

# MAINE STATE LEGISLATURE

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

Submitted to the  
119<sup>th</sup> Legislature  
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## **Mission Statement**

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



## Executive Summary

The Workers' Compensation Board, in consultation with the Superintendent of Insurance and the Director of 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 workers' compensation market has benefited from six years of rate decreases and an active, competitive market among insurers and self-insurers with group self-insurers returning excess funds to their members. There are, however, indications that the period of rate decreases may be drawing to a close and Maine is likely to see rate increases in the near future. The loss experience of insurers writing workers' compensation in Maine has deteriorated in recent years and the first proposed rate increase for loss cost since the 1992 reforms is currently under review by the Bureau of Insurance. However, the market remains competitive, new insurers continue to enter the market, and market concentration is decreasing. All indications are that Maine's market will remain competitive and employers will benefit from that competition.

As of November, 1999, one hundred and forty-nine (149) insurance companies have filed and received approval from the Bureau of Insurance to sell workers' compensation in Maine at specified rates. The number of carriers and the wide range of classification codes underscore the competitive nature of workers' compensation insurance in Maine and the importance of employers exploring options in securing coverage for workers' compensation claims.

A testimony to the success of recent reforms is highlighted by Actuarial & Technical Solutions, Inc., an independent firm which compiles and studies workers' compensation on a nationwide basis. In 1996, the study ranked Maine as the 42<sup>nd</sup> most expensive state for workers' compensation for the manufacturing industry among state studies. We were ranked 30<sup>th</sup> in 1997. In 1998, we moved down to the 23<sup>rd</sup> position. In 1999, we returned to the 30<sup>th</sup> position.

Self-insurance represents a significant part of Maine's workers' compensation market and is a viable alternative to commercial insurance for many employers in the State. There are 20 groups representing approximately 1,350 employers and 101 individual self-insured employers in Maine, many of which have been self-insured since 1988. Since 1985, the self-insured's estimated standard premium has grown from more than \$52 million to approximately \$122 million. In terms of annual standard premium, self-insureds now represent approximately 49% of the workers' compensation market. The growth in self-insurance has slowed in the last few years and some former self-insured employers have returned to the commercial market.

A trend which deserves close scrutiny involves the number of First Reports filed for disabling injuries. From 1993 to 1996, the trend has been downward. In 1998, there were 12,610 disabling cases reported to the Workers' Compensation Board, a 1.5% increase from the 12,413 disabling cases in 1997. This is the second consecutive year disabling case increased in number.



Several factors may have contributed to the increase over the last two years: increased education and training; more accurate reporting; and higher employment levels.

Two independent systems compare the number of cases resulting in days away from work, the Workers' Compensation Board system and the OSHA Recordkeeping system. Both systems show that the trend of work-related lost time cases in Maine is on the rise.

The rate of injuries and illnesses in Maine is still higher than the U.S. as a whole, even after accounting for differences in industry make-up between them and cases with restricted workdays are at a high level. However, due to a shift in the way cases are managed (e.g. return to work programs), the number of cases resulting in days away from work has dropped sharply.

Speed of payment by insurers, especially the first payment of wage loss benefits, has long been a subject of interest. The statewide average has declined from 25 days in 1996 to 18 days in 1999. The improvement is probably attributable to the active monitoring, audit, and enforcement system (MAE Program) instituted by the Legislature and implemented by the Workers' Compensation Board.

The speed, efficiency, and fairness of the dispute resolution process has also been a matter of interest. The board has three progressive stages of dispute resolution: Troubleshooting, Mediation, and Formal Hearing. Each of the first two stages close about half of the disputes assigned. In tandem, the Board's processes take care of about 75% of the disputes, without litigation and within a relatively short period of time.

Filings have been relatively constant in recent years. They have been outpaced by the number of dispositions. Over time, this has resulted in a lower number of cases pending at Troubleshooting. In the fourth quarter of 1996, there were 2,039 cases pending as compared to 747 cases pending in the fourth quarter of 1999. Due to Standard Operating Procedures (SOP's) implemented by the Board, the time frames at Troubleshooting have been significantly reduced. In the fourth quarter of 1996, it took a case an average of 60 days to proceed through the Troubleshooting process as compared to 27 days in the fourth quarter of 1999.

A similar pattern has evolved at the Mediation phase. Filings have been fairly level at Mediation but dispositions have outpaced filings. The number of cases pending has gradually declined. In the fourth quarter of 1996, there were 1,258 cases pending as compared to 575 cases pending in the fourth quarter of 1999. Due to SOP's implemented by the Board, the time frames at Mediation have been reduced. In the fourth quarter of 1996, it took a case an average of 73 days to proceed through the Mediation process as compared to 52 days in the fourth quarter of 1999.

The remaining cases, approximately 25% of the initial disputes, may be subject to litigation at formal hearing. They are usually a subset of more complex disputes. Again, filings have been fairly constant in recent years. Dispositions have exceeded filings rather noticeably. That has cumulatively resulted in a significant reduction of the number of cases pending. In the fourth quarter of 1996, there were 2,485 cases pending as compared to 1,094 in the fourth quarter of 1999. Due to SOP's implemented by the Board, the time frames have been dramatically

reduced. In the fourth quarter of 1996, it took a case an average of 14.8 months to proceed through the formal hearing process as compared to 8.7 months in the third quarter of 1999.

In 1997, the Legislature, with the support of the Governor, enacted P.L. 1997, Chapter 486 to supplement the Workers' Compensation Act of 1992. The legislation, which became effective September 19, 1997, provided for the expansion of a Worker Advocate Program and the creation of a Monitoring, Audit, and Enforcement (MAE) Program.

The Worker Advocate Program was created to provide advocates for unrepresented employees who are injured after January 1, 1993. The Worker Advocates were hired and trained and on November 1, 1997 were assigned to their offices. The Worker Advocates are presently representing employees at both the Mediation and Formal Hearing levels.

The need for the program is clearly demonstrated by the response of unrepresented injured employees. Since its inception, Worker Advocates have represented injured workers in 4,838 mediations and 982 formal hearings. The program currently has 1,836 open files.

The percentage of unrepresented employees has dropped dramatically since the start of the Worker Advocate Program. Advocates now participated in 48% of all mediations and 29% of all formal hearings.

P.L. 1997, Chapter 486 also provided for the creation of a Monitoring, Audit, and Enforcement (MAE) Program. The Workers' Compensation Board approved the MAE Program on June 2, 1998. Since its inception, the Board has performed a Pilot Audit Program to assimilate data to determine the baselines and set benchmarks. The Board has since authorized Quarterly Compliance Reports which measure the timeliness of payments and filings. Four Quarterly Compliance Reports suggest positive trends in payment of initial indemnity benefits, timely filings of Memorandums of Payment, and timely filing of First Reports of Injury since 1997. These positive trends will assist the Board in reducing the number of cases litigated and increasing the timely and accurate payment of lost time benefits.

The Board has approved an audit program with a three-year audit cycle. Audits are used to determine the accuracy of data reported to the Board, accuracy of Board data, and overall compliance by employers and insurers with the statutory requirements of the Act. Over 1,000 claims belonging to 28 entities have been audited, resulting in the levying of fines and penalties for non-compliance.

The Board's major budget concern during the upcoming biennium is that projected expenditures are expected to exceed projected revenue. The Bureau of the Budget has allowed the Board to utilize a portion of the accumulated reserves to help bridge the gap during FY2000. The Board is expected to bring expenditures in line with projected revenue within FY2001. The Board is also considering the use of the reserve account for funding of capital expenditures. This should also assist in easing the financial crunch. The Board has been able to reduce its assessment for FY2000 by \$1,500,000 by not filling vacant positions, generating interest from its cash account, and frugal administration of its budget.

1999 marked the first time that the Board, pursuant to 39-A M.R.S.A. Section 152(11), proposed to the Legislature changes to the Workers' Compensation Act. Eight different proposals were combined into two bills and all were ultimately passed into law in 1999.

The Abuse Investigation Unit, which is charged with assessing penalties under several sections of the Act, saw a significant increase in activity during 1999. Filings have increased dramatically as has the issuance of penalties. This increase is the result of two new systems implemented by the Board: the Board's coordination with the Department of Labor and the MAE Program. This positive trend is expected to continue in 2000.

Over the past year, the Board has focused its technological energies in three general areas: implementation of the MAE Program, Board system rewrite, and Y2K readiness.

The Workers' Compensation Act at Section 213 provides for both a threshold adjustment and an extension of weekly benefits in order to adjust to changes in the workers' compensation system. In 1998, the Board reduced the threshold from 15% to 11.8%, based on an actuarial report to provide that 25% of the cases in the system exceed the threshold and continue to receive benefits. In 1999, the Board, based on an actuarial report, extended the 260-week limitation by 52 weeks. The Board will have to undertake a similar analysis both in regard to the threshold and the extension in 2000.

Since the reforms, the status of the workers' compensation system has improved significantly. However, there are recent trends that must be closely observed by the Board, the Legislature, and the Governor in order to maintain a healthy workers' compensation system.

**SECTION I**

**WORKERS' COMPENSATION BOARD**



## Section I: Workers' Compensation Board

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## **1. Introduction**

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

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

Enacted in 1997, Chapter 486 expanded the scope of the report by changing the Mission Statement and requiring more data about the Board's administrative and regulatory duties. It specifically calls for data to measure compliance of individual insurers, self-insurers, and third-party administrators. On June 2, 1998, the Workers' Compensation Board approved a Monitoring, Audit and Enforcement (MAE) Program. It was agreed that the program be tested and phased in over a period of time. The first phase of the program was intended to test the MAE Program and is referred to as the Pilot Audit Program. The goals of the Pilot Project were to (1) test the MAE Program, (2) measure and determine the integrity of current data, (3) report on the performance of the entire system, and (4) educate the users about the program. The Pilot Audit Program Report was presented to the Workers' Compensation Board and approved on January 26, 1999. The Workers' Compensation Board subsequently authorized Quarterly Compliance Reports and a Three-year Audit Plan. Three Compliance Reports have been completed for the first three quarters of 1999 and a fourth is in the process of being completed. Twenty-five entities have been audited or are in the process of being audited.

P.L. 1997, Chapter 486 also provided for an expanded Worker Advocate Program. The Program provides for unrepresented employees at both the mediation and formal hearing levels and has enjoyed a positive and overwhelming response. Over 50% of employees are represented by worker advocates at the mediation level and over 25% are represented by worker advocates at the formal hearing level.

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



## **2. Historical – General**

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

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

The combination of higher benefits and more complex and costly injuries increased both the system's expenditures and the potential for disputes. Although a bi-partisan consensus supported these changes, few, at the time, appreciated how much costs would accelerate. By the early 1980's, however, it had become apparent. For approximately the next decade, workers' compensation was a controversial political issue. Almost every legislative session included a contentious debate about new laws concerning workers' compensation. This process culminated in a major overhauling of Maine's statute in 1992. The reforms, among other things, lowered benefits, provided for a less formal dispute resolution system, and reduced the use of attorneys.

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

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

### 3. Board Organization and Program

#### A. Organization.

The Workers' Compensation Board is an independent state agency, directed by an eight-member board with four employee and four employer representatives. The Governor appoints from nominees submitted by the AFL-CIO and the Maine Chamber of Commerce and Industry. These appointments are subject to review by the Joint Standing Committee on State and Local Government with confirmation by the Senate. The Workers' Compensation Board presently consists of the following members:

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

The agency is administered by its Executive Director, Paul R. Dionne. Regional Offices are located in Augusta, Bangor, Caribou, Lewiston, and Portland. The Central Office is in Augusta. Troubleshooting, mediation, and formal hearings are conducted at these and other offices.

#### B. Program.

To ensure the efficient implementation of the Workers' Compensation Act, the Board is actively engaged in the promulgation of rules and regulations, the resolution of disputes through troubleshooting, mediation, and formal hearing; the monitoring of payments to injured workers; the monitoring and enforcement of insurance coverage; the supervision of medical protocols, utilization review, medical fee schedules, and enforcement guidelines; the implementation of an independent medical examiner system; the administration of a Vocational Rehabilitation Fund and vocational rehabilitation services; the predetermination of independent contractor applications; the investigation and prosecution of complaints of misrepresentation, fraud, illegal conduct, and violations of the Act through its Abuse Investigation Unit; the advocacy of unrepresented employees through the Worker Advocate Program; dispute prevention; and compliance, through the Monitoring, Audit and Enforcement Program.

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

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

P.L. 1997, Chapter 486 was enacted by the Legislature in 1997 to supplement the Maine Workers Compensation Act of 1992. Chapter 486 provides for the creation of a Monitoring, Audit and enforcement (MAE) Program. The Workers' Compensation Board of Directors approved the MAE Program on June 2, 1998.

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

The basic goals of the Program are as follows:

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

The MAE Program consists of three integral functions: monitoring, audit and enforcement. Monitoring deals with compliance requirements; Auditing ensures correct and accurate data; Enforcement processes violations in conjunction with the Abuse Investigation Unit.

The Program is also responsible for:

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

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

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

Initially, the goal was to assimilate accurate information and establish baselines. Once baselines are established, reasonable benchmarks (performance standards) are developed to gauge the progress of insurers, self-insurers and TPAs.

When benchmarks are not met, the Board's enforcement process can be utilized to compel compliance. This provides for accountability and greater compliance.

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

- (1) definitions;
- (2) timeliness of initial indemnity payments;
- (3) timeliness of subsequent indemnity payments;
- (4) calculation of total and partial incapacity benefits;
- (5) seven day waiting period and 14 day period;
- (6) first day of compensability after the waiting period is met;
- (7) salary continuation;
- (8) completeness of payments;
- (9) incapacity dates;
- (10) filing of First Reports;
- (11) closure of First Reports;
- (12) filing of Wage Statements;
- (13) filing of Memorandum of Payment;
- (14) filing of Discontinuance or Modification of Compensation;
- (15) filing of Notice of Controversy;
- (16) filing of Statements of Compensation;
- (17) measuring the timing of the process and use and involvement of attorneys; and
- (18) performance benchmarks for initial indemnity payments and filing of Memorandum of Payment.

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

Chapter 486 also directs the Executive Director to submit quarterly compliance reports to the Board, the Bureau of Insurance and the Director of the Bureau of Labor Standards.

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

- (1) Timely filing of First Reports of Injury. (No insurer or third-party administrator will be identified.)
- (2) Timely payment of initial indemnity benefits. (Insurers, third-party administrators and self-administered employers are identified.)
- (3) Timely filing of Memorandum of Payment. (Insurer, third-party administrator and self-administered employers are identified.)
- (4) Timely filing of Notice of Controversy. (Not reported to date.)

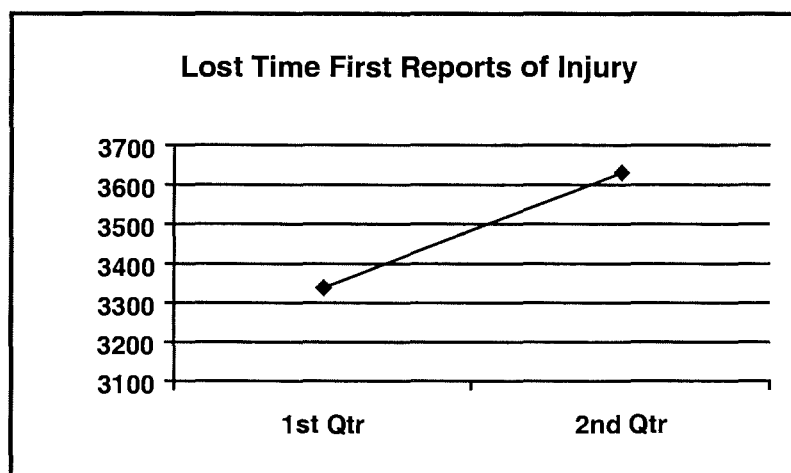
Additional compliance measures, as referenced in P.L. 1997, Chapter 486 and the Monitoring, Audit and Enforcement Program will be developed and generated (1) as the new protocols are agreed upon and approved, (2) as the computer system matures and (3) as Board resources are reallocated.

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

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

	<b>Pilot Audit Project for 1997 Dates of Injury</b>	<b>Quarterly Compliance Report Average for 01/01/99 – 09/30/99</b>	<b>Percentage Improved Compliance</b>
Time Line Protocol	0-14 days	0-14 days	
Payment of Initial Indemnity Benefits	59.39%	79.91%	20.52%
Time Line Protocol	0-17 days	0-17 days	
Filing of Memoranda of Payment	56.78%	75.56%	18.78%
Time Line Protocol	0-7 days	0-7 days	
Filing of First Reports of Injury	36.74%	71.96%	35.22%

First Reports of Injury's are also being monitored and reported in the Quarterly Compliance Reports. 6969 lost time First Reports of Injury were filed with the Board. The chart below shows the number of lost time First Reports of Injury filed by quarter.



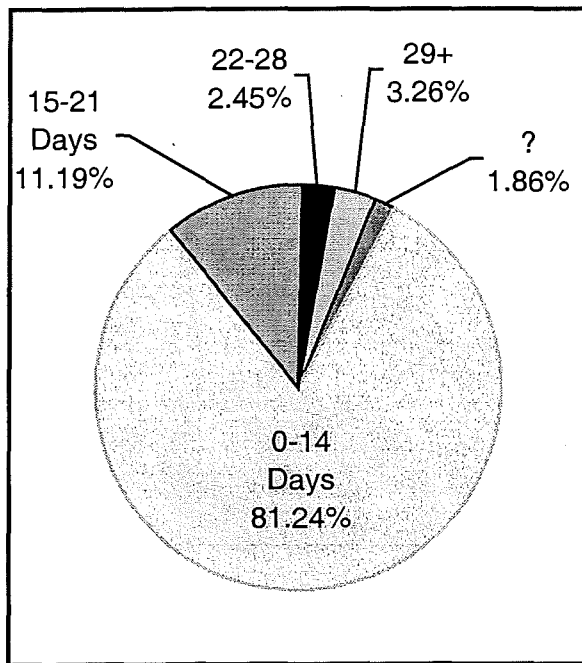
#### **Payment of Initial Indemnity Benefit**

The first payment of compensation for incapacity under Section 212 or 213 is due and payable within 14 days after the employer has notice or knowledge of the injury or death, on which date

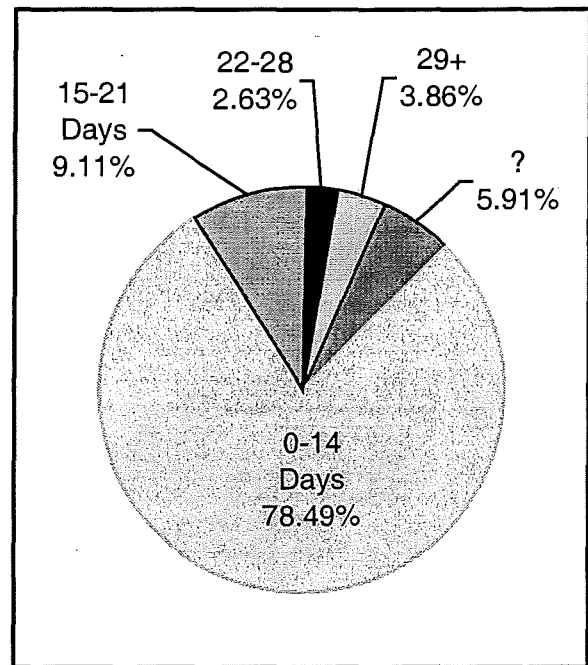
all compensation then accrued must be paid. Compliance with the initial indemnity payment obligation exists when payment is made within 14 days. 14 days is defined as the later of (a) 14 days after the employer's notice or knowledge of incapacity Section 205(2), or (b) the 7-day waiting period, plus the first day of compensability, plus 6 days after the first day of compensability.

Benchmark – 80% of initial indemnity payments within 14 days.

First Quarter



Second Quarter



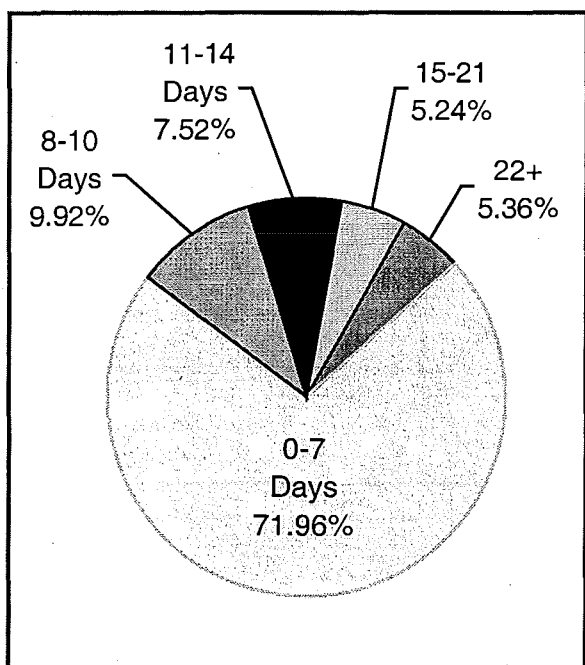
Initial Payment Made Within:			
		Number	Percent
0-14	Days	697	81.24 %
15-21	Days	96	11.19 %
22-28	Days	21	2.45 %
29+	Days	28	3.26 %
?	Days	16	1.86 %
Total		858	100.00 %

Initial Payment Made Within:			
		Number	Percent
0-14	Days	956	78.49 %
15-21	Days	111	9.11 %
22-28	Days	32	2.63 %
29+	Days	47	3.86 %
?	Days	72	5.91 %
Total		1218	100.00 %

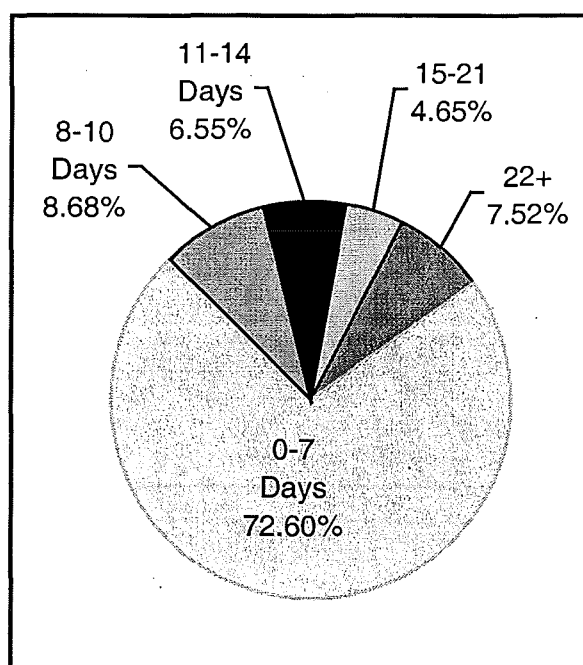
## First Report of Occupational Injury or Disease

The filing of First Reports is the employer's responsibility and needs to be mailed or delivered on or before the 7<sup>th</sup> day as provided by law, but must be received by the 10<sup>th</sup> day. Three mail days are provided for receipt by the Board. The employer may rebut a finding for late filing. This standard may also be rebutted when Electronic Data Interface (EDI) is involved or if the carrier has agreed to assume the responsibility for filing the First Report on the employer's behalf. In those cases the insurer assumes responsibility for late filings when the employer notified the insurer within a timely fashion but the insurer failed to notify the Board as defined above. It was also agreed that the employers would be notified of the fine.

First Quarter



Second Quarter



First Report Received Within:			
		Number	Percent
0-7	Days	2402	71.96 %
8-10	Days	331	9.92 %
11-14	Days	251	7.52 %
15-21	Days	175	5.24 %
22+	Days	179	5.36 %
Total		3338	100.00 %

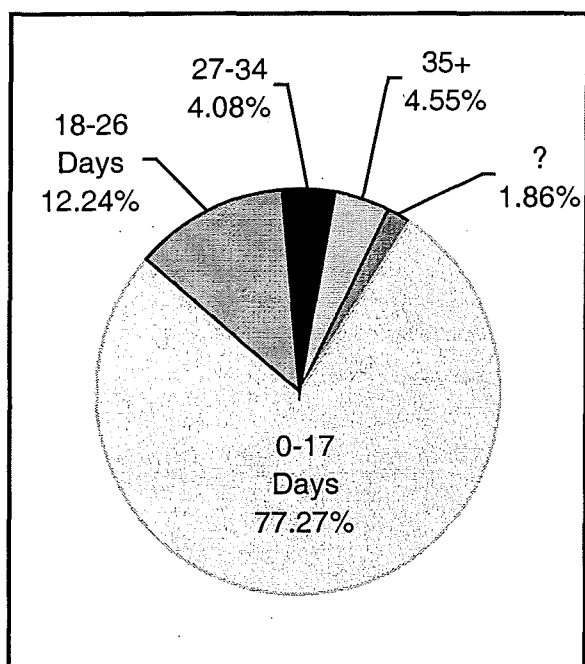
First Report Received Within:			
		Number	Percent
0-7	Days	2636	72.60 %
8-10	Days	315	8.68 %
11-14	Days	238	6.55 %
15-21	Days	169	4.65 %
22+	Days	273	7.52 %
Total		3631	100.00 %

## Memorandum of Payment

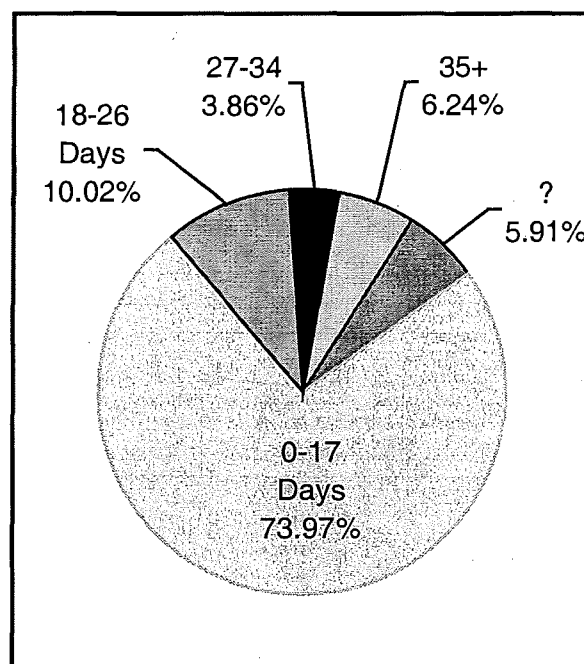
A MOP should be mailed or delivered on or before the 14<sup>th</sup> day, but must be received by the 17<sup>th</sup> day. Three mail days are provided for receipt by the Board. MOPs received after the 17<sup>th</sup> day may be considered in noncompliance under Section 360(1). Evidence of timely mailing is a rebuttable presumption to a determination of noncompliance under Section 360(1).

Benchmark – 75% filed within 17 days (14 days plus 3 mail days).

First Quarter



Second Quarter



Memorandum of Payment Received Within:			
		Number	Percent
0-17	Days	663	77.27 %
18-26	Days	105	12.24 %
27-34	Days	35	4.08 %
35+	Days	39	4.55 %
?	Days	16	1.86 %
Total		858	100.00 %

Memorandum of Payment Received Within:			
		Number	Percent
0-17	Days	901	73.97 %
18-26	Days	122	10.02 %
27-34	Days	47	3.86 %
35+	Days	76	6.24 %
?	Days	72	5.91 %
Total		1218	100.00 %



#### **E. Audits.**

The Audit Division, with the approval of the Executive Director, is authorized to audit uninsured employers, insurers, self-insurers and third-party administrators. Audits are used to determine (1) the accuracy of data reported to the Board, (2) the accuracy of the Board's data recording, processing and reporting system, and (3) overall compliance with statutory requirements.

Over 1,000 claim files belonging to 28 entities have been audited. Audits of 2 of the 28 entities have been completed and reports have been submitted to the Workers' Compensation Board of Directors. The other 26 entities are in various stages of the audit process and reports will be submitted to the Board of Directors during the first quarter of 2000.

## **5. Worker Advocate Program**

### **A. Introduction.**

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

### **B. Duties.**

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

If the claim is not resolved in mediation, the next step 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 x-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. 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 where advocates may decline and/or withdraw from cases without merit. An advocate may choose not to represent a person under the following statutory criteria of Chapter 410:

- (1) Timely notice of the injury was not given by the employee to the employer, pursuant to this Act;
- (2) The statute of limitations has expired;
- (3) The employee's case is based on an argument or issue adversely determined by the Supreme Judicial Court;
- (4) The employee's case is based on a claim of discrimination governed by section 353;
- (5) There is no record of medical assessment stating that the employee's injury was either caused by, aggravated by or precipitated by the employee's work or, when the issue is aggravation, there is no record of medical assessment stating that the employee's work aggravated a pre-existing condition in a significant manner; or
- (6) The employee has admitted to a fraudulent act, has been convicted of a fraudulent act by a court of competent jurisdiction or has been found to have committed a fraudulent act by the abuse investigation unit of the board.

The Legislature provided for specific safeguards in the application of this section. The advocate, after a thorough investigation must request, in writing, to the staff attorney permission to drop the case. The staff 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. Hopefully, Chapter 410 will keep those claims out of the system that should not be in the system.

### **C. Workload.**

Injured workers have flocked to the Worker Advocate Program in overwhelming numbers. The need for competent representation, where private attorneys are not an option, has been clearly proven by the number of cases that the advocates have handled since the start of the program.. A substantial majority of the active caseload is in the Portland, Augusta and Lewiston offices. As you can see, the Portland, Augusta and Lewiston regional offices account for **80%** of all open files with the remaining **20%** distributed among the other two regional offices. Fully **80%** of all files are found from the Kennebec Valley to York County.

Through the month of November 1999, the Advocate program has **1,836** open files. The advocates, from December 1998 through August 1999, have represented injured workers in **2,587** Mediations and **549** Formal Hearings. The following month to month chart shows the number of open files, mediations and formal hearings attended from December 1998 through November 1999.

<b>MONTH</b>	<b>OPEN FILES</b>	<b>MEDIATIONS</b>	<b>HEARINGS</b>
<b>December 1998</b>	<b>1,443</b>	<b>201</b>	<b>41</b>
<b>January 1999</b>	<b>1,536</b>	<b>197</b>	<b>54</b>
<b>February 1999</b>	<b>1,573</b>	<b>194</b>	<b>41</b>
<b>March 1999</b>	<b>1,605</b>	<b>281</b>	<b>66</b>
<b>April 1999</b>	<b>1,647</b>	<b>180</b>	<b>36</b>
<b>May 1999</b>	<b>1,758</b>	<b>199</b>	<b>51</b>
<b>June 1999</b>	<b>1,650</b>	<b>250</b>	<b>38</b>
<b>July 1999</b>	<b>1,670</b>	<b>210</b>	<b>38</b>
<b>August 1999</b>	<b>1,692</b>	<b>178</b>	<b>38</b>
<b>September 1999</b>	<b>1,778</b>	<b>213</b>	<b>45</b>
<b>October 1999</b>	<b>1,779</b>	<b>235</b>	<b>52</b>
<b>November 1999</b>	<b>1,836</b>	<b>249</b>	<b>49</b>
<b>Total</b>		<b>2,587</b>	<b>549</b>

The percentage of unrepresented employees has dropped significantly since the inception of the Worker Advocate Program. The following statistics, covering the time period from the third quarter 1998 through the third quarter 1999 show an increasing degree of advocate representation at mediation and formal hearings.

#### **MEDIATION**

<b>Third Quarter 1998</b>	<b>36%</b>
<b>Fourth Quarter 1998</b>	<b>39%</b>
<b>First Quarter 1999</b>	<b>46%</b>
<b>Second Quarter 1999</b>	<b>46%</b>
<b>Third Quarter 1999</b>	<b>48%</b>

#### **FORMAL HEARING**

<b>Third Quarter 1998</b>	<b>23%</b>
<b>Fourth Quarter 1998</b>	<b>22%</b>
<b>First Quarter 1999</b>	<b>24%</b>
<b>Second Quarter 1999</b>	<b>25%</b>
<b>Third Quarter 1999</b>	<b>29%</b>

Advocates now participate in almost **half** of the total number of mediations and more than one quarter of the formal hearings. These numbers are indicative of the popularity and need for the program.

#### **D. Staffing.**

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

The Legislature has provided for funding for two additional paralegal assistants in the Augusta and Bangor offices. There is still a pressing need for additional staff. The future success of the Advocate Program is tied directly to this staffing issue.

#### **E. Conclusion.**

The Worker Advocate Program has been quite successful. The response by injured workers has been very positive. The advocates are performing their duties in a dedicated and professional manner. Injured workers now have access to representation and assistance that enables them to receive all benefits to which they are entitled. There are, admittedly, issues that must be addressed to ensure the viability of the program. Overall, however, the outlook for the future is encouraging.

## **6. Profile of the System**

### **A. Data.**

Evaluating workers compensation policy issues is often regarded as challenging. One of the major reasons is the underlying data. It is inherently complex, even arcane.

This section begins with comments about workers' compensation data maintained by the Workers Compensation Board. Then, it uses the data to profile certain elements of the system.

The Board begins data collection when employers file an initial injury report, known as a "First Report." Then, over the life of the claim, other documents are submitted concerning payments and disputes. The life of the claim may be brief or it may extend for a decade or more, depending on the seriousness of the injury.

The resulting data can be complicated, especially for long term claims. These injuries can involve several periods of incapacity and several disputes processed separately at different times. System costs and litigation tend to be concentrated in this type of claim.

In contrast, simple injuries with a brief period of missed work, tend to be paid promptly without significant disputes.

### **B. Types of First Reports.**

A "Lost Time First Report" indicates one or more day of work has been missed. This unit is identified at the beginning of the claim cycle. It has been gathered consistently for more than a decade. These are definite advantages.

However, many Lost Time First Reports involve injuries where the missed work does not exceed the waiting period of 7 days. The injury doesn't call for the payment of wage loss benefits. Also, a First Report may be filed if a medical bill is disputed.

A count of first reports makes no distinction between major and minor injuries. Aggregations of first report data tend to mix both serious and simple ones.

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

### **C. Claims.**

There are many ways to define a claim. It can be a first report. It can be an injury where benefits are paid. It can be an injury where either benefits are paid or initially denied by the payer, i.e. a claim for benefits has been made. Or, it can be a claim where more than a certain dollar value has been paid, a major claim.

### **C. Injury Years and Calendar Years.**

Calendar year data, such as the number of disputes and time frames is useful assessing the Board's administrative operation. However, payments and litigation occurring in a calendar year relate to injuries that happened in many previous years, not the injuries occurring that year.

So, aggregating information by injury year often gives a more illuminating picture of the cost of the system or the level of litigation. The long claim cycle means it may take a few years for enough experience to develop, so that enough information can accrue, to support an analysis.

### **E. Policy Questions.**

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

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

Most injuries at the workplace are not serious. A relatively small percent of long term injuries play a dominant role in the cost of the system.

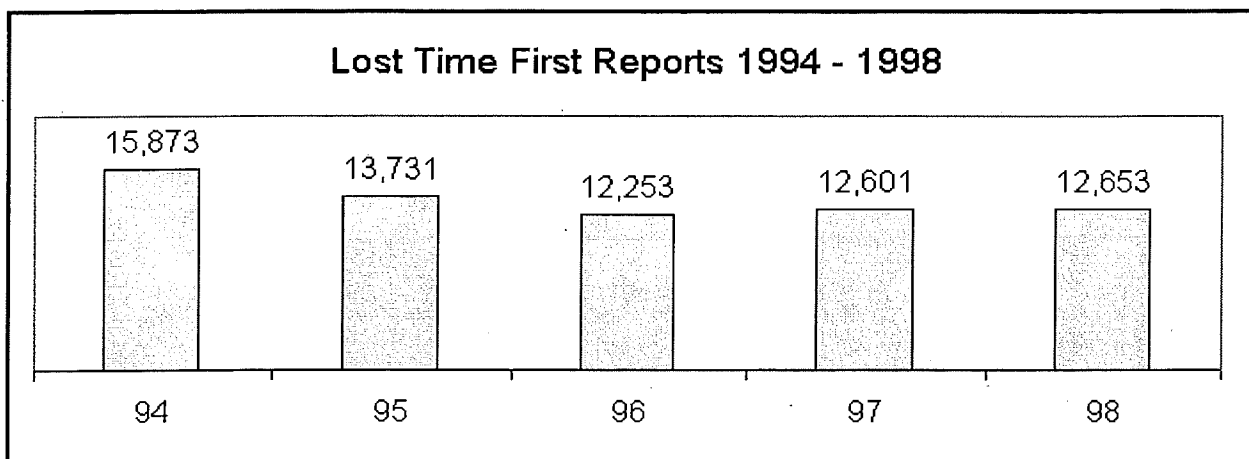
The Board has assessed the concentration of costs on several occasions over the years. Typically, the top 10% of injuries account for approximately 60% of system costs. The top 20% account for approximately 85% of system costs. 50% of injuries cost less than \$2,500 25% cost less than \$500. The likelihood of litigation increases if a claim is in this top 20%.

### **G. Safety.**

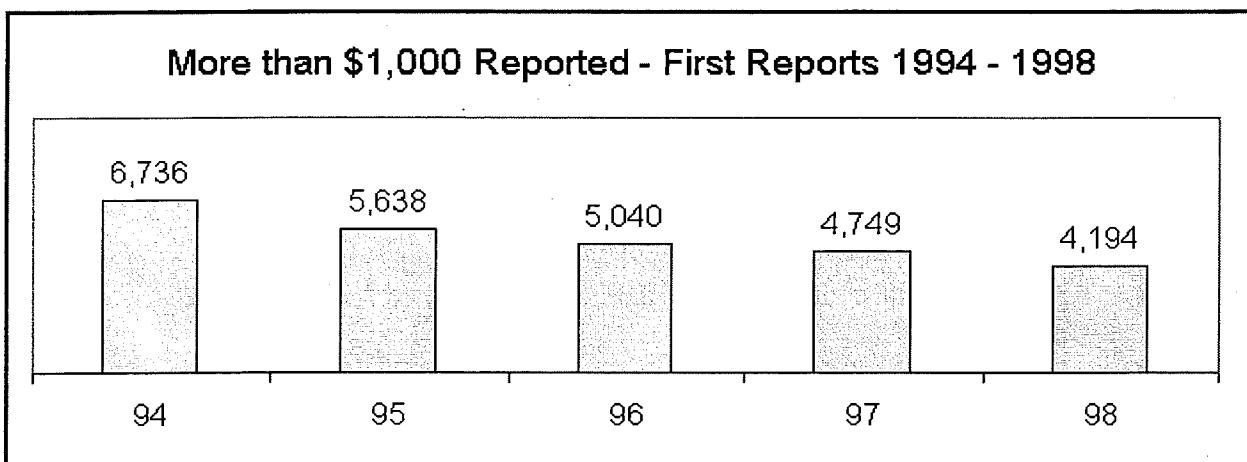
An analysis of system costs, is by definition an analysis of costs incurred. Safety measures that prevent serious accidents reduce system costs in a way that is difficult to measure, but obviously significant. A serious accident can cost hundreds of thousands of dollars and create life long suffering for the injured employee.

### **H. Injury Reports.**

We begin with an overview of trends in reports of lost time injuries. Since 1996, annual filings have ranged between 12,253 and 12,653.



Another unit of measure is the number of injuries where more than \$1,000 has been reported in benefit payments. This is to identify the number of more serious injuries.

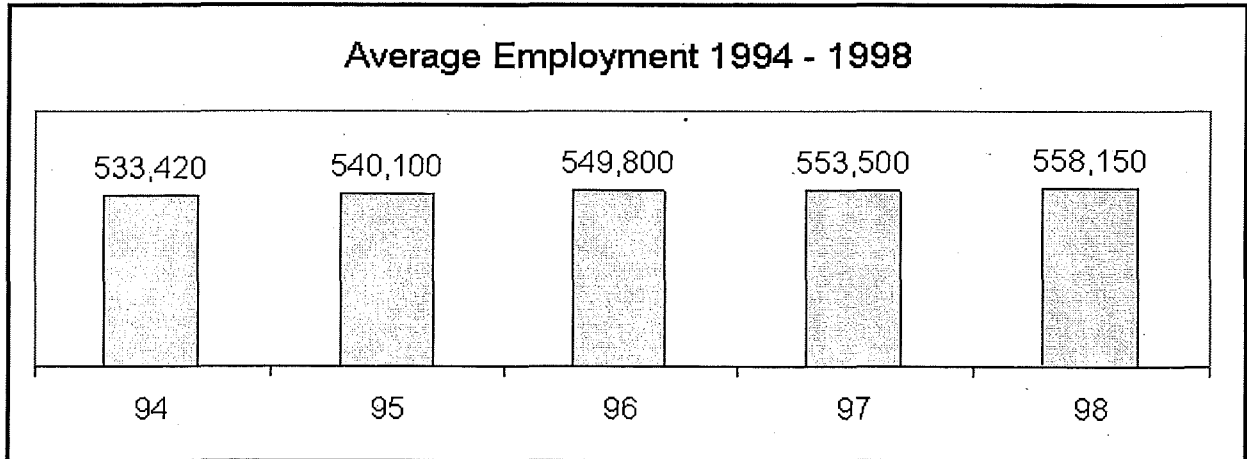


The counts for 97 and 98 injuries may be slightly understated because they are still relatively early in the claim cycle.



## I. Employment.

The number of lost time first reports has stayed relatively stable. The number of first reports with more than \$1,000 of benefits reported may be declining. However, statewide employment levels are increasing.

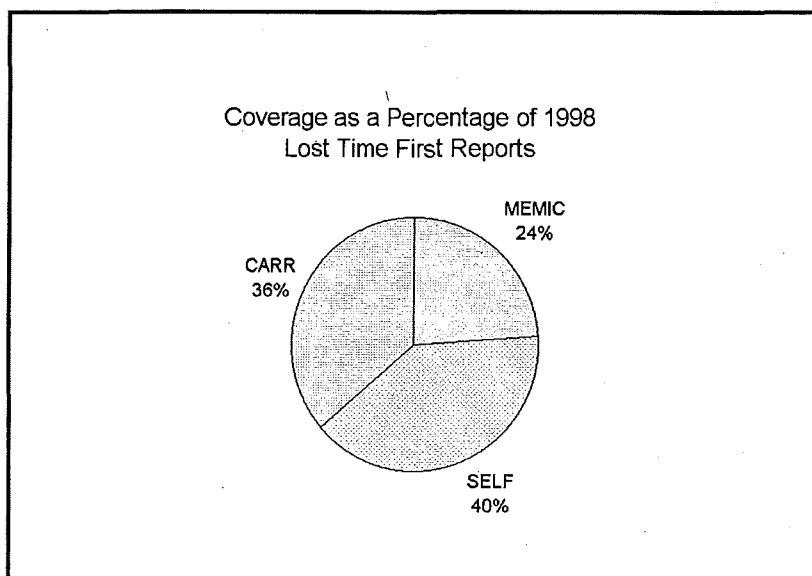


(Source: Maine Department of Labor)

## J. Coverage.

Maine Employers Mutual Insurance Company has become a significant provider of coverage. As measured by the percentage of lost time first reports, MEMIC provides almost a quarter of statewide workers compensation coverage.

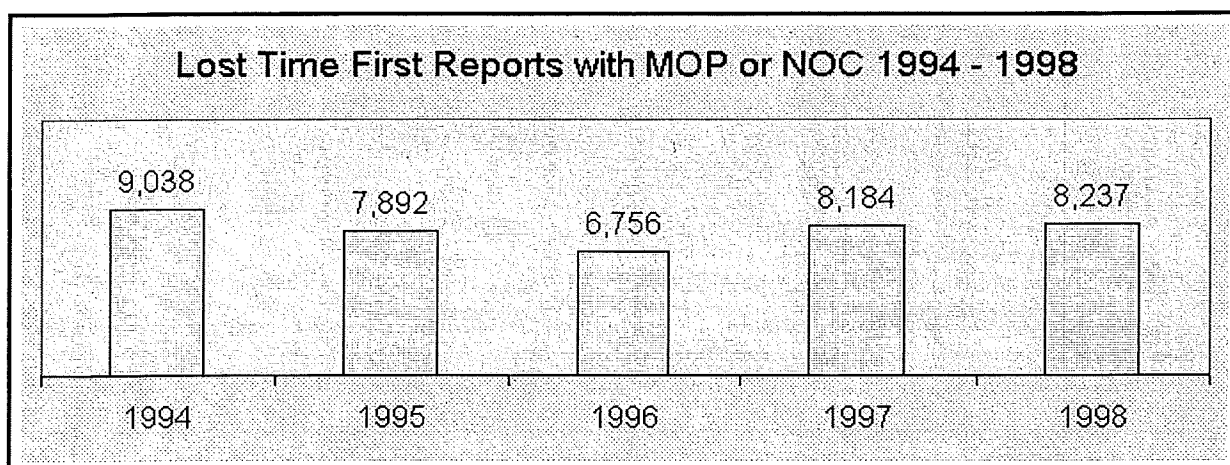
It bears similarities to group self insurance. It offers employers, particularly small employers, an alternative to the controversial assigned risk pool, existing in 1993 and earlier years.



### **K. Claims – Injury Reports with a NOC or MOP.**

The statute requires employers to file a first report if the injury causes one or more days of missed work. However, there is a 7-day waiting period before an injured worker is eligible for wage loss benefits. So, first reports on injuries with no benefits are common.

A claim can be defined as an injury where the injured worker asserts a claim for benefits. They can be identified because a payer will either file a Memorandum of Payment or “MOP” with the Board or else they will deny the claim by filing a Notice of Controversy or “NOC”.



This figure has been averaging about 8,000 injuries per year. There seems to be no clear reason for the fluctuations in 1994 and 1996.

The next two sections further analyze first filings. One looks at the promptness of payment for uncontested first filings of memos of payment. The other looks at the percentage of first filings that are denials.

### **L. Promptness of First Payment.**

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

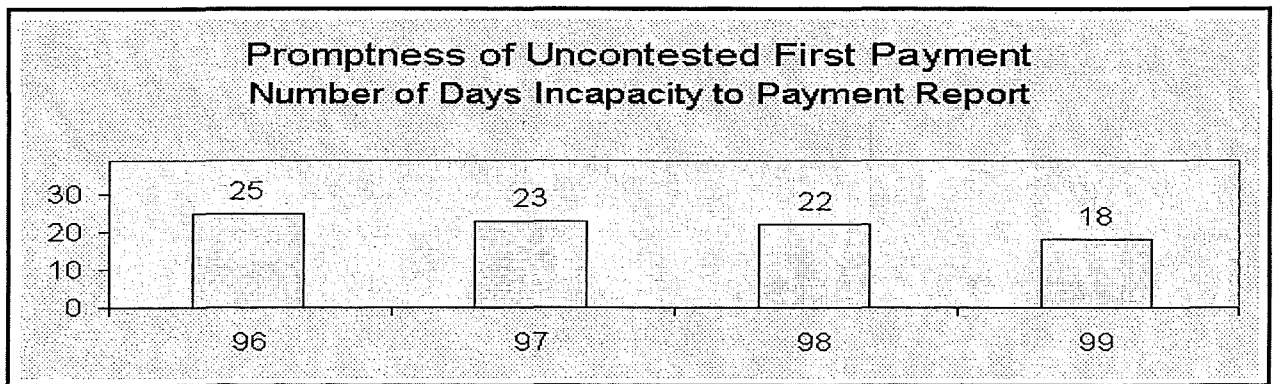
To prepare the following, uncontested wage loss payments for injuries occurring in 1996-1999 were selected. Then, the average number of days between the date of incapacity and the date the first payment was reported to the Board was calculated.

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

By way of context, there is a 7-day waiting period. At that point, benefits begin to accrue. Let us assume for another 7 days. Then, it could reasonably take another 7 days for the check to be sent to the injured worker, the payment report to be sent to the Board, and for the post office to deliver. That is a total of 21 days.

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

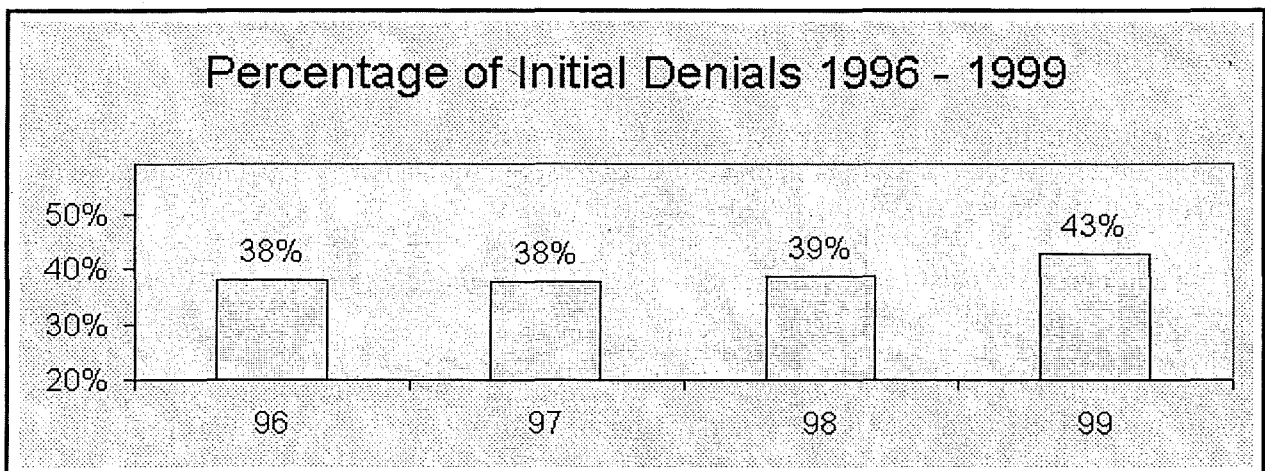
In individual cases these factors can significantly complicate a calculation. Accordingly, 21 days from the date of incapacity to the date the memo of payment arrives at the Board, is suggested as a general benchmark for summarized data, not as an exact measure of compliance with the time frame envisioned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



As may be seen, the statewide average has been close to 21 days for the past 4 years. The improvement in 1999 is probably attributable to the more active monitoring and audit activities by the Board.

#### **M. Level of Initial Denials.**

In recent years, the Board has been seeing approximately 8,000 injuries annually where either a Memorandum of Payment or a Notice of Controversy has been filed. Approximately 5,000 first filings are Memorandum of Payment. 3,000 are Notices of Controversy.



The rate of initial denial is higher than most observers would have anticipated. The explanation is not clear.

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

It also may be that some members of the adjustment community are using the Board's dispute resolution process as an instrument of claims investigation. Filing a "NOC" puts the matter on hold and forces the Board to become involved with the injured worker while medical reports and other information are obtained.

The factual circumstances of individual injuries are inherently different. The decision to pay or deny requires a case by case analysis. Similarly, evaluating whether such a decision is made on a reasonable basis also requires a case by case analysis.

At present, the Board is not equipped to do this kind of evaluation on a large scale. However, evolving computer technology is enhancing the Boards' ability to involve itself.

Ten years ago, generating the previous chart would not have been possible. Five years ago it would have been theoretically possible, but extremely difficult. Today, it is still not simple. However, it can be done.

#### **N. Dispute Prevention.**

Pursuant to the recommendations of the Coopers and Lybrand business assessment, the Board is moving into proactive involvement in such systemic issues, originating in private adjustment.

This may represent an administrative opportunity to reduce the overall number of disputes in the system – dispute prevention as opposed to dispute resolution. This issue – and the appropriate state agency response - is at an early stage of consideration.

#### **O. Dispute Resolution – Introduction.**

Some injuries are clearly work related. For example, if a truck driver falls off a loading dock and fractures a leg, work relatedness is evident.

However, if that same driver experiences back problems, the relationship to employment is not so clear.

Also with the fracture, there would normally be a well-defined healing period and often a return to the same job with the same duties. The amount of missed work and lost earnings is readily identifiable.

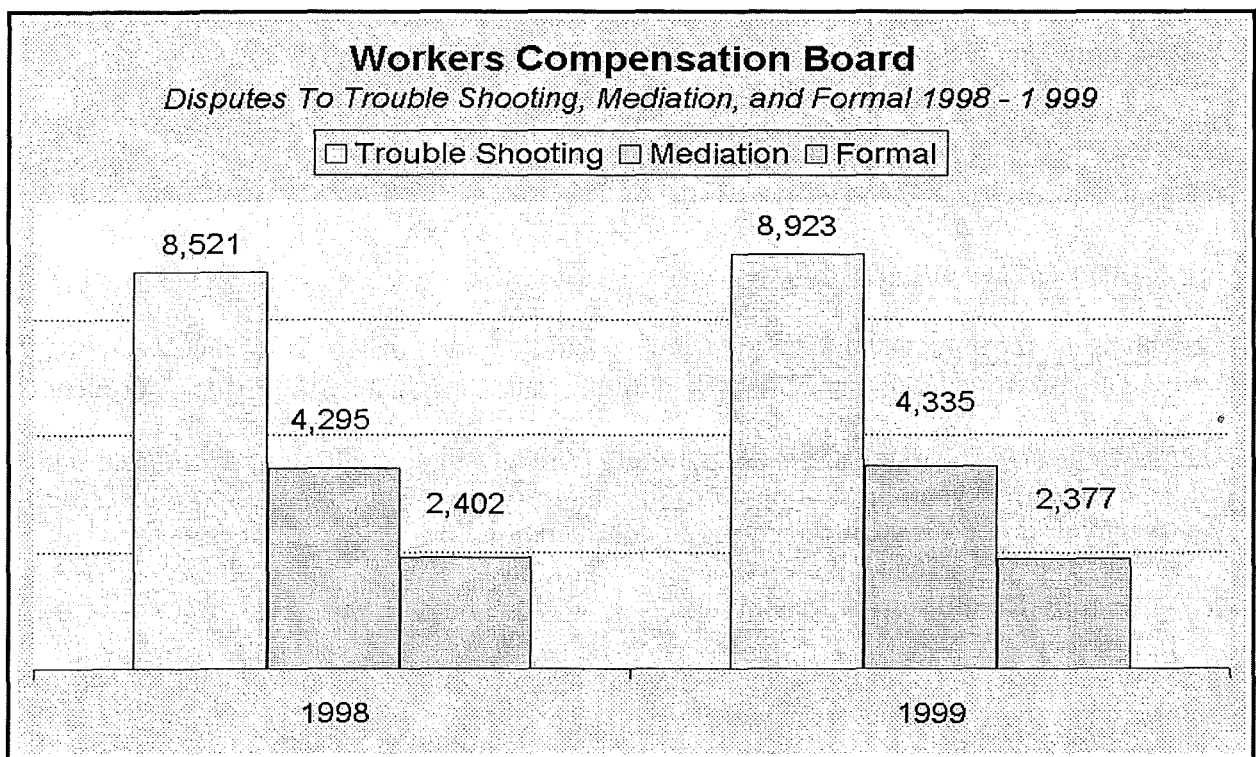
In contrast, the back injury may take months, even years, to heal. It may result in permanent disability. It may not be clear whether the individual has regained the capacity to return to work.

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

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

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

Each of the first two stages, close about half of the disputes assigned. After Troubleshooting about 50% of the original disputes remain. After Mediation 25% remain. So in tandem, the Board's initial processes take care of about 75% of initial disputes, without litigation and in a very timely manner.

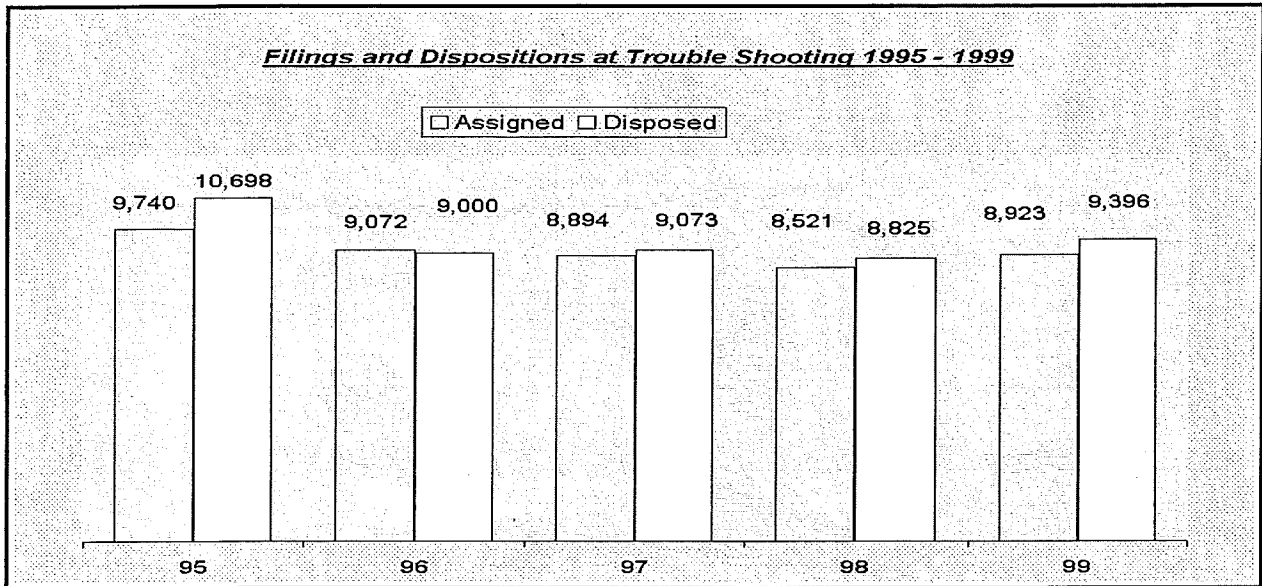


The final 25% usually represent serious injuries, involving substantial amounts of money and real disagreements about the facts and the applicable law.

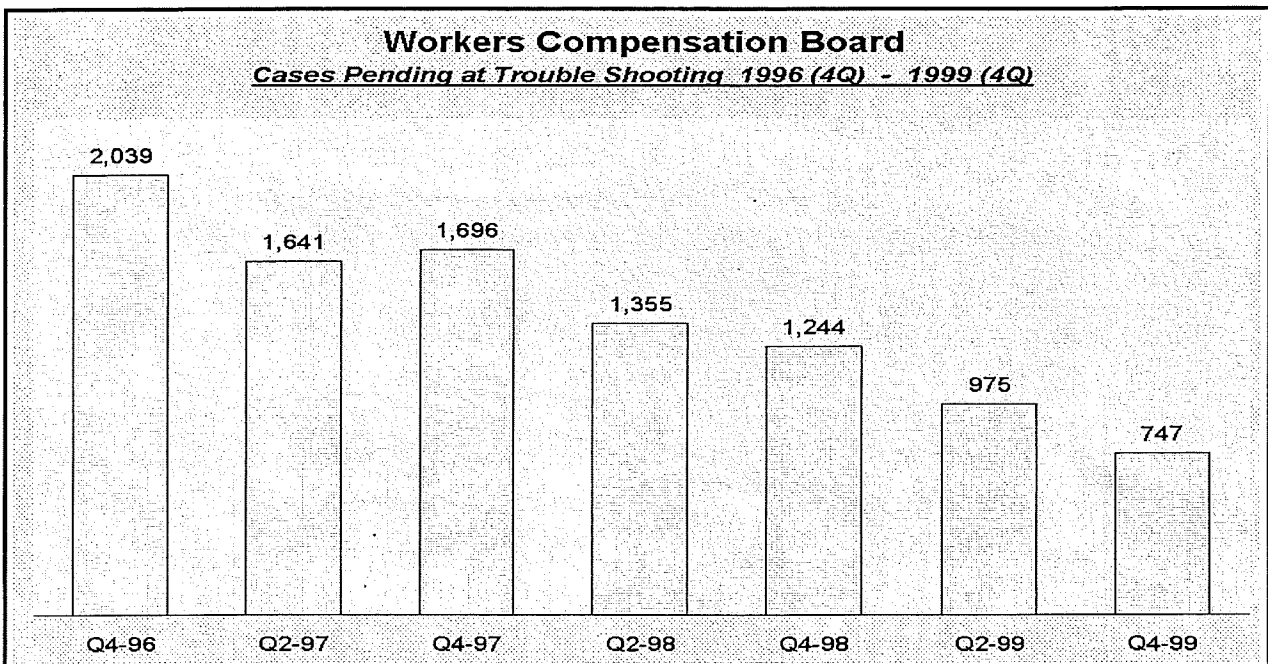
#### **P. Troubleshooting.**

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

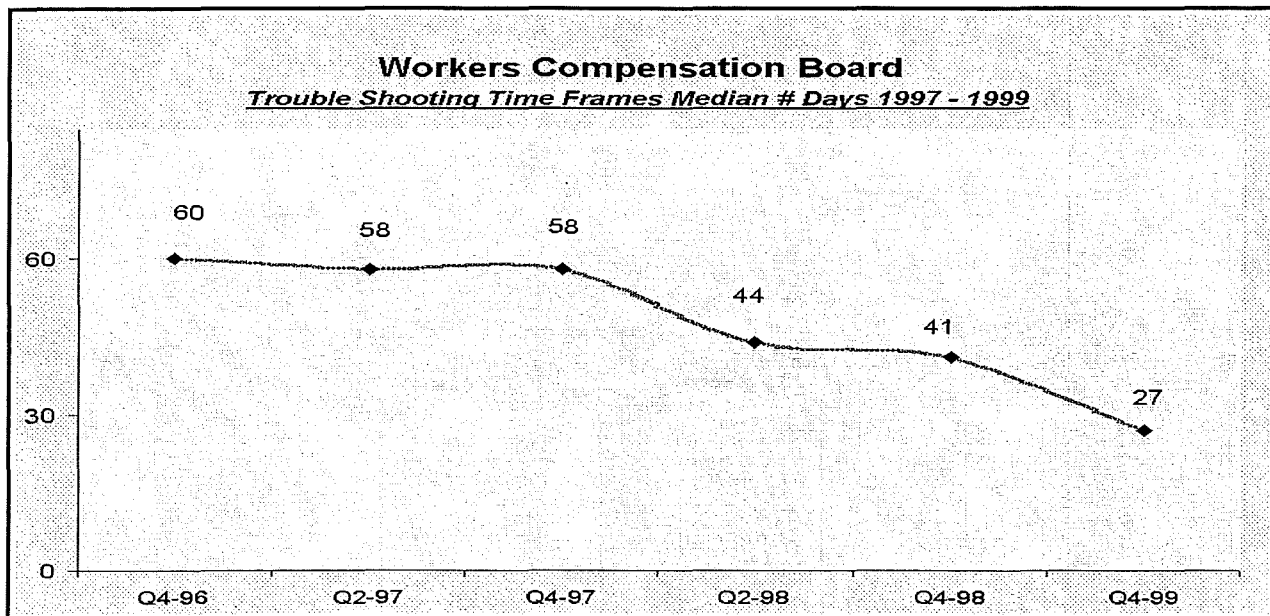
Troubleshooting is the first step for initial denials and other controversies. Workers' Compensation Board employees known as Claims Resolution Specialists contact both sides and attempt to resolve the problem. This is done, almost always, by mail and by phone. The Board maintains 800 numbers at its Regional Offices.



Filings have been relative constant in recent years.



Filings have been slightly outpaced by dispositions. Over time this has resulted in a lower number of cases pending at Troubleshooting.

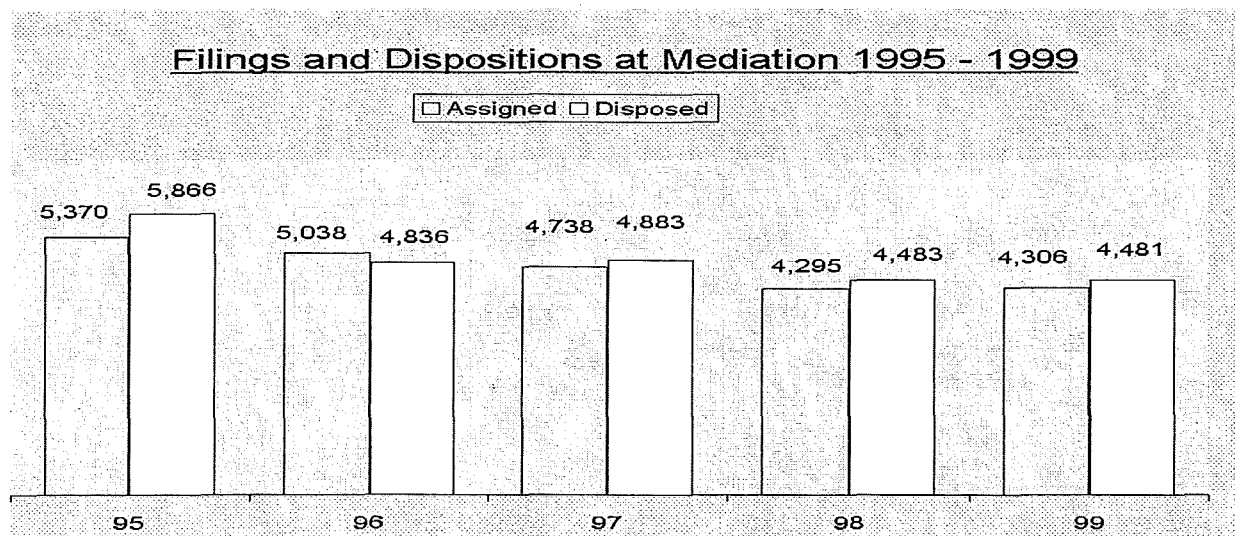


It has also resulted in an increase in the speed of the process.

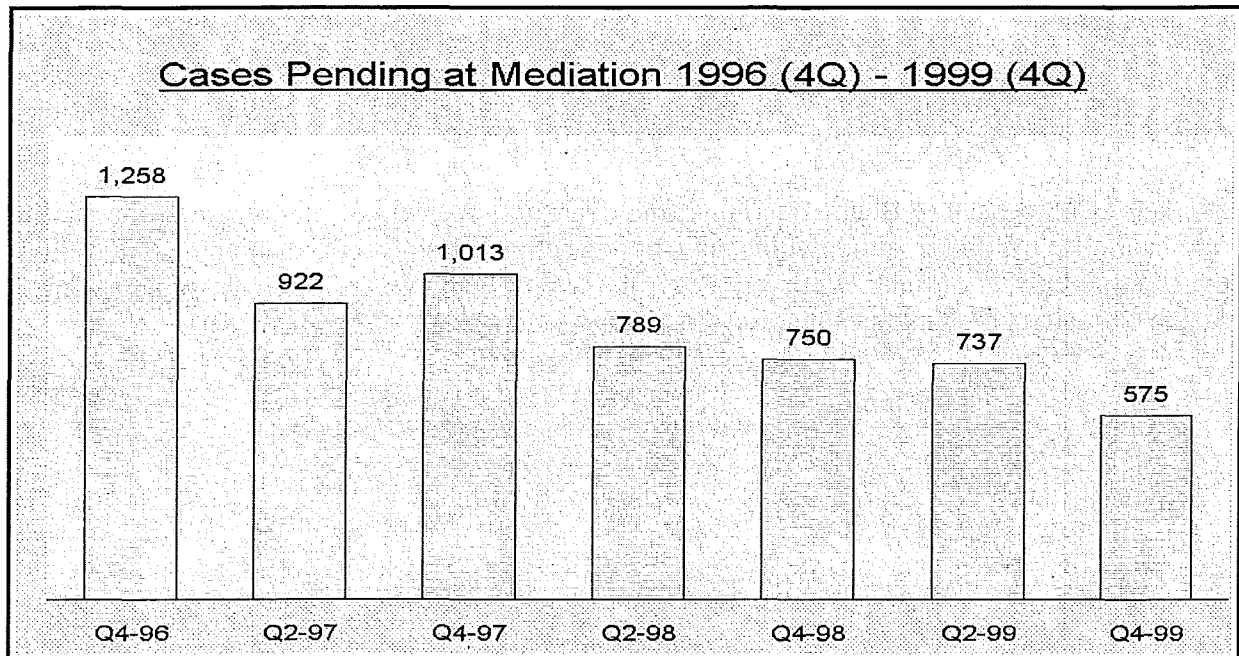
#### **Q. Mediation.**

State wide, about 50% of initial disputes are disposed of at Troubleshooting. However, if the dispute is not screened out at this stage, it is forwarded to Mediation.

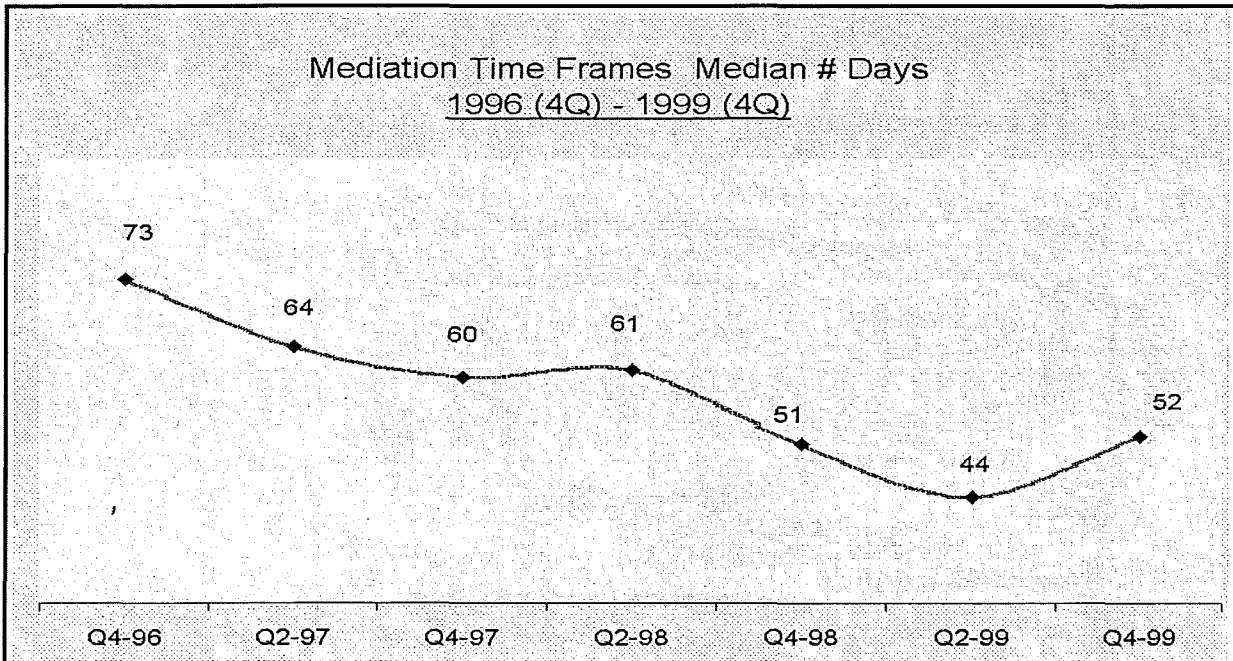
Mediation is a face to face meeting between the parties. The purpose is to assist in the reaching of a voluntary agreement, if possible.



The pattern is similar to Troubleshooting. Filings have been fairly level in recent years.



Dispositions have slightly exceeded filings. The number of cases pending has gradually declined.



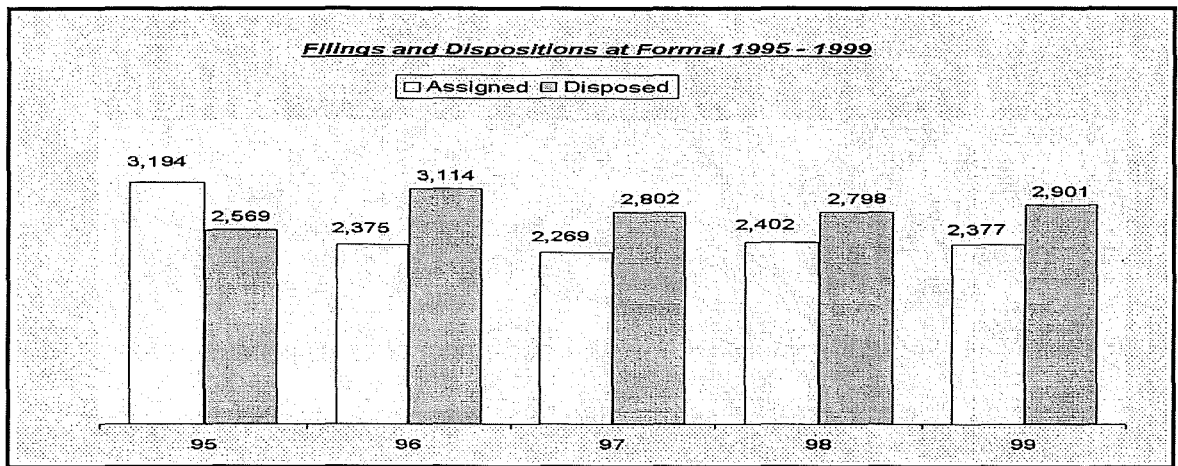
The speed of the process has also increased.



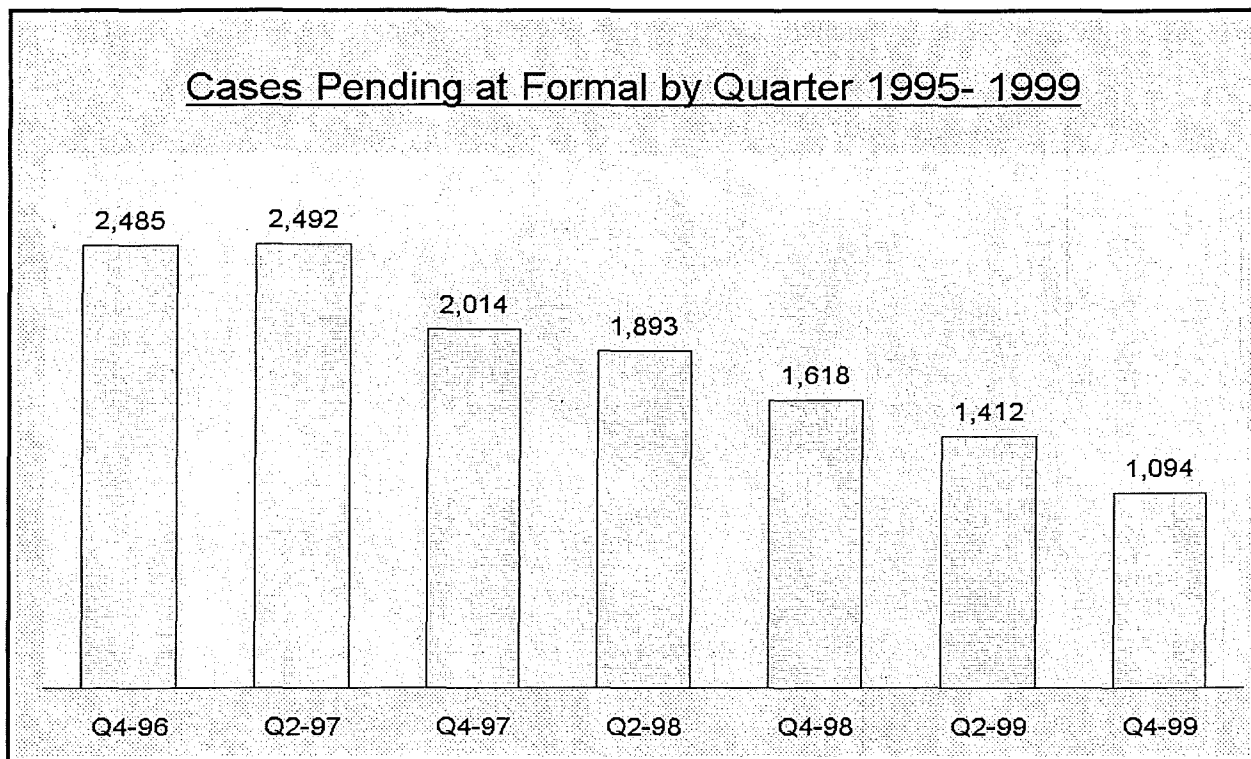
Mediation may result in an agreement before the meeting as well as at the actual face to face discussion. Together, approximately 50% of the reviewing cases are disposed of at the mediation level.

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

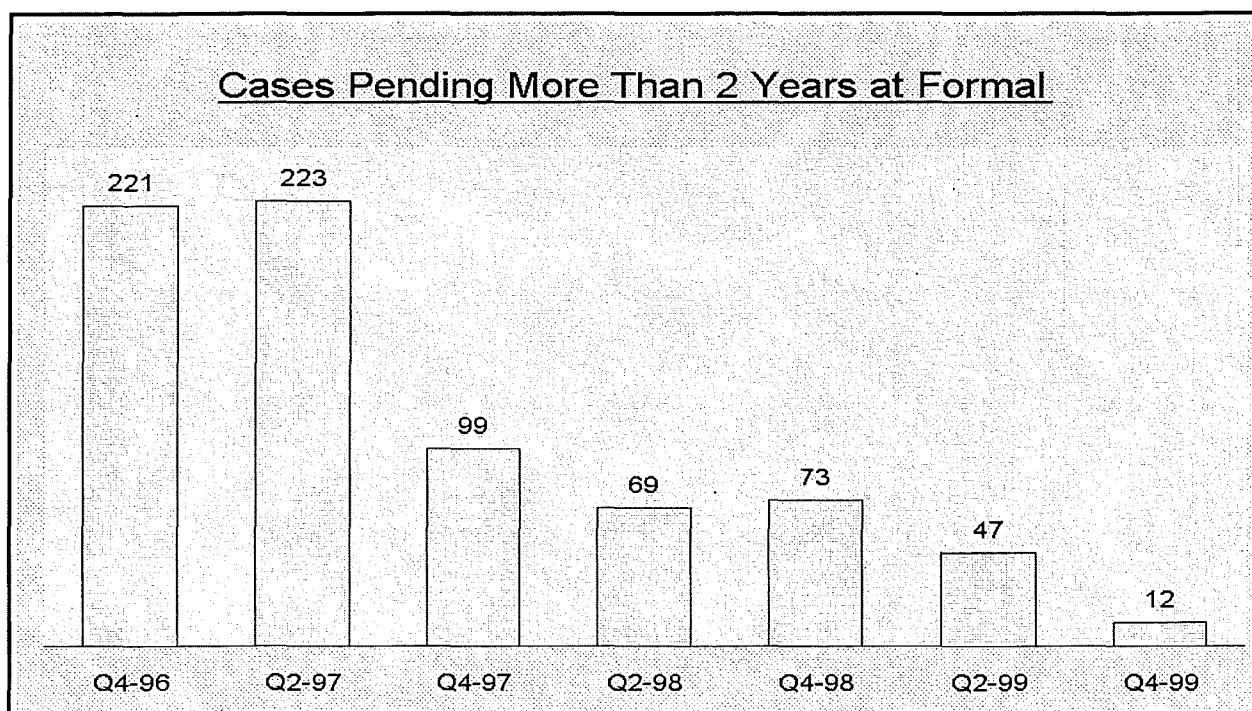
Workers' Compensation Board Hearing Officers preside over the formal hearing process. Their role is similar to judges, although the actual proceeding is less formal than court. The ruling of the Hearing Officer is final. However, a case may be appealed to the Supreme Judicial Court of Maine on matters of statutory interpretation.



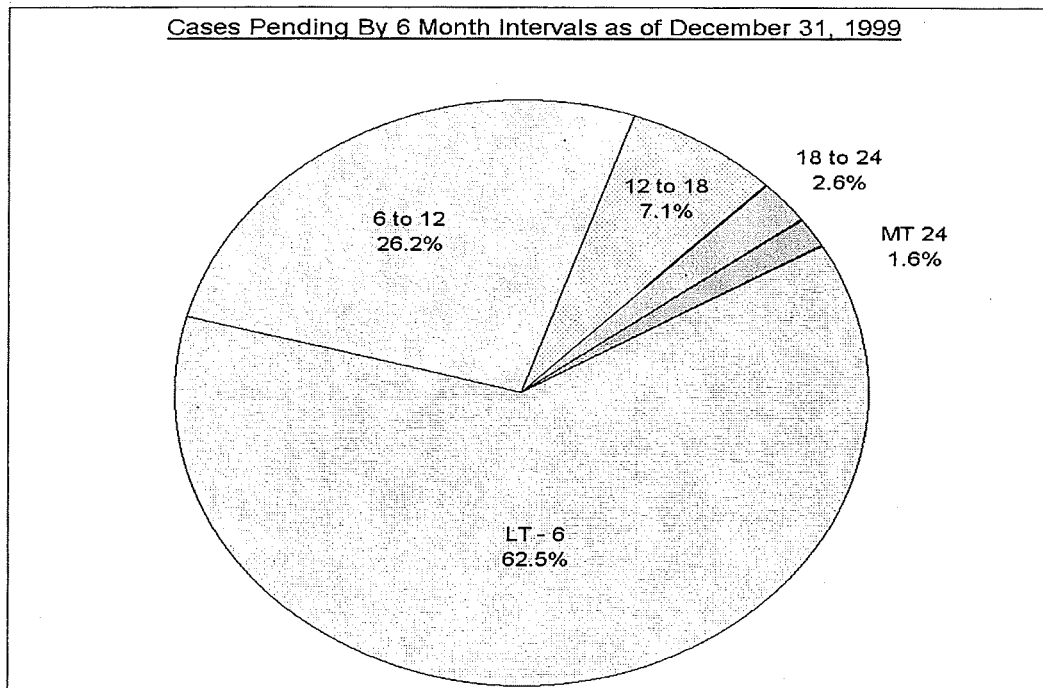
Again, filings have been fairly constant in recent years. Dispositions have exceeded filings rather noticeably.



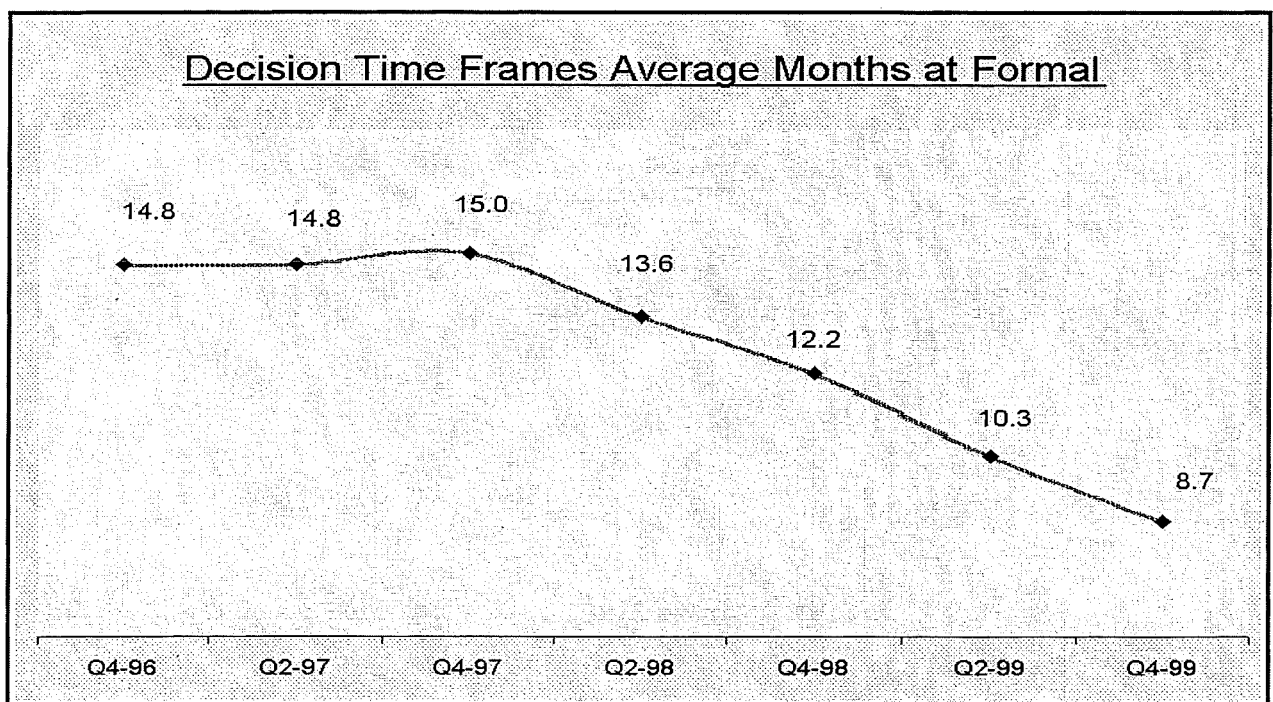
Due to the dispositions exceeding the assignments, a significant reduction of the number of cases pending has resulted.



It has also led to a dramatic reduction in the number of cases pending more than two years.



Today, about 90% of cases have been pending less than a year.



The reduction of long pending cases has slowly resulted in a significant improvement in the speed of the process.

There will always be a few cases at the Formal Level with unusual circumstances. However, the Board is committed to keeping the number of long pending cases to a low level and closely monitoring time frames.

#### **R. Streamlining.**

The Board implemented a "Streamlining" process during 1999. The issue had been a matter of concern during 1996 and 1997. Progress was being made, however. A study in late 1997 by Coopers and Lybrand, commissioned by the Workers' Compensation Board, was the catalyst that which led to a focused effort by the Board's Directors and staff.

The Board organized a study group of interested parties during 1998. A series of meetings was held. These led to rule changes, development of standard time frame expectations, and enhanced monitoring at each level and with each Claims Resolution Specialist, Mediator, and Hearing Officer.

The result of the effort was a significant improvement in the speed of the process for the years 1998 and 1999. We anticipate a limited additional increase in the speed of the process during 2000.

## **7. Formal Hearing Process**

One of the major efforts resulting from the 1997 Coopers & Lybrand business assessment involved streamlining the dispute resolution process. The Streamlining Dispute Resolution Project Group made its recommendations in 1998; they have been fully implemented in 1999; and the final results will be recognized in 2000. These recommendations affected all three levels of dispute resolution: troubleshooting, mediation and formal hearing.

With respect to the formal hearing process, there were three major recommendations for change: rule changes to speed up the time frames involved in gathering information relevant to a claim; standard operating procedures (SOPs) to speed up the Workers' Compensation Board's internal processes; and the appointment of a Chief Hearing Officer.

It is important to note that while the changes to Board Rule Chapter 12 has forced the parties to a workers' compensation case, the employee and the employer and/or insurer, to work more quickly, the Streamlining Dispute Resolution Project Group also scrutinized the Board's internal processes and recommended ways to reduce or eliminate delays there as well. The Board's processes have been improved by means of standard operating procedures. These SOPs also ensure that cases are handled in the same manner in all five of the Board's regional offices.

Some of the changes included in the rule change are the speedy exchange of mandatory information followed by the filing of a Joint Scheduling Memorandum. The parties are responsible for filing the Joint Scheduling Memorandum without first receiving a copy from the Board. As soon as the Joint Scheduling Memorandum is received, the case is scheduled for hearing on the next available date. Previously, the parties indicated how much time was needed prior to the hearing (anywhere from 0-6 months) and the case would not be scheduled until that time. This mechanism unnecessarily added time to the process. Another change to the rule requires that any depositions that are necessary must be scheduled either before the hearing or within 45 days after the hearing. The effective date of the Chapter 12 rule changes was May 23, 1999.

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

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

60 day mark. This is a testament to the level of experience, expertise and professionalism that the Board's current corps of hearing officers possesses.

Finally, the Streamlining Dispute Resolution Project Group recommended hiring a Chief Hearing Officer to administer the formal hearing process and keep cases running smoothly through the system. On June 1, 1999, the Chief Hearing Officer began work by redistributing caseloads throughout the state. Previously, there were times when there was a 100 case spread between the largest and smallest caseload at formal hearing. This situation is not fair and not an efficient use of resources as the hearing officer with the large caseload will have longer delays in scheduling hearings and issuing decisions. The redistribution, which was completed in early June, has successfully equalized caseloads and helped to eliminate backlog and increase efficiency. There is presently only a 25 case spread amongst the hearing officers. Caseloads range from 139 to 164 open cases at formal hearing.

In late 1999, the Workers' Compensation Board's formal hearing process is running as smoothly and as quickly as it has in the last 10 years. The parties are becoming accustomed to the stepped up time frames and the hearing officers are minimizing delays while maintaining fairness and protecting the due process rights of the parties.

The year 2000 should prove an interesting year with respect to the Board's formal hearing process. During the upcoming year, it is expected that the formal hearing process will reach the point of optimal efficiency while still assuring the protection of the due process rights of the parties. We will all soon know exactly where that point is.

## 8. Medical/Rehabilitation

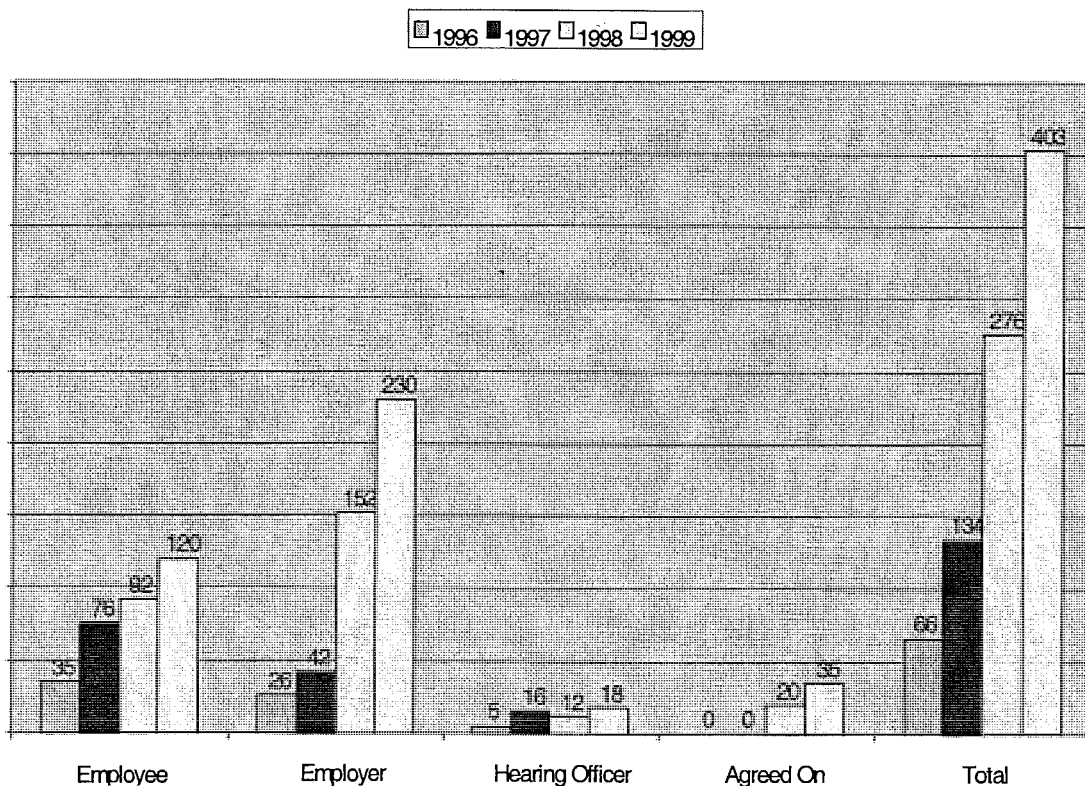
### A. Rulemaking for the Office of Medical and Rehabilitation Services.

The Medical Fee Schedule was updated with the latest American Medical Association CPT codes and the most recent Resource Based Relative Value Scale (RBRVS).

### B. Independent Medical Examinations.

Requests for Independent Medical Examinations, pursuant to 39-A M.R.S.A. Section 312, have continued to increase steadily. The following chart demonstrates the use and growth of the program.

Independent Medical Examinations  
Maine, 1996 - 1999



### **C. Legislative Reports**

A report has been presented to the Joint Standing Committee on Labor on the status of Vocational Rehabilitation Services, with recommendations to improve the system. A report has also been presented on a study of Occupational Disease.



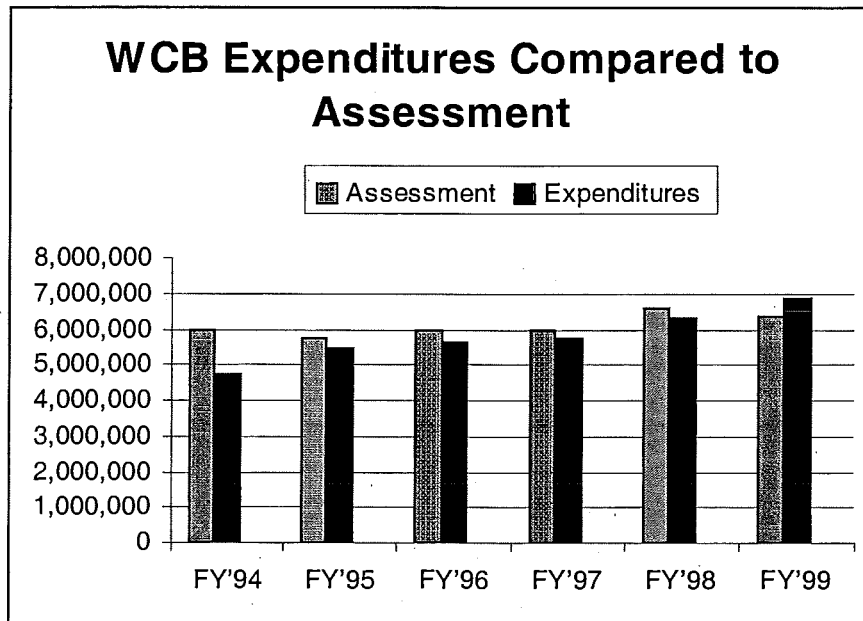
## 9. Budget and Assessment

The Board's major budget concern during the coming biennium is that projected expenditures are expected to exceed projected revenue. The Bureau of the Budget has allowed the Board to utilize a portion of the accumulated reserves or cash balance to help bridge this gap during FY 2000. The Board is expected to bring its expenditures in line with projected revenue within FY 2001. FY 2001 expenditures must be reduced by \$384,570.

Accomplishing this goal will mean a reduction in spending in the "All Other" line item as well as "Personal Services" line item. It is expected that the majority of the shortfall will be realized from the elimination of currently vacant positions and the resulting salary savings.

An issue still to be dealt with is the across-the-board salary increases effective July 1, 1999, July 1, 2000, and January 1, 2001. These salary increases result in corresponding raises to retirement costs, life insurance and FICA expenses for the Board.

The following chart illustrates the annual increases in expenditures in comparison to the annual assessment:



P.L. 1999, Ch. 359 increased the assessment by \$135,000 to a total of \$6,735,000. This law authorized three new positions (one Auditor for the MAE program and two Paralegal Assistants

for the Advocate Program). The Board chose to fund these positions from the reserve account rather than by issuing a Supplemental Assessment.

The Board has reduced its assessment in FY 2000 by \$1,500,000 due to surplus generated from vacant positions, additional revenue received from reconciliations and audits, and interest on its cash account.

The Workers' Compensation Board unanimously voted to reduce the amount of the Administrative Fund Assessment for Fiscal Year 2000 (July 1, 1999 – June 30, 2000) from \$6,600,000 to \$5,100,000. The effect of this reduction is that Maine's employers realize a net savings of \$1,500,000 during the fiscal year.

The Board was able to reduce the assessment due to a number of reasons that generated a surplus over several years such as savings which resulted from accrued interest on assessment revenues, audits performed on premiums, the sale of publications and copies of Board data, and penalties deposited in the Administrative Fund. These factors, along with prudent management and the exercise of fiscal responsibility, resulted in the surplus.

## **10. Case Management System**

A little more than a year has elapsed since a “case management” process was begun in the Claims Management Unit. The new process assigns carriers to a single case worker who processes the file from start to finish. This has proven to be very effective as the insurance carriers now have a single contact at the Board.

The Board continues to work with the Department of Labor to determine employers who are in violation of the Act for not providing workers’ compensation coverage. The Board is cross-referencing its employer database with the Department of Labor’s unemployment database to identify employers or businesses who may not have the required workers’ compensation insurance. The Department of Labor has estimated that there are currently about 5,700 non-matching businesses. The Board is now following up with these businesses to determine whether they are required to obtain workers’ compensation insurance. Many of the problems thus far identified are due to inaccurate information provided by the carriers. Violations are being uncovered and the Board’s database is being cleansed.

## **11. General Counsel Report**

### **A. Rules.**

A number of rules were adopted by the Board in 1999. To ensure that the Board has accurate coverage information, the Board adopted a rule requiring proof of coverage forms to be filed within 14 days after issuance, renewal or endorsement of any workers' compensation policy. W.C.B. Rule Ch. 1, Section 10.

There were two additions to Chapter 2. First, as noted in Section 16 of the Annual Report, the "260-week limitation referenced in 39-A M.R.S.A. Section 213(4) shall be extended for 52 weeks on January 1, 1999." W.C.B. Rule Ch. 2, Section 2(2). In light of this change, a provision was added which outlines the procedure for reimbursement in cases where benefits are paid in excess of 52 weeks as a result of this extension. W.C.B. Rule Ch. 2, Section 4(2).

Several changes were made to the Utilization Review procedures contained in Chapter 7 of the Board's rules. One change added a pain treatment guideline. W.C.B. Ch. 7, Section 2(2). Other changes, contained in Sections 3, 4, and 5, further spell out the procedure for obtaining utilization review in a given case.

Formulae and a table for calculating interest were also added. W.C.B. Rule Ch. 8, Section 7. This rule will standardize the way that interest on awards is calculated.

Over the course of the past year, the Board focused on streamlining the dispute resolution process. To facilitate the streamlining, changes were made to the formal hearing rules contained in W.C.B. Rule Ch. 12. These amendments will have the effect of shortening the time it takes for a case to reach a final resolution.

The Board has also been active in establishing a monitoring, auditing and enforcement program. As part of this effort, the Board adopted W.C.B. Rule Ch. 15, Section (8). This rule defines the way Section 359(2) penalties will be processed. Section 359(2) penalties may be imposed if an employer/insurer has "engaged in a pattern of questionable claims handling techniques or repeated unreasonably contested claims."

## **B. Legislation.**

1998 marked the first time that the Board, pursuant to 39-A M.R.S.A. Section 152(11), proposed changes to the Workers' Compensation Act. Eight different proposals were combined into two bills, and all, with only minor changes, were ultimately passed into law in 1999. The amendments:

- (1) Require that wage statements be filed within 30 days of notice of a claim of incapacity;
- (2) Increase the penalty for not securing required workers' compensation coverage to the greater of \$10,000 or 108% of the premium that should have been paid during the period of noncompliance;
- (3) Eliminate Employment Rehabilitation Fund reimbursements for dates of injury on or after January 1, 2000;
- (4) Eliminate mandatory mediation after a request for a provisional order has been ruled upon;
- (5) Simplify the statute of limitations;
- (6) Provide that Hearing Officers will decide apportionment cases instead of requiring arbitration at the Bureau of Insurance;
- (7) Require that nonresident aliens receive the same death benefits as United States or Canadian citizens; and
- (8) Provide that audit working papers are confidential.

## **C. Independent Contractor/Logging Task Force.**

The Independent Contractor/Logging Task Force produced a report containing three options to deal with the problem of wood harvesters circumventing coverage requirements and underbidding their competition. Ultimately, the Legislature amended the Workers' Compensation Act to allow for an annual certificate of independent status and tightened up the situations where a wood harvester can work without workers' compensation coverage.

## **D. Extreme Financial Hardship.**

The Board will be hearing its second extreme financial hardship case in 1999.

## **12. Abuse Investigation Unit Report**

The Abuse Investigation Unit is charged with assessing penalties under several sections of the Act. Section 205(3) requires payment of weekly compensation benefits within 30 days of becoming due and payable when there is no ongoing dispute. Section 205(4) requires payment of medical bills within 30 days of becoming due and payable when there is no ongoing dispute. If these sections are violated, a \$50.00 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.

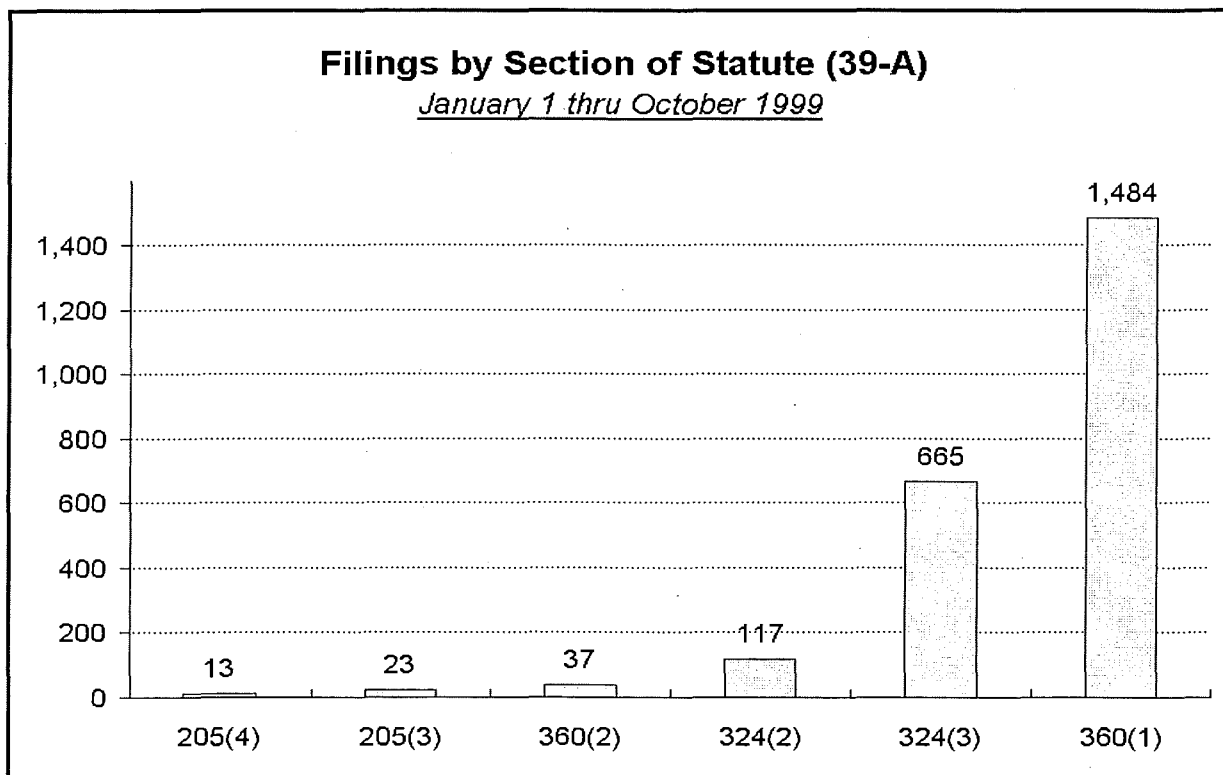
Section 324(2) mandates that payments be made within 10 days of any board order or approved agreement. A violation of this section can be penalized by a forfeiture of up to \$200.00 per day. The first \$50.00 per day is due to the aggrieved employee, the remainder is paid to the Board's Administrative 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.

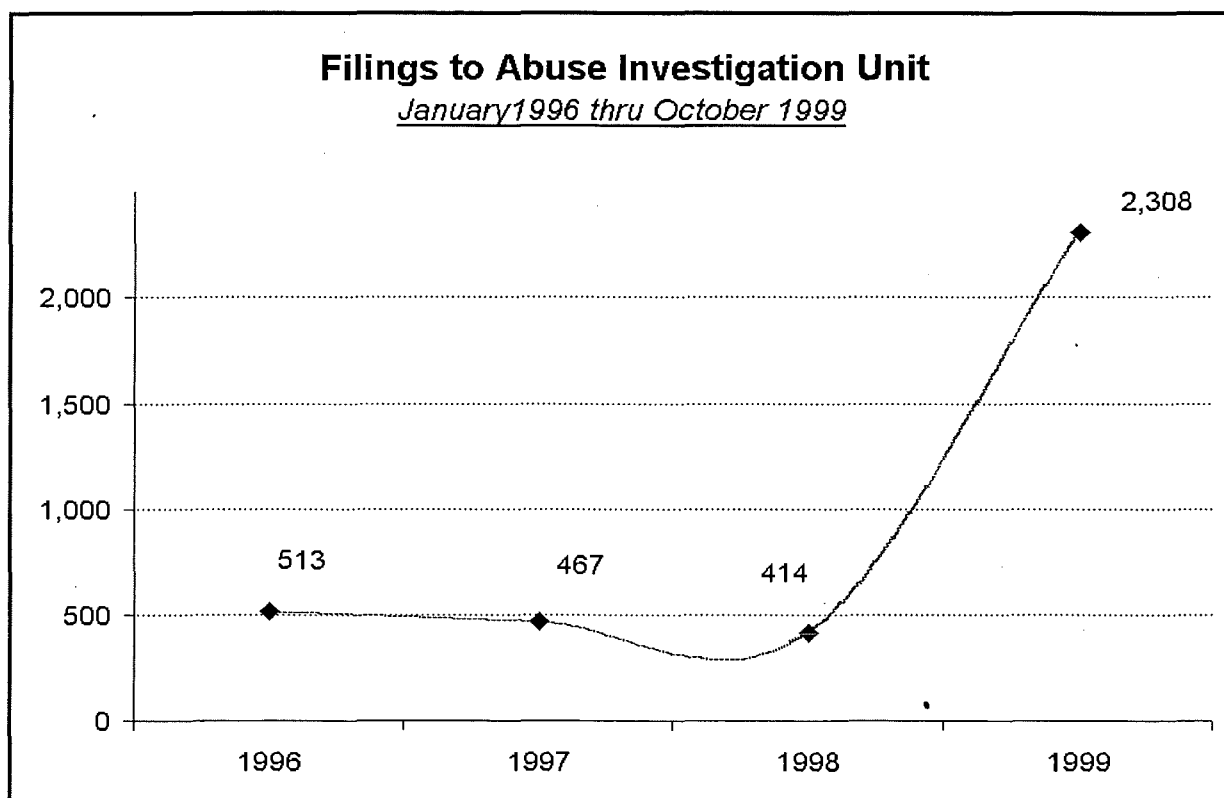
Section 360(1) provides for penalties when a form is not filed within time frames set by rule or statute. Violations of this section carry a maximum penalty of \$100.00, payable to the General Fund.

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 under sections 360(1) and 324(3).



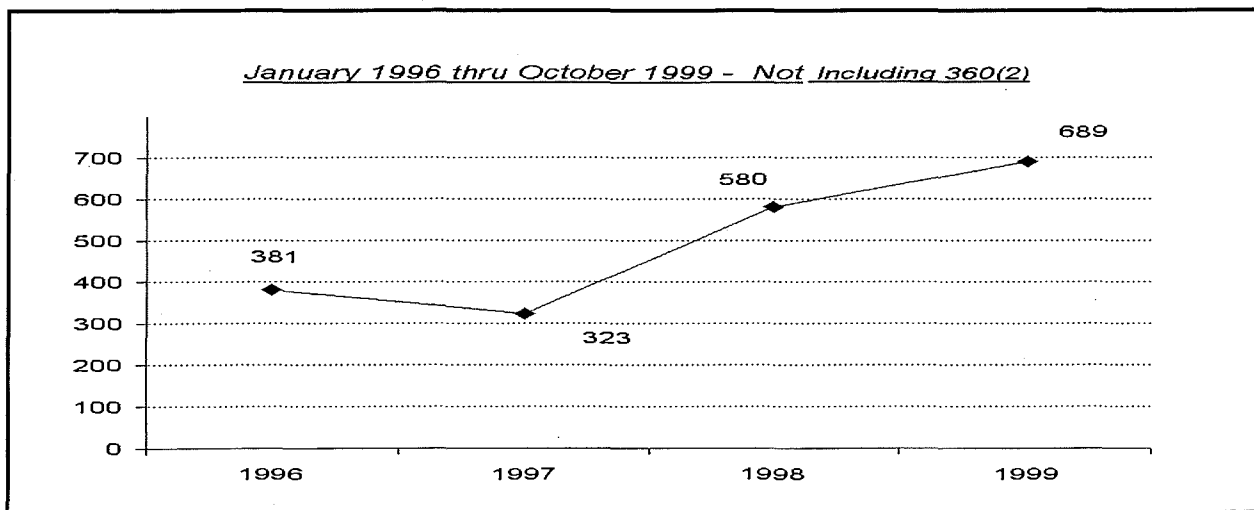
There was a sharp increase in the number of cases filed with the Abuse Investigation Unit in 1999.



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

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

In 1999, the Abuse Investigation Unit continued to increase the number of cases it closed. This positive trend is expected to continue in 2000.



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

As was stated above, the Abuse Investigation Unit has authority to impose penalties pursuant to several sections of the Act. The basis for penalties pursuant to each section is spelled out above. The Abuse Investigation Unit, through October of 1999, disposed of the following cases: Section 360(1): 133 granted, 2 denied and 6 dismissed; Section 324(3): 215 granted, and 191 dismissed; Section 324(2): 10 granted 16 denied and 16 dismissed; Section 205(3): 2 denied; Section 205(4): 2 dismissed.

In 1999, the Abuse Investigation Unit assessed \$124,396 in penalties pursuant to Section 324(2); \$403,435 in penalties pursuant to Section 324(3); \$49,700 pursuant to Section 360(1); and \$6,750 in penalties pursuant to Section 205(3) for a total of \$584,281.

Complaints filed pursuant to section 360(2) are 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 October of 1999, 37 complaints pursuant to section 360(2) had been received. Also, through the end of October of 1999, 18 section 360(2) complaints had been referred for hearing, and another 13 had been closed.



## **13. Technology**

### **A. Technology.**

Over the past year the Workers' Compensation Board has focused it's technological energies in three general areas. Implementation of the MAE Report; rewriting the Board's data base applications, and ensuring the Board is Y2K ready. In addition to the three areas listed, there is always the miscellaneous category that consumes a large portion of energy.

### **B. MAE Program.**

Beginning January 1, 1999 the Board began monitoring portion of the MAE program. This required an entire new suite of applications to be developed, a new data base to be designed, and a number of bridge programs to link the new data base with the Board's current operational system. These changes represented an entire new set of screens and workflow for the Claims Management Unit. In addition the programs for the Claims Unit, a host of programs were developed to send each of the carriers/self insured a summary of all data that the Board received throughout the quarter. This process was added to give the carriers/self insured an opportunity to review and correct data to ensure that the performance rating is accurate.

### **C. Board System Rewrite.**

A comprehensive review of the WCB database was performed to assess the viability for modifying the current system. The determination was made that rewrite would be more efficient and expeditious. The changes necessitated by the MAE program forced the rewrite of the Claims Management Unit first. Only those changes required for the MAE program we implemented at this time. The schedule is to perform an analysis and develop new programs for the Coverage Unit and then return to complete the Claims Unit.

The analysis phase and initial program develop work has begun on the Coverage Unit. At the same time some development work has been directed toward the Abuse Unit to help manage/process the increased workload generated by automated enforcement activities.

### **D. Y2K Readiness.**

The Y2K status of the Board at this point appears to be good. All computer hardware has been reviewed for compliance. A Prom update patch needed to be applied to all 6-network servers as well as a service level update to all desktops for Microsoft Office. The operating system on the Database Server was also upgrade for Y2K. The old and new data base applications were reviewed and tested to assure that the year 2000 could be entered and processed.

Contingency plans were developed as a precautionary measure in case situation outside of our control occurred. A testing plan was developed and was implemented on January 1, 2000. The Workers' Compensation Board entered the year 2000 with only minor Y2K glitches, which were remedied within days of their discovery. Overall, the transition to the year 2000 was smooth and efficient.

## **14. Coopers & Lybrand Report**

The final report recommended in the Coopers & Lybrand Study was submitted to and approved by the Worker' Compensation Board. The Score Card and Employee Performance Measures Report was approved by the Board at its meeting of December 7, 1999 and is presently being implemented by staff. The Score Card and Employee Performance Measures will provide the means whereby all of the projects which flowed from the Coopers & Lybrand study will be graded and evaluated. This rating process will start with the year 2000. Two other projects outside the Coopers & Lybrand Study will also be rated: the Worker Advocate Program and the Monitoring, Audit and Enforcement (MAE) Program.

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

## **15. 39-A M.R.S.A. Section 213 - Threshold Adjustment and Extension of 260-Week Limitation**

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

Pursuant to 39-A M.R.S.A. Section 213(4), the 260-week limitation contained in Section 213(1) must be extended 52 weeks for every year the Board finds the frequency of cases involving the payment of benefits under Sections 212 and 213 is no greater than the national average. Based on a report provided by Advanced Risk Management Techniques, Inc., "the limitation referenced in Section 213(4) shall be extended for 52 weeks on January 1, 1999." (This language is found in W.C.B. Rule Ch.2, Section 2(2).)

The Workers' Compensation Board has recently hired the actuarial firm of Deloitte & Touche to conduct the independent actuarial review for the 39-A M.R.S.A. adjustment and extension for the next two years. The first report will be submitted to the Board in February of 2000.

## 16. Summary

The Workers' Compensation Act of 1992 went into effect on January 1, 1993 and was amended by P.L. 1997, Chapter 486. The reforms and the amendments continue to have a positive impact on workers' compensation in Maine. The past year of 1999 was a milestone year for the Workers' Compensation Board. The collaborative effort between Labor and Management has brought stability to the system along with a number of innovative programs, such as the streamlining of dispute resolution, implementation of the Monitoring, Audit and Enforcement (MAE) Program, expansion of the Worker Advocate Program, and legislative proposals.

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

The Workers' Compensation Board approved the MAE Program on June 2, 1998. The basic objectives of this program are to (1) provide timely and reliable data to policymakers; (2) monitor and audit payments and filings; and (3) identify insurers, self-insurers, and third-party administrators that are not complying with minimum standards. The program provides for quarterly compliance reports, which measure the timeliness of initial indemnity payments, the filing of Memoranda of Payment, and the timeliness of First Reports of Injury filings.

To ensure the accuracy of the Quarterly Compliance Reports, a pilot project was undertaken. The Board approved the report resulting from the Pilot Project on January 26, 1999 and authorized the production of Quarterly Compliance Reports starting with the first quarter of 1999. The Board has approved three Quarterly Compliance Reports in 1999 and is in the process of receiving the fourth quarter Compliance Report. There has been a significant improvement in the performance of insurers since the start of this program.

The Board has also approved a three-year cycle for the audits of insurers. Over 1,000 claim files belonging to 28 entities have been audited to date.

Violations to the Act are pursued through both the MAE Program and the Abuse Investigation Unit.

The expanded Worker Advocate Program has been in place since September, 1998. The program assists unrepresented employees through the mediation and formal hearing stages. The continued need for, and the popularity of, the Program is obvious from the volume of work advocates now handle. The advocates have represented injured workers in 4,665 mediations and 939 formal hearings. The Worker Advocate Program is filling the void for unrepresented employees created by the 1992 Act.

Another milestone realized by the Board came during the 1999 legislative session when the Legislature and the Governor enacted several laws proposed by the Board. In coming legislative sessions, the Board plans to build on its recent success in improving the system through the legislative process.

These are but a few of the important issues the Board has been able to resolve. The Board will continue to build on its past successes to ensure that Maine's workers' compensation system runs as smoothly and efficiently as possible.



**SECTION II**

**BUREAU OF INSURANCE**





## Section II: Bureau of Insurance

1. Introduction .....	B-1
2. Recent experience in the Maine Workers' Compensation Market.....	B-2
3. Market Structure and Competition .....	B-4
4. Rate Differentials .....	B-6
5. Tiered Rating, Schedule Rating, Dividend Plans, Retrospective Rating and Large Deductibles.....	B-8
6. Self-Insurance.....	B-9
7. Conclusion.....	B-10



## **1. Introduction**

The Superintendent is pleased to present this report on the status of the Maine workers' compensation market. This report is required by law and is made to the Governor and the Joint Standing Committee of the Legislature having jurisdiction over workers' compensation rate regulation matters, and other interested persons.

The workers' compensation market has benefited from six years of rate decreases and an active, competitive market among insurers and self-insurers with group self-insurers returning excess funds to their members. There are however, indications that the period of rate decreases may be drawing to a close and Maine is likely to see rate increases in the near future. The loss experience of insurers writing workers' compensation insurance in Maine has deteriorated in recent years and the first proposed rate increase for loss costs since the 1992 reform is currently under review by this bureau.

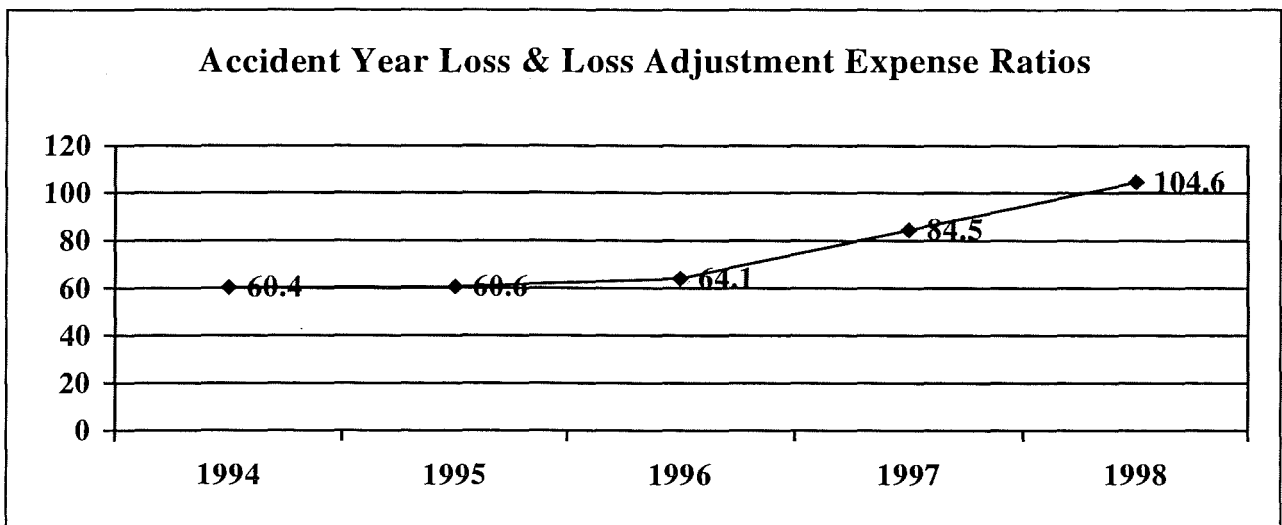
The market remains competitive, new insurers continue to enter the market and market concentration is decreasing. All indications are that Maine's market will remain competitive and employers will benefit from that competition.

Alessandro A. Iuppa  
Superintendent of Insurance

## 2. Recent Experience in the Maine Workers' Compensation Market

The experience of insurers writing workers' compensation policies as measured by the industry-wide loss and loss adjustment expense (LAE) ratio has deteriorated in recent years. As shown in Exhibit I below, the loss and LAE ratio, based on recently updated information, was in the low 60's following the 1992 law change. The relatively low loss and LAE ratio reflected the loss prevention and claim management practices of employers and that the savings from the law change were greater than initially estimated by the National Council on Compensation (NCCI) and insurers. During the period 1994 through 1999 loss costs filed by NCCI were lower, the market became more competitive and rates charged by insurers decreased. Premiums decreased and the loss and LAE ratio increased. For accident year 1997 and 1998 indications from NCCI are that indemnity losses have increased while rates continued to decrease, causing the loss and LAE ratio to raise to levels above those of the prior years. The first proposed increase in loss costs was filed in 1999 for the year 2000 policies.

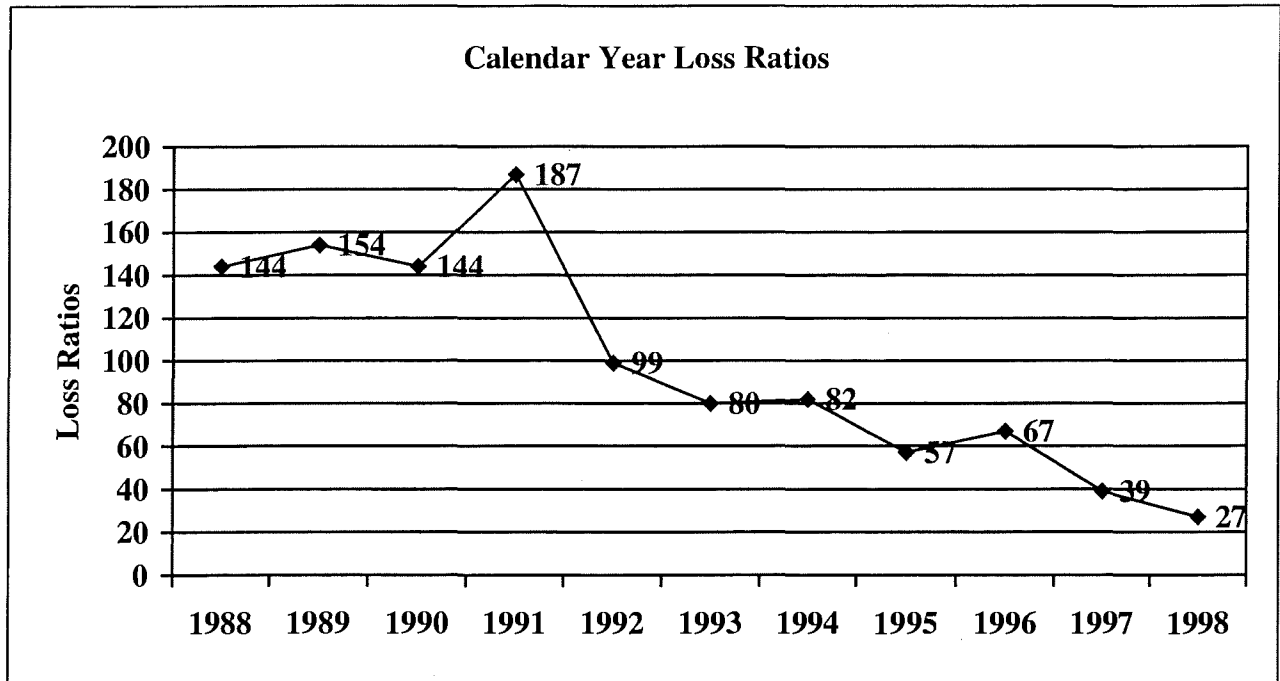
Exhibit I



Source: NCCI

Another source of information on the Maine market is the calendar year loss ratio information compiled from the Annual Statements insurers are required to file with the Bureau of Insurance. These figures, shown in Exhibit II, show improving financial results. Calendar year incurred losses and LAE reflect payments and reserve adjustments during a year on all claims including those on prior years' injuries. The improving calendar year loss and LAE ratios reflect the downward adjustment in reserves for the years prior to and immediately following the 1992 reforms. While the calendar year data may be easier 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 of a better matching of 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.

## Exhibit II



In summary, the experience of insurers as measured by the loss and LAE ratio was favorable in the years 1994 – 1996 but current indications are that the ratio has increased in recent years. The six years of rate decreases has ended and rates can be expected to increase in the near term.

### 3. Market Structure and Competition

A measure of market competition is market concentration. In general, greater concentration is associated with less competition. Prior to January 1993, many insurers had withdrawn from the workers' compensation insurance market. Not all insurers have returned even with the law change in 1992. The assigned risk or residual market pool had a significant share of the market. Effective January 1, 1993 Maine Employers Mutual Insurance Company (MEMIC), a state created mutual insurer replaced the residual market as the insurer of last resort. MEMIC inherited a block of business previously written by insurers acting as service carriers for the Pool. Additionally a substantial portion of the market is self-insured for workers' compensation (See Section 5).

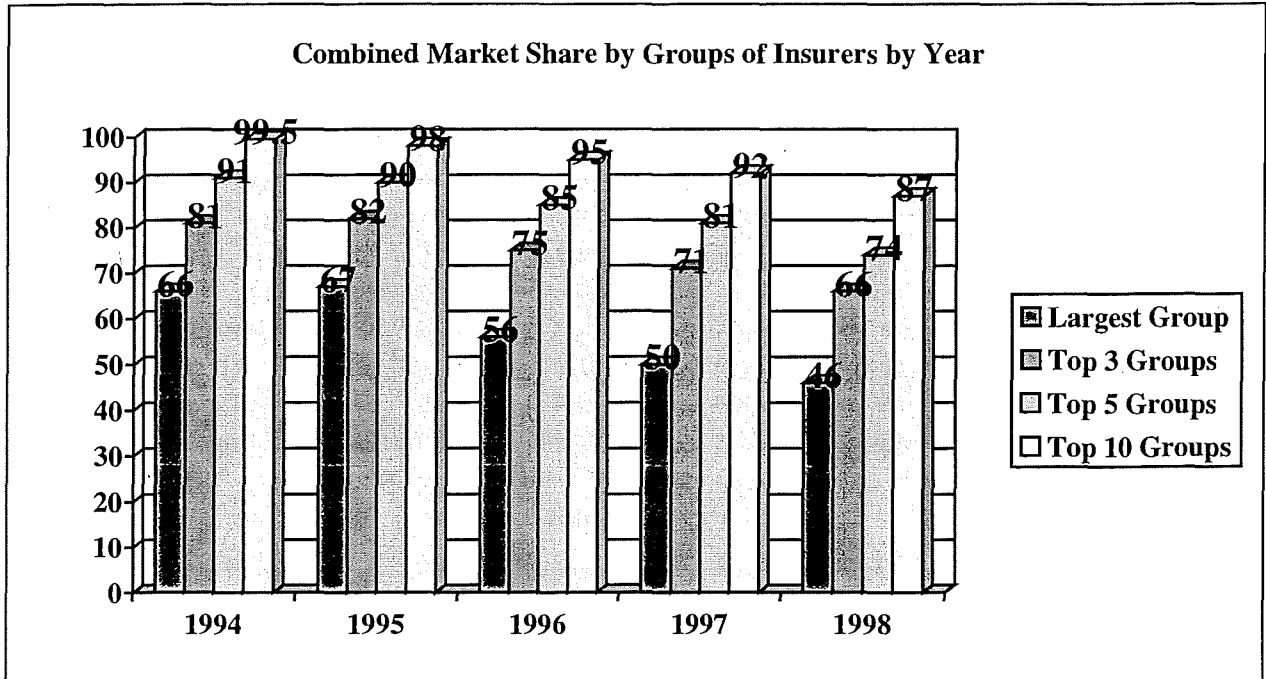
Exhibit III contains workers' compensation insurance market share percentages for the 10 largest insurance groups for the years 1994 through 1998. See Appendix A for a listing of the groups by year. Exhibit IV illustrates market share for the 20 largest insurance groups, based on 1998 written premium. Figures are by insurance group, where a group is made up of insurance companies under common control and underwriting. Groups rather than companies are used because there is not likely to be meaningful competition among companies within the same group. The year 1993 is excluded because premiums written included that of any companies acting as servicing carriers for the assigned risk pool.

An examination of the market share percentages in Exhibit III indicates that market concentration has decreased subsequent to the revision in the rating law and other changes effective January 1, 1993. The largest group's insured market share decreased from about two thirds to less than half, and the market share of the five largest groups decreased from 91 % to 75 %. In 1994 the ten largest groups wrote virtually all of the insured market, but that percentage decreased to 87 % in 1998.

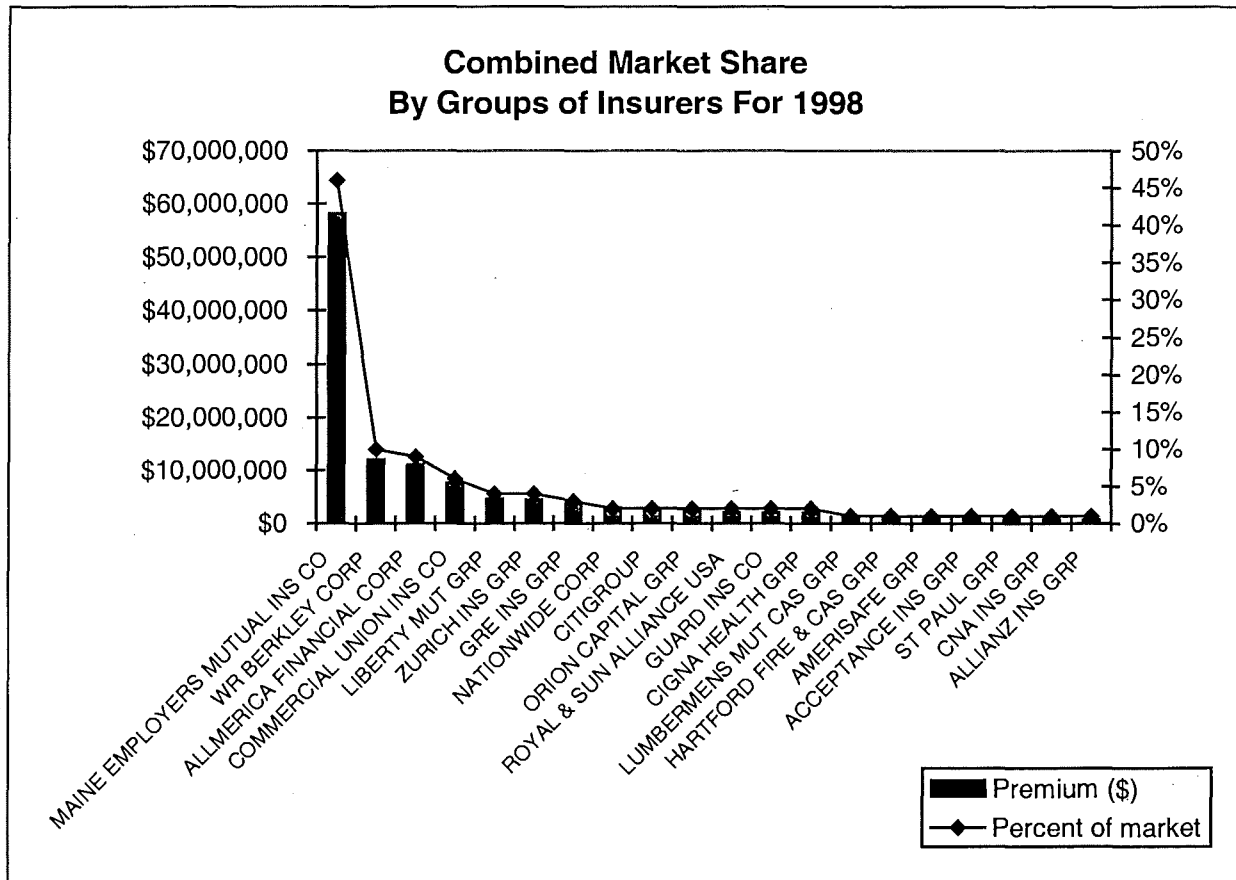
With approximately half of the market self-insured the insured market share percentages do not fully reflect the degree of competition. The concentration numbers considering the entire market would be half those in the exhibit.

The decreasing market concentration along with the disparity in rates indicate that the market is competitive, rates are not controlled or fixed, and employers have options with respect to cost and other factors influencing the selection of the insurance carrier. The trend since 1993 continues to be towards more competition, more choices and a broadening of the market even when total premium volume has decreased.

### Exhibit III



### Exhibit IV

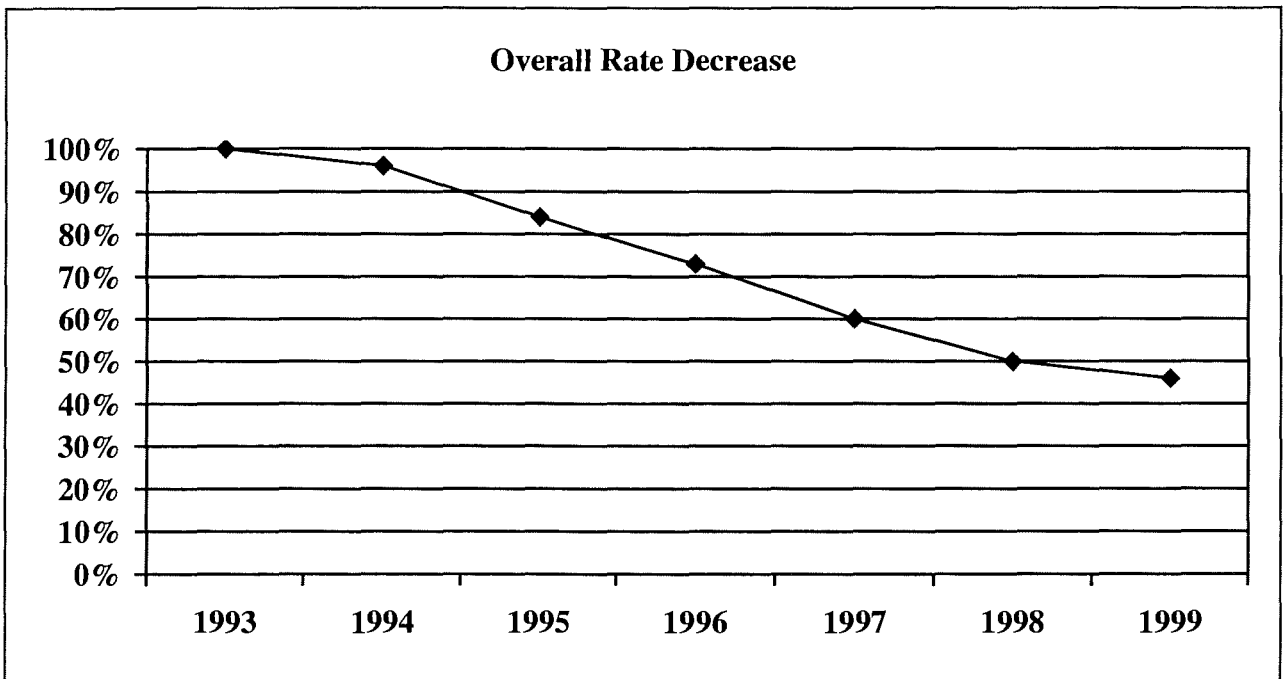




## 4. Rate Differentials

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 differentiation in the manual rates. By law, maximum rates were established by the Superintendent and 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) continues to make an annual advisory filing of pure premium rates, which are rates for losses and loss adjustment expenses, excluding all other expenses and profit provisions. NCCI has made two filings which are currently pending before this bureau for an aggregate increase of 13.3% effective January 1, 2000. Overall, since 1994 the cumulative impact of these rate reductions is a 43.4% decrease in loss cost rates. Exhibit V details the decrease. If the pending increase is approved, the 43.4 % decrease will have to be recalculated.

Exhibit V



As of November 1999, 149 insurance carriers have filed and received approval from the Bureau to sell workers' compensation insurance in Maine at specified rates. Appendix B compares the Maine Employers' Mutual Insurance standard base rate with the lowest available base rate for the 73 largest classification codes (in terms of payroll) for all workers' compensation insurers. For many classification codes, the wide range underscores the competitive nature of workers' compensation insurance in Maine and the importance of employers exploring options in securing coverage for workers' compensation claims.

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 reentering the Maine market specialize in underwriting employers in a specific industry such as wood products manufacturing (including logging), health care, trucking or construction.

A testimony to the success of recent reforms is highlighted in an annual report compiled by Actuarial & Technical Solutions, Inc., an independent firm which compiles and studies workers’ compensation on a nationwide basis. In 1996 the study ranked Maine as the 42<sup>nd</sup> most expensive state for workers’ compensation for the manufacturing industry among the states studied. We were ranked 30<sup>th</sup> in 1997. In 1998, we moved down to the 23<sup>rd</sup> position. In 1999 we returned to the 30<sup>th</sup> position.

## **5. Tiered Rating, Schedule Rating, Dividend Plans, Retrospective Rating, and Large Deductibles**

Another feature of the workers' compensation insurance market in Maine is the introduction of tiered rating, scheduled rating, dividend plans and the increased use of retrospective rating and large deductibles.

Tiered rating provides a means for an individual carrier to offer more than one set of base rates. The carrier develops the underwriting criteria applicable to each tier and files the criteria and rates which are then reviewed to assure that they are not unfairly discriminatory.

Over 70 percent of the insurance companies with filed rates have received approval to utilize scheduled rating in Maine. 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 by as much as 25%.

Indications are that retrospective rating plans are being utilized in Maine. Retrospective rating means that an employer's final premium is a direct function of their loss experience for that policy period. To the extent the employer controls its losses it receives a reduced premium and, conversely, pays a higher premium in the event it has poor experience. Retrospective rating utilizes minimum and maximum amounts for a policy and is typically written for large employers.

Finally, several companies offer large deductible plans in Maine where the employer agrees 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 bills the deductible amounts to the insured employer. The advantages of this product are that the employer receives a discount for assuming some of the risk and it offers an alternative to self-insurance.

## **6. Self-Insurance**

Self-insurance represents a significant part of Maine's workers' compensation market and is a viable alternative to commercial insurance for many employers in the State. There are 20 groups representing approximately 1,350 employers and 101 individual self-insured employers in Maine, many of which have become self-insured since 1988. Since 1985 the self-insurers' estimated standard premium has grown from more than \$52 million to about \$122 million. In terms of annual standard premium, self-insureds now represent approximately 49% of the workers' compensation market. The growth in self-insurance has slowed in the last few years and some former self-insured employers have returned to the commercial market. Some carriers have filed rating plans to allow them to assume the balance of a self-insurer's existing exposure and transition into a fully insured program.

## **7. Conclusion**

The loss experience of insurers writing workers' compensation insurance in Maine has deteriorated in recent years and the first proposed rate increase for loss costs since the 1992 reform is currently under review.

A measure of market competition is market concentration. The trend in the Maine workers' compensation market is that more companies have a share of the market. Although this process has been deliberate, it shows a positive growth with less concentration.

The range among workers' compensation rates, the number of carriers in the market place and the overall decline in rate levels between 1994 and 1999, all indicate that Maine's workers' compensation market is healthier. Many employers have greater options and lower costs, and market competition has significantly improved.

## Appendix A

### 10 Largest Insurance Groups For the Years 1994 through 1998.

	1994	1995	1996	1997	1998
1	ME Employers' Mutual	ME Employers' Mutual	ME Employers' Mutual	ME Employers' Mutual	ME Employers' Mutual
2	Commercial Union	WR Berkley	WR Berkley	WR Berkley	WR Berkley
3	WR Berkley	Commercial Union	Allmerica Financial	Allmerica Financial	Allmerica Financial
4	Allmerica Financial	Allmerica Financial	Commercial Union	Commercial Union	Commercial Union
5	Zurich	Zurich	Zurich	Liberty	Liberty
6	Aetna	Acceptance	Netherlands	Zurich	Zurich
7	Acceptance	Netherlands	Acceptance	Netherlands	GRE
8	Netherlands	Reliance	Liberty	Citigroup	Nationwide
9	Royal	ST Paul	Royal	Nationwide	Citigroup
10	Liberty	Star	Nationwide	Hartford	Orion

## Appendix B

### MEMIC Standard Rate Verse the Lowest Available Rate

Class Code	Description	MEMIC	Industry
		Standard	Low
2111	Cannery	\$5.10	\$2.76
2286	Wool Spinning & Weaving	\$4.93	\$2.66
2501	Clothing Manufacturing	\$4.20	\$2.27
2660	Boot or Shoe Manufacturing	\$7.13	\$3.85
2702	Logging or Lumbering	\$35.73	\$19.32
2709	Mechanized Logging	\$10.77	\$5.82
2710	Saw Mill	\$10.81	\$5.84
2721	Certified Logging	\$10.54	\$5.70
2841	Woodenware Manufacturing	\$7.71	\$4.17
3629	Precision Machined Parts Manufacturing	\$2.86	\$1.54
3632	Machine Shop	\$4.47	\$2.41
3681	TV, Radio, Telephone. or Telegraph Device Manuf.	\$2.00	\$1.08
3724	Machinery or Equipment Erection or Rep	\$17.88	\$9.67
4207	Pulp Manufacturing	\$1.65	\$0.8 <sup>n</sup>
4239	Paper Manufacturing	\$3.82	\$2.6
4279	Paper Goods Manufacturing	\$3.47	\$1.88
4299	Printing	\$3.00	\$1.62
4361	Photographers	\$2.80	\$1.51
4484	Plastics Manufacturing: Molded Products	\$4.49	\$2.43
4511	Analytical Chemist	\$1.75	\$0.95
4693	Pharmaceutical/Surgical Goods Manufacturing	\$2.63	\$1.42
5183	Plumbing	\$6.45	\$3.49
5190	Electrical Wiring Within Buildings	\$4.55	\$2.46
5191	Office Machine or Appliance Installation	\$1.16	\$0.63
5506	Street Construction Paving	\$7.57	\$4.10
5538	Sheet Metal Work	\$7.39	\$4.00
5606	Contractor Executive Supervisor	\$3.02	\$1.64
5645	Carpentry Detached 1 or 2 Family	\$11.06	\$5.98
6217	Excavation	\$10.09	\$5.46
7228	Trucking Local	\$15.95	\$8.62
7229	Trucking Long Distance	\$15.95	\$8.62
7380	Drivers	\$9.63	\$5.21
7539	Electric Light or Power Company	\$4.44	\$2.40
7600	Telephone or Telegraph Company	\$6.01	\$2.9
7610	Radio or Television Broadcasting	\$0.57	\$0.28

7720	Police Officer	\$4.66	\$2.00
8006	Store: Grocery/Convenience Retail	\$2.70	\$1.48
8008	Store: Clothing/Dry Goods Retail	\$1.69	\$0.79
8010	Store: Hardware	\$2.65	\$1.26
8017	Store: Retail NOC	\$2.11	\$1.30
8018	Store: Wholesale NOC	\$6.79	\$3.11
8024	Seafood Dealer Wholesale	\$8.78	\$4.94
8033	Store: Meat, Grocery And Provision	\$2.69	\$1.32
8039	Store: Department-Retail	\$3.19	\$1.42
8044	Store: Furniture	\$4.06	\$2.13
8058	Building Material Dealer-New Material	\$3.09	\$1.51
8107	Machinery Dealer	\$4.83	\$2.55
8227	Construction Permanent Yard	\$6.82	\$3.91
8232	Lumberyard New Material Wholesale	\$4.12	\$2.23
8350	Gasoline Dealers	\$5.73	\$2.64
8380	Auto Service or Repair Center	\$4.55	\$2.41
8601	Architect or Engineer Consulting	\$1.13	\$0.59
8742	Salespersons, Collectors	\$0.97	\$0.60
8803	Auditors, Accountant Traveling	\$0.36	\$0.20
8810	Clerical Office Employees	\$0.76	\$0.39
8820	Attorney	\$1.18	\$0.54
8829	Convalescent or Nursing Home	\$6.54	\$2.76
8832	Physician	\$0.87	\$0.39
8833	Hospital Professional Employees	\$1.81	\$0.98
8835	Nursing-Home Health, Public & Traveling	\$4.05	\$2.07
8861	Charitable or Welfare organ. Prof.	\$0.71	\$0.47
8868	College: Professional Employees	\$0.71	\$0.47
8901	Telephone or Telegraph Co. Office	\$0.45	\$0.25
9014	Buildings Operated By Contractors	\$5.57	\$2.75
9015	Building Operated By Owner	\$6.45	\$3.62
9040	Hospital All Other Employees	\$4.48	\$2.33
9052	Hotel: All Other Employees	\$3.40	\$1.91
9058	Hotel: Restaurant Employees	\$2.83	\$1.28
9060	Club-Country, Golf, Fishing or Yacht	\$2.70	\$1.35
9063	YMCA, YWCA, YMHA, or YWHA	\$1.44	\$0.74
9079	Restaurant	\$2.80	\$1.49
9101	College: All Other Employees	\$3.53	\$2.01
6824F	Boat Building or Repair	\$5.95	\$3.91

NOC – Not Otherwise Classified





**SECTION III**

**BUREAU OF LABOR STANDARDS**



### Section III: Bureau of Labor Standards

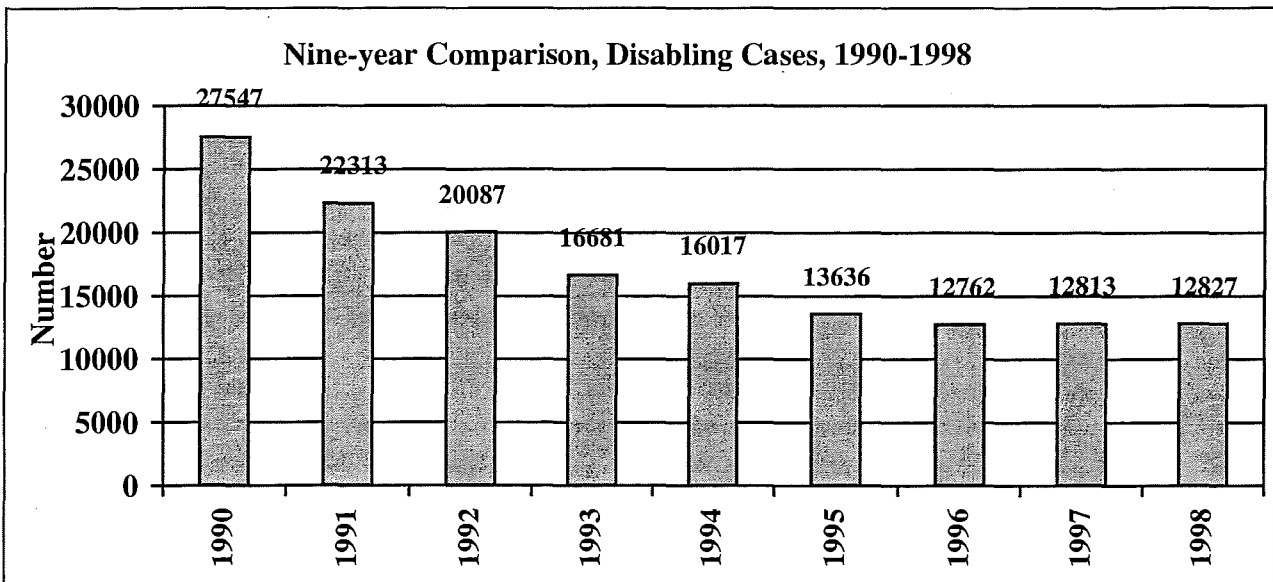
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## 1. Highlights from Characteristics of Work-related Injuries and Illnesses in Maine, 1998

In 1998, there were 12,827 disabling cases reported to the Workers' Compensation Board (WCB) on a First Report of Occupational Injury or Disease, a 0.1% increase from the 12,813 disabling cases in 1997 as shown in Figure 1. This is the second consecutive year disabling cases increased in number.

Figure 1.



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

- Increased education and training have made employers and workers more aware of the criteria for reporting a work-related injury or illness to the WCB.
- The number of disabling cases with no return-to-work date is nearly 2.5 that of 1995 when 24% of all disabling cases received had no return-to-work date. This gives an inaccurate account of disabling cases
  - 1995 - 3,270 cases with no return-to-work date (24.2% of total 13,673 total disabling cases)
  - 1996 - 6,094 cases with no return-to-work date (48% of total 12,791 total disabling cases)
  - 1997 - 7,620 cases with no return-to-work date (59% of total 12,813 total disabling cases)
  - 1998 - 7,936 cases with no return-to-work date (62% of total 12,827 total disabling cases)

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

## 2. Workers' Compensation Data

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

- **Cost data** is an important source of information when evaluating the effectiveness of the Workers' Compensation System. It is also very useful in determining where agencies involved in injury and illness prevention should allocate their resources. BLS received cost data in January 2000, it is hoped accurate cost data will be available for publication in the near future.
- The **Monitoring, Auditing and Enforcement Program** (MAE) at the WCB is a vital part of getting accurate data regarding disabling work-related injuries and illnesses. This program collects reliable data in a timely fashion, monitors and audits payment and filing requirements, ensures that all filing and compliance obligations are met. Since 1999 is the first full year this program was in place, the effectiveness of this program will not be realized until later this year.
- **Employee file** has also just been made available to BLS, so the age of the injured worker will become a close focus for 2000. It is imperative to train young workers before or just as they are entering the workforce do proper training for workplace safety.
- **Return-to-work date** of every case must be reported to the WCB. Without this date, cases appear to be open and active. This data is mandatory by law, and WCB must receive this date. As shown in the data on the previous page, 62% of all cases for 1998 do not have a return-to work date. With the MAE program is now in place, this should improve but as of December 1999, 57% of all 1999 disabling cases received at the WCB do not have a return-to-work date.
- **Detailed narrative of the injury** is vital in training, targeting and educating the employers and the workers on safety and health issues. First Reports should not be accepted without the nature of the injury (cut, bruise, fracture), the part of the body affected, the event leading up to the injury (auto accident, overexertion, struck against), and the source that directly produced the injury. Unknown codes are better for 1998 but still there are too many unknowns for the injury.

Unknown Data Elements				
	1995	1996	1997	1998
Number of disabling cases	13,673	12,791	12,813	12,827
Unknown nature	3.2%	7.2%	9.0%	6.3%
Unknown part of body	0.6%	0.8%	0.9%	1.1%
Unknown source	7.2%	7.9%	9.2%	8.0%
Unknown event	4.7%	4.6%	6.1%	5.2%

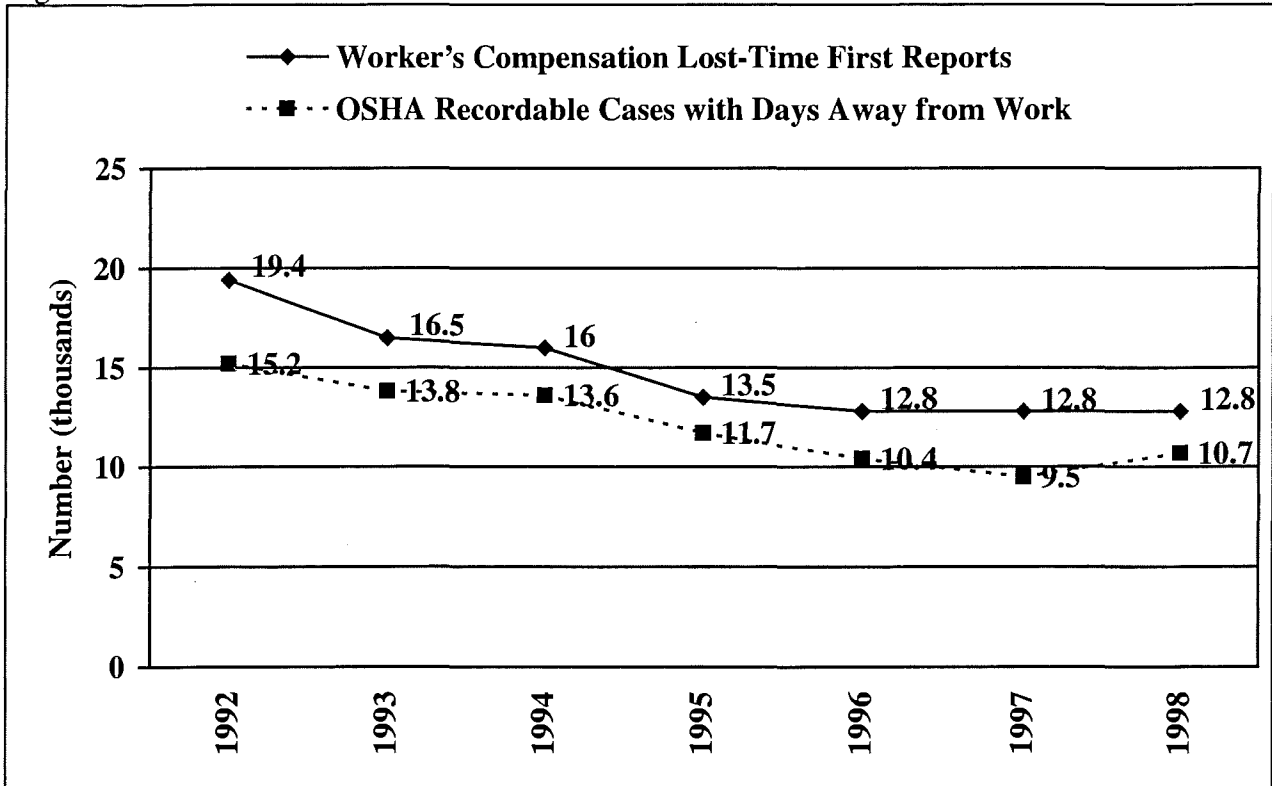
**Key Point:** To get a consistent and accurate picture of all disabling cases, employers, workers and insurers need to be educated on proper filing guidelines with accurate date. A preliminary look at 1999 data shows the collection of the data is getting better, and with the MAE program in place at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

### 3. Cases with Lost Time are on the Increase

Figure 2 compares the number of cases resulting in days away from work between two independent systems, Workers' Compensation and the OSHA Recordkeeping system. These two systems were created to serve separate purposes but they each show a similar trend dating back to 1990. Each system shows a steady decline in the number of cases resulting in days away from work. WC data started increasing in number of lost time cases in 1996 while OSHA data revealed an increase starting a year later in 1997

The data in this year's chart is refined from previous years' data. Public sector information was added to the OSHA data in this table, where it had been omitted from previous publications. OSHA recordable cases with days away from work is also on the rise, showing that the trend for work-related injuries in Maine is on the rise.

Figure 2.



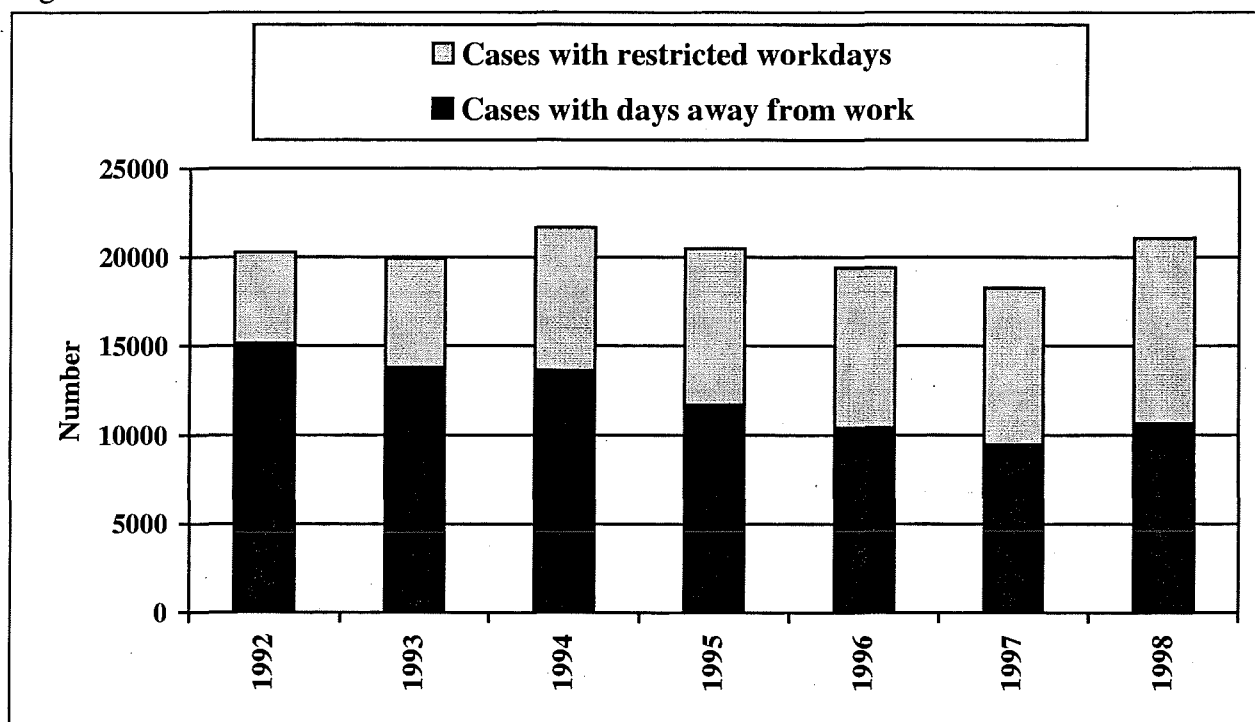
**Key Point:** The number of lost time cases rose to 12,827 in 1998 (0.1% increase from 1997) the second increase since 1990. OSHA recordable cases rose to 10,657 in 1998 (12.6% increase).



## 4. Cases with Restricted Workday Cases at High Levels

The *Annual Survey of Occupational Injuries and Illnesses* conducted by the U. S. Bureau of Labor Statistics, in cooperation with the Maine Department of Labor, Bureau of Labor Standards produces reliable estimates on the number and rate of cases with days away from work, cases with restricted work activity, and cases requiring medical treatment beyond first aid. Because the Workers' Compensation Board does not generally collect cases resulting in restricted work activity unless the claim involves medical bills and the claim is controverted, an important piece of information is lost. Cases with restricted workdays account for 49.6% of all lost workday cases as shown in Figure 3. However, the annual BLS survey continues to collect cases resulting in restricted work activity and an interesting trend has evolved. Prior to 1992, the proportion of injuries and illnesses that resulted in days away from work made up a large majority of the total lost workday cases (cases involving days away from work and restricted work activity). Since 1992, the proportion of lost workday cases that involved restricted work increased while the proportion of cases resulting in days away from work declined.

Figure 3.



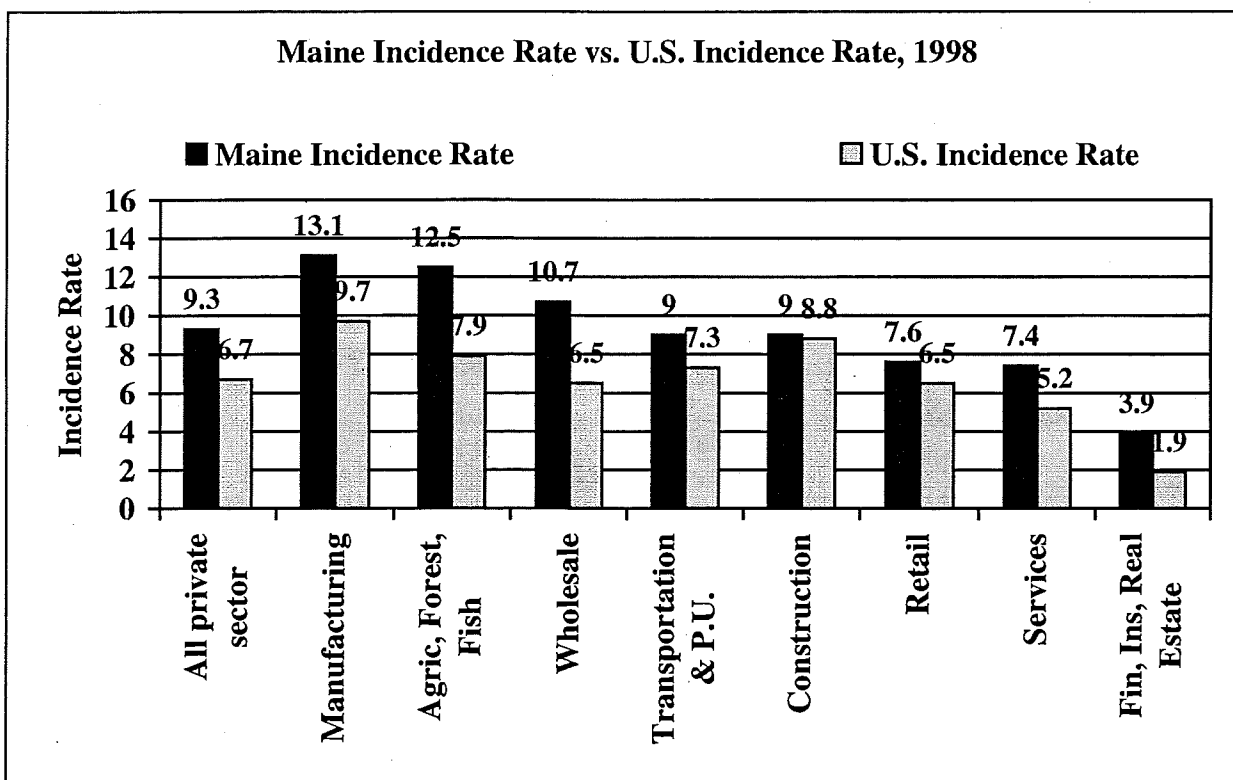
**Key Point:** Due to a shift in the way cases are managed (e.g. return-to-work programs), the number of cases resulting in restricted work activity has greatly increased since 1992 while the number of cases resulting in days away from work has dropped sharply. The continued sharp drop may only indicate that cases are being managed better. Although less severe, a significant number of injuries are still occurring in the workplace.

## 5. Incidence Rate for Maine vs. U.S.

After nine years of decline, the number and rate of OSHA recordable injuries and illnesses from the Annual Survey of Occupational Injuries and Illnesses has shown an increase. There was a large increase in the number of cases involving restricted work activity in 1998. A record 10,077 cases were recorded, a 19% increase over 1997 when 8,435 cases were reported. Cases involving days away from work increased 10% in 1998 with 9,224 cases. Cases that required medical treatment beyond first aid without days away or restricted work activity increased 16% over 1997 cases with 18,432 cases in 1998. See Figure 4.

The increase in the incidence rate of OSHA recordable cases in 1998 was evident in all major industry divisions except for Finance, Insurance, and Real Estate which showed a slight decrease. Manufacturing recorded the highest incidence rate of injuries and illnesses with 14.2 cases per 100 full-time employees. Finance, Insurance, and Real Estate recorded the lowest rate in 1998 with 3.9 cases per 100 full-time workers

Figure 4.



**Key Point:** The rate of injuries and illnesses in Maine is higher than the U. S., as a whole, in each major industry, even after accounting for differences in the industry makeup between them.

## 6. Length of Service of Injured Worker

The number of workers getting injured within the first year of employment with their current employer, has risen from the 8-year average of 32% to 37% in 1998. This information clearly shows the need to have new workers properly trained on workplace safety and health.

Figure 5.

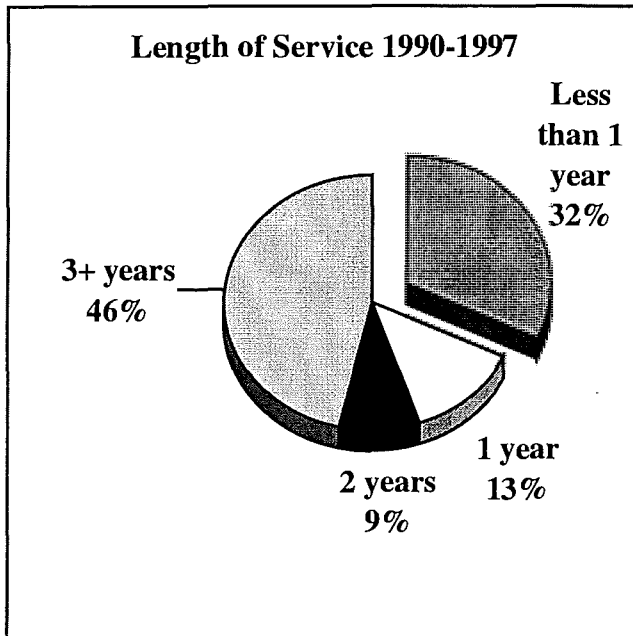
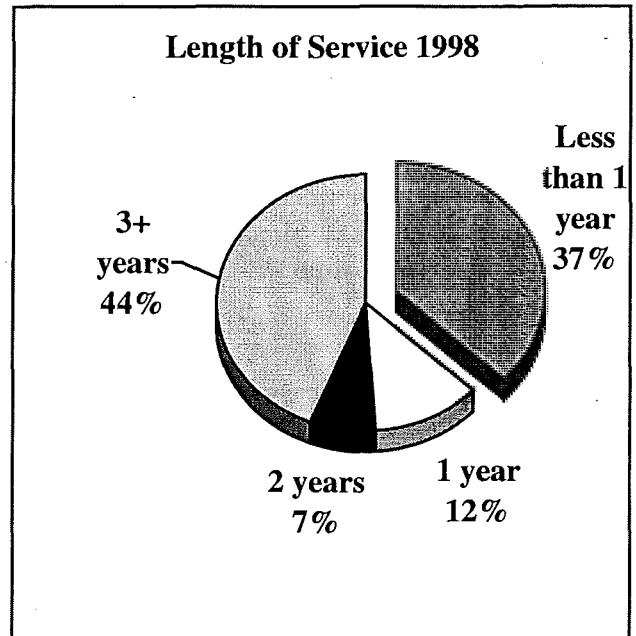


Figure 6.



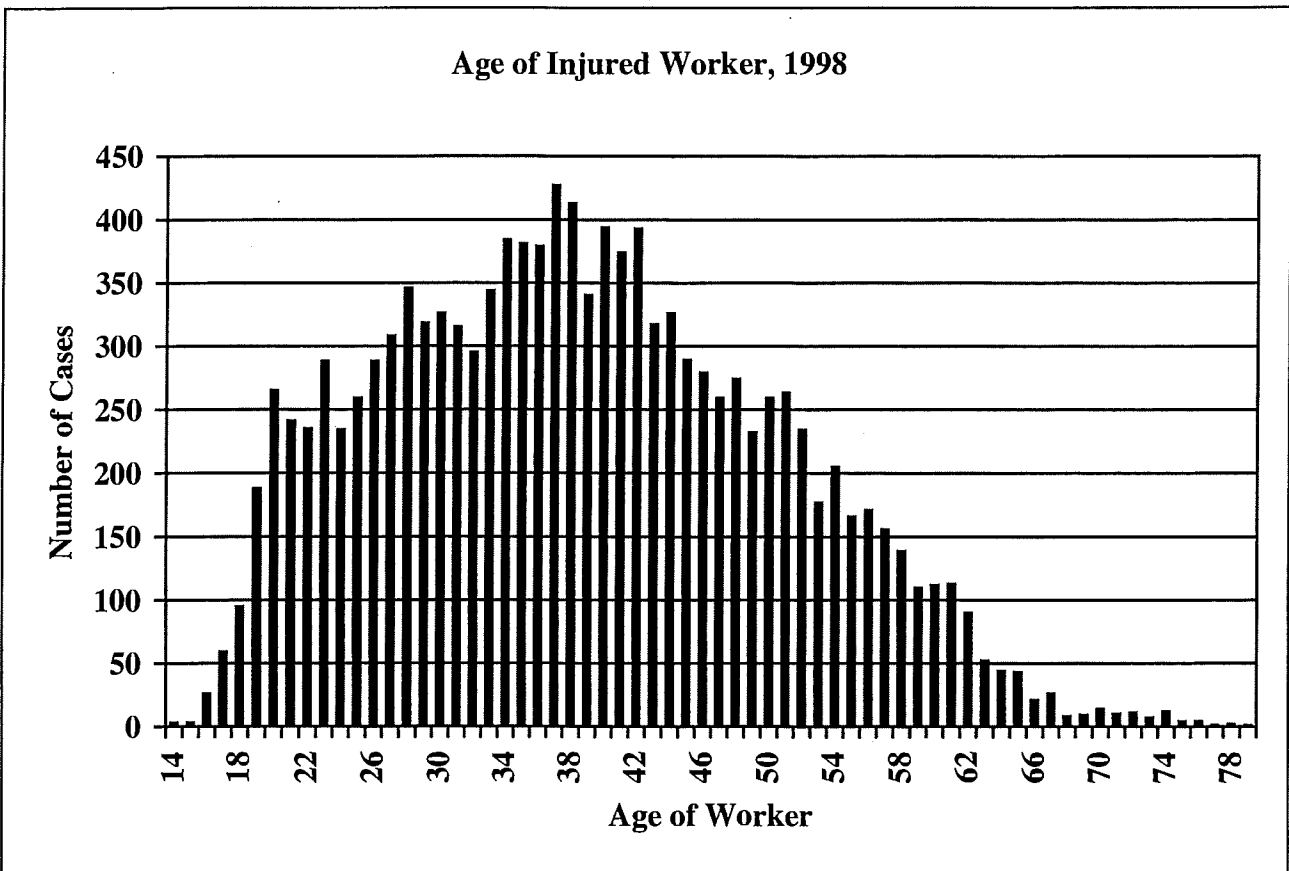
Length of Service of Injured Worker	Disabling Cases					
	1996		1997		1998	
	Number	Percent	Number	Percent	Number	Percent
<b>Total</b>	<b>12,762</b>	<b>100.0</b>	<b>12,813</b>	<b>100.0</b>	<b>12,827</b>	<b>100.0</b>
<b>Under 1 Year</b>	<b>4,086</b>	<b>32.0</b>	<b>4,472</b>	<b>34.9</b>	<b>4,722</b>	<b>36.8</b>
1 Year	1,481	11.6	1,396	10.9	1,588	12.4
2 Years	956	7.5	955	7.5	877	6.8
3-4 Years	1,163	9.1	1,180	9.2	1,141	8.9
5-9 Years	2,395	18.8	2,142	16.7	1,809	14.1
10-14 Years	976	7.6	1,004	7.8	1,203	9.4
15-19 Years	645	5.1	671	5.2	547	4.3
20+ Years	626	4.9	690	5.4	656	5.1
Unknown	434	3.4	3.3	2.4	284	2.2

**Key point:** The number of new hires getting injured on the job is on the rise. In 1998, over 4,700 workers, who had been with their current employer less than one year, lost time due to a work-related injury or illness, a 15% increase from 1995. Over 56% of all injured workers losing time in 1998 had been with their current employer less than 3 years.

## 7. Age of Injured Worker

For the first time since 1995, age data is available for the injured worker. BLS has spent much time and effort training young workers over the past several years. The chart in Figure 7 shows there is still a sharp rise in lost time work-related injuries between the ages of 19 and 23 years of age. The highest claims were between the ages of 37 and 42 years old.

Figure 7.



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

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

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

- **Company profiles** – shows the number of disabling and fatal cases for a specific company, so it is imperative to assign the correct UI account numbers to EVERY First Report
- **SafetyWorks!** – Workplace Safety and Health uses WC data to train employers and workers in areas where workplace injuries occur, i.e. forklift training, cumulative trauma injuries. By doing queries on WC data, SafetyWorks! knows where the 'hot spots' are for injuries and illnesses. Also WC data is used for targeting. Companies can be selected at random, or can be selected because their incidence rate of injuries and illnesses is higher than the State average.
- **Public Sector enforcement** – BLS investigates complaints and enforces occupational health and safety laws for municipal, county and state government helping to protect over 78,000 workers. WC data helps the Workplace Safety and Health division target city, county, and state locations with higher than average incidence rate for injuries and illnesses.
- **Wage and Hour** – this division enforces state laws and investigates complaints pertaining to minimum wages and overtime, final payment of wages, severance pay, child labor. WC data helps this division find employers who hire children; they may investigate these companies to protect the welfare of the children. They also may use this data to find employers in a specific industry to visit for compliance with wage and hour laws.
- **Migrant and Immigrant Services** – coordinates migrant and immigrant issues in Maine. WC data is used to track employers using migrant workers.
- **Young Workers** – much focus is being placed on our youth in the workplace and how they are getting injured. By educating them at an early age, it is hoped they will go in to their place of employment with skills to prevent injuries. For the year 2000, BLS will be involved in the Young Worker Injury Surveillance Program (YWISP) where work-related injuries to children 14 and 15 years old will be tracked, in an effort to prevent future injuries to these children, and other youth in the workforce.
- **Characteristics of Work-related Injuries and Illnesses in Maine** – is published annually highlighting all disabling work-related injuries and illnesses based on data received on a *First Report of Occupational Injury or Disease*.
- **WC Assessment** – is set in April using WC data. Inaccurate data means inaccurate assessments to insurance companies and self-insured employers.

(Continued on next page)

- **Census of Fatal Occupation Injuries (CFOI)** – tracks work-related fatalities in Maine. Cases are usually found through a First Report but cases are also found in the newspaper, through Bureau of Health for death certificates, and Marine Resources for water-related fatalities
- **Fatality Assessment and Control Evaluation (FACE)** – is a new surveillance and investigative research project. This information is used to identify new hazards and case clusters and the data will be used for new research or prevention efforts or for new or revised regulations to protect workers.
- **Integrating Research and Practice in Occupational Safety and Health** – BLS is taking the initiative to develop an occupational safety and health research conference in August 2000. This symposium will be an opportunity to identify new research partners and integrate various ideas and perspectives.
- **Special projects** – Economic and Social Studying Impact Consequences of Work-related Injuries and Illnesses:
  1. Economic impact of carbon monoxide poisoning: A Case Study (1998-1999)
  2. Economic Impact of Work-related fatalities: A Retrospective Study (1995-1999)
  3. Economic Impact of Work-related Injuries and Illnesses in the Manufacturing Industries