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

Submitted to the
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(Second Regular Session)

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MISSION STATEMENT

The Board's Mission Is to Serve the Employees and Employers of the State Fairly and Expeditiously by Ensuring Compliance with the Workers' Compensation Laws, Ensuring the Prompt Delivery of Benefits Legally Due, Promoting the Prevention of Disputes, Utilizing Dispute Resolution to Reduce Litigation and Facilitating Labor-management Cooperation.

EXECUTIVE SUMMARY

The Workers' Compensation Board, in consultation with the Superintendent of Insurance and the Director of Labor Standards, is directed by statute to submit an Annual Report to the Governor and the Legislative Committees on Labor and Banking & Insurance by February 15th of each year.

In 1997 the Legislature, with the support of the Governor, enacted P.L. 1997, Chapter 486 to supplement the Workers' Compensation Act of 1992. The legislation, which became effective September 19, 1997, provides a new Mission Statement for the Board: "The board's mission is to serve the employees and employers of the state fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation."

The new legislation shifts the focus of the Board from dispute resolution to dispute prevention and compliance. The main themes of Chapter 486 are the "Worker Advocate Program" and the "Audit, Enforcement, and Monitoring Program."

The Worker Advocate Program was created to provide advocates for unrepresented employees who are injured after January 1, 1993. The effective date of the legislation is September 19, 1997. Worker advocates were hired, trained, and as of November 1, 1997 assigned to their offices and are currently representing employees at both the mediation and formal hearing levels.

Chapter 486 mandates an "audit, enforcement and monitoring program by July 1, 1998, to ensure that all obligations under this Act are met, including the requirements of section 359." A Monitoring, Audit, and Enforcement Division was created to develop and implement the Monitoring, Audit, and Enforcement Program. The Board anticipates the Program to be in place by March 1, 1998, well in advance of the July 1, 1998 date.

The Board, with sponsorship from the Department of Labor and the Department of Professional and Financial Regulation, retained the firm of Coopers & Lybrand to do a business assessment of the Workers' Compensation Board. The

study, along with recommendations, were presented to the Board on December 18, 1997. The implementation of the recommendations is scheduled to take place during the next 24 months. This activity should improve the efficiency of the Board and assure the successful implementation of the 1992 Act and the subsequent revisions found in Chapter 486.

Technological advances will in time improve the quality of financial data available to policymakers. The Workers' Compensation Board is actively developing the Electronic Data Interchange (EDI) process. Presently, Maine Employers' Mutual Insurance Company, The Dunlap Agency, Northern General, and the State of Maine submit First Reports electronically. Additionally, MEMIC files all proof of insurance coverage forms by EDI. The Board is engaged in discussions with the International Association of Industrial Accident Boards and Commissions to assist the Board in further expansions of its EDI program. The goal is to get 80% of the users on EDI within the next two years.

The Act provides that effective January 1, 1998, the Workers' Compensation Board adjust the 15% permanent impairment threshold so that 25% of all cases with permanent impairment will continue to receive compensation for the duration of the disability. The Act further provides that effective January 1, 1998, the 260-week limitation be extended 52 weeks for each year the Board finds the frequency of such cases is no greater than the national average. The Board requested Advanced Risk Management Techniques, Inc. (ARMTech) to perform an actuarial review pursuant to 39-A M.R.S.A. §213. ARMTech has recommended a reduction of the threshold to 11% and further recommended that indemnity benefits not be extended. The Board voted a reduction of the threshold to 11.8% and voted that indemnity benefits not be extended.

Prior to 1992 reform legislation, insurance carriers were writing very few risks in the voluntary market, and the vast majority of all insured employers were written in what was known as the "assigned risk pool in the residual market," or the "Pool." That pool operated for the years 1988 to 1992. In 1992, the residual market share was 82.6%. In 1992, Maine Employers' Mutual Insurance Company (MEMIC) was established by legislation, and there was also created an open competitive rating environment. MEMIC was established as an employer-owned mutual insurance company and replaced the Pool beginning January 1, 1993. In 1998, MEMIC reduced its rates an average of 12.2%. This reduction was preceded

by an average 10.2% rate reduction in 1997 and an average 8.2% rate reduction in 1996. The 1998 rate reduction marks the fifth consecutive overall rate reduction.

The experience of insurers writing workers' compensation policies has improved significantly in recent years as measured by industry-wide loss ratios. In 1991, the loss ratio was 1.87 and in 1996 the loss ratio was .67.

Additional carriers continue to reenter the market, resulting in more options for Maine employers. As of November, 1997, 130 insurance carriers have filed and received approval from the Bureau of Insurance to sell workers' compensation insurance in Maine. (Since 1996, 58 companies have obtained authority to write workers' compensation coverage.) Overall, since 1994 the cumulative impact of the rate reductions, including the recently-approved 1998 reductions, is a 41% decrease in loss costs rates.

Self-insurance represents a significant part of the workers' compensation market in Maine and is a viable alternative for many employers in the State. Since 1988, 19 new self-insured groups have been formed in Maine bringing the total number of groups to 21. These 21 groups represent approximately 1,350 employers. Additionally, there are 118 individual self-insured employers in Maine. It is estimated that self-insureds now represent approximately 50% of the workers' compensation market in Maine in terms of annual standard premium.

When contrasted with the conditions which existed during the years 1988 through 1992, the competition in the Maine workers' compensation market has clearly improved and Maine employers have many more options. When one considers the range among workers' compensation rates, the number of carriers in the market place, and the overall decline in the rate levels since 1994, the Maine workers' compensation market is healthier, many employers have greater options and lower costs, and market competition has significantly increased.

Last year, the Legislature passed P.L. 1997, Chapter 486, a law which bolstered the workers' compensation program and tightened the collection and monitoring of reported information. This was a positive step toward ensuring that information used for policy and decisionmaking will be available in the future. The Board must take positive action to ensure that the data collection and

monitoring as required in Chapter 486 is enforced. Data definitions and time frames must be established.

Accurate and complete data presents many new opportunities for the Board and users of the system, such as the receipt of grants to study occupational diseases, maximizing resources, a greater ability to address safety concerns, and accurate information for policymakers to make informed decisions.

Data collected in the Annual Survey of Occupational Injuries and Illnesses by the Bureau of Labor Standards shows that the number of cases resulting in days away from work in Maine has declined sharply over the past eight years. The number of reported cases involving lost days from work has been on the decline and this has been a factor in lowering workers' compensation costs.

Another positive trend is that due to return-to-work programs and improved medical management, the number of cases resulting in restricted work activity has increased significantly since 1992 while the number of cases resulting in days away from work has dropped. The number of cases that resulted in restricted work activity increased to the point where they are nearly equal to the number of cases that resulted in days away from work.

While the overall trend is positive, it is important to note that the increase in cases that result in a return to restricted work activity also indicates that prevention strategies are needed to address these less severe accidents and illnesses. It is true that lost time injuries have decreased significantly, but it is also true that the total number of injuries (lost time cases plus restricted work day cases) have remained relatively constant since 1991.

The health of the economy had a significant impact on the rate at which injuries and illnesses occurred in Maine's workplaces. As the unemployment rate fell, the rate and number of injuries and illnesses increased due in part to the hiring of less experienced workers who were at the higher risk of being injured at work. However, beginning in 1992, factors other than the economy have had significant impact on the rates.

The Bureau of Labor Standards will select 30 public sector employers with the highest rates of injuries and illnesses to be part of a public sector safety

initiative. This program is modeled after the successful "Maine 200" program which did similar work in the private sector.

The report that follows provides details on the items summarized plus additional information on other aspects of the workers' compensation system. Many of the changes implemented by the 1992 legislation have become operational. The changes recommended by Chapter 486 are presently being implemented. Future monitoring and auditing efforts will provide the necessary information to evaluate the consequences of these changes.

**A. PROFILE OF THE WORKERS' COMPENSATION SYSTEM, PERSPECTIVE
OF THE WORKERS' COMPENSATION BOARD: WORKERS'
COMPENSATION BOARD.**

I. INTRODUCTION

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

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

Enacted in 1997, Chapter 486 expanded the scope of the report by requiring more data about the Board's administrative and regulatory duties. It specifically calls for data to measure compliance of individual insurers, self-insurers, and third-party administrators. The Board has drafted a Monitoring, Audit, and Enforcement Program pursuant to Chapter 486. Although the Program is not due until July 1, 1998, the Board concluded that monitoring, auditing, and enforcement should start as soon as possible. The Board anticipates the Program to be in place by March 1, 1998. Auditors have already been hired and the Program is undergoing its second draft.

The Worker Advocate Program which was expanded by Chapter 486 was in place by November 1, 1997. The Program provides advocates for unrepresented employees at both the mediation and formal hearing levels.

The following is the Workers' Compensation Board's section of the Annual Report. The Board's report is organized in the following sections:

- I. Introduction.
- II. Historical - General.
- III. Historical - State Agency.
- IV. Board Organization and Program.
- V. Operations and Data Gathering.
- VI. Profile of the System.
- VII. Claims Monitoring.

VIII. Workers' Compensation Board Administration.

- A. Dispute Resolution.
- B. Payments, Coverage, NOCS/Petitions, and EDI.
- C. Budget and Assessment.
- D. Medical/Rehabilitation.
- E. General Counsel Report.
- F. Abuse Investigation Unit.

IX. Permanent Impairment Threshold and Extension of Benefits.

X. Worker Advocate Program.

XI. Coopers & Lybrand Report.

XII. Summary.

II. HISTORICAL - GENERAL

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

Prior to workers' compensation, injured employees could sue if hurt at work. However, employers could defend themselves by arguing that the accident was not their fault. They could use legal defenses of assumption of risk by the employee, negligence by the employee, and negligence by a co-worker.

Employees, if they prevailed in court, were eligible to receive damages for pain and suffering. However, recoveries, especially for minor injuries, were rare. In the legal climate of the late nineteenth and early twentieth centuries, injured workers faced a difficult burden of proof.

States enacted workers' compensation laws with two purposes in mind. One was to routinely provide benefits for wage loss and medical treatment without requiring legal action. The other, less recognized purpose was to exempt employers from damages for pain and suffering, the most costly aspect of many awards in personal injury lawsuits. Without workers' compensation, large punitive awards beyond actual wage loss and medical treatment would be likely to be commonplace in today's legal climate.

Although the system was "no fault," disputes still occurred about whether an injury was work-related and the degree of disability. In Maine and elsewhere, state agencies often functioned as a quasi-judicial alternative to the court system. Administrators maintained data to process disputes rather than administrate benefits.

Workers' compensation changed little between its inception and approximately the early 1970's. Then, a national, bi-partisan consensus slowly developed that favored raising benefits. In the late 1970's, Maine's Legislature passed laws that increased both benefit levels and the number of employers covered by the system. This followed national trends and recommendations by a federal study commission.

Also, statutes, case law, and medical evidence began to recognize injuries like back strain or carpal tunnel syndrome as work-related. This brought more ambiguous injuries with longer periods of disability into the system.

The combination of higher benefits and more complex and costly injuries increased both the system's expenditures and the potential for disputes. Although a bi-partisan consensus supported these changes, few, at the time, appreciated how much costs would accelerate.

By the early-1980's, however, it had become apparent. For approximately the next decade, workers' compensation was a controversial political issue. Almost every legislative session included a contentious debate about new laws concerning workers' compensation.

III. HISTORICAL - STATE AGENCY

These statutory changes were intended to reduce costs. However, they also expanded the operations of the state agency of the time, the Workers' Compensation Commission, the predecessor to the Workers' Compensation Board. For most of its history, it had been a small quasi-adjudicatory agency with part-time Commissioners. Its primary mission was dispute resolution through formal hearings.

During the early 1980's, the agency grew from 35 employees to approximately 110. Part of this growth was the result of creating a less formal step to the dispute resolution process. Policy makers correctly believed that minor claims could be resolved without litigation. Setting up the new process involved establishing regional offices in Portland, Lewiston, Augusta, Bangor, and Caribou. The Commission was also empowered to monitor claims handling practices, which would lead to fewer disputes and lower costs.

These new operations expanded the data maintained by the state agency. The Workers' Compensation Board has better information about dispute resolution than it does about costs and claims processing. However, fairly recent (mid-1996) enhancements to our computer system make it possible to report case monitoring at a higher level than in the past.

The 1996 report, issued in February 1997, contained, for the first time, a number of tables comparing private insurance carriers, MEMIC, and self-insureds. Clear differences emerged. The data showed that MEMIC tended to pay claims faster and make less use of the state agency's dispute resolution process.

The Board is in the early stages of establishing benchmarks and penalty procedures for non compliance. There is a range of options, from assessing penalties on individual cases, to surcharging the assessment for payors who over utilize the dispute resolution system, to even referring a payor to the Bureau of Insurance for additional penalties and corrective action. The new "Monitoring, Audit, and Enforcement Program" created pursuant to Chapter 486 will deal with these issues as well as provide a comparison of individual payors. By revising the Board's Mission Statement, Chapter 486 calls for the Board to place greater emphasis on these activities.

Monitoring, by definition, lacks early authority to overrule private adjustment. Accordingly, it tends to focus on the timely filings of various forms. That is not to disparage the value of enforcing the filing requirements of the statute. In its absence, payors might be more lax about compliance. Monitoring is an important source of data. Monitoring provides an incentive for not delaying the initial investigation and decision about payment.

The ability to identify payors who contest a significantly higher percentage of cases than their peers offers a new opportunity to pursue the issue of bad faith adjusting. Although proof in an individual case can be problematic, comparative statistics may provide a basis for identification of such offenses and administrative action by the Board.

IV. BOARD ORGANIZATION AND PROGRAM

A. Organization.

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

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

B. Program.

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

V. OPERATIONS AND DATA GATHERING

A. Initial Injury Reports.

First Reports are filed for cases involving missed work or controverted medical only injuries. They contain the name and address of the affected worker, the employer, the insurance carrier, a description of the incident, date of incapacity, and other information necessary for processing a claim.

Information from the First Report is electronically stored and used by the Workers' Compensation Board and the Bureau of Labor Standards, Technical Services Division.

The Workers' Compensation Board uses the information to identify insurance coverage and to send a brief letter to the injured worker verifying the First Report. An Employee Pamphlet presenting basic material about the workers' compensation system is included with the letter.

The Technical Services Division codes accident information from the First Reports and is the primary source of accident and safety analysis.

B. Coverage Monitoring and Data.

Payors file coverage information with the Board. This data is electronically maintained. It permits the Board to identify which insurance carrier or self-insured is responsible for a particular claim. The Workers' Compensation Board's Abuse Investigation Unit follows up on employers not shown as providing coverage.

C. Initial Payments.

Initial benefit information is reported to the Board on a Memorandum of Payment form. To verify correct payment, this preliminary information is later checked against another filing which establishes the worker's average weekly wage. The Memorandum of Payment also provides data to calculate the promptness of first payment, from the date of incapacity to the date of payment. This information is electronically recorded.

D. Other Payment Data.

The carrier/employer files other payment documents at case closure or at six-month intervals. These reports total costs for several categories of benefits. This data is also electronically stored.

These payment documents do not support Board operations or those of the employer/carrier. Consequently, there is no direct method to become aware of missing or inaccurate data.

Lump sum agreements are approved by a Board Hearing Officer. The amount and date of settlement is entered into the agency's computerized database. Because a Board operation is involved that data is more complete.

E. Electronic Data Interchange.

Technological advances may in time improve the quality of financial data available to policy makers. Electronic transfer of data is becoming more and more feasible. Within a few years it may become possible for all payors to initiate a machine to machine transfer of summary financial data on individual claims from their computers to a central computerized data base.

The Workers' Compensation Board is actively developing so-called EDI (Electronic Data Interchange) procedures. Today, Maine Employers' Mutual Insurance Company, the Dunlap Agency, Northern General, and the State of Maine submit coverage information and First Reports electronically. The Board is encouraging large employers, carriers, self-insureds, and third-party adjusters to participate in the program. The Board is engaged in discussions with the International Association of Industrial Accident Boards and Commissions to assist the Board in further expansion of its EDI program. The goal of the Board is to get 80% of the users on EDI within the next two years.

F. Dispute Resolution.

Between 1984 and 1992, an informal conference was required before litigation. At that conference, an adjudicator reviewed the case and advised both

sides about the probable ruling based on evidence available at the time. Agency staff, known as Employee Assistants, worked with injured employees.

Following the Workers' Compensation Act of 1992, Troubleshooters and Mediators replaced the Employee Assistants. When a dispute arises, a Troubleshooter contacts both sides in an attempt to resolve the problem. This is usually done by mail and phone. Approximately 50% of controversies are resolved at the Troubleshooting stage.

If a case is not resolved, it is referred to Mediation. This involves a face-to-face meeting between the parties and a Workers' Compensation Board Mediator. The process allows the parties to reach a voluntary resolution of the case through discussions and negotiations.

About 40% of cases referred to mediation are either resolved at or before mediation. This represents approximately 20% of the original disputes. Therefore, approximately 70% (50% at troubleshooting plus 20% at mediation) are resolved without requiring formal hearing.

Unresolved cases may proceed to formal hearing. The formal hearing process is quasi-judicial and is presided over by a Workers' Compensation Board Hearing Officer. Once the evidence is closed, the Hearing Officer will render a written decision on the case.

A Hearing Officer's decision is final. There is a discretionary appeal to the Supreme Court of Maine on matters of statutory interpretation.

Parties initiate disputes at all three levels by filing documents called Petitions and Notices of Controversy. The Workers' Compensation Board uses its computer system to process these documents, schedule hearings, and track outcomes. These computer applications provide the Board with substantial data concerning the dispute resolution process.

VI. PROFILE OF THE SYSTEM

A. Costs are Concentrated in a Small Percentage of Injuries.

Aggregate cost data on individual claims is reported to the Workers' Compensation Board. This data provides an illustration of the relationship between serious injuries and the total cost of the system.

Most injuries are minor. A small number of serious injuries generates most of the total expense; 20% of the injuries create 80% of the costs and 10% of the injuries create approximately 60% of costs. Similarly, a high percentage of litigation relates to the same small group of serious, long-term injuries.

Injury year 1988 is used because much of the costs attributable to these injuries has been reported to the Board at this point of the claim cycle. As may be seen, the top 20% of injuries accounted for almost 85% of reported costs. Undisplayed in the table is the top 10%. However, these accounted for fully 60% of reported costs.

Costs Reported as of January 29, 1998	
Percent of Injuries v. Percent of Cost Injury Year 1988	
Percentile of Individual Injury Cost	Percent of Reported Total Costs
Highest 20%	84.0%
Second 20%	13.0%
Third 20%	2.0%
Fourth 20%	0.7%
<u>Lowest 20%</u>	<u>0.3%</u>
Total	100.0%

Excluded from this figure are claims with less than \$100 reported.

B. Multi-year Claim Cycle.

It is common for a claim to be settled with a lump sum payment at some point in the claim cycle. These settlements are approved by the Board and entered into our computer. Although lump sum settlements are not the same as total benefits, their occurrence illustrates the long duration of the claims cycle in workers' compensation.

The following displays a ten year picture of settlements on injuries occurring in 1988.

Lump Sum Settlements	
Injury Year 1988 by Year of Settlement as of January 30, 1998	
Year of Settlement	Number of Settlements
88-89	491
90-91	1,355
92-93	837
94-95	342
96-97	149
Total	3,174

As may be seen, settlements occur for many years after the injury. These lump sums represent substantial benefit payments.

C. Benefit Payments and Other Activity in a Calendar Year Reflect the Cumulative Effect of Earlier Injury Years.

Activity in a calendar period is a cumulative product of injuries in several prior years. At a moment in time, aggregate benefit payments and litigation relate almost totally to past injuries, not current ones. Consequently, it may take several years after statutory changes to evaluate their effect on costs and litigation.

Data about such things as the number of First Reports or cases with disputes during a calendar year describe the agency's annual workload. However, activity in one calendar year provides only partial insight into the system as a whole.

To illustrate the degree to which benefit payments and litigation in a calendar year relate to injuries from previous years, this report presents two tables showing a distribution of activity in calendar 1997 by the underlying year of injury for individual cases. One is the distribution of lump sum settlements approved in 1997. The other is litigation initiated in 1997.

Settlements reached in 1997 tail back for about a decades worth of injury years.

Injuries Lump Summed in 1997	
Distribution by Injury Year	
Year of Injury	# of Lump Sum Settlements
85 - 86	64
87 - 88	137
89- 90	338
91 - 92	309
93 - 94	526
95 - 96	303
97	4
Total	1,681

Only 4 of the 1,681 of lump sum settlements approved in 1997 were for injuries occurring in 1997.

A similar distribution exists for litigation initiated in 1997.

Cases to Formal in 1997 by Year of Primary Injury	
Year of Injury	# of Cases
Pre 86	179
86 - 87	132
88 - 89	206
90 - 91	265
92 - 93	339
94 - 95	523
96	467
97	153
Total	2,264

The tail extends backward for more than a decade. Only 153 cases initiated in 1997 related to 1997 injuries.

D. Benefit Costs as Illustrated by the Average Value of Lump Sums Are Declining (Comparison Title 39 and 39-A (Injury Years 1992 and 1993) at the Same Point of the Claim Cycle.)

Although lump sum settlements are not the same thing as total benefits paid, the average amount of lump sum settlements at the same point in the claim cycle is an illustrative comparison between injury years. This chart compares average lump sum settlements at comparable points in the claims cycle for injury years 1992 the last year of the benefit structure under title 39 and 1993 the first year of the current benefit structure under 39-A . The year of the claim cycle is the number of years from the date of injury. The first year of the claim cycle for 1992

is 1992, the second year is 1993. The first year of the claim cycle for 1993 is 1993, the second year is 1994.

<p>Cost Trends as Illustrated by Average Lump Sums</p> <p>at Comparable Points of the Claim Cycle</p> <p>Injury Years 1993 and 1992</p> <p>as of January 30, 1997</p>		
Year of Settlement in Claim Cycle	Average Settlement Injury Year 1992	Average Settlement Injury Year 1993
1	\$10,632	\$12,882
2	\$20,850	\$16,278
3	\$23,952	\$27,823
4	\$36,077	\$24,263
5	\$33,717	\$32,065
6	\$41,906	

The average value of lumps seems to be declining. However, it is too early in the claim cycle injuries to see the full extent of that reduction. The decrease in average lump sum settlements is likely to become more pronounced later. Substantial anecdotal evidence exists that the cost of the system is declining.

E. The Number of Reported Injuries and the Ratio to Employment is Declining.

The number of disabling injuries and illnesses, where one or more days of work is lost, has declined each year since 1991. It is difficult to determine the

exact reasons for the decline, but certain factors should be cited, such as the change in the reporting system, safety programs, and return to work programs.

Prior to the law changes of 1991, First Reports were required for non-controverted medical only injuries. The elimination of this requirement reduced the number of First Reports filed in 1992 and subsequent years. Additionally, the 1992 Act increased the waiting period for indemnity benefits from three to seven days. That may have resulted in non reporting of some minor injuries.

First Reports, Disabling Cases, and Cases with More Than \$1,000 Reported 1988-1996			
Injury Year	Total First Reports	Disabling Cases*	GT \$1,000 Cases
1988	78,958	26,431	7,395
1989	80,349	26,006	8,616
1990	75,155	26,693	8,158
1991	58,541	21,919	6,150
1992	24,298	19,418	5,370
1993	20,687	16,831	5,129
1994	19,231	16,016	4,629
1995	17,498	13,817	3,739
1996	16,646	12,866	3,099

*A disabling case is an injury or illness resulting in one or more days away from work.

The number of cases with more than \$1000 of wage loss benefits, including lump sums, is less subject to influence by changing reporting requirements. Benefit payments substantially increase the likelihood that the case will be recorded in the Board's computer. A ratio of such cases to average non farm wage and salary employment provides a crude incidence rate.

Ratio of Cases with More than \$1,000 of Costs to Average Non Farm Wage and Salary Employment 1988-1996			
Year	Wage Loss GT \$1,000 Cases	Average Employment	Ratio
1988	7,395	527,500	1.4%
1989	8,613	547,120	1.6%
1990	8,158	539,250	1.5%
1991	6,150	515,050	1.2%
1992	5,370	513,570	1.0%
1993	5,129	520,280	1.0%
1994	4,629	533,420	0.9%
1995	3,739	540,100	0.7%
1996	3,099	549,800	0.6%

F. Maine Employers Mutual Insurance Company (MEMIC) Has Become a Major Source of Coverage.

The agency's database supports an analysis both by injury year and by the type of payor. Maine Employers' Mutual Insurance Company (MEMIC) was created by the 1992 law changes. It bears similarities to group self-insurance. It

offers employers an alternative to private insurance and to the controversial assigned risk pool existing in 1992 and earlier years.

Between 1993 and 1996, MEMIC grew from about 20% to 40% of coverage as measured by total first reports. Preliminary figures indicate that this fell to about 33% in 1997. Total first reports includes both lost time and medical only cases.

First Reports by Type of Coverage								
Includes Both Lost Time and Controverted Medical Only First Reports Number and Percent - Injury Years 1993 through 1997								
Year	Type of Coverage							
	MEMIC		Self Insurance		Carriers		Total	
	#	%		%	#	%	#	%
1993	4,081	20%	8,599	42%	8,007	39%	20,687	100%
1994	8,302	42%	8,086	41%	3,304	17%	19,692	100%
1995	7,830	43%	7,015	39%	3,168	18%	18,013	100%
1996	6,493	38%	6,773	40%	3,808	22%	17,074	100%
1997*	5,225	33%	6,015	38%	4,735	30%	15,975	100%

* Preliminary as of January 30, 1998

VII. CLAIMS MONITORING

Chapter 486 provides for an audit and enforcement program. "The executive director shall establish an audit, enforcement and monitoring program by July 1, 1998." An annual summary is to be submitted to the Governor and the Legislature by February 15th of each year. The first annual summary is due February 15, 1999.

The Board anticipates that the Program will be in place ahead of the scheduled date of July 1, 1998.

The Board started its work in the Monitoring, Audit and Enforcement Program shortly after the effective date of the legislation (09/19/97). Two auditors have been hired and are presently working on the Audit Plan to track the timeliness of payments and filings, as well as other compliance requirements. The Plan will also track whether parties are unreasonably contesting claims and ensuring that all reporting requirements are met.

The legislation also requires that the Board set benchmarks to measure compliance, with input from insurers, self-insurers, third-party administrators, and other parties the Board figures appropriate. The Board has already met with the group representing insurers, self-insurers, and third-party administrators. The Board has scheduled meetings with the group representing employees.

The Board anticipates that the Audit, Enforcement, and Monitoring Program and the Audit Plan will be in place by March 1, 1998, four months ahead of schedule.

Dispute Resolution System Utilization.

Payors have the legal right to initially deny claims. However, questions inevitably arise about whether this decision was made in good faith. In an individual dispute these questions can be difficult. To the best of our knowledge, in Maine there has never been a successful lawsuit for bad faith workers' compensation adjusting. The standard of proof is a difficult burden.

However, statistics concerning relative usage of the dispute resolution process may shed some insight as to how carriers, self-insurers, and TPA's handle their cases.

The following tables display utilization of the three stages of dispute resolution for injury years 93 through 1996 as of February 4, 1998. Older injury years have higher levels of utilization because more time has passed for disputes to occur. It is too early to use these tables to assess whether disputes as a whole are more or less frequent.

Troubleshooting is the first step for initial denials and other controversies that may arise. Workers' Compensation Board employees known as Claims Resolution Specialists contact both sides and attempt to resolve the problem. This is usually by mail or phone.

<p>Troubleshooter Utilization by Type of Coverage</p> <p>Percent of Lost Time First Reports to Trouble Shooting at Least One Time Injury Years 1993 through 1997 (As of February 4, 1998)</p>				
Injury Year	MEMIC	Self Insurance	Carriers	State Wide
1993	33%	33%	38%	35%
1994	31%	30%	35%	31%
1995	27%	30%	36%	30%
1996	26%	27%	30%	28%
1997 Preliminary	19%	22%	22%	21%

Statewide, about 50% of disputes are resolved through these low level contacts with the Troubleshooters. For the remaining disputes, the next step is mediation, a face to face meeting to see if discussion can lead to a voluntary agreement.

Mediation Utilization by Type of Coverage				
Percent of Lost Time First Reports to Mediation at Least One Time Injury Years 1993 thru 1996 as of February 4, 1998				
Injury Year	MEMIC	Self Insurance	Carriers	State Wide
1993	9%	7%	8%	8%
1994	10%	10%	13%	10%
1995	8%	9%	12%	9%
1996	9%	9%	12%	10%

The last stage of dispute resolution is the formal hearing process. Workers' Compensation Board Hearing Officers preside over the hearings. It is an adjudication based on evidence presented and a legal analysis. Typically, cases at this level are legally and factually so complex that reaching a voluntary agreement is difficult.

Formal Hearing Utilization by Type of Coverage				
Percent of Lost Time First Reports to Formal at Least One Time Injury Years 1993 thru 1995as of February 4, 1998				
Injury Year	MEMIC	Self- insurance	Carriers	State Wide
1993	9%	7%	9%	8%
1994	6%	6%	8%	7%
1995	5%	5%	7%	5%

Injury year 1996 is not included because it takes at least two calendar years to get a picture of litigation for an individual injury year.

VIII. WORKERS' COMPENSATION BOARD ADMINISTRATION

A. Dispute Resolution.

The following tables are presented on a calendar year basis because they describe the agency's administrative activities. As may be seen, progress was made during 1997 in terms of reducing the number of cases pending at all three levels.

The Act established a three-tier dispute resolution process: troubleshooting, mediation, and formal hearing or arbitration. Filings in a calendar year represent the Board's workload and work flow.

The following tables use "Cases" as a unit of measure. It requires explanation because cases, claims, and injuries are often used interchangeably during conversations. For individual situations, often, they are the same. However, differences exist because employees sometimes have experienced more than one injury. Petitions may be filed on multiple dates of injury for such a person at the same time. The issues in question are interrelated.

The whole dispute or "Case" encompasses all the filings on all the injuries relating to one employee at one point in time. A case is the unit of work on someone's desk. However, it is not always the same thing as an injury. Mathematically, each case involves approximately 1.2 injuries.

1993 was a start-up year for the Troubleshooting step.

<p style="text-align: center;">Troubleshooting</p> <p style="text-align: center;">Administrative Statistics 1993 - 1997</p>					
Year of Filing	Cases Assigned	Cases Disposed	Percent Resolved	Average # Days	Median # Days
1993	12,625	8,995	65%	105	96
1994	12,060	13,142	52%	81	61
1995	9,740	10,698	54%	74	65
1996	9,072	9,000	55%	70	60
1997	8,913	9,074	59%	56	44

The number of claims pending at Troubleshooting as of January 8, 1998 is 1,696 compared to 2,039 on January 2, 1997. The number of cases pending represents approximately 2 months of assignments.

Mediation					
Administrative Statistics 1993 - 1997					
Year of Filing	Cases Assigned	Cases Disposed	Percent Resolved at or Prior to Mediation*	Average # Days	Median # Days
1993	3,773	2,285	51%	n.a.	n.a.
1994	6,846	6,943	45%	n.a.	n.a.
1995	5,370	5,866	44%	82	63
1996	5,038	4,836	39%	80	58
1997	4,758	4,855	38%	77	63

* Resolved prior to mediation means that the parties reach an agreement after the Troubleshooter has forwarded the case to Mediation but before a meeting at the Workers' Compensation Board has been held. Of the 38% resolved at mediation in 1997, 13% were resolved prior, 25% at a mediational meeting.

As of January 16, 1998 1,013 cases were pending at Mediation, compared to 1,258 on January 2, 1997. The number of pending cases represents approximately 2.5 months of filings.

The transition from the old statute resulted in the hiring of ten Hearing Officers in early 1994. Accordingly, administrative statistics are presented beginning with 1994. However, it should be noted that litigation has decreased markedly in recent years. During the late 1980's approximately 4,000 cases annually went to the formal level. In the early 1990's, that figure rose to approximately 7 to 8 thousand cases a year. In recent years, only two to three thousand cases a year have been entering litigation.

<p>Formal Hearings</p> <p>Administrative Statistics</p> <p>1994 - 1997</p>		
Year of Filing	Cases Assigned	Cases Disposed *
1994	3,011	2,569
1995	3,194	3,393
1996	2,375	3,114
1997	2,267	2,791

* Disposed means decisions, dismissals, and lump sum settlements. Approximately half of dispositions are decisions, twenty percent are dismissals, and thirty percent are lump sum settlements.

The number of claims pending at the Formal Hearing level as of January 2, 1998 is 2,014 compared to 2,485 on January 2, 1997.

1994 and part of 1995 were transitional years for the new cadre of adjudicators. 1996 was a difficult transition to a new computer system. Administrative statistics at the formal level were essentially unavailable until late in the year. In 1997, the Board and its Hearing Officers became aware of a growing number of cases pending more than two years at the formal level. By mid-1997, the number had grown to the low 200's.

A small number of cases, for reasons particular to that dispute, may take more than two years. However, the number pending in mid 1997 represented an administrative problem at the agency. In mid-1997, we enhanced the computer support for docket management. The Hearing Officers have focused on these older cases. As of December 31, 1997, there were 99 cases pending more than two years.

B. Payments, Coverage, NOCS/Petitions, and EDI.

1. Coverage Division.

For injuries occurring after October 17, 1991, a First Report is filed with the Board if the injured employee loses one or more days from work or if work-related medical bills are disputed. The First Report contains the name and address of the affected worker, the employer, the insurance carrier, a description of the incident, date of incapacity, and other information necessary for processing a claim.

The Board has taken a leadership role in developing and implementing electronic data interchange technology (EDI). All First Reports are filed electronically with the Board by Maine Employers' Mutual Insurance Company (MEMIC), Dunlap, the Maine Bureau of Human Resources/Maine Health Information Center, and Northern General. This action has resulted in improving the efficiency and accuracy of First Report data. The Board is working with the employer and insurance community to encourage the expansion of this technology. The State of Maine has recently agreed to have placed all its departments on EDI, working through the Maine Health Information Center.

Monitoring employers to ensure that workers' compensation coverage exists is another mission of the Coverage Division. In cooperation with the Bureau of Labor Standards of the Department of Labor, the Board is able to cross-reference employers paying unemployment taxes and workers' compensation insurance. Additionally, MEMIC files all proof of insurance coverage forms by EDI. The combination of both programs reduced the number of employers in the Board's database with no recorded coverage from 65,000 to less than 6,000 employers. This action was accomplished without hiring additional staff or increased administrative costs.

The Division also processes employer applications for workers' compensation insurance waivers and independent contractor determinations. It usually takes approximately 14 days to process these applications.

2. 1996 Coverage Division Data.

Proof of Insurance Coverage	105,005
First Reports of Injury	12,209
Workers' Compensation Insurance Waivers	3,259
Independent Contractor Determinations	756
No Recorded Coverage Letters Mailed to Employers	11,801

3. Payments Division.

Initial payment information is reported to the Board on a Memorandum of Payment form. A Discontinuance or Modification form is filed when the employee returns to work with the same employer. Interim Reports are filed every six months for long-term cases. The Final Report is filed when payment activity ends. This form provides the cumulative totals of benefits paid during the entire history of each workers' compensation claim.

This Division monitors all lost-time cases, reviews Hearing Officer decisions, checks mediation agreements, and ensures that injured employees are paid timely and accurately. The staff in the Payments Division works closely with the workers' compensation community by providing a Forms Manual and training workshops to assist in completing the Board forms.

Recent workers' compensation legislation authorized the hiring of two auditors. These positions will allow the Board to audit the timeliness and accuracy of benefits, review claims handling practices, determine if claims are being unreasonably contested, and ensure that all reporting requirements to the Board are met. The results of the audits will be issued in quarterly compliance reports and will be available to the public.

4. 1996 Payments Division Data.

Memorandum of Payment	13,426
Wage Statements	11,575
Discontinuances	18,293
Hearing Officer Decisions	3,154
Interim/Final Reports	33,347
Miscellaneous Forms	22,031

Benefits of accurate payments data include:

- identifying the factors that increase workers' compensation costs;
- measuring the claims adjusting performance of insurance carriers, third-party administrators, and self-insured employers;
- pinpointing injuries with the highest costs to develop prevention and safety programs; and
- providing a factual and statistical basis for informed decisionmaking on proposed changes to the Act.

Filing compliance problems and related concerns about the accuracy of reporting payments data have prevented the Board from becoming a reliable source of cost information. Resource constraints have not allowed the Board to develop an extensive audit process or establish a pro-active data collection system. The Monitoring, Audit, and Enforcement Program should help to fill this void.

C. Budget and Assessment.

The Board issued its Administrative Fund Assessment for Fiscal Year 98 in the amount of \$6,000,000 last May. The assessment rate was changed to 2.78% from the 2.65% which was applicable in the previous fiscal year. The assessment distribution, based on the pro rata share of disabling cases between self-insured employers and those covered by insurance companies, changed slightly between the two fiscal years. The distribution in FY97 was approximately 60/40 and for FY98 it was about 58/42, the higher number belonging to those covered by insurance companies.

The Board assessment was amended by the Legislature effective September 19, 1997 when it enacted P.L. 1997, Chapter 486. This law raised the assessment by \$600,000 in order to fund the Worker Advocate program through the formal hearing level, to add a Senior Staff Attorney to manage the program, and to fund two Auditor positions to work on compliance issues. The Board issued a supplemental assessment to self-insureds which became due on September 19, 1997 and raised the rate from 2.78% to 3.15% for the insureds' share of the assessment which will be due over quarters two, three, and four.

During FY97, the \$6,000,000 assessment actually generated \$6,521,459. The FY96 assessment, also for \$6,000,000, generated \$5,841,809. The excess of \$521,459 for FY97 was in part a result of reconciliations done in September of 1997. This money will begin to fund a reserve account as anticipated by 39-A M.R.S.A. §154(6). The \$6,000,000 assessment has just recently been exceeded for the first time.

As stated in last year's report, it was anticipated that FY97 expenditures would exceed FY94's (the base year) by about \$918,000. Total FY94 expenditures amounted to \$4,744,278 and FY97's were \$5,750,914 or \$1,006,636 over FY94's. The Board has managed, thus far, to remain within its budget due to some vacant positions and to a continuing cautious approach to expenditures. FY98's expenditures will be higher due to the enactment of Chapter 486.

The Board's budget will experience some cost shifting as a result of recommendations made in the Coopers & Lybrand report. The agency will be making every effort to identify new costs as recommendations are thought through. As of the drafting of this report, for example, a new Agency Technology Officer position has already been identified as being necessary. This position will need to be funded at Pay Range 30 and will be funded from the elimination of two of the agency's four vacant information services positions. Other recommendations regarding outsourcing the technical infrastructure of the Board to the Bureau of Information Services and the business application system to the Department of Labor would result in SLA's or Service Level Agreements for services which would be performed. The costs of these SLA's have yet to be determined at this time.

D. Medical/Rehabilitation Issues.

1. Rulemaking for the Office of Medical and Rehabilitation Services.

The following rules went to public hearing and were approved by the Board: Utilization Review, Protocols for the Care of Low Back Injuries, Permanent Impairment Guidelines, and a Medical Fee Schedule. The following rules are going to public hearing within the next two months: Protocols for the Care of Carpal Tunnel and Pain, Regulations Covering Return to Work and Rehabilitation, and a Medical Fee Schedule for Hospital Inpatient Care.

2. Medical and Rehabilitation Issues.

The Independent Medical Review system is working very well. To date in 1997, 134 cases have been reviewed. Seventy-six of the requests came from injured workers (31 were pro se), 42 requests came from employers, and 16 came from Hearing Officers. A Medical Fee Schedule covering Inpatient Hospital Care is being prepared. The Medical Fee Schedule which went into effect in 1997 covering office visits and hospital outpatient services will be updated to deal with the updated CPT coding and the latest RBRVS. Regulations covering rehabilitation will be promulgated with emphasis on early return to work and if RTW is not possible, then there must be an early referral for evaluation for rehabilitation services.

E. General Counsel's Report.

1. Rules.

The Workers' Compensation Board adopted or amended five new rule sections in 1997. Two of those involve medical treatment or payment for medical services as follows: Chapter 7: Utilization Review, Treatment Protocols for Acute Low Back Injury, and Permanent Impairment; and Chapter 5: Medical Fee Schedule. These rules are described in detail in the section of this report on medical issues.

The Board also adopted Chapter 8, "Procedures for Payment," which accompanied a form entitled "Consent Between Employer and Employee." This form enables an employer and an employee to agree to a closed-ended period of payment without prejudice without the intervention of the dispute resolution process. Employees are advised on the form, however, to consult with a troubleshooter or an advocate before signing.

On October 6, 1997, Chapter 12, Section 19, entitled "Disposition of Evidence" went into effect. This rule enables the agency to dispose of evidence and transcripts in cases that have been closed or settled. We are presently working on a procedure to return evidence to the parties upon request and to ensure that evidence in cases that have been appealed is retained.

Recently adopted by the Board and effective on November 29, 1997 is Chapter 1, "Fringe Benefits." This rule was prompted by the Law Court's decision in *Beaulieu v. Maine Medical Center*, 675 A.2d 110 (Me. 1996), which held that fringe benefits must be included in an employee's average weekly wage regardless of date of injury. The intent of the rule is to clarify the process and reporting requirements for including fringe benefits in an employee's wage.

2. Employee Pamphlet.

The Board approved amendments to the employee pamphlet which provides answers to commonly asked questions about workers' compensation. This pamphlet is mailed to every injured employee when a First Report of Injury is filed. It is presently being revised again to include information and telephone numbers for the Worker Advocates.

3. Reciprocal Agreement.

The Board entered into a reciprocal agreement with the State of New Hampshire as outlined in 39-A M.R.S.A. §113. This section, entitled "Exemption for nonresident employees, reciprocity," enables the Workers' Compensation Board to enter into reciprocal agreements with other states with similar enabling legislation in order to clarify the coverage laws with respect to employees who live in one state but temporarily work in another state. The State of New Hampshire enacted identical enabling legislation and is the only state bordering

Maine. The Board therefore entered into negotiations regarding the reciprocal agreement and an agreement was executed on October 23, 1997.

4. Hanover Case.

As a result of a disagreement regarding the interpretation of the Board's prior assessment statute (it has since been amended), Hanover Insurance Company brought suit against the Board in 1995. Hanover alleged that it had overpaid the Board's assessment and therefore began offsetting future payments against the alleged overpayment. The Superior Court ruled in favor of Hanover in 1996 and the Board appealed that decision to the Law Court. In 1997, the Law Court affirmed the Superior Court's decision. *See Hanover Insurance Company v. Workers' Compensation Board*, 695 A.2d 556 (Me. 1997).

F. Abuse Investigation Unit Report.

Section 205(3) of the Workers' Compensation Act required that accrued weekly benefits be paid within 30 days of becoming due and payable. A \$50.00 per day penalty is added and paid to the worker for each day over 30 days in which the benefit is not paid. There is a maximum penalty of \$1,500.00 under this section. From January 1, 1997 to October 31, 1997, the Abuse Investigation Unit received 16 complaints pursuant to §205(3). Of these, ten were granted and six were dismissed. The total amount of fines imposed under this section was \$11,150.00.

Section 324(2) of the Workers' Compensation Act mandates that compensation payments be made within ten days after the receipt of a notice of an approved agreement for payment of compensation, or order or decision of the Board awarding compensation. A fine of up to \$200.00 per day may be assessed in cases where the payments are late, and the tardiness of the payment is not due to circumstances beyond the employer's or insurer's control. The first \$50.00 per day is payable to the employee who is aggrieved, and the remainder is credited to the Workers' Compensation Board Administrative Fund. Attorney's fees and costs may also be awarded under this section. From January 1, 1997 to October 31, 1997, the Abuse Investigation Unit received 116 complaints pursuant to §324(2). Of these, 62 were granted, 20 were denied, and 58 were dismissed. The total amount of penalties ordered under this section breaks down as follows:

\$134,744.18 was ordered paid to employees, and \$2,570.00 was payable to the Workers' Compensation Board Administrative Fund.

Section 324(3) of the Workers' Compensation Act provides penalties for failure to secure a workers' compensation policy. From January 1, 1997 to October 31, 1997, the Abuse Investigation Unit received 209 complaints pursuant to §324(3). Of these, 27 were granted and 179 were dismissed. The total amount of penalties ordered under this section was \$42,000.00.

Section 360(1) of the Workers' Compensation Act provides penalties for failure to file or complete any form that is required by the Act. From January 1, 1997 to October 31, 1997, the Abuse Investigation Unit received 117 complaints pursuant to §360(1). Of these, 106 were granted. The total amount of penalties ordered pursuant to this section was \$10,600.00.

Section 360(2) of the Workers' Compensation Act authorizes the Board to impose penalties (and repayment of benefits where appropriate) in cases where an employee, employer, or insurer has committed fraud or intentional misrepresentation, or has willfully violated the Act. From January 1, 1997 to October 31, 1997, the Abuse Investigation Unit received 46 complaints pursuant to §360(2). Of these, 2 were granted and 26 were dismissed. The total amount of penalties ordered pursuant to this section was \$1,100.00.

Finally, an audit, pursuant to Sections 153(7) and 359(1) of the Workers' Compensation Act, was also conducted in 1997. The audit was undertaken to determine if the audited entity had been complying with the requirements of the Act. After meetings were held with the entity, and their books and our records were scrutinized, it was determined that the entity had not, in fact, been complying with all of the requirements of the Act. Specifically, in four cases, the entity had not paid indemnity benefits that were due as a result of 14-day violations. In 106 cases, First Reports of Injury were not filed with the Board even though the Act required that they be filed. As a result of this audit, the entity paid fines pursuant to Section 205(3) to the employees who did not receive appropriate indemnity payments, and fines to the Board in the 106 cases where the First Reports of Injury were not filed.

In order to increase the number of cases forwarded to hearing, the Workers' Compensation Board recently authorized the Executive Director and General Counsel to formulate a program whereby Abuse Unit cases are scheduled before the ten Hearing Officers, effectively increasing the number of hearing persons from one to ten.

IX. SECTION 213: PERMANENT IMPAIRMENT THRESHOLD AND EXTENSION OF BENEFITS

The Act provides that effective January 1, 1998, the Workers' Compensation Board adjust the 15% permanent impairment threshold so that 25% of all cases with permanent impairment will continue to receive compensation for the duration of the disability. The Act further provides that effective January 1, 1998, the 260-week limitation be extended 52 weeks for every year the Board finds that the frequency of such cases is no greater than the national average.

The Board requested Advanced Risk Management Techniques, Inc. (ARMTech) to perform an actuarial review of the permanent impairment threshold and adjust the indemnity benefit duration pursuant to 39-A M.R.S.A. §213.

ARMTech recommended a reduction of the PI threshold to 11%, so that injured workers with 12% or greater PI rating be eligible for extended benefits.

ARMTech recommended that indemnity benefits not be extended for an additional 52 weeks.

ARMTech also recommended changes be made in its data collection procedure.

The Workers' Compensation Board voted a reduction of the threshold to 11.8% and voted that indemnity benefits not be extended.

X. WORKER ADVOCATE PROGRAM

In 1992, substantial changes were made to Maine's Workers' Compensation Act. One change revamped the attorney's fees provisions in the Act. The reforms eliminated what is known as the "prevail standard." Under the prevail standard, an

injured worker's attorney, if the injured worker prevailed in litigation, was paid by the opposing party. Now, all workers injured on or after January 1, 1993, are responsible for paying their own attorney's fees, and those fees come out of any money that the injured worker recovers.

As a result of this change, injured workers encountered difficulty obtaining legal representation. Many attorneys who had handled workers' compensation cases in the past refused to take new cases. Consequently, more and more injured workers were forced to represent themselves at all levels of dispute resolution, including mediations and formal hearings.

1996 was a transition year for the Worker Advocate Program. On October 1, 1996, the Board expanded the program from a pilot program involving only the Augusta Regional Office to a statewide program with an advocate in every Regional Office. The Advocate Program was developed by the Board in response to unrepresented injured workers who have difficulties understanding and exercising their rights under the workers' compensation law. Without the advocates, injured workers often had difficulty processing their claims.

To alleviate this problem, the Legislature established the worker advocate program (which built on a program that the Workers' Compensation Board had started). The Workers' Compensation Advocates were hired to advocate, at mediation and formal hearing, for workers who are unable to procure the services of an attorney. Essentially, then, the Workers' Compensation Advocates have been hired to perform work previously handled by employee attorneys.

The Workers' Compensation Board has four basic functions; resolving disputes, preventing disputes, collecting data, and monitoring compliance. Dispute resolution has three steps. The first is referred to as troubleshooting. This phase of dispute resolution involves telephone contact, by a Board employee, with the employee and the employer/insurer in an attempt to resolve the parties' dispute. If troubleshooting is not successful, the case is transferred to a mediator. The mediator meets, in person, with the parties and tries to help them negotiate a resolution of the disputed issues. If mediation does not resolve the dispute, and one or both parties files an appropriate petition, the case is sent to a hearing officer. The hearing officer presides over a hearing where the parties present their cases. The hearing officer then issues a decision that is binding on the parties.

Data collection is accomplished by requiring parties to submit various forms. The Board uses the information on these forms to assist in the exercise of its regulatory functions. The Board also monitors compliance with the Workers' Compensation Act, and imposes penalties when parties run afoul of the Act's dictates.

Any employee injured on or after January 1, 1993, who has not retained the services of an attorney, is entitled to the assistance of a Workers' Compensation Advocate. The Workers' Compensation Advocate is responsible for a number of tasks. First, the Workers' Compensation Advocate must elicit from the employee all information pertinent to the employee's case. Then, the Workers' Compensation Advocate must develop a theory of the case. This requires the Workers' Compensation Advocate to apply workers' compensation law to the facts garnered from the employee. To do this, the Workers' Compensation Advocates must research the Workers' Compensation Act, the rules adopted by the Workers' Compensation Board, and relevant case law.

The Workers' Compensation Advocate must also develop the testimony of relevant witnesses. In virtually every case, this will require the Workers' Compensation Advocate to communicate with the health care practitioners who are treating the employee. From the health care practitioners, the Workers' Compensation Advocate must elicit the medical documentation necessary to establish a causal nexus with the employee's job. In some cases the Workers' Compensation Advocate will have to depose health care practitioners who have examined the employee.

Once the groundwork is set, the Workers' Compensation Advocate will try to achieve informal resolution of the injured worker's claim. If the parties cannot achieve a resolution on their own, they must proceed to mediation (which is mandatory in Maine). The Workers' Compensation Advocate will attend the mediation with the employee. During the mediation, the Workers' Compensation Advocate will try and negotiate a resolution that is in the best interest of the injured worker. Any agreements reached at mediation are binding on the parties.

In appropriate cases, the Workers' Compensation Advocate will negotiate a lump sum settlement for the injured worker. A lump sum settlement is a final resolution of the employee's workers' compensation claim. The employee, in

exchange for a sum of money, agrees to relinquish his/her rights under the Workers' Compensation Act.

If the dispute cannot be resolved informally, the Workers' Compensation Advocate will prepare the employee's case for hearing. At the hearing, the Workers' Compensation Advocate, among other things, must perform the direct examination of witnesses called on behalf of the injured worker, and cross-examine witnesses called by the opposing party.

Post-hearing, the Workers' Compensation Advocate is responsible for submitting a position paper. In the position paper, the Workers' Compensation Advocate, by making reference to the evidence that was admitted at the hearing, and by citing appropriate legal authority, presents the hearing officer with an argument as to why the injured employee should prevail. Once a decree is issued the Workers' Compensation Advocate will, if warranted, file a motion for findings of fact and conclusions of law, or will respond to a similar motion filed by the opposing party.

The Workers' Compensation Advocates are supervised by a staff attorney. The staff attorney is available to give the Workers' Compensation Advocates guidance on legal issues and strategies that may be employed. The Workers' Compensation Advocates will be on their own in terms of accepting or rejecting settlement offers, developing cases for formal hearing, and presenting cases at formal hearing.

XI. COOPERS & LYBRAND REPORT

The Workers' Compensation Board along with the Department of Labor and the Department of Professional and Financial Regulation hired the firm of Coopers & Lybrand to conduct a business assessment of the Workers' Compensation Board. Coopers & Lybrand submitted its final report to the Board on December 18, 1997. The study focused on four key areas of interest: Organization, Process, Technology, and Culture. A comprehensive, three-phase analytical approach was used to conduct the business assessment and develop recommendations for change. The recommendations for change have been transformed into 20 discrete projects, scheduled over a two- year time frame. With the implementation of these projects, resources can be shifted to dispute

prevention and compliance monitoring to provide a balanced focus on the activities which directly support the mission of the Workers' Compensation Board. The projects consist of the following:

1. Board and Executive Director Role Definition.
2. Workers' Compensation Board Score Card.
3. Contract Hearing Officers.
4. Long Term Business Plan.
5. Change Management/Communication Program.
6. Employee Performance Measures.
7. Streamlined Dispute Resolution Process.
8. Customer Service Representative Model.
9. Dispute Prevention Program.
10. Compliance Program.
11. External Auditors.
12. Enforce Compliance.
13. Redistribute Hearing Officer Workload.
14. Agency Technology Officer.
15. Technical Infrastructure Insourcing.
16. Business Application Insourcing.
17. Interim Data Cleansing & Analysis.
18. EDI Standard Implementation.
19. Future Technical Environment.
20. WEB Site.

XII. SUMMARY

The Workers' Compensation Act of 1992 went into effect on January 1, 1993. The reforms have had a significant impact on workers' compensation in Maine. The collaborative effort between Labor and Management appears to have brought stability to the system. The dispute resolution system is resolving a high percentage of cases in a low cost and timely manner, as envisioned by the Act. The formal hearing process continues to improve in that more cases are being resolved in a more timely manner. The Independent Medical Examiner program has been partially implemented and should be totally implemented in 1998. The Worker Advocate Program has been implemented at all five Regional Offices to assist unrepresented employees at the Mediation and Formal Hearing phases.

Electronic Data Interchange has been established between the Workers' Compensation Board, MEMIC, the Dunlap Agency, Northern General, and the State of Maine. Cost controls and medical cost containment are being established through Utilization Review, Protocols, and Medical Fee Schedules. ARMTech has submitted an actuarial report relating to the permanent impairment threshold and benefit continuation. Coopers & Lybrand has submitted a business plan to improve the efficiency of the Worker's Compensation Board. Chapter 486 is being efficiently implemented by the Board. A Monitoring, Audit, and Enforcement Program is being implemented. The Workers' Compensation Board continues to operate efficiently under its authorized assessment of \$6,600,000.

**B. THE STATE OF COMPETITION IN THE MAINE WORKERS'
COMPENSATION MARKET: BUREAU OF INSURANCE.**

The State of Competition in the Maine Workers' Compensation Market

Pursuant to M.R.S.A. 24-A Section 2383-A this report reviews the state of competition in the workers' compensation market in Maine.

Maine Bureau of Insurance

1) Workers' Compensation Market Competition: Voluntary Market 1988 - 1992.

Prior to the 1992 Blue Ribbon Commission Reform legislation, insurance carriers were writing very few risks in the voluntary market (those employers which were voluntarily underwritten by insurers) and the vast majority of all insured employers were written in what was known as the "assigned risk pool in the residual market" or the "Pool". The Pool operated for the years 1988 through 1992.

On a calendar year basis, the percentage of premium written in the voluntary market for the years 1988 through 1992 was:

Year	Voluntary Market Share	Residual Market Share
1988	17.7%	82.3%
1989	9.4%	90.6%
1990	12.2%	87.8%
1991	21.8%	78.2%
1992	17.4%	82.6%

**Data Source: National Council on Compensation Insurance (NCCI)
1992 Management Summary**

During this period, insured employers in Maine had few options to obtain workers' compensation other than to self-insure or to be assigned to a servicing carrier. In response to these conditions, the 1992 Blue Ribbon Commission Reform legislation, Public Law 885 "An Act to Reform the Workers' Compensation Act and Workers' Compensation Insurance Laws" was enacted establishing the Maine Employers' Mutual Insurance Company and an open competitive rating environment.

During the same period, the Pool incurred deficits which continue to affect the workers' compensation insurance market to this day. Although recent deficit estimates are significantly lower than those projected a few years ago, Public Law 289 "An Act to Create the Workers' Compensation Residual Market Deficit Resolution and Recovery Act", approved by the Governor on June 23, 1995, provides a mechanism to fund this deficit and required certain insurance carriers to contribute \$65 million dollars by January 1, 1996. It also fixed the employers' share of the deficit and reduced the surcharge on insurance policies to 6.32 percent of workers' compensation premium. This law has added stability to the workers' compensation marketplace. Recent deficit estimates project that the funding provided by PL 289 will yield a surplus after all claims are paid.

Maine Employers Mutual Insurance Company was established as an employer-owned mutual insurance company and replaced the Pool beginning January 1, 1993. Although Maine Employers' Mutual is the only workers' compensation insurance company in Maine which is required to accept all risks that apply (there are a few circumstances in which they can deny coverage), they do not view themselves solely as a market of last resort and have manifested a commitment to provide a superior level of service which is answerable to the owners of the company, their policyholders-the employers of Maine. In 1997, Maine Employers' Mutual reduced their rates an average of 10.2%. This reduction was preceded by an average 8.2% rate reduction in 1996 and the elimination of their capital contribution. The 1997 rate reduction marks their fourth consecutive rate reduction.

As a result of the 1992 Blue Ribbon Commission Reform legislation, the National Council on Compensation Insurance (NCCI) is no longer allowed to file full rates for workers' compensation in Maine. (NCCI is a rating organization which files advisory loss cost rates and rating plans on behalf of member insurers and as of 1993, NCCI could only file loss cost rates.) Each insurer writing workers' compensation in Maine is required to file their own rates utilizing their own expense and profit provisions.

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

The experience of insurers writing workers' compensation policies has improved significantly in recent years as measured by industry-wide loss ratios. The 1995 calendar year loss ratio of .57 represented a 25% decrease from the 1994 level of .82 and a 70% decrease from the 1991 level of 1.87. The loss ratio rose slightly in 1996 to .67 but still is the second lowest loss ratio in over 20 years. Cumulatively these loss ratios are a sign of the tremendous improvement in the Maine workers' compensation insurance market.

Calendar Year Loss Ratios in Maine, 1988 - 1995:

Year	Loss Ratio
1988	1.44
1989	1.54
1990	1.44
1991	1.87
1992	.99
1993	.80
1994	.82
1995	.57
1996	.67

Source: Annual Statement Page 14 Compilations

**3) Market Shares and Market Activity By Insurance Co.(Group):
Calendar Year 1996 Market Share Based on Written Premium.**

Company	Market Share
Maine Employers' Mutual Insurance Company	56.0
Acadia Insurance Company	9.4
Hanover of Maine Insurance Companies	9.3
Commercial Union Insurance Companies	5.8
Maine Bonding Companies	4.0
Redland Insurance Company	2.4
The Netherlands Insurance Companies	2.3
Liberty Mutual Insurance Companies	2.0
Nationwide Companies	1.3
Royal Insurance Companies	1.1

As additional carriers continue to reenter the market resulting in more options for Maine employers, we expect that market shares in 1997 will look markedly different from the 1996 numbers.

4) Rate Differentials.

Prior to the 1992 Blue Commission Reform legislation all insurance companies charged the same base rates (manual rates) for workers' compensation insurance. Although each employer's actual premium was modified by their own experience, there was little or no differentiation in the manual rates. Since 1/1/93, each insurance company is required to file its own manual rates based upon its expense and profit provisions. (NCCI continues to annually make an advisory filing of pure premium rates, which are rates for losses and loss adjustment expenses, excluding all other expenses and profit provisions.) The NCCI has filed for an average rate reduction of 10.6% effective January 1, 1998. In 1997 the NCCI loss cost filing called for an overall rate reduction of 12.5% effective January 1, 1997. The 1996 NCCI loss cost filing had an overall rate reduction of 10.9%. This followed an average decrease of 12.5% in 1995 and a 3.8% decrease occurring in 1994. Overall, since 1994 the cumulative impact of these rate reductions, including the recommended 1998 reduction, is a 41% decrease in loss cost rates.

As of November 1997 one-hundred thirty-one insurance carriers have filed and received approval from the Bureau to sell workers' compensation insurance in Maine at specified rates. At this time, data is not available regarding the amount of business each of these companies is writing in Maine. However, the attached charts show the high and low rates for the 140 largest classification codes (in terms of payroll) for all workers' compensation insurers and compares the high and low rates to the standard rate which Maine Employers' Mutual Insurance charges for that classification code. (These

rates do not reflect the proposed 1998 rate reduction.) For many classification codes, the wide range underscores the new competitive nature of workers' compensation insurance in Maine and underscores the importance of employers exploring options in securing coverage for workers' compensation claims.

Competitive rating has allowed for "niche" marketing. A company with expertise in certain areas can utilize that proficiency to lower the rate for specific risks and return an acceptable profit to the carrier. For example, some insurers reentering the Maine market specialize in underwriting employers in a specific industry such as wood products manufacturing (including logging), health care, or construction.

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

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

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

Nearly 70 percent of the insurance companies with filed rates have received approval to utilize scheduled rating in Maine. Scheduled rating allows the insurance company to consider other factors that may not be reflected in an employer's experience rating when determining an individual employer's premium. Elements such as safety plans, medical facilities, safety devices, and premises are considered and can result in a change in premium by as much as twenty-five percent.

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

Finally, several companies offer large deductible plans in Maine where by the employer agrees to pay a deductible that can be in excess of \$100,000 per claim. The insurance company is required by law to pay all losses associated with this policy and then bills the deductible amounts to the insured employer. The advantages of this product are that the employer gets a discount for assuming some of the risk and it offers an alternative to self-insurance.

6) Insurers Entering the Maine Workers' Compensation Market.

Since the Blue Ribbon Commission Reform legislation was enacted in October of 1992, a large number of insurance companies have reentered the Maine workers' compensation market. During that time frame, exits from the workers' compensation market have been minimal. One of the nation's largest workers' compensation insurers, Liberty Mutual returned to the market in 1995 and one of Maine's domestic insurers, Mutual Fire of Saco was purchased and renamed Eastguard with the specific intent of entering the Maine workers' compensation market. Other insurers recently reentering the Maine workers' compensation market include ITT Hartford, Aetna, Travelers, and CIGNA. Since 1996 fifty-eight companies have obtained authority to write workers' compensation coverage.

7) Self-Insurance.

Self-insurance represents a significant part of the workers' compensation market in Maine and is a viable alternative for many employers in the State. Since 1988, nineteen new self-insured groups have been formed in Maine bringing the total number of groups to twenty-one. These twenty-one groups represent approximately 1350 employers. Additionally, there are 118 individual self-insured employers in Maine. It is estimated that self-insureds now represent approximately 50% of the workers' compensation market in Maine in terms of annual standard premium. The growth in self-insurance has slowed dramatically in the last few years and some former self-insured employers have returned to the commercial market. The competitive market could cause further returns from self-insurance to the commercial insurance market and some carriers have filed rating plans to allow them to assume the balance of a self-insurer's existing exposure and transition into a fully insured program.

8) Conclusion.

When contrasted with the conditions which existed during the years 1988 through 1992, the competition in the Maine workers' compensation market has clearly improved and many Maine employers have more options. However, according to economic theory, an industry is perfectly competitive only when a large number of firms selling a homogeneous commodity is so large, and each individual firm's share of the market is so small, that no individual firm is able to affect the price of the commodity. By this definition, Maine does not yet have a competitive market. However, when one considers the range among workers' compensation rates, the number of carriers in the market place, and the overall decline in rate levels since 1994, Maine's workers' compensation market is healthier, many employers have greater options and lower costs, and market competition has significantly improved.

Workers' Compensation Rates for Selected Carriers as of 11-1-97

CODE	DESCRIPTION	LOW	MEMIC(std)	HIGH
34	FARM: POULTRY/EGG	\$6.67	\$12.33	\$13.66
42	LANDSCAPE GARDENING	\$4.41	\$8.16	\$9.04
1463	ASPHALT WORKS	\$5.42	\$10.02	\$11.10
2003	BAKERY	\$3.04	\$5.61	\$6.22
2070	CREAMERY	\$3.72	\$6.89	\$7.63
2111	CANNERY	\$3.42	\$6.33	\$7.01
2113	CANNERY SARDINES	\$4.13	\$7.64	\$8.46
2157	BOTTLING	\$2.98	\$5.52	\$6.11
2220	YARN OR THREAD MFG	\$4.02	\$7.43	\$8.23
2286	WOOL SPINNING/WEAVING	\$3.20	\$5.92	\$6.56
2302	SILK THREAD/YARN MFG	\$2.30	\$4.26	\$4.71
2380	WEBBING MFG	\$1.98	\$3.65	\$4.05
2501	CLOTHING MFG	\$2.17	\$4.02	\$4.45
2585	LAUNDRY	\$4.85	\$8.97	\$9.94
2623	TANNING	\$4.42	\$8.18	\$9.05
2660	BOOT OR SHOE MFG	\$4.65	\$8.60	\$9.52
2688	LEATHER GOODS MFG	\$3.11	\$5.75	\$6.37
2702	LOGGING OR LUMBERING	\$24.12	\$44.60	\$49.38
2709	LOG. OR LUM. MECHANIZED	\$6.94	\$12.84	\$14.21
2710	SAW MILL	\$7.02	\$12.99	\$14.38
2721	LOG. OR LUM.CERTIFIED	\$11.47	\$21.21	\$23.48
2731	PLANING/MOLDING MILL	\$3.49	\$6.45	\$7.15
2802	CARPENTRY SHOP ONLY	\$4.67	\$8.64	\$9.56
2812	CABINET WORK	\$3.06	\$5.66	\$6.26
2841	WOODENWARE MFG	\$3.38	\$6.24	\$6.91
2883	FURNITURE MFG WOOD	\$3.49	\$6.45	\$7.15
3030	IRON OR STEEL FABRICATION SHOP	\$5.46	\$10.09	\$11.18
3076	FIREPROOF EQUIPMENT MFG	\$1.74	\$3.22	\$3.57
3113	TOOL MFG NOT DROP/MAC	\$1.92	\$3.56	\$3.94
3179	ELECTRICAL APPARATUS MFG	\$3.26	\$6.02	\$6.67
3507	CONSTRUCTION/AGRI MACHINE MFG	\$2.88	\$5.33	\$5.91
3574	COMPUTING/RECORDING MACHINE MFG	\$2.12	\$3.92	\$4.34
3629	PRECISION PARTS MFG	\$1.48	\$2.74	\$3.04
3632	MACHINE SHOP	\$2.50	\$4.62	\$5.12
3634	VALVE MFG	\$2.01	\$3.71	\$4.11
3643	ELECTRIC POWER/TRANS EQUIP MFG	\$2.08	\$3.85	\$4.26
3681	TELEVISION/RADIO/TELEPHONE MFG	\$1.52	\$2.81	\$3.12
3724	MACHINERY/EQUIPMENT ERECTION	\$11.49	\$21.25	\$23.53
3726	BOILER INSTALLATION/REPAIR-STEAM	\$12.87	\$23.80	\$26.35
3826	AIRCRAFT ENGINE MFG	\$1.20	\$2.23	\$2.46
4000	SAND DIGGING	\$4.45	\$8.23	\$9.11
4034	CONCRETE PRODUCTS MFG	\$6.06	\$11.21	\$12.42
4112	INCANDESCENT LAMP MFG	\$1.05	\$1.95	\$2.15
4207	PULP MFG CHEMICAL PROCESS	\$0.86	\$1.60	\$1.77
4239	PAPER MFG	\$3.51	\$6.50	\$7.19
4279	PAPER GOODS MFG	\$2.74	\$5.07	\$5.61
4299	PRINTING	\$1.77	\$3.28	\$3.63
4304	NEWSPAPER PUBLISHING	\$2.63	\$4.87	\$5.39
4361	PHOTOGRAPHERS	\$1.94	\$3.58	\$3.97
4431	PHONOGRAPH RECORD MFG	\$3.01	\$5.57	\$6.17

Workers' Compensation Rates for Selected Carriers as of 11-1-97

4484	PLASTIC MFG: MOLDED	\$3.02	\$5.59	\$6.18
4511	ANALYTICAL CHEMIST	\$1.55	\$2.87	\$3.18
4693	PHARM/SURGICAL MFG	\$1.20	\$2.23	\$2.46
5022	MASONRY	\$15.22	\$28.14	\$31.16
5183	PLUMBING	\$5.43	\$10.04	\$11.11
5190	ELECTRICAL WIRING WITHIN BUILDING	\$2.85	\$5.28	\$5.84
5191	OFFICE MACHINE REPAIR	\$0.59	\$1.09	\$1.21
5192	VENDING MACHINE SERVICE AND SALES	\$4.05	\$7.49	\$8.29
5213	CONCRETE CONSTRUCTION	\$14.84	\$27.44	\$30.38
5215	CONCRETE WORK PRIVATE RESIDENCE	\$7.36	\$13.61	\$15.07
5221	CONCRETE WORK	\$4.33	\$8.01	\$8.87
5403	CARPENTRY NOC	\$19.95	\$36.90	\$40.86
5437	CARPENTRY INSTALL CABINETS AND TRIM	\$5.88	\$10.88	\$12.04
5445	WALLBOARD INSTALLATION	\$11.10	\$20.52	\$22.72
5474	PAINTING/PAPERHANGING	\$9.49	\$17.54	\$19.42
5479	INSULATION WORK	\$5.00	\$9.25	\$10.25
5506	STREET OR ROAD CONSTRUCTION PAVING	\$6.47	\$11.97	\$13.25
5507	STREET/ROAD CONSTRUCTION SUBGRADE	\$7.50	\$13.87	\$15.36
5538	SHEET METAL WORK	\$5.43	\$10.04	\$11.11
5551	ROOFING ALL KINDS	\$17.89	\$33.08	\$36.63
5606	CONTRACTOR EXECUTIVE	\$2.16	\$3.99	\$4.42
5645	CARPENTRY ONE/TWO FAMILY DWELLING	\$5.33	\$9.86	\$10.91
5651	CARPENTRY 3 STORIES OR LESS	\$7.30	\$13.50	\$14.94
6217	EXCAVATION	\$6.61	\$12.22	\$13.53
6306	SEWER CONSTRUCTION	\$5.56	\$10.28	\$11.38
7219	TRUCKING: NOC	\$9.49	\$17.54	\$19.42
7380	DRIVERS AND CHAUFFEURS	\$4.59	\$8.48	\$9.39
7382	BUS COMPANY	\$3.94	\$7.29	\$8.08
7390	BEER OR ALE DEALERS	\$3.29	\$6.09	\$6.74
7403	AIRCRAFT OPER REG SCH CARRIERS	\$1.83	\$3.39	\$3.75
7423	AIRCRAFT OPERATIONS ALL OTHERS	\$3.35	\$6.19	\$6.85
7520	WATERWORKS OPERATION	\$2.47	\$4.56	\$5.05
7539	ELECTRIC LIGHT OR POWER	\$2.88	\$5.33	\$5.91
7600	TELEPHONE ALL OTHERS	\$2.91	\$5.39	\$5.97
7610	RADIO OR TV BROADCASTING	\$0.40	\$0.74	\$0.82
7720	POLICE OFFICERS	\$2.82	\$5.21	\$5.77
7723	PRIVATE DETECTIVE OR PATROL AGENCY	\$3.15	\$5.82	\$6.45
8001	STORE: FLORISTS	\$1.49	\$2.76	\$3.05
8006	STORE: GROCERY RETAIL	\$1.57	\$2.90	\$3.21
8008	STORE: CLOTHING RETAIL	\$1.02	\$1.89	\$2.09
8010	STORE: HARDWARE RETAIL	\$1.35	\$2.49	\$2.76
8013	STORE: JEWELRY	\$0.53	\$0.98	\$1.09
8017	STORE: RETAIL NOC	\$1.07	\$1.97	\$2.19
8018	STORE: WHOLESALE NOC	\$4.36	\$8.06	\$8.93
8021	STORE: MEAT WHOLESALE	\$5.44	\$10.05	\$11.13
8024	SEAFOOD DEALER	\$4.81	\$8.90	\$9.86
8032	STORE: CLOTHING WHOLESALE	\$1.63	\$3.01	\$3.33
8033	STORE: PROVISIONS COMBINED	\$1.73	\$3.21	\$3.55
8039	STORE: DEPARTMENT RETAIL	\$1.97	\$3.64	\$4.03
8044	STORE: FURNITURE	\$2.54	\$4.69	\$5.19
8046	STORE AUTO PARTS NEW RETAIL	\$1.45	\$2.67	\$2.96

Workers' Compensation Rates for Selected Carriers as of 11-1-97

8058	BUILDING MATERIALS DEALER	\$1.66	\$3.07	\$3.39
8107	MACHINERY DEALER	\$2.79	\$5.15	\$5.70
8111	PLUMBERS SUPPLIES	\$2.68	\$4.96	\$5.49
8227	CONSTRUCTION OR ERECTION YARD	\$3.38	\$6.26	\$6.93
8232	LUMBERYARD NEW MATERIALS	\$2.74	\$5.07	\$5.61
8235	SASH, DOOR AND MILLWORK DEALER	\$3.07	\$5.67	\$6.28
8350	GASOLINE DEALERS	\$3.43	\$6.34	\$7.02
8380	AUTOMOBILE SERVICE CENTER	\$2.75	\$5.08	\$5.63
8385	BUS COMPANY GARAGE EMPLOYEES	\$2.01	\$3.72	\$4.12
8393	AUTO BODY REPAIR	\$2.40	\$4.44	\$4.91
8601	ARCHITECT OR ENGINEER CONSULTING	\$0.64	\$1.19	\$1.32
8720	INSPECTION OF RISKS FOR INSURANCE	\$0.99	\$1.83	\$2.03
8742	SALESPERSON/OUTSIDE MESSENGER	\$0.64	\$1.18	\$1.30
8748	AUTOMOBILE SALESPERSON	\$1.09	\$2.02	\$2.23
8755	LABOR UNION	\$0.74	\$1.37	\$1.52
8803	AUDITORS TRAVELING	\$0.20	\$0.38	\$0.42
8810	CLERICAL/OFFICE EMPLOYEE NOC	\$0.48	\$0.90	\$0.99
8820	ATTORNEY ALL EMPLOYEES	\$0.62	\$1.15	\$1.27
8829	CONVALESCENT OR NURSING HOME	\$4.28	\$7.92	\$8.77
8831	HOSPITAL VETERINARY	\$0.87	\$1.61	\$1.78
8832	PHYSICIAN AND CLERICAL	\$0.48	\$0.90	\$0.99
8833	HOSPITAL PROFESSIONAL EMPLOYEE	\$1.13	\$2.09	\$2.31
8835	NURSING- HOME HEALTH	\$2.49	\$4.61	\$5.10
8868	COLLEGE PROFESSIONAL & CLERICAL	\$0.34	\$0.63	\$0.70
8901	TELEPHONE OFFICE AND CLERICAL	\$0.27	\$0.50	\$0.56
9014	BUILDING OPERATIONS BY CONTRACTOR	\$3.39	\$6.27	\$6.94
9015	BUILDING OPERATIONS BY OWNER	\$3.04	\$5.61	\$6.22
9016	AMUSEMENT PARK	\$1.88	\$3.49	\$3.86
9033	HOUSING AUTHORITY	\$1.66	\$3.07	\$3.39
9040	HOSPITAL ALL OTHER EMPLOYEES	\$2.70	\$5.00	\$5.53
9052	HOTEL ALL OTHER EMPLOYEES	\$2.22	\$4.10	\$4.54
9058	HOTEL: RESTAURANT EMPLOYEES	\$1.72	\$3.18	\$3.52
9060	COUNTRY CLUB	\$1.63	\$3.01	\$3.33
9061	CLUB NOC AND CLERICAL	\$1.55	\$2.87	\$3.18
9063	YMCA, YWCA	\$0.83	\$1.53	\$1.69
9079	RESTAURANT NOC	\$1.69	\$3.12	\$3.46
9101	COLLEGE: ALL OTHER EMPLOYEES	\$2.59	\$4.79	\$5.30
9180	AMUSEMENT DEVICE NOT TRAVELING	\$6.59	\$12.19	\$13.50
9402	STREET CLEANING	\$4.66	\$8.62	\$9.55
9403	GARBAGE COLLECTION	\$5.08	\$9.39	\$10.40
9410	MUNICIPAL	\$2.15	\$3.98	\$4.40
9519	HOUSEHOLD APPLIANCE REPAIR ELECTRIC	\$1.64	\$3.02	\$3.35
9521	HOUSE FURNISHINGS INSTALLATION	\$4.32	\$7.99	\$8.85
9586	BARBER SHOP	\$0.80	\$1.48	\$1.64
9620	FUNERAL DIRECTOR	\$0.75	\$1.39	\$1.53

Companies with Approved Workers' Compensation Rates
Revised December 10, 1997

Acadia Insurance Company One Acadia Commons PO Box 9010 Westbrook, ME 04098-5010	One Kemper Drive Long Grove, IL 60049-0001
Aetna Casualty and Surety Company 151 Farmington Avenue Hartford, CT. 06156	American Motorists Ins. Co. One Kemper Drive Long Grove, IL 60049-0001
Aetna Casualty and Surety Company of Illinois 151 Farmington Avenue Hartford, CT. 06156	American Protection Ins. Co. One Kemper Drive Long Grove, IL 60049-0001
Allianz 6435 Wilshire Blvd. P.O. Box 54897 Los Angeles, CA 90054	American Zurich Insurance Co. 1400 American Lane Schaumburg, IL. 60196-1050
American and Foreign Insurance 2 Commerce Drive Bedford, NH 03110	Arrow Mutual Liability Ins. Co. 23 Commonwealth Ave. Chestnut Hill, MA 02167-1099
American Automobile Insurance Co. 777 San Marin Drive Novato, CA 94998	Associated Indemnity Corporation 777 San Marin Drive Novato, CA 94998
American Casualty Co. of Reading, PA CNA Plaza Chicago, IL 60685	Assurance Company of America PO Box 1228 Baltimore, MD 21203-1228
American Central Ins. Co. One Beacon Street Boston, MA 02108-3100	Atlantic Insurance Company PO Box 1771 Dallas, TX 75221-1771
American Employers Ins. Co. One Beacon Street Boston, MA 02108-3100	Atlantic Mutual Insurance Company Three Giralda Farms Madison, NJ 07940-1004
American Insurance Co. 777 San Marin Drive Novato, CA 94998	Bituminous Insurance Companies 320 18th Street Rock Island, IL 61201-8744
American Interstate Ins. Co. 1807 Highway 190 WEST Deridder, LA 70634-6005	Business Insurance Compaany 11092 Sun Center Drive Rancho Cordova, CA 95670
American Manufacturers Mut. Ins. Co.	Camden Fire Ins. Association 436 Walnut Street Philadelphia, PA 19105
	Centennial Insurance Company Three Giralda Farms

Madison, NJ 07940-1004

Charter Oak Fire Ins. Co.
One Tower Square
Hartford, CT 06183

Chrysler Insurance
PO Box 5158
Southfield, MI 48086-5168

Chubb Indemnity Insurance Co.
PO Box 1615
Warren, NJ 07061-1615

Cigna Fire Insurance Co.
1601 Chestnut Street
Philadelphia, PA 19192-2305

Cigna Insurance Co.
1601 Chestnut Street
Philadelphia, PA 19192-2305

Cigna Property and Casualty Insurance Co.
1601 Chestnut Street
Philadelphia, PA 19192-2305

Citizens Insurance Company
8 Ashley Drive
PO Box 9001
Scarborough, Maine 04070-5001

Clarendon National Ins. Co.
1177 Avenue of the Americas
New York, NY 10036

Commercial Union Insurance Company
One Beacon Street
Boston, MA 02108-3100

Connecticut Indemnity Company
9 Farm Springs Drive
Farmington, CT 06032

Continental Casualty Company
CNA Plaza
Chicago, IL 60685

Eastguard Insurance Company
PO Box 537
Saco, ME 04074

Employers' Fire Insurance Company
One Beacon Street
Boston, MA 02108-3100

Employers Insurance of Wausau
2000 Westwood Drive
Wausau, WI 54401

Excelsior Ins. Co.
62 Maple Ave.
Keene, NH 03431

Fairfield Insurance Company
PO Box 10167
Stamford, CT 06904-2167

Farmington Casualty Company
151 Farmington Avenue
Hartford, CT. 06156

Fire and Casualty Ins. Co. of Connecticut
9 Farm Springs Drive
Farmington, CT 06032

Fireman's Fund Ins. Co.
777 San Marin Drive
Novato, CA 94998

First Liberty Insurance Corp.
PO Box 140
175 Berkeley Street
Boston, MA 02117-0140

Frontier Insurance Company
Rock Hill
New York, NY 12775-8000

GAN National Insurance Company
120 Wall Street
New York, NY 10005

General Accident
436 Walnut Street
Philadelphia, PA 19106-3786

General Insurance Company of America
Safeco Plaza
Seattle, WA 98185

Genesis Insurance Company
Financial Centre
PO Box 10352
Stamford, CT 06904-2352

Globe Indemnity Company
9300 Arrowpoint Boulevard
PO Box 1000
Charlotte, NC 28201-1000

Great West Casualty Company
PO Box 277
South Sioux City, NE 68776-0277

Gulf Insurance Group
P.O. Box 1771
Dallas, TX 75221-1771

Harco National Insurance Company
PO Box 68309
Schaumburg, IL 60168-0309

Hanover Insurance Company
8 Ashley Drive
P.O. Box 9001

Scarborough, ME 04070-5001

Hartford Accident and Indemnity Company
Hartford Plaza
Hartford, CT 06115

Hartford Casualty Insurance Company
Hartford Plaza
Hartford, CT 06115

Hartford Fire Ins. Co.
Hartford Plaza
Hartford, CT 06115

Hartford Ins. Co. of the Midwest
Hartford Plaza
Hartford, CT 06115

Hartford Underwriters Ins. Co.
Hartford Plaza
Hartford, CT 06115

Highlands Insurance Group
10370 Richmond Avenue
Houston, TX 77042-4123

Indemnity Insurance Co. of North America
1601 Chestnut Street
Philadelphia, PA 19192-2305

Industrial Indemnity
PO Box 7468
San Francisco, CA 94120

Insurance Company of North America
1601 Chestnut Street
Philadelphia, PA 19192-2305

Intercargo Insurance Company
1450 East American Lane 20th Floor
Schaumburg, IL 60173

International Business & Mercantile
Reassurance Company
PO Box 789
Greensburg, PA 15601

John Deere Insurance Corp.
3400 80th Street
Moline, IL 61265-5886

Legion Insurance Company
111 E. Kilbourn Avenue
Suite 1150
P.O. Box 92903
Milwaukee, WI 53202-0903

Liberty Insurance Corp.
PO Box 140 175 Berkeley Street
Boston, MA 02117-0140

Liberty Mutual Insurance Company

PO Box 140 175 Berkely Street
Boston, MA 02117-0140

Liberty Mutual Fire Ins. Co.
PO Box 140 175 Berkeley Street
Boston, MA 02117-0140

LM Insurance Corp.
PO Box 140 175 Berkeley Street
Boston, MA 02117-0140

Lumber Mutual Insurance Co.
PO Box 9165
Framingham, MA 01701-9165

Lumbermens Mutual Casualty Co.
One Kemper Drive
Long Grove, IL 60049-0001

Lumbermen's Underwriting Alliance
2501 N. Military Trail
Boca Raton, FL 33431-6398

Maine Bonding & Casualty Co.
PO Box 448
Portland, ME 04104

Maine Employers Mutual Ins. Company
261 Commercial Street
P.O. Box 11409
Portland, ME 04104

Markel Insurance Company
Shand Morahan Plaza
Evanston, IL 60201

Maryland Insurance Company
P.O. Box 1228
Baltimore, MD 21203

Massachusetts Bay Ins. Co.
8 Ashley Drive
PO Box 9001
Scarborough, ME 04070-5001

Merchants Insurance
250 Main Street
Buffalo, NY 14202

National Fire Ins. Co. of Hartford, CT
CNA Plaza
Chicago, IL 60685

National Grange
55 West Street
PO Box 2300
Keene, NH 03431-8000

National Surety Corporation
777 San Marin Drive
Novato, CA 94998

Netherlands Ins. Company
62 Maple Avenue
Keene, NH 03431

North River Insurance Company
PO Box 1973
Morristown, NJ 07960

Northern Assurance Co. of America
One Beacon Street
Boston, MA 02106

Northern Ins. Co. of N.Y.
PO Box 1228
Baltimore, MD 21203-1228

Old Republic Companies
P.O. Box 789
Greenburg, PA 15601

Pacific Employers Insurance Co.
1601 Chestnut Street
Philadelphia, PA 19192-2305

Peerless Ins. Co.
62 Maple Ave.
Keene, NH 03431

Pennsylvania National Mutual Casualty
Ins. Company
PO Box 2361
Harrisburg, PA 17105

Petroleum Casualty Company
P.O. Box 3342
Houston, TX 77253-3342

Preferred Risk Mutual Ins. Co.
111 Ashworth Road
West Des Moines, IA 50265-3538

Protective Insurance Company
1099 North Mendin Street
Indianapolis, IN 46204

Public Service Mutual Ins. Co.
132 West 31st. Street
New York, NY 10001-3406

Redland Insurance Company
535 West Broadway
P.O. Box 229
Council Bluffs, IA 51502-0029

Reliance Insurance Company
4 Penn Center Plaza
Philadelphia, PA 19103

Reliance National Indemnity Company
4 Penn Center Plaza
Philadelphia, PA 19103

Reliance National Insurance Company
4 Penn Center Plaza
Philadelphia, PA 19103

Royal Indemnity Company
PO Box 10000
Charlotte, NC 28201-1000

Royal Insurance Co. of America
9300 Arrowpoint Boulevard
P.O. Box 1000
Charlotte, NC 28201-1000

SAFECO Insurance Company of America
Safeco Plaza
Seattle, WA 98185

Safeguard Insurance Company
2 Commerce Drive
Bedford, NH 03110

St. Paul Fire & Marine Ins. Co.
385 Washington Street
St. Paul, MN 55102-1390

St. Paul Guardian Ins. Co.
385 Washington Street
St. Paul, MN 55102-1390

St. Paul Mercury Ins. Co.
385 Washington Street
St. Paul, MN 55102-1390

Savers Property and Casualty
10985 Cody, Suite 135
Overland Park, KS 66210

Seaco Insurance Company
PO Box 9165
Farmingham, MA 01701-9165

Security Ins. Co. of Hartford
9 Farm Springs Drive
Farmington, CT 06032

Seven Hills Insurance Company
580 Walnut Street
Cincinnati, OH 45202

Tokio Fire & Marine
101 Park Avenue
New York, NY 10178-0095

Transcontinental Insurance Co.
CNA Plaza
Chicago, IL 60685

Transportation Insurance Co.
CNA Plaza
Chicago, IL 60685

Travelers Indemnity Co. of America

One Tower Square
Hartford, CT 06183

Travelers Indemnity Co. of Illinois
One Tower Square
Hartford, CT 06183

Travelers Insurance Ins. Co.
One Tower Square
Hartford, CT 06183

Truck Insurance Exchange
4680 Wilshire Blvd.
P.O. Box 2478
Los Angeles, CA 90051

Twin City Insurance Co.
Hartford Plaza
Hartford, CT 06115

United Pacific Insurance Company
4 Penn Center Plaza
Philadelphia, PA 19103

United States Fire Insurance Company
PO Box 1973
Morristown, NJ 07960

Universal Underwriters Insurance Company
6363 College Boulevard
Overland Park, KS 66211

Valiant Ins. Company
PO Box 1228
Baltimore, MD 21203

Valley Forge Insurance Co.
CNA Plaza
Chicago, IL 60685

VanLiner Insurance Company
One United Drive
P.O. Box 26352
Fenton, MO 63026-1552

Virginia Surety Company
123 North Wacker Drive
Chicago, IL 60606

Wausau Underwriters Ins. Company
PO Box 8017
Wausau, WI 54402-8017

Wausau Business Ins. Company
PO Box 8017
Wausau, WI 54402-8017

White Mountains Insurance Company
1117 Elm Street
Manchester, NH 03101

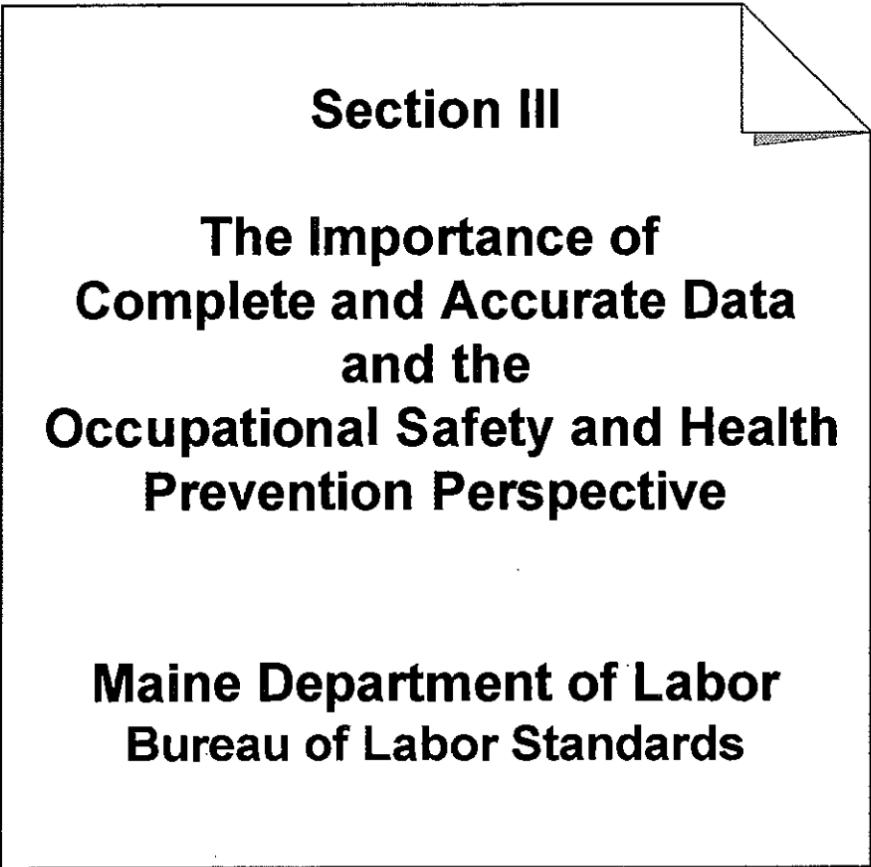
Yasuda Fire & Marine Ins. Co.

Two World Financial Center
225 Liberty Street, 43rd Floor
New York, NY 10281

Zenith Insurance Company
21255 Califa Street
Woodland Hills, CA Zip 91367

Zurich Insurance Company
1400 American Lane
Schaumburg, IL. 60196-1050

- C. MAKING INFORMED DECISIONS: OCCUPATIONAL HEALTH AND SAFETY
IN MAINE AND A DISCUSSION OF SELECTED WORKERS'
COMPENSATION ISSUES: BUREAU OF LABOR STANDARDS.**



Section III

**The Importance of
Complete and Accurate Data
and the
Occupational Safety and Health
Prevention Perspective**

**Maine Department of Labor
Bureau of Labor Standards**

Section III: Maine Department of Labor Bureau of Labor Standards The Data and Prevention Perspective

The following section is provided by the Maine Department of Labor, Bureau of Labor Standards (BLS). This information is one part of the Annual Report on the Status of the Workers' Compensation System in Maine. It is divided into four sections:

■ Ensuring that PL 486 becomes a reality

- The Monitoring Process
- Establishing Definitions and Beginning and Ending Time Frames

■ Accurate and Complete Data - The Possibilities

- Attracting Grant Money to Maine
- More In-depth Studies on Occupational Injuries and Illnesses in Maine
- The Ability to Better Maximize Limited Personnel and Resources
- The Ability to Address the Most Costly Safety Concerns

■ Trends from the Annual Survey of Occupational Injuries and Illnesses

- A Positive Movement: A Drop in the Number of Cases with Days Away From Work
- A Trend: Better Medical Management and Use of Alternative Work
- A Concern: The Number of Cases with Restricted Work Activity is at Record Levels
- The Economy and Its Affect on Injuries and Illnesses

■ BLS Safety and Health Programs and Initiatives

- Public Sector Safety Initiative
- Migrant Worker Housing Inspections
- Educational Programs
- Technical Advisors for Departmental Labor/Management Safety Committees
- Special Emphasis Program for Fire Departments

Ensuring that PL 486 Becomes Reality

The Monitoring Process

Last year, the legislature passed PL486--a law which bolstered the Worker Advocacy Program and tightened the collection and monitoring of reported information. This was a positive step toward ensuring that information used for policy and decision making will be available in the future. However, there have been provisions in past Workers' Compensation laws addressing data collection and monitoring that were not fully implemented by the Board. The current data quality problems in large part are a result of a lack of attention to data collection and monitoring by the Board. Below are a couple of examples of data collection deficiencies:

- ✓ There is no current monitoring of open-ended first reports so claim activity can be followed. Open-ended First Reports are those where either no return to work date has been reported, no Memorandum of Payment has been received or no Notice of Controversy or Denial has been received. By the fourteenth day after the injury, the Board should know whether the claim has been accepted or payments are being made while the case is explored further.
- ✓ An "interim report" is required every six months showing cumulative payments for ongoing claims and overall payments for final claims. This data is not being uniformly collected or monitored.

Important Decisions To Make

To alleviate problems later, certain decisions regarding data must be made soon by the Board. Definitions of terms and beginning and ending dates for deadlines must be established. Here are a few examples of data issues that must be resolved:

- ✓ Part of the problem with monitoring timeliness of benefits to injured workers is that there is no clear definition of the start and end date used to determine that 14 days have passed and payment is due to an injured worker if the employer/insurer has not taken certain actions (e.g, controverted or denied the claim).
- ✓ Some employers are continuing the injured employee's salary after an injury, a practice known as salary continuation. This can be a good situation for the employee, however, there are some considerations:
 - If a two year statute of limitations passes and the appropriate paperwork has not been filed, the employee could conceivably be cut off from future benefits. This is not to say that most employers would do that, but it should be mentioned. The employer might also be liable under civil lawsuit for not filing;
 - Reported information on these claims show \$0 paid for weekly compensation (indemnity) payments and this is not an accurate reflection of the costs of the claim. A decision needs to be made on how to handle these cases and what costs should be reported to the Board.

Key Point: The Board must take positive action to ensure that the data collection and monitoring as required in PL 486 is enforced. Data definitions and time frames must be established.

Accurate and Complete Data - The Possibilities

⊙ Grants

One opportunity that could emerge from the availability of complete and accurate data is that people in Maine could apply for and potentially receive grants to research occupational injuries and illnesses. Lack of such data has impeded these grant requests in the past. The National Institute of Occupational Safety and Health (NIOSH) recently established the National Occupational Research Agenda to identify priority research areas through the next decade. NIOSH is interested in data to identify risk factors associated with injuries and illnesses.

⊙ Maximizing Resources

Performance Based Budgeting requires all state government agencies to maximize resources and to show effectiveness by measuring results. The Bureau of Labor Standards is working on establishing its priorities by using data. Services will be offered to those identified as being most in need. Much of the data used comes from the Workers' Compensation database. If the data is incomplete or inaccurate, the ability of agencies, such as BLS, to use the information for their purposes is diminished.

⊙ Ability to Address the Most Costly Safety Concerns

Current measures of the severity of a Workers' Compensation claim are pretty much limited to whether a person lost a day or more of work. This has become more difficult to determine since the Workers' Compensation agency moved to its new computer system. The new data entry screens that were developed do not include a question that researchers had access to previously: Did the employee lose one or more days of work beyond the day of the injury? Only recently did BLS receive information on screens showing incapacity and return to work dates.

Better measures of severity help researchers working on injury and illness prevention focus on areas that need attention. An actual count of lost workdays would be helpful; this information is not gathered in the current system. Another good measure would be the actual costs incurred for each claim, something that is collected but needs to be monitored for completeness and for accuracy. NIOSH and other researchers have specifically expressed an interest in having better information on costs of injuries.

⊙ Making Informed Decisions

Accurate information on the current and past performance of the Workers' Compensation system is essential to evaluating the merits of any proposed law change. Over the years lawmakers asked for information in different Workers' Compensation acts, including information on costs, utilization, and performance of the Workers' Compensation System. That data must be available if policy makers are to make informed decisions.

Trends From the Annual Survey of Occupational Injuries and Illnesses

The past year has been a rebuilding year for staff at the Bureau of Labor Standards. In June of 1996, the Workers' Compensation Board (WCB) switched to a new computer system. Due to difficulties, we were unable to enter new information on the characteristics of work-related injuries and illnesses (e.g., kind of injury, events leading to injury, occupation of worker, etc.). Additionally we could not get data from the WCB computer system. Thanks to the efforts of the former WCB Director of Computer Services, we eventually gained access to their system for data entry and were able to extract information.

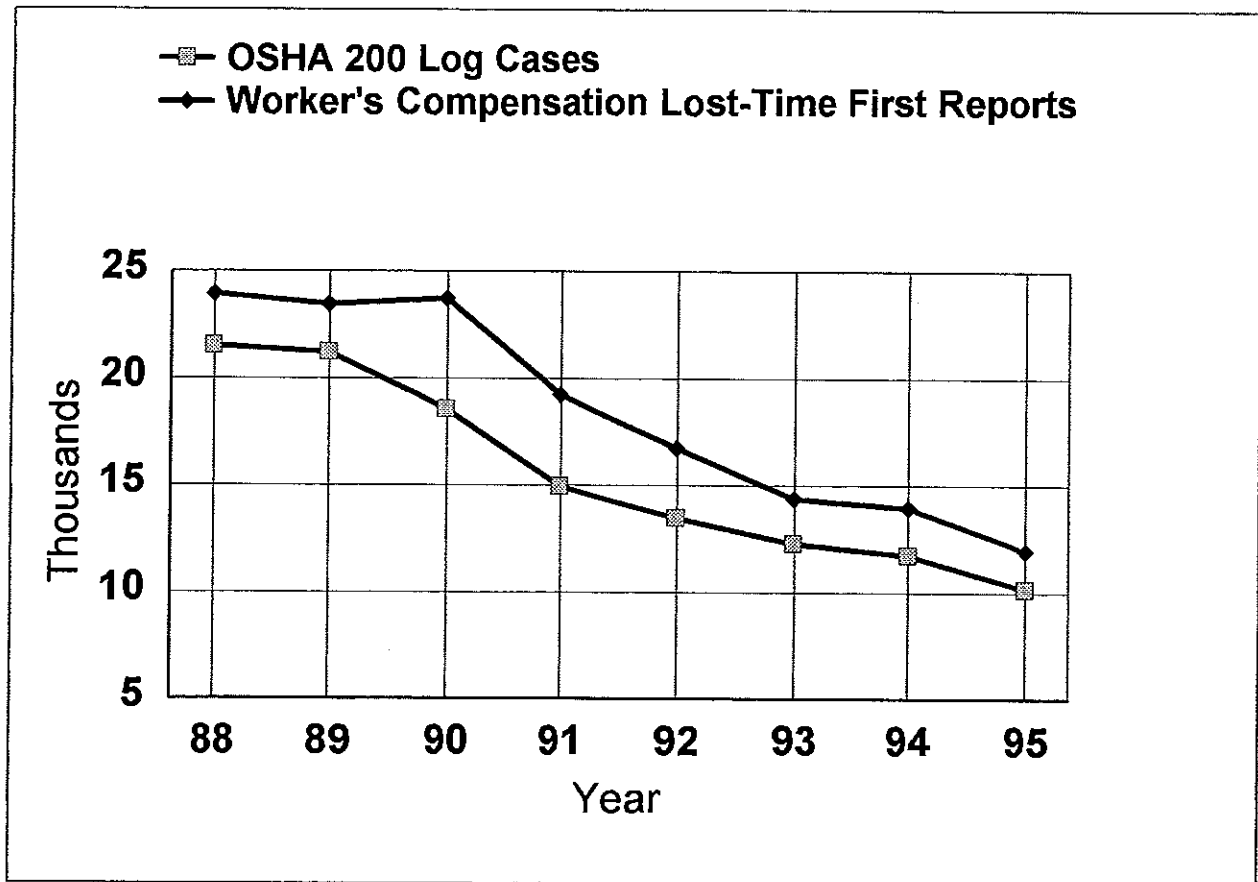
The data was loaded onto our computer system, and we have done several checks on data quality. The data had more problems than usual; the data cleansing process for 1996 is near completion. This cleansing process will make the data comparable to previous years. We hope to publish a report on 1996 injuries in March or April.

Consequently, in this year's report to the legislature, we will focus on injury and illness data collected for the U.S. Bureau of Labor Statistics in the Annual Survey of Occupational Injuries and Illnesses.

Cases with Lost Time are on the Decline

Data collected in the Annual Survey of Occupational Injuries and Illnesses by the Maine Bureau of Labor Standards for the U.S. Bureau of Labor Statistics shows that the number of cases resulting in days away from work in Maine has declined sharply over the past eight years. Workers' compensation claims for people losing a day or more away from work has declined as well. This is a positive trend (see Chart 1.).

Chart 1.

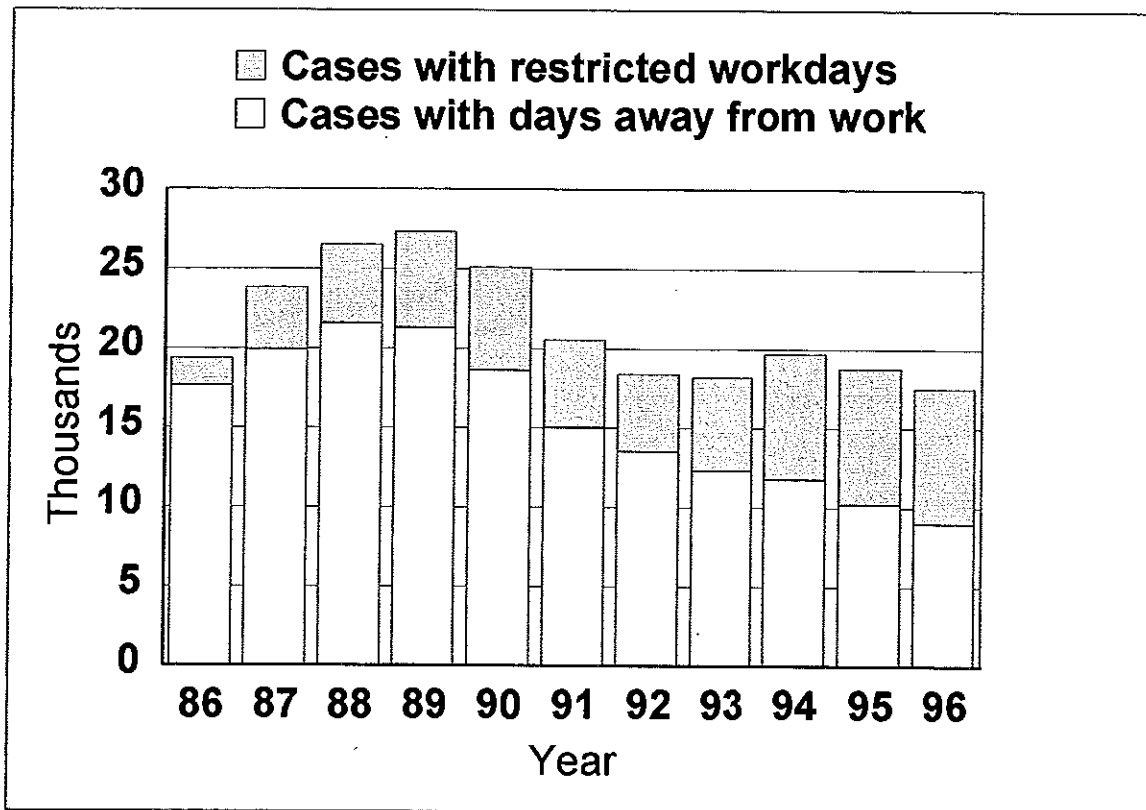


Key Point: The number of reported cases involving lost days from work under both collection systems, Workers' Compensation and OSHA, has been on the decline; this is a factor in lowering workers' compensation costs.

Cases with Restricted Workday Cases at High Levels

The Annual BLS Survey collects cases that result in restricted work activity and cases that result in no lost time or restricted work activity but require medical treatment beyond first aid. The Workers' Compensation Board no longer collects these types of cases. These additional cases collected through the survey reveal an important piece of information regarding the number of cases resulting in restricted work activity. In past years these cases may have resulted in days away from work, but now, due to return-to-work programs and better medical management of claims, these cases are treated as restricted work activity. The number of cases resulting in restricted work activity has increased sharply since 1992 (see Chart 2).

Chart 2.



Key Point: Due to Return-to-Work programs and improved medical management, the number of cases resulting in restricted work activity has increased significantly since 1992 while the number of cases resulting in days away from work has dropped.

Proportion of Lost Workday Cases

The proportion of cases with restricted work activity to all lost workday cases (i.e., those with either days away from work, restricted time, or both) has increased in all but one of the 12 years since 1985. For each of the past two years there have been over 8,500 work-related injuries and illnesses that resulted in restricted work activity. Cases with restricted work activity now represent 48.7 percent of all lost workday cases (see Charts 3 and 4).

Chart 3.

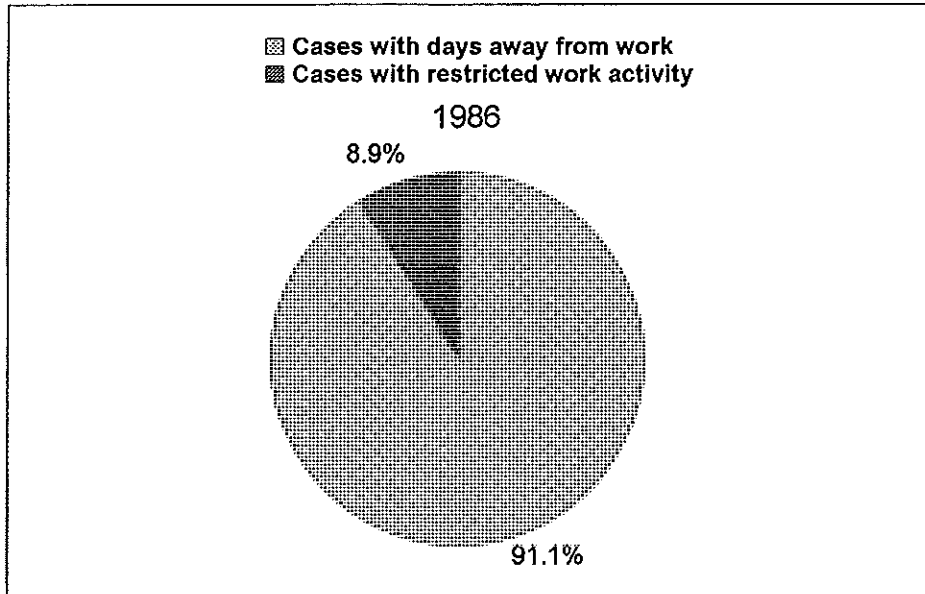
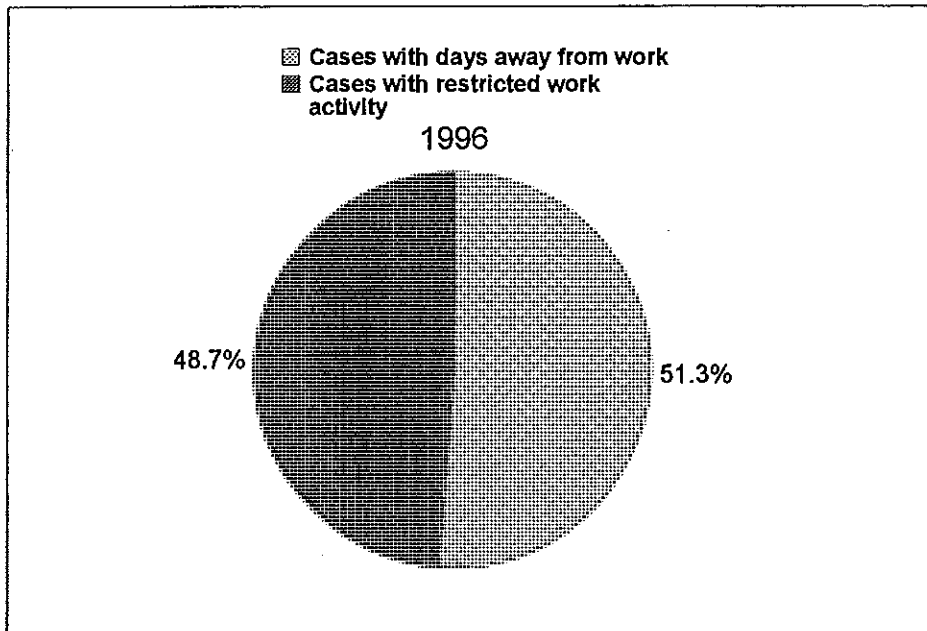


Chart 4.



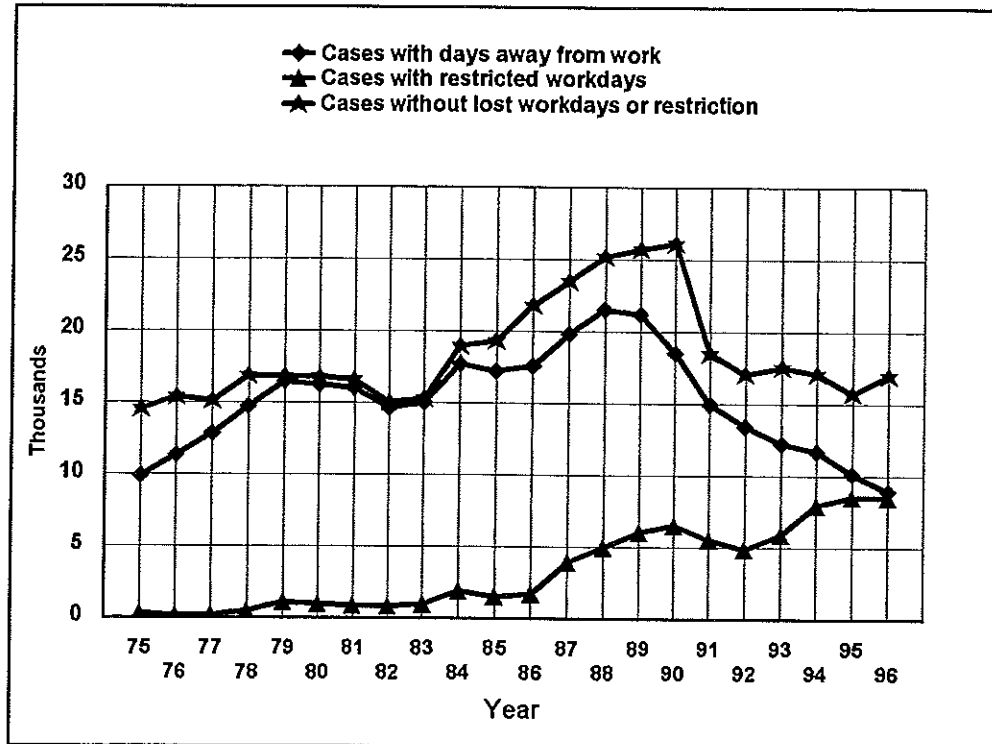
Key Point: Though cases with days away are on the decline, restricted workday cases--which have the potential to become lost time--are at record high levels.

Trends in the Severity of Injuries and Illnesses

Chart 5 shows trends in the number of OSHA recordable cases since 1975. Cases that result in days away from work, in most instances, would be OSHA recordable and workers' compensation reportable. There are slight differences in the reporting rules that make a small number of these cases reportable to workers' compensation but not OSHA recordable and vice versa.

Cases that result in restricted work activity and minor cases requiring medical treatment beyond first aid are not typically reported to workers' compensation unless there are medical bills and the claim is controverted (denied). As chart 5 illustrates, data from the annual survey show there are as many less serious cases (cases without lost workdays or restriction) as there are cases that do result in days away from work or restricted workdays. These cases should be presented since they result from incidents in the workplace.

Chart 5.

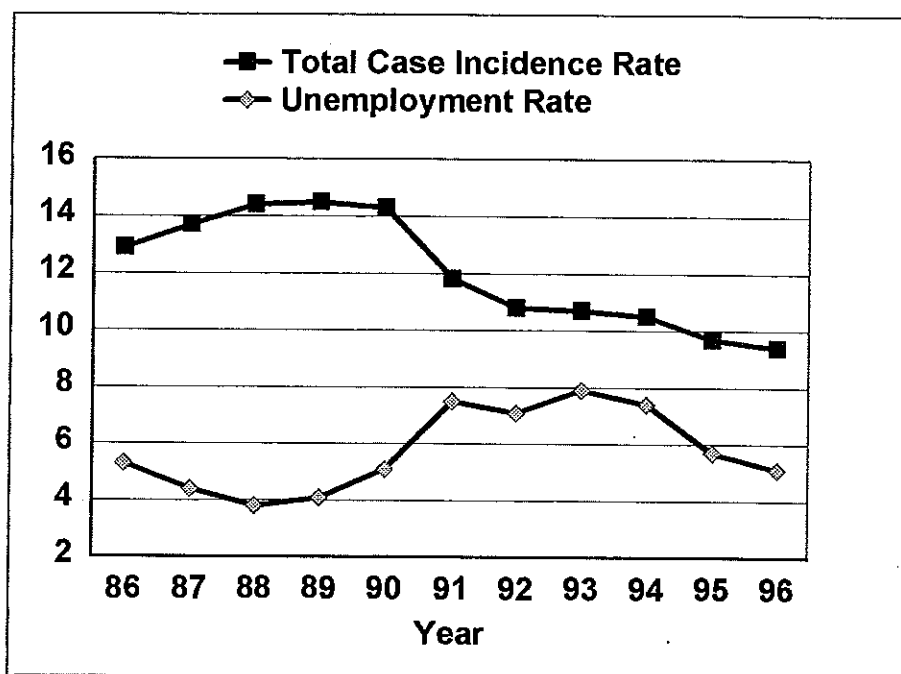


Key Point: The number of cases that resulted in restricted work activity increased to the point where they are nearly equal to the number of cases that resulted in days away from work. This is due mainly to return-to-work programs that more and more employers have adopted. An even higher number of occurrences do not result in lost-time or restriction.

The Effect of the Economy on Injuries or Illnesses

Changes in the rate at which injuries and illnesses occur in the workplace are affected most by the economy. Chart 6 compares the rate for all OSHA recordable cases to the unemployment rate in Maine. There is a strong relationship between the two measures. In general, when the economy is strong, more people find work and therefore unemployment is low. When this occurs the number and rate of injuries and illnesses increase. This is likely due to the hiring of less experienced and younger workers. This is evident in the workers' compensation data which show that employees who are employed less than one year are much more likely to suffer a work-related injury or illness than employees who have been on the job for a longer period of time. On the other hand, when the economy slows, employers are forced to cut, typically back to their core staff of employees who are the more experienced workers. (The data pattern is similar, though less pronounced for national data).

Chart 6.



Key Point: The health of the economy had a significant affect on the rate at which injuries and illnesses occurred in Maine's workplaces. As the unemployment rate fell, the rate and number of injuries and illnesses increased due in part to the hiring of less experienced workers who were at a higher risk of being injured at work. However, beginning in 1992, factors other than the economy have had a significant effect on the rates.

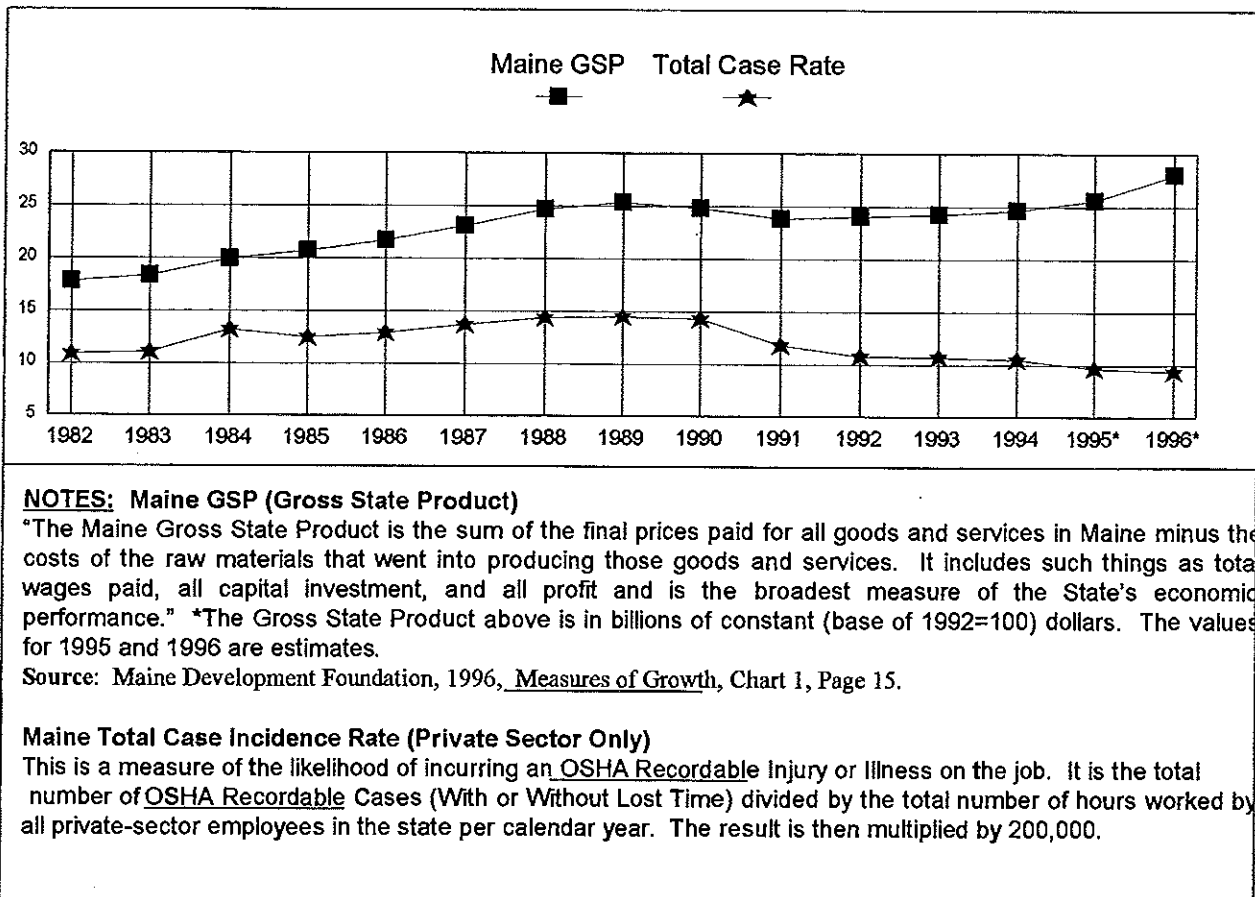
The Effect of the Economy on Rate of OSHA Recordable Cases

Chart 7 compares Maine's total case injury and illness incidence rate with the gross state product for calendar years 1982 through 1996.

From 1982 through 1991 (with the exception of 1984 - 1985), these two measures increased and decreased consistently together (i.e., as Maine's economy grew, the likelihood of being hurt on the job also grew). During the economic downturn of 1989 - 1991, as the economy receded, the injury/illness incidence rates also decreased.

However, in the time period from 1992 through 1996 there was a change to this relationship. Contrary to past trends, as Maine's economy grew, the OSHA recordable total injury and illness rate decreased each year.

Chart 7.



Key Point: Previously, OSHA Total Case Incidence Rates were affected by the state of the economy. Now it appears that other factors are influencing the rates.

Workplace Safety and Health Prevention Initiatives

★ **Public Sector Safety Initiative**

The Bureau of Labor Standards' (BLS) will select 30 public sector employers with the highest rates of injury and illness. This list of employers, which will likely include some state agencies, will be invited to be in the program. The Bureau of Labor Standards will then assist them to develop a written safety plan and mechanisms for improving their safety and health record. The employers must agree to on-site consultation and to provide relevant information to the consultation team. As long as the employer is a participant in the safety initiative, BLS will waive routine inspections of the facility. This program is modeled after the successful "Maine 200" program which did similar work in the private sector.

★ **Migrant Worker Housing Inspections**

Through a contract with the Bureau of Employment Services, the Bureau of Labor Standards' Workplace Safety and Health Division will conduct inspections of migrant housing units in central and western Maine. Division employees will perform on-site inspections in accordance with guidelines provided by the Bureau of Employment Services.

★ **Educational Programs**

BLS' Workplace Safety and Health Division delivers a variety of educational programs relating to occupational safety and health. Courses are presented by instructors who have completed train-the-trainer courses at the U.S. Department of Labor, Occupational Safety and Health Training Institute in Illinois. Subjects include accident investigation, hazard communication, safety management for supervisors, OSHA update, video display terminal, and OSHA standards for general industry and construction.

★ **Technical Advisors for Departmental Labor/Management Safety Committees**

In 1997 the Governor, through executive order, created labor/management safety and health committees within state government. BLS' Workplace Safety and Health Division employees provide guidance to these committees. Staff members attend meetings of their assigned committees and provide technical advice about safety and health related topics as needed.

★ **Special Emphasis Program--Fire Departments**

During the last six months, the Workplace Safety and Health Division has embarked on several safety and health initiatives. Letters were sent to 456 fire departments in the State offering consultation services. If agreed to by the department, penalties would not be assessed while working with consultants. Approximately 175 departments took advantage of this effort. The completion date of this initiative is April 30, 1998.

Key Point: *Accurate and complete data is essential for Policy makers to make informed decisions about the Workers' Compensation System in Maine.*