

RECENT DEVELOPMENTS IN CONNECTION WITH THE  
SPECIAL FUNDS UNDER THE  
NEW YORK WORKMEN'S COMPENSATION LAW

BY

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In 1938 Mr. Grady H. Hipp presented a paper entitled "Special Funds under the New York Workmen's Compensation Law,"\* wherein he discussed the legislation, history and financial status of the following special New York funds:

1. Second Injury (Special Disability) Fund—Section 15, Subdivision 8.
2. Reopened Case Fund—Section 25-a.
3. Vocational Rehabilitation Fund—Section 15, Subdivision 9.
4. Aggregate Trust Fund—Section 27.
5. Workmen's Compensation Security Funds—Sections 106 to 109j, inclusive.

Particular attention was called to the financial impairment of the Reopened Case Fund, as indicated by an examination of the Insurance Department as of December 31, 1936, and to the deficit incurred by the Aggregate Trust Fund at the end of 1937 due to insufficient interest earnings. The problems of improving the financial condition of these special funds were presented as requiring the attention of the insurance carriers.

Considerable study has since been given to correcting the situation with regard to the Reopened Case Fund and the Aggregate Trust Fund. The developments that have taken place in this connection will be outlined in this paper. In addition, brief reference will be made to the present status of the other special funds listed above.

REOPENED CASE FUND

The Reopened Case Fund, created under Section 25-a of the New York Workmen's Compensation Law, assumes the liability for medical costs and compensation payable to claimants in cases reopened more than seven years after the date of injury or death and more than three years after the date of last payment of compensation.

An examination of the Fund as of December 31, 1936 showed that assets of only \$201,703 were available against liabilities for known cases of \$658,498 and estimated liabilities for probable future reopened cases of \$2,126,601. As of December 31, 1938, the assets were \$77,480. The Fund was rapidly being depleted due to the inadequacy of the income from con-

\* *Proceedings of the Casualty Actuarial Society*, Volume XXIV, May 20, 1938.

tributions of \$300 in each no dependency death case award to meet current losses.

A permanent increase in income was needed to provide for current loss payments and incurred liabilities. Moreover, in view of the constant increase in the number of compensable reopenings, various brakes on the outgo of the Fund, especially with respect to unwarranted claims, were necessary if the Fund was to be maintained in a solvent condition. In order to restrict awards to meritorious claims, it was essential that the Fund be adequately defended. It was also necessary to place some limitation on the period during which cases could be reopened.

The program for restoring the solvency of the Reopened Case Fund will be discussed under the following headings:

- (1) Defense of the Fund
- (2) Statute of Limitations
- (3) Increase of Contributions

#### (1) *Defense of the Fund*

Under Section 25-a the financial liability for cases reopened after a given period was transferred to the Special Fund, but the defense of the Fund against such cases was the responsibility of the employers or insurance carriers originally liable for the payment of compensation.

The lack of financial incentive often resulted in inadequate defense of the Fund. It was therefore likely that awards were made in some cases which might have been declared non-compensable had the full facts been obtained by the defense. To remedy this situation, the carriers in cooperation with the self-insurers undertook, in 1938, the organization of a special unit, known as the Special Funds Conservation Committee, for the defense and conservation of the Reopened Case Fund.

An amendment to Section 25-a, effective April 10, 1939, gave this committee legal status by providing for the designation of the Attorney of the committee as the representative of the Fund in proceedings brought to enforce claims against the Fund. The Conservation Unit is now operating as the only agency defending the Fund.

#### (2) *Statute of Limitations*

In addition to undertaking the defense of claims against the Reopened Case Fund, the Special Funds Conservation Committee gave serious study to other aspects of rehabilitating the Fund.

The existing law placed no limitation on either the time within which a claim could be reopened or on the amount of back compensation payable to a successful claimant. The Fund was thus faced with the liability for

some cases where the great lapse of time after the original accident made it difficult, if not impossible, to obtain files, hospital and medical records, or witnesses necessary to check employees' claims.

Severe drains on the resources of the Fund were often made by awards for large amounts of back compensation. Because of the difficulty of determining the actual condition of the claimant for the past period, and because the claimant's failure to take earlier action is an indication that disability may not have been very serious, a limitation of retroactive compensation was deemed proper.

The following statute of limitations was adopted:

- (a) No award against the Special Fund shall be made retroactive to a date more than two years prior to the date of the application.
- (b) For cases in which compensation payment was made, and also cases which would have been compensable if disability extended beyond seven days, no award against the Special Fund may be made after a lapse of 18 years from the date of injury or death and also a lapse of 8 years from the date of last payment of compensation.
- (c) Cases previously disallowed or otherwise disposed of after a hearing, and cases where disability lasted seven days or less and for which no determination was made of the merits, may not be reopened after seven years from the date of accident. (Such cases are thus barred from being reopened under Section 25-a.)

The first two limitations were incorporated in Section 25-a by Chapter 686, Laws of 1940, together with amendments involving contributions payable into the Fund. The last limitation was incorporated in Section 123. It was provided that the limitations on reopening would not become effective for 180 days from July 1, 1940, the effective date of the new law.

### *(3) Increase of Contributions*

The financial status of the Fund as of December 31, 1938 indicated that sufficient funds would not be available to meet loss payments in 1939 unless additional income was obtained. The loss payments for 1938 were more than \$150,000 while the income from awards was less than \$50,000. The assets available for 1939 were only \$77,480.

Pending the determination of the statute of limitations, it was agreed, as a temporary solution, to levy an assessment of \$150,000 against the carriers and self-insurers in addition to the amounts already provided for by law. Provision for this assessment was included in Section 25-a, effective April 10, 1939, concurrently with the amendment involving the defense of the Fund. Payments were to be made in proportion to indemnity losses paid by the carriers during the fiscal year ended June 30, 1938. The assessment rate was determined to be 0.48% of such indemnity payments.

The assessment, by law, was to constitute an element of loss for the purpose of establishing compensation rates and necessitated a law amendment factor of 1.003 in the July 1, 1939 rate structure. The carriers were instructed to treat the assessment as a loss, rather than as a tax item, in their records, that is, in their Loss Ratio Data and Casualty Experience Exhibits, so that proper recognition would be given to this item in future rate revisions.

In developing the principles for a more permanent plan which would place the Fund on a solvent basis, consideration was given to various proposals, including provisions for an actuarial reserve basis, for a "current loss" or "pay-as-you-go" basis and for a middle course or modified reserve basis. As a practical matter, in order not to place too heavy a burden on the carriers, a modified plan was adopted to provide funds for current loss payments and for known liabilities incurred:

- (a) In no dependency death cases, the contribution to the Reopened Case Fund was increased from \$300 to \$1,000. It was further provided that if the actual cost of a death case involving dependency was less than \$2,000 exclusive of funeral expense (that is, less than the sum of all contributions payable in a no dependency death case), the difference between such actual cost and \$2,000 would be payable into the Reopened Case Fund. No contributions would be payable into the Fund for dust disease cases arising under Article 4-A, however, in view of the limited compensation benefits provided for all such cases.

These amendments were effective as respects cases for which the date of accident was July 1, 1940 and thereafter.

- (b) In each permanent partial schedule case award, a payment of five dollars was to be made to the Reopened Case Fund at the time of the original award. Such payments were applicable to accidents occurring during the seven year period beginning July 1, 1940.
- (c) A special assessment of \$150,000 was to be levied in 1940, in a similar manner as levied in 1939, to provide immediate funds. Contributions due under items (a) and (b) above would not be immediately forthcoming in view of the necessary time lag in making awards.

The financial plan adopted above was incorporated in Section 25-a, along with the statute of limitations and several other amendments, by Chapter 686, Laws of 1940.

The annual income of the Fund under the amended law, exclusive of the special assessment of \$150,000 in 1940, was estimated at the time to be \$275,000, apportioned as follows:

1. \$140,000 from no dependency death cases. This estimate was based upon the average number of awards in such cases in calendar years 1937 to 1939.
2. \$50,000 from low cost dependency death cases. This estimate was

determined from cases reported under the Unit Statistical Plan for policy years 1934 to 1936 and included an adjustment for the experience of self-insurers.

3. \$85,000 from permanent partial schedule cases. Special Bulletin 202 of the Department of Labor showed an average of 17,000 awards made for such types of cases in calendar years 1936 and 1937.

The contributions from death cases were expected to provide sufficient funds for current loss payments, estimated to be about \$150,000 a year on the basis of disbursements made in calendar years 1937 to 1939. (See Table C attached, which presents a summary of the cash transactions of the Fund since its beginning.) The total income from the assessments of \$5 in permanent partial schedule cases was expected to liquidate over a period of seven years the deficit accrued in connection with awards made against the Fund in the past.

In the July 1, 1940 rate revision a law amendment factor of 1.008 was included to give effect to the special assessment of \$150,000 and to the increased costs for death and permanent partial cases because of payments into the Fund. The special assessment, which amounted to 0.48% of the carriers' compensation payments for the fiscal year ended June 30, 1939, was to be included as a loss item in experience records as was the assessment levied in 1939.

#### *Examination of the Reopened Case Fund*

One of the new provisions of Section 25-a required that the Commissioner of Taxation and Finance furnish the Industrial Commissioner with an annual statement of the Reopened Case Fund, covering income and disbursements and the balance of moneys at the beginning and end of each fiscal year. A copy of such statement was to be transmitted to the Superintendent of Insurance who was required to examine the Fund every two years, verify the receipts and disbursements and ascertain the liability of the Fund with respect to awards which had been made against it.

Accordingly, the financial condition of the Fund was examined by the Insurance Department as of June 30, 1940. A statement of the receipts and disbursements of the Fund for the fiscal year ended June 30, 1940 as determined by the insurance examiner is shown below:

TABLE A  
RECEIPTS AND DISBURSEMENTS — JULY 1, 1939 TO JUNE 30, 1940

<i>Receipts</i>		
No dependency death awards.....		\$ 44,365.40
Special assessments .....		4,089.19
Interest—on bonds .....	\$ 1,975.00	
—on awards .....	40.09	
Total interest .....		<u>2,015.09</u>
Total receipts .....		\$ 50,469.68
Ledger assets June 30, 1939.....		<u>184,003.86</u>
		<u>\$234,473.54</u>
<i>Disbursements</i>		
Awards—compensation .....	\$144,779.07	
—medical .....	30,286.06	
Total disbursements .....		<u>\$175,065.13</u>
Balance—ledger assets June 30, 1940		<u>\$ 59,408.41</u>

The assets and liabilities as of June 30, 1940 are also shown below:

TABLE B

<i>Assets</i>			
	Ledger	Non-Ledger	Admitted Assets
Cash .....	\$ 13,408.41		\$ 13,408.41
Bonds (par value).....	46,000.00		46,000.00
Interest accrued—on bonds .....		\$ 629.57	629.57
—on awards*.....		14.35	14.35
No dependency death awards*.....		1,938.46	1,938.46
Special assessment**.....		150,000.00	150,000.00
Total .....	<u>\$ 59,408.41</u>	<u>\$152,582.38</u>	<u>\$211,990.79</u>
<i>Liabilities</i>			
Reserve for cases on which awards have been made and charged against the Fund—compensation —medical .....		\$764,776.00 98,104.00	
Total .....			862,880.00
Deficit .....			<u>— 650,889.21</u>
			<u>\$211,990.79</u>

\* Award made prior to June 30, 1940 and received subsequently.

\*\* Assessment effective July 1, 1940 and collected in full subsequently, was approved April 22, 1940.

In determining the liabilities of the Fund, only those cases on which awards had been made and charged against the Fund on or prior to June 30, 1940 were considered, in accordance with the provisions of Section 25-a. Reserves for probable life pension cases and for dependency death cases

were computed on the basis of the Survivorship Annuitants' table of mortality with interest at  $3\frac{1}{2}\%$  per annum.

At the same time the examiner reviewed all cases pending before the Industrial Board on which no determination had been made on or prior to June 30, 1940. There were 153 such cases with an estimated cost of \$476,648 for compensation and \$51,913 for medical, or a total estimated cost of \$528,561.

Some of the findings and recommendations of the examiner, as contained in his report to the Insurance Department, are summarized below:

1. It was recommended that the reserve for outstanding losses be ascertained at least annually and be included in any statement of condition of the Fund.
2. The assets of the Fund as of June 30, 1940 were inadequate to discharge the future cost of cases on which awards had been made against the Fund on or prior to June 30, 1940.
3. It was recommended that provision be made for the cost of known cases pending on June 30, 1940 as a liability of the Fund.
4. It also seemed desirable to give consideration to the accumulation of a contingency reserve to meet the potential liability for cases where injuries occurred prior to June 30, 1940 and which would be reopened in the future and become actual charges against the Fund.
5. It was recommended that more complete records of income and disbursements and of all claims be maintained in order to facilitate the preparation of financial statements and the determination of the liabilities of the Fund as required by law.

After publication of the examiner's report, the question of the adequacy of funds for the next fiscal period was considered. A statement of the cash position of the Fund as of December 31, 1940 showed that the income for 1940 did not greatly exceed that for 1939. This indicated that very little income was derived from the 1940 law amendments. It was expected that the effect of such amendments would soon emerge to a much greater extent and that a total income from awards of \$100,000 to \$150,000 would be realized in 1941. (The actual net receipts from awards in 1941 were \$161,459.)

The loss payments for calendar year 1940 were considerably higher than those for 1939 and exceeded the previous estimate of annual disbursements. This amount included large retroactive payments for a few cases. It was believed that the increase may possibly have been due to the fact that a large number of cases still pending in 1938 when the Conservation Unit began to function were finally decided upon in the latter part of 1939, and payments therefor began in 1940. It was not expected that the disbursements for 1941 would show a further increase or exceed \$200,000 because of the statute of limitations.

The assets of \$147,809 as of December 31, 1940 plus the expected income

for 1941 seemed sufficient to meet the obligations for 1941, but to assure that no possible cash deficit would occur, an assessment of \$100,000 was levied by Chapter 376, Laws of 1941. The assessment rate was 0.31% of the compensation loss payments of each carrier for the fiscal year ended June 30, 1940. A law amendment factor of 1.002 was included in the revised rates effective July 1, 1941 to provide for this item.

With respect to the outstanding liabilities on cases for which awards had been made, it was believed that the \$5 assessment on schedule award cases would, because of the increased industrial activity at the present time, be able to liquidate the accumulated deficit.

### *Cases Open and Pending on April 24, 1933*

Section 25-a contains a provision that such section does not apply to any case open and pending on April 24, 1933 (the date of the original enactment of Section 25-a) nor does it apply during the pendency of an appeal.

In view of such provision, the Industrial Board ruled, on February 2, 1940, that any case which was open and pending on April 24, 1933 and subsequently closed, could not thereafter be reopened against the Reopened Case Fund. Awards for all such cases reopened were to be charged against the employer or carrier originally liable. There were some doubts, however, as to the correctness of this interpretation, and since appeals from such awards against the carriers had been taken and were still pending, the Board requested clarification of these points by the Appellate Division.\*

The court decision (July 2, 1941) indicated that the statement that the provisions of Section 25-a shall not "apply during the pendency of an appeal" was not intended to bar for all times the payment of compensation by the Fund to claimants in such cases. The purpose of the provision was to prevent inroads upon the Fund pending final determination of an appeal. In the event of an award against the Fund as a result of an appeal, the compensation covering the period of appeal was chargeable against the Fund.

With respect to the application of Section 25-a to cases open and pending on April 24, 1933, it was stated that the provision was intended to prevent an immediate drain upon the Fund at its inception and precluded only cases that were then open and pending or in which an application to reopen had been made. If such cases were later closed by awards and subsequently reopened, awards would be made against the Fund, provided the time limitations were met.

In view of this decision, about thirty-seven cases formerly chargeable to the carriers were transferred to the Fund. These involved an estimated

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\* Samuel Riddle *vs.* General Ice Cream Corporation.



potential liability of \$334,397. In approximately one-third of the cases awards have already been made and payments must now be made from the Fund. The majority of cases are still being controverted, and many may never be charged against the Fund. In any event, however, a substantial additional liability has been added to the Fund.

To provide for this additional liability, it has been agreed to increase the present \$5 assessment on each schedule award case to \$10 effective on such cases with date of accident July 1, 1942 or thereafter. Such assessments will be discontinued with respect to cases with date of accident on or after July 1, 1947. An over-all law amendment factor of 1.001 will be included in the rate revision for July 1, 1942 to give effect to this amendment which became law in April, 1942.

### *Conclusions*

Sufficient time has not yet elapsed to determine whether the 1940 law amendments will achieve the objectives for which they were designed: (1) to provide adequate income for current loss payments, (2) to eliminate over a period of seven years the existing deficit on known liabilities, and (3) to curtail the losses of the Fund by various limitations.

On the basis of the figures for calendar year 1941, it appears that previous estimates of the annual income resulting from such amendments will be realized. In the first six months of 1941, the net income, exclusive of the special assessment, was \$64,908; in the second six months, \$98,680. If the latter figure is doubled, an income of at least \$200,000 is indicated for 1942.

When the full effect of the increase of contributions in no dependency death cases develops, the anticipated income of at least \$140,000 from this source should be reached. Of the 147 payments to the Fund in 1941 for no dependency death cases, only eighty-four were on the \$1,000 basis. The remainder were on the \$300 basis for accidents occurring prior to July 1, 1940.

There is a considerable time lag in realizing income from dependency death cases under \$2,000, but there should be a gradual rise in income from this source. Certain modifications in the expected income will result, however, from the following two amendments to the New York Compensation Law relating to payments in death cases:

- (1) An amendment to Section 16, effective July 1, 1941, providing for the use of a minimum wage of \$75 a month in the calculation of death benefits to widows and children; and
- (2) An amendment to Section 27 providing for the payment to the Aggregate Trust Fund of an additional amount equal to 6% of the present value of each case on all awards for accidents occurring on or after July 1, 1941.

Both of these provisions will increase the cost of death cases and, hence, reduce the contributions to the Fund from low cost dependency cases. It has been estimated that the first amendment will reduce the income from this source by 20%.

Previous estimates of future loss payments and of outstanding liabilities will also require modification because of the recent decision involving cases open and pending on April 24, 1933. The effect of the transfer of such cases to the Fund is reflected to a very small extent, if at all, in the calendar year figures for 1941. The loss payments for 1941 did, however, show a drop from the previous year. It is expected that the income from schedule award cases, which has been increased from \$5 to \$10 per case for accidents occurring on or after July 1, 1942, will be adequate to eliminate the deficit on outstanding liabilities.

Since the Fund has been in existence for a comparatively short time, it is not possible to predict with any degree of certainty what the future losses will be. It is likely that the rate of reopening will increase in the future as the provisions of the law become more widely known to possible claimants. On the other hand, the statute of limitations and the excellent work done by the Conservation Unit should curtail the increase in liability to some extent.

The condition of the Fund should be closely watched in the near future to determine the adequacy of the income on the basis of the actual experience developed, including the new estimates of outstanding liabilities which will be made by the Insurance Department. If it is found, after taking into account new developments which may not yet be reflected in the experience, that future receipts and disbursements are out of line with previous estimates and result in an increasing deficit in the Fund, further amendment to Section 25-a may be necessary. At such time consideration could be given to providing for the undisclosed liabilities of the Fund. The accumulation of reserves for such liabilities would decrease the deficit of the Fund and would prevent the recurrence of situations requiring further amendments to Section 25-a to provide for the increased losses of the future.

**TABLE C**  
**STATEMENT OF CASH TRANSACTIONS—REOPENED CASE FUND (SECTION 25-a)**

Period	I N C O M E				Loss Payments	Cash Plus Bonds at Par Value at End of Period
	Net Income from No Dependency Death Cases	Income from Other Contributions	Interest + Profit or Loss on Investments	Total Income (2) + (3) + (4)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
4/24/33	..	..	..	..	..	\$250,000
4/24/33 to } 12/31/33 }	\$ 4,500	..	\$ 3,287	\$ 7,787	..	257,787
1934	25,200	..	9,297	34,497	\$ 17,930	274,354
1935	35,400	..	10,704	46,104	71,106	249,352
1936	37,500	..	13,685	51,185	98,834	201,703
1937	44,700	..	13,102	57,802	89,704	169,801
1938	47,859	..	11,514	59,373	151,694	77,480
1939	40,919	\$149,793 (a)	2,010	192,722	145,822	124,380
1940	51,404	150,000 (a)	2,029	204,556	181,127	147,809
		410 (b)				
		713 (c)				
1941	100,250	100,000 (a)	2,129	263,588	173,568	237,829
		55,205 (b)				
		6,004 (c)				

NOTES: (a) Special assessment levied on all insurance carriers.  
(b) \$5 contributions levied in permanent partial schedule cases.  
(c) Contributions from low cost dependency cases.

## AGGREGATE TRUST FUND

Section 27 of the Compensation Law provides for the deposit into the Aggregate Trust Fund of the present value of awards for death benefits and for compensation in certain types of permanent disability cases, whereupon all further liability for such benefits is assumed by the Fund. In the event of a subsequent modification of an award by the Industrial Board, the necessary adjustment in deposit is made. All computations of present values are based on specified mortality and remarriage tables and interest rate. Liability for medical treatment is retained by the carrier.

Under the original provisions of the section, deposits were required or permitted at the discretion of the Industrial Commissioner. Effective July 1, 1935, however, after the occurrence of numerous receiverships in casualty companies which affected the compensation of many claimants, especially those who were entitled to long term benefits, such deposits were made mandatory in the case of stock and mutual carriers.

This amendment resulted in a tremendous increase in the receipts of the Fund. At the same time, there was a decline in the interest rate on those types of securities in which the Fund was permitted to invest, and the interest earnings were less than the  $3\frac{1}{2}\%$  rate fixed by law as a basis for commutation of awards. The deficiency in interest earnings, combined with a small loss from mortality and remarriage experience, resulted in a deficit in the Fund for calendar year 1937. In view of the investment situation, it was expected that the deficit would increase in the future as long as a  $3\frac{1}{2}\%$  rate was retained in the law.

Since the insurance carriers in general were unable to earn  $3\frac{1}{2}\%$  interest on their investments at this time, it was believed desirable to reduce the interest rate used in computing awards which were payable into the Aggregate Trust Fund and any of their other compensation liabilities. Section 27 was therefore amended by Chapter 512, Laws of 1939, to provide for the computation of awards payable into the Fund on the basis of interest at 3% where the accident occurred on or after July 1, 1939. The Actuary of the Fund indicated, however, that a still lower rate was probably necessary to make up the accrued deficit of the Fund.

Concurrently with the foregoing amendment, other amendments to Section 27 were enacted to correct various inequities of the existing law with respect to awards payable into the Aggregate Trust Fund. The most important are given below:

1. In third party cases payment of an award into the Fund shall be postponed for a stated period if the claimant has not yet started third party action, or until the termination of any such third party action brought by the claimant.

Prior to this amendment, payment of the full award may have been required pending or previous to a third party action, with no subsequent adjustment of the award made, even where a successful action decreased the liability of the Fund. Now the carrier has an opportunity to determine whether action will be taken against the third party and is given the benefit of the decreased liability if a recovery has been made.

2. Where an award to the Fund is reaffirmed after appeal by the carrier, the carrier shall pay simple interest on the amount of the original award at 3% per year (up to the date of payment into the Fund), plus simple interest at 6% per year on payments accrued to the claimant, the latter interest to be paid to the claimant.

Heretofore the carrier was required to pay simple interest at 6% per year on the entire amount of the award and thus was unduly penalized since the claimant was entitled to receive 6% interest only on accrued compensation. Under the new provision, the carrier pays the claimant the 6% interest due and reimburses the Fund for its loss of interest up to the date on which payment is made.

3. The carrier shall be entitled to the unexpended balance of an award for permanent disability, other than for a definite number of weeks, plus simple interest at 3% per year, in the event a subsequent award is made for death arising out of such injury.

Heretofore in such cases, the carrier was required to pay the full value of a death award and received no credit for the unexpended balance of the previous award.

4. Where an award for permanent partial disability for a definite number of weeks has been paid into the Fund, if the injured employee dies prior to the end of such period, the carrier shall be entitled to the present value of the unexpended disability benefits not payable to beneficiaries, computed on the basis of annuities certain with interest at 3% per year.
5. Awards for permanent partial disability for a definite number of weeks shall be computed on the basis of annuities certain with interest at 3½% per year for accidents prior to July 1, 1939 and at 3% per year for accidents occurring thereafter.

Previously the section did not specify the use of annuities certain in such computations.

The first two of the above amendments were effective on July 1, 1939 regardless of the date of accident. The third and fourth amendments applied only to accidents occurring on or after July 1, 1939.

The long term cases reported for policy year 1937 under the Unit Statistical Plan were revalued on a 3% interest basis to determine the effect of the change in the interest rate. An increase of about 5% in the cost of death and permanent total cases was indicated, which necessitated an over-all law amendment factor of 1.007 in the rate structure effective July 1, 1939.

While the change in interest rate provided for a material increase in income, it was found to be inadequate in view of the continued low rate of

interest earned by the Fund. The total net interest earnings of the Fund, expressed as a percentage of the mean amount of cash and bonds, exceeded 4% in the four calendar years preceding 1935. In 1935 they dropped to 3.39%, and subsequently have remained below 3%.

The following tables supplement Tables H and I presented in Mr. Hipp's paper and show the increasing deficit of the Fund due to insufficient interest earnings:

TABLE D  
FINANCIAL SUMMARY (ON REVENUE BASIS) OF AGGREGATE TRUST FUND\*

Year Ended Dec. 31st	Income	Expenditures	Assets	Liabilities	Surplus or Deficit (-)
1941	\$2,946,791	\$2,988,772	\$12,519,721	\$12,749,161	— \$229,440
1940	2,810,407	2,863,566	10,919,090	11,106,549	— 187,459
1939	2,492,472	2,564,196	9,282,622	9,416,921	— 134,299
1938	2,841,870	2,861,150	7,768,219	7,830,794	— 62,575
1937	3,014,090	3,113,813	5,794,568	5,837,863	— 43,295

TABLE E  
EXCESS (OR DEFICIENCY) IN INTEREST EARNINGS OF THE AGGREGATE TRUST FUND\*

Calendar Year	Interest Earned**	Interest Required to Maintain Reserve (Estimated)	Excess Interest Earnings (Deficiency Indicated by Minus Sign)	Increase in Surplus (Decrease Indicated by Minus Sign)
1941	\$283,026	\$396,802	— \$113,776	— \$41,981
1940	288,216	348,049	— 59,833	— 53,160
1939	204,549	296,624	— 92,075	— 71,724
1938	180,274	239,202	— 58,928	— 19,280
1937	95,355	155,441	— 60,086	— 99,724

\* These tables have been taken from the State Insurance Fund Actuary's memorandum of May 18, 1942, "Re: Reports of the Aggregate Trust Fund Covering the Last Six Calendar Years."

\*\* Interest earned including gain or loss from change in difference between book and amortized value of bonds, and including profit or loss on maturity of bonds.

The following analysis of the changes in the surplus of the Fund indicates that the gains from mortality and remarriage experience have exceeded the losses from these sources during the last five calendar years. It will be noted that income from interest paid by carriers as shown in item (4) will be eliminated in the future by the provision calling for payments of 3% interest instead of 6% on awards which have been affirmed upon appeal. Further reduction in income will result from the amendments providing that the carrier shall be entitled to the unexpended balance of awards for disability when the claimant dies.

**TABLE F**  
**ANALYSIS OF CHANGES IN SURPLUS OF AGGREGATE TRUST FUND DURING CALENDAR YEARS**  
**1937, 1938, 1939, 1940 AND 1941\***

	CALENDAR YEAR				
	1937	1938	1939	1940	1941
(1) Excess or deficiency (—) in interest earnings over interest required to maintain reserve.....	— \$60,086	— \$58,928	— \$92,075	— \$59,833	— \$113,776
(2) Gain or loss (—) from mortality and remarriage experience under annuities to dependents in death cases .....	— 45,818	21,183	13,227	— 4,717	67,509
(3) Gain or loss (—) from mortality experience under annuities on permanently disabled lives.....	— 991	— 1,563	— 1,601	7,084	— 1,360
(4) Estimated amount of interest paid to Aggregate Trust Fund by insurance carriers less portion thereof paid by Fund to claimants.....	10,579	15,338	14,370	11,513	9,446
(5) Gain or loss (—) from miscellaneous sources .....	— 3,408	4,690	— 5,645	— 7,207	— 3,800
(6) Total increase or decrease (—) in surplus .....	— \$99,724	— \$19,280	— \$71,724	— \$53,160	— \$ 41,981

\* This table has been taken from the State Insurance Fund Actuary's memorandum of May 18, 1942, "Re: Reports of the Aggregate Trust Fund Covering the Last Six Calendar Years."

In order to establish the Fund on a solvent basis, further amendment to Section 27 was necessary. It was agreed to provide for additional payments of 6% on all awards for which the accidents occurred on or after July 1, 1941 until the surplus reached 1% of the total outstanding loss reserves (valued as of December 31 next preceding). The income from the additional 6% was considered to be the equivalent, over-all, of the difference between the commuted values of awards on 3% and 2.5% interest bases. It was not practical at this time to provide for a statutory change in interest rate to 2.5%, since the tables incorporating the 3% interest rate adopted in 1939 had not yet been printed. (These tables were subsequently published in Special Bulletin No. 207 by the Department of Labor.) Moreover, the further reduction in interest rate would have the effect of further increasing all payments involving lump sum settlements which are commuted on the same basis as awards to the Fund.

The amendment to Section 27 was incorporated in Chapter 325, Laws of 1941. Its effect was evaluated on the basis of the same data used in computing the previous change in interest rate, and it was determined that an over-all law amendment factor of 1.008 was required in the July 1, 1941 rate revision.

This amendment should satisfactorily correct the financial condition of the Aggregate Trust Fund unless there is an unexpected decrease in interest earnings or a loss from mortality and remarriage experience in the future.

#### SECOND INJURY FUND

Section 15, Subdivision 8, of the New York Workmen's Compensation Law provides for the payment by the Second Injury Fund of compensation to employees who have incurred permanent total disability through the loss of a limb or an eye after having previously sustained the loss of another major member of the body. Such payment is to be made after the employer or insurance carrier has completed the payment of the specific benefits provided by law for loss of the second member. No provision is made for medical payments by the Fund.

The income of the Fund is derived mainly from contributions of \$500 in each no dependency death case and includes fines imposed under Section 52 of the Compensation Law for the conviction of employers who have failed to secure compensation, as well as other miscellaneous fees.

An examination of the Fund by the Insurance Department as of December 31, 1936 showed the assets to be \$992,167 and the liabilities incurred for known cases to be \$1,222,782. In addition, the examiner estimated liabilities of \$630,000 for awards which might be made in the future in cases involving accidents which occurred on or prior to December 31, 1936.

In view of the sizeable assets on hand and the adequacy of the annual



income of the Fund to cover current loss payments, and because of the more pressing need to rehabilitate the Reopened Case Fund, no action has been taken to reduce what has been indicated as a deficit of this Fund.

The defense of the Fund, while not provided for by statute, has been voluntarily undertaken by the Special Funds Conservation Committee since 1938. The Committee has been notified of comparatively few cases to date.

A summary of the cash transactions of the Second Injury Fund for calendar years 1933 to 1941, as taken from reports of the Department of Labor, is given below:

**TABLE G**  
**STATEMENT OF CASH TRANSACTIONS OF THE SECOND INJURY FUND**

Year Ended Dec. 31st	Income from No Dependency Awards	Other Income*	Loss Payments	Income — Loss Payments (2) + (3) — (4)	Cash + Bonds at Par Value
(1)	(2)	(3)	(4)	(5)	(6)
1933	\$87,700	\$33,800	\$78,097	\$43,403	\$ 926,102
1934	85,596	30,658	90,245	26,009	952,111
1935	75,100	35,642	92,260	18,482	970,593
1936	78,200	39,842	96,468	21,574	992,167
1937	82,100	40,498	90,103	32,495	1,024,662
1938	89,766	49,797	92,397	47,166	1,071,828
1939	76,799	54,547	90,037	41,309	1,113,137
1940	77,473	62,520	89,010	50,983	1,164,120
1941	71,175	51,911	94,522	28,564	1,192,684

\* Includes interest, profit or loss on investments and miscellaneous fines and fees.

It will be noted that there has been a steady rise in the assets of the Fund due to the accumulation of the excess of income over loss payments.

The financial statement as of December 31, 1941 indicates a surplus of \$259,092 on the basis of assets of \$1,501,011, which include bonds at amortized values instead of par value, and liabilities of \$1,241,919. The liabilities consist of reserves for 99 outstanding cases of \$1,200,187 and reserves for contingencies of \$41,732.

In the determination of liabilities as of December 31, 1936, the insurance examiner included as liabilities additional reserves of \$630,000 for awards which might be made in the future in cases involving accidents which had already occurred. It had been determined that an average time of 3.025 years elapsed between the date of accident and the date on which the case was finally classified as one of permanent total disability falling under the provisions of this section of the law. These liabilities added considerably to the indicated deficit of the Fund.

In view of the increase in the assets of the Fund and the relative stabilization of the liabilities since 1936, there is some question as to whether the Fund can be considered to be deficient.

Prior to 1934 the Fund acquired on the average six new cases net per year, after deducting cases terminating because of death or for other reasons. Since then, however, for a seven year period, cases have been dropping out

at a rate which has on the average offset the rate of acquisition of new cases. There were ninety-nine outstanding cases at the end of 1934, ninety-eight at the end of 1936, and ninety-nine at the end of 1941. The reserves for outstanding claims as of December 31, 1941 differed little from those set up as of December 31, 1936.

Since the Fund has been in existence for twenty-five years, it would appear that the experience of the last seven years, which showed a stabilization of the number of active claims after a previous steady rise, would be indicative of the expected loss rate for the future. It seems doubtful whether additional reserves for as large an amount as previously set up are required, since the present rate of acquisition is practically offset by the rate of dropping out of cases. There is no certainty, of course, that similar conditions will continue in the future.

#### VOCATIONAL REHABILITATION FUND

The Vocational Rehabilitation Fund, created under the provisions of Section 15, Subdivision 9, of the New York Workmen's Compensation Law, is financed by contributions of \$500 in each no dependency death case.

The following types of payments are made from this Fund:

- (1) Expenditures for maintenance in an amount not to exceed \$10 a week for any injured workman who is undergoing rehabilitation or vocational training.
- (2) Expenses of tuition, supplies, artificial appliances, transportation, etc. for such employees.
- (3) Administrative expenses of the Bureau of Vocational Rehabilitation of the State Education Department.
- (4) Expenditures up to \$50,000 a year for studies by the Industrial Commissioner of means and methods of eliminating dust and other occupational disease hazards. These expenditures were originally authorized for a period of five years beginning with July 1, 1936 by Chapter 888, Laws of 1936. This period has recently been extended for an additional year until June 30, 1942, by Chapter 274, Laws of 1941.

The income of the Fund in the past was considered to be more than adequate to meet its needs. In fact, in view of the large surplus, it had been proposed to reduce the contributions to the Fund when the question of increasing the contributions to the Reopened Case Fund arose.

In recent years, however, the annual disbursements of the Fund for the various expenses of rehabilitating employees, inclusive of the substantial administrative expenses of the Bureau of Rehabilitation, have been in excess of the annual income. This situation, combined with the transfer of moneys to the Industrial Commissioner, has resulted in a considerable reduction in the assets of the Fund, as shown in the following table:

TABLE H  
STATEMENT OF INCOME AND DISBURSEMENTS OF THE  
VOCATIONAL REHABILITATION FUND\*

Balance in the Fund (including investments) — July 1, 1937.... \$ 700,202.20

*Income*

Fiscal Year Ended June 30th	Awards	All Interest and Profit on Investments	Total	
1938	\$ 86,963.74	\$ 30,264.44	\$117,228.18	
1939	84,500.00	34,700.15	119,200.15	
1940	78,391.01	29,477.88	107,868.89	
1941	67,988.30	31,144.92	99,133.22	
Total	\$317,843.05	\$125,587.39	\$443,430.44	443,430.44
				<u>\$1,143,632.64</u>

*Disbursements*

Fiscal Year Ended June 30th	Adminis- tration	Tuition and Supplies	Maintenance	Transferred to Labor Department	Total	
1938	\$ 93,191.90	\$ 21,059.83	\$ 32,605.16	\$ 41,000.00	\$187,856.89	
1939	111,333.31	24,011.72	36,879.35	43,000.00	215,224.38	
1940	108,441.66	22,666.46	29,258.50	40,000.00	200,366.62	
1941	99,255.02	34,886.29	32,045.81	40,000.00	206,187.12	
Total	\$412,221.89	\$102,624.30	\$130,788.82	\$164,000.00	\$809,635.01	809,635.01
Balance						<u>\$ 333,997.63</u>

\* These figures were obtained from statements furnished by the Bureau of Rehabilitation.

It may be of interest to note that a bill was introduced in February, 1941 providing for the extension to ten years of the period during which the Industrial Commissioner could withdraw up to \$50,000 a year for silicosis studies. It is evident from the foregoing table that such a provision would have wiped out the surplus of the Fund in a short time.

Additional transfers of funds will be made to the Industrial Commissioner, however, up to July 1, 1942 and a further decrease in the assets can be expected. Moreover, if the other expenditures continue to exceed the income at the same rate as heretofore, the Fund may be depleted in a few years. It is important, therefore, that the condition of this Fund receive attention, particularly with respect to the substantial disbursements made.

WORKMEN'S COMPENSATION SECURITY FUNDS

Separate Stock and Mutual Workmen's Compensation Security Funds were established in 1935 to provide for the payment of compensation to employees and to the Special Funds in the event that the carriers liable for such compensation are unable to meet their obligations because of insolvency.

Article 6A of the New York Workmen's Compensation Law (previously numbered Article 5) requires the stock and mutual companies to pay into

these Funds 1% of their net premiums written during calendar year 1934 and each year thereafter. Payments by the stock carriers are to be suspended when the total net income of the Stock Fund less its liabilities reaches a minimum amount of \$2,300,000 or 5% of the New York workmen's compensation loss reserves of all stock carriers as of December 31st next preceding, whichever amount is the greater. The Mutual Fund must reach a minimum amount of \$700,000 or 5% of the total loss reserves of mutual carriers, whichever amount is the greater.

The following table shows the status of these Funds as of March 1, 1942, as reported by the Superintendent of Insurance who administers the Funds:

**WORKMEN'S COMPENSATION SECURITY FUNDS  
ON MARCH 1, 1942**

*Income and Disbursements*

	Stock Fund	Mutual Fund
Tax receipts of 1% of net premiums written for calendar years:		
1934.....	\$ 193,323	\$ 91,366
1935.....	234,981	119,250
1936.....	306,058	151,129
1937.....	344,624	187,730
1938.....	337,876	171,941
1939.....	339,562	188,616
1940.....	330,114	194,761
1941.....	341,663	224,404
Total .....	<u>2,478,201</u>	<u>1,329,197</u>
Interest Received (net).....	159,814	73,404
Gross Income .....	2,638,015	1,402,601
Expenses Paid (including refund).....	7,499	3,222
Net Income.....	<u>\$2,630,516</u>	<u>\$1,399,379</u>

*Assets*

Cash in Banks.....	\$ 372,250	\$ 270,770
United States Bonds (at cost).....	2,258,266	1,128,609
Fund Totals.....	<u>\$2,630,516</u>	<u>\$1,399,379</u>

No compensation benefits have been paid by either of the Funds as no insurance carriers have become insolvent since the establishment of the Funds. There are no known liabilities at the present time.

The Insurance Department has not as yet determined the total compensation loss reserves as of December 31, 1941. Preliminary figures obtained from the Casualty Experience Exhibits as submitted to the Compensation Insurance Rating Board indicate loss reserves for the stock carriers of about \$60,000,000 and for the mutual carriers, almost \$30,000,000. The goal for the Stock Fund will therefore be about \$3,000,000, and for the Mutual Fund, about \$1,500,000. It can be seen from the foregoing table that each Fund may reach its required minimum within the next year or two.