A REPORT TO THE MINNESOTA LEGISLATURE AND GOVERNOR

MINNESOTA WORKERS' COMPENSATION STUDY COMMISSION

February 1979

STEVE KEEFE
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Senator 59th District
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Senate
State of Minnesota

February 19, 1979

The Honorable Albert H. Quie
Governor, State of Minnesota

The Honorable Edward J. Gearty
President, Minnesota Senate

The Honorable Rod Searle
Speaker, Minnesota House of Representatives

Gentlemen:

Pursuant to Laws 1977, Chapter 342, the accompanying report of the Workers' Compensation Study Commission is submitted to you.

Beginning September 1, 1977, and ending February 16, 1979, the Study Commission held 40 hearings in which it explored means of alleviating the burden of the cost of workers' compensation insurance to Minnesota employers, while at the same time assuring that employees throughout the state continue to be fairly compensated for job related injuries and returned to gainful employment as quickly as possible.

This report contains the major findings of the commission and 57 recommendations which we believe will have a favorable impact in those areas of workers' compensation which have caused the greatest concern to the people of Minnesota during the past few years. We believe that the adoption of these recommendations will assure that the State of Minnesota continues to be a national leader in the workers' compensation field.

Respectfully submitted

Steve Keefe

Steve Keefe, Chairman
Workers' Compensation Study Commission

SK:jm

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INTRODUCTION TO THE REPORT
OF THE
WORKERS' COMPENSATION STUDY COMMISSION

The Workers' Compensation Study Commission was established by the 1977 Minnesota Legislature "in order to improve the system of providing workers' compensation insurance at fair and reasonable rates to employers within the state." Minnesota employers have become increasingly concerned with the rates of workers' compensation coverage which now approaches three percent of the total state payroll and is considerably higher in certain "risk" industries.

Although comparisons of workers' compensation costs between jurisdictions are tenuous due to variance in laws, administration, benefits, litigation, and other factors, it is evident that neighboring states offer a competitive advantage in workers' compensation insurance rates. The adoption of the recommendations contained in this report is expected to substantially reduce or reverse these differences.

Concerned with the increases in workers' compensation premiums and their relation to neighboring states, the Minnesota Legislature created the Workers' Compensation Study Commission (Laws of Minnesota 1977, Ch. 342, Sec. 27, Subd. 1) to examine four specific workers' compensation topics. The charge to the Study Commission was amended by the 1978 Legislature (Laws of Minnesota 1978, Ch. 342, Sec. 27, Subd. 1) by adding an additional topic to be addressed by the commission.

The charge thus given the Commission was to study and report on:

(a) the procedure by which workers' compensation insurance premium rates are established;
(b) the level of Minnesota workers' compensation premiums as compared to premium levels in other jurisdictions;
(c) the various methods of providing workers' compensation insurance to employers in other jurisdictions;
(d) the administration of the law by the department of labor and industry and workers' compensation court of appeals; and
(e) the expense factor in the rate in terms of whether the factor is inadequate or excessive.

Six Commission members, three from each house of the Legislature, were appointed by their respective bodies and, in August 1977, Governor Rudy Perpich appointed ten members to the Study Commission - the Commissioner of Labor and Industry, the Commissioner of Insurance (designee), two representatives of the insurance industry, two employer representatives, two labor representatives, and two citizen representatives.

MEMBERS OF THE WORKERS' COMPENSATION STUDY COMMISSION*

Senator Steve Keefe (Chairman)
301 State Capitol
St. Paul, Minnesota 55155

Senator Roger Laufenburger
Room 235, State Capitol
St. Paul, Minnesota 55155

Senator Nancy Brataas
Room 139, State Office Bldg.
St. Paul, Minnesota 55155

Commissioner E.I. Bud Malone
Department of Labor & Industry

Mr. Patrick Newlin (Insurance)
St. Paul Companies

Ms. Wendy Borsheim (Employer)
Minnesota Retail Federation

Representative Leo Adams
Room 289, State Office Building
St. Paul, Minnesota 55155

Representative Dick Kaley
Room 398, State Office Building
St. Paul, Minnesota 55155

Representative Wayne Simoneau
Room 357, State Office Building
St. Paul, Minnesota 55155

Tom O'Malley
Assistant Commissioner
Minnesota Insurance Division

Mr. Preston Shepherd (Insurance)
Employers Insurance of Wausau

Mr. Laurence Koll (Employer)
Attorney

* Additional biographical information on the Commission members can be found on page 4.

Mr. Neil Sherburne (Labor)
Minnesota AFL-CIO

Ms. Tobey Lapakko (Labor)
Minnesota AFL-CIO

C. Arthur Williams (Citizen)
University of Minnesota
Study Commission-Vice Chairman

Ms. Nadine James (Citizen)
Workers' Compensation Judge

STAFF OF THE WORKERS' COMPENSATION STUDY COMMISSION

Betsy Chesebrough
Commission Secretary

Steve Goff
Administrative Assistant

Doug Seaton
House Research

LeRoy H. Schramm
House Research

Paul Hyduke
Senate Research

John Ryan
Senate Research

Jay BenAnav
Senate Counsel

COMMISSION MEMBERS' BIOGRAPHICAL INFORMATION

Senator Steve Keefe

Chairman of the Workers' Compensation Study Commission; elected to the Senate in 1972 from district #59 in South Minneapolis (DFL); graduated from the University of Minnesota and employed as a chemist with Honeywell, Inc.; Assistant Majority Whip in the Senate; serves on the Employment, Elections, Commerce and Finance Committees; Chairman of the Labor Subcommittee and serves on the Subcommittee on Committees.

Senator Roger Laufenburger

Elected to the Senate in 1962 from district #34 in southeastern Minnesota (DFL); the owner of an insurance agency in Lewiston, Minnesota; Chairman of the Employment Committee and serves on the Commerce, Rules and Transportation Committees.

Senator Nancy Brataas

Elected to the Senate in 1975 from district #33 in Rochester (IR); is a management and data processing consultant for charitable and political organizations; serves on the Commerce, Employment, and Health, Welfare and Corrections Committees.

Representative Leo Adams

Elected to the Minnesota House of Representatives in 1974 (DFL); employed as an engineering supervisor; serves on the Commerce/Economic Development, Government Operations and Local/Urban Affairs Committees.

Representative Wayne Simoneau

Elected to the Minnesota House of Representatives in 1974 (DFL); employed as a mechanic; serves on the Commerce/Economic Development, Governmental Operations and the Labor-Management Relations Committees.

Representative Dick Kaley

Elected to the Minnesota House of Representatives in 1974 (IR); retired from IBM Corporation; serves on the Governmental Operations, Health/Welfare and Criminal Justice Committees.

E. I. "Bud" Malone

Currently General Manager of Industrial Relations and Safety for Northern States Power; Commissioner of the Minnesota Department of Labor and Industry from 1967-1979; B.A., Metropolitan State University.

Tom O'Malley

Graduate of the College of St. Thomas in St. Paul; member of the Charter Property & Casualty Underwriters; has worked for the Insurance Division of the Minnesota Department of Commerce since 1964, currently Assistant Commissioner of Insurance.

Patrick Newlin

Staff actuary for St. Paul Fire & Marine Insurance Co. for seven years; fellow in Casualty Actuary Society; member of Twin City Actuary Club, Midwest Actuary Club; graduate of St. Cloud State University.

Wendy Borsheim

President since 1973 of the Minnesota Retail Merchants Association, a 1,400-member association of Minnesota retailers.

Laurence Koll

B.A., St. John's University; J.D., University of Minnesota; attorney with Doherty, Rumble and Butler, and Maun Hazel law firms (1964-67); Commissioner, State of Minnesota Workers' Compensation Commission (1967-69); Assistant to Governor Harold LeVander (1969-70); private practice of law (1971-present).

Neil Sherburne

Secretary-Treasurer of the Minnesota AFL-CIO for 23 years until he retired August 1, 1978; member of the Board of Regents for the University of Minnesota.

Tobey Lapakko

Currently Consumer Affairs Coordinator for the AFL-CIO; former Director of Consumer Affairs for AFL-CIO; lobbyist for AFL-CIO during the past ten years; former Director of the Minnesota Consumer Services Division.

C. Arthur Williams

Graduate of Columbia University, A.B., A.M., Ph.D; taught at the University of Buffalo; since 1952 has been teaching at the University of Minnesota College of Business Administration; dean of the College of Business Administration from 1972-1978; co-chairman of an earlier Minnesota Workers' Compensation Study Commission; was a consultant to the National Commission on State Workers' Compensation laws; served as a consultant to the Minnesota Insurance Department in connection with workers' compensation rates; serves on board of directors of the St. Paul Companies; served on the board of directors of the State Capitol Credit Union, the American Hardware Mutual Insurance Company and the Consumers Union.

Nadine James

B.S. and M.S. in chemistry from the University of Saskatchewan; law degree from the University of Minnesota; in private practice for three years; attorney for the state representing employees; currently a workers' compensation judge.

W. Preston Shepherd

B.A. in Journalism, University of Missouri; graduate study, Tulsa University; currently Regional Vice President, Employers Insurance of Wausau; member, Chartered Property and Casualty Underwriters.

SUMMARY OF MEETINGS OF THE WORKERS' COMPENSATION STUDY COMMISSION

1st meeting - Thursday, September 1, 1977

Senator Steve Keefe was elected chairman. A general organization meeting was held with discussion on meeting dates and agendas.

2nd meeting - Monday, September 12, 1977

C. Arthur Williams of the College and Graduate School of Business Administration at the University of Minnesota presented an academic history of the workers' compensation law; it's basic characteristics, how it was adopted and other key issues. Dr. Williams was also elected as vice chairman of the commission.

3rd meeting - Monday, September 19, 1977

LeRoy Schramm, House Researcher, presented different examples of workers' compensation cases. He explained how attorneys' fees are calculated, and what supplemental benefits or special compensation funding was available. Mr. Ray Adel of the Dept. of Labor and Industry explained the function of his division to the commission members.

4th meeting - Monday, October 3, 1977

Professor Kerwin from the William Mitchell School of Law spoke on the legal definitions and the workings of the workers' compensation law.

5th meeting - Monday, October 17, 1977

Mr. Malcolm Robinson of the Alliance of American Insurers, a voluntary association of insurance companies, made a presentation to the commission. Mr. William Curtis of Employers Insurance of Wausau spoke on the handling of claims by the insurer. LeRoy Schramm of House Research, gave the commission members background on the Minnesota Compensation Rating Bureau.

6th meeting - Monday, November 7, 1977

Mr. John Hildebrandt of the Minnesota Compensation Rating Bureau explained the duties of the Bureau and what the Minnesota Compensation Rating Bureau perceives to be some of the basic problems of the current system.

7th meeting - Monday, November 21, 1977

Mr. John Hildebrandt of the Minnesota Compensation Rating Bureau continued his presentation. Mr. Berton Heaton, Commissioner of Insurance, told the commission what problems the Insurance Division has had and what their procedures are. Mr. Hildebrandt continued his presentation with a case history to explain to the commission how rates are determined.

8th meeting - Tuesday, December 6, 1977

Mr. Donald T. DeCarlo, Vice President and General Counsel of the National Council on Compensation Insurance and Mr. Kallop, Vice President and Actuary of the National Council, explained to the commission the functions of the National Council.

9th meeting - Monday, December 19, 1977

Mr. Ron Holbock, a workers' compensation claims manager of Employers Insurance of Wausau, gave examples of different types of cases and claims. Mr. Jerry Schibel also of Employers Insurance of Wausau answered questions by the commission members. Mr. Leo Flaten, chief examiner of the State Insurance Division testified about the Division's periodic review of companies offering insurance in Minnesota.

10th meeting - Monday, January 9, 1978

John Hildebrandt from the Minnesota Compensation Rating Bureau responded to 23 written questions submitted by the commission.

11th meeting - Monday, January 30, 1978

John Hildebrandt continued to respond to the 23 questions submitted by the commission. LeRoy Schramm of House Research, distributed to the commission several comparisons of Minnesota and other states.

12th meeting - Friday, February 10, 1978

Mr. William Peet, President and Senior Consultant of Wm. Peet Company, spoke to the commission as a buyer of workers' compensation insurance. LeRoy Schramm of House Research, presented data and figures on self-insurers to the commission.

13th meeting - Friday, March 31, 1978

The commission was given a brief summary of the meetings of the commission to be held during the interim. LeRoy Schramm

of House Research, presented a report to the commission concerning ratemaking, state funds, and self insurance as it relates to workers' compensation.

14th meeting - Monday, April 3, 1978

Mr. O'Malley, assistant Commissioner of Insurance, took exception to some of the statements made in Mr. Schramm's report at the last meeting. Mr. Abe Rosenthal spoke to the commission as a buyer of workers' compensation insurance.

15th meeting - Monday, April 17, 1978

The chairman stated that he would like to look at some states that have competitive state funds. Commissioner Berton Heaton addressed the commission and reported on various aspects of the rate hearings. Mr. Tom Noble of the Minnesota Agricultural Aircraft Assoc. addressed the commission concerning high workers' compensation rates.

16th meeting - Monday, May 1, 1978

C. Arthur Williams, a member of the commission, and John Ryan of Senate Research each gave presentations on the recent rate hearings.

17th meeting - Monday, May 22, 1978

Tom Triplett, Counsel to the Senate Governmental Operations Committee, explained the Administrative Procedures Act as it relates to ratemaking and the Commissioner of Insurance. Mr. John Hildebrandt of the Minnesota Compensation Rating Bureau responded to questions of policy submitted by the study commission.

18th meeting - Friday, June 9, 1978

The commission traveled to Brainerd to receive public testimony from area employers and employees.

Those testifying

Floyd Rudy - attorney - Cloquet - representing Potlatch
Bernie Williams - director of insurance for Jeno's
Art Ranke - insurance agent, Brainerd
George Gaasvig - injured employee - retraining program
Carl Nielsen - President of Dairy Craft in St. Cloud
Ray Hughes - Vice Pres. of Dairy Craft

John Sullivan - owner of Brainerd timber company
Sherman Mandt - Wadena
Roger Notch - personnel mgr. of Stearns Manufacturing Co.
Charles Burns - finance mgr. of Stearns Manufacturing Co.
Dale McFeeders - independent insurance agent St. Cloud
Chuck Nelson - Hackensack
George Patterson
Joyce Burd - independent insurance agent
Harvey Halvorsen - Pine River
Barbara Nord - Bemidji
Jim Merklewitz - Franklin Manufacturing Co., St. Cloud
Joe Larson - Climax, farmer
Paul Cibuzar - shoe store owner in Brainerd

19th meeting - Friday, June 23, 1978

The commission met in Albert Lea to obtain public testimony from area employers and employees.

Those testifying

Bob Entorf - personnel manager - Wilson Foods - Albert Lea
Oscar Severson - workers' comp. supervisor - Wilson Foods
Fred Hansen - Hubbard Milling - Mankato
Mark Piepho - Piepho Moving & Storage - Mankato & Rochester
F. Mike Tuohy - Tuohy Furniture Co. - Chatfield
E. Heinrich - Wells Concrete - Wells
C. Fingerson - AFC, Inc. - Chatfield
Edwin Petersen - farmer - Oakland
Joe Becker - owner, Becker HiWay
Bob Ecklund - owner, Ecklund Trucking - Kiester
Dave Brown - Piepho Moving & Storage - Albert Lea
Bob Quackenbush - QBC Insurance - Albert Lea
Robert A. Keller - K & S Mfg. - Faribault
Ray Hershey - Hershey Roofing - Albert Lea
Cliff Sime - Sime Equip. Co. - Kiester
Dick Dickema - Dickema Const. Inc. - Albert Lea
Chesley Hibbard - Albert Lea Plating - Albert Lea
Merle May - May Engineering - Albert Lea
Lon Nagel - Petersen International Inc. - Albert Lea
Allan A. Schutz - Allan Schutz Const. - Wells
Lowell Braun - Dave Syverson Ford - Albert Lea

Dale Schumm - Northwest Rubber Co. - Albert Lea
Ken Soost - farmer - Wells
George Warrant - farmer
Darrel Flurry - Mn. Independent Truckers
Jack Neal - Commercial Printing Co. - Albert Lea
Tony Carp - plant manager - Banquet Foods - Wells
Bob Smith - Town and Country Ins. Agency - Albert Lea

20th meeting - Monday, July 10, 1978

Senator Keefe introduced LeRoy Schramm's replacement, Doug Seaton of House Research to the members of the commission. Discussion followed about future meetings of the commission. Jay BenAnav, Senate Counsel, made a presentation to the commission about comparative benefits for disabilities in other states.

21st meeting - Monday, July 24, 1978

Paul Hyduke of Senate Research explained the social security offset. Mr. Ray Adel, Dept. of Labor & Industry, answered questions about the social security offset and the relation to workers' compensation. Mr. Dean Lemke, Manager of the local Social Security office, spoke to the commission and told them what information he had available. John Ryan of Senate Research made a presentation about comparative rates in other states.

22nd meeting - Monday, August 14, 1978

Mr. Tom Renner of the Minnesota Water Well Contractors spoke to the commission about the exceptionally high rate that he pays for workers' compensation insurance. Mr. Lee Berghoff, President of DeBourgh Manufacturing Company, told the commission how their workers' compensation insurance rates have risen during the last couple of years. Mr. Michael Healey of the State Bar Association and the Minnesota Trial Lawyers Association, explained the views of attorneys who represent employees in workers' compensation cases regarding attorneys' fees. Mr. Gerald Duffy, an attorney representing the Minnesota Concrete and Masonary Contractors Association and the Aggregate and Ready Mix Association, said that employers are not being adequately represented in the present system.

23rd meeting - Monday, August 28, 1978

Mr. Howard Milberg, a Culligan businessman in South St. Paul and North St. Paul, told the commission of his main

complaint with workers' compensation. Mr. Ed Hentges, a Financial Vice President of Lester's of Minnesota, told the commission about his company's problem with workers' compensation. Mr. Marv Spears from the Dept. of Vocational Rehabilitation addressed the commission about the problems involved in rehabilitation and his recommendations for improving services. John Ryan of Senate Research presented a state by state comparison of costs and where Minnesota stands in this comparison.

24th meeting - Tuesday, September 5, 1978

Mr. George Keller, President of the Minnesota Self Insurers' Association, spoke to the commission about the benefits of self-insuring and recommended changes. Mr. David Evert of Control Data addressed the commission about self-insuring.

25th meeting - Monday, September 18, 1978

Mr. Bill Ristow of the Chartered Property and Casualty Underwriters Society presented information to the commission on insurance costs. Mr. John Romine of the Minnesota Defense Lawyers' Association presented his group's thoughts on the present law. Mr. Tom O'Malley, Assistant Commissioner of the Insurance Division, gave his views on ways of improving the system.

26th meeting - Monday, September 25, 1978

Mr. Ron Jaynes explained the rehabilitation program in Colorado. Mr. Glenn Adams, Manager of the Colorado State Fund, explained the history of the competitive state fund and how it functions.

27th meeting - Monday, October 2, 1978

Mr. David Florence, President of Multi-Video International and an orthopedic surgeon, told the commission about his work with chronic pain. Mr. John Cantlon of Columbus, Ohio, an employer's representative and consultant on workers' compensation, addressed the commission concerning Ohio's exclusive state fund.

28th meeting - Tuesday, October 10, 1978

Testimony from injured workers' was received by the commission.

Those testifying

Linda Sorenson
Howard Tellin
Charles Maples
Joe Miller
Floyd England
Howard Peterson
Donald Borer
Irving Aaron
Ronald Berg
Ed Pisert
Richard Smith

Mr. Alan Tebb of the California Workers' Compensation Institute testified about California's experience with litigation and cumulative trauma.

29th meeting - Monday, October 16, 1978

Mr. Robert Johnson, Vice President of the Insurance Federation of Minnesota, presented a statement to the commission on behalf of his federation, the American Insurance Assoc., the Alliance of American Insurers and the National Assoc. of Independent Insurers.

30th meeting - Monday, October 23, 1978

Mr. Donald Elisburg, Assistant Secretary of Labor for the U.S., spoke about the federal office of workers' compensation. Ms. June Robinson of the federal office also spoke about the 19 essential recommendations. Mr. John Hildebrandt of the Minnesota Compensation Rating Bureau disputed certain statements made about the Bureau. Mr. Joe Davis of the Washington State AFL-CIO told the commission about the state fund in Washington. Mr. Bob Johnson and Mr. Tim McCoy of the Minnesota Trial Lawyers Assoc. testified about the legal reforms that they feel are needed. Mr. Bob Johnson of the Insurance Federation asked for a brief time to rebut some of their statements.

31st meeting - Monday, October 30, 1978

Mr. Harry Peterson, Vice President for Employment Relations of Minnesota Association of Commerce and Industry, presented the organization's recommendations for reform. Mr. Bradley Robinson of Robinson Rubber Products spoke to the commission about his company's problems. Mr. Jim Kroll of Western National Insurance Company informed the commission about the problems his company has experienced. Dr. James Roberts of the University of Minnesota Pain Clinic testified about chronic pain. John Fuller, representing small businessmen, presented a report. Mr. Hugh Russell, Assistant Commissioner of Labor and Industry in Wisconsin, addressed the commission about the Wisconsin system. Ms. Betty Thompson, a rehabilitation nurse, gave several examples of cases with which she had been involved.

32nd meeting - Monday, November 13, 1978

Daniel B. Gallagher and Thomas W. Walsh, workers' compensation judges, addressed the commission concerning their views on workers' compensation. Doug Seaton of House Research explained two reports, one dealing with litigation and workers' compensation costs, and self insurance administrative costs.

33rd meeting - Tuesday, November 14, 1978

The commission received testimony from injured workers and their experiences with the system.

Those testifying

Don Schidler - Stevens Buick
James English - American Can Co.
Donald Forcier
Dan Gustafson - AFL-CIO
Dave Foster
Jack Bingel - representing locals of the U.S. Steelworkers
Joe Miller
Carl Hokenrod

34th meeting - Monday, November 20, 1978

Doug Seaton of House Research, presented a report on the staffing and organization of the Wisconsin and Minnesota divisions of workers' compensation. Ten recommendations to the Legislature were adopted by the commission dealing with administrative aspects of the law.

35th meeting - Monday, November 27, 1978

Abe Rosenthal of the Minnesota Transport Services Association and the Independent Truckers Association distributed a statement to the commission. Jay BenAnav, Senate Counsel, explained his memo on the Governor's appointment powers. Ms. Borsheim explained the rehabilitation proposal of the Workers' Compensation Advisory Commission. Commission members discussed the rehabilitation proposal.

36th meeting - Monday, December 4, 1978

Paul Hyduke of Senate Research explained a memo on medical panels. Marv Spears and Marijo Olson of DVR explained their proposal for rehabilitation. Ms. Borsheim's rehabilitation proposal was adopted. The commission passed a recommendation to place investment income from the special compensation fund back in the fund, rather than in the general fund.

37th meeting - Monday, December 11, 1978

Mr. William Peet addressed the commission about his recommendations for solving workers' compensation problems. Dwight Smith of Senate Research explained his insurance exhibit to the commission. Jay BenAnav, Senate Counsel, told the commission what information he had received from New York State about the re-opened case fund. Ron Anderson of the St. Paul Companies presented a report on investment income in ratemaking of property casualty insurance.

38th meeting - Monday, December 18, 1978

The commission approved twenty recommendations for submission to the legislature. These recommendations are explained in the following sections of the report.

39th meeting - Wednesday, December 20, 1978

The commission approved twenty-five recommendations for submission to the legislature or the Commission of Insurance.

40th meeting - Friday, February 16, 1979

The commission approved the final report.

RECOMMENDATIONS OF THE

WORKERS' COMPENSATION STUDY COMMISSION

BENEFITS*

1. THE LEGISLATURE SHOULD ELIMINATE TEMPORARY TOTAL OR OTHER WEEKLY INDEMNITY DURING THE PERIOD THAT RETRAINING BENEFITS ARE BEING PAID, BUT INCREASE THE WEEKLY RETRAINING AMOUNT BY 15 PER CENT DURING ANY WEEK IN WHICH THE CLAIMANT IS PARTICIPATING IN AN APPROVED RETRAINING PROGRAM. (Prevailed 12-2)

The commission believes that retraining compensation currently operates as a disincentive to return to work since a person who is in a certified retraining program may presently receive a concurrent weekly retraining benefit, in addition to and equal to the amount received for temporary total disability. This "double" payment often results in more real income during the period of disability than was earned while employed. However, it is the view of the commission that some incentive should be provided to encourage retraining which will assist the employee in returning to gainful employment. This incentive should be in the form of supplemental compensation of 15% of the weekly benefit amount.

2. THE LEGISLATURE SHOULD PROHIBIT PAYMENT OF PERMANENT TOTAL AND PERMANENT PARTIAL COMPENSATION FOR THE SAME INJURY AND PROVIDE FOR THE PAYMENT OF PERMANENT PARTIAL COMPENSATION ONLY UPON THE EMPLOYEE'S RETURN TO WORK. (Prevailed 10-4)

Until a statutory change in 1974, permanent total and permanent partial disability compensation were not payable for the same injury since both these benefits had historically been intended to compensate for the wage loss which resulted from a disability. Therefore, to allow payment of both forms of compensation resulted

*commission vote tally for each recommendation can be found on page 56.

in a double recovery of the wage loss.

A delay in the payment of permanent partial disability until return to work, rather than payment concurrently with temporary total disability compensation, will result in added incentive to return to work.

3. THE LEGISLATURE SHOULD REDUCE THE MINIMUM WEEKLY COMPENSATION BENEFIT FOR TEMPORARY TOTAL DISABILITY TO 66-2/3% OF THE WAGE AT THE TIME OF THE INJURY. (Prevailed 9-3)

This recommendation would assure that all employees are treated equally by receiving 2/3 of their gross working wage regardless of the wage. Presently, the minimum compensation for temporary total disability is 50% of the state average weekly wage ($104.50) or the injured employee's actual wage, whichever is less, but in no case can the minimum be less than 20% of the state average weekly wage ($41.80). This means that an employee who earns between $139 and $104.50 a week while employed nonetheless receives more than 2/3 of his gross wage in compensation. Those earning less than $104.50 but more than $41.80 receive 100% of their wage and those earning less than $41.80 receive more than 100% of the working wage.

4. THE LEGISLATURE SHOULD PROVIDE AN OFFSET AGAINST A WORKERS' COMPENSATION INDEMNITY AWARD IN THE AMOUNT OF THE PREVIOUS COMPENSATION WHERE AN EXISTING DISABILITY HAS BEEN COMPENSATED AND THAT DISABILITY IS AGGRAVATED BY A WORK RELATED INJURY. (Voice Vote)

An employee who suffers an injury which results in a permanency rating should not be compensated for that portion of the disability which is attributable to a prior injury which has been indemnified by workers' compensation, tort award, or other manner. By providing this offset, the situation in which an employee receives double compensation for a portion of a disability is eliminated, while compensation for the work-related disability continues at the present rate.

5. THE LEGISLATURE SHOULD PROVIDE FOR A MAXIMUM DISABILITY BENEFIT OF 200 PERCENT OF THE STATE AVERAGE WEEKLY WAGE (NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS, RECOMMENDATION #3.9, 3.16.) (Prevailed 8-7)

The present maximum of 100% of the state average weekly wage

(currently $209) precludes some individuals from receiving 66-2/3% of their wage though this percentage is provided for others and is viewed as the amount necessary during a period of disability in order to assure financial stability. The commission views this situation as unfair to some injured employees. Workers' Compensation has always been looked upon as a method of assisting injured employees in maintaining their standard of living during recovery. While this objective is reached by employees for whom 66-2/3% of their income is less than 100% of the state average weekly wage, it is not a reality for those who are limited by the maximum. For those employees, 66-2/3% of their wage exceeds the maximum weekly benefit and as a result they only receive something less than the 66-2/3% which is considered adequate. Because few workers will be affected by this recommendation, its cost will be minimal. However, for those who are affected and whose living costs, mortgage payments, etc., are based on their higher income, it could prevent financial disaster.

6. THE LEGISLATURE SHOULD PERMIT RECOVERY OF BENEFITS PAID DUE TO MISTAKE OF FACT, BUT, IN CASES OTHER THAN PERMANENT PARTIAL LUMP SUM AWARDS, LIMIT THE RECOVERY TO NO MORE THAN 20% OF THE WEEKLY BENEFIT PAYMENT, THEREBY PROTECTING 80% OF THE WEEKLY COMPENSATION. (Prevailed 13-2)

Currently, benefits which are due to a claimant by an insurer but which are not paid as a result of mistake of fact are recoverable by the claimant. Benefits paid as a result of an error should therefore be recoverable by the insurer since these are benefits to which an employee is not in fact entitled. In order to assure that an employee who is receiving weekly benefits will be left with an amount sufficient to sustain him or her, any recovery of weekly benefits by an insurer should be limited to 20% of the weekly compensation received by an individual which would result in 80% of that person's weekly compensation being protected.

7. THE LEGISLATURE SHOULD PROVIDE THAT YEARLY ADJUSTMENT OF BENEFITS BE APPLIED ONLY AFTER 104 WEEKS OF DISABILITY. (Voice Vote)

Currently, weekly compensation benefits are adjusted each October 1 to keep pace with the increase in the state average weekly wage with a 6% yearly maximum increase provided by statute. This adjustment is intended to assure that the effects of inflation will not result in inadequate compensation in long term cases.

The commission believes that while weekly compensation should be protected from the effects of inflation, this protection is not needed in short term cases. In addition, inequities are created in short term cases where two employees with similar wage levels are injured, one just prior to October 1 and one just after, since the one injured just prior to October 1 would receive an increase in his benefit on October 1 while the one injured just after October 1 would not receive an increase until the next October 1. The effect on the adequacy of weekly compensation to those who have been disabled less than 104 weeks is not felt to be as devastating since that compensation which was provided at the outset of the disability will continue to be sufficient to meet the needs of the disabled for at least two years. The effects of long term inflation, however, work to create an undue hardship on individuals who are unable to return to work and, therefore, adjustment of benefits is crucial to maintaining the adequacy of workers' compensation. In addition, a disincentive to return to work is created under the present statute since an employee's weekly compensation is adjusted from the first year of disability, and the employee is therefore receiving automatic increases while not working, perhaps resulting in the receipt of compensation which exceeds 66-2/3% of the wage the employee would receive if he returned to work.

8. THE LEGISLATURE SHOULD PROVIDE FOR A SPECIFIC LIST OF INTERNAL ORGANS WHICH ARE INTENDED TO BE COVERED BY THE STATUTE AND INDICATE THE COMPENSATION TO BE PAID FOR THE LOSS OF EACH ORGAN UNDER THE PERMANENT PARTIAL SCHEDULE. (Voice Vote)

Currently, the statute which provides for the compensation for loss of internal organs is vague and unclear in that it allows for compensation in an amount "for that proportion of 500 weeks which is the proportionate amount of disability caused to the entire body by the injury. . ." This language has resulted in inconsistent, confusing and subjective compensation awards and an increase in litigation. It is the commission's belief that the Legislature should therefore specifically list the compensation for the impairment of internal organs in the same manner that other parts of the body are listed. This list would provide

workers' compensation judges, claimants and insurers with an objective method of evaluating the effect the loss of an organ has on the person, and reduce litigation.

9. THE LEGISLATURE SHOULD REMOVE THE STATUTORY PRESUMPTION THAT HEART AND ARTERIAL DISEASE AND PNEUMONIA SUFFERED BY PEACE OFFICERS ARE OCCUPATIONALLY RELATED AND THUS COMPENSABLE. (Voice Vote)

Peace officers should not be treated differently than other employees when proving whether a heart or arterial disease and pneumonia are work related. They should be required to prove the work relatedness of these conditions rather than having a statutory presumption working in their favor.

Judicial decisions in other states which have similar statutory provisions have made it virtually impossible to overcome this presumption resulting in the compensability of all heart or arterial disease and pneumonia for all peace officers in spite of strong evidence that the condition may not be work related. This has caused severe problems for the workers' compensation system in other jurisdictions and it is the commission's belief that a similar situation may be averted in Minnesota as a result of this change.

10. THE LEGISLATURE SHOULD REMOVE THE CONCLUSIVE PRESUMPTION OF DEPENDENCY ON BEHALF OF WIDOWS WHERE DEATH RESULTS FROM A WORK RELATED INJURY AND IN ITS PLACE CREATE A CONCLUSIVE PRESUMPTION OF DEPENDENCY IN FAVOR OF BOTH WIDOWS AND WIDOWERS. THIS PRESUMPTION SHOULD EXIST FOR TWO YEARS FROM THE DATE OF DEATH DURING WHICH TIME WEEKLY COMPENSATION WILL BE PAYABLE TO THE WIDOW OR WIDOWER. FOLLOWING THIS PERIOD AN OFFSET OF 50% OF INCOME EARNED BY THE SURVIVING SPOUSE SHOULD BE APPLIED TO THE WEEKLY BENEFITS UNTIL SUCH TIME AS 50% OF THE EARNED INCOME IS EQUAL TO THE FULL BENEFIT DUE AT WHICH TIME THE RIGHT TO FURTHER DEATH BENEFITS SHOULD CEASE. (Voice Vote)

Presently, women are conclusively presumed to be wholly dependent on their spouses while men must prove dependency. In order to assure the constitutionality of the dependency statute and provide for equal treatment of both men and women, this inequitable situation must be corrected. The existing statute results in full compensation payments to a widow for the rest of her life (or until she remarries) even if in fact she was never wholly dependent or is subsequently employed in a high paying position. However, the commission believes that in order to assist a widow or widower during the two years immediately following the death of a spouse,

death benefits should be paid. The offset which will take effect subsequent to the two year period will create an incentive for the surviving spouse to become employed since a portion of the benefit otherwise payable will be retained while outside income is earned. However, the offset will result in a savings to insurers since rather than paying full benefits to a widow for the remainder of her life, these benefits will be reduced by 50% of the income earned until that offset is equal to the death benefit at which time the right to the death benefit ceases. The commission believes that the incentives to gainful employment for both widows and widowers will result in cost savings in these very expensive long term cases and will also result in an improved standard of living for the claimants.

11. THE LEGISLATURE SHOULD PROVIDE THAT ACCRUED BENEFITS BE PAID TO DEPENDENTS IF THE EMPLOYEE DIES PRIOR TO THE PAYMENT OF BENEFITS. (Voice Vote)

Since weekly compensation benefits are intended to compensate for wage loss resulting from an injury and since an injured employee who dies prior to the payment of accrued benefits has nonetheless suffered a wage loss while he or she was disabled, no reason exists not to permit payment to dependents. These dependents have also suffered a financial hardship during the period of disability which should be compensated despite the death of the employee. Moreover, the present statute is inconsistent in that it permits accrued permanent partial disability benefits to be paid to dependents despite the death of the employee while not permitting the payment of accrued temporary total disability benefits following the death of the employee.

12. THE LEGISLATURE SHOULD PROVIDE FOR PAYMENT OF DEATH BENEFITS TO A CHILD UNTIL AGE 25 IF AND WHILE THE CHILD IS ENROLLED AS A FULL TIME STUDENT IN AN ACCREDITED EDUCATIONAL INSTITUTION. (NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS, ESSENTIAL RECOMMENDATION #3.25.) (Voice Vote)

The commission believes that the developments in recent years which have made it necessary in many cases to continue one's education for a longer period than was contemplated at the time of the enactment of the existing statute, require extending death benefits to a child until age 25 in some cases. Therefore, in order to provide for the complete education of a child whose supporting parent

has died as a result of a work related injury, death benefits should be paid until age 25 rather than the present age of 21 years where the child is a full time student.

13. THE LEGISLATURE SHOULD EXTEND MANDATORY WORKERS' COMPENSATION COVERAGE TO ALL ELECTED AND APPOINTED OFFICIALS OF POLITICAL SUBDIVISIONS. (NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS, ESSENTIAL RECOMMENDATION #2.6.) (Voice Vote)

Presently, all governmental employees are mandatorily covered by the workers' compensation laws except officers of a political subdivision who are elected or appointed for a regular term of office. These employees are covered only when the governing body of that subdivision adopts an ordinance or resolution providing for coverage. In order to protect these employees and their dependents from the hardships of an injury or disability and protect political subdivisions from tort actions, coverage should be made mandatory rather than elective.

RETRAINING AND REHABILITATION

14. THE LEGISLATURE SHOULD IMPLEMENT THE FOLLOWING REHABILITATION AND RETRAINING PROPOSALS OF THE WORKERS' COMPENSATION ADVISORY COUNCIL. (THE ADVISORY COUNCIL, A SEPARATE AND DISTINCT BODY FROM THE WORKERS' COMPENSATION STUDY COMMISSION, IS A PERMANENT BODY CREATED BY STATUTE TO STUDY WORKERS' COMPENSATION.) (Voice Vote)

1. Any injury producing permanent disability which will prevent an employee from adequately performing the duties of the occupation held at the time of injury should be referred for rehabilitation consultation and subsequent services where feasible.

2. Vocational rehabilitation services should be those training services designed to return the individual to (1) a job related to former employment; (2) a job in a nonrelated work field which produces an economic status as close as possible to that enjoyed prior to the disability with priority given to the former where possible.

Rehabilitation to a job with higher economic status, then held before the disability, should be allowed if, as a practical matter and because of physical limitation this is the only vocation for which the individual can be trained.

3. Rehabilitation Administrators. The Commissioner of Labor and Industry should be authorized to hire qualified Administrators of Rehabilitation and other assistance as may be necessary to carry out the responsibilities laid out in this recommendation. These personnel should be responsible to the Commissioner.

It should be the responsibility of these Rehabilitation Administrators under the direction of the Commissioner of Labor and Industry to supervise the delivery of all rehabilitation services provided for. The Rehabilitation Administrators should have the power to approve, modify or disapprove plans submitted to the Department.

In the event of a dispute by an insurer, employer or employee with respect to a plan approved, modified or rejected by the Administrator, upon the request of any party, the plan should be submitted to the Rehabilitation Review Panel for determination.

4. Rehabilitation Review Panel. There should be established a Rehabilitation Review Panel composed of the Commissioner of Labor and Industry or his designated Representative, equal representation from labor, employers, insurers, vocational rehabilitation, physicians and other medical specialities, each of whom should be qualified by experience and training and appointed by the Governor.

It should be the responsibility of this panel to review and make determination of appeals filed with regard to rehabilitation programs; hold revocation of approval hearings as necessary; continuously study rehabilitation, both physical and vocational, and develop and recommend rehabilitation regulations to the Commissioner of Labor.

5. Rules and Regulations. The Commissioner of Labor and Industry, in consultation with the Rehabilitation Review Panel and other interested parties, should promulgate rules and regulations governing approval of applications for accreditation of all public and private rehabilitation facilities and all functions, staffing, etc. desiring to provide workers' compensation rehabilitation services.

The Commissioner should approve any public or private rehabilitation facility or institution meeting the standards as set forth by rule. The Commissioner should have the authority to revoke approval, if after hearings by the Rehabilitation Review Panel, it is found such facility is not conducting itself according to the requirements of the regulations set forth by the Department.

6. Plan Formulation. Within 30 days or immediately when the employer/insurer has medical information that an injured employee will be unable to return to his pre-injury occupation or employment for which he has previous training or experience, the employer/insurer should provide for rehabilitation consultation for the employee. In case of failure by the employer/insurer to provide rehabilitation the rehabilitation administrator should notify the division of vocational rehabilitation so that it may provide these services. Upon determination that a program of rehabilitation would significantly reduce or eliminate the decrease in employability, the rehabilitation consultant should develop a specific plan for submission by the employer/insurer to the Rehabilitation Administration of the Department of Labor.

Disabled employees should be required to submit to all reasonable requests for examination and evaluations considered necessary to determine need for rehabilitation, or to develop a plan for rehabilitation and to cooperate in implementation once a plan has been developed and approved.

In developing the plan, consideration should be given to the employee's age, education, previous work history, interests and skills.

On-the-job training should be specifically allowed where such training would produce an economic status similar to that enjoyed prior to the disability.

If after consultation with an accredited rehabilitation facility it is felt, that due to the disabled worker's age, education, disability, etc., successful rehabilitation is unlikely that determination should be filed with the

Rehabilitation Administrator.

7. Where on-the-job training is provided in the rehabilitation plan, the plan may compensate an employee up to the wages earned prior to disability in lieu of temporary total disability payments otherwise authorized by the Act, for a limited time. Such subsidization should be extended for an additional period upon request by the rehabilitation facility to the insurer/employer for an extension if the extension is approved by the Rehabilitation Administrator.

Compensation in part or in full shall be made to an employer, who is willing to provide on-the-job training to a disabled worker when the on-the-job training would normally be economically disadvantageous.

8. Reporting. Upon approval of a rehabilitation plan by the Rehabilitation Administrator, the rehabilitation facility should provide periodic progress reports to the Department of Labor, employer and insurer.

9. Plan Modifications. Upon application by an employer, insurer, or disabled worker to the Rehabilitation Administrator, the plan should be suspended, terminated or changed upon a showing of good cause, including but not limited to:

a. A physical impairment that would not allow the worker to follow the vocation being trained for;

b. The worker's performance level indicates he cannot complete the course satisfactorily;

c. The worker fails or refuses to cooperate in the program;

d. The worker requests termination of the program in favor of a different program because he feels he is not suited for the type of work for which training is being provided. A change of program for this reason should only be ordered once, and only if the request is made by the worker within 90 days after commencement of the training period.

Appeal of such a change should be filed with the Administrator within 15 days for hearing by the Rehabilitation Review Panel for final determination.

10. Rehabilitation Costs. Rehabilitation expenses to be covered by the employer should be limited to:

a. Cost of vocational rehabilitation diagnosis and formulation of plan.

b. Cost of all rehabilitation services and supplies deemed necessary for the implementation of the approved plan.

c. Tuition, books and the reasonable costs of board, lodging and travel when rehabilitation requires residence away from the employee's customary residence.

d. Any other necessary expense agreed to by the insurer/employer.

* * *

The adoption of this proposal will result in the addition of features not presently found in the law and will result in better quality retraining leading to a quicker return to work of workers' compensation recipients, thereby reducing the cost for benefits which are currently paid to injured employees who have been unable to return to work and at the same time improving the standard of living of the injured employee.

The primary objective of the proposal is retraining the employee in a field which the employee is physically able to handle and which will lead to an economic status which is comparable to the economic status held prior to the injury. The proposal permits retraining to be certified by private rehabilitation agencies properly accredited by the commissioner of labor and industry. The present practice is for the division of vocational rehabilitation to certify retraining. By permitting private agencies to develop retraining programs, the commission believes retraining will occur in areas which demand new entrants and the overall quality of retraining will be improved, thereby enhancing the employment prospects of the retrained employee.

On-the-job training is encouraged by the Council's proposal. The commission believes that emphasis should be placed upon on-the-job training wherever possible. When an employee is retrained and at the same time is earning an income, two objectives are reached, that is, re-entry into the job market with a restoration of earning capacity and a reduction in the costs of compensation.

The participation of the insurer and employer in the rehabilitation process is a point which the commission and the council agree must be encouraged since the insurer/employer has an important interest in the successful conclusion of rehabilitation. Currently the only input the insurer/employer has is to object in a judicial proceeding to the retraining plan developed by the division of vocational rehabilitation. We recommend, therefore, that the insurer/employer be permitted to choose the rehabilitation agency which will be responsible for developing and carrying out the plan.

In addition, it is the conclusion of the commission and council that the department of labor and industry be involved in the rehabilitation process. Therefore, we recommend that authorization be given to the commissioner of labor and industry to hire "rehabilitation administrators" who would be responsible for supervising the delivery of rehabilitation services, including approval, modification or rejection of all rehabilitation plans developed for an employee.

Finally, in order to assure fair determinations in the event of disputes regarding approval of a rehabilitation plan or modification of a plan, a "rehabilitation review panel" is proposed. This would allow each side to a dispute to air their concerns and present their cases. Such a vehicle will reduce the litigation which the workers' compensation court of appeals and compensation judges now handle thereby freeing some time of an already overburdened court. Although final appeal to the court would still be permitted, it is the opinion of the commission that in most cases the "review panel's" decision would satisfy all sides.

ADMINISTRATION

Department of Labor and Industry

15. THE LEGISLATURE SHOULD PROVIDE THE COMMISSIONER OF LABOR AND INDUSTRY WITH THE AUTHORITY TO PROMULGATE BY RULE, SCHEDULES WHICH WOULD PERMIT AN OBJECTIVE ASSESSMENT OF DEGREE OF DISABILITY. IN PROMULGATING THESE RULES THE COMMISSIONER SHOULD EXAMINE THE SCHEDULES IN USE IN WISCONSIN, CALIFORNIA, AND OTHER STATES, THAT OF THE AMERICAN MEDICAL ASSOCIATION AND OTHER APPROPRIATE SOURCES. THE LEGISLATURE SHOULD PROVIDE ADDITIONAL FUNDING TO THE DEPARTMENT OF LABOR FOR THIS PURPOSE. (Voice Vote)

Conflicting estimates of the injured worker's degree of disability are commonplace in workers' compensation litigation. The defendant's physician may determine that the disability represents a loss of 10 percent, while the plaintiff's physician may report a 40 percent loss. Of course, the benefits to be paid depend upon the degree of such disability. Current Minnesota law provides few means to objectively evaluate the degree of disability in order to avoid the arbitrary selection of one physician's estimate or the averaging of the two. Several other states, however, have adopted by statute or regulation schedules designed to provide an objective assessment of the degree of disability.

The commission believes that there will always be a margin of subjectivity in determining how much of the productive use of an arm, for example, has been lost due to an accident. But we also think that the extent of the present variance in the evaluation of similar injuries is not justified. The lack of routinely applicable, objective criteria for determination of degree of disability is an invitation to unnecessary litigation and needlessly complicates medical fact questions. The resulting uncertainty is unfair both to claimants and insurer/employers. The commission therefore recommends that the legislature provide the commissioner of labor and industry with funds and authority to study the schedules used by Wisconsin, California and other states and the American Medical Association Guide to the Evaluation of Permanent Impairment to objectively assess degree of disability.

16. THE DEPARTMENT OF LABOR AND INDUSTRY SHOULD CONSULT WITH THE MEDICAL AND CHIROPRACTIC PROFESSIONS TO DEVELOP A MEDICAL FEE SCHEDULE. (Voice Vote)

The increase in medical expenses in workers' compensation has encouraged several states to adopt a fee schedule covering some medical procedures performed under the workers' compensation laws. In Minnesota

medical expenses covered by workers' compensation totaled $43,277,348.00 in 1976, an increase of 260 percent over 1969. As in the health area generally these costs are bound to continue to escalate unless steps are taken to control them. The commission recommends that the legislature authorize the commissioner of labor and industry to devise and promulgate a schedule of fees (i.e. a relative value index) for the more frequently performed workers' compensation medical procedures, and to seek the advice of the professional associations of physicians and chiropractors in developing this schedule.

17. THE DEPARTMENT OF ADMINISTRATION SHOULD, WITH THE OPTION OF HIRING OUTSIDE CONSULTANTS, STUDY AND MAKE RECOMMENDATIONS FOR THE IMPROVEMENT OF THE DEPARTMENT OF LABOR AND INDUSTRY DATA AND RECORD-KEEPING SYSTEMS, WITH SPECIAL ATTENTION TO COMPUTER AND MICROFILMING APPLICATIONS. (Voice Vote)

Effective oversight of the workers' compensation system by the legislature and the executive branch depends upon adequate information about past experience. Because sufficient staff has never been available for this purpose, past data on workers' compensation and even relatively current records have not been easily accessible to the department of labor and industry or to legislative staff. Since genuine control over both costs and the quality of services provided requires dependable and flexible data systems, the commission recommends that the legislature authorize the department of administration with the assistance of outside consultants, if appropriate, to study the department of labor and industry's workers' compensation record-keeping and data systems and make recommendations for their improvement, including possible microfilm and computer applications.

18. THE LEGISLATURE SHOULD PROVIDE FOR AN INCREASE IN THE STAFF OF THE DEPARTMENT OF LABOR AND INDUSTRY WHICH MONITORS SELF-INSURING EMPLOYERS. (Voice Vote)

Self-insurance against workers' compensation claims is available in Minnesota to those employers who meet the financial, bonding and excess insurance requirements of the department of labor. Currently 100 private and 18 public employers self-insure for workers' compensation. These employers have paid approximately 10-12 percent of workers' compensation benefits in Minnesota in recent years. The increase in commercial workers' compensation insurance rates is likely to encourage other employers to self-insure. In addition, during the

last session, the legislature amended the statute to permit smaller employers to jointly self-insure as of August 1, 1979.

The department of labor and industry has been hard-pressed to adequately monitor self-insured employers and this situation will be exacerbated as joint self-insurance applications are received. The department must process applications, evaluate employers' financial status and responsibility, check excess insurance coverage and assure that workers' compensation reserves are adequately maintained. Almost all the employers who self-insure have payrolls in excess of $1,000,000 annually, so that these functions are not easily performed.

The commission has concluded that self-insurance in workers' compensation ought to be encouraged, insofar as is consistent with proper guarantees that payments will be made when due. However, in order to do so, an increase in the staff of the department of labor and industry is necessary.

Notice

19. FIRST REPORTS OF INJURY SHOULD BE COMPLETED BY THE EMPLOYER IN TRIPLICATE, WITH COPIES SUBMITTED TO THE INSURER AND THE WORKERS' COMPENSATION DIVISION. (Voice Vote)

20. THE LEGISLATURE SHOULD PROVIDE THAT THE CURRENT REQUIREMENT THAT NOTICE OF INJURY MUST BE GIVEN TO AN EMPLOYER WITHIN 180 DAYS AFTER THE INJURY, IS NOT SATISFIED BY NOTIFICATION TO THE EMPLOYER BY A MEDICAL CARRIER THAT AN EMPLOYEE IS RECEIVING TREATMENT OR PAYMENTS FOR SUCH MEDICAL TREATMENT, UNLESS THE NOTICE EXPRESSLY INDICATES THAT THE TREATMENT IS FOR A WORK RELATED CONDITION. (Voice Vote)

21. WHERE AN EMPLOYEE IS UNABLE, BECAUSE OF MENTAL OR PHYSICAL INCAPACITY, TO GIVE NOTICE OF INJURY TO THE EMPLOYER WITHIN 180 DAYS FROM THE INJURY THE TIME WITHIN WHICH THE EMPLOYEE SHOULD BE REQUIRED TO GIVE NOTICE SHOULD BE EXTENDED TO 180 DAYS FROM THE DATE THE INCAPACITY CEASES. (Voice Vote)

Prompt notice of injury by the employee to the employer and by the employer to the insurer and the department of labor and industry is crucial in any program to reduce litigation of workers' compensation claims. Unnecessary delay in notice is unfair to other parties and prevents the most effective medical and rehabilitative services as well. There are occasions, however, when notice cannot be given immediately and these should be provided for in the laws. The commission believes that the above three recommendations represent

the best method of encouraging prompt notice while accommodating those situations where justice requires more latitude.

A triplicate form designed by the department of labor and industry to provide direct, immediate notice of death or injury to the insurer and the division of workers' compensation would help to avoid delay at the crucial point following the injury itself. The commission recommends that the legislature mandate the development of such a model form, actual copies to be provided by insurers to their insured employers.

The commission believes that enforcement of the current notice provision requiring notice within 180 days of the injury will impose no hardship on diligent claimants.

This requirement has had limited effect because of court decisions. A particular problem has been that notice of payment or treatment by medical carriers has been taken to constitute notice of a work related injury. The commission believes that notice to the employer should be actual notice and that medical carriers' treatment and payment forms should not ordinarily constitute such notice.

Notice allows the employer to gather facts, notify his insurer and the department of labor and industry and to prepare to pay or contest the claim. Practically no claims may be denied by such a time limit but it is necessary that the employer and the insurer be protected against undue delay. The alternative is uncertainty and uncontrolled exposure to liability which tends to unnecessarily increase costs to all employers without corresponding improvement in benefits.

This notice requirement, however, would be unfair in cases where the employee is mentally or physically incapacitated to such an extent that he cannot give the notice within 180 days from the injury. The commission therefore recommends that an incapacitated employee be given 180 days from the end of the incapacity to give a notice of injury to the employer. This recommendation would make the notice of injury requirement consistent with the statute which imposes a statute of limitations for court actions. The statute of limitations is currently extended for three years after a mental or physical incapacity ceases.

22. THE COMMISSIONER OF LABOR AND INDUSTRY SHOULD FURNISH TO EMPLOYERS COVERED BY WORKERS' COMPENSATION A BOOKLET EXPLAINING THEIR RIGHTS AND OBLIGATIONS UNDER THE STATUTES AND RULES. (Voice Vote)

23. THE COMMISSIONER OF LABOR AND INDUSTRY SHOULD DEVELOP AN INFORMATIONAL BROCHURE TO BE DISTRIBUTED TO EMPLOYEES UPON FIRST REPORT OF INJURY. THE BROCHURE SHOULD MINIMALLY INCLUDE AN INJURED EMPLOYEE'S RIGHTS UNDER THE LAW, ASSISTANCE AVAILABLE TO THE EMPLOYEE, AND THE OPERATION OF THE COMPENSATION SYSTEM. (Voice Vote)

24. A NOTICE ADVISING EMPLOYEES OF THEIR RIGHTS UNDER THE LAW, ASSISTANCE AVAILABLE TO THEM, AND THE OPERATION OF THE COMPENSATION SYSTEM SHOULD BE POSTED IN ALL PLACES OF EMPLOYMENT. (Voice Vote)

Several national studies of workers' compensation costs (the Teknekron, Burton and Tebb studies, for example) have concluded that the absence of early intervention and a lack of information about the workers' compensation system is a major cause of litigation in the system. High litigation rates, in turn, are more closely associated with high workers' compensation costs than any other factor, apart from benefit levels. Though there are states with litigation rates as high as 68 percent of first injury reports, Minnesota's rate of 9.95 percent places it within the top six of seventeen comparable states studied by the commission staff. Wisconsin's rate is only 3.8 percent, while Iowa's is 1.89 percent. South Dakota's is .52 percent and North Dakota's is less than .10 percent.

The commission's study of the problem of litigation rates has convinced us that litigation, and the high overall workers' compensation costs associated with litigation, can be reduced in Minnesota by early intervention and the relatively simple step of providing immediate information to the injured employee especially, and to the employer, before frustration, misinformation and resentment produce unnecessary conflict. As a result of the Tebb study the California Workers' Compensation Institute has begun to provide information material for employees and employers. Wisconsin currently mails a booklet to every injured employee and the commission's comparison of Minnesota and Wisconsin concluded that this may be one of the major reasons for Wisconsin's lower rate of litigation.

Providing immediate trustworthy information to injured workers and to employers will facilitate legitimate claims, encourage settlements and avoid the delays and uncertainty which tend to produce unnecessary litigation. The administrative burden of litigated claims on the state and on insurers and employers will be lessened and the workers' compensation costs associated with the administration of litigated claims and higher awards after litigation will be reduced.

25. THE LEGISLATURE SHOULD EXPAND THE WORKERS' COMPENSATION COURT OF APPEALS TO FIVE MEMBERS. OF THESE FIVE MEMBERS, TWO MEMBERS SHOULD BE APPOINTED TO REPRESENT EMPLOYEES, TWO MEMBERS SHOULD BE APPOINTED TO REPRESENT EMPLOYERS, AND ONE MEMBER SHOULD BE A NEUTRAL PUBLIC REPRESENTATIVE. THE NEUTRAL INDIVIDUAL AND AT LEAST ONE OF THE EMPLOYEE AND ONE OF THE EMPLOYER REPRESENTATIVES SHOULD BE REQUIRED TO BE LEARNED IN THE LAW. (Voice Vote)

Originally the Workers' Compensation Court of Appeals consisted of three members, learned in the law, appointed to represent, respectively employers, employees and the public. This was changed to drop the representative character of the appointments. The commission believes that it would be advisable to restore the representative character of the appointment process.

The representational character of the Court of Appeals is an important and symbolic way of assuring confidence in the fairness of the workers' compensation system. It will also help to develop, in the court's opinions, the genuine differences on issues that do occur, which will assist the Supreme Court in the final resolution of such issues.

In accordance with this representational character of the Appeals Court the commission also recommends that the requirement of legal training be mandatory for only three of the five judges. We think that the perspective of non-attorneys would be helpful in the resolution of some issues and that the presence of at least three attorneys will assure that the issues requiring legal background will not suffer as a result.

The increase in the number of judges from three to five which the commission is also recommending is motivated by the desire to expedite the increasing number of litigated cases. Appeals to the Appeals Court increased about 70 percent between fiscal 1977 and 1978 and the commission believes that an adequate resolution of these appeals, for the parties involved and for others whose claims will turn on the appeal ruling, requires additonal judges.

26 THE WORKERS' COMPENSATION COURT OF APPEALS SHOULD BE PHYSICALLY SEPARATE FROM THE DIVISION OF WORKERS' COMPENSATION. (Voice Vote)

The Workers' Compensation Court of Appeals is presently housed with the Department of Labor. Since department workers' compensation attorneys argue appeals before the Appeals Court as defense counsel

for the state and as plaintiffs' counsel for individual claimants, the commission feels that it would be more appropriate for the Appeals Court to be housed elsewhere. In addition, the commission feels that this recommendation will enhance the Court of Appeals' image as an independent reviewing authority.

27. ADDITIONAL HEARING ROOMS SHOULD BE MADE AVAILABLE BY THE LEGISLATURE TO THE WORKERS' COMPENSATION DIVISION. (Voice Vote)

The number of claims hearings requested during fiscal 1978 was 4,574, which represents an increase of more than 50 percent over fiscal 1973. Though not all of these disputed claims result in a formal hearing, far more of them than in previous years are scheduled for a pre-hearing which does involve a workers' compensation judge.

Though several of the commission's recommendations are designed to reduce the rate of increase in litigation, simplify issues, and encourage settlements, the present facilities are entirely inadequate to handle even the present volume of hearings and pre-hearings. Since the resulting delays are burdensome to all parties, particularly to the injured worker, the commission recommends that the legislature provide funds for two additional hearing rooms in Minneapolis and one in St. Paul.

28. THE LEGISLATURE SHOULD PERMIT A WORKERS' COMPENSATION JUDGE TO CONSIDER THE WORKERS' COMPENSATION EXPERTISE OF THE ATTORNEY WHEN AWARDING FEES. (Prevailed 10-3)

The workers' compensation statute currently provides that important factors to be taken into account in determining attorneys' fees are: the amount involved, the difficulty of the issues, the time and expense necessary to prepare for trial, the responsibilities assumed by counsel, the nature of proof needed to be adduced and the results obtained.

The statute does permit a workers' compensation judge to take other factors into account since the list does not purport to be exhaustive and is described as "principles" to be applied in fee decisions, but the commission believes that this change will encourage attorneys to develop more expertise in workers' compensation. The result of such expertise will be attorneys who are better prepared, fewer and better-reasoned appeals and a just result for the parties.

Increased expertise ought to produce a more realistic appraisal of claims and thus should also reduce litigation and encourage settlement.

Special Fund

29. THE LEGISLATURE SHOULD ESTABLISH A REOPENED CASE FUND WHICH WILL BE LIABLE FOR ANY COMPENSATION DUE AN EMPLOYEE RESULTING FROM A REOPENING OF A WORKERS' COMPENSATION CLAIM IF THAT CASE IS REOPENED 7 YEARS FROM THE DATE OF AN INJURY OR 3 YEARS FROM THE DATE OF THE LAST COMPENSATION PAYMENT, WHICHEVER IS LATER. IN ADDITION, THE LEGISLATURE SHOULD PRECLUDE THE REOPENING OF CLAIMS AGAINST THE FUND IF THE CLAIM IS MADE MORE THAN 18 YEARS FROM THE INJURY OR 8 YEARS FROM THE LAST PAYMENT OF AN ORIGINAL AWARD, WHICHEVER IS LATER.

(Prevailed 13-0)

Currently, once a claim for compensation has been made, there is no bar to asserting a further claim at any time in the future. This uncertainty creates a further liability which must be accounted for in reserves for future claim payments. Additional reserves for this liability cause an increase in insurance costs.

The commission, however, has concluded that it would work an injustice to cut off the reopening of claims where there is additional evidence or changed conditions traceable to the injury. Instead we have decided to recommend the adoption of a Reopened Case Fund like the one in New York state to mitigate uncertainty and spread the losses involved.

The Fund would be administered, not as a separate entity, but as a part of the Special Compensation Fund and would be financed by an additional percentage assessment. The assessment in New York most recently was 3.85 percent of workers' compensation payments.

The commission believes that such a reopened case fund would provide for the reopening of claims where justice requires, alleviate the uncertainty about reserving among insurers and reduce the higher premiums to employers which this uncertainty produces. Claimants would receive benefits due them and individual insurers (and employers) would not have to pay such reopenings. Instead, an assessment on all insurers would serve to finance all reopenings, thus avoiding the necessity of considering potential reopenings in the determination of individual case reserves.

30. THE LEGISLATURE SHOULD PERMIT AN EMPLOYER TO REGISTER AN EMPLOYEE'S PRE-EXISTING CONDITION WITH THE "SPECIAL FUND" SUBSEQUENT TO AS WELL AS PRIOR TO AN INJURY TO THE EMPLOYEE. (Voice Vote)

The purpose of the "special fund" is to encourage employers to hire employees who have certain specified disabilities. By registering a pre-existing condition with the fund the employer avoids sole responsibility for an aggravation to the condition. Any disability compensation in excess of 52 weeks and all medical payments in excess of $2,000 are reimbursed by the fund to the employer. Failure to pre-register results in the employer being fully liable with no reimbursement from the fund. It is apparent to the commission that the provisions of the fund are not known to many employers and therefore many eligible conditions are not pre-registered. The commission believes that the requirement of pre-registering causes undue confusion, and unjustly penalizes an employer who is not aware of the present requirements. The fund should share the costs of an eligible condition in all cases whether or not pre-registration has occurred.

31. THE LEGISLATURE SHOULD PROVIDE THAT INVESTMENT INCOME FROM THE "SPECIAL FUND" BE PLACED BACK IN THE FUND, RATHER THAN IN THE GENERAL FUND. (Voice Vote)

The commission believes that returning investment income from the "special fund" back into that fund will effectively lower the assessments imposed on employers for the maintenance of the fund. The current practice of placing investment income in the general fund results in potential benefit dollars being used to subsidize other state programs. Growth of the special compensation fund will result in increased investment income, and this income will help maintain the assessments on employers at the lowest possible rate.

32. THE LEGISLATURE SHOULD PROVIDE THAT LIABILITY FOR AGGRAVATION OF EXISTING INJURIES TO INDIVIDUALS IN ON-THE-JOB TRAINING SHOULD BE ASSESSED AGAINST THE "SPECIAL FUND" AND NOT THE EMPLOYER.

(Prevailed 14-0)

The commission believes that an incentive should be provided to employers to hire previously disabled individuals in on-the-job training programs without fear of encountering a workers' compensation claim for the aggravation of a pre-existing injury. Should employers be held liable for the aggravation of an injury in this situation, few employers would risk hiring the disabled in anticipation of an accident adversely affecting their experience rating and workers'

compensation rates. Allowing such injuries to be paid out of the special injury fund will spread the risks to all employers and thus lessen the cost impact.

33. THE LEGISLATURE SHOULD PROVIDE THE COMMISSIONER OF LABOR AND INDUSTRY THE POWER TO AUTHORIZE THE PAYMENT, FROM THE "SPECIAL FUND", OF BENEFITS TO AN EMPLOYEE WHO SUFFERS A WORK RELATED INJURY, WHEN THE COMMISSIONER DETERMINES THE INJURY IS WORK RELATED AND THE SOLE ISSUE IS WHICH INSURER IS LIABLE. WHEN LIABILITY IS DETERMINED THE SPECIAL FUND SHOULD BE REIMBURSED BY THE LIABLE PARTY. (Voice Vote)

Currently, when a dispute arises between two insurers as to who is responsible for the compensation which is due an injured employee, the employee will often not receive compensation from any party until the issue is settled. Often this means a delay of many months with no source of income for the employee. Therefore, in order to assure that an injured employee is receiving compensation due him the special compensation fund should make the payments and be reimbursed by the insurer found liable at a later date.

Medical

34. THE LEGISLATURE SHOULD REQUIRE THE COMPENSATION JUDGES TO APPOINT A NEUTRAL DOCTOR FOR A THIRD MEDICAL OPINION AT THE REQUEST OF EITHER PARTY IN CONTESTED CASES. A LIST OF NEUTRAL DOCTORS SHOULD BE DEVELOPED BY THE DEPARTMENT OF LABOR AND INDUSTRY. (Voice Vote)

Present law permits a workers' compensation judge to appoint a neutral physician, on his own motion or that of either party, to render an opinion on the medical issues in a litigated workers' compensation claim, whether these issues relate to causation or the degree and character of the disability. The judge, however, is not required to appoint a neutral physician when requested by one of the parties.

The commission believes that there is good reason to broaden the scope of the present "neutral physician" provision. Medical opinion can become very polarized in workers' compensation litigation. Plaintiff's evidence and defendants' evidence may be quite far apart and in such cases the judge may be pressured to arbitrarily select one opinion or even to "average" the two opinions. The commission wishes to preserve the essentially adversary character of the determination of medical fact questions. But the option of a neutral physician's testimony at the request of either party would provide a check on the inconsistency of medical testimony and a means to provide a resolution of genuinely disputed medical issues which are

beyond the capacity of the court to resolve. A list of neutral physicians would be maintained by the department of labor and industry for this purpose. The commission therefore recommends that the legislature provide for a neutral physician's examination at the request of any party when any medical issue is in dispute in workers' compensation litigation.

35. THE LEGISLATURE SHOULD REQUIRE A MANDATORY SECOND OPINION ON CERTAIN ELECTIVE SURGICAL PROCEDURES COVERED BY WORKERS' COMPENSATION. (Voice Vote)

Second surgical opinions to confirm the advisability of elective surgical procedures have become common in the health insurance context as a means to avoid unnecessary elective surgery, defined generally as other than emergency surgery. Several studies have indicated that more than 25 percent of elective operations initially recommended will not be confirmed by a second opinion. The cost savings have proven greater than the administrative expenses of such programs.

The workers' compensation system covered $43,277,348.00 in medical expenses in 1976, an increase of more than 260 percent over 1969. A mandatory second opinion program could realize considerable savings in this area, and in indemnity benefits following operations, as well as preventing the unnecessary discomfort and pain associated with surgery. Such a system can be easily and routinely administered in workers' compensation. The ultimate choice as to which opinion to follow would remain with the injured worker, preserving the control of the patient over his own treatment.

36. THE LEGISLATURE SHOULD PROVIDE THAT MEDICAL CARRIERS PAY MEDICAL BENEFITS WHEN THERE IS A DISPUTE OF PRIMARY LIABILITY, AND PROVIDE THAT THE WORKERS' COMPENSATION CARRIER BE BILLED IF WORKERS' COMPENSATION LIABILITY IS THEN ESTABLISHED. (Voice Vote)

A liability dispute between the medical and workers' compensation carrier currently may result in a long delay before the injured employee's medical expenses are paid. This causes the employee unnecessary insecurity and may result in needed treatment being avoided. Since the workers' compensation carrier's liability is more likely to be challenged in litigation, the commission believes the most appropriate solution to this problem is to require the medical carrier to pay the expenses and the workers' compensation carrier to reimburse the carrier if liability is established.

Department of Insurance

37. THE LEGISLATURE SHOULD ELIMINATE THE CEILING ON SALARIES FOR HIRING AN ACTUARY BY THE INSURANCE COMMISSIONER. (Voice Vote)

Current law provides that the commissioner of insurance shall hire a casualty actuary. Actuaries in the private sector receive far higher salaries than the current insurance department salary ceiling of $28,800. Since an actuary is a highly trained individual the commission believes that making a statutory exception to the salary ceiling, such as that currently available to medical doctors, would enable the commissioner of insurance to hire an actuary with the workers' compensation experience necessary to enable the commissioner to more fully discharge his workers' compensation regulatory duties. At the present time the commissioner is forced to rely on much of the data and the calculations provided by the rating bureau, without the staff necessary to independently certify this data and confirm the calculations made. This is an unhealthy situation from the point of view of both the regulators and regulated. The commission feels that the importance of the rate decisions for all Minnesota employers and workers' compensation insurers justifies an exception to the salary ceiling for a senior actuary in order to assure that rates accurately reflect workers' compensation experience.

38. THE LEGISLATURE SHOULD INCREASE THE STAFF OF THE INSURANCE DIVISION TO ASSIST WITH RATE DETERMINATION, WITH SPECIAL EMPHASIS GIVEN TO EMPLOYING LEGAL ASSISTANCE AND AN ECONOMIST. (Voice Vote)

In addition to an actuary, the commission believes that additional professional and support staff, especially legal and economic assistance, should be added to the department of insurance to permit the department to most effectively discharge its regulatory and reporting duties with respect to workers' compensation.

Rating Bureau

39. THE LEGISLATURE SHOULD CHANGE THE NAME OF THE "MINNESOTA COMPENSATION RATING BUREAU" TO THE "WORKERS' COMPENSATION RATING ASSOCIATION OF MINNESOTA" AS OF OCTOBER 1, 1979. (Voice Vote)

The Minnesota Compensation Rating Bureau is not an agency of the state of Minnesota. It is an association of workers' compensation insurers for the purpose of centralizing workers' compensation data

and determining occupational classifications and workers' compensation rates. These functions are recognized by statute. The Bureau's determination on classifications are subject to approval of the commissioner of insurance and rate proposals are subject to the hearing process.

The current name of the Bureau nonetheless suggests that the Bureau is an official state agency and many employers have assumed this to be so. The commission feels that this potential confusion of regulators and regulated is not advisable. The commission is recommending elsewhere that clear lines of appeal to the insurance commissioner from the Bureau be established in rate and classification decisions, yet the Bureau's name may suggest to employers and others that a final, official decision has been made. The commission thus recommends to the legislature that the name of the Minnesota Compensation Rating Bureau be changed to the "Workers' Compensation Rating Association of Minnesota," effective October 1, 1979.

* * *

40. THE LEGISLATURE SHOULD PROHIBIT SUITS, BY AN EMPLOYEE ENTITLED TO WORKERS' COMPENSATION BENEFITS, AGAINST A FELLOW EMPLOYEE EXCEPT WHEN THE FELLOW EMPLOYEE HAS CAUSED THE WORKER'S INJURY INTENTIONALLY OR THROUGH ACTS OF GROSS NEGLIGENCE. (Voice Vote)

Workers' compensation was originally conceived as an exclusive remedy for industrial injuries. The employee lost the right to a common law tort recovery for an accident in return for the security of workers' compensation benefits, even in the absence of the employer's fault. Employers continue to be protected from tort action by employees eligible for workers' compensation, but under some circumstances other parties may be subject to tort claims whether workers' compensation benefits are received or not.

Where the other party has caused the injury by providing defective machinery or is an employer who has "borrowed" the employee, this result is an appropriate one. But the commission has concluded that it is anomalous to remove tort liability from employers, while retaining it for the simple negligence of co-workers of the injured employee.

Under current law an employee may sue his fellow worker for negligence and receive a portion of any recovery which is less than the total of workers' compensation benefits due, and all of the excess, while the employer is reimbursed from the recovery for any workers' compensation benefits paid. This tends to shift tort liability from employer to fellow employee in a manner never intended by the workers' compensation system.

The employer hires and has the authority to direct co-employees. He is liable for injuries due to their negligence, in any case, if the injured employee does not sue the co-workers. He is insured against just such accidents through workers' compensation. The commission thus concludes that the employer should be solely liable, through workers' compensation, for otherwise compensible injuries caused by negligent acts of co-workers of the injured employee. Where the acts of the co-worker are intentional, however, or grossly negligent, it would be unfair to make the employer liable. An injured employee should thus still be able to recover from a co-worker in those situations.

41. THE LEGISLATURE SHOULD PROVIDE THAT EMPLOYEES GIVE NOTICE TO THEIR EMPLOYERS IN ALL CASES WHERE THE EMPLOYEE IS FILING A CLAIM FOR OR SEEKING A CHANGE IN COMPENSATION, RETRAINING OR OTHER WORKERS' COMPENSATION BENEFITS. (Voice Vote)

Currently, when an employee desires to file an original claim, undergo retraining, make a change in a certified retraining program or seek some other change in compensation, a petition is filed with the workers' compensation division. The commission believes that the filing of a petition causes the parties to adopt a posture which results in increased and often unnecessary litigation. If a notice requesting the changes were filed with the employer prior to the filing of a petition, it is the commission's view that many employers would agree to the requested change or an amicable agreement could be reached by the parties without the need to enter into litigation. If no agreement could be reached, the employee would still have the right to file a petition with the workers' compensation division.

INSURANCE/RATEMAKING

42. THE LEGISLATURE SHOULD PROHIBIT RETROACTIVE RATE ADJUSTMENT (Prevailed 10-4)

Retroactive rate adjustments have created a problem affecting the bidding practices of several industries (construction and transportation particularly). When bids are made on a project which may last several months, workers' compensation costs are calculated as a percentage of the bids. Following completion of the project, a retroactive rate adjustment may add an unanticipated surcharge to the employer's costs resulting in an injustice to the employer. Prohibiting retroactive rate adjustments will eliminate this inequity.

43. THE LEGISLATURE SHOULD GIVE THE COMMISSIONER OF INSURANCE THE AUTHORITY TO ESTABLISH BY RULE AN AUTOMATIC RATING FORMULA (TO BE DEVELOPED WITH THE ASSISTANCE OF THE INSURANCE INDUSTRY AND OTHER INTERESTED PARTIES) WHICH WILL ALLOW PREMIUMS TO BE AUTOMATICALLY ADJUSTED AS A RESULT OF LEGISLATED BENEFIT CHANGES. THE AUTOMATIC INCREASE AS WELL AS THE BENEFIT CHANGES SHOULD TAKE EFFECT ON JANUARY 1. (Prevailed 8-6)

By prohibiting retroactive rate increases as suggested by the prior recommendation, insurers may be denied sufficient premiums associated with benefit changes occurring during a policy year. There is currently no prospective method available to determine the cost implications associated with legislated changes in the workers' compensation law. The Legislature should allow the commissioner of insurance to implement an automatic rating formula to be applied to mandated changes to calculate the costs associated with the changes in the law. Once determined, the associated costs and the mandated change would become effective concurrently on January 1. The commission recommends that this recommendation and recommendation 42 be considered together and that one not be adopted without the other.

44. THE COMMISSIONER OF INSURANCE SHOULD REVIEW DURING RATE HEARINGS ANY AUTOMATIC RATE CHANGES WHICH HAVE TAKEN EFFECT SINCE THE PREVIOUS RATE HEARING AND THE COMMISSIONER SHOULD HAVE THE AUTHORITY TO GRANT A RESCISSION AND PROSPECTIVE PREMIUM REDUCTION AS NECESSARY. (Voice Vote)

To assure that there have been no miscalculations in the automatic rating formula mentioned in the previous recommendation,

it is recommended that the commissioner of insurance annually review rate changes and be provided the authority to grant rescissions and prospective premium reductions as necessary. Since the commissioner is charged with the responsibility of overseeing rates generally, the commission believes the commissioner of insurance should have the authority to review automatic rate increases as well.

45. THE DIVISION OF PAYROLL FOR THE PURPOSES OF RATE CALCULATION SHOULD BE ALLOWED UPON THE REQUEST OF AN EMPLOYER IF AN EMPLOYEE FALLS WITHIN TWO RATE CLASSIFICATIONS AND THE EMPLOYER'S RECORDS SUPPORT SUCH DIVISION. (Voice Vote)

With few exceptions, the current rules of the National Council on Compensation Insurance (NCCI) specifically prohibit the payroll of any one employee being divided between two or more classifications. The NCCI requires that "the entire payroll of each employee shall be assigned to the highest rated classification representing any part of his work." This practice works a hardship on many employers, especially small employers. Often a small employer has an employee who spends just a small fraction of his time in work which is considered hazardous and the great majority of the time in work which is safe. However, because of the current practice, the employer is required to pay premiums on the employee as if all the time was spent doing the dangerous work. So long as the employer's records justify a division, there is little reason to continue this practice. This recommendation would end a practice many employers view as unfair. Division of payroll will permit employers' workers' compensation premiums to more accurately reflect the risk associated with an employee's actual work.

46. THE LEGISLATURE SHOULD PROVIDE A FORMAL HEARING PROCESS BEFORE THE COMMISSIONER OF INSURANCE FOR EMPLOYERS APPEALING A COMPENSATION RATING BUREAU CLASSIFICATION DECISION AND ALLOW THE COMMISSIONER TO ALTER CLASSIFICATIONS AND DETERMINE ADEQUATE APPLICABLE RATES.(Voice Vote)

The commissioner may review the acts of any insurer, bureau, or agent and make findings and orders requiring compliance with the law, subject to review by a writ of certiorari brought in the supreme court. The commissioner of insurance currently has the authority to "approve as correct" all classifications for compensation insurance, but there is no formal hearing procedure provided.

This recommended change would provide a formal hearing procedure to those employers who disagree with a bureau classification approved by the commissioner. Following the hearing process the commissioner

would have authority to modify rating classifications and determine appropriate rates.

47. THE LEGISLATURE SHOULD ESTABLISH A STATE REINSURANCE FUND WHICH WOULD PROVIDE EXCLUSIVE COVERAGE FOR ALL BENEFITS DUE ON CLAIMS CONTINUING AFTER FIVE YEARS FROM THE DATE OF INJURY. COVERAGE SHOULD BE PROVIDED DIRECTLY TO INSURERS AND SELF-INSURERS. THE REINSURANCE FUND SHOULD OPERATE ON A PREMIUM BASIS RATHER THAN BY ASSESSMENTS, AND INITIAL FUNDING SHOULD BE PROVIDED BY THE SALE OF REVENUE BONDS. (Prevailed 9-7)

The commission's recommendation of a State Reinsurance Fund is designed to address two issues: (1) the difficulty of obtaining and the expense of commercial workers' compensation reinsurance and (2) the problem of "long tails" (the potential of long term liability on a given claim) in workers' compensation.

Workers' compensation insurance is sometimes carried in layers: one insurer (or a self-insuring employer) will assume liability for up to, for example $100,000 in claims arising from a single incident, with additional insurers assuming responsibility for amounts between $100,000 and $1,000,000; $1,000,000 and $5,000,000 and so on. Reinsurance refers to the insurance above the first layer, whether carried directly by the employer or by the employer's basic workers' compensation insurer. Companies issuing reinsurance coverage have declined in numbers in the last few years, because the risks are considerable, and some employers and insurers now complain that such reinsurance is both difficult to obtain and increasingly expensive. This shortage of suppliers reduces the number of firms who are able to self-insure, but it may also have the effect of making involuntary self-insurers of many employers whose insurers cannot obtain reinsurance at the upper end of their liability exposure.

The problem of "long tails" is related to the problem of reinsurance. "Long tails" is a problem of the potentially long duration of claims. Reinsurance addresses the problem of potentially large dollar amounts of claim. A workers' compensation claim may potentially result in benefits being paid for decades. Since the benefits involved are subject to a cost of living escalation and may be increased by future legislation or court interpretation as well, insurers face the prospect of long-term and increasing payments on a given claim, and reserve accordingly. This produces considerable upward pressure on premiums.

A state reinsurance fund is not a competitive state fund or an exclusive state fund. Several states which have no state workers' compensation fund, such as Wisconsin and Michigan, have a state reinsurance fund to cover catastrophic losses to self-insurers. The state reinsurance fund which the commission proposes would bear sole responsibility for payment of all workers' compensation benefits on any claim continuing after five years from the date of injury but would discharge this responsibility by reimbursing insurers and self-insurers for payments made on such claims and assessing appropriate premiums against them. This would provide more coverage than a catastrophic fund, but would leave all but the most expensive, risky and long-lived claims in the hands of commercial insurers and self-insuring employers themselves. Actual payments and claims administration, even on claims five years or older would remain in the hands of these insurers. The fund would be required to be actuarily sound. Initial capital would be provided by revenue bonding. Premiums would be paid by all insurers and self-insuring employers for such reinsurance coverage.

The commission believes that a state reinsurance fund would alleviate the shortage of commercial reinsurance and reduce the burden on insurers and self-insurers of long term escalating claim liability. Employers would be better able to self-insure and would not be forced to involuntarily carry their own exposure. The carriers' workers' compensation premiums could be reduced since insurers would be able to reserve in a much less conservative fashion with only five years of potential liability. The state reinsurance fund would be better able to assume the risk of expensive long term claims than individual reinsurers. A state reinsurance fund would also be able to provide effective coverage at lower reserve levels than private reinsurers. Its expenses might be less and investment income available from reserves might also reduce cost to employers.

48. THE COMMISSION RECOMMENDS THAT THE COMMISSIONER OF INSURANCE PROHIBIT ASSIGNED RISK POOL INSURERS FROM RECEIVING A HIGHER EXPENSE LOADING THAN IS ALLOWED FOR NON-ASSIGNED RISK POOL COVERAGE, EXCEPT FOR ACTUAL ADJUSTMENT EXPENSES, AS OPPOSED TO THE CURRENT

PRACTICE OF INCLUDING LOSS ADJUSTMENT WITH OTHER EXPENSE ITEMS.

(Voice Vote)

Presently there are twelve servicing carriers in the Assigned Risk Pool (ARP). The servicing carriers are assured that 35 percent of every premium dollar will be allowed for expenses and profit. They are also assured no loss under the ARP. If actual losses for any policy exceed 65 percent of premium, all other insurers are assessed for the additional expense.

This recommendation allows the servicing carriers of the ARP to receive the same percentages as the voluntary market, 70 percent for losses and 30 percent for expenses, with one exception. Loss adjustment expenses (claims management) would no longer be included as part of the 30 percent expense allowance, but would be included with the 70 percent of allowable losses inasmuch as they exceed the amount allowed in the normal rating formula. The servicing carriers are guaranteed no risk in the ARP since losses exceeding 70 percent (65 percent currently) are paid by the industry. Since the ARP is comprised of worse than average risks, the inclusion of loss adjustment expenses with losses might exceed the allowable 70 percent resulting in the combined losses and loss adjustment expenses in excess of 70 percent being paid by an assessment on the industry as a whole.

49. THE COMMISSION RECOMMENDS THAT THE COMMISSIONER OF INSURANCE CONSIDER AND RECOMMEND TO THE LEGISLATURE ALTERNATIVE MODES OF CONDUCTING RATE HEARINGS IN WHICH THE FORMAT WOULD BE MORE CONSISTENT WITH HIS POSITION AS NEUTRAL ARBITER THAN THE PRESENT CHAPTER 15 RULE-MAKING METHOD IN WHICH THE COMMISSIONER PROPOSES THE RATE.

(Voice Vote)

Prior to this year, no standard procedure for rate hearings was established. As a result, the Legislature placed the rate-making process under the Administrative Procedures Act (M.S. Ch. 15). It is the commission's view that the Chapter 15 process places the Commissioner of Insurance in the position of proposing the rates and thus becoming an advocate of the rates. This posture is inconsistent with the Commissioner's authority to approve, modify or reject the rate proposal submitted by the Compensation Rating Bureau. It is recommended that the Commissioner consider alternatives to the current procedure which may be more consistent with his role as a neutral arbiter. The Commissioner should submit such alternatives to the Legislature for consideration.

50. THE COMMISSIONER OF INSURANCE SHOULD ESTABLISH A MAXIMUM WAGE BASE (IN RELATION TO MAXIMUM BENEFITS) UPON WHICH PREMIUMS ARE TO BE CALCULATED. (Prevailed 14-0)

Presently an employer must pay workers' compensation premiums on the total payroll received by an employee. Relative to maximum benefits, there is no maximum wage base, as is true for example of social security taxes, upon which premiums are calculated. Differences in weekly salaries up to $314 for the same classification result in different levels of benefits. However, differences in salaries above $314 for the same classification result in different premium charges for the same level of benefits. The only exception to this rule is that the payroll of athletes, entertainers and executive officers is subject to a $300 limitation on which workers' compensation premiums are calculated. This change will assure that employers whose risk situation is identical will not pay different premiums solely because one pays higher wages than the other.

51. THE COMMISSIONER OF INSURANCE SHOULD REQUIRE INSURERS TO EXTEND THE EXPERIENCE-RATING SYSTEM TO MORE EMPLOYERS THAN ARE NOW COVERED BY THE $750 PREMIUM MINIMUM. (Voice Vote)

The experience rating plan in Minnesota is a comparison of actual losses to expected losses, based on the experience of three recent policy years. Low accident experience results in lower workers' compensation rates, while higher rates will accompany above average accident experience. The theory of experience rating states that the more immediate economic stake the employer has, the greater the incentive for that employer to reduce the employees' exposure to risk. Current qualifications for experience rating require employers to have a minimum annual premium of $750. The commission recommends that more employers be afforded the opportunity to benefit from good safety experience. It is expected that a credibility factor would have to be used to prevent one bad experience from having too large an impact on a small employer's premium, but the commission feels that the social benefits of broadened experience rating outweigh the rating problems.

52. THE COMMISSIONER OF INSURANCE SHOULD REQUIRE INSURERS TO USE LIFE EXPECTANCY TABLES, IF AVAILABLE, APPROPRIATE FOR PERSONS WITH EQUIVALENT DISABILITIES WHEN ESTABLISHING CASE RESERVES. (Voice Vote)

The commission believes that the use of an ordinary mortality table may not be proper when establishing case reserves for individuals whose life expectancy may be decreased due to disability or occupational disease. If appropriate tables are unavailable, the commission recommends that the commissioner of insurance urge their development.

53. THE COMMISSIONER OF INSURANCE SHOULD REQUIRE THE RATING BUREAU TO SEPARATE INCURRED BUT NOT REPORTED LOSSES FROM OTHER RESERVE COMPONENTS AND EXPLAIN HOW SUCH AMOUNTS HAVE BEEN DETERMINED. (Voice Vote)

Incurred but not reported losses are claims which have occurred but are not yet reported to the agent or agency. By statutory authority the commissioner of insurance requires every insurer to establish and carry such reserves. This recommendation will provide more detailed information on the reserving practices of insurers for use by the commissioner of insurance in setting rates and by the Legislature and the public in evaluating the rating system.

54. THE COMMISSIONER OF INSURANCE SHOULD REQUIRE THE RATING BUREAU TO SEPARATE PAID AND OUTSTANDING LOSSES IN RATE PROPOSALS. (Voice Vote)

Insurers currently report incurred losses to the commissioner of insurance. Incurred losses are composed of two elements, paid losses and outstanding losses for which a reserve has been established. As time goes on, reserved losses shrink as paid losses grow. Because of the "long tail" (payout period) associated with many workers' compensation injuries, reserves are kept open for many years after the policy year has elapsed. This recommendation would aid in understanding the reserving practices and payment procedures of the industry.

55. THE COMMISSIONER OF INSURANCE SHOULD REQUIRE INSURERS TO GIVE NOTICE WHEN AN INDIVIDUAL WORKERS' COMPENSATION CASE RESERVE IS ESTABLISHED WHICH IS IN EXCESS OF $50,000. (Voice Vote)

As in the previous two recommendations, the commission believes that more information is needed on the reserving practices of the insurance industry. By establishing such a notice requirement more information will be available on the major disability cases which represent the major cost components of workers' compensation. This may be used by the commissioner of insurance in

setting rates and by the Legislature and the public in evaluating the rating system.

56. THE COMMISSIONER OF INSURANCE SHOULD CONSIDER INSURERS' INVESTMENT INCOME ON WORKERS' COMPENSATION RESERVES WHEN ESTABLISHING RATES. (Voice Vote)

Investment income on workers' compensation reserves is not included in the ratemaking process. Investment income, which is a substantial part of the profit an insurer makes from the writing of workers' compensation insurance, is not directly considered in pricing this insurance. This profit is indirectly considered through the 2½% underwriting profit loading included in the rates. If the insurer were forced to return all of its investment income to insureds, the profit loading might have to be greater than 2½% to interest insurers in writing this coverage. On the other hand, it is possible that current investment income plus the 2½% produce an overall return that is unreasonably high. What is needed is a periodic reexamination of the 2½% to determine whether it is consistent with a reasonable overall rate of return. Since considerable investment income is generated by workers' compensation reserves, the commission believes that it should be considered in some manner in the ratemaking process.

57. PAIN SHOULD BE RETAINED AS A COMPENSABLE CONSIDERATION IN DISABILITY INDEMNIFICATION. (Voice Vote)

Although a recommendation was made to the commission to eliminate pain as a compensable consideration, the commission believes that pain when coupled with physiological symptoms should continue to be considered in determining compensation. Pain alone is not now compensable but is only considered a symptom of disability.

MOTIONS DEFEATED

1. APPORTIONMENT OF PERMANENT PARTIAL DISABILITY BETWEEN WORK RELATED AND NON-WORK RELATED CONDITIONS. (Defeated 7-7)

This proposed recommendation would have the effect of proportionally reducing an injured employee's workers' compensation award when a pre-existing non-work related condition contributed to the permanent partial disability resulting from an accident at work. If the disability were 30 percent due to the prior condition, for example, the award would be reduced by 30 percent. Since this condition was not caused by work, the argument is made that it should not be the basis of workers' compensation benefits. This proportion of the award, it is said, is simply a gratuitous payment to the injured employee and is both inconsistent with the theory of workers' compensation and unfair to the employer. Such a change could result in significant cost savings especially in compensation for cumulative problems such as those affecting the back and coronary system and cancer. The commission, however, concluded that such a system would be inequitable and would lead to a massive increase in litigation over the presence or absence and extent of pre-existing conditions. In any case, if the new injury results in a new permanent partial disability which did not exist even with the prior impairment, the loss to the employee is just as great as if there had been no pre-existing impairment.

The commission has recommended three different proposals which permit limited apportionment under certain conditions. The special injury fund now assumes liability after 52 weeks for the aggravation of certain registered pre-existing disabilities in a work injury. The commission has recommended that retroactive registration of these disabilities be permitted. The commission also recommends that the special injury fund pay all benefits due when aggravation occurs during an on-the-job training program. Recommendation is also made that a workers' compensation award be reduced by the amount of any previous permanent partial award when the disability previously compensated contributed to the second disability.

The commission believes that these recommendations adequately provide against unfairness to the employer in apportionment situations. The special injury fund will assume liability for long term benefits when certain pre-existing conditions can be proven, double payments will be encouraged by shifting the entire burden of aggravation to the fund. The fund spreads this cost to all employers so that the burden is a light one.

To strictly apportion permanent partial liability so that an injured worker bears the burden of a pre-existing condition, the commission thinks, is too harsh a result, especially since in many cases the pre-existing condition would not have caused any disability until the accident itself. In most liability producing situations (in common law tort actions, for example) the responsible party takes the victim "as he finds him" and cannot avoid responsibility for injury which is greater because of the victim's previous condition. This principle is a good one and it prevents the commission from endorsing apportionment in this form.

2. REDUCTION IN PERMANENT PARTIAL DISABILITY BENEFITS OF 2-1/2% FOR EACH YEAR AN EMPLOYEE IS OVER 52, WITH THE MAXIMUM REDUCTION BEING 50%. (Defeated 7-8)

This proposed recommendation would implement the Wisconsin system for reducing lump sum permanent partial benefit for older employees, on the theory that such awards are designed to replace lost future earnings which is the case of older workers will be substantially less than for younger workers.

The commission believes that such a reduction would be unjust since an injured employee who is 52 years of age or older suffers from pain and associated trauma for the same extent that a younger employee does when injured. Therefore, permanent partial compensation should be equal in both instances with no reduction based on age.

3. LIMIT THE RECEIPT OF DEATH BENEFITS TO 1,000 WEEKS (Defeated 1-13)

This proposal is premised on the belief that death benefits should provide transitional support for defendants of the injured worker, rather than lifetime income. A cap of 1,000 weeks would provide support for 20 years and proponents of the cap believe that this is ample time for dependent children to be educated and for widows and widowers to prepare for work.

The commission, however, believes that a cap on death benefits would run counter to the philosophy of workers' compensation in this state since it would result in a cessation of benefits without regard to the economic posture of the dependents of a dead employee. Rather, the approach the commission favors is reflected in recommendation #10 which will create an offset for income earned after 2 years from the date of death. In addition, the National Commission on State Workmen's Compensation Laws in essential recommendation #3.25 took a view contrary to this proposed recommendation in that it suggested death benefits not be limited in this manner.

4. REMOVE THE PRESENT PROHIBITION ON ATTORNEYS' FEES BEING PAID FROM SUPPLEMENTAL BENEFITS UNLESS THE RECEIPT OF SUCH BENEFITS IS THE ONLY ISSUE IN THE CASE. (Voice Vote)

This proposed recommendation was intended to encourage attorneys to take the cases of claimants who might otherwise go unrepresented because the fee would be inadequate with supplementary benefits excluded from the calculation.

Supplementary benefits, however, are virtually automatic once the liability for the basic award has been established and a certain time period has elapsed. The commission, therefore, believes that a fee based upon the basic award is adequate compensation and a sufficient incentive to pursue appropriate supplementary benefits as well. The commission thus recommends that the present prohibition of attorneys' fees being paid from supplementary benefits, except in cases in which the receipt of supplementary benefits is the sole issue, be retained.

5. PERMIT AN EMPLOYEE'S LEGAL FEES TO BE RECOVERED FROM THE SPECIAL COMPENSATION FUND WHEN THE ONLY ITEM IN DISPUTE IS WHETHER THE INSURER IS ENTITLED TO REIMBURSEMENT FROM THE FUND AND THE FUND IS EVENTUALLY FOUND LIABLE FOR SUCH REIMBURSEMENT. (Voice Vote)

This proposal was intended to encourage attorneys to represent workers' compensation clients who might otherwise go unrepresented in cases which might substantially affect their rights.

When the payment of benefits is not in dispute, merely who ought to pay them, the commission believes there is no reason to provide for the claimant's representation except on the usual terms. A frivolous denial of liability can be penalized by other means. The

commission thus recommends against the payment of the claimant's attorney's fees by the Special Compensation Fund when it is found liable, where the only item in dispute is whether the Special Fund or an insurer or employer is liable for payment.

6. WORKERS' COMPENSATION CLAIMS FOR STATE EMPLOYEES SHALL BE HANDLED BY THE DEPARTMENT OF PERSONNEL, RATHER THAN THE DEPARTMENT OF LABOR AND INDUSTRY. (Voice Vote)

Under current law the workers' compensation attorneys in the department of labor and industry are sometimes available if their workload permits, to serve as plaintiffs' attorneys for a claimant who wishes to be represented by them. They also represent the State of Minnesota, which self-insures, when it contests the payment of a claim to a state employee. Therefore, when a state employee has a claim against the state the attorneys employed by the department are not available to give free legal advice, and assistance to the state employee since the attorney must represent the state as a defendant.

The commission, however, has determined not to recommend this separation of functions since there is no evidence that state employees are unduly burdened as a result of the lack of free legal advice. The majority of injured employees throughout the state do in fact consult private attorneys since state attorneys are unable to handle many contested cases due to the volume.

7. REQUIRE THE COMMISSIONER OF INSURANCE TO ESTABLISH RATES BASED ONLY ON PURE PREMIUMS (ANTICIPATED LOSSES ONLY) WITH THE EXPENSE LOADING ALLOWED TO FLOAT IN OPEN COMPETITION. (Defeated 7-8)

The premise of this recommendation is that competition should be introduced into the workers' compensation insurance market. The current method of establishing rates includes allowances for anticipated losses (70%) and expenses and profit (30%). By establishing rates based only on pure premiums or anticipated losses, insurers might compete for business by reducing administrative expenses resulting in lower cost policies.

Though the argument was made that the long term effect of this recommendation may be to reduce rates, the commission believes that such a result is highly uncertain. The view of the commission is that the immediate impact whould be much higher rates and therefore did not adopt this recommendation.

8. INSURANCE RATES SHOULD BE DETERMINED BY OPEN COMPETITION. (Defeated 4-10)

This recommendation would have permitted insurers to set workers' compensation rates according to the market without any rate approval by the insurance division. Insurers would only be required to file their rates with the insurance division after which time the rates would become immediately effective. The commission believes that this recommendation would result at least in the short run in higher premiums to all employers.

9. ESTABLISH A COMPETITIVE STATE FUND TO COMPETE WITH COMMERCIAL INSURERS IN PROVIDING WORKERS' COMPENSATION COVERAGE. (Defeated 7-9)

This proposed recommendation would establish a non-profit, independent state fund which would offer workers' compensation coverage to employers on a premium basis in competition with commercial insurers. Proponents of a competitive state fund believe that such a fund would provide healthy competition for commercial carriers. In addition it is felt that such a fund, based on the experience of general state funds, could operate more cheaply both because its actual expenses would be less and because it could return income on reserves to policy holders in the form of premium reductions.

The commission however, believes it would be unwise at this time to burden the citizens and employers of Minnesota with the costs and potential problems associated with the creation of another arm of state government. The creation of a state workers' compensation insurance company would be a substantial task, costing millions of dollars, and the commission believes such a fund would be an overreaction to Minnesota's current workers' compensation problems.

A number of competitive and exclusive state funds, such as those in Arizona, Ohio, Pennsylvania, Washington and West Virginia, have experienced financial provlems or serious administrative shortcomings at some period in their histories. The overall services of most private insurers, too, have proven superior to many state funds, particularly in the areas of safety, timeliness of benefit payments, and rehabilitation, retraining and reemployment programs. The costs associated with the establishment of such a fund may exceed $15 million, as indicated by the commission staff. The potential also exists for such an operation to incur additional costs requiring further state subsidization. Employers may face additional expenses in the form of professional claims, safety

and retraining service organizations to supplement the state fund's services, or additional premiums for adequate coverage in associated lines of insurance, or they may have difficulty in obtaining certain coverages they need. Injured employees would realize little or no benefit from the creation of a state fund and may well be subjected to delayed payments and reduced services. Reduced services may also cause higher accident rates resulting in increased costs to Minnesota employers.

Although a number of positive elements, such as encouraging employers to "shop" for insurance, may accompany the creation of a state compensation insurance fund, the commission believes that such a system would provide little or no relief to the current workers' compensation problems of Minnesota employers and employees, and could involve significant additional problems and expenses.

10. TRANSFER THE STATUTORY RATING FUNCTIONS OF THE RATING BUREAU TO THE COMMISSIONER OF INSURANCE. (Defeated 3-11)

This proposed recommendation is designed to place full responsibility for gathering data and developing manual rates for all workers' compensation occupational classifications on the commissioner of insurance. This change is premised on the belief that it is inappropriate for an association of insurers to have statutory responsibility for generating data and determining proposed premiums, and that the commissioner's determinations would be less open to challenge. Proponents of this change believe that effective regulation requires the Insurance Division to develop the data itself and that employers are necessarily at a disadvantage when the basic data is generated by an insurers' organization.

The commission, however, believes that the data gathering and manual rate calculation duties of the rating bureau are too extensive and too technical for any useful regulatory purpose to be served by assigning them to the commissioner of insurance. Such a change could simply make the commissioner dependent upon the information provided by the National Council on Compensation Insurance. The present system is preferable, despite its limitations, since it requires insurers to propose the rate, while the commissioner retains authority to modify or reject the proposal.

RECOMMENDATION VOTES

PASSED

1. Roll Call: Prevailed 12 - 2

Yes	No
Borsheim	Malone
James	Simoneau
Koll	
O'Malley	
Shepherd	
Williams	
Brataas	
Laufenburger	
Adams	
Kaley	
Newlin	
Keefe	

2. Roll Call: Prevailed 10 - 4

Yes	No
Borsheim	James
Koll	Malone
Shepherd	O'Malley
Williams	Simoneau
Brataas	
Laufenburger	
Adams	
Kaley	
Newlin	
Keefe	

3. Roll Call: Prevailed 9 - 3

Yes	No
Borsheim	O'Malley
James	Simoneau
Koll	Keefe
Shepherd	
Williams	
Brataas	
Laufenburger	
Kaley	
Newlin	

4. Prevailed on Voice Vote

5. Roll Call: Prevailed 8 - 7

Yes	No
Borsheim	Koll
James	O'Malley
Lapakko	Shepherd
Malone	Brataas
Williams	Laufenburger
Adams	Kaley
Simoneau	Newlin
Keefe	

6. Roll Call: Prevailed 13 - 2

Yes	No
Borsheim	James
Koll	Simoneau
Lapakko	
Malone	
Shepherd	
Williams	

6. (continued)

Yes	No
Brataas	
Laufenburger	
Adams	
Kaley	
Newlin	
Keefe	

7. Prevailed on Voice Vote

8. Prevailed on Voice Vote

9. Prevailed on Voice Vote

10. Prevailed on Voice Vote

11. Prevailed on Voice Vote

12. Prevailed on Voice Vote

13. Prevailed on Voice Vote

14. Prevailed on Voice Vote

15. Prevailed on Voice Vote

16. Prevailed on Voice Vote

17. Prevailed on Voice Vote

18. Prevailed on Voice Vote

19. Prevailed on Voice Vote

20. Prevailed on Voice Vote

21. Prevailed on Voice Vote

22. Prevailed on Voice Vote

23. Prevailed on Voice Vote

24. Prevailed on Voice Vote

25. Prevailed on Voice Vote

26. Prevailed on Voice Vote

27. Prevailed on Voice Vote

28. Roll Call: Prevailed 10 - 3

Yes	No
Borsheim	O'Malley
James	Shepherd
Lapakko	Laufenburger
Adel (Malone designee)	
Williams	
Brataas	
Kaley	
Simoneau	
Newlin	
Keefe	

29. Roll Call: Prevailed 13 - 0

Yes	No
Borsheim	
James	
Koll	
Malone	
O'Malley	
Shepherd	
Williams	
Brataas	
Laufenburger	
Kaley	
Simoneau	
Newlin	
Keefe	

30. Prevailed on Voice Vote

31. Prevailed on Voice Vote

32. Roll Call: Prevailed 14 - 0

Yes	No
Borsheim	
James	
Koll	
Malone	
O'Malley	
Shepherd	
Williams	
Brataas	
Laufenburger	
Adams	
Kaley	
Simoneau	
Newlin	
Keefe	

33. Prevailed on Voice Vote

34. Prevailed on Voice Vote

35. Prevailed on Voice Vote

36. Prevailed on Voice Vote

37. Prevailed on Voice Vote

38. Prevailed on Voice Vote

39. Prevailed on Voice Vote

40. Prevailed on Voice Vote

41. Prevailed on Voice Vote

42. Roll Call: Prevailed 10 - 4

Yes	No
Borsheim	James
Koll	Malone
O'Malley	Simoneau
Shepherd	Keefe
Williams	
Brataas	
Laufenburger	
Adams	
Kaley	
Newlin	

43. Roll Call: Prevailed 8 - 6

Yes	No
Borsheim	James
Koll	Malone
O'Malley	Laufenburger
Shepherd	Adams
Williams	Simoneau
Brataas	Keefe
Kaley	
Newlin	

44. Prevailed on Voice Vote

45. Prevailed on Voice Vote

46. Prevailed on Voice Vote

47. Roll Call: Prevailed 9 - 7

Yes	No
James	Borsheim
Lapakko	Koll
Adel (Malone designee)	Shepherd
O'Malley	Brataas
Sherburne	Laufenburger
Williams	Kaley
Adams	Newlin
Simoneau	
Keefe	

48. Prevailed on Voice Vote

49. Prevailed on Voice Vote

50. Roll Call: Prevailed 14 - 0

Yes	No
Borsheim	
James	
Lapakko	
Adel (Malone designee)	

50. (continued)

Yes	No
O'Malley	
Shepherd	
Sherburne	
Williams	
Brataas	
Laufenburger	
Adams	
Simoneau	
Newlin	
Keefe	

51. Prevailed on Voice Vote

52. Prevailed on Voice Vote

53. Prevailed on Voice Vote

54. Prevailed on Voice Vote

55. Prevailed on Voice Vote

56. Prevailed on Voice Vote

57. Prevailed on Voice Vote

DEFEATED

1. Roll Call: Defeated 7 - 7

Yes	No
Borsheim	Malone
James	O'Malley
Koll	Williams
Shepherd	Laufenburger
Brataas	Adams
Kaley	Simoneau
Newlin	Keefe

2. Roll Call: Defeated 7 - 8

Yes	No
Borsheim	James
Koll	Lapakko
Shepherd	Malone
Williams	O'Malley
Brataas	Laufenburger
Kaley	Adams
Newlin	Simoneau
	Keefe

3. Roll Call: Defeated 1 - 13

Yes	No
Koll	Borsheim
	James
	Lapakko
	Malone
	O'Malley
	Shepherd
	Williams
	Brataas
	Adams
	Kaley
	Simoneau
	Newlin
	Keefe

4. Defeated on Voice Vote

5. Defeated on Voice Vote

6. Defeated on Voice Vote

7. Roll Call: Defeated 7 - 8

Yes	No
James	Borsheim
Adel (Malone designee)	Koll
O'Malley	Lapakko
Shepherd	Brataas
Sherburne	Laufenburger
Williams	Adams
Newlin	Simoneau
	Keefe

8. Roll Call: Defeated 4 - 10

Yes	No
O'Malley	Borsheim
Shepherd	James
Williams	Koll
Newlin	Lapakko
	Adel (Malone Designee)
	Sherburne
	Brataas
	Laufenburger
	Simoneau
	Keefe

9. Roll Call: Defeated 7 - 9

Yes	No
James	Borsheim
Lapakko	Koll
Adel (Malone designee)	Shepherd
O'Malley	Williams
Sherburne	Brataas
Simoneau	Laufenburger
Keefe	Adams
	Kaley
	Newlin

10. Roll Call: Defeated 3 - 11

Yes	No
Lapakko	Borsheim
Sherburne	James
Simoneau	Koll
	Adel (Malone Designee)
	O'Malley
	Shepherd
	Williams
	Brataas
	Laufenburger
	Newlin
	Keefe

MINORITY RECOMMENDATIONS

FROM THE

WORKERS' COMPENSATION STUDY COMMISSION

1. ESTABLISH A COMPETITIVE STATE INSURANCE FUND.

The undersigned Commission members concur with many of the essential features and recommendations of the report of the Workers' Compensation Study Commission. Implementation of the recommendations contained in this report will reduce costs and result in a significant improvement in the workers' compensation system of this state to the benefit of both employees and employers. While certain Commission members do not believe that the Commission was created to alter or reduce benefit levels, the members conscientiously attempted to propose a compensation system for the State of Minnesota which would not only greatly improve the administrative aspects of the law, but also reduce excessive litigation through early intervention, and provide incentives for injured individuals to return to work as soon as physically possible. The majority of the Commission is of the opinion that, under the prevailing conditions, it would be neither appropriate nor desirable to enact legislation providing for a state compensation insurance fund. In this respect, the undersigned Commission members disagree with the majority of the Commission.

A major expense facing Minnesota employers is the current high cost of workers' compensation insurance. This problem is exacerbated by comparisons to the lower rates yet similar benefits available in neighboring states, particularly Wisconsin which has a similar workforce and industrial base. Approximately three percent of the statewide payroll of Minnesota business is currently dedicated to workers' compensation insurance. Premiums as a percent of payroll are considerably higher for certain risk industries such as lumbering (up to 40 percent). Although the recommendations contained in this report should slow the rate of growth in workers' compensation rates, there are few assurances that workers' compensation costs will not continue to rise as a result of inflation and other factors.

With the implementation of the workers' compensation law, employees ceded their rights to sue employers under common law, employers were required to pay what is essentially a payroll-based tax, and carriers agreed to provide insurance coverage to employers for the risks associated with their workplace. The

availability and affordability of workers' compensation insurance has now become a major business concern confronting virtually every employer in the state. Insurers contend that in the past few years it has become unprofitable to write compensation insurance in Minnesota, yet few (if any) have withdrawn from the market. The insurance industry does not mention how profitable, at the expense of Minnesota employers, workers' compensation has been in this state in the past. Insurers now simply seek to insure the "selected risks".

It was not until 1976 that the standard loss ratio of all Minnesota insurers approached 70 percent (69.98%) of (standard) earned premiums. On a net earned premium basis (includes premium discounts, experience and retrospective rating), the 1976 net loss ratio was 74.71 percent. For calendar year 1976, Minnesota insurers paid out 70 cents (standard) and 75 cents (net) for every dollar collected in premiums from Minnesota employers. It was at this point that the compensation insurers became concerned with the Minnesota market. The reason for this concern is readily understood by examining the years prior to 1976. For the calendar years 1969 through 1975, the standard loss ratio of all Minnesota insurers averaged 57.3 percent of (standard) earned premiums. On a net earned premium basis, the net loss ratio for the same time period was 63.5 percent. Minnesota insurers paid out 57 cents (standard) and 63.5 cents (net) for every dollar collected in premiums from Minnesota business for the years 1969-1975.

It is our belief that the most essential element for improving the workers' compensation system in this state is the introduction of competition into the workers' compensation market-place. The creation of a state compensation insurance fund is perhaps the most important step in establishing a competitive compensation market without effecting an immediate increase in workers' compensation rates. Minnesota employers should be given a competitive alternative to the private/self-insurance system currently available, with that alternative being a non-profit source of insurance. Other competitive options examined by the Commission which would allow greater competition in the compensation system

would be accompanied by immediate rate increases, and thus these options were viewed as untenable in light of the directives given the Commission.

With the exception of the state reinsurance fund, the Study Commission has recommended only minor changes in the compensation insurance delivery system. The insurance system, and particularly the ratemaking portion of that system, is so complex that it is doubtful that a skeptical legislature would give the commissioner of insurance the authority or a large enough staff to check the expertise of private insurers and, in turn, permit the commissioner to do an adequate job of regulating the industry. Therefore, a better alternative is the creation of a state competitive fund which would be subject to careful scrutiny since it would be a state agency, but would not cost the state any money to operate because it would raise its administrative expenses through premiums collected and profits on its investments.

Larger employers are generally afforded the complete services (loss control safety services, case management) and benefits (experience rating, premium discounts, etc.) associated with a workers' compensation insurance policy. One hundred of Minnesota's largest employers have met the stringent financial requirements necessary to qualify as self-insurers and realize the associated benefits. Who would then realize the greatest benefit from the creation of a state fund? The small employers, with one to three employees and annual premiums under $750 need an alternative to the current approach to workers' compensation in Minnesota and would therefore benefit the most from the creation of a state fund. Although the Study Commission has recommended that experience rating be made available to employers at a level below the current $750 annual minimum premium, the small employers of this state constitute the vast majority of workers' compensation insurance policyholders and this recommendation, if implemented, would afford them minimal relief. Although the recommendations contained in this report would improve the entire workers' compensation system, too few recommendations are specifically directed at the small employer. To maintain their profits and remain competitive, these small employers need more relief from high compensation rates than the larger employers in the state.

There are approximately 75,000 workers' compensation policies written in Minnesota each year. Of this group, approximately one-third or 25,000 policyholders qualify for experience rating. This group of employers pays approximately 80 percent of the Minnesota premium. These premiums are large enough that private insurers can manage their policies at an expense loading of 28 percent or less. The larger the premium, the less the percent expense loading necessary for the insurer to manage the policy and vice versa. Employers with policies over $100,000 receive a premium discount of 16.3%. Those with premiums of between $5,000 and $100,000 receive a 14.7% discount, while those between $1,000-$5,000 are given a 9.4% premium discount. However, for the small employers, those with premiums under $1,000, no discount is given by the insurers.

Fifty thousand employers, or two-thirds of the businesses in this state do not pay a large enough premium to qualify for experience rating and other benefits afforded the larger employers of this state. What then becomes of these employers? One option is the assigned risk pool which has been experiencing phenomenal growth. The servicing carriers of the assigned risk pool are assured a 35 percent expense loading and guaranteed that all losses in excess of 65 percent will be paid by the entire industry. It is understandable that employers feel a stigma in being assigned to the risk pool. In 1973, there were 764 assignments to the risk pool for the entire year. For the first eight months of 1978, there was an average of 775 assignments per month. What is happening to the 50,000 small employers in Minnesota? Approximately one-fifth or nearly 10,000 had been forced into the assigned risk pool by the end of 1978 and this trend will continue unless an alternative source of insurance is made available.

It is apparent that the great majority of employers in Minnesota are in need of a viable inexpensive alternative in their purchase of workers' compensation insurance. This alternative can be supplied by a state competitive insurance fund.

One of the directives given the Study Commission was to examine "the expense factor in the rate in terms of whether the factor is inadequate or excessive." An examination of the average expense factor of the various state compensation funds and Minnesota private insurers indicates that workers' compensation can indeed be administered with less expense. The average state fund operates on an expense factor of between 8-12% while private insurers operate on an expense ratio of close to 30%. The inability of private insurers to match the low expenses of state funds is perplexing and discouraging. However, employers should not be forced to pay for the inability of these insurers to match the expense ratio of the state funds.

Why is the private insurance industry unable to offer workers' compensation insurance at lower expense? The industry contends that small businesses are unprofitable risks, requiring increased processing time, staff time, and claims management at greater expense to the insurer. However, as already indicated, a large number of these small businesses have been thrown into the assigned risk pool but insurers have not yet been able to operate on a lower expense factor than before despite this.

Why then are state compensation insurance funds able to market compensation insurance with an expense loading of 8 to 12 percent of earned premiums? State funds have, at best, rudimentary sales staff that result in very low acquisition (sales) costs. Administrative costs are also lower due to lower salaries, high levels of computerization, and the economies of scale.

Furthermore, since a state fund specializes in workers' compensation insurance, it can deliver the expertise usually associated with specialization, thereby further reducing its administrative expenses. Virtually all private insurers are multi-line. A claims adjuster, an underwriter or a safety representative employed by a multi-line insurer is oriented toward multiple line of insurance each requiring different skills; in short, the insurance version of jack-of-all-trades.

Another obvious attraction to creating a state fund is that to the extent that premium payments are made to the fund rather than private insurers based out of state, capital is retained in the state. Of course, this capital is then invested within the state and serves to create new jobs and aids in the expansion of the state's economy. Private insurers in Minnesota do not limit themselves to investing in the state. Much of the premium dollar collected from Minnesota employers is never used for the benefit of the state's economy.

One of the major arguments against a state competitive fund is that the fund might not be truly competitive. That to some extent it might be subsidized by the state in being exempt from taxation, receiving rent free space or receiving services from other state agencies thus allowing it to operate with lower administrative expenses than private insurers. While it is true that a state fund created in such a manner would have an unfair advantage over private insurers, a state fund need not be subsidized in this way to operate at lower administrative expense loading. The Colorado fund, for example, is subject to all the taxes a private insurer is subject to, pays rent for its space at the same rate private insurers do, pays employee salaries from its own separate account and receives no other special treatment from the state. It is treated by the state of Colorado like any other private insurer.

It is also reasonable to question the ability of state government to perform more efficiently than the private sector. In opposing a state fund, the insurance industry has claimed inefficiencies and shortcomings of certain state funds including financial incompetence, increased and inequitable costs, inadequate services, tax subsidies, and political influence. As is the case with private insurers, some state funds are certainly more efficient and better managed than others. State funds are in operation in 18 states and all the provinces of Canada. Most state funds have been in existence for over 60 years and the operation of the funds has proven successful beyond doubt. The Ohio state fund is commonly cited for financial shortcomings, yet they have not raised their

rates for over two years, and in fact reduced rates by 19% across the board in 1978. It also realized $138 million in investment income last year alone. Furthermore, the average manual rate in Ohio is under 2 percent of payroll, as opposed to 3 percent in Minnesota.

One of the most striking examples of a successful state fund is Colorado's which in 1978 provided workers' compensation insurance at a discount of 30 percent from the rate charged by private insurers in the state. As a result of this rate difference, the Colorado fund writes approximately 75 percent of the workers' compensation in that state. In fact, of the 12 states which have competitive funds, only three do not have the leading share of the market. It is evident that given a choice, employers (especially small ones) prefer to obtain insurance from a state fund because of the advantages they offer.

Competition in workers' compensation insurance is an inherently desirable condition. The economic incentives of state and private insurance competing for business would minimize the danger of complacency and promote higher standards, better service, and, in the end, lower cost.

If the employers of Minnesota could have their compensation insurance carried at an expense of 8 to 12 percent instead of 28 to 35 percent, as is now the case, the dollars available for benefit payments could be increased by 16 to 27 percent without an increase in premium rates. That does not include the potential for considerable investment income, which would inflate the dollars available for increased benefits or reduced premiums to an even greater extent. The increased dollars available for benefits would assist in keeping the premium levels of this state at the lowest reasonable levels.

That the state of Minnesota has a need for a non-profit source of workers' compensation insurance is clear. However, it will not become an important issue in the Minnesota Legislature until the concept of a state compensation insurance fund becomes a well-known business issue and vocal concern of the 50,000 small employers of Minnesota.

This minority report supported by commission members:

STEVE KEEFE	E. I. BUD MALONE	TOBEY LAPAKKO
WAYNE SIMONEAU	NEIL SHERBURNE	NADINE JAMES

2. RETAIN THE PRESENT SYSTEM OF COMPETITIVE, COMMERCIALLY-PROVIDED REINSURANCE IN WORKERS' COMPENSATION.

The undersigned members of the Workers' Compensation Study Commission respectfully dissent from the Commission's narrow recommendation (by a 9:7 vote) that the Legislature establish a State Monopoly Reinsurance Fund to provide exclusive coverage for all workers' compensation benefits due on claims continuing after five years from the date of injury (Recommendation Number 47). We recommend, instead, that the current system of competitive, commercially-provided reinsurance in workers' compensation be retained and strengthened, and that the expansion of workers' compensation benefits and liability be slowed so that the rise in reinsurance premiums can be also.

Reinsurance or excess insurance in workers' compensation is the insurance coverage provided by an insurer or insurers for liability above the upper limit of liability of the first workers' compensation insurer or, in self-insurance, above the liability of the employer himself. Such reinsurance coverage might typically cover amounts arising from a single incident in excess of $200,000 and up to five, ten or over fifteen million dollars. The cost of such insurance has been increasing because the possible liability on individual claims and larger incidents has been increasing. The establishment of a state reinsurance fund, however, will have no effect on the sources of this cost increase and will very likely result in further increases in workers' compensation costs. The creation of a monopoly reinsurer also seems a particularly inappropriate response to what proponents of the fund claim is a lack of competition among reinsurers.

A State Monopoly Reinsurance Fund would represent a significant expansion of government. It would mean a monopoly of reinsurance by the state and the abolition of competition in yet another sector of the economy. The reinsurance fund would be, in effect, a monopoly state workers' compensation fund with respect to claims five years old or older. Since the state reinsurance fund could impose whatever premiums it chose without fear of competition, and regardless of employer complaints, there would be far more likelihood of excessive

increases in benefit levels and other expansion of liability to the detriment of employers and the economy generally. In contrast, the present system of regulated competition, imperfect as it may be, provides better service and more responsiveness to employers, as well as a healthy opposition to undue expansion of workers' compensation liability.

There is actually no problem of availability of reinsurance. Reinsurance simply costs more than it has in the past. Because the expense of longer-term claims (due to higher weekly benefits, more liberal permanency findings, rehabilitation costs, death benefits, and the increased coverage of occupational disease and cumulative conditions) has increased at a much higher rate than the cost of the average claim, reinsurance costs have increased even faster than basic workers' compensation coverage costs. The only way to address this cost increase, however, is to take steps to reduce liability, waste, double payments and excessive benefits and, generally, to return the workers' compensation system to its proper function of reimbursing temporary wage loss while the victim of an industrial accident recovers and seeks new work. A state reinsurance fund offers no solution to these cost pressures at all. In fact, as any observer of government understands, such a fund would be far less responsive to the legitimate need to minimize expenditures and far more likely to increase them beyond the capacity of Minnesota employers to absorb.

A monopoly state reinsurance fund covering all claims five years old or more would pay approximately 15% of workers' compensation benefits, a greater proportion than some competitive state workers' compensation funds, even though these state funds can compete in basic coverage as well. Such a reinsurance fund would be subject to all of the pressures and problems which caused the Commission as a whole to reject a state competitive fund. Like state funds generally, the reinsurance fund is not likely to operate soundly by actuarial standards, would run at a deficit and would require hidden general fund subsidies. It would provide poor safety and claims control services to employers and would fail to offer legitimate challenges to questionable claims, "rubberstamping", instead, the payment of benefits. It would also provide poorer and slower responses to the legitimate claims of injured workers. Safety problems would also be

exacerbated by the tendency of a state reinsurance fund to displace some of the cost of riskier industries and firms (with more long-term claims) to safer industries and firms. This, of course, will decrease the initiative to improve safety and could result in more injuries and more claims. Apart from the disincentives to safety, such a shifting of the burden of claims from high-risk to low-risk employers is simply unfair though it is bound to be the political result of a state reinsurance fund.

The size of the proposed reinsurance fund and its status as a state fund are said to offer better security for employers than private reinsurance. Yet, no commercial reinsurance carrier in Minnesota has ever failed to meet its obligations to employers or to injured workers. A firm must carry a good deal of reinsurance to assume the serious risks involved (which explains, of course, the small number of reinsurance carriers), but those which do have been fully able to discharge their responsibilities.

A State Monopoly Reinsurance Fund would be a significant expansion of government. Commission staff have determined that a competitive state workers' compensation fund (which would be more expensive than a reinsurance fund, of course) would require $15 million in start-up capital. At the same time, it is extremely unlikely that any of the expense overhead of insurers will be significantly reduced because of the loss of the reinsurance line. The overhead expenses of the fund will thus be added to the expenses already borne by employers. At the present time very few taxpayers are eager to see any expansion of government unless the need is absolutely critical. A state monopoly reinsurance fund is far from a critical need in Minnesota. The cost of insurance is increasing, but a state fund is no solution to the specific cost pressures involved. It would merely increase the long-term costs associated with workers' compensation while diminishing the services provided and the overall efficiency of the system.

Commercial reinsurance in Minnesota has worked. It has never failed to cover a loss. Its costs are rising because liability under workers' compensation has been continuously, and sometimes inappropriately, expanded by the Legislature and the courts. This

system of private, competitive reinsurance deserves to be retained and strengthened, rather than scapegoated for the increased costs imposed upon it, and it should certainly not be replaced by an unnecessary, expensive and monopolistic state agency whose long-run scale and costs no one can foresee.

This minority proposal supported by commission members:

NANCY BRATAAS
PRESTON SHEPHERD
ROGER LAUFENBURGER
DICK KALEY
PATRICK NEWLIN
WENDY BORSHEIM
LAURENCE KOLL

3. PROVIDE FOR THE APPORTIONMENT OF LIABILITY BETWEEN PRE-EXISTING NON-OCCUPATIONAL CONDITIONS AND OCCUPATIONAL INJURIES WHEN THE TWO COMBINE TO PRODUCE A PERMANENT PARTIAL DISABILITY.

The undersigned members of the Workers' Compensation Study Commission recommend that the Legislature adopt an "apportionment rule" which would avoid liability to employers for that portion of a permanent partial disability which is the result of a pre-existing non-occupational injury or condition. The Commission narrowly failed to adopt this recommendation on a seven to seven vote.

The purpose of workers' compensation is to provide indemnification to employees for wage loss resulting from injuries or conditions caused at work. The present law, however, as interpreted by the Workers' Compensation Court of Appeals and the Supreme Court, requires an employer to pay benefits even for that portion of a permanent partial disability which is caused by a previous non-occupational condition or injury. This "no apportionment rule" imposes enormous costs upon the workers' compensation system without any justification, except for the lack of express statutory authority to apportion. Employers are unfairly forced to compensate employees for their domestic accidents or congenital conditions and the resulting costs must be borne by everyone who purchases goods and services. In addition, the rule discourages employers from hiring handicapped individuals when social policy is seeking to promote employment of the disabled.

The Commission has recommended three different proposals which relate to the apportionment issue. First, that employers be permitted to register an employee's pre-existing condition with the Department of Labor and Industry even after a work-related injury. Second, that benefits resulting from an injury which aggravates a pre-existing condition be assessed against the Special Compensation Fund when the employee is engaged in on-the-job training. Third, that a second workers' compensation award be reduced by the amount of any previous award when the disability previously compensated contributed to the second. (Recommendations 4, 30, 32)

Each of these changes should be adopted, but none of them affects the underlying liability of employers for non-occupational conditions, and the resulting disincentive to hire the handicapped. The registration recommendation simply transfers liability for permanent partial disability from individual employers to all employers, as does the on-the-job training recommendation. In any case the individual employer would remain liable for 52 weeks of benefits except in on-the-job training situations. The offset recommendation affects only previous compensible occupational disabilities.

While it is certainly less burdensome to individual employers to assess a portion of the liability for some pre-existing conditions against all employers, we believe it unfair and inconsistent with the principles of workers' compensation for employers to be required to reimburse for these conditions at all. Unnecessary expenditures in workers' compensation are being closely scrutinized, since costs are rising at an alarming rate. The payment of additional benefits to an employee solely because he has previously injured himself at home or was unfortunately born with a physical defect is without logic in workers' compensation theory. These payments are gratuities which serve no legitimate workers' compensation purpose and impose significant additional expenses on the workers' compensation system. The potential liability for such payments also operates as a barrier to full employment for the disabled. We believe apportionment of liability for permanent partial disabilities should be adopted to avoid these problems.

This minority proposal supported by commission members:

NANCY BRATAAS
PRESTON SHEPHERD
NADINE JAMES
DICK KALEY
PATRICK NEWLIN
WENDY BORSHEIM
LAURENCE KOLL

4. RETAIN THE PRESENT MAXIMUM DISABILITY BENEFIT 100% OF THE STATE AVERAGE WEEKLY WAGE, RATHER THAN INCREASE THE MAXIMUM TO 200%.

The Commission narrowly agreed (8:7 vote) to recommend an increase in the current maximum disability benefit payment of 100% of the state average weekly wage to 200% (Recommendation 5). The undersigned members of the Commission respectfully dissent from this recommendation and recommend instead that the current maximum be retained.

The theory behind workers' compensation is wage loss replacement, but no workers' compensation jurisdiction replaces all wage loss. Most jurisdictions have a maximum benefit and most replace only a proportion of actual wage loss up to that maximum. Despite the theory of wage loss replacement, society cannot afford to replace all of an injured worker's lost income, especially since 100% income replacement would constitute a disincentive to retrain or return to work. Thus the fact that Minnesota has a maximum benefit level is neither unusual among the states nor inconsistent with workers' compensation theory.

Behind the wage loss theory in workers' compensation, in fact, is a belief that benefits should go to those most in need. The current maximum benefit of 100% of the state average weekly wage provides 66-2/3% of lost income on a tax-free basis to all workers earning less than approximately $16,400. This maximum represents a considered legislative judgment that those earning more than $16,400 are less in need of scarce workers' compensation dollars than those earning smaller incomes. We believe this judgment is a reasonable one.

The current maximum provides for the basic necessities for all injured workers. The maximum is indexed to the rise in the state average weekly wage and benefits, once receipt begins, will be further adjusted by a cost-of-living escalator. In addition to the maximum, a 15% increment will be available (if the Commission's recommendation is adopted) for enrollment in an expenses-paid

retraining program.

It is our belief that this maximum is adequate to provide for the essential needs of all injured employees for the temporary period of disability. All that an increase in the maximum would do is permit some employees to retain a level of affluence for the period of their disability that most employees will never enjoy at any time. We think that such a change would represent an unwarranted luxury for a workers' compensation system which is straining under tremendous cost pressure.

The Legislature, in creating the Workers' Compensation Study Commission, was responding to widespread complaints of rising costs in workers' compensation. Every other recommendation of the Commission is designed to reduce such costs. This recommendation, however, will have the effect of gratuitously raising benefit levels, in many cases by 100%, for the least-needy half of the Minnesota workforce. The 200% maximum is a recommendation, though not an essential recommendation, of the National Commission on State Workers' Compensation Laws, but these recommendations do not have the force of law or regulation and our Commission has in fact rejected or modified other recommendations of the National Commission.

An increase in the maximum disability benefit to 200% of the state average weekly wage is inconsistent with the Commission's task of reducing workers' compensation costs. It will discourage retraining and return to work and will encourage frivolous claims. It is entirely unnecessary to assure an adequate benefit level for all injured workers. We, therefore, recommend that the Legislature reject the recommendation to increase the maximum disability benefit to 200% of the state average weekly wage and retain instead the 100% maximum.

This minority proposal supported by commission members:

NANCY BRATAAS LAURENCE KOLL

5. PROVIDE FOR THE REDUCTION OF PERMANENT PARTIAL DISABILITY BENEFITS WHEN AN EMPLOYEE IS OVER THE AGE OF 52 AT THE TIME OF INJURY, BY 2-1/2% FOR EACH YEAR ABOVE THAT AGE TO A MAXIMUM REDUCTION OF 50%.

Permanent partial benefits are provided by statute in cases where an employee has lost the use of a bodily member or organ or suffered disfigurement affecting employability. These benefits are expressed in the statute in terms of 66-2/3% of the wage at time of injury for a certain number of weeks, depending on the severity of the injury. Though the form of these benefits suggests that they are flat payments for injuries, in fact they are designed to compensate injured workers for long-term income lost due to the injury. Since calculation of such lost income would be very difficult, almost every state, at the time of the adoption of its workers' compensation statute, devised such a schedule of permanent partial benefits for ease of administration.

Because these benefits are supposed to function as replacement of future lost income it does not make sense to compensate someone whose working life if almost over to the same degree as one whose employment has just begun. In recognition of this iniquity, Wisconsin has for a number of years reduced the permanent partial award depending on the age of the recipient. Those who are 52 years of age or older at the time of injury incur a 2-1/2% reduction in the award for each year above 52 to a maximum reduction of 50%.

The Commission heard this proposal and listened to the testimony of Wisconsin officials in support of it, but defeated wage adjustment by a vote of 8 to 7. The undersigned members of the Commission dissent from the Commission's decision and hereby recommend that the Legislature adopt a system of age adjustment in permanent partial awards as described.

This recommendation would help to restore permanent partial awards to an income replacement basis by preventing older workers from receiving a proportionally greater replacement of lost future income than younger workers receive. This change would not affect benefits during the healing period which are currently equivalent to temporary total benefits. It would not affect retraining benefits. Since injuries compensated by permanent partial benefits

do not prevent a return to lighter work and since older workers are in a position to receive pension and Social Security payments within a few years (and in some cases immediately), this change will not impose any unwarranted burden on older workers. We believe that this proposal is more equitable than current practice and closer to the income replacement model of workers' compensation and that it will result in significant cost savings without serious detriment to any class of claimants.

This minority proposal supported by commission members:

PRESTON SHEPHERD
PATRICK NEWLIN
C. ARTHUR WILLIAMS
LAURENCE KOLL

6. PROVIDE FOR A LEGAL PRESUMPTION OF THE REASONABLENESS OF SETTLEMENTS ENTERED INTO BY AN INSURER OR EMPLOYER AND A CLAIMANT WHEN BOTH ARE REPRESENTED BY AN ATTORNEY.

The workers' compensation law currently provides that settlements whose terms conform to the law may be approved by the Division of Workers' Compensation, but that the parties have the burden of proving that the settlement is "reasonable, fair and in conformity" with the law, and the judge may exercise discretion in approving or disapproving the settlement. This proposal would require the judge to approve a settlement when both parties were advised by attorneys unless a specific challenge to its terms were made. The Commission did not have time to consider this particular proposal, but the undersigned members believe that a presumption in favor of settlements when both sides have legal counsel would be an effective method of reducing litigation and encouraging appropriate private settlements of workers' compensation claims. It would have the effect of preventing the litigation of cases in which nothing was in dispute between the parties.

In other areas of the law, settlements are encouraged by the courts and must be authorized whenever the parties come to an agreement. Despite the need to assure that workers' compensation claimants receive their due, it is our belief that much more could be done in the workers' compensation system to encourage settlements.

Minnesota'a workers' compensation litigation rate is higher than that of any of the surrounding states, twenty times as high as South Dakota's rate. High litigation rates correlate with higher workers' compensation premiums in almost every state. The Commission concluded that Wisconsin's low litigation rate was a crucial element in Wisconsin's lower workers' compensation costs. We believe that more encouragement of private settlements in Minnesota would decrease the number of contested cases, reduce the burden on the workers' compensation judges and court of appeals, diminish the size of legal fees, permit more attention to those cases presenting genuine issues and ultimately reduce workers' compensation premiums.

It is appropriate to presume that a settlement entered into by parties represented by attorneys is "reasonable, fair and in conformity with" the law. This presumption could still be overcome and the settlement disapproved if the Division or the claimant could show at the pre-hearing that there were specific deficiencies in the settlement. A rebuttable presumption of reasonableness would permit routine settlements to be approved more readily, while preserving the Division's authority to disapprove where the settlement was actually and demonstrably deficient under the law. Therefore, we recommend that the Legislature provide for a rebuttable presumption that settlements entered into by parties represented by counsel are "reasonable, fair and in conformity" with the law.

This minority proposal supported by commission members:

DICK KALEY
PATRICK NEWLIN
WENDY BORSHEIM
PRESTON SHEPHERD
ROGER LAUFENBURGER
LAURENCE KOLL

7. PROVIDE THAT WEEKLY BENEFIT PAYMENTS BE CALCULATED TO THE NEAREST $1.00.

This proposal was among those never actually considered by the Commission. The undersigned, however, believe that this change could save a significant amount of administrative expense to insurers and thus reduce employers' workers' compensation premiums. The amount saved would certainly outweigh the very slight gain or loss to individual claimants. There would, of course, be no net gain to insurers since the few cents gained or lost would average out over all claims.

This minority proposal supported by commission members:

NANCY BRATAAS
PATRICK NEWLIN
PRESTON SHEPHERD
WENDY BORSHEIM
LAURENCE KOLL

8. PERMIT A WORKERS' COMPENSATION JUDGE TO MAKE A FACTUAL DETERMINATION OF THE DEGREE OF DISABILITY WITHIN THE RANGE ESTABLISHED BY THE PHYSICIANS' OPINIONS WHEN THESE OPINIONS DIFFER SIGNIFICANTLY.

One of the major litigated issues in workers' compensation is the degree of disability. Defense and plaintiffs' attorneys often differ considerably in their estimates of a claimant's loss of function. Thus, even when all other issues are settled, cases go to hearing and to appeal to establish the percentage of disability resulting from an injury. This proposal would permit the workers' compensation judge to make a determination of degree of disability after weighing the physicians' opinions, thereby avoiding the problem of choosing between contradictory medical opinions and reducing exaggerated claims and litigation in what is currently a very subjective area.

The Commission did not address this particular proposal, but it recognized the problem of disputed medical opinions by recommending that a second opinion be required in cases of elective workers' compensation surgery and that a neutral medical opinion be provided in evidence at the request of any party (Recommendations 35 and 34). We believe that these two recommendations are good ones. They will be especially helpful in the more complicated cases. But the problem

of disputed medical evidence can often be more efficiently and more cheaply handled, in cases of a simple dispute over percentage of disability, by permitting the judge to weigh that evidence and enter a finding as to degree of disability.

The judges have considerable discretion in many other areas of workers' compensation and there is no reason to believe they would exercise this new authority other than judiciously. Parameters would be set on the judge's discretion by the requirement that the finding not exceed the higher nor undercut the lower estimates of disability offered by the parties. The judge's decision, even in such cases, could be challenged by an aggrieved party as an abuse of discretion.

Permitting the judge, within limits, to assess the degree of disability will tend to reduce the number of litigated cases in which percentage of loss of function is the sole issue and will simplify many other cases. It will encourage both claimant and insurer to offer more realistic assessments of the disability by allowing the judge to enter an objective finding, rather than selecting one or the other of the parties' opinions as is now generally required. Since the judges are charged with liberally interpreting the law on behalf of claimants, there is no danger that claimants' interests will be seriously compromised by this change.

This minority proposal supported by commission members:

NANCY BRATAAS
PRESTON SHEPHERD
WENDY BORSHEIM
DICK KALEY
PATRICK NEWLIN
LAURENCE KOLL

9. REPLACE THE STATE AVERAGE WEEKLY WAGE, THE CURRENT MAXIMUM WEEKLY AMOUNT USED IN THE COMPUTATION OF PERMANENT PARTIAL AWARDS, WITH THE DOLLAR FIGURE OF $200.

Permanent partial benefits are currently paid in one lump sum at a rate equal to 2/3 of the injured employee's weekly wage times a number of weeks varying from 7-1/2 to 500 depending on the severity of the injury. The maximum weekly amount is currently 100% of the state average weekly wage but the Commission has recommended that this be increased to 200%. These permanent partial benefits are in addition to temporary total benefits of indifinite duration, by court decision, and in some cases permanent total benefits or retraining benefits are also being received.

The undersigned members of the Commission believe that the current permanent partial system places Minnesota employers at a severe competitive disadvantage and is unnecessary to fairly compensate injured workers. With the new maximum indemnity recommended by the Commission, a permanent partial recipient in Minnesota would be entitled to as much as six times the permanent partial benefit available in Wisconsin, plus the additional retraining, temporary total and permanent total which may be paid. Wisconsin law provides that permanent partial awards be paid at a rate of 2/3 the weekly wage to a maximum of $65.

The change proposed would result in no reduction of current benefit levels since the maximum indemnity is now equal to the state average weekly wage, which is $209. Thus the new maximum would be roughly equivalent to the current one. But the change would end the connection between current wages and permanent partial benefits and therefore prevent the steady increase in the size of these awards because of inflation.

The payment of temporary total and permanent total indemnity is presently related, like permanent partial, to current wages, with a maximum of 100% of the state average weekly wage. Since temporary total represents the total loss of current earning capacity and permanent total the actual long-run loss of such capacity, this automatic correction for inflation is appropriate. Permanent partial indemnity, however, is compensation for the loss of function or use of the bodily member or organ itself and

for speculative loss of future earnings. It will be paid in a single lump sum on the employee's return to work. The employee's actual lost work time will be otherwise compensated by temporary total benefits. His loss of future earnings is speculative and often nonexistent: no such loss need actually be shown in order to receive these benefits. The central purpose of the permanent partial benefits, then, is to compensate for loss of function or use of the member or organ itself. There is thus no rationale for tying these benefits to current wages, except convenience, and a flat maximum should work no injustice. If the amount indicated becomes genuinely inadequate in terms of compensation of loss of bodily function, the legislature ought then to alter it. But a steady increase in these benefits, unrelated as they are to current income needs, seems unjustified and a maximum appropriate.

This minority proposal supported by commission members:

NANCY BRATAAS
WENDY BORSHEIM
PATRICK NEWLIN
LAURENCE KOLL

We, the undersigned, members of the Study Commission on Workers' Compensation, do hereby recommend that:

10. THE STATUTORY RATING FUNCTIONS OF THE RATING BUREAU BE TRANSFERRED TO THE COMMISSIONER OF INSURANCE.

The Study Commission members were presented with information about the inappropriateness of the insurance industry funding the current rate-setting process. This is equivalent to having the fox guard the chicken coop. To preserve the integrity of the rate-making process, the functions of the Rating Bureau should be placed, by statute, in the Office of the Commissioner of Insurance.

11. THE NATIONAL COUNCIL OF COMPENSATION INSURERS (NCCI) BE PROHIBITED FROM INVOLVEMENT IN THE MINNESOTA RATE SETTING PROCESS.

NCCI recommendations do not reflect Minnesota work experience nor do they reflect the policy of the Minnesota Insurance Commission nor of the Legislature.

The interests of Minnesota employers will best be served by the use of Minnesota-based statistical information and policy recommendations.

12. THE RATING COMPENSATION BUREAU MEMBERS REPRESENT THE INSURANCE INDUSTRY, BUSINESS, LABOR AND THE PUBLIC.

Testimony from those Minnesota citizens affected by workers' compensation legislation leads to the conclusion that broader representation on the Rating Bureau is essential. To be sensitive to the needs of the employer-employee community, Minnesota Statutes should be amended to include members from every area regulated by workers' compensation laws.

13. CONGRESS BE MEMORIALIZED TO REPEAL INTERSTATE IMMUNITY OF THE INSURANCE INDUSTRY (MCCARRON-FERGUSON ACT).

The federal government currently has no jurisdiction or authority to act as long as the states regulate rate-making. This allows fifty states to produce different rates regardless of competency, staff or funding. Exemption from anti-trust regulation provided by the McCarron-Ferguson Act does not serve the best interests of American citizens. The insurance industry should be placed under the scrutiny of the federal anti-trust agency.

14. THE CURRENT EXPENSE FACTOR USED IN RATE-MAKING AND EXPENSES INCURRED BY THE INSURANCE COMPANIES FOR ADMINISTERING THE PREMIUM DOLLARS BE SET BY LAW.

Evidence presented to the Study Commission fails to establish that the current expense factor and expenses incurred by insurance companies for administration are necessary. Expenses should be regulated to reflect their actual needs, as demonstrated to the Commissioner by the insurance industry.

15. ALL COMMISSION RECOMMENDATIONS DEALING WITH BENEFIT REDUCTIONS BE DISREGARDED.

The Study Commission exceeded statutory authority in recommending benefit cutbacks.

In 1977 the House of Representatives called for a study of the high cost of workers' compensation and concerned itself with exhorbitant rates. Therefore, a legislative conference committee created a study commission to examine four specific workers' compensation topics. In 1978, the legislature added one more topic.

The statutory authority of the Commission was to study and report on:

a. the procedure by which workers' compensation insurance premium rates are established;

b. the level of Minnesota workers' compensation premiums as compared to premium levels in other jurisdictions;

c. the various methods of providing workers' compensation insurance to employers in other jurisdictions;

d. the administration of the law by the department of labor and industry and workers' compensation court of appeals; and

e. the expense factor in the rate in terms of whether the factor is inadequate or excessive.

However, the majority of the Commission unwisely and without statutory authority has chosen to recommend significant reduction and modification of worker benefits. We conclude, therefore, that it is bad public policy to give any credence or weight to the recommendations of any commission whose acts exceed its statutory authority.

This minority proposal supported by Commission members:

WAYNE SIMONEAU

E. I. BUD MALONE

TOBEY LAPAKKO

NEIL SHERBURNE

We, the undersigned, members of the Study Commission on Workers' Compensation, do hereby recommend that:

16. WAGES FOR VACATIONS, HOLIDAY AND SICK LEAVE SHOULD NOT BE INCLUDED IN PREMIUM CALCULATIONS AND RATES FOR WORKERS' COMPENSATION.

The Commissioner of Insurance, and if he doesn't act, the legislature, require that premiums for workers' compensation insurance not apply to any wages or benefits paid workers for vacations, holidays or sick leave when such wages and benefits are paid for non-risk hours, days and weeks.

Currently, employers are being required to pay premiums for non-work, non-risk, non-exposure to injury hours, days and weeks and this is contrary to the purposes of workers' compensation insurance. Premiums must be based solely on the concept of risk and there is no employer risk whenever a worker is on vacation, holiday or sick leave.

The risk exposure principal should be our state public policy and we request an order from the insurance commissioner. If he doesn't act, the legislature should act and prohibit premium assessment on wages for vacations, holidays and sick leave.

This minority report supported by Commission members:

WAYNE SIMONEAU

E. I. BUD MALONE

TOBEY LAPAKKO

STEVE KEEFE

WORKERS' COMPENSATION STUDY COMMISSION

STAFF PAPERS

I.

LAWS, BENEFITS AND ADMINISTRATION

A. NATIONAL COMMISSION ON STATE WORKERS' COMPENSATION LAWS

In the past few years, increasing pressure has been exerted by the federal government on state legislatures to reform their workers' compensation systems.

Presently, there is no federal involvement in any state's workers' compensation program nor are there any federal standards which each state is required to meet. In fact, no state is even required to have a workers' compensation system, although all 50 states have such a system. Because of the absence of federal standards, the various state laws lack uniformity with regard to coverages, benefit levels and policy rates.

In 1971, former President Nixon, acting under an authorization from Congress, appointed a National Commission on State Workers' Compensation Laws. This fifteen-member commission was instructed to "undertake a comprehensive study and evaluation of state workers' compensation laws in order to determine if such laws provide an adequate, prompt, equitable system of compensation." The commission submitted its final report to Congress and the President in July, 1972. The report gave a rather low score to most states' workers' compensation programs. The commission said in part:

> The inescapable conclusion is that state workmen's compensation laws in general are inadequate and inequitable. While several states have good programs, and while medical care and some other aspects of workmen's compensation are commendable in most states, the strong points are too often matched by weak.

The commission went on to list 84 recommendations for improving the states' workers' compensation system. Nineteen of these recommendations were termed "essential." With regard to these 19 recommendations, the commission said: "We believe that compliance of the states with these essential recommendations should be evaluated on July 1, 1975, and, if necessary, Congress with no further delay in the effective date should guarantee compliance."

Following the commission report, Senators Williams and Javits introduced a bill which incorporated the commission's

essential recommendations into 21 standards which the bill specified that all state workers' compensation systems must meet. Any state law that did not comply would be preempted and employers and employees in the state would be put under the workers' compensation coverage provided by the federal Longshoremen's and Harbor Workers' Compensation Act.

This bill initially met with opposition from many sectors. One of the major concerns was the creation of, or the substantial expansion of, an administrative agency or adjudicative body that would be required by the legislation. However, Senator Javits and Williams have recently indicated that the legislation which will be introduced into the 96th Congress during 1979 will not require the establishment or expansion of the federal bureaucracy. Rather, any state which does not comply with the essential recommendations would be required to do so, but the administration of each state's system would remain within the existing state agency.

The pressure being put on the states to reform their workers' compensation programs is viewed by some as a serious one. The chairman of the American Bar Association Workers' Compensation Division, Mr. Ron Jaynes, testified before the Study Commission that the likelihood of federal intervention is no longer just a threat but rather a real likelihood exists for passage of the Javits-Williams legislation within the near future.

At the time of the National Commission's report, Minnesota was in compliance with 10 of the 19 essential recommendations. Currently, Minnesota is in compliance with 13-1/2 of the 19. Included among the Workers' Compensation Study Commission's recommendations are one and one-quarter of the 19 essential recommendations (see Study Commission recommendations #12, 13. Recommendation #12, while among the National Commission's essential recommendations, does not by itself constitute a full essential recommendation. Rather, it is one of four parts which, when combined, comprise one essential recommendation.) Adoption of these essential recommendations would raise the

state total to 14-3/4 of the 19 essential recommendations with which Minnesota would be in compliance with. Also among the Study Commission's recommendations is one which, while not an essential recommendation of the federal commission, is among those which the National Commission urged adoption of by all states (see Study Commission Recommendation #5).

The 19 essential recommendations of the National Commission and the Minnesota compliance record are as follows:

1. Essential Recommendation #2.1 - Coverage by workers' compensation laws be compulsory and no waivers permitted.
   - Minnesota in compliance
2. #2.2 - Employers not be exempted from workers' compensation coverage because of the number of their employees.
   - Minnesota in compliance
3. #2.4 - A two-stage approach to the coverage of farmworkers. First, as of July 1, 1973, each agriculture employer who has an annual payroll that in total exceeds $1,000 be required to provide workers' compensation coverage to all of his employees. As a second stage, as of July 1, 1975, farmworkers be covered on the same basis as all other employees.
   - Minnesota not in compliance

   The trend in Minnesota has been in just the opposite direction. Currently, farmworkers who are employed by "family farms" are excluded from coverage. Prior to 1978, "family farm" was defined as "any farm operation which pays or is obligated to pay less than $2,000, exclusive of machine hire, to farm laborers . . . during the preceding calendar year." However, in 1978 the legislature raised the $2,000 figure to $4,000, thereby perhaps excluding more farm laborers from coverage of the law.
4. #2.5 - As of July 1, 1975, household workers and all casual workers be covered under workers' compensation at least to the extent they are covered by social security.
   - Minnesota not in compliance

Current state law provides coverage of casual workers only in cases where the employee earned $500 or more from the present employer in any three-month period during the previous year. Social security coverage for casual workers differs in that there are no dollar calculations in determining coverage. Rather, a casual worker who is employed for ten calendar days within a two-month period without regard to hours worked is included in the social security program.

5. #2.6 - Workers' compensation coverage be mandatory for all government employees.

   - Minnesota not in compliance

   Current state law covers all governmental employees on such a mandatory basis except for employees of political subdivisions elected or appointed for a definite term. Coverage of these officials is elective at the option of the political subdivision's governing body. This is one of the essential recommendations that the Study Commission has recommended in this report (see Recommendation #13).

6. #2.7 - There be no exemptions for any class of employees, such as professional athletes or employees of charitable organizations.

   - Minnesota in compliance

7. #2.11 - An employee or his survivor be given the choice of filing a workers' compensation claim in the state where the injury or death occurred, or where the employment was principally localized, or where the employee was hired.

   - Minnesota not in compliance

   Current state law does not permit an employee to file a claim in Minnesota in cases where an employee who was hired within the state has been permanently transferred outside the state, or in cases where a Minnesota company hires an employee in another state. This essential recommendation would permit that employee or survivor of the employee to file a claim in Minnesota so long as the employee was hired in the state or the employer's principal

place of business is in Minnesota, without regard to whether the employment was actually in Minnesota. Any employee who was hired in the state could, therefore, file a claim here even if he was permanently transferred to another state, or if the employer's principal place of business is in Minnesota even if the employee never conducted any aspects of the employment within Minnesota, under Essential Recommendation #2.11.

8. #2.13 - All states provide full coverage for work-related diseases.
   - Minnesota in compliance
9. #3.7 - Subject to the state's maximum weekly benefit, temporary total disability benefits be at least 66-2/3 percent of the worker's gross weekly wage.
   - Minnesota in compliance
10. #3.8 - As of July 1, 1973, the maximum weekly benefit for temporary total disability be at least 66-2/3 percent of the state's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the state's average weekly wage.
   - Minnesota in compliance
11. #3.11 - The definition of permanent total disability used in most states be retained. However, in those few states which permit the payment of permanent total disability benefits to workers who retain substantial earning capacity, the benefit proposals be applicable only to those cases which meet the test of permanent total disability used in most states.
   - Minnesota in compliance
12. #3.12 - Subject to the state's maximum weekly benefit, permanent total disability benefits be at least 66-2/3 percent of the worker's gross weekly wage.
   - Minnesota in compliance
13. #3.15 - As of July 1, 1973, the maximum weekly benefit for permanent total disability be at least 66-2/3 percent of the state's average weekly wage, and that as of

July 1, 1975, the maximum be at least 100 percent of the state's average weekly wage.

- Minnesota in compliance

14. #3.17 - Total disability benefits be paid for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time.

- Minnesota in compliance

15. #3.21 - Subject to the state's maximum weekly benefit, death benefits in all cases be at least 66-2/3 percent of the worker's gross weekly wage.

- Minnesota not in compliance

Minnesota law presently provides for a death benefit between 50-66-2/3 percent of the gross wage, depending on the number of dependent children.

Minnesota law presently provides for a death benefit of 50% of the gross wage.

16. #3.23 - As of July 1, 1973, the maximum weekly death benefit be at least 66-2/3 percent of the state's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the state's average weekly wage.

- Minnesota in compliance

17. #3.25 - (a) Death benefits be paid to a widow or widower for life or until remarriage, and (b) in the event of remarriage, two years' benefits be paid in a lump sum to the widow or widower. (c) Benefits for a dependent child be continued at least until the child reaches 18, or beyond such age if actually dependent, or (d) at least until age 25 if enrolled as a full-time student in any accredited educational institution.

- Minnesota in compliance with (a) and (c), not in compliance with (b) and (d)

Current law specifies that upon remarriage of a dependent spouse who has dependent children, the compensation which would otherwise be due the spouse shall be paid to the children during their dependency. Upon the end of the children's dependency, the spouse is entitled to any money which remains if that amount is equivalent to less than two years of benefits. However, in many cases, there is little or no money left for the spouse.

Benefits to a dependent child who is enrolled as a full-time student are currently paid in Minnesota until age 21. Adoption of Recommendation #12 of this report would result in compliance with this part of the essential recommendation.

18. #4.2 - There be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment.
    - Minnesota in compliance

19. #4.4 - The right to medical and physical rehabilitation benefits not terminate by the mere passage of time.
    - Minnesota in compliance

The following tables compare state laws in effect October 1, 1978, with the National Commission's 19 essential recommendations.

Table 1 summarizes the total number of essential recommendations met by each state law. Tables 2, 3, and 4 show state-by-state breakdowns for recommendations relating, respectively, to coverage, income benefits, and medical benefits. An "X" means that the law meets the recommended standard. A "-" means that the law does not meet the recommended standard. "NA" means that data were not available.

A supplement, entitled "Pending Changes," shows legislation enacted by October 1, 1978, which will newly meet, or approach meeting, an essential recommendation on an effective date later than October 1, 1978.

TABLE 1. SUMMARY OF STATE TOTALS

(NOTE: The possible total score is 938, or 19 recommendations multiplied by 52 jurisdictions for which data were available. The current total of 615.25 represents 62.3% of the possible total.)

State	Total	Coverage	Benefits	Medical
Total	615.25			
Average	11.83			
Alabama	10.00	4.00	4.00	2.00
Alaska	13.00	3.50	8.50	1.00
Am Samoa	NA	NA	NA	NA
Arizona	12.50	6.50	4.00	2.00
Arkansas	9.00	3.00	4.00	2.00
California	11.00	6.00	4.00	1.00
Colorado	12.50	5.50	5.00	2.00
Connecticut	10.75	3.50	5.25	2.00
Delaware	11.00	4.00	5.00	2.00
Dist Columbia	14.00	5.00	7.00	2.00
Florida	6.50	3.50	2.00	1.00
Georgia	9.50	2.50	5.00	2.00
Guam	NA	NA	NA	NA
Hawaii	14.75	6.00	6.75	2.00
Idaho	9.00	5.00	2.00	2.00
Illinois	14.00	4.00	8.00	2.00
Indiana	11.00	5.00	4.00	2.00
Iowa	14.50	4.50	8.00	2.00
Kansas	9.50	4.50	4.00	1.00
Kentucky	11.50	5.50	4.00	2.00
Louisiana	11.75	5.00	4.75	2.00
Maine	13.50	4.50	8.00	1.00
Maryland	15.25	4.50	8.75	2.00
Massachusetts	9.50	4.00	3.50	2.00
Michigan	11.00	5.00	4.00	2.00
Minnesota	13.50	4.00	7.50	2.00
Mississippi	7.00	2.00	3.00	2.00
Missouri	10.75	5.00	4.75	1.00
Montana	16.00	5.00	9.00	2.00
Nebraska	14.00	6.00	6.00	2.00
Nevada	14.00	4.00	8.00	2.00
New Hampshire	18.50	8.00	8.50	2.00
New Jersey	10.50	6.50	3.00	1.00
New Mexico	12.00	4.00	6.00	2.00
New York	9.00	3.00	4.00	2.00
North Carolina	12.50	2.50	8.00	2.00
North Dakota	13.75	4.00	7.75	2.00
Ohio	16.50	5.50	9.00	2.00
Oklahoma	9.75	4.00	3.75	2.00
Oregon	13.50	5.00	6.50	2.00
Pennsylvania	13.00	4.00	7.00	2.00
Puerto Rico	9.50	6.00	1.50	2.00
Rhode Island	13.50	3.00	8.50	2.00
South Carolina	11.00	2.00	7.00	2.00
South Dakota	10.25	2.50	5.75	2.00
Tennessee	7.50	2.50	3.00	2.00
Texas	9.50	2.50	5.00	2.00
Utah	12.00	5.00	6.00	1.00
Vermont	13.50	4.50	7.00	2.00
Virginia	10.50	1.50	7.00	2.00
Virgin Is	NA	NA	NA	NA
Washington	10.00	6.00	2.00	2.00
West Virginia	14.75	5.00	7.75	2.00
Wisconsin	15.00	5.00	8.00	2.00
Wyoming	9.00	4.00	3.00	2.00

TABLE 2. 8 RECOMMENDATIONS RELATING TO COVERAGE

State	Recommendation number								
	2.1(a)	2.1(b)	2.2	2.4	2.5	2.6	2.7	2.11	2.12
Total States Meeting	49	34	37	14	1	31	23	27	52
Alabama	X	X	-	-	-	-	X	X	X
Alaska	X	-	X	-	-	-	-	X	X
Am Samoa	NA	NA	NA	NA	NA	NA	NA	NA	NA
Arizona	X	-	X	X	-	X	X	X	X
Arkansas	X	X	-	-	-	X	-	-	X
California	X	X	X	X	-	X	X	-	X
Colorado	X	-	X	X	-	X	-	X	X
Connecticut	X	-	X	X	-	-	-	-	X
Delaware	X	X	X	-	-	-	-	X	X
Dist Columbia	X	X	X	-	-	X	X	-	X
Florida	X	-	-	-	-	X	-	X	X
Georgia	X	-	-	-	-	-	-	X	X
Guam	NA	NA	NA	NA	NA	NA	NA	NA	NA
Hawaii	X	X	X	X	-	X	-	X	X
Idaho	X	X	X	-	-	X	-	X	X
Illinois	X	X	X	-	-	-	-	X	X
Indiana	X	X	X	-	-	X	-	X	X
Iowa	X	-	X	-	-	X	-	X	X
Kansas	X	-	-	-	-	X	X	X	X
Kentucky	X	-	X	-	-	X	X	X	X
Louisiana	X	X	X	X	-	-	-	X	X
Maine	X	-	X	-	-	X	X	-	X
Maryland	X	-	X	-	-	X	X	-	X
Massachusetts	X	X	X	X	-	-	-	-	X
Michigan	X	X	-	X	-	X	X	-	X
Minnesota	X	X	X	-	-	-	X	-	X
Mississippi	X	X	-	-	-	-	-	-	X
Missouri	X	X	-	-	-	X	X	X	X
Montana	X	X	X	X	-	X	-	-	X
Nebraska	X	X	X	-	-	X	X	X	X
Nevada	X	X	X	-	-	X	-	-	X
New Hampshire	X	X	X	X	X	X	X	X	X
New Jersey	-	X	X	X	-	X	X	X	X
New Mexico	X	X	-	-	-	X	-	X	X
New York	X	X	X	-	-	-	-	-	X
North Carolina	X	-	-	-	-	-	-	X	X
North Dakota	X	X	X	-	-	X	-	-	X
Ohio	X	-	X	X	-	X	X	-	X
Oklahoma	X	X	X	-	-	X	-	-	X
Oregon	X	X	X	X	-	X	-	-	X
Pennsylvania	X	X	X	-	-	-	-	X	X
Puerto Rico	X	X	X	X	-	X	X	-	X
Rhode Island	X	X	-	-	-	-	X	-	X
South Carolina	-	-	-	-	-	-	-	X	X
South Dakota	X	-	X	-	-	-	-	-	X
Tennessee	X	-	-	-	-	-	X	-	X
Texas	-	X	X	-	-	-	-	-	X
Utah	X	X	X	-	-	X	X	-	X
Vermont	X	-	X	-	-	-	X	X	X
Virginia	X	-	-	-	-	-	-	-	X
Virgin Is	NA	NA	NA	NA	NA	NA	NA	NA	NA
Washington	X	X	X	-	-	X	X	X	X
West Virginia	X	X	X	-	-	X	X	-	X
Wisconsin	X	X	-	-	-	X	X	X	X
Wyoming	X	X	X	-	-	-	-	X	X

TABLE 3. 9 RECOMMENDATIONS RELATING TO INCOME BENEFITS

State	Recommendation number											
	3.7	3.8	3.11	3.12	3.15	3.17	3.21	3.23	3.25(a)	3.25(b)	3.25(c)	3.25(d)
Total States Meeting	48	25	51	47	23	35	30	20	17	12	19	7
Alabama	X	-	X	X	-	X	-	-	-	-	-	-
Alaska	X	X	X	X	X	X	X	X	-	X	X	-
Am Samoa	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Arizona	X	-	X	X	-	X	-	-	-	-	-	-
Arkansas	X	-	X	X	-	X	-	-	-	-	-	-
California	X	-	X	X	-	-	X	-	-	-	-	-
Colorado	X	-	X	X	-	X	X	-	-	-	-	-
Connecticut	X	-	X	X	-	X	X	-	X	-	-	-
Delaware	X	-	X	X	-	X	X	-	-	-	-	-
Dist Columbia	X	X	X	X	X	X	-	X	-	-	-	-
Florida	-	-	X	-	-	X	-	-	-	-	-	-
Georgia	X	-	X	X	-	X	X	-	-	-	-	-
Guam	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Hawaii	X	X	X	X	X	X	-	-	X	X	X	-
Idaho	-	-	X	-	-	X	-	-	-	-	-	-
Illinois	X	X	X	X	X	X	X	X	-	-	-	-
Indiana	X	-	X	X	-	-	X	-	-	-	-	-
Iowa	X	X	X	X	X	X	X	X	-	-	-	-
Kansas	X	-	X	X	-	-	X	-	-	-	-	-
Kentucky	X	-	X	X	-	X	-	-	-	-	-	-
Louisiana	X	-	X	X	-	X	-	-	X	X	X	-
Maine	X	X	X	X	X	X	X	X	-	-	-	-
Maryland	X	X	X	X	X	X	X	X	X	X	X	-
Massachusetts	X	-	X	X	-	-	-	-	-	-	X	X
Michigan	X	-	-	X	-	X	X	-	-	-	-	-
Minnesota	X	X	X	X	X	X	-	X	X	-	X	-
Mississippi	X	-	X	X	-	-	-	-	-	-	-	-
Missouri	X	-	X	X	-	-	X	-	X	X	X	-
Montana	X	X	X	X	X	X	X	X	X	X	X	X
Nebraska	X	-	X	X	-	X	X	-	X	X	X	X
Nevada	X	X	X	X	X	X	X	X	-	-	-	-
New Hampshire	X	X	X	X	X	X	X	X	-	-	X	X
New Jersey	X	-	X	X	-	-	-	-	-	-	-	-
New Mexico	X	X	X	X	X	-	-	X	-	-	-	-
New York	X	-	X	X	-	X	-	-	-	-	-	-
North Carolina	X	X	X	X	X	X	X	X	-	-	-	-
North Dakota	X	X	X	X	X	X	X	-	X	X	X	-
Ohio	X	X	X	X	X	X	X	X	X	X	X	X
Oklahoma	X	-	X	X	-	-	-	-	X	X	X	-
Oregon	X	X	X	X	X	X	-	-	X	-	X	-
Pennsylvania	X	X	X	X	X	X	-	X	-	-	-	-
Puerto Rico	-	-	X	-	-	-	-	-	X	-	X	-
Rhode Island	X	X	X	X	X	X	X	X	X	-	X	-
South Carolina	X	X	X	X	X	-	X	X	-	-	-	-
South Dakota	X	-	X	X	-	X	X	-	X	X	X	-
Tennessee	X	-	X	X	-	-	-	-	-	-	-	-
Texas	X	-	X	X	-	-	X	-	X	X	X	X
Utah	X	X	X	X	-	X	X	-	-	-	-	-
Vermont	X	X	X	X	X	-	X	X	-	-	-	-
Virginia	X	X	X	X	X	-	X	X	-	-	-	-
Virgin Is	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Washington	-	-	X	-	-	X	-	-	-	-	-	-
West Virginia	X	X	X	X	X	-	X	X	X	-	X	X
Wisconsin	X	X	X	X	X	X	X	X	-	-	-	-
Wyoming	X	X	X	-	-	-	-	-	-	-	-	-

TABLE 4. 2 RECOMMENDATIONS RELATING TO MEDICAL BENEFITS

States	Recommendation number 4.2	4.4
Total States Meeting	50	46
Alabama	X	X
Alaska	-	X
Am Samoa	NA	NA
Arizona	X	X
Arkansas	X	X
California	X	-
Colorado	X	X
Connecticut	X	X
Delaware	X	X
Dist Columbia	X	X
Florida	X	-
Georgia	X	X
Guam	NA	NA
Hawaii	X	X
Idaho	X	X
Illinois	X	X
Indiana	X	X
Iowa	X	X
Kansas	X	-
Kentucky	X	X
Louisiana	X	X
Maine	X	-
Maryland	X	X
Massachusetts	X	X
Michigan	X	X
Minnesota	X	X
Mississippi	X	X
Missouri	X	-
Montana	X	X
Nebraska	X	X
Nevada	X	X
New Hampshire	X	X
New Jersey	X	-
New Mexico	X	X
New York	X	X
North Carolina	X	X
North Dakota	X	X
Ohio	X	X
Oklahoma	X	X
Oregon	X	X
Pennsylvania	X	X
Puerto Rico	X	X
Rhode Island	X	X
South Carolina	X	X
South Dakota	X	X
Tennessee	X	X
Texas	X	X
Utah	-	X
Vermont	X	X
Virginia	X	X
Virgin Is	NA	NA
Washington	X	X
West Virginia	X	X
Wisconsin	X	X
Wyoming	X	X

Supplement: Pending Changes

The following changes in State laws, affecting accordance with the 19 essential recommendations of the National Commission, were enacted and approved on or before October 1, 1978, to become effective after that date.

State	Effective date	Maximum weekly compensation for total disability and death will equal:
Alaska	1-1-79	166.6% of State average weekly wage
	1-1-81	200% of State average weekly wage
Iowa	7-1-79	166 2/3% of State average weekly wage
	7-1-81	200% of State average weekly wage
Oklahoma 1/	1-1-79	$90
	1-1-80	$110
	1-1-81	66 2/3% of State average weekly wage
South Dakota	7-1-79	100% of State average weekly wage
Oklahoma	1-1-79	Will comply with R2.7

1/ Compensation shown for Oklahoma pertains only to permanent total disability and death, not to temporary total disability.

B. COMPARISON OF BENEFITS AMONG 51 JURISDICTIONS

(See following tables. Figures contained in these tables were compiled from information contained in the 1978 edition of Analysis of Workers' Compensation Laws, prepared and published by the Chamber of Commerce of the United States.)

INCOME BENEFITS FOR DISABILITIES

	Jurisdiction	Max Percent of Wages	Max Weekly Payment	Min Weekly Payment	Permanent Total Time Limit	Permanent Total Amount Limit	Notation	Temporary Total Time Limit	Temporary Total Amount Limit
1.	Alaska*	66-2/3	$607.85	$65 (actual wage if less)	--	--	Max = 133-1/3% SAWW (1/1/77); 166-2/3% (1/1/79); 200% (1/1/81)	Disability	No limit
2.	District of* Columbia	66-2/3	367.22	91.81	--	--	Max = 200% Nat'l Avg. Weekly Wage Min = 50% Nat'l Avg. Weekly Wage	Disability	No limit
3.	Illinois*1	66-2/3	306.73	115.03	--	--	Max = 133-1/3% SAWW Min = 50% SAWW	Disability	No limit
4.	Connecticut*	66-2/3	220.50 + 30 = 250.50	20	--	--	Benefits adjusted annually based on cost of living. ($10 per dependent child not to exceed 50% of benefit or 75% avg. weekly wage)	Disability	No limit
5.	Iowa*	66-2/3	247.48	36 (actual if less)	--	--	Max = 133-1/3% SAWW 1977; 166-2/3% SAWW 1979; 200% SAWW 1981	Disability	No limit
6.	Oregon*2	66-2/3	213.78 + 20 = 233.78	50 or 90% if wage is less	--	--	Max = 100% SAWW ($5 ea. dependent - $25 max)	Disability	No limit
7.	Maine*3	66-2/3	220.88	25	--	--		Disability	No limit
8.	Ohio*	66-2/3	216	108	--	--	Max = 100% SAWW Min = 50% SAWW	200 wks after which claimant is examined to determine if disability is permanent	

* Benefits increased automatically based upon state average weekly wage, annually; except Illinois semiannually and Maine biennially.

1 Unreasonable delay (more than 14 days) in payment of compensation may result in penalty of 50% of award plus $10 per day that compensation is unpaid. Employer's willful violation of safety and health act causing employee's injury, liable for penalty of 25% increased compensation.

2 Employer may be sued for damages for failure to comply with posted notice of violation of safety code.

3 10% penalty added for failure to pay compensation within 10 days if uncontroverted.

Jurisdiction	Max Percent of Wages	Max Weekly Payment	Min Weekly Payment	Permanent Total Time Limit	Permanent Total Amount Limit	Notation	Temporary Total Time Limit	Temporary Total Amount Limit
9. Pennsylvania*	66-2/3	213	106.50	--	--	Max = 100% SAWW Min = 1/3 SAWW if wage is less than 50% of SAWW	Disability	No limit
10. West Virginia*	66-2/3	208	69.33	--	--	Max = 100% SAWW Min = 33-1/3% SAWW	208 weeks	--
11. Wisconsin*	66-2/3	202	30	--	--	Max = 100% SAWW	Disability	No limit
11. Maryland*	66-2/3	202	25 (actual if less)	--	--	Max = 100% SAWW	208 weeks	--
13. Rhode Island	66-2/3	176 + 24 = 200	30	--	--	Max = 100% SAWW (additional $6 week ea. dependent, total not to exceed 80% avg. weekly wage of employee	Disability	No limit
14. Arizona	66-2/3	192.12 + 9.20 = 201.32	32.50	--	--	($2.30 for ea. dependent)	Disability	$65,000
15. Idaho*	60-90	164.70 + 34.58 = 199.28	109.80	--	--	Max = 90% SAWW Min = 60% SAWW (7% additional ea. child, max 5 or more = $214.11)	Disability	No limit
16. Nevada*	66-2/3	198.22		--	--	Max = 100% SAWW. Additional allowance for constant attendant if necessary of $50 a month	Disability	No limit
17. Minnesota*[4]	66-2/3	197[4a]	39.40[4b]			Max = 100% SAWW Min = 20% SAWW	Disability	No limit
18. Hawaii*	66-2/3	189	48	--	--	Max = 100% SAWW. 4 times max may be ordered for attendant	Disability	No limit
19. North Dakota*	66-2/3	171 + 15 = 186	96	--	--	Max = 100% SAWW (additional $5 ea. child under 18)	Disability	No limit

* Benefits increased automatically based upon state average weekly wage, annually; except Illinois semiannually and Maine biennially.

[4] 8% interest for late payments. Annual adjustment based on change in SAWW, after 10/76 (6% maximum increase).

4a $209 as of October 1, 1978

4b $41.80 as of October 1, 1978

Jurisdiction	Max Percent of Wages	Max Weekly Payment	Min Weekly Payment	Permanent Total Time Limit	Permanent Total Amount Limit	Notation	Temporary Total Time Limit	Temporary Total Amount Limit
20. Vermont*[5]	66-2/3	170 + 15 = 185	85	330 weeks	--	Max = 100% SAWW Min = 50% SAWW (additional $5 ea. dependent child under 21)	330 weeks	--
21. New York	66-2/3	180	20 (actual if less)	--	--		Disability	No limit
22. Utah*	66-2/3	156 + 20 = 176	45 (actual if less)	--	--	$5 additional ea. dependent child under 18 up to 4. $5 for dependent spouse	312 weeks	--
23. Virginia*[6]	66-2/3	175	43.75	--	--	Cost of living supp. benefits payable if combined W.C. and S.S. are less than 80% of employee's earnings before disability	500 weeks	$87,500
24. Massachusetts[7]	66-2/3	150 + 24 = 174	30	--	$45,000	Max = 100% SAWW Min = 40%; additional $6 ea. dependent	Disability	$45,000
24. Montana*	66-2/3	174	--	--	--	Max = 100% SAWW	Disability	No limit
26. Wyoming*	66-2/3	130.58+41.55 = 172.13	43.38	--	--	Max = 66-2/3% SAWW. (Additional $13.85 for ea. child, no limit)	Disability	No limit
27. South Carolina*	66-2/3	172	25	500 weeks	$40,000	Max = 100% SAWW	500 weeks	$40,000

* Benefits increased automatically based upon state average weekly wage, annually; except Illinois semiannually and Maine biennially.

5 Compensation increased or decreased by 15% if injury due to employer's or employee's violation of state safety laws.

6 Failure to pay compensation within 2 weeks after due, 20% penalty added.

7 Double compensation if injury due to employer's serious and willful misconduct.

	Jurisdiction	Max Percent of Wages	Max Weekly Payment	Min Weekly Payment	Permanent Total Time Limit	Permanent Total Amount Limit	Notation	Temporary Total Time Limit	Temporary Total Amount Limit
28.	New Hampshire*[8]	66-2/3	169	30 (actual if less)	--	--	Max = 100% SAWW. After 6 successive years of payment, additional payments may be made only by order of commissioner upon application to employer If employer objects, medical panel provided for.	Disability	No limit
29.	North Carolina*	66-2/3	168	20	--	--	Max = 100% SAWW	Disability	No limit
30.	Michigan*	66-2/3	142 + 24 = 166	105	--	--	Max = 100% SAWW (Additional $6 ea. dependent)	Disability	No limit
31.	Washington*[9]	60-75	163.37	49.65	--	--	Additional allowance for constant attendant. Reduced schedule if less than 5 children.	Disability	No limit
32.	Colorado*[10]	66-2/3	161.43	--	--	--	Max = 80% SAWW	Disability	No limit
33.	California[11]	66-2/3	154	49	--	--	--	215 wks (w/in 5 yrs. of injury	--
34.	New Mexico*[12]	66-2/3	153.49	36 (actual if less)	600 weeks	$92,094	Max = 89% SAWW 100% SAWW (7/1/78)	600 weeks	$92,094

* Benefits increased automatically based upon state average weekly wage, annually; except Illinois semiannually and Maine biennially.

8 Double compensation if employer violates prior recorded safety standard violation.

9 50% penalty payable to accident fund for employer's failure to maintain proper safeguards.

10 50% increase in compensation where employer has failed to comply with insurance provisions.
50% decrease in compensation where injury results from failure to obey safety regulations or intoxication.

11 50% increased compensation if injury due to employer's serious, willful misconduct.

12 10% additional compensation payable by employer for failure to provide safety devices.

Jurisdiction	Max Percent of Wages	Max Weekly Payment	Min Weekly Payment	Permanent Total		Notation	Temporary Total	
				Time Limit	Amount Limit		Time Limit	Amount Limit
35. New Jersey*	66-2/3	146	15	450 weeks	--	After 450 weeks at reduced rate during disability if employed; at full rate if not rehabitable	300 weeks	--
36. Delaware*	66-2/3	143.85	48	--	--	Max = 66-2/3% SAWW Min = 22-2/9% SAWW	Disability	No limit
37. Nebraska	66-2/3	140	49 (actual if less)	--	--	--	Disability	No limit
38. Indiana	66-2/3	120 + 12 = 132	75 (actual if less)	500 weeks	$60,000	Additional $3 ea. dependent	500 weeks	$60,000
39. South Dakota	66-2/3	130	65	--	--	Max = 84% SAWW, 7/1/77; 94%, 7/1/78; 100% 7/1/79; Min = 50% or wage if less	Disability	No limit
39. Louisiana*	66-2/3	130	39 (actual if less)	--	--	Max = 66-2/3% SAWW	Disability	No limit
41. Florida*[13]	60	126	20 (actual if less)	--	--	Max = 66-2/3% SAWW	350 weeks	$44,100
42. Kentucky*	66-2/3	112 + 11.20 = 123.20	37.40	--	--	Additional 2-1/2% for each dependent	Disability	No limit
43. Kansas*[14]	66-2/3	120.82	7	--	$50,000	Max = 66-2/3% SAWW	Disability	$50,000
44. Alabama*	66-2/3	120	45	--	--	Max = 66-2/3% SAWW; Min = 25%, or actual wage if less	300 weeks	$30,600
45. Missouri	66-2/3	115	16	--	--	--	400 weeks	$46,000

* Benefits increased automatically based upon state average weekly wage, annually; except Illinois semiannually and Maine biennially.

[13] 10% penalty may be added for failure to pay benefits within 14 days of due date.

[14] Penalty of $100 per week for failure to pay compensation award and $25 for medical care past due and within 20 days of written demand.

Jurisdiction	Max Percent of Wages	Max Weekly Payment	Min Weekly Payment	Permanent Total Time Limit	Permanent Total Amount Limit	Notation	Temporary Total Time Limit	Temporary Total Amount Limit
46. Mississippi	66-2/3	91 + 12 = 103	25	450 weeks	$40,950	Additional $3 for each dependent, max of 5	450 weeks	$40,950
47. Tennessee	66-2/3	100	15	550 weeks	$40,000	After 400 weeks, $15 per week	Disability	$40,000
48. Georgia[15]	66-2/3	95	25	--	--	--	Disability	No limit
49. Texas*	66-2/3	91	19	401 weeks	$36,491	Adjusted annually, $7 for each $10 increase in SAWW	300 weeks	$27,300
50. Arkansas[16]	66-2/3	87.50	15	--	$39,375	--	450 weeks	$39,375
51. Oklahoma	66-2/3	75	30	--	--	--	300 weeks	--

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National Average $179.76

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* Benefits increased automatically based upon state average weekly wage, annually; except Illinois semiannually and Maine biennially.

15 Refusal, unreasonable delay or willful neglect to make any payment due, board may assess employer 10% added.

16 Compensation increased 15% if disability due to employer's violation of safety regulations.

INCOME BENEFITS FOR SPOUSE AND CHILDREN

	Jurisdiction	Maximum Burial Allowance	Maximum Period	Maximum Per Week		Maximum Amounts +		Minimum Per Week	Percent of Wage		
				Widow Only	Widow Plus Children	Widow Only	Widow Plus Children	Widow Only	Maximum	Widow Only	One Child Only
1.	Alaska	$1,000	1	$607.85 133-1/3% SAWW	Same	104 week lump sum payable upon remarriage of widow	Payments to children until age 19	$45	66-2/3	66-2/3	66-2/3
2.	District of Columbia	1,000	*	367.22 Adjusted annually by increase in NAWW	Same	--	--	91.81 (Adjusted annually)	66-2/3	50	50
3.	Illinois	1,750	2	306.73 Max=133-1/3% SAWW	Same	250,000 or 20 yrs.	Same	115.03 Min=50% SAWW	66-2/3	66-2/3	66-2/3
4.	Iowa	1,000	*	247.48 Max=133-1/3% SAWW	Same	--	--	36(actual if less)	80	80	80
5.	Maine	1,000	*	220.88 Max=133-1/3% SAWW	Same	--	--	25	66-2/3	66-2/3	66-2/3
6.	Ohio	1,250	2	216 Max=SAWW	Same	--	--	108 Min=50%SAWW	66-2/3	66-2/3	66-2/3
7.	Pennsylvania	1,500	*	213 Max=SAWW	Same	--	--	106.50 Min=1/2 SAWW	66-2/3	51	32

* Benefits payable to widow until death or remarriage and to children until specified age (generally 18). Lump sum payable to widow upon remarriage (generally 104 weeks).

\+ Disability payments deducted in all jurisdictions except Arizona, Arkansas, California, Delaware, D.C., Florida, Michigan, Mississippi, Missouri, Nevada, New York, N. Dakota, Oregon, Washington, W. Virginia, Wisconsin, Wyoming.

1 Death benefits payable to spouse reduced as follows: 5 years after worker's death to 2/3 of benefits being paid; 8 years from death, 50% of benefits; 10 years after death, benefits terminate except if spouse is over 52 years of age.

2 Benefits to either surviving spouse for life or remarriage whereupon payment of lump sum settlement of 2 years benefits; to children if full-time student.

Jurisdiction	Maximum Burial Allowance	Maximum Period	Maximum Per Week		Maximum Amounts		Minimum Per Week	Percent of Wage		
			Widow Only	Widow Plus Children	Widow Only	Widow Plus Children	Widow Only	Maximum	Widow Only	One Child Only
8. W. Virginia	$1,500	*	$208 Max=SAWW	Same	--	--	$69.33	66-2/3	66-2/3	66-2/3
9. Wisconsin	1,000	1000 wks	202	Plus 10% of surviving parent's weekly benefit to each child under 18	Aggregate amount = 70% of avg. weekly wage not to exceed 4 times worker's avg. annual wage or $56,706		30	66/23	66-2/3	66-2/3
9. Maryland	1,200	*	202 Max=SAWW	Same	--	--	25(actual if less)	66-2/3	66-2/3	66-2/3
11. Nevada	1,200	*	198.22	Same	--	--	--	66-2/3 Adjusted annually but not to exceed 2/3 SAWW	66-2/3	66-2/3
12. Minnesota	1,000	*	197 Max=SAWW	Same	--	--	39.40	66-2/3 Annual adjustment based on SAWW after 10/76 (6% maximum increase)	50	55
13. Idaho	750	500 wks	183 Max=SAWW	45% employee's wage for widow plus 5% ea child up to 3	41,175	54,900	74.25	60	50	40
14. New York	750	*	180 To be increased to $215 1/1/79	Same	--	--	30	66-2/3	66-2/3	66-2/3
15. Rhode Island	1,800	*	176	176 + $6 ea. dependent child not to exceed 80% of wage	--	--	30	80	66-2/3	80

*Benefits payable to widow until death or remarriage and to children until specified age (generally 18). Lump sum payable to widow upon remarriage (generally 104 weeks).

	Jurisdiction	Maximum Burial Allowance	Maximum Period	Maximum Per Week		Maximum Amounts		Minimum Per Week	Percent of Wage		
				Widow Only	Widow Plus Children	Widow Only	Widow Plus Children	Widow Only	Maximum	Widow Only	One Child Only
16.	Virginia	1,000	500 wks	175	Same	87,500	87,500	43.75	66-2/3	66-2/3	66-2/3
17.	Montana	1,100	*3	174 Max=SAWW	Same	--	--	87	66-2/3	66-2/3	66-2/3
18.	S. Carolina	400	500 wks	172 Max=SAWW	Same	40,000	40,000	25	66-2/3	66-2/3	66-2/3
19.	Vermont	500	4	170 Max=SAWW	Same	--	--	85 Min=50% SAWW	76-2/3	66-2/3	71-2/3
20.	New Hampshire	1,200	400 wks	169 Max=SAWW	Same	67,600	67,600	30(actual if less)	66-2/3	66-2/3	66-2/3
21.	N. Carolina[5]	500	*	168 Max=SAWW	Same	--	--	20	66-2/3	66-2/3	66-2/3
22.	Washington	1,000	*6	163.37 Max=lesser of 70% of employee's avg. monthly wage or 75% SAWW	Same	--	--	49.65	75	60	35

* Benefits payable to widow until death or remarriage and to children until specified age (generally 18). Lump sum payable to widow upon remarriage (generally 104 weeks).

3 Beneficiary includes unmarried child to age 25 who is a full time student. Also provides for $3,000 payment to non-dependent parent if no other beneficiaries.

4 Payments continue until age 62, remarriage or death of widow; 330 weeks to child; 264 to parent, grandparent, grandchild, brothers or sisters.

5 In no-dependency death cases, benefits payable to next of kin. Payments to dependent spouse continue until death or remarriage and to child until age 18.

6 Upon remarriage, surviving spouse has choice of $7,500 or 50% of remaining annuity.

Jurisdiction	Maximum Burial Allowance	Maximum Period	Maximum Per Week		Maximum Amounts		Minimum Per Week	Percent of Wage		
			Widow Only	Widow Plus Children	Widow Only	Widow Plus Children	Widow Only	Maximum	Widow Only	One Child Only
23. Colorado	1,000	*	161.43 Max=80% SAWW	Same	--	--	40.36	66-2/3	66-2/3	66-2/3
24. Utah	1,000	312 wks	156	156+$5 ea. dependent child (up to 4)	48,672 Payments in excess payable from 2nd injury fund	48,672	45	66-2/3	66-2/3	66-2/3
25. California	1,000	*	154	Same	50,000	55,000	36	66-2/3	--	--
26. Connecticut	1,500	*	147 Benefit payable to either spouse Max = 2/3 SAWW	Same	--	--	20	66-2/3 Annual cost of living adjustment payable from 2nd injury fund	66-2/3	66-2/3
27. New Jersey	750	450 wks Thereafter to children until age 18, amt reduced for widow by her earnings	146 Max=2/3 avg. indus. wage	Same	--	--	15	70	50	50
28. Delaware	700	*	144 Max = 2/3 SAWW	173	--	--	48	80	66-2/3	66-2/3
29 Michigan	1,500	500 wks	142	165	71,000	82,500	105	66-2/3	66-2/3	66-2/3
30. Nebraska[2]	1,000	--	140	Same	--	--	49 (actual if less)	75	66-2/3	66-2/3
31. Wyoming	1,100	*	130.58 Max = 2/3 SAWW	Plus $13.85/ week for ea. child, $20,000=Max	25,000	45,000	43.38	--	--	--

* Benefits payable to widow until death or remarriage and to children until specified age (generally 18). Lump sum payable to widow upon remarriage (generally 104 weeks).

2 Benefits to either surviving spouse for life or remarriage whereupon payment of lump sum settlement of 2 years benefits; to children if full-time student.

Jurisdiction	Maximum Burial Allowance	Maximum Period	Maximum Per Week		Maximum Amounts		Minimum Per Week	Percent of Wage		
			Widow Only	Widow Plus Children	Widow Only	Widow Plus Children	Widow Only	Maximum	Widow Only	One Child Only
32. Louisiana	1,500	*	130 Max = 2/3 SAWW	Same	--	--	39 (actual if less)	65	32-1/2	32-1/2
32. S. Dakota	2,000	*	130 Max=2/3 SAWW	Plus $11.50 a wk for ea. child Max=SAWW 7/1/79	--	--	65	66-2/3	66-2/3	66-2/3
34. Florida	1,000	*	126	Same	50,000	50,000	20 (actual if less)	60	45	30
35. Kansas	2,000	*	120.40	Same	50,000	50,000-limit not applicable to children under 18	7	66-2/3	66-2/3	66-2/3
36. Indiana	1,500	500 wks	120	Same	60,000	60,000	75	66-2/3	66-2/3	66-2/3
37. Missouri	2,000	*	115	Same	--	--	16	66-2/3	66-2/3	66-2/3
38. Oregon	1,000	7	106.89	213.78	--	--	106.89 Min=1/2 SAWW	Max monthly benefit not to exceed 4.35 times 100% SAWW		
39. Arizona	1,000	*	100.96 Benefit payable to surviving spouse w/o regard to dependency	In computing avg. monthly wage all wages in excess of $1,250/month are excluded			--	66-2/3	35	25
40. Tennessee	750	*	100	Same	40,000	40,000	15 (actual if less)	66-2/3	50	50

* Benefits payable to widow until death or remarriage and to children until specified age (generally 18). Lump sum payable to widow upon remarriage (generally 104 weeks).

7 Payable until remarriage then $5,000 lump sum settlement.

Jurisdiction	Maximum Burial Allowance	Maximum Period	Maximum Per Week		Maximum Amounts		Minimum Per Week	Percent of Wage		
			Widow Only	Widow Plus Children	Widow Only	Widow Plus Children	Widow Only	Maximum	Widow Only	One Child Only
41. Georgia	750	400 wks	95	Same	32,500	38,000	25 (actual if less	66-2/3	66-2/3	66-2/3
41. Hawaii	1,500	--	95	189	Aggregate of disability and death benefits = 312 times max weekly benefit		47	66-2/3	50	40
43. Kentucky	1,500	--	94	112 Max=2/3 SAWW	--	--	37	75	50	60
44. Mississippi	1,000	450 wks	91	Same	40,950	40,950	25	66-2/3	35	25
44. Oklahoma	1,000	--	91 plus $10,000 single payment to surviving spouse and $2,500 to ea child not to exceed 2 children	182	--	--	30	75	50	35
44. Texas[2]	1,250	--	91	Same	--	--	19	66-2/3	66-2/3	66-2/3
47. Alabama	1,000	500 wks	89.88	120	44,938	60,000	45	66-2/3	50	50
48. Arkansas	750	2	87.50	Same	--	--	15	66-2/3	35	50
49. New Mexico	1,500	600 wks[8]	86.23	153.49	51,738	92,094	36	66-2/3	66-2/3	66-2/3

[2] Benefits to either surviving spouse for life or remarriage whereupon payment of lump sum settlement of 2 years benefits; to children if full-time student.

[8] Payments to children until age 19 or over 19 if a student; 104 weeks lump sum to spouse upon remarriage, excluding amounts on account of other dependents. Benefits to either spouse.

Jurisdiction	Maximum Burial Allowance	Maximum Period	Maximum Per Week		Maximum Amounts		Minimum Per Week	Percent of Wage		
			Widow Only	Widow Plus Children	Widow Only	Widow Plus Children	Widow Only	Maximum	Widow Only	One Child Only
50. N. Dakota	1,000	*	75	Same - plus $7/wk for ea. dependent child; also $300 lump sum to spouse and $100 for ea. child	--	--	--	66-2/3	66-2/3	66-2/3
51. Massuchesetts	1,000	400 wks Thereafter to age 18 to dependent children	55	Same - plus $6/wk per child	16,000 May receive additional sums if widow not fully self supporting and/or child up to age 18 or over if full time student	16,000	55	--	--	--
			* * * * * * * * * * * * * * * * * * * *							
National Average			161.52	173.18			46.77			

* Benefits payable to widow until death or remarriage and to children until specified age (generally 18.). Lump sum payable to widow upon remarriage (generally 104 weeks).

INCOME BENEFITS FOR SCHEDULED INJURIES

In this group of states, compensation for temporary disability is allowed in addition to allowance for scheduled injury.

Jurisdiction	Arm at Shoulder	Hand	Thumb	First Finger	Second Finger	Third Finger	Fourth Finger	Leg at Hip	Foot	Great Toe	Other Toes	One Eye
District of Columbia	$114,573	$89,601	$27,542	$16,892	$11,017	$9,181	$5,508	$105,759	$75,280	$13,954	$5,876	$58,755
Illinois	92,019	58,279	21,471	12,269	10,736	7,668	6,135	84,351	47,543	10,736	3,681	49,077
Hawaii	58,986	46,116	14,175	8,694	5,670	4,725	2,835	54,432	38,745	7,182	3,024	30,246
Iowa	57,000	43,320	13,680	7,980	6,840	5,700	4,560	50,160	34,200	9,120	3,420	31,920
Rhode Island	54,912	42,944	13,200	8,096	5,280	4,400	3,520	54,912	36,080	6,688	1,760	28,160
Minnesota	53,190	43,340	12,805	7,880	6,895	4,925	3,940	43,340	32,505	6,895	2,955	31,520
Connecticut	45,552	36,792	13,870	7,884	6,424	4,526	3,796	34,748	27,448	6,132	1,898	34,310
Michigan	45,999	36,765	11,115	6,498	5,643	3,762	2,736	36,765	27,702	5,643	1,881	27,702
Maine	44,176	36,445	11,044	7,068	6,185	4,418	3,755	44,176	36,445	5,522	2,209	22,088
Alaska	43,680	33,600	10,400	6,440	4,200	3,500	2,100	40,320	28,700	5,320	2,240	22,400
North Carolina	40,320	33,600	12,600	7,560	6,720	4,200	3,360	33,600	24,192	5,880	1,680	20,160
South Carolina	37,840	28,380	11,180	6,880	6,020	4,300	3,440	33,540	24,080	6,020	1,720	18,920
New Hampshire	36,166	29,575	8,450	5,239	4,394	3,211	2,197	36,166	25,519	4,394	1,690	21,294
Massachusetts	33,750	26,250	9,450	6,300	4,725	3,150	2,625	30,000	22,500	5,625	2,250	30,000
West Virginia	33,247	27,706	11,082	5,541	3,879	2,771	2,771	33,247	19,394	5,541	2,216	18,286

Jurisdiction	Arm at Shoulder	Hand	Thumb	First Finger	Second Finger	Third Finger	Fourth Finger	Leg at Hip	Foot	Great Toe	Other Toes	One Eye
Wisconsin	$32,500	$26,000	$10,400	$3,900	$2,925	$1,690	$1,820	$32,500	$16,250	$5,417	$1,625	$17,875
Nebraska	31,500	24,500	8,400	4,900	4,200	2,800	2,100	30,100	21,000	4,200	1,400	17,500
New Mexico	30,698	19,186	8,442	4,298	3,377	2,609	2,149	30,698	17,651	5,372	2,149	20,160
Arizona	27,474	22,930	6,869	4,121	3,170	2,325	1,796	22,930	18,281	3,170	1,162	13,737
South Dakota	26,000	19,500	6,500	4,550	3,900	2,600	1,950	20,800	16,250	3,900	1,300	19,500
Alabama	26,640	20,400	7,440	5,160	3,720	2,640	1,920	24,000	16,680	3,840	1,320	14,880
Utah	26,596	20,496	8,174	5,124	4,148	2,074	976	19,032	10,736	3,172	488	14,640
Montana	24,360	17,400	6,525	6,525	3,219	2,175	1,305	26,100	15,660	3,219	1,392	14,355
Idaho	24,156	20,130	7,046	4,026	4,026	3,020	2,013	18,117	12,581	3,020	1,208	14,091
Ohio	24,300	18,900	6,480	3,780	3,240	2,160	1,620	21,600	16,200	3,240	1,080	13,500
Maryland	20,400	17,000	6,800	2,720	2,380	2,040	1,700	20,400	17,000	2,720	680	17,000
Tennessee	20,000	15,000	6,000	3,500	3,000	2,000	1,500	20,000	12,500	3,000	1,000	10,000
Wyoming	19,587	15,931	5,746	3,787	1,959	1,959	1,959	17,628	13,058	2,612	914	12,275
Delaware	18,750	16,500	5,625	3,750	3,000	2,250	1,500	18,750	12,000	3,000	1,215	17,625
Washington	18,000	16,200	6,480	4,050	3,240	1,620	810	18,000	6,300	3,780	1,380	7,200
Mississippi	18,200	13,650	5,460	3,185	2,730	1,820	1,365	15,925	11,375	2,730	910	9,100
Arkansas	16,800	12,600	5,040	2,940	2,520	1,680	1,260	14,700	10,500	2,520	840	8,400
Colorado	17,472	8,736	4,200	2,184	1,152	924	1,092	17,472	8,736	2,184	924	11,676

Jurisdiction	Art at Shoulder	Hand	Thumb	First Finger	Second Finger	Third Finger	Fourth Finger	Leg at Hip	Foot	Great Toe	Other Toes	One Eye
Oregon	$16,320	$12,750	$ 4,080	$2,040	$1,870	$ 850	$ 510	$12,750	$11,475	$1,530	$ 340	$ 8,500
North Dakota	10,000	10,000	3,750	2,500	2,000	1,500	1,300	9,360	6,000	1,200	480	6,000
New Jersey	1,200	9,200	3,000	2,000	1,600	1,200	800	11,000	8,000	1,600	600	9,000
Nevada	No schedule. Industrial commission determines degree of disability in relation to whole body. Each 1% of impairment compensated by ½ of 1% of employee's monthly wage up to SAWW of $859 payable for five years or until age 65, whichever is later.											
	In this group of states, compensation for temporary disability is allowed in addition to scheduled injury with certain limitations as to period.											
Pennsylvania[1]	87,330	71,355	21,300	10,650	8,520	6,390	5,964	87,330	53,250	8,520	3,408	58,575
Kentucky[3]	38,080	34,944	9,632	6,048	4,816	2,464	1,792	38,080	24,192	3,360	2,240	16,800
Vermont[1]	36,550	29,750	8,500	5,440	4,250	3,400	2,040	36,550	29,750	4,250	1,700	21,250
Virginia[4]	35,000	26,250	10,500	6,120	5,250	3,500	2,625	30,625	21,875	5,250	1,750	17,500

[1]Additional weeks for healing periods.

[3]Additional benefits may be granted if there is wage loss.

[4]After expiration of schedule award, claimant may file for further benefits within one year, if still incapacitated to work.

Jurisdiction	Arm at Shoulder	Hand	Thumb	First Finger	Second Finger	Third Finger	Fourth Finger	Leg at Hip	Foot	Great Toe	Other Toes	One Eye
New York[1,5]	$32,760	$25,620	$7,875	$4,830	$3,150	$2,625	$1,575	$30,240	$21,525	$3,990	$1,680	$16,800
Florida	25,200	22,050	7,560	4,410	3,780	2,520	2,375	21,375	12,825	2,850	1,900	11,875
California	26,687	21,770	3,797	1,680	1,680	1,260	1,260	24,220	16,870	2,117	420	8,452
Kansas[6]	25,372	18,123	7,249	4,470	3,625	2,416	1,812	24,164	15,103	3,625	1,208	14,498
Georgia[7]	19,000	15,200	5,700	3,800	3,325	2,850	2,375	21,375	12,825	2,850	1,900	11,875
Missouri[9]	20,880	15,750	5,400	4,050	3,150	3,150	1,980	18,630	13,500	3,600	1,260	12,600
Indiana[8]	18,750	15,000	4,500	3,000	2,625	2,250	1,500	16,875	13,125	4,500	2,250	13,125
Oklahoma	15,000	12,000	3,600	2,100	1,800	1,200	900	15,000	12,000	1,800	600	6,000
				In this group of states, compensation for temporary disability is deducted from the allowance for scheduled injury.								
Louisana	26,000	19,500	6,500	3,900	2,600	2,600	2,600	22,750	16,250	2,600	1,300	13,000
Texas	18,200	13,650	6,370	5,005	3,640	2,821	2,275	18,200	11,375	2,730	910	9,100

[1]Additional weeks for healing periods.

[5]Compensation for wage loss in addition to scheduled if impairment due to loss of 50% or more of member.

[6]Additional healing period of up to 15 weeks may be allowed.

[7]Not to exceed 52 weeks total disability may be paid in addition, plus an additional 23 weeks healing period.

[8]26 weeks total disability, without deduction.

[9]40 weeks maximum healing period allowed; any compensation in excess of 40 weeks deducted from award.

REHABILITATION OF DISABLED WORKERS

Jurisdiction	Maintenance Allowance	Special Provisions
Alabama	Board, lodging and travel, if away from home	Physical and vocational rehabilitation to restore employee to gainful employment furnished at employer's expense. Employee's refusal shall result in loss of compensation
Alaska	$100 per month during retraining	Limit per person for rehabilitation expense $5,000. Employee undergoing vocational rehabilitation, if compensation and maintenance allowances are exhausted, he may be allowed additional compensation of 1/2 of temporary total disability benefit.
Arizona	Commission may authorize additional necessary awards to persons undergoing vocational rehabilitation.	Person working as vocational rehabilitation trainee shall be considered an employee at $200 monthly wage rate for compensation benefits.
Arkansas	Reasonable expenses for maintenance, travel and other necessary costs for 60 weeks, maximum	Must apply to Commission within 60 days. Commission may authorize vocational rehabilitation if reasonable in relation to disability.
California	All additional necessary living expenses during rehabilitation plus $70 a week in addition to other benefits	Rehabilitation program is compulsory on part of employer or carrier.
Colorado	Maintenance, tuition and transportation during 26 weeks.	Period of time may be extended if necessary. Employee cannot receive disability benefits and maintenance simultaneously.
Connecticut	Additional compensation of $40 per week during rehabilitation paid by employer.	Rehabilitation is continued until employee reaches maximum development in opinion of Commissioner.
Delaware	Reasonable board, lodging and travel	State Board of Rehabilitation may provide vocational rehabilitation, training, services, and money payments for living requirements. Compensation forfeited for refusing rehabilitation services.
Florida	May be paid compensation in lump sum	Compensation during temporary total disability training and rehabilitation in use of artificial appliance maximum of 40 weeks. Employee undergoing rehabilitation may get 80 percent of wage, maximum $400 weekly during six months.

REHABILITATION OF DISABLED WORKERS

Jurisdiction	Maintenance Allowance	Special Provisions
Georgia	Board, lodging and travel away from home.	Vocational Rehabilitation shall be furnished for 52 weeks but may be extended if necessary. Employee's unreasonable refusal of same may result in suspension of compensation.
Hawaii	$35 per week, $5,000 maximum	
Idaho	Reasonable expenses for maintenance and travel	Vocational and physical rehabilitation for 52 weeks. May be extended additional 52 weeks; disability benefits payable during such training.
Illinois	Maintenance costs and incidental expenses	Physical, mental and vocational rehabilitation as may be necessary. Institutional care, if required.
Iowa	$20 weekly in addition to other compensation for 13 weeks	May be extended additional 13 weeks. Medical care includes physical rehabilitation.
Kansas	$2,000 for 26 weeks plus $1,000 if needed, for maintenance and travel.	Physical and vocational rehabilitation shall be furnished by employer for 26 weeks, may be extended additional 26 weeks. Employee's unreasonable refusal may result in suspension of compensation.
Kentucky	50 percent of weekly award for maintenance; $3,500 maximum for 36 weeks for rehabilitation.	If employee completed rehabilitation and gainfully employed at less than prior salary, he shall get 25 percent of permanent disability benefits for 400 weeks.
Maine	$35 per week for 52 weeks	A Commission member may extend vocational or educational rehabilitation benefits for an additional 52 weeks or for a 3rd period of 52 weeks. Parties may agree to 3 month maximum trial work period during which compensation is suspended. If unsuccessful, compensation shall be resumed.
Maryland	Employer shall furnish maintenance, $40 maximum weekly, also compensation for temporary total disability, and pay expenses of vocational rehabilitation.	Employee entitled to 24 months of vocational rehabilitation. Employee's unreasonable refusal forfeits compensation.

REHABILITATION OF DISABLED WORKERS

Jurisdiction	Maintenance Allowance	Special Provisions
Massachusetts		Necessary cost of rehabilitation plus expenses including travel, board and room, etc., subject to approval of Rehabilitation Commission.
Michigan	Transportation and other necessary expenses during 52 weeks training	Medical and vocational rehabilitation services under W. C. Department. Department may extend training period additional 52 weeks, maximum total 104 weeks.
Minnesota	Additional compensation of 2/3 of the daily wage for maximum of 156 weeks and other reasonable and necessary expenses.	Employer shall remodel disabled employee's residence to enable him to move freely, maximum cost of $30,000.
Mississippi	Not more than $10 per week for no more than 52 weeks for rehabilitation maintenance	
Missouri	$21 weekly where physical rehabilitation necessary for as long as authorized.	
Montana	$50 per week additional during rehabilitation	
Nebraska	Board, lodging and travel in addition to compensation	Insurer shall furnish medical, physical and vocational rehabilitation services voluntarily, if not, may be ordered to do so. Costs for same may be apportioned between the employer and the Vocational Rehabilitation Fund.
Nevada	Rehabilitation Commission may allow maintenance as needed.	Commission authorized to provide all necessary rehabilitation services. Employee's refusal to cooperate shall forfeit all benefits.
New Hampshire	Board, lodging, travel, books and basic materials in addition to compensation	Insurer shall furnish rehabilitation services voluntarily or may be ordered to do so, for one year and for further treatment if needed.
New Mexico	Board, lodging, travel and maintenance for his family, $1,000 maximum in addition to other compensation.	Employer shall furnish vocational rehabilitation services to render him fit to engage in remunerative employment.
New York	Not more than $30 per week for rehabilitation maintenance.	

REHABILITATION OF DISABLED WORKERS

Jurisdiction	Maintenance Allowance	Special Provisions
North Carolina		Insurer shall furnish such rehabilitation services as required to lessen disability. Employee's unreasonable refusal of services ordered by Commission bars compensation.
North Dakota	Rehabilitation allowance in lieu of and equal to compensation, plus 25 percent thereof. Additional allowance of $5,000 maximum during lifetime, for remodeling living or business facilities, if required.	Bureau through its Director of Rehabilitation shall provide courses of study, training or education to rehabilitate injured employees. Employee's unreasonable refusal to cooperate shall forfeit compensation.
Ohio	Not more than $84 per week for maximum of 52 weeks	Course of instructions must be undertaken within 60 days from date sufficiently recovered or as soon thereafter as State Board shall provide opportunity.
Oklahoma	Board, lodging, travel, tuition and books.	Court may order necessary rehabilitation not to exceed 52 weeks.
Oregon	Not specifically provided for in law	Board may provide vocational rehabilitation - as much as necessary. May also operate and control a physical rehabilitation center. Employee shall receive temporary disability compensation while undergoing rehabilitation. Board shall reimburse employer for temporary disability benefits paid after injury is medically stationary.
Pennsylvania	No provision in law	State Board of Rehabilitation may provide vocational rehabilitation, training, service, and money payments for living requirements.
Rhode Island		Rehabilitation clinic established to make available to injured workers "all possible modern curative treatment."
South Dakota	Rehabilitation Division provides necessary compensation.	

REHABILITATION OF DISABLED WORKERS

Jurisdiction	Maintenance Allowance	Special Provisions
Tennessee		Division of Workmen's Compensation shall refer all feasible cases to Department of Education authorized to establish and operate State Vocational Rehabilitation Center at Smyrna.
Texas	No provision in law	Insurer shall furnish necessary medical care and services for physical rehabilitation.
Utah	$1,000 maximum during rehabilitation of permanently total disabled person	If cannot be rehabilitated, then gets $99 per week for life after maximum benefit for permanent total disablement.
Vermont	Board, lodging, travel, books and tools	Commissioner may order vocational rehabilitation services. If employee refuses, compensation may be suspended. Rehabilitation services shall be furnished for one year but may be extended in unusual cases.
Virginia	No provision in law	Commission may award compensation, medical care and vocational rehabilitation. Employee's unreasonable refusal may suspend compensation.
Washington	Compensation plus board and lodging away from home for 52 weeks.	Supervisor may extend period for another 52 weeks. Department operates a Rehabilitation Center and pays for books, supplies, tuition and transportation, $1500 maximum per year. Compensation may be denied if worker refuses to cooperate on rehabilitation unless for good cause.
West Virginia	$10,000 per case; plus temporary total payments if totally disabled	
Wisconsin	Not more than $176 per week for not exceeding 40 weeks, plus traveling expense and maintenance	Course of instructions must be undertaken within 60 days from date sufficiently recovered or as soon thereafter as State Board shall provide opportunity. 40 week period may be extended if necessary.
Wyoming	Not more than $10 per week (may be increased to $15 per week if insufficient) for not exceeding 72 weeks	District judge grants maintenance allowance on recommendations of Board of Education.

C. SOCIAL SECURITY OFFSET

The social insurance plan covering the most workers for the most contingencies and paying the largest aggregate amount of benefits to the most people is the Old Age, Survivor's, Disability and Health Insurance (OASDHI) program of the Social Security Act. A higher proportion of workers are covered under the social security program than under any other social insurance program, including the state workers' compensation system. The social security OASDHI program is the income maintenance program most often considered in relation to the workers' compensation system.

The social security program pays benefits to:

1) retired workers,
2) survivors of workers who die,
3) disabled workers, and
4) dependents of the three categories of beneficiaries.

Social security may provide protection where workers' compensation does not. In some circumstances, both systems may pay benefits for the same risk.

In our system of income maintenance, there are gaps as well as overlaps between social security and workers' compensation. The most prominent overlap concerns the disability benefits program of the Social Security Act and workers' compensation benefits, ordinarily for permanent and total disability. This part of social security provides income maintenance for disability regardless of cause, but only under the restricted circumstances that the condition:

1) is totally disabling, preventing the worker from engaging in any substantial gainful work;
2) is expected to last at least 12 months or terminate in death; and
3) actually lasts at least five months as benefits are payable only after a five-month waiting period.

The restrictions in this definition of disability automatically exclude most workers' compensation beneficiaries from also receiving social security disability benefits. Only a small proportion of workers' compensation cases are likely to receive social security disability benefits, also, since only a small fraction of workers' compensation cases are for permanent total disability. Even some

of these individuals would not qualify for social security benefits for lack of sufficient work credits* or for being capable of some gainful activity. Workers receiving workers' compensation for other than permanent total disability may subsequently become entitled to social security benefits.

The Social Security Offset

Section 224 of the Social Security Act (42 U.S.C.A. Sec. 424a) specifies that periodic workers' compensation benefits, as well as lump sum benefits to the extent that they are a commutation of or substitute for periodic payments, are to be deducted from the social security disability benefits otherwise payable. The deduction applies only to the combined amount of workers' compensation and social security benefits in excess of 80 percent of the worker's "average current earnings"+ before the disability. Average current earnings for this purpose usually are based on the highest five consecutive years of total earnings (including amounts above the statutory covered earning base). The deduction is limited also to preclude the combined worker's compensation and net social security benefit from falling below the amount of the original social security benefit. This limitation applies primarily to

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* For most types of benefits, a worker must be fully insured. To be fully insured, a person must have at least as many quarters of coverage as the number of years elapsing between ages 21 and 65 (62 for women) or the date of death or disability if earlier. Forty quarters is the maximum required for permanent protection. If a worker dies before acquiring fully insured status, but is "currently insured" (i.e., has at least six quarters of coverage within the most recent 13-quarter period, including the quarter in which he died), survivor's benefits may be paid to his widow who has entitled children in her care.

To be insured for disability, a worker must be fully insured and have at least 20 quarters of covered work in the last 40, except that a worker under age 31 needs coverage only in at least half of the quarters since age 21 to the date of disability, with a minimum of 6.

+ "Average current earnings" are periodically redetermined based on the "national earnings level." Redetermination occurs after the second calendar year that benefits are initially granted and every third year thereafter.

individuals with low benefits and those with family benefits in addition to their own. The monthly benefit amount payable at age 65 or upon disablement is computed from a weighted schedule which provides a higher benefit in relation to average monthly earnings for low-paid workers than for high-paid.

The number of workers affected by the offset provision represents only about three percent of the total number of people who receive benefits payable on the basis of social security disability. As of January 1977, 57,911 disabled workers and dependents were affected by the month-to-month social security offset provision.

The Federal Law and Minnesota

The federal law (42 U.S.C.A. 424a (d)) stipulates that if a state has an offset provision reducing workers' compensation because of social security, it shall take precedence over the federal requirements:

> 424a (d) The reduction of benefits required by this section shall not be made if the workmen's compensation law or plan under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this subchapter on the basis of the wages and self-employment income of an individual entitled to benefits under section 423 of this title.

Minnesota is one of several states which applies a deduction to workers' compensation payments if an individual is receiving simultaneous social security disability benefits. The first offset provision in Minnesota law (Minnesota Statutes 1978, Chapter 176.101, Subdivision 4) applies to workers entitled to permanent total workers' compensation and any government disability program, as well as old age and survivor's benefits. In general, this offset provides that after an individual has been paid $25,000 in weekly compensation benefits for permanent total disability, any further payments shall be reduced dollar for dollar by the amount of any disability payments being paid by any government disability benefit program, if the benefits are based on the same injury.

The regular federal offset would apply to eligible individuals receiving Minnesota workers' compensation benefits up to $25,000, but when this limit has been reached, social security becomes the primary benefit and the Minnesota offset replaces the federal offset.

If an injured employee is entitled to both workers' compensation and social security disability benefits, the combined benefits in excess of 80 percent of the worker's average current earnings are to be deducted from the social security disability benefits otherwise payable. The apparent result of the federal offset provision is that the state workers' compensation systems effectually subsidize a small portion of the federal social security program.

The next offset provision in Minnesota law (Minnesota Statutes 1978, Chapter 176.111, Subdivision 21) coordinates death benefits under workers' compensation with federal government survivor benefits. This subdivision provides that the combined total of weekly government survivor benefits and workers' compensation death benefits shall not exceed 100 percent of the weekly wage being earned by the employee at the time of death. Under this provision no state workers' compensation death benefits are to be paid for any week in which federal survivor benefits exceed 100 percent of the weekly wage. This provision does not apply to a dependent surviving spouse if the support of the decedent's dependent children is not the responsibility of the dependent surviving spouse.

The final offset provision (Minnesota Statutes 1978, Chapter 176.132, Subdivision 2(d) and (e), as amended by Laws of Minnesota 1978, Chapter 797) applies to supplementary benefits. Clause (d) provides that if an eligible recipient is receiving a reduced level of compensation because of the simultaneous receipt of old age or disability benefits, supplementary benefits are payable for the difference between the actual amount of compensation being paid and 60 percent of the statewide average weekly wage. Clause (e) provides that if an eligible recipient is receiving simultaneous

benefits from any government disability program, the amount of supplementary benefits payable are to be reduced by five percent. The purpose of this offset was to avoid the federal social security 80% maximum benefit clause. If the individual is not receiving the maximum benefits for which he is eligible under other governmental disability programs because of the state offset provisions, the five percent reduction will not apply.

Conclusions

The Social Security Act does not require a reduction in benefits from other federal or private disability programs; therefore, disabled workers and their families under workers' compensation are the only category of social security beneficiaries whose benefits are reduced because of the receipt of nonwork income.

The workers' compensation system exists solely for the benefit of injured and disabled workers and their dependents, and not to enhance the actuarial soundness of the social security trust fund. It may be prudent to change the current $25,000 offset provision (Minnesota Statutes 1978, Chapter 176.101, Subdivision 4) to provide for eligibility based on a time limitation which could more easily and accurately be coordinated with the current federal law.

D. NOTICE AND REPORTING REQUIREMENTS UNDER THE WISCONSIN WORKERS' COMPENSATION STATUTE

Wisconsin employers are required to notify the Department of Industry and Labor within one day after an employment-related death and four days after any injury resulting in three days' lost time. A supplementary report (which would normally require previous contact with the injured worker) is required of insurers eleven days after the injury (Wis. Stat. Ind. 80.02).

Minnesota law currently requires an employer to make an initial report of "death or serious injury" within two days and of "any other injury" resulting in three days' lost time within fifteen days (Minn. Stat. 176.231 (1)). The claim must be paid or denied within thirty days of the employer's knowledge of the accident though an extension of time may be sought (Minn. Stat. 176.221 (1)).

The provisions on employee notice to the employer are a little more complex. They are as follows:

Wisconsin Statute 102.12

> No claim for compensation shall be maintained unless, within 30 days after the occurrence of the injury or within 30 days after the employee knew or ought to have known the nature of his disability and its relation to his employment, actual notice was received by the employer or by an officer, manager or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places, then notice received by any superior shall be sufficient. Absence of notice shall not bar recovery if it is found that the employer was not misled thereby.

Minnesota Statute 176.141

> Unless the employer has actual knowledge of the occurrence of the injury or unless the injured worker, or a dependent or someone in behalf of either, gives written notice thereof to the employer within 14 days after the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given or the knowledge obtained within 30 days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation unless the employer shows that he was prejudiced by such want, defect, or inaccuracy, and then only to the extent of such prejudice. If the notice is given or the knowledge obtained within 180 days, and if the employee or other beneficiary shows that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation, or deceit of the employer or his agent, then compensation may be allowed, unless the employer shows that he was prejudiced by failure to receive such notice, in which case the amount of compensation shall be reduced by such sum as fairly represents the prejudice shown. Unless knowledge is obtained or written notice given within 180 days after the occurrence of the injury no compensation shall be allowed.

Wisconsin thus provides for actual notice to the employer, though its absence does not prevent recovery where the employer is not thereby "misled." This language would probably permit recovery where there is actual knowledge of a work-related injury, but might not where a health insurance claim is mistakenly filed.

E. STAFFING AND ORGANIZATION OF THE WISCONSIN AND MINNESOTA DIVISION OF WORKERS' COMPENSATION

The Wisconsin Division of Workers' Compensation is a unit of the Department of Industry, Labor and Human Relations. It is headed by an administrator and a deputy administrator. The total staff complement is 60, which the division hopes will be increased to 63 during the next legislative session. Fifty-six of the 60 personnel are housed in Madison and 4 in a Milwaukee office. The staff can be roughly divided into insurance, contested cases, "routine claims" and support services sections.

The insurance section numbers four and is responsible for monitoring employers' compliance with workers' compensation insurance requirements. The "routine cases" or audit section numbers thirteen. This is the unit which monitors files established through first injury reports until the claim is paid or contested. A wage analyst in this section rechecks all computations of claim amounts and the disability calculations are checked by the audit clerks. An audit card is established for each file. Very close track is kept of the file by means of this card, which permits relatively quick action following the first injury report, after denial of claims and when the denial is contested.

The "contested case" section consists of eight hearing examiners, four correspondents and four court reporters. The hearing examiners are attorneys and spend approximately half their time in informal contact with claimants providing information and explanation of claims procedure. There are no attorneys, however, available to actually represent claimants before hearing examiners. Claimants must hire private or legal aid attorneys or consent to be "represented" by the examiner himself. The state may do this also or may be represented by the Attorney General. The correspondents do the balance of the claimant contact work, evaluate disabilities and perform paralegal duties.

The balance of the Division of Workers' Compensation staff is clerical and support staff. Self-insurance is monitored by a separate office, the Research and Statistics unit, within the Department of Industry, Labor and Human Relations. Four people work part-time in this area, which involves monitoring the

reinsurance coverage, annual payout and reserving practices of self-insuring employers. The Department of Vocational Rehabilitation is a separate unit within the Department of Health. The DVR conducts essentially all workers' compensation rehabilitation and retraining itself, though private providers are occasionally involved. The actual mailing of the booklet, Facts About Wisconsin's Workers' Compensation Law, is performed by the Department of Administration.

The Minnesota Division of Workers' Compensation has a staff complement of 104. The division operates under the Deputy Commissioner of Labor and Industry for Workers' Compensation, a Workers' Compensation Administrator and a Chief Attorney. Compensation judges number 17, attorneys 13 and court reporters 14. There is also one legal secretary.

The remainder of the staff numbers 60 and is divided into several different sections, roughly analogous to those in Wisconsin. The insurance verification section numbers 2, filing 11, docket 5 and auditing 12. The State Compensation Revolving Fund is staffed by 10 people and the Special Compensation Fund by 5. The communications section is essentially clerical and numbers 9 people. In addition, there are 7 other clerical personnel divided between the Minneapolis (3) and Duluth (2) offices, and provided to the Workers' Compensation Court of Appeals (2).

II.

WORKERS' COMPENSATION

RATEMAKING

A. RATEMAKING

Introduction

Minnesota is not the only state in the midst of a debate over the causes and cures for high workers' compensation rates. In the past year insurance industry rate increase requests have been rejected or reduced in, among others, the states of Illinois, Florida, and Missouri, as well as in Minnesota. In part, the rate increases result from state attempts to implement the benefit recommendations of the 1972 report of the National Commission on State Workmen's Compensation Laws. But, as rates increase as a percentage of payroll, they become more of an economic burden on the employer. Therefore, it becomes more important to determine whether the present system of supplying workers' compensation coverage and benefits is operating at as low a cost and as efficiently as possible. In Minnesota, this question assumes added importance because of the continuing existence of a sizable rate differential between Minnesota and all of her neighboring states.

History and Evolution of the Ratemaking Statutes

Minnesota's first general workers' compensation law was enacted in 1913 (Chapter 467 of General Laws of 1913). Coverage was not made mandatory for employers but those employers who did elect coverage were authorized to "insure the risk in any manner then authorized by law" (Section 31A of original act). However, no procedure for determining rates or regulating rates was contained in the statutes.

The original Minnesota workers' compensation law was amended substantially in 1921. Among the amendments was the creation of a Compensation Insurance Board and the creation of a Compensation Rating Bureau (Chapter 85 of General Laws of 1921). The Compensation Insurance Board was a three-member panel consisting of the Commissioner of Insurance, one member of the newly created Industrial Commission (which commission both administered the Department of Labor and Industry and served as a workers' compensation appeals board), and one governor's appointee who was to "be versed in the subject of workmen's compensation insurance and in the

making of rates therefor." The board's function was stated as follows:

> To provide for the solvency of insurers writing workmen's compensation insurance in this state and to secure reasonable rates, the board shall approve a minimum and adequate and reasonable rate for each classification under which such business is written. The board shall, in approving such rates, make use of the experience which from time to time may be available, and of such other helpful information as may be obtainable. For the purpose of uniformity and equality the board shall, after consultation with insurers, approve a system of schedule, merit and experience rating for use in the writing of such business in this state. No system of schedule, merit or experience rating except the one so approved shall be used in this state.

This charge remains, virtually unchanged, in state law today (M.S. 79.07).

The Compensation Rating Bureau, although created by statute, was, and is today, nevertheless, a private organization made up of all insurance companies which wrote workmen's compensation insurance in the state. Each carrier paid an assessment on each dollar of workers' compensation premium collected. This assessment went to support the operations of the bureau. The operations of the bureau were overseen by a general manager who was hired by the insurers comprising the governing committee of the bureau. Under the 1921 law the bureau had the responsibility of devising rate formulas and rate structures for workers' compensation insurance and submitting these rates to the Workmen's Compensation Board for approval. These rates, when approved by the board, were to be <u>the</u> rate at which workers' compensation insurance was sold. No price competition was permitted under Section 21 of the 1921 law which read:

> No insurer shall write insurance at a rate other than that made and put into force by such bureau and approved as adequate and reasonable by the board; provided, that the bureau may reduce or increase a rate by the application to individual risks of the system of schedule, merit or experience rating which has been approved by the board.

The ratemaking structure devised in 1921 remained relatively unchanged for 56 years. In 1967 the Compensation Insurance Board was abolished and all of its powers and duties transferred to the Department of Commerce (Section 79, of Chapter 48 of the Extra Session Laws of 1967). The 1967 amendments were complemented by and carried out in a 1969 revisor's bill (Chapter 9 of Laws 1969) which clearly specified that the authority to approve and modify workers' compensation rates was vested in the Commissioner of Insurance. The composition or function of the Compensation Rating Bureau was not changed in either 1967 or 1969. The ratemaking functions of the bureau remain relatively unchanged today from the 1921 legislation. In 1929 the bureau was given the duty of fixing premiums and assigning to various insurers high risk applicants who had been refused coverage by some insurer (Laws 1929, Chapter 237). In 1935, the bureau was given the authority to levy assessments on all workmen's compensation insurers if necessary to pay the outstanding claims of an insurer who had become insolvent (Laws 1935, Chapter 103).

The National Council on Compensation Insurance

Ratemaking statutes throughout most of the 44 states that allow private WC insurance bear a remarkable similarity one to another.[1]

The organization most responsible for centralizing and bringing a certain amount of uniformity to WC ratemaking is the National Council on Compensation Insurance. The council is a New York based national association of 526 insurance companies. Since its formation in 1922 the council has had as its main function the development of WC ratemaking formulas. In performing with that function, the council directly files for rate

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[1]Compare for example: Minnesota Statutes, Chapter 79; 73 Illinois Statutes 1065 ff.; Burns Indiana Statutes 27-7-2 ff.; 30 Iowa Code 515A; Michigan Compiled Laws 500.2400 ff.; 15 Missouri Statutes 287.320 ff.; 3-A Nebraska Revised Statutes 44-1401 ff.; South Dakota Compiled Laws 58-24-1 ff.; and 17 Wisconsin Statutes 205.

changes in 30 states. In several other states, such as Minnesota, the council advises the state insurance industry group making the rate request (the Rating Bureau) and analyzes WC statistics and prepares the rate hearing exhibits for the state group.

Minnesota Compensation Rating Bureau

Minnesota Statutes, Chapter 79, creates the Minnesota Compensation Rating Bureau. All insurers writing WC insurance within the state are required to be members of the bureau. Bureau membership has remained fairly stable over the past few years as indicated below:

Year	Bureau Membership*
1973	234
1974	250
1975	256
1976	260
1977	254

*Source: Bureau exhibits at 1977-78 rate hearings.

These members finance bureau operations through assessments on themselves. Each company's assessment is proportional to the company's share of total WC premiums written in the state. The cost of operating the bureau has been increasing rapidly in recent years as indicated below:

Year	Bureau Expenditures*
1974	$337,336.71
1975	$391,673.51
1976	$477,983.34

*Source: Bureau exhibits at 1977-78 rate hearings.

The above noted budget figures do not include the amount of NCCI assessments against its Minnesota members for NCCI services rendered to the bureau.

The bureau members each have one vote at an annual meeting where the various governing and policy-making committees of the

bureau are elected. The most important committee, called The Governing Committee, is made up of four stock insurance company representatives and four mutual insurance company representatives. These members in turn hire a general manager (at present, the general manager is Mr. John Hildebrandt) who in turn is responsible for running the bureau and directing its 45 or so employees.

Rate Calculation

Rate Hearings

Since 1976, the public hearings at which the Rating Bureau proposes a new overall rate level have been guided informally by a Hearings Examiner and have included participants from employer groups as well as the insurance industry, the insurance division of the Commerce Department, and the Attorney General's office. At these annual hearings, the Rating Bureau proposes a new rate level, explains the rating formula used and the statistical basis of the proposal, and responds to questions brought forth by the other parties.

After the presentation of a rate proposal by the Rating Bureau, the Commissioner of Insurance takes the evidence under advisement and accepts, rejects, or modifies the proposal. The decision of the commissioner is subject to appeal by the State Supreme Court by the Rating Bureau or any other party affected by the decision.

In 1978 the legislature passed legislation which brought the rate hearing under APA procedures, although the statute does not specify if the hearing is to be treated as rulemaking or contested case hearings. However, the 1978 changes do not require hearings on bureau requests to the commissioner to modify experience rating or retrospective rating plans. Since changes in these plans can affect an employer's actual rate every bit as much as an actual change of manual rate levels, there would seem to be good reason for subjecting such changes to a public hearing process also.

Data Modification and Development

The manual rate is the basic charge to all employers within any given job classification. It represents the amount of premiums collected for each $100 of payroll for a small employer with an average record of safety. The manual rate is automatically adjusted based on the size of the employer's payroll (premium discounts) and for the employer's record of safety if his premiums exceed $750 per year (experience rating).

Manual rates in Minnesota are not competitive. All insurers must charge the same manual rate to all employers within a given job classification. Each year the Commissioner of Insurance with input from the Rating Bureau establishes an overall rate level--the total amount of premiums needed to assure solvency and a reasonable level of expenses and profits for workers' compensation insurers. The Compensation Rating Bureau then assigns an individual rate to each of 650-plus job classifications; as a general rule, the individual rate assures that the employers of each type of work provide enough premium among themselves to entirely cover the risk of that occupation. Such manual rates currently vary from $0.23 (per $100 of payroll) for clerical office employees to $40.74 for tree trimmers.

Once an overall rate level has been established, the Rating Bureau adjusts the individual job classifications to reflect changes in experience for each type of employment; the bureau also adjusts each qualifying employer's rates on the basis of his own experience within one or more job classifications.

Reduced to its simplest form, the process by which the rate proposal is developed is as follows: Using data supplied by each individual WC insurance company in the state, the bureau compiles the total amount of premiums collected and the total amount of losses incurred on policies issued in the last two years. For the 1977 rate filing, the figures used were from policy years 1974 and 1975. The aggregate premiums and the aggregate amount of losses are then multiplied by various "modification" factors. These figures are modified in order to determine what total

premiums and total losses will be for a policy year by the time all files from injuries occurring under policies written within that year are closed; something that won't occur for many years because of the long duration of WC permanent total and dependency payments and because of the possibility of having claims reopened. This modification factor is called the development factor. The premium and loss figures are further modified by a procedure called "bringing them up to current levels." This means that the actual dollar figure for losses incurred in the past policy year are increased by a certain amount in order to reflect what dollar amount of losses would have been incurred if the same injuries occurred under the WC statutes in effect at the end of the policy year with its more generous benefit provisions. The modified losses are divided by the modified premiums and if the resulting number (called a loss ratio) is higher than the allowable loss ratio, a general rate increase is called for.

For the 1977 rate filing the policy year aggregates used by the bureau were as follows (from page 3 of Bureau Exhibit A, 1977-78 Rate Filing):

1974 Policies

Modification Factors

	Policy Year Valuation as of 12-31-76		Current Levels		Development		Modified Data
Std.Earned Prem.	157,511,292	X	1.235	X	1.006	=	195,629,025
Indemnity Incurred	57,396,196	X	1.463	X	1.297	=	108,937,980
Medical Incurred	27,138,269	X	1.000	X	1.243	=	33,732,868

Modified Loss Ratio = Modified Losses (Indemnity + Medical) ÷ Modified Std. Earned Prem. = .729

1975 Policies

Std.Earned Prem.	180,841,579	X	1.064	X	1.039	=	199,829,945
Indemnity Incurred	63,661,905	X	1.228	X	1.490	=	116,501,286
Medical Incurred	30,384,457	X	1.000	X	1.267	=	38,497,107

Modified Loss Ratio = Modified Losses (Indemnity + Medical) ÷ Modified Std. Earned Prem. = .776

Modified 1974 & 1975 Policy Year Totals as of 12-31-76

Standard Earned Premium	395,458,970
Indemnity Incurred	225,439,266
Medical Incurred	72,229,975

$$\text{Modified Loss Ratio} = \frac{297,669,241}{395,458,970} = .753$$

The development of this modified policy year loss ratio could well be considered the single most important indicator of how well the rate setting formula has worked in the past. If the rates set in previous rate hearings had exactly anticipated the experience of the subsequent policy years, the resulting loss ratio should just equal the allowable loss ratio and no overall rate change would be necessary (absent any legislatively mandated change of benefits). However, there are several reasons to question the applicability of the resulting loss ratio. The first question arises from the fact that the modified loss ratio is not a ratio of actual premiums and losses. In the above noted example the actual unmodified loss ratio for policy years 1974 and 1975 is only .528, as compared to the modified loss ratio of .753. While it is hard to object in principle to the use of the "to current level" and the "development" modification factors, the use of these factors, combined with the multitude of other mathematical calculations that the NCCI and the Rating Bureau have developed for WC rate requests, leaves the observer at each step further and further removed from reality (reality being actual dollars paid in to and paid out by WC insurers), and less and less sure at each step about the accuracy, meaning, and significance of the resulting calculated figures.

In addition, the method used by the Minnesota Compensation Rating Bureau in deriving the development factors has limitations. To create these factors, the NCCI compares aggregate losses and premiums for past policy years and calculates how much premiums and losses have increased from first report to second report, second report to the third report, and so on. The final result is a figure that purports to indicate how premiums reported and losses reported on any report will change by the time all policies and claims from the policy year in

question are closed. But in deriving these development factors, the bureau and the NCCI do not use the premiums received and losses incurred by all Minnesota WC carriers. Rather, the bureau and the NCCI exclude the data from a few Minnesota insurers whose reports contain "anamolies" in the eyes of the bureau or the NCCI. Even though the number of companies omitted is not large, the result of the omissions may be to understate or overstate the statewide loss ratio at first reporting.

The Calculation of Losses and Reserves

The data presented by the bureau in the 1977 rate filing was based on policy year data for 1974 and 1975. For these two years combined standard earned premium was $338,352,871. Total incurred losses equaled $178,580,827. The loss total is after only a first report for policy year 1975 and a second report for policy year 1974, so the loss ratio of only 52.8% is likely to increase as insurance companies increase their estimates of remaining liability on the 1974 and 1975 policies. But even the low initial loss totals may not be as high as they seem. The loss totals include both losses actually paid out and those for which the insurance company anticipates it will be liable and has set aside a reserve. As of the end of 1976 the insurance companies had only paid out 61% of the losses incurred in policy year 1974 and 47% of the losses incurred in policy year 1975. (See page 149 which consists of data supplied to the Study Commission by the Rating Bureau.) As time goes on, paid losses grow and reserved losses shrink, but because the payout period for many WC injuries is very long, reserves are kept open for many years, even decades, after the policy year has elapsed. For example, at the end of 1976, insurance companies still held reserves of over $7 million for injuries occurring in policy year 1970. As of the end of 1976, insurance companies held reserves of almost $200 million for policy years 1970-1975 (including half of 1976). If one included reserves from pre-1970 policy years and from all of 1976 and 1977, the total may well exceed $300 million. The magnitude of this omission is shown by the figures on page 150. That exhibit presented to the

Study Commission in February 1978 shows that by disregarding investment income the insurers may receive a windfall each policy year amounting to 11% or 12% of total premium, assuming that they can make a modest return of 7% annually on invested reserves. The exhibit shows that on an annual premium volume of $215 million, the insurers would earn over $25 million on invested reserves, if all claims were paid off after only 11 years. Since some claims run over 11 years, the example may understate the potential reserve earnings. The exhibit also shows that by including reserve income, a high loss ratio of 87% may only amount to an actual loss ratio of 69%.

Insurance companies have often contended that investment income from unearned premium and loss reserves while not directly considered in rate calculation, is in fact indirectly considered. When the 2.5% allowance for profit and contingency was selected, it was contemplated that there would be income from other sources, since a figure of 2.5% would by itself be inadequate to attract new capital. Therefore, if investment income were directly taken into account in ratemaking, the present 2.5% allowance for profit and contingencies would have to be raised to some higher figure. While this is in all liklihood true, this would be a more reasonable approach. Presently very little is known about the investment income of insurers. As a result, it is not possible to determine the actual rate of profit being realized by workers' compensation insurers. How much above the allowable 2.5% they are making remains a mystery. In order to better account for the investment income of insurers, a better approach to the allowable rate of profit would be to determine such an overall rate (in all liklihood significantly above the current 2.5%) and include all sources of income from invested reserves, capital, and underwriting. It is conceivable that such an approach might have the effect of reducing rates charged to employers. But if this were not the case, at least a truer accounting of insurer profits would appear.

The insurers also argue that to include investment income would make WC rates dependent on the portfolio performance of the insurers. This need not be the case. Rather than including actual investment income in the rate formula, the commissioner

could set an assumed rate of return that a prudent investor of reserves could make. Any income above this amount could be kept by the insurers as excess profit, and any amount less than the assumed income would have to be absorbed by the insurer as a loss.

Ignoring investment income could be justified if reserve amounts were established by the insurance companies by a process that included a discount factor for such income. Testimony before the Study Commission and at the 1977 rate hearings made clear that there is no uniformity with regard to reserving standards from company to company. Mr. Jerome Scheibl of Employers' Mutual of Wausau told the commissioner: "There are some companies that elect the option of reflecting a discount on these reserves. This is optional, that is not required, and the practices vary from company to company." (1977 Rate Hearing Transcript, Vol. VI, p. 1001.) Further testimony indicated that for certain reports (unit statistical plan data) some injuries (deaths and permanent totals) must be discounted, while for other reports (aggregate financial data) there is no such requirement.

When insurers do choose to discount reserves, the discount rate almost universally chosen is 3-1/2%. (See testimony of Mr. Roy Kallop of the NCCI, 1977 Rate Hearings, Vol. II, pp. 219-223.) The argument given for using such a low rate of return is that if the insurers are paying corporate income taxes near the 50% rate, they therefore need to make 7% in order to net 3-1/2%. This ignores the fact that the income on reserves is not taxable if it is used to pay claims, only if it is profit to the insurer. This fact was pointed out in a letter to the insurance commissioner from Mr. Robert Lowe, a consulting actuary hired by the commissioner to testify at the 1977 rate hearing. Mr. Lowe, in his letter of January 17, 1978, said:

> Federal income tax applies, effectively, only to net profits of an insurer. Net profits being the results of both the investments and underwriting. Therefore, any investment earnings which are used to reduce losses receive a tax offset. Additionally, this objection ignores the fact that no pricing structure in any other insurance line, life, health, or property-casualty, anticipates federal income tax. This is so even in a line such as accident and health and life insurance where investment earnings are an integral part of the pricing structure. There simply is no precedent for bringing the effect of federal income tax into the pricing mechanism.

1977 RATE HEARING

MINNESOTA

DEVELOPMENT FACTORS

		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
		AMOUNT AS PER					1st/2nd	2nd/3rd	3rd/4th	
		1st Report	2nd Report	3rd Report	4th & Subsq.	5th & Subsq.	(2)÷(1)	(3)÷(2)	(4)÷(3)	
					Val.12-31-74	Val.12-31-75				
70 & Prior	Premium	xxx	xxx	xxx	1,021,747,720	1,021,933,425	xxx	xxx	xxx	1.002*
	Indemnity	xxx	xxx	xxx	389,659,962	390,834,102	xxx	xxx	xxx	1.039*
	Medical	xxx	xxx	xxx	234,339,821	236,769,812	xxx	xxx	xxx	1.145*
					Val.12-31-75	Val.12-31-76				
71 & Prior	Premium	xxx	xxx	xxx	1,118,723,227	1,119,052,380	xxx	xxx	xxx	1.003**
	Indemnity	xxx	xxx	xxx	409,507,744	415,434,198	xxx	xxx	xxx	1.162**
	Medical	xxx	xxx	xxx	244,784,433	248,347,511	xxx	xxx	xxx	1.188**
1-1-71 to	Premium	xxx	xxx	99,608,701	99,721,964	xxx	xxx	xxx	1.001	xxx
12-31-71	Indemnity	xxx	xxx	34,838,831	36,688,027	xxx	xxx	xxx	1.053	xxx
	Medical	xxx	xxx	18,590,247	18,909,138	xxx	xxx	xxx	1.017	xxx
1-1-72 to	Premium	xxx	112,923,991	113,076,778	113,389,637	xxx	xxx	1.001	1.003	xxx
12-31-72	Indemnity	xxx	36,021,474	39,373,143	42,412,937	xxx	xxx	1.093	1.077	xxx
	Medical	xxx	18,747,101	19,298,985	20,021,674	xxx	xxx	1.029	1.037	xxx
1-1-73 to	Premium	128,062,941	132,868,136	132,826,851	xxx	xxx	1.038	1.000	xxx	xxx
12-31-73	Indemnity	39,733,190	44,780,125	50,103,663	xxx	xxx	1.127	1.119	xxx	xxx
	Medical	21,629,267	21,895,340	22,880,803	xxx	xxx	1.012	1.045	xxx	xxx
1-1-74 to	Premium	153,321,966	157,485,964	xxx	xxx	xxx	1.027	xxx	xxx	xxx
12-31-74	Indemnity	47,375,299	55,453,013	xxx	xxx	xxx	1.171	xxx	xxx	xxx
	Medical	25,144,532	25,806,044	xxx	xxx	xxx	1.026	xxx	xxx	xxx
1-1-75 to	Premium	180,841,579								
12-31-75	Indemnity	63,661,905								
	Medical	30,384,457								

Development From Columns (4)&(5) Related To
P.Y.1970 as of 12-31-74, P.Y.1971 as of 12-31-75

			Unweighted Average			
Premium	84,297,621*	99,700,136**	Premium	1.033	1.001	1.002	1.003
Indemnity	30,360,796*	36,682,833**	Indemnity	1.149	1.106	1.065	1.101
Medical	16,734,762*	18,906,700**	Medical	1.019	1.037	1.027	1.167

	(10) 2nd to Ult. (7)x{(8)x(9)}	(11) 1st to Ult. (6)x(10)
Premium	1.006	1.039
Indemnity	1.297	1.490
Medical	1.2	1.26

MINNESOTA COMPENSATION RATING BUREAU

1976 MINNESOTA RATE HEARING

EXHIBIT A - IC

DEVELOPMENT FACTORS

		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
		AMOUNT AS PER					1st/2nd	2nd/3rd	3rd/4th	4th/Ult.
		1st Report	2nd Report	3rd Report	4th & Subsq.	5th & Subsq.	(2)÷(1)	(3)÷(2)	(4)÷(3)	(5)÷(4
					Val. 12-31-73	Val. 12-31-74				
69& Prior	Premium	xxx	xxx	xxx	915,504,140	915,409,257	xxx	xxx	xxx	.999*
	Indemnity	xxx	xxx	xxx	357,865,958	359,541,619	xxx	xxx	xxx	1.059*
	Medical	xxx	xxx	xxx	215,717,563	217,747,517	xxx	xxx	xxx	1.126*
					Val. 12-31-74	Val. 12-31-75				
70& Prior	Premium	xxx	xxx	xxx	997,397,325	997,325,438	xxx	xxx	xxx	.999**
	Indemnity	xxx	xxx	xxx	389,806,141	390,744,040	xxx	xxx	xxx	1.031**
	Medical	xxx	xxx	xxx	234,418,381	236,833,224	xxx	xxx	xxx	1.144**
1-1-70 to	Premium	xxx	xxx	81,594,996	81,696,735	xxx	xxx	xxx	1.001	xxx
12-31-70	Indemnity	xxx	xxx	28,879,338	30,086,588	xxx	xxx	xxx	1.042	xxx
	Medical	xxx	xxx	16,225,670	16,578,865	xxx	xxx	xxx	1.022	xxx
1-1-71 to	Premium	xxx	93,953,024	94,297,720	95,889,924	xxx	xxx	1.004	1.017	xxx
12-31-71	Indemnity	xxx	31,592,322	33,906,645	36,258,470	xxx	xxx	1.073	1.069	xxx
	Medical	xxx	17,557,818	18,051,433	18,552,772	xxx	xxx	1.028	1.028	xxx
1-1-72 to	Premium	105,838,934	109,154,346	109,386,635	xxx	xxx	1.031	1.002	xxx	xxx
12-31-72	Indemnity	32,775,677	35,360,664	38,614,312	xxx	xxx	1.079	1.092	xxx	xxx
	Medical	18,378,302	18,467,502	19,015,297	xxx	xxx	1.005	1.030	xxx	xxx
1-1-73 to	Premium	126,192,477	131,127,977	xxx	xxx	xxx	1.039	xxx	xxx	xxx
12-31-73	Indemnity	40,239,949	45,069,373	xxx	xxx	xxx	1.120	xxx	xxx	xxx
	Medical	21,960,067	22,075,418	xxx	xxx	xxx	1.005	xxx	xxx	xxx
1-1-74 to	Premium	154,640,720								
12-31-74	Indemnity	49,978,817								
	Medical	26,433,870								

Development From Columns (4)&(5) Related To
P.Y.1969 as of 12-31-73, P.Y.1970 as of 12-31-74

Premium	80,425,301*	82,318,139 **
Indemnity	28,366,640*	30,361,282 **
Medical	16,161,466*	16,735,980 **

Unweighted Average

Premium	1.035	1.003	1.009	.999
Indemnity	1.100	1.083	1.056	1.045
Medical	1.005	1.029	1.025	1.135

2nd to Ult. [(7)x[(8)x(9)]]	1st to Ult. [(6)x[(7)x[(8)x(9)]]]
Premium 1.011	1.046
Indemnity 1.196	1.316
Medical 1.197	1.203

MINNESOTA WORKERS' COMPENSATION EXPERIENCE BY POLICY YEAR - AS OF DECEMBER 31, 1976

POLICY YEAR	EARNED PREMIUM (1) Accumulated Net	ACCUMULATED INDEMNITY LOSSES (2) Paid	(3) Outstanding	ACCUMULATED MEDICAL LOSSES (4) Paid	(5) Outstanding	ACCUMULATED TOTAL INCURRED LOSSES (6) Paid (2)+(4)	(7) Outstanding (3)+(5)	(8) Total (6)+(7)
1970	69,687,761	24,532,185	5,324,674	14,239,938	1,969,187	38,772,123	7,293,861	46,065,984
1971	89,125,243	29,288,877	9,129,489	16,683,640	2,837,713	45,972,517	11,967,202	57,939,719
1972	101,413,924	30,414,472	12,872,342	17,165,151	3,294,423	47,579,623	16,166,765	63,746,388
1973	119,876,615	34,231,236	17,089,700	19,336,668	4,091,109	53,567,904	21,180,809	74,748,713
1974	140,223,788	32,512,297	27,236,264	20,837,693	6,800,454	53,349,990	34,036,718	87,386,708
1975	163,658,356	25,480,790	39,836,626	19,380,529	11,338,955	44,861,319	51,175,581	96,036,900
1976 *	127,156,597	8,711,241	42,784,726	7,801,387	14,705,024	16,512,628	57,489,750	74,002,378
TOTAL	811,142,284	185,171,098	154,273,821	115,445,006	45,036,865	300,616,104	199,310,686	499,926,790

* Incomplete Policy Year

Compiled From:

1976 Workers' Compensation Experience Exhibits prepared by the carriers and filed with the Commissioner of Insurance of the State of Minnesota for the year ending December 31, 1976.

WC PREMIUMS AND LOSSES: A HYPOTHETICAL TRACKING THROUGH ELEVEN YEARS

YEAR	EARNED PREMIUM	TOTAL INCURRED LOSSES	PAID LOSSES[1]	LOSS RESERVES[1]	RESERVE EARNINGS AT 7%	EARNINGS + RESERVES
1	$200,000,000	$116,000,000	$ 25,500,000	$90,500,000	$ 3,100,000[2]	
2 (1st report)	$200,000,000	$116,000,000	$ 54,500,000	$61,500,000	$ 4,500,000	$65,600,000
3 (2nd report)	$207,400,000	$129,900,000	$ 80,500,000	$49,400,000	$ 3,800,000	$53,900,000
4 (3rd report)	$210,700,000	$142,000,000	$102,200,000	$39,800,000	$ 3,100,000	$43,600,000
5 (4th report)	$214,700,000	$151,000,000	$113,250,000	$37,750,000	$ 2,900,000	$40,850,000
[3]6	$215,000,000	$168,800,000	$135,000,000	$33,800,000	$ 2,600,000	$36,700,000
7	$215,000,000	$168,800,000	$141,800,000	$27,000,000	$ 2,100,000	$29,600,000
8	$215,000,000	$168,800,000	$148,500,000	$20,300,000	$ 1,600,000	$22,400,000
9	$215,000,000	$168,800,000	$155,300,000	$13,500,000	$ 1,100,000	$15,100,000
10	$215,000,000	$168,800,000	$162,000,000	$ 6,800,000	$ 600,000	$ 7,900,000
11	$215,000,000	$168,800,000	$168,800,000	$ -0-	$ 100,000	$ 1,800,000[4]
					$25,500,000 (total earnings on reserves)	

[1] Paid to reserve ratio derived from Rating Bureau table submitted to WC Study Commission by mail on 2/7/78

[2] 6 months

[3] Year 6 and thereafter figures use "ultimate" development factors from page 8 of Exhibit A of Rating Bureau's 1977 rate filing

[4] Remaining surplus not needed to pay losses

Apparent loss ratio $= \frac{168,800,000}{215,000,000} = 87.8\%$ Real loss ratio $= \frac{167,000,000}{240,500,000} = 69.4\%$

*** A preliminary working paper--suggestions regarding improvements are encouraged. ***

Payroll as a Measure of Exposure to Risk

In all states (with one partial exception) payroll is the basis of determining the amount of exposure to risk which all workers face. In Washington, the medical fee schedule is based on hours worked.

Basically, premium is applied to the entire payroll of a corporation. An exception is made for overtime work, for which only the basic hourly rate is included for premium purposes. Also, athletes, entertainers, and executives have premium applied to the first $300 of payroll earned each week.

In theory, the basis for determining exposure--be it hours or dollars--is a moot point, since total losses are independent of the source of risk. However, the present system of using payroll as a basis for premiums affects certain employers' ability to compete in terms of cost with other employers in their particular classification.

At present, the maximum benefit for disability is $209 per week, or 2/3 of an actual wage of $313.50 a week. Differences in weekly salaries up to $313.50 result in different rates of compensation. It follows that an employer should base premiums on the entire salary to this level. However, differences which occur in salaries above $313.50 result in different premium charges for the same level of coverage. An employer with an employee earning $350 a week will pay a 15 percent higher standard premium than a competitor who pays the same class of employee $300 a week. Yet, each employee if hurt would only earn $209 a week in disability benefits. Approximately 12.5 percent of the Minnesota work force earns at least $313.50 a week according to the Department of Revenue.

Certain independent contractors, particularly contractors with large fixed costs, often pay large premiums on salary which is in large part inflated to cover the upkeep and amortization of their fixed costs. This causes an acute burden on small contractors who cannot spread such costs over many employees, and whose own safety experience has little impact on their rates.

If the collection of premium were limited to payroll up to 150 percent of the maximum benefit, it would resolve the two problems of equity addressed above.

An alternative often proposed is the use of hours worked as a fairer measure of exposure to risk. Such an alternative would have to overcome two obstacles to assure effectiveness: finding a consistently reliable record of hours worked, and devising an equitable schedule of compensation based on time worked rather than income earned. The difficulty of these two obstacles indicates that payroll limitation may be a simpler and more equitable solution to the problems addressed.

Experience Rating

Any policy with an annual premium larger than $750 has its cost at least partially based on its own record of safety. This is known as "experience rating." The theory behind experience rating states that the more immediate economic stake the employer has, the greater is the incentive for that employer to reduce his employees' exposure to injury.

Basically, the experience rating plan in Minnesota is a comparison of actual losses to expected losses, based on the experience of three recent policy years. The actuarial formula dictated in the plan is designed to avoid widely fluctuating rates due to experience. In part, this is accomplished by a test of "credibility." Credibility is an actuarial technique used to determine the degree to which enough information is present to predict what will happen in the future. The credibility factor is graduated from 0.00 to 1.00 according to the amount of expected losses developed for the risk on the basis of the payrolls reported for that risk for the policy years which constitute the rating period. The credibility factor remains at 0.00 until the level of expected losses exceeds $25,000 and then increases in increments of one point for each additional $6,300 (approximately) of expected losses. In this way, only the largest risks are able to have a significant impact on their own costs.

One of the most controversial elements of the experience rating formula concerns the "off-balance factor." Each year there are substantially more credits given for good experience than debits for bad. Last year, a surcharge of 11 percent was added to all rates to balance the experience rating formula. In terms of actual costs, the average risk had an experience rating of 0.89, not 1.00; it received an 11 percent discount on the basis of experience, but paid an 11 percent assessment through inflated manual rates.

The small employer has no opportunity to recover a portion of the 11 percent off-balance assessment. His manual rate helps subsidize the experience rating plan of larger employers. The Rating Bureau has defended this policy by contending that the small employer saves more than 11 percent by being grouped with larger employers in the ratemaking process. The bureau contends that the lack of funds and employees earmarked for safety causes small employers to have significantly higher loss ratios than large employers. They have not presented the commission any hard evidence to substantiate this claim, however, In fact, a chart supplied at one meeting by the Rating Bureau (see chart at end of this section) indicated that only the smallest risks (under $299 in premium) had losses ratios out of line from all other sizes of employers.

The issue of the size of premium which is appropriate for experience rating has been the subject of debate as well. On one hand, reducing or eliminating the premium requirement for experience rating would allow all employers to have a certain economic stake in the safety of their employees. According to the Rating Bureau, nearly 50,000 or 70 percent of all employers in Minnesota were too small to be experience rated in 1976. The problem with experience rating all employers is an actuarial one. The average manual rate in Minnesota is about $2.83 per $100 of payroll. With a statewide average weekly wage of $209, it would take only 2.6 employees earning the average wage to produce $750 of premiums in a year at the average manual rate. Serious questions have been raised by both the Rating Bureau and the assistant commissioner of insurance concerning the degree of faith

that can be placed in the experience of fewer than three employees. In fact, Assistant Commissioner of Insurance, Tom O'Malley, recommended to the commission that only employers with a premium in excess of $3,200 be eligible for experience rating.

It has been proposed that, since the experience rating formula has the second largest impact on the cost of workers' compensation insurance (after the manual rate), any changes in the formula for determing experience rating be held under the Administrative Procedures Act.

The Effect of Employee Classification on Industry Structure

The classification of employees for workers' compensation purposes is designed to reflect the existing distribution of industrial risks and allocate premium payments according to those risks. These classifications, however, sometimes have an unintended and material effect on the actual structure of industry. This does not seem an appropriate result. Though the classification system requires some flexibility in order to be workable, it is hoped that classification decisions can be made without significant impact on the actual distribution of work within an industry.

The trucking industry provides an example of this problem. The workers' compensation classification system provides an incentive to larger manufacturers to maintain their own in-house trucking departments to the disadvantage of the outside trucking companies. Because the larger manufacturers have few truckers in proportion to their operative and clerical complements the former are often lumped with the latter for classification purposes. Since truckers generally pay a higher rate the result is a lower rate for truckers than is paid by the trucking industry. Consequently, many larger manufacturers shift their trucking business to an in-house unit.

Outside truckers are generally small employers and thus many do not share in the full advantages of premium discounts, experience-rating or self-insurance. They feel that this classification procedure exacerbates their workers' compensation problems and causes an unfair disadvantage to them in the market

place. The expansion and formalization of the right to appeal classification decisions to the Commissioner of Insurance should assist the truckers in pursuing this objection and devising a method of "lumping" categories for ease of policy administration which does not penalize independent carriers.

Retroactive Rate Increases

The present workers' compensation statute permits insurers to retroactively adjust premium rates to take account of legislative changes in their liability for benefits which occur during a policy year. This is consistent with insurance accounting and theory which suggest that the premium paid should correlate with the risk exposure incurred in the same period. The result of this practice, however, is a considerable burden on industries which work on a term contract basis such as construction and trucking. Workers' compensation costs are typically allocated as a percentage of the contract total in these industries and once the contract is entered into, certainly once it is completed, there is no means by which the party whose workers' compensation rates have been retroactively increased can recoup these expenses from the party which contracted for the work.

Though it would be contrary to normal insurance practice, it would be quite possible for increased costs due to newly legislated benefits changes to be allocated as prospective rather than retroactive premium increases. This would mean that risks associated with an earlier year would be paid during a later year. But since the same employers would be paying that cost no inequities should result from the change. Prospective adjustments would allow businesses operating under fixed contracts to allocate these workers' compensation increases forward instead of being forced to absorb the costs themselves. It should be possible for a formula to be devised which would accurately predict the cost increases generated by a given legislative change in benefits. Thus, a benefit change could be made effective, say, January 1 and the prospective premium increase necessary to cover that expense could be precisely calculated and made effective the same date.

RISK STUDY

ALL RISKS BY PREMIUM SIZE

POLICY YEAR 1974

Premium Range	(1) Standard Premium	(2) Total Modified Losses	(3) Loss Ratio (2)÷(1)
000-100	705,900	737,981	1.045
101-299	2,690,311	2,324,137	.864
300-499	3,049,353	2,216,544	.727
500-749	3,618,265	2,469,050	.682
750-999	3,211,857	2,409,162	.750
1000-4999	30,692,624	21,010,709	.685
5000-99999	86,176,332	61,276,158	.711
over 99999	49,337,509	34,405,545	.697

MINNESOTA LOSS RATIO STUDY

BELOW $750

Policy Period	Standard Earned Premium	Incurred Losses*	Loss Ratio
1/72 - 12/72	9,397,626	7,911,662	.842
1/73 - 12/73	9,723,623	8,085,705	.823
1/74 - 12/74	10,063,829	7,180,904	.714
TOTALS:	29,185,078	23,178,271	.794

ABOVE $750

1/72 - 12/72	103,930,975	72,620,286	.699
1/73 - 12/73	123,856,526	90,899,348	.734
1/74 - 12/74	169,418,322	110,495,078	.652
TOTALS:	397,205,823	274,014,712	.690
TOTALS (ALL RISKS)	426,390,901	297,192,983	.697

* Developed to an Ultimate Basis

Premiums and Losses Reporting

Both the Insurance Division and the Rating Bureau perform periodic audits to assure that the correct amount of premiums are collected from employers to cover their risk. Except for individual complaints regarding the appropriate classification of an employer which surface with some regularity, the commission has uncovered no serious complaints regarding the collection of premiums.

Insurers report losses on the basis of their year-end financial record. The financial data combines two major types of losses. (1) Paid losses record the actual money paid during a policy year for injuries which occurred during that policy year. A high percentage of medical costs and temporary total indemnity payments are actually paid during the first policy year. (2) Incurred, but not paid, losses reflect the long-term nature of the workers' compensation benefit system. Death and Permanent Total Disability benefits are generally paid out over a long period of time. Incurred losses represent the insurer's estimate of the total unpaid liability, both known and unknown, for all injuries which occurred within a given policy year.

A major failing in the present system of reporting losses stems from the inability to divide actual paid losses from incurred, but not paid, losses. Until this is done, it is impossible to judge with any certainty the accuracy of the judgments made by insurers about their future unpaid liability. This is a special problem in our efforts to separate the known from the unknown elements of these future liabilities.

According to the Rating Bureau, efforts are already under way to separate paid from incurred losses for all future rate-making proceedings.

As already stated, the financial records report known as well as unknown losses. Another source of losses exists which tracks only known losses. The Unit Stat Plan totalsaggregate all paid and incurred losses for the individual files of injuries. The Unit Stat Plans monitor the experience of individual policies annually for five years. All premiums, injuries, and medical and

PENSION TABLE (OTHER THAN WIDOW'S)
(Present Value of $1.00 per annum payable until death.)

Age	Present Value	Age	Present Value	Age	Present Value
13	24.640	41	18.808	69	9.260
14	24.496	42	18.511	70	8.902
15	24.351	43	18.209	71	8.546
16	24.203	44	17.902	72	8.191
17	24.053	45	17.590	73	7.838
18	23.900	46	17.273	74	7.487
19	23.744	47	16.951	75	7.140
20	23.583	48	16.625	76	6.796
21	23.419	49	16.295	77	6.454
22	23.250	50	15.963	78	6.117
23	23.076	51	15.629	79	5.787
24	22.896	52	15.294	80	5.467
25	22.710	53	14.955	81	5.162
26	22.516	54	14.613	82	4.875
27	22.315	55	14.266	83	4.602
28	22.107	56	13.916	84	4.335
29	21.892	57	13.561	85	4.066
30	21.671	58	13.203	86	3.810
31	21.444	59	12.844	87	3.570
32	21.209	60	12.486	88	3.345
33	20.968	61	12.128	89	3.136
34	20.721	62	11.770	90	2.946
35	20.467	63	11.412	91	2.776
36	20.206	64	11.054	92	2.624
37	19.938	65	10.696	93	2.490
38	19.664	66	10.337	94	2.372
39	19.384	67	9.978	95	2.266
40	19.099	68	9.618		

1960 U.S. Life Tables—Total Population—3.5% Interest.

†Applicable to all losses incurred under Policy Year 1973 first and subsequent reports; all losses incurred under Policy Year 1972 second and subsequent reports; all losses incurred under Policy Year 1971 third and subsequent reports; all losses incurred under Policy Year 1970 fourth and subsequent reports; and all losses incurred under Policy Year 1969 fifth reports.

Edition of 10-1-69

Date of Accident 8-8-75 Policy Eff. 11-1-74/75
Employees Birth 1927
Weekly Benefit Payable: $135.00

Calculations:

1. Valuation date	5-1-76
2. Employee's age nearest valuation date	48
3. Annual benefit ($135 x 52 wks.)	7,020
4. Present value of $1.00 per yr. (From Table II)	16,625
5. Present value of future payments (3) x (4)	116,708
6. Payments since 8-8-75 at $135.00	5,940
7. Total incurred indemnity loss (5) + (6)	122,648

indemnity payments are reported on the Unit Statistical Plan cards. The Unit Statistical Plan totals are used for experience rating but not for the ratemaking proceedings. The losses reported in the Unit Stat Plan totals are in all cases smaller than the totals reported on the basis of the year-end financial totals.

Expense Loading

Up until January 1, 1978, the insurance commissioner allowed the insurance carriers to retain up to 38.8% of premiums for profit and expenses. The bureau in 1977 proposed that this figure be reduced to 37.8%. The 38.8% only applied to policies with less than $1000 in annual premiums. For larger policies premium discounts were given that reduced the expense loading to 29.4% for policies with premiums up to $5,000, 24.1% for policies with premiums up to $100,000, and 22.5% for policies with premiums over $100,000. The Bureau calculates that the average premium discount was 10.5% in 1976 and 11.1% in 1977 (information supplied by Harold Nelson of the Bureau via telephone on 11-7-77). This reduces the actual expense loading from 38.8% to around 27% or 28%. The real expense loading factor is therefore 38.8% minus the average premium discount. The order of the insurance commissioner on March 13, 1978, allowing a rate increase of 30.5% also ordered a reduction of the expense loading factor to 28.35% plus 2.5% for profit/contingencies. The new maximum expense loading is thus 30.85%.

Assigned Risk Pool

In 1929, the legislature formed the Assigned Risk Pool to assure that all employers in the state would be able to secure workers' compensation insurance. Today, the Assigned Risk Pool is administered by the Rating Bureau and serviced by 12 large insurers in the state. Any employer who has been twice refused regular coverage must be accepted in the Assigned Risk Pool. As indicated in the chart below, the assignments to the Risk Pool have grown tremendously in the past five years.

MINNESOTA RISK POOL, NEW ASSIGNMENTS, 1975-78

Date	Number	% Increase
1975	1078	--
1976	2910	170%
1977	5837	101%
1/1-7/31/78	(5399)	--
1978	9257*	59%

* Projected for 1978 on basis of seven-month total. Out of approximately 70,000 policies. Source: Minnesota Compensation Rating Bureau.

Minnesota employers who are assigned to the Risk Pool do not receive any direct assessments or penalties. The manual rates for each classification are not affected by assignment in the pool. Pool risks are also experience-rated (if they exceed $750 of premium) and receive premium discounts. Pool risks cannot, however, choose any voluntary rating programs and do not receive dividends. In 1977, dividends amounted to about $16 million or 5 percent of total premiums in Minnesota.

For their part, the 12 insurance companies who share responsibility for the Risk Pool are assured that 35 percent of every premium dollar collected from the insureds in the pool will go toward expenses and profits. If actual losses for any policy exceed 65 percent of premium, all of the other insurers are assessed for the additional expense. For the most recent year, total assessments to cover these excess losses was $4.2 million. According to the Rating Bureau, each company includes payments to the Risk Pool as part of its losses for purposes of determining rates for all its customers. In the opinion of the commission the higher expense loading permitted in the assigned risk pool has provided a substantial incentive to insurers to refuse coverage to their smaller customers.

B. LOSS DEVELOPMENT DIFFERENCES BETWEEN MINNESOTA AND WISCONSIN

The typical workers' compensation insurance policy provides a 12-month coverage to employers against work-related injuries.

Six months after the policy expires, the insurer reports all of the known losses which occurred during the policy year to the Commissioner of Insurance and the Rating Bureau. This is known as the "first report" of losses. Figure 1 traces the first report of losses and payroll for the most recent five policy years in Minnesota and Wisconsin. The "Rate" is the percentage of payroll reported as losses, and illustrated as dollars per $100 of payroll.

Figure 1. Minnesota and Wisconsin, Rate as of First Report of Payroll and Losses, Policy Years 1970-1975*

Policy Year	MINNESOTA Rate	WISCONSIN Rate
1975	--	$.596
1974	$.739	.598
1973	.676	.578
1972	.619	.539
1971	.601	.528
1970	.564	.559

* From Schedule Z, Unit Stat Plan Totals

Although the gap between the states is widening even at the first report of premiums and losses, the difference for the five years is less than 15%. Compare this against Figure 2 which gives the average cost of workers' compensation in terms of dollars per $100 of payroll.

Figure 2. Minnesota and Wisconsin, Average Manual Rate, 1974-1978

Policy Year	MINNESOTA Rate	WISCONSIN Rate
1978	$2.83	$1.44
1977	2.17	1.26
1976	2.06	1.15
1975	1.84	1.08
1974	1.65	1.08

Minnesota's average rate has grown from 56.2% greater than Wisconsin's in PY 1974 to 96.5% greater in PY 1978.

The major cause for the disparity between Minnesota's and Wisconsin's rates is "loss development." An insurer's liability does not cease with the first report of losses. The total cost for all injuries which have occurred within a given policy year changes frequently and is often not known for several years. There can be delays before the employee realizes he is injured or that his injury is work-related. Claims analysts can err in

understanding the severity of an injury--the physical condition, itself, can improve or degenerate unexpectedly. The greatest delay in determining the ultimate cost of an injury results from litigating and settling contested cases. (Changes can also occur, though generally on a smaller scale, in premiums collected for a policy.)

Insurers track the changes in losses and premiums continuously, and report these changes at 12-month intervals following the first report. The cumulative change for all policies written in the state from one year to the next is known as "loss development." The ratemaking process includes a factor which adjusts the first report of losses based on the loss development of the most recent five years for all insurers. If the loss development factor is 1.000, it means that in the past five years 100% of the total cost for work-related injuries was known to insurers by the first report of losses. A loss development factor of 1.500 means that insurers underestimated their total cost by 50% at the first report. It is assumed in the ratemaking formula that the most recent first reports of losses would be similarly underestimated by 50%.

When we say that 50% or 100% of losses were known by the first report, it does not mean that the losses were actually paid by that time. Since most benefits are paid weekly, sometimes for many years, loss development measures only how accurately insurers project what their ultimate liability will be.

Historically, Minnesota's loss development factor has served to increase the overall rates significantly. By contrast, Wisconsin--which determines rates similarly--has had virtually no loss development in recent years.

Figure 3. Minnesota and Wisconsin, Composite Loss Development (1st to Ultimate), PY 1974-1978

Policy Year	MINNESOTA Rate	WISCONSIN Rate
1978	--	1.014
1977	1.325	1.027
1976	1.208	1.006
1975	1.246	1.009
1974	1.355	1.023
1973	1.260	--

The problems which generate Minnesota's large loss development--primarily the delays in settling and litigating claims--are major obstacles to getting the injured worker back on the job. It is clear that if we can resolve these problems, it will reduce our loss development, and consequently our overall rates, significantly. If we had shared the low level of loss development which Wisconsin enjoys, there would have been no rate increase last year--a savings of roughly $65 million.

III.

COST OF WORKERS' COMPENSATION INSURANCE

A. HOW HIGH ARE MINNESOTA'S WORKERS' COMPENSATION RATES?

The following exhibits should dispel some of the myths and misinformation about where Minnesota's workers' compensation costs stand in relation to the rest of the country.

The National Council on Compensation Insurance (NCCI) compiled average manual rates for all states which allow some form of private insurance for policy periods beginning between 12-1-72 and 7-1-74. The NCCI has also reported all rate increases for these states through 6-30-78. Similar information was obtained by phone from the six exclusive fund states. By multiplying the initial average manual rate times all the subsequent rate increases, we get a relatively reliable indicator of the comparative cost of workers' compensation in the fifty states today.

It is important to remember a number of things about this information: 1) the average manual rate is

$$\text{TOTAL PREMIUM} \div \left(\text{TOTAL PAYROLL}\right) \times .01,$$

and is shown as dollars per $100 of payroll; 2) neither payroll nor premium develop much beyond first report, so these figures are not subject to much change; 3) each state's industrial mix contributes heavily to its workers' comp costs - even ideally, all states should not have the same costs; 4) most states increase rates annually - only 18 states reported their 1978 rate increases, which tends to deflate the actual costs in the remaining 32 states; 5) the policy period differs as much as several months from one state to the next, which makes a comparison of all states at the same point in time slightly inconsistent - this, however, is not a major problem; 6) some competitive state funds give automatic reductions from the stated average manual rate; (foremost of these is Colorado, which granted a 30% reduction on all policies in 1978).

Between 1974 and 1978, Minnesota raised its maximum benefit more than all but eight other states. In the same time period, Minnesota's rates increased faster than all but 12 other states. Minnesota currently has the 13th highest maximum benefit and the 14th highest average manual rate.

AVERAGE MANUAL RATE
ALL JURISDICTIONS, By Rank, 1974 and 1978

	STATE	1974 AVERAGE MANUAL RATE
1.	Oregon	$ 3.60
2.	Louisiana	3.21
3.	Florida	3.09
4.	Montana	3.03
5.	Oklahoma	2 78
6.	Texas	2.67
7.	Arizona	2.54
8.	Alaska	2.52
9.	Hawaii	2.34
10.	Idaho	2.26
11.	Nevada	2.16
12.	Michigan	2.09
13.	Arkansas	2.07
14.	California	1.98
15.	New Mexico	1.97
16.	W. Virginia	1.92
17.	Kentucky	1.82
18.	Mississippi	1.74
19.	New Jersey	1.73
20.	Maine	1.70
21.	MINNESOTA	1.65
22.	Washington	1.51
23.	Massachusetts	1.49
	Missouri	1.49
25.	Maryland	1.40
	Ohio	1.40
27.	Tennessee	1.38
28.	N. Dakota	1.31
29.	Kansas	1.27
30.	Nebraska	1.22
	N. Hampshire	1.22
	New York	1.22
33.	Alabama	1.21
	Georgia	1.21
	Rhode Island	1.21
36.	S. Dakota	1.15
37.	Illinois	1.13
	S. Carolina	1.13
39.	Colorado	1.12
40.	Connecticut	1.11
	Utah	1.11
42.	Iowa	1.10
43.	Delaware	1.07
44.	Pennsylvania	1.05
45.	Wisconsin	1.05
46.	Vermont	.98
47.	Wyoming	.91
48.	Virginia	.88
49.	N. Carolina	.81
50.	Indiana	.74

	STATE	1978 AVERAGE MANUAL RATE
1.	Louisiana	$ 7.19
2.	Oregon	5.77
3.	Florida	5.30
4.	Alaska	4.81
5.	Hawaii	4.47
6.	Oklahoma	4.27
7.	Arizona	3.81
8.	California	3.49
9.	N. Hampshire	3.37
10.	Texas	3.28
11.	Maine	3.24
12.	Michigan	3.04
13.	Montana	2.97
14.	MINNESOTA	2.83
15.	Arkansas	2.74
16.	Nevada	2.73
17.	Idaho	2.72
	Iowa	2.72
19.	Pennsylvania	2.68
20.	W. Virginia	2.58
21.	New Mexico	2.39
22.	Kentucky	2.35
23.	New York	2.32
24.	Maryland	2.31
25.	Washington	2.26
	New Jersey	2.26
27.	Colorado	2.24
28.	Illinois	2.17
29.	Kansas	2.15
30.	Delaware	2.08
31.	Tennessee	1.98
32.	Massachusetts	1.95
33.	Rhode Island	1.93
34.	Missouri	1.88
35.	Mississippi	1.85
36.	Georgia	1.83
37.	Connecticut	1.80
38.	N. Dakota	1.80
39.	Ohio	1.72
40.	Utah	1.70
41.	Vermont	1.59
42.	Alabama	1.54
43.	Virginia	1.45
44.	Wisconsin	1.44
45.	S. Dakota	1.43
46.	Nebraska	1.40
47.	Wyoming	1.39
48.	S. Carolina	1.16
49.	N. Carolina	1.08
50.	Indiana	.81

PRESENT MANUAL RATE (7/1/78)
ALL JURISDICTIONS

STATE	POLICY PERIOD	AVE. EARNED RATE	RATE INCREASES 1973	1974	1975	1976	1977	1978	TOTAL	PRESENT MAN RATE
ALABAMA	2-1-74/1-31-75	1.21	--	1.064	1.057	.998	1.136	--	1.275	1.54
ALASKA	10-1-73/9-30-74	2.52	--	1.342	1.499	1.037	.863	1.060	1.908	4.81
ARIZONA(c)	6-1-74/5-31-75	2.54	--	1.069	1.092	1.137	1.131	--	1.501	3.81
ARKANSAS	3-1-73/2-28-74	2.07	1.054	1.093	1.028	1.076	1.037	--	1.321	2.74
CALIFORNIA(c)	1-1-74/12-31-74	1.98	--	1.116	1.129	1.199	1.115	1.046	1.762	3.49
COLORADO (c)	9-1-73/8-31-74	1.12	--	1.057	1.180	1.055	1.523	--	2.003	2.24
CONNECTICUT	4-1-73/3-31-74	1.11	--	1.111	1.089	1.097	1.222	--	1.622	1.80
DELAWARE	1-1-74/12-31-74	1.07	--	1.096	1.212	1.351	1.081	--	1.940	2.08
FLORIDA	12-1-73/11-30-74	3.09	--	--	1.410	1.202	1.011	--	1.714	5.30
GEORGIA	5-1-73/4-30-74	1.21	--	1.073	1.199	1.078	1.090	--	1.512	1.83
HAWAII	3-1-74/2-28-75	2.34	--	1.098	1.502	1.032	1.122	--	1.909	4.47
IDAHO (c)	5-1-74/4-31-75	2.26	--	1.108	1.090	1.068	.955	.977	1.204	2.72
ILLINOIS	3-1-74/2-28-75	1.13	--	1.103	1.514	1.243	.924	--	1.919	2.17
INDIANA	2-1-74/1-31-75	.74	--	1.081	1.041	.969	1.218	--	1.328	.81
IOWA	4-1-73/3-31-74	1.10	1.777	--	1.234	1.154	1.073	1.269	2.476	2.72
KANSAS	7-1-73/6-30-74	1.27	--	1.257	1.070	1.131	1.113	--	1.693	2.15
KENTUCKY	7-1-73/6-30-74	1.82	--	1.078	1.053	1.169	.972	--	1.289	2.35
LOUISIANA	1-1-74/12-31-74	3.21	--	1.074	1.355	1.223	1.208	1.042	2.244	7.19

PRESENT MANUAL RATE (7/1/78)
ALL JURISDICTIONS

STATE	POLICY PERIOD	AVE. EARNED RATE	RATE INCREASES						TOTAL	PRESENT MAN RATE
			1973	1974	1975	1976	1977	1978		
MAINE	3-1-73/2-28-74	1.70	--	1.244	1.185	--	1.071	1.208	1.906	3.24
MARYLAND(c)	5-1-73/4-30-74	1.40	1.070	1.024	1.198	1.097	1.147	--	1.652	2.31
MASSACHUSETTS	7-1-73/6-30-74	1.49	--	1.042	1.084	--	1.089	--	1.308	1.95
MICHIGAN(c)	4-1-73/3-30-74	2.09	--	1.088	1.095	1.165	1.049	--	1.456	3.04
MINNESOTA	1-1-74/12-30-74	1.65	--	1.116	1.117	1.054	--	1.306	1.715	2.83
MISSISSIPPI	12-1-72/11-30-73	1.79	1.017	1.026	.906	1.032	1.024	1.031	1.031	1.85
MISSOURI	12-1-73/11-30-74	1.49	--	1.176	1.062	--	1.000	1.021	1.264	1.88
MONTANA(c)	4-1-74/3-31-75	3.03	--	--	1.212	1.101	.737	--	.983	2.97
NEBRASKA	10-1-73/9-30-74	1.22	.964	1.118	1.263	.866	.972	--	1.146	1.40
NEVADA(e)	7-1-73/6-30-74	2.16	--	--	.931	1.189	1.069	1.066	1.264	2.73
NEW HAMPSHIRE	3-1-73/2-28-74	1.22	1.115	--	1.218	1.128	1.477	--	2.263	3.37
NEW JERSEY	1-1-74/12-1-74	1.73	--	.975	.999	1.116	1.202	--	1.306	2.26
NEW MEXICO	1-1-74/12-31-74	1.97	--	1.067	1.058	1.025	1.050	--	1.214	2.39
NEW YORK(c)	1-1-74/12-31-74	1.22	--	1.070	1.099	1.248	1.140	1.134	1.898	2.32
NORTH CAROLINA	8-1-73/4-30-74	.81	1.034	--	--	--	1.284	1.328	1.328	1.08
NORTH DAKOTA(e)	7-1-73/6-30-74	1.31	--	--	1.107	1.055	1.176	--	1.374	1.80
OHIO (e)*	7-1-73/6-30-74	1.40	--	1.007	1.014	1.209	1.228	.809	1.229	1.72
OKLAHOMA(c)	6-1-74/5-31-75	2.78	--	--	1.201	1.278	--	--	1.536	4.27

PRESENT MANUAL RATE (7/1/78)
ALL JURISDICTIONS

STATE	POLICY PERIOD	AVE. EARNED RATE	RATE INCREASES 1973	1974	1975	1976	1977	1978	TOTAL	PRESENT MAN RATE
OREGON(c)	5-1-74/4-30-75	3.60	--	1.027	1.099	1.294	1.098	--	1.603	5.77
PENNSYLVANIA(c)	7-1-74/6-30-75	1.05	--	1.105	1.309	1.281	1.379	--	2.557	2.68
RHODE ISLAND	1-1-74/12-31-75	1.21	--	1.130	1.233	1.145	--	--	1.595	1.93
SOUTH CAROLINA	11-1-72/10-31-73	1.13	.935	--	1.098	--	--	--	1.026	1.16
SOUTH DAKOTA	11-1-73/10-31-74	1.15	--	1.046	1.140	.973	1.074	--	1.246	1.43
TENNESSEE	9-1-73/8-31-74	1.38	1.057	1.055	1.047	1.102	1.130	--	1.432	1.98
TEXAS	1-1-74/12-31-74	2.67	--	1.058	1.004	--	1.121	1.032	1.228	3.28
UTAH(c)	5-1-73/4-30-74	1.11	1.151	1.029	1.112	--	1.108	1.070	1.527	1.70
VERMONT	11-1-73/10-31-74	.98	1.099	1.008	1.181	--	1.236	--	1.617	1.59
VIRGINIA	3-1-74/2-28-75	.88	--	1.061	1.124	1.211	1.211	1.098	1.646	1.45
WASHINGTON (e)	1-1-74/12-31-74	1.51	--	--	.991	1.145	1.339	--	1.518	2.29
WEST VIRGINIA(e)	7-1-73/6-30-74	1.92	--	--	1.096	1.038	.977	1.213	1.344	2.58
WISCONSIN	12-1-73/11-30-74	1.05	--	1.025	1.001	1.070	1.097	1.142	1.375	1.44
WYOMING(e)	7-1-73/6-30-74	.91	--	--	1.200	.880	1.105	1.300	1.530	1.39

(c) Competitive state fund

(e) Exclusive state fund

* Ohio statistics do not include state, county or municipal employees

B. WORKERS' COMPENSATION RATES IN MINNESOTA AND IOWA

According to the National Council on Compensation Insurance, the state of Iowa had an average manual rate of $1.10 per $100 of payroll for the policy period of April 1, 1973 - March 31, 1974. The Iowa Commissioner of Insurance (also according to the NCCI) increased the overall rates six times since the beginning of that period, as follows:

EFFECTIVE DATE	INCREASE	AVERAGE MANUAL RATE
9/73	1.277	$1.40
1/75	1.127	$1.58
7/75	1.095	$1.73
7/76	1.154	$2.00
7/77	1.073	$2.15
7/78	1.269	$2.72

The same documents show Minnesota with an average manual rate of $1.65 for the policy period of January 1, 1974 - December 31, 1974. The subsequent increases have been as follows:

EFFECTIVE DATE	INCREASE	AVERAGE MANUAL RATE
9/74	1.116	$1.84
10/75	1.117	$2.06
10/76	1.054	$2.17
3/78	1.306	$2.83

The figures seem to show that contrary to the widely-held belief, Iowa's rates are no longer much different than ours.

C. COMPARISON OF NATIONWIDE UNIT STATISTICAL PLAN DATA

The information contained in the following tables is based on the Unit Statistical Plan reports collected by the National Council on Compensation Insurance for 36 states and the District of Columbia. For the 37 jurisdictions included in this section of the report, the tables present: (1) the cost per case, (2) the incidence per $1 million of payroll, and (3) the cost per $100 of payroll for seven compensable categories of workers' compensation. The seven categories are death, permanent total (PT), serious injury (Major), non-serious injury (Minor), temporary total (TT), compensable medical (C. Med.), and non-compensable medical (N.C. Med.). Minnesota has been ranked in relation to the other jurisdictions at the bottom of the tables. The totals incurred by each state are contained in the far right column.

STATE(1)	MAXIMUM WEEKLY BENEFIT JAN 1, 1975	MAXIMUM WEEKLY BENEFIT JAN 1, 1978	WC RATE(2)	DEATH			PT			MAJOR			MINOR		
				COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL(3)	COST PER $100 PAYROLL	COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL	COST PER $100 PAYROLL	COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL	COST PER $100 PAYROLL	COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL	COST PER $100 PAYROLL
AL	$ 75	$120	$1.59	$ 23,455	.016	$.04	$ 25,709	.0026	$.007	$14,570	.061	$.09	$3,433	.270	$.09
AK(4)	175	608	5.05	90,876	.039	.36	125,143	.0048	.06	22,616	.123	.28	4,206	.344	.28
AZ	154	201	3.42	52,828	.011	.06	63,010	.0040	.025	19,338	.189	.37	2,534	.365	.09
AR	67	88	2.69	31,627	.019	.06	46,628	.0053	.025	12,918	.180	.23	2,537	.509	.13
CO(5)	109	161	1.70	26,591	.013	.03	39,348	.0016	.006	17,487	.028	.05	3,451	.358	.12
CT	191	250	1.50	64,380	.004	.02	96,362	.0006	.006	19,599	.046	.09	3,468	.440	.13
DC	261	367	2.19	179,403	.010	.18	101,626	.0024	.025	26,740	.129	.34	3,472	.240	.08
FL(5)	98	126	3.44	30,192	.021	.06	53,813	.0104	.055	15,886	.309	.49	3,556	.842	.30
GA	80	95	1.66	24,390	.013	.03	32,685	.0022	.008	13,542	.117	.16	2,657	.296	.08
HI	155	189	3.43	44,590	.015	.07	22,300	.0299	.065	16,365	.167	.27	1,542	1.077	.17
ID	129	199	3.14	19,488	.013	.02	158,883	.0032	.05	24,377	.035	.09	5,125	.579	.30
IL	97	306	3.00	48,710	.010	.05	68,090	.0015	.01	16,790	.124	.21	2,651	.756	.20
IN	90	132	.98	35,218	.009	.03	33,518	.0006	.002	12,297	.050	.06	2,928	.250	.07
IA(5)	97	248	1.65	61,097	.011	.07	50,035	.0033	.02	18,502	.057	.11	3,350	.265	.09
KS(5)	95	121	1.74	22,905	.016	.04	19,445	.0064	.01	12,070	.140	.17	2,497	.422	.11
KY(5)	88	123	2.43	53,395	.012	.06	39,125	.0081	.06	22,669	.123	.28	3,892	.343	.13
LA(6)	65	130	3.30	34,022	.037	.13	30,100	.0349	.10	15,746	.401	.62	3,136	.750	.24
ME(5)	131	221	2.49	76,590	.015	.11	148,656	.0017	.025	19,712	.065	.13	4,487	.306	.14
MD	102	202	2.10	53,773	.007	.04	85,789	.0019	.02	20,189	.057	.12	3,121	.467	.15
MI	100	166	2.86	41,551	.009	.04	38,926	.0066	.025	22,005	.126	.28	4,816	.271	.13

STATE (1)	MAXIMUM WEEKLY BENEFIT JAN 1, 1975	MAXIMUM WEEKLY BENEFIT JAN 1, 1978	WC RATE (2)	DEATH			PT			MAJOR			MINOR		
				COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL (3)	COST PER $100 PAYROLL	COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL	COST PER $100 PAYROLL	COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL	COST PER $100 PAYROLL	COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL	COST PER $100 PAYROLL
MN (6)	$100	$197	$2.39	$ 29,699	.012	$.03	$ 47,980	.0048	$.02	$ 23,766	.042	$.10	$4,364	.374	$.16
MS (5)	63	103	1.55	15,007	.025	.03	20,215	.0048	.01	12,392	.128	.16	3,030	.408	.12
MO (5)	95	115	1.41	47,165	.016	.07	50,522	.0033	.015	12,203	.118	.14	2,242	1.036	.23
MT	137	174	4.47	85,823	.016	.14	68,582	.0045	.03	17,189	.184	.32	3,944	.492	.19
NE (5)	89	140	1.48	65,679	.013	.09	53,062	.0047	.025	27,184	.055	.15	3,572	.271	.10
NH	115	169	2.01	50,883	.015	.06	94,031	.0016	.015	15,876	.114	.18	3,155	.192	.06
NM (6)	75	153	2.40	21,650	.017	.04	17,069	.0155	.02	15,684	.137	.21	2,850	.560	.16
NC (5)	80	168	.84	27,844	.009	.02	82,994	.0116	.01	12,502	.055	.06	2,420	.371	.09
OK	50	75	2.86	16,497	.048	.08	23,773	.0170	.04	11,190	.435	.49	2,888	1.284	.37
OR	111	234	5.19	64,377	.016	.11	100,186	.0124	.01	30,014	.047	.14	4,539	1.219	.55
RI (6)	97	200	2.03	59,062	.003	.01	54,185	.0019	.01	15,746	.130	.20	2,661	.219	.06
SC (5)	88	172	1.26	29,079	.017	.05	33,242	.0026	.005	11,627	.123	.14	2,114	.512	.11
SD (5)	72	130	1.33	44,178	.013	.06	41,244	.0023	.01	19,913	.048	.10	2,050	.346	.07
TN (5)	70	100	1.48	19,310	.016	.03	32,599	.0031	.01	12,549	.121	.15	2,977	.472	.14
VT (5)	101	185	1.45	27,873	.006	.01	22,765	.0019	.004	13,711	.066	.09	3,289	.211	.07
VI	91	175	1.44	36,099	.013	.05	75,587	.0016	.01	17,158	.051	.09	3,083	.220	.07
WI	108	202	1.33	37,941	.007	.025	96,460	.0011	.01	14,846	.068	.10	2,955	.317	.09
MN RANK (of 37)	16	13	16	26	24	26	20	12	15	5	35	27	5	18	11

STATE (1)	MAXIMUM WEEKLY BENEFIT JAN 1, 1975	MAXIMUM WEEKLY BENEFIT JAN 1, 1978	WC RATE (2)	TT			C.MED			N.C.MED			TOTAL		
				COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL (3)	COST PER $100 PAYROLL	COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL	COST PER $100 PAYROLL	COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL	COST PER $100 PAYROLL	COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL	COST PER $100 PAYROLL
AL	$ 75	$120	$1.59	$347	3.29	$.11	$ 656	3.64	$.24	$48	12.77	$.06	$ 391	16.41	$ .61
AK(4)	175	608	5.05	713	2.63	.19	1,159	3.14	.36	95	7.16	.07	1,417	10.30	1.46
AZ	154	201	3.42	695	1.46	.15	1,256	2.68	.34	83	12.00	.10	765	14.68	1.12
AR	67	88	2.69	653	1.64	.16	1,015	3.22	.33	49	17.04	.08	504	13.27	1.02
CO(5)	109	161	1.70	387	2.57	.10	595	2.98	.18	47	10.73	.05	394	13.69	.54
CT	191	250	1.50	517	2.22	.12	618	2.64	.16	53	7.81	.04	541	10.40	.57
DC	261	367	2.19	602	1.34	.08	927	1.72	.16	63	4.95	.03	1,359	6.67	.91
FL(5)	98	126	3.44	687	3.61	.25	1,325	4.79	.63	64	22.44	.14	710	27.24	1.94
GA	80	95	1.66	723	1.72	.12	1,088	2.15	.23	56	12.77	.07	475	14.92	.71
HI	155	189	3.43	317	6.26	.20	359	7.55	.27	57	7.07	.04	739	14.62	1.08
ID	129	199	3.14	533	3.88	.21	841	4.51	.38	53	13.18	.07	630	17.68	1.11
IL	97	306	3.00	913	1.17	.11	833	2.06	.17	56	9.71	.05	679	11.77	.80
IN	90	132	.98	597	1.37	.08	821	1.68	.14	49	11.85	.06	328	13.53	.44
IA(5)	97	248	1.65	543	1.94	.11	855	2.27	.19	40	15.26	.06	364	17.53	.64
KS(5)	95	121	1.74	711	1.87	.13	861	2.45	.21	46	15.27	.07	417	17.73	.74
KY(5)	88	123	2.43	496	2.29	.11	776	2.78	.22	43	12.16	.05	595	14.93	.89
LA(6)	65	130	3.30	699	3.46	.24	699	4.68	.52	59	20.38	.12	789	25.06	1.98
ME(5)	131	221	2.49	599	2.80	.17	636	3.19	.20	38	13.18	.05	503	16.37	.82
MD	102	202	2.10	713	2.05	.15	754	2.59	.20	58	8.54	.05	635	11.13	.71
MI	200	166	2.86	915	1.84	.17	1,011	2.25	.22	59	11.16	.07	695	13.41	.93

STATE (1)	MAXIMUM WEEKLY BENEFIT JAN 1, 1975	MAXIMUM WEEKLY BENEFIT JAN 1, 1978	WC RATE (2)	TT			C.MED			N.C.MED			TOTAL		
				COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL (3)	COST PER $100 PAYROLL	COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL	COST PER $100 PAYROLL	COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL	COST PER $100 PAYROLL	COST PER CASE	INCIDENCE PER $1 MILLION PAYROLL	COST PER $100 PAYROLL
MN(6)	$100	$197	$2.39	$698	2.19	$.15	$ 830	2.61	$.22	$45	9.25	$.04	$ 614	11.87	$ .73
MS(5)	63	103	1.55	436	2.75	.12	873	3.31	.29	42	15.16	.06	435	18.48	.80
MO(5)	95	115	1.41	457	3.69	.17	550	4.87	.27	44	16.31	.07	462	21.08	.98
MT	137	174	4.47	693	2.19	.15	1,102	2.88	.32	56	14.63	.08	703	17.51	1.23
NE(5)	89	140	1.48	559	1.60	.09	1,043	1.94	.20	43	13.16	.06	467	15.11	.71
NH	115	169	2.01	455	3.79	.17	549	4.11	.23	40	10.77	.04	507	14.88	.75
NM(6)	75	153	2.40	513	2.24	.12	1,038	2.99	.31	60	12.36	.07	608	15.33	.93
NC(5)	80	168	.84	502	1.35	.07	643	1.78	.11	40	13.63	.05	279	15.42	.43
OK	50	75	2.86	745	3.67	.27	1,029	5.45	.56	57	21.91	.12	707	27.36	1.93
OR	111	234	5.19	499	3.79	.18	914	4.87	.45	57	12.26	.07	944	17.14	1.62
RI(6)	97	200	2.03	676	2.52	.17	676	2.87	.19	52	8.79	.05	600	11.66	.70
SC(5)	88	172	1.26	658	1.56	.10	801	2.21	.18	42	12.60	.05	435	13.84	.60
SD(5)	72	130	1.33	725	1.67	.12	935	2.08	.19	54	12.53	.07	420	14.62	.61
TN(5)	70	100	1.48	522	2.14	.11	847	2.74	.23	42	14.25	.06	432	17.00	.73
VT	101	185	1.45	527	2.44	.13	602	2.73	.16	39	8.49	.03	452	11.22	.45
VI	21	175	1.44	608	1.53	.09	956	1.82	.17	50	10.46	.05	434	12.28	.53
WI	108	202	1.33	426	2.62	.11	639	3.02	.19	53	10.19	.05	445	13.21	.59
MN RANK (of 37)	16	13	16	10	20	14	21	24	18	26	29	31	14	29	21

(1) Except as noted, all information derives from the first report of policy year 1974-1975 of NCII, Exhibit III, Unit Plan Data, All Classes.

(2) Effective January 1, 1977, from calendar year data compiled by the Minnesota Compensation Rating Bureau.

(3) All payroll is adjusted in those states having payroll limitations.

(4) Combined experience: policy years 1973-1975.

(5) Policy year 1973-1974.

(6) Policy year 1974.

NATIONAL COUNCIL ON COMPENSATION INSURANCE

WCSC CHART II

DEVELOPMENT FACTORS - COUNTRYWIDE

State	Effective Date	Premium Development 1st to 5th	Premium Development 2nd to 5th	Loss Development 1st to Ult.	Loss Development 2nd to Ult.
Alabama	9-1-77	1.040	1.007	.956	.962
Alaska	11-1-76	1.024	1.007	1.042	.997
Arizona	9-1-77	1.026	.999	1.241	1.243
Arkansas	1-1-77	1.030	1.005	1.100	1.062
Colorado	11-3-77	1.093	1.020	1.000	.983
Connecticut	10-1-77	1.033	1.012	1.136	1.105
Dist. of Columbia	7-1-77	1.052	.990	1.589	1.350
Florida	1-1-78	1.011	.983	1.365	1.206
Georgia	7-1-76	1.025	1.007	1.034	.991
Hawaii	1-1-77	1.010	1.011	1.181	1.172
Idaho	1-1-77	1.047	1.016	1.115	1.101
Illinois	7-1-76	1.004	1.013	1.010	1.001
Indiana	7-1-77	1.018	1.004	.901	.929
Iowa	7-1-77	1.074	1.003	1.015	.983
Kansas	9-1-77	1.060	1.004	.978	.976
Kentucky	10-14-77	1.050	.995	1.166	1.038
Louisiana	1-1-77	1.036	1.017	1.068	.983
Maine	10-1-75	1.058	1.009	1.192	1.107
Maryland	1-1-77	1.010	1.010	1.149	1.116
Michigan	7-1-77	1.051	1.004	1.429	1.257
Mississippi	1-1-78	1.071	1.003	.929	.962
Missouri	1-1-77	.981	.985	.953	.978
Montana	10-1-77	1.112	1.020	1.038	1.008
Nebraska	9-2-77	1.049	.999	.953	.943
New Hampshire	1-1-77	1.068	1.019	1.334	1.227
New Mexico	7-1-77	1.038	1.007	1.072	1.011
North Carolina	2-1-78	1.040	1.010	.963	.974
Oklahoma	9-1-76	1.005	1.053	1.005	1.013
Oregon	7-1-77	1.078	1.007	1.371	1.250
Rhode Island	12-1-76	1.042	1.029	1.167	1.087
South Carolina	7-1-75	1.013	1.001	.966	.981
South Dakota	7-1-77	1.031	1.006	.894	.919
Tennessee	9-1-77	1.046	1.006	.972	.962
Utah	11-1-74	.998	1.000	1.022†	1.009†
				1.032††	1.029††
Vermont	7-1-77	1.037	1.005	.966	.953
Virginia	7-1-77	1.047	1.010	1.027	.995
Wisconsin	4-1-77	1.011	1.008	1.023	1.022

†Indemnity Losses on a 5th reporting basis
††Medical Losses on a 5th reporting basis

Minnesota	3-1-78	1.075	1.037	1.522 (Ind)	1.312
				1.298 (Med)	1.265

This information compares only the first reports of injuries for the several jurisdictions. Since changes in liability which occur after the first reporting period do not appear on the NCCI Exhibit, the following information should not be interpreted as the complete liability of insurers in these jurisdictions. The value of the chart lies in the ability to compare the cost and frequency of various types of injuries after the first year. Direct comparisons between Minnesota and the surrounding states (except North Dakota which is an exclusive state fund and not included) indicate that although the cost per case and cost per $100 payroll are higher in Minnesota, the frequency of injuries is lower. Ranking 29th out of 37 jurisdictions indicates that safety programs in Minnesota may be superior to those in surrounding states. The Workers' Compensation Study Commission Chart II lists the current development factors for these same jurisdictions. The loss development factor demonstrates how the subsequent experience increases or reduces the liability measured in the first report of injury.

D. INCOME AND EXPENSES OF EIGHT MINNESOTA INSURERS

The Minnesota workers' compensation law was enacted in 1913. Since the program's inception, most workers' compensation insurers have considered Minnesota an attractive market and reported consistent underwriting earnings. Certain legislative changes in the last five years and other factors appear to have impaired that profitability.

Some insurers are now reporting underwriting losses. Many companies refuse to write new policies or renew existing policies. The growth of the assigned risk pool provides a startling example of the problem. In 1974 there were 913 employers in the pool. In 1977 that number had increased by almost 5,000 employers.

The Senate Research staff examined the expense exhibits of eight companies offering workers' compensation insurance in Minnesota. The information contained in Exhibits I - IX is derived from the Insurance Expense Exhibits which every insurer is required to file annually with the Commissioner of Insurance. The chart on the following page graphically displays the combined

	1974	1977	% Increase
All Workers' Compensation Insurers in the State of Minnesota (see Exhibit IX)			
Total Net Earned Premium	$ 138,091,624	$ 254,395,320	84.22%
Total Incurred Losses	$ 84,043,055	$ 215,569,954	156.50%
Percent of Incurred Losses to Net Earned Premium (Loss Ratio)	60.86%	84.74%	
The following information is extracted from Exhibits I-VIII. These tables were developed to examine the financial condition of eight Minnesota workers' compensation insurers for the years 1974 and 1977. The eight companies are a representative sample of Minnesota insurers, receiving approximately one-third of all workers' compensation insurance premiums and reserving or paying out approximately one-third of the losses incurred by Minnesota employers.			
Experience of eight workers' compensation insurers only -			
Minnesota Experience Only -			
Net Earned Premiums	$ 46,883,833	$ 79,445,652	69.45%
Incurred Losses	$ 28,420,574	$ 70,829,055	149.22%
Loss Ratio	60.62%	89.16%	
Nationwide Experience -			
Net Earned Premiums	$ 966,756,444	$1,487,818,511	53.90%
Incurred Losses	$ 719,635,853	$1,180,566,329	64.05%
Loss Ratio	74.45%	79.35%	
Workers' Compensation Net Investment Income Nationwide	$ 64,450,865	$ 130,212,887	102.04%
Percent of Investment Income to Net Earned Premium	6.67%	8.76%	
Workers' Compensation Reserves Nationwide	$ 947,032,325	$1,662,310,031	75.53%
Cash and Invested Assets - all insurance lines	$3,944,505,006	$8,790,692,073	122.86%
Estimated Investment Income earned by all companies writing workers' compensation insurance in Minnesota based on the Nationwide Net Investment Income realized by the eight insurers studied.			
Minnesota Net Earned Premium	$ 138,091,624	$ 254,395,320	84.23%
Nationwide Net Investment Income of eight companies as a percent of Earned Premium	x 6.67%	x 8.76%	
Estimated Investment Income of all Minnesota workers' compensation insurers	$ 9,210,711	$ 22,285,030	

statewide and nationwide experience of eight workers' compensation insurers.

The experience of all companies insuring workers' compensation in Minnesota for 1974 and 1977 is shown at the top of the chart. Although net earned premiums increased significantly, it is evident that the substantial increase in incurred losses and the associated loss ratios are representative of the impaired profitability that insurers have reported. Prior to 1976, the loss ratios for all companies insuring workers' compensation in Minnesota were consistently in the low 60 percent range of net earned premiums and below 60 percent in relation to standard earned premiums (Exhibit IX).

The loss ratio, or the percent of incurred losses to earned premium, is currently the primary measure of effectiveness used in the industry. The loss-ratio theory is based on the assumption that for given risk (reflected in earned premium) a particular insurer can do better or worse in containing costs than the average of carriers (incurred losses). The loss ratio is highly imperfect as an applied measure of carrier efficiency for several reasons:

1. Aggregate earned premium may not be a good measure of risk, since it does not necessarily reflect the risk associated with certain insureds that do not qualify for experience rating.
2. Incurred losses include the important variable--estimated future costs, it can be artificially too high or too low without truly reflecting the capacity of the carrier to control medical and indemnity costs.
3. The loss ratio cannot be utilized to evaluate claims management performance, since earned premium is governed by forces other than claimants, lawyers, physicians and other influences which can affect claim cost.
4. Loss ratios are strongly influenced by jurisdictions. A carrier writing in a high loss ratio jurisdiction may have different results than in a low loss ratio jurisdiction, and yet have essentially the same internal efficiency.

A sampling of eight workers' compensation insurers is made to compare Minnesota and the nationwide experience for the same insurers. The "sample" companies represent about one-third of the workers' compensation earned premium collected in Minnesota and approximately one-third of the losses incurred by Minnesota employers. Although the eight companies do not perfectly represent all Minnesota insurers, the similarities provide the essential information for comparative purposes.

All Minnesota workers' compensation insurers realized a greater increase in net earned premium and incurred losses between 1974 and 1977 than did the Minnesota sample. The loss ratio of the eight companies studied was virtually the same as all Minnesota insurers combined in 1974, but by 1977 the loss ratio of the Minnesota sample was 4.42 percent higher than the average of every insurer in the state.

Comparing the Minnesota experience of the eight insurers to the national experience for the same carriers provides an interesting contrast. While the Minnesota loss ratio went up 28.54 percent over the four-year period, the national loss ratio for the same insurers went up only 4.90 percent. Although the Minnesota loss ratio is 9.81 percent above the comparable national figure for 1977, in 1974 the Minnesota figure is 13.83 percent below the national loss ratio for the same companies.

Minnesota's workers' compensation earned premiums rose faster than the national trend of the companies sampled. More dramatically, incurred losses in Minnesota increased nearly 150 percent from 1974 to 1977, while the national experience increased only 64 percent. Although incurred losses for the eight companies increased 64 percent nationally, the nationwide workers' compensation reserves for the same carriers increased by 75.5 percent. Since nationwide reserves have increased more than the nationwide losses incurred by the sample carriers, it appears that more generous reserving practices may have been initiated in later years. Reserves are not broken down on a statewide basis; hence no comparable figures are available for Minnesota.

By using the percent of investment gain to earned premiums on a nationwide basis for the eight companies, an estimation of

the investment income realized on Minnesota workers' compensation premiums can be made. The sample carriers realized a 6.67 percent return on investment in 1974 and an 8.76 percent return on investment in 1977. Assuming that these figures are representative of all workers' compensation insurers in the State of Minnesota and multiplying the percentages by the net earned premium for the respective years, the carriers would have realized an investment return of $9,210,711 in 1974 on reserves from all prior years and $22,285,030 in 1977 on reserves from all prior years. Investment income is currently not directly calculated into the workers' compensation ratemaking process. Since the investment income is realized on workers' compensation premiums, the inclusion of investment income may be one method of reducing rates.

INDEX TO EXHIBITS AND COMPARISON RECAP OF EARNED PREMIUMS

	EARNED PREMIUMS			
	All Lines	Workers' Comp. Only		
		All States	Minnesota	
Employers Mutual Liability Insurance Co. of Wisconsin	$ 654,261,509	$362,015,209	$28,774,752	Exhibit I
Firemans Fund Insurance Co.	1,980,264,928	401,893,667	12,483,591	Exhibit II
St. Paul Companies	1,015,711,182	114,810,138	9,710,436	Exhibit III
Federated Mutual Insurance Co.	118,100,122	22,771,974	7,870,975	Exhibit IV
Aetna Casualty & Surety Insurance Co.	2,084,449,040	347,171,216	7,274,700	Exhibit V
The Continental Insurance Co.	1,868,770,911	246,608,121	4,883,695	Exhibit VI
Iowa National Mutual Insurance Co.	89,262,913	20,763,674	4,404,904	Exhibit VII
Western National Mutual	15,786,502	4,052,756	4,042,599	Exhibit VIII

Comparative Loss Ratios of Eight Selected Workers' Compensation Insurance Carriers for 1974 and 1977

	1977	1974
1. Employers Mutual		
Iowa	56.4	86.2
Minnesota	104.2	60.7
South Dakota	78.8	91.8
Wisconsin	78.2	59.8
2. Fireman's Fund		
Iowa	75.0	73.2
Minnesota	74.7	39.8
South Dakota	141.4	71.6
Wisconsin	76.0	57.6
3. St. Paul Companies		
Iowa	38.9	92.4
Minnesota	77.3	57.5
South Dakota	94.3	32.7
Wisconsin	68.1	61.3
4. Federated		
Iowa	56.6	64.1
Minnesota	83.2	67.5
South Dakota	55.5	42.6
Wisconsin	79.8	9.1
5. Aetna		
Iowa	81.2	59.4
Minnesota	83.7	64.9
South Dakota	45.6	314.5
Wisconsin	74.0	78.9
6. Continental		
Iowa	33.3	105.3
Minnesota	82.7	122.0
South Dakota	46.2	92.8
Wisconsin	91.8	93.9
7. Iowa National		
Iowa	60.7	80.8
Minnesota	119.4	61.1
South Dakota	93.1	51.0
Wisconsin	64.9	65.8
8. Western National		
Iowa	258.5	44.9
Minnesota	51.6	55.6
South Dakota	5.5	56.0
Wisconsin	88.0	82.9

EMPLOYERS MUTUAL LIABILITY INSURANCE CO. OF WISCONSIN

	1977				1974			
	All Lines		W.C. Only		All Lines		W.C. Only	
	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned
Net Premiums Written - MEMO ONLY		$ 656,455,100	$362,013,533			$569,310,697	$283,569,047	
+ Net Premiums Earned	100.00%	$ 654,261,509	$362,015,209	100.00%	100.00%	$579,031,816	$281,837,635	100.00%
- Net Losses Incurred	69.4	$ 453,408,493	$288,240,981	79.6	79.7	$461,273,105	$199,182,351	70.7
Loss Adj. Expenses Paid - MEMO ONLY		67,588,140	23,392,747			50,534,458	18,344,605	
Loss Adjustment Expenses Incurred	14.8	96,802,440	37,247,647	10.3	11.3	65,494,258	20,679,205	7.3
Commission and Brokerage Incurred	(.5)	(3,219,108)	(8,260,716)	(2.3)	2.3	13,690,395	2,821,995	1.0
Other Acq. Superv., and Coll. Exp.	6.6	43,457,652	14,322,442	4.0	6.3	36,299,300	12,778,024	4.5
Boards, Bureaus & Assoc. Exp.	.4	2,633,879	1,589,792	.4	.4	2,087,639	1,381,470	.5
Other General Expenses Incurred	4.5	29,446,701	13,133,252	3.6	4.1	23,767,256	12,000,094	4.3
Taxes, Licenses Incurred	3.5	22,741,539	13,417,613	3.7	2.6	15,098,629	7,939,044	2.8
- Total Expense Incurred	29.3	$ 191,863,103	$ 71,450,030	19.7	27.0	$156,437,477	$ 57,599,832	20.4
+ Net Investment Gain or Loss	13.12	85,843,245	35,134,716	9.7	10.3	59,303,428	21,371,640	7.6
Capital Account - MEMO ONLY	3.09	20,263,099				13,402,575		
- Dividends to Policyholders	4.6	30,096,932	29,642,014	8.2	7.1	41,030,665	34,494,640	12.2
= NET INCOME BEFORE TAXES	9.89	$ 64,736,226	$ 7,816,900	2.2	(3.5)	($ 20,406,003)	$ 11,932,452	4.3
Cash and Invested Assets - Liquid Only	223.16	$1,460,074,246			153.74	$890,220,484		
RESERVES - Losses		1,010,691,963	549,523,437			683,906,854	329,209,058	
Loss Adjustment Expenses		139,042,600	42,170,100			83,742,480	19,906,600	
TOTAL RESERVES	175.73	$1,149,734,563	$591,693,537	163.44	132.57	$767,649,334	$349,111,658	123.86
Investment Expenses		$ 4,700,710				$ 3,632,470		

	All States	Minn. Only	All States	Minn. Only
Workmen Compensation Earned Premiums	$ 362,015,209	$ 28,774,752	$281,837,635	$ 17,417,628
Incurred Losses	$ 288,240,981	$ 29,981,132	$199,182,351	$ 10,578,648
% Ratio	79.6%	104.2%	70.7%	60.7%

( ) Denotes deficit or deduction

EXHIBIT I

FIREMAN'S FUND INSURANCE CO. OF SAN FRANCISCO

	1977				1974			
	All Lines		W.C. Only		All Lines		W.C. Only	
	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned
Net Premiums Written - MEMO ONLY		$1,980,264,928	$401,893,667			$1,184,819,584	$190,415,091	
+ Net Premiums Earned	100.00%	$1,861,135,038	$371,253,239	100.00%	100.00%	$1,125,651,351	$182,092,145	100.00%
- Net Losses Incurred	60.3	$1,121,456,777	$286,643,488	77.2	62.8	706,306,892	$119,110,898	65.4
Loss Adj. Expenses Paid - MEMO ONLY	6.43	119,685,942	21,484,721			89,662,165	14,673,790	
Loss Adjustment Expenses Incurred	10.6	197,816,737	31,710,272	8.5	9.0	101,516,721	17,837,285	9.8
Commission and Brokerage Incurred	15.8	294,444,103	24,570,429	6.6	16.9	190,521,683	15,398,493	8.5
Other Acq. Superv., and Coll. Exp.	3.5	65,494,272	9,925,227	2.7	5.4	61,198,791	7,991,493	4.4
Boards, Bureaus & Assoc, Exp.	.9	16,279,939	1,849,825	.5	1.2	13,099,370	984,877	.6
Other General Expenses Incurred	6.1	113,444,110	17,191,710	4.7	6.0	67,365,707	8,796,785	4.8
Taxes, Licenses Incurred	3.4	63,389,489	13,546,919	3.7	3.3	37,040,354	7,201,251	3.9
- Total Expense Incurred	40.3	$ 750,868,650	$ 98,794,382	26.6	41.8	$ 470,742,626	$ 58,210,184	32.0
+ Net Investment Gain or Loss	7.23	134,624,671	24,669,262	6.6	8.35	94,016,360	12,296,923	6.8
Capital Account - MEMO ONLY	2.24	41,691,767			4.04	45,576,878		
- Dividends to Policyholders	1.0	18,495,263	17,703,024	4.8	1.5	17,049,191	17,386,128	9.6
= NET INCOME BEFORE TAXES	5.63	$ 104,939,019	$ (7,218,393)	(1.9)	2.27	$ 25,569,002	$ (318,142)	(.2)
Cash and Invested Assets - Liquid Only	87.01	$1,619,375,844			4.64	$ 52,286,219		
RESERVES - Losses		708,142,786	226,761,452			115,061,363	31,574,528	
Loss Adjustment Expenses		121,781,915	22,802,660			15,636,030	3,186,939	
TOTAL RESERVES	44.59	$ 829,924,701	$249,564,112	67.22	11.61	$ 130,697,393	$ 34,761,467	19.09
Investment Expenses		$ 7,253,346				$ 6,310,998		
		All States	Minn. Only			All States	Minn. Only	
Workmen Compensation Earned Premiums		$ 371,253,239	$ 12,483,591			$ 182,092,145	$ 5,869,679	
Incurred Losses		$ 286,643,488	$ 9,324,401			$ 119,110,898	$ 2,338,482	
% Ratio		77.2%	74.7%			65.4%	39.8%	

( ) Denotes deficit or deduction

EXHIBIT II

ST. PAUL COMPANIES

	1977 All Lines % to Net Premiums Earned	1977 All Lines Amount	1977 W.C. Only Amount	1977 W.C. Only % to Net Premiums Earned	1974 All Lines % to Net Premiums Earned	1974 All Lines Amount	1974 W.C. Only Amount	1974 W.C. Only % to Net Premiums Earned
Net Premiums Written - MEMO ONLY		$1,043,427,497	$117,515,015			$707,055,980	$ 73,119,842	
+ Net Premiums Earned	100.00%	$1,015,711,182	$114,810,138	100.00%	100.00%	$678,644,068	$ 68,175,982	100.00%
- Net Losses Incurred	53.4	$ 542,401,159	$ 88,171,884	76.8	63.0	$427,586,842	$ 48,282,901	70.8
Loss Adj. Expenses Paid - MEMO ONLY		77,966,227	8,253,755			48,812,739	5,576,811	
Loss Adjustment Expenses Incurred	12.4	125,706,618	14,171,212	12.3	11.5	77,735,383	7,490,887	11.0
Commission and Brokerage Incurred	16.5	167,552,967	11,649,148	10.2	17.3	117,307,091	6,942,420	10.2
Other Acq. Superv., and Coll. Exp.	2.6	26,942,309	1,679,071	1.5	3.0	20,666,487	1,097,817	1.6
Boards, Bureaus & Assoc. Exp.	1.4	14,476,340	2,925,750	2.6	1.1	7,534,286	633,543	.9
Other General Expenses Incurred	6.1	61,700,766	4,394,692	3.8	6.2	41,778,502	3,133,220	4.6
Taxes, Licenses Incurred	3.1	31,485,988	4,175,519	3.6	3.3	22,215,014	2,926,353	4.3
- Total Expense Incurred	42.1	$ 427,864,988	$ 38,995,392	34.0	42.4	$287,236,763	$ 22,224,240	32.6
+ Net Investment Gain or Loss	10.74	109,116,316	9,636,220	8.39	(.1)	(762,377)	3,922,554	5.75
Capital Account - MEMO ONLY	3.91	39,786,400			(5.94)	(40,359,013)		
- Dividends to Policyholders	.4	3,776,559	2,643,738	2.3	.43	2,952,691	2,179,297	3.19
= NET INCOME BEFORE TAXES	14.84	$ 150,784,792	$ (5,364,656)	(4.67)	(5.9)	($ 39,894,605)	$ (587,902)	(.8)
Cash and Invested Assets - Liquid Only	171.02	$1,737,133,414			144.85	$983,031,335		
RESERVES - Losses		837,708,100	140,832,889			501,605,193	63,480,930	
Loss Adjustment Expenses		244,141,934	20,724,043			139,327,677	49,504,315	
TOTAL RESERVES	106.51	$1,081,850,034	$161,556,932	140.71	94.44	$640,932,870	$112,985,245	165.72
Investment Expenses		$ 1,620,534				$ 892,632		
		All States	Minn. Only			All States	Minn. Only	
Workmen Compensation Earned Premiums		$ 114,810,138	$ 9,710,436			$ 68,175,982	$ 5,466,768	
Incurred Losses		$ 88,171,884	$ 7,507,747			$ 48,282,901	$ 3,141,809	
% Ratio		76.8%	77.3%			70.8%	57.5%	

( ) Denotes deficit or deduction

EXHIBIT III

FEDERATED MUTUAL INSURANCE COMPANY (OF OWATONNA)

	1977				1974			
	All Lines		W.C. Only		All Lines		W.C. Only	
	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned
Net Premiums Written - MEMO ONLY		$118,100,122	$ 22,771,974			$ 88,317,712	$ 15,102,331	
+ Net Premiums Earned	100.00%	$109,296,522	$ 21,255,793	100.00%	100.00%	$ 86,695,675	$ 14,406,265	100.00%
- Net Losses Incurred	57.8	$ 63,169,256	$ 15,401,185	72.5	70.4	$ 61,011,696	$ 9,939,557	69.0
Loss Adj. Expenses Paid - MEMO ONLY		7,198,327	1,163,725			4,863,992	900,671	
Loss Adjustment Expenses Incurred	9.0	9,827,312	1,744,200	8.2	5.6	4,870,706	1,058,145	7.3
Commission and Brokerage Incurred	(3.3)	(3,594,337)	-		(0.6)	(52,140)	-	
Other Acq. Superv. and Coll. Exp.	15.8	17,253,601	1,919,460	9.0	12.1	10,520,302	1,576,426	10.9
Boards, Bureaus & Assoc. Exp.	0.5	537,025	122,415	0.6	0.4	389,291	90,477	0.6
Other General Expenses Incurred	7.5	8,162,827	1,138,964	5.4	6.5	5,635,394	904,259	6.3
Taxes, Licenses Incurred	3.8	4,110,097	523,317	2.5	2.8	2,412,353	320,939	2.2
- Total Expense Incurred	33.2	$ 36,296,525	$ 5,448,356	25.6	27.4	$ 23,775,906	$ 3,950,246	27.4
+ Net Investment Gain or Loss	9.0	9,843,581	1,682,113	7.9	6.1	5,248,339	922,432	6.4
Capital Account - MEMO ONLY	4.04	4,421,737			2.45	2,125,187		
- Dividends to Policyholders	3.5	3,831,715	2,394,191	11.3	1.8	1,568,573	1,435,749	10.0
= NET INCOME BEFORE TAXES	14.49	$ 15,842,607	$ (305,826)	(1.4)	6.4	$ 5,587,839	$ 3,145	.02
Cash and Invested Assets - Liquid Only	199.12	$217,632,622			134.95	$116,999,292		
RESERVES - Losses		80,117,539	27,492,042			44,513,845	15,727,996	
Loss Adjustment Expenses		10,661,101	2,707,249			5,153,684	1,675,233	
TOTAL RESERVES	83.05	$ 90,778,640	$ 30,199,291	142.07	57.28	$ 49,667,529	$ 17,403,229	120.80
Investment Expenses		$ 912,484				$ 837,571		
		All States	Minn. Only			All States	Minn. Only	
Workmen Compensation Earned Premiums		$ 21,255,793	$ 7,870,975			$ 14,406,265	$ 5,588,869	
Incurred Losses		$ 15,401,185	$ 6,548,751			$ 9,939,557	$ 3,771,624	
% Ratio		72.5%	83.2%			69.0%	67.5%	

( ) Denotes deficit or deduction

EXHIBIT IV

THE AETNA CASUALTY & SURETY INSURANCE CO.
STATE OF CONNECTICUT

	1977				1974			
	All Lines		W.C. Only		All Lines		W.C. Only	
	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned
Net Premiums written - MEMO ONLY		$2,189,575,645	$359,837,614			$1,682,046,716	$227,011,576	
+ Net Premiums Earned	100.00%	$2,084,449,040	$347,171,216	100.00%	100.00%	$1,627,235,967	$222,798,590	100.00%
- Net Losses Incurred	59.5	$1,240,969,323	$292,915,704	84.4	63.4	$1,032,253,386	$171,421,442	76.9
Loss Adj. Expenses Paid - MEMO ONLY		119,967,659	16,328,583			124,321,507	18,201,215	
Loss Adjustment Expenses Incurred	7.3	152,183,649	25,543,882	7.4	8.8	143,289,146	21,849,131	9.8
Commission and Brokerage Incurred	15.0	312,349,355	11,956,082	3.4	16.8	274,183,058	17,091,050	7.7
Other Acq. Superv., and Coll. Exp.	1.9	38,830,437	2,778,311	.8	2.7	44,290,168	3,250,863	1.5
Boards, Bureaus & Assoc. Exp.	1.1	22,660,993	6,566,664	1.9	.8	13,670,158	3,060,526	1.4
Other General Expenses Incurred	5.8	121,176,753	17,755,448	5.1	7.8	126,703,488	17,855,589	8.0
Taxes, Licenses Incurred	3.3	68,654,090	13,808,198	4.0	3.3	53,489,409	10,564,777	4.7
- Total Expense Incurred	34.3	$ 715,855,277	$ 78,408,585	22.6	40.3	$ 655,625,427	$ 73,671,936	33.1
+ Net Investment Gain or Loss	10.91	227,550,131	28,985,588	8.34	10.6	172,394,208	20,297,841	9.1
Capital Account - MEMO ONLY	5.74	119,853,569			4.16	67,824,792		
- Dividends to Policyholders	.5	10,388,094	5,824,253	1.7	.5	8,810,323	7,236,083	3.2
= NET INCOME BEFORE TAXES	16.54	$ 344,786,477	$ (991,738)	(.3)	6.32	$ 102,941,039	$ (9,233,030)	(4.1)
Cash and Invested Assets - Liquid Only	145.68	$3,036,704,958			89.70	$1,459,765,214		
RESERVES - Losses		1,457,446,894	458,323,479			857,751,196	260,211,643	
Loss Adjustment Expenses		213,274,936	39,449,846			136,124,070	127,708,974	
TOTAL RESERVES	80.15	$1,670,721,830	$497,773,325	143.37	61.07	$ 993,875,266	$387,920,617	174.11
Investment Expenses		$ 3,849,417				4,375,885		
		All States	Minn. Only			All States	Minn. Only	
Workmen Compensation Earned Premiums		$ 347,171,216	$ 7,274,700			$ 222,798,590	$ 4,143,553	
Incurred Losses		$ 292,915,704	$ 6,085,348			$ 171,421,442	$ 1,689,799	
% Ratio		84.4%	83.7%			76.9%	64.9%	

( ) Denotes deficit or deduction

EXHIBIT V

THE CONTINENTAL INSURANCE COMPANY

	1977				1974			
	All Lines		W.C. Only		All Lines		W.C. Only	
	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned
Net Premiums Written - MEMO ONLY		$1,910,763,298	$247,032,717			$2,374,354,922	$192,911,972	
+ Net Premiums Earned	100.00%	$1,868,770,911	$246,608,121	100.00%	100.00%	$1,346,999,660	$181,368,443	100.00%
- Net Losses Incurred	60.0	$1,120,594,420	$193,246,020	78.4	68.4	$ 921,922,211	$161,548,047	89.1
Loss Adj. Expenses Paid - MEMO ONLY		132,257,774	19,093,876			98,991,962	13,822,152	
Loss Adjustment Expenses Incurred	8.8	164,536,403	28,301,429	11.5	7.6	101,894,872	15,021,836	8.3
Commission and Brokerage Incurred	16.4	306,303,847	12,815,509	5.2	17.4	234,917,206	15,452,465	8.5
Other Acq. Superv., and Coll. Exp.	2.5	46,396,253	5,531,792	2.2	2.9	39,106,060	5,539,739	3.1
Boards, Bureaus & Assoc. Exp.	.5	9,743,423	1,570,430	.6	.6	8,565,611	1,424,213	.8
Other General Expenses Incurred	6.0	111,975,623	15,694,540	6.4	6.2	83,026,048	11,766,166	6.5
Taxes, Licenses Incurred	2.7	50,546,699	7,974,625	3.2	2.9	39,330,886	7,051,929	3.9
- Total Expense Incurred	36.9	$ 689,502,248	$ 71,888,325	29.1	37.6	$ 506,840,683	$ 56,256,348	31.1
+ Net Investment Gain or Loss	9.78	182,809,587	28,970,532	11.8	11.7	158,684,844	5,126,812	2.8
Capital Account - MEMO ONLY	2.97	55,659,139				129,166,316		
- Dividends to Policyholders	.7	13,804,837	9,927,059	4.0	.6	8,392,769	6,261,844	3.5
NET INCOME BEFORE TAXES	12.18	$ 227,678,993	$ 517,249	.2	5.1	$ 68,528,841	$(37,570,984)	(20.7)
Cash and Invested Assets - Liquid Only	31.78	$ 594,050,931			27.1	$ 364,944,094		
RESERVES - Losses		406,073,529	104,167,113			153,311,088	33,379,523	
Loss Adjustment Expenses		40,765,015	6,384,352			14,275,870	1,620,904	
TOTAL RESERVES	23.91	$ 446,838,544	$110,551,465	44.82	12.44	$ 167,586,958	$ 35,000,427	19.29
Investment Expenses		$ 16,061,697				$ 10,117,675		

	All States	Minn. Only	All States	Minn. Only
Workmen Compensation Earned Premiums	$ 246,608,121	$ 4,883,695	$ 181,368,443	$ 3,098,838
Incurred Losses	$ 193,246,020	$ 4,037,347	$ 161,548,047	$ 3,779,678
% Ratio	78.4%	82.7%	89.1%	122.0%

( ) Denotes deficit or deduction

EXHIBIT VI

IOWA NATIONAL MUTUAL INSURANCE CO.

	1977				1974			
	All Lines		W.C. Only		All Lines		W.C. Only	
	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned
Net Premiums Written		$ 92,478,341	$20,696.674			$60,827,345	$15,324,903	
+ Net Premiums Earned	100.00%	$ 89,262,913	$20,763,718	100.00%	100.00%	$57,679,564	$13,858,212	100.00%
- Net Losses Incurred	56.8	$ 50,689,006	$13,918,208	67.0	57.3	$33,040,423	$ 9,044,072	65.3
Loss Adj. Expenses Paid - MEMO ONLY		6,734,732	2,892,088			4,797.719	1,474,231	
Loss Adjustment Expenses Incurred	9.3	8,270,651	3,071,427	14.8	8.4	4,848,223	1,552,903	11.2
Commission and Brokerage Incurred	18.6	16,579,520	2,894,859	13.9	19.2	11,046,697	1,626,074	11.7
Other Acq. Superv., and Coll. Exp.	2.0	1,761,653	381,048	1.8	2.8	1,611,505	361,903	2.6
Boards, Bureaus & Assoc. Exp.	.6	603,636	192,077	.9	.5	300,788	47,464	.3
Other General Expenses Incurred	8.1	7,201,029	1,501,415	7.3	8.8	5,080,932	1,185,890	8.6
Taxes, Licenses Incurred	3.2	2,875,186	912,640	4.4	2.8	1,619,062	406,385	2.9
- Total Expense Incurred	41.8	$ 37,291,675	$ 8,953,466	43.1	42.5	$24,507,207	$ 5,180,619	37.3
+ Net Investment Gain or Loss	5.6	5,005,948	918,986	4.4	4.8	2,752,247	429,873	3.1
Capital Account - MEMO ONLY	2.41	2,157,811			1.59	922,278		
- Dividends to Policyholders	.8	729,568	598,500	2.9	2.9	1,673,000	1,224,564	8.8
= NET INCOME BEFORE TAXES	6.2	$ 5,558,612	($ 1,787,470)	(8.6)	2.1	$ 1,211,181	($ 1,161,170)	(8.3)
Cash and Invested Assets - Liquid Only	118.10	$105,426,934			113.07	$65,221,587		
RESERVES - Losses		42,274,931	16,423,378			22,577,381	7,452,016	
Loss Adjustment Expenses		4,523,055	831,259			1,997,144	407,755	
TOTAL RESERVES	52.42	$ 46,797,986	$17,254,637	83.09	42.6	$24,574,525	$ 7,859,771	56.71
Investment Expenses		$ 319,132				$ 271,296		
		All States	Minn. Only			All States	Minn. Only	
Workmen Compensation Earned Premiums		$ 20,763,719	$ 4,404,904			$13,858,212	$ 3,188,051	
Incurred Losses		$ 13,918,208	$ 5,258,234			$ 9,044,072	$ 1,947,199	
% Ratio		67.0%	119.4%			65.3%	61.1%	

( ) Denotes deficit or deduction

WESTERN NATIONAL MUTUAL INSURANCE CO. OF MINNEAPOLIS

	1977				1974			
	All Lines		W.C. Only		All Lines		W.C. Only	
	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned	% to Net Premiums Earned	Amount	Amount	% to Net Premiums Earned
Net Premiums Written - MEMO ONLY		$15,786,502	$4,052,756			$ 9,150,993	$2,245,172	
+ Net Premiums Earned	100.00%	$14,895,345	$3,942,753	100.00%	100.00%	$ 9,163,265	$2,219,172	100.00%
- Net Losses Incurred	52.7	$ 7,842,828	$2,028,859	51.5	55.8	$ 5,116,002	$1,106,585	49.9
Loss Adj. Expenses Paid - MEMO ONLY		1,339,152	425,174			881,115	271,021	
Loss Adjustment Expenses Incurred	11.1	1,654,152	525,525	13.3	10.4	956,115	296,632	13.4
Commission and Brokerage Incurred	17.1	2,542,844	422,366	10.7	16.1	1,472,230	229,119	10.3
Other Acq. Superv., and Coll. Exp.	6.7	992,930	273,453	6.9	6.7	615,506	154,245	7.0
Boards, Bureaus & Assoc. Exp.	.8	116,970	72,349	1.8	.6	54,674	10,875	.5
Other General Expenses Incurred	1.7	254,527	24,775	.6	2.5	228,208	34,041	1.5
Taxes, Licenses Incurred	.5	70,916	6,484	.1	.5	42,486	2,129	.1
- Total Expense Incurred	37.8	$ 5,632,339	$1,324,952	33.6	36.8	$ 3,369,219	$ 727,041	32.8
+ Net Investment Gain or Loss	7.13	1,062,789	215,470	5.5	6.4	589,365	82,790	3.7
Capital Account - MEMO ONLY	2.03	302,630			2.55	233,728		
- Dividends to Policyholders	2.6	389,796	389,796	9.9	3.3	301,657	301,657	13.6
= NET INCOME BEFORE TAXES	14.05	$ 2,093,171	$ 414,616	10.5	10.5	$ 965,752	$ 166,679	7.5
Cash and Invested Assets - Liquid Only	136.23	$20,293,124			131.35	$12,036,781		
RESERVES - Losses		8,046,666	3,306,732			4,905,650	1,779,911	
Loss Adjustment Expenses		955,000	410,000			4,213,099	210,000	
TOTAL RESERVES	60.43	$ 9,001,666	$3,716,732	94.26	99.51	$ 9,118,749	$1,989,911	89.66
Investment Expenses		$ 41,644				$ 47,181		

	All States	Minn. Only	All States	Minn. Only
Workmen Compensation Earned Premiums	$ 3,942,752	$4,042,599	$ 2,219,171	$2,110,447
Incurred Losses	$ 2,028,859	$2,086,095	$ 1,106,585	$1,173,335
% Ratio	51.5%	51.6%	49.9%	55.6%

EXHIBIT VIII

EXHIBIT IX

WORKERS' COMPENSATION EXPERIENCE EXHIBIT

CALENDAR YEAR DATA

TOTALS - ALL COMPANIES

Calendar Year	Direct Premium Written $	PREMIUM EARNED Standard Basis $	PREMIUM EARNED Net Basis $	Losses Paid Indemnity $	Losses Paid Medical $	Losses Outstanding Indemnity $	Losses Outstanding Medical $
1969	71,206,423	76,493,163	69,706,029	20,694,904	13,845,214	5,399,316	2,737,157
1970	78,924,003	85,603,088	77,145,653	23,633,887	15,447,128	6,425,573	2,303,850
1971	87,005,423	93,472,994	83,806,848	25,517,955	16,375,284	8,510,970	4,280,364
1972	104,536,641	109,632,546	99,749,269	29,997,027	18,109,936	14,848,611	4,944,694
1973	116,075,920	125,505,678	110,868,665	32,368,963	19,826,683	15,618,878	4,942,020
1974	144,671,097	151,986,398	138,091,624	40,105,598	23,149,480	15,724,516	5,063,461
1975	168,294,163	178,781,635	162,615,905	46,365,055	26,053,015	21,210,761	6,437,353
1976	213,422,305	217,834,816	204,063,697	60,056,739	30,734,427	49,106,907	12,542,921
1977	266,578,167	275,030,911	254,395,320	77,137,786	36,771,146	79,233,639	22,427,383

Calendar Year	LOSSES INCURRED Indemnity	Medical	Total Losses	LOSS RATIO Standard Basis	Net Basis	Dividend Paid
1969	26,094,220	16,582,371	42,676,591	55.79%	61.23	NA
1970	30,059,460	17,750,978	47,810,438	55.85%	61.98	NA
1971	34,028,925	20,655,648	54,684,573	58.50%	65.25	6,642,855
1972	44,845,638	23,054,630	67,900,268	61.93%	68.07	8,151,048
1973	48,450,787	24,305,757	72,756,544	57.97%	65.63	10,049,540
1974	55,830,114	28,212,941	84,043,055	55.296%	60.86	12,159,910
1975	67,575,816	32,490,368	100,066,184	55.971%	61.54	13,110,762
1976	109,163,646	43,277,348	152,440,994	69.980%	74.71	14,587,983
1977	156,371,425	59,198,529	215,569,954	78.38%	84.74	16,003,986

Source: Minnesota Insurance Division

IV.

JUDICIAL AND LITIGATIONAL ASPECTS

OF THE WORKERS' COMPENSATION SYSTEM

A. SUPREME COURT WORKERS' COMPENSATION DECISIONS SINCE 1972

From the enactment of Minnesota's workers' compensation law in 1913 until the early 1970's, the law remained relatively stable. However, in June 1972 the State Supreme Court decided the case of Mechling v. Jasper Stone Co. (293 Minn. 309, 198 N.W.2d 561). This was to be the beginning of a series of major and complex changes. Up until Mechling the statute was interpreted to mean than an injured worker was entitled to temporary total disability compensation or temporary partial disability for up to 350 weeks or, in the alternative, temporary total disability for a 104 week "healing period", plus permanent partial disability. This in effect meant that where a person was disabled for longer than two years, that person had to make a choice between receiving temporary total disability for the time after the first two years, or receiving permanent partial benefits. In Mechling, however, the Court held that the subdivisions of Minnesota Statutes 176.101 were separate and distinct and that an employee was entitled to receive temporary total disability benefits for up to 350 weeks plus permanent partial benefits.

1. Concurrent Benefits

Following Mechling, attorneys for injured employees moved quickly. They reasoned that since an injured worker was entitled to payments under Minnesota Statutes 176.101, Subdivision 1 (temporary total), or Subdivision 4 (permanent total) in addition to permanent partial benefits under Subdivision 3, these benefits should be payable concurrently rather than following one another. The Supreme Court in its 1973 decision of Boquist v. Dayton-Hudson Corp. (297 Minn. 14, 209 N.W.2d 783) responded to this assertion by holding than an injured person was not entitled to receive both permanent total and permanent partial concurrently since a permanent partial disability was a smaller part of a permanent total disability. The Court reasoned that benefits for permanent partial and permanent total disabilities are both intended to compensate for lost earnings; thus to permit the payment of both classes of benefits during the same period of time would create overlapping of compensation which was not envisioned by the statute. Moreover,

the Court in Pramschiefer v. Windom Hospital (297 Minn. 212, 211 N.W.2d 365) held that an employee was also not entitled to receive temporary total and permanent partial benefits concurrently. Again the decision was based on the belief that since temporary total benefits are a replacement for lost earnings, as are permanent partial benefits, simultaneous payments for a permanent partial disability, and for a temporary total disability, would constitute double payments for lost earnings. The Court concluded by stating that "the legislature did not intend benefits should be paid simultaneously because that would result in double payments". The payment of permanent partial benefits in the Court's opinion, would have to wait until the cessation of payments for temporary total disability.

The 1974 legislature reacted to these Court decisions by amending Minnesota Statutes 176.021. The pertinent part now reads as follows:

> Compensation for permanent partial disability is payable concurrently and in addition to compensation for temporary total disability and temporary partial disability . . . and for permanent total disability . . . and such compensation for permanent partial disability shall not be deferred pending completion of payment for temporary disability or permanent total disability . . . Liability on the part of the employer or his insurer for disability of a temporary total, temporary partial, and permanent total nature shall be considered as a continuing product and part of the employee's . . . injury or occupational disease and shall be paid accordingly. Permanent partial disability is payable for functional loss or use or impairment of function, permanent in nature, and payment therefore shall be separate, distinct, and in addition to payment for any other compensation.

This was the language which the Court in Pramschiefer had indicated was not present. As a result of the amendment, benefits for permanancy are now payable as soon as the permanancy is ascertainable and concurrently with other disability benefits. In addition, the Court's belief that payments for permanent partial disabilities represent lost earnings no longer appears to be valid. Rather, permanent partial benefits now represent general damages rather than payment for loss in earning capacity.

2. Temporary Partial Disability

Minnesota Statutes 176.101, Subdivision 2, reads in part as follows:

> Subd. 2. [TEMPORARY PARTIAL DISABILITY.] In all cases of temporary partial disability the compensation shall be 66-2/3 percent of the difference between the daily wage of the worker at the time of injury and the wage he is able to earn in his partially disabled condition.

In the past, this section was read to mean that when an injured employee returned to work at a lower paying job, that employee would receive temporary partial benefits of two-thirds his/her wage loss. However, in the recent case of LeMieux v. Mortenson (306 Minn. 50, 234 N.W.2d 897), the Supreme Court read this statute somewhat restrictively when it denied temporary partial benefits to an injured worker. In LeMieux, the worker's medical condition had stabilized and he was paid permanent partial disability benefits. He then returned to work where he earned less than the salary he received prior to the injury and therefore filed for benefits under 176.101, subd. 2. The Court denied further temporary partial benefits based on the fact that the award for permanent partial disability which was received was intended to compensate the employee for presumed loss of earnings resulting from the injury. To pay additional temporary partial compensation, after he was employed, the Court concluded, would confer on him double benefits not contemplated by the statute.

3. Permanent Partial Disability

An area of concern raised at previous hearings has been that of pre-existing injuries and apportionment of liability. Those injures which result in some permanent partial disability to a portion of the body which had some degree of permanent impairment prior to the injury have been looked at by the Court. In Vanda v. Minnesota Mining & Mfg. Co. (300 Minn. 515, 218 N.W.2d 458), the Court reiterated its longstanding rule that

> When the usual tasks ordinary to an employee's work substantially aggravate, accelerate, or combine with a pre-existing disease or latent condition to produce a disability, the entire disability is compensable, no apportionment being made on the basis if relative casual contribution of the pre-existing condition and the work activities.

The Court, however, has indicated that serious inequities may result from this rule. In Wallace v. Hanson Silo Co. (305 Minn. 395, 235 N.W.2d 363, 28 W.C.D. 79), the Court while refusing to apportion disability did point to what it called a "highly inequitable omission from the statute". In Wallace the workers' compensation commission had found that a work related injury had aggravated a pre-existing condition. The Court stressed its belief that it is unjust to burden the employer with responsibility for that part of the disability which was not work related. While the legislature in recognition of the understandable reluctance of employers to hire workers with physical defects did create the special fund by virtue of Minnesota Statutes 176.131, the Court felt that this section was not adequate in this situation, nor would it be in many others. The Court was of the opinion that the statute denied access to the special fund for many prior non-occupational injuries and therefore tended to defeat the legislative intent. According to the Court, it seemed advisable to suggest that the legislature amend the law to prevent a result which was unfair to employers throughout the state. In absence of direct legislative authority, the Court believed it could not apportion the liability.

4. Permanent Total Disability

Another area of concern appears to be when benefits should be payable to persons who have suffered permanent total disabilities. One insurance representative pointed out that any person who suffers an injury listed in Minnesota Statutes 176.101, Subdivision 5, is automatically entitled to permanent total benefits and need not show anything further. This view is correct in light of Court decisions on the matter. In Ford v. W.J. Krucheberg (___ Minn. ___, 241 N.W.2d 653, 28 W.C.D. 388), the Court held that the injured worker was entitled to benefits for permanent total disability despite the fact that he had been retrained and was employed in a position which paid him a higher wage than he had received prior to his injury. The Court stated that the statute was clear and unambiguous and that to uphold the employer's contention that the employee was not entitled to benefits for total

disability because he was working at an occupation which brought in an income read something into the statute which was not there. The statute in question reads as follows:

> Subd. 5. [TOTAL DISABILITY.] The total and permanent loss of the sight of both eyes, the loss of both arms at the shoulder, the loss of both legs so close to the hips that no effective artificial members can be used, complete and permanent paralysis, total and permanent loss of mental faculties, or any other injury which totally incapacitates the employee from working at an occupation which brings him an income constitutes total disability.

In Krucheberg the employee had suffered an injury which resulted in the loss of both legs which the Court believed was covered by the above statute.

5. Retraining Benefits

The argument has been made that retraining benefits should not be provided in those cases where an injured worker has been offered another job by his employer since the employee is capable of working and therefore need not be retrained in order to earn a livelihood.

Minnesota Statutes 176.101, Subdivision 7, provides that when an employee is injured to an extent which will prevent that employee from adequately performing the duties of the occupation held at the time of the injury or is likely to produce indefinite and continuous disability in excess of 26 weeks, the employee is eligible for retraining. If it is determined that retraining is "necessary", retraining will be certified. It is the contention of some employers that retraining is not in fact "necessary" for some employees since some employees are employable in another capacity. The Court has consistently stated that "necessary" should not be construed as indispensable, but rather that retraining is "necessary" if it appears that the retraining will materially assist the employee in restoring his impaired capacity to earn a livelihood (Norby v. Arctic Enterprises Inc., ___ Minn. ___, 232 N.W.2d 773, Tibbets v. E.G. Staude Mfg. Co., 166 Minn. 252, 245 N.W. 150).

The second retraining benefit complaint which has been raised deals with the payment of retraining benefits concurrently with other disability benefits. The Court in addressing this issue stated that "if the legislature had intended to forbid concurrent payments, it would have said so clearly and it did not." (Nelson v. National Biscuit Co., 300 Minn. 46, 217 N.W.2d 734). This statement was based on the fact that since the early 1960's retraining benefits have been awarded concurrently with other benefits by the workers' compensation division. In 1967 the legislature revised the retraining benefits section and was presumably aware of the interpretation of the existing law regarding concurrent payments. Had it wanted to, the legislature could have easily made clear its intention to legislatively change the commission's interpretation. Its failure to do so constituted adoption of the commission's interpretation, according to the Court. Instead, the legislature amended Minnesota Statutes 176.101, Subdivision 7, to read in part as follows:

> . . . the employer shall pay up to 104 weeks of additional compensation during the actual period of retraining . . . [(emphasis supplied) The period has subsequently been amended to provide an additional 156 weeks.]

The Court pointed to the word "additional" in concluding that retraining benefits should be paid along with other benefits.

6. Medical Evidence

The trier of fact in a workers' compensation case is very often confronted with a diversity of medical opinion. It is then for the trier of fact to choose not only between conflicting evidence, but also between opposed inferences. It is only where the inference upon which the challenged finding rests is not itself reasonably supported or where it is clear that the whole evidence is in manifest and undeniable preponderence against it (even though there is some support for it in the evidence) that the decision will be reversed by the Supreme Court. (Maker v. Duluth Yellow Cab Co., 172 Minn. 439, 442, 215 N.W. 678, 679). On this basis, the Court is ordinarily reluctant to reverse the findings of the Workers' Compensation Court of Appeals. The Supreme Court has often stated that it is not the trier of fact

in a workers' compensation case. Its only function is to ascertain whether the findings are supported by an inference reasonably drawn from the facts (Casey v. NSP, 247 Minn. 295, 77 N.W.2d 67; Anderson v. Armour & Co., 257 Minn. 281, 101 N.W.2d 435). The Court will not disturb the findings unless the evidence and permissible inferences therefrom are such as to require reasonable minds to reach a contrary conclusion, or it is clear that reasonable evidence is lacking to sustain the findings. (Schmillen v. Schroeder Grocery, 250 Minn. 561, 85 N.W.2d 740).

The problem in most contested workers' compensation cases is as mentioned before, the diversity of competent medical testimony which exists. Reasonable minds may differ as to which evidence is to be relied upon. Often an employer and insurer will believe that its medical testimony should prevail over that of an employee's expert medical testimony. The fact is that until the time comes when medical knowledge has progressed to such a point that experts in the field of medicine can agree, causal relation in determining compensable injury or disease will have to remain in the province of the trier of fact. Where qualified medical witnesses differ, as is so often the case, it is rarely possible to say that one is so eminently right and another so clearly wrong that the fact finder is obliged to accept the opinion of one and discard the opinion of the other. The determination of this question is like the determination of any other question of fact, and it must depend to a large extent upon the credibility attached by the trier of fact to the opinion and testimony of the various witnesses. (Golob v. Buckingham Hotel, 244 Minn. 301, 304, 69 N.W.2d 636, 639; Haskin v. County of Hennepin, 268 Minn. 21, 127 N.W.2d 522).

7. Conclusion

Much of the problem in workers' compensation cases results from different competent medical evidence which is presented to the judge. The judge is often faced with the task of sorting out the evidence and making a decision based on the evidence. One must place one's self in the judge's position in order to understand the dilemma the judge faces. If the judge determines

that the employee has not suffered a work related injury despite medical evidence to the contrary and the employee has in reality suffered such an injury, then the employee must carry an enormous financial burden by himself. On the other hand, if the judge is not absolutely certain as to whether the injury is work related and awards the employee compensation, then of course the employer will suffer in the form of higher compensation rates. However, the employer's burden will, in theory, not be as great as would an employee's burden. This is not to say that the employee does not also share part of the burden. He does lose in the form of lost income which is not replaced by workers' compensation. Edwin E. Witte, a noted social insurance scholar described this cost sharing as the "least-cost theory." In Witte's view, workers' compensation

> does not place the cost of accidents upon the industry, but provides for a sharing of the resulting economic loss between the employers and employees on a predetermined basis, without reference to fault, under a plan designed to insure prompt and certain recovery, at minimum expense.

The test of the system is not, according to Witte, whether employers are made responsible or whether exact justice is achieved, but what arrangements on balance result in the least cost to society.

B. LITIGATION AND WORKERS' COMPENSATION COSTS

1. Litigation and Workers' Compensation Costs Generally

Expenses associated with litigation have become a major focal point in the national discussion of the escalation of workers' compensation costs. A recent article in Business Week which compared the workers' compensation systems of Illinois and Wisconsin concluded that Wisconsin's "model" system owed much of its superiority to the low litigation rate there. Another article, in Business Insurance, indicated that early and "total involvement" with the injured worker by employers and insurers could save up to 75 percent of the costs incurred under the "old idea of an adversary approach."

The conclusion that litigation is a major factor in increased workers' compensation costs is confirmed by several major workers' compensation studies. The "Teknekron Study" commissioned by the U.S. Department of Labor concluded that the rate of litigation outweighed any differences among state funds, private carriers and self-insurers as a determinant of the cost of workers' compensation. Only statutory differences in benefit levels were more significant in costs.

The study conducted by Professor John F. Burton of Cornell University, former chairman of the National Commission of Workers' Compensation, indicated that Wisconsin's low rate of litigation was a major factor in the efficient delivery of workers' compensation benefits, and in the equitable allocation of benefits among injured workers in that state. The report of the California Workers' Compensation Institute, discussed before the Commission by the Institute's director, Alan Tebb, also focused on litigation as a cost factor and a source of uncertainty, delay and distortion in the California workers' compensation system. Several of the recommendations of this report for earlier, more sympathetic communication with claimants have already been adopted.

"Litigation" embraces many things in the workers' compensation system and the "costs of litigation" are thus not easy to isolate and quantify. Among the more obvious expenses are attorneys' fees and the cost of maintaining the legal forum for workers' compensation hearings and appeals. The cost of the forum, of course, is borne by the taxpayer directly. Defense attorneys' fees are presumably reflected in premium costs, but plaintiffs' attorneys' fees are deducted from, rather than added to the cost of awards and do not directly increase premiums. There are other workers' compensation expenses, however, which are engendered by litigation and are not offset by any other factor.

These include the cost of delay in rehabilitation and return to work and the "growth" of both medical and indemnity benefits in litigated claims, as compared to equivalent non-litigated claims. Litigation also results in less efficiency in the processing of non-litigated claims because of resources devoted to contested cases and procedures designed with such cases in

mind. In addition, the uncertainty which litigation produces affects all claims whether litigated or not.

It is clear that litigation is unavoidable in a system like workers' compensation. There must, both practically and constitutionally, be a means for both claimants and employers to challenge denials and awards. The prospect of litigation is itself a check on excessive or inadequate awards. Contested cases produce the continuing body of judicial rules necessary to deal with the volume of claims in workers' compensation. On the other hand, the volume of litigation in the system is somewhat anomalous, since workers' compensation is fundamentally a no-fault insurance system. It should be possible to reduce this rate, and thus reduce workers' compensation costs, without undermining the traditional and necessary functions of litigation.

2. Litigation Rates Among The States

Workers' compensation litigation rates vary considerably among the states and can vary even more depending on how they are calculated. The Commission staff collected data from every state. We concluded that the number of hearings requested as compared to first injury reports was the best measure of litigation since an attorney is almost always involved at this point. A pre-hearing conference involving a workers' compensation judge would usually occur after such a request even if the claim was resolved before a formal hearing was held.

By this measure litigation rates varied from a low of.52 percent in South Dakota to a high of 68 percent in Connecticut. There is some variation among the states in defining a "reportable injury" and a "hearing request." These and other data problems together with significant procedural and statutory differences made several states noncomparable, at least for purposes of cost-comparison. The states which presented the fewest problems are included in Tables I and II. Among these states the highest litigation rate in 1977 was 41.49 percent in Michigan and the lowest was that of South Dakota, .52 percent. The majority of these states, eleven of the seventeen, have litigation rates lower than the Minnesota rate of 9.95 percent. One of the more

TABLE I

LITIGATION DATA FOR JURISDICTIONS WHOSE MAXIMUM BENEFITS ARE AT LEAST 100% SAWW

Jurisdiction	Average Manual Rate	Maximum Benefit (1/1/78)	# 1st Reports of Injury		# Hearings Requested; (as a % of 1st Reports)		# Hearings Held; (as a % of 1st Reports)	
			1976	1977	1976	1977	1976	1977
Oregon	5.77	233.78 (100% SAWW)	38,854	47,162	8,165 (21.05%)	8,841 (18.76%)	2,076 (5.34%)	2,282 (4.84%)
Arizona	3.81	$201.32	125,200	132.477	4,024 (3.21%)	3,875 (2.92%)	3,451 (2.75%	3,411 (2.57%)
Minnesota	2.83	$197 (100% SAWW)	44,089	46,000	4,192 (9.51%)	4,574 (9.95%)	800-850[1] (1.8%-1.92%)	850-900[1] (1.84%-1.95%)
Iowa	2.72	$247.48 (133-1/3% SAWW)	20,024	28,480	425 (2.12%)	539 (1.89%)	317 (1.58%)	431 (1.51%)
W. Virginia	2.58	$208 (100% SAWW)	74,681	83,286	2,767 (3.70%)	3,034 (3.64%)	6,801 (9.10%)[2]	6,858 (8.23%)[2]
N. Dakota	1.80	$186 (100% SAWW)	21,193	22,187	N.A.	N.A.	40 (0.18%)	23 (0.10%)
Vermont	1.59	$185 (100% SAWW)	N.A.	19,583	N.A.	180 (0.91%)	N.A.	20-30 (0.10%-0.15%)
Wisconsin	1.44	$202 (100% SAWW)	72,748	81,047	2,667 (3.66%)	3,076 (3.80%)	1,174 (1.61%)	1,264 (1.56%)

[1] Minnesota Department of Labor and Industry estimate. No exact figure available.

[2] Higher rate of cases heard as compared to hearings filed due to backlog of cases from previous years.

TABLE II

LITIGATION DATA FOR JURISDICTIONS WHOSE MAXIMUM BENEFITS ARE LESS THAN 100% SAWW

Jurisdiction	Average Manual Rate	Maximum Benefit (1/1/78)	# 1st Reports of Injury		# Hearings Requested; (as a % of 1st Reports)		# Hearings Held; (as a % of 1st Reports)	
			1976	1977	1976	1977	1976	1977
Michigan	3.04	$142 (66 2/3% SAWW)	58,960	67,187	27,736 (47.16%)	27,876 (41.49%)	17,169 (29.15%)	17,556 (26.17%)
Kentucky	2.35	$123.20	43,218	49,572	5,453 (12.62%)	6,825 (13.77%)	5,145 (11.93%)	5,396 (10.89%)
New Jersey	2.26	$146	238,330	259,168	47,032 (19.76%)	44,923 (17.36%)	38,980 (16.36%)	38,139 (14.72%)
Colorado	2.24	$161.43 (80% SAWW)	27,817	34,231	N.A.	6,647 (19.45%)	626 (2.25%)	707 (2.06%)
Kansas	2.15	$120 (66-2/3% SAWW)	38,034	41,090	1,648 (4.33%)	1,912 (4.65%)	330 (0.86%)	344 (0.83%)
Missouri	1.88	$115	121,580	N.A.	6,365 (5.23%)	N.A.	120 (0.099%)	N.A.
Georgia	1.83	$95	N.A.	206,000	N.A.	5500-6000[3] (2.67%-2.91%)	N.A.	2500-3000[3] (1.21%-1.45%)
S. Dakota	1.43	$144 (94% SAWW)	13,326	13,435	75 (0.56%)	70 (0.52%)	28 (0.21%)	17 (0.12%)
Indiana	.81	$132	38,873	40,683	2,316 (5.95%)	2,172 (5.33%)	N.A.	N.A.

[3] Georgia Board of Workmen's Compensation estimate. No exact figures available.

interesting findings was that Michigan, the most litigious state of the sample, has a higher average manual premium than Minnesota, even though its benefit structure is much lower than Minnesota's. Among our immediate neighbors (Wisconsin, Iowa, North and South Dakota) litigation rates range from .52 percent in South Dakota to 3.8 percent in Wisconsin. Each of these four states has a much lower average anual premium than Minnesota, except for Iowa whose average premium is just $.11 less. Iowa, however, provides significantly higher benefits than Minnesota.

The Commission's staff survey of state data confirmed the finding of the California Workers' Compensation Institute that higher litigation rates are associated with higher workers' compensation costs. Our data, too, parallels the Teknekron Study in finding far less correlation between type of workers' compensation carrier--state fund or private insurer--and workers' compensation costs, than between litigation rates and workers' compensation costs. Differences in the statutory benefit provisions among the states were more significant, as in the Teknekron Study, but no other single factor appears as strongly correlated with costs as rate of litigation.

3. Litigation in Minnesota and Wisconsin

The second section of Table III presents the litigation-related data for Minnesota. Our overall rate of litigation in 1977, based on hearings requested as a proportion of first injury reports, is 9.95 percent, though formal hearings are actually held for just under 2 percent of injuries reported. Hearing requests have increased more rapidly over the last five years than have first injury reports. Most of the claims involving a hearing request are settled before a formal hearing, though almost all of these require a pre-hearing conference involving a workers' compensation judge. The number of formal hearings has not increased as rapidly as first injury reports, but appeals have increased by approximately 46 percent over 1974, while Supreme Court appeals have more than doubled since 1973.

An employer in Minnesota must normally file a first injury report within 15 days of the injury. Within 30 days the employer

TABLE III

LITIGATION DATA FOR WISCONSIN AND MINNESOTA

WISCONSIN

Calendar Year	First Injury Report	Hearing Requested	Private Settlement	Pre-Hearing Conferences	Hearings Held	Judicial Decisions		Motions to Reopen a Claim	Appeals of Judicial Decisions	Appeals to Circuit Court	Appeals to Supreme Court
						Awards	Denials				
1977	81,047	3,076	NA	705	1,264	NA	NA	NA	263	81	19
1976	72,748	2,667	NA	980	1,174	NA	NA	NA	258	95	14
1975	68,272	2,580	NA	954	1,295	NA	NA	NA	331	119	10
1974	74,715	2,477	NA	1,278	999	NA	NA	NA	251	69	9
1973	69,102	2,167	NA	779	1,124	NA	NA	NA	241	72	8

MINNESOTA

Fiscal Year	First Injury Reports[1]	Hearing Requested	Private Settlement	Judicial Decisions		Motions to Reopen a Claim	Appeals of Judicial Decisions	Appeals to Supreme Court
				Awards	Denials			
1978	55,536	4,574	3,322	864	94	44	370	96
1977	50,009	4,192	3,077	756	55	22	225	51
1976	45,840	3,987	3,226	583	49	23	232	63
1975	40,608	3,608	2,890	558	70	23	247	51
1974	42,070	3,437	2,498	560	55	25	256	54
1973	38,953	2,949	2,152	672	56	24	319	41

1 Calendar year data.

or insurer must begin payments or deny the claim. If the claim is denied, the Department of Labor and Industry forwards the denial to the claimant together with a letter informing him that he may contest the denial and may contact an attorney for more information. A claim petition is furnished for the claimant to request a hearing. Once the petition is received it will take two and a half months for a pre-hearing. If settlement does not occur, a formal hearing will be scheduled within another two and a half to three months. If an appeal is sought it will take an average of five - six additional months for the review. A Supreme Court appeal would take a further year for hearing. These figures are all current averages.

The first portion of Table III illustrates the litigation-related data for Wisconsin. Wisconsin's litigation rate, based on hearings requested, is 3.8 percent. Only 1.56 percent of first injury reports result in formal hearings. Wisconsin has recently begun to require a pre-hearing conference when a hearing is requested so that the number of full-scale hearings is likely to be even further reduced. The number of first injury reports, it should be noted, is increasing at a much slower rate, about 16 percent, than in Minnesota, 37 percent. Requests for hearings are increasing at about the same rate in both states. Wisconsin has three levels of appeal for workers' compensation cases. The administrative and district court appeals have not appreciably increased over the last five years. Though the Supreme Court appeals have more than doubled since 1973, they are still only one-fifth the number of Minnesota Supreme Court appeals, largely because of the intermediate appeal level in Wisconsin.

The sequence of steps in Wisconsin after the filing of a first injury report is generally similar to that in Minnesota. The wait for pre-hearings or hearings is currently four to five months, twice as long as in Minnesota. An administrative appeal takes only three months compared to five to six in Minnesota. But the circuit court review in Wisconsin takes a full year with many additional months for a Supreme Court hearing, while the direct Minnesota Supreme Court review takes about a year. Wisconsin does have fewer appeals taken from workers' compensation

judges' decisions (20%) than has Minnesota (40%), but Minnesota holds fewer formal hearings in relation to requests (20%) than Wisconsin (40%).

Wisconsin thus actually does no better than Minnesota in settling cases once hearings are scheduled, or in avoiding or expediting appeals. The striking advantage Wisconsin has in litigation comparisons is in preventing the original request for a hearing and the litigation which ensues between that point and the hearing. As soon as the injury is reported in Wisconsin the Department of Industry, Labor and Human Relations sends the employee a copy of a booklet entitled Facts About Wisconsin Workers' Compensation, whereas in Minnesota the Department of Labor and Industry has no contact with an employee until a claim is denied. In addition the Wisconsin employer or insurer is pressed to contact the employee about the claim within 11 days of the injury, though this does not always occur, rather than 30 days as in Minnesota. Later contact is penalized by a surcharge on the award. Once a claim is denied the pattern is essentially identical to that in Minnesota.

Wisconsin's low litigation rate thus seems to be due to early contact with the employee by the state agency and the employer or insurer, and the availability of unbiased information about the system. The California Workers' Compensation Institute study concluded that an absence of contact and information predisposed the injured employee to resentment, rejection of settlement and litigation. Wisconsin's experience seems to prove the converse, that litigation rates can be dramatically reduced by such early intervention. It would appear that an employee who has received information from the state agency about workers' compensation has a more realistic appraisal of his claim and is more inclined to settle. Or it may be that the early contact alone is reassuring and results in a less defensive attitude on the part of the employee. Whether it is the psychological effect of intervention or the information or both, it is apparent that early contact makes for less litigation--unless Wisconsin insurers and employers are simply more inclined to offer very generous settlements.

4. Appeals and Workers' Compensation Costs in Minnesota and Wisconsin

Workers' compensation appeals are more frequent in Minnesota than they are in Wisconsin, both absolutely and more dramatically as a percentage of first injury reports, as shown in Table III. The total number of appeals in Minnesota in fiscal 1978 was 510, almost 1 percent of the first injury reports. The comparable Wisconsin data, in calendar 1977, was 363, less than .5 percent, though one would expect Wisconsin's third level of review to make appeals more routine.

Appeals are expensive, especially above the administrative level, so that this difference does have some impact on Minnesota workers' compensation costs. This effect is accentuated since more Minnesota appeals reach the Supreme Court. On the other hand, since neither forum costs nor plaintiffs' attorneys' fees increase workers' compensation premiums, the direct effect of appeals on workers' compensation costs is not great.

The indirect effect of appeals on workers' compensation costs may be far greater, but this is the least quantifiable element of the litigation costs problem. If appeals were decided routinely in favor of plaintiffs, which the "liberal administration" theory might suggest, the result of more appeals would be to increase the size of settlements and awards and thus increase workers' compensation costs generally. This does not appear to be the case in Minnesota, at least at the Supreme Court level. A survey of cases since 1967 involving issues of the work-relatedness of the injury indicated that the Minnesota Supreme Court found for the claimant in 40 cases and for the defense in 28. Almost exactly the same proportion was true during the 32 years before 1967. In Wisconsin during equivalent periods the ratio was 12 to 16 (1967-Present) and 39 to 29 (1941-1967). The Wisconsin court has more often supported the defense in workers' compensation cases, especially in recent years, but much of the difference between the two states can be assigned to the effect of Wisconsin's third level of appeal which may discourage claimants from appealing as far as the Supreme Court. This material is presented in Table IV.

TABLE IV

DISPOSITION OF CASES INVOLVING
WORK-RELATEDNESS OF INJURY ON SUPREME COURT APPEAL

MINNESOTA

	1935-1967	1967-Present
Commission Award/Supreme Court Affirmation	36	36
Commission Denial/Supreme Court Reversal	9	4
Commission Denial/Supreme Court Affirmation	25	24
Commission Award/Supreme Court Reversal	3	4

WISCONSIN

	1941-1967	1967-Present
Commission Award/Supreme Court Affirmation	30	8
Commission Denial/Supreme Court Reversal	9	4
Commission Denial/Supreme Court Affirmation	23	13
Commission Award/Supreme Court Reversal	6	3

Of course, the impact of a few major Supreme Court decisions in plaintiffs' favor could have a considerable impact on workers' compensation costs even where awards and denials are generally in parity. In order to ascertain whether this might be the case in Minnesota, a large sample of Supreme Court workers' compensation cases were examined and compared to analogous cases in Wisconsin. The comparison of Minnesota and Wisconsin workers' compensation decisions centered on when injuries were work-related and on disability determinations. (Case citations are omitted from this summary.)

a. Relation to Work

Both the Minnesota and Wisconsin Supreme Courts generally defer to the hearing judges' decision as to whether an injury was caused by employment, and the similarities in the decisions in this area are far greater than the differences. The Wisconsin statute, however, requires "mental or physical harm to an employee caused by accident or disease" (Wis. Stat. §102,01(c)) for compensation while the comparable Minnesota language is "injury arising out of and in the course of employment" (Minn.Stat. §176.011, Subd. 16).

The "accident" requirement normally produces the same result as in Minnesota, but it does discourage claims involving pre-existing conditions where there is no actual "event" at work precipitating or aggravating the condition. A sharper difference between the two jurisidictions involves apportionment for pre-existing conditions combining with a work-related injury to produce a disability. Minnesota decisions deny apportionment where the pre-existing condition is non-occupational or occupational, but non-registered. Wisconsin permits apportionment when the pre-existing condition is an actual contributing cause of the disability.

On other issues relating to the circumstances of the injury the Minnesota Supreme Court decisions generally have a slightly more liberal cast than those of the Wisconsin court. Employers' premises are more broadly defined than in Wisconsin though a slight difference in statutory language is involved also. The

difference between a legitimate detour from work and a personal errand is somewhat more restrictively applied in Wisconsin. Wisconsin, however, is more liberal in permitting recovery in cases involving acts in direct disobedience of the employer's orders.

b. Disability Determinations

The degree of disability decisions are much more complex than the relation-to-work cases, and both the Wisconsin and the Minnesota courts rely even more heavily on the medical findings made at the administrative level. Nonetheless, some clear differences with cost implications do emerge from the cases.

i. Permanent Partial Disabilities

In Wisconsin scheduled benefits for a permanent partial disability are exclusive of any other payments. If the disability is unscheduled the permanent partial benefit is determined by income loss. In Minnesota, in contrast, the court has interpreted the 1974 amendments to Minn.Stat. 176.021(3) to mean that scheduled benefits are payable concurrently and in addition to temporary total or temporary partial benefits, the permanent partial as general damages for functional loss, the temporary as income replacement.

ii. Permanent Total Disability

Both Minnesota and Wisconsin cases uphold permanent total benefits in cases where an employer is able to do some work if there is no reasonable market for the work which he can do. The Wisconsin court, however, stresses loss of earning capacity in permanent total cases, so that benefits based upon the severity of the disability, where the employee is actually still working, are not likely to be permitted.

iii. Temporary Total and Temporary Partial Disability

Minnesota cases, as indicated, permit the concurrent receipt of either temporary total or temporary partial benefits with permanent partial benefits. Though cases are rare, the Wisconsin court's focus on income-replacement as the purpose of all categories of workers' compensation benefits suggests that Wisconsin does not do this.

5. Conclusion

An examination of litigation data from all states supports the hypothesis that high litigation rates are associated with high workers' compensation costs. Apart from differences in statutory benefit levels no other single factor is as closely correlated with high costs. Differences between state and private carriers are less significant than litigation as a factor in costs.

Minnesota's litigation rate of 9.95 percent is twenty times higher than South Dakota's and two and one half times as high as Wisconsin's. Wisconsin's advantages include a lower rate of appeal of workers' compensation judges' decisions and a much lower rate of initial hearing requests. Both of these are apparently explained by the fact that Wisconsin provides injured workers with immediate information about the workers' compensation system and encourages early employer or insurer contact as well. This early intervention encourages the resolution of claims prior to hearing requests, acceptance of initial awards or settlement prior to appeal.

The influence of workers' compensation appeals decisions in litigation costs is much less apparent than the influence of pre-appeal litigation. The direct costs of appeals are not insignificant, but most are not carried by the workers' compensation system. The indirect cost impact of appeals which change the legal rules for recovery, however, can clearly be significant. This is especially true for Supreme Court appeals.

The Minnesota Supreme Court, partly because of differences in the statutes, has found in favor of the claimant more often than the Wisconsin Court has during the last ten years, at least in work-relatedness cases. This difference is not a dramatic one, however, especially when the effect of Wisconsin's third appeal is considered. There are several specific areas, nonetheless, in which more restrictive Wisconsin rules do have a significant cost impact. These include dual payment of temporary and permanent partial benefits, apportionment for a pre-existing condition and aggravation of a pre-existing condition.

6. Addendum

Though medical evidence issues were not involved in this litigation rate study they do have a direct relationship with litigation rates. It is apparent from the cases that more objective, straightforward criteria for the statutory disabilities would reduce the litigation rate. It may also be significant that the Burton Study suggests a mandatory and neutral evaluation of the disability which would be determinative of the medical fact issue unless "clearly defective," as a means of reducing litigation of medical issues.

C. WORKERS' COMPENSATION DECISIONS IN MINNESOTA AND WISCONSIN

1. Introduction

The purpose of this summary is to discuss whether state supreme court interpretations of workers' compensation laws have contributed to higher workers' compensation costs in Minnesota than in Wisconsin. The summary focuses on two areas. The first is which accidents are considered to be within the scope of employment. Secondly, the summary discusses how courts have interpreted the various degrees of disability--partial and total permanent, and partial and total temporary.

In general, the workers' compensation decisions of the Wisconsin Supreme Court are more thorough than those in Minnesota. In particular, the Wisconsin opinions devote more time to a review of the factual evidence. The reason for the discrepancy is most likely that the Minnesota Supreme Court must decide far more workers' compensation cases than its Wisconsin counterpart. In both states the initial compensation decision is made by an administrative official, and then may be appealed within the workers' compensation division. In Minnesota the decision of the workers' compensation board may be reviewed directly by the Supreme Court. In Wisconsin appeals are taken from the administrative agency to the circuit court of Dane County, and then only in limited instances to the Supreme Court. Thus the Wisconsin Supreme Court is faced with fewer cases, and probably harder cases, and can afford to devote more time to a study of the record.

Many of the cases studied were decided on the basis of the commission's interpretation of conflicting medical evidence. Because of these narrow factual issues involved, it is often hard to make worthwhile comparisons between the cases in the two states. Thus we will attempt to set forth the state of the law in Minnesota, drawing comparisons to Wisconsin law whenever useful.

2. The Scope Of Employment

In Minnesota, "personal injury" is defined as an "injury arising out of and in the course of employment." Minn.Stat. 176.011. subd. 16. In Wisconsin, injury means "mental or physical harm to an employee caused by accident or disease." Wis.Stat. 102.01(c). Liability exists only when "at the time of the injury, the employee is performing services growing out of and incidental to his employment." Wis.Stat. 102.03, subd. 1(c). On its face, the Wisconsin statute appears to be less inclusive than Minnesota's, since it requires an "accident" in addition to an injury. However, Wisconsin's coverage could be broader, in that the injury need occur only "incidental to" instead of "in the course of" employment.

a. Causation: Deference to Administrative Expertise

In both Minnesota and Wisconsin, the cause of an injury is a question of fact, to be resolved primarily by the administrative agency--the department of labor and industry in Minnesota, and the department of industry, labor and human relations (DILHR) in Wisconsin. All conflicts in testimony must be assessed by the agency, as the trier of fact. The decision of the agency as to causation will not be reversed by the courts unless it is not supported by substantial evidence (Minnesota) or there is no credible evidence to support the decision (Wisconsin).

In most instances, the Minnesota Supreme Court has routinely affirmed commission findings on whether an injury was caused by employment. An example is O'Connor v. Schlick, 296 Minn. 484, 206 N.W.2d 554 (1973). The court has stressed its deference to administrative expertise in cases such as heart attackes, in which it is next to impossible to determine causation. Dudovitz v. Shopper's City, 282 Minn. 322, 164 N.W.2d 873 (1969) (heart attack);

Hed v. Brockway Glass, ___ Minn. ___, 244 N.W.2d 28 (1976) (commission awarded benefits after finding that employee's car crashed because he was unusually tired after work). However, the court reversed an award of benefits when the most favorable testimony suggested only that the work injury might or could have caused the subsequent condition. There must be some testimony that the injury did cause the condition. Holmlund v. Standard Construction, ___ Minn. ___, 240 N.W.2d 52 (1976).

b. Causation: Aggravation and Acceleration of Previous Injuries

Closely related to the previous topic is the issue of when aggravation of a previous injury will be compensable. Although there are no cases involving substantially identical facts in which the Wisconsin and Minnesota courts have reached opposite conclusions, we believe the two states have very different approaches to the subject.

The Wisconsin requirement of an "accident" has given rise to a line of cases denying benefits to workers. In the leading case of Lewellyn v. Industrial Commission, 38 Wis. 2d 43, 155 N.W.2d 678 (1968) the supreme court upheld the industrial commission's determination that a degenerative disc condition was not caused or aggravated by employment. The court states that when there is no demonstrable physical change occurring at the time of the work incident, but only a manifestation of a definitely pre-existing condition of a progressively deteriorating nature, recovery should be denied even if the manifestation became apparent during normal employment activities. However, if work activity precipitates or aggravates and accelerates a progessively deteriorating condition, it is an "accident causing injury" and the employee should recover, even if there is no definite "breakage."

In several later cases discussing the topic of pre-existing conditions, the court again determined that employees were not entitled to benefits. In Schroeder v. DILHR, 43 Wis. 2d 12, 168 N.W.2d 144 (1969), the court affirmed the commission's denial of benefits since there was credible evidence to support the finding that work did not aggravate back pain beyond a normal progession.

In Burks v. DILHR, 45 Wis 2d 1, 172 N.W.2d 27 (1969) an employee who had a degenerative back condition sprained her back while at work. The court admitted that the sprain was an "accident," but still affirmed the commission denial of recovery by finding that the sprain did not permanently aggravate the pre-existing condition, or otherwise contribute to the permanent partial disability. Finally in Schlitz v. DILHR, 67 Wis. 2d 185, 226 N.W.2d 492 (1975), the court reversed an award of benefits to an employee who died from heart trouble which the survivors alleged was caused by inhalation of noxious gasses. The commission found that the work conditions were "in the nature of an aggravation" of the employee's pre-existing heart condition. The court held this finding insufficient to support the award, since the commission did not find that the work did aggravate the previous condition.

We are aware of no Minnesota cases awarding benefits in circumstances in which Wisconsin would clearly deny them. However, from the tone of the Minnesota opinions it is our impression that Minnesota is more liberal in its awards. First, the Minnesota court does not have the "accident" language on which to base a denial of benefits. In Wisconsin, "accident" has been defined as "the unexpected result of a routine performance of the claimant's duties." School District 1 v. DILHR, 62 Wis. 2d 370, 215, N.W.2d 373 (1974). Under this definition, an employee who was injured in a car crash caused by fatigue after a hard day at work might not be compensated, as he was in Minnesota. Hed v. Brockway Glass, ___ Minn. ___, 244 N.W.2d 28 (1976).

The dominant theme in the Minnesota opionions we have read is that aggravation and acceleration of a pre-existing physical defect is compensable. Although the language used by the Minnesota court does not differ sharply from that used in Wisconsin, the results seem to be more favorable to Minnesota workers. An employee who had congenital foot deformities, and who had to stand ten hours a day at work, developed a partial disability in both feet. The court affirmed the commission's finding that the job accelerated the pre-existing defect. Johnson v. Armout, 297 Minn. 510, 210 N.W.2d 247 (1973). The court affirmed an award of benefits to a worker who died of a heart attack ten hours after

leaving his job as a welder. The court stated that it was unnecessary to show that there was extraordinary exertion, or an accident, but only that employment was a causative factor in bringing about death. Wever v. Farmhand, ___ Minn. ___, 243 N.W.2d 37 (1976). In both cases the method of analysis, and possibly the result, would have been different in Wisconsin.

The two states also differ on the issue of apportioning responsibility for a disability between a pre-existing condition and the work activity. In Minnesota, when employment tasks substantially aggravate or combine with a latent condition to produce a disability, the entire disability is compensable, with no apportionment being made on the basis of relative causal contribution of the pre-existing condition and the work condition. Vanda v. Minnesota Mining and Manufacturing, 300 Minn. 190, 218 N.W.2d 459 (1974). Thus an employee who had a pre-existing 75 percent loss of vision, who could only distinguish light from darkness after an industrial accident, was awarded full compensation for the loss of his eye, with no deduction for the pre-existing impairment. Herbst v. ISD No. 793, 292 Minn. 386, 194 N.W.2d 273, (1972).

In Wisconsin, an applicant is not compensated for a pre-existing disability when such disability can be separated from the effects of a later accidental injury. An employee who had only four percent of normal vision in his left eye before an accident, who lost all use of the eye in the accident, was compensated only for the four percent loss in vision. Mednis v. Industrial Commission, 27 Wis. 2d 439, 134 N.W.2d 416 (1965). However, the fact that a former injury made an employee susceptible to further injury does not necessarily mean that the employee has a pre-existing disability. When only the last accident is responsible for creating a compensable disability, the last employer may be totally liable. Semons v. DILHR, 50 Wis. 2d 518, N.W.2d 871 (1971).

c. Personal Activities While At Work

In Minnesota, an injury can be compensable even if the employee is not actually working at the time of the injury. Acts which are necessary to comfort or convenience of any employee

while at work, even though personal and not technically acts of service, are compensable. An employee who reported early to work and left to mail a card was injured when he fell while still on the employer's premises. The court held that this conduct was a minor interruption from work which might reasonably be expected, since it was not expressly forbidden, was compensable. Hill v. Terazzo Machine Supply, 279 Minn. 428, 157 N.W.2d 373 (1968).

Injuries resulting from an employee's personal work, done within the employer's premises, may be compensable. However, an injury which takes place outside of working hours is not compensable. Employees are not covered while performing acts for their own personal comfort while off duty, even when such acts are on the employer's premises. Thus an employee of a service station who was injured while working on his own car after business hours was denied benefits. Scheppman v. T. and E. Service, Inc., 287 Minn. 183, 177 N.W.2d 306 (1970).

Survivors of an employee who died by choking on a piece of meat in a restaurant received benefits because the employee was entertaining a customer upon order of the employer. Even though eating is a personal activity, it may be compensable if it occurs while the employee is under the employer's direction and control. Snyder v. General Paper Co., 277 Minn. 376, 152 N.W.2d 743 (1967). A strong dissent by Justice Otis argued that the condition causing death was not related to employment or any business activity and hence not compensable.

There are not enough Wisconsin cases on this topic to draw detailed comparisons. One case suggesting that Wisconsin may be more likely to deny benefits is Brickson v. DILHR, 40 Wis. 2d 694, 162 N.W.2d 600 (1968). In that case an employee fell while passing from a washroom into a hallway on the employer's premises. The supreme court sustained the commission's findings that the injury was not in the course of employment. The court stated that there is no presumption than an injury arises out of employment merely because it occurs while the employee is at work. The burden of proving this is on the applicant.

An older Wisconsin case, VanRay v. Industrial Commission, 5 Wis. 2d 416, 92 N.W.2d 818 (1958) is more similar to the Minnesota

decisions. The court states that activities personal to the employee which minister to his comfort while at work are in the course of employment. A highway employee who left the job site with his supervisor's permission, to buy lunch, was still protected under the act.

d. Social and Recreational Pursuits

In Minnesota, an injury incurred in a social pursuit tangentially related to a job is compensable only if the employer derives a direct and substantial benefit from the employee's attendance, beyond the intangible value of improvement in the employee's health. Important factors in this determination are whether employees are paid for attendance, and whether attendance is compulsory.

A drowning from a boating accident at a company picnic was held compensable since the outing was on a working day, attendance was encouraged, and employees were paid for their time. Tietz v. Hastings Lumber Mart, 297 Minn. 516, 210 N.W.2d 237 (1973). Benefits were denied to another employee injured at a company picnic, since the picnic was on a non-working day, attendance was voluntary, and no wages were paid. Ethen v. Franklin Manufacturing, 286 Minn. 371, 176 N.W.2d 72 (1970). An injury from a car crash while returning from an employer-sponsored Christmas party was also held non-compensable since attendance was not compulsory, nor rewarded by gift or wages. Ramaker v. Margae, Inc., 300 Minn. 563, 221 N.W.2d 125 (1974).

In the one Wisconsin case we have read on this topic, the court appeared to take an approach similar to Minnesota's. The court felt that an important distinction was whether employees were compelled to attend the event, or if it was merely sponsored by the employer. An employee killed while driving home from a "supervisory get-together" off of work premises was denied benefits, even though the function was considered a business expense by the employer. Schwab v. DILHR, 40 Wis. 2d 686, 162 N.W.2d 548 (1968).

e. Disobeying Employer's Orders

The general rule in Minnesota is that when an employee's injury-producing conduct is in violation of a specific order of an employer, benefits will be denied unless the employee was performing work in furtherance of the employer's business. The court has distinguished between performance of authorized acts in a prohibited manner and performance of prohibited acts. An 18 year-old stable employee who was injured while riding a horse in violation of his employer's order was denied benefits by the court (after a commission award of benefits). The court concluded that even though the act might be considered in furtherance of the employer's business, it was specifically prohibited, and hence non-compensable. Bartley v. Card H Riding Stables, 296 Minn. 490, 206 N.W.2d 660 (1973).

The Wisconsin statute may be more liberal in granting benefits than Minnesota's on this point. As discussed by the Wisconsin court in Grant County Service Bureau v. Industrial Commission, 25 Wis. 2d 579, 131 N.W.2d 293 (1964) the statute does not require that an injury be "within the scope of employment" but only that the employee be performing service "growing out of and incidental to his employment." Like the Minnesota court, the Wisconsin court concluded that if disobedient actions are taken in furtherance of the employer's interest, compensation should be granted. In Grant County, benefits were awarded to an employee of a collection agency who was killed when he fell off the roof of a building while attempting to repossess a television antenna, in contravention of orders. In Martin v. Industrial Commission, 13 Wis. 2d 574, 109 N.W.2d 92 (1961) the court affirmed an award of benefits to an employee killed when soil caved in on him while he worked on an excavation project. Even though the employee may have entered the ditch in disobedience of his employer's orders, there was no doubt he did so for the purpose of assisting his employer, and not for any personal benefit.

f. The Employer's Premises

In Minnesota, no injury is compensable unless the employee is "...engaged in, on, or about the premises where his services

require his presence as part of such service at the time of the injury and during the hours of such service." Minn. Stat. 176.011, Subd. 16.

In Goff v. FUAS, ___ Minn. ___, 241 N.W.2d 315 (1976), an employee was killed as she crossed the street from her place of employment to a parking lot used by employees. Employees commonly crossed the street at this point, although the employer circulated an annual memo suggesting the use of a crosswalk or tunnel. The court affirmed the commission award of benefits. The court stated that generally an employee who chooses a hazardouz route to work, which is a deviation from the customary route, will not receive benefits. However, a crossing may become a "special hazard" if it becomes a normal manner of ingress and egress. Here the proximity of the lot to the building and the habitual use of the crossing by employees made the route a special hazard.

In Faust v. State Department of Revenue, ___ Minn. ___, 252 N.W.2d 855 (1977), the commission denied benefits to an employee who was hit by a van as she crossed from the Centennial Office Building to the Capitol mall to eat lunch. The supreme court concluded that the mall area is part of the employer's business premises, and thus reversed the commission and awarded benefits. The court felt that because the mall is openly and notoriously used by state employees for lunch, and the state sometimes "lures" employees there by sponsoring noon-hour concerts, the mall is part of the business premises.

Finally, the Minnesota court has affirmed an award of benefits to an employee injured in a shopping center parking lot which the employer leased from a third party. The court held that the parking lot was part of the employer's premises. Merrill v. J.C. Penney, ___ Minn. ___, 256 N.W.2d 518 (1977).

Although the Wisconsin cases are not necessarily contradictory to Minnesota's, we believe the Wisconsin court has been much stricter in defining an employer's premises. Under Wis.Stat. 102.03, Subd. 1(c)(1) an employee must show the injury occurred while he was "on the premises of his employer, or while in the immediate vicinity thereof if the injury results from an occurrence on the premises."

The Wisconsin court recognized that in most sates an employee is covered while on a necessary route between two portions of an employer's premises (such as a street between an employer-owned parking lot and the place of employment). The court suggested that the legislature amend the above statute to delete the "on or in the immediate vicinity" requirement. Under that language however, the court declined to give benefits to an employee who fell on railroad tracks while en route from the parking lot to the plant. The court felt that the employer had not exercised such complete dominion over the section of public sidewalk in question so as to make it part of his premises. Frisbie v. DILHR, 45 Wis. 2d 80, 172 N.W.2d 346 (1969). In Halma v. DILHR, 48 Wis. 2d 328, 179 N.W.2d 784 (1970) the court reaffirmed its holding that an injury on a public street is not compensable even if the street lies between two portions of the employer's premises.

While the general rule in Wisconsin is that an employee may be compensated only for an injury suffered on the employer's premises, there is an exception when the employee must travel and work away from the employer's premises. The home of a pizza salesman was deemed the premises of the employer when the employee was responsible for making calls from his house and for using his own electricity to keep the truck cold. The salesman received benefits for injuries sustained when he fell while walking from his house to the truck. Black River Dairy Products v. DILHR, 58 Wis. 2d 537, 207 N.W.2d 65 (1973).

g. Deviation From Scope of Employment. Whether an employee is deviating from the scope of employment and acting for his own personal benefit is a question of fact in both Minnesota and Wisconsin, and reviewing courts defer greatly to the judgment of the administrative agency. Both states set forth the general distinction between acts in the course of employment, which are compensable, and acts for the personal benefit of the employee, which are not. Once again our analysis is not conclusive, but based on the cases we have read, the Minnesota court appears to be more liberal than the Wisconsin court in finding an activity to be within the scope of employment.

In Epp v. Midwestern Machinery, 296 Minn. 231, 208 N.W.2d 87 (1973), the court affirmed an award of benefits to a truck driver who was killed by a car while crossing a highway after staying at a tavern until closing time. (There was no finding as to intoxication.) The driver had been staying in a Pennsylvania hotel, upon his employer's direction, while waiting to pick up a shipment. The court stated that when an employee is directed to remain at a certain locale, he may indulge in any reasonable activity at that place, and if he does so, the risk inherent in such activity is an incident of his employment.

The court in Nelson v. Lutheran Mutual, ___ Minn. ___, 249 N.W.2d 445 (1976) affirmed an award to an insurance salesman who was injured in a car crash while driving home from a retail store where he had once tried to sell insurance, and where he had previously worked. Two days prior to the accident the employee had notified his employer that he was resigning, and there was some evidence that the visit was for social purposes. However, since there was conflicting evidence as to the employee's reason for being in the store, the court affirmed the commission judgment.

A number of Minnesota cases have denied benefits. An employee killed while driving home in a truck furnished him by the employer for the purpose of going from the work site to home was denied benefits, on the theory that he was travelling for his own personal convenience. Funk v. Scheppman, 294 Minn. 483, 199 N.W.2d 791 (1972). In Williams v. Hoyt Construction, 306 Minn. 59, 237 N.W.2d 339 (1976), the court affirmed denial of benefits when the commission found that the decedent was flying to the Twin Cities on a personal mission, and not to benefit the employer, The court also affirmed the commission denial of benefits to an employee who jumped up to touch his hand on a rafter while leaving the store where he worked, and injured the finger. Elfelt v. Red Owl, 296 Minn. 16, 206 N.W.2d 371 (1973).

The Wisconsin casea have also had mixed results. In one case with facts somewhat similar to a Minnesota case (Epp), the court affirmed a denial of benefits to an employee of a Wisconsin phone company who as on loan to a company in Texas. While at his

hotel swimming pool, the employee fell and broke his back. However, unlike Epp, the employee was not waiting to imminently perform a task for the benefit of his employer. Sauerwein v. DILHR, 83 Wis. 2d 294, 262 N.W.2d 136 (1978).

Both Minnesota and Wisconsin have developed special doctrines to allow an employee to recover when the general rule might seem to mandate no benefits. Under the "dominant purpose" rule an employee is covered if the business purpose is dominant in a trip having both personal and business purposes. However, a severable personal side trip defeats application of the rule. The "personal comfort" doctrine holds that an employee does not leave the scope of employment while ministering to personal comfort within the time and space limits of his employment. We are not aware of any significant differences in application of these rules in Minnesota and Wisconsin.

In Minnesota there apparently is a "special mission" doctrine, holding that an employee on such a mission is covered by the workers' compensation act from the time he leaves home until he returns. (There can be a severable side trip, however.) Wisconsin has declined to adopt this doctrine. However, we believe that the operative difference between the two states on this point is slight since the Minnesota court can (and has) found a severable side trip. For a discussion of all three of the above doctrines, the Williams case in Minnesota, and the Sauerwein case in Wisconsin are useful.

3. Degrees Of Disability

Both Minnesota and Wisconsin statutes require payments of different benefits depending on whether a disability is temporary or permanent, and whether it is total or partial. Yet neither set of statutes clearly defines what the various degrees of disability mean. In deciding the degree of disability of a particular injury, both supreme courts have placed a tremendous emphasis on the administrative assessment of the medical evidence. Because of the great deference to administrative expertise, it is very difficult to say, for example, that one injury would have been called a total permanent disability in one state, and only

a 50 percent disability in the other.

a. Permanent Partial Disability

In 1974 the legislature amended Minn.Stat. 176.021(3), regarding the purpose of permanent partial benefits. The statute now provides that "Permanent partial disability is payable for functional loss of use or impairment of function, permanent in nature, and payment therefore shall be separate, distinct, and in addition to payment for any other compensation." The Minnesota court has interpreted this new language to mean that compensation payable for permanent partial disability represents general damages rather than payment for loss in earning capacity. Ahoe v. Quality Park Products, ___ Minn. ___, 258 N.W.2d 885 (1977). Before the statute was amended, the court had held that permanent partial benefits compensate an employee for presumed wage loss due to his disability. Boquist v. Dayton-Hudson Corp., 297 Minn. 14, 209 N.W.2d 783 (1973).

The Minnesota court has also stated that when an employee's disability is confined to a specific part of the body, and that part is referred to in the schedule on permanent partial disability, the employee can still receive more benefits than what the schedule calls for. If an injury renders an employee unemployable, he is not restricted to the statutory schedule. Olson v. Griffin Wheel, 218 Minn. 42, 15 N.W.2d 511 (1944).

In Wisconsin, the supreme court has held that if a permanent partial disability is sustained which is covered by the statutory schedule, the scheduled benefit is exclusive. Vande Zande v. DILHR, 70 Wis. 2d 1086, 236 N.W.2d 255 (1975). Furthermore, in Wisconsin any award for permanent partial disability must be based upon some kind of prediction as to impairment of earning capacity. Butler v. DILHR, 57 Wis. 2d 77, 203 N.W.2d 687 (1973). Even for an unscheduled injury, benefits are determined by comparing the injury to one that would render a person permanently disabled for industrial purposes, and not to injuries that would disable a person functionally, without regard to earning capacity. Kurschner v. Industrial Commission, 40 Wis. 2d 10, 161 N.W.2d 213 (1968).

b. Permanent Total Disability

In Minnesota total disability has been defined as the inability to perform substantial and material parts of some gainful work or occupation with reasonable continuity. Schulte v. C.H. Peterson Construction Co., 278 Minn. 79, 153 N.W.2d 130 (1967). An employee who is so injured that he can perform no services other than those which are so limited that a reasonable market does not exist may be considered totally disabled. Mastellar v. Nelson, 299 Minn. 210, 216 N.W.2d 836 (1974).

Thus, the determination of permanent and total disability is dependent on the background of the employee as well as on the nature of the injury. An employee who is able to do intermittent work may still be permanently and totally disabled. Lee v. Minneapolis Street Railway, 230 Minn. 315, 41 N.W.2d 433 (1950). An employee who was able to help build and supervise construction of his house was considered permanently and totally disabled because he was unable to perform substantial and material parts of any work on a consistent basis. McRae v. Brandt, 283 Minn. 483, 168 N.W.2d 683 (1969). A 52 year-old with an eight grade education who had done only truck driving and general labor was found permanently and totally disabled after a back injury, even though he could still do light work. Due to the employee's limited skills, there was no market for such work. Petter v. McKee, 270 Minn. 362, 133 N.W.2d 638 (1965).

In some instances, an injured employee may receive permanent total disability benefits even if he is able to work. An employee who lost the use of both legs returned to work and earned more than he had previous to the accident. The court awarded him benefits under Minn.Stat. 176.101(5), which defines "loss of both legs so close to the hips that no effective artificial members can be used" as a permanent total disability. The court interpreted this language as mandating the payment of benefits, regardless of wage loss. Ford v. Willis Kruchenberg, ___ Minn. ___, 241 N.W.2d 653 (1976).

A recent Wisconsin case discussing the concept of permanet total disability cited with approval the language of the

Minnesota Supreme Court:

> an employee who is so injured that he can perform no services other than those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist may well be classified as totally disabled.

However, the Wisconsin court also stressed that a crucial factor in establishing permanent total disability was loss of earning capacity. The court stated that no allowance can be made for physical or mental suffering, however acute, which does not interfere with earning capacity. Balczewski v. DILHR, 76 Wis. 2d 787, 251 N.W.2d 794 (1977). Thus it is likely that Minnesota's Ford case would be analyzed differently, and probably decided differently, in Wisconsin

c. Total and Partial Temporary Disability

In Minnesota temporary total disability like permanent total disability, is primarily dependent on an applicant's ability to hold a job, not upon physical condition. Ahoe v. Quality Park Products, ___ Minn. ___, 258 N.W.2d 885 (1977). The fact that an injury is permanent and partial in a physical sense does not preclude a finding of a temporary total disability. Schulte v. C.H. Peterson Construction Co., 278 Minn. 29, 153 N.W.2d 130 (1967). A woman with a fourth grade education and no employment skills who lived in a small community was totally disabled even though she could do sedentary work, since there was no such work available in the community. Reese v. Preston, 274 Minn. 150, 142 N.W.2d 721 (1966). In Brening v. Roto-Press, 306 Minn. 562, 237 N.W.2d 383 (1975) the court held that the testimony of the employee alone to the effect that her back injury prevented her from carrying on substantial work was sufficient to support a finding of temporary total disability. Uncontradicted medical testimony stated that she would be able to perform the employment she was offered.

An employee may receive permanent partial benefits concurrently and in addition to compensation for total permanent or temporary benefits. Payments for total disability are considered compensation for a continuing impairment of earning capacity,

while permanent partial benefits are paid for loss of functional ability, as opposed to industrial. Ahoe v. Quality Park Products, ___ Minn. ___, 258 N.W.2d 885 (1977).

In Dorn v. A.J. Chromy, ___ Minn. ___, 245 N.W.2d 451 (1976), the court articulated the factors necessary for recovery of temporary partial benefits: 1) a physical disability, 2) an injury which is temporary rather than permanent in nature, 3) an injury which is partial--the employee must be able to work, subject to disabilities, and 4) a loss of earning capacity related to the disabilities.

We have been unable to find many Wisconsin decisions specifying requirements for recovery of temporary benefits. Following the general Wisconsin rule, a decline in earning capacity must be shown. Shymanski v. Industrial Commission, 274 Wis. 307, 79 N.W.2d 650 (1956). The Wisconsin court has also held that a disability is no longer temporary when all the improvement that is likely to occur has occurred. Larson v. Industrial Commission, 9 Wis. 2d 386, 101 N.W.2d 129 (1960). Since both permanent partial and temporary total benefits in Wisconsin are intended to compensate for loss of earning capacity, we do not believe Wisconsin would have awards of both types, as may be granted in Minnesota.

4. Conclusions

a. In general, the workers' compensation decisions of the Wisconsin Supreme Court are more thorough than those in Minnesota, particularly in regard to review of factual evidence. The difference in structure of the two court systems probably accounts for this discrepancy.

b. In both Minnesota and Wisconsin the supreme courts place heavy reliance on the administrative interpretation of the medical evidence. Thus any conclusion that one supreme court decides cases in a certain way may often be explained as a result of administrative practice.

c. Wisconsin cases seem to be more favorable to the employer than Minnesota decisions as regards aggravation and acceleration of previous injuries.

d. The Wisconsin Supreme Court has interpreted an employer's "premises" more narrowly than the Minnesota Supreme Court, denying benefits in cases in which awards may have been allowed in Minnesota.

e. In Minnesota, an employee may receive compensation for functional disabilities, even if there is no resultant wage loss. In Wisconsin benefits are tied more strictly to loss of earning capacity.

D. 1978 WORKERS' COMPENSATION DECISIONS OF THE SUPREME COURT

During 1978 the state supreme court rendered numerous opinions dealing with workers' compensation. In some of those opinions the court indicated the need for legislative reform of various sections of the statute. Following is a summary of those cases which gave the court the greatest problems.

1. Arens v. Hanecy (August 25, 1978) (M.S. 176.041, Subd. 1)

Mrs. Arens was employed as a household worker by Mrs. Hanecy. On the third day of her employment Mrs. Arens was injured in a fall. She sought workers' compensation which was denied by the supreme court. The governing language appears in section 176.41, subdivision 1.

> Neither shall the chapter apply to any person employed as a household worker in, for, or about, a private home or household who earns less than $500 in cash in any three month period from a single private home or household provided that any household worker who has earned $500 or more from his present employer in any three month period within the previous year shall be covered by Laws 1975, Chapter 359 regardless of whether or not he has in the present quarter earned $500.

The claimant, Mrs. Arens, asserted that the statute required only a rate of pay of $500 per quarter. The defendant asserted that actual earnings of $500 are required to have workers' compensation coverage.

The supreme court said the statute is ambiguous but held against the claimant because of the history of the legislation.

> We believe that the record indicates that the legislature made a major policy decision in extending workers' compensation coverage to household workers and, reflecting the concerns of the members, chose to re-

> strict coverage to a specific class of those employees. The legislature may wish to reexamine and further extend workers' compensation coverage. That decision, however, is not within our power or purview.

2. Lakics v. Lane Bryant Department Store, 263 N.W.2d 608, (February 3, 1978) (M.S. 176)

Gladys Lakics died while her workers' compensation claim for temporary total disability was pending before the workers' compensation court of appeals. The claim was allowed after her death and ordered to be paid to her brothers and sisters. The supreme court reversed stating,

> In the absence of statutory authorization for the order, we are faced with the fact that rights and benefits granted by the Workers' Compensation Act rest solely upon, and are limited by, the statutes creating them. 263 N.W.2d 610

Minnesota Statutes 1974, Section 176.101, Subdivision 6, contained a provision for payment to dependents or heirs

> ...(A)ccrued compensation due to the deceased prior to his death but not paid is payable to such dependent persons or legal heirs as the commissioner of the department of labor and industry, compensation judge, or commission, in cases upon appeal, may order, without probate administration.

This provision together with other language was repealed by Laws 1975, Chapter 359, Section 8. The supreme court concluded,

> In the light of this consequence, it seems to us that the legislature may wish to reexamine the wisdom of repealing Minn.Stat. 1974, §176.101, subd. 6. 263 N.W. 2d 610

The holding of the court results in an unusual situation. M.S. 176.021, subdivision 3, provides that the right to receive permanent partial benefits shall be paid to the heirs of the employee if the employee died prior to the making of the payment. This provision was added by the Laws 1977, Chapter 342. However, accrued temporary total benefits, according to the court, are not payable to heirs of the employee. Therefore, the payment of temporary total and permanent partial benefits is now treated differently under the law.

3. Lambertson v. Cincinnati Corporation, 257 N.W.2d 679, February 4, 1977

Lambertson was injured while operating a machine manufactured by Cincinnati Corporation. His injury was compensable under the workers' compensation laws. The employee then brought a personal injury suit against Cincinnati Corporation. The jury assigned causative fault 15 percent to the employee, 25 percent to the manufacturer of the machine (Cincinnati), and 60 percent to the employer and fixed damages at $40,000. The trial court ordered judgment against Cincinnati for $34,000, the full amount of the verdict less 15 percent for the employee's negligence and denied Cincinnati's claim for contribution or indemnity from the employer, Hutchinson, since Hutchinson liability was limited by workers' compensation. Cincinnati argued that it had been forced to bear the entire burden of the employee's claim despite the fact that it was only 25 percent negligent.

The supreme court in its holding stated that "the problem is in large part, a legislative one which demands a comprehensive solution in statutory form." It went on to say

> It is rather inconsiderate to force courts to speculate about legislative intention on the strength of statutory language, in the framing of which the draftsmen had not the remotest trace of the present question in their minds. The legislature should face squarely the question whether the third party who happens to be so unfortunate as to get tangled up with a compensable injury should, so to speak, individually subsidize the compensation system by bearing alone a burden which normally he could shift to the employer. 257 N.W.2d 689

The court concluded by stating

> If further reform is to be accomplished, it must be effected by legislative changes in workers' compensation-third-party law. 257 N.W.2d 689

E. APPORTIONMENT OF WORKERS' COMPENSATION LIABILITY BETWEEN A PRE-EXISTING NON-OCCUPATIONAL DISABILITY AND AN OCCUPATIONAL INJURY

The issue of apportionment of liability for previous disability was raised several times in testimony before the Commission. The current no-apportionment rule prevents an employer from proportionally reducing his liability where a pre-existing,

non-occupational condition has contributed to a disability resulting after a work-related accident, and also denies him reimbursement from the Special Fund under such circumstances. It was suggested that this rule is unfair to employers and unfortunate in its effect on the employment of those who have suffered non-occupational disabilitites. Several cases were mentioned in which this rule had been construed and criticized by the Supreme Court including Vanda v. Minnesota Mining & Mfg. Co., 300 Minn. 515, 218 N.W.2d 458 (1974), Wallace v. Hanson Silo Co., 305 Minn. 395, 253 N.W.2d 363 (1975) and Byrd v. State of Minnesota, 305 Minn. 399, 234 N.W.2d 589 (1975).

The statute involved in these cases is Minn.Stat 176.131 (1976). Subdivision 1 of this section provides:

> If an employee incurs personal injury and suffers disability that is substantially greater, because of a pre-existing physical impairment, than what would have resulted from the personal injury alone, the employer shall pay all compensation provided by this chapter, but he shall be reimbursed from the special compensation fund for all compensation paid in excess of 52 weeks of monetary benefits and $2,000 in medical expenses.

Subdivision 3 makes this reimbursement contingent on the prior registration of the pre-existing condition. The language of Subdivision 8 defines physical impairment as "any physical or mental condition that is permanent in nature, whether congenital or due to injury, disease or surgery and which is or is likely to be a hindrance or obstacle to obtaining employment", but limits the application of the term to specified disabilities and to conditions which would result in 50 weeks or more of benefits under workers' compensation and "any other physical impairments of a permanent nature which the Workers' Compensation Court of Appeals may by rule prescribe."

In Vanda the employer sought to proportionally reduce his own liability for a back disability which resulted from work activity "substantially aggravating a pre-existing condition." There was apparently no claim for reimbursement from the Special Fund. The Commission declined to apportion and the Supreme Court affirmed.

The Wallace case involved a back disability, 2/5 of which was attributable to a pre-existing condition and 3/5 to the work-related injury. The pre-existing condition was treated as non-occupational though there was some contrary testimony. The Commission refused to apportion the liability between the injury and the pre-existing condition and the Supreme Court in the absence of statutory authority to apportion, affirmed the decision.

The Byrd case was decided the same day as Wallace and also involved a back disability. The disability was 2/3 due to the pre-existing condition in this case. Apportionment was denied. Reimbursement from the Special Fund under Minn.Stat. 176.131 was apparently not sought in either the Byrd or the Wallace cases.

The Supreme Court was critical of the result the statute (as interpreted by the Workers' Compensation Commission) required in the Wallace case, though it had not commented on the apportionment rule the year before the Vanda. The Workers' Compensation Commission's conclusion was that, whether or not the employer registered a pre-existing non-occupational condition, he was not entitled to reimbursement from the Special Fund under Minn.Stat. 176.131. While affirming this interpretation, the court commented: "We deem it appropriate to call to the attention of the legislature what may be a highly inequitable omission from the statute." The court continued:

> Where, as here, the commission has found that a work-related injury has aggravated a pre-existing condition, we are of the opinion that it is unjust to burden the employer with responsibility for that part of the disability which was not work-related. In recognition of the understandable reluctance of employers to hire workers with physical defects, the statute encourages the hiring of handicapped persons by permitting employers to be reimbursed under the conditions set forth in 176.131. If the statute denies access to the special fund for prior non-occupational injuries, it tends to defeat legislative policy by making it more difficult for partially disabled employees to continue working in positions which they are capable of handling. Accordingly, it seems advisable to suggest that the legislature amend the law to prevent a result which is not only unfair to employers but detrimental to those employees the statute is designed to protect.

The form of the amendment was not specified by the court. There are several ways in which apportionment in some form could be provided. First, non-occupational disabilities could be brought under Minn.Stat. 176.131 (1976) so as to permit reimbursement of benefits in excess of 52 weeks and medical expenses in excess of $2,000 when these disabilities are registered, just as is now the case with pre-existing work-related disabilities. This, however, would probably not have changed the result in either Vanda or Wallace, since the partial back disabiliites there were apparently latent conditions. In Byrd the disability had been knowingly concealed. The employer, in most cases, would be unable to register such non-occupational disabilities because he would not learn of them even if they were known to the employee. Where they were evident and registered the employer would be reimbursed only for benefits paid after 52 weeks and medical expenses after $2,000. Since a pre-existing condition will always increase the risk of serious disability where an injury occurs, and will often increase the risk of occurrence as well, the remaining exposure would represent a serious detriment to the employment of handicapped persons. This change would not reduce overall cost since it would simply shift the expense of pre-existing non-occupational injuries to the Special Fund.

The second way to amend 176.171 would be to permit reimbursement under that section for medically proven pre-existing, non-occupational disabilities whether registered or not. This would avoid the registration problems where disabilities are unknown to both employer and employee or are concealed by the latter. But the exposure problem and the resulting disincentive to hire the disabled would still remain. Overall workers' compensation costs would remain the same.

The third possible modification in the no-apportionment rule would be to permit direct apportionment of liability for pre-existing non-occupational disability outside the framework of Minn.Stat. 176.131, which would then continue to apply solely to pre-existing occupational disabilities as the Workers' Compensation Commission has held. Apportionment would involve a reduction in the employer's liability for a disability by the

proportion of the impairment which was due to the pre-existing non-occupational condition. Such a change would remove most of the additional risk of workers' compensation liability in hiring disabled workers. Such a change would reduce overall workers' compensation costs by denying any form of workers' compensation liability for pre-existing non-occupational disabilities. A significant number of claims, especially back cases, would be affected by direct apportionment of liability.

The problem with adopting an apportionment rule is that many pre-existing conditions are entirely latent and result in no actual impairment of function or income until combined with a second injury. This problem could be partially avoided by requiring 100 percent employer medical liability even where a pre-existing non-occupational disability is involved and excluding apportionment where the pre-existing condition is less than a significant causal element in the later disability.

A fourth method of changing the rule, less sweeping than adopting direct apportionment, would be to permit reimbursement from the Special Fund under Minn.Stat. 176.131 for all medical expenses and indemnity benefits, with or without registration, where a pre-existing non-occupational disability is involved. This would spread the risk of employing the disabled over all employers and thus remove the disincentive for individual employers to hire the disabled. It would still mean that employers generally, and the products they sell, would carry the cost of workers' compensation coverage for pre-existing non-occupational disabilities.

V.

MEDICAL ISSUES IN

WORKERS' COMPENSATION

A. SECOND MEDICAL OPINIONS IN WORKERS' COMPENSATION CASES

There is a considerable problem of escalating medical costs in the workers' compensation program. Medical expenses for workers' compensation cases, both paid and outstanding, for policy year 1969 were $16,582,371. In 1976 they amounted to $43,277,348, an increase of more than 260%. The increase in indemnity (benefit) expenses, paid and prospective, has been even more dramatic, from $26,094,220 to $109,163,646. A second opinion program might operate to reduce both of these types of expenses.

The authoritative study of Professor McCarthy* indicates that 28% of medical procedures prescribed by a first physician for patients covered by health insurance were found unnecessary after review by a board of surgeons. If this rate were to hold true in the workers' compensation context, and if the low administrative costs of McCarthy's programs could be preserved, the direct savings in medical expenditures would be substantial. The indirect savings in indemnity payments could be even more considerable. Indemnity payments depend upon determinations as to the existence of medical conditions and the degree to which these impair the use of bodily members. If even a small fraction of such diagnoses were to prove erroneous on review under a second opinion program, the indemnity savings, stretching in some cases over the lifetime of the claimant, could be quite substantial.

There are a number of differences between health coverage and workers' compensation, however, which limit the possible application of second opinion programs, or at least demand substantial modification of the "classical" second opinion program.

The major differences between health coverage (HC) and workers' compensation (WC) are the indemnity benefits which are at stake in the latter and the adversary nature of the WC system which derives from this fact. Under HC the interest and inclination of both carrier and patient is to avoid unwarranted medical treatment and correct erroneous diagnoses. With indemnity benefits related to diagnosis and treatment, as in WC, the picture is more complicated. The carrier is concerned to reduce unnecessary medical expenditures under WC (though perhaps less so, under regulated rates, than is ideal), but the claimant's position

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* McCarthy, E.G., Widmer, G.W., "Effects of Screening by Consultants on Recommended Elective Surgery Procedures" New England Journal of Medicine, pp. 1131-1335, Dec. 1974

is an ambivalent one: he does not want unneeded surgery or erroneous diagnosis but he does want indemnity payments. These two desires are sometimes in conflict in the WC system and this conflict is exacerbated by the adversary nature of the proceedings.

For this reason, the operational principle of second opinion programs--that health consumers do not want unnecessary treatment and erroneous diagnoses and can be expected to heed second opinions to avoid such treatment and overcome such diagnoses--is not necessarily operating in the WC context. Since the patient initiates the second opinion in voluntary second opinion programs and may elect to abide by the first diagnosis in both mandatory and voluntary programs, this difference is a significant obstacle to the adoption of second opinion programs, per se, in WC.

Another significant difference between HC and WC relevant to second opinion plans is the difference in types of medical treatment involved. A higher proportion of WC treatment is emergency, or at least clearly non-"elective," in nature than is true of HC treatment generally. Most WC claims arise from actual events at work or from the cumulative effects of particular work conditions. The effect of a second opinion program is striking in HC plans, where the medical procedure is initially recommended by a physician who has sifted through general complaints and "symptoms" to arrive at his diagnosis. It is bound to be much less dramatic where the complaint involves a specific injury or occupational disease as most WC claims do.

In addition, the focus of second opinion plans has been on surgical procedures. There is no doubt that surgical procedures are overused in WC as in other medical contexts, and that significant savings in this area alone could be realized by the proper program. But the most pressing need for medical review in WC would seem to involve diagnosed conditions which are long-term or permanent and not, or only partially, amenable to surgical or other treatment. Even if the incentive of the WC claimant to avoid unnecessary treatment were as strong as that of the HC patient, this would not have much effect in these loss-of-function

cases. Medical review of recommended surgical procedures in WC could be organized independently of review of physicians' diagnoses of long-term conditions. But it would be most efficient and most logical, especially since the two are closely related in WC, to regulate both through the same mechanism. A second opinion program, on the traditional model, does not lend itself to this dual purpose.

Another difference between HC and WC which suggests limits to the impact of a classical second opinion program is that there is already, in effect, a "second opinion program" in WC. Because of the "partisan" nature of both opinions, however, very little of the expected savings associated with second opinion plans has materialized. The insurance carrier or employer usually conducts its own examination of the WC claimant in contested cases. Where this is done, the claimant, of course, is free to accept this "second opinion" where it differs from that of his physician, and drop or modify his claim. Few do and it would thus seem clear that effective medical review in WC ought to go further than merely imposing another "third opinion," in addition to the plaintiff's and defendant's physicians' opinions. In fact, this already occurs in some cases, under M.S.A. 176.155, Subd. 2, the "neutral physician" provision, and has had no appreciable effect on costs.

These observations suggest that there would be significant obstacles to the successful implementation of a second opinion program, as such programs have been developed in other contexts, in the workers' compensation field. The interest and inclination of the WC claimant, tied as it is to prospective benefits, will not make him a very effective policeman of unnecessary treatment and erroneous diagnosis. Thus the voluntary elements present even in the "mandatory" second opinion plans, in which patients are still free to accept an earlier diagnosis, would not work as well as WC.

This central difficulty is exacerbated by the adversary nature of the proceedings in WC. A further serious limitation on the utility of second opinion programs in WC is that they

focus on a type of treatment, elective surgery, which is less common in WC. The most serious problem for medical review in WC, on the other hand, long-term untreatable loss-of-function, is not amenable to remedy by second opinion programs since no or minimal treatment issues are involved.

There are some elements of such a program, however, which are clearly applicable to WC and the difficulties discussed above suggest another way to shape a medical review system for WC. The second opinion studies show that initial recommendations and diagnoses of physicians are often in error. This error factor is likely to be even greater in WC because of the prospect of benefits and the adversary feeling among "plaintiff's" and "defendants'" physicians. If such errors can be isolated and corrected, considerable savings in both direct medical costs and long-term indemnity payments could be realized. But the dependence of the current second opinion programs on the voluntary action of the patients themselves and the programs' focus on surgical procedures may be misplaced in the WC field.

It would seem to be the case that, while medical review is needed in WC, to be most effective it ought to be mandatory in nature and oriented toward diagnosis generally, rather than targeted on surgical procedures. And such review ought to have some impact, beyond the discretion of the WC claimant, on the outcome. The most far-reaching system would consist of panels of specialists whose certification of initial diagnoses in their own field would be required for initiation of medical procedures and for receipt of benefits based on the disability. A less stringent program would be based on such panels but would treat their recommendations simply as additional evidence within the current adversary system. A stronger variant of the latter program would be to give added evidentiary weight to the panel's finding, in any WC proceeding, through a legal presumption that it is correct. The clear weight of the other medical testimony would have to be contrary for this presumption to be overcome. This would preserve the adversary system while placing the burden of medical proof on the party challenging the panel's determination. Each of these possible programs, to a greater or lesser

degree, would replicate in WC some of the savings experienced by second opinion programs generally, while obviating many of the problems discussed above.

The "certification system" would produce the most savings and would avoid the largest number of unnecessary procedures and incorrect diagnoses. It would provide effective review of both recommended medical procedures and long-term disability determinations in one procedure. It would also represent the sharpest departure from the current adversary system. The "presumptive system" would preserve the adversary features of the WC system and, depending on how it is administered by the WC judiciary, could realize very considerable savings. It is my estimate that treatment of the panel's recommendation merely as "additional evidence" would have considerably less effect on expenses and unnecessary treatment.

Both the "presumptive" and the "additional evidence" systems have the disadvantage that, while they can operate as an effective control on erroneous long-term disability diagnoses, they provide only discretionary review of medical procedures themselves. If such procedures do not have to be certified by a panel, the WC claimant would retain the discretion to proceed with the operation, despite the panel's finding. Though it is clear many claimants could be expected to accept the panel's recommendation, the problems of physician mystique and influence encountered in all second opinion situations, together with the special problems presented by indemnity benefits in WC, make this a far less effective check on unnecessary treatment than a certification program.

While the lower percentage of "elective" cases in WC will tend to reduce the direct medical savings experienced by HC second opinion programs, there will be additional savings, under at least two of the three systems discussed, in indemnity payments. The effect of a medical review system, in addition, particularly if the panel's finding is largely or altogether dispositive of the medical fact questions, would be to reduce the volume of litigation generally and the substantial associated costs. There would have to be additional legal research on the implications of

a panel system as described, but a cursory review suggests that such a change would be within the legislature's discretion in constitutional terms.

B. WORKERS' COMPENSATION MEDICAL PANELS

The use of a medical panel of judges in workers' compensation to determine the degree of disability of employees injured on the job is an idea that is apparently gaining support in a number of jurisdictions. This type of medical panel should be distinguished from a "physician panel" which had been used in Wisconsin and other states in the past, but is currently losing popularity. These "physician panels" do not rule on the presence or extent of disability, but rather are used to limit an employee's choice of physician. These physician panels were restrictive in nature, by limiting an employee's choice of physician to those doctors listed or posted (conspicuously in the workplace) by the employer and/or the insurance carrier. Wisconsin and some of the other states which previously restricted choice of physician now grant free choice to the employee.

Two states still have some form of "physician panel." In Tennessee, an injured employee is required to see one of three (non-affiliated) physicians whose names are posted by the employer. The New York Compensation Board requires doctors to register with the Medical Registration Division of the board. A physician not authorized by the chairman of the compensation board may not recover his fee for treating an injured employee. Approximately 91 percent of the physicians in the state are authorized by the board to treat workers' compensation claimants. The chairman may revoke for cause the authorization of a physician to treat compensation cases. A Medical Appeals Panel of the board conducts hearings on all matters concerning physicians such as authorization, qualifications, competency of service, charges of misconduct and the like. The appeals unit is exclusively concerned with the practice of medicine and does not determine disability or impairment.

Medical Panels

Several other states are currently utilizing medical panels to determine disability ratings. The use of such panels is becoming more prevalent, particularly with regard to occupational disease. In some instances, the findings of the medical panel are considered advisory, while in other instances the medical panel rules conclusively.

The state of Arizona employs a full-time medical director on the staff of the Industrial Commission. The commission has the option in any permanent disability case to appoint a panel of three medical consultants to report the prima facie evidence of facts and advise further medical care. Following the consultation, the individual is advised to return to the original attending physician. The attending physician will comment on the findings of the consultation. The commission will then rule on the degree of disability. The commission may also request that an individual who is temporarily and totally disabled be reviewed by the medical panel if there is some reason to believe the individual may be malingering.

The state of Washington utilizes a three-doctor panel (on board request) to conduct a special consultation of permanent disability. Washington utilizes three independent and geographically separate medical panels to which individual physicians may also refer their patients for an advisory opinion regarding degree of disability. Such advisory opinions generally carry great strength toward final determination of disability. The panels are composed of independent physicians and are not employed by the state.

The state of Ohio has a medical section, comprised of five doctors, within the Industrial Commission. The initial award for a permanent disability is determined by the commission doctors. Upon request for an increase in disability rating, an adversary proceeding is initiated in which the individual will seek a physician's opinion as will the employer/insurer.

The province of Ontario has ten to twelve physicians on the permanent staff of the Workers' Compensation Board. This panel

is comprised of the appropriate medical and surgical specialties. In any case of permanent disability, a member of the medical panel would issue a determination of disability which would qualify the disabled individual for a pension.

Occupational Disease

The state of Colorado has a panel of ten physicians to review occupational disease claims. Examinations and findings are made by one or more members of the panel. The findings are strictly advisory.

The state of Georgia has a medical panel of five physicians with jurisdiction over occupational disease. The findings of this panel are conclusive, as are the findings of the three-member medical panel appointed by the governor of Maryland.

Summary

Litigation currently plays a central role in the management of complex medical questions. It often appears that the commercial aspects of private/self-insurance and the professional interests of medical legal experts tends to overshadow the primary objectives of the workers' compensation system.

The debate surrounding the current methods of determining disability ratings is likely to become more controversial and more litigious with the further development of occupationally compensable diseases. The medical professions are apparently of the opinion that medical questions should be resolved by medical professionals.

Medical panels issue advisory opinions or conclusive opinions. Although both systems would reduce litigation, it is more likely that an advisory opinion would be subject to challenge. Allowing a medical panel to issue a conclusive ruling would require a number of compromises by labor and industry, as well as assurances that the determinations would be truly objective and represent the best interests of all parties. Primary concern for the claimant and neutrality in the determination of disability are the primary advantages of a medical panel.

The implementation of a medical panel approach to disability would remove a number of the existing barriers to prompt, effective and equitable solutions to medical and indemnification problems. Although such an approach may increase the medical costs associated with workers' compensation, reduced litigation may reduce the overall costs of the process.

VI.

ALTERNATIVE METHODS OF PROVIDING WORKERS' COMPENSATION

A. SELF-INSURANCE IN WORKERS' COMPENSATION: ADMINISTRATIVE COSTS AND AVAILABILITY

Introduction

There are two reasons, in the context of the inquiry of the Workers' Compensation Study Commission, to examine employers' self-insurance under the workers' compensation laws.

First, self-insurance is the only present alternative to commercial workers' compensation insurance in Minnesota and thus the only means of direct workers' compensation cost comparisons. If the costs of self-insurance were significantly lower than those related to commercial insurance for comparable employers it would suggest that commercial workers' compensation insurance is too expensive. It might also suggest the areas which contribute to any unnecessary expense in commercial insurance.

Second, even if the savings involved cannot be realized by most employers, there may be reasons to expand the availability of self-insurance for those employers for whom it is attractive. Self-insurance is certainly an effective workers' compensation coverage for some employers. Since many employers are currently dissatisfied with commercial workers' compensation coverage, the existence of a self-insurance option lessens pressure on the commercial insurance system, offers flexibility to the insured employer, encourages innovations which may have application across the workers' compensation system and provides a "yardstick" for other workers' compensation delivery systems. If there are ways in which the availability of self-insurance can be increased and the costs reduced without significantly increasing risks, it will thus improve the workers' compensation system as a whole, even if self-insurance would not be cheaper for most insured employers.

Self-Insurance in Workers' Compensation Generally

Employers' self-insurance for industrial injuries to employees is available under workers' compensation statutes in 45 states and the District of Columbia, and is permitted under the Federal Black Lung and Longshore and Harbor programs as well.

Self-insurance in workers' compensation simply means that the employer himself pays all workers' compensation claims, up

to a certain amount, from his own funds. The claims procedure, benefit schedules and other statutory workers' compensation provisions are unaffected. The difference is simply that the self-insurer is directly, rather than indirectly, liable for claims. The self-insurer may himself administer the system or (in most states) he may contract on a fee basis with a self-insurance management service. Though reserves are established for future payments the employer retains the use of those funds in the interim.

Self-insurance statutes differ but they typically provide considerable latitude to a state department of labor or industrial commission in determining which enterprises will be permitted to self-insure. Applicants must submit financial and workers' compensation experience data and are required to provide guarantees of their workers' compensation reserves in the form of negotiable securities, cash, and surety bonds in some combination. Coverage up to a certain amount per occurrence is often stipulated and many self-insurers meet this requirement by carrying commercial reinsurance above their own "retention," which is analogous to the deductible in automobile collision insurance. Though some states purport to follow a "formula" in decisions on self-insurance applications, case-by-case determinations, based upon a firm's financial resources and reputation, the type of business, the potential for serious disasters, the scent of impending mergers or dissolution, past workers' compensation experience and a number of other factors, are the rule.

The proportion of workers' compensation coverage provided by self-insurers, as compared to commercial insurers and state funds, varies from state to state. The benefits paid by self-insurers are roughly 12% of the national total. This proportion has been gradually declining since 1939 in the face of competition from commercial retroactive plans involving experience-rating and premium discounts, and in some cases from state funds. The average self-insurer has a payroll of several millions of dollars and is a manufacturer, an energy firm, a major retailer or a public body.

A number of advantages are said by self-insurers' organizations to be characteristic of self-insurance in workers' compensation. Administrative costs are often said to represent only 10% of the total cost of self-insured workers' compensation programs. Safety programs are claimed to be more extensive and effective than those of the average commercially insured employer. Self-insurers are also said to be more responsive to the individual injured worker, though they also litigate more claims than do either state funds or commercial insurers. A major advantage of self-insurance is that employers retain their workers' compensation reserves until pay-out is necessary. Self-insurers in Minnesota and in many other states also pay no premium or premium-equivalent tax.

The issues of reserving and administrative costs will be examined in more detail in the Minnesota context. No data on safety, litigation or claims work is presented since, if significant, these should be reflected either in administrative costs or in losses. An evaluation problem which cuts across all these issues is that the size of the typical self-insurer, rather than self-insurance per se, may be responsible for observed differences between self-insurers and commercially insured firms, which are generally far smaller.

Self-Insurance in Minnesota

Minnesota self-insurers number exactly 100, down from a high of 110 in 1975-76, and the workers' compensation benefits these employees paid in 1977 were approximately 10-12% of the total payments for that year. Among the major private self-insurers are Dayton-Hudson, Hormel, U.S. Steel, AT&T, Control Data, Ford Motor, Munsingwear, Reserve Mining and Target. Public self-insurers include the cities of Minneapolis, St. Paul and Rochester, Hennepin, Ramsey and St. Louis Counties, several metropolitan authorities and the St. Paul and Minneapolis school districts. Appendices I and II provide a list with workers' compensation experience of Minnesota self-insurers.

Minnesota's self-insurance enabling statute (Minnesota Statutes 1978, Section 176.181, Subdivision 2), like those of other states, allows considerable discretion to the Department

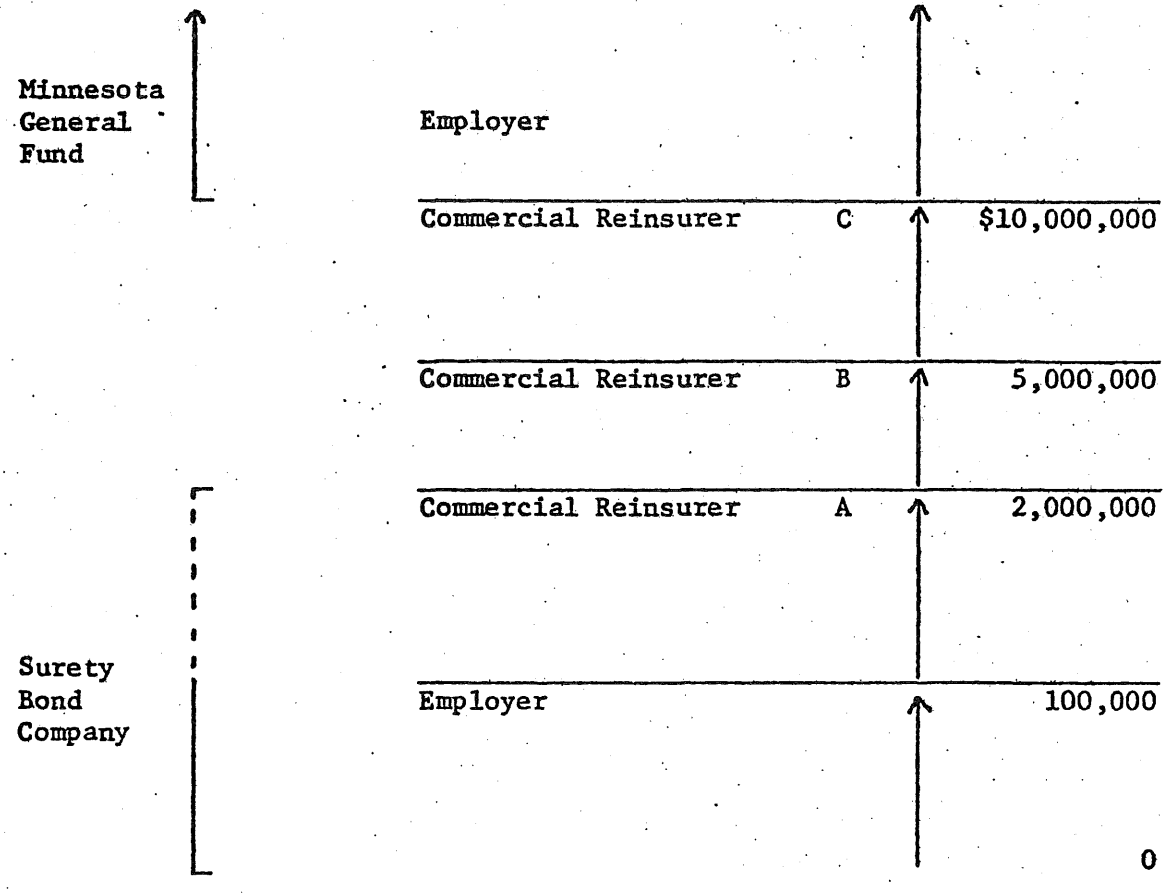
of Labor and Industry in approving self-insurance applications. The department receives about a half dozen formal applications for self-insurer status each year. Some states insist on a certain minimum figure in payroll or capital assets for self-insurers. Arizona, for example, requires $750,000 annual payroll. Minnesota, however, sets no flat minimums. Those firms which the department determines are good self-insurance risks must post at least $50,000 in negotiable securities and an annual surety bond (in a minimum amount of $100,000) equivalent to total outstanding workers' compensation liability plus one full year's projected liability, as a guarantee that claims will be honored. Bonds presently range between $100,000 and $2,000,000.

Coverage in some form up to $10,000,000 per occurrence is generally required by the department. Firms typically carry between $100,000 and $200,000 themselves as "retention," with one or more commercial carriers providing layers of excess or reinsurance up to $10,000,000 in most cases. Over that amount the self-insurer himself has liability, which the state would assume in case of insolvency. There is no fund to cover insolvency of self-insurers nor are other self-insurers liable to assessment for this purpose. The "layers" of workers' compensation liability for a single disaster to a self-insuring employer are illustrated in Table I.

Most of the self-insurers are considerably larger than average firms. Only 15% of those for which this data could be determined had annual Minnesota payrolls of less than $1,000,000 in 1976. Almost a third had Minnesota payrolls in excess of $20,000,000. The public employers who self-insure are even larger. Minnesota Statutes 1978, Section 176.181, Subdivision 2 was amended last session to permit smaller employers to join together for self-insurance purposes, but this amendment will not be effective until August 1, 1979 and it is not yet known how the security requirements will affect joint self-insurance. No Minnesota self-insurer has yet failed to pay outstanding claims either directly or by reinsurance or surety, even in cases of insolvency.

TABLE I

TYPICAL ASSIGNMENT OF WORKERS' COMPENSATION LIABILITY FOR A SINGLE OCCURENCE UNDER EMPLOYER SELF INSURANCE IN MINNESOTA



Administrative Costs to Current Minnesota Self-Insurers

Table II indicates the workers' compensation experience of four major Minnesota self-insurers over the period 1971 through 1976. Some of this data was presented to the commission in February 1978 and again with revisions in March 1978. The self-insurers' pure premium, the amount of benefits per $100 of payroll, can be derived from data the self-insurers' submit to the Division of Workers' Compensation. The self-insurers' premium is not comparable to the manual premium rate of commercial insurers because the self-insurance data does not include an expense loading factor or a reserve factor. The self-insurers' pure premium has thus been increased to reflect these two other components of workers' compensation costs. The actual ratio of paid losses to reserves for each of these years in commercial insurers' incurred losses and the 38.8% expense loading which was applicable to commercial carriers until January 1, 1978 have been used to make this correction. The results, outlined in the last two columns in Table II, can be called "premium equivalents" for these self-insurers. These premium equivalents range widely above and below the average manual rate for commercially insured employers throughout the state.

The overall data for self-insurers also brings into question the cost advantages of self-insurance. The total payroll of reporting self-insurers in the state in 1976 was $1,291,953,694. Their workers' compensation payments in that year were $10,747,251, which yields a pure premium of $.83 on $100 of payroll. If this is increased by the same reserve and expense factors as was done for the pure premiums for the four self-insurers above, the resulting average self-insurers' premium equivalent is $2.42, which is $.03 more than the commercial average manual rate. Ten public employers whose self-insurance data was examined had a total payroll of $332,188,407 and total workers' compensation benefits payout of $3,057,659 in 1976 for a pure premium of $.92. Adding the reserve and expense factors produces a premium equivalent for these public self-insurers of $2.52, $.13 above the statewide commercial average.

TABLE II

WORKERS' COMPENSATION COST RATIOS: 1971-1976
FOUR MINNESOTA SELF-INSURERS

	1971	1972	1973	1974	1975	1976	Total	Pure Premium (Cost per $100 of Payroll) Average 1971-76	Pure Premium (Cost per $100 of Payroll) in 1976	Premium Equivalents Average 1971-76[2]	Premium Equivalents in 1976 [2]
HORMEL											
Mn. Payroll (in millions)	56	57	53	59	64	67	356				
WC Payments[1] (in thousands)	329	357	371	526	732	1,292	3,607	$1.01	$1.93	$1.65	$3.15
DAYTONS											
Mn. Payroll (in millions)	61	69	70	80	85	101	466				
WC Payments[1] (in thousands)	291	435	441	461	546	591	2,765	$ .59	$ .59	$ .96	$ .96
HONEYWELL											
Mn. Payroll (in millions)	152	149	160	180	183	200	1,024				
WC Payments[1] (in thousands)	671	762	842	809	1,333	2,185	6,602	$ .64	$1.09	$1.05	$1.78
U.S. STEEL											
Mn. Payroll (in millions)	60	74	84	93	94	98	503				
WC Payments[1] (in thousands)	804	953	937	972	1,836	2,062	7,564	$1.50	$2.10	$2.45	$3.43

1 Figures include special fund assessment and are increased by the reserve factor applicable to commercial insurers in that year.

2 Figures include the 38.8% expense loading applicable to commercial insurers. Because of the inclusion of the special fund assessment before the reserve factor is applied the premium equivalents are overstated by approximately 1-3%.

If self-insurers' reserving and administrative costs were equivalent to those of commercial insurers, this data would suggest that self-insurance was not less expense than commercial insurance. Since self-insurers are generally firms which commercial carriers would regard as better risks and since they would all qualify for experience-rated retrospective plans and premium discounts, this data alone would even suggest that self-insurance was significantly more expensive than commercial insurance.

Both the reserving and the administrative practices of self-insurers, however, are sufficiently different from those of commercial insurers that this conclusion may be unwarranted. Self-insurers are often said to reserve less than commercial insurers and their administrative costs are generally reported to be lower, as low as 10% in comparison with the 38.8% of commercial insurers' in this period. If this were so, the premium equivalents calculated above on the basis of reserves and expenses of commercial insurers would be decreased and self-insurance might begin to seem an attractive alternative to commercial insurance and proof that commercial insurers are overcharging or inefficient.

Unfortunately the practices of self-insurers in reserving and administering workers' compensation are so different from those of commercial insurers that comparison is not very easily accomplished. The meaning of the terms is even different. Reserves for commercial insurers are a specific proportion of premium, received from the employer and invested against future payments on current claims and potential future claims on an actuarial basis. Reserves for self-insurers, on the other hand, are merely a balance sheet item, rather than a specific account. The self-insuring firm must simply have assets which justify a Division of Workers' Compensation decision that "reserves" are available in an amount equal to outstanding liability plus one year's projected liability. How the self-insurer calculates its outstanding liability and what it does with the money are not routinely regulated by the division, though some self-insurers have been required to "recalculate" the former figure. The money is available for other operations and is subject, of course, to

other corporate obligations. The availability of these funds is one of the major attractions of self-insurance to employers. The trade-off, of course, is that such reserves are less secure than those of commercial insurance users.

There is another difference between self-insurers' and commercial insurers' reserving. Commercial insurers may be said to have an incentive to overstate necessary reserves, since a rate increase will presumably provide the requisite revenue and additional investment income will be gained. Self-insurers, on the other hand, have an incentive to understate reserves since these are a liability not covered by payments from someone else, as with the commercial insurers, and because the size of the surety bond self-insurers must furnish to the Division of Workers' Compensation is determined by their reserves. The division has had to redetermine upward the calculated reserves of several self-insurers for this reason. The fear of the division is that understated revenues will prove inadequate to cover already current claims if a self-insurer liquidates or merges, since taxpayers would then have to shoulder the workers' compensation obligations of the firm.

Administrative cost comparisons between self-insurers and commercial insurers are similarly difficult to make. Self-insurers do not provide information to state agencies on their cost breakdowns, if indeed they actually have such information. There are reasons, in any case, why such data would not be comparable to those of commercial insurers. Self-insurers do not make profits on their workers' compensation coverage. They do not have acquisition costs, nor do they (in most states) pay premium taxes. They often operate without calculating hidden costs such as space, or the workers' compensation-related time of those in safety work or in the legal department. For example, several of the claimed advantages of self-insurance (better claims work, greater safety efforts, more claim challenges) would clearly require higher rather than lower administrative costs, though they may reduce losses, unless these are not being directly charged to the self-insurance program as costs. Though a 10% administrative cost estimate for self-insurers is often encountered, it is not clear what, if any, actual data supports this figure

and what costs are included in it. The Minnesota private self-insurers who were solicited, in any case, could not provide any specific administrative cost data for their self-insurance programs.

Comparing the putative 10% administrative cost ratio claimed by some self-insurers with the 38.8% maximum expense loading permitted for commercial insurers is thus deceptive because the apparent costs of self-insurers are higher and because some costs to commercial insurers are not borne by self-insurers. In addition, the expense ratio of commercial workers' compensation insurance to a typical large self-insurer, eligible for premium discount, would usually be on the order of 20%, rather than 38.8%. The full amount of the commercial premium is tax deductible for the employer as a business expense, as well, while self-insurance reserves generally are not.

Whether the factors used for adding expenses and reserves to the self-insurance premium equivalents in Table II are correct or not is thus not easy to say. Though actuarily there should be no difference in reserves, the self-insurers may be reserving less than the commercial insurers. The reason for this, however, would appear to be that self-insurers can determine their own reserves, which they carry as a liability and cover with a surety bond. They thus tend to understate their reserve requirements. The "savings" in reserve costs by self-insurers, therefore, could be dangerous skimping. This, at any rate, has been the tendency observed by the Division of Workers' Compensation. Firms of the magnitude of the typical self-insurer may be able to reserve in this way without ill-effect. But the purpose of comparing self-insurers' costs to commercial rates is to isolate savings which can be replicated for those now commercially insured. Even if underreserving of the kind observed among some self-insurers were a desirable method of cost saving for larger firms, the savings represented could not be duplicated among smaller firms without considerably increasing the financial risk. Administrative costs lend themselves even less to comparative purposes. Commercial insurers' expense loading is scrutinized in the rate-making process. It is a known factor. Self-insurers' expenses are much

harder to get at. Though low "estimates" for self-insurance are prevalent it seems clear that these do not include all costs, that there are costs borne by commercial insurers and not by self-insurers and that much of any such savings would be attributable to the scale of operation of these characteristically large self-insuring firms and thus not transferable to smaller firms now commercially insuring.

Conclusions on Costs

Low administrative costs in self-insurance are something of a will o' the wisp. Many are convinced that costs are lower than commercial insurance, but no one has any actual data to prove this even for individual firms. Apparent costs to self-insurers are higher than the often-quoted 10% administrative cost. The commercial insurers' workers' compensation expense ratio, too, is roughly 20% on the policies self-insuring employers would be offered rather than the current maximum of 30.85% or the previous loading of 38.8%. In addition, certain costs to commercial insurers are not paid by self-insurers. Though it is impossible to calculate "real" cost ratios for self-insurance versus commercial insurance even on a single firm basis, a number of factors suggest that there is, on average, a parity of costs which is overcome in particular instances by circumstances which make one or the other more attractive to a specific firm. Indeed, the most knowledgeable people in self-insurance - the professional managers of self-insurance programs - believe that a commercial, retrospective, discounted workers' compensation policy is competitive with self-insurance in purely cost terms for most employers who self-insure. This is increasingly so as insurance companies permit quarterly and even monthly premium payments, rather than requiring annual prepayment of the premium, which reduces the cash flow advantages of self-insuring.

It is this cash-flow advantage in self-reserving which seems to be the single most attractive feature in self-insurance. Administrative costs are not really looked at closely - hence the absence of data - because savings there, if any, are simply a bonus. The real gain in self-insurance is that the 40 cents in reserves in each $1.00 of losses (in 1976) can be retained and

put to other interim uses by the employer, rather than be paid to an insurance company. Retention of the reserves, not disparities in calculation, appears to underlie the difference between self-insurance and commercial insurance. Actuarily, the reserves should be determined the same way. Commercial insurers may tend to overreserve and self-insurers to underreserve for institutional reasons, but aside from these tendencies, which are partly offset, at least in the self-insurers' case, there should be no major difference in reserving policies. Who holds the money seems to be what matters here.

This indirect evidence tends to support the general integrity of the premium equivalents calculated in Table II for self-insurers. The addition of the reserve factor used by commercial insurers is justified by the apparent equivalence of reserving practices, apart from the question of retention. The addition of the same expense loading as for commercial insurers is justified because, after experience-rating and discounts, the administrative cost disparity between self-insurance and commercial insurance for the same employer doesn't seem to be significant. It would be more appropriate to use a 20% expense loading here rather than 30.85% or 38.8%, to allow for the discount and experience-rating, but the comparative "premiums" of self-insurers and commercial insurers would not be affected.

There are particular cost-saving components of self-insurance which could possibly be extended to other employers - self-insurers challenge more claims than other employers, their safety work and their claims work is often better - but many of these savings and most of the overall administrative cost difference between "average" self-insurers and "average" commercially insured employers is attributable to the size of the self-insurer. Whether commercially insured or self-insured these firms insure more cheaply because they get returns to scale and because they are simply better risks than the "average" employer, or are so regarded by both the insurers and the Departments of Insurance, and Labor and Industry. Though it may be possible to save through self-insurance, the smaller the insured employer, the less return there will be for full-time workers' compensation managers, safety departments,

actuaries and claims people, and the less predictive credibility there will be in previous workers' compensation experience.

Security Requirements for Self-Insurance in Minnesota

On receiving an application for self-insurance from an employer the Department of Labor and Industry first makes a qualitative and quantitative assessment of the employer's financial condition and workers' compensation experience, the inherent dangers of the industry and other factors bearing on risk. Those employers determined to be qualified for self-insurance then provide certain financial guarantees:

1. A deposit of at least $50,000 in negotiable securities or cash.
2. $10,000,000 in reinsurance coverage for claims arising from any single occurrence, over the employer's retention of $100,000-$200,000. (In some cases more is required.)
3. A surety bond, of at least $100,000, equal to total outstanding workers' compensation liability plus one full year's projected new liability.

These requirements are unusually stringent in comparison to those of other states. Most states have a single requirement that current outstanding liability or a year's expected losses be covered by some combination of cash, reinsurance or surety. Minimums in cash or surety are generally $20,000-$25,000. Though at least five other states (New Jersey, California, Oregon, Washington, and Arizona) require a $100,000 minimum, only Arizona requires reinsurance coverage in addition and only to a maximum of $5,000,000. None of the five requires a cash deposit in addition. Indiana requires a deposit equal to ten times the last year's indemnity payments, but does not require reinsurance or cash deposits. Several states, including Utah and South Dakota, have no security requirements at all. Wisconsin generally requires cash or surety bonds only of employers with fewer than 100 employees. Iowa, too, has no minium security requirements: case by case decisions are made.

Minnesota has the highest requirements for reinsurance coverage and (with the exception of Indiana) the highest surety/reserve requirements of any state. In addition, Minnesota requires both of these and a cash deposit, while most states

require only that a given reserve level be achieved by some combination of the three. The reason for the high security requirements is fear that a major disaster and/or a bankruptcy will leave workers' compensation claims unpaid. This fear is exacerbated by the potentially high awards in some death cases and the general effect of indexing benefits, together with whatever other factors are influencing Minnesota's high "development." Under existing legislation, the General Fund of the State of Minnesota, rather than other self-insurers or workers' compensation insurers generally, would be liable for any unpaid claims. Under the circumstances, the Department of Labor and Industry feels bound to insure that there are adequate guarantees to prevent a claim on the General Fund.

These requirements, however, are the highest in the nation. They are burdensome even to very large self-insurers, as is illustrated by the actual decline in the number of self-insurers over the last three years. The escalation of workers' compensation costs would certainly have made self-insurance more attractive otherwise. The security requirements will be even more prohibitive to smaller employers who wish to jointly self-insure under the 1978 amendment to Minnesota Statutes, Section 176.181, Subdivision 2, due to take effect next August.

There are several ways to relax the security requirements without increasing the risk of unpaid claims coming back to the state. One is simply to assess all self-insurers for a self-insurance Security Fund to cover all claims unpayable because of insolvency and/or above a certain upper limit on self-insurer liability. This could be done on a continuous basis or authority could be given by statute to do so when an insolvency arose. Michigan has such a fund covering self-insurance bankruptcies. Self-insurers are assessed .25% of workers' compensation payments annually to maintain this fund, which is administered by the self-insurers themselves. There is authority to increase the assessment to 3% when the need arises. Wisconsin also has such a fund, whose assessments are triggered only in case of an insolvency. Such an assessment would be less of a burden on the self-insurer than the combination of cash deposit, surety bond and very high reinsurance now required (especially since reinsurance and surety

bonds are becoming difficult to obtain) and would parallel the joint liability now imposed on commercial workers' compensation insurers for the bankruptcy of any insurance company. A Self-Insurance Security Fund, too, would seem a far more efficient way to provide for catastrophe and bankruptcy than requiring each self-insurer to provide fully against the remote possibility of disaster to his own firm.

The other method of providing security for workers' compensation claims against self-insurers while reducing employer financial requirements is to permit the state to offer reinsurance coverage, either to self-insurers alone or to all workers' compensation insurers. The state could presumably insure to any level of liability caused by disaster or bankruptcy and increase the premium to cover particular disasters as necessary, just as a Self-Insurance Security Fund could. The most effective way for state reinsurance to distribute these losses would be as a monopoly provider of reinsurance either to self-insurers alone or to all workers' compensation insurers above a certain liability level. Such a state reinsurance fund could operate as a component of a state competitive or monopoly fund or, if these were rejected, merely as a reinsurance fund.

Either of these methods of providing against self-insurance disaster or bankruptcy could substantially reduce the financial requirements which are required of self-insuring employers. If some change is not made, self-insurance will become a less and less viable workers' compensation alternative, and it will remain essentially unavailable to smaller employers despite the joint self-insurance provision.

General Conclusions

Self-insurers' administrative costs do not appear to be as low as self-insurance organizations allege. Though non-comparability and inadequate data pose problems, it would seem that actual administrative costs to a given firm are roughly equivalent under self-insurance and under a commercial experience-rated and discounted plan. Any competitive advantage depends on specific circumstances. The major attraction of self-insurance is

the cash flow advantage of self-reserving, rather than low administrative costs.

Though workers' compensation costs to the average self-insurer are in fact lower than they are for the average commercial insurer, this has to do with the size advantage of the average self-insurer rather than any inherent advantage of self-insurance. Most of these savings, as well as the claims control and safety advantages of self-insurance, would thus not be realizable by smaller self-insurers unless they were to jointly self-insure.

Self-insurance is a viable option in workers' compensation for many employers, however, and could be for many others if joint self-insurance were to become a reality. This will not be possible unless the very high financial requirements for self-insurance in Minnesota are relaxed. Through the use of a Self-Insurance Security Fund or state reinsurance, it would be possible to lower requirements and thus extend self-insurance to smaller firms without increasing the risk of unpaid workers' compensation claims.

APPENDIX I

MINNESOTA SELF INSURERS WORKERS' COMPENSATION BENEFIT STATISTICS-1976

COMPANY	Indemnified Injuries	Medical Only Injuries	Total Injuries	Post-1971 Injury Indemnity Payments	Pre-1971 Injury Indemnity Payments	1976 Medical Payments	Total Comp. Paid-1976	Special Comp. Death Payments	Special Comp. Fund Payment (17%)	1976 MN Payroll	1976 WC Cost Ratio 7 ÷ 10
Admiral-Merchants Motor Freight	9	24	33	18,106.14	10,165.00	7,497.50	35,768.64	0	3,078.04	3,385,044	
American Can Company	20	138	158	62,657.00	2,034.00	36,118.00	100,809.00	0	10,651.69	11,300,000	
American District Telegraph Co. of Mpls.	1	2	3	540.00	0	183.50	723.50	8	91.80	-	
American District Telegraph Co., of MN	1	4	5	459.00	0	640.60	1,099.60	0	78.03	-	
American Telephone & Telegraph Co.	0	1	1	0	0	130.65	130.65	0	0	5,448,181	
Armour & Company	331	284	615	522,808.60	61,423.27	197,525.79	781,757.66	0	88,877.46	37,321,522	
American Oil Company	33	95	128	69,479.82	5,120.00	38,280.59	112,880.41	0	11,811.57		
BN Transport, Inc.	1	1	2	270.00	2,920.00	296.50	3,486.50	0	45.90	429,247	
Balkan Mining Company	0	0	0	0	10,304.00	404.65	10,708.65	0	0		
Banquet Foods Corp. of Minn.	23	48	71	15,069.55	5,992.03	6,693.42	27,755.00	0	2,561.82	158,806	
Bethlehem Steel Corporation	0	4	4	0	0	292.00	292.00	0	0		

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MINNESOTA SELF INSURERS WORKERS' COMPENSATION BENEFIT STATISTICS-1976

COMPANY	Indemnified Injuries	Medical Only Injuries	Total Injuries	Post-1971 Injury Indemnity Payments	Pre-1971 Injury Indemnity Payments	1976 Medical Payments	Total Comp. Paid-1976	Special Comp. Death Payments	Special Comp. Fund Payment (17%)	1976 MN Payroll	1976 WC Cost Ratio 7 ÷ 10
Beatrice Foods Company	28	429	457	118,286.23	2,100.56	57,994.71	178,381.50	0	20,108.66	14,999,976	
Butler Brothers	0	0	0	0	0	0	0	0	0	0	
Borden, Inc.	0	0	0	0	0	0	0	0	0	0	
Boise Cascade Corporation	139	418	557	396,246.51	36,895.58	284,746.45	717,888.54	0	67,361.91	33,533,596	
Braham Monument Co.	0	1	1	672.00	2,555.00	nil	479.65	nil	276.99		
Brundige & Carr											
Consolidated Papers, Inc.	0	0	0	0	0	0	0	0	0		
Container Corp. of America	5	26	31	13,544.88	0	2,289.66	15,834.54	0	2,302.62		
Control Data Corporation											
Chicago Bridge & Iron Co.	1	27	28	4,878.75	0	1,244.47	6,123.22	0	829.39	1,094,000	
Cleveland-Cliffs Iron Co.	3	20	23	979.98	0	1,516.78	2,496.76	0	166.60	3,027,775	
Cold Spring Granite Co.	38	43	81	65,758.23	2,640.00	38,191.07	106,589.30	0	11,178.90	6,390,807.37	
Consolidated Freightways Corp.	20	70	90	24,717.22	15,989.65	14,321.27	55,028.14	0	4,201.93		

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COMPANY	Indemnified Injuries	Medical Only Injuries	Total Injuries	Post-1971 Injury Indemnity Payments	Pre-1971 Injury Indemnity Payments	1976 Medical Payments	Total Comp. Paid-1976	Special Comp. Death Payments	Special Comp. Fund Payment (17%)	1976 MN Payroll	1976 WC Cost Ratio 7 ÷ 10
Conwed Corporation	19	200	219	56,779.76	11,259.00	26,396.26	94,435.02	0	9,652.56	14,603.123	
Continental Oil Co.	3	17	20	2,174.21	0.	2,432.95	4,607.16	0	369.62	6,539.369	
Control Data Corp.	54	259	313	284,868.84	38,973.07	146,125.71	469,967.62	0	48,427.70		
Del Monte Corporation (Sleepy Eye, MN)	0	14	14	429.35	0	932.97	1,362.32	0	72.99	1,954,000	
Del Monte Corporation (Wells, MN)											
Delano Granite, Inc.	nil	nil	nil	1,760.00	2,400.00	588.80	4,166.20	4,678.31	13,004.51		
E. I. DuPont de Nemours & Co.	0	2	2	0	0	97.80	97.80	0	0	1,703,514	
Dayton Hudson Corporation	140	424	564	147,131.90	68,551.98	111,313.55	326,997.43	0	25,012.45	100,645,000	
Diamond International Corporation	5	38	43	8,974.35	1,220.16	27,635.85	37,830.36	0	1,525.64	3,105,198	
Eastman Kodak Company	1	0	1	1,080.00	0.	65.95	1,145.95	0	183.60	1,196,000	
Ecodyne Corp., Lindsay Division	16	59	75	23,009.12	0	11,816.06	34,825.18	0	3,911.55	-	
Erie Mining Company	48	1,236	1,284	232,129.85	80,704.88	78,300.24	391,224.97	0	39,462.07	30,368,534	
Ex-Cell-O Corporation	6	34	40	18,444.87	0	4,211.29	22,656.16	0	3,135.63	-	

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COMPANY	Indemnified Injuries	Medical Only Injuries	Total Injuries	Post-1971 Injury Indemnity Payments	Pre-1971 Injury Indemnity Payments	1976 Medical Payments	Total Comp. Paid-1976	Special Comp. Death Payments	Special Comp. Fund Payment (17%)	1976 MN Payroll	1976 WC Cost Ratio 7 ÷ 10
Eaton Corporation	20	68	88	25,121.96	0	35,983.67	61,105.63	0	4,270.71		
Fisher Nut Company											
Fuqua Industries, Inc.	0	0	0	0	0	170.30	170.30	0	0		
Florida, State of Casualty Risk Mgmt. Trust Fund	0	0	0	0	0	0	0	0	0		
Ford Motor Company	78	188	266	151.850.89	26,629.38	67,246.67	245,726.94	0	25,814.65	39,000,000	
Granit-Bronz, Inc.	2	7	9	654.36	0	160.31	814.67	0	111.24	702,329.9	
Grayhar Electric Company, Inc.	1	5	6	394.44	0	902.25	1,296.69	0	67.05	1,467,462	
Greyhound Lines, Inc.	25	27	52	25,273.57	4,420.50	26,328.06	56,022.13	0	4,296.51	5,085,119	
Great-West Life Insurance Co.	nil	nil	nil	nil	nil	nil	nil	nil	nil		
B. F. Goodrich Company	1	17	18	10,796.75	0	1,926.06	12,722.81	0	1,835.45		
Greif Bros. Corp.	8	21	29	11,396.45	0	8,227.99	19,624.44	0	1,937.40	2,140,659	
Graco, Inc.	12	67	79	18,806.03	0	21,003.75	39,809.78	0	3,197.03	12,021,393	

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Honeywell, Inc.	223	350	573	672,803.59	170,152.75	344,829.84	1,187,786.18	nil	114,376.61	199,542,000	
Hanna Ore Mining Company	50	332	382	137,848.56	39,851.35	122,765.70	300,465.61	0	23,434.20	31,618,000	
Hanna Ore Mining Co.	0	0	0	0	0	0	0	0	0		
Hercules Incorporated	1	21	22	1,889.29	0	4,868.30	6,757.59	0	321.18	2,073,316	
Hibbing Taconite	6	41	47	2,852.74	n/a	5,506.04	8,358.78	n/a	484.90		
Holiday Inns, Inc.	11	28	39	16,933.89	0	22,872.30	39,806.19	0	2,878.76	3,253,526	
George A. Hormel & Company	393	5,735	6,128	451,735.48	91,500.64	150,042.66	693,278.78	0	76,795.01	66,838,622	
Honeywell Information Systems											
Inland Steel Company	0	6	6	0	0	129.30	129.30	0	0	-	
International Harvester Co.	9	64	83	55,919.43	3,447.58	19,305.53	78,672.54	0	9,506.30	9,190,000	
Iowa Beef Processors, Inc.	4	59	63	14,850.00	0	11,219.00	26,069.00	0	2,524.50	2,429,000	
International Paper Co.	13	39	52	22,589.89	0	12,792.45	35,382.34	0	3,840.28	-	
Jones & Laughlin Steel Corp	6	44	50	60,443.62	24,151.00	23,562.77	108,157.39	0	10,275.42	7,250,000	

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COMPANY	Indemnified Injuries	Medical Only Injuries	Total Injuries	Post-1971 Injury Indemnity Payments	Pre-1971 Injury Indemnity Payments	1976 Medical Payments	Total Comp. Paid-1976	Special Comp. Death Payments	Special Comp. Fund Payment (17%)	1976 MN Payroll	1976 WC Cost Ratio 7 ÷ 10
Koppers Company, Inc.	3	12	15	27,063	24,060.00	6,292.00	57,415.00	0	4,600.71		
K-Mart Corp. (S.S. Kresge)	27	196	223	8,996.85	0	17,013.91	26,010.76	0	4,421.83	11,000,872.41	
Lampert Lumber Co.	6	70	76	22,200.54	0	16,442.20	38,642.74	0	3,774.09	5,298,076	
Lampert Yards, Inc.	4	22	26	7,193.98	3,171.12	6,416.00	16,781.10	0	1,222.98		
Litton Industries, Inc.	197	309	506	226,994.08	0	103,568.63	330,562.71	0	38,589.00	35,200,000	
Mobil Oil Corporation	6	8	14	13,660.99	5,297.50	14,648.84	33,607.33	0	2,322.37		
Mahoning Ore & Steel Co.	0	0	0	0	19,366.87	594.10	19,960.97	0	0		
Mayo Foundation	21	40	0	0	0	17,624.90	17,624.90	0	0	89,836,027	
Mesabi-Cliffs Mining Co.	0	0	0	0	3,640.00	663.08	4,303.08	0	0		
Minnesota Power & Light Co.	14	102	116	31,168.29	8,966.08	37,457.24	77,591.61	1,326.00	5,610.29	18,129,722	
Montgomery Ward & Company	56	254	310	142,878.70	28,700.05	75,033.40	246,612.15	0	24,289.38	31,388,629	
Minnesota Gas Company	31	95	126	84,600.66	5,343.00	40,195.98	130,139.64	0	14,382.11	26,238,362	
Mutual Benefit Life Ins. Co.	0	0	0	0	0	0	0	0	0	366,325.61	
Murphy Motor Freight Lines	35	76	111	71,585.37	12,612.00	25,343.79	109,541.16	0	12,169.51	11,490,995	
Munsingwear, Inc.	38	77	115	61,850.78	15,288.00	52,136.04	129,424.58	0	10,514.63	13,946.781	
National Can Corporation	3	16	19	12,966.20	0	5,358.78	18,324.98	0	2,204.25		

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National Supermarkets, Inc.	53	160	213	103,405.21	16,865.00	35,186.33	155,456.54	0	17,578.89	14,492,963	
Nabisco, Inc.	20	29	49	127,479.98	5,372.00	62,835.54	195,687.52	0	21,671.60		
National Tea Company											
Northern Minnesota Self-Insurers Assoc.											
Northwestern Bell Telephone Co.	36	252	288	60,733.13	5,837.50	62,125.81	128,696.44	0	10,324.61		
National Steel Corporation	0	0	0	0	0	0	0	0	-		
Northern Natural Gas Co.	2	26	28	12,834.35	0	6,310.11	19,144.46	0	2,181.84	4,931,836	
N L Industries, Inc.	0	2	2	3,850.00	0	924.40	4,774.40	0	654.50	403,200	
Northern States Power Co.	281	681	962	379,644.79	87,394.69	379,142.45	846,181.93	0	64,539.61	99,717,215	
Pickands Mather & Co.											
Phillips Petroleum Company	2	15	17	13,175.90	0	5,563.60	18,739.50	0	2,239.90		
PPG Industries, Inc.	2	10	12	3,158.55	571.50	3,510.86	7,240.91	0	536.95	-	

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COMPANY	Indemnified Injuries	Medical Only Injuries	Total Injuries	Post-1971 Injury Indemnity Payments	Pre-1971 Injury Indemnity Payments	1976 Medical Payments	Total Comp. Paid-1976	Special Comp. Death Payments	Special Comp. Fund Payment (17%)	1976 MN Payroll	1976 WC Cost Ratio 7 ÷ 10
Potlatch Forest, Inc.	57	218	275	141.822.91	6,489.90	72,411.78	220,724.59	0	24,109.89	33,610,100	
Portec, Inc. - Pioneer Div.	17	101	118	63,716.00	6,138.00	36,175.00	106,029.00	0	10,831.72	6,821,000	
Parker Hannifen Corp.	10	41	51	8,868.00	0	4,502.00	13,370.00	0	1,507.56		
Roadway Express, Inc.											
Royal-Melrose Granite Co.	8	13	21	11,373.82	0	10,834.10	22,207.92	0	1,933.54	459,119.86	
Republic Steel Corporation	0	0	0	0	0	0	0	0	0	243,627	
Reserve Mining Company	41	94	135	101,010.98	41,919.69	83,696.06	226,626.73	0	17,171.87	44,356,763	
S.C. Trading Corp. & Shoppers City Drug Co.	32	175	207	26,107.38	0	26,383.27	52,490.65	0	4,438.25	11,304 (53 weeks)	
Rehabilitation Resources, Inc.											
SCM Corporation	-										
Sears, Roebuck & Company	89	363	452	99,004.66	7,568.33	114,166.29	220,739.28	0	16,830.79	50,868,000	
Shell Oil Company	1	3	4	108.00	7,639.50	243.50	7,991.00	0	18.36	539,883	

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COMPANY	Indemnified Injuries	Medical Only Injuries	Total Injuries	Post-1971 Injury Indemnity Payments	Pre-1971 Injury Indemnity Payments	1976 Medical Payments	Total Comp. Paid-1976	Special Comp. Death Payments	Special Comp. Fund Payment (17%)	1976 MN Payroll	1976 WC Cost Ratio 7 ÷ 10
Skelly Oil Company	3	7	10	7,992.00	2,740.00	10,806.62	21,538.62	0	1,358.64	1,912,935	
Spector Freight System											
Standard Oil Co.											
Standing Packing Corp.	33	68	101	31,806.91	0	22,453.83	59,260.74	0	5,407.17	263,004	
Stokely-VanCamp, Inc.	22	71	93	33,815.02	0	13,533.53	47,348.55	0	5,748.55	3,284,305	
Target Stores											
Toro Manufacturing Corporation	56	269	325	62,163.04	3,646.90	59,878.42	125,688.36	0	10,567.72	13,016,431	
Union Oil Company of California	3	23	26	2,384.00	4,419.00	5,522.30	12,325.30	0	405.28	2,486,000	
United Air Lines, Inc.	4	5	9	22,057.00	0	5,886.55	27,943.55	0	3,749.69	1,606,000	
United States Steel Corp.	84	1,079	1,163	618,199.04	245,619.66	260,482.61	1,124,251.31	0	105,085.33	97,904,637	
Werner Continental, Inc.	15	68	83	17,075.94	0	11,059.50	28,135.44	0	2,906.32		
Western Electric Company	8	1	9	2,325.90	0	2,779.60	5,105.50	0	395.40	10,496,948	

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COMPANY	Indemnified Injuries	Medical Only Injuries	Total Injuries	Post-1971 Injury Indemnity Payments	Pre-1971 Injury Indemnity Payments	1976 Medical Payments	Total Comp. Paid-1976	Special Comp. Death Payments	Special Comp. Fund Payment (17%)	1976 MI Payroll	1976 WC Cost Ratio 7 ÷ 10
Western Union Telegraph Co.	1	3	4	5,335.00	0	243.00	5,578.00	0	906.95	2,652,318	
Wilson & Co.	469	218	687	415,803.27	44,886.61	112,139.33	572,829.21	0	70,685.56	24,756,000	
Weyerhaeuser Company	8	83	91	50,110.00	5,363.00	25,017.00	80,490.00	0	8,518.70	5,023,000	
Yellow Taxi Company	11	20	31	30,341.09	0	21,798.75	52,139.84	0	5,157.99		
Yellow Freight System, Inc.	13	34	47	36,215.49	0	21,984.17	58,199.66	0	6,156.63	2,996,149	
							10,747,251.26		*	1,291,953,694.57	.0083 or 83¢ per $100 of payroll

* Though Special Fund payments are an additional workers' compensation expense they are not included in premium equivalent for self-insurers since they are excluded from commercial insurers manual premium.

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COMPANY Political Subdivisions	Indemnified Injuries	Medical Only Injuries	Total Injuries	Post-1971 Injury Indemnity Payments	Pre-1971 Injury Indemnity Payments	1976 Medical Payments	Total Comp. Paid-1976	Special Comp. Death Payments	Special Comp. Fund Payment (17%)	1976 MN Payroll	1976 WC Cost Ratio 7 ÷ 10
Metropolitan Waste Control Commission											
Metropolitan Transit Operating Division	263	231	664	442,781.26	32,390.00	201,221.44	676,392.70	0	75,272.81	27,693,000	
Metropolitan Airports Commission											
Metropolitan Council											
Metropolitan Sports Area Commission											
Metropolitan Mosquito Control											
Special School Dist. #1	73	126	299	190,088.61	24,954.25	103,937.03	318,979.89	0	32,315.06	87,836,000	
City of Minneapolis	281	507	1,176	546,771.04	203,470.25	271,321.30	1,021,562.59	0	92,951.00	84,977,154	
Mpls. Park & Rec. Board	22	19	41	41,868.51	120.00	13,299.34	55,287.85	0	7,117.63	7,943,388	
St. Paul - Ramsey Hospital											
St. Louis County	53	68	121	105,424.85	24,292.00	47,295.08	117,011.93	0	17,922.22	3,378,765.19	

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COMPANY	Indemnified Injuries	Medical Only Injuries	Total Injuries	Post-1971 Injury Indemnity Payments	Pre-1971 Injury Indemnity Payments	1976 Medical Payments	Total Comp. Paid-1976	Special Comp. Death Payments	Special Comp. Fund Payment (17%)	1976 MN Payroll	1976 WC Cost Ratio 7 ÷ 10
City of New Ulm	7	37	44	2,705.47	2,045.41	6,269.32	11,020.20	0	459.91	972,428.53	
City of Rochester	23	47	70	27,277.14	13,421.10	38,744.80	79,443.04	105.60	4,637.11	883,640.00	
City of St. Paul 647 Court House	147	270	417	83,421.50	241,106.39	234,109.72	558,637.61	0	14,181.66	48,925,902.00	
City of St. Paul Water Dept.	11	15	26	7,799.63	35,583.94	25,916.92	69,300.49	0	1,325.94	5,005,692.00	
Ramsey County											
Hennepin County											
Ind. School Dist. 625 St. Paul	56	113	254	80,807.25	5,980.00	63,235.83	150,023.08	0	13,737.23	64,572,438.00	
							3,057,659.38		*	332,188,407.75	.0092 or 92¢ per $100 of payroll

* Though Special Fund payments are an additional workers' compensation expense they are not included in premium equivalent for self-insurers since they are excluded from commercial insurers manual premium.

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B. NEW YORK'S REOPENED CASE FUND

Since 1944, the state of New York has had a "reopened case fund" which relieves insurers of certain workers' compensation liability. Section 25-a of the New York Workers' Compensation law provides that when an application for compensaton is filed under certain conditions and an award is made, the award is the liability of the state fund rather than the insurance carrier. These conditions are as follows:

(a) when an application is made after the lapse of seven years from the date of the injury or death and claim for compensation previously has been disallowed or claim has otherwise been disposed of without an award, or

(b) after the lapse of seven years from the date of injury or death and also a lapse of three years from the date of the last payment of compensation, whichever is later, or

(c) where death resulting from the injury shall occur after the time limited by the foregoing provisions of (a) or (b) shall have elapsed.

In addition, no reopenings may be made against the fund after a lapse of 18 years from the date of injury or death and also a lapse of 8 years from the date of the last payment of compensation. However, this restriction does not apply to medical treatment.

Financing of the fund comes in part from an annual assesment against carriers and self-insurers and part by the payment of $3,000 by the respective carriers or self-insurers in death cases in which there are no persons entitled to compensation. Each year the fund administrators determine the fund's liability and make an assessment which, when combined with the fund's assets, will cover the potential liability. The statute provides that "there shall be maintained in the special fund at all times assets at least equal in value to the sum of (1) the value of awards charged against such fund, (2) the value of all claims that have been reopened by the board as a charge against such fund but as to which awards have not yet been made, and (3) a reserve equal to ten percent of the sum of items (1) and (2)."

This type of fund might assist in alleviating the problems insurers contend they have in establishing reserves for injuries since it is impossible for them to know when their liability ends. As a result of this uncertainty, overreserving may be occurring which, in turn, drives up rates.

C. STATE COMPENSATION INSURANCE FUND

Workers' compensation statutes require employers to provide certain benefits to employees injured on the job or suffering from a work-related occupational disease. To guarantee compliance with the law, employers are required to provide insurance or security provisions which demonstrate their ability to satisfy their compensation obligations.

Minnesota employers provide for workers' compensation through private insurance or self-insurance, the latter being available primarily to larger employers who can satisfy relatively strong security arrangements. Minnesota Statutes 176.181, Subd. 2 (1976) was amended in the 1978 legislative session to allow smaller employers to join together for self-insurance purposes, but this amendment will not be effective until August 1, 1979.

In addition to private insurance and self-insurance, workers' compensation insurance may also be provided by state compensation insurance funds. Eighteen states currently operate state insurance funds. In some instances, these are exclusive funds, that is, they operate as the only source of coverage available to employers. In other instances, state funds operate in competition with private insurance carriers. For all practical purposes, state funds, whether exclusive or competitive, have the same characteristics and operate as insurance companies. The eighteen state funds are insurers with the common characteristic that they have a public charter and are not profit-oriented.

During the proceedings of the Workers' Compensation Study Commission, testimony was received from representatives of exclusive fund states, Ohio and Washington, and competitive fund states, California and Colorado. The state fund alternative provides another workers' compensation insurance option which

could be made available to employers of Minnesota as a means of satisfying their compensation obligations.

MINNESOTA

The establishment of a state compensation insurance fund is not a new concept to Minnesota. Numerous bills which would create an exclusive or competitive state fund have been introduced in the Minnesota Legislature.

As early as 1921, a Special Interim Committee of the Minnesota House of Representatives was given the charge: "to thoroughly and carefully investigate and consider the entire subject of State Industrial Accident Compensation and a State Industrial Accident Fund."* The majority report of the Committee stated, "...the fundamental purposes of the compensation law may be better accomplished for the state of Minnesota through a system of administration by an Industrial Commission, without providing for a monopolistic or competitive state fund."

In advocating the creation of a state fund, Representative Thomas J. McGrath states in the minority report,

> "The administration of workmen's compensation through state funds is no longer an experiment. The state funds are in operation in seventeen states and territories, either as exclusive state funds or in competition with private carriers. .. The operation of these funds has proven successful beyond doubt. The service rendered by state fund administrative bodies is equal to the service rendered by private carriers in all respects except perhaps safety regulation."

The workers' compensation delivery system in Minnesota has been examined by several other legislative commissions. One reason for the Report of the Interim Commission on Workers' Compensation submitted to the Minnesota Legislature of 1953 was that, "The insurance buyers in this state have made persistent complaints that the compensation insurance rates are excessive

* "Workmen's Compensation - Majority and Minority Report of the Special Interim Committee of the House of Representatives," Minnesota Legislature, 1921, p. 11,16.

and result in unwarranted profits for the insurance companies."* This report found that for the years from the depression until 1950 the insurance industry had collected a substantial sum of excess premiums from writing workers' compensation insurance in Minnesota.+

Another study, conducted in 1962 by the Compensation Insurance Board, was written by C. Arthur Williams, Jr., of the University of Minnesota and a member of the present Study Commission. This study compared Minnesota and Wisconsin workers' compensation insurance rates. The report concluded that "Minnesota workers' compensation insurance rates are higher than the Wisconsin rates on the average and for most rating classes."++

In the sixteen years since the issuance of this report, the contrast between Minnesota and Wisconsin workers' compensation insurance rates has become even more dramatic. The result of the difference in workers' compensation insurance rates in Minnesota and the surrounding states has become a primary concern to management, labor, and the public at large. This situation has become the central issue of most discussions regarding the "business climate" in Minnesota. The Workers' Compensation Study Commission was created by the 1977 Legislature (Laws 1977, Chapter 342, Section 27, amended by Laws 1978, Chapter 797) in response to this concern.

In addition to other directives, the Study Commission was instructed to study and report on "the various methods of providing workers' compensation insurance to employers in other jurisdictions." The focus of this section shall be on the State Compensation Insurance Funds.

OTHER STATES

Presently, the insured premium for workers' compensation insurance is handled by the 18 State Compensation Insurance Funds and more than 500 private insurance carriers. The state fund concept has been operational in workers' compensation insurance since the early part of the 20th century.

* "Report of the Interim Commission on Workmen's Compensation," submitted to the Minnesota Legislature, 1953, p.9.
+ Op. cit., p. 18-31.
++ "A Comparative Analysis of Minnesota and Wisconsin Workmen's Compensation Insurance Rates," Compensation Insurance Board (Documents Section), June, 1962.

Eighteen states, Puerto Rico, the Virgin Islands, and all the Canadian provinces have public workers' compensation funds that fall into one of two categories: (1) exclusive funds, or (2) competitive funds.

Exclusive state funds write all of the workers' compensation insurance in six states--Nevada, North Dakota, Ohio, Washington, West Virginia, and Wyoming. Puerto Rico and the Virgin Islands are also exclusive state fund jurisdictions. All Canadian provinces operate exclusive provincial funds.

The states of Arizona, California, Colorado, Idaho, Maryland, Michigan, Montana, New York, Oklahoma, Oregon, Pennsylvania, and Utah operate competitive state funds. In these states private insurers compete directly with the state funds, and self-insurance is also allowed. Oregon is the only state that has substantially altered the method in which workers' compensation insurance is provided. In 1966, a change in the nature of one of the eighteen state funds was made when the Oregon State Fund was changed from an exclusive fund to a competitive fund.

Texas is the only state that requires an employer insure his liability with a private insurance carrier. Six states have an exclusive state fund with which all employers are required to insure. Three of the exclusive fund states permit self-insurance. Thirty-one states allow self-insurance or coverage through private carriers. Twelve states offer all three options, self-insurance, insurance through a competitive state fund, or insurance through private carriers. In Canada, all provinces have boards or commissions with complete jurisdictional and administrative powers in matters relating to workers' compensation. These boards or commissions are similar in concept and organization to exclusive state funds. The territory of Guam, like Texas, requires employers to insure with private insurance carriers. The method(s) in which employers of each state insure their workers' compensation obligation is displayed in Exhibit 1.

The formation of state funds serves three basic purposes:

(1) to provide a non-profit source of insurance to employers at the lowest possible costs;

(2) to provide a guaranteed source of insurance available to all employers as a means of assuring the full measure of benefits to the insureds, and

(3) to provide a yardstick for the cost of workers' compensation insurance against which the performance of the private carriers could be measured.

State funds vary considerably in size and the share of the market they have been able to capture. These funds have had a significant impact on the workers' compensation market itself. There are twelve states in which employers have the option of securing coverage with the state fund or private insurance. In eight of those twelve states, the state fund is the leading carrier in premium volume (see Exhibit 2).

Comparison of Insurer Operations

> "...there is no magic in State insurance that guarantees high standards of service at low expense; and there is also no magic in private insurance that transmutes higher expense into superior service."*

Quantitative assessments of the various methods of insuring workers' compensation have been attempted a number of times, but few conclusive opinions have been drawn regarding the advantages of state funds versus private insurers or vice versa. The available data cannot support an opinion in favor of the effectiveness of one type of insurer over another in the management of the injured or the disabled. However, two features do stand out about state funds when compared to private insurers. First, state funds operate on a very low expense loading percentage as compared to private insurance companies, and are therefore less expensive to operate. Second, and this feature may be a corollary of the first, state funds consistently operate with very high benefit (loss) to premium ratios, or in other words, they return a greater percentage of their income to the injured worker/dependent than private insurance. These facts are displayed in Exhibits 3, 4, 5.

Probably much of the reason for the low expense figures is that most state funds have, at best, rudimentary sales staffs

* Reede, Arthur H., Adequacy of Workmen's Compensation, Cambridge: Harvard University Press, 1947, p. 304.

and, therefore, very low sales and acquisition costs. In Minnesota, commissions amount to about seven percent of premiums for stock carriers and about half that amount for non-stock carriers. Six of twelve competitive state funds report a line expenditure for acquisition, but this item averages less than three percent for these states. State funds also sometimes incur slightly lower loss adjustments (claims) expenses than the eight or nine percent of earned premiums incurred by private insurers. The lower loss adjustment expense is probably due to less local claim service and lower salaries of fund employees. Additionally, administrative costs are lower probably due to lower salaries, reduced loss prevention (safety) activities, high levels of computerization and economies of scale due to large size and specialization. In addition, some state funds are free from most taxes. Whatever the source of the expense differential, state funds appear to provide a premium savings for the employers required to purchase workers' compensation insurance.

Exhibit 11 summarizes the importance of investment income in the operations of the state funds. It is primarily this investment income, sometimes equal to over 25 percent of annual premiums, that allows state funds to operate with very high loss ratios (sometimes exceeding 100 percent for several years in succession) and still remain solvent. This also demonstrates that the total disregard of investment income in the rate formulas of Minnesota and other private insurance states may contribute to unnecessarily higher general premium levels.

Income available to private insurers and state funds may be used in different ways. Investment income realized by private insurers may be returned to policyholders through dividends. Since workers' compensation insurance rates are consistent throughout the industry, dividends offer the only competitive aspect of selling this line of insurance. State funds generally realize significantly higher investment income due to their highly capitalized financial structure (see Exhibit 3). Often a state fund's investment return was of such magnitude that it surpassed the aggregate expenses excluding incurred losses.

That state funds return a greater percentage of their income to injured workers is due to these factors and to their non-profit orientation (see Exhibits 4, 5).

> "State funds clearly return a larger portion of their premium income to injured workers than do private insurers. Furthermore, exclusive State funds have higher benefit ratios than do competitive State funds. When benefit ratios are adjusted for dividends, the benefit ratios of private insurers and especially competitive State funds are increased substantially, but the relative positions of the three types of insurers are unchanged. If losses-incurred data, based on adequate reserves, could be substituted for the losses paid reported by some State funds, their benefit ratios would be further increased."*

A recent study prepared for the U. S. Department of Labor compared the performance of state funds, self-insurers, and private insurance carriers in several different aspects of workers' compensation administration ("Workers Compensation: Analysis of Insurer Operations," prepared for the USDL by Teknekron, Inc., Berkeley, California, October 1977). The study found that state funds generally began payment of benefits as quickly as private insurers (V-9). The study also found evidence showing that state funds probably spend at least as much on safety and accident prevention as do private insurers (page VI-2). In addition, in a survey of five states, in every case the state fund forced a lower percentage of workers' compensation claimants into litigation than did private insurance carriers (or self-insurers, also, for that matter, when that data was available, page V-14). This lower level of litigation should not be minimized as a source of workers' compensation administrative cost. There is some evidence to suggest that Minnesota residents may be especially litigation prone, as is addressed in another section of this report.

The summary of the Teknekron study states, "From all points of view, state funds differ dramatically among themselves, and despite their so-called non-profit orientation, often resemble private carriers. There is no evidence to suggest that state

* Williams, C. Arthur, Jr., Insurance Arrangements Under Workmen's Compensation, Bureau of Labor Standards Bulletin Number 317 (Washington, D.C.), 1969, p. 198.

funds provide more or less service to employers or to workers than do private carriers, but with some exceptions, they are clearly higher capitalized than private carriers."

The Cost of Establishing a Minnesota State Compensation Insurance Fund

Workers' compensation insurance premiums are composed of two parts: (1) the "pure premium" portion, which is designed to cover expected losses, and (2) the "expense loading" portion, which is designed to provide the funds necessary for the operation of the business. The expenses involved in the establishment of a State Compensation Insurance Fund (SCIF) can similarly be divided into two categories--capital fund expenses and operating expenses.

THE CAPITAL FUND

The premium and investment income collected by a SCIF or private insurer will pay for the expected losses and expenses of the policies written. The capital fund is money reserved for unexpected events such as unusually large losses, inadequate estimation of liability for unpaid losses, and unexpectedly poor investment results.

In any year, but particularly in the formative years, it is possible that a catastrophe could result in losses being greater than expected. A capital fund would be needed to pay for the short-term deficit.

If the loss reserves or the amounts owed on old losses are established, they are not paid immediately, but over long periods of time. Because these loss reserves are estimates of all future payments, the possibility exists that they may be underreserved (it is, of course, also possible that they may overreserve). If a deficiency is discovered in the loss reserving practices, the capital fund would be needed to make up the deficit.

The third action which could necessitate the use of the capital fund would be if the investments made by the SCIF deteriorated.

Generally, a private insurance operation will establish a

capital fund outlay of one-fourth or more of the premium it expects to write. In 1974, the ratio of earning assets to earned premium in various state funds ranged from a low of 1.50 in Oklahoma to a high of 4.38 in Arizona (see Exhibit 3).

The Woodward and Fondiller report to the State of Alaska presents three different approaches the Legislature may apply to initial capital funding.*

The first approach--conservative--is to set up an initial capital equal to 50 percent of the first year's anticipated written premium. The likelihood of a need to go back to the Legislature is very remote.

The second approach--moderately conservative--is to establish an initial capital equal to 25 percent of the first year's anticipated written premium. In this case, the likelihood of need for additional capital is still small.

The third approach--least conservative--initial capital equals 10 percent of the first year's anticipated written premium. On this basis, insolvency during the first few years, although unlikely, should occasion no great surprise, but the fund should be able to recoup its losses before running out of cash.

The moderately conservative approach of establishing an initial capital equal to 25 percent of the first year's anticipated written premium seems to be the most reasonable approach. Arriving at the anticipated writtem premium for the first year of operation is dependent upon other factors in the creation of the fund: (1) Would the fund have the exclusive right to provide coverage to the political subdivisions of the state, (2) Would the fund participate in the assigned risk pool, (3) Could the fund reject risks, or (4) Would the fund be required to accept every risk and in fact absorb the assigned risk pool, etc.

To arrive at the anticipated written premium, several assumptions must be made. In this case it is assumed that the fund would be the exclusive insurer to the political subdivisions of the state in order to guarantee it a base of normal risks. Those subdivisions which self-insure may be allowed to continue as such. Further

* "Alaska State Compensation Insurance Fund Analysis of Capital Funds Expenses and Premiums," Woodward and Fondiller, New York, 1977.

it is assumed that the fund would attain a 5 percent market share in the first year of operation. Informal discussions with the Minnesota Compensation Rating Bureau indicate that political subdivisions of the state would probably constitute 5 percent of annual premiums and may be as much as 7 to 8 percent.

Assuming that written premiums continue to grow at approximately $50-60 million a year statewide (see Exhibit 6) a state total would lead to a written premium of $400-450 million for 1980. A 5 percent market share would give the fund a written premium of $20-22.5 million. This would require an initial capital fund (25 percent of written premium) of roughly $5-6 million. If the first year's market share were greater, say 10 percent, the written premium could reach $40-50 million and a capital fund of $10-12 million should be established. It should be emphasized that the figures provided here are rough estimates. The method of arriving at the capital fund figures is derived from the actuarial report to the State of Alaska.

OPERATING COSTS

When an insurance operation is just starting or experiencing rapid growth, additional capital is needed to finance the growth in order to keep the initial capital unimpaired.

Exhibit 2 shows the market shares of the twelve competitive state funds. Market shares vary dramatically from a low of 6 percent in Michigan to a high of over 60 percent in Montana and Utah. A 5 percent market share for a Minnesota State Fund seems to be a reasonable minimum estimate based on the assumptions made in the previous section.

An indication of the expenses associated with current level of services provided by ten of the existing state fund operations is displayed in Exhibit 7 which shows the ratios of expenses to prmeiums.

Exhibit 8 projects a high and low estimate of expenses associated with the operation of a Minnesota Fund based on the median expenses of the ten state funds in Exhibit 7. In addition to the expense factors of the other funds, a 2.5 percent allowance for taxes has also been included. Actual cost could vary considerably up or down depending on a variety of factors such as management, marketing approach, pricing policies, emphasis placed

on loss control, etc.

An insurance operation undergoing rapid growth or just beginning operation will incur expenses faster than it earns the premiums it collects. It may be prudent to allow a larger provision for expenses with particular attention being paid to the "safety factor" or loss control. An increased "safety factor" may be necessary in the case of a state fund because of the greater risk associated with operating in a single state with only one line of business.

Exhibit 9 displays the ratios of expenses to premium for all mutual companies in the United States. In 1975 the ratio of operating expenses to premiums was 22.1 percent. The average expense ratios excluding loss adjustment and investment expense by type of insurer for the years 1972-76 is provided in Exhibit 10.

EXHIBIT 1

TYPES OF WORKERS' COMPENSATION SYSTEMS

IN THE UNITED STATES

A. Exclusively by private insurance:

TEXAS

B. By private insurance or authorized self-insurance:

ALABAMA
ALASKA
ARKANSAS
CONNECTICUT
DELAWARE
FLORIDA
GEORGIA
HAWAII
ILLINOIS
INDIANA
IOWA
KANSAS
KENTUCKY
LOUISIANA
MAINE
MASSACHUSETTS
MINNESOTA
MISSISSIPPI
MISSOURI
NEBRASKA
NEW HAMPSHIRE
NEW JERSEY
NEW MEXICO
NORTH CAROLINA
RHODE ISLAND
SOUTH CAROLINA
SOUTH DAKOTA
TENNESSEE
VERMONT
VIRGINIA
WISCONSIN

C. Exclusively by state fund (year established):

NEVADA (1913)
NORTH DAKOTA (1919)
WYOMING (1915)

D. By state fund or authorized self-insurance:

OHIO (1912)
WASHINGTON (1911)
WEST VIRGINIA (1913)

E. By state fund, private insurance or authorized self-insurance:

ARIZONA (1925)
CALIFORNIA (1913)
COLORADO (1915)
IDAHO (1918)
MARYLAND (1914)
MICHIGAN (1912)
MONTANA (1915)
NEW YORK (1914)
OKLAHOMA (1933)
OREGON (1913)*
PENNSYLVANIA (1915)
UTAH (1917)

*The Oregon State Fund was an exclusive fund until 1966, at which time it became a competitive fund.

Source: Best's Insurance Reports, Property and Casualty Edition, 1977.

EXHIBIT 2

1977 PREMIUM VOLUME AND MARKET SHARES OF THE TWELVE COMPETITIVE STATE FUNDS

Premium Volume (millions)

State	Total Market	State Fund	Market Share
ARIZONA	$ 181.9	$ 65.5	36.0%
CALIFORNIA	2040.9	414.3	20.3%
COLORADO	115.7	57.6	49.8%
IDAHO	32.0	11.2	35.0%
MARYLAND	81.0	8.1	10.0%
MICHIGAN	657.4	40.1	6.1%
MONTANA	31.7	19.5	61.6%
NEW YORK	748.3	217.0	29.0%
OHKAHOMA	106.8	21.9	20.5%
OREGON	423.7	208.9	49.3%
PENNSYLVANIA	455.3	68.3	15.0%
UTAH	42.2	25.3	60.0%

Note: Maryland, Michigan, Oklahoma, and Pennsylvania do not have the the leading market in their respective states.

Source: American Association of State Compensation Insurance Funds Statistics Committee Reports, 1978

EXHIBIT 3

STATE FUNDS, 1974 - EARNING ASSETS

		Earnings Assets (Millions)				Ratio of Earnings Assets to Earned Premium
		Bonds	Stocks	Other	Total	
1.	N. Dakota	$ 14.7		$18.6	$ 33.3	3.92
2.	Nevada	46.2	$ 14.7	14.6	75.5	1.73
3.	Washington	275.6	11.8	64.2	351.6	2.90
4.	Ohio	1,176.6	107.8		1,297.9	4.06
5.	Maryland	6.7	12.2	.3	19.2	3.49
6.	Idaho	8.8		1.6	10.4	1.85
7.	Oklahoma			10.2	10.2	1.50
8.	Utah	19.8		2.6	22.4	2.38
9.	Montana	25.4		1.1	26.5	1.80
10.	Michigan	58.7		.6	59.3	3.40
11.	Colorado	9.8		62.8	72.6	2.72
12.	Arizona	128.5	27.8	9.1	165.4	4.38
13.	Oregon	185.2	25.9	42.2	253.3	2.27
14.	New York	460.0		26.0	486.0	3.91
15.	California	370.2		10.0	380.2	1.64
16.	Pennsylvania	44.2	1.3	1.4	46.9	3.08

SOURCE: American Association of State Compensation Insurance Funds (AASCIF) Statistics Report for 1974.

EXHIBIT 4

BENEFIT RATIOS OF PRIVATE INSURERS, EXCLUSIVE STATE FUNDS, AND COMPETITIVE STATE FUNDS, 1962-66*

Type of Insurer	Benefits relative to Premiums[1]		Benefits relative to Premiums less dividends[2]	
Private insurers:				
Nonparticipating stocks	0.64		0.64	
Participating stocks	.64		.70	
Mutuals	.64		.73	
Exclusive State funds	.95	.85	.95	.92
Competitive State funds	.78		.90	

* From C. A. Williams, Jr., Insurance Arrangements Under Workmen's Compensation, Bureau of Labor Standards Bulletin No. 317, Washington, D.C., 1969, p. 199-200.

[1] Losses incurred to premiums earned for private insurers; losses paid or incurred to premiums earned or written for State funds.

[2] Premiums earned by private insurers reduced by the Burton dividend estimates, presented on p. 91.

Premiums earned or written by the Nevada, California, Colorado, Michigan, Montana, Oregon, and Utah funds reduced by the dividend rates specified in tables 5.3 and 5.8.

Source: Private insurers, see pp. 88-89. Simple arithmetic average of annual loss ratios.
Exclusive funds, see p. 145. 1962-66 ratios weighted by 1966 premiums.
Competitive funds, see p. 165. 1962-66 ratios weighted by 1966 premiums.

EXHIBIT 5

EXPENSE RATIOS OF PRIVATE INSURERS, EXCLUSIVE STATE FUNDS AND COMPETITIVE STATE FUNDS, 1962-66*

Type of Insurer	Expenses Relative To: Premiums Earned	Premiums Written[1]	Premiums Written Less Dividends
Private insurers:			
Nonparticipating stocks	0.35	0.34	0.34
Participating stocks	.26	.25	.28
Mutuals	.26	.25	.29
Exclusive State funds	.06)	.06)	.06)
	).13	).13	) .14
Competitive State funds	.18)	.18)	.20)

* From C. A . Williams, Jr., Insurance Arrangements Under Workmen's Compensation, Bureau of Labor Standards Bulletin No. 317, Washington, D.C., 1969, p. 199-200.

[1] Adjusted by using the following ratios of premiums earned to premiums written: 0.97 for nonparticipating stocks and participating stocks; 0.98 for mutuals.

SOURCE: See notes and source for Exhibit 9.

EXHIBIT 6

WORKERS' COMPENSATION EXPERIENCE EXHIBIT

CALENDAR YEAR DATA

TOTALS - ALL COMPANIES

Calendar Year	Direct Premium Written $	PREMIUM Standard Basis $	EARNED Net Basis $	Losses Paid Indemnity $	Losses Paid Medical $	Losses Outstanding Indemnity $	Losses Outstanding Medical $
1969	71,206,423	76,493,163	69,706,029	20,694,904	13,845,214	5,399,316	2,737,157
1970	78,924,003	85,603,088	77,145,653	23,633,887	15,447,128	6,425,573	2,303,850
1971	87,005,423	93,472,994	83,806,848	25,517,955	16,375,284	8,510,970	4,280,364
1972	104,536,641	109,632,546	99,749,269	29,997,027	18,109,936	14,848,611	4,944,694
1973	116,075,920	125,505,678	110,868,665	32,368,963	19,826,683	15,618,878	4,942,020
1974	144,671,097	151,986,398	138,091,624	40,105,598	23,149,480	15,724,516	5,063,461
1975	168,294,163	178,781,635	162,615,905	46,365,055	26,053,015	21,210,761	6,437,353
1976	213,422,305	217,834,816	204,063,697	60,056,739	30,734,427	49,106,907	12,542,921
1977	266,578,167	275,030,911	254,395,320	77,137,786	36,771,146	79,233,639	22,427,383

Calendar Year	LOSSES INCURRED Indemnity	Medical	Total Losses	Loss Ratio Standard Basis	Dividend Paid
1969	26,094,220	16,582,371	42,676,591	55.79%	NA
1970	30,059,460	17,750,978	47,810,438	55.85%	NA
1971	34,028,925	20,655,648	54,684,573	58.50%	6,642,855
1972	44,845,638	23,054,630	67,900,268	61.93%	8,151,048
1973	48,450,787	24,305,757	72,756,544	57.97%	10,049,540
1974	55,830,114	28,212,941	84,043,055	55.296%	12,159,910
1975	67,575,816	32,490,368	100,066,184	55.971%	13,110,762
1976	109,163,646	43,277,348	152,440,994	69.980%	14,587,983
1977	156,371,425	59,198,529	215,569,954	78.38%	16,003,986

EXHIBIT 7

STATE WORKERS' COMPENSATION OPERATING EXPENSES +

CALENDAR YEAR 1975

(Amounts in 000's)

(1)	(2)	(3)	(4)	(5)	(6)	(7)
State Fund	Earned Premium	Other Underwriting Expenses Incurred	Ratio to Premium (3) ÷ (2) x100%	Loss Adjustment Expense Inc'd	Ratio to Premium (5) ÷ (2) x100%	Total Ratio (4) + (6)
Ariz.	39,540	6,855	17.3%	2,910	7.4%	24.7%
Calif.	275,663	22,521	8.2	20,725	7.5	15.7
Colo.	28,402	1,424	5.1*	1,876	6.6	11.7
Idaho	6,542	511	7.4*	408	6.2	13.6
Md.	5,328	785	14.7	N/A	N/A	14.7
Mich.	17,921	2,289	12.8	2,309	12.9	25.7
Mont.#	15,696	N/A	N/A	N/A	N/A	12.2
Okla.	8,734	1,130	12.9	715	8.2	21.1
Ore.	122,553	11,036	8.8*	5,468	4.5	13.3
Utah**	9,784	765	7.8*	390	4.0	11.8
Median			8.8		7.0	14.2

* These ratios are taken to Written Premium. (Colorado WP - 28,105, Idaho WP - 6,927, Oregon WP - 125,822 Utah WP - 10,667).

** Utah data represents 1975-76 fiscal year.

The distribution of expenses is not available. Total expenses equal to 1,912.

+ Source: Woodward and Fondiller, Report to the State of Alaska

EXHIBIT OF THE POSSIBLE EXPENSES OF THE MINNESOTA STATE COMPENSATION INSURANCE FUND

		By the End of 1980	
		Low Estimate	High Estimate
(1)	Assumed Market Share (% of 1980 Market)	5%+	10%+
(1a)	1980 Minnesota Earned Premium	$400,000,000++	$450,000,000++
(2)	Fund Earned Premium (1) x (1a)	$ 20,000,000	$ 45,000,000
(3)	Underwriting Expenses Median** Value of 8.8%* x (2)	$ 1,760,000	$ 3,960,000
(4)	Loss Adjustment Expenses (Claims) Median** Value of 7.0% x (2)	$ 1,400,000	$ 3,150,000
(5)	Taxes 2.5%x (2)	$ 500,000	$ 1,125,000
(6)	Total Expenses (3) + (4) + (5)	$ 3,660,000	$ 8,235,000
	Median of Column (7), Exhibit 7 14.2% x (2)	$ 2,840,000	$ 6,390,000

\+ Assumes State Fund as the exclusive insurer of political subdivisions of the state, excluding self-insureds

++ Estimate

* From Exhibit 7, columns (4), (6) and (7)

** For a set of measurements arranged in order of magnitude, the median is defined as the middle measurement, if there is one, otherwise the interpolated middle value

Model: Woodward and Fondiller, Report to the State of Alaska.

EXHIBIT 9

WORKERS' COMPENSATION EXPENSE RATIOS - MUTUAL COMPANIES

	Ratios to Premium Written			Ratio to Earned Premium	
Cal. Yr.	Other Acquisition Expense	General Expenses	Taxes	Loss Adjustment Expense	Total
1971	4.5%	6.3%	3.9%	8.8%	23.5%
1972	4.5	6.2	4.2	8.9	23.8
1973	4.5	5.9	4.1	8.6	23.1
1974	4.4	5.8	3.7	8.8	22.7
1975	4.3	5.6	3.9	8.3	22.1

Source: Best's Aggregates and Averages, A.M. Best and Company.

EXHIBIT 10

AVERAGE EXPENSE RATIOS BY TYPE OF INSURERS

1972 - 1976*

Stock Carriers	20.0%
Mutuals	16.5
State Funds	7.4

* Note: Excludes Loss Adjustment and Investment Expense.

Source: Best's Aggregates and Averages, Property-Liability, 1973-77 editions.

AASCIF Statistics Committee Reports, 1973-1977.

EXHIBIT 11
(000's)

	Earned Premium	Incurred Losses	Loss Ratio	Administrative, Loss Adjustment & Investment Expenses	Expense Rate	Invested Reserves & Surplus	Investment Income	% Return on Investments	Investment Income as % of Earned Premium
California	$321,844	$269,063	83.6%	$59,986	18.6%	$585,562	$35,572	6.1%	11.1%
Colorado	35,744	41,614	116.4%	3,580	9.8%	87,414	5,996	6.9%	16.8%
Idaho	9,136	6,888	75.4%	1,388	15.2%	25,758	1,687	6.5%	18.5%
Maryland	6,512	4,704	72.2%	929	14.3%	25,965	N.A.	N.A.	N.A.
Michigan	26,720	25,227	94.4%	5,376	20.1%	75,062	5,174	6.9%	19.4%
Montana	18,329	6,397	34.9%	1,730	9.4%	42,645	2,650	6.2%	14.5%
Nevada*	53,627	53,295	99.4%	6,385 (excludes investment expense)	11.9%	114,832	4,916 (less investment expense)	4.3%	9.2%
North Dakota*	11,509	8,527	74.1%	1,559	13.5%	30,838	2,463	8.0%	21.4%
Ohio* (1975 figures)	306,456	285,547	93.2%	13,145	4.3%	1,332,960	87,560	6.6%	28.6%
Oklahoma	12,511	10,332	82.6%	2,851	22.8%	17,807	1,049	5.9%	8.4%
Oregon	159,125	148,131	93.1%	23,095	14.5%	348,943	19,446	5.6%	12.2%
Utah	15,071	16,509	109.5%	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Washington*	160,279	242,604	151.4%	17,629	11.0%	392,692	24,674	6.3%	15.4%
West Virginia* (1975 figures)	81,343	95,142	117.0%	5,103	6.3%	244,720	21,474	8.8%	26.4%
Wyoming*	7,984	7,364	92.2%	656 (excludes loss adjustment expense)	8.2%	30,793	1,749	5.7%	21.9%

Source: Compiled from the American Association of State Compensation Fund's (AASCIF) Fact Book.

*Designates a monopoly fund.

Benefits. The various states' workers' compensation acts generally provide four kinds of benefits: 1) wage loss, 2) indemnity or disability payments to the injured workers based on the concept of disability, 3) hospital and medical benefits regardless of wage loss or disability, often controlled by published fee schedules, and 4) benefits to dependents in death cases. Benefits can further be classified by their source. Benefits can be defined by acts of legislation as described above; however, those legislated or statutory benefits are subject to modification (often expansion) by judicial and/or administrative interpretation during the process of hearings, trials, and informal settlements.

Carrier. A private insurance company or a state compensation insurance fund.

Casualty Actuary. A statistician with special training in mathematical techniques relative to insurance. An actuary uses data and trends from past experience to advise insurers on the accuracy of projections about future experience.

Claim. A demand to recover under a policy of insurance for loss that may come within that policy. In workers' compensation, an action to collect benefits prescribed by law for injuries sustained or sickness contracted or death arising "out of" and "in the course of" employment with the insured employer.

Claimant. A person who files a claim.

Claims Adjustment. The process of determining the cause and amount of a loss, the amount of indemnity the insured may recover after all proper allowances and deductions have been made, and the proportion each company (if more than one is involved) is required to pay under its contract. (See Claims Management.)

Claims Management. The process of supervising expenditures on claims and exercising professional skills and judgment to assure achievement of the benefit delivery objectives of workers' compensation for each claimant at reasonable cost.

Concurrent Benefits. Under 1978 M.S. 176.101, Subd. 7, an injured worker certified for retraining after 26 consecutive weeks of disability receives a second benefit check equal to and in addition to his indemnity benefit for up to 156 weeks during the course of his retraining.

Credibility. The degree to which enough information is present to predict what will happen in the future. It applies to workers' compensation as a measure of the believability of an individual employer's experience. Based on a formula which takes into account the size of payroll and exposure to risk, credibility determines the degree to which an employer's rate is based on his own experience.

Cumulative Injury. Sometimes also referred to as cumulative trauma, gradual injury, repeated trauma, repetitive trauma, continuing injury, it is an injury which occurs as the result of repetitive, mentally or physically traumatic or stressful activities, extending over a period of time, the combined effect of which causes a disability or need for medical treatment. It is to be contrasted to a specific injury which is the result of one incident or exposure. Cumulative injuries can involve degenerative conditions (such as arthritis, bursitis, or disc disease), and wear-and-tear injuries (such as chronic muscle sprains, tendonitis, and tendosynovitis), or other traumatic injuries (such as heart attacks, acoustical shock, contact dermatitis, and flat feet). Cumulative injuries may also be nontraumatic such as psychic and mental disturbances resulting from occupational stress.

Development. See Loss Development.

Employee: A term which includes every person in the service of another under any contract of hire, expressed or implied, oral or written, including aliens and minors whether lawfully or unlawfully employed, but excluding persons whose employment is casual, who are independent contractors, or whose employment is not in the course of the trade, business, profession, or occupation of the employers' regular business.

Employer: Any person who contracts to pay a remuneration for and secures the right to direct and control the services of any person. In workers' compensation insurance employer and policyholder are used interchangeably.

Experience Rating. An employer whose workers' compensation insurance premium exceeds $750 per year automatically receives an adjustment of his premium to reflect the comparative safety record of that employer against all other employers in that job classification.

Group Self-Insurance. 1978 Laws of Minnesota, Chapter 797, grants the commissioner of labor and industry the power to allow two or more employers to enter into agreement to pool their liabilities, and provide an adequate level of security to insure themselves against the cost of work-related injuries within their employ. This law is not scheduled to go into effect until August 1, 1979.

Indemnity Claim. One for permanent or temporary disability. (See Permanent disability; Temporary disability.)

Indemnity Losses. Money paid to injured workers to replace lost wages and as a lump sum for permanent partial disability. In calculating losses, all expenses associated with retraining are included in indemnity losses.

Job Classifications. Minnesota generally follows the National Council on Compensation Insurance's system of placing employers in one of nearly 700 job classifications whose purpose is to group like employers together to base the cost of workers' compensation as closely as possible to the actual risk involved in a certain type of business.

Loss Adjustment Expense. The expense to insurers of investigating and litigating contested cases and paying a required portion of the employee's legal fees.

Loss Development. Represents an inadequacy of the original estimates of the total liability, both known and unknown, for all policies written in a given policy year. It reflects the changes in incurred losses which occur after the policy year expires.

Each year, insurers report the overall changes in premiums and losses after one year, two years, three years, etc., and apply these changes to the new rates.

Loss Experience. The amount of loss incurred by a specific policyholder (employer) over a period of time.

Loss Ratio. The ratio of losses to premiums.

Losses. The amount the insurance company pays under the terms of the policy following the occurrence of injury or illness.

Market. That workers' compensation premium for which carriers compete overall or in a given location or for a specific type of business.

Medical Losses. Includes professional medical services, treatment, hospital costs, drugs, ambulance and other elements of treatment as well as fees for medical testimony and reports. Physical rehabilitation costs are included, as frequently, are costs for vocational rehabilitation services.

Medical Losses Paid. (See Paid Losses.)

Medical Only. This is a non-disabling injury that requires medical treatment only.

Minnesota Compensation Rating Bureau. The insurance industry organization maintained by all private carriers writing workers' compensation insurance in Minnesota, and established by law in 1921 (M.S. 79.11) to "assist the commissioner and insurers in approving rates." Today the rating bureau collects all information regarding rates from private insurers in Minnesota; proposes and defends rate increases before the Commissioner of Insurance; and is responsible for appeals of commission decisions on rates to the State Supreme Court.

National Council on Compensation Insurance. A national insurance industry organization supported by workers' compensation insurers to assist those insurers in establishing the various states' rates.

Net Earned Premium. The premiums actually collected from employers after the application of premium discounts and experience and retrospective rating.

Paid Losses. Losses which are actually received by the injured worker for medical care and indemnity payments, as distinguished from incurred but not paid losses which are dollars set aside in reserve for expenditures anticipated by actuarial judgment for existing injuries.

Payroll. A record of wages paid to workers for their service and shall include vacation pay, bonus pay, commissions, exchange labor, board, rent, housing, or similar advantages received from the employer.

Permanent Partial Disability. Permanent partial disability, such as the loss of a finger, toe, eye, or any other injury considered to be permanent physical disability.

Permanent Total Disability. This is a condition permanently incapacitating the worker from regularly performing any work at a gainful occupation.

Physical Rehabilitation. The processes of assisting people with serious injuries or handicaps to perform work or become more self-sufficient by means of mechanical or prosthetic aids and/or physical training.

Policyholder. The insured named in the insurance contract and protected by its terms and conditions.

Premium Discounts. Insureds are given reductions based on the size of the policy. At present, the premium discount is:

0%	on first $1,000 of premium
9.4%	on next $4,000 of premium
14.3%	on next $95,000 of premium
16.3%	on premiums over $100,000

Pure Premium. That portion of premiums which represents paid and incurred but not paid losses developed to represent current experience and accounting for any changes in the law, but prior to the application of a factor for administrative expenses and profit.

Reemployment. Return to the status of an employee.

Rehabilitation. The process of returning people with serious injuries or handicaps to useful work is known as rehabilitation. The techniques include the fitting of prosthetic devices, such as mechanical arms, fingers, and legs, psychological guidance, vocational evaluation, counselling, training; and job placement. (See Physical Rehabilitation; Vocational Rehabilitation.)

Reinsurance. A device or method for limitation of the risk by an insurance company. It is designed to protect a company against catastrophic occurrences. An insurance company, through a treaty with the reinsurer, can limit the amount of loss the company will pay per claim or occurrence with the reinsurer paying the amount above the limit. Some companies set a top dollar limit on the liability they will assume on a risk, placing the balance of it with another company. For this protection they pay their own premiums.

Reserves. Insurers set aside money for losses which have been incurred but not yet paid. Such determinations are generally made and regularly adjusted by claims adjusters and are based on actuarial judgments for the life expectancy of permanently disabled workers and survivors, and on medical reports and the adjusters' judgment for less serious claims. Reserves are set variously by insurers for incurred but not reported losses, based on judgments concerning the likelihood of compensable injuries occurring during a given policy year but not reported until that policy year expires. Insurers, in various manners, also set aside reserves (and report them as incurred losses) if, in their judgment, the individual case reserves are inadequate to cover the overall risk of the premium they are writing. This is called aggregate reserving.

Retrospective Rating Plans. Employers can negotiate with insurers to enter into one of several voluntary contracts which allow them to base their premiums more directly on their own experience for a set period of time (and with varying degrees of risk) in the

future. A maximum premium is paid at the start of the policy and refunded to the employer on the basis of his experience and the terms of the contract.

Risk. The chance of physical or personal loss; the amount of possible loss to the insuring company. Also used in place of insured or prospect. Hazard, danger, peril. A company protected by insurance. A subjective evaluation of relative failure potential.

Risk Pool. If an employer has been refused coverage by two insurers, his policy is transferred to a pool of large carriers administered by the Minnesota Compensation Rating Bureau. Unlike automobile insurance, the risk pool assesses no penalty; the insureds are charged the same rates and are experience-rated; however, they cannot receive dividends or select retrospective rating plans. For their part, the pool insurers are guaranteed that losses for any insured which exceed 62.2% of premiums in any year will be charged against all insurers on the basis of their size.

Safety Engineers. Personnel involved in inspection and consultation to reduce hazard of on-the-job injuries. Also known as loss control or loss prevention personnel.

Second Injury. If an employee incurs personal injury and suffers disability that is substantially greater, because of a pre-existing physical impairment, than what would have resulted from the personal injury alone, the employer is reimbursed from the special compensation fund for all compensation paid in excess of 52 weeks of indemnity and $2,000 in medical expenses. An employer must register a form with the commissioner of labor and industry for all employees suffering a previous physical impairment covered by M.S. 176.131, Subd. 8.

Self-Insurance. A system whereby a firm receives authority from the state regulatory agency to be liable for its own losses and may set aside an amount of its monies to provide for any losses that occur--losses that could ordinarily be covered under an insurance program.

Social Security Offset. M.S. 176.101, Subd. 4, states that after $25,000 of permanent total disability benefits have been paid, the workers' compensation benefit will be reduced by the amount of disability benefits paid by social security. However, M.S. 176.132 provides for a supplementary benefit if the social security offset causes the workers' compensation benefits alone to fall below 60% of the statewide Average Weekly Wage. This supplementary benefit does not go to the injured worker, however, because the social security disability is reduced whenever the combined benefits of social security and workers' compensation exceed 80% of the injured worker's take-home pay at the time of injury. The supplementary benefit actually goes to the Social Security Administration.

Special Compensation Fund. Supplemental benefits and second injuries are paid out of a fund administered by the commissioner of labor and industry and funded by an assessment against employers of up to $5,000 for any death incurred by a worker in their employ, and by an assessment (presently 13%) to all liability awards.

State Funds. There are two types. A competitive state fund is a state-managed workers' compensation insurer which competes with private insurance carriers for workers' compensation policies in the state. The twelve competitive state funds (with 1974 market share in parentheses) are: Arizona (36%), California (23%), Colorado (47%), Idaho (19%), Maryland (5%), New York (25%), Oklahoma (10%), Oregon (61%), Pennsylvania (7%), and Utah (56%). An exclusive state fund is a state-managed workers' compensation insurer which serves as the sole provider of workers' compensation insurance in the state. There are six consecutive state fund states (as well as all the Canadian provinces): Nevada, North Dakota, Ohio, Washington, West Virginia, and Wyoming.

Standard Earned Premium. The premium charged to employers prior to the application of premium discounts, experience rating, and retrospective rating.

Subrogation Recoveries. Amounts recovered by an insurance carrier in suits where the insurer succeeds to the rights of the insured or the insured's beneficiary.

Supplementary Benefits. M.S. 176.132 provides that a worker who is totally disabled for at least 104 weeks cannot receive less than 60% of the statewide Average Weekly Wage ($118.20) in workers' compensation benefits regardless of his salary at the time of disability. If the regular disability benefit is less than $118.20 a supplementary benefit is paid from the special compensation fund.

Temporary Total Disability Claim. Usually considered to be the payment of money to cover time lost from work.

Trending. The determination of overall manual rates is based on policy year experience which is more than three years old by the time the rate hearing is completed. Trending is an index which tries to account for inflation between the original experience and the time of the rate decision. The factor proposed for trending in each of the past two rate hearings has been rejected.

Unearned Premium. Generally, insurers collect and invest premiums before they incur any liability for the workers covered by those premiums. The investment income derived from the holding of these premiums prior to liability is known as unearned premium.

Unit Stat Plan. The policy year experience for each individual employer--listing premium and discounts, rating factors, individual cases of injury, and total liability--are recorded on unit stat plans.

Vocational Rehabilitations. The process of assisting people with serious injuries or handicaps to work by techniques of evaluation, counselling, retraining, and job placement.

Workers' Compensation Study Commission. 1977 Laws of Minnesota, Chapter 342, Section 27, established a study commission made up of representatives of the Legislature, insurers, employers, employees, and the public to study and report to the Governor by December 18, 1978, on:

(a) the procedure by which premium rates are established;
(b) the cost of workers' compensation insurance compared to other jurisdictions;
(c) the various methods of providing workers' compensation insurance;
(d) the administration of the law; and
(e) if the expense factor in the rate is adequate or excessive.

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