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# Annual Report on the Status of the State of Maine Workers' Compensation System, 2008

Maine Workers' Compensation Board

Maine Bureau of Labor Standards

Maine Bureau of Insurance

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# **Annual Report on the Status of the Maine Workers' Compensation System**

**Submitted to the  
123<sup>rd</sup> Legislature  
(Second Regular Session)**

**February 2008**

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February 15, 2008

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The Honorable Glenn Cummings  
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We are pleased to submit to the Governor and the 123<sup>rd</sup> Legislature, Second Regular Session, the Annual Report on the Status of the Maine Workers' Compensation System as required by Title 39-A § 358-A(1).

The Annual Report profiles the current status of the workers' compensation system in Maine and is submitted by the three State agencies most involved in the workers' compensation system – the Workers' Compensation Board, the Bureau of Insurance, and the Maine Department of Labor, Bureau of Labor Standards.

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## EXECUTIVE SUMMARY

The Workers' Compensation Board, in consultation with the Superintendent of Insurance and the Director of the Bureau of Labor Standards, is directed by Title 39-A, Section 358-A(1) to submit an annual report on the status of the workers' compensation system to the Governor and the Joint Standing Committee on Labor and Joint Standing Committee on Banking and Insurance by February 15 of each year.

### WORKERS' COMPENSATION BOARD

The Governor worked diligently with both labor and management to ensure the passage of Public Law 2004 Chapter 608 which became effective April 8, 2004. The intent of the legislation was to break the Board's gridlock on key issues and return a sense of normalcy to the Board's operations. The legislation changed the structure of the Board from eight members to seven. Three members represent labor and three represent management. The seventh member is the Executive Director, who serves as Chair of the Board and at the pleasure of the Governor. Since the effective date of the legislation, the Board has resolved all of the gridlock issues and functions in an effective manner in setting policy for Board business. Some of the difficult issues the Board has acted on include: hearing officer appointments; hearing officer terms; budgetary and assessment matters; Section 213 actuarial studies; electronic filing mandates; by-law revisions; legislation; compliance issues; independent medical examiners; worker advocate resources and reclassifications; dispute resolution issues; increase in compliance benchmarks; and independent contractors.

The importance of the Governor's legislation (Chapter 608) cannot be overly emphasized. The State of Maine has gradually improved its national rating regarding the costs of workers' compensation and an effective and efficient Board will help to perpetuate this positive trend. But recently the Board has been divided on issues such as the budget, independent medical examiners, and Section 213 issues (extension of benefits and permanent impairment thresholds). These are issues of particular importance to both Labor and Management, but issues on which they have been unable to reach consensus. Decisions are regularly made by the Chair in a tie-breaking manner, which means, in large part, that the parties of interest are not reaching consensus on decisions that impact their constituencies.

It was not too long ago that Maine was one of the costliest states in the nation in regard to workers' compensation costs. A recent article in the *Workers' Compensation Policy Review* compared the costs of benefits for 47 states and highlighted Maine's achievements during the past few years: "The experience in Maine ... clearly demonstrates that significant reduction in cash, medical, and total benefits are possible."

The 2005 Edition of *Workers' Compensation State Rankings Manufacturing Industry Costs* provides a costs comparison for the manufacturing section in 45 states. The purpose of the study

is to provide a comparison as to the cost of obtaining workers' compensation coverage among states. Maine's rank was 29<sup>th</sup> among 45 states and Maine's rank was 3<sup>rd</sup> among the New England states with only Massachusetts and Rhode Island faring better than Maine. The Oregon Department of Consumer and Business Services reports every two years as to overall premium costs per State. In 2002 Maine's ranking among the 50 states was 8<sup>th</sup>; in 2004, it was ranked at 13<sup>th</sup>; and in 2006 it was ranked at 8<sup>th</sup>.

And in a recent report, *Fiscal Data for State Workers' Compensation Systems*, designed to provide employers and public policymakers with comparative statistics on state workers' compensation costs, Maine was listed as one of the states with the largest decrease in its benefit costs rate: Alabama (-7.9%), Colorado (-11.2%), Kansas (-16.5%), **Maine (-12.9%)**, Nevada (-14.7%), Rhode Island (-15.2%), and Utah (-13.2%).

Maine has gone from one of the costliest states in the nation to one that is moving to the level of average costs for both premiums and benefits and has positioned itself to continue this trend. Maine appears to have struck a balance between reasonable costs and reasonable benefits, all within the Governor's policy making Maine even-handed and competitive.

The Board submitted five bills for consideration during the First Regular Session of the 123<sup>rd</sup> Legislature. All five were enacted into law:

The first bill, P.L. 2007, Ch. 350, adds domestic partners, as defined in Title 24, Section 2319-A, Subsection 1, to the list of individuals who can waive coverage in certain circumstances.

The second bill, P.L. 2007, Ch. 218, provides that penalties for non-payment of bills for medical or health care services are payable to the providers of the medical or health care service or the employee who paid for the medical or health care service instead of to the Board's Administrative Fund.

The third bill, P.L. 2007, Ch. 78, clarifies that decisions issued by the Board pursuant to Section 360 are final agency action subject to appeal to the Superior Court whether or not a penalty is imposed.

The fourth bill, P.L. 2007, Ch. 26, authorizes the Board to have the Attorney General or private counsel to prosecute any action necessary to enforce penalties payable to the Administrative Fund, Employment Rehabilitation Fund, or the General Fund.

And, the fifth bill P.L. 2007, Ch. 312, enhanced the Worker Advocate program by allocating funds to reclassify 11 Worker Advocate positions from range 24 to range 27, reclassify one Worker Advocate position (range 24) to Deputy Senior Staff Attorney Position (range 29), reclassify 1 Senior Staff Attorney position from range 29 to range 33, and reclassify 6 Paralegal Assistant positions (range 18) to Paralegal positions (range 20). This bill also requires that individuals hired as worker advocates by the Workers' Compensation Board on or after September 20, 2007 either be admitted to practice law in

Maine or be eligible to practice law in Maine upon hiring and, within 12 months of hiring, be admitted to practice law in Maine.

The major issues facing the Board in the 2008 year include: Implementation of the Blake, Hurley, McCallum & Conley recommendations; Adoption of a Hospital Fee Schedule; Collection of Permanent Impairment Data; Board Appointments; and Review of Trends in Workers' Compensation Claims.

## **BUREAU OF INSURANCE**

The advisory loss costs, the portion of workers' compensation rates which cover projected loss and loss adjustment expenses, has been steady for several years. The advisory loss costs are, on average, 38 percent lower than they were when the last major reform was made to the system in 1993. The percentage increase and decrease in advisory loss cost varies by classification and is based in part upon past loss experience. The Bureau of Insurance recently approved an average 2.2 percent decrease in the advisory loss costs effective January 1, 2008.

Maine's workers' compensation insurance market is open competitive. New companies are allowed to enter the market and compete for business with companies that are already licensed and have rates on file. By law the Superintendent cannot determine that the rates of any insurance company are excessive, and competition in the market controls the rate levels. The number of carriers entering the market continues to outpace those exiting, and the number of policyholders receiving rates lower than MEMIC's Standard Rating tier increased by three percent this past year.

Maine's workers' compensation insurance market remains quite concentrated. Even though MEMIC's market share dropped by nearly two percent over the past two years, MEMIC accounts for over 63 percent of the written premium in the state. The top three insurance groups (companies under common ownership) account for 79 percent of the market and the top five groups account for 87 percent of the market.

Self-insured employers account for nearly 41 percent of Maine's workers' compensation market. That is a slight increase over the prior year and the first increase in three years. There are currently 70 individually self-insured employers and 1,478 other employers who are self-insured in one of 19 groups. Group self-insured plans generally have rates lower than those available from the insured market. Employers must meet eligibility requirements in order to be considered for a group.

Employers purchasing coverage from insurance carriers have some options for reducing their premiums. Nearly all employers are eligible to elect small deductibles whereby the employer reimburses the insurer for a specified amount of losses for either indemnity or medical payments in return for a small percentage reduction in premium. Some employers are eligible for large deductibles and those employers receive a much lower premium in exchange for accepting more risk. Additionally, merit rating and experience rating are a means to receive credits for those employers who maintain a low frequency and severity of claims. However, those employers who

do not do so may receive debits. Insurers may utilize schedule rating to consider factors not already considered in experience rating. Employers who do things like develop safety plans, keep their premises in good condition, install safety devices, have management stability, train their employees and establish return-to-work programs may be eligible for credits.

In the insurance market, a portion of premium amounts collected by insurers is set aside in an escrow account. That portion is not considered fully earned premium unless or until the benefit duration limits under 24-A M.R.S.A. § 213 are extended to 520 weeks. The Workers' Compensation Board recently decided to extend the benefit duration to 416 weeks, so a portion of the funds held in escrow will be treated as earned premium and the percentage of premiums held in escrow for 2008 will be reduced to 1.7%.

Overall, Maine's workers' compensation insurance market remains relatively stable with Maine Employer's Mutual as the primary insurer and a substantial portion of the market self-insured. Insurers will compete for the business of employers that maintain a safe work environment and control their losses. New businesses and businesses with an unfavorable loss experience will have fewer options.

## **BUREAU OF LABOR STANDARDS**

The Bureau of Labor Standards (BLS) of the Maine Department of Labor (MDOL) works in collaboration with the Maine Workers' Compensation Board (WCB) in the prevention of occupational injuries and illnesses by a variety of means. Under Title 26 MRSA § 42-A, the BLS is charged with establishing and supervising safety education and training programs. Additionally, the BLS has the authority to collect and analyze statistical data on work-related injuries and illnesses and their effects. The MDOL is also responsible for enforcement of Maine labor laws and the related rules and standards, including occupational safety and health standards in the public sector.

SafetyWorks! is an identity that encompasses the occupational safety and health (OSH) training, consultation and outreach functions of the BLS. These activities include use of WCB data to respond to requests for information from the OSH community and the general public on the safety and health of Maine workers. SafetyWorks! instructors also design their safety training programs based on industry profiles generated from data from the WCB *First Reports of Occupational Injury or Disease* and other sources.

In terms of enforcement, the Wage and Hour Division of the BLS reviews and approves work permit applications to protect minor workers and inspects employers for compliance with Maine child labor law. The Wage and Hour Division may use the data from the WCB *First Reports*, among other criteria, to select employers for inspection. The Workplace Safety and Health Division of the BLS enforces safety regulations *in the public sector only*. The Workplace Safety and Health Division prioritizes state and local agencies for inspection based on the agency's injury and illness data from the WCB, the results of the Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses, or complaints from employees or employee representatives.

Effective workplace injury and illness prevention requires a detailed working knowledge of all factors contributing to occupational safety and health. The WCB collects data from its *First Reports*, which the BLS electronically imports for coding and analysis. In addition, the following annual data collections are administered by the Research and Statistics Unit of the BLS: 1) the Federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses, 2) the Federal Occupational Safety and Health Administration's (OSHA) Data Initiative, and 3) the Census of Fatal Occupational Injuries. Taken together, the results of these surveys provide an epidemiological profile of occupational injuries and illnesses in Maine. The BLS also conducts research on narrower foci. In 2007 such research took the form of:

- Continuation of capacity building in OSH surveillance
- Development in-house of an occupational fatality reporting program similar to the federal Fatality Assessment, Control, and Evaluation (FACE) program.

A serious problem is missing data in WCB *First Reports* submitted by Electronic Data Interchange (EDI). Missing fields prevent useful analysis and BLS must therefore collect the data by phone. In 2007, a Value-Stream Mapping (VSM) team determined that BLS case coding quality was the same as before EDI. However, coding was taking more effort (about twice as much overall) to maintain that quality. The VSM team was able to show that almost 60% of the incoming cases had problems, some involving multiple fields. The VSM process identified and implemented a series of changes, including correcting a general programming error that had affected half of the cases entering the coding process.

A separate, chronic problem in the use of WCB data is that around 50% of *First Reports* are missing the date for the employee's return to work. The "return to work" date is a critical data element for a number of important purposes. The problem is at least partly due to a built-in functionality of the WCB system. The EDI process seems to be improving the results in this area somewhat, but there is still a long way to go.

The Occupational Safety and Health Data Collection and Injury Prevention Work Group was convened September 29, 2003, by the Department of Labor under 2003 Public Law chapter 471. Membership includes representatives of the WCB staff. Among the primary purposes of the Work Group is the identification of ways to improve the collection and analysis of occupational safety and health data. Such problems in data collection and sharing are being closely examined and there is good reason to hope for improvements. The Work Group will again be reporting to the legislature in late 2007 or early 2008 on specific problems and recommendations.

The BLS applied for no research grants in 2007 because NIOSH funding was unavailable. The Maine Occupational Research Agenda (MORA), created in 2000 on the model of the National Occupational Research Agenda, provided input to BLS on a variety of OSH issues through review of relevant projects in 2007. Additionally, several members are currently working on a joint conference with the Jackson Laboratories entitled "Occupational Health, Safety and Risk Assessment Meeting - The Genetic Basis of Work-Related Disease: Science, Ethics, and Policy", scheduled for September 2008.

In 2007, the Research and Statistics Unit of BLS continued its data outreach initiative, placing its accumulated data and data-related services before the public. SafetyWorks! administered the Safety and Health Achievement Recognition Program (SHARP) in the private sector and began the parallel Safety and Health Award for Public Employers (SHAPE) in the public sector as means of recognizing outstanding employer safety programs. Six employers were admitted to the SHARP and seven to the SHAPE in 2007.

There was limited legislative action directly impacting occupational safety and health in the First Regular Session of the 123<sup>rd</sup> Legislature.

**SECTION A**

**WORKERS' COMPENSATION BOARD**

**SECTION A**  
**WORKERS' COMPENSATION BOARD**

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## 1. INTRODUCTION

The original agency, known as the Industrial Accident Board, began operations on January 1, 1916. It became the Workers' Compensation Commission in 1978. It became the Workers' Compensation Board in 1993.

The major programs of the Board fall into six categories: (1) Dispute Resolution; (2) Compliance – Monitoring, Auditing, and Enforcement (MAE) Program; (3) Worker Advocate Program; (4) Independent Medical Examiners/Medical Fee Schedule; (5) Technology; and (6) Central and Regional Office support.

The implementation of Standard Operating Procedures (SOPs) has resulted in the elimination of backlogs and an efficient dispute resolution system. But a recent Law Court decision in regard to the Independent Medical Examiner program has reversed some of the progress. The Law Court holding in *Lydon v. Sprinkler Systems* has resulted in a reduction in the number of independent medical examiners causing significant delays to the formal hearing process. Cases without an IME are processed within 8 months, while cases with an IME are taking over 11 months to process through the formal hearing system. The *Lydon* decision has also hampered the Board's ability to attract doctors in the appropriate specialties to serve as independent medical examiners.

The MAE Program has dramatically improved compliance throughout the industry both as to payments and filings. The basic goals of the programs are to (1) provide timely and reliable data to policy-makers; (2) monitor and audit payments and filings; (3) identify insurers, self-insurers and third-party administrators that are not complying with minimum standards.

The Worker Advocate Program has given injured workers access to advocates improving their likelihood of receiving statutory benefits. Over 50% of injured workers are represented by advocates at the mediation level and over 30% are represented by advocates at the formal hearing level.

The Board has recently mandated the electronic filing of First Reports of Injury (July 1, 2006), Notices of Controversy (April to June 2006), Memorandums of Payment and related documents (September 2008), and Proof of Coverage (January 2008).

The Board is not a General Fund agency and receives its revenue to fund its operations through an assessment on Maine's employers. The Legislature established the assessment as a revenue source to fund the Board, but capped the assessment, limiting the amount of revenue which can be assessed.

The Board's assessment was adequate to fund the Board's operations until FY97. In 1997, the Board implemented legislation that expanded the Worker Advocate Program and created the MAE Program. The cost of these programs has been in excess of the amount allocated for the task. The cost of these programs, increases in employee salaries and benefits, and general

inflation created budgetary problems for the Board, in light of the maximum assessment set by law.

The Legislature, recognized the urgency of the Board's situation in FY02, taking two steps: (1) authorizing the use of \$700,000 from the Board's reserve account; and (2) authorizing a one-time increase in the maximum assessment of \$300,000 to provide temporary assistance to the Worker Advocate Program. The Legislature also recognized the urgency of the Board's situation in FY03, taking the following steps: (1) authorizing the use of reserve funds in the amount of \$1,300,000; (2) increasing the assessment to fund a hearing officer position in Caribou in the amount of \$125,000; and (3) allocating funds from reserves to fund actuarial studies and arbitration services to determine permanent impairment thresholds, and to fund a MAE Program position in the amount of \$135,000. These were short-term solutions and during the 2003 Legislative Term the Legislature increased the Board's assessment cap to \$8,350,000 in FY 04 and \$8,525,000 in FY 05. The Legislature also provided for greater discretion in the use of the Board's reserve account. Through the use of the reserve account, the Board was able to fund the FY-06-07 budget. Finally, the Legislature increased the Board's assessment for FY 07-08 to \$9,820,178 and for FY 08-09 to \$10,400,000, and requested an audit of the Board's performance for the past 10 years and a review of the Worker Advocate and Monitoring, Audit, & Enforcement Programs to determine if they were adequately funded.

The Blake Hurley McCallum & Conley audit and program report will be submitted to the 123<sup>rd</sup> Second Regular Session of the Legislature, the Workers' Compensation Board, and the Department of Administrative and Financial Services in January of 2008 relating to the Board's fiscal operations for the past 10 years, and will include recommendations to further improve the efficiency of the Board's operations.

The Board is attempting to improve efficiency and lower costs through administrative efforts ranging from mandating electronic data interchange, enforcing performance standards in the dispute resolution process, and enforcing compliance through the MAE program and the Abuse Investigation Unit.

In 2004 the Governor introduced a Bill, which was enacted by the Legislature as Chapter 608 and entitled "*An Act to Promote Decision-Making Within the Workers' Compensation Board.*" The purpose of the legislation was to break the gridlock that adversely affected the Board. The legislation reduced the size of the Board from eight to seven members and empowered the Governor to appoint an executive director, to serve as chair and chief executive officer of the Board. The Board has since resolved most of the gridlock issues and functions in a more effective manner in setting policy for the Board's business.

Prior to the inception of the Maine Workers' Compensation Act (January 1, 1993), Maine was one of the costliest states in the nation in regard to workers' compensation costs. Recent studies demonstrate a dramatic improvement for Maine in comparison to other states. Maine has gone from one of the costliest states in the nation to one that is at average costs for both premiums and benefits, all within the Governor's policy of making the system fair and competitive for Maine's employees and employers.

## **2. ENABLING LEGISLATION AND HISTORY OF MAINE WORKERS' COMPENSATION**

### **I. ENABLING LEGISLATION.**

39 M.R.S.A. § 101, et seq. (Maine Workers' Compensation Act of 1992)

On January 1, 1993, Title 39, which contained the Workers' Compensation Act of 1991 and all prior workers' compensation acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992.

### **II. REVISIONS TO ENABLING LEGISLATION.**

The following are some of the revisions made to the Act since 1993.

- **§ 102(11)(B-1).** Tightened the criteria for wood harvesters to obtain a predetermination of independent contractor status.
- **§ 113.** Permits reciprocal agreements to exempt certain nonresident employees from coverage under the Act.
- **§ 151-A.** Added the Board's mission statement.
- **§ 153(9).** Established the monitoring, audit & enforcement (MAE) program.
- **§ 153-A.** Established the worker advocate program.
- **§ 201(6).** Clarified rights and benefits in cases which post-1993 work injuries aggravate, accelerate, or combine with work-injuries that occurred prior to January 1, 1993.
- **§ 213(1-A).** Defines "permanent impairment" for the purpose of determining entitlement to partial incapacity benefits.
- **§ 224.** Clarified annual adjustments made pursuant to former Title 39, §§ 55 and 55-A.
- **§ 328-A.** Created rebuttable presumption of work-relatedness for emergency rescue or public safety workers who contract certain communicable diseases.
- **§§ 355-A, 355-B, 355-C, and 356.** Created the Supplemental Benefits Oversight Committee.
- **§§ 151, Sub-§1.** Established the Executive Director as a gubernatorial appointment and member and Chair of the Board of Directors.

### **III. STATE AGENCY HISTORY.**

The original agency, the Industrial Accident Board, began operations on January 1, 1916. In 1978, it became the Workers' Compensation Commission. In 1993, it became the Workers' Compensation Board.

#### **A. The Early Years of Workers' Compensation.**

A transition from common law into the statutory system we know today occurred during the late teens and early 1920's. Earlier, an injured worker had to sue his employer and prove fault to obtain compensation. Workers' compensation was conceived as an alternative to tort. Instead of litigating fault, injured workers would receive a statutorily determined compensation for lost wages and medical treatment. Employers gave up legal defenses such as assumption of risk or contributory negligence. Injured workers gave up the possibility of damages, beyond lost wages and medical treatment, such as pain and suffering and punitive damages. This historic bargain, as it is sometimes called, remains a fundamental feature of workers' compensation. Perhaps because of the time period, financing and administration of benefit payments remained in the private sector, either through insurance policies or self-insurance. Workers' compensation disputes still occur in a no fault system. For example, disputes arise as to whether the disability is related to work; how much money is due the injured worker; and, how much earning capacity has been permanently lost. Maine, like other states, established an agency to process these disputes and perform other administrative duties. Disputes were simpler. Injured workers rarely had lawyers. Expensive, long term, and medically complicated claims, such as carpal tunnel syndrome or back strain, were decades away.

#### **B. Adjudicators as Fact Finders.**

In 1929, the Maine Federation of Labor and an early employer group listed as "Associated Industries" opposed Commissioner William Hall's re-nomination. Testimony from both groups referred to reversals of his decisions by the Maine Supreme Court. This early feature of Maine's system, direct review of decisions by the Supreme Court, still exists today. The Supreme Court decides issues regarding legal interpretation, and does not conduct a whole new trial. In Maine, the state agency adjudicator has historically been the final fact finder.

Until 1993, Commissioners were gubernatorial appointments, subject to confirmation by the legislative committee on judiciary. The need for independence of its quasi-judicial function was one of the reasons why it was established as an independent agency, rather than as a part of a larger administrative department within the executive branch. The smaller scale of state government in 1916 no doubt also played a role.

#### **C. Transition to the Modern Era.**

In 1974, workers' compensation coverage became mandatory. This and other significant changes to the statute were passed without an increase in appropriation for the Industrial Accident Commission. In 1964 insurance carriers reported about \$3 million in direct losses paid. By 1974 that had grown to about \$14 million of direct losses paid. By 1979, direct losses paid by carriers

totaled a little over \$55 million. By 1984, it had grown to almost \$128 million. These figures do not reflect benefits paid through self-insurance. This exponential growth of the system resulted from legislative changes during the late 1970's and set the stage for a series of workers compensation crises that occurred throughout the 1980's and into the early 1990's.

During the early 1970's time limits were removed for both total and partial wage loss benefits. Inflation adjustments were added. The maximum benefit was set at 200% of the state average weekly wage. Also, laws were passed making it easier for injured workers to secure the services of an attorney. The availability of legal representation greatly enhanced an injured worker's likelihood of receiving benefits, especially in a complex case. And, statutory changes and evolving medical knowledge brought a new type of claim into the system. The law no longer required a specific accident. Doctors began to connect injuries such as carpal tunnel syndrome and back problems to work and thus brought these injuries within the coverage of workers' compensation.

Such injuries required benefit payments for longer periods than most accidental injuries. These claims were more likely to involve litigation. Over the course of a decade, rising costs quickly transformed workers compensation into a contentious political issue in the late 1980's and early 1990's.

In 1980, Commissioners became full-time and an informal conference process was added to attempt to resolve disputes early in the claim cycle, before a formal hearing.

Additionally, regional offices were established in Portland, Lewiston, Bangor, Augusta, and Caribou, supported by the central administrative office in Augusta.

In 1987, three full-time Commissioners were added, bringing the total to 11, in addition to the Chair. Today, the Board has nine Hearing Officers.

The workers' compensation environment of the 1980's and early 1990's was an extraordinary time in Maine's political history. Contentious legislative sessions regarding workers' compensation occurred in 1982, 1985, 1987, 1991, and 1992. In 1991, then Governor John McKernan tied his veto of the State Budget to changes in the workers' compensation statute. State Government was shut down for about three weeks.

In 1992, a Blue Ribbon Commission made a series of recommendations which were ultimately enacted. Inflation adjustments for both partial and total benefits were eliminated. The maximum benefit was set at 90% of state average weekly wage. A limit of 260 weeks of benefits was established for partial disability. These changes represented substantial reductions in benefits for injured workers, particularly those with long term disabilities. Additionally, the section of the statute concerning access to legal representation was changed making it more difficult for injured workers to secure the services of private attorneys.

Maine Employers' Mutual Insurance Company was established. It replaced the assigned risk pool and offered a permanent source of coverage. Despite differing views on the nature of the

problems within the preceding and current system, virtually all observers agree that MEMIC has played a critical role in stabilizing the workers' compensation environment in Maine.

Based on the recommendation of the Blue Ribbon Commission, the Workers' Compensation Board was created directly involving labor and management in the administration of the State agency.

The Board of Directors originally consisted of four Labor members and four Management members, appointed by the Governor based on nomination lists submitted by the Maine AFL-CIO and Maine Chamber of Commerce. The eight Directors hired an Executive Director to run the agency. In 2004 legislation was enacted to reduce the Board to three Labor Directors and three Management members. The Executive Director became a gubernatorial appointment, confirmed by the legislative committee on Labor, for a term concurrent with the Governor.

The Board of Directors appoints Hearing Officers to adjudicate Formal Hearings. And, a two step process replaced informal conferences: troubleshooting and mediation.

In 1997, legislation was enacted which provided more structure to case monitoring operations of the Board and created the MAE program. Also in 1997, a worker advocate program, begun by the Board, was expanded by the Legislature.

In terms of both regulatory and dispute resolution operations the Board has experienced significant accomplishments. In terms of its traditional operation, dispute resolution, the Board can show an efficient informal process. Between troubleshooting and mediation, approximately 75% of initial disputes are resolved within 80 days from the date a denial is filed. An efficient formal hearing process that had reduced timelines to an acceptable 7.3 months for processing cases in 2000. Gridlock by the Board of Directors regarding appointment of Hearing Officers occurred in 2003 and 2004, resulting in slightly longer time frames at the formal level, about 10.5 months in 2004. The problem was exacerbated by the Law Court decision in *Lydon v. Sprinkler Systems* significantly reducing the number of independent medical examiners (IME) from 30 to 11. Although the gridlock of the appointment of hearing officers has been broken, the IME problem persists, resulting in higher timeframes at formal hearing.

In an apples to apples comparison, matching the complexity of the dispute and the type of litigation, the Board's average time frame of about ten months for formal hearings is rapid, compared to other states, and especially if compared to court systems for comparable personal injury cases.

The agency was criticized for not doing more with its data gathering and regulatory operations during the late 1980's and early 1990's. But the benefit of a relational database installed in 1996, and a modern programming language, the agency is making progress. Filings of first reports and first payment documents are systematically tracked. Significant administrative penalties have been pursued in several cases. The computer applications and the abuse unit are doing a better job of identifying employers, typically small employers, with no coverage. No coverage hearings are regularly scheduled. The Board has mandated the electronic filing of First Reports with an effective date of July 1, 2005. The Board has also mandated the electronic filing of denials, with

an effective date of April through June 2006, and for payments, with an anticipated implementation date of April 2009.

During the late 1990's, the Board of Directors began to deadlock on significant issues such as the appointment of Hearing Officers, the adjustments to the benefit structure under section 213, and the agency budget. By 2002, this had become a matter of Legislative concern. Finally, in 2004, legislation was proposed by Governor Baldacci and enacted to make the Board's Executive Director a tie-breaking member of the Board and its Chair. The Executive Director became a gubernatorial appointment, subject to confirmation by the legislative Committee on Labor, serving at the pleasure of the Governor. Although it will take time to fully evaluate the new arrangement, clearly gridlock due to tie votes is no longer an issue, all issues which gridlocked the Board have been acted upon and the Executive Director has cast a deciding vote in numerous matters. However, the objective is to attain increased cooperation between the Labor and Management caucuses, which has occurred more frequently in 2006 and 2007.

### **3. DISPUTE RESOLUTION**

#### **I. INTRODUCTION.**

The Workers' Compensation Board has regional offices throughout the State, in Caribou, Bangor, Augusta, Lewiston and Portland that handle dispute resolution functions. The regional offices handle troubleshooting, mediation and formal hearings.

#### **II. THREE TIERS OF DISPUTE RESOLUTION.**

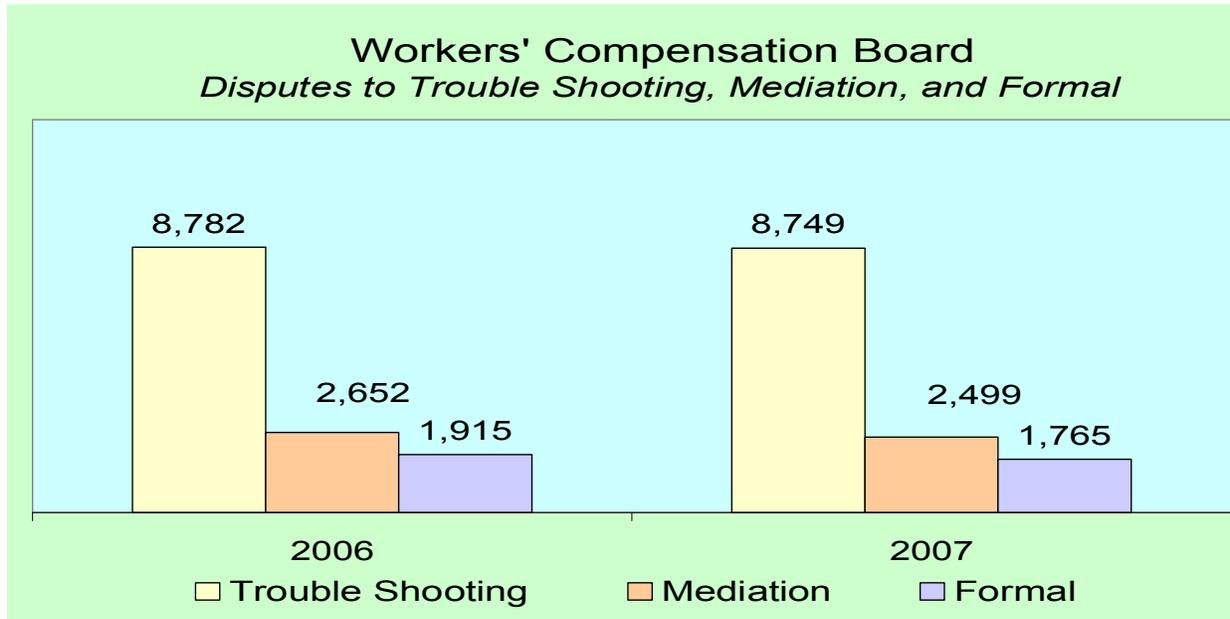
On January 1, 1993, Title 39, which contained the Workers' Compensation Act of 1991 and all prior workers' compensation acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992. The new Title 39-A created a three tiered dispute resolution process.

First, at the troubleshooting stage, a claims resolution specialist informally attempts to resolve disputes by contacting the employer and the employee and identifying the issues. Many times, additional information, often medical reports, must be obtained in order to discuss possible resolutions. If a resolution of the dispute is not reached after reviewing the necessary information, the claim is referred to mediation.

Second, at the mediation stage, a case is scheduled before one of the Board's mediators. The parties attend the mediation at a regional office or through teleconference. At mediation, the employee, the employer, the insurance adjuster and any employee or employer representatives such as attorneys or advocates meet with the mediator in an attempt to reach a voluntary resolution of the claim. The mediator requests each party to state its position and tries to find common ground. At times, the mediator meets with each side separately to sort out the issues. If the case is resolved at mediation, the mediator writes out the terms of the agreement, which is signed by the parties. If the case is not resolved at mediation, it is referred for formal hearing.

Third, at the formal hearing stage, the parties are required to exchange information and medical reports and answer specific questions that pertain to the claim. After the information has been exchanged, the parties file with the Board a "Joint Scheduling Memorandum," which lists the witnesses who will testify and estimates the time needed for hearing. Depositions of medical witnesses oftentimes secluded to elicit or dispute expert testimony. At the hearing, witnesses for both sides testify and evidence is submitted. In most cases, the parties are represented either by an attorney or a worker advocate. Following the hearing, position papers are submitted and the hearing officer issues a decision.

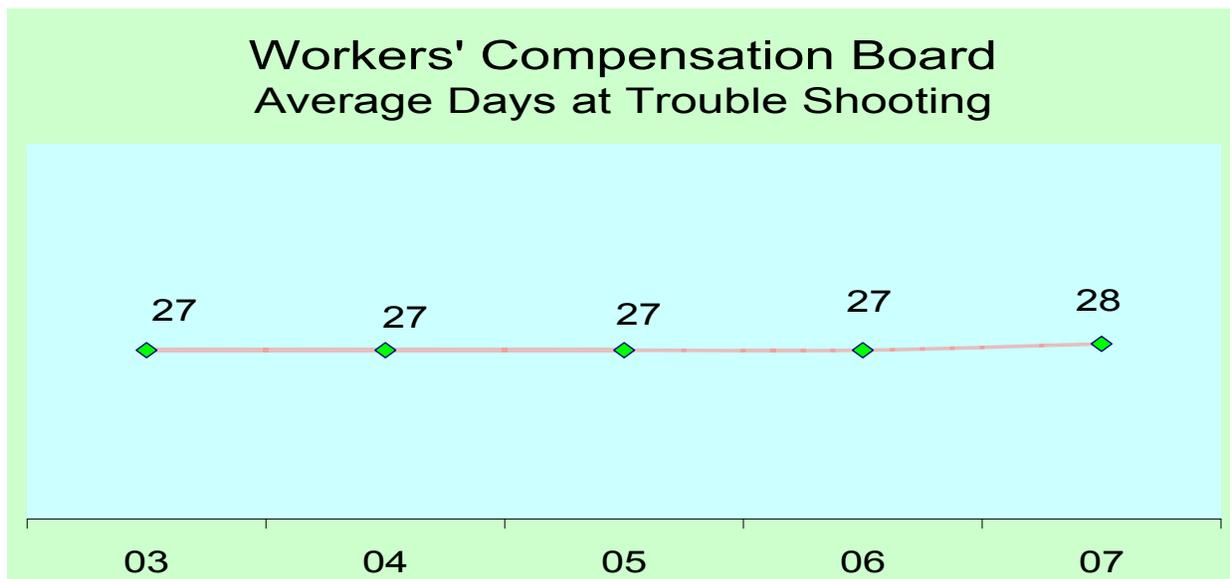
The number of cases resolved at each phase for the years 2006 and 2007 is illustrated in the chart below:



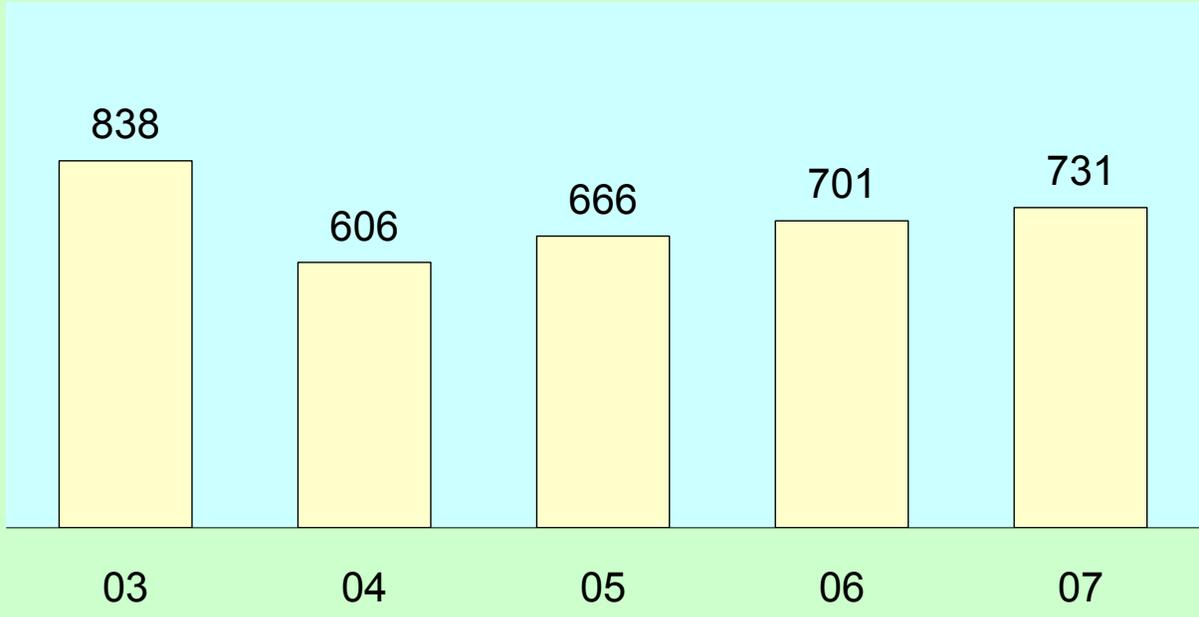
It is worth noting that approximately half of the cases that get to troubleshooting are resolved and half of the remaining cases are resolved at mediation. The remaining cases are resolved at the formal hearing level.

### III. TROUBLESHOOTING STATISTICAL SUMMARY

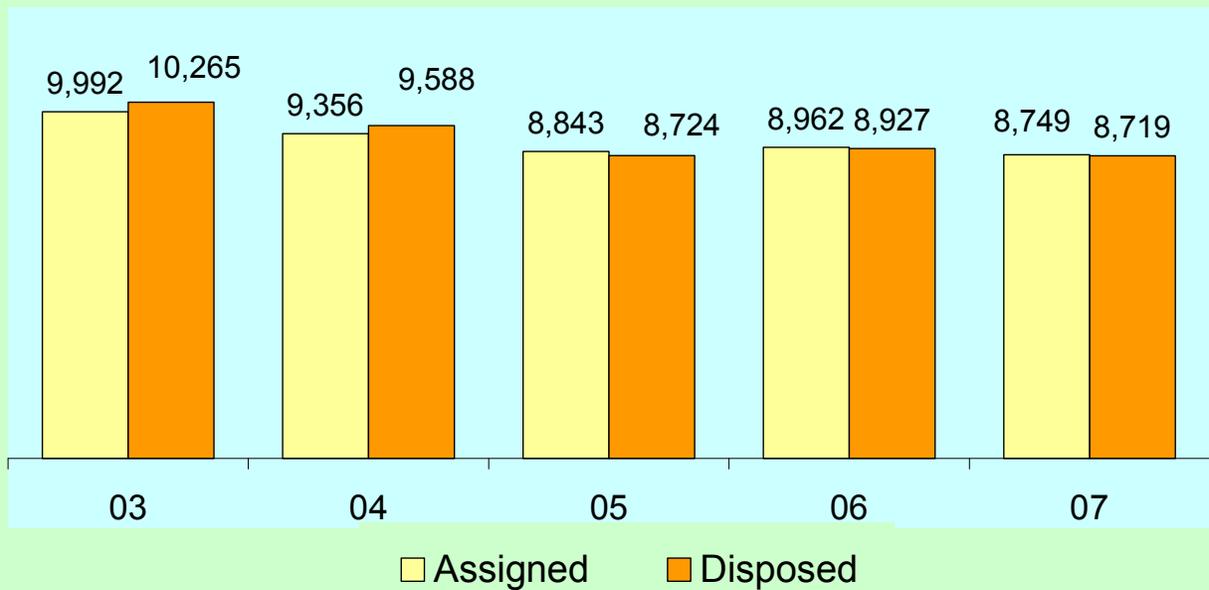
The following charts illustrate the number of days that cases are held at Troubleshooting, the number of cases pending and the number of filings and dispositions at that level.



## Workers' Compensation Board Cases Pending at Trouble Shooting as of Dec 31st

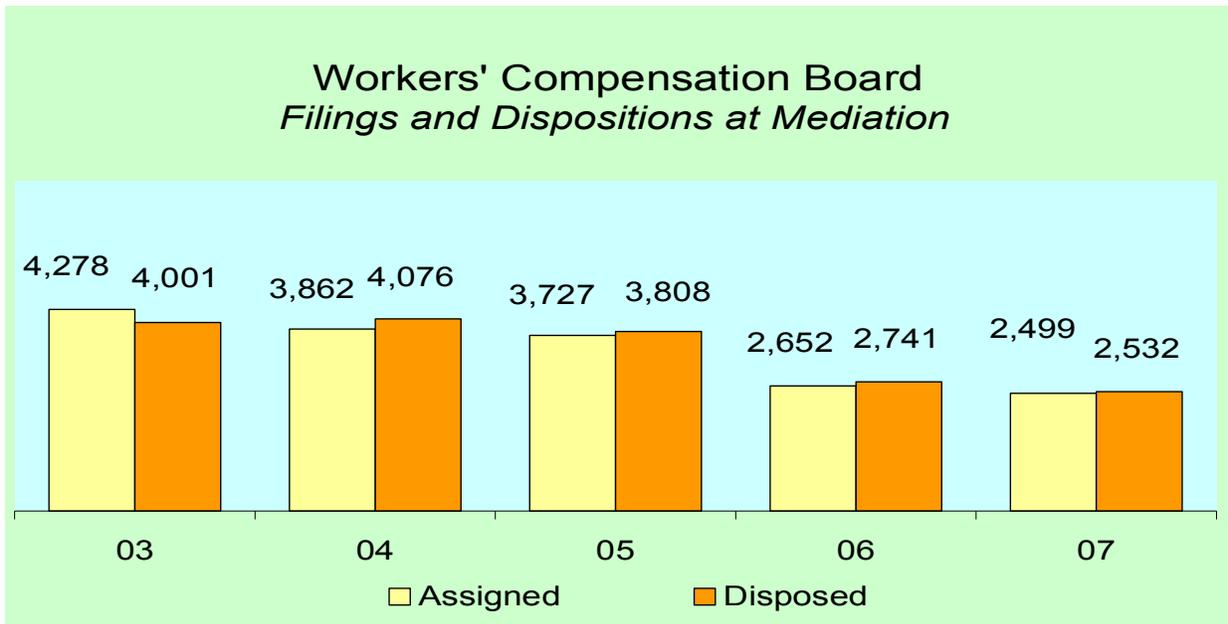
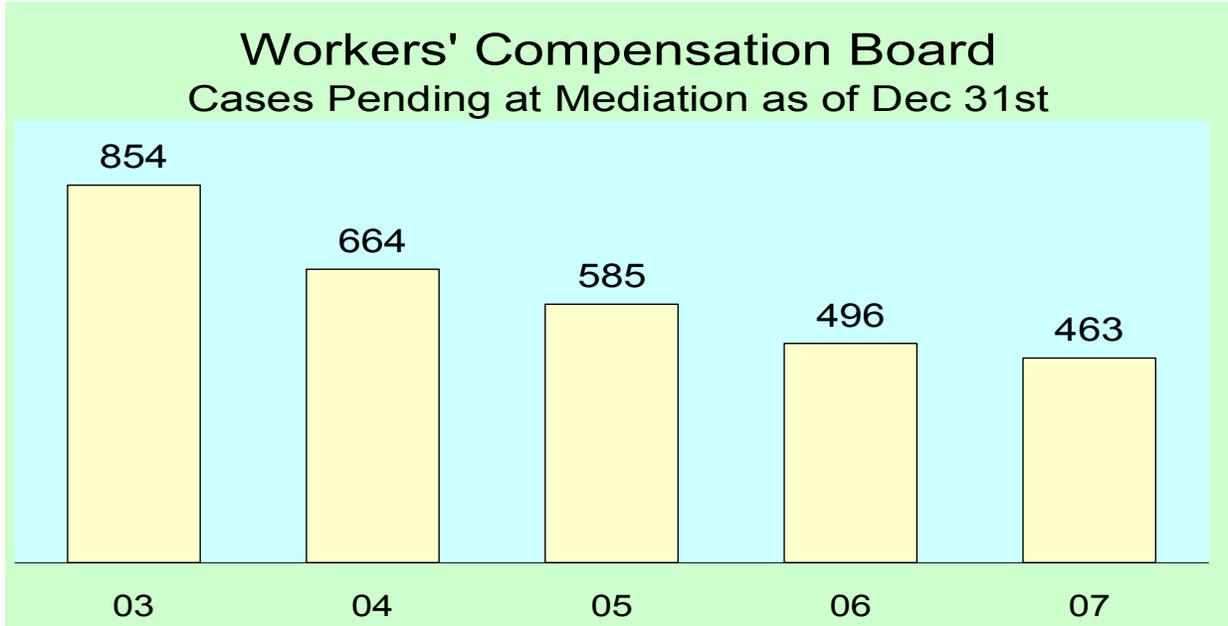


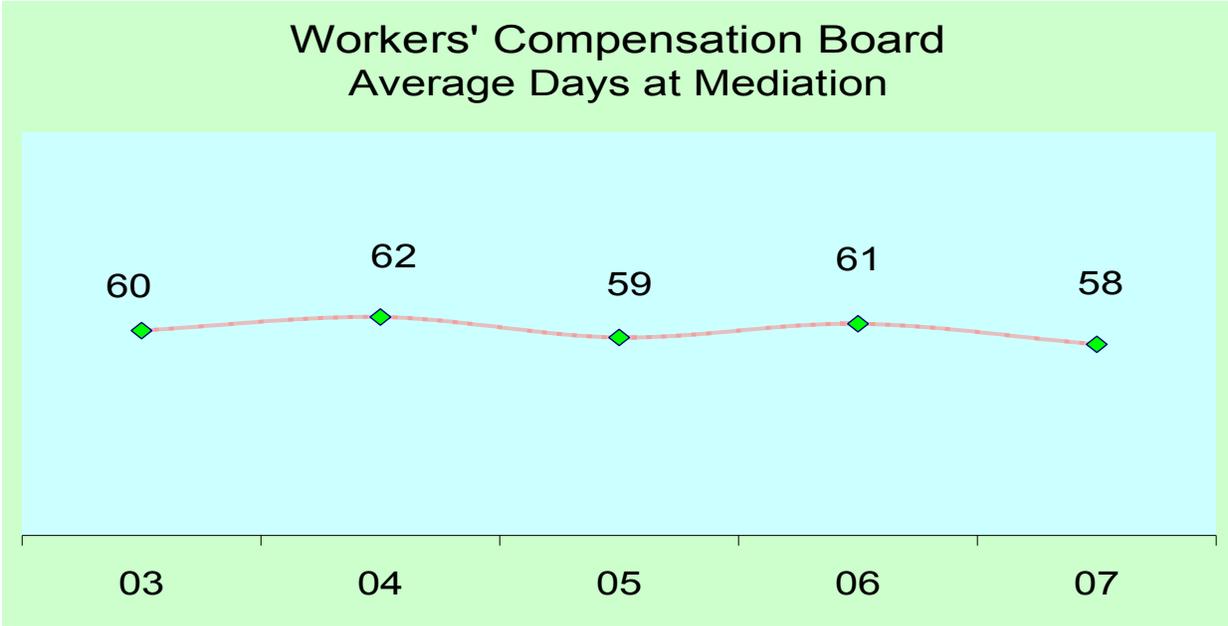
## Workers' Compensation Board *Filings and Dispositions at Trouble Shooting*



#### IV. MEDIATION STATISTICAL SUMMARY.

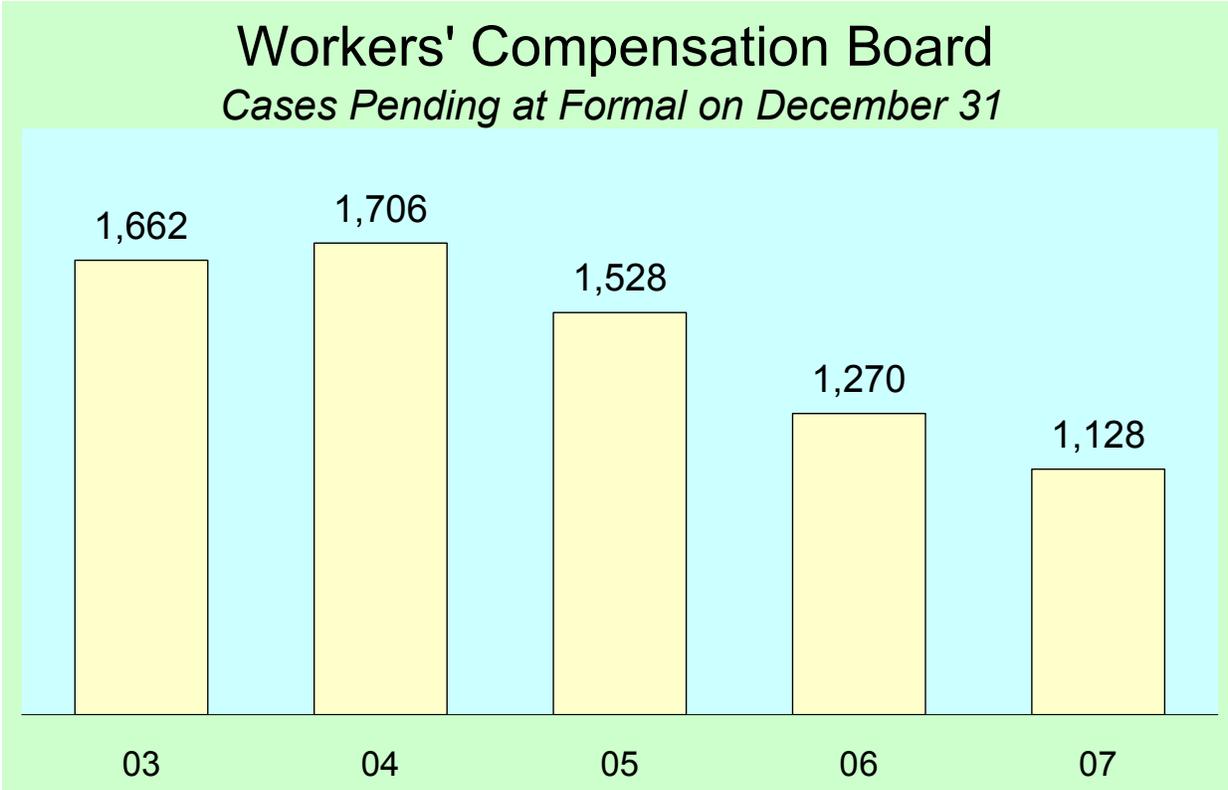
The following charts illustrate the number of cases pending at Mediation, the number of filings and dispositions at that level, and average timeframes.



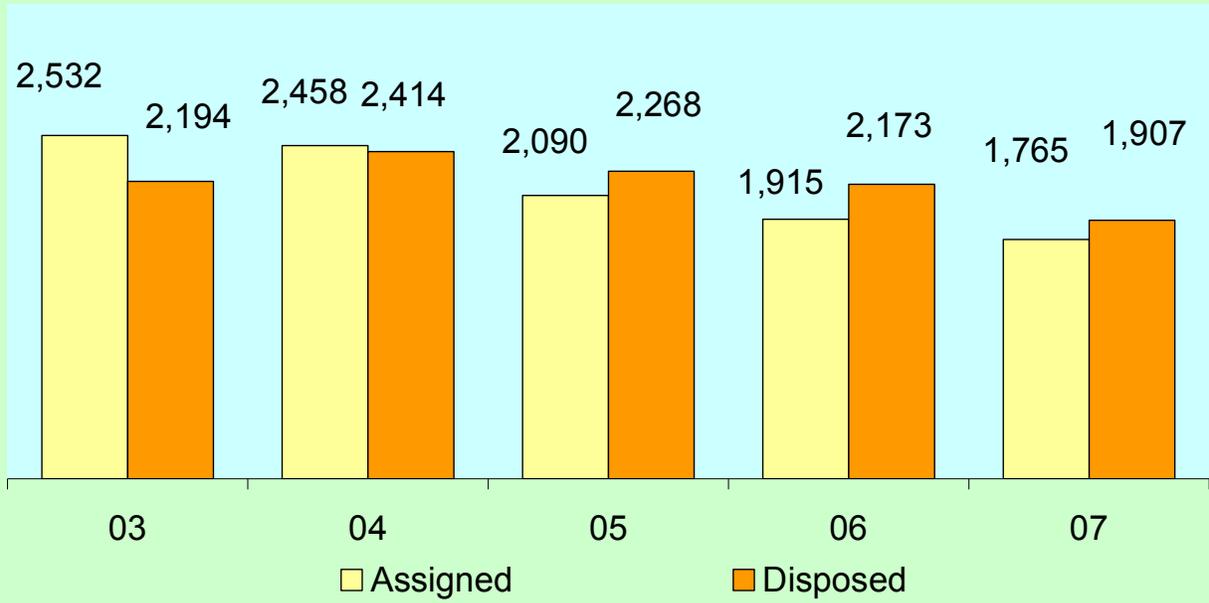


**V. FORMAL HEARING STATISTICAL SUMMARY.**

The following charts illustrate the number of cases pending at the formal level, filings and dispositions, and average timeframes.



## Workers' Compensation Board *Filings and Dispositions at Formal*



## Workers' Compensation Board Average Months Formal Hearing Decisions



## **VI. CONCLUSION.**

The Board currently has a full complement of hearing officers (9). Hearing officer terms have been lengthened from three to seven years. All hearing officers have been appointed to seven year terms.

In the case of *Lydon v. Sprinkler Systems*, the Law Court held that doctors who had performed a Section 207 examination within the prior 52 weeks were not eligible to render independent medical examinations pursuant to Section 312. The decision reduced the Board's IME list from 30 to 14 doctors, resulting in significant delays to the formal hearing process. Since then, the lists has been expanded to 22 doctors, but delays at formal hearing level will persist until the number of IMEs reaches an acceptable level or the statute is amended.

## 4. OFFICE OF MONITORING, AUDIT, AND ENFORCEMENT

### *HISTORY*

In 1997, the Maine Legislature, with the support of Governor Angus S. King, Jr., enacted Public Law 1997, Chapter 486 to establish the Office of Monitoring, Audit, and Enforcement (MAE). The basic goals of this office are to (1) provide timely and reliable data to policymakers; (2) monitor and audit payments and filings; and (3) identify insurers, self-administered employers, and third-party administrators (collectively “insurers”) that are not complying with minimum standards.

As part of the monitoring program, the Board identifies employers that do not have required coverage and identifies First Reports of Injury that are filed late. Audits are being conducted pursuant to a yearly schedule. The Board’s Abuse Investigation Unit provides an enforcement mechanism when violations of the Workers’ Compensation Act are identified.

### **I. MONITORING**

A key component of the monitoring program is the production of Quarterly Compliance Reports. These reports measure, on a system-wide and individual basis, the timeliness of Initial Indemnity Payments, the timeliness of Memoranda of Payment, the timeliness of First Reports of Injury filings, and the timeliness of Notices of Controversy.

To ensure that the Quarterly Compliance Reports would be as accurate as possible, a Pilot Project was undertaken in May 1997. The goal of the Pilot Project was to: (1) measure the Board’s data collection and reporting capabilities; (2) report on the performance of insurers; and (3) let all interested parties know what to expect from Quarterly Compliance Reports. These components were further modified on June 17, 2003, when the Board unanimously passed the following motion:

MOVE to implement the NOC Pilot Project to provide for the reporting of the number, timeliness and percent of initial indemnity claims denied (NOCs) in the compliance reports of 2004.

This performance indicator was made a permanent part of the Compliance Reports on November 22, 2005, when the Workers’ Compensation Board of Directors passed the following motion in a majority vote:

MOVE to implement the reporting of the number, timeliness and the percent of initial indemnity claims denied (NOCs) in the quarterly and annual compliance reports.

Upon approval of the First Quarter 2004 Quarterly Compliance Report, the Board directed that the number and timeliness of NOCs be reported in the Quarterly Compliance Reports of 2004 and the percent of initial indemnity claims denied be detailed in the Annual Compliance Report.

Starting in the First Quarter of 2006, two new compliance-related elements were added to the Quarterly and Annual Compliance Reports to reflect the Monitoring Division's activities in the administration of work systems and penalty processes related to Late Filed Coverage Notices and possible violations of §205(3) of the Act.

## **1. 2006 Annual Compliance Report Overview.**

### **A. Lost Time First Reports.**

14,747 Lost Time First Reports were received by the MWCB in 2006. This represents 242 fewer reports than in 2005 and 828 fewer than in 2004.

84% (84.44%) were filed within 7 days.

### **B. Payments of Initial Indemnity Benefit.**

87% (86.83%) of initial indemnity benefits were paid within 14 days. This is the highest annual compliance the industry has achieved to date. The MWCB Benchmark is 80%.

Continued focus on poor compliance carriers in 2006 played a large part in increasing this compliance performance compared to 2005.

### **C. Memoranda of Payment Filed Within 17 Days.**

84% (84.38%) of all Memoranda of Payment were filed within 17 days. The MWCB Benchmark is 75%. The insurance community exceeded this benchmark by over nine percent (9.38%).

### **D. Notices of Controversy.**

89.29% of the Initial Indemnity NOCs filed in 2006 were filed within 0-17 days. This marks a 3.13% decrease from 2005 (92.42%). This decrease is attributable to the Board requirement that claims administrators file NOCs by Electronic Data Interchange (EDI) starting July 1, 2006.

### **E. Utilization Analysis.**

20.30% of all Lost Time First Reports reported NOCs as initial activity, a decrease of .23% from the 20.53% in 2004.

40.04% of all Claims for Compensation reported NOCs as initial activity, a decline of 1.45% from the 41.49% of 2004.

## **F. Adjusting Entity Compliance Comparisons.**

(1) Initial Indemnity Benefit Payment (see Chart 21 attached).

Overall Compliance	87%
Standard Insurers	85%
MEMIC	91%
Self-Insured/Self-Admin	90%
Self-Insured/TPA Admin	88%
TPA	71%

(2) MOP Filing (see Chart 22 attached).

Overall Compliance	84%
Standard Insurers	80%
MEMIC	90%
Self-Insured/Self-Admin	90%
Self-Insured/TPA Admin	87%
TPA	60%

(3) Percentage of MOPs filed with the Workers' Compensation Board (see Chart 24 attached).

Standard Insurers	18%
MEMIC	34%
Self-Insured/Self-Admin	20%
Self-Insured/TPA Admin	17%
TPA	11%

## **G. Insurance Group Analysis.**

Initial Indemnity Payment – Groups Above and Below Benchmark (see Chart 25 attached)

Above – 80%

Below - 20%

MOP Filing - Groups Above and Below Benchmark (see Chart 26 attached)

Above – 59%

Below - 41%

Initial Indemnity Payment – Groups In-State vs. Out-of-State<sup>1</sup> (see Chart 27 attached)

Compliance for In-State Groups – 89%

Compliance for Out-of-State Groups – 77%

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<sup>1</sup> An out-of-state insurance group has its main indemnity claims processing location outside of Maine and provides a mailing address for the reconciliation report that is outside of Maine. An in-state insurance group has its main indemnity claims processing location in Maine and provides a mailing address for the reconciliation report that is in Maine.

## 2. Corrective Action Plans (CAPs)

### A. Current CAPs.

The following insurance groups have had Corrective Action Plans (CAPs) in place for some period of time. Corrective Action Plans are implemented for insurers and self-insured employers with chronic poor compliance and filing procedures. These plans have improved the performance of many of these carriers.

<u>Insurer</u>	<u>Market Share by Premium Written</u>
A. Ace/ESIS Insurance Group	1.64%
B. Cambridge Integrated Services	NA-TPA
C. CNA Insurance Group	1.05%
D. Crawford & Company	NA-TPA
F. Harleysville Insurance	0.10%
G. Hartford/Specialty Risk Services	3.12%
H. NGM Insurance Company	0.17%
I. Zurich Insurance	0.64%

### B. CAPs Lifted.

Chubb & Son Insurance Corrective Action Plan (CAP) was lifted in August of 2006. The company has met and/or exceeded all Board established benchmarks as well as all of the corrective elements of their CAP.

St. Paul/Travelers Corrective Action Plan (CAP) was lifted in May of 2006. The company has met and/or exceeded all Board established benchmarks as well as all of the corrective elements of their CAP.

### C. CAPs Terminated.

Gallagher-Bassett Corrective Action Plan was terminated in August of 2006 due to chronic poor compliance. Complaint for Audit filed.

Georgia Pacific Corrective Action Plan was terminated in September 2006. At that time they were no longer a self-insured employer but now have a conventional workers compensation policy for claims.

Royal/Sunalliance Corrective Action Plan was terminated in September of 2006. They are currently in run off status and have no new business in Maine.

Elements of the Corrective Action Plans are reviewed and updated each quarter to track compliance changes and ensure that the elements of the Corrective Action Plan are being met.

Compliance information on individual insurance carriers, third-party administrators, and self-administered employers for the four quarters of 2006 is listed on the Board's website: [www.maine.gov/wcb/](http://www.maine.gov/wcb/)

**Table 1** 2006 Quarterly Compliance Reports

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	7 Days	7 Days	7 Days	7 Days
<b>First Reports of Injury Received Within:</b>	83.67%	85.92%	83.99%	83.25%
<b>Initial Indemnity Payments Made Within 14 Days</b>	86.14%	88.24%	86.47%	86.16%
<b>Memoranda of Payment Received Within 17 Days</b>	84.64%	85.51%	83.92%	83.15%
<b>Notices of Controversy Received Within 17 Days</b>	91.26%	N/A	88.03%	88.46%
Static results based upon data received by the deadline for each quarter.				

**Table 2** Annual Compliance

	Pilot Project 1997*	1999	2000	2001	2002	2003	2004	2005	2006
<b>First Reports of Injury Received Within 7 Days</b>	36.74%	69.20%	78.33%	79.71%	81.73%	82.43%	85.70%	86.12%	84.44%
<b>Initial Indemnity Payments Made Within 14 Days</b>	59.39%	79.35%	80.26%	82.79%	85.27%	85.56%	85.30%	86.59%	86.83%
<b>Memoranda of Payment Received Within 17 Days</b>	56.78%	75.14%	74.62%	77.08%	80.78%	81.87%	82.81%	83.93%	84.38%
<b>Notices of Controversy Received Within 17 Days</b>							91.43%	92.42%	89.29% <sup>1</sup>
*Based on Sample Data for Pilot Project of 1997		Total population data received by March 30 after each calendar is complete.							

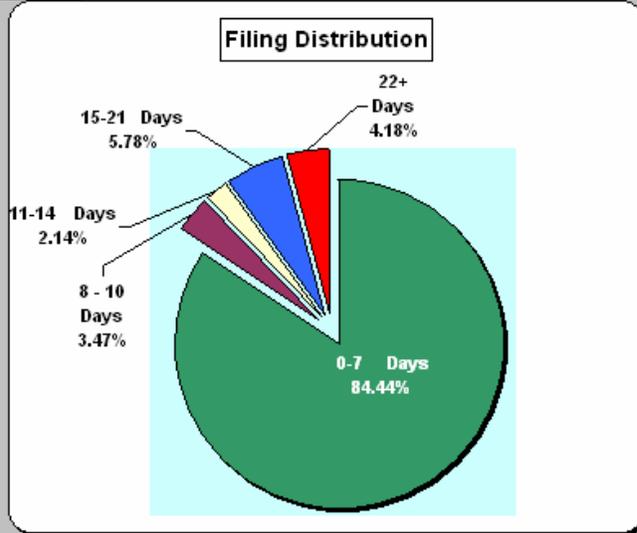
**Table 3** Percentage Change over Time

	Since Pilot Project 1997*	Since 1999	Since 2000	Since 2001	Since 2002	Since 2003	Since 2004	Since 2005
<b>First Reports of Injury Received Within 7 Days</b>	129.83%	22.02%	7.80%	5.93%	3.32%	2.44%	-1.47%	-1.95%
<b>Initial Indemnity Payments Made Within 14 Days</b>	46.20%	9.43%	8.19%	4.88%	1.83%	1.48%	1.79%	0.28%
<b>Memoranda of Payment Received Within 17 Days</b>	49.05%	12.63%	13.41%	9.80%	4.77%	3.37%	2.20%	0.83%
*Based on Sample Data for Pilot Project of 1997		Total population data received by March 30 after each calendar is complete.						

<sup>1</sup> Second Quarter 2006 excluded

## FIRST REPORTS OF OCCUPATIONAL INJURY OR DISEASE

**Chart 1**



**Table 4**

First Reports Received Within:			
0-7 Days	12,452	84.44%	
8-10 Days	512	3.47%	
11-14 Days	315	2.14%	
15-21 Days	852	5.78%	
22+ Days	616	4.18%	
<b>Total</b>	<b>14,747</b>	<b>100%</b>	

### Number of Lost Time First Reports Received at MWCB Continues to Decline

In 2006, 14,747 Lost Time First Reports were filed with the MWCB, 242 fewer First Reports of Injury (FROIs) than 2005 and 828 fewer than 2004. The compliance rate for timely filing was 84.44% (2005 compliance was 86.12%).

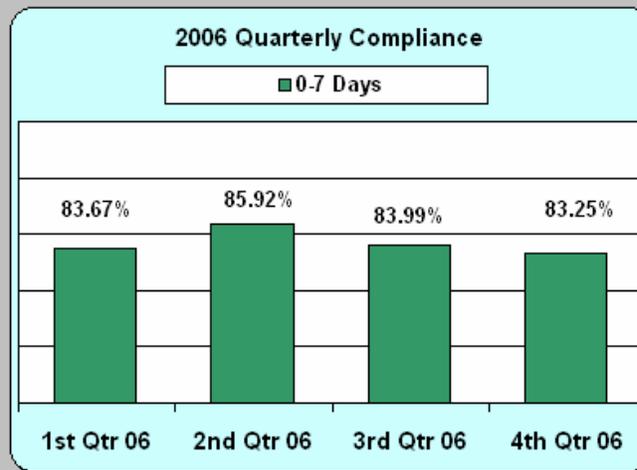
This marks the sixth year in a row that the number of Lost Time First Reports received at the Board declined.

Lost Time First Report compliance decreased slightly. This decrease can be attributed mostly to a number of claims which were initially rejected by the MWCB's EDI system due to the tightening of quality controls on the "UIAN" and "FEIN" data fields of the IAIABC Release 3 EDI format. Accurate UIAN data ensures that claims received at the Board are linked to the appropriate insurance policy and claims administrator in a timely manner.

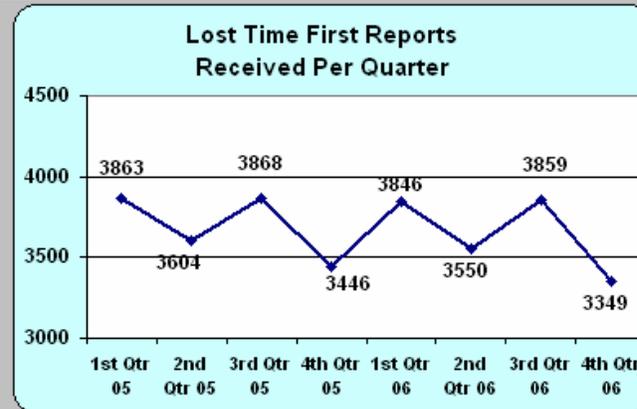
Mis-assignment of claims create unnecessary delays in ensuring due process for claims administrators, employers and employees.

This data quality improvement is one of the factors reducing duplicate claims and decreasing unnecessary disputes in the system, both of which are factors in controlling workers' compensation rates.

**Chart 2**

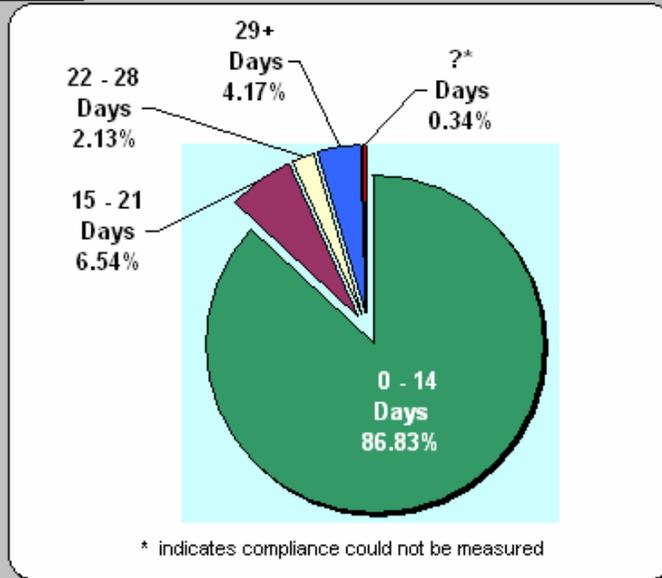


**Chart 3**



## PAYMENTS OF INITIAL INDEMNITY BENEFITS

**Chart 4**

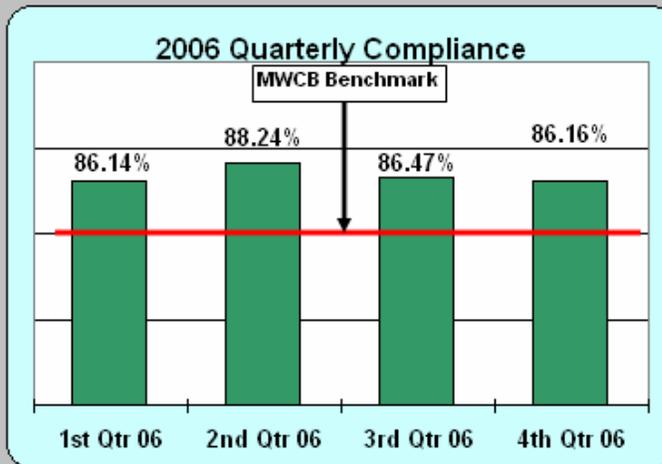


**Table 5**

**Initial Payments Made Within:**

0 - 14 Days	3,626	86.83%
15 - 21 Days	273	6.54%
22 - 28 Days	89	2.13%
29+ Days	174	4.17%
? Days	14	0.34%
<b>Total</b>	<b>4,176</b>	<b>100%</b>

**Chart 5**



### Maine Continues Improvement on Compliance Performance of Initial Indemnity Payments

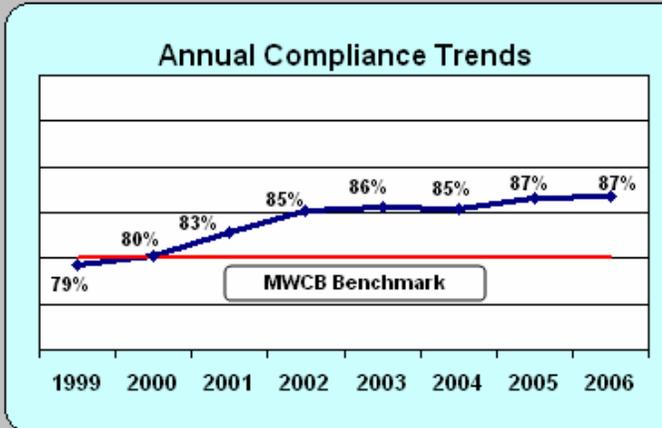
Injured workers in the State of Maine continue to benefit from the high compliance rate of initial indemnity payments. As displayed below, Maine has one of the higher compliance rates in states that publish this performance indicator.

	2003	2004	2005	2006
<b>Maine</b>	86%	85%	87%	87%
Florida	91%	93%	92%	89%
Wisconsin	84%	84%	84%	84%
Minnesota*	85%	86%	86%	87%

\* Indicates "Prompt First Action" which includes measurement of Initial Payment or Initial Denial.

Compliance performance by the insurance community has improved by over 7% since the inception of the Compliance Report and the monitoring program.

**Chart 6**

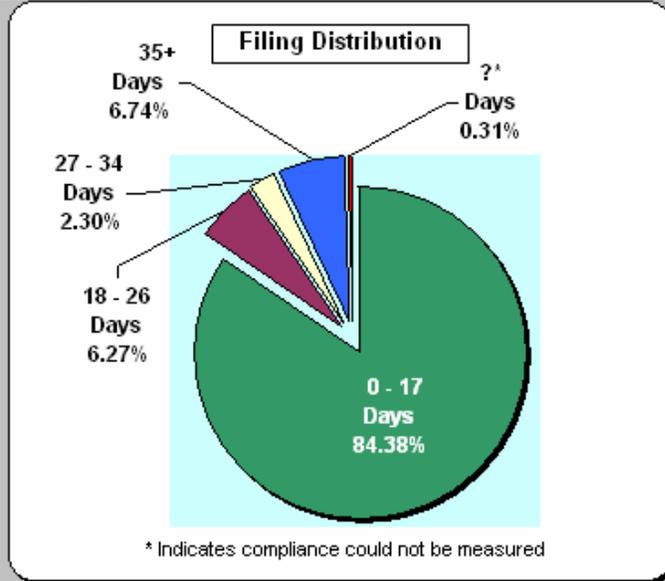


The noted improvement in compliance means that, compared to 1999, over 300 more Maine households received a timely initial indemnity benefit payment in 2006.

Workers' compensation research indicates that timely payment of initial benefits is one key factor in helping control the overall cost of a workers' compensation claim.

## MEMORANDA OF PAYMENT

**Chart 7**



**Table 6**

Initial Filing Made Within:			
0 - 17 Days	3,782	84.38%	
18 - 26 Days	281	6.27%	
27 - 34 Days	103	2.30%	
35+ Days	302	6.74%	
? Days	14	0.31%	
<b>Total</b>	<b>4,482</b>	<b>100.00%</b>	

### MOP Filing Climbing

The filing of the Memoranda of Payment (MOP) is an important performance indicator for the Maine Workers' Compensation Board.

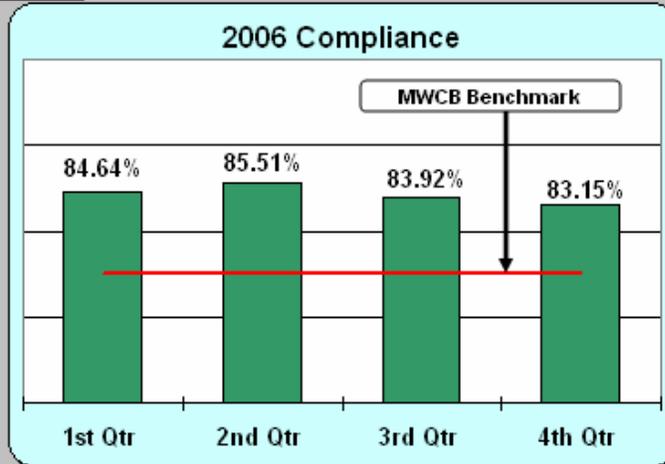
While the filing of the MOP may not have the tangible benefits to the injured employee that the initial indemnity benefit payment may have, the MOP filing provides the Board with an indicator of how well insurers are complying with the administrative requirements of the Workers' Compensation Act. Studies from the Workers' Compensation Research Institute (WCRI) indicate that proper claims administration and timely payment of claims impacts the overall costs of claims and the time it takes for a claim to be processed through the dispute resolution system.

The MOP Filing performance indicator is important to the administration of Maine claims because it allows the Monitoring Division to assess the compliance of individual insurers. It also is used as an indicator for overall forms filing compliance.

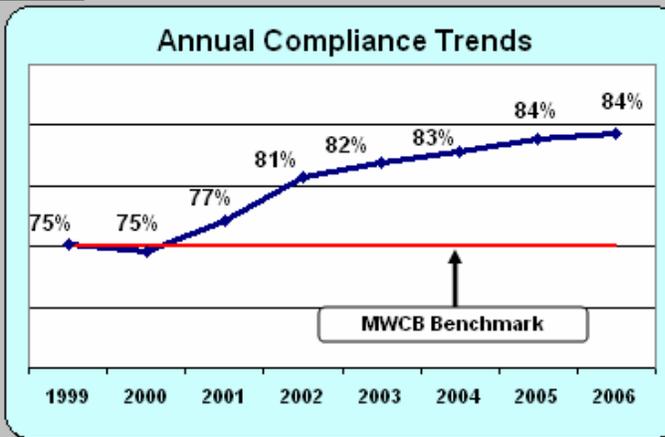
The prompt filing of the initial MOP also gives the Board's Claims Management staff the opportunity to verify that appropriate compensation benefits are being issued.

Continued improvement for this measurement is an indicator that the Board's Corrective Action Plans are working.

**Chart 8**

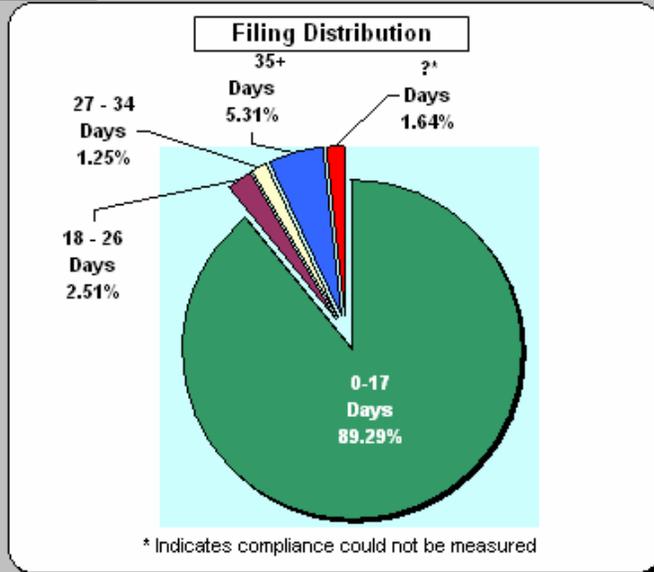


**Chart 9**



## NOTICES OF CONTROVERSY

**Chart 10**



**Table 7**

Initial Indemnity NOCs Within:			
0 - 17	Days	1,851	89.29%
18 - 26	Days	52	2.51%
27 - 34	Days	26	1.25%
35+	Days	110	5.31%
?	Days	34	1.64%
<b>Total</b>		<b>2,073</b>	<b>100.00%</b>

\*Excludes 2nd Qtr.

### NOC Filing Compliance

Pursuant to a Board Motion on June 17, 2003, the Monitoring Division initiated a Pilot Project to create computer edits and a report format **"to provide for the reporting of the number, timeliness and percent of initial indemnity claims denied (NOCs) in the compliance reports of 2004."**

With input and feedback from the insurance community, the Monitoring Division began reporting the number and timeliness of Notices of Controversy in the Quarterly Compliance Reports of 2004.

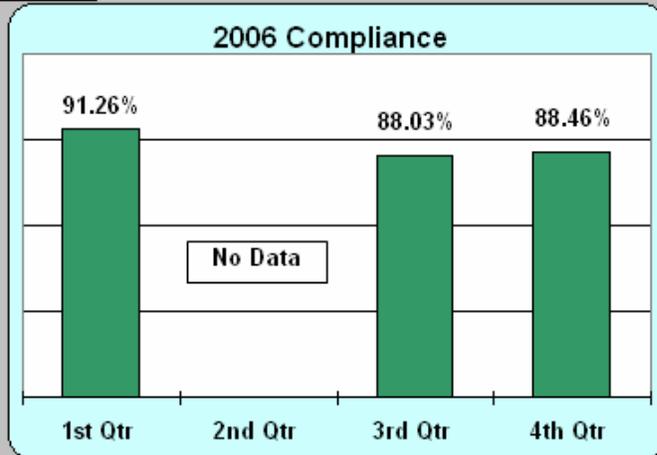
On November 22, 2005, the Maine Workers' Compensation Board of Directors approved by majority vote the following motion:

**"MOVE to implement the reporting, timeliness and the percent of initial indemnity claims denied (NOC's) in the quarterly and annual compliance reports."**

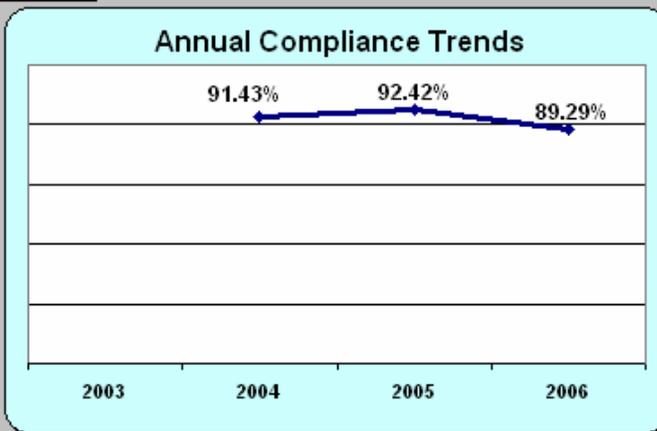
This motion made the NOC compliance measurement applicable to all future quarterly and annual compliance reports.

Due to data problems related to computer programming to support EDI reporting, second quarter data was excluded from this analysis.

**Chart 11**

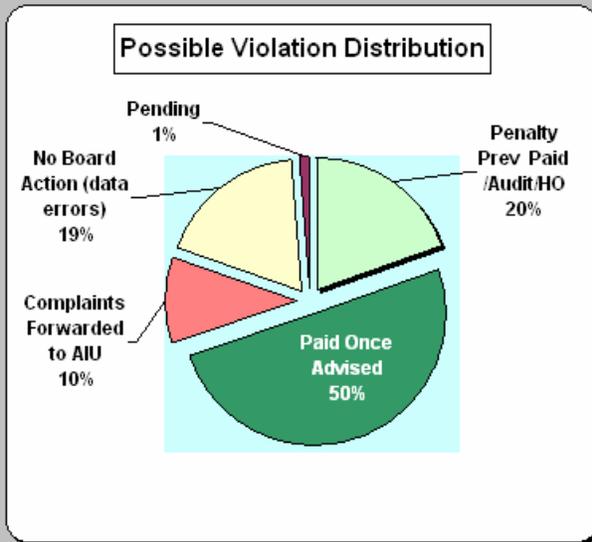


**Chart 12**



## POTENTIAL 205(3) VIOLATIONS

**Chart 13**



**Table 8**

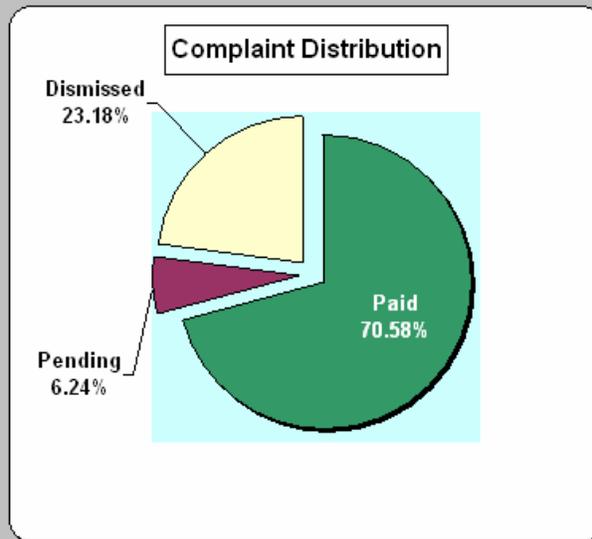
Possible Violation Distribution		
Penalty Prev. Paid/Audit/HO	19	19.79%
Paid Once Advised	48	50.00%
Complaints Forwarded to AIU	10	10.42%
No Board Action (data errors)	18	18.75%
Pending	1	1.04%
<b>Total</b>	<b>96</b>	<b>100%</b>

**\$ 39,300 issued to claimants in penalties.  
\$ 50 in penalties awaiting resolution.**

**2.14% of all Initial Indemnity Payments**

## LATE FILED COVERAGE NOTICES

**Chart 14**



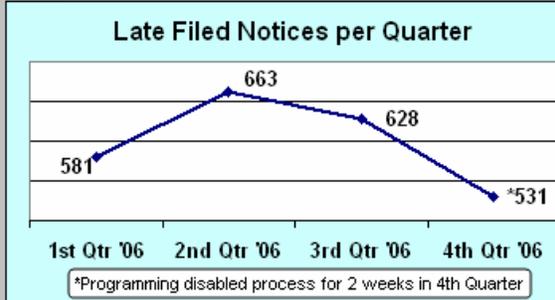
**Table 9**

Complaint Distribution		
Paid	1696	70.58%
Pending	150	6.24%
Dismissed	557	23.18%
<b>Total</b>	<b>2,403</b>	<b>100%</b>

**\$169,600 collected in penalties.  
\$15,000 pending in penalties.**

The Monitoring Division cannot accurately reflect the total percent of all coverage notices due to database limitations.

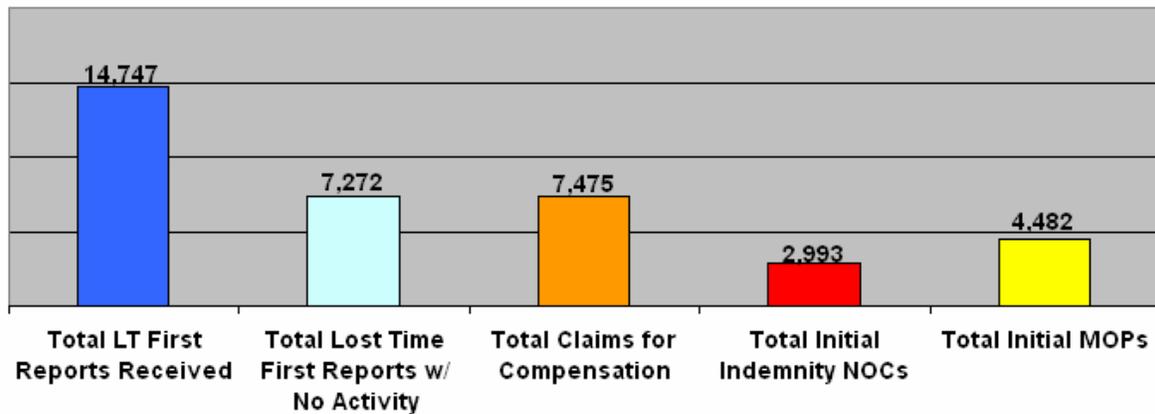
**Chart 15**



It is anticipated that the MWCB's transition to providing coverage notices by EDI will reduce the number of late reported coverage notices in the future. However, there are some carriers who are providing coverage notices as the result of "retro" audits on policies. For these types of occurrences, the coverage notices will always be late.

## UTILIZATION ANALYSIS

**Chart 16**



**% Total LT First Reports Denied**  
**Total Initial Indemnity NOCs/**  
**Total LT First Reports**

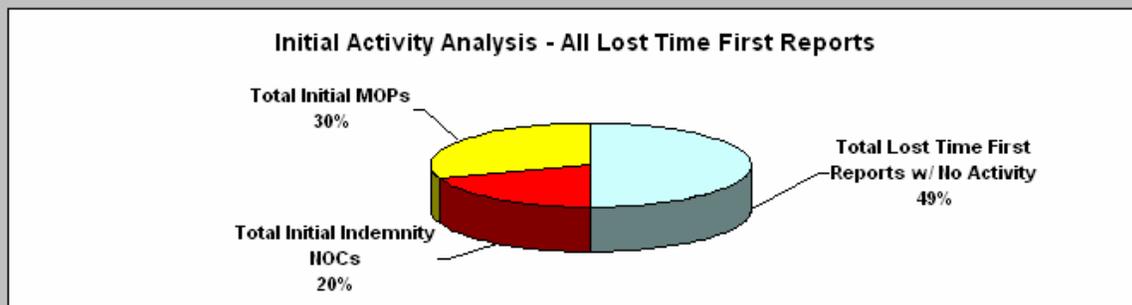
<b>*2006</b>	<b>20.30%</b>
<b>2005</b>	<b>20.15%</b>
<b>2004</b>	<b>20.53%</b>

**% Total Claims for Compensation Denied**  
**Total Initial Indemnity NOCs/**  
**Total Claims for Compensation**

<b>*2006</b>	<b>40.04%</b>
<b>2005</b>	<b>39.28%</b>
<b>2004</b>	<b>41.49%</b>

**.23% Decrease in Total LT First Reports Denied from 2004 to 2006**  
**1.45% Decrease in Claims for Compensation Denied from 2004 to 2006**

**Chart 17**



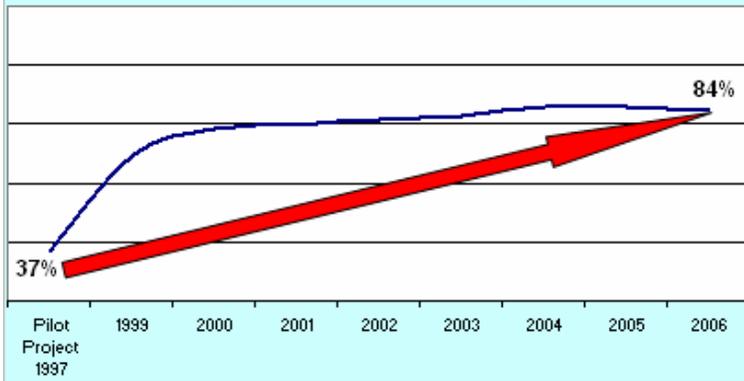
The analysis and charts above were created in response to feedback and input that was generated in three NOC Pilot Project Partner Meetings in 2003 and two subsequent meetings with the Northern and Southern Employer/Insurer Maine Advisory Groups in 2004. The bar charts and pie graph represent two different perspectives in fulfilling the Board's motion of June 17, 2003 and the motion to make the NOC measurements permanent on November 22, 2005.

\*Although this data indicates a slight increase in the percentage of Lost Time Claims and Claims for Compensation denied between 2005 and 2006, the Monitoring Division attributes this to programming changes made to implement IAABC Release 3 EDI which appears to have "over-counted" some NOCs in the 1st and 2nd Quarters. In the Monitoring Division's opinion it appears that the percentage of Lost Time Claims and Claims for Compensation actually declined in 2006.

## Compliance Trends

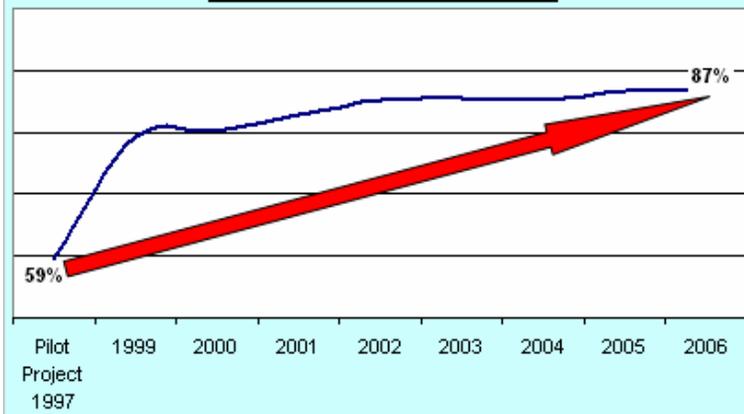
**Chart 18**

### First Reports of Injury



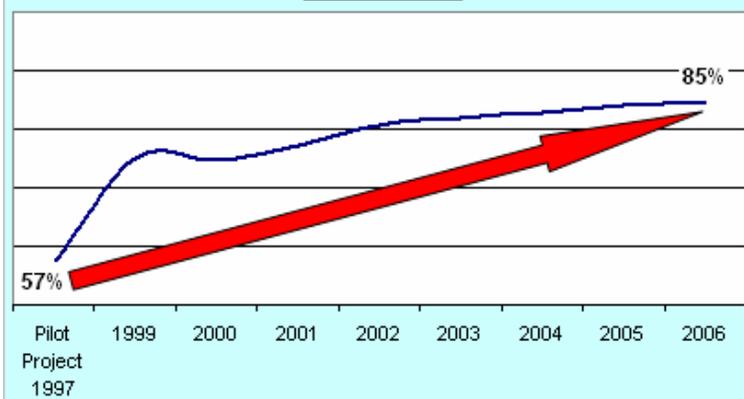
**Chart 19**

### Initial Indemnity Payments



**Chart 20**

### MOP Filing



### Compliance Continues to Trend Upwards

The Maine Workers' Compensation Board has measured compliance on three key performance indicators since the pilot project in 1997:

- 1) Filing of First Reports of Injury
- 2) Payment of Initial Indemnity Benefit
- 3) Filing of Initial Memoranda of Payment

The charts to the left give an indication of how workers' compensation claims administration has continued to improve in the State of Maine since the inception of the Office of Monitoring, Audit and Enforcement (MAE) and the Board's penalty process for late filing of First Reports.

If we use the organizational model of **"What Gets Measured Gets Done"**, we can see that there has been noted improvement in claims administration for the performance indicators. The 1997 data references sample data that was part of the Board's Pilot Project. The 1999-2006 data references the population data from the entire insurance community.

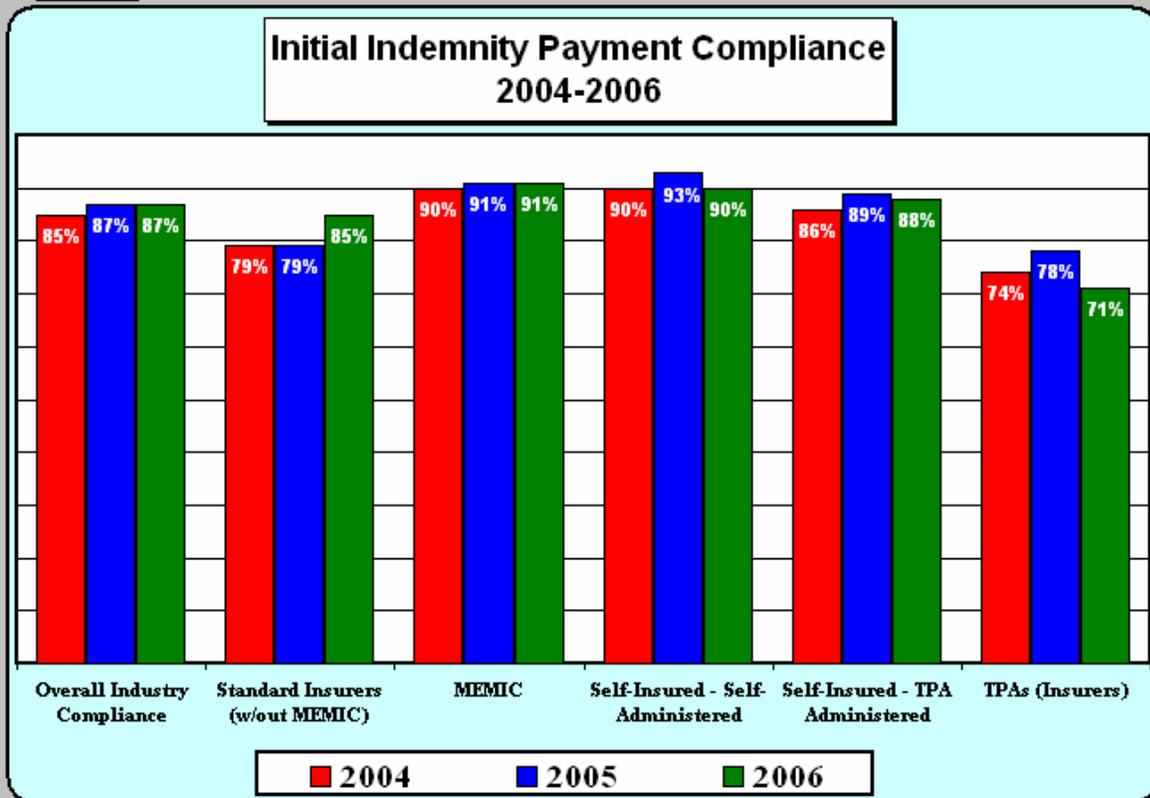
By increasing compliance with the "Act," claims administration efficiency improves which results in fewer disputes, better relationships between employees, employers and insurers and more efficient hearing processes.

Other states that use performance indicators like Maine's include Florida, Michigan, Minnesota, Texas and Wisconsin.

Workers' compensation insurance claims can be administered several ways in Maine.

- There are the customary or "standard" insurance companies like Sentry.
- There is a Legislature created insurance company, Maine Employers' Mutual (MEMIC).
- Employers like Hannaford Bros. can also choose to "self-insure." These self-insureds can choose to adjust their own claims (self-administered) or hire a third-party administrator (TPA) like HRH to adjust their claims (TPA administered).
- Some standard insurers outsource their adjusting work to TPAs as well.

Chart 21



**Payment of Initial Indemnity Benefits Comparison for Different Types of Workers' Compensation Claims Entities/Adjusters**

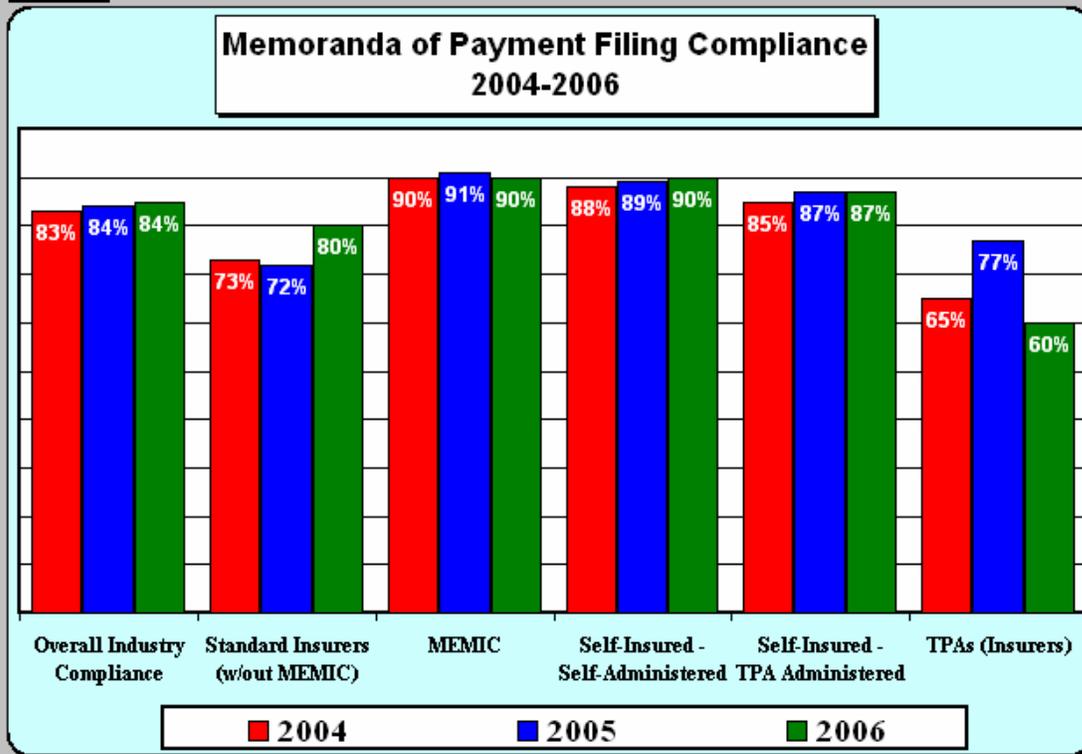
The overall compliance for Initial Indemnity Payment is very high at 87% (86.83%) which is a slight increase over 2005's performance and the highest annual compliance the industry has ever reached. The continued high compliance indicates that more Maine households that depend on their Workers' Compensation Indemnity Payments for basic needs are receiving them in a timely manner.

Third-Party Administrators continue to display the poorest compliance of all claims administrator types. The average TPA performance is 9% below the MWCB Benchmark. As a result of this continued poor compliance, the Monitoring Division implemented Corrective Action Plans with several TPAs in 2004, 2005 and 2006. Many other TPAs have been engaged in CAPs as a result of their parent insurers undergoing Audits that revealed "Questionable Claims Handling Practices".

The "Claims Administrator" is the party responsible for the majority of required forms to be filed with the Workers' Compensation Board.

Timely and complete forms filing ensures that every injured employee's workers' compensation claim is administered efficiently and accurately by the claims administrator and by the Maine Workers' Compensation Board. Incomplete, incorrect or late filed forms can lead to delays in an injured worker's case being heard. Many times, an injured employee's dissatisfaction with the administration of their workers' compensation claim can lead to mistrust and frustration with their employer which research has shown to be an indicator in driving the cost of some workers' compensation claims. The Monitoring Division uses MOP filing as an indicator of an insurer's compliance level with claims administration under the Act.

Chart 22

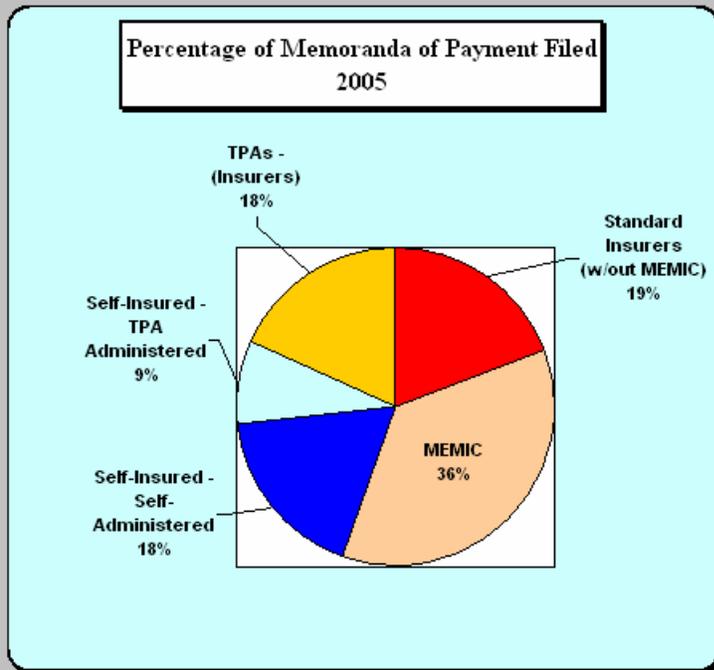


**Filing of initial MOP Compliance for Different Types of  
Workers' Compensation Claims by Entities or Adjusters**

The overall compliance for the filing of the Initial Indemnity Memoranda of Payment rose about one-half of one percent in 2006 over 2005. TPAs continue to display the lowest compliance of all entity types. This chart displays the percentage of compliance for each adjusting type in the filing of Memoranda of Payment within the compliant 0-17 days category.

The MWCB Benchmark for this performance indicator is 75%.

Chart 23



**Percentage of MOPs Filed by Entity Type**

This chart displays the MOPs that each type of adjusting entity filed with the Maine Workers' Compensation Board by percentage.

These figures represent MOPs filed only and does not indicate an insurer's market share but, rather, it indicates the insurer's claims activity.

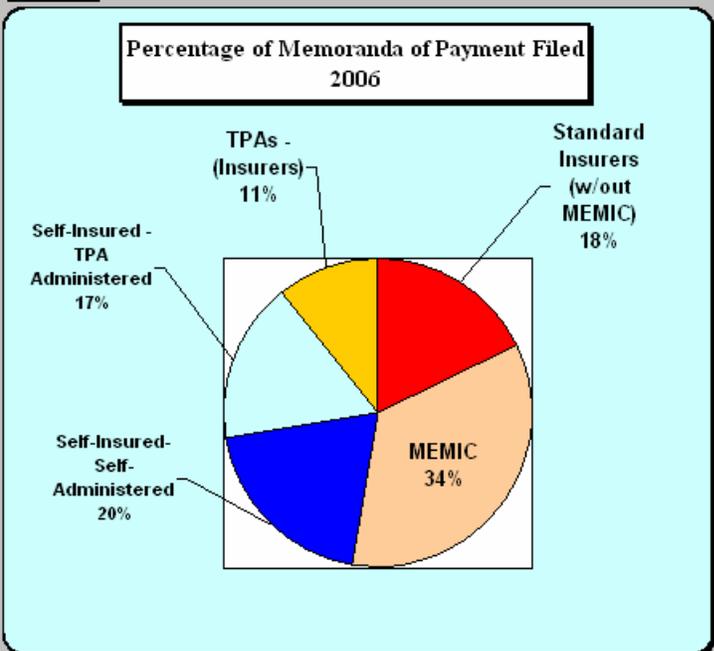
In 2006, the Board further refined its claims and coverage submission procedures by using IAIABC Release 3 data requirements to identify exactly who the claims administrator for each claim was. The previous programming allowed some claims that were administered by TPAs to appear as though they were being administered by the insurer or self-insurer who wrote/owned the policy. As a result, the percentage of claims being handled by TPAs appears to be greater than past years.

This enhancement revealed that Standard Insurers were continuing the trend to write Large Deductible Policies that were then sub-contracted to TPAs. The requirements of "Release 3" EDI also allowed the Board to better track TPAs doing work for Self-Insureds.

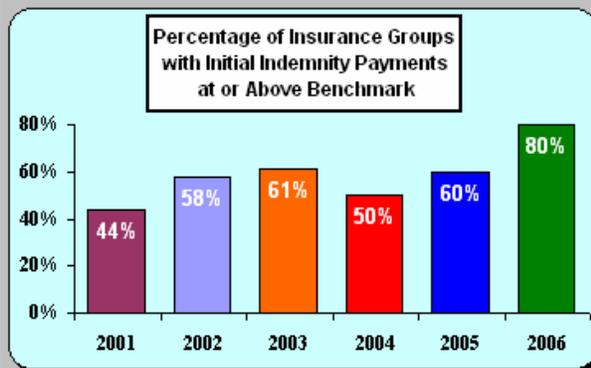
MEMIC filed about 2% fewer MOPs (34%) than in 2005.

Standard insurers continued to administer fewer MOPs than in previous years.

Chart 24

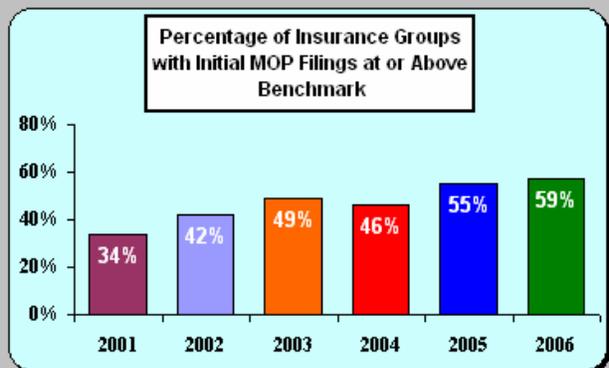


**Chart 25**



**Initial Indemnity Payments made within 0-14 days.**  
MWCB Benchmark = 80%  
Overall Compliance = 86.83%

**Chart 26**



**Initial MOP Filing made within 0-17 days.**  
MWCB Benchmark = 75%  
Overall Compliance = 84.38%

**Insurance Group Benchmark Comparisons: Initial Indemnity Benefit Payments and Initial MOP Filing**

As the charts on pages 8 and 9 indicated, overall, the insurance community met the benchmarks for compliance as set by the Maine Workers' Compensation Board.

An "insurance group" is defined in this analysis as the parent company of a number of individual insurance entities. A total of 54 insurance groups filed MOPs with the MWCB in 2006. The number of insurance groups actively filing MOPs increased slightly from 53 to 54 in 2006. The practice of larger insurer's writing more "large deductible" policies in Maine and then contracting the administration of the claims to TPAs remained steady.

Insurance groups can consist of many different insurance entities. For example, Liberty Mutual Group is comprised of 10 different insurance entities. As the Insurance Group Compliance spreadsheet (Appendix B) indicates, most insurance groups filed only a small number of MOPs.

In 2006, 43 of 54 insurance groups (80%) that filed MOPs met the benchmarks for the payment of initial indemnity benefits. In 2006, 32 of 53 insurance groups (59%) that filed MOPs met the benchmarks for the filing of the initial MOP. This trend should show continued improvement in 2007 as the Monitoring Division engaged a number of poor compliance carriers in training in preparation for Bureau of Insurance "Market Conduct" Audits.

The majority of initial indemnity payments and MOPs are filed by a small number of insurance groups that generally have high compliance. The data from those groups with high compliance made up the majority of the MOPs measured. As a result, the overall industry compliance was above the MWCB's benchmarks. However, the insurance group charts indicate less than half of the insurance groups met both of the MWCB's benchmarks.

In 2006 there were 23 insurance groups who filed less than 10 MOPs in the year. Of those 23 groups seven, or 30%, met or exceeded both benchmarks. In 2006 there were 31 insurance groups that filed more than 10 MOPs. Of those 31 groups, 24 or 77% met or exceeded the benchmarks.

Chart 27

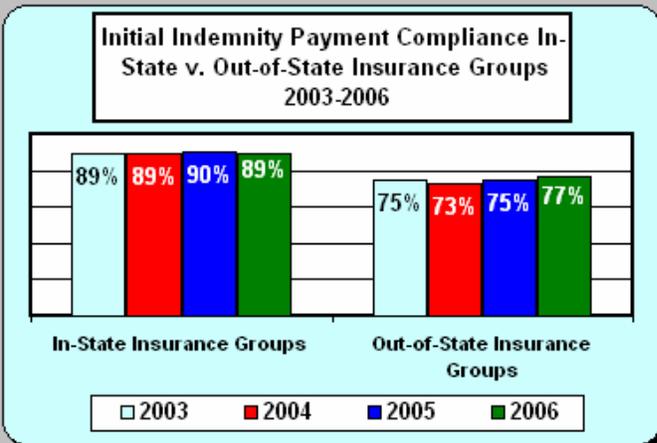


Chart 28

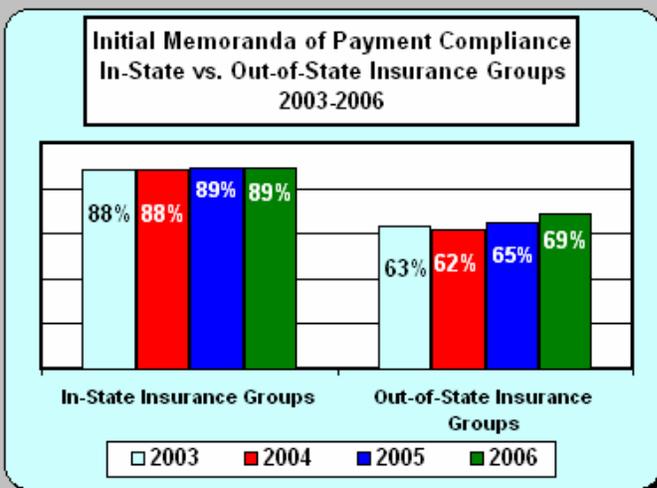
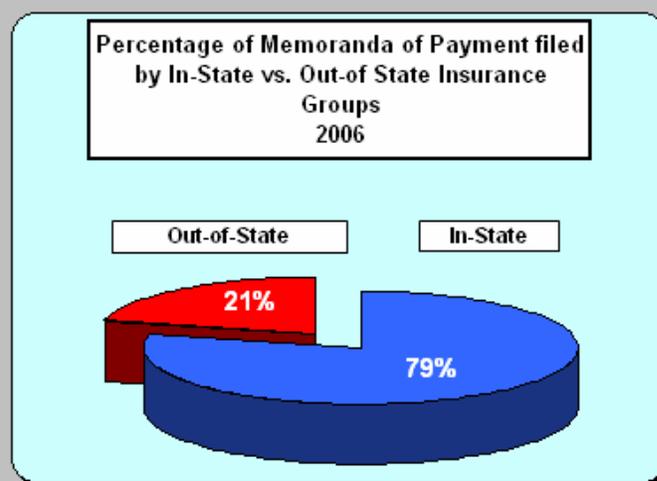


Chart 29



### In-State vs. Out-of-State Insurance Groups

Through the Reconciliation Report and the Reconciliation Process, the MWCB can identify those insurance groups processing "in-state" and those processing "out-of-state."

An out-of-state insurance group has its main indemnity claims processing location outside of Maine and provides a mailing address for the Reconciliation Report that is outside of Maine.

An in-state insurance group has its main indemnity claims processing location in Maine and provides a mailing address for the Reconciliation Report that is in Maine.

These charts indicate that in-state insurance groups generally have higher compliance with the MWCB's benchmarks than out-of-state insurance groups.

Even though out-of-state insurance groups filed only 21% of all initial MOPs, their generally lower filing compliance negatively impacted overall initial MOP filing compliance.

Some out-of-state insurance groups have improved their compliance performance by engaging in Corrective Action Plans.

Chart 29 indicates that out-of-state insurance groups filed 21% of all initial indemnity MOPs.

The Office of Monitoring, Audit and Enforcement is currently engaged with many in-state and out-of-state insurance groups in an effort to improve compliance by offering training, education and alternative filing techniques.

In addition, random on-site audits of some out-of-state Insurance Groups resulted in referrals to the Bureau of Insurance.

## II. AUDIT

The Board conducts compliance audits of insurers, self-insurers and third party administrators to ensure that all obligations under the Workers' Compensation Act are met. The functions of the audit program include, but are not limited to: ensuring that all reporting requirements of the Workers' Compensation Board are met; auditing the timeliness and accuracy of payments; evaluating claims handling practices; and determining whether claims are unreasonably contested.

Since implementing the program, ninety-seven (97) audit reports have been issued. In addition to the amounts paid to employees, dependents and service providers for compensation, interest, or other unpaid obligations, \$824,900 in penalties has been paid (see attached spreadsheet). Audit reports and the corresponding consent decrees are available on the Board's website: <http://www.maine.gov/wcb/departments/mae/mae/maeindex.htm>

In 2003, the Board successfully prosecuted Hanover Insurance Company for engaging in a pattern of questionable claims handling techniques under §359(2) of the Workers' Compensation Act (see Section 12). Additionally, American International Group, Arch Insurance Group, Atlantic Mutual Insurance Company, Cambridge Integrated Services Group, Claims Management (Wal-Mart), CNA Insurance Group, Crawford & Company, ESIS, Gallagher Bassett Services, Gates McDonald, Georgia Pacific, Harleysville Insurance, Hartford Insurance, MEMIC, National Grange Mutual Insurance Company, Royal & SunAlliance Group, The St. Paul Companies, Virginia Surety, and Zurich North America have agreed to Consent Decrees for engaging in a pattern of questionable claims-handling techniques under Section 359(2). The Board filed Certificates of Findings pursuant to this section with the Maine Bureau of Insurance for further action.

The Audit Division also has a Complaint for Audit form and procedure that allow a complainant to request that the Board investigate a claim to determine if an audit under §359 and/or §360(2) is warranted. Since the form was implemented, two hundred eighteen (218) forms have been received by the Audit Division. As a result of these investigations, over \$200,000 in unpaid obligations and over \$139,000 in penalties have been paid.

NAME	DATE	205 (3)	205 (4)	324 (2)	324 (2)	359 (2)	360 (1)(A)	360 (1)(B)	360 (2)	TOTAL
				EE	STATE					
ACADIA INSURANCE	3/3/2005	\$1,300						\$1,650		\$2,950
AMERICAN INTERNATIONAL GROUP	4/5/2006	\$20,550			\$6,150	\$10,000	\$3,700	\$15,300	\$10,000	\$65,700
AMERICAN ALTERNATIVE INSURANCE CORPORATION	11/30/2004						\$100			\$100
ARCH INSURANCE GROUP	8/16/2005	\$5,300				\$10,000		\$3,400		\$18,700
ARGONAUT GROUP, INC.	12/19/2006	\$1,500					\$1,400	\$600		\$3,500
ARROW HART/COOPER INDUSTRIES	4/4/2000							\$800		\$800
ARROW MUTUAL LIABILITY INSURANCE COMPANY	6/30/2006							\$100		\$100
ATLANTIC MUTUAL INSURANCE COMPANY	2/28/2003	\$1,500				\$5,000	\$400	\$9,400		\$16,300
BATH IRON WORKS	6/17/2004						\$250			\$250
THE BILL JOHNSON AGENCY	5/1/2000							\$200		\$200
BROADSPIRE SERVICES, INC.	10/10/2006	\$3,000					\$500	\$1,900		\$5,400

NAME	DATE	205 (3)	205 (4)	324 (2)	324 (2)	359 (2)	360 (1)(A)	360 (1)(B)	360 (2)	TOTAL
				EE	STATE					
BUCKLER, IRVIN & GRAF, INC.	2/8/2002	\$550						\$1,700		\$2,250
CAMBRIDGE INTEGRATED SERVICES GROUP	5/31/2005	\$1,500				\$10,000	\$700	\$4,300		\$16,500
CENTRAL MAINE POWER COMPANY	10/6/2000							\$400		\$400
CHUBB INSURANCE GROUP	8/15/2000					\$3,000	\$2,500	\$400		\$5,900
	11/14/2006	\$600						\$2,600		\$3,200
CHURCH MUTUAL INSURANCE COMPANY	5/26/2005	\$3,000						\$700		\$3,700
CIANBRO CORPORATION	5/11/2000									
	7/31/2006							\$400		\$400
CITY OF BANGOR	6/28/2000									
	2/6/2007							\$700		\$700
CLAIMS MANAGEMENT, INC. (WAL-MART)	8/3/2006	\$4,200		\$4,600		\$10,000	\$1,600	\$12,750		\$33,150
CLARENDON NATIONAL INSURANCE COMPANY	1/17/2001	\$1,350					\$400			\$1,750
	9/28/2005	\$2,250					\$600	\$700		\$3,550
CNA INSURANCE GROUP	3/9/2006	\$6,250				\$10,000	\$1,800	\$3,900		\$21,950

NAME	DATE	205 (3)	205 (4)	324 (2)	324 (2)	359 (2)	360 (1)(A)	360 (1)(B)	360 (2)	TOTAL
				EE	STATE					
CRAWFORD & COMPANY	9/11/2002						\$1,100	\$500		\$1,600
	6/13/2005	\$19,000		\$2,600	\$7,800	\$10,000	\$300	\$11,300	\$10,000	\$61,000
CRUM & FORSTER	2/28/2002							\$1,000		\$1,000
DUNLAP CLAIMS MANAGEMENT SERVICE	9/18/2003						\$1,400			\$1,400
ELECTRIC INSURANCE COMPANY	12/4/2006							\$1,800		\$1,800
ESIS	2/14/2005	\$15,550				\$10,000	\$700	\$3,000	\$10,000	\$39,250
FAIRFIELD INSURANCE COMPANY	4/24/2002	\$2,050					\$200	\$625		\$2,875
	3/16/2007		\$550					\$500		\$1,050
FEDERATED MUTUAL INSURANCE COMPANY	8/31/2006	\$1,150					\$200	\$100		\$1,450
FEDERATED RETAIL HOLDINGS	3/31/2002						\$300	\$200		\$500
	6/5/2007							\$500		\$500
FIREMAN'S FUND INSURANCE COMPANY	6/10/2005							\$900		\$900
GAB ROBINS	1/9/2002	\$3,000					\$200	\$1,400		\$4,600
GALLAGHER BASSETT SERVICES, INC.	10/15/2002			\$1,150	\$1,725		\$400	\$1,400		\$4,675
	1/17/2007	\$24,200		\$7,250	\$21,750	\$10,000	\$1,300	\$8,300		\$72,800

NAME	DATE	205 (3)	205 (4)	324 (2)	324 (2)	359 (2)	360 (1)(A)	360 (1)(B)	360 (2)	TOTAL
				EE	STATE					
GATES MCDONALD	10/15/2003					\$5,000	\$500	\$4,100		\$9,600
GENERAL CASUALTY COMPANY OF WISCONSIN	7/18/2006									
GEORGIA PACIFIC	11/30/2004	\$3,000				\$10,000	\$2,500	\$800		\$16,300
GREAT AMERICAN INSURANCE GROUP	2/22/2005						\$800	\$100		\$900
GREAT WEST CASUALTY COMPANY	9/6/2006	\$3,000						\$200		\$3,200
GREENWICH INSURANCE COMPANY	7/9/2002						\$400	\$200		\$600
GUARD INSURANCE GROUP	12/9/2002	\$2,650					\$1,800	\$3,100		\$7,550
HANNAFORD BROTHERS	1/8/2003	\$3,000					\$100	\$1,400		\$4,500
HANOVER INSURANCE COMPANY	11/7/2000	\$5,750		\$1,000	\$2,100	\$5,000		\$10,200		\$24,050
	10/16/2006	\$2,850						\$700		\$3,550
HARLEYSVILLE INSURANCE	8/10/2005	\$7,650				\$4,000		\$3,100		\$14,750
HARTFORD INSURANCE	12/8/2004	\$3,000				\$5,000		\$3,000		\$11,000
LIBERTY MUTUAL GROUP	11/16/1999							\$1,400		\$1,400

NAME	DATE	205 (3)	205 (4)	324 (2)	324 (2)	359 (2)	360 (1)(A)	360 (1)(B)	360 (2)	TOTAL
				EE	STATE					
LUMBER INSURANCE COMPANIES	7/16/1999	\$6,750						\$17,300		\$24,050
MAINE ADJUSTMENT SERVICE	12/18/2003	\$6,000					\$925	\$1,025		\$7,950
MAINE AUTOMOBILE DEALERS ASSOCIATION	4/7/2005	\$6,200						\$800		\$7,000
MAINE HEALTH CARE ASSOCIATION	3/14/2006	\$7,500						\$925		\$8,425
MAINE MOTOR TRANSPORT ASSOCIATION	6/18/2004						\$50	\$475		\$525
MAINE MUNICIPAL ASSOCIATION	6/20/2001	\$1,500						\$500		\$2,000
	5/24/2007	\$4,850		\$15,400				\$4,200		\$24,450
MAINE SCHOOL MANAGEMENT ASSOCIATION	7/9/2001							\$100		\$100
MEAD PUBLISHING PAPER DIVISION	9/11/2000									
MEMIC	6/9/2006	\$4,500		\$30,800		\$10,000		\$3,050		\$48,350
MITSUI SUMITOMO MARINE MANAGEMENT (U.S.A.), INC.	3/15/2006	\$2,450					\$200	\$1,400		\$4,050

NAME	DATE	205 (3)	205 (4)	324 (2)	324 (2)	359 (2)	360 (1)(A)	360 (1)(B)	360 (2)	TOTAL
				EE	STATE					
MORSE PAYSON & NOYES	4/5/2002	\$600						\$600		\$1,200
NATIONAL GRANGE MUTUAL INSURANCE COMPANY	8/10/2005	\$6,200				\$6,000		\$6,100		\$18,300
NORTHERN GENERAL SERVICES	4/14/2003						\$100	\$1,000		\$1,100
OLD REPUBLIC INSURANCE COMPANY	3/12/2002	\$1,500					\$900	\$700		\$3,100
ONEBEACON INSURANCE GROUP	2/28/2006						\$1,500	\$1,300		\$2,800
PUBLIC SERVICE MUTUAL INSURANCE COMPANY	1/9/2001						\$100	\$100		\$200
	12/13/2006	\$1,100					\$100	\$700		\$1,900
RISK ENTERPRISE MANAGEMENT LIMITED	1/9/2007	\$3,000					\$400	\$1,700		\$5,100
ROMAN CATHOLIC DIOCESE OF PORTLAND	3/19/2007						\$150	\$800		\$950
ROYAL & SUNALLIANCE GROUP	11/30/2004	\$300		\$100	\$300	\$7,500	\$1,600	\$4,600		\$14,400
RSKCO	5/11/2001							\$800		\$800
RYDER SERVICES CORPORATION	10/13/2004						\$300	\$100		\$400

NAME	DATE	205 (3)	205 (4)	324 (2)	324 (2)	359 (2)	360 (1)(A)	360 (1)(B)	360 (2)	TOTAL
				EE	STATE					
SEDGWICK CLAIMS MANAGEMENT	3/14/2001	\$400						\$500		<b>\$900</b>
SELECTIVE INSURANCE COMPANY OF NEW YORK	12/6/2006	\$50					\$300	\$2,400		<b>\$2,750</b>
SENTRY INSURANCE COMPANY	12/12/2001	\$1,500						\$1,300		<b>\$2,800</b>
	2/21/2007						\$900	\$1,100		<b>\$2,000</b>
SOMPO JAPAN INSURANCE COMPANY OF AMERICA	8/31/2006	\$100						\$600		<b>\$700</b>
THE ST. PAUL COMPANIES	5/25/2004	\$4,050				\$7,000		\$2,600		<b>\$13,650</b>
STATE OF MAINE	5/31/2001	\$1,500						\$900		<b>\$2,400</b>
	3/30/2007	\$13,300						\$5,700		<b>\$19,000</b>
SYNERNET	12/13/2000							\$400		<b>\$400</b>
T.H.E. INSURANCE COMPANY	9/30/2005	\$400						\$500		<b>\$900</b>
TOKIO MARINE MANAGEMENT, INC.	1/9/2001									
	6/7/2006									
TRAVELERS INSURANCE COMPANIES	6/30/1999	\$15,800					\$1,400	\$12,100		<b>\$29,300</b>

NAME	DATE	205 (3)	205 (4)	324 (2)	324 (2)	359 (2)	360 (1)(A)	360 (1)(B)	360 (2)	TOTAL
				EE	STATE					
VERIZON	12/28/2005									
VIRGINIA SURETY COMPANY	3/16/2006	\$2,050			\$2,250	\$10,000	\$500	\$4,000		\$18,800
WAUSAU INSURANCE COMPANIES	6/9/2003	\$3,450						\$3,800		\$7,250
THE XL INSURANCE COMPANIES	10/31/2006	\$3,000					\$100	\$700		\$3,800
THE YASUDA FIRE AND MARINE INSURANCE COMPANY OF AMERICA	3/27/2001	\$1,500					\$700	\$100		\$2,300
YELLOW TRANSPORTATION	9/20/2004									
YORK CLAIMS SERVICE INC.	3/30/2000	\$15,000						\$1,200		\$16,200
ZURICH NORTH AMERICA	6/28/2005	\$6,050				\$10,000	\$200	\$8,100		\$24,350
		<b>\$269,300</b>	<b>\$550</b>	<b>\$62,900</b>	<b>\$42,075</b>	<b>\$167,500</b>	<b>\$36,575</b>	<b>\$216,000</b>	<b>\$30,000</b>	<b>\$824,900</b>

### **III. ENFORCEMENT.**

The Board's Abuse Investigation Unit handles enforcement of the Maine Workers' Compensation Act. The report of the Abuse Investigation Unit appears at Section 12 of the Board's annual report.

## **5. WORKER ADVOCATE PROGRAM**

### **I. INTRODUCTION.**

The Worker Advocate Program provides legal representation to injured workers in administrative proceedings (mediations and formal hearings) before the Workers' Compensation Board. In order to receive assistance, an injured worker must be "qualified"; the injury must have occurred on or after January 1, 1993, and the worker must have participated in the Board's troubleshooter program, have not informally resolved the dispute, and demonstrate that they have not retained legal counsel.

While traditional legal representation is the core of the program, the Advocate staff has broad responsibilities to injured workers including: conducting negotiations; acting as an information resource; advocating for and assisting workers to obtain rehabilitation, return to work and employment security services; and communicating with insurers, employers and health care providers on behalf of the injured worker.

### **II. HISTORY.**

In 1992 the Maine legislature re-wrote the Workers' Compensation Act repealing, in whole, title 39 and enacting title 39-A. One of the most prominent changes impacting injured workers was the elimination of the "prevail" standard. Under title 39, an attorney representing an injured worker could request the board order the employer/insurer to pay his/her fees if they obtained a certain degree of relief for the injured worker; i.e., prevailed. However, under the "new" act, beginning in January 1993 the employer/insurer had no liability regardless of whether the worker prevailed or not, and, in addition, fees for injured workers' attorneys were limited to a maximum of 30% of accrued benefits.

Although these changes undoubtedly reduced the cost of claims, it also became difficult for injured workers to obtain legal representation unless they had a serious injury with a substantial amount of accrued benefits at stake. Estimates indicate that upwards of 40 % of injured workers did not have legal representation post-1992. This presented some dramatic challenges for administration of the workers' compensation system. By 1995 recognition of these issues prompted the Workers' Compensation Board of Directors to establish a pilot "Worker Advocate" program.

The pilot program was staffed by one non-attorney Advocate and was limited to representation at the mediation stage of dispute resolution. Based on its initial success, the board expanded the pilot program to five non-attorney Advocates, one for each regional office, however, representation remained limited to mediations. As a result of the challenges presented to administration of the Act by elimination of the prevail standard, and the success of the board's pilot program, the Legislature amended title 39-A to formally create the Worker Advocate Program in 1997.

The new statute was a substantial expansion of operations. The new program required Advocates provide representation at formal hearings in addition to mediations and added additional duties. Mediation is typically less complex and requires relatively limited preparation compared to a formal hearing. In contrast, representing an injured worker at a formal hearing is more complex. Developing cases for formal hearing can include depositions, hearings, joint scheduling memos, motions, position papers, complex medical reports, settlement negotiations, and other legal activities, including analysis of case law.

### **III. THE CURRENT WORKER ADVOCATE PROGRAM**

Currently the board has 12 Advocates working in five regional offices from Caribou to Portland. Unlike private attorneys, Advocates are in effect required to represent all qualified employees who apply to the program. The statute does provide some exceptions allowing the program to decline assistance however, in practice, relatively few cases are refused.

Cases are referred to the Advocate Program only when there is a dispute as indicated by the employee, employer, insurer, or a health care provider. When the Board is notified of a dispute, a Claims Resolution Specialists (known as a “troubleshooter”) tries to facilitate a voluntary resolution of the problem. If that is not successful, or if some issues remain in dispute, the Board determines if the employee qualifies for assistance, and if so, refers the employee to the Advocate Program.

Matters that have issues in dispute after troubleshooting are scheduled for Mediation. To represent an injured worker at Mediation, the Advocate Program must obtain medical records, factual information regarding the injury and the worker’s employment, and meet with the injured worker to review the issues prior to Mediation. Advocates often are also called upon to explain the legal process, Board rules and the statute including requirements regarding medical treatment and work, to assist a worker with unemployment and health insurance issues, to provide information to health care providers, and to assist the worker with other forms of interim support if needed.

At Mediation, the parties meet with a Mediator, discuss the issues, and attempt to negotiate an agreement. The Mediator facilitates but has no authority to require the parties to reach an agreement or set the terms of an agreement. If the parties resolve their issues, the terms of the agreement are recorded in a binding Mediation Record. A significant number of cases are resolved at Mediation; for every 100 disputes reported to the Board, only about 25 go on to a formal hearing.

Cases that do not resolve at mediation typically do so because of the factual and legal complexity of the dispute. The next step is litigation at the formal hearing level. The Advocate files petitions to request a formal hearing after assuring there is adequate medical and other evidence to support a claim. Handling formal hearings requires an Advocate to provide legal representation including reviewing medical reports, conducting discovery/exchange of information with the employer/insurer, filing evidentiary and other motions, preparing the worker for his/her testimony, preparing exhibits, taking direct and cross examination testimony, and filing position

papers summarizing the law and facts at the conclusion of the testimony. The Advocates also, when necessary, attend depositions of medical providers, private investigators, and labor market experts. Eventually, either a decision is issued or the parties agree on a lump sum settlement. The average timeframe is about 12 months, although it can be significantly shorter or longer depending on the complexity of medical evidence and the need for independent medical examinations.

#### IV. CASELOAD STATISTICS.

Injured workers in Maine have made substantial utilization of the Advocate program. As illustrated in the following table, Advocates represent injured workers at approximately 50% of all mediations (an average of 2,000 mediations per year). The trend has been fairly consistent with a notable increase in 2006 of 56% representation at Mediation. And given the relatively large number of Mediations handled by Advocates, it bears noting that from 1998 through 2007, the program consistently cleared no less than 95% of the cases assigned in a given year for Mediation.

	Assigned	Disposed	Pending Dec 31st	% of All Pending
1998	1,889	2,021	308	39%
1999	2,342	2,351	299	51%
2000	1,903	1,856	346	52%
2001	2,249	2,247	348	51%
2002	2,113	2,153	308	51%
2003	1,981	1,899	390	46%
2004	1,816	1,969	237	50%
2005	1,915	1,841	311	53%
2006	1,522	1,533	280	56%
2007	1,397	1,434	243	52%

The Advocate program has also represented injured workers at 25 – 30% of all formal hearings before the Board (about 700 cases per year). That number has remained relatively consistent over

the last nine years (1998 – 2007) and in the majority of years, Advocates have cleared more formal cases than were pending at the start of the year. Given the much greater scope of responsibility inherent with formal hearing cases, Advocates have performed very well in their expanded role.

## Advocate Cases at Formal Hearings

	Assigned	Disposed	Pending Dec 31st	% of All Pending
1998	655	444	405	25%
1999	605	645	310	28%
2000	597	594	313	28%
2001	813	784	342	28%
2002	642	682	468	35%
2003	920	780	608	37%
2004	689	810	487	29%
2005	679	714	452	30%
2006	628	715	361	29%
2007	632	673	320	28%

### V. SUMMARY.

The expansion of program duties in 1997 created unmet needs in the Worker Advocate Program. In order to meet the obligations set by the statute, the Workers' Compensation Board has diverted resources from other work to the Advocate program. Currently the program has 12 Advocates with a support staff of 8 paralegals, 5.5 legal secretaries (one 50% time) and 1 clerk with a supervising senior staff attorney. Services are provided in 5 offices; Caribou, Bangor, Augusta, Lewiston and Portland. In calendar year 2007, the Advocate Program represented 1434 injured workers at Mediation and 673 at formal hearings.

The Advocate Program was created to meet a significant need in administration of the Workers' Compensation system. In its first 10 years, the Program has proven its value providing much-needed assistance to Maine's injured workers, with limited resources. As a result, the Advocate program has experienced periods of high case loads and chronic staff turnover. In one 12-month period, (2006 – 2007) 42% of Advocate Program positions were vacant. In response to ongoing

concerns, the 123<sup>rd</sup> Legislature passed additional support for the Advocate program. Qualifications for Advocates and paralegals were increased and, in conjunction, pay ranges were upgraded. [Public Law 2007 Ch 312]. The changes, which went into effect in September 2007, are intended to attract and retain staff and to bolster stability of this program which is an integral part of the Workers' Compensation system in Maine.

## **6. INDEPENDENT MEDICAL EXAMINATIONS (IMES) /MEDICAL FEE SCHEDULE**

### **I. INDEPENDENT MEDICAL EXAMINATIONS.**

Draft regulations for the implementation of Section 312 of the Workers' Compensation Act of 1992 were first presented to the Board of Directors April 7, 1994, with final approval on January 3, 1996. Section 312 provides, in part, as follows:

**Examiner system.** The board shall develop and implement an independent medical examiner system consistent with the requirements of this section. As part of this system, the board shall, in the exercise of its discretion, create, maintain and periodically validate a list of not more than 50 health care providers that it finds to be the most qualified and to be highly experienced and competent in their specific fields of expertise and in the treatment of work-related injuries to serve as independent medical examiners from each of the health care specialties that the board finds most commonly used by injured employees. The board shall establish a fee schedule for services rendered by independent medical examiners and adopt any rules considered necessary to effectuate the purposes of this section.

**Duties.** An independent medical examiner shall render medical findings on the medical condition of an employee and related issues as specified under this section. The independent medical examiner in a case may not be the employee's treating health care provider and may not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid. Nothing in this subsection precludes the selection of a provider authorized to receive reimbursement under section 206 to serve in the capacity of an independent medical examiner. Unless agreed upon by the parties, a physician who has examined an employee at the request of an insurance company, employer or employee in accordance with section 207 during the previous 52 weeks is not eligible to serve as an independent medical examiner.

**Appointment.** If the parties to a dispute cannot agree on an independent medical examiner of their own choosing, the board shall assign an independent medical examiner from the list of qualified examiners to render medical findings in any dispute relating to the medical condition of a claimant, including but not limited to disputes that involve the employee's medical condition, improvement or treatment, degree of impairment or ability to return to work.

**Rules.** The board may adopt rules pertaining to the procedures before the independent medical examiner, including the parties' ability to propound questions relating to the medical condition of the employee to be submitted to the independent medical examiner. The parties shall submit any medical records or other pertinent information to the independent medical examiner. In addition

to the review of records and information submitted by the parties, the independent medical examiner may examine the employee as often as the examiner determines necessary to render medical findings on the questions propounded by the parties.

**Medical findings; fees.** The independent medical examiner shall submit a written report to the board, the employer and the employee stating the examiner's medical findings on the issues raised by that case and providing a description of findings sufficient to explain the basis of those findings. It is presumed that the employer and employee received the report 3 working days after mailing. The fee for the examination and report must be paid by the employer.

**Weight.** The board shall adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. Contrary evidence does not include medical evidence not considered by the independent medical examiner. The board shall state in writing the reasons for not accepting the medical findings of the independent medical examiner.

**Annual review.** The board shall create a review process to oversee on an annual basis the quality of performance and the timeliness of the submission of medical findings by the independent medical examiners.

Currently, the Board has 23 examiners on its Section 312 IME list. The Board continues to consider remedies to increase the number of examiners on the list and decrease the amount of delay. The following physicians are currently on the Board's Section 312 IME list:

## **PAIN MANAGEMENT SPECIALISTS**

HERLAND, JONATHAN S., MD  
PENOBSCOT PAIN MANAGEMENT  
36 PENN PLAZA  
BANGOR, ME 04401

LEONG, PETER Y  
MERCY HOSPITAL  
144 STATE STREET  
PORTLAND ME 04102

## **CHIROPRACTIC**

BALLEW, DAVID M., DC  
BALLEW CHIROPRACTIC OFFICE  
256 MAIN STREET  
WATERVILLE, ME 04901

LYNCH, ROBERT P., DC  
1200 BROADWAY  
S PORTLAND, ME 04106

VANDERPLOEG, DOUGLAS A., DC  
17 BACK MEADOW RD  
DAMARISCOTTA, ME 04543

## **FAMILY & INTERNAL MEDICINE SPECIALISTS**

GRIFFITH, WILLIAM L., MD  
KENNEBEC MEDICAL ASSOCIATES  
13 RAILROAD SQUARE  
WATERVILLE, ME 04901

SHAW, PETER K., MD  
96 CAMPUS DRIVE  
SCARBOROUGH, ME 04102

## **NEUROLOGY**

BRIDGMAN, PETER, MD  
51 HARPSWELL RD, STE 100  
BRUNSWICK, ME 04011

SIGSBEE, BRUCE, MD  
PENOBSCOT BAY NEUROLOGISTS  
4 GLEN COVE DRIVE  
ROCKPORT, ME 04856

## **ORTHOPEDIC**

DONOVAN, MATTHEW J., MD  
16 LONG SANDS ROAD  
YORK, ME 03909

CROTHERS III, OMAR D., M.D.  
542 CUMBERLAND AVENUE  
PORTLAND, ME 04101

## **OSTEOPATH**

TRENKLE, DOUGLAS L., DO  
60 UNION ST STE 1  
ELLWORTH, ME 04605

CHARKOWICK, ROBERT  
P.O. BOX 3154  
AUGUSTA, ME 04330

## **OTOLARYNGOLOGY**

HAUGHWOUT, PETER J., MD  
7A EVERETT ST  
BRUNSWICK, ME 04011

**PHYSIATRY**

HERZOG, VINCENT, DO  
306 US RTE 1  
SCARBOROUGH, ME 04074

BAMBERGER, STEPHAN  
MEDICAL REHAB ASSOCIATES  
12 INDUSTRIAL PARKWAY  
BRUNSWICK, ME 04011

**PODIATRY**

MUCA, ERIC, D.P.M.  
YARMOUTH FAMILY SERVICES  
259 MAIN STREET  
YARMOUTH, ME 04096

**PSYCHIATRY**

LOBOZZO, DAVID B., MD  
477 CONGRESS ST  
PORTLAND, ME 04101

WEAR-FINKLE, DEBORAH, MD  
PO BOX 10  
LISBON FALLS, ME 04252

YOUNG, JOHN J  
477 CONGRESS ST., 5TH FLOOR  
PORTLAND, ME 04101

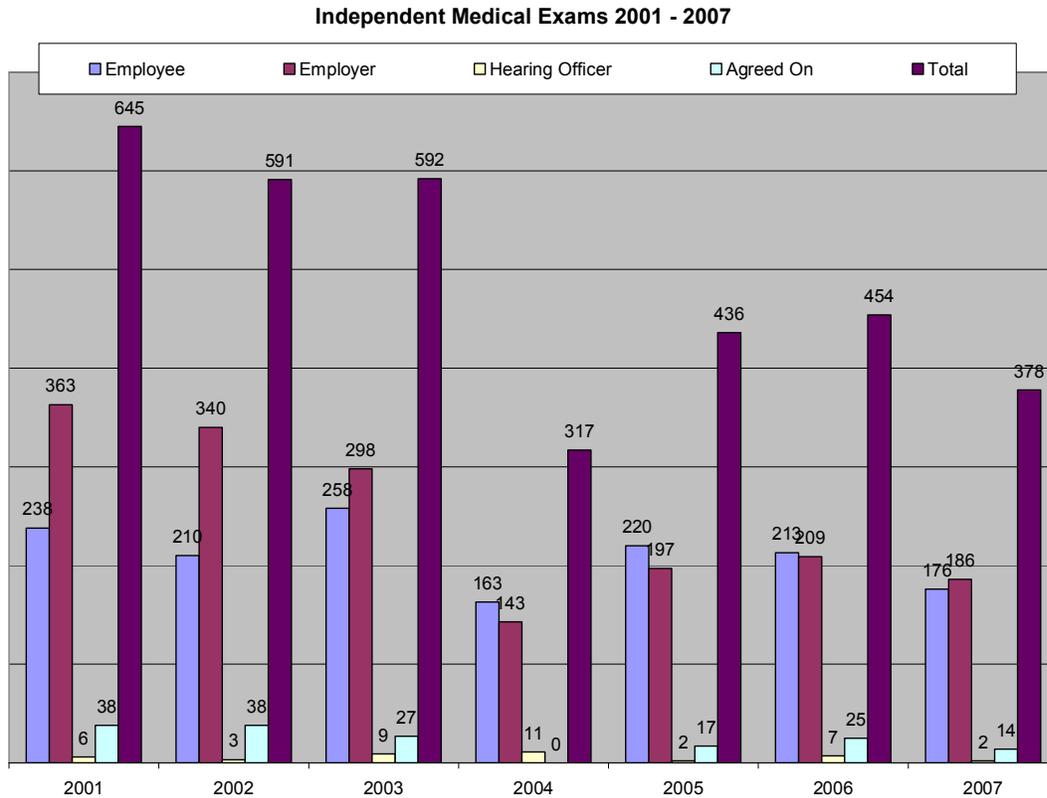
**PSYCHOLOGY**

MATRANGA, JEFF, PH. D.  
2 BIG SKY LANE  
WATERVILLE, ME 04901

GINN, ROGER, PH.D.  
205 OCEAN AVE  
PORTLAND ME 04103

**PULMONARY**

FUHRMANN, CALVIN P., MD  
KENNEBUNK MEDICAL CENTER  
24 PORTLAND RD.  
KENNEBUNK, ME 04043  
TELE: 985-3726



The chart reflects the source of requests for independent medical examinations for the years 2001-2007.

## II. MEDICAL FEE SCHEDULE.

The Board first published a Medical Fee Schedule on April 4, 1994. The Board is required pursuant to Section 209 to adopt rules establishing standards, schedules, and scales of maximum charges for individual services, procedures and courses of treatment. In order to ensure appropriate costs for health care services, the standards are to be adjusted annually to reflect appropriate changes in levels of reimbursement.

In August 1997, the Board adopted the Resource Based Relative Value System (RBRVS) as an efficient method to administer a fee schedule. On August 22, 2006, the Board voted to adopt the 2005 CPT Codes and RBRVS.

Currently, the Board is working with Ingenix, a leader in the field of hospital and medical fee schedules, to facilitate the creation of and transition to a workers' compensation hospital facility fee and ambulatory surgical care center fee schedule. The contractor will assist the board in the collection of facility fee data, assess the data and make recommendations for the development of an inpatient/outpatient facility fee and ambulatory surgical center fee schedule. Once the contractor provides the Board with recommended methodology, the Board will meet with stakeholders, begin drafting rules and regulations, and plan the implementation of the fee schedule.

## 7. TECHNOLOGY

The Board has implemented a number of modification and applications in order to provide timelier, accurate, and less costly information. Over the years a number of changes have occurred to reduce the time and resources required to gather employee injury data. With the implementation of the electronic submission of data directly from the Claim Administrators and the tightening of edits on the quality of the data, the available information is more reliable and timely. This has enabled the WCB to monitor the compliance and assist Claim Administrators that have difficulty with the process.

The WCB is working to expand the electronic receipt of information to Coverage as well as indemnity payment information. This will enable the Claim staff to better supervise the timeliness and accuracy of payments to injured employees.

The WCB is working with the Office of Information Technology to initiate migration from departmental servers to Enterprise service. This will centralize support and purchasing across State Government. While there will be a sizeable and immediate increase costs, the hope is that efficiencies can be achieved which will ultimately reduce costs. Migration of the WC Business application, Abacus (Advocate Unit client tracking system), and ISYS (word search application for Hearing Officers) will occur over the next year resulting in a more secure and less redundant system.

## 8. BUDGET AND ASSESSMENT

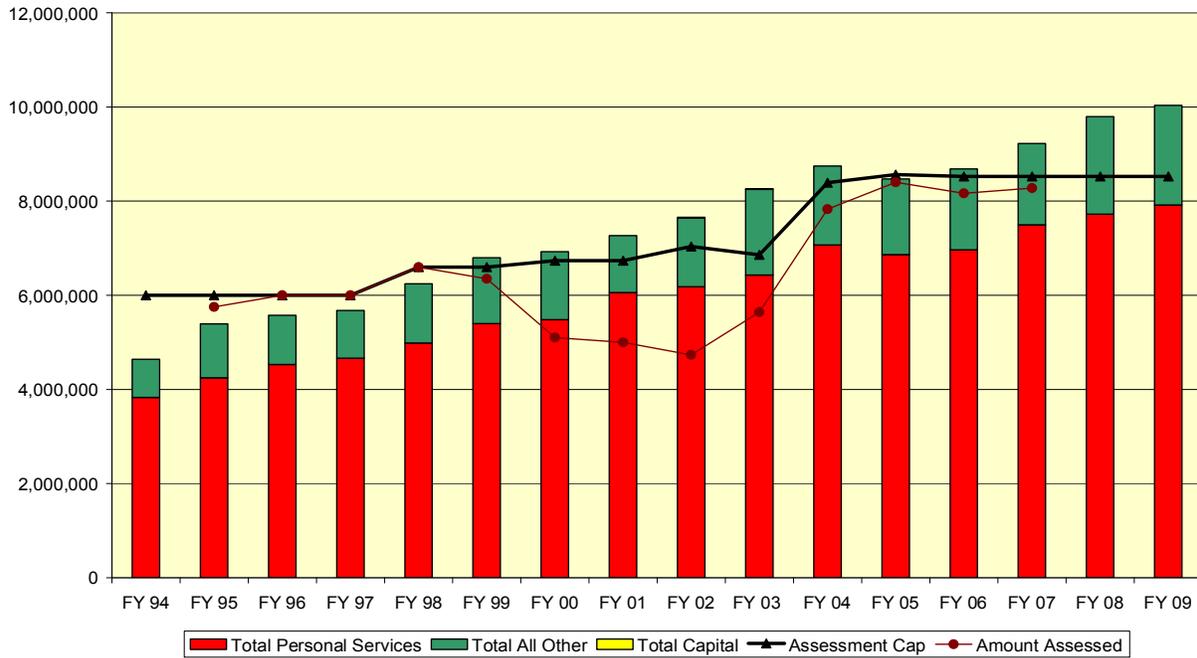
The Board is funded pursuant to a statutory assessment paid by Maine's employers, both self-insured and insureds. The Legislature in creating this funding mechanism in 1992 intended the users of the workers' compensation system to pay for it. The agency had previously been funded from General Fund appropriations.

The Legislature established the assessment as a revenue source to fund the Board, but capped the assessment limiting the amount of revenue which can be assessed. A long term solution to this problem is being considered through legislation proposed by the Board in order to deal with costs, beyond the Board's control, associated with contract increases, health insurance, retirement, postage, and lease costs.

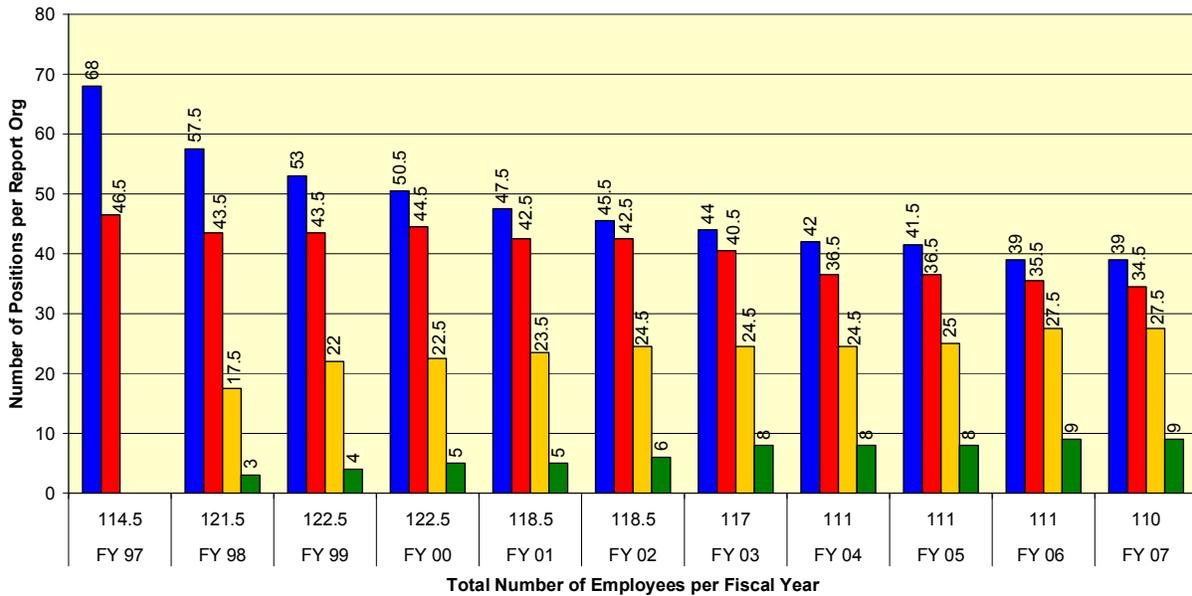
The assessment cap has been problematic in submitting a balanced budget. The Board cannot budget more than it can raise for revenue from the annual assessment and other minor revenues collected from the sale of copies of documents, fines and penalties. A majority of the fines and penalties received are deposited in the General Fund which contributes no support to the Board. The Legislature voted to raise the assessment cap beginning in FY08. This legislation increased the maximum assessment to \$9,820,178 in fiscal year 2008, \$10,000,000 beginning in fiscal year 2009, \$10,400,000 beginning in fiscal year 2010, \$10,800,000 beginning in fiscal year 2011, and \$11,200,000 beginning in fiscal year 2012. These increases in the Board's assessment cap should assist in submitting a budget that is balanced between expenditures and revenues for the next biennium. The total Board-approved budget for this biennium totaled \$9,684,780 in FY08 and \$9,954,434 in FY09.

P.L. 2003, C. 93 provides that the Board, by a majority vote of its membership, may use its reserve to assist in funding its Personal Services and All Other expenditures, along with other reasonable costs incurred to administer the Workers' Compensation Act. The Bureau of the Budget and Governor approve the request via the financial order process. This provides greater discretion to the Board in the use of its reserve account. The bar chart entitled "WCB – 14 Year Schedule of Actual and Projected Expenditures" shows actual expenditures through FY06 and projected expenditures for FY07. It also shows the assessment cap and the amounts actually assessed through FY06. The bar chart entitled "WCB – Personnel Changes Since FY97" demonstrates the Board's efficient use of personnel since 1997.

**WCB - 16 Year Schedule of Actual and Projected Expenditures  
Workers' Compensation Administrative Fund - 0183  
September 2007**



**WCB - Personnel Changes Since FY 97  
July 2006**



The MAE and Worker Advocate programs represent 33% of the agency's total number of employees.



## 9. CLAIMS MANAGEMENT UNIT

The Claims Management Unit operates under a “case management” system. Individual claims managers process the file from start to finish. The insurance carriers, claims administrators and self-insured employers benefit from having a single contact in the Claims Management Unit.

The Unit coordinates with the Monitoring Unit of the MAE Program to identify carriers that frequently file late forms or who may be consistently late in making required payments to injured workers. Case managers of the Claims Management Unit review the paperwork filed by carriers to ensure that payments to injured workers are accurate and that the proper forms are completed and filed with the Workers’ Compensation Board. The Unit conducts training workshops regarding compliance and payments to injured workers upon request.

Greater implementation of Electronic Data Interchange (EDI) has created efficiencies in claims management, allowing managers to increase their claim management efforts, through the electronic filing of the First Report of Injury and Notice of Controversy.

In addition to EDI creating data entry efficiencies, the Unit is also undergoing full business analysis of its overall daily functions. The purpose is to upgrade computer programs and screens in order to streamline the workload, thereby making the daily performance of work more efficient; automate functions that can be done by the computer; and, reduce the time it takes to process claims and associated paperwork. All of these changes will provide the claims managers more time to address higher level and more serious problems and should benefit the entire workers’ compensation community. It will also identify, through the computer, filing requirements and deadlines for carriers while notifying them automatically of problems or errors in this regard.

Claims staff search the database for a claim that matches the information on each form that is received, checking by Social Security Number, employee name and date of injury. This is information that is entered into the database after the Employer’s First Report of Occupational Injury or Disease is filed with the Board. Claims Management Unit staff verify accuracy of payment information on each claim that is filed with the Workers’ Compensation Board for claims that have been open since 1966. Cost of Living Adjustments (COLA) are done on claims beginning with dates of injury on January 1, 1972 through December 31, 1992. Claims staff checks to see that the COLA’s are calculated correctly. The filing of forms with incorrect information causes Claims staff to spend considerable time researching files and doing mathematical calculations, which is necessary to ensure that correct payments are made to injured workers.

This Unit is responsible for producing the annual “State Average Weekly Notice” which contains the information necessary to make COLA’s on claims, calculate permanent impairment payments, and determine whether fringe benefits should be included in calculating compensation

rates. The Claims staff utilize this information to do mathematical calculations in determining the COLA multiplier and maximum benefit in effect for the following year.

Claims staff produces a Weekly Benefit Table annually. The Weekly Benefit Table is used by all members of the Workers' Compensation community to determine a compensation rate for an employee.

Forms are processed by the Claims staff in the following manner:

**Petitions** – A file for the claim is located or created, the form is entered in the database, and the file is sent to the appropriate Claims Resolution Specialist in a regional office. A telephone call or e-mail message is directed to the person who filed the form if a claim cannot be found in the database. They are asked to provide an Employer's First Report of Occupational Injury or Disease so that a claim can be started.

**Answers to Petitions** - The file for the claim is located, the Answer is entered into the database, and the Answer is forwarded to the file.

**Notices of Controversy** – The initial form is filed electronically. Corrections to the form are submitted to the Board on paper forms and the changes are entered manually by Claims staff.

**Wage Statements** - The average weekly wage is calculated by Claims staff pursuant to Statute, Board Rules, and Law Court decisions. The average weekly wage is entered into the database and the form is forwarded to the file room.

**Schedule of Dependent(s) and Filing Status Statements** - The information on this form is entered into the database and the form is forwarded to the file room.

**Memorandum of Payment; Discontinuance or Modification of Compensation; Consent between Employer and Employee** - The form is checked for accuracy by comparing dates, the rate and the wage to information previously filed. The form is entered into the database and then sent to the file room. If there is a problem, a telephone call or e-mail message is directed to the person who filed the form for an explanation or revision. Explanations or amended forms are requested.

**21-Day Certificate or Reduction of Compensation** - The form is checked for accuracy comparing dates, the rate and the wage. The form is entered into the database once completed. In cases of an illegal suspension or reduction, the file is forwarded to a Claims Resolution Specialist in a regional office.

**Lump Sum Settlement** – The information on this form is entered into the database and the form is sent to the file room.

**Statement of Compensation Paid** – The information on this form is compared to information previously reported, the form is entered into the database and the form is sent to the file room. A

large number of these forms are found to have errors which results in staff having to research the file and contact the person who filed the form, requesting corrected or missing forms.

The Claims Management Unit process the following forms: Filed between Jan. 1 and Oct. 31, 2007

Employer's First Report of Occupational Injury or Disease	26,840 electronic filing 118 paper filing
Notice of Controversy	8,974 electronic filing 54 paper filing
Petitions	3,650
Answers to Petitions	1,579
Wage Statement	7,428
Schedule of Dependent(s) and Filing Status Statement	7,390
All Payment Forms, including:	
Memorandum of Payment; Discontinuance or Modification of Compensation; Consent Between Employer and Employee; 21-Day Certificate of Discontinuance or Reduction of Comp;	
Lump Sum Settlement	16,952
Statement of Compensation Paid	13,735

Currently, the only forms that can be filed electronically are the Employer's First Report of Occupational Injury or Disease and the Notice of Controversy. All other forms are filed on paper and entered manually.

## 10. INSURANCE COVERAGE UNIT

The Insurance Coverage Unit has new computer screens resulting from recent program upgrades. The new screens help to streamline data entry and enhance the ability to identify trends and problems with carriers. The program can link coverage and do employer updates more easily than in the past. This has resulted in a reduction of First Reports that can't be matched to an insurer. In the early 1990s, the Board would receive approximately 600 First Reports in which coverage could not be identified. In 2005 this figure had been reduced to 16, in 2006 to 14. As a direct result of the computer upgrade and streamlining the workload, the Coverage Unit staff was reduced by three employees.

The Board's database was merged with the Department of Labor's roughly six years ago, resulting in greater collaboration with the Department of Labor and the Bureau of Insurance. The Unit processes proof of workers' compensation insurance coverage both manually and electronically. A staff member is assigned for processing applications for waivers to the Workers' Compensation Act.

The Unit supervisor is responsible for a multitude of duties including the approval of applications for predetermination of independent contractor status. The functions of the Unit consist of proof of coverage, waivers, and predeterminations. The goal of staff is to process 80% of the proof of coverage filings within 24 hours of receipt (the Board received and processed 47,135 proof of coverage filings between November 2006 and October 2007); 90% of waiver applications within 48 hours of receipt (the Board received and processed 2,148 waiver applications between November 2006 and October 2007); and 100% of predetermination applications within 14 days (the Board received 3,270 applications between November 2006 and October 2007). ALL GOALS WERE MET IN 2007.

The Unit assists with problem claims including the identification of insurance coverage, the identification of employers, and identifying address changes for employers. This is done to properly process and assign claim files to the appropriate regional offices. The Coverage staff works closely with the Abuse Investigation Unit regarding problems associated with coverage enforcement. The Unit cooperates with the MAE program to identify carriers and self-insureds who consistently fail to file required information in a timely manner. And, it assists the Bureau of Labor Standards to maintain an accurate and up-to-date employer database, utilized by both departments.

The Unit researches the history of employer insurance coverage in order to certify the accuracy of these records. This is particularly important for many of the claims at formal hearing, especially where there is a controversy as to the liability for the payment of the claim. Since workers' compensation coverage in Maine is mandatory, the Unit routinely provides assistance to the public regarding insurance coverage requirements.

## 11-A. COORDINATION WITH OTHER AGENCIES

The Board has been successful in its effort to coordinate its work with other state and federal agencies.

An example of this success is the Board's migration of its employer database to the Department of Labor's (DOL) database. For years, in its effort to identify employers that were operating without required workers' compensation coverage, the Board compared its coverage information to DOL's unemployment database. A great deal of unnecessary paperwork for the Board and for Maine's employers was generated due to the inconsistencies between the two databases. Information that was updated on one system, for example, would not always be updated on the other system. Now, with the two databases combined, the Board can more accurately identify employers without coverage. Efforts are currently underway to coordinate other DOL employer databases into one.

The Board also collects a significant amount of data on its forms to assist the Bureau of Labor Standards (BLS) in its task of producing statistical reports. An example of the Board's responsiveness in this area involves a form titled "Statement of Compensation Paid." At the request of BLS, which wanted more detailed information, the Board acted to incorporate the requested changes.

The same holds true for the Occupational Safety and Health Administration (OSHA). Maine is currently one of the few states in the nation that captures OSHA required data on its First Report of Injury form. This means that Maine's employers, in the event of an accident in the workplace, only have to fill out one form to meet both state and federal requirements. This has substantially reduced the paperwork burden on Maine's employers.

The Board also works with the Bureau of Insurance (BOI) with respect to its annual assessment. BOI provides information on premiums written, predictions on market trends, and paid losses information for self-insured employers. The Board uses this information when it calculates the annual assessment. The Monitoring, Auditing, and Enforcement (MAE) Unit works directly with BOI on compliance and enforcement cases pursuant to 39-A M.R.S.A. § 359(2). The WCB certifies and forwards to BOI cases which involve questionable claims handling techniques or repeated unreasonable contested claims for appropriate sanctions by BOI.

There are also increasing requests from the Bureau of Labor Standards for data and additional elements. Some fundamental changes were made in the area of data responsibility. Basically, programming changes will be made to give BLS the ability and authority to modify specific information with regard to the physical location of the employer where an injury has occurred. The Occupational Safety and Health Data Collection and Injury Prevention Group was formed in response to P.L. 2003 Ch. 471 to review various data collection and injury prevent efforts and to make recommendations to the Labor Committee. The Bureau of Labor Standards has coordinated this effort with assistance from the Workers' Compensation Board.

A coordinated effort is underway with Bureau of Information Services to upgrade the WCB's computer hardware and software. Upgrades include desktops, network servers, database server, network hubs, and a routed network. Major programming changes have been underway for the past two years and will continue into the foreseeable future.

The Board has also worked with the Department of Health and Human Services (DHHS) to assist DHHS with recovering past due child support payments and to ensure that MaineCare is not paying for medical services that should be covered by workers' compensation insurance.

Pursuant to P.L. 2007 Ch. 311, the Board, to help ensure that MaineCare receives appropriate reimbursement, notifies the Department of Health and Human Services within 10 days of an approved agreement or an order to pay compensation.

The Department of Labor, Bureau of Labor Standards, and the Workers' Compensation Board, at the request of the Legislature, are involved in a coordinated effort to develop an uniform standard for the determination of independent contractor status.

## **11-B. ALTERNATIVE DELIVERY SYSTEMS INCLUDING PRIVATIZATION**

The 121st Maine Legislature enacted legislation that required the Workers Compensation Board (WCB) to adopt rules mandating electronic filing. The legislation directed the Board to proceed by way of consensus based rulemaking. A committee was formed consisting of representatives from the insurance companies, self insureds, WCB Directors and staff. Recommendations were forwarded to and unanimously approved by the Board of Directors.

The WCB agreed on a three-phase project. - First Reports of Injury and Denial submissions are currently being implemented as directed in the legislation. The WCB is currently engaged in completing the remaining payments phase. An internal group is near completion for the Trading Partner Tables which will provide a roadmap of the various payment functions and time frames required for each business event. The next step is to get shareholder review and comment before programming the necessary functions. The carriers require at least 12 months once the State's specifications are posted before they can initiate a test. Additionally, WCB Rules will be updated to take advantage of the new process. Testing is estimated to begin the Fall of '08.

## 12. ABUSE INVESTIGATION UNIT

The Abuse Investigation Unit (AIU) is authorized to “investigate all complaints of fraud, illegal or improper conduct or violation of the Act or rules of the board relating to workers’ compensation insurance, benefits or programs, including ... acts by employers, employees or insurers” as directed by the board. 39-A M.R.S.A. §153 (5). AIU is responsible for investigating and/or assessing penalties under the following provisions of the Act.

- **Section 205 (3)** requires payment of lost time benefits within 30 days of becoming due when there is no ongoing dispute. Penalties of \$50 per day to a maximum of \$1,500 are payable to the injured worker.
- **Section 205(4)** requires payment of medical bills within 30 days of becoming due when there is no ongoing dispute. Penalties of \$50 per day penalty up to a maximum of \$1,500 are payable to a health care provider or the injured worker if they paid the bill.
- **Section 324(2)** mandates payments pursuant to any board order or approved agreement be made within 10 days. Violations of this section may be penalized up to \$200 per day with the first \$50 per day payable to the employee and any additional fine payable to the Board’s Administrative Fund.
- **Section 360(1)** provides for a \$100 penalty per instance, when a mandatory form has not been filed or was not filed within time frames set by rule or statute. Penalties are payable to the General Fund.

AIU also has limited responsibilities to investigate complaints and recommend penalties under sections 324(3), 359(2) and 360(2). Complaints brought pursuant to these provisions are referred to a presiding officer or hearing officer of the board who holds a hearing, takes evidence, and assesses any penalties &/or fines.

- **Section 324(3)** provides penalties for failure to secure required workers’ compensation insurance. Fines may be levied up to \$10,000.00 or an amount equal to 108% of the unpaid premiums, whichever is greater. Violators may also be subject to loss of corporate status, suspension of a state-issued license, and/or referral to the Attorney General for criminal prosecution. Penalties under this section are paid to the Board’s Employment Rehabilitation Fund.
- **Section 359(2)** provides a penalty of up to \$100,000 for any employer, insurer or third-party administrator who engages in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. Penalties under this section are payable to the Board’s Administrative Fund. Any violations are certified to the Superintendent of Insurance, for further action.
- **Section 360(2)** requires penalties for willful violation, intentional misrepresentation and/or fraud under the Act. Individuals may be fined up to \$1,000 and corporations, partnership or other legal entities up to \$10,000 for violations. Repayment of compensation received, or of

compensation wrongfully withheld, may also be ordered. Penalties are payable to the General Fund.

In 2007, AIU carried an open caseload of 4316 claims, including 2464 new filings during the calendar year. See Table 1. The number of new cases filed in 2007 represents a very slight decrease (less than 1%) over 2006 (2894 new cases filed). The majority of claims continue to fall into two sections: § 360(1) for late filings and § 324(3) for failure to carry workers' compensation insurance. In 2007, new filings for these two sections combined represented 97% of all new cases filed with the Unit. Following the overall trend for total new filings noted above, new filings under these two sections also decreased slightly; approximately 1% for Section 324.3 and 1.4% for Section 360(1).

**Table 1: Filings by Statutory Provision - 2007**

<b>Statute Section</b>	<b>Open 1/1/2007*</b>	<b>Filed</b>	<b>Closed</b>	<b>Open 1/1/2008</b>
<b>205(3)</b>	3	0	2	1
<b>205(4)</b>	0	0	0	0
<b>324(2)</b>	156	31	87	100
<b>324(3)</b>	716	1401	1485	632
<b>356(2) †</b>	1	10	3	8
<b>360(1)</b>	964	1001	477	1488
<b>360(2)</b>	12	21	12	21
<b>TOTALS</b>	<b>1852</b>	<b>2464</b>	<b>2066</b>	<b>2250</b>

\* The prior report estimated the figures for "pending" as of 1/1/2007.

In 2007 the dollar amount of fines assessed annually continued the trend of tracking the relative distribution of cases by statutory provision; the majority of penalty dollars are assessed for cases under section 324(3) and 360(1). In 2007, \$ 424,960 in penalties were assessed for late-filings pursuant to § 360(1), and \$ 14,450 in penalties were levied for lack of insurance coverage in accordance with § 324(3).

Two important legislative changes impacting AIU occurred in 2007. First, section 205(4) was amended to require that penalties for failure to pay a medical or health services bill be paid to either a requesting medical or health care provider, or an injured worker who personally paid for the billed services. Payments under this provision were, previously, payable to the Board's Administrative Fund. With this change, a provider or an injured worker requesting payment of the bill will receive the penalty payment up to the \$1,500 maximum if an insurer fails to contest the request for payment or pay within 30 days. Second, the legislature amended section 359(2), increasing the amount the board may assess in civil penalties against an employer, insurer or 3<sup>rd</sup>-party administrator for engaging in a pattern of questionable claims-handling or repeated unreasonably contesting claims. The prior maximum penalty of \$10,000 has been increased to \$100,000. Both changes were enacted in June 2007 and took effect in September 2007.

## 13. GENERAL COUNSEL REPORT

### I. RULES.

The Board adopted rules requiring the electronic filing of First Reports of Injury and Notices of Controversy. These rules were developed using the consensus-based rule-making process. The Board is in the process of developing a rule requiring the electronic filing of payment information.

The Board will, in 2008, reconvene a consensus based rulemaking group to look at hospital inpatient and ambulatory surgical care centers.

The Board is considering amendments to its rule regarding the collection of permanent impairment data. The proposed change will require a permanent impairment rating or note from a health care provider stating there is no permanent injury before a case can be settled pursuant to Section 352.

### II. LEGISLATIVE ACTIVITY.

The Board submitted five bills for consideration during the First Regular Session of the 123<sup>rd</sup> Legislature. All five were enacted into law.

The first bill, P.L. 2007, Ch. 350, adds domestic partners, as defined in Title 24, Section 2319-A, Subsection 1, to the list of individuals who can waive coverage in certain circumstances.

The second bill, P.L. 2007, Ch. 218, provides that penalties for non-payment of bills for medical or health care services are payable to the providers of the medical or health care service or the employee who paid for the medical or health care service instead of to the Board's Administrative Fund.

The third bill, P.L. 2007, Ch. 78, clarifies that decisions issued by the Board pursuant to Section 360 are final agency action subject to appeal to the Superior Court whether or not a penalty is imposed.

The fourth bill, P.L. 2007, Ch. 26, authorizes the Board to have the Attorney General or private counsel to prosecute any action necessary to enforce penalties payable to the Administrative Fund, Employment Rehabilitation Fund, or the General Fund.

And, the fifth bill P.L. 2007, Ch. 312, enhanced the Worker Advocate program by allocating funds to reclassify 11 Worker Advocate positions from range 24 to range 27, reclassify one Worker Advocate position (range 24) to Deputy Senior Staff Attorney Position (range 29), reclassify 1 Senior Staff Attorney position from range 29 to range 33, and reclassify 6 Paralegal Assistant positions (range 18) to Paralegal positions (range 20). This bill also requires that

individuals hired as worker advocates by the Workers' Compensation Board on or after September 20, 2007 either be admitted to practice law in Maine or be eligible to practice law in Maine upon hiring and, within 12 months of hiring, be admitted to practice law in Maine.

### **III. EXTREME FINANCIAL HARDSHIP CASES.**

Pursuant to 39-A M.R.S.A. § 213(1) the Board "may in the exercise of its discretion extend the duration of benefit entitlement ... in cases involving extreme financial hardship due to inability to return to gainful employment."

The Board decided three hardship cases in 2007.

In *Germano v. Maine Medical Foundation*, the parties agreed that the employee's benefits would be continued for 15 months from the date of the hearing and then cease.

In *Levesque v. Fraser Paper*, the Board denied a requested extension of benefits finding that the employee failed to establish an inability to return to gainful employment.

In *Oakes v. Aroostook Home Healthcare*, the Board granted an extension of benefits after finding that the employee proved she suffered extreme financial hardship due to an inability to return to gainful employment.

The decisions are available at

[http://www.maine.gov/wcb/Board\\_Decisions/section\\_213/section213.html](http://www.maine.gov/wcb/Board_Decisions/section_213/section213.html)

The Board does not have any hardship hearings scheduled at the current time. One such case is pending before a hearing officer who was delegated the authority to decide the case by the Board.

### **IV. BOARD REVIEW PURSUANT TO 39-A M.R.S.A. § 320.**

The Board denied one request for review in 2007. The issue presented by the Hearing Officer was the "proper rate to bill and pay for non-physician surgical assistants under the Board's Medical Fee Schedule." The Hearing Officer determined that physician's assistants shall be reimbursed at 10% of the primary surgeon's fee when assisting with a surgery.

#### **14. 39-A M.R.S.A. § 213 THRESHOLD ADJUSTMENT AND EXTENSION OF 260-WEEK LIMITATION**

The Workers' Compensation Act provides for a biennial permanent impairment threshold adjustment and a study of whether an extension of weekly benefits is warranted. Section 213(2) provides, in part, that the Board, based on an actuarial review, adjust the permanent impairment threshold so that 25% of all cases with permanent impairment will be expected to exceed the threshold and 75% of all cases with permanent impairment will be expected to be less than the threshold. In 1998, the Board reduced the threshold from 15% to 11.8% based on an actuarial report compiled by Advanced Risk Management Techniques, Inc.

Pursuant to 39-A M.R.S.A. § 213(4), the 260-week limitation contained in Section 213(1) must be extended 52 weeks for every year the Board finds the frequency of cases involving the payment of benefits under Sections 212 and 213 is no greater than the national average. Based on a report provided by Advanced Risk Management Techniques, Inc., the limitation referenced in Section 213(4) was extended for 52 weeks on January 1, 1999.

The Workers' Compensation Board hired the actuarial firm of Deloitte & Touche to conduct the independent actuarial review for the 39-A M.R.S.A. §§ 213(2) and (4) adjustment and extension for 2000 and 2001. Based on the 2000 Deloitte & Touche actuarial report, the Board retained the 11.8% threshold and extended the limitation referenced in Section 213(4) by 52 weeks on January 1, 2000.

The Board did not extend the limitation referenced in Section 213(4) in 2001, 2002 or 2003. Based on a report provided by Practical Actuarial Solutions, Inc., the Board adopted a rule establishing that the benefit limitation was not extended on January 1, 2004 or January 1, 2005.

Pursuant to P.L. 2001, Ch. 712, the Board referred the threshold adjustment for January 1, 2002 to an arbitrator appointed by the American Arbitration Association. The arbitrator determined that the permanent impairment threshold for January 1, 2002 is 13.2%.

Based on a report from Practical Actuarial Solutions, Inc., the permanent impairment threshold was adjusted, effective January 1, 2004, to 13.4% from 13.2%.

The Board is proposing a rule addressing the extension of benefits and permanent impairment threshold effective on January 1, 2006. The proposed rule does not extend benefits referenced in Section 213(4) and adjusts the permanent impairment threshold to 11.7%. The Board will receive and review comments on this proposal before deciding whether to finally adopt the rule as proposed.

Based on a report from Practical Actuarial Solutions, Inc., the extension of benefits referenced in Section 213(4) was extended for 52 weeks to a total of 416 weeks effective January 1, 2007.

## 15. SUMMARY

The Workers' Compensation Board has experienced significant changes during the last three years. The Governor worked diligently with both Labor and Management to ensure the passage of P.L. 2004, Ch. 608 which went into effect on April 8, 2004. The intent of the legislation was to break the Board's gridlock on key issues and to return a sense of normalcy to the operations of the agency. Since the inception of the legislation, the Board has resolved all of the gridlock issues and has a renewed sense of responsibility in setting policy for Board business. Some of the difficult issues the Board has acted on include: hearing officer appointments; hearing officer terms; budgetary and assessment matters; Section 213 actuarial studies; electronic filing mandates; safety issues; by-law revisions; legislation; compliance matters; Section 312 independent medical examiners; worker advocate issues; and dispute resolution matters. Some of the other issues that the Board will face during 2008 include the independent medical examiner program, the hospital and facility fee schedule, and Section 213 issues (extension of benefits and permanent impairment thresholds). The Governor intends to submit nominations to the Legislature during the 2008 session which would change the dynamics of the Board and assist Labor and Management in reaching consensus on these challenging issues.

The importance of the Governor's legislation (Chapter 608) cannot be overly emphasized. The State of Maine has gradually improved its national ranking regarding the costs of workers' compensation and an effective and efficient Board will help to perpetuate this positive trend. It was not too long ago that Maine was one of the costliest states in the nation in regard to workers' compensation costs. A recent article in the *Workers' Compensation Policy Review* highlighted Maine's achievements during the past few years: "The experience in Maine...clearly demonstrates that significant reduction in cash, medical and total benefits are possible."

Maine has gone from one of the costliest states in the nation to one that is reaching the level of average costs for both premiums and benefits and has positioned itself to continue this trend. Maine appears to have struck a balance between reasonable costs and reasonable benefits, all within the Governor's policy of making Maine even-handed and competitive.

Other matters of immediate concern to the Board include: resolution of the Independent Medical Examiners (IMEs) problem; completion of Section 213 Actuarial Study for 2006; implementation of Electronic Data Interchange (EDI) mandates; implementation of a hospital and facility fee schedule; increasing resources for the Worker Advocate Program; a return of the formal hearing timelines to 2002 levels; and a review and implementation of the Blake Hurley McCallum & Conley Audit & Program Report.

In 2003 the Legislature enacted Chapter 425, which increased the maximum assessment to \$8,390,000 in fiscal year 2004 and to \$8,565,000 in fiscal year 2005. The Board budgeted \$9,066,709 and \$9,376,559 for fiscal years 2006 and 2007 and funded the shortfall from the reserve account. The Board approved a biennial budget for FY 08 of \$9,810,160 and \$10,052,372 for FY 09, which represents a 2.6% increase for FY 08 and a 2.5% increase for

FY 09. The budget proposes no increase in the Board's staffing levels. Personnel cost increases are attributable to fixed personnel costs such as insurance and retirement.

The Board is performing efficiently in other major areas of responsibility: MAE Program; Worker Advocate Program; Claims and Coverage, Electronic Data Interchange (EDI), and Dispute Resolution. The MAE Program continues to impact positively on the compliance and performance of insurers, self-insureds, and third party administrators. The Worker Advocate Program provides representation of 50% of injured employees at the mediation level and 30% of injured employees at formal hearing level. The major programming changes in Claims and Coverage are bringing about significant improvements in the operations of those departments. The implementation of EDI mandates has led to the electronic filing of First Reports (July 1, 2005), the filing of Denials (April-June 2006), mandated the filing of Payments by April-June 2008, and the filing of Proof of Coverage by January 2008. Dispute Resolution continues to perform efficiently at the troubleshooting and mediation levels, resolving 75% of all cases within 90 days. With the increase in the number of Independent Medical Examiners, formal hearing timelines are trending down and should return to 2002 levels during 2008.

**SECTION B**

**BUREAU OF INSURANCE**

**SECTION B**  
**BUREAU OF INSURANCE**

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## INTRODUCTION AND BACKGROUND

### Introduction

This report looks at competition in the Maine workers' compensation insurance market by examining different measures of market competition. Among the measures are: 1) the number of insurers providing coverage; 2) insurer market share; 3) changes in market share; 4) ease of entry into and exit out of the insurance market by workers' compensation insurers; and 5) comparing variations in rates.

The tables in this report that show accident year and calendar year loss ratios contain five years of information. Loss ratios are updated each year to account for how costs have developed for open claims, claims closed and any claims reopened during the year. Other tables and graphs contain up to ten years of information.

The last five NCCI loss cost filings have called for either small increases, small decreases or no change in loss costs. This is a positive trend and shows some stabilization in the market. The frequency of injuries in Maine continues to decline, but indemnity and medical severity are increasing. According to NCCI, there were five straight decreases in lost-time claims through 2005. Forty seven percent of Maine's total benefit costs are for medical benefits and 53 percent are for indemnity. This compares to 59 percent for medical benefits and 41 percent for indemnity benefits nationally. Indemnity severity tends to increase with age, so the aging of Maine's population suggests that there may be some upward pressure on indemnity costs in the future. NCCI economists, using data from the U.S. Department of Labor and Moody's Economy.com, presented projections showing much of Maine's job growth coming in Education and Health Services, Professional and Business Services and Leisure and Hospitality through 2009. These sectors tend to have relatively low frequency, so little upward pressure on frequency is expected in the near future. Overall claim frequency has also been affected by the loss of jobs in manufacturing.

Different criteria may be used to determine if the insurance industry is competitive. Although Maine's market has become quite concentrated and MEMIC writes a large volume of business, there are still many insurers writing some workers' compensation coverage in Maine and self-insurance remains a viable alternative for other Maine employers. Insurers, however, are still being conservative in the selection of business that they choose to provide coverage for or to renew. An insurer can decide to non-renew business for any reason as long as it provides the policyholder with the statutorily required advance written notice.

## Accident Year, Calendar Year and Policy Year Reporting

Workers' compensation is a long-tail line of insurance, meaning payments for claims can continue over a long period of time. For more serious claims, wage loss and medical services payments may occur over many years; thus, figures for amounts actually paid out on claims are incomplete and future amounts to be paid on open claims must be estimated. Insurance companies report information used to calculate financial ratios. This information is presented on an accident year, calendar year, or a policy year basis. Ratios may vary greatly, depending on the reporting basis utilized.

In this publication, most information is reported on an accident year basis. However, to better understand each basis of reporting information, a description of each method and its use follows.

- Accident year experience matches all losses for injuries occurring during a given 12-month period of time (regardless of when the losses are reported) with all premiums earned during the same period of time (regardless of when the premium was written). The accident year loss ratio shows the percentage of premium earned that is being paid out or expected to be paid out on claims. It enables the establishment of a basic premium reflecting the pure cost of protection. Accident year losses or loss ratios are used to evaluate experience under various laws because claims are tracked by year and can be associated with the law in effect at the time of the injury. This information is projected because claim costs change over time as claims further develop, with the ultimate result determined only after all losses are settled. Therefore, the ratios for each year are updated on an annual basis.
- Calendar year loss ratios match all losses incurred within a given 12-month period (though not necessarily for injuries occurring during that 12-month period) with all premiums earned within the same period of time. Because workers' compensation claims are often paid out over a long period of time, only a small portion of calendar year losses are attributable to premiums earned that year. Many of the losses paid during the current calendar year are for claims occurring in past calendar years. Calendar year loss ratios also reflect aggregate reserve adjustments for past years. For claims expected to cost more, reserves are adjusted upward; for those expected to cost less, reserves are adjusted downward. Calendar year incurred losses are used primarily for financial reporting. Once calculated for a given period, calendar year experience never changes.
- Policy year experience segregates all premiums and losses attributed to policies having an inception or a renewal date within a given 12-month period. The total value of all losses for injuries occurring during the policy year (losses paid plus loss reserves) are assigned to the period regardless of when they are actually reported. They are matched to the fully developed earned premium for those same policies. The written premium will develop into earned premium for those policies. The ultimate incurred loss result cannot be finalized until all losses are settled. It takes time for the losses to develop, so it takes about two years before the information is useful. This data is used to determine advisory loss costs.

## **The Underwriting Cycle**

Insurance tends to go through underwriting cycles--successive periods of increasing or diminishing competition and increasing or decreasing premiums. These cycles are important factors in the short-term performance of the insurance industry. Hard markets are periods in which there is less capacity and competition and fewer insurers willing to write business. Soft markets are periods of increased competition--identified by an increased capacity to write business, falling rates, and growing loss ratios, which can result in insurer operating losses. This can eventually force loss ratios to critical levels, causing insurers to raise their rates and be more selective on business written. Ultimately this restores insurer profitability and surplus. This situation, in time, spurs another round of price-cutting, perpetuating the cycle.

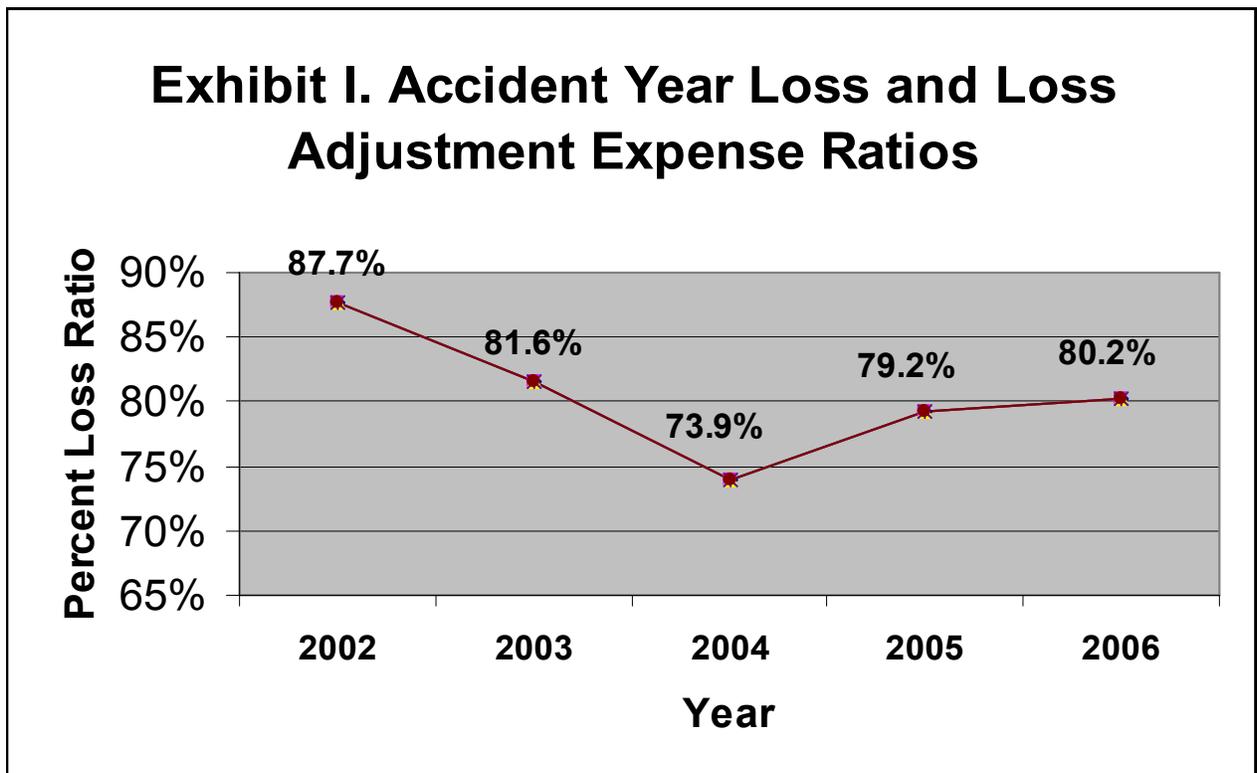
In the late 1980s and early 1990s, Maine's workers' compensation insurance market was hard. From the mid-1990s until about 2000, Maine's market would be considered soft. After 2000 insurance markets became less competitive, and this trend increased following the events of September 11, 2001. Hard markets may also occur when insurers tighten their underwriting standards or reduce their use of premium credits. This describes what happened in Maine over the last several years. However, there are indications that the market in Maine is softening. More companies have become licensed to write workers' compensation insurance and some companies have reduced their rates.

The accident year incurred loss ratio has ranged from 74% to 81% over the past four years. Loss ratios that exceed 100% mean that insurers are paying out more in benefits than they collect in premiums. A decrease in these loss ratios over time may reflect increased rates, an improved loss experience or reserve adjustments (i.e., revising the amount of money expected to be paid out on claims). Conversely, an increase in these loss ratios may reflect decreased rates or a worsening loss experience. The loss ratio does not take into account underwriting expenses of the insurer--including things like acquisition expenses, general expenses and taxes, nor does it consider investment income.

## RECENT EXPERIENCE

### Accident Year Loss and Loss Adjustment Expense Ratios

The accident year loss ratio shows the percent of earned premium used to fund losses and their settlement. Exhibit I shows the accident year loss ratios for the most recent five years available. Loss ratios in this report are based on more mature data and may not match the loss ratios for the same years in prior reports. Claim costs and loss adjustment expenses are further developed, so the loss ratios reflect more recent estimates of what the claims will ultimately cost. The loss ratios do not include general expenses of insurance companies such as overhead, marketing and federal or state taxes, nor do they include investment income. The 2006 loss ratio was 80.2%, indicating that about \$80 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium. The 2005 loss ratio was 79.2%. Loss ratios dropped from 2002 to 2004 and are now rebounding. The loss ratios have increased in the past two years as some insurers have begun to reduce rates and increase credits to attract business.



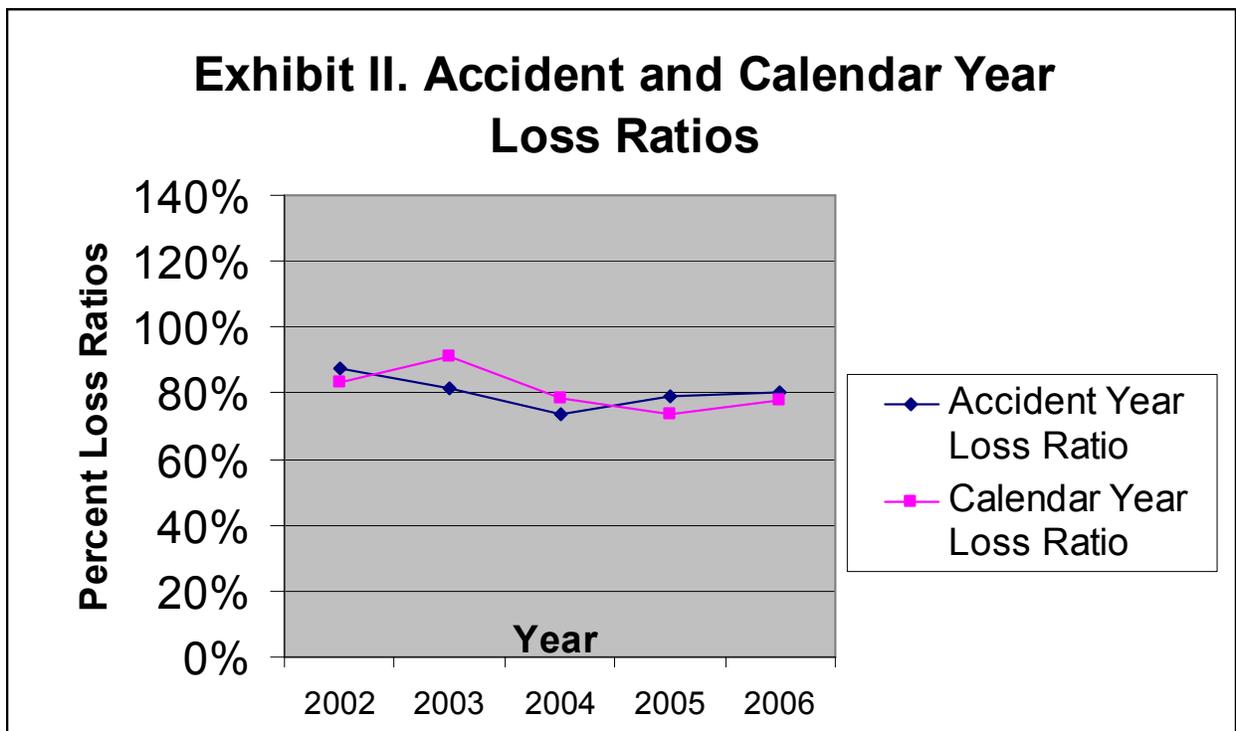
Source: National Council on Compensation Insurance

## Calendar Year and Accident Year Loss Ratios

In addition to accident year loss ratios, Exhibit II shows calendar year loss ratios. Calendar year loss ratios compare losses incurred in a year to the premiums earned in that year (although only a small portion of the losses are attributable to premiums earned that year). The calendar year loss ratios reflect payments and reserve adjustments (changes to estimated ultimate cost) on all claims during a specific year, including those adjustments from prior injury years. Over the past six years, the calendar year loss ratio has ranged from the low 70s to the low 90s. In 2005, it was 73.6, its lowest level since 2001.

While calendar year data is relatively easy to compile and is useful in evaluating the financial condition of an insurance company, accident year data is more useful in evaluating the claim experience during a particular period because it better matches premium and loss information. In addition, the accident year experience is not distorted by reserve adjustments on claims that occurred in prior periods, possibly under a different law.

The highest accident year loss ratio in the past five years was nearly 88 percent in 2002. Over the past four years, it has hovered around 80 percent or less. These ratios do not include amounts paid by insurers for sales, general expenses and taxes, nor do they reflect investment income. The movement of the calendar year loss ratios from below to above the accident year loss ratios may reflect increases in reserves on prior accident years.



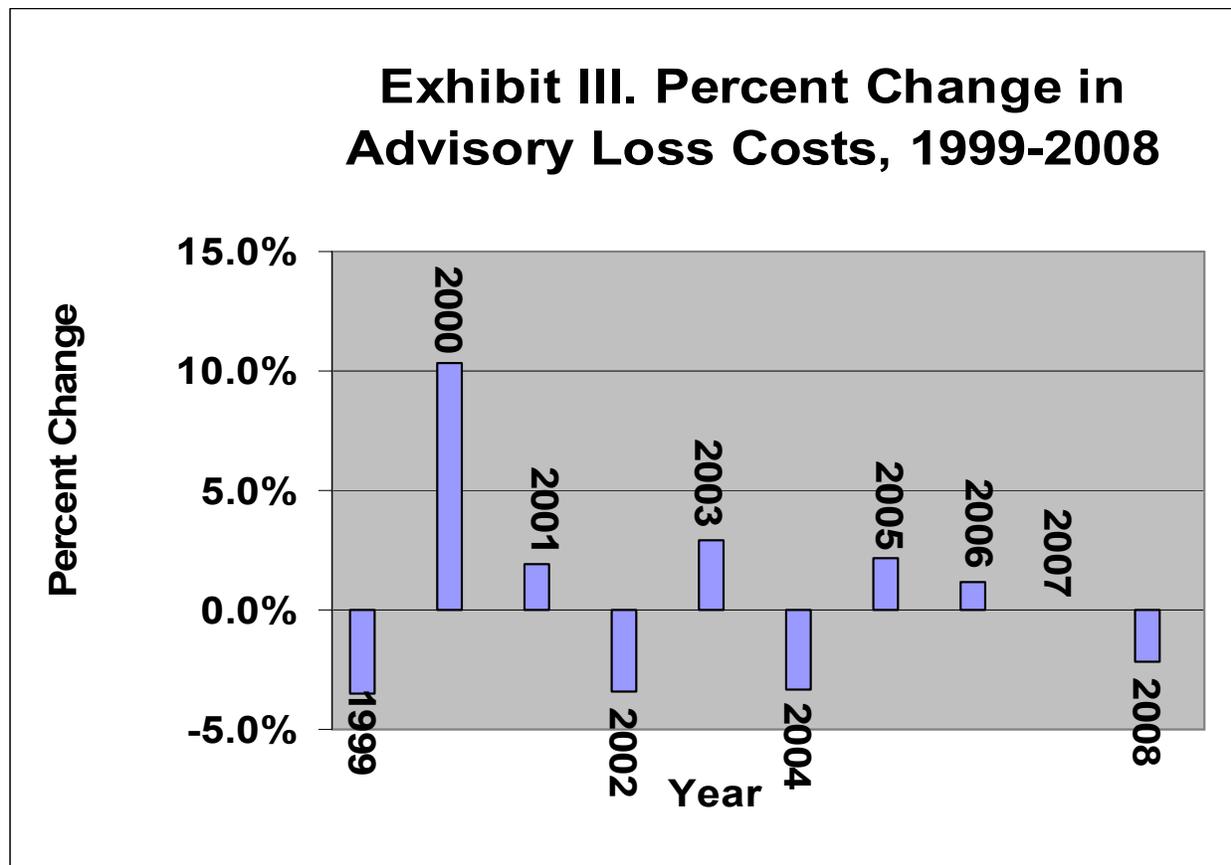
Source: National Council on Compensation Insurance

## LOSSES IN WORKERS' COMPENSATION

### Changes in Advisory Loss Costs

The National Council on Compensation Insurance (NCCI) files advisory loss costs on behalf of workers' compensation carriers. The advisory loss costs reflect the portion of the rate that applies to losses and loss adjustment expenses. Advisory loss costs do not account for what the insurer pays for general expenses, taxes and contingencies, nor do they account for profits and investment income. Under Maine's competitive rating law, each insurance carrier determines what to load into premium to cover those items.

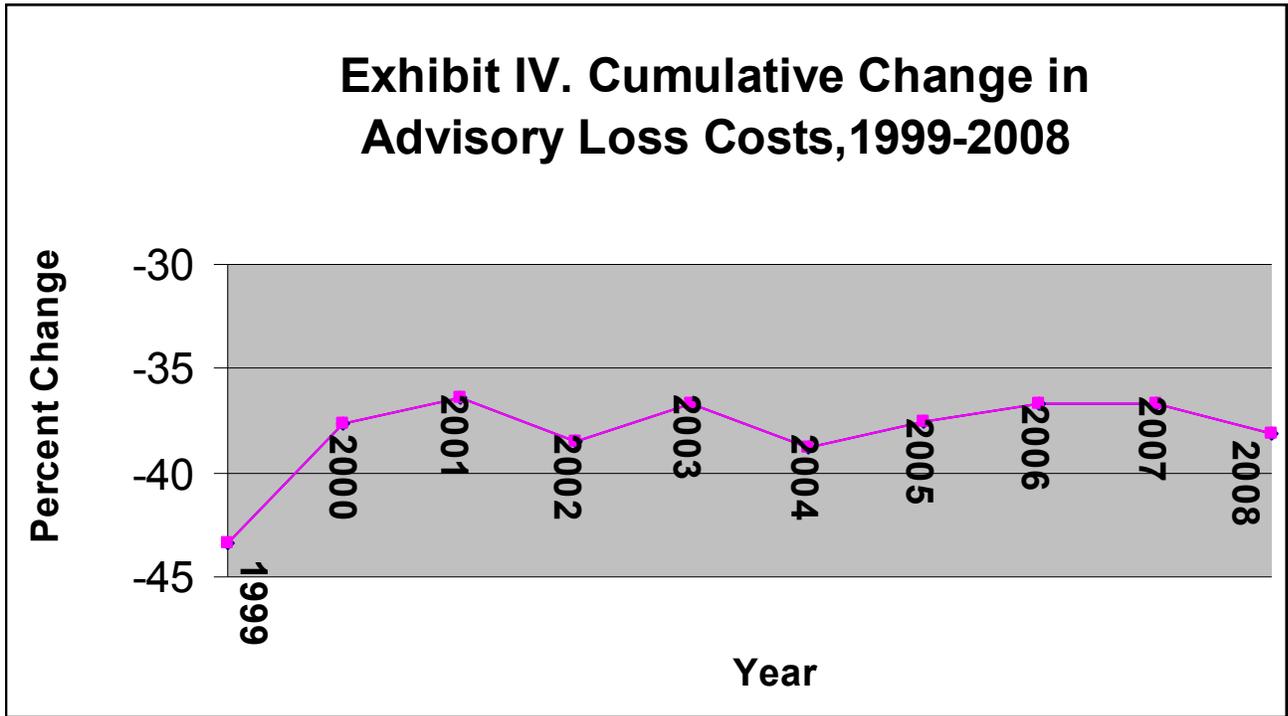
In 2007, there was no increase in the advisory loss costs. NCCI filed for a 2.2% decrease effective January 1, 2008 and that filing was approved. There have been some increases and some decreases, but overall there has been minimal change in the average loss costs since 2001. The last large increase in the loss costs was 10.3 percent in 2000. Changes in the advisory loss costs tend to lag behind changes in actual experience and precede changes in rates.



Source: National Council on Compensation Insurance

### Cumulative Changes in Advisory Loss Costs

Average advisory loss costs have remained steady over the past eight years. The last large increase filed was in 2000.



Source: National Council on Compensation Insurance

## MARKET STRUCTURE AND COMPETITION

### Market Concentration

Market concentration is another measure of competition. Greater concentration means that there are fewer insurers in the market or insurance written is concentrated among fewer insurers. The result is less competition. Conversely, less concentration indicates that there are more insurers in the market and greater competition.

As of October 1, 2007, 273 companies are authorized to write workers' compensation coverage in Maine. This number is not the best indicator of market concentration because some insurers have no written premium. In terms of written premium, the market share for Maine Employers' Mutual Insurance Company (MEMIC) is 64% of the insured market. MEMIC has been successful in retaining business and other insurers are selective and less willing to provide coverage for some businesses or have been unable to increase their market share. The following table shows the number of carriers, by level of written premium, for those carriers writing workers' compensation insurance in 2006. The number of carriers writing over one million dollars in written premium increased from 21 in 2004 to 25 in 2006. This information is one indicator that the market is becoming less concentrated and somewhat more competitive than it was a couple of years ago.

**Table I: Number of Companies by Level of Written Premium--2006**

Amount of Written Premium	Number of Companies At That Level
>\$10,000	111
>\$100,000	71
>\$1,000,000	25

Source: Annual Statements Filed with the Bureau of Insurance. Total written premium for 2006 was over \$242 million.

Looking only at market concentration does not give a complete picture of market competition. A discussion of self-insurance, found in the Alternative Risk Markets section, gives a more balanced perspective.

## **Herfindahl Hirschman Index**

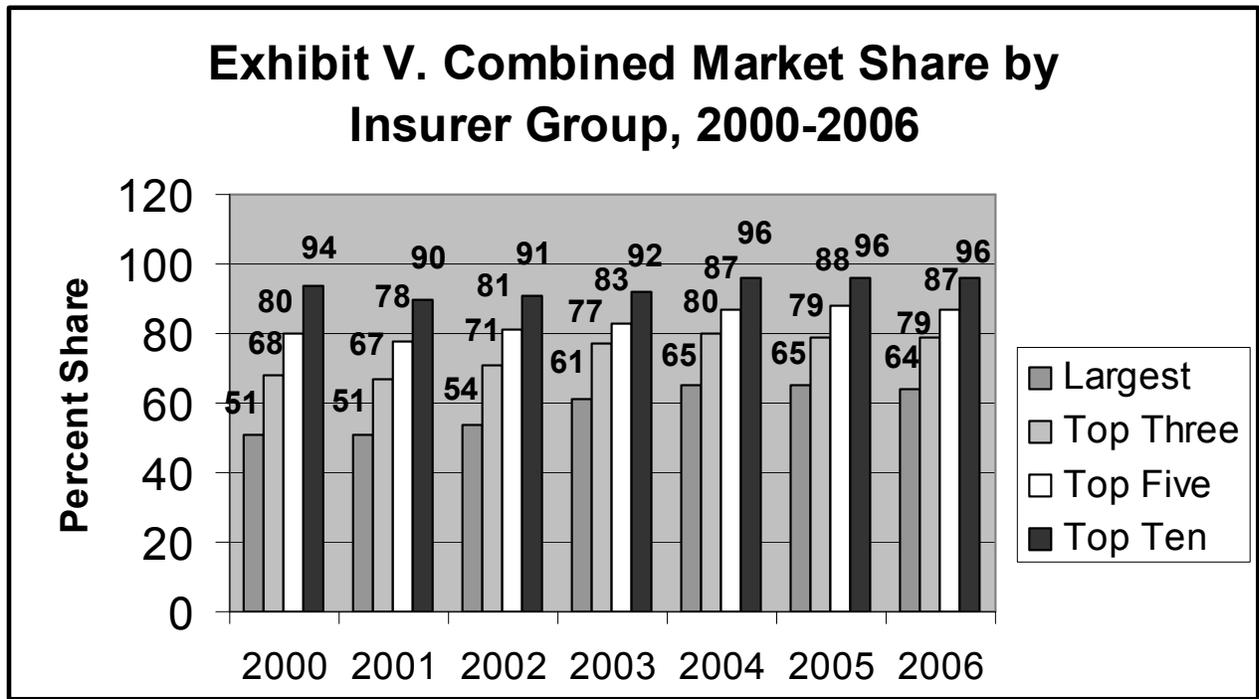
The Herfindahl-Hirschman Index (HHI) is a method to measure market concentration. The HHI is calculated by summing the squares of the market shares (percentages) of all groups in the market. The National Association of Insurance Commissioners publishes a Commercial Lines Competition Database Report as a reference source of measures to examine the competitiveness of state insurance markets, and the HHI is one of the data elements in the report. In the latest report issued in 2007 based on 2005 information the HHI for the workers' compensation line in Maine was 4,250. This was the second highest for all commercial lines in Maine behind medical malpractice at 4301. All other commercial lines were between 394 and 872. As mentioned in the report, there is no precise point at which the HHI indicates that a market or industry is concentrated highly enough to restrict competition. The U.S. Department of Justice has developed guidelines with regard to corporate mergers and uses 1800 to indicate highly concentrated markets, the range from 1000 to 1800 to indicate moderately concentrated markets and an HHI less than 1000 is considered not concentrated. Applying these guidelines to Maine's workers' compensation market must be done with caution given Maine's unique factors: an employer owned mutual insurer created to replace a highly concentrated residual market where other insurers were reluctant to write actively in this state, and a high percentage of employers self-insured individually or in a group.

Source: NAIC 2005 Commercial Lines Competition Database Report.

## Combined Market Share

Exhibit V illustrates the percent market share of the largest commercial insurance group, in terms of written premium, as well as the percent market share for the top three, top five and top 10 insurer groups. An insurance group is a carrier or group of carriers under common ownership. Maine Employers' Mutual Insurance Company (MEMIC) has the largest market share. Their share fell from 67% of the commercially insured market in 1995 to 45% in 1999. That trend began to reverse in 2000. MEMIC's market share is now approximately 64%, down one percentage point from last year.

For the past three years, market share of the top 10 insurer groups was 96%. Other groups wrote only 4% of the workers' compensation premium in Maine. In terms of dollar amounts, MEMIC wrote over \$154 million in premium in 2006, nearly \$7 million less than it did in the previous year. The top three groups, including MEMIC, wrote over \$191 million in business, about \$4 million more than in 2005. The top five groups had nearly \$211 million in written premium, which is \$6 million less than the prior year. The top 10 groups wrote over \$231 million in premium in 2006, approximately \$7 million less than in 2005. The remaining groups had written premium of less than \$11 million.



Source: Annual Statements Filed with the Bureau of Insurance

## Number of Carriers in the Maine Insurance Market

The number of carriers in the workers' compensation market has increased in each of the last nine years listed in the table. Eleven new carriers became licensed in the past year and, the number of carriers now licensed is at its highest levels. There currently are no significant barriers to entry.

<b>Year</b>	<b>Number of Carriers</b>	<b>Number Entering</b>	<b>Number Exiting</b>	<b>Net Change (Number)</b>	<b>Net Change (Percent)</b>
2007	273	11	5	6	2.3
2006	267	14	4	10	3.9
2005	257	4	1	3	1.1
2004	254	5	2	3	1.2
2003	251	11	1	10	4.2
2002	241	15	2	13	5.7
2001	228	24	6	18	8.6
2000	210	12	0	12	6.1
1999	198	11	0	11	5.9
1998	187	9	0	9	5.1

Source: Maine Bureau of Insurance Records. This is based upon the number of carriers licensed to transact workers' compensation insurance as of October 1 of each year. Beginning in 2001, the number exiting includes companies under suspension.

## Percent Market Share of the Top Insurance Groups

Table III shows market share by insurance group from 2000-2006. Information by group is more relevant when assessing competition because carriers in a group are under common control and are not likely to compete with one another.

<b>TABLE III. PERCENT MARKET SHARE FOR TOP INSURANCE GROUPS, BY AMOUNT OF WRITTEN PREMIUM, 2000-2006</b>							
<b>INSURANCE GROUP</b>	<b>2006 Share</b>	<b>2005 Share</b>	<b>2004 Share</b>	<b>2003 SHAR E</b>	<b>2002 SHAR E</b>	<b>2001 SHAR E</b>	<b>2000 SHAR E</b>
<b>Maine Employers' Mutual</b>	63.6	64.8	65.4	61.5	54.4	51.5	51.2
Liberty Mutual Group	9.2	8.4	9.4	9.6	10.4	7.9	9.5
WR Berkeley Corp.	6.1	5.6	5.4	5.8	6.5	7.4	7.5
American International	4.9	5.1	4.1	3.3	*	*	*
Hartford Fire & Casualty	3.3	3.8	1.9	2.0	3.1	5.4	6.4
Guard Insurance Group	2.3	2.1	2.0	1.8	1.2	1.0	*
Allmerica Financial Corp.	2.1	1.9	1.7	1.6	2.6	2.0	2.2
St. Paul Travelers Group	1.9	1.6	2.3	1.1	1.6	1.1	*
ACE Ltd	1.3	1.6	0.5	*	*	*	*
CNA Insurance Group	1.1	1.1	0.5	*	*	*	*

Source: Annual Statements Filed with the Bureau of Insurance

### Notes:

\* Indicates group was not among the top 10 groups for written premium that year.

## Percent Market Share of the Top Insurance Companies

Table IV shows the percent of market share for the top carriers for each calendar year from 2000 through 2006. For the fourth straight year, MEMIC maintains a market share in excess of 60 percent. For the third straight year, none of the other carriers attained a five percent market share. The top ten companies combined write nearly 82% of the business. No carrier outside the top 12 accounts for more than one percent of the written premium.

<b>INSURANCE CARRIER</b>	<b>2006 Share</b>	<b>2005 SHAR E</b>	<b>2004 SHAR E</b>	<b>2003 SHAR E</b>	<b>2002 SHAR E</b>	<b>2001 SHAR E</b>	<b>2000 SHAR E</b>
Maine Employers' Mutual	63.6	64.8	65.3	61.5	54.4	51.5	51.2
Acadia Insurance Company	4.5	4.3	4.4	5.3	6.0	6.8	7.0
Liberty Insurance Corp.	2.5	1.7	1.1	1.4	1.2	1.1	*
Commerce & Industry	2.1	2.1	2.1	1.2	*	*	*
Hanover Insurance Co.	1.6	1.7	1.8	2.0	1.9	3.3	2.5
Peerless Ins. Co.	1.6	2.2	2.3	2.3	2.3	1.5	*
Twin City Fire Ins Co.	1.6	2.0	0.9	*	*	*	*
American Home Assurance Co.	1.5	*	*	*	*	*	*
Norguard	1.4	1.6	2.0	1.9	1.7	2.0	1.3
Liberty Mutual Fire Ins Co	1.2	1.0	1.4	1.6	1.4	0.9	*
Excelsior Insurance Co.	1.2	*	*	*	*	*	*
Fireman's Fund of Wash DC	1.1	*	*	*	*	*	*

Source: Annual Statements Filed with the Bureau of Insurance

### Notes:

\* Indicates carrier was not among the top 10 carriers for written premium that year.

## DIFFERENCES IN RATES AND FACTORS AFFECTING RATES

### Rate Differentials

There are a wide range of potential rates for workers' compensation policyholders, but most employers are not able to get the lowest rates. Insurers are selective in accepting risks for the lower-priced plans. Their underwriting is based on such things as prior-claims history, safety programs and classifications. An indication that the current workers' compensation market may not be fully price competitive is the distribution of policyholders among companies with different loss cost multipliers or among a single company with multiple rating tiers. The Bureau of Insurance did a survey of the top ten insurance groups and all of the companies within their insurance groups. We asked for the number of policyholders and the amount of written premium for in-force policies in Maine within each of their rating tiers. Together the carriers that reported accounted for over 96% of the market and over \$238 million in written premium in Maine for calendar year 2006. The results show that nearly 73% of policyholders are written at rates equivalent to Maine Employers' Mutual Insurance Company's (MEMIC) Standard rating tier. Over nineteen percent are written at rates lower than MEMIC's Standard Rating tier. This is an increase of over three percent from last year's survey and is an indicator of market softening. Nearly eight percent of policyholders have policies written at rates that are above MEMIC's Standard Rating tier, just a bit lower than last year.

Possible reasons for policyholders accepting rates higher than MEMIC's Standard Rating tier are: 1) an insurer, other than MEMIC, provides workers' compensation coverage, even though they might not otherwise, because they provide coverage for other lines of insurance and the insurer provides a good overall package to the insured; 2) an insurer, other than MEMIC, charges a higher rate but offers a sufficient amount of credits to lower the overall premium; 3) the insured has chosen to purchase all coverages from the same insurer or producer, 4) The insured would have been placed in MEMIC's High Risk Rating tier because of its poor loss history.

#### Percent of Reported Policyholders At, Above or Below MEMIC's Standard Rating Tier Rates

Rate Comparison	2007 Percent	2006 Percent
Below MEMIC Standard Rate	19.37%	16.05%
At MEMIC Standard Rate	72.76%	75.59%
Above MEMIC Standard Rate	7.88%	8.37%

Note: Based upon the results of a survey conducted by the Bureau of Insurance. Respondents included carriers in the top 10 insurance groups in Maine. 2006 figures were adjusted to reflect additional information reported by one carrier.

## Additional Factors Affecting Premiums

Some employers have other options available that may affect the premiums they pay for workers' compensation insurance. However, each of these options is available only if the insurer is willing to write a policy using them. In the Bureau's survey of insurers in the top 10 groups, mentioned on the previous page, we found that nearly \$16 in credits were provided for every \$1 in debits. Additionally, over 12.5 million dollars in dividends were paid out in 2006, with about 95 percent of those reported dividends issued by MEMIC.

Employers should carefully analyze certain options, such as retrospective rating (retros) and large deductible policies, before deciding on them. Below is a description of each:

- ❑ **Tiered rating** means that an individual carrier has more than one loss cost multiplier to use, based on where a potential insured falls in its underwriting criteria. It may apply to groups of insurers that have different loss cost multipliers for different companies in the group. Our records indicate that over 80% of companies either have different loss cost multipliers on file or are part of a group that does.
- ❑ **Scheduled rating** allows the insurance company to consider other factors that may not be reflected in an employer's experience rating when determining an individual employer's premium. Elements such as safety plans, medical facilities, safety devices and premises are considered and can result in a change in premium of up to 25%. Over 77 percent of the insurance companies with filed rates in Maine have received approval to utilize scheduled rating.
- ❑ **Small deductible plans** shall be offered by insurance carriers. Carriers must offer medical benefit deductibles in the amounts of \$250 per occurrence for non-experience rated accounts and either \$250 or \$500 per occurrence for experience rated accounts. Carriers must also offer deductibles of either \$1,000 or \$5,000 per claim for indemnity benefits. Payments are initially made by the insurance carrier and then reimbursed by the employer. The table below lists, effective January 1, 2007, the percentage reduction in the advisory loss costs received for electing small deductibles.

Deductible Amount	Percentage
\$1,000 Per Claim for Indemnity Payments	0.9%
\$5,000 Per Claim for Indemnity Payments	3.0%
\$250 Per Occurrence for Medical Payments	1.3%
\$500 Per Occurrence for Medical Payments	2.7%

- ❑ **Managed Care Credits** are credits offered by carriers to employers who use managed care plans. Nearly twelve percent of insurers offer managed care credits.
- ❑ **Dividend Plans** provide a return premium to the insured after the policy expires if losses are lower than average. Premiums are not increased if losses are greater than average. Because losses may still be open for several years after policy expiration, dividends will usually be

paid periodically with adjustments for any changes in the amount of incurred losses. Dividends are not guaranteed. On September 21, 2007, MEMIC declared a dividend of \$14,000,000. The dividend was based upon premium paid to MEMIC on 2004 policies and was paid to 20,000 policyholders.

- ❑ **Retrospective rating** means that an employer's final premium is a direct function of its loss experience for that policy period. If an employer controls its losses, it receives a reduced premium; conversely, if the employer has a bad loss experience, it receives an increased premium. Retrospective rating utilizes minimum and maximum amounts for a policy and is typically written for larger, sophisticated employers.
- ❑ **Large deductible plans** are for employers who agree to pay a deductible that can be in excess of \$100,000 per claim. The insurance company is required by law to pay all losses associated with this policy and then bill the deductible amounts to the insured employer. The advantages of this product are discounts for assuming some of the risk. It is an alternative to self-insurance.
- ❑ **Loss Free Credits** may be given to employers who have had no losses for specified periods of time. Sixty-three percent of MEMIC's non-experience rated accounts currently receive loss free credits of between eight and 25 percent.
- ❑ **Terrorism Risk Insurance Act** is a separate element of the premium calculation. It is a final step of the workers' compensation premium determination and is a charge based upon payroll for federal terrorism coverage. Acts of Terrorism cannot be excluded in workers' compensation and since September 2001 reinsurance contracts have excluded coverage for terrorist acts. The Terrorism Risk Insurance Act (TRIA), signed into law in 2002, established a temporary Federal program under which the federal government shares in the cost of terrorist attacks with the insurance industry. Its intent is to protect consumers and insurers by addressing market disruptions and ensuring the continued availability and affordability of insurance for terrorism risk. It also allowed for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses. Federal payments in extreme events help eliminate the insolvency risk for the insurance industry. In late 2005, Congress voted to extend TRIA until December 31, 2007. Recognizing that this catastrophic exposure continues to be significant, Congress enacted the Terrorism Risk Insurance Program Reauthorization Act of 2007. Signed by the President on December 26, 2007, this law extends the program through 2014 and includes domestic, as well as foreign, in the definition of terrorism.

## ALTERNATIVE RISK MARKETS

### Percent of Overall Market Held by Self-Insured Employers

Self-insurance plays an important role in Maine's workers' compensation market. Self-insured employers pay for losses with their own resources rather than by purchasing insurance. They may, however, choose or be required by the Bureau of Insurance to purchase insurance for losses that exceed a certain limit. One advantage of being self-insured is better cash flow. Since there are no premiums, the employer retains the money until it pays out on losses. Employers who self-insure anticipate that they would be better off not paying premiums and are likely to have active programs in safety training and injury prevention. In 2006, the percent of Maine's total workers' compensation insurance market represented by self-insured employers and groups was nearly 41%. This was first increase in market share held by self-insurers in three years.

The estimated standard premium for individual self-insurance is determined by taking the advisory loss cost and multiplying it by a factor of 1.2, as specified in statute, and multiplying that figure by the payroll amount divided by 100 and then applying experience modification. As advisory loss costs, and therefore rates, decline, so does the estimated standard premium. Group self-insurers determine their own rates subject to review by the Bureau of Insurance.

**Table VI: Estimated Standard Premium for Self-Insured Employers and Percent of the Workers' Compensation Market Held by Self-Insurers, 1997-2006**

Year	Estimated Standard Premium	Percent of Workers' Comp. Market (in annual standard premium)
2006	\$167,535,911	40.9
2005	\$167,278,509	40.3
2004	\$171,662,347	41.7
2003	\$182,379,567	43.1
2002	\$167,803,123	43.0
2001	\$159,548,698	43.9
2000	\$126,096,312	42.1
1999	\$116,028,759	45.4
1998	\$120,799,841	49.0
1997	\$147,851,730	49.9

Source: Annual Statements Filed with the Bureau of Insurance.

**Notes:** Estimated standard premium figures are as of December 31.

The percent of the workers' compensation market held by self-insured employers is calculated by taking the estimated standard premium for self-insured employers, dividing it by the sum of the estimated standard premium for self-insured employers and the written premium in the regular insurance market, and then multiplying that figure by 100.

2003 Estimated Standard Premium was revised to reflect updates to information by one self-insured group.

## Number of Self-Insured Employers and Groups

As of October 1, 2007 there were 19 self-insured groups representing approximately 1,478 employers as well as 70 individual self-insured employers in Maine. The number of self-insured groups has been either 19 or 20 for the past nine years. The number of employers in self-insured groups has increased by nearly 20% since 2002. Conversely, the number of individually self-insured employers has decreased by 55% over the past 11 years.

<b>Year</b>	<b># of Self-Insured Groups</b>	<b># of Employers In Groups</b>	<b># of Individually Self-Insured Employers</b>
2007	19	1,478	70
2006	20	1,437	71
2005	20	1,416	80
2004	20	1,417	86
2003	19	1,351	91
2002	19	1,235	98
2001	19	1,281	92
2000	19	1,247	98
1999	20	N/A	115
1998	21	N/A	118

Source: Bureau of Insurance Records

### Notes:

For the purposes of self-insurance, affiliated employers are considered separate employers. N/A indicates that the information is not available.

The number of individually self-insured employers and self-insured group information beginning in 2001 is as of October 1 of the year listed. Figures for years 2000 and before are as of the beginning of the year listed.

## A LOOK NATIONALLY

### **Manufacturing Industry and Office and Clerical Operations**

Each year Actuarial and Technical Solutions, Inc. collects information from states that is used in a publication entitled Workers' Compensation State Rankings--Manufacturing Industry Costs and Statutory Benefit Provisions. Until 2005, the study ranked workers' compensation rates charged in the manufacturing sector only. In response to inquiries about the cost of workers' compensation in other sectors, Actuarial and Technical Solutions began publishing information on office and clerical employees. This includes classes such as accountants, engineers, school professionals, attorneys and other office and clerical employees.

In the 2007 study, Maine ranked 25th in workers' compensation average statutory benefit provisions (wage replacement benefits). Our rank in 2006 was 27<sup>th</sup>. All fifty states were ranked. A lower rank indicates lower statutory benefits. In addition to statutory benefit provisions, states were ranked by comparative cost for both office and clerical operations and for manufacturing. In 2007, Maine ranked 36th in office and clerical and 29<sup>th</sup> in manufacturing. We were ranked 35th and 27<sup>th</sup> respectively in 2006. This means that our comparative costs fell two positions in manufacturing and fell one position in office and clerical relative to other states.

### **Oregon Workers' Compensation Premium Rate Ranking**

In another study, conducted bi-annually by the State of Oregon, Maine ranked 8<sup>th</sup> in terms of 2006 workers' compensation premium rates for all industries. In this study, a lower rank indicates higher premium rates. In the 2004 study, Maine ranked 13<sup>th</sup> overall and in the 2002 study, Maine also ranked 8<sup>th</sup>. This study focused on 50 classifications based on their relative importance as measured by their share of losses in Oregon. Results are reported for all 50 states and for the District of Columbia. The next report will be in 2008.

### Average Loss Costs by State Based Upon Maine's Payroll Distribution

The National Council on Compensation Insurance (NCCI) developed a spreadsheet which shows the average loss cost for Maine compared to the average loss cost for other states based upon Maine's payroll distribution. Maine had the sixth highest average loss costs of the 35 states and the District of Columbia reporting information to NCCI.

State	Average Loss Cost	Rank
Indiana	\$0.87	1
Virginia	\$0.98	2
Arkansas	\$1.02	3
District of Columbia	\$1.11	4
Utah	\$1.12	5
Kansas	\$1.21	6
Arizona	\$1.22	7
South Dakota	\$1.27	8
Maryland	\$1.32	9
Idaho	\$1.37	10
New Mexico	\$1.38	11
Oregon	\$1.42	12
Iowa	\$1.43	13
Missouri	\$1.44	14
Hawaii	\$1.45	15
South Carolina	\$1.45	15
Nevada	\$1.47	17
Rhode Island	\$1.48	18
Mississippi	\$1.55	19
Georgia	\$1.56	20
Nebraska	\$1.56	20
Tennessee	\$1.60	22
Colorado	\$1.64	23
North Carolina	\$1.67	24
Oklahoma	\$1.71	25
Connecticut	\$1.74	26
Louisiana	\$1.74	26
Florida	\$1.85	28
Kentucky	\$1.87	29
New Hampshire	\$1.95	30
Maine	\$1.97	31
Illinois	\$2.01	32
Alabama	\$2.07	33
Vermont	\$2.12	34
Alaska	\$2.51	35
Montana	\$3.25	36

Note: Average loss cost does not include expense and profit loading and is an average using all payroll. The actual average for an employer will depend on the type of business and payroll mix. The relatively high total payroll and relatively low loss cost for the clerical classification causes the statewide average to be lower.

**SECTION C**

**BUREAU OF LABOR STANDARDS**

**SECTION C**  
**BUREAU OF LABOR STANDARDS**

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# 1. INTRODUCTION

## 1A. Role Of The Bureau Of Labor Standards In Protecting Maine Workers

The Bureau of Labor Standards (BLS) of the Maine Department of Labor (MDOL) works in collaboration with the Maine Workers' Compensation Board (WCB) in the prevention of occupational injuries and illnesses by a variety of means. Under Maine Statute, Title 3 MRSA § 42, the BLS has the authority to collect and analyze statistical data on work-related injuries and illnesses and their effects. Title 26 MRSA § 42-A also charges the BLS with establishing and supervising safety education and training programs. Additionally, MDOL is responsible for overseeing the employer-employee relationship in the state through enforcement of Maine labor laws and the related rules and standards, including occupational safety and health standards in the public sector. By accomplishing its mandated functions, the BLS complements the WCB in prevention of workplace injuries and illnesses in Maine.

To successfully accomplish its functions, the BLS works with the WCB to gather data relative to injuries and illnesses sustained by Maine workers. The BLS and the WCB collect their data through several mechanisms. Both agencies strive for the highest quality of available data. The BLS administers the following data collection programs: 1) the federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses (SOII), 2) the federal Occupational Safety and Health Administration's (OSHA) Data Initiative (ODI), and 3) the Census of Fatal Occupational Injuries (CFOI). The WCB collects data from its *First Report of Occupational Injury or Disease* forms. Using the WCB administrative tracking system, the BLS electronically imports the contents of the WCB *First Reports* for analysis and as supplements to its own data. The combined information is then used in benchmarking and prioritizing BLS workplace safety activities such as training, education, advocacy, and public sector enforcement.

A number of significant areas of employment have low levels of coverage by the WCB, notably commercial fishing and agriculture. Since the responsibilities of the MDOL extend to all Maine workers, the BLS is working to build means to acquire the data to allow assessment of services needed in these areas as well. This report, however, is largely limited to industries in common between the WCB system and the BLS.

## 1B. Organization Of This Report

The report is organized to provide as complete as possible a picture of the prevention of occupational injuries and illnesses, including enforcement activities.

- **Part 2** of this report will describe the workplace injury and illness prevention activities of the BLS and its partners in the occupational safety and health (OSH) community, including outreach, advocacy, and enforcement.
- **Part 3** will present research programs of the BLS and some resulting data and conclusions.

- **Part 4** will discuss how current information gathering and sharing can be improved and provide an update on the initiative in this area.
- **Part 5** will outline 2007 developments and some prospects for the immediate future.

## 2. PREVENTION SERVICES AVAILABLE

### 2A. Safetyworks!

SafetyWorks! is an identity that encompasses the occupational safety and health (OSH) training, consultation and outreach functions of the BLS. Under its umbrella, a variety of free services are made available to Maine employers, employees, and educators. These activities include use of the WCB data to supplement the federal Bureau of Labor Statistics and OSHA data to respond to requests for information from the OSH community and the general public on the safety and health status of Maine workers.

SafetyWorks! instructors may design their safety training programs based on industry profiles generated from data from the WCB *First Reports* among other sources. By analyzing the WCB data, SafetyWorks! instructors and consultants can see what types of injuries and illnesses are prevalent in different industry sectors in Maine. This information allows outreach and education activities to be tailored to those employers and their needs. For example, the Outreach and Education Unit (O&E) uses the age and industry profiles from the WCB *First Reports* to target its young workers' safety initiatives.

#### ***Employer and Employee Training and Education***

**General OSH Training.** SafetyWorks! develops and offers industry-specific and problem-specific training. WCB data can suggest the need for and direct the targeting of such training. In addition to such targeted training programs, the BLS provides OSHA and Mine Safety and Health Administration (MSHA) approved regulatory compliance training. Approximately 50 different curricula of all types are offered, ranging in scope from 30-hour OSHA compliance courses to such tightly focused efforts as VDT operator training requiring as little as two hours. This includes free training in OSHA recordkeeping, something critical to collecting accurate federal data and, we believe, unique to the state of Maine. Some of this training is offered centrally at the SafetyWorks! Training Institute in Fairfield and some is worksite-delivered at employer request. In fiscal 2007, 439 safety classes were completed with 7,168 attendees.

**Child Labor Education.** A special emphasis of O&E is the education of young workers. To encourage employers to provide safe work experiences for their teenage workers, the BLS developed the curriculum, *Starting Safely: Teaching Youth about Workplace Safety and Health*. The three-hour curriculum is designed to teach middle and high school age youth about their safety rights and responsibilities on the job. In 2002, O&E was authorized by Keene State College (New Hampshire) to present to educators the train-the-trainer course that allows the teachers to use this curriculum. The train-the-trainer course complements the Summer Safety Institute for Educators, which O&E has offered in conjunction with the University of Southern Maine since 1993. The 2007 Summer Safety Institute was conducted at the SafetyWorks! Training Institute in Fairfield (June 18-22) with 13 participants completing the course. A Keene State College train-the-trainer course was presented at the United Technologies Center in Bangor November 27, 2006 through January 22, 2007, with 27 participants.

## ***Employer Consultation***

**Employer Profiles.** Using the data from the WCB's *First Reports* and SOII, the Research and Statistics Unit (R&S) of the BLS can provide a Maine employer with a profile of that employer's injury and illness experience over a number of years. Such a profile shows the type of disabling injuries or illnesses that have been experienced by the company's workers. This profile also describes the nature of the injury or illness and the event or exposure that led to each incident. The employer uses this information in detecting patterns in developing/refining the company safety program. In 2007, 28 profiles were requested.

**On-Site Consultation.** Also under SafetyWorks!, the Workplace Safety and Health Division (WS&H) of the BLS provides consultation services to public and private sector employers. In the private sector, BLS provides consultations to employers identified by Regional OSHA for inspection through its Local Emphasis Programs (LEPs). National and Regional OSHA identify employers for LEPs and National Emphasis Programs (NEPs) based on summary data from the WCB and the OSHA Data Initiative (ODI). Consultations are also provided in both the public and private sector upon employer request. A typical employer consultation can include an evaluation of records from the employer, including an analysis of the employer's Workers' Compensation cases and/or the OSHA Forms 300, 300A, and 301, an environmental evaluation (a walk-through), and an examination of the work processes. Consultations are advisory and cooperative in nature and in fiscal 2007, 779 consultations were requested.

For more on SafetyWorks!, go to [www.safetyworksmaine.com](http://www.safetyworksmaine.com).

## **2B. Advocacy**

The Migrant and Immigrant Services Division (M&IS) coordinates services for migrant and foreign workers in Maine. The Division has a State Monitor Advocate who works with agricultural employers to ensure compliance with the federal Seasonal Agricultural Worker Protection Act and the Fair Labor Standards Act. The State Monitor Advocate monitors the payment of fair wages and ensures that the housing provided to these workers meets OSHA standards. In addition to addressing the safety and health of migrant and foreign workers, M&IS provides foreign labor certification services to Maine employers who wish to hire foreign workers. In 2007, applications from 246 employers were processed seeking 4,503 foreign workers of all types.

## **2C. Enforcement**

### ***Child Labor Work Permits***

To protect young workers, the Wage and Hour Division of the BLS reviews and approves up to 5,000 work permit applications for minors each year. From July 1, 2006 to July 1, 2007, a total of 3,699 work permits were approved and 162 permits were denied. Denials are typically due to incomplete or incorrect applications, but perhaps a third are due to the applicant being underage for the proposed employment.

### ***Wage and Hour Enforcement***

In addition to the issuance of work permits, the Wage and Hour Division inspects employers for compliance with Maine wage and hour and child labor law, which has an occupational safety and health component. The Division may use the data from the WCB *First Reports* to select employers for inspection -- based on the age variable, an industry profile showing where young workers were injured can be generated. Employers are also identified for inspections based on combinations of certain administrative criteria or complaints. From July 1, 2006 to July 1, 2007 the Division conducted 2,705 inspections finding 388 employers in violation with 569 separate violations.

### ***Public Sector Site Safety Inspections***

The Workplace Safety and Health Division of the BLS (WS&H) enforces safety regulations based on OSHA standards *in the public sector only* and is therefore responsible for the health and safety of employees of state and local governments. The Board of Occupational Safety and Health, whose members are appointed by the Governor, oversees public sector safety enforcement. WS&H prioritizes state and local agencies for inspection based on the agencies' injury and illness data from the WCB, the results of the Survey of Occupational Injuries and Illnesses (SOII), or complaints from employees or employee representatives. WS&H compliance officers conduct unannounced inspections of the work environment and can cite the state and local employers for non-compliance with safety and health standards, which may carry fines. Failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be asked to shut down the operation; this shutdown is not mandatory, however. By way of comparison with OSHA activity in the private sector (below), 290 inspections were completed in federal fiscal year 2007. All inspections found violations: 2,112 violations resulted in \$172,400 in penalties after reductions for size of business and good faith abatement efforts.

### ***Private Sector Site Safety Inspections (Federal)***

In Maine, the United States Department of Labor Occupational Safety and Health Administration (OSHA) enforces federal workplace health and safety standards in the private sector in parallel with the BLS enforcement in the public sector. OSHA prioritizes employers for inspection based on the employers' injury and illness data from the OSHA Data Initiative (ODI), Local Emphasis Programs (LEPs) or National Emphasis Programs (NEPs) (typically developed using the ODI), or complaints from employees or employee representatives. OSHA compliance officers likewise conduct unannounced inspections of the work environment and can cite employers for non-compliance with safety and health standards, which usually carry fines. As in the public sector, failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be required to shut down the operation. Data for federal fiscal year 2007 show that OSHA conducted 662 inspections in Maine, all of which found violations: 1,581 violations resulted in \$1,804,006 in penalties assessed.

### 3: RESEARCH AND DATA AVAILABLE

Effective workplace injury and illness prevention services cannot be designed and delivered without a detailed working knowledge of all factors that contribute to OSH. This knowledge is gained by OSH research, through both indefinitely continuing programs and one-time, focused studies.

#### 3A. Annual Studies

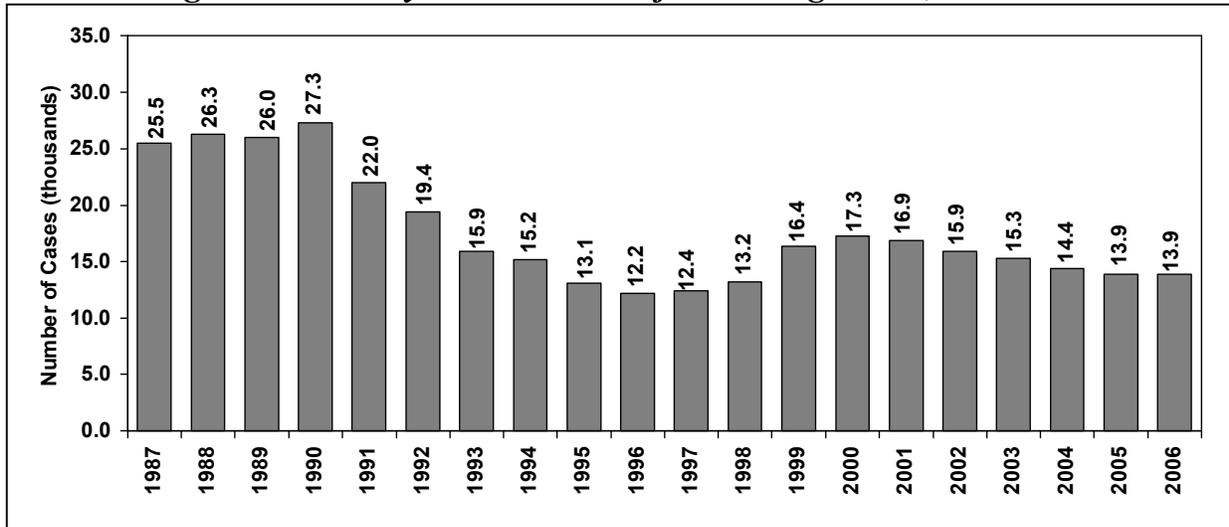
The Research and Statistics Unit (R&S) in the Technical Services Division (TSD) of the BLS is responsible for the administration of several annual OSH surveys. Taken together, the results of these surveys provide an epidemiological profile of occupational injuries and illnesses in Maine. For each of them, more information and statistics are available on the BLS website, [www.maine.gov/labor/bls/](http://www.maine.gov/labor/bls/), or upon request.

#### WCB First Report of Occupational Injury or Disease

Since 1973 the BLS has coded, tabulated, analyzed, and summarized data from the WCB *First Reports*. This activity began as a program called the Supplementary Data System (SDS) funded by the federal Bureau of Labor Statistics. When federal funding ended, this program was continued with state funding. The BLS database is directly linked to the WCB administrative data for each case and provides a wealth of information on individual cases. This tabulation is the primary data source for BLS prevention purposes because it is possible to examine many factors, including the individual employer, the age of the injured, how long the injured person has worked, the injured's occupation, and so on. Because the data are tied to the WCB administrative data, the consistency and completeness of that administrative data is critical. The BLS analyzes the WCB data and publishes a report titled "*Characteristics of Work-related Injuries and Illnesses in Maine*," which provides descriptive statistics on all disabling work-related injuries and illnesses. This and other BLS reports can be accessed at the BLS website. The following are some data from this program.

**A Twenty-Year Pattern of Disabling Cases, Maine, 1987-2006.** In 2006, there were 13,871 disabling cases reported to the Maine Workers' Compensation Board. A disabling case is a case in which a worker lost one or more days of work beyond the day of the injury. Figure 1 shows the twenty-year pattern of disabling cases. The 2006 figure shows a decrease of 88 cases from 2005. This is the sixth straight year this figure has decreased.

**Figure 1. Twenty-Year Pattern of Disabling Cases, 1987-2006**



**Source:** Workers' Compensation Board *First Reports of Occupational Injury or Disease*

Changes as a result of the 1990 workers' compensation reform decreased the number of reports, partly accounting for the apparent decline after that year. In 1999, the introduction of the WCB's Monitoring and Enforcement (MAE) program increased the number of reports for non-compensable (less than 7 days) lost time cases, producing part of the apparent increase in that and following years. Also, based on data from the SOII for the 1987-2001 period, there has been a marked increase in the number of cases resulting in restricted work only (no days away). SOII definitions and procedures did not change during those years.

**Geographic Distribution of Disabling Cases, Maine, 2004-2006.** In 2006, the six counties with the highest disabling case rates were (in descending order): Sagadahoc (consistently highest by almost a factor of two), Cumberland, Aroostook, Kennebec, Knox, and Androscoggin counties. Table 1 breaks down the number of disabling cases by county for calendar years 2004 through 2006. The rate is calculated by dividing the number of disabling cases in each county by its respective employment in thousands. Geographic distribution data can be useful in health planning and setting enforcement and consultation priorities by region.

**Table 1. Geographical Distribution of Disabling Cases, Maine, 2004-2006**

County	2004			2005			2006		
	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000
Androscoggin	1,203	54,495	22.1	1,192	55,192	21.6	1,117	55,723	20.0
Aroostook	693	32,839	21.1	762	33,302	22.9	783	33,730	23.2
Cumberland	3,777	151,298	25.0	3,551	153,371	32.2	3,603	153,266	23.5
Franklin	229	13,924	16.4	252	14,090	17.9	243	13,797	17.6
Hancock	541	28,518	19.0	561	28,893	19.4	535	28,724	18.6
Kennebec	1,365	59,218	23.1	1,436	60,116	23.9	1,406	61,127	23.0
Knox	471	21,025	22.4	420	20,978	20.0	421	20,780	20.3
Lincoln	282	17,671	16.0	284	17,937	15.8	294	17,822	16.5
Oxford	470	26,710	17.6	445	27,156	16.4	470	26,956	17.4
Penobscot	1,527	73,233	20.9	1,452	74,853	19.4	1,275	75,164	17.0
Piscataquis	126	6,960	18.1	132	7,063	18.7	134	7,188	18.6
Sagadahoc	790	18,185	43.4	678	18,084	37.5	738	18,139	40.7
Somerset	514	23,004	22.3	413	23,279	17.7	473	23,721	19.9
Waldo	291	18,722	15.5	250	18,758	13.3	247	18,503	13.3
Washington	297	14,175	21.0	245	14,491	16.9	263	14,397	18.3
York	1,527	107,235	14.2	1,487	109,862	13.5	1,426	109,806	13.0
Unknown*	301	----	----	399	----	----	443	----	----
Total	14,404	667,212	21.6	13,959	677,429	20.6	13,871	678,843	20.4

**Source:** Case data from Workers' Compensation Board *First Reports of Occupational Injury or Disease*.  
Employment data from Labor Market Information Services, Maine Department of Labor.

\* Unknown represents WCB *First Reports* with missing information.

**Disabling Cases by Occupational Groups, Maine, 2005-2006.** Beginning in 2005, occupations were classified using the new Standard Occupational Classification (SOC) system in which neither the major groups nor specific occupations are directly comparable with those used in previous years. Therefore, Table 2 presents only 2005 and 2006 data without reference to earlier years.

As seen in Table 2, more than two thirds of all reports of disabling injuries in 2006 occurred in the top seven occupational groups. Although the specific occupational groups differ slightly, this is the same situation as in 2005. With nearly 70% of disabling injuries occurring in these occupational groups, further research is needed in assessing trends and patterns of injuries and illnesses reported in these occupations. In addition, more work should be done to identify the

risk factors, demographics, and the type of safety training programs that are being offered to workers and the effectiveness of such training in preventing work-related injuries.

**Table 2: Disabling Cases by Occupational Groups, Maine, 2005-2006**

Occupational Groups	2005		2006	
	Number	Percent	Number	Percent
Transportation and Material Moving	2,317	16.6	2,207	15.9
Construction and Extraction	1,633	11.7	1,636	11.8
Production	1,438	10.3	1,449	10.4
Office and Administrative Support	1,187	8.5	1,196	8.6
Sales and Related	991	7.1	*	*
Building and Grounds Cleaning and Maintenance	981	7.0	956	6.9
Installation, Maintenance, and Repair	978	7.0	1,004	7.2
Healthcare Support	*	*	932	6.7
Other Occupational Groups	4,434	31.8	4,491	32.4
Total	13,959	100.0	13,871	100.0

**Source:** Workers' Compensation Board *First Reports of Occupational Injury or Disease*

\* Indicates that the occupational group was not in the top seven categories.

**Length of Service of Injured Worker, Maine, 2004-2006.** One of the patterns that the BLS has identified from the analyses of the WCB data is that more new hires (under one year of service) are being injured on the job when compared to those employees who have been with their employers for one year or more. New hires accounted for 4,703 (33.9%) of the *First Reports* in 2006. This high representation of new hires has been declining slowly but steadily over the past several years, both in terms of absolute numbers and in percent overall.

At the same time, the proportion of long-term (older) workers with 15 or more years with the same employer has increased substantially, from 10.3% of all claims in 2001 to 14.7% in 2006. This change merits further investigation.

**Table 3. Length of Service of Injured Worker, Maine, 2004-2006**

Length of Service of the Injured Worker	Disabling Cases					
	2004		2005		2006	
	Number	Percent	Number	Percent	Number	Percent
<b>Total</b>	<b>14,404</b>	<b>100.0</b>	<b>13,959</b>	<b>100.0</b>	<b>13,871</b>	<b>100.0</b>
<b>Under 1 Year</b>	<b>4,913</b>	<b>34.1</b>	<b>4,656</b>	<b>33.4</b>	<b>4,703</b>	<b>33.9</b>
1 Year	1,717	11.9	1,745	12.5	1,805	13.0
2 Years	1,111	7.7	1,034	7.4	1,064	7.7
3-4 Years	1,635	11.4	1,464	10.5	1,355	9.8
5-9 Years	1,698	11.8	1,894	13.6	1,917	13.8
10-14 Years	1,138	7.9	797	5.7	807	5.8
15-19 Years	926	6.4	1,034	7.4	1,022	7.4
20+ Years	858	6.0	903	6.5	1,007	7.3
Unknown	408	2.8	432	3.1	191	1.4

Source: Workers' Compensation Board *First Reports of Injury or Occupational Disease*

**Nature, Source, and Event of Injuries and Illnesses, Maine, 2002-2006.** Table 4 displays the frequencies of the top five each of nature, source, and event of injuries and illnesses. Most of these counts showed a decrease from 2005.

**Table 4. Nature, Source and Event of Injuries and Illnesses, Maine, 2002-2006**

	2002	2003	2004	2005	2006
<b>Nature of Injury</b>					
Sprains, strains, tears	4,991	4,692	4,664	4,965	4,919
Unspecified pain, sore, hurt	3,913	3,863	3,462	3,081	2,693
Bruises, contusions	1,045	1,057	988	1,080	1,089
Traumatic injuries & disorders, unspecified	*	860	*	*	*
Fractures	720	*	666	755	730
Cuts, lacerations	747	745	726	682	761
<b>Source of Injury</b>					
Person—injured or ill worker	3,567	3,417	3,302	3,102	3,087
Floors, walkways, ground surfaces	2,376	2,332	2,055	2,181	1,965
Containers	1,629	1,609	1,513	1,287	1,159
Nonclassifiable	*	1,270	1,182	1,446	1,484
Parts and materials	1,067	1,009	978	810	856
Vehicles	932	*	*	*	*
<b>Event or Exposure</b>					
Overexertion	5,024	4,756	4,415	4,065	4,029
Bodily reaction	1,772	1,688	1,704	1,799	1,641
Fall on same level	1,584	1,631	1,313	1,515	1,301
Struck by object	1,2077	1,321	1,160	1,119	1,180
Repetitive motion	1,222	1,208	1,124	929	917

Source: Workers' Compensation Board *First Reports of Injury or Occupational Disease*

Note: \* indicates that the specific nature and source of injury was not in the top five categories.

## ***Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses***

Since 1972, the BLS has partnered with the federal Bureau of Labor Statistics in a cooperative agreement to collect data on occupational injuries and illnesses through the annual Survey of Occupational Injuries and Illnesses (SOII). The results from this survey are summarized and published on the Federal BLS website, <http://www.bls.gov/iif/oshstate.htm#ME>. The data are generated from a random sample stratified by industry and establishment size. There are over 3,000 work establishments in the sample in any given year. For the year 2006, BLS surveyed 2,847 private establishments and 483 public sector agencies, asking these businesses about their experience with OSHA recordable injuries and illnesses. The SOII gathers data from employers' records. Besides the total numbers of OSHA–recordable injuries and illnesses, the SOII asks employers for their average employment and total hours worked at the reporting worksite. From this information, incidence rates are produced.

The SOII incidence rates are calculated using the following formula:

$$\text{Incidence Rate} = (N / EH) * 200,000$$

Where:

N = number of OSHA recordable incidents (injuries and illnesses in the chart below) for an employer or industry group

EH = total hours worked by all employees during the calendar year in the corresponding group

200,000 = base for 100 full-time equivalent employees (working 40 hours per week for 50 weeks)

The result is the estimated number of incidents per 100 full-time workers, standardized to a full calendar year.

2001 was the last year for which SOII incident statistics are comparable to the past because of changes made to OSHA recordkeeping beginning with the 2002 data. 2002 was the first year that the OSHA forms 300, 300A, and 301 were used. Besides the new forms, sweeping changes were made to the recording criteria; some cases recordable in 2001 were not in 2002 and *vice versa*. Among the most significant changes were:

- 1) A new definition of “work-related”
- 2) A new definition of “restricted work activity”
- 3) An all-inclusive list of first aid (vs. medical) treatment.

***DO NOT compare data from 2002 and later years with data from 2001 and earlier! Although 2002 and later data from employer OSHA records appear similar to 2001 and earlier data, it is neither correct nor safe to make direct comparisons across the 2001/2002 line. For further information on the recordkeeping differences go to OSHA's website, [www.osha.gov](http://www.osha.gov), and click on “recordkeeping”.***

The 2002 changes to the recordkeeping regulations apply to 2003 with one important exception. In 2003, OSHA revised its regulations regarding the recording of occupational hearing loss cases. Also in 2003, work establishments were being coded according to the North American Industry Classification System (NAICS), rather than the Standard Industrial Classification (SIC) system. There is not a one-to-one comparability between even the most general levels of the two classification systems (for further information, please visit <http://www.census.gov/epcd/www/naics.html>). For these reasons, users are advised against comparisons between 2003 and later SOII industry categories and those of previous years.

Table 5 and Figure 2 below display results from the 2006 SOII. Data collected from this survey should not be compared with WCB data for the following reasons:

- 1) WCB data consists of frequencies only; rates cannot be computed. The SOII produces both frequencies and rates.
- 2) The two systems use different definitions of recordability of work-related cases
- 3) The WCB data is a census of injuries and illnesses while the SOII data is a statistical sample. The SOII data is therefore subject to sampling error.

**Cases and Incidence Rate of Injuries and Illnesses, Maine, 2006.** According to the 2006 SOII for private industry, the Utilities Sector recorded the highest incidence rate of 9.7 per 100 FTE.

**Table 5. Number of Cases and Incidence Rate of Injuries and Illnesses, Maine, 2006**

NAICS Sector (Not directly comparable with SIC Division)	2006	
	Number of Cases	Incidence Rate
<b>Private Industry</b>	<b>27,617</b>	<b>7.0</b>
Manufacturing	5,824	9.7
Transportation and Warehousing	1,207	9.5
Construction	2,514	9.1
Utilities	173	8.9
Health Care and Social Assistance	6,330	8.7
Wholesale Trade	1,378	7.1
Arts, Entertainment, and Recreation	313	6.7
Retail Trade	4,112	6.4
Accommodation and Food Services	1,892	6.2
Administration Support and Waste and Remediation Services	1,068	6.0
Agriculture, Forestry, Fishing, and Hunting	275	5.6
Information	481	4.8
Professional and Business Services	1,952	4.5
Management of Companies and Enterprises	191	3.7
Educational Services	131	2.5
Finance and Insurance	477	2.0
Real Estate and Rental and Leasing	N/P	N/P
Mining	N/P	N/P
<b>Public Industry</b>	<b>3,567</b>	<b>5.9</b>

**Source:** Federal Bureau of Labor Statistics *Survey of Occupational Injuries and Illnesses*  
Note: “N/P” means not publishable

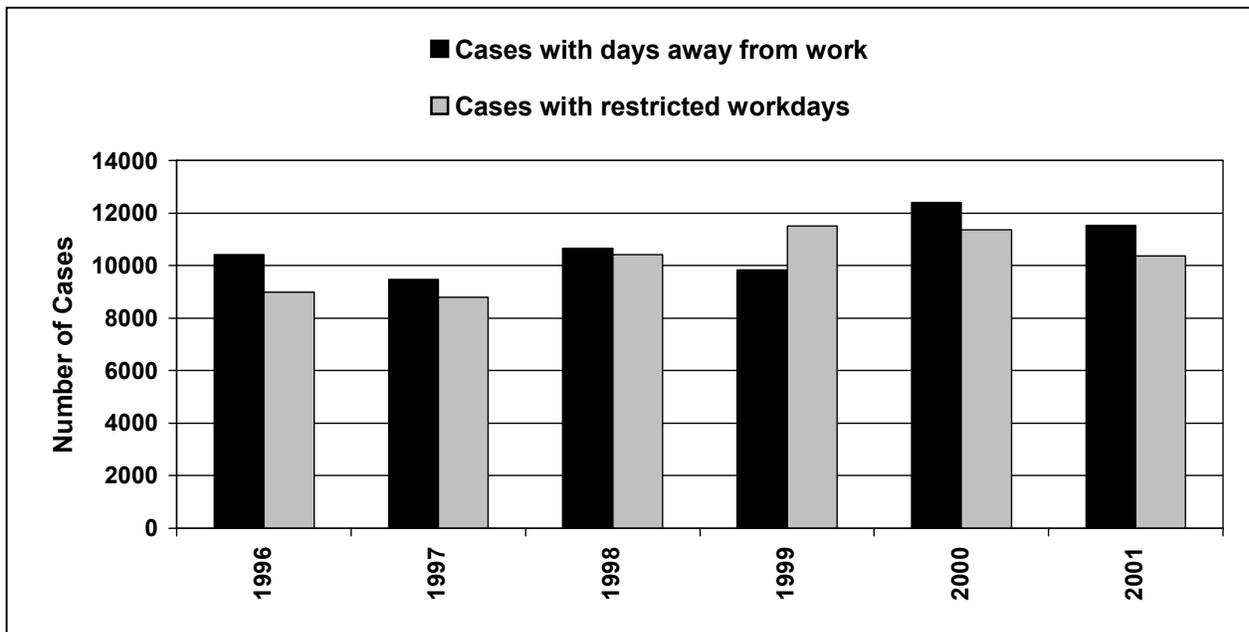
For further information on OSHA recordkeeping, please go to OSHA’s website, [www.osha.gov](http://www.osha.gov) and click on the “Recordkeeping” button.

**Cases with Lost Workdays and Restricted Work Activity.** Data collected from 1992 through 2001 show a fluctuating downward trend in the reported number of cases resulting in days away from work. However, the number of cases resulting in restricted work activity has increased. The data indicate that employers are placing more injured workers on “light duty”. The BLS has hypothesized the following:

- 1) These are not severe injuries and allow an injured worker to continue working in a limited capacity
- 2) Some employers are using this injury management approach to lower their Workers’ Compensation losses and therefore lower their direct payments on their insurance premiums
- 3) Keeping workers employed in a limited capacity is seen as good for workers’ morale, preventing the turnover of skilled workers and instilling continued company loyalty and increasing productivity.

More research is needed to test these hypotheses.

**Figure 2A. A Six-Year Trend Analysis of Lost Workday and Restricted Work Activity Cases, All Industries (Public and Private Sectors), Maine, 1996-2001**



Continued next page

**Source:** *Survey of Occupational Injuries and Illnesses*

**Figure 2B. A Five-Year Trend Analysis of Lost Workday and Restricted Work Activity Cases, All Industries (Public and Private Sectors), Maine, 2002-2006**

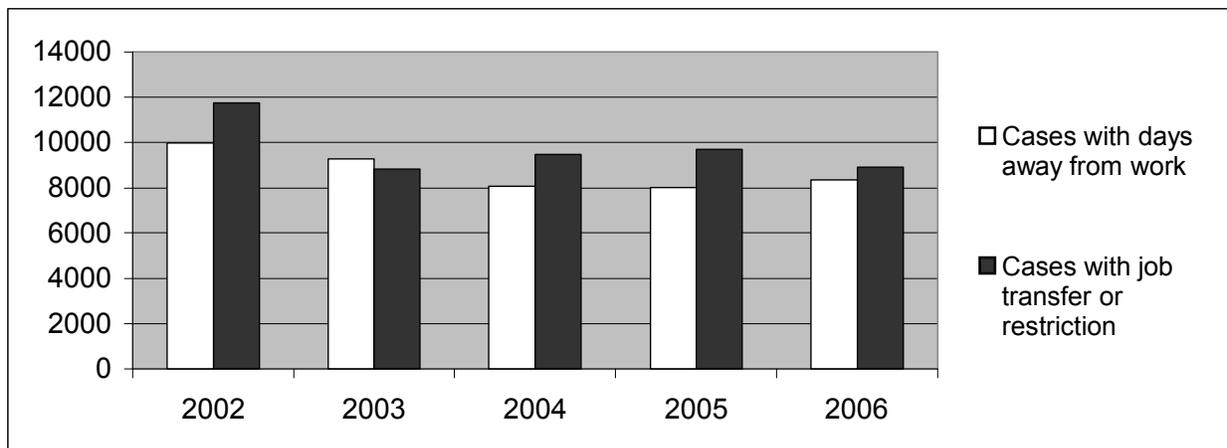


Figure 2B describes the injury data collected with revised OSHA recordkeeping regulations. These data should not be directly compared with earlier years' data (1996-2001) or with each other. For 2006, there was an estimated total of 17,278 OSHA recordable injuries resulting in at least one day away from work or one day of job transfer or restriction beyond the day of injury. Of this total, it is estimated that 8,364 cases resulted in at least one day away from work and 8,914 cases resulted in job transfer or restriction without any days away from work.

### ***OSHA Data Initiative***

Every year since 1993, the BLS has received a grant from OSHA to collect data on specific worksite occupational injury and illness rates in Maine. The information is used by OSHA to target establishments with high incidence rates for intervention through consultation or enforcement. Usually the regional office of OSHA initiates this activity under an OSHA Local Emphasis Program (LEP).

The survey instrument used is called the *OSHA Work-Related Injury and Illness Data Collection Form*. The data collected are from the same sources as, but less detailed compared to the SOII survey. OSHA regional offices use the DART (“Days Away, Restricted, or Transferred”) incidence rate to identify worksites for intervention. The DART rate is calculated by *dividing the total number of cases* resulting in at least one day away from work and/or one day of job restriction/transfer *by the total hours worked* and *multiplying that result by 200,000*.

For example, for the year 2005, 235 Maine worksites were identified as having a DART rate of 5.3 or higher per 100 full-time employees. These businesses were notified by OSHA and encouraged to identify and correct any safety hazards in anticipation of OSHA inspection. Selected employers could conduct their own safety inspections, hire a consultant for that purpose, or utilize safety consultants from an OSHA voluntary safety program such as

SafetyWorks! (specifically mentioned in the OSHA notification). Some were actually inspected for violations by OSHA. For more information on the ODI, go to [www.osha.gov/as/opa/foia/hot\\_13.html](http://www.osha.gov/as/opa/foia/hot_13.html).

### ***Census of Fatal Occupational Injuries***

Since 1992, the BLS has been in another partnership with the federal Bureau of Labor Statistics to administer the Census of Fatal Occupational Injuries (CFOI) program for Maine. The CFOI program collects data on all fatal occupational injuries and illnesses. The data are published in an annual series titled “*Fatal Occupational Injuries in Maine*”.

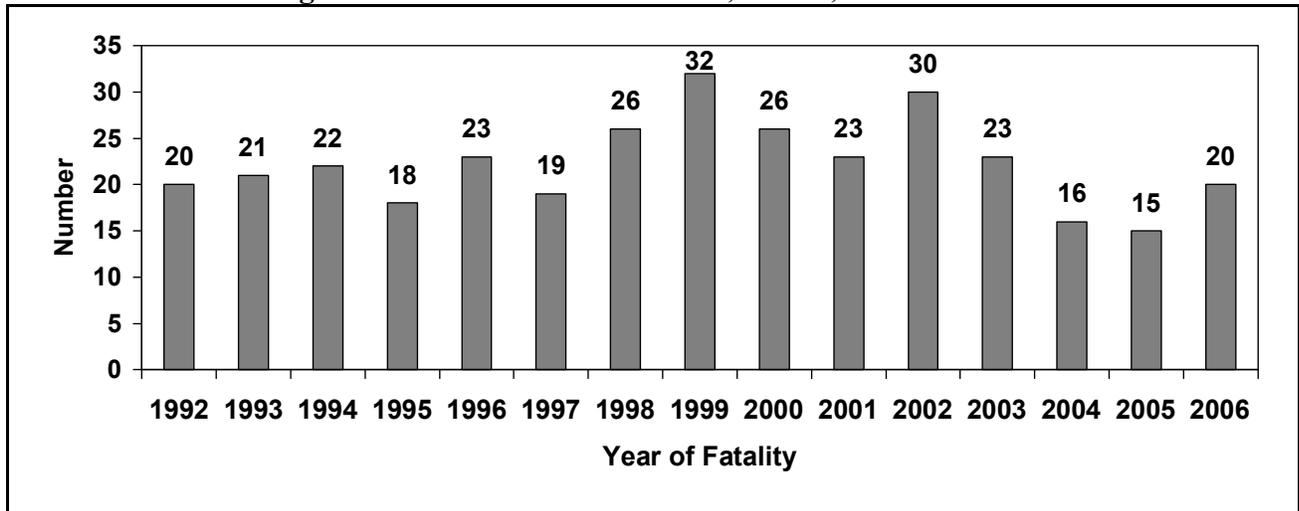
The CFOI program is a federal/state cooperative program. It was created in 1990 by the U.S. Department of Labor, Bureau of Labor Statistics and includes all 50 states and the District of Columbia. The program was established to determine a true count of work-related fatalities in the United States. Prior to CFOI, estimates of work-related fatalities varied because of differing definitions and reporting sources. The CFOI program collects and compiles workplace fatality data that are based on consistent guidelines throughout the United States.

A death is considered work-related if an event or exposure resulted in an employee fatality while in work status, whether at an on-site or off-site location. Private and public sector (state, local, and county government) are included. Fatalities must be confirmed by two independent sources before inclusion in the CFOI. Sources in Maine include death certificates, the WCB *First Report of Occupational Injury or Disease*, and fatality reports from the following agencies and sources: 1) the Chief Medical Examiner’s Office; 2) the Department of Marine Resources; 3) the Maine State Police; 4) the Bureau of Motor Vehicles; 5) the U.S. Coast Guard; 6) OSHA reports; and 7) newspaper clippings and other public media.

Only fatalities due to injuries are included in the CFOI. Fatalities due to illness or disease tend to be undercounted because the illness may not be diagnosed until years after the exposure or the work relationship may be questionable. Occupational illnesses are, therefore, excluded from the state CFOI program as required by the Federal Bureau of Labor Statistics that provides funding for this program.

**Fatal Occupational Injuries, Maine, 1992-2006.** Figure 3 shows the numbers of work-related fatalities recorded in Maine from 1992-2006.

**Figure 3. Work-related Fatalities, Maine, 1992-2006**



**Source:** Maine Census of Fatal Occupational Injuries

**Fatal Occupational Injuries by Industry and Event/Exposure, 1992-2006**

Transportation accidents have accounted for more occupational fatal injuries than any other event or exposure in Maine as shown in Table 6. Since 1992, more than 48% of the fatal work-related injuries in Maine collected under the CFOI program were classified as transportation related.

**Table 6. Fatal Occupational Injuries by Industry and Event/Exposure, Maine, 1992-2006**

Industry Division	Total	Transportation Accidents Highway & Non-highway	Contact with Objects & Equipment	Falls	Exposure to Harmful Substances	Assaults & Suicides	Fires & Explosions
<b>Total</b>	<b>337</b>	<b>165</b>	<b>71</b>	<b>41</b>	<b>35</b>	<b>18</b>	<b>7</b>
Agriculture, Forestry & Fish.	85	58	5	4	18	--	--
Manufacturing	53	13	30	10	--	--	--
Transportation & Public Utilities	53	40	6	3	4	--	--
Construction	42	6	11	14	8	--	3
Services	31	12	11	4	--	4	--
Retail	21	10	--	5	--	6	--
Government	16	11	--	--	--	5	--
Wholesale	13	13	--	--	--	--	--
Other/Nonpublishable & Unknown	23	2	8	1	5	3	4

**Source:** Census of Fatal Occupational Injuries

-- Dashes indicate less than .5 percent or do not meet publication criteria.

## ***Employer Substance Abuse Testing***

Not a part of the OSH profile, but still in support of occupational injury and illness prevention is the annual “Substance Abuse Testing Report” compiled by the BLS. The Maine Substance Abuse Testing Law, Title 26 MRSA, Section 680 *et seq.*, requires the MDOL to report to the legislature on activities under that statute. The “**Substance Abuse Testing Report**” data do not include activities under federally mandated testing programs. Therefore, these data should not be taken as a comprehensive representation of workplace substance abuse testing in Maine.

The Maine Substance Abuse Testing Law controls employer drug testing that is not performed in response to federal mandates. Therefore, the Bureau of Labor Standards also must review and approve the proposed testing policy of any company that wants to have a substance abuse testing program but is not required to under federal law. BLS can supply employers with a model substance abuse testing policy to assist in developing an acceptable workplace-specific policy, another prevention-directed activity.

The Maine Substance Abuse Testing Law is intended to protect the privacy rights of employees, yet allow an employer to administer testing; to ensure proper testing procedures; to ensure that an employee with a substance abuse problem receives an opportunity for rehabilitation and treatment; and to eliminate drug use in the workplace. Regulation of testing for use of controlled substances has been in effect under Maine law since September 30, 1989.

The administration of this law is a collaborative effort of the following agencies.

- 1) The Maine Department of Labor (MDOL), which:
  - Reviews and approves substance abuse testing policies,
  - Conducts the annual survey of substance abuse testing,
  - Analyzes testing data and publishes the annual report, and
  - Provides model policies -- a model job applicant testing policy was developed by the MDOL in 1998 and a model probable cause testing policy in 2000 -- to help employers write substance abuse policies for their workplaces.
- 2) The Maine Department of Health and Human Services (DHHS), which licenses testing laboratories and the Office of Substance Abuse Services within DHHS which reviews and approves employee assistance programs (EAPs) for employers who do probable cause or random and arbitrary testing; any employer with more than 20 full-time employees must have a functioning EAP prior to testing their employees.

The following table and graph show the trend of non-federally-mandated drug testing from 1996 through 2005.

**Table 7. Substance Abuse Testing**

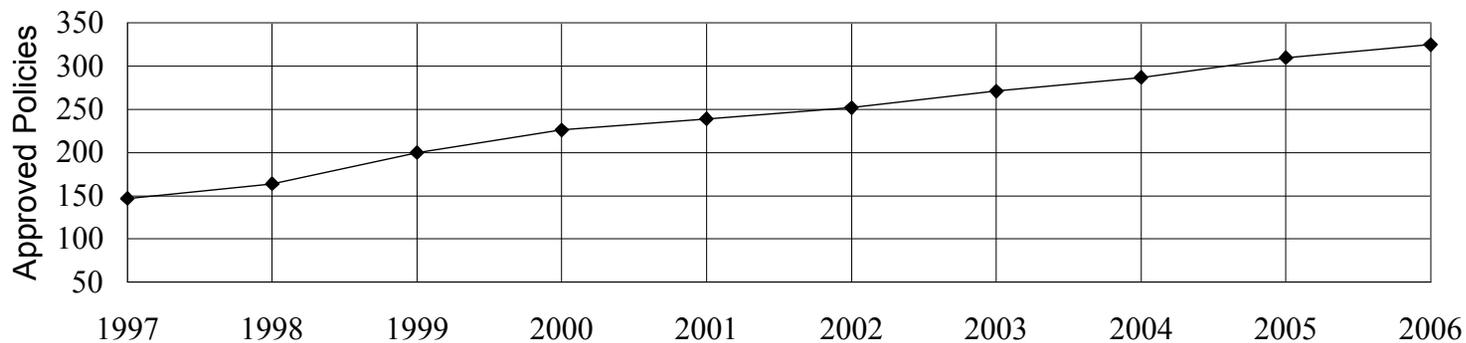
**Yearly Totals by Type of Test  
Applicants/Employees  
1997-2006**

Year	Number of Employers w/ Policies	Total Tests	Total Positives	Percent Positive	Applicant Tests	Applicant Positives	Percent Positive	Probable Cause Tests	Probable Cause Positives	Percent Positive	Random Tests	Random Positives	Percent Positive
2006	325	18,112	853	4.7	17,364	824	4.7	18	2	11.1	730	27	3.7
2005	310	17,742	749	4.2	16,876	706	4.2	18	9	50.0	863	34	3.9
2004	287	17,428	826	4.7	16,702	803	4.8	6	1	16.7	720	22	3.1
2003	271	16,129	761	4.7	15,345	727	4.7	29	7	24.1	755	27	3.6
2002	252	13,128	642	4.9	12,595	624	5.0	10	0	--	523	18	3.4
2001	239	16,492	730	4.4	15,947	716	4.5	8	1	12.5	537	13	2.4
2000	226	18,827	765	4.1	18,164	748	4.1	12	1	8.3	651	16	2.5
1999	200	20,725	691	3.3	20,118	660	3.3	9	4	44.4	598	27	4.5
1998	164	11,888	352	3.0	11,459	343	3.0	4	0	--	425	9	2.1
1997	147	13,097	392	3.0	12,616	375	3.0	7	1	14.3	474	16	3.4

-- Indicates a value of less than 0.05%

**Figure 4.**

**Employers With Approved  
Substance Abuse Testing Policies  
1997-2006**



### **3B. Research Projects Other Than Annual**

#### ***Capacity Building in OSH Surveillance***

In 2002, the Maine Bureau of Labor Standards (Maine BLS) was awarded a three-year, \$250,000 National Institute of Occupational Safety and Health (NIOSH) grant to improve OSH surveillance. The proposed program was to compile data on core surveillance indicators. These core surveillance indicators have been established by federal and state OSH epidemiologists to reflect a minimum set of conditions for a state-based surveillance initiative. An initial set of core surveillance indicators were identified and developed by a national OSH Workgroup. These indicators are considered to be the foundation of an effective surveillance system.

The membership of this workgroup comprised of epidemiologists and researchers from 13 states, the Council for State and Territorial Epidemiologists (CSTE) and the National Institute for Occupational Safety and Health (NIOSH). The Maine BLS is a member of this national work group that developed these indicators. In addition, the Workgroup also developed a “How to Manual” on generating these indicators. The manual is available on the CSTE website: [http://www.cste.org/pdffiles/Revised%20Indicators\\_6.24.04.pdf](http://www.cste.org/pdffiles/Revised%20Indicators_6.24.04.pdf)

These Occupational health indicators can provide information about a population’s status with respect to workplace factors that can influence safety and health of workers. These indicators can either be measures of health (work-related disease or injury) or factors associated with health, such as workplace exposures, hazards or interventions. These indicators are intended to:

- 1) Promote program and policy development at the national, state, and locals levels to protect worker safety and health
- 2) Build core capacity for occupational health surveillance at the state level
- 3) Provide guidance to states regarding the minimum level of occupational health surveillance activity
- 4) Bring consistency to time trend analyses of occupational health status of the workforce within states and to comparisons among states.

The funding for the project ended in 2005 but since then the MDOL has continued to participate in the Workgroup and the results of this initiative are available on the CSTE website: <http://www.cste.org/OH/OHmain.asp>

#### ***Occupational Fatality Reports***

In 2002, the Maine BLS pilot-tested a fatality assessment, control and evaluation (FACE) program. The pilot program was modeled after the National Institute for Occupational Safety and Health (NIOSH) program. In 2003, the MDOL completed 4 FACE case studies: 2 fatalities on electrocutions, one involving a bucket loader and one on workplace homicide. These reports can be found at: [http://www.maine.gov/labor/labor\\_stats/publications/face/index.html](http://www.maine.gov/labor/labor_stats/publications/face/index.html)

With no funding from NIOSH, the Maine BLS has again implemented its own occupational fatality reporting program. Currently for 2007, reports focusing on fatal falls and emergency medical technician/paramedic safety are in progress. These Occupational Fatality Reports will be made available as widely as possible to draw attention to the conditions and behaviors resulting in workers' deaths.

## 4: PROBLEM AREAS

### 4A. Needed Improvements In Data Collection And Sharing

#### *EDI AND MISSING FIELDS*

As of January 1, 2005, all filings of WCB *First Reports* were required to be done by electronic data interchange (EDI), computer-to-computer, using one of two formats. As of July, 2007 all but a few submitters were using the International Association of Industrial Accident Boards and Commissions (IAIABC) Standard 3 format. Under the new EDI standard, certain fields are classified as “required:” that is, necessary for a claim to be processed. Others are classified as “expected:” i.e., not required for a claim to be processed but necessary to complete a report. Although the WCB will request missing “expected” data from the reporting entity, that data may not be forthcoming or available to BLS for coding at the time the reports are coded.

“Expected” fields include occupation, nature of injury code, part of body code, cause of injury code, and a narrative of how the injury occurred. When these fields are missing, in particular the narrative, the BLS coder must re-contact the reporting entity to attempt to get the information, which delays the case coding and collectively more than doubles the time it takes to code all such cases. These “expected” fields are critical in BLS analysis for occupational safety and health planning, outreach and education, and prevention efforts.

Ideally, a filer with missing or invalid “expected” data would be sent an error message and all identified errors would be corrected within 14 days after the date the acknowledgement transmission was sent by the WCB, or prior to any subsequent submission for the same claim, whichever is sooner. The rules have been proposed and the programming coded for this feature as part of the WCB IAIABC EDI standards, however the quality of the current cases coming through the system to BLS indicates it is not yet working. Furthermore, if there are no subsequent transmissions, the “expected” fields are not monitored for compliance anyway and it is possible they may never be updated. With the addition of “medical-only” case reporting, the numbers of deficient reports will increase considerably if the quality of all reports is not monitored and maintained. BLS recommends that these needed fields be monitored, whether the *First Report* is “lost time” or “medical-only,” and that penalties be assessed for patterns of failure in providing useful information or, alternatively, that rewards be given to those who maintain report quality and that, as with other monitoring activity, the quality reports and any interventions be made public.

The implementation of EDI is presenting challenges at several levels. It is leading to more participants and complexity on one hand, yet it is creating discussion of data flow and quality checks on the other. The net effect on the completeness and quality of the data is not yet known as a result. It is clear that the implementation process is finding and plugging a number of reporting holes that existed with the manual system, yet the demand for certain data elements at certain times may result in reporters fabricating data to get the system to accept a report. The BLS will need to monitor the new process to be sure it is not producing fabricated data. Ideally

both completeness and accuracy will improve as a result of the changes and these goals will need to be a part of the monitoring and the penalties and rewards.

***“Return to work date”***

Table 9 shows the missing information for the variable, “return to work date,” (RTW) as compared with the numbers of disabling cases from the WCB *First Report* forms for the past seven years (2000-2006). There were 5,998 cases with no RTW for the year 2006 as of the tabulation of this data in October of 2007. This is a very large proportion of cases and would be a matter of great concern in terms of social and monetary cost if the employees were actually out of work. However, the BLS strongly suspects, from known cases, that a significant number of these workers have actually returned to work and the RTW has not been provided

This missing information prevents the BLS and the WCB from generating an accurate estimate of the number of workdays lost due to a work-related injury or illness. The RTW is critical in conducting cost-benefit analyses of workplace safety programs. Other potential uses of this variable are assessing the severity of an injury or illness and determining which industry sectors are experiencing more lost workdays. It also provides a critical check as to whether or not indemnity benefits were owed injured workers who exceeded the 7-day waiting period. As it is, these cases cannot be distinguished from those that simply returned before the waiting period. A case might not have a return to work date on it due to death or to a prolonged incapacity. Of those cases, though, there are a number where the WCB 11 form is either not timely or was not properly closed. The latest information appears to show that the EDI processes are clearing up these shortcomings.

**Table 9. Missing Return-to-Work Date, Maine, 2000-2006**

	2000	2001	2002	2003	2004	2005	2006
<i>First Reports</i> with an incapacity Date	18,811	18,301	17,233	16,267	15,654	15,154	14,560
Of those, cases lacking a return-to-work date	8,364	8,337	7,738	7,251	6,906	6,548	5,988
Percent lacking RTW	44.5%	45.6%	44.9%	44.6%	44.1%	43.2%	41.1%
No RTW, no indemnity, not fatal	1,527	1,620	1,695	1,452	1,152	647	392
Percent no RTW, no indemnity, not fatal	8.1%	8.9%	9.8%	8.9%	7.4%	4.3%	2.7%

**Source:** Workers’ Compensation Board *First Reports of Occupational Injury and Disease, WCB-11, Interim Reports*

The RTW became even more important to BLS in 2006. In the new strategic plan of the Maine Department of Labor, a new set of measures is called for to evaluate the effectiveness of prevention methods. The form of the new measures came from work that the National Institutes of Occupational Safety and Health (NIOSH) developed for loss of life due to work-related injuries. The measures will include worker-years lost due to work-related injury or illness. This

particular measure can be viewed not only as an estimate of how severe work-related injuries and illnesses are in Maine, but also as an indicator of how successful we are at getting people back to work. Eventually, the goal of the Department is to look at this measure in the context of specific industries, occupations, geographic regions and/or other factors, as well as looking at the state as a whole. The new measures, in aggregate, can be treated as representing lost productivity and a basis for OSH policy decisions.

Computation of worker-years lost will be a challenge in two respects even beyond the missing RTWs. The first is that the system is not set up to record the past as it moves forward in time-- instead it takes snapshot pictures of where the cases are at any point in time. As it is now we can say how many worker-years were lost (to date) due to injuries that occurred in 2005, but the system is not geared to tell us how many worker-years were lost during 2005 for injuries that occurred *before* 2005. This may be a matter of programming and learning how to appropriately process the existing information from the Workers' Compensation system, or it may be a matter of accepting less than ideal information to do it (developing a "proxy").

The second way lost worker-years may be a problem is that the system is not geared for reporting time the worker is out in situations where there are many small work interruptions such as occur with carpal tunnel and repetitive trauma. We can tell the duration from the start to finish of a payment episode, for instance, but if there were both days at work and days out within that episode, we are not sure if or how we can recognize this from the existing system. The solution to this problem also may be matter of coming up with how to do it with existing information, or in attempting to do this we may identify a need to modify the system.

As the system stands now we still have basic difficulties with identifying which workers are actually out and which have returned to work. As long as this remains the case, no meaningful estimate of worker-years lost can be derived. We believe the EDI process will remove at least some of the reporting holes, but we are still not sure it will plug all of them. We will be evaluating the quality of data as the changes are implemented.

### ***Costs data***

The individual case cost data from the WC system is now available and the BLS is in the process of developing useful representations of it. One product already in use compares the total and average case costs for an employer to the total and average case costs for the employer's industry and for total and average case costs in the state and does so over a number of years. It has been used to show the effect of a change in case management for one company and for overall progress in another. In the next few years, we should be able to incorporate the cost data into tabulations that will be useful to compare and contrast groups of cases as we do for the case counts now. As with duration, the cost data also suffers from the problem of it being a "snapshot" of the cases at a point in time, some of which are closed and not accumulating further expenses while others are open and continue to accumulate data. Eventually we will need to define and make determinations for "open" and "closed" cases and be able to tabulate data based on that characteristic.

The range in duration and cost will open new possibilities as well, telling us the groups and types of cases that have more uncertainty in their outcome. This, in turn, may allow us to focus attention on classes of cases where the medical treatment and case management is more a factor in what happens over the life of the case. This is consistent with research WCB is doing on the costliest cases, where findings show that some of the most costly cases are ones where the initial injury or illness was simple at the start.

#### **4B. Efforts To Improve Data Collection And Sharing**

##### ***Occupational Safety and Health Data Collection and Injury Prevention Work Group***

The Occupational Safety and Health Data Collection and Injury Prevention Work Group was convened in 2003 by the Department of Labor under 2003 Public Law chapter 471. Its creation had been advocated by the Maine Occupational Research Agenda (MORA, see below). The purpose of the Work Group is to evaluate the data currently available on work-related injuries and illnesses and to review efforts to prevent such injuries and illnesses. The Work Group will also identify ways to improve the collection and analysis of the data and to enhance related prevention efforts. Members were chosen to be broadly representative of those with interests and expertise in OSH and workers' compensation. In 2007, the Work Group put its efforts regarding data collection and analysis into defining specific problems and formulating specific recommendations concerning those problems. The results of this work will be reported to the legislature in early 2008. On the prevention side, a survey was developed to assess employers' perceived needs for OSH guidance and the sources of same actually utilized by employers. Results of this survey will be available in early 2008.

##### ***BLS Coding for Prevention Value-Stream Mapping Project***

A Value-Stream Mapping team determined that BLS case coding quality was the same as before the EDI changes. However, it was taking more and more effort (about twice as much overall) on an increasing number of cases to maintain that quality. The value-stream mapping event identified seven distinct processes between when the data is obtained from the WCB system, and when it is available for prevention purposes and agreed that the greatest improvement would be in the coding process itself. The group agreed to have the primary coder track at least 600 cases to determine the prevalence of each problem and the additional resources (time) required to resolve them. From this data the group was able to show the effect on the coding process and that almost 60% of the cases had problems, some with multiple data fields. The goal was to decrease that percentage to 30% by the end of the event.

As for the end-product data reports, the in-house users were asked about the products and made suggestions that will be tested and evaluated. Hopefully the result will be more useful reports and data. The process identified and implemented a series of changes that ranged from resolving a general programming error that affected half of the cases coming into the coding system all the way to how individual people or companies were processing reports. A follow-up survey is planned to determine the overall effects of the changes.

The project team also raised the need to map the entire WCB *First Report* reporting system—a project that would be large but would possibly result in major improvements to its quality and efficiency. At the very least mapping it would document the process as it is now, something of considerable potential use in itself.

## 5. 2007 DEVELOPMENTS

### 5A. Grants

The BLS uses WCB data to supplement federal Bureau of Labor Statistics and OSHA data in developing OSH grant applications. No applications were submitted in 2007 because NIOSH funding was unavailable.

### 5B. Program Initiatives

From time to time, based on evident needs, the BLS initiates or enters into partnerships initiating various programs promoting occupational safety and health. Those below were active or activated during 2007.

#### *Maine Occupational Research Agenda (MORA)*

In 2000, following discussions at the first Maine OSH Research Symposium, the BLS took the initiative to create a Maine Occupational Research Agenda. MORA is modeled after the NIOSH National Occupational Research Agenda (NORA). The Technical Services Division's OSH Epidemiologist, in collaboration with the MORA Steering Committee members, developed the research agenda and is moving it forward. MORA committee members include education and health professionals, members of several government agencies, and insurers. In 2007, MORA provided input to BLS on a variety of OSH issues through review of relevant projects.

In conjunction with the Maine CDC, Leslie Walleigh MD (occupational health physician at the Environmental Health Unit) updated MORA on efforts to improve lead level reporting and occupational disease reporting, the latter via hospital discharge data through the Maine Health Data Organization.

Ginger Jordan-Hillier of the Department of Environmental Protection kept MORA abreast of the work of the Governor's Task Force to Promote Safer Chemicals in Consumer Products.

Ivan Most presented a study that he and his daughter Sylvia Most of the Muskie Institute conducted. They looked at 99 questionnaires (of a potential 399) returned from subjects who received lump sum workers' compensation payments between 2000-2002 (noting that many were lost to follow-up due to residential mobility). Pertinent findings were that:

- o Many workers were not completely recovered but decided to accept the final pay-out to move on with their lives
- o Many (especially females) had returned to work only part-time, and
- o Continuing medical treatment and bills were problematic after the settlements.

Mike Rowland MD, medical director of the Maine Migrant Program, presented a study he did on improved ergonomic design of blueberry rakes.

Mike and Peter Doran also worked with Earl Dotter, a well-known photographer of worksites and working people who has photographed Maine hand harvests and migrant laborers. With MORA support and encouragement, Earl has developed a photo-essay exhibit for which Mike and Peter are seeking funding and venues.

Kathy Schulz from the Workers Compensation Board shared a draft study of the 100 costliest workers' compensation cases from 1999-2003. Kathy's work raised many questions about the workers most likely to be involved in such cases (mostly middle-aged men with some women, older workers, and new and untrained workers). MORA provided critiques and suggestions for the final product.

Additionally, several members are currently working on a joint conference with the Jackson Laboratories entitled "Occupational Health, Safety and Risk Assessment Meeting - The Genetic Basis of Work-Related Disease: Science, Ethics, and Policy", scheduled for September 2008.

For more information on MORA, go to MORA's website, [www.maine.gov/labor/bls/MORA.htm](http://www.maine.gov/labor/bls/MORA.htm).

### ***Data Outreach Initiative***

In 2004, the Research and Statistics Unit of the BLS intensified its efforts to place its accumulated data and data-related services before the public. This outreach initiative took the form of such items as a promotional trifold, explaining the Unit's profile service and describing its major data sources. These were distributed in various ways, including as handouts at seven annual conferences such as the Construction Expo in April and the Maine Employers' Mutual Insurance Company Conference in November. Unit personnel attended most of these meetings in order to answer questions and take requests for profiles. This initiative was continued in 2007, including the publication and distribution of a new, updated trifold entitled *Occupational Safety & Health Surveillance*.

### ***SHARP and SHAPE***

SafetyWorks!, in partnership with federal OSHA, administers the Safety and Health Achievement Recognition Program (SHARP). Under this program, a private employer with 250 or fewer employees who meets the program requirements for employee safety and health, including a functional safety and health program, is exempted from programmed inspection for one year after a probationary period. The probationary period is used to fine tune the employer's program and make sure that all SHARP requirements are met. Employers successfully meeting SHARP requirements are publicly honored. Four employers qualified in 2007. These were:

BDI Blow Brothers, Old Orchard Beach  
Borderview Rehabilitation & Living Center, Van Buren

H. P. Hood, Portland  
Marden's, Locust Street, Lewiston

In 2006, SafetyWorks! initiated the Safety and Health Award for Public Employers (SHAPE) program, a public-sector application of the federal private-sector SHARP program. Ten employers qualified in the SHAPE program in 2007. These were:

Berwick Fire  
Town of Brunswick  
Caribou Fire and Ambulance  
Farmingdale Fire  
Gardiner Fire and Rescue  
Town of Kennebunk  
Northern Penobscot Technical Region III, Lincoln  
Paris Fire  
Standish Fire  
Westbrook Fire

### **5C. Legislation**

Also from time to time, the BLS provides information of various kinds in support of or response to new OSH legislation. There was limited legislative action directly impacting occupational safety and health in the First Regular Session of the 123<sup>rd</sup> Legislature. There were three bills of note.

LD 591, An Act Regarding Occupational Safety and Health Training for Workers on State-funded Construction Projects, would require all workers on state-funded construction projects valued at \$100,000 or more to have an OSHA 10-Hour card, which certifies that the work has basic OSH training. This bill, which was supported by the MDOL, was eventually held over for action in the Second Regular Session.

LD 1086, An Act To Clarify Worker Payment for Clothing and Equipment, provides that an employer may not charge an employee for clothing and equipment, including personal protective equipment, where they are incidental to the employer's business. This bill, which was proposed by the MDOL, passed as 2007 Public Law chapter 357 and was effective September 30, 2007.

LD 1885, An Act To Repeal Inactive Boards and Commissions repealed the Commission on Safety and Health in the Maine Workplace among others. The Department did not contest this bill as the purpose is now served by the Occupational Safety and Health Data Collection and Injury Prevention Work Group. The bill passed as PLc 395.