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# Annual Report on the Status of the Maine Workers' Compensation System, 2001

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  
120<sup>th</sup> Legislature  
(First Regular Session)**

**February 2001**

Alessandro A. Iuppa  
Superintendent  
Bureau of Insurance  
Department of Professional  
and Financial Regulation

Michael Frett  
Director  
Bureau of Labor Standards  
Department of Labor

Paul R. Dionne  
Executive Director  
Workers' Compensation Board

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## **Mission Statement**

The Board's mission is to serve the employees and employers of the state fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation.

## 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 statute to submit an Annual Report to the Governor and the Legislative Committees on Labor and Banking & Insurance by February 15<sup>th</sup> of each year.

Following six consecutive years of rate decreases, the workers' compensation insurance market has now experienced two years of increased rates. Effective January 1, 2001, overall rates increased by 1.9 percent, with 1.7 percent of that set aside in an escrow account. The escrow account was established pending either a law court decision or a statute change to determine whether or not permanent partial impairment benefit duration extensions under Title 39-A, Section 213 are retroactive. The insurance rates do not include anticipated assessments for the Employment Rehab Fund to reimburse payment of additional benefits under Section 213. These assessments will be passed on to employers.

New insurers are still being authorized to write workers' compensation insurance and market concentration is decreasing as shown by the reduction in Maine Employers Mutual Insurance Company's (MEMIC) share of written premium for the fourth consecutive year. In 1999, there were 21 insurance companies writing premiums of \$1,000,000 or more.

The workers' compensation insurance market is still a competitive one, but is beginning to show signs of hardening. Both calendar and accident year loss ratios are increasing. In 1999, the accident year loss ratio was nearly

117, indicating that \$117 was paid or expected to be paid in losses and loss adjustment expenses for every \$100 earned in premium. This is unsustainable in the long run. Employers with no losses or few losses have coverage and cost options that are worth exploring.

Self-insurance continues to represent a significant part of the workers' compensation market. In 1999, there were 1,247 employers in self-insurance groups and 98 individually self-insured employers. Over 45 percent of the imputed or actual annual standard premium is from self-insurers.

Both the frequency and severity of losses have an impact on insurance premiums. The Bureau of Labor Standards reported increases in the number of lost time workers' compensation claims in both 1997 and 1998. Figures for 1999 are not yet available; however, information from the Annual Survey of Occupational Injuries and Illnesses indicate that cases with days away from work dropped in 1999. With the exception of one year since 1992, reported data from these two sources have either increased or decreased together. One area to watch is the increased number of OSHA recordable cases involving restricted work activity but no lost time. An estimated 11,526 of these cases occurred in 1999, a record high for restricted workday cases. Another area of concern is the increase in the number of fatal injuries as reported by the Census of Fatal Occupational Injuries program. For 1999, thirty-two fatal injuries were confirmed, the highest since this data collection effort began in 1992.

Information from these various sources is utilized by the Bureau of Labor Standards in targeting its inspection and consultation services as well as for conducting research studies. This past year the bureau initiated the Maine Occupational Research Agenda.

While the frequency of incapacity cases reported by insurers indicates that Maine is below the countrywide average (this in part reflects different benefit eligibility provisions such as waiting periods), Maine's OSHA recordable injury and illness incidence rate continues to be above the countrywide rate.

A couple of trends that have held over time and continue to need attention are the percentage of claims experienced by new hires and the number of OSHA recordable illnesses that are classified as repeat trauma cases. New hires, those with less than one year of experience on the job, account for 37% of disabling (lost-time) claims filed with the Workers' Compensation Board. Eighty two percent of OSHA recordable illnesses are categorized as repeat trauma cases. These include carpal tunnel syndrome, tendonitis, and bursitis.

Two relatively new programs at the Workers' Compensation Board are showing significant signs of success, the Monitoring, Audit and Enforcement (MAE) Program and the Worker Advocate Program, both started in June of 1998. The MAE Program consists of three major functions: monitoring the compliance of insurers; auditing the performance of insurers; and enforcing compliance of insurers. The Board issues Quarterly Compliance Reports monitoring the compliance of insurers; audits the performance of insurers on a

three-year cycle; and enforces compliance through the imposition of fines and penalties. The compliance of insurers has improved dramatically since the inception of the Program. The Board anticipates that the performance of insurers will continue to improve and it will review periodically its benchmark standards to assure continued improvement.

The Worker Advocate program was established to offer unrepresented employees assistance at mediation and formal hearing. The Workers' Compensation Act of 1992 eliminated the prevail standard which reduced attorney involvement in workers' compensation cases. The Worker Advocate Program assists employees unable to obtain representation. Worker advocates are located in five regional offices throughout the State. The Worker Advocates currently represent approximately 50% of injured workers at mediation and 30% at formal hearing.

Another area of success has been the Board's effort to streamline the dispute resolution process. The Board through the implementation of Standard Operating Procedures has significantly improved the speed and efficiency of the process while eliminating the huge backlogs at all three levels of the dispute resolution process (troubleshooting, mediation, and formal hearing). Troubleshooting and Mediation resolve about 75% of the initial disputes without litigation within two to three months. Formal Hearing has improved the adjudication period from 14.8 months in 1996 to 7.5 months in 2000. The Board's formal hearing process performs as efficiently and expeditiously as it has in the last few decades.

One additional project which should bring greater efficiency to the Board is full implementation of Electronic Data Interchange (EDI). The Board already utilizes EDI in some areas, such as the filing of First Reports, but this is done on a voluntary basis. The Board is presently considering whether it will mandate EDI transmission. A greater participation in EDI transmission will lead to greater efficiencies and more accurate data.

Though there have been improvements to the workers' compensation system since the 1992 reforms, there is a continued need to monitor

trends. Areas to watch that could lead to increased costs to Maine employers are:

- ❑ Increased losses due to increased claims frequency and severity
- ❑ Increased benefits and assessments due to Section 213 adjustments to maximum benefit duration for workers with permanent partial impairment claims
- ❑ Market hardening after a number of years of increased competition and reduced premium volume.

## Definitions of Workers' Compensation, OSHA Recordkeeping and Section 213 Data

Information from different data reporting systems is presented throughout this report. Understanding the definitions and differences is important. This section summarizes the information available from the workers' compensation First Report of Injury, from the OSHA Annual Survey and Section 213 data from the National Council on Compensation Insurance, Inc. (NCCI).

### Workers' Compensation

The number of First Reports for a given year is based upon information reported by employers and insurers to the Workers' Compensation Board. Reports are submitted to the board for cases resulting in:

1. Fatalities
2. One or more days lost from work
3. Medical bills that are controverted (being denied)

Other than those cases in item 3 above, claims with no lost time are not required to be reported to the Board.

Information on severity of claims is entered into the Workers' Compensation Board's computer system. Codes stored are:

- Fatality
- One or More Lost Days
- No Lost Time
- Unknown Severity

Since First Reports must be filed within seven days of notice or knowledge of an injury occurring, their eventual severity is not always known at that time. For example, a report may be filed indicating no initial lost time and the employee subsequently loses time from work. Once one or more lost workdays occurs, a First Report must be submitted to the board. Some employers (e.g., domestic employers, and small agriculture employers) are exempt from the Workers' Compensation system and are not required to report their injuries.

<u>Year</u>	<u>Number of Disabling Claims (i.e., One or More Days Lost)</u>
1998	12,600
1997	12,400
1996	12,100
1995	13,100
1994	15,200
1993	15,900

Statistics from Characteristics of Work-Related Injuries and Illnesses in Maine, 1998.



## OSHA Recordkeeping System

The OSHA Recordkeeping system is an entirely separate reporting system, not affiliated with Workers' Compensation. Information is collected from a sample of employers on an annual basis. Small employers (under 11 employees) and non-hazard employers (specific retail and service sectors) are not required to keep records unless they are asked to be in the annual survey.

Under OSHA recordkeeping, information for injuries and illnesses are recorded separately. By definition injuries are from one-time events and illnesses occur over a period of time. The following cases should be recorded:

- All illnesses (e.g., dermatitis, carpal tunnel syndrome)
- All fatalities
- Injuries resulting in one or more days away from work
- Injuries resulting in restricted workdays
  - Worker is transferred to another job temporarily
  - Worker can only work part-time at his/her regular job
  - Worker is full time but with light duty (can't perform all normal job duties)
- Injuries without lost or restricted time but involving specific treatments, not considered by OSHA to be first aid (cuts with stitches).

<u>Year</u>	<u>Cases with Days Away from Work</u>
1998	9,224
1997	8,350
1996	8,962
1995	10,165
1994	11,728
1993	12,276

Statistics from Occupational Injuries and Illnesses in Maine, 1998:

### NCCI Section 213 Data

Data used to determine whether the duration of workers' compensation benefits will be extended for persons with permanent partial impairment claims comes from the National Council on Compensation Insurance (NCCI). The site in the statutes requiring evaluation of data to make this determination is found in Title 39-A, Section 213(4). Benefits must be extended 52 weeks if the frequency of cases involving payment of benefits under sections 212 (compensation for total incapacity) and 213 (compensation for partial incapacity) in Maine are less than or equal to the national average for such cases. Specifically, the information used is unit statistical plan aggregate data for Maine and on a countrywide basis. This aggregate information is also used by NCCI in the ratemaking process to allocate the amount of premium needed among the various classifications used on workers' compensation policies. It is also used in experience rating. NCCI data is obtained from insurance companies; it does not include claim information from self-insureds.

Categories of data collected under the unit statistical plan include:

1. Fatalities
2. Permanent Total Impairment
3. Permanent Partial Impairment
4. Temporary Total Impairment
5. Temporary Partial Impairment
6. Medical Only

Fatalities and medical only claims are not used in the determining the frequency of claims in the Section 213 evaluation. Each of the other categories (numbers 2-5 above) are used in the evaluation. The Unit Statistical Plan information is restricted to those claims where compensation is owed. The definition of a compensable claim (i.e., payments are due for lost wages) may differ from state to state. In Maine a claim is compensable if seven or more days are lost from work. In some states a claim is compensable if 3 or more days are lost from work. Consequently, a straight comparison of the frequency of compensable claims may not be equivalent.

<u>Policy Year</u>	<u>Maine Frequency</u>	<u>U.S. Frequency</u>
6/96-5/97	1,479	1,550
6/95-5/96	1,116	1,683
6/94-5/95	1,314	1,870
6/93-5/94	2,287	1,979

Statistics from the NCCI Annual Statistical Bulletin: Frequency per 100,000 workers.

**SECTION 1**

**BUREAU OF INSURANCE**

## Section 1. Bureau of Insurance

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## Introduction

This report looks at the status of competition in the workers' compensation market by examining different measures of market competition. Among these measures are the number of insurers providing coverage, market shares and changes in market shares, as well as ease of entry and exit by workers' compensation insurers into and out of the insurance market.

Comparing the variations in rates is another measure of the competitiveness of the industry. Each year, the National Council on Compensation Insurers, Inc. (NCCI) files, on behalf of insurers, advisory loss costs with the Bureau of Insurance. These advisory loss costs reflect what is called pure premium, or the amounts necessary to cover losses and the costs to adjust (settle) those losses. After approved by the bureau, the advisory loss costs become the base upon which rates are built.

Workers' compensation insurance in Maine operates in an open competitive rating system. Each insurer files factors, called loss cost multipliers, with the bureau; the advisory loss costs are multiplied by these factors to form the rates for individual companies. The multipliers account for such things as overhead expenses, taxes, contingencies, investment income and profit. Insurers may use different multipliers for companies judged to be at different risk levels. Other factors such as experience rating and premium discounts affect the final premium paid by an individual employer.

Prior to the year 2000, advisory loss costs declined for six consecutive years. On March 8, 2000, advisory loss costs increased by 10.3 percent. Reasons for the increase were projected loss experience, increased statutory benefits for permanent partial impairment claims, and a prior data reporting error. Effective January 1, 2001, overall advisory loss costs increased by 1.9 percent, with 1.7 percent of that set aside in an escrow account pending a decision on how to handle permanent partial impairment benefit duration extensions. The market is showing signs of changing.

In theory, the insurance industry would be considered competitive if a large number of firms sell the product and each individual firm's market share is small enough so that no firm is able to affect the price of the product. Additionally, there would be no barriers to new firms entering the market. Using these criteria, the market remains competitive; new insurers continue to enter the market and market concentration is decreasing.

## PART I. RECENT EXPERIENCE

### Loss Ratios and the State of Competition

Workers' compensation claims have a long payment period. Payments on some claims may occur over many years. Thus, figures for amounts actually paid out on claims are incomplete and future amounts to be paid on claims must be estimated. Insurance companies report information used to calculate financial ratios. This information may be 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, we have decided to report most information on an accident year basis. To better understand each basis of reporting information, here is a description of when each is used:

- Accident year experience measures the premiums and losses relating to accidents which occurred during a 12-month period. These statistics show the percentage of premium received 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. The trend line generated by the record of losses is an important tool for predicting future losses. Losses are organized according to the year in which the accident occurred.
- Calendar year loss ratios compare losses incurred in a given year to premium earned in that year. 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 reserve adjustments for past years. If claims are expected to cost more, reserves are adjusted upward; if they are expected to cost less, reserves are adjusted downward.
- Policy year experience measures the premiums and losses for each 12-month period that a policy is in force. Losses occurring during this 12-month period are assigned to the period regardless of when they are actually paid. 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.

## PART I. RECENT EXPERIENCE

### The Underwriting Cycle

Insurance tends to go through underwriting cycles--successive periods of increasing and diminishing competition. These cycles are important factors in the short-term performance of the insurance industry. Periods in which there are little competition and few willing insurers are considered to be "hard" markets. This happened in the late 1980s and early 1990s in Maine. Competitive or "soft" markets are identified by falling rates, increased availability, excess capacity, growing loss ratios, and diminished surplus. Maine's market over the past six to seven years could be characterized as soft.

Soft markets, with their increased competition for business, can eventually force loss ratios to critical levels, causing insurers to raise their rates and reduce their volume. This ultimately restores their profitability and their surplus. This situation, in time, spurs another round of price-cutting, perpetuating the cycle.

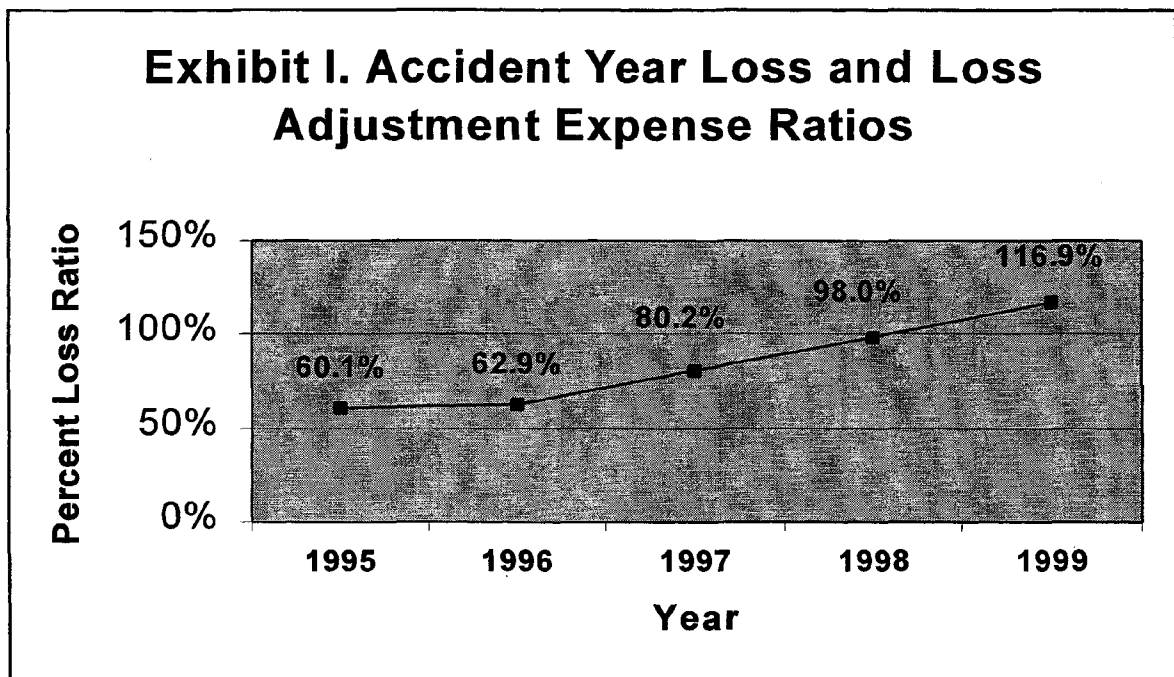
Current data indicate that we may be about to begin a hardening of the market. Insurers nationwide are reducing credits and increasing premiums for workers compensation and other lines of insurance. The first advisory loss cost increase since 1993 was approved effective March 8, 2000. A smaller increase was approved effective January 1, 2001. The accident year incurred loss ratio for 1999 is projected to be 116.9.

## PART I. 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, below, shows the loss ratios for the most recent five years available. In 1999, the loss ratio was 116.9, indicating that nearly \$117 are expected to be paid for losses and loss adjustment expenses for every \$100 earned in premium. A high accident year loss ratio is unsustainable, over the long run, for a solvent and profitable industry. This does not mean that all insurers are at risk because of it; individual companies may have lower, more reasonable loss ratios.

Loss ratios were in the 60 percent range following the 1992 law change. These ratios are relatively low and are due, most likely, to loss prevention and claims management practices of employers, combined with savings from the reduction of benefits that resulted from law changes. During 1994-1996, advisory loss costs filed by NCCI were lower, the market became more competitive, and rates charged by insurers decreased. For accident years 1997 through 1999, NCCI reported that indemnity losses and loss adjustment expenses increased as rates decreased. Thus, ratios rose above the levels of prior years. NCCI proposed its first increase in advisory loss costs in a 1999 filing. A revised filing was subsequently approved for use beginning March 8, 2000. Another increase in advisory loss costs was approved for use beginning January 1, 2001.



Source: National Council on Compensation Insurance



## **PART I. RECENT EXPERIENCE**

### **Calendar Year and Accident Year Loss Ratios**

Tracking loss and loss adjustment expense ratios is one way to evaluate the experience of insurers writing workers' compensation policies in Maine. They indicate what percent of premium is used to settle and pay for losses. The ratios do not include amounts paid by insurers for general expenses and taxes, nor do they reflect investment income.

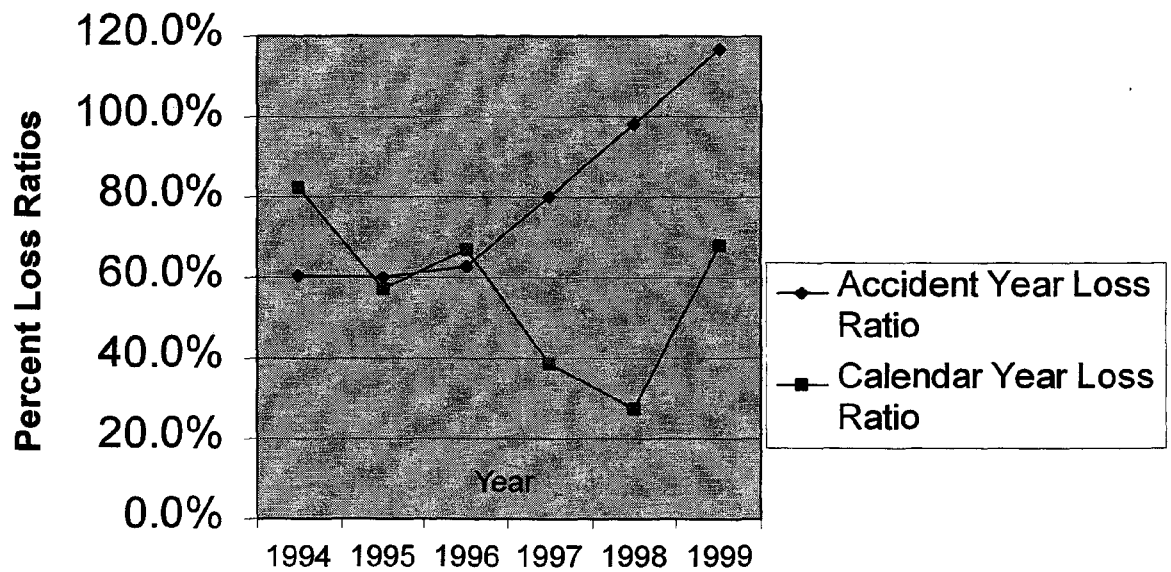
In addition to accident year loss ratios, Exhibit II looks at calendar year loss ratios. Calendar year loss ratios compare losses incurred in a year to the premiums earned in that year. Only a small portion of the losses are attributable to premiums earned that year. The calendar year loss ratios reflect payments and reserve adjustments on all claims during a particular year, including those from prior-injury years. With the exception of one year, the calendar year loss ratios dropped from 1994 to 1998, reflecting a downward adjustment in reserves for years prior to and immediately following the 1992 reforms. In 1999, the ratio rose to its highest level since 1994.

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.

Both loss ratios are now heading upward. From 1994 through 1999, advisory loss costs were lowered, the market became more competitive, and rates charged by insurers decreased. Premiums decreased and the accident year loss ratios increased. In 1997 and 1998, indemnity losses increased while rates continued to decrease. In 1999, the accident year loss ratio was nearly 117, indicating that \$117 was paid or was expected to be paid in losses and loss adjustment expenses for every \$100 earned in premium.

## PART I. RECENT EXPERIENCE

**Exhibit II. Accident and Calendar Year Loss Ratios**



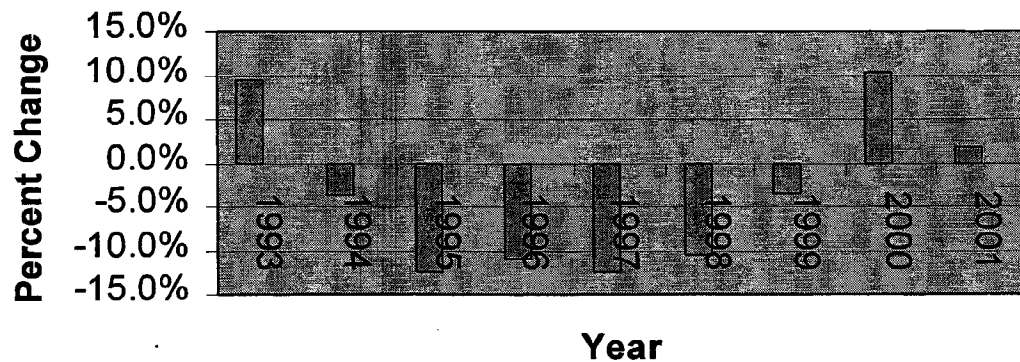
## PART II. LOSSES IN WORKERS' COMPENSATION

### 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. They do not account for what the insurer pays for general expenses, taxes, and contingencies, nor do they account for profits and investment income. In Maine's competitive insurance market, each insurance carrier determines what it needs to cover those items.

Exhibit III illustrates that from 1994 through 1999, we had six consecutive decreases in advisory loss costs. This translated into lower premiums for Maine employers. On March 8, 2000, an increase in the advisory loss costs took affect. This was due to loss experience, to an increase in permanent partial impairment benefits, and to an adjustment to correct a prior data-reporting problem. On January 1, 2001, another, smaller increase in advisory loss costs took effect. Changes in advisory loss costs tend to lag behind changes in actual experience and precede changes in rates.

**Exhibit III. Percent Change in  
Advisory Loss Costs, 1993-2001**

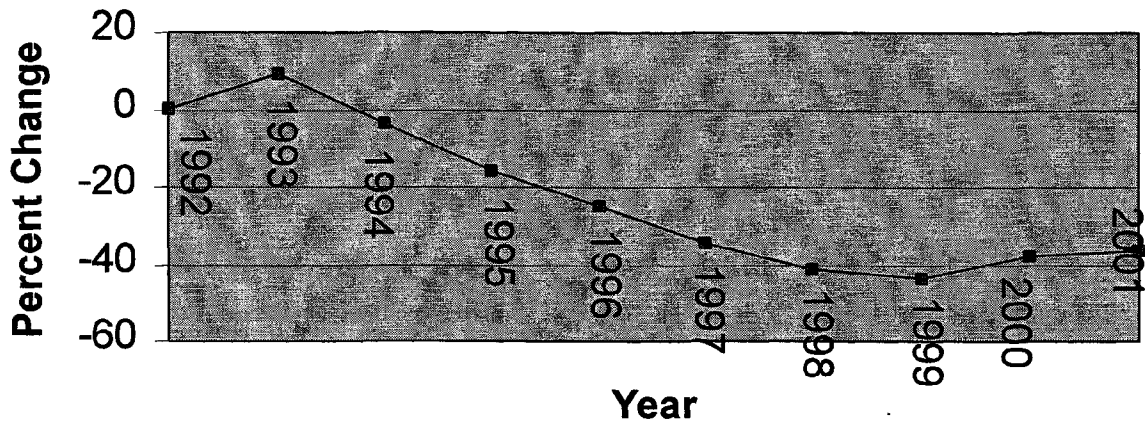


## PART II. LOSSES IN WORKERS' COMPENSATION

### Cumulative Changes in Advisory Loss Costs

Despite two straight increases, advisory loss costs are more than 36 percent lower than they were nine years ago. In 1999, advisory loss costs were over 43 percent lower, representing a significant savings to Maine's employers. On October 30, 2000, the National Council on Compensation Insurance filed for a 1.9 percent overall increase in advisory loss costs. This filing was approved. As a result, some classifications will experience higher increases and some will experience decreases in the advisory loss cost portion of the rates.

**Exhibit IV. Cumulative Change in Advisory Loss Costs Since 1992**



## PART III. MARKET STRUCTURE AND COMPETITION

### Market Concentration

A measure of competition is market concentration. Greater concentration means there are fewer insurers in the market and therefore less competition. Conversely, less concentration indicates that there are more insurers in the market and more competition.

In 1992, market concentration was great, with few insurers willing to voluntarily write workers' compensation insurance. The assigned risk or residual market pool, whose purpose was to insure employers who were unable to secure workers' compensation coverage in the voluntary market, provided a significant share of overall coverage.

Beginning January 1, 1993, Maine Employers Mutual Insurance Company (MEMIC) replaced the residual market as the insurer of last resort. MEMIC inherited a block of business previously written by insurers acting as servicing carriers for the pool. Because MEMIC also serves as the market of last resort, it maintains the highest market share of all insurance carriers operating in Maine.

There are 208 companies with authority to write workers' compensation coverage in Maine. Looking at the number is not the best indicator of market concentration as some insurers have no written premium. The following table shows the number of carriers, by level of written premium, for 1999.

<b>Table I: Number of Companies by Level of Written Premium--1999</b>	
<b>Amount of Written Premium</b>	<b>Number of Companies At That Level</b>
>\$10,000	107
>\$100,000	79
>\$1,000,000	21

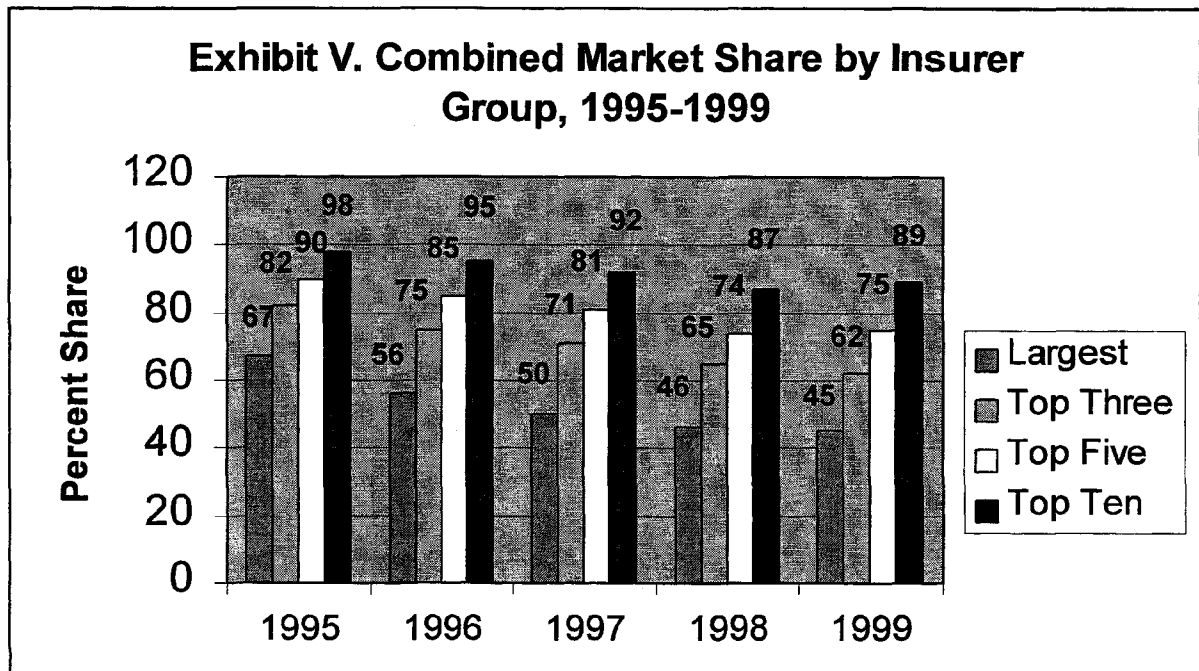
Source: Annual Reports Supplied by Insurance Carriers

Looking only at market concentration gives an incomplete picture of market competition. A discussion of self-insurance, found in the Alternatives to the Insurance Market section, gives a more balanced picture.

### PART III. MARKET STRUCTURE AND COMPETITION

#### Combined Market Share

Exhibit V illustrates the percent market share of the largest insurer—in terms of written premium—as well as the percent market share for the top three, top five and top ten groups. Maine Employers' Mutual Insurance Company (MEMIC) has the largest market share, though their share fell from 67 percent of the market in 1995 to 45 percent in 1999. Other insurers in the top ten groups have picked up most of this business.



The difference between the percent share for the top ten groups and the percent for the largest was 31 percent in 1995. The difference is now 44 percent—the largest difference in the five-year period. Market share of the top ten groups fell 11 percent from 1995 to 1998; it rose by two percentage points, to 89 percent, in 1999. Other groups write only 11 percent of the premium for Maine insurers. To put this in dollar terms, MEMIC wrote over 62 million dollars in premium. The top three groups, including MEMIC, wrote nearly 86 million in business. The top five groups had over 104 million in written premium. The top ten groups wrote 123.7 million in premium. The remaining groups had written premium of just over 15.7 million dollars. No other group had at least two percent market share.

## PART IV. DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

### Number of Carriers in the Maine Insurance Market, 1993-2000

The table below shows that since the 1992 reforms, insurers have come back into the workers' compensation market in Maine and continue to enter it in small numbers. The largest influx occurred in 1996 and 1997, when 75 insurers entered or re-entered the market. During that time, 12 insurers exited the market. Since then, 30 new insurers became authorized to write workers' compensation insurance and no insurers have left the market. This table illustrates there is no significant barrier to entry.

Table II: Entry and Exit of Workers' Compensation Carriers					
Year	Number of Carriers	Number Entering	Number Exiting	Net Change (Number)	Net Change (Percent)
1992	90	-	-	-	-
1993	96	8	2	6	6.7
1994	106	10	0	10	10.4
1995	115	11	2	9	8.5
1996	149	43	9	34	29.6
1997	178	32	3	29	19.5
1998	187	9	0	9	5.1
1999	197	10	0	10	5.3
2000	208	11	0	11	5.6

## PART IV. DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

The information in Table III shows market share by group. 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. MEMIC's share is expected to be high, since they service all employers who do not obtain coverage in the voluntary market. An increase in MEMIC's market share could indicate that some employers are unable to get insurance in the voluntary market. To get a fuller picture, you would have to look at the number of employers insured with each carrier, also. Conversely, a decrease in MEMIC's market share could indicate that some employers have more options.

**Table III: Percent Market Share for Top Ten Insurance Groups, By Amount of Written Premium, 1993-1999**

Insurance Group	1999 Share	1998 Share	1997 Share	1996 Share	1995 Share	1994 Share	1993 Share
Maine Employers' Mutual	44.7	46.2	50.4	56.0	67.4	66.1	57.9
Allmerica Financial Corp.	9.1	8.8	9.9	9.3	4.9	6.5	14.5
WR Berkeley Corp.	7.7	9.5	10.3	9.4	8.8	7.4	4.4
Liberty Mutual Group	7.0	3.7	4.9	2.2	*	0.7	1.3
CGU Insurance Group	6.1	6.0	5.3	5.8	5.8	7.5	9.1
Royal & Sun Alliance USA <sup>1</sup>	4.7	*	*	1.4	0.5	0.8	0.8
GRE Insurance Group	2.9	3.0	*	*	*	*	*
Citigroup	2.4	2.1	2.2	*	*	*	*
Zurich Insurance Group	2.1	3.5	3.7	4.2	3.2	3.4	4.2
Can Insurance Group	1.9	*	*	*	*	*	*
Nationwide Corp.	*	2.4	1.6	1.3	*	*	*
Orion Capital Group	*	1.8	*	*	*	*	*
Netherlands Insurance	*	*	2.5	2.4	2.0	1.5	1.2
Hartford Fire & Casualty	*	*	1.4	*	*	*	*
Acceptance Insurance Grp.	*	*	1.4	2.4	2.9	2.7	*
St. Paul Group	*	*	*	*	0.5	*	*
Star Insurance Group	*	*	*	*	0.5	*	*
Aetna	*	*	*	*	*	2.9	3.4
Compensation Mutual	*	*	*	*	*	*	2.2
Reliance Group Inc.	*	*	*	*	1.9		

**Notes:**

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

<sup>1</sup>On July 19, 1996, Royal Insurance Holdings merged with Sun Alliance Group forming a new holding company, Royal & Sun Alliance USA.



## PART IV. DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

Table IV shows the percent of market share for the top ten carriers for each year from 1993 through 1999. MEMIC's market share has decreased steadily since 1995. Of the remaining carriers writing workers' compensation coverage in Maine, none has more than 7.6 percent of the market share. The top eleven companies write less than 75 percent of the business.

<b>Table IV. Percent Market Share for Top Ten Insurance Carriers, By Amount of Written Premium, 1993-1999</b>							
<b>Insurance Carrier</b>	<b>1999 Share</b>	<b>1998 Share</b>	<b>1997 Share</b>	<b>1996 Share</b>	<b>1995 Share</b>	<b>1994 Share</b>	<b>1993 Share</b>
Maine Employers' Mutual	44.7	46.2	50.4	56.0	67.4	66.1	57.9
Acadia Insurance Company	7.6	9.1	10.3	9.4	8.6	7.4	4.4
Commercial Union/York <sup>1</sup>	4.6	3.1	1.4	2.1	2.0	4.6	7.1
Massachusetts Bay Ins. Co.	4.2	4.7	4.1	3.7	1.0	*	*
Citizens Insurance Co.	3.1	3.1	3.2	3.1	3.4	3.1	2.6
Liberty Mutual Fire Ins. Co	2.8	1.2	1.8	*	*	*	1.3
Connecticut Indemnity	2.2	1.3	*	*	*	*	*
Hanover Insurance Co.	1.8	*	2.5	2.5		2.2	11.1
Liberty Insurance Corp.	1.4	1.2	2.4	*	*	*	*
American Interstate Ins. Co	1.2	*	*	*	*	*	*
Travelers Indemnity Co.	1.2	1.2	*	*	*	*	*
American Employers Ins.	*	1.6	3.7	3.7	3.9	2.9	1.9
Royal Indemnity	*	1.5	*	*	*	*	*
Pacific Employers Ins. Co	*	1.3	*	*	*	*	*
Employer's Ins. Of Wausau	*	1.2	*	*	*	*	*
Netherlands	*	1.2	*	*	*	*	*
Northern Ins. Co. of N.Y.	*	*	1.7	1.5	*	2.0	*
Redlands	*	*	1.4	2.4	2.9	2.7	*
Peerless Ins. Co.	*	*	*	1.6	1.8	*	*
Maryland Casualty	*	*	*	*	2.7	1.6	*
Reliance Insurance Co.	*	*	*	*	1.5	*	*
Aetna Casualty & Surety	*	*	*	*	*	2.9	3.7
Maine Bonding	*	*	*	*	*	*	2.4
Compensation Mutual	*	*	*	*	*	*	2.2

### Notes:

This is an indicator of turnover among top carriers.

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

<sup>1</sup> York Insurance Co. of Maine became Commercial Union York Insurance Co. on October 21, 1997, following acquisition by Commercial Union Insurance Co.

## **PART IV. DIFFERENCE IN RATES AND FACTORS AFFECTING RATES**

### **Rate Differentials**

Prior to the 1992 Blue Ribbon Commission Reform Legislation, all insurance companies charged the same base rates (manual rates) for workers' compensation insurance. Although each employer's actual premium was modified by its own experience, there was little or no difference in the manual rates. The Superintendent of Insurance established maximum rates; no company filed for lower rates.

Since January 1993, each insurance company is required to file its own manual rates based upon its expense and profit provisions. The National Council on Compensation Insurance (NCCI) makes an annual advisory filing of pure premium rates, which provide for losses and loss adjustment expenses. This filing does not include all other expenses and profit provisions, which are established by insurance carriers in our open competitive market.

Beginning in 1994, the bureau approved six straight advisory filing decreases. The cumulative impact of these decreases was a 43 percent reduction in advisory loss costs. In 1999, NCCI made two filings calling for an aggregate increase of 13.3% in advisory loss costs. The Bureau of Insurance approved a 10.3 percent increase in loss costs, effective March 8, 2000. A 1.9 percent increase in overall advisory loss costs was approved effective January 1, 2001. Overall, since 1994, advisory loss costs have fallen over 36 percent.

As of November 2000, 208 insurance carriers have filed and received approval from the Bureau to sell workers' compensation insurance in Maine. Not all companies that are authorized to write coverage in Maine have rates on file. Only those who do can actually sell insurance.

The chart on the next page compares the Maine Employers' Mutual Insurance standard base rate with the lowest available base rate for the 73 largest classification codes (in terms of payroll) for all workers' compensation insurers. For many classification codes, the wide range underscores the competitive nature of workers' compensation insurance in Maine and the importance of employers exploring options in securing coverage for their workers' compensation claims. Insurers are more selective in accepting risks for the lower-rated plans. Their underwriting is based on such things as prior-claims history, safety programs, and classifications.

Competitive rating has also allowed for niche marketing. A company with expertise in certain areas can utilize that proficiency to lower the rate for specific risks and return an acceptable profit to the carrier. For example, some insurers specialize in underwriting employers in a specific industry, such as wood products manufacturing (including logging), healthcare, trucking, or construction.

An annual report compiled by Actuarial & Technical Solutions, Inc., an independent firm which compiles and studies workers' compensation on a nationwide basis. In 1996, the study ranked Maine the 42<sup>nd</sup> most expensive state for workers' compensation insurance in the manufacturing industry. Maine's rank dropped to 30<sup>th</sup> in 1997 and to 23<sup>rd</sup> in 1998. In 1999 we returned to the 30<sup>th</sup> position, and in 1999 Maine increased to 33<sup>rd</sup> of the 45 states for which data was reported. Five

#### **PART IV. DIFFERENCE IN RATES AND FACTORS AFFECTING RATES**

states that have state funds were not included in the rankings. The primary reason is that these funds have unique characteristics that could distort the results of the study.

## PART IV. DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

**Table V: MEMIC Standard Rate and the Lowest Available Rate for Selected Classifications**  
Effective January 1, 2001

Class Code	Description	MEMIC Standard Rate	Industry Low Rate
2111	CANNERY	\$6.23	\$3.56
2286	WOOL SPINNING & WEAVING	\$7.39	\$4.22
2501	CLOTHING MANUFACTURING	\$4.52	\$2.58
2660	BOOT OR SHOE MANUFACTURING	\$5.75	\$3.29
2702	LOGGING OR LUMBERING	\$34.96	\$19.98
2709	MECHANIZED LOGGING	\$11.84	\$6.77
2710	SAWMILL	\$14.35	\$8.20
2721	CERTIFIED LOGGING	\$15.75	\$9.00
2841	WOODEN WARE MANUFACTURING	\$7.56	\$4.32
3629	PRECISION MACHINED PARTS MFG	\$3.54	\$2.02
3632	MACHINE SHOP	\$5.21	\$2.98
3681	TV, RADIO, TELE/ TELECOM DEVICE MFG	\$2.65	\$1.51
3724	MACHINERY/ EQUIP ERECTION OR REP	\$14.01	\$8.01
4207	PULP MFG	\$1.96	\$1.12
4239	PAPER MFG	\$3.72	\$2.13
4279	PAPER GOODS MFG	\$4.52	\$2.58
4299	PRINTING	\$4.03	\$2.30
4361	PHOTOGRAPHERS	\$2.90	\$1.66
4484	PLASTICS MFG: MOLDED PRODUCTS	\$4.70	\$2.69
4511	ANALYTICAL CHEMIST	\$1.23	\$0.70
4693	PHARMACEUTICAL/SURGICAL GOODS MFG	\$3.18	\$1.82
5183	PLUMBING	\$7.52	\$4.30
5190	ELECTRICAL WIRING WITHIN BUILDINGS	\$5.87	\$3.35
5191	OFFICE MACHINE OR APPLIANCE INSTAL	\$1.40	\$0.80
5506	STREET CONSTRUCTION PAVING	\$8.55	\$4.89
5538	SHEETMETAL WORK	\$8.82	\$5.04
5606	CONTRACTOR EXECUTIVE SUPERVISOR	\$3.00	\$1.71
5645	CARPENTRY DETACHED 1 OR 2 FAMILY	\$15.97	\$9.13
6217	EXCAVATION	\$11.62	\$6.64
7228	TRUCKING LOCAL	\$18.47	\$10.55
7229	TRUCKING LONGDISTANCE	\$15.04	\$8.59
7380	DRIVERS	\$10.84	\$6.19
7539	ELECTRIC LIGHT OR POWER CO.	\$5.54	\$3.17
7600	TELEPHONE OR TELEGRAPH CO.	\$5.12	\$2.93
7610	RADIO OR TELEVISION BROADCASTING	\$0.45	\$0.26
7720	POLICE OFFICER	\$4.59	\$2.62

## PART IV. DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

**Table V: MEMIC Standard Rate and the Lowest Available Rate for Selected Classifications**  
**Effective January 1, 2001 (Continued)**

Class Code	Description	MEMIC Standard Rate	Industry Low Rate
8006	STORE: GROCERY/CONVENIENCE RETAIL	\$3.21	\$1.83
8008	STORE: CLOTHING/DRY GOODS RETAIL	\$1.62	\$0.93
8010	STORE: HARDWARE	\$2.83	\$1.62
8017	STORE: RETAILNOC	\$2.77	\$1.58
8018	STORE: WHOLESALENOC	\$5.59	\$3.19
8024	SEAFOOD DEALER WHOLESALE	\$11.20	\$6.40
8033	STORE: MEAT, GROCERY AND PROVISION	\$2.95	\$1.69
8039	STORE: DEPARTMENT-RETAIL	\$2.42	\$1.38
8044	STORE: FURNITURE	\$4.12	\$2.35
8058	BUILDING MATERIAL DEALER-NEWMAT.	\$2.93	\$1.67
8107	MACHINERY DEALER	\$5.77	\$3.30
8227	CONSTRUCTION PERMANENT YARD	\$9.95	\$5.69
8232	LUMBER YARD NEW MAT. WHOLESALE	\$4.49	\$2.57
8350	GASOLINE DEALERS	\$6.79	\$3.88
8380	AUTO SERVICE OR REPAIR CENTER	\$5.14	\$2.94
8601	ARCHITECT OR ENGINEER CONSULTING	\$1.48	\$0.85
8742	SALESPERSONS, COLLECTORS	\$1.19	\$0.68
8803	AUDITORS, ACCOUNTANT TRAVELING	\$0.28	\$0.16
8810	CLERICAL OFFICE EMPLOYEES	\$0.70	\$0.40
8820	ATTORNEY	\$0.90	\$0.51
8829	CONVALESCENT OR NURSING HOME	\$5.52	\$3.15
8832	PHYSICIAN	\$0.95	\$0.54
8833	HOSPITAL PROFESSIONAL EMPLOYEES	\$1.74	\$0.99
8835	NURSING-H.H., PUBLIC&TRAVELING	\$6.20	\$3.54
8861	CHARITABLE OR WELFARE ORGAN. PROF.	\$1.40	\$0.80
8868	COLLEGE: PROFESSIONAL EMPLOYEES	\$0.88	\$0.50
8901	TELEPHONE OR TELEG CO. OFFICE	\$0.43	\$0.25
9014	BUILDING OPER. BY CONTRACTORS	\$6.73	\$3.85
9015	BUILDING OPER. BY OWNER	\$6.03	\$3.45
9040	HOSPITAL ALL OTHER EMPLOYEES	\$4.59	\$2.62
9052	HOTEL: ALL OTHER EMPLOYEES	\$3.67	\$2.10
9058	HOTEL: RESTAURANT EMPLOYEES	\$2.84	\$1.62
9060	CLUB-COUNTRY, GOLF, FISHING OR YACHT	\$2.67	\$1.53
9063	YMCA, YWCA, YMHA,OR YWHA	\$1.62	\$0.93
9079	RESTAURANT	\$3.07	\$1.75
9101	COLLEGE: ALL OTHER EMPLOYEES	\$4.75	\$2.71
6824F	BOATBUILDING OR REPAIR	\$5.98	\$3.42

## PART IV. DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

### **Tiered Rating, Schedule Rating, Managed Care Credits, Dividend Plans, Retrospective Rating, and Large Deductible**

Some employers have other options available that may affect the premiums they pay for workers' compensation insurance. Each is available only if the insurer is willing to write a policy using these options. Employer 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 half of the groups offer tiered rating. When looking at companies, 116 of the 155 insurers with loss cost multipliers on file either offer tiered rating or are part of a group that does. Some of the groups on record have only one company with one loss cost multiplier on file.
- ❑ **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 percent. Over 76 percent of the insurance companies with filed rates in Maine have received approval to utilize scheduled rating.
- ❑ **Managed Care Credits** are credits offered by carriers to employers who use managed care plans. Over twenty six 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.
- ❑ **Retrospective rating** means that an employer's final premium is a direct function of their 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.

## PART V. ALTERNATIVE RISK MARKETS

### Self-Insurance

Self-insured employers pay for losses with their own resources rather than purchasing insurance. They may, however, choose to purchase insurance for losses that exceed a certain limit. An advantage of being self-insured includes better cash flow; since there are no premiums, the employer retains the money until they pay out on losses. With over 45 percent of the market self-insured (looking at estimated standard premium), a review of competition without considering self-insurance is incomplete.

The percent of the total workers' compensation insurance market represented by self-insureds<sup>1</sup>, has dropped slightly, however, from 49 percent in 1998 to 45.4 percent in 1999. This is its lowest level since 1993. Employers considering self-insurance feel they would be better off not paying premiums and are likely to have active programs in safety training and injury prevention. A greater market share in self-insurance could indicate a perception by insureds that premiums in the insurance market are too high.

During this same time period, the estimated standard premium for self-insureds shrank from \$204 million to \$116 million. The estimated standard premium is determined by taking the manual rate and multiplying it by a loss cost multiplier of 1.2, as specified in statute. Keep in mind that as advisory loss costs, and hence rates, decline, so does the estimated standard premium. Since an increase in advisory loss costs was approved in March of 1999, the estimated standard premium will increase in 2000, barring no further decline in the number of self-insured employers.

As of December, 1999, there were 19 groups representing approximately 1,247 employers as well as 98 individual self-insured employers in Maine. Some former self-insured employers returned to the commercial market in 1999; however, the number of individually self-insured employers has increased during this year.

**Table VI: Distribution of Self-Insurers, 1993-2000**

Year	# of Self-Insured Groups	# of Employers In Groups <sup>1</sup>	# of Individually Self-Insured Employers	Estimated Standard Premium	Percent of Workers' Comp. Market (in annual standard premium) <sup>2</sup>
2000	19	-	106	N/A	N/A
1999	19	1,247	98	\$116,028,759	45.4
1998	20	N/A	115	\$120,799,841	49.0
1997	21	N/A	118	\$147,851,730	49.9
1996	21	N/A	155	\$167,983,925	51.5
1995	20	N/A	147	\$180,587,422	51.9
1994	20	N/A	145	\$202,430,339	49.9
1993	20	N/A	112	\$204,111,260	44.7

<sup>1</sup> For the purposes of self-insurance, affiliated employers are considered separate employers. N/A indicates that the information is not available.

## PART V. ALTERNATIVE RISK MARKETS

<sup>2</sup> The percent of the workers' compensation market held by self-insured employers is calculated by taking the estimated standard premium for self-insureds and dividing it by the sum of the estimated standard premium for self-insureds and the written premium in the regular insurance market. That figure is then multiplied by 100.



## **Conclusion**

The loss experience of insurers writing workers' compensation insurance in Maine is beginning to increase faster than payroll. The first increase in advisory loss costs since the 1992 reform occurred in March of 2000. Another small increase became effective in January, 2001.

Many insurance options still exist and no one insurer or insurance group dominates the market. MEMIC's market share, in terms of written premium, dropped from 67.4 percent in 1995 to 44.7 percent in 1999. Twenty-one companies had more than one million dollars in written premium in 1999.

The range among workers' compensation rates, the number of carriers in the marketplace, and the overall decline in rate levels since 1994, indicate that Maine's workers' compensation market is much healthier than it was in the early to mid-1990s. Employers that maintain a safe work environment and control their losses will continue to have options.

**SECTION 2**

**BUREAU OF LABOR STANDARDS**

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## 1. Introduction

### A. Role of the Bureau of Labor Standards in the Workers' Compensation System

The role of the Bureau of Labor Standards in Maine's Workers' Compensation System is to prevent occupational injuries and illnesses. It accomplishes this through a variety of initiatives that will be listed below. Additionally, the Maine Department of Labor, of which the Bureau of Labor Standards is a part, is responsible for overseeing the employer-employee relationship in the State. So the Bureau is also concerned with the Workers' Compensation system as it relates to the fairness of that relationship. It accomplishes that by proposing law and rule changes and by promoting administrative processes that best carry out the interest of the law.

\* Critical to the Bureau's performance is complete, consistent, and timely data on individual Workers' Compensation cases. The Workers' Compensation Board as a byproduct of its administrative activities supplies that data. The quality of that data is determined by the Board's monitoring, auditing and enforcement (MAE) efforts. While there are other sources for data, they are summary in nature and therefore less useful for many of the individualized services the Bureau provides. Data helps direct the Bureau's targeting and service efforts, and if it is not complete and reliable those efforts are less convincing to the employers or target audience or they may be misdirected to the wrong employers

or target audience. Many of the problems the Bureau experience with the Workers' Compensation data stem from an incomplete monitoring system—one that routinely allows missing or conflicting information to continue on the system without question. In 1999 the Board started a program known as the Quarterly Reconciliation Report to address this issue and capture problems detected in cases after the first few months of the injury date. This should clean up a significant part of the problem, but that monitoring alone is only a spot check in the whole process. Individual cases are not followed from start to finish and active pre-1999 are not subject to any monitoring. Resolution of those two shortcomings in the process and completion of a comprehensive case and report monitoring system should ensure the quality of reporting on case status, duration of disability, and associated cost data. It would also enhance the Board's case administration and enforcement efforts.

The bulk of the Bureau's activities revolve around prevention of injury or illness. Prevention in turn removes much of the disruption, administrative problems, and costs associated with injury and illness. The following is a summary of interventions and commentary, which highlights elements of the Bureau's role and that of others as it relates to Maine's Workers' Compensation system.

## B. Research & Statistics

? ~~Complete and quality individual case data is critical in determining intervention techniques and suitable recipients. This data also helps in evaluating the effects of a single intervention technique or those, which result from applying a mixture of techniques. To assess intervention techniques the Bureau looks at selective administrative data from the Workers' Compensation Board and data that the Bureau has collected expressly for intervention purposes such as its Federal Bureau of Labor Statistics' Occupational Safety and Health Survey. It then occurs that the Bureau's research function relies closely on data, which, in accordance with legal mandate, should be available from the Workers' Compensation Board's information system and as such, advises the Board on the quality and usefulness of the data it produces. If the Board is unable to provide the information as needed, the Bureau must then seek it from sources that often view the request as bothersome, i.e., from employers, and insurers. The latter approach is~~

? time consuming and inefficient. To avoid this result, the Bureau works with the Workers' Compensation Board. Some specific examples from those efforts can be seen in the statistical results that follow.

The Bureau has recently undertaken the formation of MORA (Maine Occupational Research Agenda). When established, this agenda will help prioritize research efforts tailored to the actual needs of the state and provide statistical justification in support of grant applications to NIOSH (the National Institute of Occupational Safety and Health), and other funding sources. Towards achieving that end the Bureau has hired an epidemiologist to facilitate formation of the agenda and assist in the design and implementation of its research projects and surveys. The Bureau's research activities will continue to include partnering to assist other research groups and actively seeking their assistance with ours.

## C. Outreach

The Bureau's outreach efforts are designed with the primary purpose of identifying specific audience groups which research suggests as being appropriate recipients for the Bureau's programs and services. Notice of available programs and services is provided through advertisements and direct mailings. Outreach's efforts are also applied to inform

and alert the general and working public in particular of specific dangers and exposures to avoid in the workplace. These are dangers and exposure problems identified through research or detected in the workplace by Bureau inspectors and consultants. The Bureau concentrates its outreach efforts in areas that are not routinely covered by other agencies.

## D. Consultation

9 This service is primarily designed to employees seeking assistance to identify and address specific work conditions and/or deficiencies, or as a general inspection of the work site. Consultative in purpose, the assistance provided is of an unofficial nature, carrying no immediate penalty liability and may be sought by employees as well. Consultations might include an evaluation of employer records, a

walk through review of the work facility, and a check on the safety procedures and familiarity level of those charged with carrying them out. Record review begins with an analysis of applicable Workers' Compensation data, which again, must be accurate and complete. Consultations are advisory and done with the cooperation of the employer and employees.

## E. Education

The Bureau provides formal training for employers and employees in the areas of *general* and *special situation* workplace compliance. General compliance classes focus on the federal OSHA standards set for the general practice of business in all industries. Special situation classes are tailored to specific industries such as the construction trade, or specific environmental (workplace) exposure matters such as scaffolding, trenching, or electrical work.

Classes are scheduled and offered free of charge on a regular basis. Anyone may attend. In addition, classes are sometimes scheduled as part of an on-site consultation with a specific employer.

Each class is designed to provide a basic understanding and identification of workplace

dangers and the required OSHA standards for preventing and if need be, addressing those dangers.

These classes augment specific training that workers receive relative to their individual worksite situation, while providing them with enough ancillary information to generally observe and report any unsafe work environment.

Through its educational service the Bureau offers employers a cooperative sharing of resources. It is anticipated that employers and employees will participate in new or upgraded trainings as they occur. ✓

Ultimately however, it is the employers who must comply with the OSHA standards and ensure that their employees have a safe and healthy work environment.

## F. Enforcement

The Bureau's enforcement services are not consultative and extend *only* to state, local and municipal facilities. A similar service is performed in the private sector by the Federal Occupational Safety and Health Administration (OSHA). ✓

Through these inspections, the Bureau seeks to ensure the safety and health in Maine's workplace environments. Bureau enforcement officers conduct unannounced formal inspections of work locations to determine if the employer is in compliance with the federal OSHA workplace standards. When a violation is detected, a citation is issued for the employer's failure to comply with those standards. Employers are given an opportunity to address and abate any deficiencies found. Failure to take such action may result in monetary fines being levied. In extremely dangerous situations, the Bureau's enforcement officers are authorized to halt job operations.

The Bureau routinely schedules inspections to ensure that all facilities are reviewed on an established periodic basis. An unscheduled inspection may occur however, if the employer is part of an industry group that has come under scrutiny or as follow-up to an employee complaint. In general however, no assumptions are made on the compliance efforts of any employer.

On occasion, the Bureau receives complaints from private sector employees. These are referred to Federal OSHA for their handling. The Bureau from time to time may assist the enforcement efforts of Federal OSHA by providing them with summary data from the Workers' Compensation system. Finally, pursuant to a contract for that purpose the Bureau does some statistical work that supports Federal OSHA's targeting efforts.

## G. Summary

The Bureau of Labor Standards is one of several participants in the Workers' Compensation System in Maine. This mix of agencies brings a diversity of expertise into the arena from which each can benefit the other. As stated earlier the ~~Department~~ of Labor sees itself as responsible for the overall employer/employee relationship in the state of Maine, of which Workers' Compensation is a part. The separateness between the agencies enables each to integrate their shared activities in an efficient manner and to establish appropriate priorities. The critical factor in

this system is that the parties fulfill their respective roles and exercise a consistent degree of mutual cooperation.

Perhaps most important for the Bureau's ongoing effectiveness is that the Workers Compensation Board fully execute its monitoring, auditing and enforcement responsibility. Such activity will best support the Bureau's prevention efforts and demonstrate that the fairness of Maine's workers' compensation system can be fully and satisfactorily evaluated.

## A Note for the BLS Data in the 2001 Report

The data for the 2001 report would normally be for cases that occurred in 1999. Due to time constraints in responding to changes in the Workers' Compensation data system, the Bureau was unable to compile a full year of 1999 data, adequate for this report. Consequently, this report will show a mix of data for this year.

The problems were addressed as of press time and Bureau personnel are currently in the process of catching up. Barring any unforeseen circumstances, next year's data will be timely and complete.

For this report, the Bureau has reported 1999 figures where available from non-Workers' Compensation sources.



## 2. Programs at the Bureau of Labor Standards Using Workers' Compensation Data

Clean, accurate, and complete data from the Workers' Compensation Board (WCB) database is vital for much of the work done at the Bureau of Labor Standards (BLS), including:

- **Company profiles** – Shows the number of disabling and fatal injury cases for a specific company. It is, therefore, imperative that a correct UI account number be assigned to EVERY First Report. This should be easier with the recent integration of the BLS and WCB employer databases.
- **SafetyWorks!** – SafetyWorks! uses WCB data to direct training to employers and workers in areas where workplace injuries occur, i.e. forklift training, cumulative trauma injuries. By doing queries on WC data, SafetyWorks! knows where the 'hot spots' are for injuries and illnesses. Also WC data is used for targeting. Companies can be selected at random, or because their incidence rate of injuries and illnesses is higher than the State average.
- **Public Sector enforcement** – BLS investigates complaints and enforces occupational health and safety laws for municipal, county and state government helping to protect over 78,000 workers. WC data helps the Public Sector Enforcement Unit identify city, county, and state locations with higher than average incidence rate for injuries and illnesses.
- **Wage and Hour** – This division enforces state laws and investigates complaints pertaining to minimum wages and overtime, final payment of wages, severance pay, and child labor. WC data helps this division find employers who hire children; they may schedule routine investigations of these companies to ensure the welfare of working children. They also may use this data to locate employers in a specific industry to schedule a wage and hour compliance visit.
- **Migrant and Immigrant Services** – Coordinates migrant and immigrant issues in Maine. WC data is used to track employers who use migrant workers.
- **Young Workers** – Much focus is being placed on Maine's working youth and how they are getting injured in the workplace. By educating youth at an early age, it is hoped they will acquire skills to prevent injuries in their places of employment. WC data is critical for identifying occupations and industries where youth are getting injured.
- **Characteristics of Work-related Injuries and Illnesses in Maine** – Is published annually and highlights all disabling work-related injuries and illnesses applying data received from a *First Report of Occupational Injury or Disease*.
- **WC Assessment** – Is set in April using WC data. Inaccurate data means an inaccurate assessment to insurance companies and self-insured employers.

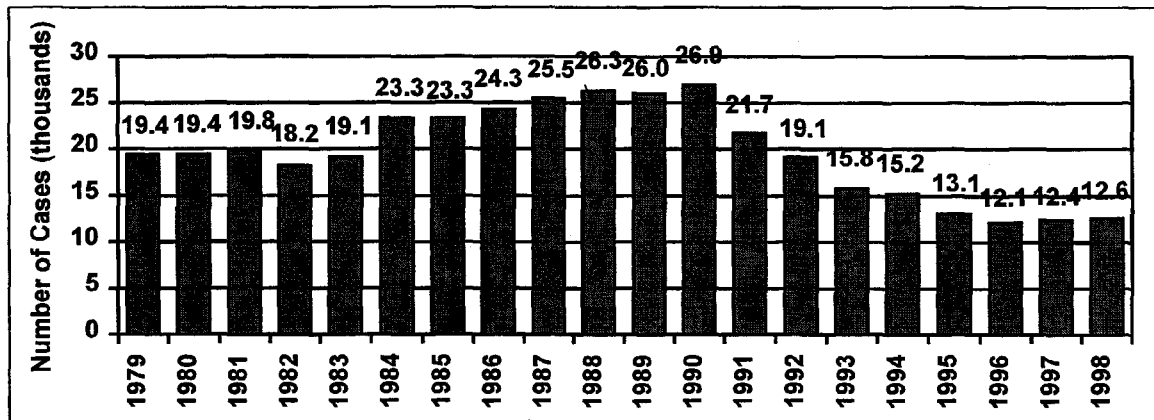
- **Census of Fatal Occupation Injuries (CFOI)** – Tracks work-related fatalities in Maine. Cases are usually found through a *First Report of Occupational Injury or Disease*. But cases are also found in newspapers, through Bureau of Health death certificates, and from Marine Resources reports of water-related fatalities.
- **Fatality Assessment and Control Evaluation (FACE)** – BLS is in the process of applying for a grant for this project. FACE is a new surveillance and investigative research project that collects information used to identify new hazards and case clusters. The data will be used for new research or prevention efforts or new/revised regulations to protect workers. One focus BLS wants to make in the Maine program is self-employed workers who are only partially covered under other investigative activities.
- **Maine Occupational Safety and Health Research Agenda** – BLS has selected a steering committee to develop this. WC data is used to identify ongoing and new trends in workplace injuries and illnesses.
- **Healthy Maine 2010** – BLS is working with the Bureau of Health on occupational health and safety indicators for Healthy Maine 2010.
- **Public Relations and Media** – BLS uses WC data in press releases and to educate the public on labor law issues.
- **Special projects** – Economic and Social Studies on the Impact and Consequences of Work-related Injuries and Illnesses:
  1. Safer Needle and Sharps Device Usage Survey
  2. Economic Impact of Carbon Monoxide Poisoning: A Pilot Study
  3. Economic Impact of Work-related Fatalities (1995-1998)
  4. An Epidemiological Study of extension Ladder Injuries: A collaboration between BLS/NIOSH/University of Kentucky.

### 3. Highlights from Characteristics of Work-related Injuries and Illnesses in Maine, 1998

In 1998, there were 12,571 disabling cases reported to the Workers' Compensation Board (WCB) on a First Report of Occupational Injury or Disease, a 1.6% increase from the

12,375 disabling cases in 1997 as shown in Figure 1. This is the second consecutive year disabling cases increased in number.

Figure 1. Twenty-year Comparison, Disabling Cases, Maine, 1979-1998



Several factors may have contributed to the increase in number of disabling cases over the last two years:

- Increased education and training have made employers and workers more aware of the criteria for reporting a work-related injury or illness to the WCB.
- The number of disabling cases with no return-to-work date is nearly 2.5 times that of 1995 when 22% of all disabling cases received had no return-to-work date. This gives an inaccurate account of disabling cases
  - 1995 – 2,885 cases with no return-to-work date (22% of total 13,127 total disabling cases)
  - 1996 – 5,620 cases with no return-to-work date (46% of total 12,121 total disabling cases)
  - 1997 - 7,358 cases with no return-to-work date (59% of total 12,375 total disabling cases)
  - 1998 – 7,738 cases with no return-to-work date (62% of total 12,571 total disabling cases)

- 1999 – should be better because of MAE (Monitoring, Audit & Enforcement) program efforts but are unable to determine until data access problems are addressed.

A **disabling case** is one where the worker lost one or more days of work beyond the day of the injury. Because of the 7-day time limit to notify the WCB of a work-related injury or illness, the employer often submits the First Report without always knowing when the worker will be returning back to work. As a result, the employer leaves the return-to-work field blank. If the worker comes back to work the very next day, and if no further action is taken on this case, the employer may neglect to notify the WCB when the worker returned to work. These cases give a false picture of the true number of workers who actually lose time. It is imperative that WCB notify the employer when no other forms have been received indicating the employee is actually out of work. These reports must be cleaned up in order to get an accurate picture of disabling cases.

## 4. Workers' Compensation Data

The data from a *First Report of Occupational Injury or Disease* is very important to the Bureau of Labor Standards. Getting data that is accurate is vital for the statistics that BLS publishes to have an accurate picture of work-related injuries and illnesses in Maine.

- **Cost data** is an important source of information when evaluating the effectiveness of the Workers' Compensation System. It is also very useful in determining where agencies involved in injury and illness prevention should allocate their resources. Moreover, BLS was unable to access the WCB's cost data for this report.
- The **Monitoring, Auditing and Enforcement Program** (MAE) at the WCB is a vital part of getting accurate data regarding disabling work-related injuries and illnesses. When fully implemented, this program could collect reliable data in a timely fashion, monitoring and auditing payment and filing requirements, ensuring that all filing and compliance obligations are met.
- **Return-to-work date** of every case must be reported to the WCB. Without this date, cases appear to be open and active. This data is mandatory by law, and WCB must receive this data. As shown in the data on the previous page, 62% of all cases for 1998 do not have a return-to work date. With the MAE program now in place, this should improve. As of December 2000, 54% of all 1999 disabling cases received at the WCB did not have a return-to-work date. However, this may be due to problems with the computer system data extraction process.
- **Detailed narrative of the injury** is vital in training, targeting and educating the employers and workers on safety and health issues. First Reports should not be accepted without the nature of the injury (cut, bruise, fracture), the part of the body affected, the event leading up to the injury (auto accident, overexertion, struck against), and the source that directly produced the injury. Unknown codes are better for 1998 but still there are too many unknowns for the injury.

Table 1. Unknown Data Elements, Maine, 1995-1998

	1995	1996	1997	1998
Number of disabling cases	13,127	12,121	12,375	12,571
Unknown nature	3.0%	7.3%	9.0%	6.3%
Unknown part of body	0.6%	0.8%	0.9%	1.0%
Unknown source	6.9%	7.6%	8.9%	7.8%
Unknown event	4.4%	4.4%	6.0%	5.0%

**Key Point:** To get a consistent and accurate picture of all disabling cases, employers, workers and insurers need to be educated on proper filing guidelines with accurate data. A preliminary look at 1999 data shows the collection of the data is getting better, and with a fully implemented MAE program in place at WCB, all data required by law could be collected to move toward the best data possible for work-related injuries and illnesses in Maine.

## 5. Length of Service of Injured Worker

The number of workers getting injured within the first year of employment with their current employer, has risen from the 8-year average of

32% to 37% in 1998. This information clearly shows the need to have new workers properly trained on workplace safety and health.

Figure 2. Length of Service 1990-1997

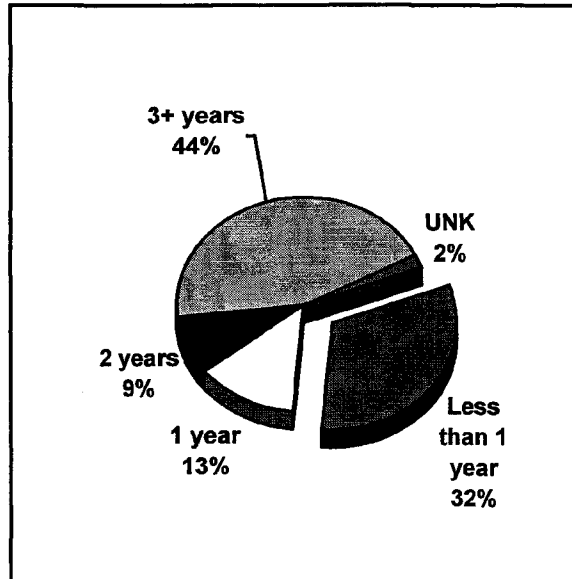
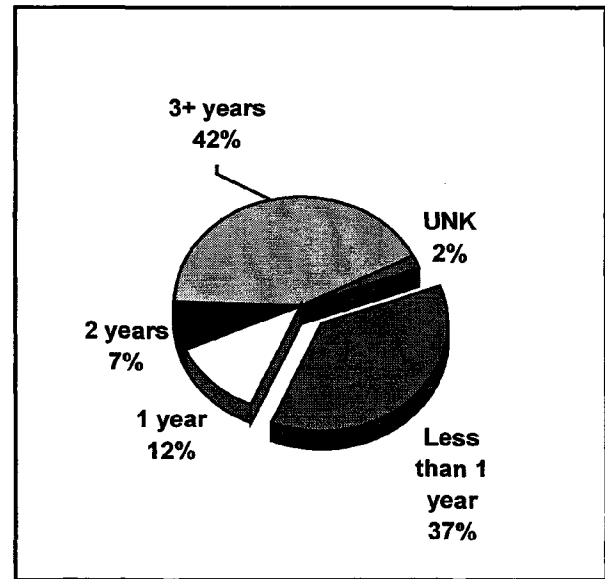


Figure 3. Length of Service 1998



UNK – Unknown, Date of Hire was not listed on the *First Report of Occupational Injury or Disease*

Table 2. Length of Service of Injured Worker, Maine 1996-1998

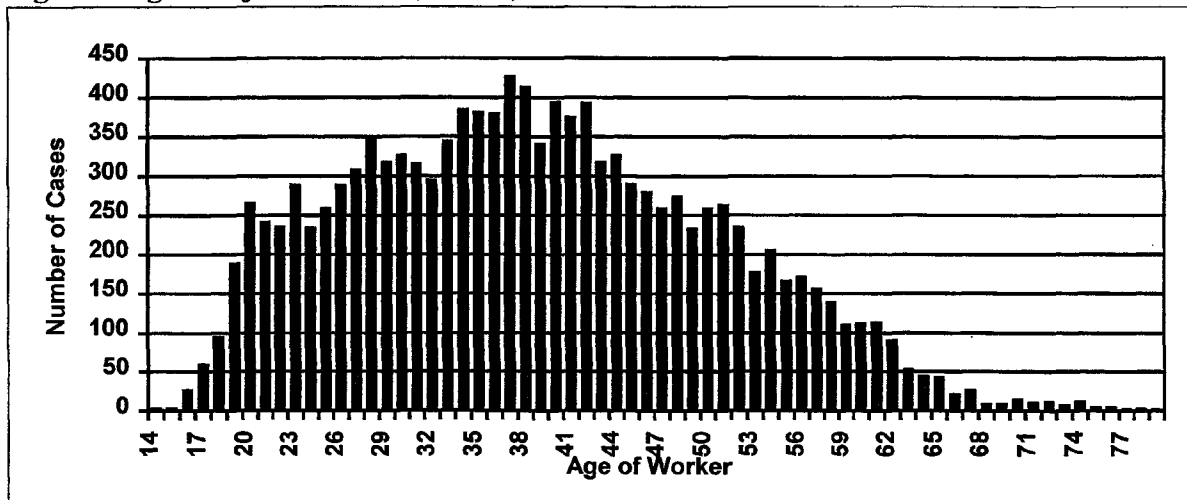
6. Age of Injured Worker						
of Injured Worker	Number	Percent	Number	Percent	Number	Percent
<b>Total</b>	<b>12,121</b>	<b>100.0</b>	<b>12,375</b>	<b>100.0</b>	<b>12,571</b>	<b>100.0</b>
<b>Under 1 Year</b>	<b>3,920</b>	<b>32.3</b>	<b>4,359</b>	<b>35.2</b>	<b>4,663</b>	<b>37.1</b>
1 Year	1,418	11.7	1,351	10.9	1,577	12.4
2 Years	909	7.5	928	7.5	862	6.9
3-4 Years	1,095	9.0	1,129	9.1	1,113	8.9
5-9 Years	2,267	18.7	2,058	16.6	1,705	14.1
10-14 Years	919	7.6	955	7.7	1,164	9.3
15-19 Years	600	5.0	647	5.2	526	4.2
20+ Years	580	4.8	655	5.3	638	5.1
Unknown	415	3.4	293	2.4	273	2.2

**Key Point:** The number of new hires getting injured on the job is on the rise. In 1998, 4,663 workers, who had been with their current employer less than one year, lost time due to a work-related injury or illness, a 19% increase from 1996. Over 56% of all injured workers losing time in 1998 had been with their current employer less than 3 years.

For the first time since 1995, age of the injured or ill worker is available for analysis. BLS has spent much time and effort training young workers over the past several years.

Figure 4 shows there is still a sharp rise in lost time work-related injuries between the ages of 19 and 23 years of age. The highest claims were between the ages of 37 and 42 years.

**Figure 4. Age of Injured Worker, Maine, 1998**



**Table 3. Age Groups of Injured Worker, Maine, 1997-1998**

Age of Injured or Ill Worker	Disabling Cases			
	1997		1998	
	Number	Percent	Number	Percent
<b>Total</b>	<b>12,375</b>	<b>100.0</b>	<b>12,571</b>	<b>100.0</b>
Up to 18 years old	231	1.9	197	1.6
19-24 years old	1,381	11.2	1,451	11.5
25-29 years old	1,541	12.5	1,519	12.1
30-34 years old	1,735	14.0	1,664	13.2
35-39 years old	1,934	15.6	1,940	15.4
40-44 years old	1,746	14.1	1,804	14.4
45-49 years old	1,362	11.0	1,333	10.6
50-54 years old	1,055	8.5	1,138	9.1
55-59 years old	712	5.8	742	5.9
60 years and older	542	4.4	585	4.7
Unknown age	136	1.1	197	1.6

**Key point:** While the data predictably shows that 37-42 year-old workers are most likely to lose time due to a workplace injury or illness, the data also reveals that young workers 19-23 years old are disproportionately involved in lost workday injuries and illnesses. As the labor market continues to tighten, a greater emphasis must be placed on new entrants to the workforce who tend to be younger workers.

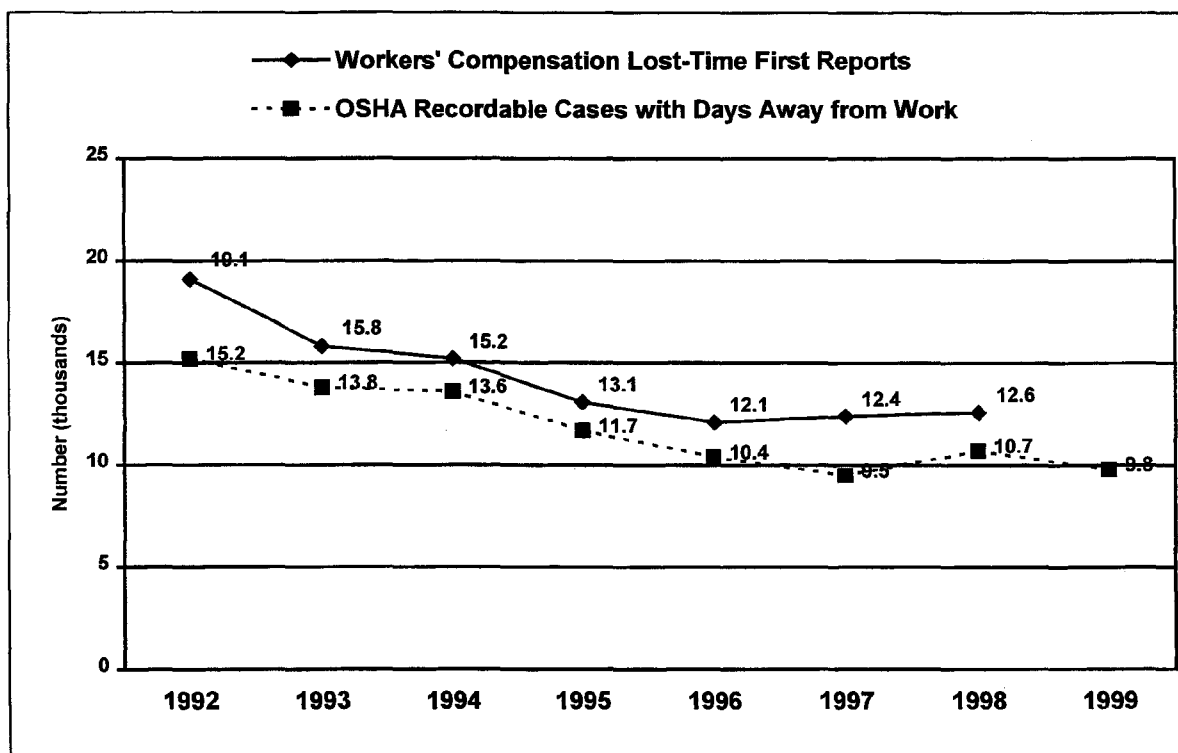
## 7. Cases with Lost Time Comparison

Figure 5 compares the number of cases resulting in days away from work between two independent systems, Workers' Compensation and the OSHA Recordkeeping system. These two systems were created to serve separate purposes but they each show a similar trend dating back to 1990. Each system shows a steady decline in the number of cases resulting in days away from work. WCB data started increasing in

number of lost time cases in 1997 while OSHA data revealed an increase starting a year later in 1998.

The data in this year's chart is refined from previous years' data. OSHA recordable cases with days away from work is also on the rise, showing that the trend for work-related injuries in Maine is on the rise.

**Figure 5. Number of Workers' Compensation Lost-time Reports vs. OSHA Recordable Cases with Days Away from Work, Maine, 1992-1999**



**Key Point:** The number of Workers' Compensation lost-time cases rose to 12,571 in 1998 (1.6% increase from 1997) the second increase since 1990. OSHA recordable cases with days away from work decreased 7.8% from 1998 with 9,831 cases in 1999. Workers' Compensation data for 1999 is not available at this time.

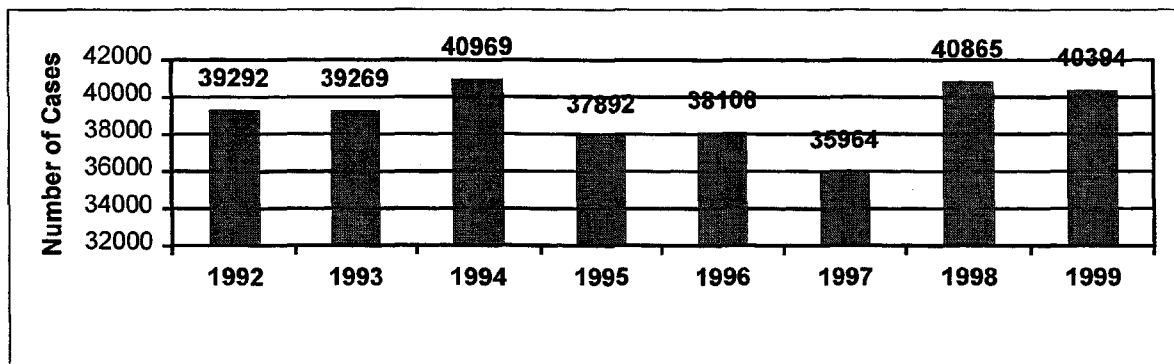
## 8. OSHA Recordable Injuries and Illnesses All Industries, Maine 1992-1999

According to the *Survey of Occupational Injuries and Illnesses, 1999*, 40,394 OSHA recordable injuries and illnesses occurred to Maine workers in 1999. The private sector accounted for 37,490 cases while the public sector (state, local, and county government) accounted for 2,904 cases. Of the 40,394 cases that occurred in 1999, 21,358 were lost workday cases (9,831 cases with days away from work, and 11,526 cases with restricted work activity). The remaining 19,036 were cases without days away from work or restricted work activity but were serious enough to require medical treatment beyond first aid or were recognized or diagnosed illnesses without lost workdays. Because the Workers' Compensation Board does not generally collect cases resulting in restricted work activity unless it involves medical expenses and the claim is controverted, information about cases involving restricted work activity is lost. However, the *Annual Survey of Occupational Injuries and Illnesses* continues to collect these cases that help complete the picture left out by the workers' compensation system. The OSHA data provides a valuable piece of information by telling us about all three severity types of cases and how employers are handling cases once they occur. From the survey the Bureau has found that injuries and illnesses are still occurring in relatively steady numbers, but they are

being managed differently than in the past. Injuries and illnesses are increasingly being recorded as restricted work activity, a shift from the past when many more were recorded as cases with days away from work. The number and rate of cases resulting in days away are falling while the number and rate of cases resulting in restricted workdays is climbing. The benefits of placing injured employees in light duty programs may have contributed to this shift.

In the private sector, the number and rate of injuries and illnesses for cases involving restricted work activity was higher than for cases involving days away from work. This trend first became apparent back in the late 1980's. However, in 1993, this trend became even more striking as the number and rate of restricted work activity cases climbed to record highs and in 1997, cases involving restricted work activity outnumbered the number and rate of cases involving days away from work for the first time. The data from 1999 show that this gap has widened. The number of cases involving restricted work activity in Maine surpassed 11,000. This trend can also be seen nation-wide in the national data published by the U.S. Bureau of Labor Statistics. See also page B-15 for related data.

**Figure 6. Number of OSHA Recordable Injuries and Illnesses, All Industries, Maine, 1992-1999**



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## 9. OSHA Injuries and Illnesses by Industry, Maine, 1998-1999

According to the Annual Survey of Occupational Injuries and Illnesses, 1999, Manufacturing recorded the highest incidence rate of injuries and illnesses with 14.6 cases per 100 full-time employees. Although accounting for far fewer injuries and illnesses than the Manufacturing industry, the Agriculture, Forestry, and Fishing industry and the Construction in-

dustry showed an incidence rate of 13.5 and 13.1 cases per 100 full-time workers, respectively. This indicates that injuries and illnesses in these industries are occurring at nearly equal rates. Finance, Insurance, and Real Estate recorded the lowest incidence rate in 1999 with 4.8 cases per 100 full-time workers.

**Table 4. Number of Cases and Incidence Rate of Injuries and Illnesses, Maine, 1998-1999**

Industry	1998		1999	
	Number of Cases	Incidence Rate	Number of Cases	Incidence Rate
<b>Private Sector</b>	<b>37,733</b>	<b>9.7</b>	<b>37,490</b>	<b>9.3</b>
Manufacturing	12,308	14.2	12,520	14.6
Services	10,015	8.3	8,207	6.7
Construction	2,116	9.0	3,460	13.1
Wholesale	2,692	10.7	2,690	10.1
Transportation & Public Utilities	2,076	9.5	1,775	7.9
Finance, Insurance & Real Estate	1,043	7.0	1,244	4.8
Agriculture, Forestry & Fishing	603	12.5	703	13.5
<b>Public Sector</b>	<b>3,132</b>	<b>5.6</b>	<b>2,904</b>	<b>5.4</b>

Note: Rates are per 100 full-time workers.

**Key point:** Rate-based data helps the Bureau target industry areas for intervention. While some industries are expected to be dangerous, such as Manufacturing, Construction and Agriculture, Forestry & Fishing, others are less expected, such as Wholesale Trade. Further research leads us to the causes and to programs needed to prevent or reduce incidence rates.

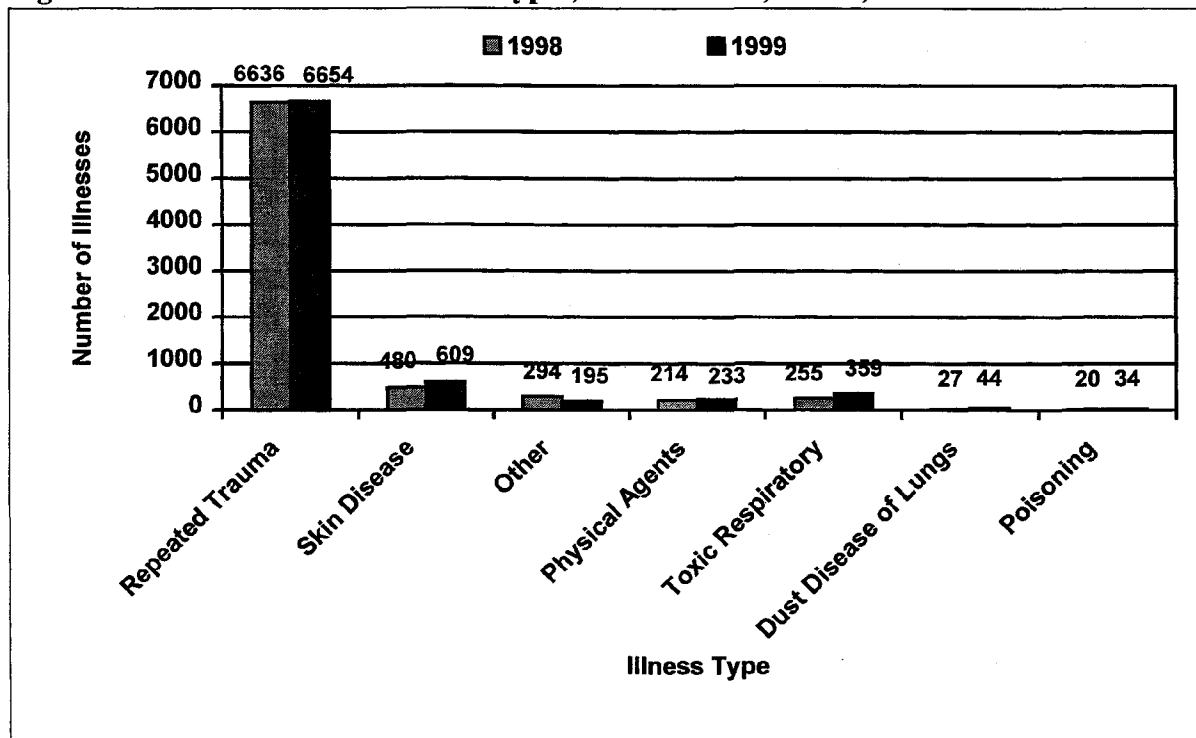
## 10. OSHA Injuries and Illnesses by Case Type Maine 1998-1999

**Injuries.** Of the 40,394 nonfatal occupational injuries and illnesses that occurred to Maine workers in 1999, 80% or 32,267 were injuries (one-time instantaneous events). Injury incidence rates were higher for mid-size establishments (those employing 50 to 249 workers) than for smaller or larger establishments. Of the total number of injuries, 17,736 cases involved lost workdays (days away from work and/or restricted work activity) and 14,572 were injuries requiring medical treat-

ment beyond first aid.

**Illnesses.** There were 8,127 newly reported cases of occupational illnesses in Maine in 1999. Of the 8,127 work-related illness cases in Maine in 1999, 6,654 (82%) were cases associated with repeated trauma which include cases of tendonitis, carpal tunnel syndrome, bursitis, overuse syndrome, hearing loss, and other repetitive motion illnesses (excluding back cases).

**Figure 7. Distribution of Illness Case Types, All Industries, Maine, 1998-1999**



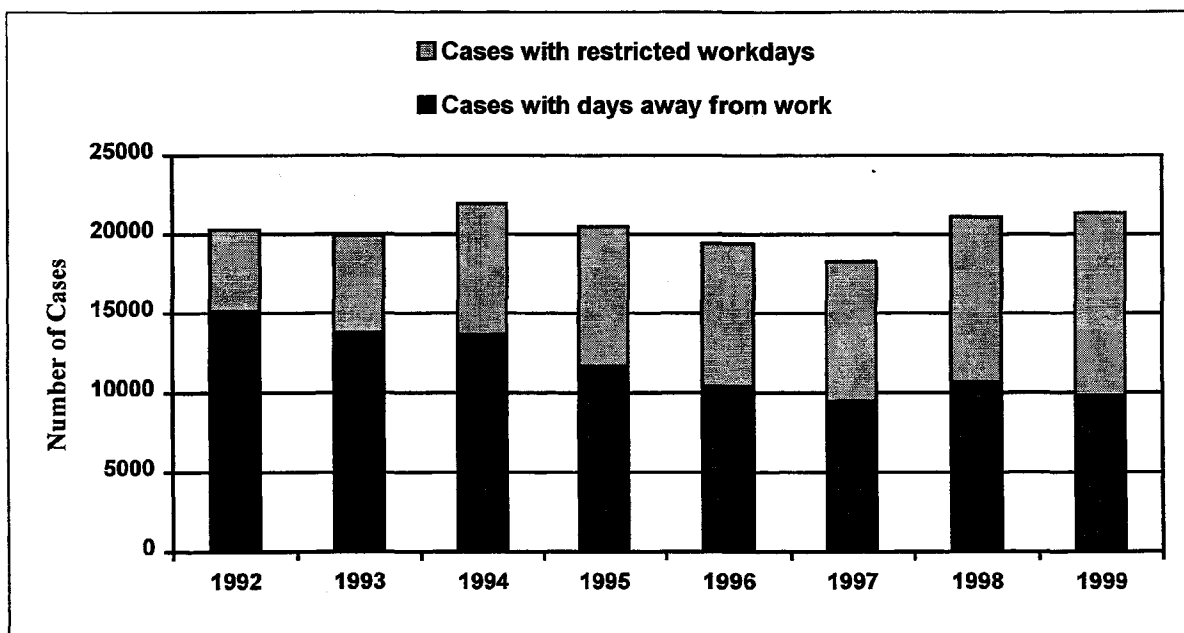
**Key point:** Illness research and Prevention efforts need to be in the area of repetitive trauma – such as tendonitis, carpal tunnel syndrome and hearing loss. With cost data, the Bureau could show how important these cases are from how long and how much effort they take to resolve.

## 11. OSHA Restricted Workday Cases at High Levels

The *Annual Survey of Occupational Injuries and Illnesses* conducted by the U. S. Bureau of Labor Statistics, in cooperation with the Maine Department of Labor, Bureau of Labor Standards produces reliable estimates on the number and rate of cases that result in days away from work, cases with restricted work activity, and cases requiring medical treatment beyond first aid. A recent development, as seen from

this survey, bears closer examination. Since 1992, the proportion of lost workday cases that involved restricted work has steadily increased while the proportion of cases resulting in days away from work has declined. According to the 1999 survey, cases with restricted workdays accounted for 54% of all lost workday cases, a record high (see Figure 8). See also page B-12 for related information.

**Figure 8. OSHA Lost Workday Injuries and Illnesses by Case Type, All Industries, Maine 1992-1999**



**Key Point:** Although there has been a reduction in the number of OSHA recordable injuries and illnesses resulting in days away from work since 1992, this is offset by the gradual but strong increase in injuries and illnesses that result in restricted workdays. This indicates a shift in response rather than a reduction in workplace injuries and illnesses in Maine.

## 12. OSHA Injury and Illness Incidence Rates for Maine and U.S.

**Table 5. Non-Fatal Occupational Injury and Illness Incidence Rates, by State, 1998**

State	Total Cases	Cases with Days Away from Work	Cases with Restricted Workdays	Cases without Lost Workdays
U.S. & Territories	6.7	2.0	1.1	3.5
Maine	9.7	2.4	2.5	4.7
Washington	9.5	2.9	1.1	5.5
Wisconsin	9.5	2.7	1.7	5.1
Iowa	9.3	2.2	2.0	5.1
Michigan	8.6	1.8	2.3	4.5
Indiana	8.5	2.2	1.6	4.6
Kansas	8.5	1.9	1.8	4.8
Nebraska	8.5	2.4	1.4	4.7
Kentucky	8.4	2.4	1.7	4.3
West Virginia	8.0	3.5	0.5	4.0
Alaska	7.8	3.4	0.5	3.9
Montana	7.8	2.7	0.6	4.5
Minnesota	7.7	1.9	1.6	4.1
Tennessee	7.6	2.1	1.4	4.1
Utah	7.6	1.9	1.1	4.6
Missouri	7.6	1.8	1.5	4.3
Oklahoma	7.5	2.5	1.4	3.6
Alabama	7.3	1.9	1.5	3.9
Nevada	7.3	2.0	1.4	3.9
Vermont	7.1	2.3	0.9	3.9
Illinois	7.0	1.9	1.2	3.8
Arkansas	7.0	1.8	1.3	3.9
Oregon	6.9	2.1	1.3	3.5
Rhode Island	6.7	2.7	1.0	3.0
Connecticut	6.6	2.2	1.2	3.2
Hawaii	6.5	3.4	0.3	2.8
California	6.3	1.9	1.3	3.1
Arizona	6.1	1.8	0.9	3.4
New Mexico	6.1	2.2	0.9	3.1
North Carolina	6.1	1.6	1.2	3.3
Florida	5.9	1.5	1.2	3.2
Georgia	5.8	1.4	1.2	3.2
Massachusetts	5.7	2.1	0.8	2.8
Virginia	5.7	1.7	0.9	3.1
South Carolina	5.7	1.5	0.9	3.3
Delaware	5.5	1.9	0.8	2.8
Texas	5.2	1.6	1.1	2.6
Louisiana	5.1	1.5	0.8	2.8
Maryland	5.0	1.9	0.5	2.6

Continued on next page

**Table 5. Non-Fatal Occupational Injury and Illness Incidence Rates (cont.)**

State	Total Cases	Cases with Days Away from Work	Cases with Restricted Workdays	Cases without Lost Workdays
New Jersey	4.8	1.8	0.4	2.6
Guam	4.5	3.0	0.0	1.6
Puerto Rico	4.3	3.4	0.1	0.9
New York	4.3	1.9	0.3	2.1
Virgin Islands	2.0	1.2	0.0	0.8

**Key Point:** Maine is again on the top of the OSHA recordable list. This may be due to Maine's OSHA ~~recordkeeping outreach efforts~~. In the year 2001, OSHA will start a nationwide effort to attempt AN audit and determine and possibly correct for state variations in OSHA recordkeeping outreach. If this project is successful, Maine might be able to adjust for such an effect, or at least know for sure of its existence.

Who leads RK?

### 13. Census of Fatal Occupational Injuries

The Census of Fatal Occupational Injuries (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 U. S. 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 is based on consistent guidelines throughout the U.S.

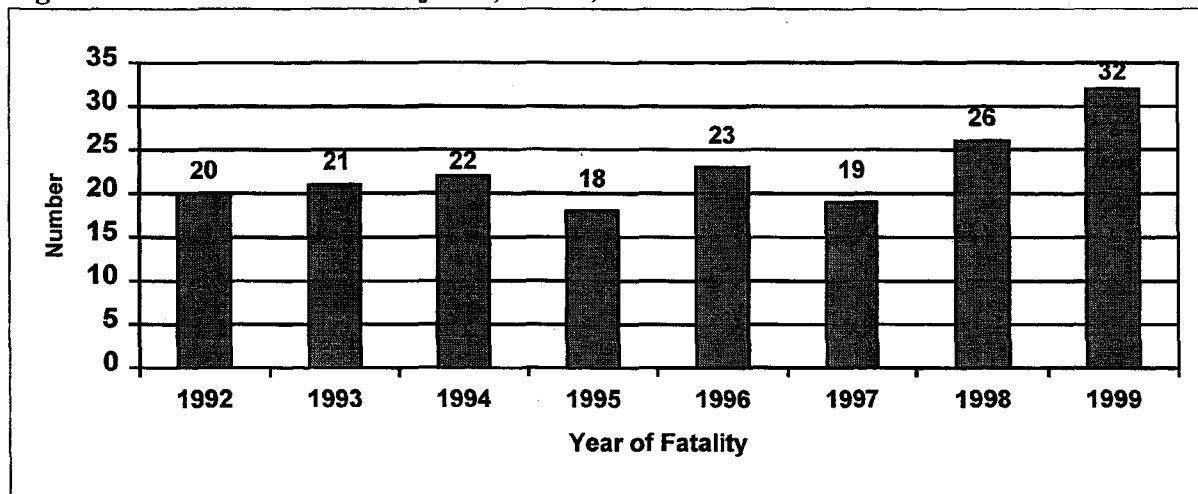
A death is considered work-related if an event or exposure resulted in an employee fatality while in work status, whether at an on-site or off-site location. Private and public sector (state, local, and county government) are included.

Fatalities must be confirmed by two independent sources before inclusion in CFOI. Sources include death certificates, First Report of Occupational Injury or Disease, medical examiner's reports, Department of Marine Resources reports, Maine State Police reports, Department of Motor Vehicles fatality records, Coast Guard reports, OSHA reports, and newspaper clippings.

Fatalities due to injuries are included in the Census of Fatal Occupational Injuries. Occupational illnesses are excluded from this report since many fatalities due to illness or disease are understated because the illness may not be diagnosed until years later or the work relationship may not be known.

Figure 9 shows the numbers of work-related fatalities recorded from 1992-1999.

**Figure 9. Work-related Fatal Injuries, Maine, 1992-1999**



**Key point:** Fatal injuries in Maine reached a record high in 1999 with 32 fatal workplace accidents, a 23% increase from 1998 when 26 fatal injuries were recorded. The rate of fatal workplace injuries in Maine in 1998 was 4.2 per 100,000 workers, slightly lower than the U.S. rate of 4.5 per 100,000 workers.

## 14. Fatal Occupational Injuries by Characteristics Maine, 1999

The Census of Fatal Occupational Injuries collects employee demographic information, such as private vs. public employers, employment status, gender, age group and race.

Table 5 shows a few of these characteristics of work-related fatal occupational injuries in Maine for 1999.

**Table 6. Fatal Occupational Injuries by Characteristics, Maine, 1999**

Characteristic	Number	Percent
<b>Total</b>	<b>32</b>	<b>100.0</b>
<b>Employer</b>		
Private Industry	27	84.4
Public (Federal, State, local & county government)	5	15.6
<b>Employment Status</b>		
Working for wages or salary	26	81.2
Self-employed	6	18.8
<b>Gender</b>		
Male	28	87.5
Female	4	12.5
<b>Age Groups</b>		
15-34 years old	7	21.9
35-44 years old	10	31.2
45-54 years old	11	34.4
55-64 years old	4	12.5
<b>Race</b>		
White	32	100.0

**Key point:** Fatal workplace injuries to self-employed individuals occurred in a disproportionately higher frequency than employees working for wages or salary in 1999 accounting for nearly 19% of the 32 Maine fatal injuries. Additionally, there are gaps in the investigating of the work-related causes of these injuries since others do not employ them. In a grant to NIOSH (National Institute of Occupational Safety and Health) the Bureau will attempt to cover investigation gaps.

## 15. Fatal Occupational Injuries by Industry and Event/Exposure, Maine, 1992-1999

Transportation accidents have accounted for more fatal workplace injuries than any other event or exposure in Maine as shown in Table 6. Since 1992, nearly 42% of all fatal work-related injuries in Maine were transportation related. In the U.S., as a whole, from 1992-1999, 42% of all fatal injuries were also transportation related.

**Table 7. Fatal Occupational Injuries by Industry & Event/Exposure, Maine, 1992-1999**

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>184</b>	<b>77</b>	<b>46</b>	<b>24</b>	<b>23</b>	<b>11</b>	<b>3</b>
Agriculture, Forestry & Fish.	38	20	2	2	14	0	0
Manufacturing	36	5	23	6	1	1	0
Transportation & Public Utilities	34	23	5	2	4	0	0
Services	23	8	8	3	1	3	0
Construction	19	2	4	10	1	0	2
Government	16	8	2	1	1	4	0
Wholesale	10	7	1	0	1	0	1
Retail	7	3	1	0	0	3	0
Finance, Ins. & Real Estate	1	1	0	0	0	0	0

**Key Facts:** Transportation accidents in the Transportation and Public Utilities Industry accounted for 23 of the 184 (12.5%) reported work-related injuries in Maine from 1992-1999. Also with 23 fatal work-related injuries during this same time period, were contact with objects and equipment in the Manufacturing Industry.



**SECTION 3**

**WORKERS' COMPENSATION BOARD**

## Section 3. Workers' Compensation Board

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## 1. Introduction

Title 39-A M.R.S.A. Section 358 as amended by P.L. 1997, Chapter 486 directs the Board, in consultation with the Superintendent of Insurance and the Director of the Bureau of Labor Standards, to submit an annual report to the Governor and the Legislative Committees on Labor and Banking and Insurance.

The report is intended to summarize data and related operations within the three agencies and to profile the workers' compensation system. Each agency has prepared a section to describe its operations and perspective of the workers' compensation system.

Enacted in 1997, Chapter 486 expanded the scope of the report by changing the Mission Statement and requiring more data about the Board's administrative and regulatory duties. It specifically calls for data to measure compliance of individual insurers, self-insurers, and third-party administrators. On June 2, 1998, the Workers' Compensation Board approved a Monitoring, Audit and Enforcement (MAE) Program. It was agreed that the program be tested and phased in over a period of time. The first phase of the program was intended to test the MAE Program and is referred to as the Pilot Audit Program. The goals of the Pilot Project were to:

- (1) Test the MAE Program,
- (2) Measure and determine the integrity of current data,
- (3) Report on the performance of the entire system, and
- (4) Educate the users about the program.

The Pilot Audit Program Report was presented to the Workers' Compensation Board

and approved on January 26, 1999. The Workers' Compensation Board subsequently authorized Quarterly Compliance Reports and a Three-year Audit Plan. Six Compliance Reports have been completed for 1999 and 2000 and a seventh is in the process of being completed. Thirty-nine entities have been audited or are in the process of being audited. Compliance has improved significantly since the inception of the MAE Program.

P.L. 1997, Chapter 486 also provided for an expanded Worker Advocate Program. The Program provides for unrepresented employees at both the mediation and formal hearing levels and has enjoyed a positive and overwhelming response. Over 50% of employees are represented by worker advocates at the mediation level and over 30% are represented by worker advocates at the formal hearing level.

Due to contractual increases in salaries, benefits, and health insurance, along with the high cost of the MAE and the Worker Advocate Programs, the Board is facing budgetary problems. The Board's solution involves the prudent use of its reserves and an increase of the assessment cap by \$700,000, through legislation.

The new mission of the Workers' Compensation Board redistributes the Board's focus from dispute resolution to dispute prevention and compliance. An incremental shift in emphasis has taken place during the past 24 months and this trend should continue until a greater balance is reached in these three phases of activity. The goal of a 10% shift for 1999 and a 10% shift in 2000 were attained by the Workers' Compensation Board.

## 2. Historical - General

Workers' compensation originated during the early part of the 20<sup>th</sup> century. Maine's first statute became effective in 1916. Other states enacted similar laws during the same period.

Workers' compensation changed little between its inception and approximately the early 1970's, at which time a national, bi-partisan consensus developed that favored raising benefit levels. In the late 1970's, Maine's Legislature passed laws that increased both benefit levels and the number of employers covered by the system. This followed national trends and recommendations by a federal study commission. Also, statutes, case law, and medical evidence began to recognize injuries like back strain or carpal tunnel syndrome as work-related. This brought more ambiguous injuries with longer periods of disability into the system.

The combination of higher benefits and more complex and costly injuries increased both the system's expenditures and the potential for disputes. Although a bi-partisan consensus supported these changes, few, at the time, appreciated how much costs would accelerate. By the early 1980's, however, it had become

apparent. For approximately the next decade, workers' compensation was a controversial political issue. Almost every legislative session included a contentious debate about new laws concerning workers' compensation. This process culminated in a major overhauling of Maine's statute in 1992. The reforms, among other things, lowered benefits, provided for a less formal dispute resolution system, and reduced the use of attorneys.

Although many effects of the legislation remain subject to differing interpretations, most observers agree that creating Maine Employers' Mutual Insurance Company (MEMIC) was an important step in restoring stability to the State's workers' compensation system.

P.L. 1997, Chapter 486, enacted in 1997, provides a new mission statement for the Board shifting the emphasis from dispute resolution to dispute prevention and compliance. This report will, in large part, deal with the changes that have resulted from this new legislation, such as the Monitoring, Audit and Enforcement Program and the Worker Advocate Program.

### 3. Board Organization and Program

#### A. Organization

The Workers' Compensation Board is an independent state agency, directed by an eight-member board with four employee and four employer representatives. The Governor appoints from nominees submitted by the AFL-CIO and the Maine Chamber of Com-

merce and Industry. These appointments are subject to review by the Joint Standing Committee on State and Local Government with confirmation by the Senate. The Workers' Compensation Board presently consists of the following members:

Labor	Management
Anthony Monfiletto	Charles R. Weeks
Frederick G. Hayes	Thomas Accomando
Patricia Lemaire	David M. Gauvin
Joan Kirkpatrick	Barbara Longfellow

The agency is administered by its Executive Director, Paul R. Dionne. Regional Offices are located in Augusta, Bangor, Caribou, Lewiston, and Portland. The Central Office is

in Augusta. Troubleshooting, mediation, and formal hearings are conducted at these and other offices.

#### B. Program

To ensure the efficient implementation of the Workers' Compensation Act, the Board is actively engaged in the promulgation of rules and regulations; the resolution of disputes through troubleshooting, mediation, and formal hearing; the monitoring of payments to injured workers; the monitoring and enforcement of insurance coverage; the supervision of medical protocols, utilization review, medical fee schedules, and enforcement guidelines; the implementation of an independent medical examiner system; the administration of a Vocational Rehabilitation Fund and vocational re-

habilitation services; the predetermination of independent contractor applications; the investigation and prosecution of complaints of misrepresentation, fraud, illegal conduct, and violations of the Act through its Abuse Investigation Unit; the advocacy of unrepresented employees through the Worker Advocate Program; dispute prevention; and compliance, through the Monitoring, Audit and Enforcement Program; and the supervision of Section 213 reimbursement provisions from the Vocational Rehabilitation Fund.

## **4. Monitoring, Audit and Enforcement (MAE) Program**

### **A. History of the MAE Program**

P.L. 1997, Chapter 486 was enacted by the Legislature in 1997 to supplement the Maine Workers' Compensation Act of 1992. Chapter 486 provides for the creation of a Monitoring,

Audit and Enforcement (MAE) program. The Workers' Compensation Board of Directors approved the MAE Program on June 2, 1998.

### **B. Goals of the MAE Program**

The basic goals of the Program are as follows:

- Provide timely and reliable data;
- Monitor and audit payment and filing requirements;
- Detect those parties that are not in compliance; and
- Ensure that all filings and compliance obligations are met.

The MAE Program consists of three integral functions: monitoring, auditing, and enforcement. Monitoring deals with compliance requirements. Auditing ensures correct and

accurate data. Enforcement processes violations in conjunction with the Abuse Investigation Unit.

The Program is also responsible for:

- Determining and maintaining Workers' Compensation Board data integrity;
- Compiling and reporting statistics of all performance indicators;
- Making recommendations to improve user performance; and
- Making recommendations to improve forms and information gathering procedures.

### **C. Benchmarks, Baselines and Protocols**

An important part of Chapter 486 is the development of a system to measure compliance. Board staff has been meeting with the Compliance and Benchmarking Group to develop protocols. Considerable progress has been made with this group. Numerous protocols have been recommended and approved. Performance benchmarks have been developed. Approved protocols and benchmarks have been incorporated into the MAE Program.

Initially, the goal was to assimilate accurate information and establish baselines. Once baselines were established, reasonable benchmarks (performance standards) were developed to gauge the progress of insurers, self-insurers and third-party administrators. If benchmarks are not met, the Board's enforcement process can be utilized to compel compliance. This provides for accountability and greater compliance.



The Compliance and Benchmarking Group has reached a consensus regarding a number of issues. Protocols already accepted by the Board and integrated into the MAE Program deal with:

- Definitions;
- Timeliness of initial indemnity payments;
- Timeliness of subsequent indemnity payments;
- Calculation of total and partial incapacity payments;
- Seven day waiting period and 14 day period;
- First day of compensability after the waiting period is met;
- Salary continuation;
- Completeness of payments;
- Incapacity dates;
- Filing of First Reports;
- Closure of First Reports
- Filing of Wage Statements;
- Filing of Memorandum of Payment;
- Filing of Discontinuance or Modification of Compensation;
- Filing of Notice of Controversy;
- Filing of Statements of Compensation;
- Measuring of timing of the process use and involvement of attorneys; and
- Performance benchmarks for initial indemnity payments and filing of Memorandum of Payment.

#### **D. Quarterly Compliance Reports**

Chapter 486 also directs the Executive Director to submit Quarterly Compliance Reports to the Board, the Bureau of Insurance and the Director of the Bureau of Labor Standards.

The Board of Directors approved the implementation of Quarterly Compliance Reports to monitor the following:

- Timely filing of First Reports of Injury. (Insurers and third-party administrators are not identified.)
- Timely payment of initial indemnity benefits. (Insurers, third-party administrators, and self-administered employers are identified.)
- Timely filing of Memorandum of Payment. (Insurer, third-party administrators, and self-administered employees are identified.)
- Timely filing of Notice of Controversy. (Not reported to date.)

Additional compliance measures, as referenced in P.L. 1997, Chapter 486 and the Monitoring, Audit and Enforcement Program, will be developed and generated as the new protocols are agreed upon and approved, as the computer system matures, and as the Board resources are reallocated.

The MAE Program is the initial step of the Workers' Compensation Board complying with its new mission of shifting resources from the dispute resolution to dispute prevention and compliance.

The Quarterly Compliance Reports suggest positive trends in payment of initial indemnity benefits, timely filing of Memoranda of Payment, and timely filing of First Reports of Injury since 1997. These positive trends will assist the Board in reducing the number of cases litigated and increasing the timely and accurate payment of lost time benefits.

**Table 1. Quarterly Compliance Reports, 1999<sup>1</sup>**

	<b>First Quarter</b>		<b>Second Quarter</b>		<b>Third Quarter</b>		<b>Fourth Quarter</b>	
First Report of Injury Received within:	<u>7 days</u>	<u>10 days</u>	<u>7 days</u>	<u>10 days</u>	<u>7 days</u>	<u>10 days</u>	<u>7 days</u>	<u>10 days</u>
	71.96%	81.88%	72.60%	81.28%	68.29%	77.13%	71.28%	79.31%
Initial Indemnity Payment Made Within 14 Days:	81.24%		78.49%		79.54%		79.18%	
Memoranda of Payment Received Within 17 Days:	77.27%		73.97%		75.45%		74.58%	

**Table 2. Compliance Comparison**

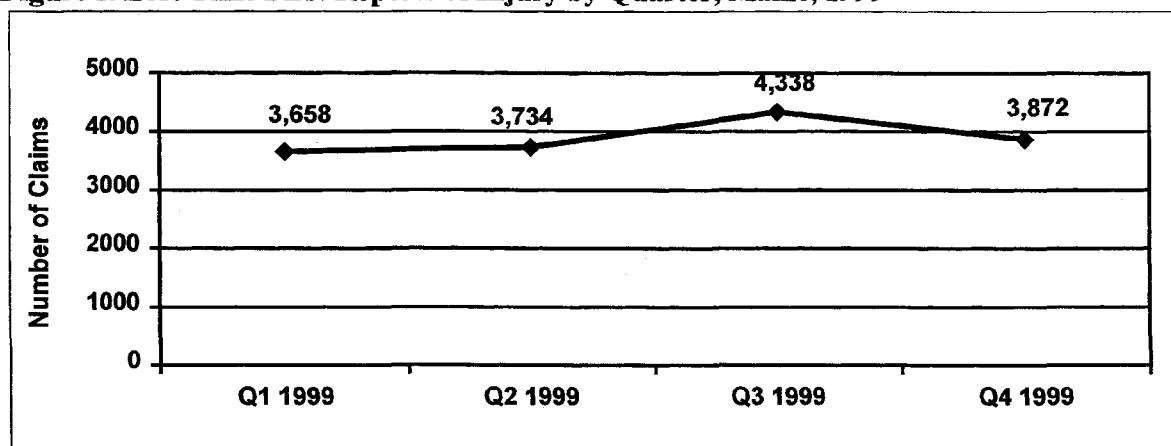
	<b>Pilot Project 1997</b>	<b>Annual Compliance<sup>2</sup> 1999</b>	<b>Percent of Change</b>
First Report Of Injury Received within 7 days	36.74%	69.20%	88.35%
Initial Indemnity Payment Made within 14 Days	59.39%	79.35%	33.61%
Memoranda of Payment Received Within 17 Days	56.78%	75.14%	32.34%

<sup>1</sup> Static results based upon data received by the deadline for each quarter.

<sup>2</sup> Dynamic results based upon data received by March 30, 2000.

First Reports of Injury are also being monitored and reported in the Quarterly Compliance Reports. In 1999, 15,602 lost time First

Reports of Injury were filed with the Board. The chart below shows the number of Lost Time First Reports of Injury filed by quarter.

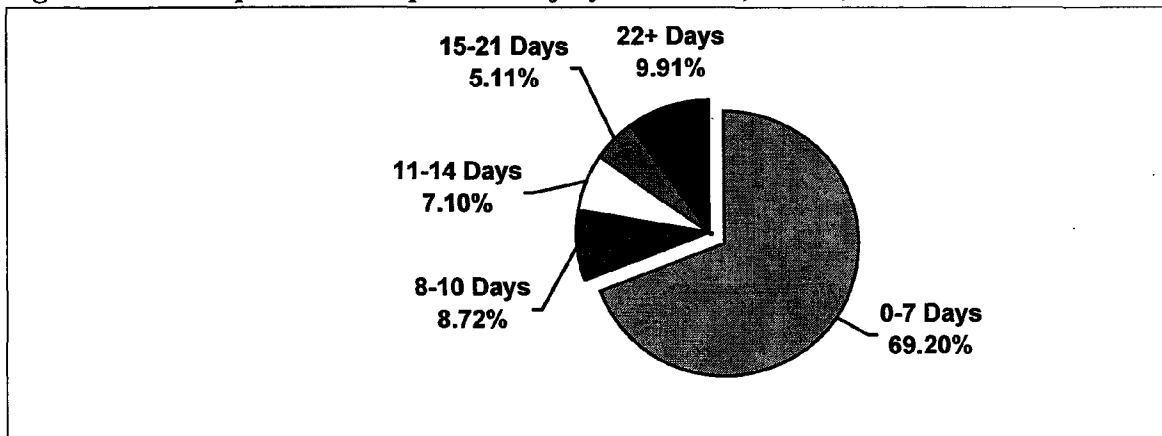
**Figure 1. Lost Time First Reports of Injury by Quarter, Maine, 1999**

## 1. First Report of Occupational Injury or Disease

The responsibility of filing First Reports rests with employers and needs to be mailed or delivered on or before the 7<sup>th</sup> day as provided by the law, but must be received by the 10<sup>th</sup> day. Three mail days are provided for receipt by the Board. The employer may rebut a finding for late filing. This standard may also be rebutted when Electronic Data Interface (EDI) is in-

volved or if the carrier has agreed to assume the responsibility for filing the First Report on the employer's behalf. In those cases the insurer assumes responsibility for late filings when the employer notified the insurer in a timely manner but the insurer failed to notify the Board as outlined above. In such cases, the employers will be notified of the fine.

**Figure 2. First Reports of Occupational Injury or Disease, Maine, 1999**



**Table 3. First Reports Received, Maine, 1999**

First Reports Received within:	Number	Percent
0-7 days	10,797	69.20%
8-10 days	1,362	8.72%
11-14 days	1,109	7.10%
15-21 days	799	5.11%
22+ days	1,547	9.91%
<b>Total</b>	<b>15,602</b>	<b>100.00%</b>

## 2. Payment of Initial Indemnity Benefits

The first payment of compensation for incapacity under section 212 or 213 is due and payable within 14 days after the employer has notice or knowledge of the injury or death, on which date all compensation then accrued must be paid. Compliance with the initial indemnity payment obligation exists when pay-

ment is made within 14 days. 14 days is defined as the later of (a) 14 days after the employer's notice or knowledge of incapacity Section 205(2), or (b) the 7-day waiting period, plus the first day of compensability, plus 6 days after the first day of compensability.

## 3. Benchmark – 80% of Initial Indemnity Payments Within 14 Days

Figure 3. Payment of Initial Indemnity Benefit, Maine, 1999

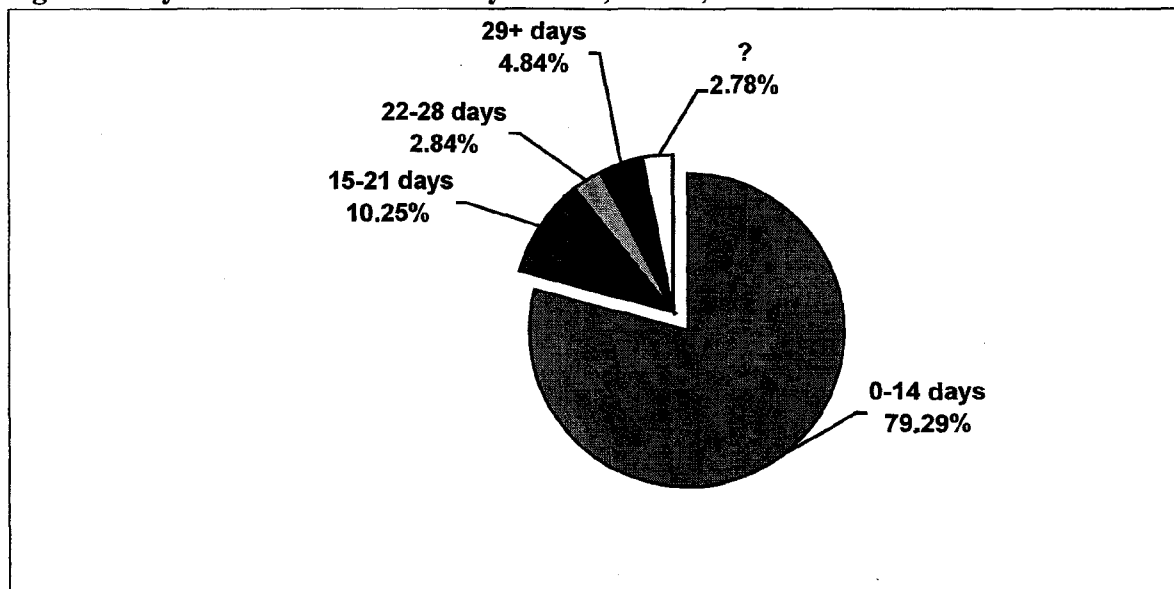


Table 4. Initial Payments Made, Maine, 1999

Initial payments made within:	Number	Percent
0-14 days	3,851	79.29%
15-21 days	498	10.25%
22-28 days	138	2.84%
29+ days	235	4.84%
? days	135	2.78%
<b>Total</b>	<b>4,857</b>	<b>100.00%</b>

#### 4. Memorandum of Payment

A Memorandum of Payment (MOP) should be mailed or delivered on or before the 14<sup>th</sup> day, but must be received by the 17<sup>th</sup> day. Three mail days are provided for receipt by the Board. MOPs received after the 17<sup>th</sup> day

may be considered in noncompliance under Section 360(1). Evidence of timely mailing is a rebuttable presumption to a determination of noncompliance under Section 360(1).

#### 5. Benchmark – 75% Filed Within 17 Days (14 days plus 3 mail days)

Figure 4. Memorandum of Payment, Maine, 1999

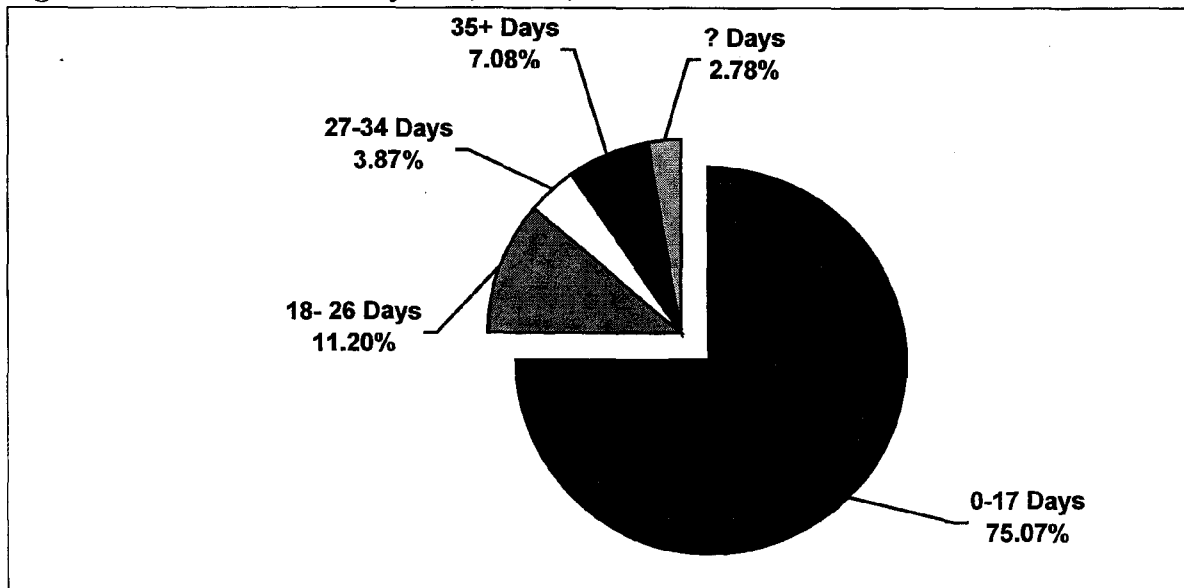


Table 5. Memorandum of Payment Received, Maine, 1999

Memorandum of Payment received within:	Number	Percent
0-17 days	3,646	75.07%
18-26 days	544	11.20%
27-34 days	188	3.87%
35+ days	344	7.08%
?	135	2.78%
Total	4,857	100.00%

## **E. Audits**

The Audit Division is authorized to audit uninsured employers, insurance companies, self-insured/self-administered employers, and third-party administrators. Audits are used to determine:

- The accuracy of data reported to the Board,
- The accuracy of the Board's data recording, processing, and reporting system, and
- Overall compliance with statutory requirements.

Over 3,000 claim files belonging to 39 entities

have been audited. Audits of 19 entities have been completed and reports have been submitted to the Workers' Compensation Board of Directors. Twenty entities are in various stages of the audit process and reports will soon be submitted to the Board of Directors.

To date, consent decrees between the Board and the audited entities have generated \$71,750.00 in penalties. This penalty amount breaks down to \$37,500.00 paid to injured employees and \$34,200.00 paid to the Board and transferred to the State General Fund.

## 5. Worker Advocate Report

### A. Introduction

The Worker Advocate Program was established, by the Legislature to assist injured workers in processing their disputed workers' compensation claims. Initially, ten advocates were hired and placed in the five regional offices of the Workers' Compensation Board. Each advocate was assigned to a specific hearing officer. In order to ensure a separation between the Board and the Advocate Program, the Board has provided the advocates with their own staff and office space in each regional office.

### B. Duties

An injured worker must request the services of an advocate. This request can be made only after a claim has been through the Troubleshooting process and is still unresolved. Once the worker is assigned an advocate, a file is created and the advocate prepares the case for Mediation. The Mediation process is a mandatory attempt to voluntarily resolve disputed claims. The advocate attends the mediation with the injured worker and has the authority to negotiate an agreement with the employer/insurer on behalf of the employee.

If the claim is not resolved in mediation, the next step involves the filing of a petition and proceeding to Formal Hearing. The advocates provide representation and litigate disputed claims through the Formal Hearing process. This includes compiling medical reports, preparing the worker for hearing, the taking of direct and cross-examination testimony, and the filing of position letters at the conclusion of the testimony. The advocates also attend depositions, when necessary, of medical providers, private investigators and labor market experts. Essentially, the advocates have the

The Board recognized, at the very beginning, that proper equipment and data processing tools were necessary for the successful operation of the program. Accordingly, the Board has placed "state of the art" computers in every advocate office. In addition, the Advocate Division has a computerized case management system that permits scheduling, docketing, reporting and updating of information on all case files. This system permits the advocates to have access to case materials at their desktop.

same duties as any other person who represents injured workers.

From the beginning of the program, there was speculation that the advocates were spending a great deal of time on cases that had no merit, which time could be more effectively spent on more meritorious cases. The Legislature concurred and effective September 19, 1999, P.L. 1999, Chapter 410 provided for a framework where advocates may decline and/or withdraw from cases without merit. An advocate may choose not to represent a person under the following statutory criteria of Chapter 410:

- (1) Timely notice of the injury was not given by the employee to the employer, pursuant to this Act;
- (2) The statute of limitations has expired;
- (3) The employee's case is based on an argument or issue adversely determined by the Supreme Judicial Court;

- (4) The employee's case is based on a claim of discrimination governed by section 353;
- (5) There is no record of medical assessment stating that the employee's injury was either caused by, aggravated by or precipitated by the employee's work or, when the issue is aggravation, there is no record of medical assessment stating that the employee's work aggravated a pre-existing condition in a significant manner; or
- (6) The employee has admitted to a fraudulent act, has been convicted of a fraudulent act by a court of competent jurisdiction

or has been found to have committed a fraudulent act by the abuse investigation unit of the board.

The Legislature provided for specific safeguards in the application of this section. The advocate, after a thorough investigation must request, in writing, to the staff attorney permission to drop the case. The staff attorney must approve the request in writing. Finally, the employee has the right to appeal to the Executive Director of the Board the decision of the staff attorney. During the past year, few cases were screened out through this mechanism.

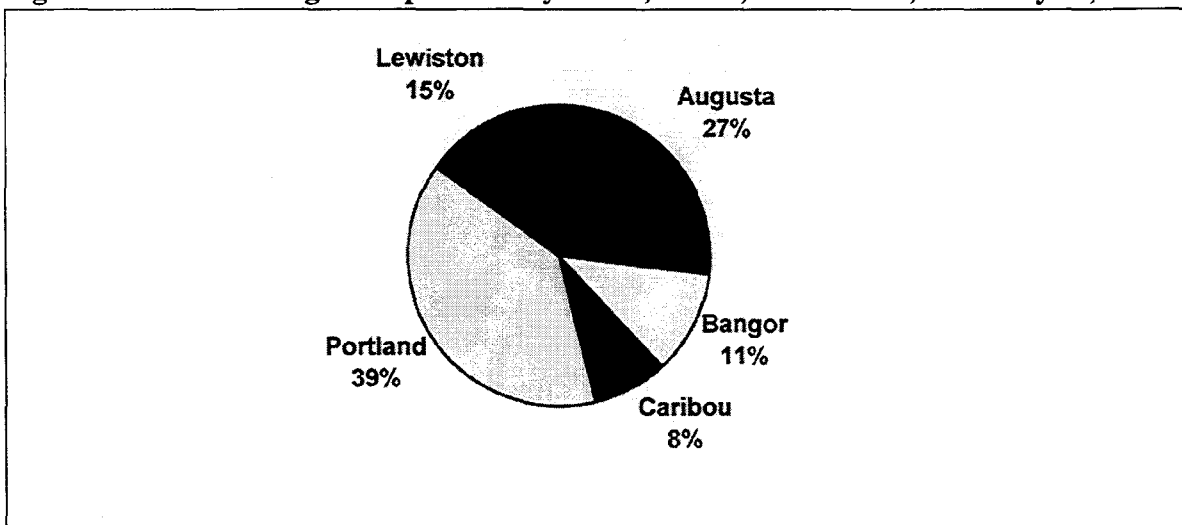


### C. Workload

Injured workers have flocked to the Worker Advocate Program in overwhelming numbers. The need for competent representation, where private attorneys are not an option, has been clearly proven by the number of cases that the advocates have handled for the time period from December 1, 1997 through July 30, 2000. A substantial majority of the active caseload is

in the Portland and Augusta offices. As you can see, the Portland and Augusta regional offices account for 66% of all open files with the remaining 34% distributed among the other three regional offices. Fully 81% of all files are found from the Kennebec Valley to York County. The following pie chart highlights this situation

**Figure 5. Advocate Program Open Files by Office, Maine, December 1, 1997-July 30, 2000**



Through the month of July 2000, the Advocate program has 1,678 open files. The advocates, from December 1997 through July 2000, have represented injured workers in 3,968 Mediations and 793 formal hearings.

The following month to month chart shows the number of open files, mediations and formal hearings attended from January 1999 through July 2000.

**Table 6. Advocate Program, Open Files, Mediations, Hearings by Month, Maine, 1999-July 2000**

Month	Open Files	Mediations	Hearings
January 1999	1,536	197	54
February 1999	1,573	194	41
March 1999	1,605	281	66
April 1999	1,647	180	36
May 1999	1,758	199	51
June 1999	1,650	250	38
July 1999	1,670	210	38
August 1999	1,692	178	38
September 1999	1,778	213	45
October 1999	1,779	235	52
November 1999	1,781	249	49
December 1999	1,754	173	43
January 2000	1,677	155	23
February 2000	1,683	111	43
March 2000	1,728	209	56
April 2000	1,758	157	41
May 2000	1,794	241	42
June 2000	1,664	195	47
July 2000	1,678	220	34

The percentage of unrepresented employees has dropped significantly since the inception of the Worker Advocate Program. The following statistics, covering the time period

from the third quarter 1999 through the second quarter 2000 show a high degree of advocate representation at mediation and formal hearings.

**Table 7. Advocate Representation, Maine, Third Quarter 1999-Second Quarter 2000**

Mediation		Formal Hearing	
Third Quarter 1999	48%	Third Quarter 1999	29%
Fourth Quarter 1999	51%	First Quarter 2000	39%
Fourth Quarter 1999	28%	First Quarter 2000	28%
Second Quarter 2000	45%	Second Quarter 2000	27%

Advocates now participate in almost **half** of the total number of mediations and nearly one-third of the formal hearings. These num-

bers are indicative of the popularity and need for the program. However, these numbers also are very high for the advocates and staff.

## **D. Staffing**

Adequate support staff has been a problem since the beginning of the program. The enabling legislation provided for only two support staff positions statewide. The Board provided for an additional four positions before the advocates were placed in the regional offices. However, the huge caseload, particularly in the southern part of the state, has made the delivery of services very difficult. The Board recognized this problem and has hired an additional advocate for the Portland and Augusta offices as well as paralegal assistants in the Portland and Lewiston offices.

The Legislature has provided for funding for

## **E. Conclusion**

The Worker Advocate Program has been quite successful. The response by injured workers has been overwhelming. The advocates are performing their duties in a dedicated and professional manner and are really making a difference. Injured workers now have access to representation and assistance

two additional paralegal assistants in the Augusta and Bangor offices. There is still a pressing need for an additional staff in the Portland and Augusta offices. There are only three staff people in Portland to serve four advocates and **656** active files. There are only two staff people in Augusta to serve two advocates and **458** active files. The staffing issue directly affects the quality of the services that the advocates can deliver to the injured workers that they represent. The program is very fortunate to have a dedicated group of advocates, who take their jobs seriously. The continued success of the Advocate Program is tied directly to this staffing issue.

that enables them to receive all benefits to which they are entitled. There are, admittedly, issues that must be addressed to ensure the viability of the program. Overall, however, the outlook for the future is encouraging. The advocates are here and they are doing the "people's business."

## 6. Profile of the System

As a generalization, policy makers are interested in assessing the costs of the system and in the amount of litigation. Also, policy makers are interested in how promptly benefits are paid and if denials are reasonable. The specific question at hand can be highly detailed or generic.

### A. Data - Introduction

This section begins with comments about the information collected by the Workers Compensation Board. Then, it uses the data to profile certain elements of the system and to address some of the generic policy questions.

For minor disabilities, data is simple and straightforward. An injured employee may return to work - completely healed - soon after an injury. There is just one period of missed work and one benefit payment. Disputes are rare.

### B. Injury Years and Calendar Years

Calendar year data, such as the number of disputes and time frames is useful for assessing the Board's operations. However, payments and litigation occurring in a calendar year relate to injuries that happened in many previous years. In 2000, for example, many litigated cases involved injuries occurring in

Evolving computer technology has enabled the Board to become a better source of information about these types of issues than it was a decade ago. However, workers' compensation policy issues are still regarded as challenging. The inherent complexity of long-term disability data is one of the major reasons.

Serious disability cases are a small percentage, perhaps 10 to 20% of all injuries. Their effects may extend for a decade or more. Several periods of incapacity and several disputes may need to be processed separately at different times. If it is a soft tissue injury, such as a back problem, disputes about work relatedness and the degree of incapacity are common.

The resulting claim data about benefit costs and litigation develop over many years. It can be difficult to gather from many private payers of benefits. It can be complicated data to summarize.

the late 1980's and early 1990's.

Aggregating information by injury year often gives a more illuminating picture of the cost or litigation associated with injuries. However, it takes a few years before enough information accrues to support an analysis.

### **C. Dominant Role of Long Term Injuries**

A small percent of injuries in the work place are serious. However, they result in long-term disabilities and play a dominant role in the cost of the system.

The Board has assessed the concentration of costs on several occasions over the years. Typically, the top 10% of injuries account for

approximately 60% of system costs. The top 20% account for approximately 85% of system costs. Fifty percent of injuries cost less than \$2,500; twenty-five percent cost less than \$500. The likelihood of litigation increases dramatically if a claim is in the top 10 to 20 percent.

### **D. Claims**

There are many ways to define a claim. It can be a first report. It can be an injury where benefits are paid. It can be an injury where either benefits are paid or initially

denied by the payer, i.e. a claim for benefits has been made. Or, it can be a claim where more than a certain dollar value has been paid.

### **E. First Reports as a Source of Data**

The Board begins data collection when employers file an initial injury report, known as a "First Report." Subsequently, over the life of the claim, other documents are submitted concerning payments and disputes. Employers, by statute, must file a first report if one or more day is missed. Additionally, the Board requires, by rule, a first report if a dispute arise about a medical bill. Although there may be no incapacity, the first report is needed to administratively process the dispute.

Missed work is indicated on the first report by an incapacity date and other information. An incapacity date is a little different than an injury date. It refers to the first day of missed work. Work may be first missed after the day of injury. So, the two dates will not always be identical.

A First Report with an incapacity date indicates that at least one day of work has been

missed. The statute requires 7 days of missed work before the injured worker becomes eligible for wage loss benefits. Often, the period of incapacity is less than this so-called waiting period.

If there isn't enough missed work to qualify for payment of wage loss benefits, the obligation to file a first report may go unrecognized. Also, injury dates may be erroneously reported as incapacity dates on First Reports filed to process disputes about medical bills.

Although First Reports with an incapacity date may be the best available measure of the number of accidents in the workplace, they have limitations. Filings are subject to reporting error. Aggregations give no insight into the number of payable claims. Finally, aggregations blend serious and non-serious injuries – apples and oranges – into the same analysis

Counts of first reports make no distinction between major and minor injuries. However, the two are as different as night and day. System costs and litigation relate primarily to long-term claims. Simple injuries with a brief period of missed work tend to be paid promptly and without significant disputes.

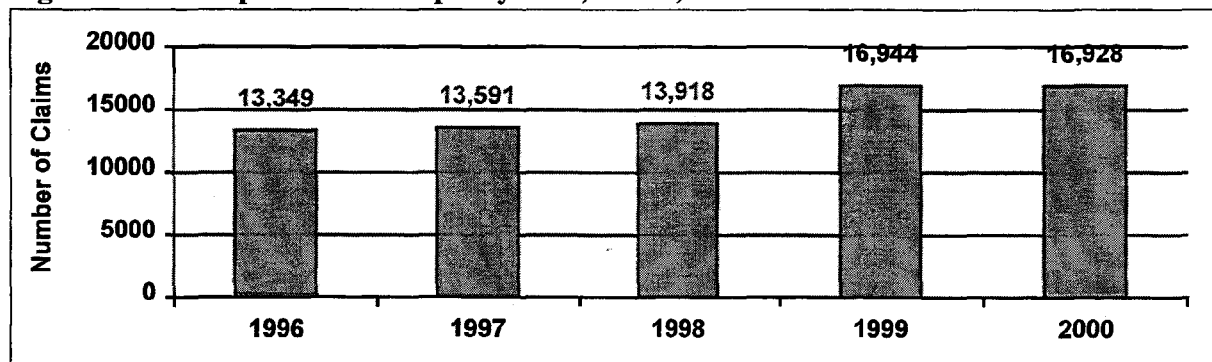
It is important for policy makers to understand the unit of measure when evaluating a total number or a calculation such as a percentage or average. First reports, when used to calculate a percentage or an average will tend to understate the level of costs and disputes associated with more complex claims, such as back strain or carpal tunnel.

## F. Injury Reports (First Reports) Summary

Between 1996 and 1998, annual filings of first reports with incapacity dates ranged from 13,349 to 13,918. In 1999 the figure grew to 16,944. In 2000, it was 16,928. The increase

is out of line with employment growth or paid claims. It most likely represents an improvement in the reporting. The Board began a monitoring and auditing program in late 1998.

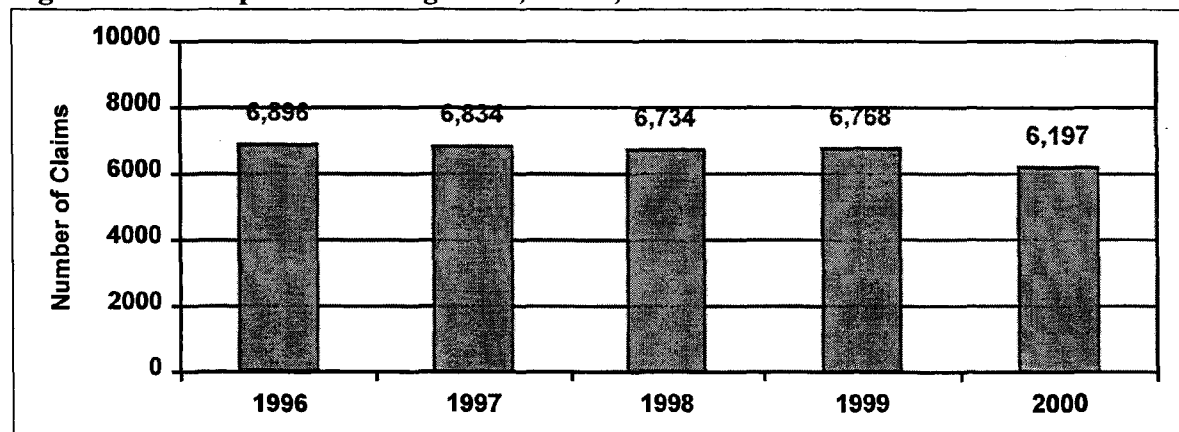
**Figure 6. First Reports with Incapacity Date, Maine, 1996-2000**



The number of injuries with a wage loss benefit payment is another unit of measure. As may be seen, the number of claims, with an

initial wage loss payment reported to the Board, has consistently been a little less than 7,000 injuries per year.

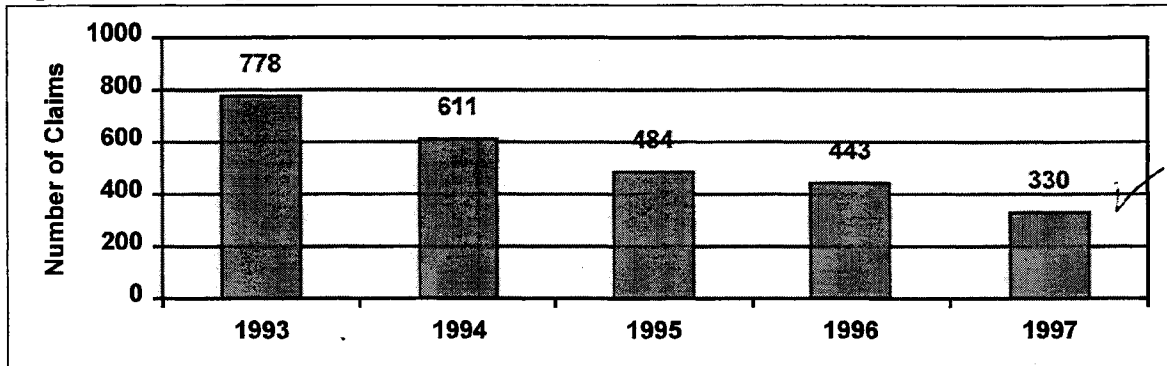
**Figure 7. First Reports with Wage Loss, Maine, 1996-2000**



Lastly, we present a tabulation of first reports

with at least \$50,000 of benefit payments reported to the Board.

**Figure 8. First Reports with \$50,000 Reported, Maine, 1993-1997**



It can take years to pay out \$50,000 in benefits. Even though recent injury years were not included in the above chart, the tabulations are very much preliminary.

Actuaries can estimate the total loss after 3 or 4 years of experience. However, it may take a decade or more before most actual costs are incurred and reported to the Board. The data reported to us is not an estimate. Accordingly, it will be approximately another 3 years before we have most costs reported on injury year 1993, more before subsequent years come into focus.

Accordingly, the decline noted above should not be interpreted as a trend. Many of the more than \$50K cases have not yet been identified or reported to the Board. It is highly likely that more such cases will be reported on injury year 1993, many more on recent injury years.

From time to time an anecdotal estimate arises of about 1,000 truly serious injuries in Maine per year. The above seems to be in line with that ballpark figure.

## G. Safety

Thirty to forty years of lost wages and major medical bills add up to an enormous amount of money. A serious accident can cost hundreds of thousands of dollars and create life long suffering for the injured employee. Prevention of even one accident can save hundreds of thousands of dollars. However, it is difficult to document. How can a safety official prove that a specific accident didn't happen?

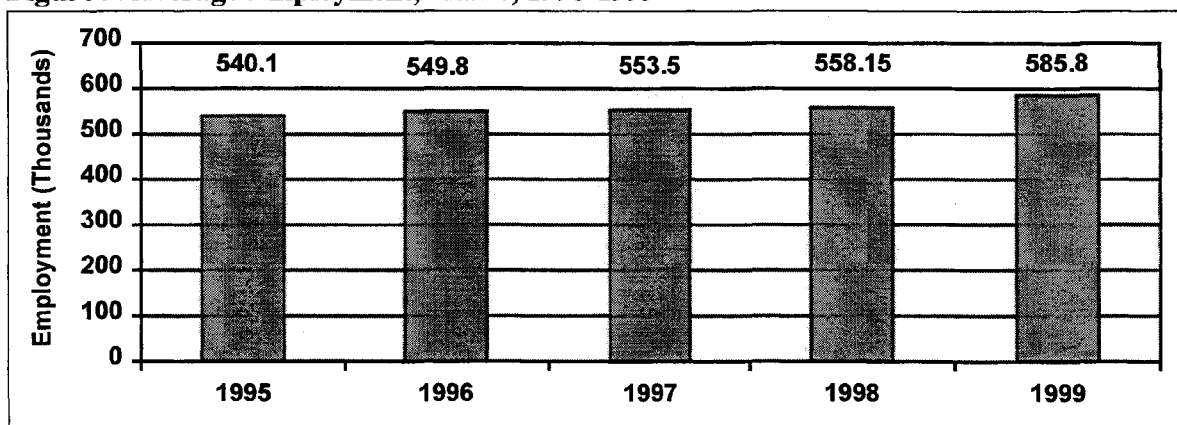
An analysis of system costs is by definition an analysis of costs incurred. Safety measures that prevent accidents reduce system costs in

a way that is difficult to measure, but obviously significant.

First report data and employment figures provide a basis for calculating crude incidence rates. To some extent it is playing with numbers, however, it does provide a context for looking at the number of first reports.

Statewide employment levels have been increasing. The addition of approximately 45,000 jobs since 1995 is a boon to the overall economy. The annual percentage of increase may also be driving the number of first reports upwards.

**Figure 9. Average Employment, Maine, 1995-1999**



Source: Maine Department of Labor

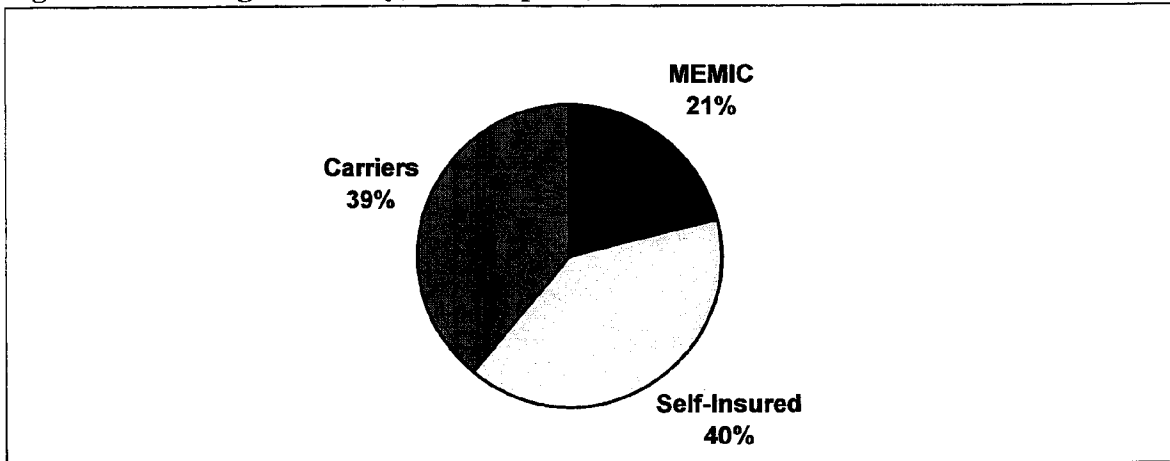


## H. Coverage

Maine Employers' Mutual Insurance Company has become a significant provider of coverage. As measured by the percentage of lost time first reports, MEMIC provided about 20% of statewide workers compensation coverage in 1999.

It bears similarities to group self insurance. It offers employers, particularly small employers, an alternative to the controversial assigned risk pool, existing in 1993 and earlier years.

**Figure 10. Coverage Summary, First Reports, Maine, 1999**



## I. Promptness of First Payment

Speed of payment by the private sector, especially the first payment of wage loss benefits, has long been a subject of interest.

To prepare the following, uncontested wage loss payments for injuries occurring in 1997-2000 were selected. Then, the average number of days was calculated, between the date of incapacity and the date the first payment was reported to the Board.

This approach was used because the dates are readily available and the calculation, subtracting two dates, is straightforward.

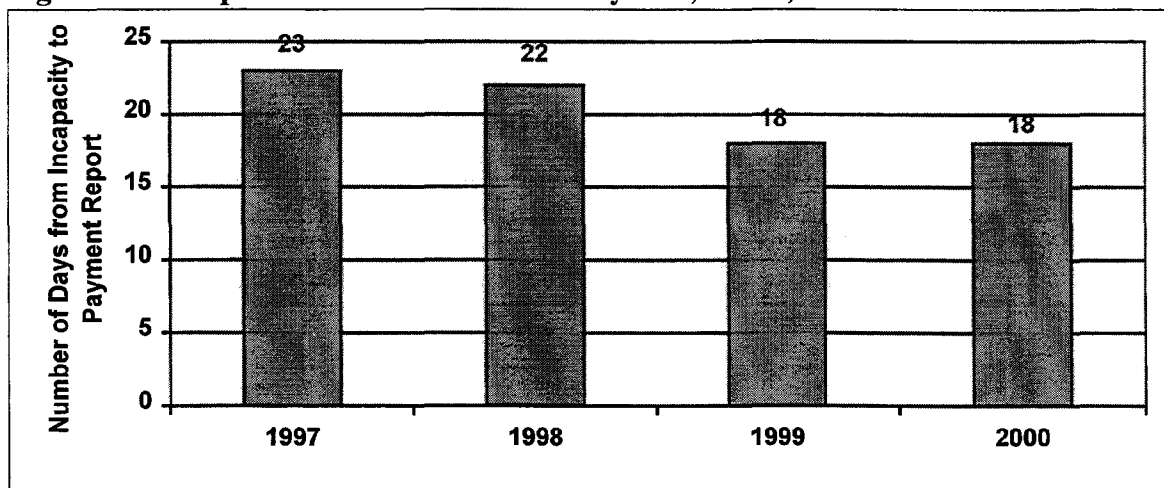
By way of context, there is a 7-day waiting period. At that point, benefits begin to accrue. Let us assume for another 7 days. Then, it could reasonably take another 7 days for the check to be sent to the injured worker, the payment report to be sent to the Board, and

for the post office to deliver. That is a total of 21 days.

Many variants can occur in individual cases. The waiting period of 7 days may not occur all at once. A day may be missed here and there for weeks. Less than 7 days of benefits may accrue. Lastly, the employer may not notify the adjuster promptly about the injury.

In individual cases these factors can significantly complicate a calculation. Accordingly, 21 days from the date of incapacity to the date the memo of payment arrives at the Board, is suggested as a general benchmark for summarized data, not as an exact measure of compliance with the time frame envisioned in the statute, which is 14 days from the date of incapacity - subject to notification and irregular waiting periods.

**Figure 11. Promptness of Uncontested First Payment, Maine, 1997-2000**



As may be seen, the statewide average has been close to 21 days for the past 4 years. The improvement in 1999 and 2000 is probably

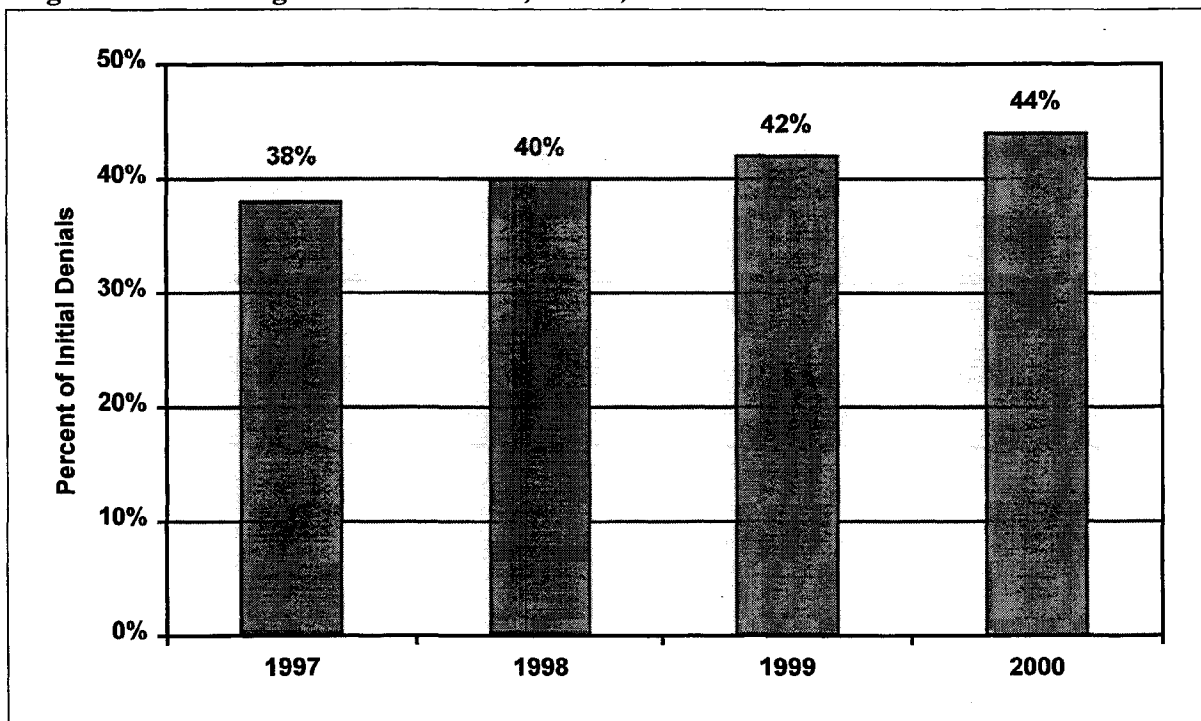
attributable to the more active monitoring and audit activities by the Board.

## J. Level of Initial Denials

The rate of denial is higher than most observers would have anticipated. The explanation is not clear. A comparison of Board data for this

report and the records of a large payer were conducted in 1998. The calculations did seem to match up.

**Figure 12. Percentage of Initial Denials, Maine, 1997-2000**



Does an approximate 40% initial denial rate reflect unreasonable denials or unmeritorious claims?

For many people with tenuous employment in low wage jobs, workers' compensation is the only source of medical coverage or disability insurance. That lends itself to claims of desperation, which are likely to be denied as not work related.

Alternatively, the Board's dispute resolution process may be being used inappropriately in some cases. Filing a denial, known as a "NOC" or Notice of Controversy, puts the matter on hold for at least a month. Often

the injured worker simply gives up.

The factual circumstances of individual injuries are inherently different. The decision to pay or deny requires a case-by-case analysis. Similarly, evaluating the reasonableness of the decision also requires a case-by-case analysis.

At present, the Board is not equipped to do this kind on a large scale. However, evolving computer technology is enhancing the Boards' ability to involve itself. It has only been fairly recently that our technology had advanced to the point where we could document this troubling feature of the system.

## 7. Dispute Resolution

### A. Introduction

A case involves all the filings on all the injuries relating to one injured worker at a point in time. Commonly, more than one injury and more than one petition or notice of controversy is processed together. Mathematically, each case averages 1.2 injuries and 1.8 filings.

Some claims are clearly work-related. For example, if a truck driver falls off a loading dock and fractures a leg, work relatedness is evident. With the fracture, there would normally be a well-defined healing period and a return to the same job with the same duties. The amount of lost earnings is readily identifiable.

However, if that same driver experiences back problems, the relationship to employment is not so clear. The back injury may take months, even years, to heal. It may result in permanent disability. Return to the original job or type of employment may not be possi-

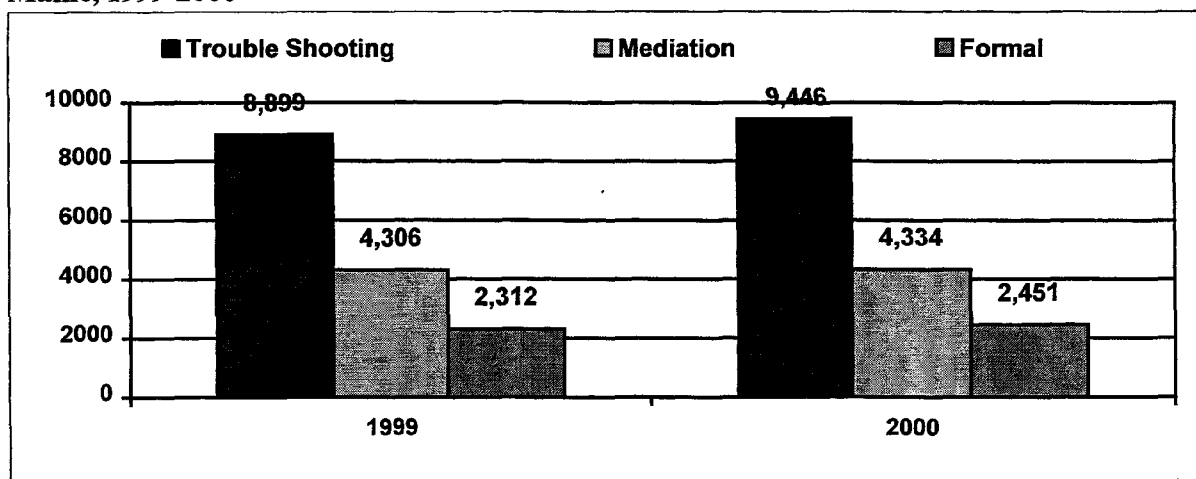
ble. It is inherently more difficult to evaluate work relatedness, lost earnings, and ability to return to work.

The complexity of disputes often relates to the complexity of the underlying injury. Some disputes lend themselves to voluntary agreements. Others raise factual and legal questions as complicated as a personal injury lawsuit.

The Board has three progressive stages of dispute resolution: Troubleshooting, Mediation, and Formal Hearings.

Each of the first two stages, close about half of the disputes assigned. After Troubleshooting about 50% of the original disputes remain. After Mediation 25% remain. So in tandem, the Board's initial processes take care of about 75% of initial disputes, without litigation in about 2 to 3 months.

**Figure 13. Workers' Compensation, Troubleshooting, Mediation, and Formal Hearing, Maine, 1999-2000**



The final 25% usually represent serious injuries, involving substantial amounts of money

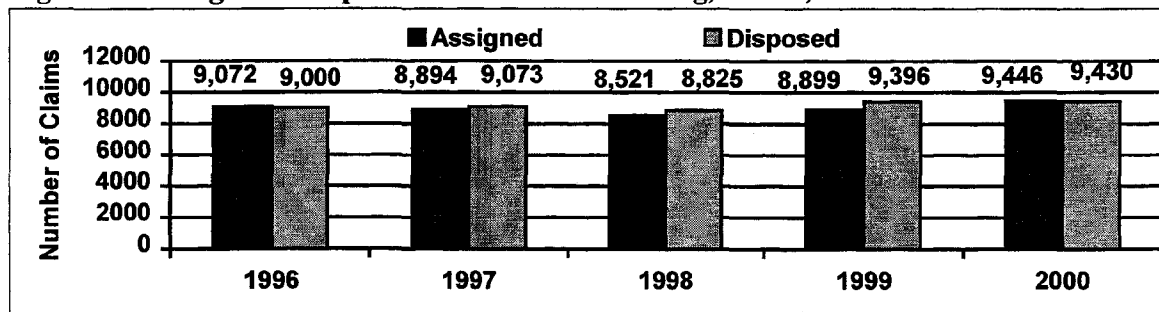
and real disagreements about the facts and the applicable law.

## B. Troubleshooting

Troubleshooting is the first step for initial denials and other controversies. Workers' Compensation Board employees, known as Claims Resolution Specialists, contact both sides and

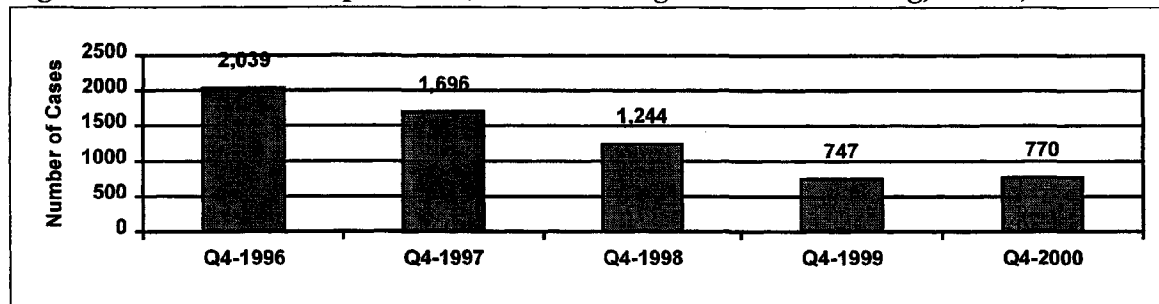
attempt to resolve the problem. This is done, almost always, by mail and by phone. The Board maintains 800 numbers at its Regional Offices.

**Figure 14. Filings and Dispositions at Troubleshooting, Maine, 1996-2000**



Filings have been relatively constant in recent years.

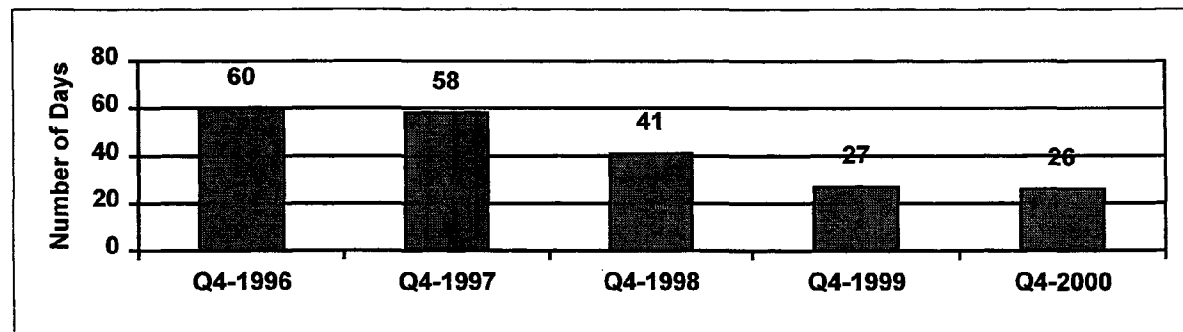
**Figure 15. Workers' Compensation, Cases Pending at Troubleshooting, Maine, 1996-2000**



Dispositions have outpaced filings. Over time this has resulted in a lower number of cases

pending at Troubleshooting. It has also resulted in an increase in the speed of the process.

**Figure 16. Workers' Compensation, Troubleshooting, Median Number of Days, Maine, 1996-2000**

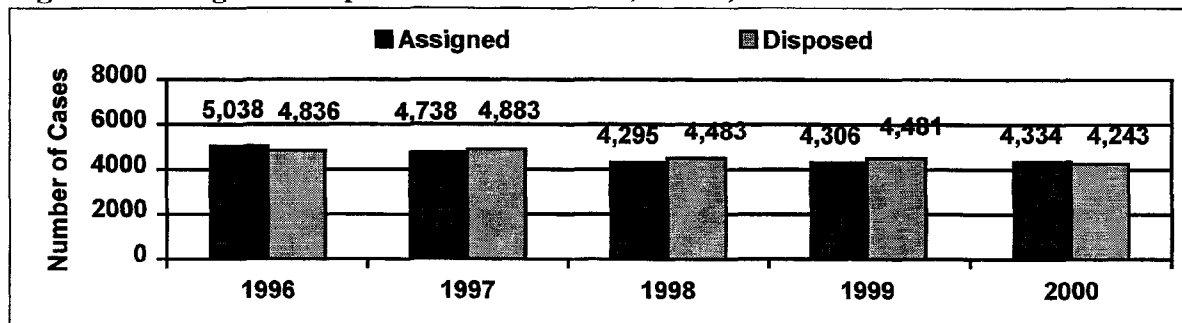


### C. Mediation

Statewide, about 50% of initial disputes are disposed of at Troubleshooting. If the dispute is not screened out, it is forwarded to Mediation.

Mediation is a face-to-face meeting between the parties. The purpose is to assist in the reaching of a voluntary agreement, if possible.

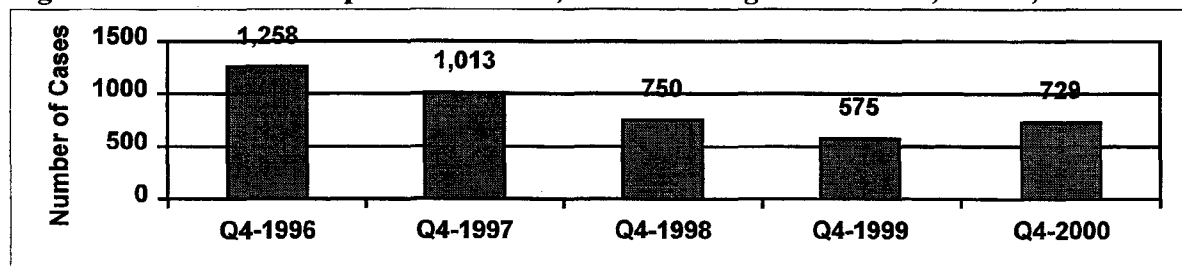
**Figure 17. Filings and Dispositions at Mediation, Maine, 1996-2000**



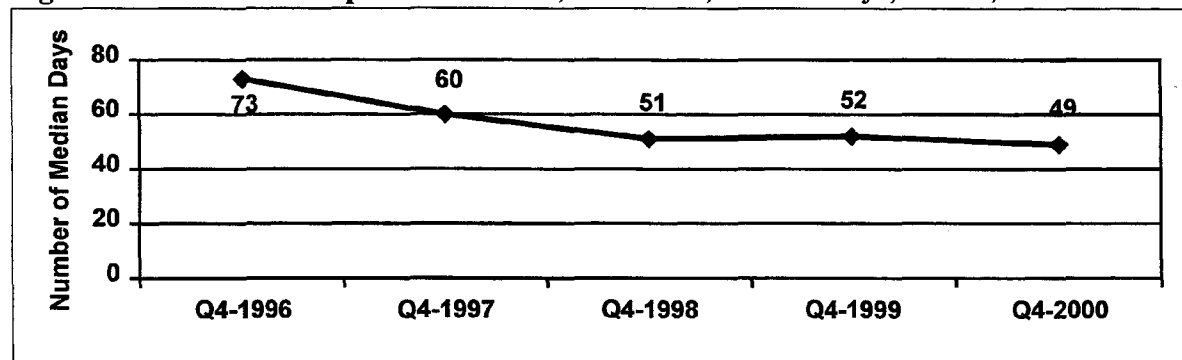
The pattern is similar to Troubleshooting. Filings have been fairly level in recent years. Dispositions have slightly exceeded filings.

The number of cases pending gradually declined until 2000. The speed of the process has increased since 1996.

**Figure 18. Workers' Compensation Board, Cases Pending at Mediation, Maine, 1996-2000**



**Figure 19. Workers' Compensation Board, Mediation, Median Days, Maine, 1996-2000**



Mediation may result in an agreement before the meeting as well as at the actual face to

face discussion. Together, approximately 50% of cases referred are disposed of mediation.

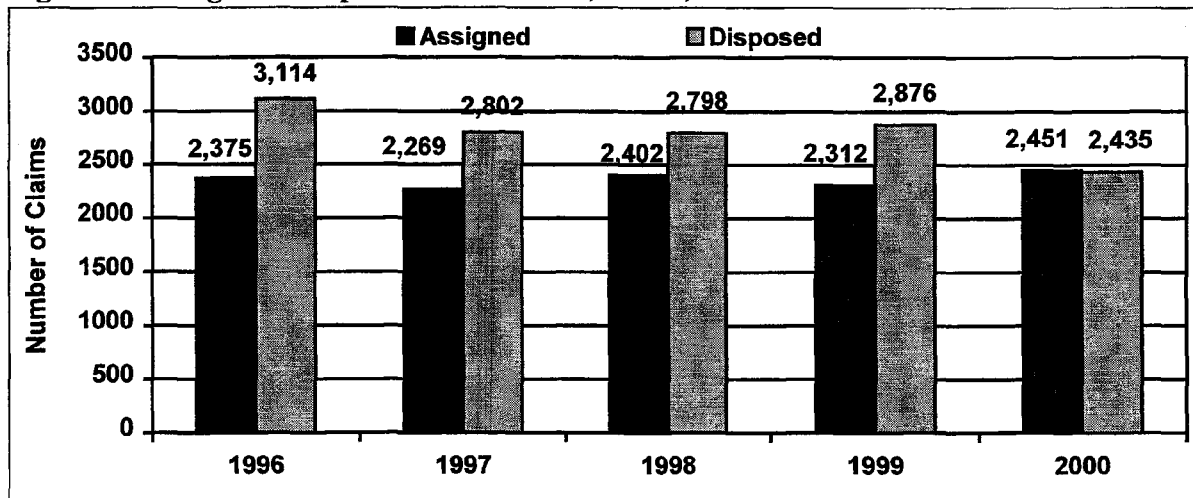
## D. Formal Hearings

The remaining cases, approximately 25% of the initial disputes, may be subject to litigation at a formal hearing. They are usually a subset of more complex disputes.

Workers' Compensation Board Hearing Officers preside over the formal hearing process.

Although the actual proceeding is less formal than court, their role is similar to judges. A case may be appealed to the Supreme Judicial Court of Maine or to the Board's directors on matters of statutory interpretation. Otherwise, the ruling of the Hearing Officer is final.

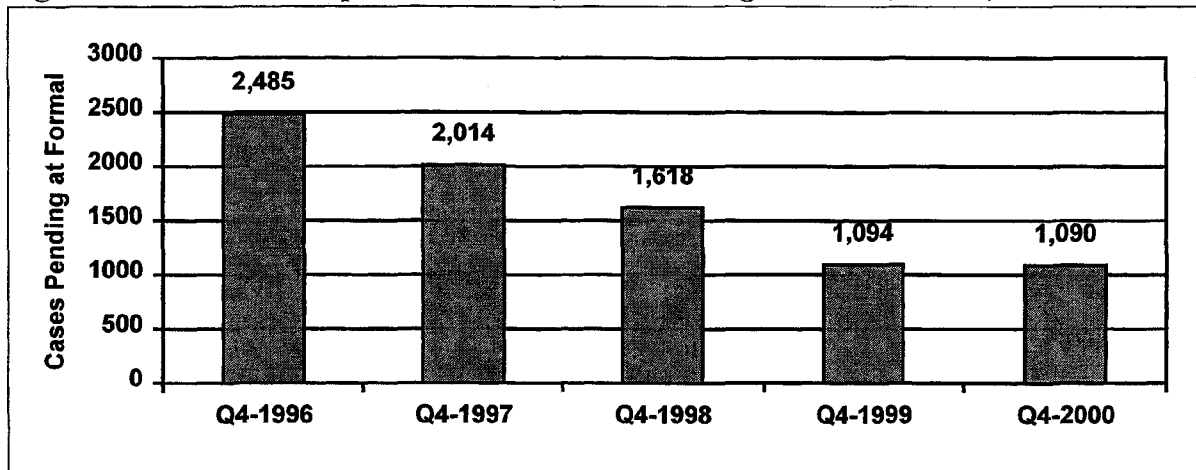
**Figure 20. Filings and Dispositions at Formal, Maine, 1996-2000**



Again, filings have been fairly constant in recent years. Dispositions have exceeded fil-

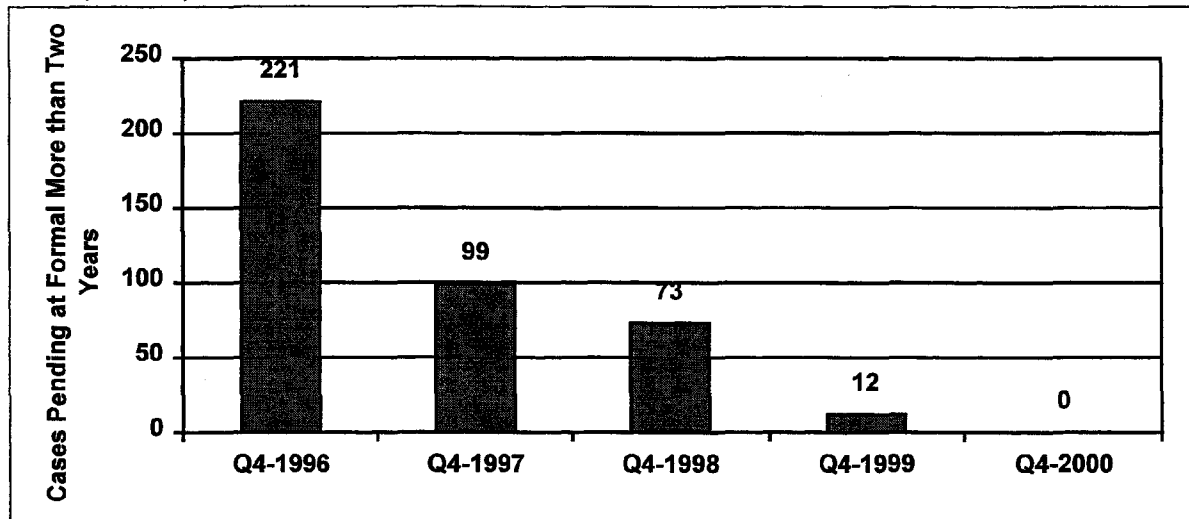
ings. A significant reduction of the number of cases pending has resulted.

**Figure 21. Workers' Compensation Board, Cases Pending at Formal, Maine, 1996-2000**



It has also led to a dramatic reduction in the number of cases pending more than two years. For the first time, the Board has no cases at all past 2 years on its formal docket.

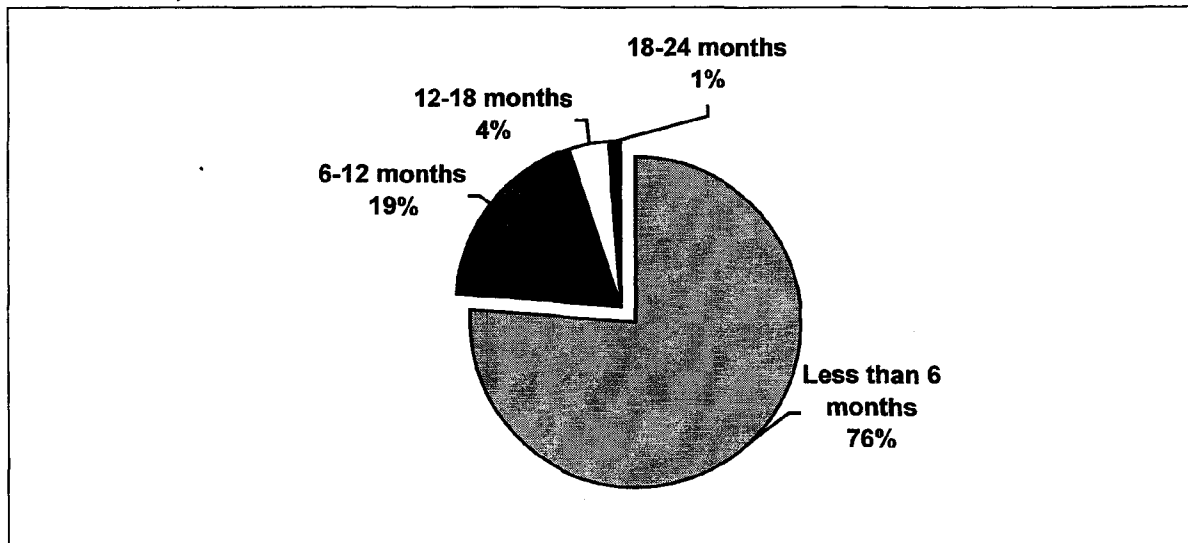
**Figure 22. Workers' Compensation Board, Cases Pending at Formal More than Two Years, Maine, 1996-2000**



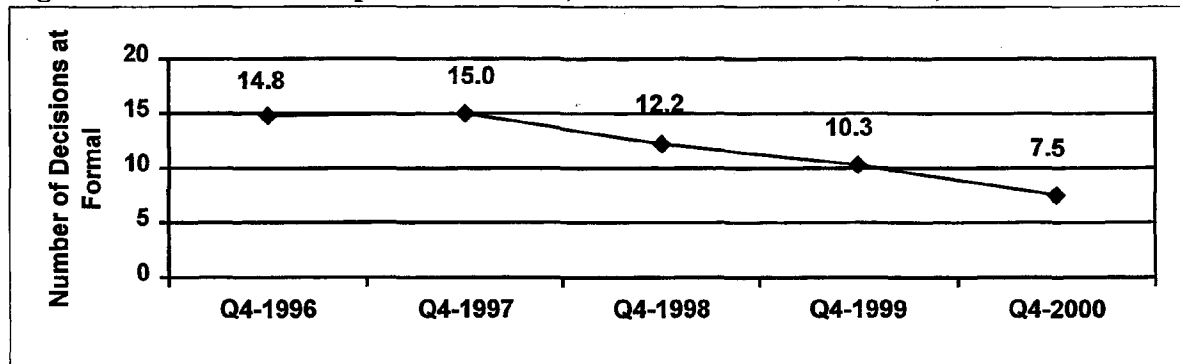


Today, about 95% of cases have been pending less than a year.

**Figure 23. Workers Compensation Board, Cases Pending by 6-Month Intervals as of December 31, 2000**



**Figure XX. Workers' Compensation Board, Decisions at Formal, Maine, 1996-2000**



The reduction of long pending cases has slowly resulted in a significant improvement

in the speed of the process. Few, if any, states can match 7.5 months for a full adjudication.

## 8. Formal Hearing Process

One of the major efforts resulting from the 1997 Coopers & Lybrand business assessment involved streamlining the dispute resolution process. The Streamlining Dispute Resolution Project Group made its recommendations in 1998; they have been fully implemented in 1999; and the final results have been recognized in 2000.

The Board voted to adopt standard operating procedures (SOP's) for formal hearing on July 13, 1999. These SOP's required that the entire formal hearing process from start to finish be completed in 10 months by January 1, 2000; 8 months by July 1, 2000; and 6 months by January 1, 2001. The other SOP adopted by the Board requires that the hearing officers decide 90% of their cases within 60 days of the close of evidence and the case is "ready for decision."

The hearing officers met both SOP's almost immediately. By the end of the third quarter, September 30, 1999, the hearing officers had reached the 10 month benchmark – a full quarter ahead of schedule. By the end of the fourth quarter, December 31, 1999, hearing officers had further reduced this timeline to 8.7 months. They had also met the 90% of cases decided within 60 days mark.

These positive trends have continued in 2000. The goal for the length of time at formal hearing was 8 months by July 1, 2000 and, once again, that goal was exceeded. As of July 1, 2000 the statewide average length of time at formal hearing was 7.6 months. As of November 15, 2000, it has dropped to 7.3 months. There will come a time when this number will stop dropping and, instead, will level out. This may happen quite soon. We are approaching the point of maximum efficiency.

The other SOP regarding time to decision has continued in 2000. As of September 30, 2000, 88% of decisions were rendered within 60 days and 70% were rendered within 30 days. Parties are getting their decisions faster than ever before.

In late 2000, the Workers' Compensation Board's formal hearing process continues to run as smoothly and as quickly as it has in the last 10 years. The parties have adjusted admirably to the stepped up time frames and the hearing officers are minimizing delays while maintaining fairness and protecting the due process rights of the parties. (See pages C-27, C-28, and C-29 for additional information.)

## 9. Medical/Rehabilitation

### A. Vocational Rehabilitation

- (1) Proposed Regulations went to public hearing and ultimately were withdrawn.
- (2) The Assistant Administrator of Vocational Rehabilitation transferred to the Worker Advocate Program. Voca-

tional Rehabilitation Plans will now be processed through the Deputy Director of Medical and Rehabilitation Services and if contested through the Dispute Resolution Process.

### B. Medical Fee Schedule

The medical fee schedule was updated with the latest American Medical Association CPT

codes and the most recent resource based relative value scale (RBRVU's).

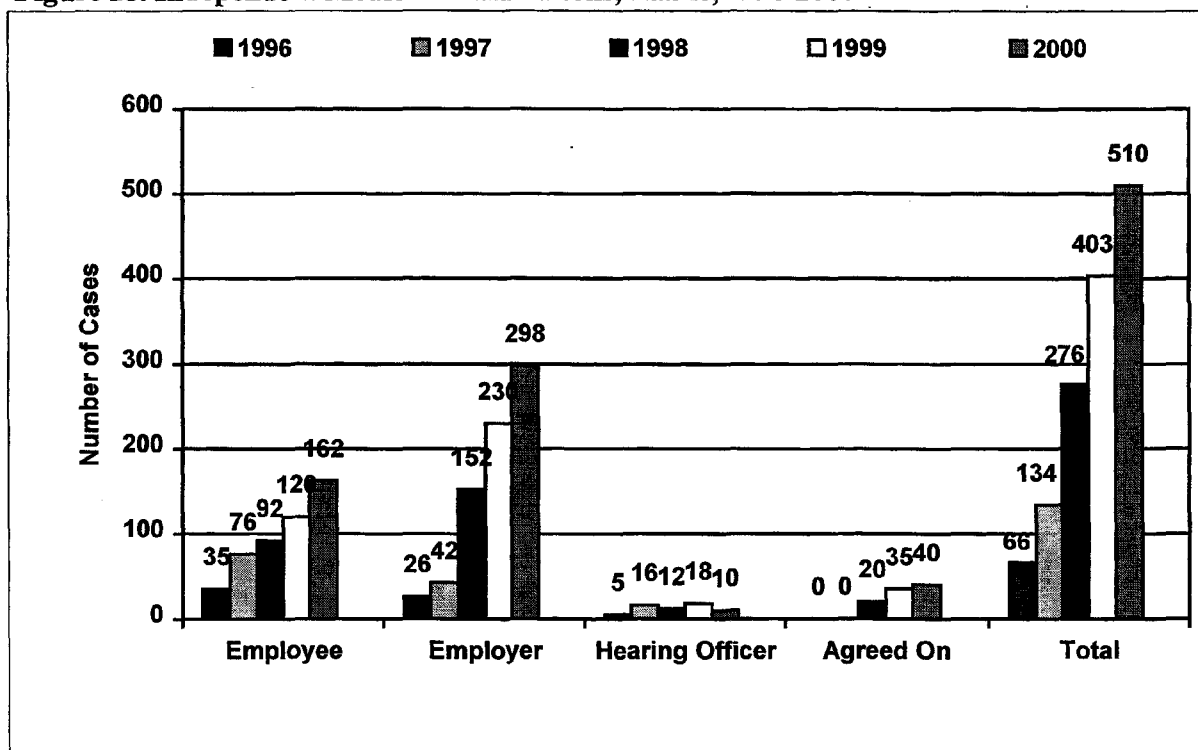
### C. Independent Medical Examiner System

As request for independent medical examinations have increased, the Board appointed eleven new examiners. The independent medical examiners are all certified by a Board recognized by the American Board of Medical Specialties, experienced in their fields of

expertise and are geographically located throughout the State.

Proposed amended regulations related to the IME process are under consideration by the Board of Directors.

Figure 25. Independent Medical Examinations, Maine, 1996-2000



## 10. Budget and Assessment

Last year's report indicated that the Administration allowed the Board to use reserves in the amount of \$384,570 during Fiscal Year 2000 to help bridge a funding gap. The Administration suggested that the Board bring its expenditures in line with projected revenue during fiscal year 2001, the current fiscal year, which ends on June 30, 2001, by reducing expenditures in the amount of \$384,570. The Workers' Compensation Board has eliminated four positions and reduced its All Other budget by delaying the replacement process for its personal computers and servers for one year.

The Board's budget and assessment problems need to be resolved in the Legislative Session, which begins in January 2001. The problems are as follows: The current fiscal year (FY2001) has a payroll shortage in the fourth quarter amounting to approximately \$190,000. This shortage is caused by State/MSEA contract increases and by the increase in the cost of health insurance. The Board would like to resolve this problem through the use of its reserve account. A more serious problem is projected for the new bien-nium, which begins July 1, 2001 (FY2002 and FY2003). Based on total projected revenue (including interest on assessment revenue, income from the sale of copies, and miscellaneous minor penalties), the shortage in FY02 is projected to be \$609,000 and \$825,000 in FY03. The Board will propose legislation to raise the assessment cap by \$700,000 along

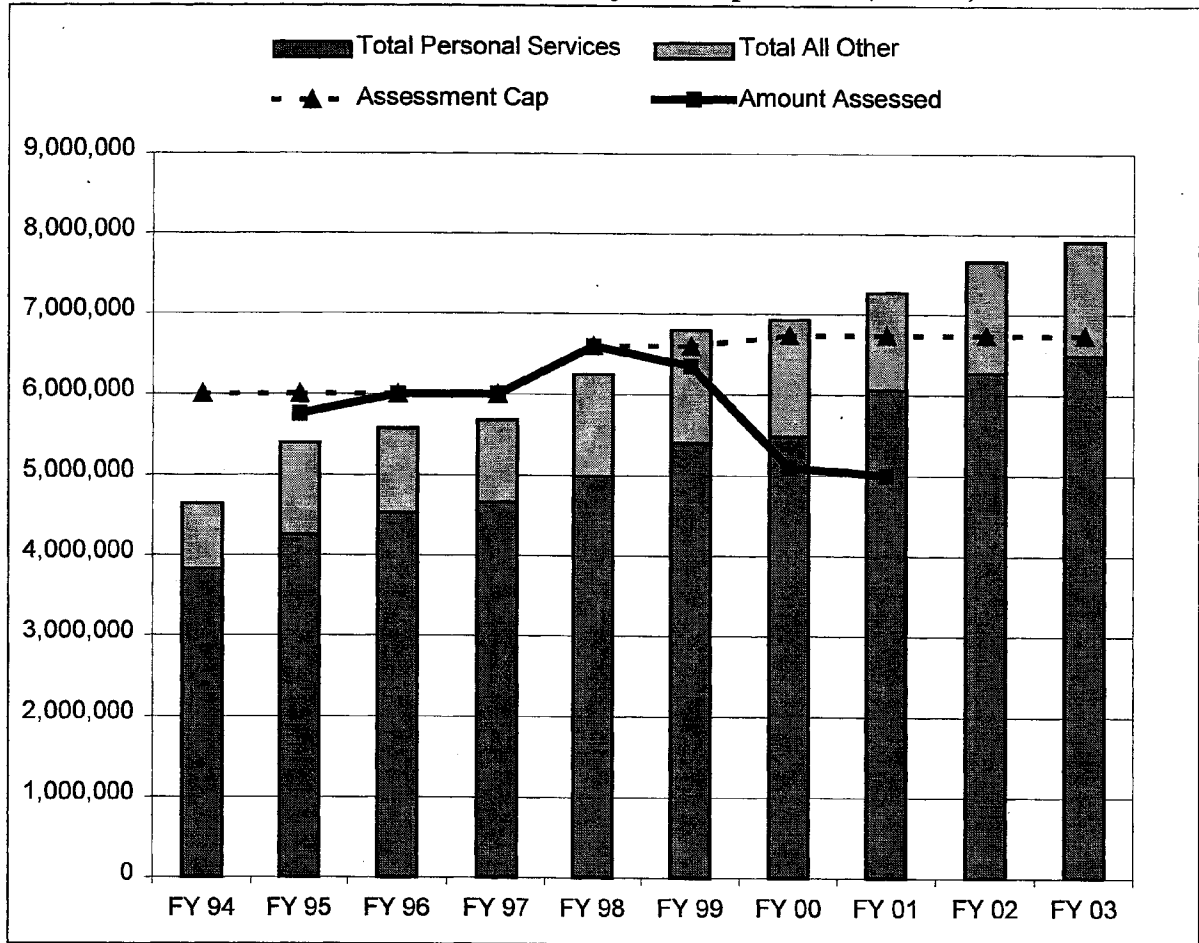
with taking steps to continue to improve the efficiency of the Board.

The Board reduced its FY2000 assessment by \$1,500,000 and its FY2001 \$1,735,000. The Board reduced its assessment due to surplus generated from vacant positions, additional revenue received from reconciliations, audits performed by carriers on their premiums written, and interest on the assessment revenue.

The effect of the decrease is to give Maine's employers another reduction in their assessment. This is actually the fourth decrease since the assessment went into effect on July 1, 1993 (FY94). Anything above its reserve account must be returned to Maine's employers in the form of a reduced assessment for the ensuing fiscal year.

The chart entitled "WCB - 10 Year Schedule of Actual and Projected Expenditures" shows the problem of a static or level assessment funding source. The increase in expenditures is two-fold: (1) contract increases for salaries, fringe benefits, and health insurance, items over which the Board has little or no control, and cost of living increases; and (2) the under funding of two legislative programs, the Monitoring, Audit and Enforcement (MAE) Program and the Worker Advocate Program. These programs were funded for \$735,000 while the actual cost of these programs is \$1,500,000.

**Figure 26. 10-Year Schedule of Actual and Projected Expenditures, Maine, FY94-FY03**



## 11. Claims Management Unit

The Claims Management Unit has been operating under a "case management" process for the past two years. Individual caseloads are adjusted occasionally as workloads fluctuate. Individual claims managers process the file from start to finish. The insurance carriers, third-party administrators, and self-insured employers benefit from having a single contact at the Board.

The Unit works closely with the newly-created Planning and Research Associate position of the MAE Program to ensure that payments to injured employees are made timely

and accurately and that the proper forms are completed and filed with the Workers' Compensation Board. The Unit has conducted several training workshops regarding compliance and continues to schedule in-state training sessions upon request and Board approval.

The greater implementation of Electronic Data Interchange (EDI) would create efficiencies in claims management allowing the managers to increase the claim management effort through the elimination of most of the data entry functions.

## 12. Insurance Coverage Unit

The Insurance Coverage Unit has been undergoing a rewrite of its programs. New Coverage computer screens have recently been tested by the staff. The large employer database has undergone a thorough update in conjunction with the employer database at the Department of Labor.

A rewrite of the Coverage programs along

with new screens and a thorough update of the employer database should have a positive effect on the workload of the unit. It should also result in more accurate and timely insurance coverage data. The implementation date of the changes was Monday, December 11, 2000. Next year's report will reflect the impact of these changes.



## 13. General Counsel Report

### A. Rules

Pursuant to 39-A M.R.S.A. Section 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 Deloitte & Touche, the Board adopted a rule stating that "the limitation referenced in Section 213(4) shall be extended for 52 weeks on January 1, 2000."

The Board amended W.C.B. Rule Ch. 14 that governs review of hearing officer decisions

pursuant to 39-A M.R.S.A. Section 320. The amendments clarify that if a motion for findings of fact is filed, a request for review will be considered within 30 days after the motion is decided. The amendments also clarify that the Board will only consider the information received from the hearing officer requesting review, and a summary provided by the Board's Legal Division.

The Board also eliminated references to the Deputy Director of Dispute Resolution where contained in W.C.B. Rule Ch. 15 which governs penalties.

### B. Employment Rehabilitation Fund

Pursuant to 39-A M.R.S.A. Section 213(3) and (4), insurers and self-insurers are entitled to reimbursement for certain lost time benefits paid in excess of 260 weeks. The Board is receiving an ever-growing number of requests for reimbursement pursuant to these sections. Due to the volume of requests, and the lack of staff to handle the influx of requests, the Board

has proposed legislation that would enable it to hire a contractor to administer requests for reimbursement (pursuant to standards set by the Board). The legislation, if adopted, will also create an oversight committee to monitor the performance of the contractor and to make recommendations to the Board with regard to the reimbursement process.

### C. Legislative Activity

The Board is currently studying whether to propose legislation that would provide additional funds to help support the Board's op-

erations and provide additional resources to the Worker Advocate Program.

## **D. Review by the Board Pursuant to 39-A M.R.S.A. Section 320**

Pursuant to 39-A M.R.S.A. Section 320, the Board can review decisions of its hearing officers if the “decision involves an issue that is of significance to the operation of the workers’ compensation system.”

The Board reviewed three decisions pursuant to Section 320 in 2000. In *O’Brien v Great Northern Paper Co.*, 2000-01, a majority vote was not obtained. Therefore, pursuant to Section 320, the hearing officer’s decision was left to stand.

In *Simard v. Great Northern Paper Co.*, 2000-02, the Board held that a hearing officer

shall not consider a physician who is retired as a Section 312 physician<sup>3</sup> because the Board’s rules<sup>4</sup> specifically state that a Section 312 physician must have an active treating practice.

In *Rambo v. William F. Porter, Inc.*, 2000-03, the Board reaffirmed an earlier decision issued by the Board to the effect that mediation agreements are binding.

All three decisions, along with decisions previously issued by the Board, are available on the Board’s web-site: [www.state.me.us/wcb/](http://www.state.me.us/wcb/)

<sup>3</sup> Section 312 of the Act establishes an independent medical examination process.

<sup>4</sup> See. W.C.B. Rules Ch.4.

## 14. Abuse Investigation Unit Report

The Abuse Investigation Unit is charged with assessing penalties under several sections of the Act. Section 205(3) requires payment of weekly compensation benefits within 30 days of becoming due and payable when there is no ongoing dispute. Section 205(4) requires payment of medical bills within 30 days of becoming due and payable when there is no ongoing dispute. If these sections are violated, a \$50 per day penalty, up to a maximum of \$1,500 must be imposed. Penalties under section 205(3) must be paid to the employee, while section 205(4) penalties are paid to the Board's Administrative Fund.

Section 324(2) mandates that payments be made within 10 days of any board order or approved agreement. A violation of this section can be penalized by a forfeiture of up to \$200 per day. The first \$50 per day is due to the aggrieved employee; the remainder is paid to the Board's Administrative Fund.

Section 324(3) provides penalties for failure to secure required workers' compensation coverage. The maximum penalty is \$10,000. Other potential sanctions include loss of cor-

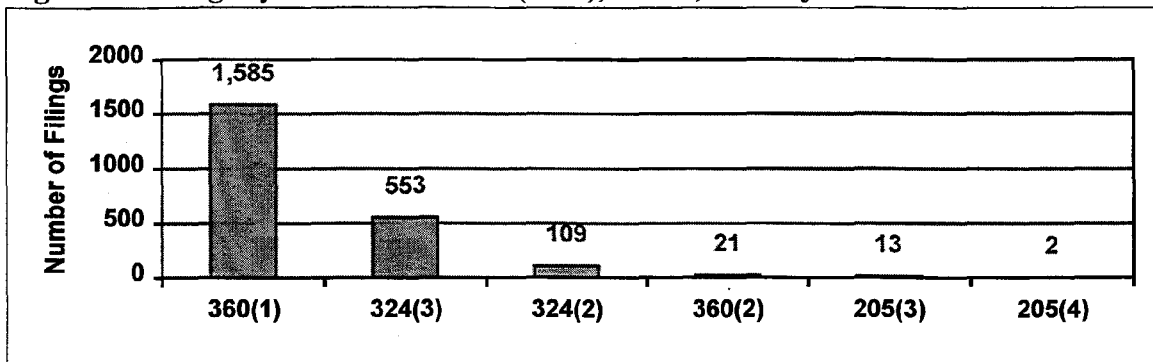
porate status and referral to the Attorney General for criminal prosecution. Penalties assessed under this section are paid to the Board's Employment Rehabilitation Fund.

Section 360(1) provides for penalties when a form is not filed within time frames set by rule or statute. Violations of this section carry a maximum penalty of \$100, payable to the General Fund.

Finally, section 360(2) provides for penalties in cases where a willful violation of the Act, intentional misrepresentation and/or fraud has occurred. The maximum penalty that may be imposed, after hearing, is \$1,000 for an individual, and \$10,000 for a corporation, partnership or other legal entity. Repayment of compensation received, or of compensation wrongfully withheld, through a violation of the Act may also be ordered. If a penalty is ordered, it is paid to the General Fund.

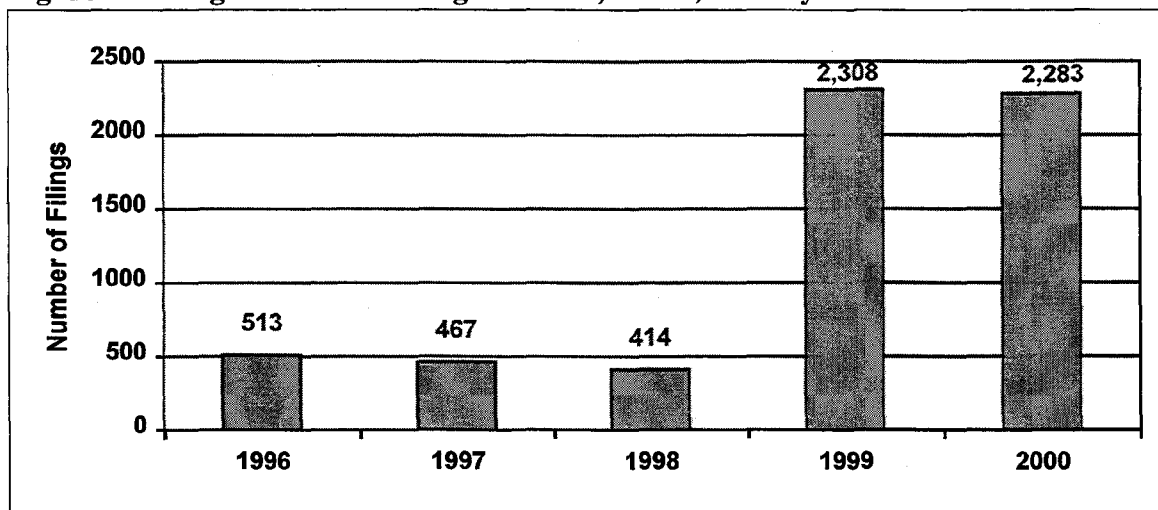
The majority of cases that are filed with the Abuse Investigation Unit are brought under sections 360(1) and 324(3), late reports and no-coverage.

**Figure 27. Filings by Section of Statute (39-A), Maine, January –November 2000**



The total number of cases filed with the Abuse Investigation Unit, which increased sharply in 1999, remained quite high in 2000.

**Figure 28. Filings to Abuse Investigation Unit, Maine, January 1996 – November 2000**



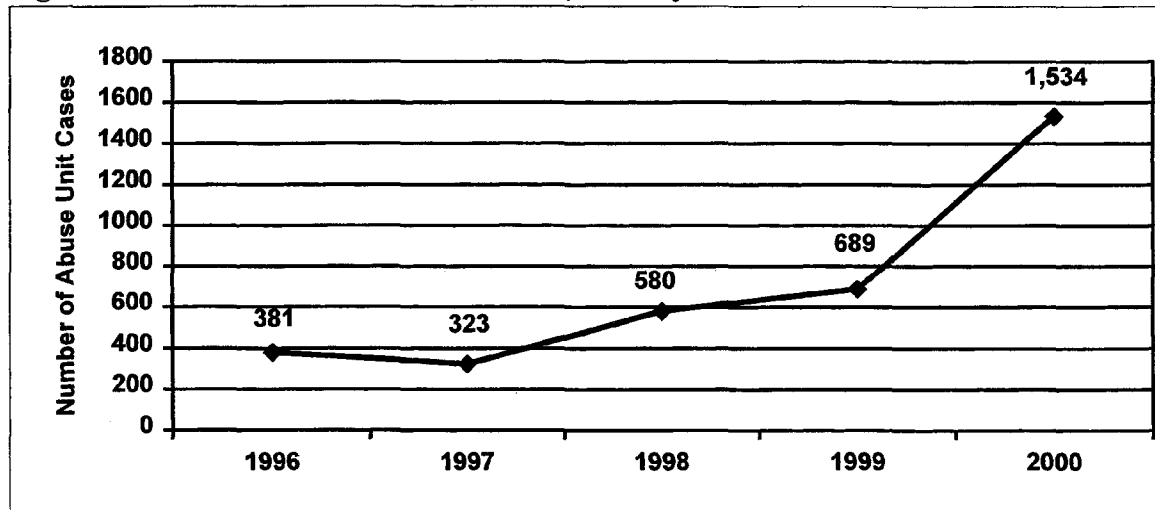
This increase is the result of two new systems implemented by the Board within the last two years. First, the Board is identifying more employers who are operating without required workers' compensation coverage. The Board is able to do this by using a program that compares the Department of Labor's unemployment database with the Board's coverage database.

Second, in February of 1999, the Board implemented a program to identify First Reports of Injury that are not filed in a timely manner. This program, on its own, has significantly increased the number of complaints filed with the Abuse Investigation Unit.

In 2000 the Abuse Investigation Unit greatly increased the number of cases that it closed.

The number of closed cases, which had been rising since 1997, more than doubled in 2000.

**Figure 29. Abuse Unit Cases Closed, Maine, January 1996-November 2000**



As would be expected, sections 360(1) and 324(3) account for the greatest number of cases that are closed.

As was stated above, the Abuse Investigation Unit has authority to impose penalties pursuant to several sections of the Act. The basis for penalties pursuant to each section is spelled out above. The Abuse Investigation Unit, through November of 2000, disposed of cases as follows: Section 360(1): 206 granted, 78 denied, 40 dismissed, and 405 paid voluntarily prior to order; Section 324(3): 302 granted, and 410 dismissed; Section 324(2): 5 granted, 4 denied and 47 dismissed; Section 205(3): 3 denied and 11 dismissed; Section 205(4): 1 dismissed.

In 2000, the Abuse Investigation Unit assessed \$15,475 in penalties pursuant to Section 324(2); \$380,581 in penalties pursuant to Section 324(3); and \$61,100 pursuant to Section 360(1) for a total of \$457,156.

Complaints filed pursuant to section 360(2) are also investigated by the Abuse Investigation Unit. The Abuse Investigation Unit determines whether the allegations, if true, constitute a violation of section 360(2). If they do, the case is referred to a Hearing Officer. Through the end of November of 2000, 21 complaints pursuant to section 360(2) had been received. Also through the end of November of 2000, 4 section 360(2) complaints had been referred for hearing and another 18 had been closed.

## 15. Technology

Over the past year the Workers' Compensation Board has focused its technological energies in two areas. The first is the continued rewrite of the Workers' Compensation Board's core business application and the

second was the enhancement and growth of our electronic submission of forms. In addition to these areas, there is always the miscellaneous category that consumes a large portion of energy.

### A. Board System Rewrite

A comprehensive review of the Workers' Compensation Board's database was completed and a determination was made that a rewrite of the core system would be more efficient and expeditious. The changes implemented for the MAE program forced some changes in the Claims Unit with the remainder to be completed once programming in the Coverage Unit is completed.

Throughout the year we have worked with the Coverage Unit to review business functions and test the changes made. The decision was also made to share a common employer database with the Bureau of Labor Standards to assure more accuracy. This will be a significant change to operations in the past that required many months of labor to review employer addresses. The transfer was completed on December 9, 2000.

### B. Electronic Transfer of Information

A law became effective during June 1999 that required all State agencies to have an on-line inventory of all forms that individuals and businesses use to do business with the State. The law goes further requiring State agencies to begin allowing for electronic submissions of those forms that agencies feel are common. To that end, the Board has listed all their

forms and to date currently accept receipt of the First Report of Injury electronically. Over the next year, the Board will work to increase the number of entities that submit claims electronically as well as implementing two additional forms for EDI transmission. The Board is presently considering whether it will mandate EDI transmission.

## 16. Coopers & Lybrand Report

The final report recommended in the Coopers & Lybrand Study was submitted to and approved by the Worker' Compensation Board. The Score Card and Employee Performance Measures Report was approved by the Board at its meeting of September 12, 2000 and is presently being implemented by staff. The Score Card and Employee Performance Measures will provide the means whereby all of the projects that flowed from the Coopers & Lybrand study will be graded and evaluated. This rating process will start with the year 2001. Two other projects outside the Coopers & Lybrand Study will also be rated: the Worker Advocate

Program and the Monitoring, Audit and Enforcement (MAE) Program.

The projects which resulted from the Coopers & Lybrand study include: Board and Executive Director Roles; Long Term Business Plan; Score Card and Performance Measures; Agency Technology Officer; Data Cleansing; Technical Environment; Electronic Data Interchange (EDI); Streamline Dispute Resolution Process; Customer Service Representative Model; Redistribute Hearing Officer Workload; Dispute Prevention; Compliance; and Web-site.

## **17. 39-A M.R.S.A. Section 213**

### **Threshold Adjustment and Extension of 260-week Limitation**

The Workers' Compensation Act at Section 213 provides for both a threshold adjustment and an extension of weekly benefits in order to adjust to changes in the workers' compensation system. Section 213(2) provides, in part, that the Board based on an independent actuarial review adjust the 15% 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. Section 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 Sec-

tions 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. adjustment and extension for the next two years. Based on the Deloitte & Touche actuarial reports, the Board has retained the 11.8% threshold and extended the limitation referenced in Section 213(4) by 52 weeks on January 1, 2000. The Board has recently voted, based on the Deloitte & Touche report dated November 28, 2000, to accept the actuarial firm's recommendation that the duration of benefits be extended for an additional 52 weeks on January 1, 2000.



## 18. Summary

The Workers' Compensation Act of 1992 went into effect on January 1, 1993 and was amended by P.L. 1997, Chapter 486. The reforms and the amendments continue to have a positive impact on workers' compensation in Maine. The past two years have been a milestone period for the Workers' Compensation Board. The collaborative effort between Labor and Management has brought stability to the system along with a number of innovative programs, such as the streamlining of dispute resolution, implementation of the Monitoring, Audit and Enforcement (MAE) Program, expansion of the Worker Advocate Program, and legislative changes.

The Board has made great strides in reducing the amount of time it takes for a claim to reach final resolution. Both the management and the labor directors recognized the need to provide speedy and fair resolution of workers' compensation cases. With respect to the formal hearing process, there were three major recommendations for change: rule changes to speed up the time frames involved in gathering information relevant to a claim; standard operating procedures (SOP's) to speed up the Workers' Compensation Board's internal processes; and the appointment of a Chief Hearing Officer. The Workers' Compensation Board's dispute resolution process is now running as efficiently and quickly as it has in recent history.

The Workers' Compensation Board approved the MAE Program on June 2, 1998. The basic objectives of this program are to (1) provide timely and reliable data to policymakers; (2) monitor and audit payments and filings; and (3) identify insurers, self-insurers, and third-

-party administrators that are not complying with minimum standards. The program provides for quarterly compliance reports, which measure the timeliness of initial indemnity payments, the filing of Memoranda of Payment, and the timeliness of First Reports of Injury filings.

To ensure the accuracy of the Quarterly Compliance Reports, a pilot project was undertaken. The Board approved the report resulting from the Pilot Project on January 26, 1999 and authorized the production of Quarterly Compliance Reports starting with the first quarter of 1999. The Board has approved six Quarterly Compliance Reports in 1999 and 2000 and is in the process of receiving its seventh Quarterly Compliance Report, resulting in significant improvement in the performance of insurers since the start of this program. These positive trends will assist the Board in reducing the number of cases litigated and increasing the timely and accurate payment of lost time benefits.

The Board has also approved a three-year cycle for the audits of insurers, self-insureds, and third-party administrators. Over 3,000 claims files belonging to 39 entities have been audited. To date, the audits have resulted in \$71,750 in penalties.

Violations to the Act are pursued through both the MAE Program and the Abuse Investigation Unit. The Abuse Investigation Unit is charged with assessing penalties under several sections of the Act. Since 1998, the total number of cases filed has increased sharply from 414 to 2,283, resulting in penalties amounting to nearly \$457,156.

The expanded Worker Advocate Program has been in place since September 1998. The program assists unrepresented employees through the mediation and formal hearing stages. The continued need for, and the popularity of, the Program is obvious from the volume of work advocates now handle. The advocates now represent injured workers in 50% of all mediations and 30% of all formal hearings. The Worker Advocate Program is filling the void for unrepresented employees created by the 1992 Act.

Another milestone realized by the Board came

during recent legislative sessions when the Legislature enacted into law several proposals submitted by the Board. In upcoming legislative sessions, the Board plans to build on its recent success of improving the system through the legislative process.

The Board will continue to build on its past successes to ensure that Maine's workers' compensation system runs as smoothly and efficiently as possible. These are but a few of the important issues that clearly demonstrate that Labor-Management cooperation does work.