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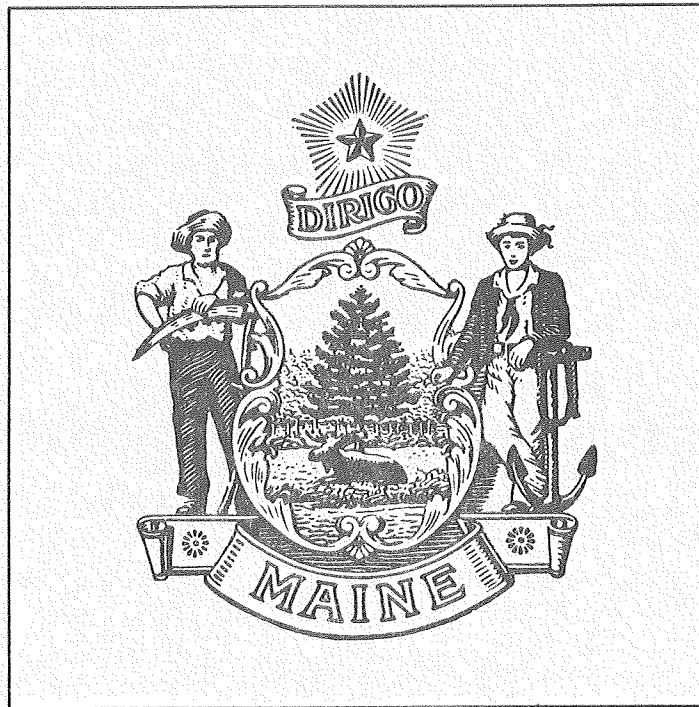
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Report of

SPEAKER'S SELECT COMMITTEE ON WORKERS' COMPENSATION



January 17, 1983
State House
Augusta, Maine

John L. Martin, Speaker of the House

January 17, 1983

Honorable John L. Martin
Speaker of the House
State House Station 2
Augusta, ME 04333

Dear John:


We are pleased to transmit to you the report of the Speaker's Select Committee on Workers' Compensation for your consideration. Your Committee members have worked diligently and, we believe, constructively to develop their recommendations.

The Committee's conclusions, if adopted, will provide modest but important changes in the workers' compensation system that serve both to protect injured workers and contain overall costs.

The Committee is obviously hopeful that their efforts will result in affirmative Legislative action.

Very truly yours,


Gary Cook
Co-Chairman


Roger L. Mallar
Co-Chairman

cc: Committee Members
Commissioner DeVane
Commissioner Devoe

REPORT

OF

THE SPEAKER'S SELECT COMMITTEE

ON

WORKERS' COMPENSATION

January 17, 1983

Augusta, Maine

INTRODUCTION

The Speaker's Select Committee on Workers' Compensation was formed in May of 1982 by John L. Martin, Speaker of the Maine House of Representatives. The following excerpts from the Speaker's statement when forming the Committee provide the basis for the committee and clearly describe its charge.

"The issues are far too technical and emotion charged to be resolved through the normal political process. On the other hand, the stakes are too high for us to fail to effectively deal with one of the issues most critical to establishing a more competitive business climate and improved employment opportunities in Maine.

"The cost of workers' compensation insurance coverage to Maine employers is outrageous. Yet, employees must be guaranteed adequate and fair financial and medical protection against on the job injuries.

"I am asking for members to set aside the natural prejudices and biases that all of us who are involved in the issue have. I am asking that they react to facts and not the misinformation that abounds about the issue. I am asking that they seriously seek honest compromise."

The members of the Committee are listed on the following page. The Committee met repeatedly throughout the summer and

THE SPEAKER'S SELECT COMMITTEE

ON

WORKERS' COMPENSATION

Roger L. Mallar, Co-Chairman
Mallar Development Service Inc.
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State Senator
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Angela Z. Aloupis
State Representative
Bangor, Maine

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Peter Williams
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Great Northern Paper Company
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State Representative
Calais, Maine

Neil Rolde
State Representative
York, Maine

Dana Swazey
State Representative
Bucksport, Maine

Staff:

Kenneth P. Allen, Executive Assistant to the Speaker of the House

William E. Saufley, Office of Legislative Assistants

fall. Many expert witnesses voluntarily provided time and advice on a wide variety of features of the workers' compensation system. Intermittent, but helpful, staff assistance was provided by Ken Allen of the Speaker's office and William Saufley of the legislative staff.

The Maine workers' compensation system is extremely complex. Again, quoting from the Speaker's statement--"The workers' compensation system was originally intended to be a simple, no-fault way to protect both employers and employees against injuries and losses. Since its inception in the early 1900's, the system has deteriorated into a quagmire of technicalities, legal pitfalls and abuses by both businesses and labor. It fosters expensive litigation; long drawn out court battles that neither side ever really wins.

"In short, the problem with the system, as I view it, is the system itself. There are no quick fixes. There are no easy solutions."

Given the voluntary nature of the Committee's work and the complexity of the system, the Committee members could not hope to develop detailed expertise or recommendations in each of the issues; rather the objective of the Committee was to screen through the plethora of ideas and areas of potential cost containment to determine those that seemed most likely to achieve

the basic, over-riding objective of returning the employee to a productive capacity in the workplace, and/or to make modest adjustments to the system to assure consistent payment concepts, all assuring that the basic, overall protection to the injured employee was satisfactorily maintained.

In addition, the Committee adopted rules of procedure suggested by Speaker Martin to require a two-thirds vote of the total committee membership for the adoption of recommendations and disallowing minority reports. These procedures obviously require the building of consensus and led to the development of frank and productive discussions among the Committee members throughout the deliberations. Just as obviously, there are cost savings and containment issues that various members or interests on the Committee believe could positively affect the system but for which no consensus could be found.

The fact that the relative rates of workers' compensation are high in Maine form the basis for the Committee's existence. The approved rates have increased 336% from 1970 to 1981 and have particularly accelerated since 1978. From 1970 through 1977 the approved rates rose an average of 11.8% annually, but from 1978 through 1981 the rates rose an average of 21.9% annually. These increases have created considerable concern among those with a deep interest in the system. The need to contain these cost increases to avoid future adverse impacts on the basic benefit

system clearly provides an impetus for improvement and creates the basis for the Committee recommendations, which follow.

RECOMMENDATIONS

- I. "Early Pay" System. Maine's "agreement" system creates a situation directly contrary to the mutually desirable objective of assuring early payment to employees injured in the workplace and the avoidance of adversarial relationships creating delays in an employee's return to work. Loss of wages, formal agreement documents, lack of independent assistance from the Commission, and free legal advice to the employee all help to create concern and uncertainty on the part of the employee or result in the clear opportunity for adversarial relationships in a "no-fault" system. Fairly complete agreement exists on the premise that delays in returning eligible employees to work in an early time-frame significantly reduces the possibility of the employee ever returning to a productive capacity. Successful rehabilitation efforts need to start as early as practical while the employee still has "work" as his norm as opposed to "comp".

Therefore, the Committee recommends that development of an "early pay" system that will provide an opportunity for responsible early action leading to an assurance of employees receiving wage loss payments more promptly and creating

attitudes and opportunities early in the process for rehabilitation and return to work approaches to be successful. This system would work as follows:

1. Compensation shall be paid to entitled employees promptly, unless controverted, without the necessity for an agreement and without the waiving of any rights by either an employee or employer. The system shall apply to all injured employees except those with pending petitions on the effective date of the proposal.
2. The Commission shall, immediately upon receipt of report of injury, contact the employee and provide information explaining the compensation system and employee's rights and advising the employee how to contact the Commission for further assistance and shall provide that assistance to the employee.
3. The first compensation payment shall be due and payable, unless controverted, within 14 days after the employer has notice or knowledge of injury without the necessity for an "agreement" and without the waiving of any rights by the employer or employee. The employer may choose to controvert and stop payments at any time within 30 days following the initial 14 day period. The employer shall notify the Commission of either the intent to controvert or by memorandum of payment, the initiation of compensation payments.

4. Failure to promptly initiate payments or advise the Commission of intent to controvert shall result in a financial penalty to the employer which shall accrue to the Second Injury Fund.
5. Upon receipt of a memorandum of payment, the Commission shall assure that the full amount of compensation to which the employee is entitled is received.
6. Upon notice to controvert, the Commission shall, within three weeks, hold an informal conference in an effort to resolve any dispute or misunderstanding. In preparation for and at this conference, the Commission shall assure that competent technical staff is available to provide advice and assistance to the employee. Such staff shall have qualifications and ability comparable to claims adjusters representing employers. The Commission shall make every effort to resolve any controversies or misunderstanding and shall render an advisory opinion at the conference. If the employer should choose to be represented by legal counsel, the employer will be required to provide such compensation as may be approved by the Commission for similar representation by the employee. The employee would retain the right to be represented by an attorney during this period and such attorney would have the right to compensation by the employee

under normal client/attorney relationships. Within seven days of the informal conference, the employer may notify the Commission of the initiation of compensation payments or the employee may request a formal hearing which the Commission will hold within 30 days.

7. The employer will not be required to pay claimant fees for legal services rendered during the initiation of payment phase prior to the expiration of one week following an informal conference; however, if the employer, after initiating compensation payments, desires to adjust payments, the process would require either an agreement or formal petition, and the employee would be afforded the same protection and representation as exists under the current system.
8. The process described above will only work and should only be implemented if the Commission is adequately staffed and organized as suggested in the following section.

II. Administrative improvements. Despite some earlier improvements in Commission staffing capability, considerable concern remains over the ability of the Commission to hold hearings and issue decisions in a prompt and timely manner. This ability must be assured in order for an "early pay" system to work, in order to

assure the employee both prompt hearings and determinations and, therefore, compensation payments where entitled. Equally important is assurance to the employer that a willingness to initiate early compensation payments will result in an equally early opportunity for consideration to reduce or stop those payments as the employee is determined able to return to work. Not only must the staff capability be available but administrative control must also be present to assure that these goals are met.

One of the features of the workers' compensation system that should clearly be recognized is the changed relationship between the premium tax paid on workers' compensation insurance and the cost of the Commission's operation. In 1964, the total tax amounted to \$110,861 from which \$106,515 or 96% was allocated to the Commission. In 1981 the total tax had increased to \$2,271,093 and only \$546,606 or 24% was utilized for workers' compensation administration, and even though appropriations were increased for 1982 and 1983, they still represent less than 50% of the premium tax. The Committee believes these taxes should be statutorily reserved for workers' compensation administration and other essential program elements, such as rehabilitation programs and the Second Injury Fund.

The Committee further recommends that the following administrative adjustments be implemented:

1. Funds required to implement the Commission's computer operation should be made available at the earliest possible time.
2. Three district offices to supplement the Augusta office should be established and operated at Presque Isle/Caribou, Bangor, and Portland, beginning January 1, 1984.
3. The two ex-officio Commissioners should be replaced with two permanent full-time Commissioners. In addition, the ability should be created to utilize active, retired Commissioners. This need should be fulfilled as soon after July 1, 1983 as possible to eliminate any case backlog which exists, prior to the initiation of the "early pay" system.
4. Three additional legal secretaries and four claims analysts to assist employees should be available to adequately staff the district offices. One claims analyst should be authorized on July 1, 1983 with the remaining personnel available on January 1, 1984.
5. Funds should be authorized to provide the commission with the capability to provide booklets and advice to injured employees immediately upon knowledge of injury.

6. The Chairman of the Commission should be given clear administrative authority over the operations of the Commission. The number and geographic location of Commissioners and the need for administrative accountability demand this revision. Once the Commission's computer system is in operation, the Chairman shall report quarterly to the Governor on each Commissioner's caseload and processing timeframes.

7. The judicial retirement system should be available to Workers' Compensation Commissioners to broaden the interest in these positions and create an incentive for qualified Commissioners to remain. Other incentive programs may also be appropriate.

The Committee estimates these changes will require approximately \$300,000 per year of additional funding, an amount clearly currently provided by the Workers' Compensation premium tax.

- III. Annual increase in compensation payments. Adjustments in weekly compensation payments currently occur on July 1 for all individuals in the system. This system was apparently instituted for ease of administration, however, employees who are on the system for only a short period, but who are there July 1 automatically receive an

annual increase. Also employees who become injured late in the fiscal year receive an adjustment much sooner than those who enter the system early in the fiscal year. Therefore, the Committee recommends that employees injured after July 1, 1983 receive the first annual increase in weekly compensation payments one year after compensation payments begin, except for those employees whose rate of compensation is less than $2/3$ of their weekly wage as a result of the $166 \frac{2}{3}$ limitation on compensation payments, who shall receive the first adjustment on July 1 as is currently the case.

IV. Re-employment and Rehabilitation. The workers' compensation rehabilitation program in Maine today is not effective. A rehabilitation program that was successful in placing employees in productive employment would represent one of the more significant opportunities to reduce costs. There is clearly a potential for significant benefits to injured employees and for long term reduction in Workers' Compensation costs from such an effective physical and vocational rehabilitation program. However, hastily drawn rehabilitation legislation could result in increased system costs with little real beneficial impact on injured workers.

It is clear that key elements of an effective rehabilitation program include at least:

1. Early identification of those workers for whom rehabilitation would be effective.
2. The need to follow realistic rehabilitation priorities:
 - a. Return to existing job
 - b. Job modification
 - c. New job in same company or new company
 - d. Retraining
3. Incentives and restrictions which will assure good faith participation by all parties.

It is clear that rehabilitation programs must be developed professionally, thoughtfully, cooperatively, and in a manner that will lead to successful results.

The Committee does not feel that it has had sufficient time to determine the specific parameters for this exceptionally important recommendation and is willing to provide additional effort to define a sound program in this regard. The Committee believes that an additional two to three months will be required to fulfill this objective.

- V. Alternative systems. The Committee reviewed a variety of structural options, including state funds and competitive rate filings. It seems clear that any interest in these options derives mainly from considerable uncertainty as to the effect of reserving practices, return on invest-

ments, and profitability on rates approved for workers' compensation insurance coverage. Greatly varying viewpoints were provided to the Committee as to the extent to which these factors are controlled in relation to final rate decisions. The Committee believes that these issues need to be thoroughly and independently evaluated in order to finally determine the potential advantages of alternate systems. Therefore, the Committee recommends that the legislature create an independent, three-member, ad hoc Commission chaired by an individual to be appointed by the Governor (such as a retired judge without any ties to any interest group) along with a representative from both labor and business and with advisory non-voting representation from the Insurance industry and from the Department of Business Regulation. Sufficient resources to assure the availability of competent, independent actuarial expertise will be essential to the success of this effort and adequate per diem payments should be provided to the three Commission members. In addition, the Commission will need to be able to have sufficient access to insurance company data to complete its task. The Committee would expect that this effort would require a year to successfully complete.

CONCLUSIONS

The Workers' Compensation system is extremely complex, and not well understood. The costs of the system have increased dramatically over the last several years and the potential for further substantial increases in costs are clearly evident. The Committee has attempted, on a voluntary, part-time basis, to undertake an overview of the system and suggest some cost-containment improvements without adversely affecting injured workers' benefits.

There are many opportunities for cost savings in the system. Given the Committee's requirement for consensus, the following recommendations make a modest but meaningful effort to contain some of the unnecessary costs in the system.

1. Create an "early pay" system by eliminating the agreement system for initial workers' compensation payments and requiring strict conference and hearing deadlines.
2. Make a variety of staff and administrative improvements to assure assistance to injured employees and to provide the capability for prompt hearings.
3. Establish a more logical date for initiating inflation payments to workers' compensation recipients.

4. Allow the Committee to further develop the basis for an effective rehabilitation program.
5. Create an independent Commission with adequate resources and data access to evaluate the impact of reserving practices, return on investments, and profitability on workers' compensation rate-making and structural alternatives, such as state funds.