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Annual Report on the Status of the Maine Workers' Compensation System, 1992

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 116TH
LEGISLATURE**

AUGUST 14, 1992

Brian K. Atchinson
Superintendent
Dept. of Professional
& Financial Regulation
Bur. of Insurance

James H. McGowan
Director
Dept. of Labor
Bur. of Labor
Standards

Ralph L. Tucker
Chairman
Workers' Compensation
Commission

John R. McKernan, Jr
Governor



Charles A. Morrison
Commissioner

James H. McGowan
Director

DEPARTMENT OF LABOR
Bureau of Labor Standards

The Honorable John L. Martin
Speaker of the House
State House Station #2
Augusta, ME 04333-0002

The Honorable Charles P. Pray
President of the Senate
State House Station #3
Augusta, ME 04333-0003

Dear Speaker Martin and President Pray:

We are pleased to submit to the 116th Legislature the fourth Annual Report on the Status of the Maine Workers' Compensation System pursuant to Public Law 1987, Chapter 599. This document summarizes the results of data collection by the three agencies involved and is intended to present a profile of the workers' compensation system including costs, administration, adequacy, and an evaluation of the entire system.

Like its predecessor, this report is organized into three sections. The report itself, however, is a cooperative effort.

Sincerely,

Sincerely,

Sincerely,

Brian K. Atchinson
Superintendent
Dept. of Professional &
Financial Regulation
Bur. of Insurance

James H. McGowan
Director
Dept. of Labor
Bur. of Labor Standards

Ralph L. Tucker
Chairman
Workers'
Compensation
Commission

**REPORT ON THE 1991 MARKET FOR
WORKERS' COMPENSATION INSURANCE**

**DEPARTMENT OF PROFESSIONAL AND
FINANCIAL REGULATION**

BUREAU OF INSURANCE

REPORT ON THE 1991 MARKET FOR WORKERS' COMPENSATION INSURANCE

There currently is a great deal of uncertainty surrounding workers' compensation insurance in Maine with issues such as carrier withdrawals, rate increases, and changes in Title 39, all occurring in 1991 and continuing into 1992.

By a Decision and Order issued September 30, 1991, which considered changes from PL 1991 Chapter 615, rates for the voluntary market and safety pool decreased by an average of 5.8%. The rate changes ranged from a decrease of 18% to an increase of 11% retroactive to July 1, 1991. The rating differential for the Accident Prevention Account of the pool was increased to 20%. The year 1991 saw a continuation of the fresh start assessment of 3% to pay for policy year 1988 deficits in the residual market. The pending rate filing contains a request for assessments on policy years 1988, 1989, and 1990.

The National Council on Compensation Insurance (NCCI) notified the Bureau of Insurance that efforts to procure adequate capacity for the Maine assigned risk pool had failed, and early in 1992 there would be insufficient carriers left to write workers' compensation policies. In response to this notification, the Acting Superintendent held a hearing on March 23, 1992. As a result of this hearing a Decision and Order was issued initiating steps to solicit proposals and award servicing contracts within various areas of the State pursuant to Title 24-A M.R.S.A. Section 2366(4)(E) and Bureau of Insurance Rule 440, Subchapter II, Section 10(B)-(4)&(5). By separate action, additional capacity was offered by three insurers but would likely be used up by June.

The fear of assessments led several companies to file to terminate their authority to write workers' compensation insurance in Maine during 1991 and 1992. The Bureau promulgated emergency Rule 640 which was subsequently replaced by permanent Rule 650. Rule 650 did not change eligibility for assessments but changed the allocation procedure for assessments. This Rule is currently being challenged by some insurers.

On December 27, 1991, the NCCI filed for an average increase of 32.2% with a proposed effective date of May 1, 1992. The hearings began on March 5, 1992 and concluded on April 3, 1992. A decision was delayed until November by passage of PS Chapter 108. It is anticipated that The Blue Ribbon Commission will have completed its work by then, and the legislature will have acted so the changes in law could then be incorporated into the rates.

In the one year period ending December 31, 1991, 17 companies and 5 groups became self-insured. The self-insureds now represent approximately 40% of the premium volume in the State with an estimated imputed standard premium of \$156 million.

Based on financial statements filed with the Bureau of Insurance, calendar year 1991 premiums show the market coverage in the following percentages:

Hanover	33.7%
Commercial Union	17.5
Maine Bonding	15.1
Travelers*	13.8
Liberty*	3.5
Aetna	3.1
Hartford*	2.7
U.S.F. & G.*	2.4
Fidelity & Casualty	1.9
ALL OTHER	8.9

*Carriers who have terminated their authority to write workers' compensation insurance in Maine.

The total premium volume on a calendar year basis for 1991 was about \$274 million. Most of the insureds are obtaining coverage through the residual market. Premiums reported may include collections on retrospectively rated policies issued in prior years.

**OCCUPATIONAL INJURY AND ILLNESS
STATISTICAL PROGRAMS AND
WORKSITE SAFETY INITIATIVES**

**DEPARTMENT OF LABOR
BUREAU OF LABOR STANDARDS**

OCCUPATIONAL INJURY AND ILLNESS DATA SYSTEM

The Bureau of Labor Standards' affiliation with the workers' compensation system has been primarily in the area of statistics gathering and dissemination. The Bureau staff does, however, assist other agencies and outside parties with Workers' Compensation Commission data transfer and with data consultation. Additionally, a major role of the Bureau has been to try to reduce the number of injuries and illnesses in Maine through training and education and through on-site inspections and consultations. Workers' Compensation data provides important information as we attempt to target our efforts.

Statistics Gathering and Dissemination

The two data collection and dissemination programs dealing with occupational injuries and illnesses are the Supplementary Data System (SDS) and the Annual Survey of Occupational Injuries and Illnesses (OSHA 200S). The survey program is partially funded through the U.S. Department of Labor, Bureau of Labor Statistics. Two annual publications are produced: Characteristics of Work-Related Injuries and Illnesses in Maine and Occupational Injuries and Illnesses in Maine. Both are available, free of charge for single copies.

Supplementary Data System

The Supplementary Data System (SDS) relies upon First Reports of Injury submitted to the Workers' Compensation Commission for use in coding detailed characteristics information for each claim. Coding of data elements (e.g., occupation, nature of injury, severity, etc.) is done directly onto the Workers' Compensation database via on-line capabilities. Each month a tape of claims information is created by the staff of the Workers' Compensation Commission. Employees of the Bureau's Research and Statistics Division write programs which use the claims tape to generate information to meet specific requests (e.g., the number of claims by occupation, industry, or company; the number of injuries and illnesses by severity, etc.). The data is public information and requests are filled as time permits. Our ability to handle requests for information is limited due to the loss of the statistical programming position as a result of the state's budget problems.

Each year the Research and Statistics Division publishes the Characteristics of Work-Related Injuries and Illnesses in Maine. Valuable information on detailed case characteristics of injured worker, of the firm, of the incident, and of fatalities occurring during the previous calendar year are contained in this publication.

Throughout the 1980's the number of claims processed by the Research and Statistics Division steadily increased, peaking in 1989 with 80,349. In 1990, the number of reported claims dropped to 75,155. In October 1991, Workers' Compensation Laws changed, so only cases with lost time are now filed with the Commission. A comparison of lost-time only cases shows a decrease of over 19 percent, from 26,799 to 21,583 reported cases from 1990 to 1991.

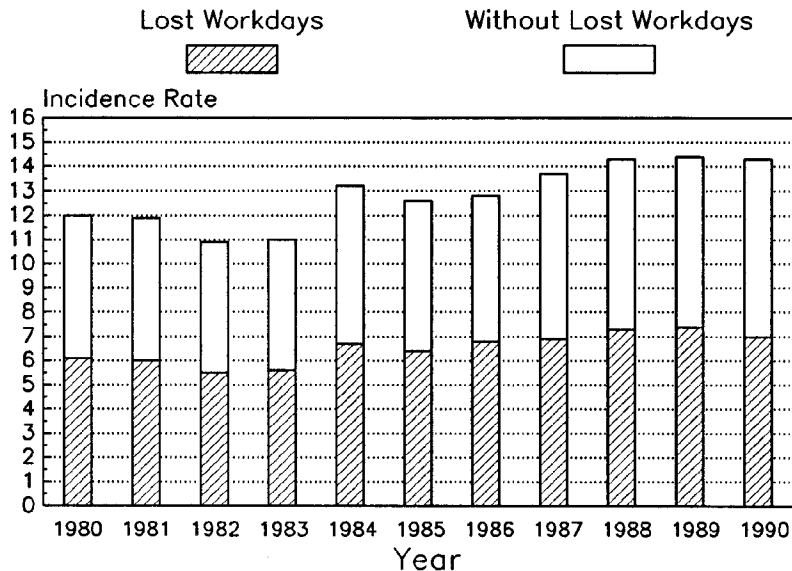
The Annual Survey of Occupational Injuries and Illnesses

The Annual Survey of Occupational Injuries and Illnesses is a survey designed to gather information on the injury and illness experience from a representative sample of Maine's private sector employers. A sample of employers from each industry and by size class is selected for participation in the survey. Recordable cases are based on OSHA recordkeeping standards which differ slightly from Workers' Compensation reporting requirements but are uniform throughout the nation.

The results of the survey are used by the Occupational Safety and Health Administration (OSHA) to identify and target industries for inspection through the use of incidence rates of injuries and illnesses. OSHA and other safety and health specialists, researchers, and government organizations also use the survey data in voluntary efforts to improve worker safety and health. The data also supply policy-makers, as well as the general public, with information on workplace developments in the safety and health field. Statistics generated from the survey are presented, annually, in a publication entitled Occupational Injuries and Illnesses in Maine.

The following chart shows the total case incidence rates by case type in Maine since 1980. Data for 1991 will be available in the fall of 1992. Recordable occupational injuries and illnesses occurred at a rate of 14.3 cases for every 100 full-time workers in Maine in 1990. This represents a decrease of 1.4 percent from 1989 when a rate of 14.5 was recorded. The all-industry total case incidence rate represents the experience of 435,273 workers in Maine's private sector. Lost workday cases (those involving days away from work or days restricted work activity or both) occurred at the rate of 7.0 cases per 100 workers, a decrease of 5.4 percent from 1990. The incident rate for injuries and illnesses without lost workdays was 7.3, an increase of 4.3 percent over 1989.

Total Case Incidence Rates by Case Type Maine, 1980-1990



Occupational Health & Safety Training and Consultation Programs

The Safety Division of the Bureau of Labor Standards offers safety consultation and training programs to employers throughout the state. These services are free of charge. Specifically, safety and health inspectors will, upon request, conduct on-site inspections and provide a written report covering the problems discovered and suggest ways to correct them, conduct a pre-construction review of plans or specifications for potential safety and health problems, and offer assistance in correcting violations uncovered during an OSHA inspection. Additionally, many training classes are offered throughout the year on various safety and health topics. Nearly 15,000 workers were trained in fiscal year ending June 30, 1991. The Bureau of Labor Standards operates its consultation and training programs in a non-enforcement manner in the public and private sectors in an attempt to foster safety awareness and voluntary compliance to safety and health standards.

Occupational Safety and Health Compact

Created in 1990, the Occupational Safety and Health Compact is a joint undertaking of the Bureau of Labor Standards and the Commission on Safety and Health in the Maine Workplace, as part of the Governor's "Safety Begins with ME Initiative". Through intensive ongoing training and consultation with a management focus, the Compact prepares employers to develop and implement effective safety and health programs.

The first Compact training program was held March 25-29, 1991, in Brunswick. Fourteen companies, representing 820 employees in manufacturing, construction, and health care participated. The second training program was held for construction employers in Augusta on October 21-25, 1991, with fifteen participating companies representing 594 employees. The third program, also for construction, was held January 13-17, 1992, in Caribou, with seventeen companies representing 135 employees in attendance.

Four Compact follow-up programs have been held, two on developing action plans, one on establishing training programs, and one on hazard communication. In addition, Compact staff have assisted members of the first and second groups in organizing a Compact support group which holds a dinner meeting every other month for the purpose of sharing safety and health experiences and exploring related topics.

The success of the Compact has been measured through before and after statistics, follow-up questionnaires, site visits, and anecdotal reports. Members have reported significant improvements in safety and health, including reductions in incidence and severity, lower workers' compensation premiums, improved safety behavior and attitudes, and fewer OSHA citations, as a result of Compact participation. Members who complete the obligations of Compact membership will receive a certificate from the Commission, as well as assistance in applying for OSHA exemption programs.

A one day program on reducing back injury among nursing personnel was held June 16, 1992. Advisory groups have been formed to assist in planning Compact programs for long term care facilities and for manufacturing.

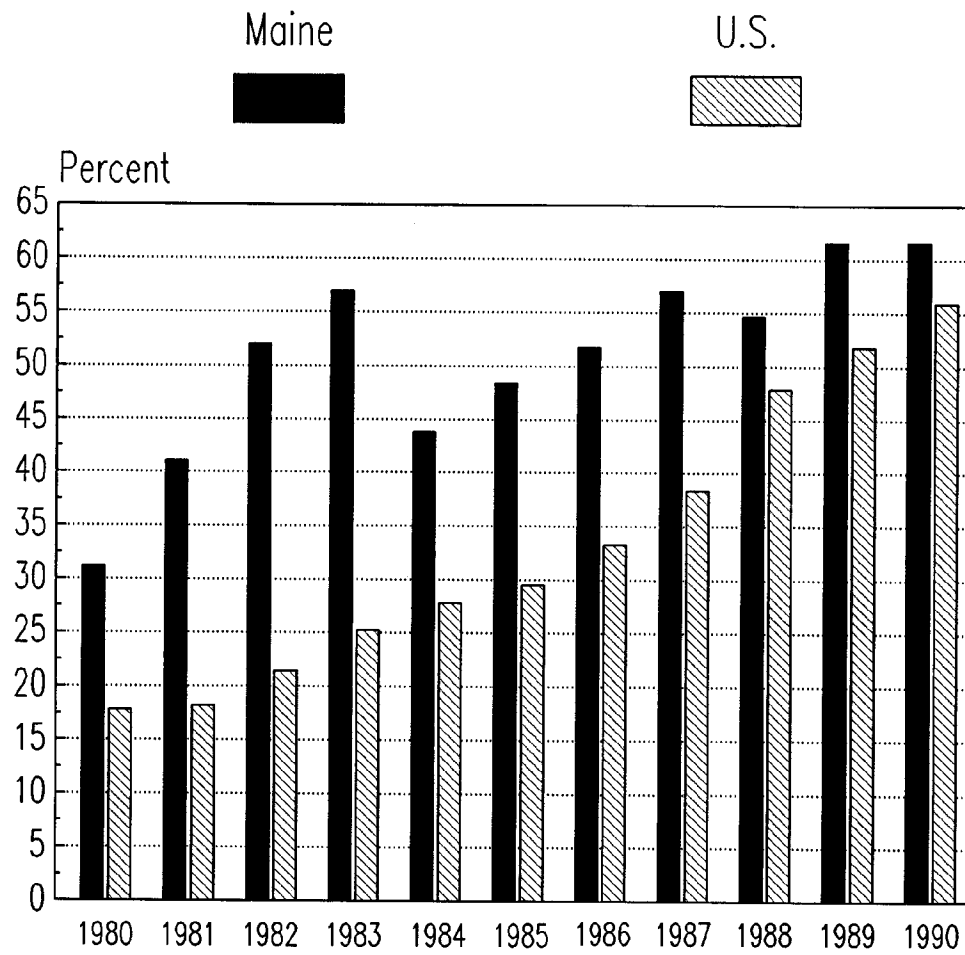
Cumulative Trauma Disorder Project

On March 5, 1991, a one-half day follow-up program was held for participants in the CTD training program. By April 1991, twelve of the seventeen participating companies reported initiating some action to address their CTD problems. In addition, one company joined the Compact, attended the first Compact training program, and is an active member of the Compact support group.

Another company is on the Compact advisory group for health care facilities. At least one company was forced to drop its CTD program because of budgetary constraints. A questionnaire was distributed to the participants in April 1992, in order to further assess the success of the program.

The table on the following page illustrates the rapid increase in cumulative trauma disorder since 1980, and the need to reach out and train employees on proper body positions. On-site visits by the Bureau's staff ergonomists may be arranged upon the request of an employer.

Percent of All Illness Cases Involving Repeated Trauma



Source:
Annual Occupational Injuries and Illnesses Survey

Produced By:
Maine Bureau of Labor Standards, June 1992

OVERVIEW OF THE WORKERS' COMPENSATION COMMISSION

PROFILE OF THE MAINE WORKERS' COMPENSATION SYSTEM

OVERVIEW OF THE WORKERS' COMPENSATION COMMISSION PROFILE OF THE MAINE WORKERS' COMPENSATION SYSTEM

Introduction

This section describes the Workers' Compensation Commission's data collection activities and operations. It also evaluates certain aspects of the overall workers' compensation system.

Overview of the Maine Workers' Compensation Commission

A dozen or so cases per year are reviewed by the Supreme Judicial Court to address special issues of statutory interpretation. With this exception, the Commission, not the court system, is responsible for resolving disputes. The agency holds informal conferences to take care of problems without litigation, conducts a formal hearing system similar to court, and conducts an appellate process. Like Judges, Workers' Compensation Commissioners are appointed by the Governor and confirmed by the Joint Standing Committee on Judiciary.

Formal dispute resolution was the agency's primary mission before 1980. In 1981, an Appellate Division was created within the Commission. In 1983, an informal conference process was created to attempt to resolve problems without litigation. In 1985, the Office of Employment Rehabilitation and the Abuse Investigation Unit were added. Adjudication remains the most important responsibility in terms of the agency's effect on injured workers, employers, and insurance carriers. However, the Commission also oversees rehabilitation activity, investigates abuse, and monitors individual cases.

In 1983, the staff numbered 36 and worked in a central Augusta office. Commissioners traveled throughout the state, moving from one hearing location to the next. Today, the Commission has a central office in Augusta and five regional offices. Before the hiring freeze in 1989, the staff numbered nearly 120. Hearings, informal conferences, vocational rehabilitation conferences and other activities occur mainly in regional offices. The central Augusta office is administrative. Some hearings continue to be held at distant locations for the convenience of the affected workers.

Statutory Mandate

Title 39 M.R.S.A., Section 92 details many of the responsibilities of the Commission, including adjudication, the Office of Employee Assistants, Office of Employment Rehabilitation and the Abuse Investigation Unit.

Section 93, Part 6 mandates that the Commission take an active role in the administration of the Act and that the Commission monitor individual cases to ensure that workers receive the full amount of compensation to which they are entitled.

Sections 94-A and 106-A mandate that the Commission provide an explanation of the compensation system to the worker after a First Report is filed.

Section 94-B mandates that the Commission assist workers in preparing for informal conferences.

Sections 96-105 define many aspects of the formal litigation procedure.

Sections 81-90 define many aspects of the rehabilitation oversight process.

Description of Data Collection Activities and Operations

Initial Injury Reports

For injuries occurring after October 17, 1991, a first report is filed only for cases involving missed work. This contains the name and address of the affected worker, the employer, the insurance carrier, a description of the incident, date of incapacity and other information necessary for processing a claim. For injuries prior to October 17, 1991, first reports were filed with the Commission if an accident required medical treatment by a physician or one or more days of work was missed.

Information from the First Report is electronically stored and used by both the Workers' Compensation Commission and the Bureau of Labor Standards, Research and Statistics Division. The Workers' Compensation Commission uses the information to identify insurance coverage and to send a brief, informational letter to the injured worker verifying the first report. The Research and Statistics Division codes accident information from the First Reports and is a primary source for accident and safety analysis.

Non-Disputed Payments Data

Initial payment information is reported to the Commission on a Memorandum of Payment form. To verify correct payment, this preliminary information is later checked against another form which establishes the workers' average weekly wage. This information is electronically recorded.

A discontinuance is filed by the carrier/employer when the affected employee returns to work. This reports total cost and the date the period of incapacity ended. On long-term cases, interim reports are supposed to be made at six-month intervals. This data is also electronically stored.

Filing compliance problems and related concerns about the accuracy of reported financial data have prevented the Commission from becoming a reliable source of cost information. These payment documents do not support Commission operations or the operations of the carrier or employer. The Commission, therefore, has no direct method to identify missing data or inaccurate information. Resource constraints have prevented the Commission from developing audit procedures.

Informal Conferences Data

If the carrier or employer does not believe that the injury or illness is work-related or that they shouldn't be liable for some other reason, then the claim may be challenged. The first step is to file a Notice of Controversy (NOC) with the Commission. This form, which lists the reason for the dispute, triggers the informal conference process. Occasionally, petitions are also routed through an informal conference. Data from the NOC is electronically stored and Commission staff use it to schedule informal conferences by computer and initiate informal resolution of the problem. The outcome of each NOC, including the date of informal conference, if any, is electronically stored. Computer programs use this data to track cases through the informal system and prevent cases from becoming lost.

Formal Hearing Data

If the controversy is not worked out at the informal conference, one of the parties may file a petition to initiate formal litigation. The case is then tried in front of a Commissioner, who is the fact-finder for workers' compensation cases.

The Commission maintains petition filings and dispositions data electronically. This information is used to track formal petitions that needed to be scheduled, tabulate the number of pending petitions per Commissioner, and to focus attention on petitions undecided two years after the filing date.

This data is also used to generate a monthly docket and disposition summary. These are compiled every three months into a quarterly report to the Governor, the Speaker of the House, and the President of the Senate. This report, which is statutorily mandated, summarizes each commissioner's case load and progress.

Appellate Data

An appeal may be filed if a litigant believes that the hearing level Commissioner has made an error of legal analysis. The hearing level Commissioner's legal reasoning is evaluated by a panel of 2-3 Commissioners. These panel decisions may be appealed to the Supreme Judicial Court. However, the court has discretion on whether to accept the case for review. Data regarding the number of appeals, dispositions, and types of disposition are maintained manually.

Rehabilitation Data

The Commission's Office of Employment Rehabilitation regulates the development and implementation of rehabilitation plans for injured workers with long term disabilities. During 1987, 1988, and part of 1989, the Commission maintained its vocational rehabilitation data on a personal computer. In mid-1989, this was transferred to a small mainframe computer. Most data is now used to support operations. An electronic record now exists to record filings with the Office of Employment Rehabilitation and to record the costs and outcomes of plans.

Summary of Operations and Data

Processing First Reports of Injury

Prior to the law changes of 1991, most First Reports were for medical only injuries. As shown in the following table, the total number of First Reports has increased dramatically during the last few years. We believe this may be attributable to medical only First Reports being reported more consistently after passage of reform legislation in 1983. The number of disabling injuries and illnesses, where one or more days of work is lost has grown more slowly and more in line with employment.

<u>Year</u>	<u>Total First Reports</u>	<u>Disabling Cases*</u>	<u>Average Employment</u>
1982	47,188	18,212	415,500
1983	49,214	19,140	425,000
1984	63,838	23,620**	445,700
1985	64,033	23,296	459,100
1986	67,872	24,336	477,400
1987	75,326	25,528	502,600
1988	78,958	26,431	527,500
1989	80,349	26,006	546,120
1990	75,155	26,693	539,250
1991	-----	21,583***	516,300***

* A disabling case is defined as an injury or illness resulting in one or more days away from work.

** Estimate

*** Preliminary

Dispute Resolution - Informal Conferences

Utilization of the informal conference system has increased substantially.

Informal Conference Filings By Year of Filing

<u>Year Filed</u>	<u>Filings for Informal Conference</u>	<u>Informal Conferences Held (subset of filings)</u>
1986	11,553	4,973
1987	15,287	6,738
1988	16,782	6,572
1989	19,941	7,211
1990	21,858	7,951
1991	22,766*	7,560*

* Preliminary

Disputes in a current year are a cumulative product of injuries occurring in that year and those from prior years that are now in controversy. The number of years covered by the early pay system has increased; therefore, the number of cases eligible for informal conference is larger.

Distribution of Informal Conference Filings
Filed in 1991 by the Year of Injury

<u>Year of Injury</u>	<u>Filings for Informal Conference</u>	<u>Percent</u>
1984	502	2.2%
1985	638	2.8%
1986	751	3.3%
1987	1,118	4.9%
1988	1,572	6.9%
1989	2,640	11.6%
1990	5,088	22.3%
1991	<u>10,457</u>	<u>45.9%</u>
	22,766	100.0%

Growth in the number of disputes going through the system would be expected for the first five years even if employment levels remained constant. However, this was accelerated because employment levels began to rise at about the time the early pay system was implemented.

Many conferences are canceled because the underlying problem is simple enough to be taken care of by the parties prior to the conference date. Alternatively, the conference is waived in some cases because the underlying problem is too complex to resolve without litigation. Conferences are held for about 35 percent of filings.

Some NOC's are filed even if there is no problem and there is no reason for a conference. These are often called "protective" NOC's. Failure to file a Notice of Controversy within 60 days of a claim may lead to a default, i.e. the carrier or employer being legally presumed to have accepted compensability. Hence, a NOC may be filed simply to avert this possibility.

The statutory requirement for scheduling an informal conference is within 21 days from the date the Notice of Controversy is filed. The Commission has never been able to conform to this deadline. From 1986 through 1991 an average of 50 days passed between the filing of a Notice of Controversy and the date of an informal conference.

We have attempted to evaluate the effectiveness of the informal conference system in resolving disputed claims. We found no statistical evidence to suggest that informal conferences reduce litigation. However, we did find evidence that informal conferences help resolve minor claim problems.

Dispute Resolution - Formal Hearings

The Commission implemented a computerized system for scheduling and docket management in late 1991. We computerized formal hearing support to increase speed and efficiency in scheduling hearings. However, it has the very desirable side effect of improving the accuracy of our records.

The Commission received many petitions in 1990 that were not entered until 1991. The Commission also issued many decisions and dismissals that were not entered until 1991. These were not counted in last year's report, so it was necessary to revise 1990 figures in our tables. We anticipate that our new computerized procedures will solve the data entry lag problem that our older system of reporting entailed.

The new data also gives us a better opportunity to analyze the important subject of litigation in the workers' compensation system. This year we are beginning to analyze litigation in terms of the number of people affected.

Previously, we were forced to use petitions as our unit of analysis. We knew that more than one petition may be filed per case or per injured worker. However, some members of the public naturally assume that each petition is one case. This assumption creates an impression of more litigation than is actually occurring.

Volume of Filings

The number of petitions filed annually grew markedly during the 1980's. Litigation relates to injuries occurring in several previous years. The cumulative effect of increased employment during prior years is that there is more litigation today than in the early 1980s.

Volume of Petitions

<u>Year</u>	<u>Petitions Filed</u>	<u># Cases (Injured Workers)</u>
1981	5,796	.
1982	5,940	.
1983	7,360	.
1984	5,968	.
1985	5,919	.
1986	7,471	.
1987	8,140	.
1988	11,036	.
1989	12,899	.
1990	14,483	8,530
1991	14,088*	8,589*

* Preliminary

Volume of Dispositions

<u>Year</u>	<u>Decisions</u>	<u>Dismissals</u>	<u>Lump Sums</u>	<u>Total Dispositions</u>
1987	4,320	*	*	8,349
1988	5,988	*	*	11,300
1989	5,884	*	*	12,008
1990	5,771	4,703	2,049	12,523
1991	7,072**	4,783**	2,949**	14,766**

* Not Available

** Preliminary

Litigated cases are less than total petitions, as more than one petition may be filed per dispute. Some disputes involve multiple dates of injury. For example, the 14,483 petitions filed in 1990 reflected about 8,500 litigated cases.

We anticipate a substantial slowdown in litigation during 1992 and 1993, as a result of the current recession. Maine, however, will not again see litigation levels of the early 1980's, where approximately 6,000 petitions were filed annually, unless an economic catastrophe occurs and employment levels drop by roughly 100,000 jobs.

Volume of Pending Litigation

In mid-1986, the Commission began tracking the number of pending petitions. It was then about 7,500 statewide. That level of backlog held through 1988 despite a significant increase in petition filings. The backlog increased to 8,194 in 1989. In 1990 and 1991, the number of pending, undecided petitions increased to nearly 10,000. On the other hand, petitions undecided for more than two years were reduced to the lowest levels since records were first kept in mid-1986.

<u>Year</u>	<u>Total Petitions Pending as of December 31st</u>	<u>Pending 2 or More Years</u>
1986	7,499	492
1987	7,461	N/A
1988	7,303	465
1989	8,194	287
1990	10,026	221
1991	10,377	174

Speed of Adjudication

The time from the filing of a petition to a full decision continues to average about a year. The median is slightly less, about 9 months. This figure is in line with other states and is faster than the courts for cases of comparable value and complexity. States with more rapid hearing time lines for workers' compensation often involve situations where the agency's administrative ruling may be followed by a full trial in district court. Therefore, it is in court, not the state workers' compensation agency, where litigation occurs.

Appellate Cases

The volume of Appellate cases has also been increasing. A manual system is in place to monitor delay and the current backlog of pending cases is less than the number of annual filings.

Appellate Filings and Dispositions

	Appeals Filed	Decisions & Dismissals	Decisions	Dismissals
1984	284	249	162	87
1985	399	294	200	94
1986	322	318	211	107
1987	319	239	153	86
1988	367	369	254	115
1989	442	364	234	130
1990	480	369	242	127
1991	644	446	214	232

Appellate Backlog as of May 15, 1992 is 600

Commissioner panels affirm the legal analysis of the hearing Commissioner in roughly 70-80% of cases. The Supreme Court affirms Commissioner panels in about the same percentage.

**Percent Commissioner Affirmed
By Appellate Panel**

Year of Appellate Decision	Decisions	Percent Affirmed
1984	162	73%
1985	200	65%
1986	211	70%
1987	153	79%
1988	254	78%
1989	234	75%
1990	242	77%
1991	214	79%

**Percent Appellate Panel
Affirmed By Supreme Court**

Year of Appeal Filed	Law Court Decisions*	Percent Affirmed
1984	8	62%
1985	8	62%
1986	4	100%
1987	8	75%
1988	14	57%
1989	8	75%
1990	16	44%
1991	6**	83%

* Decisions are a subset of appeals accepted by the Law Court. A decision on a 1991 appeal may have been issued in 1992.

** To Date

System Perspective of Workers' Compensation Commission

Litigiousness

The question of how much litigation is appropriate is obviously subject to differing opinions. Some believe that any litigation at all indicates a system problem. Others believe that the majority of injured workers need attorneys in order to obtain their statutory benefits. Policy discussions have been hindered because data beyond a simple count of filings and dispositions has not been available.

The volume of litigation in a calendar year represents work load for the Workers' Compensation Commission. However, many policy questions relate to the injury year. We need to understand what percent of injuries for a given year are litigated and at what point or points in the claim cycle. The distribution of petitions filed in 1990 and 1991 displays a substantial lag effect. Most petitions filed in a calendar year relate mainly to injuries occurring in several prior years.

Petitions Filed in 1990			Petitions Filed in 1991		
<u>Year of Injury</u>	<u># Petitions</u>	<u>Percent</u>	<u>Year of Injury</u>	<u># Petitions</u>	<u>Percent</u>
Pre-1980	281	2%	Pre-1981	318	2%
1980	145	1%	1981	186	1%
1981	199	1%	1982	254	2%
1982	265	2%	1983	279	2%
1983	391	3%	1984	446	3%
1984	600	4%	1985	627	4%
1985	764	5%	1986	710	5%
1986	1,113	8%	1987	1,148	8%
1987	1,700	12%	1988	1,658	12%
1988	2,589	18%	1989	2,766	20%
1989	4,150	29%	1990	4,022	29%
1990	2,286	16%	1991	1,674	12%
<hr/>			<hr/>		
	14,483	100%		14,088	100%

We anticipate that the volume of petitions filed in 1992 will decline noticeably because many petitions filed in 1992 will come from injury years 1990 and 1991, when employment levels were falling.

This lag effect makes it difficult to determine whether a higher or lower percentage of injuries occurring in just one year are entering litigation. We are attempting to develop litigation rates based on the underlying year of injury.

We have completed a second year of analysis of 1990 injuries and have a more concrete idea of the scope of litigation than ever before.

Injury Year 1990 - Litigation Summary

	Injured Workers Entering Litigation in 1990	Injured Workers Entering Litigation in 1991	Total
1990 Injuries	1,461	2,559	4,020
Percent of 17,955 Wage Loss Cases	8%	14%	22%

Left unanswered is how much additional litigation will ensue. However, we believe that the vast majority of potentially litigious 1990 claims have entered litigation. More time is also needed to evaluate how much litigation is centered in a core group of extremely contentious cases with multiple episodes of litigation during the claim cycle.

Benefit Structure

An influential study entitled The Report of the National Commission on State Workers' Compensation Laws issued in 1973 contained certain recommendations which have become commonly accepted benchmarks. Since adequacy of benefits is ultimately a political determination, these recommendations were expressed as a minimum standard rather than as an ideal benefit structure.

Benefits for total disability were recommended to be at least two-thirds of the affected workers' average weekly wage. Total disability benefits were recommended to be paid for the duration of the disability or for life, if the disability was permanent. The waiting period recommended was to be no more than three days. The maximum weekly benefit to be at least 200 percent of average weekly wage. An additional suggestion was that compensation for partial disability be a combination of separate benefits for impairment and for disability.

Maine's statute on total incapacity follows these recommendations except in the area of the maximum weekly benefit. The current maximum weekly benefit is 137 percent of state average weekly wage. Maine's statute on partial benefits no longer follow the suggestion of the National Commission. The 1991 legislative changes offset disability and permanent impairment benefits.

Timeliness of Benefits

The Workers' Compensation Commission has developed a computer program which calculates the number of days from the date of incapacity to the date of first payment for wage loss cases. For purposes of comparison, the Commission performed a similar analysis on a sample of 1983 cases. The results for 1983, 1986, 1987, 1989, 1990 and 1991 are displayed on the following table.

Year of First Payment	Percent Paid 1-14 Days	Percent Paid 15-21 Days	Percent Paid 22-28 Days	Percent Paid 28+ Days
1983	16	10	6	68
1986	45	17	10	28
1987	41	20	12	27
1988	35	19	12	34
1989	36	21	12	31
1990	40	20	11	29
1991	39	15	11	35

Improvement in the timeliness of first benefit payments in recent years as compared to 1983 is largely attributable to the early pay legislation that became effective in 1984. However, current timeliness does not conform to the statutory mandate that payment for wage loss be made or the case controverted within 14 days.

In 1988, the Commission was contemplating a computer supported process for monitoring payment timeliness on individual cases and working with insurers and adjustment companies to improve timeliness. This project has been placed on hold due to resource constraints.

Additionally, complaints have been raised regarding delay in making payments following a Commission decision. In the past, this has been anecdotal and no data was available about the nature and extent of the problem. During the 1987 emergency session, the penalties provision of the statute was strengthened. During 1990, the Commission received 417 complaints and collected fines totaling \$114,882. During 1991, the Commission received 318 complaints and collected fines totaling \$115,855.

System Costs

During the 1987 emergency session, the cost of partial disability cases was a central issue. It was argued that a high percentage of system costs, under the then existing benefit structure, was related to permanent partial cases where the affected worker lost some, but not all, of their earning capacity as a result of work-related injury or illness.

The effect of the cut in benefits during late 1987 has not yet been fully evaluated, although anecdotal evidence is growing that the cost of partial cases has been greatly reduced. A study of lump sum activity also suggests that costs of partial cases have been reduced relative to the past.

Average Lump Sum Amounts in 4th Year

Injury Year	Average Value of Lump Sum Settlements Made in 4th Year
1986	\$51,070 (1989)
1988	\$34,294 (1991)

We believe the reduction in the value of lump sum settlements at a comparable point in the claim cycle is attributable to the institution of a duration limit without inflation adjustments.

By way of interstate cost comparison, the Commission receives an annual publication from the National Foundation for Unemployment and Workers' Compensation Insurance summarizing fiscal data for state workers' compensation systems. Aggregation of data is slow and 1989 is the most recent year available.

Benefit Cost Rate*
Five Highest States, 1989

<u>State</u>	<u>1989</u>
1. Montana	3.75%
2. Maine	3.61%
3. W. Virginia	3.55%
4. Texas	3.01%
5. New Mexico	2.84%

U.S. Average 1.46%

* Total indemnity and medical payments as a percentage of estimated total wages of workers' covered by state workers' compensation programs

- Source: The Bulletin, June 8, 1992, National Foundation for Unemployment Compensation and Workers' Compensation

States with high benefit cost rates also tend to rank high in OSHA incidence rates of occupational injuries and illnesses. In 1989, 3 of the 5 highest cost states were also in the top 5 for the OSHA lost workday case rate. Maine ranks second benefit cost rate and first on the OSHA lost workday case rate.

OSHA Lost Workday Incidence Rate*
Five Highest States, 1989

<u>State</u>	<u>1989</u>
1. Maine	177.6
2. Rhode Island	148.8
3. W. Virginia	113.7
4. Nevada	110.0
5. New Mexico	109.4

U.S. Average 69.9

* Lost workdays per 100 employees per year (working 40 hours weekly, 50 weeks per year)

Source: Occupational Injuries and Illnesses in Maine 1990, Bureau of Labor Standards

Evaluation Perspective of the Workers' Compensation Commission

Many states have been confronted by workers' compensation problems in the past few years. This trend has had an especially severe impact in Maine. In part, we attribute this to a lack of political consensus that has extended for approximately a decade. In part, we attribute this to Maine's industrial mix.

It is unlikely that Maine will ever be an inexpensive state. Our economy includes a preponderance of hazardous employment. Our incidence rates, as measured by the OSHA survey are the highest in the nation, more than twice the national average for total lost workdays.

Workers' compensation expense per employee is also high. Again, more than twice the national average. These costs make workers' compensation a chronic legislative issue.

All parties feel the system is difficult to understand. Employers complain that insurance premiums are excessive and unrelated to business safety records. Workers often feel they are unprotected from abuse by carriers and employers. Carriers and employers feel they are unable to have people removed from compensation benefits fast enough and that, in some cases, undeserving individuals receive benefits.

The performance of carriers and adjusting companies is both a source of concern and a cost driver. Employer complaints about the adequacy of claims investigation seem to be increasing. The informal conference process is often used as an investigative tool rather than as a process to resolve an actual dispute. Timely payment is not being made on a significant number of routine indemnity cases. In some cases, payments are not promptly made, even after a Commission decree.

The Commission sees only limited opportunities for correcting these problems through administrative action by public agencies. To a significant degree, the Commission believes they reflect an underlying instability in the benefit financing mechanism.

All sides appear to agree that small employers are poorly served by the current system. Beyond that, political consensus about either the basic problems or potential solutions is extremely limited. No group is satisfied, despite the numerous statutory changes.

Unfortunately, a direct relationship exists between a statute's clarity, and the level of agreement at the time of its development. When there is no meaningful consensus, the political battle will often be fought by introducing amendments that weaken the opposition's proposals by adding exceptions or qualifications. The eventual law is likely to be phrased in language that is complex and subject to many interpretations.

With four crisis-oriented legislative sessions in less than a decade, this phenomena has characterized many changes to the workers' compensation law. The underlying political grid-lock has been built into the law and created a challenging environment for all system participants.

Beyond the difficult questions raised by the unstable insurance market environment, the Commission sees some positive developments. We anticipate a recession related decrease in litigation. We also anticipate smaller backlogs and less delay in adjudication. This may contribute towards a less controversial workers' compensation environment.