

**California Department of Industrial Relations
Division of Workers' Compensation**

**2003 Audits of Workers' Compensation Insurers, Self-Insured Employers, and
Third-Party Administrators**

April 1, 2004

This fourteenth annual workers' compensation audit report summarizes the accomplishments of the Audit Unit of the Division of Workers' Compensation for all audits commencing during calendar year 2003.

Assembly Bill 749, enacted into law in 2002 and effective January 1, 2003 resulted in major changes to California workers' compensation law and mandates significant changes to the audit program beginning 2003.

The major changes in the audit program bring substantial change to this report. The continuity of tracking audit data as presented in previous years is no longer available. This report, the first on the new audit program, will be the building block to future reports. The reader will not find references comparing the 2003 results to years past. The report provides a basis for clear comparison of benefit delivery by insurers and third-party administrators.

The Division of Workers' Compensation invites comments and suggestions on additional data that may be useful and pertinent to accomplish the above.

Below is a description of the changes in the audit program beginning in 2003:

- The Audit Unit will be required to conduct a profile audit review (PAR audit) of each adjusting location of California workers' compensation claims at least once every five years.
- The Administrative Director will annually publish a profile audit review performance standard and a full compliance audit performance standard.
- Audit subjects that meet or exceed profile audit review performance standards will be required to pay all compensation found unpaid by the Audit Unit, but no penalties will be assessed.
- Audit subjects that do not meet or exceed profile audit review performance standards will be subject to a full compliance audit (FCA).
- Audit subjects that meet or exceed full compliance audit performance standards will be required to pay all compensation found unpaid by the Audit Unit, and will be assessed penalties for unpaid and late paid compensation only.
- Audit subjects that do not meet or exceed full compliance audit performance standards will be required to pay any compensation found unpaid by the Audit Unit, and will be assessed penalties for all violations included in a full compliance audit failure penalty schedule.

- A new factor in determining penalty amounts (for audit subjects that fail to meet or exceed the full compliance audit performance standard) will be the size of the adjusting location. Penalties assessed pursuant to the full compliance audit failure penalty schedule may be as high as \$40,000 each for the most serious violations at the largest adjusting locations. The previous maximum penalty amount was \$5,000.
- The Administrative Director shall publish and make available to the public on request a list ranking all insurers, self-insured employers, and third-party administrators audited according to their performance ratings.

Calculation of profile audit review performance ratings

In order to determine whether audit subjects meet or exceed the PAR Performance Standard, each audit subject's PAR performance rating will be calculated following a review of a sample of randomly selected indemnity claims. The audit subject's PAR Performance Rating is a composite score based on performance in specific key areas. Ratings will be based on the frequency and severity of violations, with a weighting factor emphasizing the gravity of violations involving the failure to pay compensation. The higher the rating of an audit subject, the worse is the performance. The formula for the calculation of each year's performance standard is in 8CCR§10107(c)(3). Ratings will be calculated based on:

- The frequency of claims with unpaid compensation and the amounts of unpaid compensation found in the sample of randomly selected undisputed claims.
- The frequency of claims with violations involving late first temporary disability payments or first notices of salary continuation.
- The frequency of claims with violations involving late first payments of permanent disability, vocational rehabilitation maintenance allowance, and death benefits.
- The frequency of claims with violations involving late subsequent (scheduled) indemnity payments.
- The frequency of claims with violations involving the failure to timely issue Notices of Potential Eligibility for Vocational Rehabilitation and Notices advising injured workers of their rights for Qualified Medical Examinations to determine permanent disability.

If the audit subject's PAR performance rating meets or exceeds (that is, is lower than) the worst 20% of performance ratings for all final audit reports issued over the three calendar years before the year preceding the current audit, the Audit Unit will issue Notices of Compensation Due pursuant to Section 10110 but will assess no administrative penalties for violations found in the profile audit review.

If the audit subject's PAR performance rating is higher than the worst 20% of performance ratings as calculated based on all final audit findings as published in the Annual DWC Audit Reports over the three calendar years before the year preceding the

current audit, the Audit Unit will conduct a Full Compliance Audit by randomly selecting and auditing an additional sample of indemnity claims.

It is estimated that approximately 80% of audit subjects meet or exceed the PAR Performance Standard and that approximately 20% of audit subjects will be subject to a Full Compliance Audit.

The audit process

Selection of PAR audit subjects

In order to implement the changes mandated by AB 749, audit regulations have been revised extensively. Pursuant to Title 8, California Code of Regulations, Section 10100.2, effective January 1, 2003, separate underwriting companies, self-administered, self-insured employers, and/or third-party administrators operating at one location will be combined as one audit subject for the purposes of PAR audits conducted pursuant to Section 129(a), but only if claims are administered under the same management at that location. Where claims are administered from an office that includes a satellite office at another location, claims administered at the satellite office(s) will be considered as part of the single adjusting location for auditing purposes when demonstrated that the claims are under the same immediate management.

The number of adjusting locations is constantly changing as a result of administrators opening, closing, and consolidating offices. For the past several years the total number of adjusting locations of California workers' compensation claims has averaged approximately 500. The Audit Unit's intent was to select most audits to be conducted during 2003 from locations that had not been audited since before 1994. However, audit subjects that merited targeted audit selection based on criteria listed below were also selected for audit.

Targeted audit subject selection

The bases for the targeting of audit subjects by the Audit Unit are specified in 8CCR§10106.1(c), effective January 1, 2003:

- Complaints regarding claims handling received by the Division of Workers' Compensation.
- Failure to meet or exceed Full Compliance Audit Performance Standards.
- High Numbers of Penalties awarded pursuant to Labor Code Section 5814.
- Information received from the Workers' Compensation Information System.
- Failure to provide a claim file for a PAR.
- Failure to pay or appeal a Notice of Compensation Due ordered by the Audit Unit.

Notices of audit and audit commencement

The Audit Unit usually issues Notices of Audit far in advance of the actual audits, a procedure that allows for flexibility in planning. A Notice of Audit informs the administrator that it has been selected for audit and requests that copies of claim logs be sent to the Audit Unit, but it does not indicate when the audit will be conducted or which claims will be selected for audit. The audit may not be scheduled for several weeks, or even months, after the Notice of Audit is received. Only after the audit has been scheduled is the administrator issued a Notice of Audit Commencement. This notice, issued two to three weeks before the audit is to begin, identifies the claims that are selected for audit and includes instructions for preparing the claims for audit.

Selection of claims for audit and performance standards

- **Profile Audit Review (PAR)** - Beginning in 2003, indemnity claims will be randomly selected for PAR audits from the indemnity claim populations reported on the claim logs for the three years preceding the audit, as opposed to the two years preceding the audit as was the case before 2003. For audits conducted in 2003, claims will be selected from the claim logs for the years 2000 through 2002. Another change for audits conducted in 2003 is that indemnity claims randomly selected for audit will be taken from the population of claims in which indemnity has been paid, not from the population of claims in which indemnity *may* be payable. The Audit Unit utilizes a table based on an expected frequency rate of 10% with a confidence level of 90%, give or take 5%, to select the indemnity claims for the PAR audit. The table is in 8CCR§10107.1(c)(1).

If the Audit subject fails to meet or exceed the profile audit review performance standard, the sample of indemnity claims will be expanded and a full compliance audit (FCA) will be conducted. **The profile audit review performance standard for 2003 is 2.10.** If the audit subject's profile audit review performance rating is less than 2.10, the audit subject will be required to pay any unpaid compensation, but no penalties will be assessed. A PAR performance rating of 2.10 or greater will result in a full compliance audit.

- **Full Compliance Audits (Stage 1)** - If a full compliance audit is conducted, the total number of indemnity claims randomly selected for audit will be based on the table in 8CCR§10107.1(d)(1). The number of claims in this full sample of indemnity claims is determined from a table utilizing an expected frequency rate of 10% with a confidence level of 95%, give or take 5%. The formula for the calculation of each year's full compliance audit performance standard is the same as for the PAR performance standard, but is based on audit results from the full sample of indemnity claims. **The full compliance audit performance standard for 2003 is 2.82.** If the audit subject's full compliance audit performance rating is less than 2.82, the audit subject will be required to pay any unpaid compensation,

and penalties will be assessed, but only for violations involving the failure to pay indemnity or late paid indemnity.

- **Full Compliance Audits (Stage 2)** - If, after the review of the expanded sample of indemnity claims, the audit subject's performance rating is 2.82 or greater, the audit subject has failed to meet or exceed the full compliance audit performance standard, and an additional sample of denied claims will be audited. The number of denied claims randomly selected for audit are based on a table utilizing an expected frequency rate of 1% with a confidence level of 90%, give or take 3%. That table is set forth in 8CCR§10107.1(e)(1).

Following the review of all audited claims, penalties will be assessed for all violations. In addition, if there is failure to meet or exceed the FCA audit standard defined in 8CCR§10106.1(c)(1) the Audit Unit will return for a target audit within two years.

Audit procedures

Audits vary in size based on the populations of claims at the audited claims administrator adjusting locations. It is expected that one or two auditors can conduct routine PAR audits in one or two weeks. However, some may exceed this time frame. Audit subjects that fail to meet or exceed performance audit review performance standards or full compliance audit performance standards will take longer to conduct than PAR audits and may involve higher numbers of auditors.

A lead auditor who is responsible for coordination of the audit and the completion of the audit report is assigned for each audit. During the course of the audit, the auditors complete worksheets for each audited claim. The worksheets list relevant information, such as identifying data, due dates for various required actions, the bases for those actions and due dates, and amounts payable per specific periods per type of benefit. The auditors will copy documents from the claim files to support the bases for any compensation due or proposed penalties. They also provide the claims administrator with copies of proposed notices involving compensation due or possible penalties at daily or other agreed upon intervals, so that the administrator may research the issues and determine whether it agrees with or disputes the findings (the idea is to get it right).

Preliminary report and post-audit conference

Once the audit is completed, the lead auditor conducts a short exit interview and returns to the audit office to complete a preliminary audit report that includes a Notice of Proposed Penalty Assessments and Notices of Intention to Issue Notices of Compensation Due. After an assigned Senior Compliance Officer and/or the Supervising Compliance Officer reviews the report, the preliminary report and enclosures are issued to the claims administrator. Depending on the schedules of the participants, a post-audit conference is scheduled anytime after approximately two weeks. Periods between the receipt of the preliminary report and the post-audit conference usually do not exceed a few weeks unless it is at the request of the claims administrator.

The post-audit conference is usually held at the audit subject's adjusting location and is attended by the assigned lead and Senior Compliance Officers, the Supervising Compliance Officer, and/or whomever the claims administrator wishes to attend (claims manager, supervisors, corporate officers, legal counsel, et al). The post-audit conference may be waived if the administrator wishes. The claims administrator is encouraged to notify the Audit Unit in advance and in writing of any disputed penalty assessments and/or mitigating circumstances, and can then present any arguments and discuss any issues on an informal basis at the post-audit conference.

If the audit subject's profile audit review performance rating meets or exceeds the PAR performance standard, however, the audit subject may choose to waive the preliminary report. In those audits, the final audit report and any Notices of Compensation Due may be issued within one to two weeks after the completion of the audit, and no penalties will be assessed.

Final audit report, payment of penalties and compensation due, and appeal of penalties and/or compensation due

The lead auditor prepares and issues to the audit subject by certified mail the final audit report, Notice of Penalty Assessments, and any Notices of Compensation Due. Although the goal is to issue the final report within two weeks of the post-audit conference, the process occasionally takes longer. Delays can occur if follow-up information from the claims administrator is needed or because of other audits or assignments. Copies of any Notices of Compensation Due are also issued to the appropriate injured workers. Unless appealed, penalties must be paid within 15 days of receipt of the Notice of Penalty Assessments. If some but not all penalties are appealed, those penalties that are not appealed must still be paid within 15 days of receipt of the report. Compensation due to injured workers must be paid within 15 days of receipt of the Notice of Compensation Due unless appealed within that time to the appropriate Workers' Compensation Appeals Board pursuant to 8CCR §§10110 and 10115.1.

The audit subject is required to submit to the Audit Unit within 30 days documentation to indicate compliance with claims handling regulations. Documentation of compliance can include items such as copies of benefit notices, wage statements, and checks issued to injured workers and/or medical providers. Additional penalties may be assessed if the audit subject fails to submit documentation of compliance as required.

The audit subject may appeal disputed penalties to the Administrative Director within 7 days of receipt of the Notice of Penalty Assessments by requesting an appeal conference or a written decision on the appeal without a conference. If there is an appeal, within 21 days of filing the request for appeal the appellant must file with the Administrative Director a statement specifying the penalties appealed and the basis for contesting each penalty, and submit any documentation relevant to the appeal.

The Administrative Director is required to issue a Notice of Findings within 15 days of the date the appeal is submitted for review following a conference or within 15 days after

receipt of the Audit Unit's written answer if no appeals conference is held. Any subsequent appeal must be made by filing a petition for Writ of Mandate to the appropriate Superior Court.

2003 audit results

The Audit Unit of the Division of Workers' Compensation completed a total of 70 audits which began in 2003. Of these, 64 were routinely selected PAR audits and the remaining 6 were target PAR audits. Target audits for 2003 were selected based upon results from prior audits of calendar year 2000. The total number of audit subjects included 20 insurance companies, 24 self-administered, self-insured employers, and 26 third-party administrators (TPAs).

At all audits, claim files were selected for audit on a random basis, with the number of indemnity and denied cases being selected based on the numbers of claims in each of those populations for the audit subject. No medical-only claims were selected for audit in 2003. In addition, if any complaints were received regarding possible violations of the Labor Code or regulations of the Administrative Director, each respective claim file related to a complaint may have been part of the audit pursuant to Title 8 CCR 10107.1(c)(2), (d)(2), and (e)(2).

The numbers of claims audited are based upon the total number of claims at the adjusting location and the number of complaints received by the Division of Workers' Compensation related to claims handling practices. Pursuant to Title 8, California Code of Regulations, Section 10107.1(c) and (d), either a "PAR sample" of up to 59 or a "FCA sample" of up to 138 of indemnity claims is audited, depending on the claims administrator's performance as measured in certain key areas after the PAR sample is audited. Pursuant to Title 8, California Code of Regulations, Section 10107.1(e), a sample" up to 67 denied claims may be audited, depending on the claims administrator's performance as measured in certain key areas after the review of the indemnity claims in the "FCA stage 1 sample" is audited.

In 2003, compliance officers audited 3,425 claim files, of which 3,372 were randomly selected claims in which some form of indemnity benefits were paid. One audit included randomly selected claims in which the employer or insurer denied all liability. Targeted claims audited included 46 based on complaints received by the Division of Workers' Compensation. 4 claims were designated as "additional" files. "Additional" files include:

- Claims chosen based on criteria relevant to a target audit but for which no specific complaints had been received.
- Claims audited in excess of the number of claims in the random sample that were audited because the files selected were incorrectly designated on the log.

Violations of administrative director's regulations

As a result of audits conducted during the calendar year 2003, the Audit Unit issued 3,903 administrative penalties assessable to claims administrators totaling \$706,480. However, the Audit Unit waived \$624,835 of the assessable penalties pursuant to Labor Code Section 129.5(c). The total penalties assessed claim administrators were \$81,645. These waivers occurred within 65 of the audits that met or exceeded the PAR performance standard and 4 other audits that met or exceeded the FCA performance standard.

Unpaid compensation due To employees

There were 490 claims in which injured workers were owed unpaid compensation totaling \$370,454.80, an average of \$756.03 per file in which there was unpaid compensation. The unpaid compensation is broken down as follows: \$137,524.72 in temporary disability indemnity and salary continuation in lieu of temporary disability (37.1% of the unpaid compensation), \$142,126.28 in permanent disability indemnity (38.4% of the unpaid compensation), \$22,383.25 in vocational rehabilitation maintenance allowance (6.0% of the unpaid compensation), \$65,220.45 in 10% self-imposed increases for late indemnity payments (17.6% of the unpaid compensation), \$57.67 in death benefits (0.1% of the unpaid compensation), and \$3,142.43 in interest and penalty and/or unreimbursed medical expenses (0.8% of the unpaid compensation).

The administrator is required to pay these employees within 15 days after receipt of a notice advising the administrator of the amount due, unless a written request for a conference is filed within 7 days of receipt of the audit report.

When employees due unpaid compensation cannot be located, the unpaid compensation is payable by the administrator to the *Workers' Compensation Administrative Revolving Fund*. In these instances, application by an employee can be made to the Division of Workers' Compensation for payment of moneys deposited by administrators into this fund. In 2003, \$1,603.76 was paid into this fund because the injured workers could not be located.

Frequency of violations

A statewide frequency of the 5 key areas under review for violations used in determining the PAR and FCA performance standards was calculated after combining the individual audit findings (Individual Exhibits 1A, 1B, and 1C). The frequency noted in each area is actually the ratio of files in which there is an assessment for a specific type of violation to the total number of randomly selected files in which the possibility of that type of violation exists. Statewide Exhibits 1A through 1C provide a breakdown of performance for audit subjects in 2003.

Unpaid Indemnity

Of the randomly selected audited claims in which indemnity was accrued and payable, the percentage for assessable penalties for unpaid indemnity is:

- 2003 65 Audits passing the PAR standard: 13.24%
- 2003 4 Audits passing the FCA standard: 23.08%
- 2003 1 Audit failing all standards; 75.00%

Late First payment of Temporary Disability or First Salary Continuation Notice when Salary Continuation is paid in lieu of Temporary Disability

Of the randomly selected audited claims with temporary disability payments or first notice of salary continuation, the following percentage for assessable penalties for late paid first payment of temporary disability or late first notice of salary continuation is:

- 2003 65 Audits passing the PAR standard: 24.57%
- 2003 4 Audits passing the FCA standard: 35.99%
- 2003 1 Audit failing all standards; 75.00%

Late First payment of Permanent Disability, Vocational Rehabilitation Maintenance Allowance, and Death Benefits

Of the randomly selected audited claims with permanent disability, vocational rehabilitation maintenance allowance, and death benefits payments, the following percentage for assessable penalties for late paid first payment of permanent disability, vocational rehabilitation maintenance allowance, and death benefits is:

- 2003 65 Audits passing the PAR standard: 14.03%
- 2003 4 Audits passing the FCA standard: 29.87%
- 2003 1 Audit failing all standards; 0.00%

Late Subsequent Indemnity Payments

Of the randomly selected audited claims with subsequent indemnity payments, the following percentage for assessable penalties for late subsequent indemnity payments is:

- 2003 65 Audits passing the PAR standard: 25.37%
- 2003 4 Audits passing the FCA standard: 39.17%
- 2003 1 Audit failing all standards; 100.00%

Failure or Late Provision of AME/QME Notices and Notices of Potential Eligibility for Vocational Rehabilitation

Of the randomly selected audited claims with requirement to issue the AME/QME notice and/or the notice of potential eligibility for vocational rehabilitation, the following percentage for assessable penalties for failure or late issuance is:

- 2003 65 Audits passing the PAR standard: 27.78%
- 2003 4 Audits passing the FCA standard: 39.87%
- 2003 1 Audit failing all standards; 20.00%

Performance ratings of audit subjects

Of the 70 audits conducted in 2003:

- 65 audit subjects (92.9%) met or exceeded the PAR 2003 performance standard thereby having all penalty citations waived in accordance with Labor Code Section 129.5(c) and Title 8 California Code of Regulations Section 10107.1(c)(3)(B). These audit subjects were ordered to pay all unpaid compensation due found within the audit.
- 5 audit subjects failed to meet or exceed the PAR standard with the audit expanding into the FCA pursuant to LC 129.5c and Title 8 California Code of Regulations Section 10107.1(d). 4 of these audit subjects (5.7%) than met or exceeded the FCA stage1 2003 standard thereby having all penalty citations except those for unpaid indemnity and late paid indemnity in accordance with Labor Code Section 129.5(c) and Title 8 California Code of Regulations Section 10107.1(d)(3)(B). Additionally, these audit subjects were ordered to pay all unpaid compensation due found within the audit.
- One of the 5 audit subjects (1.4%) that failed the PAR also failed the FCA stage 2 performance standard thereby demonstrating poor performance and this administrator will be subject to a return target audit within 2 years. This audit expanded into the FCA pursuant to LC 129.5c and Title 8 California Code of Regulations Section 10107.1(e) and the audit subject was assessed all penalty citations in accordance with Labor Code Section 129.5(c) and Title 8 California Code of Regulations Section 10107.1(e).

The **DWC Administrative Director's 2003 Audit Results Ranking Report** is part of this Annual Report and the complete list of the performance standard scores for the 70 audit subjects can be reviewed in order, from the best to worst performer.

PAR and FCA standards comparison

A look at the PAR and FCA performance standards combining all individual audit findings within the group that met or exceeded the PAR standard with the group that failed the PAR, but met or exceeded the FCA standard and the group that failed both standards. (Individual Exhibits 860 1A, 1B, and 1C) beginning with calendar year 2003 shows:

PAR Standard

- 2003 Average score of the 65 audit subjects: 1.01343
- 2003 Average score of the 5 audit subjects failing PAR: 2.60301
- 2003 Average score of the 1 audit subject failing PAR and FCA: 6.96841

FCA (stage 1) Standard

- 2003 Average score of the 4 audit subjects passing FCA: 1.97533
- 2003 Average score of the 1 audit subject failing FCA: 6.96841

FCA (stage 2) Standard

- 2003 Average score of the 1 audit subject failing FCA: 5.16178

Appeals

In 2002, one audit was appealed and was resolved in 2003.

- 99 Cents Only Stores — City of Commerce, Audit No. AHM-16-02-R-2: The audit subject appealed all 1,865 penalties totaling \$289,015. A complete review and discussion of the penalty items of concern to the audit subject was held in 2003. The audit subject withdrew its appeal of all penalties and paid the amount shown above.

In 2003, there were no appeals of audit findings.

Civil penalty issues

Civil penalty under pre 2003 Labor Code §129.5(d) —

1990 through 2002 California Labor Code §129.5(d) states, in part:

"In addition to the penalty assessments permitted by subdivision (a), the administrative director may assess a civil penalty, not to exceed one hundred thousand dollars (\$100,000), upon finding, after hearing, that an employer, insurer, or third-party administrator for an employer has knowingly committed and has performed with a frequency as to indicate a general business practice any of the following:

- (1) Induced employees to accept less than compensation due, or made it necessary for employees to resort to proceedings against the employer to secure compensation due.
- (2) Refused to comply with known and legally indisputable compensation obligations.
- (3) Discharged or administered compensation obligations in a dishonest manner.
- (4) Discharged or administered compensation obligations in a manner as to cause injury the public or those dealing with the employer or insurer...."

As a result of investigations and audits conducted by the Civil Penalty Investigation Section of the Audit Unit under Labor Code §129.5(d), the Administrative Director assessed five separate civil penalties between calendar years 2000 and 2003. The claim administrators were National RV, Inc., Crawford & Company, Cambridge Integrated Services, Inc., City of Los Angeles, and 99 Cents Only Stores, Inc.

The status of the remaining civil penalty issues to other claim administrators under Labor Code Section 129.5(d) follows:

Gates McDonald & Company

This civil penalty investigation and audit of 2001 was conducted based on information received from the Office of Self-Insurance Plans indicating possible business practices involving late paid indemnity, failure to pay self-imposed increases pursuant to Labor Code Section 4650(d), and failure to issue required benefit notices pursuant to Title 8, California Code of Regulations, Sections 9812 and 9813. The investigation and audit consisted of a limited review of a targeted sample of claims of specific clients.

Penalties were assessed only for individual violations involving the failure to pay indemnity, late paid indemnity and the failure to pay self-imposed increases, and the failure to issue notices. The audit subject filed an appeal of the audit findings. The appeal was resolved in late 2002.

The Audit Unit has filed charges to a civil penalty and has requested the Administrative Director set a hearing for Gates McDonald to show cause why the Administrative Director should not assess a civil penalty. The matter continues in litigation and pending a hearing in 2004.

Gulf Insurance Company

The Audit Unit conducted a random audit at the companies adjusting location in 1999. The findings of that audit shows it failed to meet the criteria as set forth in Title 8CCR Section 10106(f) and earned a return non-random audit within 3 years. The return non-random audit was conducted in 2002. The adjusting location for the second findings did not meet the criteria as set forth in Title 8CCR Section 10106(f). The overall audit results to both audits are being reviewed to determine whether civil penalty charges will be filed with the AD pursuant to Title 8CCR Section 10113(a).

Civil penalty under 2003 Labor Code Section 129.5(e)

Under AB 749, effective January 1, 2003 California Labor Code Section 129.5(e) was modified and states, in part:

"In addition to the penalty assessments permitted by subdivision (a), the administrative director may assess a civil penalty, not to exceed one hundred thousand dollars (\$100,000), upon finding, after hearing, that an employer, insurer, or third-party administrator for an employer has knowingly committed **or** has performed with **sufficient** frequency **so** as to indicate a general business practice any of the following:

(1) Induced employees to accept less than compensation due, or made it necessary for employees to resort to proceedings against the employer to secure compensation due.

- (2) Refused to comply with known and legally indisputable compensation obligations.
- (3) Discharged or administered compensation obligations in a dishonest manner.
- (4) Discharged or administered compensation obligations in a manner as to cause injury the public or those dealing with the employer or insurer...."**Any employer, insurer, or third party administrator that fails to meet the full compliance audit performance standards in two consecutive full compliance audits shall be rebuttably presumed to have engaged in a general business practice of discharging and administering its compensation obligations in a manner causing injury to those dealing with it.**

No civil penalty investigations and target audits occurred in 2003. However, in 2003 the Audit Unit conducted 6 Return Target Audits. These were due to audit findings in 2000 wherein the audit subjects failed to meet the criteria as set forth in Title 8CCR Section 10106(f) which resulted in a return non-random audit within 3 years. All 6 audit subjects met or exceeded the PAR or FCA performance standard set for 2003 and no further action is required due to the past failure.

The annual report of inventory

In addition to the penalty assessments totaling \$81,645 that were assessed as a result of audits, an additional 32 penalties totaling \$20,900 were assessed not as the result of individual audits, but for the failure of claims administrators either to timely file or having filed an inaccurate Annual Report of Inventory of Claims with the Audit Unit, as required by Title 8, California Code of Regulations, Sections 10104. The penalty assessments are pursuant to Title 8, California Code of Regulations, Sections 10111.1(b)(11) and 10111.2(b)(25). These penalties are not otherwise included as part of the audit data within this report, but were assessed as follows:

Failure to timely file a report

Claims Administrator	Location	Amount Assessed	Amount Collected	Unpaid Balance
99 Cents Only Stores, Inc.	City of Commerce	\$500	\$500	\$0
ACE USA / ESIS	Irving, Texas	\$500		\$500
Alternate Service Concepts	Stockton	\$500	\$500	\$0
COMCO Management, Inc.	Sierra Madre	\$500		\$500
Corporate Claims	Chesterfield,	\$500	\$500	\$0

Management	MO			
County of Santa Clara	San Jose	\$500	\$500	\$0
Crawford & Company	Orange	\$500	\$500	\$0
Crum & Forster Insurance	Plano, Texas	\$500	\$500	\$0
Crum & Forster Insurance	Los Angeles	\$500	\$500	\$0
GAB Robins North America	Rancho Cordova	\$500		\$500
Gates McDonald & Company	Concord	\$500	\$500	\$0
InServe Corporation	Rancho Cordova	\$500	\$500	\$0
Integrated Claims Administrators	Torrance	\$500		\$500
National American Insurance Company	Chandler, OK	\$500	\$500	\$0
Pearce & Frankman	Benicia	\$500		\$500
PTSC/MTA Risk Management Authority	Los Angeles	\$400		\$400
Ranger Insurance Company	Houston, TX	\$300	\$300	\$0
Republic Western Insurance Company	Phoenix, AZ	\$500		\$500
Sedgwick Claims Management	Louisville, KY	\$500		\$500
Shasta County Risk Management	Redding	\$500		\$500
Sutter Health Workers' Compensation	Sacramento	\$500	\$500	\$0
United Services Automobile Association	Sacramento	\$4,900	\$4,900	\$0
Warner Brothers Studios	Burbank	\$300	\$300	\$0

Wausau/Liberty Mutual Insurance	Beaverton, OR	\$500	\$500	\$0
TOTALS		\$15,900	\$11,500	\$4,400

Failure to file an accurate report

Claims Administrator	Location	Amount Assessed	Amount Collected	Unpaid Balance
AIG Claim Services	San Diego	\$500	\$500	\$0
City of Long Beach	Long Beach	\$500		\$500
Gallagher Bassett Services	Anaheim	\$500		\$500
Gallagher Bassett Services	Thousand Oaks	\$500	\$500	\$0
ICW group	San Diego	\$500	\$500	\$0
Marriott Claim Services Corporation	Washington D. C. (previously Santa Ana)	\$1,000		\$1,000
Octagon Risk Services	Van Nuys	\$500	\$500	\$0
Sierra Insurance Group	Burbank	\$1,000	\$1,000	\$0
TOTALS		\$5,000	\$3,000	\$2,000

California Division of Workers' Compensation 2004 audit program description

As work progressed through 2003, several audit regulations, Title 8, CCR§§ 10104, 10107.1, and 10111.2 had minor clerical and/or typographical errors corrected with the most recent version now effective December 1, 2003. The PAR and FCA performance standards were updated pursuant to Labor Code Section 129(b) and Title 8, CCR§10107.1(c), (d), and (e). This was accomplished by taking the 2002 audit results and extracting data for the 5 major keys subject to the new audit program. The results were then combined with the 2001 and 2000 performance rating scores to develop the 2004 profile audit review (PAR) and full compliance audit FCA standards. The **PAR standard for 2004 is 1.92667 and the FCA standard is 2.77703**. Profile audit review audits (PAR audits) for 2004 commenced January 2004 using the new standards. The

Division has high expectations that the audit program's effectiveness will be enhanced by the changes. The Audit Unit continues to work to ensure that injured workers receive their proper workers' compensation benefits and to act as a deterrent to poor claims handling.

Window to the future

A look into the future finds that the PAR and FCA standards for 2005 will be more stringent. This will occur due to the audit findings of the 2003 audit subjects. The DWC continues planning, including rulemaking, within 2004 for the most recent reforms by the legislature within AB227 and SB228. These regulations will be promulgated and become effective in 2004 and early in of 2005. The Audit Unit is developing regulations to include within audits the review of mandates required by Labor Code §§ 138.6, 139.5, 3201.7, 4603.4, 4610, 4658.5, and 4658.6. This will include audit review and assessment for violations involving: claim handling requirements of the Workers' Compensation Information System reporting by claim administrators; Carve-out Program(s); Electronic Billing of medical bills; Utilization Review Plans; and, the Supplemental Job Displacement Benefit. Watch for the posting of these new regulations on the DWC Forum and the subsequent scheduling of the required Public Hearings. DWC is interested in all comments and suggestions.

Description of statewide exhibits

Ranking Report is the DWC Administrative Director's 2003 Audit Ranking Report issued in accordance with Labor Code Section 129(e). The report ranks all insurers, self-insured employers, and third-party administrators audited during 2003 according to their performance measured by the profile audit review and full compliance audit performance standards.

Exhibit 1A is a summary of the individual 1A exhibits used in determining the **PAR** performance standard factor for each audit subject. It includes the number of indemnity files audited for each of the 5 major areas of key violations and the number of those files wherein one or more of the key violations were found.

Exhibit 1B is a summary of the individual 1A exhibits used in determining the **FCA stage 1** performance standard factor for each audit subject. It includes the number of indemnity files audited for each of the 5 major areas of key violations and the number of those files wherein one or more of the key violations were found.

Exhibit 1C is a summary of the individual exhibits used in determining the **FCA stage 2** performance standard factor for each audit subject. It includes the expanded number of indemnity files and denied claim files with subsequent acceptance and requirements to pay indemnity audited for each of the 5 major areas of key violations and the number of those files wherein one or more of the key violations were found.

Exhibit 2A is a summary of the number of files audited by type, the numbers and amounts of penalties, amounts collected, balance due, and the number of appeals for Northern California and Southern California. **Exhibit 2B** lists the same data for each audit subject audited in or by Northern California staff. **Exhibit 2C** lists the same data for each audit subject audited in or by Southern California staff.

Exhibit 2D and 2E are summaries of the audit results for each audit by type of claims administrator and by method of selection for audit. There are separate listings for routinely selected and target selected audit subjects, and breakdowns showing the same data for insurers, self-insured employers, and third-party administrators as separate groupings.

Exhibit 3 separates the Schedule of Administrative Penalties in Title 8, California Code of Regulations, Section 10111.2 into various categories. There is a **Key to Exhibit 3** describing the nature of each category, and an **Exhibit 3** showing statewide totals and amounts of assessable administrative penalties in 2003 by category.

Exhibit 4 summarizes by type of indemnity the amounts of unpaid compensation found in the 487 audited claims for which Notices of Compensation Due were issued.

Description of individual audit exhibits

Exhibit 1A is the worksheet to calculate the audit findings to a score that determines the **PAR** performance standard factor for this audit subject. It includes the number of indemnity files audited for each of the 5 major areas of key violations and the number of those files wherein one or more of the key violations were found.

Exhibit 1B is the worksheet to calculate the audit findings to a score that determines the **FCA** stage 1 performance standard factor for this audit subject. It includes the expanded number of indemnity files audited for each of the 5 major areas of key violations and the number of those files wherein one or more of the key violations were found.

Exhibit 1C is the worksheet to calculate the audit findings to a score that determines the **FCA** stage 2 performance standard factor for this audit subject. It includes the number of indemnity files and denied claim files with subsequent acceptance and requirements to pay indemnity audited for each of the 5 major areas of key violations and the number of those files wherein one or more of the key violations were found.

Exhibit 3 separates the Schedule of Administrative Penalties in Title 8, California Code of Regulations, Section 10111.2 into various categories showing totals and amounts of assessable administrative penalties for this individual audit finding. There is a **Key to Exhibit 3** describing the nature of each category.

Exhibit 4 summarizes by type of indemnity the amounts of unpaid compensation found in the audited claims in this individual audit for which Notices of Compensation Due were issued.