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

Submitted to the 124th Legislature (Second Regular Session)

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We are pleased to submit to the Governor and the 124th Legislature, Second 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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EXECUTIVE SUMMARY

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

WORKERS' COMPENSATION BOARD

The Governor worked diligently with both labor and management to ensure the passage of Public Law 2004 Chapter 608 which became effective April 8, 2004. The intent of the legislation was to break the Board's gridlock on key issues and return a sense of normalcy to the 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 recent legislation. In order to maintain continuity, a member from both Labor (Anthony Monfiletto) and Management (James Mingo) were nominated by the Governor and confirmed by the Legislature. The Executive Director/Chair (Paul Dionne) was also nominated by the Governor and confirmed by the Legislature. Two new Labor Members (Ginette Rivard and Dan Lawson) and two new Management Members (Sophia Leotsakos Wilson and Mitch Sammons) 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.

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 30th among 45 states and Maine's rank was 3rd 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.

The Board submitted two bills for consideration during the First Regular Session of the 124th Legislature, both were enacted into law.

> The first bill changes the assessment process so that assessment collections which exceed 10% of the maximum assessment are used to reduce the annual assessment on insured employers.
>
> The second bill clarifies that Maine Insurance Guaranty Association (MIGA) is required to pay all penalties for non-compliance of the Maine Workers' Compensation Act, with the exception of the penalty in Section 359(2) provided for in Title 39-A.

The Board will submit at least three bills for consideration during the Second Regular Session of the 124th Legislature.

> One will ensure that penalties for not maintaining required workers' compensation coverage are applied equally to all business entities;
>
> Another will enhance the Abuse Unit's ability to coordinate enforcement with other agencies;
>
> And, the third bill will reverse the Law Court's holding in *Nichols v. S.D. Warren* clarifying that certain insurance benefits are not subject to offset.

An independent accountant report prepared by Blake, Hurley, McCallum & Conley gave the Board a clean bill of health for the past 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 simplify the process and reduce administrative costs, but would be very cumbersome for the insurance companies to implement.

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. The Board will consider the new data and send a rule back out for public hearing in 2010.

Employee misclassification is another issue dealt with by the Board in 2009. 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.

Overall, dispute resolution is performing at peak levels. Compliance with the Workers' Compensation Act is high. Frequency of claims is down. Compensation rates have dropped 47 percent since 1993. The Superintendent of Insurance has approved a 7 percent rate reduction for 2010. MEMIC has recently declared a $15 million dividend to Maine businesses. And, the Board

has reduced the assessment to employers by $3 million. All of which contribute to one of the more stable workers' compensation systems in the country.

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 major 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, has dropped in each of the past three years. They are now, on average, nearly 47 percent lower than they were at the time of the last major reform to the workers' compensation system in 1993. The most recent reduction in loss costs of 7.0% became effective on January 1, 2010. Although medical costs slightly increased in policy year 2007, the average medical cost per case has risen significantly since policy year 2000. This development is important because medical benefits constitute 53 percent 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 decrease in advisory loss costs is not evenly distributed across all rating classifications. Although all five industry group experienced declines, they ranged from just under five percent to greater than ten percent as shown here:

Industry Group	Percent Decrease
Miscellaneous	-9.3%
Manufacturing	-5.1%
Office Clerical	-4.8%
Contracting	-10.4%
Goods & Services	-4.9%

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) is 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. New businesses and businesses with unfavorable loss experience likely have fewer options available.

Twenty eight insurers wrote more than $1 million each in annual premium in 2008; this was one more company writing at that volume of business than in 2007. The top 10 insurance groups wrote 94% of the workers' compensation insurance in the state in 2008, the same as in 2007. Self-insured employers represented over 44% of the overall workers' compensation market in 2008, 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 2009 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.

In addition, the Bureau completed two special studies using summer interns. One, done in conjunction with MeCDC (Maine Center for Disease Control), looked at the use of Poison Control Center data to identify workplace exposures to hazardous substances. The other studied the accuracy of the federal OSHA expedited settlement program in correcting standards violations.

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% 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 50% of *First Reports* are missing the date for the employee's return to work. The "return to work" date is a critical data element for a number of important purposes. The problem is at least partly due to a built-in functionality of the WCB system. The EDI process seems to be improving the results in this area somewhat, but there is still a long way to go.

The Occupational Safety and Health Data Collection and Injury Prevention Work Group was convened September 29, 2003, by the Department of Labor under 2003 Public Law chapter 471. Membership includes representatives of the WCB staff. Among the primary purposes of the Work Group is the identification of ways to improve the collection and analysis of occupational safety and health data. Such problems in data collection and sharing are being closely examined and there is good reason to hope for improvements. The Work Group will likely be reporting to the legislature in mid-to-late 2010 on specific problems and recommendations, particularly the submission of "medical-only" reports.

The BLS applied for no research grants in 2009 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 began the parallel Safety and Health Award for Public Employers (SHAPE) in the public sector as means of recognizing outstanding employer safety programs. There are now 33 sites in the SHARP program and 23 employers in SHAPE. The Bureau supported the creation of a SHARP/SHAPE employer network.

SECTION A

WORKERS' COMPENSATION BOARD

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WORKERS' COMPENSATION BOARD

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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 six categories: (1) Dispute Resolution; (2) Compliance – Monitoring, Auditing, and Enforcement (MAE) Program; (3) Worker Advocate Program; (4) Independent Medical Examiners/Medical Fee Schedule; (5) Technology; (6) Central and Regional Office support; and (7) potentially 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), Memorandums of Payment and related documents (May 1, 2009), and Proof of Coverage (May 1, 2009).

The Board is not a General Fund agency and receives its 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 123rd 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 2008-2009 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. Due to the recent availability of new data the Board has delayed action on the rule, but is intent on formulating a rule in 2010. 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 a very active role in the Governor's Misclassification Task Force and has forwarded its recommendations to the Board, the Legislature, and the Governor's Task Force.

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.A. § 101, et seq. (Maine Workers' Compensation Act of 1992)

On January 1, 1993, Title 39, which contained the Workers' Compensation Act of 1991 and all prior workers' compensation acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992.

II. REVISIONS TO ENABLING LEGISLATION.

The following are some of the revisions made to the Act since 1993.

- **§ 102(11)(B-1).** Tightened the criteria for wood harvesters to obtain a predetermination of independent contractor status.
- **§ 113.** Permits reciprocal agreements to exempt certain nonresident employees from coverage under the Act.
- **§ 151-A.** Added the Board's mission statement.
- **§ 153(9).** Established the monitoring, audit & enforcement (MAE) program.
- **§ 153-A.** Established the worker advocate program.
- **§ 201(6).** Clarified rights and benefits in cases which post-1993 work injuries aggravate, accelerate, or combine with work-injuries that occurred prior to January 1, 1993.
- **§ 213(1-A).** Defines "permanent impairment" for the purpose of determining entitlement to partial incapacity benefits.
- **§ 224.** Clarified annual adjustments made pursuant to former Title 39, §§ 55 and 55-A.
- **§ 328-A.** Created rebuttable presumption of work-relatedness for emergency rescue or public safety workers who contract certain communicable diseases.
- **§§ 355-A, 355-B, 355-C, and 356.** Created the Supplemental Benefits Oversight Committee.
- **§§ 151, Sub-§1.** Established the Executive Director as a gubernatorial appointment and member and Chair of the Board of Directors. 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 7.3 months for processing cases in 2000. 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 more 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 2010.

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 123rd 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 124th 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 1999 thru 2009 is shown in the table below:

Cases Entering Dispute Resolution

Year	Trouble Shooting	Mediation	Formal Hearing
2000	9,442	3,642	2,433
2001	10,132	3,830	2,725
2002	9,677	3,507	2,481
2003	9,996	3,582	2,532
2004	9,356	3,303	2,458
2005	8,784	3,003	2,088
2006	8,962	2,652	1,915
2007	8,749	2,499	1,765
2008	8,384	2,428	1,680
2009	7,960	2,220	1,602

The raw counts of cases entering each stage are not logical subsets. The Board has done occasional studies of subsets to evaluate the results of each stage. 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 Mediation, the average timeframes, and number of cases pending at the end of each year for the period 1999 thru 2009.

Trouble Shooting
Cases Assigned, Disposed, and Pending

Year	Assigned	Disposed	Pending 12/31	Av Days at TS
2000	9,442	9,426	763	25
2001	10,132	10,139	756	24
2002	9,677	9,466	967	23
2003	9,996	10,269	838	27
2004	9,356	9,588	606	27
2005	8,784	8,724	666	27
2006	8,962	8,927	701	27
2007	8,749	8,719	731	27
2008	8,439	8,439	676	30
2009	7,960	7,913	723	29

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 1999 thru 2009.

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

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 1999 thru 2000.

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

VI. OTHER.

The number of cases entering the Mediation and Formal stages of dispute resolution has declined noticeably during the last few years. So much so, that the Board eliminated a hearing officer

position. The Board will also consider reallocating positions from within dispute resolution to the Abuse Investigation Unit and the Employee Misclassification effort.

4. Office Of Monitoring, Audit, And Enforcement

I. History

In 1997, 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

With a key component of the monitoring program being the production of Quarterly and Annual Compliance Reports, a pilot project was undertaken in May 1997 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. From this pilot, MAE was able to refine its policies, practices and processes. Since 1997, MAE has followed a course of continuous improvement to ensure that the Compliance Reports maintain high quality standards.

The 2008 Quarterly and Annual Compliance Reports were unanimously accepted by the Maine Worker's Compensation Board. The 2008 quarterly compliance in Table 1 represents static results based upon data received by the deadline for each quarter. The 2008 Annual Compliance Report represents dynamic results based upon data received by March 31, 2009. Tables 2 and 3 show continued improvement in the performance of insurers since the pilot project. This improvement results in improved claims-handling and faster initial indemnity payments.

A. Lost Time First Report Filings

The Board's benchmark for lost time first report filings within 7 days is 85%.
Benchmark Exceeded. The Board received 14,160 lost time first reports. This represents 235 fewer reports than in 2007 and continues a long term decline in the number of lost time first reports. Eighty-nine percent (89%) of lost time first report filings were within 7 days, the highest compliance recorded for this indicator to date.

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, the highest compliance recorded for this indicator to date.

C. Initial Memorandum of Payment (MOP) Filings

The Board's benchmark for initial MOP filings within 17 days is 85%.
Benchmark Exceeded. Eighty-eight percent (88%) of initial MOP filings were within 17 days, the highest compliance recorded for this indicator to date.

D. Initial Indemnity Notice of Controversy (NOC) Filings

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

Benchmark Met. Ninety percent (90%) of initial indemnity NOC filings were within 14 days.

E. Utilization Analysis

Nineteen percent (19%) of all lost time first reports were "denied", a decrease of 0.5% from 2007. Forty percent (40%) of all claims for compensation were denied, a decline of 0.4% since 2007.

F. Initial Indemnity Payments > 44 Days

$42,150 was issued to claimants in penalties under Section 205(3).

G. Late Filed Coverage Notices

$82,700 was collected in penalties under Section 360(1)(B), and $3,700 in penalties are awaiting resolution. These monies go to the State General Fund.

H. Caveats & Explanations

1. **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 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 in compliance.

2. **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.
   -

3. **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.

4. **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)

CAPs 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 2008:

Insurer (alpha order)	Market Share by Premiums Written
ACE	1.2%
AIG	< 1%
Cambridge Integrated Services	Not Applicable - TPA
Claims Management, Inc. (Wal-Mart) (**CAP lifted**)	Not Applicable - TPA
CNA	1.2%
Crawford & Co.	Not Applicable – TPA
GAB Robins	Not Applicable - TPA
Gallagher Bassett Services, Inc.	Not Applicable - TPA
Hartford	3.5%
Meadowbrook	Not Applicable - MGA
Old Republic Insurance	< 1%
Sedgwick Claims Management	Not Applicable - TPA
Selective Insurance Company (**CAP lifted**)	< 1%
Specialty Risk Services	Not Applicable - TPA
Zurich	1.2%

New additions in 2008: GAB Robins, Meadowbrook, Old Republic, Sedgwick, and SRS.

Special recognition goes to Claims Management, Inc. and Selective Insurance Company for successfully meeting their CAP requirements and having their CAPs lifted.

Annual Compliance Summary

Table 1 2008 Quarterly Compliance Reports

Benchmark	Goal	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Lost Time First Report Filings Rec'd w/i 7 Days	85%	88%	89%	88%	88%
Initial Indemnity Payments Made w/i 14 Days	87%	88%	88%	87%	89%
Initial Memorandum of Payment Filings Rec'd w/i 17 Days	85%	87%	88%	87%	89%
Initial Indemnity Notice of Controversy Filings Rec'd w/i 14 Days	90%	88%	90%	91%	93%

Table 2 Annual Compliance

Benchmark	1997[1]	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Lost Time First Report Filings Rec'd w/i 7 Days	37%	69%	78%	80%	82%	82%	86%	86%	84%	87%	89%
Initial Indemnity Payments Made w/i 14 Days	59%	79%	80%	83%	85%	86%	85%	87%	87%	87%	89%
Initial Memorandum of Payment Filings Rec'd w/i 17 Days	57%	75%	75%	77%	81%	82%	83%	84%	84%	85%	88%
Initial Indemnity Notice of Controversy Filings Rec'd w/i 14 Days[2]							91%	92%	89%[3]	89%	90%

Table 3 Percentage Change Over Time

Benchmark	Since 1997[1]	Since 1999	Since 2000	Since 2001	Since 2002	Since 2003	Since 2004	Since 2005	Since 2006	Since 2007
Lost Time First Report Filings Rec'd w/i 7 Days	141%	28%	13%	11%	8%	8%	3%	3%	5%	2%
Initial Indemnity Payments Made w/i 14 Days	49%	12%	10%	7%	4%	4%	4%	2%	2%	1%
Initial Memorandum of Payment Filings Rec'd w/i 17 Days	55%	17%	18%	15%	9%	8%	7%	5%	5%	4%
Initial Indemnity Notice of Controversy Filings Rec'd w/i 14 Days[2]							-1%	-2%	1%	1.5%

[1] Based on sample data.

[2] The Initial Indemnity Notice of Controversy filing benchmark was changed in 2007 from 17 days to 14 days.

[3] 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 forty-seven (147) audit reports have been issued. In addition to the amounts paid to employees, dependents and service providers for compensation, interest, or other unpaid obligations, $1,324,713 in penalties has been paid since 1999 (see Table 1). Audit reports and the corresponding consent decrees are available on the Board's website: www.maine.gov/wcb/

In 2003, the Board successfully prosecuted Hanover Insurance Company for engaging in a pattern of questionable claims-handling techniques under §359(2) of the Workers' Compensation Act (see Section 12). Additionally, ACE Insurance Group, American International Group, Arch Insurance Group, Atlantic Mutual Insurance Company, Berkley Administrators of Connecticut, Broadspire Services, Cambridge Integrated Services, Claimetrics Management, Claims Management (Wal-Mart), CMI Octagon, CNA Insurance Group, Crawford & Company, ESIS, Fireman's Fund Insurance Group, Future Comp/TD Banknorth Insurance Agency, GAB Robins, Gallagher Bassett Services, Gates McDonald, Georgia Pacific, Harleysville Insurance Company, Hartford Insurance Group, Helmsman Management Services, Liberty Mutual Insurance Group, Meadowbrook, MEMIC, NGM Insurance Company, Old Republic Insurance Company, Royal & SunAlliance Insurance Group, Sedgwick Claims Management Services, Specialty Risk Services, The St. Paul Companies, Virginia Surety Company, Wausau Insurance Group, and Zurich Insurance Group have all signed consent decrees for engaging in a pattern of questionable claims-handling techniques under §359(2). The Board filed Certificates of Findings pursuant to this section with the Maine Bureau of Insurance for further action.

B. Complaints for Audit

The audit program also has a Complaint for Audit form and procedure that allow a complainant to request that the Board investigate a claim to determine if an audit under §359 and/or §360(2) is warranted. Since the form was implemented, two hundred ninety-seven (297) complaints have been received. As a result of these investigations, over $255,000 in unpaid obligations and over $155,000 in penalties have been paid (see Table 2).

Table 1 Completed Audits

Date	205 (3)	205 (4)	324 (2) EE	324 (2) State	359 (2)	360(1)	360 (2)	Total Penalties
1999	22,550	0	0	0	0	32,200	0	54,750
2000	20,750	0	1,000	2,100	8,000	16,100	0	47,950
2001	7,750	0	0	0	0	5,500	0	13,250
2002	10,350	0	1,150	1,725	0	16,725	0	29,950
2003	13,950	0	0	0	10,000	24,150	0	48,100
2004	10,350	0	100	300	29,500	16,375	0	56,625
2005	74,400	0	54,900	7,800	60,000	47,950	20,000	265,050
2006	68,450	0	52,953	8,400	50,000	68,625	10,000	258,428
2007	87,550	850	61,550	21,900	37,000	53,225	2,000	264,075
2008	107,150	1,500	10,175	0	64,000	45,675	0	228,500
2009	26,350	0	2,150	0	19,500	10,035	0	58,035
Total	**$449,600**	**$2,350**	**$183,978**	**$42,225**	**$278,000**	**$336,560**	**$32,000**	**$1,324,713**

Table 2 Complaints for Audit

Date	205(3)	205(4)	324(2) EE	324(2) State	360(1)	360(2)	Total Penalties	Statutory Obligations Paid
1999	0	0	0	0	0	0	0	0
2001	0	0	0	0	0	0	0	0
2002	0	0	0	0	0	0	0	0
2003	0	0	0	0	0	0	0	0
2004	3,000	0	0	0	0	0	3,000	85,739
2005	9,000	4,000	31,050	57,300	300	0	101,650	62,303
2006	4,700	0	25,600	3,150	0	0	33,450	52,278
2007	4,700	0	2,050	0	0	0	6,750	25,689
2008	12,000	0	1,500	0	0	0	13,500	25,891
2009	0	0	0	0	0	0	0	4,049
Total	**$33,400**	**$4,000**	**$60,200**	**$60,450**	**$300**	**$0**	**$158,350**	**$255,948**

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.

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 24 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:

ANESTHESIOLOGY/PAIN MANAGEMENT

BLAZIER, KENNETH
MERCY HOSPITAL, DEPT OF ANESTHESIA
144 STATE STREET
PORTLAND ME 04102
TEL: 879-3385

LEONG, PETER Y
MERCY HOSPITAL, DEPT OF ANESTHESIA
144 STATE STREET
PORTLAND ME 04102
TEL: 879-3385

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

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

SHAW, PETER K., MD
96 CAMPUS DR
SCARBOROUGH, ME 04102
TEL: 885-9905

GASTROENTEROLOGY

SULLIVAN, HAROLD H. MD
CASCO BAY GASTROENTEROLOGY
25 LONG CREEK DRIVE
SOUTH PORTLAND, ME 04106
TEL: (207) 879-0094

INTERNAL MEDICINE

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

NEUROLOGY

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

NEUROPSYCHOLOGIST

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

ORTHOPEDIC SURGERY

CROTHERS III, OMAR D., M.D. (HIPS ONLY)
ORTHOPEDIC ASSOCS PTL
33 SEWALL ST.
PORTLAND, ME 04104
TELE: 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
MAINE GENERAL MEDICAL CTR
SETON UNIT, 30 CHASE AVE
WATERVILLE, ME 04901
TEL: 872-4400

PODIATRY

MUCA, ERIC, D.P.M.
INTERMED SPECIALTY GROUP
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PULMONARY

FUHRMANN, CALVIN P. MD
KENNEBUNK MEDICAL CTR
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KENNEBUNK, ME 04043
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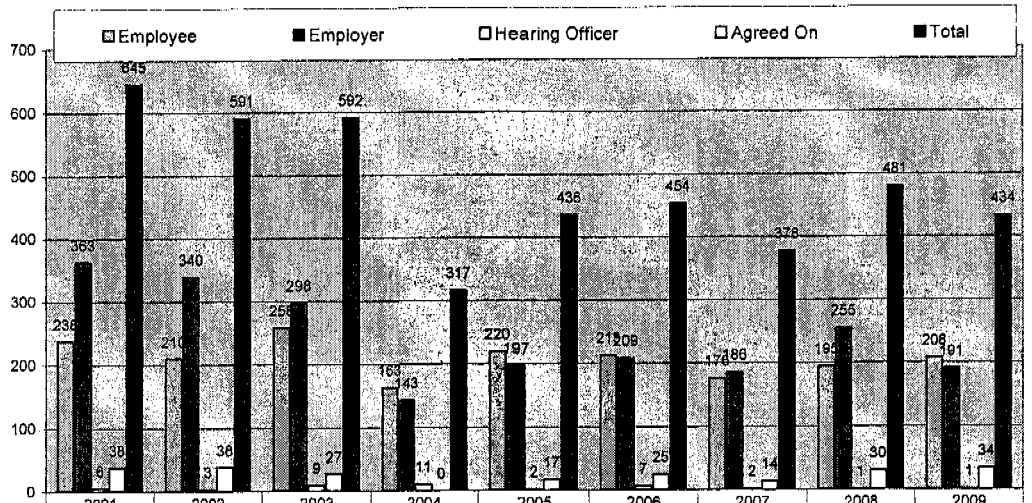
Independent Medical Exams 2001-2009



	2001	2002	2003	2004	2005	2006	2007	2008	2009
Employee	238	210	258	163	220	213	176	195	208
Employer	363	340	298	143	197	209	186	255	191
Hearing Officer	6	3	9	11	2	7	2	1	1
Agreed On	38	38	27	0	17	25	14	30	34
Total	645	591	592	317	436	454	378	481	434

The above chart reflects the source of requests for independent medical examinations for the years 2001-2009.

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. 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.

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.

The Board held a public hearing on Chapter 5 on August 17, 2009. During the public comment timeframe, there was data submitted which raised a number of questions. In order to respond to the public comments, the Board requested additional data from the Maine Health Data Organization. MHDO was unable to supply the data in a timely fashion, so the Board is attempting to obtain the data from OnPoint Health. The Board had until December 24th to take final action on the proposed changes to Chapter 5. Because no action was taken by that date, the timeframe for implementing the proposed fee schedule expired. As soon as the data is received from MHDO or OnPoint Health, Ingenix will provide its analysis, and the Board will propose a new fee schedule.

The Board anticipates that the rule will generate significant savings with respect to these medical costs. A safety net is built in to have Ingenix analyze the facility fee rule one year after implementation to identify savings or correct any negative impact.

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 1999 through 2009.

Advocate Cases at Mediation

	Assigned	Cases Disposed	Pending Dec 31st	% of All Pending
1999	2,342	2,351	299	51%
2001	2,249	2,247	348	51%
2002	2,113	2,153	308	51%
2003	1,981	1,899	390	46%
2004	1,816	1,969	237	50%
2005	1,915	1,841	311	53%
2006	1,522	1,533	280	56%
2007	1,397	1,434	243	52%
2008	1,405	1,437	211	48%
2009	1,205	1,195	221	52%

In 2009, the number of cases handled by Advocates at mediation represents a decrease of approximately 14%, as compared to the number of cases taken to mediation by Advocates in 2008 (which represented a slight increase over 2007). Nevertheless, the Advocate Division handled 52% of mediations (statewide) in 2009. This represents an 8% increase in market share over 2008 levels.

The Advocate program has also represented injured workers at 25 to 30% 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 2000 through 2009.

Advocate Cases at Formal Hearings

	Assigned	Disposed	Pending 12/31	% of All Pending
2000	597	594	313	28%
2001	813	784	342	28%
2002	642	682	468	35%
2003	920	780	608	37%
2004	689	810	487	29%
2005	679	714	452	30%
2006	628	715	361	29%
2007	632	673	320	28%
2008	599	610	309	29%
2009	564	511	362	32%

In 2009, there was a marginal 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 2008. However, there are more Advocate cases currently pending at the Formal Hearing level than at any time since 2005.

It is also worth noting that the Advocate Division is currently handling 32% of all cases pending at the Formal Hearing level. This constitutes a 10% increase in market share over 2008 levels and a 14% increase in market share over 2007 levels. This is the highest level of market share since 2003.

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 123rd 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 recent legislation, many of the information delivery platforms and application were centralized into the Office of Information Technology. The Board has completed the migration of its applications on Board servers to the OIT centralized enterprise services. This transition required changes to our Agency Business application as well as merging the Advocate client tracking system. These two tasks alone required significant time and expense to migrate to the OIT enterprise server. Additionally, all the desktops were replaced because they were over 5 years old and beginning to experience system degradation and malfunctions. Working with OIT we seemed to have resolved the issues regarding the slow network by adding lines to the slower offices.

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 provide the ability 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 once the State's specifications are posted before they can initiate a test. Additionally, WCB Rules will be updated to take advantage of the new process. Testing is estimated to begin the Spring of '10.

A Rule mandating electronic submission of Proof of Coverage information was approved on August 22, 2009. All submissions for Proof of Coverage are now being submitted electronically.

8. BUDGET AND ASSESSMENT

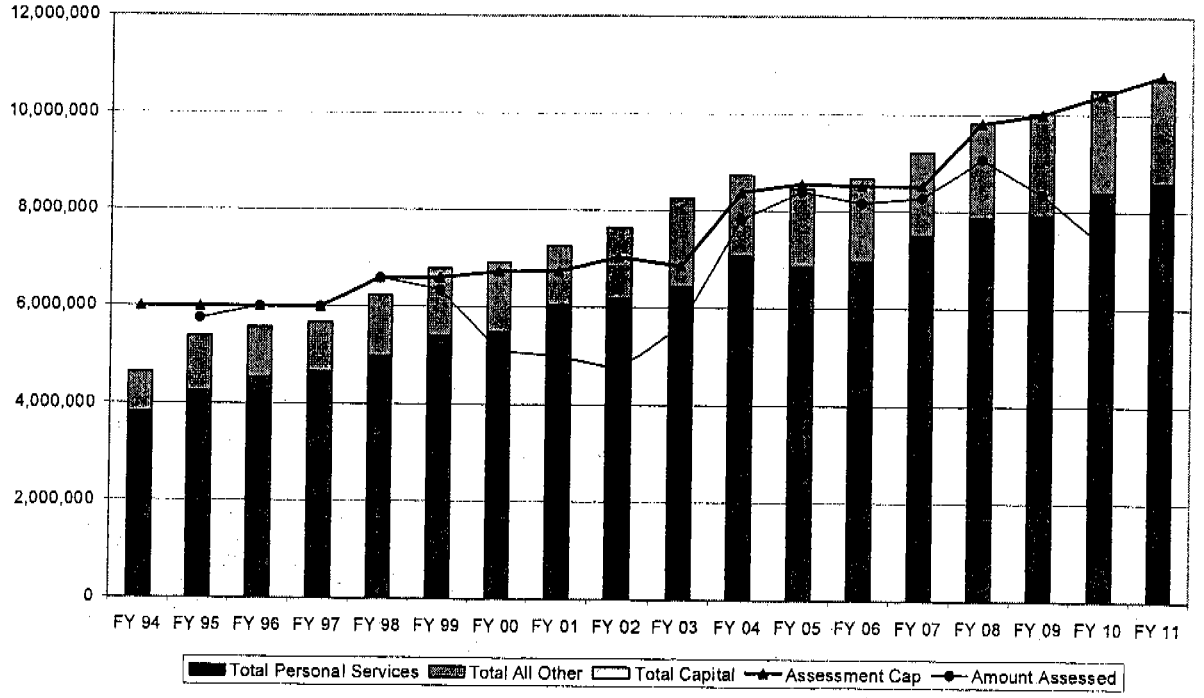
The Board is funded pursuant to a statutory assessment paid by Maine's employers, both self-insured and insureds. The Legislature, in creating this funding mechanism in 1992, intended the users of the workers' compensation system to pay for it. The agency had previously been funded from General Fund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

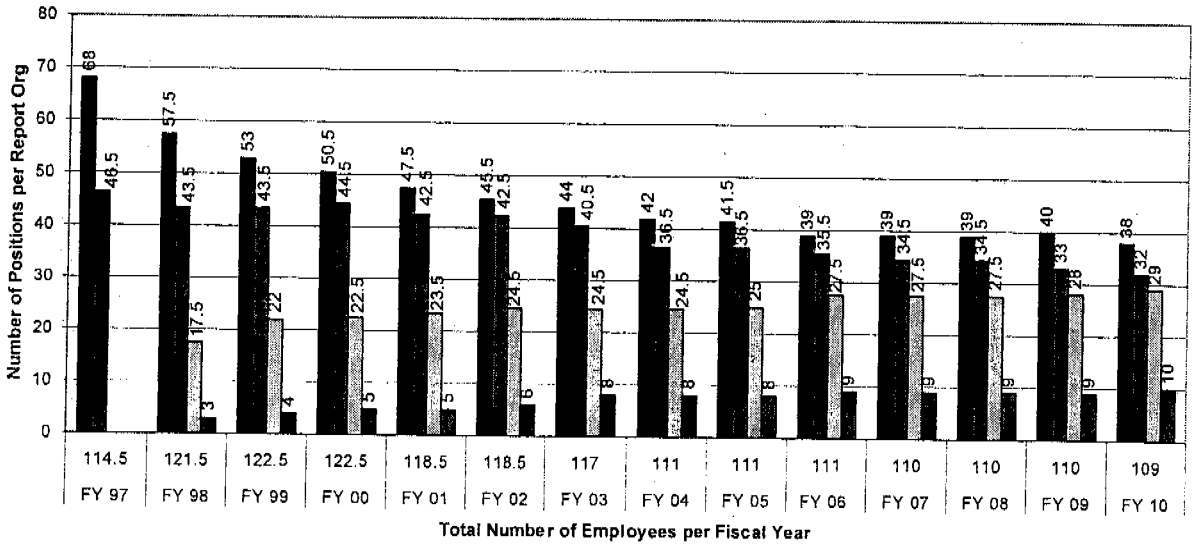
The assessment cap has been problematic in submitting a balanced budget. The Board cannot budget more than it can raise for revenue from the annual assessment and other minor revenues collected from the sale of copies of documents, fines and penalties. A majority of the fines and penalties received are 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 in the Board's assessment cap should assist in submitting a budget that is balanced between expenditures and revenues for the next biennium. The total Board-approved budget for this biennium totaled $10,446,994 in FY 10 and $10,681,089 in FY11.

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 2009



WCB - Personnel Changes Since FY 97
October 2009



The MAE and Worker Advocate programs represent 36% of the agency's total number of employees.

Dispute Resolution | Central Services | Advocate Program | MAE Program

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:

	Filed between Jan. 1 And Oct. 31, 2009
Employer's First Report of Occupational Injury or Disease	31,488 electronic 54 paper filing
Notice of Controversy	8,081 electronic 4 paper filing
Petitions	3,265
Answers to Petitions	1,352
Wage Statement	7,678
Schedule of Dependent(s) and Filing Status Statement	8,085
All Payment Forms, including:	15,715
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	12,144

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 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.

The Insurance Coverage Unit has new computer screens resulting from recent program upgrades. The new screens help to streamline data entry and enhance the ability to identify trends and problems with carriers. The program can link coverage and 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 2005 this figure had been reduced to 16, and in 2006 to 14. 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 both manually and electronically. A staff member is assigned for processing applications for waivers to the Workers' Compensation Act.

The Unit supervisor is responsible for a multitude of duties including the approval of applications for predetermination of independent contractor status. The functions of the Unit consist of proof of coverage, waivers, and predeterminations. The goal of staff is to process 80% of the proof of coverage filings within 24 hours of receipt (the Board received and processed 45,641 proof of coverage filings between November 2007 and October 2008); 90% of waiver applications within 48 hours of receipt (the Board received and processed 1,652 waiver applications between November 2007 and October 2008); and 100% of predetermination applications within 14 days (the Board received 6,644 applications between November 2008 and October 2009). ALL GOALS WERE MET.

The 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 certainly result in greater agency coordination and collaboration.

12. ABUSE INVESTIGATION UNIT

The Abuse Investigation Unit (AIU) is responsible for investigating violations of the Act by employers, employees or insurers including complaints of fraud and illegal or improper conduct. 39-A M.R.S. §153(5). The Unit conducts investigations from information received from internal and external sources. The AIU is also responsible for assessing fines regarding worker benefits, parties' agreements, mandatory workers' compensation insurance, and abuses of the Act (willful violations, fraud or intentional misrepresentations).

Board staff initiates cases against employers' that fail to carry mandatory workers' compensation insurance coverage. Cases are heard by Board-appointed presiding officers and can result in significant monetary penalties, loss of corporate status, suspension of a state-issued license, and/or referral to the Attorney General for criminal prosecution. The AIU also rules on petitions filed by parties for failure to pay medical expenses or lost-time benefits, and in instances when one party alleges another has failed to follow or has violated a Board order or other agreement regarding payment of benefits. The AIU may represent the Board when there is an allegation that an employer, insurer or third-party administrator has engaged in a pattern of questionable claims-handling or has repeatedly unreasonably contested claims.

The Unit is also responsible for administrative enforcement of laws when employers and insurers have to file specific forms. Potential violations are identified, and the AIU issues a complaint notifying employers and/or insurers of possible violations, conducts an investigation and, if a violation is identified, issues a decision that may impose a penalty.

Following is a list of the statutory provisions for which AIU is responsible.

- **Section 205(3):** when there is no ongoing dispute lost time benefits must be paid within 30 days of becoming due. Penalties of $50 per day to a maximum of $1,500 are payable to the injured worker for violations.
- **Section 205(4):** when there is no ongoing dispute medical bills are payable within 30 days of becoming due. Penalties of $50 per day up to a maximum of $1,500 are payable to a health care provider or the injured worker if there is a violation.
- **Section 324(2):** payments pursuant to a board order or agreement of the parties must be made within 10 days. Violations of this section may be penalized up to $200 per day for each day of violation. The employee receives up to $50 per day of any penalty assessed with the balance, if any, payable to the Board's Administrative Fund.
- **Section 360(1):** employers and insurers must provide information and/or file certain forms within deadlines specified. Penalties of up to $100 per instance are payable to the General Fund.
- **Section 324(3):** entities conducting business in Maine, regardless of where they are based, must have workers' compensation insurance for any employees. Failure to carry coverage

can result in penalties of up to $10,000.00 or an amount equal to 108% of the unpaid premiums, ***whichever is greater***. Violators are also subject to loss of corporate status, suspension of a state-issued license, and/or referral to the Attorney General for criminal prosecution. Penalties are paid to the Board's Employment Rehabilitation Fund.

- **Section 356(2):** benefits due to the work-related death of an employee are payable to the state when there are no surviving dependents as defined by the Act. An amount equal to 100 times the state average weekly wage is payable. AIU investigates possible cases and negotiates with insurers or litigates claims for payment.
- **Section 359(2):** any employer, insurer or third-party administrator found, after a hearing, to have a pattern of questionable claims-handling techniques or to have repeatedly unreasonably contested claims for compensation is liable for fines of up to $25,000. Penalties are payable to the General Fund and violations are certified to the Superintendent of Insurance for further action.
- **Section 360(2):** individuals or businesses that commit a willful violation of the Workers' Compensation Act, fraud or intentional misrepresentation may penalized. Individuals may be fined up to $1,000 and businesses up to $10,000 per violation and they may be ordered to pay compensation wrongfully withheld or repay benefits received. Penalties and are payable to the General Fund.

Through the efforts of the Abuse Investigation Unit, the Board has contributed $160,240 to the General Fund in 2009 from penalties assessed for late filed First Reports.

The AIU continues to work closely with the Attorney General's office regarding criminal prosecutions based on violations of Title 39-A. The failure to carry mandatory workers' compensation coverage is a Class D crime in Maine. 39-A M.R.S. § 324(3)(A). In 2005 the Attorney General's office began accepting cases for prosecution. Cases are identified using jointly developed criteria including the length of time a business operated without coverage and taking into consideration violators representative of a particular business or sector. The Attorney General's office also accepts cases from the Board for criminal prosecution based on violations of § 360(2). While violation of this section is not a crime, the actions taken resulting in violations (working while collecting compensation, misrepresenting the law or facts, perjury, fraud, etc.) may also constitute one or several different crimes under Maine Law. The Attorney General has obtained indictments regarding both provisions in all the cases presented to date, and has successfully obtained convictions with jail time and/or penalties and restitution.

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 2009, 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 3rd-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 adopted a rule that establishes a procedure for coordinating benefits; it also adopted a rule establishing mileage and expense reimbursement rates.

II. LEGISLATIVE ACTIVITY.

Legislative initiatives for the Second Regular Session of the 124th Maine Legislature include bills that will ensure that penalties for not maintaining required workers' compensation coverage apply equally to all business entities; will enhance the Abuse Unit's ability to coordinate enforcement with other agencies; and, a bill that will reverse the Law Court's holding in *Nichols v. S.D. Warren.*

In the *Nichols* case, the Law Court held that a life insurance policy which had a disability feature was a wage continuation plan subject to an offset against workers' compensation benefits. The proposed legislation would clarify that such policies are not subject to offset.

The Board is also working to implement P.L. 2009, Ch. 452 (LD 1456). This Act creates a new definition of independent contractor for the construction industry. The Act aims to ensure that all construction workers are appropriately covered by workers' compensation insurance. As part of its effort to implement Ch. 452, the Board, with the assistance of several interested parties, revised the application that is used to request a predetermination of independent status. The Board has also created a website where individuals can go to ascertain if specific employers have coverage or are self-insured.

The form can be found at www.maine.gov/wcb/petitions/wcb-263.pdf and the coverage verification website can be found at www.maine.gov/wcb/departments/Coverage/VerifyCoverage.html.

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 2009.

Previous decisions are available at 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 was not presented with any requests for review pursuant to 39-A M.R.S.A. § 320 in 2009.

V. LITIGATION.

BIW, et al v. WCB. This is a matter is a challenge to the Board's adoption (in 1998) of a standard for determining maximum facility fee charges for hospitals and ambulatory surgical care centers. Although originally based on an argument that the Board had failed to act with respect to such a standard, the thrust of the argument became whether the Board's action in 1998 complies with the statutory mandate to establish such a standard. In a ruling this fall, the Superior Court sided with the plaintiffs and decided that the rule adopted in 1998 does not comply with the statute. The Board attempted to appeal this ruling, but could not because the Law Court determined it was premature. This case also involves a separate challenge to the conversion factor used to determine maximum charges for professional services. This issue is still pending in Superior Court.

The second case involved a challenge to the Board's adoption of the 2006 permanent impairment threshold. The Superior court vacated the Board's rule. The Board did not appeal the Superior Court's decision and has begun work on establishing a threshold for 2006.

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. A pilot project with MEMIC and BIW was successfully completed and a request has been sent to insurers to forward the data to the Board within 90 days. A report from Practical Actuarial Solutions has also been sent to Senator Peter Mills in regard to Section 213 considering whether to eliminate the threshold and extend weekly benefits.

SECTION B

BUREAU OF INSURANCE

SECTION B
BUREAU OF INSURANCE

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INTRODUCTION AND BACKGROUND

1. 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 out of the workers' compensation insurance market; and 5) comparison of variations in rates.

The tables in this report that show accident year and calendar year loss ratios contain five years of information. Loss ratios are updated each year to account for how costs have developed for claims opened, claims closed and any claims reopened during the year. Other tables and graphs contain up to ten years of information.

The recently approved advisory loss cost filing produced the second largest decrease in loss costs since 1998. The largest decrease of 7.6% in NCCI's loss cost occurred in 2009. According to NCCI, there were seven consecutive decreases in lost-time claims through 2007. The frequency of injuries in Maine continues to decline but at a slower rate than it has in past years, while indemnity costs—a measure of severity—increased slightly. Indemnity costs tend to be higher for older workers, so, as Maine's population ages, this suggests that there may be an increase in indemnity costs in the future. Maine's share of the population between ages 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 percent are for medical.

Although Maine's market has become quite 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.

2. 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 a policy year basis. This report primarily shows information on an accident year basis. However, 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.

3. 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.

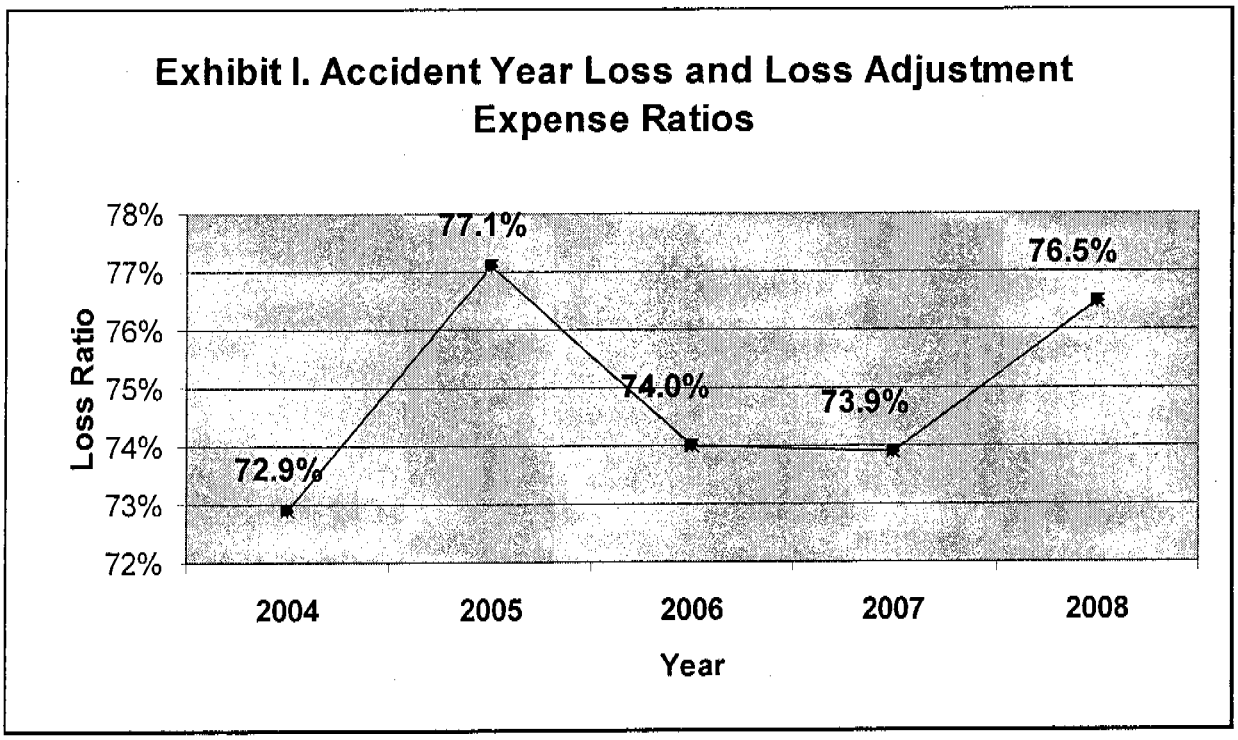
In the late 1980s and early 1990s, the Maine's workers' compensation insurance market was hard. From the mid-1990s until about 2000, the market was considered soft. After 2000 insurance markets generally became less competitive, and this trend increased following the September 11, 2001 attacks. Over the last several years, the Maine market hardened as insurers tightened their underwriting standards and reduced premium credits. However, recent signs are that the Maine market is softening. More insurers have become licensed to write workers' compensation insurance and some have reduced their rates.

RECENT EXPERIENCE

1. 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 percent 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 73 percent to slightly over 77 percent for the past five years. The 2008 loss ratio was 76.5 percent, indicating that $76.50 is expected to be paid out for losses and loss adjustment expenses for every $100 earned in premium.

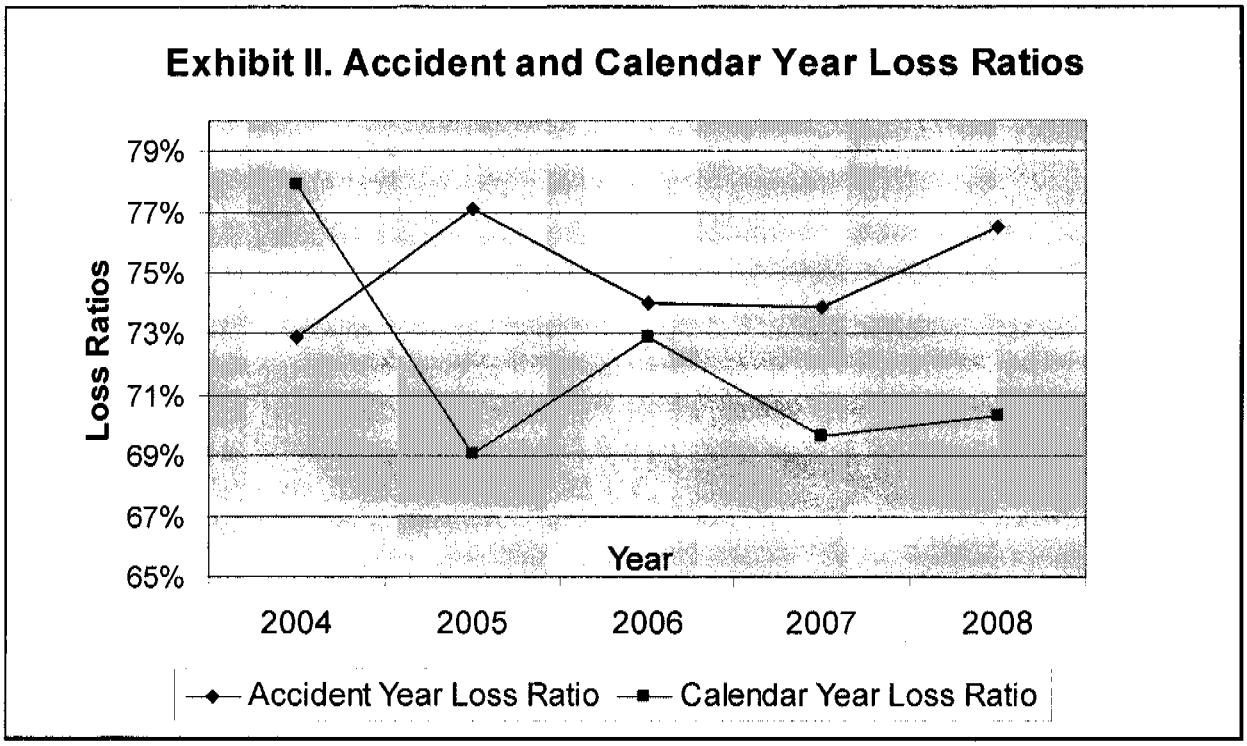


Source: National Council on Compensation Insurance

2. 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 77.9 percent in 2004 was the highest in the period of 2004-2008. Since that time it dropped to 70.3 percent in 2008, which was about the same as in 2005 when it was at a low of 69.1 percent. The accident year loss ratio has stayed within a 4 or 5 percent band over the period of 2004-2008, ranging from a high of 77.1 percent to a low of 72.9 percent. In 2008 it was 76.5 percent.

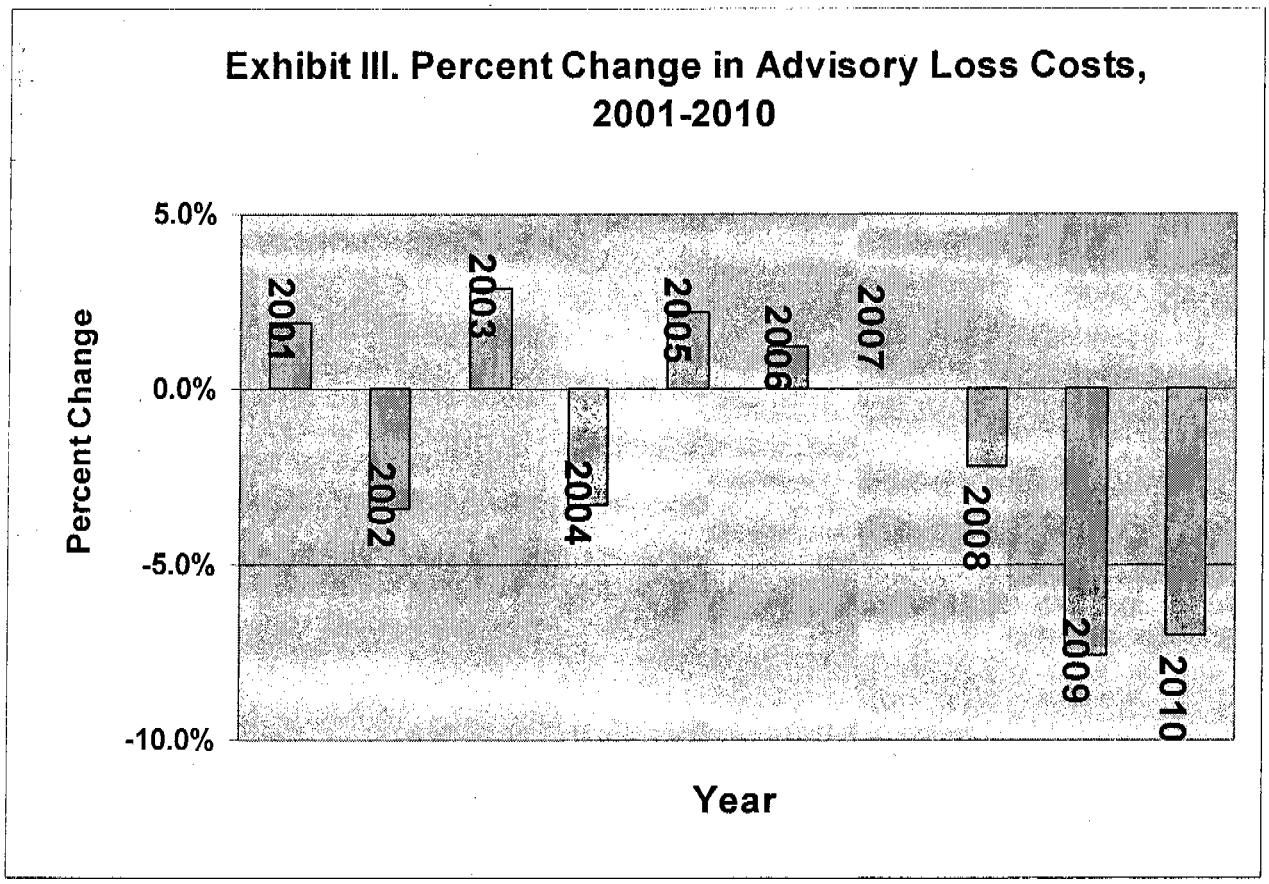


Source: National Council on Compensation Insurance

1. Changes in Advisory Loss Costs

The National Council on Compensation Insurance (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.

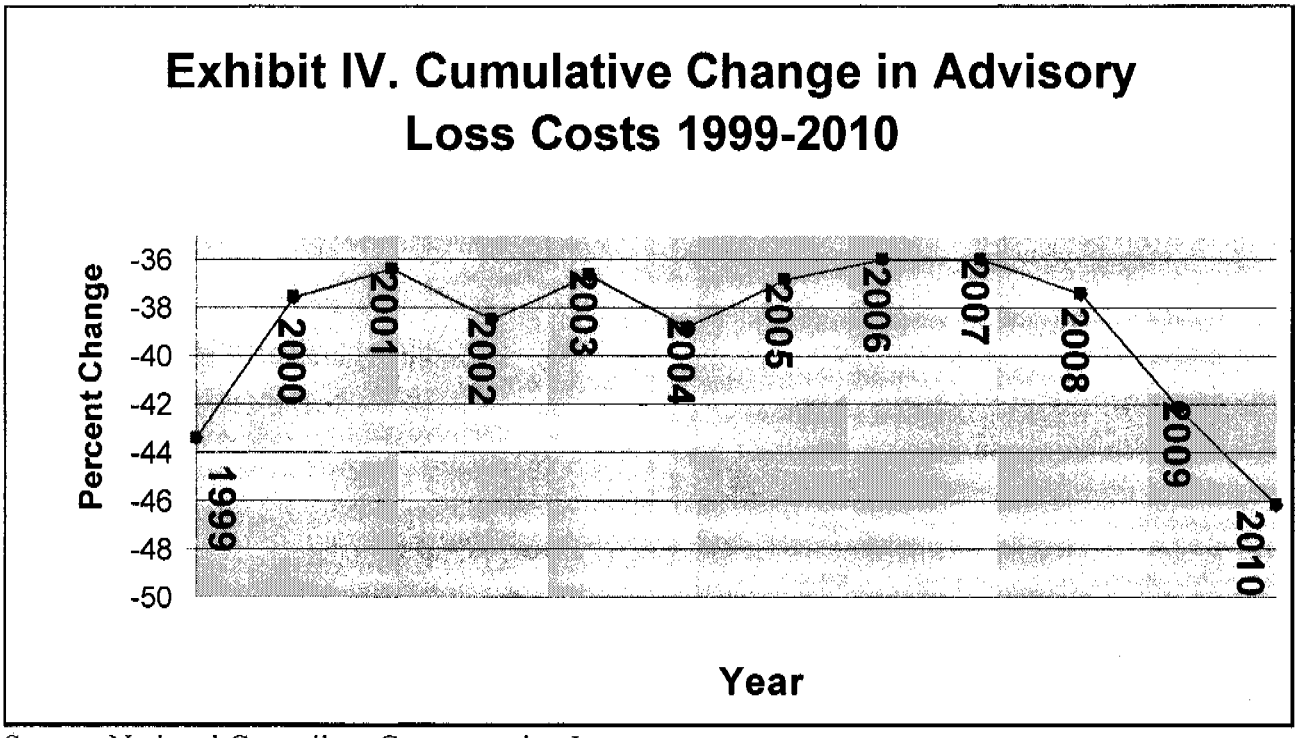
In 2009, the advisory loss costs decreased by 7.6 percent. The Bureau of Insurance recently approved a 7.0 percent decrease in advisory loss costs effective January 1, 2010. Advisory loss costs will be about sixteen percent lower than they were three years ago and nearly 46 percent lower than when the 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

2. Cumulative Changes in Advisory Loss Costs

Exhibit IV shows the cumulative changes in loss costs over the past 12 years. After three years of increases or no change, the advisory loss costs declined during the past three years, with this year's decline being the second largest decline in 12 years.



Source: National Council on Compensation Insurance

MARKET STRUCTURE AND COMPETITION

1. 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 the best indicator of market concentration because some insurers have no written premium. In terms of written premium, MEMIC has 61 person 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 2008. The number of carriers writing greater than $1 million dollars in written premium has increased by one but the number of insurers writing more than $10,000 in premium decreased by nine.

Table I: Number of Companies by Level of Written Premium--2008

Amount of Written Premium	Number of Companies At That Level
>$10,000	111
>$100,000	79
>$1,000,000	28

Source: Annual Statements Filed with the Bureau of Insurance. Total written premium for 2008 was approximately $223 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.

2. Herfindahl Hirschman Index

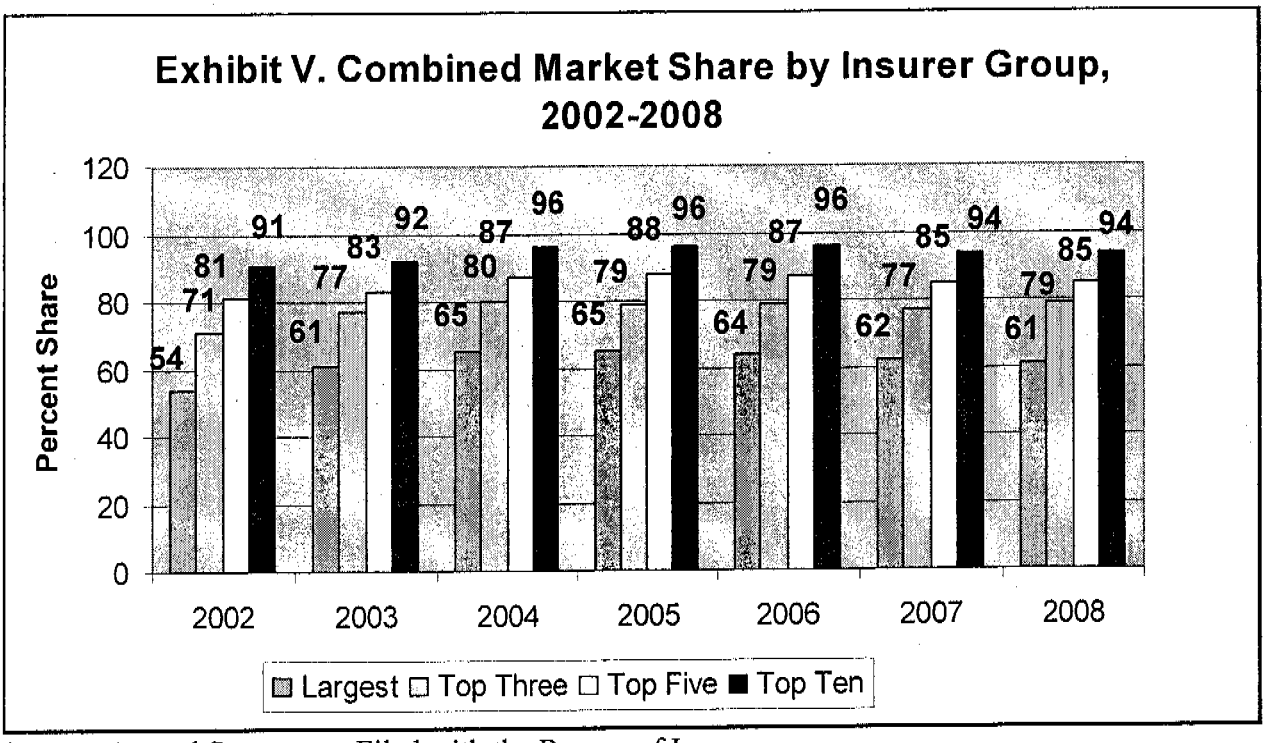
The Herfindahl-Hirschman Index (HHI) is a method to measure market concentration. The HHI is calculated by summing the squares of the market shares (percentages) of all groups in the market. The National Association of Insurance Commissioners publishes a Commercial Lines Competition Database Report as 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 2008 Database Report, based on 2007 information, shows that the HHI for the workers' compensation insurance in Maine is 3,962. This is the second highest for all commercial lines in Maine behind medical malpractice which is 4,311. All other commercial lines were between 407 and 809. 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 1800 to indicate highly concentrated markets and the range from 1000 to 1800 to indicate moderately concentrated markets. A market with an HHI below 1000 is considered not concentrated. Applying the HHI to the 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 2007 Commercial Lines Competition Database Report.

3. 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. Maine Employers' Mutual Insurance Company (MEMIC) has the largest market share. Its share has ranged between 61 and 65 percent for the last six years.

The market share of the top five and the top 10 insurer groups remained the same in 2008 as it did in 2007, with shares of 85 and 94 consecutively. Groups outside of the top 10 groups accounted for only 6 percent of the workers' compensation premium in Maine. In terms of premium dollars, MEMIC wrote under $137 million in premium in 2008, more than $10 million less than in 2007 and nearly $24 million less than a few years ago. The top three groups, including MEMIC, wrote over $175 million in business, about $9 million less than in 2007. The top five groups had over $189 million in written premium, which is $16 million less than in 2007. The top 10 groups wrote nearly $209 million in premium in 2008, over $17 million less than in 2007. The remaining insurance groups had written premium totaling over $14 million.



Source: Annual Statements Filed with the Bureau of Insurance

4. 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 more than 56 percent since 1998. There currently are no significant barriers to entry.

Table II: Entry and Exit of Workers' Compensation Carriers, 1999-2009

Year	Number of Carriers	Number Entering	Number Exiting	Net Change (Number)	Net Change (Percent)
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
1999	198	11	0	11	5.9

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.

5. Percent Market Share of the Top Insurance Groups

Table III shows market share by insurance group from 2002-2008. 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.

Table III. Percent Market Share for Top Insurance Groups, By Amount of Written Premium, 2002-2008

Insurance Group	2008 Share	2007 Share	2006 Share	2005 Share	2004 Share	2003 Share	2002 Share
Maine Employers' Mutual	61.3	61.6	63.6	64.8	65.4	61.5	54.4
Liberty Mutual Group	11.0	8.8	9.2	8.4	9.4	9.6	10.4
WR Berkeley Corp.	6.1	6.3	6.1	5.6	5.4	5.8	6.5
Hartford Fire & Casualty	3.7	3.6	3.3	3.8	1.9	2.0	3.1
American International Group	2.8	5.2	4.9	5.1	4.1	3.3	0.2
Travelers Group	2.7	2.2	1.9	1.6	2.3	1.3	1.7
Guard Insurance Group	1.8	2.0	2.3	2.1	2.0	1.8	1.2
The Hanover Ins Corp.	1.8	1.7	2.1	1.9	1.7	1.6	2.6
Zurich Insurance Group	1.2	1.3	0.9	0.6	1.7	1.6	2.6
CNA Insurance Group	1.2	1.2	1.1	1.1	1.2	1.5	1.1

Source: Annual Statements Filed with the Bureau of Insurance

6. 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 2002 through 2008. Every year since 2002 MEMIC has had more than 60 percent of the market; however, its market share has decreased each of the past four years. For the fifth straight year, none of the other carriers attained a five percent market share. The top ten companies combined write over 77 percent of the business. All carriers outside of the top ten had less than a 1 percent market share.

Table IV. Percent Market Share for Top Insurance Carriers, By Amount of Written Premium, 2002-2008

Insurance Carrier	2008 Share	2007 Share	2006 Share	2005 Share	2004 Share	2003 Share	2002 Share
Maine Employers' Mutual	61.3	61.6	63.6	64.8	65.3	61.5	54.4
Acadia Insurance Company	4.2	4.5	4.5	4.3	4.4	5.3	6.0
Liberty Insurance Corp.	2.7	2.1	2.5	1.7	1.1	1.4	1.2
Netherlands	2.1	1.4	0.9	0.3	0.2	0.2	0.4
Excelsior Insurance Co.	1.4	1.4	1.2	1.0	0.9	0.7	0.8
Firemen's Ins Co of Wash DC	1.3	1.3	1.1	0.9	0.7	0.6	0.0
Twin City Fire Ins Co.	1.2	1.4	1.6	2.0	0.9	0.9	0.6
Amguard Insurance Company	1.1	1.1	0.9	0.5	0.3	0.3	0.4
Hartford Ins Co of the Midwest	1.0	0.9	0.5	0.4	0.2	0.1	0.1
Peerless Insurance Company	1.0	1.0	1.6	2.2	2.3	2.3	2.3

Source: Annual Statements Filed with the Bureau of Insurance

DIFFERENCES IN RATES AND FACTORS AFFECTING RATES

1. 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 ten 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. The carriers that responded accounted for nearly 94 percent of the market and nearly $209 million in written premium in Maine for calendar year 2008. The results show that over 68 percent of policyholders are written at rates equivalent to Maine Employers' Mutual Insurance Company's (MEMIC) Standard Rating tier. Over 24 percent are written at rates lower than MEMIC's Standard Rating tier. Over 7 percent 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	2009 Percent	2008 Percent
Below MEMIC Standard Rate	24.34%	23.48%
At MEMIC Standard Rate	68.43%	68.21%
Above MEMIC Standard Rate	7.22%	8.31%

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.

2. Additional Factors Affecting Premiums

Some employers have other options available that may affect the premiums they pay for workers' compensation insurance. However, these options are available only if the insurer offers them. While they might lower an employer's premium, they 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 77 percent 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 for the employer. Such factors include safety plans, medical facilities, safety devices and premises are considered and can result in a change in premium of up to 25 percent. Over 76 percent 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 deductibles plans and the amount of reduction varies by insurer.

- **Managed Care Credits** are credits offered by insurers to employers who use managed care plans. Less than 10 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. On September 22, 2009, MEMIC declared a dividend of $10,000,000. Employers who held policies with MEMIC for a full year, with a term beginning in 2006, will be eligible to receive the dividend which will be paid in November to over 20,000 policyholders. MEMIC will have returned more than $110 million back 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 8/31/2009, 67 percent of non-experience rated accounts -- 9,618 policyholders -- receive loss free credits of between 8 and 25 percent. This represents a 3 percent increase over last year at the same time and represents 49 percent 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 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. Over 16.1 million in dividends were paid out in 2008, over a half million dollars more than in 2007. MEMIC accounted for over 92 percent of the dividends issued. The amount of credits in the top 10 groups in 2008 rose over $1.5 million above 2007 and the amount of debits increased by nearly $0.6 million.

ALTERNATIVE RISK MARKETS

1. 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 2008, nearly 45 percent of Maine's total workers' compensation insurance market, as measured by standard premium, consisted of self-insured employers and groups. This is the highest level in nine years.

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, 1998-2008

Year	Estimated Standard Premium	Percent of Workers' Comp. Market (in annual standard premium)
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
1999	$116,028,759	45.4
1998	$120,799,841	49.0

Source: Annual Statements Filed with the Bureau of Insurance.

Notes:

1. Estimated standard premium figures are as of December 31.
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.

2. Number of Self-Insured Employers and Groups

As of October 1, 2009, there were 19 self-insured groups representing approximately 1,459 employers. This is virtually the same as in 2008. However, the number of individually self-insured employers decreased by over 17 percent in the past year and is nearly 50 percent lower than it was in 1999.

Table VII: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 1999-2009

Year	# of Self-Insured Groups	# of Employers In Groups	# of Individually Self-Insured Employers
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
1999	20	N/A	115

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.

A LOOK NATIONALLY

1. 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 entitled, "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 2008 study, Maine ranked 32nd in workers' compensation average statutory benefit provisions (excluding medical benefits). Our rank in 2007 was 25th. According to ATS, the reason for the change in rank was that healing period costs for non-scheduled permanent partial impairment benefits were not reflected in their previous report findings. All fifty 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 2008, Maine ranked 35th in office and clerical and 30th in manufacturing. We were ranked 36th and 29th respectively in 2007. This means that our comparative costs improved one position in office and clerical and fell one position in manufacturing.

2. Oregon Workers' Compensation Premium Rate Ranking

In another study, conducted bi-annually by the State of Oregon, Maine ranked 6th in terms of 2008 workers' compensation premium rates for all industries. In this study, a lower rank indicates higher premium rates. In the 2006 study, Maine ranked 8th overall and in the 2004 study, Maine also ranked 13th. 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.

3. Average Loss Costs by State Based Upon Maine's Payroll Distribution

NCCI developed a spreadsheet which shows the average loss cost for Maine compared to the average loss cost for other states based upon Maine's payroll distribution. Maine had the seventh highest average loss costs of the 36 states and the District of Columbia reporting information to NCCI.

State	Average Loss Cost	Rank
Montana	$3.21	1
Illinois	$2.25	2
Alaska	$2.02	3
Oklahoma	$1.93	4
Alabama	$1.82	5
New Hampshire	$1.81	6
Maine	**$1.79**	**7**
Connecticut	$1.77	8
Kentucky	$1.72	9
Vermont	$1.71	10
North Carolina	$1.62	11
South Carolina	$1.60	12
Georgia	$1.57	13
Tennessee	$1.52	14
South Dakota	$1.46	15
Nevada	$1.45	16
Nebraska	$1.43	17
Iowa	$1.38	18
Arizona	$1.37	19
Rhode Island	$1.37	20
Oregon	$1.36	21
Idaho	$1.31	22
Louisiana	$1.30	23
West Virginia	$1.29	24
Missouri	$1.28	25
New Mexico	$1.28	26
Kansas	$1.27	27
Maryland	$1.27	28
Colorado	$1.26	29
Mississippi	$1.24	30
Florida	$1.13	31
Hawaii	$1.03	32
Utah	$1.00	33
Virginia	$0.98	34

State	Average Loss Cost	Rank
Indiana	$0.86	35
D.C.	$0.85	36
Arkansas	$0.78	37

Note: Average loss cost does not include expense and profit loading and is an average using all payroll. 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

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1. INTRODUCTION

1A. ROLE OF THE BUREAU OF LABOR STANDARDS IN PROTECTING MAINE WORKERS

The Bureau of Labor Standards (BLS) of the Maine Department of Labor (MDOL) works in collaboration with the Maine Workers' Compensation Board (WCB) in the prevention of occupational injuries and illnesses by a variety of means. Under Maine Statute, Title 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 2009 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. For example, the Outreach and Education Unit (O&E) uses the age and industry profiles from the WCB *First Reports* to target its young workers' safety initiatives.

Employer and Employee Training and Education

General OSH Training. SafetyWorks! develops and offers industry-specific and problem-specific training. WCB data can suggest the need for and direct the targeting of such training. In addition to such targeted training programs, the BLS provides OSHA and Mine Safety and Health Administration (MSHA) approved regulatory compliance training. Approximately 50 different curricula of all types are offered, ranging in scope from 30-hour OSHA compliance courses to such tightly focused efforts as VDT operator training requiring as little as two hours. 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 2009, 504 safety classes were completed with 8,610 attendees.

Child Labor Education. A special emphasis of O&E is the education of young workers. To encourage employers to provide safe work experiences for their teenage workers, the BLS developed the curriculum, *Starting Safely: Teaching Youth about Workplace Safety and Health.* The three-hour curriculum is designed to teach middle and high school age youth about their safety rights and responsibilities on the job. In 2002, O&E was authorized by Keene State College (New Hampshire) to present to educators the train-the-trainer course that allows the teachers to use this curriculum. There was no Summer Safety Institute conducted in 2009. 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 SafeyWorks! 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/refining the company safety program. Between November 1, 2008 and October 31, 2009, 25 profiles were requested.

On-Site Consultation. Also under SafetyWorks!, the Workplace Safety and Health Division (WS&H) of the BLS provides consultation services to public and private sector employers. In the private sector, BLS provides consultations to employers identified by Regional OSHA for inspection through its Local Emphasis Programs (LEPs). National and Regional OSHA identify employers for LEPs and National Emphasis Programs (NEPs) based on summary data from the WCB and the OSHA Data Initiative (ODI). Consultations are also provided in both the public and private sector upon employer request. A typical employer consultation can include an evaluation of records from the employer, including an analysis of the employer's Workers' Compensation cases and/or the OSHA 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 2009, 669 consultations were requested.

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

2B. ADVOCACY

The Migrant and Immigrant Services Division (M&IS) coordinates services for migrant and foreign workers in Maine. The Division has a State Monitor Advocate who works with agricultural employers to ensure compliance with the federal Seasonal Agricultural Worker Protection Act and the Fair Labor Standards Act. The State Monitor Advocate monitors the payment of fair wages and ensures that the housing provided to these workers meets OSHA standards. In addition to addressing the safety and health of migrant and foreign workers, M&IS provides foreign labor certification services to Maine employers who wish to hire foreign workers. In 2009, applications from 150 employers were processed seeking 2,886 foreign workers of all types. Effective January 18, 2009, new rules removed local State processing of foreign labor applications.

2C. 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, 2008 to July 1, 2009, a total of 2,990 work permits was approved and 131 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, 2008 to July 1, 2009 the Division conducted 3,302 inspections finding 438 employers in violation with 748 separate violations.

Public Sector Site Safety Inspections

The Workplace Safety and Health Division (WS&H) 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 129 public sector employers and 774 site inspections completed in federal fiscal year 2009. (On average each employer had 6 sites or locations that were inspected.) All inspections found violations: 4,280 violations resulted in $426,400 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 2009 show that OSHA conducted 628 inspections in Maine, all of which found violations: 1,511 violations resulted in $1,582,964 in penalties assessed.

Worker Misclassification Task Force

On January 14, 2009, Governor Baldacci issued an Executive Order establishing a Joint Enforcement 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 is chaired by the Commissioner of Labor, Laura Fortman and includes representation from the three agencies.

The Task Force is 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.

Misclassification has a serious adverse impact on not only the misclassified employees, but also on businesses and the general public. The employees are harmed because they are not covered by the state and federal laws designed to protect workers, laws such as Workers' Compensation, Unemployment Insurance and Occupational Safety and Health, to name a few. Businesses that misclassify workers harm law-abiding businesses in at least two ways. First, employers who properly classify their employees face a competitive disadvantage when bidding against misclassifying companies. Second, these employers who properly classify employees often subsidize certain costs of the misclassifying businesses, often paying higher workers' compensation premiums and unemployment insurance taxes to subsidize misclassifying employers. The general public is harmed by misclassification through "cost shifting". For example, when a misclassified worker injured on the job needs medical care but is not covered by workers' compensation or health insurance, hospitals and doctors recoup these uninsured expenses by increasing the cost of care, resulting in higher health care costs for all, and generally, higher health insurance premiums. Misclassified employees who become unemployed and are not covered by unemployment create a greater demand for public assistance, in turn increasing taxes at all levels of government.

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 both indefinitely continuing programs and one-time, focused studies.

3A. Annual Studies

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

WCB First Report of Occupational Injury or Disease

Since 1973 the BLS has coded, tabulated, analyzed, and summarized data from the WCB *First Reports*. This activity began as a program called the Supplementary Data System (SDS) funded by the federal Bureau of Labor Statistics. When federal funding ended, this program was continued with state funding. The BLS database is directly linked to the WCB administrative data for each case and provides a wealth of information on individual cases. This tabulation is the primary data source for BLS prevention purposes because it is possible to examine many factors, including the individual employer, the age of the injured, how long the injured person has worked, the injured worker's occupation, and so on. Because the data are tied to the WCB administrative data, the consistency and completeness of that administrative data is critical. The following are some data from this program.

A Twenty-Year Pattern of Disabling Cases, Maine, 1989-2008. In 2008, there were 13,085 disabling cases reported to the Maine Workers' Compensation Board. A disabling case is a case in which a worker lost one or more days of work beyond the day of the injury. Figure 1 shows the twenty-year pattern of disabling cases. The 2008 figure shows a decrease of 2,758 cases from 2006. (This is the eighth straight year this figure has decreased.)

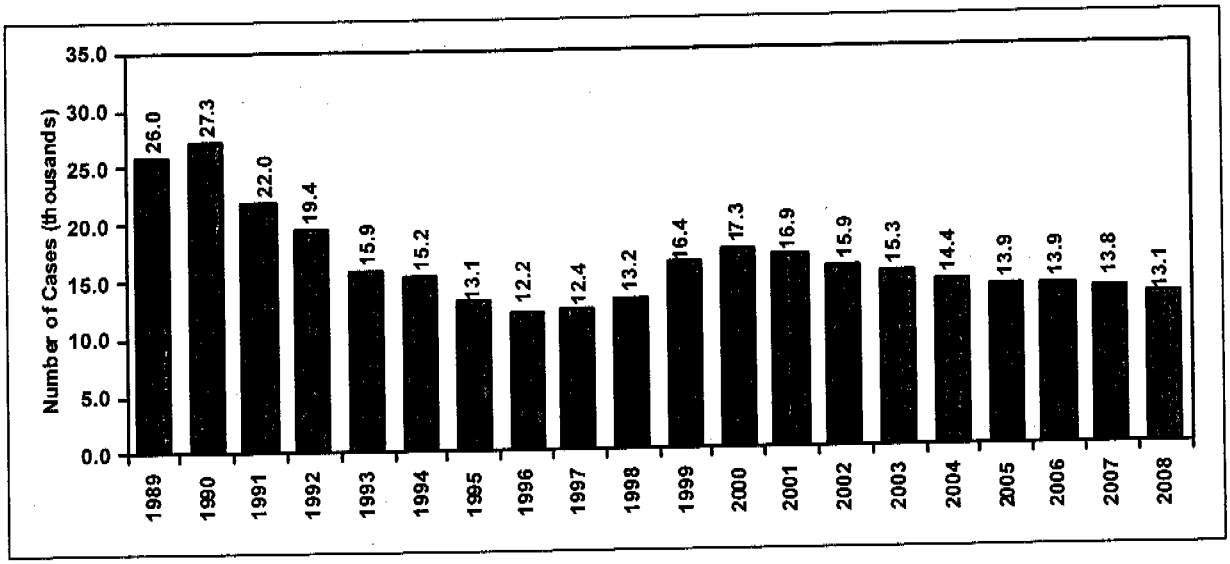


Figure 1. Twenty-Year Pattern of Disabling Cases, 1989-2008

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

Changes as a result of the 1990 workers' compensation reform decreased the number of reports, partly accounting for the apparent decline after that year. In 1999, the introduction of the WCB's Monitoring and Enforcement (MAE) program increased the number of reports for non-compensable (less than 7 days) lost time cases, producing part of the apparent increase in that and following years. Also, based on data from the Survey of Occupational Injuries and Illnesses (SOII) for the 1987-2001 period, there has been a marked increase in the number of cases resulting in restricted work only (no days away). SOII definitions and procedures did not change during those years.

Geographic Distribution of Disabling Cases, Maine, 2006-2008. In 2008, the six counties with the highest disabling case rates were (in descending order): Sagadahoc (consistently highest by almost a factor of two), Cumberland, Aroostook, Washington, Kennebec, and Somerset counties. Table 1 breaks down the number of disabling cases by county for calendar years 2006 through 2008. The rate is calculated by dividing the number of disabling cases in each county by its respective employment in thousands. Geographic distribution data can be useful in health planning and setting enforcement and consultation priorities by region.

Table 1. Geographical Distribution of Disabling Cases, Maine, 2006-2008

County	2006			2007			2008		
	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000
Androscoggin	1,117	55,723	20.0	1,110	55,748	19.9	1,093	55,318	19.8
Aroostook	783	33,730	23.2	738	33,142	22.3	705	32,787	21.5
Cumberland	3,603	153,266	23.5	3,630	152,508	23.8	3,294	151,859	21.7
Franklin	243	13,797	17.6	249	13,393	18.6	201	13,341	15.1
Hancock	535	28,724	18.6	480	27,986	17.2	524	28,090	18.7
Kennebec	1,406	61,127	23.0	1,390	60,209	23.1	1,242	60,450	20.5
Knox	421	20,780	20.3	399	20,244	19.5	384	20,068	19.1
Lincoln	294	17,822	16.5	256	17,662	14.5	252	17,527	14.4
Oxford	470	26,956	17.4	452	26,888	16.8	418	26,461	15.8
Penobscot	1,275	75,164	17.0	1,430	73,812	19.4	1,398	74,663	18.7
Piscataquis	134	7,188	18.6	144	6,963	20.7	129	6,878	18.8
Sagadahoc	738	18,139	40.7	761	18,348	41.5	680	18,323	37.1
Somerset	473	23,721	19.9	460	23,386	19.7	459	23,027	19.9
Waldo	247	18,503	13.3	220	17,969	12.2	220	17,982	12.2
Washington	263	14,397	18.3	274	13,579	20.2	285	13,407	21.3
York	1,426	109,806	13.0	1,440	109,302	13.2	1,344	108,544	12.4
Unknown*	443	----	----	384	----	----	431		
Total	13,871	678,843	20.4	13,817	671,339	22.4	13,085	668,724	18.6

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, 2006-2008. As seen in Table 2, more than three quarters of all reports of disabling injuries in 2008 occurred in the top nine occupational groups. With 79% of disabling injuries occurring in these occupational groups, further research is needed in assessing trends and patterns of injuries and illnesses reported in these occupations. In addition, more work should be done to identify the risk factors, demographics, and the type of safety training programs that are being offered to workers and the effectiveness of such training in preventing work-related injuries.

Table 2: Disabling Cases by Occupational Groups, Maine, 2006-2008

Occupational Groups	2006		2007		2008	
	Number	Percent	Number	Percent	Number	Percent
Transportation and Material Moving	2,207	15.9	2,229	16.3	2,106	16.1
Construction and Extraction	1,636	11.8	1,409	10.3	1,265	9.7
Production	1,449	10.4	1,517	11.1	1,288	9.8
Office and Administrative Support	1,196	8.6	1,150	8.4	1,046	8.0
Sales and Related	*	*	*	*	786	6.0
Building and Grounds Cleaning and Maintenance	956	6.9	986	7.2	915	7.0
Installation, Maintenance, and Repair	1,004	7.2	979	7.2	963	7.4
Healthcare Support	932	6.7	974	7.1	1,081	8.3
Food Preparation and Serving	*	*	934	6.8	882	6.7
Other Occupational Groups	4,491	32.4	3,639	26.3	2,753	21.0
Total	13,871	100.0	13,817	100.0	13,085	100.0

Source: Workers' Compensation Board *First Reports of Occupational Injury or Disease*
** Indicates that the occupational group was not in the top nine categories.*

Length of Service of Injured Worker, Maine, 2006-2008. One of the patterns that the BLS has identified from the analyses of the WCB data is that more new hires (under one year of service) are being injured on the job when compared to those employees who have been with their employers for one year or more. New hires accounted for 4,219 (32.2 %) of the *First Reports* in 2008. (For each of the past three years, roughly one-third of all disabling cases have occurred to new hires.)

At the same time, the proportion of long-term (older) workers with 15 or more years with the same employer has increased, from 10.3% of all claims in 2001 to 13.4 % in 2008. Of specific concern, the proportion of workers with 20 or more years with the same employer has increased from 5.9 % of all claims in 2001 to 8.9 % in 2008. This change merits further investigation.

Table 3. Length of Service of Injured Worker, Maine, 2006-2008

Length of Service of the Injured Worker	Disabling Cases					
	2006		2007		2008	
	Number	Percent	Number	Percent	Number	Percent
Total	***13,871***	***100.0***	***13,817***	***100.0***	***13,085***	***100.0***
Under 1 Year	4,703	33.9	4,603	33.3	4,219	32.2
1 Year	1,805	13.0	1,919	13.9	1,693	12.9
2 Years	1,064	7.7	1,074	7.8	1,252	9.6
3-4 Years	1,355	9.8	1,382	10.0	1,295	9.9
5-9 Years	1,917	13.8	1,986	14.4	1,874	14.3
10-14 Years	807	5.8	799	5.8	821	6.3
15-19 Years	1,022	7.4	871	6.3	586	4.5
20+ Years	1,007	7.3	1,095	7.9	1,168	8.9
Unknown	191	1.4	88	0.6	166	1.3

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

Nature, Source, and Event of Injuries and Illnesses, Maine, 2004-2008. Table 4 displays the frequencies of the top five each of nature, source, and event of injuries and illnesses. Most of these counts showed a decrease from 2006.

Table 4. Nature, Source and Event of Injuries and Illnesses, Maine, 2004-2008

	2004	2005	2006	2007	2008
Nature of Injury					
Sprains, strains, tears	4,664	4,965	4,919	4,476	3,381
Unspecified pain, sore, hurt	3,462	3,081	2,693	2,476	3,015
Bruises, contusions	988	1,080	1,089	1,177	1,051
Traumatic injuries & disorders, un-specified	*	*	*	1,480	2,111
Fractures	666	755	730	*	*
Cuts, lacerations	726	682	761	758	635
Source of Injury					
Person—injured or ill worker	3,302	3,102	3,087	3,113	3,173
Floors, walkways, ground surfaces	2,055	2,181	1,965	2,318	2,250
Containers	1,513	1,287	1,159	1,200	1,093
Nonclassifiable	1,182	1,446	1,484	1,204	1,000
Parts and materials	978	810	856	822	733
Event or Exposure					
Overexertion	4,415	4,065	4,029	3,861	3,565
Bodily reaction	1,704	1,799	1,641	1,742	1,870
Fall on same level	1,313	1,515	1,301	1,711	1,679
Struck by object	1,160	1,119	1,180	1,189	979
Repetitive motion	1,124	929	917	845	770

Source: Workers' Compensation Board *First Reports of Injury or Occupational Disease*
*Note: * indicates that the specific nature and source of injury was not in the top five categories.*

Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses

Since 1972, the BLS has partnered with the federal Bureau of Labor Statistics in a cooperative agreement to collect data on occupational injuries and illnesses through the annual Survey of Occupational Injuries and Illnesses (SOII). The results from this survey are summarized and published on the Federal BLS website, http://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 2008, Maine BLS surveyed 2,805 private establishments and exactly 500 public sector agencies, asking these businesses about their experience with OSHA recordable injuries and illnesses. The SOII gathers data from employers' records. Besides the total numbers of OSHA recordable injuries and illnesses, the SOII asks employers for their average employment and total hours worked at the reporting worksite. From this information, incidence rates are produced. The incident rate is the estimated number of incidents per 100 full-time workers, standardized to a full calendar year.

2001 was the last year for which SOII incident statistics are comparable to the past because of changes made to OSHA recordkeeping beginning with the 2002 data. 2002 was the first year that the OSHA forms 300, 300A, and 301 were used. Besides the new forms, sweeping changes were made to the recording criteria; some cases recordable in 2001 were not in 2002 and *vice versa.* Among the most significant changes were:

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

DO NOT compare data from 2002 and later years with data from 2001 and earlier! *Although 2002 and later data from employer OSHA records appear similar to 2001 and earlier data, it is neither correct nor safe to make direct comparisons across the 2001/2002 line. For further information on the recordkeeping differences go to OSHA's website, www.osha.gov and click on "recordkeeping".*

The 2002 changes to the recordkeeping regulations apply to 2003 with one important exception. In 2003, OSHA revised its regulations regarding the recording of occupational hearing loss cases. Also in 2003, work establishments were being coded according to the North American Industry Classification System (NAICS), rather than the Standard Industrial Classification (SIC) system. There is not a one-to-one comparability between even the most general levels of the two classification systems (for further information, please visit http://www.census.gov/epcd/www/naics.html). For these reasons, users are advised against comparisons between SOII industry categories earlier than 2003 and those of 2003 and later.

Table 5 and Figure 2 below display results from the 2007 SOII. Data collected from this survey should not be compared with WCB data for the following reasons:

1) The two systems use different definitions of recordability of work-related cases.
2) WCB data consists of frequencies only; rates cannot be computed. The SOII produces both frequencies and rates.

3) The WCB data is a census of injuries and illnesses while the SOII data is a statistical sample. The SOII data is therefore subject to sampling error.

Cases and Incidence Rate of Injuries and Illnesses, Maine, 2008. According to the 2008 SOII for private industry, the "Manufacturing" and "Transportation and Warehousing" each recorded the highest incidence rate of 8.8 cases per 100 FTE.

Table 5. Number of Cases and Incidence Rate of Injuries and Illnesses, Maine, 2008

NAICS Sector (Not directly comparable with SIC Division)	2008	
	Number of Cases	Incidence Rate
Private Industry	**24,386**	**6.0**
Manufacturing	4,397	7.8
Transportation and Warehousing	1,298	8.4
Utilities	181	9.5
Health Care and Social Assistance	5,443	7.4
Construction	2,280	8.1
Wholesale Trade	1,180	7.2
Arts, Entertainment, and Recreation	314	7.2
Retail Trade	4,360	6.6
Agriculture, Forestry, Fishing, and Hunting	267	5.4
Accommodation and Food Services	1,467	5.1
Real Estate Rental and Leasing	310	5.0
Administration Support and Waste and Remediation Services	944	4.9
Educational Services	260	3.9
Professional and Business Services	1,676	3.7
Management of Companies and Enterprises	172	2.9
Information	287	2.8
Finance and Insurance	495	2.2
Mining	N/P	N/P
Public Industry	**3,714**	**6.0**

Source: Federal Bureau of Labor Statistics *Survey of Occupational Injuries and Illnesses*
Note: "N/P" means not publishable

For further information on OSHA recordkeeping, please go to OSHA's recordkeeping website, http://www.osha.gov/recordkeeping/index.html .

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

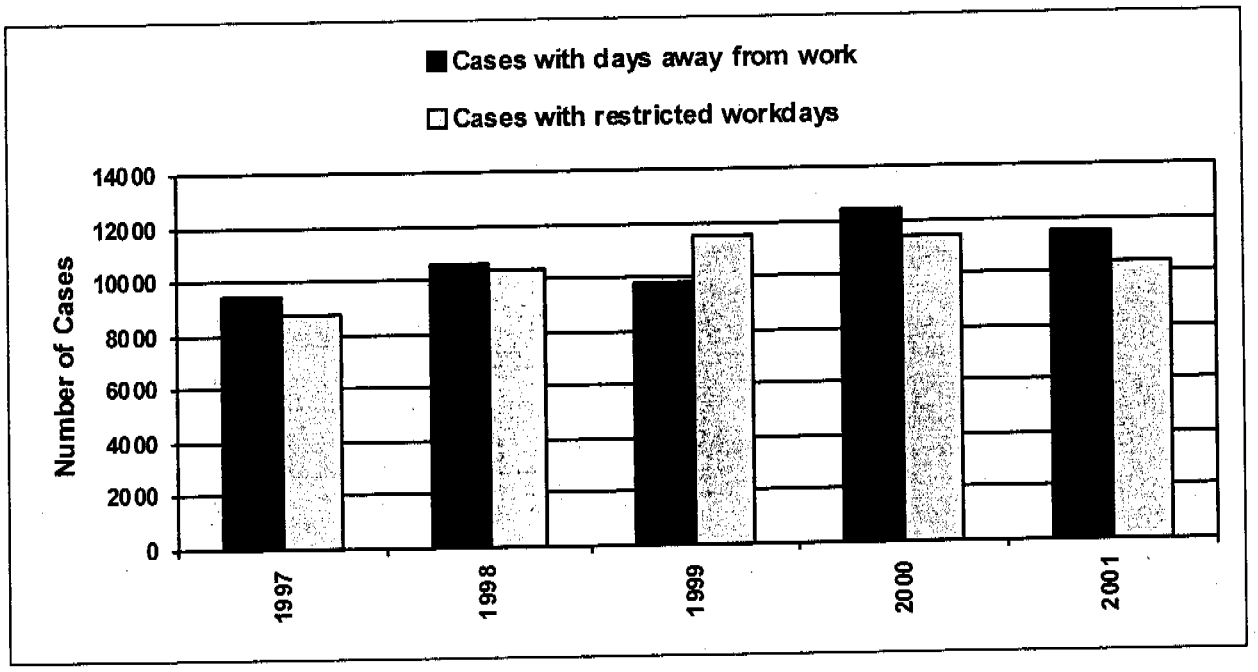
1) These are not severe injuries and allow an injured worker to continue working in a limited capacity.

2) Some employers are using this injury management approach to lower their Workers' Compensation losses and therefore lower their direct payments on their insurance premiums.

3) Keeping workers employed in a limited capacity is seen as good for workers' morale, preventing the turnover of skilled workers and instilling continued company loyalty and increasing productivity.

More research is needed to test these hypotheses.

Figure 2A. A Five-Year Trend Analysis of Lost Workday and Restricted Work Activity Cases, All Industries (Public and Private Sectors), Maine, 1997-2001



Source: *Survey of Occupational Injuries and Illnesses*

Figure 2B. A Six-Year Trend Analysis of Lost Workday and Restricted Work Activity Cases, All Industries (Public and Private Sectors), Maine, 2002-2008

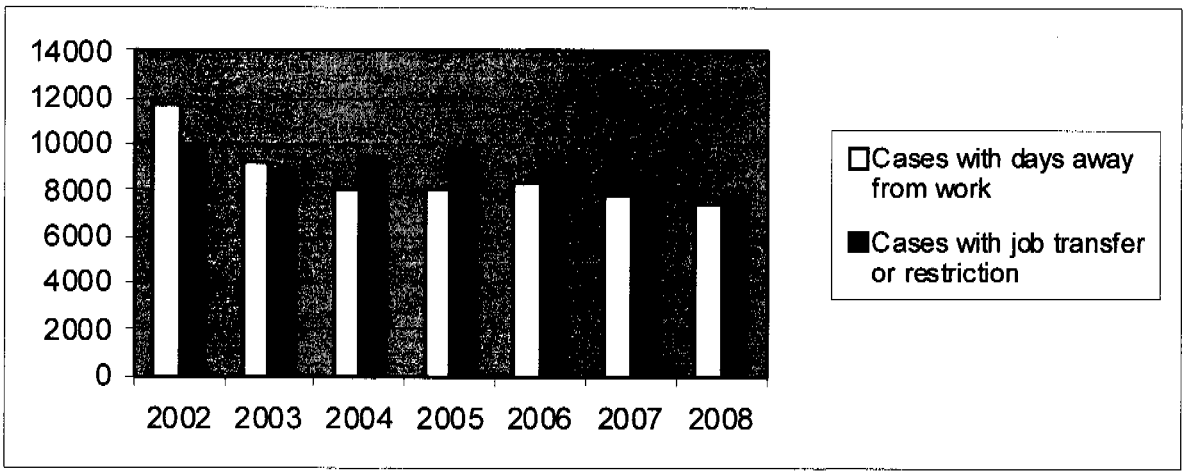


Figure 2B describes the injury data collected with revised OSHA recordkeeping regulations. These data should not be directly compared with earlier years' data (1997-2001). For 2008, there was an estimated total of 15,227 OSHA recordable injuries resulting in at least one day away from work and/or one day of job transfer or restriction beyond the day of injury. Of this total, it is estimated that 7,440 cases resulted in at least one day away from work and 7,787 cases resulted in job transfer or restriction without any days away from work.

OSHA Data Initiative

Every year since 1993, the BLS has received a grant from OSHA to collect data on specific worksite occupational injury and illness rates in Maine. The information is used by OSHA to target establishments with high incidence rates for intervention through consultation or enforcement. Usually the regional office of OSHA initiates this activity under an OSHA Local Emphasis Program (LEP).

The survey instrument used is called the *OSHA Work-Related Injury and Illness Data Collection Form*. The data collected are from the same sources as, but less detailed compared to, the SOII survey. OSHA regional offices use the DART ("*D*ays *A*way, *R*estricted, or *T*ransferred") incidence rate to identify worksites for intervention. The DART rate is calculated by *dividing the total number of cases* resulting in at least one day away from work and/or one day of job restriction/transfer *by the total hours worked* and *multiplying* that result *by 200,000.*

For example, for the year 2007, 235 Maine worksites were identified as having a DART rate of 5.0 or higher per 100 full-time employees (compared to the national DART rate of 2.1 per 100 full-time employees). These businesses were notified by OSHA and encouraged to identify and correct any safety hazards in anticipation of OSHA inspection. Selected employers could conduct their own safety inspections, hire a consultant for that purpose, or utilize safety consultants from an OSHA voluntary safety program including SafetyWorks! (specifically mentioned in the

OSHA notification). Some were actually inspected for violations by OSHA. For more information on the ODI, go to http://www.osha.gov/as/opa/foia/hot-14.html .

Census of Fatal Occupational Injuries

Since 1992, the BLS has been in another partnership with the federal Bureau of Labor Statistics to administer the Census of Fatal Occupational Injuries (CFOI) program for Maine. The CFOI program collects data on all fatal occupational injuries and illnesses. The data are published in an annual series titled "*Fatal Occupational Injuries in Maine*".

The CFOI program is a federal/state cooperative program. It was created in 1990 by the U.S. Department of Labor, Bureau of Labor Statistics and includes all 50 states and the District of Columbia. The program was established to determine a true count of work-related fatalities in the United States. Prior to CFOI, estimates of work-related fatalities varied because of differing definitions and reporting sources. The CFOI program collects and compiles workplace fatality data that are based on consistent guidelines throughout the United States.

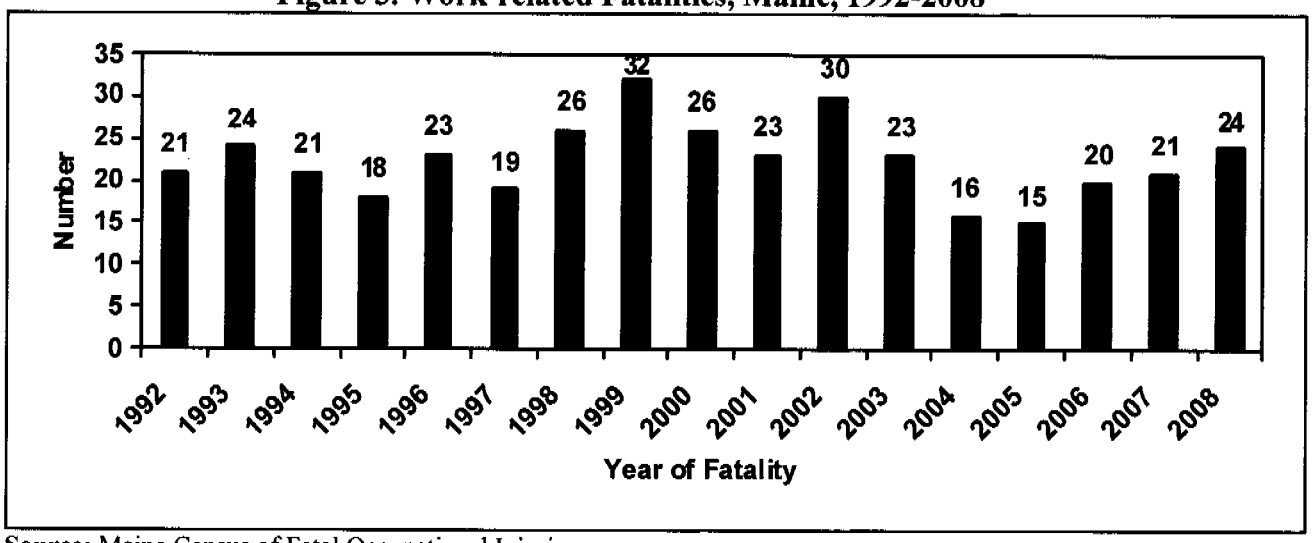
A death is considered work-related if an event or exposure resulted in an employee fatality while in work status, whether at an on-site or off-site location. Private and public sector (state, local, and county government) are included. Fatalities must be confirmed by two independent sources before inclusion in the CFOI. Sources in Maine include death certificates, the WCB *First Report of Occupational Injury or Disease*, and fatality reports from the following agencies and sources: 1) the Chief Medical Examiner's Office; 2) the Department of Marine Resources; 3) the Maine State Police; 4) the Bureau of Motor Vehicles; 5) the U.S. Coast Guard; 6) OSHA reports; and 7) newspaper clippings and other public media.

Only fatalities due to injuries are included in the CFOI. Fatalities due to illness or disease tend to be undercounted because the illness may not be diagnosed until years after the exposure or the work relationship may be questionable. Occupational illnesses are, therefore, excluded from the state CFOI program as required by the Federal Bureau of Labor Statistics that provides funding for this program.

1

Fatal Occupational Injuries, Maine, 1992-2008. Figure 3 shows the numbers of work-related fatalities recorded in Maine from 1992-2008.

Figure 3. Work-related Fatalities, Maine, 1992-2008



Source: Maine Census of Fatal Occupational Injuries

Table 6. Fatal Occupational Injuries by Industry and Event/Exposure, Maine, 1992-2008

Industry Division	Total	Trans-portation Accidents Highway & Non-highway	Contact with Objects & Equipment	Falls	Exposure to Harmful Substances	Assaults & Suicides	Fires & Explosions
Total	**382**	**192**	**78**	**48**	**38**	**19**	**7**
Agriculture, Forestry & Fish.	96	66	6	5	19	--	--
Manufacturing	57	15	32	10	--	--	--
Transportation & Public Utilities	63	47	7	4	5	--	--
Construction	49	10	11	16	9	--	3
Services	39	15	13	6	--	5	--
Retail	23	11	--	6	--	6	--
Government	20	12	3	--	--	5	--
Wholesale	14	14	--	--	--	--	--
Other/Nonpublishable & Unknown	21	2	6	1	5	3	4

Source: Census of Fatal Occupational Injuries

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

Employer Substance Abuse Testing

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

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

The Maine Substance Abuse Testing Law 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 policies -- a model job applicant testing policy was developed by the MDOL in 1998 and a model probable cause testing policy in 2000 -- to help employers write substance abuse policies for their workplaces.

2) The Maine Department of Health and Human Services (DHHS), which licenses testing laboratories and the Office of Substance Abuse Services within DHHS which reviews and approves employee assistance programs (EAPs) for employers who do probable cause or random and arbitrary testing; any employer with more than 20 full-time employees must have a functioning EAP prior to testing their employees

The following table and graph show the trend of non-federally-mandated drug testing from 1999 through 2008.

Table 7. Substance Abuse Testing

Yearly Totals by Type of Test
Applicants/Employees
1999-2008

Year	Number of Employers w/ Policies	Total Tests	Total Positives	Percent Positive	Applicant Tests	Applicant Positives	Percent Positive	Probable Cause Tests	Probable Cause Positives	Percent Positive	Random Tests	Random Positives	Percent Positive
2008	384	23.437	1,086	4.7	22,477	1,045	4.7	13	2	15.4	947	37	3.9
2007	350	22,641	1,110	4.9	21,700	1,076	5.0	5	4	80.0	936	30	3.2
2006	325	18,112	853	4.7	17,364	824	4.7	18	2	11.1	730	27	3.7
2005	310	17,742	749	4.2	16,876	706	4.2	18	9	50.0	863	34	3.9
2004	287	17,428	826	4.7	16,702	803	4.8	6	1	16.7	720	22	3.1
2003	271	16,129	761	4.7	15,345	727	4.7	29	7	24.1	755	27	3.6
2002	252	13,128	642	4.9	12,595	624	5.0	10	0	--	523	18	3.4
2001	239	16,492	730	4.4	15,947	716	4.5	8	1	12.5	537	13	2.4
2000	226	18,827	765	4.1	18,164	748	4.1	12	1	8.3	651	16	2.5
1999	200	20,725	691	3.3	20,118	660	3.3	9	4	44.4	598	27	4.5

Indicates a value of less than 0.05%

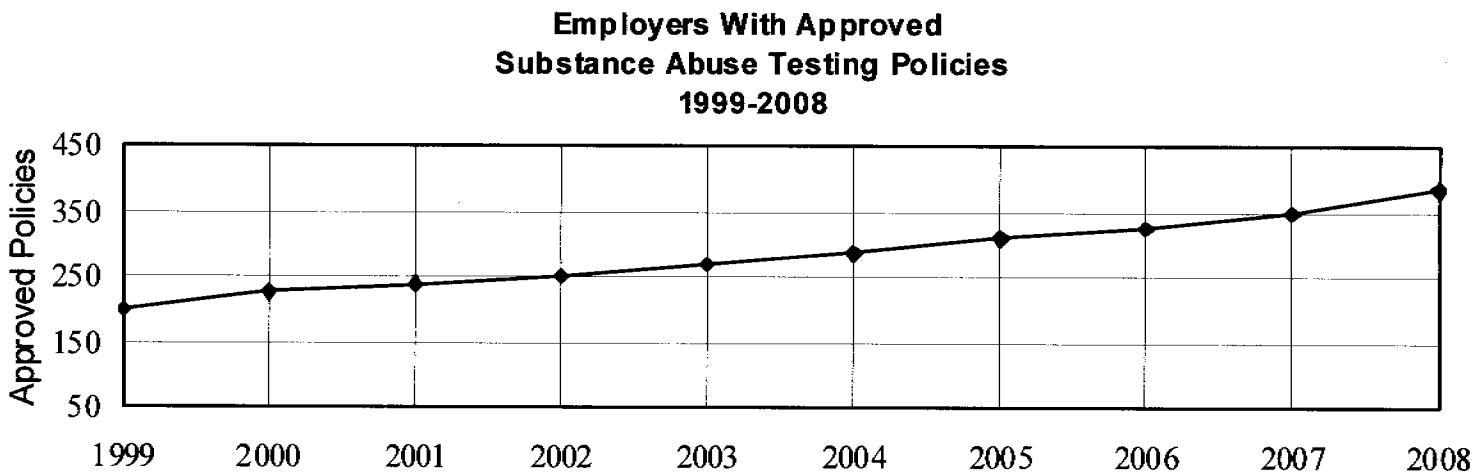


Figure 4.

3B. RESEARCH PROJECTS OTHER THAN ANNUAL

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

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

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) program. In 2003, the MDOL completed 4 FACE case studies: 2 fatalities on electrocutions, one involving a bucket loader and one on workplace homicide. These reports can be found at: http://www.maine.gov/labor/labor_stats/publications/face/index.html

With no funding from NIOSH, the Maine BLS has again implemented its own occupational fatality reporting program. These Occupational Fatality Reports will be made available as widely as possible to draw attention to the conditions and behaviors resulting in workers' deaths.

One retrospective study published in 2008 focused on work-related deaths due to motor vehicle accidents in Maine. Of note: From 1998 to 2008:

- There were 429 work-related fatalities
- There were 64 incidents that accounted for 77 (18.0%) motor vehicle related deaths
- There were 28 two-vehicle and 29 single vehicle accidents
- 7 workers were killed while working around motorized vehicles

Further information is available at:
http://www.maine.gov/labor/labor_stats/publications/face/0109.pdf

Internships

The Bureau employed three interns during the summer through the Margaret Chase Smith program. Two handled projects related to workplace safety and health. The third assisted the Director of Migrant and Immigrant Services with outreach efforts targeting migrant workers in agricultural settings.

An Evaluation of the Expedited Informal Settlement Agreement Program (EISA)

One intern worked with staff in the Research & Statistic Unit that had developed an evaluation model to assess the effectiveness of the Expedited Informal Settlement Agreement Program (EISA). EISA is a Federal OSHA program that offers small private sector employers penalty reductions with conditions. An employer will get a penalty reduction if the employer abated the cited workplace hazards on a timely basis and, in addition, requests a work-site safety consultation and/or participates in safety training. The consultation or training is provided by the Bureau using safety consultants funded under the federal OSHA Consultation grant.

During the evaluation period of 2005-2008, Bureau provided consultation and training to 306 EISA employers. Cumulatively, the BLS consultants had identified 2,279 workplace hazards in addition to the 2,450 Federal OSHA cited safety violations. The number of workers protected by the abatement of these hazards identified by the BLS consultants and Federal OSHA compliance officers totaled 42,732 and 19,682 respectively. While the work group concluded that the program needed stricter controls and better feedback procedures, it clearly provided addition protection for workers.

An Evaluation of the Data from the Northern New England Poison Center (NNEPC)

Another project was conducted in cooperation with the Maine Center for Disease Control and Prevention. This project included a review case reports from the Northern New England Poison Center (NNEPC), collection of key data elements related to workplace exposures to chemicals, and the analysis of its potential value for prevention and surveillance. The intern visited

NNEPC weekly and searched their database over a specific timeframe for cases where the individual calling identified an exposure due to a job type, an industry type, or a workplace location. Based on a pilot of reviewing thirty cases, specific variables were identified, searched for in each case, and then coded using national standards. The data set resulted in 475 cases with 45 variables for calls received in the years 2007 and 2008. Calls that are made to NNEPC can be by medical providers for clarification on treatment, from people asking basic information questions on medications, poisons and chemicals, or from people who have had contact with a problem substance and want clinical advice.

From the work we concluded that the NNEPC case reports can be an independent data source for identifying substance exposure and problems. On the downside it is not a source that could be linked to individual cases or employers in the WC system which would provide lost time amounts and costs. As such we can use it to help our general prevention programs but not individual employers and situations. (NNEPC calls are considered medical records and sharing the data could violate the confidentiality of the caller if given in the narrative unless a case report becomes part of the Occupational Disease Reporting System).

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 (2004-2008). There were 5,777 (41.8% of the) cases with no RTW date for the year 2008 as of the tabulation of this data in December of 2009. 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 provided 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, 2004-2008

	2004	2005	2006	2007	2008
First Reports with an incapacity Date	15,719	15,290	14,857	14,958	13,946
Of those, cases lacking a RTW (return-to-work) date	6,928	6,590	6,086	6,556	5,777
Raw percent lacking RTW date	44.1%	43.1%	41.0%	43.8%	41.4%
Cases lacking a RTW date and fatal or compensable cases (and therefore may not have RTW date legitimately)	3,679	3,595	3,385	3,348	2,974
Cases lacking a RTW date and not fatal or not possibly still out	3,249	2,995	2,701	3,208	2,803
Minimum percentage without a valid RTW date	20.7%	19.6%	18.2%	21.4%	20.1%

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 2008, but the system is not geared to tell us how many worker-years were lost during 2008 for injuries that occurred *before* 2008. 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 holes, 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.

Costs data

The individual case cost data from the WC system is now available and the BLS is in the process of developing useful representations of it. One product already in use compares the total and average case costs for an employer to the total and average case costs for the employer's industry and for total and average case costs in the state and does so over a number of years. It has been used to show the effect of a change in case management for one company and for overall progress in another. In the next few years, we should be able to incorporate the cost data into tabulations that will be useful 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

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 is to evaluate the data currently available on work-related injuries and illnesses and to review efforts to prevent such injuries and illnesses. The Work Group will also identify ways to improve the collection and analysis of the data and to enhance related prevention efforts. Members were chosen to be broadly representative of those with interests and exper-

tise in OSH and workers' compensation. In 2008, the Work Group put its efforts regarding data collection and analysis into defining specific problems and formulating specific recommendations concerning those problems. The results of this work will be reported to the legislature in mid-to-late 2009. On the prevention side, a survey was developed to assess employers' attitudes toward web-based safety training. The results of this survey suggest that computer usage for prevention depends on the employer/owner's familiarity with computers. This means that we have to promote alternatives to computer-based services to reach the smaller employers (1-50 employees).

5. 2009 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 were 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

Data Outreach Initiative

In 2004, the Research and Statistics Unit of the BLS intensified its efforts to place its accumulated data and data-related services before the public. This outreach initiative took the form of such items as a 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.

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 33 locations qualified from 10/01/2008 to 12/10/2009. These were:

SHARP locations:

Borderview Rehab & Living Center, Van Buren
CM Almy, Inc., Pittsfield
Franciscan Home, Eagle Lake
The Hinckley Company, Trenton
HP Hood, Portland
Limington Lumber, E. Baldwin
Marden's, Inc., Biddeford
Marden's, Inc., Calais
Marden's, Inc., Gray
Marden's, Inc., Presque Isle
Marden's, Inc., Lewiston (Locust St.)
Marden's, Inc., Lewiston (Main St.)
Marden's, Inc., Waterville
Marden's, Inc., Waterville (Warehouse)
Marden's, Inc., Ellsworth
Market Square Health Care Center, South Paris
Mercy Home, Eagle Lake
Robbins Lumber, Searsmont
CH2M Hill, Biddeford
Jotul North America, Gorham
Lyman Morse Boatbuilder, Thomaston
Deering Lumber, Biddeford
Brockway-Smith Co, Portland
Peavey Manufacturing, Eddington
Madigan Estates, Houlton
Cianbro Fabrication Corp., Pittsfield
Dearborn Precision Tubular Products, Fryeburg
Fastco, Lincoln
Reed & Reed, Inc., Woolwich
Lavalley Lumber, Sanford
Lonza, Rockland
Yachting Solutions,Rockport
Northern Aquatics, Eagle Lake

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 23 SHAPE employers. They are:

Berwick Fire (Berwick)
Gardiner Fire and Rescue (Gardiner)
Town of Brunswick (Brunswick)
Town of Kennebunk (Kennebunk)
Bangor Public Works (Bangor)
City of Caribou (Caribou)
Westbrook Public Services (Westbrook)
North Lakes Fire and Rescue (Aroostook County)
Hampden Water District (Hampden)
United Technologies Center, Bangor
Westbrook Fire Department (Westbrook)
Caribou Fire and Rescue (Caribou)
Farmingdale Fire Department (Farmingdale)
Paris Fire Department (Paris)
Greater Augusta Utilities District (Augusta)
Eco-Maine (Portland)
Northern Penobscot Tec (Lincoln)
Farmington Fire and Rescue (Farmington)
University of Maine-Blueberry Farms (Jonesboro)
Standish Fire Department (Standish)
Loring Fire Department (Limestone)
Fort Fairfield Fire Department (Fort Fairfield)
Mapleton Fire Department (Mapleton)

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 was only one bill passed in the First Regular Session of the 124th Legislature directly impacting occupational safety and health. That was 2009 Public Law, chapter 201 (LD 154) An Act To Enhance the Safety of Forestry Workers and Contracted Farm Workers. This bill adds migrant and seasonal farm workers to the law providing protections for forestry workers. Farm labor contractors who are required to register under the federal Migrant and Seasonal Farmworker Protection Act are required to file their federal registration with MDOL, listing a contact within the state. They are also required to provide first aid training, first aid kits and safe transportation for their workers.

There were two other bills with some OSH-related impact. 2009 PLc 133 (LD 549), An Act To Amend the Employment Practices Law Regarding Substance Abuse Testing, amended the Substance Abuse Testing law to allow the use of any "federally recognized substance abuse test." Essentially, this bill expanded the allowable tests beyond urine to include hair, sweat and saliva. The other, 2009 Resolves, chapter 70 (LD 1094), Resolve, To Study Safety Measures Relating to Open Trenches and Excavations, requires the Department of Public Safety and the Department of Transportation to lead a work group to study trench and excavation safety during off-work hours and report back to Joint Standing Committee on Transportation by February 1, 2010. BLS is to provide technical assistance to this work group from the SafetyWorks! staff.