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

**Submitted to the
122nd Legislature
(First Regular Session)**

February 2005

William A. Peabody
Director
Bureau of Labor Standards
Department of Labor

Paul R. Dionne
Executive Director
Workers' Compensation Board

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



JOHN ELIAS BALDACCI
GOVERNOR

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

PAUL R. DIONNE
EXECUTIVE DIRECTOR/CHAIR

February 1, 2005

The Honorable John Elias Baldacci
Governor of the State of Maine
1 State House Station
Augusta ME 04333-0001

The Honorable Beth G. Edmonds
President of the Senate
3 State House Station
Augusta ME 04333-0003

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

Senator Nancy B. Sullivan, Chair
Representative Anne C. Perry, Chair
Joint Standing Committee on
Insurance & Financial Services
100 State House Station
Augusta ME 04333-0100

Senator Ethan Strimling, Chair
Representative William J. Smith, Chair
Joint Standing Committee on Labor
100 State House Station
Augusta ME 04333-0100

We are pleased to submit to the Governor and the 122nd Legislature, First 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.

Paul R. Dionne
Executive Director/Chair
Workers' Compensation Board

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

William A. Peabody
Director
Bureau of Labor Standards
Department of Labor

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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 of each year.

Workers' Compensation Board

The Governor introduced LD 1909, An Act To Promote Decision Making Within the Workers' Compensation Board, with an emergency preamble to the 121st Legislature. The Governor worked diligently with both labor and management organizations in formulating legislation to assist the Board in overcoming gridlock and meeting its statutory responsibilities. This bill received the necessary 2/3 majority in both Chambers. It was signed by the Governor as Public Law 2004 Chapter 608 and became effective on April 8, 2004.

The legislation amended the structure of the Board. The new Board consists of seven (instead of eight) members. Three members represent management and three represent labor. The seventh member is the Executive Director who also serves as Chair of the Board. The Executive Director is appointed by the Governor subject to confirmation by the Legislature and serves at the pleasure of the Governor.

A quorum of the Board is any four members. The Board may take action by a majority vote, except that the four members constituting a quorum for an emergency meeting must include at least one management member and one labor member.

Since the effective date of the legislation, the Board has reached consensus on most of the gridlock issues. The Board approved the appointment of two hearing officers at the Portland Regional Office; voted to change hearing officer terms from three to seven years; reappointed five hearing officers to seven year terms; approved an assessment and budget for the biennium; selected a firm to perform the Section 213 actuarial study; passed a rule mandating electronic filings; revised Board by-laws; implemented the NOC project; filled the Deputy Director of Business Services position; and submitted legislation to the 122nd Legislature.

Other matters of immediate concern to the Board include: increasing the number of Section 312 Independent Medical Examiners (IMEs); Section 213 Actuarial Study; implementation of the Electronic Data Interchange (EDI) rule; revision of the Medical Fee Schedule; additional resources for the Worker Advocate Program, MAE Program, and Abuse Investigation Unit; and a return to 2002 formal hearing efficiencies.

The Board is performing efficiently in other major areas of responsibility. The MAE Program continues to have a positive impact on both the compliance and performance of

insurers, self-insurers, and third-party administrators. Compliance trends on all performance indicators are up. The Board measures compliance on three key performance indicators:

1) Filing of First Reports of Injury; 2) Payment of Indemnity Benefits; and, 3) Filing of Memoranda of Payment. Since 1997 compliance for filings of first reports have gone from 36.74% to 82.43%; for payments of initial indemnity benefits from 59.39% to 85.56%, and for filing of MOPs, from 56.78% to 81.87%. The Worker Advocate Program now provides worker advocates for 50% of injured employees at the mediation phase of dispute resolution and 38% of injured employees at the formal hearing phase of dispute resolution. 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. And major programming changes in the Claims and Coverage departments should bring about significant improvements in the operations of the agency.

The Board submitted two bills for consideration during the First Regular Session of the 122nd Legislature. The first addresses Board review of a hearing officer's decision. Currently if the Board does not act within 60 days of the initial request for review, the request is automatically denied. This creates a potential timing problem. The proposed legislation establishes that the time to request review runs from the expiration of the period within which a request for findings can be filed, or the issuance of findings, whichever is later.

The second addresses the independent medical examiner system. Currently, if the parties agree to an examiner, the examiner's report is binding on the parties. This submission encourages parties to agree to the selection of an independent medical examiner by establishing that, whether or not the parties have agreed to the selection of an independent medical examiner, the examiner's finding must be adopted unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings.

Superintendent of Insurance

The Superintendent of Insurance is required pursuant to 24-A M.R.S.A. 2383 to report annually to the Governor and the Insurance and Financial Services Committee on the status of competition in the workers' compensation market. This report examines 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), as the state's designated statistical agent, files advisory loss costs on behalf of insurers with the Bureau of Insurance. The Superintendent must approve the advisory loss costs, which represent the portion of the rates that account for losses and loss adjustment expenses. Each insurer files factors called loss cost multipliers, which account for such things as company experience, overhead expenses, taxes, contingencies, investment income and profit. The advisory loss costs are multiplied by those factors to form rates for individual insurance companies. Other things such as

experience rating, schedule rating, and premium discounts also affect the ultimate premium amount paid by an individual employer.

Recently NCCI made a filing with the bureau, which calls for an overall 2.2% increase in advisory loss costs. This filing was approved and will go into effect on January 1, 2005. Frequency of indemnity claims continues to decrease but the amount of costs for indemnity and medical claims continues to increase.

The increase in advisory loss costs is not evenly distributed across all rating classifications. The contracting group will have an average reduction of nearly five percent. The miscellaneous group will have an average decrease of over one percent. The office & clerical, the goods & services and the manufacturing groups will have average increases ranging from over five percent to nearly seven percent respectively. The change in loss cost for individual classifications within each group varies based on experience within each classification. Some employers will see premium decreases while more employers will see increases.

The Maine workers' compensation insurance market remains somewhat competitive, with many 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 continued signs of market hardening over the past few years. With relatively low 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 over 45% of the overall market and self-insurance continues to be a viable alternative to the insurance market for some employers.

One important trend is the increased market share held by Maine Employer's Mutual Insurance Company (MEMIC). In terms of written premium, MEMIC's market share is at its highest level since 1995. MEMIC does not maintain records of the number of employers that they insure because the employer was not able to obtain coverage elsewhere; however, the increased market share is an indicator that more employers may be insuring with MEMIC out of necessity and is a sign that the market is becoming less competitive. MEMIC requested and received approval for a 3.5% rate increase in its standard rating tier, effective November 1, 2004. The increase was within the allowable voluntary market statutory limits set for MEMIC rates. Any further increase in the loss cost multiplier for the standard rating tier would be subject to review and possible disapproval by the Superintendent.

Although MEMIC now accounts for over 61% of the insured workers' compensation business in the state, 28 companies continued to write more than \$1 million in annual premium in 2003. 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.

Overall, Maine's loss costs will be over 37% lower than they were in 1993. 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 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.

Bureau of Labor Standards

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 Title 26 MRSA § 42-A, the BLS is charged with establishing and supervising safety education and training programs. 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. The MDOL is also responsible for enforcement of Maine labor laws and the related rules and standards.

SafetyWorks! is an identity that encompasses the occupational safety and health (OSH) training, consultation and outreach functions of the BLS. These activities include use of WCB data to respond to requests for information from the OSH 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. In 2004 such research took the form of:

- Research into workplace violence, including both continuation of a study of the workplace effects of domestic violence and development of a pilot workplace violence surveillance program
- Development of a pilot surveillance program for young workers
- A survey of employer attitudes toward workplace substance abuse and substance abuse testing
- A study of the misclassification of workers as independent contractors in the construction industry
- A study of the occupational safety and health factors affecting workers in the home health care industry.

A chronic problem in the use of WCB data is that around 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 weakness 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 occupational safety and health data. Such problems in data collection and sharing are being closely examined and there is good reason to hope for improvements.

The BLS uses WCB data to supplement Federal Bureau of Labor Statistics and OSHA data in developing occupational safety and health grant applications. The most important example shaping BLS 2004 activities was 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. 2004 was year two of activity under this grant.

SECTION A

WORKERS' COMPENSATION BOARD

SECTION A. WORKERS' COMPENSATION BOARD

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1. INTRODUCTION

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

The major programs of the Board fall into six categories: (1) Dispute Resolution; (2) Compliance – Monitoring, Auditing, and Enforcement (MAE) Program; (3) Worker Advocate Program; (4) Independent Medical Examinations/Medical Fee Schedule; (5) Technology; and (6) Central and Regional Office support staff.

The implementation of Standard Operating Procedures (SOPs) has resulted in the elimination of backlogs and an efficient dispute resolution system. The MAE Program has dramatically improved compliance throughout the industry both as to payments and filings. Because of the Worker Advocate Program, injured workers now have access to representation that enables them to receive the benefits to which they are entitled. Over 50% of injured workers are represented by advocates at the mediation level and over 38% are represented by advocates at the formal hearing level. The Independent Medical Examination Program and the Medical Fee Schedule have been important tools in the successful resolution of cases. Although the Board has made progress in the field of technology, due to limited resources, many of its objectives have not been met. The Board has committed additional resources to this endeavor for fiscal years 2004-2005.

The Board is not a General Fund agency and receives its revenue to fund its operations through an assessment on Maine's employers. The maximum amount that the Board can presently assess is \$8,350,000 in FY 04 and \$8,525,000 in FY 05. Chapter 425 provides for the creation of a Commission to study the Board's assessment and budgetary processes and to report to the Legislature in 2004.

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

The Legislature recognized the urgency of the Board's situation in FY02. It took two steps: First, the Legislature authorized the use of \$700,000 from the Board's reserve account, and second, the Legislature authorized a one-time increase in the maximum assessment of \$300,000 to provide temporary assistance to the Worker Advocate Program. The Legislature also recognized the urgency of the Board's situation in FY03. It took three steps: First, the Legislature authorized the use of reserve funds in the amount of \$1,300,000; second, the Legislature increased the assessment to fund a hearing officer position in Caribou in the amount of \$125,000; and third,

the Legislature allocated funds from reserves to fund actuarial studies and arbitration services to determine permanent impairment thresholds, and to fund a MAE Program position in the amount of \$135,000. These were short-term solutions and during the 2003 Legislative Term the Legislature increased the Board's assessment cap to \$8,350,000 in FY 04 and \$8,525,000 in FY 05. The Legislature also provided for greater discretion in the use of the Board's reserve account.

Parallel to legislative assistance with the assessment cap and greater discretion in the use of the Board's reserve accounts, the agency is attempting to improve efficiency and lower costs via a range of administrative efforts ranging from mandating electronic data interchange to enforcement of performance standards in the dispute resolution process.

In 2004 the Governor introduced a Bill, which was enacted by the Legislature as Chapter 608 and entitled "*An Act to Promote Decision-Making Within the Workers' Compensation Board.*" The purpose of the legislation was to break the gridlock that adversely affected the functioning of the Board. The legislation reduced the size of the Board from eight to seven members and empowered the Governor to appoint an executive director, who is the chair and chief executive officer 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.
- **§§ 151, Sub-§1.** Established the Executive Director as a gubernatorial appointment and member and Chair of the Board of Directors.

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 from legislative changes during the late 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 originally consisted of four Labor members and four Management members, appointed by the Governor based on nomination lists submitted by the Maine AFL-CIO and Maine Chamber of Commerce. The eight Directors hired an Executive Director to run the agency. In 2004 legislation was enacted to reduce the Board to three Labor Directors and three Management members. The Executive Director became a gubernatorial appointment, confirmed by the legislative committee on Labor, for a term concurrent with the Governor.

The Board of Directors 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. An efficient formal hearing process that had reduced timelines to an acceptable 7.3 months for processing cases in 2000. Gridlock by the Board of Directors regarding appointment of Hearing Officers occurred in 2003 and 2004. This has resulted in slightly longer time frames at the formal level, about 10.5 months in 2004. However, this problem has been resolved and the agency anticipates a return to time frames of about eight months in 2005.

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. Other circumstances and the applicable law are often complex. Substantial sums of money may be at issue.

In an apples to apples comparison, matching the complexity of the dispute and the type of litigation, the Board's average time frame of about ten 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.

During the late 1990's, the Board of Directors began to deadlock on significant issues such as the appointment of Hearing Officers, the adjustments to the benefit structure under section 213, and the agency budget. By 2002, this had become a matter of Legislative concern. Finally, in 2004, legislation was enacted to make the Board's Executive Director a tie-breaking member of the Board of Directors. The Executive Director became a gubernatorial appointment, subject to confirmation by the legislative committee on labor, for a term concurrent with the Governor. Although it will take time to fully evaluate the new arrangement, clearly gridlock due to tie votes is no longer an issue.

3. DISPUTE RESOLUTION

I. Introduction.

The Workers' Compensation Board has regional offices throughout the State, in Caribou, Bangor, Augusta, Lewiston and Portland that handle dispute resolution functions. The regional offices handle troubleshooting, mediation and formal hearings.

II. Three Tiers of Dispute Resolution.

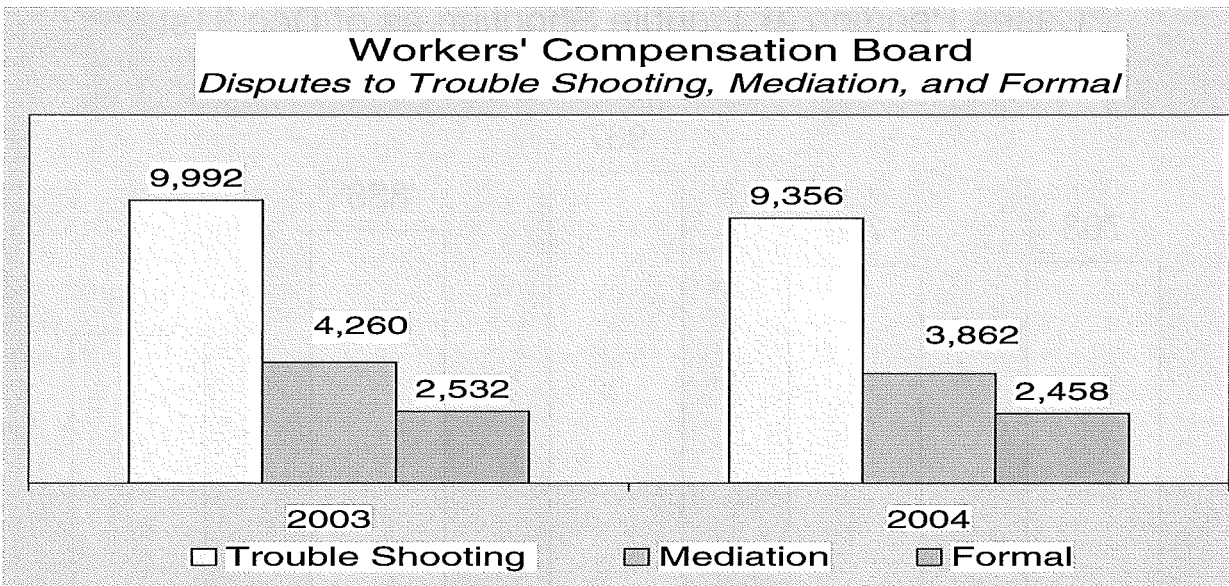
On January 1, 1993, Title 39, which contained the Workers' Compensation Act of 1991 and all prior workers' compensation acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992. The new Title 39-A created a three tiered dispute resolution process.

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 an attorney or a worker advocate. Following the hearing, position papers are submitted and the hearing officer issues a decision.

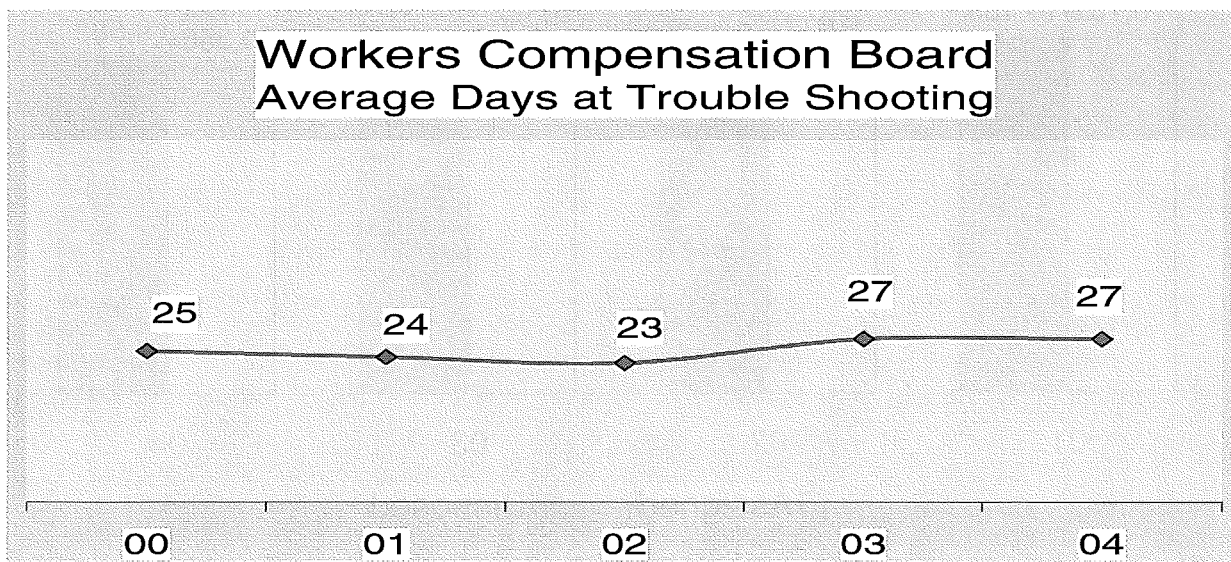
The number of cases resolved at each phase for the years 2002 and 2003 is illustrated in the chart below:



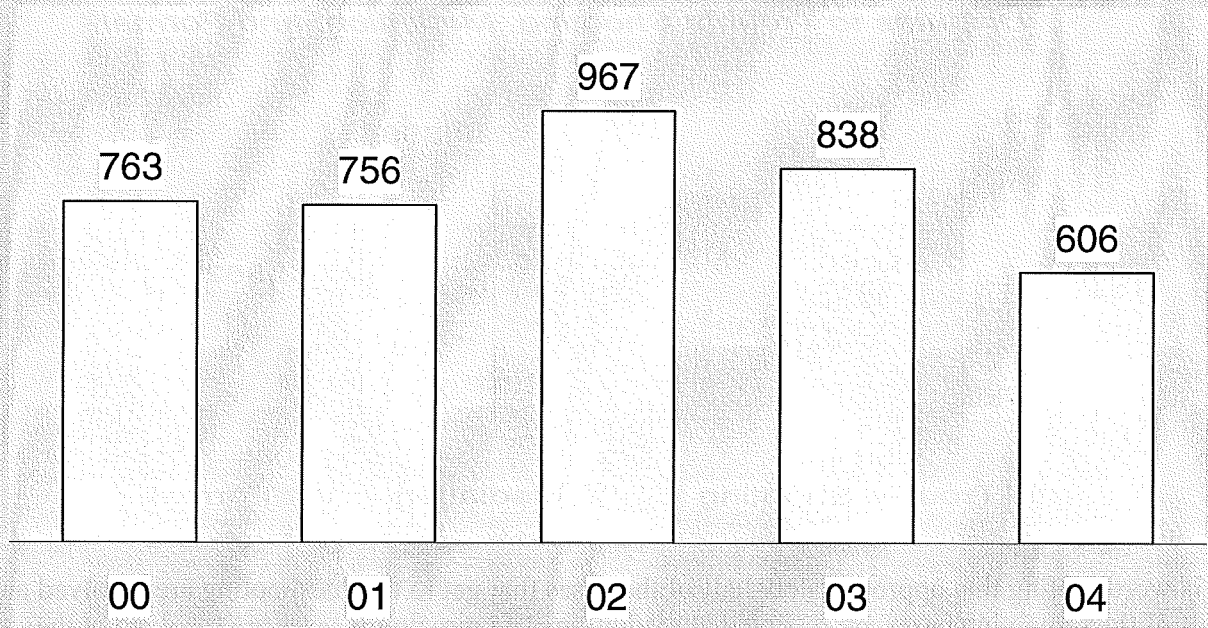
It is worth noting that approximately half of the cases that get to troubleshooting are resolved and half of the remaining cases are resolved at mediation. The remaining cases are resolved at the formal hearing level.

III. Troubleshooting Statistical Summary

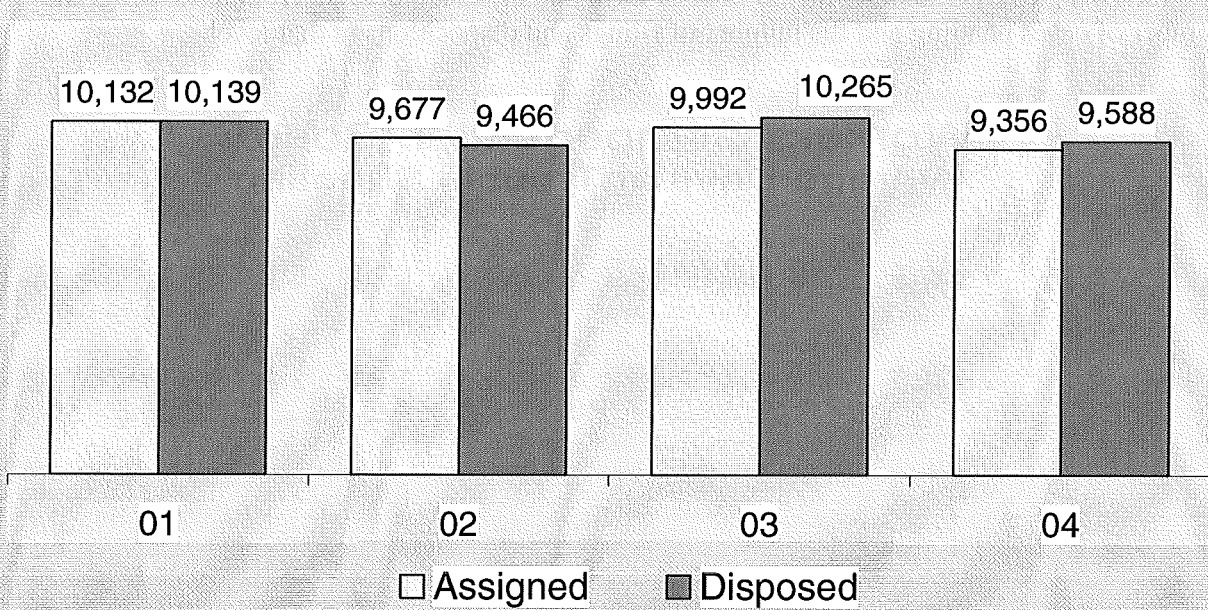
The following charts illustrate the number of days that cases are held at Troubleshooting, the number of cases pending and the number of filings and dispositions at that level.



Workers Compensation Board Cases Pending at Trouble Shooting as of Dec 31st

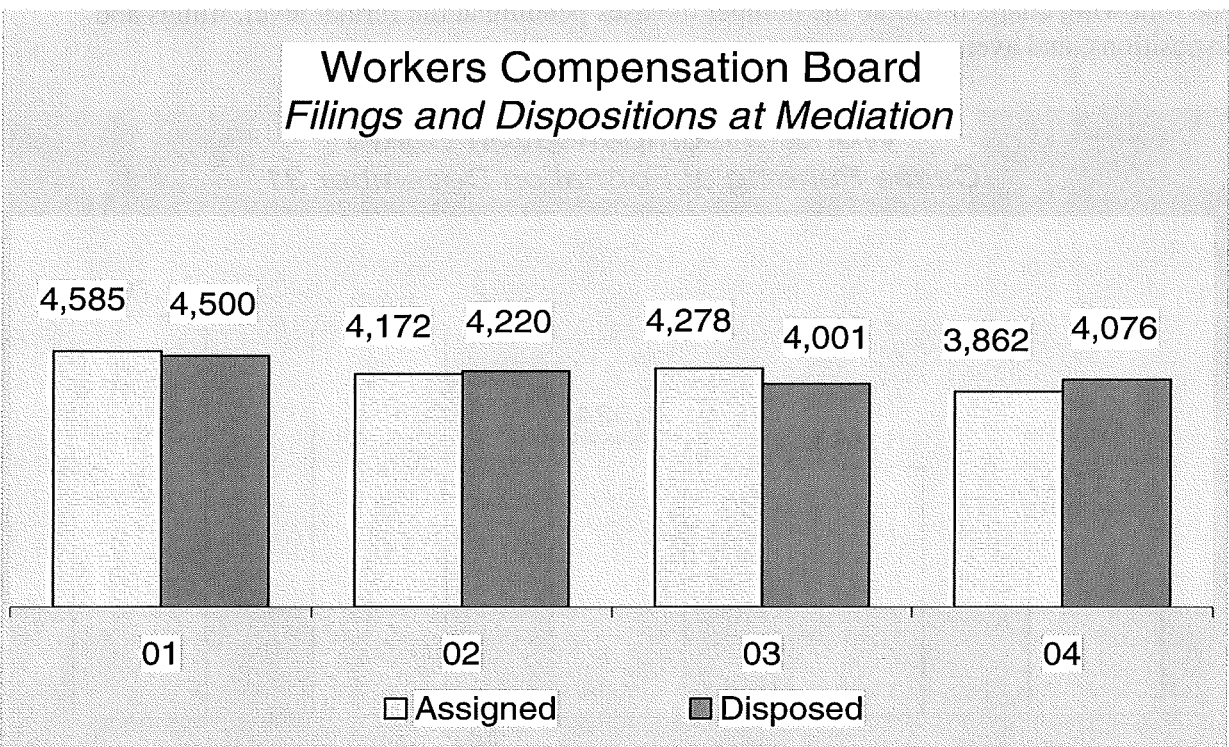
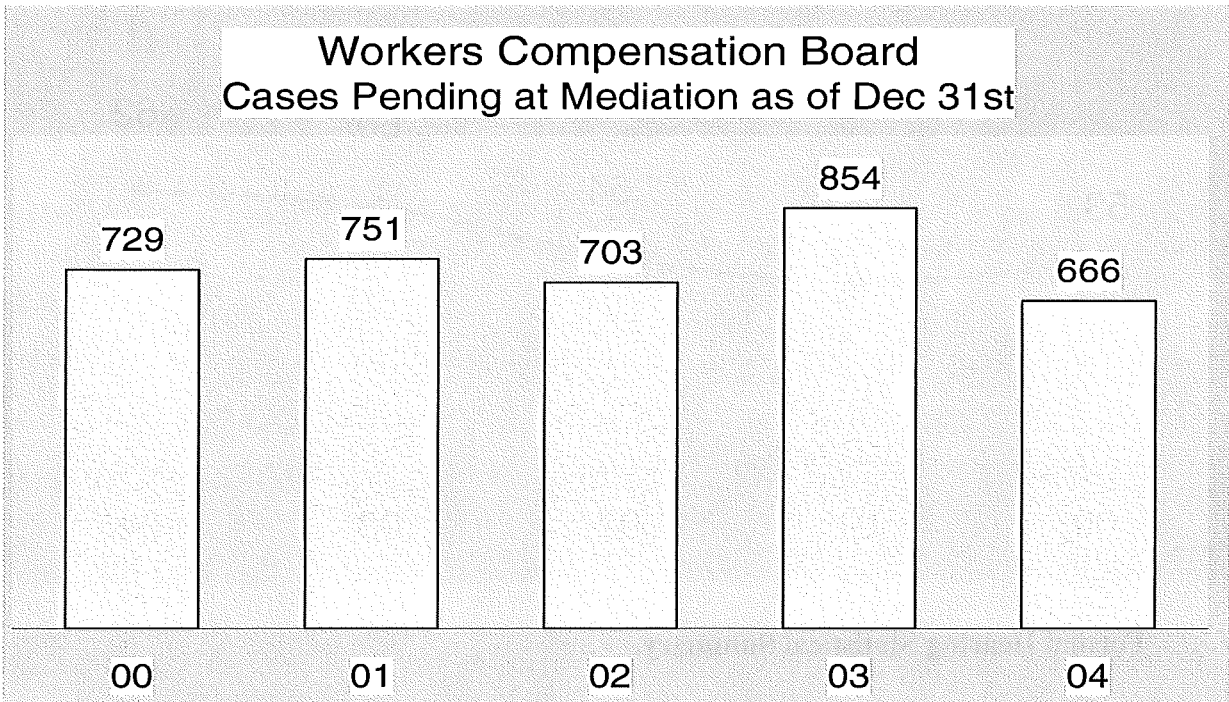


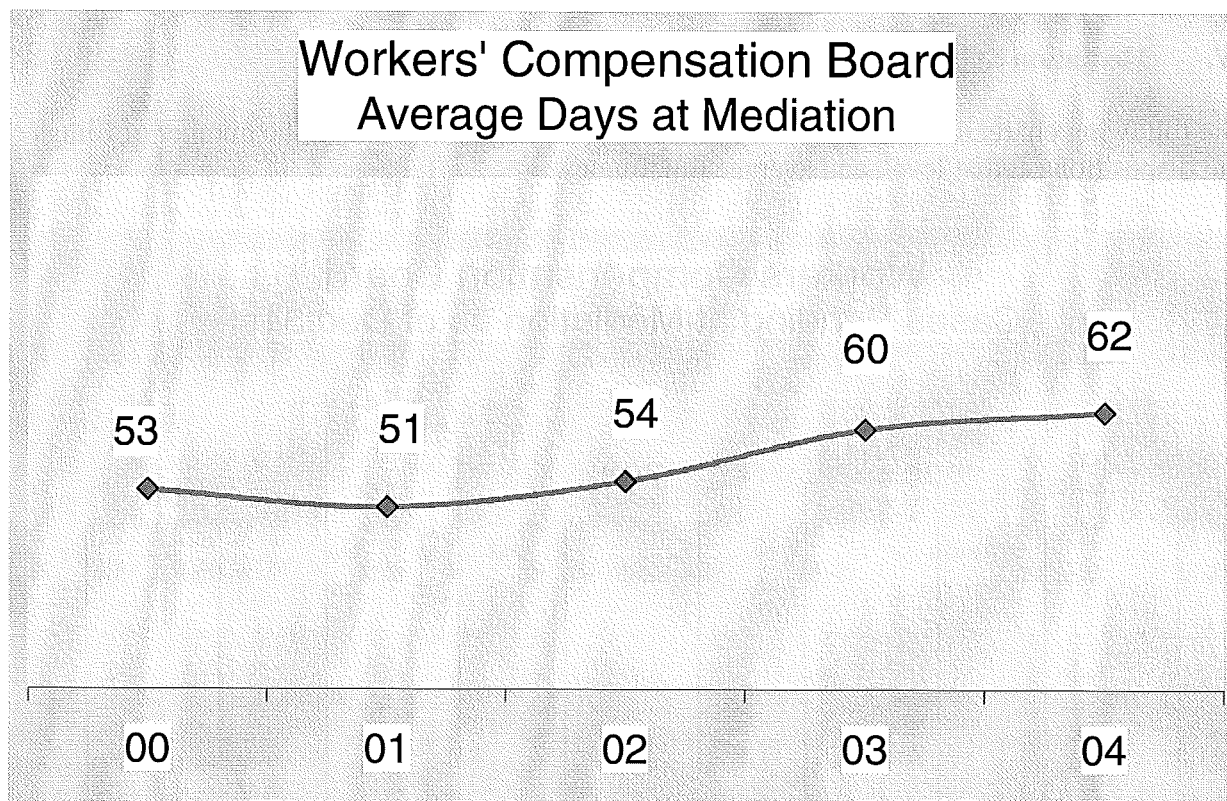
Workers Compensation Board *Filings and Dispositions at Trouble Shooting*



IV. Mediation Statistical Summary.

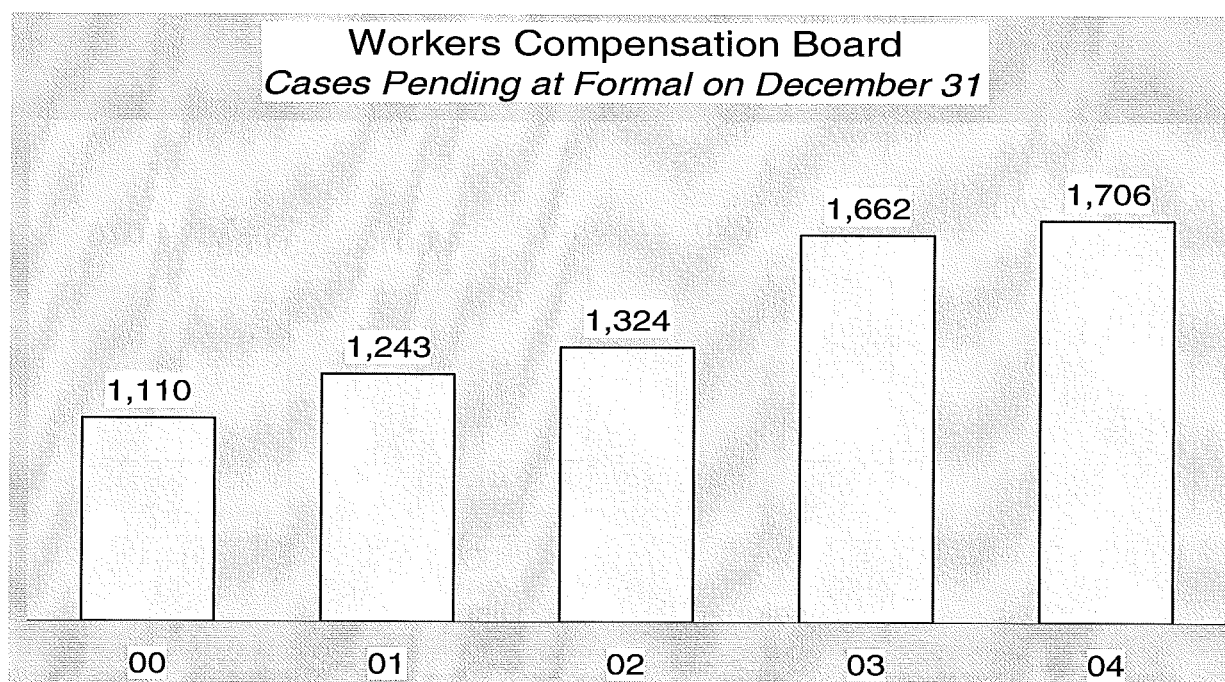
The following charts illustrate the number of cases pending at Mediation, the number of filings and dispositions at that level, and average timeframes.



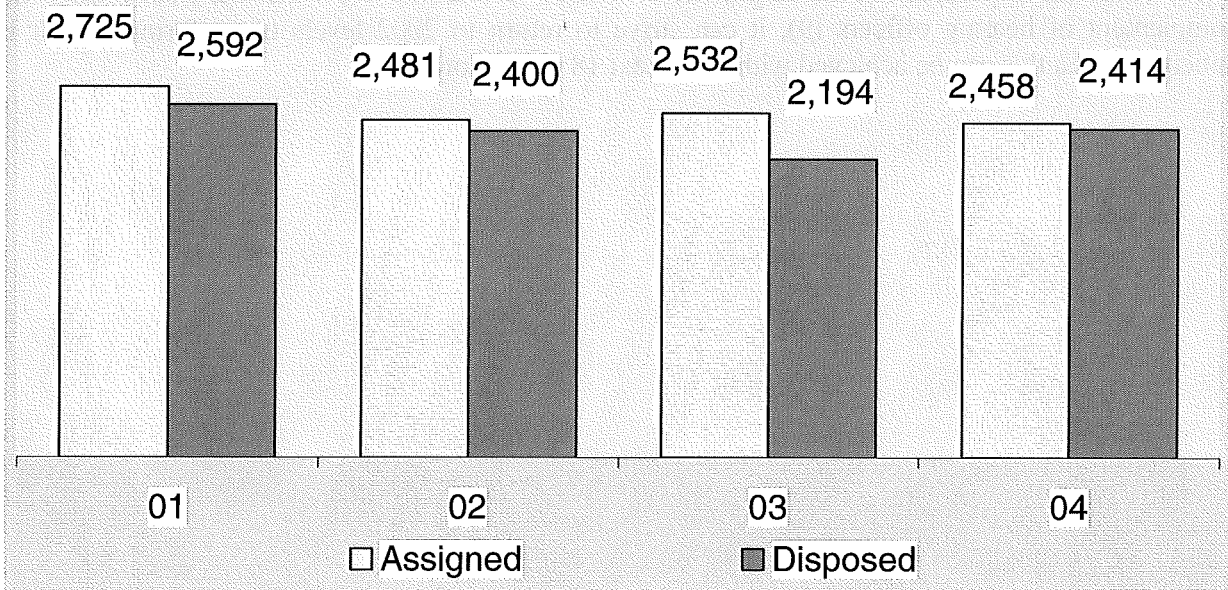


V. Formal Hearing Statistical Summary.

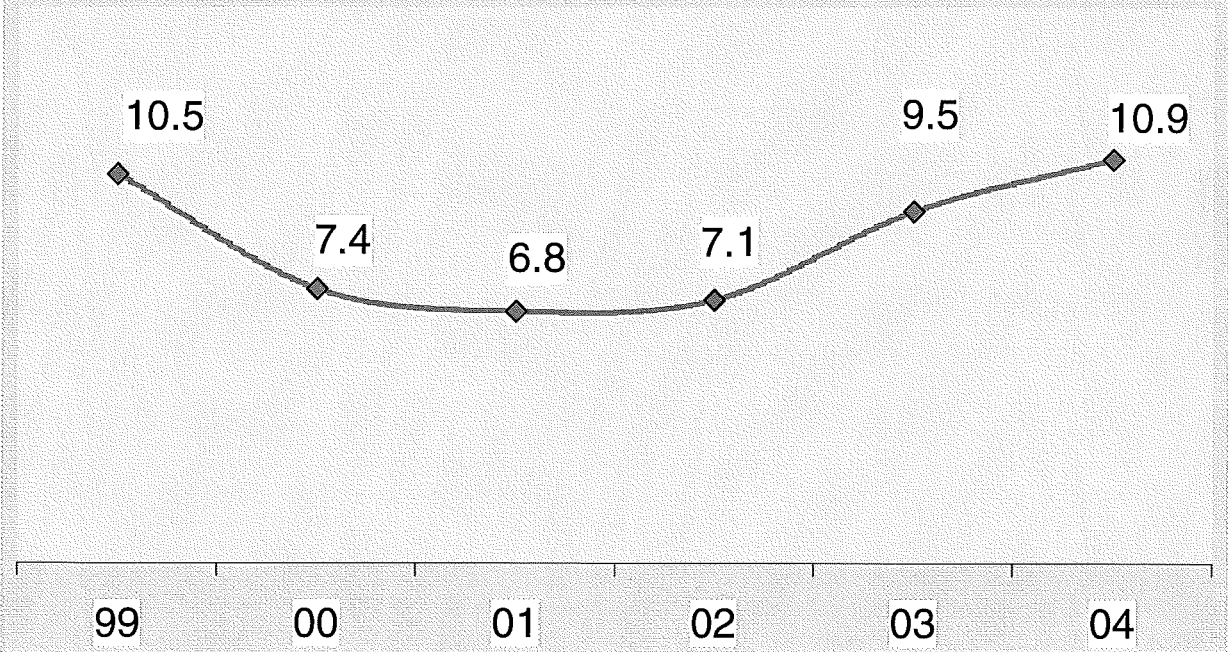
The following charts illustrate the number of cases pending at the formal level, filings and dispositions, and average timeframes.



Workers Compensation Board *Filings and Dispositions at Formal*



Workers Compensation Board Average Months Formal Hearing Decisions



VI. Conclusion.

An increase of 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. In October of 2003, the Board replaced two hearing officers with two temporary hearing officers. In September 2004, the Board appointed two hearing officers to three-year terms. Now that the Board has a full complement of hearing officers (9), it can strive to return to 2002 levels of performance. It is anticipated that this can be achieved within the next 18 to 24 months.

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 2003 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, 2 and 3 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. Entities with high compliance are listed on page 18.

I. 2003 Annual Compliance Report Overview.

A. Lost Time First Reports.

- (1) The Board received 16,362 Lost Time First Reports in 2003.
- (2) 82.43% were filed within seven days (as prescribed by law). 88.83% were filed within 10 days. The 82.43% represents a .86% increase in compliance over 2002 and a 124.36% increase in compliance since the Pilot Project of 1997. (See Tables 1, 2 and 3 and Charts 1, 2 and 3 attached.)

B. Payments of Initial Indemnity Benefits.

85.56% of initial indemnity payments were paid within 14 days. The Board Benchmark is 80%. The compliance for 2002 was 85.27%. The 85.56% represents a .34% increase in compliance from 2002 and a 44.06% increase in compliance since the Pilot Project of 1997. Over one hundred more households received timely benefits than the previous year. (See Tables 1, 2 and 3 and Charts 4, 5 and 6 attached.)

C. MOP Filed Within 17 Days.

81.87% were filed within 17 days. The Benchmark is 75%. The compliance for 2002 was 80.78%. The 81.78% represents an increase in compliance of 1.35% from 2002 and 44.19% increase in compliance since the Pilot Project of 1997. (See Tables 1, 2 and 3 and Charts 7, 8 and 9 attached.)

D. Adjusting Entity Compliance Comparisons.

- (1) Initial Indemnity Benefit Payment. (See Chart 13 attached.)

Overall Compliance	86%
Standard Insurers	81%
MEMIC	92%
Self-Insured/Self-Admin	88%
Self-Insured/TPA Admin	84%
TPA	68%

(2) MOP Filing. (Chart 14)

Overall Compliance	82%
Standard Insurers	72%
MEMIC	91%
Self-Insured/Self Admin	88%
Self-Insured/TPA Admin	82%
TPA	56%

(3) Percentages of MOPs filed with Workers' Compensation Board.
(See Chart 16 attached.)

Standard Insurers	25%
MEMIC	35%
Self-Insured/Self-Admin	19%
Self-Insured/TPA Admin	14%
TPA	7%

E. Insurance Group Analysis.

Initial Indemnity Payment – Groups Above and Below Benchmark. (See Chart 17 attached.)

Above – 61%

Below – 39%

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

Above – 49%

Below – 51%

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

Compliance for In-State Groups – 89%

Compliance for Out-of-State Groups – 75%

¹ 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.

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

Compliance for In-State Groups – 88%

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%

II. Additional Compliance Report Element.

An additional element was added to the Annual Compliance Report in 2003. This additional element provides a greater analytical picture of overall compliance.

- **Compliance Trends.** This chart indicates compliance trends from 1999 to 2003 (See Charts 10, 11 and 12).

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:

Corrective Action Plans (CAPs) were implemented for insurers with chronic poor compliance and filing procedures. These plans have improved the performance of some insurance groups. Those groups who have failed to improve compliance have been engaged in further corrective action.

Corrective Action Plans - Ongoing

<u>Insurance Group</u>	<u>Market Share by Premium Written*</u>
A. Royal & Sun Alliance	4.70%
B. Zurich Insurance	1.80%
C. Travelers	1.20%
D. CNA/ RSKO Insurance Co.	1.01%
E. Chubb & Son Insurance	0.35%
F. Atlantic Mutual Insurance Co.	0.07%

Corrective Action Plans – Newly Initiated

After the second quarter of 2003, three additional insurers and third-party administrators have entered into Corrective Action Plans with the Board to attempt to improve their performance. These insurers and third-party administrators are:

<u>Insurance Group</u>	<u>Market Share by Premium Written*</u>
A. St. Paul Insurance Group	1.51%
B. Crawford & Company	0.05%
C. Ace/ESIS Insurance	0.01%

Corrective Action Plans - Lifted

After the fourth quarter of 2003, the following CAP was lifted.

<u>Insurance Group</u>	<u>Market Share by Premium Written *</u>
A. Guard	2.70%

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

• Market Share Percentages provided by Bureau of Insurance.

Compliance Summary

Table 1

2003 Quarterly Compliance Reports

	First Quarter		Second Quarter		Third Quarter		Fourth Quarter	
	<u>7 Days</u>	<u>10 Days</u>	<u>7 Days</u>	<u>10 Days</u>	<u>7 Days</u>	<u>10 Days</u>	<u>7 Days</u>	<u>10 Days</u>
First Report of Injury Received Within:	82.26%	87.13%	83.13%	87.41%	82.11%	87.74%	82.10%	87.75%
Initial Indemnity Payment Made Within 14 Days	83.16%		87.85%		85.17%		85.78%	
Memoranda of Payment Received Within 17 Days	78.04%		83.45%		83.47%		82.96%	
	Static results based upon data received by the deadline for each quarter.							

Table 2

Annual Compliance

	Pilot Project 1997		1999	2000	2001	2002	2003
First Report of Injury Received Within 7 Days	*36.74%		69.20%	78.33%	79.71%	81.73%	82.43%
Initial Indemnity Payment Made Within 14 Days	*59.39%		79.35%	80.26%	82.79%	85.27%	85.56%
Memoranda of Payment Received Within 17 Days	*56.78%		75.14%	74.62%	77.08%	80.78%	81.87%
	*Based on sample data collected for Pilot Project of 1997		Total population data received by March 30 after each calendar year is complete				

Table 3

Percentage Change Over Time

	Since Pilot Project 1997		Since 1999	Since 2000	Since 2001	Since 2002
First Report of Injury Received Within 7 Days	124.36%		19.12%	5.23%	3.41%	0.86%
Initial Indemnity Payment Made Within 14 Days	44.06%		7.83%	6.60%	3.35%	0.34%
Memoranda of Payment Received Within 17 Days	44.19%		8.96%	9.72%	6.21%	1.35%

FIRST REPORTS OF OCCUPATIONAL INJURY OR DISEASE

Chart 1

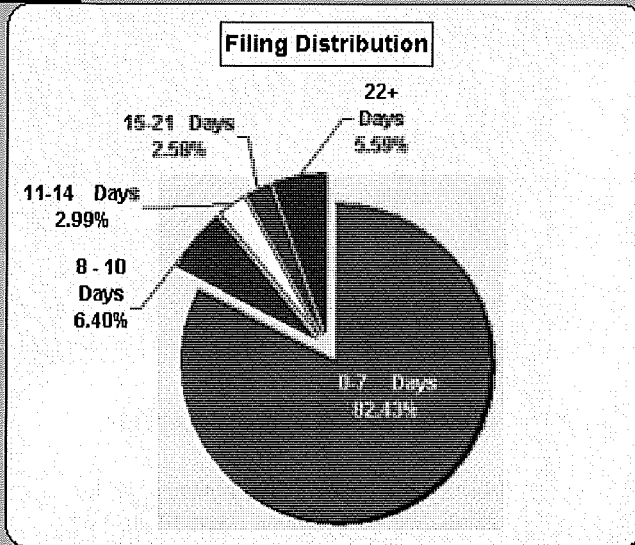


Table 4

First Reports Received Within:

0-7 Days	13,488	82.43%
8-10 Days	1,047	6.40%
11-14 Days	490	2.99%
15-21 Days	422	2.58%
22+ Days	915	5.59%
Total	16,362	100%

Chart 2

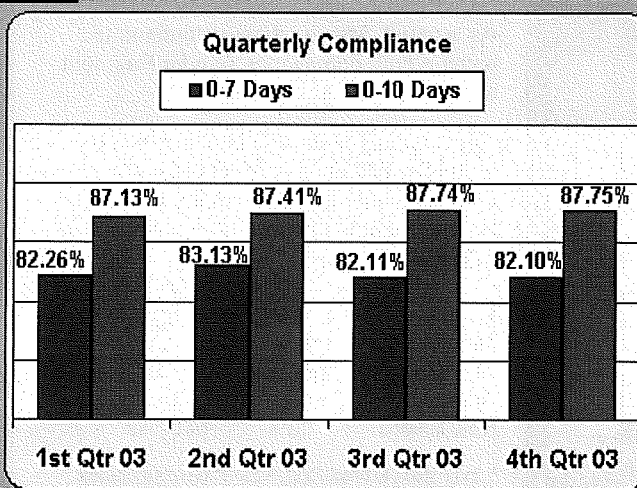
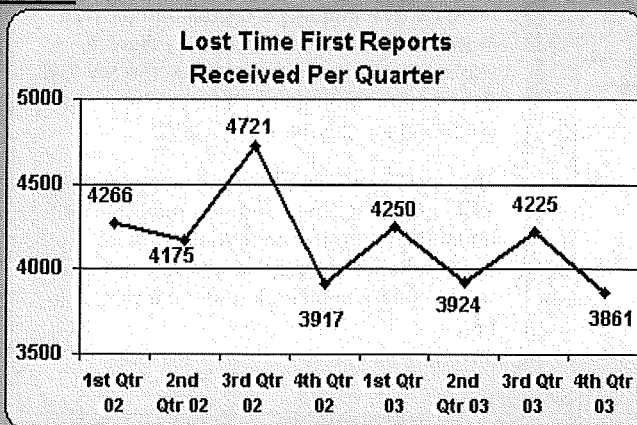


Chart 3



Improvement in Lost Time First Report Filing Compliance Continues

In 2003, 16,362 Lost Time First Reports were filed with the MWCB, 529 fewer First Reports of Injury (FROIs) than 2002. The compliance rate for timely filing rose to 82.43% (2002 compliance was 81.73%).

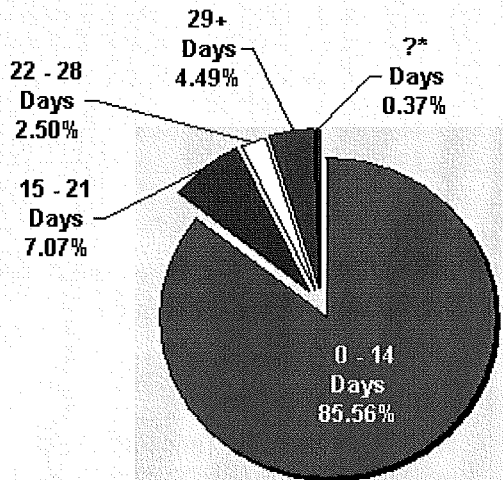
This marked a third year in a row that the number of Lost Time First Reports received at the Board declined.

The continued increase in filing compliance and decrease in the number of Lost Time First Reports filed can be attributed to three causes:

- 1) The Board's penalizing of insurers and employers \$100 for late filing of First Reports.
- 2) Continued outreach and training by the Board's Monitoring Division that targets insurer's with poor filing compliance for Corrective Action Plans (CAPs) and forms training. The CAPs have identified breakdowns that cause late reporting.
- 3) The Reconciliation process administered by the Monitoring Division that corrects inaccurately submitted First Reports and other Board filings.

PAYMENT OF INITIAL INDEMNITY BENEFITS

Chart 4



* - indicates compliance could not be measured

Table 5

Initial Payment Made Within:

0 - 14 Days	4,173	85.56%
15 - 21 Days	345	7.07%
22 - 28 Days	122	2.50%
29+ Days	219	4.49%
? Days	18	0.37%
Total	4,877	100%

Maine, a Compliance Leader

As Chart 4 indicates, compliance for the Initial Indemnity Benefit Payment in 2003 surpassed 2002 by about one third of one percent (0.29%) to 85.56%.

As a result, Maine citizens continue to enjoy a high compliance rate for Payment of Initial Indemnity Benefits.

Although not direct comparisons due to statutory differences, here is Maine's compliance for Initial Indemnity Benefits Payment compared to other compliance-measuring states:

	2002	2003
Maine	85%	86%
Florida	92%	91%
Wisconsin	not avail	84%
Minnesota*	85%	86%
New Mexico	60%	not avail

* Indicates "Prompt First Action" which includes measurement of Initial Payment or Initial Denial.

As the trend line in Charts 5 and 6 indicate, the industry's overall compliance in Maine for the Initial Indemnity Benefit Payment continued to be above the MWCB Benchmark throughout all four quarters of 2003 and for all years since 2000.

The 6.51% increase in compliance since 1999 indicates that hundreds more Maine households are receiving their workers' compensation benefits in a timely manner than before compliance measurements began.

Chart 5

2003 Quarterly Compliance

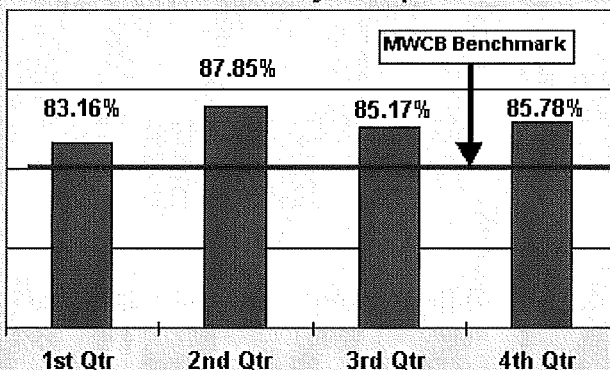
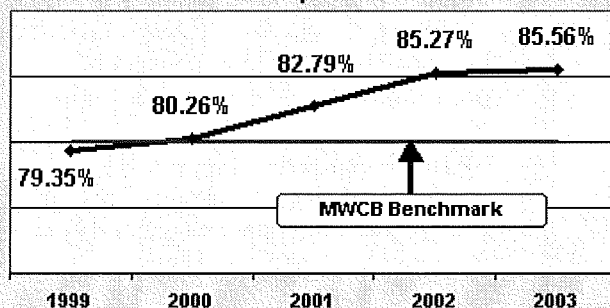


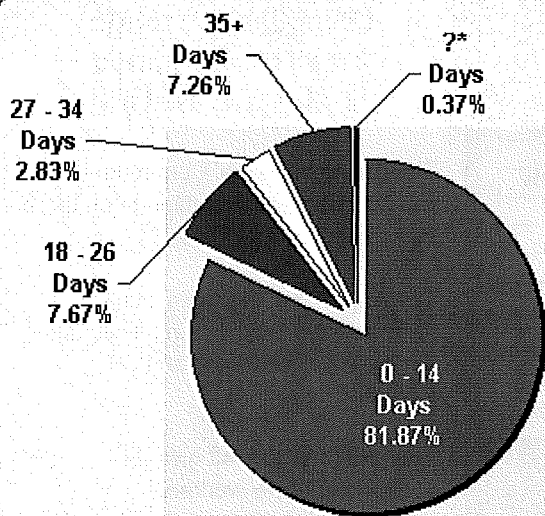
Chart 6

Annual Compliance Trends



MEMORANDA OF PAYMENT

Chart 7



* Indicates compliance could not be measured

Table 6

Initial Payment Made Within:

0 - 17 Days	3,993	81.87%
18 - 26 Days	374	7.67%
27 - 34 Days	138	2.83%
35+ Days	354	7.26%
? Days	18	0.37%
Total	4,877	100.00%

Form Filing Compliance Continues to Improve

The filing of the Memoranda of Payment (MOP) is an important performance indicator for the Maine Workers' Compensation Board.

While the filing of the MOP may not have the tangible benefits to the injured employee that the initial indemnity benefit payment may have, the MOP filing provides the Board with an indicator of how well insurers are complying with the administrative requirements of the Workers' Compensation Act. Studies from the Workers' Compensation Research Institute (WCRI) indicate that proper claims administration and timely payment of claims impacts the overall costs of claims and the time it takes for a claim to be processed through the dispute resolution system.

The MOP Filing performance indicator is important to the administration of Maine claims because it allows the Monitoring Division to assess the compliance of individual insurers. It also is used as an indicator for overall forms filing compliance.

The prompt filing of the initial MOP also gives the Board's Claims Management staff the opportunity to verify that appropriate compensation benefits are being issued.

Chart 8

2003 Compliance

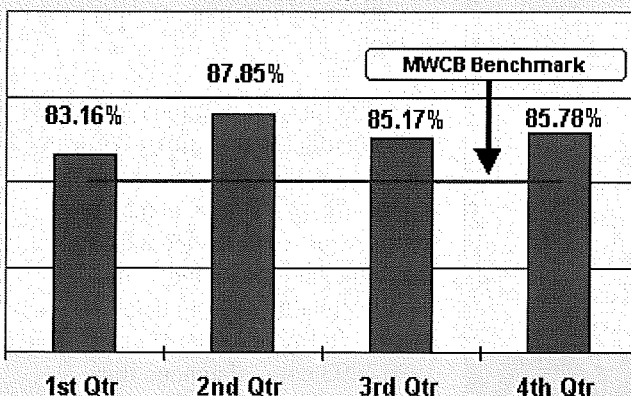
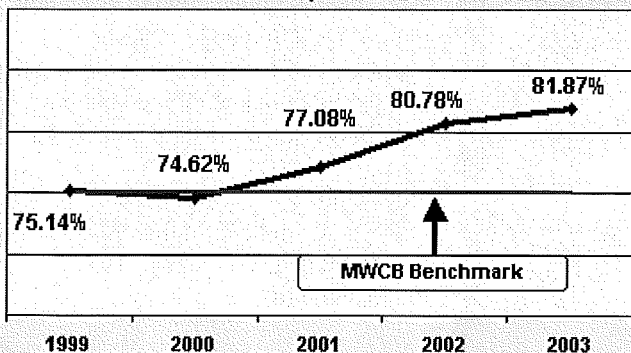


Chart 9

Annual Compliance Trends



Compliance Trends

Chart 10

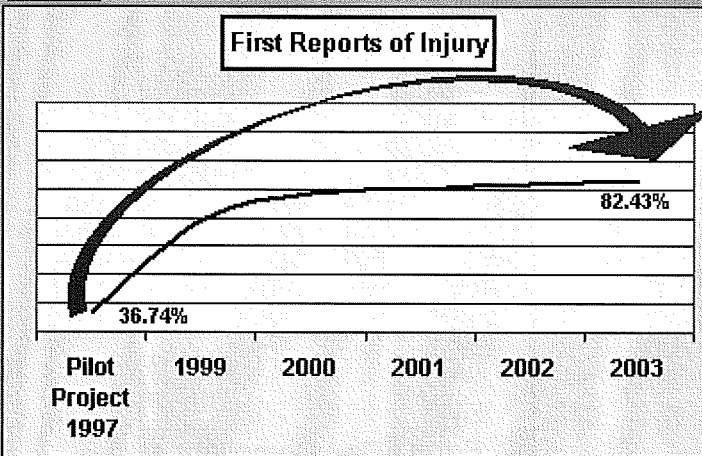


Chart 11

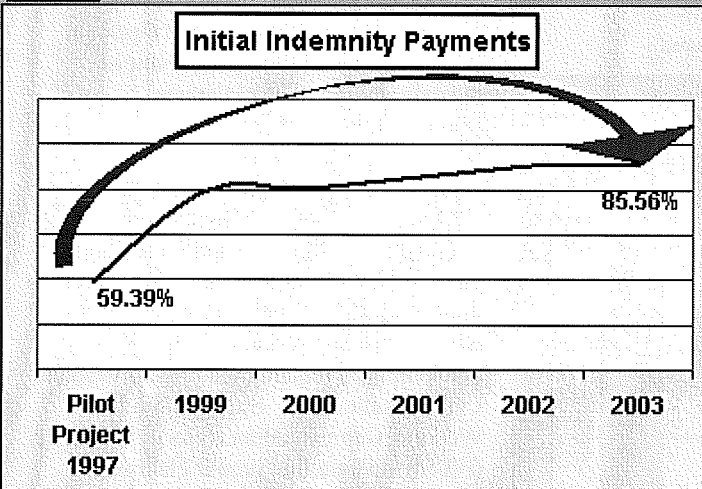
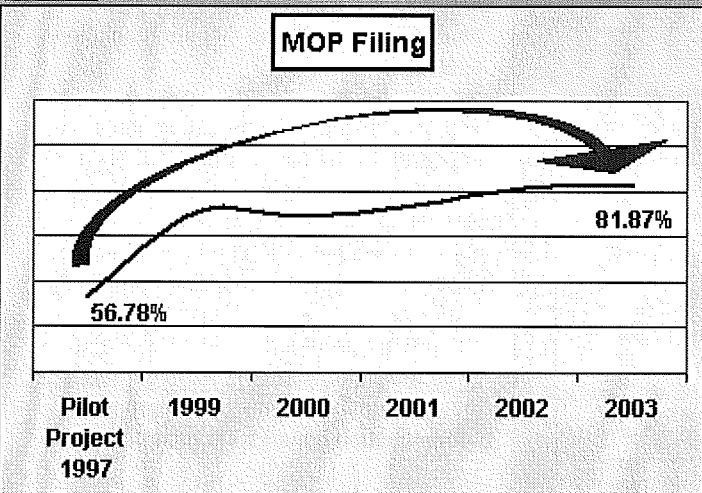


Chart 12



Compliance Trends on all Performance Indicators are UP!

The Maine Workers' Compensation Board measures compliance on three key performance indicators:

- 1) Filing of First Reports of Injury
- 2) Payment of Initial Indemnity Benefit
- 3) Filing of Initial Memoranda of Payment

The charts to the left give an indication of how workers' compensation claims administration has continued to improve in the State of Maine since the inception of the Office of Monitoring, Audit and Enforcement (MAE) and the Board's penalty process for late filing of First Reports.

If we use the organizational model of **"What Gets Measured Gets Done"**, we can see that there has been noted improvement in claims administration for the three performance indicators that are being measured. The 1997 data references sample data that was part of the Board's Pilot Project. The 1999-2003 data references the population data from the entire insurance community.

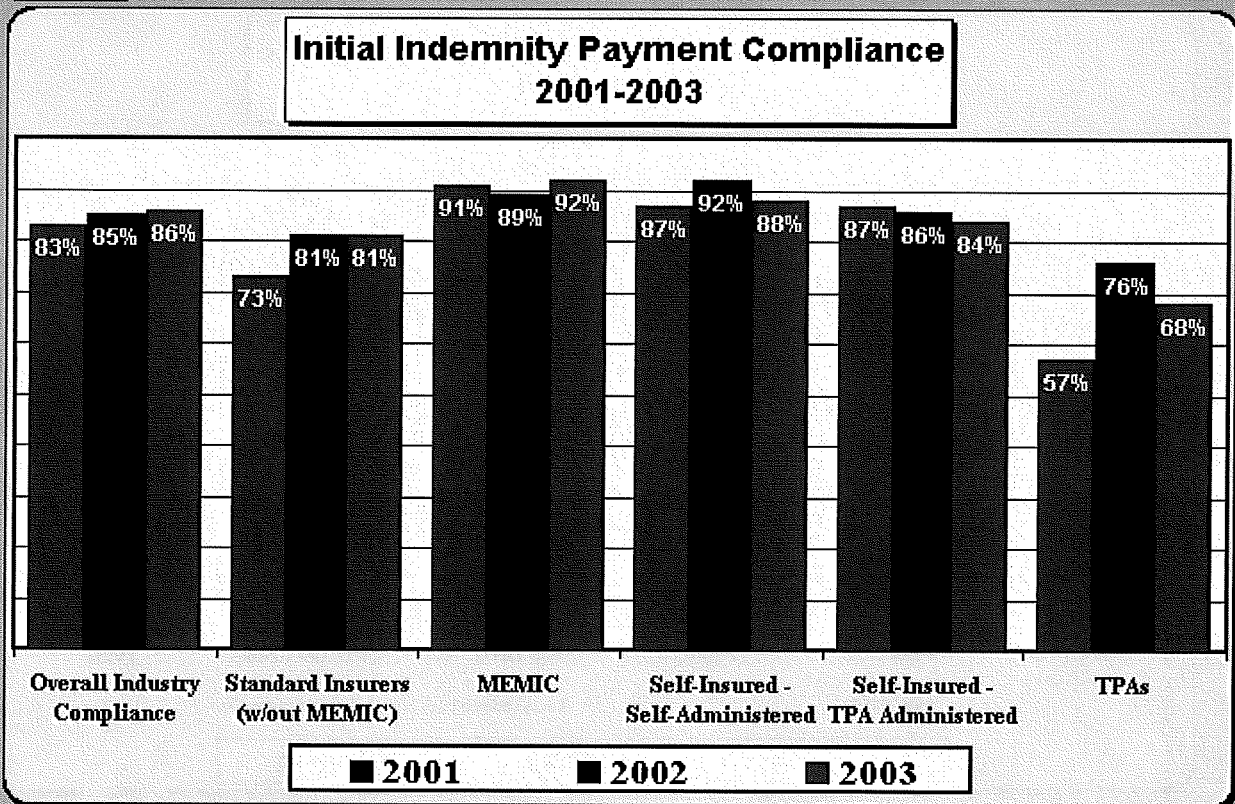
By increasing compliance with the "Act," claims administration efficiency improves which results in fewer disputes, better relationships between employees, employers and insurers and more efficient hearing processes.

Other states that employ more performance indicators than Maine include Florida, Wisconsin, Texas and Minnesota.

Workers' compensation insurance claims can be administered several ways in Maine.

- There are the customary or "standard" insurance companies like Hanover.
- There is a Legislature created insurance company, Maine Employers' Mutual (MEMIC).
- Employers like Bath Iron Works can also choose to "self-insure." These self-insureds can choose to adjust their own claims (self-administered) or hire a third party administrator (TPA) like Gallagher-Bassett to adjust their claims (TPA administered).
- Some standard insurers outsource their adjusting work to TPAs as well.

Chart 13



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

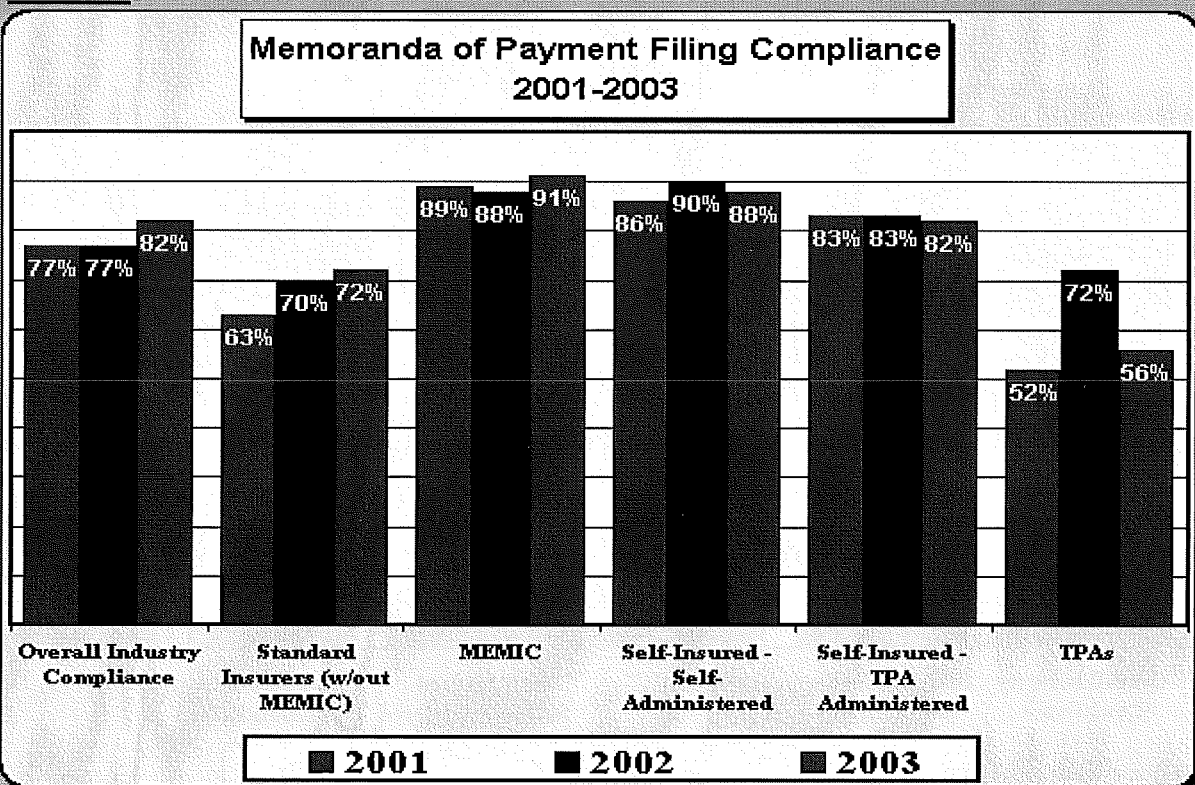
The overall compliance for Initial Indemnity Payment is very high at 86% which is a slight increase over last year's numbers. The continued improvement indicates that more and more Maine households that depend on their Workers' Compensation Indemnity Payments for basic needs are receiving them in a timely manner.

Third Party Administrators continue to display the poorest compliance of all Claims administrator types. The average TPA performance is 12% below the MWCB Benchmark. The Monitoring Division has initiated a concerted effort in 2004 to work with TPAs to improve compliance performance.

The "Claims Administrator" is the party responsible for the majority of required forms to be filed with the Workers' Compensation Board.

Timely and complete forms filing ensures that the every injured employee's workers' compensation claim is administered efficiently and accurately by the claims administrator and by the Maine Workers' Compensation Board. Incomplete, incorrect or late filed forms can lead to delays in an injured workers' case being heard. Many times, an injured employee's dissatisfaction with the administration of their workers' compensation claim can lead to mistrust and frustration with their employer which has been shown in some research to be an indicator in driving the cost of some workers' compensation claims. The Monitoring Division uses MOP Filing as an indicator of an insurer's compliance level with claims administration under the Act.

Chart 14



Filing of initial MOP Compliance for Different Types of Workers' Compensation Claims by Entities or Adjusters

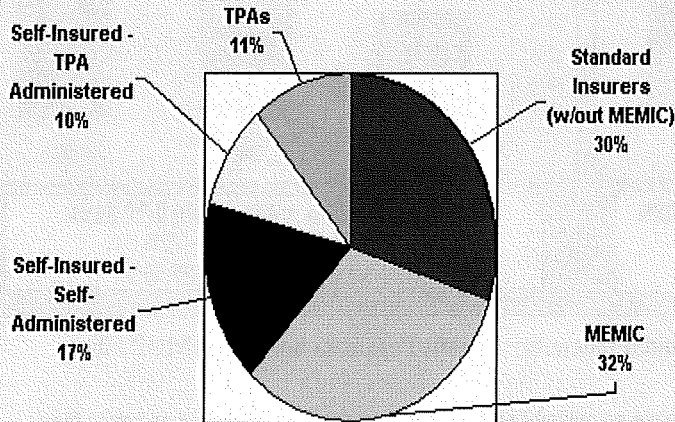
The overall compliance for the Filing of the Initial Indemnity Memoranda of Payment rose five percent (5%) in 2003 over the previous 2 years. Improvements were seen mostly among the standard insurers including MEMIC. Much of this can be attributed to improved filing at MEMIC and to Corrective Action Plans (CAPs) at Standard Insurers like Liberty Mutual, Guard Insurance and Royal & Sunalliance that have gradually improved the overall compliance of these insurers.

This chart displays the percentage of compliance for each adjusting type in the filing of Memoranda of Payment within the compliant 0-17 days category.

The MWCB Benchmark for this performance indicator is 75%.

Chart 15

Percentage of Memoranda of Payment Filed
2002



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 by 3%. This is the second year of increase (2001 was 29%). Other standard insurers are issuing fewer MOPs in Maine by five percent. Self-insureds now represent a third of the MOPs filed. This is an increase of six percent from last year's MOPs filed.

Chart 16

Percentage of Memoranda of Payment Filed
2003

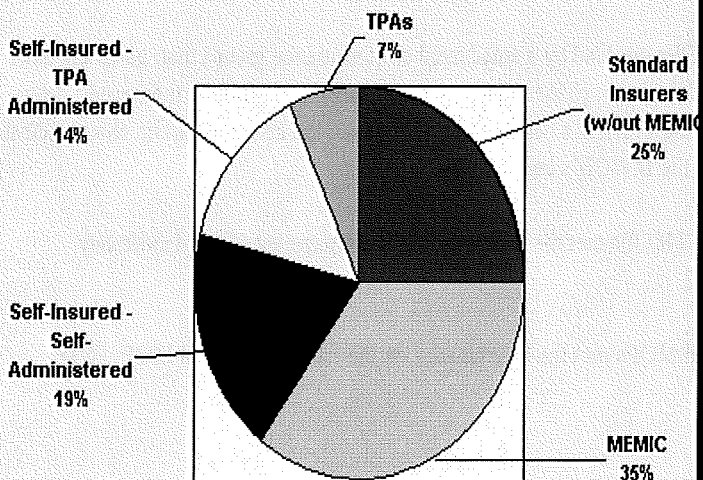
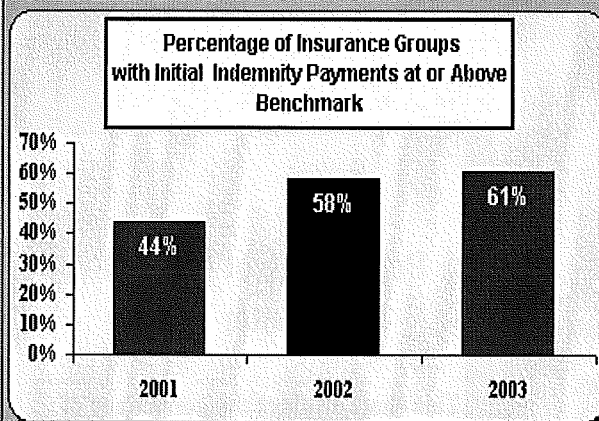
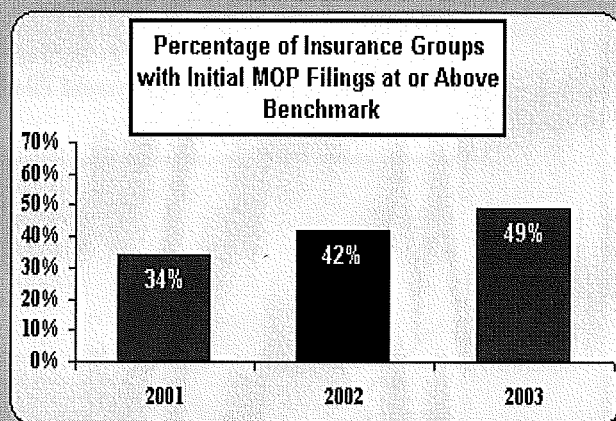


Chart 17

Initial Indemnity Payments made within 0-14 days.
MWCB Benchmark = 80%
Overall Compliance = 85.56%

Chart 18

Initial MOP Filing made within 0-17 days.
MWCB Benchmark = 75%
Overall Compliance = 85.56%

Insurance Group Benchmark Comparisons: Initial Indemnity Benefit Payments and Initial MOP Filing

As the charts 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 49 insurance groups filed MOPs with the MWCB in 2003. This number of groups is down 13 from 2001 and 10 from 2002. It is an indication of the consolidation that the industry is experiencing. Fewer and fewer insurers are writing workers' compensation policies in Maine.

Insurance groups can consist of many different insurance entities. For example, Liberty Mutual Group is comprised of 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 groups that generally have high compliance. The data from those groups with high compliance made up the majority of the MOPs measured. As a result, the overall industry compliance was above the MWCB's benchmarks. However, the insurance group charts indicate that only half of the insurance groups met both of the MWCB's benchmarks.

In 2003, 30 of 49 insurance groups (61%) that filed MOPs met the benchmarks for the payment of initial indemnity benefits. This is up slightly from 2002 as Chart 17.

In 2003 24 of 49 insurance groups (49%) that filed MOPs met the benchmarks for the filing of the initial MOP. This upward trend is indicated in Chart 18.

Chart 19

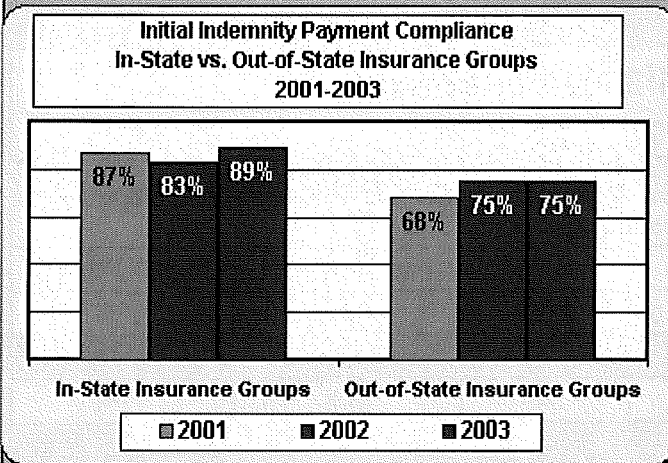


Chart 20

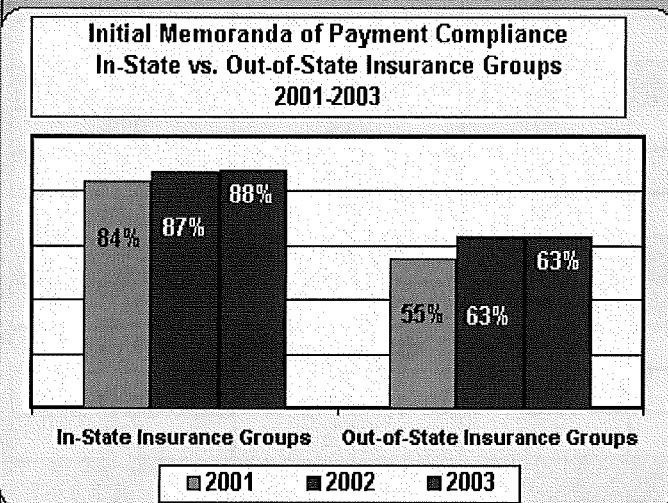
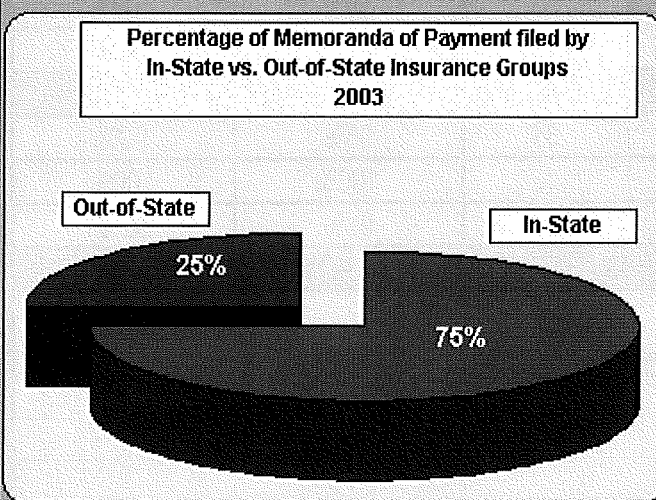


Chart 21



In-State vs. Out-of-State Insurance Groups

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.

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.

Chart 21 indicates that out-of-state insurance groups filed 25% of all initial indemnity MOPs.

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.

High Compliance Performers				
	2003			

Insurance Groups/TPAs				
Volume	Name of Group/TPA	# of MOPs	Initial Payment	MOP Filing
501+	Maine Employers' Mutual Insurance Co.	1,686	92%	91%
301-500	Sedgwick	345	87%	77%
101-300	Liberty Mutual Insurance	244	85%	79%
	Dunlap Claims Mgmt.	199	82%	87%
	Acadia	144	90%	94%
0-100	Peerless	67	93%	93%
	American Interstate	27	89%	93%
	One Beacon	26	96%	88%

Self-Administered Employers				
Volume	Name of Employer	# of MOPs	Initial Payment	MOP Filing
101+	Maine Municipal Association	256	84%	88%
	State of Maine	140	88%	89%
51-100	Maine School Management	89	98%	98%
	Maine Automobile Dealers	57	98%	100%
	Bath Iron Works	55	100%	100%
0 - 50	Maine Motor Transport	37	95%	92%
	City of Bangor	12	100%	100%
	Mead Westvaco	13	92%	92%

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.	

AUDITS

The Board also conducts compliance audits of insurers, self-insurers and third party administrators to ensure that all obligations under the Workers' Compensation Act are met. The functions of the audit program include, but are not limited to: auditing the timeliness and accuracy of payments; evaluating claims handling practices of insurers, self-insurers and third party administrators; determining whether insurers, self-insurers and third party administrators are unreasonably contesting claims; and ensuring that all reporting requirements of the Workers' Compensation Board are met.

Since the year 2000, sixty-one (61) entities have been reviewed by the Audit Division. As a result of the sixty-one (61) reviews, forty-five (45) audit reports have been issued, forty-one (41) entities have entered into consent decrees with the Board and over \$200,000 in penalties have been collected (see attached spreadsheet). Audit reports and the corresponding consent decrees are available on the Board's website: www.Maine.gov/wcb/ As of the date of this report, there are an additional fourteen (14) reviews pending and thirty-two (32) reviews to be scheduled to complete the Board's seven (7) year audit cycle.

The Board successfully prosecuted Hanover Insurance Company for engaging in a pattern of questionable claims handling techniques under §359(2) of the Workers' Compensation Act. Additionally, Atlantic Mutual Insurance Company, Gates McDonald, The St. Paul Companies, Royal & SunAlliance Group, and Hartford Insurance have plead guilty under §359(2) and entered into voluntary consent decrees with the Board. The Board filed Certificates of Findings pursuant to §359(2) regarding the above entities with the Maine Bureau of Insurance for further action.

The Audit Division has fully implemented a Complaint for Audit Form and procedure as part of the audit program. This form and procedure allow a complainant to request that the Board investigate a claim to determine if an audit under §359 is warranted. Since the year 2000, ninety (90) Complaints for Audit have been received and processed by the Audit Division. Of these complaints, one (1) is under investigation, six (6) are included in completed audit reports and three (3) are included in pending audit reports. The remaining complaints were successfully resolved or dismissed.

NAME	REPORT DATE	PENALTIES ASSESSED							TOTAL PENALTIES	CONSENT DECREE
		205 (3)	EE 324 (2)	State 324 (2)	359 (2)	360 (1)(A)	360 (1)(B)	360 (2)		
ARROW HART	4/4/2000						\$800.00		\$800.00	YES
ATLANTIC MUTUAL	2/28/2003	\$1,500.00			\$5,000.00	\$400.00	\$9,400.00		\$16,300.00	YES
BATH IRON WORKS	6/17/2004					\$250.00			\$250.00	YES
BILL JOHNSON AGENCY - FALCON SHOE	5/1/2000						\$200.00		\$200.00	YES
BUCKLER, IRVIN & GRAF, INC.	2/8/2002	\$550.00					\$1,700.00		\$2,250.00	YES
CHUBB	8/15/2000	\$3,000.00				\$2,500.00	\$400.00		\$5,900.00	YES
CIANBRO	5/11/2000									NO
CITY OF BANGOR	6/28/2000									NO
CLARENDON	1/17/2001	\$1,350.00				\$400.00			\$1,750.00	YES
CMP	10/6/2000						\$400.00		\$400.00	YES
CRAWFORD & COMPANY	9/11/2002					\$1,100.00	\$500.00		\$1,600.00	YES
CRUM	2/28/2002						\$1,000.00		\$1,000.00	YES
DUNLAP	9/18/2003					\$1,400.00			\$1,400.00	YES
FAIRFIELD	4/24/2002	\$2,050.00				\$200.00	\$625.00		\$2,875.00	YES
FILENE'S	3/31/2002					\$300.00	\$200.00		\$500.00	YES
GAB ROBBINS	1/9/2002	\$3,000.00				\$200.00	\$1,400.00		\$4,600.00	YES
GALLAGHER BASSETT	10/15/2002		\$1,150.00	\$3,525.00		\$400.00	\$1,400.00		\$6,475.00	YES
GATES MCDONALD	10/15/2003			\$5,000.00	\$500.00	\$4,100.00			\$9,600.00	YES
GREENWICH	7/9/2002					\$400.00	\$200.00		\$600.00	YES
GUARD INSURANCE	12/9/2002	\$2,650.00				\$1,800.00	\$3,100.00		\$7,550.00	YES
HANNAFORD	1/8/2003	\$3,000.00				\$100.00	\$1,400.00		\$4,500.00	YES
HANOVER	11/7/2000	\$5,750.00	\$3,100.00	\$2,100.00	\$5,000.00		\$10,200.00		\$26,150.00	YES
LIBERTY MUTUAL	11/16/1999						\$3,500.00		\$3,500.00	YES
LUMBER	7/16/1999	\$6,750.00					\$17,300.00		\$24,050.00	YES
MAINE MOTOR TRANSPORT ASSOCIATION	6/18/2004					\$50.00	\$475.00		\$525.00	YES
MAINE MUNICIPAL ASSOCIATION	6/20/2001	\$1,500.00					\$500.00		\$2,000.00	YES
MAINE SCHOOL MANAGEMENT	7/9/2001						\$100.00		\$100.00	YES
MEAD	9/11/2000									NO
MORSE PAYSON AND NOYES	4/5/2002	\$600.00					\$600.00		\$1,200.00	YES
NORTHERN GENERAL INSURANCE	4/14/2003					\$100.00	\$1,000.00		\$1,100.00	YES
OLD REPUBLIC	3/12/2002	\$1,500.00				\$900.00	\$700.00		\$3,100.00	YES
PUBLIC SERVICE	1/9/2001					\$100.00	\$100.00		\$200.00	YES
RSKCO	5/11/2001						\$800.00		\$800.00	YES
RYDER SERVICES	10/13/2004					\$300.00	\$100.00		\$400.00	YES
SEDGWICK	3/14/2001	\$400.00					\$500.00		\$900.00	YES
SENTRY INSURANCE	12/12/2001	\$1,500.00					\$1,300.00		\$2,800.00	YES
ST PAUL	5/25/2004	\$4,050.00			\$7,000.00		\$2,600.00		\$13,650.00	YES
STATE OF MAINE	5/31/2001	\$1,500.00					\$900.00		\$2,400.00	YES
SYNERNET	12/13/2000						\$400.00		\$400.00	YES
TOKIO	1/9/2001									NO
TRAVELERS	6/30/1999	\$15,800.00				\$1,400.00	\$12,100.00		\$29,300.00	YES
WAUSAU	6/9/2003	\$3,450.00					\$3,800.00		\$7,250.00	YES
YASUDA	3/27/2001	\$1,500.00				\$700.00	\$100.00		\$2,300.00	YES
YELLOW FREIGHT	9/20/2004									NO
YORK	3/30/2000	\$15,000.00					\$1,200.00		\$16,200.00	YES
		\$76,400.00	\$4,250.00	\$10,625.00	\$17,500.00	\$17,100.00	\$81,000.00	\$0.00	\$206,875.00	

ENFORCEMENT

The Board's Abuse Investigation Unit handles enforcement of the Maine Workers' Compensation Act. The report of the Abuse Investigation Unit appears at section 12 of the Board's annual report

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 attorneys who represent injured workers.

Due to large caseloads, 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;

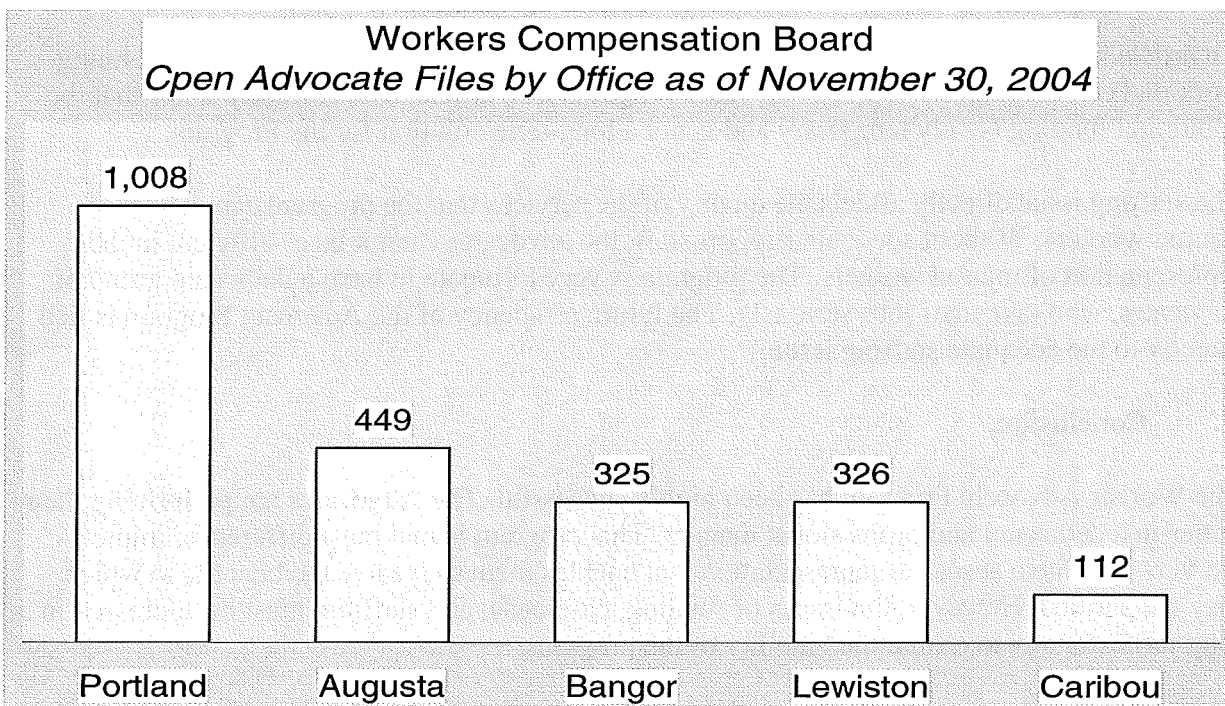
- (4) The employee's case is based on a claim of discrimination governed by section 353;
- (5) There is no record of medical assessment stating that the employee's injury was either caused by, aggravated by or precipitated by the employee's work or, when the issue is aggravation, there is no record of medical assessment stating that the employee's work aggravated a pre-existing condition in a significant manner; or
- (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 significant numbers. The Portland and Augusta regional offices account for **65%** of all open files with the remaining **35%** distributed among the other three regional offices. **80%** of the cases are from Southern Maine. The following chart highlights this situation.



As of June 2004, the Advocate program has **2,049** open files. In the past year, advocates represented injured workers in **2,333** mediations and **539** formal hearings. From December 1997 through June 2004, advocates have represented injured workers in over **15,000** Mediations and over **3,390** formal hearings.

The percentage of unrepresented employees has dropped significantly since the inception of the Worker Advocate Program. Advocates now participate in approximately **50%** of the total number of mediations and **35%** 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 has also continued this additional funding into 2005.

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. Without adequate support staff, the advocates cannot be as efficient in their representation of injured workers. 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 highly successful. 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 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.

The Board expanded its Section 312 IME list to include 30 doctors in various occupational specialties. However, on February 12, 2004, the Maine Supreme Judicial Court ruled in *Lydon v. Sprinkler Services, et al.*, that:

“by its plain language, the Legislature has decreed that any physician who has examined *any* employee pursuant to Section 207 within the past year is ineligible to serve as an independent medical examiner.”

As a result of the Law Court’s decision, the Board’s list of examiners was reduced from 30 to 14 doctors, with only one orthopedic specialist and one neurologist, resulting in significant delay in the system.

Since then, the Board expanded the list to include 20 doctors. However, there is still a need for orthopedic specialists, neurologists, and psychiatrists. Currently, there is a substantial waiting period with some of the specialists because of the overwhelming number of cases referred from the Board. The following lists the physicians currently on the Board’s Section 312 IME list.

INDEPENDENT MEDICAL EXAMINER LIST

ANESTHESIOLOGY/PAIN MANAGEMENT

Herland, Jonathan S., MD
Penobscot Pain Management
38 Penn Plaza
Bangor, ME 04401
Tel: 990-4775

Leong, Peter Y.K., MD
Penobscot Pain Management
38 Penn Plaza
Bangor, ME 04401
Tel: 990-4775

CHIROPRACTIC

Ballew, David M., DC
Ballew Chiropractic Office
256 Main Street
Waterville, ME 04901
Tel: 873-1167

Lynch, Robert P., DC
1200 Broadway
S Portland, ME 04106
Tel: 799-2263

Vanderploeg, Douglas A., DC
157 Main St
PO Box 1081
Damariscotta, ME 04543
Tel: 563-8500

FAM/GEN/INT

Griffith, William L., MD
Kennebec Medical Associates
13 Railroad Square
Waterville, ME 04901
Tel: 872-6869

Shaw, Peter K., MD
96 Campus Dr
Scarborough, ME 04102
Tel: 885-9905

NEUROLOGY

Ross, Mitchell K., MD
72 Winthrop St.,
Augusta, ME 04330
Tel: 622-6888

OCCUPATIONAL MEDICINE

Phillips, II, David L, MD
Physical Medicine & Rehab, Ltd
324 Gannett Dr, Ste 400
S Portland, ME 04106
Tel: 874-6250

ORTHOPEDIC

Crothers III, Omar D., M.D.
542 Cumberland Avenue
Portland, ME 04101
Tel: 773-7768

Donovan, Matthew J., MD
16 Long Sands Rd.,
York, ME 03909
Tel: 363-6400

OSTEOPATHIC

Trenkle, Douglas L., DO
306 Main Street
Ellsworth, ME 04605
Tel: 667-2202

White, Dennis P., DO
49 Hooper St.
Wiscasset, ME 04578
Tel: 882-7600

OTOLARYNGOLOGY

Haughwout, Peter J., MD
7a Everett St
Brunswick, ME 04011
Tel: 729-4124

PSYCHIATRY

Genova, Paul MD
38 Pleasant St
Portland, ME 04103
Tel: 207-775-0426

Lobozzo, David B., MD
477 Congress St
Portland, ME 04101
Tel: 207- 773-1290

Wear-Finkle, Deborah J., MD
PO Box 10
Lisbon Falls, ME 04252
Tel: 751-8439

PSYCHOLOGY

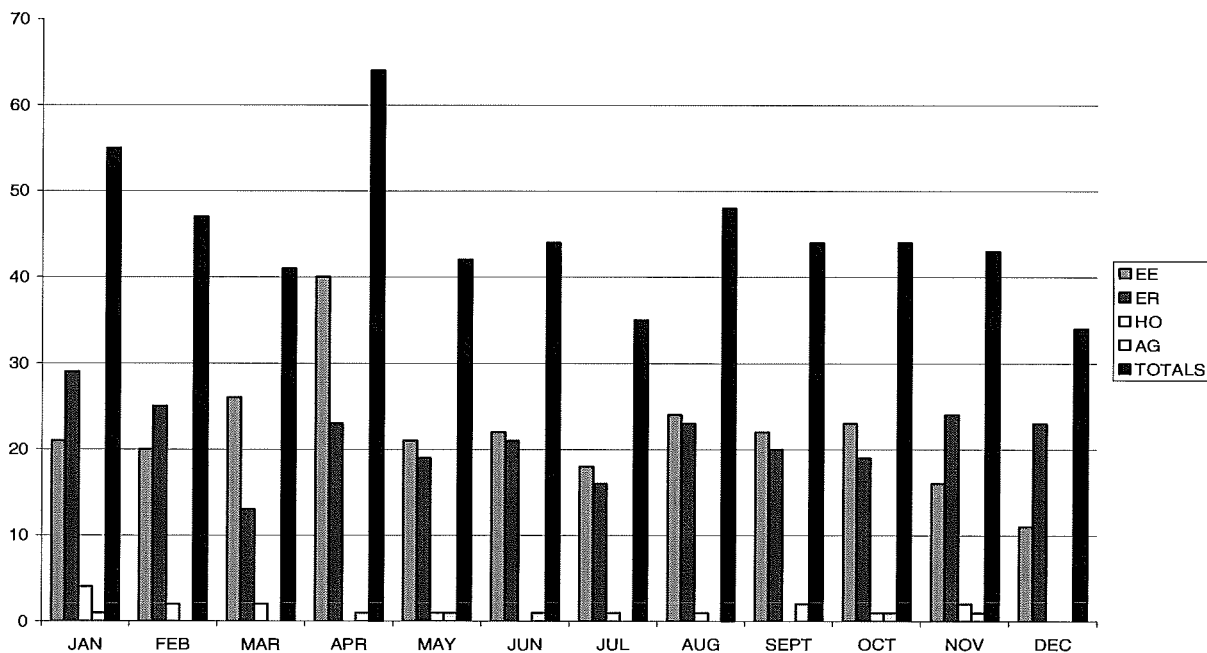
Ginn, Roger, Ph.D.
205 Ocean Ave
Portland ME 04103
Tel: 773-7993

Matranga, Jeff, Ph.D.
30 Chase Avenue
Waterville, ME 04901
Tel: 872-4100

PULMONARY

Fuhrmann, Calvin P., MD
Kennebunk Medical Center
24 Portland Rd.
Kennebunk, ME 04043
Tel: 985-3726

2004 IME Requests



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 are 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 2004 update is currently pending before the Board.

In 2004, the Board approved a Consensus-Based Rulemaking group to draft proposed amendments to the medical fee schedule. The Committee is a representative group of participants with an interest in the subject of the rulemaking, including the Maine Medical Association, Maine Hospital Association, Maine Osteopathic Association, Maine Chiropractic Association, Chamber of Commerce, MEMIC, Self-Insureds, a Labor Board member, and a Management Board member. The Committee has held three meetings and a fourth one is planned in 2005.

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 a 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 has been pretty much completed. Programming will begin once the Board's business application is moved to a new DOL enterprise server, scheduled early '05. 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. The '04 Legislative session passed a bill to mandate electronic filing of Board forms. Rules were promulgated to assure compliance in this area. The start date for 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 with an annual assessment paid by Maine's employers, both self-insured and those covered by a workers' compensation insurance policy. The Legislature in creating this funding mechanism intended the users of the workers' compensation system to pay for it. The agency had previously been funded from General Fund appropriations.

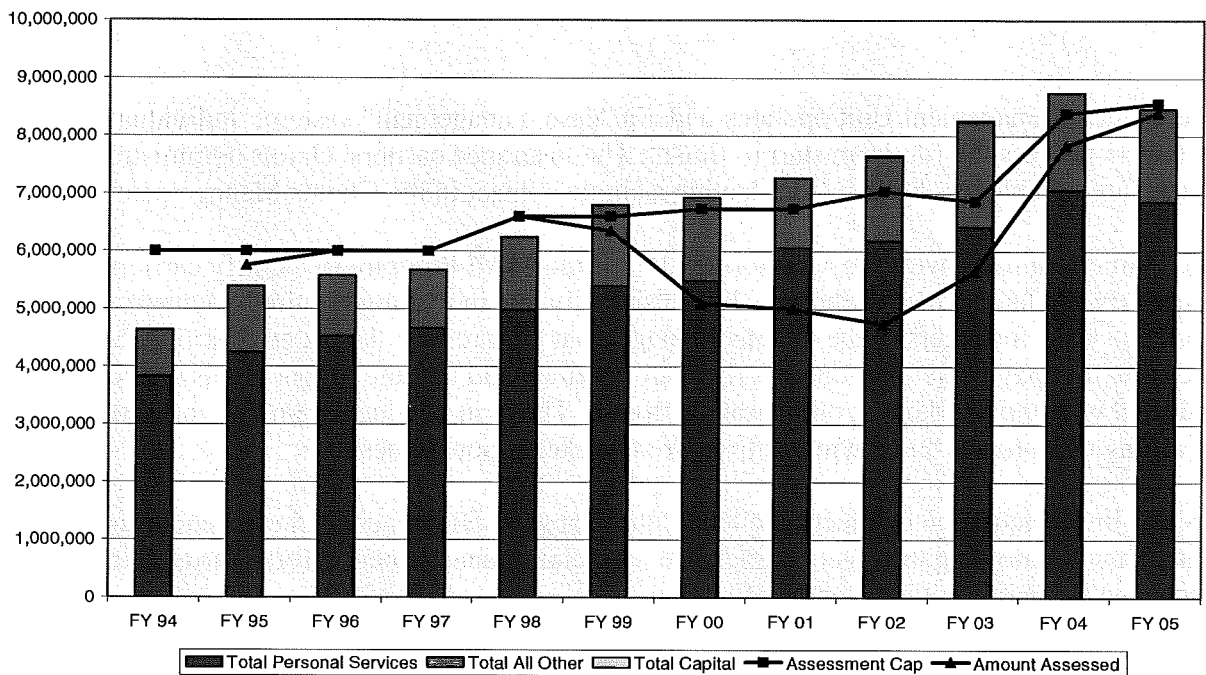
The Legislature established the assessment as a revenue source to fund the Board. By law there is an assessment cap which limits the amount of revenue which can be assessed. A long term solution to this cap in the form of a salary plan or revenue stabilization plan should be considered in order to deal with costs associated with contract increases, health insurance, retirement, postage, and lease costs.

The result of this assessment cap has been the inability to submit a balanced budget for the last four fiscal years. The Board cannot budget more than it can raise for revenue from the annual assessment and other minor revenues collected from the sale of copies of documents, fines and penalties. A majority of the fines and penalties received are deposited in the General Fund which contributes no support to the Board. The Legislature voted to raise the assessment cap beginning in FY04. This 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 totaled \$8,680,500 in FY04 and \$8,855,500 in FY05.

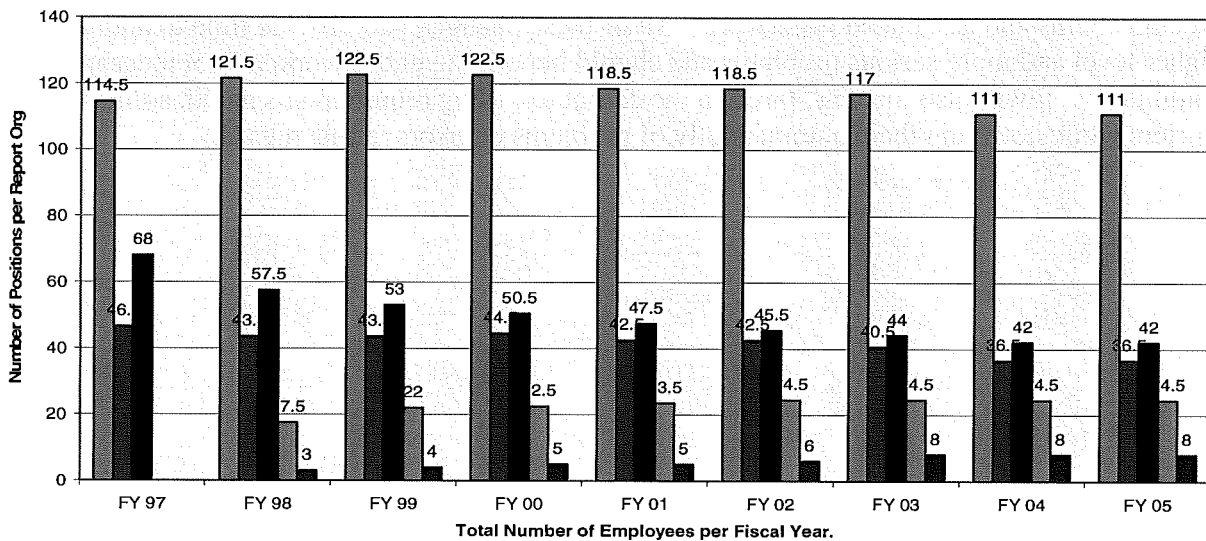
P.L. 2003, C. 93 provides that the Board, by a majority vote of its membership, may use its reserve to assist in funding its Personal Services and All Other expenditures, along with other reasonable costs incurred to administer the Workers' Compensation Act. The Bureau of the Budget and Governor approve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

The projected shortfall, notwithstanding the higher assessment cap, amounts to \$251,415 in FY05. This is based on actual projected expenditures of \$9,106,915 in FY05. The bar chart entitled "WCB – 12 Year Schedule of Actual and Projected Expenditures" shows actual expenditures through FY04 and projected expenditures for FY05. It also shows the assessment cap and the amounts actually assessed through FY05.

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



**WCB - Personnel Changes Since FY97
July 2005**



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

Series4 Series1 Series2 Series3 Series5

9. CLAIMS MANAGEMENT UNIT

The Claims Management Unit operates under a “case management” system. Individual claims managers process the file from start to finish. The insurance carriers, claims administrators, and self-insured employers benefit from having a single contact in the Claims Management Unit.

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 conducts training workshops regarding compliance and payments to injured workers 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 the First Report of Injury.

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.

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. In addition, as a direct result of the computer upgrade and efforts to streamline the workload, the Coverage Unit staff was reduced by three employees.

The Board's database was merged with the Department of Labor's roughly three 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 predetermination of independent contractors status. The activities consist 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 (the Board received and processed 11,934 proof of coverage filings between January and November 2004); 90% of waiver applications within 48 hours of receipt (the Board received and processed 3,196 waiver applications between January and November 2004); and 100% of predetermination applications within 14 days (the Board received 1,561 applications between January and November 2004). All these goals were met in 2004.

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 been successful in its effort to coordinate its work with other state and federal agencies.

An example of this 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 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, only have to 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.

The Board has also worked with the Department of Health and Human Services (DHHS) to assist DHHS with recovering past due child support payments and to ensure that MaineCare is not paying for medical services that should be covered by workers' compensation insurance.

<p style="text-align: center;">11-B. ALTERNATIVE DELIVERY SYSTEMS INCLUDING PRIVATIZATION</p>
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The 121st Maine Legislature enacted legislation that required the Workers Compensation Board (WCB) to adopt rules mandating electronic filing. The legislation directed the Board to proceed by the consensus based rulemaking process, so a committee was formed consisting of representatives from the insurance community, self insurers, WCB of Directors, and WCB staff. Recommendations were forwarded and unanimously approved by the Board of Directors.

The WCB will offer two options with regard the to electronic filing format; a proprietary format that has been in use over the past 7 years and the International Association of Industrial Accident Boards and Commissions (IAIABC) Claims Release 3 . At this point the WCB will focus on three forms; the First Report of Injury, Denials , and the Payment information.

This method was considered the most cost effective and efficient of all options investigated.

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 or an amount equal to 108% of the premiums that should have been paid. 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), for late filings, and 324(3), concerning no-coverage. In 2004 there were 3,716 cases filed under sections 360(1) and 1,741 filings under section 324(3). This compares with just 94 total filings under the remaining penalty sections of the Act combined. The total number of cases filed with the Abuse Investigation Unit in 2004 was 5,551. This number increased sharply in 1999 and remained at nearly that level in 2000, increased again in 2001 and 2002, dipped somewhat 2003 and has now once again risen sharply beyond the 2001/2002 levels.

The higher volume of cases flowing into the Unit in the last few years is the result of several automated systems implemented by the Board. 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. In 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, significantly increased the number of complaints filed with the Abuse Investigation Unit. Finally, this year, the Board began automatically referring for penalties under 360(1) all late-filed proof-of-coverage filings. These programs together have greatly increased the number of cases flowing into the 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 each year as late as 1998, was 5,138 in 2004. 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 2004 as follows: Section 360(1): 2,359 granted and 1,227 denied; Section 324(3): 295 granted and 1,204 denied or dismissed; and Section 324(2): 27 granted and 26 denied or dismissed.

In 2004, the Abuse Investigation Unit assessed \$45,651 in penalties and \$4,550 in attorney's fees pursuant to Section 324(2); \$442,572 in penalties pursuant to Section 324(3); and \$235,900 pursuant to Section 360(1) for a total of \$728,673 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). Although the Unit did not receive any Section 359 referrals in 2004, 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.

The Abuse Investigation Unit also investigates complaints filed pursuant to section 360(2). 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 2004 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 – as

it was for only a portion of 2004), 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 likely to continue in the foreseeable future.

13. GENERAL COUNSEL REPORT

A. Rules.

The Board has convened a consensus based rulemaking group to consider potential amendments to W.C.B. Rule Ch. 5, the medical fee schedule. The potential amendments address several areas: Incorporating the 2004 Physician's Current Procedural Terminology ("CPT codes") and the 2004 Medicare RBRVS; the conversion factor; defining "inpatient;" standardizing reimbursement for travel and related expenses; clarifying procedures when there is a dispute regarding the appropriate CPT code; incorporating ambulatory surgical care centers, inpatient hospital charges and pharmaceutical costs into the medical fee schedule.

The group has met three times and will meet for a fourth time in early 2005. It is not yet clear if the group will reach consensus on some, none or all of these issues.

The Board is currently in the process of implementing W.C.B. Rule Ch. 3, §4. This rule 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 two bills for consideration during the First Regular Session of the 122nd Legislature.

The first addresses Board review of a hearing officer's decision pursuant to section 320. P.L. 2003, Chapter 608, which changed the structure of the Board, also amended section 320. Section 320 now provides that if the Board does not act within 60 days of the initial request for review, the request for review is automatically denied. This creates a potential timing problem: The initial request must be made by a hearing officer within 5 days after issuing a decision. The parties have 20 days from the notice of a decision to request further findings. With perhaps one exception, this has occurred in all cases referred to the Board. The Board's practice in these situations has been to delay consideration until findings are issued. With the new language, there is a very real possibility that the 60 day period from the initial request will expire before findings are issued, thus denying the Board the opportunity to consider the request for review.

To eliminate this possibility, this proposal establishes that the time to request review runs from the expiration of the period within which a request for findings can be filed, or the issuance of findings after such a motion is filed, whichever is later.

The second addresses the independent medical examiner system. This submission encourages parties to agree to the selection of an independent medical examiner by establishing that, whether or not the parties have agreed to the selection of an independent medical examiner, the examiner's findings must be adopted unless there is clear and convincing evidence to the

contrary in the record that does not support the medical findings. Currently, if the parties agree to an examiner the examiner's report is binding on the parties.

C. 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.”

The Board heard the case of *Starbird v. City of Portland* in early 2004. The Board declined to extend benefits in Mr. Starbird’s case. The Board is currently considering the case of *Stewart v. Sky Pig, Inc.*, and will hear the case of *Holland v. Catholic Charities* in the near future. Petitions have been filed in several more cases. Hearings will be scheduled in these cases after underlying litigation is completed.

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.

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%.

The Board has hired Actuarial and Technical Solutions to conduct the independent actuarial review for both the permanent impairment threshold, due to be adjusted as of January 1, 2004,

and the review of whether an extension of the benefit limitation is warranted effective January 1, 2004 and January 1, 2005. The Board expects to receive the actuary's report in the first quarter of 2005.

15. SUMMARY

Major changes were initiated as a result of the Governor's Bill (Chapter 608), "An Act to Promote Decision-Making Within the Workers' Compensation Board." The Bill was submitted with an emergency preamble and was effective April 8, 2004. The membership of the Board changed from eight to seven members. The composition was changed from four Labor and four Management representatives to three of each. The executive director was appointed as the seventh member and Chair of the Board.

The responsibility for the appointment of the executive director was changed from the Board to the Governor. The Governor was empowered to "appoint an executive director, who is the chair and chief executive officer of the Board." The executive director serves at the pleasure of the Governor.

Since the Bill's enactment, the Board has moved on issues, which previously deadlocked the Board. The Board voted to appoint two hearing officers to three-year terms; changed hearing officer terms from three to seven years; reappointed five hearing officers to seven-year terms; and implemented the NOC project.

Other matters of immediate concern to the Board include: increasing the list of Independent Medical Examiners (IMEs); two legislative proposals; Section 213 Actuarial Study; full implementation of the Electronic Data Interchange (EDI) Rule; revision of the Medical Fee Schedule; budgetary and resource considerations for the Worker Advocate Program, MAE Program, and the Abuse Investigation Unit; and a return of the formal hearing level to 2002 efficiencies.

In 2003 the Legislature enacted Chapter 425, which increased the maximum assessment to \$8,390,000 in fiscal year 2004 and to \$8,565,000 in fiscal year 2005. In order to resolve certain budgetary problems, the Board approved an increase in the budget to \$8,680,000 and \$8,855,000 in fiscal years 2004 and 2005 respectively. The difference in each fiscal year from the assessment cap is in the revenue from assessment interest, the sale of copies and publications, and fines and penalties.

The Board is performing efficiently in its other major areas of responsibility: the MAE Program; the Worker Advocate Program; and Claims and Coverage. The MAE Program continues to have a positive impact on the compliance and performance of insurers, self-insureds, and third party administrators. The Worker Advocate Program provides representation of 50% of injured employees at the mediation level and 38% of injured employees at the formal hearing level. Major programming changes in the Claims and Coverage departments should bring about significant improvements in the operations of those departments.

SECTION B

BUREAU OF INSURANCE

SECTION B. BUREAU OF INSURANCE

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1. INTRODUCTION

This report looks at competition in the Maine workers' compensation insurance market by examining different measures of market competition. Among the measures are: 1) the number of insurers providing coverage; 2) insurer market share; 3) changes in market share; and 4) 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.

The tables in this report that show accident year and calendar year loss ratios contain five years of information. Loss ratios are updated each year to account for how costs have developed for open claims, claims closed and any claims reopened during the year. The Bureau receives five years of accident year information from our statistical advisory organization. Other tables and graphs contain information from 1992 forward to illustrate how things have progressed since the last major workers' compensation reform.

Prior to the year 2000, advisory loss costs had declined for six consecutive years (see Exhibit III). 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 relatively low return on investment income; a tight 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 have not been as likely to offer discounts in order to capture or retain business. Some insurers have filed to increase their loss cost multipliers. Maine Employer's Mutual Insurance Company (MEMIC) recently raised the multiplier for their standard tier to 1.45. This may not be increased again without review by the Superintendent pursuant to Title 24-A, Section 3714.

The Terrorism Risk Insurance Act (TRIA), signed into law in 2002, established a temporary Federal program under which the federal government shares in the cost of terrorist attacks with the insurance industry. It is scheduled to expire on December 31, 2005. Attempts were being made in Congress to extend TRIA but it did not occur. Its intent was to protect consumers and

insurers by addressing market disruptions and ensuring the continued availability and affordability of insurance for terrorism risk. It also allowed for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses. Since September 2001 reinsurance contracts have excluded coverage for terrorist acts, though primary insurers are still liable for that exposure.

Multiple criteria 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 somewhat competitive. Although Maine Employer's Mutual Insurance Company's (MEMIC) market share increased to over 61% in 2003, there are still many insurers writing workers' compensation coverage in Maine and self-insurance remains a viable alternative for many Maine employers. Insurers, however, are being more conservative in their selection of business that they acquire or renew. An insurer can decide to non-renew business for any reason as long as they provide the policyholder with the statutorily required advance written notice. Furthermore, insurers are less willing to offer underwriting discounts and some employers have been moved to higher rating tiers. The end result is that premiums for those employers are increasing.

2. 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, wage loss and medical services 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 for injuries occurring during a given 12-month period of time (regardless of when the losses are reported) with all premiums earned during the same period of time (regardless of when the premium was written). The accident year loss ratio shows the percentage of premium earned that is being paid out or is 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 within a given 12-month period (though not necessarily for injuries occurring during that 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 attributed to policies having an inception or a renewal date within a given 12-month period. The total value of all losses for injuries occurring during the policy year (losses paid plus loss reserves) are assigned to the period regardless of when they are actually reported. They are matched to the fully developed earned premium for those same policies. The written premium will develop into earned premium for those policies. The ultimate incurred loss result cannot be finalized until all losses are settled. It takes time for the losses to develop, so it takes about two years before the information is useful. This data is used to determine advisory loss costs.

The Underwriting Cycle

Insurance tends to go through underwriting cycles--successive periods of increasing and diminishing competition and increasing or decreasing premiums. These cycles are important factors in the short-term performance of the insurance industry. Hard markets are periods in which there is less capacity and 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 of business. 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.

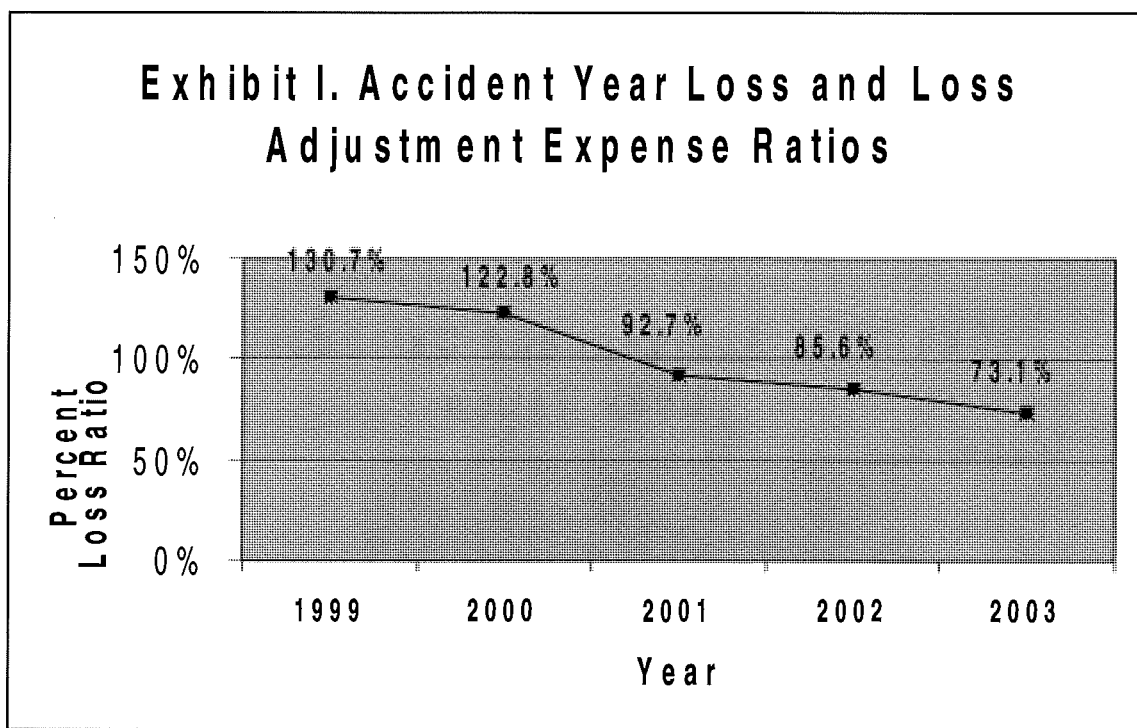
The accident year incurred loss ratio was 92.7% in 2001, 85.6% in 2002 and 73.1% in 2003. Loss ratios that exceed 100% mean that insurers are paying out more in benefits than they collect in premiums. A decrease in these loss ratios over time may reflect an improved loss experience or reserve adjustments. The loss ratio does not take into account underwriting expenses of the insurer--including things like acquisition expenses, general expenses and taxes.

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 2003 loss ratio was 73.1%, indicating that \$73 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium. The 2002 loss ratio was 85.6%. These ratios are down from a five-year high of 130.7% in 1999. The decreasing loss ratios are primarily a result of increased rates and a reduction in credits issued by the insurance companies.

Following the 1992 law changes, loss ratios were in the 60% 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 in insurance company loss cost multipliers and a reduction of credits have, in part, resulted in an increase in earned premium and a reduction in the loss ratios over the past three years.



Source: National Council on Compensation Insurance

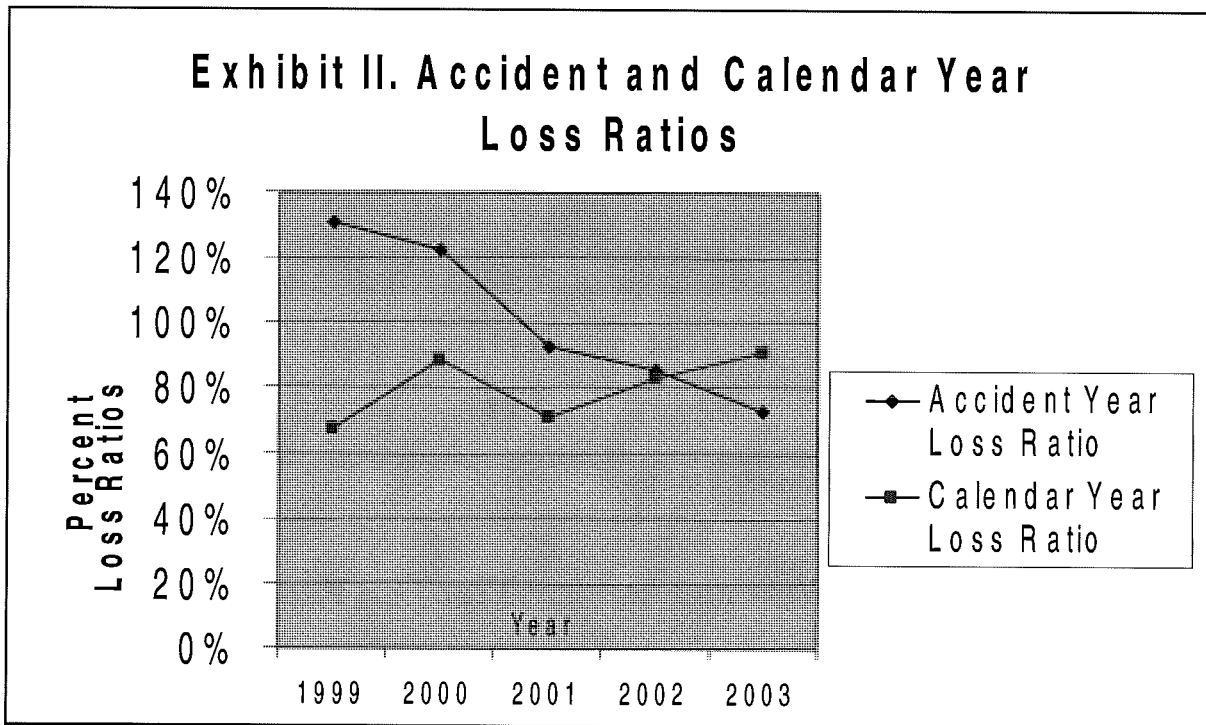
Calendar Year and Accident Year Loss Ratios

Tracking loss and loss adjustment expense ratios is one way to evaluate the experience of insurers writing workers' compensation policies. 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 is 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 specific 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. A significant decrease in the calendar year loss ratio occurred in 2001 and since then there have been two straight increases. Both paid and incurred losses have shown higher than expected development. Beginning in 2002, there was an increase in the number of lump sum settlements.

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.

In 1997 and 1998 indemnity losses increased and rates declined. The 1999 accident year loss ratio rose to over 130%, that is \$130 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 dropped slightly to just over 122%. Since then loss ratios have declined considerably. The hardening of the workers' compensation insurance market seems to have leveled off and 2005 market renewal prices will give an indication of which way the market is headed. These ratios do not include amounts paid by insurers for sales, general expenses and taxes, nor do they reflect investment income.



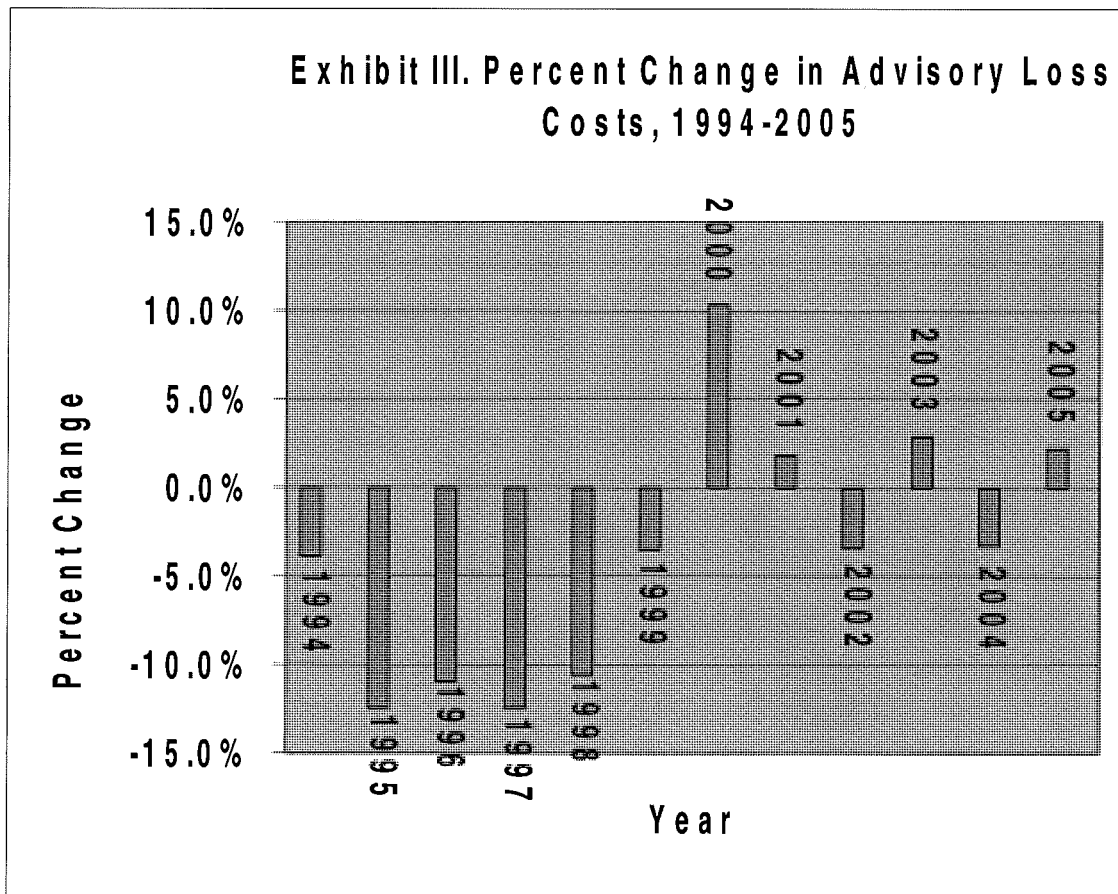
Source: National Council on Compensation Insurance

3. 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.

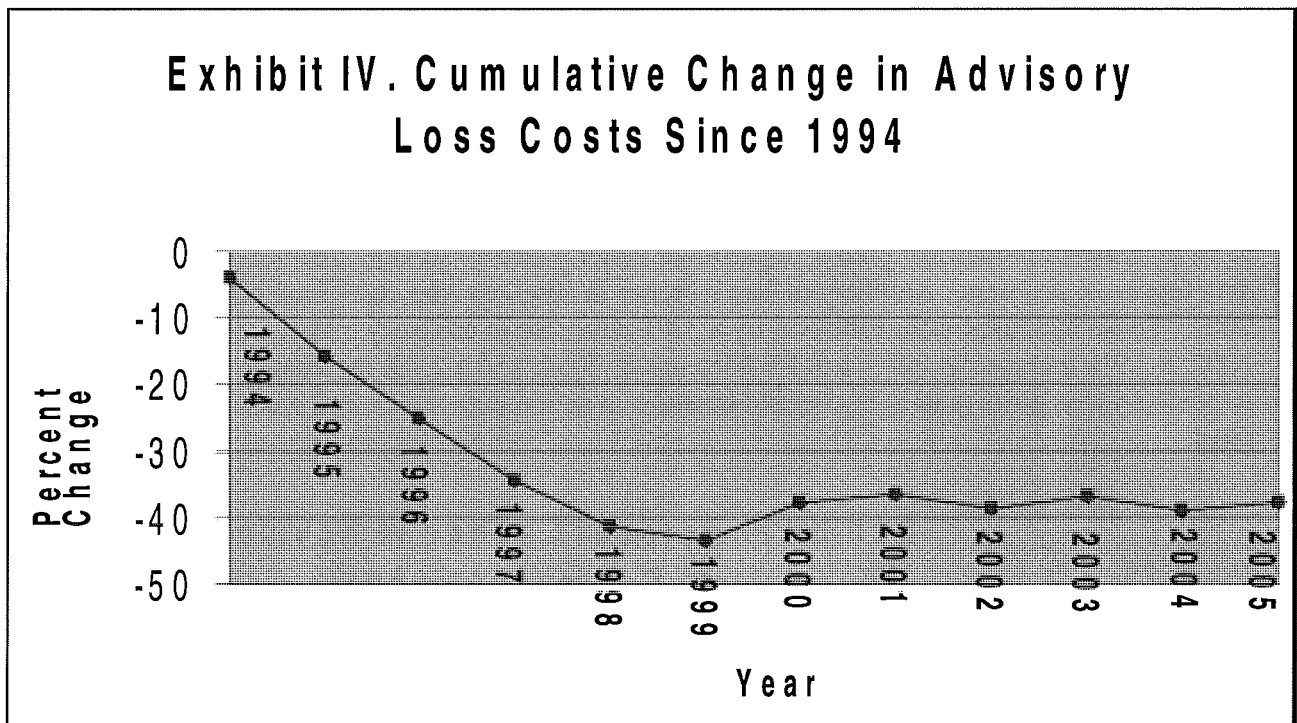
Exhibit III illustrates that from 1994 through 1999, Maine witnessed six consecutive decreases in advisory loss costs. This translated into lower premiums for Maine employers. On March 8, 2000, an increase in the advisory loss costs took effect. This increase was due to loss experience, to an increase 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% decrease in advisory loss costs for calendar year 2002, a 2.9% increase in 2003, a 3.3% decrease in 2004, and a 2.2% increase in 2005. Changes in advisory loss costs tend to lag behind changes in actual experience and precede changes in rates.



Source: National Council on Compensation Insurance

Cumulative Changes in Advisory Loss Costs

On average, advisory loss costs for 2005 are over 37% 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. Since then, they have risen by nearly 6%.



Source: National Council on Compensation Insurance

4. MARKET STRUCTURE AND COMPETITION

Market Concentration

Market concentration is a measure of competition. Greater concentration means that there are fewer insurers in the market or insurance written is concentrated among fewer insurers and therefore there is less competition. Conversely, less concentration indicates that there are more insurers in the market and greater 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 over 61%. As of October 1, 2004, 254 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 2003.

Table I: Number of Companies by Level of Written Premium--2003	
Amount of Written Premium	Number of Companies At That Level
>\$10,000	109
>\$100,000	76
>\$1,000,000	28

Source: Annual Statements Filed with the Bureau of Insurance

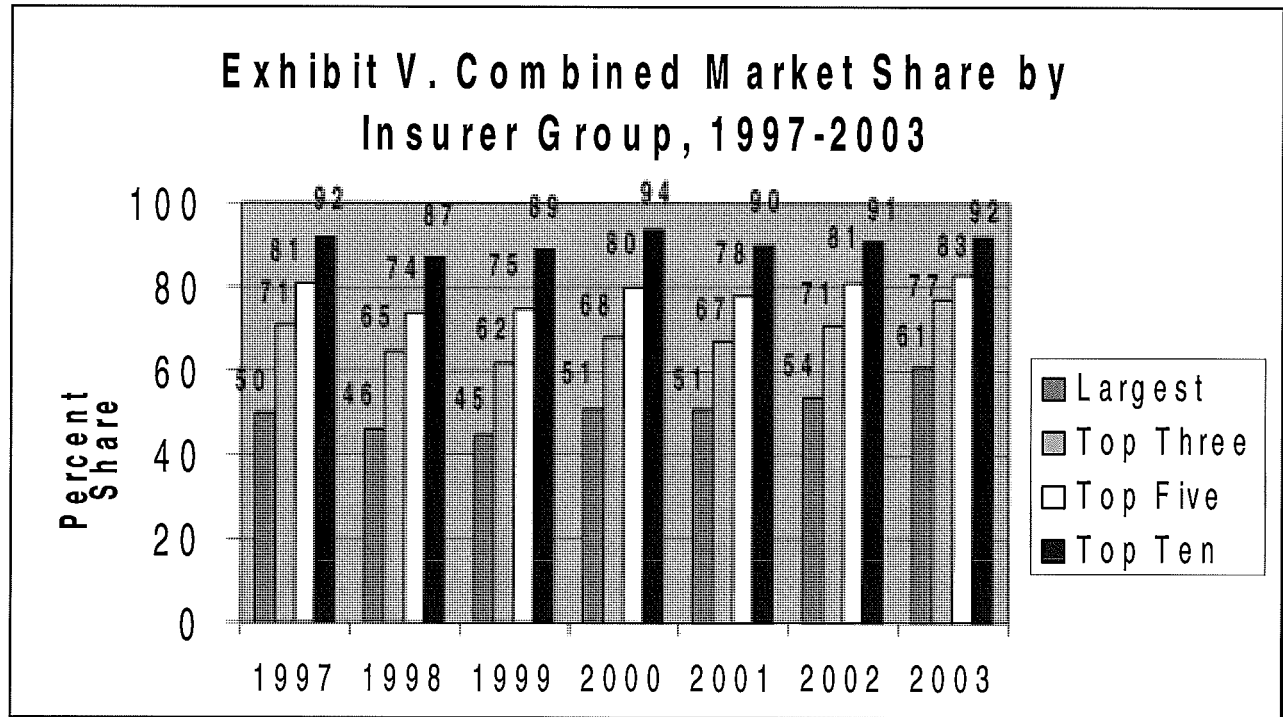
Looking only at market concentration does not give a complete picture of market competition. A discussion of self-insurance, found in the Alternative Risk Markets section, gives a more balanced perspective.

Combined Market Share

Exhibit V illustrates the percent market share of the largest commercial insurers in terms of written premium, as well as the percent market share for the top three, top five and top 10 insurer groups. Maine Employers' Mutual Insurance Company (MEMIC) has the largest market share. Their share fell from 67% of the commercially insured market in 1995 to 45% in 1999. That trend began to reverse in 2000 and MEMIC now holds over 61% market share.

In 2003, market share of the top 10 insurer groups was 92%, slightly above the seven year average. Other groups wrote less than 10% of the workers' compensation premium in Maine. In

terms of dollar amounts, MEMIC wrote over \$147 million in premium in 2003, \$26 million more than it did in the previous year. The top three groups, including MEMIC, wrote over \$184 million in business, also \$26 million more than in 2002. The top five groups had nearly \$200 million in written premium, around \$20 million above the prior year. The top 10 groups wrote over \$221 million in premium in 2003, around \$19 million more than in 2002. The remaining groups had written premium of over \$18 million, down \$2 million from the previous year.



Source: Annual Statements Filed with the Bureau of Insurance

5. DIFFERENCE IN RATES AND FACTORS AFFECTING RATES

Number of Carriers in the Maine Insurance Market, 1993-2004

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 2000, 56 more insurance carriers have entered Maine's workers' compensation market than have exited. In 2004, only three more insurers entered than exited, the lowest margin since 1992. This continued increase in the number of carriers authorized to write workers' compensation insurance indicates that there are no significant barriers to entry.

Table II: Entry and Exit of Workers' Compensation Carriers, 1993-2004					
Year	Number of Carriers	Number Entering	Number Exiting	Net Change (Number)	Net Change (Percent)
1992	90	-	-	-	-
1993	96	8	2	6	6.7
1994	106	10	0	10	10.4
1995	115	11	2	9	8.5
1996	149	43	9	34	29.6
1997	178	32	3	29	19.5
1998	187	9	0	9	5.1
1999	198	11	0	11	5.9
2000	210	12	0	12	6.1
2001	228	24	6	18	8.6
2002	241	15	2	13	5.7
2003	251	11	1	10	4.2
2004	254	5	2	3	1.2

Source: Bureau of Insurance Records.

Notes:

Figures are as of October 1, 2004.

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

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

Table III shows market share by insurance group from 1997-2003. 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; however, the 17% increase in market share over the past four years is a sign of a much tighter 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 Insurance Groups, By Amount of Written Premium, 1997-2003							
Insurance Group	2003 Share	2002 Share	2001 Share	2000 Share	1999 Share	1998 Share	1997 Share
<i>Maine Employers' Mutual</i>	61.5	54.4	51.5	51.2	44.7	46.2	50.4
Liberty Mutual Group	9.6	10.4	7.9	9.5	7.0	3.7	4.9
WR Berkeley Corp.	5.8	6.5	7.4	7.5	7.7	9.5	10.3
American International	3.3	*	*	*	*	*	*
Royal & Sun Alliance USA ¹	3.0	6.3	6.1	5.0	4.7	*	*
Guard Insurance Group	2.2	2.1	2.7	2.2	*	*	*
Allmerica Financial Corp.	2.0	3.1	5.4	6.4	9.1	8.8	9.9
Hartford Fire & Casualty	1.8	1.2	1.0	*	*	*	1.4
Zurich Insurance Group	1.6	2.6	2.0	2.2	2.1	3.5	3.7
CNA Insurance Group	1.5	1.1	1.4	*	1.9	*	*
Traveler's Prop. Cas. Grp.	1.3	1.7	*	*	*	*	*
St. Paul Group	1.1	1.6	1.1	*	*	*	*
Amerisafe Group	1.0	0.9	1.4	2.2	*	*	*
Sentry Insurance Group	1.0	0.4	0.5	*	*	*	*
ACE Ltd	0.8	1.2	1.0	*	*	*	*

Source: Annual Statements Filed with the Bureau of Insurance

Notes:

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

¹ Royal & Sun Alliance is no longer writing workers' compensation business in the United States.

Table IV shows the percent of market share for the top carriers for each calendar year from 1997 through 2003. MEMIC's market share increased by nearly 17% in the past four years, an indication of market hardening. Its market share increased to over 61% in 2003, indicating that some employers are having difficulty getting insurance coverage elsewhere. Of all the other carriers in the market, only Acadia Insurance Company had over 5% market share. The top ten companies combined write over 80% of the business.

Table IV. Percent Market Share for Top Insurance Carriers, By Amount of Written Premium, 1997-2003							
Insurance Carrier	2003 Share	2002 Share	2001 Share	2000 Share	1999 Share	1998 Share	1997 Share
Maine Employers' Mutual	61.5	54.4	51.5	51.2	44.7	46.2	50.4
Acadia Insurance Company	5.3	6.0	6.8	7.0	7.6	9.1	10.3
Peerless Ins. Co.	2.3	2.3	1.5	*	*	*	*
Hanover Insurance Co.	2.0	1.9	3.3	2.5	1.8	*	2.5
Norguard	1.9	1.7	2.0	1.3			
Liberty Mutual Fire Ins Co	1.9	2.5	0.7	2.8	2.8	1.2	1.8
Liberty Mutual Ins. Co	1.6	1.4	0.9	*	*	*	*
Employer's Ins. Of Wausau	1.4	1.2	1.1	*	*	1.2	*
Royal Ins. Co. of America ¹	1.3	2.4					
Commerce & Industry	1.2	*	*	*	*	*	*
American Home Assurance	1.1	*	*	*	*	*	*
Transportation Ins Co.	1.0	*	*	*	*	*	*
American Interstate Ins Co.	1.0	*	*	*	*	*	*
Liberty Insurance Corp.	0.9	1.1	1.3	*	1.4	1.2	2.4
Twin City Fire Ins 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.

¹ Royal Ins. Co. of America is part of the Royal & Sun Alliance Group. Royal & Sun Alliance is no longer writing workers' compensation business in the United States.

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% reduction in advisory loss costs. Advisory loss costs increased in three of the five years since 2000. However, there was a slight reduction in advisory loss costs during this period.

As of October 1, 2004, 254 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.

Table V, shown on the next page, compares the Maine Employers' Mutual Insurance standard base rate with the lowest available base rate for 73 of the 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% 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.

**Table V: MEMIC Standard Rate and the Lowest Available Rate for Selected Classifications
Effective January 1, 2005**

Class Code	Description	MEMIC Standard Rate	Industry Low Rate
2111	CANNERY	\$7.57	\$4.08
2286	WOOL SPINNING & WEAVING	\$5.13	\$2.77
2501	CLOTHING MANUFACTURING	\$6.77	\$3.65
2660	BOOT OR SHOE MANUFACTURING	\$5.12	\$2.76
2702	LOGGING OR LUMBERING	\$30.32	\$16.35
2709	MECHANIZED LOGGING	\$9.03	\$4.87
2710	SAWMILL	\$20.45	\$11.03
2721	CERTIFIED LOGGING	\$30.32	\$16.35
2841	WOODEN WARE MANUFACTURING	\$4.93	\$2.66
3629	PRECISION MACHINED PARTS MFG	\$2.87	\$1.55
3632	MACHINE SHOP	\$5.08	\$2.74
3681	TV, RADIO, TELE/ TELECOM DEVICE MFG	\$3.02	\$1.63
3724	MACHINERY/ EQUIP ERECTION OR REP	\$14.66	\$7.91
4207	PULP MFG	\$3.76	\$2.03
4239	PAPER MFG	\$4.63	\$2.49
4279	PAPER GOODS MFG	\$3.64	\$1.96
4299	PRINTING	\$3.84	\$2.07
4361	PHOTOGRAPHERS	\$2.74	\$1.48
4484	PLASTICS MFG: MOLDED PRODUCTS	\$4.47	\$2.41
4511	ANALYTICAL CHEMIST	\$1.29	\$0.70
4693	PHARMACEUTCL/SURGICAL GOODS MFG	\$2.64	\$1.42
5183	PLUMBING	\$9.93	\$8.76
5190	ELECTRICAL WIRING WITHIN BUILDINGS	\$4.67	\$2.52
5191	OFFICE MACHINE OR APPLIANCE INSTAL	\$1.74	\$0.94
5506	STREET CONSTRUCTION PAVING	\$9.67	\$5.22
5538	SHEETMETAL WORK	\$10.30	\$5.55
5606	CONTRACTOR EXECUTIVE SUPERVISOR	\$4.21	\$2.27
5645	CARPENTRY DETACHED 1 OR 2 FAMILY	\$16.28	\$8.78
6217	EXCAVATION	\$11.24	\$6.06
7228	TRUCKING LOCAL	\$18.68	\$10.07
7229	TRUCKING LONGDISTANCE	\$14.38	\$7.76
7380	DRIVERS	\$9.77	\$5.27
7539	ELECTRIC LIGHT OR POWER CO.	\$3.41	\$1.84
7600	TELEPHONE OR TELEGRAPH CO.	\$5.74	\$3.10
7610	RADIO OR TELEVISION BROADCASTING	\$0.45	\$0.24
7720	POLICE OFFICER	\$3.61	\$1.95

**Table V: MEMIC Standard Rate and the Lowest Available Rate for Selected Classifications
Effective January 1, 2005 (Continued)**

Class Code	Description	MEMIC Standard Rate	Industry Low Rate
8006	STORE: GROCERY/CONVENIENCE RETAIL	\$2.99	\$1.61
8008	STORE: CLOTHING/DRY GOODS RETAIL	\$2.16	\$1.17
8010	STORE: HARDWARE	\$3.19	\$1.72
8017	STORE: RETAIL NOC	\$2.38	\$1.28
8018	STORE: WHOLESALE NOC	\$7.54	\$4.07
8024	SEAFOOD DEALER WHOLESALE	\$8.38	\$4.52
8033	STORE: MEAT, GROCERY AND PROVISION	\$3.34	\$1.80
8039	STORE: DEPARTMENT-RETAIL	\$2.73	\$1.47
8044	STORE: FURNITURE	\$6.70	\$3.61
8058	BUILDING MATERIAL DEALER-NEWMAT.	\$4.22	\$2.28
8107	MACHINERY DEALER	\$6.26	\$3.38
8227	CONSTRUCTION PERMANENT YARD	\$9.24	\$4.98
8232	LUMBER YARD NEW MAT.WHOLESALE	\$5.76	\$3.10
8350	GASOLINE DEALERS	\$10.12	\$5.46
8380	AUTO SERVICE OR REPAIR CENTER	\$5.44	\$2.93
8601	ARCHITECT OR ENGINEER CONSULTING	\$1.17	\$0.63
8742	SALESPERSONS, COLLECTORS	\$0.73	\$0.39
8803	AUDITORS, ACCOUNTANT TRAVELING	\$0.19	\$0.10
8810	CLERICAL OFFICE EMPLOYEES	\$0.65	\$0.35
8820	ATTORNEY	\$0.61	\$0.33
8829	CONVALESCENT OR NURSING HOME	\$6.26	\$3.38
8832	PHYSICIAN	\$0.87	\$0.47
8833	HOSPITAL PROFESSIONAL EMPLOYEES	\$2.41	\$1.30
8835	NURSING-H.H., PUBLIC & TRAVELING	\$6.66	\$3.59
8861	CHARITABLE OR WELFARE ORGAN. PROF.	\$2.78	\$1.50
8868	COLLEGE: PROFESSIONAL EMPLOYEES	\$0.54	\$0.29
8901	TELEPHONE OR TELEG CO. OFFICE	\$0.55	\$0.30
9014	BUILDING OPER. BY CONTRACTORS	\$7.37	\$3.97
9015	BUILDING OPER. BY OWNER	\$5.21	\$2.81
9040	HOSPITAL ALL OTHER EMPLOYEES	\$8.28	\$4.47
9052	HOTEL: ALL OTHER EMPLOYEES	\$3.96	\$2.13
9058	HOTEL: RESTAURANT EMPLOYEES	\$2.51	\$1.35
9060	CLUB-COUNTRY, GOLF, FISHING OR YACHT	\$3.22	\$1.74
9063	YMCA, YWCA, YMHA, OR YWHA	\$1.70	\$0.91
9083	RESTAURANT: FAST FOOD	\$3.03	\$1.63
9101	COLLEGE: ALL OTHER EMPLOYEES	\$5.48	\$2.96
6824F	BOATBUILDING OR REPAIR	\$9.40	\$5.06

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% 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%. Over 69% 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% 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.

6. A LOOK NATIONALLY

Percent of Overall Market Held by Self-Insured Employers

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. One advantage of being self-insured is better cash flow. Since there are no premiums, the employer retains the money until it pays out on losses. Employers who self-insure anticipate that they would be better off not paying premiums and are likely to have active programs in safety training and injury prevention.

The percent of Maine's total workers' compensation insurance market represented by self-insured employers and groups increased in 2003. At 45.6% of the total market, self-insurance is at its highest level since 1998. 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.

Since 1999, the estimated standard premium for self-insured employers has increased by over 73%, showing increases in each of the past four years. 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.

Table VI: Estimated Standard Premium for Self-Insured Employers and Percent of the Workers' Compensation Market Held by Self-Insurers, 1993-2003		
Year	Estimated Standard Premium	Percent of WC Market (in annual standard premium)
2003	\$201,357,486	45.6
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.

Number of Self-Insured Employers and Groups

As of October 1, 2004 there were 20 self-insured groups representing approximately 1,417 employers as well as 86 individual self-insured employers in Maine. There was one new self-insurance group formed in the last year and the number of employers in groups increased by nearly 5% from 2003 to 2004. Since 2000, the number of employers in self-insured groups has increased by over 13%. During the past year, the number of individually self-insured employers decreased by five. Since 1997, when the number of self-insured employers peaked in Maine, the number of individually self-insured employers has decreased by over 44%.

Table VII: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 1994-2004			
Year	No. of Self-Insured Groups	No. of Employers In Groups	No. of Individually Self-Insured Employers
2004	20	1,417	86
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.

Comparisons with Other States

According to a recently released report for 2004, Maine ranked twenty-eighth out of 45 states in terms of comparative costs in the manufacturing industry (first place indicates lowest cost; forty-fifth indicates highest). Actuarial & Technical Solutions, Inc compiled the annual report ranking

state workers' compensation costs. This ranking indicates that Maine is a relatively high cost state. Since 1996, Maine has been ranked as high as forty-second among other states for workers' compensation insurance costs in the manufacturing industry and as low as twenty-third. In 2003, Maine's ranking was thirty-second. These ranking are impacted by the benefit structures in the various states.

In another study, conducted bi-annually by the State of Oregon, Maine ranked twenty-eighth in terms of 2002 workers' compensation premium rates for all industries. In the 2000 study, Maine ranked nineteenth. In this study, a higher rank indicates lower premium rates. This study focused on 50 classifications based on their relative importance as measured by their share of losses in Oregon. It reports results for all 50 states and the District of Columbia. Results of the 2004 study have not yet been released.

SECTION C
BUREAU OF LABOR STANDARDS

SECTION C. BUREAU OF LABOR STANDARDS

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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 have low levels of coverage by 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, like last year's, is organized slightly differently than reports of previous years and includes information on enforcement. This approach was taken in order to provide as complete as possible a picture of the prevention of occupational injuries and illnesses in Maine.

- **Part 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.
- **Part 3** will present research programs of the BLS and some resulting data and conclusions.

- **Part 4** will discuss how current information gathering and sharing can be improved and provide an update on the initiative in this area.
- **Part 5** will outline 2004 developments and some prospects for the immediate future.

2. PREVENTION SERVICES AVAILABLE

2A. SAFETYWORKS!

SafetyWorks! is an identity that encompasses the occupational safety and health (OSH) training, consultation and outreach functions 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 may 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. During fiscal 2004, 451 separate courses were taught, reaching 8042 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, complements the SAFETEEN kit. About 5,000 SAFETEEN kits have been distributed since June 2001 and this program is nearing its end.

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 only twice in 2004 due to personnel loss. The Summer Institute ran at United Technologies Institute in Bangor June 21 through 25 with 28 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 2004, twenty-six requests resulted from the outreach done at the Maine Safety Council and Maine Employers Mutual Insurance Company (MEMIC) annual conferences. Over 100 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 -- 903 were requested in fiscal 2004.

For more on SafetyWorks!, go to www.safetyworksmaine.com.

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 2004, a total of 514 employers were certified seeking more than 5,500 foreign workers of all types. In 2004, many seasonal employers, particularly in the logging and hospitality industries,

were unable to recruit the workers for which they were approved because the national quota of visas was used up by March 9, prior to the peak seasons for those employers. WCB data is used to track the OSH performance of 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. From July 1, 2003 to July 1, 2004, 4891 permits were issued and 238 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. From July 1, 2003 to July 1, 2004, the Division found 93 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.

Public Sector Site Inspections

The Workplace Safety and Health Division of the BLS (WS&H) 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), 755 inspections were completed in fiscal year 2004. These captured 1,916 violations resulting in \$506,910 in penalties after reductions for size of business and good faith efforts.

Private Sector Site Inspections (Federal)

In Maine, OSHA enforces federal 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, see below), Local Emphasis Programs (LEPs) or National Emphasis Programs (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. Data for federal fiscal year 2004 show that OSHA did 572 inspections in Maine. These captured 1,354 violations, resulting in \$1,004,318.72 in penalties.

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

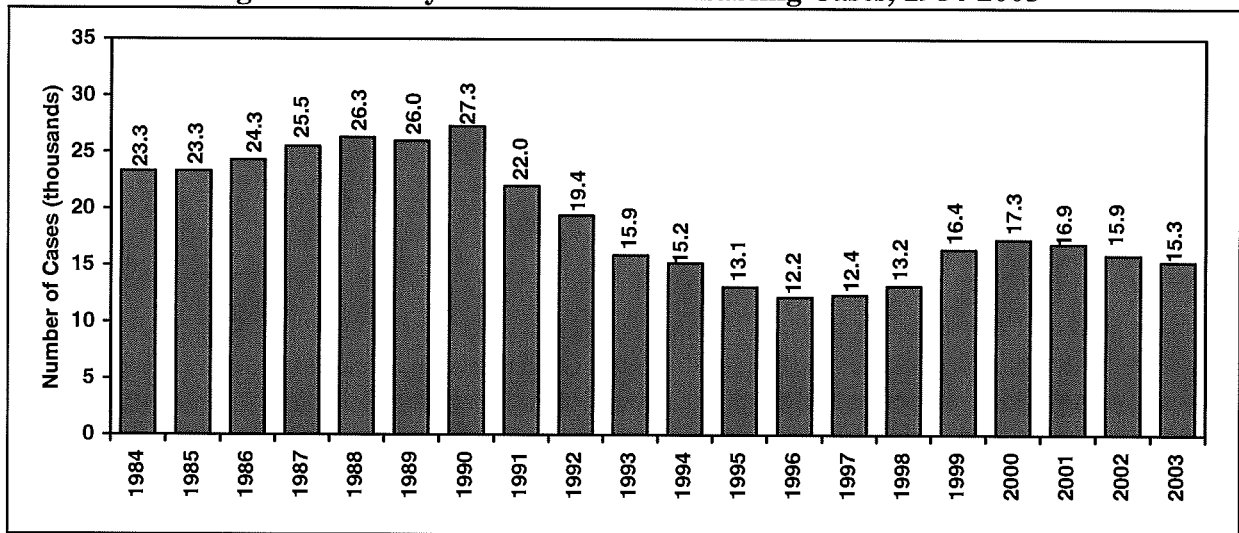
The Research and Statistics Unit (R&S) in the Technical Services Division (TSD) of the BLS is responsible for the administration of several annual OSH surveys. Taken together, the results of these surveys provide an epidemiological profile of occupational injuries and illnesses in Maine. For each of them, more information and statistics are available on the BLS website, www.maine.gov/labor/bls/, 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, 1984-2003. In 2003, there were 15,319 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 2003 figure is a decrease of 547 cases from 2002 and continues a recent declining trend.

Figure 1. Twenty-Year Pattern of Disabling Cases, 1984-2003



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 SOII, 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, 2001-2003. In 2003, the five counties with the highest disabling case rate were (in descending order): Sagadahoc (consistently highest by about a factor of two), Somerset, Androscoggin, Kennebec, and Oxford. Table 1 describes the distribution of disabling cases by counties for 2001 through 2003. 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, 2001-2003

County	2001			2002			2003		
	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000
Androscoggin	1,456	46,666	31.2	1,425	47,311	30.1	1,435	47,176	30.4
Aroostook	869	29,137	29.8	851	29,036	29.3	766	29,187	26.2
Cumberland	4,348	165,014	26.3	4,090	163,691	25.0	3,914	164,995	23.7
Franklin	287	11,611	24.7	254	11,717	21.7	250	11,741	21.3
Hancock	691	22,503	30.7	634	22,721	27.9	569	22,778	25.0
Kennebec	1,701	56,160	30.3	1,542	56,035	27.5	1,500	55,492	27.0
Knox	487	17,432	27.9	437	17,622	24.8	454	17,612	25.8
Lincoln	286	10,969	26.1	305	11,024	27.7	279	11,142	25.0
Oxford	530	17,915	29.6	480	17,656	27.2	474	17,697	26.8
Penobscot	1,658	68,510	24.2	1,605	68,740	23.3	1,568	67,846	23.1
Piscataquis	135	5,727	23.6	142	5,748	24.7	144	5,645	25.5
Sagadahoc	918	15,322	59.9	850	15,517	54.8	883	15,185	58.1
Somerset	565	19,627	28.8	554	19,032	29.1	601	18,499	32.5
Waldo	377	10,883	34.6	306	11,255	27.2	285	11,242	25.4
Washington	381	11,771	32.4	299	11,399	26.2	280	11,076	25.3
York	1,797	59,895	30.0	1,670	59,786	27.9	1,580	60,455	26.1
Unknown*	515	9,839	----	422	10,607	----	337	9,606	----
Total	17,001	576,533	29.5	15,866	579,261	27.4	15,319	577,374	26.5

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.

Note: * Unknown represents WCB *First Reports* with missing information.

Disabling Cases by Occupational Groups, Maine, 2001-2003. In 2003, as in previous years, about 70% of all disabling cases occurred in the following five major occupational groups (in order of disabling cases reported in 2003):

- 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) Transportation or Material Handler
- 5) Machine Operator, Assembler or Inspector.

The only change in this list for 2003 was that the order of the final two groups was reversed from previous years.

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 still 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, 2001-2003

Occupational Groups	2001		2002		2003	
	Number	Percent	Number	Percent	Number	Percent
Service Workers	3,275	19.3	3,131	19.7	3,008	19.6
Precision Production, Craft or Repair	2,840	16.7	2,582	16.3	2,521	16.5
Handler, Equipment Cleaner, Laborer	2,487	14.6	2,217	14.0	2,204	14.4
Machine Operator, Assembler, Inspector	1,550	9.1	1,384	8.7	1,257	8.2
Transportation or Material Handler	1,493	8.8	1,347	8.5	1,385	9.0
Other Occupational Groups	5,356	31.5	5,205	32.8	4,944	32.3
Total	17,001	100.0	15,866	100.0	15,319	100.0

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

Length of Service of Injured Worker, Maine, 2001-2003. 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 5,066 (33.1%) of the *First Reports* in 2003. 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 10.3% in 2001 to 12.3% in 2003. Since there has been concern about risk to older Maine workers, this trend has also been given priority as a research topic by MORA.

Table 3. Length of Service of Injured Worker, Maine, 2001-2003

Length of Service of the Injured Worker	Disabling Cases					
	2001		2002		2003	
	Number	Percent	Number	Percent	Number	Percent
Total	17,001	100.0	15,866	100.0	15,319	100.0
Under 1 Year	6,181	36.4	5,498	34.7	5,066	33.1
1 Year	2,195	12.9	2,049	12.9	1,887	12.3
2 Years	1,266	7.4	1,254	7.9	1,197	7.8
3-4 Years	1,484	8.7	1,654	10.4	1,653	10.8
5-9 Years	1,784	10.5	1,723	10.9	1,813	11.8
10-14 Years	1,807	10.6	1,507	9.5	1,378	9.0
15-19 Years	756	4.4	725	4.6	925	6.0
20+ Years	1,002	5.9	1,011	6.4	968	6.3
Unknown	526	3.1	445	2.8	432	2.8

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

Nature, Source, and Event of Injuries and Illnesses, Maine, 1999-2003. Table 4 gives the top five each of nature, source, and event of injuries and illnesses. There were some shifts in 2003.

Table 4. Nature, Source and Event of Injuries and Illnesses, Maine, 1999-2003

	1999	2000	2001	2002	2003
Nature of Injury					
Sprains, strains, tears	5,085	5,959	5,561	4,991	4,692
No specified pain, sore, hurt	3,151	3,549	3,837	3,913	3,863
Bruises, contusions	1,013	1,119	1,122	1,045	1,057
Traumatic injuries & disorders, unspecified					860
Fractures	729	834	871	720	
Cuts, lacerations	767	787	784	747	745
Source of Injury					
Person--injured or ill worker	3,556	3,973	3,775	3,567	3,417
Floors, walkways, ground surfaces	2,210	2,309	2,569	2,376	2,332
Containers	1,791	1,985	1,775	1,629	1,609
Nonclassifiable					1,270
Parts and materials	1,266	1,237	1,118	1,067	1,009
Vehicles	1,009	952	956	932	
Event or Exposure					
Overexertion	5,099	5,493	5,231	5,024	4,756
Bodily reaction	1,857	2,014	1,910	1,772	1,688
Fall on same level	1,430	1,544	1,791	1,584	1,631
Struck by object	1,399	1,369	1,302	1,207	1,321
Repetitive motion	1,189	1,406	1,299	1,222	1,208

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 2003, BLS surveyed 2,400 private establishments and 420 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, incidence 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, and click on "recordkeeping."

The 2002 rule changes apply to 2003 recordkeeping with one important exception: in 2003 OSHA revised its rules regarding the recording of occupational hearing loss cases. Also in 2003, work establishments began to be coded according to the North American Industry Classification System (NAICS), rather than the Standard Industrial Classification (SIC) system. There is not a one-to-one comparability between even the most general levels of the two classification systems. For these reasons, users are advised against comparisons between 2003 SOII industry categories and those of previous years.

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, 2003. According to the 2003 SOII for the private sector, the Manufacturing division recorded the highest incidence rate. Mining had the lowest incidence rate, even lower than Professional, Scientific, and Technical Services or Finance and Insurance.

Table 5. Number of Cases and Incidence Rate of Injuries and Illnesses, Maine, 2003

NAICS Sector (Not directly comparable with SIC Division)	2003	
	Number of Cases	Incidence Rate
Private Sector	30,482	7.7
Manufacturing	6,610	10.8
Health Care and Social Assistance	5,590	8.1
Retail Trade	4,967	7.5
Construction	2,901	10.4
Accommodation and Food Services	2,109	7.3
Wholesale Trade	1,668	8.6
Transportation and Warehousing	1,474	10.6
Administration Support and Waste and Remediation Services	1,193	6.7
Finance and Insurance	687	2.8
Professional, Scientific, and Technical Services	526	2.7
Information	512	5.1
Arts, Entertainment, and Recreation	389	10.5
Agriculture, Forestry, Fishing, and Hunting	266	7.3
Real Estate and Rental and Leasing	242	4.4
Management of Companies and Enterprises	233	5.4
Educational Services	210	3.2
Utilities	208	10.3
Mining	15	2.5
Public Sector	3,269	5.4

Source: Federal Bureau of Labor Statistics *Survey of Occupational Injuries and Illnesses*

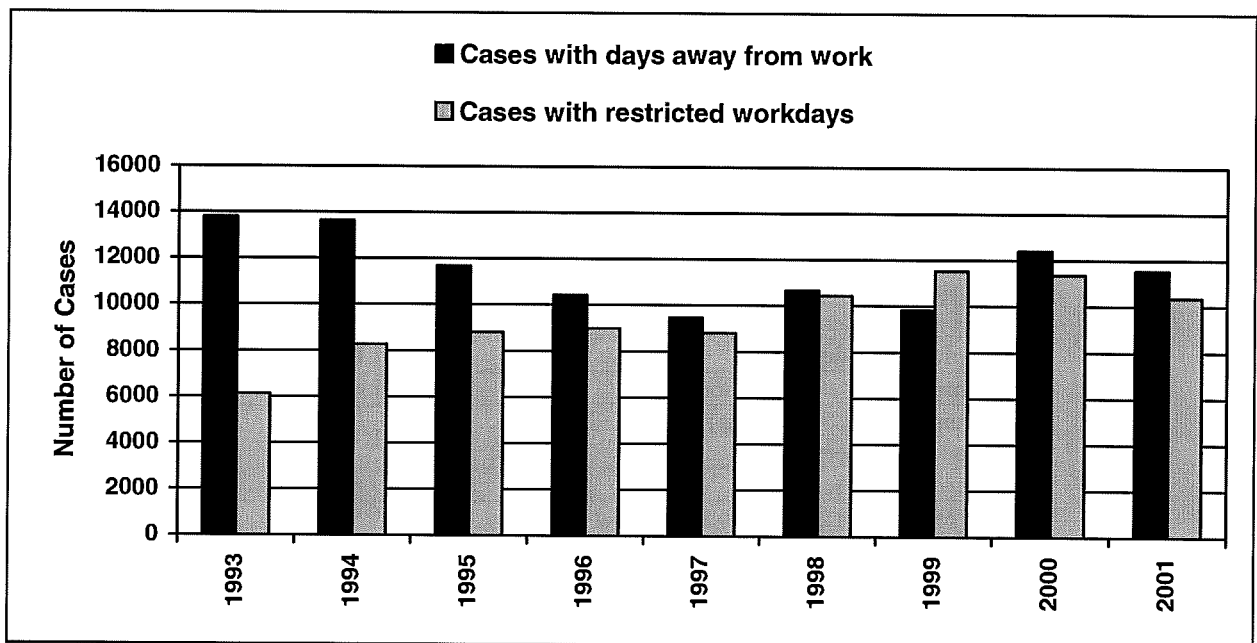
For further information on OSHA recordkeeping, please go to OSHA's website, www.osha.gov.

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:

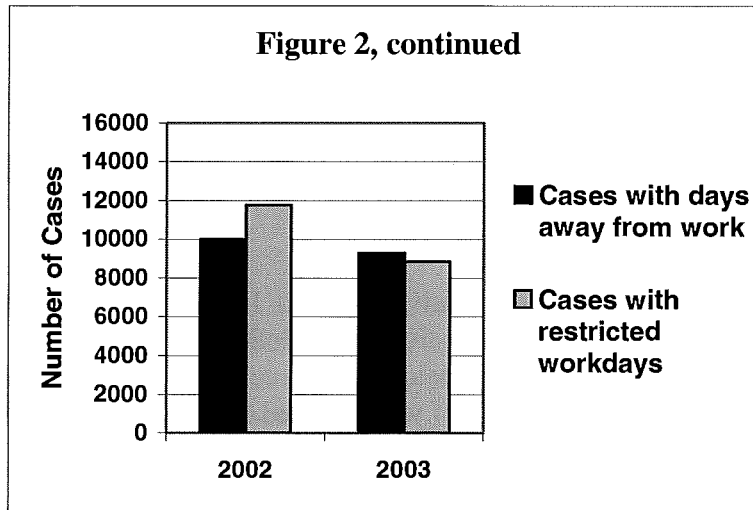
- 1) These are not severe injuries and allow an injured worker to continue working in a limited capacity
- 2) Some employers are using this injury management approach to lower their Workers' Compensation losses and therefore lower their direct payments on their insurance premiums
- 3) Keeping workers 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, with 2002 and 2003 data



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Source: *Survey of Occupational Injuries and Illnesses*

As pointed out above, 2002 and 2003 data should not be directly compared with earlier years' data or with each other. For 2003, there was an estimated total of 18,121 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 9,281 cases resulted in at least one day away from work and 8,841 cases resulted in job transfer or restriction without any days away from work. Even with the new definitions of recordability, the growing importance of transfer/restriction 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 2002, 210 Maine worksites were identified as having a DART rate of seven or higher 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*.

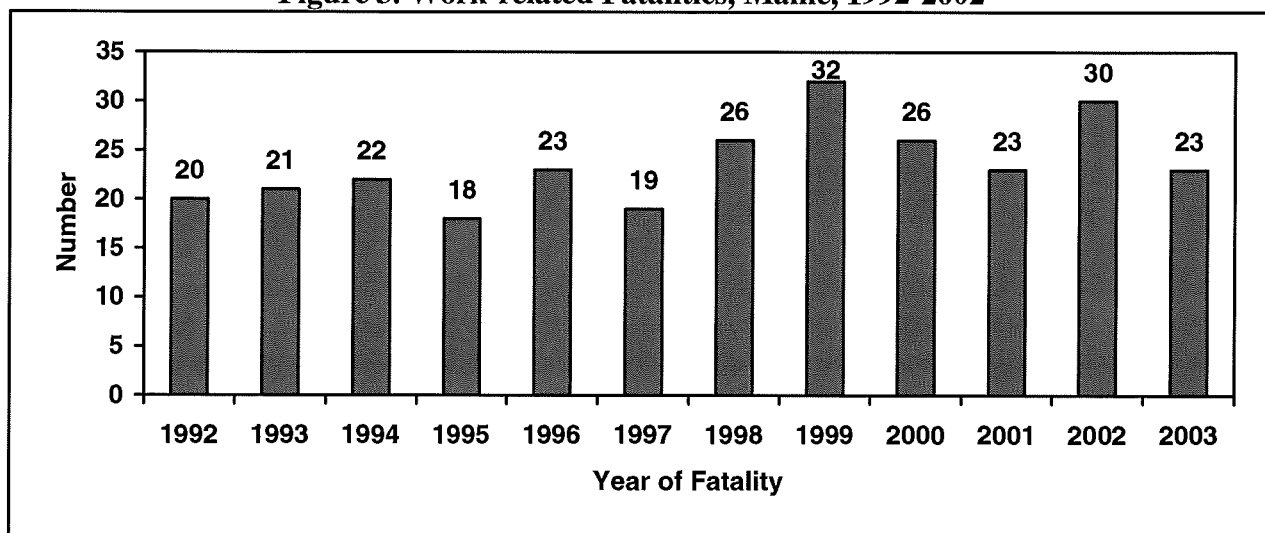
The CFOI program is a federal/state cooperative program. It was created in 1990 by the U.S. Department of Labor, Bureau of Labor Statistics and includes all 50 states and the District of Columbia. The program was established to determine a true count of work-related fatalities in the United States. Prior 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, 1992-2003. Figure 3 shows the numbers of work-related fatalities recorded in Maine from 1992-2003. The figure for 2002 is inflated by 14 fatalities from a single transportation accident.

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



Source: Census of Fatal Occupational Injuries

Fatal Occupational Injuries by Industry and Event/Exposure, Maine, 1992-2003.

Transportation accidents have accounted for more fatal workplace injuries than any other event or exposure in Maine as shown in Table 6. Since 1992, more than 48% 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, 1992-2003

Industry Division	Total	Transportation Accidents Highway & Non-highway	Contact with Objects & Equipment	Falls	Exposure to Harmful Substances	Assaults & Suicides	Fires & Explosions
Total	286	138	61	34	32	16	5
Agriculture, Forestry & Fish.	77	52	4	4	17	--	--
Manufacturing	45	10	28	7	--	--	--
Transportation & Public Utilities	40	31	5	--	4	--	--
Construction	33	5	8	13	7	--	--
Services	25	9	10	3	--	3	--
Retail	17	8	--	4	--	5	--
Government	14	9	--	--	--	5	--
Wholesale	12	12	--	--	--	--	--
Other	23	2	6	3	4	3	5

Source: Census of Fatal Occupational Injuries

Note:-- 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 1994 through 2003.

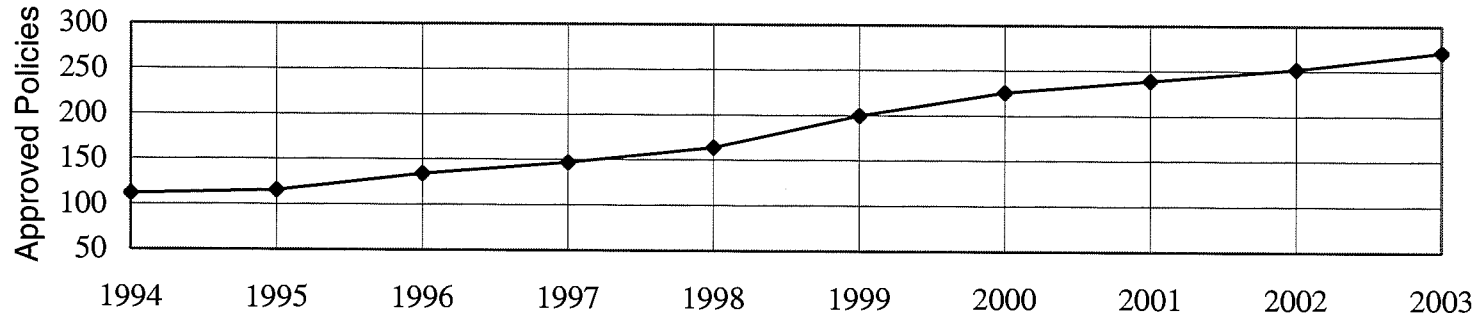
Table 7. Substance Abuse Testing

**Yearly Totals by Type of Test
Applicants/Employees
1994-2003**

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
2003	271	16,129	761	4.7	15,345	727	4.7	29	7	24.1	755	27	3.6
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

Note: -- Indicates a value of less than 0.05%

**Employers With Approved
Substance Abuse Testing Policies
1994-2003**



3B. RESEARCH PROJECTS OTHER THAN ANNUAL

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. In 2004, virtually all of these were at least partly supported by the NIOSH capacity building grant (below).

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

In 2002, BLS OSH Epidemiologist Kim Lim Ph.D. worked with Ellen Ridley 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 reported out in February 2004. The report is available on line at www.maine.gov/labor/bls/DomesticOffendersreport.pdf. Results reinforced the Massachusetts findings where the same issues were examined, as well as adding detail. In particular, from an OSH point of view, 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, was strongly reinforced. Of the offenders interviewed, 48% said that their concentration was affected, 41% said job performance was affected, and 19% said this distraction was a factor in a work accident or near miss.

In Phase 2 of this study, during the summer and early fall of 2004, The Maine Department of Labor and Family Crisis Services conducted a joint research study on domestic violence and the occupational impact to victims/survivors. Subjects of the study were 120 women representing all Maine counties who met the following criteria: experienced domestic abuse within the last three years, were employed in Maine (not self-employed), and were affected at work by the abuse.

The purpose of the study was to identify ways in which domestic abuse victims/survivors are impacted at their employment as a result of domestic abuse; determine the frequency and methods used to contact the victim/survivor at the workplace; identify and quantify performance and productivity issues, lost work time, absenteeism, workplace delays, and workplace accidents as a result of these events; measure employer responses, including frequency of policies as a prevention tool; and examine respondents' views on how employers can create safer workplaces.

Participants were invited to participate through a press release, website postings, and participation in local domestic violence projects. Information was collected in a one-on-one thirty-minute interview in person or over the telephone. With first round output from the database, preliminary results show that 98% of victims reported that domestic abuse caused them to have difficulty concentrating on work tasks and 96% reported that it affected their ability to perform their job duties and 16.7% that it contributed to an accident or near miss. The level of distraction perceived was more than double that reported by the abusers in the initial phase of this study although the accident/near miss level was slightly lower. It does seem clear that both the abuser and victim are significantly distracted on the job by a relationship including domestic violence. A detailed report of this phase will be available in early 2005.

For more information, please contact Kim Lim, Ph.D. (624-6443) or John Rioux (624-6442) at the MDOL, or Ellen Ridley at Family Crisis Services (767-4952, ext. 105).

Workplace Violence Surveillance

This project, actually started in 2003, is an ongoing attempt to document workplace violence cases that are not captured by the SOII or WCB *First Reports*. This has taken the form of reviewing statewide newspapers for reports of workplace violence. From its inception through May 2004, 146 cases of workplace violence not reported through SOII or *First Reports* were found in this way. By way of comparison, *First Reports* documented 266 cases for the same period. The cases found by the surveillance project were heavily skewed (80.8%) toward criminal intent (Type I) cases, because robberies are far more likely to be reported in a news medium than other types of workplace violence. The recognized types of workplace violence are:

Type I - Criminal intent. The perpetrator has no legitimate relationship to the business or its employees and is usually committing a crime in conjunction with the violence.

Type II – Customer/Client. The perpetrator has a legitimate relationship with the business and becomes violent while being served by the business.

Type III – Worker-on-Worker. The perpetrator is an employee or past employee of the business who attacks or threatens another employee(s) or past employee(s) in the workplace.

Type IV – Personal Relationship. The perpetrator usually does not have a relationship with the business but has a personal relationship with the victim. This category includes victims of domestic violence assaulted or threatened at work.

Although the additional cases found are skewed toward Type I, the results still show that there are a substantial number of workplace violence cases not captured by the pre-existing data collecting mechanisms. This points to a need for developing ways of gathering more data, particularly on Type II, III, and IV cases, something on which BLS is currently working. It is desirable to develop an accurate workplace violence surveillance program in order to develop an effective workplace violence prevention program. Federal OSHA has developed no standards because of the complexity of the problem, evident from the four categories above, leaving workplace violence under the “General Duty Clause” (OSHA 5(a)(1)). Only with detailed knowledge of the nature of workplace violence in Maine can MDOL develop effective prevention strategies.

For more information, please contact Kim Lim, Ph.D., (207)624-6443, at the MDOL.

Pilot study for OSH Surveillance of Young Workers

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 was done in 2004. Publication of full results is scheduled for early 2005.

Preliminary findings include:

- Over 95% of workers 14-15 years in age reported they felt safe at work
- About 40% of these young workers reported that parents and relatives were their source of information on injury prevention
- About 20% reported getting no safety and health training
- The top three business types failing to provide safety and health training were eating establishments, amusement/recreational businesses, and grocery stores, all major employers of young workers after school and during vacations
- About 12% of the young workers surveyed reported noticing some sort of danger on the job
- About 2% reported that they were asked to do something at work that they thought was dangerous

- About 37% reported using equipment prohibited under Maine child labor laws; this equipment included ladders, scaffolds, food slicers, fat fryers, power tools, mowers or weed whackers, motor vehicles, box crushers, dough rolling machines, and forklifts.

This study will form the basis for part of a proposal to NIOSH for a grant to support young worker special population surveillance. The pilot survey itself, in modified form, is likely to become an import recurring part of that surveillance.

For more information, please contact Kim Lim, Ph.D., (207)624-6443, at the MDOL.

Employer Attitudes Toward Substance Abuse and Substance Abuse Testing

In September and October 2004, as part of its response to Legislative Resolves, chapter 106 (see below), the BLS Technical Services Division conducted a survey of Maine employers' attitudes toward substance abuse and substance abuse testing. The Division mailed 5,973 questionnaires to a random sample of Maine employers who had had 5 or more employees in 2003. 2,565 usable returns were received for a response rate of 42.9%. The questionnaire asked if the employer felt affected by substance abuse and, if so, to what extent and how. It also asked if the employer had various substance abuse related policies, including a testing policy. If the employer did not have a testing policy, the questionnaire asked for specific reasons for that.

Overall, only 24% of respondents felt that their business was affected by substance abuse, but this varied strongly with business size. Where only 17% of businesses with 10 or fewer employees saw an effect, 54% of businesses with 250 or more employees did. Only 3.8% of all respondents rated the effect as "very significant," most rating it as moderate or less. Increased absenteeism and decreased productivity were the specific effects most often cited.

Forty per cent of all respondents had a written drug-free workplace policy, but only 16% had a self-disclosure policy. Fourteen per cent of the respondents had a substance abuse testing policy, but this group included only 21% of those employers who felt they were affected by substance abuse. Only 14% of all respondents had employee assistance programs, and these were generally not the same employers who had testing programs. "Not seen as needed" was the top reason cited for not having a testing program, both in general and among employers who saw themselves as affected by substance abuse. "State law requirements too complicated" was selected least often.

The final report of this study has been incorporated into the required report to the Labor Committee of the Legislature.

Worker Misclassification in the Construction Industry

A misclassified worker is a worker who meets a governmental definition of employee but is classified by an employer as an independent contractor for tax or other purposes. In 2004, the BLS examined a random sample of Bureau of Unemployment Compensation (UC) tax audits of firms in the construction industry in order to estimate the annual level of misclassification in that industry and its costs. The construction industry was chosen because it presents a high level of

opportunity for misclassification, particularly because of the high level of legitimate use of independent contractors within it.

The employer incentive to misclassify is considerable. By misclassification, the employer avoids paying payroll, UC, and FICA taxes and workers' compensation. The employer also pays no fringe benefits such as health care insurance. These cost savings can amount to a considerable advantage in bidding against a law-abiding competitor. There are two principal risks for the employer. The first is that of getting caught, with the requirement of paying all evaded taxes plus penalties and interest. The second is the risk of worker injury. Because workers' compensation does not apply, the employer managing the worksite may be sued if an independent contractor, legitimate or not, is injured.

The worker also perceives advantages in that there are few or no paycheck deductions, increasing take-home pay, and it may be possible to avoid payment of FICA and income taxes and to elude child support. There are considerable risks for the worker, however. The employer need not comply with wage and hour regulations. When the worker is laid off, there are no unemployment benefits. Most importantly from an OSH point of view, should the worker be injured on the job, there are no workers' compensation or health care benefits. The misclassified worker may even be excluded from the employer's OSHA-mandated programs.

A total of 296 random UC tax audits of activity in calendar years 1999-2002 were examined, providing a $\pm 4\%$ margin of error. Results showed considerable variation between SIC industry groups within construction. Carpentry and floor work (SIC 175) showed the highest level of misclassification with 32.0% of employers misclassifying and 55.1% of employees misclassified. Residential building construction (SIC 152) was second, with 25.8% of employers misclassifying and 38.9% of employees misclassified. At the other extreme, a number of industry groups showed no misclassification at all at this sample size, including roofing, siding and sheet metal (SIC 176), a group that word-of-mouth suggested had high misclassification rates.

It was estimated that, for a typical year within the 1999-2002 period in the construction industry, 742 employers misclassified 3,598 workers. Total lost tax revenues for that year were estimated at \$11,729,009. Of that amount, \$2,448,917 was state taxes, \$9,280,092 federal. These tax estimates are maxima because of the necessity of assuming worst-case tax returns for all employees (BLS had no access to actual returns). An estimate of workers' compensation losses could not be done because premium rates are based on worker occupation and that information was not available.

Because variation was so high at the SIC industry group level, it was recommended that future UC tax audits be targeted at groups (or the NAICS equivalent) known to have high misclassification levels rather than spread randomly industry-wide. This should lead to a greater return per audit. To facilitate this, it was also recommended that this study be extended to other industries to find other "hot spots."

Another recommendation was that UC tax audits add worker occupation to the data collected. Analysis of occupations misclassified could add another dimension to the targeting of future audits. It could also provide for recommended targeted outreach and education. Both employers

and workers need to be made more aware of the risks associated with misclassification, and an active outreach and education program could reduce occurrence of the practice.

Pilot Study on OSH issues of Home Health Care Workers

In 2004, the BLS examined OSH issues in the home health care industry (SIC 8082) using SOII and WCB data. SOII data showed that the home health care industry in Maine had significantly higher injury/illness incidence rates than Maine industries in general and nearly double the rates of home health care nationally. Profiles were then run on WCB data for the principal occupations within the industry with the intent of identifying the most common characteristics of disabling injuries reported from those occupations. Some results are presented in Table 8.

Table 8. Disabling First Reports, 1999 vs. 2002

	PERSONAL CARE ASSISTANTS (PCAs)		CERTIFIED NURSING ASSISTANTS (CNAs)		HOME HEALTH AIDES (HHAs)	
	1999	2002	1999	2002	1999	2002
	13 cases	27 cases	74 cases	36 cases	37 cases	15 cases
Age 45 and older	23%	41%	34%	50%	43%	67%
Overexertion -- All Cases	46%	59%	62%	81%	43%	80%
Overexertion -- Lifting	15%	37%	35%	47%	24%	67%
Less than 2 yrs w/employer	85%	78%	64%	56%	16%	40%
Patient as source of injury	31%	63%	59%	72%	38%	80%

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

Though the numbers of cases are small, significant changes can be seen between 1999 and 2002. While the number of reported disabling cases declined for CNAs and HHAs, it more than doubled for PCAs. The proportion of injured workers of age 45 or more increased significantly for all three occupations, as did the proportion of injuries involving overexertion and overexertion in lifting specifically. The proportion of injured workers with less than two years with their present employer decreased for PCAs and CNAs but increased considerably for HHAs. The proportion of reported disabling injuries in which the health care patient was the source of the injury more than doubled for PCAs and HHAs and increased significantly for CNAs. All these changes can stand further examination as to causes.

Based on this examination of the issues, it was recommended that an effort be made to involve industry representatives and safety specialists in developing a safety initiative taking into account the special work organization and working conditions, work hazards, and client and client family involvement found in the industry. Training needs and training delivery would require particular scrutiny.

For more information, contact Steven P. Laundrie, (207)624-6447, at MDOL.

4: PROBLEM AREAS

4A. NEEDED IMPROVEMENTS IN DATA COLLECTION AND SHARING

“Return to work date”

Table 9 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 eight years (1996-2003). There were 7,119 cases with no return to work date for the year 2003 as of the tabulation of this data in December of 2004. 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 9. Missing Return-to-Work Date, Maine, 1996-2003

	1996	1997	1998	1999	2000	2001	2002	2003
Total Disabling Cases	12,162	12,419	13,111	16,348	17,292	17,001	15,866	15,319
No return-to-work date	5,654	7,056	7,342	7,959	7,888	7,885	7,281	7,119
Percent of total	46.5	56.8	56.0	48.7	45.6	46.4	45.9	46.5

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 in 2003 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 to 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. In 2004, the Work Group inventoried and evaluated available data collections and will report the results of this work to the legislature in January 2005.

5. 2004 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 locals 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 conducted a descriptive analysis of the data collected and, based on the results of the analysis, selected three core surveillance indicators for an in-depth study. These were FACE (below), OSH surveillance of young workers (above), and workplace violence surveillance. A fourth, injury surveillance for seasonal and migrant workers, will be added in 2005. 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.

By its participation in the NIOSH-States workgroup and working there on a manual for the development of OSH indicators, MDOL qualified to apply for the next round of funding under this NIOSH program. MDOL filed an application that includes funds for, among other things, continuation of the FACE program (below). This is a very important grant because, in addition to the focal activities discussed above, it has funded or partly funded the following activities in 2004:

- The workplace violence studies, including domestic violence (above)
- The migrant/seasonal worker surveillance pilot project (below)
- The pilot study on home health care workers (above)
- The third OSH research symposium (immediately below), and
- The data outreach initiative (below).

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, titled *Using Research to Develop Occupational Safety and Health Prevention Strategies and Policy Initiatives*, cosponsored with MORA and the University of New England (UNE). The symposium further enhanced the efforts of MORA in promoting OSH research in Maine.

These symposia have the following objectives:

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

The BLS has organized its next Maine Occupational Safety and Health Research Symposium (May 25 and 26, 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). The University of New England will host it and forty presenters have been recruited and scheduled. Partial funding for this symposium will be derived from the NIOSH capacity building grant (above).

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 2004.

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. In 2004, two more fatality evaluations were reported out. This completes the FACE pilot project and continuation of the FACE program depends on the success of the application for continuation of the NIOSH capacity building grant (above).

For more information, visit the FACE website, 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 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).

In 2004, MORA has largely been concerned with organizational issues and the drafting of an operating document. It has also been involved with organizing the 2005 Maine Occupational Safety and Health Research Symposium (above).

See MORA's website, www.maine.gov/labor/bls/MORA.htm, for more information.

Migrant and Seasonal Worker Injury Surveillance

In 2004, the BLS laid the groundwork for collaboration with the Maine Migrant Health Program in a pilot injury surveillance program for migrant and seasonal workers in Maine. This program will begin in 2005, and like other OSH surveillance programs reported here, will seek injury and illness data from sources other than WCB *First Reports* to supplement the *First Reports* and give a more complete picture of work-related injuries and illnesses among migrant and seasonal workers in Maine.

Data Outreach Initiative

In 2004, the Research and Statistics Unit of the BLS intensified its efforts to place its accumulated data and data-related services before the public. This outreach initiative took the form of such items as a "data wheel" publication – a circular card stock slide rule summarizing both SOII and WCB data in tabular form – and a promotional trifold, entitled *Occupational Injury and Illness Data Profiles*, explaining the Unit's profile service and describing its major data sources. These were distributed in various ways, including as handouts at 7 annual conferences such as the Construction Expo in April and the Maine Employers' Mutual Insurance Company Conference in November. Unit personnel

attended most of these meetings in order to answer questions and take requests for profiles. In some instances, data profiles could be done on site. This effort will be continued in 2005.

5C. LEGISLATION

Also from time to time, the BLS provides information of various kinds in support of or response to new OSH legislation. The following are examples from 2004:

Public Law, chapter 547, An Act To Amend the Random Drug Testing Laws, allows an employer to expand the use of random drug testing to all employees if the employer allows a committee of workers to create the policy, which must be approved by the Bureau prior to implementation.

Public Law, chapter 570, An Act To Revise the Minimum Firefighter Safety Standards, updates the minimum firefighter standards to the latest NFPA Standards and implements OSHA standards for hearing protection.

Public Law, chapter 616, An Act To Promote Safety and Fair Labor Practices for Forestry Workers, Requires employers to provide transportation for forestry workers and establishes transportation standards to be enforced by the Bureau. It also requires the Bureau to convene a work group to determine what data needs to be available in order to study safety in the industry with the results to be reported to the Labor Committee by January 15, 2005.

Resolves, chapter 106, Resolve, Directing the Department of Labor and the Department of Behavioral and Developmental Services, Office of Substance Abuse To Study the Prevalence of Drug and Substance Abuse, required the Department of Labor and the Office of Substance Abuse to study the prevalence of substance abuse in the workplace in Maine and to report back to the Labor Committee by November 3, 2004.