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A Study of Delay
in the Workers' Compensation System

A Report to
The Joint Standing Committee on Labor
Maine Legislature
January 1, 1987

Workers' Compensation Commission
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INTRODUCTION

In April 1986 the Legislature directed the Workers' Compensation Commission to investigate the causes of delay, examine its effect on participants in the Workers' Compensation System, and make suggestions for reform.

During the past 8 months the Workers' Compensation Commission has engaged in this study by surveying injured workers, claims managers, attorneys, and its own commissioners. The injured worker survey was supplemented by personal interviews. Additional historical and statistical information was gathered from the Workers' Compensation Commission records. The following report is the culmination of these efforts.

National studies indicate that roughly ninety percent of all reported injuries are disposed of without incident./1 Maine's experience parallels these findings. Only about ten percent of cases in 1986 were not resolved prior to

1. Larson The Law of Workmen's Compensation, §82.10 at 15-556 citing Cooper & Co., Report on Closed Case Survey for the Interdepartmental Workers' Compensation Task Force (1976) reported in P. Barth & H. Hunt, Workers' Compensation and Work-Related Illnesses and Diseases, ch.5 (1980).

informal conferences./2

Typically, complex issues of law such as earning capacity, employment, medical causation, disability, apportionment, and notice characterize litigated cases. Usually the claims which are heavily litigated involve a significant amount of money. All parties are ill served by the delay that tends to develop.

The problem is national in scope. It reflects two decades of national and state level changes in the workers' compensation environment. A system which is simple, fast, and fair is needed. Unfortunately, little consensus exists as to what such a system might be. In the meantime most states are experiencing difficulty in speedily adjudicating disputes. Although Maine is similar to the country as a whole, the fact remains that existing delay can be nothing less than tragic for an injured worker.

2. Approximately 48,000 first reports were filed for 1986 injuries through September 30, 1986. For the same time period 8,000 requests were made for informal conferences with 3,200 of those disputes being resolved prior to the conference. Even if all of the 4,800 remaining cases went on to formal hearings, that would be one-tenth of the reported injuries. Unfortunately the actual percent of the 4,800 cases heard at informal conferences which proceed to formal litigation is unavailable.

FINDINGS

Our study confirmed what is generally suspected. Delay in adjudicating petitions often creates severe hardship for Maine workers.

Significant findings include:

1. Participants in the compensation system unanimously and emphatically ascribe delay to excessive workload and turnover among commissioners.

2. Commission informal conferences are held, on average, 46 days after a Notice of Controversy (NOC) is filed with 22% of conferences being held more than 60 days after the NOC filing. Statutory time lines for informal conferences are difficult to meet, given numbers of filings and current staff levels.

3. Injured workers frequently complained of delays in receiving compensation payments from insurance carriers even after the Commission has decided a case and formally ordered payment of benefits. The delays of litigation are hard to accept for employees, but late checks and delays in payment even after a decision has been issued infuriated some respondents.

4. The current law regarding payment of non-occupational benefits to employees awaiting a decision on their compensation claim appears to go unapplied in a substantial percentage of cases.

5. One-fifth of the injured workers surveyed went on the AFDC rolls while waiting for their compensation case to be decided.

6. Resolution of apportionment issues between carriers is consuming a growing amount of Commission resources.

7. Problems gathering and interpreting medical information and taking medical testimony are significant factors in delay at both the formal and informal level. The inability to timely gather medical information and the lack of sufficient medical information to determine compensability was the reason cited for initially disputing fully one quarter of controverted cases in 1986. Likewise, 63% of surveyed compensation attorneys believe that the scheduling of medical testimony for formal hearing was a significant factor in delaying decisions.

8. Virtually all participants in the compensation system agree that the early-pay system has reduced delay in delivery of benefits. However, we have no way to prove or disprove a reduction in the ultimate amount of litigation. Since 1983, the

early pay system does seem to be slowly shifting litigation from petitions for award to petitions for review.

9. Analysis of formal decisions on fully litigated petitions for award issued by the Commission between April, 1986 and September, 1986 revealed that an average of 406 days elapsed from the date the petition was filed to the date the petition was decided. Employees prevailed in 70% of the cases. In comparison, the average time for decision over that same period for petitions for review was 367 days. This average excludes all cases voluntarily paid, settled, compromised or dismissed prior to final decision.

10. The delay problem is worse in the Bangor area than statewide.

11. Delay in Commission formal decisions is to some extent a necessary component of due process of law and rules of orderly adjudicatory process. Careful deliberation is beneficial to decide legally and factually complex cases where important rights are at stake.

EFFECTS OF DELAY ON EMPLOYEES

"Nobody ever makes that up to you with the money they pay you eventually. You live through it and that's that"

This quote unfortunately summarizes our surveys and interviews. Seriously injured employees often suffer severe financial and emotional losses while awaiting a decision. Questionnaires were mailed to 161 injured workers prevailing on petitions for award decided between April and October 1986. Sixty nine responses were received and 11 follow-up interviews were conducted.

It was found that nearly fifty percent relied on earnings of their spouse, almost twenty-five percent received payments under their employer's disability plan, twenty percent collected AFDC, and another twenty percent borrowed money from relatives./2 Fully half reported that their credit rating was harmed while waiting. Many creditors referred bills to collection agencies. One respondent was sued for failure to pay on a debt. Family health insurance coverage was terminated for thirty-seven percent.

2. The cumulative percentages exceed 100% since many respondents utilized more than one source of assistance.

Four injured workers had their home mortgages foreclosed. Three others were evicted from rental apartments. Four had their vehicle repossessed. Notices of disconnection by utility companies were received. Personal property items were sold off and repossessed. In addition to those who received state welfare payments, several others resorted to municipal general assistance.

In response to the question:

While you were waiting for your compensation case to be decided did you suffer any emotional loss or did it contribute to any emotional problems?

A staggering eighty-three percent said yes. Common themes were loss of self-esteem, control over one's life, confidence and respect. Humiliation and frustration were characteristic experiences. While many injured employees alluded generally to increased stress and strain on family relationships, four respondents were actually divorced while waiting for decisions. Others described having come close to divorce. The emotional impact on four was so great that they consulted physicians.

The following case histories illustrate how delay in the workers' compensation system affected their lives. These are the actual stories of three injured workers, although the names are fictitious.

Injured Worker #1

Mr. Lambert is a 26 year old married man with two stepchildren, a girl and a boy. In November of 1984 he sustained a serious injury to his right leg. His attorney filed a Petition for Award in October, 1985 and in April of 1986, he received a decision in the case. Mr. Lambert prevailed and was awarded total compensation for an eleven month period and partial compensation from October, 1985 to the present and continuing.

Beneath this sterile outline lies a story of personal hardship. Mr. Lambert was evicted from his apartment. His credit rating was harmed. His family health insurance was terminated. He was unable to provide even basic necessities for his family.

Because of medical restrictions on Mr. Lambert, he remains unable to find work without retraining. He attempted to do so but financial pressures forced him to drop out of the training program leaving him with a \$2,500 student loan to repay. Mrs. Lambert had a job, but four months after Mr. Lambert received his workers' compensation decision, she was laid off. The lay off came on the same day she filed a workers' compensation claim for her own work-related injury. The Lambert family is now supported entirely by Mr. Lambert's compensation payment of \$140.00 a week, an annual income of less than \$5,000.

Injured Worker #2

Mr. Johnson is a 29 year old married man with 3 children; two year old twins and a five month old baby. In January, 1983, he sustained an injury to his back while operating heavy equipment for one of the state's largest employers. He had previously reported the conditions which eventually led to his accident, but they were not corrected until after his injury. His Petition for Award was filed in September, 1984. On two occasions scheduled formal hearings were canceled. The evidence in Mr. Johnson's case closed in November, 1985. No decision was rendered in his case until May, 1986. He was ultimately awarded total compensation for specified periods, continuing through the present. He was also awarded a permanent impairment benefit. Currently, Mr. Johnson is waiting for approval of a lump sum settlement which a commissioner initially disapproved and ordered renegotiated more favorably to Mr. Johnson.

Mr. Johnson, unlike Mr. Lambert, was able to manage financially for the three and one half years between the time of his injury and the decision in his case. He lost his family health insurance. However, he did receive some voluntarily paid compensation benefits for the 3 1/2 years before his case was decided. In addition, the family had income from his wife's part-time work, and he was able to take some capital out of a small, retail business he had run before his injury. Still, the emotional and financial toll of this experience for Mr. Johnson was high. Particularly aggravating were two 9 week lapses in payments by the insurance company during different Christmas seasons.

Injured Worker #3

Mr. Cyr is a 42 year old married man with three children. Mr. Cyr was a public employee in a municipal agency. He sustained an injury to his right knee which required four operations and the insertion of a prosthesis. Mr. Cyr was injured in November, 1982 and had no formal hearing until 1985. The decision in his case was issued in April, 1986. He was awarded total compensation for a specified time, and partial compensation to the present and continuing.

Mr. Cyr was able to survive financially because the city for which he worked provided benefits under a collective bargaining agreement and because his wife switched from part-time to full-time work. Mr. Cyr is now unable to find employment. In his view he was rejected at least three times because he told the prospective employer he had a workers' compensation case. Mr. Cyr successfully sued one of these employers through the Human Rights Commission. Mr. Cyr was forced to sell several items of personal property. His credit rating has been badly damaged. His medical bills have been turned over to collection agencies because none have been paid since the injury.

Mr. Cyr's injury occurred prior to the adoption of the early-pay system so, as he himself stated, "I'm one of the old system ones and maybe all of us go through the same thing." After Mr. Cyr's formal petition was filed, Mr. Cyr's attorney wrote three letters to the Commission requesting that the case be scheduled for formal hearing. After eight months passed with no response to these letters, Mr. Cyr went to the Commission's office himself and requested to see his file. His attorney's

letters were there, but his file had been mistakenly misfiled with inactive cases. Therefore, no action was even being contemplated. Once this error was discovered, he did receive a formal hearing date within four weeks.

Mr. Cyr's frustration has continued because he was not paid promptly after receiving a favorable decision in May. As of the date of the interview in September, 1986, Mr. Cyr reported that he still had not received a check from the insurance company.

THE EXTENT OF DELAY

All decisions for award and review between April and October 1986 were manually analyzed to determine the length of time between the date the petition was filed and a decision issued. Decisions on 333 petitions for award during this time period took an average of 406 days or 13 months. Decisions on 249 petitions for review averaged 367 days or 12 months.

During November and December a computerized system was implemented to monitor the number of all open petitions in the system and the average length of time necessary for a decision. For decisions issued during November, the computer calculated similar figures. Decisions on petitions for award took an average of 11 months. Decisions on petitions for review took an average of 9 months.

By way of comparison, the national average on first level decisions for 1985 as published in the Statistics Committee Report of the International Association of Industrial Accident Boards and Commissions is 332 days or 11 months.

A relatively small number of petitions undecided for more than two years are still in the system. The Commission has been working on clearing these from its docket. When they are resolved, our decision timelines should become somewhat better

than the national average.

Preliminary runs of the computer program to monitor the number and age of open or undecided petitions indicate that as of September 30, 1986 there were approximately 7,500. Of these roughly 8% are more than two years old and 3% are more than three years old. Litigated injuries involve an average of 1.4 petitions. This is consistent throughout the different regional offices. Based on this figure we estimate about 5,360 people have cases pending at the formal level.

The distribution of the undecided petitions varies greatly between regions. In the Bangor office, commissioners average approximately 1,300 petitions each. In Portland this figure is about 750 per commissioner. In the Lewiston and Augusta offices the average is about 1,100, and in Caribou 400.

There is a rough correspondence between these backlogs and the extent of delay. As of September 30, 1986 approximately 431 of the 617 pre-85 petitions or 70% were in the Bangor office. The age and size of this backlog is summarized by regional office in the following chart. Further detail is provided in the appendix.

Open Petition Summary as of September 30, 1986

<u>Office</u>	<u># Comm.</u>	<u>Undecided Petitions</u>	<u>86 Undecided Petitions</u>	<u>85 Undecided Petitions</u>	<u>84 Undecided Petitions</u>	<u>83 & prior Undecided Petitions</u>
Bangor	2	2,671	1,398	842	292	139
Portland	3	2,217	1,632	543	21	21
Augusta	1	1,123	712	313	86	12
Lewiston	1	1,018	878	131	6	3
Caribou	1	<u>402</u>	<u>296</u>	<u>69</u>	<u>25</u>	<u>12</u>
		7,431	4,916	1,898	430	187

It is believed that filings are just about matching dispositions. This means that meaningfully reducing the size of the backlog is unlikely without additional commissioners.

CAUSES OF DELAY

The explicit statutory purpose of the Maine Workers' Compensation Commission is to provide for the "speedy, efficient, and inexpensive" disposition of cases. Speed must be balanced, however, with statutory and judicial requirements of procedural fairness. Although speed and fairness are not mutually exclusive, in a world of limited resources there will always be some tension between the goal of "speedy, efficient, and inexpensive" disposition of cases, and the goal of fairness.

Fairness, or due process, includes the right of interested parties to a full opportunity to present facts and arguments, the right to decisions based on articulable reasons, and the social need for overall consistency. These considerations underlie the numerous statutory and judicial procedures which are built into the Maine Workers' Compensation Act.

The basic causes of delay are 1) the high number of claims, 2) the increasing complexity of claims and 3) the finite resources of the workers' compensation commission.

1. The High Numbers of Claims

Since the early 1970's the numbers of claims for workers' compensation have been growing steadily. Maine follows the national trend.

For 50 years since 1916, the Commission (then the Industrial Accident Commission) was a panel of two or three part-time attorneys who traveled the State deciding disputed cases and supervising settlements.

The Commission was a novel type of "quasi-judicial" state agency, preceding the development of administrative departments within the executive branch of government. Maine followed the pattern of most other states: the Commission was a dispute resolution forum, not a full-fledged regulatory agency. Because the preliminary investigation of claims was handled by the insurance carriers, the commission did not get involved at all in a case unless a basic clear-cut dispute arose between the parties.

Commissioners drove around the state with hearing files literally in the back seats of their cars resolving disputes. The regulatory aspects of workers' compensation were limited to filing first reports, and reviewing and approving agreements submitted by the parties, basically a clerical function. Because the Commission was patterned on an adjudicatory model (neutrally resolving adversary disputes brought before it), rather than a regulatory model (actively supervising and regulating all stages of a claim), the agency needed hardly any funding at all.

Few dramatic changes in substantive law or administration occurred until the late 1960's and early 1970's. The debate surrounding passage of the Federal Occupational Safety and Health Act (OSHA) in 1970 marked a watershed for workers' compensation both in Maine and across the nation.

Congress rejected attempts by organized labor to federalize workers' compensation as part of OSHA, and left the issue of workers' compensation to the states. However, Congress established a National Commission on State Workmen's Compensation Laws which issued a much respected and cited report in 1972 outlining recommended standards for the states to implement. The National Commission recommended broadened coverage and liberalized benefits.

Acting in the bipartisan spirit of the times, with the insurance industry under a lingering threat of federalization, Maine enacted many substantive changes to Title 39 in the 1970's. These statutory changes increased both the number of individual claims brought and the amount of benefits per case.

The number of covered injuries were dramatically increased by reducing the waiting period from 7 to 3 days, by requiring coverage of small businesses, and by coverage of job-related gradual injuries. The elimination of durational limitations on partial benefits also increased the number of claims pending at any given time.

As important as these statutory changes were, broader social and economic forces also had a serious impact on the number of workers' compensation claims. In the 1970's

unemployment was the highest since the Great Depression: unskilled manual workers with partial disabilities had trouble getting back to work since production jobs were declining. Service jobs required education these workers often lacked. Even able-bodied workers had trouble finding work. Injured workers returning to work often had to take lower paying jobs due to their injuries, and became eligible for partial compensation. Some experts contended that these economic and industrial conditions had as much to do with the increased numbers of claims as the legislative changes.

Additionally, longshoremen, harborworkers and shipbuilders, such as shipbuilders at Bath Iron Works, have the right to claim concurrently under the Federal compensation program and the State compensation program. Since the late 1970's most employees under the federal jurisdiction have chosen to litigate their claims under the State workers' compensation system, in part because it is relatively faster than litigation for Federal compensation. Although this has been a benefit for employees, it has added a significant number of additional claims which the Maine Workers' Compensation Commission did not previously service.

Insurance carriers were unprepared for the task of handling the sheer numbers of claims in the 1970's. It also became more difficult to investigate and evaluate the more complicated types of claims which arose. Consequent delays and backlogs led to the more frequent use of attorneys to perform basic claims adjustment functions in cases that were previously

resolved before litigation. This overflow of unresolved claims also flooded the Workers' Compensation Commission. Simple Legislative changes - for example, reducing the waiting period from 7 to 3 days - produced massive new numbers of cases in which benefits would have to be paid. Removal of the exemption for small employers added 5,500 new entities covered by compensation in 1974.

It appears that the number of injuries and the number of claims may be leveling off. For example, the Workers' Compensation Research Institute of Cambridge, Massachusetts, has analyzed demographic information, including the age of the work force and other factors, and suggests that the numbers of claims will remain stable. Richard Victor "Work Place Safety: Present Costs, Future Trends" Business & Health (May 1985). Maine Department of Labor statistics indicate that the number of disabling injuries appear to be remaining stable.

Nevertheless, the rapid increase in the sheer numbers of new claims overwhelmed the workers' compensation system in the late 70's and early 80's, and the Workers' Compensation Commission has not fully recovered.

2. The Increasing Complexity of Claims

In addition to the pure numbers of claims, delay is also caused by the increasing complexity of individual cases. This complexity is apparent from a review of the cases in the sample, and from comments by many participants in the study.

The work force is aging. Older workers tend not to get injured as frequently as younger workers -- so the injury rate may improve. On the other hand, older workers do not heal as fast, can have complications, and have a harder time returning to the labor market -- especially if unskilled and undereducated. Such cases can be difficult to litigate and much is at stake.

Other reasons for greater complexity are the influx of occupational disease cases, such as asbestosis, governed by the occupational disease law.

The legal concept of the gradual work-related injury has resulted in many new types of claims which require hearing time. Such gradual injuries are more subject to delays and litigation for several reasons: gradual injuries are more apt to mimic, or overlap with, purely personal weaknesses and simple aging; gradual injuries manifest themselves with more subtle, subjective, and, often, intractable symptoms; gradual injuries often involve multiple employers and insurance carriers.

There are increasing numbers of litigated cases which involve multiple injuries with two or more employers or insurance carriers. In Maine the doctrine of apportionment applies, which means the Commission must entertain much testimony on the issue of relative causal responsibility of multiple injuries and employers for a single indivisible incapacity. Insurance carriers hardly ever compromise in apportionment, according to our survey, and these cases are almost always litigated extensively. This trend is aggravated by the more frequent changes in insurance coverage, over which the employee, and often

the employer, has no control.

Mental stress injuries still are a minor aspect of the Commission docket; however, such cases require a relatively large amount of time because of the extensive testimony required. In a mental stress claim, the employee's entire personality becomes an issue.

Because of current economic conditions, unskilled or uneducated manufacturing workers are having increasing difficulty returning to work after an injury, especially in rural areas. Consequently, there are many more cases which involve a hearing on the nature of a "good faith" work search and the local economy. Such a hearing naturally can involve lengthy and extended testimony.

Another common situation which is the subject of extensive litigation is employment status of woodcutters and truckers in the woods industry. The case law which guides the commissioner's decision on employment status involves numerous considerations which can potentially involve lengthy and detailed testimony. If the woods industry hits hard times, due to imports or the economy generally, the injured woods workers are doubly hit, and litigation over disability can result.

3. Resources of the Workers' Compensation Commission

Acknowledging the increasing caseload, the Legislature increased the Commission from 3 part-time commissioners in 1970 to 9 full-time commissioners in 1981. One commissioner is the Chairman and does not hear first level cases. Hence, there are

actually 8 commissioners conducting hearings. More clerical staff was gradually added to handle the paperwork caused by broadened coverage. Nevertheless, the high turnover of commissioners and Commission personnel during these transition years added to the delay. Since 1981, 6 commissioners have left the Commission to become judges and 3 have returned to private practice. The constant turnover, and the gaps between appointments, reduced the efficiency of the Commission. The Commission now has a stable membership of seasoned commissioners.

On top of the substantive benefit changes made in the 1970's came radical changes in the administrative structure of the Commission during 1983 and 1984. Four regional offices were set up; rule-making authority was centralized in the position of Chairman; computerization was mandated by the legislature; and a corps of ten employee assistants were hired to oversee the early adjustment and resolution of claims.

The 1983 reform created a new regulatory role for the Commission. Beyond neutrally and passively adjudicating disputes, the Commission was now given an additional mission: to intervene, oversee, and monitor the entire claims procedure. The insurance carriers had been unable to provide the necessary personnel and funding to adjust increasing claims. Adjuster caseloads have increased dramatically. Thus the adjustment functions have been partially shifting under the supervision of the state agency, which is becoming more involved in managing even the initial aspects of many claims, including minor cases. This role absorbs tremendous resources of time and energy.

As bad as the delays involved in fully-litigated cases may appear, compensation hearings in Maine are faster than 10 years ago and faster than in many other states. Those familiar with the workers' compensation system over the last 10 years know this, but there is no basic data to prove it.. The 1983 reforms will provide baseline data for future comparison.

Although the Commission has grown, it has also taken on additional duties. In 1981 the 110th Legislature responded to pleas of the Law Court to relieve its workload by creating an internal Appellate Division within the Commission for workers' compensation appeals. All appeals from a single commissioner's decision after formal hearings must be reviewed in the first instance by the Appellate Division. Any further appeal to the Law Court is discretionary. In 1985 the Appellate Division disposed of 401 appeals. During that same year the Law Court left the Appellate Division decision undisturbed 96% of the time. While serving their duty on the Appellate Division, the commissioners lose 4 weeks per year, which could otherwise be spent resolving formal cases.

The informal conference procedures enacted as part of the 1983 reforms require that a commissioner preside at informal conferences scheduled as soon as possible after the Commission is notified of a controversy. Such informal conferences are advisory only. Commissioners ordinarily spend 2 to 3 days presiding at informal conferences every 2 weeks. Although the commissioner's presence at the informal conferences will hopefully encourage early resolution of controversies

voluntarily, attendance at informal conferences is very time consuming, and reduces the time available to handle formal disputes.

The rapid growth of the Commission has resulted in administrative difficulties within the agency, partly due to the establishment of regional offices. The agency is constantly balancing the need for flexibility and efficiency in regional offices, with the need for uniform practices and procedures statewide. This is an ongoing problem which is aggravated by high turnover of support staff, especially in Portland, the overall lack of staff to perform the statutory duties expected, and the lack of sufficient supervision.

Computerization of various Commission functions has saved tremendous labor costs. The money spent on computerization has allowed the Commission to maintain records, transfer information, and operate the informal conference system for much less cost than such a program would otherwise require.

The needs of the Commission are exceeding the resources of its current computer system. Computerization of the formal hearing process and the rehabilitation program will require an expansion and evolution of our computer system.

PATTERNS OF ABUSE

The study order asked the Commission to "ascertain and attempt to describe patterns of abuse for nonpayment and percentages for identified large carriers and large self insurers compared to averages detected in the survey".

The Commission has not historically gathered this type of information. We made several attempts to generate an analysis using the data in our computer system. In the end, we concluded our records were simply insufficient to accomplish this purpose. Thus, we were forced to rely on more general information.

The injured workers in our sample had few positive comments regarding insurance carriers. But given that this group consisted of people who had prevailed only after a lengthy litigation, this can hardly be surprising. However, it is noteworthy and disturbing that the most bitter complaints centered around insurance carrier delay in promptly providing payments after the Commission had issued its decision. Improved monitoring of the timeliness and regularity of benefit payments would be an asset to the system.

Our survey of attorneys asked if the identity of the insurer contributed to delay. Of the 73 attorneys responding 33 answered yes, 16 responded no, 15 did not answer the question, 5

responded they did not know. Additionally, the question asked for an identification of insurance carriers they considered intransigent. Of the 33 answering yes, 7 identified the state's largest workers' compensation carrier. This was the most "votes" any individual carrier received. We do not believe the results of this question provide much insight into the issue of "intransigence" as mentioned in the statute.

Intransigence is a subjective term, and difficult to measure objectively. As long as the law requires that the employee carry the burden of proving eligibility, the employer may choose to put the employee to the test. In serious or ambiguous cases, the employer may exercise its right to examine and cross-examine the employee and his doctors, leading to delay.

Seventy percent of the petitions for award were won by the injured worker. This indicates an industry willingness to litigate a significant number of cases which they will ultimately lose. The complexity of legal, factual, medical, and financial issues which characterize most litigated cases may make it difficult to pick a winner in advance. However, the practice of litigating such a high percentage of losing cases is troublesome.

RECOMMENDATIONS

To reduce delay there are several major options. First, increase the number of decision makers. Second, reduce the number of disputed cases. Third, reduce the procedural rights of the parties, including the amount of hearing time allowed per case.

In regard to the first option, there is the danger that increased numbers of commissioners will simply result in more time per case, with no guarantee the backlog would be cut. On the other hand, the statistics outlined in the statistical portion of this delay study demonstrate that the workload in the Bangor area is out of balance with the workloads in other parts of the state. An additional commissioner is needed in Bangor.

The second way to reduce delay is to cut the number of litigated cases.

The informal conference process is an effort to resolve disputed cases at an early stage, before formal proceedings begin. Hopefully, this process will screen out the number of cases which must be handled in the formal setting. Since it is expected that the number of disputed cases should be leveling off, the Commission should be seeing some relief in the long run. At present, however, the Employee Assistants are handling too many cases to be truly effective. They need help.

The Commission makes no recommendation that the procedural rights of the parties, including the amount of hearing time allowed per case, be reduced. However it is expected that as commissioners gain experience, they will be able to balance the procedural needs of the parties to achieve the fastest possible resolution of each case.

In addition to the general recommendations listed above, the Commission should undertake internal reforms along the following lines:

1. Improve management, supervision and support in the regional offices.
2. Computer services to streamline scheduling of formal hearings must be provided.
3. The Commission should re-evaluate the types of cases which are assigned for informal conferences, and clarify the basis for waiver in appropriate cases.
4. The employee assistants need full-time supervision and additional support.
5. A procedure should be established for efficient handling of public and business inquiries.
6. The excessive use of medical testimony in the hearing process should be curtailed.
7. The Commission should set up advisory groups of insurance managers, personnel directors, compensation practitioners, and employee representatives.
8. Sanctions for late payment should be clarified.
9. A practical method of enforcing the employee's right to non-occupational benefits pending a contested hearing should be devised.

1. Improve management, supervision and support in the regional offices.

The popularity of the informal conference procedure, and the increasing pressure to issue decisions promptly, has placed a considerable strain on the regional office staffs. The regional offices were established in early 1984 on a skeletal basis. Although an increasing amount of the workload has shifted from the central office in Augusta to the regional offices, the regional office staffs have not been augmented to keep pace with the workload.

Due to the lack of management resources, the commissioners have been performing administrative and supervisory tasks in regional offices on an ad hoc basis. This has caused a problem in two ways. First, it is sometimes unclear whether administrative responsibilities and procedural decisions of a clerical nature should be handled by the central office in Augusta, or by the local commissioners. Secondly, the local commissioners are distracted from their primary task of resolving cases by time-consuming personnel and clerical problems which arise on a day-to-day basis.

The management and clerical supervision problem is compounded by the fact that the separate divisions within the regional offices, i.e. hearing division, employee assistant division, and rehabilitation division, have separate chains of command, centralized in Augusta. But on a day-to-day basis, these different Commission functions must operate harmoniously

under one roof in the regional office, with some method of setting mutual priorities.

The answer to this problem is to establish centralized management within the regional offices. This would relieve the commissioners of the supervisory headaches, and give them more time to attend to dispute resolution. This would also relieve the legal secretaries from considerable confusion over procedures, and let them tend to typing hearing schedules and decisions. It would also promote harmony between the Commission divisions, and provide a single contact point between the central office and each regional office.

The regional office manager would be responsible directly to the Director of Administrative Services in Augusta, and should have the authority to hire and discipline. The regional office managers would be in a good position to see that uniform and consistent filing practices and procedures are followed throughout the state.

Due to understaffing and heavy workload, there is a very high turnover rate among clerical staff in regional offices. This is true especially in Portland. Due to the turnover, the Commission loses many experienced employees, who have mastered the clerical procedures needed to maintain files and schedules. The Commission needs to set up training and procedures manuals to assist new employees.

In addition to reorganization of management and supervision within the regional offices, additional clerical support is necessary to speed up the process.

2. Computer services to streamline scheduling of formal hearings must be provided.

The Commission's computer system is fully operational in the areas of coverage, payments, and for the scheduling and tracking of informal conferences. The high popularity of the informal conference procedures, and the high volume of claims, have pushed our current computer system to its limits, both in terms of storage of data and in terms of simultaneous user capacity. Because of high use by clerical and professional staff, response time on the computer is becoming a problem. There is intense competition for limited computer time. This problem is somewhat a measure of success in the computer program.

The Commission now needs the resources to implement the computerization of the formal hearing process, and of the vocational rehabilitation effort.

Although the computer system is primarily used for the operational needs of the Commission in the regional offices, a very important secondary goal is the development of routine statistics which may be used for management and planning.

Computerization has initial costs, but the long-term savings in labor costs make computerization the only realistic alternative.

3. The Commission should re-evaluate the types of cases which are assigned for informal conferences, and clarify the basis for waiver in appropriate cases.

There is some inconsistency in the use of informal conferences between different regional offices. Some commissioners schedule every single petition for an informal conference including petitions for review; whereas other commissioners schedule only initial claims triggered by a Notice of Controversy.

Due to the increasing amount of time required at informal conferences, consistent guidelines should be established in the use of this valuable time. In cases where a dispute is clear-cut and obviously not subject to mediation or resolution, waiver procedures should be utilized.

Thus, the commissioners may be allowed somewhat more time to focus on the formal disputes, and on the backlog of formal petitions.

4. The employee assistants need full-time supervision and additional support.

Ten employee assistants are now supervised on a part-time, as needed, basis by the assistant to the Chairman. Although the numbers of the employee assistants has grown to 10 persons, none of these positions has been designated as supervisory. The lack of supervision has led to serious personnel problems.

Since the employee assistants appear before the local commissioners on a routine basis at informal conferences, in

which the employee assistant's role is to advise the employee, in would be inappropriate for the direct supervision of employee assistants to be delegated to the hearing commissioners. The commissioners, on the other hand, need to focus on the issues before them, rather than on supervisory and personnel matters.

Stronger central supervision is necessary to pursue the goals of consistency and uniformity of procedures used by employee assistants in regional offices scattered about the state.

Besides better supervision and oversight, at least one additional employee assistant is necessary given the high current caseloads.

The office of employee assistants can operate much more efficiently and effectively if clerical support is provided. At the present time the employee assistants must work with essentially no clerical help. The employee assistants thus spend up to half of their time performing simple clerical tasks, which should be delegated to lesser paid employees. By reducing routine clerical tasks, the employee assistants will be able to perform their true job of advising and assisting employees. This will result in a higher rate of resolution of claims, and speed up the delivery of benefits substantially.

In these ways, improved management and support of the office of employee assistants should significantly speed up benefits and reduce delay in the system.

5. A procedure should be established for efficient handling of public and business inquiries.

The Commission should have a specific policy for prompt and courteous handling of daily inquiries, to guarantee a smooth functioning agency. There are several types of telephone calls: from litigants, legislators, regional offices, carriers, and the general public.

Due to the politicization of compensation over the last few years, the public has naturally become more inquisitive and there are more inquiries than in the past. These legitimate inquiries can disrupt other equally important business of the Commission.

Commission employees who handle incoming calls should be trained and encouraged to handle simple inquiries themselves. If more specific information is needed, they should know exactly where each type of call should be directed.

The Chairman should designate a specific person and protocol for handling inquiries about pending cases. The Commission must insure a party's right to inquire about the status of a case, without prejudicing its outcome. This recommendation follows the practice of the National Labor Relations Board and the Social Security Administration, which assign an "officer of the day" to handle such inquiries. This suggestion does not require a new position, and can be accomplished by training, centralization, and clarification of job function.

Insurance carriers and Commission staff in regional offices are always making telephone inquiries in the central

Commission office about prior injuries and filings on certain employees, and on coverage questions. This is a routine part of investigation. At present, these parties are unable to get this valuable information in a timely fashion; this leads to delays and duplicative filings and hearings which snowball very quickly. The central office staff must be reorganized to provide one day service for this important need of the compensation community.

6. The excessive use of medical testimony in the hearing process should be curtailed.

A serious cause of delay is the current practice of allowing extensive medical testimony in fairly simple and routine cases. Statute allows the free use of medical reports, but attorneys continue to argue an alleged absolute right to cross-examine physicians in regard to such reports. The problem is that physicians are difficult to schedule for either depositions or hearings. There are a number of solutions.

Excessive use of medical testimony can be reduced if the commissioners actively require justification and a showing of need. It is hard to make an absolute rule in this sensitive area, because many times medical testimony may be essential. But commissioners could be encouraged to be stricter about letting medical testimony go on and on. The Commission should balance efficiency and speed against the parties' right to present adequate evidence.

Local offices could work closely with local physicians to coordinate hearings with their medical schedules, and arrange for a single doctor's cases to be heard together.

7. The Commission should set up advisory groups of insurance managers, personnel directors, compensation practitioners, and employee representatives.

Such groups would let all parts of the compensation community know what is going on administratively, and also provide a forum for complaints over forms, procedures, and regulations. Some of the current forms are inadequate. Such "nuts and bolts" feedback is of tremendous importance to the functioning of any agency.

8. Sanctions for late payment should be clarified.

Procedures and methods for enforcing sanctions for late payment should be clarified. The maximum \$25 per day penalty for late payment is now assessed in Superior Court, and it is unclear whether the penalty is payable to the employee or the State.

The Abuse Unit should develop a strategy for discovering patterns of late payment.

9. A practical method of enforcing the employee's right to non-occupational benefits pending a contested hearing should be devised.

Many carriers for non-occupational disability insurance are out-of-state, and not familiar with Maine's rule of provisional payment. 39 M.R.S.A. §111-A. The Commission should develop a program of education and enforcement of such rights.

CONCLUSION

The preceding has been a presentation of our investigation of the causes of delay and its effects on injured workers.

Nationwide, workers' compensation boards and commissions have experienced problems coping with the growth in litigation and general workload. Delay in the Maine system reflects this larger trend. The Maine Workers' Compensation Commission is similar to the parallel agencies in most other states.

Complexity of workers' compensation law is a cause of delay. However, the reason this complexity evolved deserves recognition. Prior to the institution of the workers' compensation system, an employee injured at work had the right to sue an employer in civil court. This right was exchanged in return for a "no fault" payment of compensation to someone injured in the course of employment. Given the surrender of this substantial right and that the livelihood of an individual and dependents may be at stake, the law should fully protect the economic interests of the worker and compensation cases should proceed at a pace where informed and equitable decisions can be made.

A certain amount of delay and a detailed body of law may

be necessary to preserve fairness. Nonetheless, excessive delay is extremely harmful. A clearcut conclusion, favorable or not, enables an individual to understand their options and proceed on a realistic basis. When long, stressful periods of time are allowed to pass with no resolution of such a serious economic issue, positive action by the injured individual may become far more difficult than otherwise might be the case.

Over the long term, ideas as to how to fairly compensate victims of occupational injuries for their economic loss need to be carefully considered. The current system of adjudication, we believe, produces reasonably equitable decisions for employers and injured workers. But it is not a simple or rapid process.

A better system; one which is faster, and still fair, would be the final solution to this problem. However, developing a consensus as to how such a system should be constructed is a long term process which will occur at both the state and federal level.

An incremental strengthening of the Commission is necessary to realistically evaluate its capabilities in the long term process of improving the workers' compensation system in Maine. The speed of resolving disputes in particular could be improved by providing more resources.

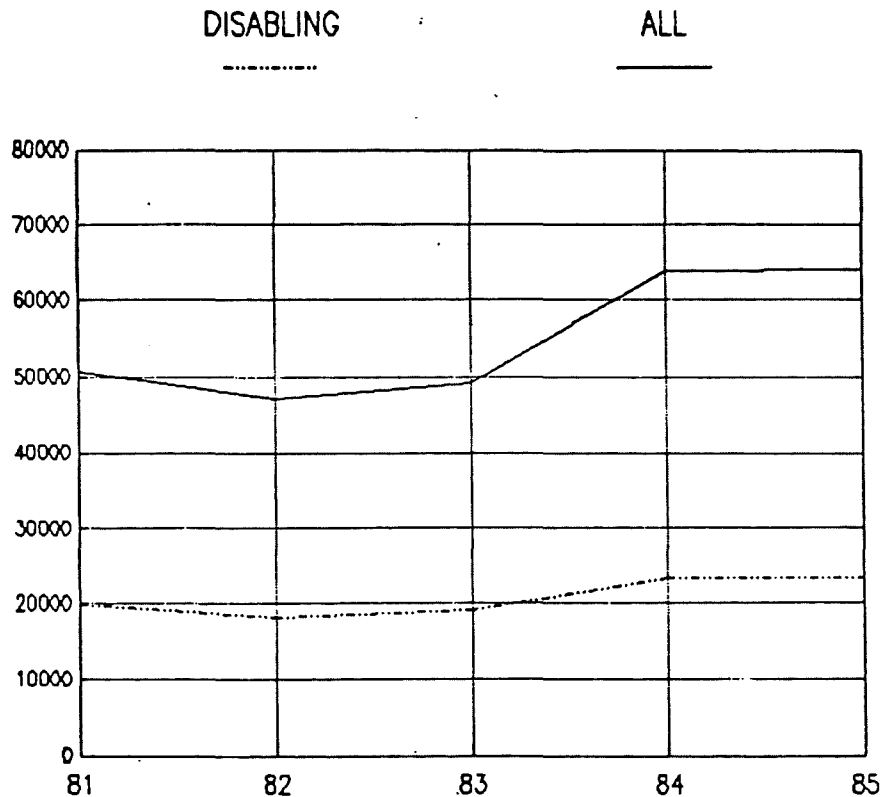
APPENDIX

The appendix presents a series of graphs detailing the extent and distribution of undecided petitions. Much of this information has been available only recently. We believe the graphs it has enabled us to develop provide a useful picture of the delay problem.

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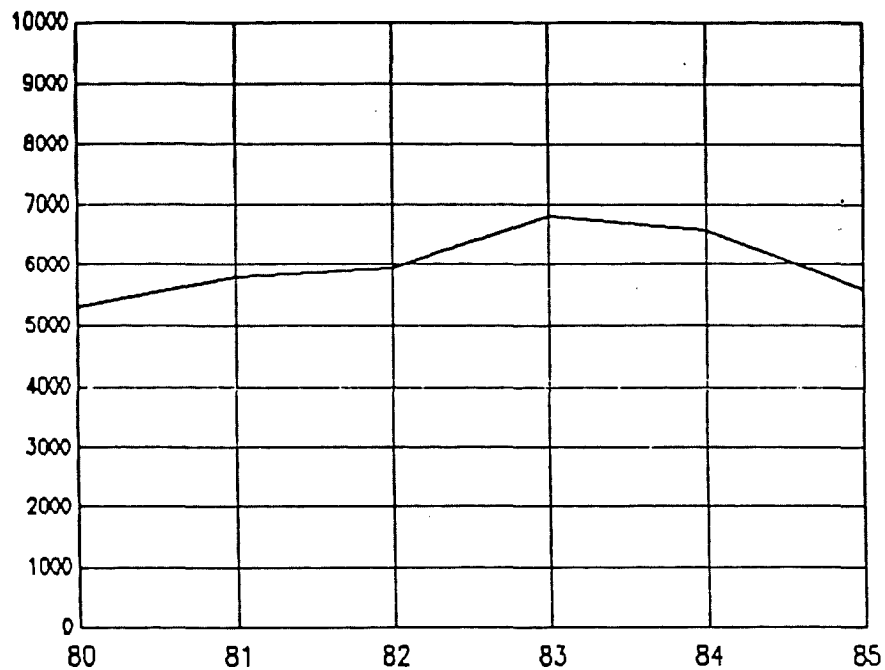
FIRST REPORTS 1981 - 1985



Graph 1

Graph 1 shows the increase in filings of first reports of work related injuries following the initiation of the early pay system. In 1981, 1982, and 1983; approximately 50,000 first reports were filed annually. The early pay system went into effect on December 31, 1983. Approximately 65,000 first reports were filed on injuries occurring during 1984 and 1985. This represents a 30% increase in the number of filings which must be administratively processed and entered into the computer system. However, the number of first reports of disabling injuries, where there has been one or more days of lost time, has remained at about 20,000 - 22,000 annually.

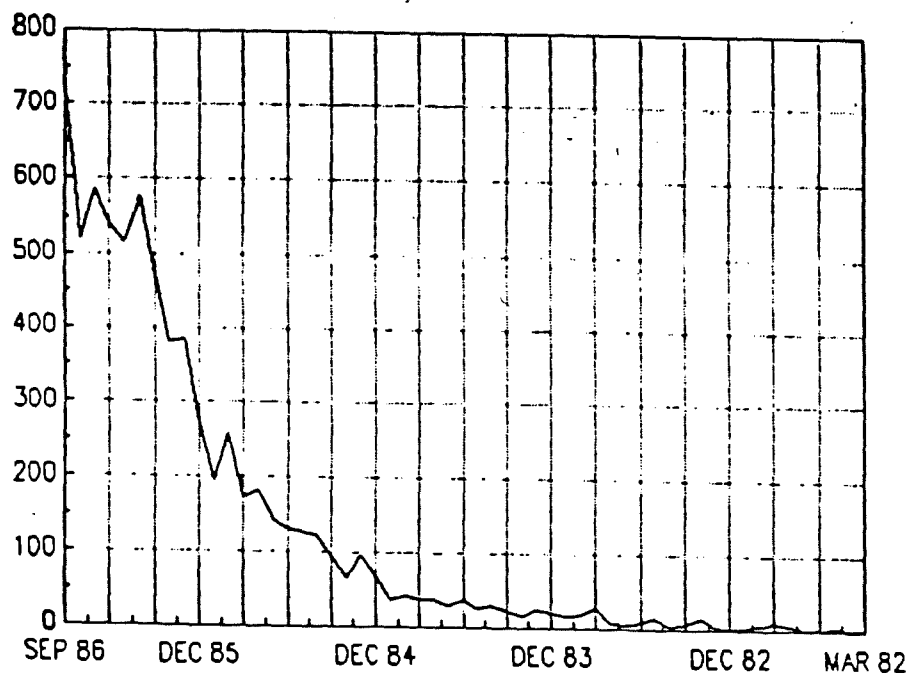
ANNUAL PETITIONS FILED 1980 - 1985



Graph 2

Graph 2 presents the number of filings of formal petitions between 1980 and 1985. As may be seen, the Commission has been receiving about 6,000 petitions per year during this period. We anticipate some increase in filings of petitions in future years.

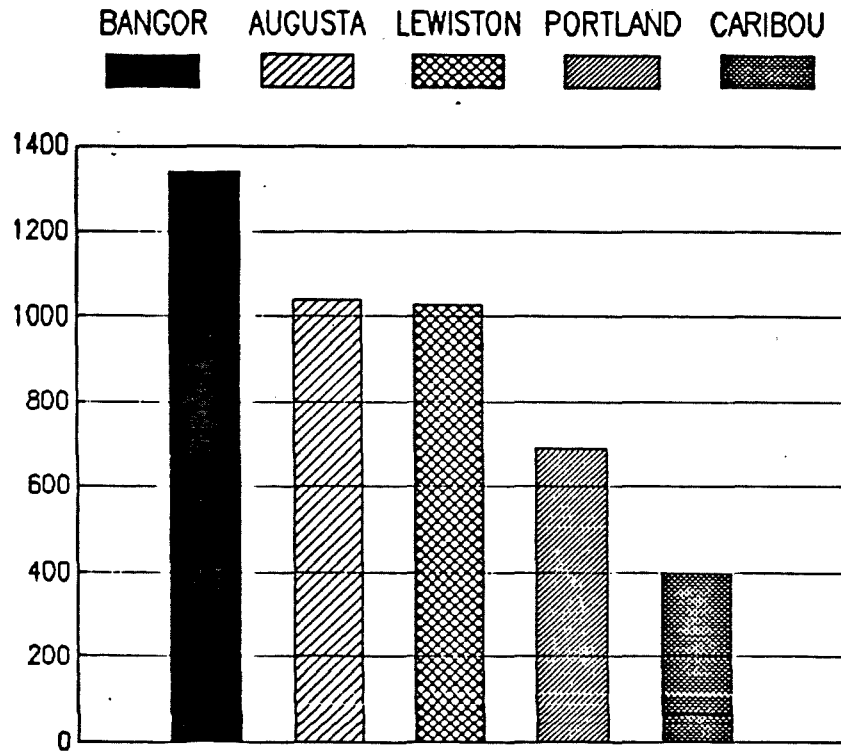
OPEN PETITIONS BY MONTH OF FILING WORKERS' COMPENSATION COMMISSION STATEWIDE



Graph 3

Graph 3 presents the number and age of open petitions throughout the state. There are approximately 7,500 petitions in the backlog. 66% were filed in 1986 and have been undecided less than a year. 26% were filed in 1985 and 8% were filed prior to 1985. However, the "shape" of this backlog and the workload of commissioners varies greatly between regional offices.

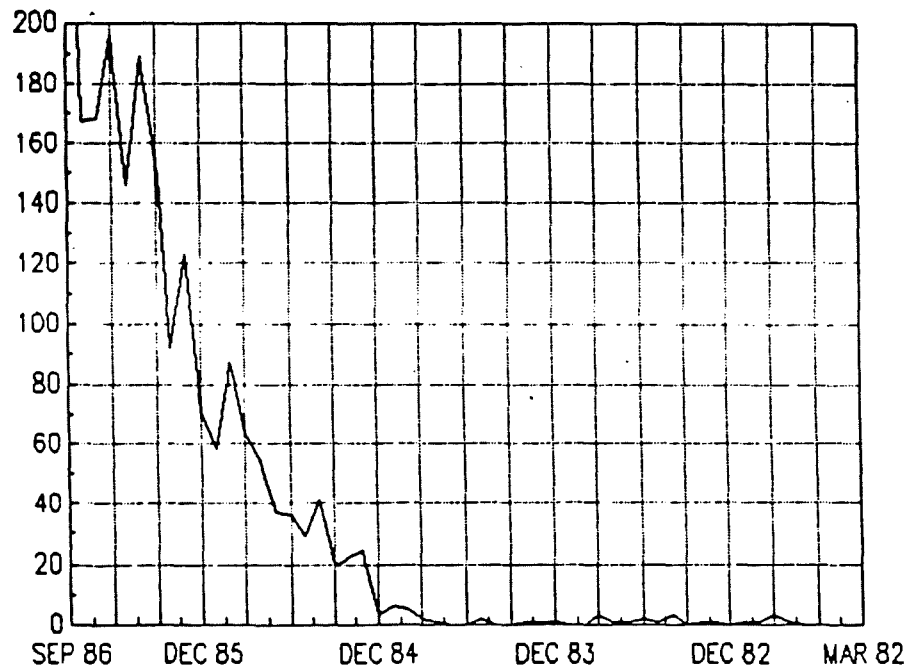
AVERAGE CASELOAD PER COMMISSIONER BY OFFICE



Graph 4

Graph 4 is based on dividing the number of open petitions as of September 30, 1986 by the number of Commissioners in each office. This was the first time the Commission had the necessary computer programs and data to generate this information. These figures have remained essentially the same during October and November. As may be seen, caseload per commissioner is heaviest in the Bangor office.

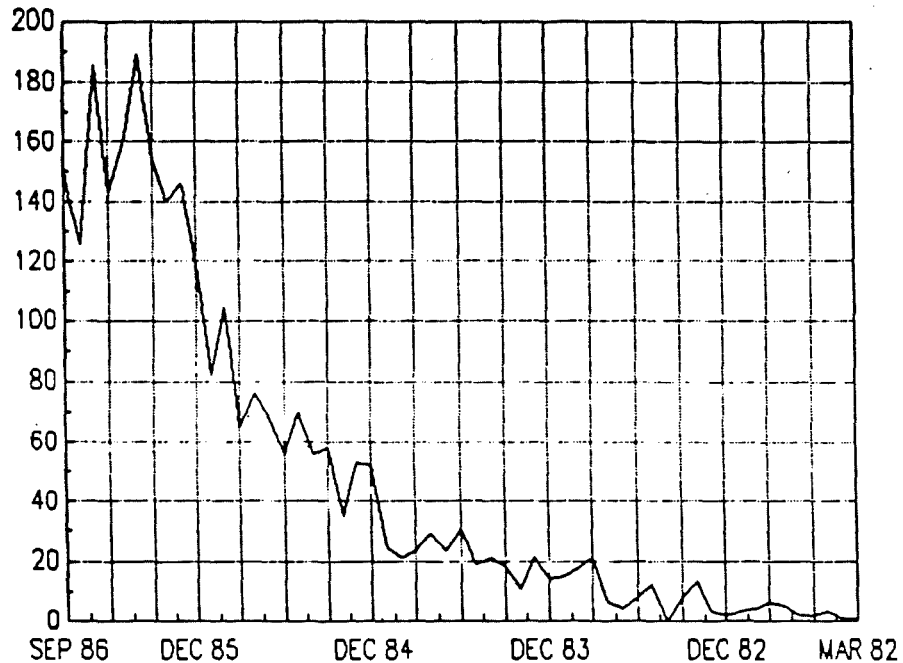
OPEN PETITIONS BY MONTH OF FILING PORTLAND OFFICE



Graph 5

Graph 5 depicts the backlog in the Portland office. This includes Bath/Brunswick cases. There are 2,000 to 2,300 open petitions and 3 Commissioners. These petitions represent approximately 1,700 cases. Caseload per commissioner is approximately 750. As of September 30, 1986, only 42 petitions had been undecided more than two years.

OPEN PETITIONS BY MONTH OF FILING BANGOR OFFICE



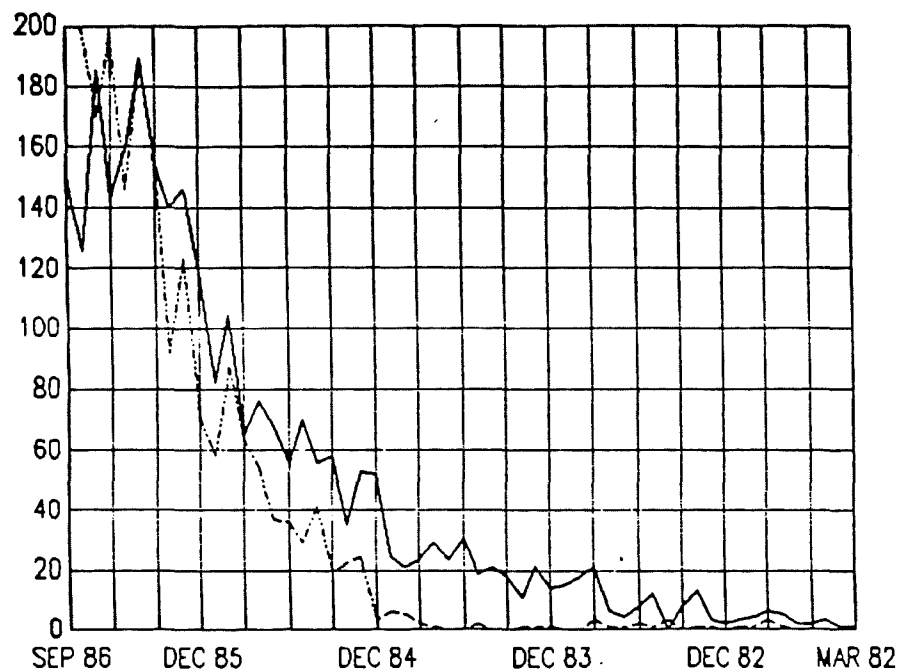
Graph 6

Graph 6 presents a startling picture of the backlog in the Bangor office. There are 2,500 to 2,800 open petitions and 2 Commissioners. These represent roughly 2,000 actual cases. Caseload per Commissioner is approximately 1,350. 431 petitions have been undecided more than two years. This office covers a wide geographic area. The region's industrial base tends to be agriculture and forest products. Accidents are more likely. Returning to work is more difficult because educational levels tend to be lower and the job market is tighter. Additionally, there have been lengthy vacancies in this office when only one Commissioner was available for hearings.

COMPARISON OF OPEN PETITIONS

PORTLAND

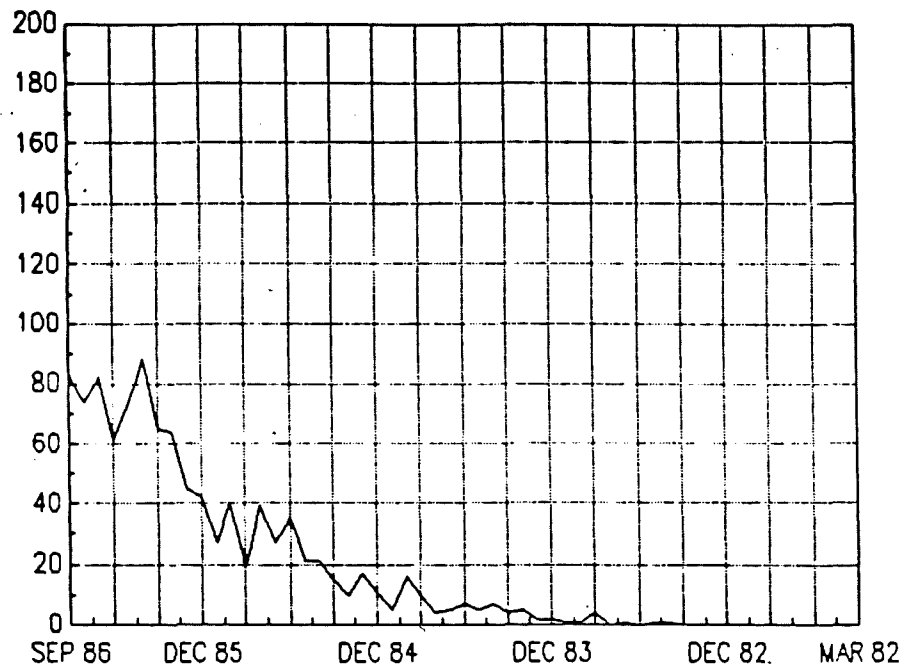
BANGOR



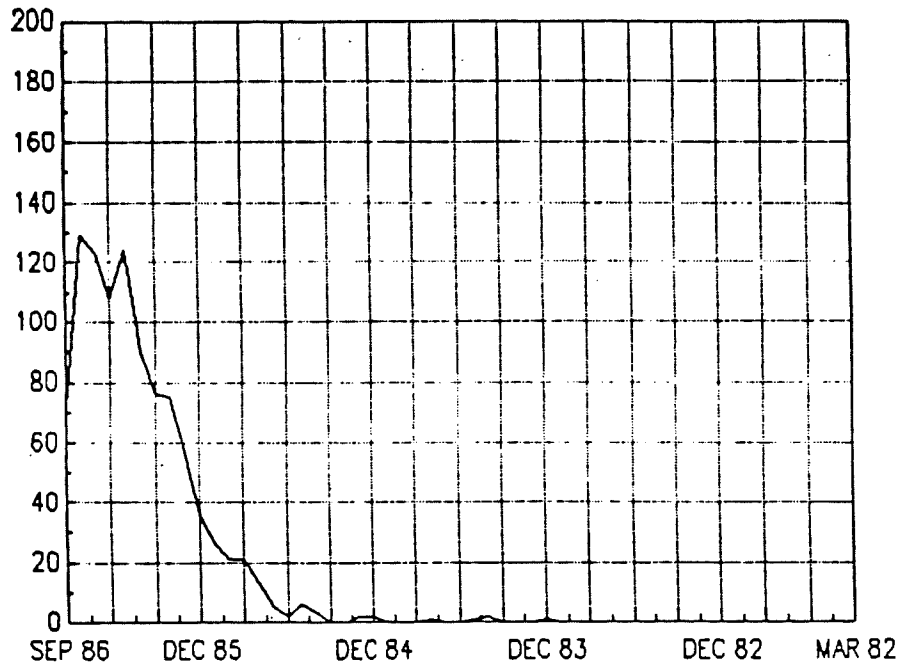
Graph 7

Graph 7 contrasts the backlogs in the Portland and Bangor offices. As may be seen Bangor has a significant caseload from before December 1984 while Portland has only a few.

OPEN PETITIONS BY MONTH OF FILING AUGUSTA OFFICE



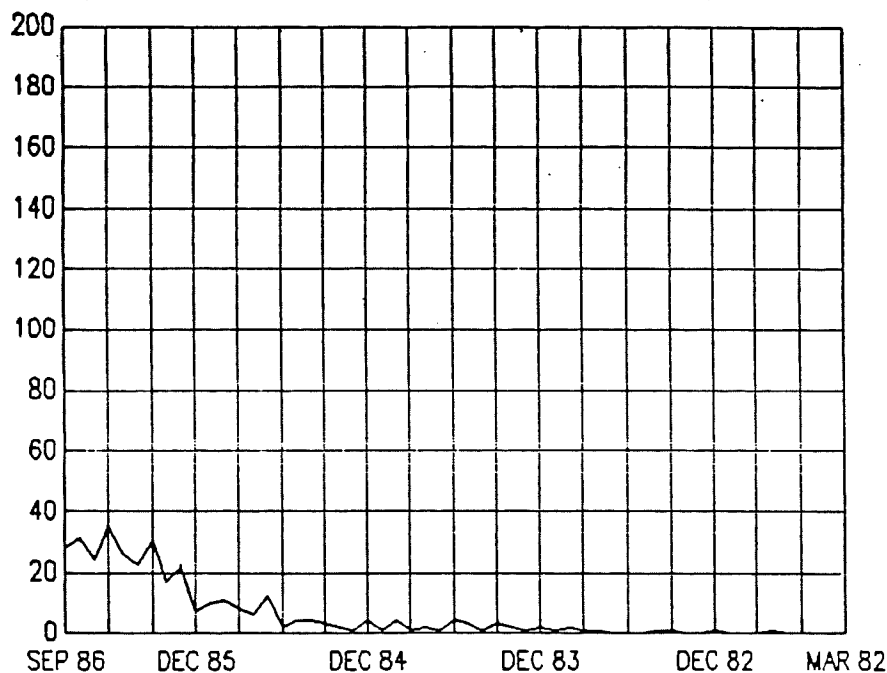
OPEN PETITIONS BY MONTH OF FILING LEWISTON OFFICE



Graph 9

Graph 9 depicts the backlog in the Lewiston office. As in Augusta, there are 1,000 to 1,200 open petitions and these represent about 900 actual cases. However, the shape of the backlog is entirely different. There only 9 petitions which are more than two years old. This, we believe, is attributable to prompt appointments. Although turnover of commissioners has occurred, there have been no extended periods of time when no commissioner was available. In recent months, there has been a high rate of filings in Lewiston office. If this trend continues, backlog could become more of a problem in the future.

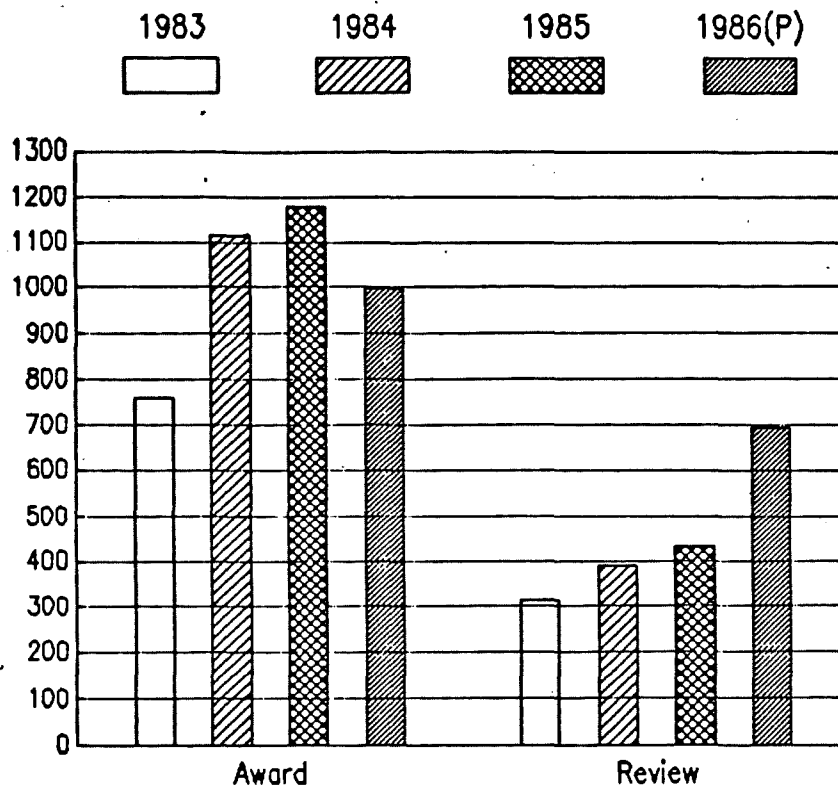
OPEN PETITIONS BY MONTH OF FILING CARIBOU OFFICE



Graph 10

Graph 10 presents the backlog in the Caribou office. There are 350 to 450 open petitions and one commissioner. These petitions represent about 285 actual cases. This office serves Aroostook and Washington counties. Significant travel is required of the commissioner. Due to the number of jobs involving forestry and agriculture, litigated cases tend to involve serious injuries. Economic difficulties in the region and generally lower levels of education make returning to work more difficult. As a result, litigation is often complex and protracted.

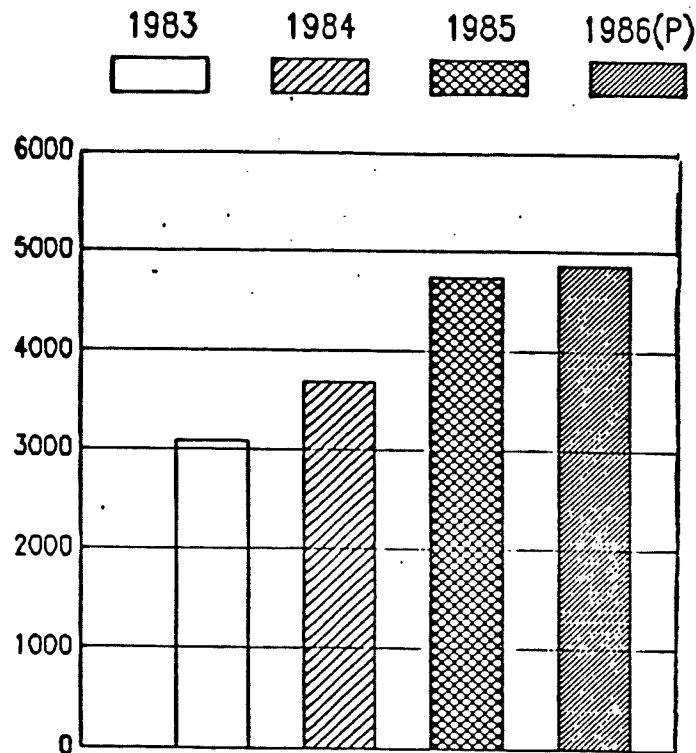
Decisions on Awards and Reviews 1983 – 1986



Graph 11

Graph 11 shows the growth in decisions on petitions for review. In recent years, the number of decisions on reviews has consistently increased. This is not mirrored in the decisions on petitions for award. The mix of petitions seems to be shifting. A higher percent of petitions for review appear to be on the docket now than in years past. The figures for 1986 are projections.

Decisions 1983 - 1986



Graph 12

Graph 12 shows the output of decisions by the Workers' Compensation Commission has nearly doubled since 1983. Currently, the Commission can issue a little less than 5,000 decisions per year. An additional number of petitions is cleared from the docket by dismissal. Beginning in 1987, we will be able to also use dismissals as a measurement of output of cleared petitions.

ADMINISTRATIVE STATISTICS
ON WORKERS' COMPENSATION

1974 - 1985

<u>F/Y</u>	<u>1st</u> <u>Reports</u>	<u>Agreements</u>	<u>Petitions</u>	<u>Hearings</u>	<u>Decisions</u>	<u># of</u> <u>Comm'rs.</u>	<u>EE's</u>
1974	33,242	6,264	1,912	3,336	*	4	*
1975	33,663	7,262	2,036	3,879	*	4	22
1976	38,555	9,764	2,112	4,032	*	4	22
1977	42,850	11,395	2,802	5,040	*	4	22
1978	43,989	12,357	3,556	6,364	*	4	30
1979	50,248	13,715	3,756	8,461	*	4	30
1980	52,568	14,453	5,308	8,821	*	6	30
1981	51,393	14,633	5,796	9,276	750	6	30
1982	49,771	14,852	5,940	10,473	2,210	8	35
1983	46,696	14,710	6,813	9,376	2,968	7	36
1984	54,911	11,179	6,569	9,336	3,524	9	57
1985	65,810	*	5,581	10,377	4,711	9	72

<u>Year</u>	<u>Expenditures</u>	<u>Net Workers' Comp.</u> <u>Premiums Written</u>	<u>Premium Tax Paid</u> <u>to Gen. Fund</u>	<u>Direct Losses</u> <u>Paid</u>
1974	*	\$ 30,231,804	\$ 592,653	\$ 14,305,953
1975	\$ 254,580	40,491,927	796,644	17,077,067
1976	256,173	45,890,018	903,040	21,773,674
1977	274,898	52,032,345	1,024,153	28,935,078
1978	306,793	66,246,000	1,294,550	38,694,000
1979	419,422	85,698,496	1,680,839	55,442,420
1980	481,693	98,930,344	1,941,259	65,151,004
1981	571,471	115,353,852	2,271,093	85,060,585
1982	751,307	124,262,683	2,451,954	90,698,465
1983	912,080	143,354,547	2,840,537	109,492,213
1984	1,555,452	158,895,000	3,154,000	127,747,000
1985	1,924,105	170,628,000	3,358,876	158,898,000
1986	2,154,377	*	*	*

* Figures not available.

Source: Annual Administrative Reports, State of Maine, 1974 - 1985.

Effective Dates of Significant Changes
in the Workers' Compensation Act

<u>Subject</u>	<u>Statute (39 M.R.S.A.)</u>	<u>P.L.</u>	<u>Eff. Date</u>
66-2/3% ceiling	54,55,58	65, c. 408	11/30/65
PI of back, neck, etc.	56A	71, c. 465	09/23/71
PI increase	56	71, c. 318	09/23/71
Partial disability-325 weeks	55	71, c. 386	09/23/71
Inflation protection	54,55,58	71, c. 225	01/01/72
"By accident" deleted	52	73, c. 289	10/03/73
PI scarring \$5M to \$7.5M	56	73, c. 392	10/03/73
Partial disability-unlimited	55	73, c. 531	11/30/73
Mandatory law	51	73, c. 746	06/28/74
Waiting period (7 to 3)	53	73, c. 557	11/29/74
100% ceiling	54,55,58	73, c. 788	12/01/74
133-1/3% ceiling	54,55,58	75, c. 493 ¹	07/01/77
166-2/3% ceiling	54,55,58	75, c. 493 ¹	07/01/79
200% ceiling	54,55,58	75, c. 493 ¹	07/01/81
Unemployment setoff	62-A	79, c. 496	09/14/79 ²
Repeal of 200% ceiling to 166%	54,55,58	81, c. 483 ³	06/22/81
Pet. Review-medical change	100	81, c. 514	09/18/81
Inflation on anniversary	54,55,58	83, c. 479	07/01/83 ⁴
Chiropractic services expanded	52	83, c. 158	09/23/83 ²
Independent contractor	2(5)(A)(2)	83, c. 402	09/23/83
Early pay-informal conference	51-B,94-B	83, c. 479	12/31/83 ⁵
No atty. fees until one week post informal conference	110	83, c. 479	12/31/83 ⁵
Maximum benefit frozen at \$447.92 until 7/1/88	53-A	85, c. 372	06/30/85 ⁶
5% inflation cap	54-A,55-A,58-A	85, c. 372	06/30/85 ⁶
PI based on SAWW	56,56-A	85, c. 372	06/30/85 ⁶
S.S. coordination of benefits	62-B	85, c. 372	06/30/85 ⁶
Atty. fees/prevail only	103-B,103-C,110	85, c. 372	06/30/85 ⁶
New discrimination remedies	111	85, c. 118	09/19/85
Agricultural exemption(4-6)	2,4,21-A	85, c. 249	09/19/85 ⁶
Mini-Miranda rule changed	112,112-A	85, c. 372	01/01/86 ⁶
Vocational rehabilitation	66-A,81-90, 100(3-A),100-A	85, c. 372	01/01/86 ⁶

1. Bernard v. Cives, 395 A.2d 1141 (Me. 1978) eff. for injuries on or after 10/1/75 each ceiling increase is phased in at two year intervals.
2. Legislation does not specify whether provision is effective for new injuries only.
3. Terry v. St. Regis, 495 A.2d 1106 (Me. 1983) 200% maximum still applies for injuries between 10/1/75 and 6/21/81.
4. Injuries prior to this date.
5. Injuries after this date.
6. Injuries on or after this date.

AVERAGE WEEKLY WAGE, INFLATION

& MAXIMUM BENEFIT CHART

<u>Dates</u>	<u>State AWW</u>	<u>Multiplier</u>	<u>Maximum</u>	<u>To Receive Maximum Employee Must Earn</u>
1/1/72	\$117.00		\$ 78.00	\$117.00
7/1/72 - 6/30/73 (as of 7/1/72)	121.71	1.04026	81.14	121.71
7/1/73 - 6/30/74 (as of 7/1/73)	124.50	1.02292	83.04	124.50
7/1/74 - 6/30/75 (as of 7/1/74)	131.29	1.05454 (100%-12/1/74)	87.53 131.29	131.29 196.95
7/1/75 - 6/30/76 (as of 7/1/75)	141.41	1.07708	141.41	212.13
7/1/76 - 6/30/77 (as of 7/1/76)	151.84	1.07376	151.84	227.76
7/1/77 - 6/30/78 (as of 7/1/77)	165.70	1.09128 (133%-7/1/77)	220.93	331.39
7/1/78 - 6/30/79 (as of 7/1/78)	173.79	1.04882	231.72	347.58
7/1/79 - 6/30/80 (as of 7/1/79)	183.74	1.05725 (166%-7/1/79)	306.23	459.34
7/1/80 - 6/30/81 (as of 7/1/80)	199.30	1.08468	332.17	498.26
7/1/81 - 6/30/82 (as of 7/1/81)	220.35	1.10562 (200%-7/1/81)	367.25(166%) 440.70(200%)	550.88** 661.05***
7/1/82 - 6/30/83 (as of 7/1/82)	237.89	1.07960	396.48(166%) 475.78(200%)	594.72** 713.67***
7/1/83 - 6/30/84 (as of 7/1/83)	255.86	1.07554	426.43(166%) 511.72(200%)	639.65** 767.58***
7/1/84 - 6/30/85 (as of 7/1/84)	268.75	1.05038	447.92(166%) 537.50(200%)	671.88** 806.25***
7/1/85 - 6/30/86 (as of 7/1/85)	282.43	1.05090	447.92(frozen) 470.72(166%) 564.86(200%)	671.88* 706.08** 847.29***
7/1/86 - 6/30/87 (as of 7/1/86)	293.33	1.03859	447.92(frozen) 488.88(166%) 586.66(200%)	671.88* 733.32** 1,173.32***

- * Injuries between 6/30/85 and 7/1/88
- ** Injuries between 6/22/81 and 6/29/85
- *** Injuries between 10/1/75 and 6/21/81

1 (EMERGENCY)
2 (After Deadline)
3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document No. 2309
8

9 H.P. 1636 House of Representatives, April 1, 1986
10 Approved for introduction by a majority of the Legislative Council
pursuant to Joint Rule 27.

11 Referred to the Committee on Labor. Sent up for concurrence and
ordered printed.

12 EDWIN H. PERT, Clerk
Presented by Representative Beaulieu of Portland.

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-SIX
18

19 AN ACT to Require the Workers' Compensation
20 Commission to Study the Causes of
21 Delay and its Effects on the
22 Participants in the Workers'
23 Compensation System.
24

25 Emergency preamble. Whereas, Acts of the Legis-
26 lature do not become effective until 90 days after
27 adjournment unless enacted as emergencies; and

28 Whereas, delays in the current workers' compensa-
29 tion system have led to charges that workers are suf-
30 fering severe financial and emotional harms due to
31 unjustified delays; and

32 Whereas, there is a need to examine the causes of
33 delay within the workers' compensation system, to
34 identify the effects that these delays have on the
35 workers involved in the system and to rectify any ad-
36 verse consequences due to these delays as soon as
37 possible; and

1 Whereas, it is desirable to provide the Workers'
2 Compensation Commission with sufficient time to con-
3 duct its study and report back to the 113th Legisla-
4 ture; and

5 Whereas, in the judgment of the Legislature,
6 these facts create an emergency within the meaning of
7 the Constitution of Maine and require the following
8 legislation as immediately necessary for the preser-
9 vation of the public peace, health and safety; now,
10 therefore,

11 Be it enacted by the People of the State of Maine as
12 follows:

13 Sec. 1. Workers' Compensation Commission to con-
14 duct study. The Workers' Compensation Commission
15 shall conduct a study regarding delays within the
16 workers' compensation system and consequential human
17 and financial harm suffered by injured workers and
18 their families caused by the delay in receiving work-
19 ers' compensation benefits.

20 A. The Workers' Compensation Commission shall
21 undertake the study on an appropriate sample or
22 samples of petitions for award in which:

23 (1) Claimants prevailed; and

24 (2) Claimants were disabled for 6 months or
25 more.

26 B. The purpose of the study is to accomplish the
27 following:

28 (1) Determine the percentage of all peti-
29 tions for award in which claimants pre-
30 vailed;

31 (2) Ascertain the degree of compliance by
32 employers and insurance carriers with provi-
33 sions of the Maine Revised Statutes, Title
34 39, section 111-A, regarding the provisional
35 payment of nonoccupational benefits;

36 (3) Ascertain and attempt to describe pat-
37 terns of abuse for nonpayment and percent-

1 ages for identified large carriers and large
2 self-insurers compared to the averages de-
3 tected in the survey;

4 (4) Consider other causes for delay in ad-
5 dition to intransigence of insurers, includ-
6 ing questions of apportionment, change of
7 insurance carriers, change to self-insurance
8 status and such other matters as may assist
9 the Legislature and the commission in under-
10 standing and correcting financial and emo-
11 tional suffering and hardship to injured
12 workers and their families caused by time
13 consumed in the workers' compensation adju-
14 dication process;

15 (5) Consider internal administrative
16 changes within the commission which may re-
17 duce back logs and delays; and

18 (6) Ascertain the severity and frequency of
19 financial and emotional losses caused to in-
20 jured workers and their families by delays
21 in regard to loss of housing, motor vehicles
22 or personal possessions and of family health
23 insurance.

24 Sec. 2. Report to legislative committee. The
25 chairman of the Workers' Compensation Commission
26 shall report to the joint standing committee of the
27 Legislature having jurisdiction over labor before
28 January 1, 1987. This report shall include:

29 A. A description of the results of the study,
30 including any relevant statistical data; and

31 B. Any suggested reforms or remedies which will
32 help eliminate or minimize delay within the sys-
33 tem and consequential human suffering.

34 Emergency clause. In view of the emergency cited
35 in the preamble, this Act shall take effect when ap-
36 proved.