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# Annual Report on the Status of the Maine Workers' Compensation System, 2002

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  
(Second Regular Session)**

**February 2002**

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February 15, 2002

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The Honorable Richard A. Bennett  
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The Honorable Michael V. Saxe  
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Joint Standing Committee on Banking & Insurance  
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Senator Betheda G. Edmonds, Chair  
Representative George H. Bunker, Jr., Chair  
Joint Standing Committee on Labor  
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We are pleased to submit to the Governor and the 120<sup>th</sup> Legislature, Second Regular Session, the Annual Report on the Status of the Maine Workers' Compensation System as required by Title 39-A, Section 358-A(1). The Annual Report profiles the current status of the workers' compensation system in Maine and is submitted by the three State agencies most involved in the workers' compensation system.

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## Executive Summary

The Workers' Compensation Board, in consultation with the Superintendent of Insurance and the Director of the Bureau of Labor Standards, is directed by 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.

The Bureau of Insurance reports on the status of competition in the workers' compensation insurance market by examining different measures of market conditions. Workers' compensation insurance in Maine operates in an open competitive rating system. Each insurer files **factors**, called loss cost multipliers, with the Bureau; and each year the National Council on Compensation Insurance (NCCI) files, on behalf of insurers, **advisory loss costs** with the Bureau. The advisory loss costs are multiplied by the factors to form the rates for individual companies. Other factors, such as experience rating and premium discounts, affect the final premiums paid by an individual employer.

Prior to the year 2000, advisory loss costs declined for six consecutive years. This was followed by two years of increases in the advisory loss costs. In its most recent filing made on October 23, 2001, NCCI filed and received approval for a 3.4 percent decrease in advisory loss costs.

Unrelated to the advisory loss costs filing, the market is undergoing a period of hardening. Carriers had been discounting premiums to retain business during times of high investment returns. Carriers are presently less optimistic about investment returns and are not likely to offer discounts to capture or retain market share. Furthermore, reinsurance costs will inevitably increase due to the huge losses sustained on September 11.

There are still many insurers writing workers' compensation coverage in Maine. MEMIC's market share has increased while many other carriers have experienced a decrease in market share. However, there is still a high level of competition for business in Maine. Although the market remains competitive, insurers' willingness to offer discounts is decreasing. The result is that some employers have been moved to higher rating tiers and some employers have lost discounts. The end result is that premiums for employers are increasing.

The Bureau of Labor Standards (BLS) works in collaboration with the Maine Workers' Compensation Board in the prevention of occupational injuries and illnesses through a variety of initiatives. The Bureau is authorized to collect, sort, and arrange statistical data of the number and character of industrial accidents and their effect upon injured workers. BLS is also charged with establishing and supervising safety education training programs. Additionally, the Maine Department of Labor is responsible for overseeing the employer-employee relationship in the State. To accomplish its mandates, BLS works with the Workers' Compensation Board to gather data relating to injuries and illnesses sustained by Maine workers.

The Bureau of Labor Standards and the Maine Workers' Compensation Board collect their data through various collection mechanisms. Both agencies strive for the highest quality of available data. The following data collection programs are administered by BLS: 1) The Census of Fatal Occupational Injuries, 2) the Federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses, 3) the Federal Occupational Safety and Health Administration's (OSHA) Data Collection Form survey, and 4) the Census of Case Characteristics. The Workers' Compensation Board collects data from its administrative forms including its *First Report of Occupational Injury or Disease*. The Bureau electronically imports the contents of these reports for analysis and as supplements to its own data. The combined information is then used for BLS safety initiatives such as training, education, and public sector enforcement activities

The Bureau of Labor Standards has made great strides in promoting occupational safety and health among Maine employers. The Bureau's occupational safety and health initiatives are dependent on timely and accurate data on occupational injuries and illnesses. The Bureau of Labor Standards in partnership with the Workers' Compensation Board, the Federal Bureau of Labor Statistics, and the Occupational Safety & Health Administration has implemented several occupational injuries and illnesses surveillance programs. These programs have strengths and limitations but used together provides a comprehensive assessment of the status of the safety and health of Maine workers.

The Workers' Compensation Board is charged with "serving 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." The major programs of the Board fall into five categories: (1) Dispute Resolution; (2) Compliance - Monitoring, Auditing, and Enforcement (MAE) Program; (3) Worker Advocate Program; (4) Independent Medical Examinations/Medical Fee Schedule; and (5) Technology. The implementation of Standard Operating Procedures (SOP's) has resulted in the elimination of backlogs and the most efficient dispute resolution system in recent history. The MAE Program has dramatically improved compliance throughout the industry both as to payments and filings. Because of the Worker Advocate Program, injured workers now have access to representation that enables them to receive the benefits to which they are entitled. Over 50% of injured workers are represented by advocates at the mediation level and over 30% are represented by advocates at the formal hearing level. The Independent Medical Examination Program and the Medical Fee Schedule have been important tools in the successful culmination of cases. Although the Board has made progress in the field of technology, due to lack of resources, many of its objectives have not been met.

The Board received an appropriation from the General Fund for Fiscal Year ("FY") 93. The following year, the Legislature and the Governor created an assessment on Maine's employers that is used to fund the Board's operations. The Board receives virtually all its revenue from this assessment. The maximum amount that the Board can assess each year is set by statute. In 1993, the maximum assessment was set at \$6,000,000. The maximum assessment has been permanently increased twice: by \$600,000 beginning in FY97 and by an additional \$135,000 in FY00.

In 1997, the Legislature enacted, and the Board implemented, legislation that expanded the Worker Advocate program and created the MAE Program. The Board's assessment was increased by \$600,000 in FY97 and again by \$135,000 in FY00 to pay for these programs. The cost to the Board has been in excess of the \$735,000 allocated for the task. The cost of these programs, in addition to increases in employee salaries, the cost of benefits, and general inflation, created budgetary problems for the Board.

The Legislature took steps to improve the situation: first, the Legislature authorized the use of \$700,000 from the Board's reserve account in FY02, and second, the Legislature authorized a one-time increase in the maximum assessment of \$300,000 to provide temporary assistance to the Worker Advocate Program. These are short-term solutions and it is anticipated that the Governor and the Legislature will deal with the budgetary issues during the 2002 Legislative Term based on the Berry, Dunn, McNeil & Parker Report and the Government Evaluation Act Report.

An effective MAE Program, along with technology and programming initiatives such as electronic data interchange (EDI), are key components in the Board's efforts to reduce claims, improve efficiency, and lower costs of the Board. The Board believed that additional resources must be shifted to these programs.

**The State Government Evaluation Act** "provides for a system of periodic review of agencies and independent agencies of State Government in order to evaluate their efficiency and performance." The Workers' Compensation Board delivered its Government Evaluation Act Report to the Joint Standing Committee on Labor on November 11, 2001. **The Berry, Dunn, McNeil & Parker Report**, resulting from a study commissioned by the Legislature, was delivered to the Joint standing Committee on Labor on December 17, 2001. **The Berry, Dunn, McNeil & Parker Report, taken in tandem with the Government Evaluation Act Report, should provide policymakers with the necessary information required to determine the efficiency of both the governance and administrative structure of the Workers' Compensation Board.**

Section 1

Bureau of Labor Standards



**Section 1. Bureau of Labor Standards  
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## Introduction

### **The Role of the Bureau of Labor Standards in the Protection of Maine Workers**

The Bureau of Labor Standards (BLS) works in collaboration with the Maine Workers' Compensation Board in the prevention of occupational injuries and illnesses through a variety of initiatives. Under Maine Revised Statutes Annotated Title 26 § 42, the Bureau has the power and duties to collect, assort, and arrange statistical data on the number and character of industrial accidents and their effect upon the injured. BLS is also charged with establishing and supervising safety education and training programs. Additionally, the Maine Department of Labor is responsible for overseeing the employer-employee relationship in the state. To successfully accomplish its mandated functions, the Bureau works with the Maine Workers' Compensation Board to gather data relative to injuries and illnesses sustained by Maine workers.

The Bureau of Labor Standards and the Maine Workers' Compensation Board collect their data through various collection mechanisms. Both agencies strive for the highest quality of available data. The following data collection programs are administered by BLS: 1) The Census of Fatal Occupational Injuries, 2) the Federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses, 3) the Federal Occupational Safety and Health Administration's (OSHA) Data Collection Form survey, and 4) the Census of Case Characteristics. The Workers' Compensation Board collects data from its administrative forms including its *First Report of Occupational Injury or Disease*. The Bureau electronically imports the contents of these reports for analysis and as supplements to its own data. The combined information is then used for BLS safety initiatives such as training, education, and public sector enforcement activities.

**Section 1** of this report will describe the occupational safety and health initiatives developed and implemented by the Bureau of Labor Standards and its partners in the occupational safety and health community. **Section 2** will provide an epidemiological profile on occupational injuries and illnesses in Maine. **Section 3** will discuss the efforts of the Bureau and the Workers' Compensation Board in gathering quality and timely data that is critical for developing appropriate safety interventions within the different sectors of industry.

## Section 1. Occupational Safety & Health Initiatives

The Bureau of Labor Standards has five divisions, each designed to accomplish some aspect of the Bureau's chief mission: "A Safe Work Environment and Fair Wages" for all Maine workers.

### 1A. Technical Services Division

The Technical Services Division is comprised of two units: Research & Statistics (R&S) and Customer Service (CSU). The Research & Statistics Unit is responsible for the administration of several occupational safety and health surveys that provide or add to existing data sets.

The first program is the Census of Fatal Occupational Injuries (CFOI). This program is based on a cooperative agreement with the federal Bureau of Labor Statistics who also partially funds it. The CFOI program collects data on all fatal occupational injuries and some illnesses. Fatality data from this program is presented in the annual publication titled "Fatal Occupational Injuries in Maine." This is a passive survey in that it utilizes data from existing administrative and public sources (including the WCB administrative data) and brings it all together to make it more useful and complete.

A second federal cooperative agreement with the federal Bureau of Labor Statistics provides funding for the annual Occupational Safety and Health Survey. This survey requests data from employers on the incidence of occupational injuries and illnesses as defined by the OSHA recordkeeping guidelines. Only a sample of employers is surveyed, but the sample is randomly selected from groups based on industry and size (number of workers) making it statistically representative of those groups and their aggregations. Another feature of this survey is that it collects the number of hours worked by all employees—injured or not. The combination of data on both incidents and exposure hours results in the ability to derive accurate rates such as 7.3 injuries per 100 workers. Such rates adjust for employment and take into account part time and overtime situations since they are based on hours actually worked. Data from this survey is presented in the annual publication "Occupational Injuries and Illnesses in Maine".

The Bureau also administers the federal Occupational Safety and Health Administration's (OSHA) Occupational Injury and Illness Data Collection Survey, commonly known as the "OSHA 200 Log." The Log is actually a record of all OSHA-defined recordable injuries and illnesses. The data collected from this program is not presented but is used by OSHA's regional offices for convincing others of the need for pursuing programs that promote occupational safety and health. The year 2000 survey resulted in 208 Maine companies being identified as having an incidence rate of 8 or more injuries/illnesses per 100 full-time employees. This list will serve as a basis for OSHA's Local Emphasis Program (LEP). An LEP develops when OSHA, after examining the data collected, determines that a particular industry's incidence rate of injury and illness is high and that, as a consequence, OSHA will be conducting random inspections. The companies are encouraged to correct any safety hazards in anticipation of an OSHA inspection. They can conduct their own safety inspections, hire a consultant for that purpose, or utilize safety consultants from an OSHA voluntary safety program. (The Bureau's SafetyWorks! program described later is such a program.) As part of this program, the unit provides classes and consulta-

tive services to businesses in OSHA recordkeeping, something which can get involved and for which OSHA enforces standards. This outreach enhances the quality of the data based on OSHA records in Maine.

Lastly, in the area of data collection, the R&S Unit classifies and codes data from the *First Reports of Occupational Injury or Illness* that the Workers' Compensation Board receives. That data is tabulated and presented in the annual publication entitled "Characteristics of Occupational Injuries and Illnesses in Maine". This series contains the best information on the types of injuries and illnesses and some indication of their causes. Unlike the two surveys above, it is based on all cases reported, the cases are attributable to specific employers, and the information is mostly in the public domain. Because of these differences, it provides a rich source for research. This program is the one most closely linked to the Workers' Compensation Board's data system (in fact we enter our data directly onto their system) and therefore is the program most affected by data quality on their system.

Linked to the R&S data collection efforts is its creation of the Maine Occupational Research Agenda (MORA). MORA is modeled after the National Institute for Occupational Safety & Health's National Occupational Research Agenda (NORA). Maine is one of only three states in the nation that has developed a state-based occupational research agenda. The other two states are California and Washington. The Bureau's Occupational Safety & Health Epidemiologist, in collaboration with the MORA Steering Committee members, are leading the effort in developing the research agenda. The mission of MORA is to develop occupational safety and health research priorities and guide their implementation for Maine. This justifies research efforts tailored to the state's needs and better supports grant applications for research.

The Bureau is also currently collaborating with the National Institute of Occupational Safety and Health (NIOSH) and the Council for State and Territorial Epidemiologists (CSTE) in developing a surveillance model of core occupational safety and health indicators for collecting quality data that are comparable among all states. This project will be beneficial to Maine when researching relatively rare occupational injuries and illnesses. Having comparable data from other states will assist BLS in identifying risk factors by providing a larger pool of cases to draw from and analyze.

## **1B. Outreach and Education Division**

The Outreach and Education Division (O&E) has been instrumental in developing and marketing new, innovative and far-reaching programs and services that the Bureau provides. Maine Revised Statutes Annotated, Title 26 § 42-A (Safety Education & Training Programs) authorizes the Bureau to "establish and supervise programs for the education and training of employers, owners, employees, educators and students in the recognition, avoidance and prevention of unsafe or unhealthful working conditions in employment." Using this mandate, the Bureau created a safety training and consultation service called "SafetyWorks!" This program bundles a variety of services individually tailored to the employer's needs. The services might include technical advice on specific situations; walk-around, onsite consultative inspections; and/or classroom-style training. A popular service available on an ongoing basis is the free safety classes, some of which are

tailored to specific industries or to specific environmental exposures such as scaffolding, trenching, or energy control. O&E regularly organizes classes on a set schedule in set locations. Some of the training is to increase the awareness of the services and expertise provided by the Bureau and by others. Increased utilization of the Bureau's services has traditionally fostered collaboration and networking among employers and the Bureau. This adds to employers' knowledge from other employers and provides the Bureau with ideas for future services and service improvements. Since 1997, over 350 individuals have attended special 10-hour courses in the general industries and construction safety and health training programs (29 CFR 1910 & 1926) while 700 individuals have successfully completed the OSHA-certified 30-hour class. To extend the reach of **SafetyWorks!** classes, the Bureau of Labor Standards recently began the use of the Department of Education's Asynchronous Transfer Mode (ATM) system. Under this system, classes broadcast from Augusta can reach students in up to three remote locations with two-way audio and video communication.

A special emphasis of the Outreach and Education Division is the education of young workers. To encourage employers to provide safe work experiences for their teenage workers, the Bureau of Labor Standards developed and distributed the SAFETEEN kit. The SAFETEEN kit contains separate informational brochures for employers and for teenagers, a poster, wallet cards with child labor rules, a "STOP" sticker to post on equipment minors may not use, and a booklet of specific training activities. A website, [www.safeteen.org](http://www.safeteen.org), complements the SAFETEEN kit. Over 1,000 SAFETEEN kits have been distributed since June 2001.

The curriculum "*Starting Safely: Teaching Youth about Workplace Safety and Health*" is another Bureau project for protecting young workers. The three-hour curriculum is designed to teach middle and high school age youth about their safety rights and responsibilities on the job. Over 100 educators are currently using the curriculum in their classrooms.

### **1C. Workplace Safety and Health Division**

The Workplace Safety and Health Division (WSH) provides training, education, and consultation services through a staff of Safety Engineers and Industrial Hygienists. The division's consultation services are offered to both public and private sector employers. Private sector employers either voluntarily request those services or seek it because Regional Federal OSHA, through its Local Emphasis Programs (LEPs) inspections, has identified a need for consultation in those businesses. That identification is based on the summary of data from the Workers' Compensation Board and the OSHA 200 Log survey. A typical employer consultation consists of an evaluation of records from the employer, including an analysis of their Workers' Compensation cases and/or the OSHA 200 Log, an environmental evaluation (a walk-through), and a check on the work processes. The consultants also identify any need for and promote the use of formal (classroom) training that the Bureau and others provide. In some situations, the consultant will arrange for on-site training. Consultations are advisory and cooperative in nature. The WSH Division also administers the Federal Mine Safety and Health Administration's cooperative grant program that provides training, education, and consultation services to approximately 176 mining (mostly gravel and sand pit) operations in Maine.

In addition, the WSH Division enforces OSHA safety regulations in the public sector **ONLY** and consequently, has paramount authority for ensuring the health and safety of employers and employees of state and local governments. The WSH Division prioritizes its inspections based on the state and local agencies' history of injury and illness. That history is obtained from the Workers' Compensation Board data, the results of the Federal BLS survey, the OSHA 200 Log survey, or it can come from a complaint filed by an employee. The WSH Division inspectors conduct unannounced formal inspections of state and local government work environments and are authorized to issue citations for any failure to comply with safety and health standards. Monetary fines may result. In situations where an operation or a process poses an immediate danger to the life or health of workers, the agency is directed to shut down that operation. Again, this is only for employers in the non-federal public sector (state and local government employers). Private-sector employers are inspected and subject to enforcement by the federal Occupational Safety and Health Administration (OSHA).

### **1D. Wage and Hour Division**

The Wage and Hour Division is responsible for enforcing Maine's labor laws to ensure fairness in employment practices and to protect young workers in the workforce. The division's protection for a young worker begins with its review and processing of over 6,000 work permit applications received annually from minors. Additional protection comes from WHD's work-site inspections to ensure that employers are in compliance with the state's child labor law. Employers are identified for inspection based on any combination of the following criteria: 1) Any history of past serious violations; 2) Membership in an industry that usually hires young workers; 3) No prior inspection in the past 12 to 25 months; 4) A history of child labor permits; 5) A complaint; and 6) Random selection. In 2001, the division identified and removed from work locations, 134 young workers who had been placed in hazardous occupations. Seventy-two employers received citations for violating time restrictions--working minors either too early in the morning, or too late in the evening. In addition to enforcement activities to protect young workers, the Wage and Hour Division has been working with the bureau's Outreach and Education Division, providing educational programs in high schools. These programs increase young workers' awareness of Maine child labor laws and their rights in the workplace.

### **1E. Migrant and Immigrant Services Division**

The Migrant and Immigrant Services Division coordinates service for Maine workers who are migrants or immigrants. The Division has a State Monitor Advocate who works with agricultural employers to ensure their compliance with the Seasonal Agricultural Worker Protection Act and the Fair Labor Standards Act. The State Monitor Advocate reviews wage payments for fairness and visits work locations to check that the housing provided to these workers meets OSHA standards. In addition to addressing the safety and health of migrant workers, the Division provides foreign labor certification service to Maine employers who are interested in hiring foreign workers.

## **1F. Bureau of Labor Standards' Occupational Safety & Health Initiatives that incorporate data from the Maine Workers' Compensation Board**

**Company Profiles** – Using the data from the Workers' Compensation Board's (WCB) *First Reports*, the Bureau of Labor Standards can provide a Maine employer with its injury and illness experience. A company profile shows the type of injuries or illnesses that were experienced by the workers. A profile will also describe the nature of injury or illness and the event or exposure that led to that incident. This information is useful to the employer in detecting patterns and in developing its own safety program. In conjunction with the profiles, The Bureau offers a training program to educate the employer in how to use Workers' Compensation and other data sources such as the OSHA Logs to interpret and take corrective action.

**SafetyWorks!** –**SafetyWorks!** managers design their safety training programs based on industry profiles generated from the data from the WCB *First Reports*. By analyzing the WCB data, **SafetyWorks!** managers know what types of injuries and illnesses are prevalent in different industry sectors. This information is used to conduct outreach and education activities tailored to those employers and their needs.

**Public Sector Enforcement** – The Bureau of Labor Standards investigates complaints and enforces occupational health and safety laws for municipal, county, and state government helping to protect over 78,000 workers. The Bureau of Labor Standards uses data from the WCB and OSHA in selecting public sector entities for safety and health inspections.

**Wage and Hour** – The Wage and Hour Division uses the data from the WCB First Reports to select employers for inspection for child labor law compliance. Using the age variable, an industry profile where young workers were injured can be generated. In addition to age, the Division uses other criteria to select businesses for inspections.

**Young Workers' Safety Initiatives** – The Outreach and Education Division uses the age and industry profiles from the WCB First Reports to conduct its outreach and education activities. The WCB data help identify the appropriate industries and employers for outreach and education.

**Migrant and Immigrant Services** – WCB data is used to track employers using migrant workers.

**Epidemiological Reports** – The Research and Statistics Unit generates periodic (yearly) summary reports. These are to benchmark counts and determine trends for Maine and to contribute to and compare to national data sets.

- The Bureau of Labor Standards analyzes the WCB data and publishes an annual report titled "Characteristics of Work-related Injuries and Illnesses in Maine". This report provides descriptive statistics on all disabling work-related injuries and illnesses. Interested parties can access this and other related reports through the Bureau of Labor Standards' WEB site: <http://www.state.me.us/labor/bls/blsmain.htm>.

- The Bureau of Labor Standards uses the WCB data to supplement the Federal Bureau of Labor Standards' Census of Fatal Occupation Injuries (CFOI) program to keep an accurate count of all work-related fatalities in Maine.
- The Bureau of Labor Standards uses the data from the WCB to produce an annual report to the Legislature to report on the safety and health status of Maine Workers.

**Maine Occupational Research Agenda (MORA)** – The Steering Committee members use the WCB data in addition to the Federal Bureau of Labor Statistics and OSHA data to develop occupational safety and health research priorities and guide their implementation for Maine.

**Healthy Maine 2010** – The Bureau of Labor Standards is collaborating with the Maine Bureau of Health in developing occupational safety and health indicators for the Healthy Maine 2010 project. The data from the WCB is used as a guide for setting objectives in these safety and health indicators.

**Public Relations and Media** - The Bureau of Labor Standards uses the WCB data to supplement the Federal Bureau of Labor Statistics and OSHA data to respond to requests for information from the occupational safety and health community on the safety and health status of Maine workers.

**Grant applications** - The Bureau of Labor Standards (BLS) uses WCB data to supplement Federal Bureau of Labor Statistics and OSHA data in developing occupational safety and health grant applications. The BLS was awarded a National Institute for Occupational Safety and Health (NIOSH) Conference Support grant in hosting Maine's First Occupational Safety & Health Research Symposium. This led to the development of MORA. In another grant, BLS partnered with the Maine Bureau of Marine Resources in submitting a grant application to NIOSH for participation in the Fatality Assessment, Control, and Evaluation (FACE) program. This program is intended to conduct research on work-related fatalities and develop interventions to prevent similar fatalities from occurring in the future.

**Special projects** – The Research and Statistics Unit has used WCB data as a resource in conducting the following special projects:

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
5. Developing a pilot training program titled "Using Data in Developing a Safety Program"
6. Collaborating with the National Institute of Occupational Safety and Health (NIOSH) and the Council for State and Territorial Epidemiologists (CSTE) in developing a surveillance model of core occupational safety and health indicators
7. Provided technical assistance to the WCB in revising the *First Report of Occupational Injury or Disease* form. The revised form will serve as an equivalent substitute to the new OSHA 300Log form effective 2002.



It is evident that all the Bureau of Labor Standards occupational safety and health initiatives are data driven. This lends credibility and validity in the Bureau's effort in preventing occupational injuries and illnesses. To maintain this significant function, the Bureau depends on quality data from various data sources, particularly from the Maine Workers' Compensation Board. The next section will highlight the data from the Maine Workers' Compensation Board and the Federal Bureau of Labor Statistics in describing the safety and health status of Maine workers.

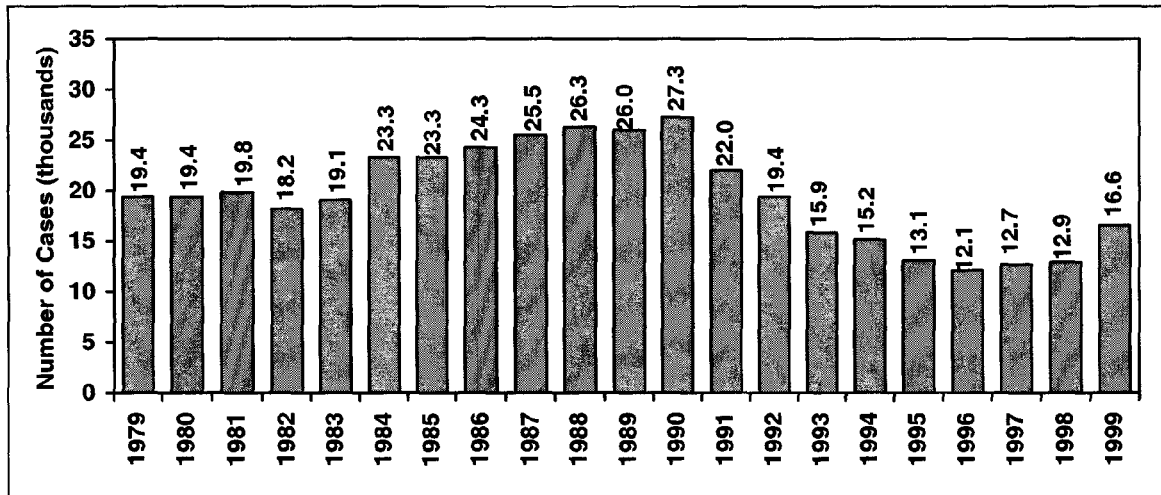
## Section 2. An Epidemiological Profile on Occupational Injuries and Illnesses, Maine, 1999

Section 2 will provide an epidemiological profile of occupational injuries and illnesses in Maine. Sections 2A through 2E present data generated from the *First Reports of Occupational Injury or Disease* from the Maine Workers' Compensation Board (WCB). Sections 2F through 2L present data from the Federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses.

### 2A. Twenty-year Trend of Disabling Cases, Maine, 1979-1999

In 1999, there were 16,561 disabling cases reported to the Workers' Compensation Board (WCB) on a *First Report of Occupational Injury or Disease*. A disabling case is one where a worker lost one or more days of work beyond the day of the injury. There is a 28.7% increase of disabling cases from 1998 to 1999. Figure 1 describes the twenty-year trend of disabling cases.

**Figure 1. Twenty-year Trend of Disabling Cases, Maine, 1979-1999**



The apparent increase in 1999 only indicates an increase in the number of reports filed with the Board and may or may not indicate an increase in the number of injuries or illnesses that occurred. It is more likely the introduction of the Workers' Compensation Board's Monitoring and Enforcement (MAE) program increased the number of reports for non-compensable (less than 7-days) lost time cases than that there was an actual increase in cases. This is shown in independent data from a source stable over that same period.

Table 1 below describes the number of disabling cases for the past 7 years (1993-1999). More importantly, it describes the missing information on the variable "return to work date" on the *First Report of Occupational Injury & Disease* forms filed. There were 8,067 cases with no return to work date for the year 1999 as of the tabulation of this data in November of 2001. This is a large proportion of cases if they are actually out of work and would be an object of great concern in terms of the social and monetary cost of these cases. We suspect from researching known cases that there are a significant number of these that have returned to work but for which a date has not been entered into this field. Such missing information prevents the Bureau and the Board from generating an accurate estimate of the number of workdays lost to due a work-related injury

or illness. This information is critical in conducting cost-benefit analyses of workplace safety programs. Another potential use of the return to date variable is that it will allow BLS and WCB to assess the severity of an injury or illness and provide a measure of the seriousness of each case. If the Workers' Compensation administrative system more carefully tracked these cases, then a case without a return to work date would accurately indicate that the worker is still out. As it is now we cannot tell if the worker is still out of work due to the incident or if paperwork is missing and/or data has not made its way into that field in the WCB data system.

**Table 1. Number of Disabling Cases, Maine, 1993-1999**

	1993	1994	1995	1996	1997	1998	1999
Total Disabling Cases	15,881	15,208	13,171	12,148	12,718	12,863	16,561
No return-to-work date	4,270	3,430	2,922	5,644	7,590	7,946	8,067
Percent of total	26.9%	22.6%	22.2%	46.5%	59.7%	61.8%	48.7%

## 2B. Geographical Distribution of Disabling Cases, Maine, 1997-1999

In 1999, the following five counties reported higher rates of disabling cases when compared to the rest of the state: Sagadahoc, Washington, Waldo, Androscoggin, and Oxford. Table 2 describes the distribution of disabling cases by counties for three years including 1999. The rate is calculated by dividing the number of disabling cases in each county by its respective employment. Geographical distributions data can be useful health planning and in setting enforcement and consultation priorities by region.

**Table 2. Geographical Distribution of Disabling Cases, Maine, 1997-1999**

County	1997			1998			1999		
	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000
Androscoggin	1,077	42,529	25.3	1,103	43,882	25.1	1,485	45,674	32.5
Aroostook	653	27,843	23.5	663	28,586	23.2	775	29,044	26.7
Cumberland	3,482	151,663	23.0	3,376	154,789	21.8	4,281	157,481	27.2
Franklin	220	11,202	19.6	250	11,293	22.1	282	11,781	23.9
Hancock	523	20,338	25.7	515	20,819	24.7	589	21,533	27.4
Kennebec	1,189	53,945	22.0	1,210	53,862	22.5	1,564	54,318	28.8
Knox	366	16,109	22.7	392	16,274	24.1	464	16,551	28.0
Lincoln	198	9,953	19.9	215	10,297	20.9	279	10,453	26.7
Oxford	430	16,871	25.5	412	17,414	23.7	553	17,680	31.3
Penobscot	1,286	62,508	20.6	1,342	64,099	20.9	1,614	65,461	24.7
Piscataquis	106	5,732	18.5	107	5,767	18.6	123	5,747	21.4
Sagadahoc	734	14,075	52.1	694	14,921	46.5	1,014	15,781	64.3
Somerset	393	17,818	22.1	451	18,183	24.8	554	18,939	29.3
Waldo	232	8,672	26.8	320	9,007	35.5	332	9,843	33.7
Washington	321	11,150	28.8	310	11,426	27.1	435	11,528	37.7
York	1,307	53,296	24.5	1,326	54,584	24.3	1,743	57,780	30.2
* Unknown	201	7,350	----	177	9,793	----	474	10,774	----
Total	12,718	531,054	23.9	12,863	544,996	23.6	16,561	560,368	29.6

\* Unknown represents missing information on the WCB First Reports.

## 2C. Disabling Cases by Occupational Groups, Maine, 1997-1999

In 1999, about 73% of all disabling cases occurred in the following 5 major occupational groups:

- 1) Service occupations
- 2) Precision productions, Craft or Repair (includes all mechanics, construction trade workers, precision metal workers and plant and system workers)
- 3) Handler, Equipment Cleaner or Laborer (includes trades helpers, machine feeders, offbearers, stock clerks and packers)
- 4) Machine Operator, Assembler or Inspectors
- 5) Transportation or Material Handler.

With nearly 73% of disabling injuries occurring in these occupational groups, further research is needed in assessing trends and patterns of injuries and illnesses reported in these occupations. In addition, research is needed to identify the risk factors, demographics, and the type of safety training programs that are being offered to workers and the effectiveness of such training in preventing work-related injuries.

**Table 3: Disabling Cases by Occupational Groups, Maine, 1997-1999**

Occupational Groups	1997		1998		1999	
	Number	Percent	Number	Percent	Number	Percent
Service Workers	2,200	17.3	2,350	18.3	3,099	18.7
Precision Production, Craft or Repair	2,210	17.4	2,331	18.1	2,965	17.9
Handler, Equipment Cleaner, Laborer	2,075	16.3	2,132	16.6	2,745	16.6
Machine Operator, Assembler, Inspector	1,294	10.2	1,250	9.7	1,689	10.2
Transportation or Material Handler	1,199	9.4	1,192	9.3	1,543	9.3
Other Occupational Groups	3,740	29.4	3,608	28.0	4,520	27.3
Total	12,718	100.0	12,863	100.0	16,561	100.0

## 2D. Length of Service of Injured Worker, Maine, 1997-1999

One of the trends that the Bureau of Labor Standards has identified from the analyses of the WCB data is more new hires are being injured on the job when compared to those employees who have been with their employers for two years or more. This trend had been constant for the past 8 years, averaging about 32.0%. In 1999, 6,226 (37.6%) new hires had filed a first report of injury. The Maine Occupational Research Agenda (MORA) Steering Committee has noted this trend and feels it warrants further research.

**Table 4. Length of Service of Injured Worker, Maine, 1997-1999**

Length of Service for the Injured Worker	Disabling Cases					
	1997		1998		1999	
	Number	Percent	Number	Percent	Number	Percent
<b>Total</b>	<b>12,718</b>	<b>100.0</b>	<b>12,863</b>	<b>100.0</b>	<b>16,561</b>	<b>100.0</b>
<b>Under 1 Year</b>	<b>4,487</b>	<b>35.3</b>	<b>4,783</b>	<b>37.2</b>	<b>6,226</b>	<b>37.6</b>
1 Year	1,384	10.9	1,600	12.4	2,027	12.2
2 Years	957	7.5	878	6.8	1,163	7.0
3-4 Years	1,165	9.2	1,135	8.8	1,407	8.5
5-9 Years	2,119	16.7	1,808	14.1	2,077	12.5
10-14 Years	974	7.7	1,190	9.3	1,700	10.3
15-19 Years	660	5.2	540	4.2	616	3.7
20+ Years	668	5.3	649	5.0	810	4.9
Unknown	304	2.4	280	2.2	535	3.2

**2E. Nature, Part and Source of Injuries and Illnesses, Maine, 1996-1999**

Table 5 describes the top five contributory factors of injuries and illnesses reported to the Workers' Compensation Board (WCB). The 4-year trend in the numbers of Sprains, Strains, or Tears has remained constant with the exception of one year, 1999. There was a 55.5% increase in the number of cases reported in 1999. Similarly, there was a 35.5% increase in the number of injuries reported where the event that led to those injuries were due to Overexertion. Injuries such as Strains, Sprains or Tears maybe due to a worker's motion or positions while Overexertion could be due to poor organization of work processes such as repetitive motion or improper work environment. More research is needed in gathering data from the WCB *First Report of Occupational Injury or Disease* to study this emerging trend.

**Table 5. Nature, Part and Source of Injuries and Illnesses, Maine, 1996-1999**

	1996	1997	1998	1999
<b>Nature of Injury</b>				
Sprains, strains, tears	3,018	3,156	3,320	5,164
Nonspecified pain, sore, hurt	2,758	3,081	2,980	3,279
Bruises, contusions	570	605	708	1,027
Fractures	579	675	646	743
Cuts, lacerations	545	576	633	774
<b>Source of Injury</b>				
Person--injured or ill worker	2,751	2,830	2,805	3,585
Floors, walkways, ground surfaces	1,653	1,873	1,897	2,247
Containers	1,400	1,417	1,486	1,810
Parts and materials	982	942	983	1,304
Vehicles	748	771	845	1,012
<b>Event or Exposure</b>				
Overexertion	3,648	3,785	3,837	5,199
Bodily reaction	1,515	1,618	1,560	1,882
Fall on same level	1,034	1,200	1,273	1,460
Struck by object	1,100	1,144	1,168	1,422
Repetitive motion	844	813	805	1,198

## 2F. Cases and Incidence Rate of Injuries and Illnesses, Maine, 1999-2000

Sections 2F through 2H include data gathered through the Annual Survey of Occupational Injuries and Illnesses. This survey is conducted by the Maine Bureau of Labor Standards on behalf of the Federal Bureau of Labor Statistics through a cooperative agreement. Data collected from this survey cannot be used for comparison with the Workers' Compensation Board rate for the following reasons:

- 1) The methodology of calculating rates is different;
- 2) Both systems use a different definition of recordability of work-related injuries and illness;
- 3) The Workers' Compensation Board data is a census of injuries and illnesses while the Federal BLS data is a statistical sample.

However, this dataset is important because it allows the Bureau of Labor Standards to cross-reference the data from the Workers' Compensation Board for trend analysis and permits a degree of national comparison for specific industries. It also collects exposure data (hours worked) unavailable from other sources. Because of this, the data is able to better adjust for the effects of time worked and the number of employees.

The data generated are from a random sample stratified by industry and employer size. There are around 2,500 employers in the sample. Incidence rates are calculated using the following formula:

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

Where:

N = number of defined incidents (injuries and illnesses in the chart below) for an employer or group;

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

200,000 = the standard base for 100 full-time equivalent workers working 40 hours per week for 50 weeks.

The result is therefore presented in the form of the number of incidences per 100 workers, (working a standardized workweeks).

According to the 1999-2000 Annual Survey of Occupational Injuries and Illnesses, in the private sector, the service and wholesale industries reported an increase in incidence rate while manufacturing and the construction industries recorded declines. The public sector reported a slight increase in incidence rate.

**Table 6. Number of Cases and Incidence Rate of Injuries and Illnesses, Maine, 1999-2000**

Industry	1999		2000	
	Number of Cases	Incidence Rate	Number of Cases	Incidence Rate
<b>Private Sector</b>	<b>37,490</b>	<b>9.3</b>	<b>35,958</b>	<b>9.0</b>
Manufacturing	12,520	14.6	10,401	12.5
Services	8,207	6.7	9,697	8.0
Construction	3,460	13.1	2,338	8.8
Wholesale	2,690	10.1	3,044	11.3
Transportation & Public Utilities	1,775	7.9	1,765	8.1
Finance, Insurance & Real Estate	1,244	4.8	905	3.3
Agriculture, Forestry & Fishing	703	13.5	509	9.5
<b>Public Sector</b>	<b>2,904</b>	<b>5.4</b>	<b>3,925</b>	<b>6.4</b>

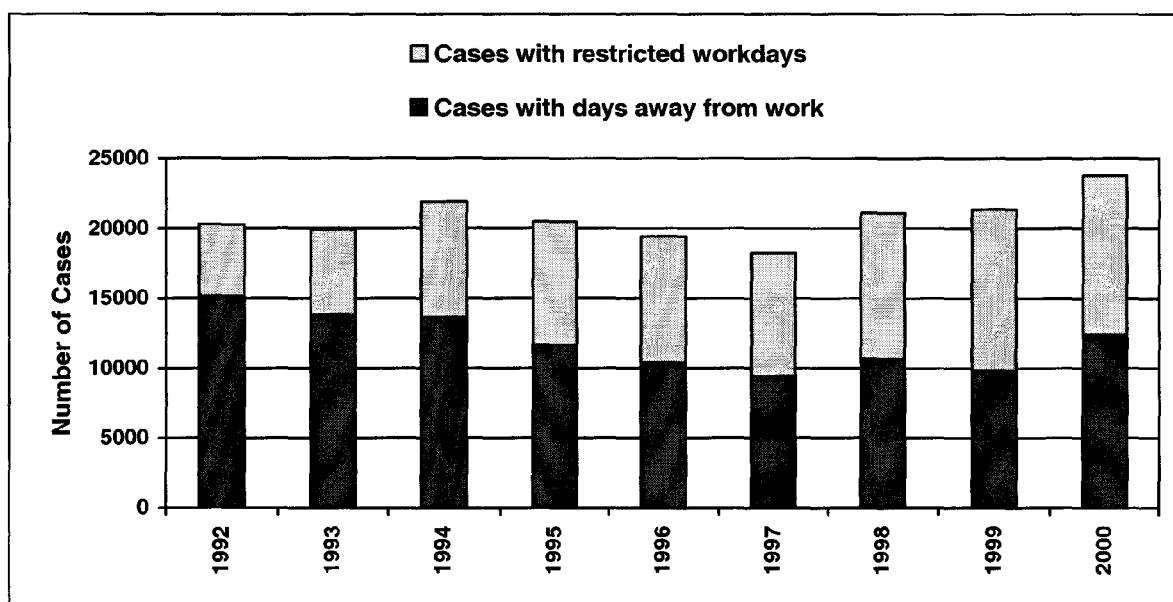
## **2G. Cases with Lost Workdays and Restricted Work Activity, Maine, 1992-2000**

Data collected since 1992 shows a downward trend in the reported number of cases with resulting in days away from work. However, the number of cases resulting in restricted work activity has increased. The data indicates that employers are placing more injured workers on "light duty." The Bureau of Labor Standards hypothesized the following:

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

More research is needed in this area to test these hypotheses.

**Figure 2. A Nine-year Trend Analysis of Lost Workday and Restricted Work Activity Cases, All Industries (Public & Private Sectors), Maine, 1992-2000**



## 2H. Nature and Source of Injuries and Illnesses Involving Days Away From Work, Maine, 1996-1999

Table 7 describes the four-year trend of injuries and illnesses that involved days away from work by the Nature and Source of the incident. The term "Nature" is used to describe the appearance or the diagnosis of the injury or illness. Examples of Nature are: "Sprains", "Fractures", "Cuts", "Bruises", "Amputations", or "Burns". The term "Source" is used to describe the object, substance, bodily motion, or exposure that directly produced or inflicted the injury or illness. Examples of Sources are: "Chemical Products", "Containers", "Furniture", "Machinery" and "Worker Motion or Position".

**Table 7. Nature and Source of Injuries and Illnesses Involving Days Away from Work (Private Sector), Maine, 1996-1999\***

	1996	1997	1998	1999
<b>Nature</b>				
Sprains & Strains	3,341	3,590	3,716	3,671
Soreness & Pain	902	811	797	899
Bruises & Contusions	611	496	653	676
Cuts, Lacerations & Punctures	376	476	569	544
Fractures	422	531	414	447
<b>Source</b>				
Worker Motion/Position	2,023	1,876	1,958	2,220
Containers	1,229	812	1,375	1,115
Vehicles	599	450	638	694
Parts & Materials	534	738	775	673



Floor/Ground Surfaces	968	1,051	1,311	981
<b>Event</b>				
Overexertion	2,806	2,794	2,969	2,719
Contact with Object or Equipment	1,647	1,877	2,181	1,784
Repetitive Motion	701	685	761	928
Fall on the Same Level	563	669	845	580
Slips or Trips without Falling	506	446	470	390

Data in Table 7 reflected those injuries reported in the private sector only. Some data in the public sector were not publishable due to the low numbers.

The data from 1996-1999 shows that the Nature of Injuries, particularly Sprains & Strains, Soreness & Pain and the Source of Injuries such Worker Motion & Positions have ergonomic implications. This set of data reflected a similar trend detected through the Workers' Compensation Board data set. With the controversy surrounding the proposed OSHA ergonomic standards, more research is needed in this area to establish a well-defined relationship between these variables. More importantly, research is needed to evaluate the cost effectiveness of existing ergonomic safety programs in preventing musculo-skeletal disorders.

\*The year 2000 data is not yet available from the Federal Bureau of Labor Statistics.

## 2I. Fatal Occupational Injuries, Maine, 1992-2000

The Census of Fatal Occupational Injuries (CFOI) program is a second Federal/State cooperative program. It was created in 1990 by the U.S. Department of Labor, Bureau of Labor Statistics and includes all 50 states and the District of Columbia. The program was established to determine a true count of work-related fatalities in the United States. Before 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 United States.

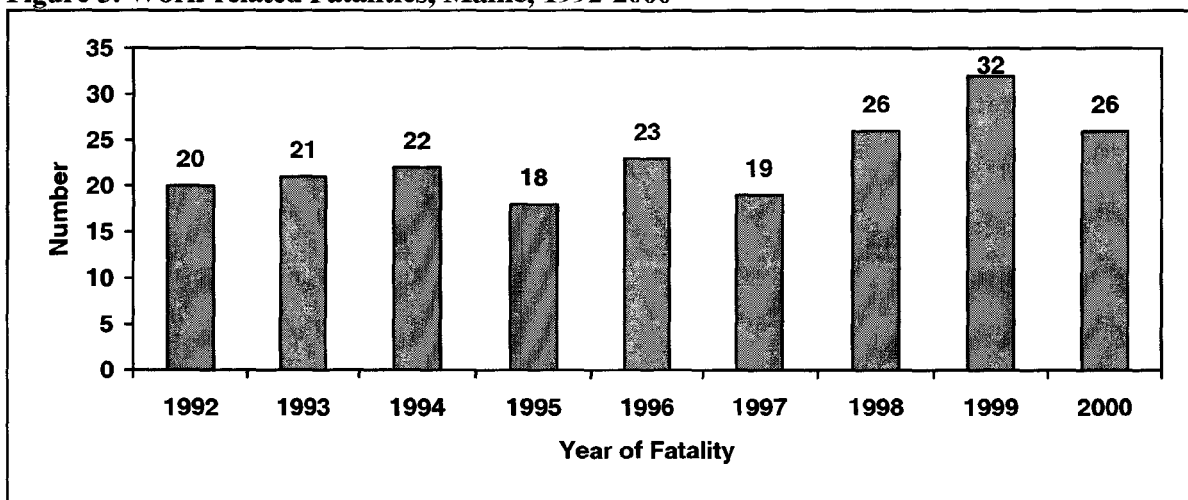
A death is considered work-related if an event or exposure resulted in an employee fatality while in work status, whether at an on-site or off-site location. Private and public sector (state, local, and county government) are included.

Fatalities must be confirmed by two independent sources before inclusion in CFOI. Sources in Maine include death certificates, the *First Report of Occupational Injury or Illness* for workers' compensation and fatality reports from the following agencies and sources: 1) the Chief Medical Examiner's Office, 2) the Department of Marine Resources, 3) the Maine State Police, 4) the Bureau of Motor Vehicles, 5) the U.S. Coast Guard, 6) Federal Occupational Safety and Health Administration (OSHA) reports, and 7) newspaper clippings and other public media.

Fatalities due to injuries are included in the Census of Fatal Occupational Injuries. Occupational illnesses are more likely to be excluded from this report because the illness may not be diagnosed until years later or the work relationship may be questionable.

Figure 3 shows the numbers of work-related fatalities recorded in Maine from 1992-2000.

**Figure 3. Work-related Fatalities, Maine, 1992-2000**



## **2J. Fatal Occupational Injuries by Industry and Event/Exposure, Maine, 1992-2000**

Transportation accidents have accounted for more fatal workplace injuries than any other event or exposure in Maine as shown in Table 8. Since 1992, nearly 45% of the fatal work-related injuries in Maine collected under the CFOI program were classified as transportation related. This is comparable to that of the U.S. as a whole, where 42% of all fatal injuries in the same period were classified as transportation related.

**Table 8. Fatal Occupational Injuries by Industry & Event/Exposure, Maine, 1992-2000**

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>210</b>	<b>94</b>	<b>50</b>	<b>26</b>	<b>25</b>	<b>12</b>	<b>3</b>
Agriculture, Forestry & Fish.	46	28	2	2	14	0	0
Manufacturing	40	7	25	6	1	1	0
Transportation & Public Utilities	37	26	5	2	4	0	0
Services	25	9	9	3	1	3	0
Construction	25	4	5	11	3	0	2
Government	17	8	2	1	1	5	0
Wholesale	11	8	1	0	1	0	1
Retail	87	3	1	1	0	3	0
Finance, Ins. & Real Estate	1	1	0	0	0	0	0

## 2K. Economic Impact of Work-Related Fatalities

The Bureau of Labor Standards conducted a pilot study to estimate the cost of work-related fatalities in Maine from 1995-1998. Using data from the CFOI program and the Maine Workers' Compensation Board (WCB), the economic impact of 86 fatalities was assessed using indicators such as years of potential life lost, loss of future earnings, Workers' Compensation payments, and OSHA penalties. Table 9 describes the result of the pilot study.

**Table 9. Economic Impact of 86 Cases of Work-Related Fatalities, Maine (1995-1998)**

Cost Variables	WCB Death Benefits Payments	Medical Costs	Funeral Costs	OSHA Fines	*Years of Potential Work Life Lost (Years)
Dollar Amount	\$1,490,000.	\$170,000.	\$198,000.	\$554,626.	1,919

\* Years of Potential Work Life Lost is calculated by deducting the age of death from the retirement age of 65.

**Results:** The 86 fatalities accounted for 1,919 years of potential life lost. Of the 86 cases, 29 (33.7%) cases had WCB death benefit payment, which totaled \$1.49 million and incurred \$170,857.00 in medical cost. Funeral costs accounted for \$198,071.00. OSHA investigated 23 cases and levied fines totaling \$554,625.00. A review of 50 case reports by BLS Safety consultants indicated that 45 of these fatalities were preventable.

**Discussion:** Work-related fatalities present a significant economic impact to employers. Direct cost includes death benefit payments and medical expenses. Indirect cost includes lost of productivity due to disruptions at work, poor morale, and OSHA fines. Long-term impact includes the years of potential life lost and lost of potential earnings. In addition, work-related fatalities have a significant impact on the quality of life of the families of the deceased workers.

**Section 3. The efforts of the Bureau of Labor Standards and  
Workers' Compensation Board in gathering quality  
and timely data that is critical in developing appropriate  
safety interventions or different industry sectors.**

Since 1984, the Bureau of Labor Standards has entered its case-specific information directly into the Workers' Compensation Board (WCB) database and has helped maintain the WCB employer database. In October of 1999, the Bureau activated its own new office automation database called "Gen II". That database includes an employer component that inter-links identification and demographic information of over 250,000 employer records from various Department of Labor activities including the Bureau's own inspection activities. Unlike its predecessor and other employer databases, it was designed to maintain links over any number of identity, ownership, name, and location changes, and do so among several existing independent databases.

When the Workers' Compensation Board re-programmed its coverage system in 2000, they elected to integrate their employer database into the Bureau's new Gen II employer system. Because of this integration, the Board now collects its initial employer identification information from the BLS employer database and provides new employer information into Gen II to supplement the Bureau and the Department of Labor employer database.

This cooperation has resulted in a more integrated identification of employers for ownership issues, business activity, and physical location of the business. It also saves the Board from programming and maintenance cost of operating a separate employer identification system. It relieves the Bureau from manually re-identifying employers from data coming in from the WCB database, producing a more efficient method of employer identification, yielding quality data. The immediate short-term result has been positive, resulting in a more efficient and accurate process to identify existing employers, and in creating new employer records.

It is too early to evaluate the long-term effect of this change but by next year, we will be able to assess this collaborative effort. The Board and Bureau are now jointly looking into ways to access and utilize the data from the integrated systems. To that end, the Board has included the Bureau in its training program in the utilization of a software product called CorVu which has some fairly sophisticated report writing and summary features useful in tabulating and "drilling" through the data. This added degree of collaboration should help in defining and improving the databases and the processes that feed information into them. It will also provide a tool to use the administrative data statistically.

## Summary

In summary, the Bureau of Labor Standards has made great strides in promoting occupational safety and health among Maine employers. The Bureau's occupational safety and health initiatives are dependent on timely and accurate data on occupational injuries and illnesses. The Bureau of Labor Standards in partnership with the Workers' Compensation Board, the Federal Bureau of Labor Statistics, and the Occupational Safety & Health Administration has implemented several occupational injuries and illnesses surveillance programs. These programs have strengths and limitations but used together provides a comprehensive assessment of the status of the safety and health of Maine workers.

With the development of the Maine Occupational Research Agenda (MORA), the Bureau has begun formally prioritizing occupational safety and health issues. To address the deficiencies of the current surveillance programs, the Maine Occupational Research Agenda Steering committee members recently developed an inventory of all occupational injuries and illnesses surveillance programs in Maine. The committee members reviewed the strengths and some limitations unique to each program, met with respective bureau or program directors to discuss the findings and offer suggestions for improvement. At the national level, the Bureau is working with the National Institute for Occupational Safety and Health (NIOSH) and the Council for State and Territorial Epidemiologists in developing model surveillance programs.

Section 2  
Workers Compensation Board

**Section 2. Workers' Compensation Board  
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## 1. Introduction

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

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

The implementation of Standard Operating Procedures (SOP's) has resulted in the elimination of backlogs and the most efficient dispute resolution system in recent history. The MAE Program has dramatically improved compliance throughout the industry both as to payments and filings. Because of the Worker Advocate Program, injured workers now have access to representation that enables them to receive the benefits to which they are entitled. Over 50% of injured workers are represented by advocates at the mediation level and over 30% are represented by advocates at the formal hearing level. The Independent Medical Examination Program and the Medical Fee Schedule have been important tools in the successful culmination of cases. Although the Board has made progress in the field of technology, due to lack of resources, many of its objectives have not been met.

The Board is not a General Fund agency and receive its revenue through an assessment on Maine's employers that is used to fund the Board's operations. The maximum amount that the Board can presently assess is \$6,735,000.

The Board's assessment was adequate to fund the Board's operations until FY97. In 1997, the Legislature enacted, and the Board implemented, legislation that expanded the Worker Advocate Program and created the MAE Program. The cost of these programs has been in excess of the amount allocated for the task. The cost of these programs, in addition to increases in employee salaries, the costs of benefits, and general inflation created, in light of the maximum assessment set by law, budgetary problems for the Board.

The Legislature recognized the urgency of the Board's situation. It took two steps: first, the Legislature authorized the use of \$700,000 from the Board's reserve account in FY02, and second, the Legislature authorized a one-time increase in the maximum assessment of \$300,000 to provide temporary assistance to the Worker Advocate Program. These are short-term solutions and it is anticipated that the Governor and the Legislature will deal with the budgetary issues during the 2002 Legislative Term based on the Berry, Dunn, McNeil & Parker Report and the Government Evaluation Act Report.

These efforts solved the Board's funding problem for FY02 but the Board, in FY03 and beyond, is facing further budgetary problems stemming from the assessment cap. If no changes are made to the Board's funding formula, the Board will be forced to make deep cuts in FY03.



These cuts will total approximately \$1,100,000. The major part of these cuts will come from the Personal Services budget.

An effective MAE Program, along with technology and programming initiatives such as electronic data interchange (EDI), are key components in the Board's efforts to reduce claims, improve efficiency, and lower costs of the Board. Additional resources **must** be shifted to these programs.

The Berry, Dunn, McNeil & Parker Report delivered to the Legislature on December 17, 2001 and the Government Evaluation Act Report delivered to the Legislature on November 11, 2001 should provide policymakers with the necessary information required to determine the efficiency of both the governance and administrative structure of the Workers' Compensation Board.

## **2. Enabling Legislation and History of Maine Workers' Compensation**

### **1. Enabling Legislation Maine Workers' Compensation Board.**

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

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

### **2. State Agency History.**

## **I. State Agency History.**

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

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

A transition from common law into the statutory system we know today occurred during the late teens and early 1920's. Earlier, an injured worker had to sue his employer and prove fault to obtain compensation.

Workers' compensation was conceived as an alternative to tort. Instead of litigating fault, injured workers would receive a statutorily determined compensation for lost wages and medical treatment.

Employers gave up legal defenses such as assumption of risk or contributory negligence. Injured workers gave up the possibility of damages, beyond lost wages and medical treatment, such as pain and suffering and punitive damages.

This historic bargain, as it is sometimes called, remains a fundamental feature of workers' compensation. Perhaps because of the time period, financing and administration of benefit payments remained in the private sector, either through insurance policies or self-insurance.

Workers' compensation disputes still occur in a no fault system. For example, disputes arise as to whether the disability is related to work; how much money is due the injured worker; and, how much earning capacity has been permanently lost. Maine, like other states, established an agency to process these disputes and perform other administrative duties.

Disputes were simpler. Injured workers rarely had lawyers. Expensive, long term, medically complicated claims, such as carpal tunnel syndrome or back strain, were decades away.

## **III. Adjudicators as Fact Finders.**

In 1929, the Maine Federation of Labor and an early employer group listed as "Associated Industries" opposed Commissioner William Hall's re-nomination. Testimony from both groups referred to reversals of his decisions by the Maine Supreme Court.

This early feature of Maine's system, direct review of decisions by the Supreme Court, still exists today. The Supreme Court decides issues regarding legal interpretation, and does not conduct a whole new trial. In Maine, the state agency adjudicator has historically been the final factfinder.

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

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

In 1974, workers' compensation coverage became mandatory. This and other significant changes to the statute were passed without an appropriation for the Industrial Accident Commission. In 1974, the agency had approximately the same staff and budget as in 1964.

In 1964 insurance carriers reported about \$3 million in direct losses paid. By 1974 that had grown to about \$14 million of direct losses paid. By 1979, direct losses paid by carriers totaled a little over \$55 million. By 1984, it had grown to almost 128 million. These figures don't reflect benefits paid through self-insurance.

This exponential growth of the system reflected legislative changes during the 1970's and set the stage for a series of workers compensation crises that occurred throughout the 1980's and into the early 1990's.

#### **V. The 1970's.**

During the early 1970's time limits were removed for both total and partial wage loss benefits. Inflation adjustments were added. The maximum benefit was set at 200% of the state average weekly wage.

Also, laws were passed making it easier for injured workers to secure the services of an attorney. The availability of legal representation greatly enhanced an injured worker's likelihood of receiving benefits, especially in a complex case.

Lastly, statutory changes and evolving medical knowledge brought a new type of claim into the system. The law no longer required a specific accident. Doctors began to connect injuries such as carpal tunnel syndrome and back problems to work and thus brought these injuries within the coverage of workers' compensation.

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

#### **VI. The 1980's.**

In 1978, the name of the agency was changed to the Workers' Compensation Commission. In 1980, Commissioners became full-time. In the early 1980's, an informal

conference process was added to attempt to resolve disputes early in the claim cycle, before a formal hearing.

Additionally, regional offices were established in Portland, Lewiston, Bangor, and Caribou. In 1988, a regional office was established in Augusta, separate from the central administrative office.

During the 1980's the agency made a transition into the format the public recognizes today: a multipurpose agency with a mixture of dispute resolution, record keeping, and regulatory operations.

In the early 1980's, long delays in the formal hearing process were a chronic source of legislative concern. In 1986, the state agency issued a study of delay. It chronicled the growth in litigation and recommended more Commissioners.

In 1987, three full-time Commissioners were added, bringing the total to 11, not including the Chair. Today, in 2002, the Board has eight Hearing Officers, not including the Chief Hearing Officer.

Parallel to controversy about delay at formal hearings was a second controversy concerning private adjustment, particularly cases in the assigned risk pool. At its heart this issue was about escalating claim costs more than adjustment. However, statutory changes began to call for increased monitoring of adjustment activity by the state agency.

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

This and other state budget problems, related to a national recession, made the late 1980's and early 1990's a challenging period to be either an elected official or a public administrator.

## **VII. The 1990's.**

Finally, in 1992, a Blue Ribbon Commission made a series of recommendations which were ultimately enacted.

Inflation adjustments for both partial and total benefits were eliminated. The maximum benefit was set at 90% of state average weekly wage. A limit of 260 weeks of benefits was established for partial disability.

These changes represented substantial reductions in benefits for injured workers, particularly those with long term disabilities. To a significant degree, the comp issue was addressed by rolling benefits back to the levels of the late 1960's.

Additionally, the section of the statute concerning access to legal representation was changed in a way that made it more difficult for injured workers to secure the services of private attorneys.

Maine Employers' Mutual Insurance Company was established. It replaced the assigned risk pool and offered a permanent source of coverage. Despite differing views on the nature of the problems within the preceding and current system, virtually all observers agree that MEMIC has played a critical role in stabilizing the workers' compensation environment in Maine.

### **VIII. The Workers' Compensation Board.**

Lastly, the state agency was renamed and significantly reorganized. At about this time, a labor-management group provided a successful forum for discussing comp issues.

Based on the recommendation of the Blue Ribbon Commission, the current Board was proposed as an experiment to help move the workers' compensation issue out of the political process by directly involving labor and management in the administration of the State agency.

The new agency was to be directed by a board of directors consisting of four members of labor and four members of management, appointed by the Governor based on nomination lists submitted by the Maine AFL-CIO and Maine Chamber of Commerce.

The Board would hire an executive director to run the agency. The Board, not the Governor, would appoint Hearing Officers to adjudicate Formal Hearings. A two step process replaced informal conferences: troubleshooting and then mediation.

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

Few would argue that the Board's structure moved workers' compensation out of the political process. Bills concerning workers' compensation still appear regularly on the calendar of the Labor Committee.

In terms of both regulatory and dispute resolution operations the Board has experienced significant accomplishments. In terms of its traditional operation, dispute resolution, the Board can show an efficient informal process. Between troubleshooting and mediation, approximately 75% of initial disputes are resolved within 80 days from the date a denial is filed.

Remaining cases usually present difficult questions about facts and the law, the types of disputes that lend themselves to litigation as a mode of dispute resolution.

The no fault system works better than many people realize for routine injuries. Simple claims where there is a specific accident, a defined healing period, and a short period of missed work are paid and processed without incident.

Litigated cases tend to involve long-term disabilities involving back problems and other soft tissue injuries where there is substantial wage loss and expensive medical treatment at issue. The connection to employment is rarely crystal clear.

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

The agency was criticized for not doing more with its data gathering and regulatory operations during the late 1980's and early 1990's. Internally, the agency saw itself as doing its best in an environment of national recession, state budget problems, yearly contentious legislative sessions, and statutory revisions. However, minimal development of these operations occurred until approximately 1998.

With the benefit of a relational database installed in mid-1996 and 1997, and a modern programming language, the agency is making progress. Filings of first reports and first payment documents are systematically tracked. Significant administrative penalties have been pursued in several cases. The computer applications and the abuse unit are doing a better job of identifying employers, typically small employers, with no coverage. No coverage hearings are regularly scheduled.

The workers' compensation system will come under the close scrutiny of the Governor and Legislature during the 2002 Legislative Term as both the Government Evaluation Act and the Berry, Dunn, McNeil & Parker Report are before the Legislature for consideration.

### **3. Dispute Resolution**

#### **I. Introduction.**

In 1998 and 1999, the Workers' Compensation Board adopted standard operating procedures (SOP's) for all three levels of dispute resolution: troubleshooting, mediation and formal hearing. These SOPs have greatly reduced the amount of time it takes for a case to proceed through the dispute resolution process. A detailed description of the dispute resolution process and the beneficial effect of the SOPs follows.

#### **I. Three Tiers of Dispute Resolution.**

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

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

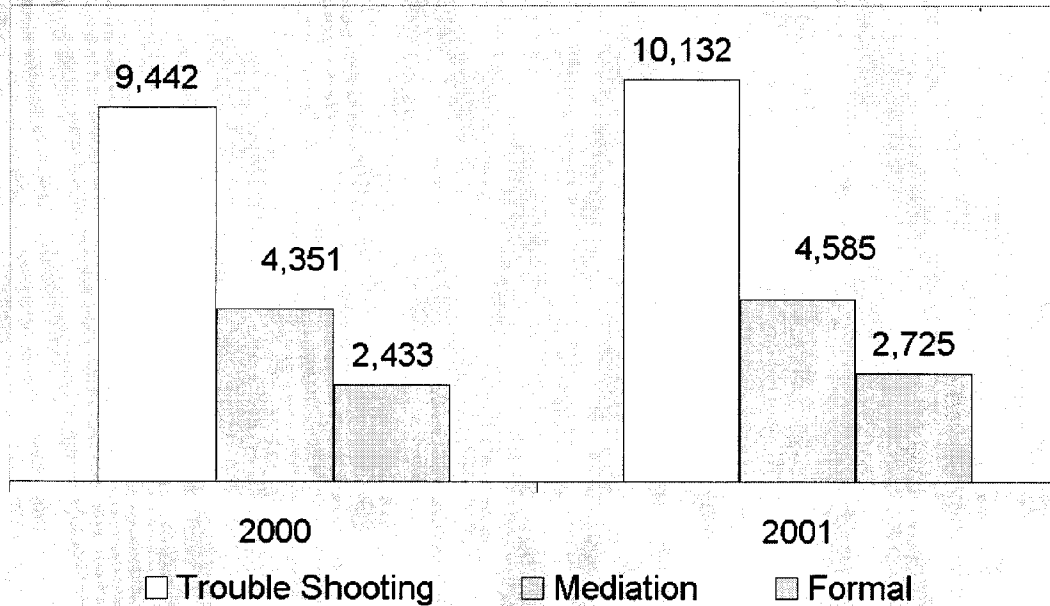
At the second stage of dispute resolution, mediation, the case is scheduled before one of the Board's mediators. The parties usually attend the mediation in one of the Board's regional offices although some mediations are conducted by telephone. At mediation, the employee, the employer, the insurance adjuster and any employee or employer representatives such as attorneys or advocates sit down with the mediator in an attempt to reach a voluntary resolution of the claim. The mediator asks each party to state its position and tries to find common ground. At times, the mediator meets with each side separately to sort out the issues. If the case is resolved at mediation, the mediator writes out the terms of the agreement and the parties sign it. If the case is not resolved at mediation, it is referred on for a formal hearing.

When the case reaches the formal hearing stage, the parties are required to exchange information and medical reports and answer specific questions that pertain to the claim. After all information has been exchanged, the parties send to the Board a "joint scheduling memo" that lists the witnesses who will testify and the amount of time needed for hearing. The hearing is much like a mini-trial. Witnesses for both sides testify and written evidence is submitted. Most parties at the hearing phase are represented either by an attorney or by a worker advocate. After all relevant evidence has been submitted, the hearing officer issues a decision, usually within 60 days.



Each level of dispute resolution serves as a funnel, with about twice as many cases coming in as going out. The numbers of cases resolved at each phase for the years 1999 and 2000 is illustrated in the chart below:

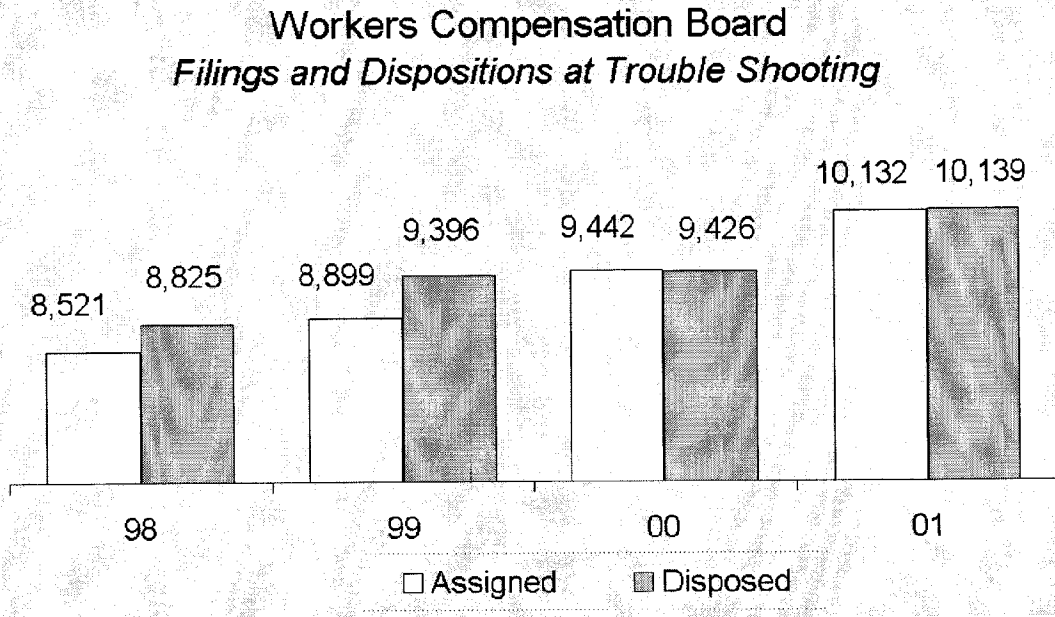
**Workers' Compensation Board**  
*Disputes to Trouble Shooting, Mediation, and Formal*



Thus, if the parties are unable to resolve the claim voluntarily with the assistance of a troubleshooter or a mediator, the case will be decided by a hearing officer. It is worth noting that approximately half of the cases that get to troubleshooting are resolved there and half of the remaining cases are resolved at mediation.

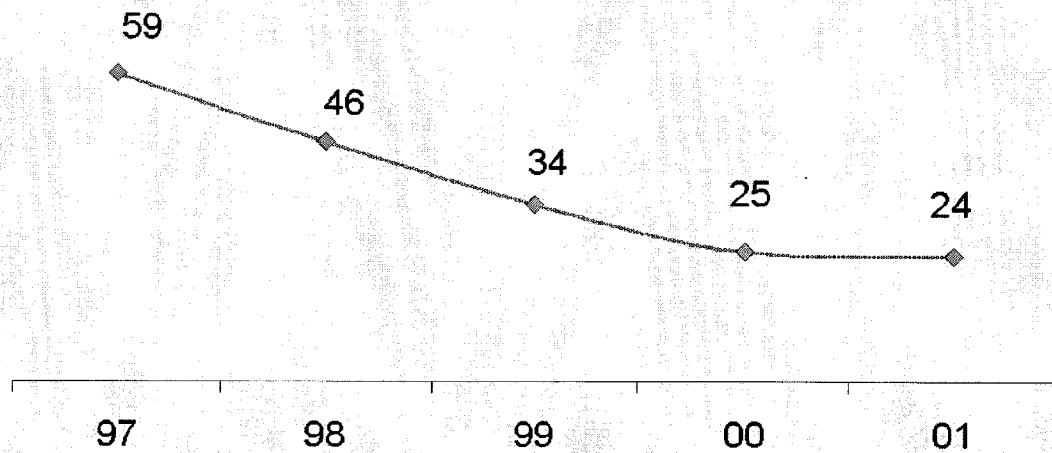
### III. Troubleshooting.

With the introduction of Standard Operating Procedures (SOP's) in July 1999, the number of cases assigned to and disposed by troubleshooters increased as shown below.



In addition, the troubleshooters have greatly reduced the number of days a case remains at the troubleshooting level.

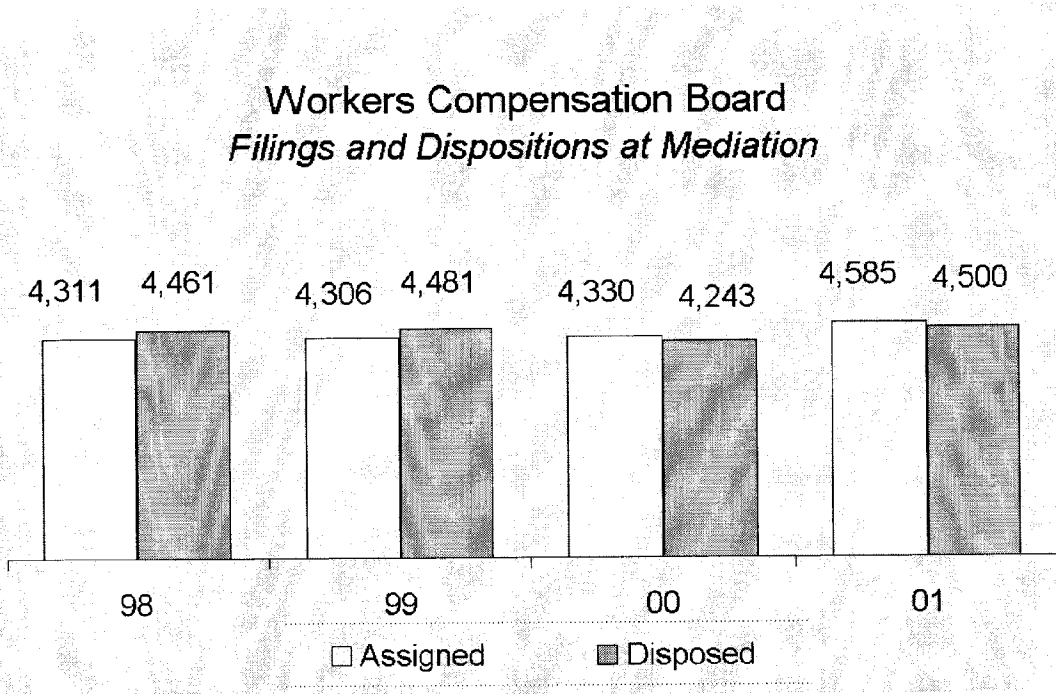
### Workers Compensation Board Average Days at Trouble Shooting



The troubleshooters have accomplished this goal despite having lost 22 positions. These positions were transferred to the Worker Advocate and MAE Programs to help ensure the viability of these programs.

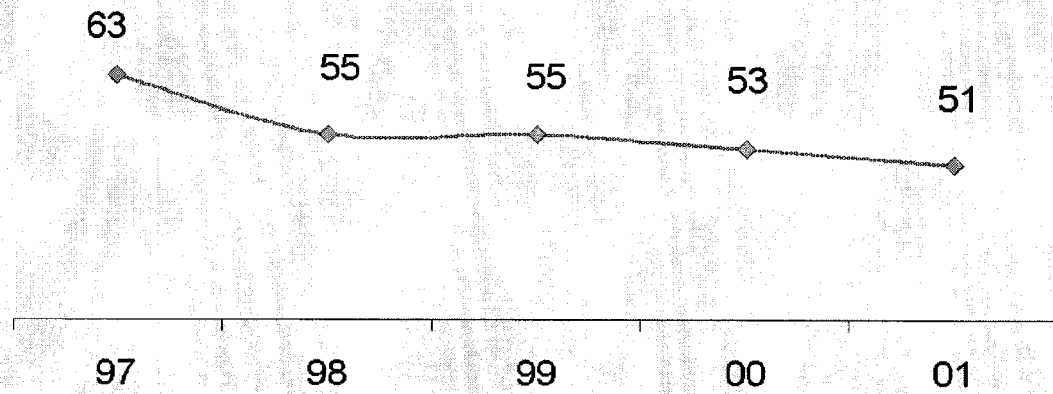
**IV. Mediation.**

Since 1997, the mediation staff has been able to dispose of as many cases as were assigned.



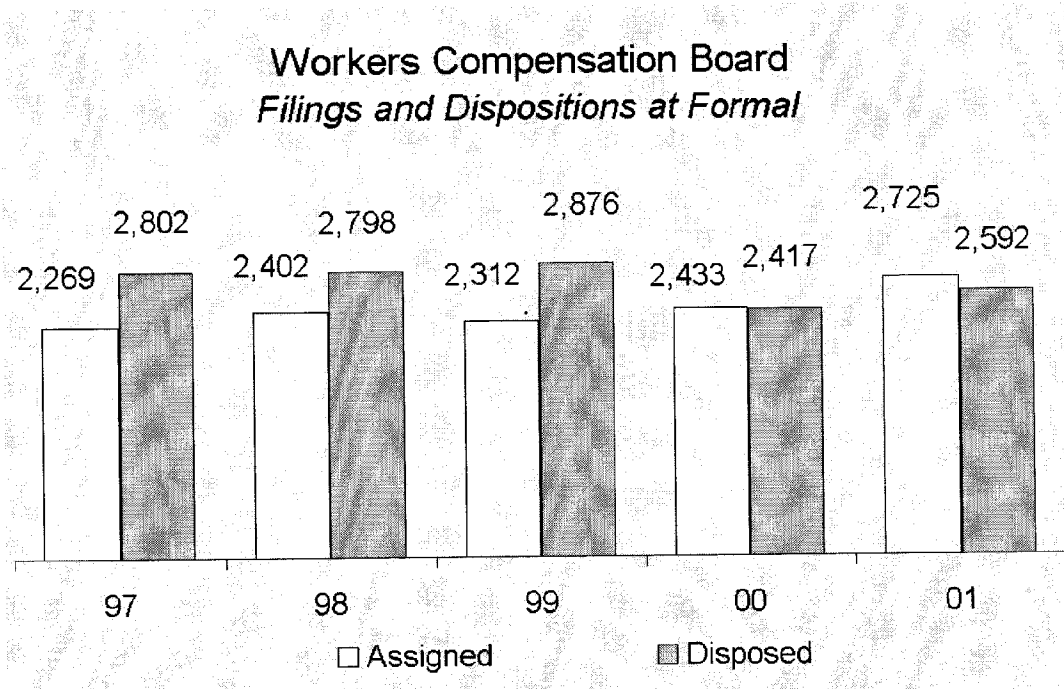
The number of days a case is pending has also improved.

### Workers' Compensation Board Average Days at Mediation



**V. Formal Hearing.**

When the current group of hearing officers came on board in 1994, there was a large backlog to contend with. Over time, however, the hearing officers consistently decided cases at a faster rate than they were assigned as is shown below:

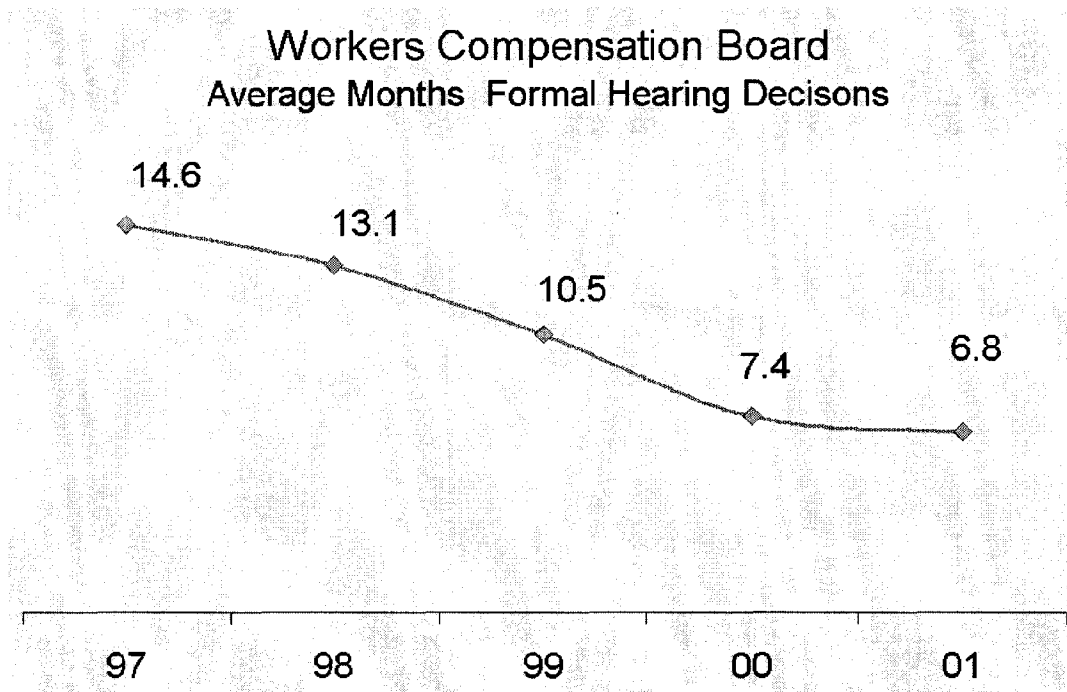


This phenomenon, together with the SOPs, resulted in a gradual decline and eventual elimination of the backlog. It is important to note that the elimination of the backlog occurred even though the number of assignments, that is the number of disputes that go to formal hearing, has remained relatively constant over the past five years as the chart above clearly illustrates. In fact, the most recent numbers seem to indicate that disputes are on the rise.

The SOPs for formal hearing are twofold: (1) 90% of decisions must be rendered within 60 days of the date the evidence closes, and (2) the length of time a case is pending at formal hearing (averaged statewide) was to be ten months by January 1, 2000, eight months by July 1, 2000 and six months by January 1, 2001.

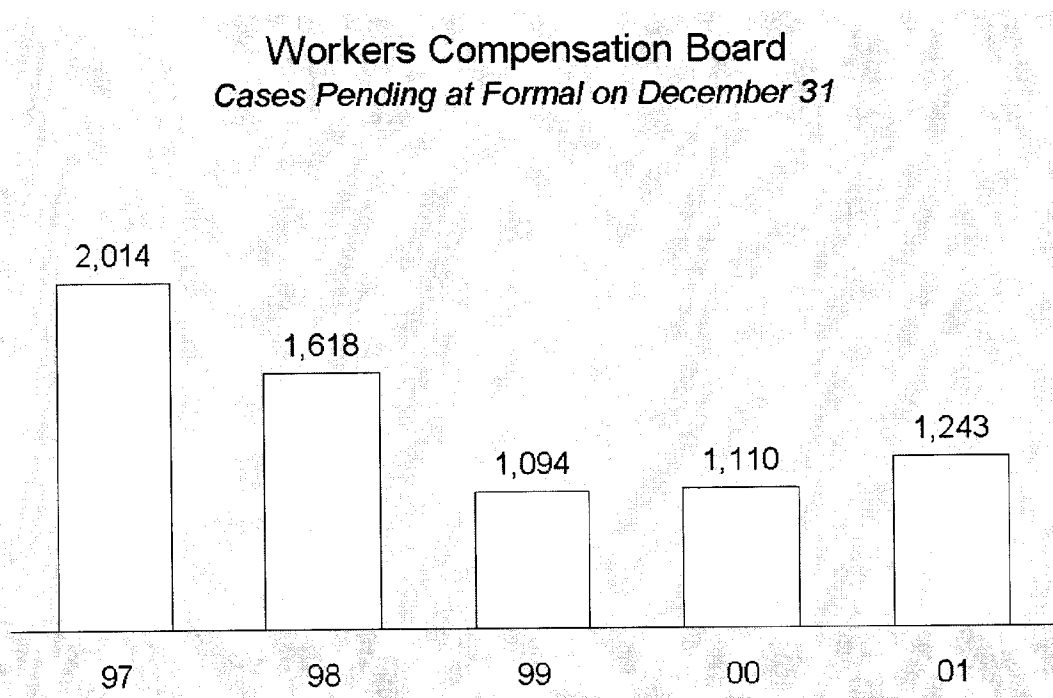
The SOPs for formal hearing were met immediately. Cases have been consistently decided within 60 days since the inception of the SOPs. Not only have 90% of cases been decided within 60 days, 70% have been decided within 30 days.

The second SOP was also met immediately. In July of 1999, the statewide average was about 12 months, on January 1, 2000, it was ten months and presently, as of March 2001, the statewide average is seven months. The six-month goal for January 1, 2001 is probably not attainable if the Board is going to provide a fair opportunity to litigate disputed claims, but we have gotten closer to six months than many ever thought possible. It is important to keep in mind that five or six years ago, the formal hearing process took an average of 18 months. Our progress has thus been considerable and we are working hard to continue in the same vein. The drastic reduction in the time at formal hearing is demonstrated in this chart:



The backlog of years past has thus been eliminated with the successful implementation of the SOPs and the hard work of the hearing officers. Cases are scheduled as soon as they come in (we give parties 30-days' notice) and are decided shortly after they become ready.

The next chart shows the number of cases pending statewide from 1996 to 2000. The reduction in pending cases represents the elimination of the backlog. Between January of 2000 and July of 2001, the total caseload figure leveled off at 1,100 to 1,300 cases pending statewide. With a goal of 140-150 cases per hearing officer, the current staffing level (nine hearing officers, down from ten in 1999) is appropriate to handle the workload at formal hearing.



**VI. Conclusions.**

The implementation of the SOPs and the elimination of the backlog at all levels of dispute resolution has resulted in a faster, more efficient and streamlined system. Caseloads and staffing are now at optimal levels. Absent any major changes to the system, these trends should continue into the future.

**Troubleshooters, Mediators, and Hearing Officers have all implemented the Standard Operating Procedures, resulting in the most efficient dispute resolution system in recent history.**



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

In 1997, the Maine Legislature, with the support of Governor Angus S. King, Jr., enacted Public Law 1997, Chapter 486 to establish a Monitoring, Audit, and Enforcement ("MAE") Program. The basic goals 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 (collectively "insurers") that are not complying with minimum standards.

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

#### **MONITORING**

A key component of the monitoring program is to produce Quarterly Compliance Reports. These reports measure, on a system-wide and individual basis, the timeliness of initial indemnity payments, the filing of Memoranda of Payment, and the timeliness of First Report of Injury filings.

To ensure that the Quarterly Compliance Reports would be as accurate as possible, a Pilot Project was undertaken. The goal of the Pilot Project was to (1) measure the Board's data collection and reporting capabilities, (2) report on the performance of insurers, and (3) let people know what to expect from Quarterly Compliance Reports.

To achieve these goals several insurers were randomly selected for audit. Four hundred and eleven (411) files from 48 entities were audited. The audited entities were very cooperative and accommodating. The report, which was unanimously accepted by the Workers' Compensation Board on January 26, 1999, revealed a need for improvement in the performance of insurers and the Workers' Compensation Board.

To improve on the results of the Pilot Project, a reconciliation process was implemented as part of the quarterly compliance process. The reconciliation process allows insurers to check the Board's data against their own so that errors can be corrected prior to the publication of a Quarterly Compliance Report. It has also been used by insurers as a case management tool.

The 2000 Annual Compliance Report was unanimously accepted by the Workers' Compensation Board. (An overview of this report follows.) This report shows a dramatic improvement in the performance of insurers since the Pilot Project (see Charts 1 and 2 attached).

This improvement will help the Board reduce the number of claims that are litigated and result in faster and more accurate payment of lost time benefits.

**I. 2000 Annual Compliance Report Overview.**

**A. Lost Time First Reports.**

- (1) 18,419 Lost Time First Reports were received by the Board in 2000.
- (2) 78.33% were filed within seven days (as prescribed by law). 84.3% were filed within 10 days. The 78.33% represents a 13.19% increase in compliance over 1999 and a 113.20% increase in compliance since the Pilot Project of 1997. (See Tables 1 and 2; Charts 1, 2, and 3, attached.)

**B. Payments of Initial Indemnity Benefits.**

80.26% of initial indemnity payments were paid within 14 days. The Board Benchmark is 80%. The compliance for 1999 was 79.35%. The 80.26% represents a 1.15% increase in compliance from 1999 and 35.14% increase in compliance since the Pilot Project of 1997. Although 80.26% of injured employees were paid within 14 days, 1,171 men and women waited up to a month or longer for their first check even though there was no dispute. (See Tables 1 and 2; Charts 4 and 5, attached.)

**C. MOP Filed Within 17 Days.**

74.62% were filed within 17 days. The Benchmark is 75%. The compliance for 1999 was 75.14%. The 74.62% represents a decrease in compliance of .69% from 1999 and 31.42% increase in compliance since the Pilot Project of 1997. (See Tables 1 and 2; Charts 6 and 7, attached.)

**D. Adjusting Entity Compliance Comparisons.**

- (1) Initial Indemnity Benefit Payment. (See Chart 8, attached.)

Overall Compliance	80%
Standard Insurers	73%
MEMIC	87%
Self-Insured/Self-Admin	87%
Self-Insured/TPA Admin	82%
TPA	62%

- (2) MOP Filing. (Chart 9)

Overall Compliance	74%
Standard Insurers	61%

MEMIC	85
Self-Insured/Self Admin	88%
Self-Insured/TPA Admin	78%
TPA	47%

- (3) Percentages of MOPs filed with Workers' Compensation Board.  
(See Chart 10, attached.)

Standard Insurers	39%
MEMIC	26%
Self-Insured/Self-Admin	16%
Self-Insured/TPA Admin	18%
TPA	1%

E. Insurance Group Analysis.

Initial Indemnity Payment – Groups Above and Below Benchmark. (See Chart 11, attached.)

Above – 41%  
Below – 59%

F. MOP Filing – Groups Above and Below Benchmark. (See Chart 12, attached.)

Above – 44%  
Below – 56%

G. Initial Indemnity Payment – Groups In-State vs. Out of State.<sup>1</sup> (See Chart 13, attached.)

Compliance for In-State Groups – 86%  
Compliance for Out-of-State Groups – 63%

H. MOP Filing – Groups In-State vs. Out of State. (See Chart 14, attached.)

Compliance for In-State Groups – 84%  
Compliance for Out-of-State Groups – 45%

I. Percentage MOPs filed – Groups In-State vs. Out of State. (See Chart 15, attached.)

In-state Groups – 76%  
Out-of-state Groups – 24%

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

## II. New Annual Compliance Report Elements.

The Board substantially revamped the Quarterly Compliance Report in 2000. Some of the improvements are noted below.

- A. Adjusting Entity Analysis. The MAE staff has generated bar and pie charts that indicate first indemnity payments and Memoranda of Payment (MOP) filing compliance for insurers, self-insureds and third party administrators. A pie chart has been added that indicates the percentage of all MOPs filed by each type of entity.
- B. Insurance Group Benchmark Performance. Pie charts have been added that display the percentage of insurance groups that are meeting the benchmarks for initial indemnity payments and MOP filing as set by the Maine Workers' Compensation Board (MWCB).
- C. In-State vs. Out-of-State Compliance Comparisons. These bar charts compare the compliance performance of in-state insurance groups against out-of-state insurance groups. The final pie chart indicates the percentage of MOPs filed by out-of-state and in-state entities and reflect the better performance of in-state entities.
- D. Insurance Group Compliance Charts. These charts indicate the quarterly and annual compliance figures for every insurance group that filed a MOP with the MWCB during the year 2000.
- E. Insurance Group Compliance Spreadsheet. This spreadsheet contains the actual compliance data for each insurance group listed in the charts noted above.
- F. Adjusting Entity Compliance Spreadsheet. This spreadsheet contains the data from which the adjusting entity comparisons were generated.
- G. In-State Insurance Group Compliance Spreadsheet. This spreadsheet contains the data from which the in-state insurance group compliance performance was determined.
- H. Out-of-State Insurance Group Compliance Spreadsheet. This spreadsheet contains the data from which the out-of-state insurance group compliance performance was determined.
- I. Compliance Data. This is the core compliance element of both the Annual and Quarterly Compliance Reports. The compliance information from this appendix was used in the creation of all spreadsheets, charts, and graphs.

### III. Corrective Action Plans.

Because of the Monitoring Program, the Board can identify insurers with chronic poor compliance and filing procedures. To correct these problems, the Board has worked with these insurers to implement Corrective Action Plans. These plans have improved the performance of some insurers. The following insurers are under Corrective Action Plans: Liberty Mutual Insurance (Bala Cynwyd, PA and Tarrytown, NY offices); Zurich Insurance; Royal Sunalliance/EBI Insurance; Guard Insurance; Hanover Insurance; Chubb & Son Insurance; York Claims Service; and Travelers.

Compliance information on individual insurance carriers, third-party administrators, and self-administered employers is listed on the Board's website: [www.state.me.us/wcb/](http://www.state.me.us/wcb/)

### AUDITS

The Board also audits insurers. Audits are conducted by using a combination of desk audits and on-site audits. Auditors review case files to determine if the insurer is accurately reporting information to the Board and is complying with the mandates of the Workers' Compensation Act. A second audit may be conducted to determine if deficiencies identified during a previous audit have been corrected.

After a preliminary report is drafted, the audited insurer is provided a 30-day period to review and comment on the draft report. Staff will also meet with the audited insurer to discuss their comments. Changes to the audit report will be made if warranted. A letter is sent to the audited insurer within 30 days of the review meeting explaining, if necessary, why requested changes were not made.

### STATUS OF THE THREE-YEAR AUDIT CYCLE

#### A. Ongoing/Completed Audits.

- |  |                              |
|--|------------------------------|
| 1. Seaco Insurance<br>Lumber Mutual Insurance  | Completed September 15, 1999 |
| 2. SAPPI   | Completed December 9, 1999   |
| 3. Liberty Mutual Insurance Companies<br>Liberty Mutual Fire Insurance Co.<br>Liberty Insurance Corporation<br>LM Insurance Corporation<br>First Liberty Insurance Corp.<br>Third-party Administrator<br>Helmsman Management Service | Completed April 12, 2000     |

- |     |   |                              |
|-----|---|------------------------------|
| 4.  | Travelers Insurance Company<br>Travelers Indemnity Company of Illinois<br>Travelers, Aetna, C & S Company<br>Third-party Administrator<br>James River Corporation<br>Constitution State Service               | Completed April 12, 2000     |
| 5.  | Arrow Hart  | Completed April 4, 2000      |
| 6.  | York Claims Services<br>AIG Claims Services   | Completed March 30, 2000     |
| 7.  | Hanover Insurance Company<br>Massachusetts Bay Insurance Company<br>Citizens Insurance Company of America<br>Third-party Administrator<br>Sterling Risk Management Services                                   | Completed April 10, 2001     |
| 8.  | Cianbro Corporation   | Completed May 11, 2000       |
| 9.  | The Bill Johnson Agency   | Completed May 1, 2000        |
| 10. | Central Maine Power Company   | Complete October 6, 2000     |
| 11. | RSKCO   | Completed July 2, 2001       |
| 12. | Chubb Insurance Company<br>Vigilant Insurance Company<br>Federal Insurance Company<br>Great Northern Insurance Company<br>Pacific Insurance Company<br>Third-party Administrator<br>Federal Insurance Company | Completed September 26, 2000 |
| 13. | Mead Publishing Paper Company   | Completed September 28, 2000 |
| 14. | City of Bangor  | Completed August 15, 2000    |
| 15. | Public Service Mutual   | Completed January 9, 2001    |
| 16. | Yasuda Insurance  | Completed June 15, 2001      |
| 17. | Clarendon Insurance   | Completed April 24, 2001     |
| 18. | East-West Insurance   | Pending Rebuttal             |

- |   |                             |
|---|-----------------------------|
| 19. Trans-Pacific Insurance                   | Completed January 9, 2001   |
| 20. Sedgwick of Maine                         | Completed April 4, 2001     |
| 21. Synernet                                  | Completed December 13, 2000 |
| 22. Maine Municipal Association               | Completed June 20, 2001     |
| 23. State of Maine Workers' Compensation Div. | Completed July 5, 2001      |
| 24. Maine School Management Association       | Pending Rebuttal            |

B. Consent Decrees.

Penalty Agreement Amounts

	<u>Paid to Employees</u>	<u>Paid to WCB</u>
1. Lumber Insurance Companies	6,750.00	17,300.00
2. Travelers Insurance Companies	15,800.00	13,500.00
3. Liberty Mutual Insurance Companies		3,500.00
4. Arrow Hart		800.00
5. The Bill Johnson Agency		200.00
6. York Claims	15,000.00	1,200.00
7. Public Service Mutual		200.00
8. CMP		400.00
9. Chubb Group	3,000.00	2,900.00
10. Hanover	8,850.00	12,300.00
11. Synernet		400.00
12. Sedgwick	400.00	500.00
13. Clarendon	1,350.00	400.00
14. Yasuda	1,500.00	800.00
15. MMA	1,500.00	500.00
16. RSKCO		800.00
17. State of Maine WCD	<u>1,500.00</u>	<u>900.00</u>
Subtotal	55,650.00	56,600.00
<b>Total Penalties Paid</b>		<b><u>\$112,250.00</u></b>

**ENFORCEMENT**

The Abuse Investigation Unit (the "AIU") 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 \$50.00 per day penalty, up to a maximum of

\$1,500.00 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 \$200.00 per day. The first \$50.00 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 \$10,000.00. Other potential sanctions include loss of corporate 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 359 provides penalties for engaging in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The maximum penalty for a violation of this section is \$10,000 and the Board certify its findings to the Superintendent of Insurance for possible further action.

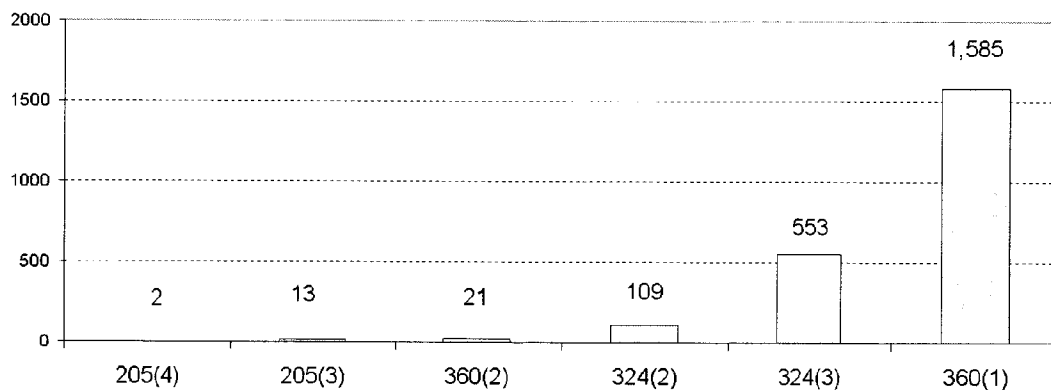
Section 360(1) provides for penalties when a form is not filed within time frames set by rule or statute. Violations of this section carry a maximum penalty of \$100.00, payable to the General Fund.

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 \$1,000.00 for an individual, and \$10,000.00 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. This distribution of cases filed has existed for several years now and is expected to remain similar in 2001.

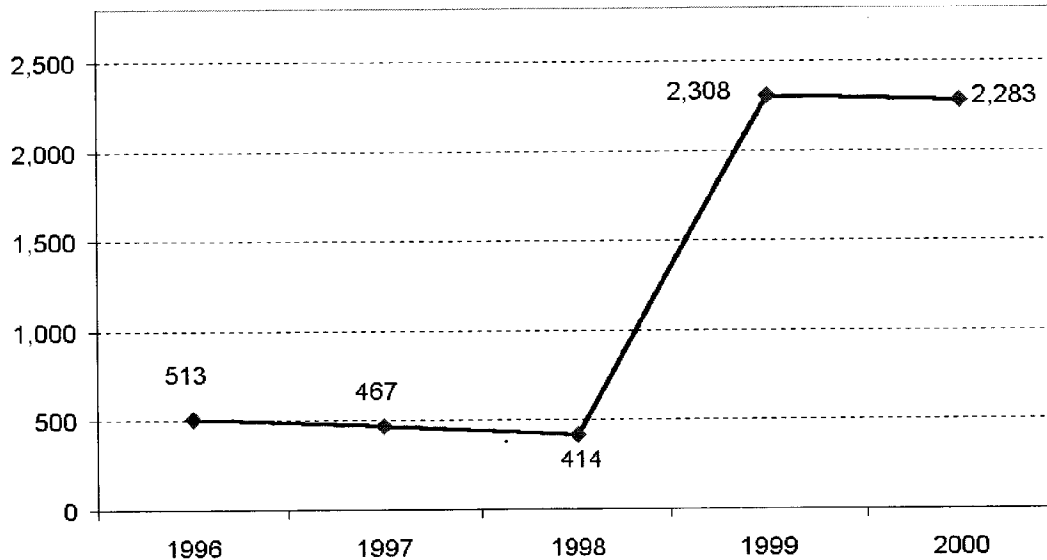


Filings by Section of Statute (39-A)  
January to November 2000



The total number of cases filed with the Abuse Investigation Unit, which increased sharply in 1999, remained quite high in 2000. It appears that the total number of cases filed will remain in this vicinity in 2001.

## Filings to Abuse Investigation Unit January 1996 thru November 2000

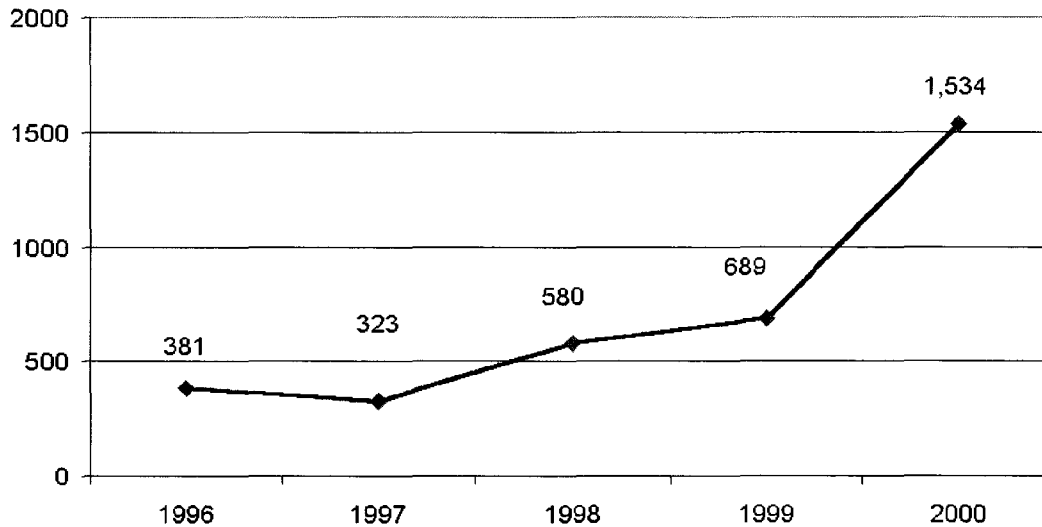


This increase is the result of some new systems implemented by the Board within the last several years. First, the Board is identifying more employers who are operating without required workers' compensation coverage. The Board is able to do this by using a computer program that compares the Department 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. That figure is expected to rise yet again in 2001.

## Abuse Unit Cases Closed January 1996 thru November 2000



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

The Abuse Unit also receives referrals from the Board's auditors. For example, if an audit reveals a failure to file forms on time, these violations can be referred to the AIU for hearing and, if warranted, imposition of a penalty. Other areas that are examined for compliance include whether indemnity payments are made on time and accurately, and whether an insurer has engaged in questionable claims-handling techniques, repeatedly unreasonably contested claims, and/or willfully violated the Act.

As mentioned 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.

The Unit received its first referral for complaint under Section 359 in 2001. As this document is written that matter remains pending and is being processed by the Unit. It seems reasonable to expect additional referrals under this Section in future years, so the Unit's workload under this provision of the Act will likely be expanding.

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.

In terms of performance measures, the Abuse Investigation Unit has exceeded its goals. For Fiscal Year 2000, the Unit had a goal of closing 850 cases and in fact closed 1,519. For Fiscal Year 2001, the goal was 1,000 cases closed and the Unit closed 2,350 cases.

It is clear from these statistics that the Abuse Investigation Unit has in recent years begun handling significantly more work in the area of enforcement. There have been over time more cases filed, more matters resolved, and more penalties imposed. Yet the staffing level of the Abuse Investigation Unit has remained constant throughout this large increase in workload. The Unit consists of one legal secretary and two investigators, supervised by the Board's Assistant General Counsel. Section 153(5) of the Act authorizes the Abuse Investigation Unit and sets forth its authority and responsibilities, and that section mandates "at least 2 abuse investigators." The caseload increases in recent years have simply required the Unit to stretch in order to do more with the existing personnel, and that trend appears unlikely to turn around in the foreseeable future.

**Annual Compliance Report  
01/01/00-12/31/00**

**Table 1. 2000 Quarterly Compliance Reports<sup>1</sup>**

	First Quarter		Second Quarter		Third Quarter		Fourth Quarter	
	7 Days	10 Days	7 Days	10 Days	7 Days	10 Days	7 Days	10 Days
First Report Of Injury Received within:	74.56%	81.73%	80.61%	86.46%	77.12%	83.42%	76.62%	82.98%
Initial Indemnity Payment Made Within 14 Days	80.03%		80.42%		80.53%		80.18%	
Memoranda of Payment Received Within 17 Days	75.86%		73.85%		74.26%		75.02%	

**Table 2. Compliance Comparison**

	Pilot Project 1997	Annual Compliance <sup>2</sup> 1999	Annual Compliance <sup>3</sup> 2000	Percent of Change	
				Since Pilot	Since 1999
First Report Of Injury Received within 7 Days	36.74%	69.20%	78.33%	Since Pilot	Since 1999
				113.20%	13.19%
Initial Indemnity Payment Made Within 14 Days	59.39%	79.35%	80.26%	Since Pilot	Since 1999
				35.14%	1.15%
Memoranda of Payment Received Within 17 Days	56.78%	75.14%	74.62%	Since Pilot	Since 1999
				31.42%	-0.69%

**Annual Compliance Report**

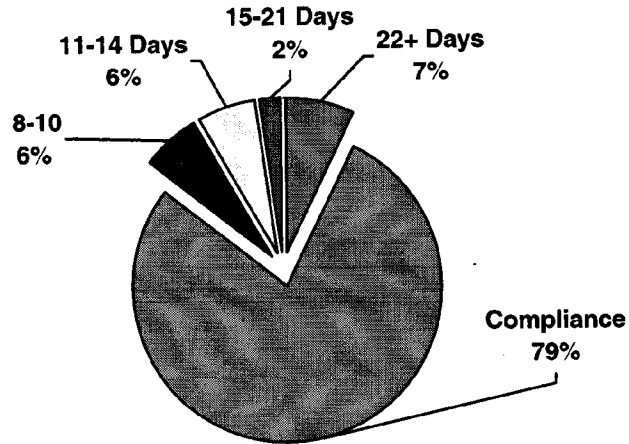
<sup>1</sup> Static results based upon data received by the deadline for each quarter.

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

<sup>3</sup> Dynamic results based upon data received by March 30, 2001.

**01/01/00-12/31/00**  
**FIRST REPORTS OF OCCUPATIONAL INJURY OR DISEASE**

**Chart 1.**

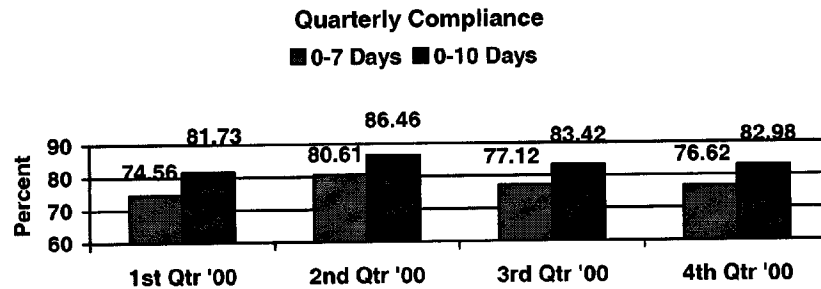


**Table 3**

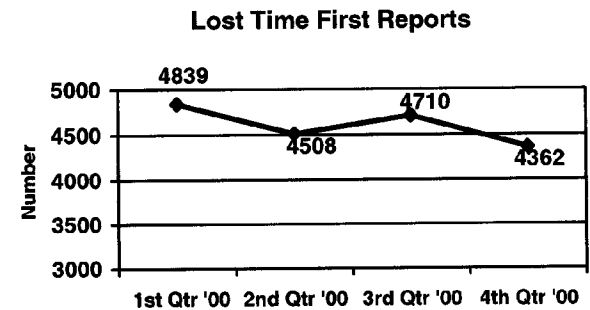
**First Reports Received Within:**

0 - 7	Days	14,428	78.33 %
8 - 10	Days	1,099	5.97 %
11 - 14	Days	1,121	6.09 %
15 - 21	Days	416	2.26 %
22+	Days	373	7.35 %
<b>Total</b>		<b>18,419</b>	<b>100 %</b>

**Chart 2**

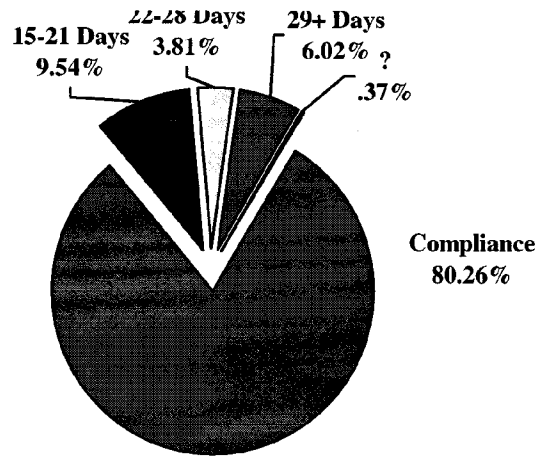


**Chart 3**



**Annual Compliance Report**  
**01/01/00-12/31/00**  
 PAYMENT OF INITIAL INDEMNITY BENEFITS

**Chart 4.**



**Table 4.**

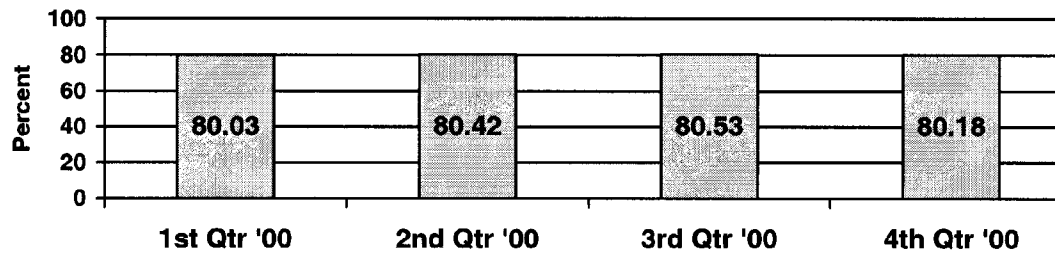
**Initial Indemnity Payments Made Within:**

0 - 14	Days	4762	80.26 %
15 - 21	Days	566	9.54 %
22 - 28	Days	226	3.81 %
29 +	Days	357	6.02 %
?	Days	22	.37 %
<b>Total</b>		<b>5933</b>	<b>100 %</b>

**Chart 5.**

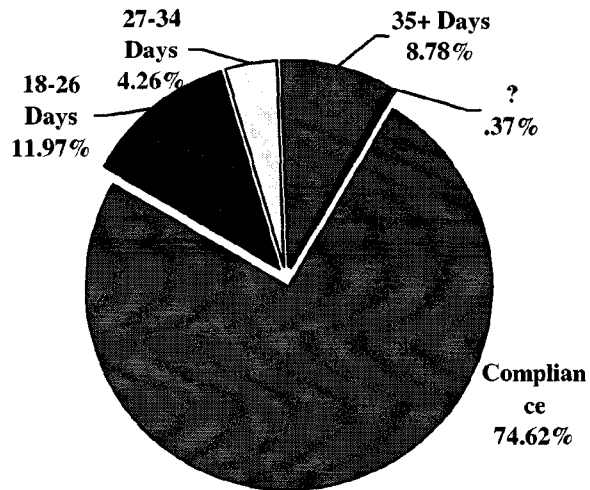
**Quarterly Compliance Comparison**

■ 0 - 14 Days



Annual Compliance Report  
01/01/00-12/31/00  
MEMORANDA OF PAYMENT

**Chart 6.**



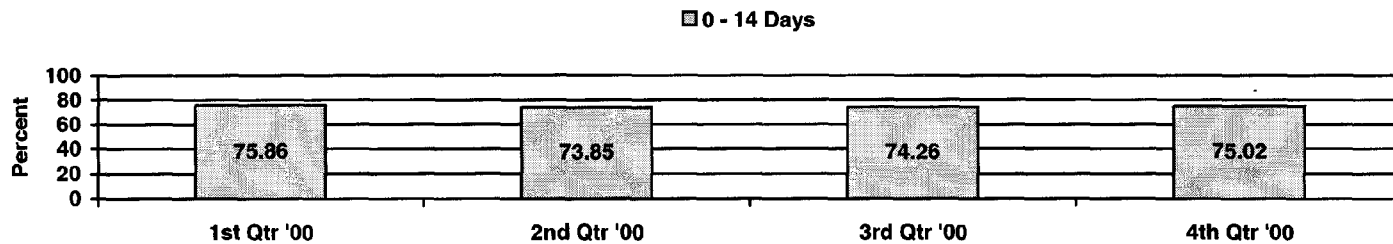
**Table 5**

**Memoranda of Payment Received Within:**

0 - 17 Days	4427	74.62 %
18-26 Days	710	11.97 %
27-34 Days	253	4.26 %
35+ Days	521	8.78 %
? Days	22	.37 %
<b>Total</b>	<b>5933</b>	<b>100 %</b>

**Chart 7**

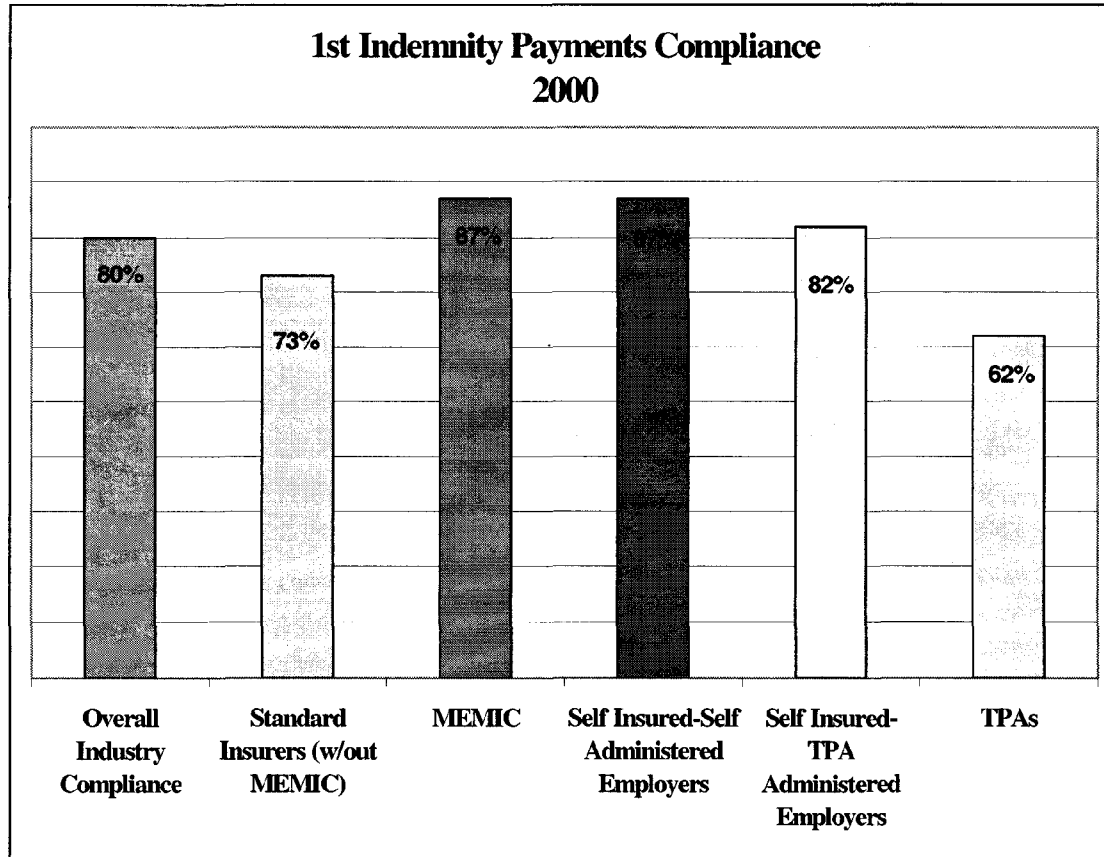
**Quarterly Compliance Comparison**





## Annual Compliance Report 01/01/00-12/31/00

**Chart 8.**



Workers' compensation insurance claims can be administered by many different types of adjusting entities in Maine.

There are the customary or "standard" insurance companies like Kemper or Hanover.

There is Maine Employers Mutual (MEMIC) which was created by the Legislature.

Employers like Bath Iron Works can also choose to "self-insure". These self-insureds can choose to adjust their own claims. This is known as "self-administering".

Self-insureds can also choose to hire a third party administrator (TPA) like Sedgewick to administer their claims.

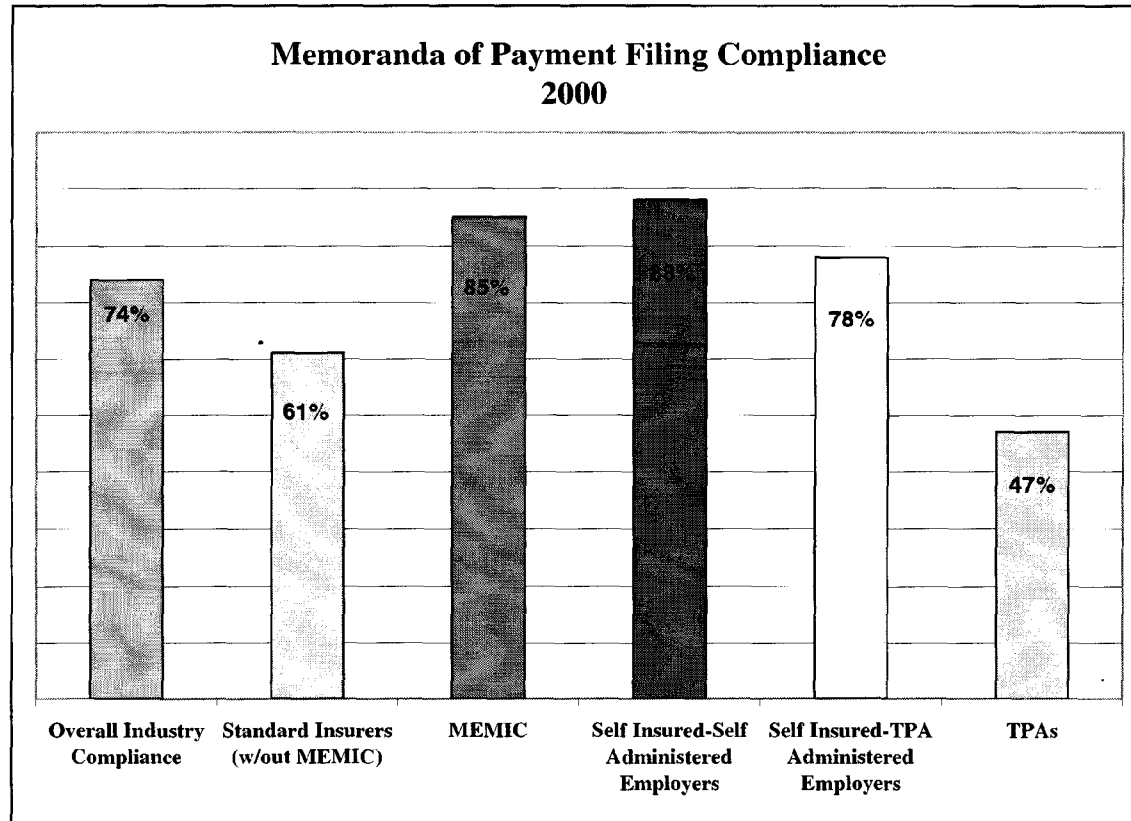
Some insurance companies choose to outsource some of their adjusting work to TPAs.

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

This chart displays the percentage of compliance for each type of adjusting entity achieved in the Payment of Initial Indemnity Benefits within 0-14 days category. The Maine Workers' Compensation Board's Benchmark for this is 80%.

Annual Compliance Report  
01/01/00-12/31/00

Chart 9.



The Maine Workers' Compensation Board (MWCBC) measures whether the "Lost Time" First Reports of Occupational Injury or Disease and Memoranda of Payment (MOP) are filed in a timely manner.

A "Lost Time" First Report of Occupational Injury or Disease is required to be filed with the MWCBC within 7 days of an employer's notice or knowledge that an employee has missed a day or more of work because of their injury.

When an insurer pays workers' compensation benefits, a Memorandum of Payment must be filed with the MWCBC.

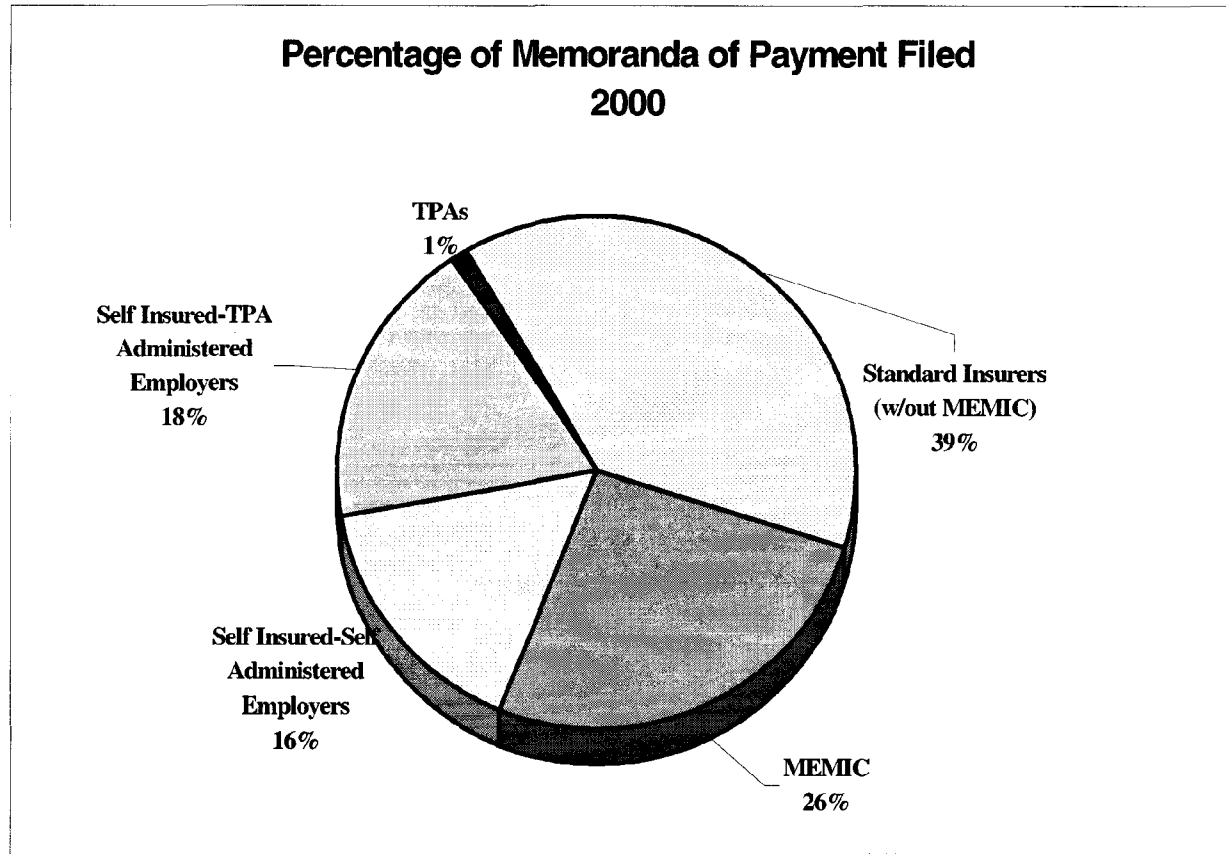
The MWCBC measures when the payment was made and when the MOP was filed.

Filing of Initial MOP Comparison for Different Types of Workers' Compensation Claims Entities/Adjusters

This chart displays the percentage of compliance for each type of adjusting entity achieved in the filing of Memoranda of Payment within 0-17 days category. The Maine Workers' Compensation Board's Benchmark for this is 75%.

Annual Compliance Report  
01/01/00-12/31/00

Chart 10.



(MOPs) that are filed with the Maine Workers' Compensation Board (MWCB) are filed by standard insurers.

Self-Insureds filed the second most MOPs. This includes employers who choose to Self-Insure-TPA Administer.

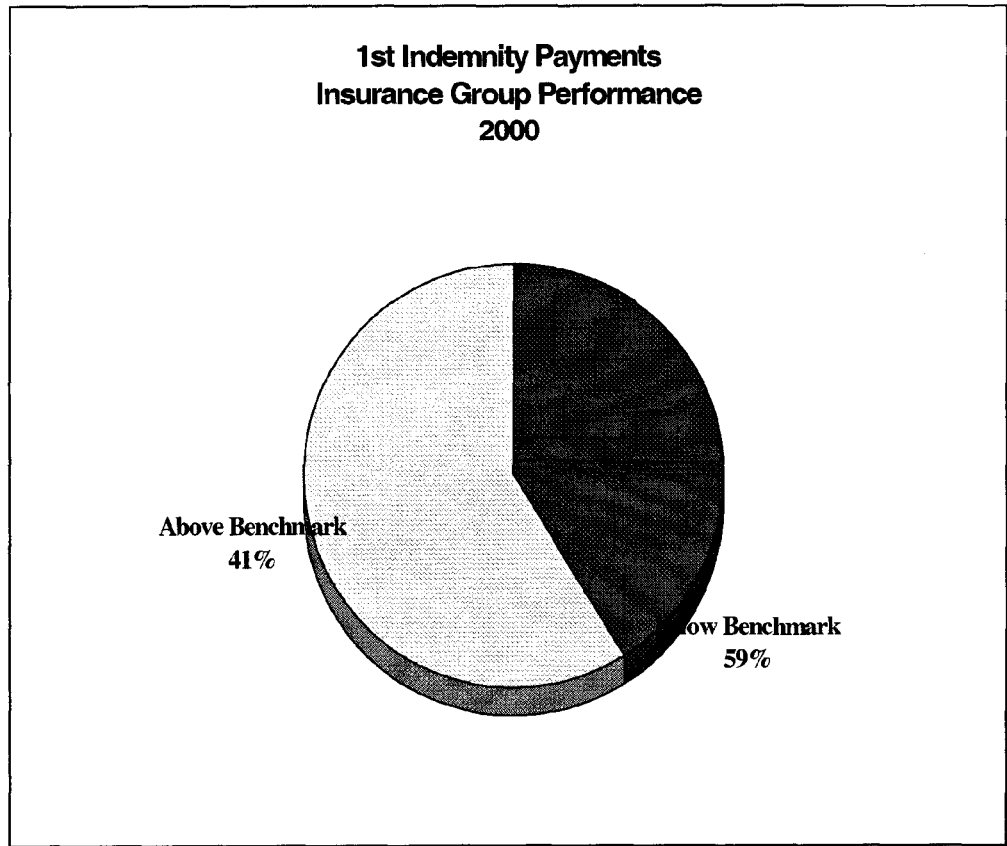
MEMIC accounted for 26% of all MOPs filed.

TPAs working for other insurance companies filed only 1% of all MOPs.

Percentage of MOPs Filed by Adjuster Type

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

**Chart 11.**



As Chart 4 on page B-32 indicated, overall, the insurance community met the benchmarks for compliance as set by the Maine Workers' Compensation Board.

Initial Indemnity Payments made within 0-14 days.

MWCB Benchmark = 80%  
Overall Compliance = 80.26%

An "Insurance Group" is defined in this analysis as the parent company of a number of individual insurance entities. A total of 63 insurance groups filed MOPs with the MWCB in 2000.

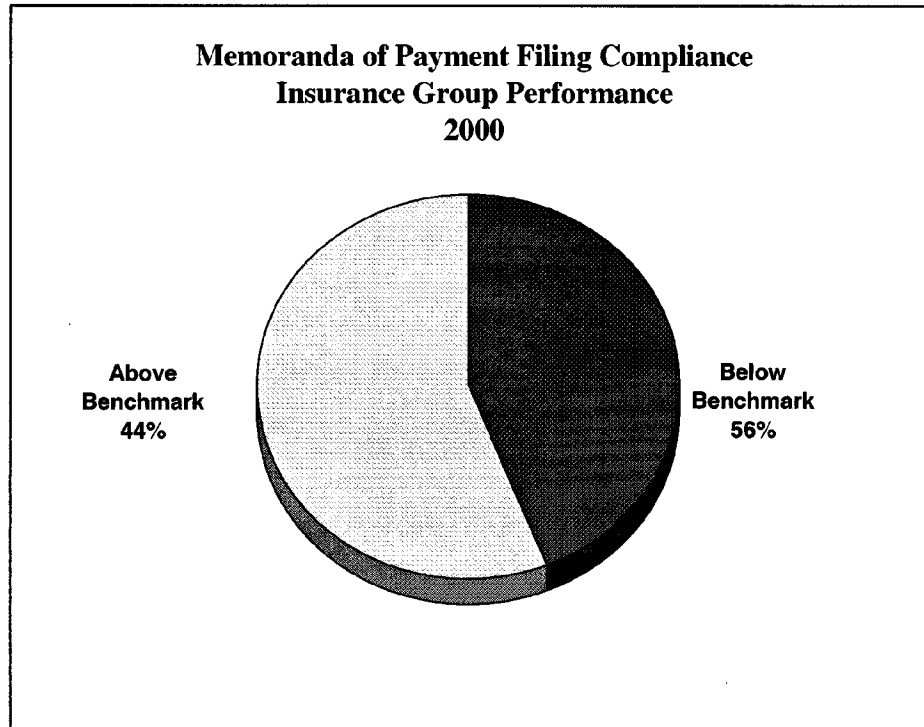
Insurance groups can consist of many different insurance entities. For example, Liberty Mutual Group accounts for 8 different insurance entities. Most insurance groups filed only a small number of MOPs.

See Insurance Group Compliance Charts and Spreadsheet for data.

**Insurance Group Benchmark Comparisons for Initial Indemnity Benefit Payments**

The majority of initial indemnity payments and MOPs are filed by a small number of insurance entities that have generally high compliance (i.e. MEMIC, Sedgewick and Acadia). The data from these companies with high compliance made up the majority of the MOPs that were measured. As a result, the overall industry compliance was close to the MWCB's benchmarks. However, the insurance group charts and spreadsheets indicate that the majority of insurance groups did not meet the MWCB's benchmarks. Only 26 of 63 insurance groups that filed MOPs met benchmarks for the payment of initial indemnity benefits.

**Chart 12.**



As Chart 6 on page B-33 indicated, the insurance community met the benchmarks for compliance as set by the Maine Workers' Compensation Board.

**Memoranda of Payment filed within 0-17 days.**

**MWCB Benchmark = 75%**

**Overall Compliance = 74.26%**

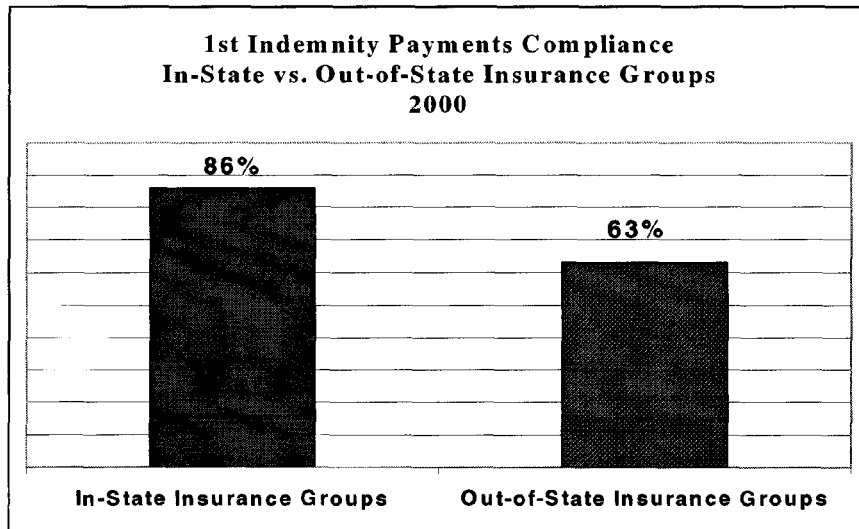
Some of the insurance groups that have displayed consistently poor compliance are placed on corrective action plans (CAPs) by the Monitoring, Audit and Enforcement Division (MAE) of the MWCB.

The purpose of the CAP is to improve insurance group compliance performance.

See Insurance Group Compliance Charts and Spreadsheet for data.

**Insurance Group Benchmark Comparisons for Memoranda of Payment Received by the MWCB**

**Chart 13.**

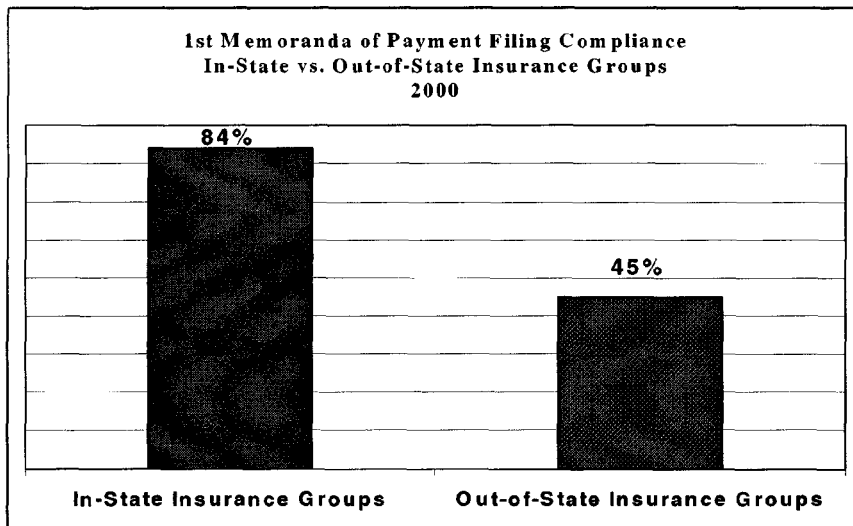


Through the Reconciliation Report and the Reconciliation Process, the MWCB can identify those insurance groups processing "In-State" and those processing "Out-of-State".

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

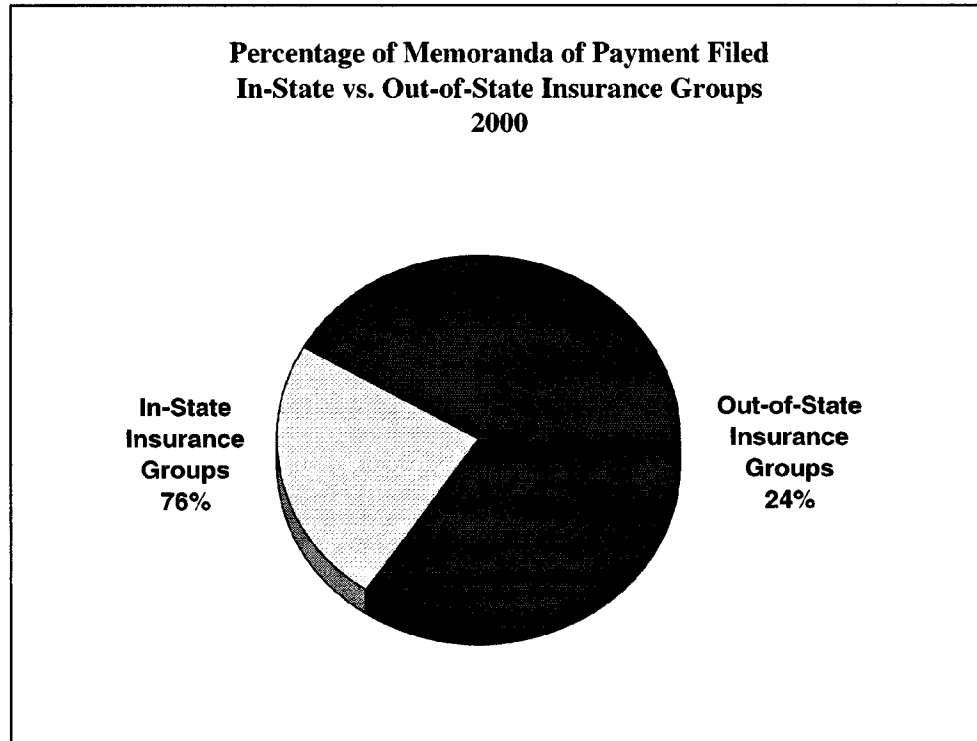
An in-state insurance group has its main indemnity claims processing location in Maine and provides a mailing address for the Reconciliation Report that is in Maine.

**Chart 14.**



**MOP filing compliance of In-State Insurance Groups vs. Out-of-State Insurance Groups**

**Chart 15.**



Although most out-of-state insurance groups display generally lower compliance than many of their in-state counterparts, they do not affect overall compliance to the same degree as in-state insurance groups. As is displayed here, out-of-state insurance groups file only 1 in 4 MOPs.

**Percentage of MOPs Filed by In-State and Out-of-State Insurance Groups.**



## 5. Worker Advocate Program

### I. Introduction.

The Worker Advocate Program was established by the Legislature to assist injured workers in processing their disputed workers' compensation claims. The Legislature allocated \$500,000 in FY97 and an additional \$85,000 in FY00 to fund this program. The actual cost to the Board in FY01 was approximately \$1,200,000. An additional \$300,000 was approved by the Legislature to provide temporary help for the Worker Advocate Program in FY02. 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 that there was 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.

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 right at their desktop. The Board plans to update and improve this system by using some of the \$300,000 allocated by the Legislature for FY02.

### II. Duties.

An injured worker must request the services of an advocate. This request can be made only if the claim has been through the troubleshooting process, is still unresolved, and does not fall into one of the exceptions enumerated in 39-A M.R.S.A. §153-A(6) (discussed below). 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 is filing petitions 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, when necessary, attend depositions of medical providers, private investigators and labor market experts. Essentially, the advocates have the same duties as any other person who represents injured workers.

From the beginning of the program, it was believed that the advocates were spending a great deal of time on cases that had no merit and that this time could be more effectively spent on more fruitful cases. The Legislature agreed. Effective September 19, 1999, P.L. 1999, Chapter 410



provides for a framework for advocates to 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 (codified at 39-A M.R.S.A. §153-A(6)):

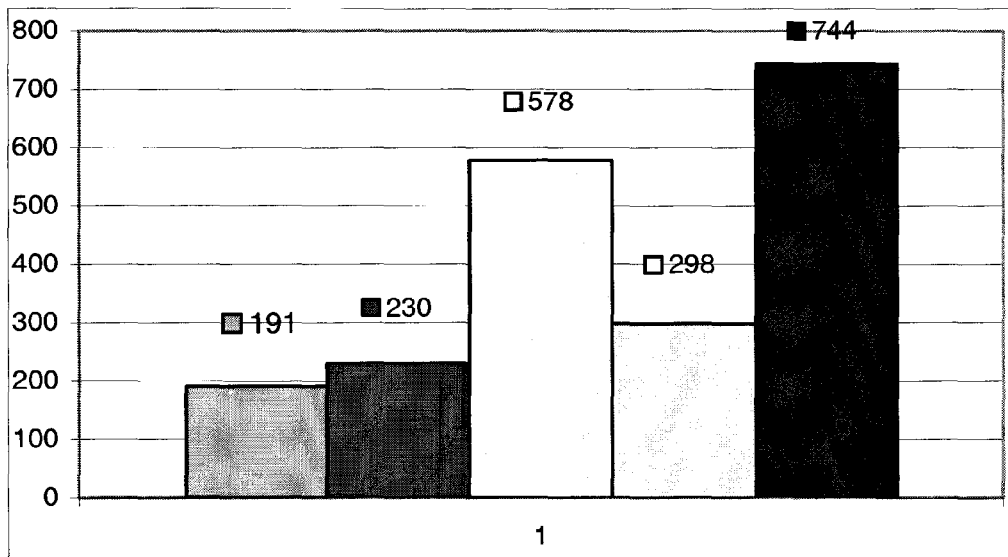
- (1) Timely notice of the injury was not given by the employee to the employer, pursuant to this Act;
- (2) The statute of limitations has expired;
- (3) The employee's case is based on an argument or issue adversely determined by the Supreme Judicial Court;
- (4) The employee's case is based on a claim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

Unfortunately, Chapter 410 has not had a significant impact on those claims that should not be in the system. The Advocates have seen only about a 1% reduction in their caseload. Further study of this issue is ongoing and recommendations will be submitted to the Board.

### III. 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, 2001. 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 65% of all open files with the remaining 35% distributed among the other three regional offices. Fully 80% of all files are found from the Kennebec Valley to York County. The following chart highlights this situation.



Through the month of July 2001, the Advocate program had 2,041 open files. The Advocates, from December 1997 through July 2001, have represented injured workers in over 8,400 Mediations and 1,750 formal hearings.

The percentage of unrepresented employees has dropped significantly since the inception of the Worker Advocate Program. Advocates now participate in approximately 50% of the total number of mediations and 30% of formal hearings. These numbers are indicative of the popularity of and need for the program. However, these numbers also are very overwhelming for the advocates and staff.

### IV. 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 hired an additional advocate for the Portland office as well as a Paralegal Assistant in Portland and Senior Paralegal Assistant in Lewiston. Recently, the Board added another Advocate and a Senior Paralegal Assistant in the Bangor office.

The Legislature also provided funding for two additional paralegal assistants in the Augusta and Bangor offices. Because of a pressing need for additional staff in the Portland and Augusta offices, the Legislature has now provided for an additional \$300, 000 for the Advocate Program, effective September 2001.

The Board will allocate these additional funds to the following functions:

- (1) advocate overtime;
- (2) additional staff in the Portland and Augusta offices;
- (3) upgrading the Advocate computerized case management system.

An article in the *Lewiston Sun Journal*, dated August 8, 2001, recognized the overwhelming workload confronting the Worker Advocate Program. The article also correctly states that the additional funding is only temporary and is not a long-term solution for the Program.

The staffing issue directly affects the quality of the services the advocates can deliver to the injured workers they represent. Without adequate support staff, the advocates cannot be as efficient in the representation of injured workers as they could be. The program is very fortunate to have a dedicated group of advocates, who take their jobs seriously. The future success of the Advocate Program is tied directly to this staffing issue.

#### **V. 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 caring and professional manner. This program is really making a difference. Injured workers now have access to representation and assistance that enables them to receive all benefits to which they are entitled. The issues of funding, caseload, and staffing, however, must be addressed in a long-term way to ensure the viability of the program.

## 6. Independent Medical Examinations (IME's)/Medical Fee Schedule

### I. Independent Medical Examinations.

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

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

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

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

**Rules.** The board may adopt rules pertaining to the procedures before the independent medical examiner, including the parties' ability to propound questions relating to the medical condition of the employee to be submitted to the independent medical examiner. The parties shall submit any medical records or other pertinent information to the independent medical examiner. In addition to the review of records and information submitted by the parties, the independent medical examiner may examine the employee as often as the examiner determines necessary to render medical findings on the questions propounded by the parties.

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

**Weight.** If the parties agree to a medical examiner, the examiner's findings are binding. If the board assigns an independent medical examiner, the board shall adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. Contrary evidence does not include medical evidence not considered by the independent medical examiner. The board shall state in writing the reasons for not accepting the medical findings of the independent medical examiner.

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

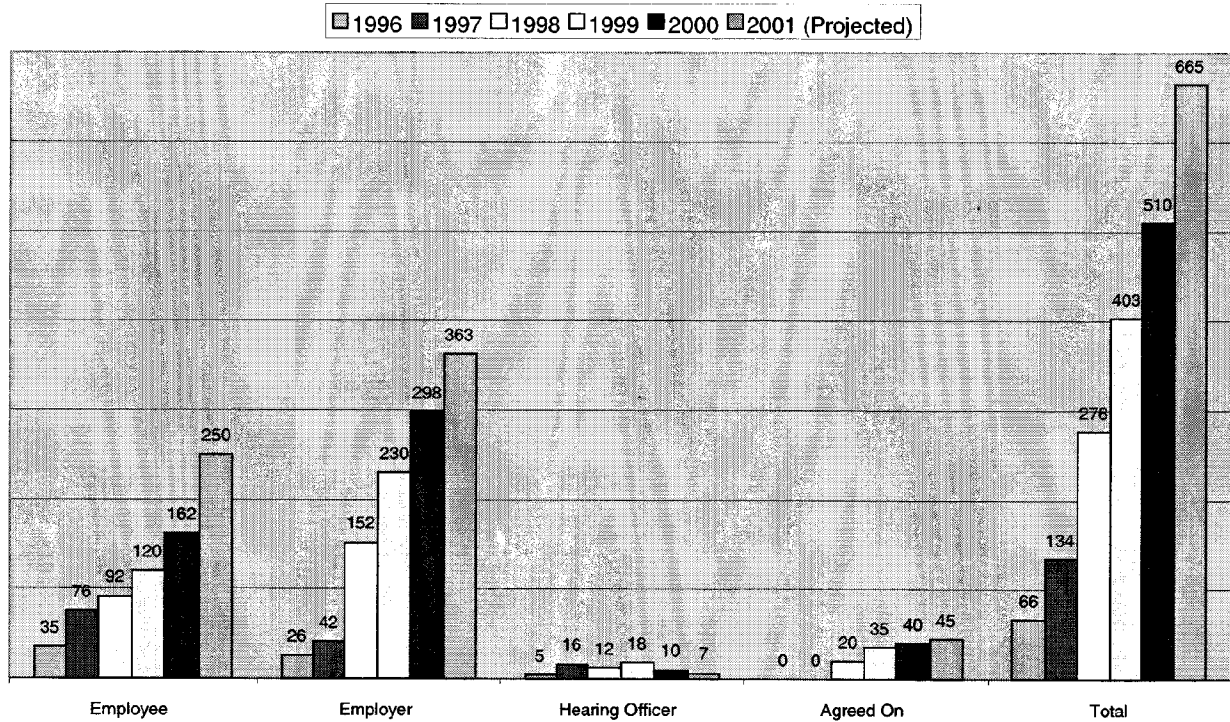
Presently, there are 25 Independent Medical Examiners in ten specialties, as shown in the following list:

Chiropractic	David M. Ballew, D.C.
Family/General/Internal	Geoffrey Gratwick, M.D. Peter Shaw, M.D. Douglas Trenkle, M.D.
Hand Surgery	S. Craige Williamson, M.D.
Neurosurgery	Julius Ciembroniewicz, M.D.

Neurology	Peter A. Bridgman, M.D. Seth Kolkin, M.D.
Occupational Medicine	Alexander L. Mesrobian, M.D. William Newkirk, M.D. David L. Phillips II, M.D.
Orthopedic Surgery	James F. Findlay, D.O. Peter E. Guay, D.O. Jordan Shubert, M.D. Michael J. Totta, M.D.
Physiatry	G. Thompson Caldwell, M.D. Stephan Bamberger, M.D. Peter Esponnette, M.D. Peter R. Geobel, M.D.
Psychiatry	Carylyle Voss, M.D.
Psychology	Roger Ginn, Ph.D. Jeff Matranga, Ph.D.

Requests for IMEs, from all sources, have increased every year since 1996.

**Independent Medical Examinations  
Maine, 1995 - 2000**



**II. Medical Fee Schedule.**

The Board first published a Medical Fee Schedule on April 4, 1994. In order to ensure appropriate limitations on the costs of health care services, the board is compelled pursuant to Section 209 to adopt rules that establish “standards, schedules, or scales of maximum charges for individual services, procedures or courses of treatment.” The standards to be adjusted annually to reflect any appropriate changes in levels of reimbursement.

In August 1997, the Board adopted the Resource Based Relative Value System (RBRVS) as the most efficient method to administer a fee schedule. The RBRVS has proven to be very successful. The fee schedule was revised and updated in 1999 and 2001.

## 7. Technology

The Board first implemented an information system in the early to mid-1980's. The system was primarily used by the Central Office to collect First Reports with little or no functional use beyond the simple collection of the data. In the later part of the 1980's, programs were written to use the information collected to perform rudimentary scheduling of cases for the dispute resolution process. The only other use of the system at the time was some basic word processing.

There were numerous problems with hardware reliability and securing technical support for the proprietary hardware and software applications. The staffing complement at the time, three Information Technology ("IT") professionals, did not have the time or resources to maintain the system adequately. Additionally, there were no off-the-shelf applications available due to the proprietary nature of the hardware and operating system software.

In the early 1990's, the original system was replaced by a system provided by Bull, a more maintainable system for the dispute resolution process. While this was a more mainstream product, the business application was written in an older, more rigid programming language. This made it difficult and time-consuming to utilize data, even though the staff had increased to five IT professionals.

The increasing need for staff, the Board, other state entities, and the private sector to access data led the Board to begin a migration effort to a relational database structure (Progress). Unfortunately, the database structure that had been developed had major design flaws that allowed corruption and data integrity problems to exist. The integrity and accuracy of any data or reports generated using the database could easily be called into question. In addition, Central and Regional office staff were not involved in the design effort resulting in a system with no functional modifications and/or enhancements.

In addition, the new Progress database was put into production without first running it in a parallel mode with the then current system to assure no problems existed prior to the switchover. As it turned out, there were significant problems that took almost a year to correct. By September 1997, the entire technical staff had resigned to accept other jobs, leaving the agency no IT staff. To compound the problem, the Chief Information Officer (CIO) would not allow the Board to replace its IT staff. The mindset at the time was to centralize all IT positions within the Bureau of Information Services. During the fall of 1997, as a result of the Board's reorganization effort, the WCB hired an Agency Technology Officer.

From November 1997 through July 1998, a major effort was made to upgrade the Board's seriously outdated systems, desktop software, networking hardware/software, and communication infrastructure. All 120 desktop systems were replaced; Microsoft Office was installed, e-mail was added to each system, all six office servers were replaced, networking software was upgraded, and all communication lines were upgraded from 56k to T1.



Having completed this project, the ATO then studied the ability of the computer system to provide the data on the compliance of employers and insurance carriers with the Workers' Compensation Board's laws and regulations. This was undertaken on behalf of the MAE program. It quickly became clear that the system would not provide the quality assurance and data integrity required for the MAE program. Utilizing the one programmer from the Department of Labor that the ATO had at his disposal, work began to rewrite the business application. Normally an effort this size would take a team of four approximately a year and a half to complete. Work began in the Claims area due to the need to capture First Report data immediately. The first compliance report was produced during June 1999. There was no system enhancements or workflow analysis of the Claims section provided during this initial phase. The focus was to get something up fast to comply with legislation.

Work then shifted to the Coverage Unit for functional analysis and system design. Migration of the Coverage Unit to the new system was accomplished in December 2000. One of the highlights was the shift to a common employer database with the Department of Labor's Bureau of Labor Standards (BLS). This change saved considerable time during the analysis phase as well as providing a method to automatically keep our employer information up-to-date. There were other system changes and workflow enhancements added to Coverage programs that increased the functionality of the system. System edits and checks were also added to help identify data quality issues. The programming effort is now focused on the Regional Offices, with Abuse, Advocate, Rehabilitation, and a revisit to Claims for a more thorough analysis of the Claims division still to occur.

Other work includes expansion of the current electronic data submission process and enhanced system capabilities for data distribution to supervisors, managers, and other entities requesting WCB data. There are also increasing requests from the BLS for data and additional elements BLS requests the Board to gather, verify and cleanse. These efforts directly affect the workload of an already over-burdened Claims and Coverage staff.

There have been a number of system migrations over time, most brought on by the need for information due to changing legislation and increased staff functionality. The common element in all these migrations is that they are neither funded adequately nor given a reasonable timeframe to be properly implemented. The situation has grown more critical over the past couple of years due to staff's increased reliance on the system and the lack of adequate funding for current operations. If the database system is down for any reason, all work stops. At the heart of our system is a seven-year-old piece of hardware that does not have a maintenance contract or back-up system (hot or cold) to resume operations in the event of serious malfunction. Additionally, there are no upgrade programs or support/maintenance contracts for any desktop/networking equipment or software. The one IT position (ATO) and one contract programmer provide all system support, development, training, and planning for the entire agency. This includes the desktop suite of products, business application, e-mail, operating system, networking, file restorations, the Advocates' current proprietary application, web-based services, electronic data transfers, etc. There are limited funds available to contract for additional help in any area.

The Board has provided for the electronic transmission of data since 1993. It is done on a voluntary basis and a number of carriers participate. The Board has encouraged others to voluntarily file their reports electronically, but has met with limited success. During the next 12 to 18 months, the Board will work to increase the number of entities that submit claims electronically as well as include two additional forms for electronic transmission (Notice of Controversy and Memorandum of Payment). The Board will continue to work with the International Association of Industrial Accident Boards and Commissions (IAIABC) to implement its recently developed Combined Claims Product. The Board is also considering mandating electronic transmission.

## 8. Ten-year Financial Summary

The Workers' Compensation Board has two accounts: The Administrative Fund and the Employment Rehabilitation Fund. The Administrative Fund is the account from which the Board pays its expenses. It will be discussed more extensively than the Employment Rehabilitation Fund which, as a result of a recent legislative change, does not figure as prominently in the Board's operations.

### I. ADMINISTRATIVE FUND.

#### A. BACKGROUND.

As a result of sweeping changes enacted in 1992, the Workers' Compensation Board replaced the Workers' Compensation Commission. As the Legislature and Governor debated the proposed changes to the workers' compensation laws, they also considered how to fund the new agency (i.e. the Board) that was being created.

The Board received an appropriation from the General Fund for fiscal year ("FY") 93. However, the Legislature and the Governor decided, in the context of the economic slowdown in the late 1980's and early 1990's, that the Board should have an independent source of funding. Thus, the Board is considered an independent agency and receives no General Fund money. Instead, the Legislature and the Governor created an assessment on Maine's employers that is used to fund the Board's operations.

The Workers' Compensation Board receives virtually all of its revenue from this assessment. The maximum amount that the Board can assess each year is set by statute. 39-A M.R.S.A. §154(6). In 1993, when the Board was created, the maximum assessment was set at \$6,000,000. Between FY 1994-1995 and FY 2000-2001, the maximum assessment increased twice: By \$600,000 beginning in FY 97, and by an additional \$135,000 in FY 00<sup>2</sup>.

The process for issuing and collecting the annual assessment is set forth in the Workers' Compensation Act. 39-A M.R.S.A. §154. The statute requires the Board to divide the assessment between self-insured employers and insured employers. The division is based on the pro rata share of disabling cases<sup>3</sup> each category of employer is responsible for. 39-A M.R.S.A. §154(5). As an example, in calendar year 2000 insured employers were responsible for 61% of disabling cases,

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<sup>2</sup> The assessment increases were enacted to fund two new programs; the Worker Advocate and Monitoring, Audit, and Enforcement Programs. As will be discussed below, these programs were underfunded and have severely strained the Board's budget.

<sup>3</sup> A disabling case is defined as a case that results in a day or more of lost time from work.

while self-insured employers were responsible for 39% of such cases. Consequently, insured employers paid 61% of the FY 02 assessment and self-insured employers the remaining 39%.

Once the distribution of disabling cases is determined, the Board must determine how much to assess. In calculating the amount to be assessed, the Board first projects its expenditures. The Board then projects the amount, if any, of its surplus. The surplus is defined as the money in the Administrative Fund account that exceeds the allowed reserve.<sup>4</sup> The surplus must be returned to Maine's employers in the form of a reduced assessment.

As shown in Chart 1, the Board has reduced its annual assessment five times in the last eight years. These reductions total \$5,870,000.

Chart 1

<b>Workers' Compensation Board</b>				
<b>Allowed Assessment vs. Amounts Assessed</b>				
<b>Fiscal Year*</b>	<b>Maximum Assessment</b>	<b>Actual Amount Assessed</b>	<b>Amount of Cut</b>	<b>Assessment Rate</b>
1995	6,000,000	5,750,000	250,000	1.40%
1996	6,000,000	6,000,000	0	1.93%
1997	6,000,000	6,000,000	0	2.65%
1998**	6,600,000	6,600,000	0	2.78% and 3.15%
1999	6,600,000	6,350,000	250,000	2.79%
2000***	6,735,000	5,100,000	1,635,000	2.26%
2001	6,735,000	5,000,000	1,735,000	1.99%
2002	6,735,000	4,735,000	2,000,000	1.47%
<b>Total</b>	<b>51,405,000</b>	<b>45,535,000</b>	<b>5,870,000</b>	

\* Fiscal Year 1994 does not appear because the Board assessed a specific dollar amount, as opposed to using a rate in that year.  
 \*\* PL 97 Ch 486 increased the assessment cap by \$600,000 which resulted in the need for two rates.  
 \*\*\* PL 99 Ch 359 increased the assessment cap by \$135,000 but the Board did not issue a supplemented assessment.

The procedure for assessing self-insured employers is straightforward. Each self-insured employer is assessed a specific dollar amount based on the aggregate benefits paid by each self-insurer during the previous calendar year. If, for example, a self-insured employer paid 10% of the total aggregate benefits paid by self-insured employers in the previous calendar year, that self-

<sup>4</sup> The Board is required to have a reserve equal to one-quarter of its annual budget. 39-A M.R.S.A. §154(6). Currently, the Board's reserve account can be funded to a maximum of \$1,700,000. The reserve account is discussed more fully below.

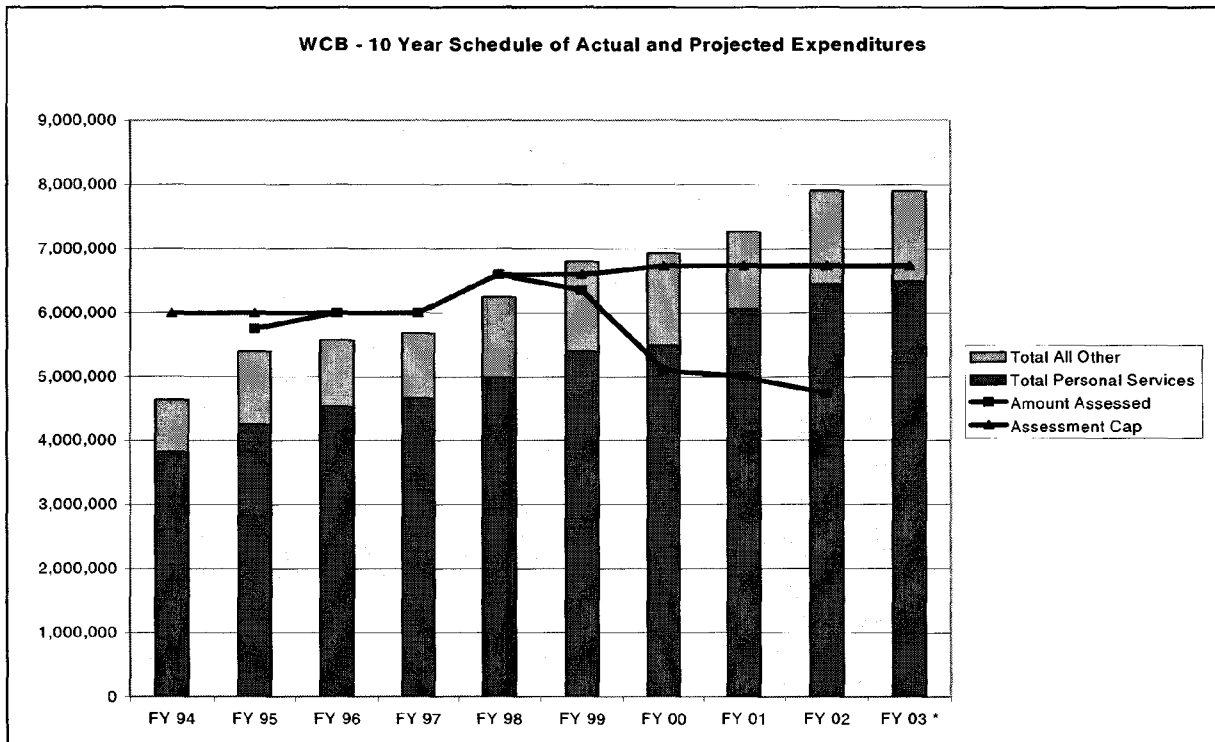
insured employer would pay 10% of the total self-insured assessment. Each self-insured employer must pay its assessment for the upcoming fiscal year on or before each June 1.

The procedure for calculating and collecting the assessment from insured employers is more complicated. Insured employers do not pay a specific dollar amount. Instead, a rate, calculated by the Board with assistance from the Bureau of Insurance and industry experts, is applied to each workers' compensation policy. Insurers collect the money from their insured employers and then remit payment to the Board on a quarterly basis. Due to audits, reconciliations, and the method of collection, the Board's books for a fiscal year do not close at the end of the fiscal year. The Board is still, for example, receiving payments based on assessments that were, technically, due in FY 96.

**B. BUDGETARY PRESSURES DUE TO THE MAXIMUM ASSESSMENT.**

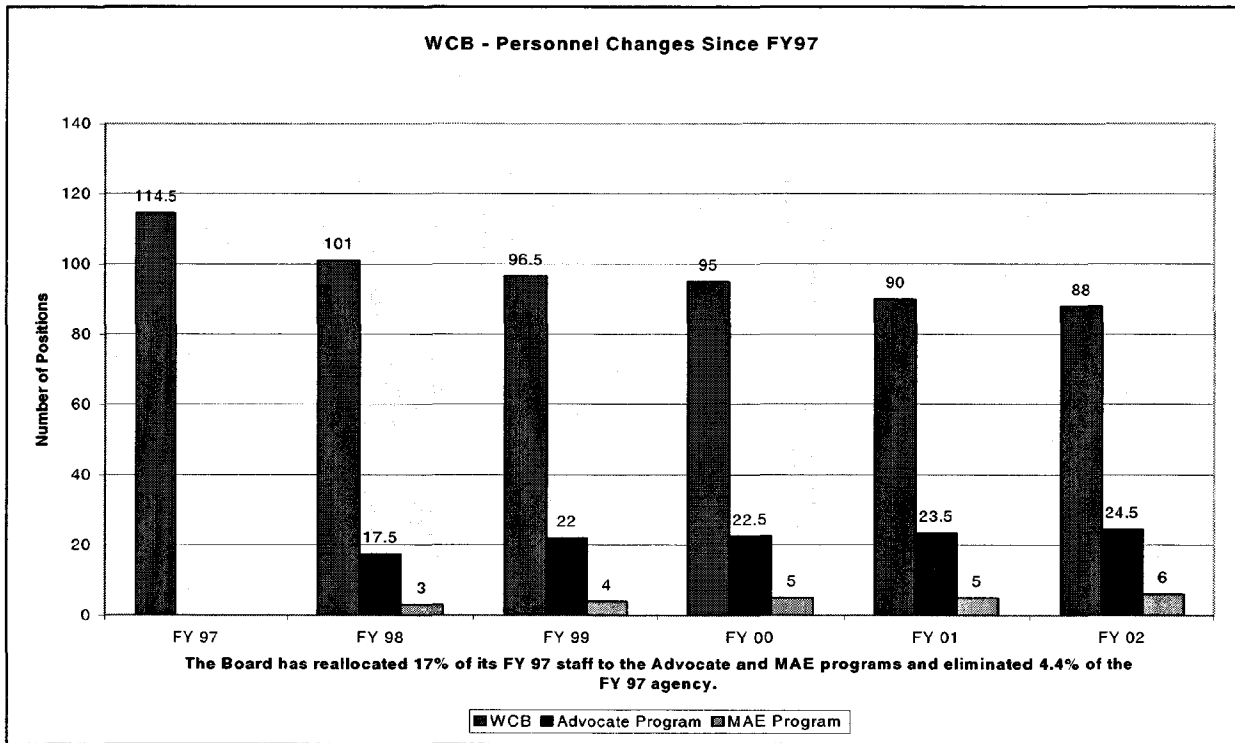
As can be seen in Chart 2, the Board's assessment cap was adequate to fund the agency's operations until FY 97. In FY 97, the Legislature enacted, and the Board implemented, legislation that expanded the Worker Advocate Program and created the MAE Program. The Board's assessment cap was increased by \$600,000 in FY 97 (and again by \$135,000 in FY 00) to pay for those programs. The cost to the Board has been far in excess of the \$735,000 allocated for the task. These two programs cost the Board approximately \$1,500,000 in FY 01; more than twice as much as was allocated. The cost of these programs, in addition to increases in employee salaries, the cost of benefits, and general inflation, created, in light of the maximum assessment set by law, budgetary problems for the Board.

Chart 2.



The Board, in an effort to resolve its budget problems and shore up these programs, especially the Worker Advocate Program, transferred significant resources from the dispute resolution section of the agency, to these programs. Chart 3 details the shift of personnel that has occurred since FY 97. The Board has, in order to ensure that the Worker Advocate and MAE Programs are as effective as possible, reassigned or eliminated 21% of the positions that were allocated to dispute resolution.

Chart 3



In addition to absorbing more than 50% of the costs of the Worker Advocate and MAE Programs, the Board has also had to find money to pay for salary and benefit increases, and for increased costs of doing business as a result of inflation. Chart 4 shows the dramatic increase in salary and benefit costs that the Board has absorbed since FY 94.

**Chart 4.**

**Workers' Compensation Board  
Administrative Fund  
10 Year Schedule of Actual and Projected Expenditures**

	Actual Expenditures									Percent Increase	Work Program FY 2002	Percent Increase	Projected FY 2003	Percent Increase
	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001						
Salaries	2,976,114	3,266,743	3,307,311	3,361,673	3,636,313	3,925,732	4,004,852	4,177,868		40.38%	4,563,756	53.35%	4,464,946	50.03%
Health Insurance	314,702	393,820	459,807	451,922	463,465	493,091	533,905	672,432		113.67%	776,722	146.81%	920,988	192.65%
Dental Insurance	19,163	21,799	22,152	21,380	22,518	24,043	25,019	26,709		39.38%	30,442	58.86%	32,042	67.21%
Workers' Comp Insurance*			59,340	59,211	31,951	22,552	35,971	36,504		-38.48%	78,120	31.65%	41,760	-29.63%
Retirement Costs	476,735	519,656	632,769	717,250	775,280	869,550	819,487	913,117		91.54%	925,534	94.14%	956,213	100.58%
Employer Life Insurance	15,230	10,582	11,052	10,803	12,502	13,570	13,660	14,206		-6.72%	15,306	0.50%	16,424	7.84%
Employer Medicare	23,591	33,676	33,812	36,076	39,763	43,743	44,600	46,668		97.82%	48,528	105.70%	51,905	120.02%
Child Care	4,400	2,150	2,800	2,800	5,050	5,850	6,087	4,441		0.93%	5,000	13.64%	6,087	38.34%
Total Personal Services	3,829,934	4,248,427	4,529,042	4,661,115	4,986,841	5,398,131	5,483,582	5,891,945		53.84%	6,443,408	68.24%	6,490,365	69.46%
Total All Other	808,858	1,143,779	1,045,632	1,014,033	1,257,820	1,401,035	1,442,812	1,225,183		51.47%	1,390,881	71.96%	1,413,462	74.75%
Total Capital	2,832	37,621	0	0	0	0	0	0			15,000		15,000	
Total Expended	4,641,624	5,429,827	5,574,674	5,675,148	6,244,661	6,799,166	6,926,393	7,117,128		53.33%	7,849,289	69.11%	7,918,827	70.60%
Assessment Cap	6,000,000	6,000,000	6,000,000	6,000,000	6,600,000	6,600,000	6,735,000	6,735,000		12.25%	7,135,000	18.92%	6,735,000	12.25%
Annual Allocation	5,798,725	5,591,905	5,732,109	5,988,715	6,532,764	6,855,515	7,070,709	6,956,932			7,849,289			

\* Temporary increase in assessment for FY 02 only



For example, in FY 94 the Board paid \$2,976,114 to cover employee salaries. In FY 02, the Board will pay \$4,563,756 to cover its employees' salaries. This represents an increase of \$1,587,642. Also, health insurance for the Board's employees' cost \$314,702 in FY 94, and will cost the agency \$776,722 in FY 02 – an increase of \$462,020. Unlike other state agencies, the Board cannot tap into the State's Salary Plan to fund contract and benefit increases. The Board must find a way to absorb these increases within the limits set by the maximum assessment.

The Board's All Other<sup>5</sup> expenditures have also risen sharply since FY 94. In FY 94, the total All Other expenditures were \$808,858. In FY 02, even after paring down this portion of the Board's budget, the Board will spend \$1,390,881, \$582,023 more than was spent in FY 94. Again, the Board cannot simply increase its annual assessment to meet these rising costs.

By conservatively managing its budget, the Board, from FY 97 to FY 01, was able to absorb the various increases and establish effective Worker Advocate and MAE Programs. The problem, however, reached a crisis point in FY 02. The assessment cap for FY 02 was simply inadequate to fund the Board's operations. As a result, the Board was required to dip into its reserve account (in the amount of \$700,000) in order to fully fund its operations.

Without the use of its reserve account, the Board would have been forced to institute deep cuts in its personnel. These cuts would have had a devastating impact on the Board's ability to meet its mission statement. The impact would almost certainly have crippled the Worker Advocate Program and undone the Board's effort to streamline its dispute resolution process. The Legislature recognized the urgency of the Board's situation. It took two steps: First, the Legislature authorized the use of \$700,000 from the Board's reserve account; and, second, the Legislature authorized a one-time increase in the maximum assessment to provide temporary assistance to the Worker Advocate Program.

These efforts solved the Board's funding problem for FY02, but the Board, in FY03 and beyond, is facing further budgetary problems stemming from the assessment cap. Possible solutions to this problem are discussed in Section D below.

### **C. THE RESERVE ACCOUNT.**

The Board is required to have a reserve account equivalent to one-quarter of its annual budget. 39-A M.R.S.A. §154(6). The Board has had a fully funded reserve account for several years. However, due to a long-running debate between the Bureau of the Budget and the Board, the Board has been unable to make effective use of its reserve account.

The debate centers around how the Board should be able to use money in the reserve account and, perhaps more importantly, the manner in which the Board may request use of its reserve fund.

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<sup>5</sup> All Other expenditures include non-personnel expenditures such as rent, electricity, etc.

As to its use, the Board believes that the statute gives it the authority to spend the reserve account in the manner best suited to meet the agency's needs. The Board's position is clearly supported by the Workers' Compensation Act which states:

All money credited to the Workers' Compensation Board Administrative Fund must be used to support the activities of the board and for no other purpose. Any balance remaining continues from year to year as a fund available for the purposes set out in this section and for no other purpose.  
39-A M.R.S.A. §154(1).

The Bureau of the Budget, however, has consistently refused to allow the Board to request an allocation of the money in its reserve account.

The current fiscal year provides an excellent example. In preparing its budget request for FY 02 and FY 03, the Board realized that its revenue from the assessment (along with interest and other miscellaneous income) would not be enough to meet its spending needs. The Board, therefore, proposed the use of some of its reserve account to meet the anticipated gap between revenues and expenditures. The Bureau of the Budget objected to the Board's attempt to use its reserve account and refused to submit the Board's budget, as written, to the Legislature. Instead, the Bureau of the Budget removed the reserve account money and forwarded, to the Legislature, a budget reflecting a \$600,000 shortfall in FY 02 and an \$800,000 shortfall in FY 03.

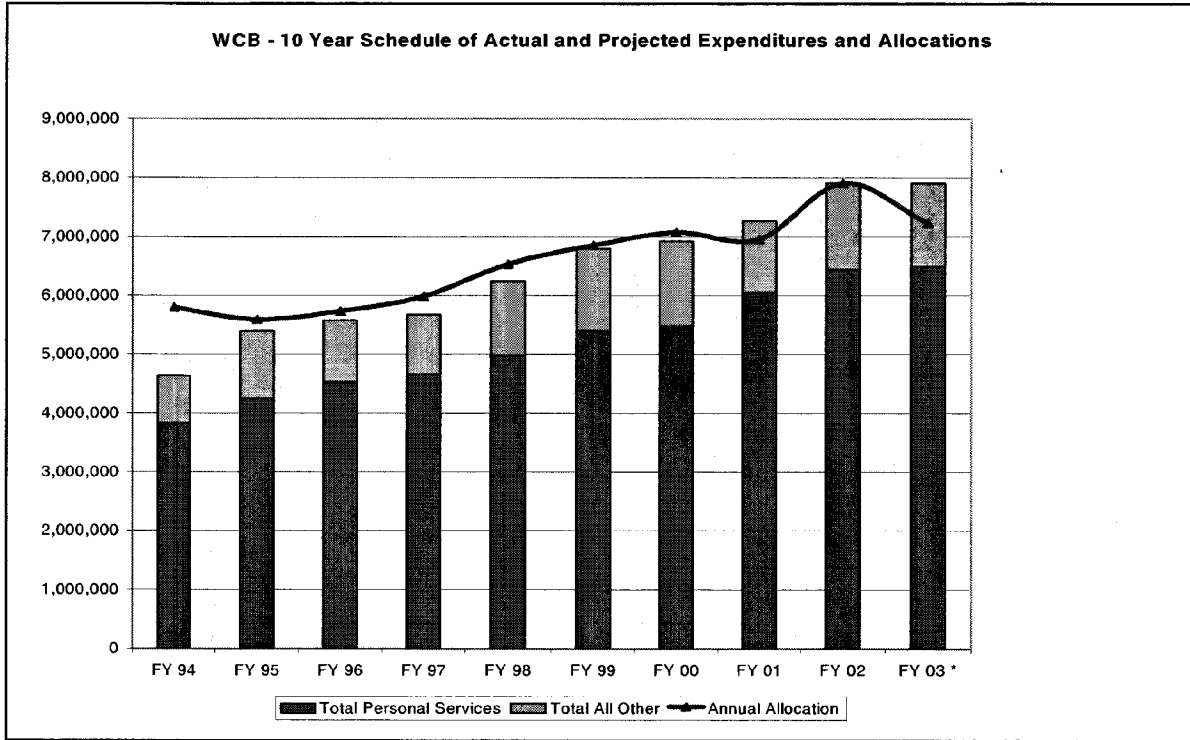
The Bureau's actions are problematic for two main reasons. First, the Bureau of the Budget has, in effect, taken over the administration of the Board's budget by substituting its judgment on how to meet the Board's expenditure needs for that of the Board. This runs directly counter to the statutory mandate that the Board "administer its budget with the assistance of the Executive Director." 39-A M.R.S.A. §152(13).

Second, the Workers' Compensation Act specifies that "[e]xpenditures from the Workers' Compensation Board Administrative Fund are subject to legislative allocation and approval..." By refusing to submit the Board's budget, as initially drafted, to the Legislature, the Bureau of the Budget is preventing the Legislature from considering whether, and under what circumstances, the Board should use its reserve funds.

As mentioned previously, the budget proposal submitted by the Bureau of the Budget did not include any use of reserve funds. Because of the Board's budget problems, however, the issue of the Board's reserve account came before the Labor Committee. After considering the issue, the Labor Committee, and, ultimately, the entire Legislature, approved the use of \$700,000 from the reserve account to make ends meet in FY 02.

If the Bureau of the Budget had its way, the Legislature would never be given an opportunity to consider the reserve account in the context of funding the Board's operations. The allocation, from the Board's reserve account, of \$700,000 in FY 02 will help the Board meet its budgetary needs for this fiscal year. The Board will again, however, be short funds in FY 03 and succeeding fiscal years absent a long-term solution to the Board's funding mechanism. (See Chart 5.)

Chart 5



#### **D. POSSIBLE SOLUTIONS**

One solution to this problem would be to amend the Board's funding formula to permit automatic increases in the Board's assessment cap by amounts equivalent to the actual and projected increases in employee benefits, employee salaries, and inflation. This would help the Board keep pace with rising costs that are beyond its control. It would also allow the Board to continue to provide the same quality service that it is presently providing. While it would increase the Board's maximum assessment, it would not necessarily result in an increase in the actual assessment issued each year. As the Board has demonstrated over the years, it makes every effort to keep the actual assessment as low as possible.

Another alternative would be to simply raise the maximum assessment. This would give the Board additional revenue from which to pay its expenses. The drawback is that, as with the current assessment cap, an increased cap will, at some future date, still prove to be inadequate and will need to be adjusted.

A third alternative is to adopt a funding scheme similar to that employed by the Public Utilities Commission and the Office of the Public Advocate. Under this scenario, the funding mechanism for the Board would remain unchanged with the exception of the Worker Advocate Office. A separate budget and budget process (including review and approved by the joint standing committee with jurisdiction over labor and the joint standing committee with jurisdiction over appropriations) would be created for the Worker Advocate Office. (See 35-A M.R.S.A. §116.)

If no changes are made to the Board's funding formula, the Board will be forced to make deep cuts in FY 03. These cuts will total approximately \$1,100,000. The All Other budget has already been reduced as much as is possible. These cuts will have to come, therefore, from the personal services budget.

It is conservatively estimated that approximately 17% of the WCB's staff of 118.5 employees will have to be laid off if a means of adequate funding is not provided to the agency. This amounts to approximately 20 positions before allowing for bumping required by seniority and also before calculating any amount(s) for unemployment compensation for laid off employees. Several additional positions may need to be targeted in order to allow for seniority and unemployment. It is not inconceivable to predict losing close to a quarter of the Board's staff if adequate funding is not provided. This would decimate the Board and make it impossible for the Board to provide an effective Worker Advocate Program, continue to swiftly resolve disputes, and have an effective Monitoring, Audit, and Enforcement Program.

#### **II. EMPLOYMENT REHABILITATION FUND.**

The Board has a second account known as the Employment Rehabilitation Fund (the "ERF"). Funding for the ERF comes primarily from penalties issued against employers that have failed to secure required workers' compensation coverage and from interest on investments. The ERF also receives money in the case of a death of a worker who has no dependents.

A major drain on the ERF came from reimbursements to employers/insurers for certain benefits paid in excess of 260 weeks. However, the responsibility for handling reimbursement requests was transferred, as of September 21, 2001, to a new Supplemental Benefits Oversight Committee ("SBOC"). The SBOC, and not the Board, will now issue reimbursements and raise funds (through an assessment) to pay for reimbursements.

The ERF, in the absence of reimbursements, will primarily be used to pay for vocational rehabilitation assessments, and for implementation of plans when employers/insurers refuse to voluntarily pay the costs of a plan.<sup>6</sup>

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<sup>6</sup> The ERF can recoup up to 180% of the costs of a successful vocational rehabilitation plan from an employer/insurer that refused to voluntarily implement a plan.

### **9-A. Areas Where Efforts Have Been Coordinated with Other Agencies or Where They Could Be**

The Board has had varying degrees of success in its effort to coordinate its work with other state and federal agencies.

The technology field is an area where the Board has seen both success and failure. An example of success is the Board's recent migration of its employer database to the Department of Labor's ("DOL") database. For years, in its effort to identify employers that were operating without required workers' compensation coverage, the Board would compare its coverage information to DOL's unemployment database. A great deal of unnecessary paperwork for the Board and for Maine's employers was generated due to the inconsistencies between the two databases. Information that was updated on one system, for example, would not always be updated on the other system. Now, with the two databases combined, the Board has been able to more accurately identify employers that do not have required coverage.

The Board also collects a significant amount of data on its forms to assist the Bureau of Labor Standards ("BLS") in its task of producing statistical reports. An example of the Board's responsiveness in this area involves a form titled "Statement of Compensation Paid." The Board proposed a rule that would have reduced both the frequency with which this report had to be filed, and the information contained in it. In response to comments received from BLS, which wanted the more detailed information, the Board reconsidered its proposal, and incorporated the changes requested by BLS.

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

The Board also works with the Bureau of Insurance ("BOI") with respect to its annual assessment. BOI provides information on premiums written, predictions on market trends, and paid losses information for self-insured employers. The Board uses this information when it calculates the annual assessment.

In the technology arena, efforts to centralize functions in the Bureau of Information Services ("BIS") have been a failure. The Board's information technology ("IT") staff was, as a result of changes mandated by the Administration, reduced to one individual from five. The funding for two IT positions was transferred to the Department of Labor. The Board was told that, if it needed programming services, it would have to enter into contracts with DOL. The

Board has required extensive programming since the transfer, but has only been able to use the services of one DOL programmer. This has significantly hampered the Board's attempts to increase its technological efficiency. The Board has attempted to use its Reserve Account to hire an additional programmer for a fixed period of time. This was a one-time non-recurring expense that was denied by the Bureau of the Budget.

## **9-B. Efforts at Alternative Delivery Systems Including Privatization**

The Board is considering mandating the electronic submission of First Reports, Memorandums of Payment (MOP's), and Notices of Controversy (NOC's). This would be accomplished through the Board's proprietary system, which is presently in place and the International Association of Industrial Accident Boards and Commissions (IAIABC) Combined Claims Product, which is presently under development and will not be ready for another 18 to 24 months. Should the Board mandate electronic submission of these forms, it will have options to either (1) implement the entire Electronic Data Interchange (EDI) Program; or (2) to continue to manage its proprietary program and privatize the IAIABC Program. The Board is presently considering both options.



## 10. Emerging Issues for the Board

The Board's budget is an issue that is of paramount importance. The Board is at a crossroads. Its maximum assessment is no longer adequate to fund its current level of operations. Without a change in its funding mechanism, the Board will be forced to make drastic cuts to its personal services budget. This will undo virtually all of the progress that the Board has made in recent years in terms of streamlining its dispute resolution process and implementing the Worker Advocate and Monitoring, Audit and Enforcement programs. It will also mean that the Board will not be able to modernize its technological resources resulting, ultimately, in an outdated system that is inadequate to meet the agency's, and by extension, the public's needs.

While it is important for the Board to be able to, at least, maintain its current level of services, as can be seen from the departmental reports contained in this Government Evaluation Act Report, several of the Board's departments need additional funding if they are to meet the expectations set by the Legislature.

The Worker Advocate Program needs additional support. The Board, as detailed earlier in this report, has already shifted significant resources to the Worker Advocate Program. The Board has reached the point, however, where it cannot meet the resource demands of the Advocate program by shifting resources. The temporary infusion of an \$300,000.00 for FY 02 will be a tremendous help. But it is only temporary help. A long-term solution to the funding/staffing needs of the Advocate program must be found.

Similarly, an effective MAE program is a key component of the Board's effort to reduce the number of claims that must be resolved by the Board. To do this, the MAE program needs more resources to ensure, among other things, that it can meet a three-year audit cycle. The Board has shifted some resources internally, but, due largely to the demands placed on the Board by the Advocate program, there has not been much left over to dedicate to the MAE program.

Due to an active MAE program and, to a larger degree, some programming changes, the volume of work flowing into the Abuse Investigation Unit (the "AIU") has increased exponentially. Staffing of the AIU has not. It is no surprise then, that the AIU is falling behind in its effort to keep pace with penalty requests.

The Board's programming and technology goals continue to be set back due to a lack of adequate funding. In order to keep personnel in key areas, the Board has virtually eliminated spending on technology. The Board has a number of programming initiatives that need to be completed. It has been unable to fulfill these initiatives because it does not have access to adequate resources to devote to this effort.

A final trend worth noting, even though a solution is not within the Board's authority, involves safety. There has been an increase in the number of First Reports of Injury filed with

the Board over the last few years. This is due in part to a program the Board implemented that automatically identifies late filed First Reports and in part to increased employment and a lack of attention to safety.

With the advent of the changes to the Workers' Compensation Act instituted in 1993, there was an increased emphasis in the State on safety. Responsibility for safety programs was with the DOL, with the proviso that the Board and DOL discuss transferring oversight of this effort to the Board. The Board expressed an interest in having control over these programs, but DOL wanted to, and ultimately did, keep safety issues under its ambit.

Since then, not necessarily due to anything DOL did or did not do, safety programs have been de-emphasized. This has, as just mentioned, been a factor in the increased number of First Reports of Injury that the Board has received. In its effort to reduce the cost of workers' compensation insurance in Maine, it is important that safety efforts be encouraged.

## **11-A. Summary of Coopers & Lybrand Report**

Coopers & Lybrand was engaged to conduct an assessment of the business operations of the Workers' Compensation Board to identify opportunities for improvement and to align the activities of the workers' compensation system with the mission of the agency. It delivered its final report and recommendations to the Board on December 15, 1997.

The majority of the Coopers & Lybrand recommendations have been implemented by the Board resulting in significant improvement in the operations of the agency. The Scorecards and Employee Performance Measures Report was the final report approved by the Board on September 20, 2000. The Scorecards serve as a means to grade and evaluate the projects which were recommended in the Coopers & Lybrand Report.

Two other projects outside the Coopers & Lybrand study are also being graded: 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; Agency Technology Officer; Data Cleansing; Technical Environment; Electronic Data Interchange (EDI); Streamline Dispute Resolution Process; Customer Service Representative Model; Redistribution of Hearing Officer Workload; Compliance (MAE) Program; Dispute Prevention; WCB Website; and Scorecards & Performance Measures.

## **11-B. Berry, Dunn, McNeil & Parker Study**

A Resolve, Authorizing a Study of the Governance and Administrative Structure of the Workers' Compensation System and Authorizing One-time Uses of the Workers' Compensation Board Reserve Account was approved on June 8, 2001. The Resolve provided, in part, that "whereas, the workers' compensation system in Maine is facing a number of budgetary and administrative issues a study should be conducted to review the governance and administrative structure of the State's workers' compensation system to determine if greater efficiencies may be gained in the operational structure and processes of the Workers' Compensation Board and the advantages and disadvantages, if any, of a closer alignment of the Workers' Compensation Board with other agencies in State Government."

The Resolve lists nine factors to be considered, directs the Department of Administrative and Financial Services to administer the study, and establishes an Advisory Committee. The Resolve further directs the Department of Administrative and Financial Services to "report its findings, including any proposed implementation plan or legislation, to the Legislature and the Workers' Compensation Board by December 15, 2001" and that "the Joint Standing Committee on Labor may report out any recommended legislation relating to the Department's report to the Second Regular Session of the 120<sup>th</sup> Legislature."

The Department of Administrative and Financial Services contracted with the firm of Berry, Dunn, McNeil and Parker to conduct the study. The firm held its first meeting with the Advisory Committee on July 30, 2001 to outline its plan, present its timetable, and receive suggestions. Berry, Dunn, McNeil and Parker submitted its final report to the Advisory Committee on December 3, 2001 and deliver its Report to the Legislature on December 17, 2001.

### 11-C. Government Evaluation Act Report

The State Government Evaluation Act “provides for a system of period reviews of agencies and independent agencies of State Government in order to evaluate their efficiency and performance.” The Workers’ Compensation Board delivered its Government Evaluation Act Report to the Joint Standing Committee on Labor on November 11, 2001. **The Government Evaluation Act Report, in tandem with the Berry, Dunn, McNeil & Parker Report, should provide policymakers with the necessary information required to determine the efficiency of both the governance and administrative structure of the Workers’ Compensation Board.**

Section 3

Bureau of Insurance

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## Introduction

This report looks at the status of competition in the workers' compensation insurance 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 company experience, overhead expenses, taxes, contingencies, investment income and profit. Insurers may use different multipliers for rating plans for different tiers or companies having different underwriting criteria. 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. This was followed by two years of increases in the advisory loss costs. In its most recent filing made on October 23, 2001, the National Council on Compensation Insurance filed and received approval for a 3.4 percent decrease in advisory loss costs. Unrelated to this advisory loss cost filing, the market is now going through a period of hardening. Carriers had been discounting premiums by issuing schedule rating credits, issuing dividends and departing from filed advisory loss costs. They did so to retain business during times when there were high investment returns. Insurers are now less optimistic about investment opportunities, and thus are not likely to offer discounts in order to capture or retain business. The problem of increasing rates will be further compounded by the incidents of September 11, 2001. Insurance carriers cede some of their business to re-insurers to help spread their risk. Reinsurance costs will increase because of the large losses related to September 11, and re-insurers may reduce the business they write, which in turn will affect primary insurers and the risks they write. There are no terrorist exclusions in workers' compensation policies; consequently claims must be paid. The Bureau has indications from one insurer that, as a result of the events of September 11, 2001, they are non-renewing all workers' compensation business. Reinsurance availability could become a concern.

There are different criteria that may be used to determine if the insurance industry is competitive. Examples include: a large number of firms selling the product, each individual firm's market share being small enough so that no firm is able to affect the price of the product, and no barriers to new firms entering the market. Using these criteria, the market remains competitive. There are still many insurers writing workers' compensation coverage in Maine. MEMIC's market share



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has increased and other carriers market share has decreased somewhat, but there is still a level of competition for business.

Though the market remains competitive, insurers' willingness to offer underwriting discounts is lessening. The result is some employers have been moved to higher rating tiers and some employers have lost discounts that they were previously offered. The end result is that premiums for those employers are increasing.

## Part I. Recent Experience

### Loss Ratios and the State of Competition

Workers' compensation claims can 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, most information is reported on an accident year basis. To better understand each basis of reporting information, a description of each method and its use follows.

- Accident year experience measures the premiums and losses relating to accidents which occurred during a 12-month period. The accident year loss ratio shows 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. Losses are organized according to the year in which the accident occurred. Accident year losses or loss ratios are used to evaluate experience under various laws because claims are tracked by year and can be associated with the law in effect at the time of the injury. This information is projected because claim costs change over time as claims further develop. Therefore, the ratios for each year are updated on an annual basis.
- 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. Calendar year incurred losses are used primarily for financial reporting.
- 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.

## 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 an increased capacity to write business, falling rates, and growing loss ratios, resulting in insurer operating losses. Maine's market from the mid-1990s until recently would be considered soft.

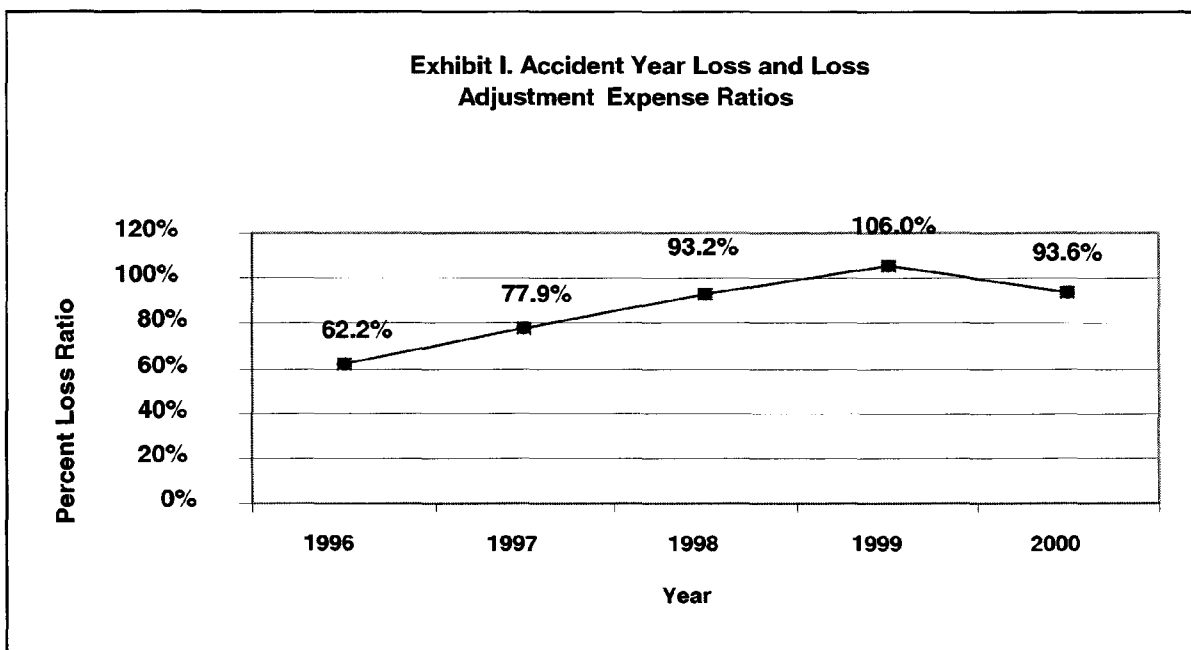
Soft markets, with their increased competition for business, can eventually force loss ratios to critical levels, causing insurers to raise their rates and reduce their volume. Nationally, for workers' compensation and other lines of insurance, we are leaving a "soft" market period and appear to be entering a "hard" period. Ultimately this restores insurer profitability and surplus. This situation, in time, spurs another round of price-cutting, perpetuating the cycle.

Current data points to indicators of market hardening. Insurers nationwide are reducing credits and increasing premiums for workers compensation and other lines of insurance. The accident year incurred loss ratio for 2000 is 93.6. For 1999, the ratio is 106. Accident year loss ratios that exceed 100 mean that insurers are paying out more in benefits than they collect in premiums. The loss ratio does not include marketing and general overhead expenses, but it also does not include investment income.

## Accident Year Loss and Loss Adjustment Expense Ratios

The accident year loss ratio shows the percent of earned premium used to fund losses and their settlement. Exhibit I, shows the loss ratios for the most recent five years available. Loss ratios in this report are more mature and may not match the loss ratios for the same years in prior reports. Claim costs and loss adjustment expenses are further developed, so the loss ratios reflect more recent estimates of what the claims will ultimately cost. The loss ratios do not include general expenses of insurance companies such as overhead and marketing, taxes, or investment income. The 2000 loss ratio is 93.6, indicating that over \$93 is expected to be paid for losses and loss adjustment expenses for every \$100 earned in premium. This, along with last year's loss ratio of nearly 106, indicates that workers' compensation insurance has not been very profitable in the last couple of years. A high accident-year loss ratio is unsustainable, over the long run, for a solvent and profitable industry. It is important to note that this does not mean that all insurers are at risk; individual companies may have lower, more reasonable loss ratios.

Loss ratios were in the 60 percent range following the 1992 law changes. These ratios were relatively low and due, most likely, to loss prevention and claims management practices of employers, combined with savings from the reduction of benefits that resulted from the 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. Increases to advisory loss costs were approved in 1999 and 2000. For 2000, net premium levels increased more than the expected indemnity and medical payments because of changing market conditions.



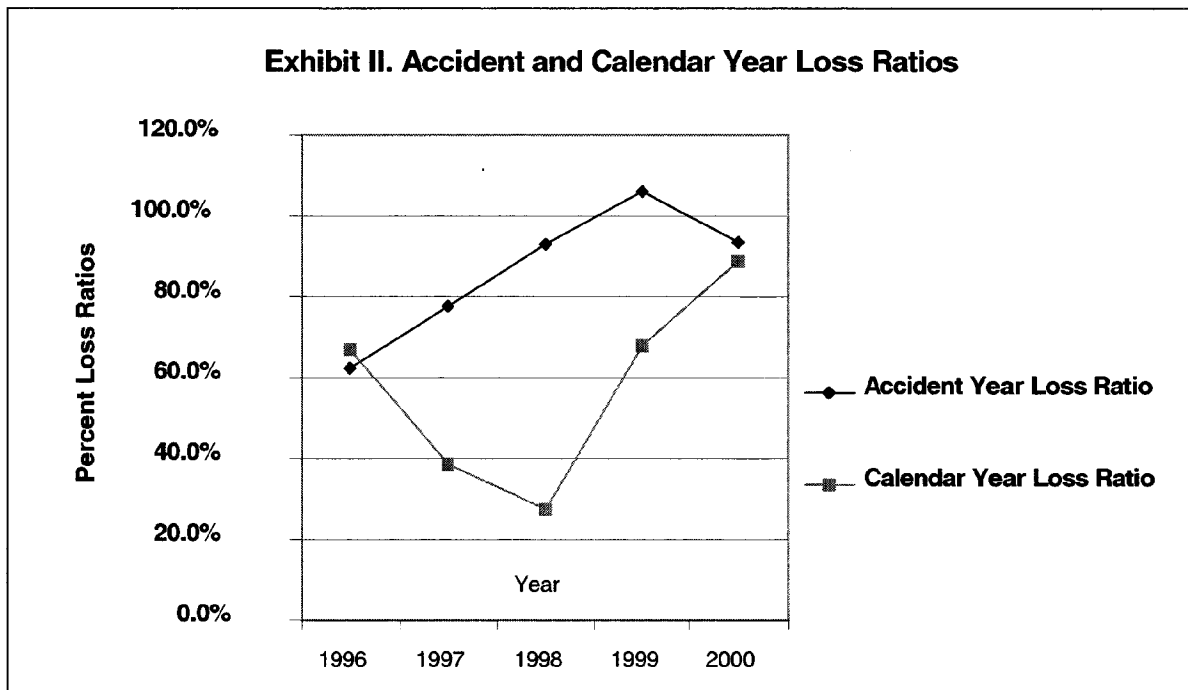
Source: National Council on Compensation Insurance

## 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. 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. However, only a small portion of the losses are attributable to premiums earned that year. The calendar year loss ratios reflect payments and reserve adjustments (changes to estimated ultimate cost) on all claims during a 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. Another significant increase occurred in the calendar year loss ratio in 2000.

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.

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. The 1999 accident year loss ratio is 106, indicating that \$106 was paid or is expected to be paid in losses and loss adjustment expenses for every \$100 earned in premium. In 2000, the loss ratio is 93.6. Premiums paid by Maine employers increased from over \$128 million in 1999



to over \$155 million in 2000 and the accident year loss ratio decreased because incurred losses increased less than premium amounts. The ratios do not include amounts paid by insurers for selling and general expenses and taxes, nor do they reflect investment income.

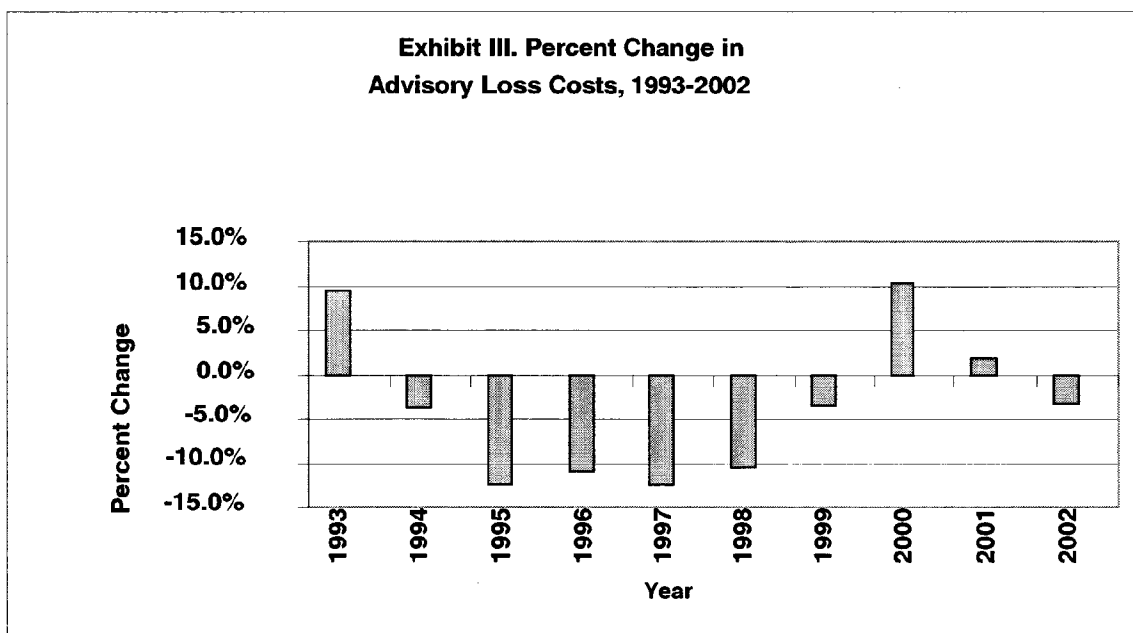
Source: National Council on Compensation Insurance

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

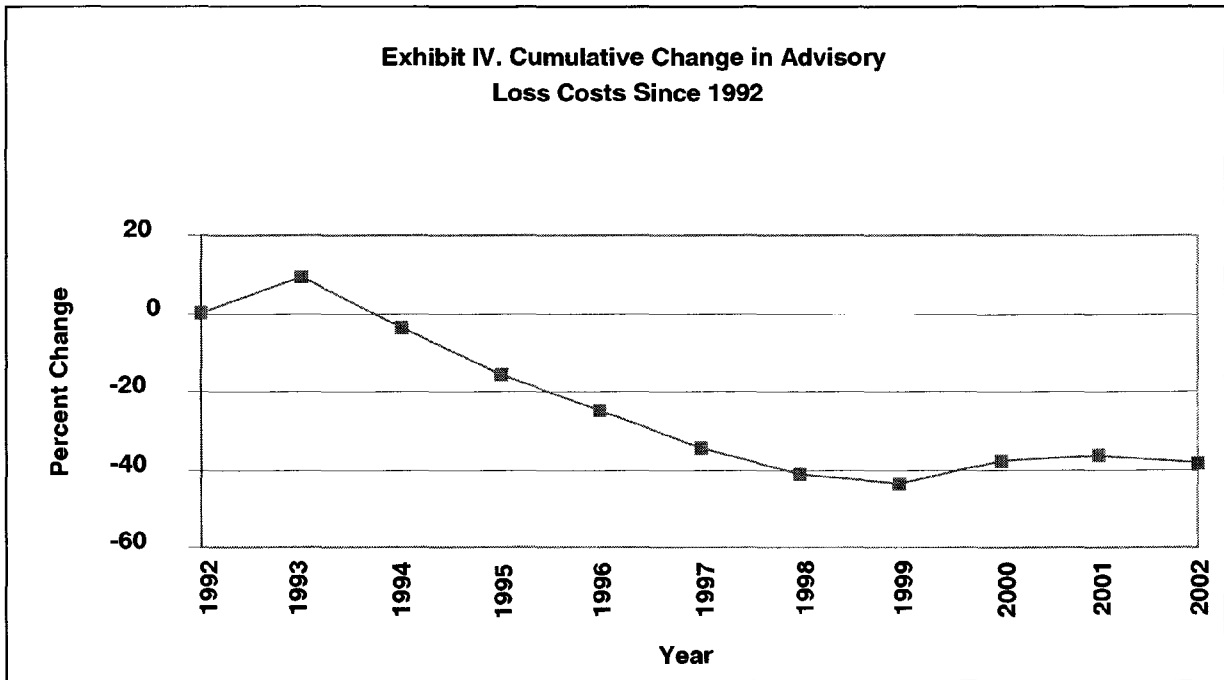
Exhibit III illustrates that from 1994 through 1999, Maine witnessed six consecutive decreases in advisory loss costs. This translated into lower premiums for Maine employers. On March 8, 2000, an increase in the advisory loss costs took effect. This was due to loss experience, to an increase in permanent 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. NCCI has proposed and received approval for a 3.4 percent decrease in advisory loss costs for calendar year 2002. The 3.4 percent decrease reflects favorable indemnity claim experience and a decrease in loss settlement costs. Changes in advisory loss costs tend to lag behind changes in actual experience and precede changes in rates.



Source: National Council on Compensation Insurance

## Cumulative Changes in Advisory Loss Costs

Despite two straight increases in 2000 and 2001, advisory loss costs in 2001 were still more than 36 percent lower than they were in 1992. Some classifications experience increases and some experience decreases in the advisory loss cost portion of the rates. In 2002, advisory loss costs will decrease for the first time in three years. Advisory loss costs will be 38.5 percent lower than they were prior to the 1992 reforms.



Source: National Council on Compensation Insurance



## 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 in Maine. 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. MEMIC serves as the market of last resort and writes voluntary business. It maintains the highest market share of all insurance carriers operating in Maine.

As of October 1, 2001, there are 229 companies with authority to write workers' compensation coverage in Maine. However, this 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 those carriers authorized to write workers' compensation insurance in 2000.

Amount of Written Premium	Number of Companies At That Level
>\$10,000	106
>\$100,000	80
>\$1,000,000	25

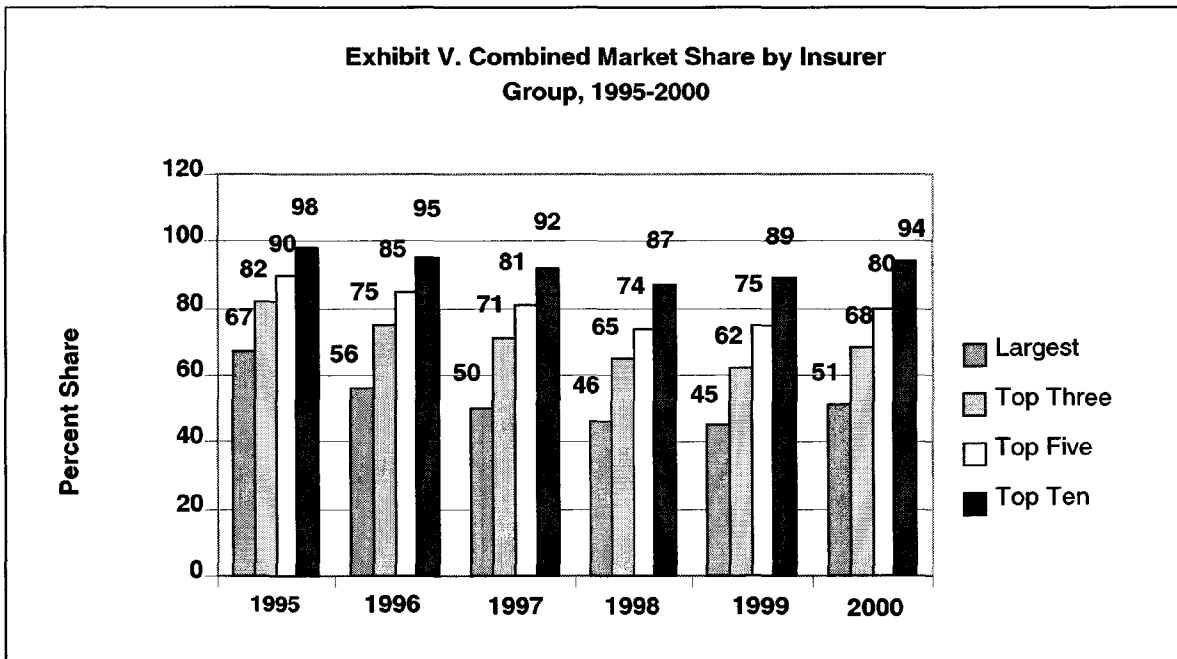
Source: Annual Statements Filed with the Bureau of Insurance

Looking only at market concentration gives an incomplete picture of market competition. A discussion of self-insurance, found in the Alternative Risk Markets section, gives a more balanced perspective.

## Combined Market Share

Exhibit V illustrates the percent market share of the largest commercial insurers in terms of written premium, as well as the percent market share for the top three, top five and top ten insurer groups. Maine Employers' Mutual Insurance Company (MEMIC) has the largest market share. Their share fell from 67 percent of the commercially insured market in 1995 to 45 percent in 1999. That trend reversed in 2000 and MEMIC now holds 51 percent of that market share. MEMIC's increase in market share accounts for the increased percentages for the top three, five and ten insurance groups.

Market share of the top ten insurer groups fell 11 percent from 1995 to 1998; it has risen by seven percentage points since then. Other groups now write only six percent of the workers' compensation premium in Maine. When put in dollar terms, MEMIC wrote over \$88 million in premium in 2000, \$26 million more than they did in the previous year. The top three groups, including MEMIC, wrote over \$118 million in business, \$32 million more than in 1999. The top five groups had over \$138 million in written premium, \$34 million above the prior year. The top ten groups wrote \$162.6 million in premium in 2000, nearly \$39 million more than in 1999. The remaining groups had written premium of just over ten million dollars.



Source: Annual Statements Filed with the Bureau of Insurance

## Part IV. Difference in Rates and Factors Affecting Rates

### Number of Carriers in the Maine Insurance Market, 1993-2001

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 smaller numbers. The largest influx occurred in 1996 and 1997, when 75 insurers entered or re-entered the market. During that same period, 12 insurers exited the market. Since 1997, 57 insurers became authorized to write workers' compensation insurance. Six insurers have had their licenses suspended during the last year. This table illustrates there is no significant barrier to entry.

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	198	11	0	11	5.9
2000	210	12	0	12	6.1
2001	229	25	6	19	9.1

Source: Bureau of Insurance Records.

Figures as of October 1, 2001

Note: Beginning in 2001, the number exiting includes companies under suspension. No companies voluntarily terminated their authority to write workers' compensation insurance.

The information in Table III shows market share by insurance 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. The increase in MEMIC's market share from 1999 to 2000 may be an indicator that some employers were unable to get insurance in the voluntary market. To get a more complete picture, it would be necessary to look at the number of employers insured with each carrier.

<b>Insurance Group</b>	<b>2000 Share</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>
Maine Employers' Mutual	51.2	44.7	46.2	50.4	56.0	67.4	66.1
Liberty Mutual Group	9.5	7.0	3.7	4.9	2.2	*	0.7
WR Berkeley Corp.	7.5	7.7	9.5	10.3	9.4	8.8	7.4
Allmerica Financial Corp.	6.4	9.1	8.8	9.9	9.3	4.9	6.5
CGU Insurance Group <sup>3</sup>	5.3	6.1	6.0	5.3	5.8	5.8	7.5
Royal & Sun Alliance USA <sup>1</sup>	5.0	4.7	*	*	1.4	0.5	0.8
Citigroup	2.6	2.4	2.1	2.2	*	*	*
Guard Insurance Company	2.2	*	*	*	*	*	*
Amerisafe Group	2.2	*	*	*	*	*	*
Zurich Insurance Group	2.2	2.1	3.5	3.7	4.2	3.2	3.4
GRE Insurance Group	*	2.9	3.0	*	*	*	*
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
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	*
Reliance Group Inc. <sup>2</sup>	*	*	*	*	*	1.9	*

Source: Annual Statements Filed with the Bureau of Insurance

**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.

<sup>2</sup>Reliance Group, Inc. became insolvent in 2001.

<sup>3</sup>Now known as One Beacon.

Table IV shows the percent of market share for the top ten carriers for each calendar year from 1994 through 2000. After steady decreases in market share over the past four years, MEMIC's market share increased by 6.5% in 2000, an indication of market hardening. No other workers' compensation carrier accounts for more than seven percent of market share. The top ten companies combined write less than 77 percent of the business.

<b>Table IV. Percent Market Share for Top Ten Insurance Carriers By Amount of Written Premium, 1994-2000</b>							
<b>Insurance Carrier</b>	<b>2000 Share</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>
Maine Employers' Mutual	51.2	44.7	46.2	50.4	56.0	67.4	66.1
Acadia Insurance Company	7.0	7.6	9.1	10.3	9.4	8.6	7.4
Commercial Union/York <sup>1</sup>	4.4	4.6	3.1	1.4	2.1	2.0	4.6
Liberty Mutual Fire Ins. Co	2.8	2.8	1.2	1.8	*	*	*
Citizens Insurance Co.	2.5	3.1	3.1	3.2	3.1	3.4	3.1
Hanover Insurance Co.	2.5	1.8	*	2.5	2.5		2.2
American Interstate Ins. Co	2.2	1.2	*	*	*	*	*
Security Ins. Co. of Hartford	1.6	*	*	*	*	*	*
Massachusetts Bay Ins. Co.	1.4	4.2	4.7	4.1	3.7	1.0	*
Norguard	1.3						
Liberty Insurance Corp.	*	1.4	1.2	2.4	*	*	*
Connecticut Indemnity	*	2.2	1.3	*	*	*	*
Travelers Indemnity Co.	*	1.2	1.2	*	*	*	*
American Employers Ins.	*	*	1.6	3.7	3.7	3.9	2.9
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. <sup>2</sup>	*	*	*	*	*	1.5	*

Source: Annual Statements Filed with the Bureau of Insurance

**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. It is now known as One Beacon.

<sup>2</sup>Reliance became insolvent in 2001.

## 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 annual advisory filing decreases. The cumulative impact of these decreases was a 43 percent reduction in advisory loss costs. The Bureau 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. The Bureau approved a filing for a 3.4 percent decrease effective January 1, 2002. When effective, advisory loss costs will have fallen over 38 percent since 1992.

As of October 1, 2001, 229 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 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. MEMIC does offer loss free credits, of up to 25 percent, which are not included in this chart. For many classification codes, the wide range underscores the competitive nature of workers' compensation insurance in Maine and the importance for employers of 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 is 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 Maine returned to the 30<sup>th</sup> position, and in 2000 Maine rose to 33<sup>rd</sup> of the 45 states for which data was reported. Five states that have state funds were not included in the ranking. The primary reason is that these funds have unique characteristics that could distort the results of the study.

**Table V: MEMIC Standard Rate and the Lowest Available Rate for Selected Classifications  
Effective January 1, 2002**

<b>Class Code</b>	<b>Description</b>	<b>MEMIC Standard Rate</b>	<b>Lowest Rate on File</b>
2111	CANNERY	\$5.57	\$2.87
2286	WOOL SPINNING & WEAVING	\$8.95	\$4.60
2501	CLOTHING MANUFACTURING	\$4.49	\$2.31
2660	BOOT OR SHOE MANUFACTURING	\$4.54	\$2.33
2702	LOGGING OR LUMBERING	\$33.39	\$17.17
2709	MECHANIZED LOGGING	\$9.38	\$4.82
2710	SAWMILL	\$13.78	\$7.08
2721	CERTIFIED LOGGING	\$18.58	\$9.55
2841	WOODEN WARE MANUFACTURING	\$6.59	\$3.39
3629	PRECISION MACHINED PARTS MFG	\$3.70	\$1.90
3632	MACHINE SHOP	\$5.54	\$2.85
3681	TV, RADIO, TELE/ TELECOM DEVICE MFG	\$2.73	\$1.40
3724	MACHINERY/ EQUIP ERECTION OR REP	\$16.56	\$8.52
4207	PULP MFG	\$1.81	\$0.93
4239	PAPER MFG	\$3.42	\$1.76
4279	PAPER GOODS MFG	\$3.95	\$2.03
4299	PRINTING	\$3.88	\$1.99
4361	PHOTOGRAPHERS	\$2.58	\$1.32
4484	PLASTICS MFG: MOLDED PRODUCTS	\$4.76	\$2.45
4511	ANALYTICAL CHEMIST	\$1.26	\$0.65
4693	PHARMACEUTCL/SURGICAL GOODS MFG	\$3.42	\$1.76
5183	PLUMBING	\$7.28	\$3.74
5190	ELECTRICAL WIRING WITHIN BUILDINGS	\$4.80	\$2.47
5191	OFFICE MACHINE OR APPLIANCE INSTAL	\$1.53	\$0.78
5506	STREET CONSTRUCTION PAVING	\$9.84	\$5.06
5538	SHEETMETAL WORK	\$9.45	\$4.86
5606	CONTRACTOR EXECUTIVE SUPERVISOR	\$3.09	\$1.59
5645	CARPENTRY DETACHED 1 OR 2 FAMILY	\$15.89	\$8.17
6217	EXCAVATION	\$12.19	\$6.27
7228	TRUCKING LOCAL	\$15.62	\$8.04
7229	TRUCKING LONGDISTANCE	\$15.27	\$7.86
7380	DRIVERS	\$11.07	\$5.70
7539	ELECTRIC LIGHT OR POWER CO.	\$4.06	\$2.09
7600	TELEPHONE OR TELEGRAPH CO.	\$5.24	\$2.69
7610	RADIO OR TELEVISION BROADCASTING	\$0.38	\$0.19
7720	POLICE OFFICER	\$4.03	\$2.07

**Table V: MEMIC Standard Rate and the Lowest Available Rate for Selected Classifications Effective January 1, 2002 (Continued)**

<b>Class Code</b>	<b>Description</b>	<b>MEMIC Standard Rate</b>	<b>Lowest Rate on File</b>
8006	STORE: GROCERY/CONVENIENCE RETAIL	\$3.49	\$1.79
8008	STORE: CLOTHING/DRY GOODS RETAIL	\$1.46	\$0.75
8010	STORE: HARDWARE	\$2.30	\$1.18
8017	STORE: RETAILNOC	\$2.31	\$1.19
8018	STORE: WHOOLESALENOC	\$5.36	\$2.76
8024	SEAFOOD DEALER WHOLESAL	\$10.54	\$5.42
8033	STORE: MEAT, GROCERY AND PROVISION	\$2.66	\$1.37
8039	STORE: DEPARTMENT-RETAIL	\$2.17	\$1.12
8044	STORE: FURNITURE	\$4.19	\$2.15
8058	BUILDING MATERIAL DEALER-NEWMAT.	\$2.58	\$1.32
8107	MACHINERY DEALER	\$5.59	\$2.87
8227	CONSTRUCTION PERMANENT YARD	\$11.93	\$6.13
8232	LUMBER YARD NEW MAT.WHOLESAL	\$4.58	\$2.35
8350	GASOLINE DEALERS	\$7.25	\$3.73
8380	AUTO SERVICE OR REPAIR CENTER	\$5.15	\$2.65
8601	ARCHITECT OR ENGINEER CONSULTING	\$1.44	\$0.74
8742	SALESPERSONS, COLLECTORS	\$0.95	\$0.49
8803	AUDITORS, ACCOUNTANT TRAVELING	\$0.24	\$0.12
8810	CLERICAL OFFICE EMPLOYEES	\$0.63	\$0.32
8820	ATTORNEY	\$0.73	\$0.37
8829	CONVALESCENT OR NURSING HOME	\$5.08	\$2.61
8832	PHYSICIAN	\$0.91	\$0.47
8833	HOSPITAL PROFESSIONAL EMPLOYEES	\$1.75	\$0.90
8835	NURSING-H.H., PUBLIC&TRAVELING	\$6.79	\$3.49
8861	CHARITABLE OR WELFARE ORGAN. PROF.	\$1.62	\$0.84
8868	COLLEGE: PROFESSIONAL EMPLOYEES	\$0.77	\$0.40
8901	TELEPHONE OR TELEG CO. OFFICE	\$0.38	\$0.19
9014	BUILDING OPER. BY CONTRACTORS	\$6.23	\$3.20
9015	BUILDING OPER. BY OWNER	\$5.47	\$2.82
9040	HOSPITAL ALL OTHER EMPLOYEES	\$4.68	\$2.40
9052	HOTEL: ALL OTHER EMPLOYEES	\$3.32	\$1.71
9058	HOTEL: RESTAURANT EMPLOYEES	\$2.60	\$1.34
9060	CLUB-COUNTRY, GOLF, FISHING OR YACHT	\$2.62	\$1.35
9063	YMCA, YWCA, YMHA,OR YWHA	\$1.51	\$0.78
9079	RESTAURANT	\$3.07	\$1.75
9101	COLLEGE: ALL OTHER EMPLOYEES	\$4.61	\$2.37
6824F	BOATBUILDING OR REPAIR	\$6.26	\$3.22



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

- **Tiered rating** means that an individual carrier has more than one loss cost multiplier to use, based on where a potential insured falls in its underwriting criteria. It may apply to groups of insurers that have different loss cost multipliers for different companies in the group. Our records indicate that 43 percent of the groups offer tiered rating. When looking at companies, 122 of the 165 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. Nearly 72 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 23 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-Insurance plays an important role in Maine's workers' compensation market. 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. 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.

It is noteworthy that the percent of Maine's total workers' compensation insurance market represented by self-insureds has dropped nine percent during the past four years. At just over 42 percent of the total market, self-insurance is at its lowest level since the 1992 reforms. A greater market share in self-insurance could indicate a perception by insureds that premiums in the insurance market are too high.

Since 1993, the estimated annual standard premium for self-insureds has declined from \$204 million to \$126 million. However, the estimated standard premium for self-insureds has risen to its highest level since 1997. The estimated standard premium is determined by taking the advisory loss cost, multiplying it by a factor of 1.2, as specified in statute, and multiplying this by the payroll amount, divided by 100. As advisory loss costs, and therefore rates, decline, so does the estimated standard premium.

As of October 1, 2001 there were 19 groups representing approximately 1,281 employers as well as 92 individual self-insured employers in Maine. Although the number of self-insured groups has remained the same, there are slightly more members within the groups. The number of individually self-insured employers has decreased in each of the past four years.

<b>Table VI: Distribution of Self-Insurers, 1993-2000</b>					
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>3</sup>
2000	19	1,281	92 <sup>2</sup>	\$126,096,312	42.1
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

Source: Annual Statements Filed with the Bureau of Insurance and Bureau of Insurance Records

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

<sup>2</sup> The number of individually self-insured employers for 2000 is as of 10/1/2001. All other information is as of year end.

<sup>3</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. Multiply that figure by 100.

## Conclusion

Currently, accident year loss ratios both in Maine and nationally are at relatively high levels. Some insurers are still performing well; however, others are experiencing difficult times. In years past, when investment returns were high, insurers competed more aggressively for business and gave discounted rates, offered schedule credits and issued dividends. These rating plans will be offered less in today's environment. Some insurers are losing money in the current climate, even considering investment returns. This will lead to higher rates for some Maine employers.

The first increase in advisory loss costs since the 1992 reform occurred in March of 2000. Another small increase became effective in January, 2001. Loss costs will decrease by 3.4 percent effective January 1, 2002.

A study of the manufacturing industry, conducted by Actuarial Solutions, shows that Maine's benefit levels are among the highest in the nation. Statutory increases in benefits for workers with permanent partial impairment will continue to affect costs in the upcoming years.

Options still exist in Maine's workers' compensation insurance market and no one insurer or insurance group totally dominates the market. Twenty-five companies wrote more than one million dollars in annual premium in 2000. Employers that maintain a safe work environment and control their losses should continue to see insurers competing for their business. New businesses and businesses with unfavorable loss experience will have fewer options available.

MEMIC's market share, in terms of written premium, is on the upswing. This may be an indicator that more employers are turning to MEMIC out of necessity. After dropping from 67.4 percent of the insured market in 1995 to 44.7 percent in 1999, MEMIC's market share increased to over 51 percent in 2000.

Insurers are offering different rates. The rate that an individual employer qualifies for depends on the insurer's underwriting requirements. Based on the number of carriers in the marketplace and the fact that rate levels are still well below 1994 levels, Maine's workers' compensation market is much healthier than it was in the early to mid-1990s. Even so, some employers will not meet insurer underwriting requirements and will feel the effects of higher rates.

Additional factors that could impact the Maine workers' compensation market in 2002 include federal legislation submitted in response to the September 11 terrorist attacks, whether the economy improves or remains in a recession, and national insurance and reinsurance conditions. Costs of reinsurance, which are expected to rise, will raise the costs of many lines of insurance including workers' compensation insurance.

The Bureau of Insurance website contains a useful reference entitled, [An Employer's Guide to Workers' Compensation Insurance in Maine](http://www.state.me.us/pfr/ins/workcomp.htm). The link is:  
<http://www.state.me.us/pfr/ins/workcomp.htm>