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

Submitted to the 125th Maine Legislature

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We are pleased to submit to the Governor and the 125th 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 in 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, Commerce, Research and Economic Development and Joint Standing Committee on Insurance and Financial Services by February 15 of each year.

Workers' Compensation Board

The Workers' Compensation Board has adopted a Strategic/Transition Plan to help maintain the stability of the workers' compensation system in Maine. Overall, dispute resolution is performing at high levels of efficiency; compliance with the Workers' Compensation Act is high; frequency of claims is down; compensation rates have dropped 56 percent since 1993; MEMIC has recently declared a $12 million dividend to Maine businesses; and the Board has reduced the assessment to employers by approximately $3 million over the past two years, all of which contribute to one of the more stable workers' compensation systems in the country.

During the past seven years the Workers' Compensation Board has transitioned from an agency whose focus was mainly dispute resolution to one which provides effective regulation, improved compliance, and strong advocacy for injured workers. We are working to control medical costs through a newly adopted fee schedule and are addressing the problem of employee misclassification.

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

There was a major transition in staff leadership with key positions changing this year. The Governor appointed a new Executive Director and key staff retired and were replaced.

This Annual Report should provide the Governor and the Legislature with a framework from which to analyze the Board's workings and assess the effect these personnel changes have made.

The seeds of administrative changes at the Board were sewn in 2004, when the Governor worked with both labor and management to ensure the passage of Public Law 2004 Chapter 608. The intent of this 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 worked toward a resolution of all of the gridlock issues and functions 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 studies; electronic filing mandates; Rule revisions; legislation; compliance issues; independent medical examiners; worker advocate resources and reclassifications; dispute resolution issues; increase in compliance benchmarks; independent contractors; a Facility Fee Schedule; a data gathering project; and employee misclassification.

The importance of Chapter 608 cannot be overly emphasized. The State of Maine has gradually improved its national standing on workers' compensation costs and an effective and efficient Board help to perpetuate this positive trend. Decisions are less regularly made by the Chair which means, in large part, the parties of interest are reaching consensus more often on decisions that impact their constituencies.

It was not too long ago that Maine was one of the costliest states in the nation for workers' compensation. Recent articles have highlighted Maine's achievements during the past few years. One noted: "The experience in Maine … clearly demonstrates that significant reduction in costs, medical, and total benefits are possible."

Various reports comparing Maine workers' compensation costs to the other states demonstrate Maine has improved significantly in lowering its costs. "Maine is one of the states with the largest decrease in benefit costs"; Maine is approaching the national average for indemnity benefits, medical benefits, and total cash and medical benefits; Maine's rank is 34th among the 51 jurisdictions requiring workers' compensation.

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 is working towards a balance between reasonable costs and reasonable benefits, all within the Governor's policy of keeping Maine fair-minded and competitive.

During the First Regular Session of the 125th Legislature, eight bills affecting workers' compensation were enacted. They are:

1. LD 731, *An Act To Terminate the Authorization of the Maine Self-Insurance Guarantee Association To Serve as a Statistical Advisory Organization for Self-insurers*, P.L. 2011, Chapter 83;
2. LD 768, *An Act To Amend the Laws Relating to Group Trusts Established by Group Self-insurers of Workers' Compensation Benefits*, P.L. 2011, Chapter 98;
3. LD 1056, *An Act To Increase the Availability of Independent Medical Examiners under the Workers' Compensation Act of 1992*, P.L. 2011, Chapter 215;
4. LD 1099, *An Act Concerning Independent Contractors in the Trucking and Messenger Courier Industries*, P.L. 2011, Chapter 176;
5. LD 1244, *An Act Regarding Payment of Medical Fees in the Workers' Compensation System*, P.L. 2011, Chapter 338;
6. LD 1268, *An Act To Allow the Repayment of Improperly Awarded Workers' Compensation Benefits*, P.L. 2011, Chapter 361;
7. LD 1301, *An Act To Amend the Laws Governing Security Deposits of Workers' Compensation Self-insurers*, P.L. 2011, Chapter 180;
8. LD 1515, *An Act To Clarify the Workers' Compensation Insurance Notification Process for Public Construction Projects*, P.L. 2011, Chapter 403.

The legislature carried over two bills that could have a significant impact on our Workers' Compensation system. The first, LD 1314, *An Act To Standardize the Definition of "Independent Contractor,"* would provide a uniform definition used to determine who is an "independent contractor" and who is an "employee" for workers' compensation and employment security purposes. The second bill carried over, LD 1571, *An Act To Amend the Laws Governing Workers' Compensation*, is intended to overhaul much of the existing workers' compensation system. The focus seems to be on addressing how partial incapacity benefits are paid and introduces provisions that might favor business interests. These bills will be considered by the second regular session of the 125th legislature.

The Workers' Compensation Board made significant progress on its objective to adopt a medical facility fee schedule. The legislature in 1992 mandated the adoption of a fee schedule to help contain health care costs within the system.

The objectives of the fee schedule include: providing access to quality care for all injured workers, insuring providers are fairly paid, reducing and containing health care costs and creating certainty and simplicity in this complex area.

In the spring, the Board voted to adopt a schedule developed by staff in consultation with Ingenix consultants. The Rule was the subject of public comment, revision, and final adoption in November. It became effective on December 11th. The Rule in conjunction with the legislature's enactment of LD 1244

is best characterized as a “work in progress”. Although there is a fee schedule, it is anticipated it will be reviewed, possibly revised, and regularly updated.

This year, the Board reached consensus on a number of issues and has moved forward on matters that have hindered its efficiency and effectiveness in the past.

There is still much to do to improve Maine Workers’ Compensation system. We continue to work on employee misclassification, injured employees are being encouraged to explore vocational rehabilitation when appropriate, we are encouraging cooperative job placement efforts with the Bureau of Employment Services, and, we are working to insure reporting compliance within the system.

In recent years, the Maine Workers’ Compensation Board has transitioned from an agency whose energies were mainly focused on dispute resolution to one which provides effective regulation, improved compliance, strong advocacy for injured workers, and open and equal treatment of the business community.

Bureau of Insurance

The advisory loss costs, the portion of the workers’ compensation rates which cover projected loss and loss adjustment expenses, decreased by 6.9 percent in 2012 after increasing by 0.4 percent in 2011. The advisory loss costs are now, on average, nearly 50 percent lower than they were at the time of the last major reform to the workers’ compensation system in 1993. Although medical costs slightly decreased in policy year 2009, the average medical cost per case has risen significantly since policy year 2000. This development is important because medical benefits constitute 57 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, as seen below.

Industry Group	Percent Decrease
Miscellaneous	-11.3%
Manufacturing	-6.5%
Office Clerical	-5.0%
Contracting	-7.0%
Goods & Services	-5.3%

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

Maine Employers' Mutual Insurance Company (MEMIC) although it actively competes in the voluntary market, functions as the insurer of last resort in Maine. Although MEMIC's market share has dropped from 63.6 percent in 2006 to 61.5 percent in 2010, 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.

MEMIC, which writes coverage both competitively and for employers not able to obtain coverage from other sources, had a 0.7 percent decrease in market share in 2010. MEMIC's market share has declined by 3.8 percent since 2004. Twenty-one insurers wrote more than $1 million each in annual premium in 2010, one less company than in 2009. The top 10 insurance groups wrote 94 percent of the workers' compensation insurance in the state in 2010, one percentage point less than in 2009.

Self-insured employers represented over 47.5 percent of the overall workers' compensation market in 2010, the fourth consecutive increase after reaching a low of about 40 percent in 2005. Self-insurance continues to be a viable alternative to the insurance market for some employers.

Bureau of Labor Standards

The role of the Bureau of Labor Standards (BLS) of the Maine Department of Labor (MDOL) in the Workers' Compensation system is facilitating the prevention of occupational injuries and illnesses. This is accomplished by a variety of means.

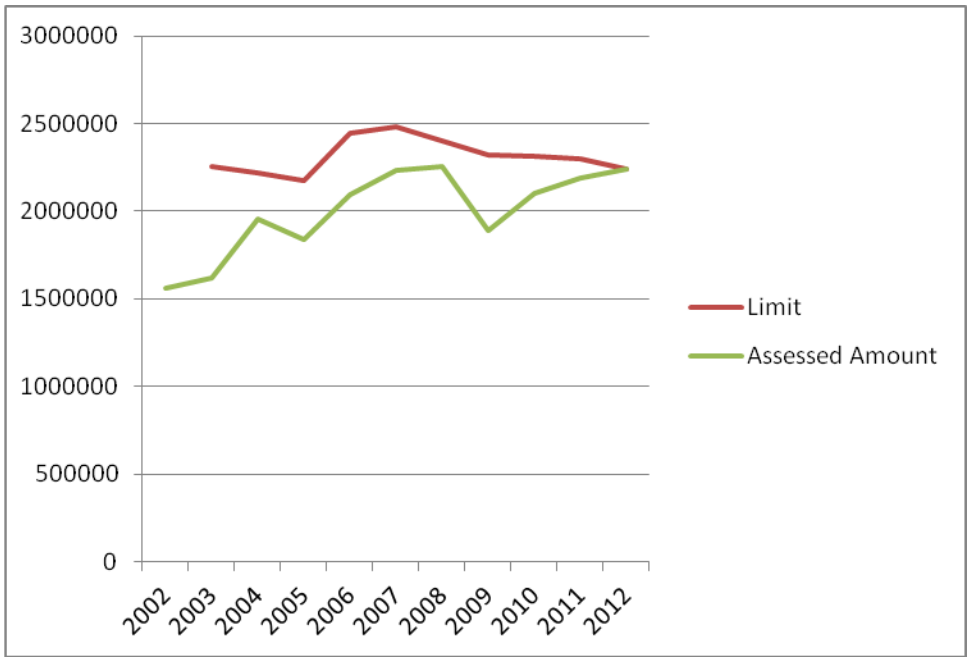
Under Maine statute, Title 3 MRSA §42, the Bureau has the authority to collect and analyze statistical data on work-related injuries and illnesses and their effects. To minimize employer effort and maximize data quality and availability the Bureau partners with the Maine Workers' Compensation Board (WCB) and federal agencies, coordinating data collection with them where possible.

Title 26 MRSA §42-A also charges the Bureau with establishing and supervising safety education and training programs directed towards helping employers comply with OSHA requirements and best practices for prevention. Additionally, MDOL is responsible for overseeing the employer-employee relationship in the state through enforcement of Maine labor standards laws and the related rules, including occupational safety and health standards in the public sector. For enforcement purposes, the Bureau partners with the federal Occupational Safety and Health Administration (OSHA) and the Wage and Hour Division of the Employment Standards Administration in the federal Department of Labor

maximizing coverage while minimizing resources. By accomplishing its mandated functions, the Bureau complements the efforts of Federal OSHA, WCB, and insurers enabling employers the means for the prevention of workplace injuries and illnesses.

The employer visits the on-site training classes offered through the SafetyWorks! Training Institute, and the data and analysis are all currently available free of charge because resources are provided by a dedicated state revenue fund collected from insurers and self-insured employers and employer groups. The revenue for the fund is assessed on these insurers and self-insured employers based on their workers compensation benefits (minus medical payments) paid out and assessed among them in proportion to the amounts they paid out to the total. The total of the amount the Bureau can collect is capped at 1 percent of the total benefits paid out.

Over time, both the number and rate of injuries and illnesses have decreased. This, and efforts at directly curbing case costs, have driven down the benefits paid out by the insurers and self-insured employers. Likewise, the cap has steadily declined to the point that last year, in order to sustain the services, the Bureau had to assess at the cap. The diagram below illustrates the cap coming down and meeting the program budget needs. The amount the Bureau needed to sustain its programs fluctuated from year to year because of holdovers—savings from one year carried over to the next. (The holdovers were purposely not held longer than a year to avoid accumulating money that might be transferred to other uses.) For the first time, transitioning from the state fiscal year 2011 to that for 2012, the Bureau had no holdover and had to assess the full amount to pay for the services.



Going forward, the Bureau may be faced with a decision to start cutting services or to request supplemental or alternative funding. The SETF is important to the services provided not only for the

direct support the funds offer but also because they provide matching funds for several federal grants that totaled $880,208 in federal fiscal year 2012. In order to qualify for that federal money the Bureau is required to match in the amount of about $200,000. The matching money comes from the SETF.

I) What the results data shows

There is a striking contrast between where things were 20 years ago compared to the latest data. In any given year the change from the year before is not striking, but as you read this report, pay attention to the longer-term changes.

Summary of Significant Measures

Data Programs	Result Measures
Workers Compensation Case Data	• 13, 065 disabling cases coded in 2010 ○ Increase of 383 (3.0%) from 2009 ○ Decrease of about 29% from 2001 ○ Decrease of about 68% from 1991
Survey of Occupational Injuries and Illnesses (SOII) Rates	• 5.6 Total OSHA recordable cases in 2010 ○ Unchanged from 2009 ○ Decrease of one-third from 2001 ○ Decrease of one-half from 1991 • 3.0 Lost Workday Cases in 2010 ○ 3.1 in 2009 ○ Decrease of one-third from 2001 ○ Decrease of one-half from 1991 • 1.5 Cases with Days Away From Work in 2010 ○ Unchanged from 2009 ○ Decrease of one-third from 2001 ○ Decrease of two-thirds from 1991
Census of Fatal Occupational Injuries (CFOI)	• 19 fatalities in 2010 ○ Up from 16 in 2009 ○ Highest in 1999 with 32 ○ Lowest in 2005 with 15

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Introduction

The original agency, known as the Industrial Accident Board, began operations on January 1, 1916. There was a name change in 1978 when it became the Workers' Compensation Commission. In 1993, there was another name change and became the Maine Workers' Compensation Board.

The major programs of the Board fit into six areas: (1) Dispute Resolution; (2) Compliance – Monitoring, Auditing, and Enforcement (MAE) Program; (3) the Worker Advocate Program; (4) Independent Medical Examiners/Medical Fee Schedule; (5) Technology; and, (6) Central and Regional Office support.

The implementation of Standard Operating Procedures (SOPs), our claims management process, has resulted in a reduction and in some cases an elimination of backlogs and an efficient dispute resolution system. A Law Court decision in 2004 on our Independent Medical Examiner (IME) program reversed some of the progress. The Law Court holding in *Lydon v. Sprinkler Systems* resulted in a reduction in the number of independent medical examiners. This caused delays to the formal hearing process. The effects of this decision are still being experienced. Cases without need for an IME are processed within eight months, while cases with an IME are taking over 11 months to make their way through the formal hearing system. The Board's ability to attract doctors in appropriate specialties to serve as independent medical examiners has been difficult and in order to ameliorate the problem the Board raised the fee schedules for the IME doctors. In addition, the legislature enacted LD 1056, An Act To Increase the Availability of Independent Medical Examiners, which has provided some additional help. The number of IME physicians was 30 pre- *Lydon*; 11 post- *Lydon*; and 26 currently.

The MAE Program has improved payment and filing compliance. MAE's goals 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 percent in all categories, a major improvement since the inception of MAE.

The Worker Advocate Program gives injured workers access to representatives. This improves the likelihood of receiving statutory benefits. Nearly 50 percent of injured workers are represented by advocates at the mediation level and over 30 percent are represented by advocates at the formal hearing level.

The Board is not a General Fund agency. It receives funding through an assessment on Maine's employers. The Legislature established this assessment as a revenue source to fund the Board. The assessment is capped by statute.

The Board's assessment was adequate to fund the Board's operations until FY97. In 1997, the Board implemented legislation expanding the Worker Advocate Program and created the MAE Program. The cost of these operations was in excess of the amount allocated for the tasks. The cost of these programs,

increases in employee salaries and benefits, and general inflation created budgetary problems for the Board. In spite of the obstacles, the Board found the wherewithal to reduce the assessment to Maine's employers over the next several years by millions.

The Legislature, recognized the urgency of the Board's situation in FY02, and responded in two ways: (1) it authorized the use of $700,000 from the Board's reserve account; and (2) it authorized a one-time increase in the maximum assessment of $300,000 to provide temporary assistance to the Worker Advocate Program. The Legislature also recognized the urgency of the Board's situation in FY03, 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 and 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 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 positive assessment 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.

Prior to the inception of the Maine Workers' Compensation Act of 1992, Maine was one of the costliest states in the nation for workers' compensation coverage. Recent studies demonstrate an improvement in Maine in comparison to other states. Maine has gone from one of the costliest states in the nation to one that is approaching average costs for both premiums and benefits. These reductions fit within the Governor's policy of making the system fair and competitive for the employees and employers of Maine.

Enabling Legislation and History of Maine Workers' Compensation

I) Enabling Legislation

39-A M.R.S. § 101, et seq. (Maine Workers' Compensation Act of 1992)

On January 1, 1993, Title 39, which was 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.
- See Executive Summary on the eight bills enacted by the 125th legislature.

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. Under our common law tort system, an injured worker had to sue his employer and prove fault to obtain compensation. Workers' compensation was conceived as an alternative to the tort system for injured workers. 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 an incapacity is related to work; how much money is due to the injured worker; and, how much earning capacity has been 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, although today appeals are discretionary. The Supreme Court decides issues of legal interpretation, and does not conduct a trial de novo. 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 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.

In the early 1970's time limits were removed for both total and partial wage loss benefits. Inflation adjustments or cost of living adjustments (COLAs) were added. The maximum benefit was set at 200 percent of the state average weekly wage. Also, legislation was 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. Statutory changes and evolving medical knowledge brought a new type of claim into the system. The law no longer required an injury to occur "by accident." Doctors began to connect injuries such as carpal tunnel syndrome and repetition overuse conditions to work and thus brought these injuries within the coverage of workers' compensation.

This type of injury frequently 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 the 1980s, 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 a 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 related to 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 three weeks.

In 1992, a Blue Ribbon Commission was created to examine and recommend changes. It made a series of proposals which were ultimately enacted. Inflation adjustments for both partial and total benefits were eliminated. The maximum benefit was set at 90 percent 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 incapacity. Additionally, the provisions of the statute concerning access to legal representation were changed making it more difficult for injured workers to secure the services of private attorneys.

Maine Employers' Mutual Insurance Company (MEMIC) 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 MEMIC has played a critical role in stabilizing the workers' compensation environment in Maine.

Based on a 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 initially consisted of four Labor 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 who ran the agency. In 2004 legislation was passed that reduced the Board to three Labor and three Management members. The Executive Director became a gubernatorial appointment, confirmed by the Senate and serving at the pleasure of the Governor.

The Board appoints Hearing Officers who adjudicate formal hearings. A two-step process replaced informal conferences: troubleshooting, and mediation.

In 1997, legislation was enacted providing more structure to the claims 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.

Over recent years, both the regulatory and dispute resolution operations the Board have experienced significant accomplishments. The dispute resolution function has developed an efficient informal process. Between troubleshooting and mediation, approximately 75 percent 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 10.8 months for processing claims. The Board of Directors was gridlocked when appointing Hearing Officers in 2003 and 2004, resulting in slower claims processing at the formal level. This problem was exacerbated when the Law Court decided in *Lydon v. Sprinkler Systems*. That decision significantly reduced the number of independent medical examiners (IME). The pool went from 30 to 11. The appointment of hearing officers gridlock was broken as hearing officers were appointed to seven year terms. The IME problem has improved significantly through the addition of and better compensation for Independent Medical Examiners and making it easier to qualify as an IME doctor.

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 reasonable, compared to other states, and is quite good if compared to the civil 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 have improved the task of identifying employers, typically small employers, with no insurance 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.

During the late 1990's, the Board of Directors deadlocked 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 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 a legislative committee, and 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 in recent times.

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. Governors have appointed new members to the Board since that time and as recently as this year.

Dispute Resolution

I) Introduction

The Workers' Compensation Board has regional offices throughout the State that handle dispute resolution functions. The regional offices are responsible for troubleshooting, mediation and formal hearings. Regional offices are located in Augusta, Bangor, Caribou, Lewiston and Portland.

II) Three Tiers of Dispute Resolution

On January 1, 1993, Title 39, which encompassed 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. Title 39-A establishes a three tiered dispute resolution process.

A. Troubleshooting

At the troubleshooting stage, a claims resolution specialist informally attempts to resolve disputes by contacting the employer and the employee. In this process, the troubleshooter identifies issues and attempts to resolve them. 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.

B. Mediation

At mediation, a case is scheduled before one of the Board's mediators. The parties attend or teleconference the mediation at a regional office. The typical mediation is in person. At mediation, the

employee, the employer, an 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 has each party discuss 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 completes a mediation agreement, which is signed by the parties. The terms of the agreement are binding on the parties. If the case is not resolved at mediation, it is referred for formal hearing.

C. Hearing

At the formal hearing stage, the parties are required to exchange information including medical reports and answer specific questions that pertain to the claim. After this information has been exchanged, the parties file a "Joint Scheduling Memorandum," which lists the witnesses who will testify and estimates the time needed for hearing. Depositions of medical witnesses are 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 written decision.

The number of cases entering each phase for the period 2001 through 2011 is shown in the table below:

Cases Entering Dispute Resolution

Year	Trouble Shooting	Mediation	Formal Hearing
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
2010	8,546	2,928	1,561
2011	13,660	2,362	1,440

Through the years, of 100 disputes entering Trouble Shooting more than half will go on to Mediation. Of those going to Mediation, approximately half will continue to the Formal Hearing stage.

III) Troubleshooting Statistical Summary

The following table shows, the number of filings and dispositions at Troubleshooting, the average timeframes, and number of cases pending at the end of each year for the period 2001 through 2011.

Troubleshooting Cases Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Av Days at TS
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
2010	8,546	8,303	919	27
2011	13,660	13,438	697	28

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 2001 through 2011.

Mediations Cases Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Av Days at MDN
2001	3,830	3,745	751	51
2002	3,507	3,655	603	54
2003	3,582	3,331	854	60
2004	3,303	3,395	666	62
2005	3,003	3,084	585	59
2006	2,652	2,741	496	61
2007	2,499	2,532	463	58
2008	2,428	2,488	443	55
2009	2,220	2,239	424	57
2010	2,928	2,868	452	59
2011	2,231	2,362	583	66

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 2001 through 2011.

Formal Hearing
Cases Assigned, Disposed, and Pending

Year	Assigned	Disposed	Pending 12/31	Av Months to Decree
2001	2,725	2,592	1,243	6.8
2002	2,481	2,400	1,324	7.1
2003	2,532	2,194	1,662	9.5
2004	2,458	2,414	1,706	10.9
2005	2,088	2,266	1,528	11.7
2006	1,915	2,173	1,270	11.7
2007	1,765	1,907	1,128	10.7
2008	1,680	1,728	1,080	8.4
2009	1,602	1,546	1,136	9.1
2010	1,561	1,486	1,211	8.5
*2011	1,440	1,445	1,206	10.8

* This figure represents all cases within the system. In prior years, certain cases were excluded. Claims processing has been slowed by a shortage of IME physicians in certain specialties, awaiting Medicare aproval, staff retirements, and more precise record keeping.

VI) Other

The number of cases entering the Dispute Resolution process declined steadily until 2010, when an increase was experienced. The Board is monitoring this closely and is adjusting resources.

Office of Monitoring, Audit & Enforcement

I) History

In 1997, the Maine Legislature, with the support of the Governor, enacted P.L. 1997, Chapter 486. It established the Office of Monitoring, Audit, and Enforcement (MAE) with the goals of: (1) providing timely and reliable data to policymakers; (2) monitoring and auditing payments and filings; and (3) identifying those insurers, self-administered employers, and third-party administrators (collectively "insurers") not complying with minimum standards.

II) Monitoring

The key component of the monitoring program is the production of Quarterly and Annual Compliance Reports. To ensure that the Compliance Reports would be as accurate as possible, a pilot project was undertaken. The goals of the pilot project were to: (1) measure the Board's data collection and reporting capabilities; (2) report on the performance of insurers; and (3) let all interested parties know what to expect from the Compliance Reports.

This section of our report traditionally provides data from the prior calendar year. We will continue that approach this year. The 2010 Quarterly and Annual Compliance Reports were approved by the Maine Worker's Compensation Board. The 2010 quarterly compliance in Table 1 represents static results based upon data received by the deadline for each quarter. The 2010 Annual Compliance Report represents static results based upon data received by March 21, 2011. Tables 2 and 3 show continued improvement in the performance of insurers since the pilot project.

A. Lost Time First Report Filings

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

> Benchmark Exceeded. Eighty-six percent (86%) of lost time first report filings were within 7 days.

B. Initial Indemnity Payments

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

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

C. Initial Memorandum of Payment (MOP) Filings

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

> Benchmark Exceeded. Eighty-six percent (86%) of initial MOP filings were within 17 days.

D. Initial Indemnity Notice of Controversy (NOC) Filings

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

> Benchmark Exceeded. Ninety-four percent (94%) of initial indemnity NOC filings were within 14 days.

E. Utilization Analysis

Eighteen percent (18%) of all lost time first reports were "denied" and thirty-nine percent (39%) of all claims for compensation were denied.

F. Initial Indemnity Payments > 44 Days

$51,200 was issued to claimants in penalties under Section 205(3). These monies go to injured workers.

G. Late Filed Coverage Notices

$98,600 was collected in penalties and $3,700 in penalties are awaiting resolution under Section 360(1)(B). These monies go to the State General Fund.

H. Caveats & Explanations

i. General

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

ii. Lost Time First Report Filings

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

iii. 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.

iv. 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.

v. Initial Indemnity Notice of Controversy (NOC) Filings

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

I. Corrective Action Plans (CAPs)

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

The following insurers had CAPs in place for all or part of 2010:

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

Annual Compliance Summary

Table 1 2010 Quarterly Compliance Reports

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

Table 2 Annual Compliance

	1997[1]	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Lost Time First Report Filings Received within 7 Days	37%	80%	82%	82%	86%	86%	84%	87%	89%	84%	86%
Initial Indemnity Payments Made within 14 Days	59%	83%	85%	86%	85%	87%	87%	87%	89%	89%	89%
Initial Memorandum of Payment Filings Received within 17 Days	57%	77%	81%	82%	83%	84%	84%	85%	88%	87%	86%
Initial Indemnity Notice of Controversy Filings Received within 14 Days[2]					91%	92%	89%[3]	89%	90%	94%	94%

Table 3 Percentage Change Over Time Since 1997

	1997[1]	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Lost Time First Report Filings Received within 7 Days	0%	117%	122%	124%	133%	134%	130%	136%	141%	127%	132%
Initial Indemnity Payments Made within 14 Days	0%	39%	44%	44%	44%	46%	46%	47%	49%	49%	51%
Initial Memorandum of Payment Filings Received within 17 Days	0%	36%	42%	44%	46%	48%	49%	49%	55%	54%	51%
Initial Indemnity Notice of Controversy Filings Received within 14 Days[2]					0%	1%	-2%	-3%	-1%	2%	3%

[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, two hundred two (202) audit reports have been issued. In addition to the amounts paid to employees, dependents and service providers for compensation, interest, or other unpaid obligations, $1,656,138 in penalties has been paid.

The following entities have all signed consent decrees for §359(2) for engaging in a pattern of questionable claims-handling techniques and/or repeated unreasonably contested claims:

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

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

B. Complaints for Audit

The audit program also has a Complaint for Audit form and procedure whereby the Complainant asks the Board to conduct an investigation to determine if the insurer, self-administered employer or

third-party administrator has violated 39-A M.R.S.A. Section 359 by engaging in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims and/or has violated Section 360(2) by committing a willful violation of the Act or committing fraud or intentional misrepresentation. The Complainant also asks that the Board assess all applicable penalties. Since the form and procedure were implemented, three hundred thirty-five (357) complaints have been received. As a result of these investigations, $330,316 in unpaid obligations and over $183,600 in penalties have been paid.

C. Employee Misclassification

Public Law 2009 Chapter 649 allocated funds to enhance the enforcement of laws prohibiting the misclassification of workers by establishing one Management Analyst II position and one Auditor III position within the MAE Program. To date, the MAE Program has completed 33 employee misclassification audits. The audits have covered 444 employees, $11,437,510 in payroll, $8,012,926 in "subcontractor" wages shown on 1099's, and $156,683 in "casual labor" wages not shown on 1099's and resulted in $6,024,280 in potentially misclassified wages, which may result in $1,130,537 in unpaid workers' compensation premium.

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.

Office of Medical/Rehabilitation Services

I) Medical Fee Schedule

In order to ensure appropriate limitations on the cost of health care services while maintaining broad access for employees to health care providers in the state, the 125th Maine Legislature enacted LD 1244, An Act Regarding Payment of Medical Fees in the Workers' Compensation System. The Act requires the adoption of rules establishing a medical fee schedule setting the fees for medical and ancillary services and products rendered by individual health care practitioners and health care facilities. This Act was signed into Public Law, Chapter 338 on June 14, 2011 by Governor LePage.

On November 8, 2011, the Board voted to adopt rules establishing a medical fee schedule in accordance with the statute. The National Council on Compensation Insurance, Inc. (NCCI) anticipates the new rules will generate significant savings. These rules became effective on December 11, 2011 after they were approved by the Secretary of State.

II) Medical Utilization Review

The Board has 21 organizations certified to provide workers' compensation utilization management services pursuant to Title 39-A M.R.S.A. §210 and Board Rules and Regulations Chapter 7.

III) Employment Rehabilitation

The Board has 15 providers approved to provide employment rehabilitation services pursuant to Title 39-A M.R.S.A. §217 and Board Rules and Regulations Chapter 6. In 2010, the Board received 31 applications for evaluation of suitability for vocational rehabilitation. Of the 31 applications, 28 were from injured workers, and 3 from Hearing Officers. Interestingly, in 2011 the Board again received 31 applications for evaluations of suitability for vocational rehabilitation. This year the mix was slightly different. Of the 31, 27 were from injured workers, 2 were from employers and 2 were Hearing Officer referrals.

IV) Independent Medical Examiners

The Section 312 Independent Medical Examiner System is critical to the Board's mission to serve the employees and employers of the state fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation.

A shortage of available independent medical examiners has resulted in a long waiting list of injured workers in need of independent medical examinations. In an effort to address these issues, the 125th Maine Legislature enacted as emergency legislation LD 1056, An Act to Increase the Availability of Independent Medical Examiners under the Workers' Compensation Act of 1992. This Act was signed into Public Law, Chapter 215 on June 3, 2011 by Governor LePage.

Currently, the Board has 26 health care providers on its list of qualified independent medical examiners pursuant to Title 39-A M.R.S.A. §312 and Board Rules and Regulations Chapter 4. The Board is actively recruiting physicians to serve as independent medical examiners.

In 2011, there were 404 requests for independent medical exams. This is 96 fewer than in 2010. Of the 404 requests, 231 were from injured workers, 151 from employers/insurers, 1 from a Hearing Officer, and 21 agreed upon by the parties.

Worker Advocate Program

I) Introduction

The Worker Advocate Program provides legal representation to injured workers in Board administrative proceedings (mediations and formal hearings). 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 not have retained private 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 attorney fee "prevail" standard. Under Title 39, attorneys who represented injured workers were entitled to Board ordered fees from employers/insurers if they obtained benefits for their client greater than any offered by the employer, i.e., if they "prevailed". However, under the "new" act (beginning in January of 1993), the employer/insurer has no liability for legal fees regardless of whether the worker prevails, and, in addition, fees paid by injured workers to their attorneys were limited to a maximum of 30 percent of accrued benefits with settlement fees capped at no greater than 10 percent of the settlement.

These changes, which undoubtedly reduced the cost of claims, made it 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 percent of injured workers did not have legal representation after these changes were made to the statute. This presented dramatic challenges for the administration of the workers' compensation system. By 1995, recognition of this problem 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 the pilots initial success, the Board expanded the 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 in 1997amended Title 39-A to formally create the Worker Advocate Program.

The 1997 statute created a substantial expansion of the existing operation. Most significantly, the new program required Advocates to provide representation at formal hearings in addition to mediations. The additional responsibilities associated with this 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 motions, drafting complicated post-hearing position letters, working with complex medical reports, conducting settlement negotiations, and analysis and utilization of statutory and case law.

III) The Current Worker Advocate Program

At present, the Board has 11 Advocates working in five regional offices from Caribou to Portland. Advocates are generally required to represent all qualified employees who apply to the program. This is in contrast to private attorneys who can pick and choose who to represent. The statute provides some exceptions to this requirement where 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 (commonly referred to as a “troubleshooter”) tries to facilitate a voluntary resolution of the problem. If not successful, the Board determines if the employee qualifies for the assistance of the Advocate Program, and if so, the referral is needed.

If troubleshooting is unsuccessful, cases are forwarded to Mediation. To represent an injured worker at Mediation, the Advocate Program must first obtain medical records and factual information concerning the injury and the worker’s employment. Advocates 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 Act) to injured workers. They often must explain medical issues and work restrictions and frequently must assist workers with unemployment and health insurance matters. They also provide injured workers with other forms of interim support, as needed. Many of these interactions produce evidence and information necessary for subsequent formal litigation, if the case proceeds to more formal processing.

At Mediation, the parties meet with a Mediator, present the issues, and attempt to negotiate a resolution. 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 the claim, 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, approximately 25 require formal hearing.

Cases that are not resolved at mediation typically involve factual and/or legally complex disputes. These cases typically concern situations where facts are unclear or there are differing interpretations of the Act and case law. If a voluntary resolution of issues fails at mediation, the next step is a formal hearing.

The hearing process is initiated by an Advocate filing petitions (after assuring there is adequate medical and other evidence to support a claim). Before a hearing is held, the parties exchange information through voluntary requests and formal discovery. Preparation for hearing involves filing and responding to motions, examining the worker and other witnesses who will testify, preparation of exhibits, analysis of applicable law and review 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, 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, a decision is issued or the parties agree on either a voluntary resolution of the issues or a lump sum settlement. In recent years, 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 percent 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 percent of the cases assigned in a given year for Mediation. The following table reflects the number of cases at Mediation from 2010 through 2011.

Advocate Summary

Mediation

Quarterly Filings, Dispositions, and Pending

		Number of Cases			Percent of Total
		To Formal	Disposed*	Pending	Pending
2010					
	Q1	150	324	247	52%
	Q2	326	301	272	48%
	Q3	282	310	244	50%
	Q4	248	221	271	60%
	Total	1006	1156		
2011**					
	Q1	233	265		
	Q2	233	235		
	Q3	233	180	306	
	Q4	276	216	246	42%
	Total	975	896		

*Dispositions include Resolved Prior to Mediation, Agreement at Mediation, and No Agreement at Mediation

**The Board changed how Advocate data is maintained, the first three quarters are averages.

In 2011, the number of cases handled by Advocates at mediation represents a slight decrease as compared to the number of cases taken to mediation by Advocates in 2010. The Advocate Division handled over 50 percent of the mediations (statewide) in 2011.

Over the years, the Advocate program has also represented injured workers at 25 to 32 percent 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 2010 through 2011.

Advocate Summary

Formal Hearings

Quarterly Filings, Dispositions, and Pending

		Number of Cases			Percent of Total
		To Formal	Disposed*	Pending	Pending
2010					
	Q1	150	150	358	32%
	Q2	144	130	372	31%
	Q3	95	128	339	21%
	Q4	74	107	306	26%
	Total	463	515		
2011**					
	Q1	101	107		
	Q2	101	88		
	Q3	101	81	279	
	Q4	135	98	242	20%
	Total	438	374		

*Dispositions include Decisions, Dismissals, and Lump Sum Settelements
**The Board changed how Advocate data is maintained, the first three quarters are averages.

In 2011, there was a decrease in the number of cases handled by Advocates at formal hearing, as compared to the number of cases handled by Advocates to formal hearing in 2010. There are fewer Advocate cases currently pending at the Formal Hearing level than in 2010.

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

V) Summary

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

In its first 10 years, the Program has proven its value by providing much-needed assistance to Maine's injured workers, albeit with limited resources. As a result of the limited resources, the Advocate program has experienced periods of overly high case loads which has led to chronic staff turnover. In one 12-month period (2006–2007), 42 percent 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.

Technology

The Board over the past year has implemented a number of significant changes within our information systems and their delivery. By statute, many of the information delivery platforms and application are centralized into the Office of Information Technology (OIT). We work with OIT to improve the service quality and support received. The technology budget continues to spiral upward as OIT computes all costs and attempts to allocate them on a pro-rata basis to the various agencies.

The 121st Maine Legislature enacted legislation requiring the Workers' Compensation Board to adopt rules mandating electronic forms 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, Board Directors and staff. Recommendations were forwarded to and unanimously approved by the Board of Directors.

The Board 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

shareholder review and comment before programming the necessary functions. The carriers require at least 12 months of lead time once the state's specifications are posted before they can initiate a test. Additionally, Board Rules will be updated to take advantage of the new process. The proposed rules will be reviewed with the Executive Director and the Board to find consensus on the issue.

Recently, the Board initiated changes to the EDI Proof of Coverage Rule. The change extends the time from 14 days to 30 days, within which the Insurer community has to report proof of coverage for an employer. Additionally the Board has removed confusing transactions from the Rule.

Language in the Bureau of Insurance (BOI) Statute requires workers' compensation data to be sent to the BOI via 3rd parties on a regular basis. While this language has been law for 20 years, there has never been a BOI data request. Working with BOI, we have agreed the WCC will provide the data on an "as needed" basis instead of sending data that duplicates what is already in our system and can be provided if there is a specific request.

Budget and Assessment

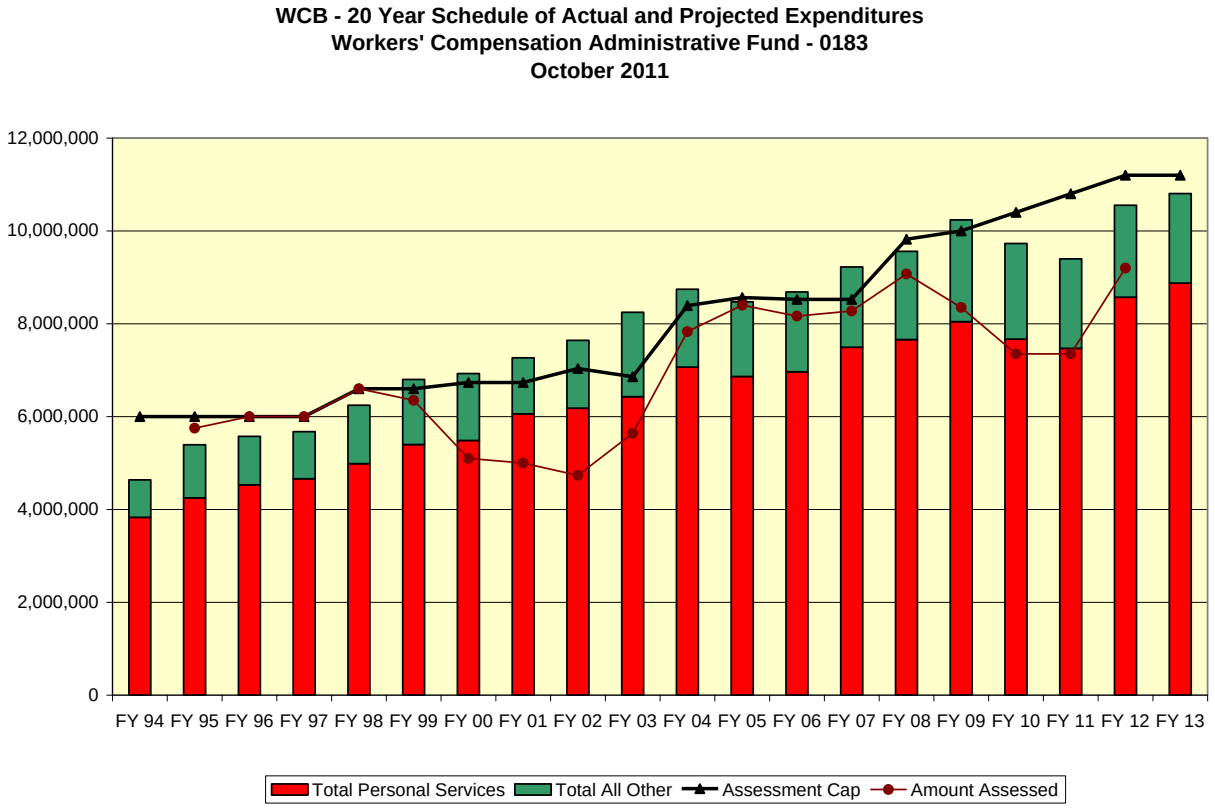
The Board is funded pursuant to a statutory assessment paid by Maine's employers, both self-insured and insurance companies. The Legislature, in creating this funding mechanism in 1992, intended the users of the workers' compensation system to pay for it. The agency was previously funded from a General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

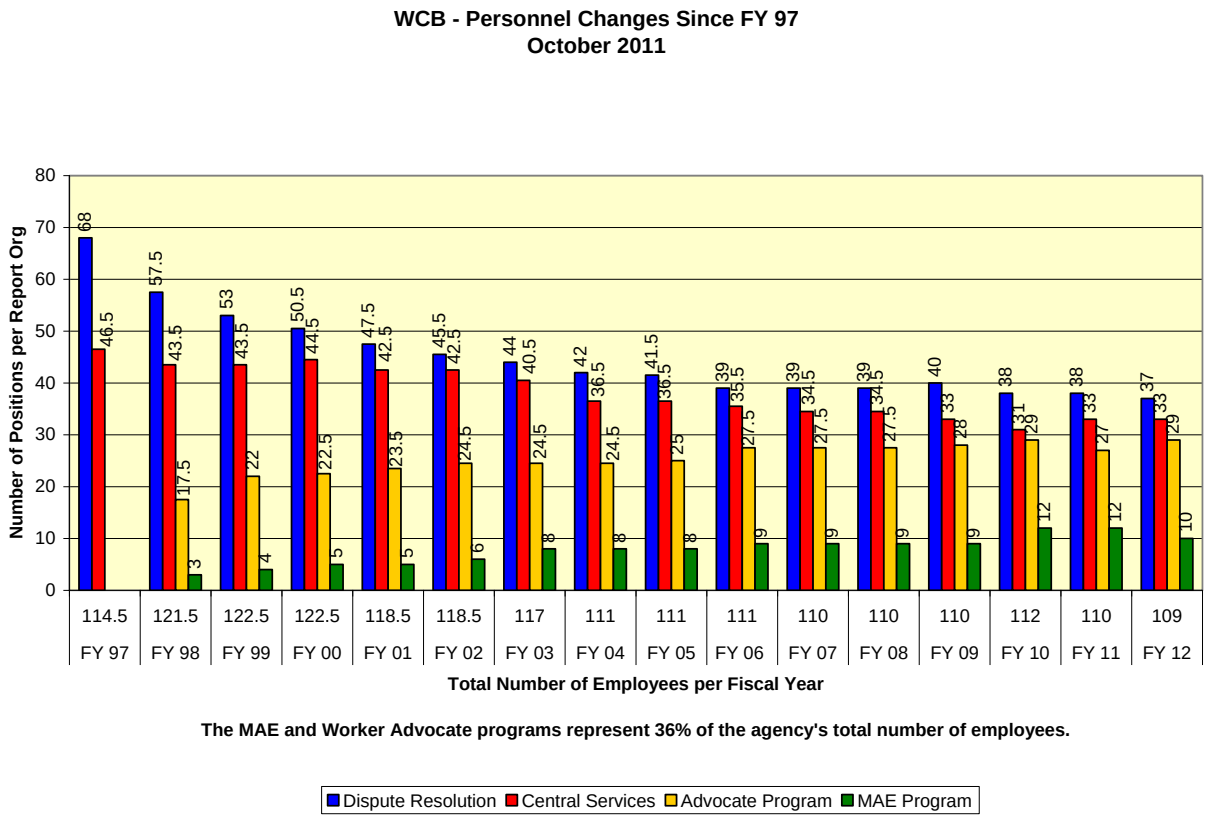
The Legislature established the assessment as a revenue source to fund the Board but capped the assessment limiting the amount of revenue which can be assessed.

The Board 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 are paid to the General Fund. 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 in fiscal year 2009, $10,400,000 in fiscal year 2010, $10,800,000 in fiscal year 2011, and $11,200,000 in fiscal year 2012. These increases have enabled the Board to submit a budget that is balanced between expenditures and revenues. The Board-approved budget totals $10,548,353 in FY12 and $10,805,163 in FY13.

P.L. 2003, C. 93 provides 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 – 21 Year Schedule of Actual and Projected Expenditures"

shows actual expenditures through FY11 and projected expenditures for FY12 and FY 13. It also shows the assessment cap and the amounts actually assessed through FY12. The bar chart entitled "WCB – Personnel Changes Since FY97" demonstrates the Board's efficient use of personnel since 1997.





Claims Management

The Claims Management Unit operates using a “case management” system. Individual claim managers process a 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 who frequently file late forms or who may be consistently late in making required payments to injured workers. Case managers in the Claims Management Unit review the carrier’s filings to ensure payments to injured workers are accurate and that the proper forms are completed and filed with the Board. The Unit conducts compliance and payment training workshops when requested.

Greater implementation of Electronic Data Interchange (EDI) has created efficiencies in claims management; this allows 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 undergoing a full business analysis of its daily functions. The purpose is to upgrade computer programs and screens in order to streamline the workload, thereby making the daily performance more efficient; automate functions that can be performed by the computer; and, reduce the time it takes to process claims and associated paperwork.

All of these changes should 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.

Claims staff searches 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 information 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 verifies the 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 (COLAs) are calculated on claims beginning with dates of injury on January 1, 1972 through December 31, 1992. Claims staff checks 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 performing 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." This notice contains 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. Claim staff uses this information to perform the mathematical calculations to determine the COLA multiplier and maximum benefit in effect for the following year.

The Claim staff produces 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 injured after January 1, 1993.

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 Nov. 1, 2010 and Oct. 31, 2011*	
Employer's First Report of Occupational Injury or Disease	36,854 electronic 88 paper filing
Notice of Controversy	10,625 electronic
Petitions	3,360
Answers to Petitions	1,636
Wage Statement	8,828
Schedule of Dependent(s) and Filing Status Statement	8,993
All Payment Forms, including: Memorandum of Payment Discontinuance or Modification of Compensation Consent between Employer and Employee 21-Day Certificate of Discontinuance or Reduction of Comp Lump Sum Settlement	18,154
Statement of Compensation Paid	15,020

Currently the only forms that can be filed electronically are the Employer's First Report of Occupational Injury or Disease and the Notice of Controversy. All others are filed in paper form and are manually entered into our system. Corrections to a Notice of Controversy cannot be made electronically and must be manually filed. *The numbers listed on previous annual reports were for the period from January 1 through October 31 of the report year.

Insurance Coverage Unit

The Insurance Coverage Unit researches the history of employer insurance coverage in order to verify the accuracy of these records. This is important for many of the claims at formal hearing, especially when there is a controversy on the liability for the payment of the claim. Workers' compensation coverage in Maine is mandatory and this unit routinely provides assistance to the public on insurance coverage requirements.

Computer programming has helped to streamline data entry and enhance the ability to identify trends and problems with carriers. The program can link coverage and conduct 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 2011 this figure had been reduced to six. These upgrades and changes resulted in Coverage Unit staff being reduced by four employees.

The Board's database has been merged with the Department of Labor's resulting in greater collaboration with the Department of Labor and the Bureau of Insurance. The Unit processes proof of workers' compensation insurance coverage received electronically. A staff member is assigned for processing applications for waivers of workers' compensation coverage.

A staff goal is to process 100 percent of the proof of coverage filings received electronically within 24 hours of receipt and 90 percent of waiver applications within 48 hours of receipt. The Board received and processed 55,085 proof of coverage filings and processed 1,892 waiver applications between November 2010 and November 2011.

The Insurance Coverage Unit assists with problem claims including the identification of insurance coverage, the identification of employers, and identifying address changes for employers. This is done to properly process and assign claim files to the appropriate regional offices. The Coverage staff works closely with the Abuse Investigation Unit on 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. They also assist the Bureau of Labor Standards to maintain an accurate, up-to-date employer database that is utilized by both agencies.

Predeterminations Unit

The Predetermination Unit processes all applications for employment status predetermination. These are voluntary forms used by workers, employers and insurance companies to determinate whether or not an individual worker or group of workers associated with an employer is an employee or an independent contractor. If someone is considered an employee, the employer must cover the employee with workers' compensation insurance. If they are an independent contractor, insurance coverage is not required. Filing the forms is voluntary under the Maine Workers' Compensation Act.

The Board currently utilizes four different types of applications for predetermination; two of which are for wood harvesters only. The first is titled Application for Certificate of Independent Status (Form WCB-262). This form is used by the wood harvester so he/she can apply for a certificate of independent status. The other form for wood harvesters is titled Application for Predetermination of Independent Contractor Status to Establish Conclusive Presumption (Form WCB-260). This is a two-party application completed by the land owner and the wood harvester. If both forms are approved, the wood harvester is not allowed to file a Workers' Compensation claim if he/she is injured on the job.

The third application used by the Board is an Application for Predetermination of Construction Subcontractor to Establish a Rebuttable Presumption (WCB-264). This form is used by construction workers who wish to be considered subcontractors. Upon approval, the Board issues a certificate which is provided to any hiring agent. An approved application does not relinquish the subcontractors' rights to be covered under the Maine Workers' Compensation Act. If injured on the job, an injured worker can still file a workers' compensation claim against the hiring agent.

The fourth form is titled Application for Predetermination of Independent Contractor Status to Establish Rebuttable Presumption (Form WCB-261). This form is used by any worker, other than someone working in wood harvesting and construction. It is a two-party form that is used by hiring agents to determinate whether or not a worker can be considered an independent contractor. Upon approval, a worker does not relinquish his/her rights to be covered under the Maine Workers' Compensation Act. There were 5,706 approved predeterminations between November 1, 2010 and October 31, 2011. All were processed with 14 days of filing.

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 merged databases, the Board can more

accurately identify employers without coverage. Efforts are currently underway to coordinate other employer databases.

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, the Board implemented the requested changes.

We also worked cooperatively with 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. Because of this, Maine's employers only have to complete one form to meet both state and federal filing requirements. This has substantially reduced the paperwork burden on Maine 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. This information 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 that involve questionable claims handling techniques or repeated unreasonable contested claims for appropriate action by BOI.

A coordinated effort is underway with the Office of Information Technology (OIT) 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. We anticipate these 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 is also working with the Department of Labor and other interested parties to draft a uniform "independent contractor" definition that can be used for both workers' compensation and unemployment purposes.

Abuse Investigation Unit

The Abuse Investigation Unit (AIU) is responsible for enforcing administrative penalty provisions of the Workers' Compensation Act including investigating allegations of fraud, illegal or improper conduct, and violations associated with mandatory filings, payments and insurance coverage. The Unit consists of five (5) professional staff members and the Board's Assistant General Counsel. AIU personnel perform investigations, file complaints and petitions, represent the Board at administrative penalty hearings, and decide some penalty cases.

The top priority for AIU is enforcement of provisions within the Act that require employers to carry workers' compensation insurance coverage for their employees. Coverage cases include employers who fail to carry coverage and cases of misclassification—when a business improperly classifies some or all of its workers to avoid obtaining workers' compensation insurance. The AIU staff investigates potential non-compliant employers to develop cases, files complaints for administrative penalty proceedings, and represents the Board at administrative hearings and negotiating consent agreements to resolve violations.

AIU administers several penalty provisions important to overall compliance. Staff issue penalties for failure to file or late-filing of various forms required by the Act, and provide administrative support for cases for failure to pay benefits when there is no dispute, and failure of a party to make payments in accordance with Board orders or an agreement of the parties. The unit also administers cases involving claims of fraud, intentional misrepresentation or willful violation of the Act, and represents the Board in obtaining statutory benefits if an employee dies without dependents.

AIU coordinates its work with the Board's Coverage Division, and Monitoring, Audit and Enforcement Program. Pursuant to section 360(2) of the Act, AIU also cooperates with the Attorney General's office to identify and refer cases for criminal prosecution.

Year	Claims Filed	Claims Closed
2004	5,711	4,542
2005	4,495	3,254
2006	5,048	3,594
2007	4,783	3,638
2008	3,341	2,215
2009	2,310	3,232
2010	4,252	2,136
2011	2,877	4,580

**Case filings are recorded on a calendar year basis*

General Counsel Report

I) Rules

The Board adopted a rule establishing maximum reimbursement levels for health care services, including inpatient, outpatient and ambulatory surgical center facility fees. The new rule, which became effective December 11, 2011, is based on Medicare's payment methodologies. The new rule provides predictable pricing and lower overall costs without sacrificing access to quality health care for workers injured on the job. It also resulted in an additional 3.8 percent decrease in workers' compensation rates for 2012.

II) Legislative Activity

During the First Regular Session of the 125th Maine Legislature, several bills affecting workers' compensation were enacted and a couple were carried over. With the exception of L.D. 1056 which, because it was emergency legislation, was effective June 3, 2011, all other newly enacted laws became effective September 28, 2011.

(1) LD 1056 An Act To Increase the Availability of Independent Medical Examiners under the Workers' Compensation Act of 1992

P.L. 2011, Ch. 215 (Emergency – effective June 3, 2011)

- 312 examiners must be certified by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association or their successor organizations
- a physician cannot be appointed to perform an IME if s/he has examined the employee at the request of an insurance company, employer or employee in accordance with section 207 or has been closely affiliated with the insurance company at any time during the previous 52 weeks unless the parties agree or no other physician is reasonably available
- a health care provider can perform up to 12 §207 examinations per year and still be eligible for appointment
- examiners must notify the Board within 10 days of the date of a §207 examination

(2) LD 1099 An Act Concerning Independent Contractors in the Trucking and Messenger Courier Industries

P.L. 2011, Ch. 176

- Establishes a separate eight-part, conjunctive test to determine independent contractor status for truckers and couriers
- One part requires ownership or a bona fide lease of a motor vehicle
- Motor vehicle is defined to include a van, truck or truck tractor used for freight transportation or courier and messenger services
- The trucker/courier test is repealed as of October 1, 2013

(3) LD 1244 An Act To Clarify Usual and Customary Charges under the Workers' Compensation Laws

P.L. 2011, Ch. 338

- Directs the Workers' Compensation Board to adopt rules to establish a medical fee schedule for services provided under the Maine Workers' Compensation Act

    1) For individual health care practitioners the payment methodology must be based on CMS' Resource Based Relative Value System
    2) For inpatient facility charges the payment methodology must be based on Medicare's MS-DRG system
    3) For outpatient facility charges, payment methodologies based upon the Medicare's APC system

- The medical fee schedule must be consistent with the most current medical coding and billing systems, including RBRVS, MS-DRG, HCPCS, ICDs and CPT codes
- Notwithstanding Title 5, chapter 375, subchapter 2, the executive director shall annually update the medical fee schedule developed pursuant to subsection 2
- a more comprehensive review of the medical fee schedule must be done every three years beginning in 2014;
- directs the executive director of the Workers' Compensation Board to obtain annually from the Maine Health Data Organization the private third-party average payment rates across all private payors and all providers in the Maine Health Data Organization's database for the most common medical services rendered under the Act during the previous year;
- Eliminates "usual and customary charge"; instead, if the Board does not adopt a schedule, reimbursement will be 105% of the private third-party payor average payment rate for the provider or the amount agreed to in writing by the provider and the insurance company or self-insured employer prior to the rendering of service by the provider

(4) LD 1268 An Act To Allow the Repayment of Improperly Awarded Workers' Compensation Benefits

P.L. 2011, Ch. 361

- Employers/insurers can recover overpayments made to an employee while a motion for findings of fact and conclusions of law is pending
- Employers/insurers can still recover overpayments made to an employee while an appeal is pending
- Repayment in either case still subject to review/approval by the Board

(5) LD 1515 An Act To Clarify the Workers' Compensation Insurance Notification Process for Public Construction Projects

P.L. 2011, Ch. 403

- At the onset of work on any construction project undertaken by the State, the University of Maine System or the Maine Community College System, the general contractor or designated project construction manager, if any, shall provide to the board a list of all construction subcontractors and independent contractors on the job site

- They must also provide a record of the entity to whom that construction subcontractor or independent contractor is directly contracted and by whom that construction subcontractor or independent contractor is insured for workers' compensation purposes
- The list must be posted on the board's publicly accessible website and updated as needed

WORKERS' COMPENSATION – CARRY OVER

(6) LD 1314 An Act To Standardize the Definition of "Independent Contractor"

Carry Over Request Approved

- This bill was carried over to the Second Regular Session of the 125th Legislature
- The Department of Labor has been tasked (pursuant to LD 1420—P.L. 2011, Ch. 292) with assembling a group of interested parties to try and develop a definition of independent contractor that can be used for all purposes (i.e. – unemployment, workers' compensation and revenue services).

(7) LD 1571 An Act To Amend the Laws Governing Workers' Compensation

Carry Over Request Approved

This bill has been carried over. The following list is a summary of the provisions in the bill:

- It amends the law to provide for full reimbursement to an employer from proceeds paid by a third party.
- It amends the selection process for the Workers' Compensation Board. Under current law, the three representatives of labor on the board must be appointed from a list provided by a bona fide labor organization or association of employees. This bill instead requires that one of the three labor members be appointed from that list; the other two labor representatives must be appointed at the discretion of the Governor.
- It repeals the troubleshooter program established under the Maine Revised Statutes, Title 39A, section 153, subsection 2.
- It amends the mediation provision to require that mediation be requested both by the employer and the employee.
- It eliminates the board's audit and enforcement oversight of the Maine Insurance Guaranty Association.
- It amends the law to address the decision in Roy v. Bath Iron Works, 2008 ME 94, to specifically provide that a subsequent non-work injury, independent of any work-related injury, and unrelated to any work-related injury, that results in total disability results in a cessation of benefits for the duration of the disability.
- It specifies that, if an award has been entered, the employer, insurer or group self-insurer may petition the board for a reduction and may not reduce or discontinue benefits until the issuance of a decree by a hearing officer, after which benefits may be reduced or discontinued pending an appeal from the hearing officer's decree.

- It eliminates the requirement that a physician have an active practice in order to be qualified to conduct a medical examination.
- It provides that if an employee chooses to have a physician present at an employer-required examination, the employee must pay the cost of that physician.
- Under current law, in establishing standards, schedules or scales of maximum charges, the board is required to consider maximum charges paid by private third-party payors. This bill requires the board to base those standards, schedules or scales on reasonably and customarily negotiated charges between health care providers and third-party insurers and requires that if standards are not established by October 1, 2011, then charges customarily paid by MaineCare apply.

- It amends the laws governing compensation for partial incapacity.

    1) This bill instead provides that, for injuries occurring from January 1, 2006 to September 30, 2011, compensation must be paid for the duration of the disability if the employee's permanent impairment is in excess of 11 percent;
    2) for injuries occurring on or after October 1, 2011, an employee may not receive compensation for more than 52 weeks, if there is no permanent impairment resulting from the injury or if the permanent impairment resulting from the injury is not in excess of 3 percent;
    3) 104 weeks, if the permanent impairment resulting from the injury is in excess of 3% but not in excess of 6 percent;
    4) 156 weeks, if the permanent impairment resulting from the injury is in excess of 6% but not in excess of 9 percent;
    5) 208 weeks, if the permanent impairment resulting from the injury is in excess of 9% but not in excess of 12 percent;
    6) 260 weeks, if the permanent impairment resulting from the injury is in excess of 12% but not in excess of 15 percent;
    7) 312 weeks, if the permanent impairment resulting from the injury is in excess of 15 percent but not in excess of 18 percent;
    8) 364 weeks, if the permanent impairment resulting from the injury is in excess of 18 percent but not in excess of 21 percent;
    9) 416 weeks, if the permanent impairment resulting from the injury is in excess of 21 percent but not in excess of 24 percent;
    10) 468 weeks, if the permanent impairment resulting from the injury is in excess of 24 percent but not in excess of 27 percent; and
    11) 520 weeks, if the permanent impairment resulting from the injury is in excess of 27 percent.
    12) This bill also eliminates the board's ability to extend the duration of benefit entitlement in cases of extreme financial hardship.

- It repeals provisions of the law requiring the board to adjust the 15 percent impairment threshold, dates of injury and extension of the period of benefit limitation.
- It provides that an employee who is otherwise retired is not presumed to have a loss of earnings or earning capacity regardless of whether the employee terminates active employment.

- It amends the statute of limitations periods when no first report of injury is required to be filed.
- It amends the law to address the decision in Larochelle v. Crest Shoe, 655 A. 2d 1245 (Me 1995) to specify that overpayments made during the pendency of a motion for findings of fact and conclusions of law must be repaid.
- It prohibits the board from assessing a fine against an employer or insurer in excess of $25,000 unless the employer or insurer intentionally and fraudulently failed to pay compensation.
- It provides that, for injuries occurring after January 1, 2005, lump sum attorney's fees are paid on the indemnity portion of a settlement.
- It prohibits the assessment of an attorney's fee for the amount of any settlement intended to pay for current or future medical costs.
- It repeals provisions regarding the Supplemental Benefits Fund, which was established to reimburse payments of compensation to employees under provisions governing extended benefits for partial incapacity that are repealed in this bill.

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 2011.

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 granted a request for review pursuant to 39-A M.R.S.A. § 320 in 2010. Deliberations by the Board in the case, *Estate of Simpson v. Downeast Toyota*, were conducted on March 8, 2011. A decision was not reached by a majority of the Board; thus, the decision of the Hearing Officer stands.

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 percent of all cases with permanent impairment will be expected to exceed the threshold and 75

percent of all cases with permanent impairment will be expected to be less than the threshold. In 1998, the Board reduced the threshold from 15 percent to 11.8 percent 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 percent 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 percent.

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

The Board adopted a rule setting the permanent impairment threshold at 11.8 percent 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 percent from 11.8 percent effective January 1, 2008. The Board has not yet acted on this recommendation.

The Board has assembled a group of interested parties to study Maine's incapacity provisions to see if an alternative method of determining eligibility for lost time benefits is feasible. It is anticipated that this group will work into the beginning of 2012 when the Board issues a report of its findings to the Labor, Commerce, Research and Economic Development Committee.

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Introduction and Background

I) Introduction

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

The tables in this report for accident year and calendar year loss ratios contain five years of information. Loss ratios are updated each year to account for how costs have developed for claims opened, claims closed and any claims reopened during the year. Other tables and graphs contain up to 10 years of information.

The recently approved advisory loss cost filings decreased the advisory loss costs on average by 6.9 percent. According to NCCI, the frequency of loss-time claims has decreased from 2000 to 2007. In 2008, the frequency increased slightly followed by a decrease in 2009 which is the most recent year of data used in their filing. Also contributing to the proposed decrease in the advisory loss costs is a decrease in the average indemnity costs—a measure of severity. However, indemnity costs tend to be higher for older workers. As Maine's population ages, there may be an increase in indemnity costs in the future. NCCI in its 2010 Maine State Advisory Forum presentation stated that the percentage of Maine's population between the ages of 45 and 64 is expected to peak in 2010, although people may work longer due to the economy. Medical costs continue to increase. Forty-three percent of Maine's total benefit costs are for indemnity and 57 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.

II) Accident Year, Calendar Year and Policy Year Reporting

Workers compensation is a long-tail line of insurance, meaning payments for claims can continue over a long period of time after the year in which the injury occurred. Thus, amounts to be paid on open claims must be estimated. Insurers collect claim, premium and expense information to calculate financial ratios. This information may be presented on an accident year, calendar year, or policy year basis. This report primarily shows information on an accident year basis. A description of each method and its use in understanding workers' compensation follows:

A. Accident Year Reporting

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.

B. Calendar Year Reporting

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.

C. Policy Year Reporting

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.

III) The Underwriting Cycle

Insurance tends to go through underwriting cycles, successive periods of increasing or diminishing competition and increasing or decreasing premiums. These cycles are important factors in the short-term performance of the insurance industry. Hard markets are periods in which there is less capacity and competition and fewer insurers willing to write business. Soft markets are periods of increased competition identified by more capacity to write business, falling rates, and growing loss ratios, which can result in insurer operating losses. This can eventually force loss ratios to critical levels, causing

insurers to raise their rates and be more selective in writing business. Insurer profitability and surplus eventually recover. This situation, in time, spurs another round of price-cutting, perpetuating the cycle.

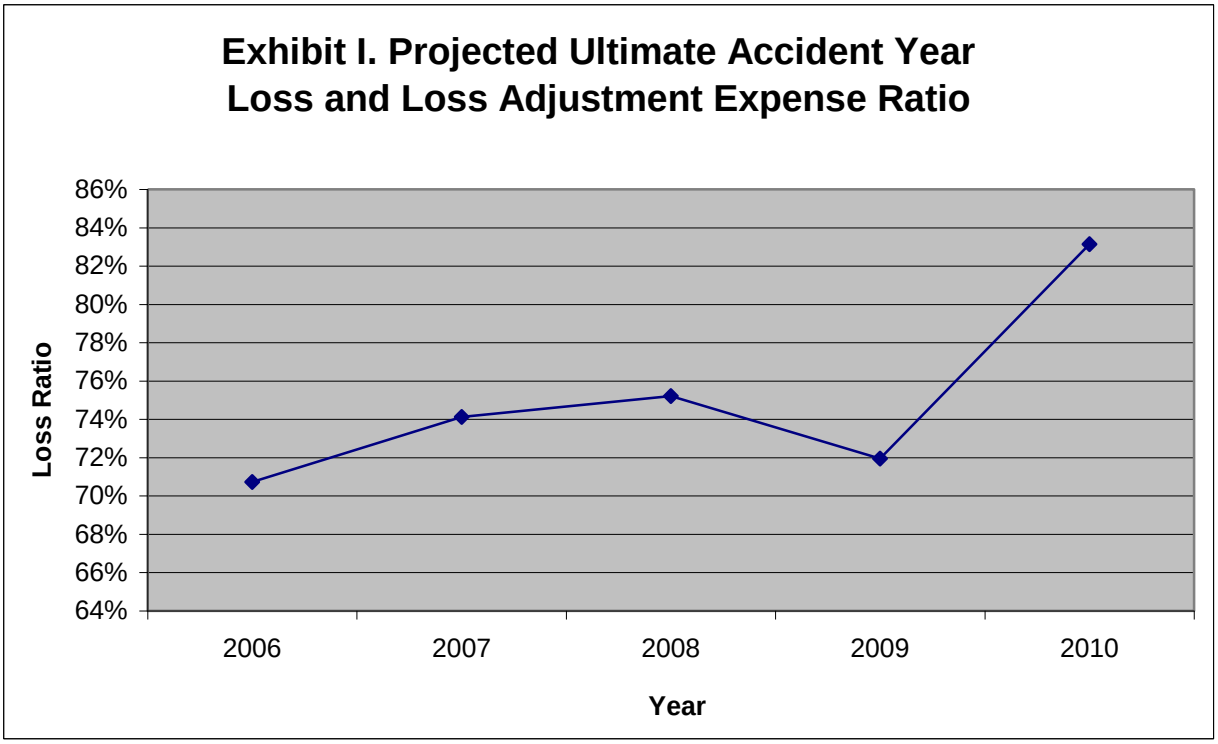
In the late 1980s and early 1990s, the Maine workers compensation insurance market was hard. From the mid-1990s until about 2000, the market was considered soft. After 2000 insurance markets generally became less competitive, and this trend increased following the September 11, 2001 attacks. Over the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

Recent Experience

I) 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 70 percent to slightly over 83 percent for the past five years. The 2010 loss ratio was 83.1 percent, indicating that $83.10 is expected to be paid out for losses and loss adjustment expenses for every $100 earned in premiums.

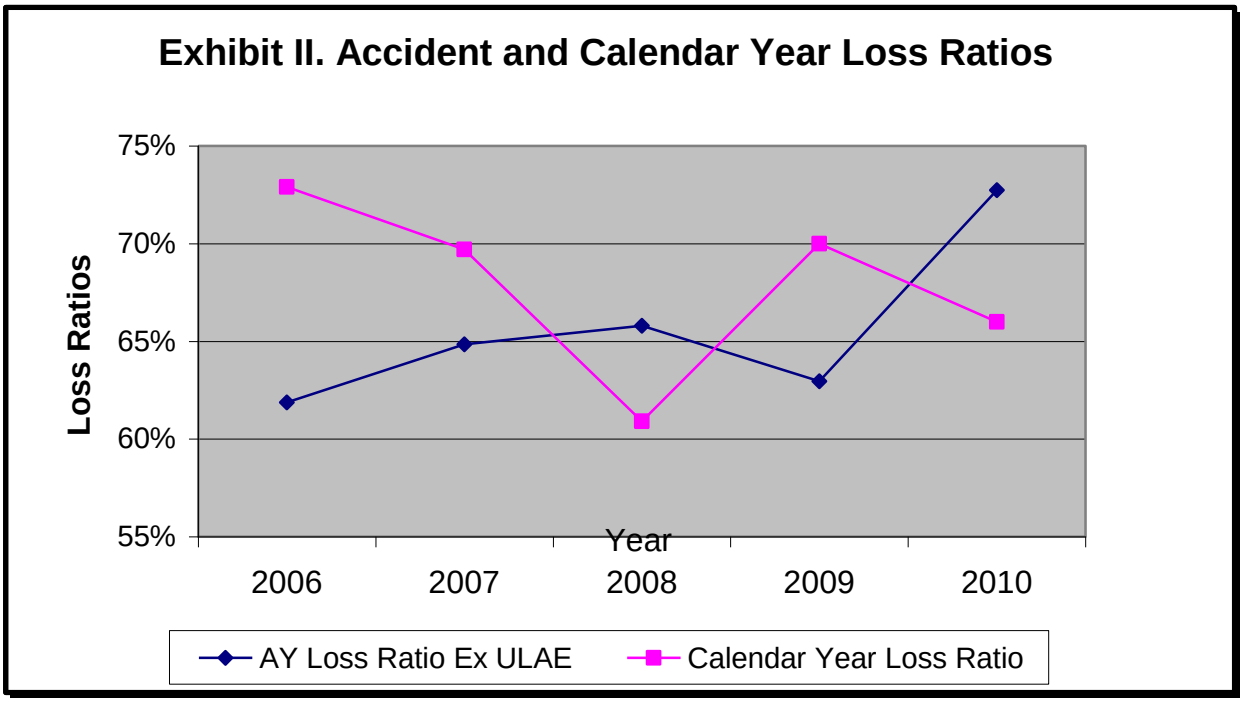


Source: National Council on Compensation Insurance

II) Calendar Year and Accident Year Loss Ratios

Calendar year loss ratios compare losses incurred with premium earned in the same year (although only a small portion of the losses are attributable to premiums earned that year). Calendar year loss ratios reflect payments and reserve adjustments (changes to estimated ultimate cost) on all claims during a specific year, including those adjustments from prior injury years. While calendar year data is relatively easy to compile and is useful in evaluating the financial condition of an insurance company, accident year data is more useful in evaluating the claim experience during a particular period because it better matches premium and loss information. In addition, the accident year experience is not distorted by reserve adjustments on claims that occurred in prior periods, possibly under a different law. These ratios do not include amounts paid by insurers for sales, general expenses and taxes, nor do they reflect investment income. The movement of the calendar year loss ratios from below to above the accident year loss ratios may reflect increases in reserves on prior accident years.

Exhibit II shows calendar year and accident year loss ratios. The calendar year loss ratio of 72.9 percent in 2006 was the highest in the period of 2006-2010. Since that time it dropped to 60.9 percent in 2008 but increased to 66.0 percent in 2010. The accident year loss ratio is trending upward over the period of 2006-2010, ranging from a low of 61.9 percent in 2006 to a high of 72.7 percent in 2010.



Note: ULAE means Unallocated Loss Adjustment Expense

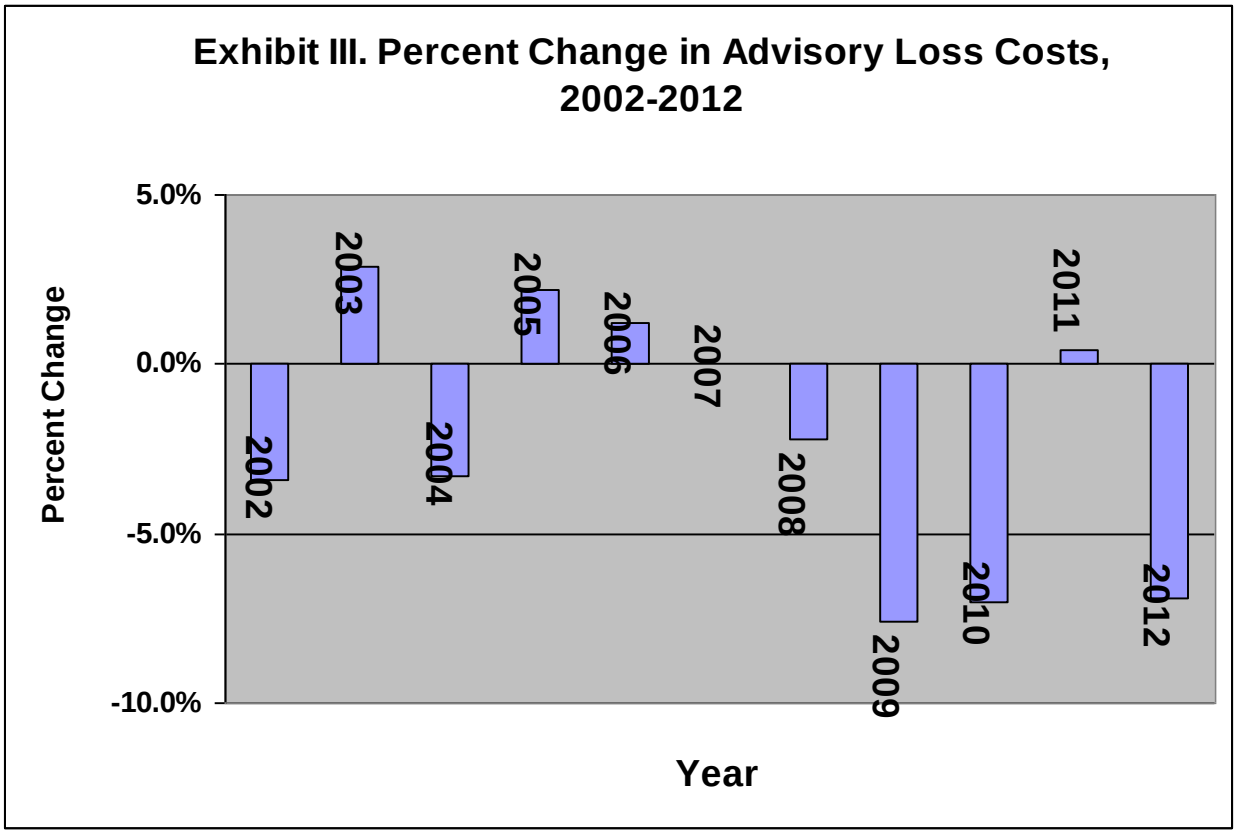
Source: National Council on Compensation Insurance

Losses in Workers' Compensation

I) Changes in Advisory Loss Costs

NCCI files advisory loss costs on behalf of workers compensation carriers. Advisory loss costs reflect the portion of the rate that applies to losses and loss adjustment expenses. Advisory loss costs do not account for what insurers pay for general expenses, taxes and contingencies, nor do they account for profits and investment income. Under Maine's competitive rating law, each insurance carrier determines what to load into premium to cover those items.

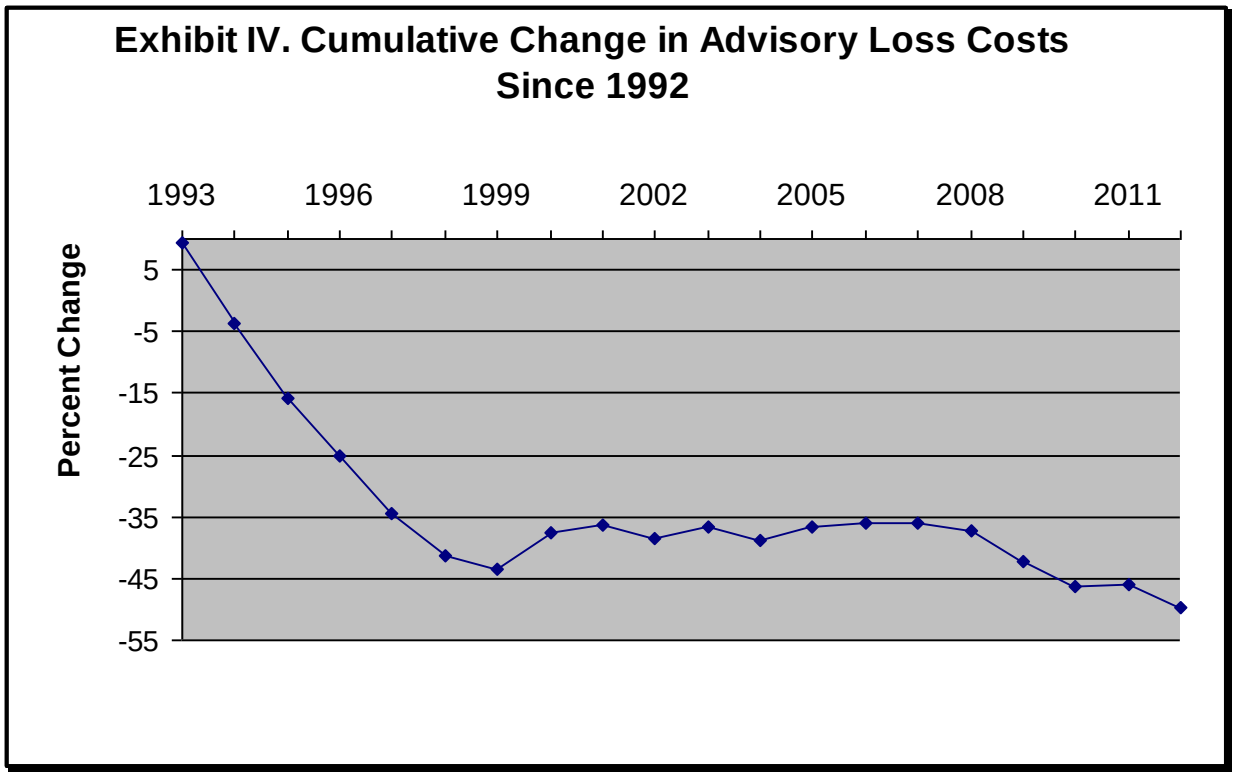
In 2010, the advisory loss costs were increased by 0.4 percent. The Bureau of Insurance recently approved a 6.9 percent decrease in advisory loss costs effective January 1, 2012. Advisory loss costs will be about 21 percent lower than they were five years ago and nearly 50 percent lower than when the 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

II) Cumulative Changes in Advisory Loss Costs

Exhibit IV shows the cumulative changes in loss costs over the past 14 years. The advisory loss costs have declined over the past five years with the expection of 2011 where the advisory loss cost increased by 0.4 percent.



Source: National Council on Compensation Insurance

Market Structure and Competition

I) 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, 2011, 313 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 accounts for nearly 62 percent 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 2010. The number of carriers writing greater than $1 million in written premium decreased by one from 2009 to 2010.

Table I: Number of Companies by Level of Written Premium—2010	
Amount of Written Premium	Number of Companies At That Level
>$10,000	127
>$100,000	80
>$1,000,000	21

Source: Annual Statements Filed with the Bureau of Insurance. Total written premium for 2010 was over $189 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.

II) Herfindahl Hirschman Index

The Herfindahl-Hirschman Index (HHI) is a method to measure market concentration. The HHI is calculated by summing the squares of the market shares (percentages) of all groups in the market. The National Association of Insurance Commissioners (NAIC) publishes a Competition Database Report as a reference source of measures to examine the competitiveness of state insurance markets, and the HHI is one of the data elements in the report. The 2009 Database Report, prepared in 2010, shows that the HHI for Workers' Compensation insurance in Maine is 3,993. This is the third highest for all commercial lines in Maine behind Medical Professional Liability and Financial Guaranty. All other commercial lines were between 357 and 834, with the exception of Mortgage Guaranty which was 2,364. According to the Database Report, there is no precise point at which the HHI indicates that a market or industry is so concentrated that competition is restricted. The U.S. Department of Justice's guideline for corporate mergers uses 1,800 to indicate highly concentrated markets and the range from 1,000 to 1,800 to indicate moderately concentrated markets. A market with an HHI below 1,000 is considered not concentrated. Applying the HHI to Maine's workers compensation market might not be a helpful gauge of this market for two reasons. First, the Maine Legislature created an employer owned mutual insurer, MEMIC, to replace a highly concentrated residual market in which 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.

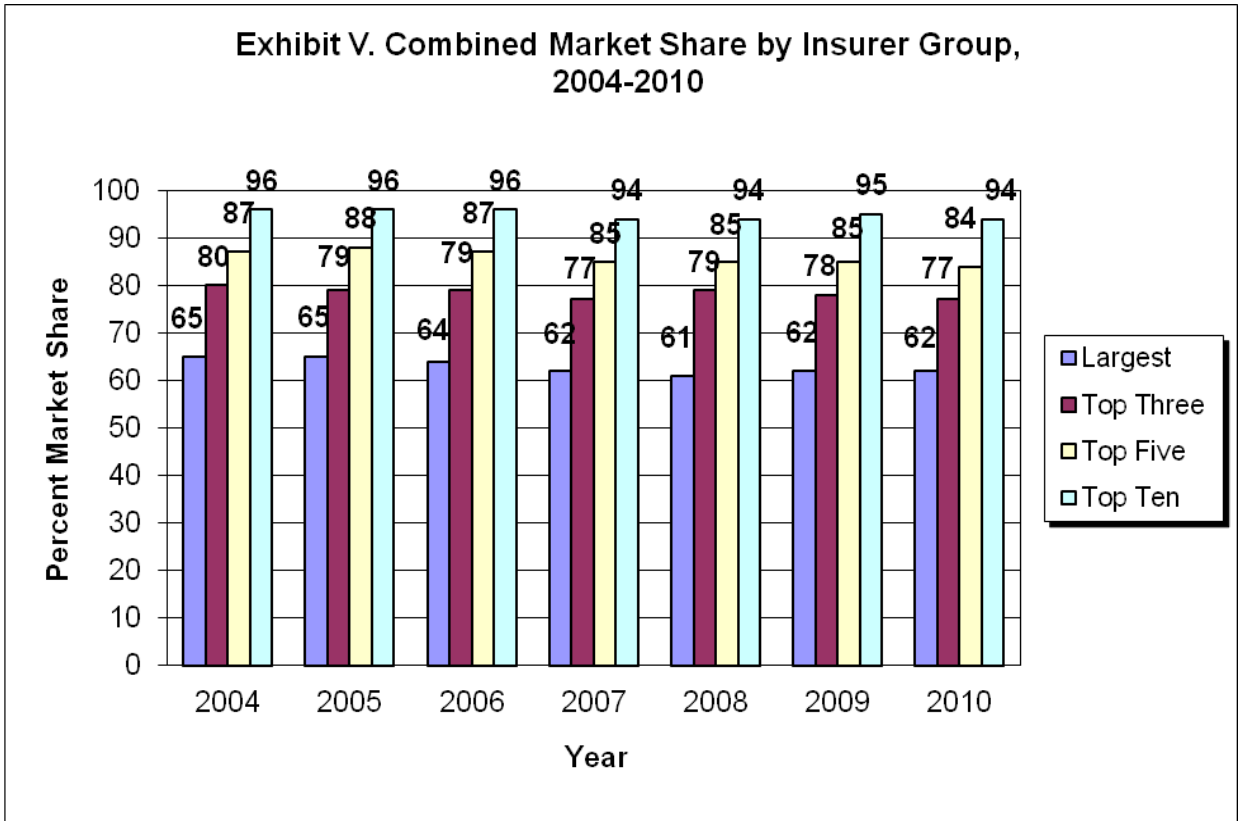
Source: NAIC 2009 Competition Database Report

III) Combined Market Share

An insurance group is a carrier or group of carriers under common ownership. Exhibit V illustrates the percent market share of the largest commercial insurance group, in terms of written premium, as well as the percent market share for the top three, top five and top 10 insurer groups. MEMIC has the largest market share. Its share has ranged between 61 percent and 65 percent for the last seven years. The

market share of the top 10 insurer groups was 94 percent in 2010; other groups accounted for only 6 percent of the workers' compensation premium in Maine.

In terms of premium dollars, MEMIC wrote over $116 million in premium in 2010. The top three groups, including MEMIC, wrote over $145 million in business. The top five groups wrote nearly $160 million, and the top 10 groups had nearly $178 in written premium. Overall, written premium levels in Maine have dropped considerably since 2005. MEMIC had over $44 million less in written premium in 2010 than it did in 2005. The top three groups had nearly $50 million less written premium, and the top five and top 10 groups had over $57 million and $60 million less respectively.



Source: Annual Statements Filed with the Bureau of Insurance

IV) Number of Carriers in the Maine Insurance Market

The number of carriers in the workers compensation market has increased throughout the 12-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 49 percent since 2000. There currently are no significant barriers to entry.

Table II: Entry and Exit of Workers Compensation Carriers, 2000-2011					
Year	**Number of Carriers**	**Number Entering**	**Number Exiting**	**Net Change (Number)**	**Net Change (Percent)**
2011	313	22	2	20	6.8
2010	293	6	5	1	0.3
2009	292	10	0	10	3.6
2008	282	13	4	9	3.3
2007	273	11	5	6	2.3
2006	267	14	4	10	3.9
2005	257	4	1	3	1.1
2004	254	5	2	3	1.2
2003	251	11	1	10	4.2
2002	241	15	2	13	5.7
2001	228	24	6	18	8.6
2000	210	12	0	12	6.1

Source: Maine Bureau of Insurance Records.

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

V) Percent Market Share of the Top Insurance Groups

Table III shows market share by insurance group from 2004-2010. 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, 2004-2010							
Insurance Group	**2010 Share**	**2009 Share**	**2008 Share**	**2007 Share**	**2006 Share**	**2005 Share**	**2004 Share**
Maine Employers' Mutual	61.5	62.2	61.3	61.6	63.6	64.8	65.4
Liberty Mutual Group	10.0	10.4	11.0	8.8	9.2	8.4	9.4
WR Berkeley Corp.	5.2	5.7	6.1	6.3	6.1	5.6	5.4
Travelers Group	3.9	3.5	2.7	2.2	1.9	1.6	2.3
American International Group	3.6	2.3	2.8	5.2	4.9	5.1	4.1
Hartford Fire & Casualty	3.2	3.4	3.7	3.6	3.3	3.8	1.9
Zurich Insurance Group	2.1	2.0	1.2	1.3	0.9	0.6	1.7
The Hanover Ins Corp.	1.5	1.6	1.8	1.7	2.1	1.9	1.7
Guard Insurance Group	1.4	1.7	1.8	2.0	2.3	2.1	2.0
Ace Ltd Group	1.3	1.9	1.2	1.6	1.3	1.6	0.9

Source: Annual Statements Filed with the Bureau of Insurance

VI) 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 2004 through 2010. Throughout the seven-year period MEMIC has had in excess of 60 percent of the market. For the seventh straight year, none of the other carriers attained a 5 percent market share. The top 10 companies combined write over 77 percent of the business.

Table IV. Percent Market Share for Top Insurance Carriers, By Amount of Written Premium, 2004-2010

Insurance Carrier	**2010 Share**	**2009 Share**	**2008 Share**	**2007 Share**	**2006 Share**	**2005 Share**	**2004 Share**
Maine Employers' Mutual	61.5	62.2	61.3	61.6	63.6	64.8	65.3
Netherlands	2.7	2.6	2.1	1.4	0.9	0.3	0.2
Acadia Insurance Company	2.6	3.4	4.2	4.5	4.5	4.3	4.4
Liberty Insurance Corp.	2.1	2.0	2.7	2.1	2.5	1.7	1.1
Firemen's Ins Co of Wash DC	2.1	1.9	1.3	1.3	1.1	0.9	0.7
Excelsior Insurance Co.	1.4	1.3	1.4	1.4	1.2	1.0	0.9
Zurich American Ins Co.	1.3						
Hartford Ins Co of the Midwest	1.2	1.0	1.0	0.9	0.5	0.4	0.2
New Hampshire Ins Co	1.2	1.2	1.0	0.4	0.3	0.3	0.2
Standard Fire Ins Co	1.2						

Source: Annual Statements Filed with the Bureau of Insurance

Differences in Rates and Factors Affecting Rates

I) Rate Differentials

There is a wide range of potential rates for workers compensation policyholders, but most employers are not able to get the lowest rates. Insurers are selective in accepting risks for the lower-priced plans. Their underwriting is based on such factors as prior-claims history, safety programs and classifications. An indication that the current workers compensation market may not be fully price-competitive is the distribution of policyholders among companies with different loss cost multipliers or among a single company with multiple rating tiers. The Bureau of Insurance surveyed the top 10 insurance groups and all of the companies in those insurance groups. We asked for the number of policyholders and the amount of written premium for in-force policies in Maine within each of their rating tiers. Based upon annual statement reports, the carriers that responded accounted for 94 percent of the market and nearly $178 million in written premium in Maine for calendar year 2010. The results of a survey conducted by the Bureau of Insurance show that over 63 percent of policies are written at rates equivalent to MEMIC Standard Rating tier. Over 27 percent are written at rates lower than MEMIC's

Standard tier. Over 8 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	2011 Percent	2010 Percent
Below MEMIC Standard Rate	27.3%	22.6%
At MEMIC Standard Rate	63.8%	70.1%
Above MEMIC Standard Rate	8.9%	7.3%

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.

II) Additional Factors Affecting Premiums

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

Employers should carefully analyze certain options, such as retrospective rating (retros) and large deductible policies, before deciding on them. Below is a description of each:

Tiered rating means that an insurer has more than one loss cost multiplier to use, based on where a potential insured falls in its underwriting criteria. Tiered rating may apply to groups of insurers that have different loss cost multipliers for different companies in the group. Our records indicate that over 71 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. Factors including safety plans, medical facilities, safety devices and premises are considered and can result in a change in premium of up to 25 percent. Over 81 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 a deductible plan and the amount of reduction varies by insurer.

Managed Care Credits are credits offered by insurers to employers who use managed care plans. Eighteen percent of insurers offer managed care credits.

Dividend Plans provide a return premium to the insured after the policy expires if losses are lower than average. Premiums are not increased if losses are greater than average. Because losses may still be open for several years after policy expiration, dividends will usually be paid periodically with adjustments for any changes in the amount of incurred losses. Dividends are not guaranteed. In calendar year 2010, MEMIC declared dividends of $11 million dollars. In October 2011, MEMIC announced it will pay a dividend totaling $12 million to about 19,000 Maine policyholders in November 2011. Employers who held policies with MEMIC for a full year, with a term beginning in 2008, will be eligible to receive the dividend. After the November 2011 dividend payment, MEMIC will have returned more than $133 million to policyholders in the form of capital returns and dividends since 1998.

Retrospective rating means that an employer's final premium is a direct function of its loss experience for that policy period. If an employer controls its losses, it receives a reduced premium; conversely, if the employer has a bad loss experience, it receives an increased premium. Retrospective rating utilizes minimum and maximum amounts for a policy and is typically written for larger, sophisticated employers.

Large deductible plans are for employers who agree to pay a deductible that can be in excess of $100,000 per claim. The law requires that the insurer pay all losses associated with this type of policy and then bill the deductible amounts to the insured employer. The advantage of this product is a discount for assuming some of the risk. It is an alternative to self-insurance.

Loss Free Credits may be given to employers who have had no losses for specified periods of time. At MEMIC, loss free credits may be received by non-experience rated accounts. As of August 31, 2010, 66 percent of non-experience rated accounts -- 9,408 policyholders -- receive loss free credits of between 8 percent and 15 percent. This represents a 2.2 percent decrease from 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 insurance and since September 2001 reinsurance contracts have excluded coverage for terrorist acts. In 2007 the Terrorism Risk Insurance Revision and Extension Act was approved and redefined terrorism to include domestic and foreign terrorism.

Insurers in Maine's top 10 groups reported that over $42 in credits was provided for every $1 in debits. This was nearly $17 less than a year ago. More than $11.3 million in dividends were paid out in 2010, an increase of more than $600,000 from 2009. MEMIC accounted for over 97 percent of the dividends issued. The amount of credits in the top 10 groups in 2010 rose more than $1.5 million from 2009, and the amount of debits increased by nearly $600,000.

Alternative Risk Markets

I) 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 2010, nearly 48 percent of Maine's total workers' compensation insurance market, as measured by standard premium, consisted of self-insured employers and groups. Although the estimated standard premium for 2010 decreased from 2008, the percent of the workers' compensation market represented by self-insurers has increased in 2010 from the 2008 level.

The estimated standard premium for individual self-insurance is determined by multiplying the advisory loss cost by a factor of 1.2, as specified in statute then multiplying that figure by the payroll amount, dividing the result by 100 and then applying experience modification. As advisory loss costs, and therefore rates, decline, so does the estimated standard premium. Group self-insurers determine their own rates subject to review by the Bureau of Insurance.

Table VI: Estimated Standard Premium for Self-Insured Employers and Percent of the Workers' Compensation Market Held by Self-Insurers, 2000-2010		
Year	Estimated Standard Premium	Percent of Workers' Comp. Market (in annual standard premium)
2010	$171,478,611	47.5
2009	$160,359,285	44.5
2008	$179,280,965	44.6
2007	$174,830,526	42.1
2006	$167,535,911	40.9
2005	$167,278,509	40.3
2004	$171,662,347	41.7
2003	$182,379,567	43.1
2002	$167,803,123	43.0
2001	$159,548,698	43.9
2000	$126,096,312	42.1

Source: Annual Statements Filed with the Bureau of Insurance.

Notes:

1) Estimated standard premium figures are as of December 31of the year listed.
2) The percent of the workers' compensation market held by self-insured employers is calculated by taking the estimated standard premium for self-insured employers, dividing it by the sum of the estimated standard premium for self-insured employers and the written premium in the regular insurance market, and then multiplying that figure by 100.

II) Number of Self-Insured Employers and Groups

As of October 1, 2011 there were 19 self-insured groups representing approximately 1,378 employers. The number of self-insured groups has remained the same for the past five years and the number of individually self-insured employers increased by one from 2010 to 2011. The number of employers in self-insured groups dropped for the fourth straight year.

Table VII: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 2000-2011			
Year	**# of Self-Insured Groups**	**# of Employers In Groups**	**# of Individually Self-Insured Employers**
2011	19	1378	59
2010	19	1382	58
2009	19	1459	58
2008	19	1,461	70
2007	19	1,478	70
2006	20	1,437	71
2005	20	1,416	80
2004	20	1,417	86
2003	19	1,351	91
2002	19	1,235	98
2001	19	1,281	92
2000	19	1,247	98

Source: Bureau of Insurance Records

Notes:

1) For the purposes of self-insurance, affiliated employers are considered separate employers.
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

I) Oregon Workers' Compensation Premium Rate Ranking

The State of Oregon collects information from other states on a bi-annual basis and it is used in premium rate rankings. In 2010, Maine ranked 8th highest in terms of workers' compensation premium rates for all industries. In the 2008 rankings, Maine ranked 5th overall and in the 2006 study, Maine also ranked 8th. The Oregon premium rate rankings focus 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.

II) Manufacturing Industry and Office and Clerical Operations

Actuarial and Technical Solutions, Inc. (ATS) previously published information about average statutory

benefit provisions (i.e., wage replacement benefits) and comparative costs in different states. Information was provided for the manufacturing industry and for office or clerical employees. ATS discontinued publishing information after 2009.

III) Average Loss Costs by State Based on Maine's Payroll Distribution

NCCI developed a spreadsheet that shows the average loss cost for Maine compared to the average loss cost for other states based upon Maine's payroll distribution. Maine had the eighth highest average loss costs of the 38 states and the District of Columbia reporting information to NCCI. Last year Maine also ranked the eighth highest average.

State	Average Loss Cost	Rank
Illinois	2.26	1
Montana	2.21	2
Oklahoma	2.01	3
Connecticut	1.94	4
Alaska	1.78	5
New Hampshire	1.74	6
Vermont	1.65	7
Maine	**1.64**	**8**
Kentucky	1.51	9
Georgia	1.49	10
North Carolina	1.46	11
Alabama	1.45	12
Iowa	1.45	13
Maryland	1.4	14
Rhode Island	1.38	15
Tennessee	1.37	16
South Carolina	1.36	17
South Dakota	1.35	18
Louisiana	1.34	19
Idaho	1.31	20

State	Average Loss Cost	Rank
Nebraska	1.28	21
Oregon	1.25	22
New Mexico	1.24	23
Missouri	1.21	24
West Virginia	1.19	25
Arizona	1.17	26
Colorado	1.17	27
Kansas	1.15	28
Florida	1.09	29
Mississippi	1.01	30
Nevada	0.97	31
Hawaii	0.94	32
Utah	0.92	33
Virginia	0.87	34
Indiana	0.84	35
D.C	0.79	36
Arkansas	0.75	37
Texas	0.70	38
Countrywide	**1.29**	

Note: Average loss cost does not include expense and profit loading and is an average using all payrolls. The actual average for an employer will depend on the type of business and payroll mix.

Section C: Bureau of Labor Standards

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Introduction

I) Role of the Bureau of Labor Standards in Protecting Maine Workers

The role of the Bureau of Labor Standards (BLS) of the Maine Department of Labor (MDOL) in the Workers' Compensation system is to facilitate the prevention of occupational injuries and illnesses. This is accomplished by a variety of means.

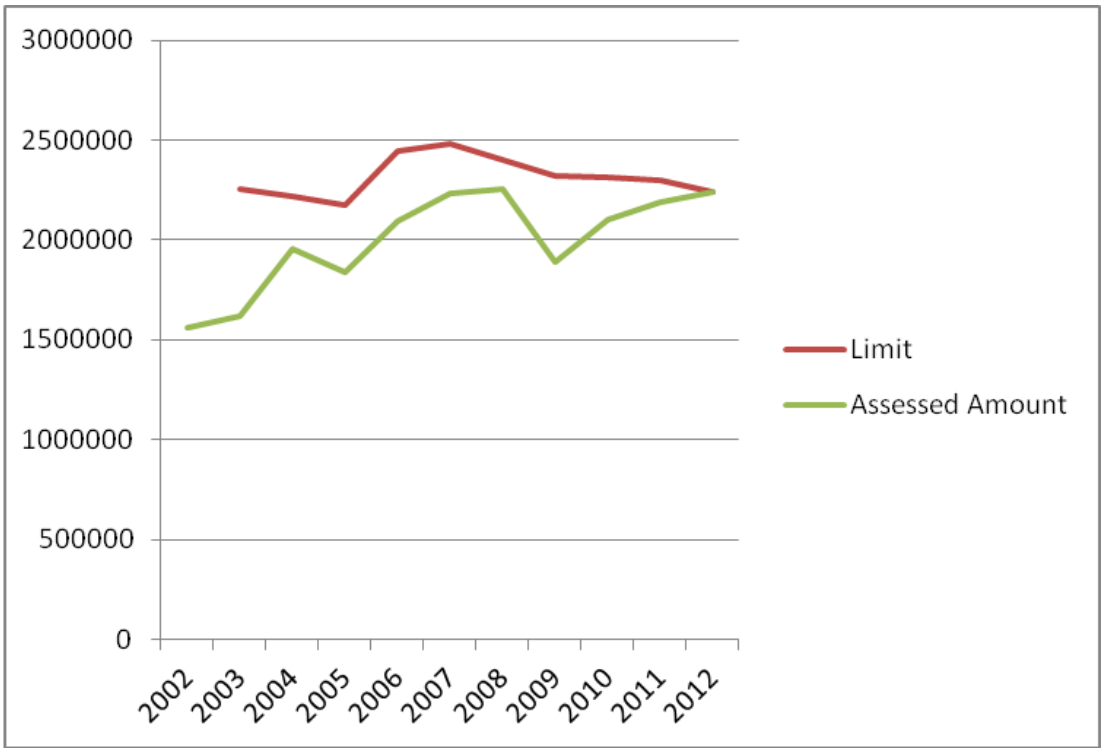
Under Maine statute, Title 3 MRSA § 42, the Bureau has the authority to collect and analyze statistical data on work-related injuries and illnesses and their effects. To minimize employer effort and maximize data quality and availability the Bureau partners with the Maine Workers' Compensation Board (WCB) and federal agencies, coordinating data collection with them where possible.

Title 26 MRSA § 42-A also charges the Bureau with establishing and supervising safety education and training programs directed towards helping employers comply with OSHA requirements and best practices for prevention. Additionally, MDOL is responsible for overseeing the employer-employee relationship in the state through enforcement of Maine labor standards laws and the related rules, including occupational safety and health standards in the public sector. For enforcement purposes, the Bureau partners with the federal Occupational Safety and Health Administration (OSHA) and the Wage and Hour Division of the Employment Standards Administration in the federal Department of Labor maximizing coverage while minimizing resources. By accomplishing its mandated functions, the Bureau complements the efforts of Federal OSHA, WCB, and insurers enabling employers the means for the prevention of workplace injuries and illnesses.

The employer visits, the on-site training, classes offered through the SafetyWorks! Training Institute, and the data and analysis are all currently available free of charge because resources are provided by a dedicated state revenue fund collected from insurers and self-insured employers and employer groups. The fund is called the Safety Education and Training Fund or SETF and the revenue for the fund is assessed on these insurers and self-insured employers based on their workers compensation benefits (minus medical payments) paid out and assessed among them in proportion to the amounts they paid out to the total. The total of the amount the Bureau can collect is capped at 1 percent of the total benefits paid out.

Over time both the number and rate of injuries and illnesses have decreased. This, and efforts at directly curbing case costs, have driven down the benefits paid out by the insurers and self-insured employers. Likewise, the cap has steadily declined to the point that last year, in order to sustain the services, the Bureau had to assess at the cap. The diagram below illustrates the cap coming down and meeting the program budget needs. The amount the Bureau needed to sustain its programs fluctuated from year to year because of holdovers—savings from one year carried over to the next. (The holdovers were

purposely not held longer than a year to avoid accumulating money that might be transferred to other uses.) For the first time, transitioning from the state fiscal year 2011 to that for 2012, the Bureau had no holdover and had to assess the full amount to pay for the services.



Going forward, the Bureau may be faced with a decision to start cutting services or to request supplemental or alternative funding. The SETF is important to the services provided not only for the direct support the funds offer but also because they provide matching funds for several federal grants that totaled $880,208 in federal fiscal year 2012. In order to qualify for that federal money the Bureau is required to match in the amount of about $200,000. The matching money comes from the SETF.

A. Summary of Services and Activities

Service	Jurisdiction / Funding Source	Activity Measures
Worker and Employer OSH Training	State SETF	593 classes 8,815 workers trained
Employer OSH Data Profiles	State SETF / Federal Bureau of Labor Statistics Grant	41 employer profiles generated
On-site Consultations	State SETF / Federal OSHA and MSHA Grants	723 on-site employer onsite consultations and reports
Child Labor Permit Enforcement	State General Fund	2,491 permits issued 119 denied
Wage & Hour Enforcement, Random Inspections	State General Fund	2,966 random employer inspections 699 violations 30 child labor violations
Wage & Hour Enforcement, Complaint Investigations	State General Fund	650 employer investigations 304 violations
Public Sector Safety Enforcement	State General Fund	110 employers 660 physical sites 2,723 violations $564,200 in penalties
Private Sector OSHA Enforcement	Federal OSHA	568 employer Inspections 407 had 3,146 violations $2,185,150 in penalties
OSHA Recordkeeping Employer Outreach	State SETF / Federal Bureau of Labor Statistics Grant	2 types of training in 2011 17 sessions in 2011 188 attendees in 2011 12 sessions planned in 2012

While much of the activity appears to be funded through the state General Fund, it accounts for only 7 out of 41 positions in the Bureau.

B. What the results data shows

There is a striking contrast between where things were 20 years ago compared to the latest data. In any given year the change from the year before is not striking, but as you read this report, pay attention to the longer-term changes.

C. Summary of Data Activities and Significant Measures

Data Programs	Funding	Result Measures
Workers Compensation Case Data	State SETF / Federal Bureau of Labor Statistics Grant	• 13, 065 disabling cases coded in 2010 ○ Increase of 383 (3.0%) from 2009 ○ Decrease of about 29% from 2001 ○ Decrease of about 68% from 1991
Survey of Occupational Injuries and Illnesses (SOII)	State SETF / Federal Bureau of Labor Statistics Grant	• 5.6 Total OSHA recordable incidence rate in 2010 ○ Unchanged from 2009 ○ Decrease of one-third from 2001 ○ Decrease of one-half from 1991* • 3.0 Days Away, Restricted or Job Transfer incidence rate in 2010 ○ 3.1 in 2009 ○ Decrease of one-third from 2001 ○ Decrease of one-half from 1991* • 1.5 Days Away From Work incidence rate in 2010 ○ Unchanged from 2009 ○ Decrease of one-third from 2001 ○ Decrease of two-thirds from 1991*
Census of Fatal Occupational Injuries (CFOI)	State SETF / Federal Bureau of Labor Statistics Grant	• 19 fatalities in 2010 ○ Up from 16 in 2009 ○ Highest in 1999 with 32 ○ Lowest in 2005 with 15
OSHA Data Initiative (ODI)	State SETF / Federal Occupational Safety & Health Administration	• 233 (51.2%) targeted employers in 2010 ○ Down from a high of 55.5% emphasized in the 2007 LEP program.
Employer Substance Abuse Testing	State General Fund and SETF	• 4.3% total positive tests for 2010 ○ 3.8% in 2009 (Low) ○ Highs of 4.9% in 2002 and 2007 • 4.4% applicant positive for 2010 ○ 3.8 % in 2009 ○ Low of 3.8% in 2009 ○ Highs of 5.0% in 2002 and 2007 • 16.2% probable cause positive for 2010 ○ 37.5% in 2009 ○ Low of 0 in 2002 ○ High of 80% in 2007 • 2.6% random positive for 2010 ○ 4.4 % in 2009 (High) ○ Low of 2.4% in 2001
Healthcare Focus Program	State SETF	• 16.4% of disabling first reports in 2010 ○ Down from 17.7% in 2009 • Refocused to Nursing & Residential Care (NAICS 623) in 2011

*Data series was altered over the time period—see narrative for details.

The prevention of injuries and illnesses prevents workers from entering the WC system and is the most efficient and humane way to contain costs. Three studies on the 100 most costly Maine WC cases found that almost any case can evolve into a high cost case due to complications and the intricacies of the WC system.

Note that 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 Bureau is working to build the 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.

II) Organization of this Report

The report is organized with an eye on providing the best possible 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 Bureau and its partners in the occupational safety and health (OSH) community, including outreach, advocacy, and enforcement.

Part 3 will present research programs of the Bureau and some resulting data and conclusions.

Part 4 will discuss how current information gathering and sharing can be improved and provide an update on the initiative in this area.

Part 5 will outline 2010 developments and some prospects for the immediate future.

Prevention Services Available

I) The SafetyWorks! Identity

SafetyWorks! is an identity that includes the occupational safety and health (OSH) training, consultation and outreach (non-enforcement) prevention functions of the Bureau of Labor Standards (BLS). Under its umbrella a variety of free education, consultations, and outreach services are made available to Maine employers, employees, and educators. These services are voluntary and provided only at the request of the employer and they are provided free of charge. 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! 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.

A. Employer and Employee Training and Education

General OSH Training - SafetyWorks! staff develop and offer industry-specific and problem-specific training. WCB data can suggest the need for, and direct the targeting of, such training. In addition, the Bureau 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 video display terminal (VDT) operator training requiring as little as two hours. This includes free training in OSHA recordkeeping, something critical to collecting accurate federal data and rare if not unique to the state of Maine. Scheduled public training is offered at the SafetyWorks! Training Institute and local CareerCenters. Employer training is delivered at the worksite at the employer's request. In fiscal 2011, 593 safety classes were completed with 8,815 attendees. As of January 2012, the SafetyWorks! Training Institute has been relocated from Fairfield to the Central Maine Commerce Center in North Augusta. This state-of-the-art training center has realistic, safety mock-ups for experiential, adult learning.

Child Labor Education - A special emphasis for the Bureau is the education of young workers. As you will see in the data section, a high proportion of the injuries and illnesses reported occur to young workers and to workers with little experience. The Bureau regularly works with the vocational technical high schools to provide teen students with 10-hour standards training and with the Penobscot Job Corps to train their students prior to entering the workforce.

B. Employer Consultation

Employer Profiles - Using the data from the WCB's *First Reports* and the Survey of Occupational Injuries and Illnesses (SOII), the Research and Statistics Unit (R&S) of the Bureau can provide a Maine employer with a profile of that employer's injury and illness experience over a number of years. Such a profile shows the type of disabling injuries or illnesses that have been experienced by the company's workers. This profile also describes the nature of the injury or illness and the event or exposure that led to each incident. The employer uses this information in detecting patterns in developing and refining the company safety program. Between November 1, 2010 and October 31, 2011, 41 employer profiles were requested.

On-Site Consultation - Also under SafetyWorks!, the Workplace Safety and Health (WS&H) Division of the Bureau provides consultation services to public and private sector employers at their request. In the private sector, the Bureau provides consultations to employers identified by Regional OSHA for inspection through its Local Emphasis Programs (LEPs). National OSHA and Regional OSHA both 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 training 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 (walk-through),
- examination of mandated written safety programs and employer policies, and
- an examination of work processes. Consultations are advisory and cooperative in nature. In fiscal 2011, 723 employer on-site consultations were requested and completed.

For more on the services offered by the SafetyWorks! program, go to: www.safetyworksmaine.com

II) Enforcement

Unfortunately with all the voluntary resources available, there is a need to determine compliance on a non-voluntary basis if, for no other reason, as a check on the Bureau's voluntary process. In order to accomplish that, there are several enforcement programs in place. The Bureau keeps those separate from the SafetyWorks! programs to distinguish them from those which are voluntary. The enforcement activity is triggered through targeted random inspections, complaints and/or known issues which are typically discovered through analysis of one or more data sources (as outlined in section 3 of this report).

A. Child Labor Work Permits

To protect young workers, the Wage and Hour Division of the Bureau reviews and approves or denies work permit applications for workers under the age of 16. The approval process involves verifying the young worker's age, that the young worker has passing grades in school and that the work activity and environment is appropriate for the age of the worker. From July 1, 2010 to June 30, 2011, 2,491 work permits were approved and 119 permits were denied. About a third of the denials were due to the applicant being underage for the proposed employment.

B. 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 laws, which have an occupational safety and health component. The Division can use age data from the WCB *First Report of Injury or Illness* to select industries and employers for inspection. Employers are also identified for inspections based on combinations of certain administrative criteria and past complaints. From July 1, 2010 to June 30, 2011 the Division conducted 2,966 random inspections finding 699 separate violations and 650 complaint assignments finding 304 violations. There were 30 child labor violations, mostly involving the number of hours worked or the time of day the work was performed.

C. Public Sector Site Safety Inspections

The Workplace Safety and Health (WS&H) Division of the Bureau enforces safety regulations based on federal 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 and health enforcement. WS&H prioritizes state and local agencies for inspection based on reports of deaths or serious injuries requiring overnight hospital stays, complaints from employees or employee representatives, the agencies' injury and illness data from the WCB, the results of the Survey of Occupational Injuries and Illnesses (SOII). WS&H compliance officers conduct randomly selected, 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; however, this shutdown is not mandatory. By way of comparison with OSHA activity in the private sector (below), there were 110 public sector employers and 660 site inspections completed in federal fiscal year 2011 (October 2010 through September 2011). (On average each public sector employer had six physical locations that were inspected.) The inspections resulted in 2,723 violations cited and $564,200 assessed in penalties before reductions for size of the employer and good faith abatement efforts. This included 10 employers with $30,000 each in penalties, due to failure to abate and two willful violations at $10,000 each.

D. 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 Bureau's 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 randomly selected, unannounced and complaint-based 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. OSHA conducted 568 inspections in Maine for federal fiscal year 2011 (October 2010 through September 2011) resulting in 3,146 citations, $2,185,150 in penalties and involving 407 employers.

Effective workplace injury and illness prevention services cannot be designed and delivered without a detailed working knowledge of all factors that contribute to occupational safety and health (OSH). This knowledge is gained by OSH research, through continuous injury surveillance programs and through conducting focused studies.

Research and Data Available

I) Occupational Safety & Health Surveillance Programs

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

- Maine Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*
- Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses (SOII)
- Federal Bureau of Labor Statistics Census of Fatality Occupational Injury Program (CFOI)
- Federal OSHA Data Initiative (ODI)
- Occupational Fatality Reporting Program

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

A. Maine Workers' Compensation Board Employer's First Report of Occupational Injury or Disease

Since 1973 the Maine Bureau of Labor Standards 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 and is now called the Census of Case Characteristics. The Bureau data is directly linked to the WCB administrative data for each case and provides a wealth of information on individual cases. The database includes:

3) Characteristics of the employer
4) Characteristics of the employee
5) Characteristics of the workplace
6) Characteristics and results of the incident
7) Characteristics and results of the workers' compensation claim

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

i. Twenty-Year Pattern of Disabling Cases, Maine (1991-2010)

In 2010, there were 13,065 disabling cases reported to the Maine Workers' Compensation Board. A disabling case is a case in which a worker lost one or more days of work beyond the day of the injury. Figure 1 shows the twenty-year trend of disabling cases. The 2010 figure shows an increase of 383 cases from 2009. Even with the small increase in 2010, there has been a 22 percent reduction in disabling cases reported from 2001; about a 32 percent reduction since the 1992 reforms; and about a 40 percent reduction since 1991.

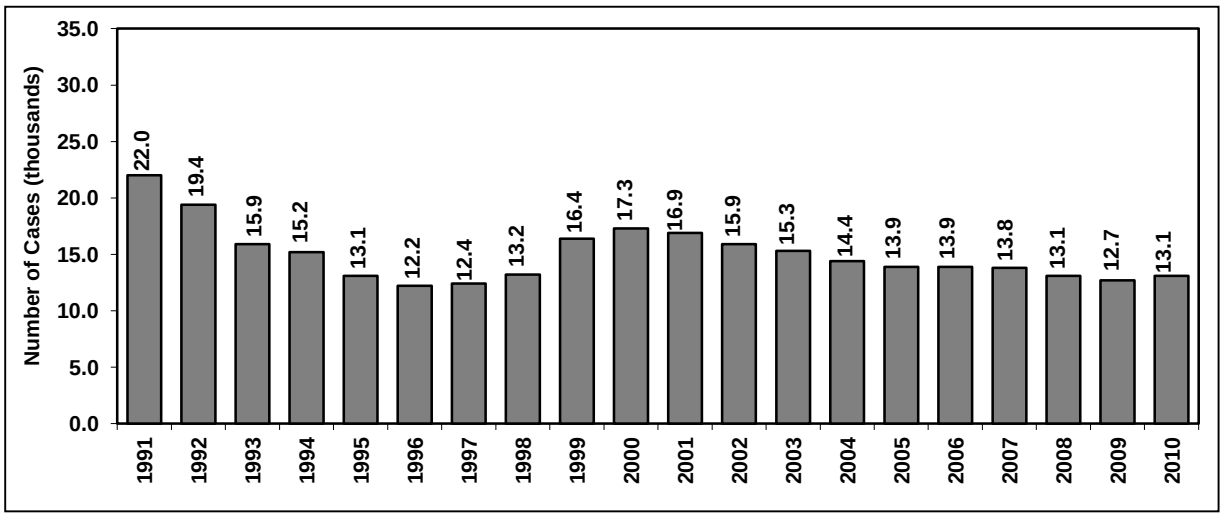


Figure 1: Twenty-Year Pattern of Disabling WCB Cases, 1991-2010

ii. Geographic Distribution of Disabling Cases, Maine (2008-2010)

In 2010, six of the sixteen counties had an injury rate higher than the state rate. The six counties were: Sagadahoc (consistently highest by a factor of one-and-a-half or more), Cumberland, Kennebec, Washington, Aroostook, and Penobscot counties. Table 1 describes the number of disabling cases by county for calendar years 2008 through 2010. 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. This rate does not take into account overtime and part-time exposure hours.

Table 1: Geographical Distribution of Disabling Cases, Maine (2008-2010)

County	2008			2009			2010		
	Cases	Employ-ment	Rate Per 1,000	Cases	Employ-ment	Rate Per 1,000	Cases	Employ-ment	Rate Per 1,000
Sagadahoc	680	18,323	37.1	596	17,635	33.8	551	17,474	31.5
Cumberland	3,294	151,859	21.7	3,370	147,150	22.9	3,791	147,149	25.8
Kennebec	1,242	60,450	20.5	1,253	58,956	21.3	1,472	58,404	25.2
Washington	285	13,407	21.3	302	12,928	23.4	287	12,631	22.7
Aroostook	705	32,787	21.5	668	31,572	21.2	679	30,871	22.0
Penobscot	1,398	74,663	18.7	1,472	73,044	20.2	1,487	71,743	20.7
Total	**13,085**	**668,724**	**18.6**	**12,682**	**647,298**	**19.6**	**13,065**	**641,896**	**20.4**
Androscoggin	1,093	55,318	19.8	1,074	53,501	20.1	1,086	53,580	20.3
Knox	384	20,068	19.1	377	19,144	19.7	355	19,009	18.7
Somerset	459	23,027	19.9	414	22,218	18.6	406	21,945	18.5
Hancock	524	28,090	18.7	405	26,972	15.0	453	26,903	16.8
Piscataquis	129	6,878	18.8	127	6,555	19.4	107	6,542	16.4
Lincoln	252	17,527	14.4	265	16,805	15.8	257	16,595	15.5
Oxford	418	26,461	15.8	356	25,501	14.0	380	25,160	15.1
Franklin	201	13,341	15.1	194	12,990	14.9	170	12,715	13.4
York	1,344	108,544	12.4	1,218	104,770	11.6	1,329	103,790	12.8
Waldo	220	17,982	12.2	223	17,557	12.7	166	17,385	9.5
Unknown*	431	----	----	368	----	----	89		

* Unknown represents WCB First Reports with missing location information.

Sources: The case data is from the Workers' Compensation Board *Employer's First Report of Occupational Injury or Disease*.

The employment data is from the Center for Workforce Research and Information, Maine Department of Labor.

iii. Disabling Cases by Occupational Groups, Maine (2008-2010)

There are nine occupational groups that accounted for over 70 percent of all reported disabling injuries in 2010. Table 2 describes the top nine occupational groups with corresponding rates. Further research is warranted to study the trends and patterns of injuries and illnesses within these nine occupational groups to identify the occupational risk factors. Two items of note: the frequency and proportion of cases involving Transportation and Material Moving occupations has been reduced significantly since

2008 while the proportion and frequency of cases involving Office and Administrative Support occupations has increased substantially in the past three years.

Table 2: Disabling Cases by Occupational Groups, Maine (2008-2010)

Occupational Groups	2008		2009		2010	
	Number	Percent	Number	Percent	Number	Percent
Transportation and Material Moving	2,106	16.1	1,821	14.4	1,390	10.6
Office and Administrative Support	1,046	8.0	1,046	8.2	1,256	9.6
Production	1,288	9.8	1,086	8.6	1,144	8.8
Installation, Maintenance, and Repair	963	7.4	993	7.8	1,062	8.1
Construction and Extraction	1,265	9.7	1,007	7.9	1,011	7.7
Healthcare Support	1,081	8.3	1,007	7.9	988	7.6
Food Preparation and Serving	882	6.7	872	6.9	991	7.6
Building and Grounds Cleaning and Maintenance	915	7.0	832	6.6	715	5.5
Sales and Related	786	6.0	840	6.6	691	5.3
Other Occupational Groups	2,753	21.0	3,178	25.1	3,817	29.2
Total	**13,085**	**100.0**	**12,682**	**100.0**	**13,065**	**100.0**

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

iv. Length of Service of Injured Worker, Maine, 2008-2010

One of the patterns that the Bureau 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 27 percent of the disabling *First Reports* in 2010. (For each of the past three years, new hires comprise roughly one-quarter to one-third of all disabling cases.)

At the same time, the proportion of long-term workers with 15 or more years with the same employer has increased, from 10.3 percent of all claims in 2001 to 13.8 percent in 2010. Of specific concern, the proportion of workers with 20 or more years with the same employer has increased from 5.9 percent of all claims in 2001 to 9.7 percent in 2010. This change merits further investigation.

Table 3a. Length of Service of Injured Worker, Maine, 2008-2010

Length of Service of the Injured Worker	Disabling Cases					
	2008		2009		2010	
	Number	Percent	Number	Percent	Number	Percent
Under 1 Year	4,219	32.2	3,411	26.9	3,525	27.0
1 Year	1,693	12.9	1,656	13.1	1,520	11.6
2 Years	1,252	9.6	1,084	8.5	1,154	8.8
3-4 Years	1,295	9.9	1,653	13.0	1,929	14.8
5-9 Years	1,874	14.3	1,996	15.7	1,994	15.3
10-14 Years	821	6.3	885	7.0	1,010	7.7
15-19 Years	586	4.5	494	3.9	532	4.1
20+ Years	1,168	8.9	1,324	10.4	1,267	9.7
Unknown	166	1.3	179	1.4	134	1.0
Total	**13,085**	**100.0**	**12,682**	**100.0**	**13,065**	**100.0**

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

v. Age of Injured Worker, Maine, 2001, 2008-2010

Related to the Table "3a" on the previous page, the Bureau has been tracking the issue of the aging workforce as it applies to disabling Workers' Compensation Claims. As can be seen below in Table 3b the proportion of injuries occurring to those workers age 50 and older has risen from 20.2 percent in 2001 to 32.5 percent in 2010. This is of concern since, according to the Maine Jobs Council's report: *Maine's Aging Workforce: Opportunities and Challenges "*By 2018, nearly one-quarter of the labor force will be age 55 and older."

Table 3b. Age of Injured Worker, Maine, 2001 and 2008-2010

Age of the Injured Worker	Disabling Cases							
	2001		2008		2009		2010	
	Number	Percent	Number	Percent	Number	Percent	Percent	Percent
Under 19	397	2.3	224	1.7	186	1.5	196	1.5
19-24	2,182	12.9	1,584	12.1	1,373	10.8	1,567	12.0
25-29	1,816	10.8	1,310	10.0	1,319	10.4	1,283	9.8
30-34	2,157	12.8	1,146	8.8	1,129	8.9	1,197	9.2
35-39	2,407	14.3	1,404	10.7	1,334	10.5	1,245	9.5
40-44	2,464	14.6	1,579	12.1	1,567	12.4	1,514	11.6
45-49	2,036	12.1	1,892	14.5	1,753	13.8	1,824	14.0
50-54	1,548	9.2	1,643	12.6	1,627	12.8	1,792	13.7
55-59	1,021	6.0	1,230	9.4	1,286	10.1	1,289	9.9
60+	849	5.0	1,073	8.2	1,108	8.7	1,158	8.9
Missing	3	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total	**16,879**	**100.0**	**13,085**	**100.0**	**12,682**	**100.0**	**13,065**	**100.0**

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

B. Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses (SOII) SHA Recordable Cases

Since 1972, the Maine Bureau of Labor Standards has partnered with the federal Bureau of Labor Statistics through a cooperative agreement to collect data through the annual Survey of Occupational Injuries and Illnesses (SOII). The results from this survey are summarized and published annually on the federal Bureau of Labor Statistics website at this link: 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 2010 the Maine Bureau of Labor Standards surveyed 2,613 private establishments and 513 public sector agencies, asking these businesses about their injury experience with OSHA recordable injuries and illnesses. In addition, employers report their average employment and total hours worked at the reporting worksite. From this information, incidence rates are produced. The incident rate is the estimated number of incidents per 100 full-time workers, standardized to a full calendar year. Unlike the rates generated from employment as the denominator, these rates take into account part-time and overtime exposure hours.

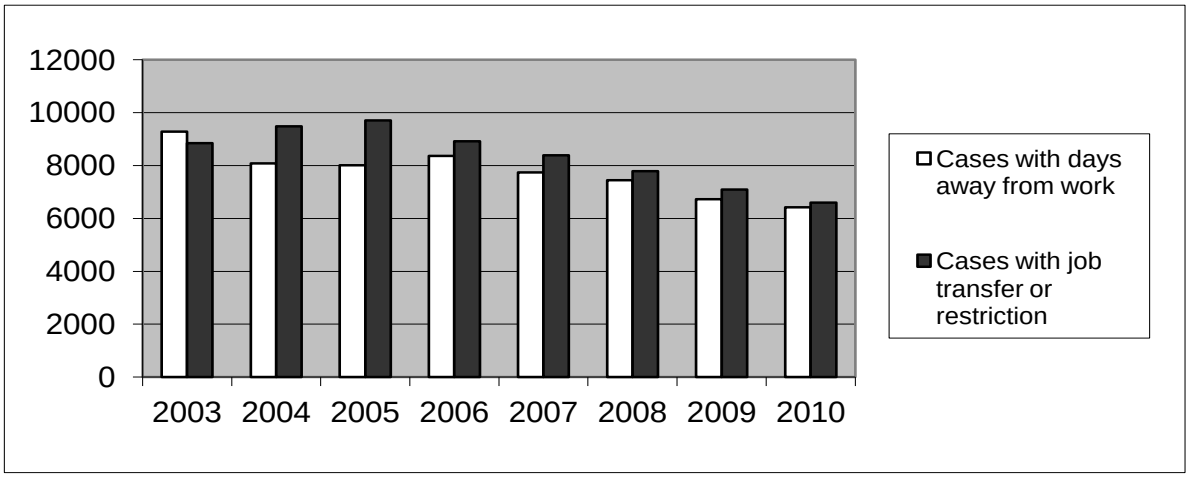
Figures 2a and 2b display results from the 2010 SOII. Data collected from this survey is not comparable with the WCB rate data for the following reasons:

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

i. OSHA Reportable Case Numbers and Rates

There has been an ongoing debate in the OSH community about using the number versus rates thus, the SOII estimates both. Figure 2a provides the estimated number of recordable cases while Figure 2b depicts the rates. The rates take into account the number of hours workers were exposed to workplace risks. The exposure hours vary from industry to industry and year to year and the rates take that into account.

Figure 2a: Lost Workday and Restricted Work Activity Cases (2003-2010)

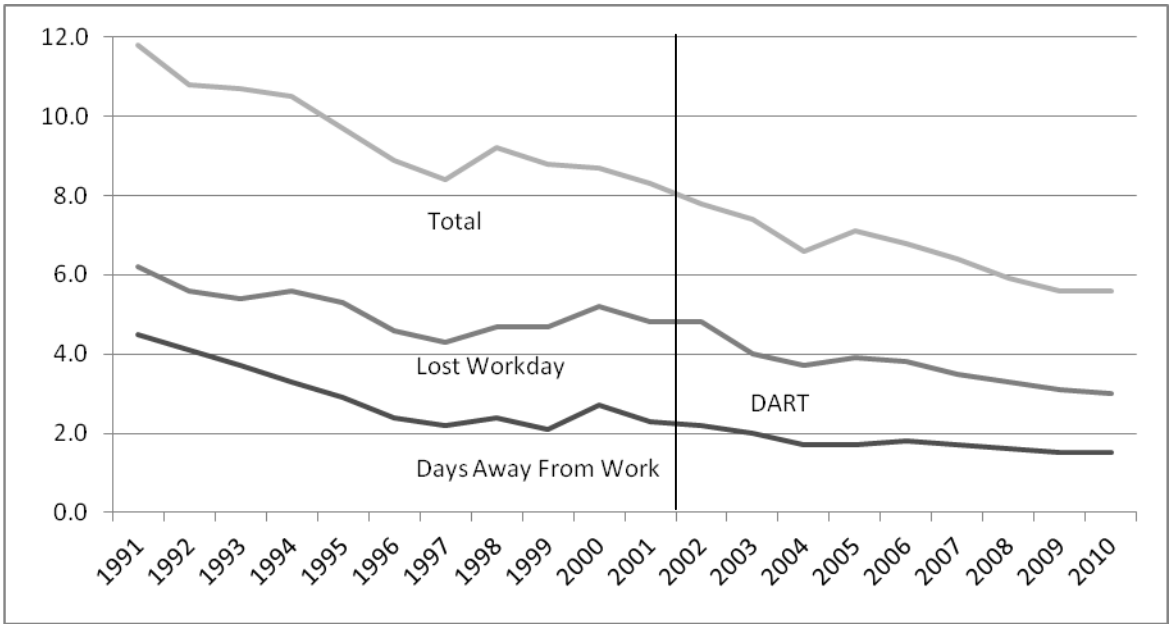


For 2010, there were an estimated total of 13,012 OSHA recordable injuries resulting in at least one day away from work and/or one day of job transfer or restriction beyond the day of injury. Of this total it was estimated that 6,419 cases resulted in at least one day away from work and 6,593 cases resulted in job transfer or restriction without any days away from work.

ii. OSHA Reportable Case Rates

A complement to the numbers generated from the WC and SOII data is the rates which, as mentioned, take into account differences in the hours worked and exposed.

Figure 2b: Total Recordable, Lost Workday or DART and Days Away From Work Cases per 100 FTEs (1996-2010)



DART=Days Away, Restricted, Transferred

Figure 2b shows the decline in the rate of injuries and illnesses reported. This table is per 100 full-time equivalents (FTEs) computed from employer-reported total hours worked. The 2010 incidence rate was 5.6 total cases per 100 FTEs, the same as in 2009. The Days Away, Restricted, Transferred (DART) incidence rate was 3.0 down from 3.1 in 2009 and the cases with the Days Away From Work rate was 1.5, the same as in 2009.

The Total and Lost Workday rates have decreased by one-third from 2001 and by one-half from 1991. The Days Away, Restricted, Transferred rate has decreased by one-third from 2001 and by two thirds from the 1991 Days Away From Work rate. Note that there was a change in this time period denoted by the break in the graph in the graph between the years 2001 and 2002 when OSHA recordkeeping definitions were changed. In any case this is a significant decrease, seen only as small decrements looking at them from year to year.

Again, more SOII rate data from 1997-2010 is published on the federal Bureau of Labor Statistics website at this link: http://stats.bls.gov/iif/oshstate.htm#ME.

iii. Industry Sector Data

According to the 2010 SOII (private sector), Transportation Equipment Manufacturing recorded the highest total recordable incidence rate of 15.7 per 100 FTEs. Table 3 describes the top 10 private industry total recordable rates.

Table 3: Industries with the Top 10 Total Recordable Rates, Maine, 2010

Industry Group	Cases per 100 FTEs
Transportation Equipment Manufacturing	15.7
Warehousing and Storage	11.2
Amusement, Gambling, and Recreation Industries	10.4
Nursing Care Facilities	10.2
Bakeries and Tortilla Manufacturing	9.2
Wood Product Manufacturing	9.1
Traveler Accommodation	9.1
Community Care Facilities for the Elderly	8.9
Hospitals	8.4
Merchant Wholesalers, Nondurable Goods	8.4
Home Health Care Services	8.1
All Private Industries	**5.6**

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

With 4 of the top 11 industries involved in health care one can see why there is, and should be, a concern for that sector. The link at http://stats.bls.gov/iif/oshstate.htm#ME has rates for most of the major industries.

C. Federal Bureau of Labor Statistics, Census of Fatality Occupational Injury Program (CFOI)

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

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

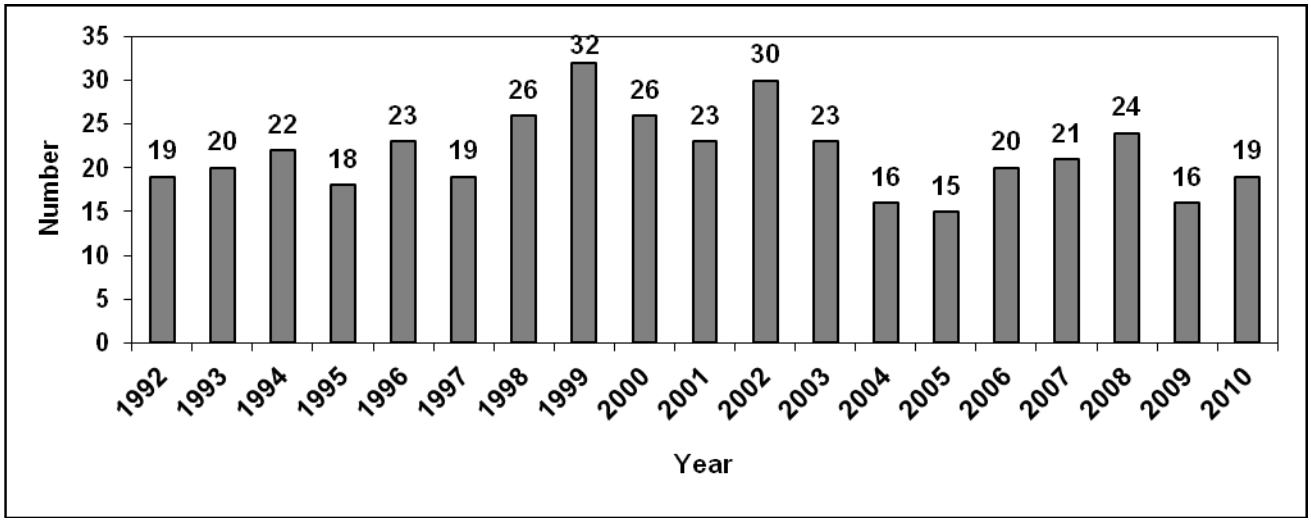
A death is considered work-related if an event or exposure resulted in an employee fatality while in work status, whether at an on-site or off-site location. Private and public sector (state, local, and county government) are included. Fatalities must be confirmed by two independent sources before inclusion in the CFOI. Sources in Maine include the WCB *Employer's First Reports of Occupational Injury or Disease,* and fatality reports from the following agencies and sources: 1) death certificates from Maine Center for Disease Control and Prevention, 2) the Chief Medical Examiner's Office, 3) the Department of Marine Resources, 4) investigative reports and motor vehicle accident reports from the Maine State Police, 5) investigative reports from the local police and sheriff's department, 6) the U.S. Coast Guard; 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.

i. Fatal Occupational Injuries, Maine (1992-2010)

Figure 3 shows the numbers of work-related fatalities recorded in Maine from 1992-2010.

Figure 3: Work-Related Fatalities, Maine (1992-2010)



Source: Maine Census of Fatal Occupational Injuries

ii. Fatal Occupational Injuries by Industry and Event/Exposure

Table 4 shows the data summarized across the years the program has existed. Note that "Transportation Accidents" account for more than 50 percent of the fatalities.

Table 4: Fatal Occupational Injuries & Illnesses by Industry and Event/Exposure Maine (1992-2010)

	Assaults and Violent Acts	Contact with Objects and Equipment	Exposure to Harmful Sub-stances or Environ-ment	Falls	Fire and Explosions	Transportation Accidents	**TOTAL**
Accommodation and Food Services	3						**9**
Administrative and Support and Waste Management and Remediation Services		4		3		8	**17**
Agriculture, Forestry, Fishing, And Hunting		23	19	5		77	**125**
Arts, Entertainment, and Recreation							**7**
Construction		12	10	19	3	13	**57**
Finance and Insurance							**3**
Health Care and Social Assistance						10	**15**
Information						3	**6**
Manufacturing		13		9		10	**35**
Other Services (except Public Administration)	3	3				3	**11**
Professional, Scientific, and Technical Services							**3**
Public Administration	3					8	**13**
Real Estate and Rental and Leasing							**3**
Retail Trade	4			4		11	**22**
Transportation and Warehousing		7		3		47	**60**
Utilities							**5**
Wholesale Trade						15	**19**
Other/Non-publishable & Unknown	7	16	10	9	6	9	**2**
TOTAL	**20**	**78**	**39**	**52**	**9**	**214**	**412**

Source: Maine Census of Fatal Occupational Injuries

D. OSHA Data Initiative (ODI)

Every year since 1993, the Bureau has received a grant from Federal OSHA to collect data on specific worksite occupational injury and illness rates in Maine. The information is used by OSHA to target

establishments with high incidence rates for intervention through consultation or enforcement. Usually the regional office of OSHA initiates this activity under the federal OSHA Local Emphasis Program (LEP).

The survey instrument used is called the OSHA Work-Related Injury and Illness Data Collection Form. The data collected are from the same sources as the SOII survey (OSHA 300 Injury Log) but requiring less detailed information.

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

Table 5 describes the sample size and the results of survey years 2006-2010

Variables/Survey Year	2006	2007	2008	2009	2010
Sample Size	439	421	475	455	453
National DART Rate	2.3	2.1	2.0	1.8	1.8
National DART Rate (Targeted)	5.4	5.0	4.5	2.5	(Not Available)
Maine Targeted Establishments	238 (54.2%)	234 (55.5%)	243 (51.0%)	233 (51.2%)	(Not Available)

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

E. Occupational Fatality Reports

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

With no funding from NIOSH, the Maine BLS implemented its own Occupational Fatality Reporting Program (OFR). The purpose of these case studies is to draw attention to the work environments, equipment or behaviors resulting in workers' deaths. Currently there are nine Occupational Fatality Reports and these reports can be found at: http://www.maine.gov/labor/labor_stats/publications/face/index.html. For 2011 the Bureau was unable to add to these reports, but this activity will resume in 2012 if resources permit.

F. Employer Substance Abuse Testing

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

The Maine Substance Abuse Testing Law is intended to protect the privacy rights of employees, yet allow an employer to administer testing for several purposes: 1) to ensure proper testing procedures, 2) to ensure that an employee with a substance abuse problem receives an opportunity for rehabilitation and treatment, and 3) 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 the collaborative effort of the following agencies:

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

In 2010, the annual survey indicated that a total of 21,388 tests were administered by employers with approved policies and 931 (4.3%) of these tests were positives. There were 20,267 applicants tested and 897 (4.4%) of the applicants tested positive for illegal substances. Table 7 shows the total and applicant test results for the last 10 years while Table 8 describes the corresponding results for probable cause and random testing.

For a full report, visit: www.maine.gov/labor/labor_stats/publications/substanceabuse

Table 7: Results of Overall and Applicant Testing (2001-2010)

Year	Approved Policies	TOTAL			Job Applicant Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
2001	239	16,492	730	4.4	15,947	716	4.5
2002	252	13,128	642	4.9	12,595	624	5.0
2003	271	16,129	761	4.7	15,345	727	4.7
2004	287	17,428	826	4.7	16,702	803	4.8
2005	310	17,742	749	4.2	16,876	706	4.2
2006	325	18,112	853	4.7	17,364	824	4.7
2007	350	22,641	1,110	4.9	21,700	1,076	5.0
2008	384	23,437	1,086	4.7	22,477	1,045	4.7
2009	412	17,399	666	3.8	16,719	631	3.8
2010	433	21,388	931	4.3	20,267	897	4.4

Table 8: Results of Probable and Random Testing (2001-2010)

Year	Approved Policies	ProbableCause Testing			Random Testing		
		Tests	Positives	(%)	Tests	Positives	(%)
2001	239	8	1	12.5	537	13	2.4
2002	252	10	0	-	523	18	3.4
2003	271	29	7	24.1	755	27	3.6
2004	287	6	1	16.7	720	22	3.1
2005	310	18	9	50.0	863	34	3.9
2006	325	18	2	11.1	730	27	3.7
2007	350	5	4	80.0	936	30	3.2
2008	384	13	2	15.4	947	37	3.9
2009	412	16	6	37.5	664	29	4.4
2010	433	39	6	16.2	1,082	29	2.6

II) Research Projects Other Than Annual Report

A. Capacity Building in OSH Surveillance

The Maine Bureau of Labor Standards is a member of a national work group that developed core occupational safety and health surveillance indicators. The membership of this work group 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/webpdfs/OHIdocumentrevised2008.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:

- Promote program and policy development at the national, state, and local levels to protect worker safety and health.
- Build core capacity for occupational health surveillance at the state level.
- Provide guidance to states regarding the minimum level of occupational health surveillance activity.
- 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 in Maine ended in 2005 but since then the MDOL has continued to participate in the work group and the results of this initiative are available on the CSTE website: http://www.cste.org/OH/OHmain.asp

B. OSHA Recordkeeping Employer Outreach Initiative

The Survey of Occupational Injuries and Illnesses and the OSHA Data Initiative survey depend on the accuracy of data tabulated from the OSHA Recordkeeping process. Additionally Federal OSHA enforces OSHA recordkeeping law and rules and fines employers for non-compliance. To ensure the accuracy of the data and to help employers comply with OSHA recordkeeping guidelines and avoid the fines, the Research & Statistics Unit provides formal training, consultation, and outreach functions to Maine employers, free of charge.

In 2011, the R&S training staff conducted 17 classes with 188 attendees in various locations in the state from Saco to Presque Isle. For 2012, there will be 12 sessions offered throughout the state.

Of note, in Maine federal OSHA enforces OSHA recordkeeping rules (CFR1904) for private sector establishments. Public sector (state and local government employers) enforcement falls under the Bureau of Labor Standards, Workplace Safety and Health Division.

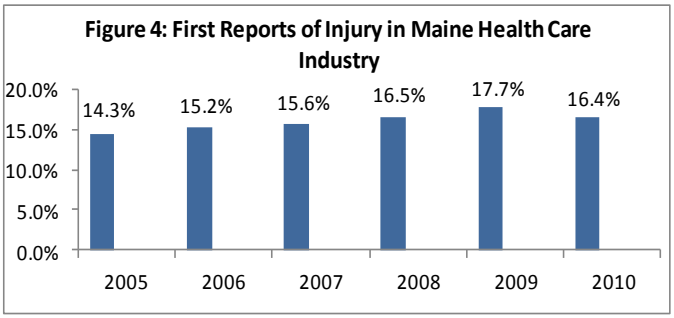
C. Special Projects

Using information from the Maine Workers' Compensation Board's *Employer's First Report of Occupational Injury or Disease* and the federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses, the Research & Statistics Unit continued work on the following research projects in 2011:

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

i. Work-Related Injuries in the Health Care Sector (NAICS Subgroups 621, 622, and 623)

The federal 2010 Census showed that Maine has the highest median age of all states in the country. As such Maine will be the leader in problems (and hopefully solutions) resulting from a high proportion of people reaching retirement age and then end-of-life care. One of the consequences will be a high demand for health care services. Using the data from the Maine Workers Compensation Board, analyses in the past showed injuries in the health services care industry has been on the rise as a proportion of the WC cases. That trend declined somewhat in 2010; however, it is too early to tell whether that change will be persistent. Figure 4 shows the most recent pattern. In 2009, on average, six health care workers were injured on the job every day in Maine.



Nursing/Residential Care Facilities Have Highest Injury Rates

Within the health care industry, the injury rates for Nursing and Residential Care Facilities (NAICS Subsector 623) have been significantly higher than the injury rates for all private sector industries combined. Table 6 shows Maine OSHA Recordable Incidence Rates (2005-2010).

Table 6: Maine OSHA Recordable Incidence Rates (2005-2010)

Year	All Industry (Private Sector)			Ambulatory Health Care (NAICS 621)			Hospitals (NAICS 622)			Nursing & Residential Care (NAICS 623)		
	TRC	DART	DAFWII	TRC	DART	DAFWII	TRC	DART	DAFWII	TRC	DART	DAFWII
2005	7.2	3.9	1.7	4.2	1.6	0.8	8.0	4.5	2.1	11.7	7.9	2.6
2006	7.0	3.9	1.8	5.4	2.7	2.0	9.5	5.0	2.1	14.1	10.3	3.1
2007	6.4	3.6	1.6	3.4	1.2	0.8	9.1	5.4	2.1	11.6	7.6	2.9
2008	6.0	3.3	1.6	5.1	1.8	0.7	9.4	5.0	2.0	9.5	8.0	5.4
2009	5.6	3.0	1.4	4.6	1.9	1.1	9.1	5.1	1.9	11.4	7.8	3.1
2010	5.6	3.0	1.4	3.8	1.2	0.6	8.4	4.5	1.8	10.2	6.9	3.3

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

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

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

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

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

For the full report, go to: www.maine.gov/labor/labor_stats/research.html

ii. Work-Related Motor Vehicle Accidents

Using the data from Maine WCB and the federal Bureau of Labor Statistics, the Research and Statistics Unit developed an informational brochure to support the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) effort in preventing work-related motor vehicle fatalities. Federal OSHA recently initiated an educational campaign calling on employers to prevent work-related distracted driving, with a special focus on putting a stop to texting while driving.

Texting while driving greatly increases the risk of being injured or killed in a motor vehicle crash. In an open letter to employers, also posted online, OSHA requests that companies examine their policies and practices, inform them that they have a legal obligation to prohibit workplace hazards such as texting

while driving, and ask them to immediately remove any incentives that may motivate employees to text while behind the wheel. This online resource informs workers of their rights, informs employers of their responsibility to provide safe workplaces, and offers best practices and policies on achieving safe workplaces in motor vehicles. Information and continual updates are available at: www.osha.gov/distracted-driving.

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

From 1998 to 2009:

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

Table 7: Comparison of Work-Related Motor Vehicle Accident Fatalities to Overall Work-Related Injury & Illness Fatalities in Maine (1998-2009)

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

Data Sources: Maine Workers' Compensation *Employer's First Report of Occupational Injury or Disease*, State Police Accident Reports.

The data from Table 8 describes police accident investigation reports. It showed that 12 (17.6%) of those 68 incidents were caused by driver inattention and no seatbelt was used in 44 (65%) of those fatalities.

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

Contributory Factors	Two-Vehicle Accidents	Single-Vehicle Accidents	Working Around Motorized Vehicles
Loss of control	11	23	0
Driver inattention	**8**	**4**	**0**
Struck by vehicle	6	1	7
Failure to yield	3	0	0
Brake or tire failure	1	2	0
Total	31	30	7
Seatbelt use	10	7	0
No seatbelt used	**21**	**23**	**0**

For the full report, go to: www.maine.gov/labor/labor_stats/research.html

Challenges

The following items are challenges identified this year or ones that continue from previous years.

I) Safety Education & Training Funding

As mentioned in the introduction, much of the funding for the Bureau's prevention efforts comes either through federal cooperative grants or the Safety and Education Training Fund (SETF). Three of the four federal grants require matching state funding. For the Bureau those state matching funds come out of SETF.

Due to the decline in claims and the declining cost of claims as illustrated by the data in the introduction, the cap has declined as the Bureau's expenses have climbed and the expense and revenue curves are meeting. The fund is currently capped at 1 percent of the payout from claims.

In a sense we have performed the ideal—putting ourselves out of business. The caution though is that this situation *may mean a decrease in the education, consultation, and research activities that maintain the decrease*. There is pressure, therefore, to resolve this in one or more of following three ways:

- Locate alternative funding sources for the current activities funded through the SETF
    - Seek additional grant funding where possible.
    - Seek additional General Fund monies if appropriate.
- Raise the cap on the fund.
- Cut services currently provided and funded by the SETF.

The most likely the short-term solution will be a combination of the three.

II) EDI and Missing Data

As of January 1, 2005, all filings of the WCB *Employer's First Report of Occupational Injury or Disease* were required to be done by electronic data interchange (EDI), computer-to-computer, using one of two formats. One is the International Association of Industrial Accident Boards and Commissions (IAIABC) Claims Release 3.0 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", that is, 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 available to the Bureau for coding in a timely manner. The Bureau will be looking at a process to ensure that, if an *Employer's First Report of Occupational Injury or Disease* is updated, the coding staff will see it again to determine if the coding should be altered, based on the changed information.

With several years of experience with the EDI system, it is clear the data are more consistent though there are some patterns that indicate systemic issues that may need to be dealt with to ensure accuracy. This is likely to be ongoing and will require vigilance to detect the issues and determine the cause. The next set of records to be automated is the payment reports. The EDI specification process should be a plus in making that data more consistent and accurate.

III) 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 (2006-2010). There were 5,196 (38.1%) cases with no RTW date for the year 2010 as of the date of tabulation (December of 2011). 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 Bureau strongly suspects that a significant number of these workers have actually returned to work and the RTW date has not been updated through the EDI system.

This missing information prevents the Bureau 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 the duration 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 statutory waiting period. As it is, these cases cannot be distinguished from those that returned before the waiting period. A case might legitimately not have a RTW 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, 2006-2010

	2006	2007	2008	2009	2010
First Reports with an incapacity Date	14,921	15,016	14,157	13,192	13,639
Of those, cases lacking a RTW (return-to-work) date	6,122	6,581	5,908	5,152	5,196
Raw percent lacking RTW date	41.0%	43.8%	41.7%	39.1%	38.1%
Cases lacking a RTW date and fatal or compensable cases (and therefore may not have RTW date legitimately)	3,406	3,412	3,165	2,608	2,671
Cases lacking a RTW date and not fatal or not possibly still out (no compensation records).	2,716	3,169	2,743	2,544	2,525
Minimum percentage without a valid RTW date	18.2%	21.1%	19.4%	19.3%	18.5%

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

IV) Cost data

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

The range in duration and cost will open new possibilities as well, telling the Bureau what groups and types of cases have more uncertainty in their outcome. This, in turn, may allow the Bureau 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 and the Bureau has done 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.

2011 Developments

I) Grants

The Bureau uses WCB data to supplement federal Bureau of Labor Statistics and OSHA data in developing OSH grant applications. There were no new grant applications initiated in 2011.

II) Program Initiatives

From time to time, based on evident needs, the Bureau initiates or enters into partnerships initiating various programs promoting occupational safety and health. Those below were active during 2011.

A. Maine Occupational Research Agenda (MORA)

In 2000, following discussions at the first Maine OSH Research Symposium, the Bureau took the initiative to create a Maine Occupational Research Agenda (MORA) and the associated steering group. The MORA is modeled after the NIOSH National Occupational Research Agenda (NORA). The Technical Services Division, in collaboration with the MORA Steering Group members, developed the research agenda and is moving it forward. MORA Steering Group members include education and health professionals, members of several government agencies, and insurers. In 2011, MORA provided input to the Bureau on a variety of OSH issues through the review of relevant projects.

For more information on MORA, go to the website at, www.maine.gov/labor/bls/MORA.htm

B. Data Outreach Initiative

In 2004, the Research and Statistics Unit of the Bureau 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.

C. SHARP and SHAPE Award Programs and MESHE

Some employers have been so successful with adopting best practices that it has resulted in recognition from the Maine Department of Labor through the SHAPE and SHARP awards and MESHE program. As part of the award, the employer is awarded a plaque in a ceremony and a flag to display at the workplace.

i. SHARP

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 48 employer locations qualified as of December 2011, including:

BBI Waste/Blow Brothers, Old Orchard Beach
Borderview Rehab & Living Center, Van Buren
Cianbro Coating Corporation
Cianbro Companies, Portland
Cianbro Fabrication Corp., Pittsfield
CM Almy, Inc., Pittsfield
Community Living Assoc–Roger Randall Center
Dearborn Precision Tubular Products, Fryeburg
Deering Lumber, Biddeford
Everett J. Prescott, Inc., Bangor
Everett J. Prescott, Inc., Gardiner
Everett J. Prescott, Inc., Portland
Fastco, Lincoln
Federal Distributors, Lewiston
Franciscan Home, Eagle Lake
Hodgdon Yachts, Boothbay
HP Hood, Portland
Jotul North America, Gorham
Kittery Point Yacht Yard,
L-3 Microdyne Outsourcing, Orono
Limington Lumber, E. Baldwin
Lonza, Rockland
Lucas Tree Experts, Portland
Marden's Inc., Lincoln
Marden's Inc., Rumford
Marden's, Inc., Calais
Marden's, Inc., Ellsworth
Marden's, Inc., Gray
Marden's, Inc., Lewiston (Locust St.)
Marden's, Inc., Lewiston (Main St.)
Marden's, Inc., Madawaska
Marden's, Inc., Waterville (Warehouse)
Marden's, Inc., Winslow (Warehouse)
Market Square Health Care Center, So. Paris
Mathews Brothers, Belfast
Mercy Home, Eagle Lake
Mid-State Machine, Winslow
Moose River Lumber Co., Moose River
Naturally Potatoes, Mars Hill
Northern Aquatics, Eagle Lake
Peavey Manufacturing, Eddington
Pleasant River Lumber
Portage Wood Products
Portland Yacht Services, Portland
Reed & Reed, Inc., Veterans Memorial Bridge
Reed & Reed, Inc., Woolwich
Robbins Lumber, Searsmont
Yachting Solutions, Rockport

ii. SHAPE

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 33 SHAPE employers, including:**

Aroostook Fire Protection, Fort Fairfield
Auburn Water & Sewage District, Auburn
Berwick Fire Department
Brooks Fire Department
Camden Fire Department
Caribou Fire and Rescue
Cary Medical Center, Caribou
City of Caribou
City of Presque Isle
Damariscotta Fire Department
Eco-Maine, Portland
Farmingdale Fire Department
Farmington Fire and Rescue
Greater Augusta Utilities District
Hampden Water District
Kennebunk, Kennebunkport & Wells Water District
Mapleton Fire Department
Newcastle Fire Department
North Lakes Fire & Rescue, Caribou
Northern Penobscot Technical Center, Lincoln
Northport Volunteer Fire Department
Oakland Fire Department
Orono Fire Department
Paris Fire Department
Region Two School of Applied Technology, Houlton
Town of Brunswick
Town of Kennebunk
United Technologies Center, Bangor
University of Maine Aroostook Farm, Presque Isle
University of Maine Blueberry Farms, Jonesboro
Westbrook Public Services
Wilton Fire Department
York Water District

iii. MESHE

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 award recipients.

III) Legislation

Several bills with potential impact on occupational safety and health passed the First Regular Session of the 125th Legislature:

1) **LD 1241**, *An Act to Remove the Requirement That Employers Offer Substance Abuse Services to Employees Who Fail Drug Tests*, which passed as amended, changed the statute regarding drug test policy to exempt from state requirements any company subject to a federal substance abuse testing program.
2) **LD 516**, *An Act to Amend the Maine Law to Conform with Federal Law Regarding Employment Practices for Certain Minors*, passed as amended, altered slightly the hours minors are permitted to work. The Bureau will monitor any impact on worker safety.

3) **LD 654**, *An Act to Amend the Occupational Disease Reporting Laws*, eased confidentiality restrictions, allow the Maine Center for Disease control to disclose to the Department of Labor the names of employers having certain reports of illnesses at their worksites and intervene to prevent further exposure.
4) **LD 466**, An Act to Require Hospitals to Adopt Employee Illness and Injury Prevention Programs and to Provide Lift Teams and to Require Reduced Workers' Compensation Insurance Rates for those Hospitals, did not pass.