

SPECIAL FUNDS UNDER THE NEW YORK WORKMEN'S COMPENSATION LAW

BY

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The special funds created by the provisions of the New York Workmen's Compensation Law have attracted considerable attention during recent months.

There are three special funds into which compensation insurance carriers and self-insurers are required by law to make payments for every case of injury causing death in which there are no persons entitled to compensation; a fourth fund, commonly known as the Aggregate Trust Fund, into which the stock and mutual companies, but not the self-insurers or the State Insurance Fund, are required by law to pay the present values of all awards made on or after July 1, 1935 for death benefits and for total permanent disability resulting from the loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, or for permanent partial disability resulting from the loss of an arm, leg, hand, foot or eye; and the Stock and Mutual Workmen's Compensation Security Funds.

The following is a list of the special funds under the New York Workmen's Compensation Law:

1. Second Injury (Special Disability) Fund, (Section 15-8).
2. Reopened Case Fund, (Section 25-a).
3. Vocational Rehabilitation Fund, (Section 15-9).
4. Aggregate Trust Fund, (Section 27).
5. Workmen's Compensation Security Funds, (Sections 60 to 73, inclusive).

Only a brief reference will be made in this paper to the Workmen's Compensation Security Funds which were created by the provisions of Chapter 255, Laws of 1935, constituting a new Article 5 of the New York Workmen's Compensation Law. The new Article 5 (Sections 60 to 73, inclusive) created two security funds known as the Stock Workmen's Compensation Security Fund and the Mutual Workmen's Compensation Security Fund.

The purpose of these funds is to assure to persons entitled thereto the compensation provided by law for employments insured in insolvent stock and mutual carriers. The stock and mutual companies are required to pay into the security funds 1% of the net premiums written during calendar year 1934 and each year thereafter until the maximum amounts are reached. When the aggregate amount of payments into the stock fund together with accumulated interest thereon, less all its known liabilities and estimated liabilities on pending cases, becomes equal to 5% of the New York Workmen's Compensation loss reserve of all stock carriers as of December 31st, next preceding, or becomes equal to \$2,300,000.00, whichever amount is the greater, no further contributions to the stock fund shall be required to be made unless thereafter the fund shall be reduced below the maximum required amount. Whenever the mutual fund, less all its known liabilities and estimated liabilities on pending cases, shall exceed the sum of \$700,000.00 or an amount equal to 5% of the New York Workmen's Compensation loss reserve of all mutual carriers as of December 31st, next preceding, whichever amount is the greater, distribution of such excess, subject to the advance approval of the Superintendent of Insurance, shall be made as repayments for successive fund years, commencing with the first fund year, to the mutual carriers in the proportion in which they respectively made contributions for such fund year, provided, however, that the Mutual Security Fund shall not be reduced below the maximum required amount. The Superintendent of Insurance is required to serve as administrator of each of the security funds without additional compensation. Administration expenses are payable from each of these funds. The Commissioner of Taxation and Finance is the custodian of each of these security funds, and disbursements from each fund are made by the Commissioner of Taxation and Finance upon vouchers signed by the Superintendent of Insurance or his deputy.

Complete annual reports have been available on the Aggregate Trust Fund from the beginning. However, during 1937, for the first time, reports covering the liabilities of the Second Injury and Reopened Case Funds became available.

The purpose of this paper is to summarize pertinent information with respect to the various special funds (other than the

Workmen's Compensation Security Funds) and to provoke comment on possible solutions of the problems involved.

The large deficits revealed in the reports covering the Second Injury and Reopened Case Funds are shown in the following summary:

SUMMARY OF FINANCIAL STATUS OF SPECIAL FUNDS (EXCLUDING SECURITY FUNDS)

	Statement as of	Assets	Liabilities	Surplus (or Deficit)
Second Injury Fund...	12/31/36	\$ 992,167.30	\$1,852,781.95	—\$ 860,614.65
Reopened Case Fund...	12/31/36	201,702.88	2,785,099.00	— 2,583,396.12
Vocational Rehabilitation Fund.....	6/30/36	746,366.46	250,000.00	496,366.46
Aggregate Trust Fund.	12/31/37	5,794,568.16	5,837,863.47	— 43,295.31

The financial status of the various funds as indicated by the above summary has impressed upon all who are interested in the operations of the New York Workmen's Compensation Law the necessity for taking action to remedy the situation. Undoubtedly, some amendments to the Compensation Law will be necessary.

Table A contains a summary of the amounts for which carriers have been liable in each no dependency death case award during various periods:

TABLE A
COSTS TO CARRIERS OF EACH NO DEPENDENCY DEATH CASE AWARD

	7/1/14 to 6/1/16	6/1/16 to 5/13/20	5/13/20 to 7/1/22	7/1/22 to 5/21/23	5/21/23 to 4/24/33	4/24/33 to Date
Second Injury Fund (§ 15-8)	\$..	\$100	\$ 100	\$ 500	\$ 500	\$ 500
Reopened Case Fund (§ 25-a)	..	..	..	..	..	300
Vocational Rehabilitation Fund (§ 15-9).....	..	..	900	500	500	500
Funeral Expenses (§ 16-1) ..	100*	100*	100*	100*	200*	200*
Totals.....	\$100	\$200	\$1,100	\$1,100	\$1,200	\$1,500

* Funeral expenses not to exceed this amount.

The contributions to the special funds and the financial condition of such funds are matters of great importance to the compensation insurance carriers and self-insurers. A discussion of the statutory provisions governing each special fund other than the Workmen's Compensation Security Funds and of the history and financial condition of each such fund therefore appears to be timely.

SECOND INJURY FUND

(Section 15, Subdivision 8 of the Compensation Law)

The Second Injury Fund was created by the provisions of Section 15, Subdivision 8 of the New York Workmen's Compensation Law. Out of this fund there is paid additional compensation to persons who, having already sustained the loss of one major member of the body, thereafter by accident lose another major member of the body. In such a case the employer (or his insurance carrier) is liable only for compensation to the injured employee for the member lost by the first accident while in his employ. But the workman is, after that member has been paid for by the employer (or his insurance carrier), entitled to payment of additional compensation as for permanent total disability out of this special fund, it being recognized that the higher disability is not the financial responsibility of the immediate employer but is the obligation of industry generally.

Subdivision 8 (formerly Subdivision 7) of Section 15 of the Compensation Law was added by Chapter 622, Laws of 1916 (effective June 1, 1916). The amount of the contribution by carriers and self-insurers was increased from \$100 to \$500 in each no dependency death case award by Chapter 615, Laws of 1922 (effective July 1, 1922) at which time the subdivision was also renumbered.

Subdivision 8 of Section 15 of the Compensation Law provides in part as follows:

"If an employee who has previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one leg, or one eye, incurs permanent total disability through the loss of another member or organ, he shall be paid, in addition to the compensation for permanent partial disability provided in this section and after the cessation of the payments for the prescribed period of weeks special additional compensation during the continuance of such total disability to the amount of sixty-six and two-thirds per centum of the average weekly wage earned by him at the time the total permanent disability was incurred."

Subdivision 8 also provides in part as follows:

"The employer, or if insured, his insurance carrier, shall pay into such special fund for every case of injury causing death in which there are no persons entitled to compensation the sum of five hundred dollars."

The Second Injury Fund receives small amounts of additional income from the following sources:

1. Section 24-a of the Compensation Law provides that fees for licenses to representatives of claimants shall be paid into the Second Injury Fund.
2. Section 50, Subdivision 3-b, of the Compensation Law provides that fees for licenses of representatives of self-insurers shall be paid into the Second Injury Fund.
3. Section 52 of the Compensation Law provides that fines for failure to secure the payment of compensation in one of the ways authorized by law shall be paid into the Second Injury Fund.

Section 52 provides in part as follows:

“Failure to secure the payment of compensation shall constitute a misdemeanor, punishable by a fine of not more than five hundred dollars or imprisonment for not more than one year, or both. Where the employer is a corporation, the president, secretary and treasurer thereof shall be liable for failure to secure the payment of compensation under this section.

“All fines imposed under this chapter, except as herein otherwise provided, shall be paid directly and immediately by the officer collecting the same to the industrial commissioner for the benefit of the special fund created under subdivision eight of section fifteen of this chapter.”

The Second Injury Fund is also entitled to receive one-half of the fines for failure to notify the Industrial Commissioner of the cessation of payments within sixteen days after the date on which compensation has been paid. See Section 25 of the Compensation Law which provides in part as follows:

“Whenever for any reason compensation payments cease, the employer or his insurance carrier shall within sixteen days thereafter, send to the commissioner a notice on a form prescribed by the commissioner that such payment has been stopped, which notice shall contain the name of the injured employee or his principal dependent, the date of accident, the date to which compensation has been paid and the whole amount of compensation paid, and in case the employer or his insurance carrier fail so to notify the commissioner of the cessation of payments within sixteen days after the date on which compensation has been paid, the commissioner may, after a hearing, impose a penalty upon such employer or his insurance carrier in an amount in his discretion not exceeding

twenty-five dollars, one-half of which shall be paid into the special fund created under favor of numbered paragraph eight of section fifteen herein and one-half of which shall be paid into the state treasury* and be applicable to the expenses of the department."

However, it appears that the Second Injury Fund has not received any fines under the provisions of Section 25.

The Commissioner of Taxation and Finance of the State of New York is the custodian of the Second Injury Fund and disbursements from it are made on vouchers signed by the Industrial Commissioner of the State of New York.

A report on examination of the Second Injury (Special Disability) Fund was made by Examiner John D. Byrne of the State of New York Insurance Department to Industrial Commissioner Elmer F. Andrews under date of July 28, 1937.

This report on examination shows that in addition to the present values of cases payable as of December 31, 1936, the estimated present values of awards which may be made in the future as a result of accidents which occurred on or prior to December 31, 1936 amount to a considerable sum.

CALCULATION OF LIABILITIES OF SECOND INJURY FUND

In calculating the present values of awards (in second injury cases) which had been made on or prior to December 31, 1936, the Insurance Department Examiner based his computations on the Survivorship Annuitants' Table of Mortality with interest at $3\frac{1}{2}\%$ per annum.

In addition to the second injury cases on which awards had been made on or prior to December 31, 1936, there will, of course, be a number of awards made in the future in second injury cases as a result of accidents which occurred originally on or prior to December 31, 1936. The main difficulty in calculating the present values of second injury awards which will be made in the future on cases where the original injury occurred on or prior to December 31, 1936 is in estimating the number of such second injury awards which will be made in the future. The large majority of

* The functions of the State Treasurer have since been assigned by separate enactment to the Department of Taxation and Finance (State Departments Law, Chapter 343, Laws of 1926, § 131).

second injury awards have been made in cases where the original accidents occurred five years or less prior to the second injury awards as will be noted from Table B containing figures prepared by the Insurance Department Examiner and showing the number of second injury awards classified according to the time elapsed between the date of the original accident and the date of the second injury award.

TABLE B

Time Elapsed Between Original Accident and Second Injury Award	Number of Claims (Second Injury Awards)	Per Cent of Total
Less than 1 year.....	11	7.38
1 to 2 years.....	33	22.15
2 to 3 years.....	40	26.85
3 to 4 years.....	33	22.15
4 to 5 years.....	15	10.07
Over 5 years.....	17	11.40
	149	100.00

Table B covers all second injury awards made on or before December 31, 1936 in cases where the original accidents occurred during the years 1916 to 1936, inclusive.

The average time elapsed between the date of the original accident and the date of the final second injury award was found by the Insurance Department Examiner to be 3.025 years.

In cases involving original accidents which occurred during the ten year period 1922 to 1931, inclusive, second injury awards were made in 105 cases with a total second injury incurred cost of \$1,429,681.23 or an average of \$13,616.00 per second injury case. A sufficient time had elapsed for the second injury loss experience of the above period to be reasonably well matured. Using the above ten year period as the basis for his calculations, the Examiner estimated that the liability on second injury awards which have been made and which will be made in the future in cases involving accidents which originally occurred during the five year period 1932 to 1936, inclusive, will amount to one-half the second injury incurred cost of the above ten year period or \$714,840.60. Deducting the amount (\$84,344.22) of the eight second injury awards made on or prior to December 31, 1936 in cases involving accidents which originally occurred during the last five year period,

the Examiner obtained \$630,496.38 (rounded off to \$630,000.00) as the estimated amount of second injury awards which will be made in the future in cases involving original accidents of the five year period 1932 to 1936, inclusive. This amount may prove to be somewhat low for the reason that there will probably be a number of second injury awards made in the future in cases involving original accidents which occurred prior to the year 1932. However, the estimate appears to be a fairly reasonable one on the basis of information now available.

The Insurance Department Examiner developed the following test of his estimate of \$630,000.00 to cover the liability for second injury awards which will be made in the future in cases involving original accidents occurring during the five year period 1932 to 1936, inclusive.

The total compensation losses incurred by all carriers (not including self-insurers) in New York State during the fourteen year period 1918 to 1931, inclusive, amounted to \$442,075,000.00. (See Table IX, Part 1, New York Insurance Department Reports.) The second injury awards made on or before December 31, 1936 in cases involving original accidents which occurred during the above fourteen year period amounted to \$1,858,086.77 or 0.42% of the compensation incurred losses. Applying the percentage, 0.42%, to the compensation losses incurred during the five year period 1932 to 1936, inclusive, the Examiner obtained \$711,997.00 as the indicated amount of the second injury awards which have been made and which will be made in the future in cases involving accidents which originally occurred during the five year period 1932 to 1936, inclusive. Deducting the amount (\$84,344.22) of the eight second injury awards made on or prior to December 31, 1936 in cases involving accidents which originally occurred during the last five year period, the Examiner obtained \$627,652.77 which differs very little from the figure of \$630,000.00 finally used by the Examiner as the estimated amount of second injury awards which will be made in the future in cases involving original accidents of the five year period 1932 to 1936, inclusive.

The above test would have been more significant if the figures for compensation losses of the self-insurers had been available and had been included in the calculation.

ASSETS AND LIABILITIES OF THE SECOND INJURY (SPECIAL DISABILITY)
FUND AS OF DECEMBER 31, 1936

Assets as shown in the report of the Industrial Commissioner	\$ 992,167.30
Liabilities as estimated in the report of the Insurance Department Examiner dated July 28, 1937 were as follows:	
Present value of second injury cases on which payments were being made December 31, 1936.	\$1,160,278.37
Present value of second injury cases payable after December 31, 1936 on which awards were made on or prior to that date...	62,503.58
Estimated present value of awards which may be made in the future in cases involving original accidents which occurred on or prior to December 31, 1936.....	630,000.00
Total Liabilities of the Second Injury Fund as of December 31, 1936.....	1,852,781.95
Deficiency of Second Injury Fund as of December 31, 1936.....	\$ 860,614.65

A financial summary of the Second Injury Fund for the five years 1932 to 1936 is shown in Table G.

The amount which would have been accumulated in the Second Injury Fund according to the calculations of Associate Actuary Mark Kormes of the Compensation Insurance Rating Board of New York if a \$500 contribution in each no dependency death case award had been in effect from July 1, 1914 up to December 31, 1936 is \$1,895,397.00.

The average annual amount of awards paid into the Second Injury Fund during the five year period 1932 to 1936, inclusive, was \$90,999.13 and the average annual amount of loss payments during the same period was \$86,167.98.

It therefore appears that the present \$500 contribution to the Second Injury Fund in each no dependency death case award probably is sufficient to cover the losses currently payable from the Second Injury Fund but not sufficient to reduce the deficit in this fund to any material extent.

REOPENED CASE FUND

(Section 25-a of the Compensation Law)

The Reopened Case Fund was created by the provisions of Section 25-a of the New York Workmen's Compensation Law. Out of this fund there is paid compensation to persons who, upon a reopening of a claim, have been found to be entitled to compensation, when such opening has taken place more than seven years after the happening of the accident and more than three years after the last payment of compensation by the employer or his insurance carrier.

Section 25-a of the Compensation Law was added by Chapter 384, Laws of 1933 (effective April 24, 1933).

Chapter 384, Laws of 1933, provided for the transfer from the Vocational Rehabilitation Fund to the Reopened Case Fund \$200,000.00 (par value) of securities and \$50,000.00 in cash.

Section 25-a provides that awards may be made against the Reopened Case Fund in the following types of cases:

“* * * (1) after a lapse of seven years from the date of the injury or death and claim for compensation previously has been disallowed or claim has been otherwise disposed of without an award of compensation, or (2) after a lapse of seven years from the date of the injury or death and also a lapse of three years from the date of the last payment of compensation, provided, however, that where the case is disposed of by the payment of a lump sum the date of last payment for the purpose of this section shall be considered as the date to which the amount paid in the lump sum settlement would extend if the award had been made on the date the lump sum payment was approved at the maximum compensation rate employee's earnings would warrant, or (3) where death resulting from the injury shall occur after the time limited by the foregoing provisions of (1) or (2) shall have elapsed * * *.”

Section 25-a also provides in part as follows:

“The employer, or, if insured, his insurance carrier, shall pay into such fund for every case of injury causing death for which there are no persons entitled to compensation the sum of three hundred dollars except that where death shall occur subsequent to the periods limited by this section no payment into such special fund nor to the special funds provided by subdivisions eight and nine of section fifteen of this chapter shall be required.”

The effective date of Section 25-a coincided with a change in Section 15, Subdivision 6-a, which authorizes the Industrial Board to reclassify a case at any time without regard to the date of accident. (See Chapter 384, Laws of 1933). Previous to this change cases could not be reclassified after three years had elapsed from the date of accident.

The Commissioner of Taxation and Finance is the custodian of the Reopened Case Fund and disbursements are made from it on vouchers signed by the Industrial Commissioner.

A report on examination of the Reopened Case Fund was made by Examiner John D. Byrne of the State Insurance Department to Industrial Commissioner Elmer F. Andrews under date of July 29, 1937.

This report on examination shows that in addition to the present values of the cases reopened up to and outstanding on December 31, 1936, the estimated present values of awards which may be made in the future on the following two types of cases amount to considerable sums:

- (a) Cases which may be reopened in the future and on which at least seven years have elapsed between the accident date and December 31, 1936.
- (b) Cases which may be reopened in the future and on which less than seven years have elapsed between the accident date and December 31, 1936.

CALCULATION OF LIABILITIES OF REOPENED CASE FUND

In calculating the present values of reopened cases outstanding as of December 31, 1936 on which awards had been made on or prior to December 31, 1936, the Insurance Department Examiner based his computations on the Survivorship Annuitants' Table of Mortality with interest at $3\frac{1}{2}\%$ per annum.

In addition to the reopened cases on which awards had been made on or prior to December 31, 1936, there will, of course, be a number of awards made in the future in reopened cases arising out of accidents which occurred on or before December 31, 1936. The amount of the present values of the incurred costs on the latter cases was estimated by the Examiner by projecting the estimated incurred cost of all cases reopened from April 24, 1933, the date as of which Section 25-a became effective, to December 31, 1936.

Table C based on figures in the report of the Insurance Department Examiner shows the number of years elapsed between the year of accident and the year in which the case was reopened.

TABLE C

Years Elapsed Between Accident and Reopening	Number	Per Cent of Total	Amount	Per Cent of Total
7	27	10.22	\$ 71,174.40	8.47
8	43	16.29	85,908.25	10.22
9	42	15.91	148,739.76	17.70
10	37	14.01	126,331.69	15.03
11	25	9.47	66,227.64	7.88
12	19	7.20	99,775.43	11.87
13	23	8.71	116,883.99	13.91
14	10	3.79	33,936.66	4.04
15	13	4.92	17,901.93	2.13
16	9	3.41	12,651.11	1.50
17	7	2.65	21,575.63	2.57
18	4	1.52	22,403.20	2.66
19	4	1.52	6,484.31	0.77
20	1	0.38	10,532.00	1.25
Total	264	100.00	\$840,526.00	100.00

The cases shown in Table C were reopened from April 24, 1933 to December 31, 1936, a period of 3.69 years.

The average number of cases reopened per year and the average estimated cost thereof classified by the time elapsed since year of accident, are shown in Table D.

TABLE D

Years Elapsed Between Accident and Reopening	Average Number of Cases Reopened per Year	Average Amount of Reopenings per Year
7	7.3	\$ 19,289.00
8	11.7	23,282.00
9	11.4	40,309.00
10	10.0	34,236.00
11	6.8	17,948.00
12	5.1	27,040.00
13	6.2	31,676.00
14	2.7	9,197.00
15	3.5	4,851.00
16	2.4	3,428.00
17	1.9	5,847.00
18	1.1	6,071.00
19	1.1	1,757.00
20	.3	2,854.00
Total	71.5	\$227,785.00

In his projection calculation, the Examiner assumed that all claims against the Reopened Case Fund will be reported in from 7 to 20 years after the accident date. Further, he made provision for the following two classes of cases :

- (a) Cases which may be reopened after December 31, 1936 arising out of accidents which occurred during the years 1917 to 1929, inclusive, or which occurred at least 7 years prior to December 31, 1936 but not more than 20 years prior to such date.
- (b) Cases which may be reopened after December 31, 1936 as a result of accidents which occurred during the years 1930 to 1936, inclusive, or within 7 years prior to December 31, 1936.

Table E shows the Examiner's estimate of the probable number of cases to be reopened on the basis of a projection of the actual number of cases reopened up to December 31, 1936.

TABLE E

Number of Years After Accident	Actual Number (Average per Year)	Probable Number of Cases to be Reopened in the Current Year	Probable Number of Cases to be Reopened After the Current Year
7	7.3	11	61
8	11.7	10	51
9	11.4	9	42
10	10.0	8	34
11	6.8	7	27
12	5.1	6	21
13	6.2	5	16
14	2.7	4	12
15	3.5	3	9
16	2.4	3	6
17	1.9	2	4
18	1.1	2	2
19	1.1	1	1
20	.3	1	0
Total	<u>71.5</u>	<u>72.0</u>	<u>286</u>

Based upon the probable number of cases to be reopened as shown above, the Examiner estimated the number of cases to be reopened subsequent to December 31, 1936 arising out of accidents which had occurred up to that date as shown in Table F.

The average total incurred cost of the 264 compensable cases

reopened to December 31, 1936 was \$3,183.00 per case. In his computation, the Examiner rounded out this average to \$3,200.00.

TABLE F

Year of Accident	Years in Which Cases May be Reopened	Number of Years After Accident	Probable Number of Cases
1917	1937	20	1
1918	1937 - 1938	19 to 20	2
1919	1937 - 1939	18 to 20	4
1920	1937 - 1940	17 to 20	6
1921	1937 - 1941	16 to 20	9
1922	1937 - 1942	15 to 20	12
1923	1937 - 1943	14 to 20	16
1924	1937 - 1944	13 to 20	21
1925	1937 - 1945	12 to 20	27
1926	1937 - 1946	11 to 20	34
1927	1937 - 1947	10 to 20	42
1928	1937 - 1948	9 to 20	51
1929	1937 - 1949	8 to 20	61
		Total	<u>286</u>
1930	1937 - 1950	7 to 20	72
1931	1938 - 1951	7 to 20	72
1932	1939 - 1952	7 to 20	72
1933	1940 - 1953	7 to 20	72
1934	1941 - 1954	7 to 20	72
1935	1942 - 1955	7 to 20	72
1936	1943 - 1956	7 to 20	72
		Total	<u>504</u>
		Grand Total	<u>790</u>

The total projected incurred cost of the estimated number of cases (790) which will be reopened subsequent to December 31, 1936 on the basis of the average per case is \$2,528,000.00 without discount for interest from December 31, 1936 to the dates of reopenings.

On the basis of the actual experience during the period April 24, 1933 to December 31, 1936, the medical incurred losses on non-compensable reopened cases amounted to approximately 0.7% of the total compensation incurred cost of compensable cases. Accordingly, in his calculation, the Examiner added a loading of 0.7% to cover medical payments on non-compensable cases which may be reopened after December 31, 1936. The Examiner's estimate of the total incurred cost of cases which may be reopened in

the future arising out of accidents occurring on or before December 31, 1936 was based on an average incurred cost of \$3,200.00 (compensation and medical) plus a loading of 0.7% to cover medical payments on future non-compensable cases, and the total of the estimated losses of each year of reopening discounted at an interest rate of 3½% compounded annually, from December 31, 1936 to the year of reopening.

The estimated present values (also taking into consideration the 0.7% loading for medical payments on future non-compensable cases and above discount for interest) of the cases which may be reopened in the future and on which at least seven years have elapsed between the accident date and December 31, 1936 amounted to \$837,537.00.

The estimated present values (also taking into consideration the 0.7% loading for medical payments on future non-compensable cases and above discount for interest) of the cases which may be reopened in the future and on which less than seven years have elapsed between the accident date and December 31, 1936 amounted to \$1,289,064.00.

The Examiner's calculations appear to be reasonable on the basis of experience which is now available. However, future experience may substantially change the results. There is grave danger that the number of reopenings may increase as possible claimants become more claim conscious. The following table indicates the increase in the number of reopened cases each year since Section 25-a was enacted:

Year Reopened	Number of Compensable Reopenings	Amount of Compensable Reopenings
1933	20	\$109,029.70
1934	63	175,117.99
1935	84	267,194.12
1936	97	289,184.19
Total	264	\$840,526.00

In my opinion, the Insurance Department Examiner is to be commended for the excellent manner in which he has pioneered the way in estimating the liabilities of the Second Injury and Reopened Case Funds.

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ASSETS AND LIABILITIES OF THE REOPENED CASE FUND AS
OF DECEMBER 31, 1936

Assets as shown in the report of the Industrial Commissioner	\$ 201,702.88
Liabilities as estimated in the report of the Insurance Department Examiner dated July 29, 1937 were as follows:	
Liabilities on reopened cases for which awards against the Reopened Case Fund have already been made or which are under consideration by the Industrial Board	\$ 658,498.00
Estimated present value of awards on claims which may be reopened, which have already occurred and on which at least seven years have elapsed between the accident date and December 31, 1936.....	837,537.00
Estimated present value of awards on claims which may be reopened, which have already occurred and on which less than seven years have elapsed between the accident date and December 31, 1936.....	1,289,064.00
Total Liabilities of the Reopened Case Fund as of December 31, 1936.....	<u>2,785,099.00</u>
Deficiency of Reopened Case Fund as of December 31, 1936.....	<u><u>\$2,583,396.12</u></u>

A financial summary of the Reopened Case Fund for the four years 1933 to 1936 is shown in Table G.

The amount which would have been accumulated in the Reopened Case Fund according to the calculations of the Associate Actuary of the Compensation Insurance Rating Board of New York if a \$300 contribution in each no dependency death case award had been in effect from July 1, 1914 up to December 31, 1936 is \$745,849.00.

The average annual amount of awards paid into the Reopened Case Fund during the three year period 1934 to 1936, inclusive, was \$33,100.00, and the average annual amount of loss payments during the same period was \$62,623.61.

It therefore appears that the present \$300 contribution to the Reopened Case Fund in each no dependency death case award is far from sufficient to cover even the losses currently payable from

the Reopened Case Fund. It appears further from the calculations of the Associate Actuary of the Compensation Insurance Rating Board of New York that a contribution of between \$750 and \$1,000 to the Reopened Case Fund in each no dependency death case award would be required to meet the losses currently payable from the Reopened Case Fund.

VOCATIONAL REHABILITATION FUND

(Section 15, Subdivision 9 of the Compensation Law)

The Vocational Rehabilitation Fund was created by the provisions of Section 15, Subdivision 9 of the New York Workmen's Compensation Law. Two classes of payments are made from this fund. The first class of payments is ordered by the Industrial Commissioner and is made as additional compensation to crippled workmen while they are undergoing rehabilitation training. These payments are limited to \$10 per week and are intended to supplement the regular compensation payments while the trainee is obliged to be away from home undergoing vocational training.

The second class of payment made from this fund is for the administrative expenses of the Bureau of Rehabilitation of the New York State Education Department and the payments are ordered by the Commissioner of Education.

Subdivision 9 (formerly Subdivision 8) of Section 15 of the Compensation Law was added by Chapter 760, Laws of 1920 (effective May 13, 1920).

The contribution in each no dependency death case award to this fund was decreased from \$900 to \$500 by Chapter 615, Laws of 1922 (effective July 1, 1922), at which time the subdivision was also renumbered.

Subdivision 9 of Section 15 reads in part as follows:

"An employee, who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the state department of education is being rendered fit, to engage in a remunerative occupation, shall receive additional compensation necessary for his rehabilitation, not more than ten dollars per week of which shall be expended for maintenance. Such expense and such of the administrative expenses of the state department of education as are properly assignable to the expense of rehabilitating employees entitled to compensa-

tion as a result of injuries under this chapter, shall be paid out of a special fund created in the following manner: The employer, or if insured, his insurance carrier, shall pay into the vocational rehabilitation fund for every case of injury causing death, in which there are no persons entitled to compensation the sum of five hundred dollars."

The Commissioner of Taxation and Finance is the custodian of the Vocational Rehabilitation Fund. Disbursements from this fund for the additional compensation provided for by Section 15 are paid by the Commissioner of Taxation and Finance on vouchers signed by the Industrial Commissioner.

Disbursements from this fund for administrative expenses of the State Department of Education are paid by the Commissioner of Taxation and Finance upon vouchers signed by the Commissioner of Education.

As has been previously noted, \$250,000.00 was transferred from the Vocational Rehabilitation Fund to the Reopened Case Fund under the provisions of Chapter 384, Laws of 1933.

Under the provisions of Subdivision 9 of Section 15 of the Compensation Law, \$50,000.00 a year may be expended for the purpose of making studies of means and methods of eliminating hazards of dust and other occupational diseases commencing July 1, 1936 for a period of five years.

Chapter 888, Laws of 1936, which amended Subdivision 9 of Section 15, provides in part as follows:

"There may be expended from such fund (Vocational Rehabilitation Fund) annually for a period of five years commencing July first, nineteen hundred thirty-six and ending June thirtieth, nineteen hundred forty-one an amount not to exceed fifty thousand dollars in any one year, for the purpose of making such studies as may in the judgment of the industrial commissioner be advisable, of means and methods of eliminating hazards to life and health from dusts and other occupational diseases, and disseminating information on the subject of control and prevention, provided however, that any information obtained in connection with such studies and investigation shall not be admissible as evidence in any action at law or in the adjudication of any claim arising under the workmen's compensation law."

Incidentally, it may be of interest to note that Chapter 889, Laws of 1936 provided an appropriation of \$100,000.00 for the payment of expenses necessary to carry out the provisions of

Article 4-A of the Workmen's Compensation Law, and of Section 222-a of the Labor Law for the prevention of silicosis and other dust diseases. (See Special Bulletin No. 187 published by the Labor Department.)

An analysis of the receipts and disbursements of the Vocational Rehabilitation Fund for the nine fiscal years 1928 to 1936 inclusive, is contained in a report dated July 10, 1937 to State Comptroller, Morris S. Tremaine, by Mr. E. H. O'Connell, Assistant State Accounts Auditor.

Assets of the Vocational Rehabilitation Fund as of June 30, 1936 as shown by the report of Mr. E. H. O'Connell.	\$746,366.46
Liabilities of Vocational Rehabilitation Fund as of June 30, 1936.....	250,000.00

It appears that the liabilities of the Vocational Rehabilitation Fund as of June 30, 1936 amounted to little or nothing aside from the \$50,000.00 a year for five years for the study of dust and other occupational disease hazards.

A financial summary of the Vocational Rehabilitation Fund for the five year period ended June 30, 1936 is shown in Table G.

The administrative expenses (salaries) paid from the Vocational Rehabilitation Fund show marked increases since 1928, whereas the benefits to injured employees show a reduction since 1928. The following table briefly illustrates this point :

	Year Ended June 30th		
	1928	1932	1936
Personal Service (Salaries)	\$19,219.54	\$55,230.87	\$96,508.06
New Equipment.....	\$ 2,019.43	\$ 2,307.07	\$ 969.91
Rent	5,458.30	3,010.00	550.00
Communications	1,266.24	767.25	1,385.64
Printing	515.42	580.15	56.80
Administration Supplies	532.58	360.44	21.87
Miscellaneous . . . . .	..	109.30	18.99
Maintenance of Compensation			
Trainees	18,363.00	14,605.13	26,563.24
Tuition—Educational Institutions	11,244.86	9,232.91	7,741.37
Tuition—Industrial and Commercial	1,122.30	226.62	323.51
Tuition—Tutorial	867.00	439.50	30.50
Tuition—Correspondence			
Schools	186.00	24.50	69.90
Instructional Supplies.....	1,702.65	1,418.15	1,138.97
Trainee Travel.....	159.47	157.23	141.21
Artificial Appliances.....	907.50	1,203.50	1,060.00
Travel—General	8,539.74	844.24	..
Total Maintenance & Operation	\$53,157.49	\$35,285.99	\$40,071.91

The report of Mr. E. H. O'Connell on the Vocational Rehabilitation Fund contains the following statement:

"Although the disbursements shown on Schedule No. 3 cover all the disbursements made from the insurance 'No Dependency Award Fund' it nevertheless only covers about 50% of the annual total disbursements made on behalf of the Vocational Rehabilitation as the Federal and State appropriations cover the other 50%."

An interesting pamphlet was published by the Rehabilitation Clinic, New York City, in 1936. The title of the pamphlet is "Vocational Rehabilitation and Workmen's Compensation" with the following subtitle: "A Study of 322 Final Adjustments in Non-Scheduled Awards in Workmen's Compensation, Usually Called Compromised Agreements setting forth the relationship between Vocational Rehabilitation and Workmen's Compensation as established by law and practiced in New York State," by Carl Norcross, Rehabilitation Division, New York State Education Department, with an introduction by R. M. Little, Director, Rehabilitation Division, New York State Education Department.

The payment of the administrative expenses of the Bureau of Rehabilitation of the State Education Department was not one of the original purposes of the law. (See Chapter 760, Laws of 1920.) These expenses were made a charge on the Vocational Rehabilitation Fund only in 1926, six years after the fund had been created. (See Chapter 261, Laws of 1926.)

The payment of such administrative expenses out of the Vocational Rehabilitation Fund was adversely criticized in 1927 by the Industrial Survey Commission, a joint New York State legislative committee to study the labor and compensation laws, which proposed to amend the law and return the fund to its original purpose.

The Industrial Survey Commission in its report (Legislative Document No. 69, 1927, pages 40-41) to the Legislature on February 15, 1927, said in part:

"Under the provisions of subdivision 9 of section 15 of the Compensation Law, a fund is created by payments by an employer or his insurance carrier of \$500 in each case of an injury resulting in death in which there is no person entitled to compensation, which fund shall be used as additional compensation in an amount not to exceed \$10 a week for any

injured workman who is undergoing rehabilitation or vocational training under the direction of the State Department of Education.

"Through an amendment to this section there was inserted a provision that such of the administrative expenses of the State Department of Education as are properly assignable to the expense of rehabilitating employees entitled to compensation, shall be paid out of such special fund. The effect of the amendment of last year was to provide that employees of the State in the Department of Education may be paid directly out of this fund rather than out of the State Treasury through regular appropriations by the Legislature. Not alone does it seem to your Commission unsound to permit payments of salaries for State employees out of this fund and without their appearing in the annual budget of the State, but your Commission entertains grave doubt as to the constitutionality of such a provision. This special fund in the hands of the State Treasurer as custodian is not a fund belonging to the State. These moneys are not moneys of the State. It is a special fund of which the State Treasurer is merely the custodian, and it is created out of the insurance premiums drawn from industry and is held for the benefit of certain injured workers who are entitled to compensation. It seems to your Commission no more logical to pay the salaries of employees of the Department of Education who are engaged in the work of physically training these industrial cripples, than it would be to pay the salaries of referees or employees in the Department of Labor out of such fund.

"Your Commission therefore recommends that subdivision 9 of section 15 be restored to the form in which it existed prior to the amendment of last year."

TABLE G
 FINANCIAL SUMMARY OF SECOND INJURY (SPECIAL DISABILITY), REOPENED CASE
 AND VOCATIONAL REHABILITATION FUNDS
(Principally from Annual Reports of Industrial Commissioner)

Year Ended Dec. 31st	*Income	**Disbursements	Assets	Liabilities	Surplus (or Deficit)
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Second Injury (Special Disability) Fund:

1936	\$122,516.95	\$97,967.58	\$992,167.30	\$1,852,781.95	\$ -860,614.65
1935	121,508.87	96,260.13	970,592.56	***	***
1934	127,806.05	92,744.70	952,110.82	***	***
1933	129,547.76	81,896.64	926,101.54	***	***
1932	151,719.14	75,270.85	882,698.92	***	***

Reopened Case Fund:

1936	\$ 47,058.29	\$99,433.51	\$201,702.88	\$2,785,099.00	\$-2,583,396.12
1935	46,487.77	71,706.37	249,351.95	***	***
1934	34,856.41	17,930.96	274,353.93	***	***
1933	257,787.49	0.00	257,787.49	***	***

The 1933 income of Reopened Case Fund includes \$250,000.00 received from the Vocational Rehabilitation Fund.

VOCATIONAL REHABILITATION FUND

(Principally from Report of Assistant State Accounts Auditor)

Year Ended June 30th	*Income	**Disbursements	Assets	Liabilities	Surplus (or deficit)
1936	\$108,389.72	\$136,579.97	\$746,366.46	\$250,000.00	\$496,366.46
1935	115,829.82	129,032.89	***	***	***
1934	122,695.24	132,562.63	***	***	***
1933	131,199.72	93,796.58 (a)	***	***	***
1932	183,025.91	93,945.22	***	***	***

(a) Excludes \$250,000.00 transferred to Reopened Case Fund.

* Excludes proceeds of bonds sold or redeemed.

** Excludes amounts paid for investments.

*** Figure is not now available.

PROPOSED LAW AMENDMENTS AFFECTING THE SECOND INJURY,
REOPENED CASE AND VOCATIONAL REHABILITATION FUNDS

With reference to the Second Injury and Reopened Case Funds, it appears to be generally agreed at the present time that there is need for a concerted effort for common defense of claims against these special funds in view of the fact that at the present time most of the claims against these special funds probably are not properly defended. Since the financial motive for defending cases against these special funds is lacking, it appears that not many carriers make a proper defense of the cases, while others make only luke-warm efforts and some carriers make no efforts at all to defend cases against the funds. In fact there are cases where it is to the advantage of the carrier to favor an award against a special fund.

In view of this situation, steps have been taken looking towards the appointment of a common defender who would handle the cases against the Second Injury and Reopened Case Funds. The assessment for financing the work of the common defender would be pro-rated among the insurance carriers including self-insurers on the basis of the method now employed by the New York State Department of Labor in assessing the cost of administering the Workmen's Compensation Law.

At the last session of the New York State Legislature, a conference committee of the compensation insurance carriers proposed amendments to the Compensation Law which would:

- (a) Reduce the contribution to the Vocational Rehabilitation Fund from \$500 to \$200 in each no dependency death case award;
- (b) Combine the Second Injury and Reopened Case Funds and increase the combined contributions from \$800 to \$1,100;
- (c) Provide for an examination of the combined funds at least once in five years by the Superintendent of Insurance.

The bill provided further that in each no dependency death case where the amount of the compensation awarded is less than \$1,100, the employer, or if insured, his insurance carrier, shall pay into the combined Second Injury and Reopened Case Funds the difference between the amount of compensation awarded and the sum of \$1,100. The bill also provided for the elimination of the requirement for the payment of administrative expenses out of the Vocational Rehabilitation Fund.

AGGREGATE TRUST FUND

(Section 27 of the Compensation Law)

The Aggregate Trust Fund was created by the provisions of Section 27 which was a part of the original Compensation Law effective July 1, 1914. This section provides that the Industrial Board may, in its discretion, at any time, compute and permit, or require to be paid into the Aggregate Trust Fund an amount equal to the present value of all unpaid death benefits or other compensation in cases in which awards are made for permanent total or permanent partial disability for a period of 104 weeks or more, for which liability exists, together with such additional sum as the Industrial Board may deem necessary for a proportionate payment of expenses of administering the Aggregate Trust Fund.

Section 27 of the Compensation Law was amended by Chapter 255, Laws of 1935, so as to require that stock and mutual companies shall pay into the Aggregate Trust Fund the present value of all awards made on or after July 1, 1935 for death benefits and for total permanent disability resulting from the loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, or for permanent partial disability resulting from the loss of an arm, leg, hand, foot or eye.

Section 27 provides that all computations shall be upon the basis of the Survivorship Annuitants' Table of Mortality, the Remarriage Tables of the Dutch Royal Insurance Institution and interest at $3\frac{1}{2}\%$ per annum.

The law provides that the Aggregate Trust Fund shall be kept separate and apart from all other moneys of the State Insurance Fund and shall not be liable for any losses or expenses of administration of the State Insurance Fund other than the expenses involved in the administration of the Aggregate Trust Fund.

The law also provides that the State Insurance Fund shall not be charged with the losses or expenses of the Aggregate Trust Fund beyond the amount of such special fund.

In a recent court decision it has been held that the State Insurance Fund is simply the custodian of the funds paid into the Aggregate Trust Fund. (See decision of the State of New York Appellate Division, Third Department, In the Matter of the

Claim of Mr. John Pocaroba, dependent father, and Mrs. Josephine Pocaroba, dependent mother, for compensation under the Workmen's Compensation Law, on account of the death of Pauline Pocaroba, claimant, against State Insurance Fund, Aggregate Trust Fund, defendants, reported in the March 23, 1938 Workmen's Compensation Reports, Volume 22, No. 4).

The above decision contains the following statements:

"The state fund has no control over the amounts of awards; as custodian, its only duty is to pay over from the funds in its hand the awards directed by the board to be paid.

"Our conclusion is that in a proper case the board has power to order and direct payment from the state fund, irrespective of any objection to such procedure on the part of such fund."

The assets of the Aggregate Trust Fund are invested by the Industrial Commissioner with the approval of the Superintendent of Insurance in the same securities as provided for the investments of the State Insurance Fund. Section 93 of the Compensation Law provides that the assets of the State Insurance Fund may be invested by order of the Industrial Commissioner approved by the Superintendent of Insurance in securities in which a savings bank may invest the moneys deposited therein as provided in Subdivisions 1, 2, 3, 4, 5 and 6 of Section 239 of the New York Banking Law.

The administrative charge added to awards paid into the Aggregate Trust Fund is 3% of the commuted values of the benefits as provided in the following rule adopted by the Industrial Board on January 4, 1928:

"23. Administrative Charge in Aggregate Trust Fund Computations.

"RESOLVED, that in the commutation of any award under Section 27 of the Workmen's Compensation Law for payment into the Aggregate Trust Fund, the actuary shall add only three per cent of the present value for administrative expenses, this charge being deemed necessary and sufficient by the Industrial Board to cover the State Insurance Fund cost of administering the Aggregate Trust Fund."

The Aggregate Trust Fund always had a surplus until the year 1937. See Table H.

TABLE H
FINANCIAL SUMMARY (ON REVENUE BASIS) OF AGGREGATE TRUST FUND

Year Ended Dec. 31st	Income	Expenditures	Assets	Liabilities	Surplus (or Deficit)
1937	\$3,014,090	\$3,113,813	\$5,794,568	\$5,837,863	\$-43,295
1936	2,796,207	2,803,634	3,370,115	3,313,687	56,428
1935	359,655	352,912	863,359	799,504	63,855
1934	60,404	54,178	570,531	513,419	57,112
1933	90,827	81,332	594,463	543,577	50,886
1932	90,424	81,363	568,243	526,851	41,392
1931	151,738	149,597	549,469	505,658	43,811

The small deficit (\$43,295.31) in the Aggregate Trust Fund as of December 31, 1937 has resulted from the fact that the interest earned on the large amounts of funds which have been deposited in this special fund during the last two or three years has averaged less than the 3½% assumed in calculating the present values of awards. See Table I.

TABLE I
EXCESS (OR DEFICIENCY) IN INTEREST EARNINGS OF THE
AGGREGATE TRUST FUND

Calendar Year	Interest Earned	Interest Required to Maintain Reserve	Excess Interest Earnings (Deficiency Indicated by Minus Sign)	Increase in Surplus (Decrease Indicated by Minus Sign)
1937	\$109,347	\$155,441	\$-46,094	\$-99,724
1936	49,497	69,864	-20,367	-7,427
1935	24,012	22,302	1,710	6,743
1934	24,608	17,955	6,653	6,227
1933	24,067	18,183	5,884	9,494
1932	23,479	17,495	5,984	-2,420
1931	22,086	15,482	6,604	1,132

It is quite possible that the deficiency in interest earnings on investments of the Aggregate Trust Fund may be offset in part at least in the future by favorable remarriage and mortality experience. If the investment situation should improve as respects interest yields on high grade investments, the deficiency in interest earnings might be gradually eliminated or turned into an excess of interest earnings over the amount of interest required to maintain reserve.

Inasmuch as the only sources of income of the Aggregate Trust Fund are the awards deposited by carriers and interest earnings, it is clearly evident that the deficit in the Aggregate Trust Fund can be overcome only by increasing the amount of the awards or by higher investment yields.

Several suggestions for amending Section 27 were made prior to the time when the deficit actually accrued and also prior to the time when Section 27 was amended in 1935 inasmuch as it was anticipated by the custodian of the Aggregate Trust Fund that the interest earnings would not equal the interest required to maintain reserve.

One of the suggestions which has been made is that the rate of interest assumed in calculating the present values of death and permanent disability benefits be reduced from $3\frac{1}{2}\%$ to 3% or even $2\frac{1}{2}\%$. One of the principal difficulties with this suggestion is that it would require the calculation of an entirely new set of tables corresponding to the tables now printed in Special Bulletin No. 190 of the New York State Department of Labor. Furthermore, the investment situation possibly, though not likely, may change materially within the next several years.

Another suggestion which has been made is that a small loading be added to the awards paid into the Aggregate Trust Fund, such loading to be collected as long as may be necessary to insure the solvency of the Aggregate Trust Fund.

GENERAL CONCLUSIONS

The financial condition of the various special funds is a matter of serious concern to the compensation insurance carriers inasmuch as they are likely to be called upon for additional contributions to at least two of the special funds.

Second Injury Fund: Although the present \$500 contribution to this fund in each no dependency death case award appears to be approximately sufficient to cover the current losses of this special fund, there is nevertheless an indicated deficit, amounting to \$860,614.65 as of December 31, 1936, which must be taken into consideration.

Reopened Case Fund: The present contribution of \$300 to the Reopened Case Fund in each no dependency death case award appears to be grossly insufficient to cover even the current losses of this special fund. In addition, there is an indicated deficit, amounting to \$2,583,396.12 as of December 31, 1936, which must be taken into consideration.

The proposal made by a conference committee of the compensation insurance carriers to amend the Compensation Law so as to decrease the contribution to the Vocational Rehabilitation Fund in each no dependency death case award from \$500 to \$200 and to increase the combined contributions to the Second Injury and Reopened Case Funds in each no dependency death case award from \$800 to \$1,100 would no doubt improve the situation. A further improvement in the situation could be effected by better defense of claims against the Second Injury and Reopened Case Funds along the lines hereinabove discussed. While these proposals constitute a good beginning it is doubtful whether they will solve completely the problem created by deficits in the Second Injury and Reopened Case Funds. It is probable that additional steps will be required in the future.

Vocational Rehabilitation Fund: This fund is in a flourishing financial condition with assets of \$746,366.46 as of June 30, 1936 and apparently no liabilities aside from the \$50,000 a year for five years for the study of dust and other occupational diseases. The \$500 contribution to the Vocational Rehabilitation Fund in each no dependency death case award appears to be far more than sufficient to cover the current needs of this special fund. In addition to the \$250,000.00 which has been or will be transferred from the Vocational Rehabilitation Fund for the study of dust and other occupational diseases, \$250,000.00 was transferred in 1933 from this special fund to the Reopened Case Fund. Even if the contribution to the Vocational Rehabilitation Fund in each no dependency death case award should be reduced to \$200, it would still appear to be sufficient to meet the needs of this special fund under its present methods of operation.

The problems with respect to the Vocational Rehabilitation Fund are as follows:

- (a) Should the work of rehabilitating injured employees be extended?

- (b) Should the contributions to this special fund in each no dependency death case award be reduced?
- (c) Should the surplus of this special fund be used for other purposes?

Aggregate Trust Fund: The interest earnings on investments of the Aggregate Trust Fund have been insufficient to equal the interest required to maintain reserve. This has resulted in a small deficit in the Aggregate Trust Fund as of December 31, 1937, whereas in each of the previous years the fund had a surplus. While this deficit has not yet assumed large proportions it would seem to be advisable to correct the situation before serious harm is done. This situation could be remedied easily by providing for a small additional loading on the awards paid into the Aggregate Trust Fund for as long as may be necessary to overcome the deficit.

It is hoped that the interest which has been aroused in the special funds under the New York Workmen's Compensation Law will result in measures which will improve the financial condition of these special funds.