CHAPTER 12

Workers' Compensation Practice: Initial Steps in Representing Claimants, Employers, and Insurers

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Scope Note

This chapter addresses the initial issues that need to be addressed by claimant's and defendant's counsel in a workers' compensation matter. It begins by discussing the initial client interview, with a review of the available benefits within and outside the workers' compensation system, attorney fees, statutes of limitations, third-party claims, uninsured employers, and jurisdictional issues, as well as additional steps such as obtaining witness statements and identifying correct procedures for filing. The chapter also addresses the challenges faced by defense counsel, including the initial contact with the insurer, review of the file, filing of a response, preserving defenses, engaging in fact gathering and investigations, and working with vocational consultants to analyze employability assessments and surveys of the labor market.

§ 12.1 INITIAL STEPS IN REPRESENTING CLAIMANTS

§ 12.1.1 Introduction

Typically, when an injured worker, or the widowed spouse of a recently deceased employee, walks into your office for the first time, he or she is completely unaware of the rights and obligations afforded under the workers' compensation system. The person is usually much more concerned about his or her future, overall physical well-being, ability to support his or her family, and the prospects of being able to return to

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a productive lifestyle in the future. This may also be the first time the person has ever met with an attorney for any reason.

Therefore, you, as the attorney, take on an important role in the claimant's life and must be able to provide a clear understanding of all segments of the workers' compensation system, including a basic explanation of the law, the identity and sources of all potentially available benefits, the process and procedures for obtaining benefits, the need for appropriate medical treatment, potential obstacles to obtaining those benefits, and the likely costs involved (such as attorney fees).

Giving your client a basic understanding of all aspects of his or her case will usually allow for a smoother handling of the matter and will allay some of his or her immediate concerns.

§ 12.1.2 Initial Interview

(a) *General Principles*

The initial interview is the most important phase in the handling of a workers' compensation claim. This is your first (and probably best) opportunity to obtain "fresh" and accurate information from the claimant and to create a trusting relationship with him or her.

It is always best to conduct the initial interview *yourself* and *in person*. This affords you and your client that all-important face-to-face contact. A common claimant complaint follows when the first meeting with the attorney happens at a scheduled event at the Department of Industrial Accidents (DIA). This would indicate that the initial interview was done either over the phone or by an associate or a paralegal in the office. Such a practice often leads to embarrassing questions, or even heated arguments, concerning previously unexplained issues at a time when the attorney's efforts should be focused on the proceeding at hand.

The initial personal interview also affords the attorney an opportunity to assess the client's credibility and to communicate any and all concerns regarding his or her claim. You can also determine whether any language barriers will require the assistance of an interpreter at all subsequent DIA proceedings, which also may give rise to issues concerning the proper reporting of injuries to employers, insurers, and medical providers.

A checklist of items to address during the initial interview is set forth as **Checklist 12.1**. These items are discussed in detail in § 12.1.2(b) through § 12.1.2(e), below. Obtaining this important information at the outset of the representation will provide you with a full and complete picture of all issues involved, allowing you to file the proper claim and thereby avoid any hidden traps or pitfalls during the pendency of the claim.

Judicial Commentary

At the risk of stating the obvious, the more information one can obtain about the alleged injury and the prospective client, the better. Since credibility is always an issue, help the judge get a better sense of just who your client is in addition to how he or she came to be injured. The more informed the lawyer is, the greater the opportunity to be persuasive. Particularly at the Section 10A conference, an informed presentation by the attorney and an ability to answer the judge's questions accurately and with ease can go a long way in creating a good impression of your client's case.

It also makes sense for a lawyer to learn as much as possible about his or her potential client and the person's case before taking on the representation. A lawyer who has committed to representing a client at the DIA may not withdraw from that representation without leave of the assigned judge (or the senior judge, if no judge has active jurisdiction) unless the request occurs with the filing of an appearance of successor counsel. 452 C.M.R. § 1.18(3).

(b) *Background Information*

Obtain detailed information in the following categories:

1. **Full name.** Include any former or maiden names. This is important when obtaining medical records or prior wage and employment records.

2. **Complete address** (mailing and residential).

3. **Marital status and number of children.** Identify the name of the claimant's spouse and the names and ages of all children under the age of eighteen. General Laws c. 152, § 35A provides for payment of dependency benefits in the amount of $6 per week per dependent, including the spouse and all children under the age of eighteen, either living with the claimant or for whom he or she is under obligation of support. These benefits are payable only when a claimant's weekly compensation rate is less than $150, after which the dependency benefits will apply until the combined payments reach a maximum of $150 per week (in this case, ask for copies of all relevant birth certificates).

4. **Age and date of birth.**

5. **Social Security number.** It is advisable to also obtain the Social Security numbers of the spouse and dependent children.

6. **Military service record/status.** This is important to obtain as the claimant may be entitled to certain forms of benefits from local veterans' services agencies or medical care from the Veterans' Administration. This also will help you determine whether the claimant has any service-connected disability (*see* G.L. c. 152, § 37A).

7. **Health insurance information.** Such information is vital when the workers' compensation insurer has denied the claim. This will allow the claimant to obtain necessary medical treatment while the claim is litigated. The health insurer may require the claimant to execute a reimbursement agreement relative to the workers' compensation claim. If so, counsel should be cognizant of this fact and that there may also be a third-party lien (DIA Form 115, included as **Exhibit 12A**) filed with the DIA.

8. **Short-term/long-term disability insurance information.** The claimant may be entitled to payments under a group (employer-provided) or a private disability policy. Availability of such benefits is again helpful if the claim has been denied. Many employers provide for short-term payments (typically for thirteen or twenty-six weeks) and long-term payments (for up to an additional twenty-four months or longer, in certain circumstances). Often there will be some form of condition or provision that the contemporaneous receipt of weekly workers' compensation benefits will either offset the payment of the group disability benefits or will actually exclude those payments. Ask your client to provide a copy of the actual disability policy, which can be obtained directly from the employer. Also, the group insurers will frequently file liens with the DIA pursuant to G.L. c. 152, § 46A.

9. **Educational background.** Obtain a *complete* listing of all schools attended by the claimant, including years of completion and highest level of formal schooling achieved (if the claimant is not a high school graduate, inquire whether he or she obtained a GED). Inquire whether the claimant attended any postgraduate programs, such as technical schools, certificate programs, special training schools, etc.

10. **Language skills.** Determine whether the claimant is able to speak, read, write, and *understand* the English language. Determine whether the claimant is able to read and write in his or her native tongue. This is important in deciding the need for interpretation assistance in all proceedings and in assessing the claimant's overall vocational picture. It may provide explanations for misunderstandings in histories provided to employers and medical providers.

11. **Prior work experience.** Obtain the identity of *all* previous employers, including their addresses, the dates of employment, and reasons for termination. Furthermore, it is extremely important in assessing the claimant's vocational history to get a detailed description of those jobs, including the physical requirements and demands of each, if any special training was required, types of tools used, etc.

12. **Prior injuries/illnesses or claims.** Given the constant barrage of defenses raised by insurers under G.L. c. 152, § 1(7A), this information is crucial to anticipating and overcoming those defenses. Therefore, obtain as much information as possible regarding any and all prior industrial injuries and claims and whether they occurred with the current employer or prior employers. Obtain dates of injuries, employer names, descriptions of injuries (including injured body parts), length of time lost, whether compensation benefits were paid, the names of insurers,

whether a prior claim was settled by lump sum, and the names and addresses of pertinent medical providers. *Do not stop with that inquiry!* Determine whether the claimant had any prior injuries or illnesses involving the same body part that is the subject of his or her current claim. Specifically, find out whether there were any prior motor vehicle accidents or non-work-related incidents or illnesses. Get similar information concerning medical providers, dates of injuries, lost time from work, when treatment ended, whether there were any residual physical limitations, etc. Remember, if the previous injury was work-related, there is no defense under Section 1(7A). However, if not, the claimant bears the burden of proving that the subject industrial accident remains a major contributing cause of the claimed disability.

13. **Existence of potential liens.** Inquire about the receipt of any form of assistance or any obligations incurred by the claimant. Typical liens include

    - *welfare liens* (the claimant received or is receiving financial assistance or medical coverage (e.g., MassHealth));
    - *child support liens* (frequently, this can be identified by garnishment of the claimant's weekly pay or compensation check);
    - *attorney liens* (inquire whether the claimant was previously represented on the subject claim);
    - *disability income provider liens* (if the claimant received short-term or long-term benefits subject to any reimbursement agreement executed by the claimant);
    - *medical provider liens* (medical provider [or health insurer] seeking payment for related medical treatment); and
    - *veterans' services liens*.

(c) *Employment and Injury*

Obtain information regarding the employee's injury and employment circumstances in the following categories:

1. **Employer information.** Get the *complete* name and address of the current employer. The best source of information is a copy of the claimant's most recent paystub. This information is important when attempting to obtain insurance information or when contacting the employer directly. Also, determine whether the employer's name changed recently or whether the employer was purchased or taken over by another concern. Also, be aware of employee leasing situations, whereby the claimant is actually employed by, and covered under the compensation policy of, an employee leasing company or a temporary employment agency. Knowledge of any special employment relationships may require inquiry and filing of a claim under G.L. c. 152, § 18.

2. **Occupation.** Obtain a complete description of the claimant's job title and job duties. Have the claimant describe a typical workday, the physical demands and requirements of the job, any special training involved, the use of any special

tools or machines, description of the work environment, any and all exposures to chemicals or other toxic substances, and any different jobs held in the past with this employer.

3. **Length of employment.** Determine the approximate starting date of employment. If any breaks in the time of employment exist, get specifics, including the claimant's reasons for leaving and when he or she returned to that employment. This is also important to determine the average weekly wage. Shorter periods of employment may give rise to questions of seasonal employment or require the need for obtaining the wage information of a similar/like employee.

4. **Average weekly wage.** Often, at the initial interview, the claimant will have no concept of "average weekly wage." This figure is typically determined through the preparation by the employer of the fifty-two-week wage schedule and it can be obtained from the insurer. However, the attorney can approximate the earnings by asking the claimant the hourly wage and number of hours averaged per week. It is advisable to get copies of all paystubs up to the date of injury and any tax forms, such as W-2 or 1099 forms. Explain to the claimant how the average weekly wage is typically determined.

   Practice Note

   Unemployment compensation benefits received during the fifty-two-week period prior to the date of injury are *not* included in the computation of the average weekly wage. *See Mike's Case*, 73 Mass. App. Ct. 44 (2008).

5. **Weekly compensation rate.** Explain to the claimant that, for all dates of injury (except in death cases) after December 23, 1991, the weekly benefits under G.L. c. 152, § 34 (temporary total disability), will be 60 percent of his or her average weekly wage, up to a maximum equal to the state average weekly wage determined each October 1. Also, explain the concept of temporary partial benefits under G.L. c. 152, § 35, which would provide a payment equal to 60 percent of the difference between the preinjury average weekly wage and subsequent earning capacity or actual earnings (up to 75 percent of the Section 34 rate).

   Furthermore, be aware of the *minimum weekly compensation rate*. The minimum rate is 20 percent of the average weekly wage in the Commonwealth, according to the calculation on or next prior to the date of the injury by the deputy director of the Division of Employment and Training. G.L. c. 152, § 1(11). Accordingly, if 60 percent of the claimant's average weekly wage results in a rate *below* the minimum, the claimant is *entitled* to that minimum rate.

6. **Union involvement.** Inquire whether the claimant is a member of a union. Often the claimant will be entitled to benefits supplemental to workers' compensation payments. The claimant can make inquiry with the union benefits coordinator or administrator and can obtain pertinent written policy and benefit information, which should be reviewed. In addition, many union workers are injured on "prevailing wage" jobs. This could give rise to a claim for a higher average weekly wage. *McCarty's Case*, 445 Mass. 361 (2005). However, fringe benefits generally

are not included in employee earnings for the purpose of calculating average weekly wages. *See* G.L. c. 152, § 1.

7. **Concurrent employment.** Inquire whether the claimant held a second job, either full time or part time, on the date of the industrial injury. Obtain all details of the second job, including the name and address of the employer, length of employment, wages, job description, whether there is any lost time due to the current injury, and the identity of the concurrent employer's workers' compensation insurer, if any. *See Sellers's Case*, 452 Mass. 804 (2008) (claimant's wages from both insured and uninsured employers included in computation of average weekly wage). Ask the claimant to provide copies of paystubs from the second job and the name of a contact person at that company. Secure a letter from that employer setting forth the above information.

8. **Date of injury.** Identify specifics on the date of injury, including the time and location of the injury. If the claimant continued working after the date of injury, get *all details* regarding subsequent work activities (e.g., light or modified duty, changes in physical condition, etc.). Identify the last date worked and the claimant's specific reasons for leaving work. Remember to advise the claimant that the date of injury typically controls the amount of compensation benefits to be paid. However, be cognizant of potential issues concerning G.L. c. 152, §§ 35B (rate in effect on date of subsequent injury or disability), 35C (latent disease or date of last injurious exposure), and 51A (entitlement to benefits in effect on date of decision on claim where more than six months elapsed from filing of claim to date of decision).

9. **Nature of injury.** Obtain as much detail as possible concerning the claimant's injuries, identifying all affected body parts. Often, claimants are vague in describing the location of their complaints (e.g., "neck," "back," "foot"). Have the claimant point to a specific area or body part and describe the actual symptoms or sensations (e.g., pain, numbness) from which he or she suffers, and be sure to record this information in detail. If there are significant visible injuries (e.g., amputations, burns, lacerations, etc.), take photographs if possible.

   Emotional injuries are usually harder to prove. Be sure to identify the specifics of the injury, including times and dates of specific identifiable events in the workplace, names of individuals involved in each event, and a detailed description of the claimant's symptoms (e.g., depression, lack of concentration, fatigue, other physical manifestations). Under the 1991 amendments, the claimant must prove that the *predominant contributing cause* of an emotional disability is an event or series of events occurring within any employment. G.L. c. 152, § 1(7A).

   Other types of injuries that require close scrutiny include "wear and tear" injuries, latent diseases (e.g., asbestosis, silicosis, toxic exposures, etc.), and heart attacks.

10. **Cause of injury.** This is arguably the most important information to decipher in the initial interview. Have the claimant be as specific as possible in describing the circumstances surrounding the injury. Missing crucial facts could lead you to

overlook other causes of action outside the scope of the workers' compensation system. A full and complete account of the incident will make it easier to spot potential negligence claims against third parties (e.g., work-related motor vehicle accidents, construction site injuries, defectively designed machines or products, employees of other companies on the job site). Advise the claimant that his or her employer and coworkers are immune from common law liability for acts of negligence and gross negligence, due to the exclusivity provisions of the Workers' Compensation Act. *See* G.L. c. 152, § 24. However, the claimant may be entitled to bring a claim against the employer under G.L. c. 152, § 28 (see § 12.1.3(a), below).

11. **Reporting of injury.** Determine if the claimant reported the injury and, if so, identify when and to whom it was reported. If the claimant filled out any form of incident report, get a copy from the claimant or determine who has possession of the report. Under G.L. c. 152, § 6, an employer must file a first report of injury (DIA Form 101) with both the DIA and the insurer no later than seven calendar days, excluding Sundays and legal holidays, after the claimant has lost five days from work. The claimant may possess a copy of the first report, or it can be obtained from the insurer. On receipt of the first report, the information should be carefully reviewed and compared to the claimant's description of the accident.

(d) *Medical Information*

Obtain contact information for medical providers as well as a signed medical release authorizing you to obtain your client's medical records.

1. **Doctors' names and addresses.** Obtain the names and addresses of *all* doctors who have treated the claimant since the inception of the industrial injury, with *all dates of treatment*. It is advisable to identify the name and address of the primary care physician as that provider's records may contain important information concerning any preexisting or current medical conditions that may become an issue during the pendency of the claim.

2. **Other medical providers.** Secure the names and addresses of all other facilities that provided medical treatment as a result of the accident, including hospitals, clinics, emergency medical facilities, and diagnostic facilities (e.g., MRI, EMG, bone scans, CT scans, etc.).

3. **Signed medical release.** Obtain a signed release from the client to allow you to gather all of the medical documentation you will need to support the claim.

(e) *Insurance Information*

Obtain information relating to the identity of the insurer, the handling of the claim, and any independent medical examination conducted with respect to the claimant.

1. **Name of insurer.** Obtain the name and address of the workers' compensation carrier. Prior to the initial interview, the claimant may have been contacted by

the insurer, usually denying the claim. Secure a copy of all written communications from the insurer, including any filings made with the DIA. If the identity of the insurer is not available at the interview, it can be obtained by having the claimant contact the employer directly, or you can make a similar request of the employer. You can request the name by forwarding the insurance inquiry form to the Insurance Registry Unit at the Department of Industrial Accidents (included as **Exhibit 12B**).

2. **File (claim) number.** Typically, this can be obtained from any DIA filings made by the insurer. Otherwise, a request can be made directly from the insurer. It is important to include the claim number on all correspondence with the insurer.

3. **Claims representative.** Again, this information is usually contained in any correspondence from the insurer.

4. **Insurer's physician exams.** Determine whether the insurer has had the claimant examined by an independent medical examiner. Ask the claimant to identify the physician (or physicians) and the examination dates. Be sure to request copies of all reports, as the opinions contained therein are often the basis of the insurer's denial of the claim.

§ 12.1.3 Other Considerations in the Initial Interview

In addition to the preceding list of items to cover in the initial client interview, you should be prepared to discuss, explain, and consider a number of other important factors in assessing all of the claimant's available rights and to assist in the smooth preparation of the claim. The following will address these additional areas of importance and concern.

(a) *Available Workers' Compensation Benefits*

Explain to the client what types of workers' compensation benefits may be available.

1. **Section 34.** Temporary total disability benefits will pay the employee 60 percent of the preinjury average weekly wage (up to the statutory weekly maximum) for a period of up to 156 weeks (for all injuries after December 23, 1991).

2. **Section 35.** Temporary partial disability benefits will pay the employee 60 percent of the difference between the preinjury average weekly wage and his or her postinjury earning capacity (or actual earnings). Be prepared to explain the concept of "earning capacity" as typically assigned by an administrative judge after a conference or a hearing. Also, the weekly partial compensation rate is capped at 75 percent of the Section 34 rate. The maximum payout under Section 35 is 260 weeks, which may be extended to 520 weeks under certain circumstances. However, the employee cannot receive more than 520 weeks, or ten years, of combined Section 34 and 35 benefits.

3. **Section 34A.** Permanent and total disability benefits. Typically, these benefits are paid after the expiration of either Section 34 or Section 35 benefits. An employee is entitled to receive two-thirds of the preinjury average weekly wage. There is no aggregate maximum payout for this benefit. When applying for this benefit, it is advisable to file the claim far enough in advance of the expiration of the Section 34 or Section 35 benefits to allow for timely proceeding before the DIA and avoid any "gap" in the receipt of benefits.

4. **Section 36.** Explain the various forms of losses of function and disfigurement ("scar-based" and deformity-based). Bear in mind that "scar-based" disfigurement is recoverable only if it exists on the face, hands, or neck for dates of injury after December 23, 1991. Typically, the employee must be at maximum medical improvement in order to recover these benefits.

5. **Medical benefits.** General Laws c. 152, §§ 13 and 30 provide that the employee is entitled to receive, and the insurer is obligated to pay for, all medical treatment that is reasonable, medically necessary, and causally related to the industrial injury. Such treatment includes doctor visits, hospital visits, diagnostic studies, physical therapy, medications, etc. The claimant should be advised that he or she is entitled to be reimbursed for all out-of-pocket medical expenses, such as prescription medication, over-the-counter medication, travel (mileage, parking, and tolls) to and from medical visits, and orthopedic devices.

   The claimant should also be educated about the utilization review process. The need to obtain approval prior to undergoing any medical treatment should be discussed. Insurers are required to provide the claimant with a utilization review card, which sets out the name and address of the insurer, the claim number, and the telephone number of the appropriate utilization review provider. The attorney should obtain a copy of that card for the file.

6. **Vocational rehabilitation benefits.** In certain circumstances, the claimant may be entitled to vocational rehabilitation services provided, and paid for, by the insurer. In order to be eligible for these benefits, the claimant must be deemed "suitable" by a member of the Office of Education and Vocational Rehabilitation of the Department of Industrial Accidents. Typically, these benefits are available only in accepted claims. *See* G.L. c. 152, §§ 30E–30I.

7. **Cost-of-living allowance (COLA) adjustments.** The receipt of certain benefits under Chapter 152 will provide for the application of COLA adjustments. Section 34B provides for the institution of such increases for claimants who are receiving Section 34A (permanent and total disability) benefits and Section 31 (survivors') benefits. For Section 34A claimants to be eligible, their date of injury must be at least two years prior to the applicable "review date," which is each October 1. After each October 1, the DIA issues a circular letter setting forth the applicable multipliers under Section 34B. Claimants receiving Section 35 (temporary partial disability) benefits whose date of injury was *before* December 23, 1991, are entitled to COLA adjustments under Section 35F (repealed December 23, 1991).

8. **Section 31 benefits.** Dependents of workers who die as the result of an industrial accident are entitled to weekly benefits under this section. In the initial interview, it is important to obtain as much detail as possible concerning the facts surrounding the employee's death. As in all claims, the burden of proof rests with the claimant (usually the surviving spouse). Determine the status of all potential dependents, including the spouse, children under the age of eighteen living with, or supported by, the deceased employee, physically and/or mentally disabled children over the age of eighteen, dependent parents, and "dependents-in-fact." General Laws c. 152, § 32 lists those individuals who are "conclusively presumed" dependents of the employee. Typically, the claimant is entitled to receive two-thirds of the employee's preinjury average weekly wage, subject to the state maximum rate, but not less than $110 per week. G.L. c. 152, § 31. Also, it is advisable to be familiar with the provisions of G.L. c. 152, § 7A, which deal with employees who are found dead in the workplace, or who suffer from a physical or mental inability to testify (which inability must be causally related to the workplace injury).

9. **Section 28 claims.** Frequently, a claimant will question his or her rights to bring a claim directly against the employer, believing that he or she can "sue" the employer for acts of negligence in causing the injury. It is important that, at the first meeting with the claimant, he or she be made aware that there is no common law action against the employer or coworkers for negligence in the workplace. Further, the claimant should be informed that Chapter 152 does not provide recovery for "pain and suffering." However, in the initial analysis, attention should be given to the circumstances surrounding the subject accident to determine whether the client's injury was caused by the *serious and willful misconduct* of the employer or persons in position of superintendence over the injured worker. In cases of such misconduct, Section 28 provides for the payment of "double" the amount of all compensation benefits to which the claimant is entitled. These claims are often difficult to prove and even more difficult to win, and close scrutiny to the facts is necessary in determining if such a cause of action lies. Information about similar past accidents, and the identity of all witnesses and persons in a supervisory capacity, should be gathered at the first meeting.

(b) *Other Available Benefits*

Explain to the client what types of benefits may be available in addition to those authorized under the Workers' Compensation Act.

1. **Social Security Disability Insurance Benefits (SSDIB).** The claimant may be entitled to receive disability insurance benefits from the Social Security Administration. Individuals who are (or are expected to be) totally disabled for at least twelve consecutive months should apply for these benefits with their local Social Security office.

2. **Supplemental Security Income (SSI).** Another benefit available through the Social Security Administration is Supplemental Security Income. Unlike SSDIB,

SSI is need-based, and certain financial criteria must be met, in addition to the level of disability.

3. **Short-term and long-term disability.** As previously discussed, the claimant's eligibility for benefits under both group and private disability income policies should be explored.

4. **Welfare benefits.** Often, by the time of the initial meeting with the claimant, the claim has been denied by the insurer and he or she has been without any income for several weeks. If it is anticipated that the insurer will maintain its denial through the initial stages of the DIA process, the practitioner should advise applying for financial assistance through the Department of Transitional Assistance (DTA), which will allow the claimant to receive some income until the claim can be resolved. Of course, the DTA will usually file a lien with the DIA, which must be subsequently discharged.

5. **Veterans' Services benefits.** Veterans who are physically disabled may qualify for financial relief through the veterans' services office in the town in which they live. Again, this is a valuable source of income for a claimant whose claim has been denied. This agency will usually file a lien for repayment of benefits paid.

(c) *Attorney Fees*

Explain to the client how attorney fees will be handled.

1. **G.L. c. 152, § 13A.** This section governs the payment of attorney fees in workers' compensation cases. All subsections in Section 13A should be reviewed and explained to the claimant. Typically, insurers are responsible for the payment of fees when an employee has prevailed. Since the 1991 amendment to the Workers' Compensation Act, an insurer that has paid an attorney fee as the result of a "cash award" to an employee may reduce an employee's future weekly benefits as set forth in Section 13A(10). Furthermore, if the claimant loses the case, he or she remains responsible for the payment of costs incurred in the pursuit of the claim.

2. **Lump-sum settlement fees.** Attorney fees payable under the terms of a lump-sum settlement, entered into under the provisions of Section 48, are set out in G.L. c. 152, § 13A(8)(a) and (b). For settlements in which an insurer *is not accepting liability*, the attorney fee is 15 percent of the gross amount of the settlement. If an insurer *is accepting liability* as part of the settlement, the fee is 20 percent of the amount of settlement.

(d) *Statute of Limitations Concerns*

General Laws c. 152, § 41 provides the applicable statute of limitations on the filing of claims for workers' compensation benefits. Essentially, the Workers' Compensation Act states that a claim for benefits must be filed *within four years* from the date of injury, or from the date the employee first became aware of the causal relationship

between disability and employment. The four-year limitation also applies to any claim involving a death that results from an industrial injury, with the time running from the date of death. Section 41 also provides that the statute of limitations shall be tolled if *any* compensation benefits have been paid by an insurer under Chapter 152.

The Appeals Court has ruled that any payment of compensation under Chapter 152 will also toll the applicable statute of limitations with regard to claims filed under Section 28. *Green's Case*, 46 Mass. App. Ct. 910 (1999).

(e) *Identifying Potential Third-Party Claims*

During the interview, obtaining all of the details surrounding the claimant's accident will assist the practitioner in assessing whether a cause of action for negligence lies against a third party. Typical cases involve motor vehicle accidents occurring in the performance of employment, slip-and-falls on the job (e.g., while making deliveries or performing services for a customer or client), injuries involving machines or tools, and accidents occurring on construction sites due to the actions and/or inactions of those responsible for safety or of other employers' workers.

The claimant should be apprised of the right to pursue such a claim and that the claim involves a cause of action that is completely separate and distinct from the workers' compensation claim. Such an action will entitle the claimant to receive payment for "pain and suffering," which is not recoverable in the workers' compensation matter.

The attorney should explain the workings of the statutory lien that the workers' compensation insurer will have against any third-party recovery, pursuant to G.L. c. 152, § 15.

(f) *Uninsured Employers*

Question the client regarding circumstances in which workers' compensation insurance coverage appears to be unavailable through the employer.

1. **Claims in general.** Often a claimant will indicate that he or she worked for a small business and was told by the owner that he or she would be paid as an independent contractor. In those instances, the claimant was given a paycheck every week but had no taxes deducted therefrom. At the end of the year, he or she was given an IRS Form 1099. After the industrial accident, he or she was told by the owner that he or she was not covered for workers' compensation because of the independent contractor status.

   Under these circumstances, questioning should center on several areas and factors. These should include the following:

   a. the nature of the work performed;

   b. whether the owner provided tools and materials;

c. hours of work—regularly scheduled hours;

d. manner of payment—hourly or by the job;

e. where the work was performed;

f. whether the owner maintained control over the manner in which the work was performed; and

g. whether the claimant holds himself or herself out as operating an individual business.

If all or most of the above factors indicate that the claimant works exclusively under the control of the business owner, an argument can be made that the claimant is an employee of that concern and is entitled to workers' compensation protection. Inquiry of the company should then be made as to the identity of its compensation carrier. If the claimant has been told he or she is an independent contractor, the employer is typically not insured.

2. **Workers' Compensation Trust Fund.** If it is discovered that coverage was not provided by the employer, a claim can be brought against the Workers' Compensation Trust Fund, pursuant to G.L. c. 152, § 65. The trust fund stands in the same position as an insurer and will pay benefits in accordance with the Workers' Compensation Act. The trust fund is administered by and is located at the Department of Industrial Accidents in Boston. In order to file a claim against the trust fund, counsel must obtain certification, on a prescribed form from the Office of Insurance at the Department of Industrial Accidents, stating that the subject employer was uninsured on the date of injury. (A copy of the form is included as **Exhibit 12C**, with instructions on submission procedure.)

3. **Section 18.** Under G.L. c. 152, § 18, in cases involving an uninsured employer, a claim may be brought against an *insured general contractor*. Therefore, it is important to inquire into any contractual relationships between the claimant's immediate employer (who may have contracted to perform certain work on a construction site) and the general contractor. If such a relationship existed, the name and address of the general contractor should be obtained, as well as the identity of its workers' compensation insurer. A claim can be filed against that insurer, which will be required to respond and bear the same responsibility as if it directly insured the immediate employer. In order for a Section 18 claim to sustain, it must be shown that

a. the work performed by the uninsured subcontractor was not ancillary and incidental to the trade or business of the insured general contractor; and

b. the injury occurred either on or about the premises on which the uninsured subcontractor agreed to work for the general contractor or was under the control of the general contractor.

4. **Common law action against uninsured employer.** The claimant has a right to pursue a common law action against an uninsured employer. General Laws c. 152, §§ 66 and 67 provide this remedy and state that the uninsured employer has no common law defenses. The claimant has the right to pursue this remedy *in addition to* claims against the trust fund or under Section 18. Of course, the trust fund or the insurer of the general contractor will have a right to recovery under Section 15. The statute of limitations for this cause of action is twenty years.

(g) *Jurisdictional Issues*

The following factors provide bases for obtaining jurisdiction in Massachusetts:

- occurrence of the injury in Massachusetts, or
- occurrence of the contract of hire in Massachusetts.

Cases often fall under "dual jurisdictions" and are therefore covered under the workers' compensation laws of more than one state. This will occur, for example, when an employee is hired in one state but sustains an injury in a second state. In these instances, it is extremely important to gain a working knowledge of the laws and benefits of the compensation system of any potential jurisdictions. In certain states, the *only* basis for jurisdiction is the contract of hire; the situs of injury is irrelevant. Furthermore, the payment of any benefits in one state will *bar* the receipt of benefits in another state. Understanding these practical issues is important in advising clients regarding choice of jurisdiction.

§ 12.1.4 Filing the Claim

A checklist of items to address when filing a workers' compensation claim is set forth as **Checklist 12.2**. These items are discussed in detail in § 12.1.4(a) and § 12.1.4(b), below.

(a) *Preliminary Steps*

After conducting the initial interview and obtaining important background information from the claimant, the attorney should gather all written documentation to support the filing of a claim for benefits or to defend against a potential filing by an insurer to discontinue or modify benefits.

1. **Obtain necessary medical documentation.** Vital to any and all claims are the claimant's medical records. The attorney should request *all* records concerning medical treatment rendered to the claimant, including complete hospital records, physicians' office notes, and reports of diagnostic examinations. The attorney should have obtained an executed medical release from the claimant at the initial interview, which should be used to request the appropriate documentation.

   If you are aware of a preexisting injury or physical condition that may support a potential defense under Section 1(7A), you should obtain all records of treatment

concerning that injury or condition. Request the office notes of the claimant's primary care physician, as information concerning underlying conditions often can be found in such records.

In most instances, in order to file a claim for benefits, it is necessary to request a narrative report, from either a treating or an examining physician. The narrative report should set forth the nature of the claimant's injuries, a diagnosis, a review of results of diagnostic studies, the extent of disability, and an opinion on the causal relationship between the disability and the claimed industrial accident or injury. If the claim seeks benefits after the insurer has terminated benefits, the medical opinions should address disability and causation *after* the date of termination.

2. **Obtain witness statements.** If it is apparent that the claim will be contested by an insurer on a liability basis, it may become necessary to contact individuals who witnessed or were immediately aware of the claimant's industrial accident or who were familiar with the claimant's work activities or work environment. These typically include coworkers, independent bystanders, or medical personnel. Identities of such witnesses can be obtained directly from the claimant, from first reports of injury, or from emergency medical treatment records (e.g., ambulance reports, emergency room reports).

3. **Obtain information from insurer.** Contact should be made with the insurer to identify the bases for the denial of the claim. The practitioner can make a written request for information from the insurer, including copies of first reports of injury, applicable filings with the DIA (e.g., notification of denial, notification of payment, notification of termination), statements of the claimant, medical treatment records, reports of independent medical evaluations, and fifty-two-week wage schedules. It is urged that the practitioner obtain and *carefully review* this information, as it will provide a clear picture of anticipated defenses and the documentation necessary to perfect the claim.

   The practitioner should also file a request for production of documents on the insurer, pursuant to 452 C.M.R. § 1.12, seeking to enter on the employer's premises for inspection or to obtain all medical records and reports in the insurer's possession.

   The initial written contact with the insurer should also include a letter of representation and an assertion of an attorney fee lien pursuant to G.L. c. 221, § 50. The attorney should also file a Form 114 (Notice of Change/Appearance of Counsel) with the DIA and all parties (included as **Exhibit 12D**).

(b) *Filing Procedure*

Filing a workers' compensation matter requires important attention to applicable statutes and regulations, including recently adopted requirements for online filing.

1. **Initial considerations.** Pursuant to G.L. c. 152, § 29, no benefits are payable to an injured worker unless that worker has been incapacitated from earning full

wages for a period of five or more calendar days. Additionally, if an injured worker is out of work for six or more days but fewer than twenty-one days, benefits are payable only from the sixth day to the date of return to work. No benefits are payable from the first day of disability unless the injured worker is out of work for twenty-one or more days.

Furthermore, a claim for initial benefits cannot be filed until thirty days have elapsed from the date of injury, or the employee has received a written notice of denial from the insurer, whichever occurs earlier.

2. **Procedure.** General Laws c. 152, § 10(1) provides the statutory requirements for filing of claims for benefits at the DIA. A practitioner's failure to comply with the mandates set forth in that section could result in delays in processing of claims, return of claims, and possible loss or reduction of attorney fees. Since Section 10(1) was deemed procedural in the 1991 amendments, these provisions apply to *all* claims, regardless of the date of injury.

    a. All claims are submitted to the DIA on a prescribed form (DIA Form 110, included as **Exhibit 12E**), which *must* be completed *in full*. Any missing information will result in the return of the form and no proceeding will be scheduled.

    b. Copies of all claims *must* be sent to the insurer by *certified mail*.

    c. All claims for benefits must be accompanied by a medical report containing a history of the injury, the treatment rendered, the diagnosis, a statement of the extent of disability, and an opinion causally relating the disability to the industrial accident.

    d. Claims for medical services (either those incurred in the past or prescribed in the future) must be accompanied by supporting documentation, including the outstanding bill for services, a description from the health-care provider of the services rendered or proposed treatment, *and a statement that the treatment is reasonable, medically necessary, and causally related to the industrial accident*. Under the current utilization review procedure, claims for such benefits require that a *prior determination* under utilization review be made (i.e., denial of initial request for approval and denial of subsequent appeal), and that such written determination also be attached to the claim.

    e. Claims under Section 36 must be accompanied by a physician's report describing the location and extent of the loss of bodily function and/or disfigurement and the *specific dollar amount claimed*. The report must also indicate that the claimant has reached maximum medical improvement and that the extent of loss of function is in accordance with the applicable American Medical Association guidelines for orthopedic disabilities.

3. **Online filing.** With the implementation of the Document Management System (DMS) at the DIA, claims for benefits (DIA Form 110, included as **Exhibit 12E**) are now filed online, enabling speedier scheduling of conciliations before the DIA.

   Practitioners can file claims by accessing their individual DMS docket page and clicking "Online Forms." A list of forms will appear. The Form 110 is then checked, presenting a partially completed document. The remaining fields must be filled in, setting forth the particular claimed benefits. Once entered, a Transmittal ID number is provided.

   Pursuant to 452 C.M.R. § 1.07, supporting medical or other written documentation must be faxed to the Office of Claims Administration (at the fax number provided) with the Transmittal ID number. An e-mail is then sent to the filing party advising that filer that the claim has been processed. The practitioner must then print out the claim from the docket page on that particular case and send a copy of the claim *with the same supporting documentation* to the insurer by certified mail, return receipt requested.

   Detailed information on DIA online filing procedures is available on the DIA website at http://www.mass.gov/lwd/workers-compensation.

§ 12.2 INITIAL STEPS IN REPRESENTING EMPLOYERS AND INSURERS

§ 12.2.1 Introduction

This section will discuss the initial steps to be taken by defense counsel representing employers and insurers to investigate and address issues raised by the workers' compensation claim and map the course of action to be followed through its administration through either litigation or resolution.

§ 12.2.2 Initial Contact

Frequently defense counsel will receive inquiries from an insurer long before a case file is referred to counsel. In these cost-conscious times, the insurer's claims adjuster may choose or be directed to refrain from engaging counsel until absolutely necessary. This may result in one or more inquiries about a potential or actual claim, about which defense counsel know only what they are told by the client.

In order to give an informed, as well as informative, answer to such inquiries, try to obtain as much information as possible about the facts of the situation before offering your advice. Discuss as many options as are applicable to the information given and suggest possible courses to follow for each. If possible, ask for the name of the employee and the employer and take note of each.

Practice Note

More often than not, when the case is referred to defense counsel, your assistance will result in the assignment of the case to you or your firm. Your notes from those initial inquiries will help you to quickly get up to speed on the issues presented by the case. In addition, you will be able to see how your advice has already begun to shape the outline of the administration and defense of the claim.

§ 12.2.3 Initial Review of File

On receipt of a new file, prepare and file an appearance with the Department of Industrial Accidents. See **Exhibit 12D**. (The DIA now requires a bar-coded coversheet for all paper filings. This coversheet can be obtained through the Document Management System available on the DIA website, http://www.mass.gov/dia. The appearance can also be filed electronically through that site without the need for a coversheet.) Next, read the file thoroughly. Every document should be reviewed, no matter how unimportant it may seem at first. Your review should reveal

- the identity of the parties involved,
- potential witnesses,
- a description of the incident that spawned the claim,
- some basic facts about the employee, and
- issues that were framed by the parties before you became involved.

Even in claims arising out of a disputed incident or injury, more than one issue will frequently have been raised by the time the case is referred to defense counsel.

In your review, make sure that both the employer and the insurer have met their respective requirements under G.L. c. 152. The employer is required to file a report of an injury or death allegedly arising during the course of employment within seven calendar days, not including Sundays and legal holidays, of its receipt of notice that the injury has resulted in five or more calendar days of either total or partial incapacity to earn full wages, or in death. G.L. c. 152, § 6. This section requires that the report of such an injury shall be on a form prescribed by the DIA, currently "Employer's First Report of Injury/Fatality," Form 101, which is available online and can be filed on the DIA website. The employer can be fined $100 if it fails to comply with this requirement three times in one calendar year.

§ 12.2.4 Response Required Within Fourteen Days

Once the injury or the death has been reported, the insurer or the self-insurer has an obligation to either accept or deny the claim within fourteen days of its receipt of either the employer's first report of the injury or an initial written claim for weekly disability benefits. G.L. c. 152, § 7(1). By its language, this section of the law mandates a response only where the claim is for weekly benefits—necessarily disability benefits, as they are the only ones paid on a weekly basis.

Acceptance and payment of the claim within the first fourteen days will allow the insurer or the self-insurer the opportunity to continue payment for up to 180 days without accepting liability for the alleged injury, or "without prejudice." The 180 days may be extended to a period not to exceed one year if the employee agrees to such an extension and it is approved by the DIA prior to the expiration of the initial 180-day period. G.L. c. 152, § 8(6). The DIA has adopted a policy that the agreement to extend the payment-without-prejudice period must be submitted and approved in advance of the 173rd day of the initial period. During that time the claim may be further investigated to determine whether it is in fact viable. The insurer or the self-insurer has the right to unilaterally discontinue or modify the payment of disability benefits during this time based on information developed during the payment-without-prejudice period after giving seven days' written notice of its intent to do so.

Failure to act within the fourteen-day period will foreclose the opportunity to pay without prejudice, even if the insurer later accepts and pays the claim. This failure will also result in a penalty of ascending magnitude based on the passage of time between the fourteenth day and the date of payment of the claim. G.L. c. 152, § 7(2). Any payment made after the expiration of the fourteen-day period will have the consequence of conclusively establishing liability.

§ 12.2.5 Denial of Claim

If the insurer elects to deny the claim within this period, it must notify the DIA, the employer, and, by certified mail, the employee of its denial on a form prescribed by the DIA. G.L. c. 152, § 7(1). Currently the form is entitled "Insurer's Notification of Denial," Form 104, included as **Exhibit 12F**, which can be filed with the DIA online at its website. The statute mandates that "the grounds and factual basis for the refusal to commence payment of said benefits" shall be specified on the insurer's notice of denial. G.L. c. 152, § 7(1). Form 104 provides space for these grounds and factual bases to be stated on its face. It is permissible to use the back of the form or to attach an additional sheet of paper to the form to fully state the grounds and factual bases for the denial.

It is important to be sure that all the grounds available at the time of the denial are stated to ensure that all possible defenses to the claim are retained. Section 7(1) of Chapter 152 limits the insurer's defenses to those specified on Form 104 unless future defenses are based on newly discovered evidence. G.L. c. 152, § 7(1).

Judicial Commentary

While it is always the employee's burden to prove all elements of his or her case, and "[a]n insurer's inability to defend on any issue shall not relieve an employee of the burden of proving each element of any case," G.L. c. 152, § 7(1), the ability to present evidence and argument to dispute the employee's position can be essential. An insurer's defenses to the claim must be specified or they will be deemed waived. For instance, except as to newly discovered evidence, "no grounds for refusal to pay compensation shall be allowed as a defense unless the insurer's notice of refusal contains a statement of the factual basis supporting such

> grounds." 452 C.M.R. § 1.04. Also, before the taking of testimony at hearing, the insurer must state clearly its defenses, since "[o]n all other issues, the employee's rights under M.G.L. c. 152 shall be deemed to have been established." 452 C.M.R. § 1.11(3).

The form lists seven possible defenses with a box to be checked for those that apply and an additional box for "other" defenses:

- no personal injury,
- no injury arising out of and in the course of employment,
- no disability,
- no causal relationship between personal injury and disability,
- lack of jurisdiction,
- lack of notice,
- late claim, and
- other.

If the occurrence of the incident or the injury is disputed, emphasis should be placed on the grounds and factual bases for raising the first two of these defenses. The substance, if not the detail, of these grounds and bases should be listed. By putting the employee on notice, you have preserved the defenses that will remain at the core of the disputed claim.

A lack of disability may be the sole applicable defense in a claim. It may also be one of several that are applicable at the time the notice of denial is given. The medical basis for this defense should be referenced in the appropriate space. It is not unusual for the existence or the extent of disability to be disputed due to a lack of any medical documentation of it. If so, this is the appropriate grounds to be stated in support of this defense. This basis may be eroded by the receipt of additional medical records or reports, but the defense has been preserved as an issue for later consideration. A dispute as to causal relationship between the claimed injury and disability may also necessitate the citation of a medical basis, a factual basis, or both. Either basis may be sufficient depending on the circumstances of the particular claim.

Jurisdiction over a claim for workers' compensation benefits is established in Massachusetts by the occurrence of the injury within the state or the contract of hire for the employment being performed at the time of the injury having been made in Massachusetts. If one of these criteria is not met by or cannot be ascertained from the information available in the fourteen-day period following the receipt of notice of an injury, jurisdiction can and should be raised as a defense.

> **Judicial Commentary**
> Raising "liability" as a defense can have implications for attorney fees at the Section 10A conference. Under Section 13A, the employee's attorney would be entitled to a lower fee for prevailing at conference if the

matter did not involve "an initial liability claim." An insurer would therefore not necessarily want to always check off all the boxes on the list of its potential defenses. Moreover, an insurer must have "reasonable grounds" for its defenses or it could be susceptible to Section 14 penalties. *Gonsalves v. IGS Store Fixtures, Inc.*, 13 Mass. Workers' Comp. Rep. 21, 23–25 (1999).

Whether an insurer has "reasonable grounds" to defend an issue must be determined by an objective, reasonable person standard, rather than on a subjective, "good faith" basis. *Adam v. Harvard Univ.*, 24 Mass. Workers' Comp. Rep. 193, 197–98 (2010); *Gonsalves v. IGS Store Fixtures, Inc.*, 13 Mass. Workers' Comp. Rep. at 24–25. In *Gonsalves*, the Reviewing Board departed from its earlier decision in *Brown v. MCI–Norfolk*, 10 Mass. Workers' Comp. Rep. 58, 60 (1996), and held that a party need not show that "fraud, ill will or insincerity [was] exhibited," only that a "cautious and prudent" insurer would not have raised the defense. *Gonsalves v. IGS Store Fixtures, Inc.*, 13 Mass. Workers' Comp. Rep. at 23–25.

§ 12.2.6 Notice Requirements

The requirements for notice and claim are contained in G.L. c. 152, §§ 41 and 44. Pursuant to Section 41, notice of an inquiry resulting in a proceeding on a claim for compensation benefits under G.L. c. 152 "shall have been given to the insurer or insured as soon as practicable after the happening thereof." Failure of the employee to provide notice will not bar the proceeding "if it be shown that the insurer, insured or agent had knowledge of the injury, or if it is found that the insurer was not prejudiced by such want of notice." G.L. c. 152, § 44.

Practice Note

The key considerations are the practicability of the timing of the notice given and whether the insurer was prejudiced by the lack of notice. This defense should be preserved when there is an unexplained gap between the occurrence of the alleged injury and its having been reported, and either the employer or the insurer was prejudiced by the lack of notice.

Prejudice may result from the unavailability of relevant evidence due to the passage of time or the intervention of the employee. Section 42 allows a claim for compensation to be filed in "any form of written communication." G.L. c. 152, § 42. The claim must be filed within four years from the date of injury or "the date the employee first became aware of the causal relationship between his disability and his employment." G.L. c. 152, § 41. The statute of limitations may not begin to run until a doctor establishes this causal nexus. This trigger may apply more frequently in occupational disease cases, repetitive microtrauma injuries, and claims arising from exposure to other harmful working conditions. "Other defenses" may be listed on the last line of the notice of denial.

It must be emphasized that it is not advisable merely to check the appropriate box without stating the grounds and the factual basis for each applicable defense. Some grounds should be stated, even if it is as simple as a statement that the employee did

not sustain an injury arising out of the course of employment. Often, the investigation performed within the first fourteen days of the filing of the first report of the injury or death will not produce much more detailed information than that. At a minimum, such grounds will preserve the defense generally, thereby allowing its supplementation with information obtained from the continuing investigation, i.e., "newly discovered evidence." To the extent that you are asked to complete the notification of denial or have input into its completion, be sure that all possible defenses are retained until such time as it is clear that one or more of them do not apply to your case.

§ 12.2.7 Factual Follow-Up

The materials initially submitted to you by the insurer are rarely complete. Your review of them should generate a list of questions seeking more information that you believe is necessary for you to provide a fully informed assessment of the issues, the available defenses, and a defense strategy. If you have been provided with the entire claims file and information gaps remain, ask the insurance adjuster to either obtain the information you need or authorize you to address your requests to the employer directly. If the occurrence of the incident or the injury is disputed, it may be best to seek permission to contact the employer directly as early in the investigation as possible.

> **Practice Note**
> This direct connection will enable you not only to ask the questions raised by your initial review of the material but also to establish a relationship with the employer and assess his or her potential as a witness, should it be necessary for him or her to testify at a hearing.

The investigation of an initial liability claim may be extensive. It is not unusual for the investigation to require the questioning of several witnesses and visiting the site of the alleged occurrence. Again, for reasons of economy, the insurance adjuster may choose to do most of the investigation himself or herself, or enlist an independent adjusting company or investigator to perform the initial investigation. If this method is chosen by the insurer, offer to assist in the investigation by recommending the type of, if not the specific, questions to be asked and by identifying the person or persons who should be questioned. Consideration should also be given at this time to whether there is a basis for a subrogation claim against any third party whose actions or inactions may have resulted in civil liability for the injury under investigation. Note that the insurer cannot initiate a claim for damages at law until compensation benefits have been paid and seven months or more have passed since the date of injury. G.L. c. 152, § 15.

At this point, consideration should also be given to whether there is any basis to believe that the employee has engaged in any fraudulent behavior in the claim. If there is evidence of possible fraud, you should discuss this issue with your client and present all available options. Once a claim for benefits or a complaint to reduce an employee's benefits has been filed, the conduct believed fraudulent may be reported to the general counsel of the insurance fraud bureau pursuant to Section 14(2). If the

circumstances so warrant, the parties to the fraudulent conduct could be prosecuted in criminal court.

Whether the conduct at issue is fraudulent or not, if it appears that the employee has either brought a claim or contested a complaint to reduce his or her benefits without reasonable grounds, the entire cost of that proceeding could be assessed against either the employee or employee counsel, or both, whomever is responsible. G.L. c. 152, § 14(1). If the conduct is potentially fraudulent and prosecuted as such, the insurer may still pursue costs in the underlying workers' compensation claim.

Similarly, be sure that there is an adequate basis for the position taken by your client in a proceeding within the DIA. Its actions should be examined objectively to ensure that they have been taken in good faith. The Reviewing Board has emphasized that Section 14(1) does not require proof of either subjective bad faith or ill will on the part of the insurer to impose the sanctions prescribed by that section. *See Gonsalves v. IGS Store Fixtures, Inc.*, 13 Mass. Workers' Comp. Rep. 21, 23–24 (1999).

§ 12.2.8 Disability

Whether the employer or the insurer has accepted liability for the injury or not, there are other issues to be considered and addressed. Chief among them is disability. Disability is both a medical and a vocational concept, though it is most often thought of only as the former. Assessing whether the employee is physically capable of performing his or her regular employment duties and responsibilities is the best way to begin the evaluation of disability. All claims for disability benefits are premised on either a physical or a mental injury. Mental injuries could also be described as emotional, psychological, or psychiatric.

Those medical records in the initial file provided to you should be read closely for both content and context. Attention should be paid to all information in hospital records. If an employee first sought medical care from a hospital emergency facility, the records may contain a description of the accident that resulted in the injury, the initial complaints and symptoms expressed by the employee, as well as the insurance information provided to the hospital before its professional staff would treat the employee. This one page may provide information that will influence the entire course of the claim. If an employee lists his or her health insurance provider as the payer for the treatment provided and fails to clearly identify the injury as work-related at the time of an emergency admission, this may lead to lively cross-examination at the hearing. There may also be information about prior admissions, medical history, and even the employee's marital status that may be relevant to the claim.

§ 12.2.9 Past Medical Condition

Records of physicians, chiropractors, or other health-care providers that assess an employee's postinjury medical condition may also contain information relevant to the administration and the defense of the claim about his or her past medical condition, injuries, habits, or personal background. You should take immediate steps to procure this information from the employee, the medical provider, the insurer, and

the employer. These records can often be obtained by requests for production, by subpoena, or by obtaining a signed release from the employee. Revisions to the Code of Massachusetts Regulations promulgated in 2009 mandate that notice of a subpoena must be given to counsel for each party at least two business days before it is served. 452 C.M.R. § 1.12(7). Failure to comply with this requirement could result in sanctions under G.L. c. 152, § 14. The time frame for responding to requests for production was expanded from five to twenty days by these revisions.

You will want all of this information to determine if there have been any prior injuries or incidents that may affect the claim. This is especially important under the revised regulations. Pursuant to 452 C.M.R. § 1.11(1)(f), the insurer is required to make an offer of proof when raising a defense under Section 1(7A) contesting that the claimed injury is a major cause of the alleged disability and/or need for medical treatment.

§ 12.2.10 Health-Care Provider

The identity of the health-care provider chosen by the injured employee may be significant. The names of certain providers will appear frequently as treating physicians or doctors. If possible, review other files in which the same doctor has served as the primary treating physician for similarities in treatment, diagnosis, and, of course, disability opinions. Your insurance adjuster should also have access to additional records of such physicians. More-experienced attorneys may have deposition transcripts, with effective cross-examination of these physicians, which could prove useful as the claim progresses.

The type of health-care provider chosen by the employee to be the primary care physician may also be significant. Frequently, an employee who immediately consults a chiropractor for a work-related injury has already established a treatment relationship with that doctor. This may also be true when the first consultation is with an orthopedic surgeon or other specialist or there has been an inability to obtain specialized care where it is warranted. References to prior treatment in the records of current treatment may prompt you to pursue the records of the former. The choice of an inappropriate medical specialist may raise the question of the need for medical management services. These services may facilitate an expedited return to work, the identification of the need for a different medical specialist, or other insights into the treatment of the injury that may reduce the period or extent of disability.

§ 12.2.11 Independent Medical Exam

The file you receive may contain a report of an independent medical examiner. This too should be read closely for further insight into the circumstances surrounding the claimed injury and the alleged disability. Attention should be paid to the report itself as a potential litigation tool. Review it for accuracy of factual information. Careless mistakes in describing an employee's age, weight, or height may provide an opportunity for the employee to cast the entire report in a negative light when it is later presented at a DIA proceeding. Be sure that the report contains an adequate history, a description of the complaints or symptoms described by the employee, a thorough

description of the physical or mental examination, a diagnosis or impression, a prognosis, and a clear opinion on the employee's disability, if any, including the restrictions that the employee should observe on his or her return to work.

The report must also contain the doctor's opinion on the existence of a causal relationship between the claimed injury and the condition observed at the examination. The employer does not have the burden of establishing a nonindustrial cause of an employee's disability. If, however, the independent medical examiner finds that there is no causal relationship between the condition he or she diagnoses and the claimed work-related injury, the basis for that opinion should be clearly stated and supported by appropriate references to the history and physical examination. If, on the other hand, the doctor does find a causal relationship between a disputed medical condition and the claimed injury, it should be made clear that the opinion is based on the history provided by the employee and assumes its accuracy only for the purposes of expressing that opinion but does not attest to the accuracy of that history. The doctor is not a fact finder in the claim adjudication process. An employee will seize on an unconditional opinion on causal relationship as if it were a legal conclusion regardless of the doctor's lack of standing to reach such a conclusion. All too often, an administrative judge may also be seduced by this inartfully expressed opinion. If the report is lacking in any of these respects, consideration should be given to requesting an addendum to the original report or a reexamination to address the omissions in the original report.

If an independent medical examination has not been performed but is necessary, communicate the need for this information to the claims adjuster who will make the appointment for this examination or directly to the doctor, if you have the opportunity. Claims that involve unusual circumstances or issues may warrant the extra step of specifying particular questions to be answered by the examining physician. Circumstances may also warrant providing the examining physician with investigation reports, photographs, video discs, other claims made by the employee, or other information relevant to the particular issue raised by the claim, in addition to all the medical records available at the time of the examination. The doctor's review of and comment on these types of materials, while extraordinary, may advance the defense on more than one level.

Practice Note

In addition to the influence that the material may have on the evaluation itself, reference to nonmedical materials such as investigation reports, photographs, and video in the evaluation report may alert an impartial medical examiner to the existence and content of these materials, which might otherwise not be available for his or her review until after the examiner's report has been issued and he or she has been deposed.

Whether an independent medical exam has already taken place or you are requesting one for the first time, you must make sure that the doctor has all the employee's past medical records and diagnostic test results available at the time of the examination. This underscores the critical need to get as much as possible of the employee's medical

treatment history prior and subsequent to the date of injury as soon as you can. The doctor cannot provide adequate opinions without all relevant information.

§ 12.2.12 Investigation of Postinjury Activity

If an investigation into the employee's postinjury activities has been performed before the file is referred to you, consider the injury in issue when reviewing the report, photographs, DVDs, and other materials produced by the investigation. Most investigations do not reveal injured employees to be gainfully employed in strenuous physical labor. If they do, the only recommendations you need to make as counsel are to try to have the investigator observe and record as many instances of this activity as time and resources will allow. At least forty-five days before a conference, request that the employee be asked to complete an "Employee's Earnings Report," Form 126, included as **Exhibit 12G**. This form requests information about postinjury earnings and can be issued at six-month intervals. The employee has thirty days from receipt to respond. This will ensure that defense counsel will have a response by the conference date and can either use the information at that proceeding or ask the administrative judge to compel a response. In the majority of cases in which an investigation has been performed, the results are much less dramatic. That is not to say that the absence of an observation of the employee working, playing football, or engaged in some other activity that is wholly inconsistent with the claimed disability renders the investigation useless. A video image that shows an employee alleged to be disabled as the result of a back injury bending at the waist to pick vegetables out of a garden, shoveling snow, lifting trash barrels, or engaging in any other activities inconsistent with a back injury has value as a potential litigation tool. Similarly, if the employee claims to be housebound by injury, observations of the employee simply running errands out of the house will serve to contradict that allegation and support any medical evidence that disputes the extent of the claimed disability. The value of these observations will be enhanced the more frequently they are made.

§ 12.2.13 Investigation of Prior Claims

Many insurers and self-insurers are members of claims index services. These services maintain records of claims of work-related accidents, motor vehicle accidents, and other general liability injuries. If provided with the employee's personal information, these services can provide information about prior claims by the employee or someone with a similar name, such as a family member. The information will often describe the nature of the claimed injury, the date it occurred, the employer or tortfeasor, and the insurance company that administered the claim. This information may be useful if it reveals similar injuries that predate or postdate the one you are defending. Prior injuries involving the same or similar body parts may give rise to a defense pursuant to Section 1(7A). Subsequent injuries to the same body parts may serve to break the chain of causation between the claimed injury and the employee's medical condition at the time of the DIA proceedings. The insurer administering another claim may be of assistance in sharing information that may be relevant to your defense. The option of requesting a subpoena for the production of the claim file is also opened to you once its existence has been confirmed.

§ 12.2.14 Requests for Production of Documents and Requests to Enter Premises

One of the few discovery tools available to you in the early stage of a claim is a request for production of documents pursuant to 452 C.M.R. § 1.12(2). A prerequisite is the filing of a claim or a complaint to reduce the employee's benefits. Once the prerequisite has been met, you can request medical notes and treatment reports from either the employee or his or her medical provider, as well as information regarding wages the employee has earned since the date of the accident. The employee can seek the same information from your client, in addition to employment records, including records of wages earned subsequent to the injury at issue in the claim.

Practice Note

It is strongly recommended that you attempt to obtain medical records through this process before arranging an independent medical examination if updated records are not otherwise available.

The regulations prescribe how the request for production of documents should be worded: that a statement of relevance of each of the requested items should be included and that the method of inspecting the requested items should be detailed with specificity. The party receiving the request is allowed twenty days to respond. The regulations also prescribe the components of the response, including the requirements for an objection to a request. An objection and the reason for it must be raised in the response. 452 C.M.R. § 1.12(3). Specific objections are not identified by the regulations. The range of objections available should mirror those available in civil actions, including but not limited to relevance, privilege, and the breadth of the request. You may be called on to either initiate or respond to such requests. A party's failure, refusal, or objection to respond to a request may later be addressed by an administrative judge once one has been assigned. 452 C.M.R. § 1.12(4)(b). Section 1.12(4)(b) of the DIA's adjudicatory rules, which was revised in 2009, sets forth procedures for the filing of discovery motions.

The employee may request permission to enter the employer's premises to inspect the area where the injury occurred, including any of the objects that may have been involved in the incident. 452 C.M.R. § 1.12(1).

Practice Note

Be aware that the inspection is not limited to the investigation of a potential third-party action. The regulations assume this premise, but there are no regulatory or statutory prohibitions against using this inspection to develop a claim for double compensation benefits under G.L. c. 152, § 28.

Prior to any inspection requested by the employee, you should consult directly with the employer about the request, ask to view in advance the site specified by the employee's request, and recommend that the employer or his or her designee attend the inspection as well. If there is reason to suspect that a claim for enhanced benefits pursuant to Section 28 is being investigated, it is advisable to explain to the employer

the effect of the success of such a claim. The option of having an attorney representing the employer present at the inspection should be offered.

> **Judicial Commentary**
> Judges obtain jurisdiction over cases when they are assigned for conference, some time after the conciliation and well after the claim or the complaint has been filed. The parties will have to wait to file discovery motions until a particular judge is assigned to the case, probably when they receive notice of the conference. However, the parties need not wait for the assignment of a judge to serve requests for production on one another.

If the work-related injury has resulted in a third-party claim, several resources will help you pursue the complaint, the tracking order, and the discovery documents. The complaint and the tracking order will be available from the office of the clerk in the venue chosen by the employee to file the civil action. Discovery documents can be requested from employee counsel if he or she represents the employee in both forums. Although such a request is not sanctioned by the regulation discussed previously, most administrative judges will at least entertain a motion to compel production of documents of this type on a showing of relevance or other good cause. The foundation for such a motion should be laid as early in the proceeding as possible. In certain types of claims, asbestos-related disease claims for example, civil filings and discovery documents provide a wealth of relevant information.

If your request is refused by employee counsel, consider making an informal request to the defendant's counsel in the third-party action. The circumstances surrounding the incident will dictate whether such a request is prudent. If there is a dispute over the occurrence of the incident or the injury, your interests and that of the civil defendant may be substantially similar. However, as a potential beneficiary of the successful prosecution of the civil action, the interests of your client may be adverse to those of the civil defendant. Under those circumstances, careful consideration should be given to whether or how to obtain information about the developing civil action by you, the insurer (if applicable), and the employer.

§ 12.2.15 Return to Work in the Case of Partial Disability

Where an employee has been determined to be partially disabled by his or her treating physician, an inquiry should be made to the employer as to whether it would be possible for the employee to return to work in a lesser capacity until the employee is ready to return to his or her former duties. The availability of the employee's former position or an alternative one should be determined when the treating physician releases the employee to his or her former or modified duties. In the event such options are available, a written job description must be obtained from the employer. On receipt, it should be reviewed to see if it generally fits within the restrictions recommended by the treating physician. If so, the insurer may be able to unilaterally modify or discontinue weekly disability benefits pursuant to Section 8(2)(d). The prerequisites for this step at the preliminary level are

> [1] possession of . . . a medical report from the treating physician . . . [which] indicates that the employee is capable of return to the job held at the time of injury, or other suitable job pursuant to section thirty-five D consistent with the employee's physical and mental condition as reported by said physician and . . .
>
> [2] a written report from the person employing said employee at the time of the injury indicating that such a suitable job is open and has been made available, and remains open to the employee.

G.L. c. 152, § 8(2)(d)(i), (ii).

For this offer to be effective, the employer must be willing and able to take the employee back to work. Whether the employer can continue to offer the alternative position to the employee for more than a fixed term will also be a consideration if a dispute arises from a reduction or discontinuance of the employee's benefits, even though the statute makes no reference to the duration of a suitable job. The statute does, however, state that if an employee accepts the offered position but cannot sustain its duties and responsibilities, the employee's compensation benefits must be reinstated at their former rate if the return to work lasts less than twenty-eight calendar days and the employee notifies the employer by certified mail within twenty-one days of leaving the job that the disability from the original injury has left him or her unable to perform even the modified duties assigned. G.L. c. 152, § 8(2)(c), (d). Administrative judges have been skeptical of offers of transitional work of temporary duration as the basis for unilateral reductions of disability benefits. Ensure from the outset that the parameters of the position to be offered meet not only the statutory requirements but also these practical considerations.

Keep in mind that Section 8(2) states that "any termination of an employee within one year of resumption of work with his prior employer will be presumed to be for the reason that the employee was physically or mentally incapable of performing the duties required by the job or that the job was unsuitable for the employee." The burden of proof to overcome this presumption lies with the employer.

If there is any uncertainty as to whether the job offered comports with the restrictions recommended by the treating physician, ask the treating physician to review the job description and give an opinion on its suitability for the patient. If the physician responds affirmatively, the employer will need to make a written offer of the position to the employee, if it has not already done so. It is recommended that the offer be sent by certified mail, return receipt requested. It should be extended for a reasonable time but with a fixed date by which a response must be received. If the employee rejects the offer or fails to respond to it by the specified date, the reduction or discontinuance of the disability benefits being paid to the claimant can be implemented. This action must be reported to the DIA by completion and filing of Form 107 or 108, depending on whether the payments being modified or terminated were being

made without prejudice as defined in Section 8(1) and discussed in § 12.2.4, above. (Forms 107 and 108 are available online at the DIA's website.)

> **Practice Note**
> If the treating physician fails to respond to the request to comment on the suitability of the position offered, the efficacy of the request can be enhanced by having it reviewed by an independent medical examiner for endorsement.

The employer may not be willing or able to accommodate the employee's return. An employer may not wish to have the injured worker return to its employ. It is not uncommon for ill will to develop between employer and employee over a contested issue, whether it be the occurrence of an injury or the extent of disability, if any. This may remove the option of offering alternative duties to the employee from the defense. An employer simply may not be able to offer alternative employment to the injured employee. The size of the business, seasonal staffing needs, collective bargaining agreements, and other factors may constrain an employer's ability to offer work within an employee's postinjury physical limitations.

Not all employees who are injured during the course of their employment immediately or necessarily lose their job. This will vary from employer to employer. Section 75A is not a guarantee that the employee's former position will remain available to him or her in perpetuity. The application of this section is limited to those who have "lost a job as a result of an injury compensable under [G.L. c. 152]." The remedy available to the employee is preference over an applicant for the same position who has not worked for that employer before. The preference to be extended to the injured former employee is for a "suitable job," not simply a job. The meaning of the term "suitable" will certainly be open to differing interpretation by employer and employee. This issue should not be a component of a dispute within the Department of Industrial Accidents, as the forum to address such claims is the Superior Court Department, as prescribed by statute.

§ 12.2.16 Employability Assessment and Labor Market Survey

If it appears that the employee has restrictions that may be permanent or may have an indefinite effect on his or her earning capacity, an employability assessment and labor market survey may be needed to mitigate the potential exposure to future disability benefits. The results of these two procedures usually will produce a list of suitable alternative employment options for the employee and the basis for choosing them. A comprehensive survey should contain information on potential earnings, which can later be used as evidence to establish a theoretical earning capacity.

In order to have an effective employability assessment and, thus, an equally effective labor market survey, the vocational consultant selected for this task must be given as much information as possible about the employee. At a minimum, the consultant will need the employee's age, educational and employment histories, and those medical reports that define the disability or restriction he or she is under at the time of the referral. The employer may be a source of this information if it is not in the claims

file. Ideally, the consultant should interview the employee to obtain details of his or her vocational background. Interviews of this kind are rare since the end product of the employability assessment and labor market survey will be used to establish the basis for the imposition of an earning capacity, which the employee will, in all likelihood, contest. At a minimum, the consultant should personally request permission for an interview from the employee or the attorney, if one has been retained. This will enable the consultant to include the response in his or her report and testify about it at a hearing, if necessary.

Alternative vocational information can come from the records of any ongoing vocational rehabilitation. Caution must be exercised to keep these two vocational analyses completely independent. The insurer is prohibited by statute from using the fact that an employee is participating in a vocational rehabilitation program as a basis for reducing his or her compensation benefits. G.L. c. 152, § 35D(5). Information generated by the employee's participation in a vocational rehabilitation program is reported to the insurer who pays for the program. Since only the basic vocational information from that program is needed to establish a starting point for a separate and independent employability analysis, the insurer is within the bounds of the law to release it to a vocational consultant. However, the two processes must remain independent. They should be undertaken by different providers who should not collaborate on any part of their analyses. If, for example, the vocational rehabilitation provider should be asked by the Office of Education and Vocational Rehabilitation to assist the employee in job placement, the results of that task should not be incorporated into the employability assessment or the labor market survey.

§ 12.2.17 Unemployment Benefits in the Case of Partial Disability

Where an employee is already receiving partial disability benefits pursuant to Section 35, the insurer may request that he or she apply for unemployment benefits. On receipt of such a written request, the employee must apply within sixty days or risk suspension of benefits. The insurer is allowed to take credit for unemployment benefits received during a period of time in which partial disability benefits had already been paid. G.L. c. 152, § 36B(2).

§ 12.2.18 Alternatives to Litigation

Even at these early stages of a proceeding, alternatives to litigation should considered. The evaluation of a claim or a complaint to reduce an employee's benefits may suggest opportunities for agreement or compromise of issues that were revealed by your initial evaluation of the dispute. Opportunities to narrow the issues in dispute should be fully explored to evaluate their viability and desirability to your client. A dispute that can be adjusted in an agreeable manner at the initial stage of a proceeding may ultimately prove to be the most cost-effective solution. If there is sufficient information available on which to base a recommendation for such an alternative, the fact that a proceeding has only just commenced should not be an impediment to its creative adjustment or resolution. Identifying those options is a skill that will be

developed as your knowledge of the law and practice experience grow with each claim defended.

Agreements made under the terms of Section 19 may enable the employer to reach a compromise that satisfies the employee yet retains some protection for the employer. An employer who has met the requirements of Section 8(1) may agree to pay the compensation benefits claimed without accepting liability for the work-related injury. This option may extend to agreements that are reached after an employer that has complied with Section 8(1) subsequently terminates or modifies the payment of benefits pursuant to that section. Conceptually, this option extends through the filing of a conference order finding liability, so long as that order is timely appealed. If approved by the DIA, a Section 19 agreement may enable the employer to avoid liability for the full range of benefits that could have been available to the employee if the claim had been accepted or if liability had been conclusively established by adjudication within the DIA.

Agreements on the amount or type of benefits to be paid may be effective in certain circumstances even though they may not foreclose future claims for additional benefits. For example, it may be possible to compromise a claim for past medical treatment by agreement. It is not possible to foreclose a future claim for the same type of treatment, however. Similarly, the parties may agree to an employee's earning capacity. Nevertheless, either party is free to seek modification of the agreed earning capacity subsequent to the agreement's approval.

Drafting agreements that seek to limit or foreclose the right of the employee to claim future benefits is challenging. The agreement can neither contravene Section 7 nor violate Section 48. There remains a wide range of issues that can be creatively addressed by a Section 19 agreement within these parameters. The key to obtaining DIA approval is supporting the basis for the agreement in written form and incorporating documents that lend credence to the compromise reached by the parties.

Judicial Commentary

Parties should always be mindful of the opportunities they have to voluntarily resolve their disputes. Exploring such opportunities and explaining to the clients the benefits of controlling the outcome of the case through a negotiated resolution are important aspects of a lawyer's representation of his or her client. These efforts can be undertaken at all junctures in the litigation process.

ü CHECKLIST 12.1

Initial Interview

1. Background Information

- q Full name
- q Complete address
- q Marital status and number of children
- q Age and date of birth
- q Social Security number
- q Military service record/status
- q Health insurance information
- q Short-term/long-term disability insurance Information
- q Educational background
- q Language skills
- q Prior work experience
- q Prior injuries/illnesses or claims
- q Existence of potential liens

2. Information Regarding Current Injury

- q Employer information
- q Occupation
- q Length of employment
- q Average weekly wage
- q Weekly compensation rate
- q Union involvement
- q Concurrent employment

- q Date of injury
- q Nature of injury
- q Cause of injury
- q Reporting of injury

3. Medical Information

- q Doctors' names and addresses
- q Other medical providers

4. Insurance Information

- q Name of insurer
- q File (claim) number
  - q Claims representative
  - q Insurer's physician exams

5. Other Considerations

- q Available workers' compensation benefits
  - q Section 34
  - q Section 35
  - q Section 34A
  - q Section 36
  - q Medical benefits
  - q Vocational rehabilitation
  - q Cost-of-living Allowance (COLA) adjustments
  - q Section 31
  - q Section 28
- q Other available benefits
  - q Social Security Disability Insurance
  - q Supplemental Security Income

- Short-term/long-term disability
- Welfare (i.e., Transitional Assistance)
- Veterans' Services

- Attorney fees
- Statute of limitations
- Potential third-party claims
- Uninsured employers
- Jurisdictional issues

ü CHECKLIST 12.2

Filing

1. Preliminary Process

- q Obtain necessary medical documentation
  - q Hospital records
  - q Office notes
  - q Reports of diagnostic studies
- q Witness statements
- q Obtain information from insurer file
  - q First Reports of Injury
  - q Applicable DIA filings
  - q Signed/recorded statements of employee
  - q Independent medical exam reports
  - q Wage schedules
  - q Request for Production of Documents

2. Filing the Claim

- q Initial considerations
  - q At least five days of lost earnings
  - q Less than twenty-one days of disability—paid from sixth day to date of return to work
  - q Twenty-one days or over—paid from first day of disability
  - q File claim after thirty days from date of injury or after receipt of denial from insurer
- q Procedure
  - q Form 110

- q Copy to insurer by certified mail
- q Claim for benefits accompanied by supporting medical documentation
- q Claim for medical services accompanied by supporting medical documentation and notice of Utilization Review denial
- q Claim for Section 36 benefits accompanied by medical documentation and specific dollar amount claimed

EXHIBIT 12A—DIA Form 115 (Third Party Claim/ Notice of Lien)

FORM 115

The Commonwealth of Massachusetts
Department of Industrial Accidents – Department 115
1 Congress Street, Suite 100, Boston, Massachusetts 02114-2017
Info. Line 800-323-3249 ext. 7470 in Mass. Outside Mass. - 617-727-4900 ext. 7470
http://www.mass.gov/dia

DIA Board # (If Known):

THIRD PARTY CLAIM / NOTICE OF LIEN

PLEASE CHECK ONE ONLY

☐ *THIRD PARTY CLAIM* ☐ *NOTICE OF LIEN*

COPIES OF THIS FORM SHOULD BE PROVIDED TO THE INJURED EMPLOYEE AND THE INSURER

Please Print or Type ***IMPORTANT - SEE INSTRUCTIONS AND DEFINITIONS ON REVERSE SIDE***

THIRD PARTY	1. Name (Business or Individual):	2. Telephone Number:
	3. Address (No. and Street, City, State, Zip Code):	
	4. Attorney's Name and Address (No. and Street, City, State, Zip Code):	5. Attorney's Telephone Number:
EMPLOYEE	6. Employee's Name (Last, First, MI):	7. Employee's Social Security Number*:
	8. Employee's Address (No. and Street, City, State, Zip Code):	9. Date of Birth (mm/dd/yyyy):
	10. Employer's Name & Address (No. and Street, City, State, Zip Code):	11. Date of Injury (mm/dd/yyyy):
	12. Insurance Carrier's Name and Address (No. and Street, City, State, Zip Code):	
BENEFIT OR SERVICE	**PLEASE NOTE - if this is a Notice of Lien fill out box 13 only. If this is a Third Party Claim fill out box 14 only. DO NOT FILL OUT BOTH BOXES. See reverse side of form for definitions and instructions.**	
	13. If this is a lien, please state the nature of services rendered, the statutory basis therefore and the amount thereof:	
	14. If this is a claim for payment or reimbursement for services provided to the employee, please state the nature of services rendered, the statutory basis therefore and the amount thereof:	
SIGN	**15. Preparer's Signature:**	
	16. Preparer's Name (Please Print):	**17. Date (mm/dd/yyyy):**

***Disclosure of Social Security Number is Voluntary. It will aid in the processing of documents.**
Please Print Legibly or Type - Unreadable forms will be returned.

Form 115 - Revised 7/2013- **Reproduce as needed.**

THIRD PARTY CLAIM / NOTICE OF LIEN

INSTRUCTIONS AND DEFINITIONS

Pursuant to M.G.L. c. 152:

LIEN - a lien may be filed by any party, business, organization or governmental agency that is owed monies for the following reasons including, but not limited to, unpaid legal bills, non-payment for services rendered, unpaid taxes, cash assistance for medical payments related to a compensable injury by the Division of Medical Assistance, and back child support.

CLAIM (THIRD PARTY) - A Third Party Claim may be filed by a medical professional or other service provider when payment for services directly related to a compensable injury has been denied by an insurer.

I**NSTRUCTIONS - This form should be filled out by third parties only when monies are owed under the definitions stated above. You must fill out the boxes in the "Third Party" and "Employee" sections to the best of your knowledge, but the employee name and address are required. If a lien is necessary, you should fill out box 13 only under the "Benefits or Services" section. If you are filing a third party claim, you should fill out box 14 only under the "Benefits or Services" section. DO NOT FILL OUT BOTH BOXES!**

Please note: A hearing pursuant to M.G.L. c 152 §46A must be scheduled, and approved, at the DIA for final lien discharge.

10 (1) states for an attorney fee to be due under Sec. 13A "such claim shall have been sent to the insurer by certified mail". Also in order for any attorney's fee to be due for services involving a claim for health care services, such claim shall include a copy of any relevant bill and a description from the health care provider of the services rendered.

EXHIBIT 12B—Insurance Inquiry Form

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR & WORKFORCE DEVELOPMENT
DEPARTMENT OF INDUSTRIAL ACCIDENTS

DEVAL L. PATRICK
Governor

RACHEL KAPRIELIAN
Secretary

OFFICE OF INSURANCE
INSURANCE REGISTER
(617) 626-5480 or (617) 626-5481

INSURANCE INQUIRY FORM

GEORGE E. NOEL
Director

Use this version for a mailed in or faxed (617-624-0985) submission. Responses to faxed requests cannot be faxed back. Use the online version if your e-mail account does not have an attachment filter. (Revised 11/2014)

Please fill out this form legibly, and remember to enter your mailing address at the bottom to receive our researched response.

If the employer name is incorrect, insurance information may not be found. Take the employer name from a payroll, income tax or social security document issued during the calendar year within which the injury occurred.

COMPANY NAME(s) _____

ADDRESS _____

_____

WHAT IS ANOTHER NAME UNDER WHICH THE COMPANY COULD BE OPERATED?

_____

DATE OR PERIOD OF INJURY _____

HOW LONG HAS THE COMPANY BEEN IN BUSINESS? _____

WORKERS COMPENSATION INSURANCE INFORMATION SHOULD BE REQUESTED FROM THE EMPLOYEE'S COMPANY FIRST. CALL AND ASK TO SPEAK WITH THE APPROPRIATE PERSON AT THE COMPANY WHO WOULD HAVE THE KNOWLEDGE OF THIS INFORMATION

IF INSURANCE INFORMATION CANNOT BE FOUND FOR THE EMPLOYER NAME SUBMITTED, SUCH A FINDING DOES NOT NECESSARILY MEAN THAT THE ENTITY WAS NOT OR IS NOT INSURED.

YOUR NAME AND ADDRESS (TO MAIL BACK THIS FORM TO YOU):

_____

_____

_____

EXHIBIT 12C—Insurer Request Certification Form

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR & WORKFORCE DEVELOPMENT
DEPARTMENT OF INDUSTRIAL ACCIDENTS

DEVAL L. PATRICK
Governor
RACHEL KAPRIELIAN
Secretary

GEORGE E. NOEL
Director

PROCESS FOR SUBMITTING
INSURER REQUEST CERTIFICATION FORM

Use this version for a mailed in or faxed (617-624-0985) submission. Responses to faxed requests cannot be faxed back. Use the online version if your e-mail account does not have an attachment filter. Also be advised that any returned online version in need of adjustment requires that a new online form be completely filled out and submitted with the requested adjustment incorporated into it.

1. Print and then fill out the Insurer Request Certification Form that follows.

2. Forward that form to Thomas Finneran at the address indicated at the bottom of the form, or fax it to his attention.

3. If the form has been completed correctly and no coverage is found for the submitted employer name, then a letter will be sent to the submitter's office certifying that name as uninsured, along with an Affidavit of Employee In Application For Trust Fund Benefits document for the employee/claimant to fill out.

4. Attach the Certification Letter, the completed Affidavit (Form 170) and the original (or a completed) Employee Claim (Form

110) and forward to:

OFFICE OF CLAIMS ADMINISTRATION
DEPARTMENT OF INDUSTRIAL ACCIDENTS
1 CONGRESS STREET, SUITE 100
BOSTON, MASSACHUSETTS 02114-2017

1 Congress Street, Suite 100, Boston MA 02114
Tel. # (617) 727-4900 - www.mass.gov/dia

INSURER REQUEST CERTIFICATION

1

I, _____, certify that the following attempts were made to
(Employee Attorney)

_____ to obtain insurer information
(Employer & Employer's Address)

regarding the claim of _____, an employee of that organization,
(Employee)

and that to the best of my knowledge no insurance coverage was in force for that company on

_____
(Date of Injury)

2

The following corporate officers/owners were contacted:

NAME/TITLE	PHONE	DAY/DATE/TIME

3

( ) I did approach the place of business.

( ) I did not approach the place of business. Why not?

_____

_____

4

( ) The employee requested the information from his/her employer.

What was he/she told? _____

By whom? _____

_____

( ) The employee did not request the information from his/her employer.

Why not? _____

All sections of this form must be completed. Any exclusions and/or deletions will be cause for return of the claim application and delay in processing.

5. _____

Employee Attorney

_____

Attorney Address & Telephone Number

_____

Claimant

EXHIBIT 12D—DIA Form 114 (Notice of Change/ Appearance of Counsel)

FORM 114

The Commonwealth of Massachusetts
Department of Industrial Accidents – Department 114
1 Congress Street, Suite 100, Boston, Massachusetts 02114-2017
Info. Line 800-323-3249 ext. 7470 in Mass. Outside Mass. - 617-727-4900 ext. 7470
http://www.mass.gov/dia

DIA Board # (If Known):

NOTICE OF CHANGE / APPEARANCE OF COUNSEL

THIS FORM MUST BE FILED WHEN AN ATTORNEY APPEARS AS LEGAL COUNSEL FOR THE FIRST TIME OR A CHANGE OF COUNSEL HAS OCCURRED. ALL PARTIES MUST BE NOTIFIED. PLEASE NOTE - WHEN AN ATTORNEY LEAVES A FIRM AND ANOTHER ATTORNEY IN THAT FIRM TAKES OVER ACTIVE CASES, AN APPEARANCE OF COUNSEL MUST BE FILED FOR EACH MATTER.

Please Print or Type

EMPLOYEE & INS.

1. Employee's Name (Last, First, MI):
2. Employee's Social Security Number*:
3. Employee's Address (No. and Street, City, State, Zip Code):
Check box if this is a new address ☐
4. **Date of Injury (mm/dd/yyyy):**
5. Employer's Name & Address (No. and Street, City, State, Zip Code):
Check box if this is a new address ☐
6. Insurance Carrier's Name:
7. Self-Insured?: ☐ Yes ☐ No
If Yes - Self Insurer #:
8. Insurance Carrier's Address (No. and Street, City, State, Zip Code):

9. PLEASE ENTER MY APPEARANCE FOR:
☐ **Employee** ☐ **Insurer** ☐ **Third Party** ☐ **Other (Specify)** _____

10. EMPLOYEE HAS DISCHARGED ME AS COUNSEL - ☐

11. COUNSEL HAS BEEN REPLACED BY SUCCESSOR COUNSEL AND IS WITHDRAWING FROM REPRESENTATION OF: ☐ **Employee** ☐ **Insurer** ☐ **Third Party** ☐ **Other (Specify)** _____

Attach Appearance of Successor Counsel

12. COUNSEL FOR: ☐ **Employee** ☐ **Insurer** ☐ **Third Party** ☐ **Other (Specify)** _____
REQUESTS PERMISSION TO WITHDRAW PURSUANT TO 452 C.M.R. 1.18 (3)

13. APPROVED BY: _____ _____
(Name) **(Title)**

_____ _____
(Signature) ON BEHALF OF THE DIVISION OF DISPUTE RESOLUTION **(Date - mm/dd/yyyy)**

14. Attorney's Name & Address:
Check box if this is a new address ☐
15. Attorney's Board of Bar Overseer's Number:
16. Attorney's Telephone Number:
17. Attorney's Signature:
18. Date Prepared (mm/dd/yyyy):

***Disclosure of Social Security Number is Voluntary. It will aid in the processing of documents. Please Print Clearly or Type. Unreadable forms will be returned.**

Form 114 - Revised 7/2013- **Reproduce as needed.**

EXHIBIT 12E—DIA Form 110 (Employee's Claim)

FORM 110

The Commonwealth of Massachusetts
Department of Industrial Accidents – Department 110
1 Congress Street, Suite 100, Boston, Massachusetts 02114-2017
Info. Line 800-323-3249 ext. 7470 in Mass. Outside Mass. - 617-727-4900 ext. 7470
http://www.mass.gov/dia

DIA Board # (If Known):

EMPLOYEE'S CLAIM

FOR USE BY EMPLOYEES OR DEPENDENTS CLAIMING BENEFITS AS A RESULT OF INJURY OR DEATH.
ALL OTHER CLAIMANTS SHOULD USE FORM 115
***IMPORTANT - INSTRUCTIONS AND CODES ON THE REVERSE SIDE* - Please Print Legibly or Type - Unreadable forms will be returned.**

EMPLOYEE

1. Employee's Name (Last, First, MI):	2. Social Security Number*:	3. Home Telephone No.:	4. Date of Birth:	5. # of Dependents:
6. Home Address (No., Street, City, State & Zip Code):		7. Employee's E-mail address (if available):		7a. Employee's Native Language Code:
8. Name, Address and BBO# of Employee's Attorney (if no attorney leave blank)**:				
9. Attorney's E-mail address (Required):		9a. Attorney's Telephone No.:		

EMPLOYER

10. Employer's Name & Address (No., Street, City, State & Zip Code):	10a. Industry Code (See Reverse Side):
11. Workers' Compensation Insurance Carrier's Address and Tel. No. (NOT LOCAL AGENT/ADMINISTRATOR - See Instructions on reverse side):	

INJURY INFORMATION

12. DATE OF INJURY (mm/dd/yyyy):	**12a. Insurer's Case/Claim #:**
13. FIRST day of Total or Partial Incapacity to Earn Wages (mm/dd/yyyy):	**14. FIFTH day of Total or Partial Incapacity to Earn Wages (mm/dd/yyyy):**
15. If Employee has Died, Date of Death (mm/dd/yyyy):	16. Describe Injury (Lower Back..., leg..., arm... etc.):
17. Briefly Describe How Injury/Exposure Occurred and Body Part(s) involved:	17a. Injury Code(s) Body Part Code(s) a. to body part a. b. to body part b. c. to body part c.
18. Name(s) of Witness(es):	
19. Employee's Regular Occupation: / 20. Average Weekly Wage: $____ ☐ Actual ☐ Estimated	21. Has Employee Returned to Work?: ☐ Yes ☐ No

22. Has the Insurer Made Any Payments On Your Claim? ☐ Yes ☐ No If Yes - Indicate Type of Benefits and Amounts (Medical Bills, Wages, etc.):
_____ in the amount of $_____

BENEFITS CLAIMED

23. Section(s) of Law Claimed. Check all appropriate boxes below and attach documentation as required by M.G.L. c 152, § 7G, §10(1) and 452 CMR 1.07.

a. Sec. 34 ☐ Total, Temporary Incapacity Comp. from (date): from ____ to ____ and
from ____ to ____

b. Sec. 35 ☐ Partial Incapacity Comp. from (date): from ____ to ____ and
from ____ to ____

c. Sec. 36 ☐ Specific Comp. in the Amount of $____

d. Sec. 31 ☐ Survivor's Benefits **e.** Sec. 33 ☐ Burial Expenses **f.** Secs. 13 & 30 ☐ Medical Expenses **g.** ☐ Other (Specify Sec): ____

24. Name and Address of Facility Where Employee was First Treated:	25. Name of Treating Physician:
26. Employee's/Claimant's Signature:	**27. Date (mm/dd/yyyy):**
28. Attorney's Signature (if applicable):	29. Date (mm/dd/yyyy):

***Disclosure of Social Security Number is Voluntary. It will aid in the processing of your claim.**
****Representation by an attorney is not required (see instructions on reverse side).**

Form 110 - Revised 7/2013 - Reproduce as needed.

EMPLOYEE'S CLAIM FILING INSTRUCTIONS

1. WHEN TO FILE: File this form if you have been injured on the job and your employer's workers' compensation insurer (the insurer) has **denied your initial claim** and/or is disputing any part of your claim and refuses to pay the compensation that you believe you are entitled. **Please fill out the form completely and accurately.** The Department of Industrial Accidents (DIA) is the agency that handles all disputed workers' compensation claims. **You do not need to be represented by an attorney in order to file a Form 110.** You may represent yourself in your claim. The term that applies to self representation is **PRO SE.** Initiating a claim PRO SE **does not** prevent you from getting an attorney later. **If you need assistance, please call 1-800-323-3249 ext. 470.**
2. WHERE TO FILE: The original form must be mailed to the DIA at the address shown on the front of the form. A copy must also be provided to the employer as well as the insurer. We recommend that the employee keep a third copy for their own records. When an employee is represented by counsel, this form must be sent via certified mail to the insurer. **Please be advised** - claims for compensation **must** be accompanied by proper documentation in accordance with M.G.L. c. 152, §7G & 452 CMR 1.07.
3. EMPLOYER'S REQUIREMENTS: The law requires that all employers in Massachusetts carry a valid workers' compensation insurance policy at all times for all of their employees in the event of an industrial injury. Also, the employer must provide the name and address of the workers' compensation insurer upon request of an employee. **If the employer refuses to provide this information or does not carry workers' compensation insurance, notify the DIA immediately.**
4. EMPLOYEE'S SIGNATURE & DATE IN BOXES 26 & 27: This form may be filed by the Employee or the Employee's Attorney (if applicable). However, in all cases the Employee must sign and date this form.

NATIVE LANGUAGE CODES

1 – English / 2 – Portuguese / 3 – Haitian Creole / 04 – Spanish / 5 – Chinese / 6 – Vietnamese / 7 Cape Verdean / 9 – Other

INDUSTRY CODES

Agriculture, Forestry and Fishing
01 Agriculture Production - Crops
02 Agriculture Production - Livestock
07 Agricultural Services
08 Forestry
09 Fishing, Hunting and Trapping

Mining
10 Metal Mining
12 Coal Mining
13 Oil and Natural Gas
14 Nonmetallic Minerals, Except Fuels

Construction
15 General Building Contractors
16 Heavy Construction, Ex. Building
17 Special Trade Contractors

Manufacturing
20 Food and Kindred Products
21 Tobacco Products
22 Textile Mill Products
23 Apparel and Other Textile Products
24 Lumber and Wood Products
25 Furniture and Fixtures
26 Paper and Allied Products
27 Printing and Publishing
28 Chemicals and Allied Products
29 Petroleum and Coal Products
30 Rubber and Misc. Plastic Products
31 Leather and Leather Products
32 Stone, Clay and Glass Products
33 Primary Metal Industries
34 Fabricated Metal Products
35 Industrial Machinery and Equipment
36 Electronic and Other Electrical Equipment
37 Transportation Equipment
38 Instruments and Related Products
39 Miscellaneous Manufacturing Industries

Transportation and Public Utilities
40 Railroad Transportation
41 Local and Interurban Passenger Transit
42 Trucking and Warehousing
43 U.S. Postal Service
44 Water Transportation
45 Transportation by Air
46 Pipelines, Except Natural Gas
47 Transportation Services
48 Communications
49 Electric, Gas and Sanitary Services

Wholesale Trade
50 Wholesale Trade - Durable Goods
51 Wholesale Trade - Non-durable Goods

Retail Trade
52 Building Materials and Garden Supplies
53 General Merchandising
54 Food Stores
55 Automotive Dealers and Service Stations
56 Apparel and Accessory Stores
57 Furniture and Home Furnishing Stores
58 Eating and Drinking Establishments
59 Miscellaneous Retail

Finance, Insurance and Real Estate
60 Depository Institutions
61 Non-depository Institutions
62 Security and Commodity Brokers
63 Insurance Carriers
64 Insurance Agents, Brokers and Service
65 Real Estate
67 Holding and Other Investment Officers

Services
70 Hotels and Other Lodging Places
72 Personal Services
73 Business Services
75 Auto Repair Services and Parking
76 Miscellaneous Repair Services
78 Motion Pictures
79 Amusements and Recreation Services
80 Health Services
81 Legal Services
82 Educational Services
83 Social Services
84 Museums, Botanical, Zoological Gardens
86 Membership Organizations
87 Engineering and Management Services
88 Private Households
89 Services, NEC

Public Administration
91 Executive, Legislative and Garden
92 Justice, Public Order, and Safety
93 Finance, Taxation, and Monetary Benefits
94 Administration of Human Services
95 Environmental Quality and Housing
96 Administration of Economic Program
97 National Security and International Affairs

Non-classifiable Establishments
99 Non-classifiable Establishments

NATURE OF INJURY OR ILLNESS CODES

100 Amputation or Enucleation
110 Asphyxia or Strangulation Etc.
120 Burns (Heat)
130 Burns (Chemical)
140 Concussion
160 Contusion, Crushing, Bruise
170 Cut, Laceration, Puncture
190 Dislocation
200 Electric Shock, Electrocution
210 Fracture
250 Hernia, Rupture
300 Scratches, Abrasions
310 Sprains, Strains
400 Multiple Injuries
900 No Injury
950 Damage to Prosthetic Devices
995 No Other Injury, NEC**
999 Non-classifiable

Infective or Parasitic Disease
150 Infective or Parasitic Disease, UNS*
151 Anesthesis
152 Anthrax
153 Brucellosis
154 Conjunctivitis and Opthalmia
156 Tetanus
157 Tuberculosis
159 Other Infective or Parasitic Diseases

Dermatitis
180 Dermatitis, UNS*
183 Primary Infections of the Skin
184 Other Skin Conditions
185 Dermatitis, Allergenic or Contact
189 Skin Condition, NEC**

Poisoning Systemic
270 Poisoning, Systemic, UNS*
271 Due to Toxic Materials other than Lead
272 Diseases of the Blood and Blood Forming Organs
273 Upper Respiratory Conditions
274 Influenza, Pneumonia, Etc.
276 Other Diseases of the Gastro-Intestinal Tract
278 Effects of Lead
279 Other Toxic Effects of One System Only

Respiratory Systems, Conditions of
570 Respiratory Systems, Conditions of
571 Upper Respiratory
572 Asthma, Influenza, Pneumonia

Pneumoconiosis
280 Pneumoconiosis
281 Aluminosis
282 Anthracosis
283 Asbestosis
284 Byssinosis
285 Siderosis
286 Silicosis
287 Other Pneumoconioses
289 Pneumoconiosis and Tuberculosis

Nervous System, Conditions of
560 Nervous System, Conditions of - NEC**
561 Diseases of the Central Nervous System
562 Diseases of the Nerves and Peripheral Ganglia

Neoplasm Tumor
550 Neoplasm Tumor, UNS*
551 Malignant
552 Benign

Radiation Effects
290 Radiation Effects, UNS*
291 Non-Ionizing Radiation
292 Microwaves
293 Ionizing Radiation - X-Ray
294 Ionizing Radiation - Isotopes
295 Welder's Flash

Other
265 Carpal Tunnel Syndrome
510 Cardiovascular and Other Conditions of the Circulatory System
520 Complications Peculiar to Medical Care
500 Effects of Changes in Atmospheric Pressure
240 Effects of Environmental Heat
220 Effects of Exposure to Low Temperature
530 Eye, other Diseases of the Eye
230 Hearing Loss or Impairment
991 Heart Condition ,Excludes Heart Attack
320 Hemorrhoids
330 Hepatitis, Serum and Infective
275 Hepatitis, Toxic
260 Inflammation of Joints, Etc.
540 Mental Disorders
900 No Illness
999 Non-classifiable
990 Occupational Disease, NEC**
580 Symptoms and Ill-defined Conditions

BODY PART AFFECTED CODES

Head
100 Head, UNS*
110 Brain
120 Ear(s), UNS*
121 Ear(s), External
124 Ear(s), Internal
130 Eye(s), UNS*
140 Face, UNS*
141 Jaw, Chin
144 Mouth and Throat (vocal chords, larynx)
146 Nose
148 Face, Multiple Parts
149 Face, NEC**
150 Scalp
160 Skull
198 Head Multiple
200 Neck & Cervical Vertebrae

UPPER EXTREMETIES
300 Upper Extremities, NEC**
310 Arm(s), UNS*
311 Upper Arm
313 Elbow(s)
315 Forearm(s)
318 Arm(s), Multiple
319 Arm(s), NEC**
320 Wrist(s)
330 Hand(s), Not Wrists or Fingers
340 Finger(s)
398 Upper Extremities, Multiple
400 Trunk, UNS*
410 Abdomen, Internal Organs, Inguinal Hernia
420 Back
430 Chest, Ribs, Breastbone, Internal Organs
440 Hip(s) ,Pelvis, Organs and Buttocks
450 Shoulder(s)
498 Trunk, Multiple

LOWER EXTREMETIES
500 Lower Extremities
510 Leg(s), UNS*
513 Knee(s)
515 Lower Leg(s)
518 Leg(s), Multiple
519 Leg(s), NEC**
520 Ankle(s)
530 Foot or Feet, Not Ankle
540 Toe(s)
598 Lower Extremities, Multiple
700 MULTIPLE PARTS
Applies when more than one major body part as been effected such as an arm and a leg
999 NON-CLASSIFIABLE - Insufficient information to identify part of body effected. Includes damage to prosthetic devises.

*UNS - UNSPECIFIED

**NEC - NOT ELSEWHERE CLASSIFIED

EXHIBIT 12F—DIA Form 104 (Insurer's Notification of Denial)

FORM 104

The Commonwealth of Massachusetts
Department of Industrial Accidents – Department 104
1 Congress Street, Suite 100, Boston, Massachusetts 02114-2017
Info. Line 800-323-3249 ext. 7470 in Mass. Outside Mass. - 617-727-4900 ext. 7470
http://www.mass.gov/dia

DIA Board # (If Known):

INSURER'S NOTIFICATION OF DENIAL

THIS FORM MUST BE FILED WITH THE DIA WHEN WEEKLY BENEFITS ARE DENIED TO A CLAIMANT. A COPY OF THIS FORM MUST ALSO BE SENT TO THE CLAIMANT BY CERTIFIED MAIL.

IMPORTANT - INSTRUCTIONS ON THE REVERSE SIDE- **Please Print Legibly or Type - Unreadable forms will be returned.**

INSURER

1. Insurance Carrier's Name and Address:
2. Self-insured?: ☐ Yes ☐ No
   If Yes Please Give Self-insurer Number:
3. Name, Address and Board of Bar Overseers Number of Insurer's Attorney:
4. Telephone Number of Insurer's Attorney:
5. Claim Representative's Name:
6. Claim Representative's Tel. Number & Ext. :
7. Insurer's Case File Number:
8. Did Insurer Receive First Report of Injury (Form 101): ☐ Yes ☐ No - If Yes - Date Received (mm/dd/yyyy)

EMPLOYEE

9. Employee's Name (Last, First, MI):
10. Employee's Social Security Number*:
11. Employee's Address (No. and Street, City, State, Zip Code):
12. Date of Birth (mm/dd/yyyy):
13. Employer's Name:
14. Employer's Address (No. and Street, City, State, Zip Code):
15. Date of Alleged Injury (mm/dd/yyyy):
16. If Employee has Died, Date of Death (mm/dd/yyyy):

GROUNDS FOR DENIAL

17. Specify grounds for denial and give a brief statement of the specific facts supporting the grounds for denial. Failure to do so may cause loss of defenses under M.G.L. c 152, Sections 7(1) and 7(2).

A. ☐ No Personal Injury _____
B. ☐ No Injury Arising Out of and in the Course of Employment _____
C. ☐ No Disability _____
D. ☐ No Causal Relationship Between Personal Injury and Disability _____
G. ☐ Lack of Jurisdiction _____
X. ☐ Lack of Notice _____
Y. ☐ Late Claim _____
H. ☐ Other (Specify) _____

18. Insurer's Signature :
19. Date Prepared (mm/dd/yyyy):

***Disclosure of Social Security Number is Voluntary. It will aid in the processing of documents. An Employee/Claimant seeking to secure benefits must use Department of Industrial Accidents Form 110 when filing a claim.**

Form 104 - Revised 7/2013 - **Reproduce as needed**

INSURER'S NOTIFICATION OF DENIAL

FILING INSTRUCTIONS

1. WHEN TO FILE: File this form within 14 days of the Insurer's receipt of the Employer's First Report of Injury (Form 101) or a written claim for weekly benefits on a form prescribed by the Department (Form 110) pursuant to M.G.L. c. 152, §7(1).

2. WHERE TO FILE: This form should be mailed to the DIA at the address shown on the front of the form. Copies of this form must be provided to the Employer, and sent to the Employee via **certified mail**.

EXHIBIT 12G—DIA Form 126 (Employee's Earning Report)

FORM 126

The Commonwealth of Massachusetts
Department of Industrial Accidents – Department 126
1 Congress Street, Suite100, Boston, Massachusetts 02114-2017
Info. Line 800 323-3249 ext. 7470 in Mass. Outside Mass. - 617-727-4900 ext. 7470
http://www.mass.gov/dia

DIA USE ONLY

EMPLOYEE'S EARNING REPORT

1. Employee's Name (Last, First, MI):	2. Social Security Number*:	3. Date of Injury (mm/dd/yy):
4. Employee's Mailing Address (No. & Street, City, State, Zip Code):		
5. Employee's Residential Address (if different from Mailing Address):		
6. Employee's Attorney (Last, First, MI) and Address (No. & Street, City, State, Zip Code):		
7. DIA Board Number (If Known):	8. Date of Birth (mm/dd/yy):	

As an employee entitled to receive weekly compensation, you have an affirmative duty to report to the insurer all earnings, including wages or salary from self-employment. If you fail to report any earnings whether paid cash or otherwise, you may be subject to civil or criminal penalties. If you fail to return this form within 30 days of this request, the insurer may suspend your weekly benefits under M.G.L. Chapter 152 section 11D (1). You cannot be required to file an earnings report more often than once every six months.
Please report your earnings below:

9. Week No.	Year: Week Ending Month	Day	Gross Amount Before Taxes	Week No.	Year: Week Ending Month	Day	Gross Amount Before Taxes
1				14			
2				15			
3				16			
4				17			
5				18			
6				19			
7				20			
8				21			
9				22			
10				23			
11				24			
12				25			
13				26			

10. Name/ Address of Employer or other Payer of Wages, Commissions, Etc. If more than one payer, please list additional names and addresses on back.	
11. I have not received earnings for any period in which I was entitled to receive Workers' Compensation Benefits. ☐ **Mark box with an X if the above statement is TRUE under the pains and penalties of perjury.**	
12. Employee's Signature:	**13. Date Signed (mm/dd/yyyy)**
THE EMPLOYEE MUST MAIL THIS COMPLETED FORM TO THE INSURER AT THE ADDRESS INDICATED BELOW:	
14. Insurance Carrier's Name & Address (No. Street, City, State & Zip Code):	

*Disclosure of Social Security Number is Voluntary. It will assist in the processing of your report.

Reproduce as needed Form 126 Revised 7/2012

Names and Addresses of additional employers: