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

**Submitted to the  
119th Legislature  
(First Regular Session)**

**February 1999**

**Alessandro A. Iuppa  
Superintendent  
Bureau of Insurance  
Department of Professional  
& Financial Regulation**

**Paul R. Dionne  
Executive Director  
Workers' Compensation Board**

**Alan C. Hinsey  
Director  
Bureau of Labor Standards  
Department of Labor**





ANGUS S. KING, JR.  
GOVERNOR

STATE OF MAINE  
WORKERS' COMPENSATION BOARD  
DEERING BUILDING AMHI COMPLEX  
27 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0027

PAUL R. DIONNE  
EXECUTIVE DIRECTOR

February 25, 1999

The Honorable Angus S. King, Jr.  
Governor of the State of Maine  
1 State House Station  
Augusta, Maine 04333-0001

The Honorable Mark W. Lawrence  
President of the Senate  
3 State House Station  
Augusta, Maine 04333-0003

The Honorable G. Steven Rowe  
Speaker of the House  
2 State House Station  
Augusta, Maine 04333-0002

Senator Lloyd P. LaFountain III, Co-chair  
Representative Jane W. Saxl, Co-chair  
Joint Standing Committee on Banking & Insurance  
State House - Room 427  
Augusta, Maine 04330

Senator Neria R. Douglass, Co-chair  
Representative Pamela Henderson Hatch, Co-chair  
Joint Standing Committee on Labor  
State House - Room 134  
Augusta, Maine 04330

We are pleased to submit to the Governor and the 119th Legislature the Annual Report on the Status of the Maine Workers' Compensation System as required by Title 39-A, Section 358-A(1). The Annual Report profiles the current status of the workers' compensation system in Maine and is submitted by the three State agencies most involved in the workers' compensation system.

Sincerely,

Alessandro A. Iuppa  
Superintendent  
Bureau of Insurance  
Department of Professional &  
Financial Regulation

Sincerely,

Paul R. Dionne  
Executive Director  
Workers' Compensation Board

Sincerely,

Alan C. Hinsey  
Director  
Bureau of Labor Standards  
Department of Labor



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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.

Prior to the 1992 Blue Ribbon Commission Reform legislation, insurance carriers were writing very few risks in the voluntary market. The vast majority of insured employers were written in the residual market pool ('Pool'). In 1992, the Pool wrote 82.6% of the Maine workers' compensation market. Among the responses to poor market conditions, Maine Employers' Mutual Insurance Company ('MEMIC') was established by legislation as an employer-owned mutual insurance company and replaced the Pool beginning January 1, 1993. Another response was to encourage competition among insurers. Prior to the 1992 reforms, virtually all insurance companies charged the base rates. After the reforms, each insurance company filed its own manual rates based upon its expense and profit provisions.

Since the reforms, market conditions have greatly improved. We now have more than 140 insurance companies with rates approved in Maine, and since 1994 the cumulative impact of the loss cost rate reductions is 43.4%. A testimony to the success of recent reforms is highlighted in an annual report compiled by Actuarial & Technical Solutions, Inc., an independent actuarial firm which compiles and studies workers' compensation on a nationwide basis. In 1996, the study ranked Maine as the 42nd most expensive state for workers' compensation for the manufacturing industry among the states studied. We were ranked 30th in 1997 and moved down to 23rd position in 1998.

Self-insurance represents a significant part of the workers' compensation market in Maine and is a viable alternative for many employers. There are 20 groups representing approximately 1,350 employers and 122 individual self-insured employers. In terms of annual standard premium, self-insureds represent approximately 50% of the workers' compensation market in Maine.

When contrasted with the conditions that existed prior to 1993, the competition in the Maine workers' compensation market has clearly improved. Considering the range of filed workers' compensation rates, the number of carriers in the market place, and the overall decline in rate levels since 1994, the Maine workers' compensation market is healthier and employers have greater options and lower costs.

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.

Injured workers have flocked to the Worker Advocate Program in large numbers. The need for competent representation, where private attorneys are not an option, has been clearly proven by the number of cases that the advocates have handled for the 12-month period from December 1, 1997 through November 30, 1998.

Through the month of November, 1998, the Advocate Program has 1,455 open files. The advocates, in the last year, have represented injured workers in 2,078 mediations and 390 formal hearings. According to the most recent statistics, 36% of all cases at mediation and 23% of all cases at formal hearing have an advocate assigned to them. A substantial majority of the active caseload is in the Portland and Lewiston offices.

Chapter 486 provides for the creation of a Monitoring, Audit and Enforcement (MAE) Program. The Workers' Compensation Board of Directors approved the MAE Program on June 2, 1998. The first part of the Program was to test the MAE Program through the Pilot Project.

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

The Program is responsible for (1) determining and maintaining Workers' Compensation Board data integrity; (2) compiling and reporting statistics of all performance indicators; (3) making recommendations to improve user performance; and (4) making recommendations to improve forms and information gathering procedures.

An important part of Chapter 486 is the development of a system to measure compliance. Board staff has been meeting with the Compliance and Benchmarking Group to develop protocols. The Compliance and Benchmarking Group has reached consensus regarding a number of issues. The protocols that were proposed and accepted by the Board on May 5 and May 19, 1998 have been integrated into the MAE Program. The protocols deal with (1) definitions, (2) First Reports, (3) timeliness of payments, (4) subsequent indemnity payments, (5) filing of Notices of Controversy, (6) completeness of payments, (7) measuring the frequency and reasons for controversies, (8) measuring the timing of the process and use of attorneys, and (9) receipt of Memorandum of Payment.

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

The first phase of the Program was intended to test the MAE Program and is referred to as the Pilot Project. The primary activity of the Pilot Project was to conduct on-site audits of randomly selected files for 1993 and 1997 dates of injury, exclusive. The Audit Division worked with the Bureau of Labor Standards to generate a statistically valid list of claim files to be audited, based upon lost time claims reported to the Board.

Four hundred eleven (411) claim files belonging to 48 entities were audited for 1997. Six of these claims had no workers' compensation insurance at the time of the injury. Audit candidates were randomly scheduled and notified in advance of the audit. The audited entities were very cooperative and accommodating.

This report will enable the Workers' Compensation Board to develop performance standards (baselines, benchmarks, etc.) after consultation with insurers, self-insurers, third-party administrators, employee groups, and other appropriate parties. The performance standards will be utilized both in assessing the Maine workers' compensation system and providing accountability for the users of the system.

One of the major concerns of the Board is to streamline the dispute resolution process reducing the time it takes for a case to be resolved, either by agreement or by a hearing officer. The goal of streamlining is to speed up the dispute resolution process by shortening the time frames at all levels of dispute resolution, i.e. troubleshooting, mediation, and formal hearing. The Workers' Compensation Board will implement standard operating procedures for each phase of dispute resolution and will closely monitor this activity through the adoption of performance measures. The Workers' Compensation Board recently forwarded Formal Hearing Rules to Public Hearing. It is anticipated that rules will be approved by the Workers' Compensation Board in early 1999.

The Board's biennial budget for Fiscal Years 2000 and 2001, beginning on July 1, 1999, is a little unique compared to previous fiscal years due to the fact that projected revenues are expected to be less than projected expenditures. This is not surprising because the Board has not raised its assessment since its first budget in 1993 for FY94 and the Worker Advocate Program is placing considerable financial demands on the Board. The Board is projecting that its expenditures will exceed its revenue for the first time in Fiscal Years 2000 and 2001 due to increases mainly to the costs of the Worker Advocate Program and new technology. The Board, however, is not seeking an increase in the assessment cap for Fiscal Years 2000 and 2001. Instead, it is proposing a Part II request to the Governor and the Legislature to allow it to use its statutory cash reserves for the upcoming biennium in order to fund expenditures that are above projected revenues. The purpose is to consider a variety of cost saving measures to include automation and improved technology.

For the first time since its inception in 1992, the Workers' Compensation Board is proposing substantive amendments to the Workers' Compensation Act. Clearly, such initiatives were contemplated by the Legislature in 1992 as the Legislature included the following language in the Act: "The board shall consider and recommend to the Legislature changes in this Act." 39-A

M.R.S.A. Section 152(11). The Board has been led to believe that such proposals would be welcomed by the Legislature and the administration.

Over the past year, the Workers' Compensation Board has made a number of significant advancements in the technological area. The technology environment was in dire need of meaningful attention in most areas, specifically the communication infrastructure, server hardware and software, desktop hardware and software, support, business application, end user tools, database design, and, most important, an in-depth analysis of business needs and process flow.

The goals for 1999 include the following: (1) increase the percentage of Coverage data received electronically to 60% by January 2000; (2) increase the percentage of electronically filed First Report claim submissions from the December 1998 level of 35% to 60% by June 1999 and to 80% by January 2000; (3) develop and implement the capability for the Workers' Compensation Board to receive Memorandum of Payment and Notice of Controversy forms electronically by September 1999; (4) investigate the viability of using Imaging Technology for sharing of claim information movement and storage of paper; (5) investigate the submission of forms via the Workers' Compensation Board web-site; and (6) automate detection of the Workers' Compensation Board rule violation.

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

Section 213(4) provides, in part, for an extension of the 260-week limitation if the Board finds that the frequency of such cases is no greater than the national average. The Board is presently considering the findings and conclusions of an ARMTEch report recommending an extension of the 260-week limitation by 52 weeks. Board action on this issue will occur in early 1999.

The new mission of the Workers' Compensation Board is gradually having an impact on the overall workers' compensation system. As the measures provided for by the Legislature and recently implemented by the Board take effect, the system should experience a further reduction in the incidence rate, improved performance by insureds and self-insureds, and a more equitable system for employees and employers of the State of Maine.

Aggressive training and education must take place to make employees aware of their rights, and employers and insurance companies aware of the laws that protect workers who get injured in the workplace. The MAE program must be fully implemented by the Board.

To get a consistent and accurate picture of all disabling cases, employers, workers and insurers need to be educated on proper filing guidelines with accurate data. A proactive monitoring system must be in

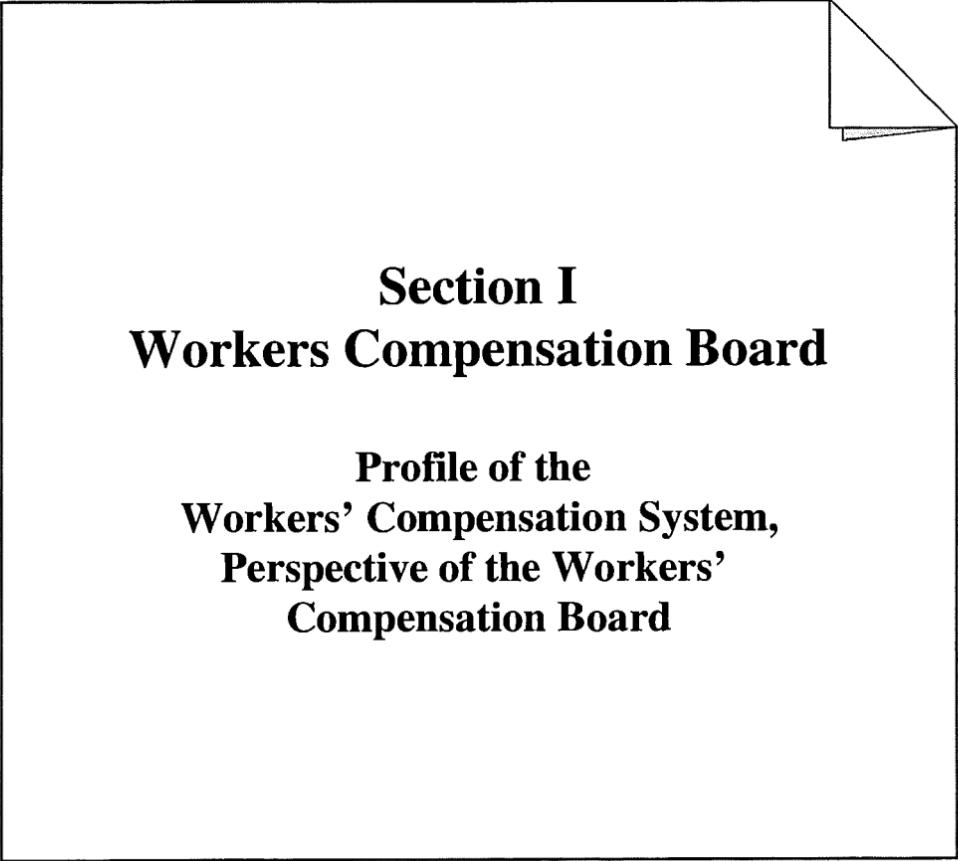
place at Workers' Compensation to monitor all forms for compliance and accuracy. This will not only assure correct and accurate data but it will close out open-ended cases.

The number of disabling cases rose (2.5%) from 12,289 in 1996 to 12,601 in 1997, the first increase since 1990. The slight decrease in OSHA recordable cases in 1997 was not a significant change from 1996.

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

Cases with days away from work are on the decline while restricted workday cases, which have the potential to result in days away from work, are at record high levels, accounting for more than half of all lost workday cases.

Employers and workers need training and education to maintain a safe and healthy workplace. The Bureau of Labor Standards provides excellent health and safety training consultations, **free of charge**. Data from the Workers' Compensation database must be accurate and reliable in order to provide this service.



**Section I**  
**Workers Compensation Board**

**Profile of the  
Workers' Compensation System,  
Perspective of the Workers'  
Compensation Board**



## Section I: Workers' Compensation Board

The following section is provided by the Workers' Compensation Board. This information is one part of the Annual Report on the Status of the Maine Workers' Compensation System. The Board's report is organized in the following sections:

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## **1. Introduction**

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

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

Enacted in 1997, Chapter 486 expanded the scope of the report by changing the Mission Statement and requiring more data about the Board's administrative and regulatory duties. It specifically calls for data to measure compliance of individual insurers, self-insurers, and third-party administrators. On June 2, 1998, the Workers' Compensation Board approved a Monitoring, Audit and Enforcement (MAE) Program. It was agreed that the program be tested and phased in over a period of time. The first phase of the program was intended to test the MAE Program and is referred to as the Pilot Audit Program. The goals of the Pilot Project were to (1) test the MAE Program, (2) measure and determine the integrity of current data, (3) report on the performance of the entire system, and (4) educate the users about the program.

P.L. 1997, Chapter 486 also provided for an expanded Worker Advocate Program. The Program provides advocates for unrepresented employees at both the mediation and formal hearing levels and has enjoyed a positive and overwhelming response.

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

## 2. 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.

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. This process culminated in a major overhauling of Maine's statute in 1992. The reforms, among other things, lowered benefits, provided for a less formal dispute resolution system, and reduced the use of attorneys.

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

P.L. 1997, Chapter 486, enacted in 1997, provides a new mission statement for the Board which shifts the emphasis from dispute resolution to dispute prevention and compliance. This report will, in large part, deal with the changes which have resulted from this new legislation, such as (1) the Monitoring, Audit and Enforcement Program, (2) the Pilot Audit Program, and (3) the Worker Advocate Program.

### 3. Board Organization and Program

#### A. Organization.

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

| Labor               | Management       |
|---------------------|------------------|
| Anthony Monfiletto  | Charles R. Weeks |
| Frederick G. Hayes  | Thomas Accomando |
| P. Vincent O'Malley | David M. Gauvin  |
| Susan M. Pinette    | Linda Riddell    |

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

#### B. Program.

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

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

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

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

### **B. The MAE Program Goals.**

The basic goals of the Program are as follows:

- \* provide timely and reliable data;
- \* monitor and audit payment and filing requirements;
- \* detect those parties that are not in compliance; and
- \* ensure that all filing and compliance obligations are met.

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

The Program will also be responsible for:

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

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

An important part of Chapter 486 is the development of a system to measure compliance. Board staff has been meeting with the Compliance and Benchmarking Group to develop protocols. Considerable progress has been made with this group and it is very probable that consensus will be reached on most of the benchmark standards. Approved baselines and benchmarks will be incorporated into the MAE Program.

Initially, the goal is to assimilate accurate information so that baselines can be developed. Once baselines are developed, then reasonable benchmarks (performance standards) will be established to gauge the progress of insurers, self-insurers, and TPAs.

If benchmarks are not met, the Board's enforcement process would be utilized to compel compliance. This will provide for accountability and greater compliance.

The Compliance and Benchmarking Group has reached consensus regarding a number of issues. The protocols that were proposed and accepted by the Board on May 5 and May 19, 1998 have been integrated into the MAE Program. The protocols deal with:

- (1) definitions,
- (2) First Reports,
- (3) timeliness of payments,
- (4) subsequent indemnity payments,
- (5) filing of Notices of Controversy,
- (6) completeness of payments,
- (7) measuring the frequency and reasons for controversies,
- (8) measuring the timing of the process and use of attorneys, and
- (9) receipt of Memorandum of Payment.

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

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

On October 20, 1998, the Board of Directors approved the implementation of Quarterly Compliance Reports, to monitor the following:

- (1) Timely filing of First Reports of Injury. (No insurer or third-party administrator [TPA] will be identified.)
- (2) Timely payment of benefits. (Insurers, TPA's, and self-administered employers will be identified.)
- (3) Timely filing of Memorandum of Payment and Notice of Controversy Forms. (Insurers, TPA's, and self-administered employers will be identified.)

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

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

## **5. Pilot Audit Program**

### **A. Executive Summary.**

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 that shifts the emphasis from dispute resolution to dispute prevention and compliance.

Chapter 486 mandates the establishment of a Monitoring, Audit and Enforcement Program (MAE Program) to ensure that all obligations under the Act are met, including the requirements of section 359. On June 2, 1998 the Workers' Compensation Board of Directors approved a MAE Program. It was agreed that the program be tested and phased in over time.

The first phase of the Program was intended to test the MAE Program and is referred to as the Pilot Project. The goals of the Pilot Project are to (1) test the proposed MAE Program, (2) measure and determine the Workers' Compensation Board's current data collection and reporting capabilities and limitations, (3) report on the performance of the entire system, and (4) educate the public about the program and what to expect following the pilot project.

The primary activity of the pilot project was to conduct on-site audits of randomly selected claim files for 1993 and 1997 dates of injury, exclusive. The Audit Division worked with the Bureau of Labor Standards to generate a statistically valid list of claim files to be audited, based upon lost time claims reported to the Board.

Early in the project 1993 claim file audits were discontinued, because the following factors made it nearly impossible to audit those files objectively: (1) Board data for 1993 claims is relatively more incomplete and inaccurate, (2) Audits of 1993 claims took considerably more time and placed an inordinate burden upon the audited entities, and (3) 1993 claims were processed without rules or adequate forms.

Four hundred eleven (411) claim files belonging to 48 entities were audited for 1997. Six of these claims had no workers' compensation insurance at the time of the injury. Audit candidates were randomly scheduled and notified in advance of the audit. The audited entities were very cooperative and accommodating.

This report reflects the results of indemnity benefit payments and form filings. The primary concern is the timely and accurate payment of indemnity benefits. Late and incorrect indemnity payments were found and are detailed in the report. Additional indemnity payments were made as a result of the audits. Form filings, although of secondary importance, are needed to provide timely and accurate information. Late or missing forms can result in late or incorrect indemnity payments and increased use of and delays in Board function.

The results contained in this report reveal that some indemnity benefits were paid late and inaccurately. Also, a significant amount of claims data cannot be recorded due to incomplete or missing forms. Although individual results are not reported, it should be noted that the results varied significantly among the entities audited.

An analysis of Board data demonstrates that data integrity is poor. Claims data had significant errors and omissions. Data collection efforts are predominantly manual and ineffective. Relevant data collection and reporting capabilities are limited. New technologies and programs presently being implemented should improve the Board's data integrity.

In conducting audits the Workers' Compensation Act, rules and protocols were utilized whenever possible. At times, results could not be determined and were placed in an 'indeterminable' category. The reasons for inclusion in this category ranged from lack of information to a lack of protocols.

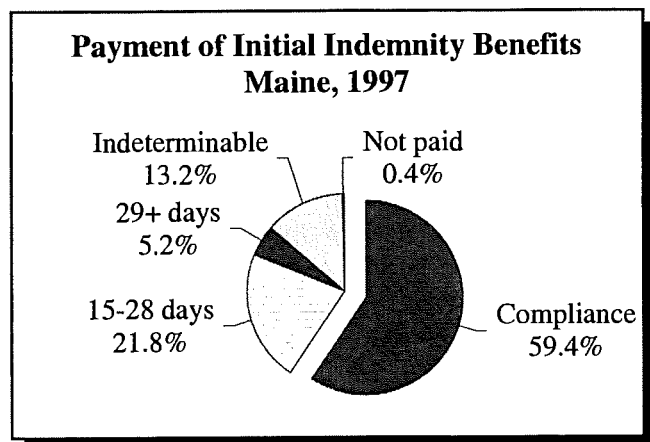
This report will enable the Workers' Compensation Board to develop performance standards (baselines, benchmarks, etc.) after consultation with insurers, self-insurers, third-party administrators, employee groups and other appropriate parties. The performance standards will be utilized both in assessing the Maine workers' compensation system and providing accountability for the users of the system.

Workers' Compensation Board staff deserves credit for some of the positive results noted in this report. Many hours were spent correcting indemnity benefit calculations and requesting missing forms and information.

A proactive monitoring program would help to ensure that indemnity benefits are paid in a timely and accurate manner. Field auditors will verify information being provided to the Board and perform other tasks yet to be determined. Enforcement procedures will encourage greater compliance.

This report attempts to provide an objective analysis of indemnity benefits and data collection activities for 1997 dates of injury. The findings of this report place a burden on the Workers' Compensation Board to effectively monitor, audit and enforce the Act. Now that the program has been tested the Board must commit to the full implementation and administration of a MAE Program, which will result in greater compliance with the Act.

## B. Indemnity Benefits.

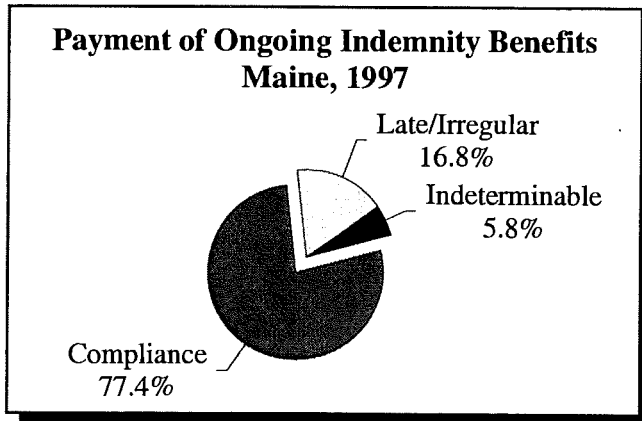


### Payment of Initial Indemnity Benefits

The Act requires that initial indemnity payments be made within 14 days. The number of days is measured from the date of incapacity or employer's knowledge of the incapacity, whichever is greater, in accordance with Section 205(2) and established protocols. The chart indicates that 59.4% of initial indemnity payments were made on time.

Initial and subsequent indemnity payments requiring a Memorandum of Payment (MOP) were used in this calculation. The indeterminable category consists of claims for partial incapacity/compensation that lacked sufficient information or guidelines; compensation paid after a Notice of Controversy but prior to mediation; and claims that involved salary continuation.

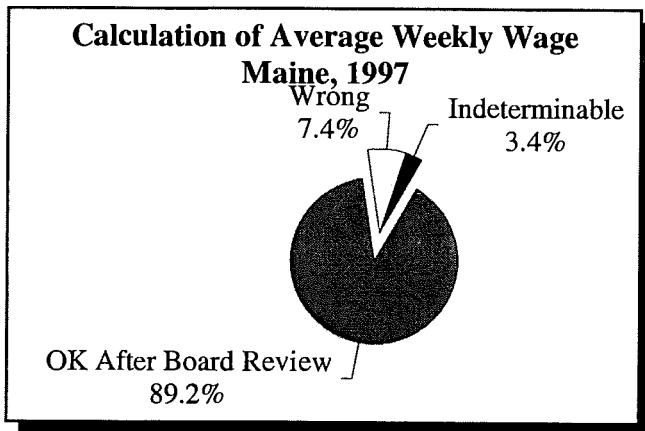
### Payment of Ongoing Indemnity Benefits



The Act requires that continuing indemnity benefits be paid weekly. The number of days is measured from the date of the previous indemnity payment in accordance with Section 205(2). The chart indicates that compliance was achieved 77.4% of the time.

The category labeled indeterminable consists of claims for partial incapacity/compensation that lacked sufficient information or guidelines and claims that involved salary continuation.

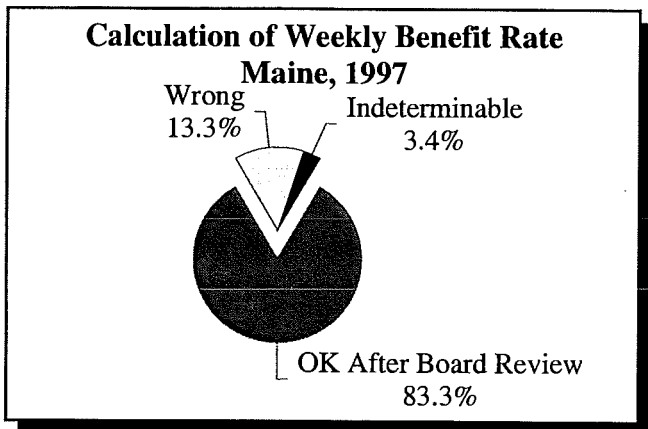
### Calculation of Average Weekly Wage



The chart indicates compliance is 89.2% after the Board has reviewed the calculations for accuracy. Board staff reviews calculations and requests corrections in many cases. No verifiable evidence exists to determine the accuracy of the calculation prior to Board involvement.

The Wrong category consists primarily of under payments. The indeterminable category consists of claims with missing or insufficient wage information.

### Calculation of Weekly Benefit Rate



Weekly benefit rates are determined, for the most part, by looking up an average weekly wage in tables published by the Board. Most claims with an incorrect average weekly wage calculation will also have an incorrect weekly benefit rate. Comparing the chart to the left with the chart above reveals that the error rate for weekly benefit rates is higher than the error rate for average weekly wage calculations. Other factors caused the additional incorrect calculations.

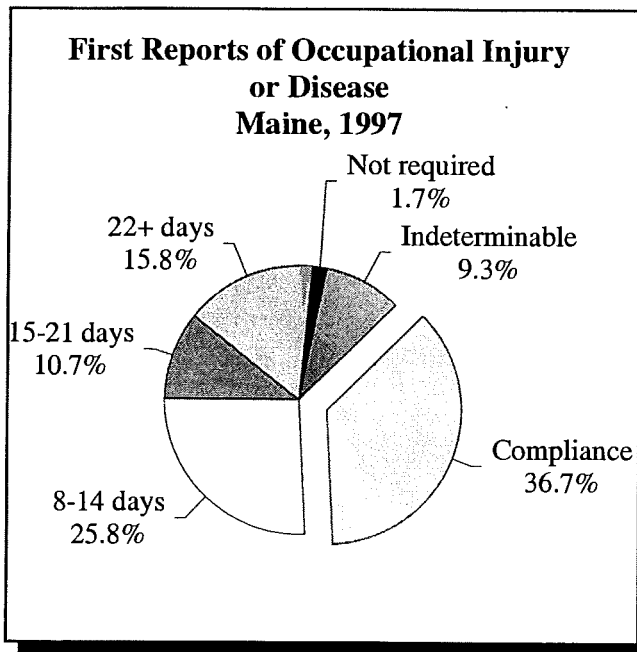
The foregoing chart represents the accuracy of the calculation after the Board has reviewed the calculations. No verifiable evidence exists to determine the accuracy of the calculation prior to Board involvement. The Wrong category consists primarily of under payments. The indeterminate category consists of claims with missing or insufficient wage information and claims with salary

### **C. Form Filing.**

Timely and accurate indemnity benefits are of primary importance. The information needed to monitor payment of benefits and generate reports is provided on Board approved forms. The form filing results will be used to determine what the Board needs to do in the future to address any deficiencies. The following forms were considered for inclusion in this project.

- \* First Report of Occupational Injury or Illness (WCB-1):  
Included in report. Protocols used.
- \* Wage Statement (WCB-2):  
Included in report. No protocol exists. Section 205(8) filing requirement was used.
- \* Schedule of Dependent(s) and Filing Status Statement (WCB-2A):  
Not included.
- \* Memorandum of Payment (WCB-3):  
Included in report. Protocols used.
- \* Discontinuance or Modification of Compensation (WCB-4):  
Included in report for illustrative purposes. No filing requirement or protocol exists.
- \* Consent Between Employer and Employee (WCB-4A):  
Not included.
- \* Certificate Authorizing Release of Benefit Information (WCB-6):  
Not included.
- \* Certificate of Discontinuance or Reduction of Compensation (WCB-8):  
Not included. Only twenty-six forms were filed which is not enough to consider a valid sample. Also, no protocols exist.
- \* Notice of Controversy (WCB-9):  
Included in report. Protocols used.
- \* Lump Sum Settlement (WCB-10):  
Not included.
- \* Statement of Compensation Paid (WCB-11):  
Included in report. No protocols exist. Rule 8.1 filing requirement was used.
- \* Employer's Supplemental Report (WCB-12):  
Not included.

## First Report of Occupational Injury or Disease

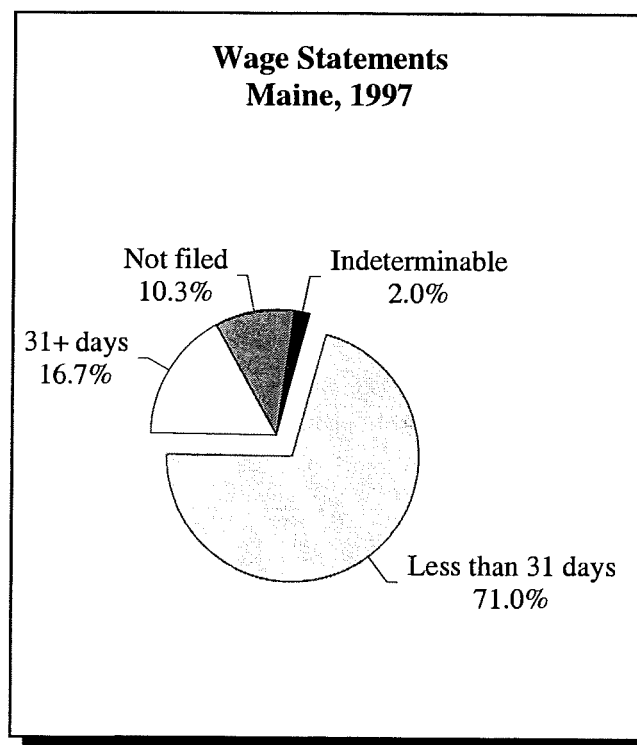


The Act requires employers to report injuries to the Board within 7 days. Late reporting can result in one or more of the following: late indemnity payments to injured employees, increased filings of Notice of Controversies, and delaying dispute resolution actions.

Audits were performed only on claims reported to the Board. The audit program was not designed to detect unreported injuries.

The chart to the left shows that only 36.7% of First Reports were filed within 7 days. Seven First Reports were filed but not required. The indeterminable category consists of First Reports that were not date stamped or were filed electronically with an indeterminable date stamp.

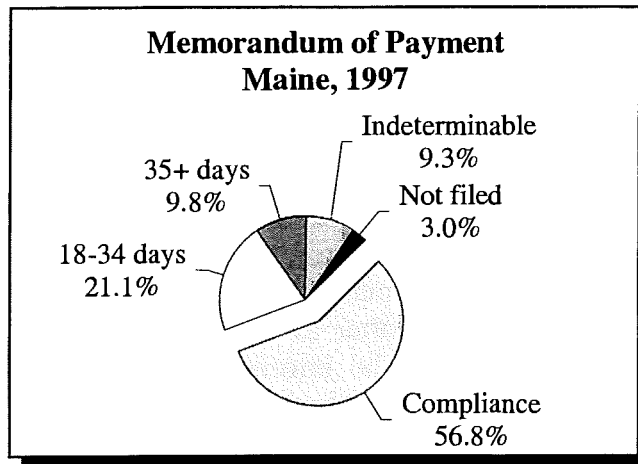
## Wage Statement



No protocol exists for this form. Section 205(8) of the Act was used in this calculation. The Benchmarking and Compliance group can utilize the results to promulgate protocols regarding filing requirements. Employers are required to file Wage Statements within 30 days after the initial indemnity payment. The information contained on this form is required by adjusters and the Board to determine an injured employee's average weekly wage. Failure to file this form in a timely manner can result in delays in the dispute resolution process.

Seventy-one percent of the forms were filed within 30 days as required. The category labeled indeterminable consists of cases in which the employee received salary continuation in lieu of compensation payments. Twenty-one forms were not filed.

## Memorandum of Payment



A Memorandum of Payment (MOP) is used to report initial indemnity payments to the Board. The form should be mailed or delivered on or before the 14th day, but must be received at the board by the 17th day as required by protocol. Timely filing of this form is required to provide the Board with the information required to determine if indemnity payments were initiated and if they were timely.

The chart to the left shows that 56.8% of Memorandum of Payment forms were received within 17 days. The indeterminable

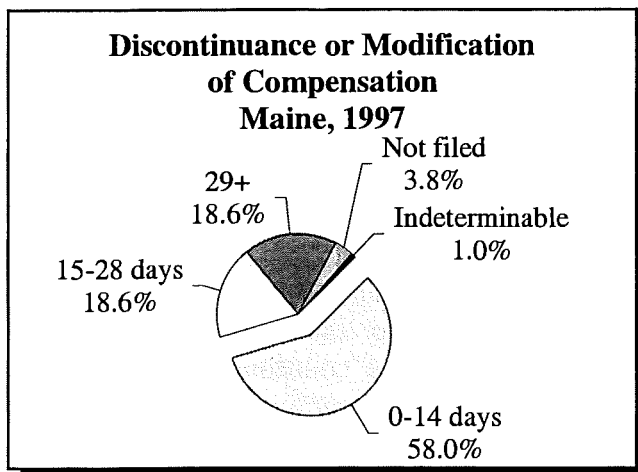
category consists of forms filed: for partial compensation, partial incapacity, insufficient information, and compensation paid after resolution of a controversy prior to mediation.

## Notice of Controversy

A Notice of Controversy must be mailed or delivered to the Board on or before the 14th day payment is due under section 205(2). Three mail days are provided for receipt by the Board. Failure to file this form timely can result in a mandatory payment to the injured employee up to the date of the filing of the form.

Nearly eighty percent of the forms were filed within 17 days as required. Comparing the filing timeliness of this form to the other forms suggests that penalties may encourage compliance. The category labeled indeterminable consists of cases in which the date(s) of incapacity were unknown or the date of the employer's notice of incapacity was unknown.

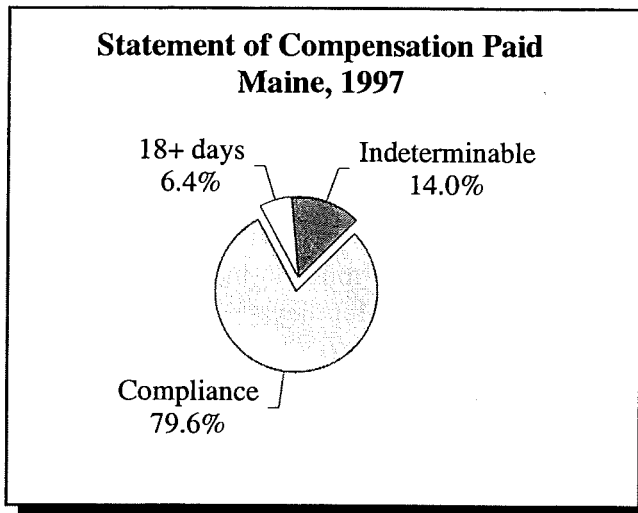
## Discontinuance or Modification of Compensation



**This form has no time filing requirements and is included for illustration purposes only.** The Board, with the help of the Benchmarking and Compliance group, can use the results to promulgate protocols regarding filing requirements. The Board needs the information contained on this form to monitor changes in indemnity benefit payments.

The chart to the left indicates that 18.6% of the forms were filed later than 28 days and 3.8% of the forms were not filed. The indeterminable category consists of forms that were not date stamped.

## Statement of Compensation Paid



**No protocol exists for this form.** Board Rule 8.1 filing requirement was used in this calculation. The Benchmarking and Compliance group can use the results to promulgate protocols regarding filing requirements.

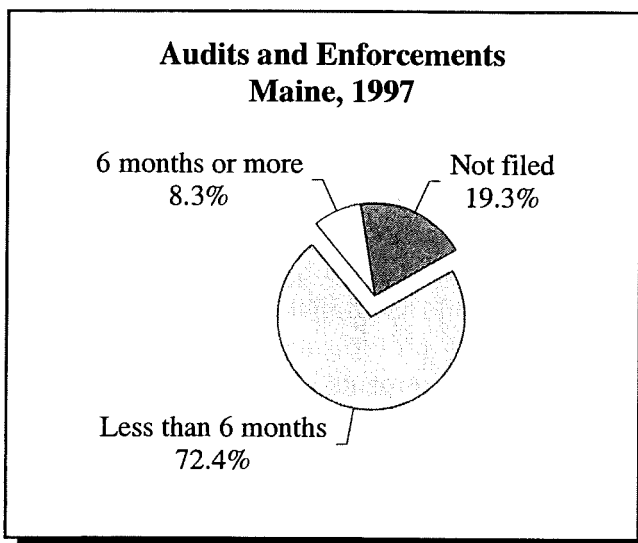
This form is required within 6 months after the initial indemnity payment and at 6-month intervals thereafter as long as payments are being made. The information contained on this form is used by the Board and other State agencies to determine the cost of injuries. Failure to file this form timely can result in incomplete or inaccurate cost data.

The chart represents only claims where this form was required and indicates that this form was not filed for 19.3% of those claims.

### D. Additional Analysis.

#### Public Law 1997, Chapter 486

#### **Audit and Enforcement §153(9)**



"9. Audit and enforcement. The executive director shall establish 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. The functions of the audit and enforcement program include, but are not limited to auditing timeliness of payments and claims handling practices of insurers, self-insurers and 3rd-party administrators; determining whether insurers, self-insurers and 3rd-party administrators are unreasonably contesting claims; and ensuring that all reporting requirements to the board are met. The program must be coordinated with the abuse

investigation unit established by section 13, subsection 5 as appropriate. The program must monitor activity and conduct audits pursuant to a schedule developed by the deputy director of benefits administration. At the end of each calendar quarter, the executive director shall prepare a

compliance report summarizing the results of the audits and reviews conducted pursuant to this subsection. The executive director shall submit the quarterly compliance reports to the board, the Bureau of Insurance and the Director of the Bureau of Labor Standards within the Department of Labor. An annual summary must be provided to the Governor and to the joint standing committees of the Legislature having jurisdiction over labor and banking and insurance matters by February 15th of each year. The quarterly compliance reports and the annual summaries must be made available to the public following distribution."

The Monitoring, Audit and Enforcement Program was submitted to the WCB on June 2, 1998. The WCB approved a Pilot Audit Program and upon review of the Pilot Project Report should approve the MAE Program in final form. The Board should produce quarterly compliance reports beginning with the first quarter of 1999. Due to data and technology problems quarterly compliance reports cannot be generated retroactively.

### **Workers' Compensation System Annual Report §358-A (1)**

The reporting requirements contained in the Act should be achieved through the MAE Program. They include the reporting requirement of Section 358-A (1) (See Appendix B)

### **Board Data Problems**

An analysis of Board data as part of this project and by different groups has concluded that data integrity must be improved. The Agency Technology Officer, with the help of Programmers, is attempting to correct the problems. Forms have been and will continue to be revised in order to collect required information.

#### ***WCB form related data problems:***

The audit revealed missing or incorrect Board date stamp on electronically and manually submitted forms. Programming deficiencies caused many electronically submitted forms to be incorrectly date stamped. The date stamp machines are not locked and the process lacks checks and controls to ensure that date stamps are correct. Forms were also found in Board files that were never entered into the database.

#### ***Insurer and Administrator problems:***

Many claims were found with missing or incorrect insurer and third party administrator information.

#### ***Application edit check problems:***

Many data integrity edit checks failed or were never developed. The problems were not identified timely and resulted in incorrect data, e.g. a 1789 date of injury.

### ***Data storage and retrieval problems:***

The Board's data is not all normalized. The same information is stored in different tables. However, one table may and often does have different information than the other table. It is not possible to generate accurate reports from data stored in this way.

The Board's data collection efforts are manual and inefficient. Staff has done a tremendous job attempting to review claims to ensure benefits are timely and accurate. The MAE program should help to bring the necessary resources to this effort, resulting in more efficient data collection and reporting.

### **Timing of the Dispute Resolution Process and Attorney Involvement**

This topic is one of the protocols. The topic was not audited as part of this project.

### **Community Observations**

The community appeared genuinely interested in how well they perform. Some entities performed very well and had made extraordinary efforts to comply with the Act. For example, some entities had a distinct habit of over paying indemnity benefits to ensure that the claimant received prompt payment. Conversely, some entities performed very poorly. The data gathered and the knowledge gained during this project

## **6. Worker Advocate Program**

### **A. Introduction.**

The Worker Advocate Program was established by the Legislature in P.L. 1997, Chapter 486 to assist injured workers in processing their disputed workers' compensation claims. Initially, ten advocates were hired and placed in the five regional offices of the Workers' Compensation Board. Each advocate was assigned to a specific hearing officer. In order to ensure that there was a separation between the Board and the Advocate Program, the Board has provided the advocates with their own staff and office space in each regional office.

The Board recognized, at the very beginning, that proper equipment and data processing tools were necessary for the successful operation of the program. Accordingly, the Board has placed 'state of the art' computers in every advocate office. In addition, the Advocate Division has a computerized case management system that permits scheduling, docketing, reporting, and updating of information on all case files. This system permits the advocates to have access to case materials right at their desktop.

### **B. Duties.**

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

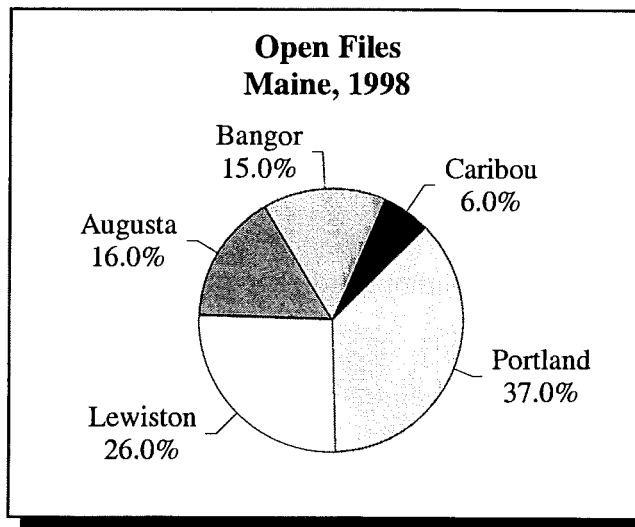
If the claim is not resolved at mediation, the next step is filing petitions and proceeding to formal hearing. The advocates provide representation and litigate disputed claims through the formal hearing process. This includes compiling medical reports, preparing the worker for hearing, the taking of direct and cross-examination, and the filing of position letters at the conclusion of the testimony. The advocates also, when necessary, attend depositions of medical providers, private investigators, and labor market experts. Essentially, the advocates have the same duties as any other person who represents injured workers.

### **C. Workload.**

Injured workers have flocked to the Worker Advocate Program in overwhelming numbers. The need for competent representation, where private attorneys are not an option, has been clearly proven by the number of cases that the advocates have handled for the 12-month period from December 1, 1997 through November 30, 1998. The following month-to-month table shows the number of open files, mediations, and hearings statewide in the five regional offices

| MONTH          | OPEN FILES | MEDIATIONS   | HEARINGS   |
|----------------|------------|--------------|------------|
| December 1997  | 720        | 153          | 10         |
| January 1998   | 795        | 157          | 20         |
| February 1998  | 1,035      | 154          | 22         |
| March 1998     | 1,215      | 159          | 28         |
| April 1998     | 1,332      | 229          | 37         |
| May 1998       | 1,350      | 168          | 32         |
| June 1998      | 1,380      | 224          | 36         |
| July 1998      | 1,381      | 200          | 35         |
| August 1998    | 1,367      | 141          | 40         |
| September 1998 | 1,351      | 162          | 34         |
| October 1998   | 1,420      | 174          | 47         |
| November 1998  | 1,455      | 157          | 49         |
| <b>TOTAL</b>   |            | <b>2,078</b> | <b>390</b> |

Through the month of November, 1998, the Advocate Program has 1,455 open files. The advocates, in the last year, have represented injured workers in 2,078 mediations and 390 formal hearings. According to the most recent statistics, 36% of all cases at mediation and 23% of all cases



at formal hearing have an advocate assigned to them. A substantial majority of the active caseload is in the Portland and Lewiston offices. The following pie chart presents a visual picture of the concentration of cases the southern part of the State.

As you can see, the Portland and Lewiston regional offices account for 63% of all open files with the remaining 37% distributed among the other regional offices. If you were to include the Augusta regional office with Portland and Lewiston, then 79% of all open files are found from the Kennebec Valley to York County.

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

Adequate support staff has been a problem since the beginning of the program. The enabling legislation provided for only two support staff positions statewide. The Board provided for an additional four positions before the advocates were placed in the regional offices. However, the huge caseload, particularly in the southern part of the State, has made the delivery of services very difficult. The Board recognized this problem and has recently hired an additional advocate for the Portland office as well as paralegal assistants in the Portland and Lewiston offices. There is still a pressing need for additional staff in the Augusta, Bangor, and Portland offices. The staffing issue directly affects the quality of the services that the advocates can deliver to the injured workers that they represent. Without adequate support staff, the advocates cannot be as efficient

in the representation of injured workers. The program is very fortunate to have a dedicated group of advocates who take their jobs seriously. The future success of the Advocate Program is tied, in large part, to this staffing issue.

**E. Conclusion.**

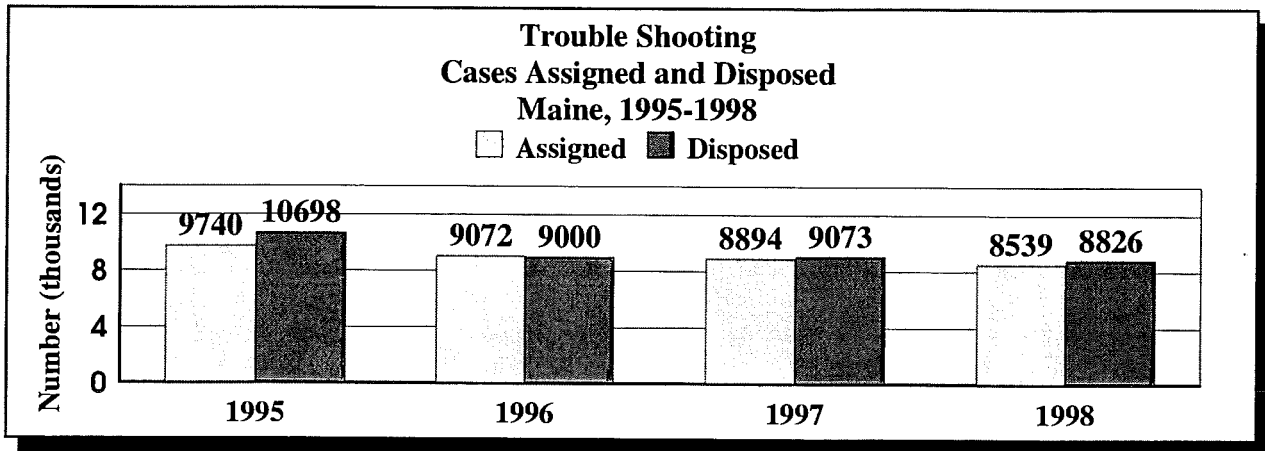
The Worker Advocate Program has been very successful. The response by injured workers has been overwhelming. The advocates are performing their duties in a caring and professional manner. This program is making a difference. Injured workers now have access to representation and assistance that enables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

## 7. Dispute Resolution

### A. Dispute Resolution - Present.

The following tables describe the agency's administrative activities on a calendar year basis.

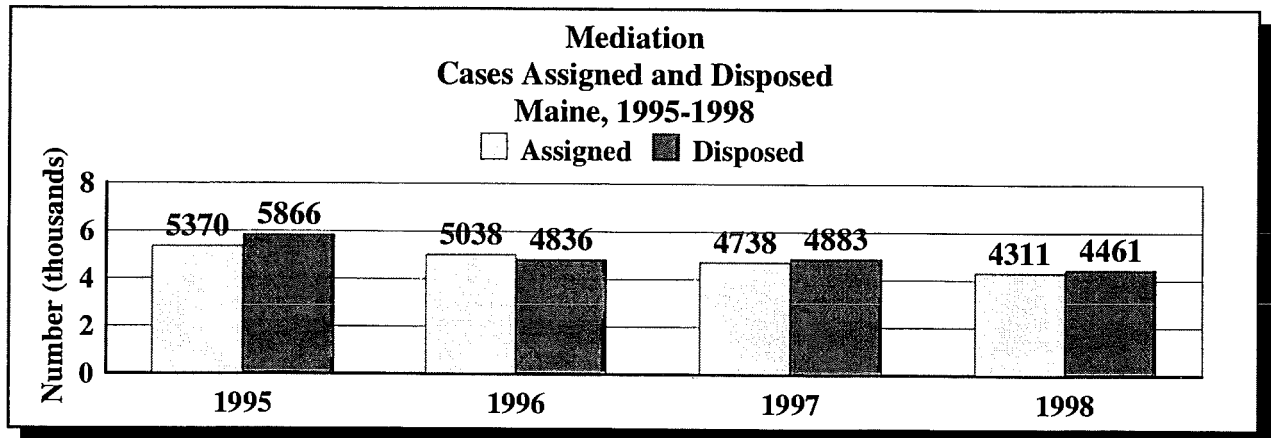
The whole dispute or 'case' encompasses all the filings on all the injuries relating to one employee at one point in time. A case is the unit of work on someone's desk. However, it is not always the same as an injury. Mathematically, each case involves approximately 1.2 injuries.



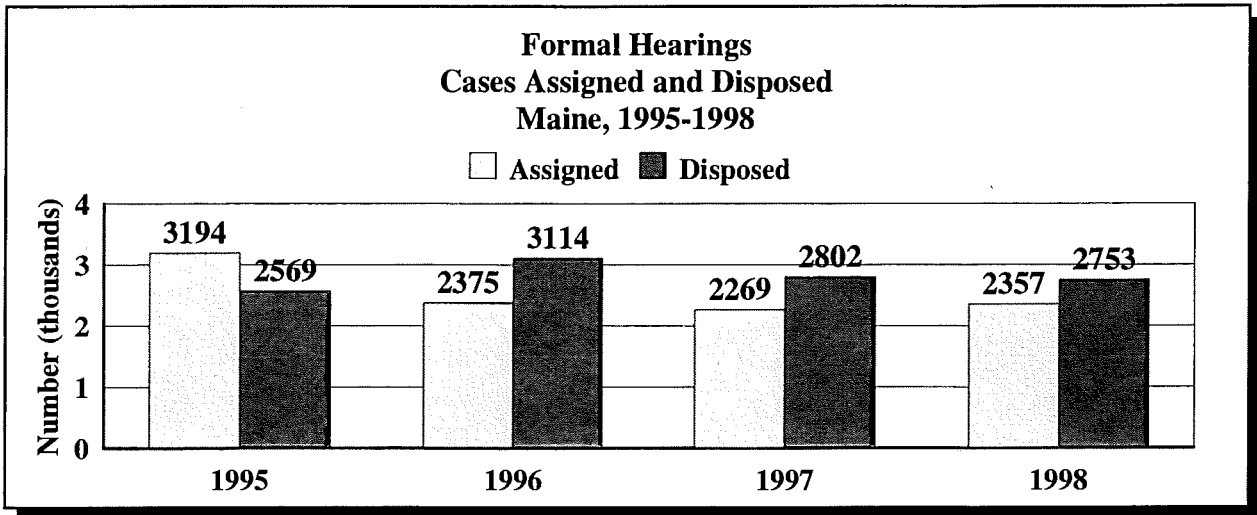
Since 1994, assignments and dispositions have approximately matched at troubleshooting.

The number of claims pending at troubleshooting as of January 1, 1999 is 1,244. This number is a little less than two months of assignments. The average case took about 50 days during 1998.

Similarly, at mediation, assignments have closely approximated dispositions in recent years. As of January 1, 1999, 750 cases were pending at mediation. The number of pending cases represents approximately two months of assignments. For 1998, the average case took 65 days to resolve at mediation.



It should be noted that litigation has decreased 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 seven to eight thousand cases a year. In recent years, two to three thousand cases a year have been entering litigation.



Formal hearing statistics are presented beginning with 1995, after the transition to the new statute.

The number of claims pending at the formal hearing level as of January 2, 1999 is 1,618, less than a year of assignments.

The Board's Hearing Officers made significant progress at resolving delay problems at the formal level. At the end of 1996, more than 200 cases had been pending more than two years. Hearing Officers began focusing on these older cases. At the end of 1997, they had reduced the number to 99. And at the end of 1998, they had reduced the number to 68.

There will always be a few cases with unusual circumstances that take more than two years at the formal level. The current figure of 68 represents continuing improvement. However, it is still higher than it should be. The Board hopes to reduce this figure to just a handful of cases by the end of 1999.

#### **B. Dispute Resolution - Streamlining.**

One of the major recommendations of Coopers & Lybrand, who completed a thorough business assessment of the Board's operations in late 1997, was to streamline the dispute resolution process to reduce the time it takes for a case to be resolved, either by agreement or by a hearing officer. The average time for a case to proceed through the entire system was 19 months, with 14 months of that at the formal hearing stage. The Board put together a group to propose ways to shorten these time frames. Many good ideas were put forward and standard operating procedures were developed for each stage of the process: troubleshooting, mediation, and formal hearing. Rule changes are still in the works and are expected in early 1999.

The goal of streamlining is to speed up the dispute resolution process by shortening the time frames at all levels of dispute resolution, i.e. troubleshooting, mediation, and formal hearing. The Workers' Compensation Board will implement standard operating procedures for each phase of dispute resolution and will closely monitor this activity through the adoption of performance measures. The Workers' Compensation Board recently forwarded Formal Hearing Rules to Public Hearing. It is anticipated that rules will be approved by the Workers' Compensation Board in early 1999.

## 8. Profile of the System

This section begins with a few general comments about workers' compensation data. Then, it presents a narrative and series of graphs to profile certain aspects of the workers' compensation system.

The Board begins data collection when employers file an initial injury report, known as a First Report. Then, over the life of the claim, documents are submitted concerning payments and disputes.

The resulting data can be complicated, especially for long term claims. These more serious injuries can involve several periods of incapacity and several disputes processed separately over a decade or more.

Another factor, creating more complex data, is the concentration of system costs and litigation in a small percent of serious accidents. Aggregations of First Report data tend to mix both simple and serious claims together.

We have chosen lost time First Reports, where at least one day of work has been missed, as a basic unit. This is known very early in the claim cycle. The data has been consistently gathered for over a decade.

However, because simple injuries with short periods of incapacity tend to be paid promptly and without significant dispute, some times this unit will tend to understate the level of problems associated with more complex injuries, such as back strain or carpal tunnel.

Annual administrative figures, such as the number of disputes and related time lines, reflect agency operations. This type of information tends to relate to questions concerning Board operations.

However, payments and litigation on open claims in a calendar year involve injuries from approximately the previous decade. Injuries occurring that year play a less significant role in agency administration.

Individual injury years are often a more illuminating unit of analysis for policy questions, such as the cost of the system or the amount of litigation. However, the long claim cycle means that it may take a few years for enough experience to develop so there is a basis for analysis.

For simple claims, it is important to know how promptly benefits are paid and if denials are reasonable and in good faith.

Long-term injuries play the dominant role in determining the cost of the system, adequacy of benefits, disputes, and litigation.

Although both types of injuries are workers' compensation claims, that is where the similarity ends.

To illustrate the concentration of system costs in a small number of injuries, the Board has tabulated the percent of injuries and the percent of costs for injury year 1988. After ten years, most but not all of the costs for that injury year have been reported.

As of late December, 1998, the Board has received reports of approximately \$320,000,000 in benefits paid on 13,478 injuries. The top 10%, the most expensive, 1,348 injuries, accounted for about \$195,000,000, or 61%, of benefits paid. The top 20% of injuries accounted for almost 85% of costs.

In contrast, 50% of injuries had benefits of less than \$2,500 reported; 25% of injuries had benefits of less than \$500 reported.

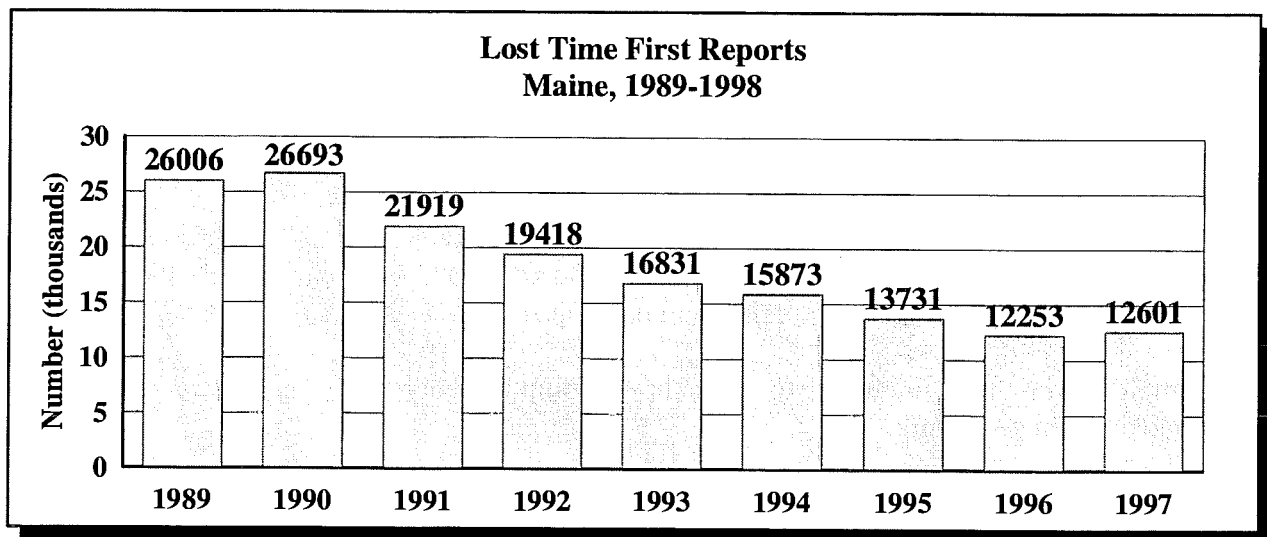
Benefit financing, administration, and payments are decentralized. Many private entities collect premiums or premium equivalents. They adjust claims and administer benefit payments.

Modern computer technology is making it easier for the Board to collect and aggregate payment data. The agency can do far more today than it could five years ago. However, the financial data in the Board's computer is not an accounting system, comparable to a payer's financial records.

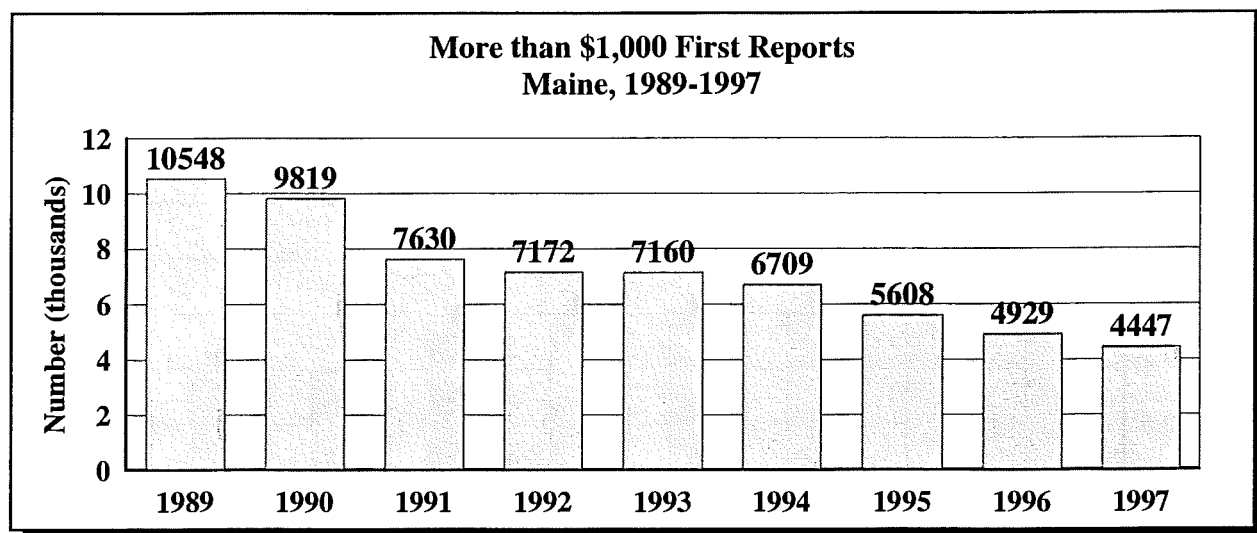
#### **A. Injury Reports.**

We begin with an overview of the trends in reports of lost time injuries, where one or more days have been missed from work.

As may be seen, there has been a steady decrease over the decade. The exact reason is subject to differing views, ranging from improvements in safety to computer system changes to changes in reporting.

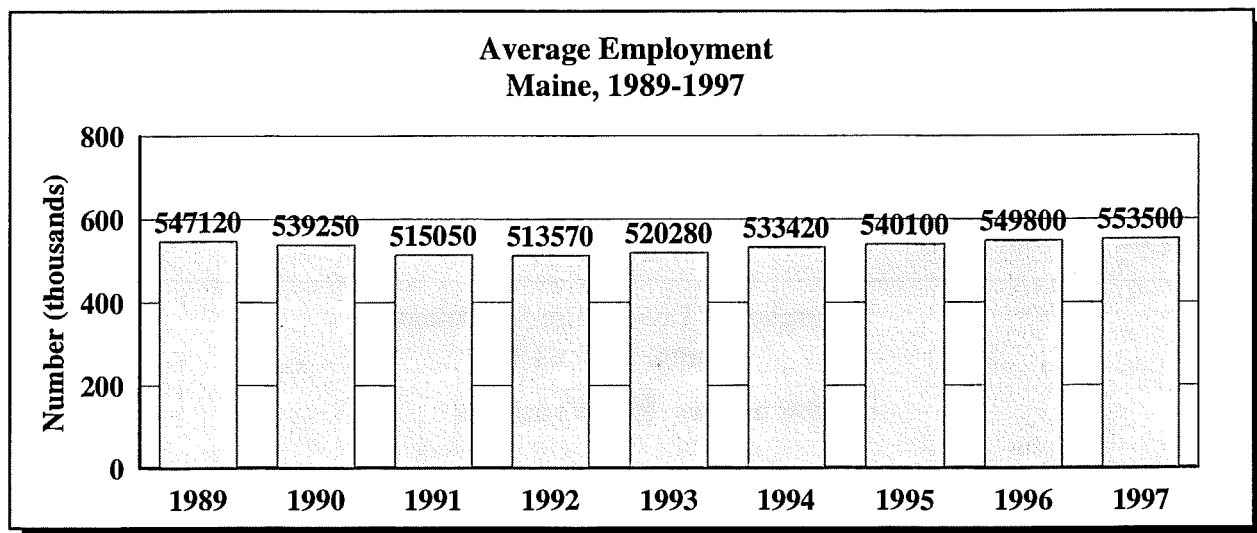


A decline can also be seen in cases where more than \$1,000 has been reported in benefits paid. These cases would be less subject to the factors listed above. 1996 and 1997 may be understated because they are relatively early in the claim cycle.



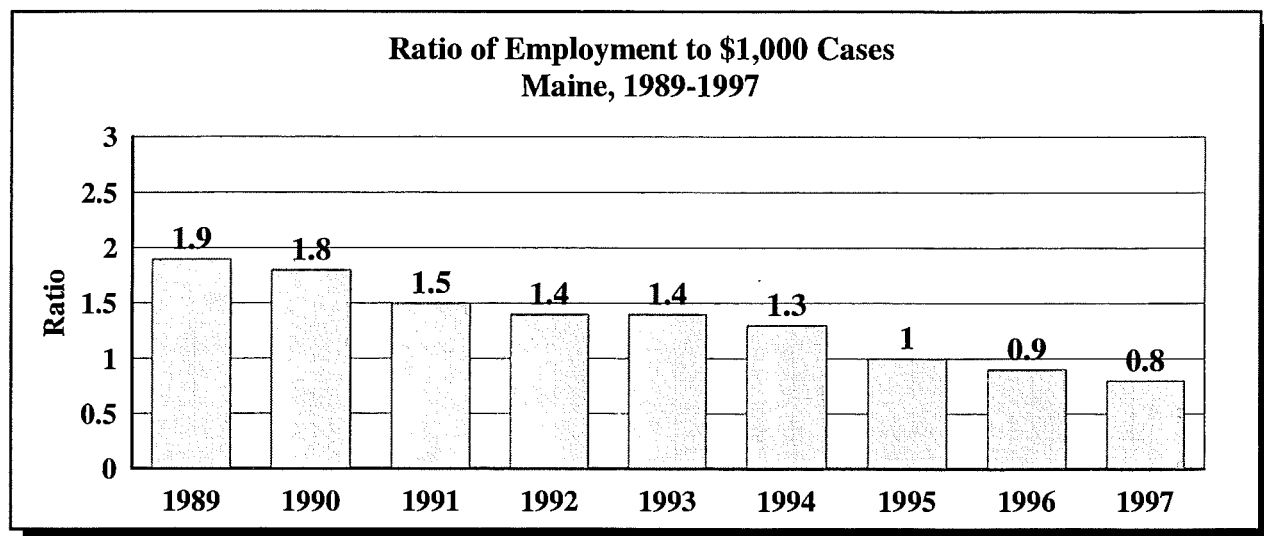
**B. Employment.**

The declines in both types of First Reports appears unrelated to changes in employment. Average annual average non-farm wage and salary employment has been increasing since 1992.



**Source:** Department of Labor, Labor Market Information Services

A crude incidence rate can be calculated by dividing the number of cases with more than \$1,000 reported by average annual employment. As may be seen, that calculation appears to be declining. However, recent years may be understated because of the long claim cycle.

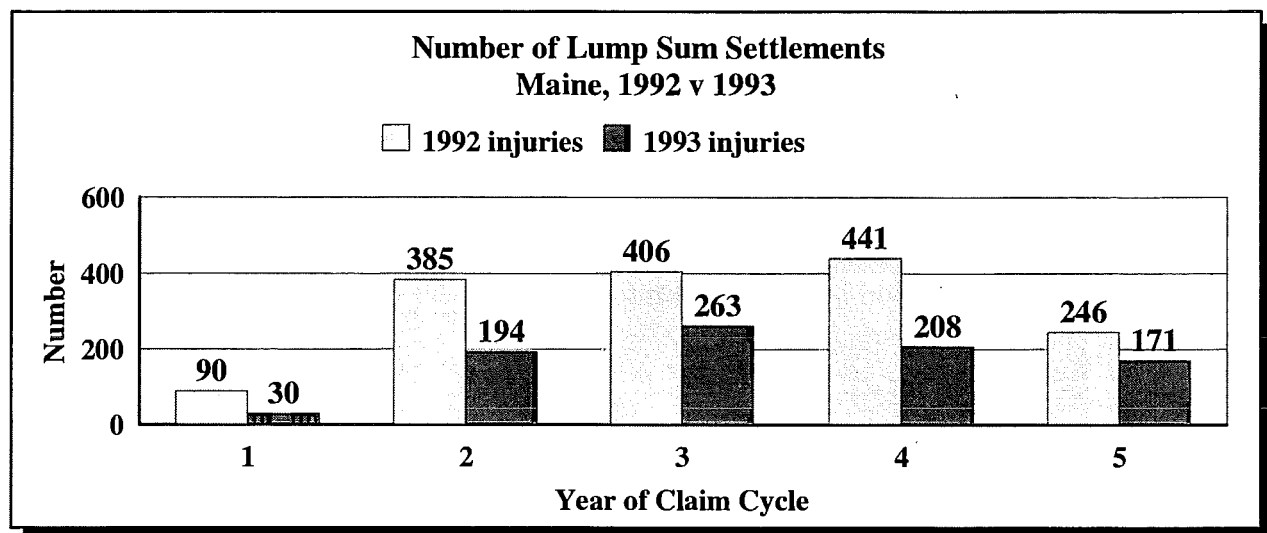


The reason for the relative decline in the number of \$1,000 cases despite rising employment is, as are so many issues in workers' compensation, inherently subject to differing views and speculation. Many possible variables affect almost every question at a moment in time.

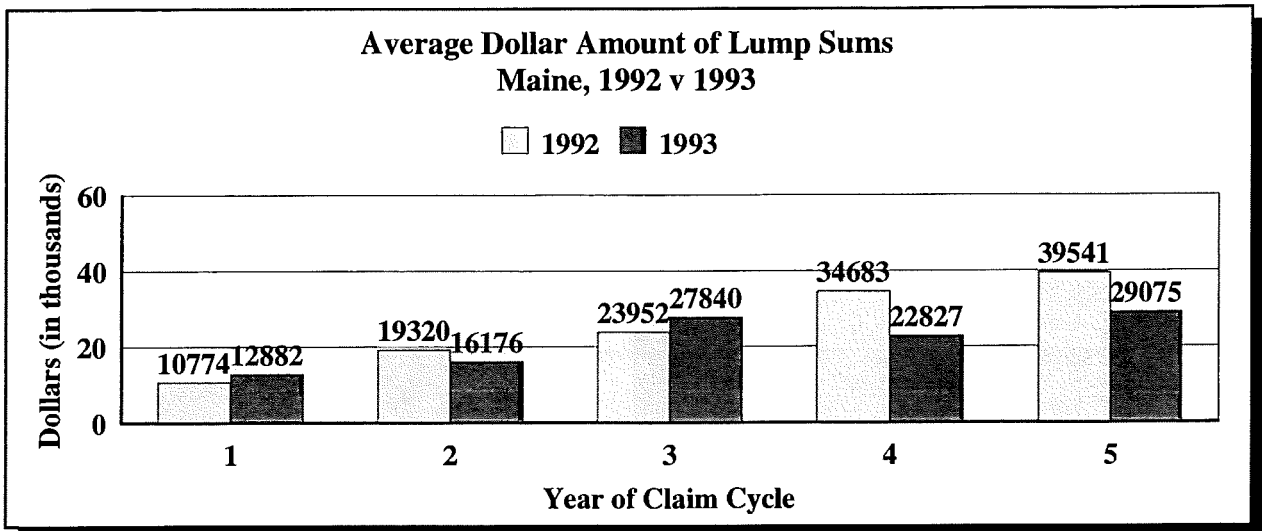
However, one factor may be the decline in the usage of lump sum settlements under the post-1992 statute, Title 39-A.

### C. Lump Sum Settlements.

To illustrate, we have compared the number of lump sums occurring on 1992 injuries the last year of the old statute with 1993 injuries, the first year of the new one.



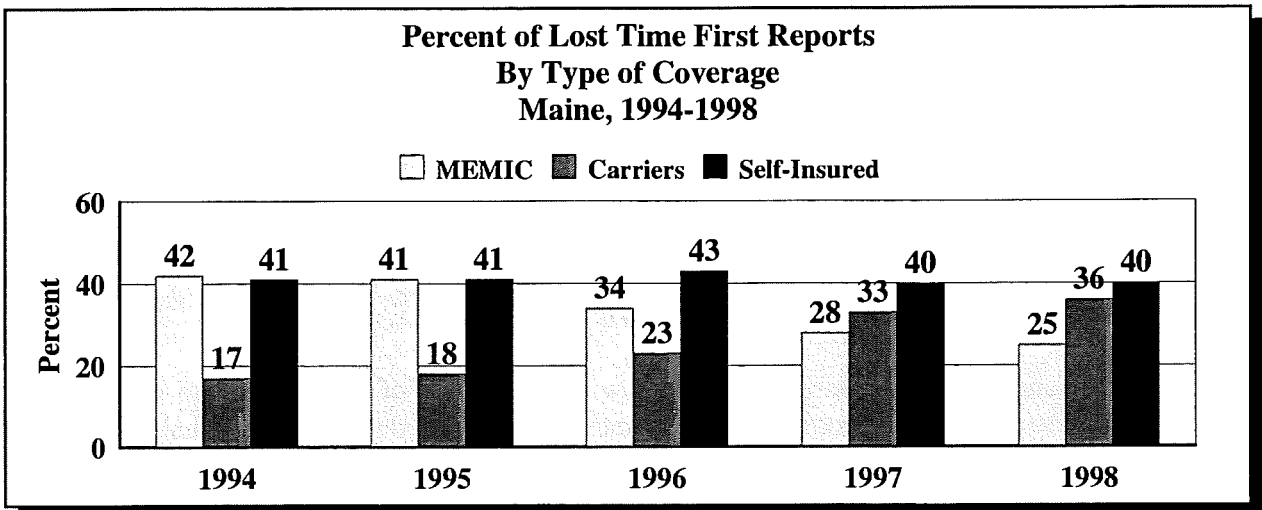
The chart also illustrates the degree to which activity on claims persists after the actual injury year. Many lump sums occur four and five years after the date of injury. Many more will occur in future years.



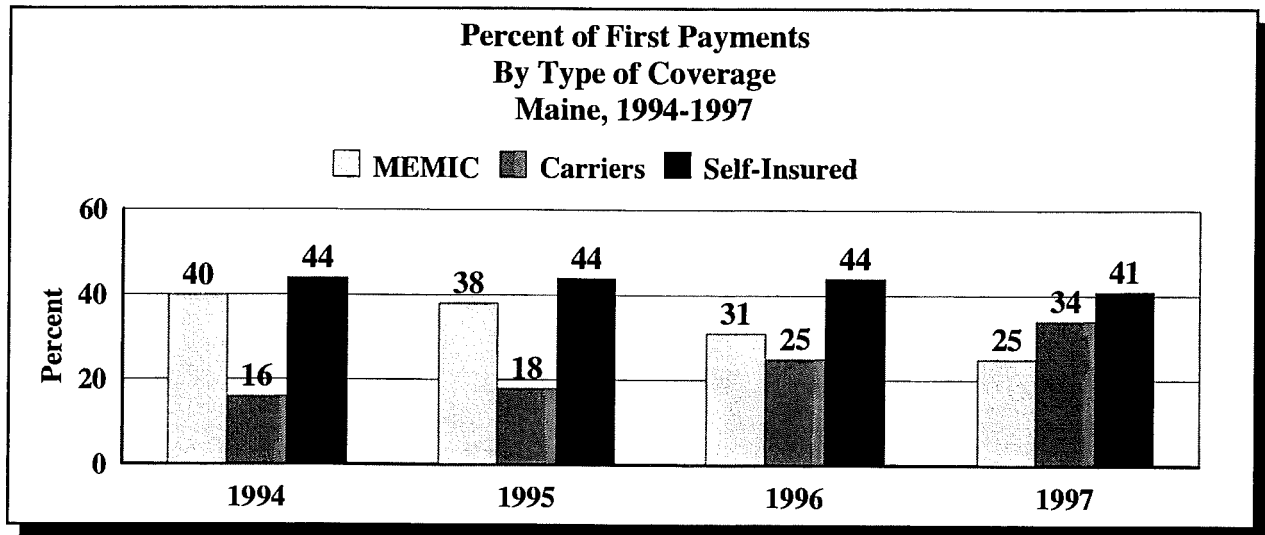
Lump sum settlements also reflect the reduction of long-term benefits under Title 39-A. The average amount has declined as well as their frequency.

#### **D. Maine Employer's Mutual Insurance Company.**

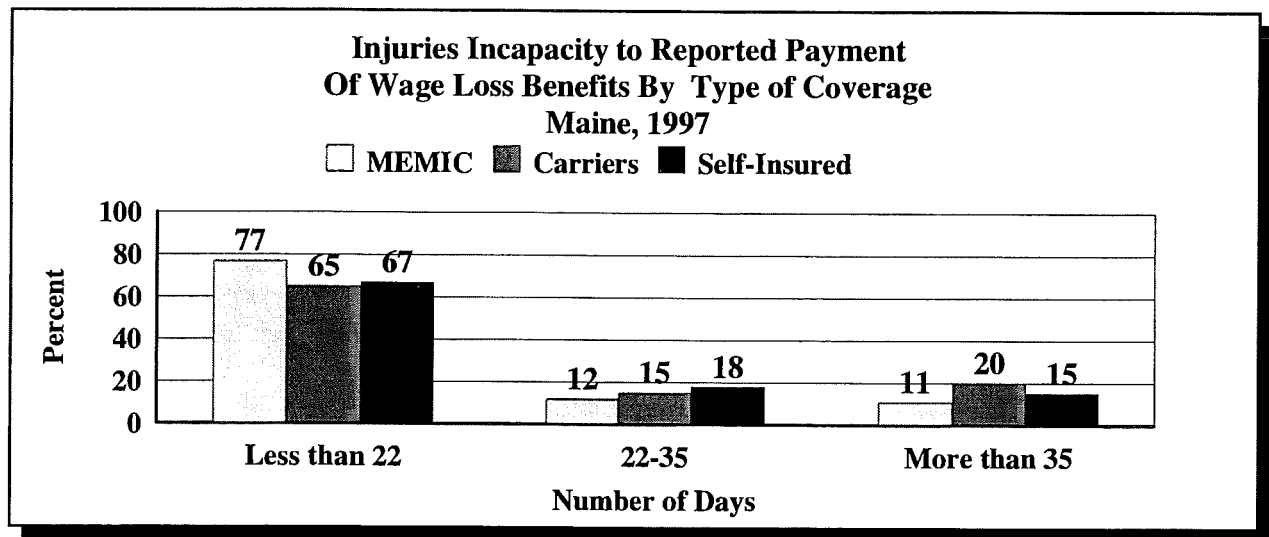
Maine Employers' Mutual Insurance Company (MEMIC) bears similarities to group self-insurance. It was created by the 1992 law changes. It offers employers, particularly small employers, an alternative to private insurance and the controversial assigned risk pool existing in 1993 and earlier years. It has become a significant provider of coverage.



As may be seen, it provides coverage to between approximately 25 to 40 percent of employers, as measured by lost time First Reports or by the percentage of first benefit payment reports.



MEMIC also reports first benefit payments to the Board more quickly than do other types of payers and it tends to use the dispute resolution system proportionately less.



#### E. Dispute Resolution System Utilization.

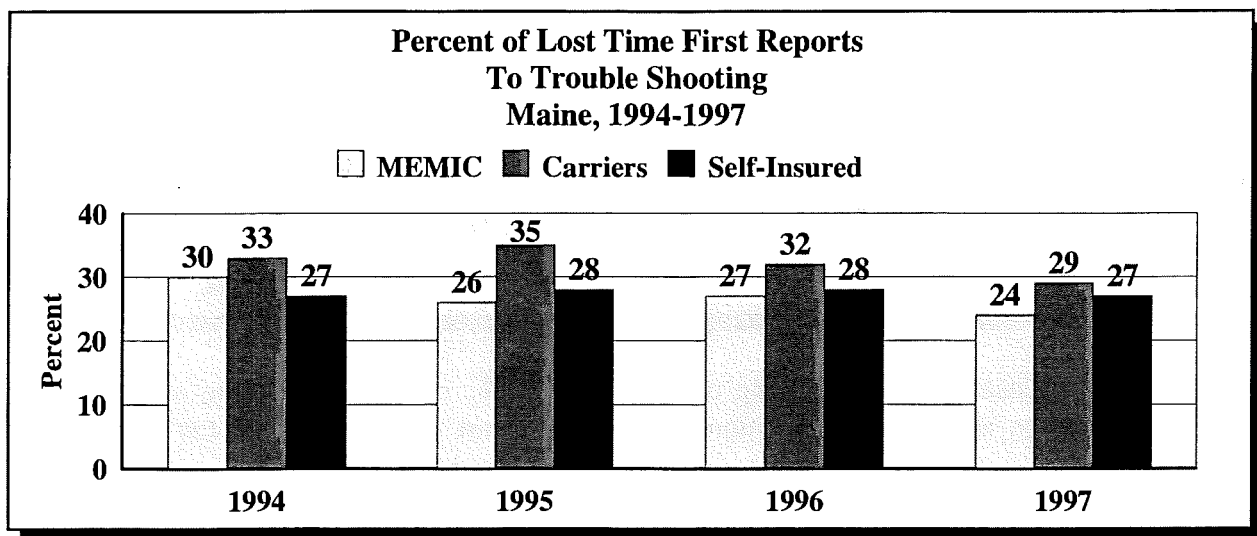
These figures are highly summarized. They show a lower level of dispute system utilization by MEMIC. The same type of program can generate this kind of data for individual carriers and self-insureds.

During 1999, the Board hopes to use it and the audit process to identify and work with individual entities that are out of line with their peers.

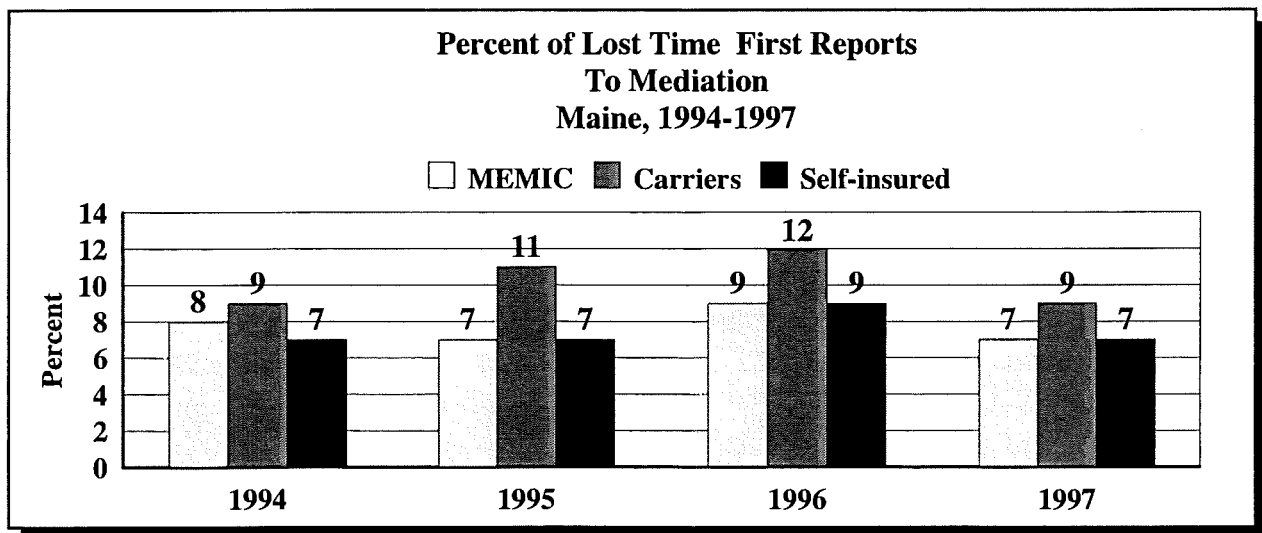
The following tables display utilization of the three stages of dispute resolution for injury years 1994 through 1997 as of January 1, 1999. Older injury years have higher levels of utilization because more time has passed for disputes to occur.

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 done by mail or telephone.

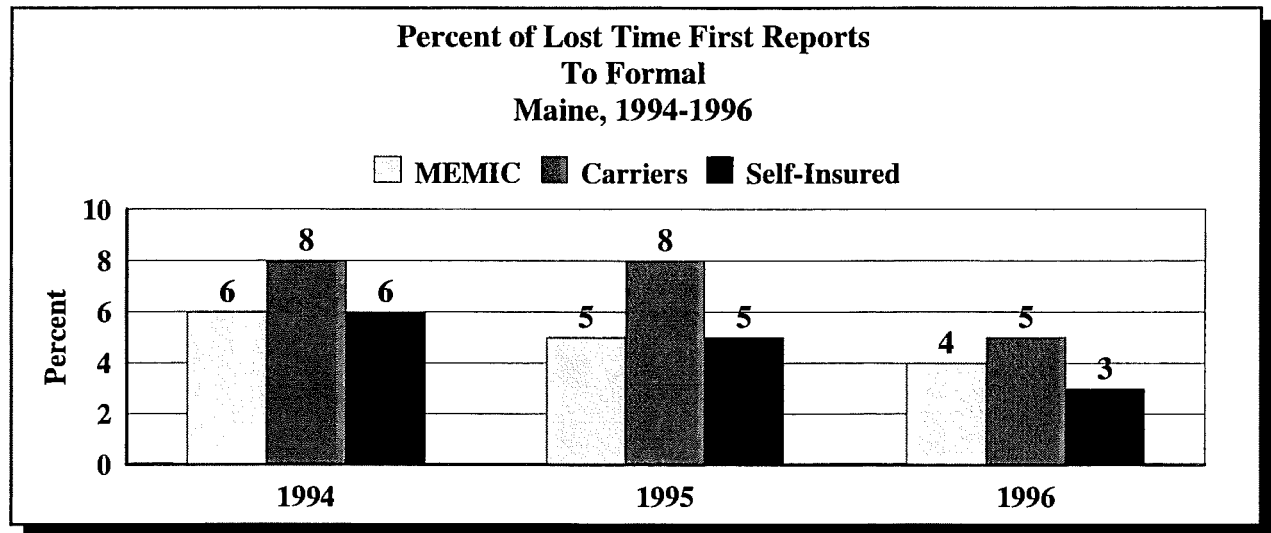
Statewide, about 50% of disputes are taken care of at this stage. The next step is mediation, a face-to-face meeting to see if discussion can lead to a voluntary agreement.



Another 25% of disputes are normally resolved through mediation. Of a typical 100 disputes entering the system at troubleshooting, about 20 to 25 will remain active following mediation.



Typically, cases reaching this point are legally and factually complex. Reaching a voluntary agreement is more difficult. These are candidates for the last stage of dispute resolution, the formal hearing. These hearings are less formal than court but similar. The process is an adjudication based on evidence presented and a legal analysis.



Workers' Compensation Board hearing offices preside. The ruling of a hearing officer is final. The case may be appealed to the Supreme Judicial Court of Maine on matters of statutory interpretation.

One of the major recommendations of Coopers & Lybrand, who completed a thorough business assessment of the Board's operations in late 1997, was to streamline the dispute resolution process to reduce the time it takes for a case to be resolved, either by agreement or by a hearing officer. The average time for a case to proceed through the entire system was 19 months, with 14 months of that at the formal hearing stage. The Board assembled a group to propose ways to shorten these time frames. The Workers' Compensation Board is in the process of adopting rules to speed up the dispute resolution process at all phases of dispute resolution. The results of that effort should be demonstrable in 1999.

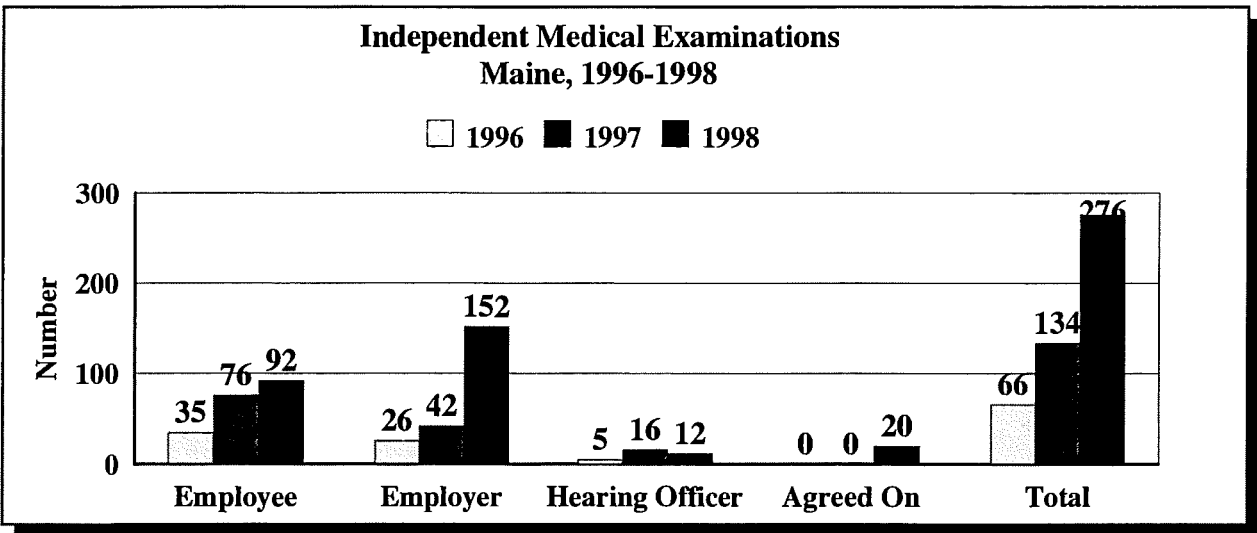
## 9. Medical/Rehabilitation

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

The following rules went to public hearing and were approved by the Board of Directors: Guidelines for the Treatment of Carpal Tunnel, Pain and the Utilization of Opioids. The updated Medical Fee Schedule also went to public hearing.

### B. Independent Medical Examinations.

The issue of Independent Medical Examinations, pursuant to 39-A M.R.S.A. Section 312, has increased steadily since the inception of the program in 1996. The following chart demonstrates the use and growth of the program.



### C. Medical Fee Schedule.

The Medical Fee Schedule which went into effect in 1997 has been updated to 1999 CPT codes and the latest RBRVS.

### D. Legislative Reports.

A report will be presented to the Joint Standing Committee on Labor on the status of Vocational Rehabilitation Services, with recommendations to improve the system. A task force, with members from the Bureau of Health, the Bureau of Labor Standards, and the Bureau of Insurance, have completed their study of Occupational Disease. The final report will be delivered to the Labor Committee with recommendations to improve the system.

## 10. Budget and Assessment

The Board's biennial budget for Fiscal Years 2000 and 2001, beginning on July 1, 1999, is a little unique compared to previous fiscal years due to the fact that projected revenues are expected to be less than projected expenditures. This is not surprising because the Board has not raised its assessment since its first budget in 1993 for FY94. It is important to note that the Board has maintained the same \$6,000,000 assessment since 1993 while the State's General Fund expenditures increased an average of 4% each year.

There are at least two basic reasons why expenditures are projected to be greater than revenue:

1. The assessment was increased by \$600,000 by the Legislature last fiscal year (98) to formally establish the Worker Advocate Program through the formal hearing stage and also to fund two positions in the Audit Unit. These assessment projections were law and the Board has had to absorb many of the costs associated with these two new programs. Several Board positions have been reallocated to the Advocate Unit in order to ensure that an adequate number of employees are available to assist and represent injured workers. Additional office space in all of the Regional Offices was leased in order to house the program.
2. While changes in staff and programs were taking place, the cost of doing business was also increasing. A 2% raise for all employees became effective on July 1, 1997 and another 2% raise for all employees became effective on July 1, 1998, both of which had to be absorbed within the same assessment. When salaries increase, even by only 2%, the cost of retirement contributions paid by the Board also increase. The Board's operating costs, in addition to increases in the cost of leased space, has gone up in most other areas as well. It is an active agency that has undergone numerous changes since 1993 in an effort to implement new changes enacted by the Legislature in workers' compensation. The agency also hired Coopers & Lybrand Consultants to conduct a business assessment which has resulted in changes but at a significant cost.

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

|                     | <b>FY94</b> | <b>FY95</b> | <b>FY96</b> | <b>FY97</b> | <b>FY98</b> |
|---------------------|-------------|-------------|-------------|-------------|-------------|
| <b>Assessment</b>   | 6,000,000   | 5,750,000   | 6,000,000   | 6,000,000   | 6,600,000   |
| <b>Expenditures</b> | 4,744,278   | 5,491,718   | 5,620,011   | 5,718,514   | 6,299,243   |

The Board has also reduced its assessment in FY99 by \$250,000 due to reserves generated from vacant positions, additional revenue received from reconciliations and audits, and interest on its cash account.

The Board is projecting that its expenditures will exceed its revenue for the first time in fiscal years 2000 and 2001 due to increases mainly to the costs of the Worker Advocate Program and new technology. The Board has attempted to establish its budgets within the same assessment cap for those two fiscal years, added projected interest on the assessment, and has been able to fund all but three existing and filled positions in the Worker Advocate Program. The Bureau of the Budget recommended that these three positions be submitted as a Part II request because their inclusion with the other Board positions would have caused the Part I request to exceed projected revenue. The Board, however, is not seeking an increase in the assessment cap for fiscal years 2000 and 2001. Instead, it is proposing a Part II request to the Governor and the Legislature to allow it to use its statutory cash reserves for the upcoming biennium in order to fund expenditures that are above projected revenues. The purpose is to consider a variety of cost saving measures to include automation and improved technology.

## **11. Case Management**

Until recently, the administration of claims-related issues was divided among three departments: Coverage, NOC's/Petitions, and Payments. The procedure was inefficient since several individuals worked on the same file. A new 'case management' system was formulated to bring greater efficiencies to these operations. The new process assigns employers and carriers to a single case worker who processes the file from start to finish. This will provide for a less fragmented system. The new process was effectuated in September, 1998 and the initial results are positive.

The Board has undertaken an extensive project along with the Department of Labor to determine employers who are in violation of the Act for not providing workers' compensation coverage. The Board is cross-referencing its employer database with the Department of Labor's unemployment database to identify employers or businesses who may not have the required workers' compensation insurance. The Department of Labor has estimated that there are currently about 10,000 non-matching businesses. The Board is now following up with these businesses to determine whether they are required to obtain workers' compensation insurance. Many of the problems thus far identified are due to inaccurate information provided by the carriers. Upon completion of the project, it is estimated that violations have been uncovered and that the Board's database will have been cleansed.

## **12. General Counsel Report**

### **A. Rules.**

Several rulemaking initiatives were undertaken in 1998, many of them involving 39-A M.R.S.A. Section 213. Based on the actuarial report of Advanced Risk Management Techniques, Inc., the permanent impairment threshold for extended benefits was lowered from 15% to 11.8%. In the same report, it was recommended that partial incapacity benefits not be extended for 52 weeks. While this rule generated considerable public comment, it was promptly passed by the Board in February.

During the course of the discussion of the permanent impairment threshold, the quality of the Board's data was criticized with respect to the collection of permanent impairment ratings, especially on dates on injury after January 1, 1993. As a result, the Board amended the rule and the Board's forms to require submission of permanent impairment assessments when available. The rule also requires that an impairment rating be obtained before any lump sum settlement is approved and provides a mechanism for reimbursement from the Employment Rehabilitation Fund for those cases that fall between 11.8% and 15% permanent impairment.

More recently, the Board promulgated a rule providing a process for the Board to hear cases in which an employee requests an extension of partial benefits for extreme financial hardship due to inability to return to gainful employment. By statute, such cases cannot be delegated to a hearing officer.

In March, the Board approved a rule clarifying the procedure for attorneys representing employees to collect a fee for their services. Some have interpreted the rule to permit employees' attorneys to withhold 30% from medical bills, leaving 70% as payment for medical services rendered. The medical community did not favor this interpretation of the rule and a task force has been formed to propose changes to the rule. The task force is comprised of Board members, agency staff, labor representatives, attorneys, employer/insurer representatives, and the medical community.

The Board also updated the rule regarding appellate procedures. The moot sections of the rule involving the now-defunct Appellate Division were deleted and the voting process was changed with respect to cases that hearing officers send to the Board for review. The Board now votes at its public meetings on whether or not to review a case.

Finally, the Board passed two new medical protocols for pain and carpal tunnel syndrome. More details on these new protocols may be found in the section of this report from the Office of Medical and Rehabilitation Services.

**B. Bourassa Case.**

The Board issued a decision in the case of Robert Bourassa v. Town of Farmington. This case is significant in that it permitted the Board to describe the appropriate application and interpretation of one of the Board's rules.

**C. Extreme Financial Hardship Hearing.**

The Board heard its first case in which the employee alleged extreme financial hardship due to inability to return to gainful employment in December after approving a rule that provides a process for hearing such cases.

**D. Independent Contractor/Logging Task Force.**

After a bill sponsored by Senator John Nutting regarding workers' compensation insurance and its application to the wood harvesting industry was narrowly defeated in the Legislature, the Legislature asked the Workers' Compensation Board and the Maine Forest Service to study the issues surrounding the Board's conclusive pre-determination of independent contractor status for loggers. The Task Force continues to work on its report and will offer several alternatives to the Legislature. Among these alternatives will be (1) to leave the system the way it is with wood harvesters requesting pre-determinations for each job that they undertake, (2) require an annual pre-determination which can be carried from job to job, and (3) require all loggers to obtain workers' compensation insurance.

**E. Streamlining Dispute Resolution.**

One of the major recommendations of Coopers & Lybrand, who completed a thorough business assessment of the Board's operations in late 1997, was to streamline the dispute resolution process to reduce the time it takes for a case to be resolved, either by agreement or by a hearing officer. The average time for a case to proceed through the entire system was 19 months, with 14 months of that at the formal hearing stage. The Board put together a group to propose ways to shorten these time frames. Many good ideas were put forward and standard operating procedures were developed for each stage of the process: troubleshooting, mediation, and formal hearing. Rule changes are still in the works and are expected in early 1999.

**F. Saco Defense Case.**

Saco Defense, a self-insured employer, initiated a lawsuit against the Workers' Compensation Board challenging the means by which the Board calculated Saco Defense's share of the Board's assessment. Resolution of this action is expected sometime in 1999.

## **G. Legislation.**

For the first time since its inception in 1992, the Workers' Compensation Board is proposing substantive amendments to the Workers' Compensation Act. Clearly such initiatives were contemplated by the Legislature in 1992 as the Legislature included the following language in the Act: "The board shall consider and recommend to the Legislature changes in this Act." 39-A M.R.S.A. Section 152(11). The Board has been led to believe that such proposals would be welcomed by the Legislature and the administration. A brief summary of these proposed amendments follows:

- (1) Wage Statements. Amend the statute to require wage statements to be filed in all cases in which there is a lost time claim.
- (2) Increased penalties for lack of coverage. Amend the statute to allow a penalty in excess of what the coverage would have cost.
- (3) Reimbursement from the Rehabilitation Fund. Delete the parts of Section 213 that require reimbursement from the Rehabilitation Fund.
- (4) Provisional Order Bypass Mediation. Amend the statute so that cases in which a provisional order has been requested may bypass mediation.
- (5) Statute of Limitations. Amend the statute to simplify the statute of limitations by breaking it into subsections.
- (6) Apportionment. Amend the statute so that hearing officers may hear petitions for apportionment.
- (7) Death Benefits for Nonresident Aliens. Amend the statute so that nonresident aliens receive the same death benefits as United States or Canadian citizens.
- (8) Confidentiality of Audit Working Papers. Amend the statute to allow for the confidentiality of audit working paper.

### 13. Abuse Investigation Unit Report

The Abuse Investigation Unit is charged with assessing penalties under several sections of the Act. Section 205(3) requires payment of weekly compensation benefits within 30 days of becoming due and payable when there is no ongoing dispute. Section 205(4) requires payment of medical bills within 30 days of becoming due and payable when there is no ongoing dispute. If these sections are violated, a \$50.00 per day penalty, up to a maximum of \$1,500.00, must be imposed. Penalties under Section 205(3) must be paid to the employee, while Section 205(4) penalties are paid to the Board's Administrative Fund.

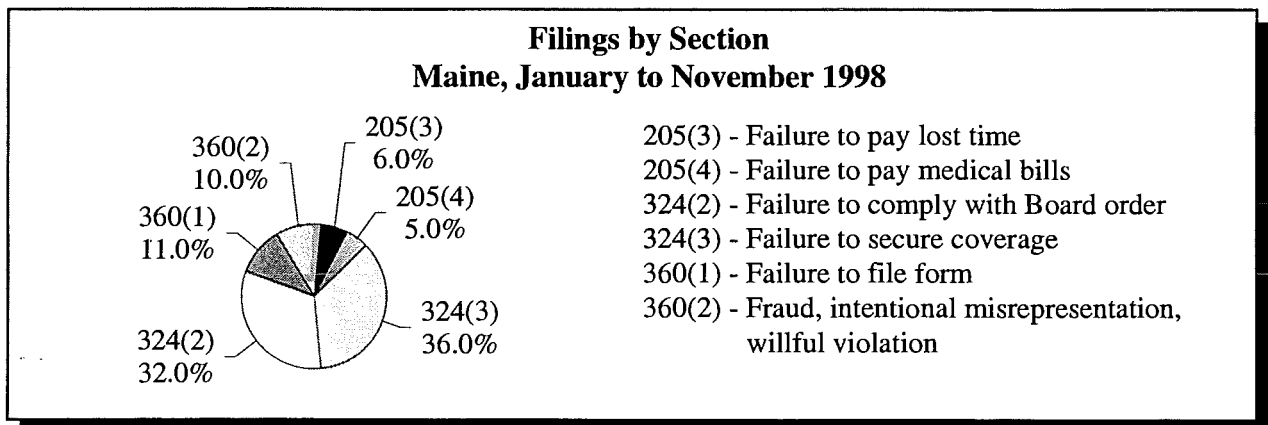
Section 324(2) mandates that payments be made within ten days of any Board order or approved agreement. A violation of this section can be penalized by a forfeiture of up to \$200.00 per day. The first \$50.00 per day is due to the aggrieved employee, the remainder is paid to the Board's Administrative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

Section 324(3) provides penalties for failure to secure required workers' compensation coverage. The maximum penalty is \$10,000.00. Other potential sanctions include loss of corporate status and referral to the Attorney General for criminal prosecution. Penalties assessed under this section are paid to the Board's Employment Rehabilitation Fund.

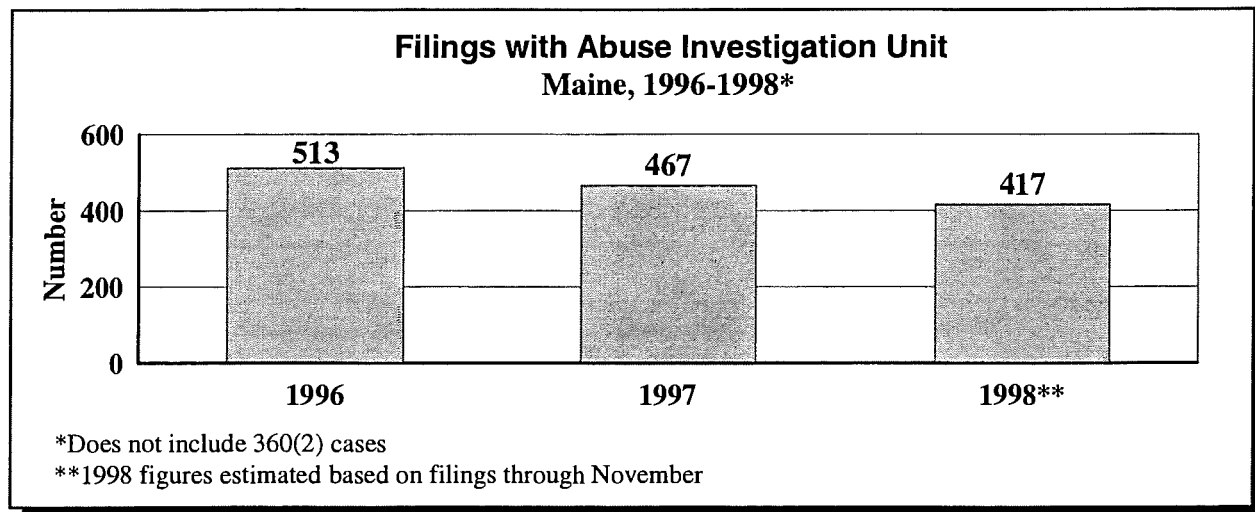
Section 360(1) provides for penalties when a form is not filed within time frames set by rule or statute. Violations of this section carry a minimum penalty of \$100.00, payable to the General Fund.

Finally, Section 360(2) provides for penalties in cases where a willful violation of the Act, intentional misrepresentation and/or fraud has occurred. The maximum penalty that may be imposed, after hearing, is \$1,000.00 for an individual and \$10,000.00 for a corporation, partnership, or other legal entity. Repayment of compensation received, or of compensation wrongfully withheld, through a violation of the Act may also be ordered. If a penalty is ordered, it is paid to the General Fund.

The majority of cases that are filed with the Abuse Investigation Unit are under Sections 324(2) and 324(3).



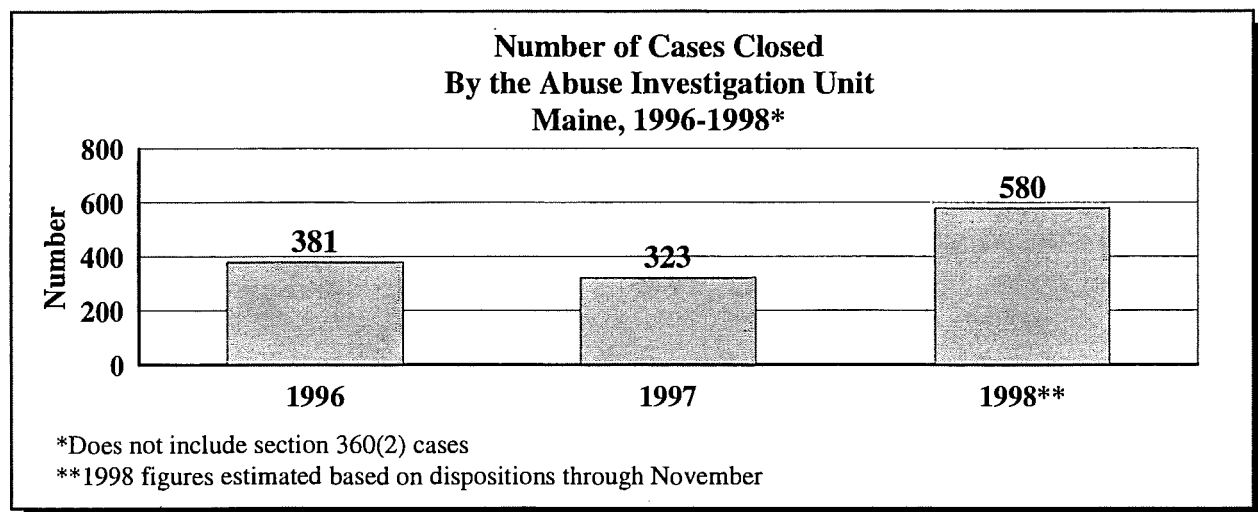
Overall, the number of complaints filed with the Abuse Investigation Unit has decreased over the last three years.



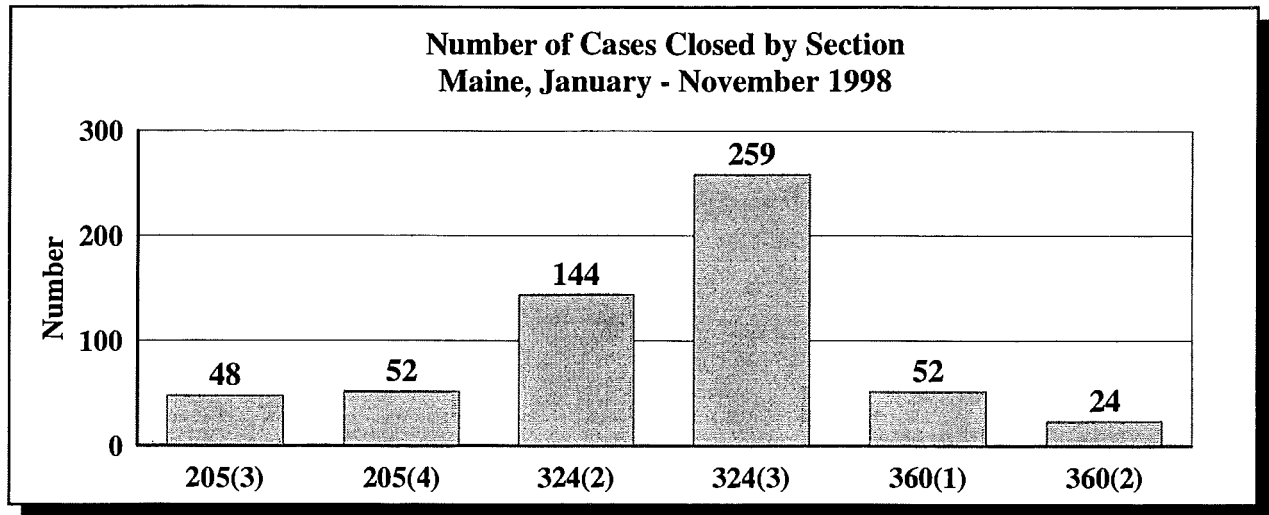
This trend is not expected to continue in 1999. The Board has implemented two new systems that are expected to cause an increase in the number of complaints filed with the Abuse Investigation Unit. First, the Board is going to identify more employers who are operating without required workers' compensation coverage. This will result from a program that compares the Department of Labor's unemployment database with the Board's coverage database. Initial projections indicate that the number of Section 324(3) filings will likely double, at least, over the next twelve months.

Second, the Board has implemented a program to identify parties who do not file required forms in a timely manner. Again, this system is expected to result in a large increase in the number of Section 360(1) complaints filed with the Abuse Investigation Unit.

While there has been a decline in the number of complaints filed over the past three years, the number of cases closed by the Abuse Investigation Unit has increased over the same period of time.



As would be expected, Sections 324(2) and 324(3) account for the greatest number of cases that are closed.



As was stated above, the Abuse Investigation Unit has authority to impose penalties pursuant to several sections of the Act. The basis for penalties pursuant to each section is spelled out above. Through November, 1998, the Abuse Investigation Unit imposed 11 penalties, pursuant to Section 205(3), for failure to timely pay weekly benefits; 12 penalties, pursuant to Section 205(4), for failure to timely pay medical bills; 53 penalties, pursuant to Section 324(2), for failure to make timely payments pursuant to a Board order or agreement; 130 penalties, pursuant to Section 324(3), for failure to secure required workers' compensation coverage; and 33 penalties, pursuant to Section 360(1), for failure to file a required form.

Complaints filed pursuant to Section 360(2) are investigated by the Abuse Investigation Unit. The Abuse Investigation Unit determines whether the allegations, if true, constitute a violation of Section 360(2). If they do, the case is referred to a hearing officer. Through the end of November, 1998, 43 complaints pursuant to Section 360(2) had been received. Also through the end of November, 1998, of the 43 Section 360(2) complaints received during 1998, 14 had been referred for hearing and another 10 closed.

## **14. Technology**

Over the past year the Workers' Compensation Board has made a number of significant advancements in the technological arena. The technology environment was in dire need of meaningful attention in most areas, specifically the communication infrastructure, server hardware and software, desktop hardware and software, support, business application, end user tools, database design, and most important an in-depth analysis of business needs and process flow.

### **A. 1998 Accomplishments.**

#### **(1) Infrastructure.**

Communications between the five (5) regional offices were unproductive. Staff consistently experienced delays of 30 – 50 seconds for a transaction to be complete or a screen to change. E-mail at various times would exceed 10 minutes just to attach to office server. These extended delays also caused the system to automatically detach from the database server causing the loss of all work performed to that point. The amount of lost productivity was significant. To resolve the problem, all network lines between Workers' Compensation Board offices on the State's Wide Area Network were upgraded from 56k to T1 capacity.

The staff's desktop system in all offices were experiencing random lockups and inability to load new applications. The systems were undersized, under-powered, and the operating system software was out of date. In addition the desktop applications were either out of date or inoperative. A replacement effort was begun and all staff desktop systems were updated with new PC's. A new e-mail application was installed which provided communications within the Workers' Compensation Board, State Government, and any business partners and constituents globally. The new e-mail application significantly improved the communication and sharing of data within the WCB, state government, and the insurance/legal community. The Workers' Compensation Board staff also began the word-processing migration from WordPerfect to Microsoft Word. This migration will put the Workers' Compensation Board into compliance with the State's standard for desktop applications.

Hearing Officers, Mediators, Advocates, and Legal Staff were trained and given online Internet access to two new programs, Westlaw and Mathew Bender's Larson Workers Compensation, which will assist in legal research.

The network server in each of the Workers' Compensation Board offices were also undersized, under-powered, and the networking software was outdated. This caused numerous problems when trying to connect between the various Workers' Compensation Board offices as well as not being able to provide adequate backup capabilities for end user data. All network servers were upgraded with risk avoidance utilities such as mirrored disk drive, unattended backups, and placing critical components on a UPS system. The network operating system was also upgraded at the time to the most current version of Novell.

## **(2) Workers' Compensation Board Business Application.**

Infrastructure issues required resolution prior to focusing any attention on the WCB Business Application, otherwise known as the Progress System, which is the most critical and the basis for all operational functions performed at the Board. Problems with the 'system' have been identified by a number of entities for a myriad of reasons. The staff cannot perform certain functions, information is not updated in all areas of the database, data checks are nonexistent for date fields, duplicity of claims, poor workflow process, and in general the validity of the data is questionable were some of the problems identified.

Following a review of the system, it was determined that it would be more expedient and cost effective to design and develop a new system in lieu of trying to correct the problems in the present application. The difficulty however is that the present system must continue to run while the a new system is designed, develop, and then carefully merged into production without causing any disruption to operations as well as keeping existing data once cleansed.

A list of concerns with the present system were collected from all interested parties and following a review and determination as to the extent and seriousness of the changes required, modification were made to keep the present system operational while applications can be rewritten.

## **(3) Coverage.**

One function of the Coverage Unit is to assure that employers required by law to provide workers' compensation coverage maintain such coverage. Detection of violations or lapse in coverage was primarily a manual effort and due to the volume many situations were not detected. In addition, a significant backlog of potential violations has developed. Because of this backlog, some employers purchase coverage when confronted by the Workers' Compensation Board only to drop it and wait until it can be detected once again by the Workers' Compensation Board, which typically can be 8-12 months later. The notification process to employers of a violation was very inefficient and would take a minimum of three months before punitive actions could begin.

New programs were developed to have the system identify, on a biweekly basis, any violations by automatically checking data on the Department of Labor's Unemployment Tax system. The system then sends one notification to the employer requesting information within 30 days or the punitive process will begin. This new system has uncovered a number of violations that would have never been detected using the old procedures.

Currently we are receiving coverage information electronically with only one insurer. Over the next year the intent is to have additional insurers file coverage data by electronic transfer.

## **(4) Abuse Investigation Unit.**

The Abuse Unit does not have any automated operations. This has been a request in the past but due to a manageable workload it has not been a priority. This however is not the case today. The new programs in the Coverage and Claim Management Units are uncovering and forwarding a

significant number of additional violations to the Abuse Unit which has prompted the need to automate a number of functions. In addition to performing tasks for current staff operations, the database information will provide reporting data as to number of cases, number and amount of fines levied, as well as being able to identify chronic abusers. Programming has begun with anticipated completion date by the end of the first quarter.

#### **(5) Claims Management.**

The Claims Management Unit has and will receive the majority of modifications to their systems. The Workers' Compensation Board organizational shift from dispute resolution to dispute prevention begins with identifying and modifying behavior. From an organizational perspective, moving from a task oriented staffing structure to a claim management organization based on carrier was a major change. This included moving functions which in the past were performed in the Coverage Unit.

New data elements were added to three current forms (First Report (WCB1), Memorandum of Payment (WCB3), and the Notice of Controversy (WCB9)) in order to provide performance measurement capabilities to the staff as well as providing the Governor and Legislature with an overview of the Worker Compensation Industry. The addition of new data elements mandated a new database as well as new First Report screens. The new database required an upgrade of the Progress software and additional memory and disc space on the database server.

Currently, about 35% of First Report are entered electronically. The format for transmission used in the past was proprietary to the Workers' Compensation Board. With the adoption by the Board of the new data elements the Board also adopted using the IAIABC standard. The standard allows for carriers which provide coverage in jurisdictions other than Maine to have one computer application to transmit data without major modifications to their systems. While the Maine Workers' Compensation Board only requires less than half of the elements designed into the system, carriers can submit data without major modifications. The goal of the Workers' Compensation Board is to have 80% of all First Reports submitted electronically by the end of 1999. The current file transfer method was enhanced to minimize the need for human involvement with the transfer process.

The current statute regarding the submission of documents enables the WCB to penalize for late filed or incorrectly filed forms. The Workers' Compensation Board has held some companies to this standard in on a limited basis in the past. Beginning February 1, 1999 an application has been developed to automatically measure the time between the date an employer is notified and the date the First Report is received by the WCB and automatically begin the penalty assessment procedures within the Abuse Unit. This will encourage the timely submission of forms which has historically added delays in processing of a controverted case.

As systems and work flow procedures are being reviewed and redesigned in 1999, there will be a number of enhancements to the current systems and procedures to automate the labor-intensive tasks within the central and regional offices. The Coverage and Abuse Units will be the first areas for review and development followed by the Claims Unit.

**B. 1999 Goals.**

- (1) Increase the % of Coverage Data received electronically to 60% by January 2000.
- (2) Increase the % of electronically filed First Report Claim submissions from December 1998 level of 35% to 60% by June 1999 and to 80% by January 2000.
- (3) Develop and implement the capability for the Workers' Compensation Board to receive Memorandum of Payment and Notice of Controversy forms electronically by September 1999.
- (4) Investigate the viability of using Imaging Technology for sharing of Claim Information movement and storage of 'paper'.
- (5) Investigate the submission of forms via the Workers' Compensation Board Web Site.
- (6) Automate detection of Workers' Compensation Board Rule violation.

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

Many of the recommendations of the groups have either been implemented or will shortly be implemented. These recommendations should provide for greater efficiency, streamlining of dispute resolution, a shift of emphasis from resolution to prevention and compliance, expanded technological capacity, and performance measures to chart the progress of the Board and staff.

## **16. 39-A M.R.S.A. Section 213 - Threshold Adjustment and Extension of 260-week Limitation**

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

Section 213(4) provides, in part, for an extension of the 260-week limitation if the Board finds that the frequency of such cases is no greater than the national average. The Board is presently considering the findings and conclusions of an ARMTech report recommending an extension of the 260-week limitation by 52 weeks. Board action on this issue will occur in early 1999.

The Act maintains that both these adjustments be made annually effective January 1, 1998.

## 17. Summary

The Workers' Compensation Act of 1992 went into effect on January 1, 1993 and was amended by P.L. 1997, Chapter 486. The reforms and the amendments continue to have a positive impact on workers' compensation in Maine. The collaborative effort between Labor and Management has brought stability to the system. The dispute resolution system is resolving a high percentage of cases through troubleshooting and mediation at a low cost and in a timely manner, as envisioned by the Act. The more formal hearing process continues to improve, in that, a greater number of cases are being resolved in a more timely manner. These improvements should continue in the future with the implementation of the Board's new streamlining measures. The Independent Medical Examiner Program continues to provide an independent resource for the resolution of difficult medical issues.

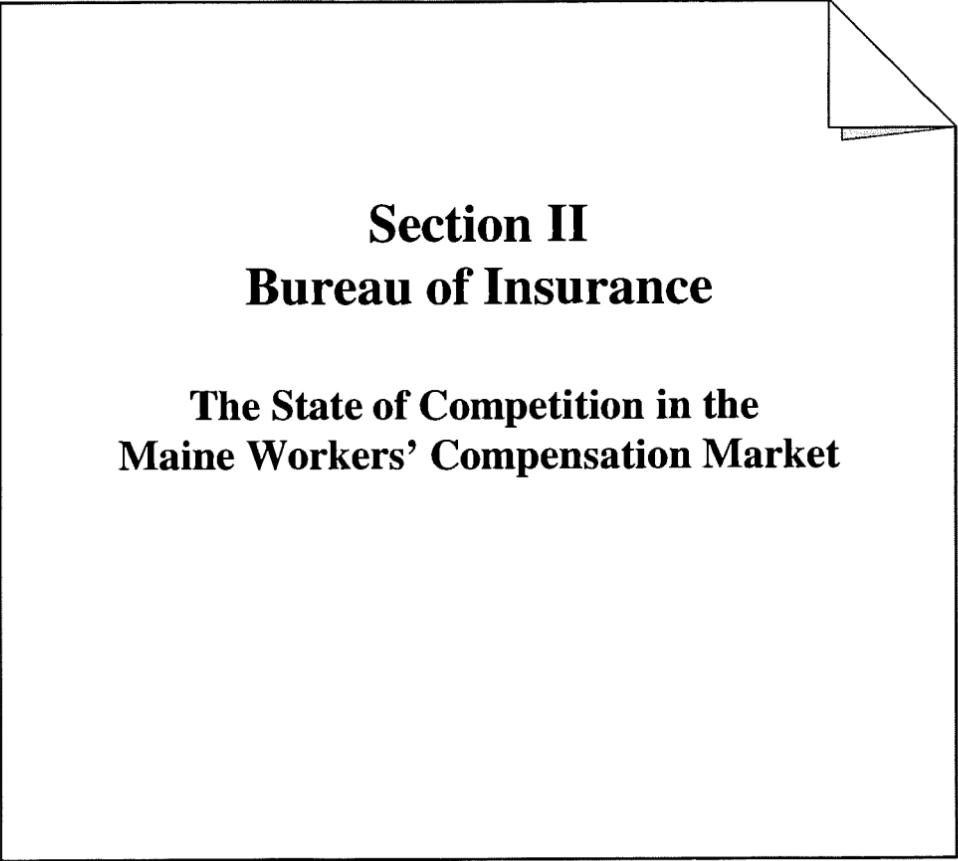
The mission of the Workers' Compensation Board was significantly changed through P.L. 1997, Chapter 486 which provides for (1) a change in focus from dispute resolution to dispute prevention and compliance, (2) a worker advocate program and auditing program, and (3) a Monitoring, Audit and Enforcement Program. As a result, significant changes have occurred in the Board's operations. A Worker Advocate Program was formulated, implemented, and is now fully operational statewide. A Monitoring, Audit and Enforcement (MAE) Program was approved to ensure that all obligations under the Act are met. A Pilot Audit Program was established to test the MAE Program and report generally on the performance of the current workers' compensation system. The Audit Report will be delivered to the Legislature and the Governor at the beginning of the Legislative Session. Quarterly Compliance Reports, as required by the MAE Program, will begin with the first quarter of 1999 and will be delivered to the Legislature and the Governor prior to the end of the present Legislative Session. Audits will also be conducted throughout 1999 with an audit report being delivered to the Legislature and the Governor at the start of its next term.

The technological capability of the Board has been significantly expanded through the modernization of its computer system and a change in its programming. Electronic transfer of data is being encouraged by the Board and the goal is to have 60% of the data transferred electronically by the end of 1999. Cost controls and medical cost containment measures have been established through the use of utilization review, protocols, and medical fee schedules.

Title 39-A, Section 213 provides for both a permanent impairment threshold adjustment and an extension of benefits provision under certain circumstances. In 1998, the Board reduced the permanent impairment threshold from 15% to 11.5% based on an actuarial report submitted by ARMTEch. In 1999, the Board will consider an extension of the 260-week limitation based on an actuarial report submitted by ARMTEch and other relevant information.

The new mission of the Workers' Compensation Board is gradually having an impact on the overall workers' compensation system. As the measures provided for by the Legislature and recently implemented by the Board take effect, the system should experience a further reduction in the incidence rate, improved performance by insureds and self-insureds, and a more equitable system for employees and employers of the State of Maine.





**Section II**  
**Bureau of Insurance**

**The State of Competition in the  
Maine Workers' Compensation Market**



## Section II: Maine Bureau of Insurance

The following section is provided by the Bureau of Insurance. This information is one part of the Annual Report on the Status of the Maine Workers' Compensation System with the following topics:

|  | Page |
|--|------|
| 1. Workers' Compensation Market Competition: Voluntary Market 1988-1992 .....                          | B-1  |
| 2. Recent Experience in the Maine Worker' Compensation Market .....                                    | B-3  |
| 3. Calendar Year 1997 Market Share Based on Written Premium .....                                      | B-5  |
| 4. Rate Differentials .....  | B-6  |
| 5. Tiered Rating, Schedule Rating, Dividend Plans, Retrospective Rating and<br>Large Deductibles ..... | B-8  |
| 6. Self-Insurance .....  | B-9  |
| 7. Conclusion .....  | B-10 |
| 8. Maine Workers' Compensation Rate Comparison as of January 1, 1999 .....                             | B-11 |

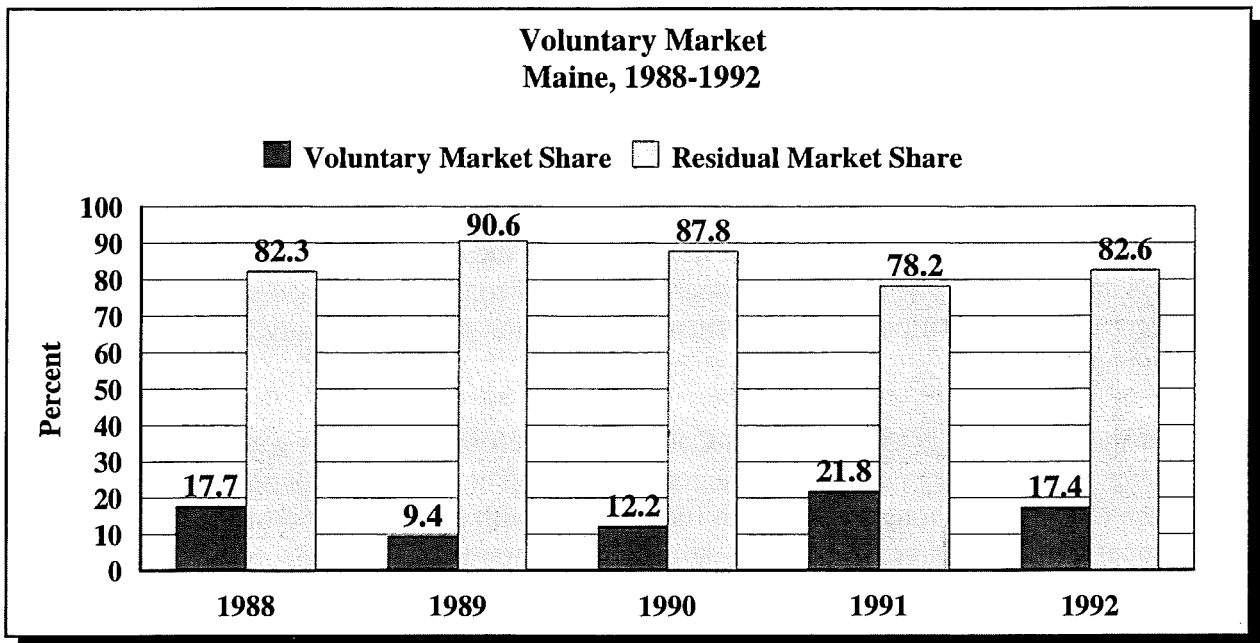


## 1. Workers' Compensation Market Competition: Voluntary Market 1988 - 1992

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). The vast majority of insured employers were written in the 'residual market pool' ('Pool'). The Pool operated through 1992.

On a calendar year basis, the percentage of premium written in the voluntary market for the years 1988 through 1992 is shown in Exhibit 1.

**Exhibit I.**



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 coverage other than to self-insure or to be assigned to a servicing carrier in the statutorily created Pool. (A servicing carrier was a private insurance company designated to process Pool business.) The servicing carrier collected a fee for its services but was reimbursed by the Pool for claims paid. In response to these market conditions, the 1992 Blue Ribbon Commission Reform legislation, Public Law 885 "An Act to Reform the Workers' Compensation Act and Workers' Compensation Laws" was enacted which established the Maine Employers' Mutual Insurance Company and an open competitive rating environment.

During the 1988-1992 period, the Pool incurred claims in excess of premiums collected which continue to affect the workers' compensation insurance market to this day. The Pool was projected to run out of funds to pay claims and unresolved litigation prevented the Pool from operating as intended. Public Law 289 "An Act to Create the Workers' Compensation Residual Market Deficit Resolution and Recovery Act" was approved by the Governor on June 23, 1995, and provided a mechanism to fund the deficit and required certain insurance carriers to contribute \$65 million by January 1, 1996. It also fixed the employers' share of the deficit and reduced the surcharge on insurance policies from 9.5% to 6.32 % of workers' compensation premium. Equally important, the law has added stability to the workers' compensation marketplace. The most recent deficit estimates released by Workers' Compensation Residual Market Pool Board project that the funding required by PL 289 may be reduced prior to the end of the 10 years originally contemplated.

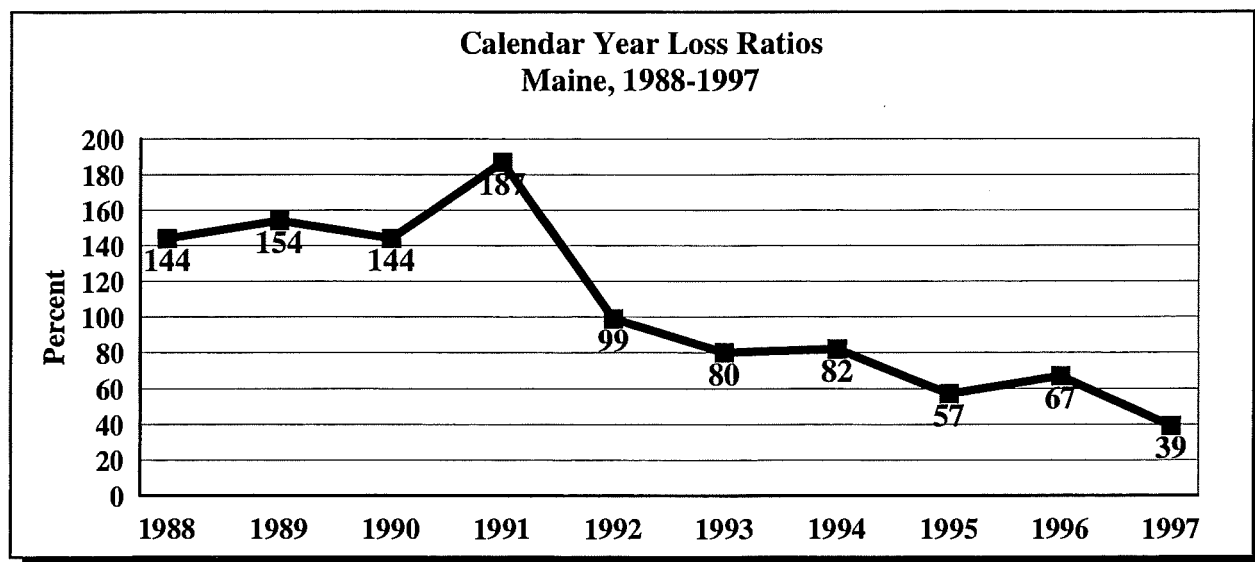
Maine Employers Mutual Insurance Company was established as an employer-owned mutual insurance company and replaced the Pool beginning January 1, 1993. Although Maine Employers' Mutual is the only workers' compensation insurance company in Maine required to accept all risks that apply (there are a few circumstances in which they can deny coverage), it does not view itself solely as a market of last resort. The company competes actively in the voluntary workers' compensation insurance market. In May 1998 pursuant to 24-A M.R.S.A. 3710 Maine Employers' Mutual was certified by the Superintendent of Insurance as meeting the required capital and surplus for a mutual insurer. Subsequently, the company returned \$5.1 million to the employers that contributed capital during the first three years of the company's existence. The company collected approximately \$47 million through this capital contribution process. Future refunds are dependent upon the continued positive financial condition of the company and approval by the Superintendent.

Another result of the 1992 Blue Ribbon Commission Reform legislation was that the rating law was changed to encourage competition among insurers. The National Council on Compensation Insurance (NCCI) is no longer allowed to file full rates with expense and profit loading for workers' compensation in Maine. (NCCI is a rating organization that 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. These loss ratios are a sign of significant improvement in Maine's workers' compensation insurance market. Exhibits II and III illustrate what has occurred on both calendar year incurred basis and accident year basis. Calendar year incurred losses reflect payments and reserve adjustments during a year on all claims including those on prior years' injuries. Calendar year loss ratios reflect adjustments and payments on claims that occurred under prior workers' compensation laws. Accident year losses reflect payments and reserves for future payments for injuries occurring between January 1 and December 31 of a particular year. While calendar year data may be easier to compile and useful in evaluating the financial condition of an insurance company, accident year data is more useful in evaluating the claim experience because of a better matching of premium and loss information. In addition, the experience is not distorted by reserve adjustments on claims which occurred in prior periods.

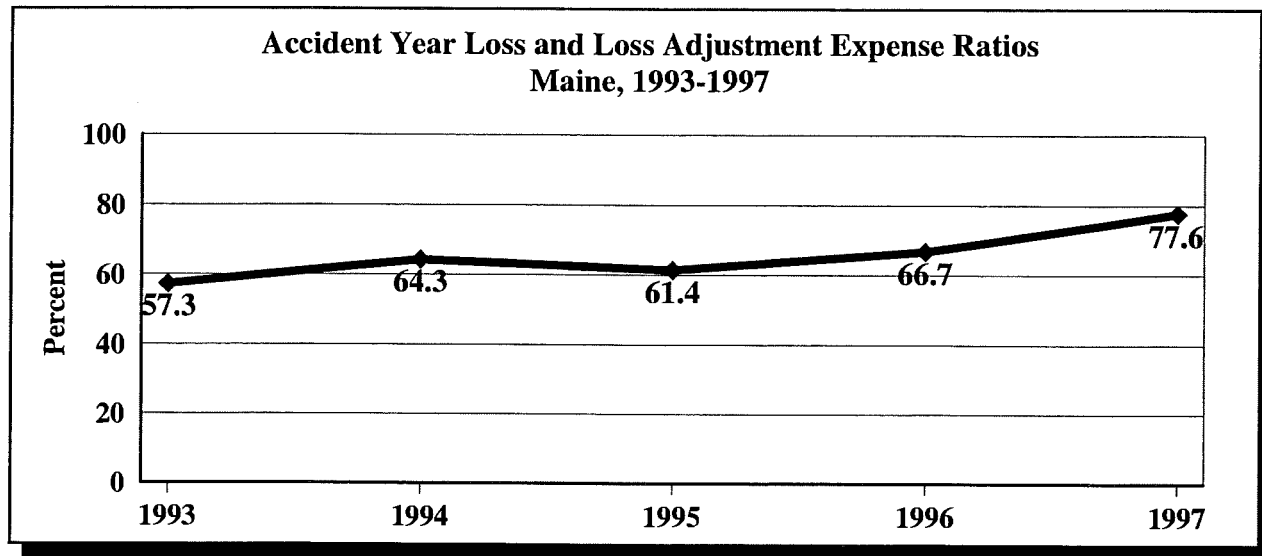
**Exhibit II.**



Source: Annual Statement Page 14 Compilations

It is important to note that as competition has intensified the accident year loss ratios have increased even though Maine workers' compensation claim costs have remained below country-wide averages. The loss ratios are higher because of decrease in premium.

**Exhibit III.**



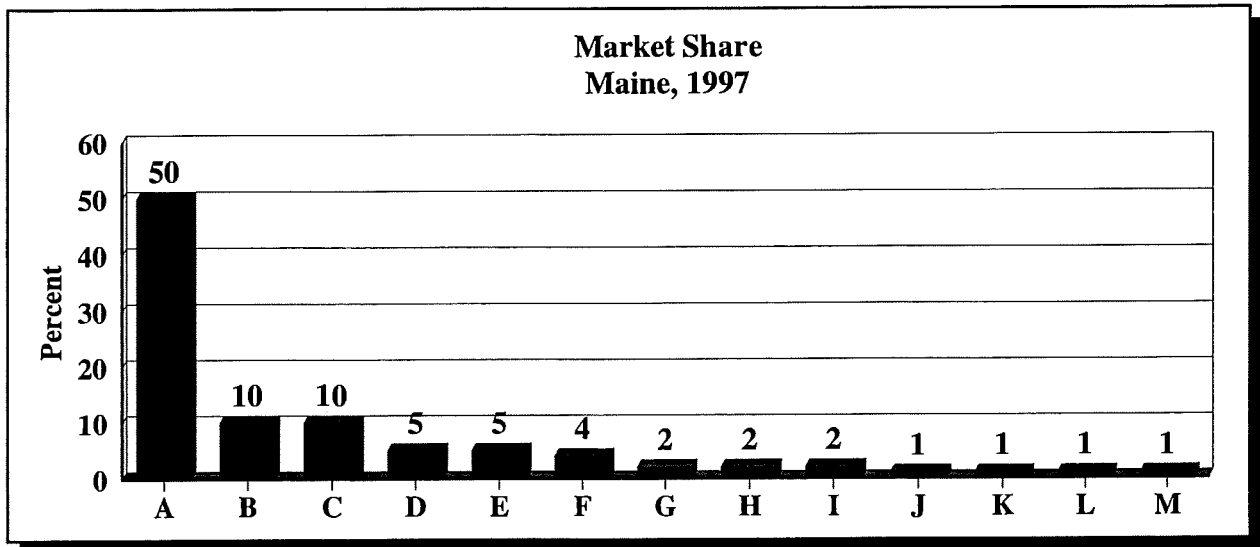
Source: NCCI

### 3. Calendar Year 1997 Market Share Based on Written Premium

Exhibit IV illustrates market share for the 13 largest insurance groups, based on 1996 premium. Maine Employers' Mutual's share reflects the business it inherited from the former Pool. The market shares of the other insurers reflect the competitive nature of the Maine market.

As additional carriers continue to reenter the market, resulting in more options for Maine employers, we expect that market shares in 1998 will look somewhat different from the 1997 numbers.

**Exhibit IV.**



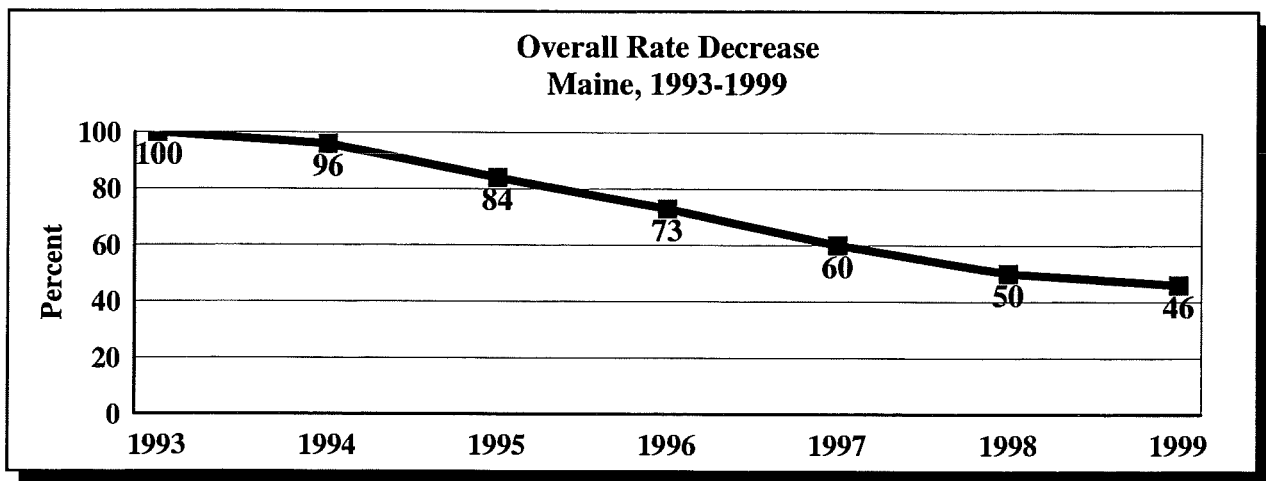
**Key for Exhibit IV**

- A. Maine Employers' Mutual Insurance Company
- B. Acadia Insurance Company
- C. Hanover of Maine Insurance Companies
- D. Commercial Union Insurance Companies
- E. Liberty Mutual Insurance Companies
- F. Zurich Companies
- G. The Netherlands Insurance Companies
- H. Travelers Insurance Companies
- I. Nationwide Companies
- J. Hartford Insurance Companies
- K. Redland Insurance Company
- L. Royal Insurance Companies
- M. St. Paul Insurance Companies

## 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. By law, maximum rates were established by the Superintendent and no company filed for lower rates. Since January 1993, each insurance company is required to file its own manual rates based upon its expense and profit provisions. (NCCI continues to make an annual advisory filing of pure premium rates, which are rates for losses and loss adjustment expenses, excluding all other expenses and profit provisions.) NCCI has filed for and received approval of an average rate reduction of 3.5% effective January 1, 1999. Overall, since 1994 the cumulative impact of these rate reductions is a 43.4% decrease in loss cost rates. Exhibit V details the decrease.

**Exhibit V.**



As of November 1998, 142 insurance carriers have filed and received approval from the Bureau to sell workers' compensation insurance in Maine at specified rates. The attached charts compares the Maine Employers' Mutual Insurance standard base rate with the lowest available base rate for the 73 largest classification codes (in terms of payroll) for all workers' compensation insurers. For many classification codes, the wide range underscores the competitive nature of workers' compensation insurance in Maine and the importance of employers exploring options in securing coverage for workers' compensation claims.

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

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

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

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

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

Over 70 percent of the insurance companies with filed rates have received approval to utilize scheduled rating in Maine. Scheduled rating allows the insurance company to consider other factors that may not be reflected in an employer's experience rating when determining an individual employer's premium. Elements such as safety plans, medical facilities, safety devices, and premises are considered and can result in a change in premium by as much as 25%.

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

## **6. Self-Insurance**

Self-insurance represents a significant part of the workers' compensation market in Maine and is a viable alternative for many employers in the State. There are 20 groups representing approximately 1,350 employers and are 122 individual self-insured employers in Maine many of which have become self-insured since 1988. Since 1985 the self-insurers' estimated standard premium has grown from more than \$52 million to about \$148. In terms of annual standard premium it is estimated that self-insureds now represent approximately 50% of the workers' compensation market. The growth in self-insurance has slowed in the last few years and some former self-insured employers have returned to the commercial market. Some carriers have filed rating plans to allow them to assume the balance of a self-insurer's existing exposure and transition into a fully insured program.

## **7. Conclusion**

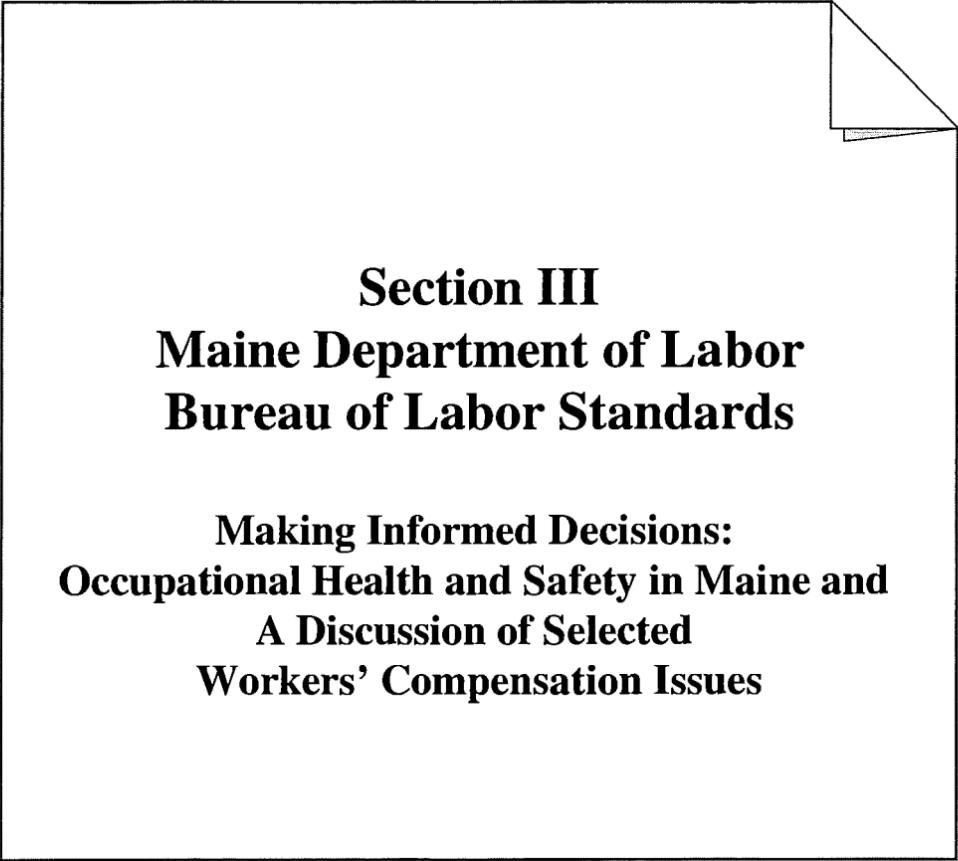
When contrasted with the conditions which existed during the years 1988 through 1992, the competition in the Maine workers' compensation market has clearly improved and Maine employers have more options. However, according to economic theory, an industry is perfectly competitive only when a large number 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.

## 8. Maine Workers' Compensation Rate Comparison As of January 1, 1999

| Class Code | Description   | MEMIC Standard | Industry Low |
|------------|---|----------------|--------------|
| 2111       | Cannery   | \$5.10         | \$2.76       |
| 2286       | Wool spinning & weaving                               | \$4.93         | \$2.66       |
| 2501       | Clothing manufacturing                                | \$4.20         | \$2.27       |
| 2660       | Boot or shoe manufacturing                            | \$7.13         | \$3.85       |
| 2702       | Logging or lumbering                                  | \$35.73        | \$19.32      |
| 2709       | Mechanized logging                                    | \$10.77        | \$5.82       |
| 2710       | Saw mill  | \$10.81        | \$5.84       |
| 2721       | Certified logging                                     | \$10.54        | \$5.70       |
| 2841       | Woodenware manufacturing                              | \$7.71         | \$4.17       |
| 3629       | Precision machine parts manufacturing                 | \$2.86         | \$1.54       |
| 3632       | Machine shop  | \$4.47         | \$2.41       |
| 3681       | TV, radio, telephone or telecom. device manufacturing | \$2.00         | \$1.08       |
| 3724       | Machinery or equipment erection or repair             | \$17.88        | \$9.67       |
| 4207       | Pulp manufacturing                                    | \$1.65         | \$0.89       |
| 4239       | Paper manufacturing                                   | \$3.82         | \$2.07       |
| 4279       | Paper goods manufacturing                             | \$3.47         | \$1.88       |
| 4299       | Printing  | \$3.00         | \$1.62       |
| 4361       | Photographers   | \$2.80         | \$1.51       |
| 4484       | Plastics manufacturing: molded products               | \$4.49         | \$2.43       |
| 4511       | Analytical chemist                                    | \$1.75         | \$0.95       |
| 4693       | Pharmaceutical/surgical goods manufacturing           | \$2.63         | \$1.42       |
| 5183       | Plumbing  | \$6.45         | \$3.49       |
| 5190       | Electrical wiring within buildings                    | \$4.55         | \$2.46       |
| 5191       | Office machine or appliance installation              | \$1.16         | \$0.63       |
| 5506       | Street construction paving                            | \$7.57         | \$4.10       |
| 5538       | Sheet metal work                                      | \$7.39         | \$4.00       |
| 5606       | Contractor executive supervisor                       | \$3.02         | \$1.64       |
| 5645       | Carpentry detached 1 or 2 family                      | \$11.06        | \$5.98       |
| 6217       | Excavation  | \$10.09        | \$5.46       |
| 7228       | Trucking local  | \$15.95        | \$8.62       |
| 7229       | Trucking long distance                                | \$15.95        | \$8.62       |
| 7380       | Drivers   | \$9.63         | \$5.21       |
| 7539       | Electric light or power company                       | \$4.44         | \$2.40       |
| 7600       | Telephone or telegraph company                        | \$6.01         | \$2.94       |
| 7610       | Radio or television broadcasting                      | \$0.57         | \$0.28       |
| 7720       | Police officer  | \$4.66         | \$2.00       |
| 8006       | Store: grocery/convenience retail                     | \$2.70         | \$1.48       |
| 8008       | Store: clothing/dry goods retail                      | \$1.69         | \$0.79       |
| 8010       | Store: hardware                                       | \$2.65         | \$1.26       |
| 8017       | Store: retail - not otherwise classified              | \$2.11         | \$1.30       |

**Maine Workers' Compensation Rate Comparison as of January 1, 1999 cont.**

| <b>Class<br/>Code</b> | <b>Description</b>                              | <b>MEMIC<br/>Standard</b> | <b>Industry<br/>Low</b> |
|-----------------------|---|---------------------------|-------------------------|
| 8018                  | Store: wholesale not otherwise classified       | \$6.79                    | \$3.11                  |
| 8024                  | Seafood dealer wholesale                        | \$8.78                    | \$4.94                  |
| 8033                  | Store: meat, grocery and provision              | \$2.69                    | \$1.32                  |
| 8044                  | Store: furniture                                | \$4.06                    | \$2.13                  |
| 8058                  | Building material dealer-new material           | \$3.09                    | \$1.51                  |
| 8107                  | Machinery dealer                                | \$4.83                    | \$2.55                  |
| 8227                  | Construction permanent yard                     | \$6.82                    | \$3.91                  |
| 8232                  | Lumberyard new material-wholesale               | \$4.12                    | \$2.23                  |
| 8350                  | Gasoline dealers                                | \$5.73                    | \$2.64                  |
| 8380                  | Auto service or repair center                   | \$4.55                    | \$2.41                  |
| 8601                  | Architect or engineer consulting                | \$1.13                    | \$0.59                  |
| 8742                  | Salespersons, collectors                        | \$0.97                    | \$0.60                  |
| 8803                  | Auditors, accountant traveling                  | \$0.36                    | \$0.20                  |
| 8810                  | Clerical office employees                       | \$0.76                    | \$0.39                  |
| 8820                  | Attorney  | \$1.18                    | \$0.54                  |
| 8829                  | Convalescent or nursing home                    | \$6.54                    | \$2.76                  |
| 8832                  | Physician                                       | \$0.87                    | \$0.39                  |
| 8833                  | Hospital professional employees                 | \$1.81                    | \$0.98                  |
| 8835                  | Nursing- home health, public & traveling        | \$4.05                    | \$2.07                  |
| 8861                  | Charitable or welfare organization professional | \$0.71                    | \$0.47                  |
| 8868                  | College: professional employees                 | \$0.71                    | \$0.47                  |
| 8901                  | Telephone or telegraph company office           | \$0.45                    | \$0.25                  |
| 9014                  | Buildings operated by contractors               | \$5.57                    | \$2.75                  |
| 9015                  | Buildings operated by owner                     | \$6.45                    | \$3.62                  |
| 9040                  | Hospital all other employees                    | \$4.48                    | \$2.33                  |
| 9052                  | Hotel: all other employees                      | \$3.40                    | \$1.91                  |
| 9058                  | Hotel: restaurant employees                     | \$2.83                    | \$1.28                  |
| 9060                  | Club country, golf, fishing or yacht            | \$2.70                    | \$1.35                  |
| 9063                  | YMCA, YWCA, YMHA, or YWHA                       | \$1.44                    | \$0.74                  |
| 9079                  | Restaurant                                      | \$2.80                    | \$1.49                  |
| 9101                  | College: all other employees                    | \$3.53                    | \$2.01                  |
| 6824F                 | Boat building or repair                         | \$5.95                    | \$3.91                  |



**Section III**  
**Maine Department of Labor**  
**Bureau of Labor Standards**

**Making Informed Decisions:**  
**Occupational Health and Safety in Maine and**  
**A Discussion of Selected**  
**Workers' Compensation Issues**



### **Section III: Maine Department of Labor Bureau of Labor Standards**

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 Maine Workers' Compensation System with the following topics:

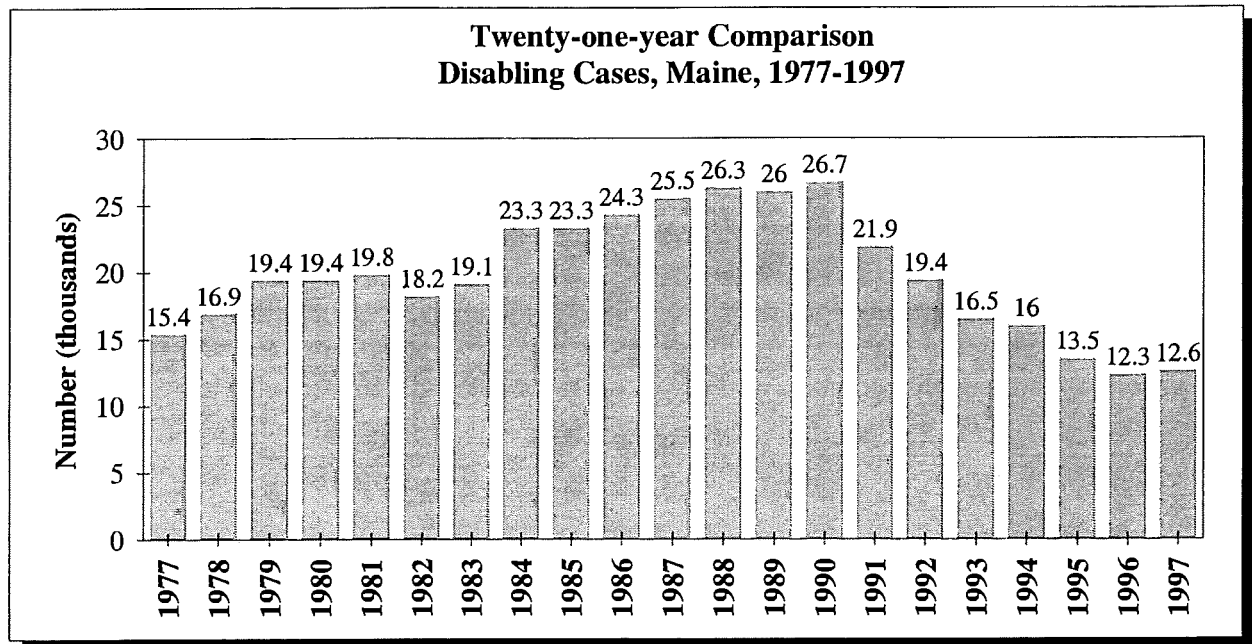
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| 2. Underreporting Workers' Compensation Cases .....   | C-2  |
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## 1. Highlights from *Characteristics of Work-Related Injuries and Injuries in Maine 1997*

In 1997, there were 12,601 disabling cases reported to the Workers' Compensation Board (WCB) on *First Report of Occupational Injury or Disease*, a 2.5% increase from the 12,289 disabling cases in 1996 as shown in Figure 1. This was the first increase in the number of disabling cases since 1990.

**Figure 1.**



Several factors may have contributed to the increase in number of disabling cases in 1997:

- increased education and training have made employers and workers more aware of the criteria for reporting a work-related injury or illness to the WCB
- the number of disabling cases with no return-to-work date has doubled over the past two years thus giving an inaccurate account of disabling cases:
  - 1995 - 3,162 cases with no return-to-work date (23.5% of 13,463 total disabling cases)
  - 1996 - 5,730 cases with no return-to-work date (46.6% of 12,289 total disabling cases)
  - 1997 - 7,660 cases with no return-to-work date (60.8% of 12,601 total disabling cases)

A **disabling case** is one where the worker lost one or more days of work beyond the day of the injury. Because of the 7-day time limit to notify the WCB of a work-related injury or illness, the employer often submits the First Report without always knowing when the worker will be returning back to work so leaves that date field blank. If the worker comes back to work the next day, and if no further action is taken on this case, the employer may neglect to notify the WCB when the worker returned to work. These cases give a false picture of the actual number of workers actually losing time.

## 2. Underreporting Workers' Compensation Cases

The most recent audit by the Workers' Compensation Board (WCB) looked at the underreporting of First Reports from insurance companies. There are three other underreporting possibilities besides that one, however.

- If an employee chooses, he can simply not report the case to his employer. The incentive to do this are few but might be linked to group rewards and incentives for no injury or fear of reprisals for reporting.
- The employer chooses to 'eat' the claim and not report it to the insurer or WCB because he/she is continuing salary and believes the case need not be reported even though there is lost time. The law is clear that cases should still be reported but since insurance companies involvement is not needed, the *First Report* is not submitted. This was thought to be more prevalent years ago because of the fear of civil suits but that fear seem to be gone now.
- There is an internal situations we need to look into involving how reports filter through the WCB system. Disabling reports are coded by being electronically routed from the WCB to BLS. We suspect some cases that come in initially as no lost time, but subsequently lose time, are not received at BLS for coding. Some internal checking should determine and close that leakage if it exists.

If the new Monitoring, Auditing, and Enforcement (MAE) program is fully implemented by the Workers' Compensation Board, many of these potentially unreported cases may be captured. Training and educating employees, employers and insurance companies on WC laws and employee rights must be an integral part of WCB daily activity to assure that employers and workers comply with the law.

***Key point:*** Aggressive training and education must take place to make employees aware of their rights, and employers and insurance companies aware of the laws that protect workers who get injured in the workplace. The MAE program must be fully implemented by the Board.

### 3. Missing Data Elements

- \* **Cost data** is an important source of information when evaluating the effectiveness of the Workers' Compensation System. It is also useful in determining where agencies involved in injury and illness prevention should allocate their resource.

In the past, staffing in the Workers' Compensation Payments Division was inadequate to proceed with full-scale, high quality data collection. In 1996, the WCB switched to a new computer system. Some significant computer related problems have had to be worked out. As a result, efforts to collect missing and complete cost data have been reduced to manual monitoring.

With the new Monitoring, Auditing and Enforcement Program (MAE) at the WCB, audits can be conducted to identify missing information, collect it and develop checks on accuracy to make sure quality data exists. We are hoping that with implementation of the MAE program, cost data will become available starting with the 1999 cases.

- \* **Employee file** is currently not available to the Bureau of Labor Standards. One focus of education and occupational safety and health issues in the past few years is to young workers entering the workforce. In 1995, the last year the Bureau was able to retrieve the age of the injured worker, nearly 30% of all disabling injuries and illnesses in Maine were to workers under 30 years old, with another 16% between 30 and 34. Education is now being implemented in schools to help these young worker learn proper lifting techniques as well as other ergonomic issues. It is important to continue to track these young workers in an effort to make the school-to-work transition a safe and healthy one.
- \* **Return-to-work date** of every case must be reported to the WCB. Without this date, cases appear to be open ended. This also is used to determine the length of the disability as well as the severity of the case. Data shown on page C-2 clearly shows this to be a growing problem.
- \* **Detailed narrative of the injury** is vital in training, targeting and educating the employees and the worker on safety and health issues. First Reports should not be accepted without the nature of the injury (cut, bruise, fracture), the part of the body affected, the events leading up to the injury, and the source that directly produced the injury. Unknown codes have risen over the last three years:

| Unknown Data Elements     |        |        |        |
|---------------------------|--------|--------|--------|
|                           | 1995   | 1996   | 1997   |
| Number of disabling cases | 13,454 | 12,289 | 12,601 |
| Unknown nature of injury  | 3.1%   | 7.3%   | 9.0%   |
| Unknown part of body      | 0.6    | 0.9    | 0.8    |
| Unknown source of injury  | 7.1    | 7.7    | 8.9    |
| Unknown event or exposure | 4.6    | 4.5    | 6.0    |

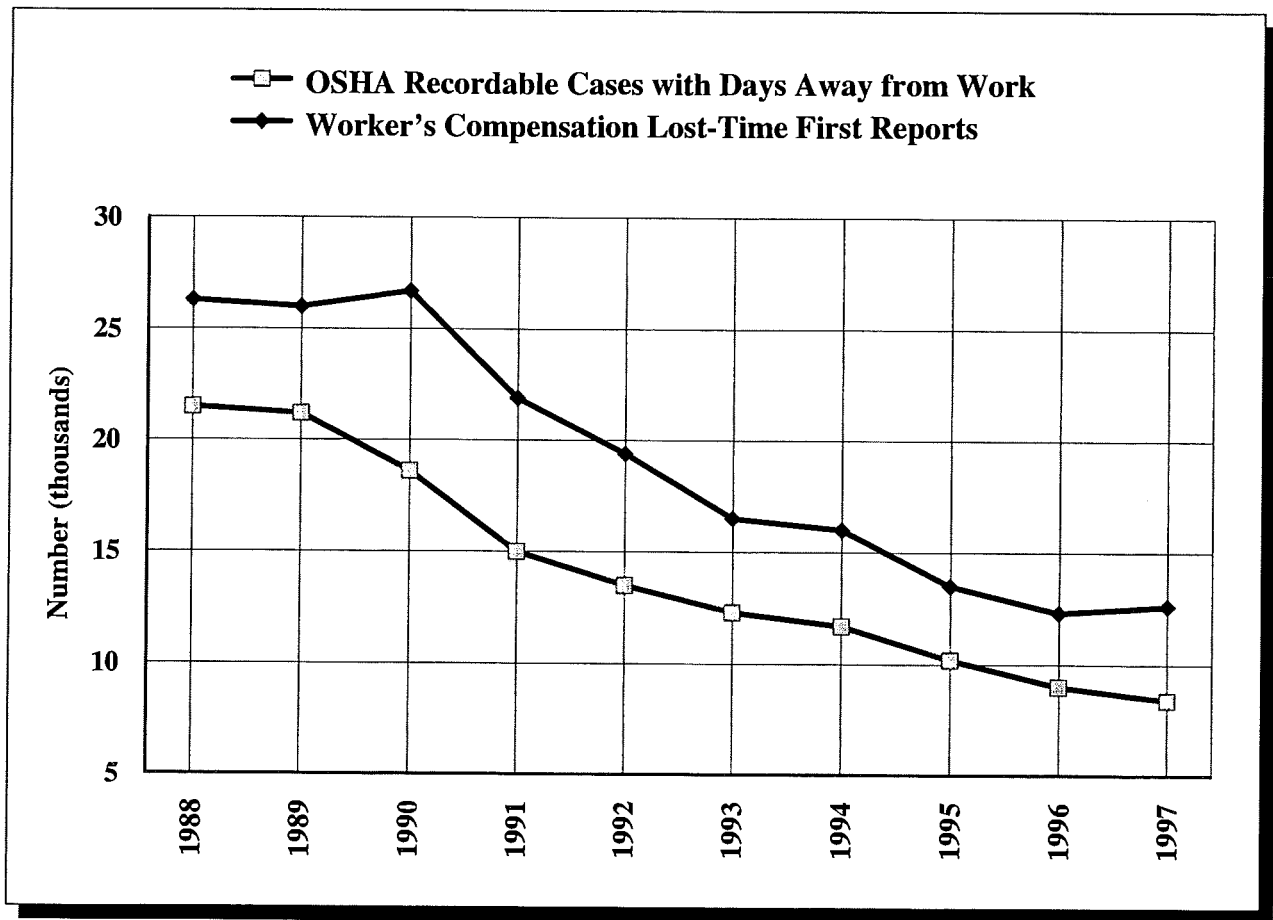
**Key point:** To get a consistent and accurate picture of all disabling cases, employers, workers and insurers need to be educated on proper filing guidelines with accurate data. A proactive monitoring system must be in place at Workers' Compensation to monitor all forms for compliance and accuracy. This will not only assure correct and accurate data but it will close out open-ended cases.

#### 4. Cases with Lost Time are on the Decline

Figure 2 compares the number of cases resulting in days away from work between two independent systems, Workers' Compensation and the OSHA Recordkeeping system. These two systems were created to serve separate purposes but they each show a similar trend dating back to 1990. Each system has shown a steady decline in the number of cases resulting in days away from work.

For the first time since 1990, the Workers' Compensation reported a slight increase in cases with days away from work in 1997 while the OSHA Recordkeeping system continued its downward trend, although not a significant change from 1996.

**Figure 2.**

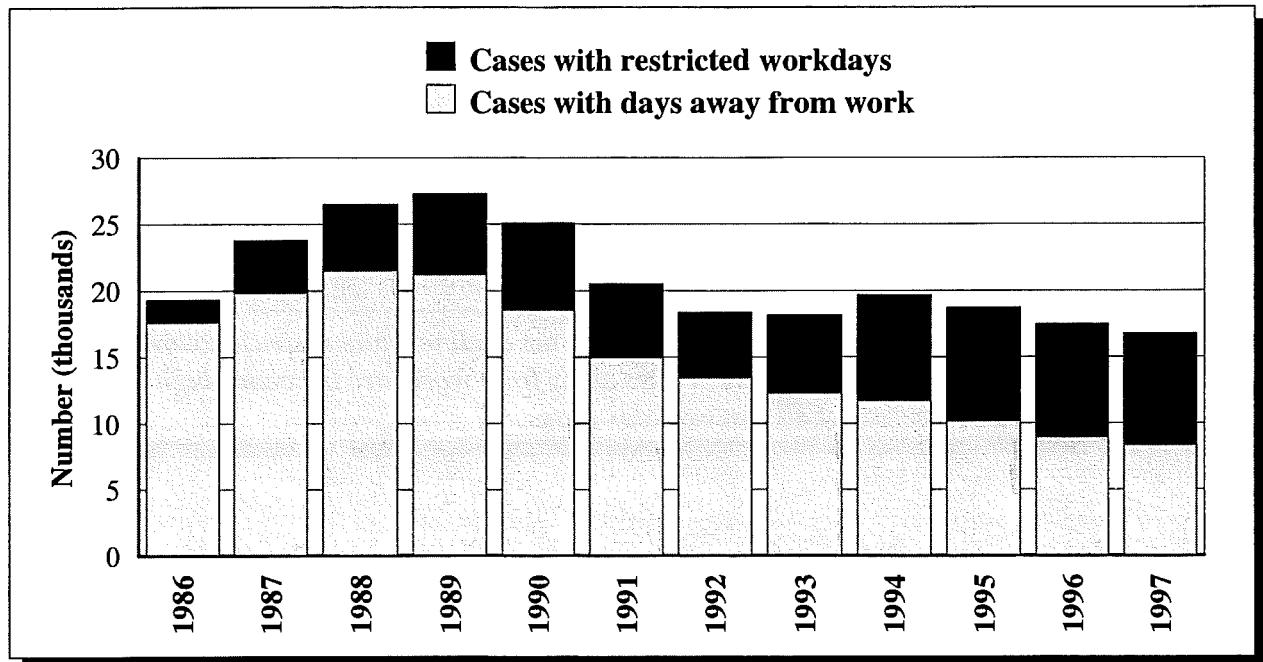


**Key Point:** The number of disabling cases rose (2.5%) from 12,289 in 1996 to 12,601 in 1997, the first increase since 1990. The slight decrease in OSHA recordable cases in 1997 was not a significant change from 1996.

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

The *Annual Survey of Occupational Injuries and Illnesses* conducted by the U.S. Bureau of Labor Statistics, in cooperation with the Maine Department of Labor, Bureau of Labor Standards produces reliable estimates on the number and rate of cases with days away from work, cases with restricted work activity, and cases requiring medical treatment beyond first aid. Because the Workers' Compensation Board does not generally collect cases resulting in restricted work activity unless the claim involves medical bills and the claim is controverted, an important piece of information is lost. However, the annual BLS survey continues to collect cases resulting in restricted work activity and an interesting trend has evolved. Prior to 1992, the proportion of injuries and illnesses that resulted in days away from work made up a large majority of the total lost workday cases (cases involving days away from work and restricted work activity). Since 1992, the proportion of lost workday cases that involved restricted work increased while the proportion of cases resulting in days away from work declined. For the first time since the survey began in 1972, the proportion of cases resulting in restricted work activity (50.3%) has pulled ahead of the proportion of cases with days away from work (49.7%) as shown in Figure 3.

**Figure 3.**

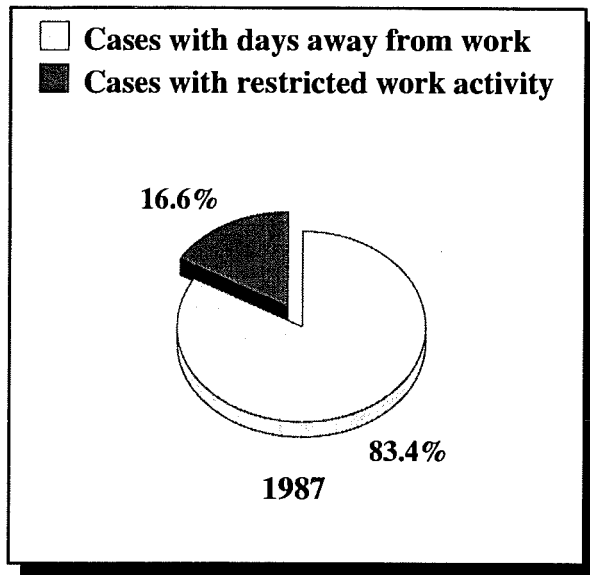


**Key Point:** Due to a shift in the way cases are managed (e.g. return-to-work programs), the number of cases resulting in restricted work activity has greatly increased since 1992 while the number of cases resulting in days away from work has dropped sharply. The continued sharp drop may only indicate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

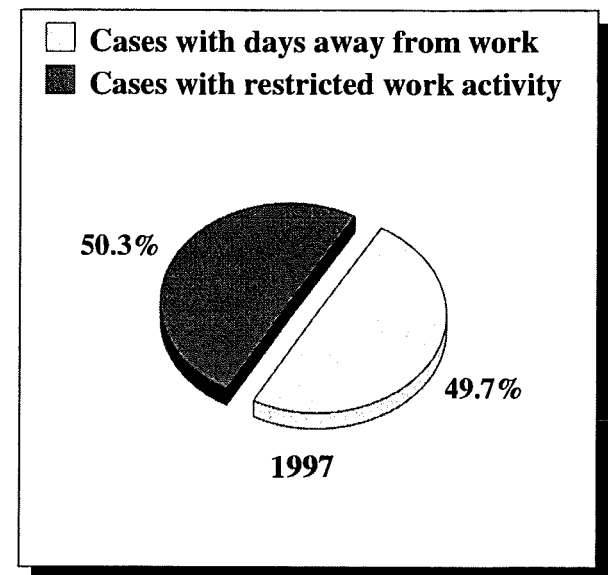
## 6. Proportion of Lost Workday Cases

The proportion of cases with restricted work activity to all lost workday cases (e.g., those with either days away from work, restricted time, or both) have increased in all but one of the 12 years since 1985. Cases with restricted work activity now represent a majority of lost workday cases with 50.3% (see Figures 4 and 5).

**Figure 4.**



**Figure 5.**

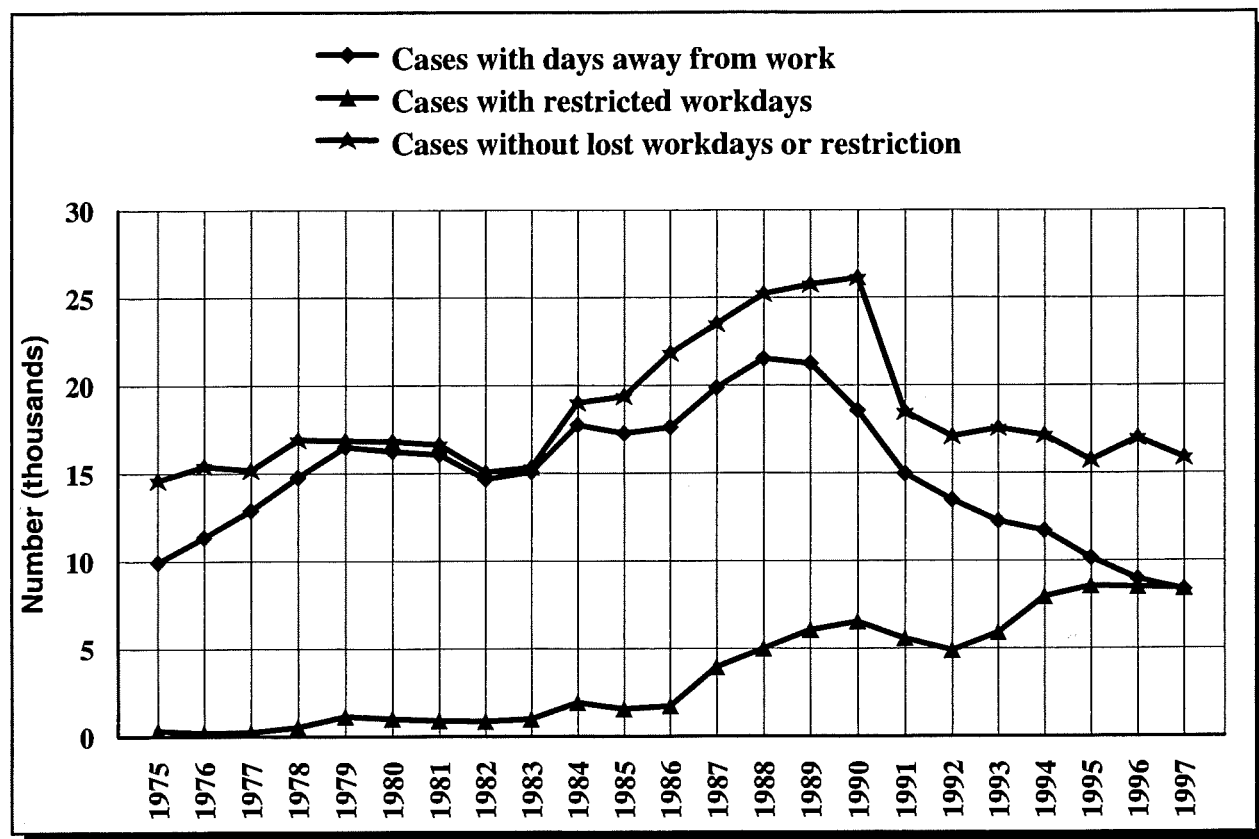


**Key Point:** Cases with days away from work are on the decline while restricted workday cases, which have the potential to result in days away from work, are at record high levels, accounting for more than half of all lost workday cases.

## 7. Trends in the Severity of Injuries and Illnesses

Figure 6 illustrates the number of OSHA recordable cases since 1975. Again, the shift in the number of cases involving the days away from work and cases involving restricted work activity can be seen. This is likely due to return-to-work programs adopted by many employers that keep injured workers on the job in a light duty or restricted capacity rather than remaining out of work. The advantage of placing injured workers in restricted capacity to the employer is a possible reduction in workers' compensation insurance costs. The advantage to the injured workers is a shorter adjustment to full capacity and no interruption in wages or salary. It does not necessarily indicate that cases are less severe in nature, but rather, may indicate a change in the way the cases are managed once they occur.

Figure 6.



**Key point:** The act of placing injured or ill workers in light duty or restricted capacity is advantageous to both employers and workers. For employers, it may mean a reduction in workers' compensation costs. For the workers, it may result in a quicker adjustment to full capacity and no interruption in wages or salary.

## 8. Current Programs in Place at the Bureau of Labor Standards

The Bureau of Labor Standards (BLS) uses the data from *First Reports* to help employers make their workplace a safer place for workers. By looking at various aspects of the disabling injuries, the BLS consultants are better able to customize the training and education to each individual company. Only when the data is current and accurate, can we get a true profile of the company's injury record. Following are the current programs in place at BLS. Workers' Compensation data is used for nearly all of these programs:

### \* Workplace Safety and Health Division - FY99 Activity Goals

- \* Enforcement - goal of 675 worksites inspected
- \* Consultations - goal of 1,000 completed consultations (SafetyWorks! program)
- \* Training - goal of 3,000 people trained (SafetyWorks! program)

### \* Wage and Hour Division - FY99 Activity Goal

- \* Enforcement - goal of 4,000 worksites inspected
- \* Consultations - new
- \* Training - new

### \* Workplace Populations Targeted for BLS Service - FY99

- \* 675 worksites - public sector targeted inspections
- \* 475 worksites - the general consultation pool - at least 2 times the State average of Workers' Comp to employment ratio
- \* 70 primary contractors - State-funded construction projects prevailing wage inspections
- \* 4,000 worksites - Wage & Hour targeted inspections
- \* 160 fire departments - fire department cooperative consultation initiative
- \* 29 public worksites - public sector safety & health initiatives
- \* 66 farms - migrant housing inspections
- \* 48 CCP worksites - OSHA cooperative compliance program - on hold

### \* Educational Programs

- \* BLS offers a variety of educational programs free of charge relating to occupational safety and health. Free courses for 1999 include General Industry Standards, Construction Standards, OSHA Recordkeeping, Safety Management for Supervisors, Bloodborne Pathogens Update, Job Safety Analysis, OSHA Update, Video display Terminal Train-the-Trainer, Excavation and Trenching.

**Key point:** *Employers and workers need training and education to maintain a safe and healthy workplace. The Bureau of Labor Standards provides excellent health and safety training consultations, free of charge. Data from the Workers' Compensation database must be accurate and reliable in order to provide this service.*