Report to the Legislature on Competitive Rating of Workers' Compensation Insurance

Massachusetts Workers' Compensation
Advisory Council

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Introduction

This report on competitive rating of workers' compensation insurance is issued by the Massachusetts Workers' Compensation Advisory Council in accordance with Section 17 of M.G.L. 23E, which sets forth the duties and responsibilities of the Advisory Council. This section directs the Council to investigate the potential costs and benefits of a competitive rating system on the Massachusetts workers' compensation insurance market.

The Advisory Council was established by the Massachusetts Workers' Compensation Reform Act of 1986. This legislation, which was preceded by two years of investigation and planning by a Governor appointed task force, completely overhauled the workers' compensation system in the Commonwealth. The task force included representatives from all groups with an interest in the workers' compensation system, and it explored all aspects of workers' compensation. These same interest groups--employers, labor, the medical community, the insurance industry, the legal community, the vocational rehabilitation profession, and government-- are now represented on the Advisory Council in overseeing the workers' compensation system in Massachusetts.

Many of the topics discussed by the Governor's Task Force were ultimately incorporated into the new Workers' Compensation Law. However, insufficient information was available on some emerging developments in workers' compensation to merit final recommendation prior to passage of the new law. One policy area concluded to require additional research was that of competitive rating in the workers' compensation insurance industry.

Research for this report took two primary forms. Initial research involved a broad

The third section of the report turns its focus to the impact of competitive rating in practice. In drawing from the Tillinghast research, this section of the report also compares the experience of the Massachusetts market between 1978 and 1988 with the experiences of the competitive rating states.

The final section of the report presents the Advisory Council's conclusions and recommendations on the potential costs and benefits of the competitive rating system and the advisability of adopting such a system for workers' compensation ratemaking in Massachusetts.

Finally, the Appendices of this report include a narrative which describes the early history of the Massachusetts workers' compensation system. This narrative traces regulatory developments in the insurance system and outlines the reasoning behind the evolution of institutional changes.

protracted length of legal proceedings and the threat of large and unpredictable liability costs gradually pushed the system towards crisis, and the search for real reform began in earnest.

Reformers looked with interest at developments in Germany, England and other European countries, where workers' compensation insurance programs offered an attractive solution to philosophical and economic shortcomings of the tort system. For one, the provision of compensation without fault dovetailed nicely with the notion that individual blame could not be assessed in an economic landscape in which some accidents were inevitable. Further, if accidents were indeed considered a natural outcome of industrialization, then it stood to reason that all employers should bear the costs of accidents by pooling the cost. Finally, an insurance program offered predictability to workers and employers alike. Workers would be promised the certainty of compensation and employers would be enabled to plan insurance payments as regular business costs, rather than run the uncertain risk of potentially damaging legal action.

Impressed with the advantages of the non-adversarial approach, Wisconsin became the first state to successfully pass a workers' compensation statute in 1911. Most states had adopted such statutes by 1920, and all states had workers' compensation statutes by 1963.

The General Characteristics of Workers' Compensation Programs

The workers' compensation system institutionalizes a tradeoff between employees and employers. Workers forfeit the right to file suit against employers under common law in exchange for guaranteed compensation for work-related injuries or illnesses. Employers, in turn, lose their traditional defenses, even in cases where an employee is solely at fault.

the accident. Benefits for employees whose partial disabilities allow them to continue working, but at rates below their previous wages, are set at two-thirds of the lost earning capacity, also up to a maximum of the statewide average weekly wage. The Massachusetts statute does not provide for permanent partial benefits.

In theory, the difference between compensation rate and full wages serves as an incentive for the workers' compensation recipient to return to work. Temporary total benefits in Massachusetts are paid for up to five years, and partial disability payments for up to 600 weeks. Temporary benefits stop when the claimant returns to work, a determination is made that the claimant can return to work, or the claimant is determined to have a permanent disability. Workers with permanent and total disabilities are eligible for compensation for the rest of their lives.

least every two years, and no proposed premiums shall take effect until approved by the Commissioner of Insurance as not excessive, inadequate or unfairly discriminating for the risks to which they apply and as within a range of reasonableness. If the Commissioner takes no action to approve or disapprove the filings within six months, they are deemed approved and effective immediately. The Commissioner can order any excessive premium in a filing to be decreased, which takes effect six months from the date of filing.

The law also directs the Commissioner to provide for the equitable distribution among employers paying higher than average wages through the use of experience rating credits, the use of a payroll cap or other method. The statute also permits the Advisory Council to intervene in the rate hearing, but to a limited degree. The Council can present testimony but cannot cross examine other parties' witnesses or appeal a decision.

At present there have been two rate filings since the enactment of the reform law. The first which entailed protracted litigation, produced a 19.9% average increase in premium rates, which was effective 1/1/88. The second, which was a stipulated decision, outlined a 14.2% increase as of 1/1/89. As part of the stipulation, absent limited special circumstances, another rate filing will not be submitted before November 15, 1989. In addition, a tax multiplier for retrospective rating plans of 6.7% has been approved and a filing seeking a .5% assessment upon insureds for the insolvency (guaranty) fund is pending at this time.

On the part of the insurer, the provision of workers' compensation insurance obliges the payment of all benefits required of the employer under the workers' compensation statute. The insurer

Dividends are offered by many stock and mutual insurance companies as reductions to employers on the basis of insurer loss and investment profit experiences. Finally, insurance companies in many prior approval states are allowed to deviate from manual rates by a specified percentage. Deviations allow insurers to apply for a rate deviation if they think they can gain a larger share of the market or make a profit at a price lower than the industry price.

The final result when all allowable adjustments other than dividends have been applied is the "net premium". This is usually thought of as the net cost to the policyholder. It might be noted that deviations and schedule rating were more widely used prior to the 1980s than they are today. Some states, such as New York and Wisconsin, do not permit the use of any of these rate adjustments.

Another concept important to understanding the operation of the insurance industry is the "inverse loss ratio". The loss ratio is the ratio of an insurance company's incurred losses to its earned premiums during a given year. Losses incurred for a particular year include both actual loss payments during the year and a portion of capital held in reserve for the anticipated future payment of claims from accidents occurring during the policy year. Earned premiums, in turn, constitute premium payments for coverage during the year, regardless of whether the policies were written prior to or during that year. The inverse of the loss ratio represents the amount paid out for each incoming dollar of insurance payment.

A final consideration, and one which complicates the comparison of different rating systems or of premium changes over time, is the insurance underwriting cycle. Along with other forms of liability insurance, workers' compensation insurance experiences cyclical swings in the cost or availability of insurance. During an upswing in

insurance is distinguished from rate-making in other property/casualty insurance lines by the inclusion of insurers in rating bureaus.

Rating bureaus have traditionally performed the role of developing rates and submitting them for approval. In computing rates, they collect actuarial data from insurers, who must report on a uniform basis. Many of them are assisted in the collection and analysis of loss, expense, benefit, exposure, and premium data by the National Council on Compensation Insurance (NCCI), a nonprofit and unincorporated association of insurers. Premium recommendations submitted by rating bureaus are to be based on the anticipated claims experience in each of more than 600 industrial and occupational classifications, and allowance for costs, and permissible profits.

Not all states with administered pricing systems employ the same form of regulation. There are essentially three forms of administered pricing for workers' compensation insurance.

The most rigid regulatory system relies upon an exclusive state-administered fund. Employed in Nevada, North Dakota, Ohio, Washington, West Virginia and Wyoming, this system provides insurance through a state governmental agency, rather than through private insurers. By definition, the system does not allow for competition since a sole provider administers the system. Self-insurance does offer an alternative to some large employers.

A second form of regulation, and that which is practiced in Massachusetts, authorizes insurers to utilize rates calculated and filed by a single rating bureau. The filing of rates in Massachusetts has traditionally been done by the Workers' Compensation Rating and Inspection Bureau (WCRIB). This bureau compiles data on industry loss experience and submits rate filings to the Division of Insurance for review and approval.

responsibilities of rating bureaus were more appropriately a function of state government.

Arguments against the suitability of competitive pricing for workers' compensation insurance are also made by some who might favor deregulation in other insurance lines. One such argument focuses upon the mandatory aspect of workers' compensation insurance coverage. Since workers' compensaton is administered by the state and coverage is required of all employers, the state has a direct interest in ensuring that benefit obligations can always be met. In this view, the administration of pricing by state authorities is intended to guarantee a stable insurance environment and protect against insurer insolvency and defaults on compensation payments.

A corollary argument relates to the special informational and analytical needs of the workers' compensation insurance industry. The actuarial process for determining appropriate prices is extremely complicated, and accurate calculations require the analysis of claims and payroll data from a wide range of employers. As the size of the information base increases, actuarial projections become more reliable. The workers' compensation insurance market is thus seen to be more efficient when insurers pool information concerning the relative riskiness of the many industrial and occupational classes. Small insurers in particular are thought to require access to a broad actuarial base if they are to reliably project future losses and expenses, and rating bureaus are said to offer the best solution to this need.

Competitive Rating

During the late 1960s and early 1970s, a number of states began to replace prior approval systems for many lines of property-casualty insurance with competitive rating statutes. One of the first organized challenges to the administered pricing system occurred in December 1980, when the National

partial price flexibility. True competition, it was argued by proponents, would create a fairer and more cost-efficient workers' compensation insurance system. Perhaps more importantly, it promised to reduce costs without attacking the benefit structures for injured workers.

In summary, the rise of competitive rating grew out of a desire to reduce the cost of insurance for employers. In many cases, the effort to control workers' compensation costs has been part of broader efforts by states to both retain current employers and attract new business. Those states which have introduced competitive rating have done so largely because the price of workers' compensation insurance threatened to tarnish them as having unfavorable business climates. By modifying or removing regulatory mechanisms, it was hoped that prices for insurance would drop, and thereby restore economic stability.

compensation insurance was instituted in 1982 because of favorable experience with competition in other property and casualty lines and unfavorable experience with the prior approval system.

Under the previous system, most insurers accepted rates filed by the NCCI-affiliated rating bureau. Through the use of schedule credits and adjustments for size and loss experience, insurers even under this system had substantial price flexibility, but adjustments in manual rates required prior approval.

The current system requires workers' compensation insurers to participate in a statistical pooling organization for loss prediction purposes but bars them from agreeing upon a uniform price structure. Greater pricing flexibility is permitted and an insurer may use any rate, provided the rate is filed with the Commissioner of Insurance within 30 days of being effective. Companies may refer to advisory rates and decide whether or not to deviate from them. Schedule rating credits may reach as high as 60 percent of the filed premium, compared with an allowed adjustment of up to 25% under the old system.

The 1984 report on the first year of open competition concluded that the new law was working to the benefit of both employers and employees. Written premiums decreased by 13.8% in 1983, the first year under the new system. Premiums had also decreased in 1981 and 1982, but the report singled out reduced levels of employment, and therefore of payroll, as affecting those reductions. In 1983, however, total payroll either remained steady or increased slightly. Consequently, the report concluded that the 1983 decrease "has to be directly attributable to premiums being reduced solely for competitive reasons". The decrease also contrasted with a trend towards large increases in written premiums from 1975 to 1980.

1979. One of its recommendations was that an "open competition--modified file and use" rating system be adopted. Such a system was adopted in 1982. Under its guidelines, mandatory adherence to NCCI-affiliated rating bureaus, systems and rates has been eliminated. Each insurer adopts pure premiums as a starting point, and adds an expense loading to create its manual premium. Insurers are required to give due consideration to investment income in making and using their rates and to maintain reasonable records showing the amount of investment income they have earned. Prior approval of rates by the insurance department is not required, but the department can nevertheless challenge rates as unfair, discriminatory, or inadequate.

In a 1985 report by the insurance commissioner to the state legislature, savings under open competition were calculated in two areas: 1) the application of percentage saved per decreases in "average rate loading factors"; and 2) application of percentage saved per declines in "average premium rate levels".

It was calculated that for 1983, a 19% expense load reduction times $282,092,000 in earned premiums created $53,597,000 in savings. In 1984, a 22% expense load reduction times $280,000,000 in earned premiums resulted in a savings of $61,600,000. It was projected that for 1985, a 16% expense load reduction times $280,000,000 in earned premiums would create a $44,800,000 savings. It was also calculated that for half of 1982, 25% of the 1983 reduction resulted in a savings of $13,399,000. Expense load analysis therefore indicated a total savings from open competition of $173,396,000.

In measuring the impact of decreases in "average premium rate levels" upon earned premiums, it was estimated that for 1983, a 15% rate level factor reduction times $282,092,000 in premiums resulted in a $42,313,800 savings. A 28% rate level factor decrease for 1984 times $280,000,000 created a

Minnesota's workers' compensation rates underwent a dramatic increase from 1984, when its rates ranked fourteenth nationally, to 1987, when they had risen to fourth highest. During 1986, premiums increased 27 percent, and were expected to have increased another 20 percent in 1987.

In addition, insurance company insolvencies necessitated a two percent premium assessment by the state Guaranty Fund in 1985, 1986, and 1987. The Assigned Risk Plan assessed insurers eight percent of 1985 premiums.

In contrast to optimal insurer practice of over-reserving by five to ten percent, initial reserves have historically been about 25 percent short in Minnesota, and shortages have continued since the enactment of competitive rating. From 1984 to 1986, Minnesota insurers estimated that 99% of the premium was neede for losses. Such high loss ratios would constitute a threat to insurer solvency over the long term, but there has been no attempt to determine the potential impact of competitive rating on loss ratios.

Michigan

Competitive rating was introduced in Michigan in 1983 largely because of concerns about the high cost of doing business in the state. Of the states adopting competitive rating for workers' compensation insurance, Michigan appears to have gone farthest in explicitly seeking to create a competitive environment. Michigan's system is most distinguished from other competitive statutes in having abolished rating bureaus, and barring insurers from sharing rate information with other insurers. The informational functions of the rating bureau have been retained in a new system in which a Data Collection Agency oversees a Designated Advisory Organization responsible for collecting and disseminating pure premium data.

In Oregon, initial experiences with competitive rating showed both positive and negative outcomes. On the positive side, price cuts in workers' compensation insurance dropped Oregon from fourth to twelfth in state rankings on insurance costs, and a number of self-insurers returned to the direct insurance market, indicating that open competition was aiding large, as well as small and medium sized, businesses. At the same time, however, there were signs that the price slashing was too severe and raised the specter of insurer insolvencies. A 1985 article in Business Insurance quotes the Oregon insurance commissioner as saying that "insurers went too far overboard in lowering their rates" to remain competitive. The near doubling of applicants to the assigned risk pool in 1984 also raised concerns regarding some of the undesirable effects of the competitive system.

Finally, concern over continuing rate increases in Minnesota has led to a recent recommendation by the Commissioner of Labor and Industries to reintroduce some form of administered pricing. His recommendation to the state legislature stated that "while traditional regulation is not in the state's best interests, a modified administered pricing system would serve everyone well. Such a system would allow regulators to review insurance companies' finances while at the same time allowing them to compete and seek their particular market niche within bands of authorized rates. This would achieve both justified rates and competitive pricing within predetermined parameters". This recommendation clearly supports the general feeling that competitive rating has had mixed results to date and that, coupled with its short history, the evidence does not yet support firm conclusions on its practical impact.

Findings from the Tillinghast study

Research provided to the Advisory Council by Tillinghast Inc. compiled data from Massachusetts

in balance, may have made up for the lack of rate changes by increasing experience rating debits. Less correlation was found between growth in premium dollars and growth in published rates among some of the earliest competitive rating states, suggesting less uniformity in the pricing practices of their insurers.

--Competitive rating states generally reported higher average loss ratios than the national average, but the average 88.7% loss ratio in Massachusetts was higher than eight of the twelve competitive rating states. While higher than average loss ratios in the competitive rating states suggested that employers were getting more benefits per premium dollar and that competition was holding down insurance cost, the higher than average loss ratio in Massachusetts suggested that employers were getting even more benefits per premium dollar. Massachusetts also showed lower year to year variance in its loss ratio than the competitive rating states, with the competitive rating states showing more evidence of cyclical pricing. Tillinghast notes that the introduction of competitive rating between 1982 and 1984 corresponded to a "soft" period in the property/casualty industry, suggesting a cyclical pattern in workers' compensation loss ratios similar to other commercial insurance lines.

--Results for the industry adjusted loss ratio are similar to the unadjusted loss ratio, with Massachusetts having one of the highest average adjusted loss ratios and less variability on a year to year basis.

--Competitive rating states reported policyholder dividends per premium dollar that were lower than the national average. Massachusetts, despite its higher loss ratios, had one of the higher dividend loadings, implying that Massachusetts employers received more dividends than the average in competitive rating states.

--Between 1983 and 1987, the residual market premium in Massachusetts grew by 160.7%, a growth rate much lower than that of most of the competitive rating states. The Massachusetts residual market was a larger percentage of the total market in 1983 (13.2%) than most of the competitive rating states, which had residual market shares under 5%. With the exception of Maryland, all the states began to experience significant growth in residual market share in 1985. Five of the states had greater residual market shares than Massachusetts in 1987. Tillinghast concludes that the greater volatility in loss ratios among competitive rating states results in greater shifts in the size of the residual market.

--In the estimated current rates, the Massachusetts rates charged for the five largest Massachusetts employer classifications in 1988 were generally lower than the published rates for the same classifications in the competitive rating states.

Discussion

The research by Tillinghast offers a broad basis for considering the comparative performance of the insurance markets in Massachusetts and the competitive rating states. The market indicators under review do not appear to subscribe any clearcut advantage to the competitive rating system over the system currently in place in Massachusetts. In some areas, such as market share and number of insurers, the trends in the competitive rating states and Massachusetts are quite similar. Both Massachusetts and the competitive rating states also had loss ratios higher than the national average. Moreover, the evidence is also inconclusive in areas where the two systems did show differences. For instance, the higher dividend ratio in Massachusetts and the higher loss ratios of the competitive rating states suggest that competition in the latter occurs in

CONCLUSION

Competitive rating systems for workers' compensation insurance have had a short history producing inconclusive and mixed results to date. Reports produced by some of the competitive rating states, notably Michigan, Oregon, and Illinois, have attributed extremely positive results to their competitive rating systems. Other competitive rating states have seen no notable differences in market performance, and at least one state (Maine) has revised its competitive rating law to a deviation/schedule rating law.

At this point, it seems unlikely that even such positive outcomes as declining insurance costs or growth in the size of the voluntary market in competitive rating states can be more confidently attributed to the influence of competition than to the underwriting cycle or other economic forces. Perhaps the most confident statement that may be made about competitive rating at this time is that it is not in and of itself an automatic cure for troubled workers' compensation insurance systems.

Those states which adopted competitive rating laws in the 1980s largely did so as an act of desperation, responding to prohibitive insurance costs that threatened to unleash widespread economic damage. Any serious consideration of adopting a competitive rate making system in Massachusetts must first ask whether the state of the insurance market warrants such drastic change and, further, whether any tangible benefits can be reasonably expected to result from a competitive rating system.

There is little question that the workers' compensation insurance market is experiencing unrest and instability at the present time. Insurers are pressing for rate relief, and

current instability should be more seriously studied before undertaking any reform of the regulatory system.

Competitive rating laws have shown that they may, under some conditions, lead to lower prices and more readily available coverage in the voluntary market. But they are only one factor affecting the price and availability of insurance. It is instructive to recall that one of the intentions of the 1985 reform of the workers' compensation system was to improve the efficiency of the system and reduce its costs. Instead, however, costs have escalated, and efforts to pinpoint the problem have not been successful. Improving the administrative operation of the system therefore must continue to be a priority task. Although improvements in administrative efficiency should lead to lower costs, it cannot be said that competitive rating would produce any impact upon the internal efficiency of the workers' compensation system.

Another factor clearly affecting the cost of the workers' compensation system is the cost of medical treatment. The high cost of medical services for injured employees is an important force in driving workers' compensation costs upward. Finding a means to control medical costs is a matter of some discussion, but no consensus has yet been reached on how to do so. Here again, this important influence on workers' compensation costs would not be affected by the introduction of a competitive rating system.

In sum, even in its most ideal form, the competitive rating system should not be viewed as a singular remedy for controlling costs of the workers' compensation system. Given the instabilities experienced throughout the workers' compensation system in Massachusetts, it would be unreasonable to expect distortions affecting the market to be cleared up by regulatory

Appendix A

The Early History of the Massachusetts Workers' Compensation System

The history of workers' compensation in the Commonwealth in fact begins in 1887. In that year, the legislature enacted the Employers' Liability Law, which was one of the first employers' liability laws enacted in the country. The passage in 1897 of a compensation act in England brought additional attention to the growing problem of industrial accidents. In 1903, a commission was established by the legislature to investigate the issue and in its report the Commission presented a draft of a compensation act that was modeled on the English law. This Draft was not enacted, but interest in establishing some sort of system for resolving disputes concerning industrial accidents continued.

In 1907, a Joint Special Committee was appointed to study, amongst other issues, workers' compensation. While the committee was unable to reach a consensus, it was clear that support for some form of legislation was growing. The majority stated:

> **"The idea of giving to persons who, in the course of their employment are producing the necessities of mankind, compensation and aid to alleviate their hardships, to the end that we may all share with them their burdens is a beneficent one, and appeals to all right minded persons; and any scheme under which the public at large shall share the burdens of those in need will be cheerfully adopted by our community, as such propositions have always been cheerfully adopted by our Commonwealth."**

The Committee's majority favored a voluntary act, while the minority favored a compulsory act. The Legislature enacted the law drafted by the majority. The next year saw the passage of a bill

from the initial report of the Special Commission called for a three member Industrial Accident Board. The Special Commission continued to investigate the matter and by May of 1912, it had drafted amended legislation to increase board membership from three to five members, while at the same time decreasing the salaries of the members. This all took place prior to the effective date of the initial legislation, (July 1, 1912). By June 23, 1917, the membership had been increased to seven members. In addition to the increased size of the Board, a number of procedural changes were also implemented which permitted the Board, in its own words, to put cases on for hearings within a reasonable time.

Over the next few years, a number of commissions and studies addressed the area of insurance for industrial accidents, particularly the establishment of rates and the control of the market. The initial review of the system was initiated in 1914. Although the law had only been in existence for two years, serious concerns were already being raised over how rates were established. The overall tenor of the times can be seen in Governor David Walsh's message to the legislature, in which he criticized the lack of competition between carriers in establishing the rates, as well as stated his concern at the high level of the rates brought about by excessive commissions.

The report itself outlined the alliance of the stock companies through the establishment of an improper agreement whereby one individual was empowered to set the workers' compensation premium rates in the state. In essence, the bureau, started by the stock companies to gather statistics and to establish rates for all lines of liability insurance, including workers' compensation, gave to Samuel Appleton, of the Employers' Liability Assurance Corporation, Ltd., the sole and exclusive authority to establish rates in Massachusetts. While in no way raising any allegations to any specific improper practices, the Commission stated that such a position was indefensible. In fact, testimony from members of the industry acknowledged that this arrangement was unique in the United States. These rates were accepted by all of the stock companies and all but one of the mutual

Joint Judiciary Committee noted that amendments to the statute, which opened up the market to the issuance of insurance policies, had resulted in intense competition between the insurance carriers. In order to prevent the larger carriers from achieving an unfair advantage, the Insurance Commissioner was empowered with the authority to approve all rates. The legislature realized that this issue presented potential problems for the new system, so a Commission was established to investigate the matter more thoroughly.

The Committee attacked the issues presented to it with zeal, and in February of 1917 published a lengthy report outlining its findings and recommendations. In its discussion of the development of the present rates, the report outlined the satisfactory participation of the Massachusetts Workers' Compensation Rating and Inspection Bureau in a regional conference, held in connection with other states, in order to align, upon a mathematical basis, the differences between the states. A consensus was reached by all Massachusetts participants, with the exception of the Employees' Liability Assurance Corporation, LTD, on the use of manual classifications and general rules for payroll division. This company withdrew from the Bureau, and presented its own lower rates, to the Insurance Commissioner. Its argument was based on its belief that an inaccurate (too high) loading factor had been applied to the rates. Since the company believed that it could perform efficiently at a lower cost, it argued that it should have the privilege of doing so. In essence it wanted the opportunity to allow market forces to determine the premium rate.

This issue was a source of controversy between insurance companies and members of the Bureau and was partially responsible for the establishment of this Legislative Committee. Companies supplying insureds with dividends (Mutual Companies) had a different perspective on the problem. But a battle over the opportunity to compete for rates never materialized, as the Massachusetts Rating and Inspection Bureau amended its constitution to not pass on the issue, and to concentrate upon data collection in order to assist members in determining manual classifications.

Within two years the legislature again ordered another study on workers' compensation, and this time the majority recommended the establishment of a State Fund. The principal reasoning of the Commission was that the initial experience of the Act had witnessed commissions paid to agents at 15½% of the total payments to injured employees. By reducing the cost to employers through the implementation of a State Fund (and the elimination of commissions) benefits to employees could be increased. The Commission also was opposed to employers self insuring, in part based upon the premise that by giving the employer such a direct involvement in the adjudication of claims, it would inevitably breed antagonism and reluctance to resolve the issue. In essence, this thinking reflected the belief that insulating the parties through some method of insurance provided a greater incentive to settle the issue without litigation.

The three members composing the minority of the Commission disputed the need for a State Fund on both economic and philosophic grounds. The members cited the lack of necessity and demand for such an institution, and questioned whether a government should compete with its citizens. For Massachusetts businesses, in the view of the legislature, the minority opinion proved to be more persuasive and no action was taken on the majority's recommendation.

In 1926 the legislature enacted a resolve that empowered the governor to appoint a five member commission to investigate the effect of the workers' compensation law and to identify any and all defects in it. The report itself addressed the entire spectrum of the existing act. The majority report expressed concern over the increasing burden of the Industrial Accident Board's work, which not only threatened to become increasingly intolerable, but also could create inefficiency and hardships to the parties. Over a four year period, the number of single members hearings had increased 48% and board reviews had increased 60%. The majority rejected the notion that a monopolistic state fund be established, in part on the evidence that Massachusetts private carriers were able to move more expeditiously under the existing law than an exclusive state fund (Ohio) in the processing of claims.

The authors of the minority reports of the commission stated that they supported the position of the Industrial Accident Board in its recommendations that the Act be made compulsory for all private and public employers. The minority also dissented on the desirability of self insurance and recommended the establishment of an exclusive state fund.

In 1941 an initiative petition was filed that would have created an exclusive state fund. The petition proposed a seven member Board of Trustees to oversee the fund and that premium rates charged to insured be revised each July, in accordance with the experience of the fund. The fund would not solicit insureds, as applications were to be accepted in a manner similar to saving's bank life insurance. Expenditures could not exceed twenty five percent (25%) of earned premiums.

The question of the constitutionality of the state fund was presented to the Supreme Judicial Court for an advisory opinion. The Court's opinion stated that the establishment and operation of the fund, as a part of the state, was constitutional as an exercise of the police power of the Commonwealth. The decision stated that while this use of legislative power to drive employers to insure went beyond that previously exercised by the state, the petition did not entail an unwarranted use of power. There is no record of a vote on the issue at the next election, so the outcome of the petition is not documented in state records. At the same time that the Court issued the Advisory Opinion on the initiative petition, it also dealt with the question of the compulsory nature of the workers' compensation law. In its opinion, the Court stated that it was not a violation of the state constitution to make the statute compulsory. The Act was ultimately made compulsory in 1943.

In the latter part of the decade, the legislature once again empowered a Commission to perform an investigation and study relative to the workers' compensation law. The resolve itself directed the study to include the matter of workers' compensation insurance rates, which may have been brought about by increases in premium rates as a result of legislative amendments to increase benefits. The Commission noted that experience had

companies. In the past, this regulation only applied to mutual companies and was consistent with the state's enactment of laws to allow stock companies to conduct business on a participating basis. The proposed legislation was not enacted. In the ensuing years, additional studies were ordered, but there was no specific action taken that would have altered the existing method of establishing workers' compensation premium rates.

risk of the economic cycle of the investments into which the premium is placed while it is not needed to pay claims. Unlike most liability policies, in workers' compensation there is not an expected long dormant period for the premium to be invested before any significant payments are made. Nevertheless, during the late 1970's and early 1980's there was a sense in the industry that premium calculations were secondary to investing premiums. That fostered the concept of "competitive rating for all". By 1985 changes in tax laws and stock and bond market cyclical patterns, as well as losses, resulted in a "hard market" with the loss of carriers, some coverages, and violent premium increases for many insureds. Workers' compensation, a required coverage, should probably not be allowed to have the same volatility, as it is virtually a utility.

Resources to Appendix A

Report of the Joint Special Committee on Labor. January, 1908. House Document 1190.

Report of the Commission on Compensation for Industrial Accidents. July, 1912.

Fifth Annual Report of the Industrial Accident Board. January, 1918. Public Document No. 105.

Report of the Commission to Investigate Rates and Practices in Workmen's Compensation Insurance. 1915.

Report of the Joint Special Recess Committee on Workmen's Compensation Insurance Rates and Accident Prevention. February, 1917. Senate Bill 370.

Report of the Special Recess Commission on Workmen's Compensation. February, 1919. Senate Bill 334.

Report of the Special Commission to Investigate the Operation of the Workmen's Compensation Law. House Bill 999 of 1927.

Report of the Special Recess Commission Appointed for the Purpose of Investigating Workmen's Compensation, Silicosis, and Hazardous Employments. February, 1939. Senate Bill 456.

Opinion of the Justices. 309 Mass 571 (1941).

Discussion on Report of Special Commission Relative to Provisions of Workmen's Compensation Law. House Bill 1803 of 1947.

Report of the Special Commission Established to Make an Investigation and Study Relative to the Workers' Compensation Law. January 5, 1949. Senate 580.

Report of the Commissioner of Insurance for an Investigation and Study Relative to Further Regulating Insurers Authorized to Write Workers' Compensation Insurance. June, 1964. House Bill No. 3623.