

# MAINE STATE LEGISLATURE

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

**Submitted to the  
121<sup>st</sup> Legislature  
(First Regular Session)**

**February 2003**

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We are pleased to submit to the Governor and the 121<sup>st</sup> Legislature, First Regular Session, 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.

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## EXECUTIVE SUMMARY

The Workers' Compensation Board, in consultation with the Superintendent of Insurance and the Director of the Bureau of Labor Standards, is directed by Title 39-A, section 358-A(1) to submit an annual report on the status of the workers' compensation system to the Governor and the Joint Standing Committee on Labor and Joint Standing Committee on Banking and Insurance by February 15<sup>th</sup> of each year.

The Bureau of Insurance reports on the status of competition in the workers' compensation insurance market by examining different measures of market conditions. Workers' compensation insurance in Maine operates in an open competitive rating system. Each year, the National Council on Compensation Insurance (NCCI) files advisory loss costs with the Bureau on behalf of insurers. Each insurer files factors, called loss cost multipliers, with the Bureau. The loss cost multipliers account for such things as company experience, overhead expenses, taxes, contingencies, investment income and profit. The advisory loss costs are multiplied by the factors to form rates for individual insurance companies. Other things such as experience rating (based upon past loss and payroll information of the employer), schedule rating (based upon factors related to safety in the workplace that are not reflected in experience rating), and premium discounts (based upon the volume of the premium) also affect the ultimate premium amount paid by an individual employer.

The Maine workers' compensation insurance market remains competitive, with numerous carriers being licensed and having rates on file. Though rates remain well below those in place during the last major reform in 1993, there are clear signs of market hardening. In the mid to late 1990s, insurers were willing to offer credits and risk underwriting losses that would be offset by investment gains. Times have changed, however, and insurers are less likely to offer credits to attract or retain market share. As a result, many employers have experienced higher premiums over the past three years. Additionally, insurers and self-insured employers are awaiting the final permanent impairment threshold from P.L. 2001, chapter 712, enacted during the 2002 legislative session, and the impact it will have on costs.

The events of September 11, 2001 continue to impact the workers' compensation insurance market. Insurers spread their risk by ceding some of their business to reinsurers. After experiencing large losses associated with the September 11 attacks, reinsurers are unwilling to cover such acts of violence in their reinsurance contracts. Primary insurers, however, are unable to exclude acts of violence and must make workers' compensation payments for work-related injuries. In November, Congress passed the Terrorism Act of 2002, which provides some relief to insurance carriers by providing federal coverage for losses, beyond an amount paid by the insurer, until insurers have an opportunity to build such events into their rates.

The Bureau of Labor Standards (BLS) promotes workplace safety and health. The Bureau is authorized to collect, sort, and arrange statistical data about the number and characteristics of workplace accidents and their affect upon injured workers. To accomplish its mandates, BLS receives information related to injuries and illnesses sustained by Maine workers directly from the Workers' Compensation Board (WCB). This information is used by BLS for safety initiatives such as training, education and public sector enforcement activities. Consequently, the completeness and accuracy of the Board's information is very important.



The Bureau of Labor Standards is affiliated with the Maine Occupational Research Agenda (MORA), a group comprised of education and health professionals, government agencies, and insurers whose mission is to develop and refine occupational safety and health research priorities and guide their implementation in Maine. BLS has also received grants related to collecting quality data that are comparable among states, developing worker safety and health indicators for Maine workers, studying the exposure of trawler fishermen to hazards on board trawlers in Maine, and piloting a research project on occupational fatalities. BLS uses information from the Board to supplement federal information when completing grant applications.

Information from the Workers' Compensation Board is used by several divisions within the Bureau of Labor Standards. The Outreach and Education division places special emphasis on training young workers. The Workplace Safety & Health division prioritizes state and local agencies for inspections, based on injury and illness information received from the Workers' Compensation Board. The Wage and Hour division uses information from WCB First Reports to select employers for inspection for child labor law compliance. The Migrant and Immigration Services division uses data to track employers using migrant workers. Additionally, WCB information is used to help get an accurate count of workplace fatalities in Maine. MORA uses WCB data to develop research priorities.

In 2001, there were 16,879 disabling claims reported to the Workers' Compensation Board. A disabling claim is one where the injured worker lost one or more days from work. This was down slightly from 2000, but is the second highest number of reported disabling claims since the 1993 reform. Part of the increase in recent years may be attributed to greater awareness of the reporting requirement, brought about by the Board's Monitoring, Auditing, and Enforcement (MAE) program.

Missing information poses problems for BLS and other organizations using WCB information. One example is the percent of claims in the Board's database where no return to work date was listed. This field is used as a measure of severity of the claim. There have been some improvements in the area of data completeness. Recently, the Workers' Compensation Board was able to provide BLS with information on claims with over \$5,000 in reported costs over a five year period. Continued improvement in this area will be of benefit to policymakers. One thing that will benefit the Board is continued movement toward electronic data interchange (EDI) by requiring all insurers, self-insurers, and third party administrators (TPAs) to submit reports electronically rather than in paper format.

The Workers' Compensation Board has made significant progress in the areas of dispute resolution, MAE program, Worker Advocate program, and technology. The Monitoring, Auditing, and Enforcement (MAE) program has dramatically improved compliance throughout the industry both as to payments and filings. It also identifies whether the performance of insurers, self-insurers, and third party administrators (insurers) meets the minimum standards set forth by the Board. Because of the Worker Advocate program, injured workers now have access to representation to obtain and protect their statutory benefits. Over 50 percent of injured workers are represented by worker advocates at the mediation level and over 30 percent of injured workers are represented at the formal hearing level. The implementation of Standard Operating Procedures (SOPs) has resulted in the elimination of backlogs and the most efficient dispute resolution process in recent history.

The MAE program establishes benchmarks for insurers. Maine Employers' Mutual Insurance Company (MEMIC) and self-insureds regularly exceed the benchmarks. Other insurers, as a whole, are more sporadic in their performance. Out-of-state carriers, as a whole, do not meet the standards.

The Board has also made progress in the area of claims processing through the adoption of a relational database. Computer applications enable the Board to better track data, such as filings of reports, payments of compensation, and coverage of employers. The Board is committed to continued improvement in this area of information technology.

Section 359(2) of the Workers' Compensation Act (the Act) provides for penalties if an insurer engages in questionable claims handling practices. A milestone case recently decided by the Board found that an insurer engaged in "questionable claims handling techniques." The Board has certified its findings to the Bureau of Insurance.

Section 213 of the Act has been problematic since 1998. The Board is responsible to deal with permanent impairment thresholds and 52-week extensions. The Board has been unable to agree on the 52-week extensions for the years 2001, 2002, and 2003, and has not been able to set the threshold pursuant to the Act and Public Law 2001, c. 712. Three of these matters are in litigation and litigation is imminent on the fourth.

The Board has unanimously recommended an increase in its assessment cap to the Legislature in order to maintain its present level of activity.



**SECTION I**

**WORKERS' COMPENSATION BOARD**



**SECTION I. WORKERS' COMPENSATION BOARD**  
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## 1. INTRODUCTION

The original agency, known as the Industrial Accident Board, began operations on January 1, 1916. In 1978, it became the Workers' Compensation Commission. In 1993, it became the Workers' Compensation Board.

The major programs of the Board fall into five categories: (1) Dispute Resolution; (2) Compliance – Monitoring, Auditing, and Enforcement (MAE) Program; (3) Worker Advocate Program; (4) Independent Medical Examinations/Medical Fee Schedule; and (5) Technology.

The implementation of Standard Operating Procedures (SOPs) has resulted in the elimination of backlogs and the most efficient dispute resolution system in recent history. The MAE Program has dramatically improved compliance throughout the industry both as to payments and filings. Because of the Worker Advocate Program, injured workers now have access to representation that enables them to receive the benefits to which they are entitled. Over 50 percent of injured workers are represented by advocates at the mediation level and over 30 percent are represented by advocates at the formal hearing level. The Independent Medical Examination Program and the Medical Fee Schedule have been important tools in the successful resolution of cases. Although the Board has made progress in the field of technology, due to lack of resources, many of its objectives have not been met. The Board has committed additional resources to this endeavor for fiscal years 2004-2005.

The Board is not a General Fund agency and receives its revenue through an assessment on Maine's employers that is used to fund the Board's operations. The maximum amount that the Board can presently assess is \$6,735,000. The Board has submitted legislation to increase the cap to \$8,350,000 in FY04 and \$8,525,000 in FY05.

The Board's assessment was adequate to fund the Board's operations until FY97. In 1997, the Legislature enacted, and the Board implemented, legislation that expanded the Worker Advocate Program and created the MAE Program. The cost of these programs has been in excess of the amount allocated for the task. The cost of these programs, in addition to increases in employee salaries, the costs of benefits, and general inflation created, in light of the maximum assessment set by law, budgetary problems for the Board.

The Legislature recognized the urgency of the Board's situation in FY02. It took two steps: First, the Legislature authorized the use of \$700,000 from the Board's reserve account, and second, the Legislature authorized a one-time increase in the maximum assessment of \$300,000 to provide temporary assistance to the Worker Advocate Program. The Legislature also recognized the urgency of the Board's situation in FY03. It took three steps: First, the Legislature authorized the use of reserve funds in the amount of \$1,300,000; second, the Legislature increased the assessment to fund a hearing officer position in Caribou in the amount of \$125,000; and third, the Legislature allocated funds from reserves to fund actuarial studies and arbitration services to determine permanent impairment thresholds, and to fund a MAE Program position in the amount of \$135,000. These are short-term solutions and it is anticipated that the Governor and the Legislature will deal with the budgetary issues during the 2003 Legislative Term based on the Berry, Dunn, McNeil & Parker Report and the Government Evaluation Act Report.



These efforts helped to solve the Board's funding problem for FY02 and FY03; but the Board in FY04-05 is facing further budgetary problems stemming an inadequate assessment funding mechanism. If no changes are made to the Board's funding formula, the Board will be forced to make deep cuts in FY04 and FY05, which would virtually decimate the Board.

An effective MAE Program, along with technology and programming initiatives such as electronic data interchange (EDI), are key components in the Board's efforts to reduce claims, improve efficiency, and lower costs of the Board. Additional resources **must** be shifted to these programs. However, the most critical issue facing the Board is the increase in its assessment cap to cover projected shortfalls. The eight-member board is unanimous in its effort to raise the assessment cap.

## **2. ENABLING LEGISLATION AND HISTORY OF MAINE WORKERS' COMPENSATION**

### **I. ENABLING LEGISLATION MAINE WORKERS' COMPENSATION BOARD.**

39 M.R.S.A. § 101, et. seq. (Maine Workers' Compensation Act of 1992)

On January 1, 1993, Title 39, which contained the Workers' Compensation Act of 1991 and all prior workers' compensation acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992.

## **II. STATE AGENCY HISTORY.**

The original agency, the Industrial Accident Board, began operations on January 1, 1916. In 1978, it became the Workers' Compensation Commission. In 1993, it became the Workers' Compensation Board.

### **A. The Early Years of Workers' Compensation.**

A transition from common law into the statutory system we know today occurred during the late teens and early 1920's. Earlier, an injured worker had to sue his employer and prove fault to obtain compensation.

Workers' compensation was conceived as an alternative to tort. Instead of litigating fault, injured workers would receive a statutorily determined compensation for lost wages and medical treatment.

Employers gave up legal defenses such as assumption of risk or contributory negligence. Injured workers gave up the possibility of damages, beyond lost wages and medical treatment, such as pain and suffering and punitive damages.

This historic bargain, as it is sometimes called, remains a fundamental feature of workers' compensation. Perhaps because of the time period, financing and administration of benefit payments remained in the private sector, either through insurance policies or self-insurance.

Workers' compensation disputes still occur in a no fault system. For example, disputes arise as to whether the disability is related to work; how much money is due the injured worker; and, how much earning capacity has been permanently lost. Maine, like other states, established an agency to process these disputes and perform other administrative duties.

Disputes were simpler. Injured workers rarely had lawyers. Expensive, long term, medically complicated claims, such as carpal tunnel syndrome or back strain, were decades away.

### **B. Adjudicators as Fact Finders.**

In 1929, the Maine Federation of Labor and an early employer group listed as "Associated Industries" opposed Commissioner William Hall's re-nomination. Testimony from both groups referred to reversals of his decisions by the Maine Supreme Court.

This early feature of Maine's system, direct review of decisions by the Supreme Court, still exists today. The Supreme Court decides issues regarding legal interpretation, and does not conduct a whole new trial. In Maine, the state agency adjudicator has historically been the final factfinder.

Until 1993, Commissioners were gubernatorial appointments, subject to confirmation by the legislative committee on judiciary. The need for independence of its quasi-judicial function was one of the reasons why it was established as an independent agency, rather than as a part of a larger administrative department within the executive branch. The smaller scale of state government in 1916 no doubt also played a role.

### **C. Transition to the Modern Era.**

In 1974, workers' compensation coverage became mandatory. This and other significant changes to the statute were passed without an appropriation for the Industrial Accident Commission. In 1974, the agency had approximately the same staff and budget as in 1964.

In 1964 insurance carriers reported about \$3 million in direct losses paid. By 1974 that had grown to about \$14 million of direct losses paid. By 1979, direct losses paid by carriers totaled a little over \$55 million. By 1984, it had grown to almost \$128 million. These figures don't reflect benefits paid through self-insurance.

This exponential growth of the system reflected legislative changes during the 1970's and set the stage for a series of workers compensation crises that occurred throughout the 1980's and into the early 1990's.

### **D. The 1970's.**

During the early 1970's time limits were removed for both total and partial wage loss benefits. Inflation adjustments were added. The maximum benefit was set at 200% of the state average weekly wage.

Also, laws were passed making it easier for injured workers to secure the services of an attorney. The availability of legal representation greatly enhanced an injured worker's likelihood of receiving benefits, especially in a complex case.

Lastly, statutory changes and evolving medical knowledge brought a new type of claim into the system. The law no longer required a specific accident. Doctors began to connect injuries such as carpal tunnel syndrome and back problems to work and thus brought these injuries within the coverage of workers' compensation.

Such injuries required benefit payments for longer periods than most accidental injuries. These claims were more likely to involve litigation. Over the course of a decade, rising costs quickly transformed workers compensation into a difficult political issue that would come close to paralyzing state government in the late 1980's and early 1990's.

### **E. The 1980's.**

In 1978, the name of the agency was changed to the Workers' Compensation Commission. In 1980, Commissioners became full-time. In the early 1980's, an informal conference process was added to attempt to resolve disputes early in the claim cycle, before a formal hearing.

Additionally, regional offices were established in Portland, Lewiston, Bangor, and Caribou. In 1988, a regional office was established in Augusta, separate from the central administrative office.

During the 1980's the agency made a transition into the format the public recognizes today: a multipurpose agency with a mixture of dispute resolution, record keeping, and regulatory operations.

In the early 1980's, long delays in the formal hearing process were a chronic source of legislative concern. In 1986, the state agency issued a study of delay. It chronicled the growth in litigation and recommended more Commissioners.

In 1987, three full-time Commissioners were added, bringing the total to 11, not including the Chair. Today, in 2003, the Board has nine Hearing Officers, not including the Chief Hearing Officer.

Parallel to controversy about delay at formal hearings was a second controversy concerning private adjustment, particularly cases in the assigned risk pool. At its heart this issue was about escalating claim costs more than adjustment. However, statutory changes began to call for increased monitoring of adjustment activity by the state agency.

The workers' compensation environment of the 1980's and early 1990's was an extraordinary time in Maine's political history. Contentious legislative sessions regarding workers' compensation occurred in 1982, 1985, 1987, 1991, and 1992. In 1991, then Governor John McKernan tied his veto of the State Budget to changes in the workers' compensation statute. State Government was shut down for about three weeks.

This and other state budget problems, related to a national recession, made the late 1980's and early 1990's a challenging period to be either an elected official or a public administrator.

#### **F. The 1990's.**

Finally, in 1992, a Blue Ribbon Commission made a series of recommendations, which were ultimately enacted.

Inflation adjustments for both partial and total benefits were eliminated. The maximum benefit was set at 90% of state average weekly wage. A limit of 260 weeks of benefits was established for partial disability.

These changes represented substantial reductions in benefits for injured workers, particularly those with long term disabilities. To a significant degree, the comp issue was addressed by rolling benefits back to the levels of the late 1960's.

Additionally, the section of the statute concerning access to legal representation was changed in a way that made it more difficult for injured workers to secure the services of private attorneys.

Maine Employers' Mutual Insurance Company was established. It replaced the assigned risk pool and offered a permanent source of coverage. Despite differing views on the nature of the problems within the preceding and current system, virtually all observers agree that MEMIC has played a critical role in stabilizing the workers' compensation environment in Maine.

#### **G. The Workers' Compensation Board.**

Lastly, the state agency was renamed and significantly reorganized. At about this time, a labor-management group provided a successful forum for discussing comp issues.

Based on the recommendation of the Blue Ribbon Commission, the current Board was proposed as an experiment to help move the workers' compensation issue out of the political process by directly involving labor and management in the administration of the State agency.

The new agency was to be directed by a board of directors consisting of four members of labor and four members of management, appointed by the Governor based on nomination lists submitted by the Maine AFL-CIO and Maine Chamber of Commerce.

The Board would hire an executive director to run the agency. The Board, not the Governor, would appoint Hearing Officers to adjudicate Formal Hearings. A two step process replaced informal conferences: troubleshooting and then mediation.

In 1997, legislation was enacted which provided more structure to case monitoring operations of the Board. Also in 1997, a worker advocate program, begun by the Board, was expanded by the Legislature.

Few would argue that the Board's structure moved workers' compensation out of the political process. Bills concerning workers' compensation still appear regularly on the calendar of the Labor Committee.

In terms of both regulatory and dispute resolution operations the Board has experienced significant accomplishments. In terms of its traditional operation, dispute resolution, the Board can show an efficient informal process. Between troubleshooting and mediation, approximately 75% of initial disputes are resolved within 80 days from the date a denial is filed.

Remaining cases usually present difficult questions about facts and the law, the types of disputes that lend themselves to litigation as a mode of dispute resolution.

The no fault system works better than many people realize for routine injuries. Simple claims where there is a specific accident, a defined healing period, and a short period of missed work are paid and processed without incident.

Litigated cases tend to involve long-term disabilities involving back problems and other soft tissue injuries where there is substantial wage loss and expensive medical treatment at issue. The connection to employment is rarely crystal clear.

In an apples to apples comparison, matching the complexity of the dispute and the type of litigation, the Board's average time frame of seven to eight months for formal hearings is rapid, compared to other states, and especially if compared to court systems for comparable personal injury cases.

The agency was criticized for not doing more with its data gathering and regulatory operations during the late 1980's and early 1990's. Internally, the agency saw itself as doing its best in an environment of national recession, state budget problems, yearly contentious legislative sessions, and statutory revisions. However, minimal development of these operations occurred until approximately 1998.

With the benefit of a relational database installed in mid-1996 and 1997, and a modern programming language, the agency is making progress. Filings of first reports and first payment documents are systematically tracked. Significant administrative penalties have been pursued in

several cases. The computer applications and the abuse unit are doing a better job of identifying employers, typically small employers, with no coverage. No coverage hearings are regularly scheduled.

The workers' compensation system came under the close scrutiny of the Governor and Legislature during the 2002 Legislative Term as both the Government Evaluation Act and the Berry, Dunn, McNeil & Parker Report were presented to the Legislature for consideration. Although the Governor's bill to restructure the Workers' Compensation Board according to the recommendations of the Berry, Dunn, McNeil & Parker Report was defeated. The Workers' Compensation Board was closely scrutinized during the debate. The governance issue will probably resurface during the 2003 Legislative session.

### **3. DISPUTE RESOLUTION**

#### **I. Introduction.**

In 1998 and 1999, the Workers' Compensation Board adopted standard operating procedures (SOPs) for all three levels of dispute resolution: troubleshooting, mediation and formal hearing. These SOPs have greatly reduced the amount of time it takes for a case to proceed through the dispute resolution process. A detailed description of the dispute resolution process and the beneficial effect of the SOPs follows.

#### **II. Three Tiers of Dispute Resolution.**

On January 1, 1993, Title 39, which contained the Workers' Compensation Act of 1991 and all prior workers' compensation acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992. The new Title 39-A created a three-tiered dispute resolution process.

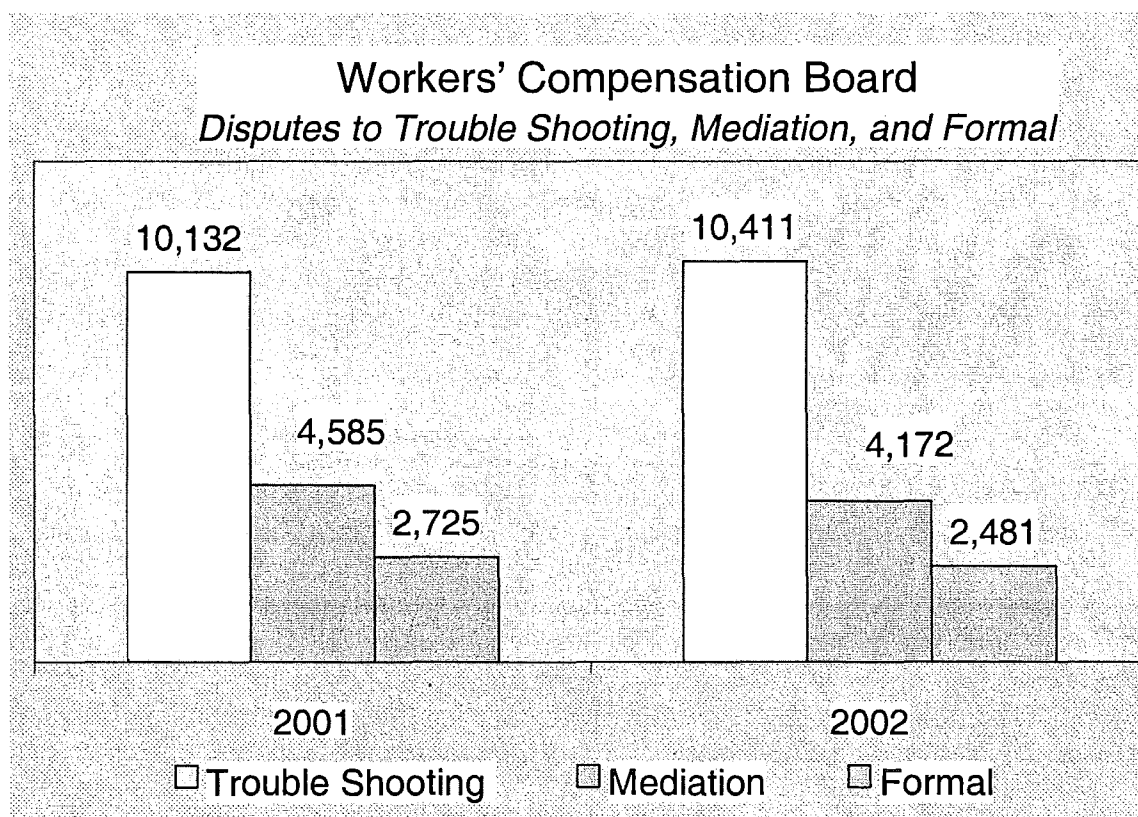
First, at the troubleshooting stage, one of the Board's troubleshooters, also known as claims resolution specialists, informally attempts to resolve a dispute by contacting the employer and the employee and identifying the issues. Many times, additional information, often medical reports, must be obtained in order to discuss possible resolutions. If a resolution of the dispute is not reached after reviewing any necessary information, the claim is referred to mediation.

At the second stage of dispute resolution, mediation, the case is scheduled before one of the Board's mediators. The parties usually attend the mediation in one of the Board's regional offices although some mediations are conducted by telephone. At mediation, the employee, the employer, the insurance adjuster and any employee or employer representatives such as attorneys or advocates sit down with the mediator in an attempt to reach a voluntary resolution of the claim. The mediator asks each party to state its position and tries to find common ground. At times, the mediator meets with each side separately to sort out the issues. If the case is resolved at mediation, the mediator writes out the terms of the agreement and the parties sign it. If the case is not resolved at mediation, it is referred on for a formal hearing.

When the case reaches the formal hearing stage, the parties are required to exchange information and medical reports and answer specific questions that pertain to the claim. After all information has been exchanged, the parties send to the Board a "joint scheduling memo" that lists the witnesses who will testify and the amount of time needed for hearing. The hearing is much like a mini trial. Witnesses for both sides testify and written evidence is submitted. Most parties at the hearing phase are represented either by an attorney or by a worker advocate. After all relevant evidence has been submitted, the hearing officer issues a decision, usually within 60 days.



Each level of dispute resolution serves as a funnel, with about twice as many cases coming in as going out. The number of cases resolved at each phase for the years 2001 and 2002 is illustrated in the chart below:

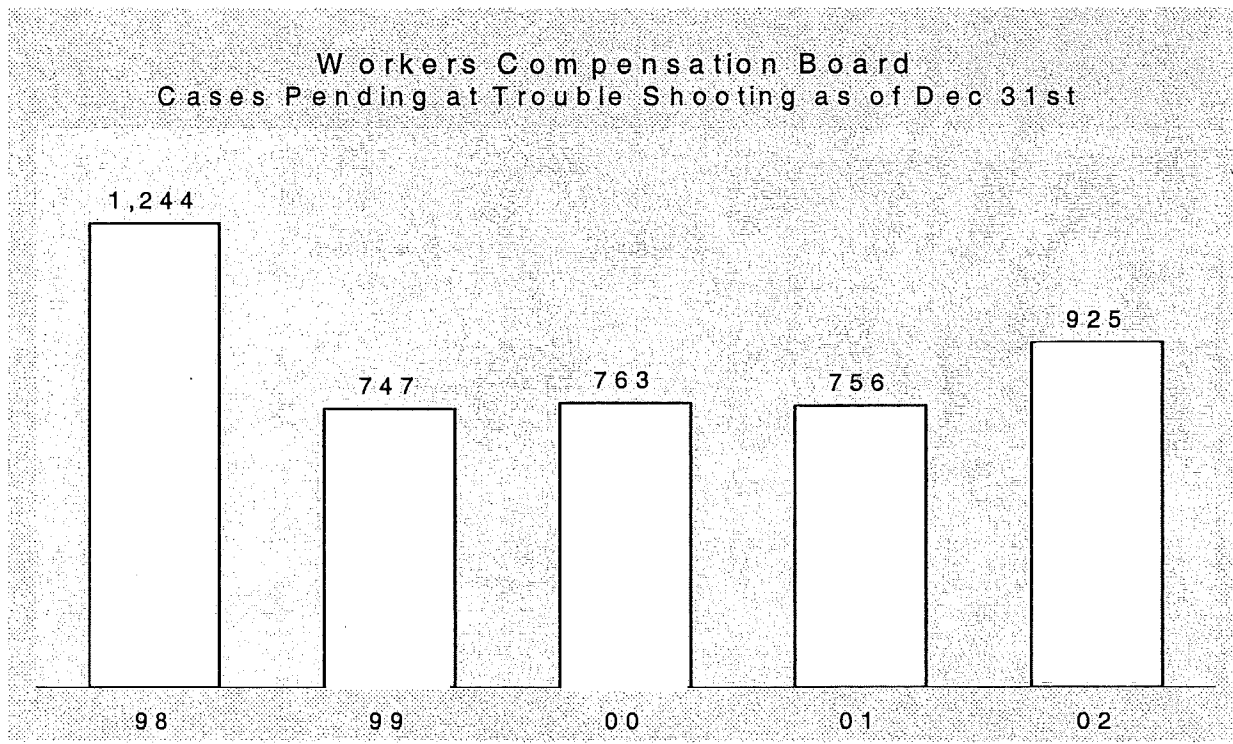
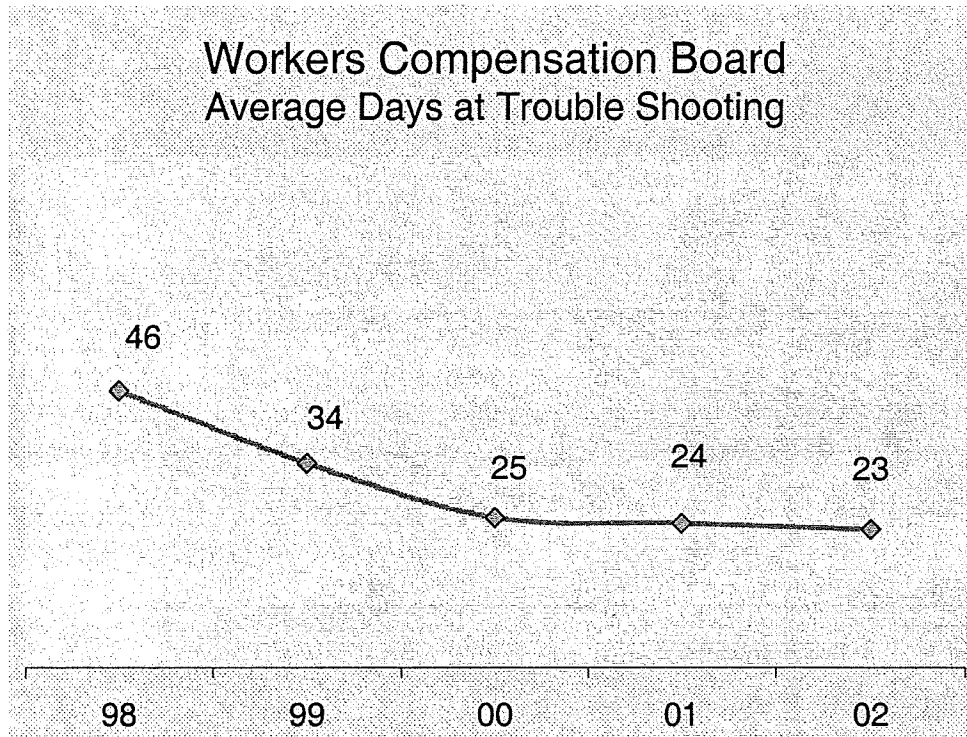


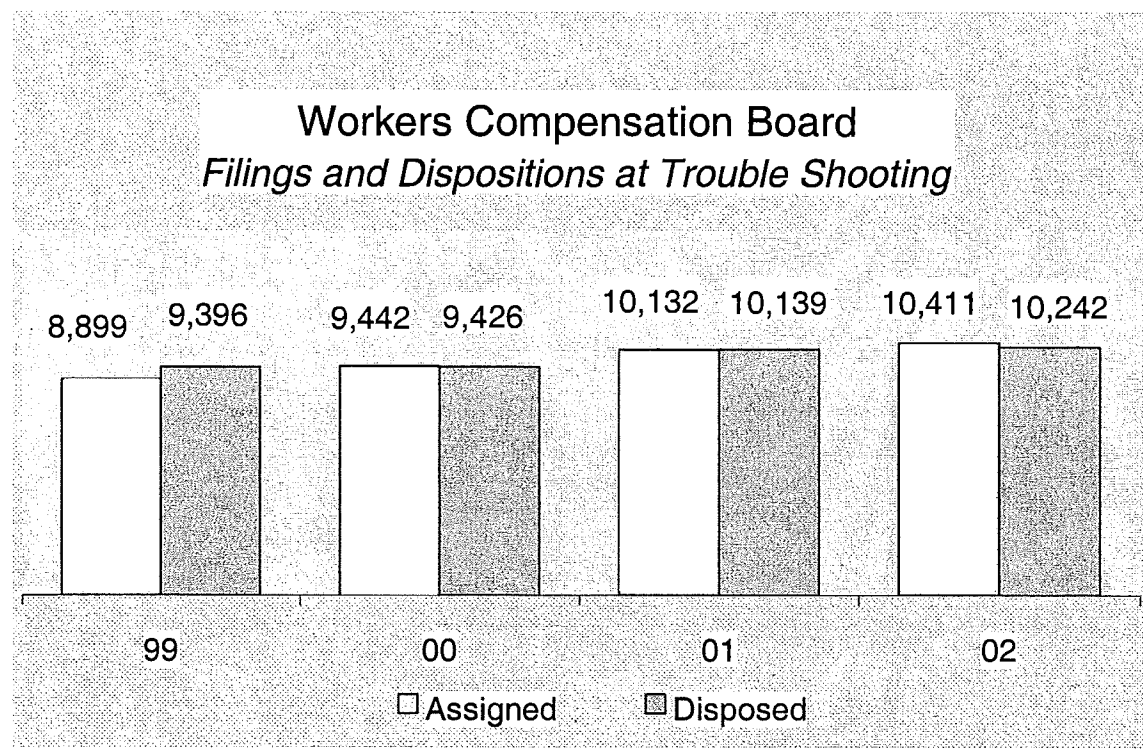
Thus, if the parties are unable to resolve the claim voluntarily with the assistance of a troubleshooter or a mediator, the case will be decided by a hearing officer. It is worth noting that approximately half of the cases that get to troubleshooting are resolved there, and half of the remaining cases are resolved at mediation.

### III. Troubleshooting.

With the introduction of Standard Operating Procedures (SOPs) in July 1999, the number of days cases are held at troubleshooting has decreased, while the number of cases assigned and disposed has increased as is shown below.

Staff Reduction – 3 ½ Troubleshooters

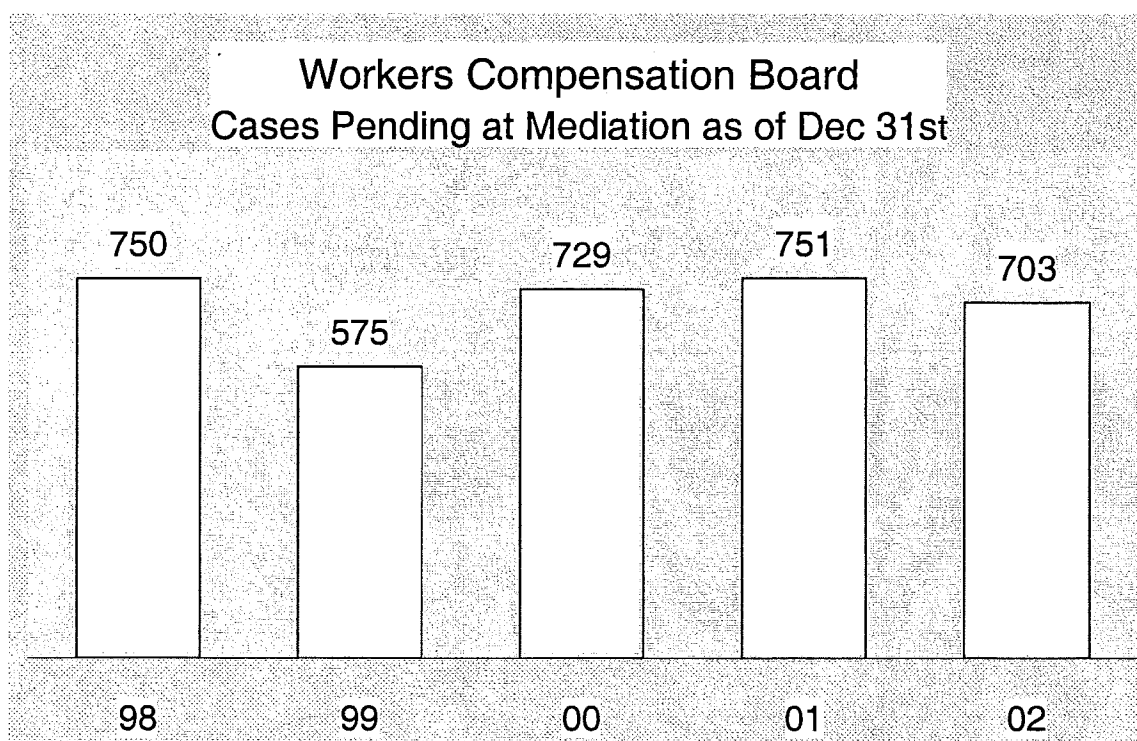


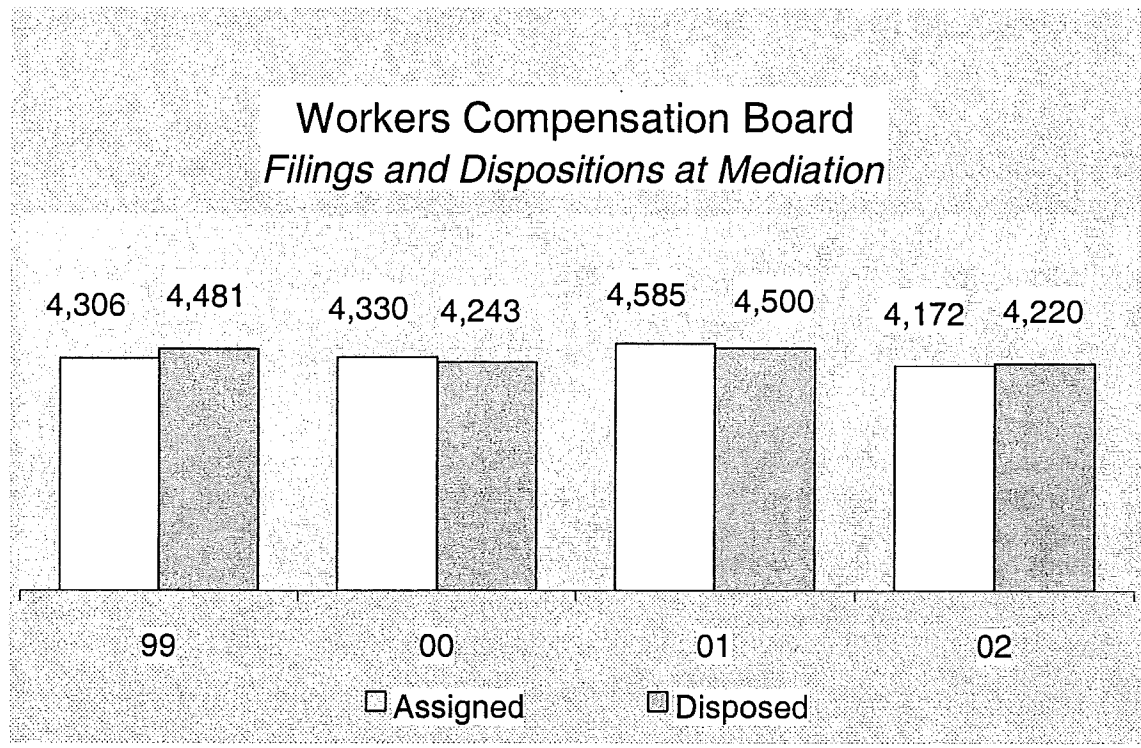


#### IV. Mediation.

Since 1998, and with the implementation of the SOPs in 1999, the cases pending have been reduced from 750 to 703 as is shown below.

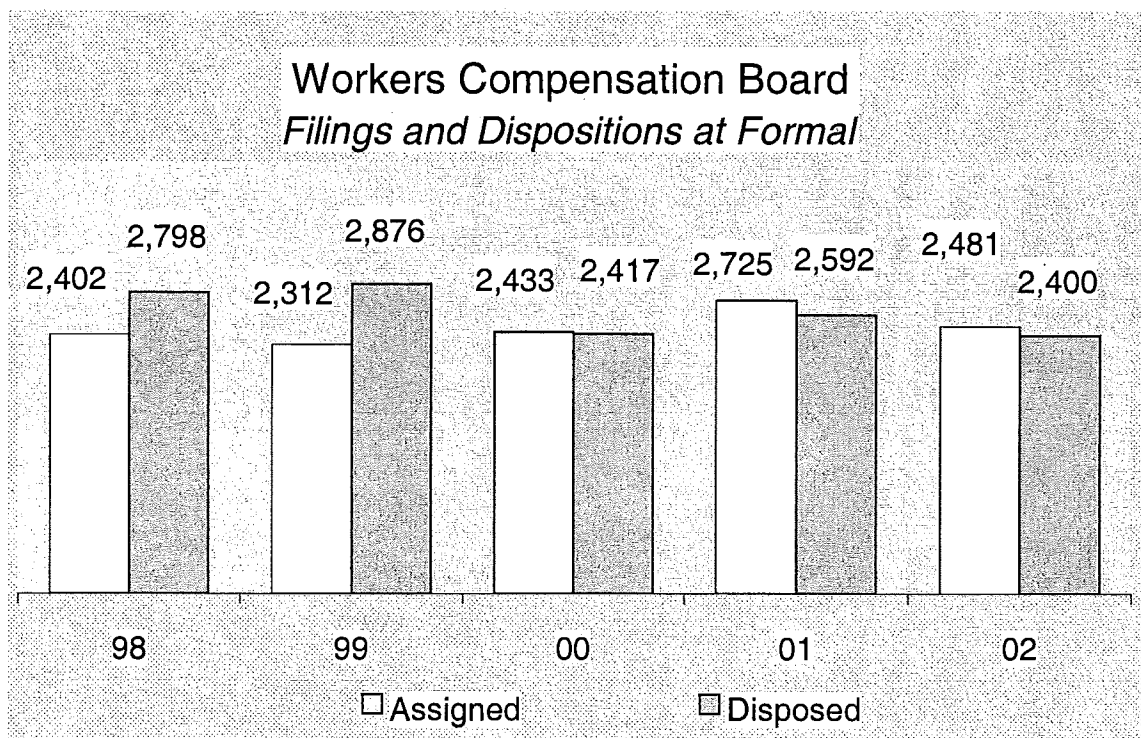
Staff Reduction – ½ Mediator





#### V. Formal Hearing.

When the current group of hearing officers came on board in 1994, there was a large backlog to contend with. Over time, however, the hearing officers consistently decided cases at a faster rate than they were assigned as is shown below:



This phenomenon, together with the SOPs, resulted in a gradual decline and eventual elimination of the backlog.

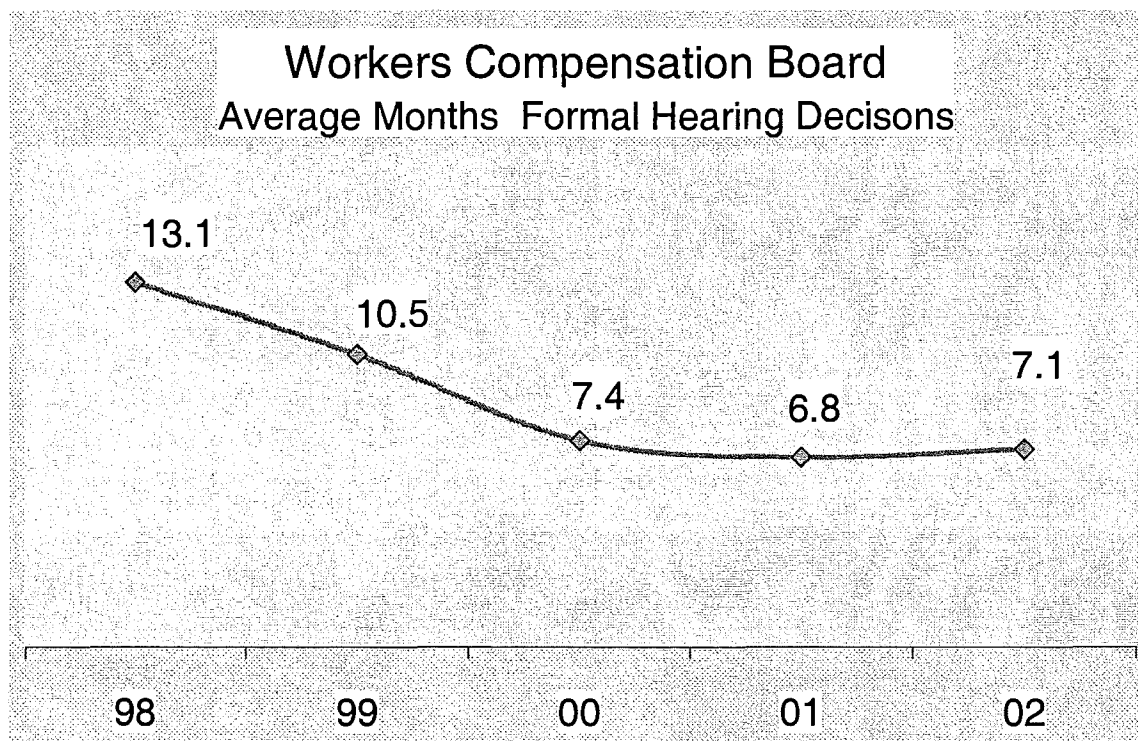
It is important to note that the number of assignments, that is the number of disputes that go to formal hearing, has remained relatively constant over the past five years as the chart above clearly illustrates.

The SOPs for formal hearing are twofold: (1) 90% of decisions must be rendered within 60 days of the date the evidence closes and (2) the length of time a case is pending at formal hearing (averaged statewide) was to be 10 months by January 1, 2000, 8 months by July 1, 2000 and 6 months by January 1, 2001.

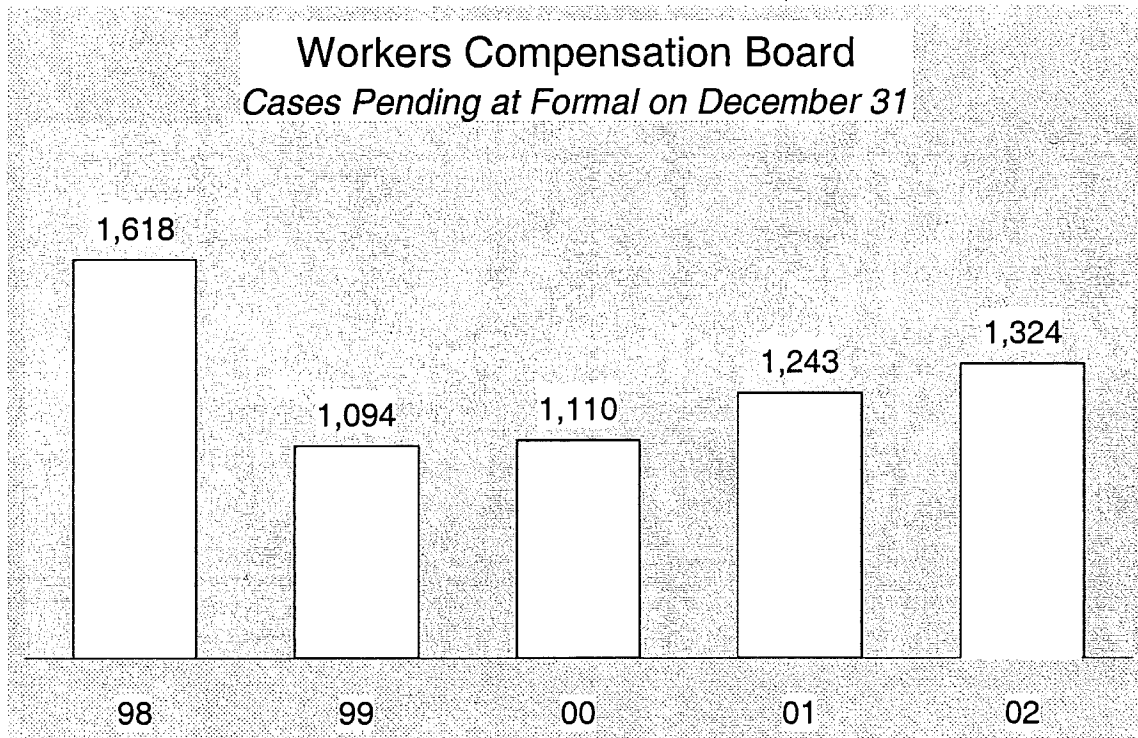
The SOPs for formal hearing were met immediately. Cases have been consistently decided within 60 days since the inception of the SOPs. Not only have 90% of cases been decided within 60 days, 70% have been decided within 30 days.

The second SOP was also met immediately. In July of 1999, the statewide average was about 12 months, on January 1, 2000, it was 10 months and presently, as of December 2002, the statewide average is 7.1 months. The six-month goal for January 1, 2001 was not attainable without compromising due process, but we have gotten closer to 6 months than many ever thought possible. It is important to keep in mind that five or six years ago, the formal hearing process took an average of 18 months. Our progress has thus been considerable and we are working hard to continue in the same vein. The length of time at formal has leveled off in 2002 as a result of gradually increasing caseloads. The reduction and leveling off of the time at formal hearing is demonstrated in this chart.

The backlog of years past has thus been eliminated with the successful implementation of the SOPs and the hard work of the hearing officers. Cases are scheduled as soon as they come in (we give parties 30 days notice) and are decided shortly after they become ready.



The next chart shows the number of cases pending statewide from 1998 to 2002. The reduction in pending cases represents the elimination of the backlog. Caseloads at formal hearing have gradually increased since January of 2000 with the total caseload figure presently at 1,324 cases pending statewide. With a goal of 140-150 cases per hearing officer, the current staffing level, ten hearing officers, is appropriate to handle the workload at formal hearing. In 2002, a hearing officer was hired for the Caribou Regional Office in order to better serve the northern part of the state.



## **VI. Conclusions.**

The implementation of the SOPs and the elimination of the backlog at all levels has resulted in a faster and more efficient and streamlined dispute resolution system. Caseloads and staffing are now at optimal levels. 2002 brought increases in caseloads and a new hearing officer in Caribou. Absent any major changes to the system, these trends should continue into the future.

#### **4. MONITORING, AUDIT, AND ENFORCEMENT (MAE) PROGRAM**

In 1997, the Maine Legislature, with the support of Governor Angus S. King, Jr., enacted Public Law 1997, Chapter 486 to establish a Monitoring, Audit, and Enforcement (“MAE”) Program. The basic goals of this program are to (1) provide timely and reliable data to policymakers; (2) monitor and audit payments and filings; and (3) identify insurers, self-insurers, and third-party administrators (collectively “insurers”) that are not complying with minimum standards.

As part of the monitoring program, the Board, among other things, identifies employers that do not have required coverage and identifies First Reports of Injury that are filed late. Audits are being conducted pursuant to a yearly schedule. The Board’s Abuse Investigation Unit provides an enforcement mechanism when violations of the Workers’ Compensation Act are identified.

##### **MONITORING**

A key component of the monitoring program is to produce Quarterly Compliance Reports. These reports measure, on a system-wide and individual basis, the timeliness of initial indemnity payments, the filing of Memoranda of Payment, and the timeliness of First Report of Injury filings.

To ensure that the Quarterly Compliance Reports would be as accurate as possible, a Pilot Project was undertaken. The goal of the Pilot Project was to (1) measure the Board’s data collection and reporting capabilities, (2) report on the performance of insurers, and (3) let people know what to expect from Quarterly Compliance Reports.

To achieve these goals several insurers were randomly selected for audit. Four hundred and eleven (411) files from 48 entities were audited. The audited entities were very cooperative and accommodating. The report, which was unanimously accepted by the Workers’ Compensation Board on January 26, 1999, revealed a need for improvement in the performance of insurers and the Workers’ Compensation Board.

To improve on the results of the Pilot Project, a reconciliation process was implemented as part of the quarterly compliance process. The reconciliation process allows insurers to check the Board’s data against their own so that errors can be corrected prior to the publication of a Quarterly Compliance Report. It has also been used by insurers as a case management tool.

The 2001 Annual Compliance Report was unanimously accepted by the Workers’ Compensation Board. (An overview of this report follows.) This report shows a dramatic improvement in the performance of insurers since the Pilot Project (see Tables 1 and 2 attached). This improvement will help the Board reduce the number of claims that are litigated and result in faster and more accurate payment of lost time benefits.

I. 2001 Annual Compliance Report Overview.

A. Lost Time First Reports.

- (1) 18,158 Lost Time First Reports were received by the Board in 2001.
- (2) 79.71% were filed within seven days (as prescribed by law). 85.41% were filed within 10 days. The 79.71% represents a 1.76% increase in compliance over 2000 and a 117.96% increase in compliance since the Pilot Project of 1997. (See Tables 1 and 2; Charts 1, 2, and 3, attached.)

B. Payments of Initial Indemnity Benefits.

82.79% of initial indemnity payments were paid within 14 days. The Board Benchmark is 80%. The compliance for 2000 was 80.26%. The 82.79% represents a 3.15% increase in compliance from 2000 and 39.40% increase in compliance since the Pilot Project of 1997. Roughly 150 more households received timely benefits than the previous year. (See Tables 1 and 2; Charts 4, 5, and 6, attached.)

C. MOP Filed Within 17 Days.

77.08% were filed within 17 days. The Benchmark is 75%. The compliance for 2000 was 74.62%. The 77.08% represents an increase in compliance of 3.30% from 2000 and 35.75% increase in compliance since the Pilot Project of 1997. (See Tables 1, 2, and 5; Charts 7, 8, and 9, attached.)

D. Adjusting Entity Compliance Comparisons.

- (1) Initial Indemnity Benefit Payment. (See Chart 11, attached.)

Overall Compliance	83%
Standard Insurers	73%
MEMIC	91%
Self-Insured/Self-Admin	87%
Self-Insured/TPA Admin	87%
TPA	57%

- (2) MOP Filing. (Chart 12)

Overall Compliance	77%
Standard Insurers	63%
MEMIC	89%
Self-Insured/Self Admin	86%
Self-Insured/TPA Admin	83%
TPA	52%



- (3) Percentages of MOPs filed with Workers' Compensation Board.  
(See Chart 14, attached.)

Standard Insurers	34%
MEMIC	29%
Self-Insured/Self-Admin	21%
Self-Insured/TPA Admin	14%
TPA	2%

E. Insurance Group Analysis.

Initial Indemnity Payment – Groups Above and Below Benchmark. (See Chart 16, attached.)

Above – 44%  
Below – 56%

F. MOP Filing – Groups Above and Below Benchmark. (See Chart 18, attached.)

Above – 34%  
Below – 66%

G. Initial Indemnity Payment – Groups In-State vs. Out of State.<sup>1</sup> (See Chart 19, attached.)

Compliance for In-State Groups – 87%  
Compliance for Out-of-State Groups – 68%

H. MOP Filing – Groups In-State vs. Out of State. (See Chart 20, attached.)

Compliance for In-State Groups – 84%  
Compliance for Out-of-State Groups – 55%

I. Percentage MOPs filed – Groups In-State vs. Out of State. (See Chart 21, attached.)

In-state Groups – 76%  
Out-of-state Groups – 24%

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<sup>1</sup> An out-of-state insurance group has its main indemnity claims processing location outside of Maine and provides a mailing address for the reconciliation report that is outside of Maine. An in-state insurance group has its main indemnity claims processing location in Maine and provides a mailing address for the reconciliation report that is in Maine.

## **II. New Annual Compliance Report Elements.**

The Board substantially revamped the Quarterly Compliance Report in 2001. Some of the improvements are noted below.

- **Compliance Trends.** This chart indicates compliance trends from 1999 to 2001 (see Chart 10).
- **Recommendations for High Compliance Performance.** A list of insurers with high compliance (see Chart 22).

## **III. Corrective Action Plans.**

The Monitoring Program can identify insurers with chronic poor compliance and filing procedures. To correct these problems, the Board has worked with these insurers to implement Corrective Action Plans. These plans have improved the performance of some insurers. The following insurers are under Corrective Action Plans: Liberty Mutual Insurance (Bala Cynwyd, PA and Tarrytown, NY offices); Zurich Insurance; Royal Sunalliance/EBI Insurance; Guard Insurance; Hanover Insurance; Chubb & Son Insurance; York Claims Service; Travelers; and Atlantic Mutual Insurance.

Compliance information on individual insurance carriers, third-party administrators, and self-administered employers is listed on the Board's website: [www.Maine.gov/wcb/](http://www.Maine.gov/wcb/)

## **AUDITS**

The Board also audits insurers. Audits are conducted by using a combination of desk audits and on-site audits. Auditors review case files to determine if the insurer is accurately reporting information to the Board and is complying with the mandates of the Workers' Compensation Act. A second audit may be conducted to determine if deficiencies identified during a previous audit have been corrected.

After a preliminary report is drafted, the audited insurer is provided a 30-day period to review and comment on the draft report. Staff will also meet with the audited insurer to discuss their comments. Changes to the audit report will be made if warranted. A letter is sent to the audited insurer within 30 days of the review meeting explaining, if necessary, why requested changes were not made.

## **STATUS OF THE FIVE-YEAR AUDIT CYCLE**

### **A. Completed Audits.**

- |   |                              |
|---|------------------------------|
| 1. Seaco Insurance<br>Lumber Mutual Insurance | Completed September 15, 1999 |
| 2. SAPPI                                      | Completed December 9, 1999   |

- |  |                              |
|--|------------------------------|
| 3. Liberty Mutual Insurance Companies<br>Liberty Mutual Fire Insurance Co.<br>Liberty Insurance Corporation<br>LM Insurance Corporation<br>First Liberty Insurance Corp.<br>Third-party Administrator<br>Helmsman Management Service | Completed April 12, 2000     |
| 4. Travelers Insurance Company<br>Travelers Indemnity Company of Illinois<br>Travelers, Aetna, C & S Company<br>Third-party Administrator<br>James River Corporation<br>Constitution State Service                                   | Completed April 12, 2000     |
| 5. Arrow Hart  | Completed April 4, 2000      |
| 6. York Claims Services<br>AIG Claims Services   | Completed March 30, 2000     |
| 7. Hanover Insurance Company<br>Massachusetts Bay Insurance Company<br>Citizens Insurance Company of America<br>Third-party Administrator<br>Sterling Risk Management Services   | Completed April 10, 2001     |
| 8. Cianbro Corporation   | Completed May 11, 2000       |
| 9. The Bill Johnson Agency   | Completed May 1, 2000        |
| 10. Central Maine Power Company  | Complete October 6, 2000     |
| 11. RSKCO  | Completed July 2, 2001       |
| 12. Chubb Insurance Company<br>Vigilant Insurance Company<br>Federal Insurance Company<br>Great Northern Insurance Company<br>Pacific Insurance Company<br>Third-party Administrator<br>Federal Insurance Company                    | Completed September 26, 2000 |
| 13. Mead Publishing Paper Company  | Completed September 28, 2000 |
| 14. City of Bangor   | Completed August 15, 2000    |
| 15. Public Service Mutual  | Completed January 9, 2001    |
| 16. Yasuda Insurance   | Completed June 15, 2001      |

17. Clarendon Insurance	Completed April 24, 2001
18. East-West Insurance	Completed September 29, 2000
19. Trans-Pacific Insurance	Completed January 9, 2001
20. Sedgwick of Maine	Completed April 4, 2001
21. Synernet	Completed December 13, 2000
22. Maine Municipal Association	Completed June 20, 2001
23. State of Maine Workers' Compensation Div.	Completed July 5, 2001
24. Maine School Management Association	Completed July 30, 2001
25. Granite State Insurance Company	Completed August 20, 2001
26. Arrow Mutual	Completed December 26, 2001
27. Sentry Insurance	Completed January 12, 2002
28. Phico Insurance Co.	Completed January 10, 2002
29. GAB	Completed January 12, 2002
30. Morse, Payson & Noyes	Completed March 6, 2002
31. Filene's	Completed June 12, 2002
32. Crum & Forster	Completed May 5, 2002

**B. Consent Decrees.**

**Penalty Agreement Amounts**

	<b><u>Paid to Employees</u></b>	<b><u>Paid to WCB</u></b>
1. Lumber Insurance Companies	6,750.00	17,300.00
2. Travelers Insurance Companies	15,800.00	13,500.00
3. Liberty Mutual Insurance Companies		1,400.00
4. Arrow Hart		800.00
5. The Bill Johnson Agency		200.00
6. York Claims	15,000.00	1,200.00
7. Public Service Mutual		200.00
8. CMP		400.00
9. Chubb Group	3,000.00	2,900.00
10. Hanover	8,850.00	12,300.00
11. Synernet		400.00
12. Sedgewick	400.00	500.00
13. Clarendon	1,350.00	400.00

14.	Yasuda	1,500.00	800.00
15.	MMA	1,500.00	500.00
16.	RSKCO		800.00
17.	State of Maine WCD	1,500.00	900.00
18.	Maine School Management Association		100.00
19.	Sentry Insurance	1,500.00	1,300.00
20.	GAB	3,000.00	1,600.00
21.	Morse, Payson & Noyes	600.00	600.00
22.	Filene's		500.00
23.	Crum & Forster		<u>1,000.00</u>
	Subtotal	<u>60,750.00</u>	<u>61,700.00</u>
<b>Total Penalties Paid</b>			<b><u>\$120,350.00</u></b>

### ENFORCEMENT

The Abuse Investigation Unit (the "AIU") 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 10 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.

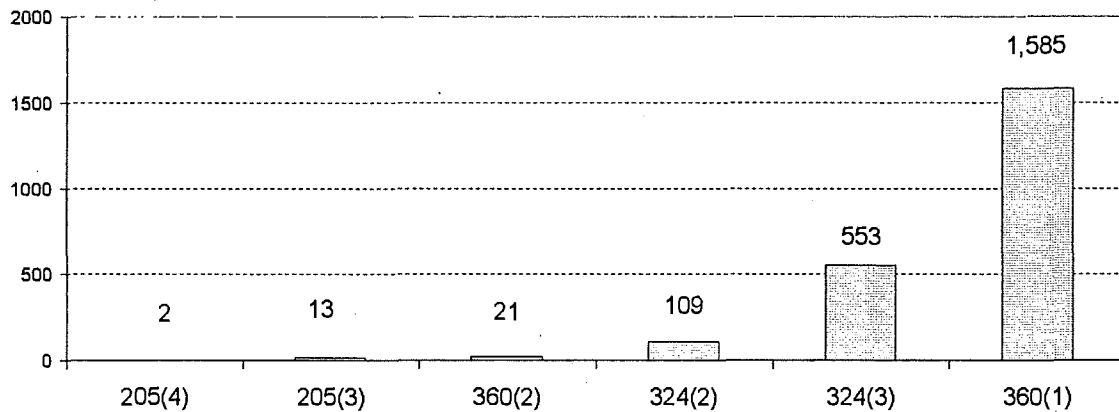
Section 359 provides penalties for engaging in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The maximum penalty for a violation of this section is \$10,000 and the Board certifies its findings to the Superintendent of Insurance for possible further action.

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 maximum 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.

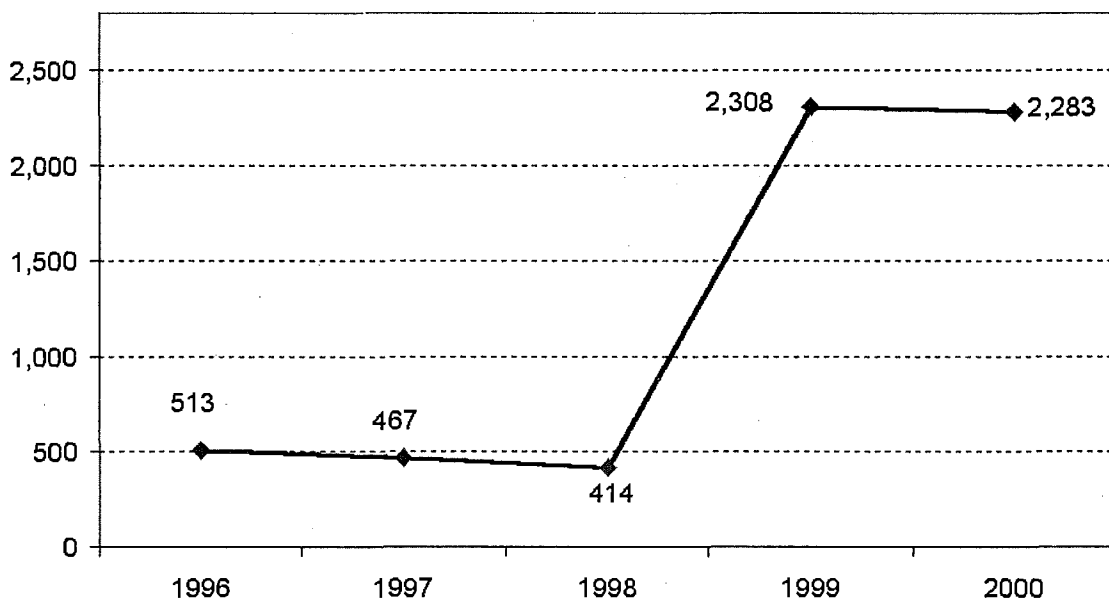
The majority of cases that are filed with the Abuse Investigation Unit are brought under sections 360(1) and 324(3), late reports and no-coverage. This distribution of cases filed has existed for several years now and is expected to remain similar in 2001.

Filings by Section of Statute (39-A)  
January to November 2000



The total number of cases filed with the Abuse Investigation Unit, which increased sharply in 1999, remained quite high in 2000. It appears that the total number of cases filed will remain in this vicinity in 2001.

Filings to Abuse Investigation Unit  
January 1996 thru November 2000



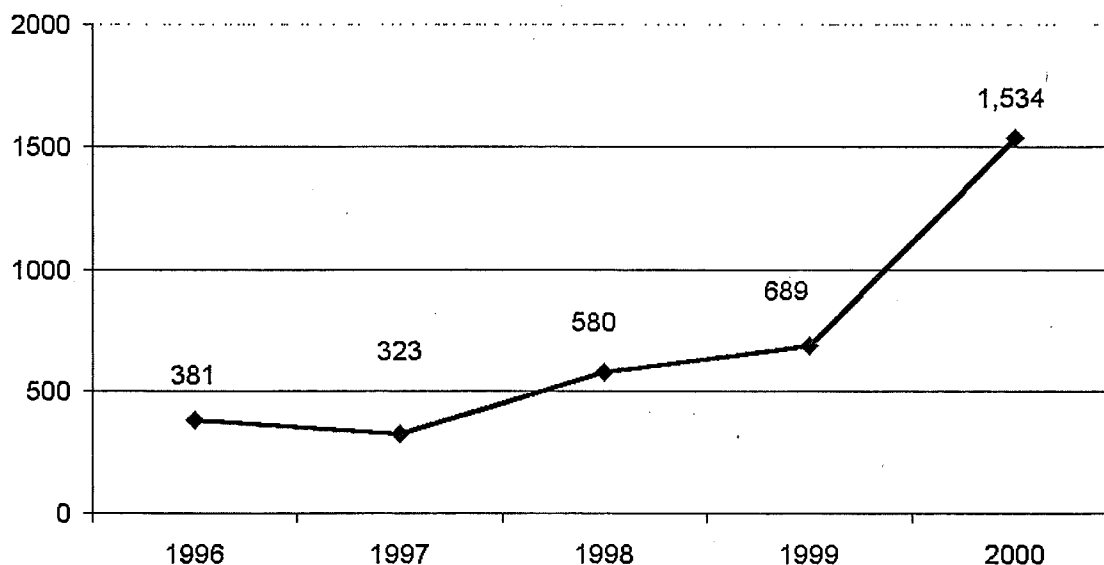
This increase is the result of some new systems implemented by the Board within the last several years. First, the Board is identifying more employers who are operating without required

workers' compensation coverage. The Board is able to do this by using a computer program that compares the Department of Labor's unemployment database with the Board's coverage database.

Second, in February of 1999, the Board implemented a program to identify First Reports of Injury that are not filed in a timely manner. This program, on its own, has significantly increased the number of complaints filed with the Abuse Investigation Unit.

In 2000 the Abuse Investigation Unit greatly increased the number of cases that it closed. The number of closed cases, which had been rising since 1997, more than doubled in 2000. That figure is expected to rise yet again in 2001.

### Abuse Unit Cases Closed January 1996 thru November 2000



As would be expected from the case filing distribution, sections 360(1) and 324(3) account for the greatest number of cases that are closed.

The Abuse Unit also receives referrals from the Board's auditors. For example, if an audit reveals a failure to file forms on time, these violations can be referred to the AIU for hearing and, if warranted, imposition of a penalty. Other areas that are examined for compliance include whether indemnity payments are made on time and accurately, and whether an insurer has engaged in questionable claims-handling techniques, repeatedly unreasonably contested claims, and/or willfully violated the Act.

As mentioned 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. The Abuse Investigation Unit, through November of 2000, disposed of cases as follows: Section 360(1): 206 granted, 78 denied, 40 dismissed, and 405 paid voluntarily prior to order; Section

324(3): 302 granted, and 410 dismissed; Section 324(2): 5 granted, 4 denied and 47 dismissed; Section 205(3): 3 denied and 11 dismissed; Section 205(4): 1 dismissed.

In 2000, the Abuse Investigation Unit assessed \$15,475 in penalties pursuant to Section 324(2); \$380,581 in penalties pursuant to Section 324(3); and \$61,100 pursuant to Section 360(1) for a total of \$457,156.

The Unit received its first referral for complaint under Section 359 in 2001. As this document is written that matter remains pending and is being processed by the Unit. It seems reasonable to expect additional referrals under this Section in future years, so the Unit's workload under this provision of the Act will likely be expanding.

Complaints filed pursuant to section 360(2) are also 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 of 2000, 21 complaints pursuant to section 360(2) had been received. Also through the end of November of 2000, 4 section 360(2) complaints had been referred for hearing and another 18 had been closed.

In terms of performance measures, the Abuse Investigation Unit has exceeded its goals. For Fiscal Year 2000, the Unit had a goal of closing 850 cases and in fact closed 1,519. For Fiscal Year 2001, the goal was 1,000 cases closed and the Unit closed 2,350 cases.

It is clear from these statistics that the Abuse Investigation Unit has in recent years begun handling significantly more work in the area of enforcement. There have been over time more cases filed, more matters resolved, and more penalties imposed. Yet the staffing level of the Abuse Investigation Unit has remained constant throughout this large increase in workload. The Unit consists of one legal secretary and two investigators, supervised by the Board's Assistant General Counsel. Section 153(5) of the Act authorizes the Abuse Investigation Unit and sets forth its authority and responsibilities, and that section mandates "at least 2 abuse investigators." The caseload increases in recent years have simply required the Unit to stretch in order to do more with the existing personnel, and that trend appears unlikely to turn around in the foreseeable future.



**Annual Compliance Report  
01/01/01-12/31/01  
2001 Quarterly Compliance Reports<sup>1</sup>**

**Table 1**

	First Quarter		Second Quarter		Third Quarter		Fourth Quarter	
	<u>7 Days</u>	<u>10 Days</u>	<u>7 Days</u>	10 Days	7 Days	10 Days	<u>7 Days</u>	<u>10 Days</u>
First Report Of Injury Received within:	79.44%	85.25%	80.86%	88.82%	79.17%	84.95%	81.20%	86.40%
Initial Indemnity Payment Made Within 14 Days	81.32%		81.82%		84.18%		82.77%	
Memoranda of Payment Received Within 17 Days	75.15%		76.43%		78.90%		77.55%	

**Table 2 Compliance Comparison**

	Pilot Project <sup>2</sup> 1997	Annual Compliance <sup>3</sup> 1999	Annual Compliance <sup>4</sup> 2000	Annual Compliance <sup>5</sup> 2001	Percent of Change		
First Report Of Injury Received within 7 Days	36.74%	69.20%	78.33%	79.71%	Since Pilot 117.96%	Since 1999 15.18%	Since 2000 1.76%
Initial Indemnity Payment Made Within 14 Days	59.39%	79.35%	80.26%	82.79%	Since Pilot 39.40%	Since 1999 4.35%	Since 2000 3.15%
Memoranda of Payment Received Within 17 Days	56.78%	75.14%	74.62%	77.08%	Since Pilot 35.75%	Since 1999 2.58%	Since 2000 3.30%

<sup>1</sup> Static results based upon data received by the deadline for each quarter.

<sup>2</sup> Static results based upon sample data collected for Pilot Project of 1997.

<sup>3</sup> Dynamic results based upon population data received by March 30, 2000.

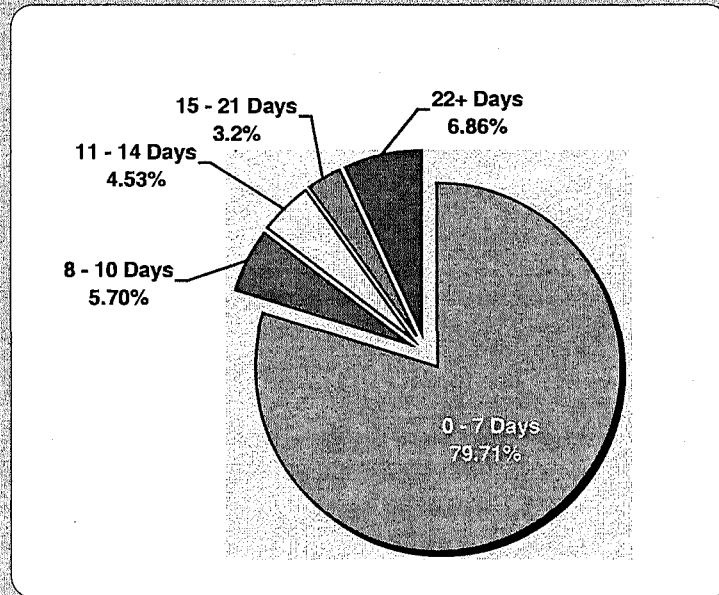
<sup>4</sup> Dynamic results based upon population data received by March 30, 2001.

<sup>5</sup> Dynamic results based upon population data received by March 30, 2002.

**Annual Compliance Report**  
**01/01/01 - 12/31/01**

**FIRST REPORTS OF OCCUPATIONAL INJURY OR DISEASE**

**Chart 1**



**Table 3**

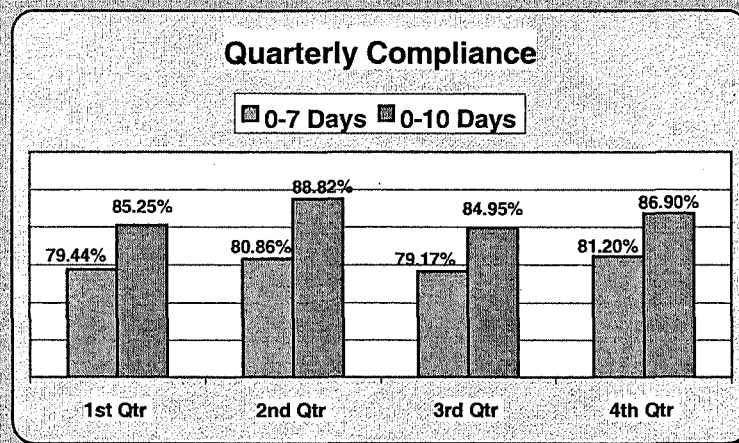
**First Reports Received Within:**

0 - 7	Days	14,474	79.71%
8 - 10	Days	1,035	5.70%
11 - 14	Days	823	4.53%
15 - 21	Days	581	3.20%
22+	Days	1,245	6.86%
<b>Total</b>		<b>18,158</b>	<b>100%</b>

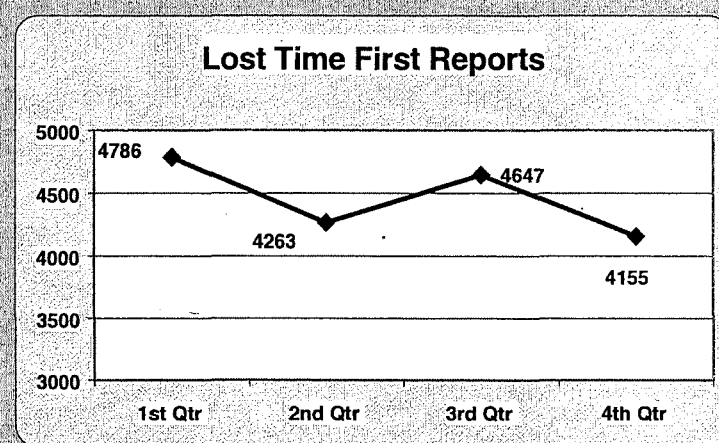
In 2001, nearly 80% of all Lost Time First Reports were filed timely. This represents the highest annual compliance the industry has ever reached.

18,158 Lost Time First Reports were received by the MWCB which is 261 less than in 2000. This is not an indicator of the total number of lost time injuries for 2001. It only indicates the total number of Lost Time First Reports received, which could be for any date of injury.

**Chart 2**



**Chart 3**



# Annual Compliance Report 01/01/01 - 12/31/01

## PAYMENT OF INITIAL INDEMNITY BENEFITS

Chart 4

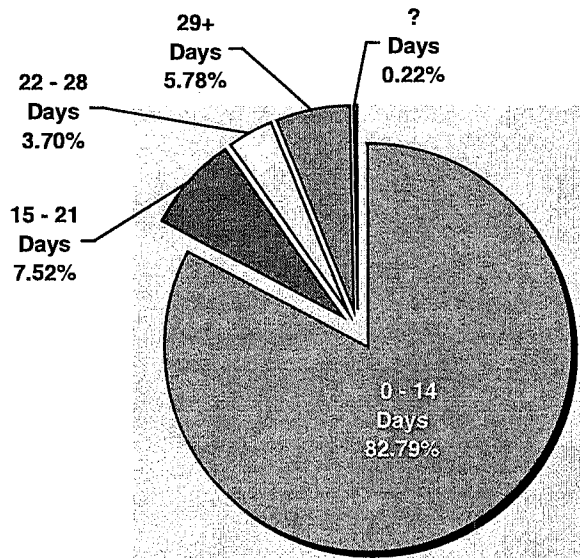


Table 4

### Initial Payment Made Within:

0 - 14	Days	4,944	82.79%
15 - 21	Days	449	7.52%
22 - 28	Days	221	3.70%
29+	Days	345	5.78%
?	Days	13	0.22%
Total		5,972	100%

In 2001, 82.79 % of all Initial Indemnity Payments were made within 0-14 Days. This is the highest annual compliance reached to date.

The 2000 compliance figure was 80.26 %.

The improvement in compliance in 2001 resulted in roughly 150 more households receiving timely benefits than in 2000.

Chart 5

### 2001 Quarterly Compliance

0-14 Days

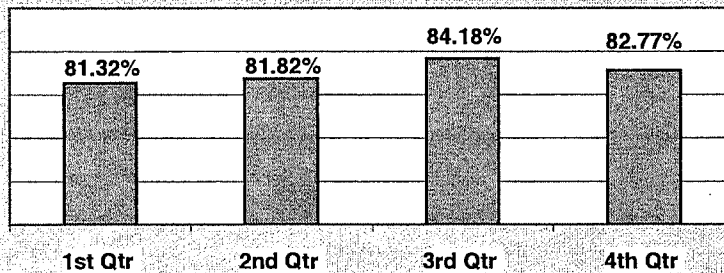
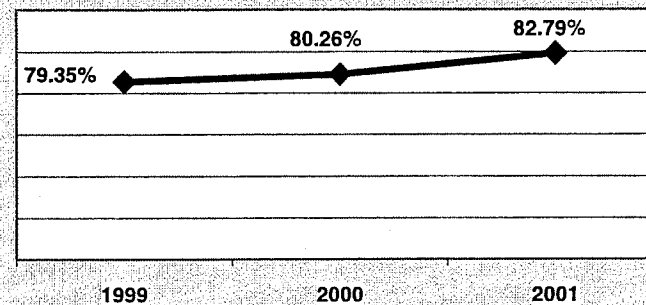


Chart 6

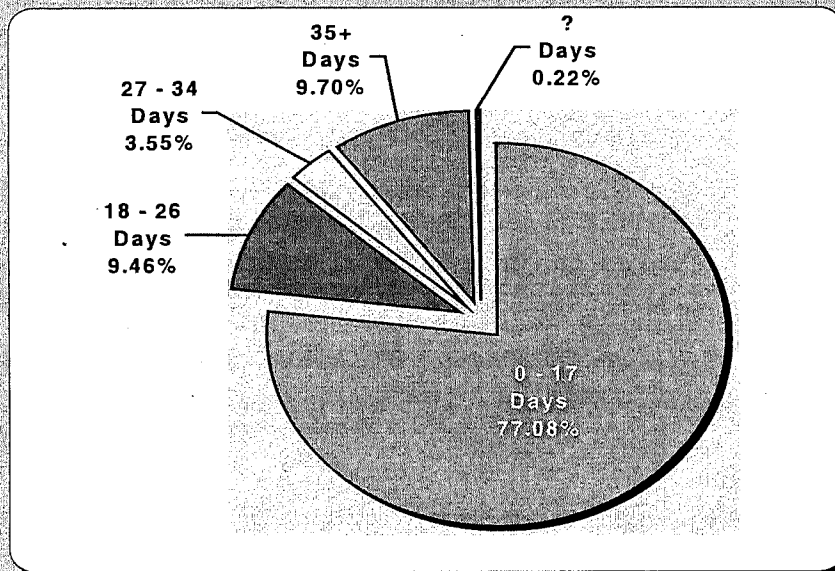
### Annual Compliance Trends



**Annud Compliance Report  
01/01/01 - 12/31/01**

**MEMORANDA OF PAYMENT**

**Chart 7**



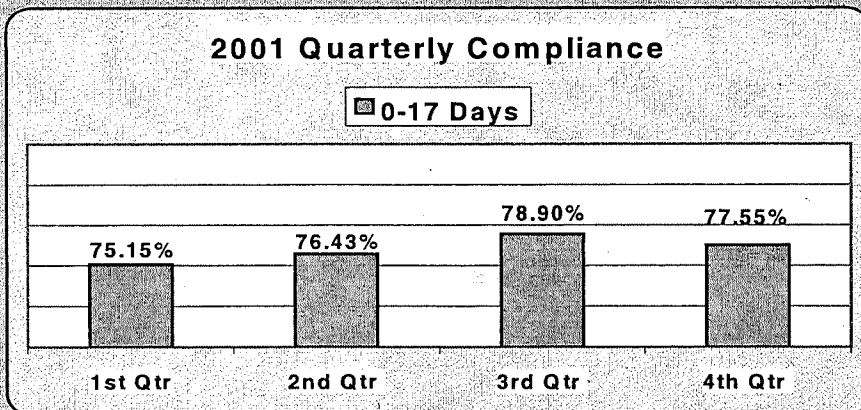
**Table 5**

Memoranda of Payment Filed Within:			
0 - 17	Days	4,603	77.08%
18 - 26	Days	565	9.46%
27 - 34	Days	212	3.55%
35+	Days	579	9.70%
?	Days	13	0.22%
<b>Total</b>		<b>5,972</b>	<b>100%</b>

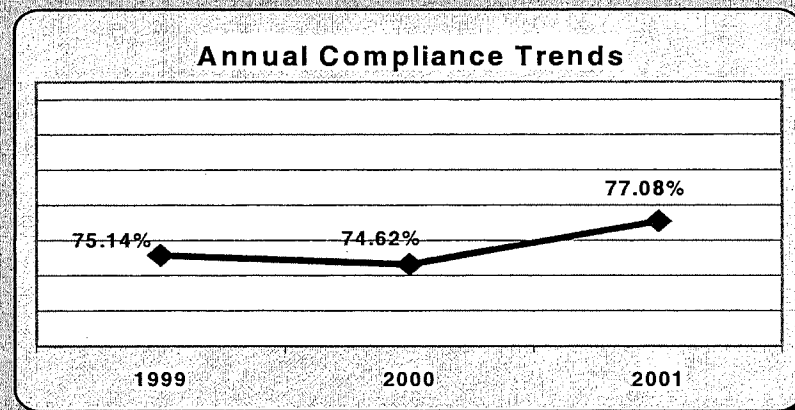
In 2001, 77.08 % of all Memoranda of Payment (MOP) Filings were made within 0-17 Days. This is the highest annual compliance reached to date.

The 2000 compliance figure was 74.62 %.

**Chart 8**

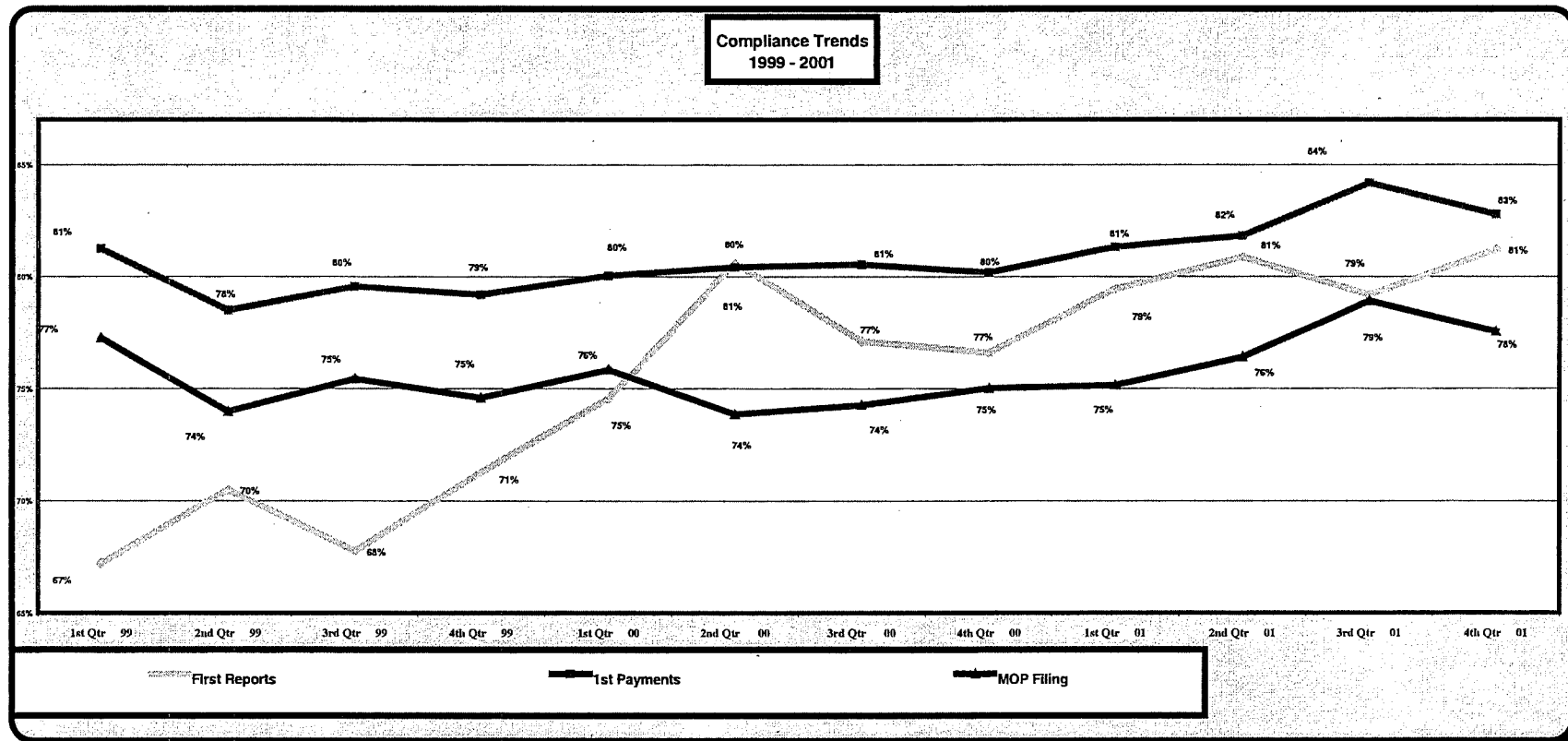


**Chart 9**



# Annud Compliance Report 01/01/01 - 12/31/01

Chart 10



## Compliance Trends

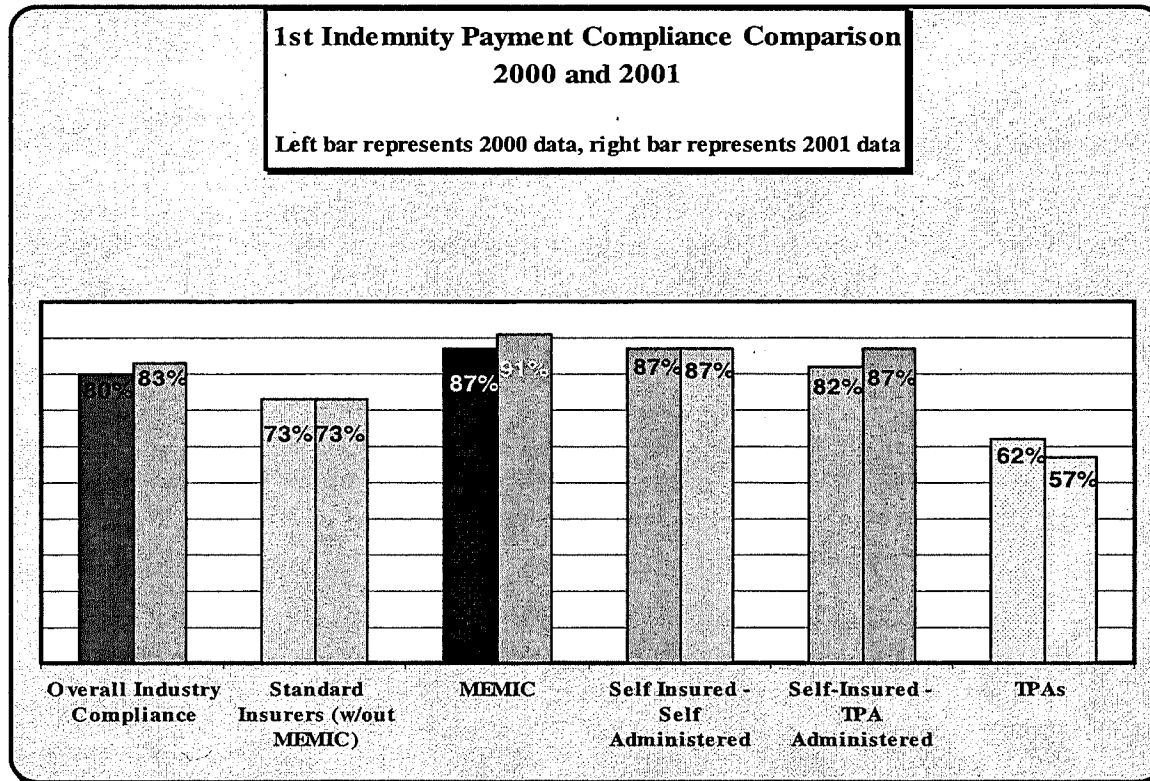
This chart gives an overview of compliance trends since the inception of compliance monitoring by the MWCB.

As can be seen, compliance by the industry in general is displaying an upward trend.

The greatest increase in compliance was in the reporting of Lost Time First Reports. In the 1st Quarter of 1999 only 67% of all Lost Time First Reports were being reported to the MWCB within 7 days of the employers notice or knowledge of lost time. By the 4th Quarter of 2001, nearly 81% of Lost Time First Reports were being reported in a timely manner which represents a 14% increase in compliance by the industry.

## Annual Compliance Report 01/01/01 - 12/31/01

**Chart 11**



Workers' compensation insurance claims can be administered by many different types of adjusting entities in Maine.

There are the customary or "standard" insurance companies like Kemper or Hanover.

There is Maine Employers Mutual (MEMIC) which was created by the Legislature.

Employers like Bath Iron Works can also choose to "self-insure". These self-insureds can choose to adjust their own claims. This is known as "self-administering".

Self-insureds can also choose to hire a third party administrator (TPA) like Sedgewick to administer their claims.

Some insurance companies choose to outsource some of their adjusting work to TPAs.

### **Payment of Initial Indemnity Benefits Comparison for Different Types of Workers' Compensation Claims Entities/Adjusters**

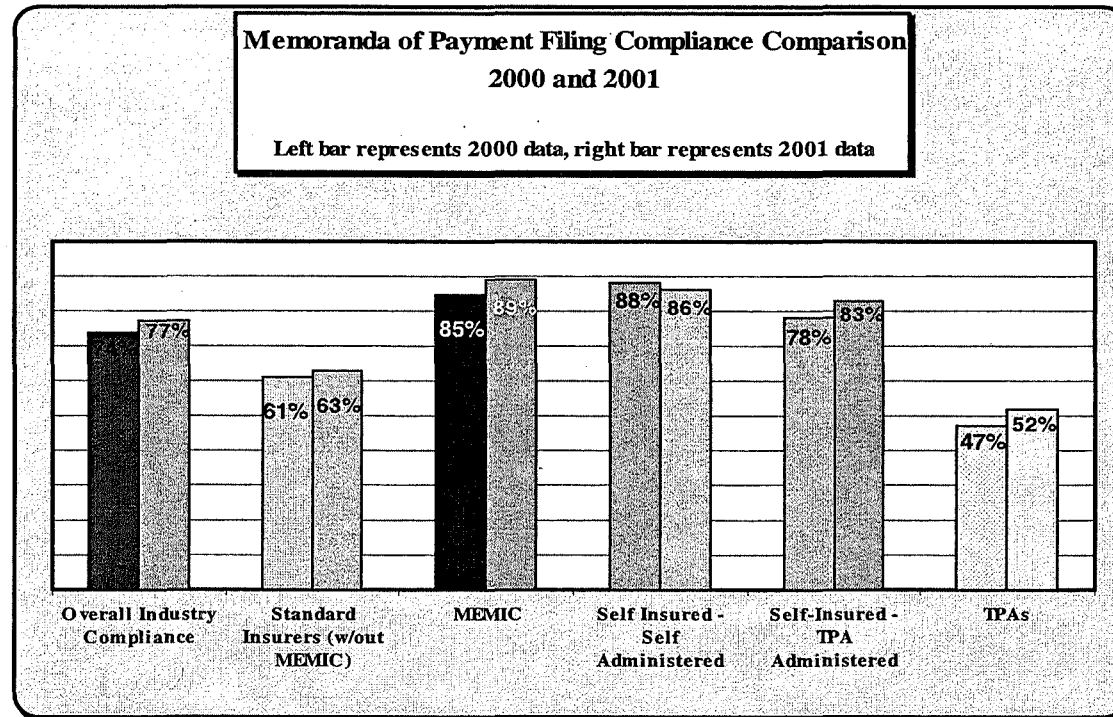
This chart displays the percentage of compliance for each type of adjusting entity achieved in Payment of Initial Indemnity Benefits within the 0-14 days category. The Maine Workers' Compensation Board's Benchmark for this is 80%.

As this chart demonstrates, 1st Indemnity Payment Compliance improved from 80% in 2000 to 83% in 2001. MEMIC and Self-Insureds that were TPA Administered improved their compliance performance in 2001. TPAs administering for other insurers were the least compliant and displayed a decrease in compliance for 2001 which are indicated by the bars labeled TPAs.



## Annual Compliance Report 01/01/01 - 12/31/01

**Chart 12**



The Maine Workers' Compensation Board (MWCB) measures whether the "Lost Time" First Reports of Occupational Injury or Disease and Memoranda of Payment (MOP) are filed in a timely manner.

A "Lost Time" First Report of Occupational Injury or Disease is required to be filed with the MWCB within 7 days of an employer's notice or knowledge that an employee has missed a day or more of work because of their injury.

When an insurer pays workers' compensation benefits, a Memorandum of Payment must be filed with the MWCB.

The MWCB measures when the payment was made and when the MOP was filed.

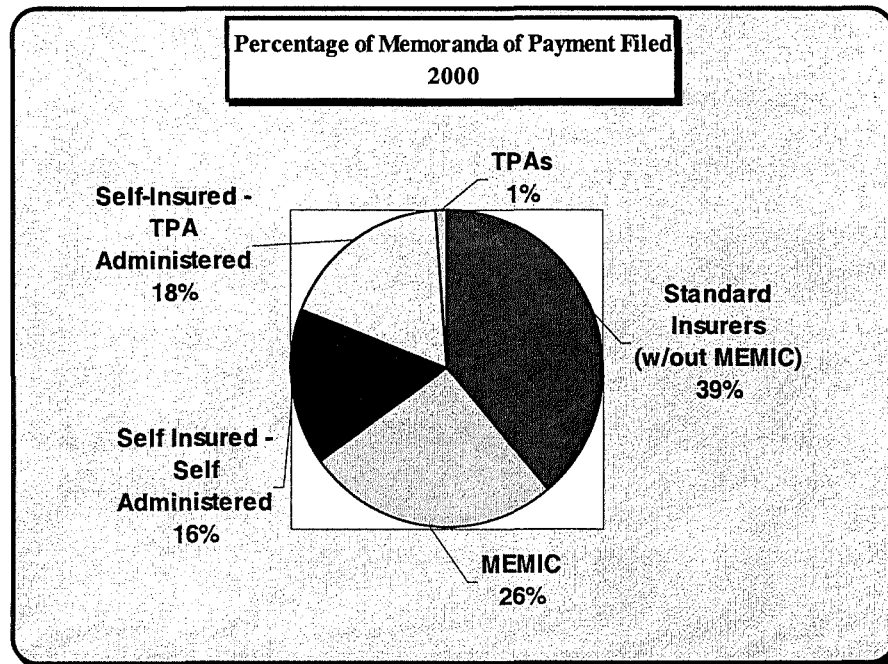
### Filing of Initial MOP Compliance Comparison for Different Types of Workers' Compensation Claims Entities/Adjusters

This chart displays the percentage of compliance for each type of adjusting entity achieved in the filing of Memoranda of Payment within 0 - 17 days category. The Maine Workers' Compensation Board's Benchmark for this is 75%.

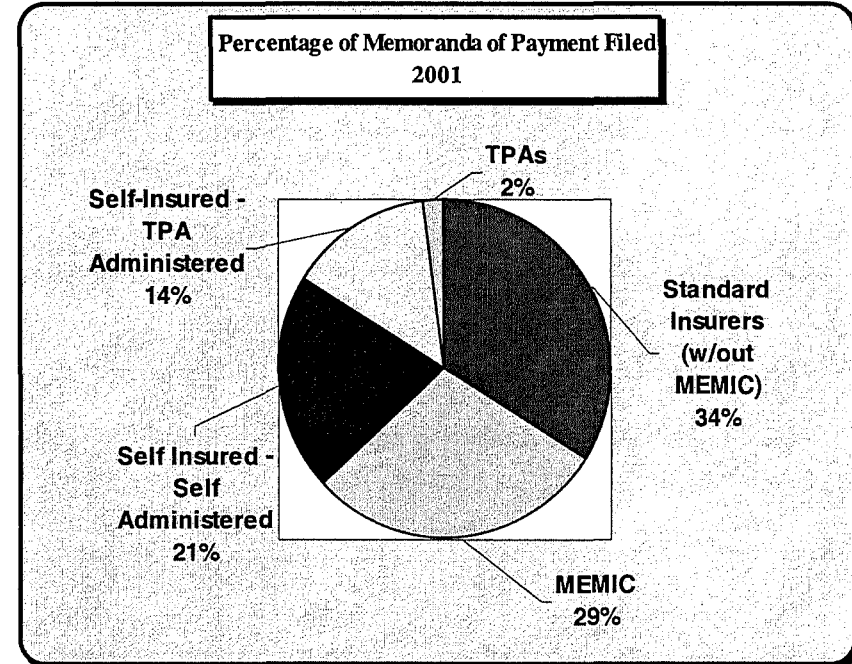
Memoranda of Payment Filing Compliance improved from 74% in 2000 to 77% in 2001. All Insurance Entity types displayed some improvement in this category. MEMIC and Self Insureds who are TPA administered displayed the greatest increase in compliance performance.

# Annual Compliance Report 01/01/01 - 12/31/01

**Chart 13**



**Chart 14**



## Percentage of MOPs Filed by Adjuster Type

This chart displays the percentage of MOPs that each type of adjusting entity filed with the Maine Workers' Compensation Board. This figure is a representation of the percentage of MOPs filed only and does not indicate an insurer's market share but rather, it indicates an insurer's claims activity.

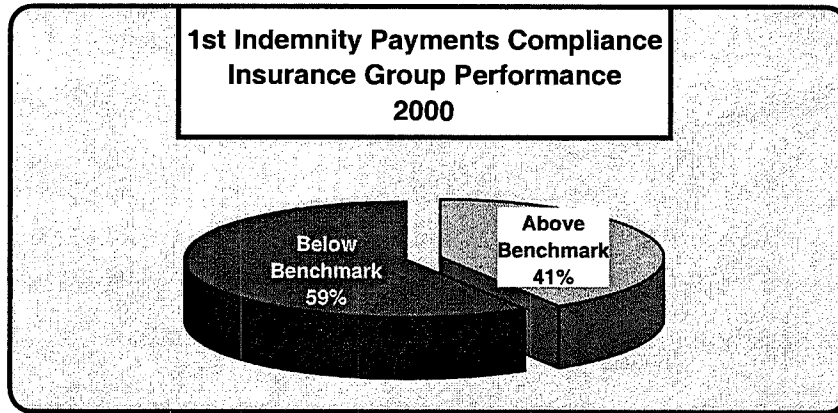
Most Memoranda of Payment (MOPs) that are filed with the Maine Workers' Compensation Board (MWCB) are filed by standard insurers. MEMIC filed the highest percentage of initial MOPs in both years. Self-Insureds filed the second most initial MOPs.

This includes employers who choose to Self-Insure-TPA Administer. TPAs working for other insurance companies filed only 1% of all initial MOPs in 2000 and 2% in 2001.

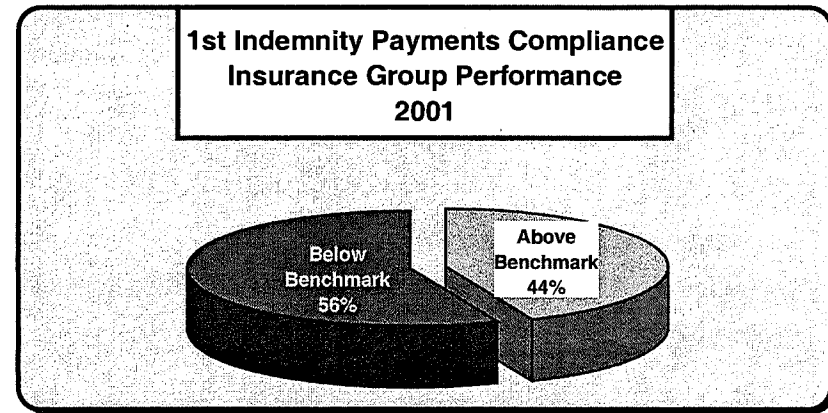


**Annual Compliance Report  
01/01/01 - 12/31/01**

**Chart 15**



**Chart 16**



**Initial Indemnity Payments made within 0-14 days.  
MWCB Benchmark = 80% Overall Compliance = 82.79%**

**Insurance Group Benchmark Comparisons for Initial Indemnity Benefit Payments**

As Chart 4 indicated, overall, the insurance community met the benchmarks for compliance as set by the Maine Workers' Compensation Board.

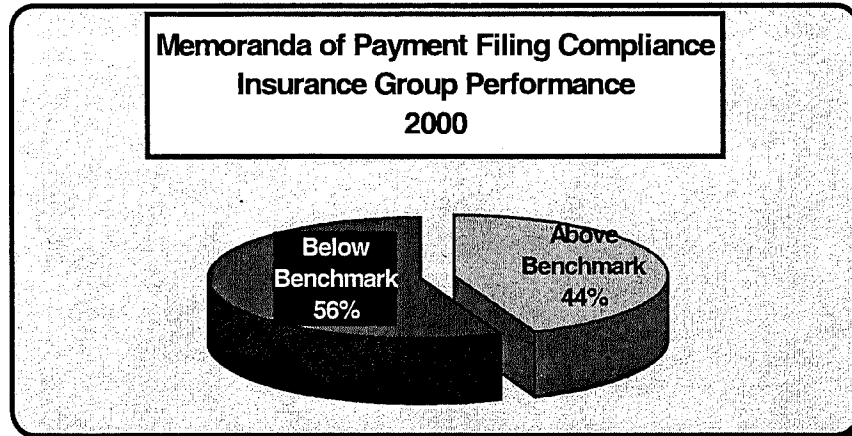
An "insurance group" is defined in this analysis as the parent company of a number of individual insurance entities. A total of 62 insurance groups filed MOPs with the MWCB in 2001.

Insurance groups can consist of many different insurance entities. For example, Liberty Mutual Group accounts for 8 different insurance entities. As the Insurance Group Compliance spreadsheet indicates, most insurance groups filed only a small number of MOPs.

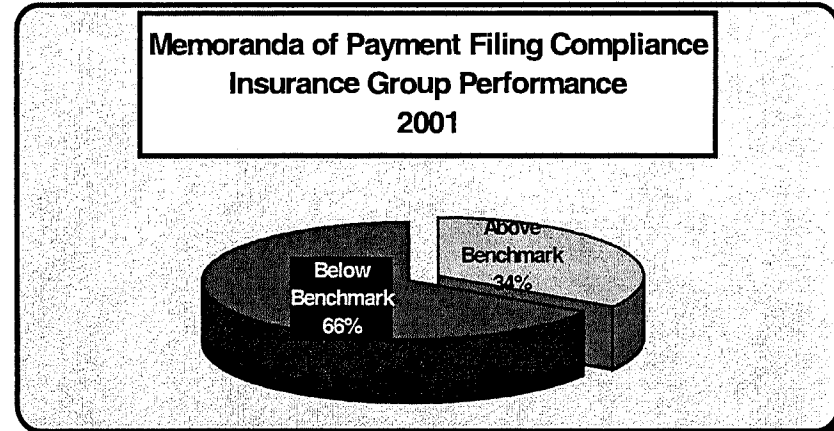
The majority of initial indemnity payments and MOPs are filed by a small number of insurance entities that have generally high compliance. The data from these companies with high compliance made up the majority of the MOPs that were measured. As a result, the overall industry compliance was above the MWCB's benchmarks. However, the insurance group charts and spreadsheets indicate that the majority of insurance groups did not meet the MWCB's benchmarks. Only 27 of 62 or 44% of all insurance groups that filed MOPs met the benchmarks for the payment of initial indemnity benefits. As the above charts indicate, this was a minor improvement over 2000.

**Annual Compliance Report**  
**01/01/01 - 12/31/01**

**Chart 17**



**Chart 18**



**Memoranda of Payment filed within 0-17 days.  
MWCB Benchmark = 75% Overall Compliance = 77.08%**

**Insurance Group Benchmark Comparisons for Memoranda of Payment Received by the MWCB.**

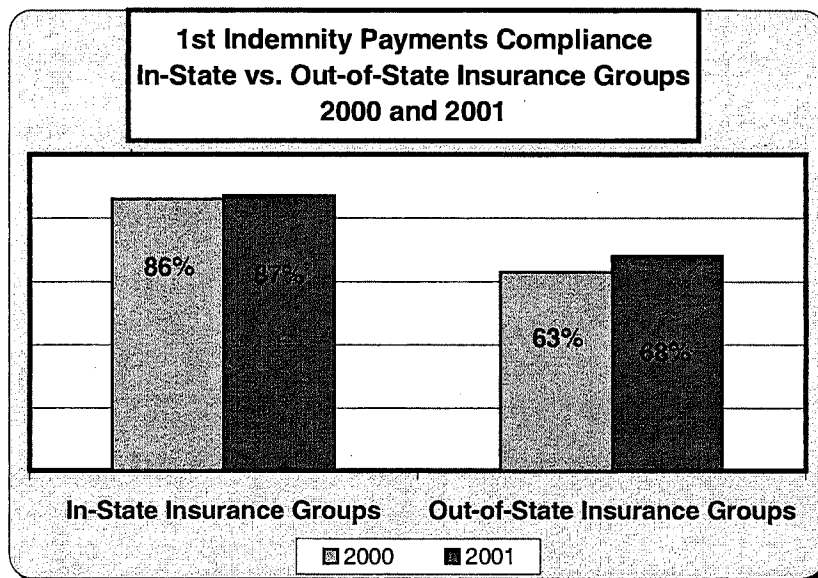
As Chart 7 indicated, overall, the insurance community met the benchmarks for compliance as set by the Maine Workers' Compensation Board.

An "insurance group" is defined in this analysis as the parent company of a number of individual insurance entities. A total of 62 insurance groups filed MOPs with the MWCB in 2001.

The data from those companies with high compliance made up the majority of the MOPs that were measured. As a result, the overall industry compliance was above the MWCB's benchmarks. However, the insurance group charts and spreadsheets indicate that the majority of insurance groups did not meet the MWCB's benchmarks. Compared to 2000, fewer insurance groups met the benchmarks for timely filing of the Memoranda of Payment. Only 21 of 62 or 34% of all insurance groups that filed MOPs met the benchmarks. As the above charts indicate, this was a 10% decline in compliance. As explained on the previous page, most insurance groups filed only a small number of MOPs.

# Annual Compliance Report 01/01/01 - 12/31/01

**Chart 19**



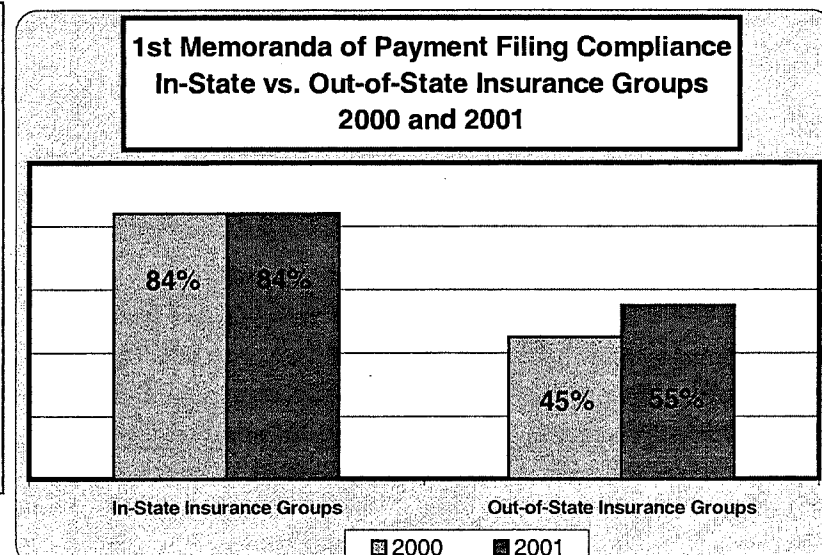
Through the Reconciliation Report and the Reconciliation Process, the MWCB can identify those insurance groups processing “in-state” and those processing “out-of-state”.

An out-of-state insurance group has its main indemnity claims processing location outside of Maine and provides a mailing address for the Reconciliation Report that is outside of Maine.

An in-state insurance group has its main indemnity claims processing location in Maine and provides a mailing address for the Reconciliation Report that is in Maine.

These charts indicate that in-state insurance groups generally have higher compliance with the MWCB's benchmarks than out-of-state insurance groups.

**Chart 20**



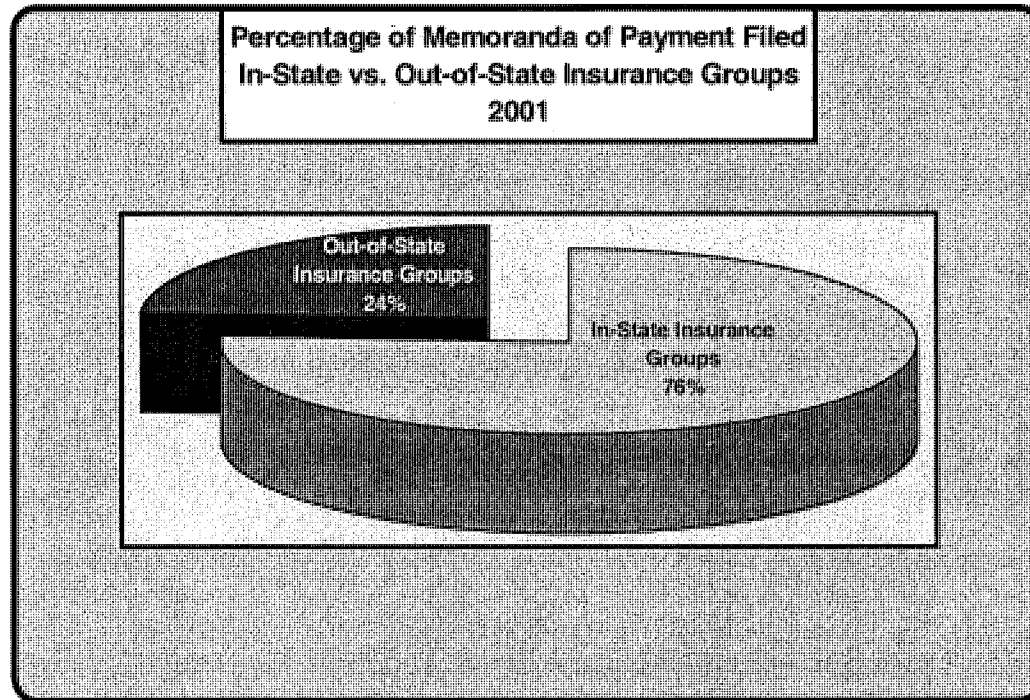
In 2000 and 2001, in-state insurance groups generally exceeded the MWCB benchmarks for both 1st Indemnity Payment compliance and 1st Memoranda of Payment filing compliance.

Although the out-of-state insurance groups showed improvement in both compliance categories in 2001, general compliance was still well below the MWCB Benchmarks.

The Monitoring, Auditing and Enforcement Division (MAE) of the MWCB has entered into Corrective Action Plans (CAPs) with in-state and out-of-state insurers that consistently fail to meet or exceed the MWCB's benchmarks.

**Annual Compliance Report  
01/01/01 - 12/31/01**

**Chart 21**



Even though out-of-state insurance groups filed only 24% of all initial MOPs, their generally low filing compliance negatively impacted overall initial MOP filing compliance.

This chart indicates that out-of-state insurance groups filed 24% of all initial indemnity MOPs. This figure was the same in 2000.

The Monitoring, Audit and Enforcement Division is currently engaged with many in-state and out-of-state insurance groups in an effort to improve compliance by offering training, education and alternative filing techniques.

**Percentage of MOPs filed by In-State and Out-of-State Insurance Groups.**

Volume	Insurance Groups/TPAs			
	Name of Group/TPA	# of MOPs	Initial Payment	MOP Filing
500+	MEMIC	1706	91%	89%
301- 500	Sedgewick	417	92%	90%
	MMA	307	83%	83%
101- 300	Northern General Svc.	121	91%	89%
	Dunlap Claims Mgmt.	181	90%	90%
	Hanover	171	88%	79%
	Synernet	181	87%	81%
	Acadia	233	84%	87%
0-100	Peerless	89	84%	87%

Volume	Self-Administered Employers			
	Name of Employer	# of MOPs	Initial Payment	MOP Filing
101+	MSMA	114	97%	97%
	State of Maine	139	88%	91%
	MMA	307	83%	83%
51-100	BIW	55	96%	93%
	Morse, Payson & Noyes	60	95%	95%
	MHCA/MMTA	72	90%	79%
	Hannaford Bros.	93	81%	76%
0 - 50	Cianbro	7	100%	100%
	City of Bangor	18	89%	94%

#### MWCB Benchmarks

- 1) Payment of Initial Indemnity Benefits made within 0-14 days is 80%
- 2) Memoranda of Payment received within 0 - 17 days is 75%.

#### Qualifications

- 1) Must have filed more than 5 MOPs in the year.
- 2) Met or exceeded MWCB Benchmarks in both categories.

## **5. WORKER ADVOCATE PROGRAM**

### **I. Introduction.**

The Worker Advocate Program was established, by the Legislature 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.

### **II. 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 in 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 x-examination testimony, 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.

From the beginning of the program, it was believed that the advocates were spending a great deal of time on cases that had no merit. This time could be more effectively spent on more fruitful cases. The Legislature agreed. Effective September 19, 1999, P.L. 1999, Chapter 410 provides for a framework where advocates may decline and/or withdraw from cases without merit. An advocate may choose not to represent a person under the following statutory criteria of Chapter 410:

- (1) Timely notice of the injury was not given by the employee to the employer, pursuant to this Act;
- (2) The statute of limitations has expired;
- (3) The employee's case is based on an argument or issue adversely determined by the Supreme Judicial Court;
- (4) The employee's case is based on a claim of discrimination governed by section 353;

- (5) There is no record of medical assessment stating that the employee's injury was either caused by, aggravated by or precipitated by the employee's work or, when the issue is aggravation, there is no record of medical assessment stating that the employee's work aggravated a pre-existing condition in a significant manner; or
- (6) The employee has admitted to a fraudulent act, has been convicted of a fraudulent act by a court of competent jurisdiction or has been found to have committed a fraudulent act by the abuse investigation unit of the board.

The legislature provided for specific safeguards in the application of this section. The advocate, after a thorough investigation must request, in writing, to the staff attorney permission to drop the case. The attorney must approve the request in writing. Finally, the employee has the right to appeal to the Executive Director of the Board the decision of the staff attorney.

Unfortunately, Chapter 410 has not had a significant impact on those claims that should not be in the system. The Advocates have seen only about a one percent reduction in their caseload. Further study of this issue is ongoing and recommendations will be submitted to the Board.

### **III. 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 time period from December 1, 1997 through July 30, 2002. A substantial majority of the active caseload is in the Portland and Augusta offices. As you can see, the Portland and Augusta regional offices account for **67%** of all open files with the remaining **33%** distributed among the other three regional offices. More than **80%** of all files are found from the Kennebec Valley to York County. The following **chart** highlights this situation.

Through the month of July 2002, the Advocate program has **1996** open files. From July 1, 2001 through June 30, 2002, Advocates represented injured workers in **2377** mediations and **577** formal hearings. The Advocates, from December 1997 through July 2002, have represented injured workers in over **10,500** mediations and **2300** formal hearings.

The percentage of unrepresented employees has dropped significantly since the inception of the Worker Advocate Program. Advocates now participate in approximately **50%** of the total number of mediations and **30%** of formal hearings. These numbers are indicative of the popularity and need for the program. However, these numbers also are very overwhelming for the advocates and staff.

#### **IV. 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 hired an additional advocate for the Portland office as well as paralegal assistants in the Portland and Lewiston offices. Recently, the Board has also added another Advocate in the Augusta office.

The Legislature also provided funding for two additional paralegal assistants in the Augusta and Bangor offices. Because of a pressing need for additional staff in the Portland and Augusta offices, the Legislature has now provided for an additional \$300, 000 for the Advocate Program, effective September 2001 and \$200,000 effective July 2002.

The Board authorized spending this additional money on:

- 1) advocate overtime;
- 2) additional staff in the Portland and Augusta offices;
- 3) upgrading the Advocate computerized case management system.

An article in the *Lewiston Sun Journal*, dated August 8, 2001, recognized the overwhelming workload confronting the Worker Advocate Program. The article also, correctly states that the additional funding is only temporary and is not a long-term solution for the Program.

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 as they could be. 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 directly to this staffing issue.

#### **V. Conclusion.**

The Worker Advocate Program has been quite successful. The response by injured workers has been overwhelming. The advocates are performing their duties in a caring and professional manner. This program is really making a difference. Injured workers now have access to representation and assistance that enables them to receive all benefits to which they are entitled. The issues of funding, caseload, and staffing, however, must be addressed in a long-term way to ensure the viability of the program.



## **6. INDEPENDENT MEDICAL EXAMINATIONS (IMES) /MEDICAL FEE SCHEDULE**

### **I. Independent Medical Examinations.**

Draft regulations for the implementation of Section 312 of the Workers' Compensation Act of 1992 were first presented to the Board of Directors April 7, 1994, with final approval dated January 3, 1996. Section 312 provides, in part, as follows:

**Examiner system.** The board shall develop and implement an independent medical examiner system consistent with the requirements of this section. As part of this system, the board shall, in the exercise of its discretion, create, maintain and periodically validate a list of not more than 50 health care providers that it finds to be the most qualified and to be highly experienced and competent in their specific fields of expertise and in the treatment of work-related injuries to serve as independent medical examiners from each of the health care specialties that the board finds most commonly used by injured employees. The board shall establish a fee schedule for services rendered by independent medical examiners and adopt any rules considered necessary to effectuate the purposes of this section.

**Duties.** An independent medical examiner shall render medical findings on the medical condition of an employee and related issues as specified under this section. The independent medical examiner in a case may not be the employee's treating health care provider and may not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid. Nothing in this subsection precludes the selection of a provider authorized to receive reimbursement under section 206 to serve in the capacity of an independent medical examiner. A physician who has examined an employee at the request of an insurance company, employer or employee in accordance with section 207 during the previous 52 weeks is not eligible to serve as an independent medical examiner.

**Appointment.** If the parties to a dispute cannot agree on an independent medical examiner of their own choosing, the board shall assign an independent medical examiner from the list of qualified examiners to render medical findings in any dispute relating to the medical condition of a claimant, including but not limited to disputes that involve the employee's medical condition, improvement or treatment, degree of impairment or ability to return to work.

**Rules.** The board may adopt rules pertaining to the procedures before the independent medical examiner, including the parties' ability to propound questions relating to the medical condition of the employee to be submitted to the independent medical examiner. The parties shall submit any medical records or other pertinent information to the independent medical examiner. In addition to the review of records and information submitted by the parties, the independent medical examiner may examine the employee as often as the examiner determines necessary to render medical findings on the questions propounded by the parties.

**Medical findings; fees.** The independent medical examiner shall submit a written report to the board, the employer and the employee stating the examiner's medical findings on the issues raised by that case and providing a description of findings sufficient to explain the basis of those findings. It is presumed that the employer and employee received the report 3 working days after mailing. The fee for the examination and report must be paid by the employer.

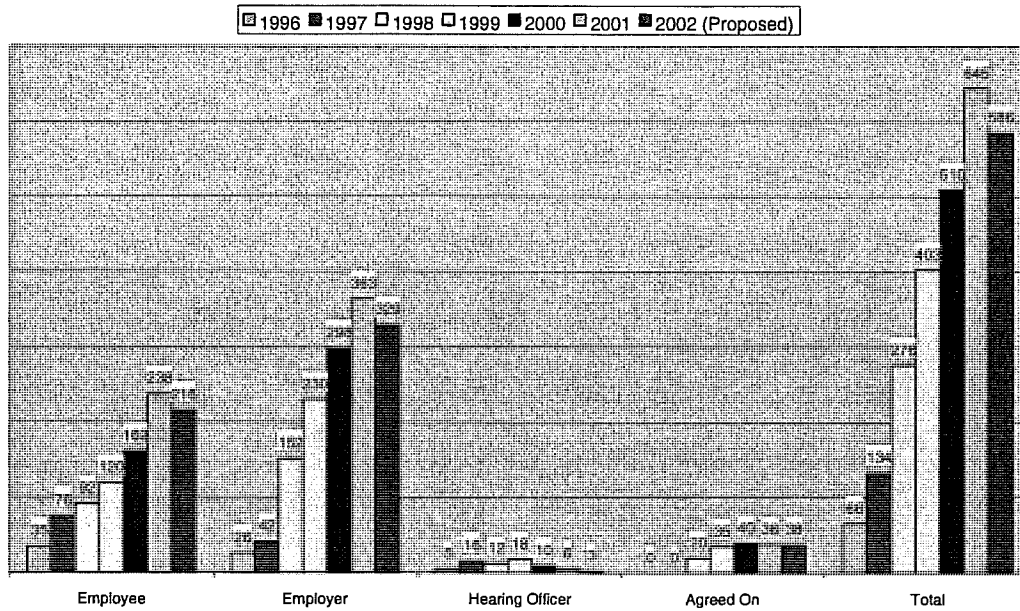
**Weight.** If the parties agree to a medical examiner, the examiner's findings are binding. If the board assigns an independent medical examiner, the board shall adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. Contrary evidence does not include medical evidence not considered by the independent medical examiner. The board shall state in writing the reasons for not accepting the medical findings of the independent medical examiner.

**Annual review.** The board shall create a review process to oversee on an annual basis the quality of performance and the timeliness of the submission of medical findings by the independent medical examiners.

Presently, there are 25 Independent Medical Examiners in ten specialties, as shown in the following list:

Chiropractic	David M. Ballew, D.C.
Family/General/Internal	Geoffrey Gratwick, M.D. Peter Shaw, M.D. Douglas Trenkle, M.D.
Neurosurgery	Julius Ciembroniewicz, M.D.
Neurology	Peter A. Bridgman, M.D. Seth Kolkin, M.D.
Occupational Medicine	Alexander L. Mesrobian, M.D. William Newkirk, M.D. David L. Phillips II, M.D.
Orthopedic Surgery	James F. Findlay, D.O. Jordan Shubert, M.D.
Physiatry	G. Thompson Caldwell, M.D. Stephan Bamberger, M.D. Peter Esponnette, M.D. Peter R. Geobel, M.D.
Psychiatry	Carylyle Voss, M.D.
Psychology	Roger Ginn, Ph.D. Jeff Matranga, Ph.D.

**Independent Medical Examinations  
Maine, 1995 - 2002**



## II. Medical Fee Schedule.

The Board first published a Medical Fee Schedule on April 4, 1994. In order to ensure appropriate limitations on the costs of health care services, the board is compelled pursuant to Section 209 to adopt rules that establish “standards, schedules, or scales of maximum charges for individual services, procedures or courses of treatment.” The standards to be adjusted annually to reflect any appropriate changes in levels of reimbursement.

In August 1997, the Board adopted the Resource Based Relative Value System (RBRVS) as the most efficient method to administer a fee schedule. The RBRVS has proven to be very successful. The fee schedule was revised and updated in 1999, 2001, and 2002.

## 7. TECHNOLOGY

The Board first implemented an information system in the early to mid-1980. The system was primarily used by the Central Office to collect First Reports with little or no functional use beyond the simple collection of the data. In the later part of the 1980's, programs were written to use the information collected to perform rudimentary scheduling of cases for the dispute resolution process. The only other use of the system at the time was some basic word processing.

There were numerous problems with hardware reliability and securing technical support for the proprietary hardware and software applications. The staffing complement at the time, three Information Technology ("IT") professionals, did not have the time or resources to maintain the system adequately. Additionally, there were no off-the-shelf applications available due to the proprietary nature of the hardware and operating system software.

In the early 1990's, the original system was replaced by a system provided by Bull, a more maintainable system for the dispute resolution process. While this was a more mainstream product, the business application was written in an older, more rigid programming language. This made it difficult and time-consuming to utilize data, even though the staff had increased to five IT professionals.

The increasing need for staff, the Board, other state entities, and the private sector to access data led the Board to begin a migration effort to a relational database structure (Progress). Unfortunately, the database structure that had been developed had major design flaws that allowed corruption and data integrity problems to exist. The integrity and accuracy of any data or reports generated using the database could easily be called into question. In addition, Central and Regional office staff were not involved in the design effort resulting in a system with no functional modifications and/or enhancements.

In addition, the new Progress database was put into production without first running it in a parallel mode with the then current system to assure no problems existed prior to the switchover. As it turned out, there were significant problems that took almost a year to correct. By September 1997, the entire technical staff had resigned to accept other jobs, leaving the agency no IT staff. To compound the problem, the Chief Information Officer (CIO) would not allow the Board to replace its IT staff. The mindset at the time was to centralize all IT positions within the Bureau of Information Services. During the fall of 1997, as a result of the Board's reorganization effort, the WCB hired an Agency Technology Officer.

From November 1997 through July 1998, a major effort was made to upgrade the Board's seriously outdated systems, desktop software, networking hardware/software, and communication infrastructure. All 120 desktop systems were replaced; Microsoft Office was installed, e-mail was added to each system, all six office servers were replaced, networking software was upgraded, and all communication lines were upgraded from 56k to T1.

Having completed this project, the ATO then studied the ability of the computer system to provide the data on the compliance of employers and insurance carriers with the Workers' Compensation Board's laws and regulations. This was undertaken on behalf of the MAE program. It quickly became clear that the system would not provide the quality assurance and

data integrity required for the MAE program. Utilizing the one programmer from the Department of Labor that the ATO had at his disposal, work began to rewrite the business application. Normally an effort this size would take a team of four approximately a year and a half to complete. Work began in the Claims area due to the need to capture First Report data immediately. The first compliance report was produced during June 1999. There was no system enhancements or workflow analysis of the Claims section provided during this initial phase. The focus was to get something up fast to comply with legislation.

Work then shifted to the Coverage Unit for functional analysis and system design. Migration of the Coverage Unit to the new system was accomplished in December 2000. One of the highlights was the shift to a common employer database with the Department of Labor's Bureau of Labor Standards (BLS). This change saved considerable time during the analysis phase as well as providing a method to automatically keep our employer information up-to-date. There were other system changes and workflow enhancements added to Coverage programs that increased the functionality of the system. System edits and checks were also added to help identify data quality issues.

During the past year the focus of the Board's sole programmer was on the Regional Offices, specifically the dispute resolution process. A team representing all facets of the dispute process was formed to assist with the analysis, design, screen building, testing, and rollout. This process has encompassed the entire year and we have just recently, November 4, 2002, migrated to the new regional office module. Programming efforts will continue on the regional office module through the end of the year at which point our efforts will once again focus on the Claims module. A more thorough analysis needs to occur to enhance workflow in that unit.

There are also increasing requests from the BLS for data, and additional elements BLS requests the Board to gather, verify and cleanse. These efforts directly affect the workload of an already over-burdened Claims and Coverage staff. During the early part of this year some programming changes were made at the request of BLS to enhance the ability for their staff to resolve issues regarding claim information. After almost a year of operations with these new changes it has been determined that the new methods of data cleansing is not working due mainly in part to the lack of Claim Unit staff to respond to the BLS demands. A working group was recently formed and some fundamental changes were made in the area of data responsibility. Basically, programming changes will be made to give BLS the ability and authority to modify specific information with regards to the physical location of the employer where an injury has occurred. This change will put the responsibility of data cleansing/accuracy within the agency that is concerned/legally bound for the data.

Other work includes enhanced system capabilities for data distribution to supervisors, managers, and other entities requesting WCB data as well as expansion of the current electronic data submission process. The Board has provided for the electronic transmission of data since 1993. It is done on a voluntary basis and a number of carriers participate. The Board has encouraged others to voluntarily file their reports electronically, but has met with limited success. The Board will work to increase the number of entities that submit claims electronically as well as include two additional forms for electronic transmission (Notice of Controversy and Memorandum of Payment). The Board will continue to work with the International Association of Industrial Accident Boards and Commissions (IAIABC) to implement its recently developed Combined Claims Product. The Board is also considering mandating electronic transmission due to the lack of carriers to voluntarily switch to this method.

A major effort is in progress to upgrade the WCB's computer equipment. Upgrades include, desktops, network servers, database server, network hubs, and switching to a routed network. In addition we will be investigating the use of Citrix to enhance the movement of data across the network.

## 8. BUDGET AND ASSESSMENT

Like most, if not all State Government departments and agencies, the Workers Compensation Board's budget is experiencing very serious funding problems. These fiscal problems, however, are not caused by the lack of tax revenue, as is the case with the General Fund. The Board is funded via an annual assessment, which is paid by Maine's employers, whether they are self-insured or covered by a workers' compensation insurance policy. The Legislature, in creating this funding mechanism about ten years ago, simply stated that the users of the workers' compensation system should be the ones to pay for it.

The Legislature established an assessment cap in the statute, which, back in 1992 when the legislation was first enacted, was adequate to meet the new Board's needs. As a matter of fact, the assessment level was adequate for five or six fiscal years. The assessment statute, however, has a major flaw built into it in the form of a cap, which prevents the Board's revenue from growing over time with increases in expenses, including expenditures over which the Board has no control. Examples are employee contract increases between State Government and the Union, which result in higher payroll costs. Other increases are reflected in the cost of health insurance and retirement costs, and increases in the cost of doing business, such as increases in the cost of postage and leases for rented space.

The problems caused by the cap are numerous. The result or end product of an inadequate assessment cap is a Workers' Compensation Board, which can no longer submit a balanced budget. This has occurred now for the last three fiscal years. The Board cannot budget more than it can show for annual revenue, which is limited by the statutory cap on the assessment. The Board has minor additional revenue from the sale of copies of files and from relatively few fines and penalties. Most of the fines and penalties, however, are deposited in the General Fund, which contributes no support to the Board.

Another major flaw built into the assessment statute is the reserve that the Board is allowed to create amounting to one-fourth of the annual allocated budget. The flaw is that the statute is silent on how the Board can utilize this reserve. The Board has had to file legislation for the last three legislative sessions in order to be allowed the use of its own reserves to meet payroll expenses and to be able to pay some of its bills.

Due to a projected shortfall in FY03, the Legislature enacted Resolve 2001, Chapter 126 allowing the Board the use of approximately \$1.3 million of its reserves to meet operational needs, including technological improvement projects, to allow the Board to continue to contract for temporary worker advocate and clerical support services for the worker advocate activity in the regional offices and for the costs of reclassification of a law clerk position with the Judicial Department that the Board is required to fund. This financial boost, however, is a one-time authorization and does not apply to any ongoing use of the reserve fund for these purposes. The problem, therefore, continues into the next biennium, as follows:

Fiscal Years 04 and 05 – Projections for the two fiscal years of the next biennium very clearly point out the total inadequacy of the current assessment funding mechanism. The Board can only budget \$6,860,000 (the amount of the assessment cap) and estimated miscellaneous income of \$330,000 for a total of \$7,190,000 per year.

The Board agreed to recommend to the Legislature in January 2003, that the cap should be raised to \$8,245,000 in Fiscal Year 04 and to \$8,410,000 in Fiscal Year 2005. However, only expenditures up to \$7,190,000 can be covered in the regular Part I budget. The remaining projected expenditures have to be inserted in a Part II budget which is normally reserved strictly for new and expanded services. The Legislature will have to decide whether or not to raise the assessment cap.

The projected payroll costs for each year of the 04-05 biennium increased towards the end of the biennial budget preparation process due to increases in two of the Maine State Retirement rates. These resulted in an increase in projected payroll costs of \$216,000 in Fiscal Year 04 and \$232,000 in Fiscal Year 05. The Board, however, voted to raise the assessment cap by only \$105,500 of the FY04 amount and by \$115,500 of the FY05 additional amount needed. The Board will have to figure out how to absorb these increases within the approved budgets. The total Board-approved budget in each fiscal year amounts to:

FY04: \$8,680,500

FY05: \$8,855,500

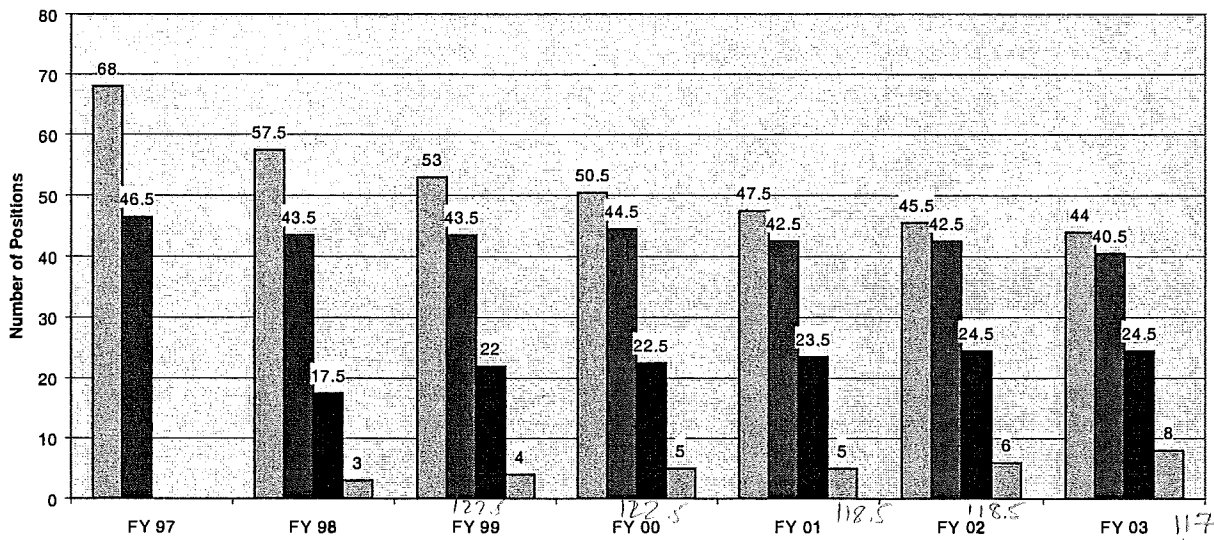
The assessment would be amended to \$8,350,000 in FY04 and to \$8,525,000 in FY05.

The projected shortfall or deficit, assuming that the board's recommendation to raise the assessment cap as shown above is approved by the Legislature, amounts to (\$245,183) in FY04 and (\$251,415) in FY05 based on actual projected expenditures of \$8,925,683 in FY04 and \$9,106,915 in FY05. These amounts would fund the higher retirement costs, which the Board is required to pay. The bar chart entitled "WCB – 12 Year Schedule of Actual and Projected Expenditures" clearly illustrates the problem.

If the assessment cap is not raised to cover the projected shortfalls, the agency will have to seriously curtail services prior to the start of the 2003-2004 biennium on July 1, 2003. The Board has made significant changes in its personnel allocation as can be seen in another chart entitled "WCB – Personnel Changes Since FY97," including the reduction of positions when feasible.



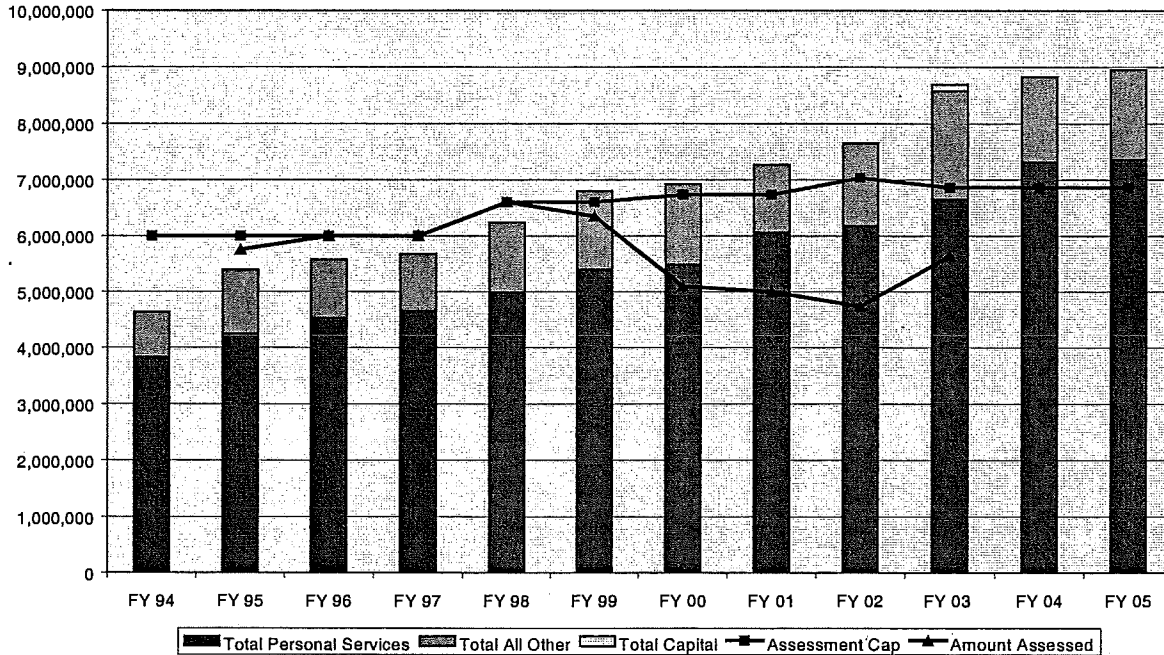
**WCB - Personnel Changes Since FY97  
July 2002**



During FY 02 the total number of staff was reduced by 3.5 positions. Additionally one new position was added to the MAE program and one to WCB - Dispute Resolution. The MAE and Advocate programs represent 28% of the agency's total number of employees.

☐ Dispute Resolution  
 ☐ Central Services  
 ☐ Advocate Program  
 ☐ MAE Program

**WCB - 12 Year Schedule of Actual and Projected Expenditures  
Workers' Compensation Administrative Fund - 0183**



## **9. CLAIMS MANAGEMENT UNIT**

The Claims Management Unit has been operating under a “case management” process for several years. Individual caseloads are adjusted occasionally as workloads fluctuate. Individual claims managers process the file from start to finish. The insurance carriers, third-party administrators, and self-insured employers benefit from having a single contact at the Board.

The Unit works closely with the Planning and Research Associate position of the MAE Program to ensure that payments to injured employees are made timely. Case managers review the paperwork filed by insurance carriers, third-party administrators, and self-insured employers to ensure that payments to injured workers are accurate and that the proper forms are completed and filed with the Workers’ Compensation Board. The Unit has conducted several training workshops regarding compliance and payments to injured workers and continues to schedule in-state training sessions upon request and Board approval.

Greater implementation of Electronic Data Interchange (EDI) may create efficiencies in claims management allowing the managers to increase their claim management efforts through the elimination of most of the data entry functions. Data entry is estimated to be about 25 percent of the daily workload.

## **10. INSURANCE COVERAGE UNIT**

The Insurance Coverage Unit has been using new computer screens that resulted from program upgrades for almost two years now. This has drastically cut down on the amount of repeat data entries and other database problems. The new screens have helped to streamline the data entry aspects as well as enhance the ability to identify trends and other problems with various carriers. We are now able to link coverage and make employer updates much more easily than in the past. As a result of these changes, the number of claims without coverage has gone from over 100,000 to just fewer than 10,000 in that time period. This is due to the continued hard work and the database cleanup by the Coverage staff.

Our database was merged with the Department of Labor's roughly a year ago. That transition had some initial problems regarding ownership of various pieces, but those issues seem to be sorting themselves out as time goes on. We have seen a lot more cooperation with the Department of Labor and the Bureau of Insurance as a result of the shared database and the commonalities of the three entities.

There are currently three fewer people in the Coverage Unit than there were two years ago, as a result of the computer upgrade and other efforts to streamline the workload; but we are still remaining caught up with the initial data entry and trying to tackle some of the ongoing problems.

## **11-A. COORDINATION WITH OTHER AGENCIES**

The Board has had varying degrees of success in its effort to coordinate its work with other state and federal agencies.

The technology field is an area where the Board has seen both success and failure. An example of success is the Board's recent migration of its employer database to the Department of Labor's ("DOL") database. For years, in its effort to identify employers that were operating without required workers' compensation coverage, the Board would compare its coverage information to DOL's unemployment database. A great deal of unnecessary paperwork for the Board and for Maine's employers was generated due to the inconsistencies between the two databases. Information that was updated on one system, for example, would not always be updated on the other system. Now, with the two databases combined, the Board has been able to more accurately identify employers that do not have required coverage.

The Board also collects a significant amount of data on its forms to assist the Bureau of Labor Standards ("BLS") in its task of producing statistical reports. An example of the Board's responsiveness in this area involves a form titled "Statement of Compensation Paid." The Board proposed a rule that would have reduced both the frequency with which this report had to be filed, and the information contained in it. In response to comments received from BLS, which wanted the more detailed information, the Board reconsidered its proposal, and incorporated the changes requested by BLS.

The same holds true for the Occupational Safety and Health Administration ("OSHA"). Maine is currently the only state in the nation that captures OSHA required data on its First Report of Injury form. This means that Maine's employers, in the event of an accident in the workplace, only have to fill out one form to meet both state and federal requirements as opposed to two. This has, obviously, substantially reduced the paperwork burden on Maine's employers.

The Board also works with the Bureau of Insurance ("BOI") with respect to its annual assessment. BOI provides information on premiums written, predictions on market trends, and paid losses information for self-insured employers. The Board uses this information when it calculates the annual assessment.

There are also increasing requests from the Bureau of Labor Standards for data and additional elements. A working group was recently formed and some fundamental changes were made in the area of data responsibility. Basically, programming changes will be made to give BLS the ability and authority to modify specific information with regard to the physical location of the employer where an injury has occurred.

A major effort is in progress with Bureau of Information Services to upgrade the WCB's computer equipment. Upgrades include desktops, network servers, database server, network hubs, and moving to a routed network.

## **11-B. ALTERNATIVE DELIVERY SYSTEMS INCLUDING PRIVATIZATION**

The Board is considering mandating the electronic submission of First Reports, Memorandums of Payment (MOPs), and Notices of Controversy (NOCs). This would be accomplished through the Board's proprietary system, which is presently in place and the International Association of Industrial Accident Boards and Commissions (IAIABC) Combined Claims Product, which is presently under development and will not be ready for another 12 to 18 months. Should the Board mandate electronic submission of these forms, it will have options to either (1) implement the entire Electronic Data Interchange (EDI) Program; or (2) to continue to manage its proprietary program and privatize the IAIABC Program. The Board is presently considering both options.

## 12. 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 per day penalty, up to a maximum of \$1,500 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 10 days of any board order or approved agreement. A violation of this section can be penalized by a forfeiture of up to \$200 per day. The first \$50 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. 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 359(2) provides a penalty of up to \$10,000 for any employer, insurer or third-party administrator who engages in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. Any penalty assessed under this section is payable to the Board's Administrative Fund. The Act also provides that the Board shall certify its findings of any violation of this section to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt.

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 maximum 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 brought under sections 360(1) and 324(3), late reports and no-coverage.

The total number of cases filed with the Abuse Investigation Unit, which increased sharply in 1999 and remained at nearly that level in 2000, increased again in 2001. This is primarily (though not entirely) due to an increase in the number of late-report filings under section 360(1).

The higher volume of cases flowing into the Unit is the result of two automated systems implemented by the Board in late 1998 and early 1999. First, the Board is identifying more employers who are operating without required workers' compensation coverage. The Board is able to do this by using a program that compares the Department of Labor's unemployment database with the Board's coverage database.

Second, in February of 1999, the Board implemented a program to identify First Reports of Injury that are not filed in a timely manner. This program, on its own, has significantly increased the number of complaints filed with the Abuse Investigation Unit.

In recent years the Abuse Investigation Unit has greatly increased the number of cases that it closed. The number of closed cases, which had been rising since 1997, more than doubled in 2000 and leapt up again in 2001.

As would be expected from the case filing numbers, sections 360(1) and 324(3) account for the greatest number of cases that are closed.

As mentioned above, the Abuse Investigation Unit has authority to impose penalties pursuant to several sections of the Act. The Abuse Investigation Unit disposed of cases in 2001 as follows: Section 360(1): 1,589 granted and 555 denied; Section 324(3): 208 granted and 207 denied or dismissed; and Section 324(2): 22 granted and 19 denied or dismissed.

In 2001, the Abuse Investigation Unit assessed \$29,605 in penalties and \$2,450 in attorney's fees pursuant to Section 324(2); \$164,125 in penalties pursuant to Section 324(3); and \$158,900 pursuant to Section 360(1) for a total of \$352,630 in penalties assessed.

The Unit received in 2001 its first referral for complaint under Section 359. As this document is written that matter remains pending and is being processed by the Unit. It seems reasonable to expect additional referrals under this Section in 2001 and future years, so the Unit's workload under this provision of the Act will likely be expanding.

Complaints filed pursuant to section 360(2) are also 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. In 2001 there were 21 complaints pursuant to section 360(2) received. 24 cases in this category were referred for hearing and 3 denied or dismissed.

It is clear from these statistics that the Abuse Investigation Unit has in recent years begun handling significantly more work in the area of enforcement. There have been over time more cases filed, more matters resolved, and more penalties imposed. Yet the staffing level of the Abuse Investigation Unit has remained constant for many years, throughout this large increase in workload. The Unit consists of one legal secretary and two investigators, supervised by the Board's Assistant General Counsel. Section 153(5) of the Act authorizes the Abuse Investigation Unit and sets forth its authority and responsibilities, and that section mandates "at least 2 abuse investigators." The caseload increases in recent years have simply required the Unit to stretch in order to do more with the existing personnel, and that trend appears unlikely to turn around in the foreseeable future.

### 13. GENERAL COUNSEL REPORT

#### A. Rules.

In response to concerns raised by health care providers, who were not receiving notice when their bills were being disputed, the Board adopted amendments to W.C.B. Rules Ch 1, § 7 and Ch. 8, § 2. Together, these amendments require that employers/insurers send a copy of a Notice of Controversy to a health care provider if the reasonableness of a health care provider's bill is being contested.

The Board added W.C.B. Rule Ch. 3, §§ 2 and 3 and amended W.C.B. Rule Ch. 12, § 1 to clarify the procedure for filing forms. These amendments clarify that all forms must be filed in the Board's Central Office unless the Workers' Compensation Act or Board rules specify a different filing location. (For instance, formal hearing correspondence, relating to a pending proceeding, must be filed in the regional office to which the case has been assigned.) These amendments also clarify that forms may be filed by mail, in-hand delivery, fax, or other form of electronic transfer. In an effort to reduce the volume of paper received by the Board, the rule also specifies that paper copies of forms that were filed electronically will not be accepted.

As of September 2001, with the creation of the Supplemental Benefits Oversight Committee, the Board no longer administers requests for reimbursement pursuant to 39-A M.R.S.A. § 213(3) and (4). The Board, therefore, repealed W.C.B. Rule Ch. 2, § 4, which had established procedures for requesting reimbursement from the Board's Employment Rehabilitation Fund.

#### B. Legislative Activity.

The Board is proposing legislation to raise the maximum assessment contained in 39-A M.R.S.A. § 154(6). The maximum assessment must be raised for the Board to maintain its current level of services.

The Board is also proposing legislation to require that it adopt rules mandating the electronic filing of information, to give it access to its reserve account, and to give it flexibility in hearing cases involving extreme financial hardship.

The Board is also considering whether and how to create a process to pay the claims of injured employees who work for employers that did not have required coverage at the time of the injury and that have become insolvent.

#### C. Board Review Pursuant to 39-A M.R.S.A. § 320.

Pursuant to 39-A M.R.S.A. § 320, the Board may review a decision rendered by a hearing officer if the "decision involves an issue of significance to the operation of the workers' compensation system."

The Board has accepted the case of *FLYNN v. Maine Medical Center* for review pursuant to this section. The issue raised in this case is whether a hearing officer can entertain a motion to reconsider a Provisional Order granted pursuant to 39-A M.R.S.A. § 205(9)(D).



Decisions issued by the Board pursuant to 39-A M.R.S.A. § 320 are available on the Board's web-site: [www.maine.gov/wcb/](http://www.maine.gov/wcb/)

**14. 39-A M.R.S.A. § 213**  
**THRESHOLD ADJUSTMENT AND**  
**EXTENSION OF 260-WEEK LIMITATION**

The Workers' Compensation Act provides for a biannual permanent impairment threshold adjustment and a study of whether an extension of weekly benefits is warranted. Section 213(2) provides, in part, that the Board, based on an actuarial review, adjust the 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 percent to 11.8 percent based on an actuarial report compiled by Advanced Risk Management Techniques, Inc.

Pursuant to 39-A M.R.S.A. § 213(4), the 260-week limitation contained in Section 213(1) must be extended 52 weeks for every year the Board finds the frequency of cases involving the payment of benefits under Sections 212 and 213 is no greater than the national average. Based on a report provided by Advanced Risk Management Techniques, Inc., the limitation referenced in Section 213(4) was extended for 52 weeks on January 1, 1999.

The Workers' Compensation Board hired the actuarial firm of Deloitte & Touche to conduct the independent actuarial review for the 39-A M.R.S.A. §§ 213(2) and (4) adjustment and extension for 2000 and 2001. Based on the 2000 Deloitte & Touche actuarial report, the Board retained the 11.8 percent threshold and extended the limitation referenced in Section 213(4) by 52 weeks on January 1, 2000.

The issues of whether to extend benefits as of January 1, 2001 and January 1, 2002 are now the subject of court actions. The January 1, 2001 issue is before the Supreme Judicial Court and the January 1, 2002 issue is pending in Superior Court.

Pursuant to P.L. 2001, Ch. 712, the Board referred the threshold adjustment for January 1, 2002 to an arbitrator appointed by the American Arbitration Association. The arbitrator determined that the permanent impairment threshold for January 1, 2002 is 13.2 percent.

## 15. SUMMARY

The Board is performing efficiently in its five major areas of responsibility: dispute resolution; the MAE program; the Worker Advocate program; Independent Medical Examinations/Medical Fee Schedule; and technology. However, the Legislature has had to increase the Board's budget for fiscal years 02 and 03 to \$8,237,000 and \$8,828,750 respectively. The Board is facing further budgetary problems for fiscal years 04-05. In order to resolve the budgetary problems, the Board has unanimously approved a proposal to increase the budget as follows: FY 04: \$8,680,000 and FY 04: \$8,855,000. This includes the Board's unanimous recommendation to increase the assessment cap to \$8,350,000 in FY 04 and to \$8,525,000 in FY 05. The difference in each fiscal year is in revenue from assessment interest, the sale of copies and publications, and fines and penalties.

Assuming a legislative resolution of the assessment cap issue, creative expansion of the MAE program and technology will continue, and the present level of services will be maintained in all other areas of responsibility.

**SECTION II**

**BUREAU OF INSURANCE**



<b>SECTION II. BUREAU OF INSURANCE</b> <b>TABLE OF CONTENTS</b>
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## INTRODUCTION

This section of the report looks at competition in the Maine workers' compensation insurance market by examining different measures of market competition. Among the measures are the number of insurers providing coverage, market share and changes in market share, and ease of entry and exit into and out of the insurance market by workers' compensation insurers.

Comparing the variations in rates is another measure of the competitiveness of the industry. Each year, on behalf of insurers and pursuant to Title 24-A §2384-A, the National Council on Compensation Insurers, Inc. (NCCI) files advisory loss costs with the Bureau of Insurance. These advisory loss costs reflect what is called "pure premium" or the amounts necessary to cover losses and the costs to adjust (settle) those losses. If approved by the Bureau, the advisory loss costs become the base upon which rates are built.

Workers' compensation insurance in Maine operates in an open competitive rating system. Each insurer files factors called loss cost multipliers with the Bureau and the advisory loss costs are multiplied by these factors to form the rates for individual companies. The multipliers account for such things as company experience, overhead expenses, taxes, contingencies, investment income and profit. Insurers may use different multipliers for rating plans for different tiers or companies having different underwriting criteria. Other factors such as experience rating and premium discounts may also affect the final premium paid by an individual employer.

Prior to the year 2000, advisory loss costs had declined for six consecutive years. This was followed by two years of increases in the advisory loss costs and then another decrease. Despite decreases in the advisory loss costs, some employers are experiencing the effects of a hardening market. This is due primarily to three reasons: a decrease in return on investment income, a tightening of the reinsurance market, and some insurers experiencing high loss ratios. Prior to 2000, carriers had been discounting premiums by issuing schedule rating credits, by issuing dividends and by using lower rates. Investment returns have diminished and, as a result, insurers are not likely to offer discounts in order to capture or retain business. Some insurers have already filed to increase their loss cost multipliers. Another factor responsible for market hardening is that gains from the release of excess reserves in prior years are no longer available.

As a result of the events of September 11, 2001, the National Council on Compensation Insurance filed on December 21, 2001 on behalf of insurance carriers a request for a four percent catastrophe load to be added to rates for all Maine insurance policies. This filing was disapproved by the Bureau of Insurance. A consequence of the September 11 attacks is that reinsurance cover for terrorist acts has become more scarce and reinsurers are increasing rates for reinsurance coverage to better match the risk exposure. Reinsurance contracts provide for a primary insurance carrier to cede part of its book of business to another insurer to help spread its risk and increase its capacity to take on other business. Since September 2001 reinsurance contracts are excluding coverage for terrorist acts while primary insurers are still liable for that exposure. The Bureau of Insurance does not regulate the rates of reinsurance business; however, the federal government recently approved a federal reinsurance backstop for certain acts of terrorism, which will provide federal assistance to insurance companies to defray the costs of such catastrophic events that are difficult to predict and build into insurance rates (H.R. 3210:



Terrorism Risk Insurance Act of 2002). There are different criteria that may be used to determine if the insurance industry is competitive. Examples include: a large number of firms selling the product, each individual firm's market share being small enough so that no firm is able to affect the price of the product, and no barriers to new firms entering the market. Using these criteria, Maine's workers' compensation insurance market is still competitive. Although market concentration did increase in years 2000 and 2001, compared to the two prior years, there are still many insurers writing workers' compensation coverage in Maine. Maine Employer's Mutual Insurance Company's (MEMIC) market share remained stable at approximately 51 percent in 2001.

Although the market remains competitive, insurers' willingness to offer underwriting discounts is lessening. Some employers have been moved to higher rating tiers while others have lost discounts that they were previously offered. The end result is that premiums for those employers are increasing. Rates for some employers will increase again next year. On October 23, 2002, the National Council on Compensation Insurance (NCCI) filed for a 5.3 percent overall increase in advisory loss costs effective January 1, 2003. As of the date of publication, that filing is under review by the Bureau of Insurance.

## **PART I. RECENT EXPERIENCE**

### **Loss Ratios and the State of Competition**

Workers' compensation claims can have a long payment period. Payments on some claims may occur over many years--thus, figures for amounts actually paid out on claims are incomplete and future amounts to be paid on claims must be estimated. Insurance companies report information used to calculate financial ratios. This information may be presented on an accident year, calendar year, or a policy year basis. Ratios may vary greatly, depending on the reporting basis utilized.

In this publication, most information is reported on an accident year basis. However, to better understand each basis of reporting information, a description of each method and its use follows.

- ❑ Accident year experience measures the premiums and losses relating to accidents, which occurred during a 12-month period. The accident year loss ratio shows the percentage of premium received that is being paid out or expected to be paid out on claims. It enables the establishment of a basic premium reflecting the pure cost of protection. Losses are organized according to the year in which the accident occurred. Accident year losses or loss ratios are used to evaluate experience under various laws because claims are tracked by year and can be associated with the law in effect at the time of the injury. This information is projected because claim costs change over time as claims further develop. Therefore, the ratios for each year are updated on an annual basis.
- ❑ Calendar year loss ratios compare losses incurred in a given year to premium earned in that year. Because workers' compensation claims are often paid out over a long period of time, only a small portion of calendar year losses are attributable to premiums earned that year. Many of the losses paid during the current calendar year are for claims occurring in past calendar years. Calendar year loss ratios also reflect reserve adjustments for past years. If claims are expected to cost more, reserves are adjusted upward; if they are expected to cost less, reserves are adjusted downward. Calendar year incurred losses are used primarily for financial reporting.
- ❑ Policy year experience measures the premiums and losses for each 12-month period that a policy is in force. Losses occurring during this 12-month period are assigned to the period regardless of when they are actually paid. It takes time for the losses to develop, so it takes about two years before the information is useful. This data is used to determine advisory loss costs.

## **The Underwriting Cycle**

Insurance tends to go through underwriting cycles--successive periods of increasing and diminishing competition. These cycles are important factors in the short-term performance of the insurance industry. Hard markets are periods in which there is little competition and fewer insurers willing to write business. Soft markets are periods of increased competition--identified by an increased capacity to write business, falling rates, and growing loss ratios, resulting in insurer operating losses. This can eventually force loss ratios to critical levels, causing insurers to raise their rates and reduce their volume. Ultimately this restores insurer profitability and surplus. This situation, in time, spurs another round of price-cutting, perpetuating the cycle.

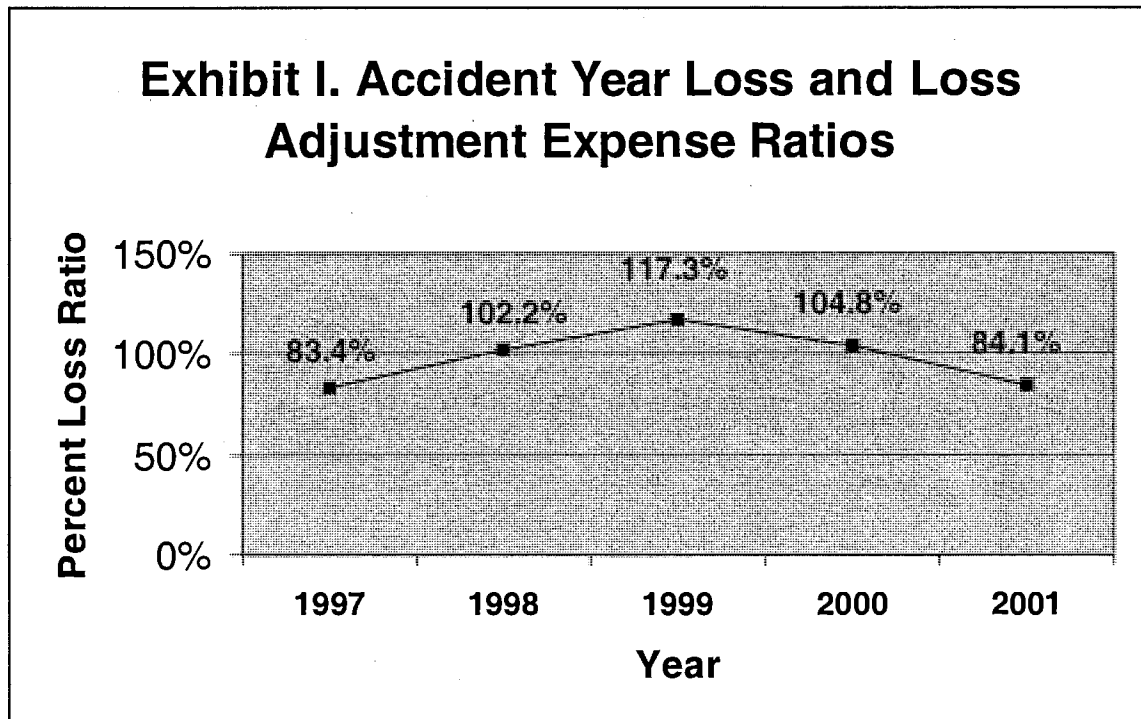
In the late 1980s and early 1990s, Maine's workers' compensation insurance market was hard. From the mid-1990s until about 2000, Maine's market would be considered soft. Hard markets may also occur when insurers tighten their underwriting standards or reduce their use of premium credits. This describes what has been happening in Maine over the last two years.

Insurers nationwide are reducing credits and increasing premiums for workers compensation and other lines of insurance. The accident year incurred loss ratio for 2001 was 84.1. For 2000, the ratio was 104.8. Loss ratios that exceed 100 mean that insurers are paying out more in benefits than they collect in premiums.

## Accident Year Loss and Loss Adjustment Expense Ratios

The accident year loss ratio shows the percent of earned premium used to fund losses and their settlement. Exhibit I, shows the accident year loss ratios for the most recent five years available. Loss ratios in this report are based on more mature data and may not match the loss ratios for the same years in prior reports. Claim costs and loss adjustment expenses are further developed, so the loss ratios reflect more recent estimates of what the claims will ultimately cost. The loss ratios do not include general expenses of insurance companies such as overhead, marketing and federal or state taxes, nor do they include investment income. The 2001 loss ratio was 84.1, indicating that \$84 is expected to be paid for losses and loss adjustment expenses for every \$100 earned in premium. The 2000 loss ratio was 104.8. These ratios are down from a five-year high of 117.3 in 1999. Currently, investment income is insufficient to offset high loss ratios. The decreasing loss ratio in 2001 is a result of increased rates, which will eventually restore profits.

Following the 1992 law changes, loss ratios were in the 60 percent range. These ratios were relatively low and due, most likely, to loss prevention and claims management practices of employers, combined with savings from the reduction of benefits that resulted from the law changes. During 1994-1996, advisory loss costs filed by NCCI were lower than they were previously, the market became more competitive, and rates charged by insurers decreased. For accident years 1997 through 1999, NCCI reported that indemnity losses and loss adjustment expenses increased as rates decreased. Thus, loss ratios rose above the levels of prior years. Increases to advisory loss costs were approved in 2000 and 2001 resulting, in part, in increased



premiums and an increased denominator for the loss ratio.

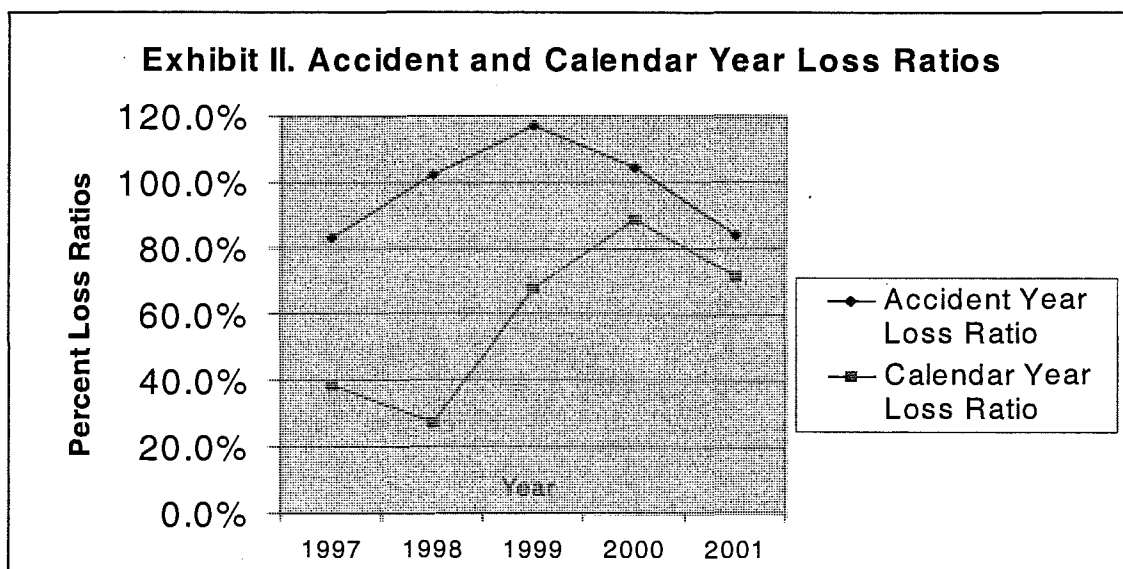
Source: National Council on Compensation Insurance

## Calendar Year and Accident Year Loss Ratios

Tracking loss and loss adjustment expense ratios is one way to evaluate the experience of insurers writing workers' compensation policies in Maine. These ratios indicate what percent of premium is used to settle and pay for losses. In addition to accident year loss ratios, Exhibit II shows calendar year loss ratios. Calendar year loss ratios compare losses incurred in a year to the premiums earned in that year. However, only a small portion of the losses are attributable to premiums earned that year. The calendar year loss ratios reflect payments and reserve adjustments (changes to estimated ultimate cost) on all claims during a particular year, including those adjustments from prior injury years. With the exception of one year, calendar year loss ratios dropped from 1994 to 1998, reflecting a downward adjustment in reserves for years prior to and immediately following the 1992 reforms. In 1999, the calendar year loss ratio rose to its highest level since 1994 and another significant increase occurred in 2000.

While calendar year data is relatively easy to compile and is useful in evaluating the financial condition of an insurance company, accident year data is more useful in evaluating the claim experience during a particular period because it better matches premium and loss information. In addition, the accident year experience is not distorted by reserve adjustments on claims that occurred in prior periods, possibly under a different law.

From 1994 through 1999, advisory loss costs were lowered, the market became more competitive, and rates charged by insurers decreased. Premiums decreased and the accident year loss ratios increased. In 1997 and 1998, indemnity losses increased, while rates continued to decrease. The 1999 accident year loss ratio was 117.3, indicating that \$117 was paid or is expected to be paid in losses and loss adjustment expenses for every \$100 earned in premium. In 2000, the loss ratio was 104.8. Premiums earned by Maine insurers increased from less than \$135 million in 1999 to over \$189 million in 2001 and the accident year loss ratio decreased because incurred losses increased less than premiums earned. The ratios do not include amounts paid by insurers for selling and general expenses and taxes, nor do they reflect investment income.



Source: National Council on Compensation Insurance

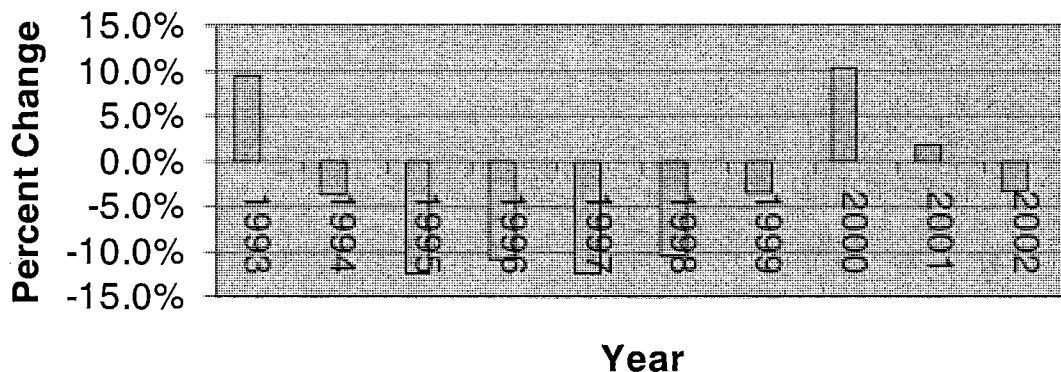
## PART II. LOSSES IN WORKERS' COMPENSATION

### Changes in Advisory Loss Costs

The National Council on Compensation Insurance (NCCI) files advisory loss costs on behalf of workers' compensation carriers. The advisory loss costs reflect the portion of the rate that applies to losses and loss adjustment expenses. Advisory loss costs do not account for what the insurer pays for general expenses, taxes, and contingencies, nor do they account for profits and investment income. Under Maine's competitive rating law, each insurance carrier determines what it needs to cover those items.

Exhibit III illustrates that from 1994 through 1999, Maine witnessed six consecutive decreases in advisory loss costs. This translated into lower premiums for Maine employers. On March 8, 2000, an increase in the advisory loss costs took effect. This increase was due to loss experience, to an increase in permanent partial impairment benefits, and to an adjustment to correct a prior data reporting problem. Another smaller increase in advisory loss costs took effect on January 1, 2001. These increases were followed by a 3.4 percent decrease in advisory loss costs for calendar year 2002. NCCI has recently filed for a 5.3 percent increase effective January 1, 2003, and the filing is currently being reviewed by the Bureau of Insurance. Changes in advisory loss costs tend

**Exhibit III. Percent Change in  
Advisory Loss Costs, 1993-2002**

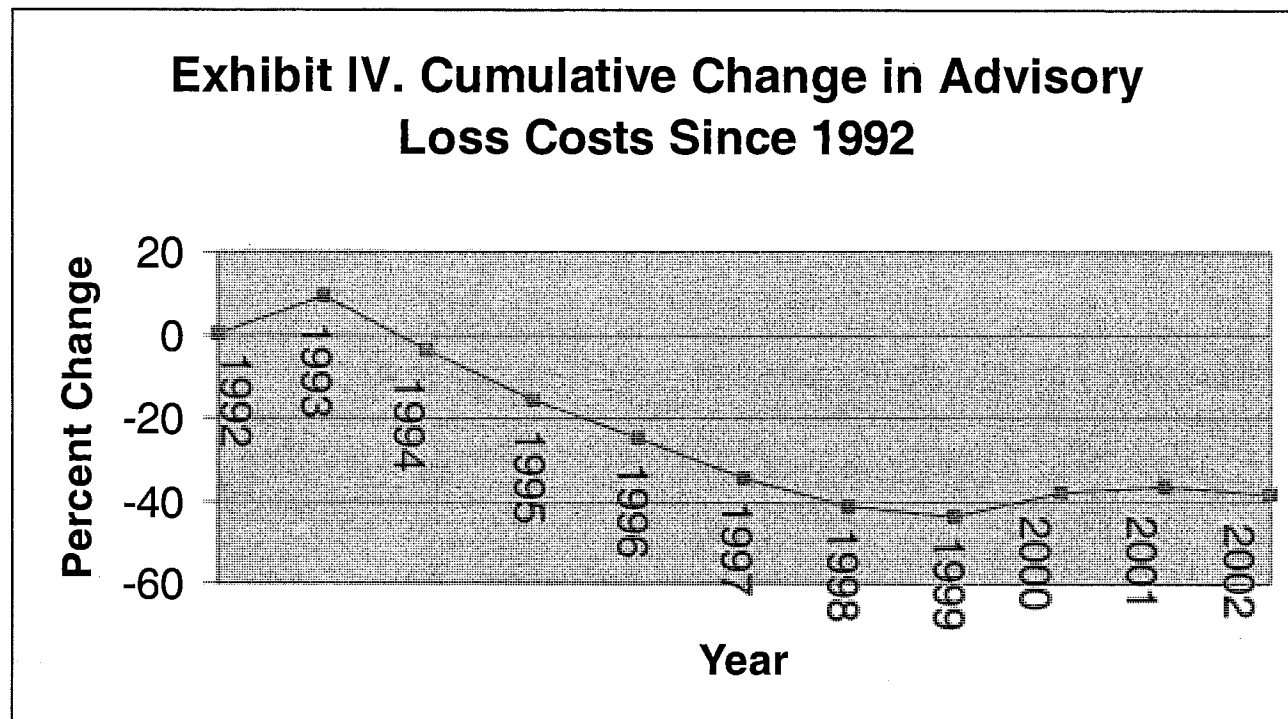


to lag behind changes in actual experience and precede changes in rates.

Source: National Council on Compensation Insurance

## Cumulative Changes in Advisory Loss Costs

Advisory loss costs in 2002 are more than 38 percent lower than they were a decade ago. Some classifications experience increases and others experience decreases in the advisory loss cost portion of the rates. In 1999, advisory loss costs reached their lowest point in many years. Since that point, they have risen five percent.



Source: National Council on Compensation Insurance

## PART III. MARKET STRUCTURE AND COMPETITION

### Market Concentration

A measure of competition is market concentration. Greater concentration means that there are fewer insurers in the market and therefore less competition. Conversely, less concentration indicates that there are more insurers in the market and more competition.

In 1992, market concentration was great, with few insurers willing to voluntarily write workers' compensation insurance in Maine. The assigned risk or residual market pool, designed to insure employers who were unable to secure workers' compensation coverage in the voluntary market, provided a significant share of overall coverage.

Beginning January 1, 1993, Maine Employers Mutual Insurance Company (MEMIC), an employer owned assessable mutual insurance company, replaced the residual market as the insurer of last resort. MEMIC inherited a block of business previously written by insurers who acted as servicing carriers for the pool. MEMIC serves as the carrier of last resort and writes voluntary business; its market share, in terms of written premium, now exceeds 51 percent. As of October 1, 2002, 241 companies are authorized to write workers' compensation coverage in Maine. However, this number is not the best indicator of market concentration, as some insurers have no written premium. The following table shows the number of carriers, by level of written premium, for those carriers writing workers' compensation insurance in 2001.

<b>Table I: Number of Companies by Level of Written Premium--2001</b>	
<b>Amount of Written Premium</b>	<b>Number of Companies At That Level</b>
>\$10,000	113
>\$100,000	83
>\$1,000,000	28

Source: Annual Statements Filed with the Bureau of Insurance

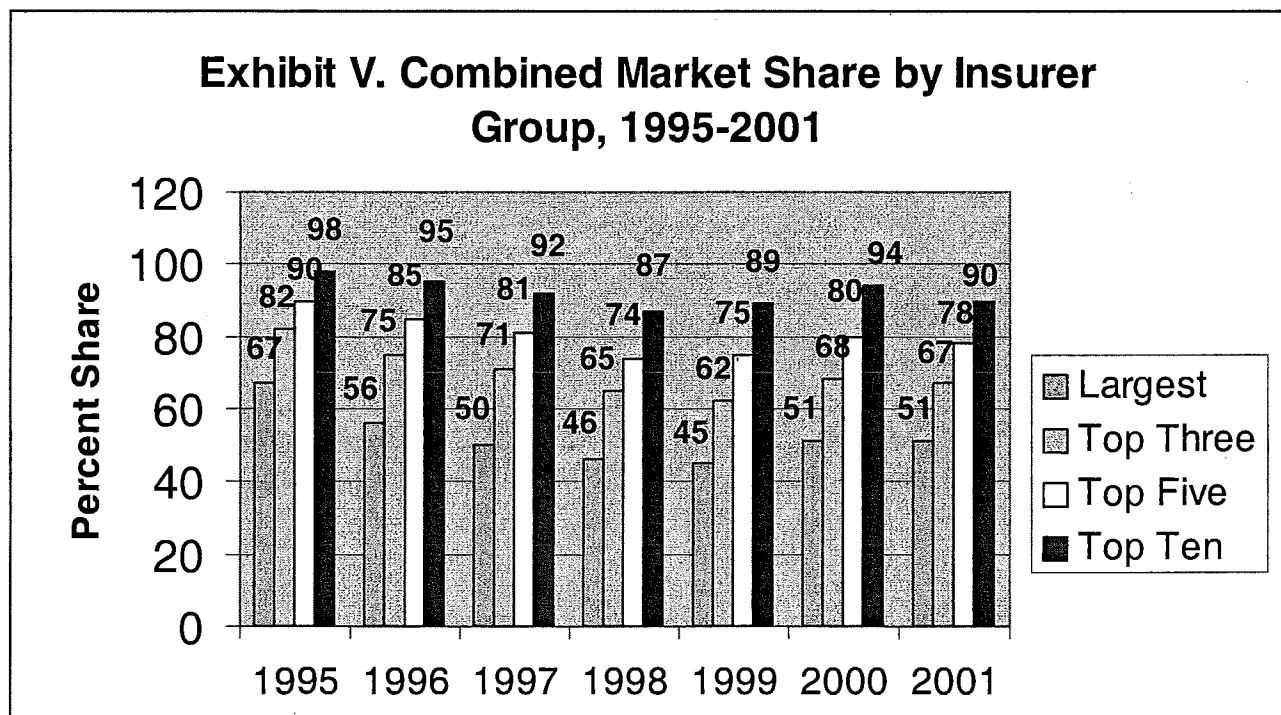
Looking only at market concentration does not give a complete picture of market competition. A discussion of self-insurance, found in the Alternative Risk Markets section, gives a more balanced perspective.



## Combined Market Share

Exhibit V illustrates the percent market share of the largest commercial insurers in terms of written premium, as well as the percent market share for the top three, top five and top ten insurer groups. Maine Employers' Mutual Insurance Company (MEMIC) has the largest market share. Their share fell from 67 percent of the commercially insured market in 1995 to 45 percent in 1999. That trend reversed in 2000 and, for the second year in a row, MEMIC held 51 percent of the market share.

In 2001, market share of the top ten insurer groups fell by four percent. Other groups wrote just ten percent of the workers' compensation premium in Maine but achieved a slightly greater market share. In terms of dollar amounts, MEMIC wrote nearly \$105 million in premium in 2001, \$17 million more than it did in the previous year. The top three groups, including MEMIC, wrote over \$136 million in business, \$18 million more than in 2000. The top five groups had over \$159 million in written premium, \$21 million above the prior year. The top ten groups wrote nearly \$184 million in premium in 2001, over \$21 million more than in 2000. The remaining groups had written premium of around twenty million dollars, up \$10 million from the previous year.



Source: Annual Statements Filed with the Bureau of Insurance

## PART IV. DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

### Number of Carriers in the Maine Insurance Market, 1993-2002

The table below (Table II) shows that since the 1992 reforms, insurers have come back into the workers' compensation market in Maine and continue to enter it, although in smaller numbers. The largest influx occurred in 1996 and 1997, when 75 insurers entered or re-entered the market. During that same period, 12 insurers exited the market. Since 1997, 71 insurers have become authorized to write workers' compensation insurance. Eight insurers have had their licenses suspended during the past two years. This continued increase in the number of carriers authorized to write workers' compensation insurance illustrates there is no significant barrier to entry.

<b>Table II: Entry and Exit of Workers' Compensation Carriers</b>					
<b>Year</b>	<b>Number of Carriers</b>	<b>Number Entering</b>	<b>Number Exiting</b>	<b>Net Change (Number)</b>	<b>Net Change (Percent)</b>
1992	90	-	-	-	-
1993	96	8	2	6	6.7
1994	106	10	0	10	10.4
1995	115	11	2	9	8.5
1996	149	43	9	34	29.6
1997	178	32	3	29	19.5
1998	187	9	0	9	5.1
1999	198	11	0	11	5.9
2000	210	12	0	12	6.1
2001	228	24	6	18	8.6
2002	241	15	2	13	5.7

Source: Bureau of Insurance Records.

Figures as of October 1, 2002

Note: Beginning in 2001, the number exiting includes companies under suspension.

No companies voluntarily terminated their authority to write workers' compensation insurance in 2002.

The information in Table III shows market share by insurance group, rather than by individual carriers, from 1995-2001. Information by group is more relevant when assessing competition because carriers in a group are under common control and are not likely to compete with one another. MEMIC's share is expected to be high, since they service all employers who do not obtain coverage in the voluntary market. To get a more complete picture, it would be necessary to look at the number of employers insured with each carrier.

<b>Table III. Percent Market Share for Top Ten Insurance Groups, By Amount of Written Premium, 1995-2001</b>							
<b>Insurance Group</b>	<b>2001 Share</b>	<b>2000 Share</b>	<b>1999 Share</b>	<b>1998 Share</b>	<b>1997 Share</b>	<b>1996 Share</b>	<b>1995 Share</b>
Maine Employers' Mutual	51.5	51.2	44.7	46.2	50.4	56.0	67.4
Liberty Mutual Group	7.9	9.5	7.0	3.7	4.9	2.2	*
WR Berkeley Corp.	7.4	7.5	7.7	9.5	10.3	9.4	8.8
Royal & Sun Alliance USA <sup>1</sup>	6.1	5.0	4.7	*	*	1.4	0.5
Allmerica Financial Corp.	5.4	6.4	9.1	8.8	9.9	9.3	4.9
White Mountains Group <sup>2</sup>	4.5	5.3	6.1	6.0	5.3	5.8	5.8
Guard Insurance Group	2.7	2.2	*	*	*	*	*
Zurich Insurance Group	2.0	2.2	2.1	3.5	3.7	4.2	3.2
CNA Insurance Group	1.4	*	1.9	*	*	*	*
Amerisafe Group	1.4	2.2	*	*	*	*	*
Lumbermen's Mutual Casualty Group	1.3	*	*	*	*	*	*
Citigroup	1.2	2.6	2.4	2.1	2.2	*	*
St. Paul Group	1.1	*	*	*	*	*	0.5
ACE Ltd	1.0	*	*	*	*	*	*
Hartford Fire & Casualty	1.0	*	*	*	1.4	*	*
Star Insurance Group	0.6	*	*	*	*	*	0.5
Sentry Insurance Group	0.5						

Source: Annual Statements Filed with the Bureau of Insurance

**Notes:**

\* Indicates group was not among the top 10 groups for written premium that year.

<sup>1</sup>On July 19, 1996, Royal Insurance Holdings merged with Sun Alliance Group forming a new holding company, Royal & Sun Alliance USA.

<sup>2</sup>Formerly known CGU Insurance Group

Table IV shows the percent of market share for the top ten carriers for each calendar year from 1995 through 2001. MEMIC's market share increased by 6.5% from 1999 to 2000, an indication of market hardening. Its market share remained at over 51 percent in 2001, indicating that some employers may be having difficulty getting insurance coverage elsewhere. No other workers' compensation carrier accounts for more than seven percent of market share. The top ten companies combined write 76 percent of the business.

<b>Table IV. Percent Market Share for Top Ten Insurance Carriers, By Amount of Written Premium, 1995-2001</b>							
<b>Insurance Carrier</b>	<b>2001 Share</b>	<b>2000 Share</b>	<b>1999 Share</b>	<b>1998 Share</b>	<b>1997 Share</b>	<b>1996 Share</b>	<b>1995 Share</b>
Maine Employers' Mutual	51.5	51.2	44.7	46.2	50.4	56.0	67.4
Acadia Insurance Company	6.8	7.0	7.6	9.1	10.3	9.4	8.6
Commercial Union/York <sup>1</sup>	3.8	4.4	4.6	3.1	1.4	2.1	2.0
Hanover Insurance Co.	3.3	2.5	1.8	*	2.5	2.5	
Security Ins. Co. of Hartford	2.7	1.6	*	*	*	*	*
Norguard	2.0	1.3					
Citizens Insurance Co.	1.7	2.5	3.1	3.1	3.2	3.1	3.4
Peerless Ins. Co.	1.5	*	*	*	*	1.6	1.8
American Interstate Ins. Co	1.4	2.2	1.2	*	*	*	*
Liberty Insurance Corp.	1.3	*	1.4	1.2	2.4	*	*
Excelsior	1.1						
Employer's Ins. Of Wausau	1.1	*	*	1.2	*	*	*
Fire & Casualty Co. of CT.	1.0						
Liberty Mutual Ins. Co	0.9						
Royal Indemnity	0.8	*	*	1.5	*	*	*
Northern Ins. Co. of N.Y.	0.7	*	*	*	1.7	1.5	*
Liberty Mutual Fire Ins Co	0.7	2.8	2.8	1.2	1.8	*	*
Amguard	0.6						
Netherlands	0.6	*	*	1.2	*	*	*
Cadillac Mountain	0.6						
Travelers Insurance Co.	0.6						
St. Paul Fire & Marine Ins.	0.6						

Source: Annual Statements Filed with the Bureau of Insurance

**Notes:**

\* Indicates carrier was not among the top 10 carriers for written premium that year.

<sup>1</sup> York Insurance Co. of Maine became Commercial Union York Insurance Co. on October 21, 1997, following acquisition by Commercial Union Insurance Co. It is now known as One Beacon.

## Rate Differentials

Prior to the 1992 Blue Ribbon 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 its own experience, there was little or no difference in the manual rates. The Superintendent of Insurance established maximum rates 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. The National Council on Compensation Insurance (NCCI) makes an annual advisory filing of pure premium rates, which provide for losses and loss adjustment expenses. This filing does not include all other expenses and profit provisions, which are established by insurance carriers in Maine's open competitive market.

Beginning in 1994, the Bureau approved six straight annual advisory filing decreases. The cumulative impact of these decreases was a 43 percent reduction in advisory loss costs. The Bureau approved a 10.3 percent increase in loss costs, effective March 8, 2000. A 1.9 percent increase in overall advisory loss costs was approved effective January 1, 2001. The Bureau approved a filing for a 3.4 percent decrease effective January 1, 2002. Advisory loss costs have fallen over 38 percent since 1992. Under consideration now is a proposed 5.3 percent increase, to be effective January 1, 2003.

As of October 1, 2002, 241 insurance carriers have filed and received approval from the Bureau to sell workers' compensation insurance in Maine. Not all companies that are authorized to write coverage in Maine have rates on file, and only those who do have rates on file can actually sell workers' compensation insurance in this state.

The table on the next page (Table V) 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. MEMIC is unique in that it offers loss free credits of up to 25 percent based on an employer's loss history to those employers that are not experience rated. These credits are not reflected in this table. For many classification codes, the wide range of rates underscores the competitive nature of workers' compensation insurance in Maine and the importance for employers of exploring options in securing coverage for their workers' compensation claims. Insurers are now very selective in accepting risks for the lower-priced plans. Their underwriting is based on such things as prior-claims history, safety programs, and classifications.

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

An annual report ranking state workers' compensation costs is 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 the 42<sup>nd</sup> most expensive state for workers' compensation insurance in the manufacturing industry. Maine's rank dropped

considerably over the next two years to 23<sup>rd</sup> in 1998. Our rank then rose over each of the next three years and in 2001 Maine had climbed to the 39<sup>th</sup> position. According to a recently released report for 2002, Maine is now 35<sup>th</sup> in terms of comparative costs in the manufacturing industry.

<b>Table V: MEMIC Standard Rate and the Lowest Available Rate for Selected Classifications Effective January 1, 2002</b>			
<b>Class Code</b>	<b>Description</b>	<b>MEMIC Standard Rate</b>	<b>Industry Low Rate</b>
2111	CANNERY	\$5.57	\$3.56
2286	WOOL SPINNING & WEAVING	\$8.95	\$4.22
2501	CLOTHING MANUFACTURING	\$4.49	\$2.58
2660	BOOT OR SHOE MANUFACTURING	\$4.54	\$3.29
2702	LOGGING OR LUMBERING	\$33.39	\$19.98
2709	MECHANIZED LOGGING	\$9.38	\$6.77
2710	SAWMILL	\$13.78	\$8.20
2721	CERTIFIED LOGGING	\$18.58	\$9.00
2841	WOODEN WARE MANUFACTURING	\$6.59	\$4.32
3629	PRECISION MACHINED PARTS MFG	\$3.70	\$2.02
3632	MACHINE SHOP	\$5.54	\$2.98
3681	TV, RADIO, TELE/ TELECOM DEVICE MFG	\$2.73	\$1.51
3724	MACHINERY/ EQUIP ERECTION OR REP	\$16.56	\$8.01
4207	PULP MFG	\$1.81	\$1.12
4239	PAPER MFG	\$3.42	\$2.13
4279	PAPER GOODS MFG	\$3.95	\$2.58
4299	PRINTING	\$3.88	\$2.30
4361	PHOTOGRAPHERS	\$2.58	\$1.66
4484	PLASTICS MFG: MOLDED PRODUCTS	\$4.76	\$2.69
4511	ANALYTICAL CHEMIST	\$1.26	\$0.70
4693	PHARMACEUTCL/SURGICAL GOODS MFG	\$3.42	\$1.82
5183	PLUMBING	\$7.28	\$4.30
5190	ELECTRICAL WIRING WITHIN BUILDINGS	\$4.80	\$3.35
5191	OFFICE MACHINE OR APPLIANCE INSTAL	\$1.53	\$0.80
5506	STREET CONSTRUCTION PAVING	\$9.84	\$4.89
5538	SHEETMETAL WORK	\$9.45	\$5.04
5606	CONTRACTOR EXECUTIVE SUPERVISOR	\$3.09	\$1.71
5645	CARPENTRY DETACHED 1 OR 2 FAMILY	\$15.89	\$9.13
6217	EXCAVATION	\$12.19	\$6.64
7228	TRUCKING LOCAL	\$15.62	\$10.55
7229	TRUCKING LONGDISTANCE	\$15.27	\$8.59
7380	DRIVERS	\$11.07	\$6.19
7539	ELECTRIC LIGHT OR POWER CO.	\$4.06	\$3.17
7600	TELEPHONE OR TELEGRAPH CO.	\$5.24	\$2.93
7610	RADIO OR TELEVISION BROADCASTING	\$0.38	\$0.26
7720	POLICE OFFICER	\$4.03	\$2.62

<b>Table V: MEMIC Standard Rate and the Lowest Available Rate for Selected Classifications Effective January 1, 2002 (Continued)</b>			
<b>Class Code</b>	<b>Description</b>	<b>MEMIC Standard Rate</b>	<b>Industry Low Rate</b>
8006	STORE: GROCERY/CONVENIENCE RETAIL	\$3.49	\$1.83
8008	STORE: CLOTHING/DRY GOODS RETAIL	\$1.46	\$0.93
8010	STORE: HARDWARE	\$2.30	\$1.62
8017	STORE: RETAIL NOC	\$2.31	\$1.58
8018	STORE: WHOLESALE NOC	\$5.36	\$3.19
8024	SEAFOOD DEALER WHOLESALE	\$10.54	\$6.40
8033	STORE: MEAT, GROCERY AND PROVISION	\$2.66	\$1.69
8039	STORE: DEPARTMENT-RETAIL	\$2.17	\$1.38
8044	STORE: FURNITURE	\$4.19	\$2.35
8058	BUILDING MATERIAL DEALER-NEWMAT.	\$2.58	\$1.67
8107	MACHINERY DEALER	\$5.59	\$3.30
8227	CONSTRUCTION PERMANENT YARD	\$11.93	\$5.69
8232	LUMBER YARD NEW MAT.WHOLESALE	\$4.58	\$2.57
8350	GASOLINE DEALERS	\$7.25	\$3.88
8380	AUTO SERVICE OR REPAIR CENTER	\$5.15	\$2.94
8601	ARCHITECT OR ENGINEER CONSULTING	\$1.44	\$0.85
8742	SALESPERSONS, COLLECTORS	\$0.95	\$0.68
8803	AUDITORS, ACCOUNTANT TRAVELING	\$0.24	\$0.16
8810	CLERICAL OFFICE EMPLOYEES	\$0.63	\$0.40
8820	ATTORNEY	\$0.73	\$0.51
8829	CONVALESCENT OR NURSING HOME	\$5.08	\$3.15
8832	PHYSICIAN	\$0.91	\$0.54
8833	HOSPITAL PROFESSIONAL EMPLOYEES	\$1.75	\$0.99
8835	NURSING-H.H., PUBLIC & TRAVELING	\$6.79	\$3.54
8861	CHARITABLE OR WELFARE ORGAN. PROF.	\$1.62	\$0.80
8868	COLLEGE: PROFESSIONAL EMPLOYEES	\$0.77	\$0.50
8901	TELEPHONE OR TELEG CO. OFFICE	\$0.38	\$0.25
9014	BUILDING OPER. BY CONTRACTORS	\$6.23	\$3.85
9015	BUILDING OPER. BY OWNER	\$5.47	\$3.45
9040	HOSPITAL ALL OTHER EMPLOYEES	\$4.68	\$2.62
9052	HOTEL: ALL OTHER EMPLOYEES	\$3.32	\$2.10
9058	HOTEL: RESTAURANT EMPLOYEES	\$2.60	\$1.62
9060	CLUB-COUNTRY, GOLF, FISHING OR YACHT	\$2.62	\$1.53
9063	YMCA, YWCA, YMHA, OR YWHA	\$1.51	\$0.93
9083	RESTAURANT: FAST FOOD	\$2.73	\$1.75
9101	COLLEGE: ALL OTHER EMPLOYEES	\$4.61	\$2.71
6824F	BOATBUILDING OR REPAIR	\$6.26	\$3.42

## **Tiered Rating, Schedule Rating, Managed Care Credits, Dividend Plans, Retrospective Rating, and Large Deductible**

Some employers have other options available that may affect the premiums they pay for workers' compensation insurance. However, each of these options is available only if the insurer is willing to write a policy using them. Employers should carefully analyze certain options, such as retrospective rating (retros) and large deductible policies, before deciding on them. Below is a description of each:

- ❑ **Tiered rating** means that an individual carrier has more than one loss cost multiplier to use, based on where a potential insured falls in its underwriting criteria. It may apply to groups of insurers that have different loss cost multipliers for different companies in the group. Our records indicate that 74 percent of companies either have different loss cost multipliers on file or are part of a group that does.
- ❑ **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 of up to 25 percent. Seventy percent of the insurance companies with filed rates in Maine have received approval to utilize scheduled rating.
- ❑ **Managed Care Credits** are credits offered by carriers to employers who use managed care plans. Nearly 20 percent of insurers offer managed care credits.
- ❑ **Dividend Plans** provide a return premium to the insured after the policy expires, if losses are lower than average. Premiums are not increased if losses are greater than average. Because losses may still be open for several years after policy expiration, dividends will usually be paid periodically with adjustments for any changes in the amount of incurred losses. Dividends are not guaranteed.
- ❑ **Retrospective rating** means that an employer's final premium is a direct function of their loss experience for that policy period. If an employer controls its losses, it receives a reduced premium; conversely, if the employer has a bad loss experience, it receives an increased premium. Retrospective rating utilizes minimum and maximum amounts for a policy and is typically written for larger, sophisticated employers.
- ❑ **Large deductible plans** are for employers who agree 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 bill the deductible amounts to the insured employer. The advantages of this product are discounts for assuming some of the risk. It is an alternative to self-insurance.



## PART V. ALTERNATIVE RISK MARKETS

### Self-Insurance

Self-Insurance plays an important role in Maine's workers' compensation market. Self-insured employers pay for losses with their own resources rather than by purchasing insurance. They may, however, choose to purchase insurance for losses that exceed a certain limit. An advantage of being self-insured includes better cash flow. Since there are no premiums, the employer retains the money until it pays out on losses. Employers considering self-insurance feel they would be better off not paying premiums and are likely to have active programs in safety training and injury prevention.

The percent of Maine's total workers' compensation insurance market represented by self-insured employers and groups increased in 2001, for the first time in six years. At 43.9 percent of the total market, self-insurance is at its second lowest level since the 1992 reforms. A greater market share in self-insurance could indicate a perception by insureds that premiums in the insurance market are too high.

From 1993 to 1999, the estimated annual standard premium for self-insureds declined from \$204 million to \$116 million. Since that time, the estimated standard premium for self-insured employers has increased by over 37 percent. The estimated standard premium for individual self-insurance is determined by taking the advisory loss cost and multiplying it by a factor of 1.2, as specified in statute, and multiplying that figure by the payroll amount divided by 100 and then applying experience modification. As advisory loss costs, and therefore rates, decline, so does the estimated standard premium. Group self-insurers determine their own rates subject to review by the Bureau of Insurance.

<b>Table VI: Estimated Standard Premium for Self-Insured Employers and Percent of the Workers' Compensation Market Held by Self-Insurers, 1993-2001</b>		
<b>Year</b>	<b>Estimated Standard Premium</b>	<b>Percent of Workers' Comp. Market (in annual standard premium)</b>
2001	\$159,548,698	43.9
2000	\$126,096,312	42.1
1999	\$116,028,759	45.4
1998	\$120,799,841	49.0
1997	\$147,851,730	49.9
1996	\$167,983,925	51.5
1995	\$180,587,422	51.9
1994	\$202,430,339	49.9
1993	\$204,111,260	44.7

Source: Annual Statements Filed with the Bureau of Insurance.

#### Notes:

Estimated standard premium figures are as of December 31.

The percent of the workers' compensation market held by self-insured employers is calculated by taking the estimated standard premium for self-insureds, dividing it by the sum of the estimated standard premium for self-insureds and the written premium in the regular insurance market, and multiplying that figure by 100.

## Self-Insurance

As of October 1, 2002 there were 19 self-insured groups representing approximately 1,235 employers as well as 98 individual self-insured employers in Maine. Although the number of self-insured groups has remained the same, the number of employers in those groups has fluctuated slightly. After four years of reductions, the number of individually self-insured employers increased.

<b>Table VI: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 1994-2002</b>			
<b>Year</b>	<b># of Self-Insured Groups</b>	<b># of Employers In Groups</b>	<b># of Individually Self-Insured Employers</b>
2002	19	1,235	98
2001	19	1,281	92
2000	19	1,247	98
1999	20	N/A	115
1998	21	N/A	118
1997	21	N/A	155
1996	20	N/A	147
1995	20	N/A	145
1994	20	N/A	112

Source: Bureau of Insurance Records

### Notes:

For the purposes of self-insurance, affiliated employers are considered separate employers. N/A indicates that the information is not available.

The number of individually self-insured employers and self-insured group information beginning in 2001 is as of October 1 of the year listed. Figures for years 2000 and before are as of the beginning of the year listed.

## Conclusion

There are many insurers authorized to write workers' compensation insurance in Maine and competition among insurers is still present. Some employers however are not benefiting from this because of the hardening of the workers' compensation market. In years past, insurers competed more aggressively for business and gave discounted rates, offered schedule credits and issued dividends. These rating plans are being offered less in today's environment.

MEMIC's market share, in terms of written premium, is the highest it has been in five years. This may be an indicator that more employers are turning to MEMIC out of necessity; however, MEMIC does not maintain records of the number of employers insured with them because they were not able to obtain coverage elsewhere.

Though MEMIC writes over half of the workers' compensation business in the state, twenty-eight companies wrote more than one million dollars in annual premium in 2001. Employers that maintain a safe work environment and control their losses should continue to see insurers competing for their business. New businesses and businesses with unfavorable loss experience will have fewer options available.

The first increase in advisory loss costs since the 1992 reform occurred in March of 2000. Another small increase became effective in January 2001. On January 1, 2002, loss costs decreased by 3.4 percent. Recently, the National Council on Compensation Insurance filed for a 5.3 percent increase in advisory loss costs. If approved, Maine's loss costs will still be 35 percent lower than they were in 1993. Increases and decreases in advisory loss costs are not applied uniformly across all classifications. As a result, some classifications may go up in cost while others go down.

A study of the manufacturing industry, conducted by Actuarial & Technical Solutions, Inc., shows that Maine's benefit levels are among the highest in the nation. Possible statutory changes in benefits for workers with permanent partial impairment may have an affect on costs in the upcoming years. Criteria found in Title 39-A §213(4), to determine whether extensions of payment of permanent partial impairment benefits should occur, has been a source of controversy. Premiums charged by employers reflect 520 weeks of benefit payments. Premiums are held in escrow pending legal interpretation of the duration of benefits.

Based on the number of carriers in the marketplace and the fact that rate levels are still well below 1993 levels, Maine's workers' compensation market is much healthier than it was in the early to mid-1990s. Some insurers have more than one rating tier and some insurance groups have companies that offer different rates. Even so, some employers will not meet insurer underwriting requirements and will feel the effects of higher rates.

Additional factors that may impact the Maine workers' compensation market in 2003 include the federal legislation recently passed in response to the September 11 terrorist attacks, whether the economy improves or remains sluggish, and the cost and availability of reinsurance. Costs of reinsurance, which are expected to rise, will raise the costs of many lines of insurance including workers' compensation insurance.

The Bureau of Insurance has developed a useful reference for employers entitled, An Employer's Guide to Workers' Compensation Insurance in Maine, which may be found at <http://www.maine.gov/pfr/ins/workcomp.htm>

**SECTION III**

**BUREAU OF LABOR STANDARDS**



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## INTRODUCTION

### **The Role of the Bureau of Labor Standards in the Protection of Maine Workers**

The Bureau of Labor Standards (BLS) works in collaboration with the Maine Workers' Compensation Board (WCB) in the prevention of occupational injuries and illnesses through a variety of initiatives. Under Maine Statute, Title 26 MRSA § 42-A, the Bureau has the power and duties to collect, assort, and arrange statistical data on the number and character of industrial accidents and their effect upon the injured. BLS is also charged with establishing and supervising safety education and training programs. Additionally, the Maine Department of Labor is responsible for overseeing the employer-employee relationship in the state. To successfully accomplish its mandated functions, the Bureau works with the Maine Workers' Compensation Board to gather data relative to injuries and illnesses sustained by Maine workers.

The Bureau of Labor Standards and the Maine Workers' Compensation Board collect their data through various collection mechanisms. Both agencies strive for the highest quality of available data. The following data collection programs are administered by BLS: 1) the Census of Fatal Occupational Injuries, 2) the Federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses, and 3) the Federal Occupational Safety and Health Administration's (OSHA) Data Collection Form. The Workers' Compensation Board collects data from its *First Report of Occupational Injury or Disease*. The Bureau electronically imports the contents of these reports for analysis and as supplements to its own data. The combined information is then used for BLS safety initiatives such as training, education, and public sector enforcement activities.

**Section 1** of this report will describe the occupational safety and health initiatives developed and implemented by the Bureau of Labor Standards and its partners in the occupational safety and health community. **Section 2** will provide an epidemiological profile on occupational injuries and illnesses in Maine. **Section 3** will discuss the efforts of the Bureau and the Workers' Compensation Board in gathering quality and timely data that is critical for developing appropriate safety interventions within the different sectors of industry.



## SECTION 1. OCCUPATIONAL SAFETY & HEALTH INITIATIVES

The Bureau of Labor Standards has five divisions, each designed to accomplish some aspect of the Bureau's chief mission: "**A Safe Work Environment and Fair Wages**" for all Maine workers.

### 1A. Technical Services Division

The Research & Statistics (R&S) Unit in the Technical Services Division (TSD) is responsible for the administration of several occupational safety and health surveys. For each of them, more information and statistics are available on our Website or upon request.

As mentioned in the introduction, since 1972 the Bureau has coded, tabulated, and summarized data from Maine's Workers' Compensation *First Reports*. This started as a program with money granted from the Federal Bureau of Labor Statistics, but was continued when funding ended over a decade ago. The coding is directly linked to the Workers Compensation administrative data for each case and is, therefore, a wealth of information on individual cases. It is our primary data source for prevention purposes because we can look at so many dimensions such as the individual employer, the age of the injured, how long the injured person has worked, their occupation, and so on. Because the data is tied in to the Workers Compensation administrative data, it makes the consistency and completeness of their administrative data critical. The data from this coding is summarized and published in paper or on the web for most years in a series titled "Characteristics of Work-Related Injuries and Illnesses in Maine". Data from this program follows in sections 2A through 2E.

Also since 1972, the Bureau has partnered with the Federal Bureau of Labor Statistics in a cooperative grant to collect data on occupational injuries and illnesses. For the year 2001, BLS surveyed 2,500 private establishments and 500 public sector agencies asking these businesses about their experience with OSHA recordable injuries and illnesses. The definition of these cases is different from the Workers' Compensation definitions and has been stable from the 1970's until recently. In the past, this data has helped identify changes to Workers' Compensation *First Reports* data process versus actual changes in the workplace. (This will be the last year the statistics will be comparable to the past because of changes instituted, beginning with the 2002 data.) Data from this program is best used to identify state-wide and industry-level changes and, with cautions, comparisons to other states. Unlike all the other data systems, this survey collects hours worked; and through the application of mathematical formulas, we are able to standardize rates of injury and illness, based on the number of full-time equivalent employees. This enables us to adjust the numbers to derive rates that take into consideration differences in overtime, part-time, and the number of workers in general. The data for this survey is summarized and published (in paper or on the Web) in the series titled "Occupational Injuries and Illnesses in Maine". Data from this survey and more information on it is included in sections 2F through 2H.

Since 1992, the Bureau of Labor Standards has partnered again with the Federal Bureau of Labor Statistics to administer the Census of Fatal Occupational Injuries (CFOI) program for Maine.

The CFOI program collects data on all fatal occupational injuries and illnesses. The data is published in an annual publication series titled "Fatal Occupational Injuries in Maine". Data from this census is in sections 2I through 2J.

Since 1993, the Bureau has received a grant from the federal Occupational Safety and Health Administration (OSHA) to collect data on specific worksites' injury and illness incidence rates. The survey used is called the OSHA Occupational Injury and Illness Data Collection Form. The respondents fill out this form using information from their OSHA 200 Log for 2000. The OSHA regional offices use the data collected as leverage for pursuing programs that promote occupational safety and health. The year 2000 survey resulted in 243 Maine companies identified as having an incidence rate of eight or more injuries/illnesses per 100 full-time employees. This list will serve as a basis for OSHA's Local Emphasis Program (LEP). An LEP develops when OSHA, after examining the data collected, determines that a particular industry's incidence rate of injury and illness is high and that, as a consequence, OSHA will be conducting random inspections. The companies are encouraged to correct any safety hazards in anticipation of an OSHA inspection. They can conduct their own safety inspections, hire a consultant for that purpose, or utilize safety consultants from an OSHA voluntary safety program. The Bureau's SafetyWorks! program described later is such a program.

#### **New in 2002**

TSD took the initiative to create a Maine Occupational Research Agenda (MORA). MORA is modeled after the National Institute for Occupational Safety & Health's National Occupational Research Agenda (NORA). Maine is the only state that has developed a state-based, on-going occupational research agenda. The Division's Occupational Safety & Health Epidemiologist, in collaboration with the MORA Steering Committee members, has developed the research agenda and is moving it forward. MORA committee members include education and health professionals, members of several government agencies, and insurers. The mission of MORA is to develop and refine occupational safety and health research priorities and guide their implementation for Maine. This justifies research efforts tailored to the state's needs and helps prioritize grant applications for research. See MORA's website, [www.maine.gov/labor/bls/MORA.htm](http://www.maine.gov/labor/bls/MORA.htm), for more information.

The Bureau is currently collaborating with the National Institute of Occupational Safety and Health (NIOSH) and the Council for State and Territorial Epidemiologists (CSTE) in developing a surveillance model of core occupational safety and health indicators for collecting quality data that are comparable among all states. This year, the Bureau was awarded a three-year, \$250,000 grant for this and upcoming work. This project will be beneficial to Maine when researching relatively rare occupational injuries and illnesses. Having comparable data from other states will assist BLS in identifying risk factors by providing a larger pool of uniformly collected cases to research and analyze.

#### **Grants Awarded in 2002**

The Research and Statistics Unit applied for and was awarded a three-year \$250,000 NIOSH Capacity Building Grant. The grant involves developing Worker Safety and Health Indicators for Maine Workers, working with MORA and other relevant state and national OSH advisory groups. The principal investigator for the project is the department's occupational safety and health epidemiologist, Kim Lim, Ph.D., MPH.

The Research and Statistics Unit applied for and was awarded a \$24,000 NIOSH conference support grant to host the second occupational safety and health symposium cosponsored with MORA and the University of New England. The theme of the symposium is "Using Research to Improve Workplace Safety and Health". The symposium will further enhance the efforts of MORA in promoting occupational safety and health research in Maine.

The Harvard-NIOSH Education and Research Center (ERC) awarded the Bureau a grant of \$5,000 to conduct "A Descriptive Study of the Exposure of Trawler Fishermen to Hazards On-board Trawlers in Maine". This project is a collaboration between trawler fisherman, the Harvard School of Public Health, the U.S. Coast Guard, the Maine Department of Marine Resources, and the Safety Office of the Port of Portland.

**Special Projects** - Beginning in 2003, the Research and Statistics Unit will begin to pilot-test a research project on occupational fatalities. This project is modeled after the National Institute for Occupational Safety and Health's Fatality Assessment, Control and Evaluation (FACE) program. The objectives of the Maine FACE project are as follows:

- a) Use the existing Maine surveillance network to identify all work-related fatalities in a timely manner and target specific fatalities for FACE investigation.
- b) Use the NIOSH/FACE model to conduct analyses of interaction between the worker, work environment and work processes to understand the nature of work-related fatalities.
- c) Use sentinel data from Maine and national FACE programs to develop safety-training programs and disseminate the findings of FACE investigations.
- d) Participate in the NIOSH sponsored FACE Consortium and Coordination Committee.
- e) Contribute to the overall development of the Maine Occupational Research Agenda (MORA) initiative in occupational safety and health research.
- f) The Research and Statistics Unit has completed a research project on the use of near miss reporting programs. The results of the study will be used to promote the development and implementation of near miss programs as a hazard surveillance tool to prevent occupational injuries and illnesses.

## **1B. Outreach and Education Division**

The Outreach and Education Division has been instrumental in the Bureau's development and marketing of BLS services. Under Maine State Law, Title 26 M.R.S.A. § 42-A (Safety Education & Training Programs) authorizes the Bureau to "establish and supervise programs for the education and training of employers, owners, employees, educators, and students in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employment. Using this mandate, the Bureau created a safety training and consultation service called "**SafetyWorks!**" Under the **SafetyWorks!** umbrella, the Bureau offers a comprehensive menu of services, including technical advice on specific situations, onsite consultations, onsite training, and centralized public training. Through its schedule of Workplace Safety and Health Classes, SafetyWorks! offers over 50 free classes a year in locations around the state, serving well over 1,000 participants a year. New course topics include permit-required confined space procedures, machine guarding, and domestic violence as a workplace safety issue (taught by Maine Employ-

ers Against Domestic Violence). Instructors also teach classes at individual worksites at the request of employers.

To extend the reach of **SafetyWorks!** classes without expanded costs, the Bureau uses the Department of Education's Asynchronous Transfer Mode (ATM) system. Under this system, classes broadcast from Augusta can reach students in up to three remote locations with two-way audio and video communication.

A special emphasis of the Outreach and Education Division is the education of young workers. To encourage employers to provide safe work experiences for their teenage workers, the Bureau of Labor Standards developed and distributes the SAFETEEN kit. The SAFETEEN kit contains separate informational brochures for employers and for teenagers, a poster, wallet cards with child labor rules, a "STOP" sticker to post on equipment minors may not use, and a booklet of specific training activities. A website, [www.safeteen.org](http://www.safeteen.org), complements the SAFETEEN kit. Over 3,000 SAFETEEN kits have been distributed since June 2001.

The curriculum, *"Starting Safely: Teaching Youth about Workplace Safety and Health"*, is another Bureau project for protecting young workers. The three-hour curriculum is designed to teach middle and high school age youth about their safety rights and responsibilities on the job. The Bureau offers certificates to students who complete the class.

In 2002, the Outreach and Education Division was authorized by Keene State College (New Hampshire) to present to educators the train the trainer course that allows them to issue OSHA cards to students. This course complements the Summer Safety Institute for Educators, which Outreach and Education has offered in conjunction with the University of Southern Maine, since 1993.

Outreach and Education has been an active partner in the development and growth of the Maine Occupational Research Agenda (MORA). MORA is sponsoring a major research conference, May 21-22, 2003 at the University of New England (UNE), Westbrook Campus.

### **1C. Workplace Safety and Health Division**

The Workplace Safety and Health (WSH) Division provides training, education, and consultation services through a staff of Occupational Safety Engineers and Industrial Hygienists. The WSH Division provides consultation services to public and private sector employers. In the private sector, BLS provides consultation services to those who have been identified by Regional Federal OSHA for inspections through its Local Emphasis Programs (LEPs). National and Regional Federal OSHA identifies employers for its LEPs and NEPs based on the summary data from the Workers' Compensation Board and the OSHA Occupational Injury and Illness Data Collection Form. A typical employer consultation may include an evaluation of records from the employer, including an analysis of their Workers' Compensation cases and/or the OSHA 200 and/or 300 Log, an environmental evaluation (a walk-through), and a check on the work processes. Consultations are advisory and cooperative in nature. The WSH Division also administers the Federal Mine Safety and Health Administration's state grant program that provides training, education, and consultation services to about 176 mining (mostly gravel and sand pit) operations in Maine.

In addition, the WSH Division enforces safety regulations **only in the public sector** and is therefore responsible for the health and safety of employers and employees of state and local governments. The WSH Division prioritizes state and local agencies for inspections based on the agencies' injury and illness data from the Workers' Compensation Board, the results of the Federal BLS survey, or a complaint from an employee or employee representative. The WSH Division inspectors conduct unannounced formal inspections of the work environment and can cite the state and local employers for non-compliance with safety and health standards, which may have monetary fines. In addition, failure to address and abate deficiencies may result in additional monetary fines. In situations where an operation or a process poses to be an immediate danger to the life or health of workers, the employer may be asked to shut down the operation; however, this is not mandatory. Again, this is only for employers in the non-federal public sector (state and local government employers).

#### **1D. Wage and Hour Division**

The Wage and Hour (W&H) Division is responsible for enforcing Maine labor laws to ensure fair employment practices and to protect young workers in the workforce. To protect young workers, the Wage and Hour Division reviews and approves between 4,000 and 6,000 minor work permit applications each year. In addition to the issuance of work permits, the Wage and Hour Division identifies employers for inspections for compliance with the Maine child labor law. Employers are identified for inspections based on combinations of the following criteria: 1) a history of past serious violations, 2) inclusion in an industry that usually hires young workers, 3) not having been inspected in the past 12 to 25 months, 4) a history of child labor permits, 5) a complaint, and 6) being randomly selected. In 2001, the Division found 4,146 instances of minors working either too early in the morning, too late in the evening, or excessive daily/weekly hours. In addition to enforcement activities to protect young workers, the Wage and Hour Division works with the Outreach and Education Division to provide educational programs in high schools to increase employers' and workers' awareness of Maine child labor laws.

#### **1E. Migrant and Immigrant Services Division**

This Division coordinates services for migrant and foreign workers in Maine. The Division has a State Monitor Advocate who works with agricultural employers for compliance with the Seasonal Agricultural Worker Protection Act and the Fair Labor Standards Act. The State Monitor Advocate monitors the payment of fair wages and ensures that the housing provided to these workers meets OSHA standards. In addition to addressing the safety and health of migrant workers, the Division provides foreign labor certification services to Maine employers who are interested in hiring foreign workers.

**Company Profiles** – Using the data from the Workers’ Compensation Board’s (WCB) *First Reports*, the Bureau of Labor Standards (BLS) can provide a Maine employer with its injury and illness experience. A company profile shows the type of disabling injuries or illnesses that were experienced by the workers. A profile will also describe the nature of injury or illness and the event or exposure that led to that incident. This information is useful to the employer in detecting patterns and in developing its own safety program.

**SafetyWorks!** –**SafetyWorks!** consultants design their safety training programs based on industry profiles generated from the data from the WCB *First Reports*. By analyzing the WCB data, **SafetyWorks!** consultants know what types of injuries and illnesses are prevalent in different industry sectors. This information is used to conduct outreach and education activities tailored to those employers and their needs.

**Public Sector Enforcement** – The BLS investigates complaints and enforces occupational health and safety laws for municipal, county, and state government helping to protect over 78,000 workers. The BLS uses data from the WCB and OSHA in selecting public sector entities for safety and health inspections.

**Wage and Hour** – The Wage and Hour Division uses the data from the WCB *First Reports* to select employers for inspection for child labor law compliance. Using the age variable, an industry profile where young workers were injured can be generated. In addition to age, the Division uses other criteria to select businesses for inspections.

**Young Workers’ Safety Initiatives** – The Outreach and Education Division uses the age and industry profiles from the WCB *First Reports* to conduct its outreach and education activities. The WCB data help identify the appropriate industries and employers for outreach and education.

**Migrant and Immigrant Services** – WCB data is used to track employers using migrant workers.

**Epidemiological Reports** – The Research and Statistics Unit generates periodic (yearly) summary reports. These are to benchmark trends in the state data and to contribute to and compare to national data sets.

- The BLS analyzes the WCB data and publishes an annual report titled “Characteristics of Work-related Injuries and Illnesses in Maine”. This report provides descriptive statistics on all disabling work-related injuries and illnesses. Other related reports can be accessed through the Bureau of Labor Standards website, [www.maine.gov/labor/bls/blsmain.htm](http://www.maine.gov/labor/bls/blsmain.htm)
- The BLS uses the WCB data to supplement the Federal Bureau of Labor Statistics’ Census of Fatal Occupational Injuries (CFOI) program to keep an accurate count of all work-related fatalities in Maine.
- The BLS uses the data from the WCB to produce an annual report to the Legislature to report on the safety and health status of Maine workers.

**Maine Occupational Research Agenda (MORA)** – The Steering Committee members use the WCB data, in addition to the Federal Bureau of Labor Statistics and OSHA data, to develop occupational safety and health research priorities and guide their implementation for Maine.

**Healthy Maine 2010** – The BLS is collaborating with the Maine Bureau of Health in developing occupational safety and health indicators for the Healthy Maine 2010 project. The data from the WCB is used as a guide for setting objectives in these safety and health indicators.

**Public Relations and Media** - The BLS uses the WCB data to supplement the Federal Bureau of Labor Statistics and OSHA data to respond to requests for information from the occupational safety and health community on the safety and health status of Maine workers.

**Grant Applications** - The BLS uses WCB data to supplement Federal Bureau of Labor Statistics and OSHA data in developing occupational safety and health grant applications. The BLS was awarded a National Institute for Occupational Safety and Health (NIOSH) Conference Support grant in hosting Maine's First Occupational Safety & Health Research Symposium. This led to the development of MORA. In another grant, BLS partnered with the Maine Bureau of Marine Resources in submitting a grant application to NIOSH for participation in the Fatality Assessment, Control, and Evaluation (FACE) program. This program is intended to conduct research on work-related fatalities and develop interventions to prevent similar fatalities from occurring in the future.

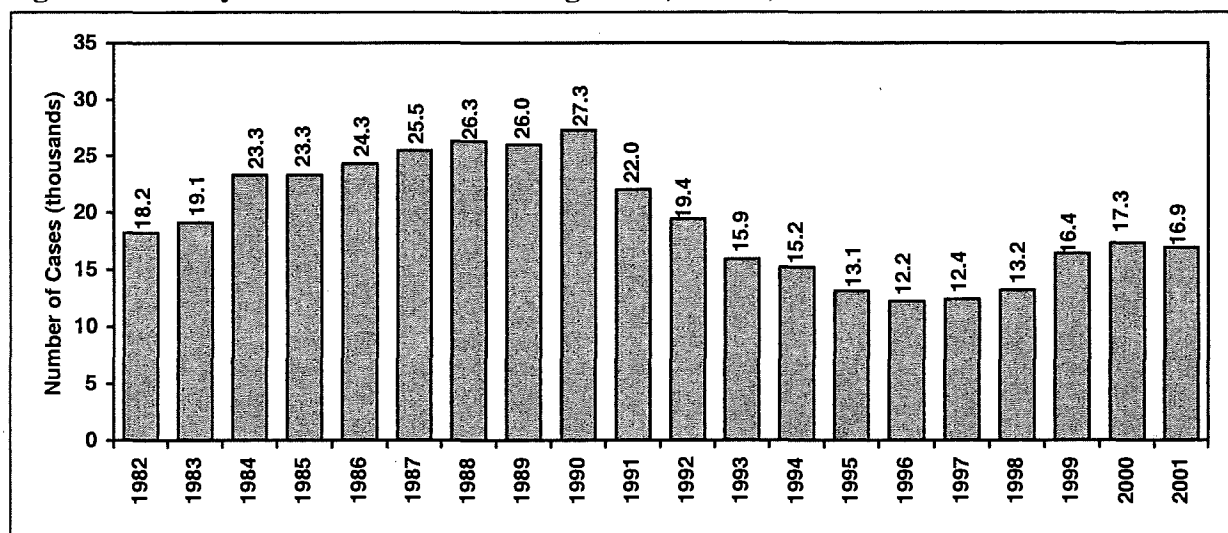
## SECTION 2. AN EPIDEMIOLOGICAL PROFILE ON OCCUPATIONAL INJURIES AND ILLNESSES, MAINE, 2001

Section 2 provides an epidemiological profile of occupational injuries and illnesses in Maine using the latest and historical data from the programs BLS administers. Sections 2A through 2E present data generated from the *First Reports of Occupational Injury or Disease* from the Maine Workers' Compensation Board (WCB). Sections 2F through 2H present data from the Federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses. Sections 2I through 2J present data from the Census of Fatal Occupational Injuries.

### 2A. A Twenty-Year Trend of Disabling Cases, Maine, 1982-2001

In 2001, there were 16,879 disabling cases reported to the Workers' Compensation Board (WCB) on a *First Report of Occupational Injury or Disease*. A disabling case is one where a worker lost one or more days of work beyond the day of the injury. This is less than a two and a half percent (2.5%) decrease from 2000. Figure 1 describes the twenty-year trend of disabling cases.

**Figure 1. Twenty-Year Trend of Disabling Cases, Maine, 1982-2001**



Source: Workers' Compensation Board *First Reports of Occupational Injury or Disease*

Changes as a result of the 1990 Reform decreased the number of reports. In 1999, the introduction of the Workers' Compensation Board's Monitoring and Enforcement (MAE) program increased the number of reports for non-compensable (less than 7 days) lost time cases. Independent data from the OSHA recordkeeping system, whose definitions and process was stable over the period, levels out the effect of some of these changes (see sections 2F and 2G).

Table 1 describes the number of disabling cases for the past seven years (1995-2001). More importantly, it describes the missing information on the variable "return to work date" on the *First Report of Occupational Injury & Disease* forms filed. There were 7,729 cases with no return to work date for the year 2001 as of the tabulation of this data in November of 2002. This is a large



proportion of cases if they are actually out of work and would be an object of great concern in terms of the social and monetary cost of these cases. We suspect, from researching known cases, that there are a significant number of these that have returned to work but for which a date has not been entered into this field. Such missing information prevents the Bureau and the Board from generating an accurate estimate of the number of workdays lost to due a work-related injury or illness. This information is critical in conducting cost-benefit analyses of workplace safety programs. Another potential use of the return to work date variable is that it will allow BLS and WCB to assess the severity of an injury or illness and determine which industry sectors are experiencing more lost workdays. If the Workers' Compensation administrative system more carefully tracked these cases, then a case without a return to work date would accurately indicate that the worker is still out. As of now, we cannot tell if the worker is still out of work due to the incident or if paperwork is missing and/or data has not made its way into that field in the WCB data system. The problem intensified after 1995.

**Table 1. Number of Disabling Cases, Maine, 1995-2001**

	1995	1996	1997	1998	1999	2000	2001
Total Disabling Cases	13,171	12,148	12,718	12,863	16,561	17,283	16,879
No return-to-work date	2,922	5,644	7,590	7,946	8,067	7,805	7,729
Percent of total	19.7%	46.3%	56.6%	55.8%	48.6%	45.1%	46.1%

**Source:** Workers' Compensation Board *First Reports of Occupational Injury & Disease*

## 2B. Geographical Distribution of Disabling Cases, Maine, 1999-2001

In 2001, the five counties with the highest disabling case rate were (in order): Sagadahoc, Waldo, Washington, Androscoggin, and Hancock. Table 2 describes the distribution of disabling cases by counties 1999 through 2001. The rate is calculated by dividing the number of disabling cases in each county by its respective employment. Geographical distributions data can be useful in health planning and setting enforcement and consultation priorities by region.

Table 2. Geographical Distribution of Disabling Cases, Maine, 1999-2001

County	1999			2000			2001		
	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000
Androscoggin	1,466	45,674	32.5	1,507	47,015	32.1	1,437	46,666	30.8
Aroostook	758	29,044	26.7	867	29,497	29.4	856	29,137	29.4
Cumberland	4,220	157,481	27.2	4,362	163,467	26.7	4,320	165,014	26.2
Franklin	284	11,781	23.9	278	11,734	23.7	285	11,611	24.5
Hancock	577	21,533	27.4	646	22,318	28.9	679	22,503	30.2
Kennebec	1,547	54,318	28.8	1,761	55,964	31.5	1,686	56,160	30.0
Knox	454	16,551	28.0	516	17,189	30.0	484	17,432	27.8
Lincoln	276	10,453	26.7	301	10,872	27.7	284	10,969	25.9
Oxford	548	17,680	31.3	506	18,011	28.1	527	17,915	29.4
Penobscot	1,592	65,461	24.7	1,789	67,402	26.5	1,652	68,510	24.1
Piscataquis	121	5,747	21.4	144	5,727	25.1	135	5,748	23.5
Sagadahoc	1,004	15,781	64.3	941	15,322	61.4	915	15,517	59.0
Somerset	548	18,939	29.3	588	19,627	30.0	562	19,032	29.5
Waldo	329	9,843	33.7	347	10,883	31.9	374	11,255	33.2
Washington	435	11,528	37.7	376	11,771	31.9	375	11,399	32.9
York	1,743	57,780	30.2	1,541	59,895	25.7	1,555	59,786	26.0
* Unknown	474	10,774	----	813	9,839	---	753	10,607	---
Total	16,561	560,368	29.6	17,283	576,533	30.0	16,879	579,261	29.1

Source: Case data from Workers' Compensation Board *First Reports of Injury or Occupational Disease*

\* Unknown represents missing information on the WCB *First Reports*.

Note: Employment data from Labor Market Information Services, Maine Department of Labor.

## 2C. Disabling Cases by Occupational Groups, Maine, 1999-2001

In 2001, about 70% of all disabling cases occurred in the following 5 major occupational groups:

- 1) Service occupations
- 2) Precision productions, Craft or Repair (includes all mechanics, construction trade workers, precision metal workers, and plant and system workers)
- 3) Handler, Equipment Cleaner or Laborer (includes trades helpers, machine feeders, off bearers, stock clerks, and packers)
- 4) Machine Operator, Assembler or Inspectors
- 5) Transportation or Material Handler

With nearly 70% of disabling injuries occurring in these occupational groups, further research is needed in assessing trends and patterns of injuries and illnesses reported in these occupations. In addition, research is needed to identify the risk factors, demographics, and the type of safety training programs that are being offered to workers and the effectiveness of such training in preventing work-related injuries.

**Table 3: Disabling Cases by Occupational Groups, Maine, 1999-2001**

Occupational Groups	1999		2000		2001	
	Number	Percent	Number	Percent	Number	Percent
Service Workers	3,099	18.7	3,668	21.2	3,716	22.0
Precision Production, Craft or Repair	2,965	17.9	2,879	16.7	2,823	16.7
Handler, Equipment Cleaner, Laborer	2,745	16.6	2,693	15.6	2,477	14.7
Machine Operator, Assembler, Inspector	1,689	10.2	1,771	10.2	1,541	9.1
Transportation or Material Handler	1,543	9.3	1,302	7.5	1,232	7.3
Other Occupational Groups	4,520	27.3	4,970	28.8	5,090	30.2
Total	16,561	100.0	17,283	100.0	16,879	100.0

Source: Workers' Compensation Board *First Reports of Injury or Occupational Disease*

## 2D. Length of Service of Injured Worker, Maine, 1999-2001

One of the trends that the Bureau of Labor Standards has identified from the analyses of the WCB data is that more new hires are being injured on the job when compared to those employees who have been with their employers for two years or more. In 2001, 6,140 (36.4%) of *First Reports* were recorded for new hires (under one year). The Maine Occupational Research Agenda (MORA) Steering Committee has noted this trend and feels it warrants further research.

**Table 4. Length of Service of Injured Worker, Maine, 1999-2001**

Length of Service for the Injured Worker	Disabling Cases					
	1999		2000		2001	
	Number	Percent	Number	Percent	Number	Percent
<b>Total</b>	<b>16,561</b>	<b>100.0</b>	<b>17,283</b>	<b>100.0</b>	<b>16,879</b>	<b>100.0</b>
<b>Under 1 Year</b>	<b>6,226</b>	<b>37.6</b>	<b>6,627</b>	<b>38.3</b>	<b>6,140</b>	<b>36.4</b>
1 Year	2,027	12.2	2,105	12.2	2,186	13.0
2 Years	1,163	7.0	1,207	7.0	1,255	7.4
3-4 Years	1,407	8.5	1,414	8.2	1,471	8.7
5-9 Years	2,077	12.5	1,845	10.7	1,775	10.5
10-14 Years	1,700	10.3	1,893	11.0	1,787	10.6
15-19 Years	616	3.7	693	4.0	748	4.4
20+ Years	810	4.9	991	5.7	994	5.9
Unknown	535	3.2	508	2.9	523	3.1

Source: Workers' Compensation Board *First Reports of Injury or Occupational Disease*

## 2E. Nature, Source, and Event of Injuries and Illnesses, Maine, 1998-2001

Table 5 describes the top five nature, source, and event of injuries and illnesses.

Table 5. Nature, Source and Event of Injuries and Illnesses, Maine, 1998-2001

	1998	1999	2000	2001
<b>Nature of Injury</b>				
Sprains, strains, tears	3,320	5,164	5,955	5,524
No specified pain, sore, hurt	2,980	3,279	3,427	3,701
Bruises, contusions	708	1,027	1,119	1,116
Fractures	646	743	835	866
Cuts, lacerations	633	774	787	783
<b>Source of Injury</b>				
Person--injured or ill worker	2,805	3,585	3,432	3,745
Floors, walkways, ground surfaces	1,897	2,247	2,314	2,550
Containers	1,486	1,810	1,982	1,763
Parts and materials	983	1,304	1,236	1,110
Vehicles	845	1,012	954	952
<b>Event or Exposure</b>				
Overexertion	3,837	5,199	5,489	5,192
Bodily reaction	1,560	1,882	2,014	1,900
Fall on same level	1,273	1,460	1,543	1,776
Struck by object	1,168	1,422	1,370	1,296
Repetitive motion	805	1,198	1,401	1,279

Source: Workers' Compensation Board *First Reports of Injury or Occupational Disease*

## 2F. Cases and Incidence Rate of Injuries and Illnesses, Maine, 2000-2001

Sections 2F through 2H include data gathered through the Annual Survey of Occupational Injuries and Illnesses. This survey is conducted by the Maine Bureau of Labor Standards on behalf of the Federal Bureau of Labor Statistics through a cooperative agreement. Data collected from this survey cannot be used for comparison with the Workers' Compensation Board rate for the following reasons:

- 1) The methodology of calculating rates is different.
- 2) Both systems use a different definition of recordability of work-related injuries and illnesses.
- 3) The Workers' Compensation Board data is a census of injuries and illnesses while the Federal BLS data is a statistical sample.

However, this dataset is important because it allows the Bureau of Labor Standards to cross-reference the data from the Workers' Compensation Board for trend analysis and permits a national comparison of specific industries. It also collects exposure data (hours worked) unavailable from other sources. Because of this, we can account and adjust for overtime, part time, seasonal, and temporary labor differences among industries and years.

The data generated are from a random sample stratified by industry and employer size. There are around 2,500 employers in the sample. Incidence rates are calculated using the following formula:

$$\text{Incidence Rate} = (N / EH) * 200,000$$

Where:

N = number of OSHA recordable incidents (injuries and illnesses in the chart below) for an employer or group

EH = total hours worked by all employees during the calendar year in the corresponding group

200,000 = base for 100 full-time equivalent (working 40 hours per week for 50 weeks)

The result is the number of incidences per 100 workers, working a standardized work-week.

According to the 2000 and 2001 Annual Survey of Occupational Injuries and Illnesses, in the private sector, the manufacturing, construction, and transportation and public utilities industries reported increases in their incidence rates while Services, Wholesale, and Agriculture, Forestry, and Fishing industries recorded declines. The public sector reported a slight decrease in incidence rate.

**Table 6. Number of Cases and Incidence Rate of Injuries and Illnesses, Maine, 2000-2001**

Industry	2000		2001	
	Number of Cases	Incidence Rate	Number of Cases	Incidence Rate
<b>Private Sector</b>	<b>35,958</b>	<b>9.0</b>	<b>34,926</b>	<b>8.7</b>
Manufacturing	10,401	12.5	11,508	14.5
Services	9,697	8.0	8,915	7.1
Construction	2,338	8.8	2,701	9.4
Wholesale	3,044	11.3	2,235	8.8
Transportation & Public Utilities	1,765	8.1	2,202	10.1
Finance, Insurance & Real Estate	905	3.3	779	2.7
Agriculture, Forestry & Fishing	509	9.5	469	8.4
<b>Public Sector</b>	<b>3,925</b>	<b>6.34</b>	<b>3,346</b>	<b>5.8</b>

Source: Survey of Occupational Injuries and Illnesses

For further information on OSHA recordkeeping, please go to OSHA's website, [www.osha.gov](http://www.osha.gov).

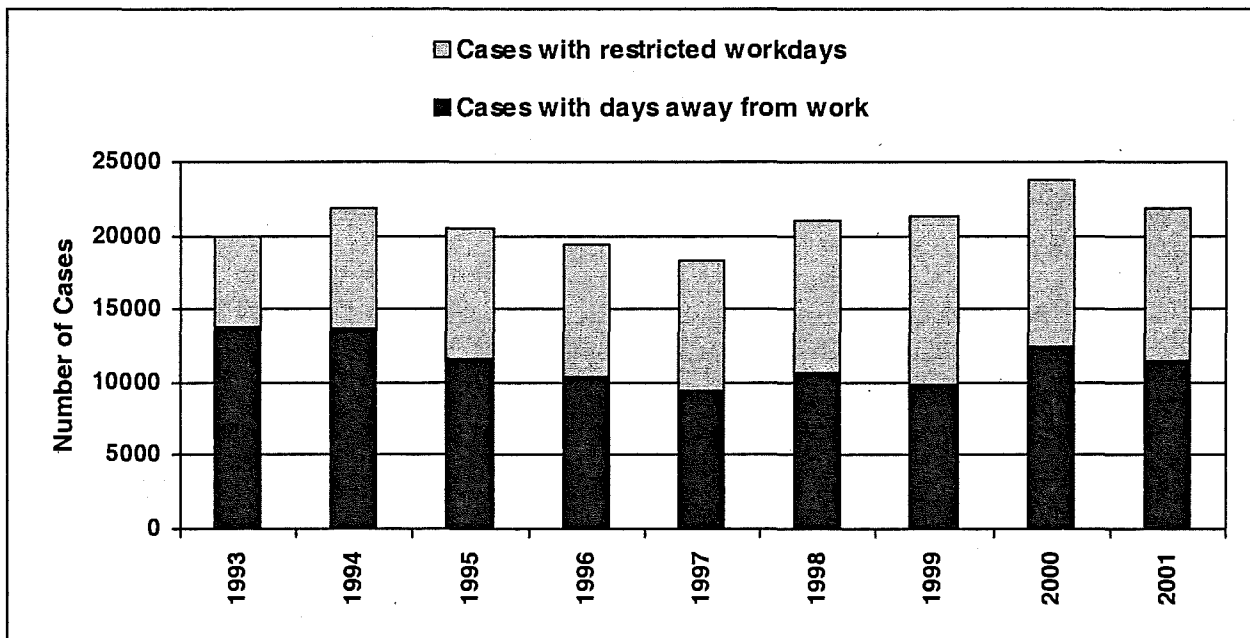
## 2G. Cases with Lost Workdays and Restricted Work Activity, Maine, 1993-2001

Data collected since 1992 shows a downward trend in the reported number of cases with resulting in days away from work. However, the number of cases resulting in restricted work activity has increased. The data indicated that employers are placing more injured workers on "light duty". The Bureau of Labor Standards hypothesized the following:

- 1) These are not severe injuries and allow an injured worker to continue working in a limited capacity.
- 2) Some employers are using this injury management approach to lower their Workers' Compensation losses and therefore lower their direct payments their insurance premiums.
- 3) Keeping workers employed in a limited capacity is seen as good for workers' morale, preventing the turnover of skilled workers and instilling continued loyalty to the company and increased productivity.

More research is needed in this area to test these hypotheses.

**Figure 2. A Nine-Year Trend Analysis of Lost Workday and Restricted Work Activity Cases, All Industries (Public & Private Sectors), Maine, 1993-2001**



Source: Survey of Occupational Injuries and Illnesses

## 2H. Nature and Source of Injuries and Illnesses Involving Days Away From Work, Maine, 1997-2000

Table 7 describes the four-year trend of injuries and illnesses that involved days away from work by the Nature and Source of the incident. The term "Nature" is used to describe the appearance or the diagnosis of the injury or illness. Examples of Nature are: Sprains, Fractures, Cuts, Bruises, Amputations, or Burns. The term "Source" is used to describe the object, substance, bodily motion, or exposure that directly produced or inflicted the injury or illness. Examples of Source are: Chemical Products, Containers, Furniture, Machinery and Worker Motion or Position.

**Table 7. Nature and Source of Injuries and Illnesses Involving Days Away from Work (Private Sector), Maine, 1997-2000\***

	1997	1998	1999	2000
<b>Nature</b>				
Sprains & Strains	3,590	3,716	3,671	5,135
Soreness & Pain	811	797	899	925
Bruises & Contusions	496	653	676	703
Cuts, Lacerations & Punctures	476	569	544	552
Fractures	531	414	447	625
<b>Source</b>				
Worker Motion/Position	1,876	1,958	2,220	2,342
Containers	812	1,375	1,115	1,349
Vehicles	450	638	694	593
Parts & Materials	738	775	673	683
Floor/Ground Surfaces	1,051	1,311	981	1,403
<b>Event</b>				
Overexertion	2,794	2,969	2,719	4,045
Contact with Object or Equipment	1,877	2,181	1,784	2,057
Repetitive Motion	685	761	928	1,081
Fall on the Same Level	669	845	580	856
Slips or Trips without Falling	446	470	390	452

\*The year 2001 data is not yet available from the Federal Bureau of Labor Statistics.

**Source:** *Survey of Occupational Injuries and Illnesses*

The data from 1997-2000 shows that the Nature of Injuries, particularly Sprains & Strains, Soreness & Pain and the Source of Injuries such Worker Motion & Positions has ergonomic implications. This set of data reflected a similar trend detected through the Workers' Compensation Board data set. With the controversy surrounding the proposed OSHA ergonomic standards, more research is needed in this area to establish a well-defined relationship between these variables. More importantly, research is needed to evaluate the cost effectiveness of existing ergonomic safety programs in preventing musculo-skeletal disorders.

## **2I. Fatal Occupational Injuries, Maine, 1992-2001**

The Census of Fatal Occupational Injuries (CFOI) program is a second Federal/State cooperative program. It was created in 1990 by the U.S. Department of Labor, Bureau of Labor Statistics and includes all 50 states and the District of Columbia. The program was established to determine a true count of work-related fatalities in the United States. Prior to CFOI, estimates of work-related fatalities varied because of differing definitions and reporting sources. The CFOI program collects and compiles workplace fatality data that is based on consistent guidelines throughout the United States.

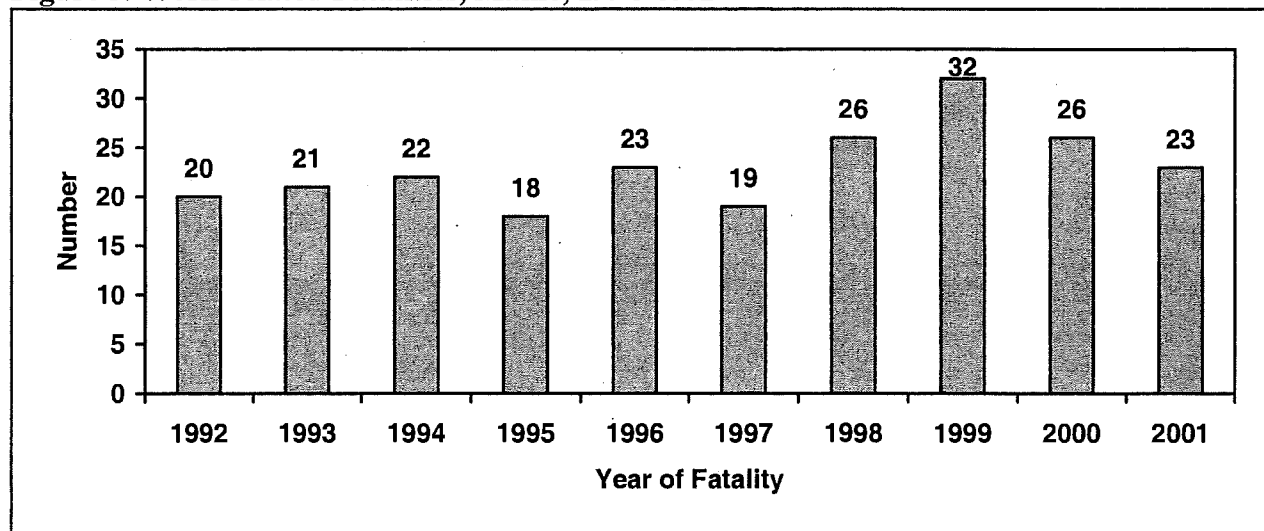
A death is considered work-related if an event or exposure resulted in an employee fatality while in work status, whether at an on-site or off-site location. Private and public sector (state, local, and county government) are included.

Fatalities must be confirmed by two independent sources before inclusion in CFOI. Sources in Maine include death certificates, the *First Report of Occupational Injury or Disease* for workers' compensation and fatality reports from the following agencies and sources: 1) the Chief Medical Examiner's Office, 2) the Department of Marine Resources, 3) the Maine State Police, 4) the Bureau of Motor Vehicles, 5) the U.S. Coast Guard, 6) Federal Occupational Safety and Health Administration (OSHA) reports, and 7) newspaper clippings and other public media.

Fatalities due to injuries are included in the Census of Fatal Occupational Injuries. Occupational illnesses are excluded from this report since many fatalities due to illness or disease are understated because the illness may not be diagnosed until years later or the work relationship may be questionable.

Figure 3 shows the numbers of work-related fatalities recorded in Maine from 1992-2001.

**Figure 3. Work-related Fatalities, Maine, 1992-2001**



Source: Census of Fatal Occupational Injuries

## **2J. Fatal Occupational Injuries by Industry and Event/Exposure, Maine, 1992-2001**

Transportation accidents have accounted for more fatal workplace injuries than any other event or exposure in Maine as shown in Table 8. Since 1992, nearly 45% of the fatal work-related injuries in Maine collected under the CFOI program were classified as transportation related. This is comparable to that of the U.S. as a whole, where 42% of all fatal injuries in the same period were classified as transportation related.



**Table 8. Fatal Occupational Injuries by Industry & Event/Exposure, Maine, 1992-2001**

Industry Division	Total	Transportation Accidents Highway & Non-highway	Contact with Objects & Equipment	Falls	Exposure to Harmful Sub- stances	Assaults & Suicides	Fires & Explosions
<b>Total</b>	<b>233</b>	<b>104</b>	<b>53</b>	<b>31</b>	<b>27</b>	<b>14</b>	<b>4</b>
Agriculture, Forestry & Fish.	53	33	3	3	14	--	--
Manufacturing	40	8	25	7	--	--	--
Transportation & Public Utilities	36	27	5	--	4	--	--
Services	27	9	9	3	--	3	--
Construction	24	4	6	12	5	--	--
Government	13	8	--	--	--	5	--
Wholesale	10	10	--	--	--	--	--
Retail	11	4	--	3	--	4	--
Other	19	1	5	3	4	2	4

**Source:** Census of Fatal Occupational Injuries

-- Dashes indicate less than .5 percent or do not meet publication criteria.

**SECTION 3. THE EFFORTS OF THE BUREAU OF LABOR  
STANDARDS AND WORKERS' COMPENSATION BOARD IN  
GATHERING QUALITY AND TIMELY DATA THAT IS CRITICAL IN  
DEVELOPING APPROPRIATE SAFETY INTERVENTIONS FOR  
DIFFERENT INDUSTRY SECTORS.**

Since 1984, the Bureau of Labor Standards has entered its case-specific information directly into the Workers' Compensation Board (WCB) database and has helped maintain the WCB employer database. In October of 1999, the Bureau activated its own new office automation database called "GEN II". That database includes an employer component that inter-links identification and demographic information of over 250,000 employer records from various Department of Labor activities including the Bureau's inspection activities. Unlike its predecessor and other employer databases, it was designed to maintain links over any number of identity, ownership, name, and location changes, and do so among several existing databases.

When the Workers' Compensation Board re-programmed its coverage system in 2000, they elected to integrate their employer database into the Bureau's new GEN II employer system. Because of this integration, the Board now collects its initial employer identification information from the BLS employer database and provides new employer information into GEN II to supplement the Bureau and the Department of Labor employer database.

This cooperation has resulted in a more integrated identification of employers with regards to ownership issues, business activity, and physical location of the business. It also saves the Board from programming and maintenance cost of operating a separate employer identification system. It relieves the Bureau from manually re-identifying employers from data coming in from the WCB database, producing a more efficient method of employer identification, yielding quality data. The result has been a more efficient and accurate process in identifying existing employers and in creating new employer records.

## SUMMARY

The Bureau of Labor Standards continues to innovatively promote occupational safety and health among Maine employers. To do this efficiently, we work with federal, state, and private partners in developing programs and research that provides a range of services to workers, employers, and government. The services we provide integrate with and supplement our partners' services.

There are several developments in the areas of occupational safety and health in 2002 that are noteworthy and that tie into the Workers' Compensation arena in Maine. All of these affect our ability to prevent occupational injuries and illnesses and this in turn has an impact on the number and quality of the Workers' Compensation cases in Maine

- ✓ The Maine Occupational Research Agenda (MORA) steering group made up of diverse members of Maine's occupational safety and health community moved forward to the point that during the year they developed their first research agenda. This parallels and builds on the National Occupational Research Agenda (NORA), which is maintained by the National Institute for Occupational Safety and Health (NIOSH). Maine's regional agenda is the only one of its kind in existence in the country and is seen as an agreement of needed research in the state. This helps spotlight funding and attention to the agenda items because there is agreement on their need.
- ✓ The MORA steering group and the BLS have organized Maine's second research symposium, which will be held in May of 2003. The Bureau was able to secure a grant from NIOSH to help fund symposium activities.
- ✓ NIOSH awarded the Bureau a 3-year grant to develop research capacity in the area of occupational safety and health indicators (of which Workers' Compensation data will be a part). Work from this grant will identify existing data for that use, their strengths and shortcomings, and resources needed to make up those shortcomings.
- ✓ The creation of a new partnership among the Small Business Administration, the Federal Occupational Safety and Health Administration (OSHA), and the Bureau of Labor Standards to work on a project to better package and market occupational safety and health services to small businesses in Maine.
- ✓ The Harvard-NIOSH Education and Research Center (ERC) awarded the Bureau a grant of \$5000 to conduct "A Descriptive Study of the Exposure of Trawler Fishermen to Hazards Onboard Trawlers in Maine". This project is a collaboration between trawler fisherman, the Harvard School of Public Health, the U.S. Coast Guard, the Maine Department of Marine Resources, and the Safety Office of the Port of Portland.
- ✓ The Bureau organized and prepared for an initiative to further study fatalities by piloting its own Fatality and Assessment Control Evaluation (FACE) program. This will be modeled after the NIOSH FACE program and its goal is to evaluate occupational death incidents from a prevention standpoint versus determining responsibility and enforcing standards. The OSHA Area Office will be a partner in this and WCB *First Rreport* data will help identify specific cases.
- ✓ The Workers' Compensation Board was able to provide a file of case cost data this Summer, providing the Bureau with what preliminarily appears to be good data on a

qualitative measure of Workers' Compensation cases in Maine. The data was for cases from 1994-1998 where reported costs were over \$5,000.

- ✓ The Bureau and Workers' Compensation Board continue collaborative efforts on the WC data system and on the quality of WC administrative data, which feeds into data used for prevention activity. Collaborative efforts improve the data quality and/or the efficiency of the collection and use of the data.
- ✓ The Bureau put additional effort over the past year in "catching up" on its case coding. Due to computer changes and programming lags we were 18 months behind on individual case coding at the beginning of 2002. As of now, we are only 2 months behind and at a point where it does not affect yearly statistical reporting.
- ✓ Thanks to training provided by the Workers' Compensation Board in 2001, this year the Bureau was able to make use of a software product to gain back and surpass access to data on the WCB data system without further programming lag.