REPORT OF THE

GOVERNOR'S TASK FORCE

ON

WORKERS' COMPENSATION REFORM

APRIL 1991

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GOVERNOR'S TASK FORCE

ON

WORKERS' COMPENSATION REFORM

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April 2, 1991

The Honorable John R. McKernan, Jr.
Governor
State House Station 1
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Dear Governor McKernan:

I am pleased to submit the following report from the Governor's Task Force on Workers' Compensation Reform. The report includes an analysis of Maine's workers' compensation system and contains a number of recommendations for significant reforms.

The Task Force found that the current system is cumbersome, contentious, and costly and fails to serve employers and employees effectively and fairly. A well-designed workers' compensation system should accomplish several objectives: prompt payment of legitimate claims, fair treatment of all parties, rapid return to work, maximization of safety, and affordability and stability of coverage. The Task Force found that Maine's system fails to meet most, if not all, of these criteria.

After extensive research and discussion, the Task Force has developed options for improving the current system. Specific recommendations in this report would reduce costly and time-consuming litigation, help ensure appropriate utilization of medical services, focus compensation on work-related injuries and illnesses, reward workplace safety, and improve insurer claims practices.

As chair of the Task Force, I want to recognize the hard work and dedication of not only the committee members who devoted countless hours to this project but also Superintendent Joe Edwards and the staff of the Bureau of Insurance. The contributions, expertise and commitment of the Task Force members and the Bureau made this report possible.

Sincerely,

Susan Collins

Susan M. Collins

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I. INTRODUCTION

In September 1990, Governor John R. McKernan, Jr. appointed a 19-member committee, known as the Governor's Task Force on Workers' Compensation Reform, charged with identifying and analyzing problems in Maine's workers' compensation system and developing potential solutions. The Task Force members included employers, employees, a physician, a State safety expert, an attorney, representatives of the insurance industry and self- insurers, and others who brought a wide range of experiences and expertise to the Task Force's work.

The Task Force's first meeting was on September 21, 1990. At that meeting, the members formed three subcommittees: the Legal/Procedural Subcommittee, chaired by Peter Weatherbee, a Bangor attorney; the Medical Subcommittee, chaired by Dr. John Barrett, an orthopedic surgeon from Maine Medical Center; and the Employer/Employee Subcommittee, chaired by Steve Clarkin, the regional manager of public affairs for International Paper and former counsel to the Maine Chamber of Commerce and Industry.

During the past six months, the subcommittees have met several times to identify areas for research, exchange information, hear presentations, and discuss issues. The full Task Force reconvened on December 11 to hear reports from each of the subcommittees and to discuss further research to refine the findings and recommendations.

Having undertaken a comprehensive review of the system, the

Task Force then explored specific recommendations to lower costs and improve the system by:

* promoting workplace safety,
* returning injured employees to work as soon as possible,
* decreasing costly litigation and streamlining the system,
* focusing compensation on work-related injuries and illnesses,
* ensuring appropriate utilization of medical services,
* improving insurance company claims handling, and
* reducing system abuse.

The Task Force subcommittees reconvened in March 1991 to adopt the findings and recommendations in this report.

II. SUMMARY OF MAJOR FINDINGS & RECOMMENDATIONS

A. FINDINGS

The Task Force makes two overriding findings: First, the costs of Maine's workers' compensation system are too high, placing an unacceptable burden on employers and employees. This inordinate expense has forced some employers out of business and others to reduce operations and has resulted in lost jobs, lower wages and benefits, and fewer employment opportunities for workers. Second, the system fails to deliver quality services to its major constituents: employers and employees. The system is characterized by hostility, unfairness, inefficiency, complexity, and uncertainty.

Specific findings include:

* Maine's workers' compensation law is complex and difficult for both employers and employees to comprehend, which, in turn, fosters excessive litigation.
* Maine has far more litigation than other states with more efficient systems; attorneys are involved in nearly 90% of major cases.
* Features of Maine's system produce unnecessary delays in benefits for injured workers and force employers to contest cases in order to protect their rights.
* Maine lacks effective procedures for terminating benefits promptly for workers who are able to return to work.
* Lump sum settlements are an expensive and prevalent feature of the system but are the most effective way to close a case under the existing system.
* The 10-year statute of limitations in Maine is well above the national average of 3 years.
* The workers' compensation system is providing benefits for many individuals whose injuries or illnesses are not predominately work-related. Maine's definition of compensability has been broadened over the years by Law Court and Workers' Compensation Commission decisions.
* There is evidence of over-utilization of medical services, and there are no requirements for timely medical reports.
* For many soft-tissue injuries, there are no common diagnoses

or protocols which could optimize treatment and control costs.

* The concept of "Maximum Medical Improvement" has proven unworkable and produces uncertainty about the duration of benefits.
* The rehabilitation system is expensive and often ineffective in returning employees to the workforce.
* Workplace safety must be a priority for all employers and employees. However, assertions that unsafe Maine workplaces are the primary cause of high workers' comp costs are contradicted by data from Maine self-insurers as well as the problems identified by the Task Force.

B. RECOMMENDATIONS

The Task Force believes that changes in Maine's workers' compensation system are needed to reduce costs significantly and to improve the quality of service provided to employers and employees. The statute should be simplified and streamlined to reduce litigation and delays.

Specific recommendations include:

* Mechanisms should be implemented to expedite payments to injured workers and to terminate benefits promptly for recovered workers.
* The concept of Maximum Medical Improvement should be eliminated from the system and duration of benefits measured

from the date of injury.

* Maine's statute of limitations should be brought into line with other states.
* Lump sum settlements should be limited or eliminated once other reforms are implemented.
* There should be a comprehensive review of the breadth of coverage with the goal of focusing compensation on work-related injuries and illnesses.
* Strategies should be developed to maximize return to work.
* Overutilization of medical services should be eliminated. Consideration should be given to using an independent medical examiner to resolve medical issues relating to claimants.
* Timely medical reporting should be required, and interdisciplinary protocols established to guide diagnosis and treatment of soft-tissue injuries.
* The rehabilitation system should be overhauled and resources focused on effective programs for those who can benefit.
* Workplace safety should be rewarded through the insurance mechanism, and employers and employees encouraged to work together to improve safety.
* Insurance companies need to improve servicing and claims handling and provide better training for adjusters.

III. BACKGROUND

Workers' compensation coverage is a form of "no-fault" insurance that provides benefits to workers who sustain work-

related injuries or diseases. Workers' compensation insurance is currently required by law for all Maine employers who do not self-insure. The compensation statute is administered by the Workers' Compensation Commission, members of which are appointed by the Governor. Insurance carriers and self-insurers are regulated by the State Bureau of Insurance.

From the 1960's to the mid-1980's, Maine's compensation law was revised frequently -- in almost every case in ways that increased the system's complexity and cost. These include increasing the maximum weekly benefit from $42 to 2/3 of the statewide average weekly wage (P.L. 1965 ch. 408), the addition of benefit inflation adjustments (P.L. 1971 ch. 225), increasing the maximum number of allowable weeks for partial incapacity benefits from 300 to 325 to unlimited (P.L. 1971 ch. 286 and P.L. 1973 ch. 531), deletion of the "by accident" requirement for compensability (P.L. 1973 ch. 389), expansion of permanent impairment benefits (P.L. 1971 chs. 318 and 465 and P.L. 1973 ch. 392), reducing the minimum number of lost time days necessary for wage loss benefits to begin from 7 to 3 (P.L. 1973 ch. 557), increasing of the maximum weekly benefit from the statewide average weekly wage (SAWW) to 133-1/3% of SAWW to 166-2/3 to 200% of SAWW (P.L. 1975 ch. 493) (the 200% standard was rolled back to 166-2/3% in 1981), the expansion of coverage for chiropractic services (P.L. 1983 ch. 158), and the establishment of the "early pay" system (P.L. 1983 ch. 479).

Additionally, insurance rates were effectively "frozen" for

several years in the 1980's. On May 14, 1987, Superior Court Justice Donald Alexander issued a 51-page opinion concluding that the rate freeze and caps enacted as part of the 1985 workers' compensation reforms (P.L. 1985, ch. 372) did not result in an unconstitutional taking of insurers' property. In so holding, Justice Alexander reasoned that an unconstitutional "taking" could not occur if insurers could avoid the adverse impact of the law by withdrawing from the state.

Within weeks of the release of the Superior Court's decision, insurance companies began submitting formal plans to relinquish their authority to write workers' compensation insurance--a move which jeopardized the availability of coverage for Maine's employers and employees. Under the controlling statute (24-A M.R.S.A. § 415-A), these withdrawal plans were required to be submitted at least sixty days before their proposed effective dates. The collective result of these withdrawals, had they been given effect as requested, would have been the destruction of the remaining market for workers' compensation insurance--the assigned risk or residual market.

The voluntary market (those policies which insurers write by choice) had slowly shrunk throughout the 1980's to roughly 50% of the total market. The remaining voluntary policies consisted mostly of large accounts, those rated retroactively, and those written for employers with multi-state operations. During this period, the Superintendent of Insurance could either approve or disapprove a requested rate increase, but the governing statute did

not permit him to grant a portion of the increase requested. As a result, insurers were denied any rate relief if the request was in any way excessive or unsupported; any subsequent filing was required to be the subject of a further hearing. Although rate filings were submitted by the workers' compensation rating organization, the National Council on Compensation Insurance ("NCCI"), no rate increase was granted from March 1981 until June 1987, when the maximum ten percent permitted under the 1985 Competitive Rating Act was approved. However, despite the continuing deterioration of the voluntary market, coverage remained available through the assigned risk pool.

The assigned risk pool historically operated in Maine by pooling losses, allocating shares of any operating deficit to all licensed carriers on the basis of their voluntary writings. This reinsurance pool, managed by the NCCI under the direction of a board of governors composed of representatives of workers' compensation insurers, contracted with selected insurers to "service" these assigned risk policies in return for a percentage of the premium.

As part of the 1985 Competitive Rating Act, the operation of the assigned risk pool became subject to greater regulatory oversight. The pool was divided by statute into the Accident Prevention Account, for employers with adverse loss history, and the Safety Pool, for employers relegated to the pool largely because the insurance carriers were reluctant to write voluntary business in Maine. Surcharges were authorized for the Accident

Prevention Account so that employers with poor records would have an incentive to improve and would carry more of their share of the burden of resulting high costs.

Participation in the assigned risk pool is a condition of maintaining a license to write workers' compensation insurance in Maine, as it is in most jurisdictions. Accordingly, the existence of numerous insurers licensed to write workers' compensation kept the assigned risk pool functioning as the voluntary market continued to shrink. Even though the servicing carriers dropped out one by one over the period from late 1985 through the summer of 1986, the Insurance Superintendent kept the pool operating by issuing an order requiring twenty-one of the largest writers to take servicing assignments on a rotating basis.

However, once insurers began withdrawing in 1987, the lack of carriers to service assigned risk policies threatened the continued viability of any market. Other insurers then felt compelled to withdraw as a result of what came to be known as the "last person out" phenomenon. Carriers feared that if they remained licensed into a new calendar year once withdrawals began to take effect, they could become financially responsible for the deficits accruing in the pool, deficits which NCCI estimated to be on the order of $500 million for 1986 and which were predicted to be substantially larger for 1987.

Thus, once a few of the larger writers filed their withdrawal plans, the remaining licensed companies felt compelled to follow. In order to avoid the collapse of the assigned risk pool and to

avoid any further disparate impact on those companies which remained active the longest, the Superintendent declined to approve any withdrawal plan to be effective before December 31, 1987.

In response to this crisis, in the summer of 1987, Governor McKernan launched a comprehensive study of the financial aspects of the workers' compensation system and determined that the costs and premiums were inordinately out of balance. Independent analysis by the Bureau of Insurance and other experts confirmed that Maine's system was more expensive than virtually any other state's and that the insurance industry was losing at least $150 million per year writing Maine workers' comp insurance.

Analysis by actuarial experts indicated that substantial premium increases would be needed to bring the system into balance. Governor McKernan and the Maine Legislature recognized that such enormous rate increases on Maine employers would jeopardize their ability to continue to provide jobs for Maine workers. After determining that only significant reform could avoid the need for massive rate increases and prevent the mass exodus of insurance companies, the Governor, working with employer groups, municipal officials, legislators and other interested parties, initiated legislation for consideration at a special session in October of 1987, with the objective of bringing rates and costs into balance.

Policy-makers determined that the existing gap between costs and premiums should not be closed by cost reductions or premium increases alone but rather by a combination of the two. Following extensive debate, the Legislature passed reform legislation in late

November. Cost saving measures enacted by P.L. 1987, ch. 559 included freezing maximum weekly wage loss benefits until July 1, 1989; delaying any inflation adjustment for benefits until the third anniversary of the injury; limiting total incapacity benefits for persons who have reached maximum medical improvement and are able to perform full-time remunerative work in the ordinary competitive labor market in the State; limiting maximum medical fees; and restructuring the calculation for determining permanent impairment benefits.

The law also included provisions to improve workplace safety by increasing penalties for businesses with poor safety records and by providing significant additional funding for the Department of Labor's safety programs. In addition, ratemaking authority was returned to the Insurance Bureau by giving the Superintendent the power to "establish just and reasonable rates" following a public hearing.

Another integral part of the 1987 reforms became known as the "fresh start" procedure (24-A M.R.S.A. § 2367), which requires rate surcharges on employers to cover deficits in the residual market when the Superintendent determines that the rate of return for the insurance industry in the entire Maine workers' compensation market is less than reasonable. This provision was enacted in response to carriers' concerns that rate inadequacy and large residual market deficits would continue to plague them. Negotiations in 1987 resulted in an agreement whereby the employers would pay for deficits, if any, provided the carriers, in turn, wrote voluntary

business. (In the 1990 rate proceeding, the Superintendent determined that a deficit exists for policy year 1988, conservatively estimated to be $14 million, and that the return on the entire workers' compensation market for that period was less than reasonable. Accordingly, a surcharge of 3% was authorized to be added to the approved rates.)

Following enactment of the 1987 reforms, seven insurers withdrew their withdrawal plans but only one (Travelers) was an active servicing carrier during the early months of 1988. Although others were persuaded to resume or begin servicing over the course of that year, each month was a struggle to obtain coverage for all employers applying for or renewing coverage. Moreover, no insurer was willing to service policies for the northern eleven counties or to service that area through a contract with an appropriate subagent. (A licensed carrier's participation was essential because service includes the issuance of a policy.)

The rules adopted pursuant to the 1987 reform legislation provided for assignments to be imposed by the Superintendent only if the carriers failed to provide service voluntarily or to contract with an alternate provider. Moreover, experience had demonstrated that mandatory assignments did not always produce quality servicing, due to factors such as lack of adequate staffing and carrier resistance. The solution ultimately proposed by the Maine reinsurance pool called for servicing by Northern MGA under a contract with the American International Group ("AIG"), with the Pool agreeing to indemnify AIG against liability for any assessment

resulting from its relicensure, which was necessary for the issuance of policies. Although the Superintendent indicated his awareness of this agreement, he refused to support or encourage it in light of the statutory requirement that any assessments be imposed upon all licensed companies.

A variety of significant reforms and innovations have been undertaken subsequent to the 1987 legislation. The Insurance Bureau adopted rules effectuating the Legislature's intent that the residual market be more closely regulated. Three members of the Maine business community are now appointed by the Superintendent to the reinsurance pool's board of governors. The Bureau rules also detail a pool assessment mechanism which avoids penalizing companies for voluntary writings by calling for assessments to be made pro rata. Assessments can be made on the basis of voluntary business only when the statewide market is profitable.

The Insurance Bureau has also worked to establish a workers' compensation database, the first in the country of its type. This system compiles data from insurers (initially collected by the NCCI), self-insurers operating in Maine, and the Workers' Compensation Commission. Developing the reporting criteria, determining efficient and effective collection mechanisms, giving attention to data quality issues, and dealing with resistance to the reporting requirements from insurers and health care providers necessitated extensive time and effort to bring the program operational. Partial information concerning over 18,000 claims has now been collected, although several more years of data must be

assembled before the system reaches its optimal usefulness, at which time it will be possible to access a great deal of information which is currently unavailable. This Maine innovation has been adopted by the National Association of Insurance Commissioners and may become a national model.

Hundreds of complaints concerning workers' compensation rating and classification issues have been handled by the Insurance Bureau over the past several years, and the high frequency and dire nature of these complaints are further evidence of serious systemic problems. Some of the complaints have led to additional reforms at the "nuts and bolts" level. In the 1990 rate decision, there was sufficient information concerning poor servicing and its impact on claims costs to support a rate reduction of 1 1/2%, which in effect penalized the insurance industry $5 million.

Some additional problems were addressed legislatively during this period. In 1990, amendments to the fresh start procedure were adopted. One change provides that when the prerequisites are met for a surcharge on insured employers, the amount of the surcharge must, after the first time the Superintendent finds a deficit in a given policy year, be sufficient to keep the size of the deficit from increasing prior to the next annual rate review. This keeps the deficit from snowballing to an unmanageable size before the final surcharge is assessed.

Another problem addressed by these amendments was the possibility that surcharges payable by employers or credits payable by insurers could be assessed many years after the policies were

issued. The statute now authorizes the Superintendent to make a final determination for each policy year after receipt of seven complete evaluations and no more than eight calendar years. Any resulting surcharge may be spread over a number of years (not to exceed ten) to avoid the adverse financial effects of one large charge. Finally, the fresh start procedure was effectively terminated for any policy year beginning on or after January 1st of the year in which the Superintendent concluded either that no deficit exists in the residual market for one or more years under review or that the rate of return in the entire Maine workers' compensation market is just and reasonable.

In 1990, the Legislature also authorized the Insurance Superintendent to adopt rules to implement the requirements of 39 M.R.S.A. § 111-A, which prohibits delay or refusal to make payments under an insured disability or medical payments plan because the employee has filed a workers' compensation claim based upon the same injury or disease. This change was designed to rectify situations where injured employees whose claims are controverted and awaiting determinations by the Workers' Compensation Commission are denied payment by both their employer's workers' compensation insurer, on the grounds the claim is controverted, and their employer's health or disability insurer, on the grounds that the claim is excepted from coverage as a workers' compensation claim.

The Superintendent has also worked to replace the AIG/MGA arrangement for servicing residual market policies in the northern 11 counties. In 1991 this effort paid off, as three insurers are

now actively servicing the northern 11 counties with a significant reduction in MGA's volume.

Throughout this period, there has been increasing interest in self-insurance as an alternative to procuring insurance coverage. The number of self-insurance applications, the number of self-insurers, and the annual standard premium in self-insurance plans have increased dramatically since 1987 as employers have been affected by the rate increases and the extraordinary costs of workers' compensation.

Year	Number of Self-insurers	Annual Standard Premium	Total Insured Written Premium
1987	47	$76,243,700	$216,302,325
1988	56	$81,836,300	$260,095,205
1989	54	$112,067,400	$318,175,237
1990	68	$146,425,800	$350,000,000 est.

As interest in self-insurance, once a viable option mostly for very large employers, has expanded to medium and even small businesses, and as the Insurance Bureau's experience with various plans has grown, it has become apparent that closer regulation of self-insurers' financial strength and ability to pay claims is necessary. The Insurance Bureau has been involved in promulgating revised rules for self-insurance, now expected to be adopted by late spring 1991.

The market has been stabilizing and "healing" as a result of the incremental effect of the rate increases, the savings from the 1987 reforms, and the further effects of the various reforms and innovations described above. Twelve of the twenty-one former servicing carriers are now licensed, as are three new companies, compared with a total of seven companies licensed on January 1, 1988. The pattern of rate requests and approvals--25% approved of the 125% requested in 1988, 22% of 45% in 1989, and 4% of 26% in 1990, with the pending NCCI request being +29.7%--is indicative of rates coming into balance. One rating issue that remains unresolved is whether the companies have taken the law changes enacted in the 1987 reforms into account in their handling and payment of claims so as to generate the full amount of savings that were anticipated.

IV. PROBLEM AREAS

The Task Force has concluded that there are now two major problem areas. One is that costs remain unacceptably high. This is forcing some employers out of business and others to reduce operations. Still others are going without coverage or underreporting payroll. The inordinate expense is costing employees jobs, wages, and benefits. The second problem is the failure of the system to deliver quality, timely services to employers and employees. This often leaves employers without proper safety engineering, policy service, claims adjustment, or

options for properly terminating benefits, and leaves employees without prompt, fair payment of benefits, effective rehabilitation, or meaningful return to work opportunities. The result is anger and hostility throughout a system which is dilatory, inefficient, litigious, overly complex, and unfair. It does not serve either employees or employers well.

There is no question that the costs of workers' compensation in Maine are much greater than any available national average. Maine has a per capita workers' compensation cost of $257 compared to a national average of $100, with the second highest state at $190. The average cost per capita of workers' compensation in Maine is 188% of the New England average (or 217% of the average for the other 5 New England states).

These ratios were calculated for 1987, but are likely to hold steady for more recent years because premiums and first reports in Maine went up considerably in both 1988 and 1989. The relationship also holds true if one shifts from cost per capita to cost per employee. The latest figures available for the national average are from 1987 and show a national average cost per employee of $282. The comparable figure from Maine in 1988 (the most recent year available) is $718. The Maine Bureau also did a rate comparison with other states, including Wisconsin, a state similar to Maine in its industry mix but with a reputation for an efficient workers' compensation system, for Maine's classifications with over $20,000,000 in payroll. As Table 1 shows, Maine's rates are substantially higher.

MAINE AND WISCONSIN WORKERS' COMPENSATION RATES FOR SELECTED CLASSES

CLASS	DESCRIPTION	PAYROLL	ME.RATE	WIS.RATE	ME/WIS
4239	PAPER MFG.	26,578,946	10.93	2.02	5.41
8832	PHYSICIAN	98,317,067	.88	.28	3.14
7539	ELECTRIC LIGHT,PWR CO.	20,787,995	5.63	1.80	3.13
7610	RADIO, TV BROADCASTING	24,220,645	1.17	.38	3.08
2302	SILK THREAD, YARNS MFG.	30,682,892	6.81	2.30	2.96
8820	ATTORNEY	69,625,201	.48	.17	2.82
9040	HOSPITAL, NON-PROF.	28,829,065	8.28	3.11	2.66
8601	ENGINEER, ARCHITECT	34,016,958	2.08	.79	2.63
2286	WOOL SPINNING, WEAVING	32,454,017	9.26	3.81	2.43
7380	DRIVERS, CHAUFFEURS	49,258,090	8.90	3.79	2.35
4431	PHONO. RECORD MFG.	22,628,867	3.80	1.70	2.24
8868	COLLEGE, SCHOOL PROF.	371,500,062	.60	.27	2.22
3724	MILLWRIGHT WORK	34,708,632	22.62	10.59	2.14
2003	BAKERIES	24,548,377	8.25	3.97	2.08
5183	PLUMBING	64,752,694	13.98	6.83	2.05
3632	MACHINE SHOPS	34,581,882	6.41	3.20	2.00
8742	SALESPERSON, COLLECTORS	272,832,425	1.40	.71	1.97
5190	ELECTRICAL WIRING	35,613,621	9.91	5.15	1.92
6217	EXCAVATION	33,311,691	16.65	8.66	1.92
8350	GAS OR OIL DEALER	22,272,041	9.75	5.11	1.91
8810	CLERICAL	1,054,309,567	.48	.26	1.85
9101	COLLEGE, SCHOOL NON-PRF	42,666,707	6.60	3.59	1.84
2702	LOGGING, LUMBERING	34,475,717	41.25	22.92	1.80
2841	WOODENWARE MFG.	33,707,031	12.02	6.72	1.79
7219	TRUCKING	73,036,649	19.29	10.87	1.77
8039	STORE:DEPARTMENT	36,555,935	2.72	1.59	1.71
8006	STORE:GROCERY RETAIL	25,241,128	4.05	2.45	1.65
5606	CONTRACTOR EXEC. SUP.	32,839,661	4.51	2.85	1.58
4299	PRINTING	24,067,846	4.11	2.65	1.55
8833	HOSPITAL, PROFESSIONAL	166,408,630	1.91	1.26	1.52
8018	STORE:WHOLESALE	27,321,948	6.45	4.28	1.51
9015	BUILDING-OP. BY OWNER	21,344,685	7.29	4.85	1.50
3574	ADDING, COMPUTING MFG.	20,248,664	2.84	1.90	1.49
8033	STORE:MEAT, GROCERY	60,280,914	4.74	3.18	1.49
9079	RESTAURANT	162,917,643	3.39	2.29	1.48
8010	STORE:HARDWARE	34,728,167	2.54	1.72	1.48
8829	NURSING HOME	80,826,918	6.41	4.48	1.43
2660	BOOT, SHOE MFG	100,572,854	4.48	3.17	1.41
9052	HOTEL	42,379,891	4.39	3.17	1.38
8008	STORE:CLOTHING, DRY GDS	42,344,391	1.54	1.15	1.34
5645	CARPENTRY 1-2 FAM. DW.	75,068,505	11.68	10.74	1.09
8232	LUMBER YARD	37,718,462	8.88	8.43	1.05
2501	CLOTHING MFG.	31,628,356	3.83	3.66	1.05
3681	TELEPHONE APP. MFG.	51,464,645	2.52	2.73	.92

TABLE 1

The number of businesses that have left Maine announcing that workers' compensation costs were a primary consideration, coupled with the number of businesses that have refused to expand operations or move to Maine for the same reason, further documents the cost problem and its impact on business and ultimately jobs in the State. Self-insurers in Maine with multi-state operations have undertaken interstate cost comparisons which provide additional evidence of the State's relative cost problem and document that at least some of the problems arise from the system and not safety or the insurance carriers.

But costs are only part of the problem. The Task Force found that on average it takes eleven months for the Workers Compensation Commission to hear and decide a major worker's compensation claim. Various anecdotal accounts have been given of the disastrous consequences of such delays for claimants who may have to wait that long for benefits. Conversely, the length of time to decision can operate to discourage some settlements by employers and insurers because the delay also applies to attempts to terminate benefits. Evidence taken by and from Task Force members confirms both the cost and delay problems.

A well-designed workers' compensation system should accomplish several objectives: prompt payment of claims, maximization of safety, fair treatment of all parties, rapid return to work, affordability, and stability. In general, the Task Force concluded that Maine's system fails on most, if not all, of these criteria. The "environmental" factors--mistrust, hostility, litigiousness,

and dissatisfaction--exacerbate the problems by putting the parties at odds a priori.

The "losers" in this system are those it is intended to serve: employees and employers. The system is now grounded in mistrust and hostility which create additional costs and ill serve both employees and employers. Maine's system encourages an inordinate amount of litigation, protracted absences, more medical treatment, delays in return to work, unfairness, and higher costs. While these elements may benefit those who provide certain services, they evidence a failure to serve employees and employers--the primary constituents of the workers' compensation system.

Over the last decade and a half, Maine's statute has been amended again and again. Each individual amendment was ostensibly intended to improve the system on behalf of employees, employers, or both. However, layer by layer and mechanism by mechanism, more requirements and defensive provisions have been added to the law, frequently based on assumptions of lack of good faith and hostility. The result, the Task Force found, is a law that is enormously complex and very difficult for the average employee or employer to deal with. Built into it are delays and requirements that often operate to preclude prompt, fair settlement of claims.

An example is the 44-day rule which requires payment or controversy at 44 days after date of injury without the option of payment without prejudice. That is, an employer cannot continue paying a claim beyond 44 days if he or she is uncertain about issues or facts without sacrificing all rights to controvert the

claim. The 44-day rule does accelerate payments to claimants to some extent, but it also increases costs and case delays tremendously by increasing litigation.

Similarly, an employer cannot unilaterally terminate benefits even if there is a medical release to work and a job offer or even if the employee is back to work. Moreover, a signed release is required for both access to medical information and discontinuance of payments, and there are no common protocols or reporting requirements for medical treatments. These are features that create serious problems within the system. Other states with more efficient and fairer systems have few, if any, of these features.

At the direction of the Task Force, the Bureau of Insurance undertook a study of major claims in Maine. It began with 50 claims selected at random from each of four carriers active in Maine, and questions were answered consistent with Appendix A. Hanover, Commercial Union, and American Fidelity provided claims values at over $25,000, and Maine Bonding provided claims, the majority of which were valued at over $15,000. Almost all cases came from accident years 1988 and 1989. (Four were from 1990.) Some of the initial conclusions are summarized below.

Sixty percent of the claims are strains, sprains, and tendinitis, and thirty percent are fractures and contusions. (Table 2) Thirty-eight percent of the claims involve back injuries, and twenty percent are injuries to the wrist or hand. (Table 3) Eighty-seven percent of the claims had attorney involvement (Table 4), and 100% of claims that had been lump-summed (60 out of 60) had

attorney involvement. (Table 5) Two-thirds of the cases had at least one notice of controversy (NOC) filed with the average 1.5, and when a petition was filed, the average per case was two petitions. (Table 6)

The average number of doctors involved on both sides of each case was 4.5. Twenty-three percent of all cases had surgery. It should be remembered that the oldest of these cases is from 1988 and many are from 1989. These numbers are likely to increase before the claims are ultimately closed.

Twenty-three percent of the cases involved a pre-existing condition which contributed to disability, and in nineteen percent of the cases, a subsequent condition developed after the original compensable injury. For almost a third of the cases, work capacity is an ongoing issue. In just about 60% of the cases, the claimant returned to work, but in 50% of these cases, there was subsequent lost time. (One-third of these involved lay-offs or terminations.) Light duty was available in 28% of the cases, and the return to work ratios held relatively steady across all injury types.

This information supports several conclusions: that there is tremendous attorney involvement in Maine's comp system with the expected resulting litigation, that there is heavy involvement of health care providers and considerable surgery, that there is a significant amount of return to work but it is too often unsuccessful, and that a large number of claims come from sprains, strains, and back pain. All of these factors drive costs up and overload the system with cases and procedures that clog it and

INJURY TYPE

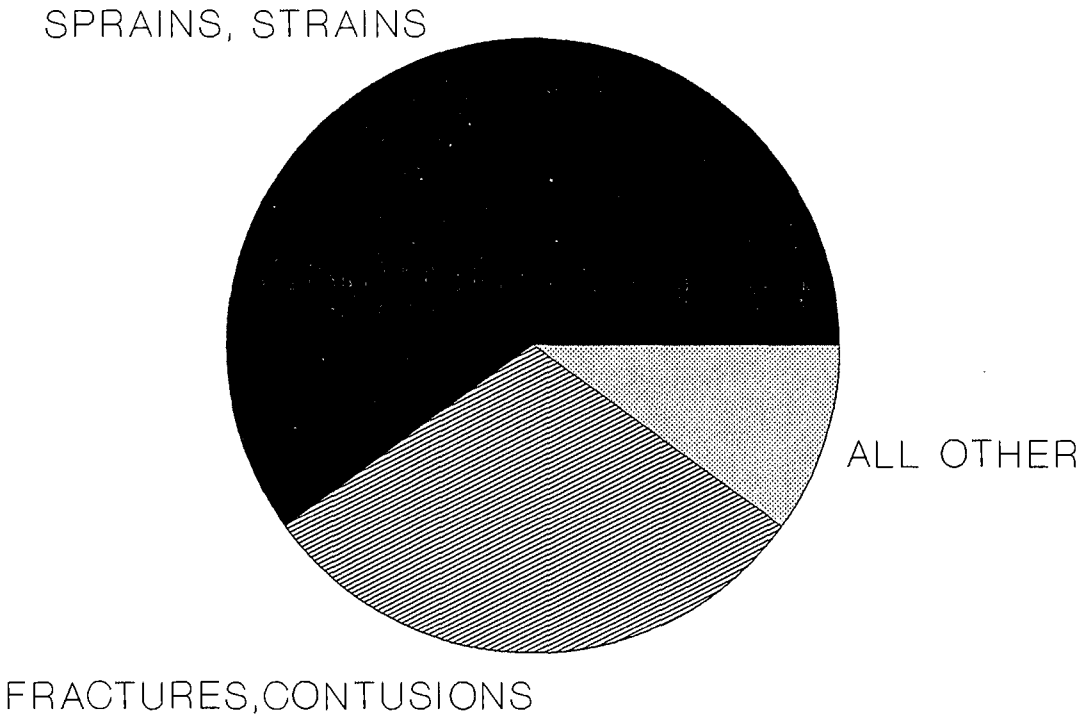


TABLE 2

BODY PART

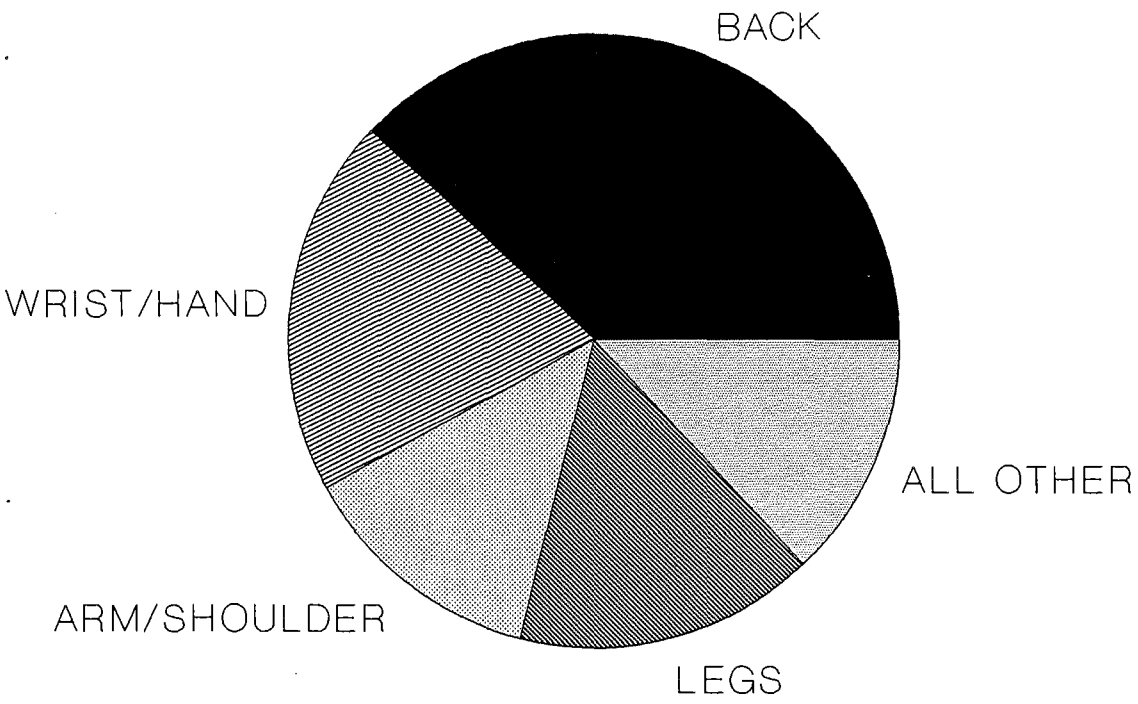


TABLE 3

ATTORNEY INVOLVEMENT FOR ALL CASES

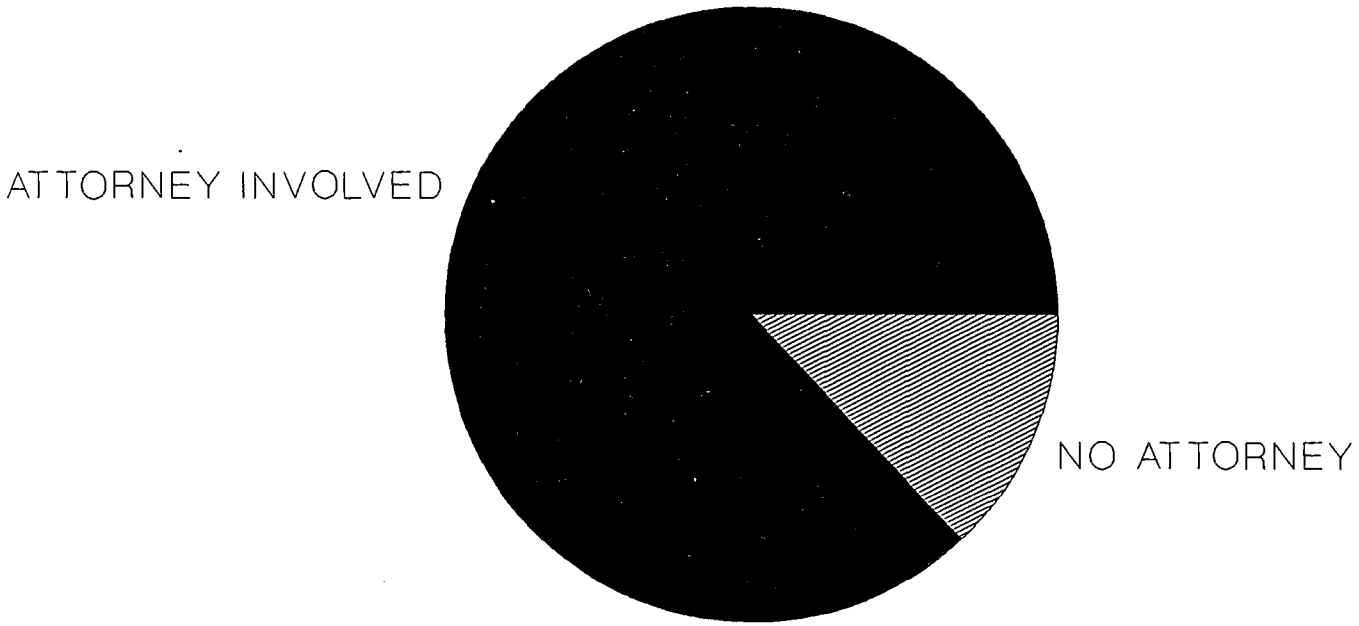


TABLE 4

LUMP SUM CASES AND ATTORNEY INVOLVEMENT

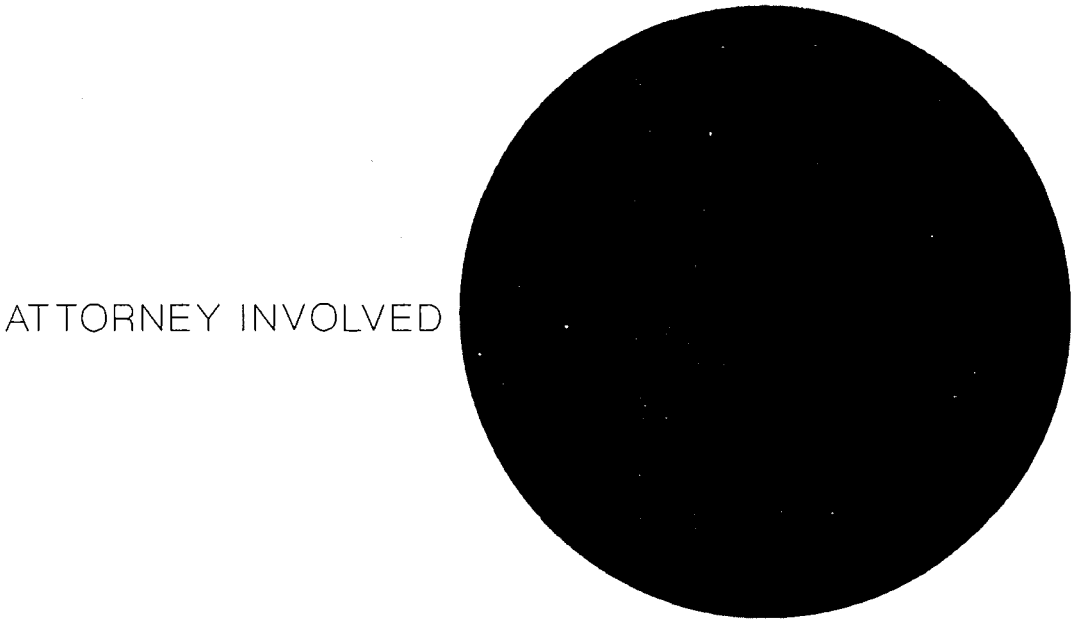


TABLE 5

CASES CONTROVERTED

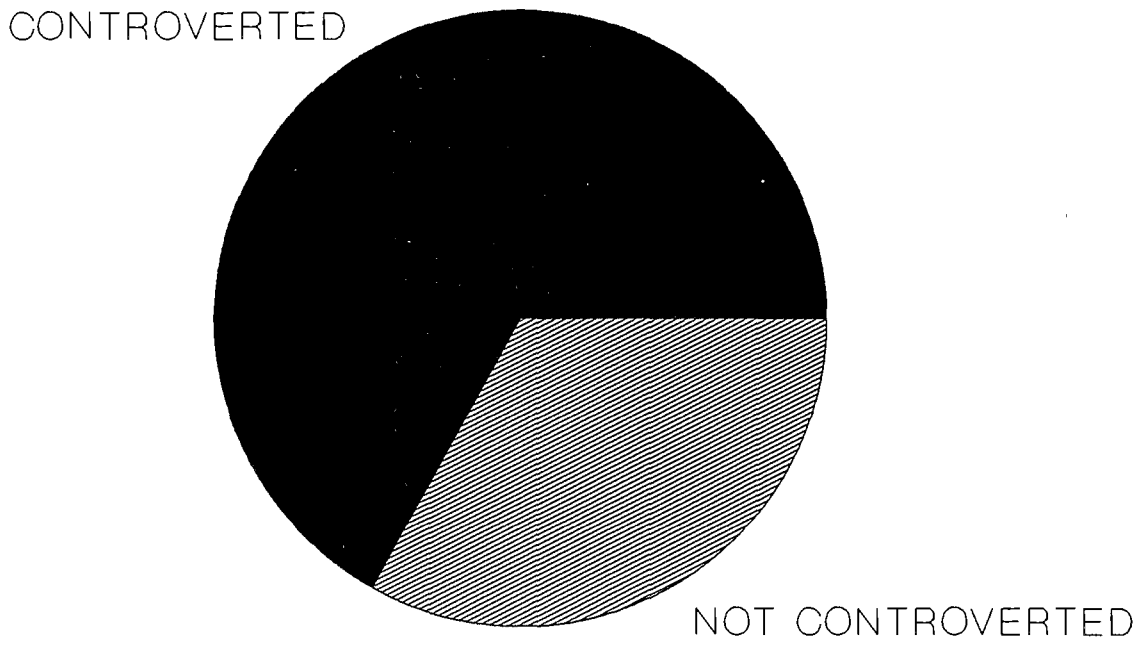


TABLE 6

create delays.

While the major problems are high costs and poor system operation, those issues are difficult to analyze directly because their impacts are felt in diverse ways systemwide. To facilitate understanding, the Task Force determined that the problems should be studied by breaking down the system into areas that contribute to cost and operational problems.

The Task Force has determined that there are at least five major areas which are a source of unacceptable delays and difficulties for injured workers or excessive costs for employers. These are the areas most in need of reform: safety; litigation; procedure; compensability; and medical costs.

Safety

The Task Force members agree that workplace safety must be a priority for all employers and employees. Improvements in the safety of Maine workplaces continues to be an overriding goal because it reduces human suffering as well as costs. If the number of lost time claims and/or the days per claim can be reduced, the resulting direct savings would be complemented by a variety of indirect savings flowing from fewer Commission hearings, lighter caseloads for adjusters, and reduction of other non-benefit costs (e.g., attorneys' fees, expert witness costs).

It has been suggested that the high cost of workers' compensation in Maine is almost exclusively a function of the

state's poor OSHA accident statistics, a viewpoint strongly held by one member of the Task Force. There is, however, dispute over the value of the OSHA statistics as a measure of workplace safety in Maine compared to other states. In its June 1987 Report to the Legislature, the Commission on Safety in the Maine Workplace, a Commission comprised of representatives of organized labor, employers, and experts in safety and health, noted that OSHA rates, state-to-state, vary with so many non-safety factors that it makes state-to-state comparisons grossly misleading, and that serious questions exist about the accuracy of OSHA data because of confusing record-keeping requirements.

Further, the Task Force majority found that the assertion that safety is the cause of Maine's high costs is contradicted by data from Maine self-insurers with similar operations in other states, as reported by the Workers' Compensation Reform Committee ("Jobs, the Economy and Workers' Compensation," January 10, 1991). Data were collected from twelve individual self-insurers and two groups, representing 11% of Maine's total payroll and 9.5% of its work force. The emphasis in selection of the self-insurers was on interstate comparability in management, safety, type of operation, and the classification and distribution of the work force.

The individual self-insurers' data for the years 1988-1989 reflects that their Maine operations accounted for 5.5% of their work force and 8.4% of the total claims, yet their Maine workers' compensation costs accounted for 26.1% of their total workers' compensation costs. These self-insurers have similar operations,

policies, and risks in their plants around the nation. If there is any difference involving safety, the Committee concluded, it should be the other way: due to the high cost of workers' compensation in Maine, self-insurers would be expected to place a greater emphasis on safety here.

The Committee also observed that the self-insurers' experience is entitled to particular consideration for several reasons. First, self-insurers handle their claims directly and can isolate system cost factors, unlike insurers with overhead and profit components factored in. Second, the direct and immediate payback to self-insurers for instituting safety measures means that workplace safety is likely to be emphasized to a greater extent than may be true for a commercially insured employer.

There are several ways in which one can interpret the high accident frequency and severity statistics in Maine. An obvious explanation that has been heard often is that Maine's workplaces are simply unsafe. The corollary assumption, which the Task Force rejects, is that Maine's employers care less about their employees' well-being than their counterparts in other states and that the problems of the comp system could be solved by simply improving workplace safety.

There is no <u>a priori</u> reason a large population of employers like those in Maine should be more or less safety conscious than employers in the other 49 states. Quite the contrary, with the very high cost of Maine compensation insurance and the complexity of the system, it is logical to assume that Maine's employers will

generally do everything reasonable to reduce accident frequency. Vital confirmation of this analysis is available from the comparative interstate data of the self-insurers in Maine who pay much, much higher costs in Maine even though their operations are similar throughout the nation and their emphasis on safety is particularly strong in this state.

Another factor that might affect the frequency and duration of claims in Maine is the state's 10 year statute of limitations. Further research is ongoing, but the 10 year statute in Maine clearly provides the opportunity for more claims and more litigation than would be the case in the average state with a 3 year statute of limitations.

Finally, the suggestion that safety is <u>the</u> problem is inconsistent with all of the other problems that are identified in this report. The Task Force found that the system is inefficient, dilatory, and litigious, that it does not deliver medical services efficiently, that it discourages return to work, and that it is susceptible to many kinds of abuse; therefore, the high accident statistics in Maine demand closer scrutiny.

First, one must consider what is meant by workplace safety. One measure of the conventional safety of the work environment is the number of accidents or injuries occurring which are clearly work-related and clearly the result of a specific event. Department of Labor data contained in Table 7 shows that the number of disabling reports in this category increased at a rate equal to approximately half the rate of increase in employment during the

Number of Disabling Reports, Maine By Type of Accident or Exposure			
Categories of Accident or Exposure	1983	1989	Percentage Change
Immediate or Evident: Struck against; struck by; fall from elevation; fall onto or against; caught in, between or under; rubbed, abraded; contact with electric current; explosion; contact with temperature extremes	9,182	10,438	14%
Gradual or Less Evident: Bodily reaction; overexertion; fall to the working surface; contact with radiation, caustics, etc.; exposure to noise	8,757	13,657	56%
Transportation and Motor Vehicle	291	582	100%
Accidents, other	266	535	101%
Non classifiable	644	794	23%
Total	19,140	26,006	36%
Employment, including government	393,500	515,263	31%

Source: Maine Department of labor, Bureau of Labor Standards, Characteristics of Work Related Injuries and Illnesses in Maine.

TABLE 7

period 1983 through 1989. This suggests that Maine's workplaces have become relatively safer with respect to accidents and objective injuries. Disabling reports have increased at rates greater than employment for the gradual or less clearly evident types of injuries or illnesses and for motor vehicle accidents. For these types of injuries, the employer may have less control as to "fault," and more importantly, the data suggest an expansion of what is considered a compensable claim.

Once it becomes apparent that the increases in claims frequency are attributable to soft tissue and similar injuries rather than classic industrial accidents, one has to ask whether it is really safety (as opposed to job design and system problems) that is at issue. Table 8 shows the lost work day case incidence rate by industry for 1980 and 1989 (the intermediate points generally fall in the expected ranges). The overall private sector incidence rate increases 21% over the period, but in transportation and construction, there is virtually no change. Manufacturing shows an increase of 33%, an increase averaging 3.2% per year. The staggering increases come from wholesale and retail trade, services, and especially finance where the figure is 275%. What is it about Maine's retail outlets, service establishments, banks, insurance agencies, and similar offices and shops that could make them so spectacularly unsafe? The answer is probably nothing.

Table 9 confirms the phenomenon by showing ratios of Maine to U.S. incidence rates for the last 7 available years. Again transportation holds steady, construction shows some increase,

Incidence Rates, Lost Workday Cases by Industry, 1980 to 1989

	1980	1989	Percentage Change 1980 to 1989
Private Sector	6.1	7.4	21%
Construction	10.5	10.2	- 3%
Manufacturing	9.5	12.4	31%
Transportation	5.4	5.4	0 %
Wholesale Trade	4.3	7.6	77%
Retail Trade	2.9	4.7	62%
Finance	.4	1.5	275%
Services	3.2	4.9	53%

Source: Maine Department of Labor, Bureau of Labor Standards, Occupational Injuries & Illnesses in Maine.

TABLE 8

Incidence Rate, Lost Workdays

Ratio Maine Incidence Rates Adjusted to Standard Industrial Mix to United States Incidence Rates

	1989	1988	1987	1986	1985	1984	1983
Total Private Sector	2.14	1.98	1.98	1.76	1.92	1.96	1.62
Construction	1.93	1.38	1.74	1.59	1.63	1.72	1.77
Manufacturing	2.71	2.34	2.28	2.05	1.93	2.12	1.97
Transportation	.88	1.38	1.32	1.18	1.48	1.31	.73
Wholesale Trade	1.92	2.23	1.95	1.75	1.16	1.82	1.14
Retail Trade	1.70	1.32	1.30	1.50	1.62	1.62	1.31
Finance	2.18	2.33	1.64	1.47	.36	.96	.62
Services	1.82	1.77	1.63	1.53	2.05	1.88	1.44

Source: Maine and United States Incidence Rates from Maine Department of Labor, Bureau of Labor Standards, Occupational Injuries and Illnesses in Maine.

manufacturing increases considerably, but wholesale and retail trade and services grow just as much, and once again, finance leads the group with an increase of over 250%.

These numbers strongly suggest that it is the system, the definition of compensability, and the application of the law by the Law Court and the Commission that are driving the frequency portion of Maine's accident statistics. Confirmation comes from Table 10, which shows a 160% increase in cases and a 200% increase in lost work day cases for occupational illnesses since 1985. Most illnesses are not accidents and generally require a long term safety approach. A Commission or Law Court decision can prompt increased claim activity faster than remedial safety measures can produce meaningful illness prevention, especially if employees change employers or if conditions are aggravated by non-work related activity. This tremendous increase in frequency is driving costs in a completely unexpected way that was not anticipated by those involved in the law changes of both 1985 and 1987. The explanations are increased employee awareness of compensability of these claims, the plaintiff bar's willingness to pursue these types of claims, medical support, the Commission approving awards for cases it would not have approved in prior years, and the Law Court's affirmative recognition of these claims.

Finally, there is evidence that incidence rates are affected by benefit levels. Considerable research around the nation has shown that as states increase benefits, claims frequency also increases. The common sense thinking behind this is that there is

Occupational Illness Incidence Rates
Maine 1985-1989

Year	Incidence Rates			
	Total Cases	Lost Workday Cases	Lost Workdays	Percentage of First Reports that are Illnesses
1985	.5	.3	9.2	4.2%
1986	.6	.3	9.8	5.0
1987	.9	.5	17.7	6.9
1988	1.0	.5	19.8	7.0
1989	1.3	.6	25.8	9.0

Incidence Rate is rate per 100 full time employees $\frac{\text{Number of incidents x 200,000}}{\text{Total Hours worked in one year}}$

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

less of a premium on working, so claims will increase. As benefits rise, the difference in wages between those who work and those out on benefits decreases. This may mean, on the front end, that there is less incentive to stay on the job, and, on the back end, there is less incentive to return to work. Some representative quotes from recognized experts who have studied benefit structures follow:

> What they seem to indicate clearly is the recent increase in claim rate frequency is in part -- in fact, substantial part -- the result of more liberalized workers' compensation benefits.[1]
>
> The evidence also supports the argument that claims continued to rise because of the work disincentives created by making generous compensation payments easier to obtain.[2]
>
> The positive and significant coefficient for income replacement indicates that, on average, higher levels of income replacement are associated with more lost workdays. A higher frequency rate is also associated with higher levels of income replacement.[3]
>
> Variation in the annual number of injuries might occur for at least two reasons. Liberalized benefits may alter worker behavior such that higher injury frequency rates arise (Butler and Worrall 1981). Second, broad changes in the characteristics of the economy or its labor force may alter the number of workplace injuries.[4]
>
> The economists who have done these research studies do not necessarily believe that large numbers of workers try to

injure themselves simply to collect benefits, or file fraudulent claims to do so (Staten and Umbeck 1983, 1982) but, rather, that workers are willing to bear more risk, be less cautious, file more claims for a given accident, level or combination of the three (see Butler 1983, or Butler and Worrall 1983, for example). Most of these studies contain implicit assumptions that employees are rational, risk-averse, expected utility maximizers. The model of employee behavior used would lead to the hypotheses that have been sustained: injuries and claims vary directly with benefits and inversely with wages.[5]

We find that the expected length of stay on workers' compensation is significantly affected by changes in the benefits, wages, and other major parameters of the workers' compensation process, including the representation of the claimant by a lawyer.[6]

Other academic studies based on experience in Kentucky, Michigan and Minnesota indicate that benefit levels impact claim directions.[7]

Litigation and Procedure

The Task Force found that the Maine system is so complex that in many instances a claimant cannot pursue his or her interests without an attorney; an inordinate amount of litigation results. In 1988 and 1989 about 10% of medical-only claims were

controverted, and it took an average of 11 months for major cases to proceed from petition for review or award to decision. The 11 month period is obviously troubling, but the litigation frequency on med-only is significant because there are over 60,000 such claims per year. In 1989 there were 10,000 notices of controversy on indemnity claims and 7,000 on non-indemnity claims. This reality is at odds with the basic intent that the workers' compensation system operate as a "no-fault" system, with the prompt, fair delivery of benefits as its major objective.

Once a case enters litigation, costs increase. Although legal fees are the most obvious example, litigation also produces more requests for diagnostic evaluations, second medical opinions, and expert witness fees, thus driving up related medical costs. Litigation protracts the delay before benefits are paid; such delays not only deprive claimants of income for extended periods, they appear to contribute indirectly to Maine's high lost time days, inflating the severity statistics.

Under the present system, virtually all of the parties are enamored with lump sum settlements. It is likely that this is another symptom of the illnesses that afflict Maine comp.

A lump sum settlement puts a large sum of money in the hands of claimants immediately. The sum is generally a calculation of all future benefits due discounted to present value and paid in a "lump." The discounting feature means that if the claimant is actually going to realize the full value of the benefits due, he or she must invest the lump sum at the discount rate and draw down on

it prudently over the life of the benefit duration. It is unlikely that this is done in many cases, although some annuities are purchased. (Statistics are unavailable.) In any event, in any instance where this is not done, the worker is at risk of having no benefit payments at some point in the future.

Supporters of the practice point out that lump sums offer the possibility of funding small business start-ups, but it is also unlikely that path is chosen by many claimants. To the extent it is, some employers have objected to comp settlement payments being used to fund new competitors as former employees go into their own businesses. Also the new business failure rate is generally considerably greater than 50%, and many who try this path are likely to find themselves without benefit payments and without the lump sum after their business has failed. In all of these instances, claimants and their families are without the benefit payments originally intended to provide for them during the disability, and that does not even address the instances where claimants spend these sums for immediate purchases rather than investing them for the future. Employers also claim that lump sums might lead to subsequent claims when money is gone and claimants have no choice but to file for subsequent aggravation. Why then is the mechanism so popular?

It is popular among employers and carriers because it is the most effective way <u>under the current system</u> of closing a case. Almost all of the other mechanisms for ending a case are ineffective, dilatory, and expensive. The inability to close a

case effectively leads to frustration and resort to the lump sum. Also, lump sum settlements are the only real way to get any certainty in Maine comp. Without lump sums, claims may continue indefinitely with petitions to review filed without success over time and subsequent injuries filed to increase payments and litigation. Claimants like the mechanism because it puts money in their hands immediately, and carriers like it because it trades servicing carrier expenses for pool benefit costs.

Attorneys like lump sums because they get paid immediately, and the lump sum almost always requires attorney involvement. Rare is the claimant who can or should negotiate a lump sum on his or her own. It is no coincidence that attorney involvement was found in all 60 lump-summed cases reviewed by the Bureau.

The Task Force has reservations about the prevalence of lump sum settlements because there are many losers--often unrepresented in the transaction. Employers not involved in the specific case lose as costs escalate and are built into rates. Claimants lose when they do not have monies for necessities once the lump sum is gone. Dependents of claimants lose when the money to provide for them is lost in a business venture or spent for non-essential items. The pool loses, and the public generally loses if attorneys are attracted to this device.

Carriers and employers should not be permitted to reduce their immediate expenses and pass the costs on to the pool by the device of lump sums. In most cases, the Task Force believes that benefits should be paid in regular, long-term installments to assure that

the money is available for its intended purpose. Of course, the abolition of lump sums cannot be contemplated without the creation of a proper mechanism to allow for alternative, effective termination of benefits where appropriate.

The Task Force notes that the recent Law Court decision in the Ashby v. Rust Engineering case has made fringe benefits part of the workers' compensation benefit calculation. Commission appellate decisions thereafter have made this decision retroactive. These are completely unforeseen developments in benefit payments and will dramatically increase system costs. They might also create considerably more litigation as the new principles are applied to existing and settled cases.

The Task Force found that several of the procedural features of Maine's system operate to increase both costs and delays. The 44-day rule puts employers and their insurers in the position of having to decide whether to controvert a claim within 44 days of the event giving rise to the claim, too early in the process of information-gathering and evaluation for a clear decision to be made in many cases. An employer or insurer has 75 days from the date of receipt of a medical bill to pay or contest compensation for medical expenses, aids, or services. In most cases, the employer or insurer would be aware of the claim and would have begun an investigation of the injury prior to receipt of the bill. However, the 44-day rule without a provision for payment without prejudice requires the insurer to make a much more important decision, to pay or contest a claim, within a time period at least

a month less than it would have to question a medical bill, and generally without the benefit of a medical report. As a result, cases which might otherwise be resolved without litigation are controverted, as there is no opportunity to pay on an interim basis beyond this point without prejudice.

One of the major continuing problems with the system is uncertainty. It not only increases delays and exacerbates ill will, but it makes insurers even more reluctant to participate actively in the voluntary market. The single most destabilizing issue in the system is the determination of the date of Maximum Medical Improvement (MMI). Currently, the benefit duration for permanent partial injuries is 400 weeks after MMI. This obviously creates considerable contention over the determination of MMI, and that only causes more uncertainty and litigation. States with more efficient systems use the date of injury as the point of departure for measuring duration, and Maine should follow suit.

The requirements that medical records be obtained and benefits discontinued only with signed permission of the claimant are obvious sources of delay and, especially in the case of the discontinuance form, additional costs as benefits continue in the interim. Each of these features, and the eleven-month average delay before hearing resolution, encourage disputes and increase costs without benefiting employees or employers, thus failing to meet the major objectives of the system.

The Workers' Compensation Commission presides over a system that is inundated with first reports and has a high ratio of

controverted cases to lost time claims. Past attempts to streamline the process, such as the use of employee assistants and informal conferences, have arguably not lived up to their promise. Similarly, despite the addition of more Commissioners to help move cases more quickly, delay remains a major characteristic of the system, with the average major controverted case taking 11 months to resolve.

The Commission has been strapped for resources and staff and has not always been able to maintain or provide quality data on the operation of the system. It also has had difficulty providing data required by the 1987 law reform. While recognizing the difficulty of the work, Task Force members expressed disappointment that the Commission did not develop the medical fee schedule mandated by the 1987 reforms in a timely or comprehensive fashion.

The lack of clarity in the 1987 reforms with respect to Maximum Medical Improvement (MMI) has not been reduced by the Commission treatment of the concept. Commission rules allow for consideration of MMI in conjunction with a specifically prescribed list of petitions, but bar consideration of MMI by itself within two years of date of injury. There is a widespread perception that the Commission will generally not address MMI within two years of injury, and Task Force members believe that Commissioners have been reluctant to issue MMI rulings even when the issue has been raised. In any event, there have been very few determinations of MMI, and case duration on serious injuries has not been authoritatively determined with any frequency since the 1987 law reform.

With MMI now "back-ended" on the 400 weeks duration for permanent partials, claimants and employers alike have no idea about the duration of payments for existing claims. In this environment, costs are uncertain, and workers may be failing to plan for their post-benefit employment.

Employers have complained about the "unfair" results at the Commission, pointing to plaintiff lawyers' claims of an 85% success rate. (While many of these successful cases for employees might only be nominal awards, they may meet the prevail standard for payment of attorney fees.) Employers often decry "fraud" and "abuse" by employees, but in fact cases viewed by employers as abusive are typically handled within the four corners of the system. As the following examples indicate, either the Commission or a health provider has approved the benefits, payments, extensions, or course of treatment found objectionable by the employer. The Task Force has found that the system often legitimizes activity that most employers view as fraud or abuse.

> Where an employer disputed a legal bill of just over $2,000 because of failure to prevail, the Commission split the difference and awarded $1,000.
>
> Where the employer allegedly witnessed an employee out on complete disability working as a garage mechanic and terminated payments, the Commission reinstated and threatened fines. Where a waiter cut his hand five days before his already announced intention to resign but was offered work he could handle as a cashier, the doctor

listed him as "totally disabled" and refused to reconsider.

These are only a few representative examples of employer complaints demonstrating that the current system can legitimately produce results that defy common sense to many employers.

Employers are often frustrated by the time it takes to obtain a Commission order to terminate benefits. The Task Force believes an essential improvement needed in the Maine system is a mechanism for terminating benefits promptly combined with a process for an expedited review of that decision. Benefits should stop when the claimant is medically cleared, and work is available.

Compensability

A major issue examined by the Task Force was the scope of coverage of the workers' compensation system. Forty-three states, including Maine, provide coverage for injuries "arising out of" and "in the course of" employment. However, some states have limited the scope of compensability by statute, for example compensating only for the percentage of disability attributable to a work injury. This contrasts with the Maine standard on both pre-existing conditions and subsequent aggravation.

In cases involving pre-existing conditions, the Maine employer is fully responsible whenever the effects of pre-existing conditions and a work-related incident combine to produce disability. This is so even if the pre-existing condition was

symptomatic at the time of injury (Ibbitson v. Sheridan Corp., 463 A.2d 735 [1983]). Subsequent non-work related injuries are not covered in several states (CT, IL, & MI). In Maine cases involving subsequent aggravation of a work-related condition by a non-work condition, employees are compensated for disability resulting from deterioration of a work condition by a subsequent non-work injury (Beaulieu v. Frances Bernard, Inc., 393 A. 2d 163 [1978]). This is true even if the employee were able to work for a period of years following recovery from the work injury but became totally disabled following two subsequent non-work injuries (Brackett v. A.C. Lawrence Leather Co., 559 A. 2d 776 [1989]).

Some states have statutes which require that an injury be linked to an identifiable event or incident (CT, IL, and WA). Others have statutes addressing compensability of particular types of injuries, including: cardiovascular claims (must be based on work-related aggravation which is significant in MI, and caused by an unusual exertion arising out of employment in CO); back claims (must relate to a specific incident in NC); and hernias (must meet a variety of qualifying conditions in NC and SC).

While compensability is liberally defined in most jurisdictions, in Maine even the slightest possibility that a work-related injury is a contributing factor in a subsequent disability resulting from a non-work related incident is sufficient to support compensability of the resulting condition and any related ailments. The existence of post-injury aggravation is irrelevant, even if it is not job-related. There is coverage for stress. There is

coverage for hearing loss and other conditions which are difficult to distinguish from the results of the aging process. Delays in receipt of compensation may in and of themselves create stress and further claims, the ultimate circularity. Claimants without job prospects may perceive no choice but to maintain their status as payment recipients.

Two issues arise here. First, the definition of compensability has been broadened by the Law Court and the Commission in Maine over the years even as the relative costs of workers' compensation to business have increased. (See Appendix B.) While other states have similar laws and broad definitions they also have restrictions. Unlike these other states, Maine may have a very broad rule in virtually every area. Second, can Maine afford a system that is so broad in its coverage?

Medical Costs

The Task Force, through its Medical Subcommittee, devoted considerable time to studying the medical component of the workers' compensation system. The workers' compensation health care system is the last bastion of first-dollar coverage, and it pays health care providers for virtually any treatment they prescribe. There is no timely reporting requirement, and there are no common interdisciplinary protocols by which to diagnose and treat. Employees do not have ownership rights with respect to their medical records, and diagnostic tests are often repeated by new

providers--of which there may be many since employees have unlimited choice as to whom and how many they see. There is evidence that rehabilitation is ineffective or even inappropriate in many instances.

Yet there is little or no utilization review, peer review, or case management during treatment of the injured worker. There is no effective means for disciplining those providers who abuse the system. There was testimony that some providers may be unbundling services to increase billable charges. Furthermore, medical issues are not usually resolved by providers but often are resolved in litigation.

Testimony from Dr. Barrett, who headed the Medical Sub-committee, indicates that about 15% of Maine's injured workers appear to stay out of work almost indefinitely and consume an inordinate amount of health care resources. It is not coincidental that these workers suffer primarily from less well- defined injuries such as soft tissue strains, somatic dysfunctions, various syndromes, chronic repetitive trauma, and so forth. This group of patients tends to see a lot of different practitioners, therapists, and counselors and have pain as the dominant complaint. There is poorly defined causation in most cases. This group also almost inevitably has a large component of stress in its history, has experienced delays in the compensation system or been involved with the system for an extended period, and has legal representation.

Most of the injuries in this group of patients are self-limiting, and healing is not shown to be speeded up by the multiple

treatments used. The Task Force believes the keys to improved treatment and reduced costs are early, specific diagnosis, regular medical reporting, timely peer and case review, and the elimination of excessive testing and treatments. To prevent "doctor-shopping," it might also be appropriate to restrict the employee's choice of physician to one provider--excepting referrals. All of this should be aimed at early return to work--even in the face of employer disinclination to rehire workers who may not yet be 100% recovered.

The Task Force supports more incentives for employers to provide light duty, encourage prompt return to work, and institute workplace wellness and stress programs. It is likely the most effective mechanisms will involve direct reductions in workers' compensation premiums. Employer light duty pools with credits for workers returned to jobs might also reduce costs. On the employee side, stronger penalties for failure to return to work or accept light duty or lesser positions might be imposed.

Another cost containment mechanism might involve discounting provider bills as is done in various health care programs. It is, however, inappropriate in the area of medical services to focus simply on the high cost. The first question for medical services has to be whether or not the outcomes for the patient have improved with the increased cost of recent years. There is no clear indication that the increased cost of medical care has resulted in increased benefit to the typical injured worker.

Preliminary indications are that there is considerable overutilization of medical services to treat workers' compensation

claimants. While injured workers should have access to excellent medical care, the present situation is rife with the possibility of overuse and overcharging. Moreover, the services being provided might well be of little benefit to the claimant.

A comparative study of back injuries from the comp system and Maine's Medicaid system was done for the Task Force. The claims relating to workers' compensation were from the Bureau of Insurance database. They were selected for injury dates between January 1, 1988 and December 31, 1990 based on the Bureau of Labor Standards back case coding. There were 5,124 back claims that fell within these parameters and 59,346 CPT code records. The CPT codes are submitted by NCCI and MSIGA for provider charges as they relate to claims. The resulting ratios are based upon the number of occurrences (CPT codes) to the number of cases.

The Medicaid data were from the Maine Department of Human Services. Data were requested for back cases as defined by diagnosis codes which indicate back treatments. Cases were requested where diagnosis and treatment occurred in 1988, 1989, and 1990. The result was 11,100 claimants with 73,247 records. Some records which involved strictly hospital treatments were then excluded from the dataset resulting in 9,104 claims with 57,051 records. The resulting ratios are based upon the number of occurrences (CPT codes) to the number of cases.

It was established that for those over age 44 the frequency of physical therapy and manipulations is almost 7 times greater for comp claimants than Medicaid patients and for those under 45 the

ratio is 6:1. (Table 11) Back surgery is twice as likely for comp claimants under 45 with back injuries than for Medicaid patients with the same Physician's Current Procedural Terminology (CPT) codes and for those over 44 the ratio is 3:2. (Table 12) For all ages the ratio of MRI's for comp back patients as compared to Medicaid back patients exceeds 3:1. (Table 13)

While some case might be made that the limited payment schedule of Medicaid reduces the provider's willingness to provide service, there is no evidence that the care received by the Medicaid population is so deficient as to explain these ratios. It is far more likely that comp claimants are scheduled for manipulations, surgeries, and MRI's to a greater extent because comp's blank check (as well as the lack of managed care and peer review) provides no incentive for a more cost-effective approach.

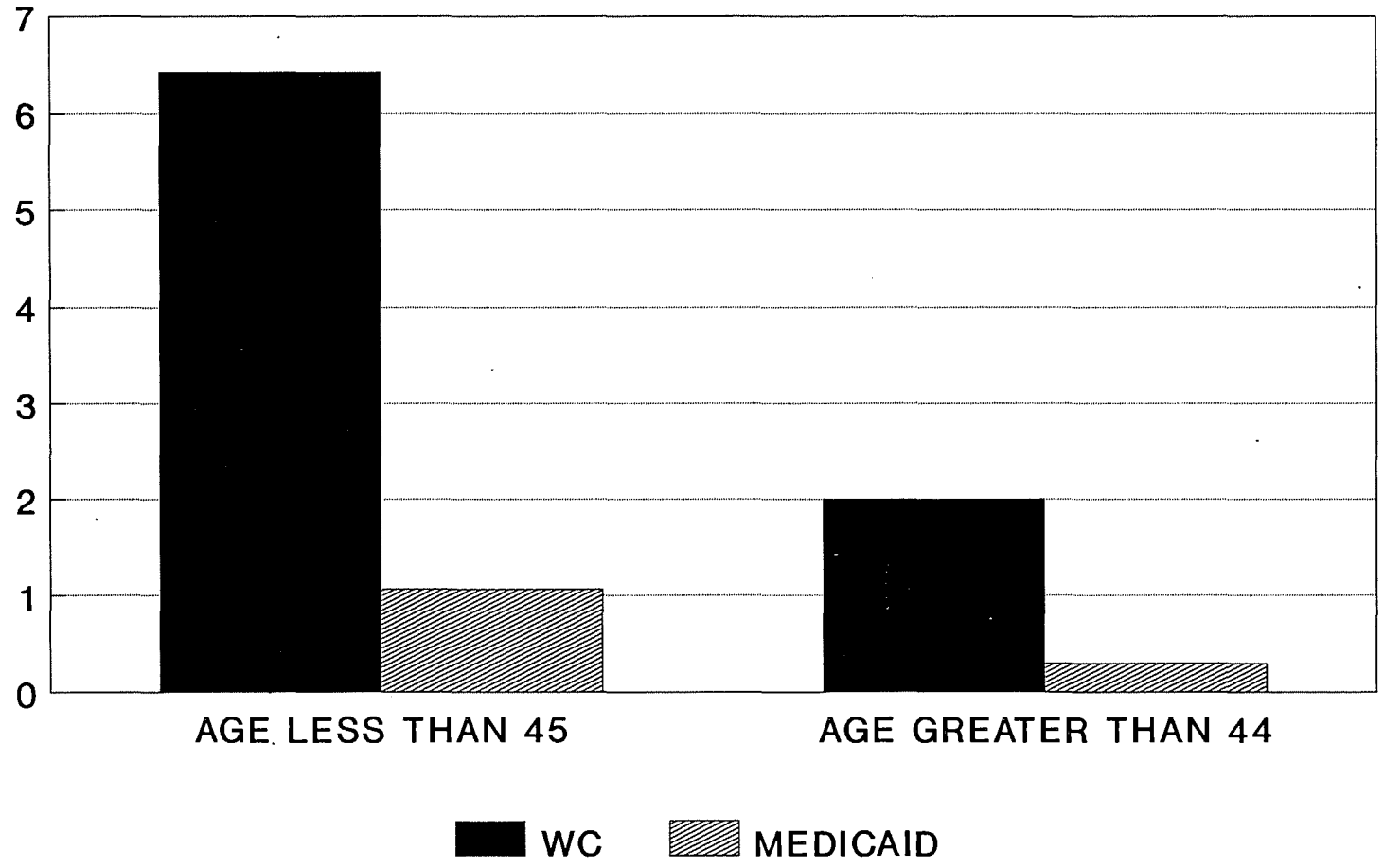
The medical fee schedule, which took a long time to develop, does not affect overutilization of medical services. While a study by Insurance Management Group, Inc. for the Maine Public Advocate indicates that the fee schedule has had some impact in lowering provider bills, it has not reduced overall medical costs.

These issues are complex and not susceptible of simple investigation and solution. A study of back pain undertaken in Quebec, which was brought to the attention of the Task Force by Dr. Barrett, illustrates both some of the problems and potential solutions.

The burden on workers, employees, employers, and society imposed by disorders of the spinal column as they occur in the

PHYSICAL THERAPY & MANIPULATIONS

RATIO OF OCCURRENCES TO TOTAL CASES

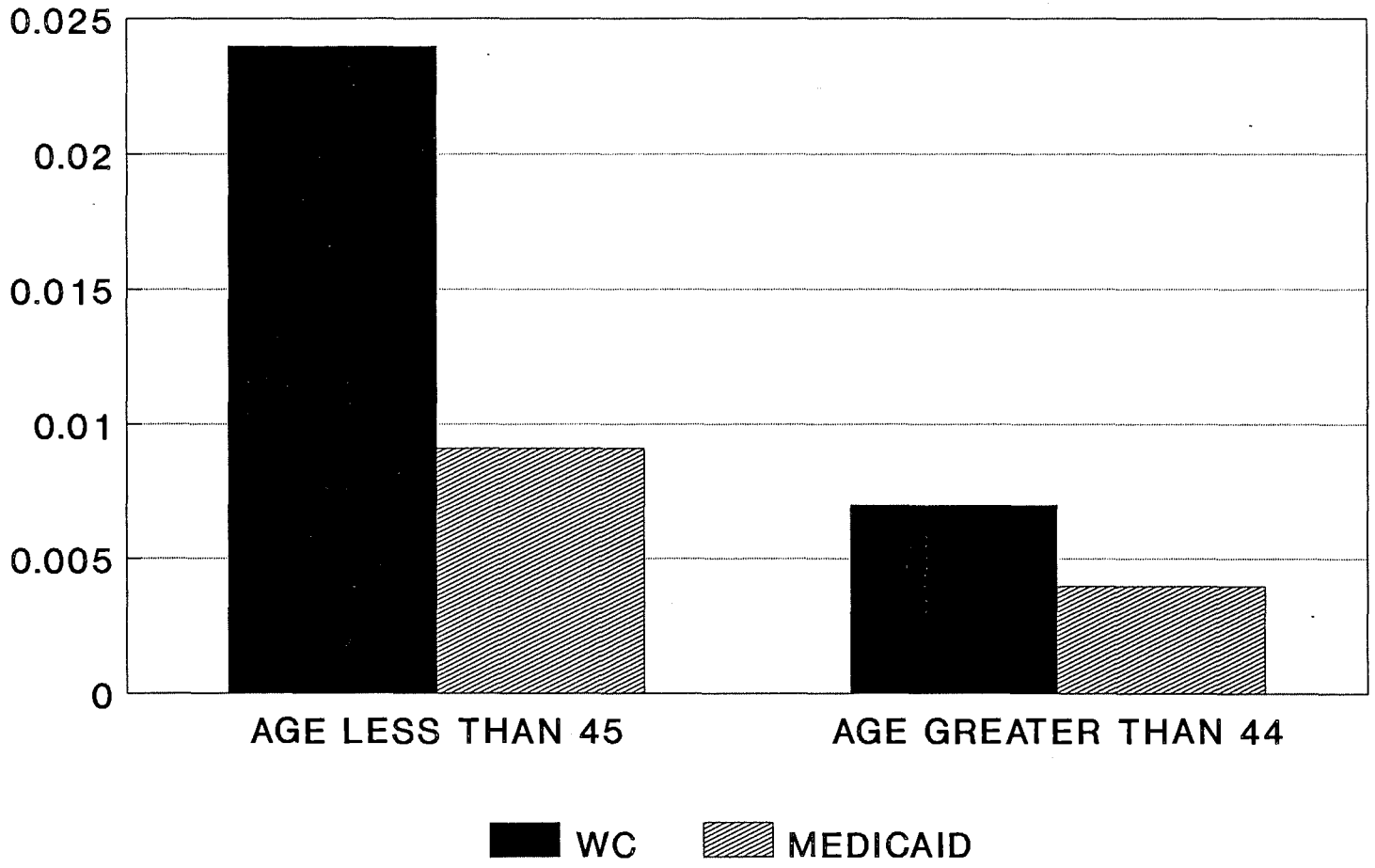


RATIO=(OCCURRENCES/TOTAL CASES)

TABLE 11

BACK SURGERY

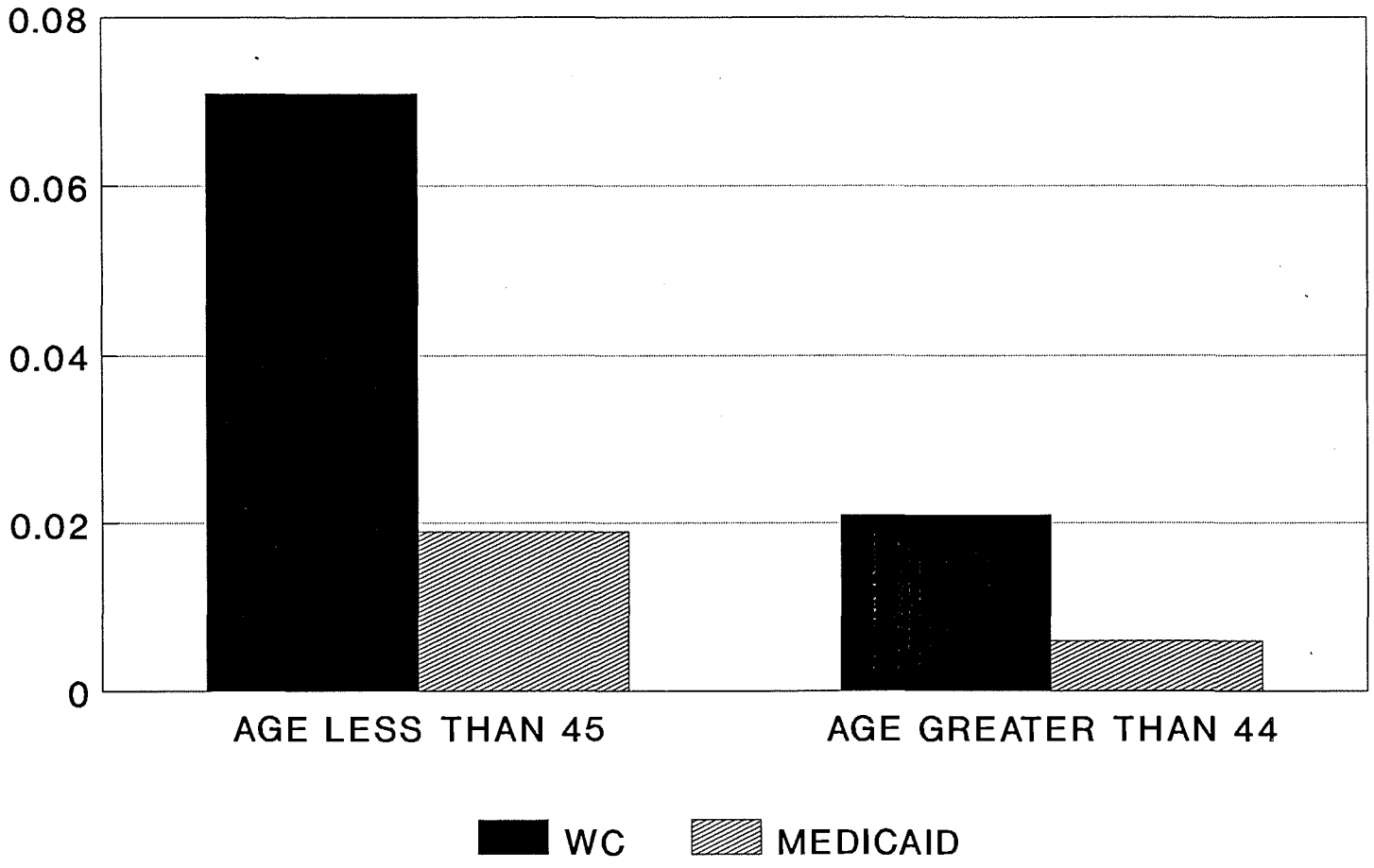
RATIO OF OCCURRENCES TO CASE TOTALS



RATIO=(OCCURRENCES/TOTAL CASES)

TABLE 12

MAGNETIC RESONANCE IMAGING
RATIO OF OCCURRENCES TO CASE TOTALS



RATIO=(OCCURRENCES/TOTAL CASES)

TABLE 13

workplace was the subject of an extensive Canadian study by an interdisciplinary group of clinicians, health professionals, and methodologists formed at the request of the Quebec Workers' Health and Safety Commission. Upon completion of the study, the Quebec Task Force on Spinal Disorders ("the Quebec Task Force") developed a diagnostic classification of spinal disorders and evaluated diagnostic and therapeutic interventions on the basis of scientifically valid evidence.

This study was initially motivated by concerns about the continual increase in physiotherapy treatments in Quebec, 40% of which were treatments for conditions affecting the spinal column, and by the wide variation in duration of treatment for the same condition from one institution to another. The Commission was also influenced by the following conclusions of the Duranceau Report on the diseases of the "locomotor system":

1) It is possible to estimate in advance the time required to regain normal function in cases of injuries to ligaments or tendons;
2) Physiotherapy has demonstrated value only in the rehabilitation phase of treatment;
3) Electrodiagnosis and electrotherapy treatments should be substantially reduced;
4) There is inadequate medical education with respect to the management of disorders of the locomotor system; and
5) Special clinical profiles are needed which will

identify distinct pathologic conditions, based on clinical symptoms and signs. (University of Montreal, Sports Medicine Clinic: Les pathologies du systeme locomoteur (Duranceau Report). Montreal, Sports Medicine, 1982)

A study was designed to measure the frequency of spinal disorders in terms of incidence rate, using information from the Quebec Workers' Compensation Board (hereinafter "QWCB"). Incidence was defined as the proportion of workers who were compensated, with absence from work of at least 1 day, for a spinal disorder at least one time during the year, regardless of the number of times. The study was based on 3,407 compensated claims, related primarily to the back and neck. The results were as follows: **7.4% who were absent from work for 6 months or more accounted for 75.6% of the total compensation costs for spinal disorder and 21.4% of total compensation costs for all injuries at the QWCB in 1981.** Thus, the costs were related to the number of days absent from work, rather than to the number of claims, and this suggests that the medical care impact of work-related spinal disorders is not as important as disability, work rehabilitation, and the social problem.

The Quebec Task Force concluded that there is no standard classification or terminology for spinal disorders, which explains in part the contradictory findings in literature and practice regarding diagnosis, therapy, and rehabilitation. The lack of uniformity in diagnostic terminology has caused a significant constraint on the adoption of uniform scientific strategies for all

aspects of spinal disorders.

Much of this problem of classification results because pain is often the only symptom of spinal disorders. Physical signs and symptoms often have little specificity which makes diagnosis difficult. Nonspecific ailments of back pain comprise the vast majority of problems found among workers with this type of claim. There is often a discrepancy between the level of pain and the loss of function, on the one hand, and the minimal objective physical symptoms on the other. The influence of psychologic and social factors on the continuation of pain past the acute phase is now increasingly recognized.

The Quebec Task Force drew the following conclusions: **1) diagnosis can be guided by knowledge of the circumstances surrounding an injury and of work-related risk factors that can be implicated in the cause of the disorder; 2) a history and physical examination alone are usually sufficient to identify the majority of patients for whom a specific therapy is required; and 3) diagnostic radiology is of limited value in the first evaluation of the majority of spinal disorders.** Furthermore, the Quebec Task Force noted that one study found that resuming work benefits patients suffering from chronic pain. The Governor's Task Force believes that the Quebec study has important implications for the treatment of injured workers and for their return to work as soon as possible.

The results of the rehabilitation efforts in Maine were seriously questioned by members of the Task Force. Information

presented indicated that referrals for rehab grew from 2,145 in 1987, to 5,439 in 1989. In 1987 1,102 cases were evaluated, and two years later the figure had risen to 2,502. The rate of return to work for completed rehabilitation in Maine hovers around 50%, and given the considerable expense, anything less than 70% should be unacceptable.

(In a recent Workers' Compensation Research Institute study of rehabilitation programs, the return to work rates for completed programs for Florida, New York, and California were 77%, 71%, and 69% respectively.)

It is not that rehab is inappropriate or that there are not workers who can benefit, but the system does not deliver its services efficiently and in a cost-effective manner. Although the Legislature reformed the rehab system in 1987 and again in 1989, there is still a need for improvement.

Employers must advise the Commission within 120 days of injury with respect to employees who have not returned to work as to the likelihood that they will return. If a report indicates that an employee is not likely to return to his or her prior employment, then the Rehabilitation Administrator orders an evaluation to determine suitability for rehabilitation to occur within 30 days of the Order. Each evaluation costs $225. In 1988 751 workers were evaluated and found suitable for rehabilitation. In 1989 the figure was 1094, and in 1990 the number was 549. For all of these individuals rehabilitation plans were developed at a maximum cost of $450. Thus, in short order the system generates two

rehabilitation bills totaling up to $775 per case with no immediate benefit to the worker. For these three years there were 2394 developed plans but only 589 workers returned to work.

In 1989 there were 1094 plans, 841 implementations, and 417 workers were returned to work. This is a success rate of implemented plans of about 50%. For 1990 the comparison numbers are 549 plans, 707 implementations, and 308 returned to work. This is a success rate of 44% (The numbers do not track year-for-year because they are kept on a calendar year basis. A plan might be developed in 1989 but not implemented until 1990.)

The fee schedule is partial and does not limit utilization. For example, there is a limit on charges per hour of travel, but there is no limit on the amount of travel a provider can bill to an individual case, and there is no overall limit on administrative costs as a percentage of total charges.

Perhaps most troubling, the providers continue to do the evaluations. The Bureau of Insurance reviewed 100 randomly selected rehabilitation files from recent years and found an average cost for these cases of $3652 with a 41% return to work rate. Almost 60% of the treated workers did not return to work, and of that group the R-4 forms showed that 22% had medical conditions that precluded rehab, 12% were unlikely to benefit from rehab, 9% were not interested in rehab, and 9% were subject to an order suspending the plan (this is usually for plan failure or lack of worker cooperation). That is, 43% were not interested, could not benefit, or had medically prohibitive conditions, and another

9% received suspension orders. These people should probably have been screened out at the suitability evaluation stage.

Providers may serve both as providers to injured workers and medical managers for carriers or employers. They may treat Maine workers from offices based in New Hampshire where they pay no Maine taxes and buy no Maine workers' compensation coverage, and then bill the Maine system for travel into Maine. Providers may charge the system a fee for service and then subcontract the work to others retaining up to 50% of the charges.

Vocational goals have no current limitations and may be unrealistic. For example, a plan has been filed and implemented to train an injured former truck driver with a GED to be a flight instructor at a cost of $20,000. Yet, the individual is no longer driving a truck because he cannot sit behind the wheel. Lump sum settlements may exclude costs for planned rehabilitation with the result that the program is terminated unsuccessfully.

Lawyers may look for providers to document expensive rehabilitation programs to increase the value of the case and then advise claimants to continue rehabilitation but not go back to work. Attorneys also may bill the system for attendance at rehabilitation conferences.

Inherent in the issues discussed in the five major problem areas are deficiencies involving the major system players. Carrier audits have reflected inadequate servicing by some insurers. Litigation is excessive; rehabilitation services are overutilized and often ineffective; medical services are often overutilized: in

short, there is evidence that the professionals who effectively control the system may not have prompt payment and low cost as their major objectives.

V. POTENTIAL SOLUTIONS

The Task Force believes changes are needed to speed up payment to claimants, reduce litigation, simplify the law, eliminate unnecessary medical and rehabilitation services, reward safety and reduce injuries, and cut the costs of the system significantly.

Safety

Additional ongoing research on the safety statistics is necessary. Once specific areas of causation can be identified, appropriate steps can be taken to improve Maine's lost time days statistic. Some Task Force members believe a "safety pays" program to reduce premiums for safety-conscious employers should be investigated. In addition, the exemption from coverage for independent contractors in the logging business should be eliminated, leveling the playing field and providing more consistent safety awareness.

Consideration should be given to improving enforcement of existing safety programs and establishing others where needed, with better monitoring of coverage. The Task Force recommends that self-policing mechanisms, such as requiring a certificate of

insurance coverage as a condition of selling wood to mills, should receive serious consideration.

In addition, incentives to improve safety other than penalties may be more effective and should be fully explored. Possibilities include revising Accident Prevention Account rules to limit the impact of a single major claim. Too often employers with several minor lost time cases and one major loss end up in the Accident Prevention Account (APA). The present criteria for inclusion in the APA involve two or more lost time claims and a loss ratio in excess of one. The Task Force suggests that perhaps those factors should be increased to three or more lost time claims, two of which exceed $10,000, and a loss ratio in excess of one. This would narrow the scope somewhat to focus on those employers more likely to be unsafe as opposed to those who might just be unlucky. The use of medical deductibles and revising outmoded rating classifications (similar to the changes relating to mechanized timber harvesting) should also be considered.

The studies showing that safety statistics are inversely related to benefit levels are problematic. However, while the Task Force is concerned that high benefit levels and low wages or depressed economic conditions might exacerbate claims statistics, it believes that the Governor and Legislature should adopt the cost-saving reforms outlined in this report, rather than reducing the schedule of benefits for injured workers.

Finally, employers should develop creative programs for dealing with workplace stress and returning employees to work, such

as light duty work and an employer return to work pool. There may be potential for improvements in job designs that would be more responsive to needs of aging workers and might reduce the incidence of job-related illnesses and repetitive motion injuries. Perhaps use of such alternatives should entitle the employer to protection against an adverse experience mod effect from a subsequent injury.

Litigation and Procedures

The Task Force believes that several changes should be implemented to reduce litigation and delay. Unnecessary benefit payments should be reduced through mechanisms such as unilateral termination of benefits subject to an expedited appeal. Consideration might be given to automatic termination of benefits for refusal to return to work once an employee has recovered or failure to complete a rehabilitation program.

Alternatives to the 44-day rule deserve attention--perhaps payment without prejudice. Payment of benefits should be speeded up by eliminating sources of delay where possible: establishing a deadline for medical reporting; encouraging employer involvement in informal conferences and settlement by requiring employers to be notified of such matters; eliminating medical-only first reports and developing a medical report form; eliminating discontinuance forms and hearings on discontinuance and apportionment; prohibiting lump sum payments; deeming the filing of a claim to be authorization of access to medical records, with employees owning

their records so that they are readily portable; speeding up hearings by limiting the issues to be litigated, and consolidating hearings. Provision should be made to collect quality data on the system.

Legislation should reverse the Ashby v. Rust Engineering decision to return the system to the intended and established principles concerning benefit calculations that governed since its inception. Moreover, Maine's statute of limitations should be reduced to conform with the national average.

In addition, the Task Force believes that removing the concept of "Maximum Medical Improvement" would be beneficial in reducing the uncertainty that now surrounds the term. Defining the number of weeks of benefits for permanent partials from the date of injury would reduce litigation and enhance predictability.

Much could be done to promote settlement at the informal conference. If the conferences followed the production of medical and other accident relevant information, parties might be in a better position to resolve cases at them. Carriers and employers might be penalized for failure to appear or failure to prepare for conferences. This would tie in to a requirement for production of medical reports in a timely fashion. (NY has an "every three weeks" reporting requirement for providers.)

One of the Commissioners reported that virtually every stress, heart attack, degenerative disease, and repetitive use case goes to formal hearing. Removing these cases from the system or at least reducing their value and/or the need to litigate them would

dramatically reduce systemic costs.

Insurance companies have not provided the highest quality service to the Maine market in recent years, and steps can be taken to improve their performance. First of all, reducing the number of cases in the system and dramatically reducing the amount of litigation will greatly increase the carriers' ability to service remaining claims. The servicing fee dollars have been relatively fixed in recent years, and given the enormous volume of claims and controverted claims in the system, the insurers have been strained to provide quality service. Beyond that, however, insurers can be forced to comply more fully with safety engineering requirements and loss control standards. Claims can be handled more expeditiously. Employers can be better notified and involved in settlements and cases. Adjusters can be more thoroughly trained and much better prepared--particularly at informal conferences. The rating system might be reformed to favor return to work and limit the impact of single major losses.

Compensability

If costs are going to be contained in a meaningful way, the Task Force concludes that policy choices about the breadth of compensability in Maine must be made. The fundamental question is whether this system is going to be a workers' compensation system or a social subsidy system that pays for virtually any and every adverse affect on wages provided there is even the slightest arguable relationship to employment.

If this is to become a system that truly provides prompt, fair and cost-efficient support for injured workers, then the resources available must be concentrated on those individuals. There are a number of ways in which this might be accomplished. The definition of compensability could be limited directly. Another option would be to reintroduce the term "accident" into the statute to require a specific on-the-job incident to trigger protection. Another possibility would be a mechanism to terminate benefits for a range of injuries that are not as objective as others or have less work-related causality. For example, medical release might automatically terminate benefits for sprains, strains, and back pain.

The statute could incorporate a "predominant cause" standard that would require the work-related incident to be the predominant cause of the wage loss. Pre-existing conditions and post-injury aggravation could be eliminated as covered conditions, or there could be apportionment with only the work-related portion of the wage loss being compensable. Durations might be limited for injuries that are not accidental or for which the work-related incident was not the predominant cause. Coverage for stress, aging, and illness might be reduced. And finally, durations could be limited for injuries like sprains, strains, and back pain. That is, perhaps those injuries could have a lesser duration than the current 400 weeks for permanent partials of all types.

Medical Costs

Eliminating unnecessary medical and rehabilitative services while ensuring that appropriate care is delivered to employees requires development of a utilization review and case management function in the workers' compensation system. Early, specific diagnoses should be required, perhaps using standardized inter-disciplinary protocols, and timely medical reports should be required. Case review should be routinized, particularly for soft tissue injuries. Medical deductibles, payment of medical costs without prejudice, and restriction of expensive diagnostic tests to specialists should be considered.

The medical fee schedule should be extended to help restrain cost increases into the future. Limitations should also be placed on the frequency of resort to specified provider services, and return to work should be emphasized. Doctor shopping should be eliminated by restricting the employee choice to some extent. Employees should own some or all of their medical records so that diagnostic tests are not needlessly repeated. Employers should have appropriate access to medical records.

The use of independent medical examiners (IME) utilizing one or more institutional providers to determine all medical aspects of a claim without appeal should be considered. The IME could evaluate impairment, disability, return to work, and rehabilitation. The IME could also conduct utilization review on

major cases at six weeks and make final determinations on the payment of medical expenses.

Cost containment measures which are being used in the health insurance area should be evaluated for possible usefulness in the workers' compensation system. In addition to case management and utilization review, devices such as preferred provider organizations may be appropriate. Generic drugs might be required and provider referrals to facilities in which they have a financial interest prohibited. Disincentives for excessive or unnecessary treatment and incentives for preventive medical services might be considered.

Changes should be made to the rehabilitation system to provide for neutral evaluations upon application of interested claimants. A fee schedule should limit charges to a percentage of SAWW. Self-referrals should be prohibited, and vocational goals should be realistic and mainstream. Rehab should be limited to two years or $5,000, and the ability of providers to function in the system should be evaluated on the basis of cost and success. Providers should be prohibited from treating claimants and serving as claims managers, and this prohibition should be extended to the parent companies that own common operations. Subcontracting should be limited, and travel from out of state not be reimbursed. Travel and administrative costs should not exceed 30% of the total plan expense, and medical management of claims for carriers or employers should be considered a bar to providing rehabilitation services. Providers should be assigned by the state or a neutral organization

and employee/attorney choice should be eliminated.

Consideration should be given to subjecting rehab providers and their parent companies to regulatory oversight that includes fines, revocation of authority, and prohibitions on new cases or accepting cases from specific sources. Bills submitted for payment should be signed by the individual responsible for the treatment. Lump sum settlements should be prohibited in this context, and attorneys should not be allowed to bill for participation in rehabilitation conferences.

These are reforms that the Task Force believes warrant careful consideration by the Governor and the Legislature. Whichever reforms are actually implemented, care must be taken to avoid unintended consequences which have been all too common in the past. A reform package must be created which is fair, appropriate, and will provide prompt payments to injured workers while significantly reducing the overall costs of the system.

VI. CONCLUSION

W.S. Libbey Company in Lewiston, National Sea Products in Rockland, and Ethan Allen in Burnham are just a few of the companies that have cited the high cost of Maine's workers' compensation system as a reason for their decision to shut down plants in our state. Other employers have made business decisions to reduce operations, forego wage increases, cut back benefits, or

expand elsewhere due to the high cost of workers' compensation in Maine. Time and again, the high expense of workers' compensation has been identified as a significant barrier to keeping good jobs in Maine and to expanding employment opportunities for our citizens. Simply put, the Task Force found that high workers' comp costs result in lost jobs, lower wages, and fewer economic opportunities for Maine workers.

Maine has come a long way since 1987 when insurance coverage for our workers was in jeopardy and the system on the verge of collapse. Nevertheless, the Task Force found that workers' comp costs remain much higher in Maine than in other states, placing our employers and employees at a competitive disadvantage. As documented in this report, the average per capita cost of workers' compensation in the United States is about $100. By contrast, the per capita cost in Maine is about $260 -- the highest in the continental United States and far higher than any other state in New England. It is not surprising that several firms have cited high workers' comp costs as a reason for their decision to close their doors in our state, not to expand here, or not to move here in the first place.

The Task Force's recommendations are intended to bring Maine's costs more in line with our neighboring states. As Maine copes with the recession, it is more important than ever before that we act to retain and promote good jobs for Maine people. Reforming our costly, complex, and cumbersome workers' compensation system is an essential first step.

FOOTNOTES

[1] R. Butler, "Wage and Injury Rate Response to Shifting Levels of Workers' Compensation," Safety and the Work Force, Incentives and Disincentives in Workers' Compensation, J. Worrall, Ed., 61, 81 (New York: Cornell University, 1983).

[2] M. Staten and J. Unbeck, "Compensating Stress-Induced Disability: Incentive Problems," Id at 103, 124.

[3] J. Chelius, "The Incentive to Prevent Injuries," Worrall, Supra, at 154, 159.

[4] A. Dillingham, "Demographic and Economic Change and the Costs of Workers' Compensation," Worrall, Supra, at 161, 162.

[5] J. Worrall and D. Appel, "Some Benefit Issues in Workers' Compensation," Workers' Compensation Benefits, Adequacy, Equity, and Efficiency, J. Worrall and D. Appel, Eds., 1, 12-13 (New York: Cornell University, 1985).

[6] J. Worrall and R. Butler, "Benefits and Claim Duration" Id., at 57.

[7] National Underwriter, "Impact of High WC Benefits Assessed," January 1, 1990, p. 15.

APPENDIX A

----DEMOGRAPHICS-----

FILE NUMBER_____ DATE OF INJURY_____

TYPE OF CLAIM_____ DATE OF HIRE_____

OCCUPATION_____ EMPLOYER_____

DATE OF BIRTH_____ EMPLOYEE NAME_____

SOCIAL SECURITY # _____ ZIP OF RESIDENCE_____

STATUS DATE OF FILE_____ TYPE OF INJURY_____

BODY PART AFFECTED_____

BRIEF DESCRIPTION OF INJURY_____

_____

_____

COMPANY _____

----PAID, RESERVED, AND INCURRED----

DATE RESERVE ESTABLISHED_____

	PAID	RESERVED	INCURRED
INDEMNITY	_____	_____	_____
MEDICAL	_____	_____	_____
REHAB	_____	_____	_____
OTHER	_____	_____	_____
LS ADJ EX	_____	_____	_____

----NUMBER OF WEEKS USED IN ESTABLISHING INCURRED INDEMNITY----

NUMBER OF WEEKS RESERVED AT TEMPORARY TOTAL_____

NUMBER OF WEEKS RESERVED AT PERMANENT PARTIAL_____

----LUMP SUM----

HAS CASE BEEN LUMPED SUMMED (Y/N)_____
AMOUNT OF SETTLEMENT _____

----MAXIMUM MEDICAL IMPROVEMENT (MMI)----

MMI DETERMINED (Y/N)_____ DATE_____

----PERMANENT IMPAIRMENT----

PERMANENT IMPAIRMENT DETERMINED (Y/N)_____

PERCENT_____ DATE_____

RECORD EACH SUBSEQUENT CONDITION (INJURY/ILLNESS) WHICH IS PART OF THIS CLAIM. WAS IT CONTROVERTED (CONT)? WAS IT RULED COMPENSABLE (COMP)?

SUBSEQUENT CONDITION	DATE	CONT(Y/N)	COMP(Y/N)
_____	_____	___	____
_____	_____	___	____
_____	_____	___	____
_____	_____	___	____

WAS THERE A PRIOR OR PRE-EXISTING CONDITION CONTRIBUTING TO THE CLAIM.

PRIOR CONDITION (Y/N)_____

DESCRIPTION OF PRIOR CONDITION_____
_____
_____

----SAFETY----

DID EMPLOYER SAFETY CONDITIONS CONTRIBUTE TO INJURY (Y/N)____

DID EMPLOYEE NEGLIGENCE CONTRIBUTE TO INJURY (Y/N)____

IF YES BRIEFLY DESCRIBE_____

_____

_____

----NOTICE OF CONTROVERSY INFORMATION----

NOC REASON	DATE	RESULT

----INFORMAL CONFERENCE INFORMATION----

IF DATE	REASON FOR IF	RESULT

----HEARING INFORMATION----

HEARING DATE	REASON FOR HEARING	RESULT

----PETITIONS FILED----

TYPE OF PETITION	DATE	WHO FILED

----ATTORNEY IDENTIFICATION----

ATTORNEY ID (FIRM)	PLAINTIFF/DEFENSE	DATE*	DOLLAR

* DATE OF EARLIEST ATTORNEY INVOLVEMENT

DATE MEDICAL RELEASE REQUESTED_____

DATE MEDICAL RELEASE SIGNED_____

----DOCTOR IDENTIFICATION----

DOCTOR & TYPE	REP(EE/ER)	DATE OF INVOLM	DOLLAR

----SURGERY----

SURGERY-TYPE	DOCTOR ID	DATE	DOLLAR

----REHABILITATION----

REHAB PROVIDER ID	DATE OF INVOLM	AMOUNT
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

REHAB EVALUATION ORDERED BY COMM (Y/N)_____

REHAB ORDERED BY COMM (Y/N)_____

REHAB COMPLETE (Y/N)_____ DATE OF COMPLETION_____

LABOR MARKET SURVEY DONE (Y/N)_____

----WORK SEARCH----

IS GOOD FAITH WORK SEARCH AN ISSUE (Y/N)_____

DOES GEOGRAPHIC LOCATION OF CLAIMANT HINDER WORK SEARCH (Y/N)

DID INSURER CONTEST EMPLOYEES' GOOD FAITH WORK SEARCH (Y/N)_

IF CONTESTED RULING FOR EE OR ER_____

----WORK CAPACITY----

IS WORK CAPACITY AN ISSUE (Y/N)_____

IS IT BEING CONTESTED (Y/N)_____

IF CONTESTED COMM. RULING _____

----RETURN TO WORK----

CLAIMANT RETURN TO WORK (Y/N)_____ DATE_____

FOR SAME EMPLOYER (Y/N)_____

DIFFERENT EMPLOYER (Y/N)_____

CLAIMANT STILL RECEIVING BENEFITS (Y/N)_____

DISCONTINUANCE SIGNED (Y/N)_____ DATE_____

ARE THERE MULTIPLE DISCONTINUANCES (Y/N)____

NUMBER OF DISCONTINUANCES _____

DID CLAIMANT RETURN TO WORK AND THEN GO BACK OUT (Y/N)

DATE LOST TIME BEGAN AGAIN_____

IS CLAIMANT STILL OUT (Y/N)____

----LIGHT DUTY----

LIGHT DUTY AVAILABLE

IS LIGHT DUTY AVAILABLE (Y/N)_____

SAME EMPLOYER(Y/N)_____

DIFFERENT EMPLOYER (Y/N)_____

DID CLAIMANT START LIGHT DUTY PROGRAM AND THEN GO BACK OUT (Y/N)_____ DATE_____

PRIVATE INVESTIGATION USED (Y/N)____ DOLLAR_____

COMMENTS_____

_____

_____

_____

APPENDIX B

CASES DECIDED - 1975

Willette v. Statler Tissue Corp., 331 A2d 365. Employee suffered work- related injury- no lost time. Ultimate disability occurred while employee was working for a successive employer. Court upheld IAC finding that ultimate disability was caused by initial injury and failed to accept employers proposed threshold requirement that there be an immediate manifestation of disability in the form of wage loss.

Davis v. Bath Iron Works, 338 A2d 146. Sequence of events: 1944 Employee goes to work at BIW; 1946 Occupational Disease Law enacted; October 1966 employee ceases employment; November 1967 Asbestosis brought within statute; July 1972 Asbestosis diagnosed. Employee was exposed to asbestos from 1944 to 1967. Employee brought a negligence action v. BIW. Court held no action lay in tort. WC is exclusive remedy.

Kidder v. Coastal Construction Co., Inc., 342 A2d 729. Two injuries with two employers caused disability. Court allowed apportionment between employers. Court rejected "Massachusetts-Michigan" rule which would have held 2nd employer fully responsible for benefits.

Canning v. State Dep't. of Transportation, 347 A2d 605. In 1973 Legislature liberalized Title 39 by deleting the "by accident" requirement from medical benefit provisions. Court determined legislative intent to have been to delete "by accident" requirement from all benefits, not just medicals despite no express provision for this in statute.

Fecteau v. Rich Vale Construction, 349 A2d 162. Construction worker injured, subsequent employment as a janitor. IAC holding that employees actual performance of remunerative work is prima facie indication of extent of ability to earn wages upheld by Law Court. Court added that the burden was on an employer to show that suitable work at higher wages was reasonably available to employee. Employer had argued that burden was on an employee to provide evidence that the work engaged in was the highest paying compatible job available.

CASES DECIDED - 1976

Wadleigh v. Higgins, 358 A2d 531. "Employers take employees as they find them." Employer must compensate an employee who is disabled as a result of the combined effects of a work-related injury and preexisting condition to the full extent of incapacity even though the injury would not so extensively disabled a healthy person.

Gordon v. Maine Reduction Co., Inc., 358 A2d 544. (1). Court held employee could not be forced to undergo an exploratory medical procedure with negligible risks without a showing by employer that employee was a fit subject for the ultimate surgical procedure in the event the exploratory indicated surgery was appropriate. (2). The costs of a court appeal by an employee shall be borne entirely by the employer- win, lose, or draw; but no balance billing of employee by his attorney is allowed. This holding is limited to WC proceedings before the Court. IAC has jurisdiction over fees in its proceedings.

Russell v. Camden Community Hospital, 359 A2d 607. Occupational Disease Case. Nurse contracted tuberculosis from patient whom she was exposed to for only 20 days. Court refused to construe the 60 day requirement of §186 to prevent compensability. Court found that the purpose of the 60 day requirement related to successive employer occupational disease cases.

Oliver v. Wyandotte Industries Corp., 360 A2d 144. Employee injured in auto accident on public street after exiting employers parking lot. Court held that injury compensable where there is a causal connection between employment and injury received. It rejected employers' contention that an employment -related hazard must be a predominant causative factor.

Ross v. Oxford Paper Company, 363 A2d 712. Employee developed carpal tunnel syndrome with date of disability established as subsequent to deletion of "by accident" requirement. Court held claim was compensable as law in effect at date of injury controlled.

Bowen v. Maplewood Packing Co., 366 A2d 1116. Work search case. Court reversed an IAC decision which had found employee not entitled to total incapacity benefits because he had failed to show that employers who wouldn't hire him would have him but for his injury. Court reiterated standard that total incapacity results either from medical incapacity to perform any substantial work or from unavailability in or near the community in which the employee lives of the type of work commensurate with his limited capacity.

CASES DECIDED - 1977

Pino v. Maplewood Packing Co., 375 A2d 534. Employers nurse possibly misled injured worker. Court held that acts of employer's representative, even if not done knowingly or intentionally, which operate to mislead injured employee as to his WC rights may serve to estop employer from denying coverage. Nurse had apparent authority for her acts.

McQuade v. Vahlsing, Inc., 377 A2d 469. Work search case. Court sustained claimant's appeal of an IAC order terminating WC for person who IAC had found had recovered a substantial portion of his pre-accident work capacity and had "to a great extent" withdrawn from the labor market. Court found Comm. findings inadequate.

Richardson v. Robbins Lumber Co., 379 A2d 380. Remote and Proximate Causes case. Once existence of work-related injury has been established, employer is then liable for WC for all harm flowing from the injury, even if harm occurs in non-work-related incidents. Court cites with approval Wing v. Morse, 300 A2d 491,496 (1973) for statement that issue is whether the work-related injury remained a substantial factor in causing the ultimate disability.

CASES DECIDED - 1978

Gullifer v. Granite Paving Co., 383 A2d 47. Remote and proximate cause case. Work-related injury; symptoms arose over a year after employee left employment but causal link was established. Court held this was compensable.

McLaren v. Webber Hospital Association, 386 A2d 734. Employee suffered acute schizophrenia while attending sensitivity seminar which employer had sent him to and paid for. Despite medical testimony that petitioner may have had a susceptibility to schizophrenia, the stress of the seminar was found to have caused the injury. Court held this injury arose out of and in the scope of employment.

Lancaster v. Cooper Industries, 387 A2d 5. (1) Work search case in the context of a petition for review. Moving party in petition for review, in this case the employer, has ultimate burden of proof. (2) Case of 1st impression as to burden of proof which must be met by employee who petitions for vocational rehabilitation. Court cites a 2 part statutory test: (a) voc rehab must be necessary and desirable to restore the injured employee to gainful employment, and (b) the proposed rehab must be reasonable and proper.

Gibson v. National Ben Franklin Ins. Co. et al, 387 A2d 220, Injured employee brought suit against WC insurer and agent alleging tortious termination of WC benefits. Court held that this action was not barred by exclusive remedy provision of WC law.

McInnis v. Town of Bar Harbor, 387 A2d 739. Fact that injured employee retained some work capacity did not, in itself, bar employee from eligibility for vocational rehabilitation. Threshold tests were (1) whether incapacity put employee at such disadvantage in employability, compensation, and job security that legislature would see fit to treat him for these benefit purposes the same as the totally incapacitated, and (2) whether the incapacity was a significant impediment to gainful employment.

Abshire v. City of Rockland, 388 A2d 512. Police officer was injured on his way to Court. Law Court determined there was a "special errand" exception to the public streets rule applicable to this case. Therefore injury arose out of and in the scope of employment. Four exceptions to the public streets rule which the Court had enumerated in 1928 were found not to be exclusive.

Page v. General Electric, 391 A2d 303. (1). Work search case. Regardless of whether employers in community had work available which claimant could do, evidence that several employers would not hire her because of her disability was sufficient to establish incapacity. (2) WC benefits cannot be offset v. unemployment benefits.

Toomey v. City of Portland, 391 A2d 325. (1) Fact that police officer sustains injury on public street which may not technically be part of employment premises does not per se defeat potential for WC award. police are within group of employees who may well be engaged in work-related activity when on a public way. (2)Court interprets §64-A presumption that claim arose out of and in course of employment, if employee is killed or physically or mentally unable to testify to not require a "linkage" between injury and incident be shown.

Gilbert v. Maheux, 391 A2d 1203. Hotel chambermaid was permitted, but not required, to live on premises. She was continuously "on call". She fell on hotel stairs while on her way to dinner with relative. This was held to be in the course and scope of employment.

Maine Bonding and Casualty Company v. Mahoney, 392 A2d 16. Two year statute of limitations held applicable to death claims. Employer had argued for application of a one year statute.

Crocker v. Eastland Woolen Mill, Inc., 392 A2d 32. Injuries resulting from treatment for a work-related industrial accident held compensable even if the treatment aggravated a condition that preexisted the accident.

Beaulieu v. Frances Bernard, Inc., 393 A2d 163. Employee may receive compensation for deterioration of a work-related injury which is caused by a subsequent non-work-related accident.

Ramsdell v. Naples, 393 A2d 1352. Injuries of meatcutter suffered when assaulted by a coworker with a boning knife held to have arisen out of employment as a causal connection existed.

Bernard v. Cives Corp., 395 A2d 1141. (1) Court rejected employer's arguments that worker injured in 1976 was not entitled to benefit of inflation adjustments which became effective from 1978 to 1981. Court interpreted inflation adjustment provisions applicable to injuries which occurred on or after Oct. 1, 1975. (2) Court held that inflation adjustment statute require not only adjustment to S.A.W.W. but also to the compensation payment.

CASES DECIDED - 1979

Coffin v. Hannaford Bros, Co., 396 A2d 1007. It was proper to include in computation of injured worker's average weekly wage a pay increase ratified after the date of injury but retroactive to a pre-injury date.

Murray v. T.W. Dick Co., Inc., 398 A2d, 390. In appropriate circumstances, gradually inflicted mental injury or incapacity may be fully compensable if it is shown that the injury arose out of and in the course and scope of employment.

Wentzell v. Webster Rubber Co., 398 A2d 393. Employee assaulted before his shift began by an employee on preceding shift. This was held to be an injury arising out of employment.

Harrington v. Goodwin's Chevrolet, Inc., 400 A2d 358. Employee's allergic condition can properly be found to disable him from certain kinds of work, but employee was found not to have made a good faith work search.

Billings v. Ralph Curtis & Son, Inc., 400 A2d 377. Truck leasing case. ICC regulations which allegedly require truck lessees to have exclusive control of leased vehicles do not as a matter of law prohibit a finding that the lessor was in fact the employer for WC purposes.

Cannon v. Folsom, 401 A2d 997. Employee allowed to have a compensation agreement annulled where he demonstrated his mistake involving his average weekly wage.

Severy v. S.D. Warren Co., 402 A2d 53. Court held that mere fact that employee, for a time, was earning the same after injury as he did before injury will not bar award for partial disability.

Cook v. Bangor Hydro-Electric Co., 402 A2d 64. Act outside employee's regular duties which is undertaken in good faith to advance employer's interest, whether or not employee's own assigned work is furthered, is within course of employment and employee's off-duty status at time of injury is not dispositive.

Mortimer v. Harry C. Crooker & Sons, Inc., 404 A2d 228. Claimant who had entered into an approved agreement was allowed to petition for further compensation on basis of an injury which allegedly consisted of mental conditions arising out of the same accident but not described in the settlement agreement because not then known.

Townsend v. Maine Bureau of Public Safety, 404 A2d 1014. Physical trauma leading to mental injury and mental stimulus leading to physical injury are both compensable under the Act.

Gordon v. Aetna Casualty & Surety Co., 406 A2d 617. Insurance claims adjuster with depressive neurosis held totally incapacitated in the medical sense, although WCC had found that some non-remunerative work-at-home activity could be therapeutic.

Pottle v. Brown, 408 A2d 1011. Apportionment case. One employer, but 2 insurers at different times. Court applied same rule as for successive employers: if successive injuries combine to produce single, indivisible disability, then apportionment; if 2nd injury is merely recurrence of 1st injury & does not contribute to disability, then 1st insurer is fully liable.

Smith v. Dexter Oil Company, 408 A2d 1014. Compensation may be awarded where a work-related injury aggravates to any degree a preexisting physical ailment or condition. A substantial causative relationship is not required.

Moreau v. Zayre Corp., 408 A2d 1289. Employee injured in auto accident occurring after receiving medical treatment for a work-related injury. The auto accident injury is compensable as incident to and in the course of employment.

CASES DECIDED -1980

Robbins v. Bates Fabrics, Inc., 412 A2d 374. Apportionment case. Employee suffered 2 similar injuries; the first while Bates was a self-insurer & the 2nd while Bates was insured. At time of 2nd injury, she was receiving benefits for 1st injury under an approved agreement. The WCC dismissed petition against self-insurer for further compensation & found the insurer at the time of the 2nd injury 100% responsible for disability. Law Court sustained employee and insurer appeals and remanded for application of apportionment scheme between the self-insurer and the insurer.

Nadeau v. Town of South Berwick, 412 A2d 392. Volunteer fireman injured during a firemen's field day. This was held compensable as arising out of and in the course of employment.

Wentzell v. Timberlands, Inc., 412 A2d 1213. Employee had been found totally disabled on several occasions and was receiving impairment benefits. Employer petition for review properly denied where employer alleged preexisting permanent impairment, but made no showing it was unaware of it at any of earlier proceedings or that employee had conceded it.

Hazelton v. Roberge Roofing, 414 A2d 900. Work search case. Law Court, in Crocker v. Eastland, 392 A2d 32, had rejected creation of an exception to the rule that a partially disabled worker seeking WC for total incapacity to present evidence of a reasonable work search. In Hazelton Court holds that "reasonableness" consists of 2 elements: (a) reasonableness in light of local job market, and (b) reasonableness in light of the workers disability. One visit to state employment office held reasonable where employee had difficulty in traveling.

Mailman v. Colonial Acres Nursing Home, 420 A2d 217. (1) Statutory change which required WC benefits to be reduced by unemployment benefits held not applicable to unemployment benefits received prior to statute's effective date. (2) When a worker secures post-injury employment which patently demonstrates an undiminished wage earning capacity & is subsequently laid off for reasons unassociated with disability, he may nevertheless establish incapacity by showing a causal relationship between an inability to find work and his disability.

American Mutual Ins. Co. v. Murray, 420 A2d 251. Law Court had vacated a WCC judgment awarding compensation. Insurer instituted an action to recover benefits paid while appeal of 1st case was pending. Court refused to allow this. Court found Legislature had expressly considered this issue, but failed to enact law. Court indicates that since WC is entirely a statutory scheme, it will decline to create rights and remedies in absence of statute.

Clark v. DeCoster Egg Farms, 421 A2d 939. First Report of Injury case. Employee's 1st report only mentioned 2 broken teeth. Court held this did not bar benefits for a latent back injury arising out of the same incident.

Ibbotson v. Sheridan Corp., 422 A2d 1005. Watershed work search case. Although employer was ultimately successful, this case is listed in this summary as the Wernick opinion makes an in-depth analysis of burden of proof and burden of production issues with respect to work search issues in total and partial incapacity cases. Wernick construes many of the court's earlier decisions. The employer always maintains the ultimate burden of proof in Petition for Review to determine incapacity case. Once employer makes a prima facie case, employee becomes subject to a burden of production.

Haney v. Lane Construction Company, 422 A2d 1292. Employee was receiving WC pursuant to an approved agreement which did not state whether incapacity was medical or due to a partial disability coupled with inability to find work. Court rejected employer's petition to review where employer failed to demonstrate a change in medical condition. In dicta, Court indicates that employer failed to carry the burden of proof of showing an improved capacity for remunerative work as well.

Dunton v. Eastern Fine Paper Co., 423 A2d 512. (1) latent back injury; failure of claimant to file petition within two years of injury held excusable as a mistake of fact as to cause and nature of the injury. (2). Employee fell. Foreman asked him if he was all right. This was held to constitute adequate knowledge of employer of accident to meet the statutory exception to notice requirement.

Coty v. Town of Millinocket(Coty 3), 423 A2d 524. While actual post-injury wages are evidentiary of earning capacity for WC purposes, the concepts are not identical and post-injury wages equal to pre-injury wages will not bar an award for partial disability.

CASES DECIDED - 1981

Warren v. Vinelhaven Light and Power Co., 424 A2d 711. Work search case. Progeny of Ibbotson v. Sheridan, 422 A2d 1005. Another lengthy Wernick opinion. Employer showed that employee had recovered some ability to perform work ordinarily available for remuneration in the community, employee produced evidence that such work was not available to him, & employer failed to rebut this evidence. Court therefore concluded that employer failed to meet its ultimate burden of proof.

Gordon v. Colonial Distributors, 425 A2d 625. Statements made by employee to employer's sales manager are inadmissable, even for purpose of impeaching contrary testimony of employee, unless employer has met procedural requirements of §112.

Brooks v. Irving Tanning Co. 429 A2d 1035. Petition for Review. Employer was able to show worker had regained some limited work capacity but WCC found employee had made a good faith work search & demonstrated no stable job market for persons such as himself. Court cites Ibbotson v.Sheridan 422 A2d 1005 in affirming denial of employer's petition for review.

Merrill v. Eastland Woolen Mills, Inc., 430 A2d 557. In view of fact that prior to amendment of statute, Superior Court had jurisdiction to annul lump sum agreements approved by WCC, application of amendment which authorizes the WCC to annul any agreement it has approved to an agreement entered into prior to the enactment of the amendment did not disregard presumption against retroactive application of statutes or unconstitutionally impair employer's contract rights. Law only changed the forum where enforcement of preexisting rights could be pursued.

Freeman v. Co-Hen Egg Co., 430 A2d 1107. Year-end bonus regularly paid for several years held properly considered in calculation of average weekly wage.

Geel v. Graham Brothers, 430 A2d 1112. Employee injured while not wearing hard hat in violation of OSHA regs. This fact does not excuse employer from responsibility for WC.

Poitras v. R.E.Glidden Body Shop, Inc., 430 A2d 1113. (1) On Petition for Review where work-related injury and unrelated preexisting condition combined to make employee totally unable to earn, WCC apportioned cause and changed employee's status from totally to partially incapacitated. Law Court held this was erroneous as employer was responsible for total incapacity. (2) Even if WCC had not been erroneous in re (1) above, & even if employees condition had improved, then employer still loses because the employee presented testimony of a rehabilitation center director who stated that employee would experience great difficulty in obtaining employment. The Court, following its Ibbotson v. Sheridan rationale considered this legally sufficient to satisfy the employees burden of production and thus the burden of presenting rebuttal evidence passed to the employer. This burden was unmet. Another lengthy Wernick opinion.

Johnson v. S.D. Warren, 432 A2d 431. Two compensable injuries while employed by single employer. Amount of benefits should be based on average weekly wage at time of 2nd injury.

Smith v. Dexter Oil Co., 432 A2d 438. Petition for Review of Incapacity. Oil truck driver had been struck by falling ice.

Suffered physical injuries and mental disability. WCC found he had recovered physically and that his mental or emotional condition didn't prevent him from having pre-injury work capacity. Law Court set this decision aside. Mental injury is as compensable as physical injury & employer had failed to meet the burden of proving a change in employee's mental condition since the award.

Wallace v. Chaplin Cadillac-Olds, Inc., 433 A2d 394. Petition for Review of Incapacity had resulted in WCC decision that benefits be terminated. This was held erroneous as employer had shown only that employer's disability had diminished. Therefore while he no longer qualified for total incapacity, he still qualified for partial incapacity benefits.

Leo v. American Hoist & Derrick Co., 438 A2d 917. Employee had returned to work. Employer filed a Petition for Review to Seek Discontinuance and unilaterally suspended benefits. Law Court held this can violate an underlying purpose of the WC system (to provide comp for loss of earning capacity) unless employer determines before suspending benefits whether the taking of a lower paying job was voluntary or was due to the employee's limited capacity. An employer which doesn't make this determination leaves itself in the position where a finding by the WCC of any degree of incapacity will render the suspension improper.

CASES DECIDED - 1982

Timberlake v. Frigon & Frigon, 438 A2d 1294. Watershed case which sets forth the guidelines for whether the injured worker was an employee or an independent contractor.

Overend v. Elan I Corp., 441 A2d 311. May an injured worker proceed under the WC Act against his employer after having settled his claim arising out of the same injury against a third party tortfeasor? Yes, but any award conferred under the Act is to be set off by the net amount of the settlement.

Bryant v. Masters Machine Co., 444 A2d 329. J. Carter does an exhaustive analysis concerning compensability where injury is due to "combined effects" of preexisting impairment and work-related incident. Claimant must establish causality. it is sufficient to do this to prove that incident was the result of a work-related risk and that the end result of the materialization of that risk was disabling pain.

Silva v. New England Group, Maremont Corp., 444 A2d 343. Companion case to Bryant v. Masters Machine Co., above. Case was remanded to WCC to determine causality in light of Bryant.

Callahan v. Callahan, 444 A2d 401. Sole proprietor sought WC for his own injuries. He testified that he earned $360 per week

salary. Insurer unsuccessfully argued that a portion of that amount must be considered "business profits' and could not be considered wages.

Coleman v. Ballinger Auto Co., 445 A2d 1023. Admissibility of evidence case. WCC improperly considered employee's statements taken in violation of §112. this caused vacation of a denial of a petition for compensation and a remand.

Westcott v. S.D. Warren, 447 A2d 78. Combined effects case. Progeny of Bryant v. Masters Machine. Employee had degenerative coronary atherosclerosis, smoked 2 packs a day, & drank 10-15 cups of coffee a day. On night in question, he engaged in work-related heavy exertion for several short periods of time, left work, had breakfast, and dropped dead due to a myocardial infarction. Law Court held his work to be a causative factor and thus case compensable under WC.

Caron v. Scott Paper Co., 448 A2d 329. Similar case to Gordon v. Colonial Distributors, 425 A2d 625. Employer sought introduction at hearing of employee's statements taken absent compliance with §112. Court held WCC properly admitted the statements on the issue of notice (§§63 & 64), but refused to consider them regarding issues of compensability. Court found a due process challenge to §112 to have little merit.

Comeau v. Maine Coastal Services, 449 A2d 368. This decision contains 2 lengthy reviews of the meaning of "in the course of employment" by J. Roberts and J. Carter.

CASES DECIDED - 1983

Pomerleau v. United Parcel Service, 455 A2d 950. WCC awarded comp for a time period ending before date of decree. Employer appealed to App. Div. and Superior Court ordered the payment of benefits pending the appeal. Law Court affirmed the Superior Court decision.

Terry v. St. Regis Paper Co., 459 A2d 1106. Application of 1981 amendment to statute which put legislative ceiling on benefits to worker injured prior to enactment constituted improper retroactive application.

Ibbotson v. Sheridan Corp. (2) 463 A2d 735. Initial incapacity was due to combined effects of preexisting condition and

work-related injury. Work-related injury "resolved itself" according to doctor, but employer failed to show a change in incapacity upon petition for review. (The injury had "lit up" the preexisting condition). Employer loses.

Pelotte v. Purolator Courier Corp., 464 A2d 186. Employer unable to recover voluntary predecree payments by setting them off against subsequent payments due under decree.

CASES DECIDED - 1984

Bourque v. Frank X. Pomerleau, 472 A2d 933. (1) Discontinuation of benefits & return to work does not prevent finding of partial incapacity provided it is demonstrated that the post- injury employment reflects a diminished work capacity. (2) Two injuries; lump sum agreement for 2nd injury does not in and of itself bar a partial incapacity claim for the 1st injury.

Stockford v. Bath Iron Works, 482 A2d 843. Benefits paid pursuant to Longshoremen's and Harbor Workers Act are "benefits otherwise require under the Act" and their payment tolls the 2 year statute of limitations.

CASES DECIDED - 1985

Bean v. Alrora Timber, Inc.489 A2d 1086. Injured woodcutter held to be an employee of an independent contractor and not of a timber company.

Diamond International Corp. v. Sullivan & Merritt, 493 A2d 1043. Injured worker brought a negligence action v. third party. Third party filed a third party complaint against employer alleging entitlement to pro tanto reduction for WC paid by employer and seeking a directed verdict on issue of whether indemnification agreement existed between employer and third party. Court held that the policies of the Act preclude the adoption of the pro tanto theory and permit indemnification only where an employer clearly and specifically waives immunity from suit by injured workers.

LaGasse v. Hannaford Bros., Co., 497 A2d 1112. Employer failed to overturn on appeal WCC's formula for calculating wage loss in varying compensation cases. Ct. explicitly upheld WCC application of inflation/deflation adjustment factors.

Wacome v. Paul Mushero Construction Co., 498 A2d 593. Employee who suffered foot and back injuries resulting from accident in course of and arising out of employment and who entered agreement under which WC was paid for described foot injuries but which did not purport to cover any back injury was not barred by res judicata from subsequently seeking compensation for back injury.

CASES DECIDED - 1986

Daigle v. Daigle, 505 A2d 778. Self-employed claimant sought WC benefits. Law Court held claimant was not required to give notice of work-related injury to the insurer within 30 days of the injury.

Davis v. Davis, 507 A2d 581. Completion by employee of trial work period did not operate to automatically terminate employers obligation under a prior open-ended agreement to pay comp during a subsequent period of disability.

Dissell v. Trans World Airlines, 511 A2d 441. Flight attendant petitioned for Maine WC benefits. She was hired in Missouri and injured on a flight from Mass. to Illinois. She was a Maine resident. Residence was held sufficient to entitle her to Maine benefits.

Martin v. Scott Paper Co., 511 A2d 1048. Employer was found to have willfully failed to post the required notice of WC insurance and employee was prejudiced by failure. Court held (1) that Payment of penalty to State is additional to other available sanctions and not an exclusive sanction, and (2) employer loses its immunity against civil suit in this instance.

Norton v. C.P. Blouin, Inc., 511 A2d 1056. Application of special asbestosis statutory provision when onset of incapacity occurred prior to effective date of statute held constitutional.

Bouford v. Bath Iron Works, 512 A2d 470. Longshore and Harbor Workers Act does not preempt State WC Act. There is concurrent jurisdiction. Employee is not entitled to receive double benefits, however.

CASES DECIDED - 1987

Phelan v. St. Johnsbury Trucking, 526 A2d 584. Employee had 4 work-related back injuries. Court held WCC properly utilized the number of injuries, not the number of insurers as basis of apportionment.

Lindsay v. Great Northern Paper Co., 532 A2d 151. An employee injured in the course of employment has a right not only to WC for injury but also for necessary time off from work to recover.

CASES DECIDED - 1988

Warren v. H.T.Winters, Co., 537 A2d 583. Employee's WC rights vest on date of injury and cannot be diminished by subsequently enacted legislation.

Bean v. H.E. Sargent, Inc., 541 A2d 944. Permanent impairment benefits are not affected by (1) work capacity or (2) death of employee to extent that employee could have maintained action during his lifetime.

Knox v. Combined Insurance Company of America, 542 A2d 363. Employee's injuries due to sexual assault and sexual harassment compensable under WC Act although WC was held to be her exclusive remedy against the employer.

Johnson v. Bath Iron Works Corp., 551 A2d 838. WC death benefits can be apportioned among multiple employers.

CASES DECIDED - 1989

Stickles v. United Parcel Service, 554 A2d 1176. First Law Court analysis of the early pay system. Employer who fails to comply with 44 day rule accepts compensability until it successfully pursues a petition for review.

Palmer v. Bath Iron Works Corp., 559 A2d 340. Early pay system requires an employer not wishing to accept a permanent impairment claim to file timely notice of controversy even if the notice of claim did not specify the precise % of impairment claimed.

Ashby v. Rust Engineering, 559 A2d 774. "Average weekly wages, earnings or salary" includes the value of fringe benefits where employer has contracted to pay specific dollar amount per

unit of employee time worked.

Brackett v. A.C. Lawrence Leather Co., 559 A2d 776. Total incapacity was the result of work-related injury and two subsequent nonwork-related injuries. This was held fully compensable as long as work-related injury was a cause.

Davidson v. Bancroft, 560 A2d 13. If employer alleges that part of incapacity results from disease unrelated to employment, burden of proof that injury is no longer a causative factor of incapacity is on the employer.

Ayotte v. United Services, Inc., 567 A2d 430. (1) Definition of "prevail" in attorney fee statute is not unconstitutionally vague. (2) WCC has power to regulate counsel fees in proceedings before it.

King v. Bangor Federal Credit Union, 568 A2d 507. Release signed by employee in connection with lump sum settlement of WC claim did not constitute a waiver of her discrimination claim under the Human Rights Act.