

# MAINE STATE LEGISLATURE

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John R. McKernan, Jr.  
Governor



Brian K. Atchinson  
Superintendent

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE  
(207) 582-8707  
Telecopier (207) 582-8716

August 3, 1992

Richard Dalbeck, Chair  
and  
William D. Hathaway, Chair  
Blue Ribbon Commission to  
Examine Alternatives to the  
Workers' Compensation System  
University of Maine School of Law  
246 Deering Avenue  
Portland, Maine 04102

Dear Chairmen Dalbeck and Hathaway:

Enclosed herewith is a copy of a July 21, 1992 letter from Keith Shoemaker of the National Council on Compensation Insurance, the Plan Manager for the Maine Workers' Compensation Residual Market Pool.

In his letter, Shoemaker notes that the annual financial statements dated December 31, 1991 have been prepared to reflect a 20% savings from the 1987 reforms, significantly less than the 41.9% determined by the Superintendent of Insurance.

I am sending this letter to you as I believe it is extremely important that participants in discussions now taking place regarding the future of Maine's compensation system be aware of these and related matters. In my capacity as Superintendent, it is my hope that these important questions (such as are raised in the attached letter from NCCI) can be addressed.

Chairmen Dalbeck and Hathaway  
Blue Ribbon Commission to Examine  
Alternatives to the Workers' Compensation System  
August 3, 1992  
Page 2

If I or the Bureau of Insurance can be of further assistance in your endeavors, please contact me.

Sincerely yours,



Brian K. Atchinson  
Superintendent

BKA/m

Enc 1

CC: Harvey Picker  
Emilien Levesque  
Michelle Bushey ✓

MAINE WORKERS' COMPENSATION RESIDUAL MARKET POOL

750 Park of Commerce Drive  
Boca Raton, Florida 33487  
(407) 997-1000

July 21, 1992

Honorable Brian K. Atchinson  
Superintendent  
Department of Professional & Financial Regulation  
Bureau of Insurance  
Gardiner Annex  
124 Northern Avenue  
Gardiner, ME 04345

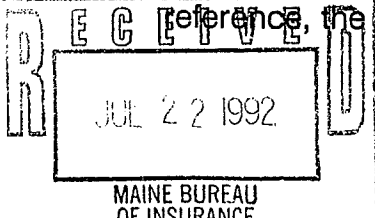
Dear Superintendent:

During a meeting in your office on June 26, 1992 with Mark Parkin of Deloitte & Touche, a question was raised by a member of your staff concerning the correlation of the 1991 Maine Workers Compensation Residual Market financial statements with the financial information provided at the Fresh Start hearing. More specifically, the questions addressed the 1988 policy year with your staff commenting that the Fresh Start material filed by NCCI indicated that \$28 million was needed to fund the 1988 policy year while the December 31, 1991 financial statements include a \$189 million deficit for the 1988 policy year.

**These amounts are comparable and there are no inconsistencies in the underlying data.**

The difference arises due to the unrealistic information requested as part of the Fresh Start hearings. NCCI is required to present inflated savings from the 1987 benefit reform in the Fresh Start filings resulting in a \$78 million artificial reduction in required funding. In addition, the \$28 million is based on present value while the financial statements are reflected at full value as required by Generally Accepted Accounting Principles resulting in a \$31 million difference. The remaining major reconciling item relates to the Fresh Start provisions mandating the use of estimated direct expenses as opposed to actual Pool expenses. These expense differences coupled with surcharge estimates account for \$30 million of the difference. The following expands the explanation of each reconciling item.

I will first explain the premises on which the \$28 million is based and follow each one with an explanation on how these differ from the financial statements. From an overall reference, the Fresh Start filings are predicated on financial information as of September



30, 1991. I will first compare the Fresh Start material to the September 30, 1991 financial statements and then update the September financials to December 31, 1991. This information is summarized on the attached exhibit. The \$28 million represents the additional funding required for policy year 1988 in the third quarter of 1992 (lump sum) to satisfy future obligations.

As you are aware, Maine legislated benefit reforms in 1987 related to workers compensation. At the time of the reform, it was estimated that the changes would result in a reduction in indemnity payments of 50.9%. These reduced indemnity losses combined with medical losses resulted in an overall projected savings of 41.9%. The full amount of the projected savings is used in the Fresh Start filing to arrive at the referenced \$28 million. Although NCCI is required to reflect the full savings in the filing, NCCI expressed concern in the Fresh Start filing and in supporting testimony that the actual realized savings from the 1987 reform will be significantly less. In fact, the actual paid benefits for the 1988 policy year do not reflect such a large savings, but rather suggest an overall savings of approximately 20%. Adjusting the Fresh Start filing to reflect a 20% benefit rather than 41.9%, increases the required \$28 million funding by \$78 million to \$106 million.

Another difference between the two reports relates to the handling and timing of expenses. The Fresh Start filing reflects estimated direct expenses and related cash flows while the financial statements obviously reflect actual Pool expenses. The handling of loss adjustment expenses is significantly different under the two scenarios. In the financial statements, these expenses are a component of the servicing carrier allowance which is paid to the carriers as they report premiums. In the Fresh Start filing, which uses a direct expense approach, these expenses are reflected as being paid out in a similar fashion as the payment of claims. This difference in the timing of payments for loss adjustment expenses results in \$7 million of additional investment income (reduction in required funding) in the Fresh Start filing. In addition to the impact of timing, actual Pool expenses exceed estimated direct expenses in the filing by \$8 million. It should be noted that for policy year 1988, the servicing carrier allowance was 30% which was a reduction from 40% for policy year 1987. The allowance was further reduced to 25.6% effective July 1, 1989.

The Fresh Start filing projects that ultimate surcharges to be collected from the two 3% annual assessments already implemented will be \$20 million. Through December 31, 1991, the total amount actually collected was \$8 million. For financial statement purposes, the surcharges are recorded when they are actually collected. Therefore, surcharges account for \$12 million (plus earned interest) of the difference between the Fresh Start filing and the financial statements. Adjusting for the timing and amount of expenses along with the difference in surcharges, the needed funding increases by \$30 million to \$136 million.

The presentation of the estimated ultimate loss ratio is also different between the Fresh Start filing and the financial statements. The impact of the 1987 benefit reform is difficult to predict resulting in a range of possible projections. While the two reports do use

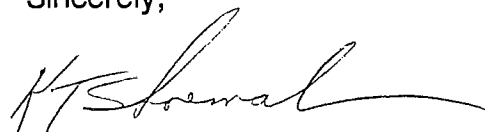
different ultimate projections, the resulting required funding difference of \$17 million (financial statements higher) is not a material difference. This brings the required funding amount up to \$153 million.

As previously stated, the amounts discussed above address the lump sum amount that would have to be deposited in the third quarter of 1992 to fund existing liabilities. The full value (undiscounted) of these liabilities for the 1988 policy year, as included in the financial statements, is \$189 million. All of the above reconciling items are summarized on the attached exhibit. The exhibit also presents comparable information for policy years 1989 and 1990. Please note that differences related to surcharges only impact the 1988 policy year and that there has not been a Fresh Start filing for 1991.

I am concurrently providing copies of this letter and exhibit to the Board of Governors of the Maine Workers Compensation Residual Market Pool and to Mark Parkin of Deloitte & Touche. I am also providing a copy of the December 31, 1991 financial statements for their approval.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Keith T. Shoemaker  
Treasurer

**MAINE WCRM POOL BOARD OF GOVERNORS**

Donald P. Carey--Maine Bonding & Casualty Company  
Richard B. Cote--Acadia Insurance Company  
Michael G. Crasnick--Electric Mutual Liability Insurance  
Lew Hayden--SAS Corporation  
Steven R. Hoxsie--Maine Cellular  
Fred R. Pracht, Jr.--Commercial Union Insurance  
Donald A. Richer--Hanover Insurance Company  
Mitchell P. Sammons--Sheridan Corporation

**RECONCILIATION OF FRESH START TO  
FINANCIAL STATEMENTS  
MAINE WORKERS COMPENSATION RESIDUAL MARKET POOL**

	POLICY YEAR				TOTAL
	1988	1989	1990	1991	
PRESENT VALUE FUNDING PER FRESH START FILING	\$28	\$35	\$27		
INCREASE DUE TO ELIMINATION OF MANDATED SAVINGS FROM 1987 BENEFIT REFORM	78	89	74		
INCREASE/(DECREASE) DUE TO TIMING AND AMOUNT OF EXPENSES AND SURCHARGES	30	6	(10)		
INCREASE/(DECREASE) DUE TO UPDATED ACTUARIAL PROJECTIONS	17	(7)	4		
CONVERSION TO ULTIMATE VALUE AS REQUIRED BY ACCOUNTING STANDARDS	31	34	42		
TOTAL DEFICIT AT SEPTEMBER 30, 1991	184	157	137		
FOURTH QUARTER 1991 ACTIVITY	5	11	(2)		
TOTAL DEFICIT AT DECEMBER 31, 1991	<u>\$189</u>	<u>\$168</u>	<u>\$135</u>	<u>\$82</u>	<u>\$574</u>

MAINE WORKERS' COMPENSATION RESIDUAL MARKET POOL

750 Park of Commerce Drive  
Boca Raton, Florida 33487  
(407) 997-1000

**CIRCULAR TO THE BOARD OF GOVERNORS OF THE  
MAINE WORKERS COMPENSATION RESIDUAL MARKET POOL**

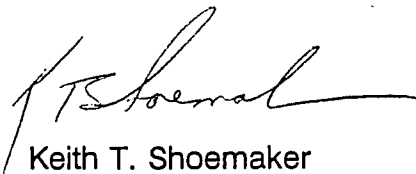
July 21, 1992

Enclosed, for Board approval, is a copy of the December 31, 1991 financial statements. Mitch Sammons, Chairman of the Board, has requested that Board members contact me to indicate their preference for either a teleconference or formal meeting to secure approval of the financial statements. Please respond with your preference by July 27, 1992 along with a list of possible meeting dates.

Also enclosed, for your information, is a copy of a letter provided to Superintendent Brian K. Atchinson concerning the reconciliation of the December 31, 1991 financial statements of the Maine Workers Compensation Residual Market Pool to the financial information presented at the Fresh Start hearings.

Please contact me at 407/997-4600 in response to your meeting preference. I will also be happy to answer any questions you may have.

Sincerely,



Keith T. Shoemaker  
Treasurer



**Maine Workers Compensation  
Residual Market Pool**

**Statutory Basis Financial Statements and  
Independent Auditors' Report  
Year Ended December 31, 1991**

# Maine Workers Compensation Residual Market Pool

## STATUTORY BASIS BALANCE SHEET

December 31, 1991

### ASSETS

Cash and cash equivalents	\$292,752,061
Maine Fresh Start surcharges receivable	2,291,113
Accrued interest receivable	<u>811,330</u>
TOTAL ASSETS	<u>\$295,854,504</u>

### LIABILITIES AND ACCOUNTABILITY OF MEMBER COMPANIES

Liability for outstanding losses:	
Reported losses	\$310,193,091
Incurred but not reported losses	493,737,000
Unearned premiums	<u>54,122,182</u>
	858,052,273
Due to servicing carriers	10,675,039
Accrued expenses	<u>1,398,825</u>
TOTAL LIABILITIES	870,126,137
Undistributed Operating Loss	( <u>574,271,633</u> )
TOTAL LIABILITIES AND UNDISTRIBUTED OPERATING LOSS	<u>\$295,854,504</u>

See notes to statutory basis financial statements.

# Maine Workers Compensation Residual Market Pool

## STATUTORY BASIS STATEMENT OF OPERATIONS AND CHANGES IN UNDISTRIBUTED OPERATING LOSS

Year Ended December 31, 1991

Premiums	
Premiums written	\$217,971,758
Fresh start premium surcharges	5,166,917
Decrease in unearned premiums	<u>463,427</u>
	<u>223,602,102</u>
Losses	
Losses paid	161,789,549
Increase in reported outstanding losses	69,078,274
Increase in incurred but not reported losses	<u>95,107,000</u>
	<u>325,974,823</u>
Expenses	
Servicing carriers' allowances	65,666,340
Other expense allowances	932,423
Administrative expenses	<u>2,891,633</u>
	<u>69,490,396</u>
Net underwriting loss	( 171,863,117)
Interest income	<u>18,309,874</u>
NET LOSS	( 153,553,243)
Undistributed operating loss, beginning of year	( <u>420,718,390</u> )
Undistributed operating loss, end of year	( <u>\$574,271,633</u> )

See notes to statutory basis financial statements.

## Maine Workers Compensation Residual Market Pool

### STATUTORY BASIS STATEMENT OF CASH FLOWS

Year Ended December 31, 1991

Cash flows from operating activities:	
Net loss	(\$153,553,243)
Adjustments to reconcile net loss to net cash provided by operating activities	
(Increase) Decrease in:	
Maine fresh start surcharges receivable	( 214,053)
Accrued interest receivable	395,512
Increase (Decrease) in:	
Due to servicing carriers	17,127,256
Accrued expenses	1,394,457
Reported and incurred but not reported losses	164,185,274
Unearned premiums	( 463,427)
Net cash provided by operating activities	<u>28,871,776</u>
Net increase (decrease) in cash and cash equivalents	28,871,776
Cash and cash equivalents at beginning of year	<u>263,880,285</u>
Cash and cash equivalents at end of year	<u>\$292,752,061</u>

See notes to statutory basis financial statements.

# Maine Workers Compensation Residual Market Pool

## NOTES TO STATUTORY BASIS FINANCIAL STATEMENTS

Year Ended December 31, 1991

### 1. Organization:

The Maine Workers Compensation Residual Market Pool (the "Pool") is an unincorporated association of insurance companies established by the Maine Bureau of Insurance and managed by the National Council on Compensation Insurance ("NCCI"). The Pool commenced operations on January 1, 1988 and is responsible for reinsuring all risks assigned to it under the Workers Compensation Law of the State of Maine. The policies are written and serviced by designated servicing carriers who report transactions (premiums, losses, expenses, unearned premiums and reported outstanding losses) to and settle net cash balances with the Pool.

Pursuant to the Maine Workers Compensation Residual Market Plan of Operation, promulgated by the Maine Bureau of Insurance, for policy year 1988, residual market deficits are not the responsibility of member company insurers, but rather will be funded by future premium surcharges to insured employers. For policy years subsequent to 1988, deficits are initially the responsibility of insured employers. However, if member company insurers fail to make a good faith effort, or fail to achieve specific voluntary market share percentages, then any surcharge to be charged to insured employers as a result of residual market deficits will be reduced to the extent specified by law and such reduction will be recoverable from the member company insurers. In no case will the amount of surcharge to be charged to insured employers be reduced by more than 50%.

### 2. Summary of Significant Accounting Policies:

The following is a summary of significant accounting policies used in preparation of the accompanying financial statements:

#### a. Basis of presentation

The Pool's financial statements have been prepared in conformity with accounting practices prescribed or permitted by state insurance regulatory authorities. Such practices vary from generally accepted accounting principles in that: (1) The costs to acquire the business, which are included in the servicing carriers' allowances, are charged to income in the period in which they are incurred rather than being deferred and amortized over the terms the related premiums are earned. (2) An accrual is not established for late reported premiums and expenses and premiums earned but not billed by the servicing carriers. To the extent, however, that anticipated losses and anticipated costs of servicing the business are expected to exceed unearned premiums, deferred acquisition costs would be expensed and a premium deficiency reserve would be established for the expected costs exceeding unearned premiums.

#### b. Premiums

Deposit premiums are generally collected in advance and earned pro rata over the term of the policy. Audit premiums are recorded as earned when they are reported by the servicing carriers. Unearned premiums are determined and reported on a quarterly basis to the Pool by the servicing carriers.

## Maine Workers Compensation Residual Market Pool

### NOTES TO STATUTORY BASIS FINANCIAL STATEMENTS

Year Ended December 31, 1991

#### 2. Summary of Significant Accounting Policies: (Continued)

Fresh start premium surcharges of \$5,166,917 are those surcharges charged during 1991, net of premium tax, pursuant to the April 17, 1990 and September 30, 1991, decision and order of the Superintendent of Insurance. Such surcharge of 3% of premium is to be imposed on all voluntary and residual market policies issued or renewed between July 1, 1990 and June 30, 1992 and is to be used exclusively for funding of the policy year 1988 residual market deficit.

The Superintendent will review in each year through 1996 whether a deficit exists for each policy year. If the Superintendent concludes that a deficit exists for a specific policy year, the Superintendent shall order a surcharge on premiums in both the voluntary and residual market. Once the Superintendent determines that no deficit exists for a specific policy year, then no surcharge can be applied in subsequent years for that policy year, regardless of changes that may occur in such subsequent years.

#### c. Servicing carriers' allowances

Servicing carriers are allowed 25.6% of all premiums written. The allowance is to compensate the servicing carriers for taxes, operating expenses, and certain loss adjustment expenses. Servicing carriers are also directly reimbursed for producer fees paid. Such allowances and fees are expensed by the Pool as they are reported.

#### d. Losses

The liability for outstanding losses consists of estimates of outstanding reported losses as submitted by the servicing carriers and an incurred but not reported reserve calculated by the Pool's actuarial management utilizing the application of appropriate actuarial techniques to project reported losses to an estimated ultimate basis. A significant variable in such estimate is the actual impact on ultimate losses of benefit reforms enacted in November 1987. The Pool commenced operations on January 1, 1988. As a result of the short period of operations, the availability of claim history is limited for the type of risks reinsured by the Pool. Due to the lack of sufficient statistically credible data available for estimating ultimate losses, no assurance can be given that the ultimate settlement of outstanding losses will not vary materially from the amounts reflected in the accompanying financial statements. To the extent that the ultimate liability varies from the estimates, the differences will be reflected in the statement of operations in the period in which the estimates are changed.

The 1991 losses in the Statutory Basis Statement of Operations reflect an adjustment to increase the liability for incurred losses of approximately \$41.7 million which is attributable to premiums earned in prior years. This adjustment reflects a change in management's estimate of such losses principally due to 1) the emergence of higher than anticipated loss ratios on recent policy years in which the volume and nature of the business written changed substantially and 2) recognition of longer periods for the ultimate settlement of claims.

## Maine Workers Compensation Residual Market Pool

### NOTES TO STATUTORY BASIS FINANCIAL STATEMENTS

Year Ended December 31, 1991

#### 2. Summary of Significant Accounting Policies: (Continued)

##### e. Cash and Cash Equivalents

For purposes of reporting cash flows, cash and cash equivalents include cash on hand and highly liquid investments with a purchased maturity of less than 3 months.

##### f. Administrative Expenses

Administrative expenses consist of the costs incurred by NCCI to administer the pools.

#### 3. Going Concern:

The statutory basis financial statements have been prepared on a going concern basis which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. The Pool has incurred a loss of \$153,553,243 for the year ended December 31, 1991 and has a cumulative undistributed loss of \$574,271,633 at December 31, 1991. The ultimate recoverability of multiple policy year operating deficits of this magnitude raises serious doubt as to the Pool's ability to continue as a going concern. The statutory basis financial statements do not contain any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might be necessary should the Pool be unable to continue as a going concern.

Under current Maine insurance regulation, conditioned on appropriate rulings by the Superintendent of Insurance, the Pool can recover deficits through surcharges on employers who purchase worker's compensation insurance or, under conditions specific in the regulations, may recover deficits from member insurance companies through an assessment process. No portion of the deficit is recoverable from member insurance companies for policy year 1988 and for policy years 1989 through 1991 the recovery is limited to 50% of the deficit.

Operating results reflect that premiums charged in years 1988 through 1991 are insufficient to cover the costs and losses under those policies. To date, the Superintendent of Insurance in Maine has implemented employer surcharges of 6% which are designed to fund only the 1988 deficit. The premium revenue generated from these surcharges has been \$7,725,764 resulting in a remaining 1988 operating deficit of \$188,909,650. No surcharges have been instituted for policy year 1989, 1990, or 1991, which, as of December 31, 1991, have generated an operating deficit of \$385,361,983. To offset operating deficits, surcharges will be needed for all years in amounts significantly in excess of the surcharges already imposed. The Pool's continuation as a going concern is dependent upon its ability to generate sufficient revenue to adequately finance its obligations.

Plan management intends to continue to communicate Pool financial results and policy year cash balances to the Superintendent of the State of Maine. However, management can give no assurance as to the actions that the Superintendent will take to resolve the deficits or as to the collectability of surcharges.

## **Maine Workers Compensation Residual Market Pool**

### **NOTES TO STATUTORY BASIS FINANCIAL STATEMENTS**

*Year Ended December 31, 1991*

#### **4. Income Taxes:**

The Pool has net operating loss carryforwards for tax purposes of \$61 million which expires in the year 2003, \$88 million which expires in the year 2004, \$105 million which expires in the year 2005, and \$99 million which expires in the year 2006. The tax benefits of such losses will be reflected in the financial statements as utilized in future years.

The difference between tax loss and loss reported on a statutory basis in any year is a result of discounting reported and incurred but not reported losses. Additionally, unearned premiums are recognized 20% in the year recorded and 80% in the subsequent year.





RAILROAD AVENUE, DEXTER MAINE 04930-9422 DUNS: 00-110-1435 TELEPHONE: (207) 924-7341 FAX: (207) 924-5795

August 4, 1992

Senator William Hathaway  
Co-Chairman, Blue Ribbon Commission  
C/O Michelle Bushey  
University of Maine  
246 Deering Avenue  
Portland, Maine 04102

Dear Bill:

Of course when it comes to the Worker's Compensation issue, we at Dexter Shoe Company share the concern of all Maine employers .

Today, Dexter Shoe Company has the most modern and up-to-date shoe factories in the country and possibly, the world. We have spared no expense in programs or technology to insure that our employees have the safest, most modern facilities and state of the art equipment to help in their fight for survival in today's tough economic environment. Without bragging, I invite you to check out Dexter's industry reputation. I extend an open invitation to come to Dexter any time.

In recent years, despite our exhausting efforts, Dexter Shoe Company has been forced to "export" more and more Maine jobs. Our single most troublesome problem has been and continues to be Worker's Compensation. In 1992, Dexter Shoe Company's payment for Worker's Compensation Expense was over **\$5 Million**. Since our peak employment of 3,005 employees in 1982, we are now down to 2,259 employees in 1992. Again, our most serious problem which influenced our decision to eliminate these jobs was **Worker's Compensation**.

Our efforts to control compensation costs covered the entire spectrum. On the one hand, we have built the most advanced and safest factories possible; on the other, we never let up in our effort to eliminate **abuse**. For example; last week, a former employee was criminally convicted in a case relating to abuse of our **comp program**. This was a "**first ever**" criminal conviction of this type in the State of Maine.

Senator William Hathaway

Page 2

July 30, 1992

I have taken the liberty of enclosing a copy of a package which Dick LaRochelle (President of Irving Tanning) sent to Governor McKernan in April of this year. If you are not familiar with this material, please take a moment to look at it to see if the Wisconsin plan might be worthy of consideration.

I am not saying that Dick LaRochelle or any one individual has the answers to the problem, but I do know that we must all work together if we are to get this horrendous problem under control and save our "Maine lifestyle" for future generations.

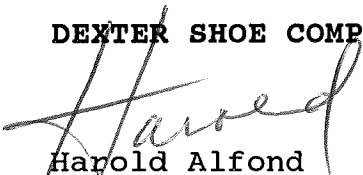
We admire your dedication and applaud your efforts as demonstrated by your willingness to Co-Chair the Blue Ribbon Commission. If we, at Dexter can help in any way, please do not hesitate to contact us.

Bill, I am sorry for bending your ear, but this Worker's Compensation mess has made me truly afraid for the future of our employees and all the citizens of Maine. Thanks for listening.

Hope all is well with you. Please say hi to your family for me.

Sincerely,

**DEXTER SHOE COMPANY**



Harold Alfond  
Chairman of the Board

HA:njk  
enc.

IRVING TANNING COMPANY

MAIN STREET, P.O. BOX 239  
HARTLAND, MAINE 04043  
TELEPHONE 207-638-4491

APR 8 1992

RICHARD C. LAROCHELLE  
PRESIDENT

April 6, 1992

The Honorable John R. McKernan  
Governor of Maine  
State House  
Augusta, Maine 04333

Dear Governor McKernan:

Enclosed you will find copies of a recent article from the Risk and Insurance magazine. This article contains excellent information on the status of workers' compensation programs and problems around the nation. It should not be surprising that many states have the same problems with their "systems" as we have had in Maine. The difference is that some states have found solutions to their problems, and all parties will benefit including workers, business, and the states themselves.

I read recently that a Workers' Compensation Group made up of business and labor representatives recently prepared a report which will be available to the Blue Ribbon panel recommending that the Michigan 'system' be adopted wholesale. Michigan is reviewed in the article, and is certainly worthy of serious consideration. I applaud this group for coming together and making this recommendation. I also commend the efforts of Senator Judy Kany and Representative Elizabeth Mitchell in their attempt to find some answers to these difficult and complex issues. The Wisconsin 'system' is also featured in this article, and based on the comparative rates and the approach they suggest to resolving problems, I suggest that this program also be studied for possible 'wholesale' adoption by the State of Maine. There is no reason to 'reinvent the wheel' and spend months or years studying the matter when we could capitalize on the experience, knowledge, and information from those who have faced the same nightmares and found solutions.

There is a concept many businesses are using today called Benchmarking. It's a process that allows a company to compare itself with its toughest competitors or those companies that are judged the best in their class. The term "best in class" refers to companies that perform certain processes better than anyone else. This concept should be utilized also by State government. If Wisconsin is the best in class in Workers' Comp, then it should be studied.

I would appreciate it very much if you would forward my letter and the articles to the appropriate members of the Workers' Compensation Group and the Blue Ribbon Panel, as I don't know how to contact them.

I believe that this problem is of crisis and life-threatening proportions for all of us in this State. I would be willing to personally make contact with Mr. Dick Bagin of Briggs & Stratton Corp. in Wisconsin, who is a member of Wisconsin's Workers' Compensation Advisory Council, the group responsible for making the State a near Workers' Comp utopia. If Mr. Bagin were willing and available to come to Maine and meet with the Maine Group and the Blue Ribbon Panel, I would be willing to pay all of his expenses to come to Maine and share his knowledge and experience with us. Please let me know if this is feasible and acceptable to all the parties involved, and I will contact Mr. Bagin to see if he would be willing to help us.

The improvements in the 'system' which are needed to address the concerns and needs of all parties, labor, workers, business, and the State of Maine cannot be found in Referendums nor in the political turmoil which surrounds this issue. Labor, business, and political leaders in Augusta must come together and display some leadership. The attorneys responsible for this mess we are in must be kept out of the process. They claim to represent labor, but only represent themselves, not the workers in the State. They are only interested in perpetuating a system which they created and is robbing this State of badly needed employment, workers of their needs and dignity when injured, and lines their pockets with millions of dollars annually at the expense of everyone else.

I would appreciate the courtesy of a response to my proposal from yourself, the Group, Panel, or appropriate individuals on my proposal. I am available to help in any way to assist in bringing this to a responsible and satisfactory resolution.

Sincerely yours,

IRVING TANNING COMPANY



Richard C. Larochelle  
President & Chief Executive Officer

RCL/m

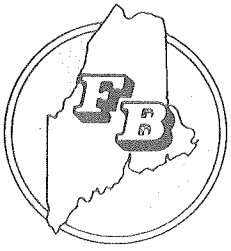
Enclosure

cc:

Workers' Compensation Group  
Blue Ribbon Panel  
Speaker John L. Martin  
President Charles P. Pray  
Senator Nancy Randall Clark-Majority Leader  
Senator Charles M. Webster-Minority Leader  
Representative Dan A. Gwadosky-Majority Leader  
Representative Walter E. Whitcomb-Minority Leader  
Representative Ruth Joseph  
Senator Judy C. Kany  
Representative Elizabeth H. Mitchell  
Representative Tracy R. Goodridge

Worker's comp pacesetters (Adams North, Cheryl) (Risk & Insurance, March 1992) ●  
(Available on request-please include the following citation: WC115-BRC-08-Pt.D-22.pdf)

To obtain items available on request, or to report errors or omissions in this history, please contact:  
[Maine State Law and Legislative Reference Library](#)



# Maine Farm Bureau Association

*The Voice Of Organized Agriculture"*

August 5, 1992

Ms. Michelle Bushey  
Blue Ribbon Commission to Examine Alternatives  
to the Workers Compensation System  
University of Maine Law School  
246 Deering Avenue  
Portland, ME 04102

Dear Ms. Bushey:

Maine Farm Bureau, the state's largest general farm organization of 5,000 members, is appreciative to the Commission for its preliminary decision to maintain Maine's agricultural exemption of six or fewer employees from the workers' compensation coverage.

We have felt this exemption has helped make Maine farmers competitive with farmers in other states competing for markets. The Legislature has continually recognized this exemption and it has not been an issue in any of the current debates on workers' comp reform.

Once again thank you for your initial decision. It is important for the farmers of Maine that this current exemption for farmers be part of the Commission's final report.

Sincerely,

Dan LaPointe  
President

DL/ld



President

Charles J. O'Leary

# maine afl-cio

157 Park Street, Suite One  
P.O. Box 1571 • Bangor, Maine 04401  
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Secretary-Treasurer

Edward Gorham

August 5, 1992

Hon. William Hathaway  
Richard Dalbeck, Co-Chairs  
Maine Blue Ribbon Commission on  
Workers' Compensation  
246 Deering Avenue  
Portland, ME 04102

Dear Chairmen Hathaway and Dalbeck:

I am writing to express the concern of the Executive Board of the Maine AFL-CIO regarding the deliberations of the Blue Ribbon Commission in two particulars:

1. The question of the primary role of Maine Labor and Maine management on the "Board of Directors" of the Maine Workers' Compensation Commission;
2. The question of retroactivity which changes both benefits and procedures. Procedures, being the methods by which benefits are given and taken away.

The Maine AFL-CIO wholeheartedly supports the public statements of the Blue Ribbon Commission that the Workers' Compensation Commissioners (the Board of Directors) should be equally representative of Labor and Management and must be representative of Labor and Management groups.

The Labor representatives should be chosen by the Maine AFL-CIO as the only representative group of Maine workers and should be appointed only from lists of Labor representatives submitted by the Maine AFL-CIO on recommendations of its constituent bodies. Labor representatives may be workers and representatives of workers, for example, business managers of local unions or international representatives of unions with responsibilities in Maine and should not be subject to a requirement that they be actual wage earners of particular employers.



The Hon. William Hathaway  
Mr. Richard Dalbeck  
August 5, 1992  
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Likewise, the equal number of management representatives should be nominated by the Maine Chamber of Commerce and Industry on recommendations of local chambers of commerce.

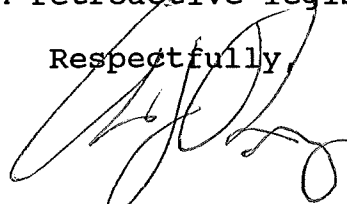
We agree with the suggestion that neither Labor or Management representatives should be substantially and actively engaged in legislative or executive department lobbying.

On the question of retroactivity, the Maine AFL-CIO and we understand the United Injured Workers of Maine stand four-square against retroactivity because retroactive changes are, a) inherently unfair; b) likely to be subject to legal attack with its attendant uncertainty, costs and delays; and c) particularly inappropriate in a privately financed rather than a governmentally provided benefit system.

Of course there are many issues before your Commission and it would be easy to have this letter extend to many pages. But that would not serve a useful purpose.

Maine Labor has participated openly and fully in the Labor-Management Group and the Blue Ribbon Commission in the formation of a new, better and fairer workers' compensation system. We are the only voice of Maine workers and their families. We are confident that the Blue Ribbon Commission will understand our concerns regarding real Labor-Management control of the workers' compensation system and about retroactivity. We write this letter because we are concerned over external, political and insurance forces who are attempting to push the Blue Ribbon Commission into a "SHAM" rather than REAL Labor-Management representation on the Workers' Compensation Commission and because we are concerned with the unfairness and legal uncertainty involved in retroactive legislation.

Respectfully,



Charles J. O'Leary  
President

cc: The Hon. Emilien Levesque  
Dr. Harvey Picker

p.s. 40% of the workers' compensation benefits are medical benefits. Most all Maine AFL-CIO membership has medical coverage through general health insurance and we anticipate that

The Hon. William Hathaway  
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national health insurance, when enacted, will include work injuries and its coverage. Thus, the principal interest of membership of the Maine AFL-CIO is in indemnity benefits. If indemnity benefits are rendered substantially meaningless, particularly in serious cases, considering the negotiated provisions for sick days and sickness and accident insurance, the Maine AFL-CIO would prefer that there be no workers' compensation law or workers' compensation law which provides a "fig leaf" of benefits and entirely bars court actions against negligent employers and employers who violate applicable safety regulations.

# MALLAR ASSOCIATES

Roger L. Mallar, President

August 6, 1992

Mr. Richard Dalbeck  
17 Spoonrift Lane  
Cape Elizabeth, ME 04107

Dear Dick:

Your proposal for the creation of a state-created mutual workers' compensation insurance company has spurred me to give considerable thought as to how risks in the current residual market can best be represented. I'm sure that we'd both agree that a voluntary market and self-insurance are the best options insofar as they may be available.

Beyond that, as you know I feel very strongly that if we want to change business attitudes broadly regarding workers' comp, then we need to create pools run by employees so that both the responsibility and accountability for the operation rest with those logically defined business entities. These pools need to allow for both homogeneous groups (particularly for high risk operations) over large geographic areas for effectiveness of safety programs and industry peer pressure. Heterogeneous groups could then be formed over smaller geographic areas so that the smaller business risks in the residual market can be administered and serviced with cost effectiveness and peer pressure created in regard to safety. I don't believe that this very important objective will be achieved by just creating a \$250,000,000 bureaucratic insurance Company from the top down and suggesting consideration of pooling. Therefore I have taken the liberty of suggesting adjustments to your proposal (enclosed) to assure that pools would be created as an important element of operation.

On the other hand, Dick, I understand the complexity of multiple pools and the desirability of centralizing some functions such as investments, reserving practices and the enclosed still retains those functions as a centralized function. I believe, as a minimum as suggested, that the pools would have day-to-day responsibility for loss control and claims functions - the elements that will make a success of this operation.

In addition, I am concerned over the very long time frame that would be involved in getting the operation of a large mutual company up and running (first, we hire the President and because of the size we have to do a complete search; then the President has to hire some key staff, etc.,etc.) with a part-time Board of Directors, probably not meeting more than two to four times a month at maximum. So I have suggested starting with four "incorporators" who have sufficient time to get the initial company organization under way for the first two or three months.

Lastly, I know you won't agree with my handling of the High-risk Pool assessment. I would like to suggest you consider the following if you're determined to spread the assessment to all employers:

1. Restrict the assessment to employers outside the company to a pool representing a maximum percentage (5-10%) of total risk, with the remainder to be absorbed by the employers within the company.

2. Significantly strengthen the management objectives of the High-risk Pool.

Richard Dalbeck  
August 6, 1992  
Page Two

3. Create a High-risk Pool Board that would be comprised proportionately of employers in the three market segments.

4. Create language that assures that any overall Company losses (other than the High-risk Pool) will not be the responsibility of employers outside the Company.

Dick, I hope that you and the other members of the commission will seriously consider these proposals. While I can only speak for myself, I believe that these approaches will add greatly to the potential for the success of your overall recommendations and will increase the degree of receptivity of the effort.

Sincerely,



Roger L. Mallar

RLM/cg

Enclosure: Proposal

cc: Members, Blue Ribbon Commission

## **MAINE MUTUAL WORKERS COMP COMPANY**

( Proposal Adjusted to Create Bottom-Up Company and necessary implementation procedures)

### **THE CHARTER**

- \* Legislation would create a domestic mutual insurance company as a non-profit, independent public corporation. It would be charged to operate like any other insurance company, subject to the same rules, regulations, taxes, and assessments. Further, while it would establish its own sound underwriting practices and related rate structure, its priority would be to serve ANY small or medium sized employer in the state seeking coverage.
- \* The company would not be an agency of the State of Maine and would not be supported in any way by the State's general fund, nor would the state be allowed to borrow from the company.
- \* Initial financing requirements and method have not been determined.
- \* As a mutual, the company will operate to the benefit of its policyholders utilizing the principles of equity normally practiced by mutual companies. (i.e., Each class of policyholders should pay its own way.)

### **BOARDS OF DIRECTORS**

- \* Company policy and financial responsibility will rest with a Board of Directors. This Board will include one representative from each individual pool group plus the President, who will also be the Chief Executive officer, plus four statewide members.
- \* The company will consist of a number of individual pool groups each of which will have its own Board of Directors elected by its policyholders on a one-policy, one-vote basis. Each pool group will be responsible for loss control and claims functions, including the selection of third party administrators.
- \* Each of these Pool Group Boards will consist of 11 Directors from group policy holder employers, and these Directors will elect 1 of their members to the statewide Board. These elections will be at the annual meeting and all Directors will serve staggered 3 year terms.
- \* The four statewide Directors will represent the public interest objectives of the company and will also serve staggered three year terms. They will be appointed two by the Governor, and one each by the Senate President and Speaker of the House with mutual approval of the other two.
- \* The statewide Board will elect as Chairman one of its members other than the President.
- \* The first annual meeting will be held in December of 1992, or as soon thereafter as feasible. Thereafter, the meetings will be as dictated by the Bylaws or determined by the policyholders of the statewide Board.
- \* Responsibility for creation of the mutual company will rest with four incorporators with the advice and assistance of the Bureau of Insurance. Two incorporators will be appointed by the Governor and one each by the President of the Senate and Speaker of the House of Representatives with mutual approval of the other two. Appointees shall seek the advise of business associations likely to have members who would be insured by the company, and shall appoint incorporators who have demonstrated management, finance and insurance skills. Appointments shall be made within three weeks of the enabling legislation.

\* The incorporators will be responsible for establishing the nature, size and location of the initial pool groups, the initial election of pool group boards, the time and place of the initial annual meeting, interim servicing arrangements (until such time as pool groups are prepared to assume such responsibility), the pool groups and company Bylaws, and any other procedural or policy issues essential to the establishment of the company.

\* Incorporators may serve as appointed Directors or may remain as ex-officio, non-voting members of the Board until the second annual meeting at the discretion of the appointing official and the individual Director.

\* The Bureau of Insurance shall establish rates for each classification for the 1993 policy year. In so far as practical, the NCCI classification system will be utilized to allow for interstate comparability. In successive years, the company shall operate as any other insurance company under the "file and use" regulatory option.

\* At least during the first year, insurance agents will be utilized to assist in placing individual risks in the appropriate pool, developing applications, payroll information, etc. and will be provided a commission equal to the current residual market rate.

### **POLICYHOLDERS**

\* Initial policyholders will be ALL companies presently participating in the residual pool.

\* The company will be obligated by statute to accept any employer as a policyholder.

\* Policyholders will be divided into appropriate sized industry and/or geographic pool groups. Selection of groups will consider commonality of interest, business type or geography as well as effective administration. The Board shall establish procedures for cancellation or transfer to the High Risk Pool due to misrepresentation of risk upon inspection; refusal to respond to appropriately required loss control measures; non-payment of premium, etc.

\* To facilitate management and accountability of the above groupings, the Board is free to establish, through internal accounting, "funds" for each group consistent with the principals of actuarial equity. However, all assets of the company will be commingled for investment purposes.

\* Those risks in the Accident Prevention Account on the effective start-up date of the company would be placed in a High Risk Pool, with the pool to be managed by the company Board of Directors. The Board will take specific steps to improve the loss history and results of this group and will determine the appropriate mechanism for charging this group up to 200% of otherwise chargeable premium. The Board will develop a mechanism to equitably return portions of premium should lower than anticipated losses develop a surplus. Further, the Board will determine an equitable allocation of any assessment necessary to fund the losses generated by the High Risk Pool. The assessment, if any, will be made against the premiums of all employers covered by the company. The Board will develop criteria which allows companies with sufficiently improved records to be placed in a pool group.

### **MANAGEMENT**

\* The Board will appoint the Chief Executive Officer of the Company and such other officers as it deems necessary.

\* The Company will employ a Chief Actuary or hire a consulting actuary to act as same. If the latter, it will not be a firm involved in establishing rates for the industry. However, this does not preclude the use of advice or data from such a firm.

\* The Company shall not invest in any state activity or state created entity.

\*The Company may utilize investment advisors to manage its funds, as approved by the Board.

\* Third Party Administrators may be used to administer the loss control and claims handling functions of one or more pool groups. In addition to cost considerations, selection criteria should include the demonstrated ability to handle safety and claims effectively and the ability to work closely with claimants, including helping them return to work.

### **PRODUCTS**

\* The Company would exclusively offer workers compensation insurance, including Employer's Liability Insurance and endorsements under the U.S. Longshore and Harbor Worker's Act.

### **DUTIES OF THE BOARD**

\* Overall responsibility for the Company's operation and its financial integrity.

\* Approval of the basic corporate structure.

\* Approval of basic underwriting policies and rate structures consistent with the Charter of the Company.

\* Approval of investment policies, the selection of investment manager(s) and any specific investments outside the parameters it may establish.

\* Final overall policy determination respecting rates, standards and process for experience rating, reserving, litigation, claim settlements, and transferability of individual risks between pools.

\* Final responsibility for equitable financial treatment for each pool group.

\* Responsibility for ultimate resolution of any disputes among pool group.

\* Liaison between the company and the Governor, Legislature, and public.

\* Appointment of any appropriate Advisory Boards.



STATE OF MAINE

**WORKERS' COMPENSATION COMMISSION**

STATE HOUSE STATION 27  
AUGUSTA, MAINE 04333  
207-289-3751

August 12, 1992

William Hathaway  
Danton Towers  
207 E. Grand Ave., Apt. D-6  
Old Orchard, ME 04064

Dear Chairman Hathaway:

The Blue Ribbon Commission is proposing new part-time workers' compensation commissioners from the ranks of labor and management. These new commissioners would be like a board of directors, setting policy and taking full responsibility for running the agency. As I understand it, there are also considerations of involving these part-time commissioners in resolving disputes.

Part-time commissioners from labor and management constituencies will naturally have the leadership and policy skills to push broad efforts to change cultural habits in key areas such as safety, return-to-work practices, medical management and good labor relations. But there will still be a need for a thoughtful and analytical resolution of specific factual disputes by experienced adjudicators.

It would be a mistake to eliminate skilled adjudicators altogether from the agency, for the considerations listed below:

1. Sheer volume of disputes. There are from 8,000 to 10,000 disputed claims each year. Part-time commissioners, even with subcontracting mediators and arbitrators, can simply not handle this volume efficiently. Contracted arbitration services (FMCS and AAA) are slower and more expensive.

2. Transition needs. As the workers' compensation system moves from one stage to the next, it is important that there be some continuity. There will be thousands of disputes which will continue to arise because of injuries in the past, under prior laws.

With multiple reforms in the workers' compensation field, it is important that employers and injured workers continue to have a place where they can get a fair hearing from qualified people who know what is going on. Skilled adjudicators, with experience and background in workers' compensation, can facilitate these reforms and ease the transition.



Under the policy directives of the new labor-management commission, adjudicators could strongly assist the transition and be part of the solution.

3. Protect against politicization. A skilled and legally trained corps of adjudicators will insulate the fact-finding process from excessive politicization.

At the level of individual factual disputes, the result should not be a matter of political power but a matter of neutral and dispassionate enforcement of rights and duties.

A part-time labor-management commission may be excellently suited for setting and promoting policy in the field of workers' compensation. However, this activist policymaking role should be complimented at the hearing level by adjudicatory staff who are experienced and disciplined in the more detached and analytical skills necessary for resolving specific factual disputes.

4. Performance of Maine adjudicators has been good. According to the industry study done by the Workers' Compensation Research Institute in 1990, "the parties express generally high regard for the competence and professionalism of the commissioners".

The workers' compensation agency is a substitute for both judge and jury. Disputed cases are handled before the compensation agency much faster than equivalent cases in the court system or in other states.

5. Most states have professional adjudication of disputes. Michigan has a board of magistrates. State compensation agencies ordinarily have a skilled corps of legally trained adjudicators.

We have heard Massachusetts, Rhode Island and Connecticut all compared favorably with Maine. All three states have legally trained adjudicators.

Even Social Security Disability, a colossus in the field of disability management, retains Administrative Law Judges for disputed cases.

6. Past reforms to reduce litigation are now taking effect. In 1984 informal dispute resolution was initiated. In 1985 the right to attorney fee reimbursement for employees, win or lose, was repealed. In 1987 benefits were cut, dramatically reducing the value of long-term cases. In 1991, benefits and lawyer fees were cut further.

Letter to William Hathaway  
August 12, 1992

3

The number of cases taking over two years to resolve has been cut in half since 1984, despite increased filings. The number of petitions pending at any one time has gone down from 10,000 last December to 8,700 now. The value of current injuries, compared to pre-1987 injuries, are much lower, reducing the incentive to litigate.

Self-insurers have demonstrated that dramatic reductions in litigation are being achieved now as a result of prior reforms and better claims management, under the current system of state regulation.

In sum, there is still a role for professional adjudication in a reorganized state workers' compensation agency. Rather than eliminate professional adjudication, it should be placed under the control and oversight of the new labor-management commissioners. These new commissioners will then have the authority to implement a transition plan, study the nuts and bolts administrative problems, and make decisions on the type of dispute resolution most suitable for the people of Maine in the future.

Sincerely,



Ralph L. Tucker  
Chairman

RLT:km

cc: Members, Blue Ribbon Commission



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
AUGUSTA, MAINE  
04333

MEMORANDUM

JOHN R. MCKERNAN, JR.  
GOVERNOR

TO: Harvey Picker  
FROM: Abby Holman  
SUBJECT: Workers' Compensation Reform package  
DATE: August 12, 1992

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The following is a brief overview of the Governor's reform package. This is to help provide you with a general description of the contents of the bill and explanation for the changes. The bill is divided up into two separate parts. Part A deals with compensability, duration limits, and closing existing holes. Part B addresses structural changes to the Workers' Compensation Commission

PART A

Section A-1 addresses workers' compensation rates. It is designed to open up the voluntary market and encourage voluntary policies by allowing an employer to contract with an insurer that may charge a higher rate, but provide a potential dividend and better service to the employer than currently available in the residual market.

Section A-2 clarifies the formula for determining the average weekly wage of seasonal employees. Based on this change, the salary of the seasonal employee will be determined by the immediately preceding year, and not the last full year of employment. This eliminates the ambiguity that has allowed a seasonal employee to interpret their average weekly wage to be determined by applying the last full year of work, thus factoring in salaries that might have preceded the injury or condition by many months.

Section A-3 provides that an employee must be paid compensation only if they can establish the work-related personal injury or disease by objective medical evidence. The effect of adding the requirement that the evidence of the injury or disease be established by "objective medical evidence" eliminates purely subjective claims by employees that can not be substantiated or demonstrated through fact-specific medical evidence. This language mirrors a section of the proposed workers' compensation referendum.

Under Section A-4 the definition of compensability is limited through apportioning compensable injuries or conditions between work-related and non work-related injuries; the latter being noncompensable. Eliminated from the definition of compensability are the pre-existing conditions that are affected by a work-related activity or aggravation. Also excluded from the definition are aggravations of work-related conditions by non-work related activities.

Section A-5 eliminates the "lag time" that exists when an employer can make payments in contested cases without prejudice. Current law allows payments without prejudice until the convening of a formal hearing. The proposed change allows payments without prejudice up to the commissioner's decision following a formal hearing. The employee, therefore, continues to receive benefits until the commissioner's decision and the employer is not prejudiced by those payments.

In Section A-6, the term "firemen" is replaced with the gender neutral term of "firefighters".

Sections A-7 and A-8 provide for structural changes to defining incapacity as well as placing limits on the duration of benefits and lowering the formula for the average weekly salary from 66 (2/3) to 60 percent. The new structure and benefit levels substantially mirror the recent changes in Massachusetts' Workers' Compensation law. The current §54-B is replaced with two separate sections; §54-C Temporary total benefits and §54-D Permanent total benefits. One significant exception between this bill and the Massachusetts law is the weekly duration limits. The maximum allowed in Mass. is 364 weeks. In this proposal there will be several different duration levels. Under temporary total the employee can receive up to 156 weeks. An employee can then either be found eligible to receive partial incapacity benefits or total permanent incapacity benefits.

Section A-7 specifically eliminates the current §54-B, Compensation for Total Incapacity. Section A-8 formats §54-C Temporary total incapacity and §54-D Total permanent incapacity.

Under §54-C the benefit levels remain the same, while the duration limits are capped at 156. At the end of 156 weeks an employee may be able to continue benefits under §54-D Permanent total or under §55-B Partial incapacity. The employee is required to conduct a statewide worksearch during the 156 week period under §54-C.

An employee who is eligible under §54-D Total permanent will receive the same amount of benefits as the current law for an unlimited period of time. The same qualifications to become eligible continue to apply. If the the employee has work capacity, the employee will continue to be required to perform a statewide worksearch, as under current law.

Section A-9 changes §55-B Partial incapacity to also mirror the Massachusetts' law. There are three different levels of weekly durations. Those who have received benefits under §54-C Temporary total may receive up to 364 weeks. However, if the employee first began receiving benefits under §55-B then the employee may only receive 260 weeks. The one exception to the 364 week cap is if the employee can qualify as incapacitated due to a permanent loss of 75% or more of certain bodily functions or senses. Once eligible under the list of exceptions the employee can receive 520 weeks of benefits under partial incapacity. The degree of loss is determined by an IME.

An employee, under §55-B, will still be able to perform a community work search for the first 40 weeks and then a state wide worksearch.

Section A-11 provides for the offset of previous lump-sum settlements in determining the benefits levels of a second injury. All future settlement agreements must be allocated between wage loss, medical services, permanent impairment or other benefits. The purpose of requiring offsets is to eliminate duplicative claims. Commissioners who have disapproved or failed to approve a lump-sum settlement are disqualified from any subsequent formal hearing.

Section A-13 clarifies that an IME can determine the degree of impairment.

Section A-14 provides that an IME will be used in all proceedings. The purpose of this change is to make the IME procedure apply to all employee examinations, including employees injured before the effective date of this Act. Thus, the IME process is not limited to employees injured after the IME process was created.

Section A-15 requires that the two year period for filing a claim by an employee in cases where a first report of injury is not required (medical only cases) begins either on the date of injury or the date of the payment by the employer of any benefits, which ever is later. The current law does not address the time for filing petitions.

Section A-16 prevents persons from filing claims in Maine for injuries which they have received final settlements in other states.

Section A-17 provides that an employee that does not file a petition for review within 21 days after automatic discontinuance or reduction because of a return to work, will not receive an expedited hearing. Section A-18 requires that the discontinuance process apply to all actions, not merely to those employees injured after the creation of the discontinuance process.

Section A-19 corrects an error in current law that does not specify attorney's fees for lump-sums between \$90,000 and \$100,000.

Section A-20 changes the current law to allow the commissioner of a decision to preside over any future discrimination claims. The current law requires the pending case as well as the discrimination claim to be transferred.

Also included in this bill is a one year freeze of the Doctors' fees schedules. The fees are scheduled to be increased shortly. By delaying the increase, significant costs will be saved.

## PART B

Part B restructures the workers' compensation commission and places it under the Judicial Department. The legislation in large part is a reenactment of the current law. To offset the fiscal impact of creating and empowering an appellate review judge, the commission shall be reduced to 11 members from 12. Because all appellate reviews will be conducted by the appellate judge, the commission will be relieved of those responsibilities, thus fewer commissioners will be needed. The reduction shall be realized through future vacancies.

The Office of Employee Assistants will be moved to the Department of Labor. The purpose for this change is to sever loyalties that can develop between commissioners and employee assistants. Creating distance between commissioners and employee assistance will help to facilitate greater advocacy for the employees and encourage early settlements.

cc: Senator Hathaway  
Dick Dalbeck  
Emilien Levesque



DEPARTMENT OF LABOR

Telephone (207) 289-3788

FAX (207) 289-5292

John R. McKernan, Jr.  
Governor

Charles A. Morrison  
Commissioner

August 18, 1992

TO: Jane Orbeton, Office of Policy and Legal Analysis  
FROM: Commissioner Charles Morrison, Department of Labor  
RE: Requested information

Attached is the material you requested for the Blue Ribbon Commission on Workers' Compensation from Bill Peabody. The attachment consists of three exhibits. The first lists statutory references, the second lists personnel involved in these activities, and the third is a chart of funds received by the Bureau of Labor Standards for these activities. The Department has attempted to be as accurate as possible, but these exhibits understate the needs, both for the Bureau and for an agency where these activities might be located in the future. Detailed information previously presented to the Commission and Legislature in the form of testimony, requested studies and published reports have not been included, although they present important insights.

I do not wish to seem defensive about the request, but as you know there has been discussion of combining the workers compensation system with the programs represented by the attached material. Given the extraordinary situation of the Commission's report process, I wish to express some thoughts to you and the Commission while there is still an opportunity. By doing so I understand I may be prejudging possible recommendations which may not occur.

The combination with another agency of the Bureau of Labor Standards' research and safety programs would have far reaching consequences, with a net negative affect on service. What follows are some thoughts for your consideration.

**1. Functional programs are not improved by combination with dysfunctional systems.**

The workers compensation system is, by almost all accounts, dysfunctional. The Bureau of Labor Standards' occupational health and safety services are indeed an important part of a proactive approach to reduce incidence, but is not a singular

component of the workers' compensation system. Instead the services have developed to be effective in most any setting regardless of one's workers' compensation experience.

To be successful, any new reform will have to emphasize the currently perceived dysfunctional areas of the workers' compensation system. There than is a strong probability that areas represented by the Bureau's current programs would become a low priority in a system which will continue to be under siege. Morale, currently high, and program direction are likely victims of such a move. The task ahead is difficult enough without such a move to make it more difficult.

2. Program and fiscal integration within the Bureau of Labor Standards is such that individual programs cannot be removed without having impact on other Bureau programs.

Bureau programs have been integrated to maximize efficiencies, especially since FY 90 when general fund budget shortfalls have continually called for reduced resources and coordinated approaches. The Bureau has attempted to run its programs, not in a vacuum, but as a part of a strategy designed to improve overall working conditions in Maine. It has coordinated both voluntary compliance and enforcement activities in all areas with appropriate functions. If health and safety services were to be transferred, it is questionable rather what was left could sustain a critical mass to continue without substantial changes in the Bureau's other statutory mandates.

One good example is in the Research and Statistics Division where there are a number of positions, funded by the Safety Education and Training Fund, which contribute to the occupational safety and health activities. At the same time, these positions have substantial responsibilities in other related programs, such as the establishment and enforcement of minimum wage determinations on State funded construction projects. Meanwhile, a number of general fund positions provide technical expertise, supervision, and clerical support to the occupational safety and health activities. Other Bureau activities include unpaid wage collection, severance payments, child labor, economic statistics gathering, as well as the inspection and registration of boilers, elevators, tramways and licensing of related occupations.

Administrative functions such as the automation of all Bureau programs on a self contained system, accounting services, phones, cost allocation to determine required match funding for federal grants as well as fair share payments of support into the general fund would all be affected.

3. An organizational move, without redirection of mission, would be disruptive of continuing efforts to have long term impact upon occupational health and safety issues.

There is no evidence that there has been disagreement with the current direction or management of these programs. The Bureau's approach has been developed with a wide variety of input, promoting fundamental changes which are best suited to correct problems that have been long in the making. Although our crystal ball is far from perfect, we have marshalled the various components to identify strategies for making lasting change.

There is little usefulness to be served and no visible cost savings to the system in simply moving these activities into another agency where they are likely to become a secondary focus rather than a primary focus as they are currently. To propose such a major change will slow the momentum and morale developed. The result, even over the long run, will serve no one.

If the Commission has identified any weaknesses in the approach taken or has identified promising new approaches, we stand ready to act on those suggestions. If a merger of agencies is a part of the Commission's final report, the affected programs should have a voice in the details of implementation. The expertise at the program delivery level should not be overlooked as valuable. Any proposed legislative language should allow reasonable program input and a realistic time frame for implementation.

I hope this information is helpful to you and the Commission. If you have any questions or addition needs please contact either Bill or Jim McGowan.

CM/JAM/ln

cc: Blue Ribbon Commission on Workers' Compensation



**Funds for Occupational Safety and Health-related Activities**  
(based on FY93 Work Program)

General Fund

Regulatory and Enforcement (010-12B-0159)  
[subaccount: Occupational Safety and Health (-1565)]  
Personal Services      231,758  
All Other                18,810  
Capital                    0  
Total                     250,568

Federal Revenue

Administration (013-12B-0158)  
Personal Services      238,508  
All Other                139,811  
Capital                    32,380  
Total                     410,699

This funds the Research and Statistics Division's Federal activities. The figures above include funding for the proposed OSHA Targeting and Intervention Grant.

Regulatory and Enforcement (013-12B-0159)  
Personal Services      354,005  
All Other                134,224  
Capital                    0  
Total                     488,229

This funds the Safety Division's Federal activities. The figures above include funding for the proposed OSHA Targeting and Intervention Grant. Also included is full year funding for the MSHA grant which will be discontinued on September 30, 1992.

Special Revenue

Safety Education and Training Fund (014-12B-0161)  
Personal Services      926,668  
All Other                782,924  
Capital                    24,500  
Total                     1,734,092

Occupational Safety Loan Fund (014-12B-0186)  
Personal Services      0  
All Other                371,551  
Capital                    0  
Total                     371,551

The Department has an allotment of \$350,000 per year in loans, the additional allocation is to cover administrative costs. The fund balance at the end of FY92 was \$107,625, the Finance Authority of Maine held an additional \$75,122 in cash. The Fund will generate an estimated \$119,000 in total income in FY93 (principal and interest payments plus return on investment). Therefore, the actual loan distribution for FY93 will be \$300,000 or less of which \$147,624 has already been obligated.

## Occupational Safety and Health-related Personnel

<u>Classification</u>	<u>Range</u>	<u>Funding Source</u>
<b>Safety Division</b>		
Division Director	28	GF
Asst. Div. Director	27	SETF
Staff Development Coordinator	25	SETF
Occupational Health Specialist (5)	25	SETF (3.5) Fed (OSHA) (1.5)
Occupational Safety Engineer(5)	23	SETF (4) GF (1)
Staff Development Specialist	22	Fed (MSHA)
Industrial Hygienist	20	SETF
Safety Compliance Specialist (4)	20	GF (3) Fed (OSHA) (1)
Asst. Safety Compliance Officer	14	SETF
Clerk Stenographer III	13	GF
Clerk Typist III	12	Fed (OSHA)
Data Entry Specialist (3)	9	SETF (2) Fed (OSHA) (1)
Clerk Typist II	8	SETF
<b>Research &amp; Statistics Division</b>		
Planning and Research Associate	23	SETF*
Statistician III (2)	22	SETF (2)
Statistician II (2)	19	SETF (1)* Fed (BLS)(1)
Statistician I	18	SETF*
Labor Statistical Technician (2)	11	SETF (2)

KEY: GF = General Fund  
 SETF = Safety Education and Training Fund  
 Fed = Federal Grant (All with U.S. Dept. of Labor)  
 (BLS) = Bureau of Labor Statistics  
 (MSHA) = Mine Safety and Health Administration  
 (OSHA) = Occupational Safety & Health Administration

**Note:** The BLS grant is 50/50 Federal/State, the OSHA grant is 90/10 and the MSHA grant is 80/20. Actual Federal funding may not reach the anticipated percentage levels. MSHA support for this grant is scheduled to end September 30, 1992.

There are six positions authorized in anticipation of a pilot Targeting and Intervention grant from OSHA. These positions will be filled if federal funds become available at the start of the next grant cycle, October 1, 1992.

Safety Division  
 Occupational Health Specialist  
 Occupational Safety Engineer  
 Clerk Typist II

Research & Statistics Division  
 Programmer Analyst  
 Statistician III  
 Labor Statistical Technician

Three general fund positions in the Research and Statistics Division provide supervision, technical expertise and administrative support to the occupational safety and health programs. Activities performed by those positions on Federal programs constitute the state match. These are listed below.

Division Director  
Clerk Stenographer III  
Clerk Typist II

In addition, several of the positions funded by SETF have some program responsibilities that are not directly related to occupational safety and health. These are marked above by an asterisk.

August 1992

DIRECTOR, BUR. OF LABOR STANDARDS  
James McGowan

DEPUTY DIR., BUR. OF LABOR STANDARDS  
William Peabody

Director, Boiler, Elevator,  
& Tramway Division  
Robert Sullivan

Director, Apprenticeship  
Division  
Kenneth Hardt

Director, Research  
& Statistics Division  
John Rioux

Director, Industrial  
Safety Division  
Lester Wood

Director, Wage & Hour  
Division  
Anne Hamel

Current  
Augusta 1992

DIRECTOR, BUR. OF LABOR STANDARDS

James McGowan

DEPUTY DIR., BUR. OF LABOR STANDARDS

William Peabody

DIRECTOR, INDUSTRIAL SAFETY DIVISION

Lester Wood

Clerk Steno III

Diane Lugar

Ass't. Division Director

Vacant

Staff Development Specialist IV

Tom Joyce

(MSHA Program)

Clerk Typist III

Jean St. Hilaire

Ass't. Safety Compliance Officer

Pattie Page

Data Entry Specialist

Vacant

Staff Development Coordinator

Jonathon Lepoff

(Safety Education & Training)

7cl Program

Safety Compliance

Specialist

Leo Mitchell

Occ. Health

Specialist (2)

Paul Noonan

Jane Garland (½ time)

Occ. Health Specialist (4)

Darlene Eartha

Lynne Lamstein

June O'Donnell

Jane Garland (½ time)

Industrial

Hygienist

David York

Occ. Safety

Engineer

Charles Gurney

Jay Warren

Adrien Polky

Sam Knight

Clerk Typist II

Kim Nixon

Data Entry

Specialist (2)

Jody Wisniewski

Louisa Lajoie

Occ. Safety Engineer

Maurice Nadeau

(Enforcement)

Safety Compliance Specialist (3)

Kathleen Gerard

Judy Gero

David Gibbs

DIRECTOR, BUREAU OF LABOR STANDARDS

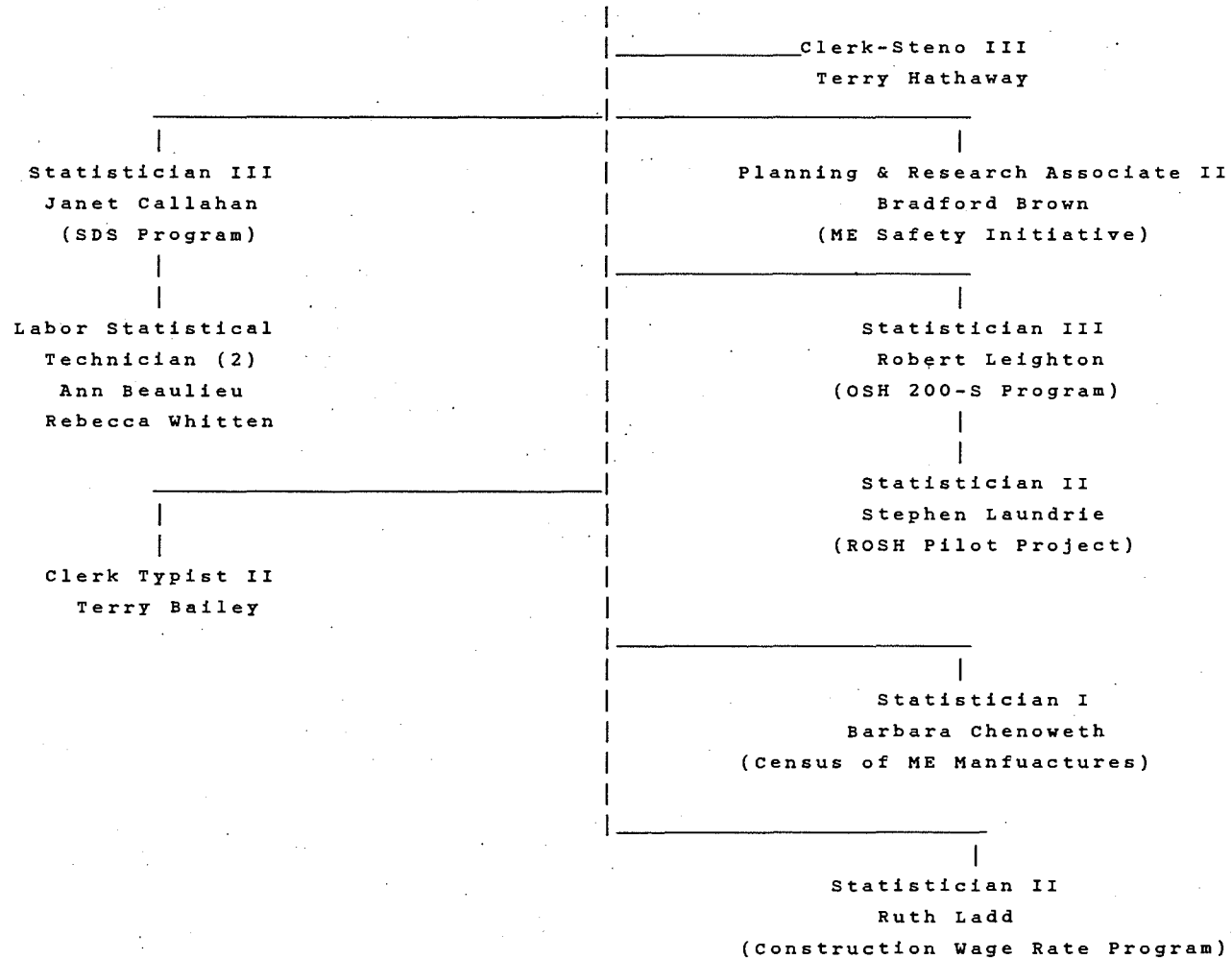
James H. McGowan

DEPUTY DIRECTOR, BUREAU OF LABOR STANDARDS

William A. Peabody

DIRECTOR, RESEARCH & STATISTICS DIVISION

John L. Rioux



## Occupational Safety and Health-related Statutory References

### Title 24 M.R.S.A.

Chapter 25 Section 2366, Subsection 7-A Establishes the Safety Education and Training Fund as a resource to the Superintendent of Insurance in developing rules granting premium credits for qualified safety programs.

### Title 26 M.R.S.A.

Chapter 1 Section 1 Definitions

Section 2 Requires reporting of death or serious injury within 24 hours.

Chapter 3 Section 42 Establishes the powers and duties of the Bureau Director (only a portion of this section refers to occupational safety and health activities).

Sections 42-A, 44, 44-A and 47 Establishes right of access to workplaces covered by compliance standards for the purpose of conducting walk-around inspections and the right to collect necessary information.

Sections 45 and 46 Governs issuance of citations and establishes penalties for noncompliance.

Section 48 Establishes the right of injured employee, the employee's survivor or representative to obtain information from the Bureau (refer to Section 3 which controls the confidentiality of Bureau records.)

Section 49 Allows Bureau to seek restraining order to address imminent danger.

Section 50 Governs inspections upon a written complaint.

Section 51 Describes the Commission on Safety and Health in the Maine Workplace and defines the role of the Commission (established by MRSA Title 5, Section 120046, Subsection 24).

<b>Chapter 4</b>	Section 61	Creates the Safety Education and Training Fund and describes the method of annual assessment.
	Sections 62, 63, and 64	Creates the Occupational Safety Loan Fund and provides for a one-time assessment. Describes the criteria and method for reviewing and approving loans, and the coverage of the Loan Fund.
<b>Chapter 5</b>	Sections 251 and 252	Requires employers having 2 or more video display terminals at any one location in Maine to provide the operators with education and training in their use. The Bureau is assigned consultation responsibilities.
	Sections 351 through 354	Creates the authority to adopt and enforce rules on sanitation on railroad property. (Note: application of these sections has been limited by recent judicial decisions, additional litigation is pending).
<b>Chapter 6</b>	Sections 561 through 571	Describes the Board of Occupational Safety and Health and defines the role of the Board and the Bureau in the adoption and enforcement of occupational safety and health standards in the public sector (established by MRSA Title 5, Section 12004 G, Subsection 26).
	Sections 580 and 581	Assigns the authority to adopt and enforce occupational safety and health standards in agriculture to the Commissioner of Agriculture, Food and Rural Resources. (Note: OSHA preemption limits the applicability of these laws in regards to private employers).
<b>Chapter 7</b>	Sections 681 through 689	The Substance Abuse Testing Act requires employers wishing to test employees and/or applicants for substances of abuse to create and file plans with the Bureau for approval.
<b>Chapter 22</b>	Sections 1709 through 1725	The Chemical Substance Identification Act establishes a "worker right-to-know" process. (Note: OSHA preemption limits the applicability of these laws in regards to private employers.)



Chapter 28 Sections 2101 through 2108 Establishes minimum safety standards for firefighters and describes their enforcement.

Title 39

Chapter 1 Section 5 Requires the Department of Labor to provide predeterminations of independent contractor status for workers' compensation insurance purposes upon request.

Section 21A Requires the Superintendent of Insurance to notify the Director of the Bureau of Labor Standards of any employer with a modification rate of 2 or more. These employers must then file with the Bureau an occupational safety and health plan designed to lower the rate.

Section 108A Requires the Director of the Bureau of Labor Standards to publish an annual report on occupational injuries and illnesses with the cooperation of other related government offices. Also requires an annual report on the workers' compensation system by the Director, the Superintendent of Insurance, and the Chair of the Workers' Compensation Commission.

**ANNUAL REPORT ON THE  
STATUS OF THE MAINE WORKERS'  
COMPENSATION SYSTEM**

**SUBMITTED TO THE 116TH  
LEGISLATURE**

**AUGUST 14, 1992**

Brian K. Atchinson  
Superintendent  
Dept. of Professional  
& Financial Regulation  
Bur. of Insurance

James H. McGowan  
Director  
Dept. of Labor  
Bur. of Labor  
Standards

Ralph L. Tucker  
Chairman  
Workers' Compensation  
Commission

John R. McKernan, Jr  
Governor



Charles A. Morrison  
Commissioner

James H. McGowan  
Director

**DEPARTMENT OF LABOR**  
Bureau of Labor Standards

The Honorable John L. Martin  
Speaker of the House  
State House Station #2  
Augusta, ME 04333-0002

The Honorable Charles P. Pray  
President of the Senate  
State House Station #3  
Augusta, ME 04333-0003

Dear Speaker Martin and President Pray:

We are pleased to submit to the 116th Legislature the fourth Annual Report on the Status of the Maine Workers' Compensation System pursuant to Public Law 1987, Chapter 599. This document summarizes the results of data collection by the three agencies involved and is intended to present a profile of the workers' compensation system including costs, administration, adequacy, and an evaluation of the entire system.

Like its predecessor, this report is organized into three sections. The report itself, however, is a cooperative effort.

Sincerely,

Handwritten signature of Brian K. Atchinson in cursive.

Brian K. Atchinson  
Superintendent  
Dept. of Professional &  
Financial Regulation  
Bur. of Insurance

Sincerely,

Handwritten signature of James H. McGowan in cursive.

James H. McGowan  
Director  
Dept. of Labor  
Bur. of Labor Standards

Sincerely,

Handwritten signature of Ralph L. Tucker in cursive.

Ralph L. Tucker  
Chairman  
Workers'  
Compensation  
Commission

**REPORT ON THE 1991 MARKET FOR  
WORKERS' COMPENSATION INSURANCE**

**DEPARTMENT OF PROFESSIONAL AND  
FINANCIAL REGULATION**

**BUREAU OF INSURANCE**

## **REPORT ON THE 1991 MARKET FOR WORKERS' COMPENSATION INSURANCE**

There currently is a great deal of uncertainty surrounding workers' compensation insurance in Maine with issues such as carrier withdrawals, rate increases, and changes in Title 39, all occurring in 1991 and continuing into 1992.

By a Decision and Order issued September 30, 1991, which considered changes from PL 1991 Chapter 615, rates for the voluntary market and safety pool decreased by an average of 5.8%. The rate changes ranged from a decrease of 18% to an increase of 11% retroactive to July 1, 1991. The rating differential for the Accident Prevention Account of the pool was increased to 20%. The year 1991 saw a continuation of the fresh start assessment of 3% to pay for policy year 1988 deficits in the residual market. The pending rate filing contains a request for assessments on policy years 1988, 1989, and 1990.

The National Council on Compensation Insurance (NCCI) notified the Bureau of Insurance that efforts to procure adequate capacity for the Maine assigned risk pool had failed, and early in 1992 there would be insufficient carriers left to write workers' compensation policies. In response to this notification, the Acting Superintendent held a hearing on March 23, 1992. As a result of this hearing a Decision and Order was issued initiating steps to solicit proposals and award servicing contracts within various areas of the State pursuant to Title 24-A M.R.S.A. Section 2366(4)(E) and Bureau of Insurance Rule 440, Subchapter II, Section 10(B)-(4)&(5). By separate action, additional capacity was offered by three insurers but would likely be used up by June.

The fear of assessments led several companies to file to terminate their authority to write workers' compensation insurance in Maine during 1991 and 1992. The Bureau promulgated emergency Rule 640 which was subsequently replaced by permanent Rule 650. Rule 650 did not change eligibility for assessments but changed the allocation procedure for assessments. This Rule is currently being challenged by some insurers.

On December 27, 1991, the NCCI filed for an average increase of 32.2% with a proposed effective date of May 1, 1992. The hearings began on March 5, 1992 and concluded on April 3, 1992. A decision was delayed until November by passage of PS Chapter 108. It is anticipated that The Blue Ribbon Commission will have completed its work by then, and the legislature will have acted so the changes in law could then be incorporated into the rates.

In the one year period ending December 31, 1991, 17 companies and 5 groups became self-insured. The self-insureds now represent approximately 40% of the premium volume in the State with an estimated imputed standard premium of \$156 million.

Based on financial statements filed with the Bureau of Insurance, calendar year 1991 premiums show the market coverage in the following percentages:

Hanover	33.7%
Commercial Union	17.5
Maine Bonding	15.1
Travelers*	13.8
Liberty*	3.5
Aetna	3.1
Hartford*	2.7
U.S.F. & G.*	2.4
Fidelity & Casualty	1.9
ALL OTHER	8.9

\*Carriers who have terminated their authority to write workers' compensation insurance in Maine.

The total premium volume on a calendar year basis for 1991 was about \$274 million. Most of the insureds are obtaining coverage through the residual market. Premiums reported may include collections on retrospectively rated policies issued in prior years.

**OCCUPATIONAL INJURY AND ILLNESS  
STATISTICAL PROGRAMS AND  
WORKSITE SAFETY INITIATIVES**

**DEPARTMENT OF LABOR  
BUREAU OF LABOR STANDARDS**

## OCCUPATIONAL INJURY AND ILLNESS DATA SYSTEM

The Bureau of Labor Standards' affiliation with the workers' compensation system has been primarily in the area of statistics gathering and dissemination. The Bureau staff does, however, assist other agencies and outside parties with Workers' Compensation Commission data transfer and with data consultation. Additionally, a major role of the Bureau has been to try to reduce the number of injuries and illnesses in Maine through training and education and through on-site inspections and consultations. Workers' Compensation data provides important information as we attempt to target our efforts.

### Statistics Gathering and Dissemination

The two data collection and dissemination programs dealing with occupational injuries and illnesses are the Supplementary Data System (SDS) and the Annual Survey of Occupational Injuries and Illnesses (OSHA 200S). The survey program is partially funded through the U.S. Department of Labor, Bureau of Labor Statistics. Two annual publications are produced: Characteristics of Work-Related Injuries and Illnesses in Maine and Occupational Injuries and Illnesses in Maine. Both are available, free of charge for single copies.

### Supplementary Data System

The Supplementary Data System (SDS) relies upon First Reports of Injury submitted to the Workers' Compensation Commission for use in coding detailed characteristics information for each claim. Coding of data elements (e.g., occupation, nature of injury, severity, etc.) is done directly onto the Workers' Compensation database via on-line capabilities. Each month a tape of claims information is created by the staff of the Workers' Compensation Commission. Employees of the Bureau's Research and Statistics Division write programs which use the claims tape to generate information to meet specific requests (e.g., the number of claims by occupation, industry, or company; the number of injuries and illnesses by severity, etc.). The data is public information and requests are filled as time permits. Our ability to handle requests for information is limited due to the loss of the statistical programming position as a result of the state's budget problems.

Each year the Research and Statistics Division publishes the Characteristics of Work-Related Injuries and Illnesses in Maine. Valuable information on detailed case characteristics of injured worker, of the firm, of the incident, and of fatalities occurring during the previous calendar year are contained in this publication.

Throughout the 1980's the number of claims processed by the Research and Statistics Division steadily increased, peaking in 1989 with 80,349. In 1990, the number of reported claims dropped to 75,155. In October 1991, Workers' Compensation Laws changed, so only cases with lost time are now filed with the Commission. A comparison of lost-time only cases shows a decrease of over 19 percent, from 26,799 to 21,583 reported cases from 1990 to 1991.



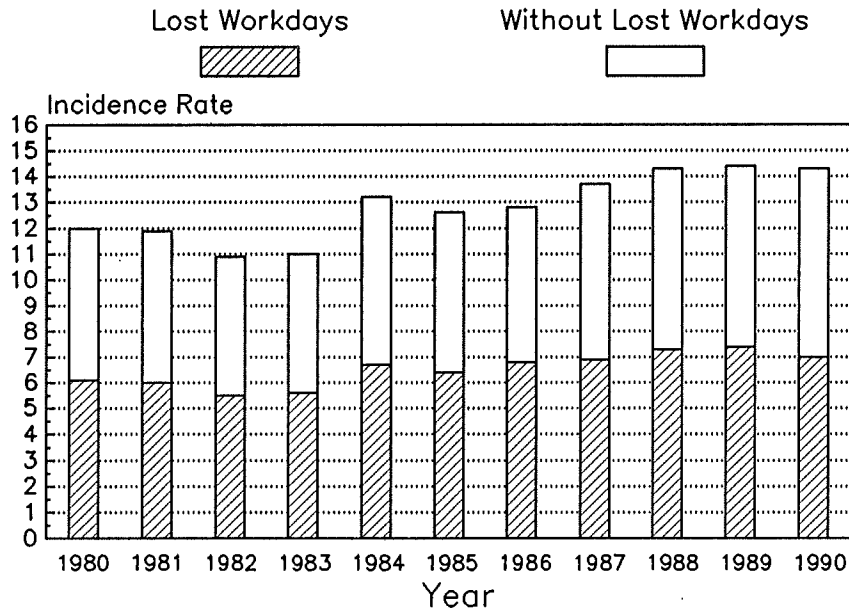
## The Annual Survey of Occupational Injuries and Illnesses

The Annual Survey of Occupational Injuries and Illnesses is a survey designed to gather information on the injury and illness experience from a representative sample of Maine's private sector employers. A sample of employers from each industry and by size class is selected for participation in the survey. Recordable cases are based on OSHA recordkeeping standards which differ slightly from Workers' Compensation reporting requirements but are uniform throughout the nation.

The results of the survey are used by the Occupational Safety and Health Administration (OSHA) to identify and target industries for inspection through the use of incidence rates of injuries and illnesses. OSHA and other safety and health specialists, researchers, and government organizations also use the survey data in voluntary efforts to improve worker safety and health. The data also supply policy-makers, as well as the general public, with information on workplace developments in the safety and health field. Statistics generated from the survey are presented, annually, in a publication entitled Occupational Injuries and Illnesses in Maine.

The following chart shows the total case incidence rates by case type in Maine since 1980. Data for 1991 will be available in the fall of 1992. Recordable occupational injuries and illnesses occurred at a rate of 14.3 cases for every 100 full-time workers in Maine in 1990. This represents a decrease of 1.4 percent from 1989 when a rate of 14.5 was recorded. The all-industry total case incidence rate represents the experience of 435,273 workers in Maine's private sector. Lost workday cases (those involving days away from work or days restricted work activity or both) occurred at the rate of 7.0 cases per 100 workers, a decrease of 5.4 percent from 1990. The incident rate for injuries and illnesses without lost workdays was 7.3, an increase of 4.3 percent over 1989.

**Total Case Incidence Rates by Case Type  
Maine, 1980-1990**



**Occupational Health & Safety Training and Consultation Programs**

The Safety Division of the Bureau of Labor Standards offers safety consultation and training programs to employers throughout the state. These services are free of charge. Specifically, safety and health inspectors will, upon request, conduct on-site inspections and provide a written report covering the problems discovered and suggest ways to correct them, conduct a pre-construction review of plans or specifications for potential safety and health problems, and offer assistance in correcting violations uncovered during an OSHA inspection. Additionally, many training classes are offered throughout the year on various safety and health topics. Nearly 15,000 workers were trained in fiscal year ending June 30, 1991. The Bureau of Labor Standards operates its consultation and training programs in a non-enforcement manner in the public and private sectors in an attempt to foster safety awareness and voluntary compliance to safety and health standards.

## Occupational Safety and Health Compact

Created in 1990, the Occupational Safety and Health Compact is a joint undertaking of the Bureau of Labor Standards and the Commission on Safety and Health in the Maine Workplace, as part of the Governor's "Safety Begins with ME Initiative". Through intensive ongoing training and consultation with a management focus, the Compact prepares employers to develop and implement effective safety and health programs.

The first Compact training program was held March 25-29, 1991, in Brunswick. Fourteen companies, representing 820 employees in manufacturing, construction, and health care participated. The second training program was held for construction employers in Augusta on October 21-25, 1991, with fifteen participating companies representing 594 employees. The third program, also for construction, was held January 13-17, 1992, in Caribou, with seventeen companies representing 135 employees in attendance.

Four Compact follow-up programs have been held, two on developing action plans, one on establishing training programs, and one on hazard communication. In addition, Compact staff have assisted members of the first and second groups in organizing a Compact support group which holds a dinner meeting every other month for the purpose of sharing safety and health experiences and exploring related topics.

The success of the Compact has been measured through before and after statistics, follow-up questionnaires, site visits, and anecdotal reports. Members have reported significant improvements in safety and health, including reductions in incidence and severity, lower workers' compensation premiums, improved safety behavior and attitudes, and fewer OSHA citations, as a result of Compact participation. Members who complete the obligations of Compact membership will receive a certificate from the Commission, as well as assistance in applying for OSHA exemption programs.

A one day program on reducing back injury among nursing personnel was held June 16, 1992. Advisory groups have been formed to assist in planning Compact programs for long term care facilities and for manufacturing.

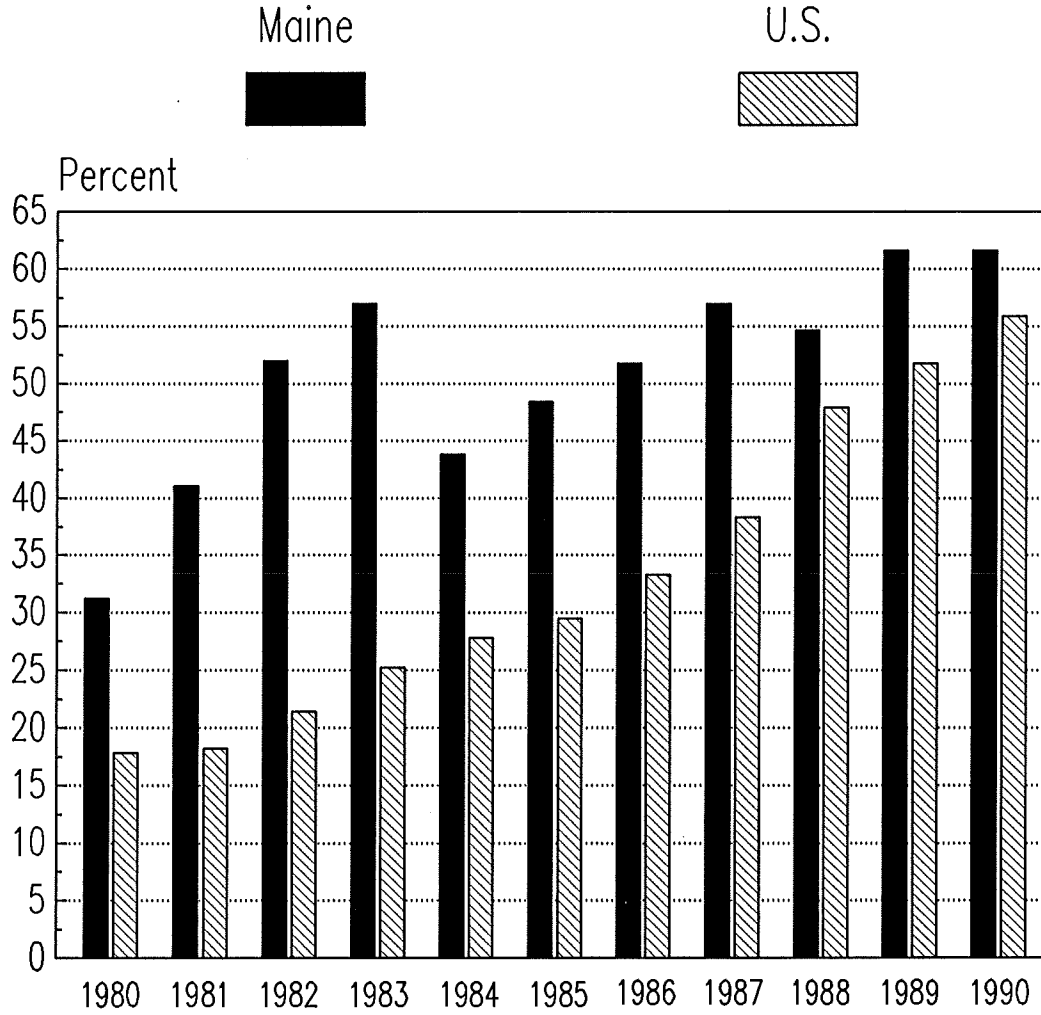
## **Cumulative Trauma Disorder Project**

On March 5, 1991, a one-half day follow-up program was held for participants in the CTD training program. By April 1991, twelve of the seventeen participating companies reported initiating some action to address their CTD problems. In addition, one company joined the Compact, attended the first Compact training program, and is an active member of the Compact support group.

Another company is on the Compact advisory group for health care facilities. At least one company was forced to drop its CTD program because of budgetary constraints. A questionnaire was distributed to the participants in April 1992, in order to further assess the success of the program.

The table on the following page illustrates the rapid increase in cumulative trauma disorder since 1980, and the need to reach out and train employees on proper body positions. On-site visits by the Bureau's staff ergonomists may be arranged upon the request of an employer.

# Percent of All Illness Cases Involving Repeated Trauma



Source:  
Annual Occupational Injuries and Illnesses Survey

Produced By:  
Maine Bureau of Labor Standards, June 1992

**OVERVIEW OF THE WORKERS'  
COMPENSATION COMMISSION**

**PROFILE OF THE MAINE WORKERS'  
COMPENSATION SYSTEM**

# **OVERVIEW OF THE WORKERS' COMPENSATION COMMISSION PROFILE OF THE MAINE WORKERS' COMPENSATION SYSTEM**

## **Introduction**

This section describes the Workers' Compensation Commission's data collection activities and operations. It also evaluates certain aspects of the overall workers' compensation system.

## **Overview of the Maine Workers' Compensation Commission**

A dozen or so cases per year are reviewed by the Supreme Judicial Court to address special issues of statutory interpretation. With this exception, the Commission, not the court system, is responsible for resolving disputes. The agency holds informal conferences to take care of problems without litigation, conducts a formal hearing system similar to court, and conducts an appellate process. Like Judges, Workers' Compensation Commissioners are appointed by the Governor and confirmed by the Joint Standing Committee on Judiciary.

Formal dispute resolution was the agency's primary mission before 1980. In 1981, an Appellate Division was created within the Commission. In 1983, an informal conference process was created to attempt to resolve problems without litigation. In 1985, the Office of Employment Rehabilitation and the Abuse Investigation Unit were added. Adjudication remains the most important responsibility in terms of the agency's effect on injured workers, employers, and insurance carriers. However, the Commission also oversees rehabilitation activity, investigates abuse, and monitors individual cases.

In 1983, the staff numbered 36 and worked in a central Augusta office. Commissioners traveled throughout the state, moving from one hearing location to the next. Today, the Commission has a central office in Augusta and five regional offices. Before the hiring freeze in 1989, the staff numbered nearly 120. Hearings, informal conferences, vocational rehabilitation conferences and other activities occur mainly in regional offices. The central Augusta office is administrative. Some hearings continue to be held at distant locations for the convenience of the affected workers.

## **Statutory Mandate**

Title 39 M.R.S.A., Section 92 details many of the responsibilities of the Commission, including adjudication, the Office of Employee Assistants, Office of Employment Rehabilitation and the Abuse Investigation Unit.

Section 93, Part 6 mandates that the Commission take an active role in the administration of the Act and that the Commission monitor individual cases to ensure that workers receive the full amount of compensation to which they are entitled.

Sections 94-A and 106-A mandate that the Commission provide an explanation of the compensation system to the worker after a First Report is filed.

Section 94-B mandates that the Commission assist workers in preparing for informal conferences.

Sections 96-105 define many aspects of the formal litigation procedure.

Sections 81-90 define many aspects of the rehabilitation oversight process.

## **Description of Data Collection Activities and Operations**

### **Initial Injury Reports**

For injuries occurring after October 17, 1991, a first report is filed only for cases involving missed work. This contains the name and address of the affected worker, the employer, the insurance carrier, a description of the incident, date of incapacity and other information necessary for processing a claim. For injuries prior to October 17, 1991, first reports were filed with the Commission if an accident required medical treatment by a physician or one or more days of work was missed.

Information from the First Report is electronically stored and used by both the Workers' Compensation Commission and the Bureau of Labor Standards, Research and Statistics Division. The Workers' Compensation Commission uses the information to identify insurance coverage and to send a brief, informational letter to the injured worker verifying the first report. The Research and Statistics Division codes accident information from the First Reports and is a primary source for accident and safety analysis.



### **Non-Disputed Payments Data**

Initial payment information is reported to the Commission on a Memorandum of Payment form. To verify correct payment, this preliminary information is later checked against another form which establishes the workers' average weekly wage. This information is electronically recorded.

A discontinuance is filed by the carrier/employer when the affected employee returns to work. This reports total cost and the date the period of incapacity ended. On long-term cases, interim reports are supposed to be made at six-month intervals. This data is also electronically stored.

Filing compliance problems and related concerns about the accuracy of reported financial data have prevented the Commission from becoming a reliable source of cost information. These payment documents do not support Commission operations or the operations of the carrier or employer. The Commission, therefore, has no direct method to identify missing data or inaccurate information. Resource constraints have prevented the Commission from developing audit procedures.

### **Informal Conferences Data**

If the carrier or employer does not believe that the injury or illness is work-related or that they shouldn't be liable for some other reason, then the claim may be challenged. The first step is to file a Notice of Controversy (NOC) with the Commission. This form, which lists the reason for the dispute, triggers the informal conference process. Occasionally, petitions are also routed through an informal conference. Data from the NOC is electronically stored and Commission staff use it to schedule informal conferences by computer and initiate informal resolution of the problem. The outcome of each NOC, including the date of informal conference, if any, is electronically stored. Computer programs use this data to track cases through the informal system and prevent cases from becoming lost.

### **Formal Hearing Data**

If the controversy is not worked out at the informal conference, one of the parties may file a petition to initiate formal litigation. The case is then tried in front of a Commissioner, who is the fact-finder for workers' compensation cases.

The Commission maintains petition filings and dispositions data electronically. This information is used to track formal petitions that needed to be scheduled, tabulate the number of pending petitions per Commissioner, and to focus attention on petitions undecided two years after the filing date.

This data is also used to generate a monthly docket and disposition summary. These are compiled every three months into a quarterly report to the Governor, the Speaker of the House, and the President of the Senate. This report, which is statutorily mandated, summarizes each commissioner's case load and progress.

## **Appellate Data**

An appeal may be filed if a litigant believes that the hearing level Commissioner has made an error of legal analysis. The hearing level Commissioner's legal reasoning is evaluated by a panel of 2-3 Commissioners. These panel decisions may be appealed to the Supreme Judicial Court. However, the court has discretion on whether to accept the case for review. Data regarding the number of appeals, dispositions, and types of disposition are maintained manually.

## **Rehabilitation Data**

The Commission's Office of Employment Rehabilitation regulates the development and implementation of rehabilitation plans for injured workers with long term disabilities. During 1987, 1988, and part of 1989, the Commission maintained its vocational rehabilitation data on a personal computer. In mid-1989, this was transferred to a small mainframe computer. Most data is now used to support operations. An electronic record now exists to record filings with the Office of Employment Rehabilitation and to record the costs and outcomes of plans.

## Summary of Operations and Data

### Processing First Reports of Injury

Prior to the law changes of 1991, most First Reports were for medical only injuries. As shown in the following table, the total number of First Reports has increased dramatically during the last few years. We believe this may be attributable to medical only First Reports being reported more consistently after passage of reform legislation in 1983. The number of disabling injuries and illnesses, where one or more days of work is lost has grown more slowly and more in line with employment.

<u>Year</u>	<u>Total First Reports</u>	<u>Disabling Cases*</u>	<u>Average Employment</u>
1982	47,188	18,212	415,500
1983	49,214	19,140	425,000
1984	63,838	23,620**	445,700
1985	64,033	23,296	459,100
1986	67,872	24,336	477,400
1987	75,326	25,528	502,600
1988	78,958	26,431	527,500
1989	80,349	26,006	546,120
1990	75,155	26,693	539,250
1991	-----	21,583***	516,300***

\* A disabling case is defined as an injury or illness resulting in one or more days away from work.

\*\* Estimate

\*\*\* Preliminary

### Dispute Resolution - Informal Conferences

Utilization of the informal conference system has increased substantially.

#### Informal Conference Filings By Year of Filing

<u>Year Filed</u>	<u>Filings for Informal Conference</u>	<u>Informal Conferences Held (subset of filings)</u>
1986	11,553	4,973
1987	15,287	6,738
1988	16,782	6,572
1989	19,941	7,211
1990	21,858	7,951
1991	22,766*	7,560*

\* Preliminary

Disputes in a current year are a cumulative product of injuries occurring in that year and those from prior years that are now in controversy. The number of years covered by the early pay system has increased; therefore, the number of cases eligible for informal conference is larger.

Distribution of Informal Conference Filings  
Filed in 1991 by the Year of Injury

<u>Year of Injury</u>	<u>Filings for Informal Conference</u>	<u>Percent</u>
1984	502	2.2%
1985	638	2.8%
1986	751	3.3%
1987	1,118	4.9%
1988	1,572	6.9%
1989	2,640	11.6%
1990	5,088	22.3%
1991	<u>10,457</u>	<u>45.9%</u>
	22,766	100.0%

Growth in the number of disputes going through the system would be expected for the first five years even if employment levels remained constant. However, this was accelerated because employment levels began to rise at about the time the early pay system was implemented.

Many conferences are canceled because the underlying problem is simple enough to be taken care of by the parties prior to the conference date. Alternatively, the conference is waived in some cases because the underlying problem is too complex to resolve without litigation. Conferences are held for about 35 percent of filings.

Some NOC's are filed even if there is no problem and there is no reason for a conference. These are often called "protective" NOC's. Failure to file a Notice of Controversy within 60 days of a claim may lead to a default, i.e. the carrier or employer being legally presumed to have accepted compensability. Hence, a NOC may be filed simply to avert this possibility.

The statutory requirement for scheduling an informal conference is within 21 days from the date the Notice of Controversy is filed. The Commission has never been able to conform to this deadline. From 1986 through 1991 an average of 50 days passed between the filing of a Notice of Controversy and the date of an informal conference.

We have attempted to evaluate the effectiveness of the informal conference system in resolving disputed claims. We found no statistical evidence to suggest that informal conferences reduce litigation. However, we did find evidence that informal conferences help resolve minor claim problems.

### **Dispute Resolution - Formal Hearings**

The Commission implemented a computerized system for scheduling and docket management in late 1991. We computerized formal hearing support to increase speed and efficiency in scheduling hearings. However, it has the very desirable side effect of improving the accuracy of our records.

The Commission received many petitions in 1990 that were not entered until 1991. The Commission also issued many decisions and dismissals that were not entered until 1991. These were not counted in last year's report, so it was necessary to revise 1990 figures in our tables. We anticipate that our new computerized procedures will solve the data entry lag problem that our older system of reporting entailed.

The new data also gives us a better opportunity to analyze the important subject of litigation in the workers' compensation system. This year we are beginning to analyze litigation in terms of the number of people affected.

Previously, we were forced to use petitions as our unit of analysis. We knew that more than one petition may be filed per case or per injured worker. However, some members of the public naturally assume that each petition is one case. This assumption creates an impression of more litigation than is actually occurring.

### **Volume of Filings**

The number of petitions filed annually grew markedly during the 1980's. Litigation relates to injuries occurring in several previous years. The cumulative effect of increased employment during prior years is that there is more litigation today than in the early 1980s.

### Volume of Petitions

<u>Year</u>	<u>Petitions Filed</u>	<u># Cases (Injured Workers)</u>
1981	5,796	.
1982	5,940	.
1983	7,360	.
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1985	5,919	.
1986	7,471	.
1987	8,140	.
1988	11,036	.
1989	12,899	.
1990	14,483	8,530
1991	14,088*	8,589*

\* Preliminary

### Volume of Dispositions

<u>Year</u>	<u>Decisions</u>	<u>Dismissals</u>	<u>Lump Sums</u>	<u>Total Dispositions</u>
1987	4,320	*	*	8,349
1988	5,988	*	*	11,300
1989	5,884	*	*	12,008
1990	5,771	4,703	2,049	12,523
1991	7,072**	4,783**	2,949**	14,766**

\* Not Available

\*\* Preliminary

Litigated cases are less than total petitions, as more than one petition may be filed per dispute. Some disputes involve multiple dates of injury. For example, the 14,483 petitions filed in 1990 reflected about 8,500 litigated cases.

We anticipate a substantial slowdown in litigation during 1992 and 1993, as a result of the current recession. Maine, however, will not again see litigation levels of the early 1980's, where approximately 6,000 petitions were filed annually, unless an economic catastrophe occurs and employment levels drop by roughly 100,000 jobs.

### **Volume of Pending Litigation**

In mid-1986, the Commission began tracking the number of pending petitions. It was then about 7,500 statewide. That level of backlog held through 1988 despite a significant increase in petition filings. The backlog increased to 8,194 in 1989. In 1990 and 1991, the number of pending, undecided petitions increased to nearly 10,000. On the other hand, petitions undecided for more than two years were reduced to the lowest levels since records were first kept in mid-1986.

<u>Year</u>	<u>Total Petitions Pending as of December 31st</u>	<u>Pending 2 or More Years</u>
1986	7,499	492
1987	7,461	N/A
1988	7,303	465
1989	8,194	287
1990	10,026	221
1991	10,377	174

### **Speed of Adjudication**

The time from the filing of a petition to a full decision continues to average about a year. The median is slightly less, about 9 months. This figure is in line with other states and is faster than the courts for cases of comparable value and complexity. States with more rapid hearing time lines for workers' compensation often involve situations where the agency's administrative ruling may be followed by a full trial in district court. Therefore, it is in court, not the state workers' compensation agency, where litigation occurs.

## **Appellate Cases**

The volume of Appellate cases has also been increasing. A manual system is in place to monitor delay and the current backlog of pending cases is less than the number of annual filings.

### **Appellate Filings and Dispositions**

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	<b>Appeals Filed</b>	<b>Decisions &amp; Dismissals</b>	<b>Decisions</b>	<b>Dismissals</b>
1984	284	249	162	87
1985	399	294	200	94
1986	322	318	211	107
1987	319	239	153	86
1988	367	369	254	115
1989	442	364	234	130
1990	480	369	242	127
1991	644	446	214	232

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Appellate Backlog as of May 15, 1992 is 600



Commissioner panels affirm the legal analysis of the hearing Commissioner in roughly 70-80% of cases. The Supreme Court affirms Commissioner panels in about the same percentage.

**Percent Commissioner Affirmed  
By Appellate Panel**

Year of Appellate Decision	Decisions	Percent Affirmed
1984	162	73%
1985	200	65%
1986	211	70%
1987	153	79%
1988	254	78%
1989	234	75%
1990	242	77%
1991	214	79%

**Percent Appellate Panel  
Affirmed By Supreme Court**

Year of Appeal Filed	Law Court Decisions*	Percent Affirmed
1984	8	62%
1985	8	62%
1986	4	100%
1987	8	75%
1988	14	57%
1989	8	75%
1990	16	44%
1991	6**	83%

\* Decisions are a subset of appeals accepted by the Law Court. A decision on a 1991 appeal may have been issued in 1992.

\*\* To Date

**System Perspective of Workers' Compensation Commission**

**Litigiousness**

The question of how much litigation is appropriate is obviously subject to differing opinions. Some believe that any litigation at all indicates a system problem. Others believe that the majority of injured workers need attorneys in order to obtain their statutory benefits. Policy discussions have been hindered because data beyond a simple count of filings and dispositions has not been available.

The volume of litigation in a calendar year represents work load for the Workers' Compensation Commission. However, many policy questions relate to the injury year. We need to understand what percent of injuries for a given year are litigated and at what point or points in the claim cycle. The distribution of petitions filed in 1990 and 1991 displays a substantial lag effect. Most petitions filed in a calendar year relate mainly to injuries occurring in several prior years.

Petitions Filed in 1990			Petitions Filed in 1991		
<u>Year of Injury</u>	<u># Petitions</u>	<u>Percent</u>	<u>Year of Injury</u>	<u># Petitions</u>	<u>Percent</u>
Pre-1980	281	2%	Pre-1981	318	2%
1980	145	1%	1981	186	1%
1981	199	1%	1982	254	2%
1982	265	2%	1983	279	2%
1983	391	3%	1984	446	3%
1984	600	4%	1985	627	4%
1985	764	5%	1986	710	5%
1986	1,113	8%	1987	1,148	8%
1987	1,700	12%	1988	1,658	12%
1988	2,589	18%	1989	2,766	20%
1989	4,150	29%	1990	4,022	29%
1990	2,286	16%	1991	1,674	12%
	<hr/>			<hr/>	
	14,483	100%		14,088	100%

We anticipate that the volume of petitions filed in 1992 will decline noticeably because many petitions filed in 1992 will come from injury years 1990 and 1991, when employment levels were falling.

This lag effect makes it difficult to determine whether a higher or lower percentage of injuries occurring in just one year are entering litigation. We are attempting to develop litigation rates based on the underlying year of injury.

We have completed a second year of analysis of 1990 injuries and have a more concrete idea of the scope of litigation than ever before.

## Injury Year 1990 - Litigation Summary

	Injured Workers Entering Litigation in 1990	Injured Workers Entering Litigation in 1991	Total
1990 Injuries	1,461	2,559	4,020
Percent of 17,955 Wage Loss Cases	8%	14%	22%

Left unanswered is how much additional litigation will ensue. However, we believe that the vast majority of potentially litigious 1990 claims have entered litigation. More time is also needed to evaluate how much litigation is centered in a core group of extremely contentious cases with multiple episodes of litigation during the claim cycle.

### Benefit Structure

An influential study entitled The Report of the National Commission on State Workers' Compensation Laws issued in 1973 contained certain recommendations which have become commonly accepted benchmarks. Since adequacy of benefits is ultimately a political determination, these recommendations were expressed as a minimum standard rather than as an ideal benefit structure.

Benefits for total disability were recommended to be at least two-thirds of the affected workers' average weekly wage. Total disability benefits were recommended to be paid for the duration of the disability or for life, if the disability was permanent. The waiting period recommended was to be no more than three days. The maximum weekly benefit to be at least 200 percent of average weekly wage. An additional suggestion was that compensation for partial disability be a combination of separate benefits for impairment and for disability.

Maine's statute on total incapacity follows these recommendations except in the area of the maximum weekly benefit. The current maximum weekly benefit is 137 percent of state average weekly wage. Maine's statute on partial benefits no longer follow the suggestion of the National Commission. The 1991 legislative changes offset disability and permanent impairment benefits.

### Timeliness of Benefits

The Workers' Compensation Commission has developed a computer program which calculates the number of days from the date of incapacity to the date of first payment for wage loss cases. For purposes of comparison, the Commission performed a similar analysis on a sample of 1983 cases. The results for 1983, 1986, 1987, 1989, 1990 and 1991 are displayed on the following table.

<u>Year of First Payment</u>	<u>Percent Paid 1-14 Days</u>	<u>Percent Paid 15-21 Days</u>	<u>Percent Paid 22-28 Days</u>	<u>Percent Paid 28+ Days</u>
1983	16	10	6	68
1986	45	17	10	28
1987	41	20	12	27
1988	35	19	12	34
1989	36	21	12	31
1990	40	20	11	29
1991	39	15	11	35

Improvement in the timeliness of first benefit payments in recent years as compared to 1983 is largely attributable to the early pay legislation that became effective in 1984. However, current timeliness does not conform to the statutory mandate that payment for wage loss be made or the case controverted within 14 days.

In 1988, the Commission was contemplating a computer supported process for monitoring payment timeliness on individual cases and working with insurers and adjustment companies to improve timeliness. This project has been placed on hold due to resource constraints.

Additionally, complaints have been raised regarding delay in making payments following a Commission decision. In the past, this has been anecdotal and no data was available about the nature and extent of the problem. During the 1987 emergency session, the penalties provision of the statute was strengthened. During 1990, the Commission received 417 complaints and collected fines totaling \$114,882. During 1991, the Commission received 318 complaints and collected fines totaling \$115,855.

## System Costs

During the 1987 emergency session, the cost of partial disability cases was a central issue. It was argued that a high percentage of system costs, under the then existing benefit structure, was related to permanent partial cases where the affected worker lost some, but not all, of their earning capacity as a result of work-related injury or illness.

The effect of the cut in benefits during late 1987 has not yet been fully evaluated, although anecdotal evidence is growing that the cost of partial cases has been greatly reduced. A study of lump sum activity also suggests that costs of partial cases have been reduced relative to the past.

### Average Lump Sum Amounts in 4th Year

Injury Year	Average Value of Lump Sum Settlements Made in 4th Year
1986	\$51,070 (1989)
1988	\$34,294 (1991)

We believe the reduction in the value of lump sum settlements at a comparable point in the claim cycle is attributable to the institution of a duration limit without inflation adjustments.

By way of interstate cost comparison, the Commission receives an annual publication from the National Foundation for Unemployment and Workers' Compensation Insurance summarizing fiscal data for state workers' compensation systems. Aggregation of data is slow and 1989 is the most recent year available.

Benefit Cost Rate\*  
Five Highest States, 1989

<u>State</u>	<u>1989</u>
1. Montana	3.75%
2. Maine	3.61%
3. W. Virginia	3.55%
4. Texas	3.01%
5. New Mexico	2.84%

U.S. Average                      1.46%

\* Total indemnity and medical payments as a percentage of estimated total wages of workers' covered by state workers' compensation programs

- Source: The Bulletin, June 8, 1992, National Foundation for Unemployment Compensation and Workers' Compensation

States with high benefit cost rates also tend to rank high in OSHA incidence rates of occupational injuries and illnesses. In 1989, 3 of the 5 highest cost states were also in the top 5 for the OSHA lost workday case rate. Maine ranks second benefit cost rate and first on the OSHA lost workday case rate.

OSHA Lost Workday Incidence Rate\*  
Five Highest States, 1989

<u>State</u>	<u>1989</u>
1. Maine	177.6
2. Rhode Island	148.8
3. W. Virginia	113.7
4. Nevada	110.0
5. New Mexico	109.4

U.S. Average                      69.9

\* Lost workdays per 100 employees per year (working 40 hours weekly, 50 weeks per year)

Source: Occupational Injuries and Illnesses in Maine 1990, Bureau of Labor Standards

## **Evaluation Perspective of the Workers' Compensation Commission**

Many states have been confronted by workers' compensation problems in the past few years. This trend has had an especially severe impact in Maine. In part, we attribute this to a lack of political consensus that has extended for approximately a decade. In part, we attribute this to Maine's industrial mix.

It is unlikely that Maine will ever be an inexpensive state. Our economy includes a preponderance of hazardous employment. Our incidence rates, as measured by the OSHA survey are the highest in the nation, more than twice the national average for total lost workdays.

Workers' compensation expense per employee is also high. Again, more than twice the national average. These costs make workers' compensation a chronic legislative issue.

All parties feel the system is difficult to understand. Employers complain that insurance premiums are excessive and unrelated to business safety records. Workers often feel they are unprotected from abuse by carriers and employers. Carriers and employers feel they are unable to have people removed from compensation benefits fast enough and that, in some cases, undeserving individuals receive benefits.

The performance of carriers and adjusting companies is both a source of concern and a cost driver. Employer complaints about the adequacy of claims investigation seem to be increasing. The informal conference process is often used as an investigative tool rather than as a process to resolve an actual dispute. Timely payment is not being made on a significant number of routine indemnity cases. In some cases, payments are not promptly made, even after a Commission decree.

The Commission sees only limited opportunities for correcting these problems through administrative action by public agencies. To a significant degree, the Commission believes they reflect an underlying instability in the benefit financing mechanism.

All sides appear to agree that small employers are poorly served by the current system. Beyond that, political consensus about either the basic problems or potential solutions is extremely limited. No group is satisfied, despite the numerous statutory changes.

Unfortunately, a direct relationship exists between a statute's clarity, and the level of agreement at the time of its development. When there is no meaningful consensus, the political battle will often be fought by introducing amendments that weaken the opposition's proposals by adding exceptions or qualifications. The eventual law is likely to be phrased in language that is complex and subject to many interpretations.

With four crisis-oriented legislative sessions in less than a decade, this phenomena has characterized many changes to the workers' compensation law. The underlying political grid-lock has been built into the law and created a challenging environment for all system participants.

Beyond the difficult questions raised by the unstable insurance market environment, the Commission sees some positive developments. We anticipate a recession related decrease in litigation. We also anticipate smaller backlogs and less delay in adjudication. This may contribute towards a less controversial workers' compensation environment.





STATE OF MAINE

**WORKERS' COMPENSATION COMMISSION**

STATE HOUSE STATION 27  
AUGUSTA, MAINE 04333  
207-289-3751

August 18, 1992

Mr. Harvey Picker  
P.O. Box 677  
Camden, ME 04843

Re: Adjudication

Dear Mr. Picker:

This letter is a follow-up on my letter of August 12, 1992, outlining the need for skilled adjudicators in a workers' compensation agency.

Virtually everyone agrees that the workers' compensation process is too adversarial. It has led to a complex statute, red tape, litigation, and high costs. You have asked whether the current Commissioners are part of this "culture". This is, to some extent, a loaded question because a hearing Commissioner's job is to enforce a controversial law.

The Commissioners are not policy makers. The statute has been changed again and again. All parties are unhappy with the results. Under these circumstances, there is a tendency to make the Commission and the Commissioners a focal point of dissatisfaction. They are tangible while the statute itself is more abstract. The public sometimes has difficulty focusing on their limited role as adjudicators.

The current Commissioners have genuinely attempted to apply the statute and case law as fairly and neutrally as possible. If you evaluate their actual work product, you will find that they closely follow the statutory language, Maine Supreme Court decisions and the standard principles of American compensation law as outlined in the authoritative treatise by Arthur Larson, Workmen's Compensation Law.

The major judicial expansions of the statute have not come from the Commissioners. Indeed these expansions have often resulted from reversals of Commission decisions against injured workers. For example, the standard of causation that has generated so much controversy was reaffirmed and delineated by the Maine Supreme Court in the case of Bryant v. Masters Machine Co., 444 A.2d 239 (Me. 1982)(Justice Carter). Bryant overruled the Commission's denial of benefits.

In practice, Commissioners frequently deny claims because of preexisting weaknesses. See *Keirstead v. Edwards Co.*, No. 91-68 (Me. WCC App. Div. Jan. 24, 1989) and *Morrissey v. Babcock & Wilcox*, No. 91-189 (Me. WCC App. Div. Oct. 30, 1989).

There have been many other situations where the Commission took a typically narrow position, only to be reversed by the Maine Supreme Court.

*Ashby v. Rust Engineering Co.*, 559 A.2d 774 (Me. 1989)(Justice Hornby). The Commission denied inclusion of fringe benefits in wage base; the Supreme Court reversed.

*Patriotti v. General Electric Co.*, 587 A.2d 231 (Me. 1991) (Justice McKusick). The Commission denied the claim on the basis that the employee has the burden of proof to show that the ten year statute of limitations did not apply; the Supreme Court reversed.

*Lindsay v. Great Northern Paper Co.*, 532 A.2d 151 (Me. 1987) (Justice Clifford). The Commission denied a discrimination claim on the basis that the company has a neutral attendance policy; the Supreme Court reversed, ruling that a neutral policy was not a valid defense.

The Commission's normally conservative approach has also been overruled by statute. In the controversial area of chiropractic care, for example, the Commission traditionally has been skeptical and strict. This resistance led to a series of legislative changes broadening the right to chiropractic care.

Current adjudicators tend to be more conservative than in the past. This is due to general changes in society, increasing experience, and appointments over the last decade. The current Governor has appointed eight of the twelve Commissioners, and reappointed the other four to second or third terms. The statutory requirement that the law be "liberally interpreted" in favor of injured employees was repealed in 1985.

The suggestion that the Commission is biased in favor of injured workers is not true. There are far more appeals by employees from Commissioner decisions. In fact, it is now more frequent for Commissioners to be attacked for being too harsh on employees. Two recent examples are attached.

Changing adjudicators would not significantly affect the culture. They did not create the statute or the culture. Factors such as safety, return to work policies, adjustment practices, labor management relations, and the general lack of consensus have far more to do with the amount of litigation and red tape than the beliefs and habits of the Commissioners.

Letter to Harvey Picker  
August 18, 1992

3

If anything, the Commission reflects the conservative trends of society at large. It would be a shame to throw out Maine's current adjudicators, based on a misperception, and lose their experience and skills at this very important transition.

Sincerely,



Ralph L. Tucker  
Chairman

RLT:km

Attachment

cc. w/attachment: Blue Ribbon Commissioners  
John Lewis

WORKERS' COMPENSATION COMMISSION  
TRI-AGENCY ANNUAL REPORT 1992  
WORKERS' COMPENSATION SECTION

OVERVIEW OF THE WORKERS' COMPENSATION COMMISSION  
PROFILE OF THE MAINE WORKERS' COMPENSATION SYSTEM

Introduction

This section describes the Workers' Compensation Commission's data collection activities and operations. It also evaluates certain aspects of the overall workers' compensation system.

Overview of the Maine Workers' Compensation Commission

A dozen or so cases per year are reviewed by the Supreme Judicial Court to address special issues of statutory interpretation. With this exception, the Commission, not the court system, is responsible for resolving disputes. The agency holds informal conferences to take care of problems without litigation, conducts a formal hearing system similar to court, and conducts an appellate process. Like Judges, Workers' Compensation Commissioners are appointed by the Governor and confirmed by the Joint Standing Committee on Judiciary.

Formal dispute resolution was the agency's sole mission before 1980. In 1981, an Appellate Division was created within the Commission. In 1983, an informal conference process was created to attempt to resolve problems without litigation. In 1985, the Office of Employment Rehabilitation and the Abuse Investigation Unit were added. Adjudication remains the most

important responsibility in terms of the agency's effect on injured workers, employers, and insurance carriers. However, the Commission also oversees rehabilitation activity, investigates abuse, and monitors individual cases.

In 1983, the staff numbered 36 and worked in a central Augusta office. Commissioners traveled throughout the state, moving from one hearing location to the next. Today, the Commission has a central office in Augusta and five regional offices. Before the hiring freeze in 1989, the staff numbered nearly 120. Hearings, informal conferences, vocational rehabilitation conferences and other activities occur mainly in regional offices. The central Augusta office is administrative. Some hearings continue to be held at distant locations for the convenience of the affected workers.

#### Statutory Mandate

Title 39 M.R.S.A. §92 details many of the responsibilities of the Commission, including adjudication, the Office of Employee Assistants, Office of Employment Rehabilitation and the Abuse Investigation Unit.

Section 93, Part 6 mandates that the Commission take an active role in the administration of the Act and that the Commission monitor individual cases to ensure that workers receive the full amount of compensation to which they are entitled.

Sections 94-A and 106-A mandate that the Commission provide an explanation of the compensation system to the worker after a First Report is filed.

Section 94-B mandates that the Commission assist workers in preparing for informal conferences.

Sections 96-105 define many aspects of the formal litigation procedure.

Sections 81-90 define many aspects of the rehabilitation oversight process.

### Description of Data Collection Activities and Operations

#### Initial Injury Reports

A First Report of Injury or Disease is filed with the Commission if an accident requires medical treatment by a physician or one or more days of work is missed. This contains the names and address of the affected worker, the employer, the insurance carrier, a description of the incident, date of incapacity and other information necessary for processing a claim. For injuries after October 17, 1991, first reports are filed only for cases involving missed work.

Information from the First Report is electronically stored and used by both the Workers' Compensation Commission and the Bureau of Labor Standards, Research and Statistics Division. The Workers' Compensation Commission uses the information to identify insurance coverage and to send a brief, informational letter to the injured worker verifying the first report. The Research and Statistics Division codes accident information from the First Reports and is the primary source of accident and safety analysis.

### Non-Disputed Payments Data

Initial payment information is reported to the Commission on a Memorandum of Payment form. To verify correct payment, this preliminary information is later checked against another form which establishes the workers' average weekly wage. This information is electronically recorded.

A discontinuance is filed by the carrier/employer when the affected employee returns to work. This reports total cost and the date the period of incapacity ended. On long term cases, interim reports are made at six-month intervals. This data is also electronically stored.

Filing compliance problems and related concerns about the accuracy of financial data have prevented the Commission from becoming a reliable source of information as to system cost. These payment documents do not support Commission operations or the operations of the carrier or employer. The Commission, therefore, has no direct method to identify missing data or inaccurate information. Resource constraints have prevented the Commission from developing audit procedures.

### Informal Conferences Data

If the carrier or employer does not believe the injury or illness is work-related or that they are not liable for some other reason, then the claim may be challenged. The first step is to file a Notice of Controversy (NOC). This form, which lists the reason for the dispute, triggers the informal conference process. Occasionally, petitions are also routed through an informal conference. Data from the NOC is electronically stored

and Commission staff use it to schedule informal conferences by computer. The outcome of each NOC, including the date of informal conference, if any, is electronically stored. Computer programs use this data to track cases through the informal system and prevent cases from becoming lost.

#### Formal Hearing Data

If the problem is not worked out at the informal conference, one of the parties may file a petition to initiate formal litigation. The case is then tried in front of a Commissioner, who is the fact-finder for workers' compensation cases.

The Commission maintains petition filings and dispositions data electronically. We use this information to track formal petitions that needed to be scheduled, tabulate the number of pending petitions per Commissioner, and to focus attention on petitions undecided two years after the filing date.

This data is also used to generate a monthly docket and disposition summary. These are compiled every three months into a quarterly report to the Governor, the Speaker of the House, and the President of the Senate. This report, which is statutorily mandated, summarizes the individual commissioner's case load and progress.



### Appellate Data

An appeal may be made if a litigant believes that the hearing level Commissioner has made an error of legal analysis. The hearing level Commissioner's legal reasoning is evaluated by a panel of 2-3 Commissioners. These panel decisions may be appealed to the Supreme Judicial Court. However, the court has discretion on whether to accept the case for review. Data as to the number of appeals, dispositions, and types of disposition are maintained manually.

### Rehabilitation

The Commission's Office of Employment Rehabilitation regulates the development and implementation of rehabilitation plans for injured workers with long term disabilities. During 1987, 1988, and part of 1989, the Commission maintained its vocational rehabilitation data on a personal computer. In mid-1989, this was transferred to a small mainframe. Most data is now used to support operations. An electronic record now exists to record filings with the Office of Employment Rehabilitation and the costs and outcomes of plans.

Summary of Operations and Data

Processing First Reports of Injury

Prior to the law changes of 1991, most First Reports are for medical only injuries. As may be seen in the following table, the total number of First Reports has increased dramatically during the last few years. We believe this may be attributable to medical only First Reports being reported more consistently after passage of reform legislation in 1983. The number of disabling injuries and illnesses, where one or more days of work is lost has grown more slowly and more in line with employment.

<u>Year</u>	<u>Total First Reports</u>	<u>Disabling Cases*</u>	<u>Average Employment</u>
1982	47,188	18,212	415,500
1983	49,214	19,140	425,000
1984	63,838	23,620**	445,700
1985	64,033	23,296	459,100
1986	67,872	24,336	477,400
1987	75,326	25,528	502,600
1988	78,958	26,431	527,500
1989	80,349	26,006	546,120
1990	75,155	26,693	539,250
1991	----	21,583***	516,300***

\* A disabling case is defined as an injury or illness resulting in one or more days away from work.

\*\* Estimate

\*\*\* Preliminary

Dispute Resolution - Informal Conferences

Utilization of the informal conference system has increased substantially.

<u>Year</u>	<u>Filings for Informal Conference</u>	<u>Informal Conferences Held (subset of filings)</u>
1986	11,553	4,973
1987	15,287	6,738
1988	16,782	6,572
1989	19,941	7,211
1990	21,858	7,951
1991	22,766*	7,560*

\* Preliminary

Disputes in a current year are a cumulative product of injuries occurring in that year and those from prior years that are now in controversy. The number of years covered by the early pay system has increased, therefore, the number of cases eligible for informal conference is larger.

Distribution of Informal Conference Findings  
Filed in 1991 by the Year of Injury

<u>Year of Injury</u>	<u>Filings for Informal Conference</u>	<u>Percent</u>
1984	502	2.2%
1985	638	2.8%
1986	751	3.3%
1987	1,118	4.9%
1988	1,572	6.9%
1989	2,640	11.6%
1990	5,088	22.3%
1991	<u>10,457</u>	<u>45.9%</u>
	22,766	100.0%

Growth in the number of disputes going through the system would be expected to occur for the first five years or so even if employment levels remained constant. However, this was accelerated because employment levels began to rise at about the time the early pay system was implemented.

Many conferences are canceled because the underlying problem was simple enough to be taken care of by the parties prior to the conference date. Alternatively, the conference is waived in some cases because the underlying problem is too complex to resolve without litigation. Conferences are held for about 35 percent of filings.

Some NOC's are filed even if there is no problem and there is no reason for a conference. These are often called "protective" NOC's. Failure to file a Notice of Controversy within 60 days of a claim may lead to a default, i.e. the carrier or employer being legally presumed to have accepted compensability. Hence, a NOC may be filed simply to avert this possibility.

The statutory requirement for scheduling an informal conference is within 21 days from the date when the Notice of Controversy is filed. The Commission has never been able to conform to this deadline. From 1986 through 1991 an average of 50 days passed between the filing of a Notice of Controversy and the date of an informal conference.

We have attempted to evaluate the effectiveness of the informal conference system in resolving disputed claims. We found no statistical evidence to suggest that informal conferences reduce litigation. However, we did find evidence that informal conferences help resolve minor claim problems.

#### Dispute Resolution - Formal Hearings

The Commission implemented a computerized system for scheduling and docket management in late 1991. We computerized formal hearing support to increase speed and efficiency in scheduling hearings. However, it has the very desirable side effect of improving the accuracy and up-to-dateness of our records.

The Commission received many petitions in 1990 that were not entered until 1991. The Commission issued many decisions and dismissals that were not entered until 1991. These were not counted in last year's report and it has been necessary to revise 1990 figures in our tables. We anticipate that our new computerized procedures will solve the data entry lag problem our older system of reporting entailed.

The new data also gives us a better opportunity to analyze the important subject of litigation in the workers' compensation system. This year we are beginning to analyze litigation in terms of the number of people affected.

Previously, we have been forced to use petitions as our unit of analysis. We have known that more than one petition may be filed per case or per injured worker. However, some members of the public naturally assume that each petition is one case. This assumption creates an impression of more litigation than is actually occurring.

#### Volume of Filings

The number of petitions filed annually grew markedly during the 1980's. Litigation relates to injuries occurring in several previous years. The cumulative effect of increased employment during prior years is that there is more litigation today than in the early 1980s.

### Volume of Petitions

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1989	12,899	.
1990	16,869**	8,530
1991	15,105* 165	8,589*

\* preliminary

\*\* The 1991 report listed 14,555 petitions for 1990. This was a count of petitions processed in 1990. Approximately 2,300 1990 petitions were in the pipeline as of December 31, 1990. These were not entered until after last year's report was prepared.

### Volume of Dispositions

<u>Year</u>	<u>Decisions</u>	<u>Dismissals</u>	<u>Lump Sums</u>	<u>Total Dispositions</u>
1987	4,320	*	*	8,349
1988	5,988	*	*	11,300
1989	5,884	*	*	12,008
1990	7,786**	6,504**	2,720**	17,010**
1991	7,795***	5,224***	3,268***	16,287***

\* Not Available

\*\* The 1991 report listed 12,723 dispositions for 1990. This was a count of dispositions processed in 1990. Approximately 4,300 1990 dispositions were not entered until after last year's report was prepared.

\*\*\* Preliminary

Litigated cases is less than total petitions, as more than one petition may be filed per dispute. Some disputes involve multiple dates of injury. For example, the 16,867 petitions filed in 1990 reflects about 8,500 litigated cases.

We anticipate a substantial slowdown in litigation during 1992 and 1993, reflecting the current recession. Maine, however, will not again see litigation levels of the early 1980's, where approximately 6,000 petitions were filed annually, unless an economic catastrophe occurs and employment levels drop by roughly 100,000 jobs.

#### Volume of Pending Litigation

In mid-1986, the Commission began tracking the number of pending petitions. It was then about 7,500 statewide. That level of backlog held through 1988 despite a significant increase in petition filings. Backlog increased to 8,194 in 1989. In 1990 and 1991, the number of pending undecided petitions increased to the 10,000 level. On the other hand, petitions undecided more than two years were reduced to the lowest levels since records were first kept in mid-1986.

<u>Year</u>	<u>Total Petitions Pending as of December 31st</u>	<u>Pending 2 or More Years</u>
1986	7,499	492
1987	7,461	N/A
1988	7,303	465
1989	8,194	287
1990	10,026	221
1991	10,377	174

### Speed of Adjudication

Litigation of a petition to a full decision continues to average about a year. The median is slightly less, about 9 months. This figure is in line with other states and is faster than the courts for cases of comparable value and complexity. States with more rapid hearing timelines for workers' compensation often involve situations where the agency's administrative ruling may be followed by a full trial in district court. Therefore, it is in court, not the state workers' compensation agency, where litigation occurs.

### Appellate Cases

The volume of Appellate cases has also been increasing. A manual system is in place to monitor delay and the current backlog of pending cases is less than the number of annual filings.

#### Appellate Filings and Dispositions

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	Appeals Filed	Decisions & Dismissals	Decisions	Dismissals
1984	284	249	162	87
1985	399	294	200	94
1986	322	318	211	107
1987	319	239	153	86
1988	367	369	254	115
1989	442	364	234	130
1990	480	369	242	127
1991	644	446	214	232

---

Appellate Backlog as of May 15, 1991 is 600



Commissioner panels affirm the legal analysis of the hearing Commissioner in roughly 70-80% of cases. The Supreme Court affirms Commissioner panels in about the same percentage.

Percent Commissioner Affirmed  
By Appellate Panel

Percent Appellate Panel Affirmed  
By Supreme Court

	Decisions	Percent Affirmed
1984	162	73%
1985	200	65%
1986	211	70%
1987	153	79%
1988	254	78%
1989	234	75%
1990	242	77%
1991	214	79%

	Law Court Decisions*	Percent Affirmed
1984	8	62%
1985	8	62%
1986	4	100%
1987	8	75%
1988	14	57%
1989	8	75%
1990	16	44%
1991	6**	83%

\* Decisions are a subset of appeals accepted by the Law Court. A decision on a 1991 appeal may have been issued in 1992.

\*\* To Date

System Perspective of Workers' Compensation Commission

Litigiousness

The question of how much litigation is appropriate is obviously subject to differing opinions. Some believe that any litigation at all indicates a system problem. Others believe that most injured workers need attorneys in order to obtain their statutory benefits. Policy discussions have been hindered because data beyond a simple count of filings and dispositions has not been available.

The volume of litigation in a calendar year represents workload for the Workers' Compensation Commission. However, many policy questions relate to the injury year. We need to understand what percent of injuries for a given year are litigated and at what point or points in the claim cycle. The distribution of petitions filed in 1990 and 1991 displays a substantial lag effect. Most petitions filed in a calendar year relate mainly to injuries occurring in several prior years.

Petitions Filed in 1990			Petitions Filed in 1991		
<u>Year of Injury</u>	<u># Petitions</u>	<u>Percent</u>	<u>Year of Injury</u>	<u># Petitions</u>	<u>Percent</u>
Pre-1980	316	2%	Pre-1981	335	2%
1980	165	1%	1981	196	1%
1981	221	1%	1982	261	2%
1982	314	2%	1983	306	2%
1983	436	3%	1984	473	3%
1984	672	4%	1985	678	4%
1985	864	5%	1986	773	5%
1986	1,332	8%	1987	1,234	8%
1987	1,998	12%	1988	1,782	12%
1988	3,009	18%	1989	2,947	20%
1989	4,845	29%	1990	4,367	29%
1990	2,587	15%	1991	1,813	12%
	<hr/>			<hr/>	
	16,769	100%		15,165	100%

We anticipate that the volume of petitions filed in 1992 will decline noticeably because many petitions filed in 1992 will come from injury years 1990 and 1991, when employment levels were falling.

This lag effect makes it difficult to determine whether a higher or lower percentage of injuries occurring in just one year are entering litigation. We are attempting to develop litigation rates based on the underlying year of injury.

We have completed a second year of analysis of 1990 injuries and have a firmer idea of the scope of litigation than ever before.

### Injury Year 1990 - Litigation Summary

	Injured Workers Entering Litigation in 1990	Injured Workers Entering Litigation in 1991	Total
1990 Injuries	1,461	2,559	4,020
Percent of 17,955 Wage Loss Cases	8%	14%	22%

Unanswered, is how much additional litigation will ensue. However, we believe that the vast majority of potentially litigious 1990 claims have entered litigation. More time is also needed to evaluate how much litigation is centered in a core group of extremely contentious cases with multiple episodes of litigation during the claim cycle.

#### Benefit Structure

An influential study entitled The Report of the National Commission on State Workers' Compensation Laws issued in 1973 contained certain recommendations which have become commonly accepted benchmarks. Since adequacy of benefits is ultimately a political determination, these recommendations were expressed as a minimum standard rather than as an ideal benefit structure.

Benefits for total disability were recommended to be at least two-thirds of the affected workers' average weekly wage. Total disability benefits were recommended to be paid for the duration of the disability or for life, if the disability was permanent. The waiting period recommended was to be no more than three days. The maximum weekly benefit to be at least 200 percent of average weekly wage. An additional suggestion was that compensation for partial disability be a combination of separate benefits for impairment and for disability.

Maine's statute on total incapacity follows these recommendations except in the area of the maximum weekly benefit. The current maximum weekly benefit is 137 percent of state average weekly wage. Maine's statute on partial benefits no longer follow the suggestion of the National Commission. The 1991 legislative changes offset disability and permanent impairment benefits.

#### Timeliness of Benefits

The Workers' Compensation Commission has developed a computer program which calculates the number of days from the date of incapacity to the date of first payment for wage loss cases. For purposes of comparison, the Commission performed a similar analysis on a sample of 1983 cases. The results for 1983, 1986, 1987, 1989, 1990 and 1991 are displayed on the following table.

Year of First Payment	Percent Paid <u>1-14 Days</u>	Percent Paid <u>15-21 Days</u>	Percent Paid <u>22-28 Days</u>	Percent Paid <u>28+ Days</u>
1983	16	10	6	68
1986	45	17	10	28
1987	41	20	12	27
1988	35	19	12	34
1989	36	21	12	31
1990	40	20	11	29
1991	39	15	11	35

Improvement in the timeliness of first benefit payments in recent years as compared to 1983 is largely attributable to the early pay legislation that became effective in 1984. However, current timelines do not conform to the statutory mandate that payment for wage loss be made or the case controverted within 14 days.

In 1988, the Commission was contemplating a computer supported process for monitoring payment timeliness on individual cases and working with insurers and adjustment companies to improve timeliness. This project has been placed on hold due to resource constraints.

Additionally, complaints have been raised regarding delay in making payments following a Commission decision. In the past, this has been anecdotal and no data was available as to the nature and extent of the problem. During the 1987 emergency session, the penalties provision of the statute was strengthened. During 1990, the Commission received 417 complaints and collected fines totaling \$114,882. During 1991, the Commission received 318 complaints and collected fines totaling \$115,855.

#### System Costs

During the 1987 emergency session, the cost of partial disability cases was a central issue. It was argued that a high percentage of system costs under the then existing benefit structure was related to permanent partial cases, where the affected worker has lost some, but not all, of their earning capacity as a result of work-related injury or illness.

The effect of the cut in benefits during late 1987 has not yet been fully evaluated, although anecdotal evidence is growing that the cost of partial cases has been greatly reduced. A study of lump sum activity, also suggests that costs of partial cases are being reduced relative to the past.

Average Lump Sum Amounts in 4th Year

Injury Year	Average Value of Lump Sum Settlements Made in 4th Year
1986	\$51,070 (1989)
1988	\$34,294 (1991)

We believe the reduction in the value of lump sum settlements at a comparable point in the claim cycle is attributable to the institution of a duration limit without inflation adjustments.

By way of interstate cost comparison, the Commission receives an annual publication from the National Foundation for Unemployment and Workers' Compensation Insurance summarizing fiscal data for state workers' compensation systems. Aggregation of data is slow and 1988 is the most recent year available.

Interstate Costs  
1988  
Benefit Cost Rate\*  
Highest 5 States

<u>State</u>	<u>1988</u>
Montana	3.87%
W. Virginia	3.64%
Maine	3.46%
Louisiana	2.86%
Oregon	2.78%
<hr/>	
U.S. Average	1.46%

\* Total indemnity and medical payments as a percentage of estimated total wages of workers' covered by state workers' compensation programs

- Source: The Bulletin, May 28, 1991, National Foundation for Unemployment Compensation and Workers' Compensation

States with high benefit cost rates also tend to rank high in OSHA incidence rates of occupational injuries and illnesses. In 1988, 3 of the highest 5 cost states were also in the top 5 for the OSHA lost workday case rate. Maine ranks third in its benefit cost rate and first on the OSHA lost workday case rate.

Interstate Safety  
1988  
OSHA Lost Workday Incidence Rate\*  
Highest 5 States

<u>State</u>	<u>1988</u>
Maine	167.9
Rhode Island	142.9
Oregon	122.6
W. Virginia	107.6
Louisiana	100.0
<hr/>	
U.S. Average	69.9

\* Lost workdays per 100 employees per year  
(working 40 hours weekly, 50 weeks per year)

Source: Occupational Injuries and Illnesses  
in Maine 1989, Bureau of Labor Standards

### Evaluation Perspective of Workers' Compensation Commission

Many states have been confronted by workers' compensation problems in the past few years. This trend has had an especially severe impact in Maine. In part, we attribute this to a lack of political consensus that has extended for approximately a decade. In part, we attribute this to Maine's industrial mix.

It is unlikely that Maine will ever be an inexpensive state. Our economy includes a preponderance of hazardous employment. Our incidence rates, as measured by the OSHA standards are the highest in the nation, more than twice the national average.

Workers' compensation expense per employee is also high. Again, more than twice the national average. These costs make workers' compensation a chronic legislative issue.

All parties feel the system is difficult to understand. Employers complain that insurance premiums are excessive and unrelated to business safety records. Workers often feel they are unprotected from abuse by carriers and employers. Carriers and employers feel they are unable to have people removed from compensation benefits fast enough and that, in some cases, undeserving individuals receive benefits.

The performance of carriers and adjusting companies is both a source of concern and a cost driver. Employer complaints as to the adequacy of claims investigation seem to be increasing. The informal conference process is often used as an investigative tool rather than as a process to resolve an actual dispute. Timely payment is not being made on a significant number of routine indemnity cases. In some cases, payments are not promptly made, even after a Commission decree.

The Commission sees only limited opportunities for correcting these problems through administrative action by public agencies. To a significant degree, the Commission believes they reflect an underlying instability in the benefit financing mechanism.

All sides appear to agree that small employers are poorly served by the current system. Beyond that, political consensus about either the basic problems or potential solutions is extremely limited. No group is satisfied, despite the numerous statutory changes.



Unfortunately, a direct relationship exists between a statute and the level of agreement at the time of its development. When there is no meaningful consensus, legislators will often fight the political battle by introducing amendments that weaken the opposition's proposals by adding exceptions or qualifications. The eventual law is likely to be phrased in language that is complex and subject to many interpretations.

With four crisis oriented legislative sessions in less than a decade, this phenomena has characterized many changes to the workers' compensation law. The underlying political gridlock has been built into the law and created a challenging environment for all system participants.

Beyond the difficult questions raised by the unstable insurance market environment, the Commission sees some positive developments. We anticipate a recession related decrease in litigation. We anticipate smaller backlogs and less delay in adjudication. This may contribute towards a less controversial workers' compensation environment.

# FORWARD

MEDICAL & VOCATIONAL  
REHABILITATION SERVICES  
ROBIN A. DUDLEY, CRRN, ARP

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(207) 443-9331

Aug 19, 1992

MICHELLE BUSHEY  
BLUE RIBBON COMMISSION ON WORKERS' COMPENSATION  
246 DEERING AVENUE  
PORTLAND, ME 04102

Dear Commission Members,

I am a Certified Rehabilitation Registered Nurse (CRRN) and Approved Rehabilitation Provider (ARP) certified by the Workers' Compensation Commission of Maine to provide services to the work injured.

In your efforts to make the Workers' Compensation system work more effectively and efficiently; I hope that you will consider the following:

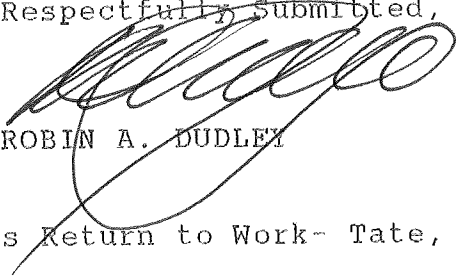
Studies show that injured workers have difficulty returning to work for two key reasons. One reason is the nature of the worker population. The majority of injured workers have limited skills, education and resources. A sound body allowed for employment. The work injury has eliminated or compromised that primary asset. The other point that interferes with the return to work is that rehabilitation efforts which could successfully address the demographic issue, are initiated too late. As you are aware, in Maine, the insurer/employer is under no obligation to provide rehabilitation services until 120 days of lost time have passed.

In my experience, too many problems are already underway by that time for the likelihood of successful rehabilitation. Early, aggressive rehabilitation intervention has been shown to be cost effective. Statutory change could assure that rehabilitation is initiated when it will result in gain for all parties. Currently, rehabilitation is too often provided as an after thought, something to be dispensed with by the insurer and plaintiff attorney on the way to settlement or preparatory to petition. It is a "last ditch" effort when it should be primary. Consequently, everyone is disappointed in the statistics for return to work in the rehabilitation process. The certification of the ARP is

threatened if his "success" rate is not high enough. This is akin to taking the license away from an oncologist because his mortality rate is too high or his "success" is too low. How preposterous! His patients have cancer, but have not come to him until four months or more after the initial diagnosis!

I have enclosed two papers that go into more detail supporting early intervention. I would be glad to talk with you further or provide more information if you would like.

Respectfully Submitted,



ROBIN A. DUDLEY

ENC: Factors Influencing Injured Employees Return to Work- Tate, 1992  
THE THREE LEGGED TABLE- Psychosocial Disability in Workers' Compensation- Dudley, 1992  
Follow-up of Persons With Litigation Related Injuries- Vander Kolk & Vander Kolk, 1990

Factors influencing injured employees return to work (Galluf Tate, Denise) (Journal of Applied Rehabilitation Counseling Vol. 23, No. 2 Summer 1992) ●

(Available on request-please include the following citation: WC115-BRC-08-Pt.D-116.pdf)

To obtain items available on request, or to report errors or omissions in this history, please contact:

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The three legged table: Psychosocial disability in workers' compensation (Dudley, Robin A.)(1992) ●  
(Available on request-please include the following citation: WC115-BRC-08-Pt.D-121.pdf)

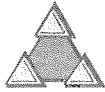
To obtain items available on request, or to report errors or omissions in this history, please contact:  
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Follow-up of persons with litigation related injuries (Vander Kolk, Charles and Jo Anna) (Journal of Rehabilitation, October/November/December 1990) ●

(Available on request-please include the following citation: WC115-BRC-08-Pt.D-127.pdf)

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August 21, 1992

Michelle Bushey  
Staff Assistant  
Blue Ribbon Workers' Compensation Commission  
University of Maine School of Law  
Portland, ME 04103

Dear Michelle:

Enclosed are five copies of a resolution circulated among and approved by the Workers' Compensation Section of the Maine Bar Association. Please circulate to the Commission members.

Very truly yours,  
HARDY WOLF & DOWNING, P.A.

  
William P. Hardy

WPH/nas

Enclosures

## RESOLUTION

The Workers' Compensation Section of the Maine Bar Association adopts the following statements of principle and commitment:

1. The Section is committed to reducing the overall costs of the Maine Workers' Compensation system consistent with principles of fairness and justice.
2. The workers' compensation system contains competing interests which inevitably lead to disputes needing resolution.
3. Due process hearings are the accepted method of resolving disputes in civilized societies.
4. Lawyers are expert in due process hearings and are needed for orderly processing of those cases which cannot be otherwise resolved.
5. Failure to provide a due process system for Maine workers' compensation will inevitably result in individual and public perceptions of unfairness and arbitrariness and will produce chaos. Furthermore, these perceptions will be correct because, absent the orderly resolution of disputes through adequate representation of both sides by counsel, one side or the other will inevitably gain the upper hand through unequal power, arbitrariness or happenstance.
6. A system of resolving disputes now represents a very minimal percentage of the overall workers' compensation costs in Maine. What has been referred to as "friction costs" are the costs of due process where disputes may be resolved in an orderly and fair manner. The Commission is urged to accept the inevitability of this very minimal cost to achieve the extremely important result, viz., a fair workers' compensation system.

June 26, 1992





United Parcel Service 3 Technology Park, Londonderry, NH 03053  
(603) 668-2022

August 28, 1992

Workers' Compensation Blue Ribbon Commission  
c/o Michelle Bushey  
University of Maine School of Law  
246 Deering Avenue  
Portland, ME 04102

Dear Blue Ribbon Commission:

I would like to extend my best wishes with respect to your unenviable task of unscrambling the State's Workers' Compensation system. After attending a majority of the public hearings and monitoring your progress on many of the issues that you have addressed, so far, I am confident that your final proposal, if adopted in its entirety, would be a vast improvement over the current system.

As an employer of over 252,000 people both nationally and internationally, with over 800 being employed in Maine, United Parcel Service has extensive experience and exposure to virtually every workers' compensation system in the world. With that in mind, I would like to briefly address three key issues which I feel are most in need of reform and which, hopefully, will be of assistance to you. As a preface to these comments, we are a member of the Maine Council of Self-Insurers, and are in full support of the items presented to you on May 6, 1992 by John Melrose.

**COMBINED EFFECTS - COMPENSIBILITY**

Many of the insurers and insureds agreed that one of the largest areas of expense occurs not from the actual acute injury at work, but from residual incapacity due to degenerative processes and chronic or congenital conditions becoming symptomatic. Combined effects needs to be eliminated. This situation could be addressed under the current medical administrator regulations. An I.M.E. physician from the approved list should be assigned to examine the claimant and apportion a percentage of incapacity to the work related injury; This finding should be final and binding which would be consistent with the overriding intentions of reducing litigation and eliminating doctor shopping.

As a corollary to combined effects, revision of the definition of compensability likewise needs to be addressed. Compensability language should be altered to either limit coverage or provide coverage but limit liability, the latter of which would also reduce litigation and bottom line cost for such injuries.

Workers' Compensation Blue Ribbon Commission  
August 27, 1992  
Page 2

#### VOCATIONAL REHABILITATION

Despite some of the testimony heard at the public hearings, it is our experience that Vocational Rehabilitation does not reduce an insured's exposure. In fact, too often Vocational Rehabilitation plans are used merely as a weapon by a claimant's attorney as a means to prevent an employer/insurer from filing a Review. During this period, an employer/insurer is without recourse as employment rehabilitation administrators in their unrealistic optimism will approve plans which are successful on paper, but do not result in relief for the employer/insurer. For these reasons it is recommended that Vocational Rehabilitation, once again, be a voluntary option of the employer/insurer.

#### ADMINISTRATIVE STRUCTURE

As Commissioner Picker had stated several times throughout the public hearings, Workers' Compensation can no longer be used as a welfare or unemployment subsidy, shifting the financial burden from the State to employers. Commissioner Dalbeck's proposal to change the administrative structure of the system by creating an independent agency comprised of equal numbers of Labor and Management Commissioners appears meritorious of further discussion. Although I am hesitant in favoring the creation of another level of bureaucracy, objective reviews of the Commissioners' performances under the current system are virtually non-existent.

It has always been UPS' position that workers' compensation is to benefit employees rather than vendors who feed off of the system.

In closing, it is my sincere hope that the above information is of some assistance to you. I am astounded by the progress you have made and that you will be meeting your intended deadline. Finally, regardless of whether or not your proposal is actually adopted, I would like to thank you for your efforts.

Sincerely,

UNITED PARCEL SERVICE



Timothy C. Sullivan  
Safety Supervisor

TCS/sap