

109293

BY THE COMPTROLLER GENERAL



# Report To The Congress

OF THE UNITED STATES

*Handwritten signature/initials*

## Labor Department Is Strengthening Procedures To Recover Costs For Federal Employees' Injuries Caused By Third Parties

The Department of Labor's attempts to recover costs for Federal civilian employees with work-related injuries are inadequate. An additional \$4.7 million might have been recovered from third parties in three of Labor's district offices during a 3-year period if more aggressive action had been taken. Claims should be promptly identified, reviewed, and processed.

Labor is improving its recovery activities. If properly carried out, the new actions should solve the problems discussed in this report.



005183  
109293

HRD-79-36  
MAY 9, 1979



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

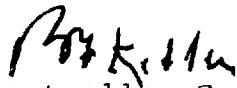
B-157593

To the President of the Senate and the  
Speaker of the House of Representatives

This report describes deficiencies in Labor's program to recover costs incurred for Federal employees' injuries caused by third parties, makes recommendations to improve the program, and identifies action Labor is taking to accomplish such improvements.

The number of third-party cases referred to the Solicitor of Labor's office for recovery action decreased from fiscal year 1970 to 1977, while injuries reported by employees and compensation benefits paid by the Government increased substantially. If properly implemented, Labor's program to recover costs from third parties could help offset escalating compensation costs.

We are sending copies of this report to the Director, Office of Management and Budget, and the Secretary of Labor.

  
ACTING Comptroller General  
of the United States

COMPTROLLER GENERAL'S  
REPORT TO THE CONGRESS

LABOR DEPARTMENT IS  
STRENGTHENING PROCEDURES  
TO RECOVER COSTS FOR FEDERAL  
EMPLOYEES' INJURIES CAUSED  
BY THIRD PARTIES

D I G E S T

Millions of dollars in compensation costs for Federal civilian employees are not being recovered for work-related injuries caused by third parties. For example: A letter carrier falls through rotted steps and is injured while delivering mail to a private home. As a result, he is unable to return to work for some time. The Government will pay wage loss benefits and all his medical expenses because he was hurt while on duty. } 3

The Labor Department has not been effective in identifying and recovering these costs. Such recoveries could have helped to offset escalating compensation costs. 16

If a third party is responsible for an injury to a Federal employee and thus is liable for paying damages to him/her, the Federal Employees' Compensation Act provides that Labor may require the injured employee to

--assign to the United States any right to enforce the liability or any right to share in assets to satisfy the liability or

--prosecute the action in his/her name.  
(See p. 1.)

This provision is to keep taxpayers from bearing the costs of compensation when a third party is liable.

25 My 12/15/83  
2) 100-123

Injuries reported annually by Federal employees increased from 120,625 to 207,615 from fiscal year 1970 to 1977. However, the number of cases processed annually against third parties decreased from 1,896 to 1,003 cases during the same period. (See p. 4.)

GAO's review of 1,002 randomly selected claims at three district offices showed that claims with recovery potential from third parties were not being effectively identified and recovery of costs was not being adequately pursued. For the 3-year period in the three district offices covered by GAO's review, through more aggressive action Labor might have recovered an additional \$4.7 million from third parties. Potential moneys from recoveries nationwide could amount to much more. (See p. 4.)

Of the 1,002 claims reviewed, GAO identified 189 claims with recovery potential; claims examiners had identified only 26. (See p. 4.) Discussions with 70 claimants that were not identified by Labor as having recovery potential disclosed that 53 had reasonable cause to pursue cost recovery. Five of these were pursuing settlements without notifying Labor. (See p. 6.)

GAO also reviewed 120 cases which were initiated and settled with third parties during the sample period. In 72 of these cases the injured employees initiated recovery action by retaining attorneys who then informed Labor that cases against the third parties were being pursued. (See p. 10.)

Labor officials said that third-party actions were not being pursued aggressively because Labor gave identification and recovery a low priority. Claims examiners received only nominal training in third-party recovery, management actions involving third-party liability claims were limited, and the identification and pursuit of potential third-party

liability claims was left up to each claims examiner. Labor's staff was to process a heavy caseload of employee claims and to pay benefits. (See p. 8.)

Labor's procedural changes to improve the program did not adequately address identifying claims with recovery potential. (See p. 12.)

Labor's primary responsibility should be to promptly process injured employees' claims. However, GAO believes that very little time is needed to identify claims where potential third-party liability exists and for regional solicitors' staffs to review such claims and notify injured employees of their third-party responsibilities and benefits. (See p. 14.)

To help Labor more effectively identify potentially recoverable claims and pursue the recovery of costs, the Secretary of Labor should require the Assistant Secretary for Employment Standards and the Solicitor of Labor to:

- Revise the claims processing procedures and establish effective management controls to assure that all potentially recoverable claims are identified and, in cases where action is warranted, that recovery of costs is pursued.
- Determine and request the resources needed to effectively carry out Labor's responsibilities for identifying and pursuing potentially recoverable claims.
- Train personnel to identify and pursue potentially recoverable claims.

Labor is taking actions to make its program more effective and efficient. It expressed the view that these actions will meet the objectives and conform to GAO's recommendations. (See app. I.)

GAO believes that, if properly implemented,  
Labor's actions should resolve the problems  
disclosed in this report.

## C o n t e n t s

	<u>Page</u>	
DIGEST	i	
CHAPTER		
1	INTRODUCTION	1
	Organizational responsibilities	1
	Scope of review	2
2	LABOR'S EFFORTS TO RECOVER COSTS FROM THIRD PARTIES WERE INADEQUATE	4
	Labor did not effectively identify third-party cases	4
	Computation of unrecovered costs	7
	Deficiencies in Labor's recovery prac- tices and procedures	7
	Labor's prior attempts to improve recoveries were ineffective	11
3	CONCLUSIONS, RECOMMENDATIONS, AGENCY COMMENTS, AND OUR EVALUATION	14
	Conclusions	14
	Recommendations to the Secretary of Labor	15
	Agency comments	16
	Our evaluation	17
APPENDIX		
I	March 8, 1979, letter from the Acting Inspector General, Department of Labor	18

### ABBREVIATIONS

FECA	Federal Employees' Compensation Act
GAO	General Accounting Office
OMB	Office of Management and Budget
OWCP	Office of Workers' Compensation Programs

## CHAPTER 1

### INTRODUCTION

About 3 million Federal employees and certain non-Federal employees (such as law enforcement officers injured while enforcing Federal laws) are eligible for economic protection against work-related injuries under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101). The act provides for paying medical expenses and wage loss compensation benefits for the disability or death of Federal civilian employees that are injured while on duty. These benefits include compensation for wage losses, dollar awards for bodily impairment or disfigurement, medical care for an injury or a disease, rehabilitation services, and compensation to survivors.

If a third party is responsible for an injury to a Federal employee and, thus, liable for paying damages to him/her the act provides that Labor may require the injured employee

--assign to the Government any right to enforce the liability or any right to share assets to satisfy the liability or

--prosecute the action in his/her name.

The rationale for this provision is that the taxpayers should not have to bear the costs of compensation when a private party is liable or at fault.

An injured employee who refuses to assign or prosecute an action when required is not entitled to compensation under the act. An additional incentive for the injured employee to assign or prosecute an action is his/her right to receive at least one-fifth of the net recovery after deducting the expenses of the suit or settlement (attorney fees, court cost etc.). The injured employee also receives additional proceeds to the extent that recovery exceeds all Government disbursements (compensation costs and medical expenses) and the expenses of the suit or settlement.

### ORGANIZATIONAL RESPONSIBILITIES

<sup>DLG-01519</sup>  
The Office of Workers' Compensation Programs (OWCP), in Labor's Employment Standards Administration, is responsible for administering the act. OWCP administers the program through the Division of Federal Employees' Compensation, which develops policies and procedures. Claims are generally adjudicated and serviced by OWCP's 15 district offices.



Employees' compensation claims are submitted to OWCP for processing. OWCP district office claims examiners at the time of our review were responsible for determining whether individual claims have third-party recovery potential and for estimating the cost of the injury, as determined by the employee's lost wages, compensation, and medical costs. Once OWCP identified a claim as having potential for recovery of costs from a third party, the claim was sent to the regional solicitor's office.

The regional solicitors' offices at the time of our review were responsible for (1) informing the claimant of his/her rights and responsibilities for pursuing recovery of costs from third parties and (2) monitoring the third-party action through to disposition. The regional solicitors' offices provided advice to the claimant or the claimant's attorney to assure that the Government was adequately reimbursed upon settlement. After a claim was forwarded to the regional solicitor's office, OWCP was to keep that office informed of disbursements made on claims identified as having potential for recovery.

#### SCOPE OF REVIEW

Our review was made at Labor's national office in Washington, D.C., and at OWCP district offices and Labor's regional solicitors' offices in New York City, Boston, and Seattle. We also visited Postal Service headquarters in Washington, D.C., as well as regional postal facilities in the localities covered by our review.

We interviewed headquarters and district office officials, claims examiners, and regional solicitors. We examined procedures and practices OWCP district offices and the regional solicitors' offices used for identifying and pursuing third-party liability cases. We also reviewed Labor's internal and consultant reports that dealt with third-party liability activities.

We examined a random sample of 1,002 claims that were filed during calendar years 1975-77 in 3 of Labor's 15 OWCP district offices; this was done to identify claims with third-party liability potential. We interviewed 70 claimants from our sample whose cases appeared to have potential for cost recovery and reviewed 120 cases which resulted in recoveries from third parties for the same 3-year period in the three district offices. We also contacted Postal Service officials to find out why they were increasing efforts to identify and follow up on third-party liability cases.

The cases in the random sample which our auditors identified as having third-party liability potential were reviewed in detail by attorneys from our Office of General Counsel. They concurred with the auditors that 189 of the 1,002 claims in the sample had potential for recovery of Federal costs from third parties, although the extent of recovery potential varied with each claim.

## CHAPTER 2

### LABOR'S EFFORTS TO RECOVER COSTS FROM

#### THIRD PARTIES WERE INADEQUATE

Injuries reported annually by Federal employees increased from 120,625 to 207,615 from fiscal years 1970 to 1977. However, the number of cases processed annually against third parties decreased from 1,896 to 1,003 in the same period.

Although the act provides for it, Labor does not require injured Federal employees to assign their right of action or prosecute cases themselves against third parties. (See p. 1.) Once Labor informs claimants of their rights and responsibilities for pursuing recovery of costs from third parties, actions against third parties are left to the initiative of the injured employees.

Our review of 1,002 randomly selected claims at three district offices showed that claims with recovery potential from third parties were not being effectively identified and that recovery of costs was not being adequately pursued. We estimate that--for the 3-year period in the three district offices covered by our review--through more aggressive action, Labor might have recovered an additional \$4.7 million from third parties liable for injuries to Federal employees. (See p. 7.)

Nationwide, the potential recoveries are materially higher than our estimates for the three districts. However, we were not able to estimate the potential for nationwide recovery because there was no assurance that the claims we reviewed in 3 districts were representative of the claims filed in the other 12 districts.

#### LABOR DID NOT EFFECTIVELY IDENTIFY THIRD-PARTY CASES

We identified 189 claims in our sample that had potential for recovery from third parties; Labor's claims examiners identified only 26 of the 189 claims:

Table 1

District office	Claims sampled	Claims identified with third-party recovery potential			
		By GAO		By Labor	
		Number	Percent of total claims	Number	Percent of total claims
New York	700	152	22	21	3
Boston	100	20	20	3	3
Seattle	202	17	8	2	1
Total	<u>1,002</u>	<u>189</u>	19	<u>26</u>	3

Our analysis of the case files disclosed that the result in the New York district and the Boston district were very similar. However, our analysis showed that fewer claims had potential for recovery from third parties in Seattle. There are at least two reasons for this disparity:

--Postal Service workers serviced by the Seattle district office comprise a smaller portion of the total Federal labor force than those serviced by the New York and Boston district offices. (Overall, 85 percent of the claims we identified as having third-party recovery potential involved Postal Service employees.)

*AGC 00052*  
 --Postal Service letter carriers serviced by the Seattle district office deliver mail to mostly rural areas and use motor vehicles--as opposed to walking from door to door, which is common in more heavily populated areas. Consequently, they are less susceptible to hazards that are frequently encountered going from door to door, such as dog-related incidents and tripping and falling.

The claims we identified as having recovery potential consisted primarily of injuries from slipping and falling on hazardous steps and sidewalks, and animal-related injuries:

Table 2

<u>Type of injury</u>	<u>Number of claims</u>	<u>Percent</u>
Slipping and falling on steps, sidewalks, etc.	95	50
Animal-related injuries, including bites	51	27
Product liability	13	7
Vehicle accidents	9	5
Other	<u>21</u>	<u>11</u>
Total	<u>189</u>	<u>100</u>

We contacted 70 claimants of the 189 whose cases we identified as having recovery potential. Of these 70, 53 confirmed that recovery potential did exist. The remaining 17 claimants provided information which showed that third parties were not liable for their injuries.

Our discussions with claimants disclosed that employees were generally not aware of their right to pursue legal action against third parties or that they are entitled to one-fifth of the net recovery.

After we explained the employees' responsibilities and benefits under the act, 12 of the 53 who confirmed that third-party liability did exist stated they would consider seeking legal counsel and pursuing legal action against the responsible third parties. Another 36 cited a variety of reasons for not pursuing legal action, including

- it was purely an accident, no malice was intended;
- the third party was aged;
- the third party was poor; and
- it was not worth the claimant's time.

Five claimants were already pursuing recovery without Labor's knowledge. Labor officials recognize that this situation exists, but they do not know its extent and do not have any procedures to identify cases where legal actions are being pursued without their knowledge.

## COMPUTATION OF UNRECOVERED COSTS

Of the 1,002 randomly selected claims we reviewed, we identified 189 cases (19 percent of our sample) as having potential for recovery of costs from third parties. (See p. 5.) Of the 120 cases Labor processed and settled during our review period, about 54 percent of the Government costs incurred for employees' injuries was recovered. Our analysis of the 120 cases settled by Labor showed that the amount of Federal costs incurred and the types and causes of injuries were comparable to the 189 cases identified from our sample.

The statistical projection of these data indicates that there was a potential for recovery from third parties of an additional \$9.4 million for the 3-year period in the three districts covered by our review. <sup>1/</sup> However, this figure was reduced in our final estimate by 50 percent--to \$4.7 million--because a representative from the Solicitor of Labor's Office said that as many as one-half of the claims initially identified as having recovery potential from third parties are eliminated once more details regarding the claims are obtained.

Nationwide, the potential recoveries are materially higher than our estimates for the three districts. However, we were not able to make any estimates of the potential for recovery from third parties for claims filed in the other 12 OWCP districts not covered by our review because there was no assurance that the claims we reviewed were representative of the claims filed in the other districts.

## DEFICIENCIES IN LABOR'S RECOVERY PRACTICES AND PROCEDURES

In a December 1977 response to a recommendation on third-party cases which appeared in a report by the House Committee on Government Operations, <sup>2/</sup> Labor agreed that several deficiencies existed in its recovery program. Labor stated:

---

<sup>1/</sup>There is a 95-percent certainty that an examination of all case files at the three district offices during the 3-year period of our review would disclose a total potential dollar recovery of from \$4.8 million to \$14.0 million. The variance is large because the range of costs for the individual claims incurred by the Government varied greatly.

<sup>2/</sup>H.R. 1757, 94th Congress, 2d sess. 31 (1976).

"\* \* \* this is an important area of responsibility and the Department is deficient in identifying and handling cases where there is potential recovery in third-party liability cases. This is due essentially to the lack of claims examiner training in third-party work and the pressures of other priority work both in the Office of the Solicitor and the OWCP District Offices \* \* \*."

Labor did not enforce its identification procedures

Discussions with Labor's national and district office representatives disclosed that the procedures for identifying potentially recoverable claims (see p. 1) generally were not enforced. Labor officials stated that the procedures were not being adhered to because a low priority had been assigned to identifying and pursuing potential third-party claims. Labor's staff resources are directed to processing a heavy caseload of employee claims and paying benefits. They said that, because of heavy caseloads and limited staff, the amount of potential recovery is not worth the time it would take for examiners to identify and pursue those claims. As a result, claims examiners received only nominal third-party training, management exercised few controls over third-party actions, and identifying potential third-party liability claims was left to the initiative of each claims examiner.

Management controls were inadequate

Management controls over the identification of potentially recoverable claims varied among the district offices, and supervisors did not routinely monitor examiners' caseloads to determine whether potentially recoverable claims were being identified and properly referred. The decision to identify potentially recoverable claims was left mostly to the initiative of the individual claims examiners, but heavy workloads often precluded examiners from scanning and identifying potentially recoverable claims; when claims were identified as being potentially recoverable, examiners often could not follow up to monitor disbursements made on the claims.

Pursuit of so-called nuisance cases  
can result in significant recoveries

Labor procedures in effect during our review called for closing out a claim as a minor injury if disbursements were not expected to be greater than \$100; Labor was to reopen it only if disbursements exceeded \$100. However, claims examiners cannot know for certain the dollar significance of claims when they are initially reviewed, since they are reviewed before actual disbursement.

Labor officials referred to directives dating back to the early 1960s <sup>1/</sup> to support the approach followed in identifying potential third-party liability claims. The directives noted that "nuisance cases"--such as dog bites and slipping and falling on ice--need not be pursued because of what Labor believed to be the likelihood of small dollar recoveries.

Labor would have considered 67 of the 189 potentially recoverable claims (35 percent) we identified to be nuisance cases. But 14 of the 26 claims in our sample that Labor identified as having recovery potential were also nuisance cases.

Our review of cases processed during our sample period showed that Labor did obtain recoveries from many nuisance cases, and that several resulted in significant recoveries to the Government. Of the 120 cases processed and settled during our sample period, Labor would have considered 61 (51 percent) to be nuisance cases. These cases accounted for 24 percent of the funds recovered during our sample period in the three district offices covered by our review. Some of the nuisance cases led to quick settlements with little effort and were settled for relatively large amounts, as demonstrated by the following examples.

A letter carrier fell while backing away from a dog and fractured a wrist. The claimant retained an attorney and initiated action without Labor's help. The suit was settled for \$14,000; Labor was reimbursed \$5,445. The injury cost the Government \$6,828. Another carrier broke a wrist when he was knocked down by a German shepherd. Labor initiated the third-party action by sending a form letter to the claimant

-----

<sup>1/</sup>Bureau of Employees' Compensation Training Office, "Third Party Claims," Feb. 1961. Subrogation Branch of the Solicitor's Office, "Procedure in Third Party Cases," undated as an enclosure to a May 22, 1962, memorandum to a Deputy Commissioner of the Bureau.



which explained his responsibilities. The claimant retained an attorney and settled the suit for \$10,500. The Government's expenditure was \$7,861; Labor was reimbursed \$3,733.

We reviewed 31 cases in New York which were processed and settled during the 3-year period. Of these 31 cases, 14 fell into the nuisance case category. Out of these 14 cases:

- Labor's notifying claimants of potential third-party recovery prompted claimants to initiate only 6 of the recovery actions; claimants initiated the other 8 on their own.
- Nuisance cases were settled an average of 12 months from the date of the injury; other cases averaged 21 months.
- Three nuisance cases resulted in gross recoveries of at least \$10,000 each.

Of the 120 cases where recoveries were obtained during our sample period, examiners identified claims as having recovery potential in only 48. Employees acted on their own initiative in the remaining 72 cases, and their attorneys informed Labor that cases against the third parties were being pursued.

- - - -

Postal Service officials, in discussions with us, expressed concern about the effect that compensation costs have on Postal Service programs. They have begun an intensive program to reduce compensation costs. One program element is the more vigorous identification and followup of potentially recoverable third-party claims.

Postal Service officials realized that Labor did not normally pursue recoveries on nuisance cases. The officials believed that all potentially recoverable claims should be identified and the claimant notified of his/her third-party rights and responsibilities regardless of the type of injury because the severity and dollar significance of the injury can only be estimated when the claim is received.

The automated management information system could help

Labor is implementing an automated management information system which has the potential to monitor potentially recoverable claims. If used to its fullest advantage, this system could track the progress of potential and actual third-party liability cases by flagging a case when new developments arise or when followup is required and by calculating compensation, medical, and wage loss disbursements at any given date.

The information that will be available on the automated system and the type of data to be coded into the system have not been determined by Labor. But the pursuit of cost recoveries could be enhanced and greater recoveries to the Government could be realized if the capabilities mentioned above are included.

Even if the above-described capabilities are included in the system, claims examiners will still be responsible for identifying potentially recoverable claims and filling out the necessary forms so that the information can be coded into computer language. Therefore, effective management controls should be established to assure that potentially recoverable claims are not overlooked.

LABOR'S PRIOR ATTEMPTS TO IMPROVE RECOVERIES WERE INEFFECTIVE

Labor has recently hired additional claims examiners, and Labor officials believe this should help ease the agency's caseload problems and allow examiners to better identify all claims with recovery potential. National office statistics show that the number of claims examiners employed as of August 1978 increased from 1975 levels from about 145 examiners to more than 320. During our review Labor had also revised procedures for pursuing third-party liability cases. (See p. 12.) But the recovery program needed more improvements.

Contractor's study disclosed the Labor program's weaknesses

In the 1974 amendments to the Federal Employees' Compensation Act, the Secretary of Labor was directed to "\* \* \* conduct a study of the provisions of the Act and the programs thereunder \* \* \*." As an element of the study the Employment Standards Administration contracted with an outside contractor to study the act's implementation and effectiveness.

In 1975 the contractor noted several weaknesses in the procedures used to identify potential third-party claims and recover costs. <sup>1/</sup> It reported that greater emphasis on third-party litigation could have resulted in additional recoveries of \$5.7 million in fiscal year 1974. The report stated that recoveries to the Government for fiscal year 1974 would probably have been significantly higher if all cases with potential third-party liability had been pursued and if settlements had been for more realistic amounts. The contractor recommended that claims examiners be trained to identify and refer recoverable claims.

Regarding this recommendation, training OWCP claims examiners to identify claims with recovery potential was not formalized until 1977. The training program for claims examiners during 1977 lasted 1 week; only 1 hour was devoted to third-party recovery actions. Labor recently started an advanced training program that will devote 4 hours to third-party matters, but many of the claims examiners interviewed recognized the need for more than 4 hours training in third-party matters.

#### Procedural changes initiated during our review

On January 3, 1978, Labor implemented a procedural change which provided that "significant" recoverable cases (those involving over \$2,000) are to be reported to the regional solicitors' offices for monitoring and pursuit once they are identified by claims examiners. An August 1978 procedural change eliminated the \$2,000 criteria. This change, in effect, made the regional solicitors' offices responsible for monitoring and pursuing cost recovery regardless of the claim's estimated significance. Although the regional solicitors' offices involvement with third-party actions had increased, their staffs were not provided any training in monitoring, pursuing, or processing recoveries. No training had been planned as of September 1978.

The August directive also provided that regional solicitors should meet with OWCP staff to develop procedures which would allow them to help OWCP identify potentially recoverable claims. Several regional solicitors recognized that they needed to identify all potentially recoverable cases regardless of the cause of injury or expenses. However, inadequate

---

<sup>1/</sup>"FECA Effectiveness Study," Planning Research Corporation/Systems Sciences Company and Gordon Associates, Inc., Oct. 1975.

staffing precluded the solicitors from helping to identify recoverable claims and forced them to selectively pursue recovery only in significant cases. New York and Seattle regional solicitors stated that as of September 1978 neither office could handle all third-party claims referred to them by claims examiners.

## CHAPTER 3

### CONCLUSIONS, RECOMMENDATIONS,

### AGENCY COMMENTS, AND OUR EVALUATION

#### CONCLUSIONS

We found that Labor was not identifying or pursuing potentially recoverable claims as aggressively as it should. Reimbursements to the Government resulting from third-party settlements--which offset escalating compensation costs--can be significantly increased.

Although Labor implemented several general procedural changes during our review to improve the identification and pursuit of potentially recoverable claims, we believe that these changes were inadequate for making the recovery program effective. Management controls were deficient, training was inadequate, staffing considerations at the regional solicitors' offices were not addressed, and the identification of potentially recoverable claims was left mostly to the discretion of the claims examiners. Labor's new automated management information system could be an excellent resource for recovery control if effective management controls are established to assure that potentially recoverable claims are not overlooked.

Labor reduced the amount of money the Government could expect to recover by not providing for pursuing recoveries on nuisance cases. Although these cases may appear individually insignificant when viewed from a dollar recovery perspective, the limited number of nuisance cases that have been pursued showed that, in some cases, substantial recoveries could result with little time and effort expended.

Claims examiners can only estimate the cost to the Government when claims are received. Therefore, we believe that it is essential that all potentially recoverable claims be identified and forwarded to the regional solicitors' offices and that claimants be informed of their third-party responsibilities and rights. OWCP should monitor the disbursements made on such claims through its automated management information system and periodically provide the regional solicitors' offices with such information. We also believe that there should be established procedures with prescribed time periods and predetermined cost levels for following up on potential third-party cases. In all instances, once a claimant initiates action against a third party the regional solicitors' offices should monitor the recovery of costs.

We concur with Labor that its primary mission should be serving injured Federal employees, particularly in view of the potential hardships on claimants caused by claims processing delays. However, based on our review of claims we believe that only minimal time is required during the initial review for claims examiners to identify potentially recoverable claims and for the regional solicitor's staff to help identify such claims and notify the injured employees of their third-party responsibilities and benefits. OWCP's workload in most instances precludes a claims examiner from reexamining a case file to determine whether higher-than-estimated disbursements change the importance of claims initially perceived as not worthy of pursuit; this makes case tracking with the automated management information system essential.

We believe that Labor should encourage the claimant and help him/her pursue settlement once a third-party liability case has been initiated. We also believe that Labor has the responsibility for determining what size staff it will need to identify and pursue potentially recoverable claims and to assist claimants who are pursuing settlements, and that Labor is responsible for requesting that the Congress provide such staff resources to the extent that they are economically justified.

#### RECOMMENDATIONS TO THE SECRETARY OF LABOR

To more effectively identify potentially recoverable claims and pursue the recovery of such claims' costs, we recommend that the Secretary of Labor require that the Assistant Secretary for Employment Standards and the Solicitor of Labor:

- Revise the claims processing procedures and establish effective management controls to assure that all potentially recoverable claims are identified and, in cases where action is warranted, that recovery of costs is pursued.
- Determine and request the resources needed to effectively carry out Labor's responsibilities for identifying and pursuing potentially recoverable claims.
- Train personnel to identify and pursue potentially recoverable claims.

## AGENCY COMMENTS

Labor, in response on March 8, 1979, to our draft report, referred to its increased efforts over the past 2 years to improve the administration of the Federal employees' compensation program, but it stated that the improved delivery of benefits has been its first priority. Labor outlined further actions it is taking to make the program more effective and efficient, and it expressed the view that its actions will achieve the desired objectives and conform to our proposals. (See app. I.)

Labor detailed the actions it is taking, including:

--OWCP is designating two experienced claims examiners in each district office to monitor the handling of potential third-party liability cases.

--All claimants will be notified of their statutory responsibilities.

--OWCP's district offices will be responsible for the identification, notification, development, and monitoring of each case identified as having recovery potential. When advice is received that third-party action is pending, the claim will be transferred to the regional solicitor.

--OWCP's national office personnel will monitor field office performance under the new procedures and provide technical assistance, as needed.

--Followup training activity will take place.

--Monitoring procedures are being formulated to evaluate the new procedures' results.

--Claims will be closed as minor cases if disbursements are not expected to be greater than \$500. However, a procedure is being established to monitor disbursements so that claims which later require re-opening can be reevaluated for recovery purposes.

--Labor's automated management information capabilities will be employed to assist in the monitoring of all third-party cases.

Labor noted that review by experienced members of the New York Regional Solicitor's staff of 239 files referred to

that office since January 1979 found that over 80 percent had no recovery potential. Further, a spot check by the New York office of 79 claims which we identified as having recovery potential revealed that 48 had minimal disbursements and questionable recovery potential.

Labor stated that we had implied that it automatically rules out consideration of nuisance cases for recovery efforts. Labor also indicated that we were premature in concluding that its attempts to improve recoveries were inadequate. Labor pointed out that its recoveries had increased from \$1.2 million in 1975 to \$2.2 million in 1978; Labor also pointed out that its increased emphasis on recoveries will produce substantial increases.

#### OUR EVALUATION

We believe that Labor's actions should resolve the problems disclosed in this report if they are properly implemented.

We recognize that some of the claims we identified as having recovery potential may have minimal disbursements or questionable liability. However, we believe that it is essential that all claims believed to have any recovery potential should be identified and monitored in case cumulative disbursements become significant enough to pursue recovery action. We also recognize that Labor did pursue recovery of some nuisance cases. However, with the actions being implemented by Labor, questions about the pursuit of nuisance cases and all other cases with potential for recovery--regardless of whether they are initially considered significant--are moot because Labor procedures should identify all cases that meet the criteria for pursuing recovery to increase recoveries to the Government.



**U.S. Department of Labor**Office of Inspector General  
Washington, D C 20210

Reply to the Attention of

**MAR 8 1979**

Mr. Gregory J. Ahart  
Director  
Human Resources Division  
United States General Accounting Office  
Washington, D. C. 20548

Dear Mr. Ahart:

This is in response to your letter of February 2 transmitting for our review and comment the draft of a proposed report to Congress on increased efforts needed to recover cost incurred for Federal employees' injuries caused by third parties. You have concluded, after a review of 1002 randomly selected cases arising under the Federal Employees' Compensation Act during the years 1975-1977 in three District Offices of the Department's Office of Workers Compensation Programs: Boston, New York City and Seattle, that this Department should more aggressively identify and pursue to recovery costs incurred for Federal employees' injuries caused by third parties. You have determined that such activity aggressively pursued might have resulted in additional recoveries of \$4.7 million during the review period in the areas surveyed.

Your report recognizes that this Department has taken measures to improve its performance in this respect. However, you have recommended, as a result of your review, that the Secretary require the Assistant Secretary for Employment Standards Administration and the Solicitor to take the following additional action:

- Revise the claims processing procedures and establish effective management controls to assure that all potentially recoverable claims are identified and, in cases where warranted, that recovery of costs be pursued.
- Determine and request the resources needed to effectively carry out Labor's responsibilities for identifying and pursuing potentially recoverable losses.
- Train personnel to identify and pursue potentially recoverable claims.

My comments follow:

During the past two years this Administration has made an intensive review of the entire FECA program and taken significant action to make it more effective and efficient. Our review has disclosed many systemic problems to the solution of which we are dedicating our best efforts. Of necessity, improved delivery of benefits has been our first priority. However, the Department's procedures with respect to third party activity under Sections 8131 and 8132 of Title 5 of the United States Code have also been under review.

As your report recognizes, Labor has made efforts to improve its handling of third party cases. After receipt in 1975 of the report of a contract study of the effectiveness of the program, pursuant to the 1974 amendments to the Act, consideration was given to implementation of its recommendations for improvement. Resource constraints prevented this action at that time but our review of our third party activity continued and a number of corrective actions were initiated. A limited training effort for OWCP Claims examining staff was conducted in 1977 as a first step. Effective January 3, 1978 the Solicitor delegated authority to the Regional Solicitors to handle the more significant cases, i.e. those in excess of \$2,000. Special training for staff of the Regional Solicitors was presented at regional SOL conferences during the year. Subsequently, the dollar "divider" was removed in August of 1978. In recent months a senior member of the Solicitor's Washington staff has made visits to five local offices to monitor third party case handling. More intensive review has followed resulting in further changes in the third party procedures effective March 1, 1979. (See Notice and new FECA Bulletin No. 8-79 attached.)

Under the new arrangement a functional allocation of responsibility has been established. OWCP is designating two experienced claims examiners in each office to monitor the handling of these cases. All claimants will be notified of the statutory requirements when their claim is received. OWCP's District Offices will be responsible for the identification, notification, development and monitoring of each case identified as having potential. When advice is received that a claimant has retained an attorney or, if unrepresented, that settlement negotiations are to be had, the claims will be transferred to the Regional Solicitor. Further monitoring will take place at that level to follow up on any action taken as to the third party case and advice and assistance will be given by Regional Solicitor's staff in the settlement process. Regional Solicitors will also be responsible for collection action if needed. National office personnel will monitor

field office performance under the new procedures and provide technical assistance as needed. Follow up training activity will also take place in the OWCP field offices in ensuing months and new monitoring procedures are being put in place by the Solicitor's office staff to evaluate results under the new procedures.

Some reallocation of current resources and priorities will, we believe, enable us to substantially improve our recoveries under the new procedures. However, we will reassess our staffing needs later in this fiscal year, based on our experience under the changed procedures and, if appropriate, seek additional resources so that we can most effectively carry out our responsibilities in this regard. We are confident that these changes will achieve the desired objectives and conform to your recommendations.

More specific comments on some of the matters treated in your report follow:

LABOR'S EFFORTS TO RECOVER COSTS FROM LIABLE THIRD PARTIES ARE INADEQUATE

Your random sample of 1002 cases consisted of 700 claims from OWCP's New York City District Office, 100 from Boston and 202 from Seattle. You identified 189 of these claims, or 19 percent, as having potential for recovery from third parties; 152 in NYC, 20 in Boston and 17 in Seattle. Labor, on the other hand, had identified only 26; 21 by New York, three by Boston and two by Seattle. You also contacted 70 of the claimants whose claims you had identified as possessing third party recovery potential. Of these 53 confirmed the fact. The remaining 17 upon further inquiry were found not to have been caused by third parties. You reported the persons interviewed were generally uninformed of their rights and responsibilities under the Act. Of the 53 for whom recovery potential was confirmed, 12, after being given further information, indicated a desire to pursue legal action against the responsible third parties. Five of this group were already doing so without Labor's knowledge.

You also found that during the review period Labor had processed and settled 120 cases, recovering approximately 54 percent of the Government's costs. Of these 120 cases only 48 had been identified by Labor as having recovery potential. You noted that half of the claims identified as having recovery potential were caused by slipping and falling on steps and sidewalks. Animal-related injuries, including dog bites, accounted for 27 percent, product liability for seven percent, auto accidents for five percent and other injuries for 11 percent. You also observed a difference in the kinds of claims in our Seattle area from those in the Boston New York City areas which you found to be similar.

COMMENT:

Time has not permitted us to identify and analyze the cases your staff reviewed. Since you did not define the standards by which you determined recovery potential in the cases you reviewed, and you did not disclose the training and qualifications of your survey team, we cannot assess fully your conclusions. We do recognize that improvement is needed. In this connection frequently, claims when received include little or no factual or medical information, and no accident reports or witness statements--which materials are essential for an informed decision as to potential third party liability. Further, an understanding of negligence law as applicable in the several states is a prerequisite for determination of the potential of a third party claim. You recognized the importance of these factors by reducing by 50 percent your total statistical projection for the review period of the possible total recovery from third party cases in the three offices reviewed from \$9.4 million to \$4.7 million. This reduction you state was based on statements of an experienced representative of the Solicitor's office who had actual experience with respect to such cases.

It is also worth noting that review by experienced members of the staff of the New York Regional Solicitor of 239 files that had been referred to that office since January, 1979 as having recovery potential, over 80 percent (193) were found to have no recovery potential. Further, a spot check by the New York office of 79 files which you had identified as having recovery potential revealed 48 with minimal disbursements and questionable liability. Only 14 of these 79 files indicated possible third party liability.

PURSUIT OF SO-CALLED NUISANCE CASES CAN RESULT  
IN SIGINFICANT RECOVERIES

Your report places much emphasis upon the recovery potential of so-called "nuisance" cases. You state that Labor would have considered 67 of the 189 cases identified as having recovery potential as being in the "nuisance" category and 61 of the 120 cases actually processed and settled during the review period. You note that 14 out of 31 of the cases processed and settled in the New York area in the review period fall in the "nuisance" category and that only six of the 14 had been notified by Labor. You also noted that three cases in this group had produced gross recoveries of at least \$10,000 each.

COMMENT:

You do not define "nuisance" cases other than to refer to unidentified past Labor directives which allegedly so classified "dogbite" and "slip and fall" cases and ruled out pursuit of recovery with respect to them. However, we have not, as your report implies, automatically ruled out consideration of "dog bite" cases or "slip and fall" cases for recovery purposes but pursued recovery action vigorously when appropriate in the circumstances of the particular case. (See, for example, the attached recovery statement with respect to the claim of Mr.

(See GAO note.) for a dogbite on August 31, 1974 in which, after adjustment for his attorney's fee, a net refund of \$344.16 was made for an injury which cost the Government \$564.20 (Exhibit 2 ). It should also be noted that of the 14 "nuisance" cases processed and settled during the review period in New York recoveries in six (43%) were initiated by Labor's notification to the claimant of the recovery potential.

I would also emphasize in this connection that it is not always possible to determine at the time a claim is filed what disbursements will ultimately be required with respect to it. Where the injury requires little or no loss of time and minimal medical treatment on an outpatient basis, it is obviously not economically feasible to pursue recovery. It has, therefore, been our practice in the past to close as "minor" cases of this kind which do not involve disbursements of more than \$100. Because of the high rate of inflation in the field of medical care we are now raising this figure under our new procedures to \$500. We recognize, of course, that developments may necessitate further disbursements at a later date. We are, therefore, establishing a new procedure for monitoring disbursements so that claims which later require reopening can be reevaluated for recovery purposes.

Certainly, cases such as you noted in your report involving wrist fractures, which may require extended medical treatment and therapy, and result in temporary partial or total disability, are not routinely treated as "nuisance" cases.

## LABOR'S ATTEMPTS TO IMPROVE RECOVERIES ARE INEFFECTIVE

You state that although Labor has recently hired additional claims examiners and revised its procedures for pursuing third party liability cases, its efforts are inadequate.

GAO note: Identification deleted.

COMMENT:

I must respectfully suggest that your judgment is premature. In projecting total potential recoveries under the program it is helpful to look to recent FECA claims experience. Although we do not have hard data in this regard, it is our best estimate that the average cost per case for Postal Service employee claims, which accounted for the largest number of the claims in your sample, is \$1,512. Although we recognize the need for improvement, we submit that the recoveries reflected for the review period in the table below are not insubstantial. According to our records, net recoveries for the review period were as follows:

<u>Calendar Year</u>		
1975		1,243,590.60
1976		1,417,580.40
1977 - SOL		2,198,816.67
	DO	50,554.14
	Total	<u>2,249,370.81</u>
Net recoveries for Calendar Year 1978		
totalled		2,226,767.73

Our increased emphasis will, I am sure, produce substantial increases.

Special efforts are already being made through regularly scheduled meetings by both national and regional office staff to establish improved liaison with employing agencies. This increased awareness is expected to result in improved initial claims submissions which are supported by the reports and other documentation needed for timely and effective pursuit of third party recovery potential.

Under the new procedures now being implemented, each claimant will receive notice at the outset of his/her rights and responsibilities under the Act. New monitoring responsibilities are being imposed upon specially designated claims examiners in each District Office to assure full and timely development of each case so that its recovery potential can be properly evaluated. Labor's ADP capability will also be employed as you suggest to assist in the monitoring of all third party cases. This improved monitoring will also enable the Solicitor's office to better follow up on and take such collection action as may be appropriate in cases where recoveries are not forthcoming.

I appreciate this opportunity to comment upon your draft report. Let me assure you of Labor's commitment to fully discharge its statutory responsibilities with respect to third party recoveries. I am confident that the initiatives now being taken will have this result. If further information is desired, please let me know.

Sincerely,



R. C. DeMarco  
Inspector General - Acting

Enc. (See GAO note.)

GAO note: Enclosures deleted.

Single copies of GAO reports are available free of charge. Requests (except by Members of Congress) for additional quantities should be accompanied by payment of \$1.00 per copy.

Requests for single copies (without charge) should be sent to:

U.S. General Accounting Office  
Distribution Section, Room 1518  
441 G Street, NW.  
Washington, DC 20548

Requests for multiple copies should be sent with checks or money orders to:

U.S. General Accounting Office  
Distribution Section  
P.O. Box 1020  
Washington, DC 20013

Checks or money orders should be made payable to the U.S. General Accounting Office. NOTE: Stamps or Superintendent of Documents coupons will not be accepted.

**PLEASE DO NOT SEND CASH**

To expedite filling your order, use the report number and date in the lower right corner of the front cover.

GAO reports are now available on microfiche. If such copies will meet your needs, be sure to specify that you want microfiche copies.



AN EQUAL OPPORTUNITY EMPLOYER

UNITED STATES  
GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES PAID  
U. S. GENERAL ACCOUNTING OFFICE



THIRD CLASS