

THE STATE OF THE MASSACHUSETTS WORKERS' COMPENSATION SYSTEM

FISCAL YEAR 2008 ANNUAL REPORT

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

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January 14, 2009

His Excellency Deval L. Patrick
Governor of Massachusetts
State House – Room 360
Boston, MA 02133

Dear Governor Patrick:

On behalf of the Massachusetts Workers' Compensation Advisory Council, I am pleased to present you with our Fiscal Year 2008 Annual Report: The State of the Massachusetts Workers' Compensation System.

The Advisory Council's Annual Report illustrates a detailed analysis of the workers' compensation system in Massachusetts. The report provides summaries in areas such as the workers' compensation insurance market, legislative initiatives, occupational illness and injury statistics, and the operations of the Division of Industrial Accidents (DIA). The Advisory Council also identifies eight specific areas of concern and offers conclusive recommendations to enhance the workers' compensation system. Finally, the report recognizes significant achievements within the DIA and other related organizations that play a role in improving the system.

It is important to note that this report and its recommendations are a product of the commitment and contributions made by Council Members who volunteer their time to discuss a variety of workers' compensation issues with the ultimate goal of identifying problems and developing solutions. When the affirmative vote of at least seven members can be reached between business and labor, these positions are reflected in our recommendations.

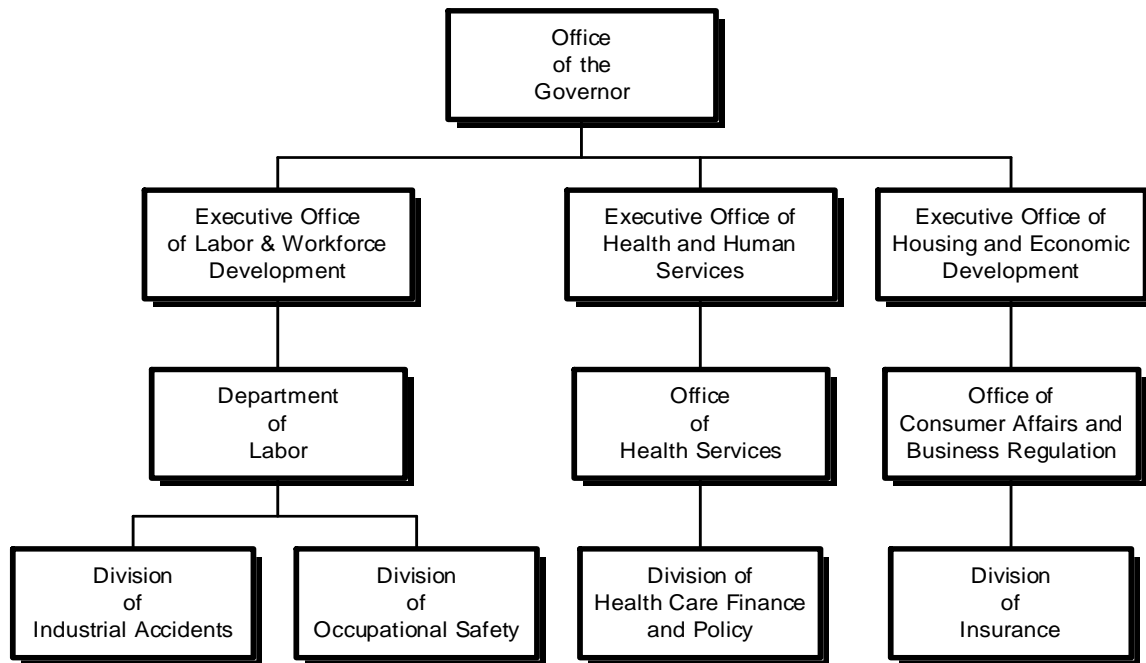
The Advisory Council hopes that this report will serve to highlight the successes of the past year and offer guidance to policymakers looking to improve the system. We look forward to working with you in the future and continuing our shared mission to improve services to injured workers, employers, and all participants in the Commonwealth's workers' compensation system.

Very truly yours,

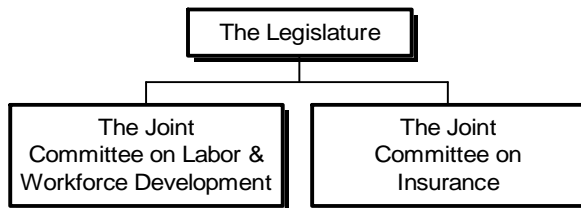
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Executive Director

Government Regulation of Workers' Compensation

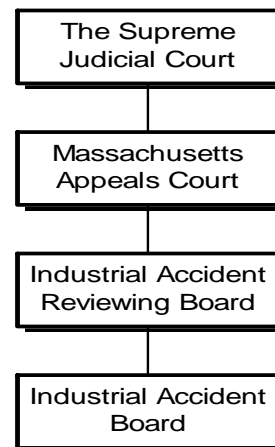
Executive Branch



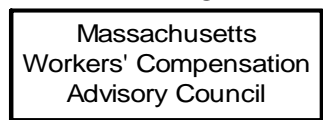
Legislative Branch



Appeals Process



Oversight



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

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ADVISORY COUNCIL

The Massachusetts Workers' Compensation Advisory Council was created by the Massachusetts General Court on December 10, 1985, with the passage of chapter 572 of the Acts of 1985. The function of the Council 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.

Pursuant to the Act, the Advisory Council is mandated to issue an annual report evaluating the operations of the Department of Industrial Accidents (DIA) and the state of the Massachusetts workers' compensation system. In addition, members are required to review the annual operating budget of the DIA and submit an independent recommendation when necessary. The Council also reviews the insurance rate filing and participates in insurance rate hearings.

The Advisory Council is comprised of sixteen members that are appointed by the Governor for five-year terms. The membership consists of: 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 the Department of Labor and the Director of the Department of Economic Development serve as ex-officio members.

The voting members of the Council are comprised of the employee and employer representatives and cannot take action without at least seven affirmative votes. The Council's chair and vice-chair 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 Department 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 (M.G.L. c.30A, §11(a)).

Advisory Council Studies

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 office of the Advisory Council, 600 Washington Street, 6th 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.mass.gov/wcac/>.

Advisory Council Studies: 1989-2008

Actuarial Analysis of the Insurance Rate Filing as Submitted by the Workers' Compensation Rating & Inspection Bureau of Massachusetts, KPMG (2005).

Analysis of September 2003 Workers' Compensation Rating and Inspection Bureau of Massachusetts Rate Filing, Tillinghast, (2003).

Analysis of September 2001 Workers' Compensation Rating and Inspection Bureau of Massachusetts Rate Filing, Tillinghast, (2001).

Addendum to the 1997 Tillinghast Analysis of Proposed Changes to Section 34 and 35 of Chapter 152 of the Massachusetts General Laws, Tillinghast, (2000).

Analysis of the Workers' Compensation Rating and Inspection Bureau (WCRI) and State Rating Bureau (SRB) Rate Filings, Tillinghast – Towers Perrin, (1999).

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

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

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

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

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

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

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

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

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

Report on Competitive Rating, Tillinghast, (1989).

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

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

FISCAL YEAR 2008 IN REVIEW

During fiscal year 2008, the number of workers' compensation cases filed at the Department of Industrial Accidents (DIA) decreased by 5%. Since the enactment of the Workers' Compensation Reform Act of 1991, the number of cases filed at the DIA has decreased by 69%. The majority of cases filed at the DIA are employee claims. In fiscal year 2008, employee claims decreased by 6% from last fiscal year. Since 1991, employee claims have declined by 50%. The number of requests for a discontinuance or modification of benefits by insurers, which account for 17% of the total cases, increased by 7% in fiscal year 2008 but have decreased by 77% since the 1991 Reform Act.

In July of 2007, the Joint Committee on Labor & Workforce Development unanimously voted to favorably rate three workers' compensation bills that were endorsed by the Advisory Council. The three bills would increase the maximum benefit for funeral expenses, from \$4,000 to \$8,000 (H.4170), restore the scarring benefit for injuries that occur on the "face neck or hands" (S.2289), and allow any ten people to bring a civil action against a business that is misclassifying employees or failing to carry workers' compensation insurance (S.1066).

On August 8, 2007, a subcommittee of the WCRIB's Bureau/Producer Advisory Group presented to the Advisory Council proposed audit guidelines that would provide consistent treatment to insurance certificates for policies issued to sole proprietors or partnerships. In 2004, an amendment to the Independent Contractor Law excluded far more workers from independent contractor status than under the prior statute. The law also shifted the burden of liability to the General Contractor's insurer when a sole proprietor is injured on the job and cannot provide satisfactory proof they are an independent contractor or a bone fide employer. In September of 2007, Council members formally recommended that both the DIA and the Division of Insurance work with the WCRIB's subcommittee to finalize premium audit guidelines. The Advisory Council believed that finalized guidelines would ensure that all employers and general contractors are audited by the same guidelines and would further assist insurers in better understanding their exposure when writing and collecting premiums.

On August 16, 2007, Secretary of Labor and Workforce Development Suzanne M. Bump announced 43 statewide Occupational Safety and Health grant awards for FY'08 totaling \$800,000. Since 1991, the DIA's Safety Grant Program has been providing grants of up to \$25,000 per year to employers in Massachusetts to develop and implement workplace safety training for employees. Training can encompass a wide range of areas that will improve the safety of the workplace, including ergonomics, handling of hazardous materials, or proper lifting techniques for heavy objects.

On September 12, 2007, the Advisory Council was presented with an overview of Rhode Island's Fee Schedule Task Force. The Task Force was created in 1992 and consists of a diverse group of representatives from the state's workers' compensation system. The Rhode Island Task Force provides all parties with a forum to continually fine-tune the fee schedule and expand codes when necessary. The Advisory Council members were impressed how various interests were able to come together in Rhode Island to produce a

fee schedule that accurately reflects the costs incurred by health care providers. Later in the year, the Advisory Council would recommend that the DIA and the Division of Health Care Finance & Policy work together in establishing a Medical Fee Schedule Task Force to provide a mechanism that can promptly react when areas of the fee schedule become unrepresentative of system costs.

On September 28, 2007, the DIA held a public hearing to afford interested parties the opportunity to testify on proposed amendments and additions to the DIA Adjudicatory Rules, 452 C.M.R. 1.00 et seq. The public hearing addressed various dispute resolution proposals including discovery, interpreters, impartial medical examination practice, penalty and fraud claims, Section 50 interest claims, the preclusive effect of conference orders in claims against multiple insurers, attorney appearances, Section 1(7A) "combination injury" practice, and the formatting of briefs to the Reviewing Board. The proposed regulations are intended to update and clarify existing regulations so that they accurately reflect decisions by the Reviewing Board and/or appellate courts, add provisions that codify decisions of the Reviewing Board regarding practice before Administrative Judges, and to add provisions designed to promote uniform procedures in the adjudicatory process.

In October of 2007, Deloitte Consulting informed the Advisory Council that they would be unable to perform a scar-based disfigurement cost analysis because available statistical data was not refined to the required level of detail. In June of 2000, the Advisory Council attempted to conduct a similar scar-based disfigurement study with the actuarial firm Tillinghast - Towers Perrin to estimate the cost-impact of restoring scarring awards to their pre-chapter 398 levels. Again, the contracted actuaries were unable to quantify the impact of such a proposed revision due to incomplete data, though it was suggested that such a change would have a "relatively minimal impact on system costs." Although past attempts have been unsuccessful at measuring the precise costs associated with scar-based disfigurement benefits, the Advisory Council continued to advocate for the passage of Senate Bill 2289 during the 2007-2008 Legislative Session.

In November of 2007, the Advisory Council met in Executive Session to review the qualifications of twelve judicial applicants seeking appointment to the position of Administrative Judge. Upon the vote of at least seven voting members, the Advisory Council may rate any candidate as either "qualified," "highly qualified," or "unqualified." On November 19, 2007, the Advisory Council forwarded all twelve judicial recommendations to the Governor's Chief Legal Counsel and to the members of the Governor's Council for review.

On January 16, 2008, the Legislature's Public Safety Committee held a public hearing on House Bill 2407 regarding floor finishing safety. In 2006, the Massachusetts Coalition for Occupational Safety and Health (MassCOSH) spearheaded a Task Force comprised of labor, industry, safety, and Vietnamese community representatives to develop legislation that would prohibit the use and sale of floor finishing products that ignite at temperatures less than 100 degrees. In 2004 and 2005, three Vietnamese floor finishing workers were killed in two separate fires in Somerville and Hull after the floor finishing chemicals they used burst into flames.

In January of 2008, Attorney General Martha Coakley began the process of seeking public comments on a Proposed Advisory regarding the Massachusetts Independent Contractor Law (M.G.L. c.149, §148B). The Proposed Advisory, intended to supersede a previous advisory from the Attorney General Office in 2004, explained the purpose of the law and provided guidance on the three prong test. In addition, the Proposed Advisory included Enforcement Guidelines describing the areas of concern and factors which may be used by the Attorney General's Office in making a determination about enforcement. On May 1, 2008, the Attorney General's Office released the official advisory to the public on their website.

On February 13, 2008, the Advisory Council examined the adequacy of the transportation reimbursement rate set by the DIA. In Massachusetts, when an injured workers seeks medical treatment they are entitled reimbursement for travel from the workers' compensation insurance carrier (previously 30 cents per mile). In order to assess how Massachusetts compared to the rest of New England, Council members examined each state's statutory language and learned that every New England state indexed their reimbursement rate to one of two Federal rates set by either the Internal Revenue Service or the General Services Administration. On July 9, 2008, DIA Commissioner Paul V. Buckley increased the travel reimbursement rate to 45 cents per mile.

In March of 2008, the Workers' Compensation Research Institute (WCRI) released findings from the *CompScope Benchmarks for Massachusetts, 8th Edition*. The study provided a comparison of the workers' compensation systems in Massachusetts and 13 other important states during 2005/2006. According to the study, the cost of workers' compensation claims is growing rapidly in Massachusetts. The WCRI reported that this rapid growth in claim costs was driven by rapid increases in medical costs per claim, as well as by two new cost drivers: indemnity benefits per claim with more than seven days of lost time and benefit delivery expenses per claim. The study noted that over a five-year period, the average medical cost per claim with more than seven days of lost time increased, on average, nearly 11 percent annually, including a 12 percent increase in the latest year of data.

On March 6, 2008, the Advisory Council's Budget Subcommittee reviewed the DIA's line-item contained in the Governor's Fiscal Year 2009 Budget Recommendation (House 2). The Budget Subcommittee made a recommendation to the full Council to endorse the House 2 Budget of \$21,196,452. As part of Governor Patrick's Fiscal Year 2009 Budget Narrative, the Governor addressed the issue of employers who illegally hire workers as independent contractors instead of as full time employees. Due to the fact that premium fraud has been a central concern of the Advisory Council, the subcommittee further recommended that the future Executive Director of the Task Force provide monthly progress updates at Council meetings.

On March 12, 2008, Governor Deval L. Patrick signed Executive Order #499 establishing the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification ("Task Force"). The Task Force is charged with coordinating the efforts of various state agencies to stamp out fraudulent employment activities and bring those workers under the protective umbrella of statutes and regulations that protect their rights and ensure a safe working environment. In addition, the Task Force will be working to bring those employers who skirt the laws of the Commonwealth into

compliance and create a level playing field for all businesses to compete and contribute to the economic well-being of Massachusetts.

On April 9, 2008, the Advisory Council was presented with an overview of the operations of the DIA's Second Injury Fund (SIF). Council members were informed that 74% of the total DIA budget pays for the operations of the Trust Fund. From the Trust Fund's budget, 50% of the expenditures are primarily attributed to the SIF (approximately \$30 million of \$59 million). It was noted that just ten years prior, the SIF was only 25% of the Trust Fund budget. Council members also learned while the number of SIF settlements has decreased over a 10-year period, the average cost per claim has steadily increased by nearly 50%. In light of increasing costs to the Trust Fund, the Advisory Council voted to create a Second Injury Fund Subcommittee to better understand how SIFs operate both nationally and in Massachusetts and to evaluate their effectiveness in promoting the employment and retention of employees with prior disabilities. The subcommittee met regularly during the summer of 2008.

On April 16, 2008, the Massachusetts Supreme Judicial Court issued its decision on the Kim Oakes's Case/Steven Alves's Case. The issue before the SJC was whether the lower courts erred in finding that the "Mid Act" Section 37 claims (filed between 12/10/85 thru 12/23/91) were not subject to any statute of limitations. In both cases, the SJC affirmed the decision of the lower courts that Mid-Act Second Injury Fund petitions are not subject to a statute of limitations. The Advisory Council has been informed that this decision will have significant financial consequences to the Trust Fund. From FY'04 through FY'07 there have been over 500 pre-1991 cases filed at the DIA.

On April 17, 2008, Insurance Commissioner Nonnie S. Burnes approved a 1% overall average rate reduction in the 2008 workers' compensation rate case. The decision was the result of an agreement between the Workers' Compensation Rating & Inspection Bureau (WCRIB), the State Rating Bureau, and the Attorney General's Office. In February, the WCRIB proposed a 2.3% rate increase to average workers' compensation rates. The 1% reduction will take effect for policies written on or after September 1, 2008 and will save Massachusetts employers \$11 million.

On April 29, 2008, Workers' Memorial Day was observed in Massachusetts to honor workers killed and injured on the job. Coinciding with Workers' Memorial Day was the release of a statewide occupational fatality report sponsored by the Massachusetts AFL-CIO, the Massachusetts Coalition for Occupational Safety and Health, and the Western Massachusetts Coalition for Occupational Safety and Health. The report, titled, *"Dying for Work in Massachusetts: The Loss of Life and Limb in Massachusetts,"* highlights the fact that many workplace deaths are preventable. In 2007, 80 workers in Massachusetts died on the job. Immigrants accounted for 20 percent of workplace fatalities in 2007, while their representation in the workforce was 16.97 percent.

On May 14, 2008, the Advisory Council met once again in Executive Session to review the qualifications of four judicial applicants seeking appointment or reappointment to the positions of Administrative Judge and Administrative Law Judge. Following this meeting, the Advisory Council forwarded all four judicial recommendations to the Governor's Chief Legal Counsel and to the members of the Governor's Council for review.

CONCERNS & RECOMMENDATIONS

The Advisory Council is mandated by M.G.L. c.23E, §17 to include in its annual report “an evaluation of the operations of the [DIA] along with recommendations for improving the workers’ compensation system.” In an effort to further improve the workers’ compensation system, the Council has identified the following areas of concern and offers these recommendations to address them.

1. Employer Fraud - Misclassification & Uninsured Employers

As part of Governor Deval Patrick's Fiscal Year 2009 Budget Narrative, the Governor vowed to take action against those employers who misclassify their employees and cost the Commonwealth hundreds of millions of dollars in lost tax revenue while denying their own workers benefits to which they are entitled. This assertion, which led to the creation of an Underground Economy Task Force, came as welcome news to the Massachusetts Workers' Compensation Advisory Council that has for the last twelve years identified employer fraud as a major threat to the health of the state's workers' compensation system. By bringing new focus and visibility to these deceptive business practices, the Governor has sent a strong message to the business community that the state will use all available resources to combat employer fraud.

The Advisory Council is well aware of the difficult challenges that lay ahead for state regulators that must untangle the often large and complex nature of today's insurance fraud schemes. In light of these complexities, the Advisory Council strongly believes that any effort to combat insurance fraud in Massachusetts must be multifaceted and include both legislative and non-legislative solutions. Although there is no "silver bullet" that will force every employer to adequately insure their employees, the Advisory Council believes that the following collective recommendations will be instrumental in winning the fight against employer fraud.

1.1 Employee Misclassification - Private Right of Action - Employee misclassification is a form of employer fraud. Classifications were created as a premium calculation tool based on the theory that the nature, extent and likelihood of certain injuries are common to any given industry (see page 110 for a more detailed description of the classification system). When employers misclassify their workers, they misrepresent the true nature or size of their business to their insurance carrier and various government agencies. Although employee misclassification can result from an honest misunderstanding of law or complex classification definitions, it frequently occurs when an employer is looking for ways to cut costs.

While the practice of employee misclassification happens in all industries, it occurs most often in the construction industry, where employers are prone to deliberately misclassify their workers as "independent contractors," to avoid paying workers' compensation insurance and other state, federal or Social Security taxes. However, misclassification can be as simple as disguising the high-risk nature of the work being conducted, such as

stating that a business employs clerical workers, when in fact they employ roofers. Or it can be as complex as defining certain workers as subcontractors to elude any premium payments and transfer liability to a third party.

Employee misclassification also creates a shortage in collected premiums needed by insurance carriers to pay the benefits of injured workers. When a business chooses to misclassify their workers, compliant employers end up paying millions of dollars in higher premium costs to cover this shortfall. Money spent subsidizing fraud takes away resources for worthy initiatives to improve workplace safety and increase job training.

While employee misclassification is an enormous problem both nationally and within Massachusetts, the elusive nature of the underground economy makes it difficult to pinpoint its full extent. According to a recent study conducted by Harvard University and the University of Massachusetts, a conservative estimate projected that one in seven construction workers (14% or 2,634 employees) in Massachusetts were misclassified as Independent Contractors (ICs) from 2001-2003. A less conservative estimate projected IC misclassification in the construction industry at 24% (4,459 employees). This gross misclassification translates up to \$7 million in unpaid workers' compensation premiums for misclassified ICs in the construction industry and up to \$91 million of lost premiums for misclassified ICs across all industries. These figures are startling considering that they only account for IC misclassification and do not include the array of other premium evasion fraud schemes in existence.

Ensuring that employees are properly classified in Massachusetts comes down to strengthening enforcement and removing the economic incentives that cause dishonest employers to misclassify their workers. While the Fair Labor Division of the Attorney General's Office and the Insurance Fraud Bureau have made strides in addressing workers' compensation fraud, there is still no regulatory organization that can exclusively place resources towards investigating fraud associated with employee misclassification. The Fair Labor Division of the Attorney General's Office has multiple enforcement responsibilities including monitoring wage violations, child labor laws, and public bidding laws. The Insurance Fraud Bureau primarily investigates automobile and workers' compensation employee fraud.

During the 2007-2008 Legislative Session, the Advisory Council testified in support for the passage of **Senate Bill 1066**, filed by Senator Jack Hart. This bill would provide a vehicle for both private citizens and insurers to bring forth a civil action against employers who illegally fail to carry workers' compensation insurance or misclassify their workers for the purpose of avoiding premiums. On suits brought forth by private citizens, the majority of the damages would be deposited into the DIA's Trust Fund to help off-set payments made to injured workers of uninsured employers. In fiscal year 2008 alone, the Trust Fund paid approximately \$7.0 million in workers' compensation benefits to uninsured claimants. Earlier this year, Illinois enacted a similar law that is expected to give rise to vigorous litigation involving misclassification fraud within the construction industry.

Although **Senate Bill 1066** failed to become a law, Council members commend the Joint Committee on Labor & Workforce Development for recognizing the importance of this legislation and reporting it favorably out of Committee. The Advisory Council is

recommending that the Legislature refile and pass Private Right of Action legislation during the 2009-2010 Legislative Session. The passage of this legislation will help alleviate the competitive disadvantage faced by the vast majority of honest employers who purchase workers' compensation policies and properly classify their employees.

1.2 Uninsured Employers - Toughening Criminal Penalties - With limited exceptions, every employer in the Commonwealth with one or more employee(s) is required by law to have a valid workers' compensation policy at all times. This "no fault" insurance not only provides injured workers with medical care and partial wage replacement, but also protects policyholders from potentially damaging lawsuits. Although most companies in Massachusetts purchase a traditional commercial insurance policy, there are alternative methods of coverage which include licensing as a self insurer, gaining membership in a self insurance group, or obtaining coverage in the Assigned Risk Pool. With a broad variety of insurance products and pricing options available, there is no excuse for a business not to obtain appropriate coverage.

Workers' compensation insurance is a business cost just like unemployment insurance, health care, electricity and state and local taxes. Although workers' compensation costs have dramatically decreased since the 1991 Reform Act, an individual company's premium can vary significantly depending upon the nature of the industry, past injury experience and the amount of payroll. An employer may choose not to purchase insurance believing they can save money in the short-term, while others may simply be unaware of the legal requirements of the workers' compensation law.

In order for Massachusetts to sustain a healthy and vibrant business climate, there must be an economic atmosphere where similar industries can compete on a level playing field. Workers' compensation insurance attempts to accomplish this by creating a premium structure that classifies businesses together with similar exposure to injuries, thereby distributing the overall costs equitably among employers. When a business chooses to operate without coverage, the result is an unfair and burdensome cost to compliant employers in the form of higher premiums to cover this shortfall. This shift in costs is especially detrimental to small businesses and construction companies where the margin of profit is already small.

Employer fraud also negatively affects the competitive bidding process. On many occasions, law-abiding general contractors in Massachusetts have lost a competitive bid to another firm who eluded the workers' compensation coverage requirements. During these uncertain economic times when firms are under pressure to reduce costs to maintain competitiveness, the practice of employer fraud makes it nearly impossible for a responsible employer to compete against a business which has lower labor costs because they defraud the system.

Beyond creating an unlevel playing field for competitors, uninsured employers unnecessarily jeopardize the health of the workers they employ. The central premise behind a workers' compensation insurance policy is that it will create incentives for an employer to provide a safer workplace. When an employer has a higher frequency of injuries, they are charged a higher premium to reflect future risk (see page 112 on "Premium Calculation"). Uninsured employers have fewer incentives to develop

workplace safety programs because there is no tool in place to assess a financial penalty for poor injury experience.

It is well documented that employers who engage in workers' compensation fraud are prone to engage in other illegal or deceptive business activities that can negatively affect unemployment insurance benefits, state income tax collection, Social Security tax collection, and healthcare/pension plans. Sometimes deceitful business decisions can result in tragic consequences. In February of 2003, the Station Night Club fire in Rhode Island took the lives of 100 people, four of whom were club employees. Beyond not having the required workers' compensation insurance, a subsequent investigation found that club owners were engaged in a range of illegal business practices that included paying bartenders under the table, violating fire and building codes, and allowing overcrowding beyond the license capacity. This is a prime example of how workers' compensation fraud can be the tip of the iceberg in terms of other illegal business activity.

When an uninsured business is identified, the DIA's Office of Investigations is limited in the penalties they may assess. Established in 1987, the fine structure allows the DIA to serve a stop work order and issue a flat-fine of \$100 per day until there is proof of coverage. Although this may serve as a sufficient penalty to low-risk businesses with few employees, the fine becomes both smaller in severity and less of a deterrent as the size and risk of the business increase. In extreme cases where there are flagrant violations of the law, the DIA may impose criminal penalties which are capped at \$1,500 and/or imprisonment for up to one year.

To ensure that workers are provided with safe workplaces and timely access to medical and indemnity benefits, policymakers must strengthen the existing workers' compensation laws. During the 2007-2008 Legislative Session, the Advisory Council testified in support for the passage of **Senate Bill 1111** filed by Senator Susan Tucker. This bill, which was later redrafted as **Senate Bill 2587**, would significantly increase the severity of criminal penalties for employers who fail to provide mandatory workers' compensation insurance for their employees. On criminal convictions, this bill would subject offenders to minimum mandatory fines ranging between \$1,000 and \$10,000. A judge would also have the ability to impose sentencing for up to 1-year in state prison. Repeat criminal offenders would also be subject to imprisonment and additional minimum mandatory fines ranging between \$5,000 and \$50,000.

In Massachusetts, criminal penalties against uninsured employers are severely deficient when compared to most criminal statutes throughout the country. Established over two decades ago, the present fine structure is an outdated and insufficient penalty for those select employers whose actions warrant a criminal complaint. The Advisory Council is recommending that the Legislature refile and pass legislation to toughen criminal penalties against uninsured employers. The Advisory Council believes this legislation sends a strong message to uninsured businesses in the Commonwealth that workers' compensation employer fraud is a serious violation of the law and will be met with serious consequences.

1.3 DIA Funding - Maintain Appropriate Levels of Investigative Staff - The DIA is charged with ensuring that every business in the Commonwealth is carrying the mandatory workers' compensation insurance. This can be a daunting challenge considering that at any given time, there are more than 200,000 businesses operating in Massachusetts, employing in excess of three million workers. With only twelve investigators responsible for covering 351 cities and towns, the DIA is placed at a severe disadvantage in the fight against employer fraud.

When an employee is injured at work and it is discovered that their employer failed to provide workers' compensation coverage, the employee may obtain benefits through the DIA's Trust Fund. The Trust Fund was created by the Legislature in 1985 as a protective measure to pay for the benefits of injured employees of uninsured employers. The Trust Fund is financed through assessments paid by all employers who purchase workers' compensation insurance. In fiscal year 2008, approximately \$7.0 million was paid in workers' compensation benefits to uninsured claimants and 179 claims were filed. During the last eight years, Trust Fund disbursements have doubled. Although the DIA aggressively goes after uninsured employers to recoup monies paid out of the Trust Fund, collection efforts are hampered by the sheer nature of the underground economy in which assets are often difficult to locate. Over the last decade, the Trust Fund has expended nearly \$54 million to uninsured claimants and collected \$11.2 million in reimbursements for these uninsured injuries.

Last fiscal year, the Advisory Council made a formal recommendation that the DIA assess the benefits of hiring additional investigators and Trust Fund staff to increase employer compliance and to maximize recoveries. During the fiscal year, the DIA backfilled three Trust Fund positions and plans to backfill another position in fiscal year 2009. The Office of Investigations was also able to backfill two investigator positions and plans to add an additional investigator in the coming months. The Advisory Council applauds the agency for placing focus on these vacant positions that are critical in protecting the Trust Fund.

Each year, the Advisory Council Budget Subcommittee reviews the agency's expenditures and budget projections to identify areas of savings and to make certain that injured workers in the Commonwealth are receiving the highest quality of services possible. As we head into the fiscal year 2010 budget cycle, the Advisory Council is concerned with how the DIA's line-item will be treated during these difficult budget times. A common misconception made by lawmakers is that the DIA is a tax-funded agency and by reducing its funding (during "across the board" cuts) will help alleviate budget shortfalls in Massachusetts. This is entirely untrue. In 1985, the Commonwealth's employer community agreed to pay an agency assessment on their workers' compensation premium to ensure that the DIA would always have adequate funding to fulfill its mandate.

The Advisory Council would like all parties involved in the fiscal year 2010 state budget process to recognize the unique funding mechanism of the DIA in which no tax dollars are used to fund any of its operations. A complete understanding of this employer-funded agency will help ensure that the DIA has adequate funding to efficiently and effectively assist injured workers as they maneuver through the Workers' Compensation System. The Advisory Council is also recommending that the DIA continue to monitor

and assess the appropriate levels of Trust Fund and Investigative Staff. Many gains were made in the battle against workers' compensation fraud during fiscal year 2008. Adequate staffing levels will both protect the Trust Fund and maximize recovery efforts against uninsured employers.

1.4 Online Coverage Verification Searches - Each year the Office of Investigations receives hundreds of anonymous calls and letters from the general public providing tips on companies that may be operating without workers' compensation insurance. Upon receiving public referrals, investigators will cross-match the referred employer to a coverage database furnished by the Workers' Compensation Rating & Inspection Bureau (WCRIB). The WCRIB is the licensed rating organization responsible for the collection of all policy data written by commercial carriers in the Commonwealth.

The WCRIB has been sharing their coverage database with the DIA since 1991. Although this data sharing relationship has been based on a verbal agreement, the workers' compensation statute is clear that the DIA has a legal right to this coverage information. Chapter 152, section 63, requires the WCRIB to furnish the department in writing "any information required in connection with the administration by said department [DIA] of this chapter, including any statistics and the names of all employers insured by them." Chapter 23E, section 11, also states that for the purpose of investigating fraud, the DIA has the right to request and receive information from the WCRIB.

During the past five years, a national trend has emerged whereby state workers' compensation agencies are providing the general public with coverage verification tools on the internet. Currently 33 other states are utilizing these online tools to combat employer fraud (see Appendix M). By allowing the public to directly verify whether an employer is insured, workers' compensation fraud referrals will increase in quality, while reducing needless inquiries. In addition to enhancing the referral process, online coverage verification tools could provide the following benefits to Massachusetts:

- Serving as a deterrent against uninsured employers by allowing competing businesses to police their own industries;
- Assisting general contractors with ensuring that all sub-contractors are properly insured;
- Generating increased premium volume for insurers from the addition of new policies created from online referrals;
- Assisting medical providers with coverage questions when treating an injured worker in the emergency room;
- Assisting public agencies with coverage questions when issuing state contracts;
- Protecting employers from agent and broker fraud allowing them to verify their own coverage;
- Assisting DIA investigators during off-site field inspections in determining coverage;

- Assisting insurers in determining whether other insurance companies could potentially share the liability of certain claims; and
- Assisting homeowners in ensuring that hired contractors have workers' compensation insurance.

The Advisory Council is recommending that the DIA follow the national trend by forming a partnership with the WCRIB in developing an online tool that allows the general public to verify whether a specific company has a workers' compensation insurance policy. This type of web-based service has already proven to be a successful tool for assisting other states in the identification of illegally uninsured employers. With ever increasing costs to the Trust Fund for uninsured injuries, it is critical that all available resources and technology are used to identify those employers who are operating without coverage.

1.5 Underground Economy Task Force - On March 12, 2008, Governor Deval L. Patrick signed Executive Order #499 establishing a Joint Enforcement Task Force on the Underground Economy and Employee Misclassification ("Task Force"). The Task Force, chaired by the Director of Labor, is charged with coordinating the efforts of multiple state agencies to stamp out fraudulent employment activities. This includes sharing information to ensure employer compliance with the labor, licensing and tax laws of the Commonwealth. The efforts of the Task Force will help create a level playing field for all businesses to compete, thereby enhancing the Commonwealth's economic vitality.

In 2008, the Task Force held a series of regional public information sessions and hearings on workplace fraud. These meetings have provided the Task Force with valuable testimony from labor, business, and community groups as to how fraud impacts the cost of doing business in Massachusetts. Furthermore, these sessions have provided the Task Force with an opportunity to educate the public on the various efforts being taken by the Commonwealth of Massachusetts to combat workplace fraud.

In May of 2008, the Task Force announced a new toll-free referral line and website (1-877-96-LABOR / www.mass.gov/dol/labortaskforce) which allows the public to report suspected cases of workplace fraud. To date, the Joint Task Force referral line has yielded hundreds of calls from workers and citizens in regards to suspected cases of workplace fraud.

Council members applaud the Governor for taking aggressive measures against the underground economy by building partnerships between state agencies and local government. As the Task Force continues to expand its reach, the Advisory Council is optimistic the DIA will see future decreases in uninsured claims, an increase in the number of workers covered by workers' compensation insurance, and civil recovery where appropriate. During fiscal year 2009, the Advisory Council will continue to support the efforts of the Task Force in combating fraudulent activities of dishonest employers.

2. Scar-Based Disfigurement Benefits

During the 2007-2008 Legislative Session, the Advisory Council testified before the Joint Committee on Labor & Workforce Development advocating for the passage of **House Bill 1777**, filed by Representative Antonio Cabral, and **Senate Bill 1060**, filed by Senator Jack Hart. These two identical bills would provide compensation for scar-based disfigurement appearing on any part of the body, subject to a \$15,000 maximum benefit. Since the enactment of the Reform Act of 1991, scheduled benefits for scarring have been limited to the face, neck or hands.

During fiscal year 2007, the Advisory Council contracted with Deloitte Consulting to investigate the cost implications of expanding workers' compensation scar-based disfigurement benefits under six proposed amendment scenarios. Specifically, the Advisory Council directed the actuary to measure the cost impact for each proposed scenario accounting for historical claim trends and changes in claim frequency and severity. Unfortunately, after conducting interviews with representatives from both the DIA and the WCRIB, it was determined that the available statistical data was not refined to the required level of detail in either organization's databases.

In June of 2000, the Advisory Council conducted a similar scar-based disfigurement study with the actuarial firm Tillinghast - Towers Perrin to estimate the cost-impact of restoring scarring awards to their pre-chapter 398 levels. Again, our contracted actuaries were unable to quantify the impact of such a proposed revision due to incomplete data, though it was suggested that such a change would have a "relatively minimal impact on system costs."

In July of 2007, the Joint Committee on Labor & Workforce Development combined Senate Bill 1060 and House Bill 1777 into one bill (**Senate Bill 2289**) and reported it favorably out of Committee. Although Senate Bill 2289 failed to become a law during the last legislative session, the Advisory Council remains committed with its support of restoring this benefit to the injured worker. The Advisory Council is recommending that the Legislature refile and pass scar-based disfigurement legislation during the 2009-2010 Legislative Session. Advisory Council members strongly believe that the location of scarring on the body is irrelevant and that compensation, with a \$15,000 maximum benefit, should be provided to workers who suffer these traumatic, and at times, horrific injuries.

3. Maximum Burial Allowance

The principle foundation to any healthy workers' compensation system is the establishment of a benefit structure that fairly and adequately compensates workers who are injured or killed on the job. Periodically, benefit structures must be reevaluated and adjusted to ensure payments reflect the overall economic conditions. In Massachusetts, when an employee is killed on the job, the workers' compensation statute requires the insurer to "pay the reasonable expenses of burial, not exceeding four thousand dollars" [M.G.L. c.152, §33]. This amount has not been adjusted in 17 years.

On June 2, 2008, the National Funeral Directors Association (NFDA) released the results from their biennial Member General Price List Survey. In 2006, the average adult casketed funeral cost (with vault) in New England was \$7,407. It is important to note

that these costs do not include cemetery monument or marker costs or miscellaneous cash advance charges such as flowers or obituaries.

During the 2007-2008 Legislative Session, the Advisory Council testified in support for raising the maximum burial allowance from \$4,000 to eight times the State Average Weekly Wage ($8 \times \text{SAWW} = \$8,746.16$). Shortly after the May 15, 2007 legislative hearing on workers' compensation, the Joint Committee on Labor & Workforce Development favorably reported **House Bill 4170**, which would require an insurer to pay for burial expenses when a worker has died, not to exceed \$8,000. Although House Bill 4170 failed to become a law during the last legislative session, Council members applaud the leadership of Representative Martin J. Walsh and Representative David M. Torrisi for bringing this bill to the attention of the committee as a stand-alone bill.

State mandated burial allowances vary considerably in the U.S., ranging from a high of \$15,000 in Rhode Island to a low of \$2,000 in Mississippi. For Massachusetts, the Advisory Council is recommending that the Legislature refile and pass legislation to increase the maximum burial allowance to reflect the true economic cost of burial expenses. Council members believe that the passage of such legislation will ensure there is sufficient compensation available to the families of those workers killed on the job so that they may be honored with a respectful burial.

4. Medical Fee Schedule Task Force

The Division of Health Care Finance and Policy (DHC FP) regulates the rates of payment (fee schedule) for hospitals and health care providers rendering services covered by insurers under the Workers' Compensation Act. This fee schedule is subject to a regulatory proceeding ensuring a public process through which rate setting is established. Although rate negotiation is common, the rates set by the DHC FP are the only amount that an insurer is required to pay.

There is no question that the rate setting process is an imperfect science. If rates are set too low, injured workers could be denied proper access to quality medical care. Conversely, if rates are set too high, the fee schedule does not meet its goal as a cost containment tool. The DHC FP has experienced past difficulties with obtaining reliable data to make accurate rate decisions, largely because many insurance companies are often reluctant to share their medical claim information. Furthermore, there is evidence that many of the rates that physicians charge vary substantially for the same procedure. This inconsistency in fees, combined with a lack of medical data, underscores the difficulties that DHC FP experiences when attempting to set an equitable rate.

In September of 2007, the Advisory Council was presented with an overview of Rhode Island's Fee Schedule Task Force. The Task Force was created in 1992 and consists of a diverse group of representatives from that state's Department of Labor & Training, Beacon Mutual Insurance, self insured employers, the Medical Advisory Board, Blue Cross/Blue Shield, third party administrators, the Rhode Island Medical Society, and the Hospital Association of Rhode Island. As a representative body of the Rhode Island workers' compensation system, the Task Force provides all parties with a forum to continually fine-tune the fee schedule and expand codes when necessary.

The Advisory Council was impressed with how various interests were able to come together in Rhode Island to produce a fee schedule that accurately reflects the costs incurred by health care providers. In Massachusetts, where medical providers receive the lowest payments in the nation yet face the second highest practice expenses associated with providing medical care to injured workers, an effective vehicle is needed to better coordinate dialogue between the medical community, insurance companies, and the DHCFP. The Advisory Council is recommending that the DIA and the DHCFP work together in establishing a Medical Fee Schedule Task Force to provide a mechanism that can promptly react when areas of the fee schedule become unrepresentative of system costs.

5. Second Injury Fund

The Massachusetts Second Injury Fund (SIF) was created in 1919 to encourage employers to hire seriously disabled workers who had suffered from catastrophic injuries resulting in the loss of one hand, one foot, or one eye. Under this system, the Commonwealth would provide financial assistance to an insurance company if the previously disabled worker suffered a subsequent injury that resulted in the loss of the other hand, the other foot, or the other eye. This reimbursement to the insurer would benefit the employer by offsetting the total costs associated with the second injury. While the statute has evolved since 1919 and has become more expansive in the types of injuries that are eligible for reimbursement, two major objectives have remained:

1. Encouraging employers to hire and retain workers who have preexisting conditions; and
2. Providing economic relief to employers who hire workers with preexisting conditions that sustain a subsequent workplace injury.

In May of 2008, the Advisory Council formed a Second Injury Fund Subcommittee to better understand how SIFs operate both nationally and within Massachusetts. The subcommittee also evaluated the effectiveness of SIFs in promoting the employment and retention of employees with prior disabilities. The subcommittee met on four occasions throughout the summer to examine the SIF caseload within Massachusetts, the Americans with Disabilities Act, experience rating, recent SIF case law, and national trends.

SIF Caseload within Massachusetts - The DIA's Trust Fund administers SIF reimbursements in Massachusetts. The Trust Fund has an annual budget of approximately \$59 million, in which half of the expenditures are primarily attributed to SIF expenses. Just ten years ago, SIF expenses only accounted for 25% of the Trust Fund's annual budget. Although the number of SIF settlements has decreased over the last decade, the average cost per claim has steadily increased by nearly 50% due to rising medical costs in Massachusetts. In fiscal year 2008, the Trust Fund disbursed \$23,213,427 for SIF reimbursements and received 321 claims. The administration of SIF claims is complicated by the fact that the Trust Fund continues to receive claims from three distinct statutory time periods, known as the "Old Act," "Mid Act," and "New Act."

Americans with Disabilities Act - To determine whether the Massachusetts SIF effectively promotes the employment and retention of employees with prior disabilities,

the Advisory Council examined current laws which share similar goals. The Americans with Disabilities Act (ADA) is a federal anti-discrimination statute designed to remove the barriers that prevent qualified individuals with disabilities from enjoying the same employment opportunities available to those without disabilities. Enacted in 1990, the ADA applies only to employers with 15 or more employees. With over half a million small businesses operating in Massachusetts at any given time, many employees would not be protected by the discrimination provisions of the ADA. In this regard, the SIF and ADA compliment each other (one providing a "carrot" and the other a "stick") to ensure that as many workers as possible can be protected from workplace discrimination.

Experience Rating - SIF reimbursements are specifically designed to help employers bear the additional cost associated with hiring workers with prior disabilities. In order for this financial assistance to work, the reimbursements collected by insurance carriers must be timely reported to the designated rating bureau so that the employer can have their experience modification factor revised to reflect the lower claim costs. Unfortunately, many SIF claims are processed too late (not within the 3-year experience period) to have any affect on an employer's experience modification factor. This is the case with "Mid-Act" (1985-1991) and "Old-Act" (1973-1985) claims which represent approximately 25% of all the claims received by the Trust Fund. To be eligible for experience rating in Massachusetts, an employer must have a premium of at least \$11,000 during the last two years. Although only 20% of Massachusetts employers are experience rated, this accounts for approximately 80% of the total premium volume.

Recent SIF Case Law - On April 16, 2008, the Massachusetts Supreme Judicial Court (SJC) issued a decision on the Kim Oakes's Case/Steven Alves's Case. The issue before the SJC was whether the lower courts erred in finding that the "Mid Act" Section 37 claims (filed between 12/10/85 thru 12/23/91) were not subject to any statute of limitations. In both cases, the SJC affirmed the decision of the lower courts that "Mid-Act" Second Injury Fund petitions are not subject to a statute of limitations. The Advisory Council has been informed that this decision could jeopardize the Trust Fund's ability to make accurate predictions regarding the level of future assessments that will be necessary to keep the SIF solvent. From FY'04 through FY'07, there were over 500 pre-1991 cases filed with the Trust Fund.

National Trends - Since the early 1990s, twenty jurisdictions in the United States have either eliminated or have begun to phase out their SIFs. To understand why states are electing to close their SIFs, the Advisory Council closely examined the last six states that have passed legislation to abolish their funds (New York, South Carolina, Arkansas, Georgia, West Virginia, and South Dakota). The primary reason for SIF closure was either due to fund insolvency issues (NY, AR, GA, WV) or the fund not serving its intended purpose (SC, SD). In Massachusetts, where assessments are collected annually based on the needs of the Trust Fund, SIF insolvency has not been an issue but should be monitored closely.

For almost 90 years, the SIF in Massachusetts has promoted the hiring and retention of workers with prior disabilities with varying degrees of success. However, in its present structure, the SIF often fails to benefit either employers or employees due to the stale nature of claims that are submitted many years after the second injuries occurred. The Massachusetts SIF needs to be repaired so that the objectives of the fund directly benefit

the two parties with the most at stake - previously disabled workers and the businesses that employ them. In order to accomplish this goal, focus should be placed on "Mid-Act" and "Old-Act" claims where reimbursements can no longer be converted into premium adjustments.

The Advisory Council is recommending that the Legislature file and pass legislation to phase out Section 37 Second Injury Fund reimbursements for new and arising cases eligible for reimbursement for all injuries occurring before December 23, 1991, so called "Mid Act" and "Old Act" claims. Council members believe that such legislation should become effective 180 days after enactment to allow insurers adequate time to review and submit remaining caseloads. The Advisory Council is further recommending the preservation of the Second Injury Fund in Massachusetts for all claims arising on or after December 23, 1991, so called "New Act" claims.

6. Injury Reporting - Strengthening Employer Compliance

Under Massachusetts law, all employers must report to the DIA any workplace fatality or injury that incapacitates an employee from earning full or partial wages for a period of five or more calendar days [M.G.L. c.152, §6]. This report, known as the "Employer's First Report of Injury or Fatality - Form 101" (FRI), can be submitted by mail or online and is due within seven days from the fifth calendar day of disability (not including Sundays or legal holidays). The timely reporting of injuries is to the advantage of all parties in the workers' compensation system. Studies have shown that the sooner claim management begins, the faster the claim is resolved with minimal conflicts. This equates to savings for the employer and prompt benefit payments to the injured worker.

The DIA's First Report Compliance Office, within the Office of Claims, is responsible for ensuring that employers are timely reporting workplace injuries. Failure to file, or timely file, a FRI three or more times within any year is punishable by a fine of \$100 for each violation. Each failure to pay a fine within 30 days is considered a separate violation. Massachusetts is the only state in the nation that allows an employer to have two violations in any year before fines are assessed. In fiscal year 2008, the First Report Compliance Office collected \$224,474 in fines stemming from late or unreported injuries, representing a 14% increase from last fiscal year. From the 32,794 FRIs processed in the fiscal year, only 28% were filed online.

In September of 2008, the Advisory Council formed an Injury Reporting Subcommittee to investigate methods of increasing employer compliance and promoting the online filing of the FRI. The subcommittee worked closely with the First Report Compliance Office, the Office of Revenue, and the Information Technology Department to review the current procedures in place that trigger the issuance of FRI fines. During this review, the subcommittee learned that the computer system that monitors FRI violations had programmed algorithms that created "grace periods" stretching beyond the time limits provided in the statute. It was also discovered that annual FRI fines for individual employers were being capped at \$500, though the statute provides no such cap. As a result of the subcommittee's work, the DIA has begun the process of reprogramming the parameters that are used to generate FRI violation notices and late payment demand

notices in accordance to the mandated time periods. The \$500 annual cap has also been removed.

In addition to the administrative changes presently being made, the Advisory Council believes that legislation is needed to strengthen the existing statute. The Advisory Council is recommending that the Legislature file and pass legislation to remove the fine waiving provision that allows employers to have two FRI violations in any year before administrative penalties are assessed. In today's business environment in which employers have an instantaneous ability to submit FRIs online, there is no justification for waiving fines on the first two violations in any year. The Advisory Council also believes that legislation should include an escalating fine structure to ensure that injuries are reported on a timely basis.

7. Expanding e-Government Services

For the past eight years, the DIA has invested in technology to develop e-Government services to better assist the workers' compensation community. The two key components at the center of this electronic infrastructure are the Case Management System (CMS) and the Document Management System (DMS).

The CMS is an Oracle database utilized by the agency to operate its court system. After cases are assigned board numbers, CMS is used to schedule cases for Conciliation, Conference, and Hearing. It also tracks all activity and filings on each particular case. The database maintains the relevant information on the claimant, their attorney, the employer, the insurer and any third parties that may file liens or claims. Attorneys who practice before the DIA have free access to the CMS through an Attorney Calendar Account. This account also provides access to the electronic CMS case file.

The DMS was designed to minimize the reliance on paper documents within the dispute resolution system. It accomplishes this goal by storing all records electronically so that the agency will no longer have to maintain large boxes of files. At present, the DIA maintains 40 years of court records in paper form held in approximately 30,000 boxes (9,000 of which are stored in the DIA's Boston facility). The DMS is used to organize, maintain and retrieve all documents related to a specific case via its board number. This speeds the flow of documents between staff members, judges, conciliators, and attorneys alike. In addition, the DMS provides the general public with a host of online services including electronic form submission, secure credit card payments, and various types of notices, bulletins, and educational materials.

The Advisory Council has played an important role with ensuring that funding has been available for many of these e-Government initiatives. From fiscal year 2001 through fiscal year 2006, the Advisory Council authorized the release of \$7.5 million from the Special Fund Reserve Account, established in M.G.L. c.152, §65(4)(c). In conjunction with the release of this funding, the Advisory Council has worked closely with the agency to monitor each phase of the technology expansion. The Advisory Council is recommending that the DIA continue their investment in technology with the goal of enhancing both internal and external business practices. Council members look forward to the upcoming implementation of high volume batch claim submission and the online assessment project which will further enhance the services being offered to injured

workers, employers, insurers, attorneys, vocational rehabilitation providers, and the medical community.

8. Utilization Review - Update of Treatment Guidelines

Utilization Review (UR) is a system for reviewing proposed medical treatments and procedures in order to determine whether or not services are appropriate, reasonable, and necessary. This review of medical care is conducted before, during, or following treatment to an injured worker. The UR and quality assessment regulations mandate that all insurers conduct UR on all health care services provided to injured workers that have been delivered on or after October 1, 1993, regardless of the date the employee is injured.

The DIA developed Treatment Guidelines as part of the 1991 Reform Act to assure that appropriate medical care is provided to injured workers at a reasonable cost. The Guidelines were developed by the Health Care Services Board (HCSB) and are considered optimal strategies for patient management around which practice patterns should converge. Although UR agents are required to refer to the Treatment Guidelines for the approval of care, the DIA recognizes that acceptable medical practice may at times deviate from the Guidelines.

The HCSB is a medical advisory board consisting of 14 voluntary members specified by the statute and appointed by the Commissioner. The HCSB convenes five times a year and has multiple statutory responsibilities which include investigating complaints against health care practitioners, developing eligibility criteria for the DIA to select and maintain a roster of qualified impartial physicians, and conducting an annual review and update of the 28 existing Treatment Guidelines.

To assist the HCSB with creating and maintaining accurate Treatment Guidelines, data is collected and analyzed from various insurers, self-insurers and third party administrators. This database, known as the "Compensation Review System" (CRS), attempts to measure the quality, necessity, and effectiveness of medical care with the goal of developing best practices that can be integrated into the Treatment Guidelines. Since the inception of CRS in January of 2003, data collection efforts have been hindered by numerous obstacles which include the reluctance of certain insurers to share information, various errors and inconsistencies within the collected data, and incompatibility issues with computer design systems. Without the availability of reliable medical data, efforts to keep the Treatment Guidelines representative of current practices have become a difficult task.

The Advisory Council believes there is a present need to revisit and update all of the DIA's Treatment Guidelines to ensure they are applicable to present day medical practices. In light of past difficulties with obtaining reliable medical data, the DIA may want to investigate other sources of data to assist in the review and creation of Guidelines. In some states with UR systems, treatment guidelines are adopted from private companies that produce independent evidence-based guidelines that are reviewed and updated on an annual basis. The Advisory Council applauds the work of the HCSB in their development of flexible Treatment Guidelines aimed at providing injured workers with the best medical care. An update to these Guidelines will further enhance the quality control initiatives developed in 1991.

LEGISLATION

During the 2007-2008 Legislative Session, approximately forty-six bills were filed by the House and Senate seeking to amend the workers' compensation system (see Appendix P for a complete list of legislation). The vast majority of bills concerning workers' compensation matters are referred to the Joint Committee on Labor & Workforce Development. Once legislation is referred to this committee, a public hearing is held on the bills. For a complete list of members of the Joint Committee on Labor & Workforce Development, see Appendix C.

Labor & Workforce Development Hearing

On May 15, 2007, the Joint Committee on Labor & Workforce Development held a hearing on all workers' compensation legislation before the committee. At this hearing, representatives from the Advisory Council appeared before the committee and testified on four legislative matters that had been previously endorsed by the Advisory Council.

First, the Advisory Council expressed support for the passage of **Senate Bill 1066**, filed by Senator Jack Hart. This bill would provide a vehicle for both private citizens and insurers to bring forth a civil action against employers who illegally fail to carry workers' compensation insurance or misclassify their workers for the purpose of avoiding premiums. On suits brought forth by private citizens, the majority of the damages would be deposited into the DIA's Trust Fund to help off-set payments made to injured workers of uninsured employers. In fiscal year 2008 alone, the Trust Fund paid approximately \$6.9 million in workers' compensation benefits to uninsured claimants. According to a joint study by Harvard and UMass, as much as \$91 million in premiums went uncollected for misclassified workers in Massachusetts between 2001 and 2003.

Second, the Advisory Council endorsed **House Bill 1777**, filed by Representative Antonio Cabral, and **Senate Bill 1060**, filed by Senator Jack Hart. These two bills would provide compensation for scar-based disfigurement appearing on any part of the body, subject to a \$15,000 maximum benefit. The eligibility criteria for this benefit was last modified by the 1991 Reform Act, which limited compensation for disfigurement to only the face, neck or hands.

Although there was no stand-alone bill, the Advisory Council also voiced support for raising the **maximum burial allowance**. The current burial allowance of \$4,000 has not been increased in seventeen years and appears to be well below the national average. Earlier this year, the National Funeral Directors Association reported that the median adult casketed funeral cost in New England was \$7,407 in 2006. This figure does not include cemetery, monument or marker costs or miscellaneous charges for flowers and obituaries. The Advisory Council believes that the Commonwealth has an obligation to ensure there is sufficient compensation available to the families of those workers killed on the job so that they may be honored with a respectful burial. In this regard, the Council recommended that the Legislature draft a stand-alone bill that increases the maximum burial allowance from \$4,000 to eight times the State Average Weekly Wage ($8 \times \text{SAWW} = \$8,003.44$).

Finally, the Advisory Council testified in support for the passage of **Senate Bill 1111** filed by Senator Susan Tucker. This new legislation would significantly increase the severity of criminal penalties for employers who fail to provide mandatory workers' compensation insurance for their employees. On criminal convictions, this bill would allow a judge to impose sentencing for up to 5 years in state prison and/or fines up to \$10,000. Established in 1987, the present fine structure is outdated and insufficient, capping criminal penalties at \$1,500 or up to one year in prison. Council members further recommend that the Legislature consider amending this bill with a penalty provision that subjects repeat offenders to both minimum mandatory fines and imprisonment.

Legislation with a "Favorable Rating"

As in past legislative sessions, multiple bills were reported "favorably" by the Joint Committee on Labor & Workforce Development. When a committee deems a bill to be favorably rated, it is the first essential step for a bill to become a law. Bills that are reported out favorably are then sent on to various relevant committees for review. At the close of the 2007-2008 Legislative Session, the Legislature had rated the following seven bills favorably, three of which were endorsed by the Advisory Council.

HOUSE BILL 1816

Filed By: Representative Ronald Mariano

Type of Bill: Refile (S.1097)

Endorsed by Advisory Council: No

Laws Affected: Widow's Benefits (c.152, §35C, §32, §31)

Reported Favorably on: March 4, 2008

This refiled bill would significantly alter the definition of the "average weekly wage" exclusively for Section 35C cases (latency claims). Under this bill, the surviving dependent of a worker that had died from an occupational illness or disease would receive compensation based upon the earnings of the last full time employment, regardless of whether that worker was earning wages at the time of death. According to the SJC's decision in the *McDonough's Case*, the widow of an employee who died as a result of past asbestos exposure was not entitled to receive compensation under Section 35C since the deceased had voluntarily retired in 1991 and was not receiving wages on the date of his death. Section 35C clearly states that "[w]hen there is a difference of five years or more between the date of injury and the initial date [of] eligib[ility] for benefits under section thirty-one...the applicable benefits shall be those in effect on the first date of eligibility for benefits."

Last legislative session, the Advisory Council voiced opposition to this bill because workers' compensation was designed as a wage-replacement mechanism and not as a life insurance policy. Furthermore, language contained within this bill would expand benefit eligibility requirements to include workers who are not even subject to the Workers' Compensation Act. The Advisory Council has been informed that the passage of this bill could financially jeopardize the DIA's Trust Fund, which makes reimbursement payments to insurers for latency injuries.

HOUSE BILL 4170**Filed By:** Representative David M. Torrissi**Type of Bill:** Redraft (H.1862 - Section 2)**Endorsed by Advisory Council:** YES**Laws Affected:** Burial Expenses (§33)**Reported Favorably on:** July 31, 2008

This redrafted bill would require an insurer to pay for burial expenses when a worker has died, not to exceed eight thousand dollars. Currently, the statute requires the insurer to pay reasonable expenses of burial, not to exceed four thousand dollars.

SENATE BILL 1066**Filed By:** Senator John A. Hart, Jr.**Type of Bill:** Refile (S.1099)**Endorsed by Advisory Council:** YES**Laws Affected:** Private Right of Action to Recover WC Coverage Payments (c.152, §25C)**Reported Favorably on:** July 16, 2007

This refiled bill would allow "any 10 persons" to bring a civil action against an employer to recover amounts which should have been paid in securing proper workers' compensation insurance as mandated by chapter 152. Such persons seeking civil action must first petition either the Attorney General's Office or a superior court to hold a "probable cause hearing." At the hearing, it shall be *prima facie* evidence that such probable cause exists if it is shown that:

- an employee was paid any portion of wages in cash with no deductions or taxes withheld;
- no accompanying pay slip showing the wage payment and deductions as required by law;
- an individual was misclassified as an independent contractor when actually an employee;
- wages were not timely paid;
- the employer failed to withhold from the employee's wages all related state taxes; or
- employees have not been properly reported on certified payroll records as required by law.

When probable cause exists, such persons seeking civil action against a non-compliant business may seek damages of up to \$25,000 (or 25% of the premium that has been avoided - whichever is less). The remainder of damages would be deposited into the DIA's Workers' Compensation Trust Fund. Insurance carriers would be able to recover the full amount of the award in situations where they obtain court approval to replace the private citizens in a lawsuit.

SENATE BILL 1079**Filed By:** Senator Michael W. Morrissey / William Salisbury**Type of Bill:** Refile (S.2168)**Endorsed by Advisory Council:** No**Laws Affected:** Benefits for Members of the Armed Services or National Guard (c.1, §7A)**Reported Favorably on:** May 8, 2008

This refiled bill would provide workers' compensation benefits to employees who previously sustained an emotional or physical injury in the U.S. Armed Forces or National Guard and subsequently receive a workplace injury which combines with, or is aggravated or prolonged by their injury in the military, "regardless of the extent to which the services related disability contributes." Current law requires that when an on-the-job injury or disease combines with a pre-existing condition (not compensable under Chapter 152), the resulting condition is only compensable to the extent such on-the-job injury or disease remains a major but not necessarily predominant cause of disability or need for treatment.

SENATE BILL 1088

Filed By: Senator Marc R. Pacheco

Type of Bill: Similar (H.4451)

Endorsed by Advisory Council: No

Laws Affected: Safe Workplaces for Employees of the Commonwealth (c.149, §40)

Reported Favorably on: May 8, 2008

This legislation would require the Division of Occupational Safety (DOS) to apply federal occupational and health standards to public sector employees (state, city/town, and county) and its independent authorities. Under this legislation, DOS would be given the authority to conduct investigations and the power to establish regulations and corrective action where it has found a violation. This proposed legislation would not apply to the fire services of the Commonwealth.

SENATE BILL 2289

Filed By: Senator Thomas M. McGee

Type of Bill: Redraft (Senate 1056, Senate 1060, and House 1777)

Endorsed by Advisory Council: YES

Laws Affected: Benefits for Specific Injuries (c.152, §36(k)) - Scar-Based Disfigurement

Reported Favorably on: July 16, 2007

This refiled bill would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This bill 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. This redrafted bill would not affect the \$15,000 maximum benefit for scar-based disfigurement currently in the statute.

SENATE BILL 2587

Filed By: Senator Susan C. Tucker

Type of Bill: Redraft (Senate 1111)

Endorsed by Advisory Council: No

Laws Affected: Increasing Criminal Penalties for Failing to Provide WC Insurance (c.152, §25C)

Reported Favorably on: May 5, 2008

This redraft of Senate Bill 1111 would increase the severity of criminal penalties for employers who fail to provide workers' compensation coverage for their employees. Under this bill, employers convicted of criminal offenses, would be subject to minimum mandatory fines, imprisonment, or both. The maximum imprisonment sentence would be 1 year. The maximum criminal fine would increase to \$10,000 with a minimum fine of \$1,000. Repeat criminal offenders would also be subject to imprisonment and an additional fine of not less than \$5,000 nor more than \$50,000. Current law limits criminal penalties at no more than \$1,500 or by imprisonment for not more than 1 year, or both.

SECTION

- 1 -

OVERVIEW

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PROVISIONS TO RESOLVE DISPUTES

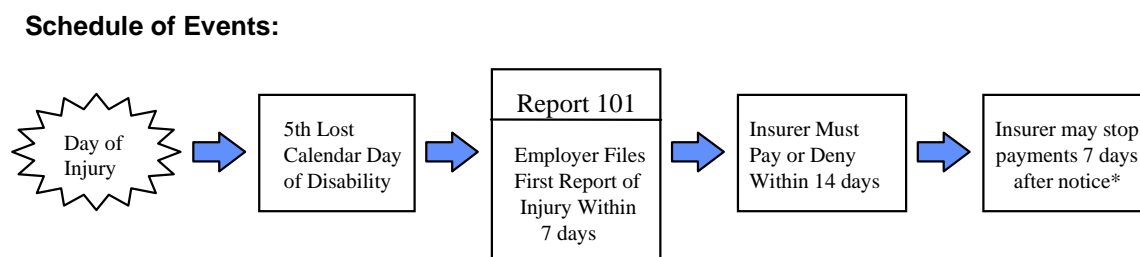
Workers' Compensation Claims

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.¹ Failure to file, or timely file, a First Report of Injury three or more times within any year is punishable by a fine of \$100 for each violation. In addition to state mandated reporting guidelines, employers must also comply with federal injury recordkeeping and reporting requirements administered by the Occupational Safety and Health Administration (OSHA).

The insurer then has 14 days upon receipt of the employer's First Report of Injury, to either pay the claim or to notify the DIA, the employer, and the employee of their refusal to pay.² When the insurer pays a claim, they may do so without accepting liability for a period of 180 days. This is known as the "pay without prejudice period." This period establishes a window where the insurer may refuse a claim and stop payments at 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.³ 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.

Figure 1: 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.

¹ The First Report of Injury can be submitted to the DIA by mail or through online submission.

² 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.

³ The insurer does not need permission from the DIA to terminate or reduce benefits during the 180 day "payment without prejudice" period if said change is based on actual income of the employee or if it gives the employee and the DIA at least seven days written notice of its intent to stop or modify benefits and contest any claim filed. The employee can contest discontinuance by filing a claim with the DIA. The pay without prejudice period may be extended up to one year under special circumstances.

After a conference order is issued or the pay without prejudice period expires, the insurer may not stop payment without an order from an Administrative Judge (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 a referral to the division of dispute resolution.

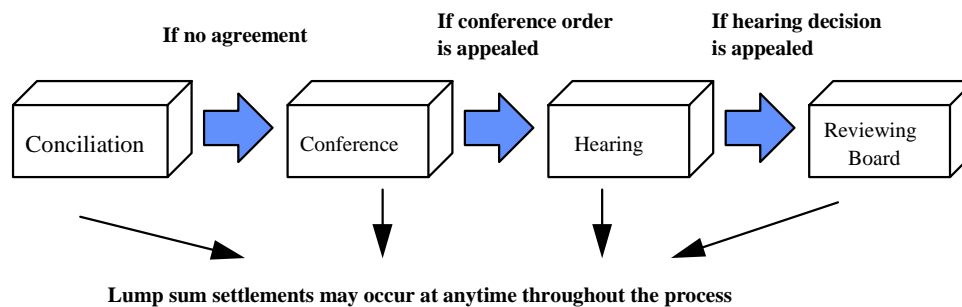
Dispute Resolution Process

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. The AJ may require both injury and hospital records. A conference order may be appealed to a hearing within 14 days from the filing date of such order.

At 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 proceeding 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. Any 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 review the evidence presented at the hearing. The ALJ's may request 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 costs 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 process by either a voluntary settlement agreed to by the parties 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 ALJ will decide if a lump sum settlement is in the best interest of the parties.

At the conference or hearing level of dispute resolution, the AJ 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 they 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 M.G.L. c.251, §12 and §13. 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 continue 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, and §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; and 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.⁴ In addition, the insurer is required to furnish medical and hospital services, as well as any medicines if needed. The insurer must also pay for vocational rehabilitation services if the employee is determined to be suitable for such services by the DIA.

Below is a list of the SAWW since 1993 along with the maximum (SAWW) and minimum benefit levels for §34 and §34A claims. In October of 2008, the SAWW increased by 4.8% (\$49.73) from the previous year.

Table 1: Minimum and Maximum Benefit Levels - §34 Claims and §34A Claims

<u>Effective Date</u> (Effective Oct 1st)	<u>Maximum Benefit</u> (100% of SAWW)	<u>Minimum Benefit</u> (20% of SAWW)
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
10/1/98	\$699.91	\$131.98
10/1/99	\$749.69	\$149.93
10/1/00	\$830.89	\$166.18
10/1/01	\$890.94	\$178.19
10/1/02	\$882.57	\$176.51
10/1/03	\$884.46	\$176.89
10/1/04	\$918.78	\$183.76
10/1/05	\$958.58	\$191.72
10/1/06	\$1,000.43	\$200.09
10/1/07	\$1,043.54	\$208.71
10/1/08	\$1,093.27	\$218.65

Source: DIA Circular Letter No. 327 - Table I (October 1, 2008)

⁴ The Statewide Average Weekly Wage (SAWW) is determined under M.G.L. c.151A, §29(2) & promulgated by the Director the Division of Employment and Training. As of October 1, 2008, the SAWW is \$1,093.27.

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 (\$1,093.27), while the minimum is 20% of the SAWW (\$218.65), if claims involve injuries occurring on or after October 1, 2008. 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 benefit period is 260 weeks for partial disability, but may be extended to 520 weeks.

Permanent and Total Incapacity (§34A) - Payments will equal 66.67% of the AWW following the exhaustion of temporary (§34) and partial (§35) payments. The maximum weekly compensation rate is 100% of the state average weekly wage (\$1,093.27), while the minimum is 20% of the SAWW (\$218.65), if claims involve injuries that occurred on or after October 1, 2008. 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 (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). However, children under 18 years old may continue to receive payments even if the maximum has been reached. Burial expenses may not exceed \$4,000.

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 a 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 M.G.L. c.152, §13A(10). As of October 1, 2008, 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 **\$1,046.75** plus necessary expenses. If the employee's attorney fails to appear at a scheduled conciliation, the amount paid is **\$523.36**.
- (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 **\$1,495.34**. 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 **\$747.66**.
- (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 **\$747.66** plus necessary expenses. This fee can be reduced to **\$373.84** 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 **\$1,046.75** 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 **\$523.36** 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 **\$5,233.64** 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 **\$1,495.34**. 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

- 2 -

WORKPLACE INJURY & CLAIM STATISTICS

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OCCUPATIONAL INJURIES AND ILLNESSES

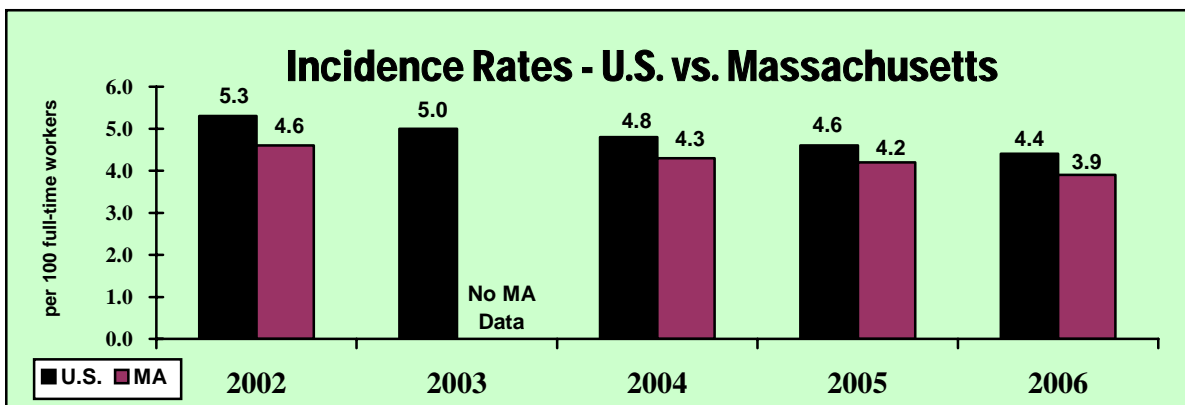
Since 1992, the Massachusetts Division of Occupational Safety (DOS) has been in a partnership with the U.S. Department of Labor, Bureau of Labor Statistics (BLS), in an effort to collect injury and illness data in a uniform format. Throughout the country, surveys are collected from over 195,200 private industry establishments in an effort to represent the total private economy. Each year these statistics are published in a document known as the *Annual Survey of Occupational Injuries and Illnesses*. Funding for the annual survey is split 50/50 between state (DOS) and federal (BLS) government.

On January 1, 2002, the Occupational Safety and Health Administration (OSHA) revised its requirement for recording occupational injuries and illnesses. The DOS now collects data using the North American Industry Classification System (NAICS), rather than the Standard Industrial Classification System (SICS). It is important to note that Massachusetts did not participate in the 2003 annual survey program due to a lack of state-funding for DOS.

Injury and Illness Incidence Rates

Incidence rates are calculated to measure the frequency of injuries. Specifically, the study examines the frequency of non-fatal injuries and illnesses that occurred in the private sector workforce (not including farms with less than 11 employees) for every 100 full-time workers. Each year the level of incidence rates can be influenced by changes in the economic climate, working conditions, an employer's emphasis on safety, and the number of hours that employees work. In 2006, Massachusetts had a population of 6,437,193 people with an estimated private sector workforce of 2,756,200 workers.

During 2006, the private sector workforce in the United States experienced approximately 4.1 million non-fatal injuries and illnesses, resulting in an incidence rate of 4.4 cases per 100 full-time workers. In Massachusetts alone, there were 87,900 non-fatal occupational injuries and illnesses, resulting in an incidence rate of 3.9 cases per 100 full time workers. The graph below shows how occupational injury and illness rates have steadily declined at both the national level and within Massachusetts from 2002 to 2006. The graph also displays how incidence rates in Massachusetts have consistently remained lower than national rates.



Incidence Rates by Region

The following table exhibits a regional breakout of the injury and illness incident rates per 100 full-time workers since 2002. Historically, Massachusetts has led all other New England states with the lowest incident rate of work-related injuries or illnesses (resulting in lost work-time).

Table 2: Injury and Illness Incidence Rates - U.S. and New England 2002-2006 (Private Industry)

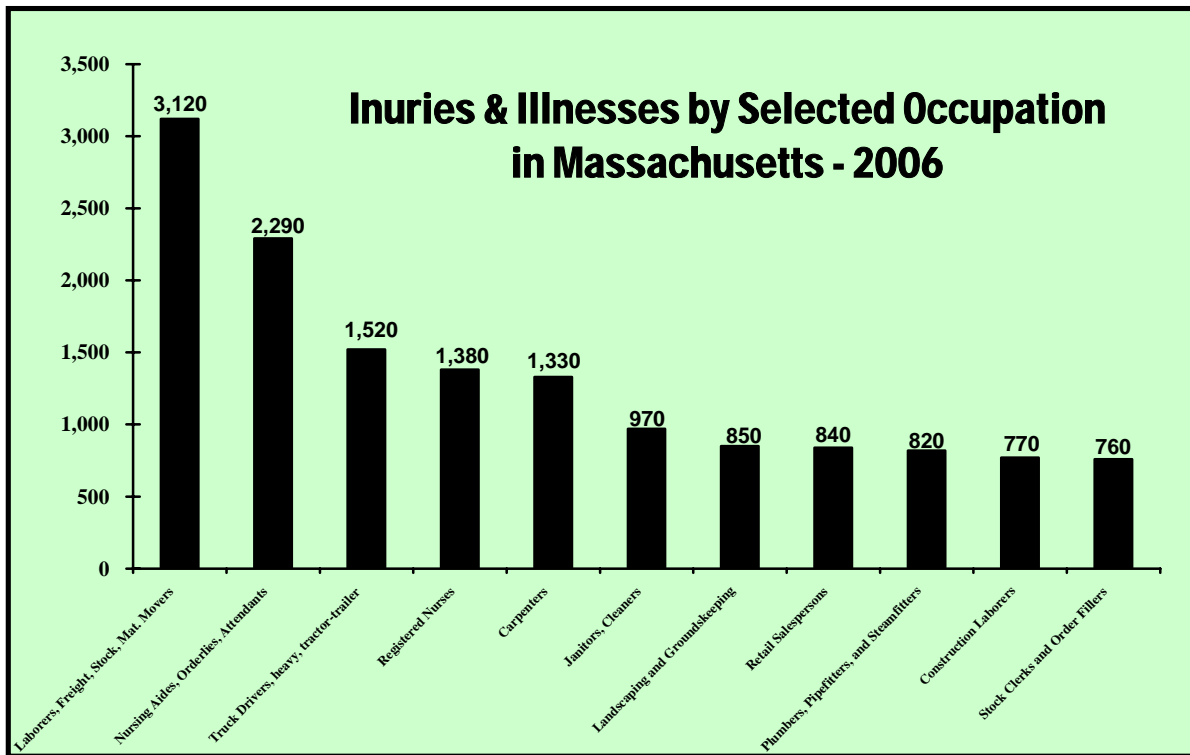
<i>Region</i>	<i>2006</i>	<i>2005</i>	<i>2004</i>	<i>2003</i>	<i>2002</i>
United States.....	4.4	4.6	4.8	5.0	5.3
Massachusetts.....	3.9	4.2	4.3	no data	4.6
Connecticut.....	4.8	5.0	4.8	5.1	5.4
Maine.....	7.0	7.2	6.9	7.7	8.1
Rhode Island.....	5.2	5.5	5.2	5.4	5.3
Vermont.....	5.5	6.2	5.8	5.2	6.7
New Hampshire...	no data	no data	no data	no data	no data

Source: Bureau of Labor Statistics - Boston Office.

Injuries & Illnesses by Occupation

The survey also has the ability to categorize the number of injuries and illnesses by occupation in Massachusetts. In 2006, laborers (non-construction) and nursing aides, orderlies and attendants had the highest number of injuries and illnesses involving days away from work in Massachusetts.

Figure 3: Injuries & Illnesses by Selected Occupation in Massachusetts - 2006



Source: Bureau of Labor Statistics - Boston Office.

Incidence Rates by Industry

The survey also has the ability to categorize incidence rates by industry. In Massachusetts, the construction industry had the highest overall incidence rate in 2006, with 6.4 injuries for every 100 full-time workers. Finance, insurance and real estate had the lowest incidence rates, with 0.9 injuries per 100 workers.

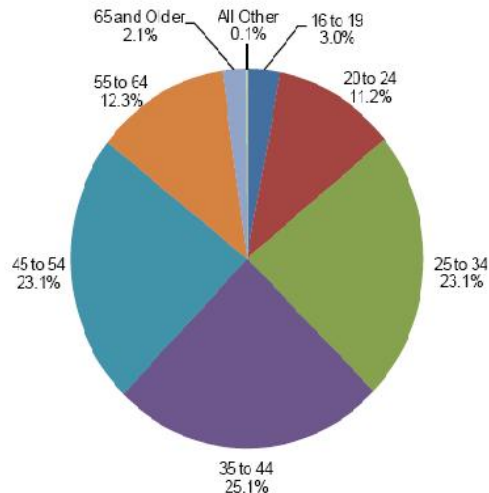
Table 3: Nonfatal Injury & Illness Incidence Rates by Industry - Massachusetts 1998-2006

MASSACHUSETTS (Selected Industry Division)	2006	2005	2004	2003	2002
Private Industry:	3.9	4.2	4.3	no data	4.6
Construction:	6.4	6.5	6.9	no data	6.8
Trade, Transportation & Utilities:	4.8	5.4	5.2	no data	7.4
Retail trade:	4.7	5.2	4.7	no data	5.3
Agriculture, forestry, and fishing:	5.9	5.0	4.5	no data	7.8
Wholesale trade:	4.0	4.5	4.2	no data	5.5
Manufacturing:	4.1	4.2	4.5	no data	5.3
Finance Activities:	0.9	1.2	1.2	no data	1.1

Source: Bureau of Labor Statistics - Boston Office.

Case & Demographic Data - All Private Industries (MA)

Pie-Chart 1: Percent distribution of nonfatal injuries and illnesses involving days away from work by age of worker, all private industries, 2006

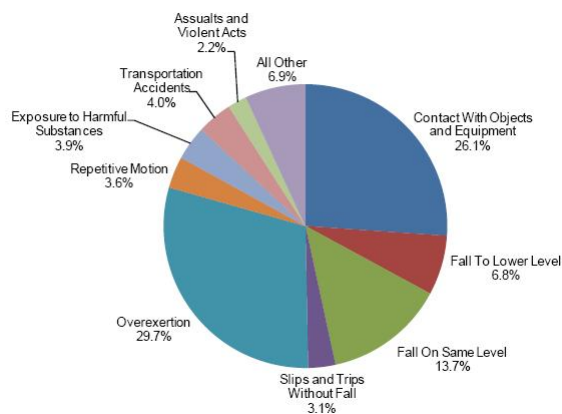


Age

In 2006, workers aged 35 to 44 had the highest number of nonfatal occupational injuries and illnesses in Massachusetts (25%). Following close behind were workers aged 45 to 54 (23%) and workers aged 25 to 34 (23%).

Source: MA Division of Occupational Safety and the U.S. Department of Labor.

Pie-Chart 2: Percent distribution of nonfatal injuries and illnesses involving days away from work by event or exposure, all private industries, 2006

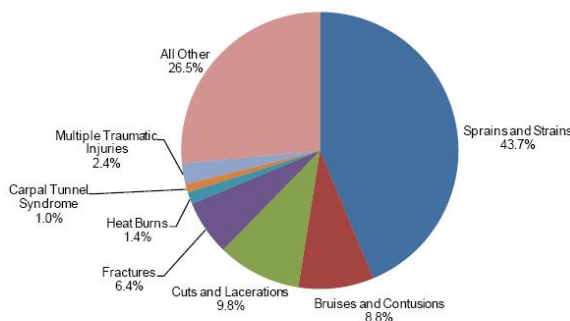


Event or Exposure

In 2006, most nonfatal occupational injuries in Massachusetts were caused by overexertion (30%) or contact with objects or equipment (26%). Falls on the same level accounted for 14% of the injuries, whereas, falls to a lower level accounted for 7% of the injuries.

Source: MA Division of Occupational Safety and the U.S. Department of Labor.

Pie-Chart 3: Percent distribution of nonfatal injuries and illnesses involving days away from work by nature of injury, all private industries, 2006

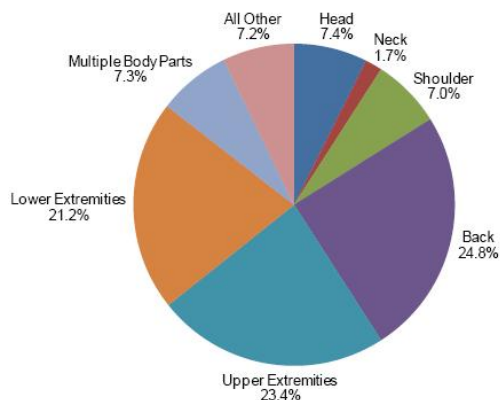


Nature of Injury

In 2006, sprains and strains accounted for 44% of all nonfatal occupational injuries and illnesses in Massachusetts.

Source: MA Division of Occupational Safety and the U.S. Department of Labor.

Pie-Chart 4: Percent distribution of nonfatal injuries and illnesses involving days away from work by part of body, all private industries, 2006



Part of Body

In 2006, the back (27%) and upper extremities (24%) were the parts of the body most commonly affected by non-fatal occupational injuries and illnesses in Massachusetts.

Source: MA Division of Occupational Safety and the U.S. Department of Labor.

OCCUPATIONAL FATALITIES

Fatal work injuries are calculated nationally each year by the U.S. Department of Labor, Bureau of Labor Statistics. The program, known as the *National Census of Fatal Occupational Injuries*, tracks data from various states and federal administrative sources including death certificates, workers' compensation reports and claims, reports to various regulatory agencies, and medical examiner reports. Much like the *Annual Survey of Occupational Injuries and Illnesses*, this census is a federal/state cooperative venture.

In 2007, a total of 5,488 work-related fatalities were recorded nationally by the program, representing a 6% decrease from the revised total of 5,840 fatalities in 2006. The national rate of fatal work injuries in 2007 was 3.7 per 100,000 workers, down from a rate of 3.9 per 100,000 workers in 2006. The overall fatal work injury rate for the U.S. in 2007 was at its lowest level since the fatality census was first conducted in 1992.

Workplace Fatalities in Massachusetts

In 2007, Massachusetts experienced 74 workplace fatalities, eight more fatalities than 2006. The leading cause of workplace death in Massachusetts came from transportation incidents (27) and falls (18) in which 45 workers were killed. Nationally, transportation incidents were the leading cause of on-the-job fatalities, accounting for 41% of the fatal work injuries in 2007. Following transportation incidents and falls, Massachusetts workers were killed by assaults and violent acts (11), exposure to harmful substances and equipment (7), and contact with objects and equipment (5).

Figure 4: Fatal Occupational Injuries by State and Event or Exposure, 2007 (Northeast Region)

State of Injury	Total Fatalities		Event or Exposure (state total for 2007)					
	2006	2007	Transportation Incidents	Assaults & Violent Acts	Contact with Objects & Equipment	Falls	Exposure to Harmful Substances	Fires & Explosions
U.S. Total.....	5,840	5,488	2,234	839	916	835	488	151
Northeast.....	723	707	258	132	97	139	47	17
Massachusetts....	66	74	27	11	5	18	7	6
Connecticut.....	38	38	8	9	--	10	6	--
Maine.....	20	21	11	--	3	5	--	--
New Hampshire..	13	14	4	3	4	--	--	--
New Jersey.....	88	106	40	27	11	17	10	--
New York.....	234	219	71	43	35	53	12	5
Pennsylvania.....	240	220	93	36	36	36	12	6
Rhode Island.....	10	5	--	3	--	--	--	--
Vermont.....	14	10	4	--	3	--	--	--

Source: Bureau of Labor Statistics, News-USDL-08-1182

SECTION

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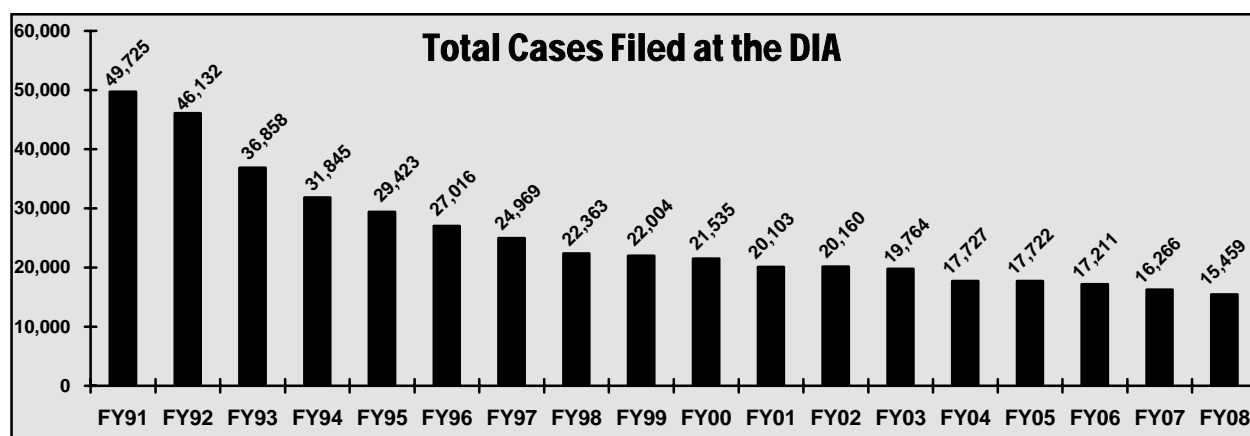
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CASES FILED AT THE DIA

Cases originate at the DIA when any of the following are filed: *an employee's claim for benefits, an insurer's complaint for termination or modification of benefits, a third party claim, a request for approval of a lump sum settlement, or a Section 37/37A request.* As demonstrated in *Figure 5*, there has been a significant decline (-69%) in the DIA caseload since the implementation of the 1991 Reform Act. In FY'08, the total number of cases filed at the DIA was 15,459, a decrease of 5% from the previous fiscal year.

Figure 5: Total Cases Filed at the DIA, FY'91 - FY'08



Source: CMS Report 28

Employee claims, which account for 75% of the total cases filed at the DIA, decreased by 791 cases (-6.4%) in FY'08. In 1991, employee claims reached an all time high of 23,240 cases filed. Employee claims have decreased by 50% since 1991. Insurers request for discontinuance or modification of benefits account for 17% of the total cases, increased by 165 cases in FY'08. Since the 1991 Reform Act, these insurer requests for discontinuance have decreased by 77%.

Table 4: Breakdown of Total Cases Filed at the DIA, Fiscal Year 2008 and Fiscal Year 2007

Total Cases Filed at the DIA FY'08 and FY'07	Number of Cases		Percentage	
	FY'08	FY'07	FY'08	FY'07
Employee Claims	11,622	12,413	75.2%	76.3%
Insurer's Request for Discontinuance	2,631	2,466	17.0%	15.2%
Lump Sum Conference Request	667	789	4.3%	4.9%
Third Party Claims	211	270	1.4%	1.7%
Section 37/37A Request	328	328	2.1%	2.0%
TOTALS:	15,459	16,266	100%	100%

Source: CMS Report 28

CONCILIATION

The first stage of the dispute resolution process is known as the conciliation. The main objective of the conciliation is to remove cases that can be resolved without formal adjudication from the dispute resolution system. 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. Although conciliators may encourage the parties to work out a settlement, they have no authority to order the parties to resolve their differences. Approximately 46% of the cases that are scheduled for conciliation are “resolved” as a result of this process and exit the dispute resolution system. Such resolved cases take on a broad range of dispositions including withdrawals, lump sum settlements, and conciliated cases. The remaining 54% of cases are referred from conciliation to a conference to be heard before an Administrative Judge.

The Conciliation Process

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

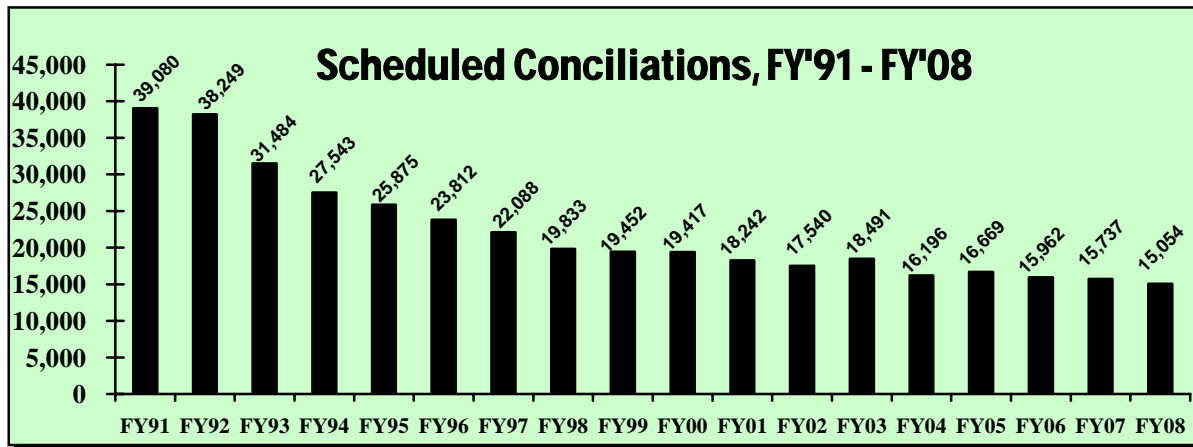
When liability is not an issue but modification or discontinuance of benefits is sought, both parties are required to submit written settlement offers. If the employee fails to file, the conciliator must record either the last offer made by the employee or the maximum compensation rate. If the insurer fails to file, the conciliator must record the last offer made or record a 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 into the case file and the disposition is recorded in the DIA’s Case Management System (CMS).

Volume of Scheduled Conciliations

The number of cases reviewed at conciliation is indicative of the total volume of disputed claims, as nearly every case to be adjudicated must first go through conciliation. The caseload of scheduled conciliations peaked in 1991 at 39,080 cases. In FY’08, there were 15,054 cases scheduled for conciliation, which represents a 61% decrease since the Workers’ Compensation Reform Act of 1991.

Figure 6 displays the number of cases scheduled for conciliation at the DIA beginning in fiscal year 1991. In fiscal year 2008, the volume of cases scheduled for conciliation decreased by 4% (683 cases) from the previous year. It is important to note that many cases scheduled for conciliation may never actually appear before a conciliator as cases can be withdrawn or adjusted prior to the scheduled meeting.

Figure 6: Volume of Cases Scheduled for Conciliation, FY'91-FY'08

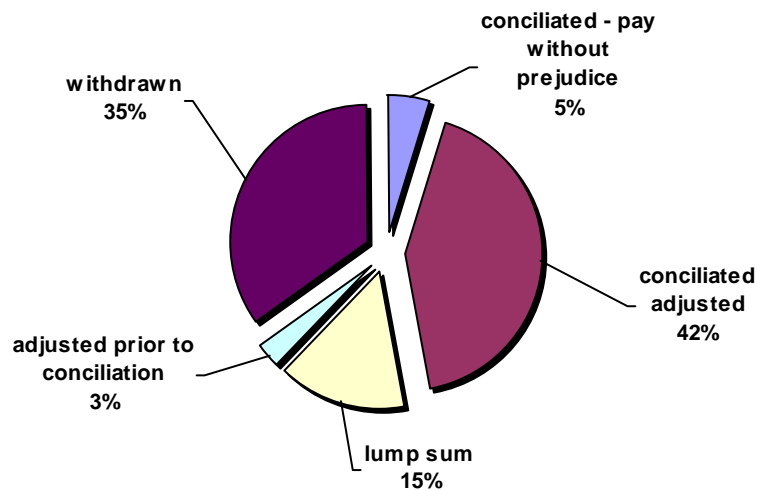
Source: CMS Report 17

Resolved at Conciliation

Disputed cases that are scheduled for conciliation can be divided into two distinct outcomes: “referred to conference,” or “resolved.” In FY’08, 6,971 cases were resolved (they were not referred on to a conference) and exited the dispute resolution system. Approximately 46% of cases that are scheduled for conciliation are resolved while the remaining 54% of cases are referred to conference, the next stage of dispute resolution. As in previous years, a small percentage of the cases scheduled for conciliation are referred to conference without a conciliation taking place. This occurs when the respondent (the party not putting forth the case) does not appear for the conciliation.

Figure 7: Pie-Chart Detailing Cases Resolved at Conciliation, Fiscal Year 2008

Resolved at Conciliation, Fiscal Year 2008



Source: CMS Report 17

Table 5: Resolved at Conciliation, Fiscal Year 2008 and Fiscal Year 2007

Resolved at Conciliation FY'08 and FY'07	Number of Cases		Percentage	
	FY'08	FY'07	FY'08	FY'07
Conciliated - Pay Without Prejudice	336	278	4.8%	3.9%
Conciliated Adjusted	2,953	3,219	42.4%	44.9%
Lump Sum	1,022	774	14.7%	10.8%
Adjusted Prior to Conciliation	199	287	2.9%	4.0%
Withdrawn	2,461	2,609	35.3%	36.4%
TOTALS:	6,971	7,167	100%	100%

Source: CMS Report 17

As displayed in *Table 5*, cases may be conciliated by two methods. Approximately 42% of the resolved cases were “conciliated-adjusted,” meaning an agreement was reached at conciliation between the parties to initiate, modify, or terminate the compensation. Secondly, cases may be “conciliated - pay without prejudice” (5% of resolved cases in FY'08), meaning the pay without prejudice period has been extended and the insurer may discontinue compensation without DIA or claimant approval.

The table also indicates that the second most prevalent method a case can exit the dispute resolution system at conciliation is through a withdrawal (2,461 cases in FY'08). A case can be withdrawn under various methods. Either before or during the conciliation, the moving party may choose to withdraw the case. A case can also be withdrawn by the agency if the parties either fail to show up for conciliation or provide the required information.

A case may also be resolved at conciliation utilizing a lump sum settlement. Conciliators are empowered by law to approve lump sum agreements "as complete" but cannot make a determination that the lump sum is in the claimants "best interest." At conciliation, lump sum settlements only account for 15% of the resolved cases at this level of dispute resolution. The percentage of resolved cases that result in a lump sum, increase dramatically at both the conference stage and the hearing stage.

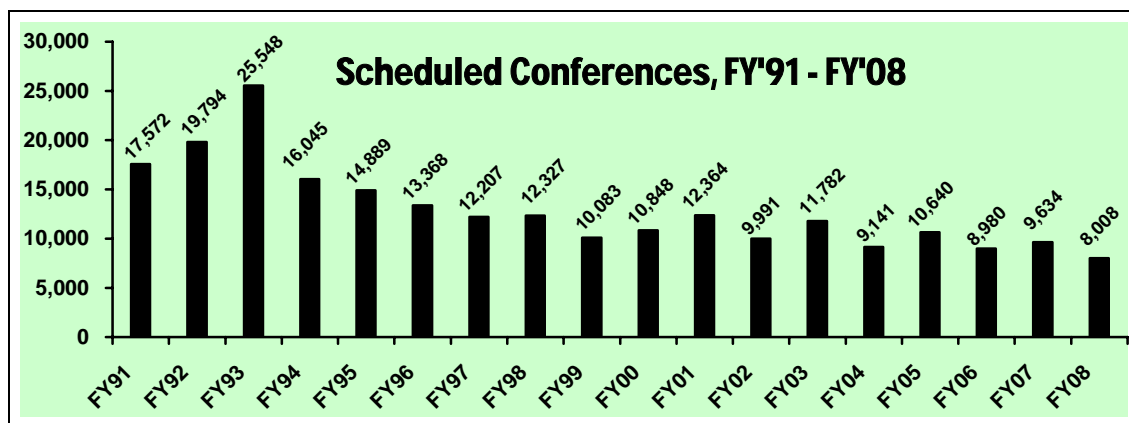
CONFERENCE

The second stage of the dispute resolution process is known as the conference. Each case referred to a conference is assigned to an Administrative Judge (AJ) who must retain the case throughout the entire process if possible. The intent of the conference is to compile the evidence and to identify the issues in dispute. The AJ may require injury and medical records as well as statements from witnesses. Although the conference is an informal proceeding, the AJ will issue a binding order shortly after the conference has concluded. This conference order is subject to appeal by the parties. The conference order is a short, written document requiring an AJ's initial impression of compensability, based upon 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 thus providing incentives to pursue settlements or devise return to work arrangements. Approximately 87% of all conference orders in a given fiscal year are appealed to the hearing level of dispute resolution. In the remaining 13% of conference orders, the parties may accept the order or otherwise voluntarily adjust, withdraw or settle the matter.

Volume of Scheduled Conferences

Conferences are scheduled by the Central Scheduling Unit at the DIA. This occurs after a conciliation has taken place and was unsuccessful at bringing the parties together to reach an agreement on the disputed issues. The number of conferences scheduled in FY'08 decreased by 17% (9,634 in FY'07 to 8,008 in FY'08) from last fiscal year.⁵ Each year, the number of conferences scheduled is greater than the number of conferences that will actually take place before an Administrative Judge since many cases are withdrawn or resolved before ever reaching a conference.

Figure 8: Scheduled Conferences, FY'91 - FY'08



Source: CMS Report 45AB (Conference Statistics - For Scheduled Dates)

⁵ In an effort to avoid duplication, the number of "scheduled conferences" does not include cases that were "rescheduled for a conference." In FY'08, 1,585 cases were "rescheduled for a conference."

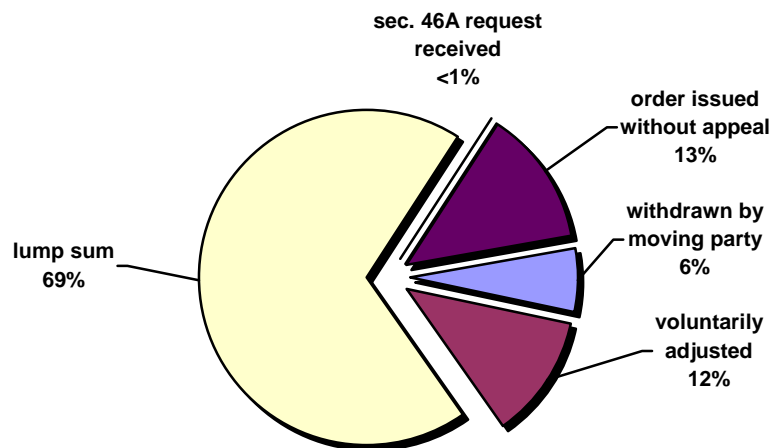
Cases Resolved at Conference

Each year, thousands of disputed cases are resolved at the conference level of the dispute resolution process and will not be forwarded to a hearing. In fiscal year 2008, 5,968 cases were resolved at the conference level and exited the dispute resolution system. Although a case may be resolved at the conference level, this does not necessarily mean that the parties appeared before an Administrative Judge. Often a case may be withdrawn before a scheduled conference takes place either by the moving party or by the Administrative Judge. Furthermore, when a case is directed to a lump sum conference or is voluntarily adjusted, it may never actually reach the scheduled conference.

Figure 9 and Table 6 display the various methods a disputed case can be resolved at conference.

Figure 9: Pie-Chart Detailing Cases Resolved at Conference, Fiscal Year 2008

Resolved at Conference, Fiscal Year 2008



Source: CMS Reports 434, 319AB, 476A, 431

Table 6: Cases Resolved at Conference, Fiscal Year 2008 and Fiscal Year 2007

Resolved at Conference FY'08 and FY'07	Number of Cases		Percentage	
	FY'08	FY'07	FY'08	FY'07
Withdrawn by Moving Party	380	400	6.4%	6.4%
Voluntarily Adjusted	709	865	11.9%	13.9%
Lump Sum	4,122	4,044	69.1%	65.1%
Section 46A Request Received	3	1	<1%	<1%
Order Issued Without Appeal	754	899	12.6%	14.5%
Total	5,968	6,209	100%	100%

Source: CMS Reports 434, 319AB, 476A, 431

As displayed in *Table 6* there are various methods by which a disputed case can be resolved at the conference level. First, the moving party may decide to withdraw the case completely from the system. In fiscal year 2008, 380 cases (6% of resolved cases at conference) exited the system in this manner.

Second, the parties may agree to have the case voluntarily adjusted. This occurs at the conference when a compromise on any part of the case (benefit level, benefit duration, etc.) can be reached among the parties. In fiscal year 2008, 709 cases (12% of resolved cases at conference) were voluntarily adjusted.

The most prevalent method in which a case exits the system at the conference level is through a lump sum settlement. Lump sum settlements may be approved either at a conference or a separate lump sum conference. The procedure is the same for both meetings. In some instances, the presiding AJ will hear the lump sum, while in others, an assigned ALJ will hear the case on a lump sum list. Most lump sum settlements are approved directly at the conference or the hearing level by the presiding AJ, rather than scheduling a separate meeting. In fiscal year 2008, 4,122 cases (69% of resolved cases at conference) exited the system through a lump sum.

Another method in which a case could exit the system is if a "Section 46A Request" is filed when there is an outstanding lien on a case that has been deemed compensable. A "Section 46A Request" occurs in conjunction with a lump sum settlement. The case is required to appear before an Administrative Law Judge (ALJ) to determine if reimbursement is owed out of the proceeds of the award. In fiscal year 2008, only 3 of these requests have been documented.

Finally, the most obvious method in which a case can exit the system at the conference level is when the presiding Administrative Judge issues a conference order and it is not appealed by any of the parties to the hearing level. In fiscal year 2008, 754 conference orders (13% of resolved cases at conference) were issued by Administrative Judges, not resulting in an appeal. However, the vast majority of conference orders are appealed to the hearing stage of dispute resolution. In fiscal year 2008, 4,941 conference orders (87% of all conference orders) were appealed to a hearing.⁶

Table 7: Conference Orders, FY'08 - FY'01

Conference Orders FY'08 - FY'01	Total Orders	Appealed	Without Appeal
Fiscal Year 2008	5,695	4,941 (86.8%)	754 (13.2)
Fiscal Year 2007	7,048	6,149 (87.2%)	899 (12.8%)
Fiscal Year 2006	6,591	5,768 (87.5%)	823 (12.5%)
Fiscal Year 2005	7,494	6,457 (86.2%)	1,037 (13.8%)
Fiscal Year 2004	6,448	5,609 (87.0%)	839 (13.0%)
Fiscal Year 2003	7,899	6,680 (84.6%)	1,219 (15.4%)
Fiscal Year 2002	6,802	5,841 (85.9%)	961 (14.1%)
Fiscal Year 2001	8,486	7,361 (86.7%)	1,125 (13.2%)

Source: CMS Reports 319AB, "Appealed Conference Order Statistics."

⁶ CMS Report 319AB, "Appealed Conference Order Statistics."

Conference Queue

The Senior Judge has explained that depending on the number of available judges, a conference queue of between 1,500 and 2,000 cases can effectively be scheduled during an AJ's normal cycle. If the queue increases beyond 2,000 cases, adjustments in scheduling and assignments would need to occur.

As presented in *Figure 11*, the conference queue during fiscal year 2008 remained well below the benchmark of 1,500 cases, thereby allowing cases to be efficiently scheduled. In FY'08 the conference queue ended 182 cases higher than the start of the year (354 on 7/4/07 and 536 on 6/25/08). The conference queue reached a high of 822 on 3/12/08 and a low of 219 on both 9/26/07 and 12/12/07.

Figure 10: Conference and Hearing Queues; Fiscal Years 1991 - 2008

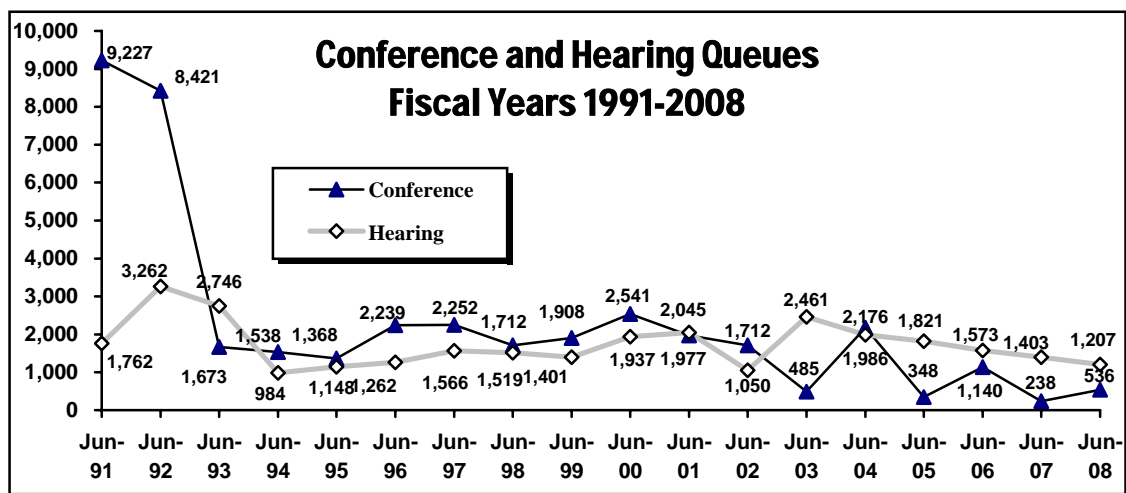
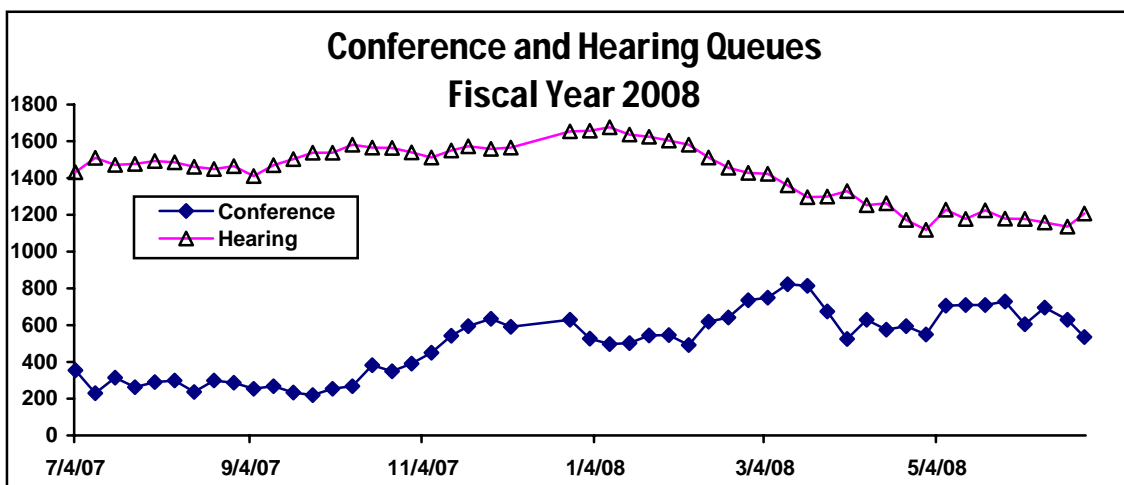


Figure 11: Conference and Hearing Queue; Fiscal Year 2008



Source: CMS Report 404

HEARINGS

The third stage of the dispute resolution process is known as the hearing. According to the Workers' Compensation Act, an Administrative Judge that presides over a conference must review the dispute at the hearing level, unless scheduling becomes "impractical." The procedure is formal and a verbatim transcript of the proceedings is recorded. Written documents are presented and witnesses are examined and cross-examined, in accordance with the Massachusetts Rules of Evidence. If the parties are disputing medical issues, an impartial physician will be selected from a DIA roster before the hearing takes place so that an Impartial Medical Examination (IME) of the injured employee can occur. At the hearing, the impartial physician's report is the only medical evidence that can be presented 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 in the report. Any party may appeal a hearing decision within 30 days. This time may be extended up to 1-year for reasonable cause. Appealing parties must pay a fee of 30% of the state average weekly wage. The claim is then forwarded to the Reviewing Board.

Hearing Queue

Much like conferences, hearings are scheduled by the Central Scheduling Unit at the DIA. This occurs after a conference has taken place and the judge's order has been appealed by any party. The scheduling of hearings is more difficult than conferences because the hearing must be assigned to the judge who heard the case at the conference level. 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 difficulty in evenly distributing cases because hearing queues may occur for individual judges with high appeal rates.

It is difficult to compare the hearing queue with the conference queue because of the 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 2008 began with a hearing queue of 1,431 and remained relatively flat throughout the year ending at 1,207 (see page 52, Conference & Hearing Queues, Fiscal Year 2008). In the last eighteen years, the hearing queue has been as low as 409 cases in September 1989 and as high as 4,046 in November 1992.

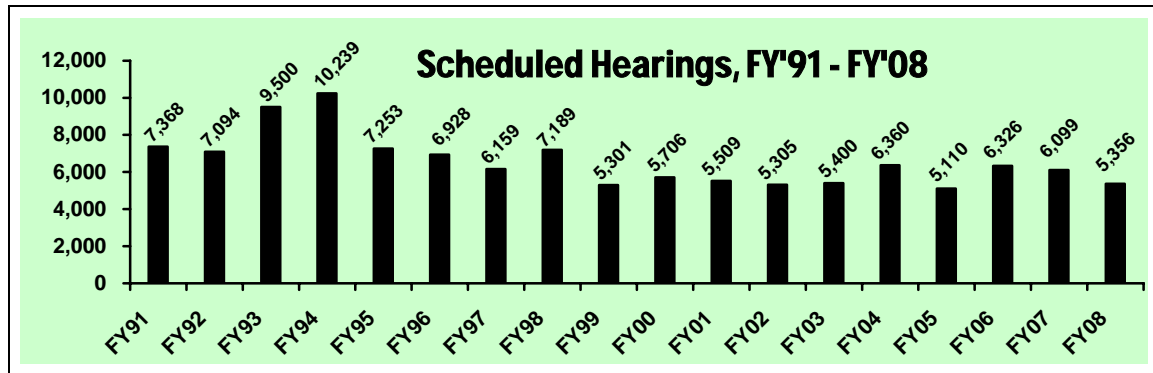
Volume of Scheduled Hearings

The number of hearings scheduled in FY'08 decreased by 743 cases (6,099 in FY'07 to 5,356 in FY'08) from last fiscal year.⁷ Each year, the number of hearings scheduled is greater than the number of hearings that will actually take place before an Administrative Judge since many cases are withdrawn or resolved before ever reaching a hearing. The

⁷ In an effort to avoid duplication, the number of "scheduled hearings" does not include cases that were "rescheduled for a hearing." In FY'08, 2,689 cases were "rescheduled for a hearing."

figure below shows that the number of "scheduled hearings" in fiscal year 2008 decreased by 12% from the previous fiscal year.

Figure 12: Scheduled Hearings, FY'91 - FY'08



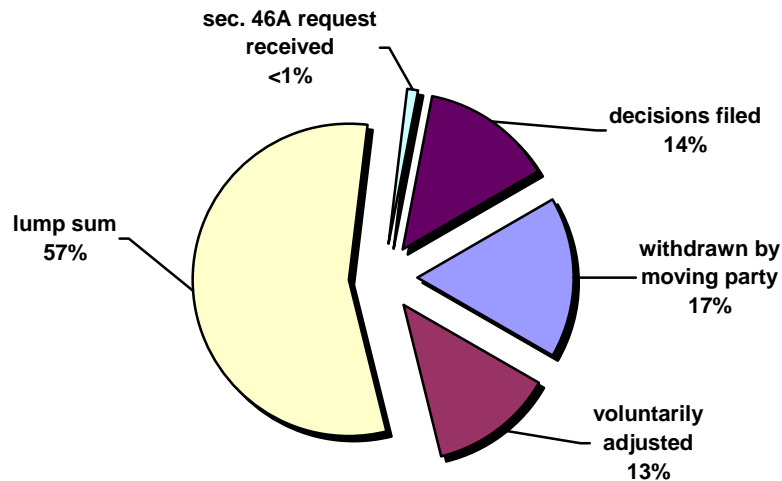
Source: CMS Report 46 (Hearing Statistics - For Scheduled Dates)

Cases Resolved at Hearing

In fiscal year 2008, 5,087 cases were resolved at the hearing level. It is important to note that a case resolved at the hearing level does not necessarily exit the system as the parties have 30 days from the decision date to appeal a case to the reviewing board. Much like conferences, a case resolved at the hearing level does not mean that the case made it to the actual hearing as it may be withdrawn, voluntarily adjusted or a lump sum could occur prior to the proceeding. The following pie-chart and statistical table shows the various methods by which a disputed case can be resolved at hearing.

Figure 13: Pie-Chart Detailing Cases Resolved at Hearing, Fiscal Year 2008

Resolved at Hearing, Fiscal Year 2008



Source: CMS Report 431

Table 8: Cases Resolved at Hearing, Fiscal Year 2007 and Fiscal Year 2008

Resolved at Hearing FY'08 and FY'07	Number of Cases		Percentage	
	FY'08	FY'07	FY'08	FY'07
Withdrawn by Moving Party	875	1,019	17.2%	17.8%
Voluntarily Adjusted	635	692	12.5%	12.1%
Lump Sum	2,873	3,272	56.5%	57.2%
Section 46A Request Received	11	17	<1%	<1%
Decisions Filed	693	720	13.6%	12.6%
Total	5,087	5,720	100%	100%

Source: CMS Report 431

As displayed in Table 8 there are various methods by which a disputed case can be resolved at the hearing level. First, the moving party may decide to withdraw the case completely from the system. In fiscal year 2008, 875 cases (17% of resolved cases at hearing) exited the system in this manner.

Second, the parties may agree to have the case voluntarily adjusted. This occurs at the hearing when a compromise on any part of the case (benefit level, benefit duration, etc.) can be reached among the parties. In fiscal year 2008, 635 cases (13% of resolved cases at hearing) were voluntarily adjusted.

Much like at the conference level, the most prevalent method by which a case exits the system at the hearing level is through a lump sum settlement. Lump sum settlements may be approved either at a hearing or at a separate lump sum conference. The procedure is the same for both meetings. Most lump sum settlements are approved directly at the conference or the hearing level by the presiding AJ, rather than scheduling a separate meeting. In fiscal year 2008, 2,873 cases (57% of resolved cases at hearing) exited the system through a lump sum settlement.

Another method in which a case could exit the system is if a "Section 46A Request" is filed when there is an outstanding lien on a case that has been deemed compensable. A "Section 46A Request" occurs in conjunction with a lump sum settlement. The case is required to appear before an Administrative Law Judge (ALJ) to determine if reimbursement is owed out of the proceeds of the award. In fiscal year 2008, only 11 of these requests have been documented at the hearing level.

Finally, the most obvious method by which a case can exit the system at the hearing level is when the presiding Administrative Judge issues a hearing decision. In fiscal year 2008, 693 hearing decisions (14% of resolved cases at hearing) were filed by Administrative Judges.

REVIEWING BOARD

The fourth and final stage of dispute resolution at the DIA is known as the reviewing board. The reviewing board consists of six Administrative Law Judges (ALJ's) whose primary function is to review the appeals from 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).

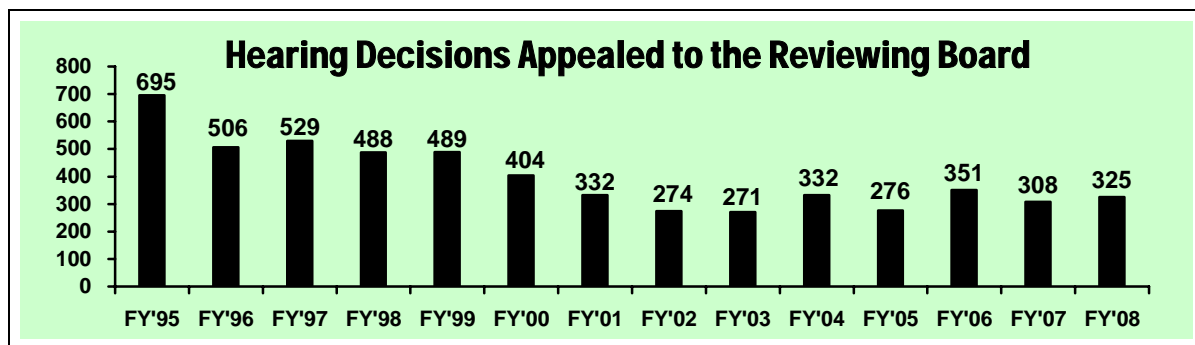
Volume of Hearing Decisions Appealed to the Reviewing Board

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, based on indigence, 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 required 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 25% to 30% of the cases are withdrawn or settled following this first meeting. After the pre-transcript conference takes place, the parties are entitled to a verbatim transcript from the appealed hearing.

Ultimately, cases that are not withdrawn or settled 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. However, the panel may reverse the Administrative Judge's decision only when it determines that the decision was beyond the AJ's scope of authority, arbitrary or capricious, or contrary to law. The panel is not a fact-finding body, although it may recommit a case to an AJ for further findings of fact. The number of hearing decisions appealed to the Reviewing Board in fiscal year 2008 was 325.

Figure 14: Hearing Decisions Appealed to the Reviewing Board, FY'95 - FY'08



Source: DIA Reviewing Board

In fiscal year 2008, the Reviewing Board resolved 240 cases (some from the prior year), representing a 6% increase from cases resolved in fiscal year 2007 (226 cases).

Figure 15: Appeals Resolved at the Reviewing Board, Fiscal Year 2008

Resolved at the Reviewing Board, Fiscal Year 2008

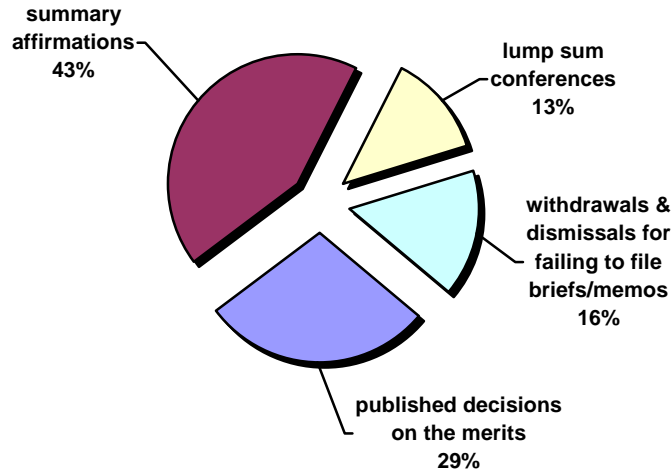


Table 9: Appeals Resolved at the Reviewing Board, Fiscal Year 2008

<i>Appeals Resolved at the Reviewing Board, FY'08</i>	<i>Number of Cases</i>
Published Decision on the Merits (Full Panel):	69 (28.8%)
Summary Affirmations (After Full Panel Deliberation):	103 (42.9%)
Lump Sum Conferences:	30 (12.5%)
Withdrawals/Dismissals for Failing to File Briefs/Memos:	38 (15.8%)
Total Number of Appeals Resolved by the Reviewing Board:	240 (100%)

Source: DIA Reviewing Board

Lump Sum Conferences

The purpose of the lump sum 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 a lump sum conference at the request of the parties or the parties may request a lump sum conference directly. The number of lump sum conferences scheduled in 2008 was 1,033.

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. However, the accident may have been caused by another driver 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 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'08, Administrative Law Judges heard 1,320 Section 15 petitions on a rotating basis.

Compromise and Discharge of Liens (§46A)

Administrative Law Judges are also responsible for determining the fair and reasonable amount to be paid out of lump sum settlements to discharge liens under M.G.L. c.152, §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 Transitional Assistance (DTA) 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 DTA 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 that were heard in fiscal year 2008 was 42.

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 or hearing 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 whereby an Administrative Law Judge will decide if it is in the best interest of the employee to settle.

Table 10: Lump Sum Conference Statistics, FY'08-FY'91

<i>Fiscal Year</i>	<i>Total lump sum conferences scheduled</i>	<i>Lump sum settlements approved</i>
FY'08	7,093	6,484 (91.4%)
FY'07	7,532	6,901 (91.6%)
FY'06	7,416	6,830 (92.1%)
FY'05	7,575	6,923 (91.4%)
FY'04	8,442	7,754 (91.9%)
FY'03	7,887	7,738 (95.7%)
FY'02	8,135	7,738 (95.1%)
FY'01	8,111	7,801 (96.2%)
FY'00	8,297	7,940 (95.7%)
FY'99	7,900	7,563 (95.7%)
FY'98	9,579	9,158 (95.6%)
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: CMS Report 86: Lump Sum Conference Statistics for Scheduled Dates

The number of lump sum conferences scheduled has declined by 64% since FY'91. In FY'08, only 4 lump sum settlements were disapproved. The remainder of the scheduled lump sum conferences without an "approved" disposition were either withdrawn or rescheduled.

There are four dispositions that indicate a lump sum settlement occurred at either conciliation, conference, or hearing:

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 lump sum settlements, however, 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 an assigned ALJ. Conciliators and Administrative Judges may refer cases to lump sum conferences to determine if settlement is in the best interest of the employee. 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 the agreement "as complete." Most attorneys want their client's settlement reviewed and determined by a judge to be in their "best interest."

Lump Sum Request Received - A lump sum conference may also be requested after a case has been scheduled for a conciliation, conference, or hearing. In this situation, the parties would fill out a form to request a lump sum conference 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 settlements have historically become increasingly prevalent at the later stages of the dispute resolution process.

Table 11: Lump Sum Settlements Pursued at Each Level of Dispute Resolution - FY'08

Fiscal Year 2008	<i>Lump Sum Pursued⁸</i>	<i>% Total Cases Resolved (at each level of dispute)</i>
Conciliation	1,022	14.7%
Conference	4,122	69.1%
Hearing	2,873	56.5%

Source: See Previous Sections on Conciliations, Conferences, and Hearings.

⁸ 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 Reform Act of 1991. 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.⁹ 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.¹⁰

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. Each party must receive the impartial report at least 7 days prior to the start of a hearing.

Impartial Unit

The Impartial Unit, within the DIA's 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.

⁹ M.G.L. c.152, §8(4).

¹⁰ M.G.L. c.152, §45.

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

The following table details the DIA's fee schedule:

Table 12: Fee Schedule - Impartial Medical Examinations

\$450	Impartial medical examination and report
\$500	For deposition lasting up to 2 hours
\$100	Additional fee when deposition exceeds 2 hours
\$225	Review of medical records only
\$125	Supplemental medical report
\$100	When worker fails to keep appointment (maximum of 2)
\$100	For cancellation less than 24 hours before exam

Source: DIA Medical Unit

Note: Fee Schedule is subject to increase.

The deposing party is responsible for paying the impartial examiner for services and the report. Should the employee prevail at hearing, the insurer must pay the employee the cost of the deposition. In FY'08, approximately \$1,620,458 was collected in filing fees.

As of 6/30/08, there were 272 physicians on the roster consisting of 28 specialties.¹¹ 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'08 the impartial unit scheduled 5,187 examinations. Of these, 3,828 exams were actually conducted in the fiscal year (the remainder of the scheduled exams were either canceled due to settlements and withdrawals or took place in the next year).¹² Medical reports are required to be submitted to the DIA and to each party within 21 calendar days after completion of the examination. Last year (FY'07), the impartial unit scheduled 5,710 examinations. Of these, 4,032 exams were actually conducted in the fiscal year.

Impartial Exam Fee Waiver for Indigent Claimants

In 1995, the Supreme Judicial Court ruled that the Department 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 DIA has implemented procedures and standards for processing waiver requests and providing financial relief for the Section 11A fee.

¹¹ Including contracts pending renewal.

¹² Additional reports may be entered upon FY'07 closure.

The Waiver Process - A workers' compensation claimant who wishes to have the impartial examination fee waived must complete Form 136: "Affidavit of Indigence and Request for Waiver of §11A(2) Fees." This document must be completed before ten calendar days following the appeal of a conference order.

It is within the discretion of the DIA 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 ten 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 DIA for any fees waived.

An indigent party is defined as:

- 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.

Table 13: DIA Indigency Requirements, 2008

2008 HHS Poverty Guidelines	
Size of Family Unit	Amount*
1	\$10,400
2	\$14,000
3	\$17,600
4	\$21,200
5	\$24,800
6	\$28,400
7	\$32,000
8	\$35,600

For family units with more than eight members, add \$3,600 for each additional member in the family. The poverty guidelines are updated annually by the U.S. Department of Health and Human Services.

Source: *Federal Register*, Vol. 73, No. 15, January 23, 2008, pp. 3971-3972.

*48 Contiguous States and the District of Columbia.

ADMINISTRATIVE JUDGES

DIA Administrative Judges (AJs) and Administrative Law Judges (ALJs) 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 [see Appendix D for membership] and then rated by the Advisory Council. M.G.L. c.23E allows for the appointment of 21 Administrative Judges, 6 Administrative Law 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. This provides a judge who has fallen behind with the opportunity to catch up. The administrative practice of taking a judge off-line is relatively rare and occurs for a limited time period. However, the Senior Judge may take an AJ off-line near the end of a term until reappointment or a replacement is made. This enables the off-line 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 thirteen members as designated by statute. 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 the understanding of anatomy and physiology. In addition, an AJ must have a minimum of a college degree or four years of writing experience and an ALJ must be a Massachusetts attorney (or formerly served as an AJ). 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 - Upon the completion of the Nominating Panel's review, recommended applicants are forwarded to the Advisory Council. The Advisory Council will review these candidates either through a formal interview or by a "paper review." On the affirmative vote of at least seven voting members, the Advisory Council may rate any candidate as either "qualified," "highly qualified," or "unqualified." This rating must then be forwarded to the Governor's Chief Legal Counsel within one week from the time a candidate's name was transmitted to the Council from the Nominating Panel (see Appendix J for a complete description of the Advisory Council's interview guidelines).

SECTION

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OFFICE OF CLAIMS ADMINISTRATION

The Office of Claims Administration (OCA) is the “starting point” for all documents within the Department of Industrial Accidents (DIA). A workers’ compensation case is established from filings received from employers, insurance companies, attorneys and third party providers under the provisions of M.G.L. c.152. The OCA has various roles of responsibility that are significant within the DIA and to the public sector. Quality control is a priority of the office and it is essential to ensure that each case is recorded in a systematic and uniform method.

The OCA consists of the Claims Processing Unit, the Record Room, the Keeper of Records, and the First Report Compliance Office. The Manager of Claims Administration is responsible for overseeing the operations of each unit within the OCA.

Claims Processing Unit

The Claims Processing Unit has two primary functions. The first being the recipient of lost time reports, insurance forms, claims, and liens. The second function is to enter information (including online filings) into the Case Management System (CMS) database. If submitted information is not complete or accurate, the Claims Processing Unit will return the filings with the proper instructions.

While quality control measures may slow down the process, 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 objective. All conciliations are scheduled upon entry of a claim through CMS. Information entered into CMS generates violation notices, scheduling of conciliations and judicial proceedings, and statistical reports. The DIA and other agencies use this data to facilitate various administrative and law enforcement functions.

In FY’08, the OCA received 32,794 First Report of Injury Forms, a decrease of 2% from FY’07 (33,476). The number of First Report of Injury Forms filed online during FY’08 was 9,199, (28% of the total received) and 289 more than FY’07 (8,910). In FY’08, the number of claims, discontinuances and third party claims received by the office decreased slightly to 15,084 from 15,289 received in FY’07 (prior to review and CMS processing). The total number of referrals to conciliation for the FY’08 was 14,464, (including 1,173 filed online) which represents a decrease of 685 from FY’07 (15,149).

Record Room

The record room serves as the “central repository” for all files pertaining to the Department of Industrial Accidents. All incoming transactions, when forwarded to the Record Room, are referenced with a board number which is generated when a case is created and attached to its file. All contents in the file correlate to the DIA case management database, which tracks the activities and status of the workers’ compensation case. It is important that all transactions related to files are current, in preparation for scheduled judicial proceedings.

The DIA files have a retention cycle of 40 years, 28 at the state archive and 12 years within the DIA's jurisdiction. Due to limited space within the state archives, the DIA's main Record Room serves as a mini-archive area containing approximately 2,000 boxes of files. The DIA's Record Room acquired an off-site storage facility during FY'08 and transferred 7,000 boxes of inventoried files to the facility. Complex file management procedures, in accordance with State Record Center (SRC) regulations, are the key to maintaining information that is accessible and easy to transfer upon request.

Keeper of Records Office

The Keeper of Records Office (KOR) responds to all written requests for records in compliance with Massachusetts Public Records Law [M.G.L. c.66]. All documents are not considered public records. In accordance to M.G.L. c.4, §7(26), records considered exempt in whole or in part, shall be withheld. If you are not a party to the workers' compensation case, then a signed authorization for the release of records from either the claimant or a court order is required. A letter of receipt will be forwarded from the KOR which will include the status of the file and its location. The trend in public record requests continues to rise and grow unabated.

The KOR processes subpoenas, conducts in-house depositions, and answers investigative services and pre-employment screening inquiries. The KOR also assists past and present claimants in obtaining copies of files or documents relevant to social security, disability, retirement, etc. A fee is charged to all requestors for copies, labor and research. The Office also assists the Insurance Fraud Bureau, the Attorney General's Office and other governmental agencies in related matters.

First Report Compliance Office

All Employers must file an *Employer's First Report of Injury or Fatality – Form 101*, within seven (7) calendar days of receiving notice of any injury alleged to have arisen out of and in the course of employment that incapacitates an employee from earning full wages for a period of five (5) calendar days. Failure to file this report or filing of the report late is a violation under M.G.L. c.152, §6. If this violation occurs three (3) or more times within any year, a fine of one hundred dollars (\$100) for each such violation will be sent to the employer. Each failure to pay a fine within thirty calendar days of receipt of a bill from the DIA shall be considered a separate violation.

In fiscal year 2008, the First Report Compliance Office collected \$224,474 in fines, an increase of \$28,338 from the \$196,136 collected in FY'07. The office is also responsible for maintaining a database on cases discovered by the DIA, where there may be suspicion of fraud. In fiscal year 2008, the Office of Claims Administration received seventeen (17) in-house referrals (telephone calls, anonymous letters or within DIA units via CMS). Outside referrals are directly reported to the Insurance Fraud Bureau or the Attorney General's Office. Each year, the Office of Claims Administration assists investigators from the Insurance Fraud Bureau by providing them with workers' compensation files on suspected fraudulent cases. A total of 20 such inquiries were processed during FY'08.

OFFICE OF EDUCATION AND VOC. REHAB

The Office of Education and Vocational Rehabilitation (OEVR) oversees the rehabilitation of disabled workers' compensation recipients with the ultimate goal of successfully returning them to employment.

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 (VR) is defined by the Workers' Compensation 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. It shall also mean reasonably necessary related expenses.”¹³

A claimant is eligible for vocational rehabilitation services when an 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.

Vocational Rehabilitation Specialist

Each year, OEVR approves vocational rehabilitation specialists 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. All Request for Response (RFR) information, including application forms, are now available through the DIA website [www.mass.gov/dia/].

Credentials for a vocational rehabilitation specialist must include at least a master's degree, rehabilitation certification, or a minimum of ten years of experience. A list of certified providers can be obtained directly from OEVR or from the department's website. In FY'08, OEVR approved 49 VR providers. It is the responsibility of each provider to submit progress reports on a regular basis so that OEVR's Rehabilitation Review Officers (RROs) can have a clear understanding of each case's progress. Progress reports must include the following:

1. Status of vocational activity;
2. Status of IWRP development (including explanation if the IWRP has not been completed within 90 days);

¹³ M.G.L. c.152, §1(12).

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; and
5. The name of the OEVR Rehabilitation Review Officer.

Determination of Suitability

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.¹⁴ Through the use of new technology, such as the automatic scheduling system, OEVR has made significant progress in identifying disabled workers for mandatory meetings early on in the claims process.

Once prospective candidates have been identified, an initial mandatory meeting between the injured worker and the Rehabilitation Review Officer is scheduled for the purpose of determining whether or not an injured worker is suitable for VR services. 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 may 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 an OEVR-approved provider so that an IRWP can be developed. The insurer must also submit to OEVR any pertinent medical records within ten 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, the 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.

¹⁴ M.G.L. c.152, §30 (E-H); 452 C.M.R. §4.00

Individual Written Rehabilitation Program (IWRP)

After an employment goal and vocational goal has been established for the injured worker, an 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, an explanation of 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 time. However, OEVR-mandated IWRP's are limited to 52 calendar weeks for pre-12/23/91 injuries and 104 calendar weeks for post-12/23/91 injuries.¹⁵ 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; and
6. Any recommendation for a workplace accommodation or a mechanical appliance to support the employee's return to work.

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:

1. a complete job description of the modified position (including the physical requirements of the position);
2. a letter from the employer that the job is being offered on a permanently modified basis; and
3. 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; and
5. the form should contain new job title, DOT code, employer name and address, client wage, and the other required information if successfully rehabilitated.

¹⁵ M.G.L. c.152, §19.

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. As a result, 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 fiscal year 2008, OEVR was headed by a Director and staffed by 9 Rehabilitation Review Officers, 1 Disability Analyst, and 4 Clerks. Out of the 2,828 cases referred to OEVR in FY'08, 81% (2,281) proceeded to a "mandatory meeting" for a determination of suitability for vocational rehabilitation services. The remaining 19% exited the system for reasons that include the non-establishment of liability or the employee was not on compensation. Of those cases that received a "mandatory meeting," 28% (647) were referred to the insurer/self-insurer with a request to initiate vocational rehabilitation services by an OEVR certified provider. In FY'08, there was a 39% success ratio of injured workers who completed plans and returned to work.

Table 14: Utilization of Vocational Rehabilitation Services, FY'02 - FY'08

<i>Fiscal Year</i>	<i>Referrals to OEVR</i>	<i>Mandatory/ Inform. 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'08	2,828	2,281/69	647	417	163	39%
FY'07	2,839	2,292/46	705	428	176	41%
FY'06	2,932	2,315/40	747	433	202	47%
FY'05	3,418	2,744/19	763	459	241	53%
FY'04	2,304	1,964/44	746	474	203	43%
FY'03	2,494	2,287/43	886	507	187	37%
FY'02	2,743	2,348/23	842	501	214	43%

Source: DIA - OEVR

Trust Fund Payment of Vocational Rehabilitation

If an insurer refuses to pay for vocational rehabilitation services while OEVR determines that the employee is suitable for services, the office may utilize monies from the Workers' Compensation Trust Fund to finance the rehabilitation services. In fiscal year 2008, the Trust Fund paid \$22,944.80 for vocational rehabilitation services. 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.

OFFICE OF SAFETY

The Office of Safety is responsible for establishing and supervising the Safety Grant Program for the education and training of employees and employers in the recognition, avoidance and prevention of unsafe or unhealthy working conditions. On an annual basis, safety training grants are awarded to qualified applicants based upon a competitive selection process initiated by a grant application. The Office of Safety also advises employees and employers of safety issues surrounding the work environment and maintains a comprehensive safety library containing numerous safety manuals and videos at its main headquarters in Boston.

Since 1991, the Office of Safety has annually issued a grant application for the "Occupational Safety and Health Education and Training Program." To date, the DIA has funded a total of 739 preventive training programs which have trained approximately a half-million workers in the Commonwealth.

The Safety Grant Program

Each fiscal year the DIA's Office of Safety awards over \$800,000 in safety grants to pay for programs which provide workplace safety training for employees and/or employers of industries operating within the Commonwealth and whose entire staff is covered under the Massachusetts Workers' Compensation Law (M.G.L. c.152).

The overall objective of the education and training program is to reduce work related injuries and illnesses by:

- Targeting preventive educational programs for specifically identified audiences with significant occupational health and/or safety problems;
- Fostering activities by employees/employers to prevent workplace accidents, injuries, and illnesses;
- Identifying, evaluating, and controlling safety and health hazards in the workplace;
- Making employees/employers aware of all federal and state health and safety standards, statutes, rules and regulations that apply, including those that mandate training and education in the workplace;
- Encouraging awareness and compliance with federal and/or state occupational safety and health standards and regulations;
- Encouraging labor/management cooperation in the area of occupational safety and health prevention programs; and,
- Encouraging collaborations between various groups, organizations, educational or health institutions to devise innovative preventive methods for addressing safety.

Grant Applications

Each fiscal year the Office of Safety publishes a grant application to notify the general public that safety grants are available for funding in the upcoming fiscal year. Language contained in the DIA's line-item in the FY'09 General Appropriations Act allocated the Office of Safety to expend "not less than" \$800,000 for occupational safety training grants. In an effort to maximize the number of grants that can be awarded, the Office of Safety restricted the maximum amount for each proposal to \$25,000. During the fiscal year, 2,500 announcement letters were mailed to various industries throughout the state. As a result of these mailings and advertisements published in regional newspapers, the Office of Safety issued more than 150 grant applications in FY'08 for FY'09 funding.

A uniform criteria to competitively evaluate all proposals received is developed by a Proposal Selection Committee, appointed by the Commissioner. Following review, the Committee recommends a list of qualified applicants for funding. Upon approval of this list by the Commissioner, contracts are then awarded. In Fiscal Year 2009, the Office of Safety will expend \$997,912 to fund a total of 65 grants which will result in the training of 12,425 employees (see Appendix L for a complete list of proposals recommended for funding in FY'09).

Changes to the Grant Application Process

During the last several years, the Office of Safety has reconfigured the Safety Grant Program in an effort to simplify the application process and to expand the number of employees who could benefit from the program. After reviewing the application process, it was discovered that the grant application was redundant and that a large amount of money was being spent on administrative costs. To address these issues, the Office of Safety significantly revised the grant application and no longer funds administrative costs without justification. The Office of Safety believes that these changes to the grant application process will help expand the number of grants that can be awarded, thereby, increasing the number of employees who will benefit from the training.

Frank S. Janas Training Center

In October of 2000, the DIA dedicated a safety training center in memory of the late Frank Janas at the Lawrence Regional Office. Mr. Janas was a beloved DIA employee who worked in the Office of Insurance for seven years. The training center is a valuable tool for both private employers and government agencies that would like to conduct safety-

related training or seminars. The conference training center holds 100 auditorium style seats and 50 classroom style seats, has valuable conference amenities (wide-screen TV/VCR, Apollo projector, podium, computer hookups, etc.), and is handicap accessible.

Frank Janas Training Center Contact:

Marcos Devers
Department of Industrial Accidents
160 Winthrop Avenue
Lawrence, MA 01840
(978) 683-6420
email: mdevers@dia.state.ma.us

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.¹⁶ To be self insured, employers must have enough capital to cover the expenses associated with self insurance (i.e. bond, reinsurance, and a TPA). However, many smaller and medium-sized companies have also been approved to self insure. The Office of Insurance evaluates employers annually to determine their eligibility for self insurance and to establish new bond amounts.

Any business seeking self insurance status must first provide the Office of Insurance the company's most current annual report, a description of the business, and credit rating from at least two of the following companies: Dun & Bradstreet, Moody's or Standard & Poor's. If a company is granted self insurance status, the Office of Insurance will mail them a self insurance application to complete.

For an employer to qualify to self insure, it must post a surety bond or negotiable securities to cover any losses that may occur. The amount of deposit varies for every company depending on their previous reported losses and predicted future losses. The average bond or security deposit 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 company, and the attaching point of reinsurance.

Employers who are self insured must purchase catastrophe reinsurance of at least \$500,000. Smaller self insured companies are required to 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. Each self insurance license provides approval for a parent company and its subsidiaries to self insure.

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 Human Resources Division (HRD), has similar responsibilities to an insurer, however, the state does not pay insurance premiums or post bond for its liabilities.

¹⁶ 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.

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

In FY'08, one (1) new license was issued to bring the total number of "parent-licensed" companies to 108, covering a total of 401 subsidiaries. Each self insurance license provides approval for a parent company and its subsidiaries to self insure. This amounts to approximately \$264,942,662 in equivalent premium dollars.

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 1930's and facilitates the filing and investigation of claims after many years. Any injured worker may contact this office directly to obtain the insurance information of an employer.¹⁷

In the past, the insurance register had a record keeping system which consisted of information manually recorded on 3x5 note cards (a time consuming and inefficient method for storing files and researching insurers). Every time an employer made a policy change, the insurer mailed in a form and the note card was changed manually.

Through legislative action, the Workers' Compensation Rating and Inspection Bureau (WCRIBM) became the official repository of insurance policy coverage in 1991. The DIA was provided with computer access to this database, which includes policy information from 1986 to present. Information prior to 1986 must be researched through the files at the DIA, now stored on microfilm. In FY'08, an estimated 4,461 inquiries were made to the Insurance Register.

¹⁷ The Insurance Unit can be contacted directly at 617-727-4900 x408. The Unit also maintains a website that is accessible through the DIA's homepage at: www.mass.gov/dia/.

OFFICE OF INVESTIGATIONS

In Massachusetts, every employer with one or more employees is required to have a valid workers' compensation policy at all times.¹⁸ Employers can meet this statutory requirement by purchasing a commercial insurance policy, gaining membership in a self-insurance group, or licensing as a self insurer (M.G.L. c.152, §25A). The Office of Investigations is charged with enforcing this mandate by investigating whether employers are maintaining insurance policies and by imposing penalties when violations are uncovered. When an employer fails to carry an insurance policy and an injury occurs at their workplace, the claim is paid from the DIA's Workers' Compensation Trust Fund (funded entirely by the employers who purchase workers' compensation policies).

Referrals to the Office of Investigations

The Office of Investigations has access to the Workers' Compensation Rating and Inspection Bureau (WCRIBM) database on all policies written by commercial carriers in the state. From this database, it can be determined which employers have either canceled or failed to renew their insurance policies. Employers on this database are investigated for insurance coverage or alternative forms of financing (self-insurance, self-insurance group, and reciprocal exchange).

Since the inception of the Underground Economy Task Force in March 2008, the Office of Investigations has been working with the following state agencies for referrals: Department of Labor, Division of Occupational Safety, Department of Workforce Development, Division of Apprentice Training, Division of Career Services, Division of Unemployment Assistance, Division of Professional Licensure, Executive Office of Public Safety and Security, Department of Revenue, Division of Capital Asset Management, Department of Housing and Community Development, State Office of Minority and Women Business Assistance, Office of Small Business and Entrepreneurship, Insurance Fraud Bureau, Massachusetts Office of Refugee and Immigration Affairs, and the Attorney General's Fair Labor Division.

Another type of referral the Office of Investigations utilizes is through anonymous calls (1-877-MASSAFE) and letters received from the general public. In May 2008, the Office of Investigations also began managing a new fraud hotline developed by the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (1-877-96-LABOR). Anonymous phone tips have historically played a crucial role in identifying which companies may be without insurance.

Referrals can also come to the Office of Investigations internally within the DIA. Whenever a Section 65 claim (an injury occurs at an uninsured business) is entered into the system, the Office of Investigations is immediately notified by the Office of Insurance that a particular company is without insurance.

¹⁸ A law passed in 2002 allows officers of corporations who own at least 25% of the stock of the corporation to exempt themselves from coverage. If a corporation has non-exempt employees, the corporation does not need workers' compensation insurance.

The Investigation Process

Referrals received by the Office of Investigations are assigned to an individual investigator who conducts comprehensive "in-house" research utilizing all available databases. This initial research allows the investigator to close cases where an insurance policy has been discovered or when there is substantial evidence that a company has ceased operations. Once a referral has been thoroughly reviewed "in-house" and it is demonstrated that an employer is in violation of the statute, the DIA will issue a compliance letter requesting the business provide proof of workers' compensation insurance. If the business fails to respond to this letter or is unable to display proof of coverage, the investigator will conduct a field investigation at the worksite.

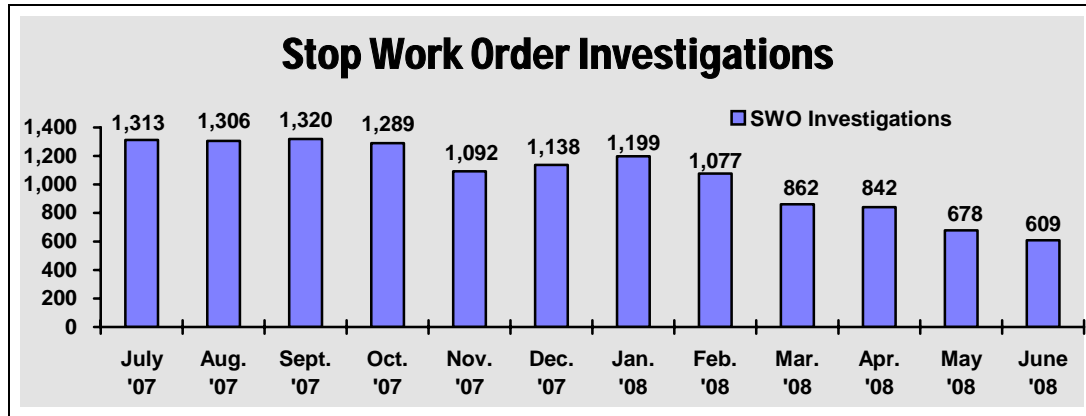
During a field investigation to a worksite, an investigator will request that the business provide proof of workers' compensation insurance coverage. If a business fails to provide proof of coverage, a "stop work order" (SWO) is immediately issued. Such an order requires that all business operations cease and the SWO becomes effective immediately upon service. However, if an employer chooses to appeal the SWO, the business may remain open until the case is resolved.

Fines resulting from a SWO begin at \$100 per day, starting the day the stop work order is issued, and continuing until proof of coverage and payment of the fine is received by the DIA. An employer, who believes the issuance of the SWO was unwarranted, has ten days to file an appeal. A hearing must take place within 14 days, during which time the SWO will not be in effect. The SWO 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 DIA hearing officer finds the employer had not obtained adequate insurance coverage, the employer must pay a fine of \$250 a day. Any employee affected by a SWO 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 a criminal court proceeding with a possible 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) that violate any aspect of Section 25C.

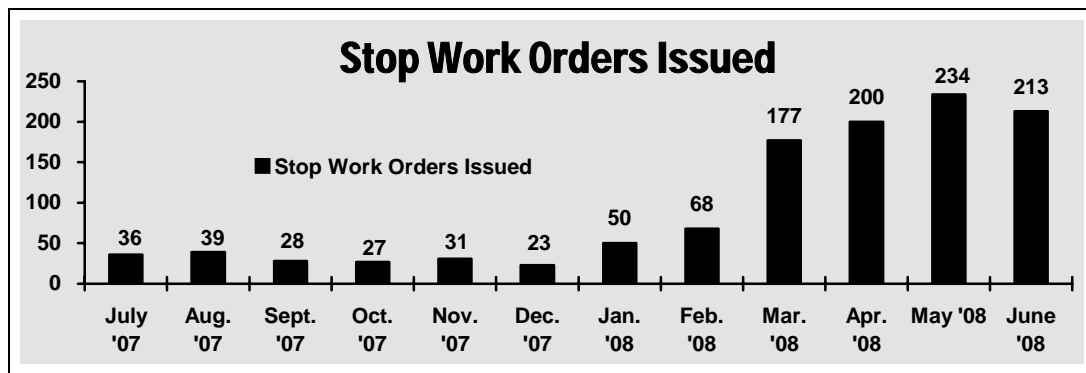
The Office of Investigations has altered its operating procedures to redefine what an "investigation" entails for statistical purposes. As of April 2008, an investigation is only tallied if the unit examines records and conducts significant office and/or field research on a suspected non-compliant employer. Prior to this change, simple record checks were included in the investigation statistics. The following two charts display how the Office of Investigations has become more efficient with their investigative procedures, producing more SWOs with fewer investigations. In Fiscal Year 2008, the Office of Investigations conducted 12,725 investigations and issued a total of 1,126 SWOs. Of the 1,126 SWOs issued, 1,101 (98%) were issued to "small" companies (1-10 employees), 24 were issued to "medium" companies (11-75 employees), and one stop work order was issued to a "large" company (76+ employees).

Figure 16: MA SWO Investigations, Fiscal Year 2008



Source: Office of Investigations

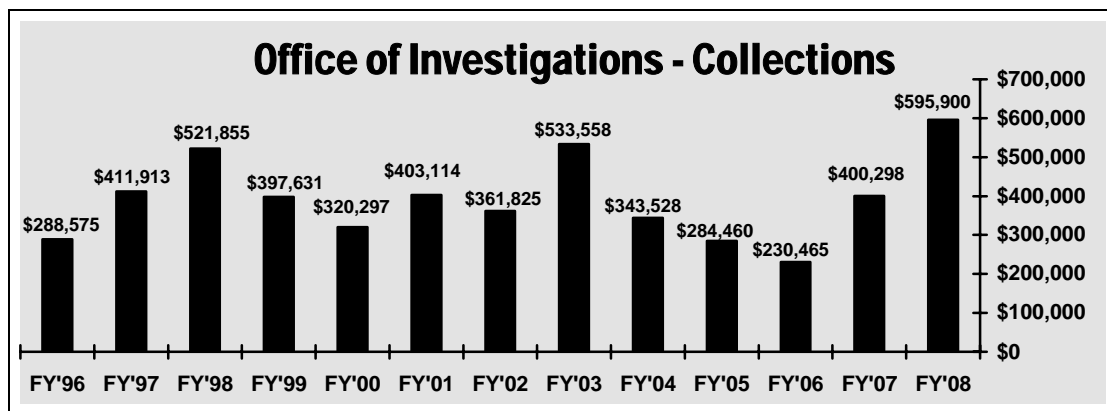
Figure 17: MA SWO's Issued, Fiscal Year 2008



Source: Office of Investigations

In Fiscal Year 2008, the Office of Investigations collected \$595,900 in fines from employers who violated the workers' compensation insurance mandate. In an effort to make paying SWO fines much easier, the DIA is now allowing the payment of fines online with debit cards, credit cards or checks.

Figure 18: Office of Investigations - Collections, FY'96 - FY'08



Source: Office of Investigations

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 Workers' Compensation Trust Fund (WCTF), to process requests for benefits, administer claims, and respond to claims filed before the Division of Dispute Resolution.

Uninsured Employers (Section 65)

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, stating that the employer was not covered by a workers' compensation insurance policy on the date of the alleged injury, according to the agency's records.¹⁹ In FY'08, \$6,956,189 was paid to uninsured claimants, 179 claims were filed, and 758 claims for benefits paid. The DIA aggressively goes after uninsured employers to recoup monies paid out from the Trust Fund. During Fiscal Year 2008, the DIA collected \$1,202,747 from recovery efforts.

Second Injury Fund 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," insurers become eligible to receive reimbursement from the DIA's WCTF for up to 75% of compensation paid after the first 104 weeks of payment.²⁰ Employers are entitled to an adjustment to their experience modification factors as a result of these reimbursements.

At the close of fiscal year 2008, 321 §37 claims were received and 263 §37 claims were settled. The total amount of §37 payments in FY'08 was \$23,213,427 (includes quarterly payments under §37 and interest).

The administration of second injury claims is complicated by the fact that the Trust Fund continues to receive claims from three distinct statutory time periods, known as the "Old Act," "Mid Act," and "New Act." The following page provides a brief outline of the distinct characteristics of each of the three time periods.

¹⁹ 452 C.M.R. 3.00

²⁰ An employee is considered to suffer a second injury when an on the job accident or illness occurs that 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" due to the combined effects of the preexisting impairment and the subsequent injury than the disability as a result of the subsequent injury by itself.

"Old Act" - 1973 thru 1985

- The Legislature greatly expanded SIF reimbursements to include any "known physical impairment which is due to any previous accident, disease or any congenital condition and is, or is likely to be, a hindrance or obstacle to his employment..."
- The Attorney General was responsible for defending claims against the SIF.
- Employer knowledge of pre-existing physical impairment was not required for reimbursement.
- Reimbursement was not to exceed 50% of all compensation subsequent to that paid for the first 104 weeks of disability.
- Allowed the Chairman of the IAB to proportionally assess all insurers if the SIF was unable to financially sustain itself.
- Did not contain a statute of limitations.

"Mid Act" - 1985 thru 1991

- An insurer could obtain SIF reimbursement for §31 (death benefits), §32 (dependent benefits), §33 (burial expenses), §34 (temporary total), §35 (partial), §36 (scarring), §34A (permanent and total), §36A (death before full payment of compensation and brain damage injuries), and §30 (medical benefits).
- Provided reimbursement in an "amount equal to" 75% of compensation paid after the first 104 weeks of disability.
- Must have medical records existing prior to second injury to establish employer knowledge of impairment.
- Funded by assessments added directly to an employer's workers' compensation premium rate.
- Did not contain a statute of limitations.

"New Act" - 1991 thru Present

- The Legislature substantially curtailed the type and amount of benefits that are reimbursable and shifted responsibility of defending the Trust Fund from the Attorney General to the Office of Legal Counsel within the DIA.
- Provided reimbursement in an "amount not to exceed" 75% of compensation paid after the first 104 weeks of disability.
- SIF Reimbursement was restricted to benefits paid for §34A (permanent and total) and for §§ 31, 32, and 33 (death cases).
- Created a 2-year statute of limitations based on when the petition was filed.
- New requirement that the employer must have actual knowledge of impairment, and that such knowledge be established by the employer at least 30 days subsequent to the date of employment.

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.

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 been filed.)

Vocational Rehabilitation (Section 30H)

Section 30H provides that if an insurer and an employee fail to agree on a vocational rehabilitation program, 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'08, one (1) new case was accepted for §30H benefits and the Trust Fund paid \$11,946 for vocational rehabilitation services.

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 (for Section's 31, 34, 35A or 35), benefits' paid will be based upon levels in effect on the date of eligibility. This same date of eligibility rather than the date of injury is also used to compute supplemental benefits known as COLA (Cost of Living Adjustments) for employees subject to this Section. In FY'08, approximately \$558,588 was paid for latency claims.

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'08 totaled \$6,740,699 for the Private Trust Fund.

OFFICE OF HEALTH POLICY

The Office of Health Policy (OHP) was created in July of 1993 by the Commissioner pursuant to the promulgation of M.G.L. c.152, §5, §13, and §30. The statute authorizes the Office of Health Policy to approve and monitor workers' compensation utilization review (UR) programs in the Commonwealth to ensure compliance with the requirements of 452 CMR 6.00 et seq.

During fiscal year 2008, the Office of Health Policy was staffed by four employees: an Executive Director (Nurse/Attorney), a UR Coordinator (Registered Nurse), a Program Analyst, and a Research Analyst.

Utilization Review

Utilization review is a system for reviewing proposed medical treatment/procedures in order to determine whether or not the services are appropriate, reasonable, and necessary. This review of medical care is conducted before, during, or following treatment to an injured worker. The utilization review and quality assessment regulations mandate that all insurers conduct UR on all health care services provided to injured workers that have been delivered on or after October 1, 1993, regardless of the date the employee is injured. UR agents must use the treatment guidelines endorsed by the Health Care Services Board and adopted by the DIA for the specific conditions to which these guidelines apply. All medical care relating to workplace injuries must be reviewed under established guidelines and review criteria.

In Massachusetts, UR Agents are required to use licensed health care professionals to conduct utilization review. Care and treatment can be approved by a licensed or registered nurse using established guidelines and review criteria. Care that cannot be approved must be reviewed by a licensed health care practitioner in the same school as the provider prescribing the care or treatment for the injured employee. All decisions regarding care and treatment (and the basis for the decision) must be disclosed in writing to the injured employee and the ordering practitioner within specific timeframes. Any decision, by any licensed reviewer cannot be arbitrary and will be based on established guidelines. For care that cannot be approved, the UR Agent must inform the injured employee and the ordering practitioner of their rights and procedure to appeal the decision to the UR Agent. After the exhaustion of this process, the injured worker and practitioner have additional rights to appeal the determination of the UR Agent to the DIA or file a claim for payment to the DIA in accordance with 452 CMR 1.07.

The OHP conducts investigations on all complaints received. Within the fiscal year, twenty-four (24) complaints were received and responded to by the Executive Director of the OHP. The OHP tracks the nature and pattern of these complaints and takes this information into account when reviewing policy and procedures of UR Agents.

To ensure the regulatory compliance with UR regulations, the OHP:

- Reviews new applications from UR Agents seeking approval to conduct UR for workers' compensation in Massachusetts. The OHP UR Coordinator provides consultation as requested throughout the application process to ensure all systems, policies and procedures comply with the DIA's rules, regulations and standards.
- Conducts system wide Quality Assessment Audits annually for UR Agents. The OHP UR Coordinator supports and assists the UR Agent throughout the following alternating process to remain in compliance with the DIA's regulations and requirements:

Application Review - Conducted every two years, the Application Review examines demographic information, changes in operations, and policy procedures.

Case Record Audits - A sample of the agent's case records are reviewed to monitor the quality of care provided to injured workers and to ensure the agent's compliance with the DIA's rules and regulations.

On-Site Reviews - Upon a mutually agreed date, this review is conducted for the purpose of confirming that the organization is operating in a manner consistent with 452 CMR 6.00 *et seq.* and in accordance with the policies and procedures set forth in the UR application.

- Ensures that applications of Preferred Provide Arrangements identify the approved UR Agent who will conduct the utilization reviews. Pursuant to 452 CMR 6.03, the OHP may require the PPA to survey affected employees to determine the employees' understanding of their rights when participating in the PPA arrangement.

Outreach and Support to UR Agents

The OHP provides outreach and support to UR Agents in an effort to assist them in offering the highest quality of service to injured workers. The OHP is providing educational sessions to all UR Agents, practitioners and school/peer reviewers who are interested in attending. UR Agents are encouraged to attend and discuss issues, as well as share new information. Agents are encouraged to contribute input for agenda items. As necessary, the agency's UR Coordinator will schedule meetings and telephone consultations with any UR Agent having difficulty complying with the DIA's regulations.

Health Care Services Board

Pursuant to M.G.L. c.152 §13, the Health Care Services Board ("HCSB") is a medical advisory body consisting of 14 members specified by statute and appointed by the Commissioner. The HCSB met throughout fiscal year 2008, discharged its statutory responsibilities with regularity, and continued to assist the Commissioner and the DIA with the implementation of multiple medical initiatives stemming from the Workers' Compensation Reform Act of 1991.

The HCSB managed its affairs with its Chair appointed by the Commissioner, Legal Counsel and administrative staff.

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, the HCSB is required to refer its findings to the appropriate board of registration. The HCSB continues to receive, investigate and resolve complaints against health care practitioners providing medical services to injured workers under the workers' compensation statute.

IME Roster Criteria - The HCSB is also required to develop eligibility criteria for the DIA to select and maintain a roster of qualified impartial physicians to conduct medical examinations pursuant to M.G.L. c.152, §8(4) and §11A. The HCSB continued to work with the Senior Judge in the recruitment of physicians and health care practitioners throughout fiscal year 2008.

Treatment Guidelines - Under §13 of c.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. In addition to an annual review and endorsement of the existing 28 medical treatment guidelines adopted by the DIA, the HCSB continues to work on medical guidelines for pain management and knee injuries while reviewing its existing guidelines.

Compensation Review System (CRS)

As part of the 1991 Workers' Compensation Reform Act, the statute mandated that the DIA "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" (M.G.L. c.152, §13).

In order to fulfill this legislative mandate, the OHP set out to create a Compensation Review System (CRS). The goals of CRS are to provide standardized, comparable data for the improvement of programs, policies, and services relative to injured workers in Massachusetts, as well as review compliance with HCSB Treatment Guidelines, review patterns of care, and review utilization of medical services and trends in medical care. In addition, CRS will aid in controlling costs by detecting over-utilization and improper utilization of treatments. This will be accomplished by collecting data from insurers, self-insurers and third party administrators (TPA) and comparing this data to the treatment guidelines.

The OHP continues to collect data to evaluate injured workers' access to medical care, standards of practice and compliance with the Massachusetts HCSB Treatment Guidelines, over and under-utilization of treatments, trends in the treatment of injured workers with back injuries and the need to update and revise the Massachusetts HCSB Treatment Guidelines.

OFFICE OF ASSESSMENTS & COMPLIANCE

In 2005, the DIA created the Office of Assessments & Compliance to verify the accuracy of the assessments that are collected by the agency. Each year, the DIA determines an assessment rate that will yield revenues sufficient to pay the obligations of the Workers' Compensation Trust Fund as well as the operating costs for the DIA.²¹ 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.

The DIA uses the Workers' Compensation Rating and Inspection Bureau of Massachusetts (WCRIBM) to communicate the annual assessment rate change, via circular letter, which is issued in July. The assessment rate changes are applied to policies, effective July 1st of that year, until notification of new rates are issued the following year. All insurance companies in Massachusetts that are licensed to write workers' compensation insurance must report and remit all collected assessments to the DIA on a quarterly basis.²² Historically, the DIA has relied upon insurance carriers to self-report and pay the appropriate amounts collected from employers.

Standard Premium

In the past, there has been confusion in the insurance industry regarding the definition of "standard premium." Confusion was eliminated in 1997 when Circular Letter 1778 was issued by the WCRIBM. The circular letter clearly stated that the assessment should be applied to premiums prior to the effect of any company deviations. As used in c.152, §65 and 452 CMR 7.00, standard premium is defined as "direct written premium equal to the product of payroll by class code and currently applicable manual rates multiplied by any applicable experience modification factor."

Assessment Audit - Phase I

In 1999, the DIA utilized the services of three accounting firms to ensure that accurate and complete assessments were collected from policyholders and then properly remitted to the DIA. The initial reviews were designed to cover a two-year period spanning from July 1, 1996 to June 30, 1998 and included insurance carriers licensed to write workers' compensation in Massachusetts. Upon the completion of Phase I by the CPA firms in August of 2007, the DIA had collected a total of \$7.6 million from insurance carriers as a result of underpaid assessment amounts. The cost of conducting the Assessment Audit in Phase I totaled \$1.9 million. This represents a cost to collection ratio of 25%. In addition to the \$7.6M collected as a result of CPA reviews, the DIA also collected \$1.9 million from conducting internal reviews, resulting in a grand total of \$9.5 million collected in Phase I of the project.

²¹ Regulated by M.G.L. c.152, §65(4).

²² Quarterly assessment reports are due no later than 40 days after the end of the calendar quarter being reported. The quarterly assessment forms are mailed to each insurance company the first week in January, April, July and October.

The following table details the assessments that were remitted to the DIA on a fiscal year basis from the result of CPA reviews.

Table 15: Assessment Recovery Project - Collections by Fiscal Year

Assessment Recovery Project		
<u>Fiscal Year</u>	<u>Amount Collected</u>	<u>Cumulative Amount</u>
Fiscal Year 2000	\$158,704	\$158,704
Fiscal Year 2001	\$67,793	\$226,497
Fiscal Year 2002	\$1,106,377	\$1,332,874
Fiscal Year 2003	\$1,539,935	\$2,872,809
Fiscal Year 2004	\$223,939	\$3,096,748
Fiscal Year 2005	\$4,537,865	\$7,634,613
Fiscal Year 2006	\$1,847,086	\$9,481,699
Fiscal Year 2007	\$92,685*	\$9,574,384
Fiscal Year 2008	\$1,064,992	\$10,639,376

Source: DIA Office of Assessments & Compliance

* The Office of Assessments & Compliance collected an additional \$4,045,202 from insurance companies during FY'07 by instituting improvements in the quarterly assessment collection process.

Assessment Audit - Phase II

Phase II of the assessment reviews was initiated in FY'06 and continued through FY'08. In Phase II, the focus was on assessments calculated and remitted during the review period from January 1, 1999 to December 31, 2003. The insurance companies reviewed as part of Phase II include both companies currently licensed to write workers' compensation insurance in Massachusetts as well as companies that no longer write new business in Massachusetts but did so during the applicable review time period. Phase II encompassed a selection of companies that range from single insurance carriers to multi-company insurance groups. The DIA's clarification of the definition of standard premium has effectively decreased confusion in the insurance industry regarding assessment calculation, thus resulting in the increased accuracy of assessment payment by insurance companies on a quarterly basis.

Assessment Audit - Phase III

In FY'08, Phase III of the assessment reviews was initiated and will continue through FY'09. Phase III focuses on assessments calculated and remitted during a 3-year review period between January 1, 2004 and December 31, 2006. This project began with the selection of five major insurers (and their subsidiaries) licensed to write workers' compensation insurance in Massachusetts.

DIA REGIONAL OFFICES

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

The Senior Judge and the managers of the conciliation, stenography, judicial support 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 entry 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. The offices are equipped with conference and hearing 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 Case Management System (CMS).

Cases are assigned to Administrative Judges by CMS 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 with the exception of the Springfield office, which is located in a building owned by the Commonwealth. The managers are 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. Therefore, the cost of operating each office is managed by each regional manager.

Resources of the Offices

Three of the four regional offices have moved to more expanded and enhanced office space within the last ten years; Fall River, Lawrence and Worcester.

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 that are networked to the Boston office. Also available to each region is online access to the Massachusetts General Laws and DIA case information for attorneys with registered user accounts.

The following are addresses for the regional offices:

Fall River

1 Father DeValles Boulevard
Fall River, MA 02723
(508) 676-3406
www.mass.gov/dia/FallRiver1.htm
Henry Mastey, Manager

Lawrence

160 Winthrop Avenue
Lawrence, MA 01840
(978) 683-6420
www.mass.gov/dia/Lawrence1.htm
Marcos Devers, Manager

Springfield

436 Dwight Street, Room 105
Springfield, MA 01103
(413) 784-1133
www.mass.gov/dia/Springfield1.htm
Marc Joyce, Sr. Regional Manager

Worcester

340 Main Street
Worcester, MA 01609
(508) 753-2072
www.mass.gov/dia/Worcester1.htm
Walter Weekes, Manager

UNDERGROUND ECONOMY TASK FORCE

On March 12, 2008, Governor Deval L. Patrick signed Executive Order #499 establishing the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification ("Task Force"). The Task Force is charged with coordinating the efforts of multiple state agencies to stamp out fraudulent employment activities. This includes sharing information that leads to employer compliance with the labor, licensing and tax laws of the Commonwealth. Task Force efforts are intended to help level the playing field for all businesses to compete, thereby enhancing the Commonwealth's economic vitality.

The Task Force is chaired by the Director of Labor and managed by an Executive Director. Task Force members include the following state agencies: Department of Labor, Department of Industrial Accidents, Division of Occupational Safety, Department of Workforce Development, Division of Apprentice Training, Division of Career Services, Division of Unemployment Assistance, Division of Professional Licensure, Executive Office of Public Safety and Security, Department of Revenue, Division of Capital Asset Management, Department of Housing and Community Development, State Office of Minority and Women Business Assistance, Office of Small Business and Entrepreneurship, Insurance Fraud Bureau, Massachusetts Office of Refugee and Immigration Affairs, and the Attorney General's Fair Labor Division.

In accordance to Executive Order #499, the specific objectives of the Task Force are to:

- A. Facilitate timely information sharing between and among Task Force members, including through the establishment of protocols by which participating agencies will advise or refer to other agencies matters of potential investigative interest;
- B. Identify those industries and sectors where the underground economy and employee misclassification are most prevalent and target Task Force members' investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
- C. Assess existing investigative and enforcement methods both in Massachusetts and other jurisdictions, and develop and recommend strategies to improve those methods;
- D. Encourage businesses and individuals to identify violators by soliciting information from the public, facilitating the filing of complaints, and enhancing the available mechanisms by which workers can report suspected violations;
- E. Solicit the cooperation and participation of district attorneys and other relevant enforcement agencies, including the Insurance Fraud Bureau, and establish procedures for referring cases to prosecuting authorities as appropriate;
- F. Work cooperatively with employers, labor, and community groups to diminish the size of the underground economy and reduce the number of employee misclassifications by, among other means, disseminating educational materials

regarding the applicable laws, including the legal distinctions between independent contractors and employees, and increasing public awareness of the harm caused by the underground economy and employee misclassification;

- G. Work cooperatively with federal, commonwealth, and local social services agencies to provide assistance to vulnerable populations that have been exploited by the underground economy and employee misclassification, including but not limited to immigrant workers;
- H. Identify potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts; and
- I. Consult with representatives of business and organized labor, members of the General Court, community groups and other agencies concerning the activities of the Task Force and its members and ways of improving its effectiveness, including consideration of whether to establish an advisory panel under the secretary of labor and workforce development.

Task Force Activities

In 2008, the Task Force held a series of regional public information sessions and hearings on workplace fraud. These meetings have provided the Task Force with valuable testimony from labor and community groups as to how such fraud impacts businesses and organizations throughout Massachusetts. Furthermore, the meetings have provided the Task Force with an opportunity to educate the public on the various efforts being taken by the Commonwealth of Massachusetts to combat workplace fraud.

In May 2008, the Task Force announced a new toll-free referral line and website (1-877-96-LABOR / www.mass.gov/dol/labortaskforce) to allow the public to report suspected cases of workplace fraud. To date, the Joint Task Force referral line has received hundreds of calls from employers and citizens reporting concerns as to suspected fraudulent activities.

As a result of the Task Force focus on collaboration to achieve results, the Office of the Attorney General's Fair Labor Division has 18 current investigations pending, five additional closed investigations and three civil enforcement actions in 2008 which has led to \$163,285 paid in restitution and an additional \$36,600 in total penalties paid to the Commonwealth.

Specific examples of successful Joint Task Force efforts in 2008 include:

- A Joint Task Force referral to the Attorney General's Office which led to a \$10,000 fine against a Pinto Drywall, a Richmond, Virginia drywall company and its owner for violation of the Massachusetts Independent Contractor/Misclassification Law. The company and owner were each cited for misclassifying 17 employees as independent contractors.

- A \$35,000 fine against Excel Home Healthcare in Tewksbury over payment of wages to employees, which has been collected.
- \$20,000 paid to the Division of Unemployment Assistance by Enviro of Lawrence.
- A \$160,000 fine paid by the L&H company to workers for violation of wage hour law as well as \$20,000 in civil fines and fees for unintentional misclassification. Additionally, the company has agreed to a voluntary one year debarment from bidding on publicly funded projects. As a result, all certifying agencies, including the State Office of Minority and Women Business Assistance (SOWMBA), the Division of Capital Asset Management (DCAM) and the Department of Housing and Community Development (DHCD) has pulled certification of L&H.
- Design & Development of Somerville which has paid nearly \$10,000 in fines and back wages to employees for unintentional misclassification and wage hour violations.

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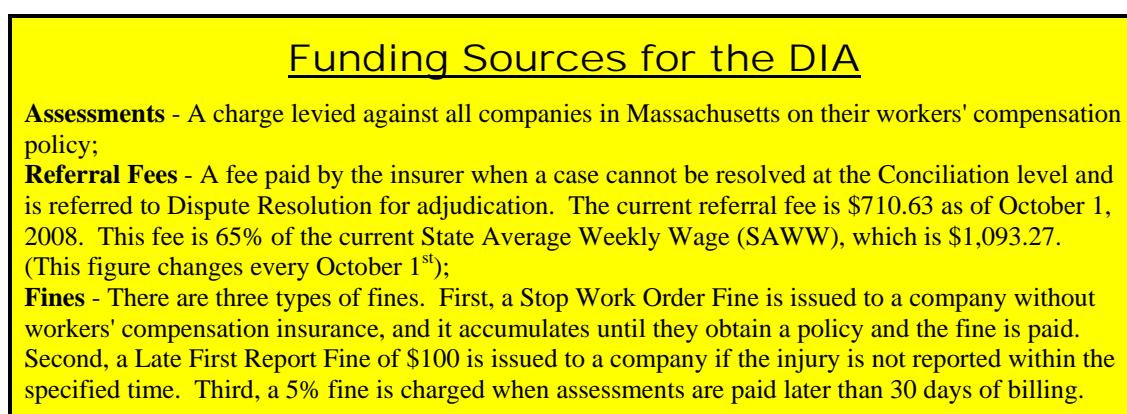
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DIA FUNDING

To ensure that the Department of Industrial Accidents had adequate funding, the Legislature in 1985 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). There are no tax dollars used to fund the Department of Industrial Accidents or any of its activities.

Figure 19: Funding Sources for the Department of Industrial Accidents



Source: Department of Industrial Accidents' Website: www.mass.gov/dia/

Each year, the DIA determines an assessment rate that will yield revenues sufficient to pay the obligations of the Workers' Compensation Trust Fund and the operating costs for 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.²³ The assessment rate for both private and public sector employers in FY'09 is 6.262% of standard premium. This represents a 13.1% increase from the FY'09 assessment rate of 5.538%.

The Special Fund - The DIA's operating expenses are paid from a Special Fund, which is funded entirely by assessments charged to private sector employers. Although the Special Fund budget is subject to the general appropriations process, the DIA reimburses the General Fund the full amount of its budget appropriations plus fringe benefits and indirect costs from the assessments, fines, and fees collected. These payments are made quarterly to the State Treasurer's Office. 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.

²³ For employers that are self insured or are members of self insured groups, an "imputed" premium is determined, whereby the WCRI 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 cannot seek reimbursement for benefits paid under sections 34B, 35C, 37, 30H, 26, and 37A. Separate opt out assessment rates are determined.

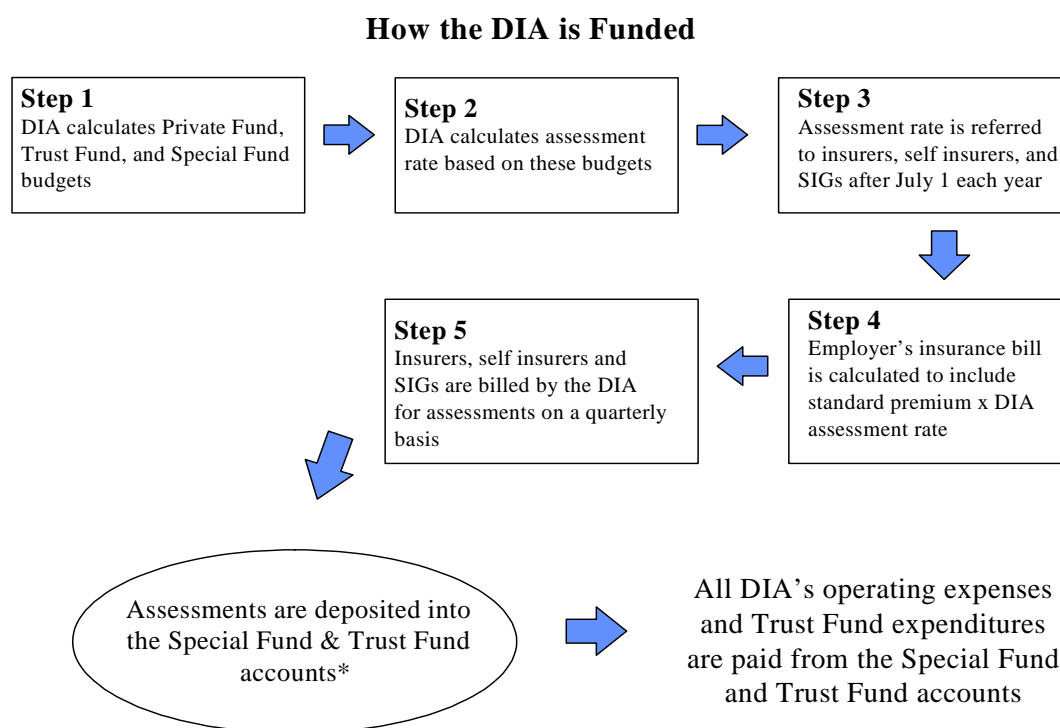
The Trust Fund - The Trust Fund was established so the DIA can make payments to uninsured injured employees and employees denied vocational rehabilitation services by their insurers. In addition, the Trust Fund must reimburse insurers for benefits for second and latent injuries, injuries involving veterans, and for specified cost of living adjustments.²⁴ One account is reserved for payments to private sector employers (Private Trust Fund); the other is for payments to public sector employers (Public Trust Fund).

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 uses consulting actuaries to estimate future expenses and determine the assessments necessary to fund the Special Fund and the Trust Fund. The budgets and the corresponding assessments must be submitted to the Director of Labor by July 1st annually. Historically, the Legislature appropriates the DIA's operating expenses before July 1st. 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 20: DIA Funding Process



*Note: Maintained by the State Treasurer.

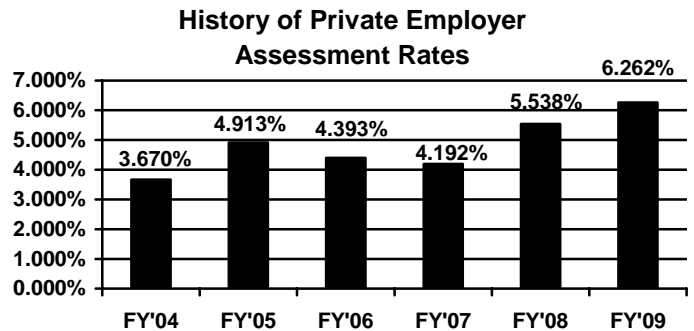
²⁴ M.G.L. c.152, §65(2).

PRIVATE & PUBLIC EMPLOYER ASSESSMENTS

On June 25, 2008, Deloitte Consulting released an analysis of the DIA's FY'09 assessment rates as mandated under M.G.L. c.152, Section 65. Specifically, the report detailed the estimated amount required by the Special Fund and Trust Funds for FY'09, beginning July 1, 2008. Included in the report are the assessment rates to be applied to public and private employer insurance premiums. The private assessment rate has been calculated to be **6.262%** of standard

premium, an increase of 13.1% from last year's assessment (5.538%). The increase to the assessment rate is primarily driven by this year's inclusion of an estimated \$3.8 million of indirect/fringe costs to the Special Fund projected budget.

Figure 21: History of Private Employer Assessment Rates



Overview of Assessment Rate Calculations

Deloitte Consulting uses the following six steps in determining the assessment rates for both private and public employers:

1. Project the Fiscal Year 2009 Expenditures;
2. Project the Fiscal Year 2009 Income (excluding assessments);
3. Estimate Fiscal Year 2009 Balance Adjustments, if any;
4. Convert Above Items to Ratios by comparing them to the Assessment Base ('07 Paid Losses);
5. Calculate the Assessment Ratio by Subtracting the Projected Income and Balance Adjustment Ratios from the Projected Expenditure Ratio; and
6. Calculate the Assessment Rate by multiplying the Assessment Ratio by the Assessment Base Factor.

1. FISCAL YEAR 2009 PROJECTED EXPENDITURES: \$85.5M

The first step in the assessment process is the calculation of the expected FY'09 expenditures. Private employers are assessed for the sum of the Private Trust Fund budget and the Special Fund budgets.

<u>PRIVATE TRUST FUND BUDGET</u>	Projected FY'09 Expenditures (06/08)
Section 37 (2nd Injuries)	\$28,840,000
Uninsured Employers	\$ 9,921,030
Section 30H (Rehabilitation)	\$ 51,809
Section 35C (Latency)	\$ 481,313
Section 34B (COLA's)	\$16,891,416
Defense of the Fund	\$ 4,303,787
Total:	<u>\$60,489,355</u>

<u>SPECIAL FUND BUDGET</u>	Projected FY'09 Expenditures (06/08)
Total:	<u>\$25,029,933</u>

<u>PRIV. EMPLOY. EXPENDITURES</u>	Projected FY'09 Expenditures (06/08)
Total:	<u>\$85,519,288</u>

2. PROJECTED FISCAL YEAR 2009 INCOME: \$6.9M

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'09 Fines and Fees (Special Fund) = \$4,877,118

FY'09 Income Due to Reimbursements = \$1,598,079

Estimated Investment Income (FY'08) = \$ 463,309 (Private Fund: \$340,372/Special Fund: \$122,937)

Total Projected FY'09 Income: **\$6,938,506**

3. ADJUSTMENTS TO FUND BUDGETS: \$0 (Special Fund)/\$0 (Private Trust Fund)

According to M.G.L. c.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'07 expenditures in a particular fund must be used to reduce amounts assessed for that fund in FY'09. The balances of both the Special Fund and Private Trust Fund at the end of FY'08 do not have surpluses exceeding 35% of FY'07 disbursements. Therefore, the assessment was calculated without a reduction to either budget.

<i>SPECIAL FUND:</i>	<u>FY'08 Estimated Year End Balance</u>	<u>35% of FY'07 Expenditures</u>	<u>Amount of Reduction Required</u>
	\$5,093,981	\$8,263,645	\$0
<i>PRIVATE TRUST FUND:</i>	<u>FY'08 Estimated Year End Balance</u>	<u>35% of FY'07 Expenditures</u>	<u>Amount of Reduction Required</u>
	\$14,103,597	\$16,972,817	\$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 first three steps by the assessment base, which represents losses paid during Calendar Year 2007. For the Private Fund, the assessment base is \$703.7M.

<i>Private Expenditure Ratio:</i>	12.153%	(\$85.5 million/\$703.7 million)
<i>Projected Income Ratio:</i>	0.986%	(\$6.9 million/\$703.7 million)
<i>Balance Adjustment Ratio:</i>	0%	(\$0/\$703.7 million)

5. CALCULATION OF THE ASSESSMENT RATIO: 11.167%

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 =	Assessment Ratio
12.153%	0.986%	0%	11.167%

6. CALCULATION OF THE ASSESSMENT RATE: 6.262%

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 WCRIB). The 2009 assessment base factor is .561.

Assessment Ratio x	Assessment Base Factor =	Assessment Rate
11.167%	.561	6.262%

DIA OPERATING BUDGET

Legislative Appropriations, Fiscal Year 2009

The Department of Industrial Accidents initially requested a budget of \$21,328,387 for fiscal year 2009. In House 2, the Governor's recommendation for the DIA's budget was \$21,196,452 (\$131,935 less than the DIA's original request). The Massachusetts House of Representatives, Senate, and Conference Committee all approved appropriations totaling \$21,196,452 (the identical amount as proposed in the Governor's House 2 recommendation).

Table 16: Legislative Budget Process for DIA Line-Item, Fiscal Year 2008 - Fiscal Year 2009

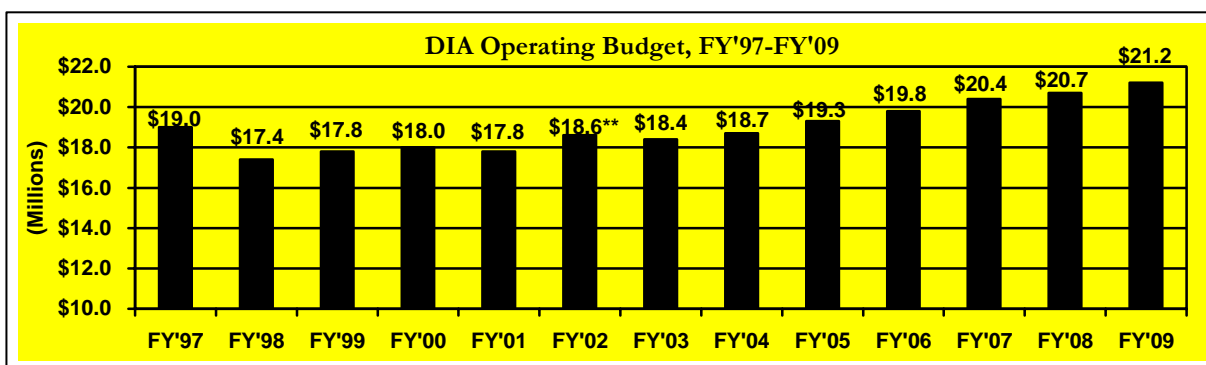
Fiscal Year 2008 Budget Process		Fiscal Year 2009 Budget Process	
DIA Request	\$20,733,538	DIA Request	\$21,328,387
Governor's Rec.	\$20,735,488	Governor's Rec.	\$21,196,452*
Full House	\$20,735,488	Full House	\$21,196,452
Full Senate	\$20,735,488	Full Senate	\$21,196,452
Conference Committee	\$20,735,488	Conference Committee	\$21,196,452
Gen. Appropriations Act	\$20,735,488	Gen. Appropriations Act	\$21,196,452

*Endorsed by the Advisory Council's on 4/11/07.

Endorsed by the Advisory Council on 3/12/08.

General Appropriations Act

On July 13, 2008, Governor Patrick signed the FY'09 General Appropriations Act, which allocated the DIA a \$21,196,452 operating budget. The FY'09 appropriation is equal to the Governor's Recommendation (House 1) which was endorsed by the Advisory Council's Budget Subcommittee in April of 2008. This appropriation represents a 1.6% increase from last year's final appropriation. Provisions contained within the DIA's appropriation require that "not less than" \$800,000 be expended for occupational safety grants and that a judge be assigned to hear cases in Berkshire County "not less than once a month." Furthermore, the line-item contains a provision that allows for the Advisory Council to release sufficient funds from the Special Reserve Account to pay for the continued expansion of the agency's Oracle conversion project.



****Note:** The FY'02 appropriation reflects the combination of the General Appropriation Act (\$17,270,401) and the Supplemental Budget figures (\$1,327,147).

Fiscal Year 2009 Spending Cuts (Section 9C)

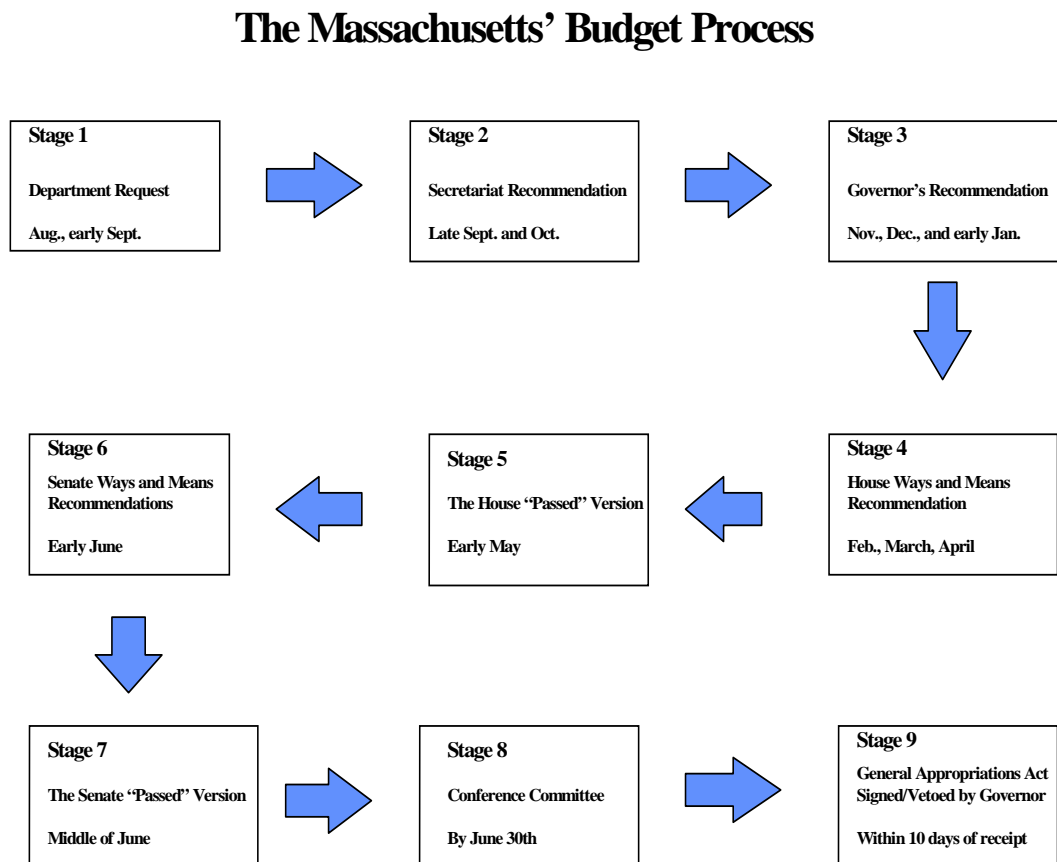
On October 15, 2008, Governor Patrick announced over \$1.4 billion in spending cuts, cost controls, and other budget solutions to bring the state's fiscal year 2009 operating budget in line with the revised consensus revenue estimate. Specifically, the Department of Industrial Accidents was required to reduce their fiscal year 2009 spending by \$92,184. The Advisory Council has been informed that the Governor's cuts will not negatively impact the core services of the DIA in any manner.

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 abide by the budget process in the same manner as most other government agencies. It is helpful to view this process in nine distinct phases.²⁵

The following is a brief description of the process:

Figure 22: The Massachusetts' Budget Process



²⁵ Making and Managing the Budget in the Commonwealth of Massachusetts, Donahue Institute for Government Services, University of Massachusetts.

STAGE #1: Department Request

Time Frame: August and early September

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

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 first 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, and 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.

STAGE #6: Senate Ways and Means Committee Recommendations

Time Frame: Early June

The House version of the budget is referred to the Senate Ways and Means Committee where hearings and testimony are held. Typically 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 that both the House and Senate must ratify. 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 General Appropriation Act is being finished.)

STAGE #9: General Appropriations Act

Time Frame: Within ten days of receipt

The Governor has ten calendar days to decide their position on the budget. During this period, the Governor may both 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.

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MANDATORY INSURANCE COVERAGE

Every private sector employer in the Commonwealth is required to maintain workers' compensation insurance.²⁶ Coverage may consist of purchasing a commercial insurance policy, membership in a self-insurance group, participation in a reciprocal insurance exchange, or maintaining a license as a self-insured employer.²⁷

All Commonwealth of Massachusetts employees are covered under the Workers' Compensation Act, with claims paid directly from the General Fund. The Human Resources Division within the Executive Office of Administration & Finance administers workers' compensation claims for state agencies. On an annual basis, each individual agency pays 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 majority of municipal employees 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 (commercial insurance, self-insurance, or membership in a self-insurance group).²⁸

The Office of Investigations at the 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.²⁹ If an employee is injured while working for a company without coverage, a claim may be filed with the DIA's Trust Fund.³⁰

Exemption of Corporate Officers

On July 25, 2002, a new law made the requirement of obtaining workers' compensation insurance elective for corporate officers (or the director of a corporation) who own at least 25% of the issued and outstanding stock of that corporation. Said corporate officer must provide the Commissioner of the DIA with a written waiver of their rights should they choose to opt-out from the workers' compensation system.³¹ The policies and procedures surrounding the exemption of a corporate officer or director are governed by 452 CMR 8.06 et. seq. The new law also amended the definition of an employee by giving a sole-proprietor or a partnership the ability to be considered an "employee" so they can obtain coverage under a workers' compensation insurance policy.

²⁶ 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.

²⁷ 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.

²⁸ For more information of the coverage of public employees see Report to the Legislature on Public Employees, Massachusetts Workers' Compensation Advisory Council, 1989.

²⁹ See page 77 covering the Office of Investigations.

³⁰ See page 80 covering the Workers' Compensation Trust Fund.

³¹ Form 153 - "Affidavit of Exemption for Certain Corporate Officers."

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 M.G.L. c.152, and are regulated by the Division of Insurance (DOI). The Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIB) has delegated authority to determine standard policy terms, classifications, and manual rates, in addition to maintaining statistical data 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 WCRIB'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 calculations, 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 DOI, which provides licensing, monitors solvency, determines rates, approves the terms of policies, and adjudicates unfair claims handling practices. In FY'08, the DOI approved a total of nine new licenses to carriers to write workers' compensation insurance in Massachusetts. In addition, three existing licenses were amended to include workers' compensation. During the fiscal year, there were no insurance carriers that gave up their license to write workers' compensation insurance.

In Massachusetts, workers' compensation insurance rates are determined through an administered pricing system.³² Insurance rates are proposed by the Workers' Compensation Rating and Inspection Bureau of Massachusetts (WCRIB) on behalf of the insurance industry, and set by the Commissioner of Insurance. The WCRIB submits to the Commissioner a classification of risks and premiums, referred to as the rate filing,

³² 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 program run by the state. Some states have competitive state funds that allow employers to purchase insurance from either a private carrier or the state.

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.³³

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."³⁴

On Thursday, April 17, 2008, Insurance Commissioner Nonnie S. Burnes issued a rate decision, which reduced average rates for workers' compensation insurance by 1.0% from 2007-2008 rate levels, resulting in the savings of \$11 million in workers' compensation premiums for Massachusetts employers. The Commissioner's decision was based on an agreement reached between the State Rating Bureau, the Workers' Compensation Rating & Inspection Bureau (WCRI), and the Attorney General's Office. In February 2008, the WCRI had originally proposed a 2.3% rate increase to average workers' compensation rates. The rate reduction became effective for policies taking effect on or after September 1, 2008. This rate decrease marks the ninth time since workers' compensation rates have decreased since 1994.

The table to the right illustrates the fluctuations in workers' compensation insurance rates since 1987 and how each year's rate would effect a company's premium, assuming their premium was \$100 in 1987 (with all other factors remaining the same - experience rating, discounts, etc.).

Table 17: Impact of Rate Changes, 1987-2008

YEAR	Percent Change from Previous Year's Rate	Assuming a Manual Rate of \$100 in 1987
1987	No Change	\$100.00
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
1998	- 21.1%	\$106.14
1999	- 20.3%	\$84.59
2000	No Change	\$84.59
2001	+ 1%	\$85.44
2002	No Change	\$85.44
2003	- 4%	\$82.02
2004	No Change	\$82.02
2005	-3%	\$79.56
2006	No Change	\$79.56
2007	- 14.6%	\$67.94
2008	-1%	\$67.26

Source: Division of Insurance WC Rate Decisions

Deviations & Scheduled Credits

The Workers' Compensation Act allows individual carriers to seek permission from the Commissioner to use a percentage decrease from approved rates within certain

³³ If the Commissioner takes no action on a rate filing within six months, the rates are then deemed to be approved. If the Commissioner disapproves the rates, 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.

³⁴ M.G.L. c.152, §53A(2).

classifications.³⁵ These percentage decreases are called “downward deviations.” Scheduled credits are also used in Massachusetts as a tool for competitive pricing, by allowing insurers to reward policyholders for good experience. 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.

In calendar year 2007, approximately 60 insurers were offering deviations or scheduled credits to their customers in Massachusetts. These discounts (some as high as -25% on certain classes) will remain in effect until the next rate filing.

Table 18: Workers' Compensation Rate Deviations, 2004-2007

Four Year Trends - State Rating Bureau	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Workers' Compensation Rate Deviations:	53	60	61	60

Source: Division of Insurance 2007 Annual Report.

The Classification System

Workers' compensation insurance rates are calculated and charged to employers, according to industry categories 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 which distributes the overall costs of workers' compensation 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 (WCRI) 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."³⁶

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.

³⁵ M.G.L. c.152, §53A(9).

³⁶ M.G.L. c.152, §53A.

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 a decreased risk to 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 Salespersons, 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.

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.

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

Appealing a Classification - When a new company applies for insurance, the broker or agent assigns a classification, which is audited by the insurance carrier at the end of the policy year. If the carrier determines the employer or their employees were misclassified, the employer is charged additional premium or receives a credit for the correct class. The WCRIB 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 M.G.L. c.152, §52D. A formal appeal must be held with the WCRIB's Governing Committee (for those insured in the Voluntary Market) or the Residual Market Committee (for those insured in the Assigned Risk Pool). The WCRIB will send an auditor to the worksite and proceed to make a ruling on the classification in question. If reclassification is denied, an appeal can be made to the Commissioner of Insurance. A hearing officer will then be selected by the Commissioner to conduct an evidentiary hearing on the classification issue.

Construction Industry - In the construction industry alone, there are over 67 different classifications for the various types of construction or erection operations. 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 employer's 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, which is 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 the company's rate to \$20 per \$100 of payroll. The other employer, who is not as safety conscious, 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 of 1990, the WCRIB instituted the All Risk Adjustment Program (ARAP), calculated in addition to the experience modification factor. The ARAP surcharges experience rated risks, both voluntary and assigned, with a record of losses greater than expected under the Experience Rating Plan. The purpose of this program is to provide a revised pricing mechanism for experience rated risks to share in the underwriting losses they generate. The WCRIB will calculate the ARAP adjustment and identify it as a separate factor on the experience rating calculation sheet.

For ratings effective before September 1, 2007 and after, the ARAP factor, expressed as a debit percentage, can range from 1.00 (unity) to a maximum surcharge of 1.49. For ratings effective September 1, 2007 and after, the maximum ARAP surcharge factor decreased from 1.49 to 1.25. Prior to January 1, 2008, the ARAP factor was applied to the policy's Standard Premium less a Massachusetts Benefits Deductible Program credit or a Massachusetts Benefits Claim and Aggregate Deductible Program credit, if applicable. Effective January 1, 2008, the ARAP factor is applied to the policy's standard

premium (the deductible credit was moved inside of Standard Premium effective January 1, 2008).

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, problems can occur when pricing premiums for large policies because as the premium increases, the proportion required to pay expenses decreases. In an effort to compensate for these differences, insurers 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.

Table 19: Percent of Premium Discount for Type A & B Companies in Massachusetts

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%

Source: WCRI Website [www.wcribma.org], Premium Discount Table.

Deductible Policies

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.

Table 20: Premium Reduction % per Claim Deductible

PER CLAIM DEDUCTIBLE ³⁷ <i>Effective September 1, 2005</i>	
Medical and Indemnity Deductible Amount	Premium Reduction Percentage
\$ 500	3.0%
\$1,000	4.2%
\$2,000	6.2%
\$2,500	7.1%
\$5,000	10.6%

Source: WCRI

³⁷ Massachusetts Workers' Compensation and Employer's Liability Insurance Manual.

Table 21: Massachusetts Benefits Claim and Aggregate Deductible Program

MASSACHUSETTS BENEFITS CLAIM AND AGGREGATE DEDUCTIBLE PROGRAM³⁸ <i>Effective September 1, 2005</i>			
Estimated Annual Standard Premium	Claim Deductible Amount	Aggregate Deductible Amount	Premium Reduction Percentage
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%

Source: WCRIB

Retrospective Rating Plans

Retrospective rating bases premium on an insured's actual losses calculated at the conclusion of the policy period. Therefore, the insured 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.³⁹ A basic premium is necessary to defray the expenses that do not vary with losses and to provide the insurance company with a profit. 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 an estimated standard premium of at least \$25,000 per year, and for a three-year plan the estimated standard premium must be at least \$75,000.⁴⁰ 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 smaller employers are purchasing retrospective plans to lower premiums by controlling company losses.

³⁸ Massachusetts Workers' Compensation and Employer's Liability Insurance Manual.

³⁹ "Retrospective Rating," Risk Financing, Supplement No. 46, May 1995: III.D.7.

⁴⁰ Workers' Compensation: Exposures, Coverage, Claims, Levick, Dwight E. Standard Publishing Corp., page 11-4.

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. However, there is a 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.⁴¹ 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.⁴²

⁴¹ "Risk Management-Life, Health, and Income Exposures," *Life Insurance*, Part 4: 406.

⁴² "Thinking About the Work Comp Crisis," *Merritt Risk Management Review*, December 1991: 3.

ASSIGNED RISK POOL

Any employer rejected for workers' compensation insurance can obtain coverage through the residual market, known as the Assigned Risk Pool. Administered by the Workers' Compensation Rating and Inspection Bureau (WCRIB), 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.

The estimated ultimate residual market share for the 12-months ending June, 2008 is 13.2%.⁴³ During the last four years this percentage has trended downward from 18.3%. Today the residual market remains far below the 1992 policy year level of 64.7%.

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." The servicing carriers are paid a commission for servicing these policies, and are subject to performance standards and a paid loss incentive program. These programs are designed to provide servicing carriers with incentives to provide loss control services to those insured.

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 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 can be 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 two years. 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). The estimated (as of the first quarter of 2007) residual market loss ratio for Policy Year 2006 is 60.0% with a resulting residual market burden of -0.87%.⁴⁴

⁴³ WCRIB Special Bulletin No. 10-08 (August 15, 2008).

⁴⁴ WCRIB Special Bulletin No. 11-08 (September 4, 2008).

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 dramatically in the late 1980's and early 1990's. Much of the cost savings derived from avoidance of residual market loads incorporated into 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. Many employers now turn to traditional commercial insurance plans, most noticeably large deductible policies and retrospective rating plans.

Self Insurance

The DIA strictly regulates self insured employers through its annual licensing procedures. For an employer to qualify to self insure, it must post a surety bond or negotiable securities to cover any 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 or security deposit 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.⁴⁵ 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 evaluates employers every year to determine their continued eligibility and to set bond amounts.

Table 22: Total Self Insured Licenses in Massachusetts, FY'95 - FY'08

	<u>New Licenses</u>	<u>Total Licenses</u>	<u>Companies Covered</u>	<u>Equivalent Premium Dollars</u>
FY'08	1	108	401	\$264M
FY'07	2	116	400	\$292M
FY'06	2	114	434	\$277M
FY'05	2	129	409	\$262M
FY'04	1	129	380	\$245M
FY'03	2	143	445	\$225M
FY'02	2	139	478	\$221M
FY'01	3	151	419	\$219M
FY'00	5	173	437	\$221M
FY'99	6	174	464	\$240M
FY'98	5	186	503	\$295M
FY'97	5	206	417	\$305M
FY'96	5	226	734	\$350M
FY'95	11	227	734	\$368M

⁴⁵ 452 C.M.R. 5:00: Code of Massachusetts Regulations concerning insurers and self insurers.

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.⁴⁶

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 for 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).⁴⁷ 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, eight SIGs were formed in 1991 and 21 in 1992. As of January 1, 2008, Massachusetts had 24 SIGs with 5,453 members.

Table 23: Membership in W/C SIGs as of Jan. 1st

Membership in Workers' Compensation Self-Insurance Groups as of Jan. 1st		
Year	Number of Groups	Number of Members
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
1999	25	2,821
2000	24	Unavailable
2001	25	Unavailable
2002	25	3,000
2003	24	3,456
2004	24	3,768
2005	25	4,472
2006	25	4,696
2007	25	5,086
2008	24	5,453

Source: Division of Insurance

⁴⁶ 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. (Div. of Insurance Regulations, 211 CMR 67.02).

⁴⁷ 211 CMR 67.09.

INSURANCE FRAUD BUREAU

The Insurance Fraud Bureau (IFB) is an insurance industry supported agency authorized by the Commonwealth to detect, prevent and refer for criminal prosecution suspected fraudulent insurance transactions involving all lines of insurance.⁴⁸ The IFB was created in 1990 to investigate auto insurance fraud and expanded in 1991 to include workers' compensation fraud.⁴⁹ While its mission statement is to include all lines of insurance, the focus is on automobile and workers' compensation insurance.

IFB Funding

The IFB receives half of its annually budgeted operating revenues from the Automobile Insurers Bureau (AIB) and half from the Workers' Compensation Rating and Inspection Bureau (WCRI). In 2007, each of these bureaus separately contributed a total of \$3,953,183 to fund the IFB. The 2007 operating expenses for the IFB totaled \$7,805,927, representing a \$620,533 increase (+8.6%) over 2006 expense levels.

The Investigative Process

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 primarily investigate the following types of workers' compensation fraud:

- *Claimants with duplicate identities who worked while receiving workers' compensation benefits or who earned income from one or more employers and failed to disclose it;*
- *Cases in which the subject staged an on-the-job accident;*
- *Cases where subjects participated in physical activities wholly inconsistent with the disability claimed or whose injuries were fraudulently attributed to the workplace;*
- *Premium evasion fraud and phony death claims.*

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, which can be reached at: 800-32-FRAUD. In calendar year 2007, the IFB received 345 referrals regarding workers' compensation fraud. Workers' compensation fraud referrals only represent 8.2% of all IFB referrals. The vast majority of referrals (85.9%) received by IFB are for automobile insurance fraud (3,598 in calendar year 2007).

⁴⁸ 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.

⁴⁹ M.G.L. St. 1990, c.338 as amended by St. 1991, c.398, §9

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.

Assigned Cases - Once resources become available, a referral is assigned to an investigator and officially becomes a "case." In calendar year 2007, a total of 94 "new" cases were assigned to investigators dealing with workers' compensation fraud.⁵⁰ 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.

Indictments & Convictions

In 2007, there were 8 individuals charged (either through indictments or complaints issued) involving workers' compensation fraud as a result of the work of the Insurance Fraud Bureau. Much like the cases referred to the Insurance Fraud Bureau, the vast majority of indictments or complaints issued are for cases involving automobile insurance fraud (282 individuals charged in 2007).

In calendar year 2007 there were 9 convictions for workers' compensation fraud and 34 convictions involving automobile insurance fraud.

⁵⁰ This is the number of workers' compensation cases investigated during 2007. There were 101 newly created cases workers' compensation cases, however, not all of these were assigned to an investigator by the end of the year. The 94 cases represents some cases that had been assigned prior to 2007 and were still in active investigation phase at the end of the year.

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

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APPENDIX A

ADVISORY COUNCIL MEMBERS – FY'08

<i>BUSINESS</i>		<i>LABOR</i>
<p>EDMUND C. CORCORAN, JR. Raytheon, Director of Integrated Disability Programs 235 Wyman Street Waltham, MA 02451-1219 Tel: (781) 768-5115 FAX: (781) 768-5126</p> <p>DAVID P. POWELL AGC of Massachusetts, Inc. 888 Worcester Street, Suite 40 Wellesley, MA 02482 Tel: (781) 235-2680 x 16 FAX: (781) 235-6020</p> <p>ANTONIO FRIAS S & F Concrete Contractors, Inc. 166 Central Street, P.O. Box 427 Hudson, MA 01749-0427 Tel: (978) 562-3495 FAX: (978) 562-9461</p> <p>JOHN REGAN Vice President for Government Affairs, AIM 222 Berkeley Street, P.O. Box 763 Boston, MA 02117-0763 Tel: (617) 262-1180 FAX: (617) 536-6785</p> <p>JOHN D. BOYLE Boyle, Morrisey & Campo, P.C. 695 Atlantic Avenue Boston, MA 02111 Tel: (617) 451-2000 FAX: (617) 451-5775</p>		<p>MICKEY LONG AFL-CIO 193 Old Colony Avenue, P.O. Box E-1 Boston, MA 02127 Tel: (617) 269-0229 FAX: (617) 269-0567</p> <p>WILLIAM T. CORLEY IBEW Local 103 256 Freeport Street Dorchester, MA 02122 Tel: (617) 268-4200 FAX: (617) 268-0330</p> <p>JOHN A. PULGINI Pulcini & Norton, LLP 10 Forbes Road West, Suite 240 Braintree, MA 02184 Tel: (781) 843-2200 FAX: (781) 843-4900</p> <p>STEPHEN JOYCE New England Carpenters Labor Management Program 803 Summer Street, 4th Floor South Boston, MA 02127 Tel: (617) 268-3400 FAX: (617) 268-6656</p> <p>STEPHEN P. FALVEY New England Regional Council of Carpenters c/o Carpenters Local 111 – 13 Branch St., Unit 215 Methuen, MA 01844 Tel: (617) 307-5132 FAX: (978) 685-7373</p>
<i>EX-OFFICIO</i>		<i>EX-OFFICIO</i>
<p>GEORGE NOEL Director, Department of Labor One Ashburton Place, Suite 2112 Boston, MA 02108 Tel: (617) 626-7100 FAX: (617) 727-9725</p>		<p>GREG BIALECKI Undersecretary, Department of Business Development One Ashburton Place, Suite 2101 Boston, MA 02108 Tel: (617) 727-8380 FAX: (617) 727-4426</p>
<i>CLAIMANT'S BAR</i>	<i>INSURANCE</i>	<i>MEDICAL PROVIDER</i>
<p>KENNETH J. PARADIS, JR. Crowe Paradis Services Corp. 607 North Avenue, Suite 18 Wakefield, MA 01880 Tel: (781) 246-8975 FAX: (617) 246-9322</p>	<p>PETER A. COOK, SR. Cook & Co. Insurance Agency, Inc. 1025 Plain Street – P.O. Box 1068 Marshfield, MA 02050 Tel: (781) 837-7300 x 611 FAX: (781) 837-5668</p>	<p>DENNIS M. HINES South Shore Hospital 55 Fogg Road So. Weymouth, MA 02190 Tel: (781) 340-8590 FAX: (781) 340-8146</p>
<i>STAFF</i>		
<p>ANDREW S. BURTON, EXECUTIVE DIRECTOR EVELYN N. FLANAGAN, CHIEF RESEARCHER</p>		

APPENDIX B

Agenda of Advisory Council Meetings - FY'08

August 8, 2007

DIA Update

Action Items

- Minutes - June 13, 2007

Proposed Audit Guidelines – Sole Proprietors/Partnerships

Executive Director Update

Miscellaneous

September 12, 2007

DIA Update

Action Items

- Minutes - June 13, 2007
- Minutes – August 8, 2007

Proposed Audit Guidelines – Sole Proprietors/Partnerships

Workers' Compensation Medical Fee Schedule Discussion

Executive Director Update

Miscellaneous

October 10, 2007

DIA Update

Action Items

- Minutes - September 12, 2007

Statute of Limitations – Second Injury Fund Cases

Executive Director Update

Miscellaneous

November 19, 2007

Judicial Nomination Update

Miscellaneous

Executive Session

December 12, 2007

DIA Update

Action Items

- Minutes - October 10, 2007
- Minutes - November 19, 2007

Fiscal Year 2007 – Concerns & Recommendations

Executive Director Update

Miscellaneous

Executive Session

February 13, 2008

DIA Update

Action Items

- Minutes - December 12, 2007

Quarterly Assessment Audit Update

Executive Director Update

Miscellaneous

Executive Session

March 12, 2008

DIA Update

Action Items

- Minutes – February 13, 2008

FY'09 Budget Subcommittee Update

Executive Director Update

Miscellaneous

April 9, 2008

DIA Update

Action Items

- Minutes – March 12, 2008

WCRIB Rate Filing

Second Injury Fund Overview

Executive Director Update

Miscellaneous

May 14, 2008

DIA Update

Action Items

- Minutes - April 9, 2008

Second Injury Fund Subcommittee Update

Miscellaneous

Executive Session

June 11, 2008

DIA Update

Action Items

- Minutes - May 14, 2008

Second Injury Fund Subcommittee Update

Executive Director Update

Miscellaneous

APPENDIX C

Joint Committee on Labor & Workforce Development - FY'08

Senator Thomas M. McGee (Chair)
State House - Room 112
Boston, MA 02133-1053
(617) 722-1350

Senator Patricia D. Jehlen
State House - Room 513
Boston, MA 02133-1053
(617) 722-1578

Senator Steven A. Tolman
State House – Room 511-B
Boston, MA 02133-1053
(617) 722-1280

Rep. David M. Torrasi (Chair)
State House – Room 39
Boston, MA 02133-1053
(617) 722-2014

Representative Colleen M. Garry
State House - Room 238
Boston, MA 02133-1053
(617) 722-2380

Representative Demetrius J. Atsalis
State House - Room 26
Boston, MA 02133-1053
(617) 722-2080

Representative John W. Scibak
State House - Room 39
Boston, MA 02133-1053
(617) 722-2220

Representative Sean Curran
State House - Room 473B
Boston, MA 02133-1053
(617) 722-2263

Representative Barbara A. L'Italien
State House - Room 26
Boston, MA 02133-1053
(617) 722-2080

Senator Pamela P. Resor
State House - Room 410
Boston, MA 02133-1053
(617) 722-1120

Senator Edward M. Augustus, Jr.
State House - Room 218
Boston, MA 02133-1053
(617) 722-1485

Senator Robert L. Hedland
State House - Room 313-C
Boston, MA 02133-1053
(617) 722-1646

Representative Thomas J. Calter
State House - Room 237
Boston, MA 02133-1053
(617) 722-2425

Representative Paul C. Casey
State House - Room 238
Boston, MA 02133-1053
(617) 722-2380

Representative Karyn E. Polito
State House - Room 167
Boston, MA 02133-1053
(617) 722-2230

Representative Martha M. Walz
State House - Room 443
Boston, MA 02133-1053
(617) 722-2460

Representative Paul J. Loscocco
State House - Room 254
Boston, MA 02133-1053
(617) 722-2220

APPENDIX D

Industrial Accident Nominating Panel

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Division of Industrial Accidents
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APPENDIX E

The Governor's Council

Room 184, State House
Boston, MA 02133
(617) 725-4015

The Massachusetts Governor's Council, also known as the Executive Council, is comprised of eight individuals elected from their respective districts every two years. Each councilor is paid \$15,000 annually plus certain expenses. The Lt. Governor serves as an Ex Officio Member.

The Council generally meets at noon on Wednesdays in the 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 Judges and Administrative Law Judges at the Department of Industrial Accidents.

Carol A. Fiola - District 1

307 Archer Street
Fall River, MA 02720
GC: (617) 725-4015 x 1
Res: (508) 674-9200
Fax: (508) 674-9201
Email: carolfiola@aol.com

Mary-Ellen Manning - District 5

P.O Box 3528
Peabody, MA 01961-3528
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Email: maryellenmanning@earthlink.net

Kelly A. Timilty - District 2

52 Murray Hill Road
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Email: kellytimiltygc2@aol.com

Michael J. Callahan - District 6

500 Salem Street
Medford, MA 02155
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Res: (781) 393-9890

Mary M. Petitto Devaney - District 3

98 Westminster Avenue
Watertown, MA 02472
GC: (617) 725-4015 x 3
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Fax: (617) 727-6610

Thomas J. Foley - District 7

27 Ridgewood Road
Worcester, MA 01606-2506
GC: (617) 725-4015 x 7
Email: tjfoley512@charter.net

Christopher A. Iannella - District 4

263 Pond Street
Boston, MA 02130
GC: (617) 725-4015 x 4
Bus: (617) 227-1538
Fax: (617) 742-1424

Thomas T. Merrigan - District 8

23 Plum Tree Lane
Greenfield, MA 01301-9687
GC: (617) 725-4016 x 8
Bus: (413) 774-5300
Fax: (413) 773-3388
Email: merrigan@valinet.com

APPENDIX F

Health Care Services Board

Current Members (2008):

Dean M. Hashimoto, MD, JD (Chair)	<i>Ex-Officio Member</i>
Henry W. DiCarlo, MM (Vice-Chair)	<i>Employers' Representative</i>
David S. Babin, MD	<i>Physician Representative</i>
Marco Volpe, PT, DPT, OCS	<i>Physical Therapist Representative</i>
Peter A. Hyatt, DC	<i>Chiropractic Representative</i>
Robert P. Naperstek, MD	<i>Physician Representative</i>
Barbara C. Mackey, MS, APRN	<i>Public Representative</i>
David C. Deitz, MD, Ph.D.	<i>Physician Representative</i>
Cynthia M. Page, PT, MHP	<i>Hospital Administrative Representative</i>
Janet D. Pearl, MD, MSC	<i>Physician Representative</i>
Nancy Lessin	<i>Employee Representative</i>
Richard F. Struzziero, D.M.D.	<i>Dentist Representative</i>
Richard P. Zimon, MD, FACP	<i>Physician Representative</i>

Staff:

Diane Neelon, RN, BS, JD	<i>Executive Director</i>
Judith A. Atkinson, Esq.	<i>Counsel</i>
Hella Dalton	<i>Research Analyst</i>

All members can be reached c/o:

Department of Industrial Accidents
Health Care Services Board
600 Washington Street, 7th Floor
Boston, MA 02111
Tel: (617) 727-4900 x 310
Fax: (617) 348-2176

APPENDIX G

Roster of Judicial Expiration Dates

INDUSTRIAL ACCIDENT REVIEWING BOARD - SIX YEAR TERMS

1.	Martine Carroll	Unenrolled	05/28/10
2.	Bernard Fabricant	Unenrolled	05/28/10
3.	Mark Horan	Democrat	06/10/10
4.	William McCarthy	Democrat	05/21/10
5.	Patricia Costigan	Unenrolled	06/03/10
6.	Catherine W. Koziol	Democrat	08/18/14

INDUSTRIAL ACCIDENT BOARD - SIX YEAR TERMS

1.	Douglas Bean	Republican	06/26/11
2.	Michael Chadinha	Republican	05/28/10
3.	David Chivers	Republican	05/21/10
4.	Cheryl A. Jacques	Democrat	03/26/14
5.	Lynn Brendemuehl	Unenrolled	07/06/12
6.	David Sullivan	Democrat	05/21/10
7.	Steven Rose	Republican	05/28/10
8.	Richard Heffernan	Democrat	09/04/09
9.	John Preston	Republican	07/29/12
10.	Paul F. Benoit	Unenrolled	08/18/14
11.	Roger Lewenberg	Republican	06/26/10
12.	Fred Taub	Democrat	08/03/12
13.	Douglas McDonald	Democrat	07/06/12
14.	Bridget Murphy	Republican	07/27/12
15.	Maureen McManus	Republican	05/28/10
16.	Emily J. Novick	Unenrolled	08/18/14
17.	Dianne Solomon	Unenrolled	08/10/12
18.	Dennis Maher	Democrat	09/15/14
19.	Omar Hernandez	Democrat	12/29/11
20.	Richard Tirrell	Democrat	05/14/10
21.	Frederick Levine	Unenrolled	09/18/10

Testimony: Workers' Compensation Advisory Council

Joint Committee on Labor & Workforce Development
State House – Hearing Room A-2
May 15, 2007

Good afternoon. My name is Andrew Burton and I serve as the Executive Director of the Massachusetts Workers' Compensation Advisory Council.

The Advisory Council is a Governor-appointed board comprised of leaders from business and labor, as well as representatives from the legal, medical, insurance and vocational rehabilitation communities. Each month, Council Members volunteer their time to discuss a variety of workers' compensation issues with the ultimate goal of identifying problems and developing solutions. When the affirmative vote of at least seven members can be reached between business and labor, these positions are reflected in our recommendations.

It has been sixteen years since the enactment of the workers' compensation reform act of 1991 and the Massachusetts Workers' Compensation System continues to benefit. Today, the Commonwealth's workforce is rewarded by a system that delivers timely benefits, provides the highest quality of healthcare, assists the injured worker with returning to employment, and promotes safety and health in the workplace, all while reducing costs to employers. However, as a labor/management coalition, the Advisory Council believes that to maintain the present vitality of the workers' compensation system, several bills should be passed.

First, the Advisory Council supports the passage of **Senate Bill 1066**, filed by Senator Jack Hart. This bill would provide a vehicle for both private citizens and insurers to bring forth a civil action against employers who illegally fail to carry workers' compensation insurance or misclassify their workers for the purpose of avoiding premiums. On suits brought forth by private citizens, the majority of the damages would be deposited into the DIA's Trust Fund to help off-set payments made to injured workers of uninsured employers. In fiscal year 2006 alone, the Trust Fund paid approximately \$6.6 million in workers' compensation benefits to uninsured claimants. According to a recent joint study by Harvard and UMass, up to \$91 million in premiums went uncollected for misclassified workers in Massachusetts between 2001 and 2003. The Advisory Council believes that the passage of this legislation will help alleviate the competitive disadvantage faced by the vast majority of honest employers who purchase workers' compensation policies and properly classify their employees.

The Advisory Council also supports the passage of **House Bill 1777**, filed by Representative Antonio Cabral, and **Senate Bill 1060**, filed by Senator Jack Hart. These two bills would rightfully provide compensation for scar-based disfigurement appearing on any part of the body, subject to a \$15,000 maximum benefit. The eligibility criteria for this benefit was last modified by the 1991 Reform Act, which limited compensation for disfigurement to only the face, neck or hands. Later this year, the Advisory Council plans to conduct a cost analysis study to determine an appropriate maximum benefit level for these traumatic, and at times, horrific injuries.

The Advisory Council has also voiced support for raising the **maximum burial allowance**. The current burial allowance of \$4,000 has not been increased in sixteen years and appears to be well below the national average. In 2004, the National Funeral Directors Association reported that the median funeral cost in Massachusetts was nearly six thousand dollars. This figure does not include cemetery, monument or marker costs or miscellaneous charges for flowers and obituaries. The Advisory Council believes that the Commonwealth has an obligation to ensure there is sufficient compensation available to the families of those workers killed on the job so that they may be honored with a respectful burial. In this regard, the Council is recommending that the legislature draft a stand-alone bill that increases the maximum burial allowance from \$4,000 to eight times the State Average Weekly Wage ($8 \times \text{SAWW} = \$8,003.44$).

Finally, the Advisory Council supports **Senate Bill 1111** filed by Senator Susan Tucker. This new legislation would significantly increase the severity of criminal penalties for employers who fail to provide mandatory workers' compensation insurance for their employees. On criminal convictions, this bill would allow a judge to impose sentencing for up to 5 years in state prison and/or fines up to \$10,000. Established in 1987, the present fine structure is outdated and insufficient, capping criminal penalties at \$1,500 or up to one year in prison. Council Members further recommend that the Legislature consider amending this bill with a penalty provision that subjects repeat offenders to both minimum mandatory fines and imprisonment. In Massachusetts, criminal prosecutions against uninsured employers are reserved for the most extreme and flagrant cases. The Advisory Council believes this legislation sends a strong message to uninsured businesses in the Commonwealth that workers' compensation employer fraud is a serious violation of the law and will be met with serious consequences.

Throughout the year, the Advisory Council will continue to review workers' compensation legislation to ensure that any changes to the statute will build upon the successful aspects of the system, benefiting both injured workers and employers. Should you have any questions, members of the Advisory Council and staff are available as resource to meet with any Committee Members to discuss the workers' compensation system. On behalf of the Advisory Council, I would like to thank the Joint Committee on Labor & Workforce Development for holding this hearing and allowing us the opportunity to share our recommendations.

Testimony:
Workers' Compensation Advisory Council

Division of Insurance - Rate Hearing

APRIL 3, 2008

**WORKERS' COMPENSATION RATE HEARING
DOCKET NO. R2008-01**

**STATEMENT OF THE MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL**

Good morning. My name is Andrew Burton, and I serve as the Executive Director for the Massachusetts Workers' Compensation Advisory Council. The Advisory Council is a labor-management council that monitors and makes recommendations on all aspects of the workers' compensation system in the Commonwealth. The Council members are appointed by the Governor and are comprised of leaders from business and labor, as well as representatives from the legal, medical, insurance, and vocational rehabilitation communities.

Although the Advisory Council's involvement in the rate hearing process is limited by statute, we are empowered to gather loss data from "any insurance company or rating organization" and to "present a written statement and oral testimony relating to any issues which may arise during the course of the hearing" [M.G.L. c.152, §53A(6)].

At our last meeting, members discussed the Council's role in the rate setting process and how we could increase our value to the Commissioner of Insurance with ensuring that rates are not excessive, inadequate or unfairly discriminatory and fall within a range of reasonableness. Because the Council's greatest asset stems from our diverse membership, which reflects the various participants in the workers' compensation system, the Council is respectfully offering you our assistance in resolving any issue pertaining to the filing.

In closing, the Council recognizes the importance of adequate rates and their impact on employer costs, accessibility of coverage in the voluntary market, and safety in the workplace. Adequate rates are essential to all participants in the workers' compensation system since they provide the foundation for competitive markets and a stable insurance system.

On behalf of the Advisory Council, I thank you for the opportunity to present testimony and I look forward to providing you with any assistance at your request.

Guidelines for Reviewing the Qualifications of Judicial Candidates

(Revised: August, 2004)

As the Massachusetts Workers' Compensation Advisory Council is charged with reviewing the qualifications of candidates for the position of administrative judge and administrative law judge at the Division of Industrial Accidents, the following guidelines are adopted to assist the Council in evaluating and rating candidates.

A. Information Distribution: Any information regarding a candidate, compiled by the Industrial Accident Nominating Panel, that is transmitted to the Advisory Council will be mailed, faxed, or delivered to the Advisory Council members. In the event this information cannot be provided to the Advisory Council members before an interview takes place, it will be provided at the interview.

B. Paper Review - Sitting Judges: Sitting Judges, seeking reappointment or appointment to a new position, who receive a favorable recommendation from the Senior Judge, will not be required to formally interview before the Council. The Advisory Council will vote on the qualifications of these Judges by reviewing any information provided by the Industrial Accident Nominating Panel. However, the Chair may, in his discretion or upon a vote of the majority of the Council members, require a sitting Judge to appear before the Council for an interview.

C. Paper Review - Nomination Pool Candidates: Any candidate who is currently serving in the Nomination Pool and reapplies for a judgeship will not be required to formally interview before the Council. The Advisory Council will vote on the qualifications of these candidates by reviewing any information provided by the Industrial Accident Nominating Panel. However, the Chair may, in his discretion or upon a vote of the majority of the Council members, require a Nomination Pool candidate to appear before the Council for an interview.

D. Interview Notification to Candidates: All other candidates not mentioned in (B) or (C), will be formally interviewed by the Advisory Council. Said candidates will be notified by the Executive Director by telephone regarding the date, time, and location of the interviews.

E. Advisory Council Interviews: The Council will convene in Executive Session for the interview process. Each candidate must be prompt for their scheduled interview time. Each candidate will be allotted no more than 15 minutes for their interview. Council members will use nameplates for identification purposes and will forego introducing themselves to each candidate. The Chair will ask the candidates to briefly introduce themselves, state their qualifications, and their reasons for seeking the position. Upon

recognition of the Chair, both voting and non-voting members may ask questions of the candidates. Council members will use discretion in limiting questioning to the most pertinent concerns.

F. Voting Procedure: Upon determining a candidate's qualifications, pursuant to section 9 of chapter 23E, council members shall make a clear distinction of those candidates who have never served on the Industrial Accident Board, from those who are Sitting Judges, seeking reappointment or appointment to a new position. In conjunction with the Advisory Council's findings, it shall be noted that the judicial ratings of new candidates cannot and should not be compared to the judicial ratings of Sitting Judges.

Upon the completion of all interviews for each meeting, the Chair will ask for a motion on each candidate in the order in which they were interviewed. The Chair will first recognize only motions that rate the candidate as either "Qualified" or "Unqualified." If a motion for "Unqualified" passes, the Chair may recognize a "Motion to Reconsider" or shall move to the next candidate. If a motion for "Qualified" passes, a Council member may motion that the candidate be rated "Highly Qualified." A candidate must receive 7 affirmative votes for any motion to pass.

G. Proxy Votes: Voting by proxy is permitted. The Executive Director will contact each voting member prior to the interviews to obtain a proxy in the event said member is unable to attend. Voting members may direct their proxy how to vote on any candidate.

H. Transmission of Findings: After each meeting, the Chair shall address letters in alphabetical order to the Governor's Chief Legal Counsel advising him/her of the findings of the Council regarding each candidate. Each letter shall state that the qualifications of the candidate were reviewed, that an interview was conducted if necessary, and shall state the rating of the Council. In the event information was lacking on a particular candidate, this will be stated in the letter. In the event Council members could not agree as to "Qualified," "Unqualified," or "Highly Qualified" for any candidate, then the letter shall state that the Council could not reach a consensus on the qualifications for that candidate.

I. Request for Additional Time: In circumstances where the Advisory Council believes it has "good cause" to request additional time to review the candidates, beyond the one week time limit allotted in Executive Order No. 456, the Chair may contact the Governor's Chief Legal Counsel stating such reasons. The Chair will contact the Governor's Chief Legal Counsel by letter, phone, or fax, depending upon the urgency of the request.

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

Massachusetts Workers' Compensation Advisory Council (WCAC)

600 Washington Street, Boston, MA 02111

Phone: 617-727-4900 x378 Web Page: <http://www.mass.gov/wcac>

The Advisory Council is a labor-management committee appointed by the Governor to monitor, make recommendations, give testimony, and report on all aspects of the workers' compensation system, except the adjudication of particular claims or complaints, and to improve the workers' compensation system in the Commonwealth.

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.mass.gov/dia>

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

Joint Committee on Labor & Workforce Development

State House, Room 39, Boston, MA 02133

Phone: 617-722-2014 Web Page: <http://www.mass.gov/legis/comm/j43.htm>

The Joint Committee on Labor and Workforce Development 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, and discrimination with respect to employment, labor laws and other such matters.

Office of the Governor

State House, Room 360, Boston, MA 02133

Phone: 617-727-7238 Web Page: <http://www.mass.gov/gov>

The Governor appoints the Director of Labor, the Director of Workforce Development, the Director of Business and Technology, the Commissioner of the DIA, Administrative Judges and Administrative Law Judges of the DIA, as well as the members of the Workers' Compensation Advisory Council.

Department of Labor

One Ashburton Place, Suite 2112, Boston, MA 02108

Phone: 617-626-7100 Web Page: <http://www.mass.gov/dol>

The Department of Labor consists of five state agencies: the Division of Industrial Accidents; the Division of Occupational Safety; the Board of Conciliation and Arbitration; the Labor Relations Commission; and the Joint Labor Management Committee. The Department of Labor's mission is to promote harmonious relations between employers and employees and the general welfare of the workers. The Director of Labor is an ex-officio member of the Massachusetts Workers' Compensation Advisory Council.

Division of Occupational Safety

19 Staniford Street, 2nd Floor, Boston, MA 02114

Phone: 617-626-6975 Web Page: <http://www.mass.gov/dos>

The Division of Occupational Safety administers several workplace safety and health programs, all focused on the goal of having every worker return home from work safe and healthy each day. Part of the Division of Occupational Safety's mission is to effectively administer and enforce the laws of employment agencies in Massachusetts. This includes the issuance of the prevailing wage schedules for many public works projects; the promulgation and interpretation of the state's minimum wage regulations; and the issuance of minimum wage, seasonal business overtime, and uniform deposit waivers.

Governor's Council

State House, Room 184, Boston, MA 02133

Phone: 617-725-4015 Web Page: <http://www.mass.gov/gov>

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 every Wednesday in the State House Chamber, next to the Governor's Office, to act upon 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 and approval of the Governor's Council.

Department of Workforce Development

One Ashburton Place, Room 2112, Boston, MA 02108

Phone: 617-626-7100 Web Page: <http://www.mass.gov/dlwd>

The Department of Workforce Development is dedicated to enhancing the quality, diversity, and stability of the Commonwealth's workforce by making available new opportunities and training for workers, job seekers, and employers; to preventing workplace injuries and illnesses; to providing temporary assistance when employment is interrupted; to ensuring that businesses are informed of all employment laws impacting them and their employees; and to promoting labor-management harmony.

Massachusetts Rehabilitation Commission (MRC)

27 Wormwood Street, Boston, MA 02210-1616

Phone: 617-204-3600 / 1-800-245-6543 Web Page: <http://www.mass.gov/mrc>

The mission of the MRC is to provide comprehensive services with and for persons with disabilities that maximize their quality of life and economic self-sufficiency in the community. 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 Business and Technology

One Ashburton Place, Boston, MA 02108

Phone: 617-788-3610 Web Page: <http://www.mass.gov/dbt>

The Department of Business & Technology seeks to promote job creation and long-term economic growth in Massachusetts. The Department of Business & Technology seeks to attract new businesses to the state, helps 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 Business & Technology 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.mass.gov/ago>

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.

Insurance

Division of Insurance (DOI)

One South Station, 5th floor, Boston, MA 02110-2208

Phone: 617-521-7794 Web Page: <http://www.mass.gov/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 Web Page: <http://www.mass.gov/dia>

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 x406 Web Page: <http://www.mass.gov/dia>

Hot Line: 1-877-MASSAFE (877-627-7233 ext. 214)

Issues stop work orders and fines to employers operating in the Commonwealth without workers' compensation insurance. In June 2004, the Investigation Unit established a "Tipsters Hotline" for citizens to anonymously report persons or businesses in violation with the law.

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

101 Arch Street, 5th floor, Boston, MA 02110

Phone: 617-439-9030 Web Page: <https://www.wcribma.org/mass>

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)

901 Peninsula Corporate Circle, Boca Raton, FL 38487

Phone: 800-622-4123 Web Page: <http://www.ncci.com>

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.
- 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 02116-4737

Phone: 617-988-3100 Web Page: <http://www.mass.gov/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 (HCSB)

Phone: 617-727-4900 x310 Web Page: <http://www.mass.gov/dia>

The Health Care Services Board (HCSB) is a medical advisory body consisting of 14 members. The HCSB reviews and develops medical treatment guidelines, in addition to developing criteria by which qualified health care providers are selected for the DIA's impartial physician roster. The Board also receives, reviews and investigates complaints against health care practitioners providing services to the injured worker. This office coordinates the utilization review program, the Medical Consultant Consortium, and the Health Care Services Board at the DIA.

DIA – The Office of Health Policy (OHP)

Phone: 617-727-4900 x438 Web Page: <http://www.mass.gov/dia>

The Office of Health Policy approves and monitors workers' compensation utilization programs in Massachusetts to ensure compliance with the requirements of the regulations.

Massachusetts Board of Allied Health – Division of Registration

239 Causeway Street, Suite 500, Boston, MA 02114

Phone: 617-727-3074

The Massachusetts Board of Allied Health Board, Division of Registration consists of health professionals who use occupational activities with specific goals in helping people of all ages to prevent, lessen or overcome physical, psychological or developmental disabilities.

Massachusetts Medical Society

860 Winter Street, Waltham Woods Corporate Center, Waltham, MA 02451-1411

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

E-Mail: info@massmed.org

101 Arch Street, Suite 1741, Boston, MA 02109

Phone: 617-367-9667

Private, non-profit professional association represents the Massachusetts physician community. Physician members share the common goal of making a difference in the lives of their patients and the practice of medicine.

Massachusetts Hospital Association

5 New England Executive Park, Burlington, MA 01803

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

E-Mail: info@mhalink.org

The Massachusetts Hospital Association (MHA) is a voluntary, non-profit organization comprised of hospitals and health systems, related organizations, and other members with a common interest in promoting the health of the people in the Commonwealth.

Massachusetts Orthopedic Association

167 Washington Street, Norwell, MA 02161

Phone: 781-982-8899 Web Page: <http://www.massortho.org>

E-Mail: info@massortho.org

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>

E-Mail: mcs@masschiro.org

The Massachusetts Chiropractic Society is 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

34 Atlantic Street, Gloucester, MA 01930-1625

Phone: 617-429-1325 National Chapter: 800-999-2782 Web Page: <http://aptaofma.org>

E-Mail: aptaofma@aptaofma.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 (AOTA)

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

Phone: 301-652-2682 Web Page: <http://www.aota.org>

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.

Massachusetts Occupational Therapy Association (MAOT)

57 Madison Road, Waltham, MA 02453-6718

E-Mail: info@maot.org

Phone: 781-647-5556 Web Page: <http://www.maot.org>

The Massachusetts Association for Occupational Therapy provides a professional network for its members and develops and preserves the profession. MAOT serves the interests of its members, represents the profession to the public and promotes access to occupational therapy.

Public Policy / Research

Workers' Compensation Research Institute (WCRI)

955 Massachusetts Avenue, Cambridge, MA 02139

Phone: 617-661-9274(WCRI) Web Page: <http://www.wcrinet.org>

WCRI is a nonpartisan, non-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 02117-0763

Phone: 617-262-1180 Hot Line: 800-470-6277 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

389 Main Street, Malden, MA 02148

Phone: 781-324-8230 Web Page: <http://www.massaficio.org>

The AFL-CIO is the umbrella organization representing more than 750 local unions and intermediate bodies in Massachusetts. The AFL-CIO is dedicated to empowering the worker by improving the standard of living and the quality of life for all working people.

International Association of Industrial Accident Boards and Commissions (IAIABC)

5610 Medical Circle, Suite 24, Madison, WI 53719

Phone: 608-663-6355 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 farsighted regulation and administration of the law.

Fraud

Joint Task Force on the Underground Economy and Employee Misclassification

600 Washington Street, Boston, MA 02113

Phone: 877-96-LABOR (877-965-2267)

The Task Force is charged with coordinating the efforts of several state agencies in an effort to eliminate fraudulent employment activities as well as protecting the rights of workers. The Task Force will also be working to bring those employers who skirt the law into compliance, which will create a level playing field for all businesses to compete.

Insurance Fraud Bureau of Massachusetts (IFB)

101 Arch Street, Boston, MA 02110-1131

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

E-Mail: webmaster@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.

Safety

Office of the Attorney General - Business and Labor Protection Bureau

Fair Labor and Business Practices Division, One Ashburton Place, Boston, MA 02108

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

Fair Labor and Business Practices Branch Office, 184 North St., Pittsfield, MA 01201

Phone: 413-7324 ext. 218

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

600 Washington Street, Boston, MA 02111

Phone: 617-727-4900 x387 / 978-683-6420 x138 Web Page: <http://www.mass.gov/dia/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.” (M.G.L. c. 23E, 3(6)).

Massachusetts Coalition of Occupational Safety and Health (MassCOSH)

42 Charles Street, Dorchester, MA 02122

Phone: 617-825-7233(SAFE) Web Page: <http://www.masscosh.org>

E-Mail: info@masscosh.org

The following safety councils provide publications, videos, training programs, speakers and other information for a fee.

- *Safety Council of Western Massachusetts* (Springfield) 413-731-0760
- *National Safety Council*, Central MA Chapter (West Boylston) 508-835-2333
- *Massachusetts Safety Council* (Braintree) (Serves Eastern MA) 781-356-1633
- *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 847-699-2929.

Legal

Massachusetts Bar Association

Workers' Compensation Committee

20 West Street, Boston, MA 02111-1204

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 Web Site: <http://www.massacademy.com>

Private, non-profit professional association represents 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

Francis Perkins Boulevard

200 Constitution Avenue, N.W., Washington, D.C. 20210

Phone: 1-866-4-USA-DOL Web Site: <http://www.dol.gov>

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 four other divisions: Division of Longshore and Harbor Workers' Compensation (202-693-0038); Division of Energy Employee's Compensation (866-888-3322*); Division of Federal Employee's Compensation (866-962-7487*); and the Division of Coal Mine Workers' Compensation (800-638-7072*).

***Toll Free Numbers**

Occupational Safety and Health Administration (OSHA)

200 Constitution Avenue, N.W.

Washington, D.C. 20210

Phone: 617-565-9860 Web Site: <http://www.osha.org>

OSHA's mission is to assure safety and health of America's workers by setting and enforcing standards; providing training, outreach and education; establishing partnerships; and encouraging continual improvement in workplace safety and health.

OSHA Massachusetts Regional Offices**North Boston Area Office**

Valley Office Park, 13 Branch Street, Methuen, MA 01844

Phone: (617) 565-8110

South Boston Area Office

639 Granite Street, 4th Floor, Braintree, MA 02184

Phone: (617) 565-6924

Springfield Area Office

1441 Main Street, Room 550, Springfield, MA 01103-1493

Phone: (413) 785-0123

National Institute for Occupational Safety and Health (NIOSH)

1095 Willowdale Road

Morgantown, WV 26505-2888

Phone: 304-285-5894 / 800-356-4674 Web Site: <http://www.cdc.gov/niosh>

Federal agency under the Department of Health and Human Service. Clearinghouse information on workplace safety, health, and illness.

200 Independence Avenue, Room 715H

Washington, DC 20201

Phone: 202-401-6997 / 800-356-4674 Web Site: <http://www.cdc.gov/niosh>

New England Field Office

P.O. Box 87040, South Dartmouth, MA 02748-0701

Phone: 508-997-6126 Web Site: <http://www.cdc.gov/niosh>

Foundation of Occupational Health and Safety (FOHS)

1330 Kemper Meadow Drive

Cincinnati, OH 45240

Phone: 513-742-6169 Web Site: <http://www.fohs.org>

The mission state of FOHS is “to (1) sponsor research, education, and the publication of scientific information, and (2) provide a vehicle for financial support of the improvement and enhancement of occupational and environmental health and safety.”

United States Chamber of Commerce

1615 H Street, N.W.

Washington, D.C. 20062-2000

Phone: 202-659-6000 / 800-638-6582 Web Site: <http://www.uschamber.com>

The mission statement of the U.S. Chamber of Commerce is “to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity, and responsibility.”

APPENDIX L

Office of Safety Proposals Recommended for Funding - FY 2009

FIRST ROUND RECOMMENDED FOR FUNDING

1. Shaws Supermarkets
Methuen Distribution Center
100 Danton Drive
Methuen, MA 01844
978-681-7602 Ext. 2117
Title: Manuel Material Handling and Behavior Training
Category of Applicant: Private Employer
Geographic Target: North Shore
Program Administrator: William Henry
Total Funds Requested: \$23,433.00 **Approved:** \$23,433.00 **Score:** 119.0

2. Berkshire Healthcare Systems, Inc.
75 North Street, Suite 210
Pittsfield, MA 01201
413-447-2513
Title: Transfer & Mobility Training at Berkshire Healthcare Systems, Inc.
Category of Applicant: Non-profit Organization
Geographic Target: Statewide
Program Administrator: Paul Sinopoli
Total Funds Requested: \$15,885.26 **Approved:** \$15,885.26 **Score:** 117.2

3. Worcester County Jail / House of Correction
5 Paul X. Tivnan Drive
West Boylston, MA 01583
508-854-1830
Title: Mitigation/Slips Trips Falls
Category of Applicant: Public Employer
Geographic Target: Worcester
Program Administrator: Trevor Beauregard
Total Funds Requested: \$10,297.00 **Approved:** \$10,297.00 **Score:** 116.6

4. Cape Cod Hospital
27 Park Street
Hyannis, MA 02601
774-552-6100
Title: Workplace Violence/Aggression in the Workplace
Category of Applicant: Non-profit Organization
Geographic Target: South Shore
Program Administrator: Josephine Whelan
Total Funds Requested: \$1,257.41 **Approved:** \$1,257.41 **Score:** 114.8

5. Brox Industries, Inc.
1471 Methuen Street
Dracut, MA 01826
978-805-9740
Title: Hazard Recognition and Risk Control in High Hazard Industries
Category of Applicant: Private Employer
Geographic Target: North Shore
Program Administrator: Victor Goulet
Total Funds Requested: \$1,573.00 **Approved:** \$1,573.00 **Score:** 114.75
6. Brockway Smith Company
125 Chestnut Street
Hatfield, MA 02038
413-247-9674
Title: Ergonomic Material Handling
Category of Applicant: Private Employer
Geographic Target: Western Massachusetts
Program Administrator: Louis Guillette
Total Funds Requested: \$3,370.50 **Approved:** \$3,370.50 **Score:** 113.0
7. NRLA Enterprises Inc.
The Lumber and Building Material Dealers Foundation (LBMDf)
585 Greenbush Road
Rensselaer, NY 12144
800-292-6752 / 518-286-1010
Title: Lumber Dealers Safety Prevention
Category of Applicant: Private Employer/Trade Association/Non-profit Organization
Geographic Target: Statewide
Program Administrator: Aisha Taylor
Total Funds Requested: \$12,840.00 **Approved:** \$12,840.00 **Score:** 112.8
8. Caritas Good Samaritan Medical Center
235 North Pearl Street
Brockton, MA 02301
508-427-3753
Title: Workplace Violence/Aggression in the Workplace
Category of Applicant: Public Employer
Geographic Target: Statewide
Program Administrator: Susan Higgins
Total Funds Requested: \$24,437.00 **Approved:** \$24,437.00 **Score:** 112.4
9. R.H. White Construction
41 Central Street
Auburn, MA 01501
508-832-3295
Title: Preventing Accidents and Increasing Safety Awareness at RHW Jobsites
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: Heather Whitney
Total Funds Requested: \$12,879.59 **Approved:** \$12,879.59 **Score:** 111.0

10. AMA Transportation Company Inc.
28 Plank Street
Billerica, MA 01821
978-667-9133
Title: Back Safety – Avoiding Slips and Falls
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: Patricia Pol
Total Funds Requested: \$3,345.68 **Approved:** \$3,210.85 **Score:** 110.4
11. Northern Essex Community College
100 Elliott Street
Haverhill, MA 01830
978-556-3873
Title: Creating a Culture of Safety Across the Community College
Category of Applicant: Public Employer/Public Higher Education Institute
Geographic Target: North Shore
Program Administrator: Charles Phair
Total Funds Requested: \$18,500.00 **Approved:** \$13,721.60 **Score:** 110.0
12. Boston Education Skills and Training Corp.
33 Harrison Avenue
Boston, MA 02111
617-542-1177
Title: Unite Here Local 26 Safety and Health Education Program
Category of Applicant: Labor Organization/Federation, Joint Labor/Mgmt Committee
Geographic Target: Western Massachusetts
Program Administrator: Marie Downey
Total Funds Requested: \$19,275.52 **Approved:** \$19,274.52 **Score:** 108.6
13. Northeast MA Carpenters A&T
350 Fordham Road, Suite 201
Wilmington, MA 01887
978-752-1197
Title: Safety in Construction Training
Category of Applicant: Trade Association / Joint Labor/Management Committee
Geographic Target: Statewide
Program Administrator: Jeff Marcoux
Total Funds Requested: \$24,995.80 **Approved:** \$24,995.80 **Score:** 108.4
14. City of Somerville
93 Highland Avenue
Somerville, MA 02143
617-625-6600 Ext. 2411
Title: Occupational Safety & Health Education and Training Program
Category of Applicant: Public Employer
Geographic Target: Metro Boston
Program Administrator: Renee Mello
Total Funds Requested: \$4,911.00 **Approved:** \$3,798.50 **Score:** 107.6

15. New England Baptist Hospital
125 Parker Hill Ave.
Boston, MA 02120
617-754-5352
Title: Occupational Safety & Health Education and Training Program
Category of Applicant: Public Employer
Geographic Target: Statewide
Program Administrator: Jane Kelly
Total Funds Requested: \$20,062.50 **Approved:** \$20,062.50 **Score:** 107.6
16. Quality Behavioral Solutions (QBS)
P.O. Box 6221
Holliston, MA 01746
866-429-9211
Title: Safety-Care™ Behavioral Safety Training
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: David Lennox
Total Funds Requested: \$22,369.69 **Approved:** \$22,263.12 **Score:** 107.6
17. Massachusetts Pile Drivers
22 Drydock Avenue, Suite 304
Boston, MA 02210
617-443-1988
Title: Safety & Health in Construction for Pile Drivers
Category of Applicant: Trade Association / Joint Labor/Management Committee
Geographic Target: Statewide
Program Administrator: David Borrus
Total Funds Requested: \$10,941.00 **Approved:** \$10,941.00 **Score:** 107.2
18. Mental Health Association
995 Worthington Street
Springfield, MA 01109
413-734-5376
Title: Occupational Safety & Health Education & Training Program
Category of Applicant: Private Employer/Non-profit Organization
Geographic Target: Western Massachusetts
Program Administrator: Linda Williams / Lynn Greguoli
Total Funds Requested: \$4,997.92 **Approved:** \$4,997.92 **Score:** 107.0
19. City of Fall River
One Government Center
Fall River, MA 02722
508-324-2661
Title: Regulatory Compliance Outreach and Awareness Training
Category of Applicant: Public Employer
Geographic Target: South Shore
Program Administrator: Madeline Coelho
Total Funds Requested: \$5,604.13 **Approved:** \$5,497.12 **Score:** 106.8

20. Massachusetts College of Liberal Arts (MCLA)
375 Church Street
North Adams, MA 01247
413-662-5544
Title: Unsafe & Unhealthy Working Conditions
Category of Applicant: Public Employer / Private Employer / Non-profit Organization
Geographic Target: Western Massachusetts
Program Administrator: George Galli
Total Funds Requested: \$19,425.00 **Approved:** \$19,425.00 **Score:** 106.6
21. Boston Carpenters Apprentice & Training
385 Market Street
Brighton, MA 02135
617-782-4314
Title: Safety in Construction
Category of Applicant: Trade Association
Geographic Target: Statewide
Program Administrator: Ben Tilton
Total Funds Requested: \$24,998.50 **Approved:** \$24,998.50 **Score:** 106.6
22. Southeastern MA Carpenters
21 Mazzeo Drive, Suite 201
Randolph, MA 02368
781-963-0200
Title: Safety in Construction Training
Category of Applicant: Trade Association / Joint Labor/Management Committee
Geographic Target: Statewide
Program Administrator: Richard Anderson
Total Funds Requested: \$24,132.90 **Approved:** \$24,132.90 **Score:** 106.6
23. Executive Office of Energy & Environmental Affairs
100 Cambridge Street
Boston, MA 02114
617-626-1474
Title: OSHA/Injury Prevention
Category of Applicant: Public Employer
Geographic Target: Statewide
Program Administrator: Andrew Yee
Total Funds Requested: \$24,107.00 **Approved:** \$24,107.00 **Score:** 105.8
24. Sheet Metal Workers
Local Union 17 Joint Apprentice Training Trust Fund
1181 Adams Street
Dorchester, MA 02124
617-298-0850
Title: Basic Life Support AED/CPR/First Aid
Category of Applicant: Joint Labor/Mgmt Committee, Non-profit Organization
Geographic Target: Metro Boston/North Shore/South Shore
Program Administrator: John Healy
Total Funds Requested: \$8,500.24 **Approved:** \$8,500.24 **Score:** 105.8

25. Cardinal Cushing Centers
450 Washington Street
Hanover, MA 02339
781-826-6371
Title: Occupational Safety and Health Education and Training Program
Category of Applicant: Non-profit Organization
Geographic Target: South Shore
Program Administrator: Michael Carlton
Total Funds Requested: \$22,411.15 **Approved:** \$22,346.95 **Score:** 105.6
26. DPH Health Surveillance Program
250 Washington Street
Boston, MA 02108
617-624-5626
Title: Vocational Education Teacher Training
Category of Applicant: Public Employer
Geographic Target: Statewide
Program Administrator: Valerie Machinist
Total Funds Requested: \$9,551.00 **Approved:** \$9,551.00 **Score:** 105.2
27. AstraZeneca LP
35 Gatehouse Drive
Waltham, MA 02451
781-839-4852
Title: Occupational Safety and Health Education & Training/Ergonomic Safety Training
Category of Applicant: Private Employer
Geographic Target: Metro Boston
Program Administrator: Jeanne Donahue
Total Funds Requested: \$22,777.63 **Approved:** \$22,777.63 **Score:** 105.0
28. Rehabilitation Resources, Inc.
1 Picker Road
P.O. Box 38
Sturbridge, MA 01655
508-347-8181 Ext. 102
Title: Coaching the Van Driver and Wheel Chair Safety
Category of Applicant: Private Employer/Non-profit Organization
Geographic Target: Statewide
Program Administrator: Paige Slein
Total Funds Requested: \$13,135.32 **Approved:** \$13,227.55 **Score:** 104.6
29. Feeney Brother Excavation
P.O. Box 220801
Boston, MA 02122
617-287-1004
Title: Work Related Injuries/Prevention
Category of Applicant: Private Employer
Geographic Target: Metro Boston
Program Administrator: Amber Vaccaro
Total Funds Requested: \$13,572.95 **Approved:** \$6,082.95 **Score:** 103.8

30. GE Infrastructure Water & Process Technologies
65 Grove Street
Watertown, MA 02472
617-673-4415
Title: General Awareness Training for Musculoskeletal Injury Prevention
Category of Applicant: Private Employer
Geographic Target: Metro Boston/Central Massachusetts
Program Administrator: Tracey Kauffman
Total Funds Requested: \$24,473.13 **Approved:** \$24,473.13 **Score:** 103.6
31. Construction Institute
256 Freeport Street
Boston, MA 02122
617-436-4159
Title: OSHA Construction Industry
Category of Applicant: Non-profit/Joint Labor/Management Committee
Geographic Target: Statewide
Program Administrator: Mary Vogel
Total Funds Requested: \$9,612.00 **Approved:** \$9,612.00 **Score:** 103.6
32. Yale Appliance & Lighting
240 Forbes Blvd.
Mansfield, MA 02048
617-822-5345
Title: Occupational Safety and Health Education and Training Program
Category of Applicant: Private Employer
Geographic Target: Metro Boston/South Shore
Program Administrator: Mary Conley
Total Funds Requested: \$16,587.14 **Approved:** \$16,522.94 **Score:** 103.4
33. Safe Patient Moves
38 Baldwin Drive
Sharon, MA 02067
781-784-5158
Title: Occupational Safety and Health Education and Training Program
Category of Applicant: Public Employer
Geographic Target: Statewide
Program Administrator: Terry Donahue
Total Funds Requested: \$20,062.50 **Approved:** \$20,062.50 **Score:** 103.0
34. Springfield Joint Apprenticeship Training Committee (JATC)
187 Industry Avenue
Springfield, MA 01104
413-737-2253
Title: Safe Work Practices for Electricians
Category of Applicant: Labor Organization / Federation
Geographic Target: Western Massachusetts
Program Administrator: Mark Kuenzel
Total Funds Requested: \$16,807.25 **Approved:** \$23,609.28 **Score:** 102.6

35. Saint-Gobain Ceramics, Inc.
1 New Bond Street
Worcester, MA 01603
508-795-5361
Title: Awareness and Safe Behavior Training
Category of Applicant: Private Employer
Geographic Target: Central Massachusetts
Program Administrator: Phillip Landry
Total Funds Requested: \$24,476.25 **Approved:** \$24,476.25 **Score:** 102.4
36. Winthrop Parks & Recreation
E.B. Newton School, 3rd Floor
45 Pauline Street
Winthrop, MA 0252
617-846-8243
Title: Save a Life - Learn How
Category of Applicant: Public Employer/Non-profit Organization
Geographic Target: North Shore
Program Administrator: Roseann Trionfi-Mazzuchelli
Total Funds Requested: \$25,000.00 **Approved:** \$25,000.00 **Score:** 102.2
37. Suffolk Construction Company, Inc.
65 Allerton Street
Boston, MA 02119
617-517-4524
Title: Workplace Injury Prevention
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: David Frist
Total Funds Requested: \$25,000.00 **Approved:** \$24,787.25 **Score:** 101.0
38. Laboratory Safety Institute
192 Worcester Road
Natick, MA 01760
508-647-1900
Title: Safety in Science, Arts & Technology
Category of Applicant:
Geographic Target:
Program Administrator: Tim Kaufman
Total Funds Requested: \$24,931.00 **Approved:** \$24,931.00 **Score:** 100.6
39. Mass. Dept. of Elementary and Secondary Education
350 Main Street
Malden, MA 02184
781-338-6839
Title: Alternative Education Occupational Safety & Health Education Training Program
Category of Applicant: State Educational Agency
Geographic Target: Metro Boston
Program Administrator: Jenny Curtin
Total Funds Requested: \$7,822.00 **Approved:** \$7,822.00 **Score:** 98.0

40. Worcester Joint Apprenticeship Training Committee (JATC)
51 Union Street
Worcester, MA 01608
508-753-8635 Ext. 107
Title: Occupational Safety and Awareness
Category of Applicant: Labor Organization/Federation
Geographic Target: Worcester
Program Administrator: Dave delaGorgendiere
Total Funds Requested: \$12,065.82 **Approved:** \$12,065.82 **Score:** 98.0
41. Mabbett & Associates
5 Alfred Circle
Bedord, MA 01730
781-275-6050 Ext. 327
Title: Hazwopper Health and Safety Training
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: Jennifer E. Burrill
Total Funds Requested: \$24,995.20 **Approved:** \$24,995.20 **Score:** 97.4
42. Finishing Trades Institute of New England
25 Colgate Road
Roslindale, MA 02131
617-524-0248
Title: CPR/AED Training
Category of Applicant: Joint Labor/Management Council / Non-profit Organization
Geographic Target: Statewide
Program Administrator: Eric Redding
Total Funds Requested: \$19,140.00 **Approved:** \$15,546.03 **Score:** 96.0
43. Boston Scientific
1 Boston Scientific Way
Natick, MA 01760
508-652-5656
Title: Ergonomics
Category of Applicant: Private Employer
Geographic Target: Western Massachusetts
Program Administrator: Karen Nielson
Total Funds Requested: \$24,496.31 **Approved:** \$24,496.31 **Score:** 95.4
44. City of Westfield
59 Court Street
Westfield, MA 01085
413-572-6200
Title: OSHA/Injury Prevention
Category of Applicant: Public Employer
Geographic Target: Western Massachusetts
Program Administrator: Hilda Colon
Total Funds Requested: \$21,505.000 **Approved:** \$14,664.00 **Score:** 95.4

45. Trustees of Reservation
572 Essex Street
Beverly, MA 01915
978-921-1944
Title: Trustees Safety Training
Category of Applicant: Non-profit Organization
Geographic Target: Statewide
Program Administrator: Kerry Smith
Total Funds Requested: \$16,344.25 **Approved:** \$16,344.25 **Score:** 95.4
46. Advance Therapeutic Resources
100 Main Street
Amesbury, MA 01913
978-388-3775
Title: Ergonomics
Category of Applicant: Private Employer
Geographic Target: Statewide
Program Administrator: Julie Cicalis
Total Funds Requested: \$24,075.00 **Approved:** \$24,075.00 **Score:** 95.4
47. Greater Waltham Arc. Inc.
56 Chestnut Street
Waltham, MA 02453
781-899-1344
Title: Safe Lifting /PMAB Training & Safety Training Materials for Direct Care Staff
Category of Applicant: Non-profit Organization
Geographic Target: Metro Boston
Program Administrator: Roslyn Rubin
Total Funds Requested: \$3,491.00 **Approved:** \$3,125.84 **Score:** 94.4
48. Quadrant Health Strategies
27A Centennial Drive
Peabody, MA 01960
978-532-2428
Title: Occupational Safety and Health Education and Training Program
Category of Applicant: Non-profit Organization/Forsyth Institute
Geographic Target: Metro Boston
Program Administrator: Dawn Strong
Total Funds Requested: \$11,964.72 **Approved:** \$11,900.51 **Score:** 94.2
49. City of Worcester
455 Main Street, Room 109
Worcester, MA 01608
508-799-1031
Title: Education and Strength Training to Reduce Back Injury/Musculoskeletal Strains
Category of Applicant: Public Employer
Geographic Target: Central Massachusetts
Program Administrator: Lisa Carmody
Total Funds Requested: \$12,912.88 **Approved:** \$8,773.92 **Score:** 92.2

50. Advanced Electron Beams (AEB)
301 Ballardvale Street
Wilmington, MA 01887
978-658-8600 ext. 224
Title: Safe Behavior in Workplace
Category of Applicant: Private Employer
Geographic Target: North East Massachusetts
Program Administrator: Greg Maclean
Total Funds Requested: \$2,086.50 **Approved:** \$2,086.50 **Score:** 80.8
51. Greater Lawrence Technical School
57 River Road
Andover, MA 01810
978-686-0194
Title: OSHA Injury Prevention
Category of Applicant: Public Employer
Geographic Target: Metro Boston
Program Administrator: Martha Guzman
Total Funds Requested: \$4,499.00 **Approved:** \$1,615.87 **Score:** 78.0
52. Harbor Schools, Inc.
26 Rolfes Lane
Newbury, MA 01951
978-462-3151
Title: Therapeutic Crisis Intervention (TCI) Update: Designing Refresher Training
Category of Applicant: Private Employer / Non-profit Organization
Geographic Target: North Shore
Program Administrator: Randy Taylor / Tina Sharby
Total Funds Requested: \$13,049.72 **Approved:** \$3,777.10 **Score:** 77.2
53. Henry Lee Willis Community Center, Inc.
119 Forest Street
Worcester, MA 01609
508-799-0702
Title: Nonviolent Crisis Intervention
Category of Applicant: Non-profit Organization
Geographic Target: Central Massachusetts
Program Administrator: Beth Mather-Noonan
Total Funds Requested: \$24,226.00 **Approved:** \$1,793.36 **Score:** 68.2

DEVELOPMENTAL GRANT

54. DPH Health Surveillance Program
250 Washington Street
Boston, MA 02108
617-624-5626
Title: Developmental Grant
Category of Applicant: Public Employer
Geographic Target: Statewide
Program Administrator: Letitia Davis / Valerie Machinist
Total Funds Requested: \$25,000.00 **Approved:** \$25,000.00 **Score:** N/A

**RECOMMENDED FOR FUNDING
ROUND TWO**

55. Community Connections, Inc.
127 Whites Path
South Yarmouth, MA 02664
508-362-1140
Title: Injury Prevention and Workplace Safety
Category of Applicant: Private Employer / Non-profit Organization
Geographic Target: South Shore
Program Administrator: Joseph Krajewski
Total Funds Requested: \$18,543.10 **Approved:** \$18,543.10 **Score:** 122.4
56. Essex County Sheriff's Department
20 Manning Avenue, Box 807
Middleton, MA 01949
978-750-1900 Ext. 3326
Title: Preventing Injury and Infection at the Essex County Sheriff's Department
Category of Applicant: Public Employer
Geographic Target: North Shore
Program Administrator: Thomas Goff
Total Funds Requested: \$4,034.95 **Approved:** \$4,034.95 **Score:** 109.2
57. Middlesex Sheriff's Office
400 Mystic Avenue
Medford, MA 02155
781-960-2800
Title: Occupational Safety and Health Education and Training Program
Category of Applicant: Public Employer
Geographic Target: North Shore / Metro Boston
Program Administrator: Kevin O'Donnell
Total Funds Requested: \$15,007.00 **Approved:** \$15,007.00 **Score:** 109.0
58. Boston Medical Center
BU Medical Campus
715 Albany Street, M408
Boston MA 02118
617-638-4935
Title: Occupational Safety and Health Education and Training Program
Category of Applicant: Public Employer
Geographic Target: Boston
Program Administrator: Constance L. Packard
Total Funds Requested: \$24,476.00 **Approved:** \$24,476.00 **Score:** 107.4
59. Town of West Springfield
26 Central Street
W. Springfield, MA 01089
413-263-3232
Title: Safe Work Practices to Protect the Health & Safety of Employees

- Category of Applicant:** Public Employer
Geographic Target: Western Massachusetts
Program Administrator: Sandra MacFayden
Total Funds Requested: \$6,120.00 **Approved:** \$6,163.20 **Score:** 105.2
60. Hampshire County Sheriff's Office
205 Rocky Hill Road
Northampton, MA 01060
413-584-5911
Title: Occupational Safety and Health Education and Training Program
Category of Applicant: Public Employer
Geographic Target: Western Massachusetts
Program Administrator: Lt. Todd Turek
Total Funds Requested: \$8,460.50 **Approved:** \$8,459.52 **Score:** 105.2
61. Maples Rehabilitation and Nursing Center
90 Taunton Street
Wrentham, MA 02093
508-384-7977
Title: Body Mechanics, Ergonomics and Behavioral/Situation Awareness Training
Category of Applicant: Private Employer
Geographic Target: Metro Boston
Program Administrator: Jodi Pflum
Total Funds Requested: \$23,513.25 **Approved:** \$23,513.25 **Score:** 104.2
62. South Middlesex Opportunity Council
300 Howard Street
Framingham, MA 01702
508-620-2647
Title: Managing Stress and Building Resiliency-Considerations for Workplace Safety
Category of Applicant: Non-profit Organization
Geographic Target: Central Massachusetts
Program Administrator: Joyce Giacomarra
Total Funds Requested: \$14,659.00 **Approved:** \$14,445.00 **Score:** 95.4
63. 7 Generations, Inc.
11 Townsend Street
Pepperell, MA 01763
978-808-6990
Title: 7 Generation State and Municipal Training Program
Category of Applicant: Public Employer
Geographic Target: Statewide
Program Administrator: Loretta Sanford
Total Funds Requested: \$25,000.00 **Approved:** \$24,107.00 **Score:** 94.8
64. Dana Farber Cancer Institute
44 Binney Street
Boston, MA -2115
617-632-4667
Title: Office Ergonomic Training at Dana Farber Cancer Institute
Category of Applicant: Non-profit Employer
Geographic Target: Metro Boston

	Program Administrator: Aron Vinson		
	Total Funds Requested: \$24,235.50	Approved: \$24,235.50	Score: 93.4
65.	Graphic Arts Institute of New England 5 Crystal Pond Road Southborough, MA 01772 508-804-4107		
	Title: OSHA Outreach for Printing Industries		
	Category of Applicant:		
	Geographic Target: Statewide		
	Program Administrator: Mark Flannery		
	Total Funds Requested: \$14,790.00	Approved: \$14,196.22	Score: 84.6

APPENDIX M

Jurisdictions that Currently Provide Public Online Coverage Verification Searches

1. Alaska ⁿ	http://labor.state.ak.us/wc/exit.html
2. Arkansas ⁿ	http://www.awcc.state.ar.us/electron.html
3. Colorado ⁿ	http://www.coworkforce.com/dwc/
4. Delaware ⁱ	http://www.delawareworks.com/industrialaffairs/compsearch.shtml
5. Dist. of Columbia ⁿ	http://www.does.dc.gov/does/cwp/view,a.1232,q.537428.asp
6. Florida ⁿ	http://www.fldfs.com/WCAPPS/Compliance_POC/wPages/query.asp
7. Georgia ⁿ	http://sbwc.georgia.gov/00/article/0,2086,11394008_11400533_42600637,00.html
8. Idaho ⁿ	http://www.iic.idaho.gov/medinfo/medinfo.htm
9. Illinois ⁿ	http://www.iwcc.il.gov/coverage.htm
10. Kansas ⁿ	http://www.dol.ks.gov/WC/html/wccoververifi_ALL.html
11. Maryland ⁿ	http://www.wcc.state.md.us/WFMS/Online_CVS.html
12. Michigan ⁱ	http://www.cis.state.mi.us/bwuc/wkrcomp/asp/sr_bwdc.asp
13. Minnesota ⁱ	http://inslookup.doli.state.mn.us/
14. Mississippi ⁿ	http://www.mwcc.state.ms.us/ (Services/Proof of Coverage Inquiry)
15. Nebraska ⁿ	https://inet.wcc.ne.gov/apps/npoc/(S(1nw2it55f5t2luveh2p45255))/NPOC0001Afr m.aspx
16. Nevada ⁿ	http://dirweb.state.nv.us/wcs/cvs.htm
17. New Jersey ⁱ	http://www.njcrib.com/PCOV/policycoverage.asp
18. New Mexico ⁿ	http://workerscomp.state.nm.us/
19. New York ⁱ	http://www.wcb.state.ny.us/icpocinq/icpocsearch.jsp
20. North Carolina ⁱ	http://www.comp.state.nc.us/iwcns/
21. North Dakota ^s	https://www.workforcesafety.com/online-services/employersearch/
22. Ohio ^s	https://www.ohiobwc.com/provider/services/mcolookup/nlbwc/default.asp
23. Oregon ⁿ	http://www4.cbs.state.or.us/ex/wcd/eds_company_search/
24. Pennsylvania ⁱ	http://www.dli.state.pa.us/landi/cwp/view.asp?a=138&q=244646
25. S. Carolina ⁿ	http://www.wcc.state.sc.us/Insurance/Verify+Coverage/
26. S. Dakota ⁿ	http://dol.sd.gov/onlineservices.aspx
27. Tennessee ⁿ	http://www.state.tn.us/labor-wfd/wcomp.html
28. Texas ⁱ	https://txcomp.tdi.state.tx.us/TXCOMPWeb/common/home.jsp
29. Utah ⁿ	http://www.laborcommission.utah.gov/IndustrialAccidents/POC.html
30. Vermont ⁿ	http://www.labor.vermont.gov/InfoCenter/WorkersCompensationInsuranceCoverageVerificat/tabid/1473/Default.aspx
31. Virginia ⁿ	http://www.vwc.state.va.us/insurance.htm
32. Washington ^s	http://www.lni.wa.gov/TradesLicensing/Contractors/HireCon/CRUA/default.asp
33. West Virginia ⁿ	http://www.wvinsurance.gov/index.htm
34. Wisconsin ⁱ	http://www.dwd.state.wi.us/wc/workers/select.asp

ⁿ NCCI Member State.

^s Single State Fund.

ⁱ Independent Rating Bureau.

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. Includes contracted faculty; contracted advisory board/commission members; seasonal; student interns, etc. (These employees are generally not eligible for benefits.)

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 divisional 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 O

COLLECTIONS AND EXPENDITURES REPORT - FISCAL YEAR 2008

<i>SPECIAL FUND</i>	<i>FY'08</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>
<u>COLLECTIONS</u>					
INTEREST	432,041	785,884	670,515	350,529	194,200
ASSESSMENT	17,245,272	15,301,449	18,005,869	16,404,375	12,805,486
LESS RET. CHECKS	(4,615)	0	(10,806)	0	0
LESS REFUNDS	(119,948)	(457)	0	(8,658)	0
SUB-TOTAL	17,120,709	15,300,992	17,995,063	16,395,717	12,805,486
FILING FEES	4,068,091	4,362,429	4,162,760	4,336,826	4,166,153
COLLECTION FEE	(422)	(15,534)	(17,889)	(36,577)	(32,357)
LESS RET. CHECKS	(10,134)	(10,536)	(4,497)	(6,908)	(3,140)
LESS REFUNDS	(10,422)	(3,094)	(7,129)	(7,119)	(4,837)
SUB-TOTAL	4,047,093	4,333,265	4,133,245	4,286,222	4,125,819
1ST REPORT FINES	225,474	206,904	198,008	315,125	241,890
LESS COLLECTION FEE	0	(7,368)	(11,077)	(10,318)	(4,642)
LESS RET. CHECKS	(500)	(2,700)	0	(2,100)	0
LESS REFUNDS	(500)	(700)	0	0	(100)
SUB-TOTAL	224,474	196,136	186,931	302,707	237,148
STOP WORK ORDERS	535,396	391,328	250,299	303,030	394,207
LESS REFUNDS	(200)	0	(3,537)	0	(600)
EDS FEE	0	(71)	(105)	0	0
LESS BAD CHECKS	0	(300)	0	(1,300)	(10,638)
COLLECTION FEE	(1,224)	(1,091)	0	(17,270)	(39,441)
SUB-TOTAL	533,972	389,867	246,657	284,460	343,528
LATE ASSESS. FINES	26,942	20,400	28,050	14,074	20,428
SEC. 7 & 14 FINES	0	0	0	2,000	6,500
MISCELLANEOUS	29,817	37,044	32,945	37,823	21,685
SUB-TOTAL	56,759	57,444	60,995	53,897	48,613
TOTAL COLLECTIONS	22,415,048	21,063,588	23,293,406	21,673,532	17,754,794
BALANCE BRGT FWD	5,634,120	9,201,123	9,148,914	10,090,768	14,728,736
TOTAL	28,049,168	30,264,710	32,442,320	31,764,300	32,483,530
LESS EXPENDITURES	(25,602,577)	(24,630,590)	(23,250,818)	(22,615,386)	(22,392,762)
ADJUSTMENT	0		9,621		
BALANCE	2,446,591	5,634,121	9,201,123	9,148,914	10,090,768
<u>EXPENDITURES</u>					
ORACLE START-UP	0	0	0	0	1,227,305
TOTAL COMPUTER	414,431	1,020,176	438,890	0	1,227,305
<u>REPAYMENT</u>					
REPAYMENT - SALARIES	14,284,592	13,698,054	13,535,090	13,552,369	13,148,258
FRINGE BENEFITS	5,161,232	4,227,282	3,614,974	3,606,371	2,989,091
INDIRECT COSTS	265,292	255,506	230,155	232,262	223,937
NON-PERSONNEL COSTS	5,176,399	5,418,795	5,428,939	5,200,563	4,772,185
OTHER INDIRECT COSTS	3,312	9,534	0		
IP INDIRECT-EXPENSE	0	1,243	0	23,821	31,986
ADJUSTMENT FRINGE Q.1	297,319	0	2,770		
TOTAL EXPENDITURES	25,602,577	24,630,590	23,250,818	22,615,386	21,165,457

COLLECTIONS AND EXPENDITURES REPORT - FISCAL YEAR 2008

<i>PUBLIC TRUST FUND</i>	<i>FY'08</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>
<u>COLLECTIONS</u>					
INTEREST	8,466	9,718	7,324	3,604	1,691
ASSESSMENTS	142,598	39,415	62,936	173,786	1,078,719
LESS FUNDS TRANSFERRED	(109,108)				
TOTAL ASSESSMENTS	33,490	39,415	62,936	173,786	1,078,719
TOTAL COLLECTIONS	41,956	49,133	70,260	177,390	1,080,410
BALANCE BRGT FWD	799,896	750,763	680,503	503,112	13,010
TOTAL	841,852	799,896	750,763	680,502	1,093,420
LESS EXPENDITURES	0	0	0	0	(590,308)
BALANCE	841,852	799,896	750,763	680,502	503,112
<u>EXPENDITURES</u>					
RR COLAS	0	0	0	0	584,916
RR SEC. 37	0	0	0	0	5,392
TOTAL EXPENDITURES	0	0	0	0	590,308

<i>PRIVATE TRUST FUND</i>	<i>FY'08</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>
<u>COLLECTIONS</u>					
INTEREST	268,411	308,118	232,217	126,512	107,041
ASSESSMENTS	50,338,430	53,365,665	46,686,859	50,919,285	41,932,779
LESS RET. CHECKS	0	(2,500)	(2,584)	0	0
LESS REFUNDS	(87,852)	(196)	0	(26,906)	0
SUB-TOTAL	50,250,578	53,362,969	46,684,275	50,892,379	41,932,779
REIMBURSEMENTS	1,289,675	1,205,800	1,444,681	885,811	639,484
LESS COLLECTION FEE	0	0	0		
RET. CHECK	(1,569)	(28,053)	(1,161)	(2,225)	(11,650)
REFUNDS	(1,070)	(10,282)	0	0	0
SUB-TOTAL	1,287,036	1,167,465	1,443,520	883,586	627,834
SEC. 30 H	0	3,393	728	0	39,322
YE ADJ FOR REFUNDS TO TF	238,385				
TOTAL COLLECTIONS	52,044,410	54,841,945	48,360,740	51,902,477	42,706,976
BALANCE BRGT FWD	15,282,709	8,934,528	13,618,318	11,685,006	16,304,121
TOTAL	67,327,119	63,776,473	61,979,058	63,587,483	59,011,097
LESS EXPENDITURES	(41,174,001)	(48,493,764)	(53,044,529)	(49,969,164)	(47,324,567)
ADJUSTMENT	0		1,500		
BALANCE	26,153,118	15,282,709	8,936,029	13,618,319	11,686,530

COLLECTION AND EXPENDITURE REPORT - FISCAL YEAR 2008

<i>PRIVATE TRUST FUND</i>	<i>FY'08</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>
<u>EXPENDITURES</u>					
RR SEC. 34	1,320,000	1,248,883	1,183,723	1,078,481	880,289
RR SEC. 35	449,319	474,278	465,122	301,736	235,072
RR LUMP SUM	1,570,455	1,242,755	1,635,402	1,651,369	877,951
RR SEC. 36	502,719	176,065	119,966	247,314	363,636
RR SEC. 31	131,075	78,508	91,434	100,386	106,257
RR SEC. 34, PERM. TOTAL	376,980	356,338	306,009	290,558	287,762
RR COLA ADJ	331,026	275,751	154,612	152,639	149,555
RR EE MEDICAL	56,400	75,111	98,387	104,327	63,848
RR EE TRAVEL	2,059	6,045	3,500	3,920	673
RR EE MISC. EXPENSE	15,726	0	637	0	0
RR BURIAL BENEFITS	0	4,575	0	0	0
RR LEGAL FEES	672,952	606,698	643,260	471,698	310,903
RR VOC. REHAB SERVICES	11,874	9,956	6,236	1,400	2,149
RR REHAB. SERV. TRAVEL	0	0	0	0	26
RR REHAB (PRIOR YEAR)	504	63	397	1,768	0
RR MEDICAL	1,515,100	2,272,265	1,941,114	1,328,010	1,097,087
SUB-TOTAL RR	6,956,189	6,827,291	6,649,799	5,733,606	4,375,208
MM TUITION	6,438	4,541	21,862	0	0
TOTAL CLAIMANTS	6,962,627	6,831,832	6,671,661	5,733,606	4,375,208
<u>INSURERS - EXP.</u>					
RR COLAS	5,751,523	8,032,750	21,914,829	14,948,170	18,110,397
RR SEC. 19 COLA LUMP SUM	989,176	1,085,082	1,452,130	1,094,044	1,111,415
RR LATENCY SEC. 35C	558,588	388,100	280,751	293,542	899,231
RR LEGAL FEE SEC. 35	0	0	0		141,588
RR SEC. 37	16,990,276	19,389,653	7,543,763	19,836,350	19,733,766
RR SEC. 37 QUARTERLY	6,138,343	8,537,194	10,996,194	5,421,404	
RR SEC. 37 INTEREST	84,808	198,285	0		0
TOTAL PAY TO INSURERS	30,512,714	37,631,064	42,187,667	41,593,510	39,996,397
TOTAL LEGAL EXP.	37,475,341	44,462,896	48,859,328	47,327,116	44,371,605
<u>OEVR - EXPENDITURES</u>					
MM TUITION	3,893	40,070	63,834	36,694	24,071
RR PRIOR YEAR REHAB	0	0	0	1,645	
RR REHAB-30H	4,189	7,708	12,022	13,173	12,670
RR TRAVEL REHAB	0	0	0	0	290
RR HEALTHSOUTH HLDS	0	0	780		
RR FCE REIMBURSEMENT	0	0	625		
RR CRAWFORD & CO.	0	0	462		
EE OTHER	182	896			
RR EE TRAVEL	1,942	2,282	2,886	2,015	1,708
RR EE BOOKS & SUPPLIES	1,740	5,491	6,874	3,483	1,331
SUB-TOTAL OEVR EXP.	11,946	56,447	87,483	57,010	40,070
TOTAL PRIVATE TRUST EXP.	37,487,287	44,519,343	48,946,811	47,384,520	44,411,675

COLLECTION AND EXPENDITURE REPORT - FISCAL YEAR 2008

<i>EXPENDITURES DEFENSE OF THE FUND</i>	<i>FY'08</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>
AA PERSONNEL	1,611,214	1,661,496	1,833,394	1,018,958	1,418,182
AA OVERTIME	362	26,798	11,803	4,067	3,899
AA SICK LEAVE BUY BACK	0	293	0	0	0
SUB-TOTAL	1,611,576	1,688,587	1,845,197	1,023,025	1,422,081
BB TRAVEL	18,877	23,291	18,578	5,504	5,796
BB CONFERENCE TRAINING	81	1,074	437	0	2,455
BB EE REIMBURSEMENT	0	23	448		
BB EMPLOYEE REIMBURS	5,265	1,774	1,696	341	532
SUB-TOTAL	24,223	26,162	21,159	5,845	8,783
CONT STUDENT INTERNS	5,803				
SUB-TOTAL	5,803				
DD FRINGE	632,427	542,343	493,193	273,755	325,898
DD UNIVERSAL HEALTH	0	0	269	269	243
DD MEDICARE	0	0	9,653	10,144	8,881
DD UNEMPLOYMENT INS.	0	0	1,914	3,118	2,774
DD BOND	445	0	356		0
DD WORKERS' COMP CHRG.	57,571	18,842	39,141	23,411	0
DD HEALTH SERVICES CORP	1,935				
SUB-TOTAL	692,378	561,185	544,526	310,697	337,796
EE RENTAL/MV CHRG-BACK	3,629	3,629	3,629	681	1,431
EE DEST. OLD RECORDS	6,912	5,875	5,786	0	5,541
EE ADVERTISING	365	990	474		0
EE BOOKS/SUPPLIES	20,138	29,220	28,400	19,678	66,147
EE IMPARTIAL APPEALS	13,050	13,950	20,375	13,175	5,625
EE CENTRAL REPRO.	2,821	1,170	0	0	0
EE POSTAGE	0	3,317	14,101	21,334	3,235
EE REFRESHMENTS	0		0	0	673
EE WATER	1,087		0	0	930
EE MCAD SEMINAR	0		0	0	1,400
EE TRAINING / TUITION	0	(50)	12,190	3,654	
EE JUDGEMENT (E54)	0	0	0	43,836	
EE TEMP USE SPACE	4,415	0	815		
EE PRINTING	149	83			
EE CONFERENCE, INCIDEN.	0	3,795			
EE MCKENZIE	0	93,983			
EE INDIRECT COSTS	35,696	44,578	39,875	25,952	31,435
EE POSTAGE CHRG-BACK	3,177				
EE FIA CREDIT CARD	1,852				
EE MEMBERSHIPS	1,350				
SUB-TOTAL	94,641	200,540	125,645	128,310	117,941
GG BOSTON LEASE	647,011	507,823	495,209	470,156	348,342
GG ELECTRICITY - BOSTON	33,994	13,409	9,084	10,268	5,484
SUB-TOTAL	681,005	521,232	504,293	480,424	353,826

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COLLECTION AND EXPENDITURE REPORT - FISCAL YEAR 2008

<i>EXPENDITURES DEFENSE OF THE FUND</i>	<i>FY'08</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>
HH CONSULTANTS	150,143	422,850	412,422	276,713	425,783
SUB-TOTAL	150,143	422,850	412,422	276,713	425,783
JJ OPERATIONAL SERV.	186,493	391,137	438,802	292,525	174,137
SUB-TOTAL	186,493	391,137	438,802	292,525	174,137
KK EQUIPMENT	18,914	1,650	1,225	5,580	23,813
SUB-TOTAL	18,914	1,650	1,225	5,580	23,813
LL CBE HOLDINGS	12,711	4,536	29,017		
LL XEROX	1,113	0	1,685	7,187	3,799
LL ORACLE	23,583	13,692	16,538	13,335	13,336
LL ASAP SOFTWARE EXPRS	18,489	0	10,593		
LL SIMPLEX	245	0	0	245	245
LL SHARED TECHNOLOGY	0	0	1,883	2,138	3,256
LL PITNEY BOWES	1,419	1,272	1,331	1,272	625
LL IKON	784	0	0	0	465
LL SUN MICROSYSTEMS	4,467	3,601	4,748	0	2,100
LL RETROFIT	3,829	2,527	2,837	903	6,058
LL MILLENNIUM MECHAN	992	0	191	742	
LL FIRE EQUIPMENT	183	0	168		
LL JEWEL PROTECTIVE SYS.	0	0	125		
LL ENTERPR. RENT-A-CAR	4,979	3,808	3,639		
LL OFFICE EQUIPMENT	0	0	204		
LL CAM OFFICE SVCS	222				
LL NTIRETY	0	3,371	11,556		
LL RONCO COMM & ELEC	0	21,233	6,865		
LL MMARS ACCT SYST	2,652	1,872	1,499		
LL KEANE	2,603	0	874		
LL KFORCE	0	0	2,340		
LL COMPUTER EQUIPMENT	0	0	1,239		
LL TSG HEALTHCARE RESR	0	0	18,763		
LL DELL MARKETING	32,865	43,038	35,996		
LL QWEST COMM.	332	376	27	0	0
LL ITT COMPUTER SERV.	23,460	16,327	17,918	14,004	9,552
LL VERIZON SERVICES	23,296	17,918	18,808	17,110	8,066
LL AMS IMAGINING	0	116	0		0
LL TELEPHONE LEASE	4,754	4,753	3,692	0	2,754
LL NEXTELL	2,500	2,702	6,353	4,983	
LL EGI BUSINESS TRUST	17,434	18,826			
LL EMC CORP.	1,500				
LL PEOPLESERVE	6,306				
LL PAUL DAUBITZ	1,648				
LL OVERTURE PARTNERS	3,900				
LL LANTEL COM	3,494				
LL CITY LIGHTS ELEC	2,543				
LL GATEWAY COMPANIES	1,825				
LL STENOGRAPHER CORP	434				

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COLLECTION AND EXPENDITURE REPORT - FISCAL YEAR 2008

<i>EXPENDITURES DEFENSE OF THE FUND</i>	<i>FY'08</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>
LL EOS APPROACH	1,523				
LL ULTRAGUARD PROTECT	156				
LL INTEGRATED PARTNERS	2,450				
SUB-TOTAL	208,691	159,968	198,889	61,919	50,256
NN NON-MAJOR INFRA MAIN	0	725	0	0	0
NN DOC DESTRUCTION	2,847	385	0	0	0
SUB-TOTAL	2,847	1,110	0	0	0
RR PENALTIES SEC. 8	10,000	0	5,560	0	0
SUB-TOTAL	10,000	0	5,560	0	0
TOTAL DEF. OF FUND EXP.	3,686,714	3,974,421	4,097,718	2,585,038	2,914,416
TOTAL EXPENDITURES	41,174,001	48,493,764	53,044,529	49,969,164	47,326,091

DIA - INCOME SUMMARY

<i>INCOME SUMMARY</i>	<i>FY'08</i>	<i>FY'07</i>	<i>FY'06</i>	<i>FY'05</i>	<i>FY'04</i>
Total Assessments (Special, Private, Public)	67,404,777	68,703,376	64,742,274	67,461,882	55,816,984
Total Filing Fees	4,047,093	4,333,265	4,133,245	4,286,222	4,125,819
Total First Report Fines	224,474	196,136	186,931	302,707	237,148
Total SWOs	533,972	389,867	246,657	284,460	343,528
Total Misc. Fines	29,817	37,044	32,945	37,823	21,685
Total 5% Fines (Late Assess.)	26,942	20,400	28,050	14,074	20,428
Section 7 and 14 Fines	0	0	0	2,000	6,500
Total Reimbursements	1,287,036	1,167,465	1,443,520	883,586	627,834
Total 30H	0	3,393	728	0	39,322
Yr. Adj. for Refunds to TF	238,385	0	0	0	0
Total Interest	708,918	1,103,720	910,056	480,645	302,932
TOTAL INCOME	74,501,414	75,954,666	71,724,406	73,753,399	61,542,180

APPENDIX P

Workers' Compensation Legislation

*Before the Joint Committee on Labor & Workforce Development
2007-2008 Legislative Session*

HOUSE BILLS:

HOUSE BILL 1069

Filed By: Representative Michael J. Rodrigues / Representative Matthew C. Patrick

Type of Bill: Similar (H.3123)

Endorsed by Advisory Council: No

Laws Affected: Third Party Lawsuits (§15) - Protecting Employee Leasing Companies (§14A)

Section 1 of this bill (similar to H.1817 filed in this legislative session) would clarify that an injured worker is barred from filing a third party lawsuit against an insured Employee Leasing Company or its client company if both are in compliance with Chapter 152. Currently, under §15, injured employees may sue third parties if a compensable injury was "caused under circumstances creating a legal liability in some person other than the insured to pay damages." A recent Superior Court Case held that a client company was not protected by the exclusive remedy provision from a leased employee who brought a suit against them [*Margolis v. Charles Precourt & Sons, Inc.* - 6/7/99].

Section 2 of this bill would require the Commissioner of Insurance to establish regulations requiring Employee Leasing Companies to be the workers' compensation policyholder of employees leased to client companies. This section of the bill is unnecessary as the Commissioner of Insurance has already established regulations requiring Employee Leasing Companies to insure its employees leased to other entities [211 CMR 111.00].

HOUSE BILL 1776

Filed By: Representative Antonio Cabral

Type of Bill: Refile (H.1607)

Endorsed by Advisory Council: No

Laws Affected: Lump Sum Settlements (c.152, §48) - Approval

This refiled bill would remove the requirement that an employer, with an experience modified policy, must sign-off on any lump sum agreement between the insurer and employee. Experience rating is a system of comparing the claims history of each employer against the claims experience of all employers within the same classification. A company's experience modification factor is determined annually and is based on the insured's losses for the last three completed years. Although this proposed legislation removes the employer's written consent as a requirement for a lump sum agreement, the employer would have the right to attend the proceeding and provide comments to the department concerning the proposed settlement.

HOUSE BILL 1777**Filed By:** Representative Antonio Cabral / Rep. Robert Koczera / Rep. Thomas Kennedy**Type of Bill:** Refile (H.1606)**Endorsed by Advisory Council:** YES (2003-2006)**Laws Affected:** Benefits for Specific Injuries (c.152, §36(k)) - Scar-Based Disfigurement

This refiled bill would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This bill 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. House Bill 1777 would not affect the \$15,000 maximum benefit for scar-based disfigurement currently in the statute.

HOUSE BILL 1796**Filed By:** Representative Bradley H. Jones, *et al.***Type of Bill:** Refile (H.3800)**Endorsed by Advisory Council:** No**Laws Affected:** Serious and Willful Misconduct (c.152, §27) - Intoxication, Unlawful Use of a Controlled Substance

This refiled bill would amend §27 and deny workers' compensation benefits to employees who are injured while intoxicated or unlawfully using a controlled substance as defined in §1 of Chapter 94C. Currently, §27 bars workers' compensation benefits to employees injured as a result of "serious and willful misconduct," but does not elaborate specifically what constitutes "serious and willful misconduct." This bill would not bar compensation to dependents if the injury resulted in death.

HOUSE BILL 1807**Filed By:** Chester P. Ostrowski**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Rehear Appeal of Chester Ostrowski

This bill would require the Department of Industrial Accidents to rehear the appeal of Chester Ostrowski in the matter of Ostrowski v. Cows Building Supply Inc.

HOUSE BILL 1816**Filed By:** Representative Ronald Mariano**Type of Bill:** Refile (S.1097)**Endorsed by Advisory Council:** No**Laws Affected:** Widow's Benefits (c.152, §35C, §32, §31)

This refiled bill would significantly alter the definition of the "average weekly wage" exclusively for Section 35C cases (latency claims). Under this bill, the surviving dependent of a worker that had died from an occupational illness or disease would receive compensation based upon the earnings of the last full time employment, regardless of whether that worker was earning wages at the time of death. According to the SJC's decision in the *McDonough's Case*, the widow of an employee who died as a result of past asbestos exposure was not entitled to receive compensation

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HOUSE BILL 1816 CONTINUED

under Section 35C since the deceased had voluntarily retired in 1991 and was not receiving wages on the date of his death. Section 35C clearly states that "[w]hen there is a difference of five years or more between the date of injury and the initial date [of] eligib[ility] for benefits under section thirty-one...the applicable benefits shall be those in effect on the first date of eligibility for benefits."

Last legislative session, the Advisory Council voiced opposition to this bill because workers' compensation was designed as a wage-replacement mechanism and not as a life insurance policy. Furthermore, language contained within this bill would expand benefit eligibility requirements to include workers who are not even subject to the Workers' Compensation Act. The Advisory Council has been informed that the passage of this bill could financially jeopardize the DIA's Trust Fund, which makes reimbursement payments to insurers for latency injuries.

HOUSE BILL 1817

Filed By: Representative Ronald Mariano

Type of Bill: Refile (H.3123)

Endorsed by Advisory Council: No

Laws Affected: Third Party Lawsuits (§15) - Protecting Employee Leasing Companies (§14A)

Section 1 of this bill (similar to H.1069 filed this legislative session) would clarify that an injured worker is barred from filing a third party lawsuit against an insured Employee Leasing Company or its client company if both are in compliance with Chapter 152. Currently, under §15, injured employees may sue third parties if a compensable injury was "caused under circumstances creating a legal liability in some person other than the insured to pay damages." This protection of Employee Leasing Companies and their client companies under the "exclusive remedy" provision would not apply to temporary staffing agencies. A recent Superior Court Case held that a client company was not protected by the exclusive remedy provision from a leased employee who brought a suit against them [*Margolis v. Charles Precourt & Sons, Inc.* - 6/7/99].

Section 2 of this bill would require the Commissioner of Insurance to establish regulations requiring Employee Leasing Companies to be the workers' compensation policyholder of employees leased to client companies. This section of the bill is unnecessary as the Commissioner of Insurance has already established regulations requiring Employee Leasing Companies to insure its employees leased to other entities [211 CMR 111.00].

HOUSE BILL 1825

Filed By: Representative Eugene L. O'Flaherty

Type of Bill: Refile (H.1599)

Endorsed by Advisory Council: No

Laws Affected: Attorney's Fees (c.152, §13A(10)), Agreements to Pay Benefits (§19), Temporary Total Disability (§34), Permanent and Total Incapacity (§34A)

Section 1 of this refiled bill would allow attorneys to collect fees for advancing an employee's rights under §75A (preferential hiring of injured workers) and §75B (protections against handicap discrimination), in addition to any attorney's fees owed under §13A. In Massachusetts, the attorney fees specified in §13A are the only fees payable for any services provided to employees.

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HOUSE BILL 1825 CONTINUED

Section 2 of this bill adds two new subsections to §19. The first subsection would allow any administrative judge, administrative law judge or conciliator to approve any agreement to pay benefits authorized by §19. The second subsection would allow an agreement to include a pay without prejudice clause.

Section 3 of this bill attempts to amend §34 benefits for injuries that are total. However, due to mistakes in drafting, the proposed language is unclear.

Section 4 of this bill would attempt to amend §34A benefits for injuries that are both permanent and total. This section would remove the minimum weekly compensation rate for injuries under §34A, thereby reducing an employee's benefit to their Average Weekly Wage. This section of the bill also has ambiguous language.

HOUSE BILL 1826

Filed By: Representative Eugene L. O'Flaherty

Type of Bill: Refile (H.1600)

Endorsed by Advisory Council: No

Laws Affected: Appointment of Impartial Physicians (c.152, §9C), Impartial Exams (§11A).

Section 1 of this refiled bill 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 §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.]

Section 2 of this bill replaces language for §11A on impartial exams. It would remove the c.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 also 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 §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 deposing party would pay the fee for any deposition. 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.

HOUSE BILL 1827**Filed By:** Representative Eugene L. O'Flaherty**Type of Bill:** Refile (H.1601)**Endorsed by Advisory Council:** No**Laws Affected:** Definition of Average Weekly Wage (c.152, §1(1)), Return to Work - Attorney Fees (§13A(4)), Eliminate Consideration of Offers at Conciliation (§13A(4))

Section 1 of this refiled bill addresses injured employees who return to work (without a lump sum settlement) and receive wages that 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 claimant's attorney is only entitled to payment if the administrative judge accepts the offer of the claimant or the amount submitted by the conciliator.

HOUSE BILL 1828**Filed By:** Representative Eugene L. O'Flaherty**Type of Bill:** Similar (S.1103)**Endorsed by Advisory Council:** No**Laws Affected:** Comprehensive Bill (c.152, §13, §30)

Section 1 of this bill attempts to amend §13 by replacing the Division of Health Care Finance & Policy with the Rate Setting Commission (which was repealed in 1996) as the sole regulator of the workers' compensation medical fee schedule. This bill would also delete all provisions regarding treatment protocols, utilization review and the Health Care Services' Board.

Section 2 of this bill would amend §30. However, due to mistakes in drafting, the proposed language is unclear.

HOUSE BILL 1833**Filed By:** Representative Kathi-Anne Reinstein**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Benefits for Environmental Police Officers (c.30, §58A)

This bill would compensate environmental police officers who receive bodily injuries while in the performance of their duties. If eligible for workers' compensation benefits, these injured state employees would receive the difference between the weekly cash benefits entitled under Chapter 152 and their regular salary. Current law allows this benefit to state employees who receive bodily injuries resulting from acts of violence from patients or prisoners.

HOUSE BILL 1839**Filed By:** Representative Michael J. Rodrigues**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Workers' Compensation Insurance Premiums

This bill, filed on behalf of the Massachusetts Insurance Federation, serves as a "placeholder" for future legislation that would create a "true up" provision concerning workers' compensation insurance premiums. Language in this bill states that productive audits conducted by insurance companies in order to clarify discrepancies between actual premiums and estimated premiums would encourage the cooperation and disclosure of the insured.

HOUSE BILL 1840**Filed By:** Rep. Michael J. Rodrigues / Jim Harrington / Rep. Robert P. Spellane**Type of Bill:** Refile (H.1603)**Endorsed by Advisory Council:** No**Laws Affected:** Insurance Rates – Loss Cost - Competition (c.152, §53A)

This refiled bill would change how workers' compensation rates are determined in Massachusetts. Currently, the Commonwealth uses a system of "Administered Pricing" in which the Commissioner of Insurance makes the final determination in establishing workers' compensation rates per job classification.

Under House Bill 1840, workers' compensation insurance rates would be determined under a "Loss-Cost System." Similar to the current law, insurers would submit all their loss data to a designated rating organization (WCRIB) and would adhere to a uniform classification system. Instead of a rate hearing, the Commissioner of Insurance would hold a loss-cost hearing in which the WCRIB would submit a loss cost filing for each classification (e.g. roofers, clerical workers). "Loss Costs" are the historical aggregate data and loss adjustment expenses (LAE), developed and trended for each classification and is expressed as a dollar amount per \$100 of payroll. For example, the loss cost for a "roofer" might be \$6.00 and for a "clerical worker" \$.90.

Following the Commissioner's approval of a loss-cost filing, each carrier would submit to the State Rating Bureau a "loss cost multiplier (LCM)" filing. This LCM takes into account the carrier's expenses other than LAE, such as overhead, acquisition, marketing, profit, etc. Upon approval of this filing, LCM's would be multiplied by the loss cost to determine the final rate.

$$\text{RATE} = \text{LOSS COST} \times \text{LCM}$$

[Example: If the loss cost for a roofer is \$6 and the carrier's LCM for roofers is 1.4 then the rate will be \$6 x 1.4 or \$8.40 per \$100 of payroll. If the loss cost for a clerical worker was \$.90 and the LCM for clerical workers was .90, the rate will be \$.90 x .90 or \$.81 per \$100 of payroll.]

The Advisory Council's involvement in the rate process would remain limited in scope, allowing for the presentation of written and oral testimony relating to any issues which may arise during the course of the hearing.

A safety mechanism has been included in this legislation which would allow the Commissioner of Insurance to hold a "Market Competition Hearing" if the market were deemed unhealthy or non-competitive. In this event the Commissioner would have the authority to revert the market to a temporary system of administered pricing.

HOUSE BILL 1856**Filed By:** Representative Patricia A. Walrath / Senator Stephen M. Brewer**Type of Bill:** Refile (H.1596)**Endorsed by Advisory Council:** No**Laws Affected:** Exemption of Non-Profit Entities (c.152, §1)

This refiled bill would make the workers' compensation insurance requirement elective for non-profit entities that are staffed by "volunteers, board members, directors, and paid employees." The current law exempts non-profits only when they are exclusively staffed by volunteers.

HOUSE BILL 1857**Filed By:** Representative Martin J. Walsh**Type of Bill:** Refile (S.1099)**Endorsed by Advisory Council:** No (see S.1066)**Laws Affected:** Private Right of Action to Recover WC Coverage Payments (c.152, §25C)

House Bill 1857 would allow "any 10 persons" to bring a civil action against an employer to recover amounts which should have been paid in securing proper workers' compensation insurance as mandated by chapter 152. Such persons seeking civil action must first petition either the Commissioner of Insurance, the Attorney General's Office or a superior court to hold a "probable cause hearing." At the hearing, it shall be *prima facie* evidence that such probable cause exists if it is shown that:

- an employee was paid any portion of wages in cash with no deductions or taxes withheld;
- no accompanying pay slip showing the wage payment and deductions as required by law;
- an individual was misclassified as an independent contractor when actually an employee;
- wages were not timely paid;
- the employer failed to withhold from the employee's wages all related state taxes; or
- employees have not been properly reported on certified payroll records as required by law.

When probable cause exists, such persons seeking civil action against a non-compliant business may seek damages of up to \$25,000 (or 25% of the premium that has been avoided - whichever is less). The remainder of damages would be deposited into the DIA's Special Fund. Insurance carriers would be able to recover the full amount of the award in situations where they obtain court approval to replace the private citizens in a lawsuit.

HOUSE BILL 1861**Filed By:** Representative Martin J. Walsh / AFL-CIO, *et al.***Type of Bill:** Refile (H.1594)**Endorsed by Advisory Council:** No**Laws Affected:** Comprehensive Bill (c.152, §1(7A), §13, §14, §30, §34, §35, §36, §46A)

Section 1 of this refiled bill would amend Section 1(7A) by allowing administrative judges to consider the employee's pre-injury employment when determining predominant cause of disability.

Section 2 would amend Section 13 setting the medical payment rate at no less than 80% of the usual and customary fee for any such health care service.

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HOUSE BILL 1861 CONTINUED

Section 3 would clarify Section 14(1) providing penalties against an insurer who refuses to pay medical benefits without reasonable grounds.

Section 4 would amend Section 30 allowing an emergency conference before an administrative judge to determine if an injured worker is entitled to medical treatment.

Sections 5 and 6 would amend Section 30 by limiting utilization review to five of "the most common industrial injury or illnesses." This change would limit the utilization review process to the most frequent care given to injured workers. Failure for an insurance company to comply with utilization review time guidelines would result in said treatments to "be deemed approved."

Section 7 would increase wage benefits for injured workers under §34 by restoring the amount to 2/3 of an employee's average weekly wage (AWW).

Section 8 would amend Section 35 by adding additional circumstances under which an administrative judge may extend the number of weeks under §35 (partial disability) benefits. These additional conditions are that the injured worker has returned to employment pursuant to an Individual Written Rehabilitation Plan under Section 30(H), has been found unsuitable for vocational rehabilitation by the OEVR, has returned to work at less than their pre-injury AWW, or has a permanent partial incapacity.

Section 9 would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This bill 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.

Section 10 would amend Section 46A by requiring an injured workers general health insurance carrier (if they have one) to cover all medical expenses of the injured worker until the workers' compensation insurer is ordered to pay a disputed claim. Currently, there is no language requiring a health insurance provider to cover these costs.

HOUSE BILL 1862

Filed By: Representative Martin J. Walsh, *et al.*

Type of Bill: Refile (H.1595)

Endorsed by Advisory Council: No

Laws Affected: Scar-Based Disfigurement (c.152, §36(k)), Burial Expenses (§33), Extension of Partial Incapacity Benefits (§35).

Section 1 of this refiled 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. Under this bill, compensation could not exceed the average weekly wage in the Commonwealth (at time of

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HOUSE BILL 1862 CONTINUED

injury) multiplied by 29 (\$1,000.43 x 29 = \$29,012.47). Currently, the statute states that scar-based disfigurement compensation cannot exceed \$15,000.

Section 2 would require an insurer to pay for burial expenses when a worker has died, not to exceed eight thousand dollars. Currently, the statute requires the insurer to pay reasonable expenses of burial, not to exceed four thousand dollars.

Section 3 would amend Section 35 by adding additional select circumstances under which an administrative judge may extend the number of weeks under §35 (partial disability) benefits from 260 weeks to 520 weeks. These additional conditions are that the injured worker has returned to employment pursuant to an Individual Written Rehabilitation Plan, has been found unsuitable for vocational rehabilitation, has returned to employment at less than his pre-injury average weekly wage, or has a permanent partial incapacity.

HOUSE BILL 1864

Filed By: Representative Martin J. Walsh

Type of Bill: Refile (H.3776)

Endorsed by Advisory Council: No

Laws Affected: Rate of Payment by Insurers for Health Care Services (c.152, §13)

This new bill would empower Administrative Judges to determine the rate of payment for health care services "if the insurer, employer and health care service provider cannot agree or if equity of justice requires a rate other than so provided."

Currently, the Division of Health Care Finance and Policy (DHCFP) regulates the rates of payment (fee schedule) for hospitals and health care providers rendering services covered by insurers under the Workers' Compensation Act. The fee schedule is subject to a regulatory proceeding ensuring a public process through which rate setting is established. Although rate negotiation is common, the rates that are set by the DHCFP are the only amount that an insurer is required to pay.

HOUSE BILL 1865

Filed By: Representative Martin J. Walsh

Type of Bill: Refile (H.3777)

Endorsed by Advisory Council: No

Laws Affected: Termination or Modification of Payments (c.152, §8) - Impartial Medical Exams (c.152, §11A)

Section 1 of this bill would amend an insurer's right to modify or terminate the payment of benefits. Under current law, an insurer paying benefits can only modify or discontinue payments under specific circumstances. One of these circumstances is when the insurer has possession of a medical report from either the treating or impartial medical examiner indicating that the employee is capable of returning to the job held at the time of injury or another suitable job. House Bill 1865 would eliminate the "impartial medical examiner report" from these specific circumstances.

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HOUSE BILL 1865 CONTINUED

Section 2 of this bill would amend §8(4) involving the insurer's right to request an Impartial Medical Exam (IME) when the dispute is over medical issues. Under current law, when an insurer requests an IME, the Senior Judge is responsible for appointing an impartial physician. House Bill 1865 would require the Administrative Judge, to which the case has been assigned, to appoint the impartial physician. This section of the bill would also diminish the weight given to the IME report thereby allowing the parties to submit other medical evidence at a hearing.

Section 3 of this bill would amend §11A involving the necessity to obtain an IME when a conference order is appealed. Under current law, the parties may agree upon an impartial physician, or the Senior Judge will assign one. This bill requires the Administrative Judge to appoint the impartial physician. This section of the bill would also diminish the weight given to the IME report thereby allowing the parties to submit other medical evidence at a hearing. Under current law, once a case is brought before an Administrative Judge at a hearing, 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.

HOUSE BILL 1866

Filed By: Representative Martin J. Waslh, *et al.*

Type of Bill: Similar (H.4451)

Endorsed by Advisory Council: No

Laws Affected: Safe Workplaces for Employees of the Commonwealth (c.149, §40)

This legislation would require the Division of Occupational Safety (DOS) to apply federal occupational and health standards to public sector employees (state, city/town, and county) and its independent authorities. Under this legislation, DOS would be given the authority to conduct investigations and the power to establish regulations and corrective action where it has found a violation. This proposed legislation would not apply to the fire services of the Commonwealth.

HOUSE BILL 2407

Filed By: Representative Martin J. Walsh, *et al.*

Type of Bill: NEW

Endorsed by Advisory Council: No

Laws Affected: Prohibiting Sale of Highly Flammable Floor Finishing Products (c.94)

This bill would prohibit the sale of any flammable floor finishing product with a flashpoint below 100 degrees Fahrenheit. Since 2004, highly flammable lacquer sealers (oil-based) have been responsible for the deaths of three workers killed in combustion accidents. The alternative to oil-based sealants is water-based products that dry faster than oil-based sealers, are more durable, reduce solvent exposure, allow occupants to return to the premises faster, and do not cause fires. The main reason that floor finishing workers are using such dangerous lacquer sealers is due to price (lacquer sealers are about \$9 per can, whereas, oil-based sealers are about \$40 per can). This bill is one of several bills (see S.185) developed by a multi-stakeholder task force comprised of labor, industry, community and safety representatives. The task force was created in May of 2006 to address the hazards of the wood floor sanding and finishing industry.

HOUSE BILL 3195**Filed By:** Representative John P. Fresolo**Type of Bill:** Similar (H.4563)**Endorsed by Advisory Council:** No**Laws Affected:** Public Records Exemption - Home Addresses of Injured Employees (c.4, §7)

This bill would exempt from the Public Records Law the name and home addresses of any injured employee that has been reported to any agency of the Commonwealth. In June of 2006, the Advisory Council formed a subcommittee to address the solicitation practices of a select group of law firms who were using the Massachusetts Public Records Law to obtain the names and addresses of employees who have been injured on the job ("Form 101 - First Report of Injury"). Several years ago, a public records lawsuit was filed against the DIA when the agency redacted the names and addresses on public record requests to protect the privacy of the injured worker. Presently this case is before the Massachusetts Superior Court.

HOUSE BILL 3225**Filed By:** Representative Eugene L. O'Flaherty**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Public Records Inclusion - First Report of Injury - Names & Addresses (c.4, §7)

This bill would specifically make the First Report of Injury a public record, including the names and addresses of the injured worker contained within the form. In June of 2006, the Advisory Council formed a subcommittee to address the solicitation practices of a select group of law firms who were using the Massachusetts Public Records Law to obtain the names and addresses of employees who have been injured on the job ("Form 101 - First Report of Injury"). Several years ago, a public records lawsuit was filed against the DIA when the agency redacted the names and addresses on public record requests to protect the privacy of the injured worker. Presently this case is before the Massachusetts Superior Court.

HOUSE BILL 3460**Filed By:** Representative Brian S. Dempsey / Representative Bradley H. Jones, Jr.**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Election to Receive WC Benefits or Pension (c.152, §73)

This bill would prevent any present or former MBTA employee from simultaneously collecting benefits due from a workplace injury and receiving payment from a pension (by reason of same injury). Section 73 of Chapter 152 specifically prohibits the collection of "dual benefits" for all Commonwealth employees including, the Massachusetts Turnpike Authority, the Massachusetts Port Authority, the Blue Hills Regional School system, the Greater Lawrence Sanitary District, the Minuteman Regional Vocational Technical School District, the Massachusetts Water Resources Authority or any police officer of the Massachusetts Bay Transportation Authority.

HOUSE BILL 3795**Filed By:** Representative Lewis G. Evangelidis**Type of Bill:** Refile (H.1597)**Endorsed by Advisory Council:** No**Laws Affected:** Extension of Temporary Total Benefits (c.152, §34)

This refiled bill would extend the benefits for injuries compensable under section 34 (temporary total) assuming there has been no discontinuance or modification order of an administrative judge. Currently, §34 benefits are equal to 60% of the injured worker's average weekly wage and are limited in duration to 156 weeks. House 3795 would allow an injured worker to receive additional benefits upon the exhaustion of their §34 benefits. This additional compensation would be equal to 45% of their average weekly wage "pursuant to section 35." The maximum benefits period for §35 injuries is 260 weeks, but may be extended to 520 weeks.

HOUSE BILL 3796**Filed By:** Representative Lewis G. Evangelidis**Type of Bill:** Refile (H.1598)**Endorsed by Advisory Council:** No**Laws Affected:** Workers' Compensation Dependency Benefits - Increase (c.152, §35A)

This refiled bill would amend §35A, which provides additional compensation to injured workers who have dependents. Currently, §35A provides additional compensation of \$6 per/week to injured workers who have persons dependent upon them for injuries occurring under §34, §34A, and §35. No weekly payments under this section can be greater than \$150 per week when combined with the compensation due under §34, §34A, and §35. House 3796 would provide injured workers additional compensation of \$15 per/week to injured workers who had persons dependent upon them. This bill would also cap weekly payments at \$300 when combined with the compensation due under §34, §34A, and §35.

The amount of \$6 per dependent per week has not increased since a 1959 amendment to the Act. The current cap of \$150 per week has not been increased since 1979.

HOUSE BILL 4170**Filed By:** Representative David M. Torrasi**Type of Bill:** Redraft (H.1862 - Section 2)**Endorsed by Advisory Council:** YES (2007)**Laws Affected:** Burial Expenses (§33)

This redrafted bill would require an insurer to pay for burial expenses when a worker has died, not to exceed eight thousand dollars. Currently, the statute requires the insurer to pay reasonable expenses of burial, not to exceed four thousand dollars.

SENATE BILLS:

SENATE BILL 185

Filed By: Senator Patricia D. Jehlen

Type of Bill: Refile (H.3375)

Endorsed by Advisory Council: No

Laws Affected: Regulations for the Licensing of Floor Finishers, Sanders & Installers (c.111)

This bill would require all workers who engage in floor finishing, sanding, and installing operations to be licensed by the Department of Labor & Workforce Development. Under this bill, private retailers who distribute floor finishing, sanding, and installation products would have to be certified by the Department of Public Health and follow storage protocols. Violators of either licensing or certification requirements would be punished by a fine of not less than \$500 nor more than \$1,500 for each offense. The Department of Labor would have the authority to issue a "cease work order" to any violator of either licensing or certification requirements.

SENATE BILL 1056

Filed By: Senator Robert S. Creedon, Jr. / Senator Michael W. Morrissey / Benjamin Brackett

Type of Bill: Refile (S.1089)

Endorsed by Advisory Council: No

Laws Affected: Scar-Based Disfigurement (c.152, §36(k))

This refiled bill would eliminate the requirement that scarring appear on the face, neck or hands to be compensable. However, if the scarring resulted from a surgical or medical procedure, no amount would be payable unless such disfigurement occurred on the face, neck or hands. This bill would not affect the \$15,000 maximum benefit for scarring currently in the statute.

SENATE BILL 1060

Filed By: Senator John A. Hart

Type of Bill: Refile (S.1095)

Endorsed by Advisory Council: YES (2003-2004)

Laws Affected: Scar-Based Disfigurement (c.152, §36(k))

This refiled bill would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. Compensation would be required for all disfigurement, whether or not scar-based, regardless of its location on the body. This bill would not affect the \$15,000 maximum benefit for scar-based disfigurement currently in the statute. In 1991, 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.

SENATE BILL 1061**Filed By:** Senator John A. Hart, Jr.**Type of Bill:** Refile (S.1097)**Endorsed by Advisory Council:** No**Laws Affected:** Widow's Benefits (c.152, §35C, §32, §31)

This refiled bill would significantly alter the definition of the "average weekly wage" exclusively for Section 35C cases (latency claims). Under this bill, the surviving dependent of a worker that had died from an occupational illness or disease would receive compensation based upon the earnings of the last full time employment, regardless of whether that worker was earning wages at the time of death. According to the SJC's decision in the *McDonough's Case*, the widow of an employee who died as a result of past asbestos exposure was not entitled to receive compensation under Section 35C since the deceased had voluntarily retired in 1991 and was not receiving wages on the date of his death. Section 35C clearly states that "[w]hen there is a difference of five years or more between the date of injury and the initial date [of] eligib[ility] for benefits under section thirty-one...the applicable benefits shall be those in effect on the first date of eligibility for benefits."

Last legislative session, the Advisory Council voiced opposition to this bill because workers' compensation was designed as a wage-replacement mechanism and not as a life insurance policy. Furthermore, language contained within this bill would expand benefit eligibility requirements to include workers who are not even subject to the Workers' Compensation Act. The Advisory Council has been informed that the passage of this bill could financially jeopardize the DIA's Trust Fund, which makes reimbursement payments to insurers for latency injuries.

SENATE BILL 1066**Filed By:** Senator John A. Hart, Jr.**Type of Bill:** Refile (S.1099)**Endorsed by Advisory Council:** YES**Laws Affected:** Private Right of Action to Recover WC Coverage Payments (c.152, §25C)

This refiled bill would allow "any 10 persons" to bring a civil action against an employer to recover amounts which should have been paid in securing proper workers' compensation insurance as mandated by chapter 152. Such persons seeking civil action must first petition either the Attorney General's Office or a superior court to hold a "probable cause hearing." At the hearing, it shall be *prima facie* evidence that such probable cause exists if it is shown that:

- an employee was paid any portion of wages in cash with no deductions or taxes withheld;
- no accompanying pay slip showing the wage payment and deductions as required by law;
- an individual was misclassified as an independent contractor when actually an employee;
- wages were not timely paid;
- the employer failed to withhold from the employee's wages all related state taxes; or
- employees have not been properly reported on certified payroll records as required by law.

When probable cause exists, such persons seeking civil action against a non-compliant business may seek damages of up to \$25,000 (or 25% of the premium that has been avoided - whichever is less). The remainder of damages would be deposited into the DIA's Workers' Compensation Trust Fund. Insurance carriers would be able to recover the full amount of the award in situations where they obtain court approval to replace the private citizens in a lawsuit.

SENATE BILL 1076**Filed By:** Senator Thomas M. McGee**Type of Bill:** Refile (S.1111)**Endorsed by Advisory Council:** No**Laws Affected:** Comprehensive Bill (c.152, §1, §6, §7, §8, §13A, §28, §29, §30, §31, §33, §34, §34A, §34B, §35, §35D, §35E, §36, §50)

This refiled bill seeks to amend many aspects of Chapter 152.

Section 1 of this bill would amend the definition of "Average Weekly Wage" by specifying that if an injured employee is employed by more than one *employer*, the total earnings from the several *employers* should be considered in determining average weekly wage. Currently, the law is more specific in stating that if the injured employee is employed by more than *one insured employer or self-insurer* rather than "employer" as proposed by this legislation. Section 1 of this bill also states that weeks in which an employee received less than *four hours* in wages is considered lost time for determining average weekly wage. Currently, the law considers lost time as weeks when an employee receives *less than five dollars in wages*.

Section 2 of this bill would amend §1(7A) regarding the definition of "Personal Injury" in dealing with mental or emotional disabilities. Currently, "Personal Injuries" include mental or emotional disabilities only where the *predominant contributing cause* of such disability is an event or series of events occurring within any employment. This bill would replace "the predominant contributing cause" with "a significant contributing cause."

Section 3 of this bill would substantially increase the fines for employers who violate the provisions of §6 with regard to the reporting of the notice of injury to the DIA, the employee, or insurer. Currently, if an employer violates this provision three or more times they are required to pay a fine of \$100 for each violation. This bill would eliminate the necessity that a violation occurs three or more times before a penalty is issued. Fines would be issued as follows: \$100 for first violation; Subsequent violations within a year are increased \$100 for each subsequent violation; If employer fails to make notice to the DIA, employee, and insurer, it must pay additional penalty to the DIA of \$1,000 into the Special Fund and \$1,000 to the employee; If employer fails to make notice to the DIA, employee, and insurer, within 90 days, an additional penalty of \$10,000 will be assessed.

Section 4 would amend §7(2) by increasing the penalty placed on insurers who fail to begin payment of weekly benefits or notify parties of refusal to pay benefits within 14 days of receipt of the employer's First Report of Injury. This bill would require the insurer to pay the employee an amount of \$200 or their compensation rate (whichever is higher). If the insurer still fails to begin payments or make such notification within 60 days, they must pay a penalty of \$1,000 to both the Special Fund and to the employee.

Section 5 and 6 of this bill would amend §8 by decreasing the "pay without prejudice" period to 90 days. Currently, when an insurer pays a claim, it may do so without accepting liability for period of 180 days. This pay without prejudice period 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. 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.

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SENATE BILL 1076 CONTINUED

Section 7 of this bill would allow the pay without prejudice period to be extended upon agreement by the parties in 90-day increments not to exceed one year. Currently, pay without prejudice extensions are not required to be set at 90-day increments.

Section 8 of this bill would amend §13A(5). This section assesses an insurer a penalty of \$3,500 (plus necessary expenses) whenever an insurer files a complaint or contests a claim for benefits and then later accepts the claim or withdraws the complaint within 5 days. This section of the proposed legislation would increase the number to 10 days.

Section 9 of this bill would amend §28, paragraph 1, which addresses injuries caused by serious and willful misconduct of the employer. This section of the proposed legislation would further define "willful misconduct" as a "knowing and willful violation of the Federal and/or State O.S.H.A. standards." Currently, if an employee is injured by serious and willful misconduct by the employer, they will receive double compensation for their injuries.

Section 10 of this bill would amend §29 dealing with the required period of incapacitation. Current law states that no compensation pursuant to §34 and §35 shall be paid for any injury which does not incapacitate the employee from earning full wages for a period of 5 or more calendar days. If incapacity extends for a period of 21 days or more, compensation is paid from the date of the onset of the incapacity. This bill decreases the 21-day period to *5 days or more*.

Section 11 of this bill would amend §30, which requires the insurer to furnish medical and hospital services, and medicines if needed. Except for the first appointment, the injured worker may select a treating physician and may switch to another such professional *once*. This bill would allow the injured worker the option of switching physicians *twice*.

Section 12 would amend §31 covering death benefits for dependants. Current law provides the widow or widower, that remains unmarried, 2/3 of the average weekly wage (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) of the deceased employee. This bill would increase the minimum amount a widower is entitled, to \$200 per week and \$12 more a week for each child of the deceased employee.

Section 13 would amend §33 regarding burial expenses for deceased employees. Currently, the insurer is required to pay reasonable expenses of burial, not exceeding \$4,000. This bill would increase the amount the insurer is required to pay for burial expenses to not exceed \$6,000.

Section 14 would increase the weekly compensation for total incapacity (§34) benefits. Compensation would increase from the current 60% to 2/3 of their average weekly wage. The duration would increase from the current 156 weeks to 208 weeks.

Section 15 would amend §34A pertaining to permanent and total incapacity. When the incapacity for work resulting from the injury is both permanent and total, an insurer is required to pay an injured employee a weekly compensation equal to 2/3 of their average weekly wage before injury, but not more than the maximum weekly compensation rate nor less than the minimum

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SENATE BILL 1076 CONTINUED

compensation rate. Current law requires that this payment be made "following payment of compensation in §34 and §35." This section of S.1076 would delete this requirement.

Sections 16 and 17 would amend §34B pertaining to supplemental benefits for §31 or §34A. This bill would expand supplemental benefits to include both §34 and §35.

Section 18 would amend §35 pertaining to partial incapacity benefits, by raising the wage benefits for injured workers to $\frac{2}{3}$ AWW of the difference between their AWW before the injury and the weekly wage they are capable of earning after the injury, *but not more than the maximum weekly compensation rate*. Currently, under §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.

Section 19 would amend the durations allowed for §35 benefits. Currently, the maximum benefit period for partial disability is 260 weeks, but may be extended to 520 weeks. This bill increases the maximum benefit period to 442 weeks and could be extended at "the discretion of an AJ."

Section 20 would amend §35A, which provides additional compensation to injured workers who have dependents. Currently, §35A provides additional compensation of \$6 per/week to injured workers who have persons dependent upon them for injuries occurring under §34, §34A, and §35.

No weekly payments under this section can be greater than \$150 per week when combined with the compensation due under §34, §34A, and §35. This section of Senate 1076 would provide injured workers additional compensation of \$12 per/week to injured workers who had persons dependent upon them. This bill would also cap weekly payments at \$250 when combined with the compensation due under §34, §34A, and §35.

Section 21 of this bill would amend §35D(5) regarding the computation of a weekly wage. This section would disallow an employee's compensation rate to be decreased in any proceeding on the fact that an employee had enrolled or is participating in a vocational rehabilitation program, whether or not it is paid for by the insurer or the department.

Section 22 of this bill would amend §35E. It would require that any person receiving old age benefits pursuant to federal social security law or receiving pension benefits paid by an employer should not be entitled to benefits under §35. This is unless the employee can establish that they would have remained active in the labor market.

Section 23 of this bill would amend §36(k). It would require that for bodily disfigurement, compensation will not exceed \$20,000 and will be payable in addition to other sums outlined in this legislation.

Section 24 of this bill would amend §50. Payments required by order that are not made within 60 days of being claimed by employee, dependent or other party would accrue interest at a rate of 12% per year. If sums include weekly payments, then interest will accrue on each unpaid weekly payment.

SENATE BILL 1079**Filed By:** Senator Michael W. Morrissey / William Salisbury**Type of Bill:** Refile (S.2168)**Endorsed by Advisory Council:** No**Laws Affected:** Benefits for Members of the Armed Services or National Guard (c.1, §7A)

This refiled bill would provide workers' compensation benefits to employees who previously sustained an emotional or physical injury in the U.S. Armed Forces or National Guard and subsequently receive a workplace injury which combines with, or is aggravated or prolonged by their injury in the military, "regardless of the extent to which the services related disability contributes." Current law requires that when an on-the-job injury or disease combines with a pre-existing condition (not compensable under Chapter 152), the resulting condition is only compensable to the extent such on-the-job injury or disease remains a major but not necessarily predominant cause of disability or need for treatment.

SENATE BILL 1080**Filed By:** Senator Michael W. Morrissey**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Definition of "Proceeding" for Purposes of Chapter 152 (c.152, §1)

This bill would define the word "proceeding" as used in Chapter 152. Under the proposed definition, a proceeding would include conciliations, conferences, hearings and presentations to appellate courts. The definition would also include any actions by a party (including attorneys and medical experts acting on behalf of a party), at any time during and after the filing of a claim.

SENATE BILL 1081**Filed By:** Senator Michael W. Morrissey**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Definition of "Proceeding" for the Purpose of Fraudulent Acts (c.152, §14(2))

This new bill would define the word "proceeding" as used in Chapter 152, section 14(2). Under the proposed definition, a proceeding would include all actions by a party (including attorneys and medical experts acting on behalf of a party), at any time during and after the filing of a claim. Section 14(2) specifies the costs and penalties for illegal or fraudulent conduct at any 'proceeding.' Minimum penalties under this section include an amount not less than the average weekly wage multiplied by six ($\$1,000.43 \times 6 = \$6,002.58$).

SENATE BILL 1082**Filed By:** Senator Michael W. Morrissey**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Authority for AJs to Determine Fraudulent Acts by Parties (c.152, §14)

This new bill would give an administrative judge the authority to determine whether a party defrauded or attempted to defraud another party. According to this legislation, the defrauding party would be assessed the whole costs of the proceedings, including attorney fees and a penalty ($\text{SAWW} \times 6$) to the aggrieved party. Any employee, who received payments for compensation from a fraudulent claim, would be required to reimburse the insurer or self-insurer.

SENATE BILL 1088**Filed By:** Senator Marc R. Pacheco**Type of Bill:** Similar (H.4451)**Endorsed by Advisory Council:** No**Laws Affected:** Safe Workplaces for Employees of the Commonwealth (c.149, §40)

This legislation would require the Division of Occupational Safety (DOS) to apply federal occupational and health standards to public sector employees (state, city/town, and county) and its independent authorities. Under this legislation, DOS would be given the authority to conduct investigations and the power to establish regulations and corrective action where it has found a violation. This proposed legislation would not apply to the fire services of the Commonwealth.

SENATE BILL 1097**Filed By:** Senator Bruce E. Tarr**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Actions Not Based on Reasonable Grounds (c.152, §14)

This new bill attempts to prevent insurers from repeatedly contesting total and permanent disability claims after a decision has already been made in favor of an employee. Such actions would be based on "unreasonable grounds" when an insurer contests such claims more than once in a five-year period:

- without evidence of the employee's improvement;
- without evidence that the employee has been working or behaving in a manner inconsistent with a total and permanent disability;
- without evidence of a significant advancement in medical science that has substantial likelihood of affecting the total and permanent disability of the employee.

SENATE BILL 1099**Filed By:** Senator James E. Timilty / Representative Kevin G. Honan**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Withholding Taxes on Wages (c.62B), Employment & Training (c.151A), Workers' Compensation Penalties - Uninsured Employers (c.152 §25C)

This new legislation would institute penalties on employers who fail to withhold taxes on wages or pay into the Unemployment Compensation Fund. This bill also directly affects the Department of Industrial Accidents in regards to the Stop Work Order penalty provisions used against uninsured employers. The following is a brief summary of each section that directly affects the Department of Industrial Accidents.

Section 3 of this bill would replace §25C(1) with new language that would effect how stop work orders are calculated. Under this proposed language a stop work order would be calculated using the "first date of the employer's non-compliance" as the first day the \$100/day penalty accrues. The present law starts the stop work order fine on the "date of service of the stop work order." This section would substantially increase the penalties issued to uninsured employers in virtually every case.

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SENATE BILL 1099 CONTINUED

Section 4 of this bill would amend §25C(2), by creating a definitive time-frame on the appeal process for employers who appeal the imposition of a stop work order or civil penalty. The present statute only requires the DIA to grant a hearing within 14 days of receiving an appeal. Once an appeal is granted, there is presently no timeframe for a hearing to be scheduled or for a decision to be issued. This amended section would require the DIA to schedule a hearing on any appeal within 7 days of the filing of the appeal. This section would also require the DIA to issue a decision on any appeal within seven days of the date of the hearing. This section contains contradicting wording as written and may need to be rewritten.

Section 5 of this bill would amend §25C(4), in line 68, by clarifying the rate of payment an employer is required to pay their employees during the first 10 days that a stop work order has been in effect. This amended language would clarify that employees receive their "regular rate of pay, but in no event less than the minimum wage as required by state or federal wage and hour laws, whichever is higher."

Section 6 of this bill would amend §25C(5), in line 74, by requiring that the DIA deposit all monies collected from criminal convictions against uninsured employers into the Commonwealth's General Fund. Presently these penalties are deposited into the DIA's Trust Fund (75%) and the DIA's Special Fund (25%). The criminal penalties collected are used to offset employer assessments in subsequent years.

Section 7 of this bill would amend §25C(5), by increasing the maximum criminal penalties against uninsured employers from \$1,500 to \$305,000. There seems to be an error in the way this section is worded. To remain consistent with previous sections of this bill, it is likely the authors intended the maximum criminal penalty to be \$3,500.

Section 8 of this bill would replace §25C(6), placing the burden on uninsured employers (who have received a stop work order) to notify state or local licensing agencies of their stop work order when seeking such licenses or permits. Failure to provide such notification would void any issued license or permit.

Section 9 of this bill would replace §25C(7), placing the burden on uninsured employers (who have received a stop work order) to notify the Commonwealth or its subdivisions of their stop work order when seeking state contracts. Failure to provide such notification would void any state contract.

Section 10 of this bill would amend §25C(8), by requiring outstanding liens or judgments owed to the DIA to be considered a tax due to the Commonwealth, which may be collected through the procedures provided for by chapter 62C ("Administrative Provisions Relative to State Taxation").

Section 11 of this bill would amend §25C(8)(b), by eliminating the maximum award of \$15,000 due to any person who wins a civil action against a competing employer who has won a competitive bid due to cost advantages achieved by deliberately misclassifying employees. This section would make the maximum award 10% of the total amount bid on the contract.

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SENATE BILL 1099 CONTINUED

Section 12 of this bill would amend §25C(8)(e), by only allowing the prevailing plaintiff to collect monies for reasonable attorney fees and costs in actions brought by losing bidders. The present statute allows either party that prevails to collect monies for reasonable attorney fees.

Section 13 of this bill would add five additional subsections to §25C(8). The purpose of the first subsection (11) is unclear due to ambiguous wording. The second subsection (12) allows the DIA to issue a stop work order to an insured employer who hires additional workers but fails to properly report their wages in compliance with Chapter 62E. The third subsection (13) gives the Secretary of Labor and the DIA Commissioner powers to subpoena any employer's payroll and business records for the purpose of determining compliance to Chapter 152. Said employers would have 7 days to provide these records. The fourth subsection (14) requires inter-agency cooperation between the Department of Industrial Accidents and the Department of Revenue in providing immediate access to employer reports and notices submitted in accordance with Chapter 62E(2) with respect to hired employees or entering into agreements with contractors for the performance of services. The fifth subsection (15) requires the DIA to report any employer who fails to comply with Chapter 152 to the Department of Revenue and the Attorney General's Office for additional enforcement action.

SENATE BILL 1100

Filed By: Sen. Richard Tisei / Sen. Bruce Tarr / Sen. Michael Knapik / Sen. Robert Hedlund

Type of Bill: Refile (S.1107)

Endorsed by Advisory Council: No

Laws Affected: Employer Fines Reduction (c.152, §25C), Preferential Hiring (§75A), Employee Definition - Elective Coverage of Corporate Officers (§1(4))

Section 1 of this refiled bill would amend §25C(2) regarding fines for failing to secure workers' compensation insurance. This bill would add a provision 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) by making workers' compensation coverage elective for all corporate officers, regardless of their duties. Current law allows elective coverage to corporate officers who "own at least 25 per cent of the issued and outstanding stock of the corporation."

SENATE BILL 1103**Filed By:** Senator Steven A. Tolman**Type of Bill:** Refile (S.1123)**Endorsed by Advisory Council:** No**Laws Affected:** Benefits for State Social Workers Resulting from Acts of Violence (c.30, §58)

This refiled bill would compensate state employees who receive bodily injuries resulting from acts of violence by children in their caseload or parents of said children. If eligible for workers' compensation benefits, these injured state employees would receive the difference between the weekly cash benefits entitled under Chapter 152 and their regular salary. The affected employee's absence would not be charged against their available sick leave credits. Current law allows this benefit to state employees who receive bodily injuries resulting from acts of violence from patients or prisoners only.

SENATE BILL 1111**Filed By:** Senator Susan C. Tucker**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Increasing Criminal Penalties for Failing to Provide WC Insurance (c.152, §25C)

This new bill would increase the severity of criminal penalties for employers who fail to provide workers' compensation coverage for their employees. Under this bill, employers convicted of criminal offenses, would be subject to minimum mandatory fines, imprisonment, or both. The maximum imprisonment sentence would be 5 years in state prison with a minimum imprisonment in the house of correction for not less than 6 months nor more than 2.5 years. The maximum criminal fine would increase to \$10,000 with a minimum fine of \$1,000. Current law limits criminal penalties at no more than \$1,500 or by imprisonment for not more than 1 year, or both.

SENATE BILL 1112**Filed By:** Senator Susan C. Tucker**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Falsifying or Forging WC Certificates & Declarations (c.267, §1)

Chapter 267, section 1, sets the punishment for any person who intends to injure or defraud by falsifying or forging specific public and legal documents. Senate Bill 1112 would add two new documents to this list: "certificate of insurance" and "insurance declarations page." The current penalty for falsifying or forging documents is imprisonment in state prison for not more than ten years or jail for not more than two years.

SENATE BILL 2168**Filed By:** Senator Michael W. Morrissey**Type of Bill:** NEW**Endorsed by Advisory Council:** No**Laws Affected:** Benefits for Members of the Armed Services or National Guard (c.1, §7A)

This new legislation would provide workers' compensation benefits to employees who previously sustained an emotional or physical injury in the U.S. Armed Forces or National Guard and subsequently receive a workplace injury which combines with, or is aggravated or prolonged by their injury in the military, "regardless of the extent to which the services related disability contributes." Current law requires that when an on-the-job injury or disease combines with a pre-existing condition (not compensable under Chapter 152), the resulting condition is only compensable to the extent such on-the-job injury or disease remains a major but not necessarily predominant cause of disability or need for treatment.

SENATE BILL 2289**Filed By:** Senator Thomas M. McGee**Type of Bill:** Redraft (Senate 1056, Senate 1060, and House 1777)**Endorsed by Advisory Council:** YES (2007)**Laws Affected:** Benefits for Specific Injuries (c.152, §36(k)) - Scar-Based Disfigurement

This refiled bill would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This bill 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. This redrafted bill would not affect the \$15,000 maximum benefit for scar-based disfigurement currently in the statute.

SENATE BILL 2587**Filed By:** Senator Susan C. Tucker**Type of Bill:** Redraft of Senate 1111**Endorsed by Advisory Council:** No**Laws Affected:** Increasing Criminal Penalties for Failing to Provide WC Insurance (c.152, §25C)

This redraft of Senate Bill 1111 would increase the severity of criminal penalties for employers who fail to provide workers' compensation coverage for their employees. Under this bill, employers convicted of criminal offenses, would be subject to minimum mandatory fines, imprisonment, or both. The maximum imprisonment sentence would be 1 year. The maximum criminal fine would increase to \$10,000 with a minimum fine of \$1,000. Repeat criminal offenders would also be subject to imprisonment and an additional fine of not less than \$5,000 nor more than \$50,000. Current law limits criminal penalties at no more than \$1,500 or by imprisonment for not more than 1 year, or both.