

MAINE STATE LEGISLATURE

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STATE OF MAINE
WORKERS' COMPENSATION COMMISSION
AUGUSTA, MAINE 04333

OFFICE OF THE CHAIRMAN
CHARLES D. DEVOE

December 19, 1984

Honorable John L. Martin
HOUSE OF REPRESENTATIVES
State House Station #2
Augusta, Maine 04333

Honorable Joseph E. Brennan
OFFICE OF THE GOVERNOR
State House Station #1
Augusta, Maine 04333

Honorable Charles P. Pray
MAINE STATE SENATE
State House Station #3
Augusta, Maine 04333

Gentlemen:

Speaker Martin recently requested information concerning 1984 Commission activity and more particularly, the impact of 1983 Legislative reform on Maine's system. Recognizing my own reporting responsibility lodged in 39 MRSA §108 I have taken this opportunity to inform all three governmental leaders on the status of this program.

You will receive a more comprehensive 1984 annual report when the year-end data is received and compiled, approximately 60 days after the close of the calendar year. During 1985, you will receive a quarterly and cumulative update approximately 30 days following the close of each calendar quarter.

If you believe that you need additional information which I can provide, please do not hesitate to advise me.

Respectfully submitted,

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CHARLES D. DEVOE

CDD/blb

MAINE WORKERS' COMPENSATION COMMISSION

1984 PRELIMINARY REPORT

December 19, 1984

CHARLES D. DEVOE
CHAIRMAN

JOHN J. JOLICOEUR
DIRECTOR OF ADMINISTRATIVE SERVICES

STATISTICAL SUMMARY - WORKERS' COMPENSATION COMMISSION

	Total 1983	November 1984	Projected 1984
Employer's First Reports of Occupational Injury/Disease	49,770	52,210	63,000
Agreements Approved as to Payment of Compensation ^{1/}	10,502	6,243	7,000
Memoranda of Payment ^{2/}	NA ^{3/}	39,000	47,250 ^{4/}
Notices of Controversy (NOC)	NA	1,391	4,224
Informal Conference (IC)	NA	990 ^{5/}	4,000
NOCs resolved without Informal Conference	NA	398 ^{5/}	1,600
Conference waived	NA	11 ^{5/}	50
Informal conference favorable to worker	NA	628 ^{5/}	UNK
Informal Conference not favorable to worker	NA	215 ^{5/}	UNK
Other result	NA	50 ^{5/}	UNK
Second Conference required	NA	47 ^{5/}	UNK
IC - Attorney Representation: EE only	NA	136 ^{5/}	544
IC - Attorney Representation: ER only	NA	27 ^{5/}	108
IC - Both parties represented	NA	51 ^{5/}	204
Formal Hearings Held	8,334	9,484	10,000 ^{6/}
Written Decisions issued	2,968	3,107	3,400
Appeals filed	228	225	250
Appellate Division decisions issued	103	162	184
Appeals pending: Record not prepared	NA	82	82

Appeals pending: Brief/Oral Argument scheduled	NA	26	26
Appeals pending: Decision pending	NA	130	110
Appeals granted	NA	38	NA
Appeals denied	NA	124	NA
Appeals Administratively Dismissed	NA	20	NA

INSURANCE COVERAGE

	Total 1983	November 1984	Projected 1984
New Coverage	21,601	22,412	24,500
Amended Coverage	17,934	15,399	16,500
Coverage Inquiries sent ^{7/}	NA	10,839	10,839
Lump Sum Settlements Awarded		\$42,586,921.04	UNK
Attorney Fees on Settlements		\$2,532,681.82	UNK
Permanent Impairment Awards		\$1,860,041.92	UNK
Net Workers' Compensation Premiums written	\$143,354,547.00	NA	\$160,000,000.00 ^{8/}
Premium Tax Paid to General Fund	\$ 2,840,537.00	NA	\$ 3,100,000.00
Commission Budget	\$ 1,024,415.00 (FY83)	NA	\$ 1,901,039.00 (FY84/ Actual)
Direct Losses Paid	\$ 109,492,213.00	NA	\$ 126,000,000.00 ^{7/}

FOOTNOTES

- 1/ Agreements for injuries predating January 1, 1984
- 2/ For injuries occurring after December 31, 1983
- 3/ The direct or early payment system is not applicable.
- 4/ Projected estimate based upon 75% of First Reports of Injury.
- 5/ For September, October, November 1984
- 6/ Exceeds petitions filed because one petition may become the subject of several evidentiary hearings.
- 7/ 60-70% of Commission inquiries answered. Responses were: 20-30% had no coverage required; 60-70% had recently obtained coverage; 10% were advised to obtain coverage.
- 8/ Estimated figures. Premiums written and losses paid exclude self-insurers. Self-insurers pay no premium tax.

Of the reform measures enacted during 1983, the elimination of the formal agreements system has had the greatest impact on Commission operations during calendar year 1984. An agreements system requires that the parties compose and sign a formal document and submit it to the Commission for review and approval. There is no obligation to make any compensation payments until the approved agreement is returned to the parties by the Commission. The early payment system replaced the agreement with a simple memorandum of payment which has three easily recognizable advantages. First, payments can be made without prior Commission action. Second, any disputed matter surfaces within two weeks after compensation is claimed. Finally, all disputes become the subject of an informal resolution effort within three weeks of notification to the Commission.

In furtherance of the reform objectives, the Commission opened regional offices and implemented the Office of Employee Assistants program. In addition to the Augusta office, the Commission now has offices at the following locations:

Androscoggin: Workers' Compensation Commission
377 Main Street
Lewiston, Maine 04240
Telephone: 783-5300

Aroostook: Workers' Compensation Commission
One Vaughn Place
Caribou, Maine 04736
Telephone: 498-6428

Cumberland: Workers' Compensation Commission
85 Preble Street
Portland, Maine 04101
Telephone: 879-4840

Penobscot: Workers' Compensation Commission
106 Hogan Road
Bangor, Maine 04401
Telephone: 941-3001

The regional offices have played a positive and important role in enhancing delivery of benefits and assistance to using parties, namely workers, employers, and insurers. Direct access to the public has helped reduce parties' tendency to approach the Commission in a formal, often written manner.

Office of Employee Assistants

The Office of Employee Assistants is the positive pivot of Workers' Compensation reform. This is attributable to two principal reasons: (1) The employee assistants have created a bridge of accessibility and assistance to the public and, more specifically, to the injured worker; (2) the employee assistants have played a major role in the evaluation of subjects in controversy and in resolving disputes without the need for formal hearings and concomitant attorney involvement.

Employee assistants were hired during late 1983 and early 1984. The number of controversies filed has quite expectedly increased during the year. The assistants were assigned 4,224 notices of controversy. The figures represented in the statistical summary are for the period September, October and November 1984. The total Notice of Controversies for this three month period was approximately 1,400. These controversies concerned disputes as to initial awards of compensation for

workers injured this year. Twenty-eight percent of these controversies were resolved without the need for any informal conference. The remaining disputes are taken to conference before a single commissioner. Of the 215 conferences, in which the employee did not prevail, it is not yet possible to determine the percentage which will proceed to formal hearing. Employees are represented by attorneys in approximately nine percent of all disputes through this level. Employers or insurers were represented by counsel in approximately one percent of claims at the informal level.

The cooperation described above--on the part of the workers, employers, insurers and members of the bar--has helped insure the success of these reforms. The implementation of the informal notice of controversy/memorandum of payment procedure placed a great administrative burden on carriers and self-insurance claims management teams. The employer and insurer has had to develop the equivalent of an employee assistant to manage claims and appear at informal conferences. The response has been enthusiastic and effective. On the Commission's part, the persons hired as employee assistants have successfully assumed a tremendous challenge which deserves at least public congratulation.

Approximately 39,000 memoranda of payments were filed for 1984 claims. In other words, approximately ninety-six percent of 1984 claims are being assumed without controversy. The 39,000 total includes medical-only claims, lost-time only claims, and a combination of the two.

RECOMMENDATION #1: The deformatization is not presently mandated for all disputed matters. The informal conference procedure should be extended to all issues which become the subject of petitions and formal hearings, including reductions, terminations, and transfers to suitable work.

RECOMMENDATION #2: Deformatization was not made applicable to injuries predating January 1, 1984. There is no logical justification for not including all claims which can become the subject of the petitions process in the informal procedure. Indeed, all parties can benefit from the speedier and more efficient resolution of disputes.

Formal Hearings

The formal hearings caseload considers to expand beyond the Commission's ability to adjudicate. There are many, varied explanations for this problem. First, commissioners have assumed two additional time-consuming responsibilities. A commissioner must participate on all aspects of appeals. This function could involve 15-20% of a commissioner's time. A commissioner must preside over informal conferences. This activity could involve up to 30% of a commissioner's time. These new notes have taken away as much as 45% of a commissioner's time from formal hearings and the issuance of decisions.

Second, the bulk of petitions filed in a given calendar year are chiefly based on claims for injuries which occurred the preceding two years. In other words, only thirty percent of

petitions filed this year are for injuries which occurred in 1984.

Finally, a 1983 amendment to the Act required that 1984 injuries receive the Commission's priority through the formal litigation process. In other words, when preparing hearings lists, all petitions based upon 1984 injuries must be scheduled before petitions based on claims for injuries which occurred before January 1, 1984 without regard to the dates on which the respective petitions were filed. A petition for restoration of compensation grounded on a 1982 injury, filed with the Commission on January 15, 1984, will most likely be heard later than a petition for award of compensation for a 1984 injury filed with the Commission on July 15, 1984. The result is an undue hardship on a worker based solely on his or her year of injury.

RECOMMENDATION # 3: Eliminate the requirement that formal hearings be held on a scheduled determined only by year of injury.

Premiums/Losses Paid

The statistical summary reveals the following changes in significant figures from calendar years 1983 to 1984:

- | | |
|-------------------------------------|-------|
| 1. Premiums paid by Maine employers | + 12% |
| 2. Premium tax to general fund | + 9% |
| 3. Commission budget | + 86% |
| 4. All losses paid | + 15% |

The projected 1984 totals are preliminary estimates subject to considerable variations which can occur before the close of the calendar year. The percentage changes from 1983 to 1984 are provided for purposes of illustration but could increase or decrease once the actual figures become available.