

Longshoremen's and Harbor Workers' Compensation Act (1987)

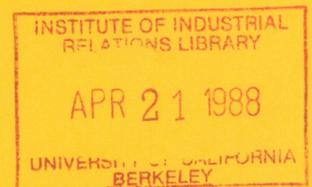
LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT:



Annual Report on Administration of the
Act During Fiscal Year 1986,
Submitted to Congress 1987.

U. S. Department of Labor
Employment Standards Administration

Washington, DC, 1987?



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Act During Fiscal Year 1986
Submitted to Congress 1987**

**U. S. Department of Labor
William E. Brock, Secretary**

**Employment Standards Administration
Fred W. Alvarez, Assistant Secretary
for Employment Standards**

The Secretary of Labor has determined that the publication of this periodical is necessary in the transaction of public business as required by law. Use of funds for printing has been approved by the director of the Office of Management and Budget.

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

October 9, 1987

The Honorable The President of the Senate
The Honorable The Speaker of the House of Representatives

Gentlemen:

Transmitted herewith is the Department of Labor's annual report to Congress as required by Section 42 of the Longshore and Harbor Workers' Compensation Act (LHWCA), as amended. The report covers administration of the LHWCA for the period October 1, 1985, through September 30, 1986.

Public Law 98-426, entitled Longshore and Harbor Workers' Compensation Act Amendments of 1984, was enacted on September 28, 1984. The major provisions of the Amendments clarify and limit the Act's jurisdiction, make various changes in benefits, provide additional safeguards against fraud and abuse in the form of increased fines and penalties, establish a method of providing benefits to victims of latent disability due to occupational disease, and revise Special Fund application procedures for second injury relief and the formula for determining industry assessments. The Department of Labor has issued and implemented final regulations governing the changes required by these Amendments.

The total cost of operating the workers' compensation program under the LHWCA and its extensions during Calendar Year (CY) 1985 was approximately \$415 million. Industry payments by employers and insurance carriers for disability compensation and medical benefits were \$250.8 million and \$89.6 million, respectively. The \$340.4 million in total industry payments under the Act in CY 1985 were about 3 percent less than in the previous year.

At the end of Fiscal Year (FY) 1986, 19,400 maritime and other workers covered under the Act and its extensions, or their survivors, were in compensation payment status.

Nearly 41,300 lost-time injuries were reported to Longshore Program offices during FY 1986, about the same number as during the previous year. The total number of lost-time injury cases closed was over 42,600.

FY 1986 expenditures for cases under the LHWCA and District of Columbia Workmen's Compensation Act (DCCA) Special Funds were \$52.8 million and \$10.8 million, respectively. Over 87 percent of the costs of both Funds were attributable to compensation payments to second injury cases under Section 8(f) of the Act. Receipts of the LHWCA Special Fund totaled \$55.3 million, while those of the DCCA Fund were \$11.2 million. Approximately 98 percent of total receipts of both Funds in FY 1986 came from assessments paid by self-insured employers and insurance carriers.

Special Fund expenditures of \$2.6 million were authorized for medical and vocational rehabilitation services under the Act in FY 1986. Approximately 850 new rehabilitation cases were opened and 263 disabled workers were successfully rehabilitated and returned to work during the year. The estimated average annual savings in compensation payments for these workers was \$12,530, resulting in a total savings during FY 1986 of about \$3.3 million.

The annual report provides a summary of the LHWCA Amendments of 1984 and discusses program administrative and operations activities, the findings and recommendations of an audit of Special Fund accounts, new program initiatives, and significant litigation and regulatory activities which took place during FY 1986.

Very truly yours,


WILLIAM E. BROCK

WEB:jwt

Enclosure

Acknowledgements

This report is required by section 42 of the Longshore and Harbor Workers' Compensation Act as amended. The report was prepared by James R. Rechnitzer under the direction of Willis J. Nordlund, Director, Division of Program Development and Research, Employment Standards Administration. Assistance in the preparation of the report was provided by the Employment Standards Administration's Office of Workers' Compensation Programs, the Office of the Solicitor's Division of Employee Benefits, and the Office of the Assistant Secretary for Policy.

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I. THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

A. Introduction

The Longshore and Harbor Workers' Compensation Act (LHWCA) and its extensions, administered by the U.S. Department of Labor's Employment Standards Administration, Office of Workers' Compensation Programs (OWCP), provide medical benefits, compensation for lost wages, and rehabilitation services to employees who are injured during the course of employment or contract an occupational disease related to employment. Survivor benefits also are provided if the work-related injury causes the employee's death.

These benefits are paid directly by an authorized self-insured employer, or through an authorized insurance carrier, or, in particular circumstances, by a Special Fund.

The original Longshoremen's and Harbor Worker's Compensation Act (Public Law 803) was enacted in 1927. The Act resolved a problem of worker coverage when the worker's activity was on the navigable waters of the United States. Before enactment of the law, state workers' compensation programs applied to injuries occurring on land, and the Supreme Court had held that a state could not extend its workers' compensation remedy to cover longshoremen injured over the navigable waters of the U.S.^{1/} The Act provided uniform and continuous protection for workers covered by its provisions.

In addition to longshore, harbor, and other maritime workers, the LHWCA covers a variety of other employees through the following extensions to the Act: The District of Columbia Workmen's Compensation Act (enacted in 1928); Defense Base Act (1941); Nonappropriated Fund Instrumentalities Act (1952); and the Outer Continental Shelf Lands Act (1953).

This Annual Report provides a summary of the 1984 amendments to the Act; administrative and oversight activities during Fiscal Year (FY) 1986, including an overview of program operations, results of an audit of Special Fund accounts, significant litigation and regulatory activities, and new program initiatives; and statistical appendices.^{2/}

^{1/} Southern Pacific Co. vs. Jensen, 244 U.S. 205 (1917).

^{2/} The scope of this report has been limited as much as possible to FY 1986 activities. For more detailed background information on the legislative history of the Act, program operational characteristics, and other aspects of the LHWCA and its extensions, see secs. I. and II. of Longshore and Harbor Workers' Compensation Act: Annual Report on Administration of the Act During Fiscal Year 1985, U.S. Dept. of Labor/ESA; submitted to the Congress June 4, 1986.

B. 1984 Amendments

There have been a series of amendments to the Act over the years, the most recent of which were the LHWCA Amendments of 1984 (Public Law 98-426, 98 Stat. 1639), enacted on September 28, 1984. The changes made by some of the major provisions of the 1984 amendments include:

1. Jurisdiction. The Act's jurisdiction was clarified and limited by exclusion of certain groups of employees and facilities from LHWCA coverage, to the extent workers are covered under a state workers' compensation law.
2. Benefits. Compensation for unrelated death was eliminated; a 5 percent ceiling was placed on annual increases in compensation payable under section 10 for permanent total disability and death; death cases are now subject to the maximum weekly benefit; and, for the purpose of calculating benefit rates, wages are defined to exclude fringe benefits.
3. Fraud and Abuse. To provide additional safeguards against fraudulent activities by employees to obtain benefits, and by employers or insurance carriers to deny, reduce or terminate benefits, fines and penalties for such actions were increased. In addition, provisions were added authorizing the Secretary to debar health care providers and claimant representatives for fraud or abuse.
4. Occupational Disease. A method of computing compensation for victims of latent disabilities due to occupational disease which do not become manifest until after the employee retires was established. Also, time of injury was redefined as occurring after the disease becomes manifest and the claimant is aware of the relationship between the disease, resulting disability, and employment and the time requirements for filing a notice of disease (injury) and a claim for compensation were extended.
5. Special Fund. Uninsured employers and carriers not authorized to write insurance under the Act are prohibited from receiving second injury (section 8(f)) relief; applications for second injury relief must now be filed by employers/carriers with an OWCP deputy commissioner prior to consideration of claims; and the formula for determining industry assessments was revised to include a factor for 8(f) cases which are attributable to each employer and insurance carrier.
6. Benefits Review Board. To expedite case processing activities under both the Longshore Act and Black Lung Benefits Act, the permanent membership of the Benefits Review Board

was increased from three to five members and the Secretary was authorized to appoint up to four administrative law judges as temporary members.

II. LONGSHORE ADMINISTRATIVE AND OVERSIGHT ACTIVITIES DURING FY 1986

A. Overview of Program Operations

The total cost of operating the workers' compensation program under the LHWCA and its extensions in Calendar Year (CY) 1985 was approximately \$415 million.^{1/} These costs include disability compensation and medical benefits paid by employers and insurance carriers, Special Fund payments for compensation and medical/vocational rehabilitation services, Department of Labor (DOL) costs of administering the program and providing related support services, and payments from DOL appropriated funds to cover 50 percent of the cost of compensation paid under section 10(h) of the Act.

In FY 1986, DOL completed its second full year administering the 1984 amendments to the Act. Longshore program activities were as follows:

1. Industry Payments. Under sections 7 through 9 of the LHWCA, the employer or insurance carrier is responsible for providing compensation payments to employees, or their survivors, who incur a work-related injury resulting in disability or death. The employer or carrier also is responsible for providing any required medical treatment services related to a covered injury.^{2/}

During CY 1985, self-insured employers and insurance carriers made payments totaling \$250.8 million and \$89.6 million for disability compensation and medical benefits, respectively. The \$340.4 million in total compensation paid under the Act and its extensions was 3 percent less than total payments in CY 1984.^{3/} (See Table A-1 of Appendix A).

The decline is associated with a 5 percent drop in the number of cases that received payments during the year. The cumulative number of cases decreased from 98,104 in CY 1984 to 93,000 in CY 1985.

^{1/} CY 1985 is the last complete year for which total costs under the Act are available.

^{2/} See FY 1985 report (sec. II.A.4, pp. 19-22) for a detailed discussion of the various disability types and compensation rates provided under these sections of the Act.

^{3/} Total compensation payments are reported by industry to DOL on a calendar year basis.

2. Cases Compensated. At the end of FY 1986, a total of 19,402 maritime and other workers covered under the Act and its extensions, or their survivors, were in compensation payment status. Table II.A.-1 shows the number of cases being compensated at the end of each year, FY 1976 through FY 1986.

Table II.A.-1
Cases Compensated Under the LHWCA
(FY 1976 - FY 1986)

FY	Cases at End of FY*
1976	15,259
1977	16,899
1978	16,168
1979	16,965
1980	20,716
1981	21,430
1982	20,869
1983	20,128
1984	18,746
1985	18,471
1986	19,402

* Number of cases in compensation payment status as of the last Thursday in each September; includes Special Fund cases.

3. Lost-Time Injuries. The number of lost-time injuries^{4/} reported by employers and insurance carriers during FY 1986 was 41,299, an increase of 441. This marginal increase of 1 percent over the number of such injuries reported last year indicates that lost-time injury reportings appear to have stabilized after the sharp decline in reportings from the peak in FY 1981 (see Table II.A.-2).
4. Insurance. Section 32 of the LHWCA requires that each employer covered by the Act or one of its extensions secure payment of compensation liabilities with either a private insurance carrier authorized by OWCP or by qualifying as a self-insurer to pay benefits directly to injured employees.

In FY 1986, approximately 370 insurance carriers and 360 self-insured employers were authorized to provide workers' compensation coverage under the LHWCA. As shown in Table A-1

^{4/} A lost-time injury is a job-related injury which results in an employee's loss of pay beyond the shift or day in which the injury occurs.

Table II.A.-2
Lost-Time Injuries Reported Under the LHWCA
(FY 1976 - FY 1986)

FY	Lost-Time Injuries
1976	48,303
1977	51,981
1978	56,276
1979	68,542
1980	69,941
1981	71,872
1982	64,810
1983	44,702
1984	38,332
1985	40,858
1986	41,299

of Appendix A, the percentage of total compensation and benefits paid under the Act by self-insured employers has gradually increased over the past several years to about 39 percent of total industry payments in CY 1985.

While it is not possible at this time to conclude that this trend in payments is due to a growth in self-insurance, it appears that there is an increased interest by industry in general in this method of insuring their liabilities under the Act. This may be due in part to the increased incidence of insolvency among insurance carriers during the past couple of years.

The interest in self-insurance can be seen in the distribution of applications for insurance authorization under the LHWCA during FY 1986. There were a total of seventy-five new applications for insurance authorization filed with OWCP during the year. Four applications were received from insurance carriers, of which three were approved and one denied. The remaining seventy-one were from employers seeking to qualify as self-insurers; sixty-five of these applications were approved, five denied, and one was pending at the end of the year.

During FY 1986, several insolvencies occurred which potentially could result in claims against the Special Fund. The most significant involved the Midland Insurance Company, a large insurer under the LHWCA. Other major insolvencies involved the North-West Insurance Company and Transit Casualty Insurance Company.

The Supreme Court of the State of New York ordered the liquidation of Midland Insurance Company by order dated April 3, 1986. Midland had been one of the largest writers of LHWCA coverage in the country, with the heaviest concentration in the States of New York, New Jersey, and Florida. Longshore District Offices immediately notified Midland's insured employers that it was their responsibility under the Act to commence payment of benefits in each of their cases covered by Midland. The District Offices remained in contact with the affected employers, offering assistance and monitoring the progress of each employer in assuming its responsibility.

5. Annual Adjustments in Compensation and Maximum-Minimum Payments. Under section 10(f) of the LHWCA, on October 1 of each year there is an adjustment to the benefits payable for permanent total disability or death. The increase each year is either the percentage by which the National Average Weekly Wage (NAWW)^{5/} exceeds the previous NAWW, or 5 percent, whichever is less. In FY 1986, the NAWW increased 2.69 percent to a level of \$297.62.

Sections 6(b) and 9(e) provide the maximum and minimum compensation payable under the Act. Disability compensation or death benefits are limited to a maximum amount equal to 200 percent of the NAWW, applicable at the time of injury or death, or the employee's full average weekly wages, whichever is less. The maximum weekly compensation rate corresponding to the NAWW for FY 1986 was \$595.24.

The minimum compensation payable for total disability is the lesser of 50 percent of the applicable NAWW (\$148.81 in FY 1986) or the employee's average weekly wage at the time of injury.

See Table A-2 in Appendix A for the levels of annual compensation adjustments and the maximum and minimum compensation rates in effect during FY 1986 and historically for the period subsequent to the 1972 amendments.

6. Medical and Vocational Rehabilitation. Medical and vocational rehabilitation and maintenance services are provided for in sections 39(c) and 8(g) of the Act, respectively. The rehabilitation program provides permanently disabled employees with early referral to and the benefit of required

^{5/} The National Average Weekly Wage (NAWW) is based on the national average weekly earnings for the three consecutive quarters ending each June 30 of production and nonsupervisory workers in private nonagricultural employment as determined by the Bureau of Labor Statistics.

medical and vocational rehabilitation services to enhance an employee's chances for an early return to work.

Special Fund expenditures authorized by OWCP for vocational and medical rehabilitation services were approximately \$2.6 million in FY 1986. The largest single expenditure was \$2.1 million in reimbursements for the retraining or job placement of injured workers as provided under section 39(c). The remainder of Fund expenditures for rehabilitation services consisted of additional compensation in the form of a maintenance allowance provided under section 8(g) to workers undergoing vocational rehabilitation; and, under section 39(c), the salaries and expenses for ten rehabilitation specialists and procurement of prosthetic appliances and other medical apparatus.

Approximately one-third of those disabled employees participating in vocational rehabilitation placement or training services funded by the Special Fund during FY 1986 were receiving job placement assistance only. The remaining two-thirds were receiving both job placement and training services.

During FY 1986, 263 disabled workers were successfully rehabilitated and were able to return to work. The majority of these workers were covered under the original LHWCA (as opposed to the subsequent extensions to the Act) and prior to their injury were primarily employed in the shipbuilding industry. The estimated average annual savings in compensation payments per injured worker was \$12,530. Total savings for the year were about \$3.3 million. Approximately 29 percent of these workers were placed in jobs with their previous employers while the remaining 71 percent were placed with new employers.

At the end of FY 1986, 1,026 rehabilitation cases were classified as ongoing (cases in which a disabled employee has not returned to work). Of these cases, 846 were opened for referral to job placement and training services during FY 1986.

A Pilot Rehabilitation Study was developed with the Philadelphia and San Francisco District Offices. The study began on October 1, 1986, and will be conducted over a one year period. Through this study, OWCP will attempt to increase the number of injured workers successfully rehabilitated and identify a model system of service delivery that results in the highest number of disabled workers returned to work without sacrificing the delivery of quality and timely services.

7. Special Funds. Two Special Funds are administered by OWCP under section 44 of the Act: the LHWCA Special Fund created

under the original Act in 1927 and the Special Fund under the District of Columbia Workmen's Compensation Act of 1928 (DCCA).^{6/} These Funds were established for the primary purpose of equitably distributing among all employers the liabilities associated with second injury claims.^{7/}

The source of payments into the Special Fund include: fines and penalties levied under the Act; payment by employers of \$5,000 for each death case when there is no survivor entitled to the benefits; interest payments on Fund investments; and payment of annual assessments by self-insured employers and insurance carriers.^{8/}

Proceeds of the Fund are used for payments under: section 8(f) for second injury claims; section 10(h) for initial and subsequent annual adjustments in compensation for permanent total disability or death from injuries which occurred prior to the 1972 amendments; sections 39(c) and 8(g) for the procurement of medical and vocational rehabilitation services for permanently disabled employees and to provide a maintenance allowance to workers undergoing rehabilitation; section 18(b) for compensation to injured workers in cases of employer default; and section 7(e) for the cost of certain medical examinations.

LHWCA Special Fund expenditures during FY 1986 were \$52.8 million. Nearly 88 percent of these costs were attributable to compensation payments in the amount of \$46.4 million for 2,952 second injury cases under section 8(f). Total receipts of the Fund in FY 1986 were \$55.3 million. Assessments paid by employers and insurance carriers accounted for approximately 98 percent of these receipts. Total assessments

^{6/} The DCCA covers all private employees working for employers carrying on any employment in the District of Columbia who incurred a work-related injury based upon an employment event that occurred prior to July 26, 1982.

^{7/} A second injury is an injury to a worker which, in combination with an existing permanent partial disability, results in the worker's increased permanent partial disability, permanent total disability, or death.

^{8/} See FY 1985 report (sec. I.D., p. 11) for the formula used in determining annual industry assessments.

billed to employers/carriers in calendar 1986 were \$55.2 million; \$52.4 million of the assessment payments were received by the Fund as of the end of FY 1986.^{9/}

FY 1986 expenditures of the DCCA Special Fund totaled \$10.8 million. As with the LHWCA Fund, the largest portion of DCCA Fund expenditures (89 percent totaling \$9.6 million) went towards compensation payments for 600 8(f) cases. Receipts were \$11.2 million, 98 percent of which came from assessments paid by employers and insurance carriers. By the end of FY 1986, \$10.5 million in assessment payments were received out of a total amount billed during the calendar year of \$10.6 million.

The second largest share of expenditures for both Funds were payments for annual adjustments in compensation for pre-1972 amendment (section 10(h)) cases. Fifty percent of 10(h) payments are paid by the Special Fund and 50 percent through DOL appropriations. FY 1986 payments to 10(h) cases accounted for 6 percent (\$3.3 million) and 9 percent (\$1.0 million) of total expenditures of the LHWCA and DCCA Funds, respectively.

In October 1986, the portion of 10(h) payments funded by DOL appropriations, including the October 1, 1986 recurring adjustment, amounted to \$176,600 per recurring bi-weekly payment period (\$35,472 for the DCCA appropriation and \$141,128 for the LHWCA appropriation). At this rate, the annual DOL appropriation costs, and thus the cost to the Funds, would be approximately \$4.5 million in FY 1987.

These adjustments are being paid on a declining base number of pre-1972 injury cases. The FY 1987 adjustment was applied to 1,336 10(h) cases, a decrease of nearly 16 percent since FY 1983. The attrition in cases receiving the annual adjustment is due to the death of beneficiaries. (See Table II.A.-3).

^{9/} A large majority of the \$2.8 million in CY 1986 LHWCA Special Fund assessments that were outstanding at the end of the Fiscal Year represent payments due from the Midland Insurance Company and the Coastal Dry Dock and Repair Corporation. During FY 1986, Midland became insolvent and Coastal filed for bankruptcy. Claims for these unpaid assessments have been filed with the appropriate organizations.

Table II.A.-3
Cases Receiving Annual Section 10(h) Adjustments
(FY 1983 - FY 1987)

Adjustment Date (FY)	DCCA Cases	LHWCA Cases	Total	% Change in Total
10/1/82 (1983)	374	1,211	1,585	--
10/1/83 (1984)	356	1,164	1,520	-4.1%
10/1/84 (1985)	346	1,129	1,475	-3.0
10/1/85 (1986)	332	1,084	1,416	-4.0
10/1/86 (1987)	313	1,023	1,336	-5.6

Total Special Fund expenditures in FY 1986 increased by about 12 percent over the previous year. Although this trend of increasing Fund payments has been continuous, the annual rate of growth has slowed considerably during the past several years. The growth in expenditures is due in large part to the continued increase in the inflow to the Funds of second injury cases. Although the number of 8(f) cases has also increased at a decreasing rate during the past several years, because, as noted earlier, compensation payments to these cases account for nearly 90 percent of total Fund disbursements, any increase in 8(f) payments will have a large impact on the Fund.

While there are many factors involved with the continued increase in 8(f) cases, one of the more important may be the changes in the handling of these cases brought about by the 1984 amendments. Chief among the changes is the new requirement that employers/carriers make an application at the administration level in every case in which section 8(f) may apply. This requirement may be causing employers/carriers to more seriously consider seeking 8(f) relief in more cases than they previously did prior to enactment of the amendments.

For a detailed accounting of Special Fund expenditures and receipts for FY 1986 and prior years, see Tables A-3, A-4, B-2, and B-4 in the appendices.

8. Case Processing. There were 42,628 lost-time injury cases closed at the District Office level during FY 1986. The number of open cases being processed for various reasons during the year was 58,634.^{10/} The pending inventory of cases was 8,110 at the end of FY 1986. The pending inventory consists of all cases in the offices requiring any type

^{10/} The number of cases is not cumulative, but the actual number of cases open at the end of the last monthly reporting period in FY 1986.

of action, including new cases to be docketed and cases requiring review or processing.

At the beginning of FY 1986, there were 3,576 LHWCA/DCCA cases pending at the OALJ. As a result of improvements made during the year, fewer than 3,000 cases were pending at the end of the year even though about the same number of new requests for hearings were received during FY 1986 as during the previous year. More importantly, more cases were disposed of during the year, approximately 3,800, than were received, about 3,200. Cases were handled on a current basis and there was no backlog at the end of the year.

Similarly, the BRB improved its disposition of cases during FY 1986, which was the first full year of operation with an expanded Board as created by the 1984 amendments. At the beginning of FY 1986, there were 1,622 cases pending at the BRB under the LHWCA/DCCA. During the year, the BRB received about 570 new appeals and disposed of nearly 700 cases under these statutes. At the end of the year the pending case load was reduced to approximately 1,500 cases.

See Appendix A (Table A-5) for a summary of case processing activities at both the OALJ and the BRB for FY 1986 and the previous several years.

9. Organizational Structure and Staffing. The LHWCA is administered by the Division of Longshore and Harbor Workers' Compensation (DLHWC) within OWCP. During FY 1986, DLHWC had the same organizational structure as the previous year and a total authorized staffing level of 148 full-time equivalent (FTE) positions.

The National Office in Washington, D.C. had 19 FTE positions while the remaining 129 positions were located in fourteen DLHWC District Offices. (See Table II.A.-4).

Table II.A.-4
 FY 1986 Staffing and District Offices, By Region

<u>DOL Region</u>	<u>Authorized FTE Positions*</u>	<u>DLHWC District Offices</u>
I (Boston)	18	Boston, Massachusetts
II (New York)	12	New York, New York
III (Philadelphia)	18	Philadelphia, Pennsylvania Baltimore, Maryland Norfolk, Virginia
IV (Atlanta)	14	Jacksonville, Florida
V (Chicago)	4	Chicago, Illinois
VI (Dallas)	27	New Orleans, Louisiana Houston, Texas
IX (San Francisco)	23	San Francisco, California Honolulu, Hawaii Long Beach, California
X (Seattle)	<u>13</u>	Seattle, Washington
Region Total	129	
National Office	<u>19**</u>	
TOTAL	148	

* Includes one vocational rehabilitation specialist in each Region except Dallas, which has two, and one in the National Office.

** Includes staff in the DLHWC District Office in Washington, D.C. that process and administer claims under the DCCA.

10. Administration Costs. Total expenditures for program operations and the overall administration of the LHWCA were \$11.1 million in FY 1986. These administrative costs include salaries and expenses for the Employment Standards Administration (ESA) and DOL management support services provided by the SOL, OIG, OALJ, and the BRB.

Table II.A.-5 shows the levels of staff and costs associated with the administration of the Act for the past several years.

Table II.A.-5
DOL Costs of Administering the LHWCA
FY 1984 - FY 1986
(staff in FTE years and cost in \$ thousands)

DOL Office	FY 1984		FY 1985		FY 1986	
	Staff	Cost	Staff	Cost	Staff	Cost
Total	248	\$11,520	267	\$12,686	259	\$11,078
Direct (ESA/OWCP)	154	6,783	162	7,432	150	6,780
Departmental Mgmt.	94	4,737	105	5,254	109	4,298
SOL	8	328	8	347	8	400
OIG	4	225	4	236	8	494
OALJ	62	3,589	62	3,656	54	2,787
BRB	20	595	31	1,015	39	617

B. Special Funds Audit

Section 44(j) requires an annual audit of Special Fund accounts. The audit for FY 1986 was performed by a public accounting firm under contract to the Office of the Inspector General. The following is a brief summary of the findings, recommendations, and OWCP's responses to the FY 1986 audit report. Summaries of the auditor's examination and certified financial statements for both the LHWCA and DCCA Special Funds for FY 1986 are included as Appendix B.

1. **Finding:** Financial statements of the Special Funds are presented on a cash rather than an accrual basis of accounting. While the cash basis was used in FY 1986, the basic accounts to convert to accrual accounting beginning on October 1, 1986, have been established.

Recommendation: It was recommended that procedures to fully implement accrual accounting be developed and provided to the OIG and the conversion process be closely monitored to ensure all financial transactions are recorded and reported on an accrual basis.

Response: The accrual basis of accounting has been implemented to the extent that program fiscal data are available. Management will continue to work closely with the OIG, DOL, and General Accounting Office to achieve full implementation.

2. **Finding:** The liability for future compensation payments has not been fully determined.

Recommendation: It was recommended that the calculation of future Special Fund compensation liability be completed in accordance with actuarial standards for FY 1987 and the liability be presented in financial statements.

Response: A modeling strategy to calculate and project future liabilities is under development, and, dependent upon the availability of required program data and resources, will be available for testing and implementation in FY 1987.

3. Finding: Although cash in excess of the current needs of the Special Funds was invested in a timely manner during FY 1986, a slightly higher yield could have been obtained on some of the investments.

Recommendation: It was recommended that existing written procedures governing policies for maximizing investment yields be expanded and incorporated in an appropriate procedures manual.

Response: Procedures to ensure timely receipt, breakdown, and maximum investment of funds are being incorporated into the ESA Manual, Chapter 6000 Financial Management, Section 6400 Program Fund Accounting.

4. In regard to internal controls related to procedures for handling Fund receipts and disbursements, the findings/recommendations were as follows:

- a) Finding: The objective of providing independent review and approval of invoices for rehabilitation services by separating these functions from the rehabilitation specialist has not been fully attained with respect to the preparation of control documents.

Recommendation: It was recommended that procedures be established to require the rehabilitation bill processor to independently prepare and to ensure the proper preparation of disbursement control sheets, and; the purpose of OWCP forms used to control approval of invoices be clarified.

Response: Procedures implemented in FY 1986 by bulletins issued to District Offices by DLHWC and OWCP will be reviewed and clarifications issued to ensure the separation of duties and responsibilities.

- b) Finding: Improvements in internal controls over changes (additions, deletions, etc.) between biweekly compensation payments to detect errors and possible misappropriation of funds had not been instituted by the end of FY 1986.

Recommendation: It was recommended that procedures be developed for checking changes in compensation payments between pay periods.

Response: The automated Special Fund System, which became operational in the first quarter of FY 1987, will generate a biweekly "report of differences" reflecting all changes between pay periods as well as providing an electronic audit trail.

- c) Finding: As of September 30, 1986, there was a difference in recorded CY 1986 assessment receipts between the Special Funds control accounts maintained by the Division of Financial Management (DFM) and the subsidiary records maintained by DLHWC.

Recommendation: It was recommended that assessment receipts postings to the control and subsidiary accounting records be reconciled at least monthly and the correct amount of CY 1986 assessment receivables be determined.

Response: With implementation of the Special Fund Assessment System in January 1987, assessment receipts are being accurately recorded and posted on a regular basis. The system automatically generates a report showing amounts paid and the balances of individual accounts which will be reconciled with DFM on a monthly basis. The differences related to the 1986 assessment receivables have been resolved.

- d) Finding: Although checks resulting from settlements of third party claims were properly recorded and processed when received, there were no controls in place to ensure all receipts due were actually received.

Recommendation: It was recommended that controls be established to ensure all receipts due from third party settlements are actually received.

Response: Manual record controls (which will be automated at a later date) have been implemented to track and ensure receipt of all third party settlements.

- e) Finding: Returned government checks submitted to the Treasury for cancellation and credit were not properly controlled or recorded upon receipt at the National Office.

Recommendation: It was recommended that returned government checks be properly controlled upon receipt at the National Office and recorded in accounting records at the time they are submitted to Treasury for cancellation.

Response: A function is currently being programmed for the Special Fund System to control and record returned government checks with implementation expected during FY 1987. In the interim, a manual control log is being kept to control returned checks.

5. Finding: CY 1986 assessment revenues were underestimated because full allowances were not made for possible uncollectible accounts and refunds.

Recommendation: It is recommended that the assessment process be improved by considering all potentially uncollectible accounts and refunds to ensure that assessment revenues cover all estimated expenditures.

Response: Current procedures provide for adequate funding to meet the needs of the Funds. DLHWC does not have the capability to anticipate an insolvency or uncollectible assessment. However, once identified, the uncollectible assessment is factored into the next assessment cycle and distributed among the remaining participants of the Special Fund.

C. Litigation Activities

During FY 1986, litigation under the LHWCA, and its extensions, resulted in several significant decisions:

1. Tax Immunity. In a unanimous decision issued July 18, 1986, the Court of Appeals for the District of Columbia Circuit affirmed a district court decision (614 F.Supp. 1419) holding that the Washington Metropolitan Area Transit Authority (WMATA) was not immune from paying assessments to the "special fund". Brock V. Washington Metropolitan Area Transit Auth., 796 F.2d 481. The court rejected WMATA's contentions that it was immune from making payments to the "special fund" under either the intergovernmental tax immunity doctrine or under the provision of WMATA's Compact which exempted it from virtually all taxes.
2. Definition of Widow. The Fifth Circuit in Leete v. Director, Office of Workers' Compensation, 790 F.2d 418 (1986), held that in determining whether a survivor was a widow within the meaning of section 2(16) of the Act, the issue is whether a conjugal nexus between the claimant and the deceased employee subsisted at the time of death. In reversing the decisions denying benefits the court held that the administrative law judge (ALJ) erroneously relied on events occurring long after the employee's death in finding that the conjugal nexus had been severed.

3. Average Weekly Wages. At issue in Walker v. Washington Metro. Area Transit Authority, 793 F.2d 319 (D.C. Cir. 1986), was the proper method for determining an injured employee's average weekly wages. The court held that a claimant's loss of wage earning capacity under section 8(c)(21) must be based on the employee's average weekly wages prior to injury. The court rejected the argument that the correct test would be to determine what the claimant would be earning at the time of the hearing had he remained at the old job and compare that amount with the wages he could have earned at another job. The court noted, however, that there may be exceptional circumstances which would justify an exception to this rule thereby permitting the adjudicator to look at salary rates both before and after the injury.
4. Permanent Total Disability. The Fifth Circuit, in affirming an award of benefits for permanent and total disability, rejected the employer's argument that a claimant must demonstrate not only his inability to perform his former job but also that he cannot perform any work or that he has engaged in a diligent search and failed to obtain any employment. Roger's Terminal Shipping Co. v. Director, OWCP, and Emile Smith, 784 F.2d 687 (1986). The Court affirmed the decision on the ground that the employer failed to satisfy its initial burden of showing the availability of jobs that the claimant could perform. It is only after such a showing that the burden would shift to the employee to demonstrate that he diligently tried and was unable to secure such employment.
5. Modification of Award. Section 22 of the LHWCA provides for the modification of a compensation order "on the ground of a change in conditions or because of a mistake in a determination of fact". The Fourth Circuit, in a divided decision, held that "a change in an employee's wage earning capacity, without a change in the employee's physical condition, could be the basis for a modification of an award" under section 22. Fleetwood v. Newport News Shipbuilding and Dry Dock, 776 F.2d 1225 (1985), reh. den. January 29, 1986.
6. Limitation of Employer Liability. Litigation involving the provisions of section 8(f) of the Act which provide a limitation on an employer/carrier's compensation liability continued to generate decisions by the courts of appeals:
 - a) In Brady-Hamilton Stevedore v. Director, etc., 779 F.2d 512 (9th Cir. 1985), the court affirmed a decision of the BRB reversing an ALJ grant of section 8(f) relief because the employer failed to claim such relief in a timely fashion. The court held that "Failure to claim Section

8(f) relief at the first hearing is considered a waiver of such relief and it will not thereafter be considered. Verderane v. Jacksonville Shipyards, Inc., 772 F.2d 775, 777-78 (11th Cir. 1985); ***". Although timely raised, section 8(f) relief is not appropriate if there was no permanent disability from the first accident. Todd Shipyards v. Director, Office of Workers' Compensation Programs, 793 F.2d 1012 (9th Cir. 1986). Where, as in the Todd case, the employee resumed his regular job including overtime without any restrictions or decrease in pay, and other evidence showed no objective evidence of permanent disability, an ALJ decision denying section 8(f) relief will be upheld as supported by substantial evidence. The First Circuit, in Director, Office of Workers' Compensation v. General Dynamics, 787 F.2d 723 (1986), upheld the granting of section 8(f) relief where the evidence supported a finding that prior to the job-related injury, the employee had hypertension (i.e., significantly elevated blood pressure at the time of employment) and that such constituted an existing disability.

- b) Section 8(f) relief would not be appropriate, the Ninth Circuit held in Todd Shipyards v. Office of Worker's Compensation, 792 F.2d 1489 (1986), where the employee/claimant is awarded a de minimis disability award (i.e., a one percent loss of wage earning capacity) for the purpose of keeping available that employee's right to seek modification until the economic effects of the disability become apparent. See Hole v. Miami Shipyards Corp., 640 F.2d 769 (5th Cir. 1984); Randall v. Comfort Control, Inc., 725 F.2d 791 (D.C. Cir. 1984). The Ninth Circuit concluded that "when a Hole de minimis award is granted, section 8(f) is not appropriate. The criterion of a disability "materially and substantially greater than that which would have resulted from the subsequent injury alone" is not met in this case."

7. Applicability of 1984 Amendments. In the FY 1985 annual report, DOL reported on a number of court decisions holding that the LHWCA Amendments of 1984 (Pub. L. 98-426, 98 Stat. 1639) applied to cases pending before the BRB and courts of appeals. At issue in Keener, et al. v. Washington Metropolitan Area Transit Authority, Nos. 85-5029, et al. (D.C. Cir.), was whether the 1984 amendments, more specifically the amendment overruling the Supreme Court's decision in WMATA v. Johnson, 467 U.S. 925 (1984), applied to cases arising under the District of Columbia Workmen's Compensation Act of 1928, D.C. Code 36-501 et seq. (1973). In a unanimous decision issued September 2, 1986, the Court of Appeals, citing its earlier decision in Hall v. C & P Telephone Co., 793 F.2d 1354 (1986) holding that the DCCA was "local" law and

therefore the decisions of the District of Columbia Court of Appeals were entitled to deference, held that the 1984 amendments did not apply to cases arising under the 1928 statute which had been repealed effective July 26, 1982. A petition for rehearing with a suggestion for rehearing en banc was denied October 17, 1986. (800 F.2d 1173).

D. Regulatory Initiatives

As discussed in the FY 1985 report, on January 3, 1985, interim final regulations implementing the 1984 amendments were published in the Federal Register. The regulations were effective immediately and were to remain in effect (as extended) until February 3, 1986. Written comments from the public were solicited and a total of seventy-eight were received. After reviewing the comments submitted and the experience gained in administering the Act as amended, DOL revised the regulations. The final rules became effective on January 31, 1986.^{11/}

There were no other significant regulatory activities related to the LHWCA during FY 1986.

E. Significant New Program Initiatives

An automated case management system was implemented in all of the DLHWC District Offices in FY 1986. This is the first automated system developed for use by the Longshore program. The system is comprised of three major subsystems: (1) The Longshore Case Control Subsystem which provides case tracking and transaction recordkeeping on all lost-time and death claims received by Longshore District Offices. It also furnishes the claims processing staff with a means of reviewing each claim as it proceeds through the administrative review and adjudicative process; (2) The Longshore Correspondence/Word Processing Subsystem which generates automatic correspondence to be sent to various parties involved in a specific case; and (3) The Longshore Management Information Subsystem which provides workload and management statistical information pertinent to the overall operation of the Longshore program, individual District Office effort, and claims examiner effort.

The first two subsystems were implemented and operational in all of the DLHWC District Offices in FY 1986. The third subsystem, the Longshore Management Information Subsystem, is being programmed and tested and is scheduled to be operational in all District Offices in FY 1987.

^{11/} See Federal Register, 51 FR 4270, February 3, 1986.

The automated case management system has assisted in more timely case creation, case review and responses to inquiries and, in general, has provided for a more efficient workflow in DLHWC District Offices.

Another major automation project completed in FY 1986 was the redesign and conversion of the Special Fund Benefit Pay and Assessment System from a separate, time-shared, contractor owned/operated IBM mainframe computer to an in-house DLHWC owned micro-computer. The former ADP system was inefficient and cumbersome. It did not provide adequate management information or comprehensive and timely statistical reports necessary for sound fiscal management. The redesigned system not only provides this capability but also includes implementation of many of the recommendations from the FY 1985 OIG audit report.

III. APPENDICES

Appendix A: Program Statistics

Table A-1. Total Industry Compensation and Benefit Payments Under the LHWCA 1/
CY 1976 - CY 1985 2/

(\$ thousands)

Payments By:	Calendar Year									
	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985
Self-Insured Employers	\$ 31,243	\$ 46,239	\$ 65,166	\$ 88,064	\$ 101,621	\$ 123,319	\$ 130,810	\$ 122,974	\$ 121,768	\$ 132,275
Insurance Carriers	116,300	129,082	147,086	176,244	192,059	213,741	224,495	246,074	229,379	208,155
TOTAL PAYMENTS 3/	\$147,542	\$175,321	\$212,252	\$264,308	\$293,680	\$337,060	\$355,305	\$369,049	\$351,147	\$340,430
Number of Cases Involved in Industry Payments	141,182	151,489	157,960	175,969	181,919	178,964	173,693	118,410	98,104	93,000

- 1/ Figures include payments under the LHWCA and all extensions.
- 2/ Industry payments are reported to the Department of Labor on a calendar year basis.
- 3/ Due to rounding, the sum of individual items may not equal total.

Table A-2. National Average Weekly Wage (NAWW) and Corresponding Maximum and Minimum Compensation Rates and Annual Adjustments Pursuant to Sections 6(b), 9(e), and 10(f) of the LHWCA

Period	NAWW	Maximum Payable	Minimum Payable	Annual Adjustment (% Increase in NAWW)
11/26/72-9/30/73	\$131.80	\$167.00	\$ 65.90	--
10/01/73-9/30/74	140.26	210.54	70.18	6.49%
10/01/74-9/30/75	149.10	261.00	74.57	6.26
10/01/75-9/30/76	159.20	318.38	79.60	6.74
10/01/76-9/30/77	171.28	342.54	85.64	7.59
10/01/77-9/30/78	183.61	367.22	91.81	7.21
10/01/78-9/30/79	198.39	396.78	99.20	8.05
10/01/79-9/30/80	213.13	426.26	106.57	7.43
10/01/80-9/30/81	228.12	456.24	114.06	7.03
10/01/81-9/30/82	248.35	496.70	124.18	8.87
10/01/82-9/30/83	262.35	524.70	131.18	5.64
10/01/83-9/30/84	274.17	548.34 1/	137.09	4.51
10/01/84-9/30/85	289.83	579.66	144.92	5.71 2/
10/01/85-9/30/86	297.62	595.24	148.81	2.69

1/ Maximum became applicable in death cases (for any death after September 28, 1984) pursuant to LHWCA Amendments of 1984. Section 9(e)(1) provides that the total weekly death benefits shall not exceed the lesser of the average weekly wages of the deceased or the benefit which the deceased would have been eligible to receive under section 6(b)(1).

2/ Five percent statutory maximum increase applicable in FY 1985 under section 10(f) of the LHWCA as amended instead of 5.71%.

Table A-3. LHWCA and DCCA Special Funds Expenditures
FY 1976 - FY 1986

Fiscal Year	LHWCA Expenditures (\$)				DCCA Expenditures (\$)				Number of Second Injury (8F) Cases		
	Total	Second Injury Cases 1/	Pre Amendment Cases 2/	Rehab. 3/	Other 4/	Total	Second Injury Cases 1/	Pre Amendment Cases 2/		Rehab. 3/	Other 4/
1976	\$ 3,035	80	\$ 2,654	\$ 65	\$ 236	\$ 1,173	33	\$ 968	\$ 171	\$ 1	5
1977	2,894	296	2,104	188	306	707	52	500	154	1	N.A.
1978	3,814	1,071	2,049	396	298	1,184	133	674	321	56	N.A.
1979	6,098	2,539	2,517	668	374	1,680	382	762	514	22	N.A.
1980	10,144	5,688	2,776	1,052	628	2,353	756	915	621	61	103
1981	14,539	10,151	2,005	1,812	571	2,907	1,786	624	407	90	139
1982	23,622	16,124	4,539	1,981	978	5,237	3,527	1,362	238	110	230
1983	31,035	22,582	4,536	2,091	1,826	6,219	4,595	1,275	231	118	308
1984	37,145	30,746	3,437	2,474	488	7,543	6,173	1,013	249	108	432
1985	47,047	40,139	3,603	2,604	701	10,034	8,699	1,118	145	72	518
1986	52,847	46,371	3,254	2,511	711	10,828	9,611	995	104	118	600

1/ Section 8(f) payments to employees who sustain second injuries which, superimposed on a pre-existing injury, results in the employee's permanent disability or death.

2/ Section 10(h) of the Act requires that compensation payments to permanent total disability and death cases, when the injury or death is caused by an employment event which occurred prior to enactment of the 1972 amendments, be adjusted to conform with the weekly wage computation methods and compensation rates put into effect by the 1972 amendments. Fifty percent of any additional compensation or death benefit paid as a result of these adjustments are to be paid out of the Special Fund accounts.

3/ In cases where vocational or medical rehabilitation services for permanent disabled employees are not available otherwise, and for maintenance allowances for employees undergoing vocational rehabilitation, sections 39(c) and 8(g) of the Act authorize the cost of these services to be paid by the Special Funds

4/ For cases where impartial medical exams or reviews are ordered by the Department of Labor (section 7(e) of Act) and where a compensation award cannot be paid due to employer default (section 18(b)), the expenses or payments resulting from these actions may be covered by the Special Fund.

N.A. Data not available.

Table A-4. LHWCA and DCCA Special Funds Receipts (Industry Assessments) 1/
CY 1976 - CY 1986

(\$ thousands)

Calendar Year	LHWCA		DCCA	
	Total Industry Assessments 2/	Preceding Year Total Industry Payments (Assessment Base) 3/	Total Industry Assessments 2/	Preceding Year Total Industry Payments (Assessment Base) 3/
1976	\$ 2,600	\$ 89,265 (CY 1975)	\$ 775	\$ 26,894 (CY 1975)
1977	3,725	110,585 (CY 1976)	920	36,958 (CY 1976)
1978	4,250	130,188 (CY 1977)	1,250	45,133 (CY 1977)
1979	6,930	161,629 (CY 1978)	2,090	50,623 (CY 1978)
1980	8,000	204,829 (CY 1979)	2,500	59,479 (CY 1979)
1981	18,000	224,863 (CY 1980)	3,500	68,817 (CY 1980)
1982	30,323	263,319 (CY 1981)	5,838	73,741 (CY 1981)
1983	31,624	282,882 (CY 1982)	7,196	72,423 (CY 1982)
1984	40,215	320,409 (CY 1983)	7,927	48,640 (CY 1983)
1985	52,373	315,694 (CY 1984)	10,180	35,454 (CY 1984)
1986	55,181	232,103 (CY 1985) 4/	10,638	18,711 (CY 1985) 4/

1/ The largest single source of receipts to the Special Funds are the annual assessments of employers and insurance carriers. Other receipts to the Funds not shown in this table include fines and penalties, payments for death cases where there is no person entitled under the Act to the benefit payments, and interest earned on Fund investments. These payments constitute a very small portion of the total receipts of the Special Funds. (See Appendix B for detailed financial statements itemizing all Fund receipts for FY 1986.)

2/ Assessments as shown here are not receipts to the Fund which were received during a given calendar year, but total assessments which are receivable from employers and insurance carriers based on the Special Fund assessment formula as prescribed under section 44(c) of the Act. (Actual Fund assessments received during FY 1986 are shown in Appendix B.)

3/ Assessments prior to CY 1985 were based on each employer's or carrier's total compensation and benefit payments under the Act during the preceding calendar year. Beginning with CY 1985, the assessment base also includes a factor for section 8(f) payments attributable to each employer/carrier, as required by the 1984 amendments.

4/ Starting with CY 1986, industry assessments are based on compensation payments only, i.e., medical benefits are no longer included in the payment base used in determining annual assessments.

Table A-5. Summary of Case Processing
 Activities Under the LHWCA 1/
 FY 1981 - FY 1986

Adjudication Level And Case Status	Fiscal Year					
	1981	1982	1983	1984	1985	1986
DISTRICT OFFICES:						
Pending Inventory of Cases	13,813	12,919	9,968	7,406	7,503	8,110
QALJ:						
Carryover from Previous FY	2,275	2,887	3,650	4,348	4,322	3,576
New Cases	3,580	4,029	4,905	4,501	3,183	3,162
Total Docket	5,855	6,916	8,555	8,849	7,505	6,738
Dispositions	2,968	3,266	4,207	4,527	3,929	3,818
Pending Inventory	2,887	3,650	4,348	4,322	3,576	2,920
BBB:						
Carryover from Previous FY	777	802	802	1,247	1,387	1,622
New Cases	493	542	694	600	632	573
Total Docket	1,270	1,344	1,496	1,847	2,019	2,195
Dispositions	468	542	249	460	397	690
Pending Inventory	802	802	1,247	1,387	1,622	1,505

1/ Includes cases under both the LHWCA and the DCCA.

Appendix B: FY 1986 Special Funds
Audit - Financial
Statements of Assets,
Revenue, Expenditures
and Fund Balance

LEONARD G. BIRNBAUM AND COMPANY

CERTIFIED PUBLIC ACCOUNTANTS

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MOUNTAIN VIEW, CALIFORNIA
ALBUQUERQUE, NEW MEXICO

AUDITOR'S REPORT

Mr. Gerald Peterson
Assistant Inspector General for Audit
United States Department of Labor
200 Constitution Avenue, NW
Room S5030
Washington, D.C. 20210

Dear Mr. Peterson:

We have examined the Statement of Assets and Fund Balance arising from cash transactions of the Longshore and Harbor Workers' Compensation Act Special Fund as of September 30, 1986, and the related Statement of Revenue, Expenditures and Changes in Fund Balance for the year then ended. Our examination was made in accordance with generally accepted auditing standards, the "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" as promulgated by the Comptroller General of the United States, and included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

As described in Note 1 to the financial statements, the policy of the Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, is to prepare its financial statements on the basis of cash receipts and disbursements; consequently, certain revenues and related assets are recognized when received rather than when earned, and certain expenses are recognized when paid rather than when incurred. Accordingly, the accompanying financial statements are not intended to present financial position and results of operations in conformity with generally accepted accounting principles, as well as Title 2 of the "General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies (Title 2)" and Public Law 97-258 [31 USC 3512(b)].

In our opinion, the financial statements referred to above present fairly the assets and fund balance arising from cash transactions of the Longshore and Harbor Workers' Compensation Act Special Fund as of September 30, 1986, and the revenues collected, expenditures made and changes in fund balance during the year then ended, on the basis of accounting described in Note 1, which basis has been applied in a manner consistent with that of the preceding year.

A handwritten signature in cursive script that reads "Leonard G. Birnbaum and Company". The signature is written in black ink and is positioned above the typed name of the firm.

Leonard G. Birnbaum and Company
Alexandria, Virginia
November 30, 1986

Table B-1.
Longshore and Harbor Workers' Compensation Act
Special Fund 16X8130
Statement of Assets and Fund Balance
As of September 30, 1986
(Prepared on a Cash Basis)

<u>ASSETS</u>	
Cash	\$ 247,131
Marketable securities	<u>29,486,005</u>
Total assets (Note 1)	<u>\$ 29,733,136</u>
 <u>FUND BALANCE</u>	
Contingencies (Note 2)	-
Fund balance (Note 3)	<u>\$ 29,733,136</u>

The accompanying notes are an integral part of this financial statement.

Table B-2.
Longshore and Harbor Workers' Compensation Act
Special Fund 16X8130
Statement of Revenue, Expenditures and Changes in Fund Balance
As of September 30, 1986
(Prepared on a Cash Basis)

REVENUE:	
Interest on investments	\$ 1,204,714
Payments (Section 44(c)(1))	73,185
Fines and penalties (Section 30(e))	3,700
Penalties (Section 49)	2,500
Fines and penalties (Section 14(g))	15,168
Assessments - calendar year 1985	1,643,635
Assessments - calendar year 1986	<u>52,394,611</u>
	55,337,513
EXPENDITURES:	
Wage increase compensation (Section 10(h))	3,254,129
Second injury compensation (Section 8(f))	46,370,527
Maintenance payment compensation (Section 8(g))	144,985
Compensation payment for self-insurer in default (Section 18(b))	700,488
Tuition reimbursement (Section 39(c)(2))	1,968,786
Other rehabilitation payments (Section 39)	7,986
Rehabilitation services (Section 39(c)(2))	389,000
Medical services (Section 7(e))	4,117
Compensation for self-insurer in default	7,209
	<u>52,847,227</u>
EXCESS OF REVENUE OVER EXPENDITURES	2,490,286
BEGINNING FUND BALANCE	<u>27,242,850</u>
ENDING FUND BALANCE	<u><u>\$29,733,136</u></u>

The accompanying notes are an integral part of this financial statement.

Longshore and Harbor Workers' Compensation Act
Special Fund 16X8130

Notes to Financial Statements
September 30, 1986

Note 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

a. Background

The Longshore and Harbor Workers' Compensation Act Special Fund offers compensation and medical care payments to employees disabled from injuries which occurred on the navigable waters of the United States, or in adjoining areas used in loading, unloading, repairing, or building a vessel. The Act was amended at various times to extend coverage to other workers. In addition, the Act provides benefits to dependents if any injury resulted in an employee's death.

b. Method of Accounting

The Special Fund uses the cash basis for accounting and reporting purposes; consequently, certain revenue and related assets are recognized when received rather than when earned, and certain expenses are recognized when paid rather than when incurred. Accordingly, the financial statements are not intended to present the financial position of the fund in conformity with generally accepted accounting principles, as well as Title 2 of the "General Accounting Policy and Procedures Manual for Guidance of Federal Agencies (Title 2)" and Public Law 97-258 [31 USC 3512(b)].

On the accrual basis, the financial statements would have shown the following estimated balances as of September 30, 1986 (unaudited):

	<u>Unaudited Estimates</u> (000 Omitted)
Deferred Revenues	\$ 10,413
Accounts Receivable (net of credits)	3,544
Accrued Interest	32
Accrued Expenditures	1,707
Liability for Future Compensation Payments (see Management Report)	Unknown
Fund Deficit	Unknown

Actions have been taken to implement the accrual basis of accounting for Fiscal Year 1987.

c. Revenues

Revenues are principally derived from annual assessments of insurance carriers and self-insured employers. A relatively minor portion of revenues is derived from fines and penalties levied under the Act, death benefit proceeds, and interest earned on fund investments.

d. Marketable Securities

Marketable securities are carried at cost, which approximates market, and consists of U.S. Treasury bills. In addition, it is the policy of the Division of Longshore and Harbor Workers' Compensation to hold the bills to maturity.

Note 2 - LEGAL MATTERS

As part of the normal process in settling and awarding compensation for injury and death benefit claims, the Special Fund can be involved in litigation. However, there are no other known settlements or legal actions pending involving the Special Fund.

Note 3 - SUBSEQUENT EVENTS

- a. Assessment revenues of about \$7.6 million were received on November 4, 1986 from one company due to underreported compensation payments in prior years. These compensation payments were used in making assessment levies, accordingly, this company had underpaid its proportionate share of assessments. The Division of Longshore and Harbor Workers' Compensation plans to use the monies to reduce the Calendar Year 1987 Special Fund assessments of other companies.
- b. Deposits of about \$1.1 million were made to the Special Fund account on November 18, 1986 from the redemption of securities held under Section 32 of the Act, Security for Compensation. These redemptions were made by ESA, Division of Longshore and Harbor Workers' Compensation because of defaults by two companies to make compensation payments as required by the Act. The monies will be held in trust to pay defaulted claims.

LEONARD G. BIRNBAUM AND COMPANY

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ALBUQUERQUE, NEW MEXICO

AUDITOR'S REPORT

Mr. Gerald Peterson
Assistant Inspector General for Audit
United States Department of Labor
200 Constitution Avenue, NW
Room S5030
Washington, D.C. 20210

Dear Mr. Peterson:

We have examined the Statement of Assets and Fund Balance arising from cash transactions of the District of Columbia Workmen's Compensation Act Special Fund as of September 30, 1986, and the related Statement of Revenue, Expenditures and Changes in Fund Balance for the year then ended. Our examination was made in accordance with generally accepted auditing standards, the "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" as promulgated by the Comptroller General of the United States, and included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

As described in Note 1 to the financial statements, the policy of the Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, is to prepare its financial statements on the basis of cash receipts and disbursements; consequently, certain revenues and related assets are recognized when received rather than when earned, and certain expenses are recognized when paid rather than when incurred. Accordingly, the accompanying financial statements are not intended to present financial position and results of operations in conformity with generally accepted accounting principles, as well as Title 2 of the "General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies (Title 2)" and Public Law 97-258 [31 USC 3512(b)].

In our opinion, the financial statements referred to above present fairly the assets and fund balance arising from cash transactions of the District of Columbia Workmen's Compensation Act Special Fund as of September 30, 1986, and the revenues collected, expenditures made and changes in fund balance during the year then ended, on the basis of accounting described in Note 1, which basis has been applied in a manner consistent with that of the preceding year.

Leonard G. Birnbaum and Company

Leonard G. Birnbaum and Company
Alexandria, Virginia
November 30, 1986

Table B-3.
District of Columbia Workmen's Compensation Act
Special Fund 16X8134
Statement of Assets and Fund Balance
As of September 30, 1986
(Prepared on a Cash Basis)

<u>ASSETS</u>	
Cash	\$ 108,361
Marketable securities	<u>4,849,466</u>
Total assets (Note 1)	<u>\$4,957,827</u>
 <u>FUND BALANCE</u>	
Contingencies (Note 2)	-
Fund balance	<u>\$4,957,827</u>

The accompanying notes are an integral part of this financial statement.

Table B-4.
District of Columbia Workmen's Compensation Act
Special Fund 16X8134
Statement of Revenue, Expenditures and Changes in Fund Balance
As of September 30, 1986
(Prepared on a Cash Basis)

REVENUE:

Interest on investments	\$ 201,341
Payments (Section 44(c)(1))	10,000
Fines and penalties (Section 30(e))	1,050
Fines and penalties (Section 14(g))	300
Assessments - calendar year 1985	496,067
Assessments - calendar year 1986	<u>10,518,514</u>
	<u>11,227,272</u>

EXPENDITURES:

Wage increase compensation (Section 10(h))	994,574
Second injury compensation (Section 8(f))	9,611,424
Maintenance payment compensation (Section 8(g))	6,570
Compensation payment for self-insurer in default (Section 18(b))	114,152
Tuition reimbursement (Section 39(c)(2))	88,444
Other rehabilitation payments (Section 39)	9,306
Medical services (Section 7(e))	<u>3,351</u>
	<u>10,827,821</u>

EXCESS OF REVENUE OVER EXPENDITURES 399,451

BEGINNING FUND BALANCE 4,558,376

ENDING FUND BALANCE \$ 4,957,827

The accompanying notes are an integral part of this financial statement.

District of Columbia Workmen's Compensation Act
Special Fund 16X8134

Notes to Financial Statements
September 30, 1986

Note 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

a. Background

The District of Columbia Workmen's Compensation Act Special Fund offers compensation and medical care payments to District of Columbia employees for work-related injury or death. The District of Columbia Workmen's Compensation Act of 1979 (36 D.C. Code 301 et seq) became effective on July 26, 1982 covering workers in the District of Columbia similar to coverage under State laws. The Special Fund, under this Act, is administered by the Mayor (36,340 (a)). The Department of Labor retains responsibility for District of Columbia cases with dates of injury prior to July 26, 1982.

b. Method of Accounting

The Special Fund uses the cash basis for accounting and reporting purposes; consequently, certain revenues and related assets are recognized when received rather than when earned, and certain expenses are recognized when paid rather than when incurred. Accordingly, the financial statements are not intended to present the financial position of the fund in conformity with generally accepted accounting principles, as well as Title 2 of the "General Accounting Policy and Procedures Manual for Guidance of Federal Agencies (Title 2)" and Public Law 97-258 [31 USC 3512(b)].

On the accrual basis, the financial statements would have shown the following estimated balances as of September 30, 1986 (unaudited):

	<u>Unaudited Estimates</u> (000 Omitted)
Deferred Revenues	\$ 1,902
Accounts Receivable (net of credits)	1,629
Accrued Interest	5
Accrued Expenditures	414
Liability for Future Compensation Payments (see Management Report)	Unknown
Fund Deficit	Unknown

Actions have been taken to implement the accrual basis of accounting for Fiscal Year 1987.

c. Revenues

Revenues are principally derived from annual assessments of insurance carriers and self-insured employers. A relatively minor portion of the revenues is derived from fines and penalties levied under the Act, death benefit proceeds, and interest earned on fund investments.

d. Marketable Securities

Marketable securities are carried at cost, which approximates market, and consists of U.S. Treasury bills. In addition, it is the policy of the Division of Longshore and Harbor Workers' Compensation to hold the bills to maturity.

Note 2 - LEGAL MATTERS

- a. As part of the normal process in settling and awarding compensation for injury and death benefit claims, the Special Fund can be involved in litigation.
- b. The Washington Metropolitan Area Transit Authority (WMATA) has claimed immunity against any responsibility to pay annual assessments on the basis the assessment is a tax and the employer is exempt from taxes. The United States District Court and the Court of Appeals for the District of Columbia have ruled that the terms of the tax exemption did not include the Special Fund assessments. WMATA has informally advised the Department of Labor, Office of Solicitor (DOL Solicitor), that it will seek United States Supreme Court review of these decisions. The DOL Solicitor expects the Supreme Court to deny review. The Special Fund is due from WMATA an estimated \$4.5 million in assessments and accrued interest for the last half of Calendar Year 1983 and the total assessments for calendar years 1984 through 1986.
- c. The United States District Court of Appeals issued a decision on September 2, 1986 that the 1984 Amendments to the Longshore and Harbor Workers Compensation Act, which, among other things, changed the method of assessment computation, do not apply to pre-1982 District of Columbia workers compensation cases. The impact of the court decision is currently under consideration.