

# MAINE STATE LEGISLATURE

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

**Submitted to the  
122<sup>nd</sup> Legislature  
(Second Regular Session)**

**February 2006**

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We are pleased to submit to the Governor and the 122<sup>nd</sup> Legislature, Second Regular Session, the Annual Report on the State of Maine workers' compensation system as required by Title 39-A § 358-A(1).

The Annual Report profiles the current status of the workers' compensation system in Maine and is submitted by the three State agencies most involved in the workers' compensation system.

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## Executive Summary

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

### Workers' Compensation Board

The Governor worked diligently with both labor and management to ensure the passage of Public Law 2004 Chapter 608 which became effective April 8, 2004. The intent of the legislation was to break the Board's gridlock on key issues and return a sense of normalcy to the agency's operations. The legislation changed the structure of the Board from eight members to seven. Three members represent labor and three represent management. The seventh member is the Executive Director, who serves as Chair of the Board and at the pleasure of the Governor. Since the effective date of the legislation, the Board has resolved all of the gridlock issues and functions in an effective manner in setting policy for Board business. Some of the difficult issues the Board has acted on include: hearing officer appointments; hearing officer terms; budgetary and assessment matters; Section 213 actuarial studies; electronic filing mandates; by-law revisions; legislation; compliance issues; independent medical examiners; worker advocates; and dispute resolution issues.

The importance of the Governor's legislation (Chapter 608) cannot be overly emphasized. The State of Maine has gradually improved its national rating regarding the costs of workers' compensation and an effective and efficient Board will help to perpetuate this positive trend.

It was not too long ago that Maine was one of the costliest states in the nation in regard to workers' compensation costs. A recent article in the *Workers' Compensation Policy Review* compared the costs of benefits for 47 states. Maine's rank for cash benefits was 24<sup>th</sup>, for medical benefits was 24<sup>th</sup>, and for total benefits was 26<sup>th</sup>. Maine fared better overall than 25 states and only Massachusetts (ranked 34<sup>th</sup>) fared better than Maine in New England. The article went on to highlight Maine's achievements during the past few years: "The experience in Maine ... clearly demonstrates that significant reduction in cash, medical, and total benefits are possible."

The 2005 Edition of *Workers' Compensation State Rankings Manufacturing Industry Costs* provides a costs comparison for the manufacturing section in 45 states. The purpose of the study is to provide a comparison as to the cost of obtaining workers' compensation coverage among states. Maine's rank was 28<sup>th</sup> among 45 states and Maine's rank was 3<sup>rd</sup> among the New England states with only Massachusetts and Rhode Island faring better than Maine.

And in a recent report, *Fiscal Data for State Workers' Compensation Systems*, designed to provide employers and public policymakers with comparative statistics on state workers' compensation costs, Maine was listed as one of the states with the largest decrease in its benefit



costs rate: Alabama (-7.9%), Colorado (-11.2%), Kansas (-16.5%), **Maine (-12.9%)**, Nevada (-14.7%), Rhode Island (-15.2%), and Utah (-13.2%).

Maine has gone from one of the costliest states in the nation to one that is at the level of average costs for both premiums and benefits and has positioned itself to continue this trend. Maine appears to have struck a balance between reasonable costs and reasonable benefits, all within the Governor's policy making Maine even-handed and competitive.

### **Bureau of Insurance**

Advisory loss costs, the base portion of the rates which project the amount of premium for losses and loss adjustment expenses, has remained steady since 2000. They are still, on average, 37% lower than they were at the time of the last major reform in 1993. Recently the National Council on Compensation Insurance (NCCI) made a filing with the Bureau of Insurance calling for a 1.8 percent increase in the advisory loss costs. After careful review, NCCI was asked to revise its filing and a 1.2 percent increase was eventually approved effective January 1, 2006. Though the severity of indemnity and medical claims has been increasing, the frequency of claims continues to decrease.

Maine has an open competitive market, and there are no barriers to entering the market or to increasing market share. However, insurers are unwilling to write coverage at their lowest rating tiers for other than the best risks and safest employers. Thus, the rates for some employers have increased. Additionally, Maine's workers' compensation insurance market has become quite concentrated. Since 1999, Maine Employers' Mutual Insurance Company's (MEMIC) market share has increased by nearly 21 percent and fewer companies are writing larger volumes of business. The Bureau of Insurance conducted a sample survey of insurers who cumulatively hold over 87 percent of the market share and found that only five percent of policyholders currently receive rates below MEMIC's standard rates. Nearly ten percent are paying rates higher than that, but it is important to note that these numbers do not reflect any discounts that may be offered to insureds through rating plans such as schedule rating. The good news is that loss ratios have been trending downward, and this year's renewal pricing may get better for some employers.

Self-insured employers account for over 41 percent of the workers' compensation insurance written premium, and self-insurance continues to be a viable alternative to the insurance market for some employers. For those in the insurance market, there are means of reducing premium such as electing small deductibles or being eligible for large deductibles, schedule rating, and merit and experience rating. 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.

## **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 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 2005 such research took the form of:

- A continuation of a study on the impact of domestic violence on workplace safety and health
- Collaborated with the National Institute for Occupational Safety and Health, the Council for State and Territorial Epidemiologists and 12 other states to develop a set of occupational safety and health indicators
- Sponsored a symposium on the occupational safety and health issues of special populations

A chronic problem in the use of WCB data is that about 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 limited linkage between the WCB costs data and the First Reports data.

To supplement some of the limitations of the WCB data, the BLS uses data from the Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses and the Federal Occupational Safety and Health Administration's Data Initiative Program.

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. A draft report has been completed and is under review for submission to the Labor Committee prior to the Second Session.

## 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 Examiners/Medical Fee Schedule; (5) Technology; and (6) Central and Regional Office support.

The implementation of Standard Operating Procedures (SOPs) has resulted in the elimination of backlogs and an efficient dispute resolution system. But a recent Law Court decision in regard to the Independent Medical Examiner program has reversed much of the progress. 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 Examiner Program and the Medical Fee Schedule have been important tools in the successful resolution of cases. However, the Law Court holding in *Lydon v. Sprinkler Systems* has resulted in a reduction in the number of independent medical examiners causing significant delays to the formal hearing process. The Board has recently mandated the electronic filing of First Reports of Injury (July 1, 2006), Notices of Controversy (April to June 2006), and Memorandums of Payment and related documents (April to June 2007).

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 06 and \$8,525,000 in FY 07. However, the projected budgets for those fiscal years are \$9,066,709 and \$9,826,559 respectively. The Board will consider changes in its assessment procedure to eliminate chronic problems with its budget.

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. However, projections for FY 06 and 07 exceed the assessment cap. The Board will consider alternatives to eliminate chronic problems with its assessment and budget.

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. Since the effective date of the legislation, the Board has resolved all the gridlock issues and functions in an effective manner in setting policy for the Agency's business.

Prior to the inception of the Maine Workers' Compensation Act (January 1, 1993), Maine was one of the costliest states in the nation in regard to workers' compensation costs. Recent studies demonstrate a dramatic improvement for Maine in comparison to other states. Maine has gone from one of the costliest states in the nation to one that is at average costs for both premiums and benefits, are within the Governor's policy of making the system fair and competitive for Maine's employees and employers.

## **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. The problem was exacerbated by the Law Court decision in *Lydon v. Sprinkler Systems* significantly reducing the number of independent medical examiners (IME) from 30 to 11. Although the gridlock of the appointment of hearing officers has been broken, the IME problem persists, resulting in higher timeframes at formal hearing.

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. The Board has mandated the electronic filing of First Reports with an effective date of July 1, 2005. The Board has also mandated the electronic filing of denials, with

an effective date of April through June 2006, and for payments, with an effective date of April through June 2007.

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 and its Chair. The Executive Director became a gubernatorial appointment, subject to confirmation by the legislative committee on labor, serving at the pleasure of the Governor. Although it will take time to fully evaluate the new arrangement, clearly gridlock due to tie votes is no longer an issue, all issues which gridlocked the Board have been acted upon and the Executive Director has cast a deciding vote in numerous matters. However, the objective is to attain increased cooperation between the Labor and Management caucuses.

### **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.**

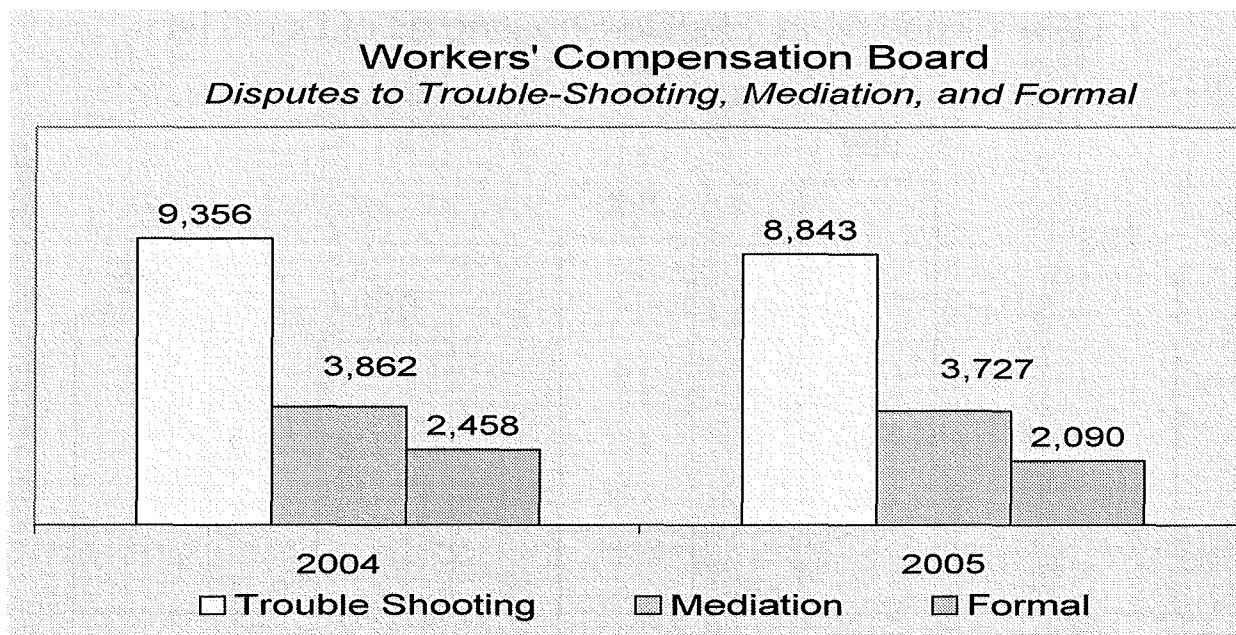
On January 1, 1993, Title 39, which contained the Workers' Compensation Act of 1991 and all prior workers' compensation acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992. The new Title 39-A created a three tiered dispute resolution process.

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.

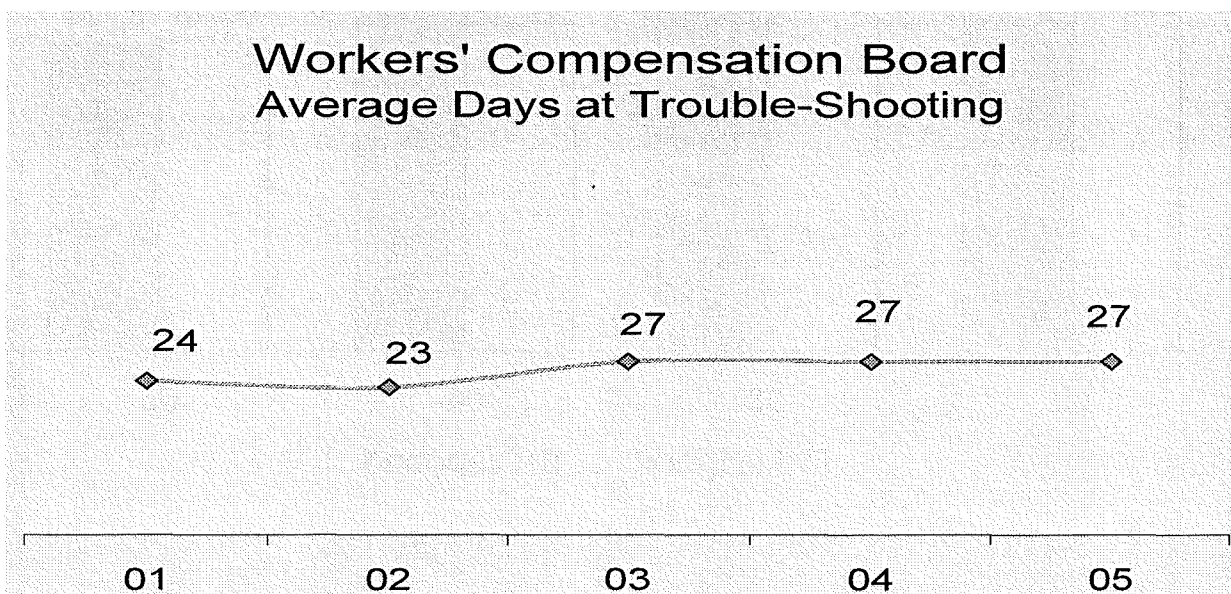
The number of cases resolved at each phase for the years 2004 and 2005 is illustrated in the chart below:



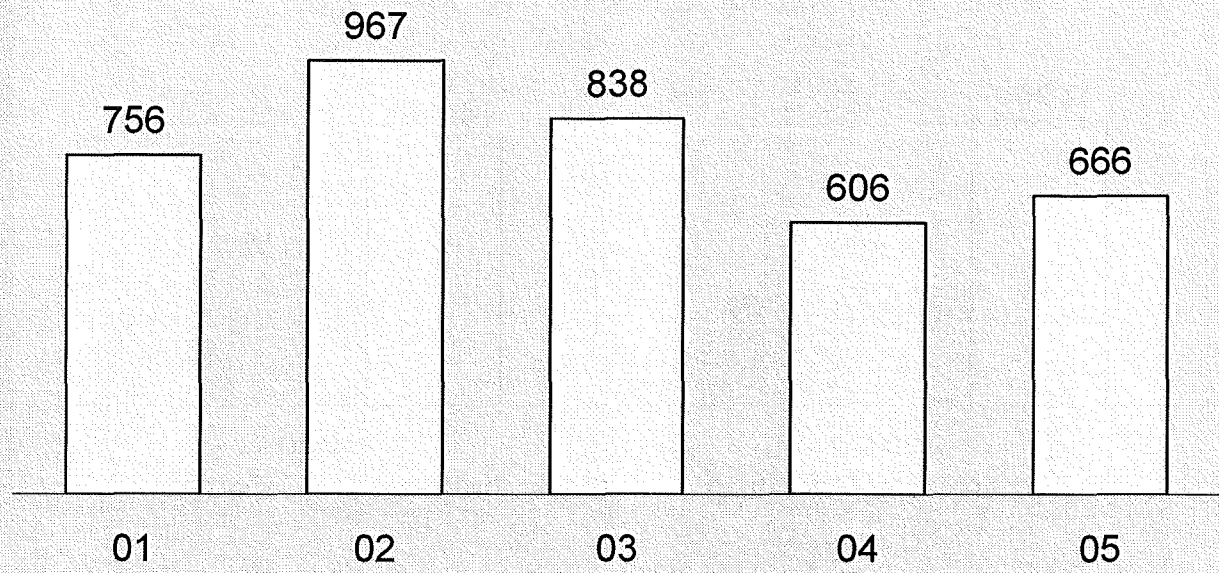
It is worth noting that approximately half of the cases that get to troubleshooting are resolved and half of the remaining cases are resolved at mediation. The remaining cases are resolved at the formal hearing level.

### III. Troubleshooting Statistical Summary

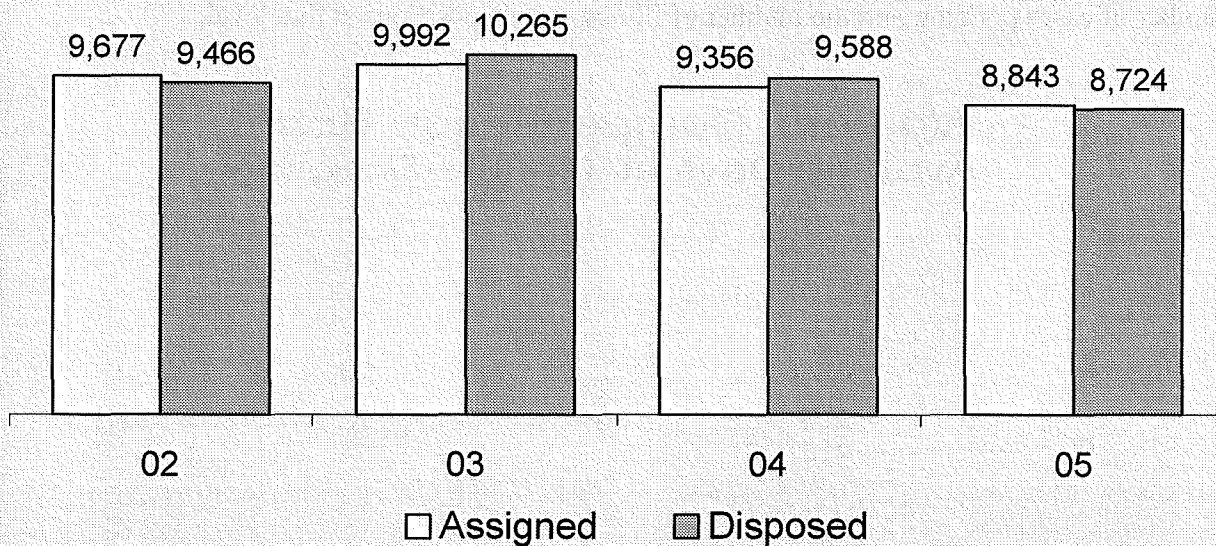
The following charts illustrate the number of days that cases are held at Troubleshooting, the number of cases pending and the number of filings and dispositions at that level.



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

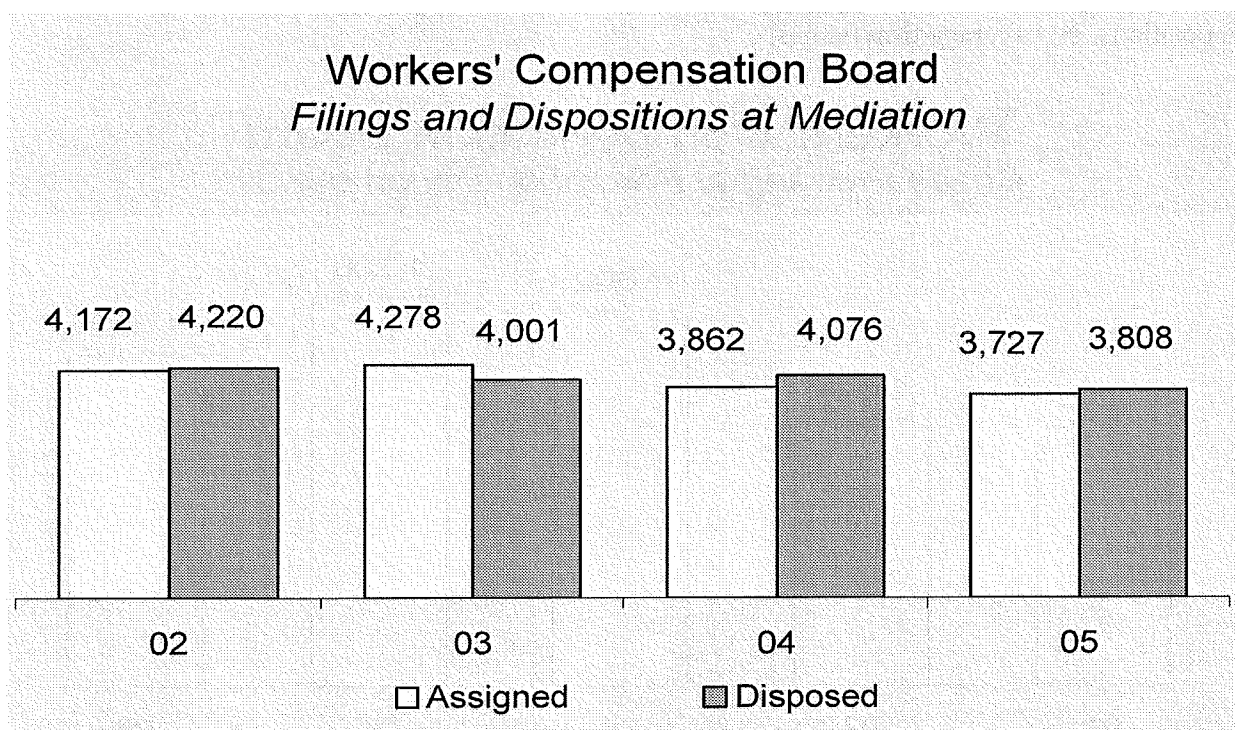
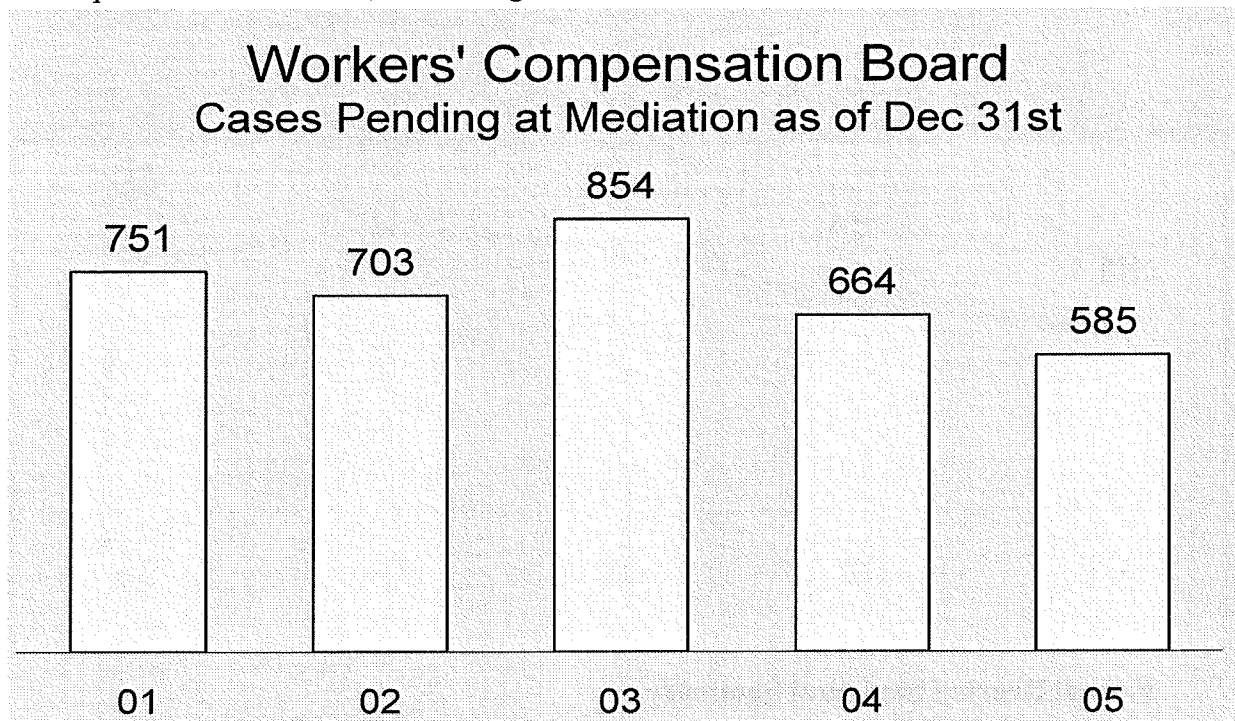


**Workers' Compensation Board**  
*Filings and Dispositions at Trouble-Shooting*

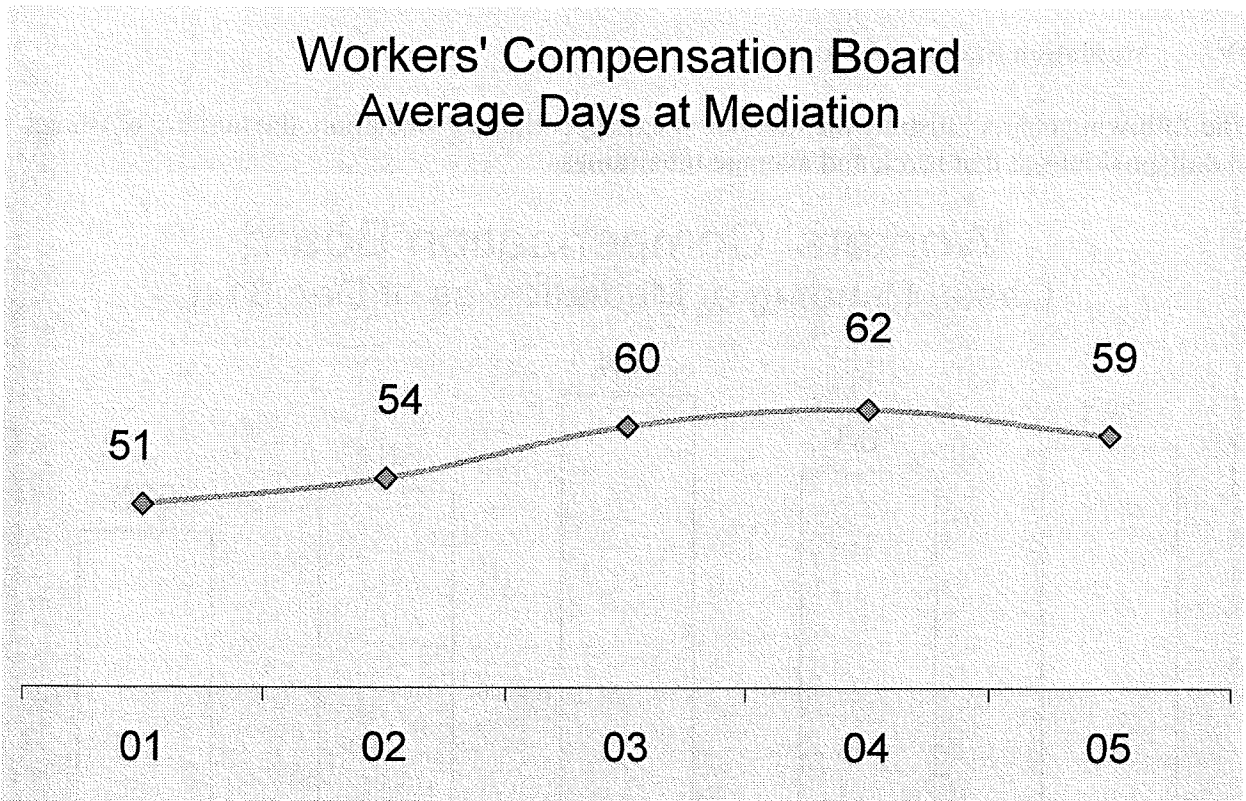


#### IV. Mediation Statistical Summary.

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

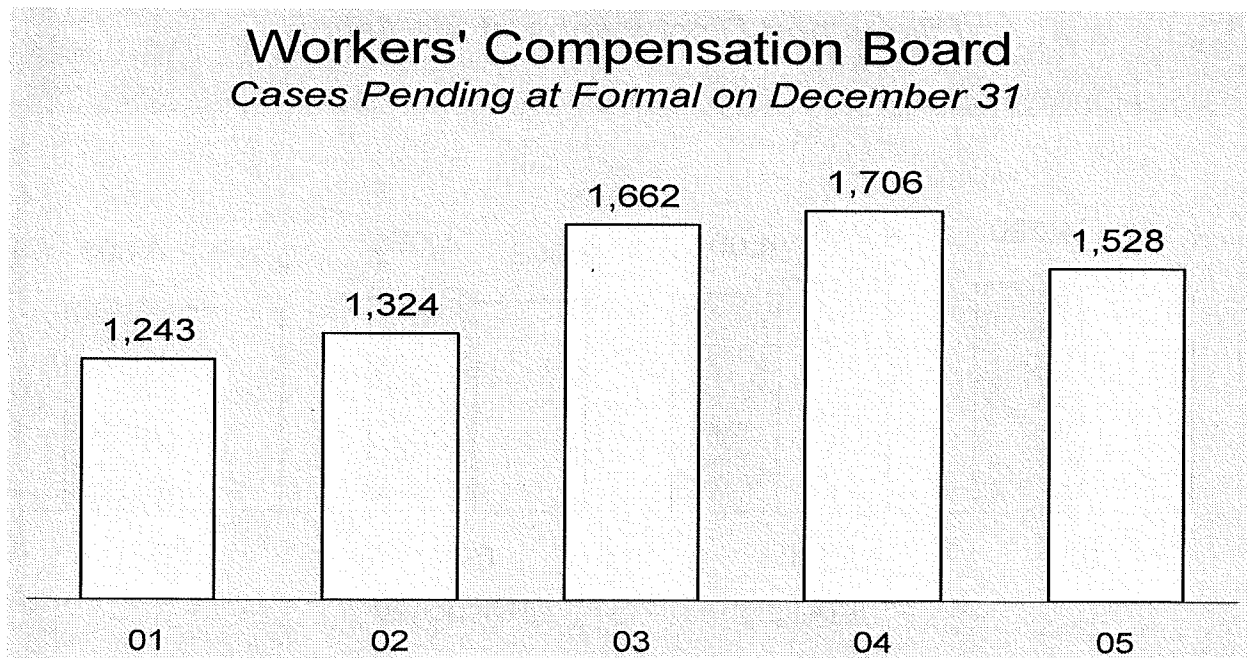




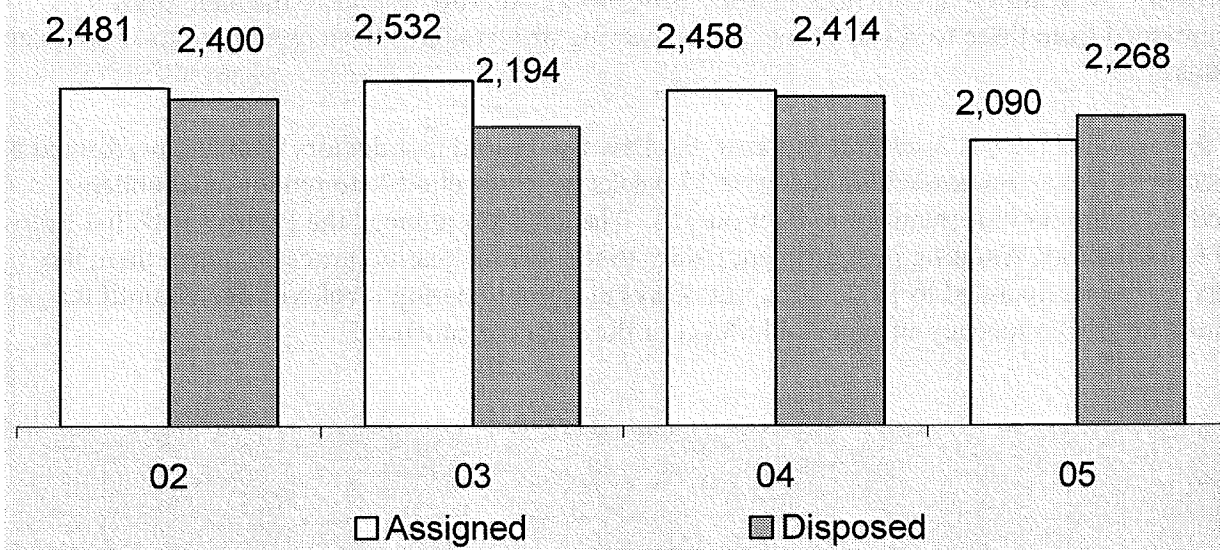


**V. Formal Hearing Statistical Summary.**

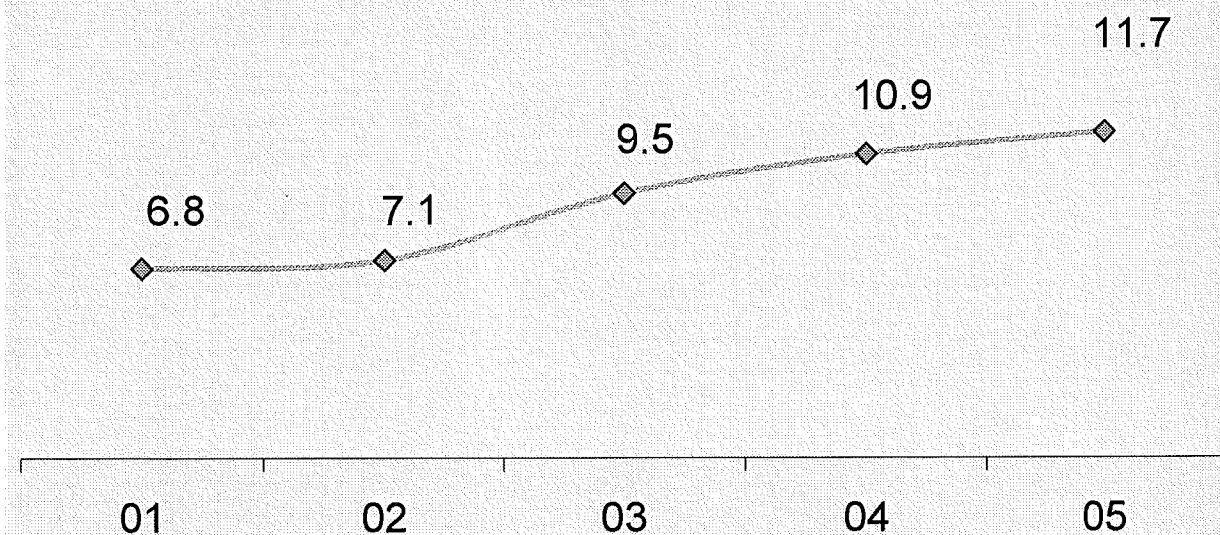
The following charts illustrate the number of cases pending at the formal level, filings and dispositions, and average timeframes.



## 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. The Board currently has a full complement of hearing officers (9). Hearing officer terms have been lengthened from three to seven years. Seven hearing officers have been appointed to seven year terms.

In the case of *Lydon v. Sprinkler Systems*, the Law Court held that doctors who had performed a Section 207 examination within the prior 52 weeks were not eligible to render independent medical examinations pursuant to Section 312. The decision reduced the Board's IME list from 30 to 14 doctors, resulting in significant delays to the formal hearing process. Since then, the lists has been expanded to 19 doctors, but delays at formal hearing level will persist until the number of IMEs reaches an acceptable level or the statute is amended.

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

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

As part of the monitoring program, the Board 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 and cannot be resolved via voluntary consent.

#### **Monitoring**

A key component of the monitoring program is the production of 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 Reports of Injury filings.

To ensure that the Quarterly Compliance Reports would be as accurate as possible, a Pilot Project was undertaken in May 1997. 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 all interested parties know what to expect from Quarterly Compliance Reports. These components were further modified by the Board in 2003 when the Board made the following motion:

On June 17, 2003 the Workers’ Compensation Board of Directors unanimously passed the following motion:

MOVE to implement the NOC Pilot Project to provide for the reporting of the number, timeliness and percent of initial indemnity claims denied (NOCs) in the compliance reports of 2004.

Upon approval of the First Quarter 2004 Quarterly Compliance Report, the Board directed that the number and timeliness of NOCs be reported in the Quarterly Compliance Reports of 2004 and the percent of initial indemnity claims denied be detailed in the Annual Compliance Report. The 2004 Quarterly Compliance Reports were unanimously accepted by the Workers’ Compensation Board. This annual report shows a dramatic improvement in the performance of insurers since the Pilot Project (see Tables 2 and 3). This improvement will help the Board reduce the number of claims that are litigated and result in faster and more accurate payment of lost time benefits.

I. 2004 ANNUAL COMPLIANCE REPORT OVERVIEW.

A. Lost Time First Reports.

The Workers' Compensation Board received 15,575 Lost Time First Reports in 2004. This represents 787 fewer reports than in 2003 and 1,316 fewer than in 2002. 86% (85.70%) were filed within 7 days. 90% (89.91%) were filed within 10 days.

B. Payments of Initial Indemnity Benefit.

85% (85.30%) of initial indemnity benefits were paid within 14 days. The MWCB Benchmark is 80%. The compliance for this metric appears to have leveled off at 85%. Continued focus on poor compliance carriers should see this figure increase in 2005.

C. Memoranda of Payment Filed Within 17 Days.

83% (82.81%) of all Memoranda of Payment were filed within 17 days. The MWCB Benchmark is 75%. The insurance community exceeded this benchmark by nearly eight percent (7.81%).

D. Notices of Controversy.

On June 17, 2003 the Maine Workers' Compensation Board of Directors unanimously passed the following motion:

MOVE to implement the NOC Pilot Project to provide for the reporting of the number, timeliness and percent of initial indemnity claims denied (NOC's) in the compliance reports of 2004.

91.43% of the Initial Indemnity NOCs filed in 2004 were filed within 0-17 days. This marks the first year that the filing distribution of initial indemnity NOCs appears in the Board's Compliance Reports.

Appendix A: Initial Filings Comparison: Appendix A was generated at the request of the Board of Directors on August 24, 2004.

Appendix C: Provides NOC filing timeliness compliance information by insurance groups.

E. Utilization Analysis.

20.53% of all Lost Time First Reports reported NOCs as initial activity.

41.49% of all Claims for Compensation reported NOCs as initial activity.

F. Adjusting Entity Compliance Comparisons.

(1) Initial Indemnity Benefit Payment (See Chart 18 attached.)

Overall Compliance	85%
Standard Insurers	79%
MEMIC	90%
Self-Insured/Self-Admin	90%
Self-Insured/TPA Admin	86%
TPA	74%

(2) MOP Filing (See Chart 19 attached.)

Overall Compliance	83%
Standard Insurers	73%
MEMIC	90%
Self-Insured/Self-Admin	88%
Self-Insured/TPA Admin	85%
TPA	65%

Percentages of MOPs filed with Workers' Compensation Board  
(See Chart 21 attached).

Standard Insurers	22%
MEMIC	35%
Self-Insured/Self-Admin	20%
Self-Insured/TPA Admin	14%
TPA	9%

G. Insurance Group Analysis.

Initial Indemnity Payment – Groups Above and Below Benchmark (See Chart 22 attached).

Above – 50%  
Below – 50%

MOP Filing – Groups Above and Below Benchmark (See Chart 22 attached).

Above – 46%  
Below – 54%

Initial Indemnity Payment – Groups In-State vs. Out-of-State<sup>1</sup> (see Chart 24 attached).

Compliance for In-State Groups – 89%

Compliance for Out-of-State Groups – 73%

## **II. Additional Compliance Report Elements.**

### **A. NOC Filing Distribution.**

The NOC Filing Distribution reports the number and timeliness of initial indemnity NOCs received during 2004.

The Distribution also posts the timely filing compliance of NOCs received during each of the four quarters of 2004. The Distribution also posts an Annual Trend Chart for NOC Filing Compliance starting in 2004.

### **B. The Utilization Analysis.**

The Utilization Analysis posts the number of First Reports, MOPs and NOCs received from the industry and from individual insurers. The Utilization Analysis uses that data to determine the percent of initial indemnity claims denied per the Board's motion of June 17, 2003.

## **III. Corrective Action Plans (CAPs).**

### **A. Current CAPs.**

The following insurance groups have had Corrective Action Plans (CAPs) in place for some period of time. Corrective Action Plans are implemented for insurers and self-insured employers with chronic poor compliance and filing procedures. These plans have improved the performance of many of these carriers.

		<i>Market Share by</i>
		<u>Premium Written</u>
	<u>Insurer Group</u>	
1.	St. Paul Insurance/Travelers	2.75%
2.	CNA Insurance Group	1.01%
3.	Chubb & Son Insurance	0.35%
4.	Ace/ESIS Insurance Group	0.01%
5.	Royal & SunAlliance	4.70%

Elements of the Corrective Action Plans are reviewed and updated each quarter to track compliance changes and ensure that the elements of the Corrective Action Plan are being met.

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

*B. CAPs Terminated for Failure to Comply.*

A Corrective Action Plan was terminated for Atlantic Mutual since that company is in runoff status and no longer administers its own claims. The Corrective Action Plans (CAPs) for the Zurich Insurance Group and Crawford & Company were terminated for failure to meet elements of their CAPs. Complaints for Audit were filed by the Monitoring Division.

*C. CAPs Lifted.*

The Guard Insurance Group had its CAP lifted in 2004 and has since been recognized as a High Compliance Performer.

Compliance information on individual insurance carriers, third-party administrators, and self-administered employers for the four quarters of 2004 is listed on the Board's website:  
[www.maine.gov/wcb/](http://www.maine.gov/wcb/)



**Table 1**

**2004 Quarterly Compliance Reports**

	First Quarter		Second Quarter		Third Quarter		Fourth Quarter	
	7 Days	10 Days	7 Days	10 Days	7 Days	10 Days	7 Days	10 Days
<b>First Reports of Injury Received Within:</b>	86.02%	89.76%	84.97%	89.56%	85.07%	89.81%	86.91%	90.82%
<b>Initial Indemnity Payments Made Within 14 Days</b>	85.35%		85.38%		83.33%		85.58%	
<b>Memoranda of Payment Received Within 17 Days</b>	82.55%		84.22%		80.62%		82.70%	
<b>Notices of Controversy Received Within 17 Days</b>	91.10%		91.56%		92.62%		90.78%	
Static results based upon data received by the deadline for each quarter.								

**Table 2**

**Annual Compliance**

	Pilot Project 1997		1999	2000	2001	2002	2003	2004
<b>First Reports of Injury Received Within 7 Days</b>	36.74%		69.20%	78.33%	79.71%	81.73%	82.43%	85.70%
<b>Initial Indemnity Payments Made Within 14 Days</b>	59.39%		79.35%	80.26%	82.79%	85.27%	85.56%	85.30%
<b>Memoranda of Payment Received Within 17 Days</b>	56.78%		75.14%	74.62%	77.08%	80.78%	81.87%	82.81%
<b>Notices of Controversy Received Within 17 Days</b>								91.43%
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	Since 2003
<b>First Reports of Injury Received Within 7 Days</b>	133.26%		23.84%	9.41%	7.51%	4.86%	3.97%
<b>Initial Indemnity Payments Made Within 14 Days</b>	43.63%		7.50%	6.28%	3.03%	0.04%	-0.30%
<b>Memoranda of Payment Received Within 17 Days</b>	45.84%		10.21%	10.98%	7.43%	2.51%	1.15%

## FIRST REPORTS OF OCCUPATIONAL INJURY OR DISEASE

Chart 1

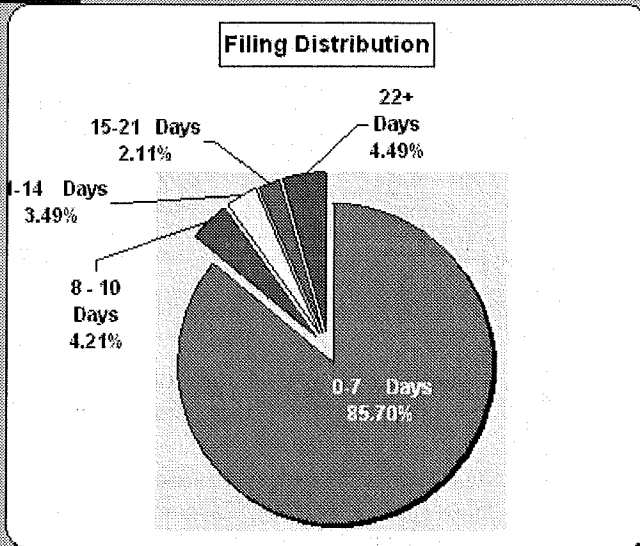


Table 4

### First Reports Received Within:

0-7 Days	13,348	85.70%
8-10 Days	655	4.21%
11-14 Days	544	3.49%
15-21 Days	328	2.11%
22+ Days	700	4.49%
<b>Total</b>	<b>15,575</b>	<b>100%</b>

Chart 2

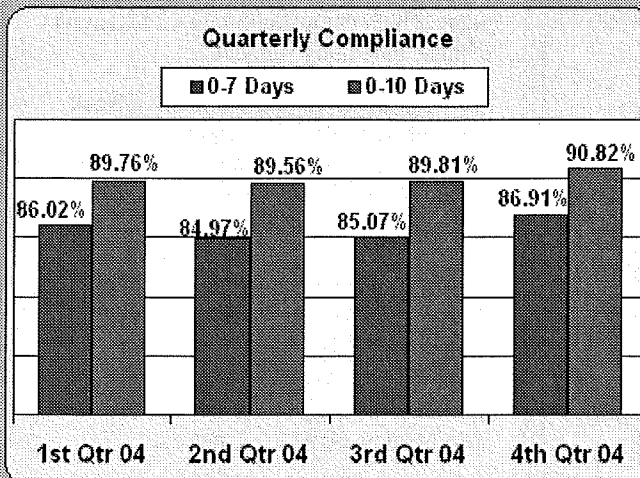
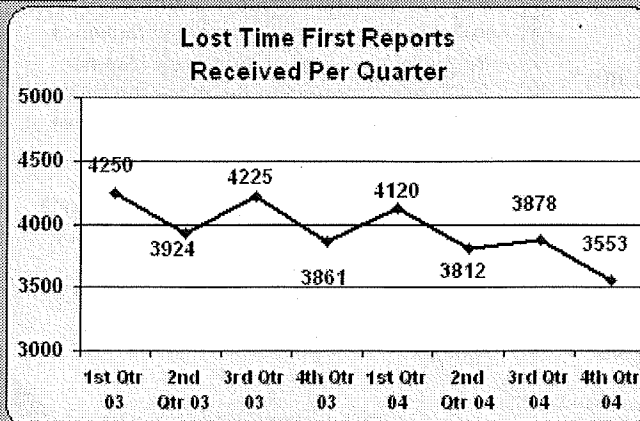


Chart 3



### Improvement in Lost Time First Report Filing Compliance Continues

In 2004, 15,575 Lost Time First Reports were filed with the MWCB, 787 fewer First Reports of Injury (FROIs) than 2003 and 1,316 fewer than 2002. The compliance rate for timely filing rose more than three percent to 85.70% (2003 compliance was 82.43%).

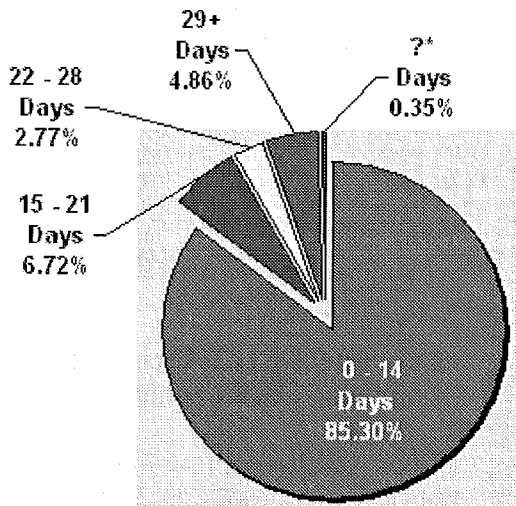
This marks the fourth year in a row that the number of Lost Time First Reports received at the Board declined.

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.

## PAYMENTS OF INITIAL INDEMNITY BENEFITS

**Chart 4**



\* - indicates compliance could not be measured

**Table 5**

**Initial Payments Made Within:**

0 - 14 Days	3,846	85.30%
15 - 21 Days	303	6.72%
22 - 28 Days	125	2.77%
29+ Days	219	4.86%
? Days	16	0.35%
<b>Total</b>	<b>4,509</b>	<b>100%</b>

### Maine Continues with High Compliance in Initial Indemnity Payments

As Chart 6 indicates, compliance for the Initial Indemnity Benefit Payments in 2004 was just slightly lower than 2003.

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

Although direct comparisons are difficult because of statutory differences, Maine's compliance for Initial Indemnity Benefits Payments compared to other compliance-measuring states is as follows:

	2002	2003	2004
<b>Maine</b>	<b>85%</b>	<b>86%</b>	<b>85%</b>
Florida	92%	91%	85%
Wisconsin	not avail	84%	84%
Minnesota*	85%	86%	86%
New Mexico	60%	not avail	

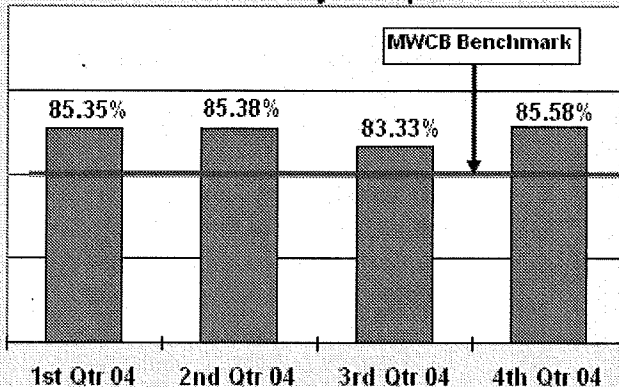
\* Indicates "Prompt First Action" which includes measurement of Initial Payment or Initial Denial.

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 near 6% 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.

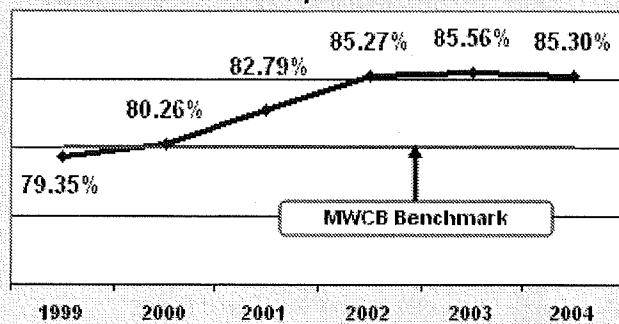
**Chart 5**

### 2004 Quarterly Compliance



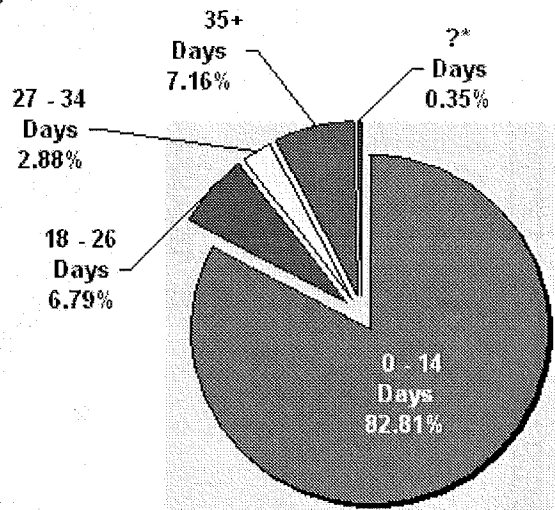
**Chart 6**

### Annual Compliance Trends



## MEMORANDA OF PAYMENT

**Chart 7**



\* Indicates compliance could not be measured

**Table 6**

**Initial Filing Made Within:**

0 - 17 Days	3,734	82.81%
18 - 26 Days	306	6.79%
27 - 34 Days	130	2.88%
35+ Days	323	7.16%
? Days	16	0.35%
<b>Total</b>	<b>4,509</b>	<b>100.00%</b>

### Form Filing Still Improving

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.

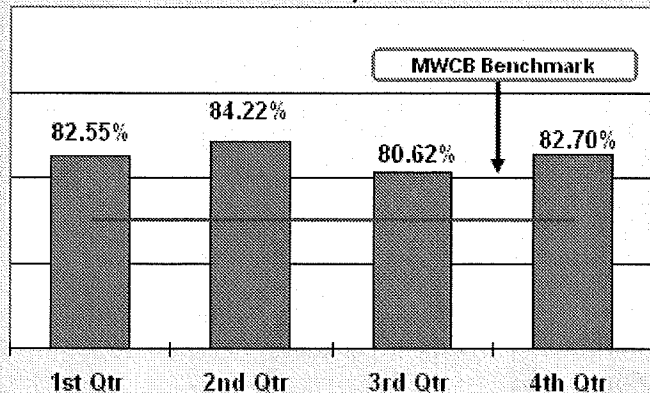
The MOP Filing performance indicator is important to the administration of Maine claims because it allows the Monitoring Division to assess the compliance of individual insurers. It also is used as an indicator for overall forms filing compliance.

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.

Continued improvement for this measurement is an indicator that the Board's Corrective Action Plans are working.

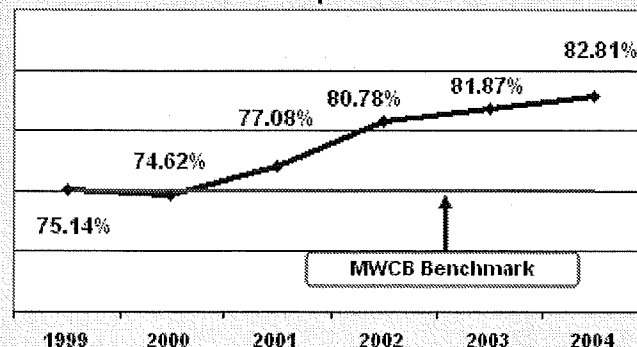
**Chart 8**

### 2004 Compliance



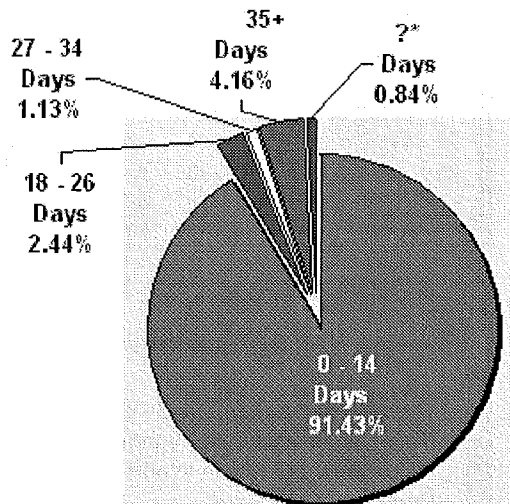
**Chart 9**

### Annual Compliance Trends



## NOTICES OF CONTROVERSY

**Chart 10**



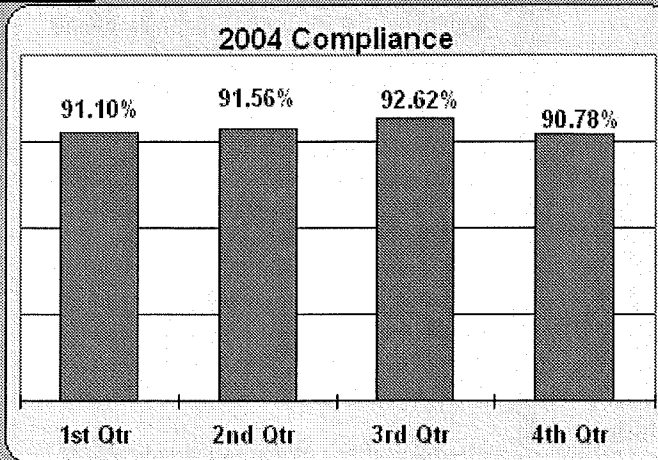
\* Indicates compliance could not be measured

**Table 7**

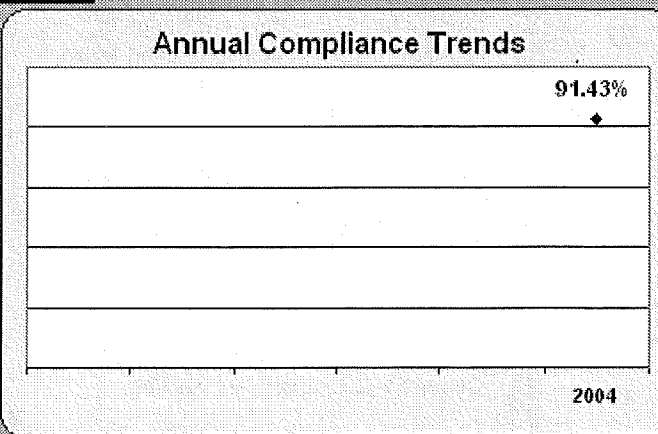
**Initial Indemnity NOCs Within:**

0 - 17	Days	2,923	91.43%
18 - 26	Days	78	2.44%
27 - 34	Days	36	1.13%
35+	Days	133	4.16%
?	Days	27	0.84%
Total		3,197	100.00%

**Chart 11**



**Chart 12**



### NOC Filing Compliance

Pursuant to a Board Motion on June 17th, 2003, the Monitoring Division initiated a Pilot Project to create computer edits and a report format **"to provide for the reporting of the number, timeliness and percent of initial indemnity claims denied (NOCs) in the compliance reports of 2004."**

With input and feedback from the insurance community, the Monitoring Division began reporting the number and timeliness of Notices of Controversy in the Quarterly Compliance Reports of 2004.

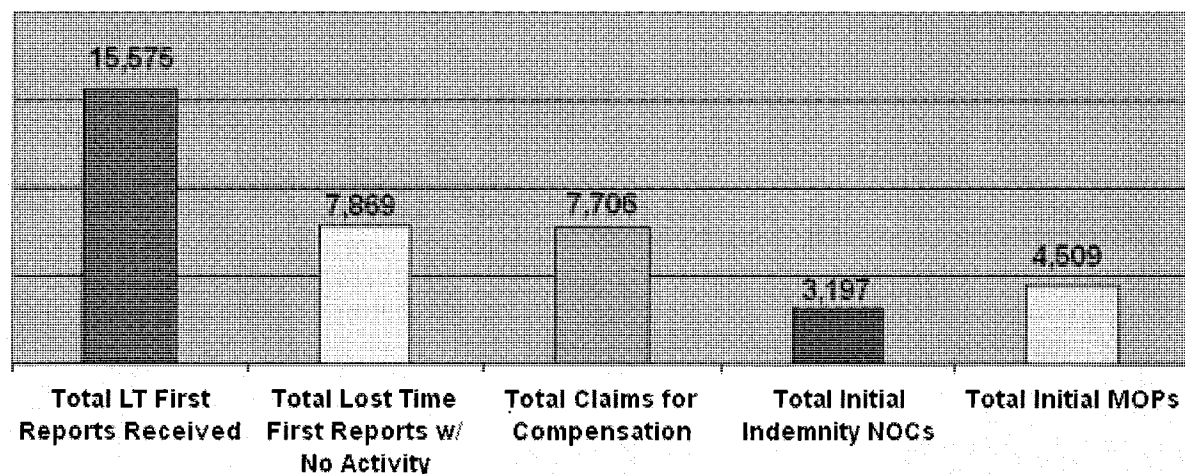
The timely filing of Initial Indemnity NOCs was over 90% for all four quarters of 2004.

When viewed as an aggregate indicator, the compliance rate for the timely filing of Initial Indemnity Notices of Controversy was 6.13% higher (91.43%) than was the timely payment of the Initial Indemnity Benefits (85.30%) and was 8.62% higher than the filing of the Initial MOP (82.81%).



## UTILIZATION ANALYSIS

**Chart 13**



% Total LT First Reports Denied  
 $\frac{\text{Total Initial Indemnity NOCs}}{\text{Total LT First Reports}}$

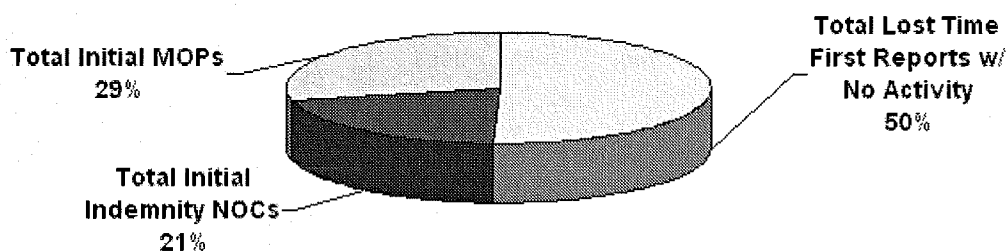
**20.53%**

% Total Claims for Compensation Denied  
 $\frac{\text{Total Initial Indemnity NOCs}}{\text{Total Claims for Compensation}}$

**41.49%**

**Chart 14**

### Initial Activity Analysis - All Lost Time First Reports



The analysis and charts above were created in response to feedback and input that was generated in three NOC Pilot Project Partner Meetings in 2003 and early 2004 and two subsequent meetings with the Northern and Southern Employer/Insurer Maine Advisory Groups in 2004. The bar charts and pie graphs represent two different perspectives in fulfilling the Board's motion of June 17th, 2003:

MOVE to implement the NOC Pilot Project to provide for the reporting of the number, timeliness and percent of initial indemnity claims denied (NOC's) in the compliance reports of 2004.

As was indicated on the previous page, the Utilization Analysis fulfills the second portion of the Board's motion by reporting the percent of initial indemnity claims denied (NOCs). This analysis also fulfills a portion of Section 359(3) of the Maine Workers' Compensation Act by analyzing the "utilization" of the system by the industry as a whole and by insurance group.

## COMPLIANCE TRENDS ANALYSIS

Chart 15

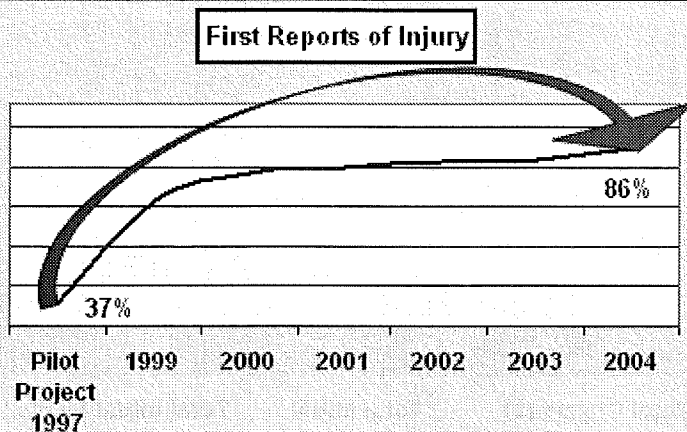


Chart 16

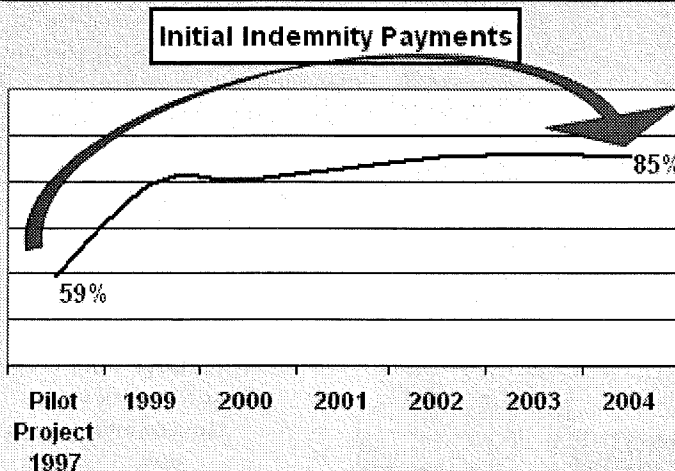
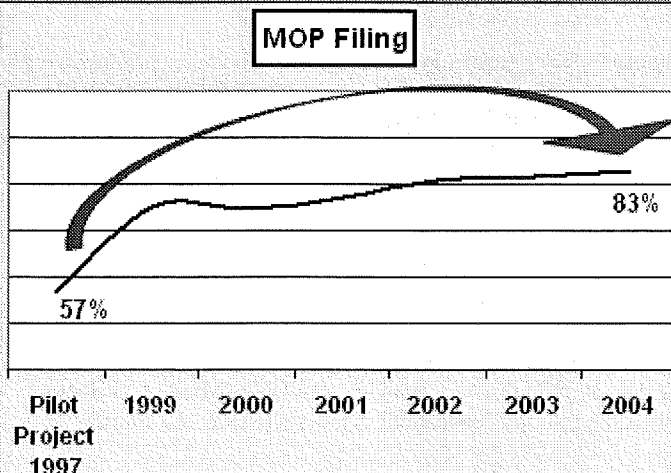


Chart 17



### Compliance Trends on all Performance Indicators are UP!

Before adding NOC compliance in 2004, the Maine Workers' Compensation Board measured industry compliance using three key performance indicators:

- 1) Filing of First Reports of Injury
- 2) Payments of Initial Indemnity Benefits
- 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 1999-2004 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.

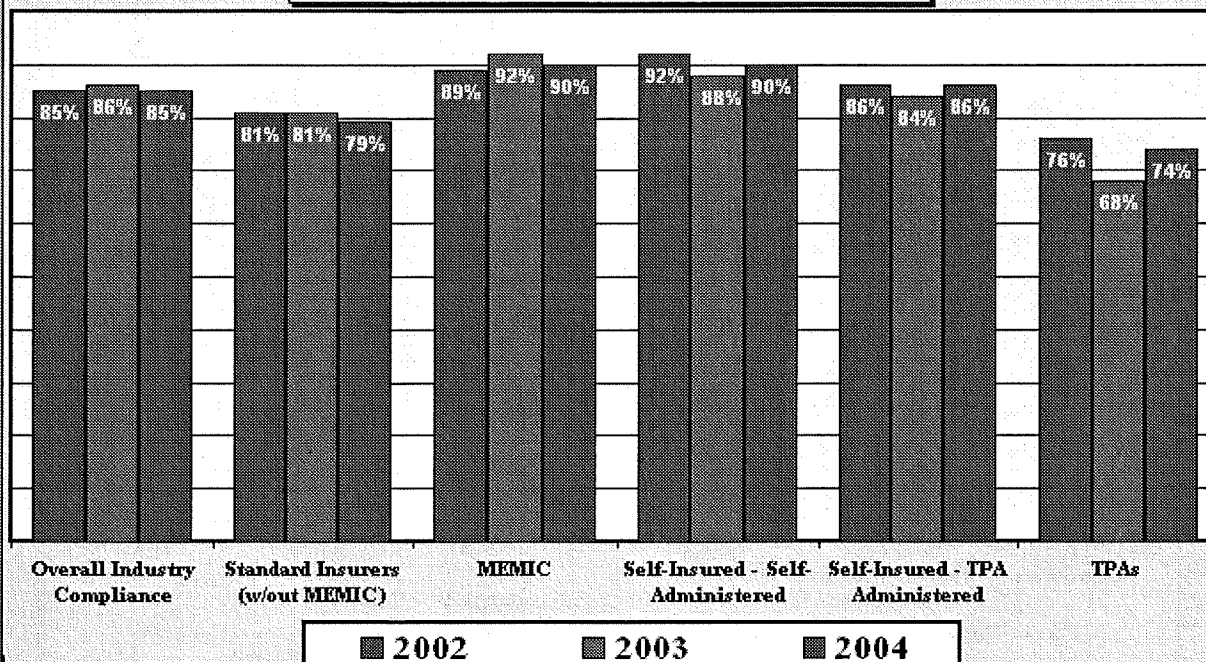
Other states that employ more performance indicators than Maine include Florida, Wisconsin, Texas and Minnesota.

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

- There are the customary or "standard" insurance companies like Acadia.
- There is a Legislature created insurance company, Maine Employers' Mutual (MEMIC).
- Employers like Cianbro 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 Sedgwick to adjust their claims (TPA administered).
- Some standard insurers outsource their adjusting work to TPAs as well.

Chart 18

### Initial Indemnity Payment Compliance 2002-2004



### 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 85% which is a minimal decrease over last year's numbers. The continued high compliance 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.

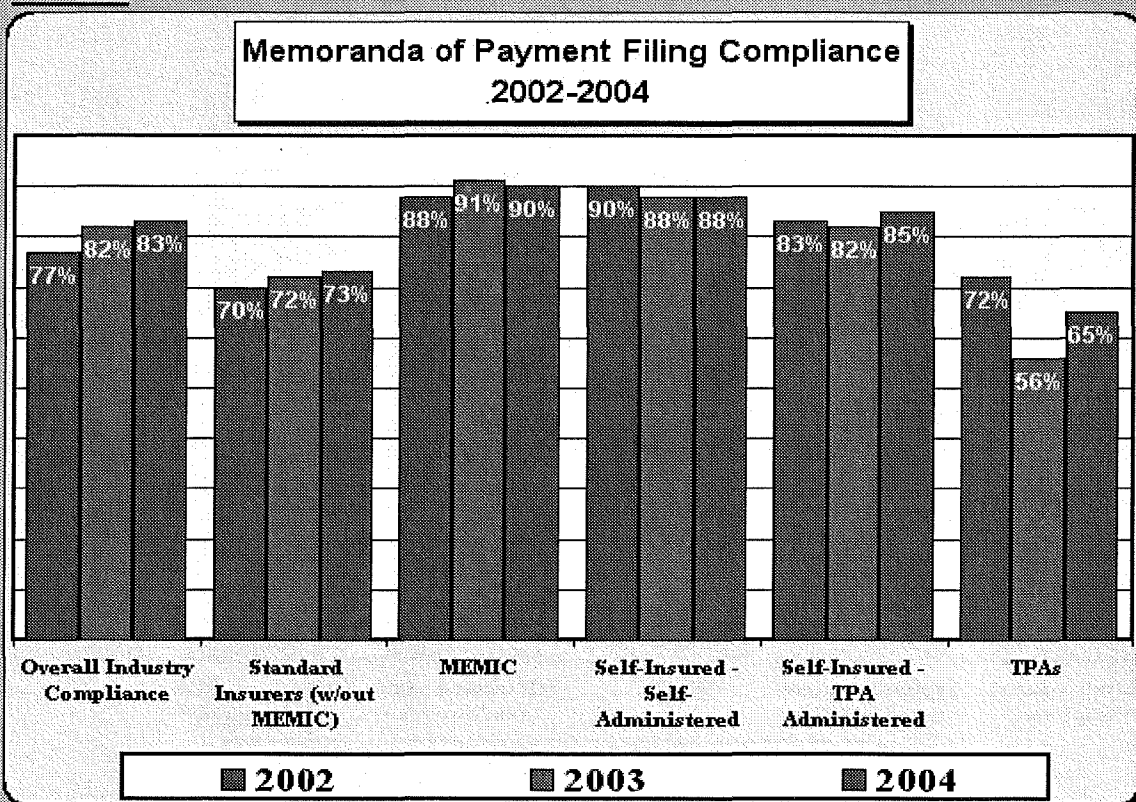
Third Party Administrators continue to display the poorest compliance of all claims administrator types. The average TPA performance is still nearly 6% below the MWCB Benchmark. As a result of this continued poor compliance, the Monitoring Division implemented Corrective Action Plans and filed Complaints for Audit against several TPAs in 2004. Other TPAs (ESIS, Crawford and Company and Gates McDonald) were referred to the Bureau of Insurance as a result of the outcomes of these audits.



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 research has shown 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 19



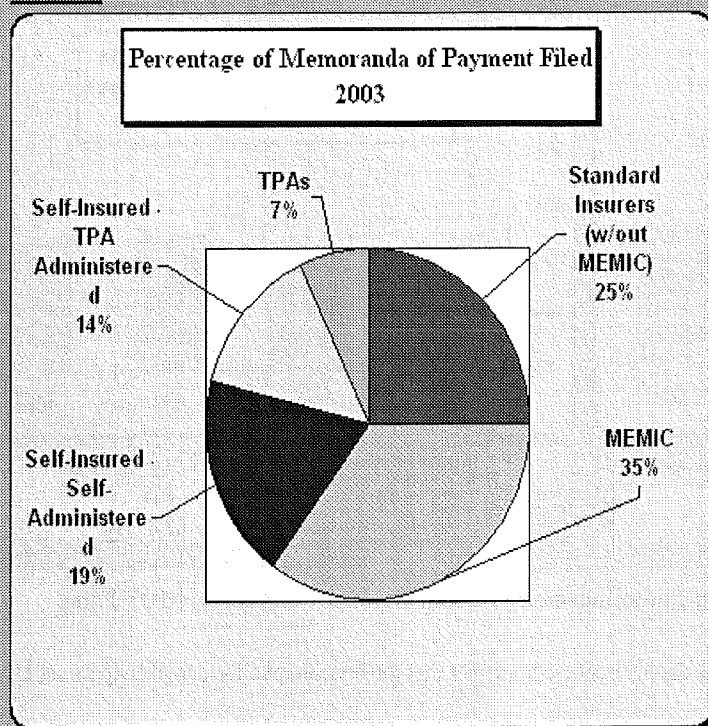
#### Filing of initial MOP Compliance for Different Types of Workers' Compensation Claims by Entities or Adjusters

The overall compliance for the filing of the Initial Indemnity Memoranda of Payment rose nearly six percent (5.73%) in 2004 over the previous 3 years. Improvements were seen mostly among the TPAs. Much of this can be attributed to the impact of MWCB Audit Reports and Corrective Action Plans (CAPs). Many of the TPAs were referred to the Bureau of Insurance.

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 20



### Percentage of MOPs Filed by Entity 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.

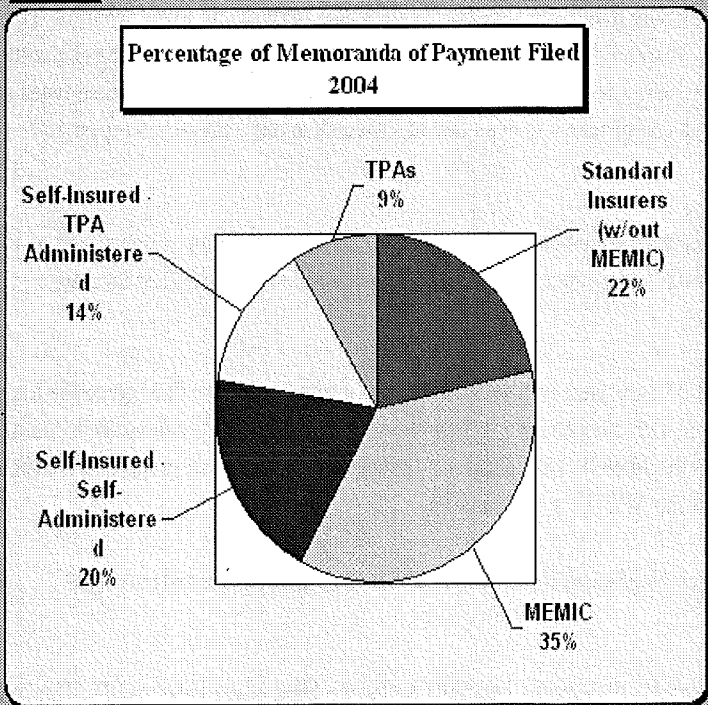
MEMIC filed about the same percentage of MOPs (35%) as in 2003.

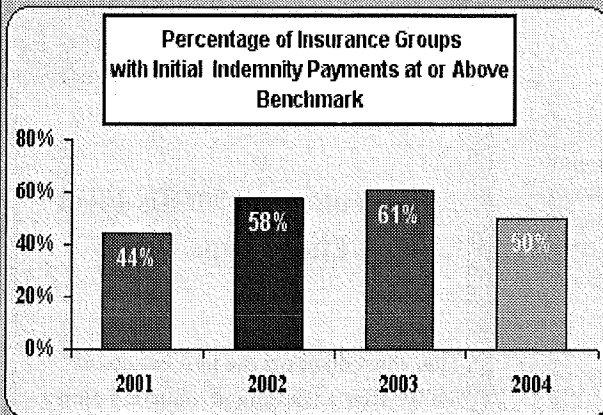
Standard insurers issued fewer MOPs in Maine by three percent with a reduction of 8% since 2002.

Self-insureds (Self Administered and TPA Administered) represent a little more than a third of the MOPs filed.

Meanwhile, TPAs administering claims under contract for other carriers increased their percentage of total Initial MOP filings by almost 2%, from 7% in 2003 to 9% in 2004. Many of these types of TPAs have chronically displayed some of the lowest compliance in the industry.

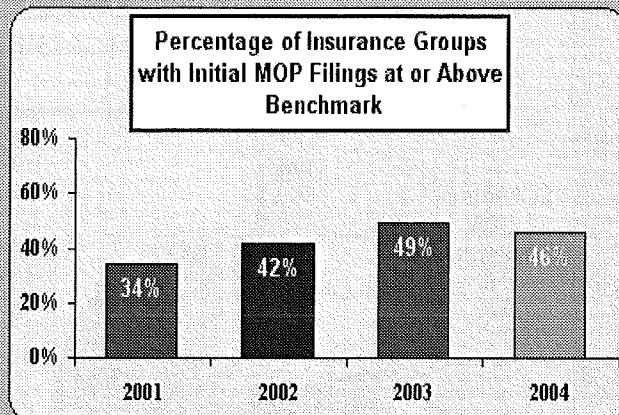
Chart 21



**Chart 22**

**Initial Indemnity Payments made within 0-14 days.**

**MWCB Benchmark = 80%**  
**Overall Compliance = 85.30%**

**Chart 23**

**Initial MOP Filing made within 0-17 days.**

**MWCB Benchmark = 75%**  
**Overall Compliance = 82.81%**

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

As the charts on pages 8 and 9 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 54 insurance groups filed MOPs with the MWCB in 2004. This number of insurance groups is down from 63 to 54 in this year's report. It is an indication of the consolidation that the industry is experiencing. Fewer and fewer insurers are writing workers' compensation policies in Maine. A trend that has caused concern is the practice of larger insurer's writing more "large deductible" policies in Maine and then contracting the administration of the claims to TPAs. As these types of TPAs have entered the Maine market their overall compliance has been low as indicated in this compliance report and Board Audits.

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 (Appendix B) indicates, most insurance groups filed only a small number of MOPs.

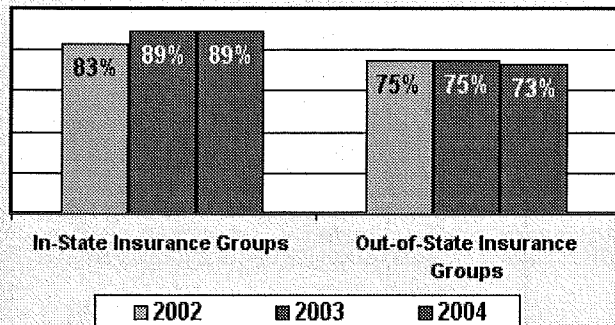
The majority of initial indemnity payments and MOPs are filed by a small number of insurance groups that generally have high compliance. The data from those groups with high compliance made up the majority of the MOPs measured. As a result, the overall industry compliance was above the MWCB's benchmarks. However, the insurance group charts indicate less than half of the insurance groups met both of the MWCB's benchmarks.

In 2004, 27 of 54 insurance groups (50%) that filed MOPs met the benchmarks for the payment of initial indemnity benefits. This is the lowest since 2001.

In 2004, 25 of 54 insurance groups (46%) that filed MOPs met the benchmarks for the filing of the initial MOP. This trend should show improvement in 2005 as the Monitoring Division has engaged a number of poor compliance carriers in training in preparation for Bureau of Insurance "Market Conduct" Audits.

Chart 24

### Initial Indemnity Payments Compliance In-State vs. Out-of-State Insurance Groups 2002-2004



### 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 22% 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 26 indicates that out-of-state insurance groups filed 22% 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.

As a result of chronic poor compliance, the Monitoring Division filed Complaints for Audit against two out-of-state Insurance Groups in 2004, Zurich North America and Crawford and Company.

In addition, random on-site audits of some out-of-state Insurance Groups resulted in referrals to the Bureau of Insurance.

Chart 25

### Initial Memoranda of Payment Compliance In-State vs. Out-of-State Insurance Groups 2002-2004

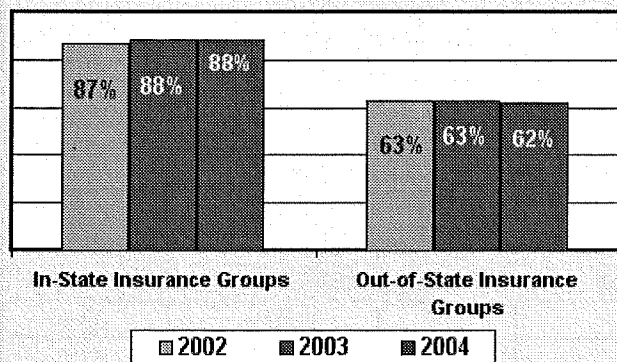
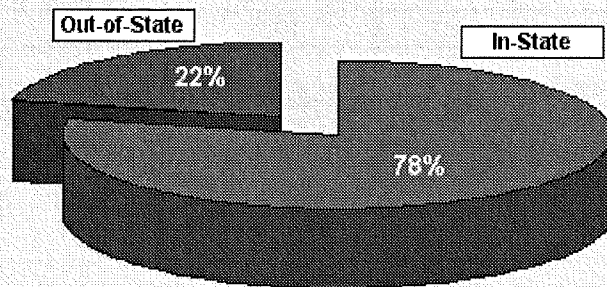


Chart 26

### Percentage of Memoranda of Payment filed by In-State vs. Out-of-State Insurance Groups 2004



## High Compliance Performers

**2004**

Volume of MOPs	Insurance Groups/TPAs			
	Name of Group/TPA	# of MOPs Filed	Initial Payment Compliance	MOP Filing Compliance
301+	Maine Employers' Mutual Insurance Co.	1,636	90%	90%
	Sedgwick Claims Management	311	85%	82%
101-300	Dunlap Claims Management (HRH Claims Management Service)	237	87%	89%
	Acadia	132	93%	98%
	Synernet	105	90%	87%
51-100	Peerless	81	93%	96%
	Cannon Cochran Management Services	80	85%	86%
	Guard Group	55	91%	91%
10-50	Hanover Insurance	35	97%	97%
	American Interstate	10	100%	100%

Volume of MOPs	Self-Administered Employers			
	Name of Employer	# of MOPs Filed	Initial Payment Compliance	MOP Filing Compliance
101+	Maine Municipal Association	231	80%	83%
	Maine School Management	117	99%	97%
	State of Maine	117	93%	77%
51-100	Hannaford Brothers	96	91%	92%
	Morse, Payson & Noyes (TD Banknorth)	77	95%	92%
	Maine Automobile Dealers	55	96%	100%
10 - 50	Bath Iron Works	47	100%	94%
	Maine Motor Transport	37	100%	100%
	Mead Westvaco (Newpage)	15	100%	100%

### MWCB Benchmarks

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

### Qualifications

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

## **Audit**

The Board 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; determining whether claims are unreasonably contested; and ensuring that all reporting requirements of the Workers' Compensation Board are met.

Since the year 2000, seventy-eight (78) entities have been reviewed by the Audit Division. As a result of these reviews, sixty (60) audit reports have been issued and fifty-three (53) entities have entered into voluntary consent decrees with the Board. In addition to the amounts paid to employees, dependents and service providers for compensation, interest, or other unpaid obligations, over \$400,000 in penalties have been paid (see attached spreadsheet). Audit reports and the corresponding consent decrees are available on the Board's website:

[www.Maine.gov/wcb/](http://www.Maine.gov/wcb/) As of the date of this report, there are an additional fifteen (15) reviews pending to complete the Board's seven (7) year audit cycle.

In 2003, 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 (see Section 12). Additionally, Arch Insurance Group, Atlantic Mutual Insurance Company, Cambridge Integrated Services Group, Crawford & Company, ESIS, Gates McDonald, Georgia Pacific, Hartford Insurance, Royal & SunAlliance, The St. Paul Companies, and Zurich North America have agreed to Consent Decrees for engaging in a pattern of questionable claims-handling techniques under Section 359(2). The Board filed Certificates of Findings pursuant to this section with the Maine Bureau of Insurance for further action.

The Audit Division has 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 and/or §360(2) is warranted. Since the form was implemented, one hundred forty-one (141) Complaints for Audit have been received by the Audit Division. Of these complaints, thirteen (13) are under investigation and sixteen (16) have been included as part of an audit file. The remaining complaints were successfully resolved or dismissed. As a result of these investigations, over \$128,000 in unpaid obligations and over \$86,000 in penalties have been paid.



NAME	REPORT DATE	LIABILITIES ASSESSED	EE	State	Referrals to BOI 359 (2)				TOTAL PENALTIES	CONSENT DECREE
		265 (3)	324 (2)	324 (2)		360 (1)(A)	360 (1)(B)	360 (2)		
ACADIA INSURANCE	3/3/2005	\$1,300.00					\$1,650.00		\$2,950.00	YES
AMERICAN ALTERNATIVE	11/19/2004					\$100.00			\$100.00	YES
ARCH INSURANCE GROUP	8/16/2005	\$5,300.00			\$10,000.00		\$3,400.00		\$18,700.00	YES
ARROW HART	4/4/2000						\$800.00		\$800.00	YES
ATLANTIC MUTUAL	2/29/2003	\$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
CAMBRIDGE INTEGRATED SERVICES GROUP, INC.	5/31/2005	\$1,500.00			\$10,000.00	\$700.00	\$4,300.00		\$16,500.00	YES
CRUBB	8/15/2000	\$3,000.00				\$2,500.00	\$400.00		\$5,900.00	YES
CHURCH MUTUAL INSURANCE COMPANY	5/26/2005	\$3,000.00					\$700.00		\$3,700.00	YES
CIANBRO	5/11/2000									NO
CITY OF BANGOR	6/28/2000									NO
CLARENDON	1/1/2001	\$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
CRAWFORD & COMPANY	6/13/2005	\$17,560.00	\$2,600.00	\$7,800.00	\$10,000.00	\$300.00	\$11,300.00	\$10,000.00	\$61,000.00	YES
CRUM	2/28/2002						\$1,000.00		\$1,000.00	YES
DUNLAP	9/18/2003					\$1,400.00			\$1,400.00	YES
ESIS	2/14/2005	\$15,550.00			\$10,000.00	\$700.00	\$3,000.00	\$10,000.00	\$39,250.00	YES
FAIRFIELD	4/24/2002	\$2,050.00				\$200.00	\$625.00		\$2,875.00	YES
FILENES	3/31/2002					\$300.00	\$200.00		\$500.00	YES
FIREMAN'S FUND INSURANCE COMPANY	6/10/2005						\$900.00		\$900.00	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
GEORGIA PACIFIC	11/30/2004	\$3,000.00			\$10,000.00	\$2,500.00	\$800.00		\$16,300.00	YES
GREAT AMERICAN	2/2/2005					\$500.00	\$100.00		\$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
HARTFORD	12/8/2004	\$3,000.00			\$5,000.00		\$3,000.00		\$11,000.00	YES
LIBERTY MUTUAL	11/16/1999						\$3,500.00		\$3,500.00	YES
LUMBER	2/16/1999	\$6,750.00					\$17,300.00		\$24,050.00	YES
MAINE ADJUSTMENT SERVICE	12/18/2003	\$6,000.00				\$925.00	\$1,025.00		\$7,950.00	YES
MAINE AUTOMOBILE DEALERS ASSOCIATION	4/7/2005	\$6,200.00					\$800.00		\$7,000.00	YES
MAINE MOTOR TRANSPORT ASSOCIATION	6/18/2004					\$50.00	\$475.00		\$525.00	YES
MAINE MUNICIPAL ASSOCIATION	6/26/2001	\$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 PATSON 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
ROYAL & SUBALLIANCE	11/30/2004	\$360.00	\$100.00	\$300.00	\$7,500.00	\$1,600.00	\$4,600.00		\$14,400.00	YES
RSKCO	5/11/2001						\$600.00		\$600.00	YES
RYDER	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	1/5/2001									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	\$1,700.00				\$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
ZURICH NORTH AMERICA	6/28/2005	\$6,050.00			\$10,000.00	\$200.00	\$5,100.00		\$24,350.00	YES
		\$135,500.00	\$6,950.00	\$13,725.00	\$84,400.00	\$21,225.00	\$123,725.00	\$28,000.00	\$408,625.00	

## Enforcement

The Board's Audit Division and Abuse Investigation Unit handle 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 Worker Advocate Program. Accordingly, the Board placed "state of the art" computers in each Advocate office and provided the Worker Advocate Program with a case management software system that permitted scheduling, docketing, reporting and updating of information on all of the Advocates' pending cases. This system gave the worker Advocates and staff instant access to case materials at their desktop. The Advocate Program is presently conducting a cost-benefit analysis of the Program's case management software to determine whether other less expensive and more efficient means exist to aid the Program in managing its cases.

### ***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 injured worker is assigned an Advocate, the Advocate and staff begin the process of gathering employment data and medical information about the injured worker in preparation for mediation. The mediation process is a statutorily 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 injured worker.

If the worker's claim is not resolved at mediation, the Advocate will file petitions and the case ultimately proceeds to a formal hearing. The Advocates provide legal representation to injured workers and litigate disputed claims through the mediation and formal hearing processes, including compiling medical reports, preparing the worker for hearing, taking of direct and cross-examination testimony, and filing of position papers at the conclusion of the testimony. The Advocates also, when necessary, attend depositions of medical providers, private investigators and labor market experts. 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. Additionally, an Advocate may choose not to represent a worker 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 of the Workers' Compensation law. An Advocate, after a thorough investigation, must request, in writing, to the Senior Staff Attorney permission to withdraw from a case. The Senior Staff Attorney must approve the request in writing. Finally, the employee has the right to appeal the Advocate's decision to withdraw to the Board's Executive Director.

Unfortunately, Chapter 410 has not significantly reduced the Advocates' caseload. Rather, the Worker Advocate Program has seen approximately a 1% reduction in the Advocates' caseload. Further study of this issue is ongoing and the Executive Director and the Senior Staff Attorney are actively working to reduce the size of the pending caseloads. The Board has been apprised of this issue and the recommended solutions.

### **III. Workload.**

Injured workers have flocked to the Worker Advocate Program in significant numbers. The Portland and Augusta regional offices account for **64%** of all open files with the remaining **36%** distributed among the other three regional offices. Geographically, the number of workers seeking assistance is generally evenly distributed with the Lewiston and Portland offices handling approximately **56%** of all cases.

As of October 31, 2005, the Advocate program has **1,959** open files. In the past year, Advocates represented injured workers in **1,883** mediations and **461** formal hearings. From December 1997 through June 2004, Advocates have represented injured workers in over **16,566** mediations and over **5,535** 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 **38%** of formal hearings. These numbers are indicative of the popularity and need for the program. However, these numbers place a huge burden on the Advocates and their staff.

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

Adequate support staff has been a problem for the Worker Advocate Program since inception of the program. The enabling legislation provided for only two support staff positions statewide. The Board added four more positions before the Advocates were placed in the respective regional offices. However, the huge caseload, particularly in the southern part of the state, made the delivery of legal services very difficult in those areas. 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. However, given the shift in the geographical areas for Hearing Officer assignments, combined with other regional factors, the Bangor and Augusta Advocate offices have continued to see a surge in the number of injured workers seeking the assistance of Advocates.

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 an additional \$300,000 in funding for the Advocate program, effective September 2001 and \$200,000 effective July 2002. The Board has 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 stated that the additional funding is only temporary and is not a long-term solution to the Program's staffing and funding needs.

The staffing issue not only affects the morale of the worker Advocates and their staff, it also directly impacts the quality and quantity of the services that the program can deliver to injured workers. Without adequate support staff and a sufficient number of Advocates to meet the representational needs of the public, the Advocates cannot be as efficient or as effective in their representation of injured workers. Surely, this is not what the Legislature intended when it created the Worker Advocate Program. The Worker Advocate Program is, however, very fortunate to have a dedicated group of Advocates and support staffs who take their jobs of serving the public very seriously. The future efficiency and efficacy of the Advocate Program is tied directly to the adequate funding and staffing issues.

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

The Worker Advocate Program has been highly successful. The Advocates represent injured workers in an efficient, 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. The Worker Advocate Program, which was implemented by the Legislature to address the Workers' Compensation crisis in the State of Maine, has had substantial success during recent years. However, the issues surrounding the adequacy of funding, the high caseloads, and continued need for additional staffing, must be addressed in order to ensure that the due process and procedural rights of injured workers are being met and to ensure the continued viability of the Workers' Compensation system as it now stands.

## **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. Unless agreed upon by the parties, 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.** 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 orthopedist and one neurologist, resulting in significant delay in the system. The Board is presently considering a rule to reduce the delays in the process. However, the problem will not be resolved unless more examiners can be added to the list or the process becomes purely voluntary through the agreement of the parties.

Since *Lydon*, the Board has expanded its list to 19 doctors, but, there is still a need for additional orthopedists, neurologists, and psychiatrists. Currently, there is a substantial waiting period for examinations with key specialists because of the overwhelming number of cases referred from the Board. The following physicians are 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

### 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

BRIDGMAN, Peter, MD  
51 Harpswell Rd, Ste 100  
Brunswick ME 04011  
Tel: 729-7800

SIGSBEE, Bruce, MD  
Penobscot Bay Neurologists  
4 Glen Cove Dr  
Rockport ME 04856  
Tel: 596-0031

### ORTHOPEDIC SURGERY

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

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

### OSTEOPATH

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

### OTOLARYNGOLGY

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

### PODIATRY

MUCA, Eric  
Yarmouth Family Services  
259 Main Street  
Yarmouth ME 04096  
Tel: 874-1488

### PHYSIATRY

HERZOG, Vincent D.O.  
306 U.S. Rte 1  
Scarborough ME 04074  
Tel: 883-3434

### PSYCHIATRY

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

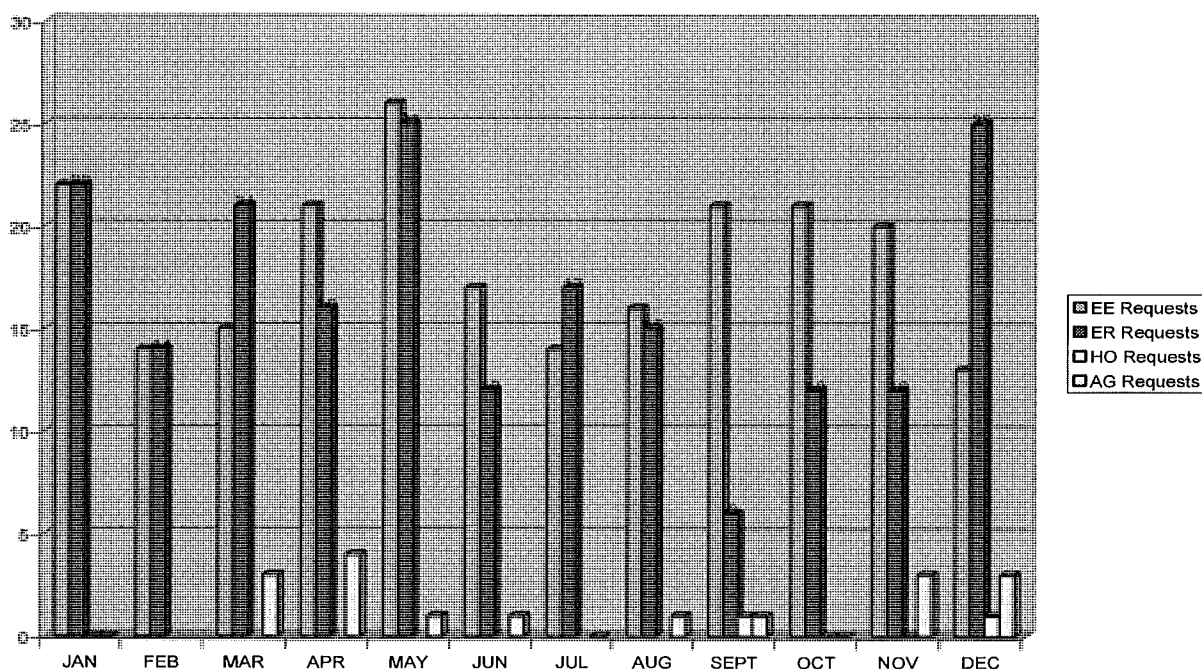
GINN, Roger, Ph.D.  
205 Ocean Ave  
Portland ME 04103  
Tel: 773-7993

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

2005 IME Requests



The chart reflects the source of requests for independent medical examinations for 2005.

## II. Medical Fee Schedule.

The Board first published a Medical Fee Schedule on April 4, 1994. The Board is required pursuant to Section 209 to adopt rules establishing standards, schedules, and scales of maximum charges for individual services, procedures and courses of treatment. In order to ensure appropriate costs for health care services, the standards are to be adjusted annually to reflect appropriate changes in levels of reimbursement.

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

In 2004, the Board approved a Consensus-Based Rulemaking group to draft amendments to the medical fee schedule. The Committee was comprised of a representative group of interested participants, including the Maine Medical Association, Maine Hospital Association, Maine Osteopathic Association, Maine Chiropractic Association, Chamber of Commerce, MEMIC, Self-Insureds, and two Board Members representing Labor and Management. The Committee met four times but was unable to reach consensus.

On July 12, 2005, the Board voted to send out the medical fee schedule to public hearing to update the 2005 CPT Codes and RBRVS. Following the public hearing process the matter will be returned to the Board for final action.

## 7. TECHNOLOGY

The Board implemented an information system in the mid-1980's. It was primarily used to collect First Reports with little or no functional use beyond the simple collection of data. Next, programs were written to perform rudimentary scheduling of cases for the dispute resolution process and to provide for basic word processing.

Due to numerous problems with hardware reliability and technical support, the hardware and software were replaced by Bull Information Systems. This system lasted a number of years, but subsequently changed to a more functional application. While this was a more mainstream product, the application software was written in a more rigid programming format, making it difficult and time-consuming to utilize data, even though the staff had increased to five information technology professionals.

The increasing need for access to data led a migration effort to a relational database structure in 1995. Unfortunately, the initial database structure had major design flaws that led to corruption of the process and problems with data integrity. In addition, the system did not adequately address the functional needs of the staff.

Following a centralization of information technology by executive order, the Board hired an Agency Technology Officer. From November 1997 through 1998, a major effort was initiated to upgrade the Board's 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 was adequate to provide the data for the Board's Compliance Report. It was concluded 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 the end of 2006. This encompasses an 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 Board'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 resolution process assisted with the analysis, design, screen building, testing, and rollout. This process took more than a year and was put into production on November 4, 2002. 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. Programming efforts continue on changes and enhancements.

The analysis phase of the Claims Unit began in the summer of 2003 and is almost completed. Programming will begin once the Board's business application is moved to a new DOL enterprise server scheduled in '06. There will be significant modifications to the current process. One major improvement already identified is the automated tracking and request for missing information. This will provide the Monitoring Unit with a more accurate measure of a carrier's performance.

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 Board has implemented the first phase of the EDI Mandate, First Report of Injury (FROI), and is currently receiving approximately 95% of all First Reports electronically. The next phase is currently under review by the EDI Committee and relates to Denials and Payments. The automation of Denials should be completed in 2006 and Payments in 2007.

## **8. BUDGET AND ASSESSMENT**

The Board is funded pursuant to a statutory assessment paid by Maine's employers, both self-insured and insureds. The Legislature in creating this funding mechanism in 1992 intended the users of the workers' compensation system to pay for it. The agency had previously been funded from General Fund appropriations.

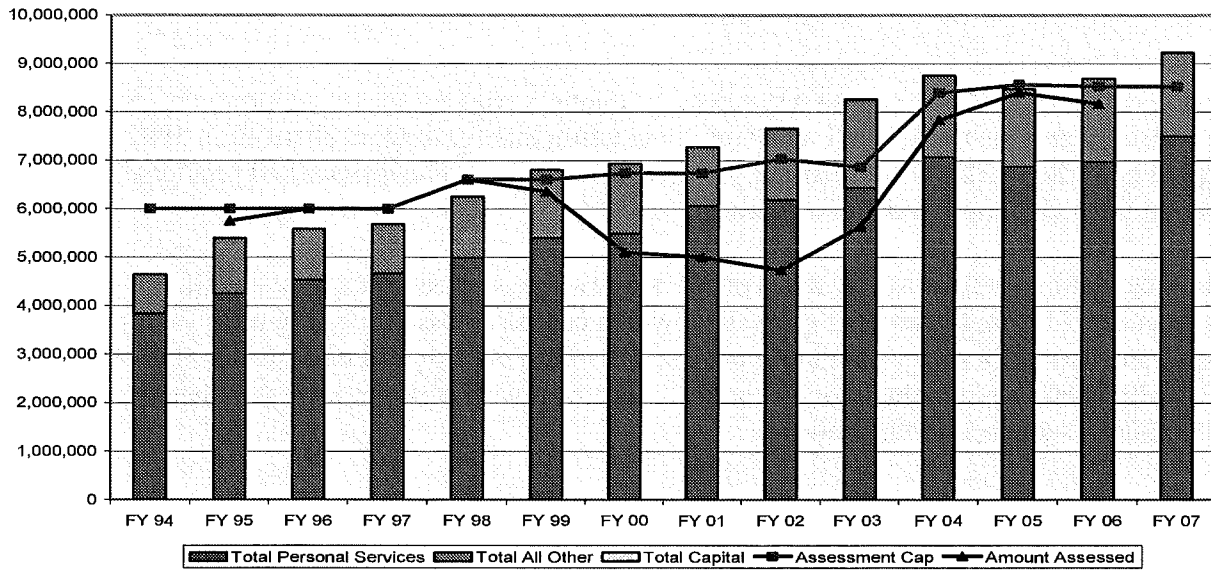
The Legislature established the assessment as a revenue source to fund the Board, but capped the assessment limiting the amount of revenue which can be assessed. A long term solution to this cap in the form of a salary plan or revenue stabilization plan should be considered in order to deal with costs, beyond the Board's control, associated with contract increases, health insurance, retirement, postage, and lease costs.

The result of this assessment cap has been an 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 \$8,625,000 in FY06 and \$8,625,000 in FY07.

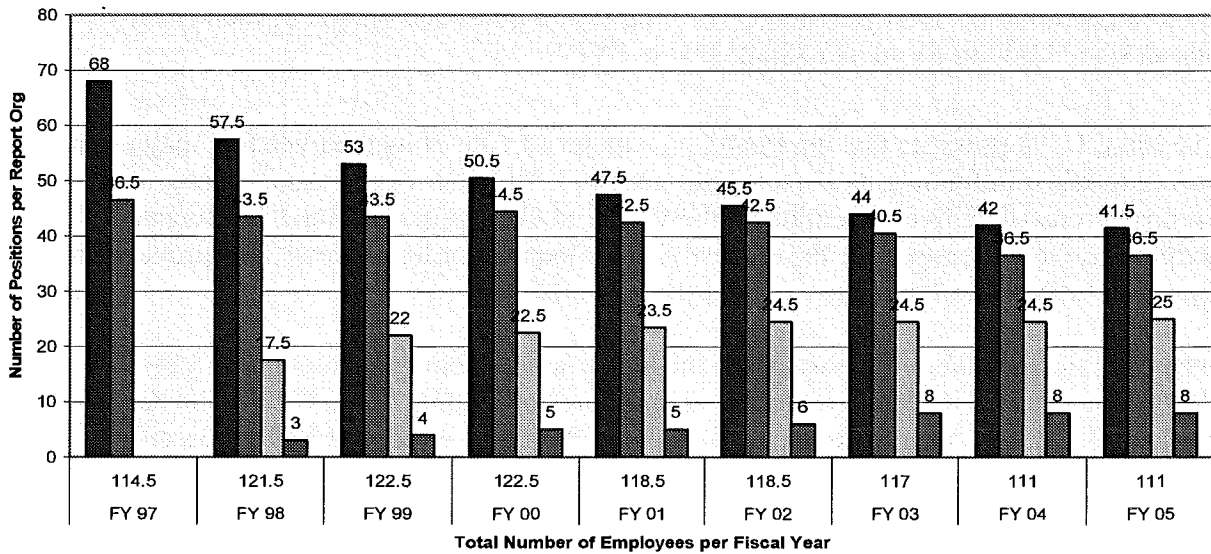
P.L. 2003, C. 93 provides that the Board, by a majority vote of its membership, may use its reserve to assist in funding its Personal Services and All Other expenditures, along with other reasonable costs incurred to administer the Workers' Compensation Act. The Bureau of the Budget and Governor approve 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 \$441,709 in FY06. This is based on actual projected expenditures of \$9,066,709 in FY06. The bar chart entitled "WCB – 14 Year Schedule of Actual and Projected Expenditures" shows actual expenditures through FY05 and projected expenditures for FY06. It also shows the assessment cap and the amounts actually assessed through FY05. The bar chart entitled "Personnel Changes since FY 97" demonstrates the Board's efficient use of personnel since 1997. The Board reduced the number of full-time employees while assuming two new programs (Worker Advocate and MAE Programs).

**WCB - 14 Year Schedule of Actual and Projected Expenditures  
Workers' Compensation Administrative Fund - 0183  
September 2005**



**WCB - Personnel Changes Since FY 97  
January 2005**



The MAE and Worker Advocate programs represent 30% of the agency's total number of employees.

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

The Board plans to fund the anticipated shortfall for FY 06 and FY 07 through the use of funds from the reserve account. But, it is imperative that a long-term funding solution be found to avoid this recurring problem. The Board will formulate legislation to be presented in 2007 to the 122<sup>nd</sup> Legislature.

## 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.

Claims staff search the database for a claim that matches the information on each form that is received, checking by Social Security Number, employee name and date of injury. This is information that is entered into the database after the Employer's First Report of Occupational Injury or Disease is filed with the Board. Claims Management Unit staff verify accuracy of payment information on each claim that is filed with the Workers' Compensation Board for claims that have been open since 1966. Cost of Living Adjustments (COLA) are done on claims beginning with dates of injury on January 1, 1972 through December 31, 1992. Claims staff check to see that the COLA's are calculated correctly. The filing of forms with incorrect information causes Claims staff to spend a lot of time researching files and doing mathematical calculations, but it is necessary to ensure that correct payments are made to injured workers.

This Unit is responsible for annually producing the "State Average Weekly Notice" that contains the information necessary to make COLA's on claims, to calculate permanent impairment payments, and whether to include fringe benefits when calculating compensation rates. The SAWW is determined by the Department of Labor each year. Claims staff use this information to do the mathematical calculations to determine the COLA multiplier and maximum benefit in effect for the following year.

Work is done by Claims staff to produce a Weekly Benefit Table each year. The Weekly Benefit Table is used by all members of the Workers' Compensation community who need to determine a compensation rate for an employee.

A brief description of the way various forms are processed is shown below:

**Notices of Controversy** and **Petitions** – The file for the claim is located or created, the form is entered in the database, and the file is sent to the appropriate Claims Resolution Specialist in a regional office. A telephone call or e-mail message is directed to the person who filed the form if a claim cannot be found in the database. They are asked to provide an Employer's First Report of Occupational Injury or Disease so that a claim can be started.

**Answers to Petitions** - The file for the claim is located, the Answer is entered into the database, and the Answer is sent to the file.

**Wage Statements** - The average weekly wage is calculated by Claims staff in accordance with direction given by Statute, Board Rules and Law Court decisions. The average weekly wage is entered into the database and the form is sent to the File Room.

**Schedule of Dependent(s) and Filing Status Statements** - The information on this form is entered into the database and the form is sent to the File Room.

**Memorandum of Payment , Discontinuance or Modification of Compensation , Consent between Employer and Employee** - The form is checked for accuracy, comparing dates, the rate and the wage to information previously filed. The form is entered into the database and then sent to the File Room. A telephone call or e-mail message is directed to the person who filed the form if there is a problem. Explanations or amended forms are requested.

**21-Day Certificate or Reduction of Compensation** - The form is checked for accuracy, comparing dates, the rate and the wage. The form is entered in the database if everything is correct. In cases where it is determined by Claims staff that there has been an illegal suspension or reduction, the file and form are sent to a Claims Resolution Specialist in a regional office.

**Lump Sum Settlement** – The information on this form is entered into the database and the form is sent to the File Room.

**Statement of Compensation Paid** – The information on this form is compared to information previously reported, the form is entered into the database and the form is sent to the File Room. A large number of these forms are found to have errors which results in staff having to research the file and contact the person who filed the form, requesting corrected or missing forms.

The Claims Management Unit processes all of the following forms:

	<u>Filed as of Oct. 31, 2005</u>
Employer's First Report of Occupational Injury or Disease	20,247 electronic filing 6,074 paper filing
Notice of Controversy	9,178
Petitions	3,523
Answers to Petitions	1,659
Wage Statement	7,152
Schedule of Dependent(s) and Filing Status Statement	6,891
All Payment Forms, including:	
Memorandum of Payment	
Discontinuance or Modification of Compensation	
Consent Between Employer and Employee	
21-Day Certificate of Discontinuance or Reduction of Comp	
Lump Sum Settlement	16,008
Statement of Compensation Paid	12,504

Currently, the only form listed above that can be filed electronically is the Employer's First Report of Occupational Injury or Disease. All other forms are filed on paper and must be entered manually. Denial forms will change to electronic filings in 2006 and payment forms will change to electronic filing in 2007.

## 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 four 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 both manually and electronically. A staff member is assigned to the processing of applications for waivers to 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 contractor status. The activities consist of proof of coverage, waivers, and predeterminations and are given equal priority for processing purposes. The staff attempts to process these expeditiously, the goal to process 80% of the proof of coverage filings within 24 hours of receipt (the Board received and processed 12,724 proof of coverage filings between January and September 2005); 90% of waiver applications within 48 hours of receipt (the Board received and processed 2,112 waiver applications between January and September 2005); and 100% of predetermination applications within 14 days (the Board received 1,626 applications between January and September 2005). ALL GOALS WERE MET IN 2005.

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. The Unit 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, utilized by both departments.

The Unit also researches the history of employer insurance coverage in order to certify 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 the liability for the payment of the claim. Since workers' compensation coverage in Maine is mandatory, the Unit routinely provides assistance to the public regarding insurance coverage requirements.

## **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 Monitoring, Auditing, and Enforcement (MAE) Unit works directly with BOI on compliance and enforcement cases pursuant to 39-A M.R.S.A. § 359(2). The WCB certifies and forwards to BOI cases which involve questionable claims handling techniques or repeated unreasonable contested claims for appropriate sanctions by BOI.

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. the Occupational Safety and Health Data Collection and Injury Prevention Group was formed in response to P.L. 2003 Ch. 471 to review various data collection and injury prevent efforts and to make recommendations to the Labor Committee. The Bureau of Labor Standards has coordinated this effort with assistance from the Workers' Compensation Board.



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.

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

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 for the First Report of Injury; 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 Board has implemented the electronic filing of the First Report of Injury. Initially the strategy was to focus on the forms but in discussions with representatives from the Insurance community it was felt that it would be best to focus on the processes, Denials and Payments as a whole. Rules have been promulgated to implement the recommendations and assure compliance. The first phase of EDI mandates requires electronic submissions of First Reports of Injury as of July 1, 2005. The Board is currently receiving about 95% of First Reports electronically. The second phase mandates the submission of denials on a scheduled basis for April through June of 2006. The third phase mandates the submission of payments on a scheduled basis from April through June of 2007.

## 12. ABUSE INVESTIGATION UNIT

The Abuse Investigation Unit (AIU) is authorized to "investigate all complaints of fraud, illegal or improper conduct or violation of the Act or rules of the board relating to workers' compensation insurance, benefits or programs, including ... acts by employers, employees or insurers" as directed by the board. 39-A M.R.S.A. §153 (5). The board has charged AIU to investigate and assess penalties under the following provisions of the Act.

- **Section 205 (3)** requires payment of weekly compensation benefits within 30 days of becoming due when there is no ongoing dispute. Penalties of \$50 per day to a maximum of \$1,500 are payable to the injured employee;
- **Section 205(4)** requires payment of medical bills within 30 days of becoming due when there is no ongoing dispute. Penalties of \$50 per day penalty up to a maximum of \$1,500 are payable to the Board's Administrative Fund.
- **Section 324(2)** mandates payments pursuant to any board order or approved agreement be made within 10 days. Violations of this section may be penalized up to \$200 per day with the first \$50 per day payable to the employee and any additional fine payable to the Board's Administrative Fund.
- **Section 360(1)** provides for penalties when a mandatory form is not filed or not filed within time frames set by rule or statute. Violations of this section carry a maximum penalty of \$100, payable to the General Fund.

The Abuse Investigation Unit also has limited responsibilities to investigate complaints and recommend penalties under sections 324(3), 359(2) and 360(2). Complaints brought pursuant to these provisions are referred to an administrative law judge (an official or hearing officer of the board) who holds a hearing, takes evidence, and assesses any penalties &/or fines.

- **Section 324(3)** provides penalties for failure to secure required workers' compensation insurance. Fines may be levied up to \$10,000.00 or an amount equal to 108% of the unpaid premiums, whichever is greater. Violators may also be subject to loss of corporate status, suspension of a state-issued license, and/or referral to the Attorney General for criminal prosecution. Penalties 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. Penalties under this section are payable to the Board's Administrative Fund. Any violations are certified to the Superintendent of Insurance, for further action.
- **Section 360(2)** requires penalties for willful violation, intentional misrepresentation and/or fraud under the Act. Individuals may be fined up to \$1,000 and corporations, partnership or other legal entities up to \$10,000 for violations. Repayment of compensation received, or of

compensation wrongfully withheld, may also be ordered. Penalties are payable to the General Fund.

In 2005, 2,586 cases were filed for all penalty provisions combined. New filings, combined with open cases pending at the start of 2005, resulted in the Unit having an open caseload of 4,829 during 2005. See Table 1. The large number of open cases was primarily the result of the Board improving its procedures to identify violations in several areas, over the last three years – notably late filings (§ 360(1)) and lack of required workers' compensation insurance coverage (§ 324(3)).

Recent trends in the number of cases filed by statutory provision have continued; the majority of cases brought continue to fall under Section 360(1) for late filings, and 324(3) for lack of workers' compensation insurance coverage. In 2005 1,373 cases were filed pursuant to Section 324(3) and 1,137 cases pursuant to Section 360(1). Cases filed under these two sections represent 97% of the total number of cases filed with the unit annually.

In response to the level of open cases, the Unit focused its efforts in 2005 to clearing backlogs. Staff has received additional training, new systems were implemented, and internal processes adjusted to improve efficiency in case processing. As a result, the Unit was able to keep pace with new filings and begin addressing backlogs. Those efforts will continue in 2006.

**Table 1: Filings by Statutory Provision - 2005**

<b>Statute Section</b>	<b>Open 1/1/2005</b>	<b>Filed</b>	<b>Closed</b>	<b>Open 1/1/2006</b>
<b>205(3)</b>	33	4	0	37
<b>205(4)</b>	21	0	0	21
<b>324(2)</b>	127	52	27	152
<b>324(3)</b>	832	1373	1512	693
<b>356(2)</b>	8	4	3	0
<b>360(1)</b>	1183	1137	1368	952
<b>360(2)</b>	39	16	7	48
<b>TOTALS</b>	<b>2243</b>	<b>2586</b>	<b>2917</b>	<b>1912</b>

By statute, penalties assessed may be payable to the state's general fund, the board, and/or directly to an injured employee. The dollar amounts of fines assessed annually tracks the distribution of cases by statutory provision; more penalties in total dollars are assessed for cases under section 324(3) and 360(1). Fines paid directly to employees play an important role in Board enforcement efforts by providing an incentive for an injured party to pursue enforcement of an existing order and penalizing parties who wrongfully withhold payment of benefits. In 2005, \$104,200 in penalties were assessed for late-filings pursuant to § 360(1), and \$989,419 in penalties were levied for lack of insurance coverage in accordance with § 324(3).

Investigations pursuant to section 360(2) hold a special status due to the impact violations of that provision hold for the system as a whole. Intentional misrepresentations and willful violations of the Act undermine fair and accurate determinations on individual cases. Instances of fraud harm employees and employers; employees who defraud the system increase costs by obtaining benefits to which they were not entitled, and employers or insurers committing fraud place themselves in an unfair competitive position to those employers and insurers complying with Maine law.

In recognition of the status of section 360(2) cases, AIU implemented expedited procedures for internal handling of these complaints. Over the last eighteen months, AIU has reduced the amount of time it takes for a 360(2) complaint to reach a formal hearing. Cases where there is a finding of probable cause a violation has occurred are now referred for hearing within 2-5 weeks down from 2-5 months previously. The number of complaints brought annually under section 360(2) has remained relatively low compared to other provisions of the Act (approximately 20 – 25 annually). That trend continued in 2005 when 16 complaints were filed

Caseload increases in the last several years have required AIU to leverage personnel and computer resources to handle more cases with existing resources. Staffing levels have remained constant; the Unit consists of one legal secretary and two investigators who are supervised by the Board's Assistant General Counsel. The trends outlined above appear likely to continue into the foreseeable future. Expansion of AIU's caseload remains likely with the possibility of additional referrals under sections 205 and 360(1) from the monitoring unit, and section 359(2) from the board's auditing unit.

### **13. GENERAL COUNSEL REPORT**

#### **A. Rules.**

As mentioned in Section 14 of the Report, the Board has proposed a rule that will, if finally adopted, establish that the benefit limitation contained in Section 213(4) will not be extended on January 1, 2004 or January 1, 2005. This rule is still pending. The Board also proposed a rule adjusting the permanent impairment threshold, effective January 1, 2004, to 13.4% from 13.2%. This rule is still pending.

The Board is currently in the process of revising, using the consensus based rulemaking process, W.C.B. Rule Ch. 3, §4. This rule requires electronic filing of all First Reports of Injury; Notices of Controversy; and Memoranda of Payment.

The Board is proposing amendments to W.C.B. Rule Ch. 5, the medical fee schedule. These amendments incorporating the 2005 Physician's Current Procedural Terminology ("CPT codes") and the 2005 Medicare RBRVS. These amendments also address the mileage and reimbursement rates for travel to and from medical appointments.

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

The Board submitted two bills for consideration during the First Regular Session of the 122nd Legislature. Both bills were ultimately enacted into law.

The first bill, P.L. 2005 Ch. 24, effective June 29, 2005, encourages parties to agree to the selection of independent medical examiners 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. Previously, if the parties agreed to an independent medical examiner, the examiner's findings were binding. The bill was amended in committee to add the phrase "Unless agreed upon by the parties, a . . ." to the beginning of the last sentence of section 312(2). The purpose of the amendment is to clarify that parties can agree upon an examiner who would otherwise be disqualified pursuant to section 312(2).

The second bill, P.L. 2005 Ch. 25, effective June 29, 2005, extends the time within which a hearing officer may request review of a decision by the full board to allow for the filing of motions to find the facts specially and state separately the conclusions of law. It 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.

**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 decided four hardship cases in 2005. In *Stewart v. Sky Pig, Inc.*, the Board found extreme financial hardship due to inability to return to gainful employment. The employee’s benefits were not extended, however, because a Hearing Officer determined that the effects of the injury had ended.

In *Holland v. International Woolen Co.*, the Board found extreme financial hardship, but determined that the employee had returned to gainful employment.

In *Richards v. Sappi/S.D. Warren Co.*, the Board found extreme financial hardship due to inability to return to gainful employment.

In *Berry v. Kinko’s Service Corp.*, the Board found extreme financial hardship due to inability to return to gainful employment.

#### **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 Board did not extend the limitation referenced in Section 213(4) in 2001, 2002 or 2003. Based on a report provided by Practical Actuarial Solutions, Inc., the Board proposed a rule establishing that the benefit limitation would not be extended on January 1, 2004 or January 1, 2005. This rule is still pending.

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%.

Practical Actuarial Solutions, Inc. also recommended adjusting the permanent impairment threshold, effective January 1, 2004, to 13.4% from 13.2%. The Board has proposed a rule to that effect. This rule is still pending.



## 15. SUMMARY

The Workers' Compensation Board has experienced significant changes during the last two years. The Governor worked diligently with both Labor and Management to ensure the passage of P.L. 2004, Ch. 608 which went into effect on April 8, 2004. The intent of the legislation was to break the Board's gridlock on key issues and to return a sense of normalcy to the operations of the agency. Since the inception of the legislation, the Board has resolved all of the gridlock issues and has a renewed sense of responsibility in setting policy for Board business. Some of the difficult issues the Board has acted on include: hearing officer appointments; hearing officer terms; budgetary and assessment matters; Section 213 actuarial studies; electronic filing mandates; safety issues; by-law revisions; legislation; compliance matters; Section 312 independent medical examiners; worker advocate issues; and dispute resolution matters.

The importance of the Governor's legislation (Chapter 608) cannot be overly emphasized. The State of Maine has gradually improved its national ranking regarding the costs of workers' compensation and an effective and efficient Board will help to perpetuate this positive trend. It was not too long ago that Maine was one of the costliest states in the nation in regard to workers' compensation costs. A recent article in the *Workers' Compensation Policy Review* compared the costs of benefits for 47 states. Maine's rank for cash benefits was 24th, for medical benefits was 24th and for total benefits was 26th. Maine fared better overall than 25 states and only Massachusetts (ranked 34th) fared better than Maine in New England. The article went on to highlight Maine's achievements during the past few years: "The experience in Maine...clearly demonstrates that significant reduction in cash, medical and total benefits are possible."

Maine has gone from one of the costliest states in the nation to one that is at the level of average costs for both premiums and benefits and has positioned itself to continue this trend. Maine appears to have struck a balance between reasonable costs and reasonable benefits, all within the governor's policy of making Maine even-handed and competitive.

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

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 shortfalls, the Board approved an increase in the budget to \$8,680,000 and \$8,855,000 in fiscal years 2004 and 2005 to be funded through the reserve account, fines and penalties, and sales of copies and publications. The shortfall will be even greater in fiscal years 2006 and 2007. The Board has budgeted \$9,066,709 and \$9,376,559 respectively, and will utilize \$441,709 from reserves in fiscal year 06 and \$751,559 from reserves in fiscal year 07 to fund the shortfalls.

During the upcoming year the Board will consider legislation to find a long-term solution to this chronic budgetary problem.

The Board is performing efficiently in other major areas of responsibility: MAE Program; Worker Advocate Program; Claims and Coverage, Electronic Data Interchange (EDI), and Dispute Resolution. The MAE Program continues to impact positively 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 formal hearing level. The major programming changes in Claims and Coverage are bringing about significant improvements in the operations of those departments; and the implementation of EDI mandates has led to the electronic filing of First Reports (July 1, 2005), and will compel the filing of Denials by April-June 2006 and filing of Payments by April-June 2007. Dispute Resolution continues to perform efficiently at the troubleshooting and mediation levels, resolving 75% of all cases within 90 days. Upon resolving the Independent Medical Examiners problem, formal hearings should return to 2002 levels.



## **Section B**

### **Bureau of Insurance**

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## **Introduction**

This report looks at competition in the Maine workers' compensation insurance market by examining different measures of market competition. Among the measures are: 1) the number of insurers providing coverage; 2) insurer market share; 3) changes in market share; 4) ease of entry into and exit out of the insurance market by workers' compensation insurers; and 5) comparing variations in rates.

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. Other tables and graphs contain ten or more years of information.

Advisory loss costs have fluctuated up and down since 2000. The last two approved filings were small increases. Some employers are experiencing the effects of a hard market. The primary reasons for this are a relatively low return on investment income and a tight reinsurance market. Prior to 2000, carriers had been discounting premiums by applying schedule rating credits, by issuing dividends and by using lower rates. In the current market, insurers are less likely to offer discounts in order to capture or retain business. Some insurers have filed to increase their loss cost multipliers. In November, 2004 Maine Employer's Mutual Insurance Company (MEMIC) raised the multiplier for their standard tier to 1.45. This may not be increased again without review and approval 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. 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. In workers' compensation, losses may not be excluded from coverage due to terrorism. On December 17, 2005 Congress passed a bill to extend TRIA for two years. This bill, named the Terrorism Risk Insurance Extension Act, was signed by the President. Since September 2001 reinsurance contracts have excluded coverage for terrorist acts, though primary insurers are still liable for that exposure. This could further disrupt the market since many insurers may decide against writing accounts where there are high concentrations of employees at a single location.

Different criteria may be used to determine if the insurance industry is competitive. Although Maine's market is becoming more concentrated and MEMIC writes a large volume of business, there are still many insurers writing some workers' compensation coverage in Maine and self-insurance remains a viable alternative for other Maine employers. Insurers, however, are being more conservative in the selection of business that they choose to provide coverage for or to renew. An insurer can decide to non-renew business for any reason as long as it provides 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.

## **Accident Year, Calendar Year and Policy Year Reporting**

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 open claims must be estimated. Insurance companies report information used to calculate financial ratios. This information is 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 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 or 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. After 2000 insurance markets became less competitive, and this trend increased following the events of September 11, 2001. Hard markets may also occur when insurers tighten their underwriting standards or reduce their use of premium credits. This describes what has happened in Maine over the last several years. However, there are some indications nationally that the market has begun to soften.

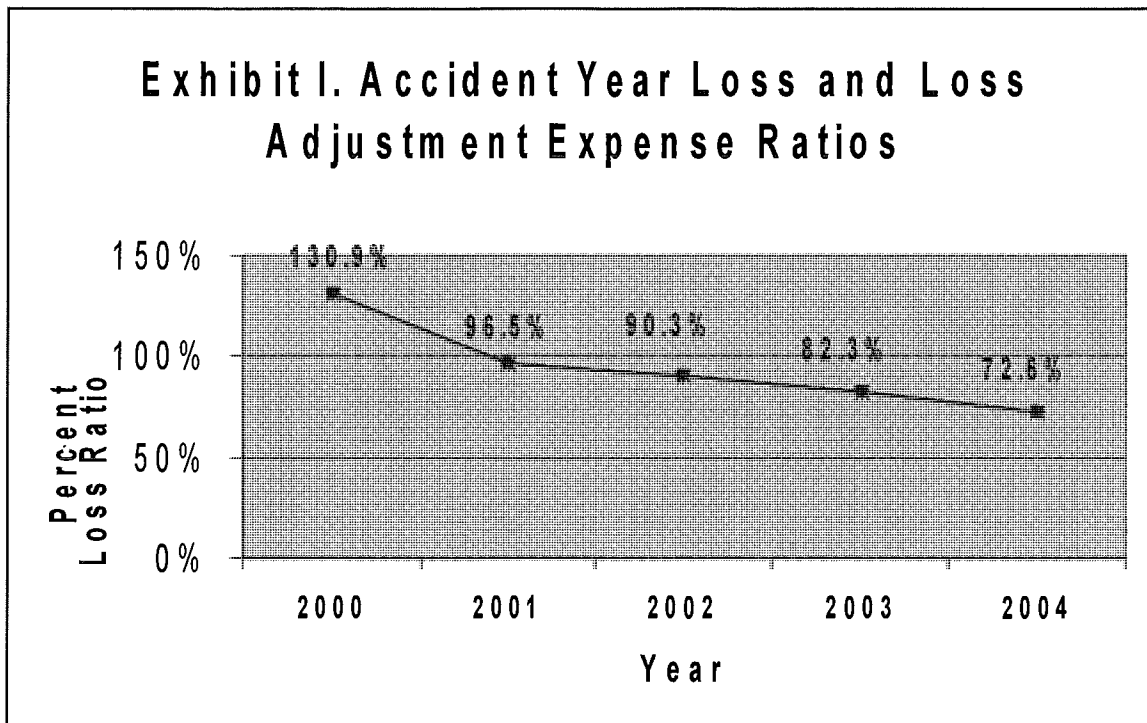
The accident year incurred loss ratio was 90.3% in 2002, 82.3% in 2003 and 72.6% in 2004. Loss ratios that exceed 100% mean that insurers are paying out more in benefits than they collect in premiums. A decrease in these loss ratios over time may reflect increased rates, an improved loss experience or reserve adjustments (i.e., revising the amount of money expected to be paid out on claims). The loss ratio does not take into account underwriting expenses of the insurer--including things like acquisition expenses, general expenses and taxes.



## PART I. RECENT EXPERIENCE

### Accident Year Loss and Loss Adjustment Expense Ratios

The accident year loss ratio shows the percent of earned premium used to fund losses and their settlement. Exhibit I shows the accident year loss ratios for the most recent five years available. Loss ratios in this report are based on more mature data and may not match the loss ratios for the same years in prior reports. Claim costs and loss adjustment expenses are further developed, so the loss ratios reflect more recent estimates of what the claims will ultimately cost. The loss ratios do not include general expenses of insurance companies such as overhead, marketing and federal or state taxes, nor do they include investment income. The 2004 loss ratio was 72.6%, indicating that about \$73 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium. The 2003 loss ratio was 82.3%. These ratios are down considerably from a five year high of 130.9% in 2000. The decreasing loss ratios are primarily a result of increased rates, fewer insureds being placed into lower rating tiers, and a reduction of credits issued by the insurance companies. 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 four years.



Source: National Council on Compensation Insurance

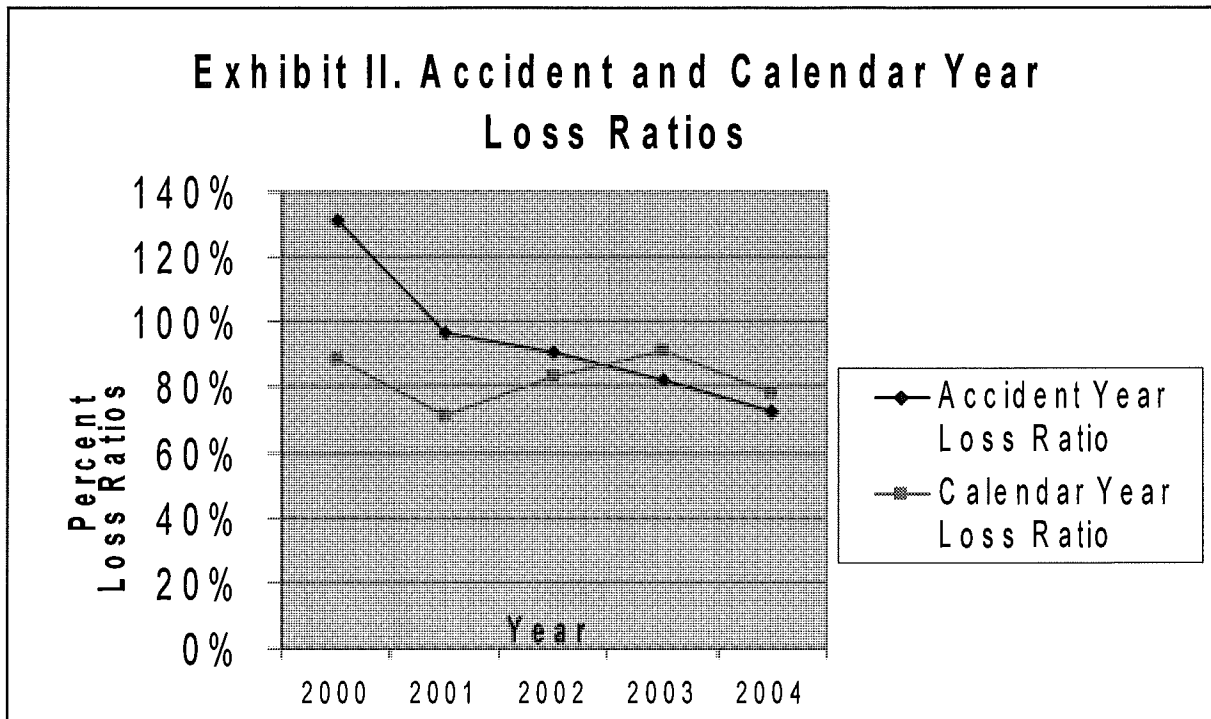
## PART I. RECENT EXPERIENCE

### Calendar Year and Accident Year Loss Ratios

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 (although only a small portion of the losses are attributable to premiums earned that year). The calendar year loss ratios reflect payments and reserve adjustments (changes to estimated ultimate cost) on all claims during a specific year, including those adjustments from prior injury years. A significant decrease in the calendar year loss ratio occurred in 2001 and since then there have been two increases followed by a decrease in 2004. 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.

The 2000 accident year loss ratio was nearly 131%, meaning \$131 was paid or expected to be paid in losses and loss adjustment expenses for every \$100 earned in premium. Since then loss ratios have declined considerably. By 2004 the accident year loss ratio had fallen to under 73 percent. The hardening of the workers' compensation market may be leveling off and 2006 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. The movement of the calendar year loss ratios from below to above the accident year loss ratios may reflect increases in reserves on prior accident years.



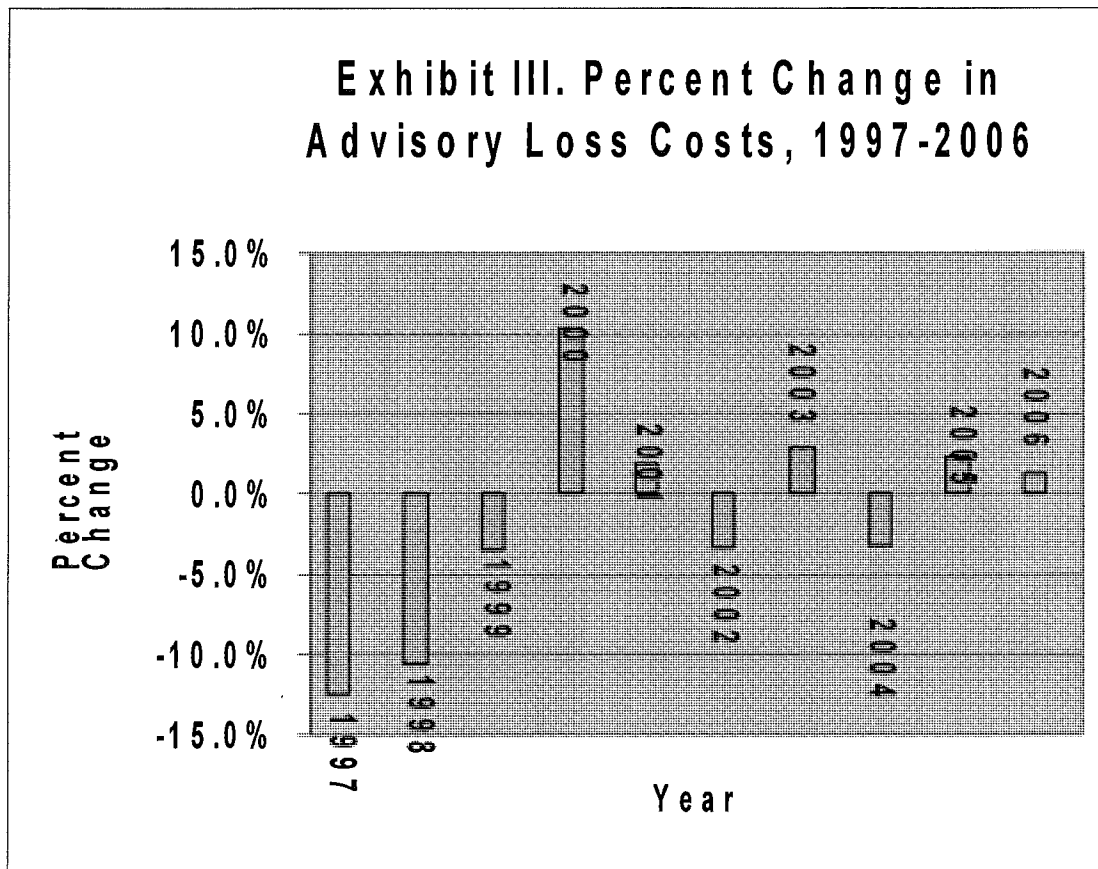
Source: National Council on Compensation Insurance

## PART II. LOSSES IN WORKERS' COMPENSATION

### Changes in Advisory Loss Costs

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

After consecutive decreases in advisory loss costs, an increase in the advisory loss costs occurred in 2000. This increase was due to loss experience, an increase in permanent partial impairment benefits, and also an adjustment to correct a prior data reporting problem. Between 2001 and 2004, the loss costs moved up and down. In the past two years, we have seen small increases in the advisory loss costs. These changes tend to lag behind changes in actual experience and precede changes in rates.

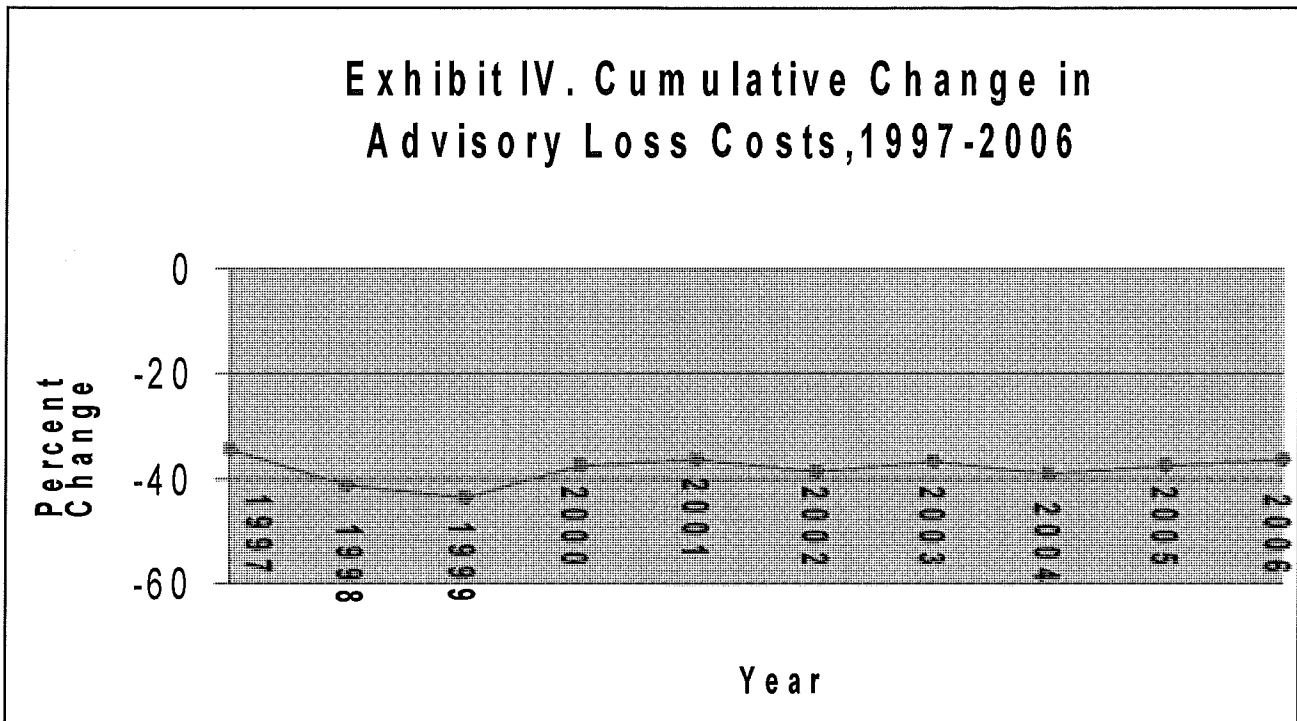


Source: National Council on Compensation Insurance

## PART II. LOSSES IN WORKERS' COMPENSATION

### Cumulative Changes in Advisory Loss Costs

Average advisory loss costs have remained steady over the past six years. In fact, the 2006 average loss costs will be in line with those of 2001.



Source: National Council on Compensation Insurance

### **PART III. MARKET STRUCTURE AND COMPETITION**

#### **Market Concentration**

Market concentration is another measure of competition. Greater concentration means that there are fewer insurers in the market or the insurance written is concentrated among fewer insurers, indicating less competition. Conversely, less concentration indicates that there are more insurers in the market and greater competition.

As of October 1, 2005, 257 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 market share for Maine Employers Mutual Insurance Company (MEMIC), in terms of written premium, is now over 65% of the insured market, up from 61% a year ago. This indicates that other carriers are more selective and less willing to provide coverage for some businesses. The following table shows the number of carriers, by level of written premium, for those carriers writing workers' compensation insurance in 2004. The number of carriers writing over one million dollars in written premium decreased from 28 in 2003 to 21 in 2004. This represents a 25% decrease and combined with movement of business to higher rating tiers shows that the market is becoming more concentrated and somewhat less competitive.

<b>Table I: Number of Companies by Level of Written Premium--2004</b>	
<b>Amount of Written Premium</b>	<b>Number of Companies At That Level</b>
>\$10,000	109
>\$100,000	71
>\$1,000,000	21

Source: Annual Statements Filed with the Bureau of Insurance

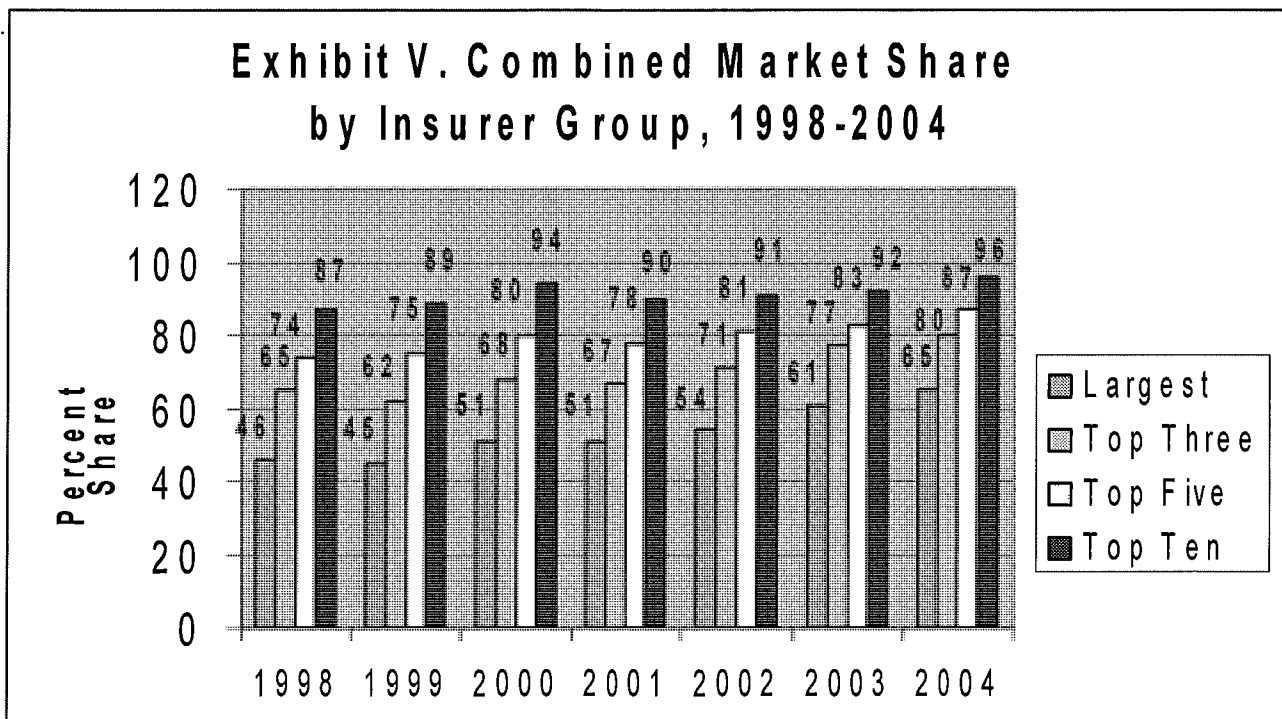
Looking only at market concentration does not give a complete picture of market competition. A discussion of self-insurance, found in the Self-Insurance as an Alternative section, gives a more balanced perspective.

### PART III. MARKET STRUCTURE AND COMPETITION

#### Combined Market Share

Exhibit V illustrates the percent market share of the largest commercial insurance group, 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 is approaching its 1995 level with over 65% market share.

In 2004, market share of the top 10 insurer groups was 96%. Other groups wrote only 4% of the workers' compensation premium in Maine. In terms of dollar amounts, MEMIC wrote over \$156 million in premium in 2004, \$9 million more than it did in the previous year. The top three groups, including MEMIC, wrote over \$192 million in business, \$8 million more than in 2003. The top five groups had nearly \$208 million in written premium, also around \$8 million above the prior year. The top 10 groups wrote over \$229 million in premium in 2003, around \$8 million more than in 2003. The remaining groups had written premium of over \$10 million, down around \$8 million from the previous year.



Source: Annual Statements Filed with the Bureau of Insurance

### **PART III. MARKET STRUCTURE AND COMPETITION**

#### **Number of Carriers in the Maine Insurance Market**

Since 2000, 47 more insurance carriers have entered Maine's workers' compensation market than have exited. Though the number of carriers entering the market over the past two years is at its lowest levels since 1993, the number of carriers in the market is at its highest levels. This continued increase in the number of carriers authorized to write workers' compensation insurance indicates that there are no significant barriers to entry.

<b>Table II: Entry and Exit of Workers' Compensation Carriers, 1993-2005</b>					
<b>Year</b>	<b>Number of Carriers</b>	<b>Number Entering</b>	<b>Number Exiting</b>	<b>Net Change (Number)</b>	<b>Net Change (Percent)</b>
1992	90	-	-	-	-
1993	96	8	2	6	6.7
1994	106	10	0	10	10.4
1995	115	11	2	9	8.5
1996	149	43	9	34	29.6
1997	178	32	3	29	19.5
1998	187	9	0	9	5.1
1999	198	11	0	11	5.9
2000	210	12	0	12	6.1
2001	228	24	6	18	8.6
2002	241	15	2	13	5.7
2003	251	11	1	10	4.2
2004	254	5	2	3	1.2
2005	257	4	1	3	1.1

Source: Bureau of Insurance Records.

Figures as of October 1, 2005

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

## PART III. MARKET STRUCTURE AND COMPETITION

### Percent Market Share for the Top Insurance Groups

Table III shows market share by insurance group from 1998-2004. 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 it services all employers who do not obtain coverage in the voluntary market; however, the 21% increase in market share over the past five years signifies that there is less competition. 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, 1998-2004**

<b>Insurance Group</b>	<b>2004 Share</b>	<b>2003 Share</b>	<b>2002 Share</b>	<b>2001 Share</b>	<b>2000 Share</b>	<b>1999 Share</b>	<b>1998 Share</b>
Maine Employer's Mutual	65.4	61.5	54.4	51.5	51.2	44.7	46.2
Liberty Mutual Group	9.4	9.6	10.4	7.9	9.5	7.0	3.7
WR Berkeley Corp.	5.4	5.8	6.5	7.4	7.5	7.7	9.5
American International	4.1	3.3	*	*	*	*	*
St. Paul Travelers Group	2.3	1.1	1.6	1.1	*	*	*
Guard Insurance Group	2.3	2.2	2.1	2.7	2.2	*	*
Hartford Fire & Casualty	2.0	1.8	1.2	1.0	*	*	*
Allmerica Financial Corp.	1.9	2.0	3.1	5.4	6.4	9.1	8.8
Zurich Insurance Group	1.7	1.6	2.6	2.0	2.2	2.1	3.5
CNA Insurance Group	1.2	1.5	1.1	1.4	*	1.9	*
ACE Ltd	0.9	0.8	1.2	1.0	*	*	*
BCBS of Mi Group	0.5	*	*	*	*	*	*
Chubb & Sons, Inc.	0.5	*	*	*	*	*	*

Source: Annual Statements Filed with the Bureau of Insurance

**Notes:**

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



## PART III. MARKET STRUCTURE AND COMPETITION

### Percent Market Share for the Top Insurance Carriers

Table IV shows the percent of market share for the top carriers for each calendar year from 1998 through 2004. MEMIC now maintains a 65% market share, nearly two thirds of the written premium in the insurance market. None of the other carriers attained a five percent market share in 2004. The top ten companies combined write nearly 84% of the business. No carrier outside the top 10 accounts for more than one percent of the written premium.

<b>Table IV. Percent Market Share for Top Insurance Carriers, By Amount of Written Premium, 1998-2004</b>							
<b>Insurance Carrier</b>	<b>2004 Share</b>	<b>2003 Share</b>	<b>2002 Share</b>	<b>2001 Share</b>	<b>2000 Share</b>	<b>1999 Share</b>	<b>1998 Share</b>
Maine Employers' Mutual	65.3	61.5	54.4	51.5	51.2	44.7	46.2
Acadia Insurance Company	4.4	5.3	6.0	6.8	7.0	7.6	9.1
Peerless Ins. Co.	2.3	2.3	2.3	1.5	*	*	*
Commerce & Industry	2.1	1.2	*	*	*	*	*
Norguard	2.0	1.9	1.7	2.0	1.3		
Hanover Insurance Co.	1.8	2.0	1.9	3.3	2.5	1.8	*
Liberty Mutual Fire Ins Co	1.8	1.9	2.5	0.7	2.8	2.8	1.2
Liberty Mutual Ins. Co	1.4	1.6	1.4	0.9	*	*	*
Liberty Insurance Corp.	1.4	0.9	1.1	1.3	*	1.4	1.2
Employer's Ins. Of Wausau	1.1	1.4	1.2	1.1	*	*	1.2
Twin City Fire Ins Co.	1.0	0.9	*	*	*	*	*
Excelsior Insurance Co.	0.9	*	*	*	*	*	*
American Home Assurance	0.8	1.1	*	*	*	*	*
Zurich American Ins. Co.	0.8	*	*	*	*	*	*

Source: Annual Statements Filed with the Bureau of Insurance

#### Notes:

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

## **PART IV. DIFFERENCES IN RATES AND FACTORS AFFECTING RATING**

### **Rate Differentials**

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. In October, NCCI filed for a 1.8 percent increase. After a careful review, the Bureau of Insurance asked NCCI to revise this downward to a 1.2 percent increase and that was approved. Advisory loss costs have increased in four of the six years through 2006. There was, however, a slight reduction in advisory loss costs overall for this period.

Competitive rating allows companies to target particular segments of the market. 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, an insurer may specialize in underwriting employers in a specific industry, such as wood products manufacturing (including logging), healthcare, trucking or construction.

There are a wide range of rates, but most employers are not able to get the lowest rates. 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.

An indication that the current workers' compensation market may not be fully price competitive is the distribution of policyholders among companies with different loss cost multipliers or among a single company with multiple rating tiers. The Bureau of Insurance did a survey of the top ten carriers and all of the other companies within their insurance groups. We asked for the number of policyholders and the amount of written premium for in-force policies in Maine (or the most recent data available) within each of their rating tiers. Together the carriers that reported accounted for over 87% of the nearly \$240 million in written premium in Maine for calendar year 2004.

The results show that a large proportion of employers are being charged rates higher than Maine Employers' Mutual Insurance Company's (MEMIC) Standard rating tier. Nearly twice as many policies are written at rates that are above MEMIC's Standard Rating tier than are written below it. Possible reasons for this are: 1) an insurer, other than MEMIC, provides workers' compensation coverage, even though they might not otherwise, because they provide coverage for other lines of insurance and the insurer provides a good overall package to the insured; 2) an insurer, other than MEMIC, charges a higher rate but offers a sufficient amount of credits to lower the overall premium; 3) the insured has chosen to purchase all coverages from the same insurer or producer, or 4) an insured may be able to obtain a more favorable rate from MEMIC than from another carrier.

The insurers responding to the survey reported that 321 policyholders are paying rates (standard premium after experience rating but prior to credits or debits) above the base level for MEMIC's

## PART IV. DIFFERENCES IN RATES AND FACTORS AFFECTING RATING

High Risk rating tier. The High Risk base level is 20% higher than for MEMIC's Standard rating tier. In addition to the 20% rate differential, MEMIC surcharges those policyholders whose actual incurred losses during the previous three-year experience rating period are greater than the expected losses for the risk. These surcharges are in increasing increments as the loss ratio increases. The primary reason for a policyholder in this situation to pay rates higher than MEMIC's base level for the High Risk rating tier is that they may be able to get a lower rate from another carrier than they would from MEMIC with the surcharge.

The following table illustrates the distribution of workers' compensation policyholders, including MEMIC insureds, relative to MEMIC's standard rate tier.

<b>Percent of Reported Policyholders At, Above or Below MEMIC's Standard Rating Tier Rates</b>	
<b>Rate Comparison</b>	<b>Percent</b>
Below MEMIC Standard Rate	5.02%
At MEMIC Standard Rate	85.42%
Above MEMIC Standard Rate	9.56%

Note: Based upon the results of a survey conducted by the Bureau of Insurance. Respondents included the top 10 insurance carriers in Maine and the other companies in their insurance groups. Cumulatively these insurers accounted for over 87% of the workers' compensation insurance written premium in 2004.

## PART IV. DIFFERENCES IN RATES AND FACTORS AFFECTING RATING

### Additional Factors Affecting Premiums

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%. Approximately two-thirds of the insurance companies with filed rates in Maine have received approval to utilize scheduled rating.
- ❑ **Small deductible plans** shall be offered by insurance carriers. Carriers must offer medical benefit deductibles in the amounts of \$250 per occurrence for non-experience rated accounts and either \$250 or \$500 per occurrence for experience rated accounts. Carriers must also offer deductibles of either \$1,000 or \$5,000 per claim for indemnity benefits. Payments are initially made by the insurance carrier and then reimbursed by the employer. The table below lists the percentage reduction in the advisory loss costs received for electing small deductibles.

Deductible Amount	Percentage
\$1,000 Per Claim for Indemnity Payments	1.0%
\$5,000 Per Claim for Indemnity Payments	3.6%
\$250 Per Occurrence for Medical Payments	1.4%
\$500 Per Occurrence for Medical Payments	2.9%

- ❑ **Managed Care Credits** are credits offered by carriers to employers who use managed care plans. Over 16% 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.

## **PART IV. DIFFERENCES IN RATES AND FACTORS AFFECTING RATING**

- ❑ **Retrospective rating** means that an employer's final premium is a direct function of its 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.
- ❑ **Loss Free Credits** may be given to employers who have had no losses for specified periods of time. Over 61 percent of MEMIC's non-experience rated accounts currently receive some level of a loss free credit.

## PART V. ALTERNATIVE RISK MARKETS

### 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. In 2004, the percent of Maine's total workers' compensation insurance market represented by self-insured employers and groups was 41.7%. This was about a four percent decrease from the prior year and was its lowest level since 1991.

After four straight increases, the estimated standard premium for self-insured employers dropped by over 10 million dollars in 2004. The estimated standard premium for individual self-insurance is determined by taking the advisory loss cost and multiplying it by a factor of 1.2, as specified in statute, and multiplying that figure by the payroll amount divided by 100 and then applying experience modification. As advisory loss costs, and therefore rates, decline, so does the estimated standard premium. Group self-insurers determine their own rates subject to review by the Bureau of Insurance. Group self insurance premiums have been driven up by some of the same factors affecting the insurance market: reduced individual investment returns and higher reinsurance costs.

<b>Table VI. Estimated Standard Premium for Self-Insured Employers and Percent of the Workers' Compensation Market Held by Self-Insurers, 1993-2004</b>		
<b>Year</b>	<b>Estimated Standard Premium</b>	<b>Percent of Workers' Compensation Market (in terms of annual standard premium)</b>
2004	\$171,662,347	41.7
2003	\$182,379,567	43.1
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.

## PART V. ALTERNATIVE RISK MARKETS

### Number of Self-Insured Employers and Groups

As of October 1, 2005 there were 20 self-insured groups representing approximately 1,416 employers as well as 80 individual self-insured employers in Maine. The number of employers in groups remained the same over the past year. 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 six. Since 1997, when the number of individually self-insured employers peaked in Maine, the number has been reduced by nearly one half.

<b>Table VII: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 1996-2005</b>			
<b>Year</b>	<b># of Self-Insured Groups</b>	<b># of Employers In Groups</b>	<b># of Individually Self-Insured Employers</b>
2005	20	1,416	80
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

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.

## **PART VI. A LOOK NATIONALLY**

### **Comparisons with Other States**

According to an annual report compiled by Actuarial & Technical Solutions, Inc and released in 2005, Maine ranked 28th out of 45 states in terms of comparative costs in the manufacturing industry (1<sup>st</sup> indicates lowest cost; 45<sup>th</sup> indicates highest). This was the same rank that Maine received in 2004. This ranking indicates that Maine is a relatively high cost state. Since 1996, Maine has been ranked as high as 42<sup>nd</sup> among other states for workers' compensation insurance costs in the manufacturing industry and as low as 23<sup>rd</sup>. In 2003, Maine's ranking was 32nd. These ranking are impacted by the benefit structures in the various states.

In this same study, comparative costs for office and clerical operations were ranked for the first time. Actuarial & Technical Solutions reviewed rates for approximately 20 classification codes to come up with their rankings. These codes included: accountants, engineers, school professionals, attorneys, and other office and clerical employees. Maine ranked 34<sup>th</sup> out of 45 states. Once again, the lower the ranking the lower are the costs.

In another study, conducted bi-annually by the State of Oregon, Maine ranked 13<sup>th</sup> in terms of 2004 workers' compensation premium rates for all industries. In this study, a lower rank indicates higher premium rates. In the 2002 study, Maine ranked 8<sup>th</sup> overall and in the 2000 study, Maine ranked 19<sup>th</sup>. Maine's 2002 ranking was adjusted downward after the State of Oregon discovered an oversight that resulted in an understatement of Maine's 2002 rates. This study focused on 50 classifications based on their relative importance as measured by their share of losses in Oregon. Results are reported for all 50 states and for the District of Columbia.

Finally, the National Council on Compensation Insurance (NCCI) developed a spreadsheet which shows the average loss cost for Maine compared to the average loss cost for other states based upon Maine's payroll distribution. Maine had the tenth highest average loss costs of the 35 states reporting information to NCCI.





## 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), and 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

The report is organized to provide as complete as possible a picture of the prevention of occupational injuries and illnesses, including enforcement activities.

- **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 2005 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.

#### *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. By the end of 2005, 609 safety classes will have been offered and completed with an estimated 10,800 attendees.

**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 the curriculum, *Starting Safely: Teaching Youth about Workplace Safety and Health*. 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 2005 Summer Institute was conducted at the University of Southern Maine (June 20<sup>th</sup> – 24<sup>th</sup>) with 29 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 over a number of years. 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 2005, twenty-one profiles were requested.

**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). 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 and in 2005, 905 consultations were requested.

For more on SafetyWorks!, go to [www.safetyworksmaine.com](http://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 2005, a total of 371 employers were certified seeking more than 3,573 foreign workers of all types.

## **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, 2004 to July 1, 2005, a total of 4,480 work permits were approved and 186 permits were denied.

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 can be generated. Employers are also identified for inspections based on combinations of certain administrative criteria. From July 1, 2004 to July 1, 2005 the Division conducted 3,256 inspections finding 124 employers in violations with 862 separate violations.

### ***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), 618 inspections were completed in fiscal year 2005. These inspections detected 2,830 violations resulting in \$274,810 in penalties after reductions for size of business and good faith abatement efforts. During the first 6 months of the fiscal year 2005, the Bureau only had one enforcement inspector.

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

In Maine, the United States Department of Labor Occupational Safety and Health Administration (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). 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 2005 show that OSHA conducted 633 inspections in Maine. These inspections detected 1,437 violations, resulting in \$1,350,185 in penalties assessed.

### 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**

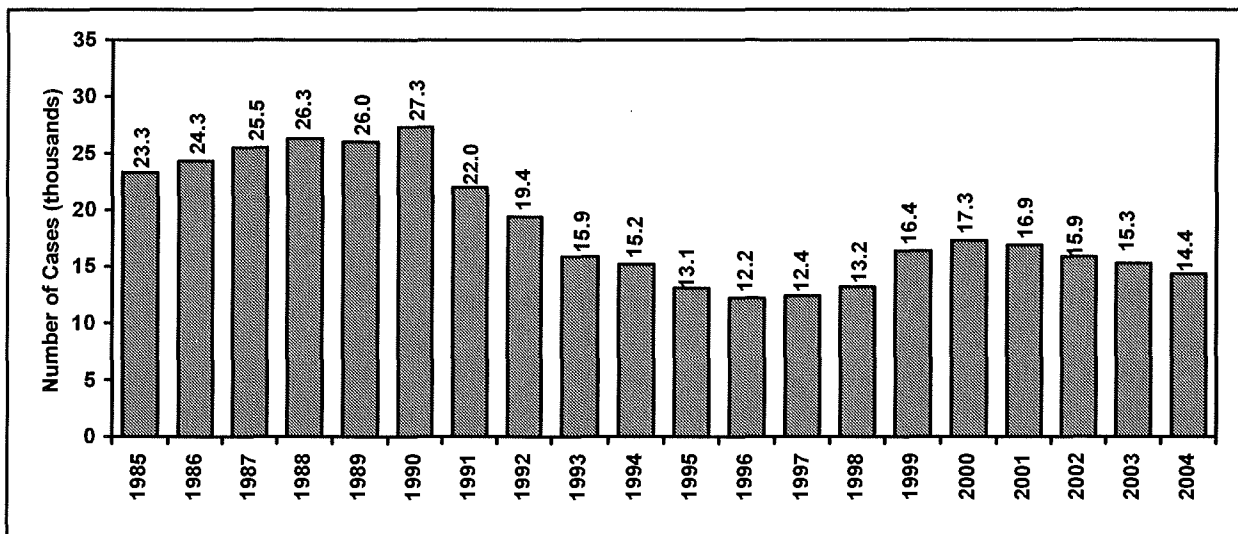
The Research and Statistics Unit (R&S) in the Technical Services Division (TSD) of the BLS is responsible for the administration of several annual OSH surveys. Taken together, the results of these surveys provide an epidemiological profile of occupational injuries and illnesses in Maine. For each of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

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

Since 1973 the BLS has coded, tabulated, analyzed, and summarized data from the WCB *First Reports*. This activity began as a program called the Supplementary Data System (SDS) funded by the federal Bureau of Labor Statistics. When federal funding ended, this program was continued with state funding. 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. The following are some data from this program.



**A Twenty-Year Pattern of Disabling Cases, Maine, 1985-2004.** In 2004, there were 14,404 disabling cases reported to the Maine Workers' Compensation Board. 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 2004 figure shows a decrease of 915 cases from 2003. This is the fourth straight year this figure has decreased.



**Figure 1. Twenty-Year Pattern of Disabling Cases, 1985-2004**

**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, 2002-2004.** In 2004, the six counties with the highest disabling case rate were (in descending order): Sagadahoc (consistently highest by about a factor of two), Somerset, Knox, Oxford, and a tie between Waldo and Washington counties. Table 1 describes the distribution of disabling cases by counties for 2002 through 2004. 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, 2002-2004**

County	2002			2003			2004		
	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000
Androscoggin	1,425	47,311	30.1	1,435	47,176	30.4	1,203	46,770	25.7
Aroostook	851	29,036	29.3	766	29,187	26.2	693	28,960	23.9
Cumberland	4,090	163,691	25.0	3,914	164,995	23.7	3,777	166,780	22.6
Franklin	254	11,717	21.7	250	11,741	21.3	229	11,750	19.5
Hancock	634	22,721	27.9	569	22,778	25.0	541	22,410	24.1
Kennebec	1,542	56,035	27.5	1,500	55,492	27.0	1,365	54,920	24.9
Knox	437	17,622	24.8	454	17,612	25.8	471	16,880	27.9
Lincoln	305	11,024	27.7	279	11,142	25.0	282	11,050	25.5
Oxford	480	17,656	27.2	474	17,697	26.8	470	17,090	27.5
Penobscot	1,605	68,740	23.3	1,568	67,846	23.1	1,527	69,110	22.1
Piscataquis	142	5,748	24.7	144	5,645	25.5	126	5,510	22.9
Sagadahoc	850	15,517	54.8	883	15,185	58.1	790	16,140	48.9
Somerset	554	19,032	29.1	601	18,499	32.5	514	17,950	28.6
Waldo	306	11,255	27.2	285	11,242	25.4	291	10,920	26.6
Washington	299	11,399	26.2	280	11,076	25.3	297	11,150	26.6
York	1,670	59,786	27.9	1,580	60,455	26.1	1,527	65,490	23.3
Unknown*	422	10,607	----	337	9,606	----	301	22,240	----
Total	15,866	579,261	27.4	15,319	577,374	26.5	14,404	595,120	24.2

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

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

**Disabling Cases by Occupational Groups, Maine, 2002-2004.** In 2004, 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 2004):

- 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.

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, more work should be done 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, 2002-2004**

Occupational Groups	2002		2003		2004	
	Number	Percent	Number	Percent	Number	Percent
Service Workers	3,131	19.7	3,008	19.6	2,825	19.6
Precision Production, Craft or Repair	2,582	16.3	2,521	16.5	2,349	16.3
Handler, Equipment Cleaner, Laborer	2,217	14.0	2,204	14.4	2,055	14.3
Transportation or Material Handler	1,347	8.5	1,385	9.0	1,311	9.1
Machine Operator, Assembler or Inspector	1,384	8.7	1,257	8.2	1,144	7.9
Other Occupational Groups	5,205	32.8	4,944	32.3	4,720	32.8
Total	15,866	100.0	15,319	100.0	14,404	100.0

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

**Length of Service of Injured Worker, Maine, 2002-2004.** 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 4,913 (34.1%) of the *First Reports* in 2004. 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 increased disproportionately, from 10.3% in 2001 to 12.4% in 2004.

**Table 3. Length of Service of Injured Worker, Maine, 2002-2004**

Length of Service of the Injured Worker	Disabling Cases					
	2002		2003		2004	
	Number	Percent	Number	Percent	Number	Percent
<b>Total</b>	<b>15,866</b>	<b>100.0</b>	<b>15,319</b>	<b>100.0</b>	<b>14,404</b>	<b>100.0</b>
<b>Under 1 Year</b>	<b>5,498</b>	<b>34.7</b>	<b>5,066</b>	<b>33.1</b>	<b>4,913</b>	<b>34.1</b>
1 Year	2,049	12.9	1,887	12.3	1,717	11.9
2 Years	1,254	7.9	1,197	7.8	1,111	7.7
3-4 Years	1,654	10.4	1,653	10.8	1,635	11.4
5-9 Years	1,723	10.9	1,813	11.8	1,698	11.8
10-14 Years	1,507	9.5	1,378	9.0	1,138	7.9
15-19 Years	725	4.6	925	6.0	926	6.4
20+ Years	1,011	6.4	968	6.3	858	6.0
Unknown	445	2.8	432	2.8	408	2.8

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

**Nature, Source, and Event of Injuries and Illnesses, Maine, 2000-2004.** Table 4 gives the top five each of nature, source, and event of injuries and illnesses. There were some shifts in 2004.

**Table 4. Nature, Source and Event of Injuries and Illnesses, Maine, 2000-2004**

	2000	2001	2002	2003	2004
<b>Nature of Injury</b>					
Sprains, strains, tears	5,959	5,561	4,991	4,692	4,664
No specified pain, sore, hurt	3,549	3,837	3,913	3,863	3,462
Bruises, contusions	1,119	1,122	1,045	1,057	988
Traumatic injuries & disorders, unspecified	*	*	*	860	665
Fractures	834	871	720		666
Cuts, lacerations	787	784	747	745	726
<b>Source of Injury</b>					
Person--injured or ill worker	3,973	3,775	3,567	3,417	3,302
Floors, walkways, ground surfaces	2,309	2,569	2,376	2,332	2,055
Containers	1,985	1,775	1,629	1,609	1,513
Nonclassifiable	*	*	*	1,270	1,182
Parts and materials	1,237	1,118	1,067	1,009	978
Vehicles	952	956	932		822
<b>Event or Exposure</b>					
Overexertion	5,493	5,231	5,024	4,756	4,415
Bodily reaction	2,014	1,910	1,772	1,688	1,704
Fall on same level	1,544	1,791	1,584	1,631	1,313
Struck by object	1,369	1,302	1,207	1,321	1,160
Repetitive motion	1,406	1,299	1,222	1,208	1,124

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

**Note:** \* indicates that the specific nature and source of injury was not in the top five categories.

### ***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 results from this survey are summarized and published on the Federal BLS website (<http://stats.bls.gov/iif/oshstate.htm>). 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 reporting 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 revised regulation instituting use of the OSHA 300 log, sweeping changes were made to the recording criteria; cases formerly recordable now are not and *vice versa*. Among the most significant changes were:

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

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

The 2002 changes to the recordkeeping regulations apply to 2003 with one important exception. In 2003, OSHA revised its regulations regarding the recording of occupational hearing loss cases. Also in 2003, work establishments were being 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, 2004.** According to the 2004 SOII for the private sector, the Utilities Division recorded the highest incidence rate of 12.5 per 100 FTE.

**Table 5. Number of Cases and Incidence Rate of Injuries and Illnesses, Maine, 2004**

NAICS Sector (Not directly comparable with SIC Division)	2004	
	Number of Cases	Incidence Rate
<b>Private Sector</b>	<b>28,225</b>	<b>6.9</b>
Manufacturing	6,891	11.2
Health Care and Social Assistance	5,807	7.8
Retail Trade	5,435	7.9
Construction	2,045	7.8
Accommodation and Food Services	1,676	5.2
Wholesale Trade	1,415	6.8
Transportation and Warehousing	1,111	8.3
Administration Support and Waste and Remediation Services	N/P	N/P
Finance and Insurance	434	1.8
Professional, Scientific, and Technical Services	1,468	3.5
Information	325	3.4
Arts, Entertainment, and Recreation	354	7.9
Agriculture, Forestry, Fishing, and Hunting	370	8.1
Real Estate and Rental and Leasing	138	2.6
Management of Companies and Enterprises	N/P	N/P
Educational Services	162	2.4
Utilities	238	12.5
Mining	NP	N/P
<b>Public Sector</b>	<b>3,002</b>	<b>4.7</b>

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

Note: "N/P" means not publishable

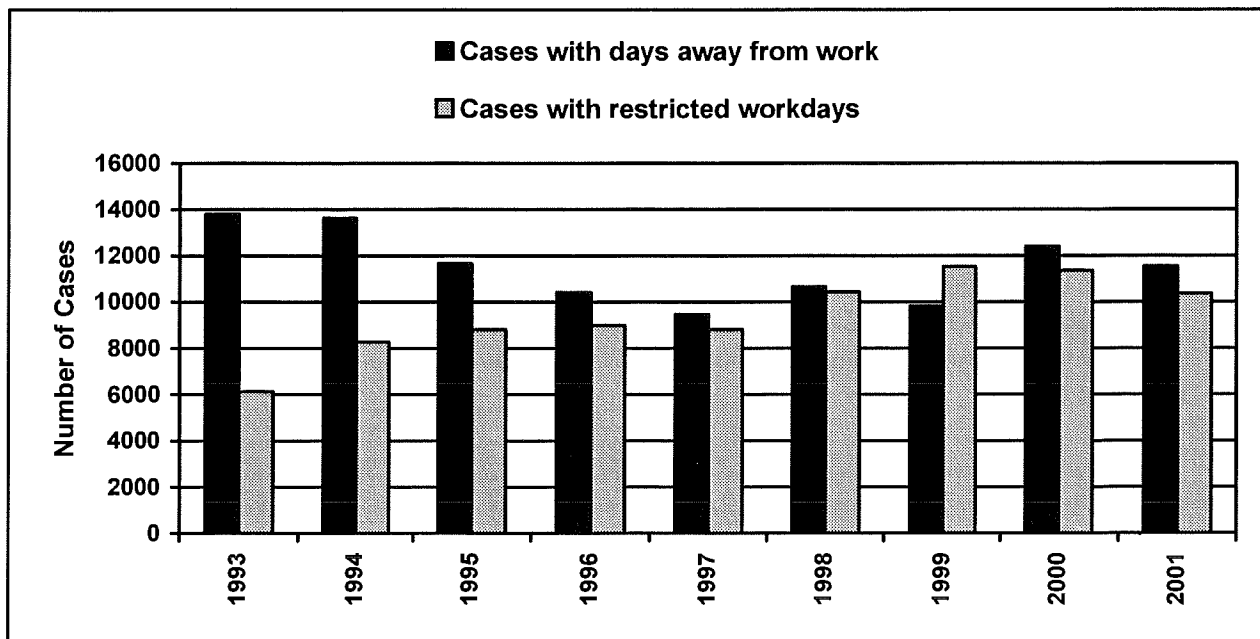
For further information on OSHA recordkeeping, please go to OSHA's website, [www.osha.gov](http://www.osha.gov).

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

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

More research is needed to test these hypotheses.

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



Continued next page

*Source: Survey of Occupational Injuries and Illnesses*



**Figure 2B. A Three-Year Trend Analysis of Lost Workday and Restricted Work Activity Cases, All Industries (Public and Private Sectors), Maine, 2002-2004**

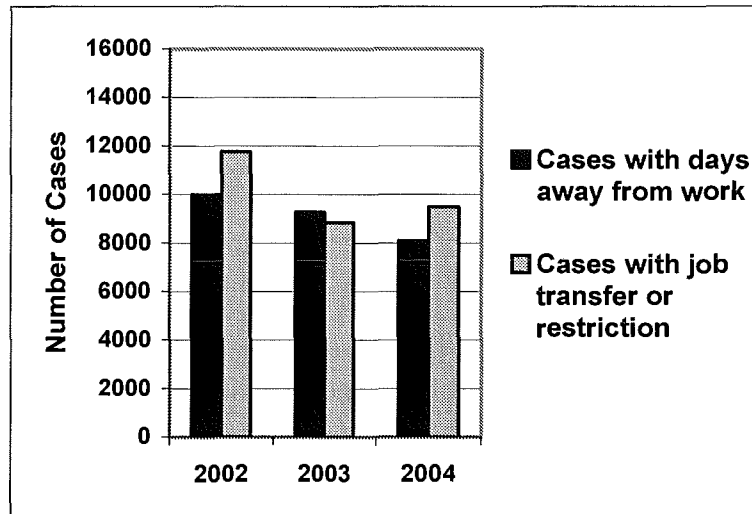


Figure 2B describes the injury data collected with revised OSHA recordkeeping regulations. These data should not be directly compared with earlier years' data (1993-2001) or with each other. For 2004, there was an estimated total of 17,567 OSHA recordable injuries resulting in at least one day away from work or one day of job transfer or restriction beyond the day of injury. Of this total, it is estimated that 8,082 cases resulted in at least one day away from work and 9,485 cases resulted in job transfer or restriction without any days away from work.

### ***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 data collected are from the same sources as, but less detailed compared to the SOII survey. 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*”.

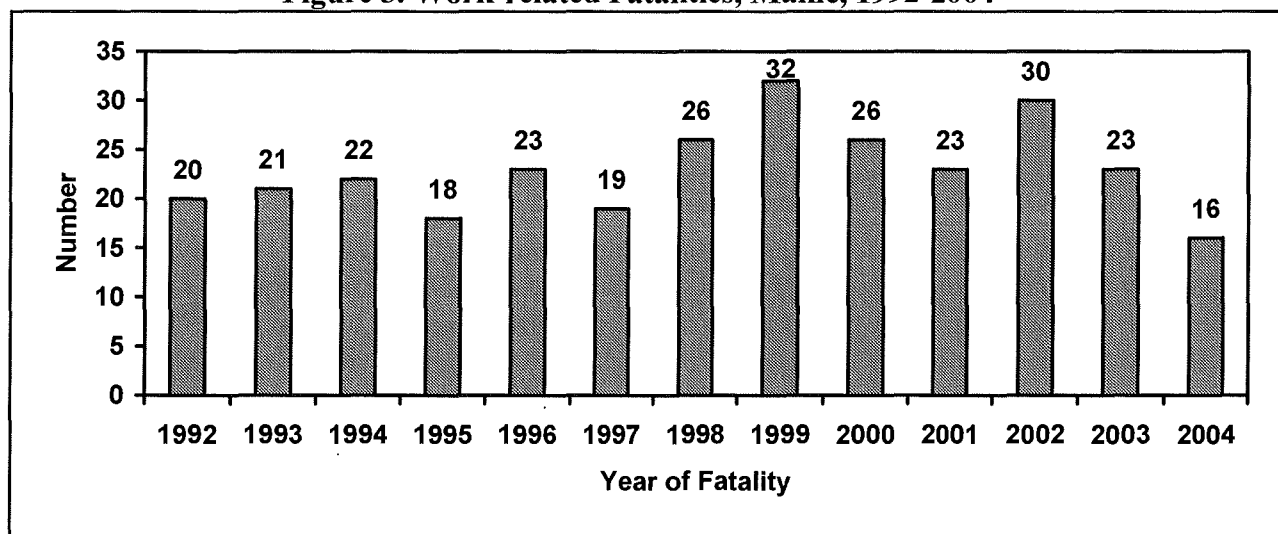
The CFOI program is a federal/state cooperative program. It was created in 1990 by the U.S. Department of Labor, Bureau of Labor Statistics and includes all 50 states and the District of Columbia. The program was established to determine a true count of work-related fatalities in the United States. Prior 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; and 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 state CFOI program as required by the Federal Bureau of Labor Statistic that provides funding for this program.

**Fatal Occupational Injuries, Maine, 1992-2004.** Figure 3 shows the numbers of work-related fatalities recorded in Maine from 1992-2004.

**Figure 3. Work-related Fatalities, Maine, 1992-2004**



Source: Maine Census of Fatal Occupational Injuries

**Fatal Occupational Injuries by Industry and Event/Exposure, 1992-2004**

Transportation accidents have accounted for more occupational fatal injuries than any other event or exposure in Maine as shown in Table 6. Since 1992, more than 49% of the fatal work-related injuries in Maine collected under the CFOI program were classified as transportation related.

**Table 6. Fatal Occupational Injuries by Industry and Event/Exposure, Maine, 1992-2004**

Industry Division	Total	Transportation Accidents Highway & Non-highway	Contact with Objects & Equipment	Falls	Exposure to Harmful Substances	Assaults & Suicides	Fires & Explosions
<b>Total</b>	<b>302</b>	<b>148</b>	<b>63</b>	<b>36</b>	<b>34</b>	<b>16</b>	<b>5</b>
Agriculture, Forestry & Fish.	79	53	4	4	18	--	--
Manufacturing	48	11	28	9	--	--	--
Transportation & Public Utilities	45	36	5	--	4	--	--
Construction	35	5	9	13	8	--	--
Services	27	10	11	3	--	3	--
Retail	18	9	--	4	--	5	--
Government	14	9	--	--	--	5	--
Wholesale	13	13	--	--	--	--	--
Other	23	2	6	3	4	3	5

Source: Census of Fatal Occupational Injuries

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

## *Employer Substance Abuse Testing*

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

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

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

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

- 1) The Maine Department of Labor, which:
  - Reviews and approves substance abuse testing policies,
  - Conducts the annual survey of substance abuse testing,
  - Analyzes testing data and publishes the annual report, 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 Health and Human Services (DHHS), which licenses testing laboratories and the Office of Substance Abuse Services within DHHS 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 prior to testing their employees.

The following table and graph show the trend of non-federally-mandated drug testing from 1994 through 2004.

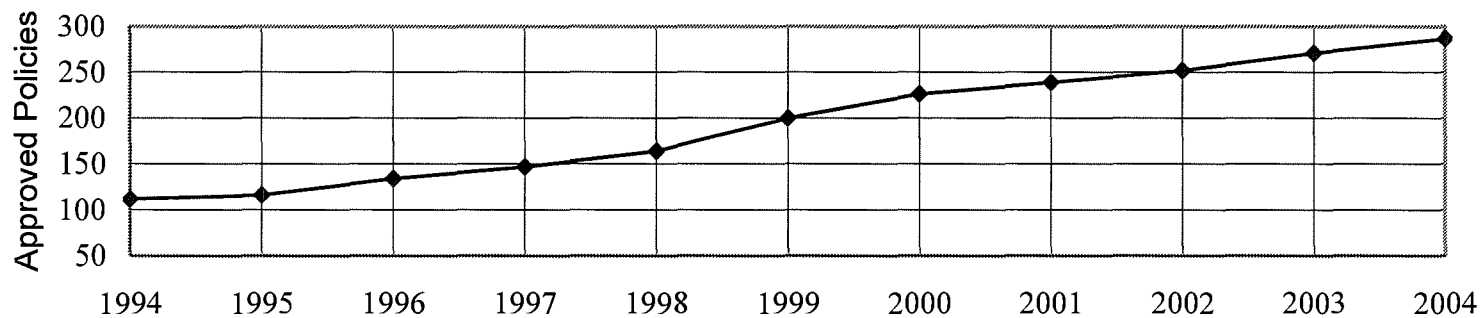
**Table 7. Substance Abuse Testing**

**Yearly Totals by Type of Test  
Applicants/Employees  
1994-2004**

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
2004	287	17,428	826	4.7	16,702	803	4.8	6	1	16.7	720	22	3.1
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

-- Indicates a value of less than 0.05%

**Employers With Approved  
Substance Abuse Testing Policies  
1994-2004**



### **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. A majority 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 C. Lim 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 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. The results of this study are found on the BLS Website:

<http://www.maine.gov/labor/bls/techserv.htm>

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

## 4: PROBLEM AREAS

### 4A. NEEDED IMPROVEMENTS IN 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 (1997-2004). There were 6,705 cases with no return to work date for the year 2004 as of the tabulation of this data in December of 2005. 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 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. The Bureau of Labor Standards (BLS) is not always able to determine if an employee is still out of work for the reasons as follows:

1. Return To Work (RTW) dates are not filed on denied indemnity cases. There is no statutory or rule obligation for the employer/insurer to file a RTW date with the Board in this situation. This example represents approximately 21% of all Lost Time (LT) claims filed.
2. Approximately 50% of the First Reports of Injury, WCB-1, are updated to reflect a RTW date. This RTW information is located on the Board's new database. The Board's migration to electronic filing (EDI) of all First Reports has improved the collection of this data.
3. RTW dates are also listed on the Discontinuance or Modification Form, WCB-4, and on the 21-Day Certificate of Discontinuance or Reduction of Compensation Form, WCB-8, for claims where indemnity benefits have been paid. This RTW information is located on the Board's old database. Approximately 29% of all LT claims filed are represented in this example.
4. The location of the RTW dates on two separate databases at the Board complicates access to this information by BLS. The Board is scheduled to merge both databases in 2006.

**Table 9. Missing Return-to-Work Date, Maine, 1997-2004**

	1997	1998	1999	2000	2001	2002	2003	2004
Total Disabling Cases	12,419	13,111	16,348	17,292	17,001	15,866	15,319	14,404
No return-to-work date	7,056	7,342	7,959	7,888	7,885	7,281	7,119	6,705
Percent of total	56.8	56.0	48.7	45.6	46.4	45.9	46.5	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 2005. A draft report has been completed and is under review for submission to the Labor Committee early in the Second Session.

## 5. 2005 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*

In 2002, the BLS was awarded a three-year, \$250,000 National Institute of Occupational Safety and Health (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.

In 2005, the BLS in collaboration with the Maine Bureau of Health submitted a joint application to the NIOSH for an injury surveillance grant. The focus of this grant is to develop a model of core OSH indicators for collecting quality data that are comparable among all states. The application was not funded.

MDOL is part of the national work group that developed these indicators. The Council of State and Territorial Epidemiologists (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 status with respect to workplace factors that can influence health. These indicators can either be measures of health (work-related disease or injury) or factors associated with health, such as workplace exposures, hazards or interventions. These indicators are intended to:

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

The proposed project is divided into three parts to be implemented in yearly steps. During the first year (2003), the MDOL (BLS) identified and established contact with relevant advisory groups.

The MDOL also began compiling data on the 13 core surveillance indicators and simultaneously assessing the strengths and limitations of data sources used. During the second year (2004), the MDOL 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 supporting 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 committed to 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 held its third Maine Occupational Safety and Health Research Symposium (May 25<sup>th</sup> and 26<sup>th</sup>, 2005) on the campus of the University of New England in Biddeford. The purpose of the symposium was to address the occupational safety and health needs of priority populations. These are workers who are under-represented in traditional occupational safety and health research. This includes young and old workers, immigrant and minority workers, disabled workers, and others with low social economic status such as self-employed or temporary help.

Addressing the occupational safety and health needs of priority populations present a challenge to the Maine Department of Labor. The limited participation by some of these workers in the workers' compensation and unemployment insurance programs and the seasonality and transient nature of employment limit the ability of the MDOL to conduct effective OSH surveillance. Compounding this limitation is language barrier among limited or non-English speaking workers, their unfamiliarity with the Maine Workers' Compensation system, and hesitancy to report injuries or work accidents.

The symposium is expected to generate discussions and improvements on three OSH issues surrounding priority populations:

- 1) Epidemiology & Surveillance
- 2) Outreach and Education
- 3) Employers' Best Practice

The 2005 symposium helped the MDOL accomplish the following objectives:

- a) Further increase the awareness of Maine and other New England States occupational safety and health communities on the occupational safety and health issues of priority populations via research and panel presentations and informal discussions through networking.
- b) Stimulate the exchange of intervention, advocacy and enforcement activities to enhance the occupational safety and health of priority populations.
- c) Continued development and promotion of OSH research via the Maine occupational safety and health research agenda (MORA).

## ***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 2005.

- A continuation of a study on the impact of domestic violence on workplace safety and health
- Collaborated with the National Institute for Occupational Safety and Health, the Council for State and Territorial Epidemiologists and 12 other states to development a set of occupational safety and health indicators
- Sponsored a symposium on the occupational safety and health issues of special populations

### ***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 2005, MORA identify the following 3 research priorities:

- 1) Occupational Asthma
- 2) Cost Drivers
- 3) Pesticide related illnesses

For more information on MORA, go to MORA's website, [www.maine.gov/labor/bls/MORA.htm](http://www.maine.gov/labor/bls/MORA.htm).

### ***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 began 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. The pilot program was completed in 2005 with the conclusion that the Maine Migrant Health Program's medical program has the potential to become a good data source of work-related injuries among migrant and seasonal workers.

### ***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 seven 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 initiative was 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 2005:

Public Law, Chapter 167, An Act To Allow Firefighters and Emergency Service Personnel To Direct Traffic: Gives firefighters and emergency service personnel the authority to direct traffic and makes the failure to obey a traffic infraction. The BLS has developed and delivered training specific to emergency personnel who will direct traffic.

Public Law, Chapter 443, An Act To Refine and Study Substance Abuse Testing Procedures and Treatment: Provides additional details for confidentiality of Point of Collect Test (POCT). It also creates a study group to research these areas of the law and report back to the Labor Committee. The three issues are: testing and treatment after workplace accidents, expanded use of POCT, and treatment as it relates to small businesses. The group is meeting and anticipates having a public report by mid-January 2006.