

# MAINE STATE LEGISLATURE

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

**Submitted to the  
125th Legislature  
(First Regular Session)**

**February 2011**

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STATE OF MAINE  
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February 15, 2011

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We are pleased to submit to the Governor and the 125<sup>th</sup> Legislature, First Regular Session, the ***Annual Report on the Status of the 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 – the Workers' Compensation Board, the Bureau of Insurance, and the Maine Department of Labor, Bureau of Labor Standards.

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## TABLE OF CONTENTS

	<u>Page</u>
<b>Executive Summary .....</b>	<b>1</b>
 <b>Reports from the Workers' Compensation Board, the Bureau of Insurance, and the Bureau of Labor Standards</b>	
<b>A. Workers' Compensation Board .....</b>	<b>A-1</b>
<b>B. Bureau of Insurance .....</b>	<b>B-1</b>
<b>C. Bureau of Labor Standards .....</b>	<b>C-1</b>

## 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 Insurance and Financial Services by February 15 of each year.

### **WORKERS' COMPENSATION BOARD**

The Workers' Compensation Board has adopted a Strategic/Transition Plan to help maintain the stability of the workers' compensation system in Maine. Overall, dispute resolution is performing at high levels of efficiency; compliance with the Workers' Compensation Act is high; frequency of claims is down; compensation rates have dropped 53 percent since 1993; MEMIC has recently declared a \$12 million dividend to Maine businesses; and the Board has reduced the assessment to employers by over \$3 million over the past two years, all of which contribute to one of the more stable workers' compensation systems in the country.

During the past seven years the Workers' Compensation Board has transitioned from an agency whose purpose was mainly dispute resolution to one which provides effective regulation, improved compliance, strong advocacy for injured workers, and is now addressing the problem of employee misclassification.

It is particularly important at this time to maintain the positive momentum generated by the Board over the years. The political landscape has changed with both a new Governor and Legislature. It is important for the Board to have a solid strategic plan to reassure the Governor and Legislature that the Board is fulfilling its mission "to serve the employees and employers of the State fairly and expeditiously... ."

There will also be a major transition in staff leadership with key positions being vacated during the 2011 year. The Governor will appoint an Executive Director and key staff people will be retiring.

The Annual Report should provide the Governor and the Legislature with a framework from which to analyze the process of the Board and assess potential changes.

In 2004, Governor Baldacci 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 Board'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, or will act 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 advocate resources and reclassifications; dispute resolution issues; increase in compliance benchmarks; independent contractors; an independent audit by Blake, Hurley, McCallum, and Conley; a Facility Fee Schedule; data gathering project; and Employee Misclassification.

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 help to perpetuate this positive trend. Decisions are less regularly made by the Chair in a tie-breaking manner, which means, in large part, that the parties of interest are reaching consensus more often on decisions that impact their constituencies.

The composition of the Board was changed as a result of the 2004 legislation. In order to maintain continuity, a member from both Labor and Management were nominated by the Governor and confirmed by the Legislature. The Executive Director/Chair was also nominated by the Governor and confirmed by the Legislature. Two new Labor Members and two new Management Members were nominated by the Governor and confirmed by the Legislature. The new Board is handling difficult issues efficiently and professionally. As an example, the Board, upon the recommendation of the Executive Director, approved a transfer of \$3 million to offset the assessment to employers for 2009 -2010.

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 and highlighted 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 various reports comparing Maine to the other states in regard to the costs of workers' compensation indicate that Maine has improved significantly in lowering its costs. "Maine is one of the states with the largest decrease in benefit costs" ; "Maine is at the national average for cash benefits, medical benefits, and total cash and medical benefits" ; "Maine's rank was 30<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."

Maine has gone from one of the costliest states in the nation to one that is moving to 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 keeping Maine fair-minded and competitive.

During the Second Regular Session of the 124<sup>th</sup> Legislature, several bills affecting workers' compensation were enacted.

1. LD 1528, *An Act To Enhance Cooperation Between the Workers' Compensation Board's Abuse Investigation Unit and Other State Agencies and To Ensure Equal Application of the Requirement to Obtain Coverage*, was passed and signed by the Governor and became effective July 12, 2010;
2. LD 1529, *An Act To Amend the Maine Workers' Compensation Act of 1992 Regarding the Coordination of Benefits*, was passed and signed by the Governor and became effective July 12, 2010;
3. LD 1565, *An Act To Amend the Laws Governing the Knowing Misclassification of Construction Workers*, was passed and signed by the Governor and became effective July 12, 2010;
4. LD 1566, *An Act Relating to the Membership of the Workers' Compensation Board*, was passed and signed by the Governor and became effective July 12, 2010;
5. LD 1711, *An Act To Clarify the Status of Prisoners*, was passed and signed by the Governor and became effective July 12, 2010;
6. LD 1815, *An Act To Clarify the Construction Subcontractor Status of the Maine Workers' Compensation Act of 1992*, was passed and signed by the Governor. Because this was emergency legislation, the law was effective the date the Governor signed it - March 30, 2010.

An independent accountant report prepared by Blake, Hurley, McCallum & Conley, and delivered to the Board on December 19, 2007, gave the Board a clean bill of health for the previous 10 years in regard to its assessment and budgetary procedures. It also advanced recommendations to improve the process, most of which have been implemented by the Board. One of the recommendations that has not been dealt with was to legislatively change the "assessment statute to require insurance companies to pay assessments on the same basis as the self-insureds" (cash basis in lieu of rate basis). The change would have simplified the process and reduced administrative costs, but would have been very cumbersome for the insurance companies to implement, and was rejected by the Board.

The Workers' Compensation Board has made significant progress in regard to a Facility Fee Schedule to contain health care costs. In 2007, the Board contracted with Ingenix to review hospital inpatient, outpatient, and ambulatory surgical center charges and costs. Four meetings have been held with the consensus-based rulemaking group. Although that group was able to reach consensus on the methodology, it was unable to agree on the base rate. The objectives of the Fee Schedule include: providing access to quality care for injured workers, ensuring that providers are paid fairly, reducing and containing healthcare costs, and, creating clarity in rules and simplicity for maintenance.

The Facility Fee Schedule should not be viewed as a one-time event; accordingly, Board Staff has recommendations for future courses of action:

- Medicare updates should be reviewed and adjusted annually;
- Payment rates should be recalculated and adjusted annually;

- Expenditures should be analyzed annually;
- Ingenix should be retained for one year to review and analyze the data and make recommendations to the Board as to adjustments to the Facility Fee Schedule.

The Board agreed on a rule for the Facility Fee Schedule which was sent out for public hearing. Comments were submitted by the various interest groups and considered by the Board. In November 2009, the Board agreed to obtain new data and consider its impact, if any, on the base rate for payment. As a result, the Board missed the adoption deadline date of December 24, 2009 for passage of the rule. During 2010, the Board continues to work with a consensus-based rulemaking group, with the assistance of Ingenix. In addition to reviewing the pros and cons of various alternative approaches, Ingenix studied and compared payments made by private 3<sup>rd</sup> party payors. The consensus-based group has agreed to use a modified Medicare approach with respect to facility fees; however, the group is still working to achieve consensus with respect to reimbursement amounts and will deal with the issue in early 2011.

Employee misclassification is another issue dealt with by the Board in 2010. This is a huge problem in Maine as well as nationally. The Governor issued an Executive Order in January 2009 appointing a Task Force to analyze the problem in Maine and to make recommendations to the Governor.

The Task Force has met regularly over the past 12 months and has held three, well-attended, public hearings in Bangor, Portland, and Lewiston. The Workers' Compensation Board has two members on the Task Force and has provided a Report to the Task Force and the Legislature. The Report recommends internal changes, such as reclassification and reallocation of positions which would improve oversight significantly at very little costs. The Report also recommends that the Task Force consider the feasibility of creating an Employee Misclassification Unit and determine whether this would lead to increased revenues and decreased premiums.

The Board has created an Employee Misclassification Unit as a result of legislation passed in the Second Regular Session of the 124<sup>th</sup> Maine Legislature. The Board hired an Auditor II and a Management Analyst II to identify misclassification and enforce no coverage cases. The Board also reclassified four existing positions from Workers' Compensation Specialists to Workers' Compensation Advocates. This initiative will be supervised by the MAE Program and the Abuse Investigation Unit in conjunction with the Department of Labor and other State Agencies.

In the past seven years, the Maine Workers' Compensation Board has transitioned from an agency whose purpose was mainly dispute resolution to one which provides effective regulation, improved compliance, strong advocacy for injured workers, and is now assuming a role in employee misclassification.



## BUREAU OF INSURANCE

The advisory loss costs, the portion of the workers' compensation rates which cover projected loss and loss adjustment expenses, increased by 0.4% in 2011 after dropping in each of the prior three years. They are now, on average, nearly 46% lower than at the time of the last major reform to the workers' compensation system in 1993.

Although medical costs slightly increased in policy year 2008, the average medical cost per case has risen significantly since policy year 2000. This development is important because medical benefits constitute 53% of the total benefit costs in Maine. Medical costs and services are rising faster than overall inflation as measured by the Consumer Price Index, and are rising faster than wages.

The increase in advisory loss costs is not evenly distributed across all rating classifications, as seen below.

<u>Industry Group</u>	<u>Percent Change</u>
Miscellaneous	-2.1%
Manufacturing	+2.1%
Office Clerical	+0.9%
Contracting	+0.1%
Goods & Services	+0.9%

The change in loss costs for individual classifications within each group varies depending on the experience within each classification. Some employers will see premium decreases while other employers will see increases.

Maine Employers' Mutual Insurance Company (MEMIC) although it actively competes in the voluntary market, functions as the insurer of last resort in Maine. Although MEMIC's market share has dropped each of the last four years, the workers' compensation insurance market is still very concentrated. Much of the business is written by a small number of companies.

There are, however, continued signs that pricing has become more competitive. Some insurers have lowered their rates in hopes of attracting business. Additionally, the number of insurance companies becoming licensed to provide workers' compensation coverage in Maine has been on the increase for several years.

Insurers other than MEMIC do not have to offer coverage to employers and can be more selective in choosing which employers to underwrite. In order to become eligible for lower rates, an employer needs to have a history of few or no losses, maintain a safe work environment, be willing to follow loss control recommendations, and strive to prevent and control any future losses.

Twenty-two insurers (22) wrote more than \$1 million each in annual premiums in 2009, six fewer companies than in 2008. The top 10 insurance groups wrote 95% of the workers' compensation insurance in Maine during 2009, the same as in 2008.

Self-insured employers represented more than 45% of the overall workers' compensation market in 2009, the third consecutive increase after reaching a low of about 40% in 2005. Self-insurance continues to be a viable alternative to the insurance market for some employers.

## 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 authority to collect and analyze statistical data on work-related injuries and illnesses and their effects. The MDOL is also responsible for enforcement of Maine labor laws and the related rules and standards, including occupational safety and health standards in the public sector.

SafetyWorks! is an identity that encompasses the occupational safety and health (OSH) training, consultation and outreach functions of the BLS. These activities include use of WCB data to respond to requests for information from the OSH community and the general public on the safety and health of Maine workers. SafetyWorks! instructors also design their safety training programs based on industry profiles generated from data from the WCB *First Reports of Occupational Injury or Disease* and 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 may use 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 agency's 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. In 2010 such research took the form of:

- Continuation of capacity building in OSH surveillance in cooperation with the Maine Center for Disease Control and Prevention, and
- Expansion of the in-house of an occupational fatality reporting program similar to the federal Fatality Assessment, Control, and Evaluation (FACE) program.

A serious problem is missing data in WCB *First Reports* submitted by Electronic Data Interchange (EDI). Missing fields prevent useful analysis and BLS must therefore collect the data by phone. In 2007, a Value-Stream Mapping (VSM) team determined that BLS case coding quality was the same as before EDI. However, coding was taking more effort (about twice as much overall) to maintain that quality. The VSM team was able to show that almost 60 percent of the incoming cases had problems, some involving multiple fields. The VSM process identified and implemented a series of changes, including correcting a general programming error that had affected half of the cases entering the coding process. These changes resulted in significant improvements in the coding process.

A separate, chronic problem in the use of WCB data is that around a minimum of around 20 percent 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. The EDI process seems to be improving the results in this area somewhat, but it is still significant.

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 were closely examined and some improvements were implemented. The Work Group was disbanded in early 2010 as their Legislative function was completed.

The BLS applied for no research grants in 2010 because National Institute of Occupational Safety and Health (NIOSH) funding was unavailable. The Maine Occupational Research Agenda (MORA), created in 2000 on the model of the National Occupational Research Agenda, provided input to BLS on a variety of OSH issues through review of relevant projects during the year.

In 2009, the Research and Statistics Unit of BLS continued its data outreach initiative, placing its accumulated data and data-related services before the public. SafetyWorks! administered the Safety and Health Achievement Recognition Program (SHARP) in the private sector and a parallel program for public sector employers called Safety and Health Award for Public Employers (SHAPE) as means of recognizing outstanding employer safety programs. There are now 32 sites in the SHARP program and 30 employers in SHAPE. The Bureau continues to support the SHARP/SHAPE employer network – the Maine Employers for Safety and Health Excellence (MESHE).

**SECTION A**

**WORKERS' COMPENSATION BOARD**

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**TABLE OF CONTENTS**

**Page A-**

<b>1. INTRODUCTION .....</b>	<b>1</b>
<b>2. ENABLING LEGISLATION AND HISTORY OF MAINE WORKERS' COMPENSATION.....</b>	<b>4</b>
I.    ENABLING LEGISLATION. ....	4
II.   REVISIONS TO ENABLING LEGISLATION.....	4
III.  STATE AGENCY HISTORY. ....	5
<b>3. DISPUTE RESOLUTION .....</b>	<b>9</b>
<b>4. OFFICE OF MONITORING, AUDIT, AND ENFORCEMENT .....</b>	<b>13</b>
I.    HISTORY. ....	13
II.   MONITORING.....	13
III.  AUDIT. ....	17
IV.  ENFORCEMENT. ....	18
V.   EMPLOYEE MISCLASSIFICATION. ....	18
<b>5. INDEPENDENT MEDICAL EXAMINATIONS (IMES); MEDICAL FEE SCHEDULE;     FACILITY FEE SCHEDULE .....</b>	<b>19</b>
I.    INDEPENDENT MEDICAL EXAMINATIONS.....	19
II.   MEDICAL FEE SCHEDULE. ....	22
III.  FACILITY FEE SCHEDULE. ....	22
<b>6. WORKER ADVOCATE PROGRAM .....</b>	<b>24</b>
<b>7. TECHNOLOGY .....</b>	<b>30</b>
<b>8. BUDGET AND ASSESSMENT .....</b>	<b>32</b>
<b>9. CLAIMS MANAGEMENT UNIT .....</b>	<b>35</b>
<b>10. INSURANCE COVERAGE UNIT .....</b>	<b>38</b>

<b>11. COORDINATION WITH OTHER AGENCIES.....</b>	<b>39</b>
<b>12. ABUSE INVESTIGATION UNIT.....</b>	<b>41</b>
<b>13. GENERAL COUNSEL REPORT .....</b>	<b>44</b>
<b>I. RULES. ....</b>	<b>44</b>
<b>II. LEGISLATIVE ACTIVITY. ....</b>	<b>44</b>
<b>III. EXTREME FINANCIAL HARDSHIP CASES.. ....</b>	<b>49</b>
<b>IV. BOARD REVIEW PURSUANT TO 39-A M.R.S.A. § 320.....</b>	<b>50</b>
<b>V. LITIGATION.....</b>	<b>50</b>
<b>14. 39-A M.R.S.A. § 213 THRESHOLD ADJUSTMENT AND EXTENSION OF 260-     WEEK LIMITATION .....</b>	<b>51</b>

## 1. INTRODUCTION

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

The major programs of the Board fall into seven 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; (6) Central and Regional Office support; and, (7) Employee Misclassification.

The implementation of Standard Operating Procedures (SOPs) has resulted in the elimination of backlogs and an efficient dispute resolution system. But a Law Court decision in regard to the Independent Medical Examiner program has reversed some of the progress. The Law Court holding in *Lydon v. Sprinkler Systems* has resulted in a reduction in the number of independent medical examiners causing delays to the formal hearing process. Cases without an IME are processed within 8 months, while cases with an IME are taking over 11 months to process through the formal hearing system. The Board's ability to attract doctors in the appropriate specialties to serve as independent medical examiners has been difficult and in order to ameliorate the problem the Board in 2009 raised the fee schedules for the IMEs. The number of IMEs has fluctuated greatly. The number was 30 pre- *Lydon*; 11 post- *Lydon*; and 24 currently.

The MAE Program has dramatically improved compliance throughout the industry both as to payments and filings. The basic goals of the programs are to (1) provide timely and reliable data to policy-makers; (2) monitor and audit payments and filings; (3) identify insurers, self-insurers and third-party administrators that are not complying with minimum standards. Compliance is near 90% in all categories, a huge improvement since the inception of the MAE Program.

The Worker Advocate Program has given injured workers access to advocates improving their likelihood of receiving statutory benefits. Nearly 50% of injured workers are represented by advocates at the mediation level and over 30% are represented by advocates at the formal hearing level.

The Board has recently mandated the electronic filing of First Reports of Injury (July 1, 2006), Notices of Controversy (April to June 2006), and Proof of Coverage (May 1, 2009).

The Board is not a General Fund agency and receives revenue to fund its operations through an assessment on Maine's employers. 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.



The Board's assessment was adequate to fund the Board's operations until FY97. In 1997, 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. In spite of the obstacles, the Board found the wherewithal to reduce the assessment to Maine's employers for the next two years by \$3 million.

The Legislature, recognized the urgency of the Board's situation in FY02, taking two steps: (1) authorizing the use of \$700,000 from the Board's reserve account; and (2) authorizing 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, taking the following steps: (1) authorizing the use of reserve funds in the amount of \$1,300,000; (2) increasing the assessment to fund a hearing officer position in Caribou in the amount of \$125,000; and (3) allocating 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. Through the use of the reserve account, the Board was able to fund the FY-06-07 budget. The Legislature increased the Board's assessment for FY 07-08 to \$9,820,178, for FY 08-09 to \$10,000,000, for FY 09-10 to \$10,400,000, for FY 10-11 to \$10,800,000, and for FY 11-12 to \$11,200,000, and requested an audit of the Board's performance for the past 10 years and a review of the Worker Advocate and Monitoring, Audit, & Enforcement Programs to determine if they were adequately funded.

The Blake Hurley McCallum & Conley audit and program report was submitted to the Governor, the 123<sup>rd</sup> Second Regular Session of the Legislature, the Workers' Compensation Board, and the Department of Administrative and Financial Services in January of 2008 relating to the Board's fiscal operations for the past 10 years. The Board received a clean bill of health for both its budgetary and assessment procedures along with a number of recommendations to further improve the efficiency of the Board's fiscal operations.

The Board is attempting to improve efficiency and lower costs through administrative efforts ranging from mandating electronic data interchange, enforcing performance standards in the dispute resolution process, and enforcing compliance through the MAE program and the Abuse Investigation Unit.

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 Board. The legislation reduced the size of the Board from eight to seven members and empowered the Governor to appoint an executive director, to serve as chair and chief executive officer of the

Board. The Board has since resolved most of the gridlock issues and functions in a more effective manner in setting policy for the Board's business.

The Board worked diligently during the course of 2008-2010 with a consensus based rulemaking group to formulate a facility fee schedule to help contain healthcare costs for hospitals and ambulatory care centers. Staff recommended a proposed rule to the Board in January 2009. At the request of some interested parties, the Board has delayed action on the rule and continued to gather data, but is intent on formulating a rule in 2011. The objectives of the Fee Schedule include: reducing and containing the increase of healthcare costs; providing access to quality care for injured workers; ensuring that providers are paid fairly; and, creating clarity in rules and simplicity for maintenance.

Staff is also playing an active role in the Governor Baldacci's Misclassification Task Force and is in the process of implementing an Employee Misclassification Unit.

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, all within the Governor's policy of making the system fair and competitive for the employees and employers of Maine.

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

### **I. ENABLING LEGISLATION.**

39-A M.R.S. § 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. Changed the composition of the Board from eight to seven members.

### **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 eight 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 Senate and serving at the will of the Governor.

The Board of Directors appoints Hearing Officers to adjudicate Formal Hearings. 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, created 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 had reduced timelines to an acceptable 8.5 months for processing cases. Gridlock by the Board of Directors regarding appointment of Hearing Officers occurred in 2003 and 2004, resulting 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. The gridlock of the appointment of hearing officers was broken as hearing officers were appointed to seven year terms, and the IME problem has improved significantly through the addition of and better compensation for Independent Medical Examiners.

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 nine 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 June 2006, and for payments, with an anticipated implementation date of December 2011.

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 proposed by Governor Baldacci and 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 and the Senate, serving at the pleasure of the Governor. With the new arrangement, gridlock due to tie votes is no longer an issue. The Executive Director casts deciding votes when necessary. However, the objective is still to foster cooperation between the Labor and Management caucuses, which has occurred more frequently since 2004.

Chapter 208, A Resolve to Appoint Members To and Establish Terms for the Workers' Compensation Board, was enacted during the second session (2008) of the 123<sup>rd</sup> Legislature. The purpose of the Resolve was to change the membership on the Board while maintaining continuity. The Governor appointed new members during the first session (2009) of the 124<sup>th</sup> Legislature. The Governor's appointments were confirmed by the Legislature.

### **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. Depositions of medical witnesses oftentimes scheduled to elicit or dispute expert testimony. 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 entering each phase for the period 2000 thru 2010 is shown in the table below:

C a s e s E n t e r i n g D i s p u t e R e s o l u t i o n			
Y e a r	T r o u b l e S h o o t i n g	M e d i a t i o n	F o r m a l H e a r i n g
2 0 0 0	9 , 4 4 2	3 , 6 4 2	2 , 4 3 3
2 0 0 1	1 0 , 1 3 2	3 , 8 3 0	2 , 7 2 5
2 0 0 2	9 , 6 7 7	3 , 5 0 7	2 , 4 8 1
2 0 0 3	9 , 9 9 6	3 , 5 8 2	2 , 5 3 2
2 0 0 4	9 , 3 5 6	3 , 3 0 3	2 , 4 5 8
2 0 0 5	8 , 7 8 4	3 , 0 0 3	2 , 0 8 8
2 0 0 6	8 , 9 6 2	2 , 6 5 2	1 , 9 1 5
2 0 0 7	8 , 7 4 9	2 , 4 9 9	1 , 7 6 5
2 0 0 8	8 , 3 8 4	2 , 4 2 8	1 , 6 8 0
2 0 0 9	7 , 9 6 0	2 , 2 2 0	1 , 6 0 2
2 0 1 0	8 , 5 4 6	2 , 9 2 8	1 , 5 6 1

In general, of 100 disputes entering Trouble Shooting approximately half (50) will go on to Mediation. Of the 50 going to Mediation, approximately half (25) will continue to the Formal Hearing stage.

### III. TROUBLESHOOTING STATISTICAL SUMMARY.

The following table shows, the number of filings and dispositions at Troubleshooting, the average timeframes, and number of cases pending at the end of each year for the period 2000 thru 2010.

T r o u b l e S h o o t i n g C a s e s A s s i g n e d , D i s p o s e d , a n d P e n d i n g				
Y e a r	A s s i g n e d	D i s p o s e d	P e n d i n g 1 2 / 3 1	A v D a y s a t T S
2 0 0 0	9 , 4 4 2	9 , 4 2 6	7 6 3	2 5
2 0 0 1	1 0 , 1 3 2	1 0 , 1 3 9	7 5 6	2 4
2 0 0 2	9 , 6 7 7	9 , 4 6 6	9 6 7	2 3
2 0 0 3	9 , 9 9 6	1 0 , 2 6 9	8 3 8	2 7
2 0 0 4	9 , 3 5 6	9 , 5 8 8	6 0 6	2 7
2 0 0 5	8 , 7 8 4	8 , 7 2 4	6 6 6	2 7
2 0 0 6	8 , 9 6 2	8 , 9 2 7	7 0 1	2 7
2 0 0 7	8 , 7 4 9	8 , 7 1 9	7 3 1	2 7
2 0 0 8	8 , 4 3 9	8 , 4 3 9	6 7 6	3 0
2 0 0 9	7 , 9 6 0	7 , 9 1 3	7 2 3	2 9
2 0 1 0	8 , 5 4 6	8 , 3 0 3	9 1 9	2 7

#### IV. MEDIATION STATISTICAL SUMMARY.

The following table shows the number of filings and dispositions at Mediation, the average timeframes, and number of cases pending at the end of each year for the period 2000 thru 2010.

Mediations Cases Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Av Days At MDN
2000	3,642	3,551	666	53
2001	3,830	3,745	751	51
2002	3,507	3,655	603	54
2003	3,582	3,331	854	60
2004	3,303	3,395	666	62
2005	3,003	3,084	585	59
2006	2,652	2,741	496	61
2007	2,499	2,532	463	58
2008	2,428	2,488	443	55
2009	2,220	2,239	424	57
2010	2,928	2,868	452	59

#### V. FORMAL HEARING STATISTICAL SUMMARY.

The following table shows the number of filings and dispositions at Formal Hearing, the average timeframes, and number of cases pending at the end of each year for the period 2000 thru 2010.

Formal Hearing Cases Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Av Months to Decree
2000	2,433	2,417	1,110	7.4
2001	2,725	2,592	1,243	6.8
2002	2,481	2,400	1,324	7.1
2003	2,532	2,194	1,662	9.5
2004	2,458	2,414	1,706	10.9
2005	2,088	2,266	1,528	11.7
2006	1,915	2,173	1,270	11.7
2007	1,765	1,907	1,128	10.7
2008	1,680	1,728	1,080	8.4
2009	1,602	1,546	1,136	9.1
2010	1,561	1,486	1,211	8.5

## **VI. OTHER.**

The number of cases entering the Dispute Resolution process has declined steadily until 2010, when a significant increase was experienced. The Board will monitor the situation closely and adjust resources, if necessary.

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

### I. HISTORY.

The Maine Legislature, with the support of Governor Angus S. King, Jr., enacted Public Law 1997, Chapter 486 to establish the Office of Monitoring, Audit, and Enforcement (MAE) with the goals of: (1) providing timely and reliable data to policymakers; (2) monitoring and auditing payments and filings; and (3) identifying those insurers, self-administered employers, and third-party administrators (collectively “insurers”) not complying with minimum standards.

### II. MONITORING.

The key component of the monitoring program is the production of Quarterly and Annual Compliance Reports. To ensure that the Compliance Reports would be as accurate as possible, a pilot project was undertaken in May 1997. The goals of the pilot project were 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 the Compliance Reports.

The 2009 Quarterly and Annual Compliance Reports were unanimously accepted by the Maine Worker’s Compensation Board. The 2009 quarterly compliance in Table 1 represents static results based upon data received by the deadline for each quarter. The 2009 Annual Compliance Report represents dynamic results based upon data received by March 8, 2010. Tables 2 and 3 show continued improvement in the performance of insurers since the pilot project.

#### A. Lost Time First Report Filings

The Board’s benchmark for lost time first report filings within 7 days is 85%.

- **Benchmark Not Met.** The Board received 13,355 lost time first reports. This represents 805 fewer reports than in 2008 and continues a long term decline in the number of lost time first reports. Eighty-four percent (84%) of lost time first report filings were within 7 days. Compliance has dropped from the 2008 compliance rate due to programming enhancements that allow the Board to more accurately track the receipt of lost time First Reports.

#### B. Initial Indemnity Payments

The Board’s benchmark for initial indemnity payments within 14 days is 87%.

- **Benchmark Exceeded.** Eighty-nine percent (89%) of initial indemnity payments were within 14 days.

### **C. Initial Memorandum of Payment (MOP) Filings**

The Board's benchmark for initial Memorandum of Payment filings within 17 days is 85%.

- **Benchmark Exceeded.** Eighty-seven percent (87%) of initial MOP filings were within 17 days.

### **D. Initial Indemnity Notice of Controversy (NOC) Filings**

The Board's benchmark for initial indemnity Notice of Controversy filings within 14 days is 90%.

- **Benchmark Exceeded.** Ninety-four percent (94%) of initial indemnity NOC filings were within 14 days, the highest compliance recorded for this indicator to date.

### **E. Utilization Analysis**

Eighteen percent (18%) of all lost time first reports were "denied" and thirty-seven percent (37%) of all claims for compensation were denied.

### **F. Initial Indemnity Payments > 44 Days**

\$46,350 was issued to claimants in penalties and \$5,050 in penalties are awaiting resolution under Section 205(3). These monies go to injured workers.

### **G. Late Filed Coverage Notices**

\$30,800 was collected in penalties and \$1,300 in penalties are awaiting resolution under Section 360(1)(B). These monies go to the State General Fund.

## **H. CAVEATS & EXPLANATIONS**

### **1. General**

- Employer delays in reporting of injuries may lower compliance.
- Question marks ("?") within this report indicate that the insurer did not provide all the data required to measure compliance.

### **2. Lost Time First Report Filings**

- Compliance with the lost time first report filing obligation exists when the lost time first report is filed (accepted Electronic Data Interchange (EDI) transaction, with or without errors) within 7 days of the employer receiving notice or knowledge of an employee injury that has caused the employee to lose a day's work.
- When a medical only first report was received and later converted to a lost time first report, if the date of the employer's notice or knowledge of incapacity minus the received date was less than zero, the filing was considered compliant.

### **3. Initial Indemnity Payments**

- Compliance with the Initial Indemnity Payment obligation exists when the check is mailed within the later of: (a) 14 days after the employer's notice or knowledge of incapacity or (b) the first day of compensability plus 6 days.

#### 4. Initial Memorandum of Payment (MOP) Filings

- Compliance with the Initial Memorandum of Payment filing obligation exists when the MOP is received within 17 days of the employer's notice or knowledge of incapacity.

#### 5. Initial Indemnity Notice of Controversy (NOC) Filings

- Measurement excludes filings submitted with full denial reason codes 3A-3H (No Coverage).
- Compliance with the Initial Indemnity Notice of Controversy filing obligation exists when the NOC is filed (accepted EDI transaction, with or without errors) within 14 days of the employer receiving notice or knowledge of the incapacity or death.

### I. CORRECTIVE ACTION PLANS (CAPs)

Corrective Action Plans are implemented for insurers with chronic poor compliance. Elements of the CAPs are reviewed and updated each quarter to track compliance changes and ensure that the elements of the plan are being met.

The following insurers had CAPs in place for all or part of 2009:

Insurer (alpha order)	Market Share by Premiums Written
ACE	1%
AIG (now Chartis)	3%
Berkley Administrators of Connecticut	Not Applicable - TPA
Cambridge Integrated Services	Not Applicable - TPA
Claimetrics	Not Applicable – TPA
CNA	1%
Crawford & Company	Not Applicable – TPA
GAB Robins	Not Applicable – TPA
Gallagher Bassett Services, Inc.	Not Applicable – TPA
Hartford	4%
Liberty Mutual	9%
Meadowbrook	Not Applicable - MGA
Old Republic	< 1%
Sedgwick Claims Management	Not Applicable - TPA
Specialty Risk Services	Not Applicable - TPA
Zurich	1%

## Annual Compliance Summary

**Table 1      2009 Quarterly Compliance Reports**

	Benchmark	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
<b>Lost Time First Report Filings</b> Received within 7 Days	85%	81%	84%	85%	86%
<b>Initial Indemnity Payments</b> Made within 14 Days	87%	87%	91%	90%	89%
<b>Initial Memorandum of Payment Filings</b> Received within 17 Days	85%	86%	90%	88%	87%
<b>Initial Indemnity Notice of Controversy Filings</b> Received within 14 Days	90%	91%	95%	94%	93%

**Table 2      Annual Compliance**

	1997 <sup>1</sup>	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>Lost Time First Report Filings</b> Received within 7 Days	37%	78%	80%	82%	82%	86%	86%	84%	87%	89%	84%
<b>Initial Indemnity Payments</b> Made within 14 Days	59%	80%	83%	85%	86%	85%	87%	87%	87%	89%	89%
<b>Initial Memorandum of Payment Filings</b> Received within 17 Days	57%	75%	77%	81%	82%	83%	84%	84%	85%	88%	87%
<b>Initial Indemnity Notice of Controversy Filings</b> Received within 14 Days <sup>2</sup>						91%	92%	89% <sup>3</sup>	89%	90%	94%

**Table 3      Percentage Change Over Time Since 1997**

	1997 <sup>1</sup>	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>Lost Time First Report Filings</b> Received within 7 Days	0%	113%	117%	122%	124%	133%	134%	130%	136%	141%	127%
<b>Initial Indemnity Payments</b> Made within 14 Days	0%	35%	39%	44%	44%	44%	46%	46%	47%	49%	49%
<b>Initial Memorandum of Payment Filings</b> Received within 17 Days	0%	31%	36%	42%	44%	46%	48%	49%	49%	55%	54%
<b>Initial Indemnity Notice of Controversy Filings</b> Received within 14 Days <sup>2</sup>						0%	1%	-2%	-3%	-1%	2%

<sup>1</sup> Based on sample data.

<sup>2</sup> The Initial Indemnity Notice of Controversy filing benchmark was changed in 2007 from 17 days to 14 days.

<sup>3</sup> Second quarter 2006 excluded.

### III. 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: ensuring that all reporting requirements of the Board are met, auditing the timeliness of benefit payments, auditing the accuracy of indemnity payments, evaluating claims-handling techniques, and determining whether claims are unreasonably contested.

#### A. Compliance Audits

Since implementing the program, one hundred sixty-eight (168) audit reports have been issued. In addition to the amounts paid to employees, dependents and service providers for compensation, interest, or other unpaid obligations, \$1,435,263 in penalties has been paid.

In 2002, the Board successfully prosecuted Hanover for engaging in a pattern of questionable claims-handling techniques under §359(2) of the Workers' Compensation Act (see Section 12). Additionally, the following entities have all signed consent decrees for §359(2) for engaging in a pattern of questionable claims-handling techniques and/or repeated unreasonably contested claims:

<u>ACE</u>	<u>Fireman's Fund Insurance</u>	<u>OneBeacon Insurance Group</u>
<u>AIG</u>	<u>Group</u>	<u>Peerless Insurance Group</u>
<u>Arch Insurance Group</u>	<u>Frank Gates Service Company</u>	<u>Public Service Mutual Insurance</u>
<u>Argonaut Insurance Group</u>	<u>Future Comp</u>	<u>Group</u>
<u>Atlantic Mutual Insurance</u>	<u>GAB Robins</u>	<u>Risk Enterprise Management</u>
<u>Company</u>	<u>Gallagher Bassett Services, Inc.</u>	<u>Royal &amp; Sunalliance Insurance</u>
<u>Berkley Administrators of</u>	<u>Gates MacDonald</u>	<u>Group</u>
<u>Connecticut</u>	<u>Georgia Pacific</u>	<u>Sedgwick Claims Management</u>
<u>Broadspire Services</u>	<u>Harleysville Insurance Group</u>	<u>Specialty Risk Services</u>
<u>Cambridge Integrated Services</u>	<u>Hartford</u>	<u>St. Paul Insurance Group</u>
<u>Chubb Insurance Group</u>	<u>Helmsman</u>	<u>THE Insurance Group</u>
<u>Claimetrics</u>	<u>Liberty Mutual</u>	<u>Travelers Insurance Group</u>
<u>Claims Management (Wal-</u>	<u>Maine Employers' Mutual</u>	<u>Universal Underwriters</u>
<u>Mart)</u>	<u>Insurance Company</u>	<u>Insurance Group</u>
<u>CMI Octagon</u>	<u>Meadowbrook</u>	<u>Virginia Surety Insurance Group</u>
<u>CNA</u>	<u>National Grange Mutual</u>	<u>Wausau Insurance Group</u>
<u>Crawford &amp; Company</u>	<u>Insurance Group (now NGM)</u>	<u>Zurich</u>
<u>ESIS</u>	<u>Old Republic</u>	



The Board filed Certificates of Findings pursuant to this section with the Maine Bureau of Insurance for further action. Two of the above referrals (Hartford and Zurich Insurance Groups) resulted in consent agreements with the Maine Bureau of Insurance and Maine Office of the Attorney General.

#### **B. Complaints for Audit**

The audit program also has a Complaint for Audit form and procedure whereby the Complainant asks the Board to conduct an investigation to determine if the insurer, self-administered employer or third-party administrator has violated 39-A M.R.S.A. Section 359 by engaging in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims and/or has violated Section 360(2) by committing a willful violation of the Act or committing fraud or intentional misrepresentation. The Complainant also asks that the Board assess all applicable penalties. Since the form and procedure were implemented, three hundred thirty-five (335) complaints have been received. As a result of these investigations, \$305,300 in unpaid obligations and over \$176,700 in penalties have been paid.

#### **IV. ENFORCEMENT.**

The Board's Abuse Investigation Unit handles enforcement of the Workers' Compensation Act. The report of the Abuse Investigation Unit appears at Section 12 of the Board's Annual Report.

#### **V. EMPLOYEE MISCLASSIFICATION.**

Public Law 2009 Chapter 649 allocated funds to enhance the enforcement of laws prohibiting the misclassification of workers by establishing one Management Analyst II position and one Auditor III position within the MAE Program. To date, the MAE Program has completed 12 employee misclassification audits. The audits have covered 114 employees, \$2,051,522 in payroll, \$3,308,867 in "subcontractor" wages shown on 1099's, and \$76,423 in "casual labor" wages not shown on 1099's and resulted in \$3,252,780 in potentially misclassified wages, which may result in \$682,861 in unpaid workers' compensation premium.

## **5. INDEPENDENT MEDICAL EXAMINATIONS (IMES); MEDICAL FEE SCHEDULE; FACILITY 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.

Currently, the Board has 26 examiners on its Section 312 IME list. The Board continues to consider alternatives to increase the number of examiners on the list and decrease the amount of delay. The following physicians are currently on the Board's Section 312 IME list:

#### **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 DC  
17 BACK MEADOW RD  
DAMARISCOTTA, ME 04543  
TEL: 563-8500

#### **FAM/GEN/INT**

ANTONUCCI, JEAN, MD  
115 MT. BLUE CIRCLE SUITE 2  
FARMINGTON, ME 04938  
TEL: (207) 778-3313

GRIFFITH, WILLIAM L., MD  
TOGUS VA MEDICAL CENTER  
AUGUSTA, ME 04330  
TEL: 623-8411 EXT 5243

#### **INTERNAL MEDICINE**

BRETT, CRAIG, MD  
CARDIO CONSULTANTS  
96 CAMPUS DRIVE, SUITE 1  
SCARBOROUGH, ME 04074  
TEL: (207) 885-9905

MEDRANO, RENATO  
SOUTHERN MAINE PHYSICAL  
THERAPY, P.A.  
449 COTTAGE ROAD  
SOUTH PORTLAND, ME 04106  
TEL: 623-8411 EXT 4390

NASS, MERYL, MD  
MT. DESERT ISLAND HOSPITAL  
410 WAYMAN LANE  
BAR HARBOR, ME 04609  
TEL: 288-5082 ext. 1220

TEUFEL, EDWARD J., MD  
CARDIO CONSULTANTS  
96 CAMPUS DRIVE, SUITE 1  
SCARBOROUGH, ME 04074  
TEL: (207) 885-9905

#### **NEUROLOGY**

BRIDGMAN, PETER, MD  
51 HARPSWELL RD, STE 100  
BRUNSWICK, ME 04011  
TEL: 729-7800

**NEUROPSYCHOLOGIST**

RILEY, ROBERT, Psy.D., ABPP-CN  
BRAIN CLINIC OF CENTRAL ME  
93 SECOND ST  
HALLOWELL, ME 04347  
TEL: 485-1646

**ORTHOPEDIC SURGERY**

BRADFORD, JOHN A., MD  
151 BROADWAY  
BANGOR, ME 04401  
TEL: 945-9461

CROTHERS III, OMAR D., M.D.  
33 SEWALL STREET  
PORTLAND, ME 04104  
TEL: 828-2100

DONOVAN, MATTHEW MD  
10 MARKETPLACE DR.  
YORK, ME 03909  
TEL: 363-6400

**OSTEOPATH**

CHARKOWICK, ROBERT  
P.O. BOX 3154  
AUGUSTA, ME 04330  
TEL: 623-8411 ext. 5257

SULLIVAN, CHARLES W.  
147 RIVERSIDE DR, SUITE1  
AUGUSTA, ME 04330-4100  
TEL: 623-6355

**OTOLARYNGOLOGY**

HAUGHWOUT, PETER MD  
18 DOUGLAS ST  
BRUNSWICK, ME 04011  
TEL: 729-4085

**PHYSIATRY**

BAMBERGER, STEPHAN  
MEDICAL REHAB ASSOCIATES  
12 INDUSTRIAL PARKWAY  
BRUNSWICK, ME 04011  
TEL: 725-7854

WOELFLEIN, KAREN  
MEDICAL REHAB ASSOCS  
12 INDUSTRIAL PARKWAY  
BRUNSWICK, ME 04011  
TEL: 725-7854

**PHYSICAL MED & REHAB**

HALL, JOHN, MD  
NEUROSURGERY & SPINE  
49 SPRING STREET  
SCARBOROUGH, ME 04074  
TEL: 885-0011

HALL, GENEVIEVE , MD  
NEUROSURGERY & SPINE  
49 SPRING STREET  
SCARBOROUGH, ME 04074  
TEL: 885-0011

**PODIATRY**

MUCA, ERIC, D.P.M.  
INTERMED SPECIALTY GROUP  
100 FODEN RD STE 200  
PORTLAND, ME 04106  
TEL: 523-8500

**PSYCHIATRY**

BARKIN, JEFFREY S., M.D.  
97A EXCHANGE STREET  
PORTLAND, ME 04101  
TEL: 775-2244

LOBOZZO, DAVID B., MD  
477 CONGRESS ST  
PORTLAND, ME 04101  
TEL: 773-1290

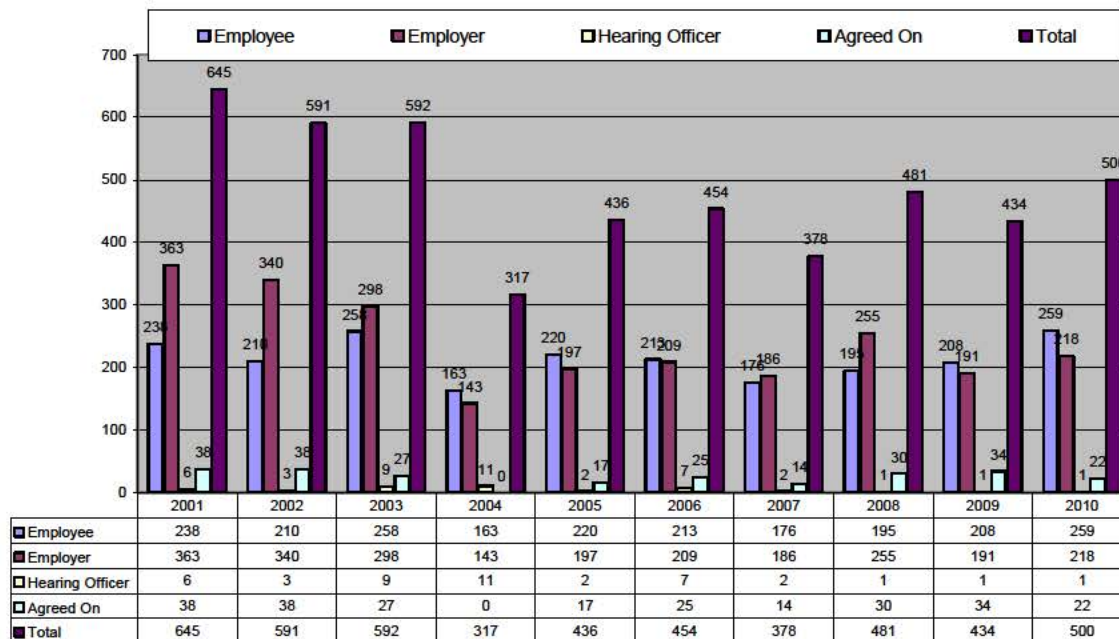
**PULMONARY**

FUHRMANN, CALVIN P. MD  
KENNEBUNK MEDICAL CTR  
24 PORTLAND ROAD  
KENNEBUNK, ME 04043  
TEL: 985-3726

**TOXICOLOGY**

PEREDY, TAMAS, MD  
NORTHERN NEW ENGLAND  
POISON CENTER  
901 WASHINGTON AVENUE  
PORTLAND, ME 04103  
TEL: (207) 662-7220

### Independent Medical Exams 2001-2010



The above chart reflects the source of requests for independent medical examinations for the years 2001 to December 2010.

## 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. On August 22, 2006, the Board voted to adopt the 2005 CPT Codes and RBRVS.

## III. FACILITY FEE SCHEDULE.

In 2007, Maine WCB contracted with Ingenix to facilitate the creation of a facility fee rule for hospital inpatient, outpatient and ambulatory surgical care. The goal of the facility fee schedule is to: reduce inequities in the system; eliminate bottlenecks and inefficiencies; ensure providers are paid fairly; create a system that payers can manage while producing the lowest rational cost system wide; and create clarity in rules and simplicity for maintenance. After four meetings of

the consensus-based rulemaking group, they were able to agree on a modified Medicare methodology because it is relatively transparent and widely understood, but they were unable to agree on several issues, including the base rate. The Board went to public hearing on August 17, 2009, and the deadline for written comments was August 27, 2009.

During the public comment timeframe, some commentators suggested that additional 3<sup>rd</sup> party data was available and should be considered. In order to respond to the public comments, the Board analyzed data from OnPoint Health and continues to meet with the stakeholders to attempt consensus on a final draft. In the meantime, the Board advertised for proposals for a vendor to perform data collection and analytics to provide the Board with a comparison of the conversion factor for third-party payors for professional fees and the conversion factor used by the Board in its current physician fee schedule. During 2010, the Board continued work with a consensus-based rulemaking group that is looking at hospital inpatient, outpatient, and ambulatory surgical care centers facility fees. To aid this group, as well as the Board with this effort, the Board hired Ingenix to work as a consultant on the facility fee project. In addition to reviewing the pros and cons of alternative approaches, Ingenix studied and compared payments made by 3<sup>rd</sup> party payors. The consensus-based group has agreed to use a modified Medicare approach with respect to facility fees; however, the group is still working to achieve consensus with respect to reimbursement amounts.

The Board anticipates that the proposed rule will generate significant savings with respect to medical costs.

## **6. WORKER ADVOCATE PROGRAM**

### **I. INTRODUCTION.**

The Worker Advocate Program provides legal representation to injured workers in administrative proceedings (mediations and formal hearings) before the Workers' Compensation Board. In order for a worker to qualify to receive assistance, the worker's injury must have occurred on or after January 1, 1993; the worker must have participated in the Board's troubleshooter program; the worker must not have informally resolved the dispute; and finally, the worker must demonstrate that they have not retained legal counsel.

Traditional legal representation is the core of the program, the Advocate staff have broad responsibilities to injured workers, which include: attending hearings and mediations; conducting negotiations; acting as an information resource; advocating for and assisting workers to obtain rehabilitation, return to work and employment security services; and communicating with insurers, employers and health care providers on behalf of the injured worker.

### **II. HISTORY.**

In 1992 the Maine legislature re-wrote the Workers' Compensation Act. They repealed Title 39 and enacted Title 39-A. One of the most significant changes which impacted injured workers was the elimination of the "prevail" standard. Under "old" Title 39, attorneys who represented injured workers were entitled to Board ordered fees from employers/insurers if they obtained a benefit for their client, i.e., if they "prevailed". However, under the "new" act (beginning in January of 1993), the employer/insurer had no liability for legal fees regardless of whether the worker prevailed or not, and, in addition, fees paid by injured workers to their attorneys were limited to a maximum of 30% of accrued benefits and settlement fees no greater than 10%.

These changes, which undoubtedly reduced the cost of claims, made it very difficult for injured workers to obtain legal representation—unless they had a serious injury with a substantial amount of accrued benefits at stake. Estimates indicate that upwards of 40% of injured workers did not have legal representation after these changes were made to the statute. This presented some dramatic challenges for the administration of the workers' compensation system. By 1995, recognition of these issues prompted the Workers' Compensation Board of Directors to establish a pilot "Worker Advocate" program.

The pilot program was staffed by one non-attorney Advocate and was limited to the representation of injured workers at the mediation stage of dispute resolution. Based on its initial success, the board expanded the pilot program to five non-attorney Advocates, one for

each regional office; however, representation remained limited to mediations. Ultimately, in recognition of both the difficulties facing unrepresented workers and the success of the pilot program, the Legislature amended Title 39-A to formally create the Worker Advocate Program in 1997.

The new statute created a substantial expansion of the existing operations. Most significantly, the new program required Advocates to provide representation at formal hearings in addition to mediations. The additional responsibilities associated with this new representation require much greater skill and many more tasks than previously required of Advocates. Some of these new tasks include: participation in depositions, attendance at hearings, drafting required joint scheduling memorandums, drafting numerous types of motions, drafting complicated post-hearing memorandums, comprehending complex medical reports, conducting settlement negotiations, and analysis and utilization of statutory and case law.

### **III. THE CURRENT WORKER ADVOCATE PROGRAM.**

Currently the board has 12 Advocates working in five regional offices from Caribou to Portland. Advocates are generally required to represent all qualified employees who apply to the program—unlike private attorneys. The statute does provide some exceptions to this requirement of representation whereby the program may decline to provide assistance. However, the reality is that relatively few cases are refused.

Cases are referred to the Advocate Program only when there is a dispute—as indicated by the employee, employer, insurer, or a health care provider. When the Board is notified of a dispute, a Claims Resolution Specialist (known as a “troubleshooter”) tries to facilitate a voluntary resolution of the problem. If that is not successful, the Board determines if the employee qualifies for the assistance of the Advocate Program, and if so, makes the referral.

If troubleshooting is not successful, cases are scheduled for Mediation. To represent an injured worker at Mediation, the Advocate Program must first obtain medical records and factual information regarding the injury and the worker’s employment. Advocates must meet with the injured worker to learn of and review the issues; they must also acquire information from health care providers. Advocates are also often called upon to explain the legal process (including Board rules and the statute) to injured workers. They often must explain requirements regarding medical treatment and work and frequently must assist workers with unemployment and health insurance issues. They also provide injured workers with other forms of interim support, as needed. Many of these steps produce evidence and information necessary for subsequent formal litigation, if the case gets that far.

At Mediation, the parties meet with a Mediator, discuss the issues, and attempt to negotiate an agreement. The Mediator facilitates, but has no authority to require the parties to reach an agreement or to set the terms of an agreement. If the parties resolve their issues, the terms of the agreement are recorded in a binding Mediation Record. A significant number of cases are



resolved before, at, and after Mediation; of every 100 disputes reported to the Board, only about 25 go on to a formal hearing.

Cases that do not resolve at mediation typically do so because of the factual and/or legal complexity of the dispute. These cases typically involve situations where facts are unclear or as the result of differing interpretations of the statute and case law. If voluntary resolution of issues fails at mediation, the next step is litigation at the formal hearing level.

This formal process is initiated by an Advocate filing petitions to request a formal hearing (after assuring there is adequate medical and other evidence to support a claim). Before a hearing is conducted, the parties exchange relevant information through voluntary requests and formal discovery. Preparation for hearing entails preparation of and response to motions, preparation of the worker and other witnesses for their testimony, preparation of exhibits, analysis of applicable law and analysis of medical and other evidence. At the hearing, Advocates must elicit direct and cross examination testimony of the witnesses, introduce exhibits, make objections and motions, and, at the conclusion of the evidence taking, file position papers which summarize the facts and credibly argue the law in the way most favorable to the injured worker. Along the way, the Advocates also often attend depositions of medical providers, private investigators, and labor market experts. Eventually, either a decision is issued or the parties agree on either a voluntary resolution of the issues or a lump sum settlement. The average timeframe for the entire process is about 12 months, although it can be significantly shorter or longer depending on the complexity of medical evidence and the need for independent medical examinations.

#### **IV. CASELOAD STATISTICS.**

Injured workers in Maine have made substantial utilization of the Advocate program. Advocates represent injured workers at approximately 50% of all mediations (an average of 2,000 mediations per year). Given the relatively large number of Mediations handled by Advocates, it bears noting that from 1998 through 2008, the program consistently cleared no less than 95% of the cases assigned in a given year for Mediation. The following table reflects the number of cases at Mediation from 2009 through 2010.

# Advocate Summary Mediation

## *Quarterly Filings, Dispositions, and Pending*

	Number of Cases			Percent of Total Pending
	To Mediation	Disposed *	Pending	
2009				
Q1	268	300	179	43%
Q2	363	307	235	49%
Q3	277	329	183	47%
Q4	297	259	221	52%
Total	1,205	1,195		
2010				
Q1	370	344	247	52%
Q2	348	323	272	48%
Q3	279	307	244	50%
Q4	252	225	271	60%
Total	1,249	1,199		

\* Dispositions Include Resolved Prior to Mediation, Agreement at Mediation,  
and No Agreement at Mediation

In 2010, the number of cases handled by Advocates at mediation represents an increase of 44 cases as compared to the number of cases taken to mediation by Advocates in 2009. The Advocate Division handled over 50% of the mediations (statewide) in 2010.

The Advocate program has also represented injured workers at 25 to 32% of all formal hearings before the Board (about 700 cases per year). In the majority of years, Advocates have cleared more formal cases than were pending at the start of the year. Given the much greater scope of responsibility inherent with formal hearing cases, Advocates have performed very well in their expanded role. The following table represents the number of cases handled by Advocates to formal hearing in years 2009 through 2010.

Advocate Summary					
Formal Hearings					
Quarterly Filings, Dispositions, and Pending					
		Number of Cases			Percent of Total Pending
		To Formal	Disposed *	Pending	
2009					
	Q 1	149	133	325	29%
	Q 2	133	110	348	32%
	Q 3	143	128	363	31%
	Q 4	135	140	358	32%
	Total	560	511		
2010					
	Q 1	144	144	358	32%
	Q 2	134	120	372	31%
	Q 3	85	118	339	21%
	Q 4	76	101	314	26%
	Total	439	483		
* Dispositions Include Decisions, Dismissals, and Lump Sum Settlements					

In 2010, there was a decrease in the number of cases handled by Advocates to formal hearing, as compared to the number of cases handled by Advocates to formal hearing in 2009. There are 44 fewer Advocate cases currently pending at the Formal Hearing level than in 2009.

It is also worth noting that the Advocate Division is currently handling 32% of all cases pending at the Formal Hearing level.

## **V. SUMMARY.**

The Advocate Program was created to meet a significant need in the administration of the Workers' Compensation system. The statutory expansion of program duties in 1997 created unmet needs in the program. In order to meet the obligations in the statute, the Workers' Compensation Board has diverted resources from other work to the Advocate program. Currently the program has 12 Advocates with a support staff of 16 (two of which are part-time) and a supervising Senior Staff Attorney. Services are provided in 5 offices; Caribou, Bangor, Augusta, Lewiston and Portland.

In its first 10 years, the Program has proven its value by providing much-needed assistance to Maine's injured workers, albeit with limited resources. As a result of the limited resources, the Advocate program has experienced periods of overly high case loads which has led to chronic staff turnover. In one 12-month period, (2006–2007) 42% of existing Advocate Program positions were vacant. Nothing has greater potential to impact the quality of the services rendered to injured workers than insufficient staff. In response to ongoing concerns, the 123<sup>rd</sup> Legislature provided additional support for the Advocate program. Qualifications for Advocates and paralegals were increased and, in conjunction, pay ranges were upgraded. [Public Law 2007 Ch 312]. The changes, which went into effect in September 2007, are intended to attract and retain staff and to bolster stability of this program—which is an integral part of the Workers' Compensation system in Maine.

## **7. TECHNOLOGY**

The Board over the past year has implemented a number of significant changes with respect to information systems and their delivery. Due to legislation, many of the information delivery platforms and application were centralized into the Office of Information Technology. We continue working with OIT to improve the service quality and support received. The technology budget continues to spiral upward as OIT computes all costs and attempts to allocate them on a pro-rata basis to the various agencies. This has caused concern at the WCB Budget Committee and staff continually reviews invoices.

The WCB, in cooperation with NCCI, implemented electronic submission for Proof of Coverage from the insurer community. The community has been asking for this electronic submission which will provide more accurate and timely filings. This will also enable the Claim staff to better supervise the timeliness and accuracy of payments to injured employees. The Board also convened a consensus based rulemaking group to develop a rule requiring the electronic filing of proof of workers' compensation coverage. The WCB has recently added a search feature to the WCB Website that will allow anyone the opportunity to check the WC insurance status online.

The Board has been using a tool called ISYS (word search application for Hearing Officers) which provides the capability to search by key word other Hearing Officer decisions, Board Statute, Board Rules, and other pertinent documents. This functionality has been expanded over the past year to other Board employees, including Advocates. The Board, at the request of the legal community, has partnered with Westlaw to provide access for the legal community to perform word search capabilities of Hearing Officer decisions. Lexis Nexis and West Publishing distribute the decisions to their clients.

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 way of consensus based rulemaking. A committee was formed consisting of representatives from the insurance companies, self-insureds, WCB Directors and staff. Recommendations were forwarded to and unanimously approved by the Board of Directors.

The WCB agreed on a timetable for implementation. First Reports of Injury and Denial submissions have been completed. Staff is currently engaged in completing the remaining payments phase. An internal group is near completion for the Trading Partner Tables which will provide a roadmap of the various payment functions and time frames required for each business event. The next step is to get shareholder review and comment before programming the necessary functions. The carriers require at least 12 months of lead time once the State's specifications are posted before they can initiate a test. Additionally, WCB Rules will have to be

updated to take advantage of the new process. The proposed rules will be reviewed with the Executive Director and the Board to find consensus on the issue.

## **8. BUDGET AND ASSESSMENT**

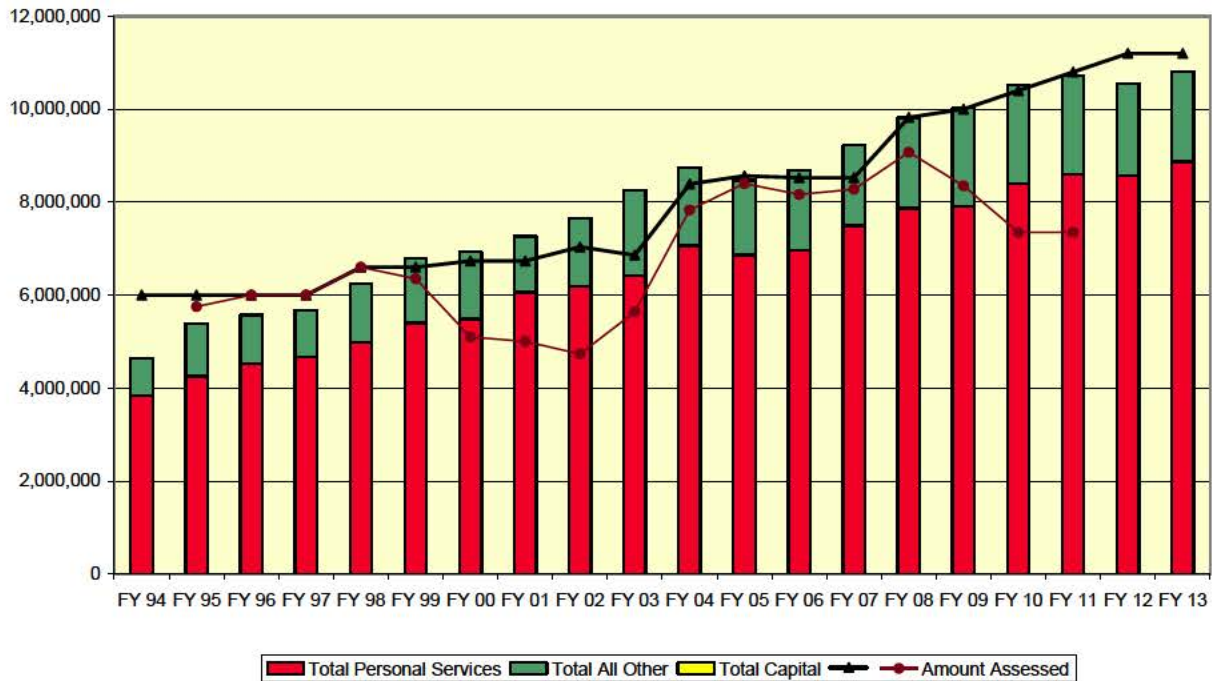
The Board is funded pursuant to a statutory assessment paid by Maine's employers, both self-insured and insureds. The Legislature, in creating this funding mechanism in 1992, intended the users of the workers' compensation system to pay for it. The agency had previously been funded from General Fund 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 problem is being considered in order to deal with costs, beyond the Board's control, such as contract increases, health insurance, retirement, postage, and lease costs.

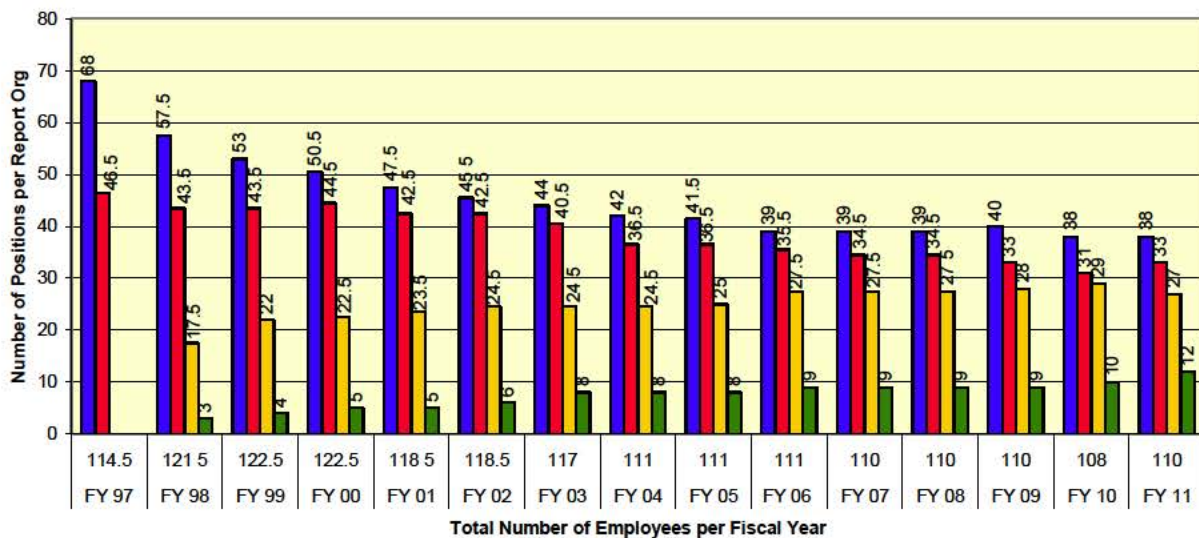
The Board cannot budget more than it can raise for revenue from the annual assessment and other minor revenues collected from the sale of copies of documents, fines and penalties. A majority of the fines and penalties received are deposited in the General Fund which contributes no support to the Board. The Legislature voted to raise the assessment cap beginning in FY08. This legislation increased the maximum assessment to \$9,820,178 in fiscal year 2008, \$10,000,000 beginning in fiscal year 2009, \$10,400,000 beginning in fiscal year 2010, \$10,800,000 beginning in fiscal year 2011, and \$11,200,000 beginning in fiscal year 2012. These increases have enabled the Board to submit a budget that is balanced between expenditures and revenues for the next biennium. The total Board-approved budget totals \$10,548,353 in FY12 and \$10,805,163 in FY13.

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 bar chart entitled "WCB – 18 Year Schedule of Actual and Projected Expenditures" shows actual expenditures through FY09 and projected expenditures for FY10. It also shows the assessment cap and the amounts actually assessed through FY10. The bar chart entitled "WCB – Personnel Changes Since FY97" demonstrates the Board's efficient use of personnel since 1997.

**WCB - 18 Year Schedule of Actual and Projected Expenditures**  
**Workers' Compensation Administrative Fund - 0183**  
 October 2010



**WCB - Personnel Changes Since FY 97**  
 October 2010



The MAE and Worker Advocate programs represent 35% of the agency's total number of employees.





As part of the FY 08-09 budget process, the Legislature requested that the Workers' Compensation Board oversee an audit of the agency's finances. At the conclusion of the RFP and interview process, the Board hired the accounting firm of Blake Hurley McCallum & Conley to conduct this audit. The firm was asked to review all aspects of the Board's assessment process and financial practices for the fiscal years beginning in July 1, 1997 and ending July 1, 2007. The firm found the Board staff to be "organized, diligent and dedicated in the manner they carried out the mission of the Workers' Compensation Board" and presented a clean bill of health for the Board's fiscal operations for the 10 year period.

The Board has taken the following steps to comply with the Blake Hurley recommendations to improve the efficiency of the Board's finances: 1) the Board has moved all assessment data from Excel spreadsheets to the Board's computer software program Progress; 2) the Board has implemented steps to ensure segregation of duties relative to assessment collections; and 3) the Board has established a separate account for the agency's reserves. Blake Hurley further recommended that if the present assessment process is retained, that the Board should institute an audit function on insurers and self-insureds to improve compliance with the assessment statute. This recommendation has not yet been implemented. Another consideration was to legislatively change the "assessment statute to require insurance companies to pay assessments on the same basis as the self-insureds" (cash basis in lieu of a rate basis). The change would simplify the process and reduce administrative costs, but would be very cumbersome for the insurance companies to implement; and, therefore, the Board has delayed any action on this recommendation.

## **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 and Notice of Controversy.

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 COLAs are calculated correctly. The filing of forms with incorrect information cause Claims staff to spend a lot of time researching files and doing mathematical calculations, which 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 COLAs 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 an annual Weekly Benefit Table. 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:

**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. A request is made to provide an Employer's First Report of Occupational Injury or Disease so that a claim can be started.

**Notices of Controversy** - The initial form is filed electronically. Corrections to the form are submitted to the Board on paper forms and the changes are entered manually by Claims staff.

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

**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 improper 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 to contact the person who filed the form, requesting corrected or missing forms.

The Claims Management Unit processed the following forms:

	<u>Filed between Jan. 1</u> <u>And Oct. 31, 2010</u>
Employer's First Report of Occupational Injury or Disease	31,395 electronic 57 paper filing
Notice of Controversy	8,899 electronic 2 paper filing
Petitions	3,188
Answers to Petitions	1,495
Wage Statement	7,887
Schedule of Dependent(s) and Filing Status Statement	8,101
All Payment Forms, including:	15,241
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	
Statement of Compensation Paid	12,374

Currently the only forms which can be filed electronically are the Employer's First Report of Occupational Injury or Disease and the Notice of Controversy. All other forms are filed on paper and must be entered manually. Corrections to the Notice of Controversy cannot be made electronically and must be submitted manually.

## **10. INSURANCE COVERAGE UNIT**

The Insurance Coverage Unit 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.

This 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 do employer updates more easily than in the past. This has resulted in a reduction of First Reports that can't be matched to an insurer. In the early 1990s, the Board would receive approximately 600 First Reports in which coverage could not be identified. In 2009 this figure had been reduced to 12, and in 2010 to four. As a direct result of the computer upgrade and streamlining personnel in the Coverage Unit staff was reduced by four employees.

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

The functions of these Units consist of proof of coverage, waivers, and predeterminations. The goal of staff is to process 100% of the proof of coverage filings received electronically within 24 hours of receipt (the Board received and processed 50,765 proof of coverage filings between November 2009 and November 2010); 90% of waiver applications within 48 hours of receipt (the Board received and processed 1,786 waiver applications between November 2009 and November 2010); total number of Predeterminations between 11/30/09-10/31/10 is 7,867 and 100% were done within 14 days.

The Insurance Coverage Unit assists with problem claims including the identification of insurance coverage, the identification of employers, and 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.

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

The Board has been active its effort to coordinate and collaborate with other state and federal agencies.

An example of this effort is the Board's merging of its employer database to the Department of Labor's (DOL) database. For years, the agencies operated with separate databases which was inefficient and resulted in unnecessary work. Information that was updated on one system, for example, would not always be updated on the other system. Now, with the two databases merged, the Board can more accurately identify employers without coverage. Efforts are currently underway to coordinate other employer databases into one.

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, for more detailed information, the Board implemented the requested changes.

The same holds true for the Occupational Safety and Health Administration (OSHA). Maine is currently one of the few states in the nation that captures OSHA required data on its First Report of Injury form. Therefore, Maine's employers only have to complete one form to meet both state and federal requirements. This has substantially reduced the paperwork burden on Maine's employers.

The Board collaborates with the Bureau of Insurance (BOI) for its annual assessment. BOI provides information on premiums written, predictions on market trends, and paid losses information for self-insured employers, which is utilized by the Board to calculate 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 action by BOI.

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 prevention 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 are underway and will continue into the foreseeable future.

The Board works with the Department of Health and Human Services (DHHS) to assist DHHS in 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.

Pursuant to P.L. 2007 Ch. 311, the Board works with MaineCare to insure it receives appropriate reimbursement and notifies the Department of Health and Human Services within 10 days of an approved agreement or an order to pay compensation.

The Workers' Compensation Board has two representatives on the Governor's Task Force on Employee Misclassification which will has already resulted in greater agency coordination and collaboration with the Department of Labor, the Bureau of Insurance, and Maine Revenue Services.

## 12. ABUSE INVESTIGATION UNIT

The Abuse Investigation Unit (AIU) is responsible for enforcing the administrative penalty provisions of the Act. AIU investigates complaints or allegations of fraud, illegal or improper conduct or violations of the Act or rules of the Board relating to benefits or programs, including acts by employers, employees or insurers. 39-A M.R.S.A. §153(5).

Currently AIU has four (4) Abuse Advocates and one (1) paralegal; the Unit is supervised by the Assistant General Counsel. Abuse Advocates perform investigations, file petitions and complaints, represent the Board at administrative penalty hearings, and decide some penalty cases. AIU administers the penalty processes for which it is responsible (creates and maintains files, schedules and records hearings and issues orders) and performs accounts payable functions for penalties billing parties for penalties, tracking penalties issued and payments received, resolving billing issues, and providing information required by the Board's Business Services office and the state for accounting purposes. The Unit's paralegal performs the majority of administrative services as well as providing paralegal support to the four (4) Abuse Advocates.

By rule the Board has directed AIU to administer, investigate and/or decide penalties regarding the following:

- payment of compensation benefits (lost time & medical) §205(3) & (4)
- untimely payments due by order or agreement §324(2)
- coverage violations §324(3)
- death benefits escheating to the State §356(2)
- questionable claims-handling/repeatedly unreasonably contesting claims §359(2)
- failure to file or untimely filing required documents §360(1)
- fraud, intentional misrepresentation or willful violations of the Act §360(2)

Penalty cases run the gamut from routine minor infractions, such as untimely document filing, which carries a penalty of up to \$100 to complex litigation cases with penalties of \$10,000 or greater decided by Hearing Officers. In 2010 AIU received 4,190 new penalty cases and closed 2,174 cases. Through the efforts of the Abuse Investigation Unit, the Board has contributed \$75,925 to the General Fund in 2010 from penalties assessed for late filed First Reports.



In 2010, AIU worked on some key initiatives:

- **Employee misclassification**

AIU conducted public education & outreach including: participating on the Governor's Misclassification Task Force, producing written materials, providing information on Workers' Compensation law and penalties, and making presentations on Maine law regarding misclassification to constituent groups. In response to legislative initiatives, coverage penalty actions were focused on misclassification cases, and staff established procedures for the Unit and the Board to implement new enforcement authority. AIU successfully advocated for changes to section 153(5)(B) permitting the unit to share otherwise confidential investigatory information with other state agencies, upon request, for enforcement.

- **Administrative Penalty Activities**

Section 360(1): The AIU successfully negotiated payment of over \$14,000 in penalties with an insurer who repeatedly failed to pay penalties for late reporting of workers' compensation insurance coverage as required by statute. Through October 2010, one thousand seven hundred and sixty (1,760) 360(1) cases had been filed—the 3<sup>rd</sup> largest number of cases filed since 2000.

Section 205: Routine compliance oversight by the Monitoring group in the MAE program is resolving less complex cases allowing AIU to focus on section 205 cases presenting issues needing legal determination.

Section 324(3): As of October 2010, the AIU received 1,504 §324(3) cases—this is the 3<sup>rd</sup> largest number since 2000. For the last full calendar year, 2009, the AIU assessed \$315,923 and collected \$224,616 for coverage cases.

In response to an adverse administrative decision, the AIU successfully advocated for changes to §324(3) updating employer coverage liability to include businesses that are partnerships, limited liability companies, professional corporations, and “any other legal business entity recognized under the laws of the State.”

Section 360(2): AIU updated internal processes for screening these cases, producing faster references for hearing, and improved coordination with the Board's regional offices responsible for dispute resolution, and eliminating duplicate steps in processing.

The AIU continues to work closely with the Attorney General's office regarding criminal prosecutions based on violations of Title 39-A. Title 39-A directs the Board to report fraud cases to the Attorney General, and the failure to carry mandatory workers' compensation coverage is a Class D crime in Maine. 39-A M.R.S. § 324(3)(A).

- **General Administration**

As part of new legislation involving employee misclassification, two existing staff positions were assigned to work as Abuse Advocates investigating and presenting coverage penalty cases. The new Advocates have completed training, and are scheduling cases for hearing, processing routine orders, and executing consent decrees. The Board also appointed a Hearing Officer dedicated to hearing and deciding coverage/misclassification cases; the number of hearing dates has been increased, and proceedings will be held in the Board's Augusta and Portland regional offices beginning in January 2011.

Administratively, AIU has created and/or re-written and streamlined internal processes for invoicing 324(3) cases, handling misclassification tips, referring penalties to Maine Revenue Service for offset and to private attorney's for collection. The AIU drafted an RFP to solicit private attorneys to accept unpaid penalties for collection.

Beginning in 2009, AIU has worked with the Board's information technology department and State OIT programmers to identify changes needed to update and refine the Progress case tracking/management data base for penalty cases. Programming for 75% of the penalty processes have been updated; approximately 1/3 of the new programming is in testing and should be in production by the end of January 2011. The last phase of programming will bring invoicing and tracking for unpaid penalties into the Progress system for the first time. This portion is the keystone of the programming effort. AIU has completed its groundwork and programming is under way. AIU expects the last segment of this project will be complete and in production by March 2011.

## **13. GENERAL COUNSEL REPORT**

### **I. RULES.**

The Board adopted rules requiring the electronic filing of Proof of Workers' Compensation Coverage Notices. These rules were developed using the consensus-based rule-making process. The Board is in the process of developing a rule requiring the electronic filing of payment information.

During 2010, the Board continued work with a consensus based rulemaking group that is looking at hospital inpatient, outpatient and ambulatory surgical care centers facility fees. To aid this group, as well as the Board with this effort, the Board hired Ingenix to work as a consultant on the facility fee project. In addition to reviewing the pros and cons of various alternative approaches, Ingenix studied and compared payments made by private 3<sup>rd</sup>-party payors. The consensus based group has agreed to use a modified Medicare approach with respect to facility fees; however, the group is still working to achieve consensus with respect to the reimbursement amounts.

The Board, with the assistance of a subcommittee of interested parties, adopted rules that:

- Change the standard for defining of a day of lost time for purposes of filing First Reports of Injury from one that is based on lost hours to one that is based on lost wages;
- State that unilateral reductions of benefits pursuant to § 205(9)(A) must be based on actual earnings unless the employee returns to work with no restrictions imposed by the employee's treating health care provider;
- Define when and how offsets may be taken pursuant to § 205(9)(B) when an employee returns to work for a different employer
- Prohibit the use of the Consent Between Employee and Employer form to discontinue or reduce benefits on a date subsequent to the date the form is signed.

### **II. LEGISLATIVE ACTIVITY.**

During the Second Regular Session of the 124<sup>th</sup> Maine Legislature, several bills affecting workers' compensation were enacted. With the exception of L.D. 1815 which, because it was emergency legislation, was effective immediately, all newly enacted laws became effective July 12, 2010.

The following outline includes, for each bill, a summary of the bill as proposed, actions taken in Joint Standing Committee on Labor, as well as action taken by the House, Senate and Governor.

(1) LD 1528 (An Act To Enhance Cooperation between the Workers' Compensation Board's Abuse Investigation Unit and Other State Agencies and To Ensure Equal Application of the Requirement To Obtain Coverage)

Summary: This bill, which was submitted by the Workers' Compensation Board, clarifies that the Workers' Compensation Board's abuse investigation unit may share information with other state agencies to enhance interagency efforts to ensure compliance with their respective laws and rules.

This bill also ensures that the coverage penalties in the Maine Workers' Compensation Act of 1992 are applied in the same manner to all business entities.

Committee action: Majority Ought-To-Pass (OTP); Minority Ought-Not-To-Pass (ONTP).

Status:

House: Passed to be Enacted (89-53) – March 9, 2010

Senate: Passed to be Enacted (19-15) – March 11, 2010

Governor: Signed; P.L. 2009 Ch. 520

(2) LD 1529 (An Act To Amend the Maine Workers' Compensation Act of 1992 Regarding Coordination of Benefits)

Summary: This bill, which was submitted by the Workers' Compensation Board in response to the decision of the Maine Supreme Judicial Court in Nichols v. S.D. Warren/Sappi, 2007 ME 103, 928 A.2d 732, provides that "disability insurance policy," as used in the coordination of benefits provisions of the Maine Workers' Compensation Act of 1992, does not include a life insurance policy that includes a disability feature.

Committee action: Unanimous Ought-To-Pass-As-Amended (OTP-A). The amendment incorporated the Board's suggestion that the offset provision be limited to benefits that were put in place as a result of collective bargaining.

Status:

House: Passed to be Enacted – March 9, 2010

Senate: Passed to be Enacted – March 11, 2010

Governor: Signed; P.L. 2009 Ch. 521

(3) LD 1565 (An Act To Amend the Laws Governing the Knowing Misclassification of Construction Workers)

Summary: This bill authorizes the Executive Director of the Workers' Compensation Board to issue a stop-work order if a hiring agent or construction subcontractor has knowingly misrepresented one or more employees as independent contractors, knowingly failed to provide a workers' compensation insurance policy or knowingly provided false, incomplete or misleading information to the board concerning the number of employees. This bill also prohibits that hiring agent or construction subcontractor from performing work on a public building or other public works for a period of 3 years.

Committee action: Anticipated Divided Report. Based on the Committee's March 8, 2010 vote, the majority report will be OTP-A and the minority report will be ONTP. The majority amendment:

Eliminates the provision barring an employer that is subject to a stop-work order from working on state funded projects for 3 years;

Grants authority to issue stop-work orders to the executive director or his/her designee;

Requires that a hiring agent or construction subcontractor be given at least 48-hours notice of a hearing requesting issuance of a stop-work order. This provision replaces the prior procedure which allowed for the issuance of a stop-work order after an investigation and finding by the executive director and provided for a right of appeal within 10 days after issuance of the order; and,

Includes a fiscal note adding a Management Analyst II and an Auditor III to the Board's headcount with the positions funded from the Board's reserve account.

Status:

House: Passed to be Enacted – April 6, 2010

Senate: Passed to be Enacted – April 7, 2010

Governor: Signed; P.L. 2009 Ch. 649

In addition to the Committee amendments described above (with one exception noted below) the final bill (which was amended in the House before final enactment in both chambers):

Provides that stop-work orders shall be issued if the failure to secure required coverage is knowing;

Provides that a violation will be considered knowing if the hiring agent or construction subcontractor has previously obtained workers' compensation insurance and the insurance has been cancelled or the insurance has not been continued or renewed; has been notified in writing by the board of the need for workers' compensation insurance; or has had one or more previous violations of the requirement to secure the payment to that hiring agent's or construction subcontractor's employees of the compensation provided for by this Act;

Deems the issuance of a stop-work order to be final agency action (meaning there is a right of appeal to Superior Court);

Replaces the notice requirement of at least 48-hours with at least 3 business days (this is the one exception);

Adds language requiring a stay of the issuance of a stop-work order if the affected entity demonstrates that it has and will continue to provide required coverage;

Clarifies that the stop-work order only applies to the construction site where a violation is found;

Provides for the release of a stop-work order if the affected entity obtains required coverage and either pays any penalty in full or enters into a penalty payment agreement with the board; and,

Indicates that payment or performance bonds do not cover exposure resulting from stop-work orders issued pursuant to this section.

(5) LD 1566 (An Act Relating to the Membership of the Workers' Compensation Board)

Summary: This bill clarifies the current restrictions on Workers' Compensation Board membership related to lobbying (by prohibiting any lobbying except on behalf of the Board) and being a service provider to the workers' compensation system (by further defining that phrase). The application section makes clear that this does not apply to Board members serving on the effective date of the act.

Committee action: Unanimous OTP-A. The amendment eliminates the original bill language and substitutes the following language: In addition to the conflict of interest provisions in section 152, subsection 8, a member of the board may not take part in reaching a decision or recommendation in any matter that directly affects an insurer, self-insurer, group self-insurer or labor organization that the member represents.

Status:

House: Passed to be Enacted – March 31, 2010

Senate: Passed to be Enacted – March 31, 2010  
The bill was Passed to be Enacted with Senate Amendment “A”  
(which eliminates term limits for Board members).

Governor: Signed; P.L. 2009, Ch. 640

(6) LD 1711 ("An Act To Clarify the Status of Prisoners")

Summary: This bill, as originally drafted, did not affect the Workers’ Compensation Act. However, during hearings on the bill, it was pointed out that the Act was internally inconsistent with respect to when prisoners are considered employees/entitled to compensation and needed to be updated with respect to the classes of prisoners that could be considered employees.

Committee action: Unanimous OTP-A. The amendment adds persons employed while in a community confinement monitoring program to the list of persons protected by minimum wage law and also adds this same group to the definition of "employee" in the workers’ compensation laws. The amendment also conforms a section of workers’ compensation law that deals with incarcerated individuals to that definition.

Status:

House: Passed to be Enacted – March 11, 2010

Senate: Passed to be Enacted – March 16, 2010

Governor: Signed; P.L. 2009 Ch. 529

(7) LD 1815 (An Act To Clarify the Construction Subcontractor Status of the Maine Workers' Compensation Act of 1992)

Summary: The momentum for this bill grew out of concerns regarding the predetermination of independent contractor process with respect to construction subcontractors. For a variety of reasons, many affected individuals and businesses were concerned about the predetermination process and the application itself.

Committee action: Unanimous OTP-A. The amendment changes the construction subcontractor predetermination process by making it annual and portable. In other words, a construction subcontractor may apply once a year for a predetermination that they operate in a manner that will not make them an employee of a hiring agent. The predetermination can be used by the construction subcontractor with different hiring agents throughout the year.

The bill directs the Workers' Compensation Board to update the predetermination application, within existing resources, and submit it for review by the Joint Standing Committee on Labor. The Committee reviewed a draft application (that was developed with significant input from various stakeholders) and was satisfied with the application with the exception that the Committee wanted the application to clearly state that the process is voluntary not mandatory.

The bill also includes an appropriations and allocations section which reclassifies three positions in the Abuse Investigation Unit (as recommended in option III of the report submitted by the Board to the Labor Committee pursuant to LD 1456).

This is an emergency measure which requires a 2/3 vote in the House and Senate. It will, if enacted, be effective when signed by the Governor instead of 90 days after adjournment.

Status:

House: Passed to be Enacted – March 22, 2010

Senate: Passed to be Enacted – March 25, 2010

Governor: Signed; P.L. 2009 Ch. 569. Because this was emergency legislation, the law was effective the day the Governor signed it; March 30, 2010.

### **III. 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.”

No hardship cases were decided in 2010.

Previous decisions are available at

[http://www.maine.gov/wcb/Board\\_Decisions/section\\_213/section213.html](http://www.maine.gov/wcb/Board_Decisions/section_213/section213.html)



#### **IV. BOARD REVIEW PURSUANT TO 39-A M.R.S.A. § 320.**

The Board granted a request for review pursuant to 39-A M.R.S.A. § 320 in 2010. Deliberations by the Board in the case, *Estate of Simpson v. Downeast Toyota*, will be conducted in January, 2011.

#### **V. LITIGATION.**

*BIW, et al v. WCB*. The remaining issues in this case were resolved in 2010. The Superior Court denied the plaintiffs' request to appoint a receiver, and also remanded the Board's fee rule for professional services and ordered the Board to comply with the obligation to adjust the fee rule annually. Neither party appealed the Superior Court's ruling. The Board continues to work with interested parties to establish rules for facility and professional service reimbursements.

## **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 benefits pursuant to Section 213(4) in 2001, 2002, 2003, 2004, 2005, or 2006.

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%.

Based on a report from Practical Actuarial Solutions, Inc., the permanent impairment threshold was adjusted, effective January 1, 2004, to 13.4% from 13.2%.

The Board adopted a rule setting the permanent impairment threshold at 11.8% effective January 1, 2006. This rule was vacated by order of the Superior Court. The Board is working on establishing a new threshold for 2006.

Based on reports from Practical Actuarial Solutions, Inc., the extension of benefits referenced in Section 213(4) was extended for 52 weeks to a total of 416 weeks effective January 1, 2007, to 468 weeks effective January 1, 2009 and to 520 weeks (the maximum duration) effective January 1, 2009.

A report from Practical Actuarial Solutions, Inc., recommended increasing the permanent to 13.0% from 11.8% effective January 1, 2008. The Board has not yet acted on this recommendation as it is studying whether and how to gather additional data to comply with the mandate contained in section 213. The Board has also discussed the feasibility of establishing, through legislation, a set rate for the next five years to gather additional data in order to make a final recommendation to the Governor and the Legislature as to the future of Section 213.

**SECTION B**

**BUREAU OF INSURANCE**

**SECTION B**  
**BUREAU OF INSURANCE**

**TABLE OF CONTENTS**

**Page B-**

<b>1. INTRODUCTION AND BACKGROUND .....</b>	<b>1</b>
A. INTRODUCTION .....	1
B. ACCIDENT YEAR, CALENDAR YEAR AND POLICY YEAR REPORTING .....	1
C. THE UNDERWRITING CYCLE .....	2
<b>2. RECENT EXPERIENCE .....</b>	<b>4</b>
A. ACCIDENT YEAR LOSS AND LOSS ADJUSTMENT EXPENSE RATIOS.....	4
B. CALENDAR YEAR AND ACCIDENT YEAR LOSS RATIOS .....	5
<b>3. LOSSES IN WORKERS' COMPENSATION .....</b>	<b>6</b>
A. CHANGES IN ADVISORY LOSS COSTS .....	6
B. CUMULATIVE CHANGES IN ADVISORY LOSS COSTS.....	7
<b>4. MARKET STRUCTURE AND COMPETITION.....</b>	<b>8</b>
A. MARKET CONCENTRATION .....	8
B. HERFINDAHL HIRSCHMAN INDEX .....	8
C. COMBINED MARKET SHARE .....	9
D. NUMBER OF CARRIERS IN THE MAINE INSURANCE MARKET.....	10
E. PERCENT MARKET SHARE OF THE TOP INSURANCE GROUPS.....	10
F. PERCENT MARKET SHARE OF THE TOP INSURANCE COMPANIES .....	11
<b>5. DIFFERENCES IN RATES AND FACTORS AFFECTING RATES .....</b>	<b>12</b>
A. RATE DIFFERENTIALS .....	12
B. ADDITIONAL FACTORS AFFECTING PREMIUMS.....	13
<b>6. ALTERNATIVE RISK MARKETS .....</b>	<b>15</b>
A. PERCENT OF OVERALL MARKET HELD BY SELF-INSURED EMPLOYERS .....	15
B. NUMBER OF SELF-INSURED EMPLOYERS AND GROUPS .....	16
<b>7. A LOOK NATIONALLY.....</b>	<b>17</b>
A. MANUFACTURING INDUSTRY AND OFFICE AND CLERICAL OPERATIONS.....	17
B. OREGON WORKERS' COMPENSATION PREMIUM RATE RANKING .....	17
C. AVERAGE LOSS COSTS BY STATE BASED ON MAINE'S PAYROLL DISTRIBUTION .....	17

## **1. INTRODUCTION AND BACKGROUND**

### **A. Introduction**

This report examines different measures of market competition in the Maine workers compensation insurance market. 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 from the workers' compensation insurance market; and 5) comparison of variations in rates.

The tables in this report for 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 claims opened, claims closed and any claims reopened during the year. Other tables and graphs contain up to 10 years of information.

The recently approved advisory loss cost filing increased the advisory loss costs on average by 0.4%. This is the first increase in the loss costs since 2006. The previous two loss cost filings produced average decreases of 7.0% and 7.6%. According to NCCI, there were seven consecutive decreases in lost-time claims through 2007. However, the frequency of loss-time injuries in Maine has increased slightly in 2008, while indemnity costs—a measure of severity—decreased slightly. Indemnity costs tend to be higher for older workers. As Maine's population ages, there may be an increase in indemnity costs in the future. The percentage of Maine's population between the ages of 45 and 64 is expected to peak in 2010, although people may work longer due to the economy. Medical costs continue to increase. Forty-seven percent of Maine's total benefit costs are for indemnity and 53% are for medical.

Although Maine's market remains concentrated and MEMIC writes a large volume of business, there are still many insurers writing some workers' compensation coverage in Maine. Insurers, however, are still being conservative in selecting businesses to cover 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. Self-insurance provides a viable alternative for some Maine employers.

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

Workers compensation is a long-tail line of insurance, meaning payments for claims can continue over a long period of time after the year in which the injury occurred. Thus, amounts to be paid on open claims must be estimated. Insurers collect claim, premium and expense information to calculate financial ratios. This information may be presented on an accident year, calendar year, or policy year basis. This report primarily shows information on an accident year basis. A description of each method and its use in understanding workers' compensation 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 earned premium 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 aggregate reserve adjustments for past years. For claims expected to cost more, reserves are adjusted upward; for those 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.

### C. 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 more capacity to write business, falling rates, and growing loss ratios, which can result in insurer operating losses. This can eventually force loss ratios to critical levels, causing insurers to raise their rates and be more selective in writing business. Insurer profitability and surplus eventually recover. This situation, in time, spurs another round of price-cutting, perpetuating the cycle.

In the late 1980s and early 1990s, the Maine workers compensation insurance market was hard. From the mid-1990s until about 2000, the market was considered soft. After 2000 insurance markets generally became less competitive, and this trend increased following the September 11, 2001 attacks. Since 2006, the Maine market hardened as insurers tightened their underwriting standards and reduced premium credits.

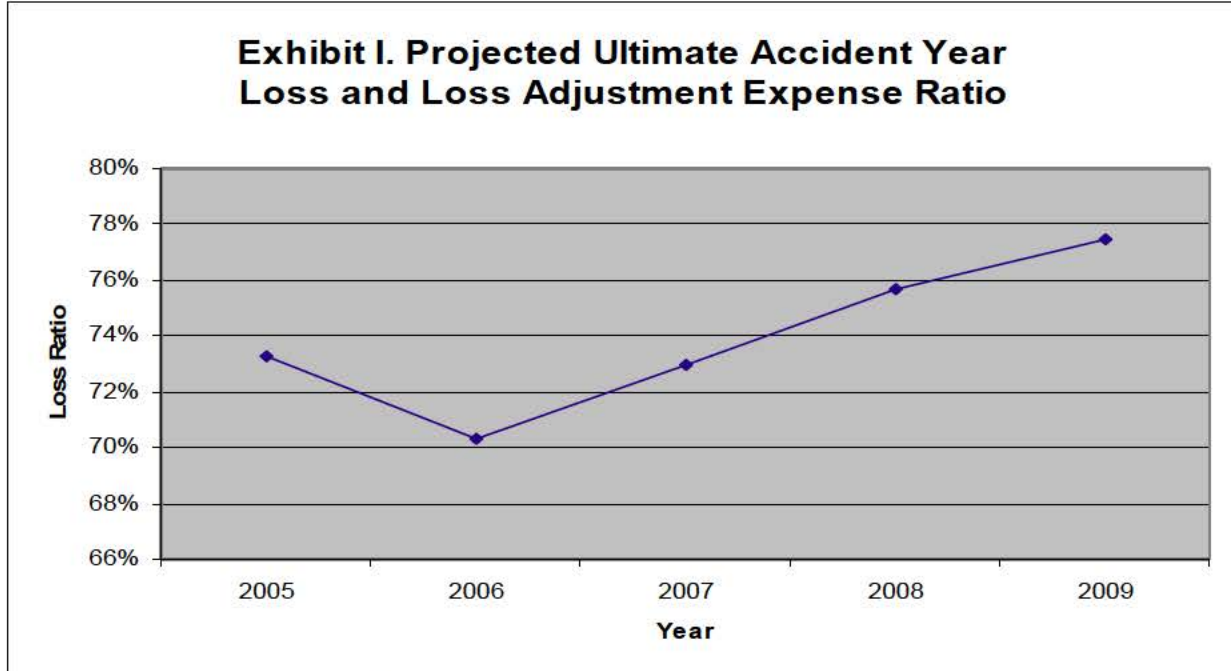


## 2. RECENT EXPERIENCE

### A. 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. 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, improved loss experience, or changes in reserve (i.e., the amount of money expected to be paid out on claims). Conversely, an increase in the loss ratios may reflect decreased rates or worsening loss experience. The loss ratio does not include insurers' general expenses, taxes and contingencies, profit or investment income.

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 for prior years are further developed, so the loss ratios reflect more recent estimates of what the claims will ultimately cost. The accident year loss ratio has ranged from about 70% to slightly over 77% for the past five years. The 2009 loss ratio was 77.5%, indicating that \$77.50 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium.

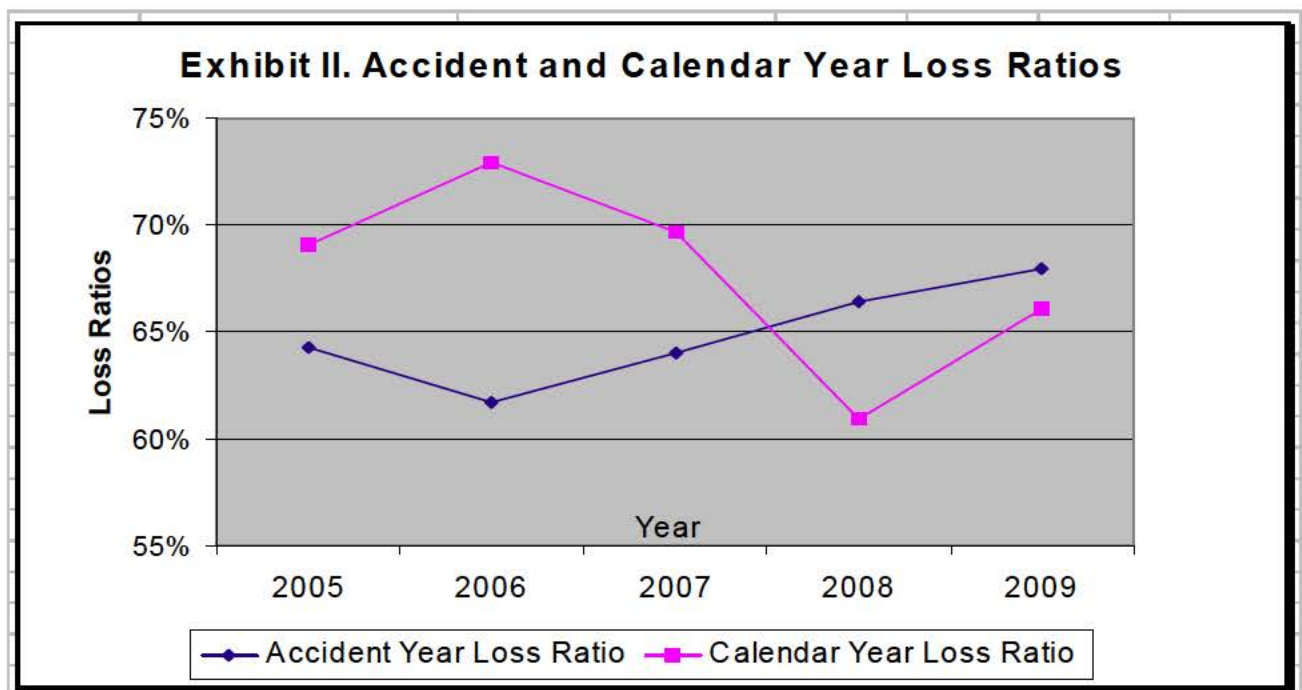


Source: National Council on Compensation Insurance

## B. Calendar Year and Accident Year Loss Ratios

Calendar year loss ratios compare losses incurred with premium earned in the same year (although only a small portion of the losses are attributable to premiums earned that year). 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. 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. 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.

Exhibit II shows calendar year and accident year loss ratios. The calendar year loss ratio of 72.9% in 2006 was the highest in the period of 2005-2009. Since that time it dropped to 60.9% in 2008 but increase to 66.1% in 2009. The accident year loss ratio is trending upward over the period of 2005-2009, ranging from a low of 61.7% in 2006 to a high of 68.0% in 2009.



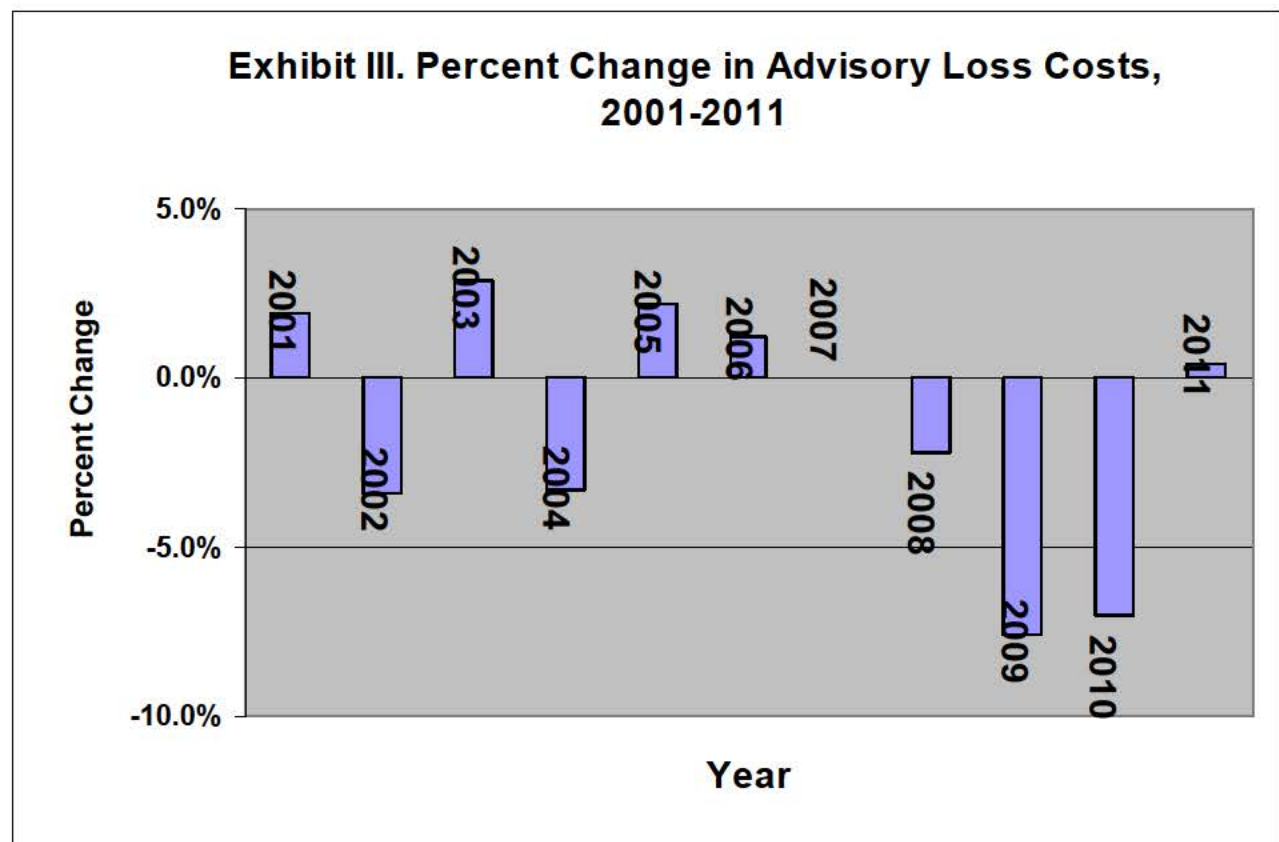
Source: National Council on Compensation Insurance

### 3. LOSSES IN WORKERS' COMPENSATION

#### A. Changes in Advisory Loss Costs

NCCI files advisory loss costs on behalf of workers compensation carriers. 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 insurers pay 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 to load into premium to cover those items.

In 2010, the advisory loss costs decreased by 7.0%. The recently approved advisory loss costs increase loss cost by an average of 0.4% increase in advisory loss costs effective January 1, 2011. Advisory loss costs will be about 16% lower than they were five years ago and nearly 46% lower than when the most recent major reform of the workers' compensation system occurred in 1993. Changes in the advisory loss costs tend to lag behind changes in actual experience and to precede changes in rates.

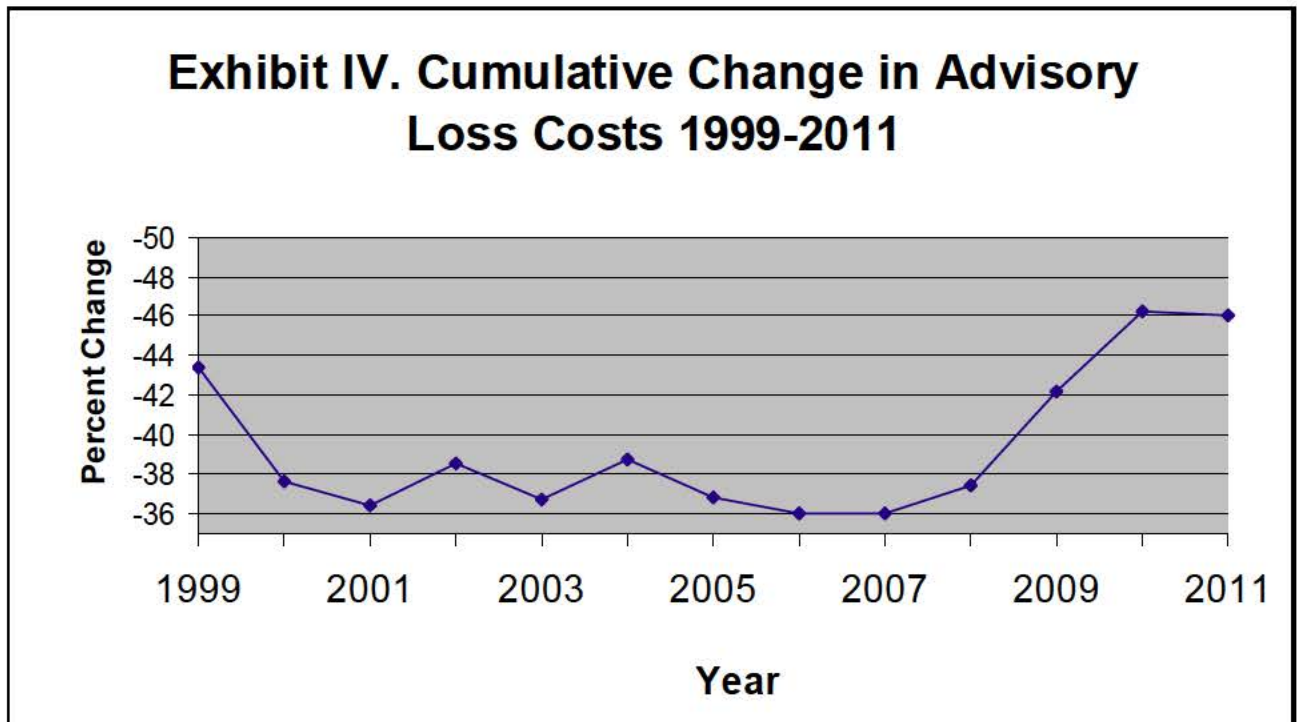


Source: National Council on Compensation Insurance



## B. Cumulative Changes in Advisory Loss Costs

Exhibit IV shows the cumulative changes in loss costs over the past 13 years. After three years of increases or no change, the advisory loss costs declined during the prior three years, with this year's proposed increase being the first increase in the last five years.



Source: National Council on Compensation Insurance

## 4. MARKET STRUCTURE AND COMPETITION

### A. Market Concentration

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

As of October 1, 2009, 292 companies were authorized to write workers' compensation coverage in Maine. This number is not a good indicator of market concentration because some insurers have no written premium. In terms of written premium, MEMIC has 62% of the insured market. Although MEMIC has been successful in retaining business, other insurers are selectively increasing their market share. The following table shows the number of carriers by premium level for those carriers writing workers' compensation insurance in 2009. The number of carriers writing greater than \$1 million in written premium decreased by six.

**Table I: Number of Companies by Level of Written Premium—2009**

<b>Amount of Written Premium</b>	<b>Number of Companies At That Level</b>
>\$10,000	114
>\$100,000	84
>\$1,000,000	22

Source: Annual Statements Filed with the Bureau of Insurance. Total written premium for 2009 was over \$200 million.

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

### B. Herfindahl Hirschman Index

The Herfindahl-Hirschman Index (HHI) is a method to measure market concentration. The HHI is calculated by summing the squares of the market shares (percentages) of all groups in the market. The National Association of Insurance Commissioners (NAIC) publishes a Competition Database Report as a reference source of measures to examine the competitiveness of state insurance markets, and the HHI is one of the data elements in the report. The 2010 Database Report, based on 2008 information, shows that the HHI for the workers' compensation insurance in Maine is 3,937. This is the second highest for all commercial lines in Maine closely behind medical malpractice which is 3,949. All other commercial lines were between 388 and 805. As mentioned in the Database Report, there is no precise point at which the HHI indicates that a market or industry is so concentrated that competition is restricted. The U.S. Department

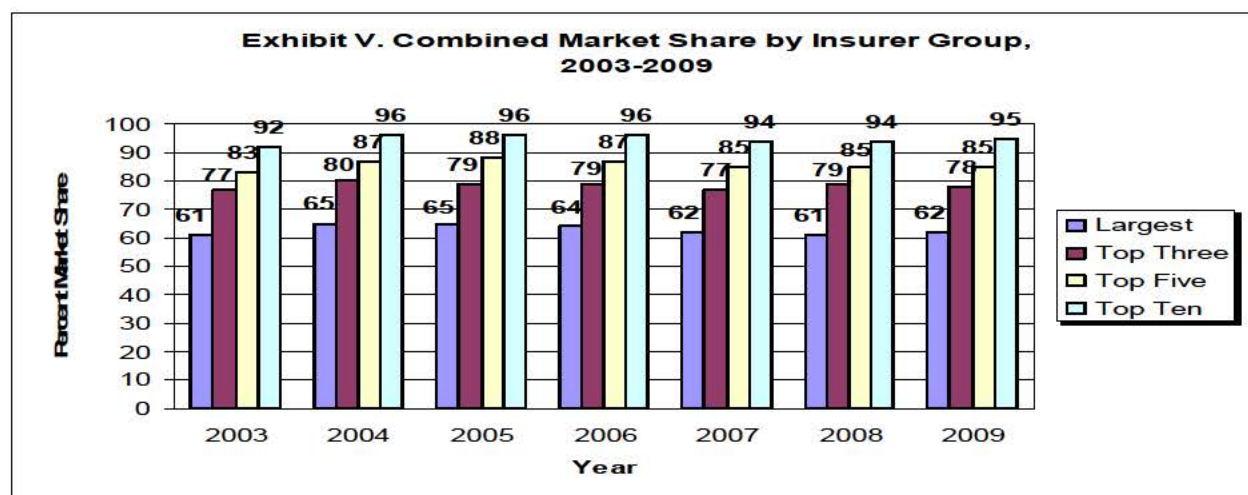
of Justice's guideline for corporate mergers uses 1,800 to indicate highly concentrated markets and the range from 1,000 to 1,800 to indicate moderately concentrated markets. A market with an HHI below 1,000 is considered not concentrated. Applying the HHI to Maine's workers compensation market might not be a helpful gauge of this market for two reasons. First, the Maine Legislature created an employer owned mutual insurer created to replace a highly concentrated residual market where other insurers were reluctant to write actively in this state. Second, the market has a high percentage of employers self-insured individually or in a group.

Source: NAIC 2008 Competition Database Report.

### C. Combined Market Share

An insurance group is a carrier or group of carriers under common ownership. 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. MEMIC has the largest market share. Its share has ranged between 61% and 65% for the last seven years.

The market share of the top 10 insurer groups increased to 95% to 2009; other groups accounted for only 5% of the workers' compensation premium in Maine. In terms of premium dollars, MEMIC wrote over \$124 million in premium in 2009. The top three groups, including MEMIC, wrote over \$156 million in business. The top five groups wrote over \$170 million, and the top 10 groups had over \$189 million in written premium. Overall written premium levels in Maine have dropped considerably since 2005. MEMIC had approximately \$36 million less in written premium in 2009 than it did in 2005. The top three groups had approximately \$48 million less written premium, and the top five and 10 groups had about \$39 million and \$47 million less respectively.



Source: Annual Statements Filed with the Bureau of Insurance

#### D. Number of Carriers in the Maine Insurance Market

The number of carriers in the workers compensation market has increased throughout the 11-year period shown in the table below. The number of carriers who may file rates and be eligible to write workers' compensation coverage has increased by nearly 40% since 2000. There currently are no significant barriers to entry.

<b>Table II: Entry and Exit of Workers Compensation Carriers, 1999-2009</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>
2010	293	6	5	1	0.3
2009	292	10	0	10	3.6
2008	282	13	4	9	3.3
2007	273	11	5	6	2.3
2006	267	14	4	10	3.9
2005	257	4	1	3	1.1
2004	254	5	2	3	1.2
2003	251	11	1	10	4.2
2002	241	15	2	13	5.7
2001	228	24	6	18	8.6
2000	210	12	0	12	6.1

Source: Maine Bureau of Insurance Records.

Notes: Based upon the number of carriers licensed to transact workers compensation insurance as of October 1 of each year. Beginning in 2001, the number exiting the market includes companies under suspension.

#### E. Percent Market Share of the Top Insurance Groups

Table III shows market share by insurance group from 2003-2009. 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.

<b>Table III. Percent Market Share for Top Insurance Groups, By Amount of Written Premium, 2003-2009</b>							
<b>Insurance Group</b>	<b>2009 Share</b>	<b>2008 Share</b>	<b>2007 Share</b>	<b>2006 Share</b>	<b>2005 Share</b>	<b>2004 Share</b>	<b>2003 Share</b>
<b>Maine Employers' Mutual</b>	62.2	61.3	61.6	63.6	64.8	65.4	61.5
Liberty Mutual Group	10.4	11.0	8.8	9.2	8.4	9.4	9.6
WR Berkeley Corp.	5.7	6.1	6.3	6.1	5.6	5.4	5.8
Travelers Group	3.5	2.7	2.2	1.9	1.6	2.3	1.3
Hartford Fire & Casualty	3.4	3.7	3.6	3.3	3.8	1.9	2.0
American International Group	2.3	2.8	5.2	4.9	5.1	4.1	3.3
Zurich Insurance Group	2.0	1.2	1.3	0.9	0.6	1.7	1.6
Ace Ltd Group	1.9	1.2	1.6	1.3	1.6	0.9	0.7
Guard Insurance Group	1.7	1.8	2.0	2.3	2.1	2.0	1.8
The Hanover Ins Corp.	1.6	1.8	1.7	2.1	1.9	1.7	1.6

Source: Annual Statements Filed with the Bureau of Insurance

## F. Percent Market Share of the Top Insurance Companies

Table IV shows the percent of market share for the top carriers for each calendar year from 2003 through 2009. Throughout the seven-year period MEMIC has had in excess of 60% of the market. For the sixth straight year, none of the other carriers attained a 5% market share. The top 10 companies combined write over 77% of the business. All carriers outside of the top 10 had 1% or less of the market share.

<b>Table IV. Percent Market Share for Top Insurance Carriers, By Amount of Written Premium, 2003-2009</b>							
<b>Insurance Carrier</b>	<b>2009 Share</b>	<b>2008 Share</b>	<b>2007 Share</b>	<b>2006 Share</b>	<b>2005 Share</b>	<b>2004 Share</b>	<b>2003 Share</b>
Maine Employers' Mutual	62.2	61.3	61.6	63.6	64.8	65.3	61.5
Acadia Insurance Company	3.4	4.2	4.5	4.5	4.3	4.4	5.3
Netherlands	2.6	2.1	1.4	0.9	0.3	0.2	0.2
Liberty Insurance Corp.	2.0	2.7	2.1	2.5	1.7	1.1	1.4
Firemen's Ins Co of Wash DC	1.9	1.3	1.3	1.1	0.9	0.7	0.6
Excelsior Insurance Co.	1.3	1.4	1.4	1.2	1.0	0.9	0.7
Wausau Underwriter Ins. Co.	1.2	1.0	0.4	0.3	0.3	0.2	0.5
Ace American Ins. Co.	1.1	0.4	0.7	0.4	0.8	0.5	0.5
Hartford Ins Co of the Midwest	1.0	1.0	0.9	0.5	0.4	0.2	0.1
Charter Oak Fire Ins. Co.	1.0	0.9	0.8	0.6	0.5	0.2	0.1

Source: Annual Statements Filed with the Bureau of Insurance



## 5. DIFFERENCES IN RATES AND FACTORS AFFECTING RATES

### A. Rate Differentials

There is a wide range of potential rates for workers compensation policyholders, but most employers are not able to get the lowest rates. Insurers are selective in accepting risks for the lower-priced plans. Their underwriting is based on such factors 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 surveyed the top 10 insurance groups and all of the companies in those insurance groups. We asked for the number of policyholders and the amount of written premium for in-force policies in Maine within each of their rating tiers. Based upon annual statement reports, the carriers that responded accounted for nearly 95% of the market and over \$189 million in written premium in Maine for calendar year 2009. The results of a survey conducted by the Bureau of Insurance show that over 70% of policies are written at rates equivalent to MEMIC Standard Rating tier. Over 22% are written at rates lower than MEMIC's Standard tier. Over 7% of policyholders have policies written at rates that are above MEMIC's Standard Rating tier.

Possible reasons for policyholders accepting rates higher than MEMIC's Standard Rating tier are: 1) an insurer other than MEMIC provides workers' compensation coverage although it might not otherwise, because it provides 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 enough credits to lower the overall premium; and 3) the insured would have been placed in MEMIC's High Risk Rating tier because of its poor loss history.

#### Percent of Reported Policyholders At, Above or Below

##### MEMIC's Standard Rating Tier Rates

Rate Comparison	2010 Percent	2009 Percent
Below MEMIC Standard Rate	22.6%	24.34%
At MEMIC Standard Rate	70.1%	68.61%
Above MEMIC Standard Rate	7.3%	7.05%

Note: Based upon the results of a survey conducted by the Bureau of Insurance. Respondents included carriers in the top 10 insurance groups in Maine.

## B. Additional Factors Affecting Premiums

Some insurers offer employers other options that may affect the premiums the employers pay for workers' compensation insurance. While these options might lower an employer's premium, they may also carry some risk of greater exposure.

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 insurer has more than one loss cost multiplier to use, based on where a potential insured falls in its underwriting criteria. Tiered rating may apply to groups of insurers that have different loss cost multipliers for different companies in the group. Our records indicate that over 71% of insurers either have different loss cost multipliers on file or are part of a group that does.
- ❑ **Scheduled rating** allows an insurer to consider other factors that may not be reflected in an employer's experience rating when determining an individual employer's premium. Factors including safety plans, medical facilities, safety devices and premises are considered and can result in a change in premium of up to 25%. Over 81% of insurers with filed rates in Maine have received approval to utilize scheduled rating.
- ❑ **Small deductible plans** must be offered by insurers. These include 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. Insurers must also offer deductibles of either \$1,000 or \$5,000 per claim for indemnity benefits. Payments are initially made by the insurer and then reimbursed by the employer. Each insurer files the percentage reductions applicable to employers who elect to have small a deductible plan and the amount of reduction varies by insurer.
- ❑ **Managed Care Credits** are credits offered by insurers to employers who use managed care plans. Eighteen percent of insurers offer managed care credits.
- ❑ **Dividend Plans** provide a return premium to the insured after the policy expires if losses are lower than average. Premiums are not increased if losses are greater than average. Because losses may still be open for several years after policy expiration, dividends will usually be paid periodically with adjustments for any changes in the amount of incurred losses. Dividends are not guaranteed. In calendar year 2009, MEMIC declared dividends of \$10 million dollars. In September 2010, MEMIC announced it will pay a dividend totaling \$11 million to about 20,000 Maine policyholders in November 2010. Employers who held policies with MEMIC for a full year, with a term beginning in 2007, will be eligible to receive the dividend. After the November 2010 dividend payment, MEMIC will have returned more than \$121 million to policyholders in the form of capital returns and dividends since 1998.

- ❑ **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 law requires that the insurer pay all losses associated with this type of policy and then bill the deductible amounts to the insured employer. The advantage of this product is a discount 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. At MEMIC, loss free credits may be received by non-experience rated accounts. As of August 31, 2010, 66% of non-experience rated accounts -- 9,408 policyholders -- receive loss free credits of between 8% and 15%. This represents a 2.2% decrease from last year at the same time and represents 49% of all MEMIC policyholders.
- ❑ **Terrorism Risk Insurance Act (TRIA)** is a federal program to protect consumers and insurers by addressing market disruptions and ensuring the continued availability and affordability of insurance for terrorism risk. Under TRIA, the federal government shares the cost of terrorist attacks with the insurance industry. Federal payments in extreme events help eliminate the insolvency risk for the insurance industry. Terrorism coverage is a separate step in determining workers' compensation premium and, like state-required workers' compensation coverage, is a charge based upon payroll for federal terrorism coverage. Acts of terrorism cannot be excluded in workers' compensation insurance and since September 2001 reinsurance contracts have excluded coverage for terrorist acts. In 2007 the Terrorism Risk Insurance Revision and Extension Act was approved and redefined terrorism to include domestic and foreign terrorism.

Insurers in Maine's top 10 groups reported that over \$42 in credits was provided for every \$1 in debits. This was nearly \$17 less than a year ago. More than \$16.1 million in dividends were paid out in 2008, an increase of more than \$500,000 from 2007. MEMIC accounted for over 92% of the dividends issued. The amount of credits in the top 10 groups in 2008 rose more than \$1.5 million from 2007, and the amount of debits increased by nearly \$600,000.

## 6. ALTERNATIVE RISK MARKETS

### A. 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 or be required by the Bureau of Insurance to purchase insurance for losses that exceed a certain limit. One advantage of being self-insured is better cash flow. Employers who self-insure anticipate that they would be better off not paying premiums. They are likely to have active programs in safety training and injury prevention. In 2009, nearly 45% of Maine's total workers' compensation insurance market, as measured by standard premium, consisted of self-insured employers and groups. Although the estimated standard premium dropped, the percent of the workers' compensation market represented by self-insurers remained the same as in 2008.

The estimated standard premium for individual self-insurance is determined by multiplying the advisory loss cost by a factor of 1.2, as specified in statute then multiplying that figure by the payroll amount, dividing the result 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.

**Table VI: Estimated Standard Premium for Self-Insured Employers and  
Percent of the Workers' Compensation Market Held by Self-Insurers, 2000-2009**

Year	Estimated Standard Premium	Percent of Workers' Comp. Market (in annual standard premium)
2009	\$160,359,285	44.5
2008	\$179,280,965	44.6
2007	\$174,830,526	42.1
2006	\$167,535,911	40.9
2005	\$167,278,509	40.3
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

Source: Annual Statements Filed with the Bureau of Insurance.

**Notes:**

1. Estimated standard premium figures are as of December 31 of the year listed.
2. 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.

## B. Number of Self-Insured Employers and Groups

As of October 1, 2010 there were 19 self-insured groups representing approximately 1,382 employers. The number of self insured groups has remained the same for the past four years and the number of individually self-insured employers remained the same as in 2009. The number of employers in self-insured groups dropped for the third straight year.

<b>Table VII: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 2000-2010</b>			
<b>Year</b>	<b># of Self-Insured Groups</b>	<b># of Employers In Groups</b>	<b># of Individually Self-Insured Employers</b>
2010	19	1382	58
2009	19	1459	58
2008	19	1,461	70
2007	19	1,478	70
2006	20	1,437	71
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

Source: Bureau of Insurance Records

### Notes:

1. For the purposes of self-insurance, affiliated employers are considered separate employers. N/A indicates that the information is not available.
2. 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.

## **7. A LOOK NATIONALLY**

### **A. Manufacturing Industry and Office and Clerical Operations**

Each year Actuarial and Technical Solutions, Inc. (ATS) collects information from States, which is used in a publication titled, "Workers' Compensation State Rankings--Manufacturing Industry Costs and Statutory Benefit Provisions." Until 2005, the study ranked workers compensation in the manufacturing sector only. In response to inquiries about the cost of workers compensation in other sectors, ATS began publishing information on office and clerical employees. This includes classes such as accountants, engineers, school professionals, attorneys and other office and clerical employees.

In the 2009 study, Maine ranked 32nd in workers compensation average statutory benefit provisions (wage replacement benefits). This ranking was unchanged from 2008. All 50 states were ranked. A lower rank indicates lower statutory benefits. In addition to statutory benefit provisions, states were ranked by comparative cost for both office and clerical operations and for manufacturing. In 2009, Maine ranked 35<sup>th</sup> in office and clerical and 26<sup>th</sup> in manufacturing out of 45 ranked states. Maine was ranked 35<sup>th</sup> and 30<sup>th</sup> respectively in 2008. (Higher rank equates to higher cost.) This means that Maine's comparative costs remained unchanged for office and clerical and improved four positions in manufacturing.

### **B. Oregon Workers' Compensation Premium Rate Ranking**

In another study, conducted bi-annually by the State of Oregon, Maine ranked 8th in terms of 2010 workers' compensation premium rates for all industries. In this study, a lower rank indicates higher premium rates. In the 2008 study, Maine ranked 5th overall and in the 2006 study, Maine also ranked 8<sup>th</sup>. 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.

### **C. Average Loss Costs by State Based On Maine's Payroll Distribution**

NCCI developed a spreadsheet that 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 10th highest average loss costs of the 36 states and the District of Columbia reporting information to NCCI. Last year Maine had the seventh highest average.

State	Average Loss Cost	Rank
Montana	\$3.15	1
Illinois	\$2.31	2
Oklahoma	\$2.08	3
Connecticut	\$1.86	4
Alaska	\$1.83	5
New Hampshire	\$1.82	6
Kentucky	\$1.72	7
Alabama	\$1.70	8
Vermont	\$1.69	9
<b>Maine</b>	<b>\$1.67</b>	<b>10</b>
Georgia	\$1.56	11
Tennessee	\$1.50	12
North Carolina	\$1.49	13
Iowa	\$1.44	14
South Carolina	\$1.44	14
Nebraska	\$1.38	16
Rhode Island	\$1.36	17
South Dakota	\$1.35	18
Maryland	\$1.33	19
Idaho	\$1.31	20
Oregon	\$1.30	21
West Virginia	\$1.29	22
Arizona	\$1.28	23
Louisiana	\$1.28	23
Missouri	\$1.28	23
New Mexico	\$1.21	26
Kansas	\$1.20	27
Colorado	\$1.15	28
Mississippi	\$1.12	29
Nevada	\$1.06	30
Florida	\$1.04	31
Virginia	\$1.02	32
Hawaii	\$0.98	33
Utah	\$0.95	34
State	Average Loss Cost	Rank
D.C.	\$0.85	35
Indiana	\$0.85	35
Arkansas	\$0.80	37

Note: Average loss cost does not include expense and profit loading and is an average using all payrolls. The actual average for an employer will depend on the type of business and payroll mix. The relatively high total payroll and relatively low loss cost for the clerical classification causes the statewide average to be lower.

**SECTION C**

**BUREAU OF LABOR STANDARDS**



**SECTION C**  
**BUREAU OF LABOR STANDARDS**

**TABLE OF CONTENTS**

	<u>Page C-</u>
<b>1. INTRODUCTION.....</b>	<b>1</b>
1A. ROLE OF THE BUREAU OF LABOR STANDARDS IN PROTECTING MAINE WORKERS.....	1
1B. ORGANIZATION OF THIS REPORT. ....	1
<b>2. PREVENTION SERVICES AVAILABLE.....</b>	<b>3</b>
2A. SAFETYWORKS!.....	3
2B. ENFORCEMENT.....	4
<b>3: RESEARCH AND DATA AVAILABLE .....</b>	<b>7</b>
3A. OCCUPATIONAL SAFETY & HEALTH SURVEILLANCE PROGRAMS.....	7
3B. RESEARCH PROJECTS OTHER THAN ANNUAL REPORT .....	18
<b>4: PROBLEM AREAS.....</b>	<b>22</b>
4A. IMPROVEMENTS NEEDED IN DATA COLLECTION AND SHARING.....	22
4B. EFFORTS TO IMPROVE DATA COLLECTION AND SHARING .....	25
<b>5. 2010 DEVELOPMENTS .....</b>	<b>27</b>
5A. GRANTS .....	27
5B. PROGRAM INITIATIVES.....	27
5C. LEGISLATION.....	28

## 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 3 MRSA § 42, the BLS has the authority to collect and analyze statistical data on work-related injuries and illnesses and their effects. Title 26 MRSA § 42-A 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, including occupational safety and health standards in the public sector. 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 2010 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 Bureau of Labor Standards (BLS). Under its umbrella, a variety of free education and outreach services are made available to Maine employers, employees, and educators. These activities include use of the Maine Workers' Compensation Board (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.

#### 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. This includes free training in OSHA recordkeeping, something critical to collecting accurate federal data and, we believe, unique to the state of Maine. Some of this training is offered centrally at the SafetyWorks! Training Institute in Fairfield and some is worksite-delivered at employer request. In fiscal 2010, 480 safety classes were completed with 8,681 attendees.

**Child Labor Education.** A special emphasis for the Bureau 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. SafetyWorks!, in conjunction with the Community Action Programs (CAP) Agencies and Learning Works weatherization programs, did one train-the-trainer course for 14 people at the SafetyWorks! Institute in Fairfield as well as the CareerCenters in Lewiston, Portland, and Wilton.

## **Employer Consultation**

**Employer Profiles.** Using the data from the WCB's *First Reports* and SOII, 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 and refining the company safety program. Between November 1, 2009 and October 31, 2010, 41 profiles were requested.

**On-Site Consultation.** Also under SafetyWorks!, the Workplace Safety and Health (WS&H) Division 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 Forms 300, 300A, and 301, an environmental evaluation (a walk-through), and an examination of the work processes. Consultations are advisory and cooperative in nature. In fiscal 2010, 699 employer on-site consultations were requested.

For more on SafetyWorks!, go to [www.safetyworksmaine.com](http://www.safetyworksmaine.com)

## **2B. ENFORCEMENT**

### **Child Labor Work Permits**

To protect young workers, the Wage and Hour Division of the BLS reviews and approves up to 5,000 work permit applications for minors each year. From July 1, 2009 to July 1, 2010, 2,544 work permits were approved and 88 permits were denied. Denials are typically due to incomplete or incorrect applications, but perhaps a third are due to the applicant being underage for the proposed employment.

## **Wage and Hour Enforcement**

In addition to the issuance of work permits, the Wage and Hour Division inspects employers for compliance with Maine wage and hour and child labor law, which has an occupational safety and health component. The Division can use 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 or complaints. From July 1, 2009 to July 1, 2010 the Division conducted 2,872 inspections finding 432 employers in violation with 780 separate violations.

## **Public Sector Site Safety Inspections**

The Workplace Safety and Health Division of the BLS enforces safety regulations based on OSHA standards *in the public sector only* and is therefore responsible for the health and safety of employees of state and local governments. The Board of Occupational Safety and Health, whose members are appointed by the Governor, oversees public sector safety enforcement. 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), there were 120 public sector employers and 720 site inspections completed in federal fiscal year 2010. (On average each employer had 6 sites or locations that were inspected.) All inspections found violations: 3,761 violations resulted in \$274,900 in penalties before reductions for size of business and good faith abatement efforts.

## **Private Sector Site Safety Inspections (Federal/OSHA))**

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 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

2010 show that OSHA conducted 635 inspections in Maine, all of which found violations: 1,458 violations resulted in \$1,821,044.96 in penalties assessed.

### **Worker Misclassification Task Force**

In January 2009, Governor Baldacci issued an Executive Order establishing a Joint Task Force on Employee Misclassification. Misclassification occurs when an employer hires a worker and improperly classifies the person as an “independent contractor” rather than as an “employee”.

The Task Force was charged with examining the problem of employee misclassification, developing ways of improving communication and information sharing among task force and other public agencies, coordinating and strengthening enforcement mechanisms among state agencies and between the state and other jurisdictions, increasing public awareness of the illegality of and harms inflicted by misclassification, working cooperatively with affected groups to disseminate information and improve methods of identifying and reporting potential violations, and making recommendations for regulatory or statutory changes that would strengthen enforcement efforts.

The Bureau Director sits on the full Task Force and has representatives on the three subcommittees; Legal, Enforcement, and Outreach. This issue has safety and health implications because employment status provides protection under the various OSH laws and regulations.

### 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 occupational safety and health (OSH). This knowledge is gained by OSH research, through continuous injury surveillance programs and focused studies.

#### 3A. OCCUPATIONAL SAFETY & HEALTH SURVEILLANCE PROGRAMS

The Research and Statistics Unit (R&S) in the Technical Services Division (TSD) of the Bureau of Labor Standards (BLS) is responsible for the administration and maintenance of the following data sources:

- 1) Maine Workers' Comp. Board First Report of Occupational Injury or Disease
- 2) Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses
- 3) Federal Bureau of Labor Statistics Census of Fatality Occupational Injury Program
- 4) Federal OSHA Data Initiative
- 5) Occupational Fatality Reporting Program

Combined, the results of these surveys provide an epidemiological profile of occupational injuries and illnesses in Maine. The following are program overviews and data summaries generated by these programs.

#### **Maine Workers' Comp Board First Report of Occupational Injury or Disease**

Since 1973 the Maine 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 a wealth of information on individual cases. This tabulation is the primary data source for BLS prevention efforts because it is possible to examine many factors associated with a work-related injury such as the individual employer, the age of the injured, how long the injured person had worked, and the injured worker's occupation, and so on.

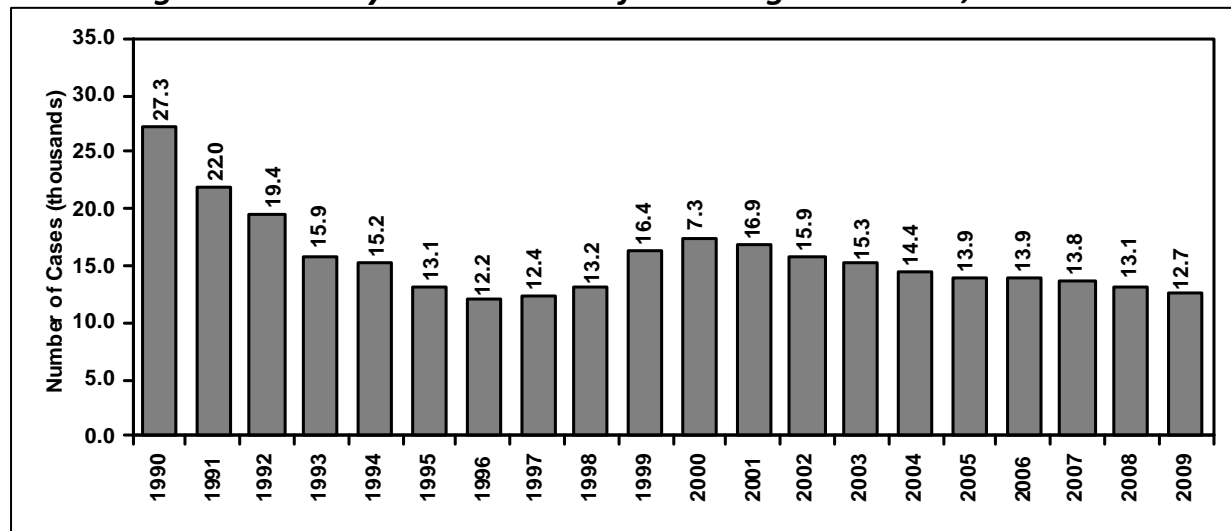
Because the data are tied to the WCB administrative data, the consistency and completeness of administrative data is critical. The BLS analyzes the WCB data and provides injury profiles to employers and safety professionals to use in prevention and training activities. The following is a summary of the data from this program.



### A Twenty-Year Pattern of Disabling Cases, Maine (1990-2009)

In 2009, there were 12,682 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 trend of disabling cases.

**Figure 1: Twenty-Year Pattern of Disabling WCB Cases, 1990-2009**



### Geographic Distribution of Disabling Cases, Maine (2007-2009)

In 2009, nine of the sixteen counties had a higher injury rate when compared to the state overall rate. The six counties with the highest disabling case rates were: Sagadahoc, Washington, Cumberland, Kennebec, Aroostook, and Penobscot counties. Table 1 describes the number of disabling cases by county for calendar years 2007 through 2009. The rates provided are employment-based rates.

**Table 1: Geographical Distribution of Disabling Cases, Maine (2007-2009)**

County	2007			2008			2009		
	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000
Androscoggin	1,110	55,748	19.9	1,093	55,318	19.8	1,074	53,501	20.1
Aroostook	738	33,142	22.3	705	32,787	21.5	668	31,572	21.2
Cumberland	3,630	152,508	23.8	3,294	151,859	21.7	3,370	147,150	22.9
Franklin	249	13,393	18.6	201	13,341	15.1	194	12,990	14.9
Hancock	480	27,986	17.2	524	28,090	18.7	405	26,972	15.0
Kennebec	1,390	60,209	23.1	1,242	60,450	20.5	1,253	58,956	21.3
Knox	399	20,244	19.5	384	20,068	19.1	377	19,144	19.7
Lincoln	256	17,662	14.5	252	17,527	14.4	265	16,805	15.8
Oxford	452	26,888	16.8	418	26,461	15.8	356	25,501	14.0
Penobscot	1,430	73,812	19.4	1,398	74,663	18.7	1,472	73,044	20.2
Piscataquis	144	6,963	20.7	129	6,878	18.8	127	6,555	19.4
Sagadahoc	761	18,348	41.5	680	18,323	37.1	596	17,635	33.8
Somerset	460	23,386	19.7	459	23,027	19.9	414	22,218	18.6
Waldo	220	17,969	12.2	220	17,982	12.2	223	17,557	12.7
Washington	274	13,579	20.2	285	13,407	21.3	302	12,928	23.4
York	1,440	109,302	13.2	1,344	108,544	12.4	1,218	104,770	11.6
Unknown*	384	----	----	431	----	----	368	----	----
<b>State-Wide</b>	<b>13,817</b>	<b>671,339</b>	<b>22.4</b>	<b>13,085</b>	<b>668,724</b>	<b>18.6</b>	<b>12,682</b>	<b>647,298</b>	<b>19.6</b>

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

Employment data from the Center for Workforce Research and Information, Maine Department of Labor.

\* Unknown represents WCB First Reports with missing information.

### **Disabling Cases by Occupational Groups, Maine (2007-2009)**

There are nine occupational groups that accounted for 75.0% of all reported disabling injuries in 2009. Table 2 describes the top nine occupational groups with corresponding rates. Further research is warranted to study the trends and patterns of injuries and illnesses within these 9 occupational groups to identify the occupational risk factors.

**Table 2: Disabling Cases by Occupational Groups, Maine (2007-2009)**

Occupational Groups	2007		2008		2009	
	Number	Percent	Number	Percent	Number	Percent
Transportation and Material Moving	2,229	16.3	2,106	16.1	1,821	14.4
Construction and Extraction	1,409	10.3	1,265	9.7	1,007	7.9
Production	1,517	11.1	1,288	9.8	1,086	8.6
Office and Administrative Support	1,150	8.4	1,046	8.0	1,046	8.2
Sales and Related	*	*	786	6.0	840	6.6
Building and Grounds Cleaning and Maintenance	986	7.2	915	7.0	832	6.6
Installation, Maintenance, and Repair	979	7.2	963	7.4	993	7.8
Healthcare Support	974	7.1	1,081	8.3	1,007	7.9
Food Preparation and Serving	934	6.8	882	6.7	872	6.9
Other Occupational Groups	3,639	26.3	2,753	21.0	3,178	25.1
<b>Total</b>	<b>13,817</b>	<b>100.0</b>	<b>13,085</b>	<b>100.0</b>	<b>12,682</b>	<b>100.0</b>

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

*\* Indicates that the occupational group was not in the top nine categories.*

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

Since 1972, the Maine BLS has partnered with the federal Bureau of Labor Statistics through a cooperative agreement to collect data through the annual Survey of Occupational Injuries and Illnesses (SOII). The results from this survey are summarized and published annually on the Federal BLS website, <http://www.bls.gov/iif/oshstate.htm#ME>. The data are generated from a random sample stratified by industry and establishment size. There are over 3,000 work establishments in the sample in any given year. For the year 2009 Maine BLS surveyed 2,636 private establishments and 516 public sector agencies, asking these businesses about their injury experience with OSHA recordable injuries and illnesses. In addition, employers report their average employment and total hours worked at the reporting worksite. From this information, incidence rates are produced. The incident rate is the estimated number of incidents per 100 full-time workers, standardized to a full calendar year.

Table 3 and Figure 2 display results from the 2009 SOII. Data collected from this survey is not comparable with the WCB data for the following reasons:

- 1) The two systems use different definitions of recordability of work-related cases.
- 2) WCB rates are employment-based while the SOII rates are computed based on hours worked.
- 3) The WCB data is a census of disabling injuries and illnesses while the SOII data is a statistical sample. The SOII data is therefore subject to sampling errors.

### Cases with Lost Workdays and Restricted Work Activity (2002-2009)

Figure 2: Lost Workday and Restricted Work Activity Cases

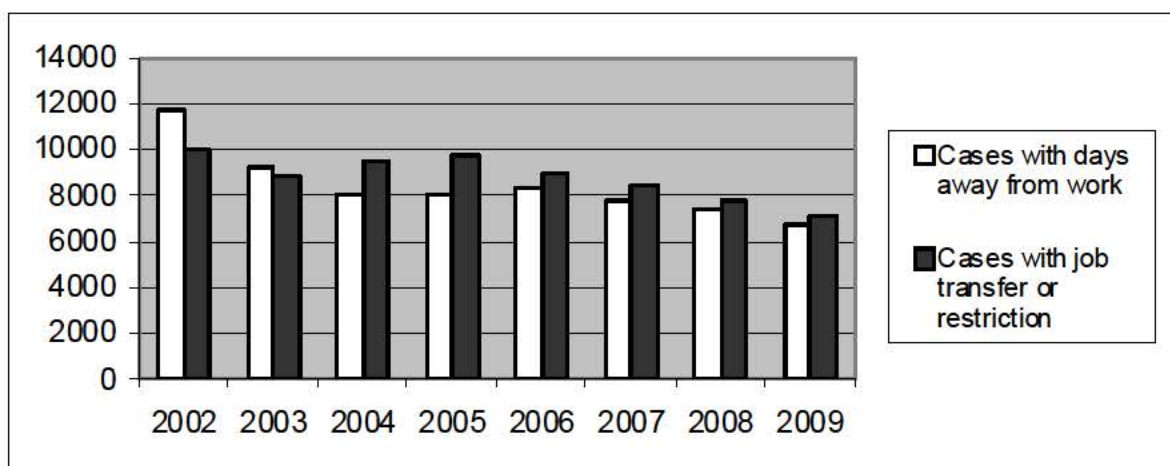


Figure 2 describes the injury data collected through the annual Survey of Occupational Injuries and Illnesses (SOII). For 2009, there were an estimated total of 13,825 OSHA recordable injuries resulting in at least one day away from work and/or one day of job transfer or restriction beyond the day of injury. Of this total, it was estimated that 6,731 cases resulted in at least one day away from work and 7,094 cases resulted in job transfer or restriction without any days away from work. Additional information on Maine injury experience from 1996-2009 is published on the Federal BLS website: <http://stats.bls.gov/iif/oshstate.htm#ME>

According to the 2009 SOII (private sectors), Nursing Care Facilities recorded the highest total recordable incidence rate of 13.0 per 100 FTE. Table 3 describes the top 10 private industry total recordable rates.

**Table 3: Industries with the top 10 Total Recordable Rates, Maine, 2009**

<b>All Private Industries</b>	<b>5.6</b>
Nursing Care Facilities	13.0
Community Care Facilities for the Elderly	11.7
Transportation Equip. Manufacturing	10.6
Waste Mgt/Remediation Services	10.4
Residential Mental Retardation, Mental Health, Substance Abuse Facilities	9.6
Grocery Store	9.4
Leather and Allied Product Manufacturing	9.3
Hospitals	9.1
Truck Transportation	8.7
Foundation/Structure Contractors	8.6

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

For more additional information on work-related injuries in Maine, go to: <http://stats.bls.gov/iif/oshstate.htm#ME>

### **Federal Bureau of Labor Statistics Census of Fatality Occupational Injury Program**

Since 1992, the BLS has been in partnership with the federal Bureau of Labor Statistics to administer the Census of Fatal Occupational Injuries (CFOI) program for Maine.

The CFOI program is a federal/state cooperative program to collect data on all fatal occupational injuries. 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.

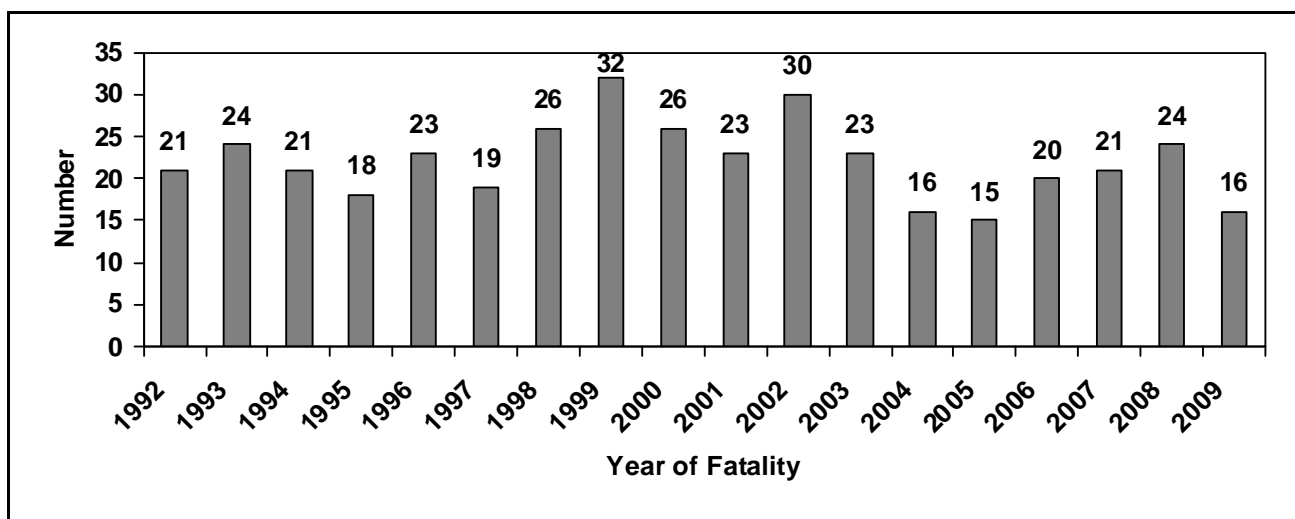
A death is considered work-related if an event or exposure resulted in an employee fatality while in work status, whether at an on-site or off-site location. Private and public sector (state, local, and county government) are included. Fatalities must be confirmed by two independent sources before inclusion 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.

### Fatal Occupational Injuries, Maine (1992-2009)

Figure 3 shows the numbers of work-related fatalities recorded in Maine from 1992-2009.

**Figure 3: Work-Related Fatalities, Maine (1992-2009)**



Source: Maine Census of Fatal Occupational Injuries

**Table 4: Fatal Occupational Injuries by Industry and Event/Exposure  
Maine (1992-2009)**

Industry Division	Total	Trans- portation Accidents Highway & Non- highway	Contact with Objects & Equipment	Falls	Exposure to Harmful Substances	Assaults & Suicides	Fires & Explosions
<b>Total</b>	<b>398</b>	<b>197</b>	<b>81</b>	<b>48</b>	<b>45</b>	<b>20</b>	<b>7</b>
Agriculture, Forestry & Fish.	104	66	7	5	26	--	--
Manufacturing	58	16	32	10	--	--	--
Transportation & Public Utilities	65	48	8	4	5	--	--
Construction	49	10	11	16	9	--	3
Services	42	17	14	6	--	5	--
Retail	23	11	--	6	--	6	--
Government	20	12	--	--	--	5	--
Wholesale	16	15	--	--	--	--	--
Other/Nonpublishable & Unknown	21	--	6	--	5	3	4

**Source:** Maine Census of Fatal Occupational Injuries

### OSHA Data Initiative

Every year since 1993, the BLS has received a grant from Federal 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 activity under the federal 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 the SOII survey (OSHA 300 Injury Log) but requiring less detailed information.

Targeted establishments are notified by Federal OSHA about their high injury rates and these establishments are encouraged to utilize the safety and health consultation services provided by Maine BLS at no cost to employers.

Table 5 describes the sample size and the results of survey years 2005-2009

<b>Variables/Survey Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Sample Size	375	439	421	475	455
National Dart Rate	2.4	2.3	2.1	2.0	1.8
National DART Rate (Targeted)	5.3	5.4	5.0	4.5	* Not Available
Maine Targeted Establishments	235 (63.0%)	238 (54.2%)	234 (55.5%)	243 (51.0%)	* Not Available

**Note:** DART = Days Away From Work, Restricted Work Activity, or Job Transfer

### Occupational Fatality Reports

In 2002, the Maine BLS pilot-tested a fatality assessment, control and evaluation (FACE) program. The pilot program was modeled after the National Institute for Occupational Safety and Health (NIOSH) FACE program, <http://www.cdc.gov/niosh/face/>

With no funding from NIOSH, the Maine BLS implemented its own Occupational Fatality Reporting Program (OFR). The purpose of these case studies is to draw attention to the work environments, equipment or behaviors resulting in workers' deaths. Currently there are 9 Occupational Fatality Reports and these reports can be found at: [http://www.maine.gov/labor/labor\\_stats/publications/face/index.html](http://www.maine.gov/labor/labor_stats/publications/face/index.html)

### Employer Substance Abuse Testing

Under the Maine Substance Abuse Testing Law, the Bureau of Labor Standards (BLS) review and approve proposed drug testing policy of Maine employers who want to have a substance abuse testing program. Employers can either use a model testing policy available from the Maine BLS or develop their own drug testing policy that will comply with Maine drug testing laws (The Maine Substance Abuse Testing Law, Title 26 MRSA, Section 680 *et seq.*)

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 (MDOL), 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 for Applicant and Probable Cause Testing Policies

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.

In 2009, a total of 17,399 tests were administered and 3.8% of these tests were positives. There were 16,719 applicants tested and 631 of the applicants tested positive for illegal substances. Table 7 shows the test results for the last 10 years while Table 8 describes the results of probable and random testing.

For a full report, go to:

[http://www.maine.gov/labor/labor\\_stats/publications/substanceabuse/index.html](http://www.maine.gov/labor/labor_stats/publications/substanceabuse/index.html)

Table 7: Results of Overall and Applicant Testing (2000-2009)

Year	Approved Policies	Total Tests	Total Positives (%)	Applicant Tests	Applicant Positives	Applicant Positives (%)
2009	412	17,399	666 (3.8)	16,719	631	3.8
2008	384	23,437	1,086 (4.7)	22,477	1,045	4.7
2007	350	22,641	1,110 (4.9)	21,700	1,076	5.0
2006	325	18,112	853 (4.7)	17,364	824	4.7
2005	310	17,742	749 (4.2)	16,876	706	4.2
2004	287	17,428	826 (4.7)	16,702	803	4.8
2003	271	16,129	761 (4.7)	15,345	727	4.7
2002	252	13,128	642 (4.9)	12,595	624	5.0
2001	239	16,492	730 (4.4)	15,947	716	4.5
2000	226	18,827	765 (4.1)	18,164	748	4.1

Table 8: Results of Probable and Random Testing (2000-2009)

<b>Year</b>	<b>Approved Policies</b>	<b>Probable Cause Tests</b>	<b>Probable Cause Positives</b>	<b>Probable Cause Positives (%)</b>	<b>Random Tests</b>	<b>Random Positives</b>	<b>Random Positives (%)</b>
2009	412	16	6	37.5	664	29	4.4
2008	384	13	2	15.4	947	37	3.9
2007	350	5	4	80.0	936	30	3.2
2006	325	18	2	11.1	730	27	3.7
2005	310	18	9	50.0	863	34	3.9
2004	287	6	1	16.7	720	22	3.1
2003	271	29	7	24.1	755	27	3.6
2002	252	10	0	-	523	18	3.4
2001	239	8	1	12.5	537	13	2.4
2000	226	12	1	8.3	651	16	2.5

### **3B. RESEARCH PROJECTS OTHER THAN ANNUAL REPORT**

#### **Capacity Building in OSH Surveillance**

The Maine Bureau of Labor Standards (BLS) is a member of a national work group that developed core occupational safety and health surveillance indicators. The membership of this workgroup is comprised of epidemiologists and researchers from 13 states, the Council for State and Territorial Epidemiologists (CSTE) and the National Institute for Occupational Safety and Health (NIOSH). In addition, the Workgroup has developed a “How to Manual” on generating these indicators. The manual is available on the CSTE website:

[http://www.cste.org/pdffiles/Revised%20Indicators\\_6.24.04.pdf](http://www.cste.org/pdffiles/Revised%20Indicators_6.24.04.pdf)

These Occupational health indicators can provide information about a population’s status with respect to workplace factors that can influence safety and health of workers. 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 funding for the project ended in 2005 but since then the MDOL has continued to participate in the Workgroup and the results of this initiative are available on the CSTE website:

<http://www.cste.org/OH/OHmain.asp>

#### **Data Outreach Initiatives**

The Research & Statistics Unit (R&S) conducts occupational safety and health injury research projects and disseminates informational literature to OSH professionals.

In 2009-2010, the R&S training staff conducted over 20 sessions on Federal OSHA injury recording and reporting requirements. These sessions provide employers and safety professionals with updated information and also enhanced the data quality collected through our federally funded injury surveys. For 2011, there will be 14 sessions offered throughout the state.

## Special Projects

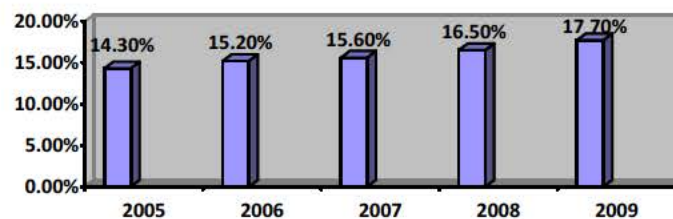
Using information from the Maine Workers' Compensation Board's First Report of Injury (FROIs) and the federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses, the Research & Statistics Unit conducted the following research projects:

- 1) Work-Related Injuries in the Health Care Sector
- 2) Work-Related Motor Vehicle Accidents

### Work-Related Injuries in the Health Care Sector

Using the data from the Maine Workers Compensation Board, analyses showed injuries in the health care industry has been on the rise. Figure 4 shows that the percent of FROIs in the health care industry has steadily increased over the last 5 years. On average, six health care workers are injured on the job every day in Maine.

Figure 4: First Reports of Injury in Maine Health Care Industry



### Nursing / Residential Care Facilities Have Highest Injury Rates

Injury rates for Nursing and Residential Care Facilities have been significantly higher than the injury rates for all private sector industries combined. Table 6 shows Maine OSHA Recordable Incidence Rates (2005-2008).

Table 6: Maine OSHA Recordable Incidence Rates (2005-2008).

Year / Industry	All Industry (Private Sector)			Ambulatory Health Care (NAICS 621)			Hospitals (NAICS 622)			Nursing & Residential Care (NAICS 623)		
	TRC	DART	DAFWII	TRC	DART	DAFWII	TRC	DART	DAFWII	TRC	DART	DAFWII
2005	7.2	3.9	1.7	4.2	1.6	0.8	8.0	4.5	2.1	11.7	7.9	2.6
2006	7.0	3.9	1.8	5.4	2.7	2.0	9.5	5.0	2.1	14.1	10.3	3.1
2007	6.4	3.6	1.6	3.4	1.2	0.8	9.1	5.4	2.1	11.6	7.6	2.9
2008	6.0	3.3	1.6	5.1	1.8	0.7	9.4	5.0	2.0	9.5	8.0	5.4

TRC = Total Recordable Case Rate. The incidence rate of all OSHA recordable cases per 100 full-time workers

DART = Days Away Restricted or Transfer Rate. The incidence rate of cases resulting in one or more days away from work and/or one or more days of job transfer or restriction BEYOND the day of injury/illness per 100 full-time workers

DAFWII = Days Away From Work Incidence Rate. The incidence rate of cases resulting in one or more days away from work BEYOND the day of injury/illness per 100 full-time workers

Based on the Maine Workers' Compensation Board's First Report of Injuries, approximately one-third of the injuries in the health care sector can be attributed to poor ergonomics and another 12% to falls to floors, walkways or other surfaces.

Data from the Federal Bureau of Labor Statistics Survey of Occupational Injuries & Illnesses revealed that the injuries rates for health care workers are much higher when compared to the injuries rate for all other workers combined. Many of these injuries can be prevented with proper ergonomic training and interventions.

For the full report, go to: [www.maine.gov/labor/labor\\_stats/research.html](http://www.maine.gov/labor/labor_stats/research.html)

### **Work-Related Motor Vehicle Accidents**

Using the data from Maine WCB and the federal Bureau of Labor Statistics, the Research & Statistics Unit developed an informational brochure to support the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) effort in preventing work-related motor vehicle fatalities. Federal OSHA recently initiated an educational campaign calling on employers to prevent work-related distracted driving, with a special focus on putting a stop to texting while driving. Texting while driving greatly increases the risk of being injured or killed in a motor vehicle crash. In an open letter to employers, also posted online, OSHA requests that companies examine their policies and practices, informs them that they have a legal obligation to prohibit workplace hazards such as texting while driving, and asks them to immediately remove any incentives that may motivate employees to text while behind the wheel. This online resource informs workers of their rights, and employers of their responsibility to provide safe workplaces, and offer best practices and policies on achieving safe workplaces in motor vehicles. Information and continual updates are available at: [www.osha.gov/distracted-driving](http://www.osha.gov/distracted-driving).

Motor vehicle accidents have been the leading cause of work related fatalities in Maine over the last 12 years. The data collected by the Maine Department of Labor (MDOL) indicates that motor vehicle accidents (MVAs) are a major contributor to work-related fatalities. In the past 12 years, there were 68 separate MVAs incidents resulting in 81 fatalities reported to the MDOL. Police accident investigation reports showed that 12 (17.6%) of those 68 incidents were caused by driver inattention.

From 1998 to 2009:

- 464 work-related fatalities
- 81 motor vehicle-related deaths from 68 incidents
  - 31 two-vehicles collisions
  - 30 single vehicle accidents
  - 7 workers were killed while working around motorized vehicles

Table 7: Comparison of Work-Related Motor Vehicle Accidents (MVAs) Fatalities to Overall Work-Related Fatalities in Maine (1998-2008)

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
All Fatalities	37	46	33	45	50	41	29	36	43	39	30	35
MVA Fatalities	8	9	3	3	23	3	5	5	4	6	7	4
MVA % of all work fatalities	21.6	19.6	9.1	6.6	46.0	7.3	17.2	13.8	9.3	15.4	23.3	11.4

Data Sources: Maine Workers' Compensation First Reports of Injury, State Police Accident Reports.

The data from Table 8 describes police accident investigation reports. It showed that 12 (17.6%) of those 68 incidents were caused by driver inattention and no seatbelt was used in 44 of these fatalities.

Table 8: Contributing factors in Work-Related Motor Vehicle Accident Incidents in Maine (1998-2009)

Contributory Factors	Two-Vehicle Accidents	Single-Vehicle accidents	Working around motorized vehicles
Loss of control	11	23	0
<b>Driver inattention</b>	8	4	0
Struck by vehicle	6	1	7
Failure to yield	3	0	0
Brake or tire failure	1	2	0
Total	31	30	7
Seatbelt use	10	7	0
<b>No seatbelt use</b>	21	23	0

For the full report, go to: [www.maine.gov/labor/labor\\_stats/research.html](http://www.maine.gov/labor/labor_stats/research.html)

## 4. PROBLEM AREAS

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

#### EDI and Missing Fields

As of January 1, 2005, all filings of WCB *First Reports* were required to be done by electronic data interchange (EDI), computer-to-computer, using one of two formats. As of July, 2008 all but a few submitters were using the International Association of Industrial Accident Boards and Commissions (IAIABC) Standard 3 format. Under the new EDI standard, certain fields are classified as “required”: that is, necessary for a claim to be processed. Others are classified as “expected”; i.e., not required for a claim to be processed but necessary to complete a report. Although the WCB will request missing “expected” data from the reporting entity, that data may not be forthcoming or available to the Maine Bureau of Labor Standards (BLS) for coding at the time the reports are coded.

The implementation of EDI is presenting challenges at several levels. It is leading to more participants and complexity of the process on one hand, yet it is creating discussion of data flow and quality checks on the other. It is clear that the implementation process is finding and plugging a number of reporting holes that existed with the manual system, yet the demand for certain data elements at certain times may result in reporters fabricating data to get the system to accept a report. The BLS is monitoring the new process to be sure it is not resulting in fabricated data. Ideally both completeness and accuracy will improve as a result of the changes and these goals will need to be a part of the monitoring and the penalties and rewards. In one study, BLS found that while quality has been consistent through the change, the amount of work required more than doubled. In that case some internal changes corrected most, if not all, of the problems once they were identified and corrected.

#### “Return to work date”

Table 9 shows the missing information for the variable, “return to work” (RTW) date as compared with the numbers of disabling cases from the WCB *First Report* forms for five years (2005-2009). There were 5,152 (39.1% of the) cases with no RTW date for the year 2009 as of the tabulation of this data in December of 2010. This is a 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 that a significant number of these workers have actually returned to work and the RTW date has not been updated through the EDI (Electronic Data Interchange) system.

This missing information prevents the BLS and the WCB from generating an accurate estimate of the number of workdays lost due to a work-related injury or illness. The RTW date is critical in conducting cost-benefit analyses of workplace safety programs. Other potential uses of this

variable are assessing the severity of an injury or illness and determining which industry sectors are experiencing more lost workdays. It also provides a critical check as to whether or not indemnity benefits were owed injured workers who exceeded the 7-day waiting period. As it is, these cases cannot be distinguished from those that simply returned before the waiting period. A case might legitimately not have a return to work date on it due to death or to a prolonged incapacity. Of those cases, though, there are a number where the WCB 11 form is either not timely or was not properly closed. The EDI process should bring more of these types of problems to light as more of the forms are brought into that process.

**Table 9: Missing Return-to-Work Date, Maine, 2005-2009**

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
<i>First Reports</i> with an incapacity Date	15,319	14,921	15,016	14,157	13,192
Of those, cases lacking a RTW (return-to-work) date	6,611	6,122	6,581	5,908	5,152
Raw percent lacking RTW date	43.2%	41.0%	43.8%	41.7%	39.1%
Cases lacking a RTW date and fatal or compensable cases (and therefore may not have RTW date legitimately)	3,609	3,406	3,412	3,165	2,608
Cases lacking a RTW date and not fatal or not possibly still out	3,002	2,716	3,169	2,743	2,544
Minimum percentage without a valid RTW date	19.6%	18.2%	21.1%	19.4%	19.3%

**Source:** Workers' Compensation Board *First Reports of Occupational Injury and Disease, WCB-11, Interim Reports*

The RTW date became even more important to BLS in 2006. In the new strategic plan of the Maine Department of Labor, a new set of measures is called for to evaluate the effectiveness of prevention methods. The form of the new measures came from work that the National Institutes of Occupational Safety and Health (NIOSH) developed for loss of life due to work-related fatalities. The measures will include worker-years lost due to work-related injury or illness. This particular measure can be viewed not only as an estimate of how severe work-related injuries and illnesses are in Maine, but also as an indicator of how successful we are at getting people back to work. Eventually, the goal of the Department is to look at this measure in the context of specific industries, occupations, geographic regions and/or other factors, as well as looking at the state as a whole. The new measures, in aggregate, can be treated as representing lost productivity and a basis for OSH policy decisions.

Computation of worker-years lost will be a challenge in two respects even beyond the missing RTW dates. The first is that the system is not set up to record the past as it moves forward in time--instead it takes snapshot pictures of where the cases are at any point in time. As it is now we can say how many worker-years were lost (to date) due to injuries that occurred in 2009, but the system is not geared to tell us how many worker-years were lost during 2009 for injuries that occurred *before* 2009. This may be a matter of programming and learning how to appropriately process the existing information from the Workers' Compensation system, or it may be a matter of accepting less than ideal information to do it (developing a "proxy").



The second way lost worker-years may be a problem is that the system is not geared for reporting time the worker is out in situations where there are many small work interruptions such as occur with carpal tunnel and repetitive trauma. We can tell the duration from the start to finish of a payment episode, for instance, but if there were both days at work and days out within that episode, we are not sure if or how we can recognize this from the existing system. The solution to this problem also may be matter of coming up with how to do it with existing information, or in attempting to do this we may identify a need to modify the system.

As the system stands now we still have basic difficulties with identifying which workers are actually out and which have returned to work. As long as this remains the case, no meaningful estimate of worker-years lost can be derived. We believe the EDI process will remove at least some of the reporting gaps, but we are still not sure it will plug all of them. We will be evaluating the quality of data as the changes are implemented and reporting requirements are enforced.

### **Cost data**

The individual case cost data from the WC system is now available and the BLS has started to incorporate the cost data with injury research projects to compare and contrast groups of cases as we do for the case counts now. As with duration, the cost data also suffers from the problem of it being a "snapshot" of the cases at a point in time, some of which are closed and not accumulating further expenses while others are open and continue to accumulate data. Eventually we will need to define and make determinations for "open" and "closed" cases and be able to tabulate data based on that characteristic.

The range in duration and cost will open new possibilities as well, telling us the groups and types of cases that have more uncertainty in their outcome. This, in turn, may allow us to focus attention on classes of cases where the medical treatment and case management is more a factor in what happens over the life of the case. This is consistent with research WCB is doing on the costliest cases, where findings show that some of the most costly cases are ones where the initial injury or illness was simple at the start.

## **4B. EFFORTS TO IMPROVE DATA COLLECTION AND SHARING**

### **Data Outreach Initiative**

In October 2009, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) initiated a national emphasis program (NEP) on [recordkeeping](#) to assess the accuracy of injury and illness data recorded by employers. "Accurate and honest recordkeeping is vitally important to workers' health and safety," said acting Assistant Secretary of Labor for OSHA Jordan Barab. "This information is not only used by OSHA to determine which workplaces to inspect, but it is an important tool that employers and workers can use to identify health and safety problems in their workplaces:

[http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=16488](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=16488)

The recordkeeping NEP involves inspecting occupational injury and illness records prepared by businesses and appropriately enforcing regulatory requirements when employers are found to be under-recording injuries and illnesses. The inspections include a records review, employee interviews, and a limited safety and health inspection of the workplace. The NEP will focus on selected industries with high injury and illness rates.

With this announcement, the demand for record-keeping training increased. In 2009-2010, the R&S training staff conducted over 20 sessions on Federal OSHA injury recording and reporting requirements. These sessions provide employers and safety professionals with updated information and also enhanced the data quality collected through our federally funded injury surveys. For 2011, there will be 14 sessions offered through-out the state.

In addition to training, 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 promotional tri-fold, 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 Maine Safety and Health Conference, Maine Municipal Association, Maine Firefighters Association, Workers' Compensation Summit, and Human Resources Conference. Unit personnel attended some of these meetings in order to answer questions and take requests for profiles.

### **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. Its creation had been advocated by the Maine Occupational Research Agenda (MORA, see below). The purpose of the Work Group was 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 also worked to 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. Having completed its work, the group was disbanded in 2010.

## **5. 2010 DEVELOPMENTS**

### **5A. GRANTS**

The BLS uses WCB data to supplement federal Bureau of Labor Statistics and OSHA data in developing OSH grant applications. There were no new grant applications initiated in 2009.

### **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 2008.

#### **Maine Occupational Research Agenda (MORA)**

In 2000, following 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, developed the research agenda and is moving it forward. MORA committee members include education and health professionals, members of several government agencies, and insurers. In 2009, MORA provided input to BLS on a variety of OSH issues through review of relevant projects.

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)

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#### **SHARP and SHAPE Award Programs**

SafetyWorks!, in partnership with federal OSHA, administers the Safety and Health Achievement Recognition Program (SHARP). Under this program, a private employer with 250 or fewer employees who meets the program requirements for employee safety and health, including a functional safety and health program, is exempted from program inspection for one year after a probationary period. The probationary period is used to fine tune the employer's

program and make sure that all SHARP requirements are met. Employers successfully meeting SHARP requirements are publicly honored. There are 34 employer locations qualified as of December 10, 2010. These are:

Border view Rehab & Living Center, Van Buren	Jotul North America, Gorham
CM Almy, Inc., Pittsfield	Deering Lumber, Biddeford
Franciscan Home, Eagle Lake	Peavey Manufacturing, Eddington
HP Hood, Portland	Madigan Estates, Houlton
Limington Lumber, E. Baldwin	Cianbro Fabrication Corp., Pittsfield
Marden's, Inc., Biddeford	Dearborn Precision Tubular Products, Fryeburg
Marden's, Inc., Calais	Fastco, Lincoln
Marden's, Inc., Gray	Reed & Reed, Inc., Woolwich
Marden's, Inc., Presque Isle	Lavalley Lumber, Sanford
Marden's, Inc., Lewiston (Locust St.)	Lonza, Rockland
Marden's, Inc., Lewiston (Main St.)	Yachting Solutions, Rockport
Marden's, Inc., Madawaska	Northern Aquatics, Eagle Lake
Marden's, Inc., Waterville (Warehouse)	L-3 Microdyne Outsourcing, Orono
Marden's, Inc., Ellsworth	Moose River Lumber Co., Moose River
Market Square Health Care Center, So. Paris	Everett J. Prescott, Inc., Gardiner
Mercy Home, Eagle Lake	Reed & Reed, Inc., Kirby Mountain
Robbins Lumber, Searsmont	BBI Waste/Blow Brothers, Old Orchard Beach

In 2006, SafetyWorks! initiated the Safety and Health Award for Public Employers (SHAPE) program, a **public-sector** application of the federal private-sector SHARP program. There are 32 SHAPE employers. They are:

Berwick Fire	Fort Fairfield Fire Department
Town of Brunswick	Mapleton Fire Department
Town of Kennebunk	Limestone Fire Department
Bangor Public Works	School of Applied Technology, Houlton
City of Caribou	Newcastle Fire Department
Westbrook Public Services	Damariscotta Fire Department
Hampden Water District	Camden Fire Department
United Technologies Center, Bangor	Kennebunk, Kennebunkport & Wells Water District
Westbrook Fire Department	York Water District
Caribou Fire and Rescue	Sinclair Fire Department
Farmingdale Fire Department	Madawaska Lake Fire Department
Paris Fire Department	Cross Lake Fire Department
Greater Augusta Utilities District	University of Maine Aroostook Farm, Presque Isle
Eco-Maine, Portland	Cary Medical Center, Caribou
Northern Penobscot Technical Center, Lincoln	
Farmington Fire and Rescue	
University of Maine Blueberry Farms, Jonesboro	
Loring Fire Department, Limestone	

Maine Employers for Safety and Health Excellence (MESHE) is a select group of SHARP (private) and SHAPE (public) employers who have been recognized for their excellent safety and health programs. This network of employers meets on a regular basis and promotes excellence in safety and health management for the improvement of all Maine workplaces and for the benefit of all Maine workers. They serve as a support resource for other group members and assist companies or organizations in the process of becoming SHARP or SHAPE.

## **5C. LEGISLATION**

There were no bills considered during the Second Regular Session of the 124<sup>th</sup> Legislature that directly impacted the occupational safety and health activities of the Bureau.