

# 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  
(Second Regular Session)**

**February 2004**

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Representative William J. Smith, Chair  
Joint Standing Committee on Labor  
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We are pleased to submit to the Governor and the 121<sup>st</sup> Legislature, Second Regular Session, the Annual Report on the State of Maine workers' compensation system as required by Title 39-A § 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 **Workers' Compensation Board** has made significant progress in the areas of dispute resolution, MAE program, Worker Advocate program, claims and coverage, and technology. The Monitoring, Audit & 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 meets the minimum standards set by the Board. The Board approved the NOC Pilot Project for 2004, which should lead to even better compliance. 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 38 percent of injured workers are represented at the formal hearing level. The implementation of Standard Operational Procedures (SOPs) has resulted in the elimination of backlogs and the most efficient dispute resolution process in recent history, although recent events have increased the timelines at formal hearing.

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. The anticipated date to mandate the electronic reporting of First Reports of Injury is January 2005.

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 decided by the Board found that an insurer engaged in "questionable claims handling techniques." The Board has certified its findings on two such cases to the Bureau of Insurance.

Section 213 of the Act has been problematic in recent years. The Board is responsible to deal with permanent impairment thresholds and 52-week extensions. The Board failed to agree on the 52-week extensions for the years 2001, 2002, and 2003, and required arbitration to set the threshold pursuant to the Act and Public Law 2001, c. 712 in 2002. The Supreme Judicial Court and the Superior Court were involved with extensions for years 2001 and 2002 respectively.

The governance of the agency has been challenged by the Governor through a set of performance measurements submitted in May of 2003. The performance measurements proposed by the Governor to the Board are as follows: 1) Section 213(4) Benefit Duration Extensions (target date: October 1, 2003); 2) Section 213(2) Permanent Impairment Threshold (target date: October 1, 2003); 3) Hearing Officer employment (target date: August 1, 2003); 4) Board revenue collection (target date: January 1, 2004); 5) Location of board resources (target date: January 1, 2004); and 6) NOC Pilot Project (target date: January 2004). The Board has not reached consensus on 1, 2, 3, but reached consensus on 4, 5, and 6.



The Legislature dealt with the Board's fiscal problems through LD 9 enacted as P.L. 2003, Ch. 93 and LD enacted as P.L. 2003, Ch. 425. Chapter 93 clarifies that the Board can use its reserve funds to assist in funding both "personal services" and "all other" expenditures, and to defray the costs incurred to administer the Act. It provides for broader discretion for the board in the use of its reserve account. Chapter 425 increases the maximum assessment to \$8,350,000 in fiscal year 2004 and to \$8,525,000 in fiscal year 2005. It also requires the Board to adopt rules requiring the electronic filing of information and establishes a Commission to review the budget process of the Board.

The Board has unanimously approved a proposal to increase the budget as follows: FY 04: \$8,680,000 and FY 05: \$8,855,000. The difference in each fiscal year from the assessment cap is due to revenue from assessment interest, the sale of copies and publications, and fines and penalties.

Two workers' compensation bills were carried over to the Second Regular Session of the 121<sup>st</sup> Legislature. LD 550 is An Act Regarding the Employment of Workers' Compensation Board Hearing Officers and Mediators. This bill transfers authority to hire Hearing Officers and Mediators from the Board to the Executive Director. LD 575 is An Act to Encourage Workers' Compensation Dispute Resolution. The bill authorizes a surcharge on an employer of \$500 per mediation or \$1500 per formal hearing if an employee obtains or retains more benefits than were offered by the employer prior to mediation or prior to a formal hearing. All surcharges would be deposited into a special account and dedicated for use by the Advocate Program.

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. The advisory loss costs reflect the portion of the rate which represents losses and loss adjustment expenses. In November the Bureau approved a 3.3 percent decrease in advisory loss costs for use during calendar year 2004. Each insurer files factors, called loss cost multipliers, with the Bureau. The loss cost multipliers account for such things as company expense, 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 somewhat 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 have been clear signs of market hardening over the past few years. With lower investment returns, insurers have been less likely to offer credits to attract or retain market share. As a result, many employers have experienced higher premiums. Self insured employers represent 43 percent of the overall market.

One thing to keep an eye on is the increasing market share by Maine Employer's Mutual Insurance Company (MEMIC). In terms of written premium, MEMIC's market share is at its highest level in six years. This could be an indication that employers are not able to get coverage elsewhere or are choosing to do business with

Maine based carrier. With the departure of Royal and SunAlliance (a major workers compensation underwriter) from the U.S. insurance market, MEMIC's market share may grow even higher in the future.

The **Bureau of Labor Standards (BLS)** works in collaboration with the Maine Workers' Compensation Board (WCB) in the prevention of occupational injuries and illnesses by a variety of means. Under Title 26 MRSA § 42-A, the BLS is charged with establishing and supervising safety education and training programs. The Maine Department of Labor (MDOL) is also responsible for enforcement of Maine labor laws and the related rules and standards. Additionally, the BLS has the power and duties to collect, assort, and arrange statistical data on the number and character of industrial accidents and their effects upon the injured.

SafetyWorks! is the occupational safety and health training and on-site consultation program of the BLS. These activities include use of WCB data to respond to requests for information from the occupational safety and health community and the general public on the safety and health of Maine workers. SafetyWorks! instructors also design their safety training programs based on industry profiles generated from data from the WCB *First Reports of Occupational Injury or Disease*, among other sources.

In terms of enforcement, the Wage and Hour Division of the BLS reviews and approves work permit applications to protect minor workers and inspects employers for compliance with Maine child labor law. The Wage and Hour Division uses the data from the WCB *First Reports*, among other criteria, to select employers for inspection. The Workplace Safety and Health Division of the BLS enforces safety regulations *in the public sector only*. The Workplace Safety and Health Division prioritizes state and local agencies for inspection based on the agencies' injury and illness data from the WCB, the results of the Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses, or complaints from employees or employee representatives.

Effective workplace injury and illness prevention requires a detailed working knowledge of all factors contributing to occupational safety and health. The WCB collects data from its *First Reports*, which the BLS electronically imports for coding and analysis. In addition, the following annual data collections are administered by the Research and Statistics Unit of the BLS: 1) the Federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses, 2) the Federal Occupational Safety and Health Administration's (OSHA) Data Initiative, and 3) the Census of Fatal Occupational Injuries. Taken together, the results of these surveys provide an epidemiological profile of occupational injuries and illnesses in Maine. The BLS also conducts research on narrower foci, both annually and from time to time.

A chronic problem in the use of WCB data is that nearly 50% of *First Reports* are missing the date for the employee's return to work. The "return to work" date is a critical data element for a number of important purposes. The problem is at least partly due to a built-in functionality of the WCB system. Another is the lack of linkage between WCB costs data and *First Reports* data. The Occupational Safety and Health Data Collection and Injury Prevention Work Group was convened September 29, 2003, by the Department of Labor under 2003 Public Law chapter 471. Membership includes representatives of the WCB staff. Among the primary purposes of the Work Group is the identification of ways to improve the collection and analysis of OSHA data. Because of this, it is considered very hopeful that such problems in data collection and sharing will be closely examined and improved.

The BLS uses WCB data to supplement Federal Bureau of Labor Statistics and OSHA data in developing occupational safety and health grant applications. Important examples shaping BLS 2003 activities were:

- 1) A \$24,000 National Institute for Occupational Safety and Health (NIOSH) Conference Support grant used in partial support of Maine's second Occupational Safety & Health Research Symposium.
- 2) A three-year, \$250,000 NIOSH grant for collaborating with NIOSH and the Council for State and Territorial Epidemiologists (CSTE) in capacity building in occupational safety and health surveillance. 2003 was year one of activity under this grant.

**SECTION I**

**WORKERS' COMPENSATION BOARD**



**SECTION I. WORKERS' COMPENSATION BOARD**  
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On May 6, 2003 the Governor charged the Board with six performance measurements to be implemented during 2003. The Board acted on three of the measures but failed to reach consensus on the other three measures. The details of the performance measurements and the Board's progress are reflected in Section 11 of this Report.

An effective MAE Program, technology and programming initiatives, mandated electronic data interchange (EDI) and implementation of the Governor's performance measurements, are key components in the Board's efforts to reduce claims, improve efficiency, and lower costs of the Board.

## **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. REVISIONS TO ENABLING LEGISLATION.**

The following are some of the revisions made to the Act since 1993.

- **§ 102(11)(B-1).** Tightened the criteria for wood harvesters to obtain a predetermination of independent contractor status.
- **§ 113.** Permits reciprocal agreements to exempt certain nonresident employees from coverage under the Act.
- **§ 151-A.** Added the Board's mission statement.
- **§ 153(9).** Established the monitoring, audit & enforcement (MAE) program.
- **§ 153-A.** Established the worker advocate program.
- **§ 201(6).** Clarified rights and benefits in cases which post-1993 work injuries aggravate, accelerate, or combine with work-injuries that occurred prior to January 1, 1993.
- **§ 213(1-A).** Defines "permanent impairment" for the purpose of determining entitlement to partial incapacity benefits.
- **§ 224.** Clarified annual adjustments made pursuant to former Title 39, §§ 55 and 55-A.
- **§ 328-A.** Created rebuttable presumption of work-relatedness for emergency rescue or public safety workers who contract certain communicable diseases.
- **§§ 355-A, 355-B, 355-C, and 356.** Created the Supplemental Benefits Oversight Committee.



### **III. 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, and 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 fact finder.

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 increase in appropriation for the Industrial Accident Commission. 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 do not reflect benefits paid through self-insurance. This exponential growth of the system resulted in 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.

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. And, 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 contentious political issue in the late 1980's and early 1990's.

In 1980, Commissioners became full-time and 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, Augusta, and Caribou, supported by the central administrative office in Augusta.

In 1987, three full-time Commissioners were added, bringing the total to 11, in addition to the Chair. Today, the Board has nine Hearing Officers.

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.

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. Additionally, the section of the statute concerning access to legal representation was changed making 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.

Based on the recommendation of the Blue Ribbon Commission, the Workers' Compensation Board was created directly involving labor and management in the administration of the State agency.

The board of directors consists 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 hires an executive director to run the agency. The Board appoints Hearing Officers to adjudicate formal Hearings. And, a two step process replaced informal conferences: troubleshooting and mediation.

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

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. And an efficient formal hearing process that had reduced timelines to an acceptable 7.3 months for processing cases.

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 regularly 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. But the benefit of a relational database installed in 1996, 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. A bill submitted by the Governor 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. Subsequently, the Governor issued six performance measurements to the Board for consideration in 2003. The Board failed to resolve the Section 213 and reappointment of hearing officers issues.

During the First Regular Session of the 121<sup>st</sup> Legislature, legislation was proposed to change the method of hiring hearing officers. The bill generated significant debate and was, ultimately, carried over to the Second Regular Session of the 121<sup>st</sup> Legislature for further consideration.

The Board's budget and budget process was extensively examined both during the First Regular Session of the 121<sup>st</sup> Legislature, and in the months between the First and Second Sessions. A Commission composed of members of the Joint Standing Committee on Labor and Workers' Compensation Board Directors was formed to study the Board's budget process. The Commission meetings provided an opportunity for the Labor Committee to learn more about the Board's assessment and budgeting process. The Commission will submit its report to the Second Regular Session of the 121<sup>st</sup> Legislature.

### **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.**

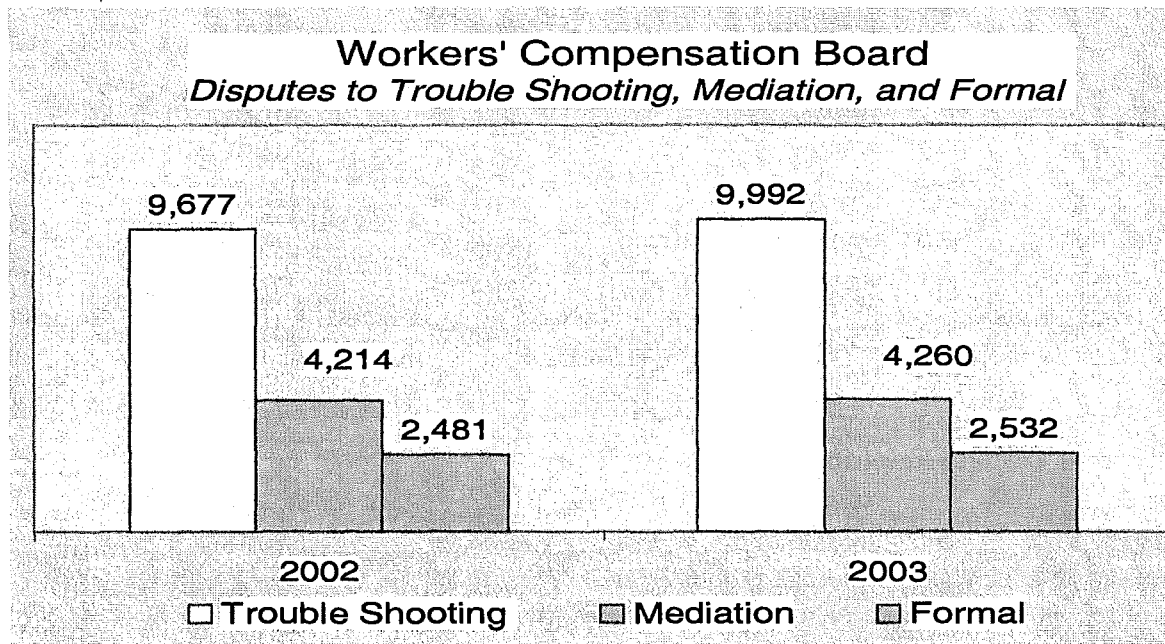
On January 1, 1993, Title 39, which contained the Workers' Compensation Act of 1991 and all prior workers' compensation acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992. The new Title 39-A created a three tiered dispute resolution process.

First, at the troubleshooting stage, a claims resolution specialist informally attempts to resolve disputes 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 the necessary information, the claim is referred to mediation.

Second, at the mediation stage, a case is scheduled before one of the Board's mediators. The parties attend the mediation at a regional office or through teleconference. At mediation, the employee, the employer, the insurance adjuster and any employee or employer representatives such as attorneys or advocates meet with the mediator in an attempt to reach a voluntary resolution of the claim. The mediator requests 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, which is signed by the parties. If the case is not resolved at mediation, it is referred for formal hearing.

Third, at the formal hearing stage, the parties are required to exchange information and medical reports and answer specific questions that pertain to the claim. After the information has been exchanged, the parties file with the Board a "Joint Scheduling Memorandum," which lists the witnesses who will testify and estimates the time needed for hearing. At the hearing, witnesses for both sides testify and evidence is submitted. In most cases, the parties are represented either by either an attorney or a worker advocate. Following the hearing, position papers are submitted and the hearing officer issues a decision, usually within 60 days.

The number of cases resolved at each phase for the years 2002 and 2003 is illustrated in the chart below:

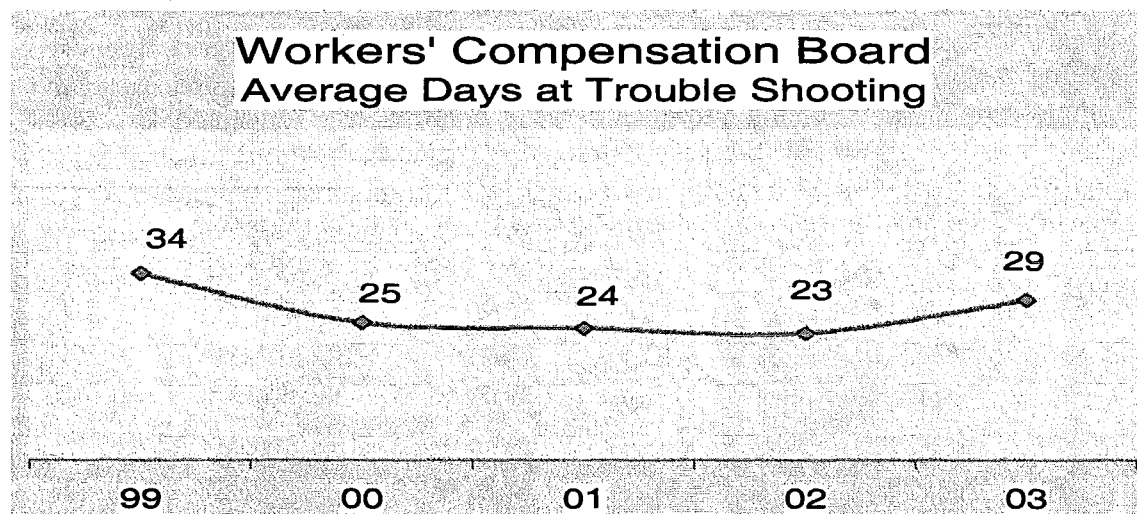


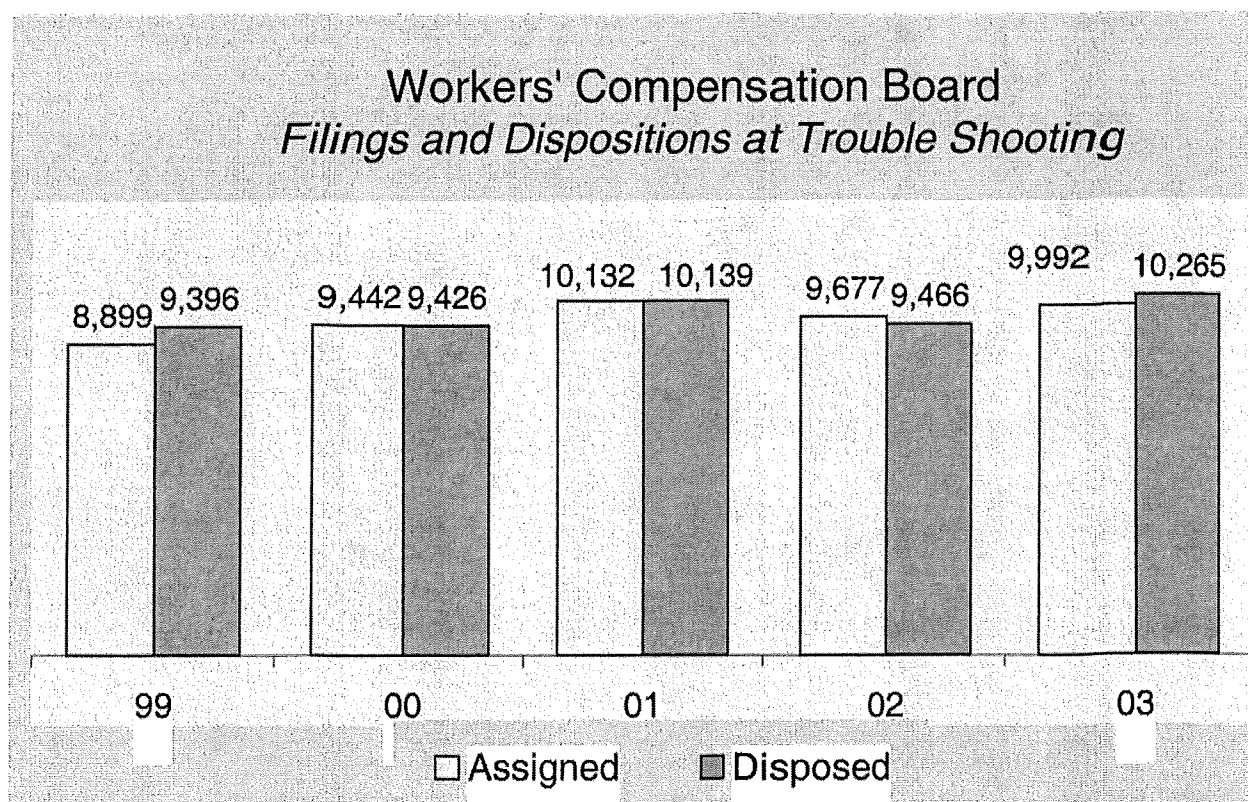
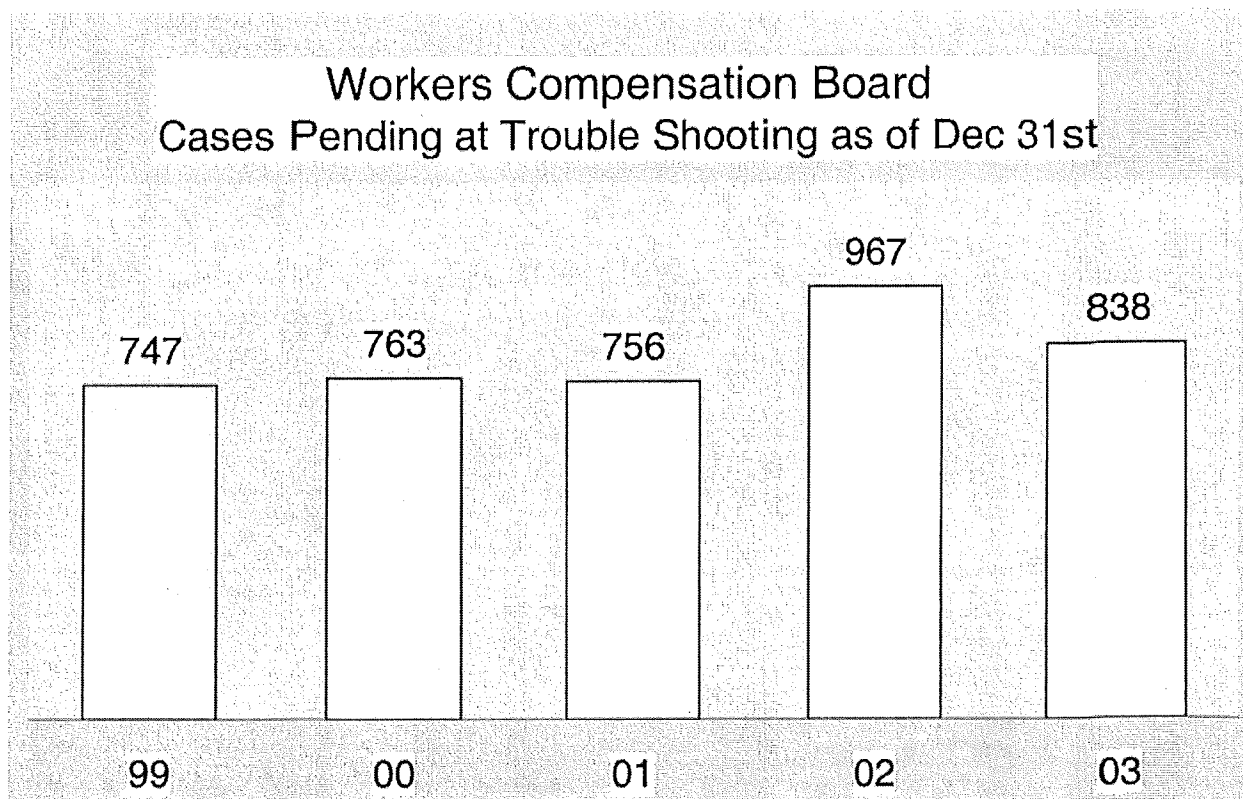
It is worth noting that approximately half of the cases that get to troubleshooting are resolved and half of the remaining cases are resolved at mediation. The remaining cases are resolved by decision at the formal hearing level

### 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:

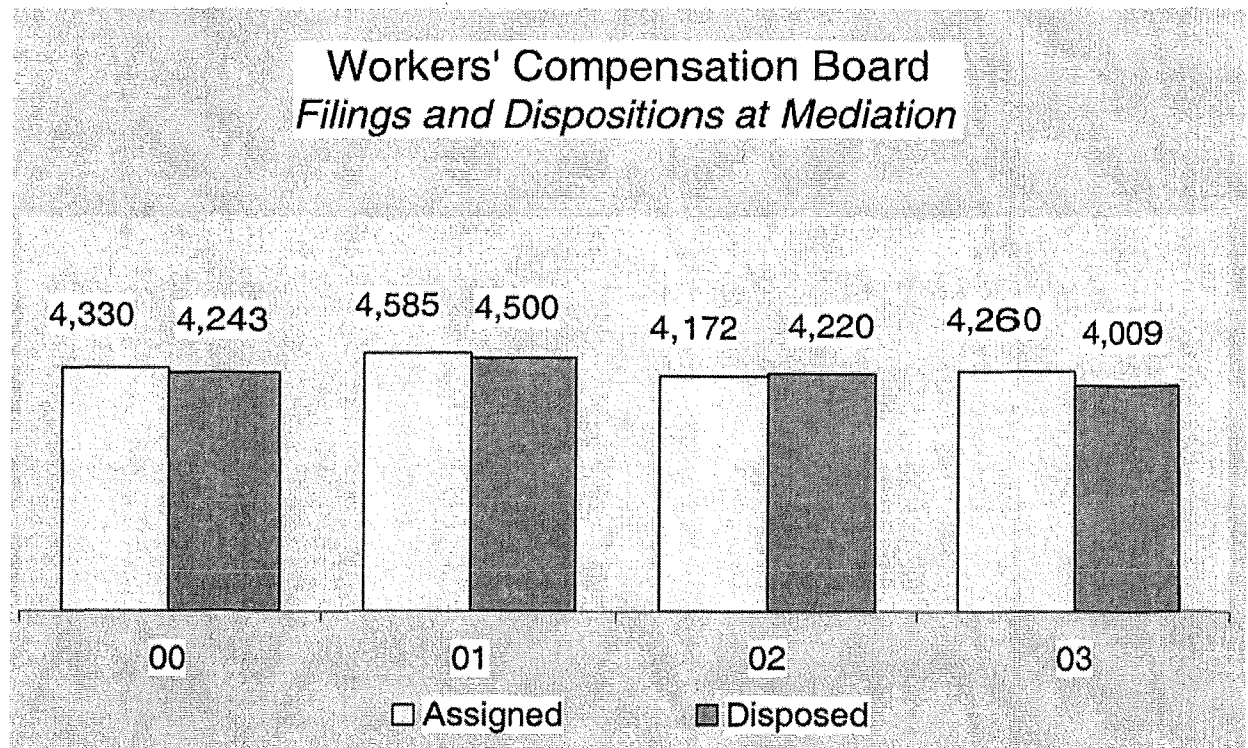
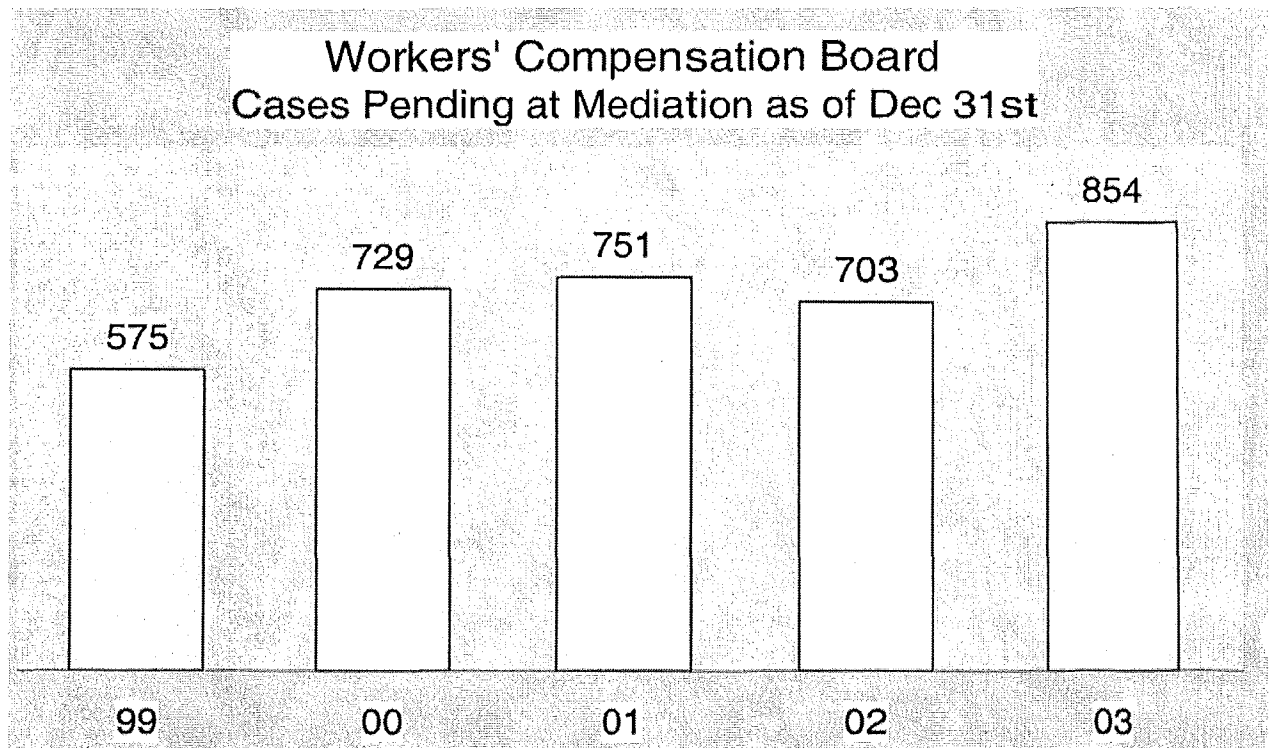
Staff Reduction – 3 ½ Troubleshooters





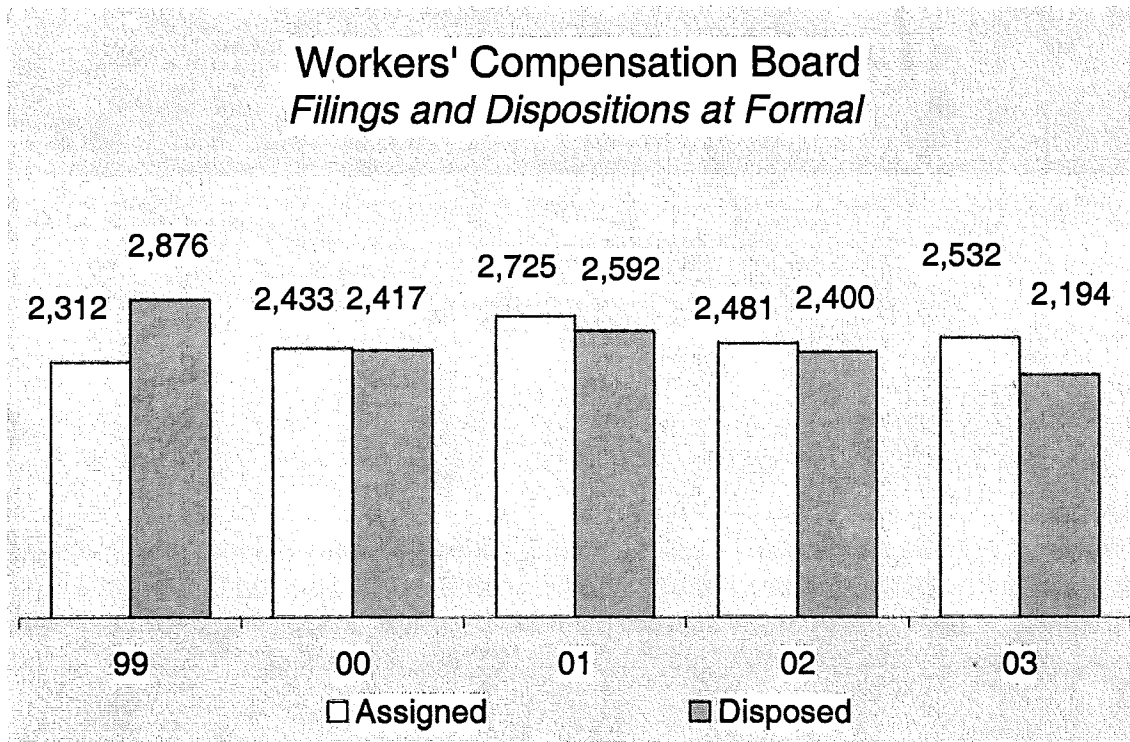
#### IV. Mediation.

With the implementation of the SOPs in 1999, the mediators dispose of the majority of cases assigned each year, either through resolution or referral to formal hearing.



## V. Formal Hearing.

When the current group of hearing officers came on board in 1994, there was a large backlog, which has been eliminated through the initiation of Standard Operating Procedures (SOPs) and the diligence of the hearing officers.



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.

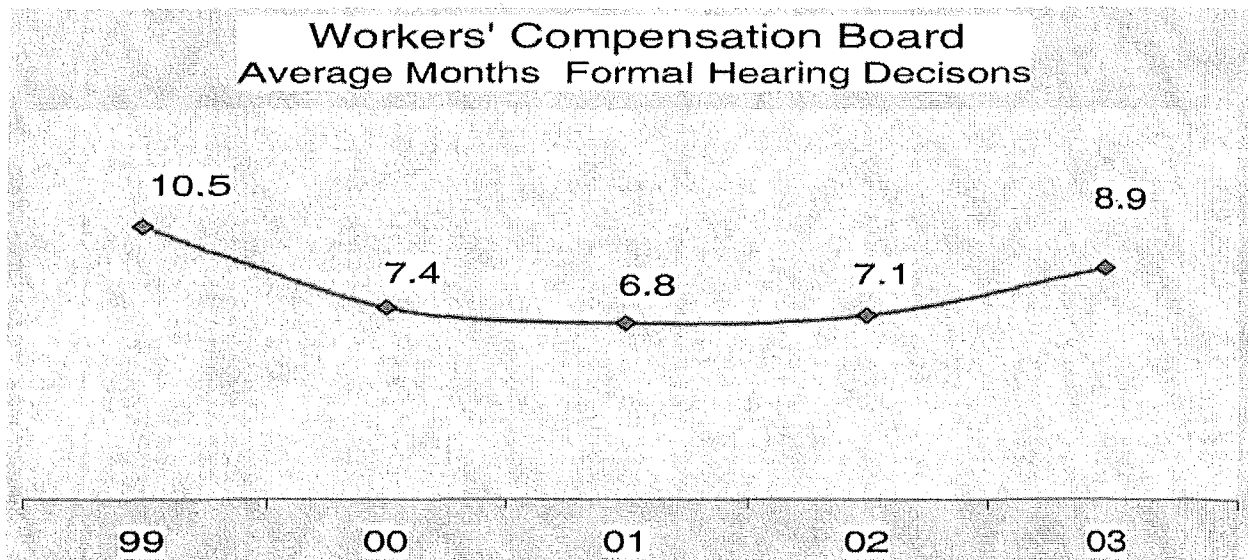
The first SOP was met immediately. Cases have been consistently decided within 60 days since the inception of the SOPs. Not only have 90% of cases been decided within 60 days, 70% have been decided within 30 days.

The second SOP was also met immediately. Five or six years ago, the formal hearing process took an average of 18 months. In July of 1999, the average was 12 months. On January 1, 2000, it was 10 months, and went down as low as 7.1 months in 2002. Presently, the statewide average is 8.7 months. Our progress has thus been considerable and the Board is working hard to continue in the same vein. The length of time at formal has increased in 2003 as a result of gradually increasing caseloads, and the Board's failure to reach consensus on the reappointment of hearing officers.

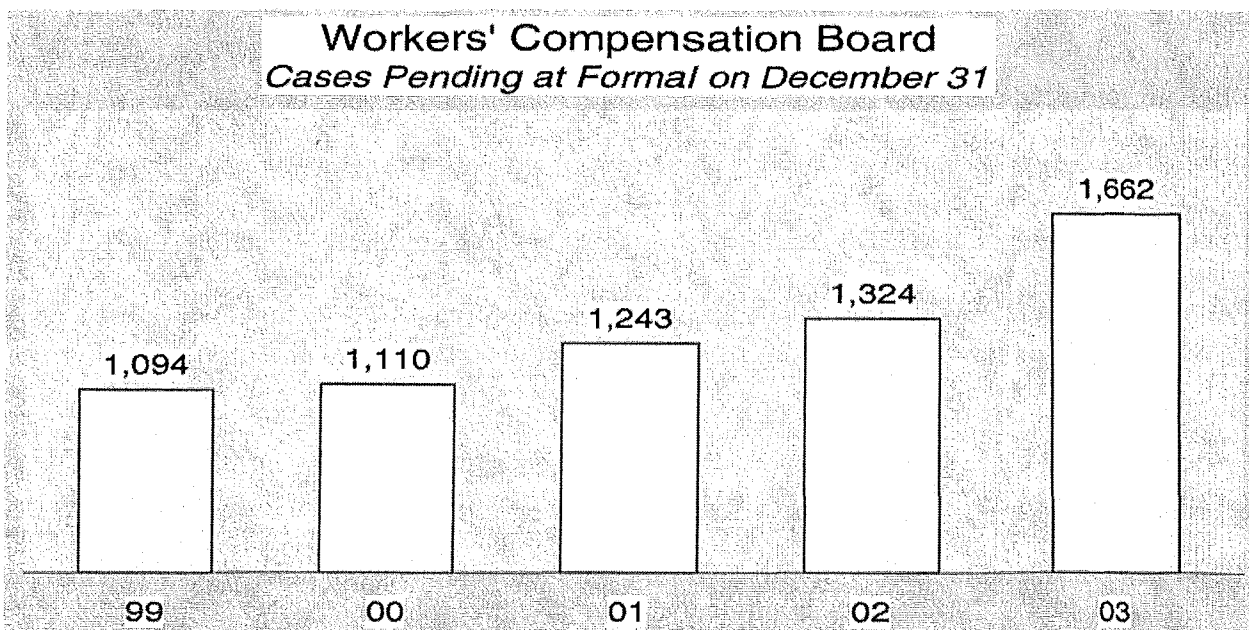
The backlog of years past has thus been eliminated with the successful implementation of the SOPs and the hard work of the hearing officers. Cases are scheduled as soon as they come in (we give parties 30 days



notice) and are decided shortly after they are ready for decision. Problems with the reappointment process have caused additional delays and the average has gone up from 7.1 to 8.9 months.



The following chart shows the number of cases pending statewide from 1998 to 2003. Caseloads at formal hearing have gradually increased since January of 2000 with the total caseload figure presently at 1,662 cases pending statewide. With a goal of 140-150 cases per hearing officer, the current staffing level, nine hearing officers, is appropriate to handle the workload at formal hearing, unless cases continue to rise at a precipi rate.



## **VI. Conclusions.**

The implementation of the SOPs and the elimination of the backlog at all levels have resulted in a faster and more efficient and streamlined dispute resolution system. But an increase in cases and the termination of two hearing officers, pursuant to *D'Amato v. Sappi Paper*, have resulted in higher caseloads and an increase in the time at formal hearing.

#### **4. OFFICE OF MONITORING, AUDIT, AND ENFORCEMENT**

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 2002 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.

## 2002 Annual Compliance Report Overview.

### A. Lost Time First Reports.

- (1) 16,891 Lost Time First Reports were received by the Board in 2002.
- (2) 81.73% were filed within seven days (as prescribed by law). 87.03% were filed within 10 days. The 81.73% represents a 2.53% increase in compliance over 2001 and a 122.46% 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.

85.27% of initial indemnity payments were paid within 14 days. The Board Benchmark is 80%. The compliance for 2001 was 82.79%. The 85.27% represents a 3.00% increase in compliance from 2001 and 43.58% increase in compliance since the Pilot Project of 1997. Over one hundred 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.

80.78% were filed within 17 days. The Benchmark is 75%. The compliance for 2001 was 77.08%. The 80.78% represents an increase in compliance of 4.80% from 2001 and 42.27% 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	85%
Standard Insurers	81%
MEMIC	89%
Self-Insured/Self-Admin	92%
Self-Insured/TPA Admin	86%
TPA	76%

- (2) MOP Filing. (Chart 12)

Overall Compliance	77%
Standard Insurers	70%
MEMIC	88%
Self-Insured/Self Admin	90%
Self-Insured/TPA Admin	83%
TPA	72%

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

Standard Insurers	30%
MEMIC	32%
Self-Insured/Self-Admin	17%
Self-Insured/TPA Admin	14%
TPA	11%

E. Insurance Group Analysis.

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

Above – 58%

Below – 42%

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

Above – 42%

Below – 58%

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

Compliance for In-State Groups – 83%

Compliance for Out-of-State Groups – 75%

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

Compliance for In-State Groups – 87%

Compliance for Out-of-State Groups – 63%

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

In-state Groups – 75%

Out-of-state Groups – 25%

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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. Additional Compliance Report Elements.**

Additional elements were added to the Annual Compliance Report in 2001. These additional elements provide a greater analytical picture of overall compliance.

- **Compliance Trends.** This chart indicates compliance trends from 1999 to 2002 (See Chart 10).
- **Recommendations for High Compliance Performance.** A list of insurers with high compliance (See Chart 22, attached)

## **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:

	<b><u>Ongoing CAPs</u></b>	<b>Market Share By Premium <u>Written</u></b>
A)	Royal SunAlliance/EBI Insurance	3.3%
B)	Zurich Insurance	2.5%
C)	Guard Insurance	2.1%
D)	Travelers	1.9%
E)	Atlantic Mutual Insurance	0.4%
F)	Chubb & Son Insurance	0.3%

### **CAPs Removed**

- A) Liberty Mutual Insurance  
(Bala-Cynwyd, PA and Tarrytown, NY offices)
- B) Hanover Insurance
- C) Claims Management Inc.

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. The initial sample size may be expanded based on severity of problems that are discovered. This occurred twice during 2002. For example, the audit of Atlantic Mutual Insurance Company was expanded. A second audit of any company 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.

The Audit Division fully implemented a Complaint for Audit Form and procedure. This form and procedure allow the complainant to request that the Board investigate a claim to determine if an audit under 39-A M.R.S.A. § 359 is warranted. If undertaken, the audit is designed to determine if the insurer, self-administered employer, or third-party administrator is in compliance with all aspects of the Act. During this process a pattern of questionable claims-handling techniques can and have been discovered. The Complaint for Audit Form is available at [www.Maine.gov/wcb/departments/mae/mae.htm](http://www.Maine.gov/wcb/departments/mae/mae.htm) or by calling the Office of Monitoring, Audit and Enforcement at 207-287-7067.

Since the year 2000, fifty-seven (57) Complaints for Audit were processed by the Audit Division. Of these complaints, three (3) are under investigation, one (1) is included in an ongoing audit, and nine (9) are pending the scheduling of upcoming audits. The remaining complaints were successfully resolved or dismissed. The Deputy Director of Benefits Administration expedited the auditing schedule of two entities based on seven (7) complaints.

The Board successfully prosecuted Hanover Insurance Company for engaging in a pattern of questionable claims handling techniques under Section 359(2) of the Act. Atlantic Mutual Insurance Company and Gates MacDonald entered into consent decrees by pleading guilty with the Board under Section 359(2). During 2003, the Board filed Certificates of Findings regarding Hanover Insurance Company, Atlantic Mutual Insurance Company, and Gates MacDonald pursuant to 39-A M.R.S.A. § 359(2) with the Maine Bureau of Insurance for further action. Audit reports, consent decrees, and the formal hearing decision regarding Hanover Insurance Company are listed on the Board's website: [www.Maine.gov/wcb/](http://www.Maine.gov/wcb/)

## STATUS OF THE SEVEN YEAR AUDIT CYCLE

### A. Completed Audits.

	Date Completed
1 Seaco Insurance Lumber Mutual Insurance	September 15, 1999
2 SAPPI	December 9, 1999
3 Liberty Mutual Insurance Companies Liberty Mutual Fire Insurance Co. Liberty Insurance Corporation LM Insurance Corporation First Liberty Insurance Corp. Third party Administrator Helmsman Management Service	April 12, 2000
4 Travelers Insurance Company Travelers Indemnity Company of Illinois Travelers, Aetna, C & S Company Third-party Administrator James River Corporation Constitution State Service	April 12, 2000
5 Arrow Hart	April 4, 2000
6 York Claims Services AIG Claims Services	March 30, 2000
7 Hanover Insurance Company Massachusetts Bay Insurance Company Citizens Insurance Company of America Third-party Administrator Sterling Risk Management Services	April 10, 2001
8 Cianbro Corporation	May 11, 2000
9 The Bill Johnson Agency	May 1, 2000
10 Central Maine Power Company	October 6, 2000
11 RSKCO	July 2, 2001
12 Chubb Insurance Company Vigilant Insurance Company Federal Insurance Company Great Northern Insurance Company Pacific Insurance Company Third-party Administrator Federal Insurance Co.	September 26, 2000
13 Mead Publishing Paper Company	September 28, 2000
14 City of Bangor	August 15, 2000
15 Public Service Mutual	January 9, 2001
16 Yasuda Insurance	June 15, 2001
17 Clarendon Insurance	April 24, 2001
18 East-West Insurance	September 29, 2000
19 Trans-Pacific Insurance	January 9, 2001
20 Sedgwick of Maine Sedgwick Claims Management (TPA) Sedgwick Claims (TPA)	April 4, 2001
21 Synernet	December 13, 2000
22 Maine Municipal Association	June 20, 2001
23 State of Maine Workers' Compensation Div.	July 5, 2001



24	Maine School Management Association	July 30, 2001
25	Granite State Insurance Company	August 20, 2001
26	Arrow Mutual	December 26, 2001
27	Sentry Insurance	January 12, 2002
28	Phico Insurance Co.	January 10, 2002
29	GAB Robbins	January 12, 2002
	General Adjustment Bureau	
	National Loss Control	
30	Morse, Payson & Noyes	March 6, 2002
31	Filene's	June 12, 2002
32	Crum & Forster	May 5, 2002
	North River Ins	
	United States Ins	
33	Old Republic Insurance	September 17, 2002
	Old Republic Lloyds of Texas	
34	Greenwich Insurance	July 9, 2002
35	Buckler, Irvin & Graf	August 9, 2002
36	Crawford & Co.	November 25, 2002
	Crawford & Co	
	Crawford & Co	
	Crawford & Company	
	Lumbermen's Underwriting Alliance	
	Argonaut-Midwest Insur Co	
	Argonaut-Southwest Insur Co	
	Argonaut-Northwest Insur Co	
	Argonaut Insurance	
	Truck Insurance Exchange	
	Legion Insurance Co	
	Transport Ins Co	
	Vanliner Insurance	
	Florists Mutual Insurance Co	
37	Gallagher-Bassett Services	December 12, 2002
	Gallagher-Bassett Ins Services	
	Indemnity Ins Co Of North America	
	North American Specialty Ins Co	
38	Guard Insurance Group	March 5, 2003
	East-guard	
	Nor-guard	
39	Northern General Services	May 14, 2003
40	Atlantic Mutual Insurance Company	March 28, 2003
	Centennial Insurance Co.	
41	Dunlap Claims Management Services	October 29, 2003
	Central Maine Power (2001 to present)	
	Zurich (small portion)	
	LL Bean ( for MEMIC)	
42	Gates McDonald	November 13, 2003
	Ace American	
	Fireman's Fund	
	Old Republic (a small portion)	
	Proctor and Gamble	
	Reliance	

As noted above, forty-two (42) insurers, self-insurers and third party administrators have been audited to date. In addition to those audits there were fifty-seven (57) subcategorized entities. Audits currently pending with the Audit Division include twenty-four (24) insurers, self-insurers and third party administrators, which include fifty-six (56) subcategorized entities.

**B. Consent Decrees.**

**---Penalty Agreement Amounts---**

	<u>Paid to Employees</u>	<u>Paid to WCB</u>
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	1,000.00
7. Public Service Mutual		200.00
8. CMP		400.00
9. Chubb Group	3,000.00	2,900.00
10. Hanover	8,850.00	17,300.00
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		1,000.00
24. Old Republic	1,500.00	1,600.00
25. Greenwich Insurance		600.00
26. Buckler, Irvin and Graf	550.00	1,700.00
27. Guard Insurance Group	2,650.00	4,900.00
28. Crawford and Co.		1,600.00
29. Gallagher Bassett Insurance	1,150.00	5,325.00
30. Northern General		1,100.00
31. Atlantic Mutual	1,500.00	14,800.00
32. Gates McDonald		9,600.00
33. Dunlap	1,500.00	1,400.00
Subtotal	69,600.00	107,025.00
<b>Total Penalties Paid</b>		<b><u>\$176,625.00</u></b>

## **ENFORCEMENT**

Enforcement of the Maine Workers' Compensation Act is handled by the Board's Abuse Investigation Unit. The report of the Abuse Investigation Unit appears at section 12 of the Board's annual report.

## FIRST REPORTS OF OCCUPATIONAL INJURY OR DISEASE

Chart 1

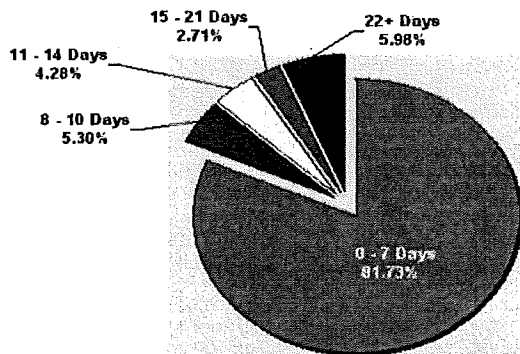


Table 3

First Reports Received Within:

0 - 7 Days	13,805	81.73%
8 - 10 Days	895	5.30%
11 - 14 Days	723	4.28%
15 - 21 Days	458	2.71%
22+ Days	1,010	5.98%
<b>Total</b>	<b>16,891</b>	<b>100%</b>

In 2002, nearly 82% of all Lost Time First Reports were filed timely. This represents the highest annual compliance the industry has ever reached.

16,891 Lost Time First Reports were received by the MWCB which is 1267 less than in 2001 and 1528 less than in 2000. This number only indicates the total number of Lost Time First Reports received, which could be for any date of injury.

Chart 2

### Quarterly Compliance

0-7 Days 0-10 Days

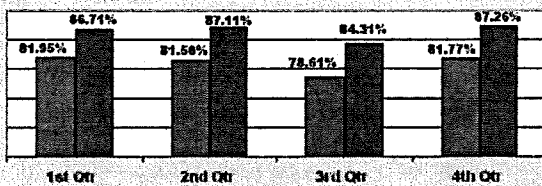
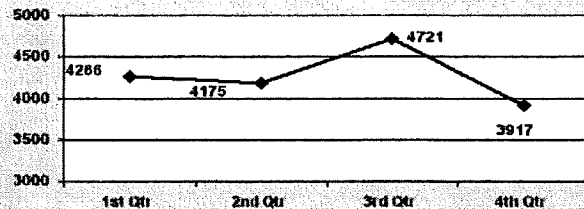


Chart 3

### Lost Time First Reports



## PAYMENT OF INITIAL INDEMNITY BENEFITS

Chart 4

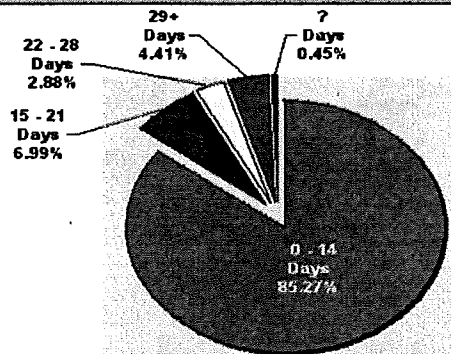


Table 4

Initial Payment Made Within:

0 - 14 Days	4,353	85.27%
15 - 21 Days	367	6.99%
22 - 28 Days	147	2.88%
29+ Days	225	4.41%
? Days	23	0.45%
<b>Total</b>	<b>5,105</b>	<b>100%</b>

In 2002, 85.27% of all Initial Indemnity Payments were made within 0-14 Days. This is the highest annual compliance reached to date.

The 2001 compliance figure was 82.79%.

The 2000 compliance figure was 80.26%.

The improvement in compliance in 2002 resulted in roughly 120 more households receiving timely benefits than in 2001.

Chart 5

### 2002 Quarterly Compliance

0-14 Days

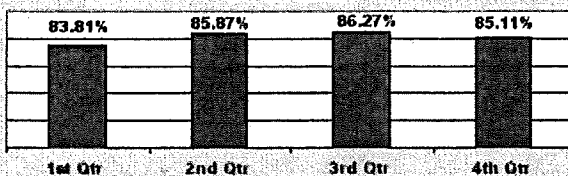
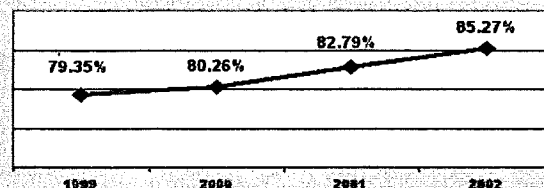


Chart 6

### Annual Compliance Trends



## MEMORANDA OF PAYMENT

Chart 7

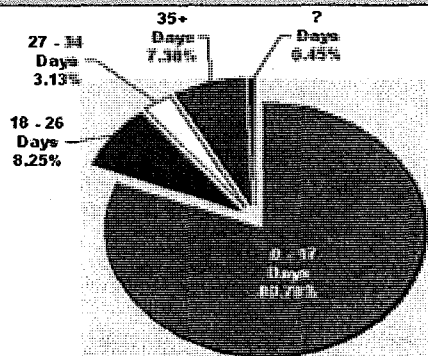


Table 5

Memoranda of Payment Filed Within:			
0 - 17 Days	4,124	80.78%	
18 - 26 Days	421	8.25%	
27 - 34 Days	160	3.13%	
35+ Days	377	7.38%	
?	23	0.45%	
<b>Total</b>	<b>5,105</b>	<b>100%</b>	

In 2002, 80.78% of all Memoranda of Payment (MOP) Filings were made within 0-17 Days. This is the highest annual compliance reached to date.

The 2001 compliance figure was 77.08%.  
The 2000 compliance figure was 74.62%.

Chart 8

### 2002 Quarterly Compliance

■ 0-17 Days

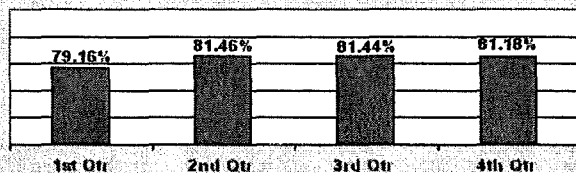


Chart 9

### Annual Compliance Trends

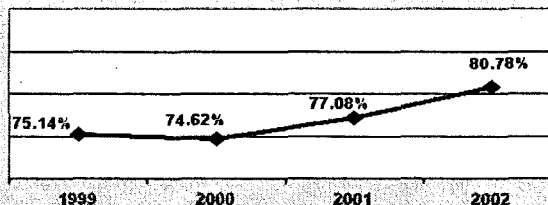
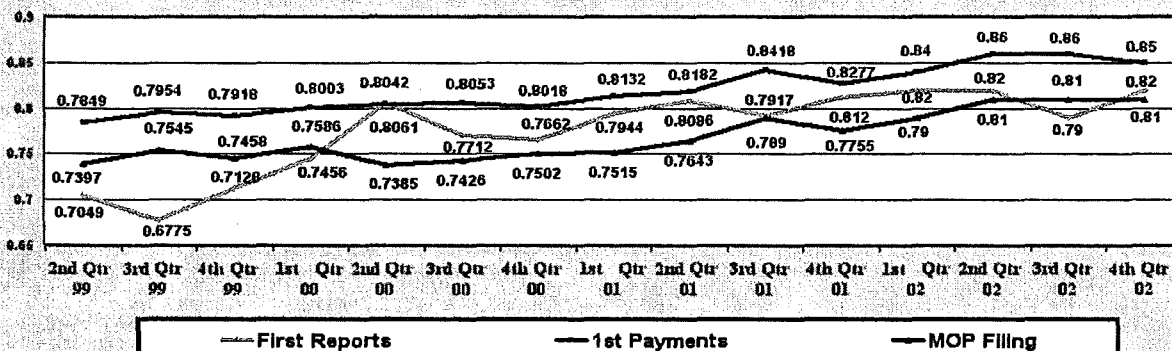


Chart 10

### Compliance Trends 1999 - 2002



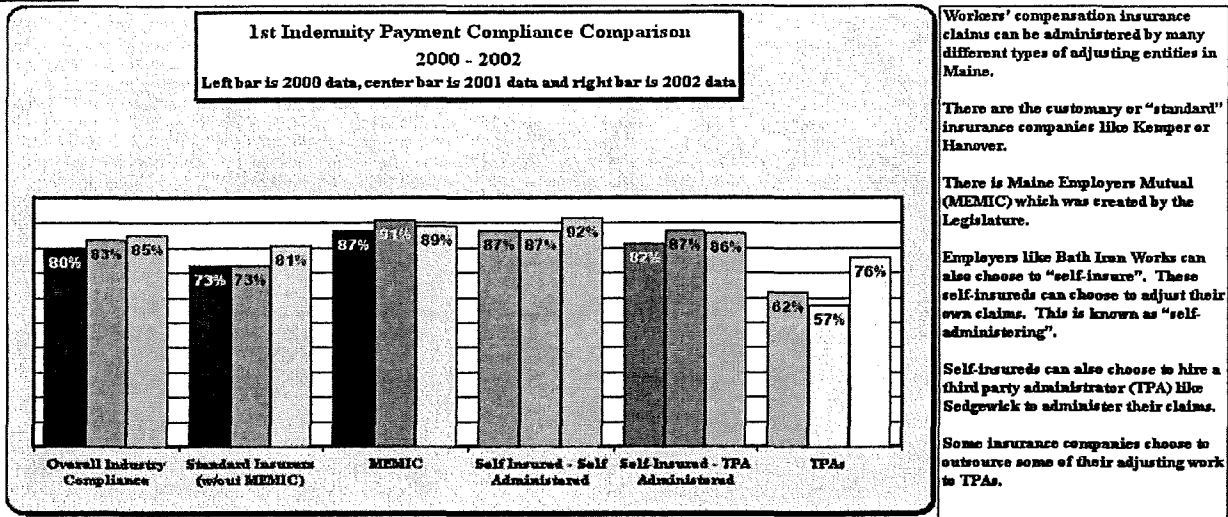
### Compliance Trends

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 2002, nearly 82% of Lost Time First Reports were being reported in a timely manner which represents a 15% increase in compliance by the industry.

Chart 11

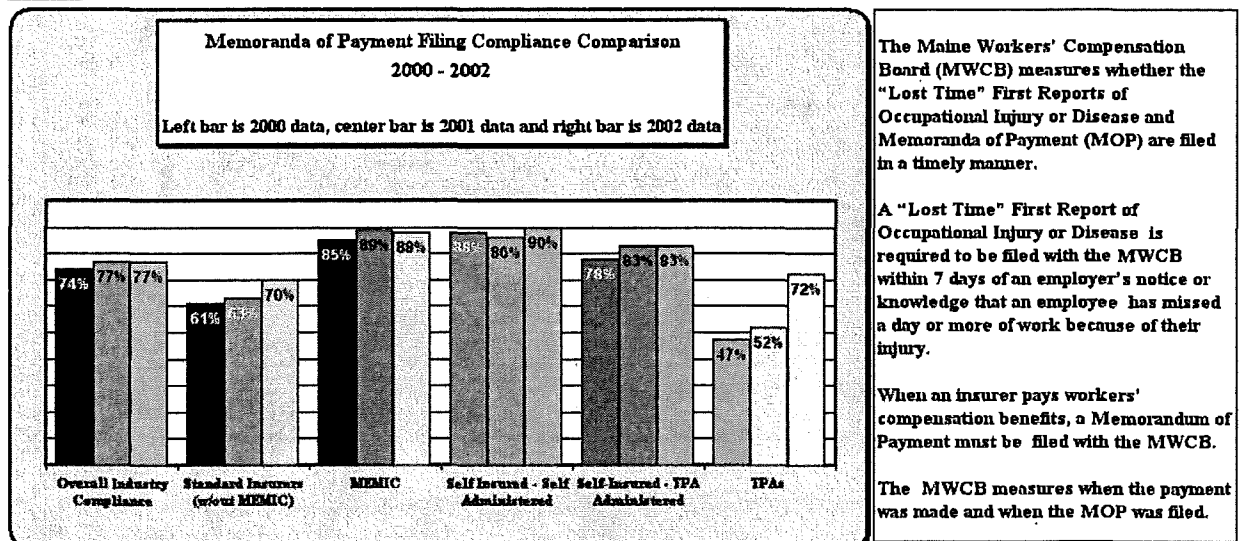


**Payment of Initial Indemnity Benefits Comparison for Different Types of Workers' Compensation Claims Entities/Adjusters**

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 85% in 2002. Standard Insurers and TPAs indicated the most improvement over these two years. TPAs administering "large-deductible" policies and standard policies for other insurers have displayed compliance improvement but still have not exceeded the Board's Benchmarks.

Chart 12



**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 81% in 2002. Most insurance entity types displayed some improvement in this category. TPAs displayed the greatest increase in compliance performance.

Chart 13

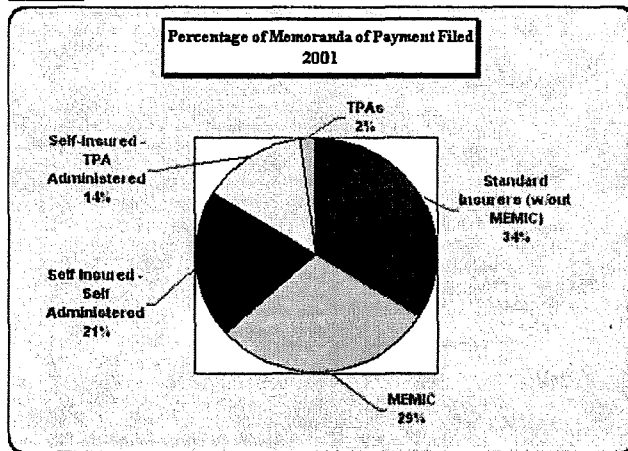
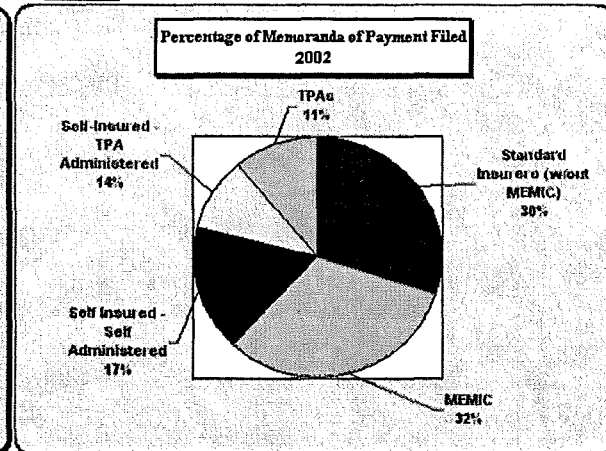


Chart 14



### 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 the insurer's claims activity.

MEMIC increased its percentage of initial MOPs filed. The monitoring division has noted a couple of interesting trends during 2002. Many employers who were previously self-insured had obtained "large-deductible" policies with insurers. Many of these "large-deductible" policies are then handled by third party administrators (TPAs). Routine monitoring activities also revealed that many standard insurers had shifted some of their claims processing activities to TPAs.

Chart 15

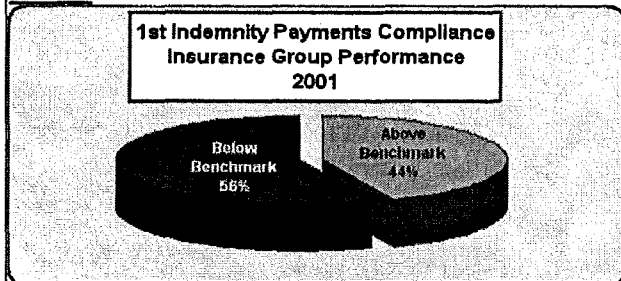
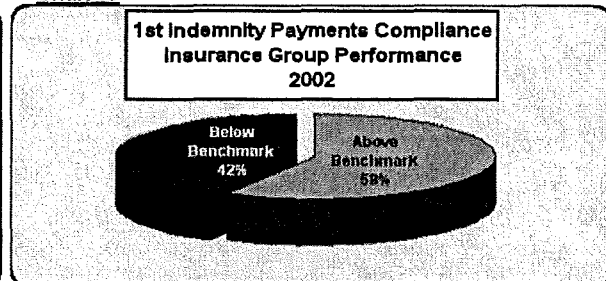


Chart 16



**Initial Indemnity Payments made within 0-14 days.  
MWCB Benchmark = 80% Overall Compliance = 85.27%**

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

As Chart 4 on page 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 59 insurance groups filed MOPs with the MWCB in 2002.

Insurance groups can consist of many different insurance entities. For example, Liberty Mutual Group accounts for 10 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 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. In 2002 34 of 59 or 58% 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 major improvement over 2001.

Chart 17

### Memoranda of Payment Filing Compliance Insurance Group Performance 2001

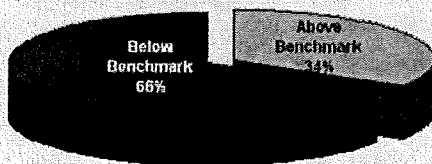
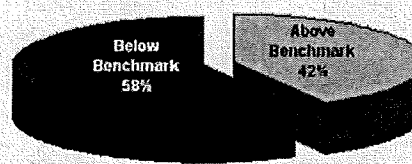


Chart 18

### Memoranda of Payment Filing Compliance Insurance Group Performance 2002



**Memoranda of Payment filed within 0-17 days.**  
**MWCB Benchmark = 75% Overall Compliance = 80.78%**

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

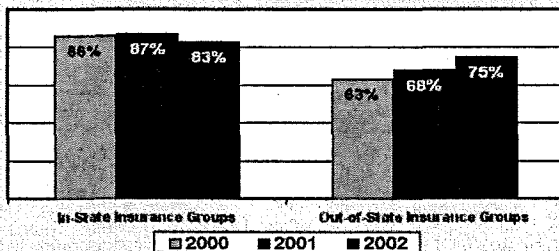
As Chart 7 on page 8 indicated, overall, the insurance community met the benchmarks for compliance as set by the Maine Workers' Compensation Board.

An "insurance group" is defined in this analysis as the parent company of a number of individual insurance entities. A total of 59 insurance groups filed MOPs with the MWCB in 2002.

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. More insurance groups met the benchmarks for timely filing of the Memoranda of Payment than last year. This year 25 of 59 or 42% of all insurance groups that filed MOPs met the benchmarks. As the above charts indicate, this was an 8% improvement in compliance. As explained on the previous page, most insurance groups filed only a small number of MOPs.

Chart 19

### 1st Indemnity Payments Compliance In-State vs. Out-of-State Insurance Groups 2000 - 2002



In 2002, the in-state insurance groups as a whole 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 2002, general compliance was still below the MWCB Benchmarks.

The Office of Monitoring, Auditing and Enforcement (MAE) of the MWCB has entered into Corrective Action Plans (CAPs) with both in-state and out-of-state insurers who consistently fail to meet or exceed the MWCB's benchmarks. This process will continue.

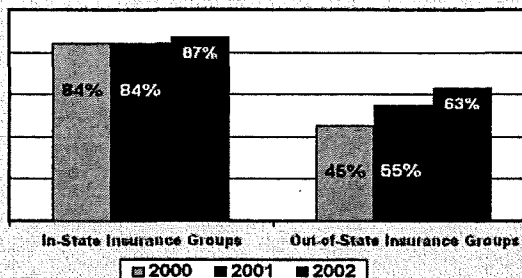
Through the Reconciliation Report and the Reconciliation Process, the MWCB can identify those insurance groups processing "in-state" and those processing "out-of-state".

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.

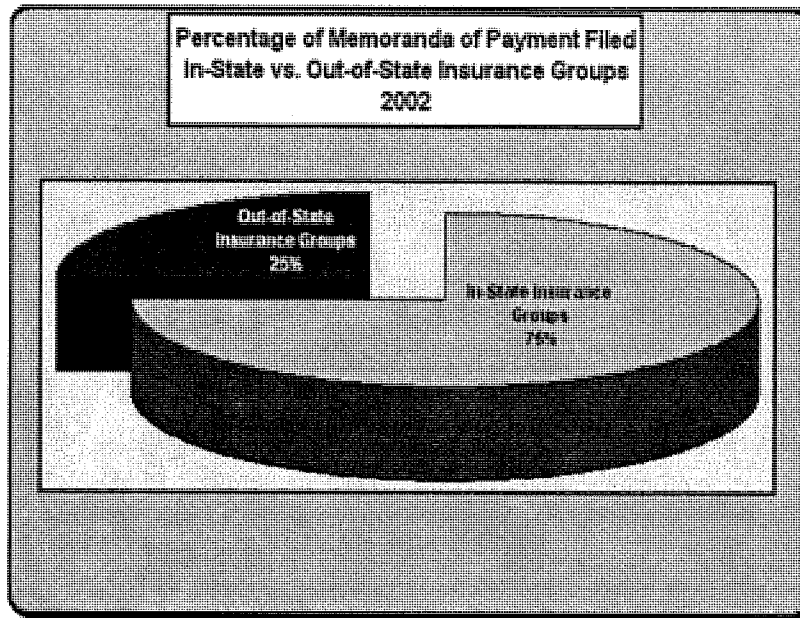
These charts indicate that in-state insurance groups generally have higher compliance with the MWCB's benchmarks than out-of-state insurance groups.

### 1st Memoranda of Payment Filing Compliance In-State vs. Out-of-State Insurance Groups 2000 - 2002





**Chart 21**



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

Even though out-of-state insurance groups filed only 25% of all initial MOPs, their generally lower filing compliance negatively impacted overall initial MOP filing compliance.

Some out-of-state Insurance Groups have improved their compliance performance by engaging in Corrective Action Plans.

This chart indicates that out-of-state insurance groups filed 25% of all initial indemnity MOPs. This figure was 24% in the last two years.

The Office of Monitoring, Audit and Enforcement 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.

**Chart 22**

Insurance Groups/TPAs				
Volume	Name of Group/TPA	# of MOPs	Initial Payment	MOP Filing
501+	MEMIC	1612	89%	88%
301- 500	Sedgwick	344	88%	86%
101-300	Dunlap Claims Mgmt.	209	92%	92%
	Acadia	170	92%	93%
	Hanover	122	94%	85%
0-100	Peerless	90	94%	90%
Self-Administered Employers				
Volume	Name of Employer	# of MOPs	Initial Payment	MOP Filing
101+	Maine Municipal Association	263	84%	83%
	State of Maine	116	97%	98%
	Maine School Management	113	96%	96%
51-100	Morse, Payson & Noyes	80	95%	91%
	Maine Health Care/Maine Motor Transport	62	90%	92%
	Maine Automobile Dealers	46	100%	100%
0 - 50	Bath Iron Works	39	97%	95%
	City of Bangor	18	100%	100%
	Central Maine Medical	12	100%	100%

**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 at least 10 MOPs in the year.
- 2) Met or exceeded MWCB Benchmarks in both categories.
- 3) Only top 3 entities in each group where more than 3 qualify.

## **5. WORKER ADVOCATE PROGRAM**

### **I. Introduction.**

The Worker Advocate Program was expanded by the Legislature in 1997 to better serve 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 a separation between the Board and the Advocate Program, the Board provided the advocates with their own staff and office space in each regional office.

The Board recognized that proper equipment and technology were necessary for the successful operation of the program. Accordingly, the Board placed "state of the art" computers in every advocate office and provided a case management system that permits scheduling, docketing, reporting and updating of information on all case files. This system gives the advocates access to case materials 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 remains 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 attempts to negotiate an agreement with the employer/insurer on behalf of the employee.

If the claim is not resolved in mediation, a petition is filed and the case proceeds to formal hearing. The advocates provide representation and litigate disputed claims through the formal hearing process, including compiling medical reports, preparing the worker for hearing, taking of direct and cross-examination testimony, and 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.

At the beginning of the program, it was believed that the advocates were spending a great deal of time on cases that had no merit. Thus, the Legislature enacted P.L. 1999, Chapter 410, which allows advocates to decline and/or withdraw from cases without merit. An advocate may choose not to represent a person if:

- (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

no record of medical assessment stating that the employee's work aggravated a pre-existing condition in a significant manner; or

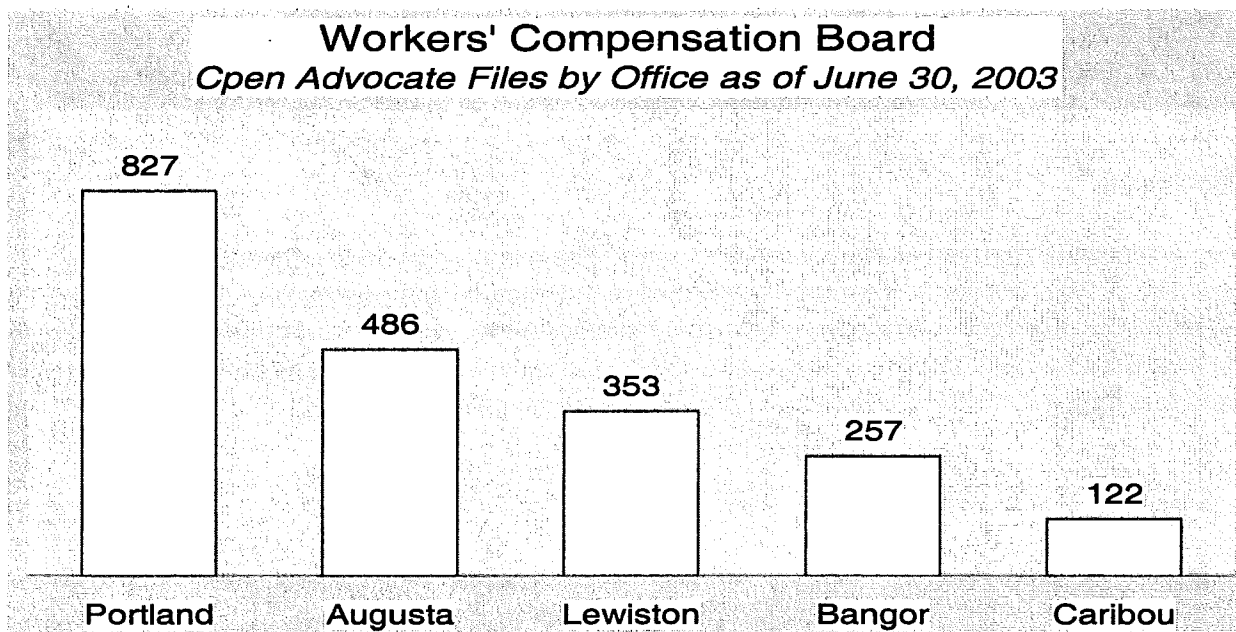
- (6) The employee has admitted to a fraudulent act, has been convicted of a fraudulent act by a court of competent jurisdiction or has been found to have committed a fraudulent act by the abuse investigation unit of the board.

The legislature provided for specific safeguards in the application of this section. An advocate, after a thorough investigation, must request, in writing, to the staff attorney permission to drop the case. The staff attorney must approve the request in writing. And, 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 significantly reduced the advocates' caseload. The advocates have seen only about a 1% 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 Portland and Augusta regional offices account for **64%** of all open files with the remaining **36%** distributed among the other three regional offices. More than **80%** of the cases are from Southern Maine. The following chart highlights this situation.



As of June 2003, the Advocate program has **2045** open files. In the past year, advocates represented injured workers in **2321** mediations and **562** formal hearings. From December 1997 through June 2003, advocates have represented injured workers in over **12,800** Mediations and over **2860** formal hearings.

The percentage of unrepresented employees has dropped significantly since the inception of the Worker Advocate Program. Advocates now participate in approximately **51%** of the total number of mediations and **38%** of formal hearings. These numbers are indicative of the popularity and need for the program. However, these numbers place a huge burden on the advocates and staff.

#### **IV. Staffing.**

Adequate support staff has been a problem since the inception of the program. The enabling legislation provided for only two support staff positions statewide. The Board added 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 hired an additional advocate for the Portland and Augusta offices as well as paralegal assistants in the Portland and Lewiston offices.

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 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, Augusta and Lewiston 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 program can deliver to injured workers 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 efficiency of the Advocate Program is tied directly to the adequate staffing issue.

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

The Worker Advocate Program has been very successful. The response by injured workers has been tremendous. The Advocates are performing their duties in a dedicated and professional manner. This program is making a difference. Injured workers now have access to representation that enables them to receive the benefits to which they are entitled. However, the issues of funding, caseloads, and staffing, must be addressed in a long-term strategy 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 on 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

**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 30 Independent Medical Examiners in various specialties, as shown in the following list:

Chiropractic	David M. Ballew, D.C. Robert P. Lynch, D.C. Douglas A. Vanderploeg, D.C.
Family/General/Internal	Jane W. Garfield, M.C. Geoffrey Gratwick, M.D. Peter K. Shaw, M.D. Douglas L. Trenkle, M.D.
Neurosurgery	Julius Ciembroniewicz, M.D.
Neurology	Peter A. Bridgman, M.D. Seth Kolkin, M.D. Mitchell K. Ross, M.D.
Occupational Medicine	Alexander L. Mesrobian, M.D. William Newkirk, M.D. David L. Phillips II, M.D.
Orthopedic Surgery	Matthew J. Donovan, M.D. James F. Findlay, D.O. Philip R. Kimball, M.D. Lawrence M. Lenoard, M.D. Jordan Shubert, M.D.

Osteopath

Dennis P. White, D.O.

Physiatry

Stephan Bamberger, M.D.  
G. Thompson Caldwell, M.D.  
Peter Esponnette, M.D.  
Peter R. Goebel, M.D.  
Vincent P. Herzog, D.O.

Psychiatry

Deborah J. Wear-Finkle, M.D.  
Carylyle B. Voss, M.D.

Psychology

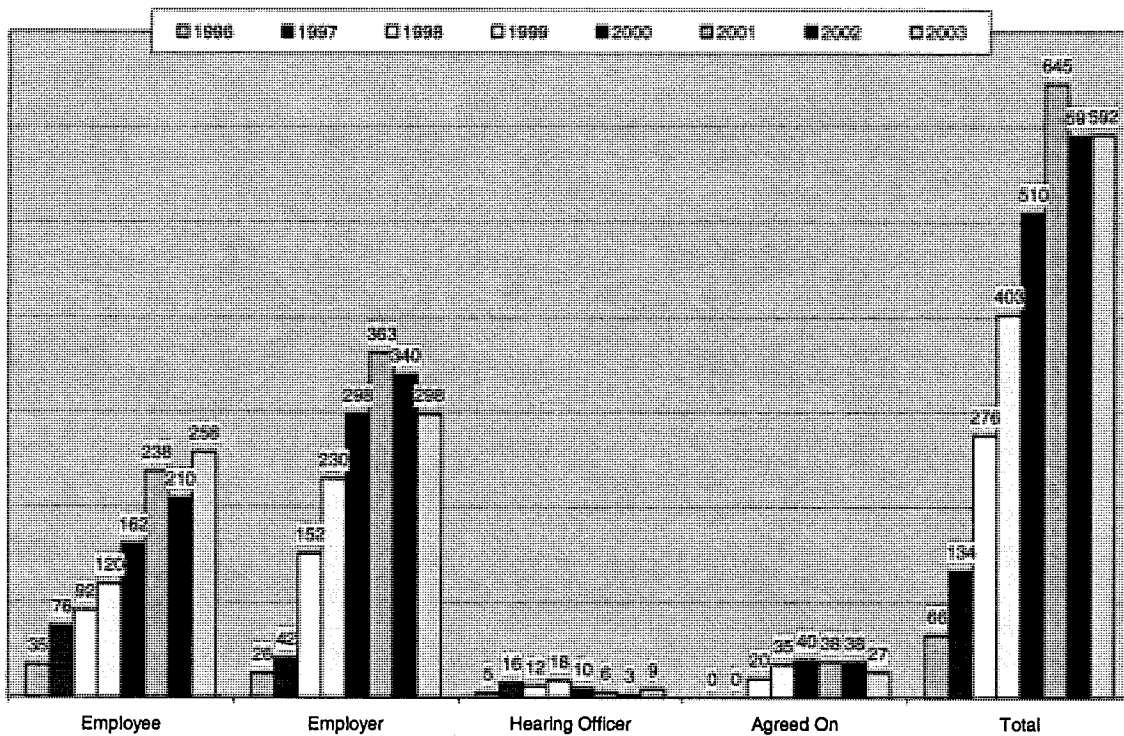
Roger Ginn, Ph.D.  
Jeff Matranga, Ph.D.

Pulmonary

Calvin P. Fuhrmann, M.D.

### Independent Medical Examinations

1996 - 2003





## **II. Medical Fee Schedule.**

The Board first published a Medical Fee Schedule on April 4, 1994. 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. In order to ensure appropriate limitations on the costs of health care services, 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. The 2003 update is currently pending before the Board.

## 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 data. The programs were written to gather information to perform rudimentary scheduling of cases for the dispute resolution process. The only other use of the system at the time was basic word processing.

Due to numerous problems with hardware reliability and technical support for the proprietary hardware and software applications, the hardware and software were replaced by Bull Information Systems. This system lasted a number of years and later moved to a more functional application. While this was more of a mainstream product, the business application software 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 information technology professionals.

The increasing need of 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) in 1995. Unfortunately, the initial database structure had major design flaws that led to corruption of the process and data integrity problems. The integrity and accuracy of the data and reports generated were questionable. In addition, the system did not adequately address the functional needs of the staff.

The plan was to centralize all 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 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.

Pursuant to a legislative mandate, a review was conducted to determine whether the computer system could provide the data for the MAE Program's Compliance Report. It became apparent that the system could not provide the quality assurance and data integrity required for the compliance report. Utilizing the one contract programmer from the Department of Labor at our disposal, work began to rewrite the business application. Normally an effort of this magnitude requires four programmers and approximately two years to complete. Due to limited resources, the time frame for completion is estimated by year end 2005. This encompasses the analysis and major rewrite of the Claims, Coverage, Regional Offices, Abuse, and MAE Units, with continued enhancements in all areas into the future.

One of the major aspects of the system rewrite is to review current work processes and practices while assuring conformity with statutory rules and regulations. A number of areas were improved leading to significant shifts in staff and resources.

The system rewrite began in the Claims Unit in order to capture First Report data for the MAE Unit's Compliance Report. The first Compliance Report was produced in June 1999. At that time no in-depth

workflow analysis or system enhancements for the Claims section was provided. The focus was to get something up fast in order to comply with statutory mandates.

The focus then shifted to the Coverage Unit and migration to the new system was accomplished in December 2000. One of the highlights was the shift to a common employer database with the Bureau of Labor Standards. This change saves considerable time during the analysis phase and provides a method to automatically keep employer information current. Other system changes and workflow enhancements were added to Coverage programs that increased the functionality of the system. System edits and checks were also added to help identify data quality issues.

The next phase dealt with Dispute Resolution and Regional Office functionality. A team representing all facets of the dispute process assisted with the analysis, design, screen building, testing, and rollout. This process encompassed more than year and was put into production on November 4, 2002. Programming efforts continue on changes and enhancements. This produced a major change of environment and took considerable effort to rollout. Due to limited resources, the training efforts fell on team members who also had to their daily workload to deal with.

The analysis phase of the Claims Unit began in the summer of 2003, and should be completed by March 2004, at which point programming will begin. There will be significant modifications to the current process. One major improvement already identified will be the automated tracking and request for missing information. This will provide the Monitoring Unit with a more accurate measure of a carrier's performance. Currently the tracking occurs on only one form and then only on the initial form. Presently, a carrier can be performing well in this area but failing in other areas, without being aware of such.

The Board continues to work closely with the Bureau of Labor Standards, Unemployment Tax, Child Enforcement, Medical Services, and Social Security to provide data instrumental to their daily operations. We are also automating a number of functional areas which should reduce some of the personnel requirements of the agencies.

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. During the past Legislative session bills were introduced to begin the process to mandate electronic filing of Board forms. Over the next year rules will be promulgated to assure compliance in this area. The anticipated date mandating the electronic reporting of the First Report of Injury is January 1, 2005. Additional forms will be added later in the year. The Board currently receives about 45% of First Reports electronically, an increase in the percentage will increase the efficiency of the Board.

## 8. BUDGET AND ASSESSMENT

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 eleven years ago, wanted the users of the workers' compensation system to pay for it. The agency had previously been funded from General Fund appropriations.

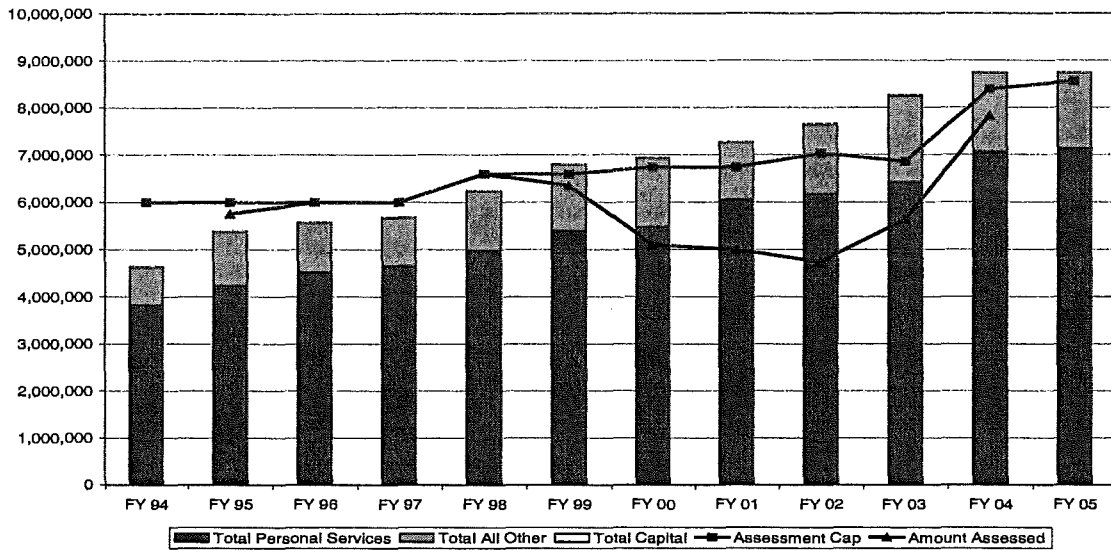
The Legislature established an assessment cap in the statute which initially was adequate to meet the Board's fiscal needs. The initial assessment level was adequate for the first six years. The assessment statute, however, has an inherent flaw in the form of a cap, which prevents revenue from keeping pace with expenditures, many of which the Board has no control over, for example, payroll, health insurance, retirement, postage, and lease costs.

The result of an inadequate assessment cap is the inability to submit a balanced budget, a problem faced in the last three fiscal years. The Board cannot budget more than it can raise for annual revenue, which is limited by the statutory cap. The Board has minor additional revenue from the sale of copies of documents, and fines and penalties. Most of the fines and penalties, however, are deposited in the General Fund which contributes no support to the Board. The Legislature, through legislation proposed by the Board, dealt with the cap problem during the last session and voted to raise the assessment cap for fiscal years 04 and 05. However, in the process, the Board had to eliminate a total of six positions, five of which had been held vacant, in order to remain within its total projected revenue. The long-range solution could take the form of a salary plan or revenue stabilization plan, similar to other state agencies. Otherwise, this will be a recurrent problem. The legislation increased the maximum assessment to \$8,390,000 in fiscal year 2004 and to \$8,565,000 in fiscal year 2005. The total Board-approved budget in each fiscal year amounted to \$8,680,500 in FY04 and \$8,855,500 in FY05, the difference being made up from sales, fines and penalties.

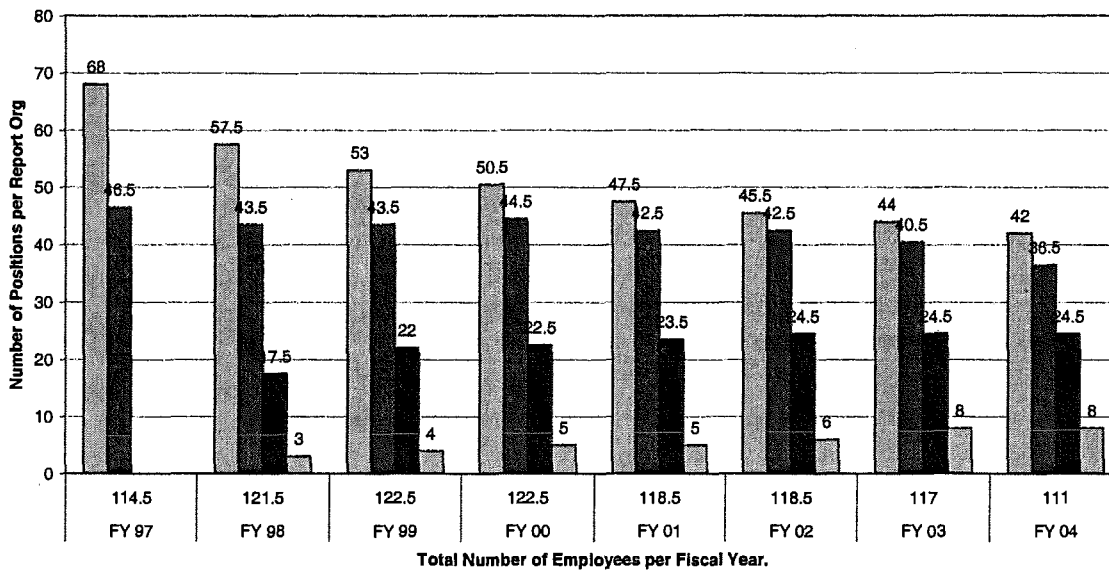
Another Legislative initiative enacted into law is P.L. 2003, c. 93. The statute provides that the Board, by a majority vote of its membership, may use its reserve to assist in funding its Personal Services and All Other expenditures, and other reasonable costs incurred to administer the Workers' Compensation Act. The Bureau of the Budget and Governor approve the request via the financial order process. This provides greater discretion to the Board in the use of its reserve account.

The projected shortfalls, notwithstanding the higher assessment cap, amounts to \$245,183 in FY04 and \$251,415 in FY05. These are based on actual projected expenditures of \$8,925,683 in FY04 and \$9,106,915 in FY05. These amounts include the higher retirement costs which the Board is required to pay. The bar chart entitled "WCB – 12 Year Schedule of Actual and Projected Expenditures" shows actual expenditures through FY03 and projected expenditures through 04 and 05. It also shows the assessment cap and the amounts actually assessed through FY04.

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



**WCB - Personnel Changes Since FY97  
July 2003**



The MAE and Worker Advocate programs represent 29% of the agency's total number of employees.

■ Dispute Resolution ■ Central Services ■ Advocate Program ■ MAE Program

Had the Legislature not increased the assessment cap to the current level, the Board would have had to lay off a quarter of its staff. The Board continues to make significant changes in its personnel allocation as can be seen in the chart entitled "WCB – Personnel Changes Since FY97." The assessment cap will continue to be a recurrent problem unless a long-range solution is found, such as, a salary plan or revenue stabilization.

## **9. CLAIMS MANAGEMENT UNIT**

The Claims Management Unit has been operating under a “case management” system 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 (“carriers”) benefit from having a single contact at the Board.

The Unit coordinates with the Monitoring Unit of the MAE Program to identify carriers that frequently file late forms or who may be consistently late in making required payments to injured workers. Case managers of the Claims Management Unit review the paperwork filed by carriers 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.

Greater implementation of Electronic Data Interchange (EDI) has created efficiencies in claims management allowing managers to increase their claim management efforts, through the electronic filing of commonly filed forms, such as the MOP, NOC and First Report of Injury forms.

In addition to EDI creating data entry efficiencies, the Unit is also undergoing full business analysis of its overall daily functions. The purpose is to upgrade computer programs and screens in order to streamline the workload thereby making the daily performance of work more efficient; automate functions that can be done by the computer; and, reduce the time it takes to process claims and associated paperwork. All of these changes will provide time to address higher level and more serious problems and should benefit the entire workers’ compensation community. It will also identify, through the computer, filing requirements and deadlines for carriers while notifying them automatically of problems or errors in this regard. It is anticipated that this computer upgrade will be completed during the summer of 2004.

## 10. INSURANCE COVERAGE UNIT

The Insurance Coverage Unit has new computer screens resulting from recent program upgrades. The new screens help to streamline data entry and enhance the ability to identify trends and problems with carriers. The program can link coverage and make employer updates much more easily than in the past. As a result, the number of claims without coverage has been reduced from over 100,000 to fewer than 10,000.

There are currently three fewer employees in the Coverage Unit. This is a direct result of the computer upgrade and efforts to streamline the workload.

The Board's database was merged with the Department of Labor's roughly two years ago, resulting in more cooperation with the Department of Labor and the Bureau of Insurance. The Unit also processes proof of workers' compensation insurance coverage manually and electronically. A staff member is assigned to the processing of applications for waivers of the Workers' Compensation Act.

The supervisor of the Unit is responsible for a multitude of duties including the review and approval of applications for the predetermination of independent contractors. The activities consisting of proof of coverage, waivers, and predeterminations are given equal priority for processing purposes. The staff attempts to process these expeditiously, and the goal is to process 80% of the proof of coverage filings within 24 hours of receipt, 90% of waiver applications within 48 hours of receipt, and 100% of predetermination applications within 14 days.

The Unit also assists with problem claims including the proper identification of insurance coverage, the proper identification of employers, as well as identifying address changes for employers. This is done to properly process and assign claim files to the appropriate regional offices. The Coverage staff works closely with the Abuse Investigation Unit regarding problems associated with coverage enforcement. It cooperates with the MAE program to identify carriers and self-insureds who consistently fail to file required information in a timely manner. And, it assists the Bureau of Labor Standards to maintain an accurate, and up-to-date employer database, used by both departments.

The Unit researches the history of employer insurance coverage for purposes of certifying to the accuracy of these records. This is particularly important for many of the claims at formal hearing, especially where there is a controversy as to which party is liable for the payment of the claim. The Unit routinely provides assistance to the public regarding insurance coverage requirements, since workers' compensation coverage in Maine is mandatory, in most cases.

## **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 compared 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 can more accurately identify employers without 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." At the request of BLS, which wanted the more detailed information, the Board acted to incorporate the requested changes.

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, need only fill out one form to meet both state and federal requirements. This has 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. The Bureau of Insurance has recently recommended a change to the process to the Chapter 425 Commission, which will be considered during the upcoming legislative session.

There are also increasing requests from the Bureau of Labor Standards for data and additional elements. 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 coordinated effort is underway with Bureau of Information Services to upgrade the WCB's computer hardware and software. Upgrades include desktops, network servers, database server, network hubs, and a routed network. Major programming changes have been underway for the past two years and will continue into the foreseeable future.



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

The Board is considering mandating the electronic submission of First Reports of Injury (FRI), 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 6 to 12 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 a rule that requires electronic filing of all First Reports of Injury by January 1, 2005; Notices of Controversy by July 1, 2005; and Memoranda of Payment by January 1, 2006.

## 12. ABUSE INVESTIGATION UNIT

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

Section 324(2) mandates that payments be made within 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(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.

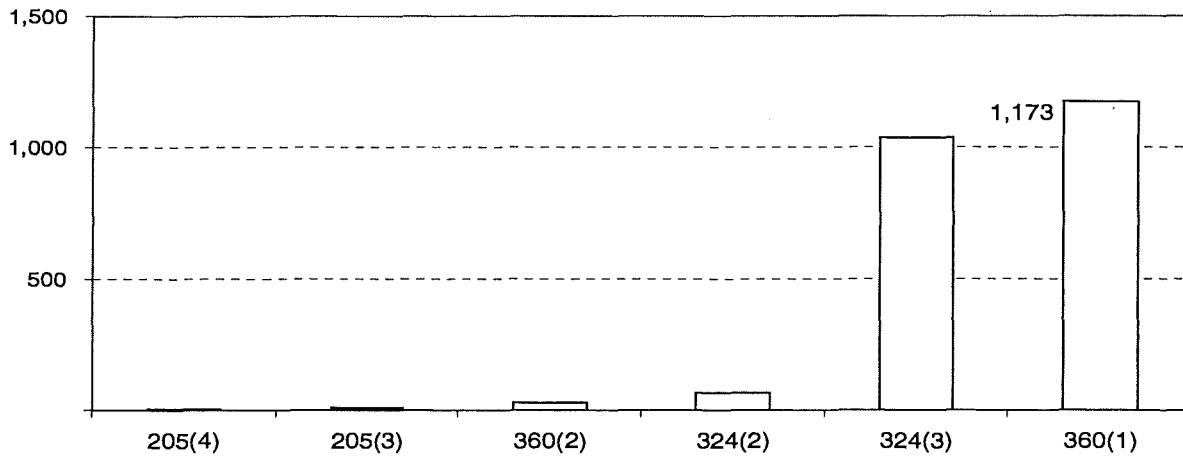
Section 360(1) provides for penalties when a form is not filed within time frames set by rule or statute. Violations of this section carry a maximum penalty of \$100.00, payable to the General Fund.

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), concerning late filings and no-coverage.

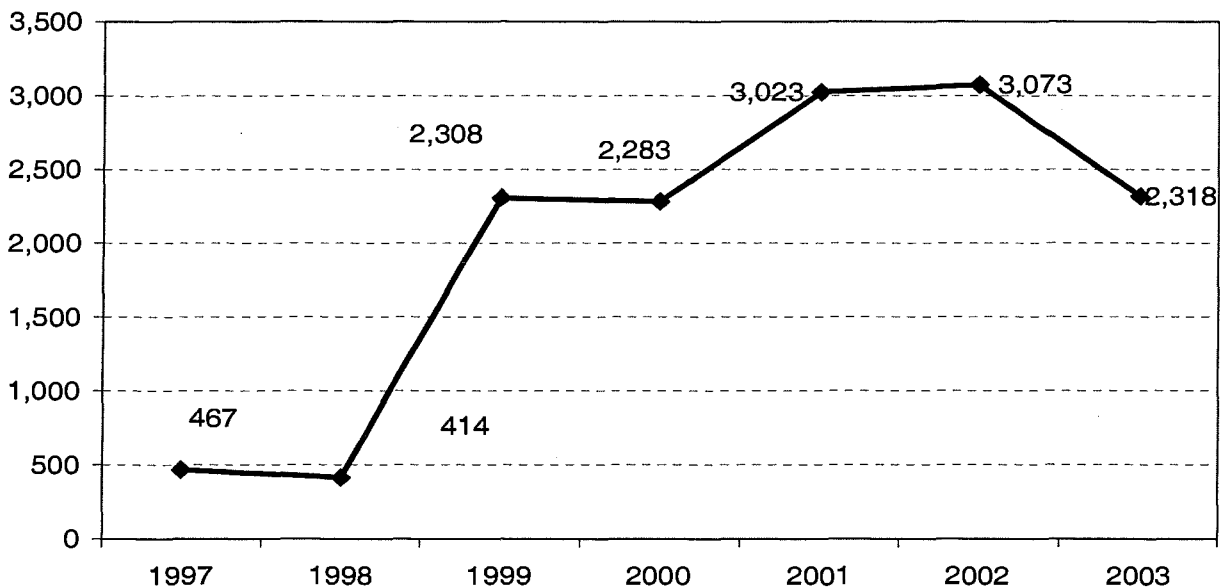
A summary of cases is shown in the following chart:

Filings by Section of Statute (39-A)  
Calendar 2003



The total number of cases filed with the Abuse Investigation Unit, which increased sharply in 1999 and remained at nearly that level in 2000, then increased again in 2001 and 2002, has returned to the 1999-2000 vicinity of 2,300. This is primarily (though not entirely) due to a fluctuation in the number of late-filing cases under section 360(1).

Filings to Abuse Investigation Unit  
January 1997 thru December 2003



The higher volume of cases flowing into the Unit in the last 5 years 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 increased the number of cases that it closed. The number of closed cases, which had been several hundred a year, is now up well over 1,200. 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 2003 as follows: Section 360(1): 454 granted and 187 denied; Section 324(3): 295 granted and 269 denied or dismissed; and Section 324(2): 27 granted and 26 denied or dismissed.

In 2003, the Abuse Investigation Unit assessed \$45,651 in penalties and \$4,550 in attorney's fees pursuant to Section 324(2); \$745,761 in penalties pursuant to Section 324(3); and \$45,350 pursuant to Section 360(1) for a total of \$841,312 in penalties and fees assessed.

The Unit received in 2003 its first decision on a complaint under Section 359, which resulted in a finding of a violation for engaging in a pattern of questionable claims-handling techniques and a penalty of \$5,000 as well as a certification of the findings to the Superintendent of Insurance. The litigation of that case consumed a significant number of hearing days and entailed a substantial amount of work on the part of the staff of the Unit (in addition to other Board personnel, including the Audit Division and Dispute Resolution). 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 significantly.

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 25 complaints pursuant to section 360(2) received. 21 cases in this category were referred for hearing and 4 denied or dismissed.

It is clear from these statistics that the Abuse Investigation Unit has in recent years been 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 (when fully staffed), 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.**

The Board is currently considering two rules. The first pertains to W.C.B. Rule Ch. 5, the medical fee schedule. The proposed amendments incorporate the 2003 Physician's Current Procedural Terminology ("CPT codes") and the 2003 Medicare RBRVS. The amendments also include a definition of "inpatient," standardize reimbursement for travel and related expenses and clarify procedures when there is a dispute regarding the appropriate CPT code.

Also pending is a rule that requires electronic filing of all First Reports of Injury by January 1, 2005; Notices of Controversy by July 1, 2005; and Memoranda of Payment by January 1, 2006.

#### **B. Legislative Activity.**

The Board submitted four bills to the First Regular Session of the 121<sup>st</sup> Legislature. The first, LD 9 (enacted as P.L. 2003, Ch. 93) clarifies that the Board can, by a majority vote, use its reserve to assist in funding Personal Services expenditures, All Other expenditures, and to defray the costs incurred to administer the Act.

Next, LD 10 (enacted as P.L. 2003, Ch. 52) allows the Board to delegate to a Hearing Officer or a panel of three Hearing Officers, authority to hear and decide cases involving a request for an extension of benefits due to extreme financial hardship.

Third, the Board submitted a bill, LD 35, to increase the maximum assessment to \$8,350,000 in Fiscal Year 2004 and to \$8,525,000 in Fiscal Year 2005. As enacted (P.L. 2003, Ch. 425), LD 35 requires the Board to adopt rules (using the consensus-based rulemaking process) requiring electronic filing of information; increases the maximum assessment to \$8,390,000 in Fiscal Year 2004, \$8,565,000 in Fiscal Year 2005, and \$8,525,000 in Fiscal Year 2006; and establishes a Commission (composed of 4 Legislators and 2 Board Members) to review the budget process of the Board.

Enactment of LD 35 permits the Board to maintain the same level of spending in Fiscal Years 2004 and 2005 as it had in Fiscal Year 2003. The Board had to eliminate 6 positions to accomplish this.

Last, the Board submitted LD 398 to require electronic filing of information. This idea was incorporated, with a few changes, into LD 35 (enacted as P.L. 2003, Ch. 425).

### C. Held-Over Legislation

Two workers' compensation related bills were carried over to the Second Regular Session of the 121st Legislature.

The first is: LD 550: An Act Regarding the Employment of Workers' Compensation Board Hearing Officers and Mediators. This bill transfers authority to hire Hearing Officers and Mediators to the Executive Director from the Board. Hearing Officers and Mediators would be subject to the Civil Service Laws. The Labor Committee issued a divided report:

Majority: OTP-A. The amendment provides that Hearing Officers and Mediators are not subject to the Civil Service Laws and serve at the pleasure of the appointing authority (the Executive Director). It also requires the Executive Director to enter into written contracts with the Hearing Officers setting forth terms and conditions of employment and providing for renewable terms of up to 5 years.

Minority: OTP-A. The amendment provides that Hearing Officers and Mediators continue to be appointed by the Board, requires the Board to enter into written contracts with the Hearing Officers setting forth terms and conditions of employment and providing for renewable terms of up to 3 years. It also requires the Executive Director to evaluate Hearing Officers before reappointment and to report to the Board with a recommendation. The report must include the number of cases decided by the Hearing Officer that were appealed to the Law Court.

The second is: LD 575: An Act to Encourage Workers' Compensation Dispute Resolution. This bill authorizes a surcharge on an employer of \$500 for mediation or \$1,500 for formal hearing if an employee obtains or retains more benefits than were offered by the employer prior to mediation or prior to formal hearing. All surcharges would be deposited into a special account and dedicated for use by the advocate program. The Labor Committee issued a divided report:

Majority: OTP-A. The amendment deletes the provision establishing a surcharge at mediation.

Minority: ONTP.

Both of these bills will be addressed during the Second Regular Session of the 121st Legislature.

**D. Extreme Financial Hardship Cases.**

Pursuant to 39-A M.R.S.A. § 213(1) the Board “may in the exercise of its discretion extend the duration of benefit entitlement ... in cases involving extreme financial hardship due to inability to return to gainful employment.”

On October 21, 2003, the Board held a hearing in the case of *McKenna v. Ladd Farms*. After hearing the evidence and considering the parties’ arguments, the Board voted to extend Mr. McKenna’s benefits by a 7-0 margin.

Two more cases arising under this section are awaiting scheduling.

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

The Workers' Compensation Act provides for a biennial 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% to 11.8% 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% threshold and extended the limitation referenced in Section 213(4) by 52 weeks on January 1, 2000.

The issue of whether to extend benefits as of January 1, 2001 was the subject of litigation that ultimately made its way to the Supreme Judicial Court. In *Lingley v. Workers' Compensation Board*, 2002 ME 32, the Supreme Judicial Court held that the Board's 4-0-3 vote on whether to extend benefits was final agency action and that the appeal of the Board's action was not filed in a timely manner and was properly dismissed by the Superior Court.

The issue of whether to extend benefits as of January 1, 2002 was also the subject of litigation. In *Clark v. Workers' Compensation Board*, 2003 Me. Super. Lexis 193, the Superior Court remanded the matter back to the Board because final agency action had not yet been taken by the Board. This matter is still before the Board.

For 2003, the Board proposed a rule that would find that no extension was warranted as of January 1, 2003. The rule, by a 4-4 vote, did not receive final Board approval.

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%



## 15. SUMMARY

The Board is performing efficiently in its major areas of responsibility: dispute resolution; the MAE program; the Worker Advocate program; Independent Medical Examinations/Medical Fee Schedule; claims and coverage; and technology. However, the governance of the agency has been challenged by the Governor through a set of performance measurements submitted in May of 2003. The performance measurements proposed by the Governor include: 1) Section 213(4) Benefit Duration Extensions (target date: October 1, 2003); 2) Section 213(2) Permanent Impairment Threshold (target date: October 1, 2003); 3) Hearing Officer employment (target date: August 1, 2003); 4) Board revenue collection (target date: January 1, 2004); 5) allocation of board resources (target date: January 1, 2004); and 6) NOC Pilot Project (target date: January 1, 2004). The Board did not reach consensus on 1, 2, 3, and reached consensus on 4, 5, and 6.

Through the enactment of Chapter 93 and Chapter 425, the Legislature, based on the Board's legislative proposals, dealt with the Board's fiscal problems. Chapter 93 clarifies the Board's authority in its use of the reserve funds in funding personal services, all other expenditures, and the costs of administering the Act. It provides broader discretion to the Board in the use of its reserve account. Chapter 425 increases the maximum assessment to \$8,390,000 in fiscal year 2004 and to \$8,565,000 in fiscal year 2005. It also requires the Board to adopt rules requiring the electronic filing of information and establishes a Commission to review the budget process of the Board.

In order to resolve certain budgetary problems, the Board unanimously approved a motion to increase the budget to \$8,680,000 and \$8,855,000 in fiscal years 04 and 05 respectively. The difference in each fiscal year from the assessment cap is in revenue from assessment interest, the sale of copies and publications, fines and penalties.

Two workers' compensation bills were carried over to the Second Regular Session of the 121<sup>st</sup> Legislature. LD 550 transfer authority to hire Hearing Officers and Mediators from the Board to the Executive Director. LD 575 authorizes a surcharge in cases where an employee retains more benefits than were offered by the employer prior to mediation or formal hearing.

**SECTION II**

**BUREAU OF INSURANCE**



## SECTION II. BUREAU OF INSURANCE

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## Introduction

This 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. Since then advisory loss costs increased in three out of five years. 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 filed to increase their loss cost multipliers.

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act. The new law establishes a temporary Federal program that provides for shared public and private compensation for insured losses resulting from acts of terrorism, in order to protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of insurance for terrorism risk. In addition, it allows for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses. 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. By its nature the reinsurance is a global business hence the premium charged by reinsurance companies are not subject to supervision by state insurance departments.

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 Maine Employer's Mutual Insurance Company's (MEMIC) market share increased from 51 percent to 54 percent in 2002, there are still many insurers writing workers' compensation coverage in Maine. The trend of increased

market share by MEMIC is one that should be watched as it can be an indication that some businesses may not find other carriers willing to insure them. Furthermore, 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.

## RECENT EXPERIENCE

### Loss Ratios and the State of Competition

Workers' compensation is a long-tail line of insurance, meaning payments for claims can be made over a long period of time. For some claims payments 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 matches all losses occurring (regardless of when the losses are reported) during a given 12-month period of time with all premiums earned (regardless of when the premium was written) during the same period of time. The accident year loss ratio shows the percentage of premium earned 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. 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, with the ultimate result determined only after all losses are settled. Therefore, the ratios for each year are updated on an annual basis.
- Calendar year loss ratios match all losses incurred (though not necessarily occurring) within a given 12 month period with all premiums earned within the same period of time. 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. Once calculated for a given period, calendar year experience never changes.
- Policy year experience segregates all premiums and losses attributable to policies having an inception or a renewal date within a given 12-month period. The total value (losses paid plus loss reserves) of all losses arising from (regardless of when reported) policies beginning or renewing during the year is divided by the fully developed earned premium for those same policies. The fully developed earned premium will always equal the written premium for those policies. The ultimate result cannot be finalized until all losses are settled. 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.



## **RECENT EXPERIENCE**

### **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 less 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 few years.

Insurers nationwide are reducing credits and increasing premiums for workers compensation and other lines of insurance. Accident year loss ratios between 1998 and 2000 ranged from 108 to 124. Loss ratios that exceed 100 percent mean that insurers are paying out more in benefits than they collect in premiums. Loss ratios fell sharply to 86.3 in 2001 and 79.3 in 2002. The reason for the drop over the past two years is due to reductions or elimination of credits and increased rates rather than a decrease in losses.

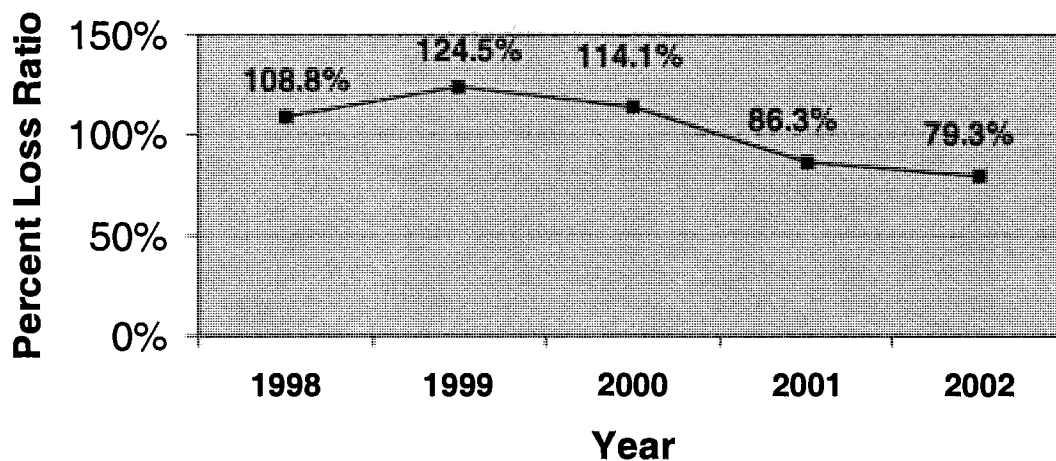
## RECENT EXPERIENCE

### 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 2002 loss ratio was 79.3 percent, indicating that \$79 is expected to be paid for losses and loss adjustment expenses for every \$100 earned in premium. The 2001 loss ratio was 86.3 percent. These ratios are down from a five year high of 124.5 percent in 1999. Currently, investment income is insufficient to offset high loss ratios. The decreasing loss ratios in 2001 and 2002 are primarily a result of increased rates and reduced credits charged by the insurance companies.

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, 2001 and 2003 resulting, in part, in increased premiums and an increased denominator for the loss ratio.

**Exhibit I. Accident Year Loss and Loss Adjustment Expense Ratios**



Source: National Council on Compensation Insurance

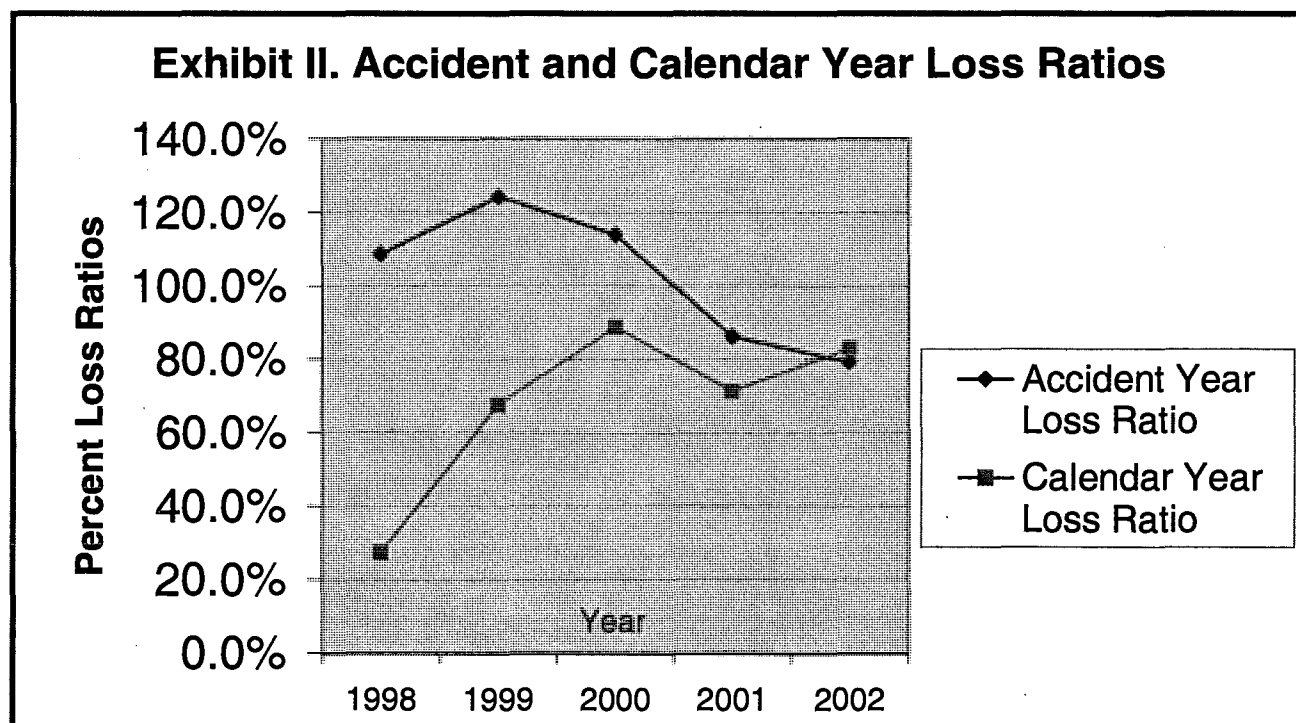
## RECENT EXPERIENCE

### 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 124.5 percent, indicating that \$124 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 114.1 percent. Premiums earned by Maine insurers increased from less than \$135 million in 1999 to over \$211 million in 2002 and the accident year loss ratios decreased in 2001 and 2002 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.



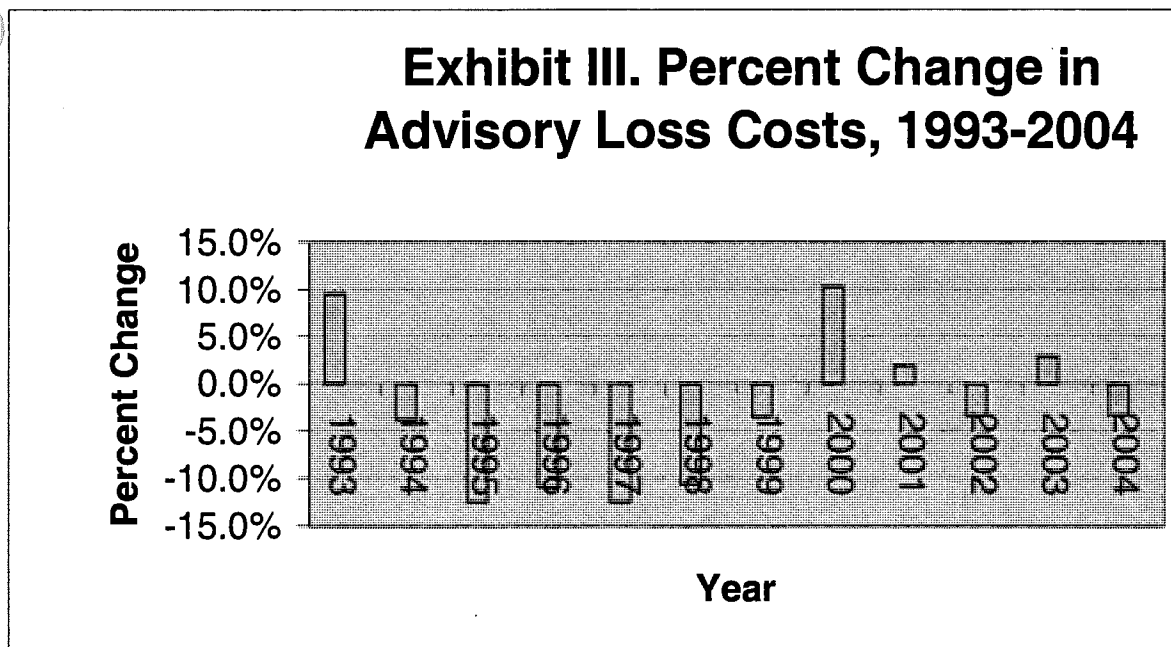
Source: National Council on Compensation Insurance

## 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 and then a 2.9 percent increase in 2003. Effective January 1, 2004, there was a 3.3 percent decrease in the loss costs. Changes in advisory loss costs tend to lag behind changes in actual experience and precede changes in rates.

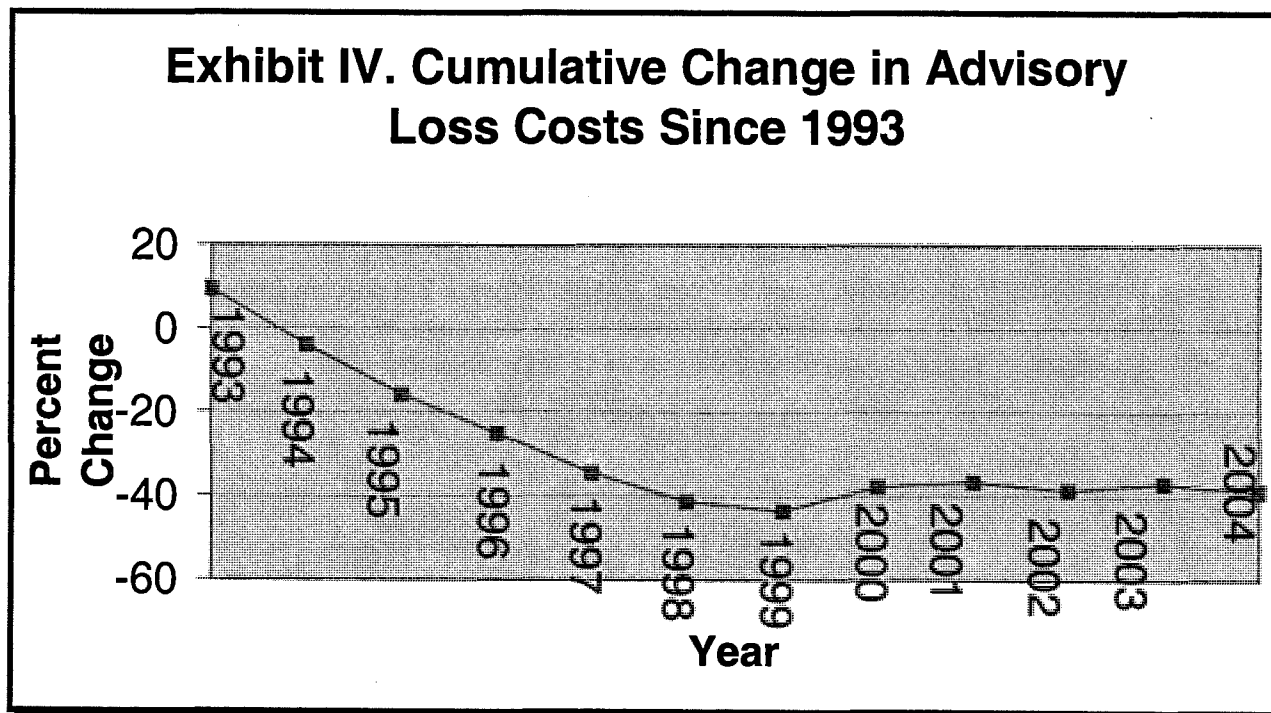


Source: National Council on Compensation Insurance

## LOSSES IN WORKERS' COMPENSATION

### Cumulative Changes in Advisory Loss Costs

On average, advisory loss costs in 2004 are nearly 39 percent lower than they were prior to the 1993 reforms. Actual changes in loss costs vary by classification. In 1999, advisory loss costs reached their lowest point in many years. Presently the loss costs are about five percent higher than that.



Source: National Council on Compensation Insurance

## 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, is now 54 percent. As of October 1, 2003, 250 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 2002.

<b>Table I: Number of Companies by Level of Written Premium--2002</b>	
<b>Amount of Written Premium</b>	<b>Number of Companies At That Level</b>
>\$10,000	118
>\$100,000	80
>\$1,000,000	28

Source: Annual Statements Filed with the Bureau of Insurance

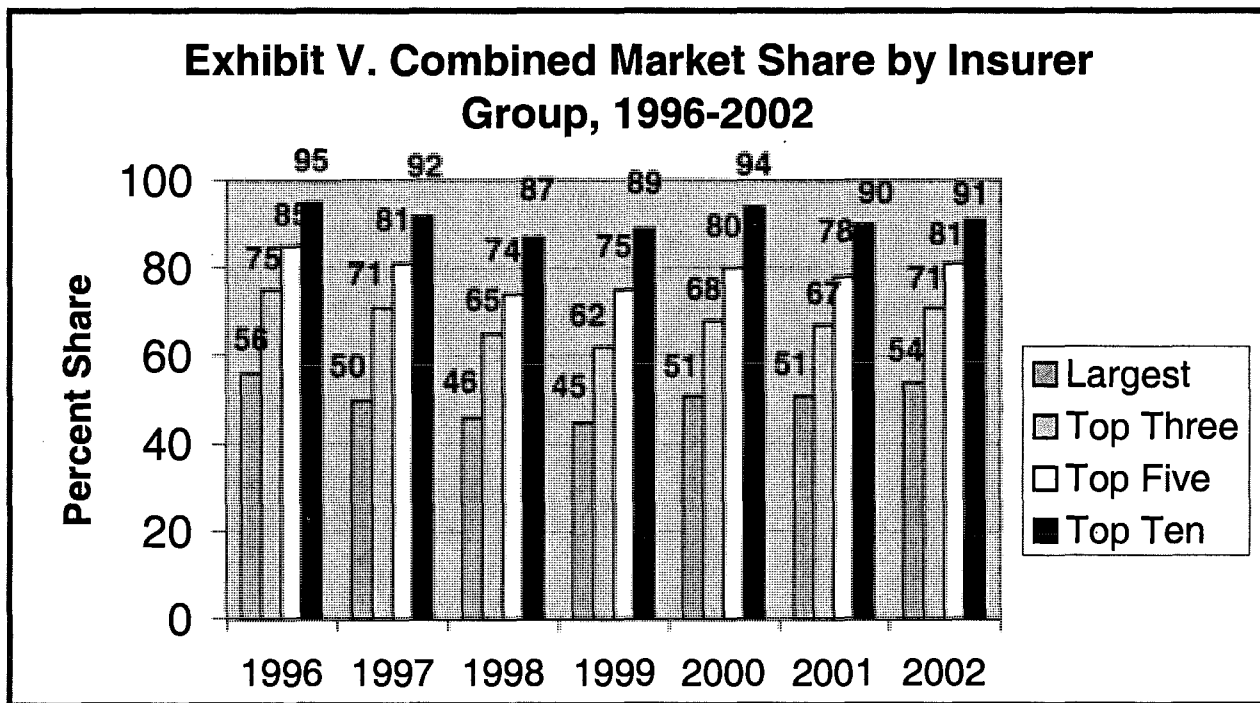
Looking only at market concentration does not give a complete picture of market competition. A discussion of self-insurance, found in the Alternative Risk Markets section, gives a more balanced perspective.

## MARKET STRUCTURE AND COMPETITION

### 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 began to reverse in 2000 and MEMIC now holds a 54 percent market share.

In 2002, market share of the top ten insurer groups is 91, consistent with the seven year average. Other groups wrote less than ten percent of the workers' compensation premium in Maine. In terms of dollar amounts, MEMIC wrote nearly \$121 million in premium in 2002, \$16 million more than it did in the previous year. The top three groups, including MEMIC, wrote over \$158 million in business, \$22 million more than in 2001. The top five groups had over \$179 million in written premium, \$20 million above the prior year. The top ten groups wrote nearly \$202 million in premium in 2002, around \$17 million more than in 2001. The remaining groups had written premium of over 20 million dollars, up \$1 million from the previous year.



Source: Annual Statements Filed with the Bureau of Insurance

## DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

### Number of Carriers in the Maine Insurance Market, 1993-2003

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, 72 more insurers have become authorized to write workers' compensation insurance than have exited the market. 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. Number of Insurance Carriers and the Net Change in the Number of Carriers, 1993-2003</b>			
<b>Year</b>	<b>Number of Carriers</b>	<b>Net Change (Number)</b>	<b>Net Change (Percent)</b>
1992	90	-	-
1993	96	6	6.7
1994	106	10	10.4
1995	115	9	8.5
1996	149	34	29.6
1997	178	29	19.5
1998	187	9	5.1
1999	198	11	5.9
2000	210	12	6.1
2001	228	18	8.6
2002	241	13	5.7
2003	250	9	3.6

Source: Bureau of Insurance Records.

### Figures as of October 1, 2003

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

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



## DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

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.

**Table III. Percent Market Share for Top Ten Insurance Groups**

**By Amount of Written Premium, 1996-2002**

Insurance Group	2002 Share	2001 Share	2000 Share	1999 Share	1998 Share	1997 Share	1996 Share
Maine Employers' Mutual	54.4%	51.5	51.2	44.7	46.2	50.4	56.0
Liberty Mutual Group	10.4	7.9	9.5	7.0	3.7	4.9	2.2
WR Berkeley Corp.	6.5	7.4	7.5	7.7	9.5	10.3	9.4
Royal & Sun Alliance USA <sup>1</sup>	6.3	6.1	5.0	4.7	*	*	1.4
Allmerica Financial Corp.	3.1	5.4	6.4	9.1	8.8	9.9	9.3
Zurich Insurance Group	2.6	2.0	2.2	2.1	3.5	3.7	4.2
Guard Insurance Group	2.1	2.7	2.2	*	*	*	*
White Mountains Group <sup>2</sup>	2.0	4.5	5.3	6.1	6.0	5.3	5.8
Traveler's Prop. Cas. Group	1.7	*	*	*	*	*	*
St. Paul Group	1.6	1.1	*	*	*	*	*
ACE Ltd	1.2	1.0	*	*	*	*	*
Hartford Fire & Casualty	1.2	1.0	*	*	*	1.4	*
CNA Insurance Group	1.1	1.4	*	1.9	*	*	*
Amerisafe Group	0.9	1.4	2.2	*	*	*	*
Lumbermen's Mutual Casualty Group	0.8	1.3	*	*	*	*	*
Star Insurance Group	0.4	0.6	*	*	*	*	*
Sentry Insurance Group	0.4	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

## DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

Table IV shows the percent of market share for the top ten carriers for each calendar year from 1996 through 2002. MEMIC's market share increased by nearly 10 percent in the past three years, an indication of market hardening. Its market share increased to over 54 percent in 2002, indicating that some employers may be having difficulty getting insurance coverage elsewhere. No other workers' compensation carrier accounts for more than six percent of market share. The top ten companies combined write over 76 percent of the business.

**Table IV. Percent Market Share for Top Ten Insurance Carriers  
By Amount of Written Premium, 1996-2002**

Insurance Carrier	2002 Share	2001 Share	2000 Share	1999 Share	1998 Share	1997 Share	1996 Share
Maine Employers' Mutual	54.4	51.5	51.2	44.7	46.2	50.4	56.0
Acadia Insurance Company	6.0	6.8	7.0	7.6	9.1	10.3	9.4
Liberty Mutual Fire Ins Co	2.5	0.7	2.8	2.8	1.2	1.8	*
Royal Ins. Co. of America	2.4						
Peerless Ins. Co.	2.3	1.5	*	*	*	*	1.6
Hanover Insurance Co.	1.9	3.3	2.5	1.8	*	2.5	2.5
Commercial Union/York <sup>1</sup>	1.9	3.8	4.4	4.6	3.1	1.4	2.1
Norguard	1.7	2.0	1.3				
Traveler's Indemnity Co.	1.6						
Liberty Mutual Ins. Co	1.4	0.9					
Citizens Insurance Co.	1.2	1.7	2.5	3.1	3.1	3.2	3.1
Employer's Ins. Of Wausau	1.2	1.1	*	*	1.2	*	*
Liberty Insurance Corp.	1.1	1.3	*	1.4	1.2	2.4	*
Security Ins. Co. of Hartford	1.1	2.7	1.6	*	*	*	*
American Interstate Ins. Co	0.9	1.4	2.2	1.2	*	*	*
Royal Indemnity	0.9	0.8	*	*	1.5	*	*
St. Paul Fire & Marine Ins.	0.9	0.6	*	*	*	*	*
Maryland Casualty Co.	0.9	*	*	*	*	*	*

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 York Insurance Company. Subsequently it was acquired by the White Mountain Group.

## DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

### 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. Since then advisory loss costs have increased in three of five years. Even still, advisory loss costs are about 39 percent lower than they were in 1992.

As of October 1, 2003, 250 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> among other states (high rank indicates high cost) 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 comparative costs in the manufacturing industry. In Oregon's 2002 ranking of workers' compensat. premiums Maine ranked 28<sup>th</sup> lowest, down from 19<sup>th</sup> in 2000, the prior study.

## DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

**Table V: MEMIC Standard Rate and the Lowest Available Rate for Selected Classifications  
Effective January 1, 2004**

Class Code	Description	MEMIC Standard Rate	Industry Low Rate
2111	CANNERY	\$6.89	\$3.84
2286	WOOL SPINNING & WEAVING	\$6.06	\$3.38
2501	CLOTHING MANUFACTURING	\$5.39	\$3.00
2660	BOOT OR SHOE MANUFACTURING	\$4.84	\$2.70
2702	LOGGING OR LUMBERING	\$28.53	\$15.90
2709	MECHANIZED LOGGING	\$7.78	\$4.34
2710	SAWMILL	\$15.46	\$8.61
2721	CERTIFIED LOGGING	\$24.00	\$13.37
2841	WOODEN WARE MANUFACTURING	\$4.75	\$2.64
3629	PRECISION MACHINED PARTS MFG	\$3.21	\$1.79
3632	MACHINE SHOP	\$5.53	\$3.08
3681	TV, RADIO, TELE/ TELECOM DEVICE MFG	\$2.56	\$1.43
3724	MACHINERY/ EQUIP ERECTION OR REP	\$13.12	\$7.31
4207	PULP MFG	\$2.74	\$1.53
4239	PAPER MFG	\$3.37	\$1.88
4279	PAPER GOODS MFG	\$3.58	\$2.00
4299	PRINTING	\$3.79	\$2.11
4361	PHOTOGRAPHERS	\$2.62	\$1.46
4484	PLASTICS MFG: MOLDED PRODUCTS	\$4.27	\$2.38
4511	ANALYTICAL CHEMIST	\$1.33	\$0.74
4693	PHARMACEUTICAL/SURGICAL GOODS MFG	\$2.69	\$1.50
5183	PLUMBING	\$9.07	\$5.05
5190	ELECTRICAL WIRING WITHIN BUILDINGS	\$3.72	\$2.07
5191	OFFICE MACHINE OR APPLIANCE INSTAL	\$1.55	\$0.87
5506	STREET CONSTRUCTION PAVING	\$12.60	\$7.02
5538	SHEETMETAL WORK	\$10.07	\$5.61
5606	CONTRACTOR EXECUTIVE SUPERVISOR	\$3.81	\$2.12
5645	CARPENTRY DETACHED 1 OR 2 FAMILY	\$18.73	\$10.44
6217	EXCAVATION	\$12.56	\$7.00
7228	TRUCKING LOCAL	\$20.73	\$11.55
7229	TRUCKING LONGDISTANCE	\$14.78	\$8.24
7380	DRIVERS	\$9.72	\$5.41
7539	ELECTRIC LIGHT OR POWER CO.	\$2.66	\$1.48
7600	TELEPHONE OR TELEGRAPH CO.	\$5.39	\$3.00
7610	RADIO OR TELEVISION BROADCASTING	\$0.034	\$0.19
7720	POLICE OFFICER	\$3.77	\$2.10

## DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

**Table V: MEMIC Standard Rate and the Lowest Available Rate for Selected Classifications  
Effective January 1, 2004 (Continued)**

Class Code	Description	MEMIC Standard Rate	Industry Low Rate
8006	STORE: GROCERY/CONVENIENCE RETAIL	\$2.72	\$1.51
8008	STORE: CLOTHING/DRY GOODS RETAIL	\$1.78	\$0.99
8010	STORE: HARDWARE	\$2.52	\$1.40
8017	STORE: RETAIL NOC	\$1.79	\$1.00
8018	STORE: WHOLESALE NOC	\$6.40	\$3.56
8024	SEAFOOD DEALER WHOLESALE	\$8.34	\$4.65
8033	STORE: MEAT, GROCERY AND PROVISION	\$3.00	\$1.67
8039	STORE: DEPARTMENT-RETAIL	\$2.49	\$1.39
8044	STORE: FURNITURE	\$5.81	\$3.24
8058	BUILDING MATERIAL DEALER-NEWMAT.	\$3.37	\$1.88
8107	MACHINERY DEALER	\$5.04	\$2.81
8227	CONSTRUCTION PERMANENT YARD	\$8.34	\$4.65
8232	LUMBER YARD NEW MAT.WHOLESALE	\$5.31	\$2.96
8350	GASOLINE DEALERS	\$10.28	\$5.73
8380	AUTO SERVICE OR REPAIR CENTER	\$5.38	\$3.00
8601	ARCHITECT OR ENGINEER CONSULTING	\$1.22	\$0.68
8742	SALESPERSONS, COLLECTORS	\$0.69	\$0.38
8803	AUDITORS, ACCOUNTANT TRAVELING	\$0.17	\$0.09
8810	CLERICAL OFFICE EMPLOYEES	\$0.62	\$0.34
8820	ATTORNEY	\$0.53	\$0.30
8829	CONVALESCENT OR NURSING HOME	\$5.40	\$3.01
8832	PHYSICIAN	\$0.76	\$0.42
8833	HOSPITAL PROFESSIONAL EMPLOYEES	\$1.92	\$1.07
8835	NURSING-H.H., PUBLIC & TRAVELING	\$7.25	\$4.04
8861	CHARITABLE OR WELFARE ORGAN. PROF.	\$2.23	\$1.24
8868	COLLEGE: PROFESSIONAL EMPLOYEES	\$0.53	\$0.30
8901	TELEPHONE OR TELEG CO. OFFICE	\$0.48	\$0.27
9014	BUILDING OPER. BY CONTRACTORS	\$5.92	\$3.30
9015	BUILDING OPER. BY OWNER	\$4.58	\$2.55
9040	HOSPITAL ALL OTHER EMPLOYEES	\$6.09	\$3.39
9052	HOTEL: ALL OTHER EMPLOYEES	\$3.82	\$2.13
9058	HOTEL: RESTAURANT EMPLOYEES	\$2.66	\$1.48
9060	CLUB-COUNTRY, GOLF, FISHING OR YACHT	\$2.84	\$1.58
9063	YMCA, YWCA, YMHA, OR YWHA	\$1.36	\$0.76
9083	RESTAURANT: FAST FOOD	\$2.90	\$1.61
9101	COLLEGE: ALL OTHER EMPLOYEES	\$5.05	\$2.82
6824F	BOATBUILDING OR REPAIR	\$8.99	\$5.01

## DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

### **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 over 76 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. Over sixty nine 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. Over 19 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.

## 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 decreased slightly in 2002. At 43.0 percent of the total market, self-insurance is at its second lowest level in ten years. A greater market share in self-insurance indicates that some employers feel that premiums in the insurance market are too high, so they are willing to accept some risk in lieu of making premium payments.

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 44 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. Group self insurance premiums have been driven up by some of the same factors affecting the insurance market: reduced individual investment returns and higher reinsurance costs.

<b>Table VI: Estimated Standard Premium for Self-Insured Employers and Percent of the Workers' Compensation Market Held by Self-Insurers, 1993-2002</b>		
<b>Year</b>	<b>Estimated Standard Premium</b>	<b>Percent of Workers' Comp. Market (in annual standard premium)</b>
2002	\$167,803,123	43.0
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-insured employers, dividing it by the sum of the estimated standard premium for self-insured employers and the written premium in the regular insurance market, and then multiplying that figure by 100

## ALTERNATIVE RISK MARKETS

### Self-Insurance

As of October 1, 2003 there were 19 self-insured groups representing approximately 1,351 employers as well as 91 individual self-insured employers in Maine. Although the number of self-insured groups has remained the same, the number of employers in those groups increased by over nine percent from 2002 to 2003. During that same time, the number of individually self-insured employers decreased by seven.

<b>Table VI: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 1994-2003</b>			
<b>Year</b>	<b># of Self-Insured Groups</b>	<b># of Employers In Groups</b>	<b># of Individually Self-Insured Employers</b>
2003	19	1,351	91
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 six 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.

Although MEMIC writes over 54 percent of the workers' compensation business in the state, twenty-eight companies wrote more than one million dollars in annual premium in 2002. 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. Advisory loss costs then increased in two of the next three years. Recently, the National Council on Compensation Insurance filed for a 3.3 percent decrease in advisory loss costs to be effective January 1, 2004. The filing was reviewed and approved by the Bureau of Insurance. Maine's loss costs are about 39 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. The criteria established in Title 39-A §213(4), to determine whether or not benefits should be extended for injured workers with permanent partial impairment, continues to be a source of controversy. Premiums currently charged by employers reflect 520 weeks of benefit payments. Premiums are held by insurers in escrow accounts 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 could impact the Maine workers' compensation market in 2004 include national market changes, investment returns, the withdrawal of Royal SunAlliance from the insurance market, whether the economy improves, 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.state.me.us/pfr/ins/workcomp.htm>

**SECTION III**

**BUREAU OF LABOR STANDARDS**



### SECTION III. BUREAU OF LABOR STANDARDS

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## SECTION 1. INTRODUCTION

### 1A. ROLE OF THE BUREAU OF LABOR STANDARDS IN PROTECTING MAINE WORKERS

The Bureau of Labor Standards (BLS) of the Maine Department of Labor (MDOL) works in collaboration with the Maine Workers' Compensation Board (WCB) in the prevention of occupational injuries and illnesses by a variety of means. Under Maine Statute, Title 26 MRSA § 42-A, the BLS has the power and duties to collect, assort, and arrange statistical data on the number and character of industrial accidents and their effects upon the injured. The same statute also charges the BLS with establishing and supervising safety education and training programs. Additionally, MDOL is responsible for overseeing the employer-employee relationship in the state through enforcement of Maine labor laws and the related rules and standards. By accomplishing its mandated functions, the BLS complements the WCB in prevention of workplace injuries and illnesses in Maine.

To successfully accomplish its functions, the BLS works with the WCB to gather data relative to injuries and illnesses sustained by Maine workers. The BLS and the WCB collect their data through several mechanisms. Both agencies strive for the highest quality of available data. The BLS administers the following data collection programs: 1) the Federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses (SOII) 2) the Federal Occupational Safety and Health Administration's (OSHA) Data Initiative (ODI) 3) the Census of Fatal Occupational Injuries (CFOI). The WCB collects data from its *First Report of Occupational Injury or Disease* forms. Using the WCB administrative tracking system, the BLS electronically imports the contents of the WCB *First Reports* for analysis and as supplements to its own data. The combined information is then used in benchmarking and prioritizing BLS workplace safety activities such as training, education, advocacy, and public sector enforcement.

A number of significant areas of employment lie outside the purview of the WCB, notably commercial fishing and agriculture. Since the responsibilities of the MDOL extend to all Maine workers, the BLS is working to build means to acquire the data to allow assessment of services needed in these areas as well. This report, however, is largely limited to industries in common between the WCB system and the BLS.

### 1B. ORGANIZATION OF THIS REPORT

This year's report is organized slightly differently than reports of previous years and includes information on enforcement for the first time. This approach was taken in order to provide as complete as possible a picture of the prevention of occupational injuries and illnesses in Maine.

**Section 2** of this report will describe the workplace injury and illness prevention activities of the BLS and its partners in the occupational safety and health (OSH) community including outreach, advocacy and enforcement. **Section 3** will present research programs of the BLS and some resulting data and conclusions. **Section 4** will discuss how current information gathering and sharing can be improved and describe a new initiative in this area. **Section 5** will outline 2003 developments and some prospects for the immediate future.

## SECTION 2. PREVENTION SERVICES AVAILABLE

### 2A. SAFETYWORKS!

SafetyWorks! is an OSH training and consultation program encompassing all voluntary workplace injury and illness prevention services of the BLS. Under its umbrella, a variety of free services are made available to Maine employers, employees, and educators. These activities include use of the WCB data to supplement the Federal Bureau of Labor Statistics and OSHA data to respond to requests for information from the OSH community and the general public on the safety and health status of Maine workers.

SafetyWorks! instructors design their safety training programs based on industry profiles generated from data from the WCB *First Reports* among other sources. By analyzing the WCB data, SafetyWorks! instructors and consultants can see what types of injuries and illnesses are prevalent in different industry sectors in Maine. This information allows outreach and education activities to be tailored to those employers and their needs. For example, the Outreach and Education Unit (O&E) uses the age and industry profiles from the WCB *First Reports* to target its young workers' safety initiatives.

To extend the reach of SafetyWorks! classes without expanded costs, the BLS 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.

#### *Employer and Employee Training and Education*

**General OSH Training.** SafetyWorks! develops and offers industry-specific and problem-specific training. WCB data can suggest the need for and direct the targeting of such training. In addition to such targeted training programs, the BLS provides OSHA and Mine Safety and Health Administration (MSHA) approved regulatory compliance training. Approximately 50 different curricula of all types are offered, ranging in scope from 30-hour OSHA compliance courses to such tightly focused efforts as VDT operator training requiring as little as two hours. Some of this training is offered centrally and some is worksite delivered at employer request. It is estimated that over 400 separate courses were taught in 2003, reaching more than 7500 students statewide.

**Child Labor.** A special emphasis of O&E is the education of young workers. To encourage employers to provide safe work experiences for their teenage workers, the BLS 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 4,000 SAFETEEN kits have been distributed since June 2001.

The curriculum, "*Starting Safely: Teaching Youth about Workplace Safety and Health*," is another BLS 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. In 2002, O&E was authorized by Keene State College (New Hampshire) to present to educators the train-the-trainer course that allows the teachers to use this curriculum. The 40 educators who took the course in 2002 began teaching the curriculum and issuing OSHA general cards to students in 2003. The train-the-trainer course complements the Summer Safety Institute for Educators, which O&E has offered in conjunction with the University of Southern Maine

Since 1993. The train-the-trainer course was given four times in 2003 and the Summer Institute ran June 23<sup>rd</sup> through 27<sup>th</sup> with 27 participants.

### ***Employer Consultation***

**Employer Profiles.** Using the data from the WCB's *First Reports*, the Research and Statistics Unit (R&S) of the BLS can provide a Maine employer with a profile of that employer's injury and illness experience. Such a profile shows the type of disabling injuries or illnesses that have been experienced by the company's workers. This profile also describes the nature of the injury or illness and the event or exposure that led to each incident. The employer uses this information in detecting patterns in developing/refining the company safety program. In 2003, about 30 requests resulted from the outreach done at the Maine Safety Council and Maine Employers Mutual Insurance Company (MEMIC) annual conferences. Roughly 80 profiles have been done since 2000.

**On-Site Consultation.** Also under SafetyWorks!, the Workplace Safety and Health Division (WS&H) of the BLS provides consultation services to public and private sector employers. In the private sector, BLS provides consultations to employers identified by Regional OSHA for inspection through its Local Emphasis Programs (LEPs). National and Regional OSHA identify employers for LEPs and National Emphasis Programs (NEPs) based on summary data from the WCB and the OSHA Data Initiative (ODI, see below). Consultations are also provided in both the public and private sector upon employer request. A typical employer consultation can include an evaluation of records from the employer, including an analysis of the employer's Workers' Compensation cases and/or the OSHA Log, an environmental evaluation (a walk-through), and an examination of the work processes. Consultations are advisory and cooperative in nature -- 26 were completed in 2003.

## **2B. ADVOCACY**

The Migrant and Immigrant Services Division (M&IS) 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 federal 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 and foreign workers, M&IS provides foreign labor certification services to Maine employers who wish to hire foreign workers. In 2003, a total of 514 employers were certified seeking more than 5,500 foreign workers of all types. WCB data is used to track employers hiring migrant workers.

## **2C. ENFORCEMENT**

### ***Child Labor Work Permits***

To protect young workers, the Wage and Hour Division of the BLS reviews and approves between 4,000 and 6,000 minor work permit applications each year. In 2002, 5,131 permits were issued and 209 denied. By November 5<sup>th</sup> of 2003, 4,853 permits had been issued and 204 denied. The usual occupational and health (as opposed to administrative) reasons for denial are that the minor is too young to work at the business or that the occupation is hazardous.



In addition to the issuance of work permits, the Division inspects employers for compliance with Maine child labor law. The Division uses the data from the WCB *First Reports* to select employers for inspection. Based on the age variable, an industry profile showing where young workers were injured is generated. Employers are also identified for inspections based on combinations of certain administrative criteria. In 2002, the Division found 250 violations, including excessive hours, excessive days, start/quit time restrictions, hazardous occupations, no permit, no daily time records, and under minimum age for the particular business. By November 5<sup>th</sup> of 2003, the Division had found only 82 violations.

### ***Public Sector Site Inspections***

The Workplace Safety and Health Division of the BLS enforces safety regulations based on OSHA standards in the public sector only and is therefore responsible for the health and safety of employees of state and local governments. WS&H prioritizes state and local agencies for inspection based on the agencies' injury and illness data from the WCB, the results of the Survey of Occupational Injuries and Illnesses (SOII), or complaints from employees or employee representatives. WS&H compliance officers conduct unannounced inspections of the work environment and can cite the state and local employers for non-compliance with safety and health standards, which may carry fines. Failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be asked to shut down the operation; this shutdown is not mandatory however. By way of comparison with OSHA activity in the private sector (below), 286 inspections were completed in federal fiscal year 2003. These captured 1,991 violations resulting in \$211,310 in penalties of all types.

### ***Private Sector Site Inspections (Federal)***

In Maine, OSHA enforces its own workplace health and safety standards in the private sector in parallel with the BLS enforcement in the public sector. OSHA prioritizes employers for inspection based on the employers' injury and illness data from the OSHA Data Initiative (ODI), LEPs or NEPs (typically developed using the ODI), or complaints from employees or employee representatives. OSHA compliance officers likewise conduct unannounced inspections of the work environment and can cite employers for non-compliance with safety and health standards, which usually carry fines. As in the public sector, failure to address and abate deficiencies may result in additional 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 required to shut down the operation. Partial data for federal fiscal year 2003 shows that OSHA did over 500 inspections in Maine. These captured more than 1,000 violations, resulting in over \$500,000 in penalties.

## SECTION 3: RESEARCH AND DATA AVAILABLE

Effective workplace injury and illness prevention services cannot be designed and delivered without a detailed working knowledge of all factors that contribute to OSH. This knowledge is gained by OSH research, through both indefinitely continuing programs and one-time, focused studies.

### 3A. ANNUAL STUDIES

The Research and Statistics Unit (R&S) in the Technical Services Division (TSD) of the BLS is responsible for the administration of several annual OSH surveys. Taken together, the results of these surveys provide an epidemiological profile of occupational injuries and illnesses in Maine. For each of them, more information and statistics are available on the BLS website, [www.maine.gov/labor/bls/blsmain.htm](http://www.maine.gov/labor/bls/blsmain.htm), or upon request.

#### **WCB First Report of Occupational Injury or Disease**

Since 1972 the BLS has coded, tabulated, analyzed, and summarized data from the WCB *First Reports*. This activity began as a program funded by the Federal Bureau of Labor Statistics, and was continued when funding ended over a decade ago. The BLS database is directly linked to the WCB administrative data for each case and provides, therefore, a wealth of information on individual cases. This tabulation is the primary data source for BLS prevention purposes because it is possible to examine many dimensions, including the individual employer, the age of the injured, how long the injured person has worked, the injured's occupation, and so on. Because the data are tied to the WCB administrative data, the consistency and completeness of that administrative data is critical. The BLS analyzes the WCB data and publishes a report titled *Characteristics of Work-related Injuries and Illnesses in Maine*, which provides descriptive statistics on all disabling work-related injuries and illnesses. This and other BLS reports can be accessed at the BLS website. Some data from this program follow.

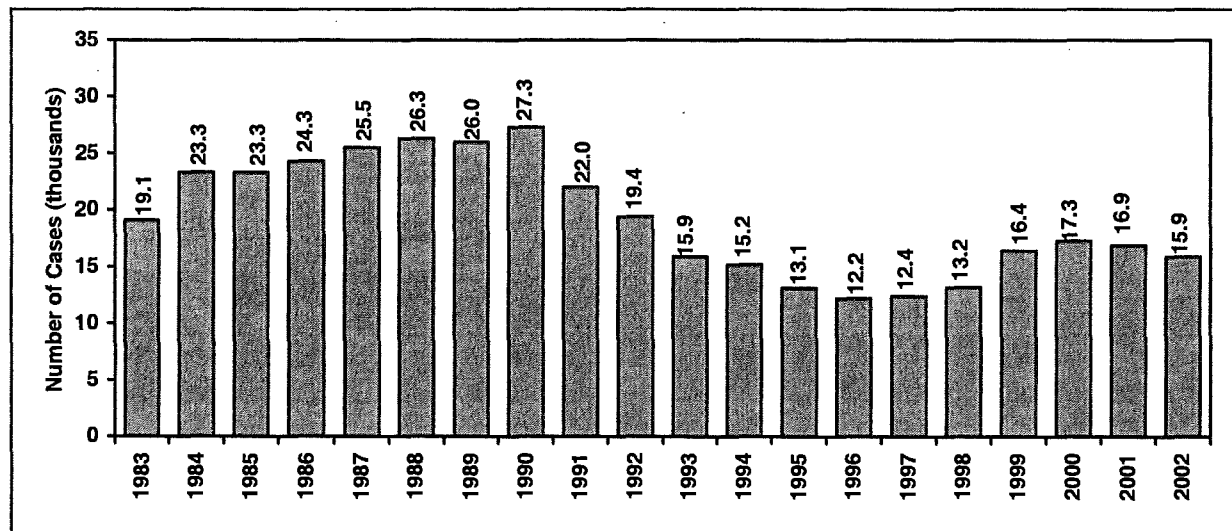
**A Twenty-Year Pattern of Disabling Cases, Maine, 1983-2002.** In 2002, there were 15,866 disabling cases reported to the WCB on *First Report of Occupational Injury or Disease* forms. A disabling case is a case in which a worker lost one or more days of work beyond the day of the injury. Figure 1 shows the twenty-year pattern of disabling cases.

The decrease of 1,013 cases from 2001 to 2002 has been traced to private insurers other than Maine Employers' Mutual Insurance Company (MEMIC). According to information received from both the Bureau of Insurance and the WCB, underwriting by these insurers (their market share) decreased in 2002. To the extent that MEMIC's market share increased, its back-to-work guidelines may account for some of this decrease.

Another possible contributor is a loss of manufacturing and other high-risk jobs, forcing a shift to less hazardous employment. The SOII gathers data on the hours of exposure from the employer and estimates the total hours of exposure in Industry Divisions using the Standard Industrial Classification (SIC) system. While we can't compare injury rates because of definition changes between the two years, the hours worked process remained the same from 2001 to 2002 and we can still compare hours worked. The estimates of hours of exposure show declines in the Manufacturing, Construction, and Wholesale Industry Divisions from 2001 to 2002. There are almost exactly corresponding increases in the estimated hours worked for the

Services and Retail Industry Divisions. The Manufacturing, Construction, and Wholesale Industry Divisions were the first, second, and fourth (respectively) most hazardous of the Industry Divisions in 2001 while the Services and Retail Divisions were the second and third *least* hazardous Industry Divisions in that year. Interestingly, the rates in all these groups became closer to the overall mean, indicating that the transfer of people improved the worst rates and worsened the better rates. So this shift is indeed a cause of the decrease as jobs and exposure hours moved from higher to lower-hazard Industry Divisions in the state.

**Figure 1. Twenty-Year Pattern of Disabling Cases, 1983-2002**



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

Changes as a result of the 1990 workers' compensation reform decreased the number of reports, partly accounting for the apparent decline after that year. In 1999, the introduction of the WCB's Monitoring and Enforcement (MAE) program increased the number of reports for non-compensable (less than 7 days) lost time cases, producing part of the apparent increase in that and following years. Independent data from the Survey of Occupational Injuries and Illnesses (SOII, see below), whose definitions and process were stable from 1983 through 2001, provide a check against such artificial variation caused by procedural changes. SOII data also show a shift from days away from work to days of restricted activity (see below for discussion), which affects the shape of the curve in recent years.

**Geographic Distribution of Disabling Cases, Maine, 2000-2002.** In 2002, the five counties with the highest disabling case rate were (in descending order): Sagadahoc, Androscoggin, Aroostook, Somerset, and Hancock and York (tied). Table 1 describes the distribution of disabling cases by counties for 2000 through 2002. The rate is calculated by dividing the number of disabling cases in each county by its respective employment. Geographical distribution data can be useful in health planning and setting enforcement and consultation priorities by region.

**Table 1. Geographical Distribution of Disabling Cases, Maine, 2000-2002**

County	2000			2001			2002		
	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000
Androscoggin	1,508	47,015	32.1	1,456	46,666	31.2	1,425	47,311	30.1
Aroostook	868	29,497	29.4	869	29,137	29.8	851	29,036	29.3
Cumberland	4,368	163,467	26.7	4,348	165,014	26.3	4,090	163,691	25.0
Franklin	278	11,734	23.7	287	11,611	24.7	254	11,717	21.7
Hancock	648	22,318	29.0	691	22,503	30.7	634	22,721	27.9
Kennebec	1,763	55,964	31.5	1,701	56,160	30.3	1,542	56,035	27.5
Knox	517	17,189	30.1	487	17,432	27.9	437	17,622	24.8
Lincoln	300	10,872	27.6	286	10,969	26.1	305	11,024	27.7
Oxford	507	18,011	28.1	530	17,915	29.6	480	17,656	27.2
Penobscot	1,791	67,402	26.6	1,658	68,510	24.2	1,605	68,740	23.3
Piscataquis	144	5,747	25.1	135	5,727	23.6	142	5,748	24.7
Sagadahoc	940	15,781	59.6	918	15,322	59.9	850	15,517	54.8
Somerset	588	18,939	31.0	565	19,627	28.8	554	19,032	29.1
Waldo	347	9,843	35.3	377	10,883	34.6	306	11,255	27.2
Washington	378	11,528	32.8	381	11,771	32.4	299	11,399	26.2
York	1,810	57,780	31.3	1,797	59,895	30.0	1,670	59,786	27.9
* Unknown	537	10,744	----	515	9,839	----	422	10,607	----
Total	17,292	560,368	30.9	17,001	576,533	29.5	15,866	579,261	27.4

**Source:** Case data from Workers' Compensation Board *First Reports of Injury or Occupational Disease*, employment data from Labor Market Information Services, Maine Department of Labor.

\* Unknown represents WCB *First Reports* with missing information.

**Disabling Cases by Occupational Groups, Maine, 2000-2002.** In 2002, about 70% of all disabling cases occurred in the following five 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 Inspector
- 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 2: Disabling Cases by Occupational Groups, Maine, 2000-2002**

Occupational Groups	2000		2001		2002	
	Number	Percent	Number	Percent	Number	Percent
Service Workers	3,251	18.8	3,275	19.3	3,131	19.7
Precision Production, Craft or Repair	2,882	16.7	2,840	16.7	2,582	16.3
Handler, Equipment Cleaner, Laborer	2,694	15.6	2,487	14.6	2,217	14.0
Machine Operator, Assembler, Inspector	1,772	10.2	1,550	9.1	1,384	8.7
Transportation or Material Handler	1,513	8.7	1,493	8.8	1,347	8.5
Other Occupational Groups	5,180	30.0	5,356	31.5	5,205	32.8
Total	17,292	100.0	17,001	100.0	15,866	100.0

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

**Length of Service of Injured Worker, Maine, 2000-2002.** One of the patterns that the BLS has identified from the analyses of the WCB data is that more new hires (under one year) are being injured on the job when compared to those employees who have been with their employers for one year or more. New hires accounted for 5,498 (34.7%) of the *First Reports* in 2002. The Maine Occupational Research Agenda (MORA, see below) Steering Committee has noted this pattern and feels it warrants further research. This disproportionate representation of new hires has been declining slowly but steadily over the past several years, both in terms of absolute numbers and in percent overall.

At the same time, the representation of long-term (older) workers, those with 15 or more years with the same employer, has been increasing disproportionately, from 9.7% in 2000 to 11.0% in 2002. Since there has been concern about risk to older Maine workers, this trend is also being investigated as a research topic by MORA.

**Table 3. Length of Service of Injured Worker, Maine, 2000-2002**

Length of Service of the Injured Worker	Disabling Cases					
	2000		2001		2002	
	Number	Percent	Number	Percent	Number	Percent
<b>Total</b>	<b>17,292</b>	<b>100.0</b>	<b>17,001</b>	<b>100.0</b>	<b>15,866</b>	<b>100.0</b>
<b>Under 1 Year</b>	<b>6,636</b>	<b>38.4</b>	<b>6,181</b>	<b>36.4</b>	<b>5,498</b>	<b>34.7</b>
1 Year	2,106	12.2	2,195	12.9	2,049	12.9
2 Years	1,204	7.0	1,266	7.4	1,254	7.9
3-4 Years	1,412	8.2	1,484	8.7	1,654	10.4
5-9 Years	1,848	10.7	1,784	10.5	1,723	10.9
10-14 Years	1,893	10.9	1,807	10.6	1,507	9.5
15-19 Years	694	4.0	756	4.4	725	4.6
20+ Years	992	5.7	1,002	5.9	1,011	6.4
Unknown	507	2.9	526	3.1	445	2.8

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

**Nature, Source, and Event of Injuries and Illnesses, Maine, 1998-2002.** Table 4 gives the top five each of nature, source, and event of injuries and illnesses.

**Table 4. Nature, Source and Event of Injuries and Illnesses, Maine, 1998-2002**

	1998	1999	2000	2001	2002
<b>Nature of Injury</b>					
Sprains, strains, tears	3,320	5,085	5,959	5,561	4,991
No specified pain, sore, hurt	2,980	3,151	3,549	3,837	3,913
Bruises, contusions	708	1,013	1,119	1,122	1,045
Fractures	646	729	834	871	720
Cuts, lacerations	633	767	787	784	747
<b>Source of Injury</b>					
Person--injured or ill worker	2,805	3,556	3,973	3,775	3,567
Floors, walkways, ground surfaces	1,897	2,210	2,309	2,569	2,376
Containers	1,486	1,791	1,985	1,775	1,629
Parts and materials	983	1,266	1,237	1,118	1,067
Vehicles	845	1,009	952	956	932
<b>Event or Exposure</b>					
Overexertion	3,837	5,099	5,493	5,231	5,024
Bodily reaction	1,560	1,857	2,014	1,910	1,772
Fall on same level	1,273	1,430	1,544	1,791	1,584
Struck by object	1,168	1,399	1,369	1,302	1,207
Repetitive motion	805	1,189	1,406	1,299	1,222

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

## ***Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses***

Also since 1972, the BLS has partnered with the Federal Bureau of Labor Statistics in a cooperative agreement to collect data on occupational injuries and illnesses through the annual Survey of Occupational Injuries and Illnesses (SOII). The data from this survey are summarized and published (in paper or on the Web) in the series titled *Occupational Injuries and Illnesses in Maine*. The data are generated from a random sample stratified by industry and work establishment size. There are around 2,500 employers in the sample in any given year. For the year 2002, BLS surveyed 2,140 private establishments and 450 public sector agencies, asking these businesses about their experience with OSHA recordable injuries and illnesses. The SOII gathers data from employers' records. Besides the total numbers of OSHA-recordable injuries and illnesses, the SOII asks employers for their average employment and total hours worked at the desired worksite. From this information, incident rates are produced, indicating the probability of being occupationally injured or ill.

The SOII 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 employees (working 40 hours per week for 50 weeks)

The result is the predicted number of incidents per 100 workers, working a standardized workweek for a standardized year.

2001 is the last year for which SOII incident statistics are comparable to the past because of changes made to OSHA recordkeeping beginning with the 2002 data. With the rule change instituting use of the OSHA 300 log, sweeping changes were made to the recording criteria: cases formerly recordable now are not and *vice versa*. Among the most significant changes were:

- 1) A new definition of "work-related"
- 2) A new definition of "restricted work activity"
- 3) An all-inclusive list of first aid (*vs.* medical) treatment.

*This means that, although 2002 and later data from employer OSHA records appear similar to 2001 and earlier data, it is neither correct nor safe to make direct comparisons across the 2001/2002 line. For further information on the recordkeeping differences go to OSHA's website, [www.osha.gov](http://www.osha.gov), and click on "recordkeeping."*

Table 5 and Figure 2 below display data gathered through the SOII. Data collected from this survey cannot be used for direct comparison with WCB rates for the following reasons:

- 1) The methodology of calculating rates is different

- 2) The two systems use different definitions of recordability of cases
- 3) The WCB data is a census of injuries and illnesses while the SOII data is a statistical sample.

**Cases and Incidence Rate of Injuries and Illnesses, Maine, 2002.** According to the 2002 SOII for the private sector, both the Manufacturing industry and the Agriculture, Forestry, and Fishing industry recorded significantly higher incidence rates than other industries. Finance, Insurance and Real Estate had the lowest incidence rate.

**Table 5. Number of Cases and Incidence Rate of Injuries and Illnesses, Maine, 2002**

Industry	2002	
	Number of Cases	Incidence Rate
<b>Private Sector</b>	<b>32,420</b>	<b>8.1</b>
Manufacturing	8,387	11.5
Services	9,629	7.4
Construction	2,204	8.3
Wholesale Trade	1,754	7.5
Retail Trade	7,263	8.1
Transportation & Public Utilities	1,750	8.4
Finance, Insurance & Real Estate	818	2.9
Agriculture, Forestry & Fishing	593	10.8
<b>Public Sector</b>	<b>3,501</b>	<b>5.9</b>

Source: Federal Bureau of Labor Statistics *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).

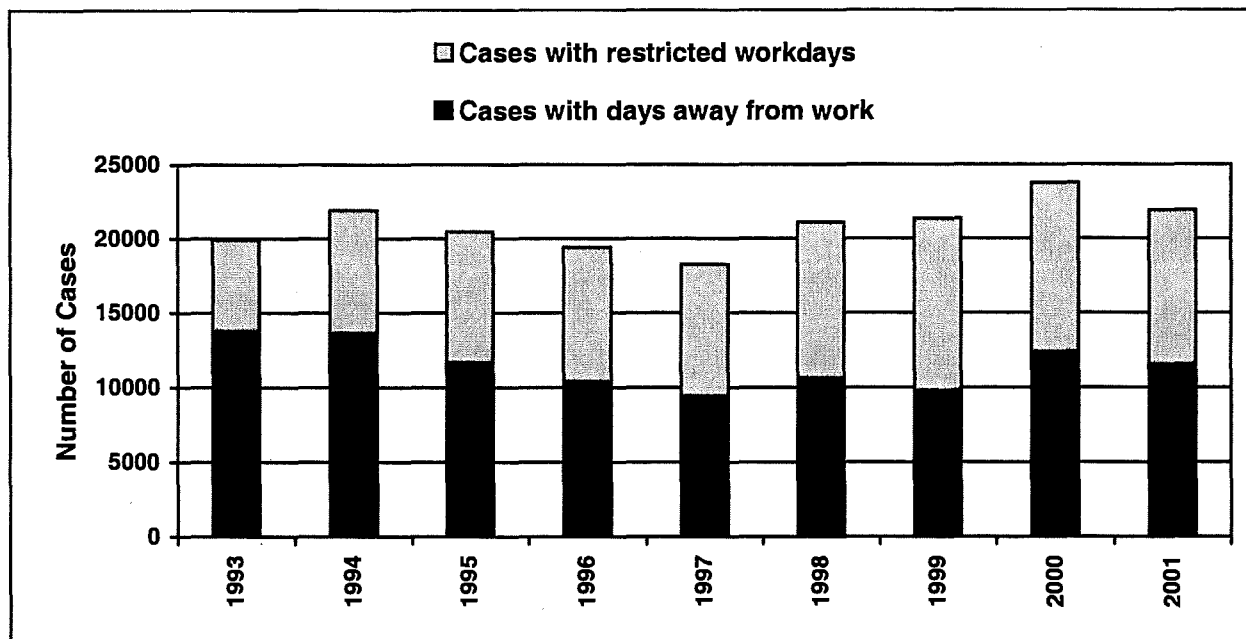
**Cases with Lost Workdays and Restricted Work Activity.** Data collected from 1992 through 2001 show a fluctuating downward trend in the reported number of cases resulting in days away from work. However, the number of cases resulting in restricted work activity has increased. The data indicate that employers are placing more injured workers on "light duty". The BLS has 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 on 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 company loyalty and increasing productivity.

More research is needed to test these hypotheses.



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



Source: Survey of Occupational Injuries and Illnesses

As pointed out above, 2002 data should not be directly compared with previous years' data. For 2002, there was an estimated total of 21,744 OSHA recordable injuries resulting in at least one day away from work or one day of job transfer or restriction beyond the day of injury. Of this total, it is estimated that 9,990 cases resulted in at least one day away from work and 11,754 cases resulted in job transfer or restriction without any days away from work. Even with the new definitions, the predominance of transfer/restriction over days away seems to hold true.

### ***OSHA Data Initiative***

Every year since 1993, the BLS has received a grant from OSHA to collect data on specific worksite occupational injury and illness rates in Maine. The information is used by OSHA to target establishments with high incidence rates for intervention through consultation or enforcement. Usually the regional office of OSHA initiates this under an OSHA Local Emphasis Program (LEP).

The survey instrument used is called the *OSHA Work-Related Injury and Illness Data Collection Form*. The respondents fill out this form using information from their OSHA annual summary reports (currently OSHA form 300A). The data collected are from the same sources as, but less detailed than, that collected by the SOII above. OSHA regional offices use the DART ("Days Away, Restricted, or Transferred") incidence rate to identify worksites for intervention. The DART rate is calculated using the incidence rate formula above but with N equal to the number of OSHA-recordable cases resulting in at least one day away from work, and/or at least one day of job transfer or restriction, beyond the day of injury: in other words, the incidence rate for DART cases only.

For example, for the year 2000, 243 Maine worksites were identified as having a DART rate of eight or more per 100 full-time employees. These businesses were notified by OSHA and encouraged to identify and correct any safety hazards in anticipation of OSHA inspection. Selected employers could conduct their own safety

inspections, hire a consultant for that purpose, or utilize safety consultants from an OSHA voluntary safety program such as SafetyWorks! (specifically mentioned in the OSHA notification). Some were actually inspected for violations by OSHA.

### ***Census of Fatal Occupational Injuries***

Since 1992, the BLS has been in another partnership 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 are published in an annual series titled *Fatal Occupational Injuries in Maine*.

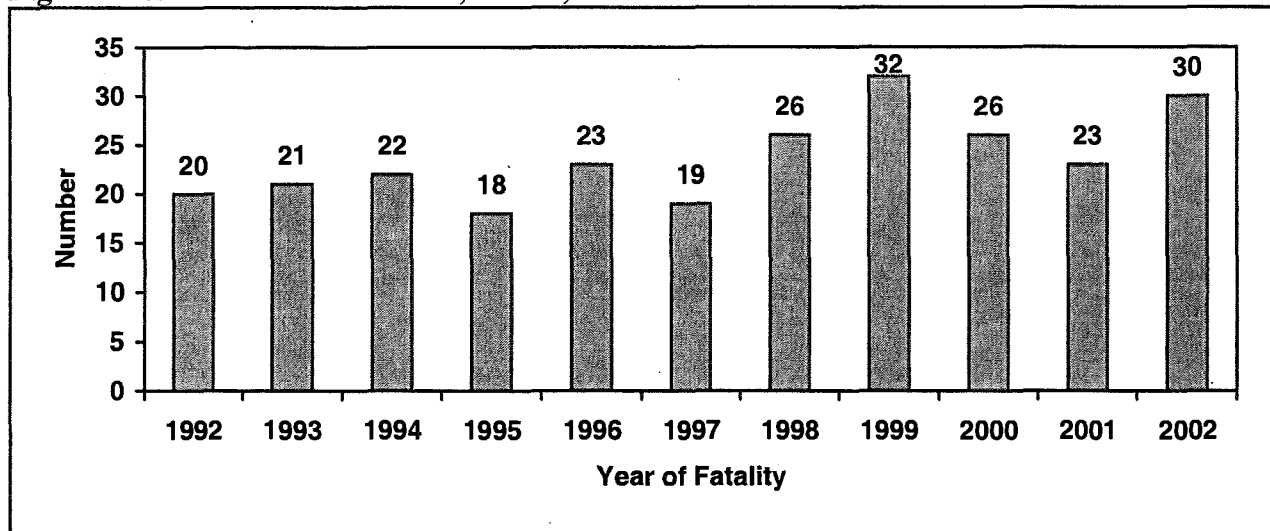
The CFOI program is a Federal/State cooperative program. It was created in 1990 by the U.S. Department of Labor, Bureau of Labor Statistics and includes all 50 states and the District of Columbia. The program was established to determine a true count of work-related fatalities in the United States. Prior 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 are 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 the CFOI. Sources in Maine include death certificates, the WCB *First Report of Occupational Injury or Disease*, 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) OSHA reports 7) newspaper clippings and other public media.

Only fatalities due to injuries are included in the CFOI. Fatalities due to illness or disease tend to be undercounted because the illness may not be diagnosed until years after the exposure or the work relationship may be questionable. Occupational illnesses are therefore excluded from the CFOI report.

**Fatal Occupational Injuries, Maine, 1992-2002.** Figure 3 shows the numbers of work-related fatalities recorded in Maine from 1992-2002. The figure for 2002 is inflated by 14 fatalities from a single transportation accident, otherwise the declining trend since 1999 would be seen to continue.

**Figure 3. Work-related Fatalities, Maine, 1992-2002**



Source: Census of Fatal Occupational Injuries

**Fatal Occupational Injuries by Industry and Event/Exposure, Maine, 1992-2002.** Transportation accidents have accounted for more fatal workplace injuries than any other event or exposure in Maine as shown in Table 6. Since 1992, nearly 49% of the fatal work-related injuries in Maine collected under the CFOI program were classified as transportation related.

**Table 6. Fatal Occupational Injuries by Industry and Event/Exposure, Maine, 1992-2002**

Industry Division	Total	Transportation Accidents Highway & Non-highway	Contact with Objects & Equipment	Falls	Exposure to Harmful Substances	Assaults & Suicides	Fires & Explosions
<b>Total</b>	<b>263</b>	<b>129</b>	<b>54</b>	<b>31</b>	<b>28</b>	<b>16</b>	<b>5</b>
Agriculture, Forestry & Fish.	71	50	3	3	15	--	--
Manufacturing	41	9	25	7	--	--	--
Transportation & Public Utilities	37	28	5	--	4	--	--
Services	24	9	9	3	--	3	--
Construction	28	4	7	12	5	--	--
Government	13	8	--	--	--	5	--
Wholesale	12	12	--	--	--	--	--
Retail	15	7	--	3	--	5	--
Other	22	2	5	3	4	3	5

Source: Census of Fatal Occupational Injuries

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

## ***Employer Substance Abuse Testing***

Not a part of the OSH profile, but still in support of occupational injury and illness prevention is the annual *Substance Abuse Testing Report* compiled by the BLS. The Maine Substance Abuse Testing Law, Title 26 MRSA, Section 680 *et seq.*, requires the MDOL to report to the legislature on activities under that statute. The *Substance Abuse Testing Report* data do not include activities under federally mandated testing programs. Therefore, these data should not be taken as a comprehensive representation of workplace substance abuse testing in Maine.

The Maine Substance Abuse Testing Law controls employer drug testing that is not performed in response to federal mandates. Therefore, the Bureau of Labor Standards also must review and approve the proposed testing policy of any company that wants to have a substance abuse testing program but is not required to under federal law. BLS can supply employers with a model substance abuse testing policy to assist in developing an acceptable workplace-specific policy, another prevention-directed activity.

The Maine Substance Abuse Testing Law is intended to protect the privacy rights of employees, yet allow an employer to administer testing; to ensure proper testing procedures; to ensure that an employee with a substance abuse problem receives an opportunity for rehabilitation and treatment; and to eliminate drug use in the workplace. Regulation of testing for use of controlled substances has been in effect under Maine law since September 30, 1989.

The administration of this law is a collaborative effort of the following agencies.

- 1) The Maine Department of Labor, which:
  - Conducts the annual survey of substance abuse testing,
  - Analyzes testing data and publishes the annual report,
  - Reviews and approves substance abuse testing policies, and
  - Provides model policies -- a model job applicant testing policy was developed by the MDOL in 1998 and a model probable cause testing policy in 2000 -- to help employers write substance abuse policies for their workplaces.
- 2) The Maine Department of Human Services (DHS), which licenses testing laboratories.
- 3) The Maine Department of Behavioral and Developmental Services, which reviews and approves employee assistance programs (EAPs) for employers who do probable cause or random and arbitrary testing; any employer with more than 20 full-time employees must have a functioning EAP as stated in Title 26 Section 683 Paragraph 1 prior to testing their employees.

The following table and graph show the trend of non-federally-mandated drug testing from 1993 through 2002.

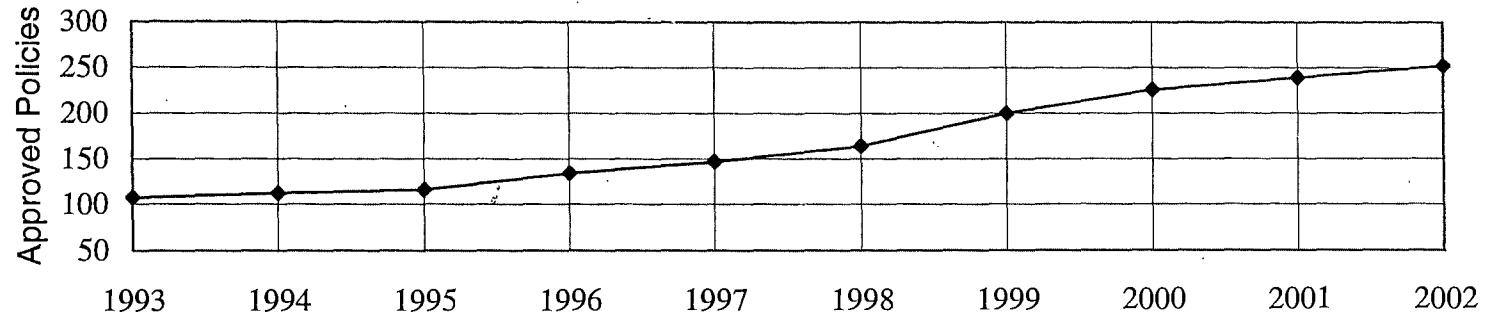
Table 7.

**Yearly Totals by Type of Test  
Applicants/Employees  
1993-2002**

Year	Number of Employers w/ Policies	Total Tests	Total Positives	Percent Positive	Applicant Tests	Applicant Positives	Percent Positive	Probable Cause Tests	Probable Cause Positives	Percent Positive	Random Tests	Random Positives	Percent Positive
2002	252	13,128	642	4.9	12,595	624	5.0	10	0	--	523	18	3.4
2001	239	16,492	730	4.4	15,947	716	4.5	8	1	12.5	537	13	2.4
2000	226	18,827	765	4.1	18,164	748	4.1	12	1	8.3	651	16	2.5
1999	200	20,725	691	3.3	20,118	660	3.3	9	4	44.4	598	27	4.5
1998	164	11,888	352	3.0	11,459	343	3.0	4	0	--	425	9	2.1
1997	147	13,097	392	3.0	12,616	375	3.0	7	1	14.3	474	16	3.4
1996	134	10,854	346	3.2	10,493	330	3.1	7	3	42.9	354	13	3.7
1995	116	9,708	236	2.4	9,484	231	2.4	11	3	27.3	213	2	0.9
1994	112	7,035	211	3.0	6,818	202	3.0	4	1	25.0	213	8	3.8
1993	107	5,502	109	2.0	5,278	101	1.9	3	1	33.3	221	7	3.2

-- indicates a value of less than 0.05%

**Employers With Approved  
Substance Abuse Testing Policies  
1993-2002**



## **B. ONE-TIME FOCUSED STUDIES**

From time to time, the BLS initiates special research projects on selected OSH topics. Typically, such projects are non-repeating and they often make use of WCB data. The following are current examples.

### ***Pilot Study on the Impact of Domestic Violence Offenders on Workplace Safety and Health***

In 2002, BLS OSH Epidemiologist Kim Lim Ph.D., MPH, worked with Ellen Ridley-Hooper of Family Crisis Services (of Portland), to draft the outline of a pilot study on Maine domestic violence offenders' impact on their own workplaces. The only previous such study, done in Massachusetts, though small, had strongly suggested that abusers made dangerous mistakes on the job due to distraction arising from the abusive relationship. A small working group was formed and chose the following objectives for the Maine study:

- 1) Identify ways in which domestic abuse offenders are using the worksite as a place from which to further victimize their intimate partner
- 2) Identify and quantify when possible performance, productivity, lost work time, absenteeism, workplace delays, and workplace accidents associated with this behavior
- 3) Examine current employer responses to this behavior when it is recognized
- 4) Determine the frequency of workplace violence policies in effect in the population sample
- 5) Examine offenders' views on useful measures employers can implement to create workplace safety and accountability
- 6) Determine the frequency and impact of domestic abuse offenders contacting the victim at her workplace.

In February and March 2003, the working group developed an 80-question survey instrument and interview protocol and recruited and trained 45 volunteer interviewers. In March and April, the volunteers conducted 152 one-on-one interviews with volunteer subjects from the certified batterer intervention programs of Cumberland and Kennebec Counties. The data were compiled during April and May and have been analyzed but are still under discussion. Preliminary results reinforce the Massachusetts findings where the same issues were examined, as well as adding detail. In particular, the finding that distraction arising in the abusive relationship affected the abuser's ability to concentrate on work tasks and safety, causing accidents and near misses, is strongly reinforced. In addition, there is a suggestion that workplace aggressive behavior and substance abuse may correlate with domestic abuse.

The questions raised by this pilot study and the discussion generated from it will serve to guide future research in this area and are expected to affect workplace violence policies yet to be written. Present plans are to replicate the study on a statewide basis with the process to be refined based on the experience gained in the pilot study. Further, the Research and Statistics Unit of BLS is developing a surveillance model for workplace violence (WPV) in general. This surveillance is intended to capture WPV data not captured by OSHA recordkeeping or WCB *First Reports* (i.e., otherwise non-recordable data). Last, but not least, the MDOL is understood to be developing a WPV policy for itself which will deal with the issues raised by this study and will potentially serve as a model for other WPV policies.

### ***Survey of Work Permit Recipients***

Young workers are at greater risk of injury than adult workers, even though minors are prohibited from doing many of the most hazardous jobs. Nationally, approximately 210,000 minors get injured at work each year, with 70 fatalities. In a typical year, Maine minors (under 18 years old) report 150 lost time cases. Because of the occasional nature of their work, this is most likely an underestimate and does not consider time lost from other important youthful pursuits like school, family and community. Studies show that minors usually do not receive the training and education they need to work safely -- neither in school nor on the job.

The work permit applications submitted to the BLS Wage and Hour Division provide a valuable opportunity to study the experience of young workers in Maine. The Technical Services Division and Outreach and Education Unit developed a questionnaire that was sent to 3,000 work permit applicants in September 2003. The questionnaire sought to discover the rate of injury of these working minors, their perceptions of safety on their jobs, and the level of safety training and information they receive. Analysis is underway. Publication of results is scheduled for early 2004.

## SECTION 4: PROBLEM AREAS

### 4A. NEEDED IMPROVEMENTS IN DATA COLLECTION AND SHARING

#### *“Return to work date”*

Table 8 shows the missing information for the variable, “return to work date,” as compared with the numbers of disabling cases from the WCB *First Report* forms for the past seven years (1996-2002). There were 7,281 cases with no return to work date for the year 2002 as of the tabulation of this data in December of 2003. This is a very large proportion of cases and would be a matter of great concern in terms of social and monetary cost if the employees were actually out of work. However, the BLS strongly suspects, from known cases, that a significant number of these workers have actually returned to work.

This missing information prevents the BLS and the WCB from generating an accurate estimate of the number of workdays lost to due a work-related injury or illness. The “return to work date” is critical in conducting cost-benefit analyses of workplace safety programs. Other potential uses of the this variable are that it would allow BLS and WCB to assess the severity of an injury or illness and to determine which industry sectors are experiencing more lost workdays. If the WCB administrative system more fully tracked these cases, then a case without a return to work date would accurately indicate that the worker were still out. At present, the BLS cannot tell if the worker is still out of work, paperwork is missing, or data simply have not been entered into that field in the WCB data system. The problem intensified after 1995 and is apparently at least partly due to a built-in functionality of the WCB system: *First Reports* become inactive and can no longer be updated if a Notice of Controversy or Memorandum of Payment is filed against them.

**Table 8. Number of Disabling Cases, Maine, 1996-2002**

	1996	1997	1998	1999	2000	2001	2002
Total Disabling Cases	12,162	12,419	13,111	16,348	17,292	17,001	15,866
No return-to-work date	5,654	7,056	7,342	7,959	7,888	7,885	7,281
Percent of total	46.5	56.8	56.0	48.7	45.6	46.4	45.9

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

#### *Costs data*

Data on the costs associated with a given case is not connected to the *First Report* data in the WCB database. This situation means that BLS does not have direct access to costs data and must make special requests for it. Because of the need to make special requests, by the time BLS receives the costs data, it is out of date with the available *First Report* data. This situation, in turn, introduces a limitation into any derived costs study. Less important but still a problem, delivery format for costs data has not been standardized, and sometimes necessitates conversion of costs data at BLS.

### 4B. AN EFFORT TO IMPROVE DATA COLLECTION AND SHARING

#### *Occupational Safety and Health Data Collection and Injury Prevention Work Group*

The Occupational Safety and Health Data Collection and Injury Prevention Work Group was convened by the Department of Labor under 2003 Public Law chapter 471. The purpose of the Work Group is to evaluate the data



currently available on work-related injuries and illnesses and to review efforts to prevent such injuries and illnesses. The Work Group will also identify ways to improve the collection and analysis of the data and enhance related prevention efforts. Members were chosen to be broadly representative of those with interests and expertise in OSH and workers' compensation. The Work Group is expected to effectively address just such problems as those above.

## SECTION 5. 2003 DEVELOPMENTS

### 5A. GRANTS

The BLS uses WCB data to supplement Federal Bureau of Labor Statistics and OSHA data in developing OSH grant applications. A number of current programs aimed at occupational injury and illness prevention are supported by grants.

#### *Capacity Building in OSH Surveillance*

The BLS is presently 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 OSH indicators for collecting quality data that are comparable among all states. In 2002, the BLS was awarded a three-year, \$250,000 NIOSH 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.

MDOL is part of the national work group that developed these indicators. The CSTE, in association with NIOSH, convened the NIOSH-States Occupational Health Surveillance Work Group to make recommendations to NIOSH concerning state-based surveillance activities for the coming decade. The Work Group also identified a number of crosscutting surveillance issues and made several recommendations to NIOSH for the implementation of comprehensive state-based occupational health surveillance systems. These indicators are a construct of public health surveillance that define a specific measure of health or risk status (i.e., the occurrence of a health event or of factors associated with that event) among a specified population. Surveillance indicators allow a state to compare its health or risk status with that of other states, evaluate trends over time within the state, and guide priorities for prevention and intervention efforts.

Occupational health indicators can provide information about a population's health status with respect to workplace factors that can influence health. These indicators can either be measures of health (work-related disease or injury) or factors associated with health, such as workplace exposures, hazards or interventions. These indicators are intended to:

- 1) Promote program and policy development at the national, state and local levels to protect worker safety and health
- 2) Build core capacity for occupational health surveillance at the state level
- 3) Provide guidance to states regarding the minimum level of occupational health surveillance activity
- 4) Bring consistency to time trend analyses of occupational health status of the workforce within states and to comparisons among states.

The proposed project is divided into three parts to be implemented in yearly steps. During the first year (2003), the MDOL (BLS) identified and established contact with relevant advisory groups. The MDOL also began compiling data on the 13 core surveillance indicators and simultaneously assessing the strengths and limitations of data sources used. During the second year (2004), the MDOL will conduct a descriptive analysis of the data collected and, based on the results of the analysis, select three core surveillance indicators for an in-depth study. During the third year (2005), the MDOL will evaluate the core indicator program effectiveness as a surveillance

tool and generate a report of the in-depth study, identify the data gaps and propose some recommendations to improve the surveillance approach

### ***Symposium Program***

The Bureau of Labor Standards (BLS) is taking the initiative to develop an OSH research agenda reflective of the National Occupational Research Agenda (NORA). Future success of the occupational safety and health promotion field in the State of Maine depends on the ability of the BLS to broaden its base and identify new research partners to collaborate and integrate different ideas and perspectives. In pursuit of this broadening, the BLS is organizing a series of symposia. The initial symposium, titled *Integrating Research into Practice in Occupational Safety and Health*, was held in 2000. Its most important product was the formation of the Maine Occupational Research Agenda (MORA) steering committee (see below).

The Research and Statistics Unit of the BLS applied for and was awarded a \$24,000 NIOSH conference support grant in partial support of the second OSH symposium cosponsored with MORA and the University of New England. The symposium further enhanced the efforts of MORA in promoting OSH research in Maine. This 2003 symposium, titled *Using Research to Develop Occupational Safety and Health Prevention Strategies and Policy Initiatives*, had the following objectives:

- 1) Provide an opportunity for the Maine OSH community to share prevention strategies
- 2) Stimulate OSH research in Maine and other New England States by the research work of other professionals through the presentations, workshops and poster sessions
- 3) Stimulate interchange of intervention effectiveness research ideas among participants and attendees
- 4) Continue development of the Maine OSH research agenda.

The BLS is planning for its next Maine Occupational Safety and Health Research Symposium (May 25<sup>th</sup> and 26<sup>th</sup>, 2005). The focus of the symposium is occupational safety and health of special populations (aging and young workers, disabled workers, and agricultural workers, migrant/immigrant and seasonal).

### **5B. PROGRAM INITIATIVES**

From time to time, based on evident needs, the BLS initiates, or enters into partnerships initiating, various programs promoting occupational safety and health. Those below were active or activated during 2003.

#### ***Fatality Assessment, Control and Evaluation***

In 2003, the Research and Statistics Unit (R&S) of the BLS began to pilot test a research project on occupational fatalities. This project is modeled after the National Institute for Occupational Safety and Health (NIOSH) Fatality Assessment, Control and Evaluation (FACE) program. The objectives of the Maine FACE project are as follows:

- 1) Use the existing Maine surveillance network to identify all work-related fatalities in a timely manner and to target specific fatalities for FACE investigation
- 2) 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
- 3) Use sentinel data from Maine and national FACE programs to develop safety training programs

- 4) Participate in the NIOSH sponsored FACE Consortium and Coordination Committee
- 5) Contribute to the overall development of the Maine Occupational Research Agenda (MORA) initiative in OSH research
- 6) Use the results of the completed R&S research project on near miss reporting programs to promote development and implementation of near miss programs as a hazard surveillance tool
- 7) Produce reports for distribution to employers as a prevention initiative.

In 2003, FACE reported out its first two fatality evaluations, both on electrocutions. For more information, visit the FACE website, [www.Maine.gov/labor/bls/FACE/FACE.htm](http://www.Maine.gov/labor/bls/FACE/FACE.htm).

### ***MORA***

In 2000, following on discussions at the first Maine OSH Research Symposium, the BLS took the initiative to create a Maine Occupational Research Agenda. MORA is modeled after the NIOSH National Occupational Research Agenda (NORA). The Technical Services Division's OSH 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 Steering Committee members use WCB data, in addition to the Federal Bureau of Labor Statistics and OSHA data, to develop and refine OSH research priorities and guide their implementation for Maine, MORA's primary mission. This activity justifies research efforts tailored to the state's needs and helps prioritize grant applications for research.

In 2003 the Steering Committee has made significant strides:

- 1) Inventoried and assessed existing data sources
- 2) Supported legislation to improve reporting of occupational injuries and illness
- 3) Presented at local and national conferences
- 4) Established six research priority areas
- 5) Organized the Second Maine Occupational Safety and Health Research Symposium
- 6) Forged research partnerships between MORA, the BLS, and (separately) the American Lung Association of Maine (occupational asthma), the University of Maine Center on Aging (aging worker safety), the Maine State Nurse's Association (needle sticks among nurses), and the Bureau of Health (occupational lead exposure of painters).

See MORA's website, [www.maine.gov/labor/bls/MORA.htm](http://www.maine.gov/labor/bls/MORA.htm), for more information.

### ***Healthy Maine 2010***

Healthy Maine 2010 is a very broad-spectrum project under the Bureau of Health, Maine Department of Human Services, in improving public health over the decade 2001-2010. The project has two major goals, increasing the quality and years of healthy life and elimination of health disparities for Maine citizens. These goals are to be approached by a long list of specific strategies, including an occupational health strategy. The BLS partnered with the Bureau of Health in developing OSH indicators for the Healthy Maine 2010 project. The data from the WCB were used as a guide for setting objectives in these safety and health indicators. In 2003, the BLS has advised the Bureau of Health on updates and will continue to do so.

## **5C. LEGISLATION**

Also from time to time, the BLS provides informational support of various kinds to new OSH legislation. The following are examples from 2003.

### ***Child Labor Legislation***

Based on concerns about the safety of working minors, there were two significant changes to the child labor laws in 2003. The first new law, 2003 Public Law chapter 10, extended the age restrictions to the State of Maine, which had been exempted as an employer through omission. The second, 2003 PLc 59, added working at heights and working in confined spaces to the hazardous occupations where minors cannot be employed. In rewriting its rules in response to this law, the BLS intends to review the recent recommendations on child labor exclusions from NIOSH.

### ***An Act To Improve Collection of Information about Work-related Injuries and To Enhance Injury Prevention Efforts (2003 PL c 471)***

The bill that eventually became PLc 471 was first submitted to the 120<sup>th</sup> Legislature in 2002 based on a presentation by the MORA Steering Committee to the legislative Labor Committee. The original version would have required that all WCB *First Reports* be submitted to the WCB, whether a given *First Report* represented lost work time or not. Under the current system, that would have created an excessive burden not only on the WCB but also on employers and insurers. As passed in 2003 by the 121<sup>st</sup> Legislature, the law requires the submission of all *First Reports* once the WCB develops rules and standards for electronic transfer of the information, also required. Another section of the law establishes the Occupational Safety and Health Data Collection and Injury Prevention Work Group, discussed above, with the same dual purposes as the Act.