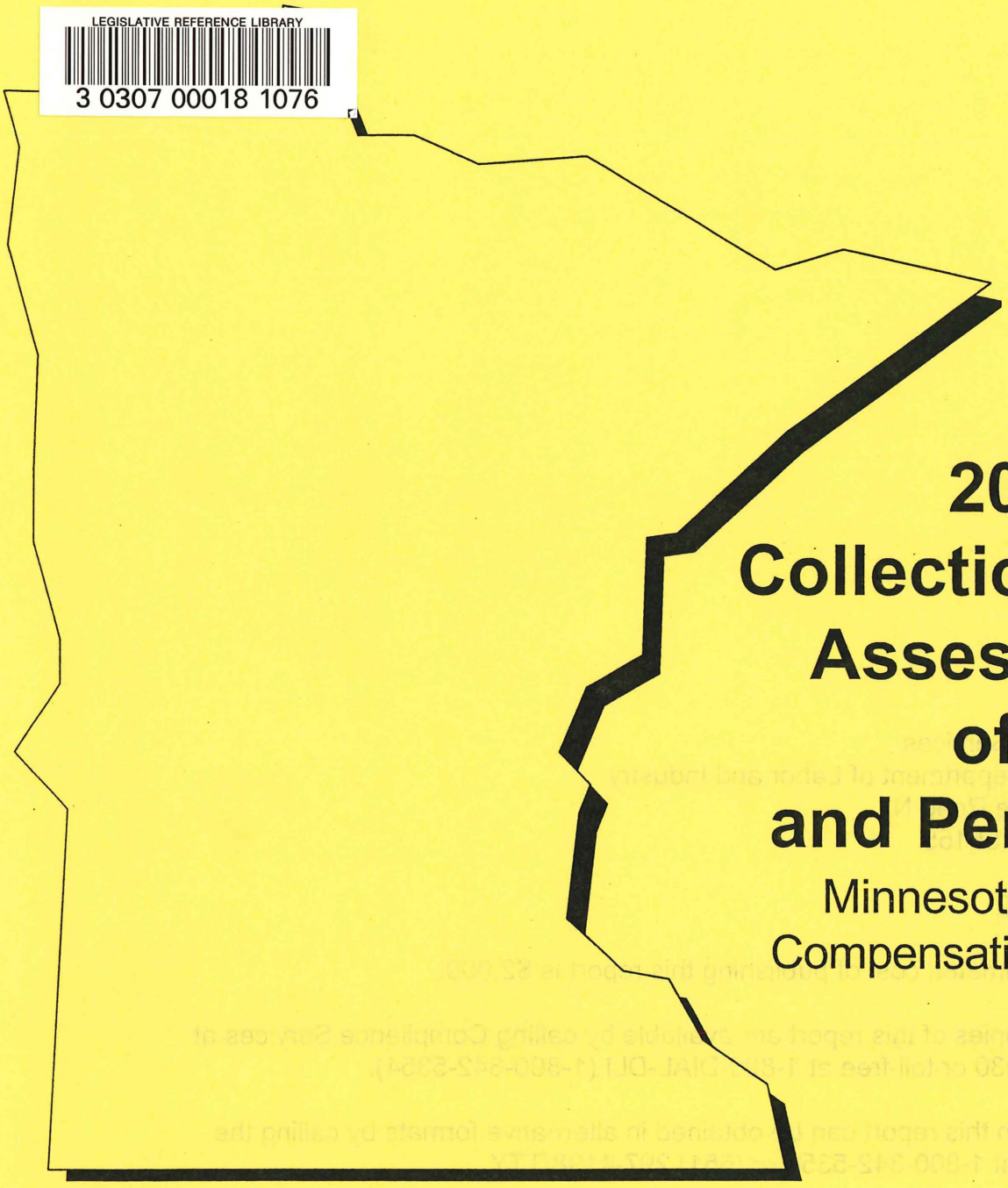

2001 Collection and Assessment of Fines and Penalties

Minnesota Workers' Compensation System

Minnesota Department of Labor & Industry

Minnesota Department of Labor and Industry
Compliance Services

Compliance Services
Minnesota Department of Labor and Industry
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Introduction

As part of its 1992 workers' compensation reform legislation, the Minnesota Legislature directed the commissioner of the Department of Labor and Industry (DLI) to submit an annual report on the assessment and collection of fines and penalties under workers' compensation law (Minnesota Statutes § 176.222).

Fines and penalties are found throughout the workers' compensation statutes. Employers may be penalized for failing to obtain workers' compensation insurance, falsifying insurance information, failing to post a required poster and for late filing of injury reports with their insurance companies. Insurance companies and self-insured employers may be penalized for a variety of reasons, including failure to commence benefit payments to an injured worker or to deny liability for a claimed injury in a timely manner, failure to pay benefits when ordered to do so by the commissioner or a compensation judge, failure to file required reports with the department and denying benefits without notice or reason, among others. Vocational rehabilitation providers are subject to sanctions, including penalties for failure to follow the rehabilitation rules such as the professional conduct standards. Certified managed care plans and health care providers are subject to sanctions, including penalties for failure to provide services as required by statute, rule or in accordance with the managed care plan as certified. Any party to a claim may be penalized for failing to release requested existing medical data in a timely fashion.

The workers' compensation statutes allow the Department of Labor and Industry to use its discretion in assessing penalties for violations of workers' compensation law. This gives the department the flexibility to monitor all cases for violations that inflict the greatest damage to injured workers, employers and the system as a whole. Other violations may result in penalties when they are reported to the department by a party to a claim or by the general public.

Under workers' compensation law, penalties are paid to one of three recipients depending on the nature of the violation. Most penalties are paid to the Assigned Risk Safety Account that was created in 1992 by the Minnesota Legislature. Through this account, matching grants are awarded to employers to improve the safety of their workplaces. A few penalties are paid to the Special Compensation Fund to assist in financing the entire workers' compensation system. Finally, some penalties are paid directly to injured workers when their monetary benefit payments have been unreasonably delayed by the insurer.

DLI Financial Services collects all workers' compensation penalties that are payable to the Assigned Risk Safety Account and the Special Compensation Fund. The Compliance Services unit monitors the payment of penalties to injured workers.

This report presents fine and penalty information in its appendix for fiscal years 1998, 1999, 2000, and 2001. Each fiscal year begins July 1, ends the following June 30, and is named for the year

in which the 12-month period ends. For example, the fiscal year beginning July 1, 2000 and ending June 30, 2001 is "FY 2001."

This report focuses on penalties issued and collections made during FY 2001. Although warnings are also technically defined as penalties, only penalty assessments that involve monetary fines are included in the appendix.

Assessment and Collection Procedures

When a potential penalty situation is identified by the department's internal monitoring system or by an external customer, department staff members carefully review the facts and determine whether a penalty should be assessed. If so, a penalty notice is sent to the violator describing the infraction and the dollar amount of the penalty. A stipulated consent agreement containing the same information is used to assess most penalties against managed care organizations, rehabilitation providers, and medical providers. All penalty information is entered into the department data base.

When the penalty is assessed for an employer's failure to obtain workers' compensation insurance, the employer may challenge the penalty by filing a written objection with the department within 10 days. Objections to all other penalty notices must be filed within 30 days of the assessment.

If a timely objection to a penalty notice is received by the department, the penalty recipient and the department may attempt to settle the penalty. If these attempts are unsuccessful, a settlement conference and/or hearing is conducted at the Office of Administrative Hearings (OAH) to determine whether the penalty was appropriate.

If a stipulated consent agreement cannot resolve a penalty issue involving a managed care organization, rehabilitation provider, or medical provider, the commissioner may initiate a contested case hearing at OAH. An administrative law judge then issues a recommendation regarding the appropriateness of a penalty, which is considered by the Rehabilitation Review Panel (Minnesota Statutes § 176.102) or the Medical Services Review Board (Minnesota Statutes § 176.103). The Panel or the Board then makes the final decision to assess the penalty.

Appeals from OAH, the Rehabilitation Review Panel, and the Medical Services Review Board are heard by the Minnesota Workers' Compensation Court of Appeals and may be appealed to the Minnesota Supreme Court.

A penalty becomes final when it is assessed and no objection or appeal is filed. If an objection or appeal has been filed by its deadline, the penalty becomes final when it is settled or when an order is issued by a judge which is not appealed.

When a penalty is final, it must be paid within 30 days. The department initiates collection procedures when parties have not paid their penalties by this deadline. If necessary, the department uses the Minnesota Collection Enterprise (MCE) to obtain payment of the penalty. The department may take a penalty case to District Court as long as the action is filed within two years of the date the penalty becomes final.

General Appendix Table Information

The penalties contained within Minnesota Statutes § 176 are listed on the left of the appendix table at the end of this report. The table is divided into columns describing the total number and dollar amount of penalties assessed and collected during each fiscal year for each penalty type.

Assessments in a fiscal year do not correspond to collections during the same fiscal year for various reasons:

- If a penalty is challenged, any subsequent settlement or withdrawal of the penalty will reduce the number and/or amount of penalties to be collected.
- Litigation and/or collection procedures can delay the collection of a penalty for one or more years after the assessment.
- The department does not collect penalty payments made to injured employees. Although these penalty numbers and dollar amounts are included in the "Assessed" column, they are not included in the "Collected" column.

Penalty Descriptions

Late Filing of *First Report of Injury* (Minnesota Statutes § 176.231)

Description: The *First Report of Injury* form is a document completed by the employer when he or she receives notice that a workplace injury or illness has occurred. The employer has 10 days to file this report with its workers' compensation insurance company when a period of work extending beyond three calendar-days has been lost due to the injury or illness. The insurance company has an additional four days beyond this 10-day period, or a total of 14 days, to file the *First Report of Injury* form with the Department of Labor and Industry, accept the claim and initiate benefit payments, or deny liability for the claim.

The department considers the prompt filing of first reports by employers and insurers to be essential in keeping the costs of the workers' compensation system as low as possible. An employer's delay in filing the first report with the insurance company reduces the amount of time the insurer has to determine liability and meet its own filing deadline. A delay in the insurer's or self-insured employer's filing of the *First Report of Injury* with the department hinders the department's ability to monitor the claim and respond to questions about its status. Any delay in the provision of medical and monetary benefits caused by the late filing of a *First Report of Injury* can create mistrust between the injured worker and the employer and adversely affect the future of the claim.

All new lost-time claims are monitored to determine whether the *First Report of Injury* has been filed in a timely manner. Penalties are assessed for late filings with the insurer or with the department. If an objection is filed on a penalty, the department may settle the penalty or refer the matter to the Office of Administrative Hearings for a settlement conference or a hearing before a compensation judge.

Penalty Payment: This penalty is paid to the Assigned Risk Safety Account.

Appendix Table: The number of late *First Report of Injury* filings rose 7.9 percent in FY 2001 from the previous year. The biggest factor in this increase appears to be claims handling difficulties continuing from the merger of two insurers during the previous fiscal year.

Late First Payment of Benefits (Minnesota Statutes §§ 176.221 and 176.225)

Description: Every self-insured employer or insurance company that accepts liability on a claim resulting in disability which extends beyond three calendar-days must either begin payment of monetary benefits to the injured worker or explain why benefits are not yet payable. Either action must be taken within 14 days of the date the employer receives notice of the injury. Timely issuance of the first payment or explanation of the reason for nonpayment is critical to the smooth handling of a claim. A delay may motivate the injured worker to retain the services of an attorney and to view the insurer or self-insured employer as an adversary, increasing the costs of the claim.

Each new lost-time claim is monitored to determine whether the first payment has been timely. Penalties are assessed for late first payments of claims. The self-insured employer or insurance company may object to any penalty assessed for this violation. Settlement and litigation procedures are identical to those for late filing of the *First Report of Injury*.

Penalty Payment: This penalty is payable to the Assigned Risk Safety Account. An additional penalty is payable to the injured worker in certain situations as directed by Minnesota Statutes § 176.225.

Appendix Table: Penalties for late first payments of benefits increased approximately 19.2 percent in FY 2001 from the previous fiscal year. The biggest factor leading to this increase appears to be claims handling difficulties continuing from the merger of two large insurers during the previous fiscal year.

Late Denial of Claims (Minnesota Statutes § 176.221)

Description: If a self-insured employer or insurance company does not accept liability for an injury resulting in disability extending beyond three calendar-days, it must notify both the injured worker and the department of its denial within 14 days after the employer receives notice of the injury. As with the first payment of benefits, it is important to give this information to injured workers quickly. A timely denial gives the injured worker the opportunity to dispute the insurer's liability decision before his/her financial situation becomes severely damaged. Delays may affect the future relationship between the injured worker and the insurer, even if the claim is later accepted.

Each new lost-time claim is monitored to determine whether the denial has been filed on time. Penalties are assessed for late denials of claims. The self-insured employer or insurance company may object to any penalty assessed for this violation. Settlement and litigation procedures are consistent with those already described in this report.

Penalty Payment: This penalty is paid to the Assigned Risk Safety Account.

Appendix Table: Penalties for late denials of claims increased approximately 19.2 percent in FY 2001 from the previous fiscal year. Claims handling difficulties experienced during the above mentioned merger of two large insurers contributed to this increase. However, most of the increase in late denials occurred within the insurance industry as a whole, for reasons that are unclear.

Prohibitive Practices (Minnesota Statutes § 176.194)

Description: Minnesota Statutes § 176.194 describes eight types of conduct by insurance companies, self-insured employers and third-party administrators that are prohibited under workers' compensation law. These include:

- failing to reply within 30 days to written requests from the claimant for information about a claim;
- failing to either deny the claim or commence benefits within 45 days after a written request to do so;

- failing to pay or deny medical bills within 45 days of receipt of all information requested of the medical provider;
- failing to investigate a claim before denying liability;
- failing to pay weekly benefits in a timely manner;
- failing to respond within 30 days to the department's written request for information about a claim;
- failing to pay pursuant to an order within 45 days; and
- advising the injured worker not to obtain an attorney.

The department monitors the written requests it makes to insurers and self-insured employers and assesses penalties when a party fails to respond. Penalties are also assessed as a result of complaints made by parties to a claim alleging violations of the prohibited practice statute by insurers, self-insured employers and third-party administrators. Depending on the type of prohibited conduct, monetary penalties may either be assessed immediately or after five violations of that type of conduct have occurred within the previous 12 months. As with the preceding penalties, a prohibitive practices penalty may be settled or litigated before an administrative law judge after an objection is received.

Penalty Payment: Monetary penalties associated with this statute are paid to the Assigned Risk Safety Account.

Appendix Table: Although small in numbers, prohibited practice penalties have increased annually since FY 1996 due to the department's increased monitoring of claims and more consistent follow-through when auditing files. These penalties rose 53 percent in FY 2001 from the previous fiscal year. Of the 53 additional penalties in FY 2001, 48 were assessed against two insurers.

Rehabilitation Provider Discipline (Minnesota Statutes § 176.102)

Description: Minnesota Statutes § 176.102 and Minnesota Rules Part 5220 provide minimum standards of performance and professional conduct for rehabilitation providers. These standards require each provider to follow the process specified in the statute and rules for the provision of vocational rehabilitation consultation and services. Each provider must also follow certain standards of conduct, objectivity and professional competence, and must not confuse the role of a provider with that of an insurer.

The department certifies rehabilitation providers and also monitors their performance. Members of the general public may file complaints with the department when they believe a rehabilitation provider has violated any of the performance or professional conduct standards. The department investigates these complaints and may initiate a variety of disciplinary actions against the provider,

including monetary penalties. Subsequent negotiations with the rehabilitation provider may result in a settlement of the penalty in the form of a stipulated consent agreement. If a settlement does not occur, the department brings the issue before an administrative law judge for a hearing. However, unlike other penalty processes, the judge's findings of fact and conclusions of law are submitted to the Rehabilitation Review Panel (Minnesota Statutes § 176.102), which imposes the penalty.

The panel's decision may be appealed to the Workers' Compensation Court of Appeals.

Penalty Payment: Penalties from violations of this statute and rule are paid to the Special Compensation Fund.

Appendix Table: Department monitoring of rehabilitation providers has resulted in penalties during each of the four fiscal years listed in the appendix.

Managed Care Organization Discipline (Minnesota Statutes § 176.1351)

Description: Under Minnesota Statutes § 176.1351, the Department of Labor and Industry certifies managed care plans. Minnesota Rules Parts 5218.0800 and 5218.0900 require the department to monitor the performance of these plans and investigate complaints.

The department may refuse to certify, suspend or revoke certification of a managed care plan for failure to provide required medical services and for failure to provide those services in accordance with the terms of the certified plan. In lieu of suspension or revocation of certification, administrative penalties may be assessed. The commissioner may enter into a stipulated consent agreement with the managed care plan for corrective or preventive action or the amount of the penalty to be paid. If there is no stipulated agreement and the managed care plan objects to the penalty assessment, it may be brought before a compensation judge for a hearing.

Penalty Payment: This penalty is paid to the Special Compensation Fund.

Appendix Table: No penalties against Certified Managed Care Organizations were assessed in FY 2001.

Health Care Provider Discipline (Minnesota Statutes § 176.103)

Description: Under Minnesota Statutes § 176.103, sanctions may be imposed against health care providers by the Medical Services Review Board (MSRB) for violating a workers' compensation statute or rule. Any member of the general public may initiate a complaint against a health care

provider if he or she believes a violation has occurred. If the department's investigation determines that a complaint is substantiated, the commissioner may enter into a stipulated consent agreement with the health care provider for corrective or preventive action, including a monetary penalty. If a settlement does not occur, the department brings the issue before an administrative law judge for a hearing. The judge's findings of fact and conclusions of law are submitted to the MSRB, which imposes the penalty.

Penalty Payment: Penalties assessed under Minnesota Statutes § 176.103 are paid to the Special Compensation Fund.

Appendix Table: No penalties were assessed against health care providers under this statute in FY 2001.

Failure to Insure (Minnesota Statutes § 176.181)

Description: Under the provisions of Minnesota Statutes § 176.181, all employers that are required to provide compensation under the workers' compensation law must obtain insurance through an insurance company or become self-insured. When an employer is suspected of operating without workers' compensation insurance, the department conducts an investigation and assesses a penalty when the employer is found to be in violation of this law. The department uses a penalty matrix to determine the severity of each violation and the amount of the penalty. As with other penalties, a dispute may result in a settlement of the penalty or a hearing before an administrative law judge. Employers that fail to respond to a department's penalty assessment may be taken to District Court for judgment and collection.

Penalty Payment: Penalties for an employer's failure to insure are paid to the Assigned Risk Safety Account.

Appendix Table: The department continues to closely monitor and investigate employers suspected of being uninsured. Cases are generated from tips provided by the public, information from *First Reports of Injury* and a comparison of employers' unemployment insurance records against their workers' compensation insurance records. The increase in penalties seen in FY 2001 continues to reflect the department's increased efforts to monitor employers via database comparisons. The increase in collection monies can be attributed to the attainment of judgements and the collection efforts of MCE.

Late Filing of Special Fund and Loggers' Assessments (Minnesota Statutes §§ 176.129 and 176.130)

Description: The Special Compensation Fund, administered by the Department of Labor and Industry, is funded primarily by semi-annual assessments against insurance companies and self-insured employers based on indemnity benefits paid in the previous six months. Minnesota Statutes § 176.129 and Minnesota Rules Part 5220.2840 dictate filing and payment timeline criteria and provide for the issuance of penalties when the timelines are not met.

A second workers' compensation statute, Minnesota Statutes § 176.130, imposes an annual assessment on Minnesota wood mills. This assessment is used to pay rebates to qualified employers in the logging industry and to fund a logger safety education program. Penalties provided under Minnesota Statutes § 176.129 may be imposed against wood mills for failure to pay their assessments by the statutory deadline.

These two penalties are combined in the appendix table under "Late Filing of Special Fund Assessment." Settlement and litigation procedures are consistent with those used for other department penalties.

Penalty Payment: Both penalties are payable to the Assigned Risk Safety Account.

Appendix Table: The number of penalties for late filing of special fund assessments and logger assessments increased 23.6 percent in FY 2001. The reason for the increase is unclear.

Other Penalties (Minnesota Statutes §§ 176.221, 176.225, 176.138, 176.231, 176.238, 176.84)

Description: Situations resulting in these penalties most often include late payment of medical, rehabilitation or monetary benefits, failure to file required reports, frivolous or nonspecific denials of claims, and the improper payment or discontinuance of benefits. Most penalties are assessed against insurers, but penalties for failure to file required reports are also assessed against employers and health care providers. These penalties occur either as a result of complaints from members of the general public or as a result of departmental monitoring of files. As with other penalties, these may be settled or litigated after the penalty is assessed.

Penalty Payment: Penalty payments per these statutes are made to the Assigned Risk Safety Account, the Special Compensation Fund and/or the injured worker.

Appendix Table: These penalties decreased 19.2 percent in FY 2001 due to improved screening of cases by the department, which resulted in fewer penalties issued in error.

APPENDIX
Workers' Compensation Division Penalty Statistics

Penalty Type	FY 1998				FY 1999				FY 2000				FY 2001			
	Assessed		Collected		Assessed		Collected		Assessed		Collected		Assessed		Collected	
	Total #	Dollar Amount	Total #	Dollar Amount	Total #	Dollar Amount	Total #	Dollar Amount	Total #	Dollar Amount	Total #	Dollar Amount	Total #	Dollar Amount	Total #	Dollar Amount
Late Filing of 1st Report (M.S. 176.231)	778	$122,250	684	$101,685	761	$193,475	639	$141,660	679	$266,875	529	$193,838	733	$297,750	647	$261,676
Late 1st Payment (M.S. 176.221)	1,414	$601,956	1,454	$425,343	1,264	$558,166	1,196	$355,208	1,479	$717,550	1,361	$448,069	1,763	$883,237	1,695	$598,017
Late Denial (M.S. 176.221)	557	$374,100	459	$256,550	475	$377,300	358	$243,593	546	$359,250	463	$272,810	651	$447,250	520	$314,518
Prohibited Practices (M.S. 176.194)	38	$126,000	18	$46,000	60	$204,000	45	$88,350	100	$369,000	66	$172,900	153	$648,000	105	$392,400
Rehabilitation Provider Discipline (M.S. 176.102)	14	$7,100	14	$7,083	6	$3,250	6	$3,250	15	$10,650	12	$6,225	4	$1,800	9	$5,075
Managed Care Organization Discipline (M.S. 176.1351)	3	$9,750	3	$9,750	1	$10,000	1	$10,000	1	$1,000	1	$1,000	0	$0	0	$0
Health Care Provider Discipline (M.S. 176.103)	0	$0	0	$0	0	$0	0	$0	1	$2,600	1	$2,600	0	$0	0	$0
Failure To Insure (M.S. 176.181)	155	$3,146,115	149	$257,511	137	$1,689,129	164	$288,824	169	$2,015,624	206	$279,565	416	$2,585,083	355	$413,132
Late Filing of Special Fund Assessment (M.S. 176.129 & 176.130)	69	$161,899	68	$71,978	85	$96,326	82	$116,577	106	$223,785	103	$114,062	131	$275,843	108	$216,607
* Other Penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238, & 176.84)	208	$78,612	140	$42,956	222	$79,804	185	$37,478	250	$156,257	213	$52,883	202	$138,330	173	$46,519
TOTALS	**3,236**	**$4,627,782**	**2,989**	**$1,218,857**	**3,011**	**$3,211,450**	**2,676**	**$1,284,941**	**3,346**	**$4,122,592**	**2,955**	**$1,543,951**	**4,053**	**$5,277,293**	**3,612**	**$2,247,944**

* These penalties could include: non-specificity of notices, improper payment of permanent partial disability, late payment of orders, improper discontinuance, frivolous denial, late payment of medical expenses, failure to release medical data, late payment of ongoing benefits, failure to file other required reports, and late payment of rehabilitation expenses.

Notes: Penalties pursuant to M.S. 176.225, which are payable to the employee, have been included in the assessed amounts only. All dollar amounts have been rounded to the nearest whole dollar.