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**Filing of the Workers' Compensation Rating and Inspection Bureau**  
**For a General Revision of Workers' Compensation Rates**  
**Docket No. R2023-03**

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**Decision and Order**

**I. Introduction and Procedural History**

On December 22, 2023, the Workers' Compensation Rating and Inspection Bureau of Massachusetts ("WCRIBMA"), on behalf of its members, submitted a filing for a workers' compensation general rate revision to be effective July 1, 2024 ("the WCRIBMA Filing" or "Filing"). The Filing sought an 8.30 % statewide average decrease to be effective July 1, 2024. The Commissioner of Insurance ("Commissioner") designated Jean F. Farrington, Esq. and Matthew A. Taylor, Esq. as presiding officers for this matter. A hearing notice, issued on January 11, 2024, scheduled a public comment hearing for February 7, 2024. On January 17, 2024, the Attorney General's office ("AGO") filed a notice of intent to appear and participate. On January 26, 2024, an order was issued scheduling a prehearing conference for February 7, to follow the public comment hearing. On or about February 7, the WCRIB replaced pages 15-307 of Section IX of the filing, Classification Pricing.

Representatives of the WCRIBMA and the State Rating Bureau in the Division of

Insurance (“SRB”) spoke at the public comment hearing. In addition, Jeffrey Kadison, an actuary, made a presentation on behalf of NAHRO, a Massachusetts Self-Insurance Group.<sup>1</sup> At the following conference, the Parties requested that scheduling evidentiary hearings be delayed until they had an opportunity to discuss a possible stipulation. Accordingly, we held status conferences on February 16 and 28, 2024. The Parties initially indicated that they were discussing a stipulation but subsequently reported that they were unable to reach an agreement. Cross-examination of the WCRIB witnesses took place on March 19, 20 and 21. A schedule was then set for advisory filings and hearings. The AGO and the SRB submitted their advisory filings on April 3, 2024. The AG’s witness was cross-examined on April 25 and the SRB’s witnesses on April 29 and May 1. The WCRIB submitted a rebuttal filing on May 10, 2024, and its witnesses were cross-examined on May 16. The SRB and AGO made surrebuttals on May 23; their witnesses were cross examined on May 29. Briefs were submitted on June 5.

## **II. Statutory Framework**

Massachusetts General Laws, Chapter 152, §53A (“§53A”) sets out the statutory requirements for obtaining approval of rates for Massachusetts workers’ compensation insurance. Subsection (1) requires any insurance company writing workers’ compensation insurance in the Commonwealth to file its risk classifications and premiums with the Commissioner, either directly or through a rating organization authorized to act on its behalf. The Commissioner thereafter conducts a hearing to determine whether the classifications and rates are not excessive, inadequate or unfairly discriminatory for the risks to which they effectively apply and fall within a range of reasonableness.

In addition to these general requirements, §53A (12) specifically states that the Commissioner shall not approve classifications or rates that provide for any of the following: 1) dividends, unabsorbed premium deposits, savings or other payments allowed or returned by the insurer to policyholders, members, subscribers or stockholders; 2) expenses that exceed the filing insurer’s expense needs; and 3) commission allowances that are not demonstrated to be reasonable and to reflect the actual cost to the agent or broker of services they provide. The Commissioner, pursuant to §53A (13), also must make a finding, on the basis of information in the rate filing, that insurers employ acceptable cost control programs and techniques. If the

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<sup>1</sup> A representative of NAHRO also submitted written commentary.

Commissioner finds that the rates are excessive, and that the excess is the result of failure to employ adequate cost control programs, he may disapprove or limit any proposed increase in rates. Furthermore, if the Commissioner finds, after hearing, that any premiums currently in effect are excessive, he is to order a specific rate decrease, whether or not the insurer or rating organization has requested one.

Neither the statute nor the applicable procedural regulation, 211 CMR 110.00 *et seq.*, prescribes a particular methodology for developing rates or specifies the data that the insurer or rating bureau must include in its filing. However, §53A (3) requires that the filer provide the information that supports the filing, which may include information on the experience or judgment of the filer, the experience of other insurers, and any other factors which the insurer deems relevant. The burden is on the filer to satisfy the decisionmaker that its proposed rates meet the statutory standard. *Workers' Compensation Rating and Inspection Bureau v. Commissioner of Insurance*, 391 Mass. 238, 245 (1984), citing *Liberty Mutual Insurance Co. v. Commissioner of Insurance*, 366 Mass. 38, 42 (1974). *See also Blue Cross and Blue Shield of Massachusetts v. Commissioner of Insurance*, 420 Mass. 707, 709-710 (1995), in which the Court concluded that the Commissioner may disapprove rates if the filer fails to submit sufficient evidence on which he may reasonably conclude that the proposed rates will not be inadequate, excessive or unfairly discriminatory. As the proponent of a new mechanism or methodology, the WCRIB has the burden of proving its reasonableness. *See In re Application of the Workers' Compensation Rating and Inspection Bureau of Massachusetts for Approval of a General Rate Revision to be Effective on or after August 1, 1999*, Docket No. R99-34, at 39-40.

The Supreme Judicial Court has articulated the standard of review to be applied by the Commissioner when reviewing filings by the WCRIB. That standard was summarized in the *Decision on August 1, 1999 Workers' Compensation Insurance Rates*, Division of Insurance Docket No. R99-34, at 6, as follows:

It is well-settled that the Commissioner or her designee, the Presiding Officer, has the authority to analyze each element of the rate filing and each method set forth in the rate filing *and may reject the proposed rates if any element or method fails to meet the statutory standard. See Workers' Compensation Rating & Inspection Bureau v. Commissioner of Insurance*, 391 Mass. at 264. Accordingly, the

Commissioner or Presiding Officer may reject certain "elements of a filing" if they may lead to "rates falling within a range of excess, no matter how small." *Id.* (emphasis added).

The statute does not require the commissioner to approve elements of filings which would lead to rates falling within a range of excess, no matter how small. The Commissioner's decision disapproving rates needs only to be reasonably supported by the evidence that the proposed filing will fail to produce rates which are not excessive, or will result in inadequate or unfairly discriminatory rates. *Id.* See also *Blue Cross of Massachusetts v. Commissioner of Insurance*, 397 Mass. 117, 119 (1986).

The Supreme Judicial Court in *Workers' Compensation Rating & Inspection Bureau v. Commissioner of Ins.*, 391 Mass. 238, 245 (1984), also considered the scope of the Commissioner's review of a filing for workers' compensation rates:

We have noted, however, that the scope of the commissioner's authority under G. L. c. 152, Section 52, differs from that under some other statutes. See, e.g., G. L. c. 175, Section 113B. The commissioner "may disapprove rates or withdraw his approval only if rates are inadequate, excessive or unfairly discriminatory. He does not have the power to fix rates; 'he may not require that they be at the figures he finds reasonable.'" *Liberty Mut. Ins. Co. v. Commissioner of Ins.*, *supra* at [366 Mass. 35,] 42 [(1974)], quoting *Massachusetts Medical Serv. v. Commissioner of Ins.*, 344 Mass. 335, 339 (1962). He must determine whether the rates are inadequate, excessive or unfairly discriminatory, based upon their falling within a "range of reasonableness." Nevertheless, "[t]he burden of furnishing evidence to enable the Commissioner to establish a range of reasonableness is on the insurers." *Id.* If the insurers fail to submit evidence sufficient to allow the commissioner reasonably to conclude, based on the evidence, that proposed rates will not be "inadequate, excessive or unfairly discriminatory" he may disapprove them.

The *Opinion, Findings and Decision on Workers' Compensation Rates* rendered in October 1982 discussed, at page 2, the appropriate role of alternative proposals advanced by other parties in hearings on WCRIB rates (emphasis added):

The statutory standards of review, contained in M. G. L. chapter 152, section 52, provide that Workers' Compensation Insurance rates may not be made effective until approved by the Commissioner as not excessive, inadequate or unfairly discriminatory for the risks to which they apply.

A rating organization making a filing must provide sufficient information to enable the Commissioner to make such a decision. The Commissioner serves as a rate reviewer, not as a rate maker. The Commissioner reviews the filing submitted. *He (or she) does not accept or reject other proposals, but rather uses them as an aid in judging the filing.*

The Supreme Judicial Court in *Workers' Compensation Rating & Inspection Bureau v. Commissioner of Insurance*, 391 Mass. 238, 245, n. 5 (1984), endorsed this language as being consistent with the proper principles to be used in WCRIB rate hearings.

The WCRIB, in its initial filing, sought an overall rate decrease of 8.3%, a recommendation that in February was later, as a result of correcting an arithmetical error, reduced to a recommended decrease of 7.6 %. The AGO recommended an overall decrease of 17.5% with an 11.1% decrease to each F-Class.<sup>2</sup> The SRB opposes the WCRIB's proposed rates but makes no alternative overall recommendation.

Our task in this proceeding is to determine whether the WCRIB has submitted sufficient evidence from which we may reasonably conclude that the proposed rates will not be inadequate, excessive or unfairly discriminatory. Unlike the last contested proceeding on workers' compensation insurance rates, in 2012, the parties have not stipulated this year to any aspects of the 2023 Filing. We conclude, after reviewing the evidence on specifically contested issues, that the evidence does not support approval of the rate decrease requested in the Filing. Although our Decision does not address every aspect of the Filing, we remind the parties that the omission of

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<sup>2</sup> AGO Brief at p1

any discussion on a particular element of the ratemaking process does not constitute approval of any party's position or permit an inference that the element is approved.

### **III. Contested Issues**

The advisory filings submitted by the SRB and the AGO, challenged eight aspects of the 2023 filing. Not all received equal attention. This decision concentrates on those that are vigorously contested: A) loss development issues; B) underwriting profits; C) calculating certain business classifications; D) the omission of a rate recommendation for the F classes; and E) data selection.

#### **A. Loss Development Issues**

The parties do not dispute that beginning in March 2020, the COVID-19 epidemic affected virtually every aspect of life in Massachusetts, including the management of business operations, or that the public health conditions that generated decisions made in response to the epidemic have in large measure abated. The Filing states that the WCRIB has therefore returned to its standard pre-pandemic practice of deriving its overall rate indication from data on Policy Years 2021 and 2022. It argues that there is now sufficient data on those years to make meaningful long-term predictions despite "abnormalities" related to the pandemic, further commenting that it adjusted loss data to reflect conditions that will be in effect after July 2024.<sup>3</sup> There is no consensus among the parties, however, on the long-term future effect of changes to the workplace that occurred during 2020 and 2021. In particular, the AGO and the SRB dispute the WCRIB's methodology that incorporates 2020 data into most of its rate calculations but excludes it from its calculation of loss development factors ("LDFs) for indemnity claims.

Loss development refers to the process for estimating the ultimate value of workers' compensation claims once they are finally paid or settled. Those values change over time as insurers make payments and adjust reserves, the ultimate value of losses therefore cannot be determined solely from early reports. Some benefits are paid out over long time periods; in such cases losses may not reach their ultimate value for many years. Underlying the methodology for calculating LDFs is the assumption that losses develop in a consistent pattern over time and that historical experience has predictive value for future development. LDFs are calculated separately for indemnity (lost time) claims and medical claims; for each of those categories one LDF is

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<sup>3</sup> Hearing Notice, Exhibit 1, Section 1, at 2-3.

estimated for paid losses and one for losses plus case reserves (paid plus case.) The data sources are loss reports that insurers submit at periodic intervals for claims made in a Policy Year ("PY") and track claim costs for periods up to 72 months. PY payments gather information about claims paid on policies that are in effect during a calendar year but may have been written in a prior year. From this data, the WCRIB annually calculates link ratios that become the basis for estimating future development of losses incurred in a particular PY.

The WCRIB also calculates a second set of loss development factors from paid plus case data that incorporates insurer reserves that are set aside to pay expected future claim costs. That calculation produces different age-to-age links that are expected to decline as claims are ultimately resolved and insurers no longer hold reserves. Ultimate losses are derived by summing those two values.

To estimate proposed LDFs, the WCRIB averages historical link ratios. In this Filing, for paid losses it averages the two link ratios developed from calendar years 2021 and 2022 data and applies them to PY 2020 and 2021 paid losses; for paid plus case it averages five link ratios for 2018-2022. One focus of the parties' dispute on the WCRIB's proposed loss development factors is its choice to average two 2021 and 2022 link ratios for paid loss development and average five years of link ratios, 2018 - 2022, for paid plus case loss development data. While the two-year model has been used in the past, at issue this year is the WCRIB's decision to eliminate a 2020 link ratio data from the sequence of historical information used to estimate for paid indemnity losses.<sup>4, 5</sup>

The WCRIB asserts that a goal of using historical data as the basis for ultimate loss estimates is to balance stability and responsiveness, to help avoid large fluctuations that do not fairly represent future expected losses, further noting that as more years are considered, results are more stable. At the same time, it argues that the data used should represent current and ongoing conditions; to that end it contends that it is appropriate to use only the most recent reliable data available and that 2021 and 2022 PY data fairly represent post-pandemic circumstances, including employment levels, indemnity claims, utilization of medical services

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<sup>4</sup> The WCRIB characterized 2020 data, in its filing for 2023 rates, as unreliable for ratemaking, and relied on PY 2018 and 2019 data.

<sup>5</sup> The dispute focusses only on the WCRIB's indemnity paid losses. Neither the SRB nor the AGO contest the proposed LDFs for indemnity plus case or medical losses.

and wage growth.<sup>6</sup> It asserts that it has in the past used a two year average of indicated age-to age link ratios as the basis for paid loss development factors because of stability in the Massachusetts benefit delivery system and claim adjudication system.

For paid plus case loss development, however, the WCRIB averages ratios for the latest five years, 2018 through 2022, asserting that the difference arises from the premise that paid plus case development, because of the presence or absence of large losses in a single year, is more volatile and that averaging the past five years of data mitigates that volatility. The AGO and the SRB agree that a five-year average of historical data that includes 2020 is appropriate for developing a LDF for paid plus case indemnity claims. The SRB and the AGO dispute the WCRIB's assertion that its alleged difference in volatility justifies excluding 2020 data from its projection of LDFs for paid losses but including it in calculating paid plus case LDFs.

The data underlying the Filing is information regularly provided to the WCRIB by its members that is, for ratemaking purposes collected into year-by-year summaries of losses and claim payments. Because insurer experience varies from year to year, it is predictable that reported data will vary. The term volatility, as used by any party to this proceeding, is not defined. The word volatile, as is defined in the New Shorter OED, carries multiple meanings that depend on the circumstances and context in which it is applied. Some meanings characterize physical changes to matter, capacity to move, or unpredictable changes of mood. In an economic market, volatile may describe sharp changes in price or value, or conditions that are transient, readily vanishing or disappearing, or difficult to fix permanently. It is reasonable to expect variability in data, but we are not persuaded that variability can reasonably be equated with volatility. Data on loss development for both indemnity and indemnity plus cases over the years 2008 through 2022 that indicates higher variances in the former.<sup>7</sup> Further, the range of calculated deviations, calculated for 15-, 10-, and 5-year periods, is significantly narrower for paid plus loss than for paid case. We conclude that patterns of year-to-year variability do not support a conclusion that data on indemnity plus case data is more "volatile."

The WCRIB relies on two years of LDF link factors to calculate its proposed indemnity paid LDFs. As in the 2023 Filing it does not rely on 2020 data but points out in its brief that now

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<sup>6</sup> Filing 2024 Rev Exh., Exhibit 2A, at 3.

<sup>7</sup> AGO Advisory Filing, Exhibit 21, at 8.



the 2020 data has had a second year to develop. As noted in the AGO's brief, the 2021 and 2022 link values are the highest of any within the past five years and the highest and fifth highest shown over the past twenty years. Furthermore, the 2022 value is 26% higher than the 2020 value, the single largest increase in 20 years.<sup>8</sup> LDFs dropped for each year between 2015 and 2020 and rose to the highest levels in two decades in 2021 and 2022.

The WCRIB offers no solid ground for the absence of a loss development factor based on 2020 data, other than implying that even after a year of additional development it is insufficiently reliable for ratemaking. It has identified no errors in the underlying data that might support such a conclusion. No party contests that the data the WCRIB receives from its members will always differ from year to year. Stability, as interpreted by the WCRIB, is based on the premise that losses develop consistently over time. Consistently, however, is not a defined term. Application of the same analytical tools to consistently assembled data sets will generate different values. We find it inappropriate to omit 2020 data from loss development calculation on the ground that its inclusion will disrupt what the WCRIB considers a stable sequence.

Although stability may be a goal of predictive ratemaking, we find it unreasonable for the WCRIB to omit the full historical record in calculating indemnity loss development factors. Including a factor for 2020 over 2019 data will complete a sequence that includes 2018 and 2019, two pre-COVID years, 2020, the Peak-Covid year, and 2021 and 2022, two years in which the workplace rebounded. We find that, because the WCRIB omits a 2020 factor from this sequence, it unreliably measures the history of loss development between the last years of the second decade of the century and the first years of the third decade.<sup>9</sup> We conclude that averaging five loss development ratios spanning 2018-2022 is an appropriate and reasonable approach to calculating LDFs in this Filing.

The WCRIB argues that averaging link factors for two years of paid indemnity losses from the COVID-19 recovery period is a reasonable approach to predicting insurer rate needs beginning in July 2024. WCRIB Financial Aggregate Data produced significant percentage loss development increases in 2021 and 2022.<sup>10</sup> The WCRIB offers various reasons to support its

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<sup>8</sup> Id. at 14.

<sup>9</sup> We observe, as well, that the WCRIB classification of policy years as pre- or post-covid varies. For example, its rebuttal filing considers PYs years 2016-2018 as pre-pandemic and 2019-2021 as post-pandemic, but still omits 2020 from its LDF calculations. The WCRIB in its brief, at page 12, also uses a third term, Peak Covid.

<sup>10</sup> AGO Advisory Filing, Ex. 21, at 14. For 2021 the percentage increase shown is 15.1 % and for 2022 9.9%.

position that those recent increases will continue and therefore support two-year averaging of 2021-2022 data to estimate its proposed indemnity paid LDFs.

The Filing does not identify any overall effect of “unusually high” inflation in 2021 and 2022 on the WCRIB’s proposed loss development factors or any indication of how inflation at comparably high rates has been a factor in past rate recommendations. The SRB points out, in its rebuttal filing, that inflation has not continued at the 2021-2022 levels, noting that in 2023 the average annual change in the Consumer Price Index for urban consumers in the Northeast region was 3.5 % and in 2024 has ranged monthly from 2.4% to 3.6%.<sup>11</sup> The WCRIB asserts that its LDFs do not reflect post 2022 inflation, but only reflect a potential effect of 2021 and 2022 inflation on subsequent indemnity claim settlements.<sup>12</sup> Its witness, Ms. Bergh, explained that such settlements may increase in the future to reflect wage increases, but offered no analysis of historical experience to quantify an overall correlation with inflation or to support a proposed factor based solely on inflation. We conclude that “unusually high” inflation is not, in itself, a direct factor in ratemaking, but may affect particular aspects of the elements underlying the process. In any event, as a variable, the scope of its effects requires careful evaluation. The WCRIB contends that stability in the Massachusetts benefit delivery and claim adjudication systems support continued use of two-year averaging of indicated age-to age link ratios as the basis for paid loss development factors. Although the operations of those two systems were addressed at some length throughout this proceeding, nothing in the record persuades us that any adjustments to the benefit delivery or claim adjudication systems in 2020 had a significant effect on data underlying loss development data that would justify omitting a 2020 age-to age link factor from LDFs and limiting the loss development calculation to two years of data for later years.

The WCRIB argues that the nature of the post-pandemic Massachusetts labor force has changed, asserting that roughly 6,700 claims per year in 2021 and 2022 are generating the same indemnity losses as approximately 7,700 claims per year in 2017-2019. It recognizes that indemnity claims have generally dropped across industry sectors, but attributes increased losses to wage increases, an increase in the state average weekly wage (“SAWW”), longer claims for

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<sup>11</sup> Surrebuttal Filing of SRB, Exhibit 40, at 6-7.

<sup>12</sup> Testimony of Carolyn Bergh, Transcript May 16, 2024, pp. 930-942.

temporary disability, increases in average lump sum settlements and changed employment levels. Assuming that those conditions represent constant changes, it contends that it is appropriate to use only the most recent reliable data to represent post-pandemic circumstances, including wage growth, employment levels, indemnity claims, utilization of medical services and wage growth.<sup>13</sup>

Among the cited differences the WCRIB contends that the years 2021-2022 show a new level of lost time claims.<sup>14</sup> The testimony of its witness is inconsistent with the WCRIB's report on lost-time claim counts in the Filing that shows values of 6,430 in 2020, 6,894 in 2021 and 6,630 in 2022. Each of those values is lower than the lost time claim counts for each year from 2013 through 2019.<sup>15</sup> WCRIB also makes the broad assumption that there are "demonstrable and sustained differences between the pre- and post-COVID workplace and economic environment" that are sufficient to rely on the 2021 and 2022 LDFs as predictive of conditions that will prevail in 2024 and 2025. That these two years reflect a period of recovery of the economy from the onset of the pandemic does not support a conclusion that they are predictive of conditions in 2024-2025. The WCRIB contends that the nature of the workforce has changed, but the significance of shifts in the number of people employed in different occupations as a predictor of estimated claims is difficult to quantify. That the SAWW increased by 13.9 % in 2021 and 4.2% in 2022 does not support a conclusion that increases of that magnitude will occur in the future and anticipated in LDFs.<sup>16</sup>

On this record, we find it unreasonable not to create a full sequence of link ratios for loss development that incorporates data for five years. That conditions were different in 2020 is undisputed. While identical circumstances may not immediately recur, we are not persuaded that it is appropriate not to recognize that downturns that affect the operations of the Massachusetts workforce may happen without notice and that data about those events is relevant to future rate filings. We disapprove the 2023 filing because the exclusion of 2020 data from loss development produces excessive rates. We find that averaging five years of paid loss developments appropriately integrates that value into the loss development sequence. We find further find that the WCRIB's link ratios for 2021 and 2022 predict excessive future loss development because

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<sup>13</sup> Ex. 2 Section II-A, at 3

<sup>14</sup> Transcript. Testimony of Carolyn Bergh, Vol. 5., at 349-50.

<sup>15</sup> WCRIB Filing 7-1-2024, Exhibit 2, Section I, at 16.

<sup>16</sup> Id. at 18. TSAWW increased by only 1.8% in 2023,

they are based on data reflecting two years of recovery from 2020, in an environment and under conditions that are not expected to repeat themselves.

### **1. Loss Development: Trend**

Trend factors are calculated to represent expected movement in claim frequency, the cost (or severity) of those claims and payroll levels that will be the basis for premiums collected in the first year that the rates effective July 1, 2024, are in effect. It is expressed as a net trend that integrates values for claim costs, claim frequency, and premium growth that results from higher payrolls. The SRB and the AGO do not object to the WCRIB's trend methodology but observe that it uses as inputs its proposed paid loss development factors. Both recommend that those factors should be revised and reflect a five-year average of those factors. We find that the loss trend, if that input is so revised, would fall within a range of reasonableness.

### **2. Loss Development: Escalation Factors**

The WCRIB uses historical data and LDFs based on that data to develop paid losses to 252 months. To account for subsequent development to ultimate of claims that remain open, it calculates a "tail factor." If the losses in question arise from claims that occurred more than 37 years ago, the tail factor may need further adjustment because those losses are not subject to statutory cost of living adjustments ("COLAs"). That adjustment takes the form of an escalation factor. As pre-1987 claims reach ultimate, the number of losses affected by the escalation factor, has steadily declined.

In this Filing, the WCRIB selected a 1.45. escalation factor, developed using a simulation model that has been in place for 20 years. The AGO questions the methodology underlying that choice, asserting that the WCRIB has not taken steps to evaluate the model's continued value over time as suitable for developing an escalation factor. Its witness proposes alternative approaches that would produce escalation factors ranging between 1.018 and 1.000. The AGO's principal objection to the WCRIB's simulation model is the input value for COLAs, 4.5%.<sup>17</sup>

The WCRIB, in its brief, explains that this value is an average over time, because COLAs vary from year to year. Averaging COLAs appears to have annually produced results within a consistently limited range. The indemnity paid escalation factor, as charted by the WCRIB for

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<sup>17</sup> The AGO asserts that the COLA is "inflated and excessive" compared to a COLA of 1.8% that is used in pension tables approved under the Massachusetts Workers' Compensation Statistical Plan. AGO Advisory Filing, Ex. 21, at 20-21.

the past 12 years, ranges from 1.033 to 1.045 and shows a maximum variation of -0.012.<sup>18</sup> On this record, we find that the methodology used to calculate the escalation factor for indemnity paid losses produces reasonable results.

## **B. Underwriting Profit Provision**

The goal of the Underwriting Profit Provision (“UPP”) in insurance rates provides insurers with a fair and reasonable rate of return. Since 2003, the WCRIB has relied on an Internal Rate of Return (“IRR”) model to estimate its recommended underwriting profit provision and continues to do so this year. IRR models incorporate a Discounted Cash Flow (“DCF”) methodology that is widely relied on in corporate and managerial finance to make investment decisions. The parties to this proceeding do not oppose the use of an IRR model but their opinions differ on the various assumptions, factors and inputs from which the WCRIB develops multiple components of that model.

In its Filing, the WCRIB develops the UPP using a new methodology focusing on insurer groups writing workers compensation in Massachusetts weighted by market share. This replaces the historical methodology based on industry wide data for insurers writing casualty insurance measured in the aggregate (unweighted). The WCRIB characterizes this as an intuitive approach to data tailored to the insurers that are also the source of data on other facets of ratemaking, such as losses and expenses. The WCRIB dismisses out of hand the concept that risk is an element common to the casualty insurance industry, substituting a theory that it should now be measured differently not only by line, i.e. for workers’ compensation insurance, but by state and by company.<sup>19</sup>

Determining the cost of capital historically starts with selecting a group of companies whose risks are representative of the entire regulated industry. In 2020, following that historic practice, the WCRIB used a sample of companies writing Commercial Casualty insurance selected from the Value Line Investment Survey, Mid Cap edition taken to estimate the cost of capital. In 2022, as in this Filing, the WCRIB shifted to deriving the estimated cost of capital based on a sample of companies writing worker’s compensation insurance in Massachusetts.<sup>20</sup>

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<sup>18</sup> WCRIB Brief, at 57.

<sup>19</sup>The implications of that choice on rate making in jurisdictions across the United States are hard to estimate, particularly for insurers who write a particular line of insurance, such as workers’ compensation, in multiple states.

<sup>20</sup> Because the 2022 case was settled, the decision that year did not address the questions that have now been raised.

This year its analysis began with looking at data in the A. M. Best Global Insurance Database on 79 insurance groups that write workers' compensation in Massachusetts. From that list, it identified 37 groups owned by public companies for which it obtained financial data from Value Line and Yahoo Finance.

The WCRIB contends that this shift produces a sample from which to calculate leverage ratios and asset portfolios appropriate to companies writing workers' compensation insurance in Massachusetts. The WCRIB noted that other aspects of rate making rely on concrete data from those insurers.<sup>21</sup> The WCRIB supports this by stating the premise that values derived from industry composites, like the Commercial Casualty group used in prior years, may be affected by data from carriers that offer other lines of insurance or serve other geographic areas. The WCRIB, however, failed to offer any evidence in support of this premise. Furthermore, the premise does not acknowledge that many insurers writing workers' compensation in Massachusetts also write it in other states and write other lines of casualty coverage, both in this state and in other jurisdictions.

As with other aspects of the Filing, UPPs are appropriately derived from reliable data sources that are relevant to the issues at hand. No party has suggested that Value Line Commercial Casualty data is now unavailable, no longer reliable, no longer reflects the workers' compensation market in Massachusetts, or that it is not information which investors review in making investment decisions. The WCRIB posits that limiting its analysis to companies writing workers' compensation in Massachusetts will produce a more accurate analysis of their cost of capital; it offers no comparative analytics to support that premise. The WCRIB does not address the implied assumptions underlying its proposed methodology, that Massachusetts workers' compensation insurance presents a measurably different risk profile from other states and that potential investors will make decisions based solely on the Massachusetts market.

The parties take different approaches to selecting the sample group of companies whose data are the basis for later calculations. The WCRIB selected from a list of 79 insurers writing workers' compensation insurance in Massachusetts, 37 that are owned by public companies with

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<sup>21</sup> It does not specify which data it has in mind, or how they affect an analysis of underwriting profits. Perhaps it perceives no difference between relying in ratemaking on records that directly report an insurer's Massachusetts insurance business operations and those that arise from operations in areas, such as investment management, that relate to a different universe. As Dr. Zanjani testified, profit provisions need not reflect matters like company payment patterns and expenses unless they would have a meaningful on underwriting profits, Transcript v. at 372.

available data from Value Line. The SRB selected a group of twenty property and casualty insurers for which Value Line provides growth projections, dividend history and the mix of debt and equity financing in its capital structure. Subsequently, after review to ensure that the group reported data on all the factors relevant to the cost of capital calculation, the SRB reduced the sample group to 12; ten of those are also included in the WCRIB's sample group.<sup>22</sup>

The SRB contends that the WCRIB's data is incomplete, as it only contains partial information pertaining to the cost of capital, such as projected growth and dividends. As an example, the SRB observes that information in the Filing on discounted cash flow is only available for one-third of the 37 companies in the group from which the WCRIB calculates discounted cash flows.<sup>23</sup> The record confirms that the data at issue includes a number of entries that are either 0 or N/A (not available), and that the former might represent a real value or absent information. The record further shows that some companies do not have values for all years, or do not show historical or forecast growth rates.<sup>24</sup> The lack of consistent information on these and any other matters that relate to historical data and forecasted growth rates affects the reliability of calculations based on those factors, and thus the appropriateness of the methodology.

Additionally, the SRB questions the WCRIB's estimation of the cost of debt, an element of the profits provision.<sup>25</sup> The Filing assumes an equal mix of short-, medium-, and long-term debt. The SRB's witness, in its advisory filing, showed that his review of sample group companies showed that almost all reported debt was long term.<sup>26</sup> Dr. Zanjani testified that he "had no evidence to support his breakdown."<sup>27</sup> Rate filings, before selecting factors, should ascertain that data supports the chosen value.

The WCRIB this year revises other methodologies for estimating elements of the UPP, among them the rate of return on insurer assets. One of the determinative factors for calculating the rate of return is investment allocation, the proportional distribution of different types of investment assets in portfolios. In past years, the method used for determining the asset allocation value for the UPP, as discussed in the SRB advisory filing,<sup>28</sup> measured the proportions

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<sup>22</sup> Exhibit 25, at 75-76

<sup>23</sup> Exhibit 2, VII, at 86.

<sup>24</sup> Testimony of Dr. Zanjani, Transcript Vol. 3? at 314-317.

<sup>25</sup> Exhibit 2, Section VII, at 80.

<sup>26</sup> Exhibit 25, at 86,

<sup>27</sup> Transcript, vol p, 305.

<sup>28</sup> Ex, 25, at 87

of investments of a combined aggregate of investments, essentially a single combined portfolio.<sup>29</sup> This year the WCRIB revises that practice, measuring the asset allocation of each of its selected companies, assigning weight to each of those allocation values according to 2022 premiums written, and averaging the weighted results. By determining asset allocation using its new method the WCRIB changes the number used to calculate the UPP. Even if both methodologies were applied to the same identical companies, they would result in difference rates of return and thus different UPPs and different rate recommendation. The WCRIB provides no theoretical or analytical basis to support the contention that its new methodology is more appropriate than the historical method.<sup>30</sup>

Further, the SRB observes, the WCRIB's asset weighting methodology produces a higher share of assets in bonds and a lower share in common stock. Because the return on common stocks is higher than on bonds, skewing the asset mix reduces the overall asset rate of return.<sup>31</sup> A second issue with asset rates of return is measuring bond returns. The SRB, based on data from the WCRIB, estimated that the average maturity of bonds held by insurers have an average maturity of 14 years estimated the return on those bonds from yields on 10- and 20-year Treasury bonds. Bond yields, until maturity, is measured as that set at the date of purchase.<sup>32</sup> In contrast, the WCRIB measures bond return by measuring the time until maturity and the yield as the rate now available for a bond of that length. That approach essentially reduces a long-term bond to a shorter-term asset, that in general produces a lower yield. That methodology, as the SRB observes, was rejected in a past decision on worker's compensation rates.<sup>33</sup> We have been presented with no argument that persuades us to overturn that decision.

Much of the WCRIB's brief consists of commentary on the testimony of the AGO and SRB witnesses on underwriting profits. Ultimately, the WCRIB does not support its burden, to demonstrate by persuasive evidence that the assumptions and methodology proposed by its

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<sup>29</sup> Exhibit 25, at 104. The asset categories are shown in Best's Annual Statement for 2022 for the total P & C industry.

<sup>30</sup> The SRB points out that there is no clear connection between asset allocation and Massachusetts premium, observing that a carrier whose premium received the most weight has a very small amount of business in the Massachusetts workers' compensation market. Ex. 25, at 88.

<sup>31</sup> Exhibit 25, at 89. The WCRIB's witness estimated that the longstanding approach to asset returns would increase asset returns to 5.68%. Dr. Zanjani concurs that that stocks have higher returns than bonds. Transcript Vol p, 207,

<sup>32</sup> Exhibit 25, at 91.

<sup>33</sup> Idem.



witness, Dr. Zanjani, is more appropriate than the longstanding industry wide model that has been the basis for calculating UPPs for at least 20 years. What the WCRIB views in this context as “superior,” is never precisely made clear as the WCRIB has not provided direct analysis, historical or otherwise, that could permit a comparison. We are not persuaded that the model WCRIB proposes would ensure that its recommended rates conform to the standards for approving workers' compensation rates in the Commonwealth. We find that the Filing does not support the WCRIB's proposed change in the methodology for calculating an underwriting profits provision. Therefore, we must conclude that the proposed rate cannot be approved as “not excessive, inadequate, or unfairly discriminatory for the risks to which they respectively apply, and within a range of reasonableness.”<sup>34</sup>

### **C. Calculating Rates for Certain Business Classifications**

In our April 4, 2023, Decision and Order (“2023 Decision”) accepting the 2023 stipulation, the parties were ordered to address the use of Self Insurance Group (“SIG”) data compiled by Massachusetts NAHRO Self Insurance Group, Inc. (“NAHRO”) when determining rates for class code 9033.<sup>35</sup> Class code 9033, housing authorities, is unusual in that a single SIG, NAHRO, conducts approximately 85% of all business within the code.<sup>36</sup> As noted in the filing, NAHRO filed for, and was granted, manual rates under M.G.L. c.152, §250(3); 211 CMR 67.09(4) in both 2022 and 2023.<sup>37</sup> NARHO successfully obtained a manual rate, essentially relief from the rates established for class code 9033, in consecutive years. To obtain those exceptions, NAHRO had to prove that the standard calculation was resulting in a rate that was inadequate, excessive, or unfairly discriminatory.

All SIGs compile data to develop rate modifications and provide that data to the WCRIB under the WCRIB's own reporting rules.<sup>38</sup> This data, however, is not used as a complement to credibility in the filing.<sup>39</sup> The data that is currently used to complement credibility is the Countrywide Data compiled by the National Council on Compensation Insurance (“NCCI”).<sup>40</sup> While the WCRIB argues that it should not be ordered to use SIG data when calculating rates

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<sup>34</sup> M.G.L. c.152 §53

<sup>35</sup> WCRIB Brief p42

<sup>36</sup> WCRIB Ex. 19 Kadison Testimony 2024, Exhibit 33, at 3. See SRB Advisory Filing, Ex. 25, at 41.

<sup>37</sup> WCRIB Filing 7-1-2024, Ex. 2, §1, at 11.

<sup>38</sup> Id. at 12.

<sup>39</sup> Id.

<sup>40</sup> SRB Brief, at 34-47.

because of concerns over the data gathering process, it failed to address the key issue, namely the suitability of the Countrywide Data as a complement to credibility.<sup>41</sup> Similarly, the AGO raised the issue that ordering the use of SIG data may be unfairly discriminatory, but the process by which credibility complements are selected demonstrates that those concerns are unwarranted. For the reasons discussed below, we find that Class Code 9033 should be designated as a “state special” for which using countrywide data as a complement to credibility is inappropriate. Additionally, we find that the WCRIB’s arguments against SIG data quality are not grounds to reject NAHRO’s data as a complement to credibility.

This discussion concerns three sets of data, the Massachusetts Data, which is the primary data set compiled by the WCRIB from member company reports and which is always used to determine the rates, and the two possible complements to that data’s credibility, the Countrywide Data, compiled by the NCCI, and the SIG Data, compiled by NAHRO.<sup>42</sup> Credibility is a measure of how likely the observed data is to be a perfect reflection of overall experience of the period. Credibility is always enhanced by additional observations, the more observations the better. When flipping a coin, credibility is how closely the overall results approach the actual 50% probability of a fair coin. Observing one thousand flips is far more credible than only observing ten, as over a thousand flips, the results will have a higher probability of hewing closely to the expected 50% result.<sup>43</sup> As the Massachusetts Data is less than 100% credible on its own,<sup>44</sup> it is appropriate to seek a complement to its credibility.

Typically, in keeping with NCCI practice, the Countrywide Data is used as the default complement to credibility. However, NCCI standards allow for the designation of a code as a special state code where the use of Countrywide Data would not be appropriate.<sup>45</sup> The Actuarial Standards of Practice state that when selecting a complement to credibility, if the proposed complementary data does not have characteristics similar to the primary data, it should not be used.<sup>46</sup> In its filing, the WCRIB failed to assess the appropriateness of the Countrywide Data in response to the 2023 Decision, instead only analyzing uses of the SIG Data.<sup>47</sup> Similarly, the

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<sup>41</sup> SRB Brief, at 22.

<sup>42</sup> See 2023 Decision, at 6-7.

<sup>43</sup> See Transcript Vol. IV at 468.

<sup>44</sup> SRB Advisory Filing, Ex. 25, at 36.

<sup>45</sup> Id. at 41-47.

<sup>46</sup> See ASOP 25

<sup>47</sup> See WCRIB Filing 7-1-2024, Ex. 2, §1, at 11-14.

WCRIB failed to submit an analysis of the Countrywide Data through direct testimony in its rebuttal in any way that might refute the SRB's argument that the Countrywide Data is not an appropriate complement to credibility in this case.<sup>48</sup> Historically, the Countrywide Data has consistently indicated a significantly lower relativity than the Massachusetts Data, indicating that it has different risk characteristics.<sup>49</sup> The NCCI designates class codes that have risk characteristics that differ from other states as "state specials" and does not use Countrywide Data as a complement to credibility.<sup>50</sup> Even in situations where Countrywide Data is available for a given class code, if the observed risk profile varies the NCCI may select to designate the class code as a "state special" with respect to that state.<sup>51</sup> We find that the observed discrepancies between the historical Countrywide Data and the historical Massachusetts Data are sufficient to indicate that Class Code 9033 should be designated as a "state special" for which the use of Countrywide Data as a complement to credibility is inappropriate. All future rate filings should be made consistent with this finding.

Having determined that the Countrywide Data is not an appropriate complement to credibility, we must address the SIG Data itself. In its filing and elsewhere, the WCRIB raises two primary objections to the use of SIG data in determining rates, both concern data quality.<sup>52</sup> The first is that the WCRIB cannot audit the data;<sup>53</sup> the second is that it is not subject to the data collection controls applied to data submitted by WCRIB members.<sup>54</sup> The WCRIB's objection that it cannot audit the data gathered by NAHRO is odd given that the WCRIB is also unable to audit the Countrywide data, as they receive it in an actuarially-edited form from the NCCI without the policy-level data that would make an audit possible.<sup>55</sup> Neither data set is without audit, the NCCI audits the Countrywide data before distributing it and the SIG data is audited according to the requirements of M.G.L. c.152 §25O(4). Given that the WCRIB is unable to audit either data set and both are subject to their own audit requirements, the argument that WCRIB's ability to audit the data should rule out the use of SIG data is not persuasive.

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<sup>48</sup> See generally, WCRIB Rebuttal Filing, Exhibit 36.

<sup>49</sup> SRB Brief at pp23-24

<sup>50</sup> SRB Advisory Filing, Ex. 25, at 41.

<sup>51</sup> Id.

<sup>52</sup> WCRIB Brief at p47

<sup>53</sup> Id.

<sup>54</sup> Id. at 47-48

<sup>55</sup> SRB Brief at 25

The second objection is that NAHRO's data is not subject to the Unit Statistical Plan Data Quality Incentive Program ("USP Data Program") and may be of low quality. The WCRIB notes that it was unable to identify specific faults with the NAHRO data because it was unable to assess the data.<sup>56</sup> The USP Data Program allows the WCRIB to assess fines for data inaccuracies, serving to both share costs and encourage accurate reporting.<sup>57</sup> Concerns over cost sharing among WCRIB members and a SIG have no bearing on the proposed rates, so we need not address it.<sup>58</sup> As noted in the filing, WCRIB receives the data in accordance with an agreement between WCRIB and NAHRO.<sup>59</sup> So WCRIB, while arguing that the NAHRO data is not subject to sufficiently rigorous data gathering requirements, is the party that dictates what those requirements are. The WCRIB fails in its burden to prove that the NAHRO data is, ipso facto, of low quality due to the lack of data quality controls and should not be used as a complement to credibility.

There were additional minor arguments raised against the use of SIG data as a complement to credibility. The WCRIB raised concerns over the financial condition of NAHRO but this argument rested on shifting the burden of proof off of the WCRIB.<sup>60</sup> As stated above, WCRIB bears the burden of proof in supporting its rate and the methodology for calculating it, so this argument fails. The AGO raised concerns that ordering the use of the NAHRO data may be unfairly discriminatory to other SIGs.<sup>61</sup> However, this argument was based on an incorrect interpretation of the NCCI "state special" concept and contemplated a blanket order encompassing every SIG in every code. The "state special" determination is made for individual codes and not a blanket determination.<sup>62</sup>

In conclusion, we make the following determinations. The historical differences in relativity between the Massachusetts Data and the Countrywide Data are sufficient to determine that Class Code 9033, Housing Authorities, is a "state special" code for which the use of the Countrywide Data as a complement to credibility is inappropriate. The Massachusetts Data requires a complement to its credibility. The concerns over auditing and data quality are not

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<sup>56</sup> WCRIB Brief at 47

<sup>57</sup> WCRIB Brief at 48

<sup>58</sup> See M.G.L. c.152 §53A

<sup>59</sup> Ex. 2, Section I at 12

<sup>60</sup> WCRIB Brief at pp49-50

<sup>61</sup> AGO Advisory Filing, Ex. 21, at 34-36

<sup>62</sup> See *supra*

sufficient grounds to support the WCRIB's position that SIG Data cannot be relied on as an acceptable complement to credibility. Neither the determination that Class Code 9033 is a "state special" code nor the use of NAHRO's data as a complement to credibility would be unfairly discriminatory. Therefore, we order that absent a material change in circumstances relating to Class Code 9033 the WCRIB, in its next general rate filings use the SIG Data as the complement to credibility for class code 9033.

#### **D. F-Class Rate Omission**

Section VIII of the WCRIB Filing customarily proposes rates for risks assigned to "F-classes," business classifications covering employees whose occupations are regulated under the United States Longshore and Harbor Workers Compensation Act ("USL&HW). That statute offers benefits to longshoremen, harbor workers and other employees engaged in loading, unloading, repairing or building vessels while working on them or any adjoining navigable waters, that differ from the benefits prescribed by Massachusetts workers' compensation law. For that reason, the WCRIB has long calculated rates for the F-classes separately from the rates for other class codes.<sup>63</sup> This year the Filing included no commentary on, calculation of or recommendation for F-class rates to be effective as of July 1, 2024; it referred to Section VIII as "reserved for future use".

Mr. Salido, a WCRIB actuary, confirmed that the WCRIB is proposing no change to the F-class rates as of July 1, 2024, from those that were approved for use as of July 1, 2023. He testified that he chose to omit Section VIII for two reasons: 1) he could not use the methodology that was used from 2014 through 2022 to calculate F-class rates because countrywide data used to update class relativities was no longer available from the NCCI and 2) that because F-class rates have not always been included in WCRIB rate filings he did not think it necessary to do so. In response to questioning, Mr. Salido stated that he could have calculated an overall F-class rate change and in fact had done so in preparation for cross-examination. That calculation showed an overall credibility weighted indication of around -6.4%.<sup>64</sup>

The AGO challenges the articulated reasons for omitting from the Filing any

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<sup>63</sup> See, for example, the WCRIB's December 22 rate filing. DOI Docket number R2022-x,

<sup>64</sup> Mr. Salido did not initially characterize that value as positive or negative but later stated that it is a -6.4 %. His calculation did not include benefit changes and weights for F-classes, as has been done in past years, nor did he update factors used in the most recent previous filing.

consideration of F-class rates. Its witness, Mr. Schwartz, first pointed out that although Section VIII omits any information on F-Class rates, under cross-examination Mr. Salido testified that he could have calculated an overall F-class rate change. He further observed that at least since 2014 WCRIB filings have included a Section VIII specific to F-class rates.

In its brief, the WCRIB argues that §53A does not require the WCRIB to include F-classes in its required rate filings, characterizing their inclusion in those filings as a “matter of convention and administrative convenience.” It asserts that because it was ordered make a rate filing in 2023, one year after its 2022 filing, it did not have to include F-class rates. The WCRIB further contends that c. 152 §1 excepts from the definition of employees who must be covered under worker’s compensation insurance “persons employed by an employer engaged in interstate or foreign commerce but only so far as the laws of the United States provide for compensation or liability for their injury or death.” From that phrase, the WCRIB concludes that every enterprise assigned to an F-class is engaged in interstate or foreign commerce and that therefore its employees are eligible under federal law for workers’ compensation benefits. That is contrary to its prior explanation for F-Class rates: that the benefit provisions for those classes differ from those prescribed by Massachusetts worker’s compensation law, and that they must be calculated separately. We do not find its new arguments persuasive.

The WCRIB’s choice to omit F-class rate calculations maintains in 2024, for employers whose businesses are assigned to the F-classes, rates that were approved in 2023 and means that, unlike employers whose enterprises are assigned to other classes, they would not receive a proposed statewide average rate decrease. For the following reasons, we do not find the WCRIB’s stated reasons for its choice persuasive.

The majority of the Commissioner’s decisions on workers’ compensation rates issued from 2003 through 2023 approved recommendations specific to F-class rates. The approved rates were not necessarily those proposed in an initial WCRIB Section VIII filing but are those memorialized in stipulations that reflect negotiations among the parties and were approved in the Commissioner’s decision.<sup>65</sup>

An overview of past decisions that specifically address F-class rates demonstrates the

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<sup>65</sup> See, e.g., the decisions on Rates for 2003, 2007, 2008, 2021, 2022.

range of proposals that were approved.<sup>66</sup> In 2003 and in 2011, F-class rates were not changed from those in place for the prior year. In 2007, rates for two F-classes were unchanged and for others reduced. The following year the 2008 decision approved an average overall 8.55% increase in F-class rates; in 2012 the Commissioner disapproved a proposed increase to F-class rates. In 2017, 2019, 2021 and 2022, stipulations provided for statewide average decreases in workers' compensation and specifically reduced the WCRIB's proposed F-class rates, memorialized by substituting a reduced underwriting profits provision in the formulas used to develop those rates.<sup>67</sup>

In this filing, the WCRIB recommends an overall average statewide rate reduction but declined to calculate F-class rates that, in years which have produced statewide average rate reductions, have consistently been reduced. It offers no rationale for omitting entirely any calculation of F-class rates in this Filing or retaining rates approved in the 2022 rate filing. The WCRIB has not demonstrated that those rates are not excessive and are not unfairly discriminatory for the risks to which they apply. For that reason, we disapprove the Filing.

#### **E. Data Adjustments**

Section XIII of the Filing, Data, reports the results of the WCRIB's systematic reviews of the Aggregate Financial and Unit Statistical Report data submitted by its members to ensure that they are suitable for industry wide ratemaking. This year it identified five instances of excluded data, four of which relate to insurance company data.<sup>68</sup> Two of those exclusions are stated to have no effect on the rate indication. The AGO contests one of the two other exclusions, the WCRIB decision to remove certain Aggregate Financial data submitted by AIG from Section VI of the filing, Expenses. The stated reason for the exclusion is that in CYs 2020 and 2021 "AIG's commission and brokerage ratios were outliers compared to the rest of the industry." The WCRIB indicates that including that data in the expense calculation would have produced a lower rate indication.<sup>69</sup>

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<sup>66</sup> The 2005 and 2011 decisions approved industry wide rate changes of, respectively -3% and 0%; they made no specific references to F-class rates.

<sup>67</sup> In 2021, that substitution was calculated to produce a -9.1 % overall average rate change; in 2022 the overall average rate change was set at -15.6%.

<sup>68</sup> The fifth relates to standing agreements to exclude financial losses associated with two particular events, first claims associated with September 11, 2001, and second, initiated in the 2023 rate filing, losses reported as Catastrophe Number 12, the COVID-19 pandemic.

<sup>69</sup> WCRIB Filing 7-1-2024, Ex. 2, Section XIII, at 3.

In response to questioning, neither of the WCRIB's actuarial witnesses could explain the basis for referring to those excluded values as outliers.<sup>70</sup> Ms. Bergh referred to excluding data that appeared to be anomalous, as perhaps "outside of tolerances" or "improper submissions" further noting that those conclusions are not based on statistical analyses but are matters of actuarial judgment.<sup>71</sup> She was unable to identify any specific reason for viewing AIG's commission and brokerage ratios, which were apparently lower than those of other insurers, as outliers and excluding them from the data used to calculate industrywide expense ratios. For that reason, we find that its decision to exclude this AIG data is not supported and that the exclusion was unreasonable, and direct the WCRIB to restore this data to the set used to develop the industrywide expense provision.

The AGO asserts that the expense provision in the filing does not meet the statutory standard as it "exceed[s] the average expense need of the members and subscribers authorizing the rating organization to file classifications or rates under this section ..." M.G.L. c.152 §53A (12).<sup>72</sup> The record shows that the WCRIB chose to omit the expense data for AIG as their compensation expenses was significantly lower than the rest of the industry.<sup>73</sup> However, when examining the historical data, this value is consistent with past compensation expenses from AIG.<sup>74</sup> In fact, the only statement the WCRIB makes to justify the exclusion is "For calendar years 2020 and 2021, AIG's commission and brokerage ratio were outliers compared to the balance of the industry."<sup>75</sup> As noted by the AGO, AIG's commission expenses were not only lower than the rest of the industry, they were *consistently* lower across all years for which data was available.<sup>76</sup> The WCRIB fails to make any assertion about the historical context of AIG commission expenses.<sup>77</sup> To exclude data in a given year from any company, that data must, at a minimum, not only diverge from the data of other companies in its own year, but from its own historical data. As stated elsewhere in this document, the burden of proof lies with the WCRIB to

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<sup>70</sup> Mr. Salido, whose prefiled testimony was submitted in support of Section XIII, could provide no details to support exclusion of the/ AIG commission and brokerage ratios. Id.

<sup>71</sup> Transcript, Volume 3, at 586-612.

<sup>72</sup> AGO Brief, pp18-19

<sup>73</sup> WCRIB Filing 7-1-2024, Ex. 2, Section XIII, at 3.

<sup>74</sup> Id.

<sup>75</sup> Id.

<sup>76</sup> AGO Brief, p20

<sup>77</sup> WCRIB Filing 7-1-2024, Ex. 2, Section XIII, at 3.



justify their rate request.<sup>78</sup> WCRIB has failed to meet this burden in justifying the exclusion of the AIG expense data.

### **1. Swing limits**

Swing limits are a capping mechanism applied, by class, to set an allowable range of rate changes by industry group.<sup>79</sup> They do not change the premium income expected from a particular industry group but affect the distribution of a rate change to members of that group. The Filing recommends a swing limit value of +/- 20%, noting that it recommended the same value in its rate filings for 2016, 2018, 2020, 2022 and 2023.<sup>80</sup> The Filing states that the methodology that the WCRIB follows to derive its swing limit recommendation is comparable to that used by the NCCI since 1977. It also comments that at that time the NCCI allowed swing limits of +/- 25%, and that currently, in some states where the NCCI develops rates, swing limits range from +/- 20% to +/- 15%. The AGO questions the WCRIB's chosen recommendation. Mr. Schwartz, pointing out the WCRIB's acknowledgement that some NCCI rate filings recommend swing limits down to +/- 15%, advocated adoption of that lower range to minimize disruptions from large rate changes.

It is axiomatic that lowering the range of permissible swing limits will affect premium for enterprises to which those limits are applied. A review of previous decisions on WCRIB rate filings shows that swing limits have been the subject of negotiation among the parties and their agreed upon values included in stipulations presented to the Commissioner that were subsequently approved.<sup>81</sup>

The goal of this hearing is to ensure that classifications and rates are not excessive, inadequate or unfairly discriminatory for the risks to which they effectively apply and fall within a range of reasonableness. Swing limits are applied to rates that have been found to be neither excessive nor inadequate; inquiry into the reasonableness of a proposed swing limit range therefore does not alter the rate but instead focus on questions as whether the chosen limit falls within a range of reasonableness. As the Filing points out, swing limits are not identical in all jurisdictions that approve workers compensation rates; it does not, however, further analyze the

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<sup>78</sup> Supra

<sup>79</sup> WCRIB Filing 7-1-2024, Ex. 2, Section IX, at 9.

<sup>80</sup> Id. at 11.

<sup>81</sup> The 2005 and 2010 decisions include no commentary on swing limits.

complete range or explore reasons for the differences.

A review of the Commissioner's past decisions on workers' compensation rates demonstrates that swing rates have often the subject of negotiation among the parties and the outcomes memorialized in stipulations.<sup>82</sup> The WCRIB's statement that it has in recent filings recommended 20% swing limits does not necessarily conform to a value that the parties discussed, and later agreed to and included in a subsequent stipulation that the Commissioner approved. Absent precise information on swing limits that were actually approved, we cannot determine how the value repeatedly requested in WCRIB filings compares to those that were stipulated, nor can we understand where it falls within a range of national data on swing limits. Although swing limits do not alter rates, they affect every Massachusetts employer. This Filing does not provide sufficient information to permit a finding that the WCRIB's proposed value falls within a range of reasonableness. The WCRIB does not address this issue in its brief; the AGO continues to support the use of 15% but provides no specific information on the previously stipulated limits. We decline to approve either party's proposal but suggest that averaging the recently stipulated values would produce a result that reflects the historical record.

#### **IV. Cost Containment**

The WCRIB's Cost Containment Filing assembles a series of insurer reports that, it contends, support its position that its member companies, as required by §53A (13), "employ cost control programs and techniques acceptable to the commissioner which have had or are expected to have a substantial impact on fraudulent claim costs, unnecessary health care costs, and any other unreasonable costs and expenses, as well as on the collection of the appropriate premium charges owed to the insurers." Since 1993, the cost containment section of the filing has principally consisted of a survey sent by the WCRIB to a representative group of its members; in 2023 the survey was sent to the ten largest NAIC insurer groups writing workers' compensation insurance in Massachusetts.<sup>83</sup> A copy of each company's survey response is

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<sup>82</sup> In 2003, swing limits were adjusted for some, but not all groups. In 2008, the stipulation reports that the parties had negotiated swing limits lower than those proposed in the filing but did not record the respective values. In 2012, the stipulation observed that swing limits, at the SRB's suggestion, had been reduced to +/- 15%. In 2013, swing limits were again stipulated and 2015 the stipulation reports that they were stipulated at a narrower range than that requested by the WCRIB. In 2017, 2019 and 2021 swing limits were described as those shown in the stipulation but did not specify the actual values.

<sup>83</sup> The ten companies are: American International Group (AIG), A.I.M. Mutual Insurance Company,

submitted as part of the Filing.

The Filing also includes the FY2021 Annual Report of the Massachusetts Department of Industrial Accidents, the Insurance Fraud Bureau's 2021 Annual Report and two issues of its newsletter, "e-focusFraud."

The cost containment survey requests information on three general areas: Claims, Premiums, and Expenses. Briefly summarized, the Claims section addresses prevention, in the form of loss prevention and engineering programs, information on the company's claims operations, including measures to control hospital and medical bills and to manage rehabilitation and return-to work programs, and asks specifically about programs and techniques to control fraud relating to claim costs and expenses. The Premiums section focuses on the company's programs and techniques to collect premium due, identify premium fraud, and audit policies to ensure that they receive correct premium for the policy term. The Expense section requests information about programs the company employs to control costs associated with a wide range of its business expenses, utilizing as a model for allocating those expenses Part 1 of the Insurance Expense Exhibit that supplements the annual statements that insurers file on forms prescribed by the NAIC.

The third volume of the Filing consists of Section XIV, Cost Containment. To support its burden to demonstrate to the Commissioner that WCRIB member companies, as required by §53A (13), "employ cost control programs and techniques acceptable to the commissioner which have had or are expected to have a substantial impact on fraudulent claim costs, unnecessary health care costs, and any other unreasonable costs and expenses, as well as on the collection of the appropriate premium charges owed to the insurers" the WCRIB assembled documents from various sources. Since 1993, Section XIV has principally consisted of a survey sent by the WCRIB to a representative group of its members; in 2023, consistent with recent years the survey was sent to the ten largest National Association of Insurance Commissioners ("NAIC") insurer groups writing workers' compensation insurance in Massachusetts.<sup>84</sup> The Filing also

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Atlantic Charter Insurance Company, Chubb Insurance Company, Guard Insurance Group, Hartford Insurance Group, Liberty Mutual Insurance Company, PMA Pooled Companies, Travelers Insurance Company, and Zurich Insurance Company.

<sup>84</sup> The ten companies are: Acadia Insurance Company, A.I.M. Mutual Insurance Company, AmTrust Insurance Company, Atlantic Charter Insurance Company, Berkshire Hathaway Guard Insurance Companies, Chubb Insurance

includes selected pages from the FY2022 Annual Report of the Massachusetts Department of Industrial Accidents,, the Insurance Fraud Bureau's reports on prosecutions and referrals relating to workers' compensation updated through December 2022, the February 2023 issue of its newsletter, "e-focusFraud," and its 2022 Annual Report.<sup>85</sup>

The cost containment survey requests information on three general areas: Claims, Premiums, and Expenses. Briefly summarized, the Claims section addresses procedures to manage claim costs such as loss prevention and engineering programs, measures to control hospital and medical bills and to manage rehabilitation and return-to work programs and asks specifically about programs and techniques to control fraud. The Premiums section focuses on the company's programs and techniques to collect premium due, identify premium fraud, and audit policies to ensure that they receive correct premium for the policy term. The Expense section requests information about programs the company employs to control costs associated with a wide range of its business expenses, using as a model for allocating those expenses Part 1 of the Insurance Expense Exhibit that supplements the annual statements that insurers file on forms prescribed by the NAIC.

In the decision on 2023 rates, we observed that over time approaches to business operations common to the industry change, requiring adjustments to the survey to ensure that it addresses the effects of those changes. We asked the WCRIB to review the survey to ensure that companies: 1) document procedures relating to their cost containment efforts that have been adjusted or changed since March 2020, describe the effectiveness of those new procedures, and whether it considers them temporary. To that end, this year the WCRIB added a question to the Claims, Premiums and Expenses sections of the survey, asking respondents to "identify and describe any operational, technological or other changes that you employed during the COVID-19 pandemic, to what degree those changes are still in place post-pandemic, and the impact of these changes" on the matters addressed that section.

Insurers' responses to that question as expected, uniformly report a shift to conducting business by virtual means. Those shifts affected many facets of their operations; in the area of

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Company, Hartford Insurance Group, Liberty Mutual Insurance Company, Travelers Insurance Group and Zurich Insurance Company. A copy of each company's survey response is submitted as part of the Filing.

<sup>85</sup> Pages from the Department of Industrial Accidents report were specific to its Office of Claims Administration, Workplace Safety Grants Program, Office of Investigations and Enforcement, Division of Dispute Resolution, Reviewing Board and Office of Education and Vocational Rehabilitation.

claims processing, for example allowing oral approvals for medical procedures and adopting electronic communication systems that allowed earlier contacts between insurers, their insureds, and claimants. To that end, they also created templates that provided guidelines for reporting information to relevant those claims. Insurers also increased the use of telemedicine in the claim handling process.

Because insurers were unable to conduct onsite audits and visits to employer worksites in 2020, they adjusted their approaches to those operations. Audit forms that employers use to report matters such as payroll were revised. When in persons inspections of employers were not possible some insurers allowed insureds to video their operations, an approach that enabled the insurer's loss control experts to review those procedures and offer suggestions for improvement. Consistent with other businesses, insurers in 2020 implemented work-from-home procedures for many employees that affected their need for office space and shifted in-person meetings to virtual gatherings. Insurers noted that those changes affected matters such as travel expenses.

Overall, the cost containment reports document changes to business operations that insurers adopted in 2020 that successfully enabled them to maintain their level of pre-COVID operations and simultaneously demonstrated that adopting virtual methods also save costs. Insurers have generally retained those methods but also exercise judgment to select situations in which telemedicine may not be appropriate or an onsite audit is preferable. We conclude that the Cost Containment filing is sufficient to support a finding that insurer cost control programs are effective.

## **V. Future Filing Date**

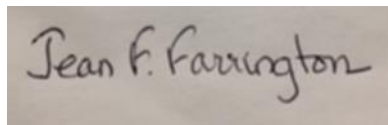
Pursuant to M.G.L. c. 152, §53A, such rates must be filed at least every two years and on any additional date that the Commissioner may designate. For the past several years, we have ordered the WCRIB to file annually. Per the discussion above, we deem it appropriate to do so again. We therefore direct the WCRIB to submit a filing in December 2024 for rates to take effect on July 1, 2025.

## **VI. Conclusion**

We find that, on the record of this proceeding, the WCRIB's 2023 Filing for rates effective July 1, 2024, contains proposed classifications or premiums that cannot be approved in accordance with M.G.L. c.152 §53A (2) as "not excessive, inadequate, or unfairly discriminatory

for the risks to which they respectively apply, and within a range of reasonableness.” We therefore disapprove the Filing in this matter. In addition, as each of the parties has advocated for a rate reduction, we must conclude that the rates now in effect are excessive and exercise our authority under M.G.L. c.152 §53A (8) to order a statewide decrease in average workers compensation insurance rates of 14.6%.

**SO ORDERED**



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Matthew A. Taylor, Esq.  
Presiding Officer

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Jean F. Farrington, Esq.  
Presiding Officer

**AFFIRMED**



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Kevin Beagan  
Acting Commissioner of Insurance

June 21, 2024