

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

FISCAL YEAR 2002 ANNUAL REPORT

**MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL**

ADVISORY COUNCIL MEMBERS:

- ***Thomas M. Jones, *Chair*** (*Associated Industries of Massachusetts*)
- ***William H. Carnes, *Vice-Chair*** (*Int'l Brotherhood of Teamsters, Local 25*)

- ***Robert Banks** (*J.A.C. Iron Workers, Local 7*)
- ***Jeanne-Marie Boylan** (*Boston Sand & Gravel Company*)
 J. Bruce Cochrane (*Cochrane and Porter Insurance Agency*)
- ***Edmund C. Corcoran** (*Raytheon*)
 Carol Falcone (*Falcone Associates*)
- ***Frank Fanning** (*Service Employees International Union, Local 254*)
- ***Antonio Frias** (*S & F Concrete Contractors, Inc.*)
- ***Stephen F. Sampson** (*International Union of Elevator Constructors, Local 4*)
- ***John J. Perry** (*International Brotherhood of Teamsters, Local 82*)
 Alan S. Pierce (*Alan S. Pierce & Associates*)

EX OFFICIO:

Jane Edmonds (*Director of Labor & Workforce Development*)
Barbara Berke (*Director of Economic Development*)

STAFF:

Andrew S. Burton (*Acting Executive Director*)
Ann M. Helgran (*Research Analyst*)
**Voting Member*

IN MEMORIAM
James B. Hayes, Jr.



October 21, 1947 - July 30, 2002

Serving as First Deputy Director of Administration and Chief Financial Officer, Jim Hayes was a regular attendee of Advisory Council meetings. Every member of the Council had the privilege of getting to know Jim during his nine years at the Department of Industrial Accidents.

Whether Jim was reviewing budget figures with a subcommittee or giving his update at the Council Meetings, he was always fair, honest, and straightforward, yet somehow always left you smiling.

Prior to entering state service, Jim served 25 years in the United States Army, retiring as a Lieutenant Colonel in 1993. He served in Vietnam and during Desert Storm.

The Advisory Council takes great pride in dedicating the Fiscal Year 2002 Annual Report in Jim's memory.

Jim Hayes will be forever missed.



MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

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VICE-CHAIR

ANDREW S. BURTON
ACTING EXECUTIVE DIRECTOR

February 3, 2003

His Excellency Mitt Romney
Governor of Massachusetts
State House – Room 360
Boston, MA 02133

Dear Governor Romney:

On behalf of the Massachusetts Workers' Compensation Advisory Council, I am pleased to present you with our Fiscal Year 2002 Annual Report: The State of the Massachusetts Workers' Compensation System.

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

We appreciate your consideration of the Advisory Council's analysis of the workers' compensation system as outlined in this Annual Report and thank you for your interest in our policy positions, concerns, and recommendations.

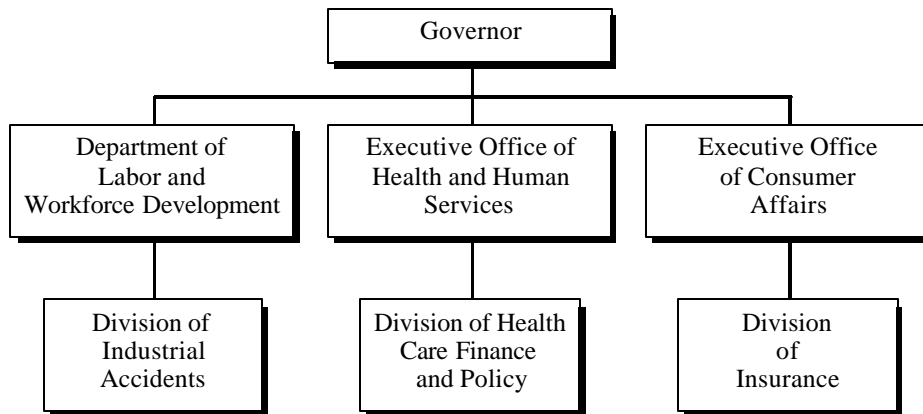
We look forward to working with you in the future and continuing our mission to improve services to injured workers, employers, and all participants in the Commonwealth's workers' compensation system.

Very truly yours,

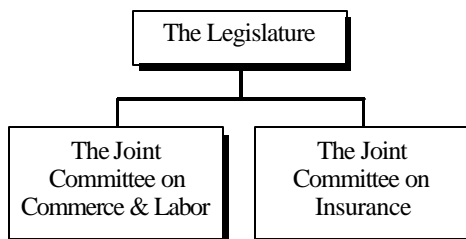
Andrew S. Burton
Acting Executive Director

Government Regulation of Workers' Compensation

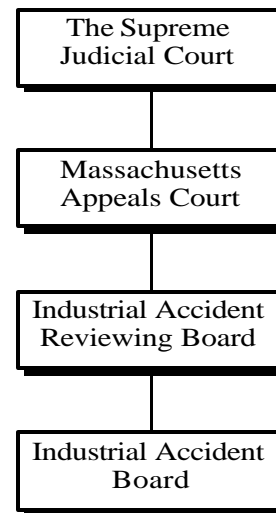
Administrative



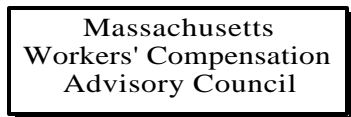
Legislative



Judicial



Oversight



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

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ADVISORY COUNCIL

The Massachusetts Workers' Compensation Advisory Council was created by the Massachusetts General Court on December 10, 1985, with passage of Chapter 572 of the Acts of 1985. Its functions are to monitor, recommend, give testimony, and report on all aspects of the workers' compensation system, except the adjudication of particular claims or complaints. The Council also conducts studies on various aspects of the workers' compensation system and reports its findings to key legislative and administrative officials.

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

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

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

The Advisory Council customarily meets on the second Wednesday of each month at 9:00 a.m. at the Division of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, Massachusetts.

Meetings are open to the general public pursuant to the Commonwealth's open meeting laws (M.G.L., c.30A, §11(a)).

Advisory Council Studies

The Advisory Council's studies are available for review Monday through Friday, 9:00 a.m. - 5:00 p.m. at the Massachusetts State Library, State House, Room 341, Boston, Massachusetts, 02133, or by appointment at the office of the Advisory Council, 600 Washington Street, 6th Floor, Boston, Massachusetts (617) 727-4900 ext. 378.

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

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

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

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

FISCAL YEAR 2002 IN REVIEW

It has been eleven years since the enactment of the workers' compensation reform act of 1991, and the Massachusetts Workers' Compensation System continues to experience benefits from it. Throughout fiscal year 2002, the Advisory Council carefully monitored the workers' compensation system and the operations of the DIA, seeking to recommend ways to improve the system and make it more efficient.

During fiscal year 2002, the Division of Industrial Accidents experienced the first increase in the number of workers' compensation cases filed since 1991. Although there was a slight increase in cases filed, they have declined by almost 60% overall since 1991. Employee claims, which account for 71% of the total cases filed, decreased slightly by 474 cases and have decreased by almost 40% since FY'91. Insurers requests for discontinuance, which account for 16% of the total cases, increased slightly by 187 cases in FY'02. These cases have decreased by 73% since fiscal year 1991.

The health of the workers' compensation insurance market showed mixed results in fiscal year 2002. On the positive side, a total of 6 new licenses were issued to carriers by the Division of Insurance (DOI) to write workers' compensation insurance in Massachusetts. Moreover, at the time of the 2001 rate decision, more than 60 insurers were offering discounts up to 35% to some or all of their Massachusetts customers. However, the health of the market was drawn into question in September of 2001 when Eastern Casualty, the third-largest workers' compensation insurer in Massachusetts, announced that it was withdrawing from the market after losing an attempt to secure an 11.6% rate increase. There was also concern regarding the size of the assigned risk pool in Massachusetts which has grown considerably in the last few years.

In July of 2001, the Advisory Council voted to send a letter to the Executive Office of Administration & Finance (EOAF), voicing the Council's support for an increase in the reimbursement fee for impartial physicians' medical examinations. Council Members were concerned about the lack of medical specialties on the Impartial Medical Examination (IME) roster and the possibility the system would experience delays in the scheduling of impartial exams. In August of 2002, the Advisory Council sent another letter to EOAF reiterating their previous concerns regarding the impartial fee structure. On August 26, 2002, the EOAF notified the legislature of its intention to increase the fee from \$350 to \$450. A public hearing was held by the EOAF relative to the proposed fee amount on October 3, 2002. The new IME rates went into effect on November 1, 2002.

On August 4, 2001, Insurance Commissioner Ruthardt disapproved the 11.6% workers' compensation rate increase requested by Eastern Casualty Insurance Company. The decision stated the Eastern Casualty could amend its rate filing, which was insufficient in critical areas such as methodologies and data associated with loss development, trend, expenses and underwriting profit. Shortly after Commissioner Ruthardt's formal decision, Eastern Casualty announced its withdrawal from the Massachusetts workers' compensation insurance market.

In September of 2001, the Advisory Council wrote a letter to the Chair and Vice-Chair of the House Ways & Means Committee stating their support for House Bill 1161. This bill would clarify assessments levied against the Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIBM). The Council believed that issues could arise if an insurance company chose not to be a member of the WCRIBM. As a result, they would not be participating in the cost-sharing of assessments levied against the WCRIBM to fund the State Rating Bureau, Insurance Fraud Bureau, and the Attorney General's anti-fraud efforts, yet they would reap the benefits of these services. In July of 2002, a new draft of this bill was substituted (H.5215) and enacted by the Governor.

In the Fall of 2001, there was a transition of Senate Chairs of the Commerce & Labor Committee when Senator Stephen P. Lynch was elected into the 9th Congressional District. Senator Marc R. Pacheco was then appointed the Senate Chair of the Joint Committee on Commerce & Labor.

On April 2, 2002, Julianne Bowler was officially sworn in as Massachusetts Insurance Commissioner. Commissioner Bowler served as Deputy Commissioner since 1998 and replaces Linda Ruthardt who served as Commissioner for nine years. Linda Ruthardt left her position as Commissioner of Insurance to become the new Commissioner for the Department of Health Care Finance & Policy.

On April 5, 2002, the Department of Labor issued a plan to reduce repetitive-stress injuries in the workplace calling for voluntary guidelines rather than the controversial ergonomic regulation issued by the Occupational Safety and Health Administration (OSHA) in 2000. The previous OSHA regulation would have required employers to develop and implement safety programs and would have altered state workers' compensation laws by mandating injury compensation for specific repetitive-motion injuries.

Throughout fiscal year 2002, the Advisory Council utilized a subcommittee to monitor the progress of Phase I of the agency's computer system conversion from Unify to Oracle. The new system went "live" on April 24, 2002 and was immediately deemed a success by the DIA. At the Advisory Council meeting that April, Council Members were presented with a summary of Phase I and a detailed overview of the objectives, scope, benefits, and functional highlights of what Phase II would entail. Later in the year, the Legislature included funding for Phase II in the FY'03 budget by including a provision that allowed the release of sufficient funds from the Special Reserve Fund upon the affirmative vote of the Advisory Council. After the budget was signed by the Governor, the Advisory Council voted to immediately release funds totaling \$2,200,000 to the Department to support Phase II of the conversion.

At the June 2002 Advisory Council meeting, members discussed Senate Bill 2358 which would amend the rate setting method of physician and hospital services under c.152 and would increase the benefits for scar-based disfigurement under §36. As a result of the discussions, the Advisory Council voted to send a letter to the Joint Committee on Commerce & Labor stating the Council's inability to reach a consensus in favor or opposed to Senate Bill 2358. It was stated in the letter that although the Council shares concern with the adequacy of these current rates, it was agreed that the language "usual and customary" is too broad based and ill defined. The Council also noted that they

continue to be receptive to amending Section 36 to allow compensation for scar-based disfigurement regardless of its location on the body. However, they were unable to reach a consensus on a SAWW multiplier to determine a maximum benefit for these injuries until a thorough cost-analysis can be conducted. Although this bill was reported favorably by the Commerce & Labor Committee, no further action occurred during the legislative session.

On July 29, 2002, Governor Swift signed the General Appropriations Act, giving the DIA an \$18,382,631 operating budget for fiscal year 2003. Included within the General Appropriations Act was a veto of funds (\$150,000) within the DIA's line item. This year's appropriation is \$214,917 less than last year's combined General Appropriations Act and Supplemental Budget (\$18,597,548). Provisions in the DIA's appropriation allow for the release of sufficient funds from the special fund reserve to pay for expenses associated with Phase-II of the agency's Oracle conversion project. The budget designates that "not less than" \$800,000 be expended for occupational safety training grants along with a stipulation requiring the DIA to assign a judge to Berkshire County once per month.

Throughout the year, the Advisory Council organized into various subcommittees to examine specific issues. Any information or conclusions obtained at the subcommittee level would then be relayed back to the full Council at the monthly meetings. As in previous years, the Advisory Council formed a budget subcommittee to review the DIA's FY'03 Budget Process and an OEVR subcommittee to address certain issues that could enhance the unit's efficiency to more effectively service injured workers. A new subcommittee that formed during the fiscal year examined the language of Section 65 and the possibility of establishing a retained revenue account (or other alternative funding mechanisms) in an effort to create an independent budget for the DIA.

Since 1997, the Advisory Council has voiced concern regarding the DIA's inability to verify the payment of assessments collected by insurance carriers from the employers of the Commonwealth. To address this issue, the DIA selected three firms to audit the assessment process to ensure adequate payments were being made to the DIA. By the end of fiscal year 2002, 72 insurers were being examined by these reviewing firms. During this process, the Council has questioned the DIA on how money will be collected from those companies who refuse to remit payment. The DIA has assured the Council that there may be cases which must be litigated if other solutions are not found. The Advisory Council receives periodic updates detailing the progress of these audits. Thus far, the project appears to be a success as reimbursements continue to be received by the DIA as a result of the audits.

During the 2001-2002 Legislative Session, only one bill regarding workers' compensation was passed into law that came before the Joint Committee on Commerce & Labor. House Bill 4348, regarding insurance coverage for sole proprietors, partnerships and corporate officers, was signed into law on July 25, 2002. Immediately following this bill's passage, Vice Chairman Rodrigues, of the Joint Committee on Commerce & Labor, invited all affected parties to a meeting to discuss the regulation of the new law. In October of 2002, the DIA held two hearings to take public comment on the proposed regulations. Finally, on October 23, 2002, the Commissioner of Insurance approved a proposal by the Workers' Compensation Rating & Inspection Bureau for determining the appropriate premium to be charged to sole proprietors and partners who elect coverage.

CONCERNS & RECOMMENDATIONS

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

Industrial Accident Board Appointments/Performance Review

In fiscal year 1998, the DIA experienced delays in both conferences and hearings due to the expiration of a large number of judicial terms. During that fiscal year, nine of twenty-four administrative judge (AJ) terms expired, as did all six administrative law judge (ALJ) terms. With as many as nine AJ's and all six ALJ's expiring in 2004, the Advisory Council believes that future delays to the system can be prevented if legislation can be passed that staggers the judicial terms of all Administrative Judges.

In the past, legislation has been filed attempting to stagger judicial terms by issuing four-year, five-year, and six-year terms to future appointments. Although the intent is good, this type of staggering could have negative consequences since a productive judge might be forced into a 4-year term, whereas, a new judge, who's work is unproven, could receive a 6-year term.

In an effort to improve on previous legislation, the Advisory Council formed a subcommittee in the fall of 2002 and met with Representative Koczera, a committed sponsor of past staggering legislation. As a result of these discussions, subcommittee members agreed on a new approach of "naturally" staggering terms. If passed, the new law would make the initial appointment of all new Administrative Judges be for 6-year terms, regardless of whether or not they were appointed to fill a vacancy. Currently, the statute provides that any judge appointed to fill a vacancy, occurring prior to the expiration of a term, must be appointed for the unexpired portion of that term.

Council members were also in agreement that a system of judicial performance review should be included in this legislation. Even the poor performance of one Administrative Judge can have an adverse effect on all participants in the workers' compensation system. The Advisory Council believes that the Senior Judge should review the performance of new AJ's after two years of service. If the performance review supports the continuation of the term, the AJ would continue to serve the remainder of the 6-year term. However, in the event the performance review recommends against the continuation of the term, the performance review would be submitted to the Governor for appropriate removal action if deemed necessary.

The Advisory Council recommends that the Legislature pass the newly revised version of this bill as sponsored by Representative Koczera, Representative Greene, and Senator Pacheco. This legislation will more efficiently allocate future judicial appointments and allow the workers' compensation system to function without delays for both injured workers, employers, and insurers.

Reimbursement Rates for Physician and Hospital Services

On May 28, 2002, the Joint Committee on Commerce & Labor held a hearing regarding Senate Bill 2358, sponsored by Senator Pacheco. Section 1 of this proposed legislation would have amended the rate setting method for physician and hospital services under c.152 by requiring the Division of Health Care Finance & Policy (DHCFP) to set these rates at a "usual and customary fee" for any such health care service. Current language requires the DHCFP to set these rates, which are determined by a regulatory process that promulgates in fee schedules (114.3 CMR 40.00) and other formats that ensure a public process. A key component of the regulation of medical fees allows them to be negotiated among the insurer, the employer, and the health care service provider (c.152, §13).

After careful review of all the issues, the Advisory Council was unable to reach a consensus in favor or opposed to Senate Bill 2358 but agreed to send a letter to the Commerce & Labor Committee stating their concerns.

Although the Council shares concern with the adequacy of the current rates, it was agreed that the language of "usual and customary" was too broad based and ill defined. The Council recognizes that there may be a cost-impact with any adjustment made to medical rates. However, Council members also acknowledge the positive impact that adequate rates could generate such as lowering indemnity costs as well as friction costs associated with litigation.

The Advisory Council recommends that the Commerce & Labor Committee consider a statutory change with suitable language that would ensure that injured workers receive prompt medical treatment and that medical providers be fairly compensated for their services.

DIA Funding

The Advisory Council continues to be concerned about how the DIA's line-item is treated during the Commonwealth's budget process. A common misconception made is that the DIA is a tax-funded agency and reducing its funding (in across the board cuts) will help alleviate budget shortfalls in Massachusetts. This is entirely untrue.

The DIA administers three separate budgets, which are funded solely by assessments on workers' compensation policies, fines for various infractions against the Workers' Compensation Act, and fees collected by the agency. The three Funds are made up of the Special Fund, the Private Trust Fund, and the Public Trust Fund. The Special Fund is used to pay for the operation of the agency. The Trust Funds were established so the DIA can make payments to uninsured-injured employees and employees denied vocational rehabilitation services by their insurers. In addition, it must reimburse insurers for benefits for second and latent injuries, injuries involving veterans, and for specified cost of living adjustments. One account is reserved for payments to private sector employees, while the other account is for payments to public sector employees.

During the fiscal year 2002 budget process, the Legislature's Conference Committee on the budget reduced the DIA's line-item by over 1 million dollars from all previous proposed amounts (DIA Request, House 1, House Ways & Means, Senate Ways & Means, and the Governor's Recovery Budget). By treating the DIA's account as a tax-

funded agency rather than an assessment-funded agency, the Legislature is jeopardizing the overall efficiency and effectiveness of the Department in assisting injured workers as they maneuver through the Workers' Compensation System.

The Advisory Council would like all parties involved in the state budget process to recognize that the DIA is funded by an assessment on employers which is based on an amount to adequately fund the DIA. There are **no tax dollars** used to fund this agency or any of its activities, as the DIA's special fund is used to reimburse the Commonwealth's General Fund for 100% of its budgeted appropriation.

Judicial Appointments

The Advisory Council continues to have concerns regarding delays in the appointment and reappointment of the DIA's Administrative Judges. It is troubling to see vacancies exist for months or years despite many qualified candidates who are awaiting nomination. Fewer sitting judges mean longer delays in processing cases through the system. This situation may bring back the backlogs that the 1991 reforms did much to eliminate. [see Appendix G for a complete roster of judicial expiration dates].

Code of Judicial Conduct Legislation

The Advisory Council continues to support the need for a uniform code of judicial conduct for DIA administrative judges (AJ's) and administrative law judges (ALJ's). The authority they exercise over the fate of injured employees and employers should be tempered by clearly defined standards to ensure the fair administration of justice.

The Council previously supported House Bill 2648, which was re-filed and modified during the 2001-2002 Legislative Session by Representative Antonio F. D. Cabral. The changes made to this bill reflect a technical amendment proposed by the Council that utilizes the American Bar Association's (ABA) Model Code of Judicial Conduct for State Administrative Law Judges. Although the ABA code only addresses conduct for ALJ's, the Council recommends that this code also be applied to AJ's.

Office of Safety Training Grants

The Office of Safety is responsible for establishing and supervising programs that entail the education and training of employees and employers in the recognition, avoidance, and prevention of unsafe or unhealthy working conditions. To fulfill this mandate, the DIA awards grants to qualified applicants, based on a competitive selection process.

For the past fourteen years, the Office of Safety has been funding "Occupational Safety and Health Education and Training Programs." In fiscal year 2002, the office received 92 requests and funded 28 proposals training over 17,535 employees.

Clearly, this program has been a valuable success. Safety grants have saved employers immeasurable amounts of money, by focussing on the pre-injury stages of workers' compensation. In fiscal year 2002, the program's funding decreased to \$700,000, and proposals could be submitted up to a maximum of \$30,000. The safety grant program has previously been funded at \$800,000 since 1993.

The Advisory Council applauds the efforts made by the Office of Safety for providing education and training to employees on a variety of workplace safety issues. Council Members have been informed that the demand for safety grants is rising and are concerned that the Office of Safety had their budget cut by \$100,000 in FY'02. The Advisory Council is supportive of the Office of Safety's future efforts to increase their funding, thereby allowing for more employees and employers to be educated, while attaining the ultimate goal of creating safer workplaces.

Employer Fines Legislation

For the past seven years the Advisory Council has expressed concern over the current flat fine of \$100 per day assessed against any employer that is found to be lacking workers' compensation insurance. This fine was established in 1987 and has not been adjusted since. Council Members have agreed that stop work orders and fine provisions found at M.G.L. c.152, §25C are not sufficiently punitive to deter employers from violating the mandate to obtain workers' compensation insurance coverage.

In FY'97, the Advisory Council worked to develop a bill to address the inadequacy of the current fines. Council Members consulted with officials from the insurance industry, the Insurance Fraud Bureau, and the DIA. As a result of those meetings, the Council believed it was important that a fine be based on a "sliding scale." Therefore, employers that have avoided higher premiums would be subject to a larger fine than employers that have avoided smaller ones would. For this reason, the Council agreed to adopt the approach of several states that imposed fines at the rate of three times premium avoided.

During the 2001-2002 Legislative Session, Senator Stephen F. Lynch re-filed Senate Bill 65, which was based on legislation previously drafted by the Advisory Council (Senate Bill 1970). Although the Council endorsed this legislation, it accompanied a study order on July 5, 2001.

A related concern of the Advisory Council is the magnitude of Trust Fund Claims. When an employee is injured at work, and it is discovered that the employer failed to provide coverage, the employee may obtain benefits through the DIA's Trust Fund. The Trust Fund was created in the statute as a protective measure to pay for the benefits of injured employees of uninsured employers. The Trust Fund is financed through assessments paid by the vast majority of employers who purchase insurance. In FY'02, approximately \$4,579,380 was paid to uninsured claimants.

TRUST FUND PAYMENTS TO UNINSURED CLAIMANTS	
Fiscal Year 2002:	\$4,579,380
Fiscal Year 2001:	\$3,302,809
Fiscal Year 2000:	\$3,390,180
Fiscal Year 1999:	\$3,132,378

The Advisory Council continues to voice support for this legislation. Although this bill has failed to move, Council Members are optimistic that the Legislature will re-examine its significance in 2003. The passage of this bill will force fraudulent employers to purchase workers' compensation insurance while helping to alleviate multiple claims against the Trust Fund. The Advisory Council strongly recommends that "employer fines" legislation be enacted in the 2003 – 2004 Legislative Session.

Compensation Review System (CRS)

As part of the 1991 Workers' Compensation Reform Act, the statute mandated that the DIA "monitor the medical and surgical treatment provided to injured employees and the services of other health care providers, and monitor hospital utilization as it relates to the treatment of injured employees. The monitoring shall include determinations concerning the appropriateness of the service, whether treatment is necessary and effective, the proper costs of services, and the quality of treatment" (M.G.L. c.152, §13).

In order to fulfill this legislative mandate, the staff of the Office of Health Policy (OHP) has set out to create a Compensation Review System (CRS). The intention of CRS is to allow the DIA to monitor the use of specific treatments for specific injuries and compare that usage to the treatment guidelines promulgated by the Health Care Services Board (HCSB). In addition to monitoring health care, the CRS will aid in controlling costs by detecting over-utilization and improper utilization of specific treatments for work-related injuries. This will be accomplished by obtaining claim and treatment records from insurers, self-insurers and third party administrators and comparing this data to the treatment guidelines.

Since March of 2002 the implementation of the CRS program has been the main focus for the Office of Health Policy. In preparation for the January 1, 2003 start date, the office has been meeting with insurers throughout the state to present the program. A CRS database has been developed along with the completion of two pilot data collections from two insurers. The Office of Health Policy continues to provide assistance and support to insurers to set up their data collection systems.

The Advisory Council applauds the DIA for introducing a new approach that uses existing technology and internal resources to fulfill the mandate issued by the Legislature in 1991. Monitoring the trends in medical services provided to injured workers could produce exceptional benefits in the system. However, we remain concerned that resistance could occur due to lack of cooperation of the insurers, self-insurers and third party administrators in providing this information. The Advisory Council will continue to closely monitor the CRS project which is scheduled to begin on January 1, 2003.

Audit of Insurance Carrier Payments/COLA Reimbursements

M.G.L. c.152, §65 states that revenues for the Special Fund and the Trust Fund shall be raised by an assessment on all employers. The act specifies that the DIA must calculate an assessment rate which, when multiplied by an employer's standard premium, yields an employer's assessment amount. M.G.L. c.152, §65(5) also specifies that the DIA must bill self insured employers and self insurance groups for these assessments. The act states that insurance carriers, however, are responsible for billing and collecting assessments from insured employers. The act also requires that assessments must be separately stated on insurance bills and that insurance carriers must pay amounts to the DIA on a quarterly basis, no later than one month after the end of the quarter.

While the DIA bills self insurance groups and self insured employers directly for assessments, it relies on insurance carriers to self-report and pay the appropriate amounts billed and collected from employers. Since 1986, when the DIA's funding system was first implemented, these payments have never been reviewed for accuracy and have gone

without audit. The DIA first identified this problem in 1994, but was unable to address it due to lack of funding.

The Advisory Council first voiced concern about the DIA's inability to verify payment of assessments collected by insurance carriers in the FY'97 Annual Report. In response to this concern, the DIA selected three accounting firms to review the assessment process to ensure adequate payments have been collected and remitted by the insurance carriers. By the end of fiscal year 2002, reviews were completed for 27 insurance companies, while approximately 50 additional companies were in the process of being reviewed. The DIA has welcomed the opportunity to work with the insurance carriers to resolve any discrepancies that have been noted as a result of the reviews and remains committed to resolving all outstanding issues through whatever means necessary. The Council is updated periodically regarding the status of the assessment audits.

The Advisory Council strongly supports the DIA's continued efforts in using independent auditors to verify insurer's compliance with the collection of assessments and COLA's from employers. Thus far, the project is a success as remittances continue to be received as a result of the reviews. The Advisory Council believes that this process will be beneficial to both insurers and the DIA by ensuring that proper credit and debit adjustments are applied to the respective parties.

Office of Education and Vocational Rehabilitation

The Office of Education and Vocational Rehabilitation (OEVR) determines eligibility and oversees the vocational rehabilitation process administered to workers' compensation recipients. For the past four years the Advisory Council and the Joint Committee on Commerce & Labor have expressed concern with OEVR and has recommended that the office take a more aggressive approach that would promptly initiate services and increase suitable work returns of injured workers.

The Advisory Council established a sub-committee to address these concerns and conjointly worked to remedy and enhance this process. The sub-committee is still proceeding in the goal to improve the operations of the office and expedite services to injured workers. In FY'02, ongoing meetings were conducted amongst the Advisory Council sub-committee members, the DIA Administration, and the Director of OEVR. Efforts continue in this endeavor and the Advisory Council plans to formally submit a report to the Joint Committee on Commerce & Labor.

Oracle Conversion - Phase II

In the Advisory Council's Fiscal Year 1994 Annual Report, concern was raised over the accuracy of the DIA's data collection system known as "Diameter." The DIA has utilized Diameter since 1987 as a scheduling and database system. Although reports were generated from this system, data was not developed fully to produce understandable and reliable statistics. Diameter was written in Unify programming language and was based on outdated technology which made maintenance difficult.

In the fall of 2000, Oracle Corporation proposed a new application to replace the antiquated Diameter system that would lay the foundation for the DIA's move to

e-government. The proposed application would modernize the agency's database, streamline data entry and maintenance, and would provide new tools to both the agency and public (i.e. online submission of the First Report of Injury Form).

Funding of this project was made possible when the Legislature allocated provisions in the FY'01 Budget to allow the release of sufficient funds from the DIA's Special Reserve Account upon the affirmative vote of the Advisory Council. In September 2000, the Advisory Council voted to release \$3,960,000 to pay for costs associated with Phase I of the conversion. The Council established a subcommittee which met monthly with members of the DIA and Oracle to closely monitor the progress of the project.

The first phase of the agency's computer system conversion from Unify to Oracle went "live" on April 24, 2002 and was immediately deemed a success by the DIA. The Advisory Council was presented with a demonstration of the new system and a detailed overview of the objectives, scope, benefits, and functional highlights of what Phase II would entail. In the fall of 2002, the Legislature included funding for Phase II in the FY'03 Budget, allowing the release of funds from the DIA's Special Reserve Account upon the affirmative vote of the Advisory Council. Once the budget was signed by the Governor, the Council voted to release \$2,200,000 to support Phase II of the project.

The Advisory Council fully recognizes the potential in cost-savings that a state-of-the-art database will provide to the workers' compensation system in Massachusetts. Oracle has estimated that annual savings to both insurers and the agency could exceed \$1 million as a result of on-line form submissions. Furthermore, savings experienced by the DIA will be passed on to the employers of the Commonwealth by favorably impacting upon their assessments. The Council will continue to monitor Phase II of the Oracle conversion project and is committed to ensuring that the investment is spent in a responsible and reasonable manner.

LEGISLATION

During 2001-2002 Legislative Session, approximately thirty-eight bills were filed by Legislators seeking to amend the workers' compensation system (see Appendix C). Most bills concerning workers' compensation matters were referred to the Joint Committee on Commerce & Labor. Once legislation is referred to the committee, public hearings are held on the bills.

The Committee met in Executive Session on March 21, 2001 to review the majority of the bills proposed regarding workers' compensation legislation. On March 28, 2002 a separate hearing was held by the Committee to review Senate Bill 2358. At a public hearing, the Committee members will vote to recommend that each bill either receive a favorable rating of "ought to pass," an unfavorable rating of "ought not to pass," an order for further study, or to extend the time period for further examination.

The Advisory Council continues to work with the Joint Committee on Commerce & Labor to achieve the necessary changes to continually improve the workers' compensation system.

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

Bills Enacted

Of the thirty-eight bills filed in the 2001-2002 Legislative Session, only one bill was enacted into law regarding workers' compensation.¹ House Bill 4348 was group sponsored and passed into law in July of 2002.

**H.4348 -
Commerce &
Labor**
[LATE-FILE]

**EXEMPTION OF CORPORATE OFFICERS (§1), DEFINITION OF
EMPLOYER - EXEMPTION OF SOLE PROPRIETORS &
PARTNERSHIPS (§1)**

This late-file bill (new draft for H.230, H.398, H.772, and H.2104), makes the requirement of obtaining workers' compensation insurance elective for corporate officers (or the director of a corporation) who own 25% of the issued and outstanding stock of that corporation. Said corporate officer must provide the Commissioner of the DIA with a written waiver of their rights should they choose to opt-out from the workers' compensation system. The Commissioner of the DIA is required to promulgate regulations to carry out this process.

This bill would also amend the definition of an employee and give a sole-proprietor or a partnership the option of being considered an employee, thereby making workers' compensation coverage elective.

¹ This number is only in reference to workers' compensation legislation filed before the Joint Committee on Commerce & Labor and excludes workers' compensation legislation that may have been filed in different committees.

Bills with a "Favorable Rating"

As in past years, a number of bills were rated "favorably" by the Committee on Commerce & Labor. It should be noted that H.230 and H.398 were combined into one bill. Attached to this combined bill are H.772, H.2104, S.56, and S.89.

**H.230 - Flavin
and Mariano**
[REFILE]

DEFINITION OF EMPLOYER - EXEMPTION OF SOLE PROPRIETORS & PARTNERSHIPS (§1)

This refiled bill (formerly H.192) would amend the definition of an employee and give a sole-proprietor or a partnership the option of being considered an employee, thereby making workers' compensation coverage elective.

**H.398 -
Rodrigues,
Lepper, Travis,
George, and
Cresta**
[REFILE]

EXEMPTION OF CORPORATE OFFICERS (§1)

This refiled bill (formerly H.753), would make the requirement of obtaining workers' compensation insurance elective for corporate officers (or the director of a corporation) who own 25% of the issued and outstanding stock of that corporation. Said corporate officer must provide the Commissioner of the DIA with a written waiver of his rights under this chapter. The Commissioner of the DIA is required to promulgate regulations to carry out this process.

H.772 - Lepper
[REFILE]

DEFINITION OF EMPLOYEE (§1(4)) - EXEMPTION OF CORPORATE OFFICERS

This refiled bill (previously H.3617) amends the definition of employee by making workers' compensation coverage elective for corporate officers regardless of their duties. This proposal would especially effect small, family-run businesses where the owners typically are the only workers.

H.2104 - Hahn
[NEW]

EXEMPTION OF CERTAIN DIRECTORS, OFFICERS, AND TRUSTEES OF NON-PROFIT ENTITIES (§1)

This new bill would amend §1(5) by exempting from the Workers' Compensation Act, "any director, officer or trustee of a nonprofit entity, as defined by the Internal Revenue Service Code, who receives no compensation except reimbursement for out of pocket expenses."

H.2114 - Larkin
[SIMILAR]

STAGGERING TERMS OF INDUSTRIAL ACCIDENT BOARD AND REVIEWING BOARD JUDGES (c. 23E)

This bill is similar to H.577 filed last legislative session.

Section 1 of this bill would require the staggering of administrative judge appointments beginning in 2001. The intent is to avoid future problems of multiple terms expiring in one year. Terms would be staggered as follows:

2001 - *one* administrative judges would be appointed to a *six-year* term.

2002 - *one* administrative judges would be appointed to a *six-year* term.

2003 - *two* administrative judge would be appointed to *six-year* terms.

2004 - *four* administrative judge would be appointed to *six-year* terms.

- *two* administrative judges would be appointed to *five-year* terms.

- *three* administrative judges would be appointed to *four-year* terms.

2005 - *two* administrative judges would be appointed to *six-year* terms.

2006 - four administrative judges would be appointed to six-year terms.
- two administrative judges would be appointed to five-year terms.
Thereafter - administrative judges would be appointed to six-year terms.

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

Section 3 of this bill would amend Chapter 23E, §5 by staggering administrative law judge appointments. Terms would run as follows beginning in 2004:

two members or successors would be appointed to six-year terms.

two members or successors would be appointed to five-year terms.

two members or successors would be appointed to four-year terms.

Thereafter, a member/successor would be appointed or re-appointed to a six-year term.

Section 4 of this bill would establish a performance review system by the Senior Judge of the DIA during the initial term of a newly appointed Administrative Judge, as established by §4 of Chapter 23E, who has never previously served on the Industrial Accident Board.

**H.2648 - Cabral,
Travis, Swan,
and Verga**
[REFILE]

REMOVAL OF AJs & ALJs (c. 2E §8) – CODE OF JUDICIAL CONDUCT

This refiled bill (previously H.3027) would require the Senior Judge, the AJs and the ALJs to be subject to the Code of Judicial Conduct as promulgated by the SJC. The Council has supported this bill in the past.

[Note: The American Bar Association has written and endorsed A Model Code of Judicial Conduct for State Administrative Law Judges. This code is based on the ethical code applicable to court judges but accounts for differences in responsibilities and powers of state administrative law judges as opposed to judges presiding in a court of law.]

**S.56- Lees, Tarr,
Knapik, and
Tisei**
[REFILE]

DEFINITION OF EMPLOYEE (§1(4)) – ELECTIVE COVERAGE OF CORPORATE OFFICERS

This bill is exactly the same as S.53 filed last legislative session.

It would make coverage of corporate officers and employees who are immediate family members, who are also sole executive officers, elective.

S.89- Lynch
[NEW]

DEFINITION OF EMPLOYEE (§1(4)) – ELECTIVE COVERAGE OF CORPORATE OFFICERS

This bill would make workers' compensation coverage elective for corporate officers or Directors of a corporation (who are the sole executive officers), who own 100% of the issued and outstanding stock, provided that the corporation does not employ any other person. Said corporate officer would be required to provide the DIA with a written affidavit stating there are no other people employed. Said corporate officer must also provide the DIA with a written waiver of rights under the workers' compensation statute and provide proof of sufficient personal medical and disability insurance coverage. Elective coverage would not apply to corporations or its employees who are engaged in any "non-sedentary work activities, including but not limited to manufacturing, trucking or the building construction trades."

S.2358 - Pacheco
[LATE-FILE]

REIMBURSEMENT RATES FOR PHYSICIAN AND HOSPITAL SERVICES (c.118G, §7), SCAR-BASED DISFIGUREMENT (§36)

Section 1 of this late-file bill would amend c.118G, §7 by adding a new paragraph requiring the Division of Health Care Finance & Policy (DHCFP) to set rates for physician and hospital services paid for under c.152 at a "usual and customary fee" for any such health care service. Current language requires the Division to set these rates, which are determined by a regulatory process that promulgates in fee schedules (114.3 CMR 40.00) and other formats that ensure a public process. Rates are currently negotiable among the insurer, employer, and the health care service provider (c.152, §13).

Section 2 of this bill would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. S.2358 would require compensation for all disfigurement, whether or not scar-based, regardless of its location on the body. The proposed legislation further states that payments for these type of injuries could not exceed the average weekly wage in the Commonwealth (at date of injury) multiplied by 29 [$\$890.94$ (SAWW) $\times 29 = \$25,837.26$ (maximum benefit)]. Current language in the statute limits payments for scar-based disfigurement to not exceed \$15,000.

SECTION

- 1 -

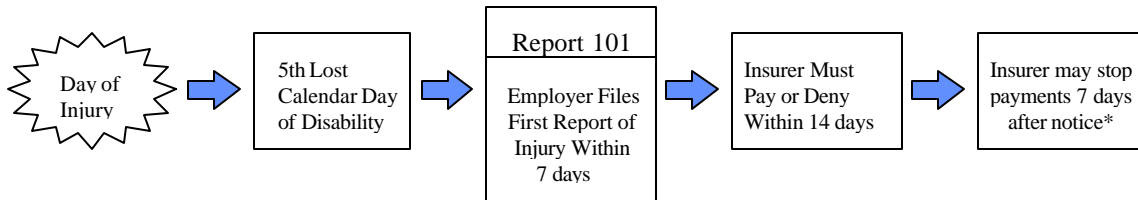
OVERVIEW

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PROVISIONS TO RESOLVE DISPUTES

Figure 1: Schedule of Events

Schedule of Events:



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

Workers’ Compensation Claims

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

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

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

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

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

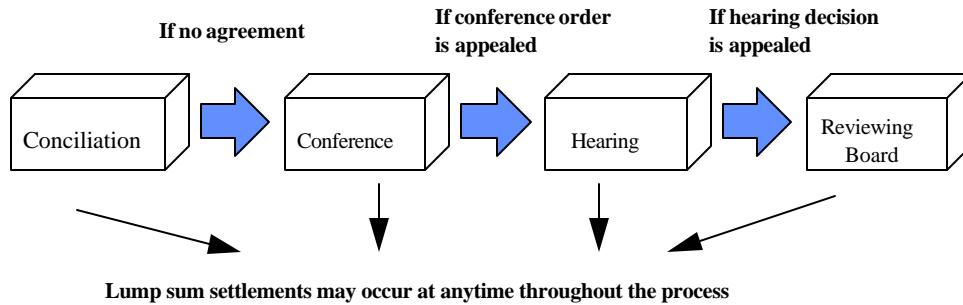
Dispute Resolution Process

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

Figure 2: Dispute Resolution Process

Dispute Resolution:

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



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

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

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

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

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

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

Lump Sum Settlements

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

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

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

Alternative Dispute Resolution Measures

Arbitration & Mediation - At any time prior to five days before a conference, a case may be referred to an independent arbitrator. The arbitrator must make a decision whether to vacate or modify the compensation pursuant to M.G.L. c.251, §12 and §13. The parties involved may agree to bring the matter before an independent mediator at any stage of the proceeding. Mediation shall in no way disrupt the dispute resolution process, and any party may continue with the process at the DIA if they decide to do so.

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

SUMMARY OF BENEFITS

An employee who is injured during the course of employment or suffers from work-related mental or emotional disabilities, as well as occupational diseases, is eligible for workers' compensation benefits. These benefits include weekly compensation for lost income during the period the employee cannot work.

Indemnity payments vary, depending on the average weekly wage of the employee (AWW) and the degree of incapacitation. The statute dictates that the maximum benefit be set at 100% of the State Average Weekly Wage (SAWW) and that a minimum benefit of at least 20% of the SAWW.⁴ In addition, the insurer is required to furnish medical and hospital services, and medicines if needed. The insurer must also pay for vocational rehabilitation services if the employee is determined to be suitable by the DIA.

Below is a list of the SAWW's, since 1992, and the maximum (SAWW) and minimum benefit levels for §34 and §34A claims. For the first time since 1940, the SAWW experienced a decrease (- \$8.37) from the previous year.

Table 1: Indemnity Benefits

<u>Effective Date</u>	<u>Maximum Benefit</u>	<u>Minimum Benefit</u>
10/1/92	\$543.30	\$108.66
10/1/93	\$565.94	\$113.19
10/1/94	\$585.95	\$117.19
10/1/95	\$604.03	\$120.81
10/1/96	\$631.03	\$126.21
10/1/97	\$665.55	\$131.11
10/1/98	\$699.91	\$131.98
10/1/99	\$749.69	\$149.93
10/1/00	\$830.89	\$166.18
10/1/01	\$890.94	\$178.19
10/1/02	\$882.57	\$176.51

Source: DIA Circular Letter No. 310 - Table III (October 1, 2002)

⁴The Statewide Average Weekly Wage (SAWW) is determined under M.G.L. c.151A, §29(2) & promulgated by the Director the Division of Employment and Training. As of October 1, 2002, the SAWW is \$882.57.

Indemnity and Supplemental Benefits

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

Temporary Total Disability (§34) - Compensation will be 60% of the employee's average weekly wage (AWW) before injury, while remaining above the minimum and below the maximum payments that are set for each form of compensation. The maximum weekly compensation rate is 100% of the state average weekly wage (\$882.57), while the minimum is 20% of the SAWW (\$176.51), if claims involve injuries occurring on or after October 1, 2002. The limit for temporary benefits is 156 weeks.

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

Permanent and Total Incapacity (§34A) - Payments will equal 2/3 of AWW following the exhaustion of temporary (§34) and partial (§35) payments. The maximum weekly compensation rate is 100% of the state average weekly wage (\$882.57), while the minimum is 20% of the SAWW (\$176.51), if claims involve injuries that occurred on or after October 1, 2002. The payments must be adjusted each year for cost of living allowances (COLA benefits).

Death Benefits for Dependents (§31) - The widow or widower that remains unmarried shall receive 2/3 of the worker's AWW, but not more than the state's AWW or less than \$110 per week. They shall also receive \$6 per week for each child (not to exceed \$150 in additional compensation). There are also benefits for other dependents. Benefits paid to all dependents cannot exceed 250 times the state AWW plus any cost of living increases (COLA). However, children under 18 years old may continue to receive payments even if the maximum has been reached. Burial expenses may not exceed \$4,000.

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

Attorney's Fees

The dollar amounts specified for attorney's fees are listed in M.G.L. c.152, §13A(10). As of October 1, 2002, subsections 1 through 6 were updated to reflect adjustments to the State Average Weekly Wage. Below is a summary of the attorney's fee schedule:

(1) When an insurer refuses to pay compensation within 21 days of an initial liability claim but prior to a conference agrees to pay the claim (with or without prejudice), the insurer must pay an attorney's fee of **\$925.14** plus necessary expenses. If the employee's attorney fails to appear at a scheduled conciliation, the amount paid is **\$462.57**.

(2) When an insurer contests a liability claim and is ordered to pay by an administrative judge at conference, the insurer must pay the employee's attorney a fee of **\$1,321.63**. The administrative judge can increase or decrease this fee based on the complexity of a case and the amount of work an attorney puts in. If the employee's attorney fails to appear at a scheduled conciliation, the fee may be reduced to **\$660.82**.

(3) When an insurer contests a claim for benefits other than the initial liability claim (as in subsection 1) and fails to pay compensation within 21 days, yet agrees to pay the compensation due, prior to conference, the insurer must pay the employee's attorney fee in the amount of **\$660.82** plus necessary expenses. This fee can be reduced to **\$330.41** if the employee's attorney fails to appear at a scheduled conciliation.

(4) When an insurer contests a claim for benefits or files a complaint to reduce or discontinue benefits by refusing to pay compensation within 21 days, and the order of the administrative judge after a conference reflects the written offer submitted by the claimant (or conciliator on the claimant's behalf), the insurer must pay the employee's attorney a fee of **\$925.14** plus necessary expenses. If the order reflects the written offer of the insurer, no attorney fee should be paid. If the order reflects an amount different from both submissions, the fee should be in the amount of **\$462.57** plus necessary expenses. Any fee should be reduced in half if the employee's attorney fails to show up to a scheduled conciliation.

(5) When the insurer files a complaint or contests a claim and then, either a) accepts the employee's claim or withdraws its own complaint within 5 days of a hearing, or b) the employee prevails at a hearing, the insurer shall pay a fee to the employee's attorney in the amount of **\$4,625.69** plus necessary expenses. An administrative judge may increase or decrease this amount based on the complexity of the case and the amount of work an attorney puts in.

(6) When the insurer appeals the decision of an administrative judge and the employee prevails in the decision of the Reviewing Board, the insurer must pay a fee to the employee's attorney in the amount of **\$1,321.63**. An administrative judge may increase or decrease this amount based on the complexity of the case and the amount of work an attorney puts in.

SECTION

- 2 -

WORKPLACE INJURY & CLAIM STATISTICS

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OCCUPATIONAL INJURIES AND ILLNESSES

Every year the Massachusetts Department of Labor & Workforce Development, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics, conducts an *Annual Survey of Occupational Injuries and Illnesses* in Massachusetts. This study surveys non-fatal injuries that occurred in the private sector workforce (not including the self-employed, farms with fewer than 11 employees, private households, and employees in Federal, State and local government agencies). A sample of 250,000 employer reports nationwide, including 10,000 in Massachusetts, are examined in an effort to represent the total private economy for 2000. The following chart shows the decline both nationally and locally in incidence rates per 100 full-time workers since 1996.

Table 2: Injury and Illness Incidence Rates - U.S. and New England 1996-2000 (Private Industry)

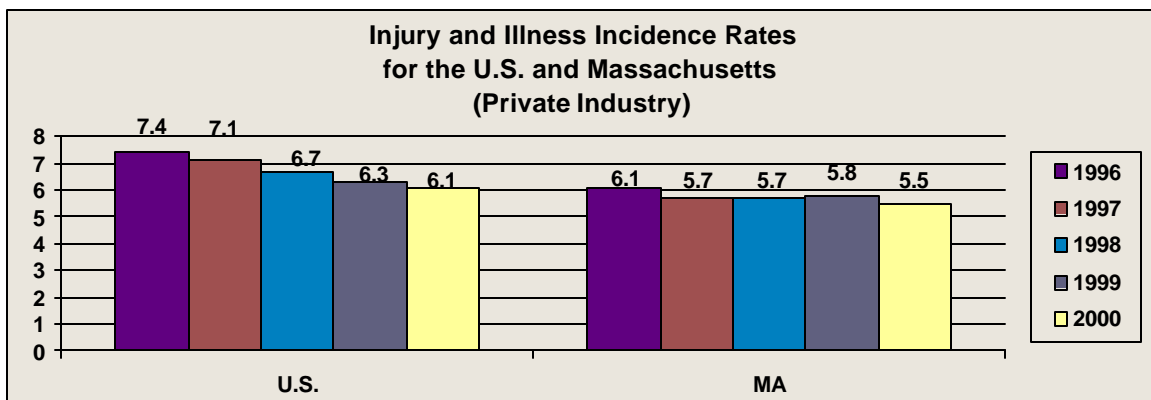
Region	2000	1999	1998	1997	1996
United States	6.1	6.3	6.7	7.1	7.4
Massachusetts	5.5	5.8	5.7	5.7	6.1
Connecticut	6.7	6.8	7.1	6.6	8.0
Maine	9.0	9.3	9.2	8.7	8.9
Rhode Island	no data	7.0	6.7	7.8	7.1
Vermont	6.9	7.6	6.9	6.7	no data
New Hampshire	no data	no data	no data	no data	no data

Source: Bureau of Labor Statistics - Boston Office.

Injury Incidence Rate

For every 100 full-time workers in the Commonwealth, 5.5 were injured in 2000 (incidence rate). For the ninth year in a row, Massachusetts ranks the lowest for incident rates among all New England states, and well below the national average of 6.1. Furthermore, this makes the Commonwealth the only New England state to remain below the national average for nine consecutive years.

Figure 3: Injury and Illness Incidence Rates - U.S. and Massachusetts 1996-2000



Source: Bureau of Labor Statistics - Boston.

Table 3: Nonfatal Injury & Illness Incidence Rates by Industry - Massachusetts 1996-2000

Industry Division (Massachusetts)	2000	1999	1998	1997	1996
Private Industry	5.5	5.8	5.7	5.7	6.1
Agriculture, forestry, and fishing	7.7	11.6	10.8	10.7	7.6
Construction	9.4	9.5	9.0	10.3	10.8
Manufacturing	6.0	6.3	6.6	7.1	7.3
• Durable goods	5.7	5.7	6.0	N/A	N/A
• Non-durable goods	6.5	7.2	7.5	N/A	N/A
Transportation & public utilities	8.2	8.1	9.3	8.9	9.0
Wholesale and retail trade	6.9	6.6	5.9	5.6	6.4
• Wholesale trade	7.6	6.1	6.2	N/A	N/A
• Retail trade	6.6	6.8	5.8	N/A	N/A
Finance, insurance, real estate	1.4	1.7	1.9	2.2	1.4
Services	4.5	5.0	4.9	5.6	5.4

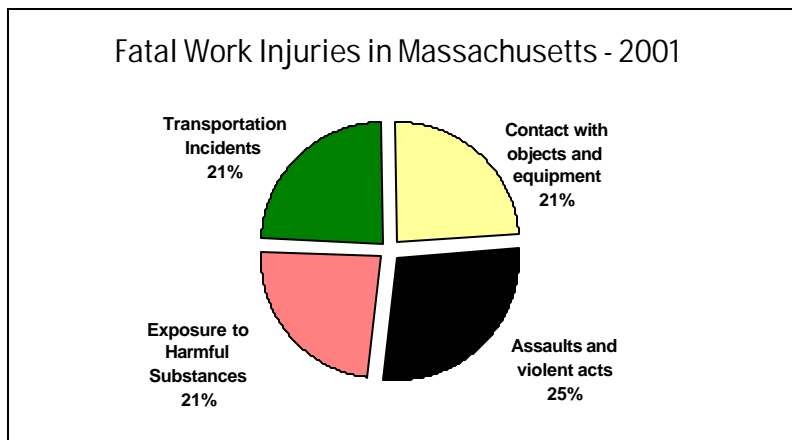
The survey also categorized incidence rates according to Massachusetts industry. Clearly, the construction industry had the highest overall incidence rate in 2000, with 9.4 injuries for every 100 full-time workers. Finance, insurance and real estate had the lowest incidence rates, with 1.4 injuries per 100 workers.

Source: Bureau of Labor Statistics - Boston.

Fatal Work Injuries

Fatal work injuries in Massachusetts are calculated each year by the U.S. Department of Labor, Bureau of Labor Statistics. Data is taken from various states and federal administrative sources including death certificates, workers' compensation reports and claims, reports to various regulatory agencies, and medical examiner reports. In 2001, a total of 53 fatal work injuries occurred in Massachusetts, a decrease of 21% from 2000 (67). This calculates to be less than 1% of the 5,900 fatal work injuries nationally.

Figure 4: Distribution of Fatal Occupational Injuries by Event - Massachusetts 2001



Assaults and violent acts were the leading cause of workplace deaths in Massachusetts, accounting for 25% of the total cases in 2001. Nationally, highway crashes continued as the leading cause of on-the-job fatalities, accounting for 43% of the fatal work injury total in 2001.

Source: Bureau of Labor Statistics, News - USDL-02-541

CASE CHARACTERISTICS

The following tables and statistics illustrate trends, by "injury kind" in claims, average claim cost, and frequency for the five most recent years of available data.⁵ This data is derived from insurance claims paid by commercial insurers writing policies in the state and does not include data from self insured employers or self insurance groups (SIGs). Insurance data is not considered reliable until several years after the policy year in which the claims occurred. For this reason, the most recent year comprising of reliable data is the 1999/2000 policy year. Each year of the data is developed to the fifth report, so the years can be compared equally.

Case Data By Injury Type

Table 4: Developed Claim Counts (Including Large Deductibles)

Composite Policy Year	Injury Kind 1 Fatal	Injury Kind 2 Permanent Total	Injury Kinds 3&4 Partial Disability	Injury Kind 5 Temporary Total	Injury Kind 6 Medical Only
1995/1996	33	68	5,892	23,600	71,383
1996/1997	42	42	5,931	23,790	73,594
1997/1998	45	80	6,727	23,649	76,293
1998/1999	30	44	7,090	23,878	75,805
1999/2000	17	21	7,205	24,938	75,275

Source: WCRIBM, schedule Z data by injury type (developed to 5th report) from Section V-D Exhibit 2-3.

Table 5: Average Claim Costs - "Indemnity + Medical" (Including Large Deductibles)

Composite Policy Year	Injury Kind 1 Fatal	Injury Kind 2 Permanent Total	Injury Kinds 3&4 Partial Disability	Injury Kind 5 Temporary Total	Injury Kind 6 Medical Only
1995/1996	285,985	535,939	46,066	7,378	345.49
1996/1997	192,017	356,409	44,812	7,224	359.31
1997/1998	179,638	302,279	44,346	8,282	383.90
1998/1999	384,944	1,537,520	42,048	9,309	405.48
1999/2000	410,175	1,307,730	43,454	9,963	427.53

Source: WCRIBM, schedule Z data by injury type (developed to 5th report) from Section V-D Exhibit 1-3.

⁵ It is important to note that the WCRIBM claim categories ("injury kind") do not correspond to specific sections of the Workers' Compensation Act. For example, the permanent total category includes predominantly section 34A benefits, but may also include benefits under section 30 and section 36.

Table 6: Average Claim Costs - Indemnity (Including Large Deductibles)

Composite Policy Year	Injury Kind 1 Fatal	Injury Kind 2 Permanent Total	Injury Kinds 3&4 Partial Disability	Injury Kind 5 Temporary Total
1995/1996	276,078	330,885	34,370	4,764
1996/1997	189,628	257,318	32,613	4,580
1997/1998	174,197	245,129	32,297	5,364
1998/1999	292,283	512,081	30,514	6,100
1999/2000	388,877	539,999	31,220	6,598

Source: WCRIBM, schedule Z data by injury type (developed to 5th report) from Section V-D Exhibit 1-3.

Table 7: Average Claim Costs - Medical (Including Large Deductibles)

Composite Policy Year	Injury Kind 1 Fatal	Injury Kind 2 Permanent Total	Injury Kinds 3&4 Partial Disability	Injury Kind 5 Temporary Total	Injury Kind 6 Medical Only
1995/1996	9,907	205,054	11,696	2,614	345.49
1996/1997	2,389	99,091	12,199	2,644	359.31
1997/1998	5,441	57,150	12,049	2,918	383.90
1998/1999	92,661	1,025,439	11,534	3,209	405.48
1999/2000	21,298	767,731	12,234	3,365	427.53

Source: WCRIBM, schedule Z data by injury type (developed to 5th report) from Section V-D Exhibit 1-3.

Claim Frequency

*Based on Developed Payroll and Developed Claim Counts
Unadjusted for Class Mix Changes*

Table 8: Claim Frequency (Number of Claims per Million Worker-Weeks)

Composite Policy Year	Injury Kind 1 Fatal	Injury Kind 2 Permanent Total	Injury Kinds 3&4 Partial Disability	Injury Kind 5 Temporary Total	Injury Kind 6 Medical Only
1995/1996	0.395	0.815	70.57	282.68	855.02
1996/1997	0.483	0.474	67.47	270.64	837.20
1997/1998	0.510	0.909	76.06	267.40	862.65
1998/1999	0.332	0.488	79.17	266.63	846.48
1999/2000	0.176	0.219	75.08	259.88	784.46

Source: WCRIBM, schedule Z data by injury type (developed to 5th report) from Section V-D Exhibit 1-4.

SECTION - 3 -

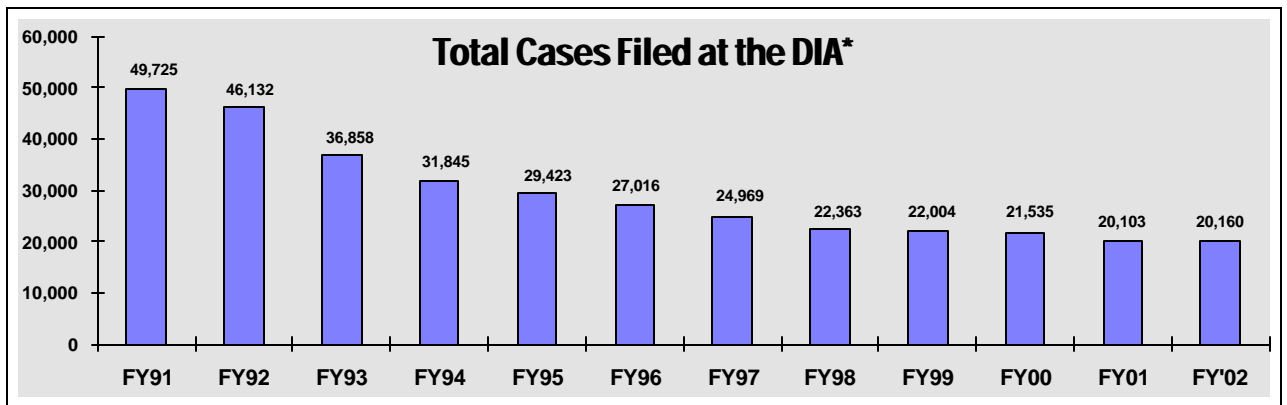
DISPUTE RESOLUTION

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DIA CASELOAD

Cases originate at the DIA when any of the following are filed: *an employee's claim for benefits, an insurer's complaint for termination or modification of benefits, a third party claim, or request for approval of a lump sum settlement.* As demonstrated in Figure 5, there has been a significant decline (-59%) in the DIA caseload since the implementation of the 1991 Reform Act. However, this trend of decreases may be ending, as the DIA experienced a slight increase this fiscal year in the total number of cases filed.

Figure 5: Total Cases Filed at the DIA



Source: CMS Report 28

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

Employee claims, which account for 71% of the total cases, decreased slightly by 474 cases in FY'02. Employee claims have decreased by 39% since 1991. Insurers requests for discontinuance, which account for 16% of the total cases, increased slightly by 187 cases in FY'02. Since the 1991 Reform Act, insurers requests for discontinuance have decreased by 73%.

Table 9: Breakdown of Total Cases Filed at the DIA, FY'02 - FY'01

Total Cases Filed at the DIA FY'02 and FY'01	Number of Cases		Percentage	
	FY'02	FY'01	FY'02	FY'01
Employee Claims	14,234	14,708	70.6%	73.2%
Insurers Discontinuance Request	3,146	2,959	15.6%	14.7%
Lump Sum Conference Request	1,934	1,899	9.6%	9.5%
Third Party Claims	598	336	3.0%	1.7%
Section 37/37A Request	248	201	1.2%	1.0%
TOTALS:	20,160	20,103	100%	100%

Source: CMS Report 28

ADMINISTRATIVE JUDGES

DIA administrative judges (AJs) and administrative law judges (ALJs) are appointed by the Governor, with the advice and consent of the Governor's Council. Candidates for the positions are first screened by the Industrial Accidents Nominating Panel and then rated by the Advisory Council. M.G.L. c.23E allows for the appointment of 21 administrative judges, 6 administrative law judges, and as many former judges to be recalled as the Governor deems necessary.

As one management tool to maintain a productive staff, the Senior Judge may stop assigning new cases to any judge with an inordinate number of hearing decisions unwritten. Intended as a sanction, it provides a judge who has fallen behind with the opportunity to catch up. This could become problematic if a large queue of new cases were to develop. The administrative practice of taking a judge off-line is relatively rare and occurs for limited amounts of time.

The Senior Judge may take an AJ off-line near the end of a term until reappointment is made. This enables the judges to complete their assigned hearings, thereby, minimizing the number of cases that must be re-assigned to other judges after their term expires.

Appointment Process

Nominating Panel - The nominating panel is comprised of thirteen members which include: the Governor's Legal Counsel, the Director of Labor and Workforce Development, the Director of Economic Development, the DIA Commissioner, the DIA Senior Judge, and eight members appointed by the Governor (two from business, two from labor, a health care provider, a lawyer who represents claimants in workers' compensation matters, a lawyer who represents employers or insurers in workers' compensation matters, and a lawyer who does not practice workers' compensation law). [see Appendix F for members].

When a judicial position becomes available, the nominating panel convenes to review applications for appointment and reappointment. The panel considers an applicant's skills in fact finding and the understanding of anatomy and physiology. In addition, an AJ must have a minimum of a college degree or four years of writing experience and an ALJ must be a Massachusetts attorney (or formerly served as an AJ). Consideration for reappointment includes review of a judge's written decisions, as well as the Senior Judge's evaluation of the applicant's judicial demeanor, average time for disposition of cases, total number of cases heard and decided, and appellate record.

Advisory Council Review - The Advisory Council reviews and rates those candidates approved by the Nominating Panel. Candidates then meet with Council Members for a formal interview. On the affirmative vote of at least seven voting members, the Advisory Council may rate any candidate either "qualified," "highly qualified," or "unqualified." The Council may wish to take "no position" on a candidate if consensus cannot be reached. Once a rating has been issued, it is then forwarded to the Governor for review.

CONCILIATION

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

The Conciliation Process

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

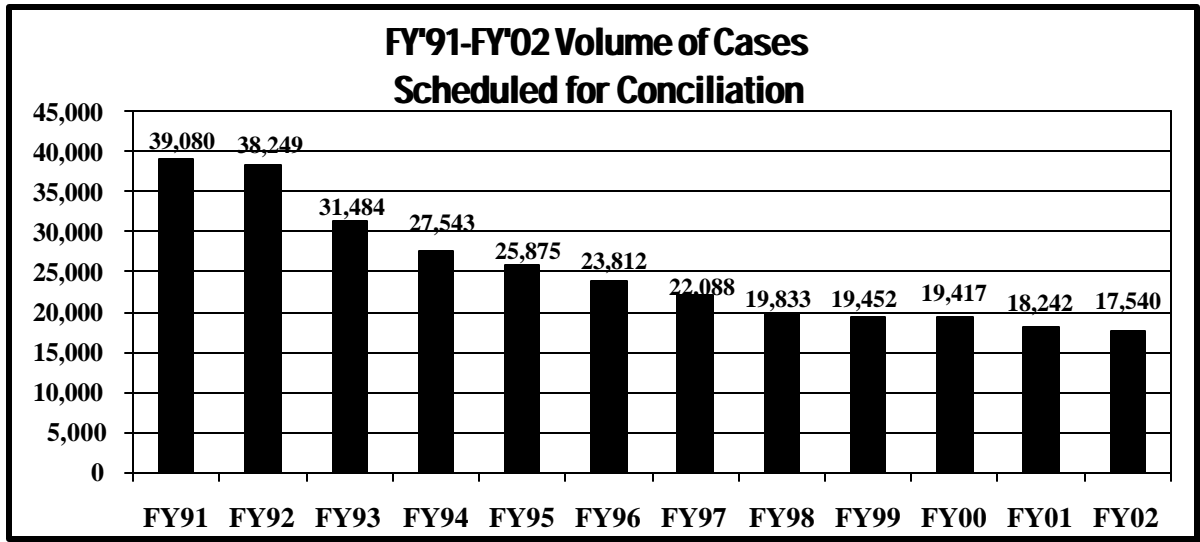
When liability is not an issue but modification or discontinuance of benefits is sought, both parties are required to submit written settlement offers. If the employee fails to file, the conciliator must record either the last offer made by the employee or the maximum compensation rate. If the insurer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

A conciliator’s recommendation is written for the case file, and the conciliator’s disposition is recorded in the DIA's Case Management System (CMS).

Volume at Conciliation

The number of cases reviewed at conciliation is indicative of the total volume of disputed claims, as nearly every case to be adjudicated must first go through conciliation. The caseload at conciliation peaked in 1991 at 39,080 cases. After the 1991 reforms, the volume of scheduled cases at conciliation has decreased every year to the current low of 17,540 cases in fiscal year 2002 (55% less than 1991 levels).

Figure 6: Volume of Cases Scheduled for Conciliation FY'91-FY'02



Source: CMS report 17

Figure 6 indicates the number of conciliations scheduled in FY'02. The volume of cases scheduled for conciliation decreased by 702 cases in FY'02. Out of the 17,540 conciliations scheduled in FY'02, 14,879 conciliations actually occurred.⁶

Conciliation Outcomes

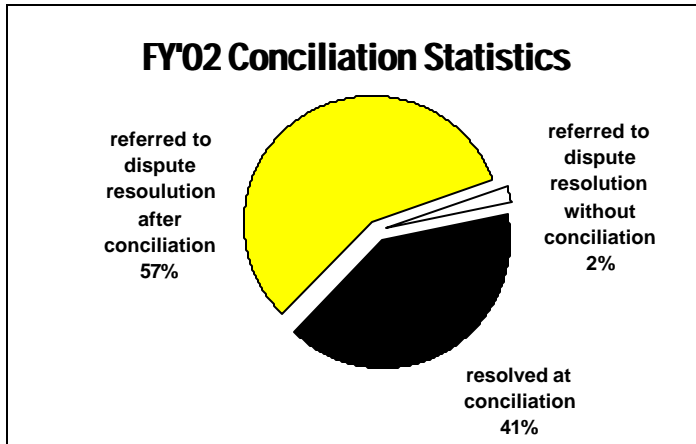
Cases Referred to Conference - Conciliation outcomes may be divided into two distinct categories: “referred to conference,” or “resolved.” In FY'02, 59% of the 17,540 cases scheduled for conciliation were referred to conference, the next stage of dispute resolution.⁷ As in previous years, a small percentage (2.1%) of the cases scheduled for conciliation were referred to conference without conciliation. This occurs when the respondent (or party that is not putting forth the case) does not appear for the conciliation.

Resolved Cases - The remaining 41% of conciliation cases in FY'02 are considered to be resolved (that is they were not referred on to conference). Numbers for FY'02 are similar to previous years, although they appear to be trending downward (FY'01: 41%, FY'00: 43%, FY'99: 44%, FY'98: 44%, FY'97: 44%, FY'96: 45%, FY'95: 47%, FY'94: 45%, FY'93: 46%, FY'92: 49%, FY'91: 48%). While the caseload has decreased since the 1991 reforms, the percentage of cases resolved at conciliation has remained just below 50%. Cases may be withdrawn or rescheduled when information is deficient or the procedure is not followed properly, thereby, removing incomplete cases from proceeding to conference.

⁶ This figure accounts for those cases withdrawn or adjusted prior to the actual conciliation. “Referred to conference” (10,052), “conciliated - adjusted” (2,975), “conciliated- pay without prejudice” (99), “withdrawn at conciliation” (1,137), “lump sum approved as complete” (99), “referred to lump sum” (517) = 14,879.

⁷ CMS Report 17 (Finished cases, not including reschedules).

Figure 7: Fiscal Year 2002, Conciliation Statistics



Source: CMS Report 17

Figure 8: Conciliation Outcomes - FY'02 and FY'01

Conciliation Outcomes FY'02 and FY'01	Number of Cases		Percentage	
	FY'02	FY'01	FY'02	FY'01
Referred to Dispute Resolution	10,434	10,755	59.5%	58.9%
Withdrawn	2,699	2,894	15.4%	15.8%
Adjusted Prior to Conciliation	612	721	3.5%	3.9%
Lump Sum	721	709	4.1%	3.8%
Conciliated-Adjusted	2,975	3,056	17.0%	16.7%
Conciliated-Pay Without Prejudice	99	107	0.6%	0.5%
TOTALS:	17,540	18,242	100%	100%

Source: CMS Report 17

Resolved Cases - Conciliated

Cases may be “conciliated” by two methods. Firstly, 42% of the resolved cases (or 17% of all cases) were “conciliated-adjusted,” meaning an agreement was reached at conciliation between the parties to initiate, modify, or terminate the compensation. Secondly, cases may be “conciliated - pay without prejudice” (1% of resolved cases in both FY'02 and FY'01), meaning the pay without prejudice period has been extended and the insurer may discontinue compensation without DIA or claimant approval.

Conciliations Rescheduled

Conciliators cannot render a legal judgment on a case, but can make sure the parties have the necessary medical documentation and other sources of information to facilitate the resolution of the case. The purpose of rescheduling a case is to allow for further discussion to occur or to allow for a continuation of the case, so all the documentation may be gathered. Out of all the cases at conciliation, 40% were rescheduled in FY'02.⁸

⁸ CMS Report #16.

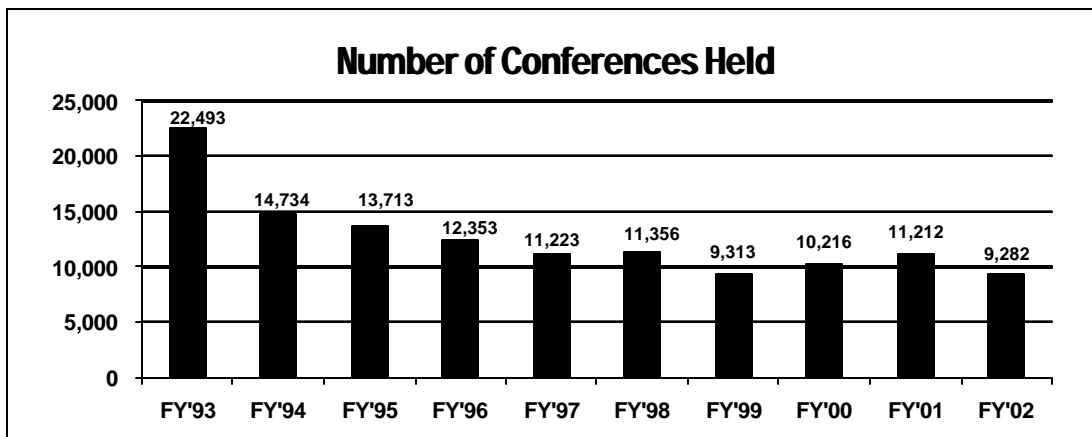
CONFERENCE

Each case referred to a conference is assigned an administrative judge who must retain the case throughout the entire process if possible. The conference is intended to compile the evidence and to identify the issues in dispute. The administrative judge may require injury and medical records as well as statements from witnesses.

Volume of Conferences

The number of conferences held in FY'02 decreased by 17% (11,212 in FY'01 to 9,282 in FY'02)⁹. Historically, the number of conferences held has represented approximately half of the cases scheduled for conciliation. FY'02 numbers remain in this range, whereas in FY'93, the volume of conferences (22,493) was well above 50% of conciliations, as the backlog of cases began to diminish.

Figure 9: Fiscal Years 1993-2002, Conferences Held



Source: CMS Report 45B

Conference Outcomes

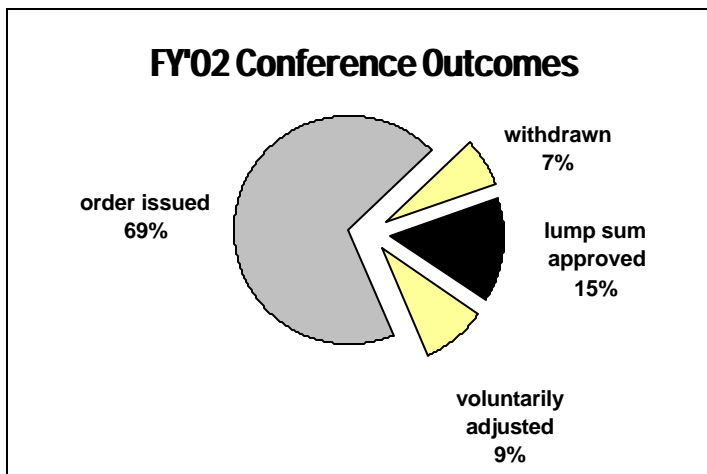
When a case is withdrawn, directed to lump sum conference, or voluntarily adjusted, it may never actually reach the conference, as it could be settled before review by the administrative judge. A case may be withdrawn at or before the conference either by the moving party or by the administrative judge,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

⁹ The "order issued" disposition and the "settlement approved by judge" disposition are both final dispositions that conclude a case. "Referred to lump sum" and "voluntarily adjusted" may also be included in this category. Together, they total 9,282 conferences that took place and were completed in the year.

In a majority of conferences (69% in FY'02), the administrative judge will issue an order to modify, terminate or begin indemnity medical benefits. In fiscal year 2002, 86% of conference orders were appealed.¹⁰

Lump sum settlements may be approved either at a conference or a separate lump sum conference. The procedure is the same for both meetings. However, at the lump sum conference, a retired AJ whose sole purpose is to review settlements will preside over the meeting. Most lump sum settlements are approved directly at the conference or the hearing level by the presiding AJ, rather than scheduling a separate meeting. Lump sum settlements approved comprised a slightly higher percentage of the dispositions in FY'02 (15.0%) than in FY'01 (13.6%).

Figure 10: Fiscal Year 2002, Conference Outcomes



Source: CMS Report 45B

Figure 11: Conference Outcomes - FY'02 and FY'01

Conference Outcomes FY'02 and FY'01	Number of Cases		Percentage	
	FY'02	FY'01	FY'02	FY'01
Withdrawn	682	720	6.9%	6.6%
Lump Sum Settlement Approved	1,480	1,625	15.0%	13.6%
Voluntarily Adjusted	914	1,026	9.3%	8.6%
Order Issued	6,803	8,486	68.9%	71.1%
Other	0	69	N/A	0.5%
Total	9,879	11,926	100%	100%

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

¹⁰ CMS Report 319, "Appealed Conference Order Statistics."

Conference Queue

The Senior Judge has explained that, depending on the number of available judges, a conference queue of between 1,500 and 2,000 cases can effectively be scheduled during the judges' regular 12 or 6 week cycle. If the queue increased beyond 2,000, adjustments in scheduling and assignments of cases will need to occur.

The conference queue remained relatively stable throughout FY'02, ending 324 cases below the start of the year (2,036 on 7/3/01 and 1,712 on 6/27/02). The queue fluctuated throughout the year, responding to the scheduling cycle of the judges. The queue reached a high of 2,141 on 7/18/01 and a low of 1,130 on 4/24/02.

Figure 12: Conference and Hearing Queues; Fiscal Years 1991 - 2002

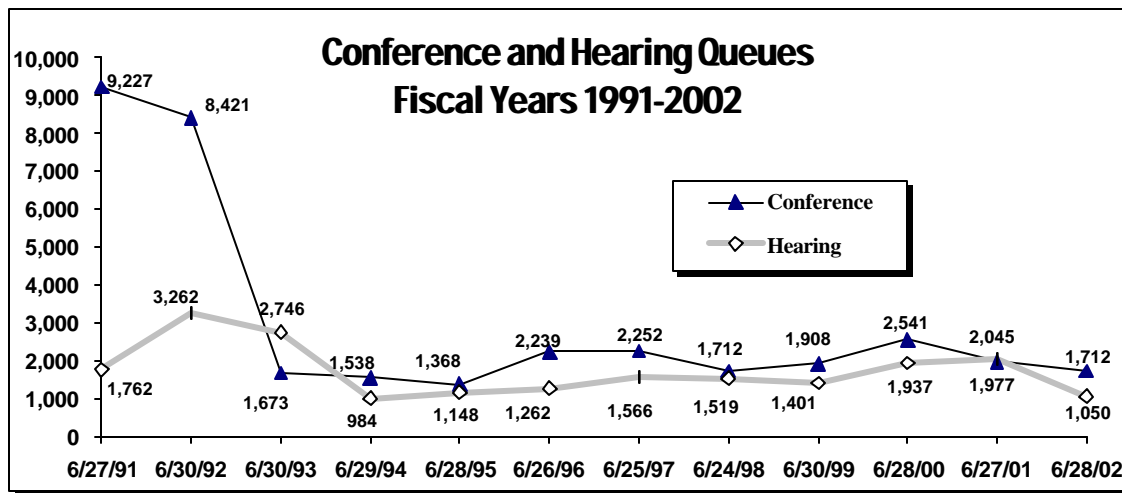
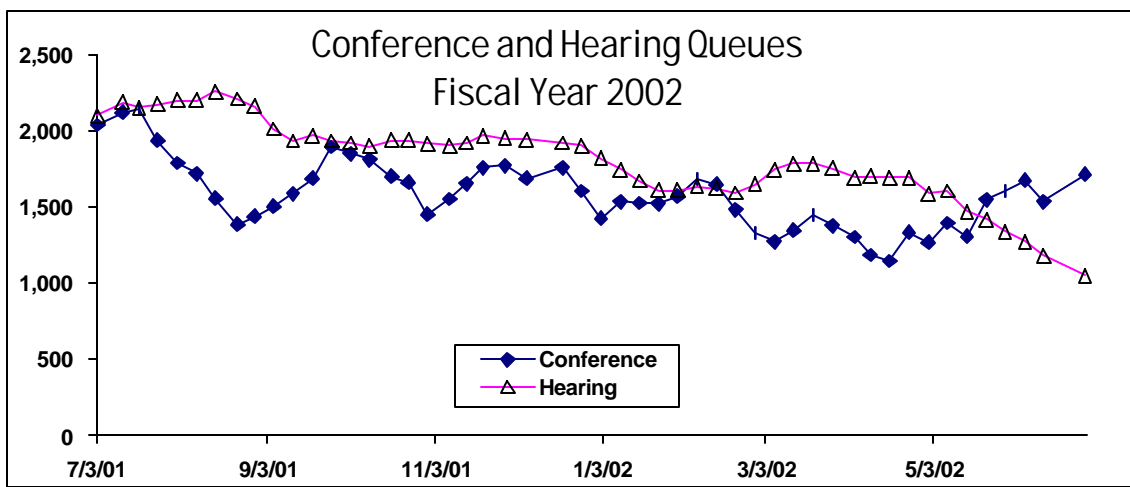


Figure 13: Conference and Hearing Queue; Fiscal Year 2002



Source: DIA report 404

HEARINGS

According to the Workers' Compensation Act, an administrative judge that presides over a conference must review the dispute at the hearing. The procedure is formal and a verbatim transcript of the proceedings is recorded. Written documents are presented and witnesses are examined and cross-examined, according to Massachusetts Rules of Evidence. Any party may appeal a hearing decision within 30 days. This appeal time may be extended up to one year for reasonable cause. A fee of 30% of the state average weekly wage must accompany the appeal. The claim will then be sent to the Reviewing Board.

Scheduling

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

Hearing Queue

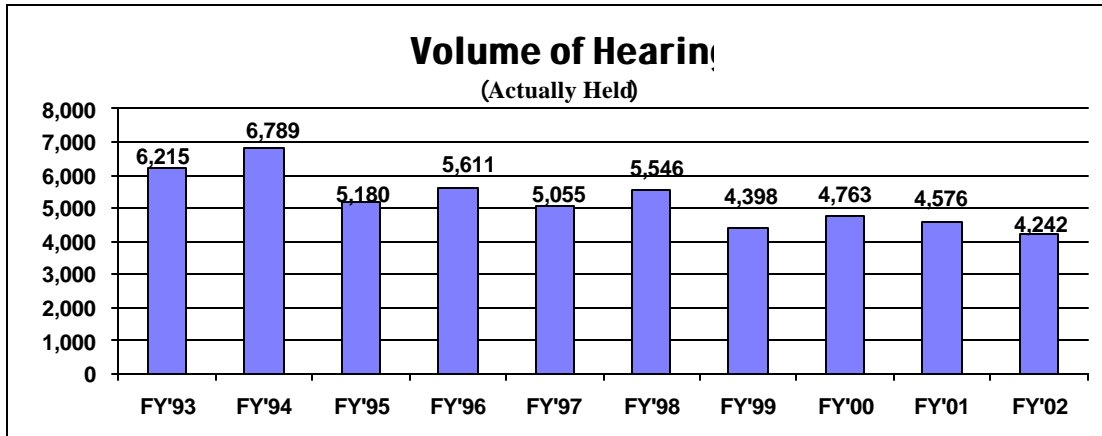
It is difficult to compare the hearing queue with the conference queue because of differences in the two proceedings. Hearings must be scheduled with the same judge who presided over the conference, whereas conferences are scheduled according to availability (when "judge ownership" is not yet a factor). Since hearings are also more time consuming than conferences, it takes more time to handle a hearing queue than a conference queue. Fiscal year 2002 began with a hearing queue of 2,100 and ended at 1,050. In the last eleven years, the hearing queue has been as low as 409 cases in September 1989 and as high as 4,046 in November 1992.

Volume of Hearings

In FY'02, there were 3,586 cases appealed to the hearing stage of dispute resolution (53% of the 6,803 conference orders) but approximately 4,242 hearings were held.¹¹

¹¹ Dispositions included from CMS Report 46: "Voluntarily Adjusted," "Referred to Lump Sum," "Decision Filed," "Lump sum Approved/Recommended," and "Administrative Withdrawal."

Figure 14: Fiscal Years 1993-2002, Volume of Hearings



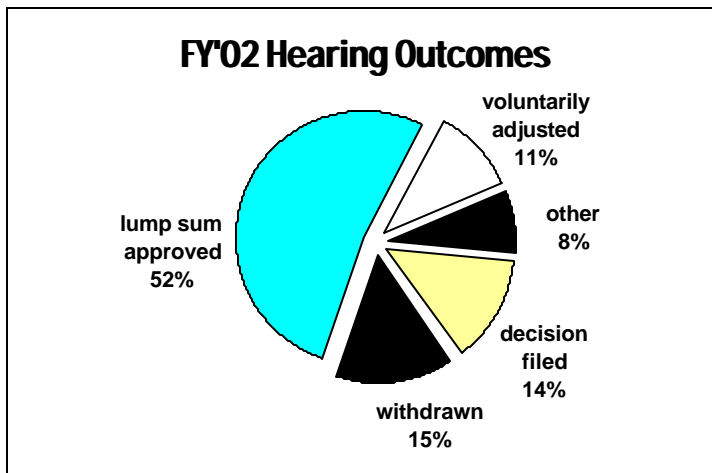
Source: CMS Report 46

The number of hearings “actually held” decreased by 7% in FY’02 to its current level of 4,242 cases. Last year, this number decreased by 4% to 4,576 cases.

Hearing Outcomes

The number of hearing dispositions entered in FY’02 totaled 5,101, decreasing slightly from last fiscal year’s total of 5,616 dispositions.¹² “Lump sums” consists of over half of all the cases, while “decision filed” accounts for only 14%, virtually the opposite of the situation at conference.

Figure 15: Fiscal Year 2002, Hearing Outcomes



Source: CMS Report 46

¹² There are usually a greater number of dispositions than the actual number of hearings because some cases have more than one disposition, others are withdrawn before the hearing, and others are from prior years.

Figure 16: Hearing Outcomes - FY'02 and FY'01

Hearing Outcomes FY'02 and FY'01	Number of Cases		Percentage	
	FY'02	FY'01	FY'02	FY'01
Withdrawn	769	954	15.1%	16.9%
Lump Sum Settlement Approved	2,666	3,016	52.3%	53.7%
Voluntarily Adjusted	567	523	11.1%	9.3%
Decision Filed	698	770	13.7%	13.7%
Other	401	353	6.2%	7.9%
Total	5,101	5,616	100%	100%

Source: CMS Report 46

As in conference, lump sums may either be approved by the administrative judge at the hearing or referred to a lump sum conference that is conducted by an administrative law judge. In FY'02, 2,666 lump sum settlements were approved by a judge at hearings. The majority of lump sum settlements are approved by the AJ at a conference or hearing, since the judge is knowledgeable in the facts of the case and may decide if the settlement is in the best interest of the employee. Parties may also request to move directly to a lump sum conference rather than proceed through the conference or hearing process. This is usually indicated with a “settlement approved by judge” disposition.

CASE TIME FRAMES

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

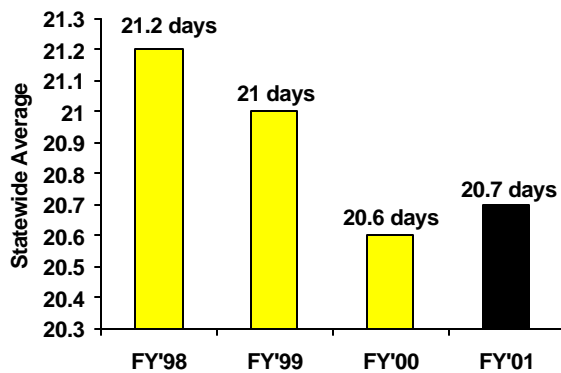
Since 1993, the DIA has been able to eliminate its backlog of cases. This was achieved by adding more judges to the DIA's division of dispute resolution, appointing a Senior Judge to manage the caseloads and assignments of the judges, utilizing management techniques to improve the functioning of the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

The following case time frame statistics are taken from Diameter Report #591. The graphs illustrate the statewide time frame averages. The most recent available data for case time statistics is fiscal year 2001.

Case Time Frames Guide

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

Figure 17: Claim to Conciliation



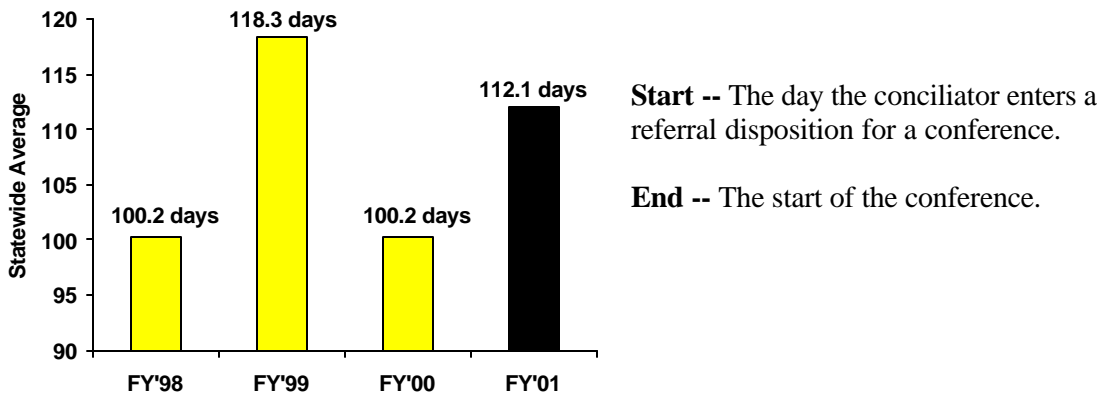
Start -- The day the Division receives the employee's claim for benefits, measured by the time stamp on the correspondence when the Division receives it (if there is no time stamp, the date that it is entered is used, however most claims have the date stamped).

End -- The day the conciliation starts.

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

When the conciliator refers a case to conference, the computer scheduling system automatically assigns the case to an administrative judge, who must maintain exclusive jurisdiction over the case throughout the conference and hearing stages.¹³

Figure 18: Conciliation to Conference



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

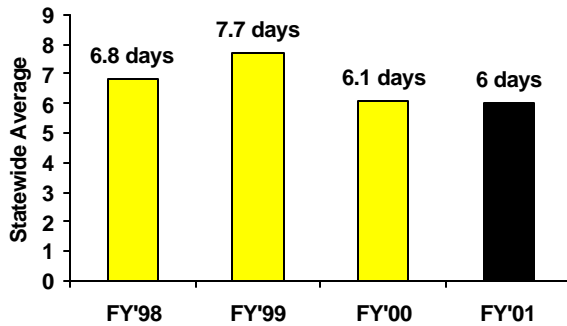
Moreover, a conference resulting from an insurer's request for discontinuance will require that the same judge, who presided over the conference at the outset of the claim, again preside over the discontinuance conference. The availability of this particular judge will affect the time frame.

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

¹³ Judge ownership may increase time frames because of the administrative requirements it creates, but it does have positive benefits according to the judges. It creates continuity for litigants, accountability for case development, and it prevents "judge shopping".

It is critical to recognize that, on occasion, judges may decide to delay from issuing an order while the parties attempt to implement return to work arrangements. An administrative judge may also require that the parties define the legal and evidentiary issues by submitting written briefs. These measures may occur as an attempt to encourage resolution of the case prior to a full evidentiary hearing and may serve to lengthen the time frame in any given case. Nevertheless, successful resolution of a case will save time in future proceedings.

Figure 19: Conference Scheduled (start) to Order



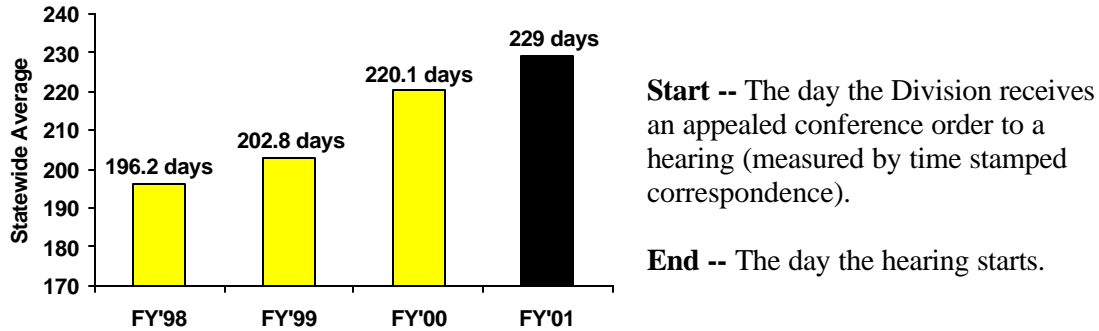
Start -- The first actual conference that takes place. If the scheduled conference is rescheduled, the start date will be the rescheduled conference.

End -- The date of the conference order.

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

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

Figure 20: Appeal of Conference Order to Hearing



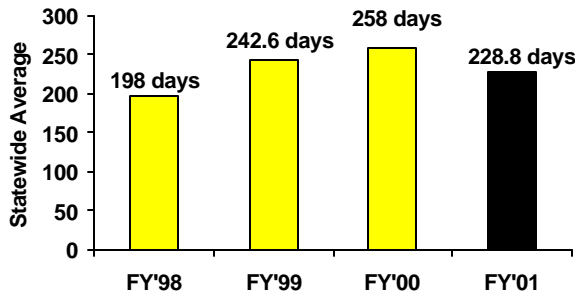
It is important to note that the shortest possible wait to hearing is not always in the best interest of either the moving or the responding party. It is often necessary that between four and six months elapse before the hearing begins to allow the medical condition of the employee to progress and stabilize.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

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

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

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

Figure 21: Hearing Scheduled (start) to Hearing Decision



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

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

Cases vary in their complexity and individual circumstances. A case involving quasi-criminal conduct (section 28), multiple insurers, parties, witnesses or injuries, or psychological stress, chemical exposure, or AIDS may take longer, require more testimony and numerous depositions of medical testimony in comparison to other less complicated cases. Moreover, the record is generally kept open by the judge for an agreed amount of time to allow for the submission of written briefs, memoranda, deposition transcripts, and hearing transcripts to assist the judge in preparing the decision. After the close of the record, the judge then must write a decision. Decisions are lengthy, as they must provide a factual determination, cite controlling board and court decisions, and provide a final determination of liability and/or compensability.

The following chart represents the average amount of time it took a case to proceed through each step of the dispute resolution process in FY'01, with respect to each district office. It is important to note that these time frames are not continuous. Therefore, their total should not be equal to the total average time frame of cases at the DIA.

Figure 22: Regional Time Frames, FY'01

FY'01	Claim to Conciliation	Conciliation to Conference	Conference scheduled (start) to Order	Appeal to Hearing receipt to Hearing	Hearing scheduled (start) to Hearing decision
<i>Boston</i>	20.5 days	101.6 days	6.6 days	246.4 days	205.5 days
<i>Fall River</i>	20.7 days	144.6 days	6.4 days	209.7 days	292.7 days
<i>Lawrence</i>	20.6 days	122.4 days	8.5 days	197.1 days	299.5 days
<i>Springfield</i>	20.6 days	88.1 days	2.5 days	208.0 days	187.1 days
<i>Worcester</i>	21.3 days	122.7 days	4.1 days	227.6 days	214.6 days
Statewide	20.7 days	112.1 days	6.0 days	229.0 days	228.8 days

Source: DIA Report 591

REVIEWING BOARD

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

Appeal of Hearing Decisions

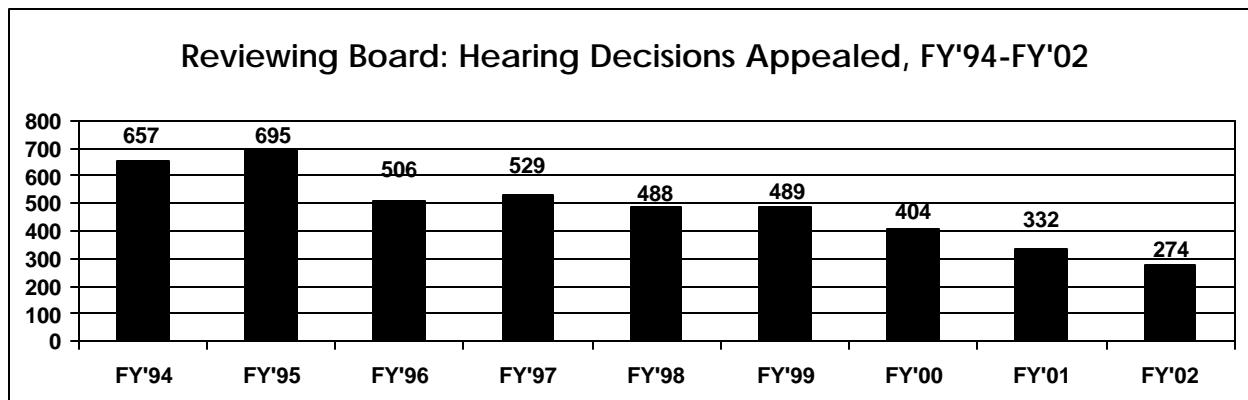
An appeal of a hearing decision must be filed with the Reviewing Board no later than 30 days from the date of the decision. A filing fee of 30% of the state's average weekly wage, or a request for waiver of the fee must accompany any appeal.

Pre-transcript conferences are held before a single ALJ to identify and narrow the issues, to determine if oral argument is necessary and to decide if producing a transcript is necessary. This is an important step that can clarify the issues in dispute and encourage some parties to settle or withdraw the case. Approximately 20% to 25% of the cases are withdrawn or settled after this first meeting. After the pre-transcript conference, the parties are entitled to a verbatim transcript of the appealed hearing if needed.

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

The vast majority of cases are remanded for further findings of fact and/or review of conclusions of law. However, the panel may reverse the administrative judge's decision, only when it determines that the decision was beyond the AJ's scope of authority, arbitrary or capricious, or contrary to law. The panel is not a fact-finding body, although it may recommit a case to an AJ for further findings of fact. The number of hearing decisions appealed to the Reviewing Board in fiscal year 2002 was 274.

Figure 23: Reviewing Board: Hearing Decisions Appealed, FY'94-FY'02



Source: DIA Reviewing Board

The Reviewing Board resolved 334 cases in FY'02 (some from the prior year) compared to 420 in the previous fiscal year.

Figure 24: Appeals Resolved by Reviewing Board, FY'02

Disposition of Cases, FY'02	Number of Cases
Full Panel:	231
• published decision on the merits:	(97)
• summary affirmations after full panel deliberation:	(134)
Lump Sum Conferences:	16
Withdrawals/Dismissals for Failing to File Briefs/Memos:	87
Total Number of Appeals Resolved by the Reviewing Board:	334

Source: DIA Reviewing Board

Lump Sum Conferences

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

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

Third Party Subrogation (§15)

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

Monies recovered by the employee in the third party action must be reimbursed to the workers' compensation insurer. However, any amounts recovered that exceed the total amount of benefits paid by the insurer may be retained by the employee.

The statute provides that the Reviewing Board may approve a third party settlement. A hearing must be held to evaluate the merits of the settlement, as well as the fair allocation of amounts payable to the employee and the insurer. Guidelines were developed to ensure that due consideration is given to the multitude of issues that arise from

settlements. During FY'02, administrative law judges heard 62 section 15 petitions on a rotating basis.

Compromise and Discharge of Liens (§46A)

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

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

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

The number of section 46A conferences heard in fiscal year 2002 was 65.

LUMP SUM SETTLEMENTS

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

Lump sum settlements can occur at any point in the dispute resolution process, whether it is before the conciliation or after the hearing. Conciliators have the power to "review and approve as complete" lump sum settlements that have already been negotiated.

Administrative judges may approve lump sum settlements at conference and hearings just as an ALJ does at a lump sum conference. At the request of the parties, conciliators and administrative judges may also refer the case to a separate lump sum conference where an administrative law judge (or one of the two recall AJ's) will decide if it is in the best interest of the employee to settle.

Figure 25: Lump Sum Conference Statistics, FY'02-FY'91

<i>Fiscal Year</i>	<i>Total lump sum conferences scheduled</i>	<i>Lump sum settlements approved</i>
FY'02	8,135	7,738 (95.1%)
FY'01	8,111	7,801 (96.2%)
FY'00	8,297	7,940 (95.7%)
FY'99	7,900	7,563 (95.7%)
FY'98	9,579	9,158 (95.6%)
FY'97	9,293	8,770 (94.4%)
FY'96	10,047	9,633 (95.9%)
FY'95	10,297	9,864 (95.8%)
FY'94	13,605	12,578 (92.5%)
FY'93	17,695	15,762 (89.1%)
FY'92	18,310	16,019 (87.5%)
FY'91	19,724	17,297 (87.7%)

Source: CMS Report 86: Lump Sum Conference Statistics for Scheduled Dates

The number of lump sum conferences scheduled has declined by 59% since FY'91. In FY'02, only 4 lump sum settlements were disapproved in the whole fiscal year. The remainder of the scheduled lump sum conferences without an "approved" disposition were either withdrawn or rescheduled.

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

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

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

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

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

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

Figure 26: Lump Sum Settlements Pursued, FY'02

<i>Meeting FY'02</i>	<i>Lump Sum Pursued¹⁴</i>	<i>Percentage of Total Cases Scheduled</i>
Conciliation	721	4.1%
Conference	1,672	16.6%
Hearing	2,855	55.9%

Source: see previous sections on conciliation, conference and hearing

¹⁴ Lump sum pursued refers to four dispositions for lump sum settlements: lump sum request received; lump sum reviewed- approved as complete; lump sum approved; referred to lump sum conference.

IMPARTIAL MEDICAL EXAMINATIONS

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

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

Section 11A of the Workers' Compensation Act now requires that the Senior Judge periodically review and update a roster of impartial medical examiners from a variety of specialized medical fields. When a case involving disputed medical issues is appealed to hearing, the parties must agree on the selection of an impartial physician. If the parties cannot agree, the AJ must appoint one. An insurer may also request an impartial examination if there is a delay in the conference order.¹⁵ Furthermore, any party may request an impartial exam to assess the reasonableness or necessity of a particular course of medical treatment, with the impartial physician's opinion binding the parties until a subsequent proceeding. Should an employee fail to attend the impartial medical examination, they risk the suspension of benefits.¹⁶

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

Impartial Unit

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

¹⁵ M.G.L. c.152, §8(4).

¹⁶ M.G.L. c.152, §45.

Filing fees for the examinations are determined by the Commissioner and set by regulation through the Commonwealth's Executive Office of Administration & Finance. The following details the department's fee schedule:

Figure 27: Fee Schedule

\$350	Impartial medical examination and report
\$500	For deposition lasting up to 2 hours
\$100	Additional fee when deposition exceeds 2 hours
\$225	Review of medical records only
\$90	Supplemental medical report
\$75	When worker fails to keep appointment (maximum of 2)
\$75	For cancellation less than 24 hours before exam

Source: DIA Medical Unit

Note: Fee Schedule is subject to increase.

The deposing party is responsible for paying the impartial examiner for services and the report. Should the employee prevail at hearing, the insurer must pay the employee the cost of the deposition. In FY'02, approximately \$1,618,050 was collected in filing fees.

As of 6/30/02, there were 229 physicians on the roster consisting of 28 specialties.¹⁷ The impartial unit is responsible for scheduling appointments with the physicians. Scheduling depends upon the availability of physicians, which varies by geographic region and the specialty sought. A queue for scheduling may arise according to certain specialties and regions in the state.

In FY'02 the impartial unit scheduled 7,267 examinations. Of these, 4,437 exams were actually conducted in the fiscal year (the remainder of the scheduled exams were either canceled due to settlements and withdrawals or took place in the next year).¹⁸ Medical reports are required to be submitted to the Division and to each party within 21 calendar days after completion of the examination. The number of exams scheduled in FY'01 was 6,327, and 3,706 were conducted in that year.

Waivers of Impartial Exam Fees

In 1995, the Supreme Judicial Court ruled that the Division of Industrial Accidents must waive the filing fee for indigent claimants appealing an administrative judge's benefit-denial order. As a result of this decision, the DIA has implemented procedures and standards for processing waiver requests and providing financial relief for the section 11A fee.

¹⁷ Including contracts pending renewal.

¹⁸ Additional reports may be entered upon FY'02 closure.

The Waiver Process - A workers' compensation claimant who wishes to have the impartial examination fee waived must complete the form "Affidavit of Indigence and Request for Waiver of §11A (2) Fees" (Form 136). This document must be completed before 10 calendar days following the appeal of a conference order.

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

Definition of Indigency -

An indigent party is defined as:

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

Figure 28: Indigency Eligibility

Size of Family Unit	Amount*
1	\$8,860
2	\$11,940
3	\$15,020
4	\$18,100
5	\$21,180
6	\$24,260
7	\$27,340
8	\$30,420

For family units with more than eight members, add \$3,080 for each additional member in the family. The poverty guidelines are updated annually by the U.S. Department of Health and Human Services.

SOURCE: *Federal Register*, Vol. 67, No. 31, February 14, 2002, pp. 6931-6933.

*48 Contiguous States and D.C.

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OFFICE OF CLAIMS ADMINISTRATION

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

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

Claims Processing Unit / Data Entry Unit

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

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

In fiscal year 2002, the Office of Claims Administration received 36,471 First Report of Injury Forms, 4,724 less than FY'01 (41,195). This significant decrease in First Reports received is due to the Oracle Case Management System (CMS) conversion in April 2002. The conversion created a backlog of approximately 2 weeks (by end of FY'02) in entering First Reports into the system. The number of claims, discontinuances and third party claims decreased to 21,320, slightly less than the previous year (21,446). The total number of referrals to conciliation for the fiscal year was 18,020, which was very similar to last year's referrals (18,142).

First Report Compliance Office & Fraud Data

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

In fiscal year 2002, \$340,200 was collected in fines, a slight decrease from the \$360,200 collected in FY'01.

The office is also responsible for maintaining a database on cases discovered by the DIA, where there is some suspicion of fraud. In fiscal year 2002, Claims Administration received five in-house referrals (telephone calls, anonymous letters or within DIA units via Diameter). Outside referrals are directly reported to the Insurance Fraud Bureau or the Attorney General's Office. Claims Administration assists the Insurance Fraud Bureau investigators on copies of suspected workers' compensation files, and receives status update letters. A total of 48 such inquiries were processed during FY'02.

Record Room

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

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

OFFICE OF EDUCATION AND VOC. REHAB

The Office of Education and Vocational Rehabilitation (OEVR) oversees the rehabilitation of disabled workers' compensation recipients for successful return to work.

While OEVR seeks to encourage the voluntary development of rehabilitation services, it has the authority to mandate services for injured workers determined to be suitable for rehabilitation. Vocational rehabilitation (VR) is defined by the act as "non-medical services reasonably necessary at a reasonable cost to restore a disabled employee to suitable employment as near as possible to pre-injury earnings. Such services may include vocational evaluation, counseling, education, workplace modification, and retraining, including on-the-job training for alternative employment with the same employer, and job placement assistance."¹⁹

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

The Vocational Rehabilitation System

It is the responsibility of OEVR to identify those disabled workers' who may benefit from rehabilitation services. OEVR identifies rehabilitation candidates according to injury type after liability has been established, and through referrals from internal DIA sources (including the Office of Claims Administration and the division of dispute resolution), insurers, certified providers, attorneys, hospitals, doctors, employers and injured employees themselves.²⁰

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

¹⁹ M.G.L. c.152, §1(12).

²⁰ M.G.L. c.152, §30 E-H. 452 C.M.R. 4.00

Each year, OEVR approves vocational rehabilitation specialists to develop and implement the individual written rehabilitation plans (IWRP). The standards and qualifications for a certified provider are found in the regulations, 452 C.M.R. 4.03. Any state vocational rehabilitation agency, employment agency, insurer, self-insurer, or private vocational rehabilitation agency may qualify to perform these services.

Credentials must include at least a master's degree, rehabilitation certification, or a minimum of 10 years of experience. A list of the providers is available from the OEVR. In FY'02, OEVR approved 63 VR providers. It is the responsibility of the provider to submit progress reports on a regular basis, so that the RRO can have a clear understanding of the progress a case has made. Progress reports must include the following:

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

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

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

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

Individual Written Rehabilitation Program (IWRP) - After an employment goal and vocational goal has been established for the injured worker, an Individual Written Rehabilitation Program (IWRP) can be written. The IWRP is written by the vocational provider and includes the client's vocational goal, the services the client will receive to obtain that goal, and explanation why the specific goal and services were selected, and the signatures necessary to implement it. A vocational rehabilitation program funded voluntarily by the insurer has no limit of length, however OEVR-funded programs are limited to 52 calendar weeks for pre-12/23/91 injuries and 104 calendar weeks for post-12/23/91 injuries. The IWRP should follow OEVR's priority of employment goals:

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

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

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

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

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

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

Utilization of Vocational Rehabilitation

In fiscal year 2002, OEVR was headed by a Director and staffed by 11 Rehabilitation Review Officers, 2 Disability Analysts, and 6 Clerks.

Out of the 2,743 cases referred to OEVR in FY'02, 86% proceeded to a "mandatory meeting" for a determination of suitability for vocational rehabilitation services. The remaining 14% exited the system for reasons that include the non-establishment of liability or that the employee was not on compensation. Of those cases, which received a "mandatory meeting," 36% were referred to the insurer/self-insurer with a request to initiate vocational rehabilitation services by an OEVR certified provider. In FY'02, there was a 43% success ratio of those injured workers who completed plans and returned to work.

Table 10: Utilization of Voc. Rehab. Services, FY'92 - FY'02

<i>Fiscal Year</i>	<i>Referrals to OEVR</i>	<i>Mandatory/ Inform. Meetings</i>	<i>Referrals to Insurer for VR</i>	<i>IWRPs approved</i>	<i>Return to work</i>	<i>% RTW after plan development</i>
FY'02	2,743	2,348/23	842	501	214	43%
FY'01	2,895	2,421/132	915	483	253	52%
FY'00	2,782	2,245/227	911	514	318	62.5%
FY'99	2,939	2,236/227	951	546	341	62.5%
FY'98	3,011	2,422/236	1,040	603	371	61.5%
FY'97	3,266	2,455/292	1,094	690	320	46%
FY'96	3,347	2,653/119	1,185	727	364	50%
FY'95	3,219	2,833	1,370	811	391	48%
FY'94	3,756	3,190	1,706	948	470	50%
FY'93	4,494	3,882	2,253	1,078	554	51%
FY'92	6,014	3,367	2,106	1,010	583	58%

Source: DIA - OEVR

Trust Fund Payment of Vocational Rehabilitation

When an insurer refuses to pay for vocational rehabilitation services after a review, OEVR then determines that the employee is suitable for services and the office may utilize moneys from the Trust Fund to finance the rehabilitation services.

Fiscal year 2002 encumbrances of the Trust Fund totaled \$48,133.48 for vocational rehabilitation services. OEVR is required to seek reimbursement from the insurer when the trust fund pays for the rehabilitation and the services are deemed successful (e.g., the employee returns to work). The DIA may assess the insurer a minimum of two times the cost of the services.

OFFICE OF SAFETY

The function of the Office of Safety is to reduce work related injury and illnesses by “establishing and supervising programs for data collection on workplace injuries and for the education and training of employees and employers in the recognition, avoidance and prevention of unsafe or unhealthy working conditions in employment and advising employees and employers on these issues.”²¹ In pursuit of this objective, the office administers the DIA's Occupational Safety and Health Education and Training Program.

The office issues a request for proposals yearly to notify the general public that these grants are available. Grants are awarded on a competitive basis according to the scope and content of proposals.

See Appendix J for a list of proposals recommended for funding in FY'03.

Safety and Education Training

The Office of Safety provides Occupational Safety and Health Safety and Education Training for employees and/or employers of industries operating within the Commonwealth and whose entire staff is covered under the Massachusetts Workers' Compensation Law (M.G.L. c.152).

The overall objective of the education and training programs is to reduce work related injuries and illnesses by establishing and supervising programs for data collection on workplace injuries, along with:

- A. Identify, evaluate, and control safety and health hazards in the workplace;
- B. Foster activities by employees/employers to prevent workplace accidents, injuries, illnesses;
- C. Make employees/employers aware of all federal and state health and safety standards, statutes, rules and regulations that apply, including those that **mandate** training and education in the workplace;
- D. Refer employees/employers to the appropriate agency for abatement procedures for safety and health related issues;
- E. Target preventive educational programs for specifically identified audiences with significant occupational health and/or safety problems;
- F. Encourage awareness and compliance with federal and/or state occupational safety and health standards and regulations;
- G. Promote understanding among employee and employer groups of the importance of ongoing safety health education and training programs and help to begin such efforts;

²¹ M.G.L. c.23E, §3(6).

- H. Encourage labor/management cooperation in the area of occupational safety and health prevention programs; and
- I. Encourage collaborations between various groups, organizations, educational or health institutions to devise innovative preventive methods for addressing occupational health and safety issues.

Request for Response (RFR) Process

During the past fourteen fiscal years, the Massachusetts Division of Industrial Accidents (DIA) has issued its RFR for the Office of Safety's "Occupational Safety and Health Education and Training Program." To date, the Division has funded a total of 489 preventive training programs targeting a wide variety of workers and industries within the Commonwealth. These DIA programs have trained over 184,500 people.

The Office of Safety publishes an RFR annually to notify the general public that grants are available. The program has an annual budget of \$700,000.00. In FY'02, proposals could be submitted up to a maximum of \$30,000.00. In FY'02, 980 announcement letters were mailed to various industries throughout the state. As a result of these announcement letters and the advertisements published in the regional newspapers, the Office of Safety issues over 352 RFR's annually. Of the 352 RFR's issued, the DIA received 92 requests for funding (proposals). Of these, approximately 30% receive funding.

A uniform criteria to competitively evaluate all proposals received is developed by a Proposal Selection Committee, appointed by the Commissioner. The Committee recommends a list of qualified applicants for funding. Upon approval of this list by the Commissioner, contracts are awarded. As a result of this money, the Office of Safety was able to fund a total of 28 grants in FY'02 that resulted in the training of 17,535 employees throughout the Commonwealth. Over 98% of the participants rated the program they attended as "excellent" or "good."

Frank S. Janas Training Center

In October, 2000, the DIA dedicated a new safety training center in memory of the late Frank Janas at the Lawrence Regional Office. Mr. Janas was a beloved DIA employee who worked in the Office of Insurance for seven years. The training center is a valuable tool for both private employers and government agencies that would like to conduct safety-related training or seminars. The conference training center holds 90 auditorium style seats, has valuable conference amenities (wide-screen TV/VCR, Apollo projector, podium, computer hookups, etc.), and is handicap accessible.

Frank Janas Training Center Contact:

Thomas Carroll
Department of Industrial Accidents
160 Winthrop Avenue
Lawrence, MA 01840
617-727-4900 x279
email: tomc@dia.state.ma.us

OFFICE OF INSURANCE

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

Self Insurance

A license to self insure is available for qualified employers with at least 300 employees and \$750,000 in annual standard premium.²² To be self insured, employers must have enough capital to cover the expenses associated with self insurance. However, many smaller and medium sized companies have also been approved to self insure. The Office of Insurance evaluates employers every year to determine their eligibility and to establish new bond amounts.

For an employer to qualify to become self insured, it must post a surety bond of at least \$100,000 to cover any losses that may occur.²³ The amount varies for every company depending on their previous reported losses and predicted future losses. The average bond is usually over \$1 million and depends on many factors including loss experience, the financial state of the company, the hazard of the occupation, the number of years as a self insured, and the attaching point for re-insurance.

Employers who are self insured must purchase reinsurance of at least \$500,000. The per case deductible of the re-insurance varies from \$100,000, a relatively modest amount, to much higher amounts. Smaller self insured companies may also purchase aggregate excess insurance to cover multiple claims that exceed a set amount. Many self insured employers engage the services of a law firm or a third party administrator (TPA) to handle claims administration.

In FY'02, two new licenses were issued to bring the total number of "parent-licensed" companies to 139, covering a total of 478 subsidiaries. Each self insurance license provides approval for a parent company and its subsidiaries to self insure. This amounts to approximately \$221 million in equivalent premium dollars.

Four semi-autonomous public employers are also licensed to self insure including the Massachusetts Bay Transportation Authority (MBTA), the Massachusetts Turnpike Authority (MTA), the Massachusetts Port Authority, and the Massachusetts Water Resource Authority (MWRA).²⁴

²² C.M.R. 5.00: Code of Massachusetts Regulations concerning insurers and self insurers. These regulations may be waived by the Commissioner of the DIA for employers that have strong safety records and can produce the necessary bond to cover for all incurred losses.

²³ M.G.L. 452 C.M.R. 5:00.

²⁴ The Commonwealth of Massachusetts does not fall under the category of self insurance, although its situation is analogous to self insured employers. It is not required to have a license to self insure because of its special status as a public employer and it therefore funds workers' compensation claims directly from the treasury as a budgetary expense. The agency responsible for claims management, the Public Employee Retirement Administration, has similar responsibilities to an insurer, however, the state does not pay insurance premiums or post a bond for its liabilities (M.G.L. c.152, §25B).

Insurance Unit

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

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

Through legislative action, the Workers' Compensation Rating and Inspection Bureau (WCRIBM) became the official repository of insurance policy coverage in 1991. The DIA was provided with computer access to this database, which includes policy information for the eight most current years. The remainder of policy information must be researched through the files at the DIA, now stored on microfilm. In FY'02, an estimated 6,874 inquiries were made to the Insurance Register.

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

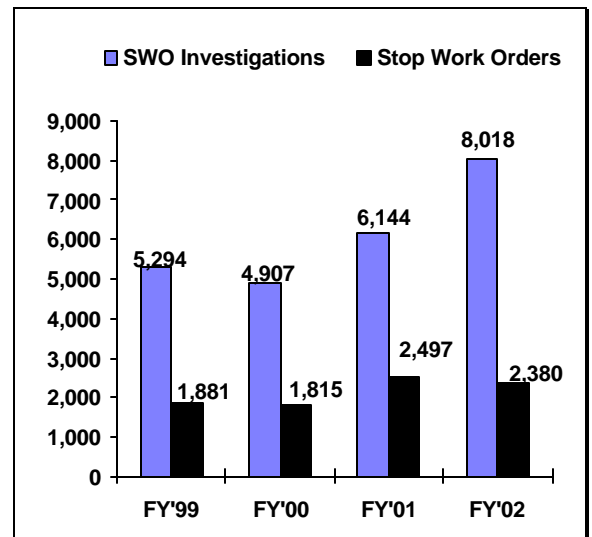
OFFICE OF INVESTIGATIONS

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

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

Stop Work Orders - The Office of Investigations, as required by the statute, will issue a "Stop Work Order" to any business with one or more full or part time employees that fail to provide proof of workers' compensation coverage upon demand. Such an order requires that all business operations cease and become effective immediately upon service. However, an employer may appeal the stop work order and remain open. In FY'02, 2,380 stop work orders were issued as a result of 8,018 investigations conducted. Of the 2,380 stop work orders issued, 2,358 (99%) were issued to "small" companies (1-10 employees), 19 were issued to "medium" companies (11-75 employees) and 3 were issued to "large" companies (76+ employees).

Figure 29: MA SWO's & Investigations

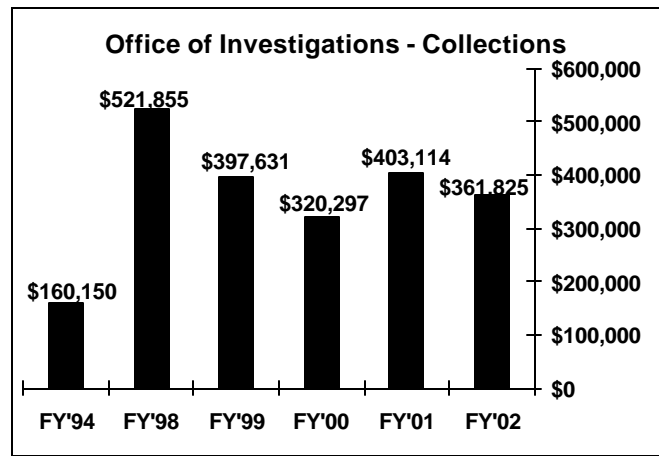


Source: Office of Investigations

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

In addition to established fines, an employer lacking insurance coverage may be subject to punishment by a fine not to exceed \$1,500, or by imprisonment for up to one year, or both. If the employer continues to fail to provide insurance, additional fines and imprisonment may be imposed. The Commissioner or designee can file criminal complaints against employers (including the president and treasurer of a corporation personally) that violate any aspect of Section 25C. The amount collected in FY'02 was \$361,825.

Figure 30: Office of Investigations - Collections



Source: Office of Investigations

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

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

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

WORKERS' COMPENSATION TRUST FUND

Section 65 of the Workers' Compensation Act establishes a trust fund in the State Treasury to make payments to injured employees whose employers did not obtain insurance, and to reimburse insurers for certain payments under sections 26, 34B, 35C, 37, 37A, and 30H. The DIA has established a department known as the Trust Fund to process requests for benefits, administer claims, and respond to claims filed before their Division of Dispute Resolution.

Uninsured Employers

Section 65 of the Workers' Compensation Act directs the Trust Fund to pay benefits resulting from approved claims against Massachusetts' employers who are uninsured in violation of the law. The Trust Fund must either accept the claim or proceed to dispute resolution over the matter. Every claim against the fund under this provision must be accompanied by a written certification from the DIA's Office of Insurance, stating that the employer was not covered by a workers' compensation insurance policy on the date of the alleged injury, according to the Division's records.²⁵ In FY'02, \$4,579,380 was paid to uninsured claimants, 165 claims were filed, and 96 claims for benefits were paid.

Second Injury Fund Claims (Sections 37, 37A, and 26)

In an effort to encourage employers to hire previously injured workers, the Legislature established a Second Injury Fund to offset any financial disincentives associated with the employment of injured workers.

Section 37 requires insurers to pay benefits at the current rate of compensation to all claimants, whether or not their injury was exacerbated by a prior injury. When the injury is determined to be a "second injury," insurers become eligible to receive reimbursement from the DIA's trust fund for up to 75% of compensation paid after the first 104 weeks of payment.²⁶ Employers are entitled to an adjustment to their experience modification factors as a result of these reimbursements.

Section 37A was enacted to encourage the employment of servicemen returning from World War II. The Legislature created a fund to reimburse insurers for benefits paid for an injury aggravated or prolonged by a military injury. Insurers are entitled to reimbursement for up to fifty percent of the payments for the first 104 weeks of compensation and up to one hundred percent for any amount thereafter.

Section 26 provides for the direct payment of benefits to workers injured by the activities of fellow workers, where those activities are traceable solely and directly to a physical or

²⁵ 452 C.M.R. 3.00

²⁶ An employee is considered to suffer a second injury when an on the job accident or illness occurs that exacerbates a pre-existing disability. How the preexisting condition was incurred is immaterial; the impairment may derive from any previous accident, disease, or congenital condition. The disability, however, must be "substantially greater" due to the combined effects of the preexisting impairment and the subsequent injury than the disability as a result of the subsequent injury by itself.

mental condition, resulting from the service of that fellow employee in the armed forces. (A negligible number of these claims have been filed.)

At the close of fiscal year 2002, 229 §37 claims were paid and 229 were settled. The total amount paid in settlements in FY'02 was \$16,830,985.

Vocational Rehabilitation (Section 30H)

Section 30H provides that if an insurer and an employee fail to agree on a vocational rehabilitation program, the Office of Education and Vocational Rehabilitation (OEVR) must determine if vocational rehabilitation is necessary and feasible to return the employee to suitable employment. If OEVR determines that vocational rehabilitation is necessary and feasible, it will develop a rehabilitation program for the employee for a maximum of 104 weeks. If the insurer refuses to provide the program to the employee, the cost of the program will be paid out of the Section 65 trust funds. If upon completion of the program OEVR determines that the program was successful, it will assess the insurer no less than twice the cost incurred by the office, with that assessment paid into the Trust Fund. In FY'02, 32,799 was paid for rehabilitation services and the DIA collected \$3,471 from insurers. During FY'02, 10 claims for benefits were filed and 8 claims for benefits were paid out.

Latency Claims (Section 35C)

Section 35C states that when there is at least a five year difference between the date of injury and the date of benefit eligibility (for section's 31, 34, 35A or 35), benefits' paid will be based upon levels in effect on the date of eligibility. This same date of eligibility rather than the date of injury is also used to compute supplemental benefits known as COLA (Cost of Living Adjustments) for employees subject to this section. In FY'02, approximately \$1,173,347 was paid as latency claims.

Cost of Living Adjustments (Section 34B)

Section 34B provides supplemental benefits for persons receiving death benefits under section 31 and permanent and total incapacity benefits under section 34A, whose date of personal injury was at least 24 months prior to the review date. The supplemental benefit is the difference between the claimant's current benefits and his/her benefit after an adjustment for the change in the statewide average weekly wage between the review date and the date of injury. Insurers pay the supplemental benefit concurrently with the base benefit. They are then entitled to quarterly reimbursements for the supplemental benefits paid on all claims with dates of injury occurring prior to October 1, 1986. For injury dates after October 1, 1986, insurers will be reimbursed for any increase that exceeds 5%. COLA payments for FY'02 totaled \$3,249,773 for the Public Trust Fund and \$17,038,376 for the Private Fund.

OFFICE OF HEALTH CARE SERVICES BOARD

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

Health Care Services Board

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

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

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

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

The HCSB has published twenty-five treatment guidelines covering many conditions common to workers' compensation patients. The HCSB is required to conduct an annual review of the guidelines and update them based on the experience of the year.

Utilization Review

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

The regulations require that utilization review be performed on all medical claims using the DIA's treatment guidelines and criteria. UR agents must review claims submitted by workers' compensation claimants for compliance with the guidelines. Review may either be prospective (examining treatment before it is provided), concurrent (review in the course of treatment), or retrospective (review after the treatment was provided). When coverage for a treatment plan is denied by an agent, it must be communicated to the treating physician and the injured employee. Either the injured employee or the treating practitioner may appeal the denial. Appeals of prospective or concurrent treatment may be made by telephone to the UR agent, with the opportunity for review by a practitioner on an expedited basis. The appeal must be resolved within two business days. Appeals for retrospective treatment must be settled within 20 business days. Examination of any utilization review appeal can be made by filing a claim with the DIA's Division of Dispute Resolution.

Compensation Review System (CRS)

As part of the 1991 Workers' Compensation Reform Act, the statute mandated that the DIA "monitor the medical and surgical treatment provided to injured employees and the services of other health care providers, and monitor hospital utilization as it relates to the treatment of injured employees. The monitoring shall include determinations concerning the appropriateness of the service, whether treatment is necessary and effective, the proper costs of services, and the quality of treatment" (M.G.L. c.152, §13).

In order to fulfill this legislative mandate, the staff of the Office of Health Policy (OHP) has set out to create a Compensation Review System (CRS). The intention of CRS is to allow the DIA to monitor the use of specific treatments for specific injuries and compare that usage to the treatment guidelines promulgated by the Health Care Services Board (HCSB). In addition to monitoring health care, the CRS will aid in controlling costs by detecting over-utilization and improper utilization of specific treatments for work-related injuries. This will be accomplished by obtaining claim and treatment records from insurers, self-insurers and third party administrators and comparing this data to the treatment guidelines. Since March of 2002 the implementation of the CRS program has been the main focus for the Office of Health Policy. In preparation for the January 1, 2003 start date the office has been meeting with insurers throughout the state to present the program. A CRS database has been developed along with the completion of two pilot data collections from two insurers. The Office of Health Policy continues to provide assistance and support to insurers to set up their data collection systems.

DIA REGIONAL OFFICES

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

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

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

Administration and Management of the Offices

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

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

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

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

Resources of the Offices

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

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

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

The following are addresses for the regional offices:

Fall River

30 Third Street
Fall River, MA 02722
(508) 676-3406
Henry Mastey, Manager

Lawrence

160 Winthrop Avenue
Lawrence, MA 01840
(978) 683-6420
Tom Vincequere, Acting Manager

Springfield

436 Dwight Street, Room 105
Springfield, MA 01103
(413) 784-1133
Marc Joyce, Manager

Worcester

8 Austin Street
Worcester, MA 01608
(508) 753-2072
Jonathan Ruda, Manager

SECTION

- 5 -

DIA FUNDING

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DIA FUNDING

To ensure that the Division of Industrial Accidents has adequate funds, the Legislature required the employers of Massachusetts, both public and private, to pay assessments covering the expenses of operating the agency and for the payment of trust fund benefits. In addition to these assessments, the DIA also derives revenue from the collection of fees (for various filing costs) and fines (for violations of the act). There are no tax dollars used to fund the Department of Industrial Accidents or any of its activities.

Table 11: Funding Mechanisms for the Division of Industrial Accidents

Assessments - A charge levied against all companies in Massachusetts on their workers' compensation policy;

Referral Fees - A fee paid by the insurer when a case cannot be resolved at the Conciliation level and is referred to Dispute Resolution for adjudication. The current referral fee is \$573.67 as of October 1, 2001. This fee is 65% of the current State Average Weekly Wage, which is \$882.57. (This figure changes every October 1st);

Fines - There are three types of fines. First, a Stop Work Order Fine is issued to a company without insurance, and it accumulates until they obtain a policy. Second, a Late First Report Fine is issued to a company if the injury is not reported within the specified time. This amount is \$100. Third, a 5% fine is charged when assessments are paid later than 30 days of billing.

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

Each year, the DIA must determine an assessment rate that will yield revenues sufficient to pay the obligations of the workers' compensation trust funds and the operating costs of the DIA. This assessment rate, multiplied by the employer's standard premium, is the DIA assessment, and is paid as part of an employer's insurance premium.²⁷ The assessment rate for private sector employers in FY'02 is 4.701% of standard premium. This is a 19% increase from the FY'01 rate of 3.953%.

The Special Fund - The DIA's operating expenses are paid from a Special Fund, funded entirely by assessments charged to private sector employers. Operating expenses must be appropriated by the Legislature each year through the General Appropriations Act. The DIA reimburses the General Fund the full amount of its budget appropriations plus fringe benefits and indirect costs from the assessments, fines, and fees collected. Payments are made quarterly. Chapter 23E of the Massachusetts General Laws directs the Advisory Council to review the DIA's operating budget as well as the Workers' Compensation Trust Fund budgets. With the affirmative vote of seven members, the Council may submit an alternative budget to the Director of Labor and Workforce Development.

The Trust Funds - The Trust Fund was established so the DIA can make payments to uninsured, injured employees and employees denied vocational rehabilitation services by their insurers. In addition, it must reimburse insurers for benefits for second and latent

²⁷ For employers that are self insured or are members of self insured groups, an "imputed" premium is determined, whereby the WCRB will estimate what their premium would have been had they obtained insurance in the traditional indemnity market. Some employers are entitled to "opt out" from paying a full assessment. By opting out, the employer agrees that it can not seek reimbursement for benefits paid under sections 34B, 35C, 37, 30H, 26, and 37A. Separate opt out assessment rates are determined.

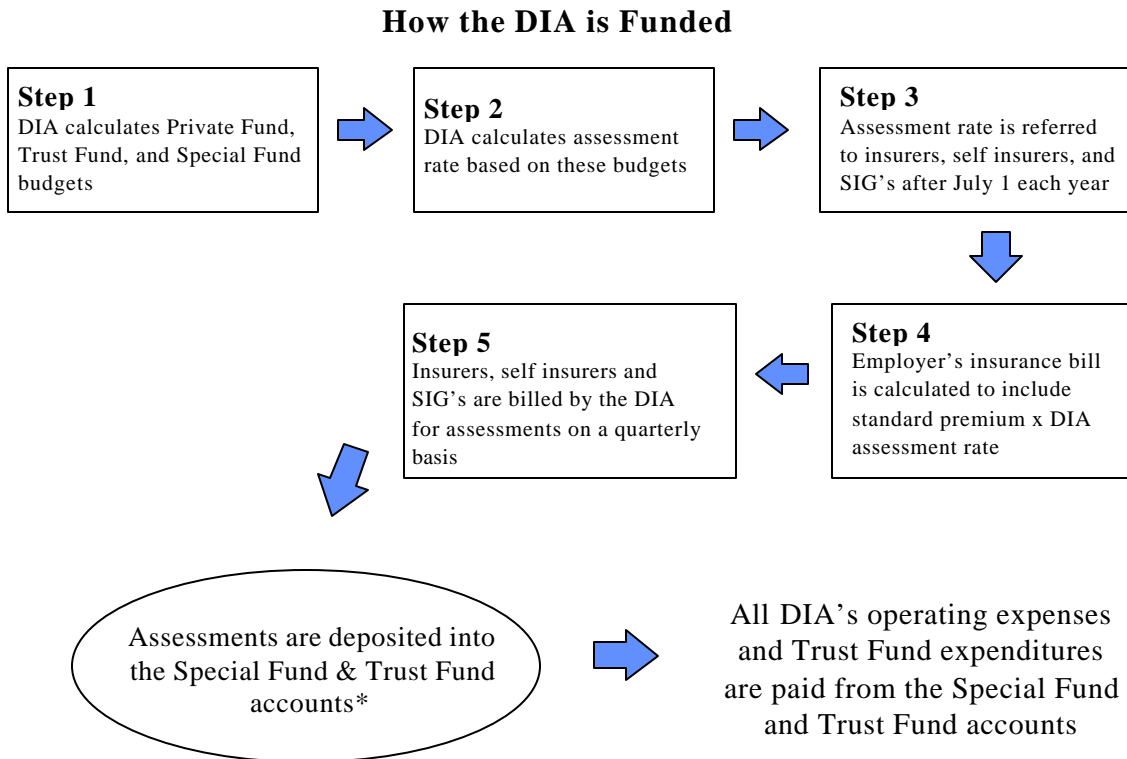
injuries, injuries involving veterans, and for specified cost of living adjustments.²⁸ These obligations are paid out of the trust funds. One account is reserved for payments to private sector employers (the private trust fund); the other is for payments to public sector employers (the public trust fund).

The Funding Process

At the beginning of each fiscal year, the DIA estimates the amount of money needed to maintain its operations in the next fiscal year. This amount is refined by December, when it is submitted to the Governor's office for inclusion in the Governor's budget (House 1), and submitted for legislative action.

In May and June the DIA uses consulting actuaries to estimate future expenses and determine the assessments necessary to fund the special fund and the trust fund. The budgets and the corresponding assessments must be submitted to the Director of Labor and Workforce Development by July 1st annually. By July, the Legislature appropriates the DIA's operating expenses. At that time, insurance carriers are notified of the assessment rates paid quarterly directly to the DIA. Collected assessments are deposited into the DIA's accounts, which are managed by the Commonwealth's Treasurer.

Figure 31: DIA Funding Process



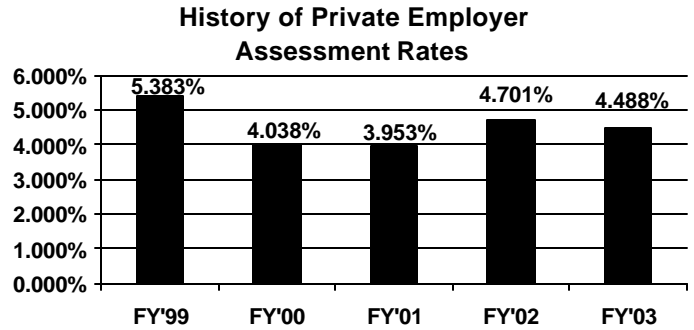
*Note: Maintained by the State Treasurer.

²⁸ M.G.L. c.152, §65(2).

PRIVATE EMPLOYER ASSESSMENTS

On June 26, 2002, Tillinghast - Towers Perrin released a revised analysis of the DIA's FY'03 assessment rates as mandated under M.G.L. c.152, section 65. Specifically, the report detailed the estimated amount required by the special fund and trust funds for FY'03, beginning July 1, 2002. Included in the report are the assessment rates to be applied to public and private employer insurance premiums. The private employer assessment rate has been calculated to be **4.488%** of standard premium, a decrease of 4.5% from last year (4.701%).

Figure 32: History of Private Employer Assessment Rates



The public employer assessment rate has been calculated to be **39.851%** of standard premium, an increase of 62% from last year's assessment (24.625%). This memorandum breaks down the process of the assessment rate calculation for private employers.

Overview of Assessment Rate Calculations

Tillinghast - Towers Perrin uses the following six steps in determining the assessment rates for both private and public employers:

1. Project the Fiscal Year 2003 Expenditures;
2. Project the Fiscal Year 2003 Income (excluding assessments);
3. Estimate Balance Adjustments;
4. Convert Above Items to Ratios by comparing them to the Assessment Base;
5. Calculate the Assessment Ratio by Subtracting the Projected Income and Balance Adjustment Ratios from the Projected Expenditure Ratio; and
6. Calculate the Assessment Rate by multiplying the Assessment Ratio by the Assessment Base Factor.

1. FISCAL YEAR 2003 PROJECTED EXPENDITURES: \$66.2M

The first step in the assessment process is the calculation of the expected FY'03 expenditures. Private employers are assessed for the sum of the Private Trust Fund budget and the Special Fund budgets.

<u>PRIVATE TRUST FUND BUDGET</u>	<u>Projected FY'03 Expenditures (6/20/02)</u>
Section 37 (2nd Injuries)	\$17,287,000
Uninsured Employers	\$ 5,000,000
Section 30H (Rehabilitation)	\$ 9,500
Section 35C (Latency)	\$ 1,175,000
Section 34B (COLA's)	\$16,583,336
Defense of the Fund	\$ 2,500,000
Total:	<u>\$42,554,836</u>

<u>SPECIAL FUND BUDGET</u>	<u>Projected FY'03 Expenditures (6/20/02)</u>
Total:	<u>\$23,675,410</u>

<u>PRIV. EMPLOY. EXPENDITURES</u>	<u>Projected FY'03 Expenditures (6/1/02)</u>
Total:	<u>\$66,230,246</u>

2. PROJECTED FISCAL YEAR 2003 INCOME: \$7.0M

Any income derived by the funds is used to offset assessments. An amount is projected for the collection of fees and fines for deposit in the Special Fund, reimbursements from uninsured employers for deposit in the Private Trust Fund, and an amount estimated for interest earned on the Private Fund and the Special Fund balances.

FY'03 Fines and Fees (Special Fund) = \$5,000,000
FY'03 Income Due to Reimbursements = \$1,000,000
Estimated Investment Income (FY'02) = \$ 942,975 (Private Fund: \$676,998/Special Fund: \$265,977)

Total Projected FY'03 Income: \$6,942,975

3. ADJUSTMENTS TO FUND BUDGETS: \$10.8M

According to M.G.L. c.152, §65(4)(c), the amount assessed employers for any fund must be reduced by a certain percentage of moneys held over from the previous year. Any amount greater than 35% of FY'01 expenditures in a particular fund must be used to reduce amounts assessed for that fund in FY'03. The balances of both Special Fund and Private Trust Fund at the end of FY'02 will have a surplus exceeding 35% of FY'01 disbursements. Therefore, the assessment was calculated with a \$840 thousand reduction to the Special Fund Budget, and a \$10 million reduction to the Private Trust Fund Budget (\$10.8 million reduction).

<i>SPECIAL FUND:</i>	<u>FY'02 Estimated Year End Balance</u>	<u>35% of FY'01 Expenditures</u>	<u>Amount of Reduction Required</u>
	\$8,865,891	\$8,025,663	\$840,228
<i>PRIVATE TRUST FUND:</i>	<u>FY'02 Estimated Year End Balance</u>	<u>35% of FY'01 Expenditures</u>	<u>Amount of Reduction Required</u>
	\$22,566,601	\$12,624,620	\$9,941,981

4. CONVERSION TO RATIO:

Expenditures, income, and any balance adjustment, must be converted to a ratio. This is calculated by dividing each of the first three steps by the assessment base, which represents losses paid during Calendar Year 2001. For the Private Fund, the assessment base is \$725.2M.

<i>Private Expenditure Ratio:</i>	9.132%	(\$66.2 million/\$725.2 million)
<i>Projected Income Ratio:</i>	0.957%	(\$ 7.0 million/\$725.2 million)
<i>Balance Adjustment Ratio:</i>	1.486%	(\$10.8 million/\$725.2 million)

5. CALCULATION OF THE ASSESSMENT RATIO: 6.689%

After the projected expenditures, income and balance adjustments are converted to ratios, the last two items are subtracted from the expected expenditure ratio to calculate an assessment ratio.

Projected expenditures -	Projected income -	Balance adjustment =	Assessment Ratio
9.132%	0.957%	1.486%	6.689%

6. CALCULATION OF THE ASSESSMENT RATE: 4.488%

Since the assessment ratio is relative to paid losses, the ratio must be converted into a rate that is relative to projected premiums. This is done by multiplying the assessment ratio by an assessment base factor which represents a ratio of losses to premiums (based on information provided by the WCRIBM). The 2003 assessment base factor is .671.

Assessment Ratio x	Assessment Base Factor =	Assessment Rate
6.689%	.671	4.488%

DIA OPERATING BUDGET

Legislative Appropriations, Fiscal Year 2003

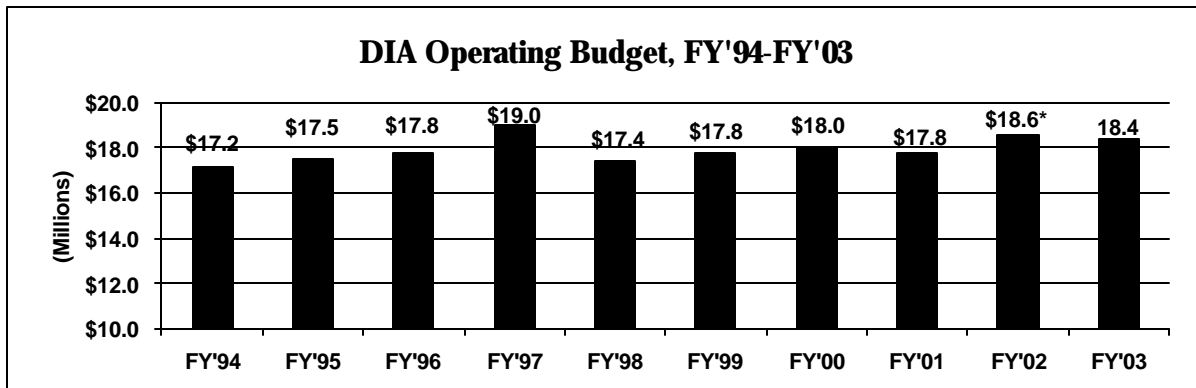
The Division of Industrial Accidents initially requested a budget of \$18,642,473 for fiscal year 2003. In House 1, the Governor's recommendation for the DIA's budget was \$18,573,319 (\$69,154 less than the DIA's original request). The House of Representatives approved a budget of \$18,532,631 and the Senate approved appropriations totaling \$18,597,548. The final conference committee resolution appropriated \$18,532,631 to the DIA, \$109,842 less than the agency's original request.

Table 12: Legislative Budget Process for DIA Line-Item, Fiscal Year 2002 - Fiscal Year 2003

Fiscal Year 2002 Budget Process		Fiscal Year 2003 Budget Process	
DIA Request	\$19,468,060	DIA Request	\$18,642,473
Governor's Rec.	\$18,642,773	Governor's Rec.	\$18,573,319
Full House	\$18,642,473	Full House	\$18,532,631
Full Senate	\$18,792,473	Full Senate	\$18,597,548
Conference Committee	\$17,270,401	Conference Committee	\$18,532,631
Gen. Appropriations Act	\$17,270,401	Gen. Appropriations Act	\$18,382,631
Supplemental Budget	\$1,327,147	(Includes \$150,000 Veto)	

General Appropriations Act

On July 29, 2002, Governor Swift signed the General Appropriations Act, giving the DIA an **\$18,382,631** operating budget for fiscal year 2003. Included within the General Appropriations Act was a veto of funds (\$150,000) within the DIA's line item. This year's appropriation is \$214,917 less than last year's combined General Appropriations Act and Supplemental Budget (\$18,597,548). Provisions in the DIA's appropriation allow for the release of sufficient funds from the special fund reserve to pay for expenses associated with Phase-II of the agency's Oracle conversion project. The budget designates that "not less than" \$800,000 be expended for occupational safety training grants along with a stipulation requiring the DIA to assign a judge to Berkshire County once per month.



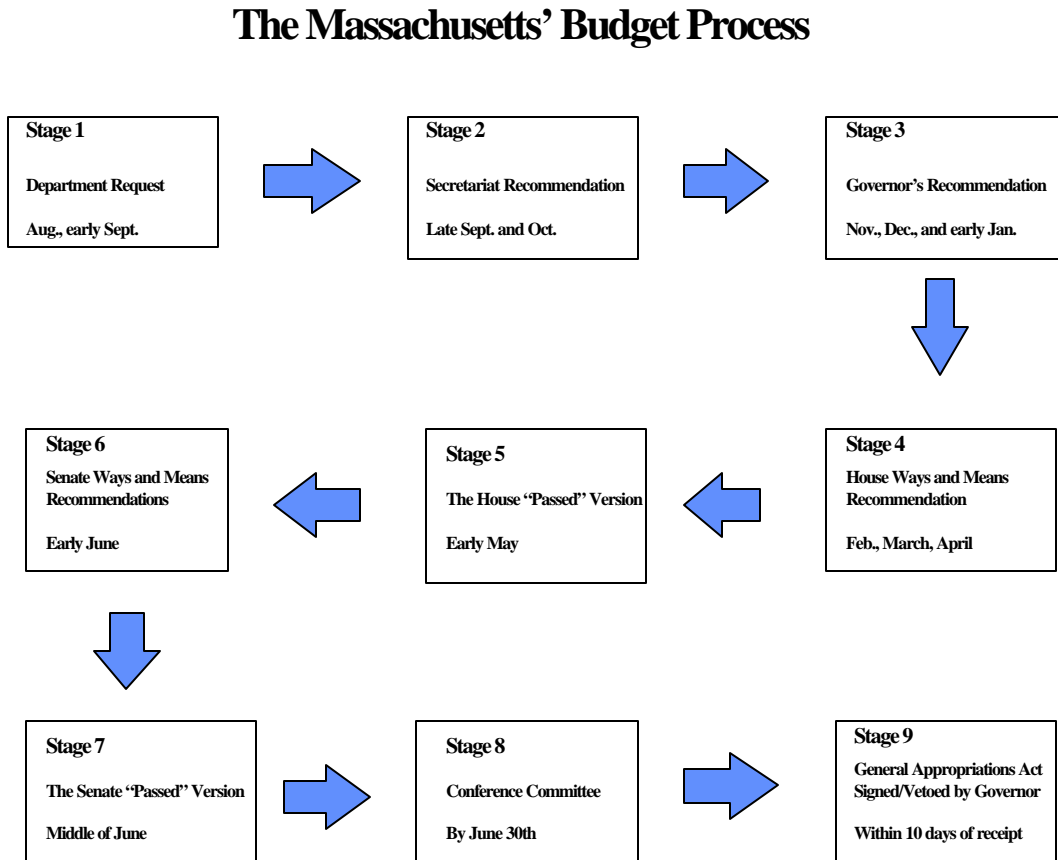
*Note: The FY'02 appropriation reflects the combination of the General Appropriation Act (\$17,270,401) and the Supplemental Budget figures (\$1,327,147).

The Budget Process

The operating budget of the DIA must be appropriated by the Legislature even though employer assessments fund the agency. The Division, therefore, must submit to the budget process in the same manner as most other government agencies. It is helpful to view this process in nine distinct phases.²⁹

The following is a brief description of the process:

Figure 33: The Massachusetts' Budget Process



²⁹ Making and Managing the Budget in the Commonwealth of Massachusetts, Donahue Institute for Government Services, University of Massachusetts.

Stage 1: Department Request

Time Frame: August and early September

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

Stage 2: Secretariat Recommendation

Time Frame: Late September and October

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

Stage 3: Governor's Recommendation (House 1)

Time Frame: November, December, and 1st weeks of January

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

Stage 4: House Ways and Means Committee Recommendations

Time Frame: February, March, and April

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

Stage 5: The House "Passed" Version

Time Frame: Early May

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

Stage 6: Senate Ways and Means Committee Recommendations

Time Frame: Early June

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

Stage 7: The Senate “Passed” Version

Time Frame: Middle of June

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

Stage 8: Conference Committee

Time Frame: By June 30th

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

Stage 9: General Appropriations Act

Time Frame: Within 10 days of receipt

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

SECTION - 6 -

INSURANCE COVERAGE

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MANDATORY INSURANCE COVERAGE

Every private sector employer in the Commonwealth is required to maintain workers' compensation insurance.³⁰ Coverage may consist of purchasing a commercial insurance policy, membership in a self-insurance group, participation in a reciprocal insurance exchange,³¹ or maintaining a license as a self-insured employer.

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

When enacted in 1911, the Workers' Compensation Act was elective for counties, cities, towns, and school districts. The vast majority of municipal employees, however, are covered, with only a few communities having never adopted coverage for certain employee groups. Municipalities attain insurance coverage in a manner identical to private employers that is through commercial insurance, self-insurance, or membership in a self-insurance group.³²

The Office of Investigations at the Division of Industrial Accidents (DIA) monitors employers in the state to ensure no employer operates without insurance. The office may issue fines and close any business operating without coverage.³³ If an employee is injured while working for a company without coverage, a claim may be filed with the DIA's trust fund.³⁴

³⁰ This mandate includes sole proprietors that are incorporated, domestics and seasonal workers that average over 16 hours of work a week, and family businesses employing family members. There are certain categories of workers for whom insurance is not required. Seamen, some professional athletes, and unincorporated sole proprietors are exempt.

³¹ A reciprocal exchange is a group of employers from diverse industries who pool their funds to insure themselves. An exchange is not self insurance or a self insurance group, but a way to provide commercial insurance to small and medium sized companies without resorting to the residual market.

³² For more information of the coverage of public employees see Report to the Legislature on Public Employees, Massachusetts Workers' Compensation Advisory Council, 1989.

³³ See section covering Office of Investigations.

³⁴ See section covering Trust Fund.

COMMERCIAL INSURANCE

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

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

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

The Insurance Market

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

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

In FY'02, the DOI issued a total of 6 new licenses to carriers to write workers' compensation insurance in Massachusetts.³⁵ Drawn by favorable market conditions marked by decreased loss costs, carriers from around the nation have entered the state in search of profitable underwriting opportunities. This has intensified competition amongst carriers for market share, fueling a record number of downward deviations. Employers have been the beneficiaries of competition, experiencing dramatic reductions to their insurance costs as a result of a large decrease in manual rates, compounded with double digit reductions provided by individual carriers.

³⁵ Of these 6 new licenses, two were already licensed in the state but added workers' compensation designations to their policies.

Insurance Rates - In Massachusetts, workers' compensation insurance rates are determined through an administered pricing system.³⁶ Insurance rates are proposed by the Workers' Compensation Rating and Inspection Bureau of Massachusetts (WCRIBM) on behalf of the insurance industry, and set by the Commissioner of Insurance. The WCRIBM submits to the Commissioner a classification of risks and premiums, referred to as the rate filing, which is reviewed by the State Rating Bureau. By law, a rate filing must be submitted at least every two years, and no classifications or premiums may take effect until approved by the Commissioner.³⁷

According to the Workers' Compensation Act, the Commissioner of Insurance must conduct a hearing within 60 days of receiving the rate filing, to determine whether the classifications and rates are "not excessive, inadequate or unfairly discriminatory" and that "they fall within a range of reasonableness."³⁸

On May 31, 2001, Commissioner Linda Ruthardt approved an agreement between the State Rating Bureau (SRB) and the Workers' Compensation Rating and Inspection Bureau (WCRIBM) for an overall average rate increase of 1% effective July 1, 2001. This slight increase to workers' compensation rates end a trend of rate decreases since 1994.

During calendar year 2002, workers' compensation insurance rates remained at 2001 levels because there was no rate filing submitted by the WCRIBM.

Table 13: Impact of Rate Changes since 1987

YEAR	Percent Change from Previous Year's Rate	Assuming a Manual Rate of \$100 in 1987
1987	No Change	\$100.00
1988	+ 19.9%	\$119.90
1989	+ 14.2%	\$136.93
1990	+ 26.2%	\$172.81
1991	+ 11.3%	\$192.34
1992	No Change	\$192.34
1993	+ 6.24%	\$204.34
1994	- 10.2%	\$183.50
1995	- 16.5%	\$153.22
1996	- 12.2%	\$134.53
1997	No Change	\$134.53
1998	- 21.1%	\$106.15
1999	- 20.3%	\$84.60
2000	No Change	\$84.60
2001	+ 1%	\$85.44
2002	No Change	\$85.44

Source: Division of Insurance WC Rate Decisions

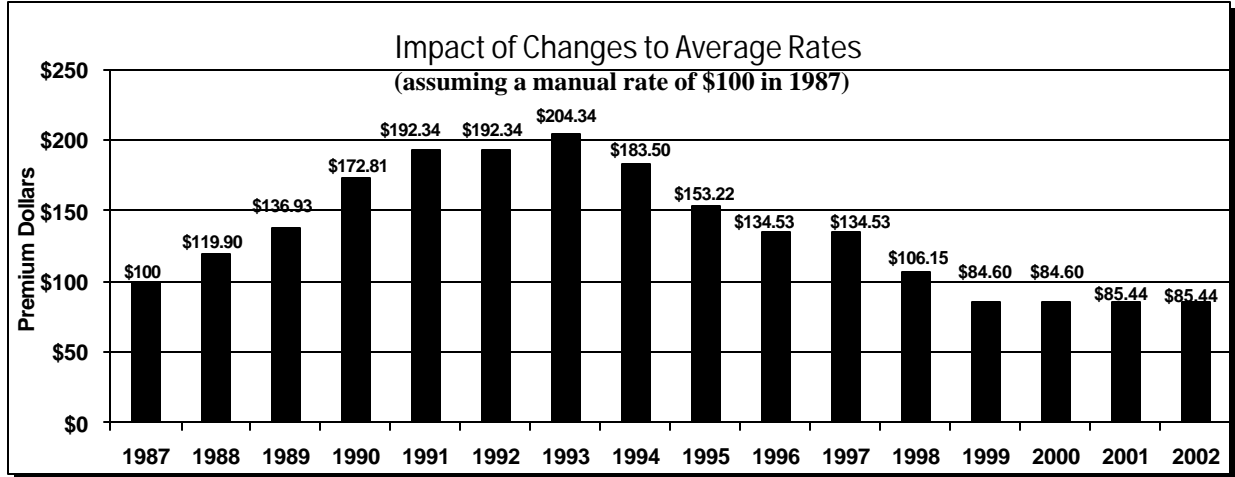
³⁶ In the United States, workers' compensation insurance rates are regulated one of three ways: through administered pricing, competitive rating, or a monopolistic state fund. Administered pricing involves strict regulation of rates by the state. Competitive rating allows carriers to set rates individually, usually based on market-wide losses developed by a rating organization and approved by the state. Monopolistic state funds require that workers' compensation insurance be purchased exclusively through a program run by the state. Some states have competitive state funds that allow employers to purchase insurance from either a private carrier or the state.

³⁷ If the Commissioner takes no action on a rate filing within six months, the rates are then deemed to be approved. If the Commissioner disapproves the rates, a new rate filing may be submitted. Finally, the Commissioner may order a specific rate reduction, if after a hearing it is determined that the current rates are excessive. Determinations by the Commissioner are subject to review by the Supreme Judicial Court.

³⁸ M.G.L. c. 152, §53A(2).

The following chart illustrates the fluctuations in workers' compensation insurance rates since 1987. The chart displays how a company's premium would be affected by the average rate increases and decreases, assuming a company's premium was \$100.00 in 1987 (with all other factors remaining the same - experience rating, discounts, etc.). Even with the recent 2001 rate increase of 1%, workers' compensation rates have declined by 14.5% since 1987 and 58.2% since 1993.

Figure 34: Impact of Changes to Average Rates



*NOTE: 1999 & 2000 Rates are for policies renewed or written on or after September 1, 1999.

Deviations & Schedule Credits - The Workers' Compensation Act allows individual carriers to seek permission from the Commissioner to use a percentage decrease from approved rates within certain classifications.³⁹ These percentage decreases are called “downward deviations.” Schedule credits are also used in Massachusetts as a tool for competitive pricing, by allowing insurers to reward policyholders for good experience. These discounting techniques have become an important part of the Massachusetts insurance market. While open competition is not permitted, the use of deviations (and other alternatively priced policies) has encouraged carriers to compete for business on the basis of pricing.

At the time of the 2001 rate decision, more than 60 insurers were offering discounts up to 35% to some or all of their Massachusetts customers.

³⁹ M.G.L. c.152, §53A(9).

The Classification System

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

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

Regulation of Classifications - Classifications in Massachusetts are established by the Workers' Compensation Rating & Inspection Bureau (WCRIBM) subject to approval by the Commissioner of Insurance. Hearings are conducted at the Division of Insurance to determine whether classifications and rates are not excessive, inadequate or unfairly discriminatory and that they fall within a "range of reasonableness."⁴⁰

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

Although most companies are assigned one governing classification, the following conditions determine when more than one basic classification should be used:

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

Standard Exception Classifications - In addition to the 600 basic classification codes that exist in Massachusetts, there are 4 "standard exception classifications" for those occupations, which are common to virtually every business and pose lesser risk of worker injury. Employees who fall within the definition of a standard exception classification are not generally included in the basic classification. These low cost standard exception classifications are: Clerical Office Employees (Code 8810), Drafting Employees (Code 8810), Drivers, Chauffeurs and Their Helpers (Code 7380), and Sales-persons, Collectors or Messengers-Outside (Code 8742).

⁴⁰ M.G.L. c.152, §53A.

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

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

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

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

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

<u>Class Code</u>	<u>Governing Classification</u>	<u>Manual Rate</u>	<u>Payroll</u>	<u>Base Rate</u>
5188	Automatic Sprinkler Installation & Drivers	\$2.50	\$200,000	\$5,000

<u>Class Code</u>	<u>Standard Exception</u>	<u>Manual Rate</u>	<u>Payroll</u>	<u>Base Rate</u>
8810	Clerical Employees	\$.25	\$50,000	\$125

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

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

for separate classifications or else a construction company can be assigned to the highest rated classification that applies to the job or location where the operation is performed. The Massachusetts Construction Classification Premium Adjustment Program is a program that provides for a manual premium credit ranging from 5% to 25%, depending on average hourly wages paid to employees. Because a disparity exists between high and low wage construction employers (largely determined by the existence of a collective bargaining agreement), this program is designed to offset the higher premiums associated with larger payrolls and equalize workers' compensation costs.

Premium Calculation

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

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

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

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

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

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

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

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

The experience modification factor is determined on an annual basis, which is based on an insured's losses for the last three completed years. For instance, two similar employers may have a manual rate of \$25 per \$100 of payroll, but the safety conscious employer (with fewer past claims) may have an experience modification factor of .80, thus adjusting his rate to \$20 per \$100 of payroll. The other employer, who is not as safety conscious, may have an experience modification factor of 1.20, which adjusts the company's rate to \$30 per \$100 of payroll.

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

Premium Discounting

Insurance companies that provide workers' compensation coverage must factor in the various expenses involved with servicing insureds to determine appropriate premium levels. However, a problem occurs when pricing premiums for large policies; as the premium increases, the proportion required to pay expenses decreases. In an effort to compensate for these differences, insurers must provide a premium discount to large policy holders. The premium discount increases as the size of the policy premium increases, resulting in a premium that better reflects costs. In most states, policy holders are entitled to a premium discount if they are paying over \$10,000 in premiums.

Table 14: Percent of Premium Discount for Type A & B Companies

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

Source: WCRIBM, A General Revision of Workers' Comp. Insurance Rates and Rating Values, pg. 590 (8/14/95).

Deductible Policies

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

Table 15: Premium Reduction % Per Claim Deductible

PER CLAIM DEDUCTIBLE⁴¹ <i>Effective May 1, 1996</i>	
Medical and Indemnity Deductible Amount	Premium Reduction Percentage
\$ 500	3.0%
\$1,000	4.2%
\$2,000	6.2%
\$2,500	7.1%
\$5,000	10.6%

Source: WCRIBM

Table 16: Massachusetts Benefits Claim and Aggregate Deductible Program

MASSACHUSETTS BENEFITS CLAIM AND AGGREGATE DEDUCTIBLE PROGRAM⁴²			
Estimated Annual Standard Premium	Claim Deductible Amount	Aggregate Deductible Amount	Premium Reduction Percentage
0 to \$75,000	\$2,500	\$10,000	7.0%
\$75,001 to \$100,000	\$2,500	\$10,000	6.5%
\$100,001 to \$125,000	\$2,500	\$10,000	5.9%
\$125,001 to \$150,000	\$2,500	\$10,000	5.4%
\$150,001 to \$200,000	\$2,500	\$10,000	4.5%
over \$200,000	\$2,500	5% of Estimated Annual Standard Premium	4.3%

Source: WCRIBM, A General Revision of Workers' Comp. Insurance Rates & Rating Values (8/14/95).

Retrospective Rating Plans

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

The Formula - Although retrospective premiums are determined by a complex formula, they are generally based on three factors: losses the employer incurs during a policy period; expenses that are related to the losses incurred; and basic premium. Incurred losses have historically included medical and indemnity losses, interest on judgments, and expenses incurred in third-party recoveries.⁴³ A basic premium is necessary to defray the expenses that do not vary with losses and to provide the insurance company with a

⁴¹ Massachusetts Workers' Compensation and Employer's Liability Insurance.

⁴² Massachusetts Workers' Compensation and Employer's Liability Insurance.

⁴³ "Retrospective Rating," Risk Financing, Supplement No. 46, May 1995: III.D.7.

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

Eligibility Requirements - Eligibility for a retrospective rating plan is based upon a minimum standard premium. Eligibility for a one-year plan is an estimated standard premium of at least \$25,000 per year, and for a three-year plan the estimated standard premium must be at least \$75,000.⁴⁴ Although these eligibility standards exclude many small businesses, one of the biggest misconceptions is that retrospective plans are only for large employers and high-risk groups. In Massachusetts, more smaller employers are purchasing retrospective plans to lower premiums by controlling company losses.

Benefits and Disadvantages - Under the right circumstances, retrospective rating can benefit both the insurer and the policyholder. The policyholder benefits by paying a smaller premium at the beginning of the policy year. Because premium is determined by losses, retrospective plans reward those businesses that maintain effective loss control programs. If losses are low, the insured will pay less than standard premium. However, there is a significant uncertainty regarding the final premium amount, since it is impossible to be precise in predicting the volume or severity of workplace accidents. An unexpected claim towards the end of a policy period can be detrimental to a company, if funds have not been set aside for the retro premium. Furthermore, there is little incentive for the insurance company to limit settlement costs, when they are able to recover payments made on claims brought against the policyholder.

Dividend Plans

Offered as another means of reducing an employers insurance costs, dividend plans can provide the policy-owner with a partial return on a previously paid premium. This payment from the insurer takes into account investment income, expenses, and the insured's overall loss-experience in a given year. The dividend is usually paid to the insured directly or by applying it to future premiums due. Regardless of how the payment is issued, dividends are non-taxable, since they are considered a return of premium.⁴⁵ Dividend plans may seem attractive to policy holders, but sometimes promise more than can be delivered. Insurer's are not legally bound to pay what they may have estimated a policy holder's return to be. Moreover, many insurers strategically calculate a dividend only once between 18 and 24 months after a policy's inception, and not always to the advantage of the insured.⁴⁶

⁴⁴ Workers' Compensation: Exposures, Coverage, Claims, Levick, Dwight E. Standard Publishing Corp., page 11-4.

⁴⁵ "Risk Management-Life, Health, and Income Exposures," Life Insurance, Part 4: 406.

⁴⁶ "Thinking About the Work Comp Crisis," Merrit Risk Management Review, December 1991: 3.

ASSIGNED RISK POOL

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

The estimated ultimate residual market share for the 12-months ending August, 2002 is 12%.⁴⁷ Although this percentage has trended upward since 1999, it remains far below the 64.7% of workers' compensation premium share that was in the residual market during the 1992 policy year.

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

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

The Residual Market Load is incorporated into rates, and was a significant factor for employers to search out alternative risk financing options. Self insurance and self-insurance groups are not subject to residual market assessments. The Residual Market Load is incorporated into manual rates. This residual market burden (percentage of each voluntary market dollar used to pay for the assigned risk pool) has significantly decreased over the past three years. Loss ratios have also continued to decline. The residual market loss ratio measures the amount of losses and expenses to the premiums written (roughly money out divided by money in). A loss ratio greater than 100% indicates that losses are greater than revenues (premiums). The estimated (as of 6/02) residual market burden for Policy Year 2001 is 88.8% with a resulting residual market burden of 2.6%.⁴⁸

⁴⁷ WCRIBM Special Bulletin No. 15-02 (October 16, 2002).

⁴⁸ WCRIBM Special Bulletin No. 16-02 (November 4, 2002).

ALTERNATIVE RISK FINANCING METHODS

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

Self Insurance

The Division of Industrial Accidents strictly regulates self insured employers through its annual licensing procedures. For an employer to qualify to become self insured, it must post a surety bond of at least \$100,000 to cover for losses that may occur (452 C.M.R. 5:00). This amount varies for every company depending on their previous reported losses and predicted future losses. The average bond, however, is usually over \$1 million. Self insurance is generally available to larger employers with at least 300 employees and \$750,000 in annual standard premium.⁴⁹ These regulations may be waived by the Commissioner of the DIA for employers that have strong safety records and can produce the necessary bond to cover incurred losses. In addition, employers who are self insured must purchase reinsurance of at least \$500,000. Each self-insured employer may administer its own claims or engage the services of a law firm or a third party administrator (TPA) to handle claims administration. The office of insurance evaluates employers every year to determine their continued eligibility and set a new bond amount.

Figure 35: Self Insurance in MA - Premium Dollars

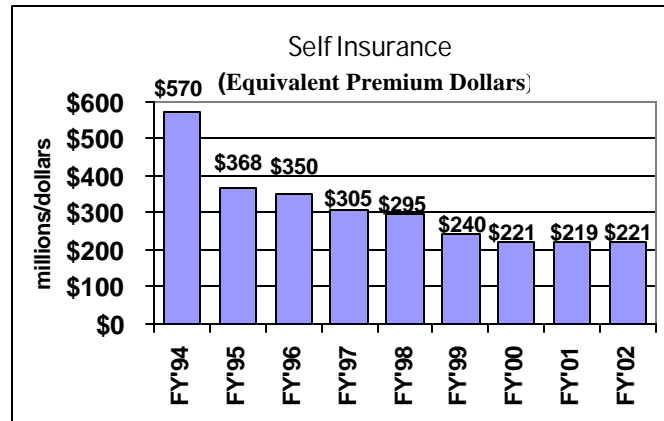


Table 17: Total Self-insured licenses in Massachusetts

	<u>New Licenses</u>	<u>Total Licenses</u>	<u>Companies Covered</u>
FY'94	23	224	688
FY'95	11	227	734
FY'96	5	226	734
FY'97	5	206	417
FY'98	5	186	503
FY'99	6	174	464
FY'00	5	173	437
FY'01	3	151	419
FY'02	2	139	478

Source: DIA Office of Insurance

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

Self Insurance Groups

Companies in related industries may join forces to form a self insurance group (SIG). Regulated by the Division of Insurance, SIGs may include public employers, non-profit groups, and private employers in the same industry or trade association.⁵⁰

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

Members of a self insurance group are assigned a classification and are charged manual rates approved by the Commissioner of Insurance for commercial insurance policies. Premium is calculated in the same manner, with manual rates adjusted by an experience modification factor and the All Risk Adjustment Program (ARAP).⁵¹ Cost savings arise through dividends returned to members and deviated rates.

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

The first group was approved in 1987. After a few years of modest interest, eight SIGs were formed in 1991 and 21 in 1992. As of January 1, 2002, there were 25 SIGs in the Commonwealth.

Table 18: Membership in W/C SIGs as of Jan. 1st

Membership in Workers' Compensation Self-Insurance Groups as of Jan. 1st		
<u>Year</u>	<u>Number of Groups</u>	<u>Number of Members</u>
1991	8	N/A
1992	21	N/A
1993	28	N/A
1994	27	2,300
1995	31	2,550
1996	32	2,700
1997	30	2,830
1998	26	2,880
1999	25	2,821
2000	24	Unavailable
2001	25	Unavailable
2002	25	3,000

Source: Division of Insurance

⁵⁰ According to Division of Insurance regulations, a SIG must have "five or more employers who are engaged in the same or similar type of business, who are members of the same bona fide industry, trade or professional association which has been in existence for not less than two years, or who are parties to the same or related collective bargaining agreements. (Div. of Insurance Regulations, 211 CMR 67.02).

⁵¹ 211 CMR 67.09.

INSURANCE FRAUD BUREAU

The Insurance Fraud Bureau (IFB) is an insurance industry supported agency authorized by the Commonwealth to detect, prevent and refer for criminal prosecution suspected fraudulent insurance transactions involving all lines of insurance.⁵² It was created in 1990 to investigate auto insurance fraud and expanded in 1991 to include workers' compensation fraud.⁵³ While its mission statement is to include all lines of insurance, the focus is on automobile and workers' compensation insurance.

IFB Funding

The IFB receives half of its annually budgeted operating revenues from the Automobile Insurers Bureau (AIB) and half from the Workers' Compensation Rating and Inspection Bureau (WCRIB). In 2001, each of these bureaus contributed a total of \$2,664,448 to fund the IFB. The 2001 operating expenses for the IFB totaled \$5,235,114, an \$86,403 decrease over 2000 expense levels. Due to actual operating expenses being \$93,781 less than what was budgeted for, the IFB returned the net surplus of funds back to the AIB and WCRIB in early 2002.

The Investigative Process

Referrals - Cases of suspected fraud for all types of insurance are generally referred to the IFB, either through an insurance carrier or through a toll-free hotline, which can be reached at: 800-32-FRAUD. In calendar year 2001, the IFB received 367 referrals regarding workers' compensation fraud.⁵⁴ Of these referrals, 92 (25%) were accepted for investigation.

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

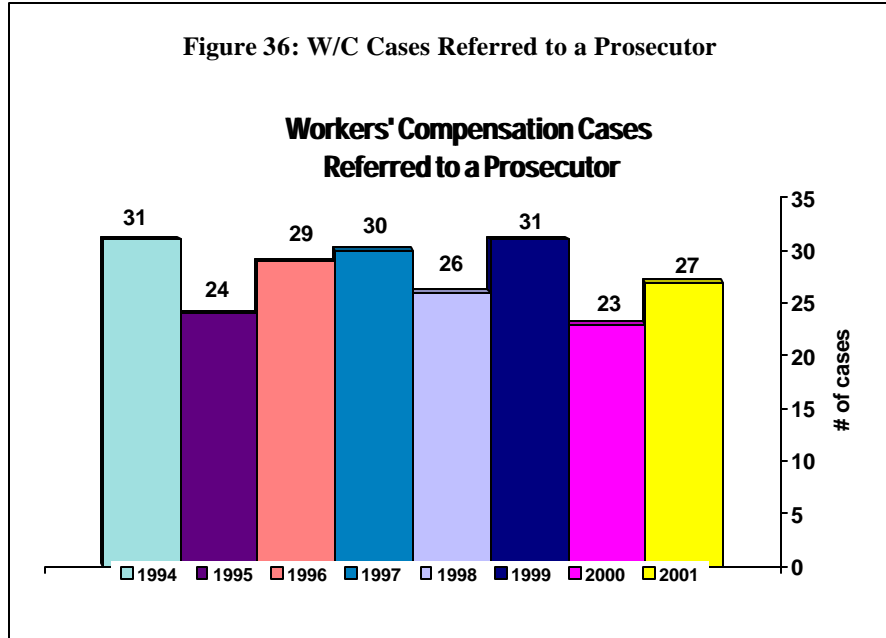
Assigned Cases - Once resources become available, a referral is assigned to an investigator and officially becomes a "case." In calendar year 2001, a total of 79 "new" cases were assigned to investigators dealing with workers' compensation fraud and 146 cases were investigated during the year.

⁵² The Insurance Fraud Bureau has its own Internet web site which can be found at <http://www.ifb.org>. The site is designed to inform the public on the activities and accomplishments of the IFB. The site also allows the general public to submit anonymous tips on suspected insurance fraud.

⁵³ M.G.L. St. 1990, c.338 as amended by St. 1991, c.398, §9

⁵⁴ Solicited referrals are included in this number.

Prosecution - After an investigator has completed their work on a case, it is either referred to a prosecutor (primarily the Massachusetts Attorney General's Office), transferred to another agency, or closed due to lack of evidence. In calendar year 2001, a total of 27 cases were referred to a prosecutor dealing with workers' compensation fraud.



Source: 2001 Insurance Fraud Bureau Annual Report

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

Claimants with duplicate identities who worked while receiving workers' compensation benefits or who earned income from one or more employers and failed to disclose it; cases where subjects participated in physical activities wholly inconsistent with the disability claimed or whose injuries were fraudulently attributed to the workplace; premium evasion cases; phony death claims; and staged falls.

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

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

LIST OF APPENDICES

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APPENDIX A

ADVISORY COUNCIL MEMBERS - FY'02		
LABOR		BUSINESS
<p>WILLIAM H. CARNES, (CHAIR) Teamsters Union, Local 25 544 Main Street Boston, MA 02129-1113 Tel: (617) 241-8831 FAX: (617) 242-4284</p> <p>ROBERT BANKS J.A.C. Iron Workers, Local 7 195 Old Colony Avenue South Boston, MA 02127 Tel: (617) 268-0707 FAX: (617) 268-0998</p> <p>FRANK FANNING SEIU-AFL/CIO Local 254 11 Beacon Street Boston, MA 02108 Tel: (617) 523-6150 FAX: (617) 367-7372</p> <p>JOHN J. PERRY Teamsters, Local 82 330 Dorchester Street South Boston, MA 02127 Tel: (617) 269-6868 FAX: (617) 269-6914</p> <p>STEPHEN F. SAMPSON Business Manager, Int'l Union of Elevator Constructors Local 4, AFL/CIO, 424 Cambridge Street Allston, MA 02134 Tel: (617-783-3687) FAX: (617) 783-9331</p>		<p>EDMUND C. CORCORAN, JR., (VICE CHAIR) Raytheon, Manager, Workers' Compensation Programs 141 Spring Street Lexington, MA 02421-7899 Tel: (781) 860-1724 FAX: (781) 860-1738</p> <p>JEANNE-MARIE BOYLAN Boston Sand and Gravel Company 169 Portland Street Boston, MA 02114-1712 Tel: (617) 227-9000 FAX: (617) 523-7947</p> <p>ANTONIO FRIAS S & F Concrete Contractors, Inc. 1266 Central Street, P.O. Box 427 Hudson, MA 01749 Tel: (978) 562-3495 FAX: (978) 562-9461</p> <p>TOM JONES Associated Industries of Massachusetts 222 Berkeley Street, P.O. Box 763 Boston, MA 02117-0763 Tel: (617) 262-1180 FAX: (617) 536-6785</p> <p>JOSEPH TAMULIS T Equipment Corp 2074 Main Street Brockton, MA 02301 Tel: (508) 583-7199 FAX: (508) 583-7198</p>
EX-OFFICIO		EX-OFFICIO
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CLAIMANT'S BAR	INSURANCE	VOCATIONAL REHAB.
<p>ALAN S. PIERCE Alan S. Pierce & Associates 27 Congress Street Salem, MA 01970 Tel: (978) 745-0914 FAX: (978) 745-1046</p>	<p>J. BRUCE COCHRANE Cochrane and Porter 981 Worcester St. Wellesley, MA 02482 Tel: (781) 431-9800 FAX: (781) 431-0222</p>	<p>CAROL FALCONE Falcone Associates 43 Witham Street, Suite 2 Gloucester, MA 01930 Tel: (978) 281-4275 FAX: (978) 281-4275</p>
STAFF		
<p><i>DENISE A. LUCCIOLA, M.P.H., Executive Director</i> <i>ANDREW S. BURTON, Research Analyst</i> <i>ANN M. HELGRAN, Paralegal</i></p>		

APPENDIX B

Agenda - Fiscal Year 2002

July 11, 2001

DIA Update
Fiscal Year 2002 Assessment Rates – Ann Conway
Lawrence in September
Action Items
 Minutes – June, 2001
Executive Director Update
Miscellaneous

August 8, 2001

DIA Update
Oracle: Calendar Presentation
Reminder: September Meeting in Lawrence at 10:00 a.m.
Action Items
 Minutes – July, 2001
Executive Director Update
Miscellaneous

September 12, 2001

DIA Update
Vocational Rehabilitation Update – Carol Falcone
Action Items
 Minutes – August, 2001
Executive Director Update
Miscellaneous

October 10, 2001

DIA Update
Vocation Rehabilitation Update
Action Items
 Minutes – September, 2001
Executive Director Update
Miscellaneous
Recognition of Council Member Joseph A. Tamulis

November 14, 2001

DIA Update
Budget Subcommittee Update
Concerns and Recommendation Section Review
Action Items
 Minutes – October, 2001
Executive Director Update
Miscellaneous

December 12, 2001

DIA Update
Action Items
 Minutes – November, 2001
Executive Director Update
Miscellaneous

January 9, 2002

DIA Update
Action Items
 Minutes – December, 2002
Executive Director Update
Miscellaneous

February 13, 2002

DIA Update
Guest Speaker: Dr. Michael J. Follick
Action Items
 Minutes – January, 2002
Executive Director Update
Miscellaneous

March 13, 2002

DIA Update
Action Items
 Minutes – February, 2002
Executive Director Update
Miscellaneous

April 10, 2002

DIA Update
Oracle Presentation
Action Items
 Minutes – March, 2002
Executive Director Update
Miscellaneous

May 8, 2002

DIA Update

Action Items

Minutes – April, 2002

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APPENDIX C

Workers' Compensation Legislation

Before the Joint Committee on Commerce & Labor

2001-2002 Legislative Session

HOUSE BILLS:

**H.30 - Office of
Consumer
Affairs and
Business
Regulation**
[NEW]

**EQUITY IN ASSESSMENTS ON INSURERS (c.26 §8E and c.152
§53A, §63)**

Until January 1, 2000, every writer of workers' compensation insurance in Massachusetts was a member of the Workers' Compensation Rating and Inspection Bureau ("WCRB") of Massachusetts, a voluntary trade organization designated by the Commissioner of Insurance as her Assigned Risk Pool Administrator and Statistical Agent for workers' compensation insurance. This bill provides that assessments for both the workers' compensation unit within the DOI and the fraud protection unit within the Attorney General's office be distributed among all insurers designed to remedy several serious problems that arise if not all workers' compensation insurers retain WCRB membership.

**H.230 - Flavin
and Mariano**
[REFILE]

**DEFINITION OF EMPLOYER - EXEMPTION OF SOLE
PROPRIETORS & PARTNERSHIPS (§1)**

This refiled bill (formerly H.192) would amend the definition of an employee and give a sole-proprietor or a partnership the option of being considered an employee, thereby making workers' compensation coverage elective.

**H.398 -
Rodrigues,
Lepper, Travis,
George, and
Cresta**
[REFILE]

EXEMPTION OF CORPORATE OFFICERS (§1)

This refiled bill (formerly H.753), would make the requirement of obtaining workers' compensation insurance elective for corporate officers (or the director of a corporation) who own 25% of the issued and outstanding stock of that corporation. Said corporate officer must provide the Commissioner of the DIA with a written waiver of his rights under this chapter. The Commissioner of the DIA is required to promulgate regulations to carry out this process.

**H.465 -
Kaufman,
Havern, and
Fargo**
[REFILE]

EMPLOYEE LEASING COMPANIES – EXCLUSIVE REMEDY (§15)

This refiled bill (previously H.1138) would amend §15 by barring an action at law for damages for personal injuries or wrongful death by an employee towards an employee leasing company and its client company, if each are in compliance with the requirements of Chapter 152. Currently, §15 only provides protection to "the insured person employing such employee and liable for payment of the compensation provided by this chapter for the employee's personal injury or wrongful death and said insured person's employees."

H.772 - Lepper
[REFILE]

DEFINITION OF EMPLOYEE (§1(4)) - EXEMPTION OF CORPORATE OFFICERS

This refiled bill (previously H.3617) would amend the definition of employee by making workers' compensation coverage elective for corporate officers regardless of their duties. This proposal would especially effect small, family-run businesses where the owners typically are the only workers.

H.777 - Walsh,
AFL-CIO
[NEW]

COMPREHENSIVE BILL

This new comprehensive bill would affect Chapter 152, sections 1(7A), 13, 14, 30, 34, 35, 36, and 46A.

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

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

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

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

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

Section 7 would increase wage benefits for injured workers under §34 by restoring the amount to 2/3 of average weekly wage.

Section 8 would amend Section 35 by adding certain, select circumstances under which an administrative judge may extend the number of weeks under §35 (partial disability) benefits. These conditions are that the injured worker has returned to employment, with or without an Individual Written Rehabilitation Plan, has been found unsuitable for vocational rehabilitation, or has a permanent partial incapacity.

Section 9 would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This would require compensation for all disfigurement, whether or not scar-based, regardless of its location on the body. Section 36(k) was amended by chapter 398 to limit payments for purely scar-based disfigurement by requiring benefits only when the disfigurement is on the face, neck, or hands.

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

**H.1161 –
Rodrigues**
[NEW]

**CLARIFICATION OF ASSESSMENTS LEVIED AGAINST THE
WORKERS' COMPENSATION RATING & INSPECTION BUREAU**
c. 26 (§8E), c.399 (§3), c.338 (§13C), AND c.152, (§63)

NOTE:
**This legislation
is before the
Joint Comm.
on Insurance.**

This new bill attempts to clarify assessment levied against the WCRIBM and insurance companies who are not a member of the WCRIBM. Currently there is no requirement that every company licensed to write workers' compensation insurance in Massachusetts be a member of the Workers' Compensation Rating & Inspection Bureau (WCRIBM). If an insurance company were to choose not to be a member of the WCRIBM it could become very problematic as they would no longer contribute to the operating budget of the WCRIBM. As a result, they would not be participating in the cost-sharing of these statutory assessments levied against the WCRIBM to fund the State Rating Bureau (SRB), Insurance Fraud Bureau (IFB), and the Attorney General's anti-fraud efforts (yet they would reap the benefits of these services). Currently the statute only mentions the assessments for these items be levied against the WCRIBM and do not address the requirement of a non-member carrier paying its share of the costs of these assessments. H.1161 attempts to remedy this problem by requiring assessments to be levied against the WCRIBM and "against any company authorized to write workers' compensation insurance that is not a member of any rating organization." The job of apportioning the assessments is left to the Commissioner of Insurance.

**H.1341 -
Loscocco,
Havern, Murphy,
and Marini**
[SIMILAR]

**CONSTRUCTION SAFETY COURSES FOR EMPLOYEES FOR
THE CONTROL OF WORKERS' COMPENSATION COSTS (§53A)**

This bill is similar to H.3030, which was signed into law last legislative session (1/4/01). H.1341 will amend Section 53A by making insurance discounts available to construction companies who have all employees certified as having "successfully completed the U.S. Department of Labor's 10-hour Occupational Safety and Health Training Course in Construction Safety and Health." H.3030 (previously signed into law) only required at a minimum, one employee to be certified.

**H.1538 - Rogers
and Lydon**
[NEW]

**ABOLISH THE DEPARTMENT OF INDUSTRIAL ACCIDENTS
REVIEWING BOARD - CHAPTER 152**

This new bill would abolish the Reviewing Board at the DIA. The Reviewing Board's duties would be assumed by the Division of Administrative Law Appeals. The words "Hearing Officer" would replace the words "Administrative Judge" and "Administrative Law Judge" anywhere in the Workers' Compensation Act.

H.2104 - Hahn
[NEW]

EXEMPTION OF CERTAIN DIRECTORS, OFFICERS, AND TRUSTEES OF NON-PROFIT ENTITIES (§1)

This new bill would amend §1(5) by exempting from the Workers' Compensation Act, "any director, officer or trustee of a nonprofit entity, as defined by the Internal Revenue Service Code, who receives no compensation except reimbursement for out of pocket expenses."

H.2114 - Larkin
[SIMILAR]

STAGGERING TERMS OF INDUSTRIAL ACCIDENT BOARD AND REVIEWING BOARD JUDGES (c. 23E)

This bill is similar to H.577 filed last legislative session.

Section 1 of this bill would require the staggering of administrative judge appointments beginning in 2001. The intent is to avoid future problems of multiple terms expiring in one year. Terms would be staggered as follows:

2001 - *one* administrative judges would be appointed to a *six-year* term.

2002 - *one* administrative judges would be appointed to a *six-year* term.

2003 - *two* administrative judge would be appointed to *six-year* terms.

2004 - *four* administrative judge would be appointed to *six-year* terms.

- *two* administrative judges would be appointed to *five-year* terms.

- *three* administrative judges would be appointed to *four-year* terms.

2005 - *two* administrative judges would be appointed to *six-year* terms.

2006 - *four* administrative judges would be appointed to *six-year* terms.

- *two* administrative judges would be appointed to *five-year* terms.

Thereafter - administrative judges would be appointed to *six-year* terms.

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

Section 3 of this bill would amend Chapter 23E, §5 by staggering administrative law judge appointments. Terms would run as follows beginning in 2004:

two members or successors would be appointed to *six-year* terms.

two members or successors would be appointed to *five-year* terms.

two members or successors would be appointed to *four-year* terms.

Thereafter, a member/successor would be appointed or re-appointed to a *six-year* term.

Section 4 of this bill would establish a performance review system by the Senior Judge of the DIA during the initial term of a newly appointed Administrative Judge, as established by §4 of Chapter 23E, who has never previously served on the Industrial Accident Board.

H.2115 - Larkin
[REFILE]

INSURANCE RATES - LOSS COST - COMPETITION (§53A)

This refiled bill (amended version of H.579) would create a system of competitive rating of workers' compensation insurance rates. Like the current law, insurers would submit all their loss data to the designated rating organization and would adhere to the uniform classification system. The

rating organization would develop a "loss cost" for each classification (e.g. roofers, clerical workers).

- "loss costs" are the historical aggregate data and loss adjustment expenses, developed and trended for each classification;
- the "loss cost" is expressed as a dollar amount per \$100 of Payroll;
- Example: The loss cost for a "roofer" might be \$6.00 and for a "clerical worker" \$.90.

Each carrier would develop its own "loss cost multiplier (LCM)." This factor takes into account the carriers expenses other than LAE, such as overhead, acquisition, marketing, profit, etc. LCM's will be multiplied by the loss cost to get the rate per \$100 or payroll.

$RATE = LOSS\ COST \times LCM$

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

This new system if passed into law would apply to all new or renewed workers' compensation policies to be effective on or after January 1, 2002.

H.2282 -
Mariano
[NEW]

WORKERS' COMPENSATION RATES (c.188G), PROVIDER COMPLAINTS TO HCSB (c.152, §13), MEDICAL REPORT FEES (c.152, §30A), DIA REVIEW OF INSURER CLAIMS PROCEDURES AND DISCIPLINARY MEASURES (c.152, §13)

This new bill is exactly the same as S.101 also file this legislative session.

Section 1 of this bill would amend c.118G mandating that workers' compensation rates set by the Division of Health Care Finance & Policy be comparable to rates paid by commercial carriers. In addition, rates would be established that fully cover administrative costs associated with services to patients covered under c.152. when these costs exceed those covered under commercial health insurance policies.

Section 2 of this bill would amend c.152, §13 and require that the Health Care Services Board hear complaints by physicians regarding insurers and report the findings to the Division of Insurance.

Section 3 and 4 of this bill would amend c.152, §30A and require an insurer to pay the fee for medical reports within 14 days upon receipt. The insurer would also be subject to the same civil fines for failing to pay for reports as physicians are subject to for failing to make reports.

Section 5 of this bill would amend c.152, §13 would require the Department of Industrial Accidents to review the claims procedures of workers' compensation insurers including "duplicative and excessive documentation of services requests, standards for utilization review, use of non-physician reviewers, and the prompt payment of claims." The DIA would also be required to review the disposition of all complaints against insurers brought before the Health Care Services Board.

Section 6 of this bill would amend c.152, §13 by allowing the Commissioner of the Department of Industrial Accidents to discipline and insurer if it is determined that the insurer has violated any part of Chapter 152 or rule adopted under this chapter.

H.2284 - McGee
[REFILE]

COMPREHENSIVE BILL

This refiled bill (previously H.2854) bill seeks to amend many aspects of Chapter 152.

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

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

Section 3 of this bill would substantially increase the fines for employers who violate the provisions of §6 with regards to the reporting of the notice of injury to the DIA, the employee, or insurer. Currently if an employer violates this provision three or more times they are required to pay a fine of \$100 for each violation. This bill would eliminate the necessity that a violation occurs three or more times before a penalty is issued. Fines would be issued as follows:

- \$100 for first violation;
- Subsequent violations within a year are increased \$100 for each subsequent violation;
- If employer fails to make notice to the DIA, employee, and insurer, it must pay additional penalty to the DIA of \$1,000 into the Special Fund and \$1,000 to the employee;
- If employer fails to make notice to the DIA, employee, and insurer, within 90 days, an additional penalty of \$10,000 will be assessed.

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

Section 5 and 6 of this bill would amend §8 by decreasing the "pay without prejudice" period to 90 days. Currently, when an insurer pays a claim, it may do so without accepting liability for period of 180 days. This pay without prejudice period establishes a window where the insurer may refuse a claim and stop payments at its will. Up to 180 days, the insurer can unilaterally terminate or modify any claim as long as it specifies the grounds and factual basis for so doing. The purpose of the pay without prejudice period is to encourage the insurer to begin payments to the employee instead of outright denying the claim.

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

Section 8 of this bill would amend §13A(5). This section assesses an insurer a penalty of \$3,500 (plus necessary expenses) whenever an insurer files a complaint or contests a claim for benefits and then later accepts the claim or withdraws the complaint within 5 days. This section of the proposed legislation would increase the number to 10 days.

Section 9 of this bill would amend §28, paragraph 1, which address injuries caused by serious and willful misconduct of the employer. This section of the proposed legislation would further define "willful misconduct" as a "knowing and willful violation of the Federal and/or State O.S.H.A. standards." Currently, if an employee is injured by serious and willful misconduct by the employer, they will receive double compensation for their injuries.

Section 10 of this bill would amend §29 dealing with the required period of incapacitation. Current law states that no compensation pursuant to §34 and §35 shall be paid for any injury which does not incapacitate the employee from earning full wages for a period of 5 or more calendar days. If incapacity extends for a period of 21 days or more, compensation is paid from the date of the onset of the incapacity. This bill would decrease this 21-day period to *5 days or more*.

Section 11 of this bill would amend §30, which requires the insurer to furnish medical and hospital services, and medicines if needed. Except for the first appointment, the injured worker may select a treating physician and may switch to another such professional *once*. This bill would allow the injured worker the option of switching physicians *twice*.

Section 12 would amend §31 covering death benefits for dependants. Current law provides the widow or widower, that remains unmarried, 2/3 of the average weekly wage (AWW), but not more than the state's AWW or less than \$110 per week. They shall also receive \$6 per week for each child (this is not to exceed \$150 in additional compensation) of the deceased employee. This bill would increase the minimum amount a widower is entitled, to \$200 per week and \$12 more a week for each child of the

deceased employee.

Section 13 would amend §33 regarding burial expenses for deceased employees. Currently, the insurer is required to pay reasonable expenses of burial, not exceeding \$4,000. This bill would increase the amount the insurer is required to pay for burial expenses to not exceed \$6,000.

Section 14 would increase the weekly compensation for total incapacity (§34) benefits. Compensation would increase from the current 60% to 2/3 of average weekly wage. Durations would increase from the current 156 weeks to 208 weeks.

Section 15 would amend §34A pertaining to permanent and total incapacity. When the incapacity for work resulting from the injury is both permanent and total, an insurer is required to pay an injured employee a weekly compensation equal to 2/3 of their average weekly wage before injury, but not more than the maximum weekly compensation rate nor less than the minimum compensation rate. Current law requires that this payment be made "following payment of compensation in §34 and §35." This section of H.2854 would delete this requirement.

Sections 16 and 17 would amend §34B pertaining to supplemental benefits for §31 or §34A. This bill would expand supplemental benefits to include both §34 and §35.

Section 18 would amend §35 pertaining to partial incapacity benefits, by raising the wage benefits for injured workers 2/3 AWW of the difference between their AWW before the injury and the weekly wage they are capable of earning after the injury, *but not more than the maximum weekly compensation rate*. Currently for §35, compensation is 60% of the difference between the employee's AWW before the injury and the weekly wage earning capacity after the injury. This amount cannot exceed 75% of temporary benefits under §34 if they were to receive those benefits.

Section 19 would amend the durations allowed for §35 benefits. Currently, the maximum benefit period for partial disability is 260 weeks, but may be extended to 520 weeks. This bill would increase the maximum benefit period to 442 weeks and could be extended to "the discretion of an administrative judge."

Section 20 would amend §35A, which provides additional compensation to injured workers who have dependents. Currently, §35A provides additional compensation of \$6 per/week to injured workers who have persons dependent upon them for injuries occurring under §34, §34A, and §35. No weekly payments under this section can be greater than \$150 per week when combined with the compensation due under §34, §34A, and §35. This section of H.2854 would provide injured workers additional compensation of \$12 per/week to injured workers who had persons dependent upon them. This bill would also cap weekly payments at \$250 when combined with the compensation due under §34, §34A, and §35.

Section 21 of this bill would amend §35D(5) and require that implementation of this section be subject to §8. Employment would be defined as a job that the employee is physically and mentally capable of performing, as long as it relates to the employee's work experience, education, or training either before or after the injury.

Section 22 of this bill would amend §35E. It would require that any person receiving old age benefits pursuant to federal social security law or receiving pension benefits paid by an employer should not be entitled to benefits under §35. This is unless the employee can establish that they would have remained active in the labor market.

Section 23 of this bill would amend §36(k). It would require that for bodily disfigurement, compensation will not exceed \$20,000 and will be payable in addition to other sums outlined in this legislation.

Section 24 of this bill would amend §50. Payments required by order that are not made within 60 days of being claimed by employee, dependent or other party would accrue interest at a rate of 12% per year. If sums include weekly payments, then interest will accrue on each unpaid weekly payment.

**H.2472 -
Sullivan**
[SIMILAR]

**TOTAL INCAPACITY (§34), PARTIAL INCAPACITY (§35) -
INCREASE BENEFITS, AND RESTORATION OF SCARRING
BENEFITS (§36)**

This new bill (similar to sections in both H.1319 and H.3029 filed last legislative session) would increase wage benefits for injured workers under §34 and §35 by restoring the amount to 2/3 of average weekly wage and would extend the duration to 260 weeks for §34 (currently 156) and 600 weeks for §35 (currently 260 or 520 for serious injuries).

Section 3 of this bill would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This would require compensation for all disfigurement, whether or not scar-based, regardless of its location on the body. Section 36(k) was amended by chapter 398 to limit payments for purely scar-based disfigurement by requiring benefits only when the disfigurement is on the face, neck, or hands. Payments made would not exceed the average weekly wage in the Commonwealth at the date of injury multiplied by 32.

**H.2648 - Cabral,
Travis, Swan,
and Verga**
[REFILE]

**REMOVAL OF AJ'S & ALJ'S (c. 2E §8) – CODE OF
JUDICIAL CONDUCT**

This refiled bill (previously H.3027) would require the Senior Judge, the AJ's and the ALJ's to be subject to the Code of Judicial Conduct as promulgated by the SJC. The Council has supported this bill in the past. [Note: The American Bar Association has written and endorsed A Model Code of Judicial Conduct for State Administrative Law Judges. This code is based on the ethical code applicable to court judges but accounts for differences in responsibilities and powers of state administrative law judges as opposed to judges presiding in a court of law.]

**H.2649 -
Cabral, Travis,
Koczera, and
Swan**
[REFILE]

**BENEFITS FOR SPECIFIC INJURIES (§36) - SCAR-BASED
DISFIGUREMENT**

This refiled bill (previously H.3029) would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This would require compensation for all disfigurement, whether or not scar-based, regardless of its location on the body. Section 36(k) was amended by chapter 398 to limit payments for purely scar-based disfigurement by requiring benefits only when the disfigurement is on the face, neck, or hands.

**H.2650 - Cabral,
and Swan**
[REFILE]

LUMP SUM SETTLEMENTS (§48) - APPROVAL

This refiled bill (previously H.3028) would remove the necessity that an employer that is an experienced modified insured approve a lump sum settlement.

H.2854 - Marini
[NEW]

**WILLFUL MISCONDUCT (§27) - INTOXICATION, UNLAWFUL
USE OF A CONTROLLED SUBSTANCE**

This new bill would amend §27 by barring workers' compensation benefits to employees who are injured while intoxicated or while using an illegal controlled substance as defined in §1 of Chapter 94C. Currently §27 only bars workers' compensation benefits to employees injured as a result of "serious and willful misconduct."

H.3246 - Larkin
[REFILE]

LUMP SUM SETTLEMENTS (§48) - LIMITS ON AGREEMENTS

This refiled bill (previously H.1888) would limit when a lump sum agreement can discharge an employee's right to payment of future benefits. No lump sum agreement should be entered into or approved unless:

1. the employee has returned to work for at least 6 months, earning at least 75% of his/her pre-injury wage;
2. survivor benefits are claimed under §31;
3. the employee is determined by the AJ to be permanently and totally disabled;
4. or the employee becomes a domiciliary of another state.

**H.3251 -
Owens-Hicks
and Swan**
[REFILE]

IMPARTIAL PHYSICIANS (§11A) - APPOINTMENT

Section 1 of this refiled bill (previously H.2855) would amend §11A by not allowing an impartial physician to be appointed when the report of both the treating physician and the insurer's physician agree with respect to "diagnosis and etiology." (Etiology is the branch of medicine that deals with the causes of disease.)

Section 2 would limit the number of times an impartial medical examiner can be appointed to 5 times in any one month. It would further require that an insurer could not recommend the same examiner for more than a "majority of cases."

Section 3 would make any impartial medical examiner subject to the penalties provided in c.152 §14(3) (anti-fraud provisions) if they knowingly produced a false or inaccurate report to benefit the insurer.

**H.3674 -
Walrath**
[SIMILAR]

EXEMPTION OF NONPROFIT ENTITIES (§1)

This bill (Similar to H.2291 filed last legislative session) would amend the word "employer" as not including: "nonprofit entities, as defined by the Internal Revenue Code, that are staffed by volunteers, board members, directors, and paid employees." This would make the requirement of obtaining workers' compensation insurance elective for said employers.

**H.4348 -
Commerce &
Labor**
[LATE-FILE]

EXEMPTION OF CORPORATE OFFICERS (§1), DEFINITION OF EMPLOYER - EXEMPTION OF SOLE PROPRIETORS & PARTNERSHIPS (§1)

This late-file bill (new draft for H.230, H.398, H.772, and H.2104), would make the requirement of obtaining workers' compensation insurance elective for corporate officers (or the director of a corporation) who own 25% of the issued and outstanding stock of that corporation. Said corporate officer must provide the Commissioner of the DIA with a written waiver of his rights under this chapter. The Commissioner of the DIA is required to promulgate regulations to carry out this process.

This bill would also amend the definition of an employee and give a sole-proprietor or a partnership the option of being considered an employee, thereby making workers' compensation coverage elective.

SENATE BILLS:

S.42 Creedon
[SIMILAR]

COMPREHENSIVE BILL

This bill is similar to S.31 filed during the 1999 – 2000 session.

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

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

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

Section 2 would repeal §10(6) which requires that each party submit written offers stating the amount of benefits believed to be owed in cases involving a request for additional compensation, or to modify/discontinue benefits.

3. Procedure (§7A) – Employee Unable

Section 3 would amend §7A and state that when an employee is killed or becomes mentally unable to testify as the result of a workplace injury, a presumption is created that the claim complies with all procedural requirements, and the injury was not the result of a willful. Section 4 of the bill would require that the incapacity to testify be determined to be “the result of the injury” rather than “causally related” as it currently reads.

4. Conference (10B) - Last Best Offer

Section 4 would amend §19A(2(b)) by repealing the requirement that the administrative judge, at conference, implement one of the offers rendered at conciliation. It would require that the insurer submit an offer two days

before the conference to the claimant. Unless the offer is accepted, the insurer would not be required to pay a referral fee under §13A.

5. Attorney's Fees (§13A) – Last Best Offer

Section 5 would amend §13A dealing with attorney's fees. This bill would remove all reference to the last best offer submissions.

6. Fraudulent Conduct (§14(3)) - Duty to Reveal Knowledge of Fraud

Section 6 would amend §14(3) dealing with fraudulent actions by stating that a person who knowingly makes a false or misleading statement or conceals knowledge of any event affecting the payment of benefits will be punished by five years imprisonment, *if they were required by law to reveal the matter*. Presumably, this is to ensure the protection of privileged information (e.g., information protected by the attorney-client privilege).

7. Total Incapacity (§34) – Percent Allowed for Total Injury

Section 7 of this bill would amend §34 and require the insurer to pay the injured employee 60% of his average weekly wage (AWW) before the injury, but not more or less than the maximum or minimum weekly compensation rate, if the injury is considered total. If the AWW is found to be less than the minimum weekly compensation rate, it would then be increased to equal the AWW.

8. Benefits (§35) - Maximum Amount

Section 8 would amend §35 by eliminating the requirement that partial disability benefits not exceed 75% of §34 benefits.

9. Benefits (§35B) - Subsequent Injury

Section 9 would amend §35B to require that an injured employee who returns to work for at least 2 months and suffers another injury, will receive benefits at the rate currently in place, whether or not the new injury is a recurrence of the former injury. Section 3 allows the employee to opt out of this section if it would subject him/her to a lower rate of compensation.

10. Benefits (§35) - Extension of Benefits

Section 10 (new section) would allow the extension of §35 benefits from 260 to 520 weeks if a judge finds or an insurer agrees that the injured worker is "incapable of earning at least ninety percent of the average weekly wage before the injury after having been deemed unsuitable for vocational rehabilitation services by the Office of Education and Vocational Rehabilitation under section 30G or, having been deemed suitable for vocational rehabilitation services by said office completed an appropriate rehabilitation program pursuant to section 30G."

**S.56- Lees, Tarr,
Knapik, and
Tisei**
[REFILE]

DEFINITION OF EMPLOYEE (§1(4)) – ELECTIVE COVERAGE OF CORPORATE OFFICERS

This bill is exactly the same as S.53 filed last legislative session.

It would make coverage of corporate officers and employees who are immediate family members, who are also sole executive officers, elective.

**S.57 - Lees, Tarr,
Tisei, Knapik,
and Sprague**
[REFILE]

**EMPLOYER FINES REDUCTION (§25C) - PREFERENTIAL
HIRING (§75A) - EMPLOYEE DEFINITION (§1(4)) - ELECTIVE
COVERAGE OF CORPORATE OFFICERS**

This bill is a refile of S.51 amending §25C(2) regarding fines for failing to secure workers' compensation insurance. It would add provisions allowing the DIA Commissioner to reduce employer fines to an amount no lower than \$250 following a hearing in which there is a finding that:

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

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

Section 3 of the bill would amend §1(4). It would make the coverage of corporate officers elective.

**S.65 - Lynch,
O'Flaherty, and
Donovan**
[REFILE]

EMPLOYER FINES (§25C) - INCREASE

This bill is a refile of S.67 filed during the 1999 – 2000 session.

Section 1 increases civil penalty to three times the premium the violating employer would have paid in the assigned risk pool for the entire period it operated without insurance. If the period is seven days or less, the fine imposed would total \$250 for each day the employer lacked insurance.

Section 2 deletes provisions, which require a higher fine for employers who appeal a stop work order, and are found to lack insurance after a hearing.

Section 3 increases the criminal fines for failure to carry insurance to \$5,000 for a first offense and \$10,000 for a second offense. Stipulates that no finding of criminal intent is necessary to prove a violation. It also requires that fines be ordered in addition to restitution to be paid to the DIA Trust Fund.

Section 4 enables a civil cause of action for loss of a competitive bid to be brought as an unfair or deceptive business practice under c.93A. It also allows for treble damages rather than the current \$15,000 maximum award.

Section 5 amends §65 to require that stop work order fines be deposited in the private employer trust.

Section 6 creates a 90-day amnesty program for violating employers to

obtain insurance. Requires the Commissioner of the DIA, the Commissioner of Insurance, the Insurance Fraud Bureau and the Massachusetts Workers' Compensation Rating and Inspection Bureau to implement a promotional campaign to advise employers about the amnesty period, the workers' compensation insurance requirement, and the penalties. It would also encourage the general public to report suspected violators.

**S.66 - Lynch,
Hart, and Walsh**
[REFILE]

**ATTORNEY'S FEES (§13A(10)) - AGREEMENTS TO PAY
BENEFITS (§19)**

This bill is a refile of S.71 filed last legislative session.

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

Section 2 of this bill adds two new subsections to §19. It would allow any administrative judge, administrative law judge or conciliator to approve any agreement to pay benefits authorized by §19. It would also allow an agreement to include a pay without prejudice clause. (See H.654 of the last legislative session.)

Section 3 of this bill would amend §34 and require the insurer to pay the injured employee 60% of his average weekly wage (AWW) before the injury, but not more or less than the maximum or minimum weekly compensation rate, if the injury is considered total. If the AWW were found to be less than the minimum weekly compensation rate, it would then be increased to equal the AWW.

Section 4 of this bill would amend §34A and require the insurer to pay the injured employee two-thirds of his AWW before the injury, but not more or less than the maximum or minimum weekly compensation rate if the injury is considered permanent and total. If the AWW were found to be less than the minimum weekly compensation rate, it would then be increased to equal the AWW.

**S.74 - Lynch,
Hart, and
O'Flaherty**
[REFILE]

**BENEFITS FOR SPECIFIC INJURIES (§36) - SCAR-BASED
DISFIGUREMENT**

This bill is a refile of S.56 filed during the 1999 – 2000 session. It would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. This would require compensation for all disfigurement, whether or not scar-based, regardless of its location on the body.

Section 36(k) was amended by chapter 398 to limit payments for purely scar-based disfigurement by requiring benefits only when the disfigurement is on the face, neck, or hands.

**S.77 - Lynch,
Hart, and Walsh**
[REFILE]

**DEFINITION OF AVERAGE WEEKLY WAGES (§1(1)) - RETURN
TO WORK - ATTORNEY'S FEES (§13A) - ELIMINATE
CONSIDERATION OF OFFERS AT CONCILIATION**

This bill is a refile of S.68. Section 1 of this bill addresses injured employees who return to work (without a lump sum settlement) and receive wages that are less than the pre-injury wages. This bill would apply the prior average weekly wage to any subsequent period of incapacity, whether or not such incapacity was the result of a new injury, or subsequent injury as set forth in §35B.

Section 2 of this bill would eliminate consideration of the last best offer in awarding attorney's fees when the insurer files for discontinuance of benefits or refuses initial payment. Currently, the claimant's attorney is only entitled to payment if the administrative judge accepts the offer of the claimant or the amount submitted by the conciliator.

**S.78 - Lynch,
Hart, and Walsh**
[REFILE]

IMPARTIAL EXAMINATIONS (§11A) - NEW SECTION (§9C)

This bill is a refile of S.69. It would create a new section (§9C) to allow an AJ or ALJ to appoint an impartial physician to examine and report on a claimant's condition prior to a conference or hearing. [Currently, under §8(4), an impartial physician can be requested at the conference stage only at the request of the insurer after the 180-day pay without prejudice period has expired.]

This bill also replaces language for §11A on impartial exams. It would remove the c.398 requirement that an impartial exam be conducted whenever "a dispute over medical issues is the subject of a conference order." Under this bill, appointment of an impartial physician would be at the discretion of the AJ or ALJ. It also requires that the report indicate whether employment is the predominant contributing cause for mental or emotional disability.

This bill would expand the role of the impartial physician by requiring that the physician make a determination about causation, whether or not the determination can be made with a reasonable degree of medical certainty. Moreover, the causation standard would change from whether the work-related injury was the "major or predominant contributing cause" of the disability, to whether the work-related injury was "probably caused or was contributing cause" of the disability. The standard would therefore be eased.

The report from §9C must be entered into evidence at the hearing, and the current requirement that it be treated as prima facie evidence is eliminated. This means that the impartial report must not be the only medical evidence presented to the AJ, but that medical evidence from the employee's treating physician and insurer reports may be entered as well.

The deposing party would pay the fee for any deposition. However, if the decision of the AJ is in favor of the employee, the cost of the deposition would be added to the amount awarded to the employee.

**S.79 - Lynch,
Hart, and Walsh**
[REFILE]

RATE OF REIMBURSEMENT - HEALTH CARE SERVICES (§13)

This bill is a refile of S.70. Section 1 deletes the current language in §13 and replaces it with simpler language. It states that the Rate Setting Commission (now called Division of Health Care Finance & Policy) must establish the maximum reimbursement rates for hospitalization and all other health care services, and that no insurer may be held liable for any charge greater than those established rates.

The bill would eliminate the ability for insurers and medical providers to negotiate rates. It would remove the "regardless of setting" provision thereby allowing hospitals to set rates higher than non-hospital facilities. It would remove the requirement that providers sign bills with their license numbers, and the removal of the adherence to federal "safe harbor" regulations. Further, all provisions regarding treatment protocols, utilization review and the establishment of the Health Care Services' Board would be deleted.

S.83 - Lynch
[NEW]

INVESTIGATION AND STUDY BY THE DIA ON VOCATIONAL REHABILITATION ISSUES

This new bill would require the Department of Industrial Accidents to investigate and study specific issues regarding vocational rehabilitation (VR). This report would have to be filed with Commerce & Labor Committee no later than July 1, 2002.

The issues to be included are:

1. expanding the purpose of VR to include preparing the injured worker for job advancements similar to those offered to non-injured workers;
2. extending the duration of the VR services offered to injured employees;
3. allowing an injured worker to select a private rehabilitation counselor from a list provided by the DIA
4. allowing injured workers to have the right to request an evaluation by the Massachusetts rehabilitation commission regarding their employability to be used by the DIA to determine the worker's earning capacity upon return to work;
5. Investigating the insurer's role, benefits paid to the worker and responsibility for costs associated with determining rehabilitation plans for state employees who are eligible for disability retirement.

S.89- Lynch
[NEW]

DEFINITION OF EMPLOYEE (§1(4)) – ELECTIVE COVERAGE OF CORPORATE OFFICERS

This bill would make workers' compensation coverage elective for corporate officers or Directors of a corporation (who are the sole executive officers), who own 100% of the issued and outstanding stock, provided that the corporation does not employ any other person. Said corporate officer would be required to provide the DIA with a written affidavit stating there are no other people employed. Said corporate officer must also provide the DIA with a written waiver of rights under the workers' compensation statute and provide proof of sufficient personal medical and disability insurance coverage. Elective coverage would not apply to corporations or its employees who are engaged in any "non-sedentary work activities, including

but not limited to manufacturing, trucking or the building construction trades."

**S.94 - Magnani,
Simmons and
Tarr**
[SIMILAR]

**NEW M.G.L. CHAPTER - INSURANCE DISCOUNTS FOR DRUG
FREE WORKPLACE PROGRAMS**

This bill is a refile of S.79 filed during the last legislative session. It would require that employers who implement a drug-free workplace program receive a 5% discount on workers' compensation premium. Employers would have to comply with the standards and procedures set forth in the legislation and all applicable rules adopted by the DIA.

**S.101 - Moore,
Glodis, and
Simmons**
[NEW]

**WORKERS' COMPENSATION RATES (c.188G), PROVIDER
COMPLAINTS TO HCSB (c.152, §13), MEDICAL REPORT FEES
(c.152, §30A), DIA REVIEW OF INSURER CLAIMS PROCEDURES
AND DISCIPLINARY MEASURES (c.152, §13)**

This new bill is exactly the same as H.2282 also filed this legislative session.

Section 1 of this bill would amend c.118G mandating that workers' compensation rates set by the Division of Health Care Finance & Policy be comparable to rates paid by commercial carriers. In addition, rates would be established that fully cover administrative costs associated with services to patients covered under c.152. when these costs exceed those covered under commercial health insurance policies.

Section 2 of this bill would amend c.152, §13 and require that the Health Care Services Board hear complaints by physicians regarding insurers and report the findings to the Division of Insurance.

Section 3 and 4 of this bill would amend c.152, §30A and require an insurer to pay the fee for medical reports within 14 days upon receipt. The insurer would also be subject to the same civil fines for failing to pay for reports as physicians are subject to for failing to make reports.

Section 5 of this bill would amend c.152, §13 would require the Department of Industrial Accidents to review the claims procedures of workers' compensation insurers including "duplicative and excessive documentation of services requests, standards for utilization review, use of non-physician reviewers, and the prompt payment of claims." The DIA would also be required to review the disposition of all complaints against insurers brought before the Health Care Services Board.

Section 6 of this bill would amend c.152, §13 by allowing the Commissioner of the Department of Industrial Accidents to discipline and insurer if it is determined that the insurer has violated any part of Chapter 152 or rule adopted under this chapter.

S.120 - Tarr
[NEW]

MODIFICATION OR TERMINATION OF BENEFITS (§16)

This new bill would amend §16 by requiring insurers who wish to modify or terminate an injured workers' benefits to file a complaint seeking the same, as prescribed by Section 10 of this chapter.

S.2358 - Pacheco
[LATE-FILE]

REIMBURSEMENT RATES FOR PHYSICIAN AND HOSPITAL SERVICES (c.118G, §7), SCAR-BASED DISFIGUREMENT (§36)

Section 1 of this late-file bill would amend c.118G, §7 by adding a new paragraph requiring the Division of Health Care Finance & Policy (DHCFP) to set rates for physician and hospital services paid for under c.152 at a "usual and customary fee" for any such health care service. Current language requires the Division to set these rates, which are determined by a regulatory process that promulgates in fee schedules (114.3 CMR 40.00) and other formats that ensure a public process. Rates are currently negotiable among the insurer, employer, and the health care service provider (c.152, §13).

Section 2 of this bill would eliminate the requirement that scar-based disfigurement appear on the face, neck or hands to be compensable. S.2358 would require compensation for all disfigurement, whether or not scar-based, regardless of its location on the body. The proposed legislation further states that payments for these type of injuries could not exceed the average weekly wage in the Commonwealth (at date of injury) multiplied by 29 [\$890.94 (SAWW) x 29 = \$25,837.26 (maximum benefit)]. Current language in the statute limits payments for scar-based disfigurement to not exceed \$15,000.

APPENDIX D

Joint Committee on Commerce & Labor - FY'02

Senator Mark R. Pacheco (Chair)
State House – Room 413-B
Boston, MA 02133-1053
(617) 722-1551

Senator Dianne Wilkerson
State House – Room 312-C
Boston, MA 02133-1053
(617) 722-1673

Senator Susan C. Tucker
State House – Room 416-A
Boston, MA 02133-1053
(617) 722-1612

Rep. William G. Green, Jr. (Chair)
State House – Room 236
Boston, MA 02133-1053
(617) 722-2430

Representative Colleen M. Garry
State House – Room 473G
Boston, MA 02133-1053
(617) 722-2040

Representative Demetrius J. Atsalis
State House – Room 167
Boston, MA 02133-1053
(617) 722-2692

Representative Stephen P. LeDuc
State House – Room 38
Boston, MA 02133-1053
(617) 722-2470

Representative Robert Spellane
State House – Room 42
Boston, MA 02133-1053
(617) 722-2370

Representative Viriato M. deMacedo
State House – Room 443
Boston, MA 02133-1053
(617) 722-2460

Senator David P. Magnani
State House - Room 413-A
Boston, MA 02133-1053
(617) 722-1640

Senator Thomas M. McGee
State House – Room 413-E
Boston, MA 02133-1053
(617) 722-1350

Senator Robert L. Hedlund
State House – Room 413-E
Boston, MA 02133-1053
(617) 722-1646

Representative Michael J. Rodrigues
State House – Room 43
Boston, MA 02133-1053
(617) 722-2030

Representative David C. Bunker
State House – Room 236
Boston, MA 02133-1053
(617) 722-2430

Representative Brian Knuuttila
State House – Room 443
Boston, MA 02133-1053
(617) 722-2460

Representative Christopher Asselin
State House – Room 38
Boston, MA 02133-1053
(617) 722-2470

Representative Paul J.P. Loscocco
State House – Room 443
Boston, MA 02133-1053
(617) 722-2460

APPENDIX E

The Governor's Council

Room 184, State House
Boston, MA 02133
(617) 727-2756

The Massachusetts Governor's Council, also known as the Executive Council, is comprised of eight individuals elected from districts, and the Lt. Governor who serves ex officio. The eight councilors are elected from their respective districts every two years. Each councilor is paid \$15,000 annually plus certain expenses.

The Council generally meets at noon on Wednesdays in its State House Chamber, next to the Governor's Office, to act on such issues as payments from the state treasury, criminal pardons and commutations, and approval of gubernatorial appointments; such as judges, notaries, and justices of the peace.

The Governor's Council is responsible for approving all Administrative Judges and Administrative Law Judges at the Division of Industrial Accidents.

Michael J. Callahan
500 Salem Street
Medford, MA 02155
Res: (781) 393-9890

Carol A. Fiola
One Home Street
Somerset, MA 02726
Bus: (508) 678-9727

Marilyn Petitto Devaney
98 Westminster Avenue
Watertown, MA 02472
Res: (617) 923-0778
Fax: (617) 926-6001

Mary-Ellen Manning
80 Lowell Street
Peabody, MA 01960
Bus: (978) 531-6363

Christopher A. Iannella
263 Pond Street
Boston, MA 02130
Bus: (617) 227-1538
Fax: (617) 742-1424

Dennis P. McManus
1112 West Boylston Street
Worcester, MA 01606
Bus: (508) 854-1670

Edward M. O'Brien
10 Dragon Circle
Easthampton, MA 01027
Bus: (413) 527-4600

Kelly A. Timilty
30 Green Lodge Street
Canton, MA 02021
Bus: (617) 828-6363

APPENDIX F

Industrial Accident Nominating Panel

THOMAS J. GRIFFIN, III, COMMISSIONER - DIA - CHAIR

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

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

Angelo Buonopane, Director
Labor & Workforce Development
One Ashburton Place, 21st Floor
Boston, MA 02108
Tel.(617) 727-6573 x 100
Fax: (617)727-1090

Terence McCourt, Esq.
Hanify & King
One Federal Street
Boston, MA 02110
Tel.(617) 423-0400
Fax:(617) 423-0498

James C. Cronin, Esq.
Raytheon
141 Spring Street
Waltham, MA 02254
Tel. (781) 860-1725
Fax:(781) 860-1738

Dr. Grant Rodkey
11 Beatrice Circle
Belmont, MA 02478-02657
Office: 724-0110 (Use V.A.# below)
V.A.# 232-9500 x 4836 Fax: 278-4543

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

Peter Abair, Acting Director
Dept. of Economic Development
One Ashburton Pl., Room 1201
Boston, MA 02108
Tel. (617) 727-8380 x 326
Fax:(617) 727-727-4426
*(Owen Kane, Gen. Counsel)

Daniel J. O'Shea, Senior Judge
DIA - 600 Washington Street
Boston, MA 02111
Tel. (617) 727-4900 x 354
Fax:(617) 727-7122

Michael A. Torrissi, Esq.
Torrissi & Torrissi, L.L.C.
Chestnut Green/Route 114
555 Turnpike Street, Suite 44
North Andover, MA 01845
Tel. (978) 683-4440
Fax: (978) 682-3330

Steven D. Pierce, Chief Legal Counsel
*(Eric Neyman, Deputy Legal Counsel)
Room 271 - State House
Boston, MA 02133
Tel. (617) 727-2065
Fax:(617) 727-8290

Henry E. Bratcher, Esq.
Kenner, Engelberg, DaDalt & Bratcher
99 Summer Street, Suite 1120
Boston, MA 02110
Tel. (617) 439-7770
Fax: (617) 439-8881

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

APPENDIX G

Roster of Judicial Expiration Dates (6/12/02)

INDUSTRIAL ACCIDENT REVIEWING BOARD SIX YEAR TERMS

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

INDUSTRIAL ACCIDENT BOARD SIX YEAR TERMS

1.	Douglas Bean	Republican	6/26/05
2.	Michael Chadinha	Republican	5/28/04
3.	David Chivers	Republican	5/21/04
4.	William Constantino	Republican	6/13/07
5.	Lynn Brendemuehl	Unenrolled	7/06/06
6.	Joellen D'Esti	Unenrolled	5/21/04
7.	John Harris	Republican	5/28/04
8.	Richard Heffernan	Democrat	9/04/03
9.	John Preston	Republican	7/29/06
10.	James LaMothe	Republican	1/31/03
11.	Roger Lewenberg	Republican	6/26/04
12.	Open		8/03/00
13.	Douglas McDonald	Democrat	7/06/06
14.	Bridget Murphy	Republican	7/27/06
15.	Daniel O'Shea	Republican	5/28/04
16.	Leo Purcell	Democrat	12/29/99
17.	Diane Solomon	Unenrolled	8/10/06
18.	James St. Amand	Democrat	5/28/04
19.	Stephen Sumner	Unenrolled	7/05/02
20.	Richard Tirrell	Democrat	5/14/04
21.	Charles E. Walker, Jr.	Unenrolled	9/18/04

INDUSTRIAL ACCIDENT BOARD ONE YEAR TERMS

1.	Fred Taub	Democrat	7/01/03
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RETIRED/PART-TIME ONE YEAR TERMS

1.	William Pickett	Democrat	1/19/03
2.	John McLaughlin	Republican	1/19/03

APPENDIX H

HEALTH CARE SERVICES BOARD

Dean M. Hashimoto, MD, JD	<i>CHAIR, Ex-Officio Member</i>
Henry W. DiCarlo, BS, MM	<i>VICE-CHAIR, Employer Representative</i>
David S. Babin, MD	<i>Physician Representative</i>
Robert A. Gundersen	<i>Hospital Administrative Representative</i>
Martin J. Dunn, DMD	<i>Dentist Representative</i>
Robert P. Naparstek, MD	<i>Physician Representative</i>
Peter A. Hyatt, DC	<i>Chiropractic Representative</i>
Daniel J. McNichol	<i>Public Representative</i>
L. Christine Oliver, MD	<i>Physician Representative</i>
Cynthia M. Page, PT	<i>Physical Therapy Representative</i>
Janet D. Pearl, MD, MSc	<i>Physician Representative</i>
Nancy Lessin	<i>Employee Representative</i>
Bernard S. Yudowitz, MD, JD	<i>Physician Representative</i>

Staff:

Catherine Fernam, RN, MS, CS – Executive Director

Judith A. Atkinson, Esq. – Counsel

Hella Dalton – Research Analyst

Members may be reached c/o:

Department of Industrial Accidents

Health Care Services Board

600 Washington Street, 7th Floor

Boston, MA 02111

Tel: (617) 727-4900 ext.: 310 or 574

Fax: (617) 438-2176

APPENDIX I

Workers' Compensation Organizations

The following are government, private, and non-profit organizations that have a role in the Massachusetts workers' compensation system. Many of the organizations below are advocacy groups funded by a specific group to represent and promote their particular view.

This is meant to be informative only, and is by no means an exhaustive list of all groups involved with workers' compensation. Inclusion of an organization's name does not indicate an endorsement of any particular viewpoint or organization nor does it relate to their effectiveness or reliability in advocating a particular view.

The categories are Massachusetts State Government, Insurance, Medical, Public Policy/Research, Fraud, Safety, Legal, and Federal Government/National Organizations.

Massachusetts State Government

Massachusetts Workers' Compensation Advisory Council

600 Washington Street, Boston, MA 02111

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

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

Division of Industrial Accidents (DIA)

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

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

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

Joint Committee on Commerce and Labor

State House, Room 43, Boston, MA 02133

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

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

Office of the Governor

State House, Room 360, Boston, MA 02133

Phone: 617-727-7238

The Governor appoints the Director of Labor, the Director of Economic Development, the Commissioner of the DIA, Administrative and Administrative law judges of the DIA, and the members of the Workers' Compensation Advisory Council.

Governor's Council

State House, Room 184, Boston, MA 02133

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

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

Department of Labor and Workforce Development

One Ashburton Place, Boston, MA 02108

Phone: 617-727-6573

The Department of Labor and Workforce Development is charged with promoting and protecting the legal, safety, health and economic interests of the Commonwealth's workers, and preserving productive and fair paying jobs. The Division of Industrial Accidents is one of five departments that fall under the Department of Labor and Workforce Development. The Director of Labor is an ex-officio member of the Workers' Compensation Advisory Council.

Massachusetts Rehabilitation Commission

59 Temple Place, Boston, MA 02111

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

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

Department of Economic Development

One Ashburton Place, Boston, MA 02108

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

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

Office of the Attorney General

One Ashburton Place, Boston, MA 02108

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

The Attorney General's office prosecutes workers' compensation fraud and enforces state labor laws. It also held a series of meetings for its task force on waste, fraud, and abuse in the workers' compensation system. A series of "White Papers" are available from the office on issues brought up at those meetings.

(Division of Health Care Finance and Policy and the Division of Insurance are also State Agencies)

Insurance

Division of Insurance (DOI)

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

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

The DOI regulates all insurance programs and monitors and licenses self-insurance groups. The **State Rating Bureau** is an office within the DOI that testifies at rate hearings with respect to insurance rates. The Commissioner of DOI holds hearings on rate filings and issues a decision.

DIA- Office of Insurance

600 Washington Street, Boston, MA 02111

Phone: 617-727-4900 x371

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

DIA- Office of Investigations

600 Washington Street, Boston, MA 02111

Phone: 617-727-4900 x409

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

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

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

Phone: 617-439-9030 Web Page: www.wcribma.org

Private non profit body funded by insurers;

- Licensed rating organization for workers' compensation; WCRIB submits workers' compensation insurance rates, rating plans, and forms for approval (rates are subject to approval by the Commissioner of Insurance);
- WCRIB is the statistical agent for workers' compensation for the Commissioner of Insurance;
- administers assigned risk pool; designates insurance carriers for employers who cannot obtain policy in voluntary market;
- collects statistical data from insurers;
- NCCI handles some of the accounting procedures for the pool.

National Council on Compensation Insurance (NCCI)

750 Park of Commerce Drive, Boca Raton, FL 33487

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

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

- Does some of the accounting for the assigned risk pool under contract with the WCRIB;
- Determines residual market loss reserves.
- In 34 other states, NCCI is the organization that files for insurance rates or loss costs (in Massachusetts, it is the WCRIB that files for rate changes);
- NCCI also administers various state funds where the state acts as an insurance carrier for workers' compensation.

Medical

Division of Health Care Finance and Policy

2 Boylston Street, Boston, MA 02116

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

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

DIA- The Health Care Services Board

Phone: 617-727-4900 x578

This office coordinates the utilization review program, the Medical Consultant Consortium, and the Health Care Services Board at the DIA.

Massachusetts Medical Society

1440 Main Street, Waltham, MA 02154-1649

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

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

Massachusetts Hospital Association

5 New England Executive Park, Burlington, MA 01803

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

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

Massachusetts Orthopedic Association

45 Broad Street, Boston, MA 02109

Phone: 617-451-9663

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

Massachusetts Chiropractic Society

76 Woodland Street, Methuen, MA 01844-4295

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

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

American Physical Therapy Association of Massachusetts

14 Beacon Street, Suite 719, Boston, MA 02108

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

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

American Occupational Therapy Association

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

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

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

Public Policy/ Research

Workers' Compensation Research Institute (WCRI)

101 Main Street, Cambridge, MA 02142

Phone: 617-494-1240 Web Page: <http://www.wcrinet.org>

WCRI is a nonpartisan, not-for-profit public policy research organization funded primarily by employers and insurers. The WCRI research takes several forms, according to their statement of purpose: "original research studies of major issues confronting workers' compensation systems; original studies of individual state systems where policy makers have shown an interest in reform and where there is an unmet need for that objective information; source book that brings together information from a variety of sources to provide unique, convenient reference works on specific issues; periodic research briefs on significant new research, data, and issues in the field." (WCRI Annual Report/Research Review, 1992).

Associated Industries of Massachusetts (AIM)

Workers' Compensation Oversight Committee

222 Berkeley Street, P.O. Box 763, Boston, MA 02117

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

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

Massachusetts AFL-CIO

8 Beacon Street, Boston, MA 02108

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

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

International Association of Industrial Accident Boards and Commissions (IAIABC)

1201 Wakarusa, C-3, Lawrence, KA 66049

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

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

Fraud

Insurance Fraud Bureau of Massachusetts (IFB)

101 Arch Street, Boston, MA 02110

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

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

The DIA - Office of Investigations (see above “insurance”) and the Attorney General’s Office, Insurance Fraud Unit (see above “state government”) also fall under the fraud category.

Safety

Office of the Attorney General - Business and Labor Protection Bureau

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

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

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

DIA- Office of Safety

Phone: 617-727-4900 x377

The function of the Office of Safety is to reduce work related injury and illnesses by “establishing and supervising programs for data collection on workplace injuries and for the education and training of employees and employers in the recognition, avoidance and prevention of unsafe or unhealthy working conditions in employment and advising employees and employers on these issues.” (M.G.L. c. 23E, 3(6)).

Massachusetts Coalition of Occupational Safety and Health (MassCOSH)

555 Armory Street
Boston, MA 02130
617-825-7233

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

- *Safety Council of Western Massachusetts* (Springfield) 413-737-7908
- *National Safety Council* , Central MA Chapter (West Boylston) 508-835-2333
- *Massachusetts Safety Council* (Braintree) (Serves Eastern MA) 617-356-1633
- *American Society of Safety Engineers* (ASSE) is a non profit association that provides monthly educational seminars and training. It can be reached through the local safety councils.

See also OSHA and NIOSH under federal government

Legal

Massachusetts Bar Association

Workers' Compensation Committee
20 West Street, Boston, MA

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

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

Massachusetts Academy of Trial Attorneys

15 Broad Street, Suite 415, Boston, MA 02109

Phone: 617-248-5858

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

Federal Government / National Organizations

While most programs for workers' compensation are administered at the state level, there are various safety, labor, and workers' compensation programs administered by the federal government.

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Planning, Policy and Standards
200 Constitution Avenue, N.W., Washington, D.C. 20210
Phone: 202-219-7491

The Division of Planning, Policy and Standards at the Office of Workers' Compensation Programs serves as a liaison to the states regarding state workers' compensation matters. They produce two major publications: State Workers' Compensation Administration Profiles and State Workers' Compensation Laws.

The Office of Workers' Compensation Programs also administers three other divisions: Division of Longshore and Harbor Workers' Compensation (202-219-8721); Division of Federal Employee's Compensation (202-219-7552); and the Division of Coal Mine Workers' Compensation (202-219-6692).

Department of Labor

Occupational Safety and Health Administration (OSHA)

200 Constitution Avenue, NW, Washington, D.C. 20210
Regional Office: 133 Portland Street
Boston, MA 02114
617-565-7164

National Institute for Occupational Safety and Health (NIOSH)

944 Chestnut Ridge Road, Morgantown, WV 26505-2888
800-356-4674

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

Occupational Health Foundation

815 16th Street, N.W. Suite 312
Washington, D.C. 20006
202-842-7840

The OHF is a labor-sponsored, non-profit organization delivering service to the American labor movement and individual members of the workforce. OHF's mission is to improve occupational safety and health conditions for workers. (OHF 1993 Annual Program Report)

United States Chamber of Commerce

1615 H Street, NW, Washington, D.C. 20062-2000
202-659-6000

Publishes an analysis of state workers' compensation statutes.

APPENDIX J

Office of Safety Proposals Recommended for Funding FY 2003

1. Analog Devices
804 Woburn Street
Wilmington, MA 01887
(781) 937-2164
Title: Occupational Safety and Health Training Program
Category of Applicant: Public Employer
Target Population: Employees/Employers/Supervisors
Geographic Target: Lawrence
Program Administrator: Elizabeth Telsey
Total Funds Requested: \$22,025.00 **Approved:** \$22,025.00

2. Brunetta Associates
15 Houston Street
Methuen, MA 01844
(978) 688-8745
Title: Occupational Safety and Health Education and Training Program
Category of Applicant: Private Employer
Target Population: Employees/Employers/Supervisors
Geographic Target: Statewide
Program Administrator: Anthony Brunetta
Total Funds Requested: \$29,952.50 **Approved:** \$29,952.50

3. Sargent and Associates
23 Chelmsford Street
Chelmsford, MA 01824
(978) 256-7459
Title: Ergonomics Training for Pepsi Cola Company of Worcester
Category of Applicant: Private Employer
Target Population: Employees/supervisors/safety committee
Geographic Target: Worcester
Program Administrator: William Russell
Total Funds Requested: \$16,143.40 **Approved:** \$16,143.40

4. Advanced Therapeutic Resources
100 Main Street, Suite 16
Amesbury, MA 01913
(508) 388-6775
Title: Preventing Musculoskeletal Disorders at four Different Companies through
Education and Ergonomics
Category of Applicant: Private Employer
Target Population: Employees/Supervisors
Geographic Target: Statewide
Program Administrator: Julie Cicalis
Total Funds Requested: \$28,380.00 **Approved:** \$28,380.00

5. Painters & Allied Trades Local #35
25 Colgate Road
Roslindale, MA 02131
(617) 524-0248
Title: Scaffold Users Safety Training
Category of Applicant: Joint Labor/Management
Target Population: Employees
Geographic Target: Boston
Program Administrator: Paul MacLean
Total Funds Requested: \$16,706.60 **Approved:** \$16,706.60

6. Julius Koch, USA, Inc.
387 Church Street
New Bedford, MA 02745
(508) 995-9565
Title: Prevention of Work Related Musculo-Skeletal Injuries
Category of Applicant: Private Employer
Target Population: Employees/Employers/Supervisors
Geographic Target: Fall River
Program Administrator: Claudia Mullane
Total Funds Requested: \$28,840.85 **Approved:** \$28,840.85

7. Asbestos Workers Local #43
1053 Burts Pit Road
Northampton, MA 01060-3630
(413) 584-0028
Title: Preventing Asbestos Related Disease for Building Trades Workers in
Western MA
Category of Applicant: Labor Organization/Federation
Target Population: Employees
Geographic Target: Worcester/Lawrence/Springfield
Program Administrator: Robert Starr
Total Funds Requested: \$19,884.00 **Approved:** \$19,884.00

8. Shipley, LLC
455 Forest Street
Marlborough, MA 01752
(508) 481-7950
Title: Ergonomic Awareness Training for Lab and Office Workers
Category of Applicant: Private Employer
Target Population: Employees/Supervisors
Geographic Target: Worcester
Program Administrator: Michael Lombardi
Total Funds Requested: \$12,100.00 **Approved:** \$12,100.00

9. Covino Environmental Associates, Inc.
300 Wildwood Avenue
Woburn, MA 01801
(508) 586-6200
Title: Health & Safety Training for Small Biotech Companies
Category of Applicant: Private Employer
Target Population: Employees/Employers
Geographic Target: Boston
Program Administrator: Robert Clifford
Total Funds Requested: \$26,200.00 **Approved:** \$26,200.00

10. Boston Carpenters Apprenticeship & Training
385 Market Street
Brighton, MA 02135
(617) 782-4314
Title: Occupational Safety and Health Training Program
Category of Applicant: Labor/Management
Target Population: Employees/Supervisors/Employer
Geographic Target: Statewide
Program Administrator: Benjamin Tilton
Total Funds Requested: \$29,840.43 **Approved:** \$28,874.90

11. Venture Tape Corporation
30 Commerce Road
Rockland, MA 02370-0384
(781) 331-5900
Title: Ergonomic Training to Prevent Musculoskeletal Injuries
Category of Applicant: Private Employer
Target Population: Employees/Supervisors
Geographic Target: Boston
Program Administrator: Anne Durgin
Total Funds Requested: \$12,603.75 **Approved:** \$12,603.25

12. Minuteman Tech High School
758 Marrett Road
Lexington, MA 02173
(781) 861-6500, ext. 349
Title: Occupational Safety and Health Education and Training
Category of Applicant: Public Employer
Target Population: Employees/Supervisors
Geographic Target: Boston
Program Administrator: Carol Zanin
Total Funds Requested: \$29,840.00 **Approved:** \$29,840.00

13. Pioneer Valley Central Labor Council
640 Page Blvd.
Springfield, MA 01104
(413) 732-7970
Title: Keep Safe: Health and Safety on the Job
Category of Applicant: Labor Organization
Target Population: Employees
Geographic Target: Springfield
Program Administrator: Irene Kimball
Total Funds Requested: \$15,636.08 **Approved:** \$15,636.08

14. Family Services of Fall River Home Assistance Program
151 Rock Street
Fall River, MA 02720
(508) 678-7542
Title: Health and Safety Training
Category of Applicant: Private Employer
Target Population: Employees/Supervisors
Geographic Target: Fall River
Program Administrator: Susan Potvin
Total Funds Requested: \$29,984.25 **Approved:** \$29,984.25

15. Chadwick's of Boston
35 United Drive
West Bridgewater, MA 02379-1026
(508) 895-2683
Title: Office Ergonomic Training, Safety Team Development & Video Production
Category of Applicant: Private Employer
Target Population: Employees/Supervisors
Geographic Target: Fall River
Program Administrator: Thomas Minichiello
Total Funds Requested: \$29,025.00 **Approved:** \$28,750.00

16. Operating Engineers Local 98
2 Center Square
E. Longmeadow, MA 01028
(413) 525-4291
Title: Excavation and Trenching Safety Program
Category of Applicant: Joint Labor Management Committee
Target Population: Employees
Geographic Target: Springfield
Program Administrator: Michael J. Florio
Total Funds Requested: \$16,711.67 **Approved:** \$16,711.67

17. Barry Right Corporation
40 Guest Street
Brighton, MA 02135
(617) 787-1555
Title: Ergonomic Training to Prevent Musculo-Skeletal Injuries
Category of Applicant: Private Employer
Target Population: Employees/Supervisors/Safety Team
Geographic Target: Boston
Program Administrator: Kevin McGahan
Total Funds Requested: \$18,749.56 **Approved:** \$18,749.56
18. Mass Compliance, LLC
19 Clark Street
Wilmington, MA 01887
(978) 694-0998
Title: Hazwopper Training for Three Private Companies
Category of Applicant: Private Employer
Target Population: Employees/Employers/Supervisors
Geographic Target: Statewide
Program Administrator: Beth Comeau
Total Funds Requested: \$29,738.34 **Approved:** \$29,738.34
19. Franklin Regional Council of Governments
425 Main Street
Greenfield, MA 01301
(413) 774-3167
Title: Preventing Occupational Injury & Building Safety Awareness in Franklin
County Towns and Schools
Category of Applicant: Public Employer
Target Population: Employees/Supervisors/Employers
Geographic Target: Springfield
Program Administrator: Lisa White
Total Funds Requested: \$25,480.25 **Approved:** \$25,480.25
20. Aramark Uniform & Apparel
141 Longwater Drive
Norwell, MA 02601
(781) 273-0123
Title: Ergonomic Training to Prevent Musculoskeletal Injuries
Category of Applicant: Private Employer
Target Population: Employees/Supervisors
Geographic Target: Fall River
Program Administrator: Maureen Franzoni
Total Funds Requested: \$28,077.20 **Approved:** \$28,076.70

21. MassCOSH (083)
12 Southern Avenue
Dorchester, MA 02124
(617) 825-7233
Title: Boston School Bus Drivers Ergonomics 2002
Category of Applicant: Non-profit Organization
Target Population: Employees
Geographic Target: Boston
Program Administrator: Sandra Baldwin-Goncalves
Total Funds Requested: \$17,896.00 **Approved:** \$17,896.00
22. Quadrant Health Strategies, Inc.
34 Salem Street
Wilmington, MA 01887
(978) 988-8832
Title: Ergonomic Training to Prevent Musculoskeletal Injuries
Category of Applicant: Private Employer
Target Population: Employees/Employer
Geographic Target: Fall River
Program Administrator: Rena Hannaford
Total Funds Requested: \$30,000.00 **Approved:** \$29,999.50
23. Western MassCOSH
640 Page Boulevard
Springfield, MA 01104
(413) 731-0760
Title: Training to Protect the Health and Safety of Employees in the Cities of
Springfield, Northampton and Chicopee
Category of Applicant: Non Profit
Target Population: Employees/Supervisors
Geographic Target: Springfield
Program Administrator: Aaron Wilson
Total Funds Requested: \$17,108.61 **Approved:** \$17,108.61
24. Jordan's Furniture, Inc.
100 Stockwell Drive
Avon, MA 02322
(508) 580-4600
Title: Ergonomic Training to Prevent Musculoskeletal Injuries
Category of Applicant: Private Employer
Target Population: Employees/Supervisors
Geographic Target: Fall River
Program Administrator: Denise Des Lauriers
Total Funds Requested: \$30,000.00 **Approved:** \$29,999.50

25. City of Newton
Department of Human Resources
1000 Commonwealth Avenue
Newton, MA 02459
(617) 552-7037
Title: A Multi-Level Training Program for the Newton School Department
Category of Applicant: Public Employer
Target Population: Supervisors/employees
Geographic Target: Boston
Program Administrator: Lori Berrett
Total Funds Requested: \$22,312.50 **Approved:** \$22,312.50
26. South Shore Savings Bank
1530 Main Street
South Weymouth, MA 02190
(781) 682-3140
Title: Ergonomic Training to Prevent Musculoskeletal Injuries
Category of Applicant: Private Employer
Target Population: Employees/Employers/Supervisors/Safety Team
Geographic Target: Boston
Program Administrator: Rosemarie McGillicuddy
Total Funds Requested: \$15,477.50 **Approved:** \$15,477.50
27. MA Nurses Association
340 Turnpike Street
Canton, MA 02021-2711
(781) 821-4625
Title: Applying OSHA to Healthcare Settings
Category of Applicant: Labor Organization
Target Population: Employees
Geographic Target: Statewide
Program Administrator: Evelyn Bain
Total Funds Requested: \$8,516.98 **Approved:** \$8,516.98
28. New England Business Service, Inc.
500 Main Street
Groton, MA 01471
(978) 448-6111
Title: Training for a Safe Office Environment & Ergonomic Video Production
Category of Applicant: Private Employer
Target Population: Employees/Supervisors
Geographic Target: Worcester
Program Administrator: Karen Nielson
Total Funds Requested: \$19,500.00 **Approved:** \$19,500.00

29. Electrical JATC
67 Market Street
Springfield, MA 01103
(413) 737-2253
Title: Safety Issues for Electricians
Category of Applicant: Labor Organization
Target Population: Employees
Geographic Target: Springfield
Program Administrator: Ron Grise
Total Funds Requested: \$29,964.60 **Approved:** \$29,964.60
30. Ark-les Corporation
95 Mill Street
Stoughton, MA 02072
(781) 297-6000
Title: Occupational Safety and Health Program
Category of Applicant: Private Employer
Target Population: Employees
Geographic Target: Worcester
Program Administrator: Barbara McAleer
Total Funds Requested: \$29,991.00 **Approved:** \$29,991.00
31. Rodman Ford Sales, Inc.
101 Washington Street
Foxboro, MA 02035
(508) 543-3333
Title: Occupational Safety and Health Training Program
Category of Applicant: Private Employer
Target Population: Employees/Supervisors
Geographic Target: Fall River
Program Administrator: Brett Rodman
Total Funds Requested: \$28,162.80 **Approved:** \$28,162.80
32. ADE Corporation
80 Wilson Way
Westwood, MA 02090-1806
(781) 467-3973
Title: Ergonomic Training to Prevent Musculoskeletal Injuries
Category of Applicant: Private Employer
Target Population: Employees/Supervisors
Geographic Target: Boston
Program Administrator: Michael Reilly
Total Funds Requested: \$25,341.50 **Approved:** \$25,341.50

33. Ames Safety Envelope Company
12 Tyler Street
Somerville, MA 02143
(617) 684-1261
Title: Occupational Safety and Health Education Program
Category of Applicant: Private Employer
Target Population: Employees/Supervisors
Geographic Target: Boston
Program Administrator: Karin Broadhurst
Total Funds Requested: \$29,977.00 **Approved:** \$29,977.00
34. Catharsis Corporation
82 Reservoir Street
Needham, MA 02494
(781) 400-1600
Title: Prevention of CTD'S
Category of Applicant: Private Employer
Target Population: Employees/Supervisors
Geographic Target: Statewide
Program Administrator: Seema Pandya
Total Funds Requested: \$29,085.00 **Approved:** \$29,085.00

Budget Subsidiaries

Subsidiary AA: Regular Employee Compensation

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

Subsidiary BB: Regular Employee Related Expenses

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

Subsidiary CC: Special Employees/ Contracted Services

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

Subsidiary DD: Pension and Insurance-Related Expenditures

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

Subsidiary EE: Administrative Expenses

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

Subsidiary GG: Energy Costs and Space and Rental Expenses

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

Subsidiary HH: Consultant Services

Outside professional services for specific projects for defined time periods, incurred when services are not provided by, or available from state employees. Consultants advise and assist departments but do not provide direct services to clients. Includes accountants; actuaries/statisticians; information technology professionals; advertising agency; arbitrators; architects; attorneys; economists; engineers; health/safety experts; honoraria for visiting speakers; researchers; labor negotiators; management consultants; medical consultants, etc.

Subsidiary JJ: Operational Services

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

Subsidiary KK: Equipment Purchase

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

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

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

APPENDIX L

COLLECTIONS AND EXPENDITURES REPORT - FISCAL YEAR 2002

SPECIAL FUND	FY'02	FY'01	FY'00	FY'99	FY'98
<u>COLLECTIONS</u>					
INTEREST	342,449	932,637	959,382	808,450	931,367
ASSESSMENT	16,031,304	14,427,829	16,363,865	16,154,391	14,143,523
LESS RET. CHECKS	(2,789)	(9,320)	0	(2,032)	0
LESS REFUNDS	(258,971)	(332,081)	(6,666)	(35,059)	(10,600)
SUB-TOTAL	15,769,544	14,086,428	16,357,199	16,117,300	14,132,923
FILING FEES	4,254,978	4,431,724	4,102,258	3,840,649	3,698,202
COLLECTION FEE	(23,705)	(18,778)	(16,073)	(20,873)	(4,429)
LESS RET. CHECKS	(2,739)	(1,027)	(2,044)	(1,486)	(2,276)
LESS REFUNDS	(7,325)	(7,368)	(9,319)	(3,784)	(4,497)
SUB-TOTAL	4,221,209	4,404,551	4,074,822	3,814,506	3,687,000
1ST REPORT FINES	333,515	378,050	378,310	321,593	284,457
LESS COLLECTION FEE	(12,460)	(13,100)	(14,550)	(14,111)	(4,231)
LESS RET. CHECKS	(1,640)	(500)	(500)	(200)	(200)
LESS REFUNDS	(700)	(200)	(1,100)	(100)	(400)
SUB-TOTAL	318,715	364,250	362,160	307,182	279,626
STOP WORK ORDERS	393,340	465,961	392,343	480,995	655,233
LESS REFUNDS	(423)	0	(1,100)	(100)	0
LESS BAD CHECKS	(5,250)	(12,208)	(18,130)	(10,233)	(59,718)
COLLECTION FEE	(25,842)	(50,639)	(52,816)	(73,031)	(73,660)
SUB-TOTAL	361,825	403,114	320,297	397,631	521,855
LATE ASSESS. FINES	28,124	36,661	24,611	40,698	42,422
SEC. 7 & 14 FINES	0		7,912	(13,600)	14,000
MISCELLANEOUS	56,120	43,472	42,526	31,765	19,876
LESS REFUND SEC.7 FINE					(3,900)
SUB-TOTAL	84,244	80,133	75,049	58,863	72,398
TOTAL COLLECTIONS	21,097,986	20,271,113	22,148,909	21,503,932	19,625,169
BALANCE BRGT FWD	10,065,860	12,725,215	11,785,359	10,915,459	11,836,705
TOTAL	31,163,846	32,996,328	33,934,268	32,419,391	31,461,874
LESS EXPENDITURES	(23,525,582)	(22,930,468)	(21,209,053)	(20,634,032)	(20,546,414)
BALANCE	7,638,264	10,065,860	12,725,215	11,785,359	10,915,460
ORACLE START-UP	2,731,097				
ORACLE SOFTWARE		408,754			
UNISYS CORP.		23,264			
ORACLE CONSULTANTS		825,000			
SUN MICROSYSTEMS		4,264			
TOTAL	2,731,097	1,261,282			
<u>REPAYMENT</u>					
SALARIES	13,644,820	13,158,744	13,003,221	12,607,469	12,461,842
FRINGE BENEFITS	2,965,931	3,798,264	3,104,485	3,016,856	3,595,185
INDIRECT COSTS	285,004	332,090	466,539	410,052	366,570
NON-PERSONNEL COSTS	3,872,690	4,348,884	4,584,213	4,599,654	4,079,325
IP INDIRECT-EX	29,528	31,204	50,595		43,492
ADJUSTMENT	(3,488)				
TOTAL REPAYMENT	20,794,485	21,669,186	21,209,053	20,634,031	20,546,414

COLLECTIONS AND EXPENDITURES REPORT - FISCAL YEAR 2002

<i>PUBLIC TRUST</i>	FY'02	FY'01	FY'00	FY'99	FY'98
<u>COLLECTIONS</u>					
INTEREST	5,376	21,904	3,135	6,322	
ASSESSMENTS	3,376,503	3,103,066	1,981,649	2,422,464	2,810,405
REFUNDS	(39,494)				
BD CHECKS	0	0	0	0	(12,133)
TOTAL ASSESSMENTS	3,337,009	3,103,066	1,981,649	2,422,464	2,798,272
TOTAL COLLECTIONS	3,342,385	3,124,970	1,984,784	2,428,786	2,798,272
BALANCE BRGT FWD	56,716	25,572	15,984	3,078	415,444
TOTAL	3,399,101	3,150,542	2,000,768	2,431,864	3,213,716
LESS EXPENDITURES	(3,361,156)	(3,093,826)	(1,975,196)	(2,415,880)	(3,210,638)
BALANCE	37,945	56,716	25,572	15,984	3,078
<u>EXPENDITURES</u>					
RR COLAS	3,249,773	3,023,919	1,758,754	1,986,675	2,764,902
RR SEC. 37	111,383	69,907	182,203	329,406	445,736
RR SEC. 19 COLA	0	0	34,239	99,799	
RR REHAB		0	0	0	0
SHELBY CLAIMS					
MM IME SEC 37		0	0	0	0
TOTAL EXPENDITURES	3,361,156	3,093,826	1,975,196	2,415,880	3,210,638

<i>PRIVATE TRUST</i>	FY'02	FY'01	FY'00	FY'99	FY'98
<u>COLLECTIONS</u>					
INTEREST	511,003	1,246,983	1,077,109	684,536	468,719
ASSESSMENTS	41,651,141	39,778,971	40,602,911	45,753,726	43,554,841
LESS RET. CHECKS	(6,533)	(60,437)	0	(99,739)	0
LESS REFUNDS	(820,175)	(994,294)	(209)	0	(13,060)
SUB-TOTAL	40,824,433	38,724,240	40,602,702	45,653,987	43,541,781
REIMBURSEMENTS	922,936	547,085	1,015,647	1,535,973	1,255,128
LESS COLLECTION FEE	(783)	(1,005)	(1,554)	(68,582)	0
RET. CHECK	(5,290)	(6,193)	(5,978)	(68,163)	(1,733)
REFUNDS	(519)	(588)	(325)	0	0
SUB-TOTAL	916,344	539,299	1,007,790	1,399,228	1,253,395
SEC. 31-J. FERNANDEZ		8,068			
SEC. 30 H	3,471	0	8,846	5,583	9,386
TOTAL COLLECTIONS	42,255,251	40,518,590	42,696,447	47,743,334	45,273,281
BALANCE BRGT FWD	23,172,956	18,724,712	18,952,485	10,405,623	7,895,008
TOTAL	65,428,207	59,243,302	61,648,932	58,148,957	53,168,289
LESS EXPENDITURES	(43,034,125)	(36,070,345)	(42,924,220)	(39,196,473)	(42,762,666)
BALANCE	22,394,082	23,172,957	18,724,712	18,952,484	10,405,623

COLLECTION AND EXPENDITURE REPORT - FISCAL YEAR 2002

<i>EXPENDITURES</i>	<i>FY'02</i>	<i>FY'01</i>	<i>FY'00</i>	<i>FY'99</i>	<i>FY'98</i>
RR SEC. 34	496,677	732,945	616,463	512,980	758,066
RR SEC. 35	291,047	297,577	391,977	499,521	652,752
RR LUMP SUM	1,462,143	699,231	585,288	605,388	711,594
RR SEC. 36	184,054	39,953	110,339	402,173	138,693
RR SEC. 31	71,502	281,105	79,231	89,077	120,908
RR SEC. 34, PERM. TOTAL	305,627	265,364	261,656	186,699	177,892
RR SEC.31-J. FERNANDEZ		8,068			
RR COLA ADJ	167,841	137,101	158,367	118,130	113,576
RR EE MEDICAL	48,593	44,634	59,453	46,298	59,556
RR EE TRAVEL	0	0	87	443	866
RR EE MISC. EXPENSE	0	0	0	235	0
RR EE BOOKS & SUPPLIES	0	0	0	0	0
RR BURIAL BENEFITS	4,000	0	0	0	0
RR VETERAN LIENS	0	0	0	0	1,000
RR LEGAL FEES	408,008	256,360	276,535	259,326	288,070
RR LEGAL EXPENSES	23,815	22,777	23,372	17,636	31,934
RR LEGAL MISC. / OTHER	6,384	2,141	2,222	2,000	8,197
RR MEDICAL EXPENSES	23,000	109	2,724	0	0
RR VOC. REHAB SERVICES	4,442	4,837	14,955	10,168	8,957
RR REHAB. SERV. TRAVEL	64	98	356	393	199
RR LABOR MARKET STUDY	7,000	11,093	12,569	8,400	19,946
RR REHAB (PRIOR YEAR)	6	2,925	1,323	0	654
RR MEDICAL	1,199,572	406,235	592,679	528,946	1,629,352
RR MEDICAL RECORDS	567	1,853	1,262	1,402	1,584
RR WELFARE LIENS	93,728	88,403	26,357	0	170,408
SUB-TOTAL RR	4,798,070	3,302,809	3,217,215	3,289,215	4,894,204
MM TUITION	1,140	0	0	335	0
SUB-TOTAL CLAIMANTS	4,799,210	3,302,809	3,217,215	3,289,550	4,894,204
<i>INSURERS</i>					
RR COLAS	15,835,070	15,325,146	11,837,661	13,875,293	18,008,554
RR SEC. 19 COLA LUMP SUM	1,203,306	1,026,126	648,587	583,460	
RR SHELBY CLAIMS	0	86,033	85,000	0	595,938
RR LATENCY SEC. 35	1,173,347	950,567	798,983	504,805	873,477
RR LEGAL FEE SEC. 35	186,357	172,111	142,010	96,598	126,800
RR LEGAL EXP. SEC. 35	1,800	860	3,933	3,483	0
RR SEC. 37	16,719,602	12,782,757	23,959,801	19,043,385	16,424,976
SUB-TOTAL INSURERS	35,119,482	30,343,600	37,475,975	34,107,024	36,029,745
TOTAL LEGAL	39,918,692	33,646,409	40,693,190	37,396,574	40,923,949
<i>OEVR</i>					
JJ IME CORP.	0	0	0	0	0
MM TUITION	15,448	7,728	7,070	1,780	3,520
RR REHAB-30H	12,989	5,528	1,143	5,089	5,514
RR TRAVEL REHAB	0	112	65	219	229
RR EE TRAVEL	2,620	810	0	3,618	262
RR EE BOOKS & SUPPLIES	1,742	354	0	931	4,727
SUB-TOTAL OEVR	32,799	14,532	8,278	11,637	14,252
TOTAL PRIVATE TRUST	43,034,125	36,070,345	42,924,220	37,408,211	42,762,666

COLLECTION AND EXPENDITURE REPORT - FISCAL YEAR 2002

<i>EXPENDITURES DEFENSE OF THE FUND</i>	FY'02	FY'01	FY'00	FY'99	FY'98
AA PERSONELL	1,405,120	1,147,577	1,058,255	1,011,619	830,029
AA OVERTIME	0	0	0	0	0
SUB-TOTAL	1,405,120	1,147,577	1,058,255	1,011,619	830,029
DD FRINGE	303,759	328,866	253,881	241,439	240,327
DD UNIVERSAL HEALTH	8,079	0	555	0	391
DD MEDICARE	293	0	15,829	0	10,553
DD UNEMPLOYMENT	1,260	2,295	2,116	2,023	2,073
DD BOND	310	62			
DD WORKERS' COMP CHRG.	19,234	1,321	6,529		
SUB-TOTAL	332,935	332,544	278,910	243,462	253,344
BB TRAVEL	7,252	9,322	10,261	10,778	10,150
BB TRAINING/TUITION	3,009	6,186	0	1,419	170
BB EMPLOYEE REIMBURS	0	156	91	116	
BB PRIDE & PERFORMANCE	0	390			
BB PETTY CASH					30
BB MANAGER TRAINING	1,000				
SUB-TOTAL	11,261	16,054	10,352	12,313	10,350
CC LAW CLERKS	0	12,128	4,440		
EE RENTAL/MV CHRG-BACK	1,703	0	231	262	271
EE ADVERTISING	0	0	0	0	0
EE BOOKS/SUPPLIES	36,887	28,971	5,069	5,885	11,457
EE IMPARTIAL APPEALS	5,600	5,950	12,650	8,550	17,300
EE CENTRAL REPRO.	222	0	0	0	0
EE OMIS CHARGEBACK	6,648	0	2,219	0	4,600
EE SEC. 37 INTEREST	0	46,344			
EE MOBILE PHONES	3,712	1,448	998	899	905
EE AT&T		5,695	0	40	71
EE TELEPHONE & FAX	4,577	0	7,269	11,701	9,134
EE POSTAGE	3,039	13,000	10,000	9,400	8,450
EE MCI TELEPHONE		1,242	1,594	1,099	
EE QUEST COMM.	810				
EE REFRESHMENTS	594				
EE ITT COMPUTER SERV.	0	0	2,225		
EE WATER	1,367				
EE INDIRECT COSTS	42,493	39,296	51,937	36,900	33,709
SUB-TOTAL	107,652	141,946	94,192	74,736	85,897
HH CONSULTANTS	798,586	400,493	475,574	130,008	151,209
SUB-TOTAL	798,586	400,493	475,574	130,008	151,209
JJ OPERATIONAL SERV.	87,584	106,575	106,069	100,972	295,302
SUB-TOTAL	87,584	106,575	106,069	100,972	295,302
GG BOSTON LEASE	293,687	146,846	146,846	146,846	146,846
GG ELECTRICITY	5,432	3,300	1,675	1,915	6,460
SUB-TOTAL	299,119	150,146	148,521	148,761	153,306
KK EQUIPMENT	3,036	63,010	7,681	31,288	0
SUB-TOTAL	3,036	63,010	7,681	31,288	0

(CONTINUED ON NEXT PAGE)

COLLECTIONS AND EXPENDITURES REPORT - FISCAL YEAR 2002

<i>EXPENDITURES DEFENSE OF THE FUND</i>	<i>FY'02</i>	<i>FY'01</i>	<i>FY'00</i>	<i>FY'99</i>	<i>FY'98</i>
LL PRAXIS	0	0	8,116	10,757	6,300
LL PAGE NETWORK	0	52	13	26	
LL XEROX	4,524	4,448	0	6,739	6,627
LL MOBIL COMM					36
LL ORACLE	0	0	5,063		11,220
LL SIMPLEX	0	0	0	0	102
LL FAIRCHILD	2,870	2,929	1,311	1,217	1,517
LL PITNEY BOWES	912	681			
LL IKON	778	976			
LL SUN	6,853	7,829			
LL RETROFIT	4,037	5,652			
LL PYRAMID	16,164	16,164	16,564	16,164	2,702
LL CONGRESS ALARM	140				
LL RICOH	63				
SUB-TOTAL	36,341	38,731	31,067	34,903	28,504
RR PENALTIES SEC. 8	1,000	200	0	200	16,524
SUB-TOTAL	1,000				
TT			7,859		
SUB-TOTAL			7,859		
TOTAL DEFENSE OF FUND	3,082,634	2,409,404	2,222,752	1,788,262	1,824,465
TOTAL EXPENDITURES	46,116,759	38,479,749	45,146,972	39,196,473	44,587,131