

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**Processing Times Associated With
Claims Received, Managed and
Adjudicated by the Workers'
Compensation Commission**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 42

**COMMONWEALTH OF VIRGINIA
RICHMOND
1993**

MEMBERS OF THE JOINT SUBCOMMITTEE

Senator Virgil H. Goode, Jr., *Chairman*
Senator Walter A. Stosch, *Vice Chairman*
Delegate Bernard S. Cohen
Delegate Watkins M. Abbitt, Jr.
Delegate William W. Bennett, Jr.
Delegate Frank D. Hargrove, Sr.
James L. Keen
James R. Leaman
William E. O'Neill
Anita B. Lawrence
F. Nash Bilisoly

STAFF

LEGAL AND RESEARCH

Division of Legislative Services

Mark C. Pratt, *Research Associate*
Arlen K. Bolstad, *Senior Staff Attorney*
Cynthia G. Liddy, *Executive Secretary*

ADMINISTRATIVE AND CLERICAL

Thomas C. Gilman, *Chief Committee Clerk of the Senate*

TABLE OF CONTENTS

Executive Summary	i
I. Authority for Study	1
II. Background	1
The JLARC Report	2
Legislative and Administrative Responses	2
III. Work of the Joint Subcommittee	4
Claims for Workers' Compensation	4
Resolving Disputed Claims	6
Changes to the Claims Process	8
Claims Processing Times	10
IV. Deliberations and Recommendations	12
Legislative Recommendations	12
Other Recommendations	14
Other Deliberations	15
V. Conclusion	16
Appendices	

EXECUTIVE SUMMARY

Study Origin, Background and Objectives

In Virginia, workers' compensation furnishes the sole remedy for many of the Commonwealth's working men and women injured in the workplace. As such, assisting the well-being of injured workers and their families through expeditious claims processing is an essential component of the workers' compensation system. The Virginia Workers' Compensation Act, which sets out the basic provisions of the system, is administered by an independent agency of state government called the Virginia Workers' Compensation Commission ("the Commission"). Reflecting on a 1990 report of the Joint Legislative Audit and Review Commission (JLARC), which generally recommended that the Commission take affirmative steps to reduce claims processing times, the 1992 Session of the General Assembly established a joint subcommittee pursuant to Senate Joint Resolution No. 54 to determine "whether measurable progress has been achieved."

The joint subcommittee, which convened four meetings, was comprised of legislators, business and labor representatives, and a member of the Commission. The panel strived to confine its deliberations to aspects of the system relating to claims processing times, recognizing that a relatively narrow focus would facilitate a thorough and thoughtful consideration of the issues.

According to the Commission's records, between 180,000 and 200,000 claims have been established per year since 1989. While most reported injuries are relatively minor, approximately 60,000 injuries each year require that a detailed report be submitted to the Commission. Because hearings may be required over a number of years and claims remain active for the lifetime of the worker, the Commission's workload necessarily involves claims from prior years.

There are several factors that determine how quickly a claim is processed, including the overall volume of claims, the number of cases that require litigation, and the differing interests of the participants in the system. The amount of litigation in workers' compensation cases can largely be attributed to the system's complexity, where cases can involve issues for which an independent fact-finder is needed, including causation, diagnosis, extent of disability, and credibility of witnesses. The participation of employees, employers, insurers, physicians, attorneys, and the courts all contribute to delays in the process. Sharp increases in medical costs have also served to intensify and increase disputes.

In conducting its study, the joint subcommittee examined the organization and management of the Commission with respect to its claims process, reviewed changes to certain administrative procedures of the Commission that were made in response to the JLARC report, and analyzed recent data on claims processing times. The panel also received input from parties affected by the claims process, including employers, insurers, injured workers and attorneys.

Recommendations of the Joint Subcommittee

The joint subcommittee made the following recommendations, all intended to improve the effectiveness and efficiency of the workers' compensation claims process:

- Request the General Assembly to enact legislation which increases financial penalties for employer noncompliance under the Workers' Compensation Act and stipulates that such moneys be paid into the Uninsured Employer's Fund;
- Request the General Assembly to enact legislation which requires the Workers' Compensation Commission to adopt rules of discovery and, as companion legislation, request the General Assembly to adopt a joint resolution which encourages the Workers' Compensation Commission to develop rules and other procedures that will serve to expedite the processing of workers' compensation claims;
- Request the General Assembly to enact legislation which permits hearings to be held in any city or county designated by the Workers' Compensation Commission;
- Request the General Assembly to enact legislation which places restrictions on the number of independent medical examinations an employer may obtain;
- Request the General Assembly to enact legislation which requires contractors and subcontractors to provide evidence of workers' compensation coverage to a governmental entity for which it performs work pursuant to the Public Procurement Act;
- Request the General Assembly to enact legislation which requires that a provisional workers' compensation award be paid from the Uninsured Employer's Fund when the Workers' Compensation Commission, after investigation, determines that (i) the employer of record has failed to satisfy insurance requirements pursuant to § 65.2-801 and (ii) the injury is compensable;
- Request the General Assembly to increase its appropriation to the Workers' Compensation Commission by \$220,000 for the purpose of adding two deputy commissioners and support staff;

- Encourage the deputy commissioners of the Workers' Compensation Commission to issue their opinions within three weeks of the closing of the record;
- Encourage Commissioners of the Workers' Compensation Commission to issue their opinions with all due speed reasonable and practical under the circumstances;
- Request the Workers' Compensation Commission to take steps to ensure that an injured worker's average weekly wage be computed accurately and in a timely fashion; and
- Request the Governor's Advisory Commission on Workers' Compensation to (i) examine how to increase access to representation for parties before the Workers' Compensation Commission and (ii) consider the feasibility and desirability of requiring that suits against claimants by health care providers for payment of medical bills be deferred while a claim is pending.

Conclusion

Senate Joint Resolution No. 54 directed the joint subcommittee to study recent efforts made by the Commission to reduce judicial processing times and to examine how the system could be improved. The panel found that administrative actions taken by the Commission have improved the claims process and believes that its legislative package and other recommendations will further strengthen the system and expedite the claims process, to the benefit of all parties in the workers' compensation system.

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING PROCESSING TIMES ASSOCIATED
WITH CLAIMS RECEIVED, MANAGED AND ADJUDICATED BY THE
VIRGINIA WORKERS' COMPENSATION COMMISSION**

The Governor and the
General Assembly of Virginia
Richmond, Virginia
1993

*To: The Honorable L. Douglas Wilder, Governor,
and
the General Assembly of Virginia*

I. AUTHORITY FOR STUDY

Adopted by the 1992 Session of the General Assembly, Senate Joint Resolution No. 54 (SJR 54) established a joint subcommittee to study processing times associated with claims received, managed and adjudicated by the Virginia Workers' Compensation Commission. A copy of SJR 54 is attached as Appendix A. The joint subcommittee was comprised of 11 members, including two members from the Senate (appointed by the Senate Committee on Privileges and Elections); four members from the House of Delegates (appointed by the Speaker of the House); one commissioner serving on the Workers' Compensation Commission; two individuals representing insurance carriers or employers; and two individuals representing employee associations or labor unions (all appointed by the Governor). The resolution directed the joint subcommittee to submit its findings and recommendations to the Governor and the 1993 Session of the General Assembly.

II. BACKGROUND

The Virginia Workers' Compensation Act ("the Act"), originally enacted by the General Assembly in 1918, is a "no fault" type of insurance system through which an injured employee receives partial wage replacement and medical benefits for a job-related injury or disability. Workers' compensation is a no-fault system because recovery is not based upon negligence, but upon the agreement of the employee to surrender other recovery rights in exchange for a system of compensation established under the Act. Extensively and consistently revised over the years, the Act was recodified in 1991 as a result of a study by the Virginia Code Commission (House Document No. 38, 1991).

Under the Act, most employers having three or more employees are required to obtain workers' compensation coverage. Eligible employees whose injury or occupational disease arises "out of and in the course of employment"

are entitled to medical and indemnity benefits. Medical benefits cover all reasonable and necessary medical costs incurred during the course of treatment of the employee's injury for as long as necessary and without limitation, and generally include physical and vocational rehabilitation. Indemnity, or wage-replacement, benefits include payments for total incapacity, partial incapacity, scheduled disability losses, and death benefits paid to dependents of employees, and are generally based on weekly compensation equal to 66 2/3 percent of the injured employee's average weekly wage for the 52-week period preceding the date of injury.

The Act is administered by the Virginia Workers' Compensation Commission (formerly the Industrial Commission of Virginia), an independent agency within Virginia's governmental structure. An organizational chart of the Commission appears on the following page. The Commission is comprised of three Commissioners who are elected by the General Assembly to serve six-year terms, with one of its members elected to serve as Chairman for a term of three years. Deputy commissioners are appointed by the Commission to hear and decide contested cases. Statutorily directed to "adjudicate issues and controversies" under the Act, the Commission established nearly 60,000 new claims (excluding minor medical-only claims) in 1991.

In the large majority of cases, matters are resolved to the satisfaction of the parties without the need for a judicial hearing. If a hearing is required, the first step is a hearing conducted by a deputy commissioner. Parties who are dissatisfied with the deputy commissioner's decision may request the Commission to review the evidence and make an award. Thereafter, the Commission's decision may be appealed as a matter of right to the Virginia Court of Appeals and finally, under limited circumstances, by petition to the Supreme Court of Virginia.

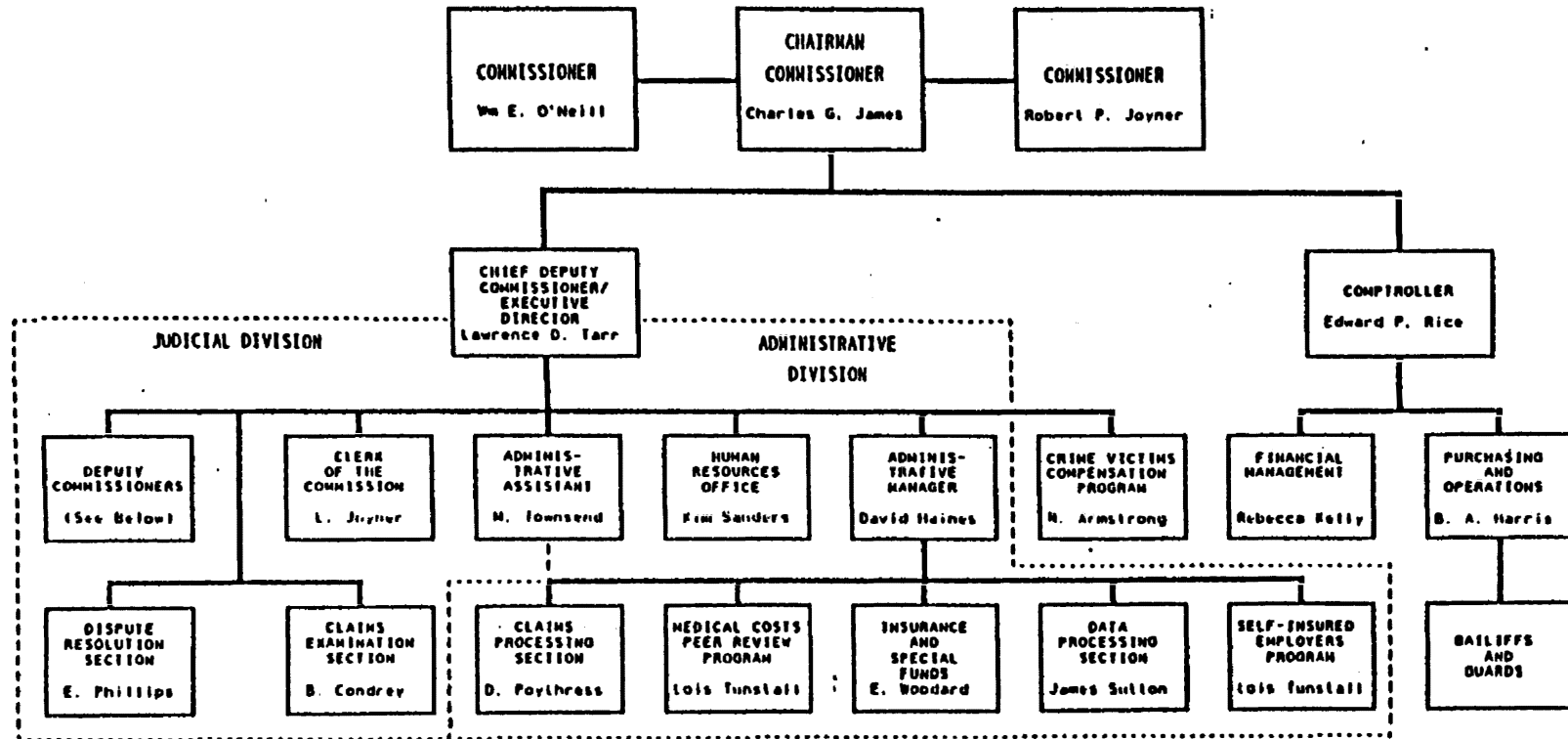
The JLARC Report

In 1990, JLARC reported to the General Assembly its review of the Commission (House Document No. 68). One of JLARC's principal findings was that the time frame for adjudicating disputed claims could be shortened. According to the report, an average disputed case in 1988 took approximately eight and one-half months to proceed from application for hearing to final review opinion. JLARC recommended that the Commission take affirmative steps to reduce judicial processing times, including improvements in hearing scheduling and review-opinion processing.

Legislative and Administrative Responses

Following the JLARC report, several legislative and administrative changes were implemented to address many of JLARC's recommendations. Further improvements to the Act were made as a result of the Virginia Code Commission's study of its provisions, resulting in the Act's recodification in 1991. In 1992, the General Assembly adopted SJR 54 to study workers' compensation claims processing times. The remainder of this report summarizes the work and recommendations of the joint subcommittee.

VIRGINIA WORKERS' COMPENSATION COMMISSION



Deputy Commissioners

Richmond Office

William R. Yates
Elizabeth J. Phillips
William S. Hayes
Patricia C. Arrighi
Randolph P. Tabb
Richard Gorman
Andrea W. Lee

Regional Offices

Carolyn Colville	- Alexandria
Susan Cummins Doan	- Alexandria
John Costa	- Roanoke
Philip Burchett	- Lebanon
Robert E. Deiv	- Norfolk
Susan B. Potter	- Norfolk

III. WORK OF THE JOINT SUBCOMMITTEE

SJR 54 required the joint subcommittee to report its findings and recommendations to the Governor and the 1993 Session of the General Assembly. In order to carry out its legislative mandate, the joint subcommittee convened four meetings as follows:

- *September 25, 1992, Richmond.* The initial meeting featured a thorough briefing of the claims process by representatives of the Commission.
- *October 29, 1992, Lynchburg.* Citizen input was received at a well-attended public hearing. Speakers included claimants and former claimants, their representatives, local employers and other representatives of the business community.
- *November 23, 1992, Richmond.* A work session at the Commission headquarters followed a tour of the facility.
- *January 13, 1993, Richmond.* The joint subcommittee finalized its recommendations at a work session held on the first day of the 1993 Session.

Throughout its work, the panel endeavored to confine its considerations to claims processing times. The narrow focus permitted it to scrutinize those issues. Recognizing that an effective workers' compensation system involves many components, the joint subcommittee welcomed efforts by other entities to study aspects of the system that were beyond its charge.

Claims for Workers' Compensation

Under Virginia law, every employee who is injured on the job is required to provide written notice of an accident within 30 days from its occurrence. In recent years, approximately 180,000 to 200,000 such accidents each year have been reported to the Commission. Most are relatively minor in nature and involve no lost time and only limited, if any, medical treatment.

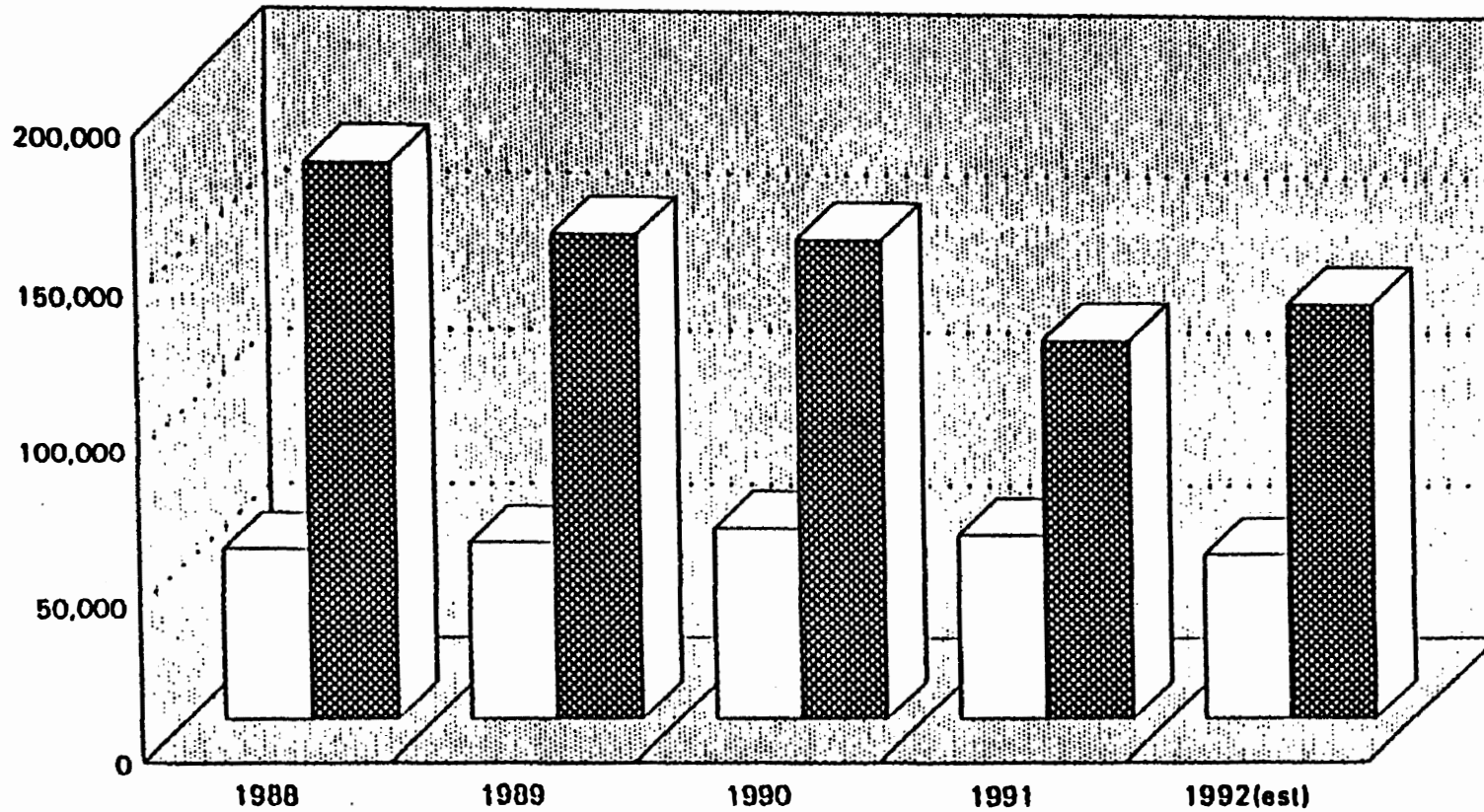
Within 10 days after an injury occurring in the course of employment, an employer or its representative is required to file an *Employer's First Report of Accident* with the Commission. An employer who fails to timely make required reports is liable for financial penalties under the Act. In 1991, the General Assembly passed legislation (consistent with a JLARC recommendation) which permits the Commission to define a "minor injury" and accept accident reports on forms prescribed by the Commission for that purpose. The Commission subsequently changed the definition of minor injury, effectively raising the minimum medical cost for a major injury to \$1,000.

Less than one-third of industrial accidents--50,000 to 60,000 per year--are classified as major injuries. For such injuries, a claim file is created that becomes a permanent record of the accident. These injuries may involve lost time, significant medical costs and other issues which require the Commission's attention. A graph depicting the number of files created and minor claims established from 1988-1992 appears on the following page.

Number of Files Created and Minor Claims Established (1988 - 1992)

Source: Workers' Compensation Commission

-5-



	1988	1989	1990	1991	1992(est)
Files created	54,569	56,922	61,849	59,943	53,587
Minor claims	178,655	156,914	155,607	123,603	135,614

Files created
 Minor claims

Of the major claims, most are resolved to the satisfaction of the parties without litigation. Commission data show that approximately one-fourth of all major claims were disputed in 1992. Further, many claims that are disputed initially are resolved prior to hearing.

In studying ways to reduce claims processing times, the subcommittee found that delays do not occur in the large majority of cases. The panel also recognized that the most effective way to improve the workers' compensation system for all parties is to reduce injuries by emphasizing workplace safety.

Resolving Disputed Claims

Despite the fact that a relatively small percentage of claims are disputed to a level which reaches deputy commissioners or the Commission, prompt resolution of contested cases is critical to the parties at issue.

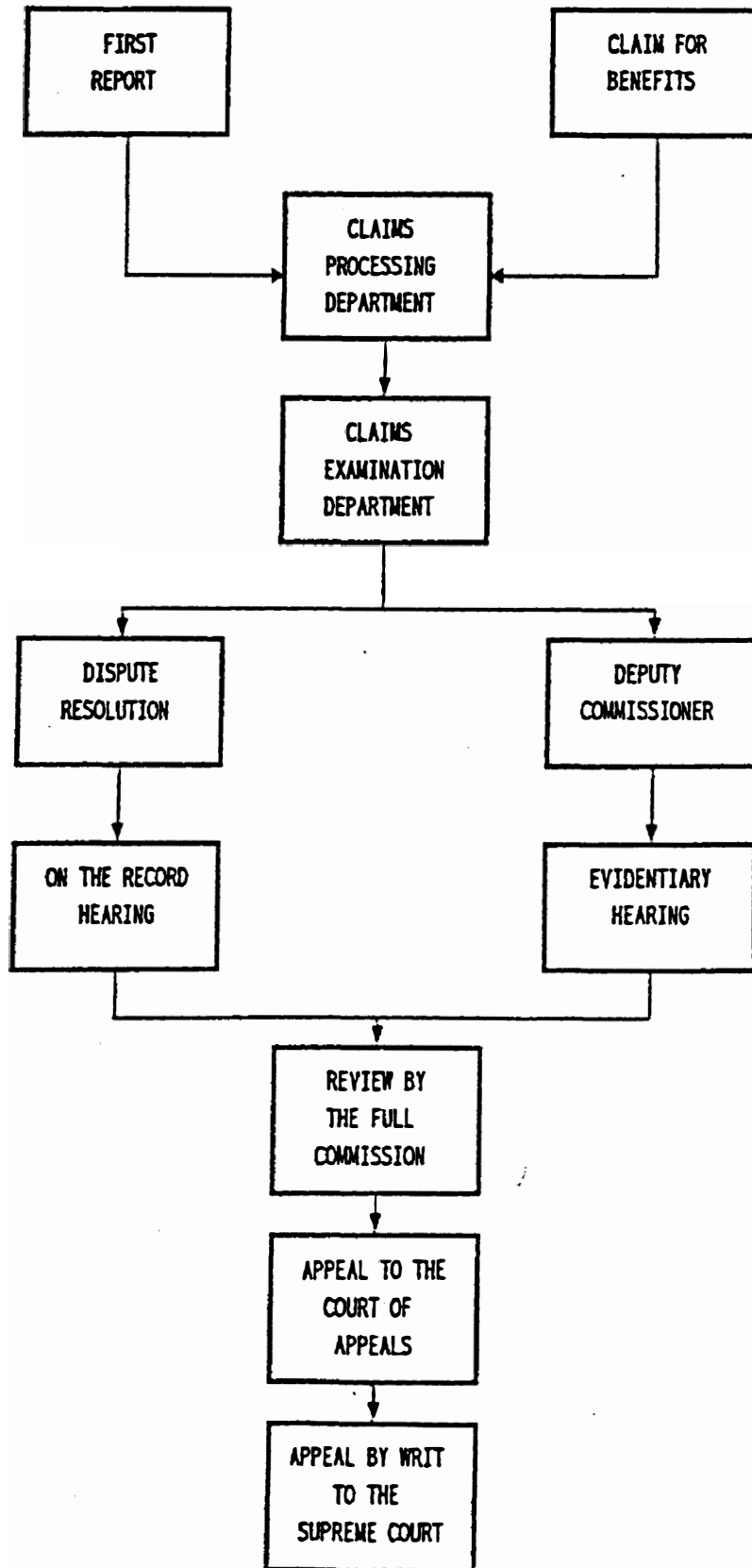
The Commission's judicial process is initiated when an injured worker, employer or insurance company notifies the Commission. At this stage, the case is either referred for evidentiary hearing by a deputy commissioner or for dispute resolution. [Dispute resolution will be discussed in the next section of the report.]

Before an evidentiary hearing takes place, each party has an opportunity to learn about the other party's evidence and defenses by requesting that the deputy commissioner approve interrogatories, depositions and subpoenas. Interrogatories are written questions sent to the parties and potential witnesses. The interrogatories must be answered in writing and under oath. Depositions involve recording and transcribing a witness's answers under oath to specific questions. Subpoenas can be issued for witnesses to appear at the hearing or for documents to be delivered to the Commission. At the conclusion of these pretrial procedures, the dispute is ready to be heard by a deputy commissioner.

Following a hearing, a deputy commissioner reviews the facts of the case and writes an opinion, which includes the decision and supporting rationale. Within 20 days of the deputy commissioner's decision, either party may ask the Commission to review it. Cases are assigned to each of the three commissioners, who review all of the relevant information pertaining to a case and draft an opinion which is provided to the other commissioners. If one or both of the other commissioners signs the draft, it becomes the Commission's opinion; if neither do, it becomes a dissenting opinion, whereupon one of the other commissioners drafts the majority opinion (House Document No. 68, 1990, p. 72).

If either party is dissatisfied with the Commission's review opinion, it may appeal to the Virginia Court of Appeals as a matter of right. In most cases, the Court of Appeals decision is final. However, the Supreme Court of Virginia may review the Court of Appeals decision if it determines on a petition for review that the decision involves a substantial constitutional question as a determinative issue or involves matters of significant precedential value (§ 17-116.07). A flow chart of the process for disputed claims appears on the next page.

DISPUTED CLAIMS



Changes to the Claims Process

In 1991, the Commission initiated a systematic examination of procedures for claims processing. According to testimony before the subcommittee by Commission representatives, the current underlying philosophy uniting the claims process is the goal of resolving cases if at all possible rather than simply placing them on the hearing docket. Key elements of a strategy emphasizing the Commission's efforts to control the pace of case resolution include:

- Supervising and monitoring claims from filing to resolution
- Eliminating unnecessary delays through examination of forms and procedures of the Claims Examination Department
- Utilizing alternative dispute resolution at all stages of the process
- Developing a system for swift judicial determination of cases that do not require a full evidentiary hearing

The Commission has implemented several administrative actions to accomplish this strategy. Consistent with a JLARC recommendation, the Claims Examination and Claims Processing Departments were separated and placed in different divisions, thereby clarifying their different roles in the process and facilitating handling of claims. Beginning in April 1991, the Commission changed the operations of its entry point for a contested claim, the Claims Examination Department. The principal tasks of the department include providing public information, administering applications and monitoring existing claims.

The importance of the public information role is evidenced by the fact that the department receives 400-500 calls per day. The Commission has added three positions to the department, provides training to personnel who answer telephone calls and has assigned two claims examiners to telephone work to enhance its ability to provide public information.

Comprehensive changes were made to improve the Commission's claims examination functions, which include determining whether a claim has been properly filed, resolving claims without formal hearings and referring others to dispute resolution, and identifying claims which will need evidentiary hearings and referring them to the hearing docket. Study of forms used by the Commission revealed that several were "redundant, archaic or did not reflect recent statutory or procedural changes." As a result, each of the existing forms were reviewed, revised and updated. Some were eliminated and new forms were designed and added.

In addition, the Commission has changed its procedures so that examiners are required to give priority to claim requests over routine telephone calls and general correspondence. Once a determination is made that a claim is properly filed, the assistant claims examiner attempts to resolve the controversy by providing information, instead of reacting to it.

Prior procedures involved sending a letter to an insurance carrier asking it to advise the Commission within 20 days of its "attitude toward the claim." Following up on a JLARC recommendation to monitor response to the letter, the Commission found that insurers were usually not responding to the letter, thereby causing follow-up action by the Commission and further delay. The "twenty-day letter" was subsequently eliminated and replaced with orders that require specific responses within specified times. Under revised provisions, a failure to timely respond may result in a Show Cause Order and, potentially, fine for noncompliance. The Commission reported that implementation of this procedure has been successful.

Another change instituted by the Commission is increased emphasis on in-service education and establishment of regular meetings with claims examiners to discuss case law, policy and file management. The Commission has also made a substantial investment in automating its operations. Computerizing case information has resulted in a more efficient operation, the ability to obtain relevant statistical data, and better delivery of services to the public.

Alternative Dispute Resolution

Perhaps the most important of the Commission's changes is implementation of an innovative procedure to resolve relatively minor disputes, termed alternative dispute resolution. Cited by JLARC as an effective means of reducing the Commission's judicial caseload, the Dispute Resolution Department was established in 1990 as part of the Commission's Judicial Division. In January of 1992, the focus and responsibility of the Department were redefined.

According to the Commission, its concept of dispute resolution differs from other states in that its emphasis is on resolving cases at the Claims Department level and deciding cases through the use of on-the-record hearings.

When the Claims Examination Department refers a case for alternative dispute resolution, a hearing officer reviews the files and determines whether the matter can be resolved by contacting the parties directly. The hearing officer then contacts each party and identifies the specific issues in dispute. He offers advice concerning the dispute and proposes ways in which the parties can agree on a settlement. If an agreement is reached, the hearing officer enters an order in accordance with the agreement, and the case is not scheduled for an evidentiary hearing (House Document No. 68, 1990, p. 77). Either party may request the full Commission to review the decision not to hold an evidentiary hearing.

The subcommittee learned that, in 1991, the Dispute Resolution Department approved over 3,000 settlements cumulatively valued at approximately \$57 million. Commission representatives and attorneys practicing workers' compensation testified that the use of alternative dispute resolution has shortened processing times for some disputed cases and has reduced the number of cases scheduled for evidentiary hearing.

Review Opinions

One aspect of the workers' compensation claims process that has been most affected by a trend toward increases in litigation is the appeal from the deputy commissioner to the full Commission. Under Virginia law, any party may request that the Commission review the hearing officer's decision. Commission data provided to the subcommittee revealed that the number of review opinions written in 1992 was estimated to be 78 percent higher than the number written in 1988.

The subcommittee learned of a pilot program established by the Commission in 1991 to reduce processing times for review opinions. After weighing the time spent at the hearings and the relative benefit derived from oral argument, the Commission determined that reviews could be expedited by setting up a briefing schedule and eliminating oral argument except in cases deemed necessary by the Commission.

Prior to implementation of the pilot program, the Commission had required a party to request oral argument; otherwise, the case was decided on the record after the hearing transcript was prepared. Under the current system, if oral argument is requested, the Commissioner assigned to a case reviews the transcript and determines whether or not oral argument is necessary. Commission representatives told the subcommittee that this procedure has expedited the review process.

Claims Processing Times

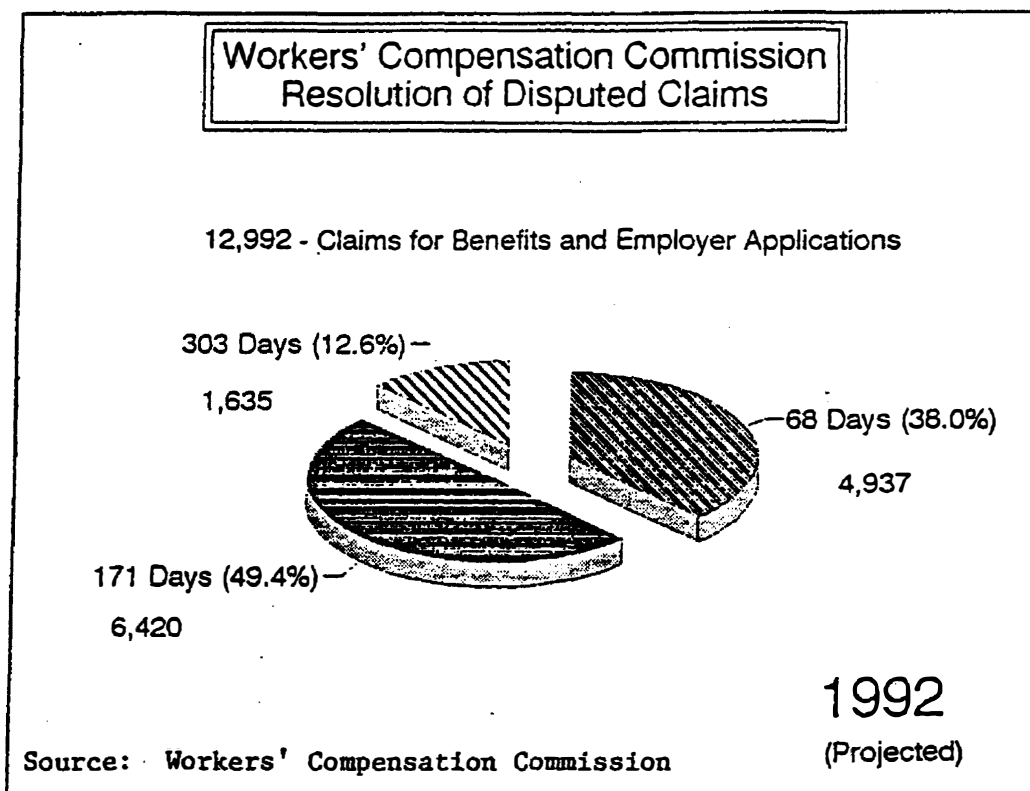
Many delays in processing workers' compensation claims cannot be easily remedied by administrative action or by legislative initiative. The volume of claims clearly has an impact on the speed with which they are processed. The subcommittee recognized that enhancing workplace safety and reducing accidents is the best way to benefit all Virginians and, as a by-product, speed up the claims process.

Another important factor with regard to claims processing times is the amount of litigation. Attributable in large measure to the inherent adversarial nature of the system, litigation has increased because the value of awards--in indemnity and medical benefits--are critical to injured workers, employers and insurers, as well as attorneys, physicians and others. Further, the system's growing complexity often demands the expertise of individuals knowledgeable about workers' compensation.

Other related factors that affect claims processing times are increases in requests for review by the full Commission and appeals to the Virginia Court of Appeals. The Commission estimated that 320 cases would be appealed to the Court of Appeals in 1992, continuing the trend upwards since an appeal (as a matter of right) to the Court of Appeals was established in 1985.

Data projections for 1992 provided by the Commission illustrate that more than one-third of disputed claims were resolved prior to hearing, approximately one-half at the deputy commissioner level (including evidentiary hearings and dispute resolution) and nearly 13 percent by the full Commission. The graph

below illustrates the level of resolution of disputed claims within the Commission and their overall percentages, as well as the number of days from application to resolution.



Although the joint subcommittee determined that improvements in the claims process have been made, the panel heard testimony which indicated that processing delays remain problematic for some parties. At its public hearing in Lynchburg, several people told the subcommittee that they experienced delays in receiving decisions on their cases. Among the reasons cited were lack of cooperation from insurers and employers, postponements of scheduled hearings, unnecessary haggling over minor disagreements and technical errors, and problems concerning payment of medical bills. Claimants testified that such delays often placed a significant financial strain on themselves and their families.

The subcommittee also received significant input from attorneys involved in the workers' compensation process. Attorneys representing injured workers and attorneys representing employers and insurers testified that practicing workers' compensation is difficult because of the special rules that apply, such as in the area of pre-trial procedures. Some testimony indicated that many attorneys choose not to practice workers' compensation because of its complexity; thus, it was also suggested, access to representation for parties before the Commission is inadequate.

Other delays in the process were said to occur because of cases where there is an uninsured employer, over-utilization of independent medical examinations by employers, and evidence of fraudulent representations.

IV. DELIBERATIONS AND RECOMMENDATIONS

Pursuant to SJR 54, the joint subcommittee's primary responsibilities were to examine recent changes to the workers' compensation claims process and, if necessary, recommend ways to further improve the process. After reviewing such changes, the subcommittee determined that enhancements to the process have been made; it further concluded that additional legislative and administrative changes should be implemented. The panel held two work sessions at which it crafted its recommendations to the Governor and the General Assembly.

Legislative Recommendations

Increasing Fines For Failure to Comply with Reporting Requirements

The subcommittee determined that the maximum statutory fines for an employer's failure to comply with the Act's insurance and reporting requirements are an insufficient deterrent against noncompliance. It believes that adherence to such requirements will expedite the claims process in its initial stages. Therefore, the joint subcommittee recommends that the General Assembly enact legislation which increases financial penalties for an employer's failure to comply with reporting provisions of the Workers' Compensation Act.

Under legislation recommended by the panel (attached as Appendix B), the minimum civil penalty for failure to file evidence of compliance with the insurance requirements of the Act changes from \$50 to \$500; the maximum from \$1,000 to \$5,000. The proposal makes an employer's failure to timely file other required reports (e.g., first report of accident) an offense subject to a civil penalty of not more than \$500 (the maximum fine is currently \$250); if the Workers' Compensation Commission determines that any such failure is willful, an employer may be assessed a civil penalty of up to \$5,000. Under the proposal's provisions, all such civil penalties are to be paid into the Uninsured Employer's Fund.

Rules Governing Discovery

When a claim is disputed by either party, pretrial procedures begin. In order for each party to learn about the other party's evidence and defenses, interrogatories, depositions and subpoenas are often utilized. Section 65.2-703 currently requires the Commission to authorize the use of such discovery.

The subcommittee found that delays occur because the hearing officer or Commissioner before whom the proceeding is pending must review all interrogatories, requests for production of documents, deposition notices and subpoena requests and personally rule on the relevance of each. The panel learned that discovery is rarely disapproved. Delays in acting on such requests, however, can cause the process to be delayed and may also result in unnecessary continuances being granted. In addition, testimony indicated that pretrial procedure in workers' compensation is so different than most litigation that it may result in unsatisfactory or insufficient representation for parties before the

Commission. For these reasons, the joint subcommittee recommends that the General Assembly be requested to enact legislation that requires the Commission to adopt rules governing discovery.

Appearing as Appendix C, the draft legislation stipulates that such rules must conform as nearly as practicable to Part Four of the Rules of the Virginia Supreme Court and be adopted in accordance with the provisions of the Administrative Process Act. Under the proposal, all interrogatories, depositions and other discovery are required to conform to the Commission's rules.

As companion legislation, the joint subcommittee recommends that the General Assembly adopt a joint resolution which encourages the Commission to develop rules and other procedures that will serve to expedite the processing of workers' compensation claims. A copy of the draft resolution is attached as Appendix D.

Venue

The subcommittee found that the statute governing venue for workers' compensation hearings is unnecessarily restrictive. Under § 65.2-702, a hearing must take place in the city or county where the injury occurred or in a contiguous city or county, unless otherwise agreed to by the parties and authorized by the Commission. Because the lack of courtroom availability in certain jurisdictions of the Commonwealth has served to slow down hearing dockets, the joint subcommittee recommends that the General Assembly enact legislation which authorizes the Commission to designate the venue for workers' compensation hearings.

The proposal (attached as Appendix E) retains venue in the city or county where the injury occurred (or in a contiguous city or county), but permits the Commission to designate some other location without first obtaining the consent of the parties to the claim.

Independent Medical Examinations

The joint subcommittee heard testimony from injured workers and their representatives indicating that much time and effort was being expended on claimants' submitting to independent medical examinations (IME's) required by the employer or insurer. Under current law, an injured employee is required to submit to such examinations without limitation (§ 65.2-607). The panel determined that unlimited IME's unnecessarily slow down the claims process and recommends that the General Assembly enact legislation which places restrictions on the number of IME's an employer can obtain.

Under draft language proposed by the subcommittee (attached as Appendix F), employers may not obtain more than one examination per medical specialty without prior authorization from the Commission based upon a showing of good cause or necessity.

Proof of Insurance Coverage for State Contracts

Because the claims process may be delayed when contractors and subcontractors do not comply with statutory requirements that they have

workers' compensation coverage, the joint subcommittee recommends that the General Assembly enact legislation which requires contractors and subcontractors to provide evidence of workers' compensation coverage as may be required under the Workers' Compensation Act to a governmental entity for which work is performed pursuant to the Virginia Public Procurement Act. Draft legislation recommended by the subcommittee to implement this recommendation appears as Appendix G.

Uninsured Employer's Fund

The subcommittee learned that cases involving the Uninsured Employer's Fund (pursuant to § 65.2-1200 et seq.) invariably result in significant delays in payment to the claimant because the Fund must defend the claim *and* attempt to recover payments from either the uninsured employer or other statutory employers. Because litigation ensues in almost every case, the injured worker--although potentially entitled to an award--is denied benefits while the legal technicalities are worked out. The joint subcommittee recommends that the General Assembly enact legislation which authorizes provisional awards from the Uninsured Employer's Fund.

The subcommittee's draft proposal, attached as Appendix H, requires that a provisional workers' compensation award be paid from the Uninsured Employer's Fund when the Commission, after investigation, determines that (i) the employer of record has failed to satisfy insurance requirements under the Act and (ii) the injury is compensable. The draft language stipulates that the determination of a final award will be made pursuant to all other applicable provisions of the Act.

Additional Commission Staff

The panel heard considerable testimony and reviewed recent data which clearly indicated that the workload of the Commission's deputy commissioners is tremendous. Because the joint subcommittee recognizes that one of the most effective ways to reduce claims processing times is to lessen the number of cases on deputy commissioners' hearing dockets, it recommends that the General Assembly increase its budget appropriation to the Commission by \$220,000 for the purpose of adding two deputy commissioners and support staff. A letter to the Staff Directors of the House Appropriations Committee and Senate Finance Committee informing them of the joint subcommittee's recommendation appears as Appendix I.

Other Recommendations

While the joint subcommittee determined that additional Commission staff is needed to address claims processing times, it also believes that it is incumbent upon deputy commissioners to adhere to the Commission's internal policy of requiring them to issue their opinions within three weeks from the closing of a case's record. By memorandum to the Commission's Chief Deputy Commissioner and deputy commissioners, the joint subcommittee encourages the deputy commissioners of the Commission to issue their opinions within three weeks from the closing of the record. A copy of the memorandum is attached as Appendix J.

In a similar vein, the subcommittee believes that review opinion processing needs to be as expeditious as possible. By copy of memorandum, the joint subcommittee encourages Commissioners of the Workers' Compensation Commission to issue their opinions with all due speed reasonable and practicable under the circumstances. Appearing as Appendix K, the memorandum also requests the Commission to take steps to ensure that a claimant's average weekly wage is computed accurately and in a timely fashion. Testimony before the subcommittee indicated that average weekly wage determinations often result in unnecessary disputes and delays.

Some subjects that were discussed were beyond the purview of the SJR 54 subcommittee, but were believed to merit further attention. Testimony indicated that access to representation--particularly for injured workers--is insufficient. Several attorneys suggested that practicing workers' compensation is complicated and cumbersome unless one chooses to specialize in it. The subcommittee believes that representation for parties to a workers' compensation proceeding is beneficial (and often critical) and surmised that one way to increase such representation would be to permit nonattorneys having appropriate expertise or certification to serve as representatives.

Members of the panel also acknowledged that lawsuits by health care providers against claimants for unpaid medical bills are undue burdens on injured workers while their claims are pending. The subcommittee discussed the possibility of requiring that such suits be deferred until a workers' compensation award has been entered.

Because these issues were beyond the scope of its work, the subcommittee recommends that the Governor's Advisory Commission on Workers' Compensation examine the issues of access to representation and suits against claimants by health care providers. The Commission was established in 1992 by an executive order of Governor Wilder, who subsequently extended its life through mid-1993. A memorandum from the joint subcommittee to the Chair and Vice Chair of the Commission is attached as Appendix L.

Other Deliberations

Some aspects of the system which related to claims processing times were debated but did not result in any subcommittee recommendation. For example, there was sentiment among some members of the subcommittee that the claims process could be expedited if the appeal as a matter of right to the Virginia Court of Appeals provided by statute was eliminated.

A draft bill was prepared by staff which required any party wishing to appeal a final decision of the Commission to petition the Court of Appeals, thereby giving the Court the discretion to hear or to refuse to accept the case. The likely effect of such a statutory change would be that fewer cases would be heard by the Court of Appeals. However, a majority of the members of the subcommittee believed that the disadvantages to parties denied the opportunity to appeal outweighed the advantages, and the measure was rejected by the joint subcommittee.

V. CONCLUSION

Senate Joint Resolution No. 54, adopted by the 1992 Session of the General Assembly, established a joint subcommittee to study workers' compensation claims processing times. The resolution charged the panel with determining whether measurable progress has been achieved in addressing delays in the claims process and recommending further enhancements to the workers' compensation claims process.

After extensive deliberations, the panel determined that recent changes have significantly improved the process. It also believes that additional legislative and administrative actions are necessary to reduce processing delays. The joint subcommittee believes that implementation of the recommendations contained in this report will be beneficial to all of the Commonwealth's citizens.

The joint subcommittee thanks all of those interested persons who contributed to its work, with specific acknowledgement to the Commissioners and Chief Deputy Commissioner of the Workers' Compensation Commission for their cooperation and assistance.

Respectfully submitted,

Virgil H. Goode, Jr., *Chairman*

Walter A. Stosch, *Vice Chairman*

Bernard S. Cohen

Watkins M. Abbitt, Jr.

William W. Bennett, Jr.

Frank D. Hargrove, Sr.

James L. Keen

James R. Leaman

William E. O'Neill

Anita B. Lawrence

F. Nash Bilisoly

SENATE JOINT RESOLUTION NO. 54

Establishing a joint subcommittee to study processing times associated with claims received, managed and adjudicated by the Department of Workers' Compensation.

Agreed to by the Senate, February 5, 1992

Agreed to by the House of Delegates, March 3, 1992

WHEREAS, the Workers' Compensation Act furnishes the sole remedy for many of the Commonwealth's working men and women injured in the workplace; and

WHEREAS, the continuing viability of this Act and the system of compensation established thereunder is linked to expeditious claim processing to ensure the well-being of injured workers and their families; and

WHEREAS, the Department of Workers' Compensation is charged with the administration of claims filed by injured workers under this Act; and

WHEREAS, a 1990 report of the Joint Legislative Audit and Review Commission (JLARC) summarizing its Review of the Virginia Department of Workers' Compensation in House Document 68 (1990), found that in 1988 an average disputed case took nearly eight and one-half months to proceed from application for hearing to final review opinion; and

WHEREAS, JLARC generally recommended that the Department of Workers' Compensation take affirmative steps to enhance judicial processing times, including improvements in hearing scheduling and review-opinion processing; and

WHEREAS, the General Assembly, on behalf of the Commonwealth's citizens, has an interest in determining whether measurable progress has been achieved by the Department of Workers' Compensation vis-a-vis claims processing; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be established to study processing times associated with claims received, managed, and adjudicated by the Department of Workers' Compensation, together with such other related issues as the joint subcommittee may deem appropriate.

The joint subcommittee shall consist of eleven members to be appointed as follows: two members from the Senate to be appointed by the Senate Committee on Privileges and Elections, and four members from the House of Delegates to be appointed by the Speaker of the House. Additional members shall include one commissioner serving on the Workers' Compensation Commission; two individuals associated with or representing (i) insurance carriers offering and issuing workers' compensation insurance in the Commonwealth, or (ii) organizations of employers in the Commonwealth; and two individuals affiliated with or representing employee associations or labor unions whose members are covered by the Workers' Compensation Act, all to be appointed by the Governor.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1993 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

The indirect costs of this study are estimated to be \$8,255; the direct costs of this study shall not exceed \$5,940.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

1 D 1/13/93 Pratt C 1/16/93 jcl

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact §§ 65.2-805 and 65.2-902 of the Code of
4 Virginia, relating to workers' compensation; civil penalties.

5

6 Be it enacted by the General Assembly of Virginia:

7 1. That §§ 65.2-805 and 65.2-902 of the Code of Virginia are amended
8 and reenacted as follows:

9 § 65.2-805. Civil Penalty for violation of § 65.2-804.--A. If
10 such employer fails to comply with the provisions of § 65.2-804, he
11 shall be ~~punished by a fine assessed~~ a civil penalty of not less than
12 ~~\$50-\$500~~ nor more than ~~\$1,000-\$5,000~~, and he shall be liable during
13 continuance of such failure to any employee either for compensation
14 under this title or at law in a suit instituted by the employee
15 against such employer to recover damages for personal injury or death
16 by accident, and in any such suit such employer shall not be permitted
17 to defend upon any of the following grounds:

- 18 1. That the employee was negligent;
- 19 2. That the injury was caused by the negligence of a fellow
20 employee; or
- 21 3. That the employee had assumed the risk of the injury.

22 B. The ~~fine-civil penalty~~ herein provided may be assessed by the
23 Commission in an open hearing with the right of review and appeal as
24 in other cases. Upon a finding by the Commission of such failure to
25 comply, and after fifteen days' written notice thereof sent by

1 certified mail to the employer, if such failure continues, the
2 Commission may order the employer to cease and desist all business
3 transactions and operations until found by the Commission to be in
4 compliance with the provisions of this chapter.

5 C. Any civil penalty assessed pursuant to this section shall be
6 paid into the Uninsured Employer's Fund established in Chapter 12 (§
7 65.2-1200 et seq.) of this title.

8 § 65.2-902. Failure to make required reports; civil penalty.--

9 A. Any employer who fails to make any report required by the
10 Commission pursuant to this title shall be ~~liable for a~~ assessed a
11 civil penalty of not more than \$250-\$500 for each failure. If the
12 Commission determines that any such failure is willful, it shall
13 assess a civil penalty of not less than \$500 and not more than \$5,000.
14 The ~~fine-civil penalty~~ herein provided may be assessed by the
15 Commission in an open hearing with the right of review and appeal as
16 in other cases. In the event the employer has transmitted the report
17 to the insurance carrier or third party administrator for transmission
18 to the Commission, the insurance carrier or third party administrator
19 failing to transmit the report shall be liable for the civil penalty.

20 B. Any civil penalty assessed pursuant to this section shall be
21 paid into the Uninsured Employer's Fund established in Chapter 12 (§
22 65.2-1200 et seq.) of this title.

23 #

LD6897156

1 D 1/13/93 Pratt T 1/15/93 scw

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact § 65.2-703 of the Code of Virginia,
4 relating to workers' compensation claims; discovery.

5

6 Be it enacted by the General Assembly of Virginia:

7 1. That § 65.2-703 of the Code of Virginia is amended and reenacted
8 as follows:

9 § 65.2-703. Interrogatories and depositions.-- A. Any party to
10 a proceeding under this title may, upon application to the Commission
11 setting forth the materiality of the evidence to be given, serve
12 interrogatories or cause the depositions of witnesses residing within
13 or without the Commonwealth to be taken, the costs to be taxed as
14 other costs by the Commission. Such depositions shall be taken after
15 giving the notice and in the manner prescribed by law for depositions
16 in actions at law, except that they shall be directed to the
17 Commission, the Commissioner, or the deputy commissioner before whom
18 the proceedings may be pending.--All interrogatories, depositions, or
19 any other discovery shall conform to rules governing discovery
20 promulgated by the Commission.

21 B. The Commission shall adopt rules governing discovery
22 conforming as nearly as practicable to Part Four of the Rules of the
23 Virginia Supreme Court. Such rules shall be adopted in accordance
24 with and pursuant to the Administrative Process Act (§ 9-6.14:1 et
25 seq.).

#

LD6894665

1 D 1/14/93 Pratt C 1/17/93 tga

2 SENATE JOINT RESOLUTION NO.....

3 Encouraging the Virginia Workers' Compensation Commission to develop
4 and implement procedures and rules which will expedite the
5 processing of workers' compensation claims.

6

7 WHEREAS, the 1992 Session of the General Assembly established a
8 joint subcommittee to study processing times associated with workers'
9 compensation claims; and

10 WHEREAS, the joint subcommittee heard testimony indicating that
11 expediting the claims process would be beneficial to the
12 Commonwealth's workers who are injured on the job; and

13 WHEREAS, the joint subcommittee recommended that the 1993 Session
14 of the General Assembly enact legislation which would require the
15 Workers' Compensation Commission to promulgate rules of discovery; and

16 WHEREAS, in developing such rules of discovery, the joint
17 subcommittee requested that the Commission consider: (i) the Rules of
18 the Workers' Compensation Commission; (ii) the Rules of the Virginia
19 Supreme Court, particularly with regard to limits on the number of
20 interrogatories or requests for production of documents, procedures
21 for issuing subpoenas, taking depositions and filing objections; (iii)
22 the use of an initial pretrial order which sets out dates certain for
23 discovery and trial; (iv) the use of bench opinions instead of full
24 written decisions for issues which can be easily decided; and (v)
25 other such sources as the Commission deems appropriate; and

26 WHEREAS, the joint subcommittee also recommended that the

1 Commission examine the feasibility and desirability of expanding the
2 use of its Dispute Resolution Department during all phases of the
3 workers' compensation claims process; and

4 WHEREAS, the General Assembly believes it is in the best
5 interests of the Commonwealth's citizens to improve the effectiveness
6 and efficiency of the workers' compensation claims process; now,
7 therefore, be it

8 RESOLVED by the Senate, the House of Delegates concurring, That
9 the Virginia Workers' Compensation Commission be encouraged to develop
10 and implement procedures and rules that will expedite the processing
11 of workers' compensation claims.

12

#

1 D 01/13/93 Pratt T 01/15/93 lss

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact § 65.2-702 of the Code of Virginia,
4 relating to workers' compensation; venue.

5

6 Be it enacted by the General Assembly of Virginia:

7 1. That § 65.2-702 of the Code of Virginia is amended and reenacted
8 as follows:

9 § 65.2-702. Disagreement on compensation; venue.--A. If the
10 employer and the injured employee or his dependents fail to reach an
11 agreement in regard to compensation under this title, or if they have
12 reached such an agreement which has been signed and filed with the
13 Commission and compensation has been paid or is due in accordance
14 therewith and the parties thereto then disagree as to the continuance
15 of any weekly payment under such agreement, either party may make
16 application to the Commission for a hearing in regard to the matters
17 at issue and for a ruling thereon.

18 B. Immediately after such application has been received the
19 Commission shall set the date for a hearing, which shall be held as
20 soon as practicable, and shall notify the parties at issue of the time
21 and place of such hearing. The hearing shall be held in the city or
22 county where the injury occurred, or in a contiguous city or county,
23 unless otherwise agreed-to-by-the-parties-and-authorized-designated
24 by the Commission.

25 #

LD6898272

1 D 01/13/93 Pratt T 01/15/93 lss

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact § 65.2-607 of the Code of Virginia,
4 relating to workers' compensation; independent medical
5 examinations.

6

7 Be it enacted by the General Assembly of Virginia:

8 1. That § 65.2-607 of the Code of Virginia is amended and reenacted
9 as follows:

10 § 65.2-607. Medical examination; physician-patient privilege
11 inapplicable; autopsy.--A. After an injury and so long as he claims
12 compensation, the employee, if so requested by his employer or ordered
13 by the Commission, shall submit himself to examination, at reasonable
14 times and places, by a duly qualified physician or surgeon designated
15 and paid by the employer or the Commission. However, no employer may
16 obtain more than one examination per medical specialty without prior
17 authorization from the Commission, and upon a showing of good cause or
18 necessity. The employee shall have the right to have present at such
19 examination any duly qualified physician or surgeon provided and paid
20 by him. No fact communicated to, or otherwise learned by, any
21 physician or surgeon who may have attended or examined the employee,
22 or who may have been present at any examination, shall be privileged,
23 either in hearings provided for by this title, or any action at law
24 brought to recover damages against any employer subject to the
25 provisions of this title.

26 B. If the employee refuses to submit himself to or in any way

1 obstructs such examination requested by and provided for by the
2 employer, his right to compensation and his right to take or prosecute
3 any proceedings under this title shall be suspended until such refusal
4 or objection ceases and no compensation shall at any time be payable
5 for the period of suspension unless in the opinion of the Commission
6 the circumstances justify the refusal or obstruction.

7 C. The employer or the Commission may in any case of death
8 require an autopsy at the expense of the party requesting the same.
9 Such autopsy shall be performed upon order of the Commission, and
10 anyone obstructing or interfering with such autopsy shall be punished
11 for contempt.

12

#

LD6900665

1 D 1/13/93 Pratt T 1/16/93 tga

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend the Code of Virginia by adding a section numbered
4 11-46.3, relating to contractors; proof of required workers'
5 compensation coverage.

6
7 Be it enacted by the General Assembly of Virginia:

8 1. That the Code of Virginia is amended by adding a section numbered
9 11-46.3 as follows:

10 § 11-46.3. Workers' compensation requirements for construction
11 contractors and subcontractors.--No contractors or subcontractor shall
12 perform any work on a construction project of a department, agency or
13 institution of the Commonwealth unless he has (i) obtained, and
14 continues to maintain for the duration of such work, such workers'
15 compensation coverage as may be required pursuant to the provisions of
16 Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provided
17 evidence thereof to the department, agency or institution.

18 #

LD6899156

LEGJEM

1 D 1/13/93 Pratt C 1/17/93 jds

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact § 65.2-1203 of the Code of Virginia,
4 relating to workers' compensation; Uninsured Employer's Fund.

5

6 Be it enacted by the General Assembly of Virginia:

7 1. That § 65.2-1203 of the Code of Virginia is amended and reenacted
8 as follows:

9 § 65.2-1203. Awards.--A. ~~After an award has been entered~~
10 ~~against an employer for compensation benefits under any provision of~~
11 ~~this chapter, and upon a finding that the employer has failed to~~
12 ~~comply with the provisions of § 65.2-801, or that a self-insured~~
13 ~~employer or its surety as required by § 65.2-801 is unable to satisfy~~
14 ~~an award in whole or in part, the Commission shall order the award, or~~
15 ~~any unpaid balance, to be paid from the Uninsured Employer's Fund.--~~
16 Whenever, following due investigation of a claim for compensation
17 benefits, the Commission determines that (i) the employer of record
18 has failed to comply with the provisions of § 65.2-801 or that a
19 self-insured employer or its surety as required by § 65.2-801 is
20 unable to satisfy an award in whole or in part, and (ii) the claim is
21 compensable, the Commission shall make a provisional award of
22 compensation benefits, or any unpaid balance thereof, without further
23 delay. Thereafter, the Commission shall make a final award concerning
24 such benefits or unpaid balance thereof, in accordance with the
25 provisions of this chapter and all applicable provisions of this

1 title. The Commission shall order payment of any award of
2 compensation benefits pursuant to this chapter from the Uninsured
3 Employer's Fund.

4 B. For the purposes of this chapter, an employer who is a former
5 member of a group self-insurance association whose license has been
6 terminated by the State Corporation Commission and whose security
7 deposit with the State Treasurer or surety coverage has been exhausted
8 shall be deemed to be an uninsured employer not in compliance with §
9 65.2-801. For all such uninsured employers, the Attorney General, or
10 his designee, shall enforce the right of subrogation and recoupment as
11 provided in § 65.2-1204.

12

#

COMMONWEALTH OF VIRGINIA



VIRGIL H. GOODE, JR.
20TH SENATORIAL DISTRICT
CARROLL, FRANKLIN, HENRY AND PATRICK
COUNTIES: CITY OF MARTINSVILLE
124 ORCHARD AVENUE
ROCKY MOUNT, VIRGINIA 24151

COMMITTEE ASSIGNMENTS:
LOCAL GOVERNMENT (CHAIRMAN)
COURTS OF JUSTICE
FINANCE
TRANSPORTATION
RULES

SENATE

January 13, 1993

John M. Bennett, Staff Director
Senate Finance Committee Staff
General Assembly Building - 10th Fl.
Richmond, VA 23219

Rebecca L. Covey, Staff Director
House Appropriations Committee Staff
General Assembly Building - 9th Fl.
Richmond, VA 23219

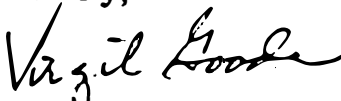
Dear John and Becky:

I am writing to you as chairman of the joint subcommittee studying workers' compensation claims processing times, established pursuant to Senate Joint Resolution No. 54 of 1992. During this past interim, our joint subcommittee has been examining how we can improve the effectiveness and the efficiency of the workers' compensation claims process.

Charged with reporting our findings and recommendations to the Governor and the 1993 Session of the General Assembly, the joint subcommittee determined that the process would be improved and claims processing times would be reduced if the Workers' Compensation Commission were provided with two additional deputy commissioners and support staff. As a result, *the joint subcommittee is recommending that § 1-127 of Chapter 893 of the 1992 Acts of Assembly be amended to increase the appropriation for the Virginia Workers' Compensation Commission by \$220,000 for this purpose.*

The members of our joint subcommittee look forward to working with you and your staffs, the money committees and the members of the General Assembly during the legislative session on this important matter.

Sincerely,


Virgil H. Goode

VHG/mcp

COMMONWEALTH OF VIRGINIA



VIRGIL H. GOODE, JR.
20TH SENATORIAL DISTRICT
CARROLL, FRANKLIN, HENRY AND PATRICK
COUNTIES: CITY OF MARTINSVILLE
124 ORCHARD AVENUE
ROCKY MOUNT VIRGINIA 24151

COMMITTEE ASSIGNMENTS
LOCAL GOVERNMENT : CHAIRMAN
COURTS OF JUSTICE
FINANCE
TRANSPORTATION
RULES

SENATE

March 4, 1993

MEMORANDUM

To: Lawrence D. Tarr, Chief Deputy Commissioner, and
Deputy Commissioners of the Workers' Compensation Commission

From: Members of the Joint Subcommittee Studying Workers'
Compensation Claims Processing Times (pursuant to
Senate Joint Resolution No. 54 of 1992)

RE: Deputy Commissioner Opinions

As you may know, the 1992 Session of the General Assembly established the above-referenced subcommittee to study workers' compensation claims processing times. The joint subcommittee's primary objective was to develop ways to expedite claims processing times, recognizing that a more effective and efficient workers' compensation claims process benefits all involved.

Charged with reporting our findings and recommendations to the Governor and the 1993 Session of the General Assembly, *the joint subcommittee is recommending by copy of this memorandum that Deputy Commissioners be encouraged to issue their opinions within twenty-one days from the closing of the record.*

The panel, which convened four meetings, was comprised of legislators, business and labor representatives, and Commissioner O'Neill. Throughout our study, we received significant assistance and input from Chairman James, Commissioner Joyner and Chief Deputy Commissioner Tarr. We also received comments from employers, insurers, workers, claimants and attorneys, all of whom are affected by the workers' compensation system.

Page Two
March 4, 1993

The joint subcommittee is cognizant of your tremendous caseload and appreciates your efforts. In that vein, we recommended that the General Assembly increase the Commission's appropriation in the "Budget Bill" to provide for two additional deputy commissioners and support staff. The General Assembly, which concluded last week, acted favorably on all of our recommendations. We believe that these are important steps toward improving the workers' compensation claims process for all parties in the system.

VHG/mcp

Subcommittee Members

Senator Virgil H. Goode, Jr., *Chairman*
Senator Walter A. Stosch, *Vice Chairman*
Delegate Bernard S. Cohen
Delegate Watkins M. Abbitt, Jr.
Delegate William W. Bennett, Jr.
Delegate Frank D. Hargrove, Sr.

James L. Keen
James R. Leaman
William E. O'Neill
Anita B. Lawrence
F. Nash Bilisoly

COMMONWEALTH OF VIRGINIA



VIRGIL H. GOODE, JR.
20TH SENATORIAL DISTRICT
CARROLL, FRANKLIN, HENRY AND PATRICK
COUNTIES, CITY OF MARTINSVILLE
124 ORCHARD AVENUE
ROCKY MOUNT, VIRGINIA 24151

COMMITTEE ASSIGNMENTS
LOCAL GOVERNMENT CHAIRMAN
COURTS OF JUSTICE
FINANCE
TRANSPORTATION
RULES

SENATE

March 4, 1993

MEMORANDUM

To: The Honorable Charles G. James, *Chairman*
The Honorable William E. O'Neill, *Commissioner*
The Honorable Robert P. Joyner, *Commissioner*

From: Members of the Joint Subcommittee Studying Workers' Comp
Claims Processing Times (pursuant to SJR 54 of 1992)

RE: Review opinions and determination of average weekly wage

As you know, the 1992 Session of the General Assembly established the above-referenced subcommittee to study workers' compensation claims processing times. The joint subcommittee's primary objective was to develop ways to expedite claims processing times, recognizing that a more effective and efficient workers' compensation claims process benefits all involved.

Charged with reporting our findings and recommendations to the Governor and the 1993 Session of the General Assembly, *the joint subcommittee is recommending by copy of this memorandum that the Commissioners of the Workers' Compensation Commission (i) issue review opinions with all due speed reasonable and practical under the circumstances and (ii) take steps to ensure that a claimant's average weekly wage is computed accurately and in a timely fashion.*

During the past few years, steps that you have taken to improve the administration of the workers' compensation claims process, such as establishing the Dispute Resolution Department, have proved successful. The joint subcommittee believes that continued efforts to reduce judicial processing times and to address other administrative aspects of the process, as outlined above, will continue to improve the workers' compensation claims process for all parties in the system.

VHG/mcp

Subcommittee Members

Senator Virgil H. Goode, Jr., *Chairman*
Senator Walter A. Stosch, *Vice Chairman*
Delegate Bernard S. Cohen
Delegate Watkins M. Abbitt, Jr.
Delegate William W. Bennett, Jr.
Delegate Frank D. Hargrove, Sr.

James L. Keen
James R. Leaman
William E. O'Neill
Anita B. Lawrence
F. Nash Bilisoly

COMMONWEALTH OF VIRGINIA



VIRGIL H. GOODE, JR.
20TH SENATORIAL DISTRICT
CARROLL, FRANKLIN, HENRY AND PATRICK
COUNTIES: CITY OF MARTINSVILLE
124 ORCHARD AVENUE
ROCKY MOUNT, VIRGINIA 24151

COMMITTEE ASSIGNMENTS
LOCAL GOVERNMENT (CHAIRMAN)
COURTS OF JUSTICE
FINANCE
TRANSPORTATION
RULES

SENATE

March 4, 1993

MEMORANDUM

To: The Honorable Yvonne B. Miller, *Chair*, and the Honorable Bernard S. Cohen, *Vice Chair*, Governor's Advisory Commission on Workers' Compensation

From: Members of the Joint Subcommittee Studying Workers' Compensation Claims Processing Times (pursuant to Senate Joint Resolution No. 54 of 1992)

RE: Increasing access to representation and deferral of suits against claimants by health care providers

As you know, the 1992 Session of the General Assembly established the above-referenced subcommittee to study workers' compensation claims processing times. The joint subcommittee's primary objective was to develop ways to expedite claims processing times, recognizing that a more effective and efficient workers' compensation claims process benefits all involved.

Charged with reporting our findings and recommendations to the Governor and the 1993 Session of the General Assembly, *the joint subcommittee is recommending by copy of this memorandum that the Governor's Advisory Commission on Workers' Compensation (i) examine how to increase access to representation for parties involved in workers' compensation claims and (ii) consider the feasibility and desirability of requiring that suits against claimants by health care providers for payment of medical bills be deferred while a claim is pending.*

The joint subcommittee believes that it is often difficult for parties—claimants, in particular—to appropriately manage a workers' compensation claim without representation. Policy options discussed by the panel to increase representation included requiring employers to pay a successful claimant's attorneys' fees and permitting non-attorneys having appropriate expertise or certification to represent parties before the Workers' Compensation Commission.

Page Two
March 4, 1993

The joint subcommittee also believes that suits against claimants by health care providers for payment of medical bills is an unnecessary and unfair burden on claimants while their claims for workers' compensation awards are pending. We discussed the possibility of requiring that these suits be deferred during such time.

Although the issues cited above were beyond our purview, the members of the joint subcommittee believe that they warrant consideration. We have followed the work of your Commission and understand that these issues may be on your list of agenda items. If not, we would be pleased to have you consider them.

VHG/mcp

Subcommittee Members

Senator Virgil H. Goode, Jr., *Chairman*
Senator Walter A. Stosch, *Vice Chairman*
Delegate Bernard S. Cohen
Delegate Watkins M. Abbitt, Jr.
Delegate William W. Bennett, Jr.
Delegate Frank D. Hargrove, Sr.

James L. Keen
James R. Leaman
William E. O'Neill
Anita B. Lawrence
F. Nash Bilisoly