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STATE OF MAINE



WORKERS' COMPENSATION BOARD

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REPORT OF THE WORKERS' COMPENSATION BOARD REGARDING WORKERS'
COMPENSATION LAWS PERTAINING TO THE WOOD HARVESTING INDUSTRY.
SUBMITTED TO THE JOINT STANDING COMMITTEE OF THE LEGISLATURE
HAVING JURISDICTION OVER FORESTRY MATTERS AND THE JOINT
STANDING COMMITTEE OF THE LEGISLATURE HAVING JURISDICTION OVER
LABOR MATTERS.

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SUMMARY OF REPORT

This report is the product of a task force that was assembled by the Workers' Compensation Board. The task force was formed in response to comments received from Senator John M. Nutting and a requirement, contained in section 7 of P.L. Ch. 648, that the Workers' Compensation Board forward a report to the Legislature regarding workers' compensation laws as they pertain to the wood harvesting industry. A wide variety of interests were represented on the task force. (A list of participants is included in the Introduction to the Task Force Report.) In addition, the Workers' Compensation Board received comments regarding the report at two meetings of its Board of Directors. These comments were incorporated into the final report.

The task force met three times, and considered a number of issues relating to the wood harvesting industry. The task force discussed, and the Workers' Compensation Board will pursue, means of increasing public awareness and understanding of workers' compensation laws as they apply to the wood harvesting industry, and methods to strengthen enforcement measures.

In short, the Workers' Compensation Board strongly recommends that the Legislature consider an annual predetermination process that is not mandatory. The Workers' Compensation Board also recommends that the Legislature consider retaining the current predetermination process. Last, the Workers' Compensation Board suggests that the Legislature review landowner liability, under 39-A M.R.S.A. §401(4), to employees of wood harvesters to determine if this section is worth retaining.

TASK FORCE REPORT

I. INTRODUCTION

Last February, Senator John M. Nutting contacted the Workers' Compensation Board (the "Board") to express his concerns about workers' compensation as it applies to the timber industry. In response, Senator Nutting was invited to address a meeting of the Workers' Compensation Board's Board of Directors. Senator Nutting did so in April of 1998. At the meeting, Senator Nutting told the Board that his constituents were complaining that many loggers who were purchasing workers' compensation insurance were losing jobs to loggers who were either not purchasing workers' compensation insurance, or who were abusing the independent contractor process.

Senator Nutting also made reference to a report that was presented to the Legislature last spring, the Logger Licensing Report. As Senator Nutting noted in his letter to the Board, this report concluded that there was an uneven playing field in workers' compensation as it applies to the logging industry.

Around the same time, the Legislature enacted P.L. Ch. 648. Section 7 of P.L. Ch. 648 required the Board, in consultation with the Maine Forest Service, to review workers' compensation laws pertaining to the wood harvesting industry, and to attempt to determine the number of wood harvesting operations where neither workers' compensation coverage nor a predetermination of independent contractor status had been obtained. It also called on the Board, in consultation with the Maine Forest Service, to recommend measures to ensure compliance with workers' compensation laws, reduce the potential for landowner liability, and, if necessary, to simplify the

process for predetermination of independent contractor status.

To accomplish these goals, the Board convened a task force to study this issue. The task force included a wide range of interests, and was well attended. The task force consisted of the following people (not all of whom were able to attend every meeting): From the Workers' Compensation Board, Director Susan Pinette, Director David Gauvin, John Jolicoeur, Jan Laster, Steve Minkowsky, and John Rohde; from the Legislature, Senator John M. Nutting, Representative Stephen S. Stanley, and Representative Clifton Foster; from the Maine Forest Service, Charles Gadzik, Don Mansius, and Kathy Nitschke; from the Bureau of Insurance, Frank Kimball, Eric Cioppa, and Dick Johnson; from the Small Woodlot Owners Association of Maine, Everett Towle, and Jeff Romano; from the Maine Forest Products Council, Pat Sirois; from the Professional Logging Contractors of Maine, Cheryl Russell; from the logging industry, Andy Arey of Arey Logging; and, from the forestry industry, Andy Shultz (who was contacted through International Paper), and Harry Dwyer of Ghost Dancer Forestry.

The task force met on June 23, 1998, July 28, 1998 and October 1, 1998. In addition, the Board discussed the task force's report at its December 15, 1998 and January 5, 1999 Board of Directors' meetings. During these meetings, the Board received additional input from Peter S. Green (of Peter S. Green Co.), Andy Schultz, Pat Sirois and Jeff Romano. The results of these meetings and discussions are detailed below.

II. BACKGROUND

A. Rebuttable and conclusive presumptions of independent contractor status.

An individual (including a corporation, partnership, etc.) that hires an independent contractor is not required to secure workers' compensation coverage for the independent contractor. An

independent contractor is defined in 39-A M.R.S.A. §102(13) as “a person who performs services for another under contract, but who is not under the essential control or superintendence of the other person while performing those services.”

39-A M.R.S.A. §105 permits a worker, employer, or workers' compensation insurer to apply to the Board for a predetermination of independent contractor status. In determining whether a worker is an independent contractor, the Board must consider eight factors that are listed in 39-A M.R.S.A. §102(13). These factors compare the relationship between the worker and the individual who is hiring the worker.

If a predetermination under 39-A M.R.S.A. §105 is granted, it creates a rebuttable presumption that the worker is an independent contractor. A rebuttable presumption can be used as evidence in a workers' compensation case to prove that a worker is not an employee, and, therefore, not entitled to workers' compensation benefits.

A separate section of the Workers' Compensation Act, 39-A M.R.S.A. §401(4), applies to landowners who contract to have wood harvested from their property. This section provides that a landowner can apply for a predetermination of independent contractor status as set forth in §105. However, a predetermination under 39-A M.R.S.A. §401(4), if granted, creates a conclusive presumption that the wood harvester is an independent contractor. A conclusive presumption is only available to a landowner and the wood harvester with whom the landowner has a wood harvesting contract. The effect of a conclusive presumption is that, absent some type of fraud, a landowner who receives a conclusive predetermination cannot be held liable for workers' compensation benefits in the event of an injury.

39-A M.R.S.A. §401(4), in addition to providing for a conclusive predetermination, defines

the limits of landowner liability for workers' compensation benefits. If a landowner hires an independent wood harvester to harvest wood, and does not apply for a predetermination of independent contractor status, the landowner will not necessarily be liable to pay workers' compensation benefits to the wood harvester in the event that the wood harvester is injured. The landowner will only be liable to the wood harvester if, using the factors set forth in 39-A M.R.S.A. §102(13), the wood harvester is determined to be an employee of the landowner.

Pursuant to 39-A M.R.S.A. §401(4), a landowner may, however, be liable for workers' compensation benefits for employees of the wood harvester. A landowner will be liable for injuries to the wood harvester's employees if the wood harvester does not carry workers' compensation for those employees *unless* the landowner applies for and receives a predetermination of independent contractor status, or "requests and receives a certificate of insurance, issued by the contractor's insurance carrier, certifying that the contractor has obtained the required coverage and indicating the effective dates of the policy." 39-A M.R.S.A. §401(4). The landowner must, if necessary, request and receive such a certificate annually.

Though the Workers' Compensation Act provides a predetermination of independent contractor status process, it does not require that a landowner or employer apply for a predetermination of independent contractor status. The process is strictly voluntary.

B. The current process for applying for a predetermination of independent contractor status.

If a conclusive predetermination is sought, the landowner (or the landowner's agent), and the wood harvester must file an Application for Predetermination of Independent Contractor Status to Establish Conclusive Presumption with the Board. If a rebuttable presumption is sought, an Application for Predetermination of Independent Contractor Status to Establish Rebuttable

Presumption must be filed by the applicant and the potential independent contractor with the Board.

Both the rebuttable and conclusive applications contain questions that mirror the 8 factors set forth in 39-A M.R.S.A. §102(13). This information is reviewed to determine if a worker is “under the essential control or superintendence of the other person.” 39-A M.R.S.A. §102(13). If a conclusive predetermination is requested, a copy of the wood harvesting contract between the landowner and the wood harvester must be submitted with the application. This is necessary because, pursuant to 39-A M.R.S.A. §401(4), a conclusive predetermination cannot be granted unless the wood harvesting contract contains the following language: “The independent contractor will not hire any employees to assist in the wood harvesting without first providing the required certificate of insurance to the landowner.” The Board must review wood harvesting contracts to ensure that this language is included before it can approve an application.

As noted above, the application, if granted, creates either a rebuttable or conclusive presumption (whichever is appropriate). The presumption is valid for one year, or the length of the contract, whichever is shorter.

III. TASK FORCE REPORT

As mentioned in the Introduction, the task force had a few goals. One was to attempt to determine the number of wood harvesting operations that occur when the logger has neither workers’ compensation coverage, nor a valid predetermination. The task force was also to consider measures to ensure compliance with workers’ compensation laws, reduce landowner liability, and, if necessary, simplify the predetermination process.

A. The number of wood harvesting operations occurring when the logger has neither workers’ compensation insurance nor a predetermination of independent contractor status.

It is very difficult to determine the exact number of wood harvesting operations that occur when the logger has neither workers' compensation insurance nor a predetermination of independent contractor status. In part, this difficulty is due to the large number of woodlots in Maine, and the large number of harvesting operations that occur at any one time. According to an estimate provided by the Small Woodlot Owners Association of Maine, there are approximately 150,000 small woodlot owners in the state of Maine. The Maine Forest Service estimates that, at any one time, 70,000 to 80,000 woodlots are subject to management by the Maine Forest Service.

In addition, there is no requirement that the predetermination process be used by landowners and wood harvesters, and, a wood harvester who works alone is not required to purchase workers' compensation insurance. Thus, many operations may, and probably are, occurring where the Board has not received any paperwork regarding the harvesting operation. While this, in some cases, is legitimate, it means that there is not a reliable database from which to draw information.

With that said, while exact numbers are not available, the consensus of the group was that there are a significant number of operations where the wood harvester has neither workers' compensation insurance nor a predetermination of independent contractor status.

At its December 15, 1998 meeting, the Board heard from two independent wood harvesters, and a gentleman who hauls wood. These gentlemen agreed that wood harvesting operations do occur where neither a predetermination of independent contractor status nor workers' compensation coverage has been obtained. They do not, however, see this as an indication that there is a problem with the current system. According to these gentlemen, some independent wood harvesters do not, like other sole proprietors, want to buy workers' compensation insurance for themselves. Also, in some instances, a predetermination of independent contractor status is not sought because some

small landowners do not want to fill out forms and sign contracts. They simply want their lots cut. With such landowners, an independent wood harvester risks losing a job if they insist on filing for a predetermination of independent contractor status, or signing a contract to harvest wood.

B. Ensuring compliance with the Workers' Compensation Act.

i. Increased educational outreach.

Educational outreach is one way to ensure that workers' compensation laws are complied with. In this vein, the Board has participated in a number of seminars and other speaking engagements in an effort to educate the public about the independent contractor provisions of the Workers' Compensation Act. For example, Board employees have spoken at seminars sponsored by the Maine Forest Service, the Small Woodlot Owners Association of Maine, and the Professional Logging Contractors of Maine. The Board will continue to provide this service.

To reach additional people, the task force recommended that the Board include information in Maine Forest Service mailings. The Maine Forest Service, by virtue of the harvest notification process, is in contact with a large number of landowners. Inclusion of information from the Board about workers' compensation, and the predetermination process in particular, will increase awareness of workers' compensation laws. The Board intends to pursue this recommendation.

Comments received by the Board revealed that an emphasis needs to be placed on increasing understanding of workers' compensation liability for landowners and wood harvesters. Increased efforts in this area are key to ensuring the success of any predetermination system.

ii. Increased enforcement.

The Workers' Compensation Board, in conjunction with the Department of Labor, has instituted a new system to identify employers who are operating without required workers'

compensation coverage. This cooperative system electronically compares the Department of Labor's unemployment database with the Board's coverage database. By so doing, the Board can identify a greater number of employers that are operating without required coverage.

In addition to using the combined databases to find employers who are operating without required coverage, the Board will occasionally receive a tip about such an employer. Based on this information, the Board can determine if penalty proceedings are appropriate. While these tips are helpful, they are infrequent. This is especially true in the logging industry where, according to a number of task force participants, there is a reluctance to turn in fellow loggers.

Another means of ensuring compliance was identified by the task force; namely, checking logging operations in the field to determine if loggers are complying with workers' compensation laws. Due to a lack of resources, it is not feasible for the Board to send its employees into the field to check logging operations. The Maine Forest Service, however, indicated that it has roughly 80-85 Forest Rangers in the field. These Rangers, among other things, check to see if the harvest notification laws are being complied with. The task force agreed that, because the Rangers are already in the field, it makes sense to utilize this resource to help identify loggers who are not complying with workers' compensation laws. The Rangers would not need to become experts in workers' compensation law to make this system work. The Rangers would simply notify the Board if they felt that a logging operation might be in violation of the workers' compensation laws. The Board would then continue the investigation.

C. The predetermination of independent contractor process.

As part of its work, the task force discussed the predetermination of independent contractor process currently in use by the Board and possible alternatives to this process. Three options were discussed by the task force: One, retain the current process; two, change to an annual predetermination process; and, three, require workers' compensation insurance for all loggers, with the possible exception of loggers who contract directly with landowners, and who work by themselves or, possibly, with a family member. The task force also discussed the issue of affordable workers' compensation insurance for loggers.

i. Leave the system as is, but increase enforcement and education efforts.

The current predetermination process seems to work well for the people who use it. Therefore, the task force discussed leaving the system as is. If the current process is retained, the goal will be to increase compliance with the law by having the Board increase enforcement and education efforts. Some members of the task force, however, expressed a concern that the procedure currently in place is not widely utilized. One reason for this is the fact that it requires a wood harvester to file an application with each landowner for whom he or she is working. Many wood harvesters find this requirement to be too time consuming, and thus avoid the process. In addition, some landowners and wood harvesters simply are not aware of the predetermination process.

To make this option effective, increased education and enforcement measures will be necessary. Educational efforts will include continued Board participation in programs designed to educate landowners and wood harvesters about workers' compensation laws, the predetermination process and liability issues in particular. As part of this effort, the Board could include, in Forest

Service mailings information about workers' compensation laws. These mailings are sent to a large number of landowners. Additionally, the Notification of Intent to Harvest form could be amended to require a landowner to indicate whether they had been shown proof of workers' compensation coverage, or a valid predetermination of independent contractor status.

Increased enforcement will come about through the help of the Forest Service. As discussed above, Forest Service Rangers, who are already in the field, will report to the Board any wood harvesters they feel are violating the Workers' Compensation Act. The Board will investigate the situation, and, if a violation is detected, penalties would be imposed.

This option assumes that increased education will result in more people using the system because more people will know about it. It also assumes that, by imposing penalties on violators, other wood harvesters will be inspired to abide by the Act.

ii. One alternative: An annual predetermination process.

Everett Towle, President of the Small Woodlot Owners Association of Maine, proposed an annual predetermination process to replace the current system. This idea will require legislative change if it is to become effective. According to the comments of Peter Green, independent wood harvesters also prefer an annual predetermination process.

Under one proposal, it will be mandatory for a wood harvester who wants to contract to harvest wood from property they do not own to either obtain workers' compensation coverage, or receive a predetermination of independent contractor status. (Obviously, a wood harvester would still be able to work as an employee for someone who provides workers' compensation insurance.)

Another alternative is to switch to an annual predetermination process, but not make it mandatory. Use of the predetermination process will, as is currently the case, be voluntary. The

independent wood harvesters who attended the Board's December 15, 1998 meeting stated that, if an annual predetermination system is adopted, they would not want it to be mandatory.

Under either alternative, a predetermination would be done on an annual basis. Once a year, a wood harvester will file an application with the Board. If granted, the wood harvester will be granted a predetermination that he or she is an independent contractor for the ensuing 12 months.

An annual predetermination decision will be based only on information submitted by the wood harvester. This will require consideration of factors similar to, but not exactly like, those set forth in 39-A M.R.S.A. §102(13). Section 102(13) requires a comparison of a landowner and a wood harvester. Under an annual predetermination system, a direct comparison with a particular landowner will not be possible.

Accordingly, if adopted, this approach will require that a different set of factors be considered. At a minimum, information will have to be submitted regarding the type and quantity of equipment owned by the wood harvester, the number of employees (if any) that the wood harvester employs, the number of jobs the wood harvester has done in the preceding year, the number of jobs the wood harvester plans to do in the upcoming year, the individuals for whom the wood harvester has worked in the preceding year, and the individuals for whom the wood harvester plans to work in the upcoming year.

If granted, the annual predetermination will be portable. In other words, it will be presumed that the wood harvester is an independent contractor on all jobs he or she undertakes during the period that the predetermination is in effect. Thus, the wood harvester will not have to file a separate predetermination application each time he or she enters into a wood harvesting contract with a landowner. The predetermination decision will list the factors upon which the predetermination is

based. For example, the name of the independent contractor (whether an individual, corporation or partnership), the equipment the independent contractor owns and uses, and the number of employees, if any, that the independent contractor has. This would make it easier for landowners to determine if the wood harvester is still operating in accordance with the predetermination.

Because an annual predetermination process will not include input from the landowner, provisions will have to be in place to ensure that landowners are made aware that they must, if they want a conclusive presumption, establish that they have checked to see if the wood harvester has a valid predetermination of independent contractor status, or has secured workers' compensation insurance. The task force recommended two means of accomplishing this. First, a requirement that an addendum, signed by the parties, be attached to wood harvesting contracts. The addendum will contain language indicating that the wood harvester has shown proof to the landowner that they have either obtained workers' compensation coverage, or have received a predetermination from the Board. It will also contain the language currently in 39-A M.R.S.A. 401(4); namely, that "the independent contractor will not hire any employees to assist in the wood harvesting without first providing the required certificate of insurance to the landowner." Second, it was recommended that the Notification of Intent to Harvest form be modified to include a line where landowners will indicate whether the wood harvester has shown them proof of workers' compensation coverage or a predetermination of independent contractor status. Some independent wood harvesters do not favor including a line on the Notification of Intent to Harvest forms. They are reluctant to include such a line because, in light of the current confusion about liability issues, they feel it will cause additional unnecessary concern among landowners and wood harvesters.

If the predetermination is granted, and the landowner has indicated that they have been

shown the required proof, it will be conclusively presumed that the wood harvester is an independent contractor as regards the landowner. If the landowner does not require that the wood harvester provide proof that he or she has a valid predetermination of independent contractor status or workers' compensation coverage, there will not be a conclusive presumption of independent contractor status in the event of an injury. While the landowner will not necessarily be liable to pay workers' compensation benefits to the wood harvester, if the wood harvester is injured, they will not have the benefit of a conclusive presumption and will remain liable, pursuant to 39-A M.R.S.A. §401(4), to pay workers' compensation benefits to injured employees of the wood harvester in the event that the wood harvester does not have workers' compensation insurance.

To be viable, enforcement measures will be necessary. Pursuant to 12 M.R.S.A. §8883(3), landowners must post Notification of Intent to Harvest forms on lots being cut. In addition to posting the Notification of Intent to Harvest forms, wood harvesters will be required to post either a certificate of workers' compensation coverage, showing coverage for the people working on the lot, or a valid predetermination of independent contractor status. If nothing is posted, and it appears that a violation of the workers' compensation laws is occurring, Rangers from the Maine Forest Service will notify the Board. Rangers will also notify the Board if the logging operation does not conform to the certificate of coverage or predetermination, whichever is posted. Because predetermination decisions will list the factors upon which they are based, it will be easier for the Forest Service to determine if a wood harvesting operation is in violation of the Workers' Compensation Act. In both situations, the Board will investigate referrals from Rangers to determine if a violation has taken place.

An annual predetermination process will lessen the paperwork burden for loggers and

landowners, thus, hopefully, increasing use of the system. Predetermination decisions which list the factors upon which they are based will make enforcement easier. If a mandatory annual process is adopted, all wood harvesters who contract with landowners to harvest wood, will be required to either obtain workers' compensation coverage, or a predetermination. By requiring either workers' compensation insurance or a predetermination, it will be easier to identify wood harvesters who are not complying with the coverage requirements of the Workers' Compensation Act. With either approach, participation by Maine Forest Service Rangers will be necessary to make this system work.

There are potential problems with an annual system. An annual predetermination will be less precise than a predetermination that is granted on a case-by-case basis. Care will have to be taken to ensure that wood harvesters who are not truly independent do not obtain predeterminations. Also, it will take time for this system to get up and running. If the process is mandatory, wood harvesters will have to be notified of the requirement that they either obtain workers' compensation coverage or file a predetermination application each year. Landowners will also have to be educated about the new process. Problems may also arise if a change in circumstances occurs after an application has been approved. There will have to be a requirement that the wood harvester notify the Board in the event of a change of circumstances, and consequences for not doing so. Consideration will have to be given to whether partners can file a joint application in the event they elect to forego workers' compensation coverage.

iii. Another alternative: Required workers' compensation coverage.

A proposal to require all wood harvesters to obtain workers' compensation coverage was also presented to the task force. This would eliminate the need for a predetermination process as all

wood harvesters would have to have their own workers' compensation policy. This idea is not popular with wood harvesters who work on their own. They would like to have the option, as other sole proprietors do, of not obtaining coverage for themselves. This was reinforced by the independent wood harvesters who spoke at the Board's December 15, 1998 meeting. They voiced strong opposition to any plan that would require wood harvesters to obtain workers' compensation coverage.

An alternative approach would be to require all wood harvesters to obtain coverage, but to have an exemption for wood harvesters who work by themselves and contract directly with landowners. This idea was contained in a bill submitted by Senator Nutting to the 118th Legislature. It passed in the Senate, but was defeated in the House. Because some wood harvesters would likely choose not to obtain coverage, if this option is chosen, a predetermination process would still need to be available.

A variation of this idea would be to require workers' compensation for all loggers, with the exception of loggers who contract directly with a landowner and who work by themselves or with a family member. Again, because some wood harvesters would likely choose not to obtain coverage, if this option is chosen, a predetermination process would still need to be available.

iv. Affordable insurance.

There was discussion of the high cost of workers' compensation insurance for wood harvesters, and the possibility of providing insurance at a lower cost. While this is a good idea, it is a private contractual matter. The possibility of a self-insurance group was raised, but this is not an option that the Board can implement.

RECOMMENDATIONS OF THE WORKERS' COMPENSATION BOARD

Based on the work of the task force, and the additional comments received by the Board, the Board will be increasing education and enforcement efforts. The Board also recommends that the Legislature consider the following alternatives.

I. An annual predetermination process.

The Board strongly recommends that the Legislature consider an annual predetermination process that is not mandatory. This recommendation (which is discussed in section III(C)(ii), above) will require legislative change. Under this scenario, a wood harvester could apply annually for a predetermination that he or she is, for the next 12 months, an independent contractor. Wood harvesters should be required to include at least the following information on their application: The type and quantity of equipment owned by the wood harvester; the number of employees (if any) that the wood harvester employs; the number of jobs the wood harvester has done in the preceding year; the number of jobs the wood harvester plans to do in the upcoming year; the individuals for whom the wood harvester has worked in the preceding year; and, the individuals for whom the wood harvester plans to work in the upcoming year.

The predetermination, if granted, will be valid for every job that the wood harvester does during that 12 month period. The predetermination decision will list the factors upon which the predetermination is based. For example, the name of the independent contractor (whether an individual, corporation or partnership), the equipment the independent contractor owns and uses, and the number of employees, if any, that the independent contractor has.

Landowners, to receive the benefit of a conclusive presumption, will have to ensure that three

steps are taken. One, that an addendum is attached to their wood harvesting contract indicating that the wood harvester has shown proof of workers' compensation coverage or a valid predetermination of independent contractor status, and containing a clause stating that "the independent contractor will not hire any employees to assist in the wood harvesting without first providing the required certificate of insurance to the landowner." Two, landowners will have to indicate, on Notification of Intent to Harvest forms, that they were shown proof of workers' compensation coverage or a valid predetermination of independent contractor status. Three, that wood harvesters post either a certificate of workers' compensation, or a valid predetermination of independent contractor status with the Notification of Intent to Harvest form that must be posted by landowners.

The posting requirements will facilitate enforcement by the Forest Service. By reviewing the documents that are posted, and comparing them to the operation in progress, a Ranger will have a much better idea of whether or not the Workers' Compensation Act is being violated. If a Ranger suspects a violation of the Act, they will report it to the Board for further investigation, and, if warranted, imposition of penalties.

II. Leave the system as is, but increase enforcement and education efforts.

Another alternative to consider is to leave the system as is, and see if the Board's increased enforcement and education efforts result in greater compliance. This alternative will not require any changes to the Workers' Compensation Act, but may require changes to other laws. The goal will be to increase compliance with the law by informing more wood harvesters and landowners about the workers' compensation system, and by punishing wood harvesters who do not comply with the Act.

Educational efforts will include continued Board participation in programs designed to

educate landowners and wood harvesters about workers' compensation laws, the predetermination process and liability issues in particular. As part of this effort, the Board could include, in Forest Service mailings, information about workers' compensation laws. These mailings are sent to a large number of landowners. Additionally, a line could be added to Notification of Intent to Harvest forms that would ask the landowner to indicate whether they had been shown proof of workers' compensation coverage, or a valid predetermination of independent contractor status. (This will probably require Legislative change. *See*, 12 M.R.S.A. §8883(1).)

Increased enforcement will come about through the help of the Forest Service. (This may also require Legislative change.) As discussed above, Forest Service Rangers, who are already in the field, will report to the Board any wood harvesters they feel are violating the Workers' Compensation Act. The Board will investigate the situation, and, if a violation is detected, penalties will be imposed.

This option assumes that increased education will result in more people using the system because more people will know about it. It also assumes that, by imposing penalties on violators, other wood harvesters will be inspired to abide by the Act.

III. Reexamine landowner liability under 39-A M.R.S.A. §401(4).

As discussed above, pursuant to 39-A M.R.S.A. §401(4), a landowner is liable to pay workers' compensation benefits to injured employees of a wood harvester if the wood harvester does not carry workers' compensation insurance for his or her employees *unless* the landowner applies for and receives a predetermination of independent contractor status, or "requests and receives a certificate of insurance, issued by the contractor's insurance carrier, certifying that the contractor has obtained the required coverage and indicating the effective dates of the policy." 39-A M.R.S.A.

§401(4). The landowner must, if necessary, request and receive such a certificate annually.

The Board suggests that the Legislature review landowner liability under 39-A M.R.S.A. §401(4) to determine if this section is worth retaining.

CONCLUSION

The Board would like to again express its thanks to the task force members who generously donated their time to this project. The Board is, of course, available to answer questions regarding this report if the joint standing committees should so desire.