National Council on Compensation Insurance

Memorandum

Residual Market Finance

April 6, 1992 | RMF-92-11 | Page 1 of 1

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CIRCULAR TO MEMBER COMPANIES OF THE MAINE WORKERS COMPENSATION RESIDUAL MARKET POOL

OPERATING RESULTS—FOURTH QUARTER 1991

Effective January 1, 1988, the Maine Workers Compensation Residual Market Pool was established as a statutory residual market plan for the state of Maine. This mechanism, whose plan of operation is established and governed by Maine Insurance Rule Chapter 440, requires the Pool to retain all cash surplus for application to future loss payments. Therefore, there is no cash distribution to member companies of this Pool.

Attached hereto are the statements of operations of the Maine Workers Compensation Residual Market Pool for the Fourth Quarter 1991 as well as the cumulative results through Fourth Quarter 1991.

25-Mar-92

MAINE WORKER'S COMP RESIDUAL MARKET POOL
STATEMENT OF OPERATIONS
FOURTH QUARTER - CALENDAR YEAR 1991
POLICY YEAR "1988"

	SAFETY POOL	ACCIDENT PREVENTION	FRESH START SURCHARGES	QUARTERLY PO
GROSS PREMIUMS WRITTEN (LESS RETURNS)	(136,721.94)	(1,618.34)	1,044,443.83	906,1
UNEARNED PREMIUMS - PREVIOUS	0.00	0.00	0.00	
TOTAL	($136,721.94)	($1,618.34)	$1,044,443.83	$906,1
UNEARNED PREMIUMS - CURRENT	0.00	0.00	0.00	
NET PREMIUMS EARNED	($136,721.94)	($1,618.34)	$1,044,443.83	$906,1
LOSSES PAID	8,200,341.00	1,512,265.81	0.00	9,712,6
KNOWN OUTSTANDING LOSSES - CURRENT	66,560,906.38	10,643,956.33	0.00	77,204,8
I.B.N.R. LOSS RESERVES - CURRENT	97,594,386.00	15,606,614.00	0.00	113,201,0
TOTAL	$172,355,633.38	$27,762,836.14	$0.00	$200,118,4
KNOWN OUTSTANDING LOSSES - PREVIOUS	71,953,999.08	11,937,721.73	0.00	83,891,7
I.B.N.R. LOSS RESERVES - PREVIOUS	94,438,866.00	15,668,134.00	0.00	110,107,0
LOSSES INCURRED	$5,962,768.30	$156,980.41	$0.00	$6,119,7
GROSS UNDERWRITING GAIN / (LOSS)	($6,099,490.24)	($158,598.75)	$1,044,443.83	($5,213,8
SERVICING CARRIER ALLOWANCES	(21,383.91)	(408.60)	0.00	(21,7
OTHER EXPENSE ALLOWANCES	22,774.88	1,096.18	0.00	23,8
ADMINISTRATIVE EXPENSES	583.55	75.29	0.00	6
NET UNDERWRITING GAIN / (LOSS)	($6,101,464.76)	($159,361.62)	$1,044,443.83	($5,216,3
INTEREST INCOME	149,422.87	(70,345.88)	0.00	79,0
NET OPERATING GAIN / (LOSS)	($5,952,041.89)	($229,707.50)	$1,044,443.83	($5,137,3
CURRENT E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00	
PREVIOUS E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00	
CURRENT E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00	
PREVIOUS E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00	
ADJ. NET OPERATING GAIN / (LOSS)	($5,952,041.89)	($229,707.50)	$1,044,443.83	($5,137,3
CASH SURPLUS / (DEFICIT)	($8,189,614.59)	($1,584,992.90)	$1,044,443.83	($8,730,1

The Pool's cash position includes FRESH START SURCHARGES net of taxes, as ordered by the Maine Bureau of Insurance.

Loss Payments - Last 3/4 Qtrs

97/12607
906104
$ 880,503
Cash shortfall

25-Mar-92

MAINE WORKER'S COMP RESIDUAL MARKET POOL
STATEMENT OF OPERATIONS
CUMULATIVE THRU 12/31/91
POLICY YEAR "1988"

	SAFETY POOL	ACCIDENT PREVENTION	FRESH START SURCHARGES	YEAR-TO-DATE
GROSS PREMIUMS WRITTEN (LESS RETURNS)	187,284,935.80	24,163,382.26	7,725,763.99	219,174,082
UNEARNED PREMIUMS - PREVIOUS	0.00	0.00	0.00	0
TOTAL	$187,284,935.80	$24,163,382.26	$7,725,763.99	$219,174,082
UNEARNED PREMIUMS - CURRENT	0.00	0.00	0.00	0
NET PREMIUMS EARNED	$187,284,935.80	$24,163,382.26	$7,725,763.99	$219,174,082
LOSSES PAID	135,281,092.03	24,258,031.08	0.00	159,539,123
KNOWN OUTSTANDING LOSSES - CURRENT	66,960,906.38	10,643,956.33	0.00	77,204,862
I.B.N.R. LOSS RESERVES - CURRENT	97,594,386.00	15,606,614.00	0.00	113,201,000
TOTAL	$299,436,384.41	$50,508,601.41	$0.00	$349,944,985
KNOWN OUTSTANDING LOSSES - PREVIOUS	0.00	0.00	0.00	0
I.B.N.R. LOSS RESERVES - PREVIOUS	0.00	0.00	0.00	0
LOSSES INCURRED	$299,436,384.41	$50,508,601.41	$0.00	$349,944,985
GROSS UNDERWRITING GAIN / (LOSS)	($112,151,448.61)	($26,345,219.15)	$7,725,763.99	($130,770,903
SERVICING CARRIER ALLOWANCES	64,631,672.22	8,041,996.68	0.00	72,673,668
OTHER EXPENSE ALLOWANCES	350,683.71	117,944.11	0.00	468,627
ADMINISTRATIVE EXPENSES	557,888.84	67,092.94	0.00	624,981
NET UNDERWRITING GAIN / (LOSS)	($177,691,693.38)	($34,572,252.88)	$7,725,763.99	($204,538,182
INTEREST INCOME	14,497,005.82	1,131,526.31	0.00	15,628,532
NET OPERATING GAIN / (LOSS)	($163,194,687.56)	($33,440,726.57)	$7,725,763.99	($188,909,650
CURRENT E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00	0
PREVIOUS E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00	0
CURRENT E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00	0
PREVIOUS E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00	0
ADJ. NET OPERATING GAIN / (LOSS)	($163,194,687.56)	($33,440,726.57)	$7,725,763.99	($188,909,650
CASH SURPLUS / (DEFICIT)	$960,604.82	($7,190,156.24)	$7,725,763.99	$1,496,212

The Pool's cash position includes FRESH START SURCHARGES net of taxes, as ordered by the Maine Bureau of Insurance.

Leg period

25-Mar-92

MAINE WORKER'S COMP RESIDUAL MARKET POOL
STATEMENT OF OPERATIONS
FOURTH QUARTER - CALENDAR YEAR 1991
POLICY YEAR "1989"

	SAFETY POOL	ACCIDENT PREVENTION	QUARTERLY TOTALS
GROSS PREMIUMS WRITTEN (LESS RETURNS)	(1,339,886.11)	85,250.52	(1,254,635.59)
UNEARNED PREMIUMS - PREVIOUS	0.00	0.00	0.00
TOTAL	($1,339,886.11)	$85,250.52	($1,254,635.59)
UNEARNED PREMIUMS - CURRENT	0.00	0.00	0.00
NET PREMIUMS EARNED	($1,339,886.11)	$85,250.52	($1,254,635.59)
LOSSES PAID	11,514,131.67	2,993,602.14	14,507,733.81
KNOWN OUTSTANDING LOSSES - CURRENT	81,987,142.05	19,570,710.21	101,557,852.26
I.B.N.R. LOSS RESERVES - CURRENT	104,108,757.00	24,851,243.00	128,960,000.00
TOTAL	$197,610,030.72	$47,415,555.35	$245,025,586.07
KNOWN OUTSTANDING LOSSES - PREVIOUS	83,499,516.46	20,992,938.07	104,492,454.53
I.B.N.R. LOSS RESERVES - PREVIOUS	103,456,579.00	26,010,421.00	129,467,000.00
LOSSES INCURRED	$10,653,935.26	$412,196.28	$11,066,131.54
GROSS UNDERWRITING GAIN / (LOSS)	($11,993,821.37)	($326,945.76)	($12,320,767.13)
SERVICING CARRIER ALLOWANCES	(202,910.15)	23,050.30	(179,859.85)
OTHER EXPENSE ALLOWANCES	22,813.70	1,863.08	24,676.78
ADMINISTRATIVE EXPENSES	52,701.24	15,691.44	68,392.68
NET UNDERWRITING GAIN / (LOSS)	($11,866,426.16)	($367,550.58)	($12,233,976.74)
INTEREST INCOME	836,425.21	300,971.32	1,137,396.53
NET OPERATING GAIN / (LOSS)	($11,030,000.95)	($66,579.26)	($11,096,580.21)
CURRENT E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00
PREVIOUS E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00
CURRENT E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00
PREVIOUS E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00
ADJ. NET OPERATING GAIN / (LOSS)	($11,030,000.95)	($66,579.26)	($11,096,580.21)
CASH SURPLUS / (DEFICIT)	($11,890,197.36)	($2,647,985.12)	($14,538,182.48)

25-Mar-92

MAINE WORKER'S COMP RESIDUAL MARKET POOL
STATEMENT OF OPERATIONS
CUMULATIVE THRU 12/31/91
POLICY YEAR "1989"

	SAFETY POOL	ACCIDENT PREVENTION	YEAR TO DATE
GROSS PREMIUMS WRITTEN (LESS RETURNS)	196,627,069.84	58,582,312.28	255,209,382.12
UNEARNED PREMIUMS - PREVIOUS	0.00	0.00	0.00
TOTAL	$196,627,069.84	$58,582,312.28	$255,209,382.12
UNEARNED PREMIUMS - CURRENT	0.00	0.00	0.00
NET PREMIUMS EARNED	$196,627,069.84	$58,582,312.28	$255,209,382.12
LOSSES PAID	103,859,000.67	27,302,602.27	131,161,602.94
KNOWN OUTSTANDING LOSSES - CURRENT	81,987,142.05	19,570,710.21	101,557,852.26
I.B.N.R. LOSS RESERVES - CURRENT	104,108,757.00	24,851,243.00	128,960,000.00
TOTAL	$289,954,899.72	$71,724,555.48	$361,679,455.20
KNOWN OUTSTANDING LOSSES - PREVIOUS	0.00	0.00	0.00
I.B.N.R. LOSS RESERVES - PREVIOUS	0.00	0.00	0.00
LOSSES INCURRED	$289,954,899.72	$71,724,555.48	$361,679,455.20
GROSS UNDERWRITING GAIN / (LOSS)	($93,327,829.88)	($13,142,243.20)	($106,470,073.08)
SERVICING CARRIER ALLOWANCES	63,845,850.41	18,240,744.95	82,086,595.36
OTHER EXPENSE ALLOWANCES	124,816.31	17,293.22	142,109.53
ADMINISTRATIVE EXPENSES	521,093.48	150,779.34	671,872.82
NET UNDERWRITING GAIN / (LOSS)	($157,819,590.08)	($31,551,060.71)	($189,370,650.79)
INTEREST INCOME	16,609,789.67	5,226,526.04	21,836,315.71
NET OPERATING GAIN / (LOSS)	($141,209,800.41)	($26,324,534.67)	($167,534,335.08)
CURRENT E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00
PREVIOUS E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00
CURRENT E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00
PREVIOUS E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00
ADJ. NET OPERATING GAIN / (LOSS)	($141,209,800.41)	($26,324,534.67)	($167,534,335.08)
CASH SURPLUS / (DEFICIT)	$44,886,098.64	$18,097,418.54	$62,983,517.18

25-Mar-92

MAINE WORKER'S COMP RESIDUAL MARKET POOL
STATEMENT OF OPERATIONS
FOURTH QUARTER - CALENDAR YEAR 1991
POLICY YEAR "1990"

	SAFETY POOL	ACCIDENT PREVENTION	QUARTERLY TOTALS
GROSS PREMIUMS WRITTEN (LESS RETURNS)	2,441,757.69	559,938.45	3,001,696.14
UNEARNED PREMIUMS - PREVIOUS	3,427,842.33	625,581.74	4,053,424.07
TOTAL	$5,869,600.02	$1,185,520.19	$7,055,120.21
UNEARNED PREMIUMS - CURRENT	368.00	0.00	368.00
NET PREMIUMS EARNED	$5,869,232.02	$1,185,520.19	$7,054,752.21
LOSSES PAID	10,072,830.70	3,191,728.57	13,264,559.27
KNOWN OUTSTANDING LOSSES - CURRENT	65,829,215.73	22,723,331.00	88,552,546.73
I.B.N.R. LOSS RESERVES - CURRENT	116,480,537.00	40,207,463.00	156,688,000.00
TOTAL	$192,382,583.43	$66,122,522.57	$258,505,106.00
KNOWN OUTSTANDING LOSSES - PREVIOUS	65,818,922.19	21,293,722.04	87,112,644.23
I.B.N.R. LOSS RESERVES - PREVIOUS	125,613,537.00	40,638,463.00	166,252,000.00
LOSSES INCURRED	$950,124.24	$4,190,337.53	$5,140,461.77
GROSS UNDERWRITING GAIN / (LOSS)	$4,919,107.78	($3,004,817.34)	$1,914,290.44
SERVICING CARRIER ALLOWANCES	786,583.70	179,712.24	966,295.94
OTHER EXPENSE ALLOWANCES	95,898.88	15,220.89	111,119.77
ADMINISTRATIVE EXPENSES	408,528.00	120,829.84	529,357.84
NET UNDERWRITING GAIN / (LOSS)	$3,628,097.20	($3,320,580.31)	$307,516.89
INTEREST INCOME	1,345,124.79	383,586.64	1,728,711.43
NET OPERATING GAIN / (LOSS)	$4,973,221.99	($2,936,993.67)	$2,036,228.32
CURRENT E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00
PREVIOUS E.B.N.R. PREMIUM RESERVES	2,386,688.00	713,312.00	3,100,000.00
CURRENT E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00
PREVIOUS E.B.N.R. EXPENSE RESERVES	730,327.00	218,273.00	948,600.00
ADJ. NET OPERATING GAIN / (LOSS)	$3,316,860.99	($3,432,032.67)	($115,171.68)
CASH SURPLUS / (DEFICIT)	($7,576,958.80)	($2,563,966.45)	($10,140,925.25)

25-Mar-92

MAINE WORKER'S COMP RESIDUAL MARKET POOL
STATEMENT OF OPERATIONS
CUMULATIVE THRU 12/31/91
POLICY YEAR "1990"

	SAFETY POOL	ACCIDENT PREVENTION	YEAR TO DATE
GROSS PREMIUMS WRITTEN (LESS RETURNS)	183,342,587.54	54,227,076.21	237,569,663.75
UNEARNED PREMIUMS - PREVIOUS	0.00	0.00	0.00
TOTAL	$183,342,587.54	$54,227,076.21	$237,569,663.75
UNEARNED PREMIUMS - CURRENT	368.00	0.00	368.00
NET PREMIUMS EARNED	$183,342,219.54	$54,227,076.21	$237,569,295.75
LOSSES PAID	51,002,265.38	16,899,458.77	67,901,724.15
KNOWN OUTSTANDING LOSSES - CURRENT	65,829,215.73	22,723,331.00	88,552,546.73
I.B.N.R. LOSS RESERVES - CURRENT	116,480,537.00	40,207,463.00	156,688,000.00
TOTAL	$233,312,018.11	$79,830,252.77	$313,142,270.88
KNOWN OUTSTANDING LOSSES - PREVIOUS	0.00	0.00	0.00
I.B.N.R. LOSS RESERVES - PREVIOUS	0.00	0.00	0.00
LOSSES INCURRED	$233,312,018.11	$79,830,252.77	$313,142,270.88
GROSS UNDERWRITING GAIN / (LOSS)	($49,969,798.57)	($25,603,176.56)	($75,572,975.13)
SERVICING CARRIER ALLOWANCES	54,640,098.13	15,526,448.77	70,166,546.90
OTHER EXPENSE ALLOWANCES	599,401.94	131,482.04	730,883.98
ADMINISTRATIVE EXPENSES	1,335,616.14	411,239.05	1,746,855.19
NET UNDERWRITING GAIN / (LOSS)	($106,544,914.78)	($41,672,346.42)	($148,217,261.20)
INTEREST INCOME	9,739,658.65	3,090,731.88	12,830,390.53
NET OPERATING GAIN / (LOSS)	($96,805,256.13)	($38,581,614.54)	($135,386,870.67)
CURRENT E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00
PREVIOUS E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00
CURRENT E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00
PREVIOUS E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00
ADJ. NET OPERATING GAIN / (LOSS)	($96,805,256.13)	($38,581,614.54)	($135,386,870.67)
CASH SURPLUS / (DEFICIT)	$85,504,864.60	$24,349,179.46	$109,854,044.06

25-Mar-92

MAINE WORKER'S COMP RESIDUAL MARKET POOL
STATEMENT OF OPERATIONS
FOURTH QUARTER - CALENDAR YEAR 1991
POLICY YEAR "1991"

	SAFETY POOL	ACCIDENT PREVENTION	QUARTERLY TOTALS
GROSS PREMIUMS WRITTEN (LESS RETURNS)	36,854,501.02	7,976,754.34	44,831,255.36
UNEARNED PREMIUMS - PREVIOUS	46,085,959.15	10,867,477.26	56,953,436.41
TOTAL	$82,940,460.17	$18,844,231.60	$101,784,691.77
UNEARNED PREMIUMS - CURRENT	46,080,171.31	8,041,642.83	54,121,814.14
NET PREMIUMS EARNED	$36,860,288.86	$10,802,588.77	$47,662,877.63
LOSSES PAID	4,457,810.02	1,126,415.23	5,584,225.25
KNOWN OUTSTANDING LOSSES - CURRENT	33,736,447.36	9,141,381.33	42,877,828.69
I.B.N.R. LOSS RESERVES - CURRENT	74,658,259.00	20,229,741.00	94,888,000.00
TOTAL	$112,852,516.38	$30,497,537.56	$143,350,053.94
KNOWN OUTSTANDING LOSSES - PREVIOUS	22,816,421.01	6,018,835.96	28,833,256.97
I.B.N.R. LOSS RESERVES - PREVIOUS	42,835,310.00	11,300,690.00	54,136,000.00
LOSSES INCURRED	$47,202,785.37	$13,178,011.60	$60,380,796.97
GROSS UNDERWRITING GAIN / (LOSS)	($10,342,496.51)	($2,375,422.83)	($12,717,919.34)
SERVICING CARRIER ALLOWANCES	10,877,186.85	2,291,914.65	13,169,101.50
OTHER EXPENSE ALLOWANCES	595.00	0.00	595.00
ADMINISTRATIVE EXPENSES	813,514.38	218,297.86	1,031,812.24
NET UNDERWRITING GAIN / (LOSS)	($22,033,792.74)	($4,885,635.34)	($26,919,428.08)
INTEREST INCOME	884,066.74	288,360.37	1,172,427.11
NET OPERATING GAIN / (LOSS)	($21,149,726.00)	($4,597,274.97)	($25,747,000.97)
CURRENT E.B.N.R. PREMIUM RESERVES	2,536,224.00	805,776.00	3,342,000.00
PREVIOUS E.B.N.R. PREMIUM RESERVES	2,021,588.00	678,412.00	2,700,000.00
CURRENT E.B.N.R. EXPENSE RESERVES	776,085.00	246,567.00	1,022,652.00
PREVIOUS E.B.N.R. EXPENSE RESERVES	618,606.00	207,594.00	826,200.00
ADJ. NET OPERATING GAIN / (LOSS)	($20,792,569.00)	($4,508,883.97)	($25,301,452.97)
CASH SURPLUS / (DEFICIT)	$21,589,461.51	$4,628,486.97	$26,217,948.48

25-Mar-92

MAINE WORKER'S COMP RESIDUAL MARKET POOL
STATEMENT OF OPERATIONS
CUMULATIVE THRU 12/31/91
POLICY YEAR "1991"

	SAFETY POOL	ACCIDENT PREVENTION	YEAR TO DATE
GROSS PREMIUMS WRITTEN (LESS RETURNS)	133,740,853.82	35,892,030.08	169,632,883.90
UNEARNED PREMIUMS - PREVIOUS	0.00	0.00	0.00
TOTAL	$133,740,853.82	$35,892,030.08	$169,632,883.90
UNEARNED PREMIUMS - CURRENT	46,080,171.31	8,041,642.83	54,121,814.14
NET PREMIUMS EARNED	$87,660,682.51	$27,850,387.25	$115,511,069.76
LOSSES PAID	9,368,980.95	2,308,141.23	11,677,122.18
KNOWN OUTSTANDING LOSSES - CURRENT	33,736,447.36	9,141,381.33	42,877,828.69
I.B.N.R. LOSS RESERVES - CURRENT	74,658,259.00	20,229,741.00	94,888,000.00
TOTAL	$117,763,687.31	$31,679,263.56	$149,442,950.87
KNOWN OUTSTANDING LOSSES - PREVIOUS	0.00	0.00	0.00
I.B.N.R. LOSS RESERVES - PREVIOUS	0.00	0.00	0.00
LOSSES INCURRED	$117,763,687.31	$31,679,263.56	$149,442,950.87
GROSS UNDERWRITING GAIN / (LOSS)	($30,103,004.80)	($3,828,876.31)	($33,931,881.11)
SERVICING CARRIER ALLOWANCES	39,588,111.38	10,248,969.15	49,837,080.53
OTHER EXPENSE ALLOWANCES	843.00	0.00	843.00
ADMINISTRATIVE EXPENSES	1,460,323.37	420,795.38	1,881,118.75
NET UNDERWRITING GAIN / (LOSS)	($71,152,282.55)	($14,498,640.84)	($85,650,923.39)
INTEREST INCOME	2,442,423.99	767,722.13	3,210,146.12
NET OPERATING GAIN / (LOSS)	($68,709,858.56)	($13,730,918.71)	($82,440,777.27)
CURRENT E.B.N.R. PREMIUM RESERVES	2,536,224.00	805,776.00	3,342,000.00
PREVIOUS E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00
CURRENT E.B.N.R. EXPENSE RESERVES	776,085.00	246,567.00	1,022,652.00
PREVIOUS E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00
ADJ. NET OPERATING GAIN / (LOSS)	($66,949,719.56)	($13,171,709.71)	($80,121,429.27)
CASH SURPLUS / (DEFICIT)	$85,765,019.11	$23,681,846.45	$109,446,865.56

25-Mar-92

MAINE WORKER'S COMP RESIDUAL MARKET POOL
STATEMENT OF OPERATIONS
FOURTH QUARTER - CALENDAR YEAR 1991
POLICY YEARS COMBINED

	SAFETY POOL	ACCIDENT PREVENTION	FRESH START SURCHARGES	QUARTERLY TOT
GROSS PREMIUMS WRITTEN (LESS RETURNS)	37,819,650.66	8,620,324.97	1,044,443.83	47,484,4
UNEARNED PREMIUMS - PREVIOUS	49,513,801.48	11,493,059.00	0.00	61,006,8
TOTAL	$87,333,452.14	$20,113,383.97	$1,044,443.83	$108,491,2
UNEARNED PREMIUMS - CURRENT	46,080,539.31	8,041,642.83	0.00	54,122,1
NET PREMIUMS EARNED	$41,252,912.83	$12,071,741.14	$1,044,443.83	$54,369,0
LOSSES PAID	34,245,113.39	8,824,011.75	0.00	43,069,1
KNOWN OUTSTANDING LOSSES - CURRENT	248,113,711.52	62,079,378.87	0.00	310,193,0
I.B.N.R. LOSS RESERVES - CURRENT	392,841,939.00	100,895,061.00	0.00	493,737,0
TOTAL	$675,200,763.91	$171,798,451.62	$0.00	$846,999,2
KNOWN OUTSTANDING LOSSES - PREVIOUS	244,086,858.74	60,243,217.80	0.00	304,330,0
I.B.N.R. LOSS RESERVES - PREVIOUS	366,344,292.00	93,617,708.00	0.00	459,962,0
LOSSES INCURRED	$64,769,613.17	$17,937,525.82	$0.00	$82,707,1
GROSS UNDERWRITING GAIN / (LOSS)	($23,516,700.34)	($5,865,784.68)	$1,044,443.83	($28,338,0
SERVICING CARRIER ALLOWANCES	11,439,476.49	2,494,268.59	0.00	13,933,7
OTHER EXPENSE ALLOWANCES	142,082.46	18,180.15	0.00	160,2
ADMINISTRATIVE EXPENSES	1,275,327.17	354,894.43	0.00	1,630,2
NET UNDERWRITING GAIN / (LOSS)	($36,373,586.46)	($8,733,127.85)	$1,044,443.83	($44,062,2
INTEREST INCOME	3,215,039.61	902,572.45	0.00	4,117,6
NET OPERATING GAIN / (LOSS)	($33,158,546.85)	($7,830,555.40)	$1,044,443.83	($39,944,6
CURRENT E.B.N.R. PREMIUM RESERVES	2,536,224.00	805,776.00	0.00	3,342,0
PREVIOUS E.B.N.R. PREMIUM RESERVES	4,408,276.00	1,391,724.00	0.00	800,0
CURRENT E.B.N.R. EXPENSE RESERVES	776,085.00	246,567.00	0.00	,022,6
PREVIOUS E.B.N.R. EXPENSE RESERVES	1,348,932.00	425,868.00	0.00	1,774,8
ADJ. NET OPERATING GAIN / (LOSS)	($34,457,751.85)	($8,237,202.40)	$1,044,443.83	($41,650,5
CASH SURPLUS / (DEFICIT)	($6,067,309.24)	($2,168,457.50)	$1,044,443.83	($7,191,3

The Pool's cash position includes FRESH START SURCHARGES net of taxes, as ordered by the Maine Bureau of Insurance.

25-Mar-92

MAINE WORKER'S COMP RESIDUAL MARKET POOL
STATEMENT OF OPERATIONS
CUMULATIVE THRU 12/31/91
POLICY YEARS COMBINED ← NOTE →

	SAFETY POOL	ACCIDENT PREVENTION	FRESH START SURCHARGES	YEAR-TO-DATE
GROSS PREMIUMS WRITTEN (LESS RETURNS)	700,995,447.00	172,864,800.83	7,725,763.99	881,586,011
UNEARNED PREMIUMS - PREVIOUS	0.00	0.00	0.00	
TOTAL	$700,995,447.00	$172,864,800.83	$7,725,763.99	881,586,011
UNEARNED PREMIUMS - CURRENT	46,080,539.31	8,041,642.83	0.00	54,122,182
NET PREMIUMS EARNED	$654,914,907.69	$164,823,158.00	$7,725,763.99	$827,463,829
LOSSES PAID	299,511,339.03	70,768,233.35	0.00	370,279,572
KNOWN OUTSTANDING LOSSES - CURRENT	248,113,711.52	62,079,378.87	0.00	310,193,090
I.B.N.R. LOSS RESERVES - CURRENT	392,841,939.00	100,895,061.00	0.00	493,737,000
TOTAL	$940,466,989.55	$233,742,673.22	$0.00	$1,174,209,662
KNOWN OUTSTANDING LOSSES - PREVIOUS	0.00	0.00	0.00	
I.B.N.R. LOSS RESERVES - PREVIOUS	0.00	0.00	0.00	
LOSSES INCURRED	$940,466,989.55	$233,742,673.22	$0.00	$1,174,209,662
GROSS UNDERWRITING GAIN / (LOSS)	($285,552,081.86)	($68,919,515.22)	$7,725,763.99	($346,745,833
SERVICING CARRIER ALLOWANCES	222,705,732.14	52,058,159.55	0.00	274,763,891
OTHER EXPENSE ALLOWANCES	1,075,744.96	266,719.37	0.00	1,342,464
ADMINISTRATIVE EXPENSES	3,874,921.83	1,049,906.71	0.00	4,924,828
NET UNDERWRITING GAIN / (LOSS)	($513,208,480.79)	($122,294,300.85)	$7,725,763.99	($627,777,017
INTEREST INCOME	43,288,878.13	10,216,506.37	0.00	53,505,384
NET OPERATING GAIN / (LOSS)	($469,919,602.66)	($112,077,794.48)	$7,725,763.99	($574,271,633
CURRENT E.B.N.R. PREMIUM RESERVES	2,536,224.00	805,776.00	0.00	3,342,000
PREVIOUS E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00	
CURRENT E.B.N.R. EXPENSE RESERVES	776,085.00	246,567.00	0.00	1,022,652
PREVIOUS E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00	
ADJ. NET OPERATING GAIN / (LOSS)	($468,159,463.66)	($111,518,585.48)	$7,725,763.99	($571,952,285
CASH SURPLUS / (DEFICIT)	$217,116,587.17	$58,938,288.22	$7,725,763.99	$283,780,639

The Pool's cash position includes FRESH START SURCHARGES net of taxes, as ordered by the Maine Bureau of Insurance.

$571

07.08.92 10:18 AM P18

Merrill & Merrill
Attorneys at Law

April 8, 1992

Mr. Richard Dalbeck
17 Spoondrift Lane
Cape Elizabeth, Me. 04107

Dear Mr Dalbeck:

Please find a selection of materials on Workers' Compensation.

You will find a list of the materials. The list divides the information into three groups: National, Maine Studies, and Administrative. The information is compiled in the order in which it appears on the list.

If I can be of any assistance please feel free to call.

Truly yours.

Philip L. Merrill

6 Summer Street, Hallowell, Maine 04347 *(207) 626-2877 Fax (207) 623-2498*

Annotated Reference Materials

National

The Report of the National Commission on State Workers' Compensation Laws. 1972.

> This is a classic report outling the historic problems of workers' compensation. It is still referred to despite the passage of twenty years.

Workers' Compensation Benefits: Adequacy, Equity, and Efficiency. John D. Worral and David Appel, Editors. Chapter 8, Challenges to Workers' Compensaiton: An Historical Analysis. Edward Berkowitz and Monroe Berkowitz.

> History and economic analysis of workers' compensation.

Workers' Compensation: An Agenda for Change. American Insurance Association.

> Analysis of workers' compensation problems from a national perspective by a major trade association.

Workers Compensation: A Call for Reform. Countryman, Gary. 1989

> Analysis of workers' compensation problems from the perspective of a major carrier, Liberty Mutual.

Why Some Employers Have a Better Workers' Compensation Experience than Others. Welch, Edward. 1991.

> Analysis of workers' compensation as a human resources management problem. Ed Welch is the former director of the Michigan Bureau of Workers' Compensation.

Miscellaneous

> Various articles on cost and benefits

Maine Studies

Report of Speaker's Select Committee on Workers' Compenstion 1983.

The first state level study to address the rising costs of workers' compensation, focus on upgrading the dispute resolution process.

Findings and Recommendations of the Special Study Commission on Workers' Compensation Insurance, 1984

The second state level study. Its focus is on the financing of benefits. It calls for establishment of a competitive state fund.

Final Report of the Subcommittee on Feasibility of Creating A State Workers' Compensation Fund to the Joint Standing Committee on Banking and Insurance. 1989.

A legislative study on the feasibility of state centered financing of workers' compensation benefits.

Workplace Injuries and Workers' Compensation in Maine 1991.

Compiled by the Maine AFL-CIO

Jobs, the Economy and Workers' Compensation 1991.

Compiled by the Workers' Compensation Reform Committee.

Report of the Governor's Task Force on Workers' Compensation Reform, 1991.

Analysis of the statutory and administrative problems as of 1991.

Cutting Comp Costs, 1992.

Analysis of benefit financing problems. Calls for establishment of an employer self insurance mutual fund.

Report of the Labor Management Comparative Study of Other State's Systems

Recent report, unanimously agreed upon, recommends Michigan as State with system Maine should adopt.

Administrative

Annual Report on the Status of the Maine Workers' Compensation System. May 1991.

> Operational and statistical analysis of activities by the Bureau of Insurance, Bureau of Labor Standards, and the Workers' Compensation Commission.

A Study of Delay in the Workers' Compensation System, A Report to the Joint Standing Committee on Labor. January 1987. MWCC.

> Administrative study of delay in dispute resolution.

Vocational Rehabilitation Under the Maine Workers' Compensation Act, A Report to the 113th Legislature. February 1988. MWCC.

> Evaluation of effectiveness of the rehabilitation statute.

Workers' Compensation in Maine - Administrative Inventory, Workers' Compensation Research Institute. 1990.

> A review of the workload and administrative procedures at the Workers' Compensation Commission by an industry sponsored research organization.

A Study of the Early Pay System, A Report to the Joint Standing Committee on Audit and Program Review and Joint Standing Committee on Labor. November 1991. MWCC.

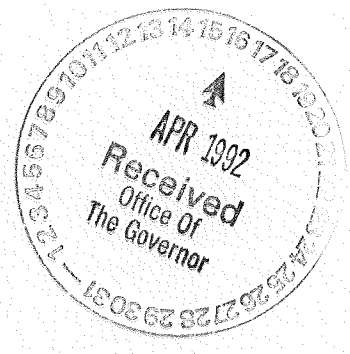
> Evaluation of informal dispute resolution process.

Maine Workers' Compensation Commission Report on Administrative Funding of Agency. May 1991. DeCarlo, Donald.

> Study of agency funding mechanism. Reccommends dedicated funding based on assessment on self insured employers and insurance carriers

MWCC = Maine Workers' Compensation Commission

Workers Compensation Research Institute
245 First Street • Cambridge, MA 02142 • 617/494-1240



April 14, 1992

Ms. Abby Harkins
Governor McKernan's Office
State House Station #1
Augusta, ME 04333

Dear Ms. Harkins:

I trust that Dr. Victor contacted you today in reference to the Maine Blue Ribbon Commission on Workers' Compensation.

As I promised, enclosed is a copy of our Annual Report which describes the mission and impact of the Institute. I also included a copy of the Administrative Inventory we conducted in Maine.

If you need additional copies, please let me know.

Sincerely yours,

Cindy Strousse
Administrative Manager

Enclosures

PG
Portland Glass.

Richard M. Bakke
President & CEO

Executive Offices: 775-3703
865 Spring Street
P.O. Box 558
Westbrook, Maine 04098-0558

April 16, 1992

Commissioners: Richard Dalbeck William Hathaway
Harvey Picker Emilien Levesque
The Blue Ribbon Commission to
Examine Alternatives to
Workers' Compensation
c/o Kenneth Allen
Office of House Speaker John L. Martin
State House Office Building #2
Augusta, Maine 04330

Gentlemen:

It was reassuring, to say the least, for me to learn of your appointments to the commission set up to study ways to restructure Maine's workers' compensation system. The action taken by the legislature to create the commission has been a long time in coming, but it's certainly a welcome move. I congratulate each of you for your willingness and courage in accepting this tremendous challenge.

During your deliberations, I'm sure you will be taking into consideration information provided by Maine business concerns and the public at large. With that in mind, I thought you would be interested in some of the steps we've taken at Portland Glass over the last year and a half to reduce injuries and, in turn, cut costs.

In 1991, Portland Glass experienced a dramatic drop in reportable injuries. A whopping 53%. That figure is the direct result of a total company commitment to making sure that everyone within our firm works safely. During 1992, we have set our sights on doing even better. Our modification rate, as of this date, is 1.39. We are extremely proud of our achievement. However, there is another side to the story. In spite of our success, we have watched our insurance premiums continue to climb. We have a full head of steam but we can't make any headway.

I have enclosed a recent new release that our company sent to Governor John McKernan, state legislatures and the news media. It outlines the moves taken by Portland Glass to build a strong safety program with the ultimate objective being to achieve zero reportable injuries. Although only in effect for a short period of time, our safety program

has been recognized as one of the best in the state. In fact, other companies are interested in setting up similar programs. We intend to continue our efforts, but we also need to see some light at the end of the tunnel. The system needs to be drastically revamped, or frankly, companies like ours who are working to make things right may not be able to survive.

I look forward with anticipation to the recommendations your commission will be making to the legislature in August. If I can be helpful in providing additional information, I hope you will call me.

Yours truly,

Richard M. Bakke

Richard M. Bakke
President and CEO

Enclosure

RMB/scl

FOR IMMEDIATE RELEASE:

CONTACT: Hank Gale
Portland Glass
P.O. Box 558
865 Spring Street
Westbrook, Maine 04098

NEW SAFETY PROGRAM AT PORTLAND GLASS PAYS DIVIDEND; ACCIDENTS REDUCED BY 53% IN ONE YEAR

WESTBROOK, ME -- A new safety program instituted at Portland Glass is paying dividends for the multi-state retail and wholesale glass company. Kicked off on January 2 of 1991, the company-wide safety initiative has served to reduce reportable injuries by more than 50%, according to an announcement by Richard Bakke, the firm's President and Chief Executive Officer.

"Portland Glass is not the only company that has been taking steps to reduce injuries in the work place," said Bakke. "Skyrocketing Workers' Compensation rates have made it imperative that companies in Maine and throughout New England take action to stem the tide of spiraling insurance costs due in large part to work related injuries." He said, "the statistics are alarming, but they can be changed. Almost all accidents can be prevented. All it takes is recognizing hazards and educating people on how to prevent them."

Bakke said his company recognized how serious the problem was getting and decided to make it a top priority. "We started by establishing a safety council to lay down the guidelines." He said the council formulated a plan and set goals, the first of which was to reduce the reportable injury rate by up to 50% by the end of 1991. "Research told us to expect a 35% reduction rate in the first year but we wanted to do better than that. And thanks to excellent planning and a total commitment on the part of all employees, we not only reached our goal, we exceeded it."

The Portland Glass Safety Program is modeled along the lines of a comprehensive program set up by the Cianbro Corporation of Fairfield, Maine and guidelines drawn up by Maine OSHA.

"We had a safety program in the past, but it was marginal at best," said Frank Levesque, Safety Trainer at Portland Glass. Levesque is chairman of the firm's safety council which is comprised of: Dana Mather, Vice President of Operations; Doug Norton, Vice President of ProGlass; Randy Phillips, Treasurer; Kathy Peterson, Human Resources Manager. "We had heard about the Cianbro program and were so impressed when we saw it in action," Levesque said, "that we decided to use it as a model in our early planning stages."

He gives high praise to the officials at Maine State OSHA for the professional help provided to Portland Glass. "We couldn't have done the job without their help. They have provided free inspections, in-depth seminars and spent countless hours with us making sure we had everything we needed to do the job right."

Levesque said that the safety program at Portland Glass is tailored to the needs of the employees and the type f jobs they do. "For instance," he points out, "one of the things we have done is to purchase special gloves for handling glass. We checked back into the records to find out how many hand lacerations had occurred over the past year and discovered 15 accidents resulting in numerous work hours lost and thousands of dollars paid out in medical bills and Workers' Compensation. Since the introduction of the gloves, hand injuries have dropped dramatically."

Some of the other positive steps that have taken place include: a back-to-work program using light duty such as filing and paperwork to get injured workers back on the job earlier than would have been possible in the past; a stretching program, now being conducted on a trial basis, to combat the onset of back problems; a distribution of safety glasses to all employees; crash cages, first aid kits, fire extinguishers and "Buckle up for Safety" signs for all vehicles; a safety newsletter and constant monitoring of work practices to reduce mishaps.

As for 1992, Levesque would like to see the injury ratio drop by another third. "I think we can achieve this by further strengthening our employee involvement in the safety program. Our long term goal is to achieve zero reportable accidents."

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DAVID C. NORMAN
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STEPHEN HESSERT
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MARK G. LAVOIE
STEPHEN W. MORIARTY
JAMES D. POLIQUIN
JOHN H. KING, JR.
PAUL F. DRISCOLL
WILLIAM O. LACASSE
MARK E. DUNLAP
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JONATHAN W. BROGAN
CHRISTOPHER C. TAINTOR
ELIZABETH M. BROGAN
GREGORY R. SMITH
PAUL M. BOOTS
MICHELLE JODOIN LAFOND
DAVID P. VERY
GRETCHEN L. JONES
JULIA A. SHERIDAN
JULIA A. FINN
CORNELIA FUCHS FISHER
ALEXANDER F. McCANN
DANIEL L. CUMMINGS
RUSSELL B. PIERCE, JR.
PATRICIA A. LERWICK

Group doesn't take positions on issues. Will have rep. at the mtgs. and can address factual issues

Senator William Hathaway
6707 Wemberly Way
McLean, VA 22101

Dear Senator Hathaway:

Please accept my congratulations on your appointment to the Blue Ribbon Commission and your recent election as co-chair of that body. I am chairperson of the Maine Bar Association Workers' Compensation Section and we are putting on a program at the Summer Bar which we have entitled "Whither (Wither?) Workers' Compensation". The program is designed to consider the various study groups and multiple proposals regarding reform of Maine Workers' Compensation and among the participants will be John Reitman, who is the facilitator for the business-labor study group which recently recommended that Maine adopt the Michigan format. Obviously, your Commission will be a dominant player in this policy debate and we would very much appreciate it if you or a member of your Commission or a member of your staff would be available to be present on a panel discussion for our program. I am aware that your Commission will not have any final report by June 26, 1992, which is the date our program is scheduled for; however, a progress report regarding the activities of the Commission to date or a consideration of the scope of the mission would be of great interest to our membership. In addition, since lawyers are not known for shyness, I would anticipate that there would be an active discussion on our involvement in the workers' compensation system.

Very truly yours,

JMW

John M. Wallach

JMW/lap

P.S. The summer meeting will take place at the Cliff House in Oguinquit, Maine.

Blue Ribbon Workers'
Compensation Commission
University of Maine School of Law
Portland, Maine 04103

April 29, 1992

John M. Wallach
Norman, Hanson & DeTroy
415 Congress Street
P.O. Box 4600
Portland, Maine 04112-4600

Dear Mr. Wallach:

On behalf of the members of the Blue Ribbon Commission, I would like to thank you for the invitation extended to the Commissioners to take part in a panel at the Summer Bar meeting. The Commissioner's must decline your invitation, but have agreed to send me to your meeting as an observor, not a spokesperson.

The Commission invites you and any member of the Maine Bar Association Workers' Compensation Section to attend the public hearings on the matter. Currently these hearings are taking place on Mondays from 10 a.m. to 4 p.m. at the Jetport conference room (except for May 4, when the hearing will be held at the Sheraton Tara in South Portland).

Sincerely,

(signed)

Michelle E. Bushey
Staff Assistant

Pain Program

EMMC
Webber Building Suite 425
417 State Street
Bangor, Maine 04401
945-7386

A Multi-Disciplinary
Assessment and
Treatment Program

April 20, 1992

Thanks - shall get back to you if necessary.

Chairman William Hathaway
Worker's Compensation Commission
6707 Wemberly Way
McLean, VA 22101

Dear Chairman Hathaway:

Over the past twelve years, I have had the opportunity to evaluate and follow more worker's compensation people than perhaps anyone else in this State. I think this gives me an unique vantage point and I would like to share my views with you as your Commission undertakes to tackle the great worker's compensation problems in this State.

I have followed each of the revisions of worker's compensation since I became involved in the System in 1979. I have watched as each attempt to fix the System seemed to make the problem worse. I have long concluded that there is really no way to truely fix the System unless the basic nature of the problem is confronted. Almost everything I read and hear about worker's compensation seems to skirt what I see as the main issue. In my view that problem comes down to what do we do about the people with chronic subjective complaints who remain stuck in the System for many months and years.

I am convinced that this group of people, consisting mostly of patients with chronic pain in various locations, forms the vast majority of the worker's compensation problem. They account for much of the money spent in medical treatment attempts, continuing wages and litigations and investigations. They are both a target and source of most of and the anger invective in the System. The other major groups of patients include the acute injuries that get better quickly and the major injuries such as amputations, both of which are reasonably straightforward and generally easily resolved.

Here are some of my thoughts about this very large group of worker's compensation patients that I am labeling chronic pain and other subjective complaints. The vast majority have very real problems. You will find very few of them who were not injured on the job, who are currently capable of doing their original job or who are happy on worker's compensation. Indeed, these are suffering, despairing people with little hope. What they do not have are active medical problems and I have a great deal of data to show that the more medical and surgical treatment they get, the worse they are. Their disabilties are residual and

secondary. Residual, in the sense that they have the injuries they have and nothing will undo that. Secondary, because whatever injury they have is compounded by fear, anger and simply over-protecting themselves or over-responding to pain. The only way out for them is to teach these people to cope with their pain, function despite it and make realistic goals in the face of it.

We need, then, to devise a system that treats these chronic pain and other similar patients fairly, quickly, and appropriately. I have created an outline of some of the considerations involved which I initially prepared for Michael Ness at the Worker's Compensation Commission. I am enclosing it for you. The crux of my position is that there must be a definite switch from the medical diagnosis and treatment of the acute injury to a specific and structured focus on rehabilitation for the chronic problem. This must occur at a definite point in time. I also feel that an adequate system demands effective pressure on both the employee and the employer (or insurer) to force both to engage in a good faith effort towards rehabilitation.

I am also enclosing a study I did some years ago that documents the gloomy, long-term course of those patients who do not get their lives moving again by making an active effort to overcome their pain problem.

I would be happy to participate or be involved in any way you wish with your deliberations. I could be reached at 945-7386.

Sincerely,

Robert L. Gallon, Ph.D.

RLG/kjg
Enclosures

STATE OF MAINE
WORKERS' COMPENSATION COMMISSION
STATE HOUSE STATION 27
AUGUSTA, MAINE 04333
207-289-3751

April 30, 1992

William Hathaway
6707 Wemberly Way
McLean, VA 22101

Dear Mr. Hathaway:

Enclosed is an article from a recent issue of NCCI Digest. The subject is insurance industry claims practices and the cost implications for workers' compensation. NCCI stands for National Council on Compensation Insurance.

Although carriers often attribute the escalating costs of workers' compensation to uncontrolled medical treatment and litigation, there are other points of view. This article supports the argument that insurance industry practices are a significant factor.

This article is also consistent with the popularity of self insurance. Nearly all employers who qualify choose this method of financing and administering benefits. Possibly, self insured employers could testify about the reasons.

I am also including a recent letter from an employer. It illustrates the problems a company experienced just trying to get a reasoned explanation of adjustment activities. Such complaints are common. The Commission gets them. The Bureau of Insurance gets them. Elected officials get them.

I suspect the cumulative effect is the reason that the Blue Ribbon Commission has heard suggestions to study other financing mechanisms. So far, this has come up in our testimony, Senate President Pray's testimony, and, if my memory is correct, House Speaker Martin's. As the Blue Ribbon Commission's work continues, I anticipate that others will make this suggestion.

There are four basic ideas about alternative financing in circulation. There is the competitive state fund idea. There is the idea of converting the assigned risk pool into an "employer owned mutual self insurance fund". There is the idea of a system similar to a Canadian style Provincial Fund. Finally, there is the idea of expanding opportunities for self insurance.

The pros and cons of each of these ideas are too complex for someone to suggest one of them specifically during testimony. That is, I think, the reason that the suggestions have been "to study".

Sincerely,

Frank R. Richards

Frank R. Richards
Assistant to the Chairman

FRR:km

Enclosures

MARTHA E. FREEMAN, DIRECTOR
WILLIAM T. GLIDDEN, JR., PRINCIPAL ANALYST
JULIE S. JONES, PRINCIPAL ANALYST
DAVID C. ELLIOTT, PRINCIPAL ANALYST
JON CLARK
DYAN M. DYTTMER
GRO FLATEBO
DEBORAH C. FRIEDMAN
MICHAEL D. HIGGINS
JANE ORBETON

KAREN L. HRUBY
JILL IPPOLITI
JOHN B. KNOX
PATRICK NORTON
MARGARET J. REINSCH
PAUL J. SAUCIER
HAVEN WHITESIDE
MILA M. DWELLEY, RES. ASST.
ROY W. LENARDSON, RES. ASST.
BRET A. PRESTON, RES. ASST.

STATE OF MAINE
OFFICE OF POLICY AND LEGAL ANALYSIS
ROOM 101/107/135
STATE HOUSE STATION 13
AUGUSTA, MAINE 04333
TEL.: (207) 289-1670

April 30, 1992

Michelle Bushey
82 Williams Street
Portland, ME 04103

Dear Ms. Bushey:

Senator Judy Kany, one of the chairs of the Legislature's Banking and Insurance Committee, asked that the staff of the Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System ensure that Commission members have access to certain materials. I have just learned of your employment as staff to the Commission, and thought I should send Senator Kany's request to you.

Senator Kany wishes to ensure that Commission members have before them not only the workers' compensation statutes of Title 39 of the Maine Revised Statutes Annotated, but also the related insurance statutes contained in Title 24-A. Senator Kany also desires that the Commission members receive copies of pertinent Workers' Compensation System Commission rules and Bureau of Insurance rules. Finally, Senator Kany asks that the Commission members receive copies of Public Law 1991, chapter 615, the workers' compensation law enacted last summer.

On another matter, I have enclosed with this letter two items that might assist you. The first is a copy of the Legislative Calendar, issued each week by the Office of the Clerk of the House. This is the primary vehicle used by study commissions and some other state agencies for notifying the public of their meetings, as required by Maine's Freedom of Access Law, 1 M.R.S.A. §406. The second enclosed item is the form the Clerk's Office wishes people to use to inform them of meeting notices to be placed in the Legislative Calendar.

On behalf of Senator Kany, I thank you for your attention to her request. On my own behalf, I wish you well in your new assignment.

Sincerely,

Martha E. Freeman

Martha E. Freeman
Director

cc: Senator Judy Kany

Senator Judy Kany
District 17
State House Station 3
Augusta, Maine 04333

THE MAINE SENATE
115th Legislature

P.O. Box 508
Belgrade Lakes, Maine 04918

P.O. Box 508
Belgrade Lakes, ME 04918
May 7, 1992

Dear Editor:

Your newspaper carried several heated letters this spring both for and against L.D. 701. Let me tell you about the health insurance law we finally enacted and why.

About 13% of Mainers under age 65 were uninsured in 1990. We all know people without health insurance and we expect the percent of uninsureds to rise. On average, 50% of the medical claims that are filed in any given year are for treatment of only four percent of the insured individuals. When commercial insurers set premium price based on one small group, the premium includes the possibility that the group could include one employee who could have extremely high medical costs. If a large population were used to determine risk, it is likely that relatively few people would incur substantial health care costs and premiums should be more stable and lower in the long run.

We learned that most uninsureds have an employed adult in the family who usually works for a small employer. When we also realized more uninsureds were employed than unemployed, we began to look at the problems in the small group market.

As the National Governors Association Task Force on Health Care reported in 1991: "Current insurance practice is to compete by shifting the risk of large potential medical costs instead of lowering costs. As a result, many businesses with high-risk employees either pay very high rates or are not able to obtain coverage. (Small companies in entire industries are excluded from coverage by some commercial insurers.) Again, this is an example of major market failure."

The Legislature then decided to attempt to reform the small employers' health insurance market. One goal was to encourage true competition in the market on the basis of which insurer can best constain costs, set reasonable base rates, administer efficiently, and manage risks--instead of avoiding risks. Another goal was to stabilize premiums by rating all small groups similarly so that rates for some small businesses will decline. In addition, other small groups will enjoy lower rate increases in future years than they would have otherwise. Our third goal was to improve

access. The stabilization of premiums, offerings of basic plans, and guaranteed issue and renewal should improve access to more affordable group health insurance. The base rate selected by insurance companies would continue to be unregulated.

In its written form L.D. 701 is titled "AN ACT to Provide More Affordable Health Insurance for Small Businesses and Community Rating of Health Insurance Providers," Public Law Chapter 861. Most provisions go into effect July 15, 1993. The law applies only to groups with fewer than 25 employees. Provisions of the new law include:

1.) The rate is uniform for all groups with the same insurance carrier.

2.) That carrier can deviate from the base rate because of age, gender, geographic area, and occupation and industry. The deviation must be within 50% of base rate beginning in July 1993 and will gradually diminish to 0% in 1997--unless repealed in 1994.

3.) Group premiums can vary due to group size, smoking status, family status, and wellness programs.

4.) No deviation from the base rate is allowed because of health status, claims experience, or policy duration.

5.) Insurers must offer small employer group policies to all small groups and must guarantee renewal.

6.) Two standardized small group health plans which comply with state law must be offered by all carriers offering small group health plans in Maine. One is a standard plan similar to those typically sold to small employers. The second is a basic plan emphasizing preventative care and containing reasonable but lesser benefits. The basic plan will cost 20% less than the standard plan.

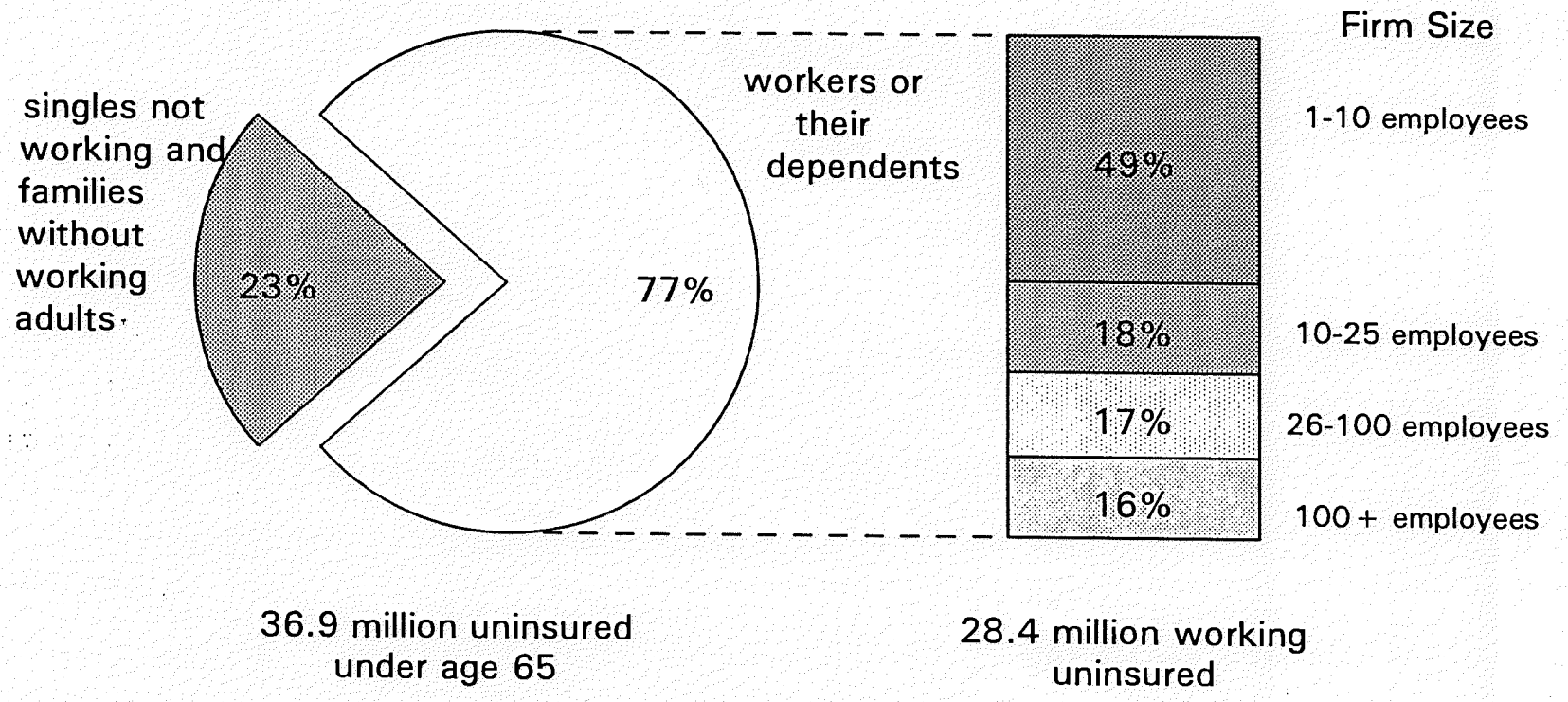
Copies of the new law are available by calling the State House at 289-1649.

Sincerely,

Judy Kany

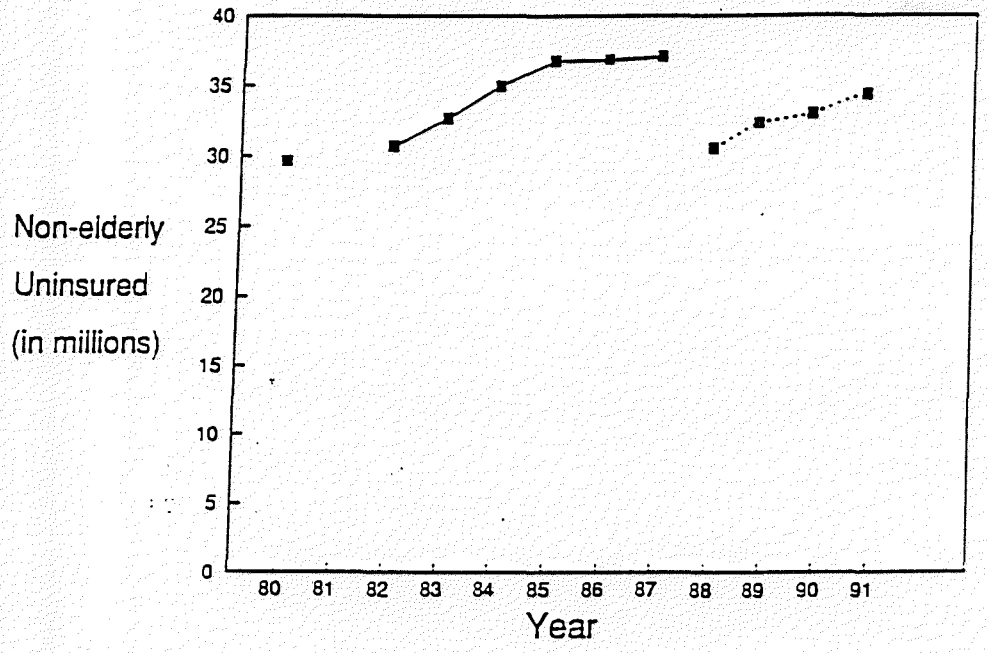
SENATOR JUDY KANY
Senate Chair
Joint Standing Committee
on Banking and Insurance

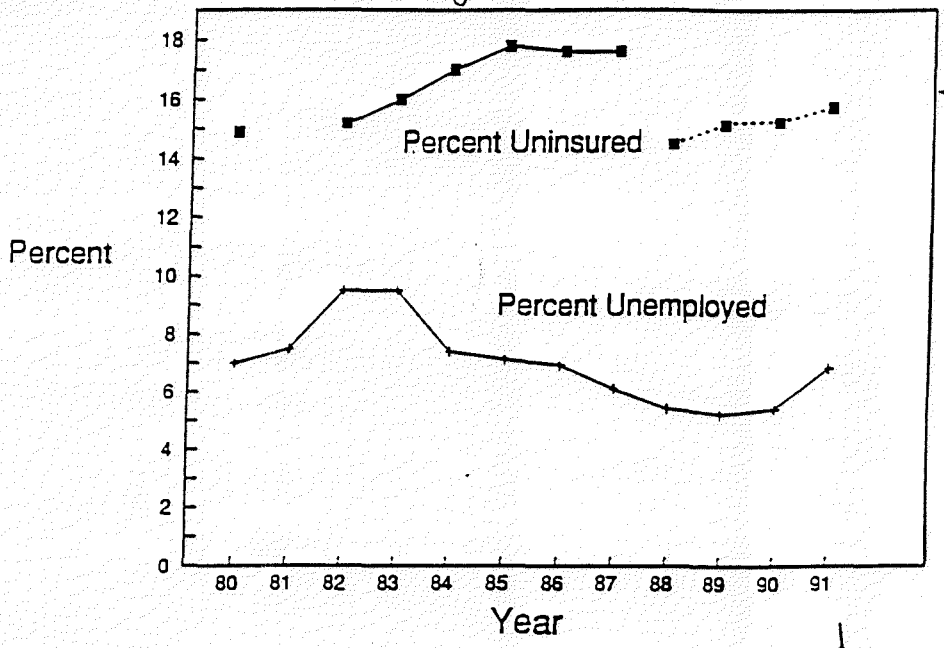
Uninsured: Working Status and Firm Size



Source: Derived from NCHSR analysis of NMES data, first quarter, 1987

THE NUMBER OF UNINSURED IS LARGE -- AND GROWING





original method: ——

revised method: ·····

reaching 14-15

(10.2% locked again for another survey yr. says 20% uninsured)

when we realized more uninsured employed than unemployed, we began to look at the problems in the small group mark

On health insurance, some states are going back to basics (Freudenheim, Milt) (New York Times, 4/26/1992) ●

(Available on request-please include the following citation: WC115-BRC-08-Pt.A-33.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

THOMPSON & BOWIE
ATTORNEYS AT LAW
FOUR CANAL PLAZA
PORTLAND, MAINE 04112

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DANIEL R. MAWHINNEY
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FRANK W. DELONG III
WILLIAM C. NUGENT
MICHAEL E. SAUCIER
MARK V. FRANCO
ELIZABETH G. KNOX
CATHY S. ROBERTS
PAUL C. CATSOS

MAILING ADDRESS
P.O. BOX 4630

TELEPHONE (207) 774-2500
FAX (207) 774-3591

May 8, 1992

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

Dear Ms. Bushey:

On behalf of the Maine Bar Association Workers' Compensation Section, I want to convey our thanks for the invitation to attend the public hearings of the Blue Ribbon Commission. We are sorry to learn that the Commission's members will be unable to participate on the panel at the Maine Bar Association's Summer Bar meeting.

We have formed an ad hoc sub-committee of experienced Workers' Compensation attorneys, including members of both the plaintiff and defense bar. I have attached a list of the members for your information. It is our intention that at least one of these members, or an experienced designee of their respective law firms, will attend each public hearing of the Blue Ribbon Commission. We want to make ourselves available to the Commission if questions should arise concerning the technical aspects of the Workers' Compensation process and procedure. In addition, we would like to volunteer our assistance with regard to issues and questions that may require legal research or other technical expertise.

I intend to be present for the meetings on May 11th and 15th. If you foresee the need for assistance in any of these areas, I hope you will feel free to call upon me or upon the member in attendance at any subsequent meeting.

Very truly yours,

Frank W. DeLong III

FWD/amw
999.00004

save copy to each Commissioner

WORKERS COMPENSATION SECTION SUB-COMMITTEE MEMBERS

Frank W. DeLong, III, Esq. Tel: 774-2500
THOMPSON & BOWIE
Four Canal Plaza
P.O. Box 4630
Portland, ME 04112

Frederick Greene, Esq. Tel: 772-6565
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Kenneth Hovermale, Esq. Tel: 772-4624
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Elizabeth E. Hood, Esq. Tel: 774-1486
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103 Exchange Street
P. O. Box 7108
Portland, ME 04112

John Wallach, Esq. Tel: 774-7000
Norman, Hanson & DeTroy
P.O. Box 4600
Portland, Maine 04112

(Maine Bar)

WORKERS COMPENSATION SECTION SUB-COMMITTEE MEMBERS

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P.O. Box 4600
Portland, Maine 04112

FYI - the above volunteer their assistance regarding issues and questions that may require legal research or other technical expertise.

POST OFFICE BOX 228
AUGUSTA, MAINE 04330
207-622-4443

MAINE POULTRY FEDERATION

May 18, 1992

Michelle Bushey
Blue Ribbon Commission to Examine
Alternatives to Worker' Compensation System
246 Deering Avenue
University of Maine Law School
Portland, ME 04102

Dear Ms. Bushey:

The Maine Poultry Federation is concerned that the Commission may be considering wholesale adoption of the workers' compensation laws in effect in the State of Michigan. To do so would, we believe, cause serious harm to Maine agriculture. We would also note that agriculture was not in any way represented (and probably not even considered) by the labor-management group which has recommended adoption of Michigan's law.

Our Federation includes virtually all of the "family farms" producing eggs and breeder hens in Maine; we also represent the middle-sized and smaller egg processing firms. We do not include DeCoster Egg Farms as a member.

For these smaller farm operations, Maine's agricultural exemption for six or fewer employees is crucial to their survival. These farms of course carry liability insurance. They simply could not afford the premiums required for workers comp coverage.

This exemption has not been a matter of contention before the legislature or in any of the far-ranging discussions which have surrounded the debates over workers compensation insurance in Maine. It is affordable to the employers, and appears to be working satisfactorily for the employees. It is my understanding that there have been no liability claims which "pierce" the $300,000 coverage provided by employers.

Michigan's exempts only two agricultural employees from mandated workers compensation coverage. Additional employees working more than 35 hours a week for 13 or more consecutive weeks must be fully covered by Workers Compensation.

We understand, based on inquries made with Michigan Farm Bureau by Maine's Farm Bureau, that **Michigan's system is less than satisfactory; farmers are constantly seeking, through round-about methods, to avoid mandatory Workers Compensation coverage for their employees.** This speaks louder than the fact that Michigan's "rates" appear lower than Maine's.

We urge that Maine's existing provisions of law in this area be retained.

Sincerely,

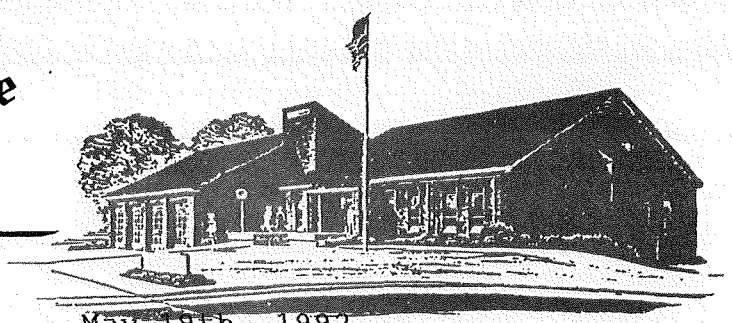
William A. Bell, J.

William A. Bell
Executive Director

Fle

Town of Farmington, Maine

147 Lower Main Street, Farmington, Maine 04938
(207)778-6538



May 19th, 1992

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

Dear Ms. Bushey:

This letter is to address concern for Maine's agricultural exemption from worker compensation insurance for farms of six or fewer employees.

Agriculture has played an important part of our heritage here in Franklin County. As an agriculturally based community we are concerned with proposed changes to Maine Worker Compensation laws with regards to their impact on smaller owned and operated farm here in Maine.

It is our understanding that Maine is considering adopting a law designed after Michigan's worker compensation law. We realize changes are needed to the system here in Maine and we would like to recommend that your Blue Ribbon Commission seriously consider the needs of Maine's smaller agricultural producers. These farms provide Maine with a substantial part of our regional food base; and their competitiveness and productivity would be severely hampered if Maine's agricultural exemption is not retained.

As is now the case, we fully expect smaller farmers to continue to carry liability insurance. This insurance has proven adequate for Maine's smaller farmers, and it allows them to provide an affordable food product to our local and regional consumers. If the agricultural exemption is not maintained, we sincerely believe the agricultural base of our community would be substantially undermined.

We ask that your Commission work to retain Maine's worker compensation agricultural exemption. Please do not underestimate the importance of this exemption to the viability of our State's agricultural industries and to the amenities this way of life provides to Maine.

Thank you for your consideration and support of this matter.

Sincerely,

Steve Kaiser
Community Development Director

TOWN OF FARMINGTON MAINE INCORPORATED 1794

cc: Paul Hersey SCS
Bussie York

File copy

Maine Maple Producers Association

RR 1 Box 927
Winthrop, ME 04364
May 19th, 1992

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

Dear Ms. Bushey:

This letter is to express concern and support for Maine's worker compensation agricultural exemption granted to smaller farms of six or fewer employees.

We join other agricultural associations in stating that we feel this exemption is crucial for the success of locally owned and operated agricultural industries here in Maine, and for the enhancement of our State's food supply.

We are aware that the worker compensation issue needs dramatic changes and that labor-management, without agricultural representation, has recommended adoption of Michigan's law. We would like to recommend that creative and custom tailoring of the Michigan law, especially the continuation of Maine's agricultural exemption, be an established concern of the Blue Ribbon Commission. Agriculture has always been a fundamental entity within Maine industry and we hope to see it maintained and enhanced throughout the coming decades.

The farms exempted under Maine workers compensation exemption continue to carry liability insurance. This arrangement has proven to be a satisfactory and affordable provision for Maine's smaller agricultural producers. Reports from the Michigan Farm Bureau indicate that workers compensation laws in Michigan do not adequately recognize the needs of their agricultural industries, and that they are a major concern as farms attempt to remain profitable and competitive.

We ask that your Commission seek to retain Maine's workers compensation agricultural exemption. We can not underestimate the importance of this exemption to the viability of Maine's agricultural industries.

Thank you for your time and attention to this matter.

Sincerely,

Vicki Schmidt

Vicki Schmidt
MMPA Correspondent

JOHN DAVID KENNEDY
Revisor of Statutes

MARGARET E. MATHESON
Principal Attorney

EVELYN KNOPF
SUZANNE M. GRESSER
Legislative Attorneys

KIM MORROW ALLEN
JUDITH L. HAYES
Paralegals

ELIZABETH H. GOSSELIN
Technical Services

MAINE STATE LEGISLATURE
OFFICE OF THE REVISOR OF STATUTES
STATE HOUSE STATION 7
AUGUSTA, MAINE 04333
(207) 289-1650

May 19, 1992

John Lewis
2901 S. Bayshore Drive
Miami, Florida 33133

VIA UPS

RE: Maine Workers' Compensation Act and Occupational Disease Law

Dear Mr. Lewis:

As requested by Michelle Bushey, I am forwarding you the following materials regarding the Maine Workers' Compensation Act and Occupational Disease Law.

1. Newly chaptered laws pertaining to the workers' compensation laws as enacted during the 1991, 2nd Special and 2nd Regular Sessions of the 115th Legislature.

2. Statute printout of the current "Workers' Compensation Rating Act" as codified in M.R.S.A. Title 24-A, Maine Insurance Code.

3. 1991 booklet, Maine Workers' Compensation Act and Occupational Disease Law, compiled and issued by the Maine Workers' Compensation Commission. Includes the Maine Workers' Compensation Act as amended at the close of the 1991, 1st Special Session of the 115th Legislature.

4. 1989 booklet, Maine Workers' Compensation Act and Occupational Disease Law, compiled and issued by the Maine Workers' Compensation Commission. Includes the Maine Workers' Compensation Act as amended at the close of the 1989, 1st Regular Session of the 114th Legislature.

5. 1987 booklet, Maine Workers' Compensation Act and Occupational Disease Law, compiled and issued by the Maine Workers' Compensation Commission. Includes the Maine Workers' Compensation Act and Commission Rules and Regulations in effect as of November 20, 1987.

6. Supplement to Workers' Compensation Law Booklet of 1987.

Please feel free to contact Jane Orbeton, Office of Policy and Legal Analysis, phone #(207) 287-1670 if you have any questions concerning the enclosed material.

Sincerely,

Kim M. Allen
Paralegal

KMA/dr
enclosures
cc: Michelle Bushey,
University of Maine School of Law

3164REVIS

Maine Farm Bureau Association
"The Voice Of Organized Agriculture"

May 19, 1992

Blue Ribbon Commission to Examine Alternatives
to the Workers' Compensation System
c/o Michelle Bushey
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, would like to present the following comments to the Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System. We hope these comments will be part of the discussion as the Blue Ribbon Commission studies and recommends alternatives to the present Workers' Compensation system.

Maine agricultural employers meeting certain criteria are exempt from the present Workers' Compensation laws. This exemption has helped make Maine farmers competitive for markets. The Maine Legislature has recognized the need to keep Maine farmers competitive and during the last 10 years, the legislature not only has maintained the agricultural exemption but has also expanded it.

I have listed a brief summary of the action the Maine Legislature has taken regarding the agricultural exemption to the Workers' Compensation laws.

- 110th Legislature (1981) enacted chapter 70 - An Act to Exempt Certain Aquacultural Workers under the Workers' Compensation Laws. This act expanded the agricultural exemption to include aquaculture.

- 110th Legislature (1981) enacted chapter 283 - An Act to Establish an Agricultural Exemption from Workers' Compensation for Certain Wood Lot Operations. This act exempted agricultural employers from workers' compensation for employees when harvesting 150 cords of wood or less from farm wood lots providing that the employer is covered under an employer's liability insurance policy with total limits of not less than $25,000 and medical payment coverage of not less than $1,000.

478 Western Avenue P.O. Box 430 Augusta, Maine 04332-0430 207-622-4111

- 111th Legislature (1983) enacted chapter 318 - An Act to Establish a Workers' Compensation Hearing Exemption for Agricultural and Aqua cultural Employers' Liability Insurance Claims Disputes. This act set up a procedure whereby a workers' compensation commissioner could quickly rule if an agricultural employer meets the requirements of the agricultural exemption.

- 112th Legislature (1985) enacted chapter 241 - An Act to Clarify the Agricultural Exemption in the Workers' Compensation Laws. This act expanded and clarified the agricultural exemption in several ways: (1) increased the number of employees the agricultural employer may employ without being required to provide workers' compensation from 4 to 6; (2) raised the amount of liability insurance which must be provided instead of workers' compensation coverage from a flat $25,000 to a variable requirement of $100,000 per agricultural employee; (3) allowed a farmer to incorporate his business and still not count members of his immediate family as laborers for the purpose of determining eligibility under the agricultural exemption; (4) defined "immediate family members", and (5) clarified the method of counting employees for the purpose of determining the agricultural employer's eligibility for the agricultural exemption.

The Maine Legislature recognized the need for an agricultural exemption to the Workers' Compensation laws. This need is still very necessary today. Maine Farm Bureau recommends that the Blue Ribbon Commission maintains this necessary exemption and that it becomes part of the Blue Ribbon Commission recommendations to the Legislature.

Thank you for your attention to the above.

Sincerely,

Dan LaPointe
President

DL/ld

BLUE RIBBON COMMISSION TO EXAMINE ALTERNATIVES
TO THE WORKERS' COMPENSATION SYSTEM
University of Maine School of Law
246 Deering Avenue
Portland, Maine 04102

Members of the Commission:

Richard B. Dalbeck
William D. Hathaway
Emilien Levesque
Harvey Picker

May 19, 1992

Frank R. Richards
Workers' Compensation Commission
State House Station 27
Augusta, Maine 04333

Dear Mr. Richards:

On behalf of Commissioner Hathaway, I would like to thank you for the very interesting article from NCCI Digest. The Commissioners appreciate any information relevant to the topic of workers' compensation being brought to their attention.

Sincerely,

Michelle E. Bushey
Staff to the Commission

BLUE RIBBON COMMISSION TO EXAMINE ALTERNATIVES
TO THE WORKERS' COMPENSATION SYSTEM
University of Maine School of Law
246 Deering Avenue
Portland, Maine 04102

Members of the Commission:

Richard B. Dalbeck
William D. Hathaway
Emilien Levesque
Harvey Picker

May 19, 1992

Robert L. Gallon, Ph.D.
Pain Program
EMMC
Webber Building, Suite 425
417 State Street
Bangor, Maine 04401

Dear Dr. Gallon:

On behalf of Commissioner Hathaway, I would like to thank you for your letter and enclosed study regarding chronic pain patients and the workers' compensation system. The study was very interesting and the Commissioners will get back to you on the subject if they feel they need more information.

Once again, the Commission thanks you for your input.

Sincerely,

Michelle E. Bushey
Staff to the Commission

MAINE COUNCIL OF SELF-INSURERS

need legislation
re pre-start —

May 20, 1992

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

Dear Mr. Picker:

At the last meeting of the Blue Ribbon Commission you raised concerns regarding the potential for insureds and self-insureds to "skim" the good risk and leave to the residual market the bad risk. Under such a scenario, there arises the concern that the residual market would become unaffordable and undermine the viability of employers in this market. To evaluate these concerns, I believe the following points are of relevance.

1. The commonly held view in the insurance industry is that a residual market that holds ten to fifteen percent of total premium reflects an overall healthy condition. A small residual market that covers bad risk has historically not been considered a negative. Rather, it has been viewed as a desirable incentive for encouraging employers to engage in better risk management.

2. The experience of the Maine Automobile Dealers Association reveals that a mature group self-insurance plan can reasonably accommodate 90% of a given sector which, in this case, is representative of new car dealerships. While I do not know the percentages for the public sector, I suspect that a similar level of saturation by self-insurance has occurred through government sponsored individual and group plans.

3. New group self-insurance plans must "skim" to pass regulatory hurdles. However, the skimming is much more based on financial strength than workplace risk. Once a core group of employers succeed in forming a self-insurance plan the entrance of additional employers becomes less restrictive. However, bad risks are never welcome and this is an important message to employers in need of behavior change.

P.O. Box 287, Hallowell, Maine 04347-0287 Tel. 207/623-4883 FAX 207/623-3748

4. Even with nearly 50% of Maine's risk in self-insurance I do not think that skimming is yet an issue. Self-insurers have a larger share of total premium compared to total workforce suggesting that it is currently serving higher risk employers. Furthermore, only recently has there been a movement to self-insurance by low-risk employers such as in the finance, insurance or real estate sectors. This movement, I believe, is more driven by concerns over the future availability of coverage than the cost of that coverage.

5. There is an assumption that larger employers, who tend to have easier access to self-insurance, are better risks. The OSHA statistics contest this assumption along with anecdotal evidence from insurance carriers. Here again the real barrier for small employers seeking to self-insure may have more to do with financial condition than their risk of injury or illness. I should add that group self-insurers do accept employers having three or more employees.

6. If Maine were to not regulate insurance rates and not charge carriers for residual market losses, it is estimated that carriers would in the near term voluntarily write 20% of the market. Assuming self-insurers realize a near term market share of 50%, the residual would then be two to three times larger than is considered desirable. However, in the longer term, the residual market should contract while voluntary writings expand. Self-insurance might also increase its market share but some employers would likely see benefits in returning to an insured status.

The best protection against skimming is to have multiple coverage options available to employers through insurance and self-insurance. Our proposal to you advances this approach and also addresses the pending market collapse.

One other concern which you have raised that I would like to respond to is the matter of existing liabilities. The so-called "Fresh Start" provision assures that employers will pay for losses in the residual market occurring since January 1, 1988. This liability has the potential for burying employers in spite of all the prospective changes the Commission, Legislature and Governor may adopt this year.

There are only two ways I know of to get at this problem. First, is to contest the fresh start surcharges in the rate cases. The Council did that this year for the first time. Half of our members are facing fresh start liabilities. The second approach that can be taken is to enact law changes that apply

Have Gregory do research on this.

retroactively. Some will argue that it is legal to retroactively adjust benefits. The litigation on this question would be hard fought but it would likely be minor compared to the political fight such a proposal would engender. Other than benefits the only option for retroactivity is on procedures which could include such matters as return-to-work or medical cost containment. Here there is a better prospect for consensus but only if you are careful in your selection of proposals. This avenue needs to be explored.

I apologize for the length of this response but nothing is simple in workers' compensation. If I can be of further assistance please call on me.

Sincerely,

John G. Melrose
Executive Director

JGM:jm
cc: Senator William Hathaway
Mr. Richard Dalbeck
Mr. Emilien Levesque

ALEXANDER & SCHMIDT

MAY 20, 1992

TO: JACK DEXTER
PRESIDENT
MAINE CHAMBER OF COMMERCE & INDUSTRY

FROM: JIM ALEXANDER

YOU REQUESTED, JACK, THAT I INTERVIEW PEOPLE INVOLVED WITH THE WORKERS' COMPENSATION REFORM ISSUE AND DEVELOP OPINIONS BASED ON MY DISCUSSIONS.

WORKERS' COMPENSATION REFORM REMAINS ONE OF THE MOST IMPORTANT ISSUES FACING MAINE'S ECONOMY. THE FAILURE OF THE SYSTEM TO ADEQUATELY SERVE THE EMPLOYEES AND EMPLOYERS OF MAINE HAS RESULTED IN SERIES OF CRISES OVER THE PAST DECADE. IT IS TIME FOR SIGNIFICANT CHANGE AND THE OPPORTUNITY APPEARS TO BE AT HAND.

EMPLOYEES SUFFERING WORK RELATED INJURIES OR ILLNESSES OFTEN FACE DELAYS, HARDSHIPS AND A LOSS OF DIGNITY RESULTING FROM THE WORKERS' COMPENSATION CLAIM PROCESS. DOCUMENTATION IS REPLETE WITH INFORMATION RELATING TO A SYSTEM THAT FAILS TO SERVE THOSE WHO HAVE SUFFERED A LOSS.

EMPLOYERS ARE FACED WITH A SYSTEM THAT IS TOO COSTLY. THESE COSTS EFFECT THE ABILITY OF BUSINESSES TO SURVIVE OR THEIR ABILITY TO EMPLOY PEOPLE. AMPLE EVIDENCE EXISTS THAT MAINE BUSINESS CANNOT AFFORD THE CURRENT WORKERS' COMPENSATION SYSTEM. EXCESSIVE PREMIUMS HAVE AND WILL CONTINUE TO ADVERSELY EFFECT THE ABILITY OF BUSINESS TO COMPETE IN THE UNIVERSAL MARKETPLACE.

ANGER, FRUSTRATION, FEAR, AND A HOST OF OTHER EMOTIONS HAVE ENVELOPED THE WORKERS' COMPENSATION ISSUE FOR TOO MANY YEARS. THE SYSTEM HAS PITTED EMPLOYEES AGAINST EMPLOYERS DUE TO THE INEQUITIES FELT BY BOTH PARTIES. CHANGE HAS BEEN DIFFICULT, IF NOT IMPOSSIBLE TO AFFECT, BECAUSE OF THE ANIMOSITY DEVELOPED AMONG PEOPLE ON VARIOUS SIDES OF THE ISSUE.

I BELIEVE THAT THE TIME IS RIGHT FOR CHANGE. GROUPS OR INDIVIDUALS, AS WELL AS THE BLUE RIBBON COMMISSION, ARE SEEKING NEW SOLUTIONS BY LOOKING AT WORKERS' COMPENSATION SYSTEMS IN OTHER STATES, EXAMINING THE MAINE STATUTES WITH AN EYE TOWARD FURTHER CHANGE, AND BY LOOKING AT THE REFORMS MADE IN THE RECENT PAST.

FOR THE FIRST TIME IN MANY YEARS THE BUSINESS AND LABOR COMMUNITIES APPEAR TO BE MOVING IN A SIMILAR DIRECTION. LITTLE, IF ANY NEGATIVE PUBLIC DISCUSSION BETWEEN THE GROUPS HAS OCCURRED SINCE THE ESTABLISHMENT OF THE BLUE RIBBON COMMISSION. THIS ATMOSPHERE CAN AND SHOULD FACILITATE POSITIVE CHANGES TO THE EXISTING SYSTEM.

BELIEVING THAT POTENTIAL FOR SIGNIFICANT WORKERS' COMPENSATION REFORM EXISTS, I CONTACTED PEOPLE IN MAINE, MICHIGAN AND OTHER STATES. I SOUGHT TO DEVELOP A POSITION BASED ON FACTS OBTAINED FROM KNOWLEDGEABLE PERSONS HAVING DIRECT EXPERIENCE WITH MICHIGAN, MAINE AND THE WORKERS' COMPENSATION SYSTEMS OF OTHERS.

THOSE PERSONS WHO PROVIDED INPUT INTO THIS PROCESS WERE:

EVERETT BISHOP, ACTUARY, LISCORD, WORD AND ROY INC, NH
SARAH BURNS, CENTRAL MAINE POWER COMPANY, ME
DAVID CLOUGH, NATIONAL FEDERATION OF INDEPENDENT BUSINESSES, ME
STEVEN HAASE, BOISE CASCADE CORP., ID
GROVER CZECH, MARYLAND CASUALTY COMPANY, MD
ROBERT HODGES, NICHOLS PORTLAND, ME
PAT LAVOIE, DUNLAP CORP. , ME
JOHN MELROSE, MAINE COUNCIL OF SELF INSURERS, ME
LINCOLN MERRILL, HANOVER INSURANCE COMPANY, ME
VICTOR PAGANUCCI, CHAMPION INTERNATIONAL, CT
RICHARD STUDLY, MICHIGAN CHAMBER OF COMMERCE, MI
ROBERT VITALIUS, SEDGEWICK JAMES, ME
RICHARD WOS, PENN GENERAL SERVICES, MI

THESE INDIVIDUALS WERE ASKED ABOUT THE ADOPTION OF THE MICHIGAN SYSTEM IN TOTO, AS WELL AS, THEIR THOUGHTS ON OTHER OPTIONS OR ALTERNATIVES.

AFTER CAREFUL CONSIDERATION OF THE COMMENTS MADE BY ALL THE INDIVIDUALS INTERVIEWED, I SUGGEST THAT MICHIGAN NOT BE ADOPTED IN ITS ENTIRETY. HOWEVER, I BELIEVE THAT SIGNIFICANT PORTIONS OF THE MICHIGAN SYSTEM DESERVE CAREFUL CONSIDERATION BY THE BLUE RIBBON COMMISSION AND IF THEY WITHSTAND FURTHER SCRUTINY, ADOPTION.

BLENDING TOGETHER THE STRENGTHS OF BOTH THE MICHIGAN AND MAINE SYSTEMS I FEEL THE OPPORTUNITY FOR LONG TERM SUCCESS EXISTS. THIS WILL BE TRUE ONLY IF THE SPIRIT OF LABOR AND MANAGEMENT COOPERATION DEVELOPED BY "THE GROUP OF 16" IS PRESERVED.

SPECIFIC ASPECTS OF THE MICHIGAN SYSTEM I FEEL HAVE MERIT ARE AS FOLLOWS:

1. A POSITIVE WORKING RELATIONSHIP BETWEEN BUSINESS AND LABOR.

   MICHIGAN HAS A NUMBER OF ORGANIZATIONS, SUCH AS THE ECONOMIC ALLIANCE OF MICHIGAN, WHERE BUSINESS AND LABOR JOIN TO DISCUSS AND MEDIATE WORKERS'S COMPENSATION ISSUES.

   NO SIGNIFICANT CHANGES HAVE BEEN MADE TO THE SYSTEM FOR 7 YEARS.

2. A STREAMLINED ADMINISTRATIVE PROCESS. RAPID CLAIMS HANDLING, NO BACKLOG OF HEARINGS, QUALIFIED ADMINISTRATIVE PERSONNEL INTERFACE WITH BUSINESS AND LABOR.

   A OVERHAUL, IF NOT REPLACEMENT OF THE CURRENT MAINE WORKERS' COMPENSATION COMMISSION IS NECESSARY.

3. MEDICAL COST CONTAINMENT PROVISIONS. FEE AND PAYMENT SCHEDULE WHICH APPLIES TO INDEMNITY & MEDICAL PAYMENTS.

4. CONTINGENCY ATTORNEY FEE SYSTEM. ATTORNEYS ARE PAID A PERCENTAGE OF THE RECOVERY, IF RECOVERY IS MADE. FEES PAYABLE ARE BASED ON A PERCENTAGE SCHEDULE.

5. SAFETY AND INJURY PREVENTION PROMOTION. A "SAFETY, EDUCATION AND TRAINING FUND" PROVIDES SAFETY COUNSELING/INSPECTIONS TO EMPLOYERS WHO ASK FOR SAFETY ASSISTANCE. ADDITIONALLY, TRAINING FILMS, PRE-OSHA INSPECTIONS, AND INCENTIVE PROGRAMS PROMOTE SAFETY.

6. OPEN, COMPETITIVE WORKERS' COMPENSATION RATING TO INCLUDE A PRIVATE FUND(S) WHOSE PURPOSE IS TO FACILITATE COMPETITION AMONG TRADITIONAL INSURERS AND ITSELF.

   ELIMINATE INSURANCE COMPANY ASSESSMENTS.

I AM RECOMMENDING THAT MANY OF THE REFORMS MADE IN MAINE DURING THE PAST 5-6 YEARS NOT BE AMENDED. PEOPLE BELIEVE THAT THE POSITIVE COST EFFECTS OF THESE REFORMS ARE NOW BEING REALIZED. THIS IS NOT TO SUGGEST THAT EXISTING BENEFIT LEVELS ARE NOT TOO HIGH. I BELIEVE THEY ARE. FOR EXAMPLE, THE IMPLEMENTATION OF THE PREDOMINATE CAUSE DEFINITION WOULD PROVIDE PAYMENTS FOR THOSE SUFFERING A WORKPLACE LOSS WHILE ELIMINATING PAYMENTS FOR PEOPLE INJURED AWAY FROM THE WORKPLACE.

TO OPEN THE BENEFITS ISSUE AT THIS TIME, HOWEVER, WOULD LIKELY ADVERSELY ALTER THE SPIRIT OF COOPERATION NOW BEING REALIZED BETWEEN LABOR AND EMPLOYERS. COOPERATION BETWEEN THE PARTIES, AS NOW APPEARS TO BE THE CASE, IS CRUCIAL IN MY JUDGEMENT TO CONTINUED, POSITIVE DIALOGUE.

FOR ANY REFORM OR ALTERATIVE SYSTEM TO WORK IN MAINE TWO PRIMARY CHANGES MUST OCCUR. BOTH HAVE BEEN MENTIONED ABOVE, BUT REQUIRE ADDITIONAL COMMENT BECAUSE OF THEIR IMPORTANCE.

1. COOPERATION, UNDERSTANDING AND COLLABORATION MUST BE DEVELOPED BETWEEN LABOR AND MANAGEMENT. THE DIVISIONS THAT HAVE BEEN CREATED DURING THE MANY YEARS OF WORKERS' COMPENSATION DISCUSSION HAVE PREVENTED CHANGE RATHER THAN FOSTERED CHANGE FOR THE GOOD OF ALL. PERSONALTIES AND AGE-OLD DISAGREEMENTS NEED TO BE TAKEN OUT OF DISCUSSIONS AND A COMMITMENT TO THE ISSUES PUT INTO THE DIALOGUE. "THE GROUP OF 16" HAS LEAD THE WAY IN

THIS AREA.

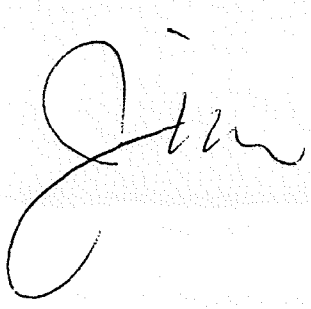
THE LABOR AND MANAGEMENT COMMUNITIES WITHIN MANY STATES HAVE SUCCESSFULLY JOINED TO EFFECT CHANGE. THIS IS NOT TO SUGGEST THAT DISAGREEMENTS WILL NOT OCCUR, BUT WHEN DISAGREEMENTS DO DEVELOP THEY CAN DISCUSSED AND RESOLVED WITH REASON AND COMMITMENT TOWARD A POSITIVE WORKING RELATIONSHIP.

2. COMMENTS MADE BY SELF INSURERS INDICATE THEY ARE ENJOYING SOME SUCCESS IN REDUCING THEIR WORKERS' COMPENSATION COSTS. THIS APPEARS TO BE OCCURRING BECAUSE THESE EMPLOYERS HAVE COMMITTED RESOURCES TO LOSS PREVENTION, EFFECTIVE CLAIMS MANAGEMENT AND RETURN TO WORK PROGRAMS. CONVERSELY, THE BUSINESS WHO IS IN THE ASSIGNED RISK POOL SELDOM RECEIVES EFFECTIVE LOSS PREVENTION ASSISTANCE AND RECEIVES INADEQUATE CLAIMS HANDLING SERVICE.

   INSURANCE COMPANIES PROVIDING SERVICES UNDER THE ASSIGNED RISK PLAN HAVE FAILED TO PERFORM IN SATISFACTORY MANNER. THIS FAILURE HAS RESULTED IN PART TO THE ESCALATION OF COSTS TO EMPLOYERS AND MORE IMPORTANTLY TO WORKER INJURIES THAT MAY NOT HAVE OCCURRED HAD EFFECTIVE SAFETY TRAINING BEEN PROVIDED.

   THE ESTABLISHMENT OF COMPETITIVE, OPEN RATING AMONG INSURERS WILL PROMOTE IMPROVED SERVICES. EMPLOYERS WILL NOT ONLY BE ABLE TO PURCHASE COVERAGE BASED ON COMPETITIVE RATES, BUT ALSO PREDICATED UPON THE TYPE AND QUALITY OF SERVICES OFFERED. UNDER THIS SCENARIO EMPLOYERS WILL HAVE A GREATER OPPORTUNITY TO CONTROL THEIR OWN COSTS, WHILE PROVIDING A SAFER WORKPLACE ENVIRONMENT FOR THEIR EMPLOYEES.

AS I HAVE STATED, JACK, I BELIEVE THERE IS A REAL OPPORTUNITY FOR MAINE TO BECOME A LEADER IN WORKERS' COMPENSATION REFORM. THROUGHOUT THE UNITED STATES WORKERS' COMPENSATION HAS BECOME A SIGNIFICANT IMPEDIMENT AGAINST BUSINESS DEVELOPMENT WITHIN THE WORLD'S EVER SHRINKING MARKETPLACE. THE INABILITY OF BUSINESS TO COMPETE MEANS THE LOSS OF JOBS FOR PEOPLE. I BELIEVE THAT THE CHANGES SUGGESTED HEREIN WILL REDUCE THE COSTS OF THE SYSTEM, LESSEN THE ANIMOSITY BETWEEN BUSINESS AND LABOR, AND CREATE A SAFER WORKING ENVIRONMENT FOR MAINE'S EMPLOYEES.



Workers' Compensation Group
Box 4024, RFD 3
Brunswick, Maine 04011

May 21, 1992

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

Re: Transition Issues

Dear Chairmen Hathaway and Dalbeck:

The Workers Compensation Group would like to formally acknowledge our appreciation for the opportunity to present our research and conclusions to the Blue Ribbon Commission on Workers Compensation recently. Based on our extensive work of the last seven months, we remain convinced that the key element in any successful reform of the workers' compensation system is the total commitment of management and labor to forging collaborative alliances.

Based on your statements to our group that you wish to work closely with us, we would like to elaborate on those issues which we deem of most concern if the adoption of the Michigan system is to be seriously evaluated:

1) State Fund issues-- We understand that many people, including Governor McKernan in his recent testimony, have expressed reservations about Michigan's State Fund. Particular concern has been raised about the "start-up" costs of such a system and the potential need for a state "bail-out" in the event the Fund was unable to become self-sustaining. Others have expressed concern about whether Michigan's State Fund artificially depresses prices, thereby giving it a competitive advantage over the private market.

Rather than addressing these concerns ourselves, we respectfully suggest the Commission may want to solicit testimony from those like Roger Fries who administer the Michigan State Fund and who has indicated his willingness to come to Maine to explain the concept in more specific detail than could we. Ed Welch has again expressed his willingness to answer the Commission's questions about

Michigan.

2) Case Law Issues-- As you know from our report, we had retained Professor David Gregory to analyze this issue for us. When the Commission retained Professor Gregory, we assumed and still do that he will be providing a memorandum on this issue to you. The leading case on this point appears to be Wing v. Morse, 300 A.2d. 491 (Me., 1978).

3) Actuarial Analysis-- There is a clear need for a comprehensive actuarial analysis of the consequences of adoption of the Michigan system. While we have contacted actuaries of substantial reputation and background who have expressed interest in taking on this project, we assume the Commission will desire its own choice of actuaries, and have thus deferred contracting with anyone until the Commission charts its own course.

4) "Change in Attitude"-- Testimony from Governor McKernan and others has criticized the adoption of the Michigan plan because of the fear that the collaborative labor-management underpinnings of that system cannot be reproduced in Maine. We urge you in the strongest possible terms not to yield to that fear. With all respect, we believe that our group demonstrates that such collaboration is possible.

We are not naive, and we know it will take much dedication and will to change what has historically been a poisoned relationship between employers and employees. But to admit defeat today because of past labor-management hostilities will become a self-fulfilling prophecy which dooms any efforts toward fundamental change-- and it is fundamental change which is required.

It must be remembered that employer-employe relations in Michigan were also divisive before they began to work collaboratively on this issue, something which can be easily documented by Michigan participants, should you call them to testify. We would welcome the opportunity to work with the Commission to develop a work plan which we believe will result in a profound change in attitude-- one which will in any event be necessary to make any changes succeed.

5) Personnel Issues-- As noted in our report, there are a number of issues raised by the differing governmental structures Maine and Michigan have evolved to administer workers' compensation. We would be happy to work with your staff to explore those issues, with the goal of adjusting Maine's administrative structures without excessive new spending.

6) Assessments for the Unfunded Liability-- Whatever the Commission ultimately recommends, it seems important to grapple with this question. One of

the most serious obstacles to insurance carriers remaining in Maine, they have told both our group and your Commission, is what they consider these "unjust" assessments. Because of the need for accurate forecasting, it would be helpful to have the actuary hired by the Commission define as precisely as possible the dimensions of this unfunded liability.

We understand from talking to business leaders throughout Maine that the business community is fragmented in its opinions on the best remedy for the ills of Maine's workers' compensation system. Many business leaders, fearful of the piecemeal "reform" efforts which have failed them for the past 12 years, favor adoption of the Michigan system as a whole. Others support the proposal of some self-insurers to expand the availability of self-insurance as a means of addressing cost increases. Still others believe the Commission should focus on reforming the existing system by changing the definition of compensability, setting limits on partial compensation, apportioning between work and non-work related injuries, and otherwise enacting revisions in particular provisions in the current law.

The Workers Compensation Group recognizes that this fragmented business community makes the work of the Blue Ribbon Commission more difficult. We are doing our best to explain our concept fully to those business leaders who may not yet have heard a first-hand presentation. We are willing to work with anyone you designate as staff to strive to reach consensus.

Finally, it is our view that while the Commission is charged by statute with recommending the best workers' compensation system for Maine, it is equally important for the Commission to accompany such a recommendation with a plan to implement the new system (or at a minimum, a plan on how such implementation should be addressed).

Thank you for the opportunity to detail these transition issues, many of which we are sure you have already considered. We look forward to engaging in dialogue with you and your staff on these matters.

Very Truly Yours,

Kenneth Goodwin
Employer Co-Chair

James Mackie
Employee Co-Chair

Atc

STATE OF MAINE

MAINE POTATO BOARD

744 Main Street, Room 1 Presque Isle, Maine 04769 (207) 769-5061

May 22, 1992

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

Dear Ms. Bushey:

The Maine Potato Board is very concerned that the Commission may be considering wholesale adoption of the workers compensation laws in effect in the State of Michigan.

Our Board represents over 700 potato farmers statewide, most of them small operations growing approximately 100 to 150 acres of potatoes along with various rotation crops.

Maine's current agricultural exemption for six or fewer employees is crucial to their survival. These farms are required to carry liability insurance, but they simply could not afford the premiums required for workers compensation coverage.

To our knowledge, this agricultural exemption has never been a source of controversy before the Legislature or with any of the various groups debating the issue.

Michigan's exemption of only two agricultural employees from mandated workers compensation coverage would seriously affect these small family farms that are fighting to survive and retain their historical place in our industry and state.

We ask that you please give serious consideration to keeping Maine's existing provisions of law in this area.

Sincerely,

David R. Lavway
Executive Director

DRL/ca

Ed Welch
On Workers' Compensation
2875 Northwind Drive, Suite 205-B
East Lansing, Michigan 48823
(517) 332-5266

May 26, 1992

Hon. William Hathaway
Federal Maritime Commission
Suite 11503
1100 L St. N.W.
Washington, DC 20573

Dear Commissioner Hathaway:

I enjoyed meeting with you last week.

I want to follow up on a couple of names that I mentioned to you. Bob Klein is with the National Association of Insurance Commissioners and has a very good understanding of the issue of insurance company profits and rate adequacy. He can be reached at:

Mr. Robert Klein
Director of Research
National Association of Insurance Commissioners
120 West 12th Street, Suite 1100
Kansas City, MO 64105
(816) 842-3600

Rich Hoffman is with Midwest Employers Casualty Company. He has some very interesting ideas about how group self-insurance funds can be used to deal with problems in the "residual market." I believe his ideas could be easily extended to using group funds to function much like a state accident fund. He can be reached at:

Mr. Richard Hoffman
Vice President
Midwest Employers Casualty Company
11457 Olde Cabin Road, Suite 100
St. Louis, MO 63141

As I mentioned, I will arrive in Portland late on Sunday, June 7 and stay at the Quality Suites. I will be at your disposal all day on Monday, June 8. I am not assuming that the committee would want to listen to me for that long, but I can be available if needed.

I am booked on a flight at about 4:00 p.m. If I finish earlier I might try for a flight earlier in the afternoon. This is not critical, however, since it would not connect with an earlier flight to Lansing. It would only get me closer to home.

If there is more I can do please let me know.

Sincerely,

Edward M. Welch

MARTHA E. FREEMAN, DIRECTOR
WILLIAM T. GLIDDEN, JR., PRINCIPAL ANALYST
JULIE S. JONES, PRINCIPAL ANALYST
DAVID C. ELLIOTT, PRINCIPAL ANALYST
JON CLARK
DYAN M. DYTTMER
GRO FLATEBO
DEBORAH C. FRIEDMAN
MICHAEL D. HIGGINS
JANE ORBETON

KAREN L. HRUBY
JILL IPPOLITI
JOHN B. KNOX
PATRICK NORTON
MARGARET J. REINSCH
PAUL J. SAUCIER
HAVEN WHITESIDE
MILA M. DWELLEY, RES. ASST.
ROY W. LENARDSON, RES. ASST.
BRET A. PRESTON, RES. ASST.

STATE OF MAINE
OFFICE OF POLICY AND LEGAL ANALYSIS
ROOM 101/107/135
STATE HOUSE STATION 13
AUGUSTA, MAINE 04333
TEL.: (207) 289-1670

May 28, 1992

Ms. Michelle Bushey
82 Williams Street
Portland, Maine 04103

Dear Michelle,

I am enclosing a list of potential resources for the Blue Ribbon Commission that my office prepared prior to the first meeting of the Commission. Perhaps the list will be helpful to the Commission as it moves from testimony-taking to deliberations and decisions.

I am also enclosing a copy of an article by Edward M. Welch entitled "Standards for Workers' Compensation Administration Proposed by Joint Labor/Management Group" that was published in the May/June issue of John Burton's Workers' Compensation Monitor.

Thank you.

Sincerely,

Jane

Jane Orbeton
Legal Analyst

4 copies sent

National Conference of State Legislatures
303-830-2200
Brenda Trolin
Can supply consultant to guide Commission through a 50 state survey, plus few other jurisdictions, NZ and Europe.
Also tracking 24-hour coverage proposals in other states.
Available anytime except July 25-30. Can cover costs.
NCSL has a Blue Ribbon Commission, task force to advise it is broad based, each has offered to assist states, most will pay own expenses.
Suggests office of Insurance Commissioner Garamindi in California and NAIC.
Says Council of State Governments and National Governors' Association have done very little in WC.

National Association of Insurance Commissioners
816-842-3600
Eric Nordman
Putting together study of WC marketplace, can share data, will be ready in fall. Suggests Commission look at Oregon and Michigan, which did broad based reforms recently.
Suggests study of examination report of NCCI. Can provide information, work with commission.

Workers' Compensation Research Institute
(617) 494-1240
Richard Victor, Exec. Director
An independent research organization providing data on the performance of various WC systems and effects of reforms.
Published a comprehensive study of Maine's system in late 1990.
Published numerous studies in past 10 years on various Workers' Compensation issues.
Can provide presentions comparing Maine's system to other states, or on specific subjects such as others experience in reducing litigation, controlling medical costs, etc.
May be difficult to arrange presentation before June.
Costs range from nothing to expenses.

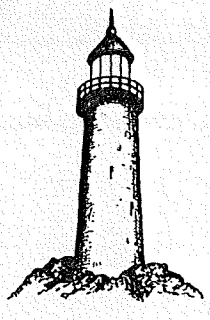
Other sources suggested by WCRI
Academics: John Burton, Rutgers; Peter Barth, U Conn,
Alan Hunt, Upjohn Institute for Employment Research
Consultants: John Lewis, (Florida)

American Legislative Exchange Conference
(202) 547-4646, Washington, DC
Provides model legislation to interested legislators.
Working on comprehensive model legislation for Workers' compensation, but not yet completed.

Standards for workers' compensation administration proposed by the Joint Labor/Management Group (Welch, Edward M.) (John Burton's Workers' Compensation Monitor 5, No. 3, May/June 1992) ●
(Available on request-please include the following citation: WC115-BRC-08-Pt.A-62.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

File



Christian Science
Committee on Publication for Maine

RALPH H. BARNES RD 1 • BOX 316 • ROCKPORT, ME 04856 236-2584

May 28, 1992

Mr. Harvey Picker
Blue Ribbon Commission on Workers' Compensation
5 Harbor House
Camden, ME 04843

Dear Mr. Picker,

I am writing on behalf of the Christian Scientists in Maine to respectfully request that provisions in the present Workers' Compensation Act relating to spiritual healing be retained in the final recommendations of the Blue Ribbon Commission.

Earlier I had requested the opportunity to offer short testimony on this matter at some point in the Commission's study but was informed that the hearing schedule was full.

I was encouraged to submit written testimony which I promptly did through staff person Ms. Michelle Bushey who has been most kind and helpful.

In one sense you are our "local contact" so I am taking the liberty of reinforcing this request by this correspondence.

I have attached a copy of references to treatment by prayer or spiritual means in the current Workers' Compensation act. I am sure the claims history under these categories are minimal, even miniscule, but they serve to accomodate those workers who in good faith rely upon this method of healing and rehabilitation.

I am sure the record will indicate no abuse of these provisions.

Thank you for your consideration in this matter.

Sincerely,

Ralph H. Barnes

Ralph H. Barnes
Christian Science Committee
on Publication for Maine

Encl

File
cc original to
H. Picker

MAINE MEDICAL CENTER

May 29, 1992

Blue Ribbon Commission
ATTN: Mr. Harvey Picker
University of Maine School of Law
246 Deering Avenue
Portland, ME 04102

Dear Mr. Picker:

Enclosed are my notes from which I spoke at the Commission hearing on May 26th. These are rough notes and I would be very happy to elaborate on those ideas if you would like. Also enclosed is a copy of one article indicating the disproportionate costs generated by a small percentage of injured workers. This study from Quebec is quite valid in that regional back complaints comprise a large majority of work related "injuries" and generate a cost annually to this nation now estimated at 50 billion dollars.

Quebec has done a careful assessment and has generated the best data in studying this problem. Their meticulous study on the efficacy of various medical treatments for regional backache also published in 1987 is widely quoted and accepted as the definitive work in this area. These data from Quebec transfer well to the State of Maine or the entire country. If anything, our data is even more dramatic than the Quebec data.

Thanks again for allowing me to speak before the Commission. I hope this is helpful.

Sincerely yours,

John W. Barrett, M.D.

JWB:gd

President of the Medical Staff
22 Bramhall Street, Portland, Maine 04102 (207) 871-2828

SUGGESTIONS FOR IMPROVEMENT

1. Redefine "injury" - backache is a disease - common as the common cold - treat the same way.

2. Establish treatment protocols with defined MMI - DRG type system. Require a diagnosis that is acceptable to all.

3. Educate physicians regarding the system especially the "experts". Get physician out of the injury certification business.

4. Continue to press employers for safe working conditions - remove the penalties for hiring disabled workers. Early return is mandatory. Stress management at work. Importance of job dissatisfaction.

5. Establish an ombudsman in the system to help employees and to decrease the need for adversarial resolution of cases.

6. Insist on quality medical care utilizing peer review, protocols, second opinions, etc. Fee schedules don't work and may limit access

7. Prevent cases from dragging on by early review. Review any case that exceed the anticipated MMI. Should reduce controverted cases to very few but decide those promptly on valid medical opinion.

8. Work fare approach if unable to go back to original employer. They work for the state - very few people are "totally" disabled.

9. Review expensive programs critically e.g rehab - P.T. - pain clinics - expensive technology (e.g. MRI, thermography - work capacity machines, etc.)

Importance and economic burden of occupational back pain: A study of 2,500 cases representative of Quebec (Abenhaim, Lucien and Samy Suissa) (Journal of Occupational Medicine/Volume 29 No. 8/August 1987) ●

(Available on request-please include the following citation: WC115-BRC-08-Pt.A-69.pdf)

ARCHITECTURAL SKYLIGHT CO., INC.

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(207) 490-1990 (800) 345-7899 FAX (207) 490-1764

June 1, 1992

Blue Ribbon Commission on Workers' Compensation
C/O Governor McKernan
Augusta, Maine 043333

Re: Report from Workers' Compensation Group

Dear Commission Members:

Having followed the Maine Workers' Compensation difficulties much more closely for the past couple years, including local as well as State House hearings, I must strongly recommend the adoption of the Michigan Plan.

The effort put fourth by the Workers' Compensation Group is to be commended, it is no small task to bring such a diverse group together, say nothing of having them reach a unanimous choice.

If the state of Maine allows this effort to fall by the wayside it may indicate to all a lack on the part of the state government to listen to what LABOR AND MANAGEMENT want for the betterment of the people and the state.

My name may be used as a supporter to the efforts of the Workers' Compensation Group.

Very truly yours;

Nicholas G. Tsakiris
Vice President

cc: W. Farnum (R-South Berwick)

June 1, 1992

Blue Ribbon Comm. to Examine Alternatives
to the Workers Comp System
c/o Michelle Bushey
University of Maine Law School
246 Deering Ave.
Portland, Maine 04102

Dear Ms. Bushey,

I am writing to you in regards of the Workers Compensation Laws.

I would like to urge you to very seriously consider the existing agricultural exemption and continue this exemption as is.

This agriculture exemption is very important to the already struggling Maine Farmer. The added burden of paying premiums could cause a few farmers to reach their breaking point and fold. When you look at what Maine Farmers do for the state's economy I find it hard to believe we would

want to lose even one farm.

Thank you for taking time with this issue.

Sincerly,

Larry & Scott

June 1, 1992

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

Dear Ms. Bushey:

It is very important to keep the existing exemption for agriculture - Maine Workers' Compensation Laws. If this law is changed, we will lose farmers that are having a struggle to pay the premium for liability insurance - never mind workers comp. So please think what serious damage you could be doing to us. Please leave as is.

Sincerely
Gordon H. Scott

5 copies sent

John R. McKernan, Jr.
Governor

Charles R. Weeks
Chair

Commission on Safety & Health in the Maine Workplace

June 2, 1992

Blue Ribbon Commission on Workers' Compensation
University of Maine Law School
Falmouth Street
Portland, ME 04103

Dear Commission Members:

I am pleased to submit for your information and consideration a report of the activities on the Commission on Safety and Health in the Maine Workplace. A series of recommendations meant to improve occupational safety and health are also included.

The Commission, established in Title 26 MRSA Section 51, consists of labor, management, and other knowledgeable persons concerned with occupational health and safety issues. The Commission has a broad mandate to evaluate and promote workplace safety and health. We have also advised the Department of Labor regarding its voluntary safety and health programs.

Too often the public policy debate relating to occupational health and safety has been solely in the context of workers' compensation. The Commission looks at occupational health and safety in its own light, recognizing that it touches all parts of our work life. We believe that this approach will have the greatest short and long term benefits to the Maine workplace.

I would like to thank the active participation of the Commission members (listed in Appendix A), former Labor Commissioner John Fitzsimmons and current Commissioner Charles Morrison for their support and leadership, as well as the staff of the Bureau of Labor Standards for their support and dedication to improving Maine workplaces.

If you wish further information regarding our activities, or have comments or questions, please do not hesitate to contact myself or any Commission member.

Sincerely,

Charles R. Weeks, Chair

CRW/ln

A REPORT OF

THE COMMISSION ON SAFETY AND HEALTH

IN THE MAINE WORKPLACE

JUNE 2, 1992

HISTORY:

The Commission on Safety in the Maine Workplace was first established in 1985 as a part of that year's reform of the workers' compensation system. The Commission made its first report to the Governor and the Legislature in June, 1987, summarizing its activities and making six recommendations.

The Commission was permanently established in 1987 with a mandate to examine safety and health in the Maine workplace, identify initiatives and to promote and improve best-practice safety and health programs. In 1989, the Commission was given new responsibilities advising the Commissioner of Labor on the distribution of loans under the revised Occupational Safety Loan Program, administrated jointly by the Department of Labor and the Finance Authority of Maine. The title of the Commission was amended by 1991 Public Law Chapter 93 to include the word "Health".

The Commission receives staff support from the Department of Labor, Bureau of Labor Standards, and in addition to it's stated mandate in Title 26 MRSA Section 51, advises the Department on some of their occupational health and safety programs. Commission activities are funded through the Bureau of Labor Standards administration of the Safety Education and Training Fund.

ACTIVITIES:

The Commission has been very active since its last report. The primary activities of the Commission have been to assist in the development and implementation of the "Safety Begins with Me" plan, advise the Commissioner of Labor on applications to the Occupational Safety Loan Program, gather information pertaining to occupational safety and health issues in the state, and commenting on appropriate topics.

1. Program Development and Implementation.

Through the winter and spring of 1989 the Commission through its Chair participated in the development of the "Safety Begins with Me" plan which identified specific action steps that would expand awareness and resources relating to occupational health and safety issues, as well as assist the Department to better target its education and training efforts.

The plan development group also included Charles O'Leary, President of the Maine AFL-CIO, Jack Dexter, President of the Maine Chamber of Commerce and Industry, and was chaired by then Commissioner of Labor John Fitzsimmons. The group presented the plan to Governor McKernan in May, 1989.

The Commission then worked with the Department to assist in the implementation and review of the various aspects of the plan that were assigned to the Department of Labor. What follows is a brief summary of the major items.

***The development and implementation of a training program dealing with cumulative trauma and soft tissue injuries.** A week long program was presented in November 1990 with 16 employers present with a combined work force of 5,360. Employers were invited based on a statistical review of workers' compensation data. The goal of the session was for each participating employer to develop a strategy to identify and reduce possible exposures and hazards in this area. Follow-up with each employer has occurred. From various discussions it was apparent that both the initial training and the ongoing follow-up have been instrumental in improving safety at member companies. Major components of the program have been integrated into other offerings such as the Maine Safety and Health Compact.

***The development and implementation of the Maine Safety and Health Compact, a voluntary membership association made up of small and medium-sized employers.** The Compact has been designed to provide technical assistance and support in the development and implementation of improved occupational health and safety policies and practices. To date 46 employers with a combined work force of 1,549 have been served in three separate programs. A fourth compact is scheduled for the fall in the area of health occupations. Previous offerings have centered on the manufacturing and construction industries. Follow up and analysis is a part of each program.

***Increase the efficiency and effectiveness of training offerings.** A mobile training academy has developed week long programs for compliance with the OSHA general industry and the construction standards. Additionally a Train-the-Trainer program, relating to hazardous communication program, has been developed. These programs have been offered at the Department's Hallowell facility as well as through out the State. The Department has also presented training on numerous occasions over the University of Maine's Interactive Television System.

***Increase awareness and availability of information and resources.** The Department has developed resources and listings for public use that will improve knowledge of occupational health and safety issues, compliance with mandated standards and, perhaps more importantly, best practices.

***The State as a model employer.** A part of the "Safety Begins with Me" plan was the issuance by the Governor on May 15, 1989 of Executive Order 13 FY88/89. The Commission applauded the Governor's action which recognized the State's responsibility as an employer and it's attempt to be a model employer in this area.

2. Occupational Safety and Health Loans

In 1987 the Commission assumed the statutory responsibilities of reviewing loan applications and making recommendations to the Commissioner of Labor. The Occupational Safety Loan Fund (OSLF) was established in 1985 by a one time assessment on the workers' compensation insurers. The program provides a revolving, low interest loan fund designed to enhance workplace health and safety. It was clear that the original conditions for the program did not provide enough of an incentive to obtain these loans and the Commission and Department worked to obtain more favorable terms. In 1989 substantial statutory changes were made which dramatically increased interest and activity in the program.

As of March 1992, 21 loans had been made totaling $696,079.73. Loans are used for the purchase of equipment which improves occupational health and safety in the workplace. A listing of all loan recipients is attached in Appendix B.

The OSLF has begun to meet the potential for which it was originally planned for. Unfortunately due to the State's fiscal problems the OSLF lost a total of $435,000 which was transferred to meet general fund short falls. These transfers effectively ended the loan program until employer payments replenish the fund.

3. Gather information on emerging safety and health issues

The Commission has gathered information from a variety of sources to increase its knowledge and ability to act effectively. A partial list of presentations before the Commission are included in the Appendix C.

4. Comments on proposed rules and regulations

The Commission responded to an invitation by the Occupational Safety and Health Administration for comments on proposed logging industry standards in June, 1990. This response is attached in Appendix D. The Commission is currently reviewing the proposed amendments to the federal Occupational Health and Safety Act presently before Congress.

5. Future Plans

The Commission is currently developing a work plan based on the following recommendations.

RECOMMENDATIONS:

1. Primary, secondary, and post secondary education curriculum and skill training programs must reflect a strong emphasis on safety and health.

Although some minimal progress has been made since the Commission first made this recommendation in 1987, there is still much to be done. The rationale for this recommendation follows.

A. Occupational health and safety concerns exist in all workplaces and affecting all workers, labor and management alike.

B. Oftentimes those educated and trained to design and manage our workplaces have minimal knowledge as to the occupational health and safety impact of their actions.

C. Maine workers' compensation data clearly indicates a disproportional incidence of loss time injuries and illnesses to younger workers and workers within the first two years of employment with an employer.

D. Inability to identify and abate hazards in a timely fashion only increases exposure.

2. The State, as the largest employer in Maine, must be a model employer regarding health and safety.

A. The Governor's Executive Order 13 FY88/89 must be fully implemented.

B. The State's management of it's workers' compensation system must be proactive to eliminate unnecessary hazards and reduce costs.

C. Occupational health and safety concerns must be considered in the State's capital construction/repair plan, purchasing processes, bid evaluation, and employee orientation, evaluation and training programs.

3. The Department of Labor's programs should continue to target small and medium size employers with higher than average exposures and risks.

A. Activities should provide employers with workable health and safety alternatives which can be integrated into regular operations as well as improve the quality of the workplace.

B. Clear and objective evaluation processes need to be developed and maintained for assessment and planning purposes.

C. Resources should be coordinated to the extent possible with priority going to activities that demonstrate higher needs.

D. Services should be developed and delivered based on possible exposure, actual incidence, and available resources to promote change.

E. Programs should be coordinated with other governmental and nongovernmental resources in order to avoid unnecessary duplication.

4. Dedicated resources such as the OSLF, the Safety Education and Training Fund (SETF) and federal funded programs identified to improve workplace health and safety should be omitted from further discussion related to the State's general fund problems.

The rationale follows.

A. Inability to plan resources undermines program planning and delivery.

B. Savings from reductions in these accounts have no impact on the general fund accounts unless specifically transferred. When savings from accounts funded by assessments on the workers' compensation system are transferred, the result is an increase cost to the State's workers' compensation system, a highly questionable public policy choice. Savings from furloughs and shutdowns for Department of Labor federally allocated positions have recently been recognized as counterproductive and those positions have been exempted from having to take additional days.

APPENDIX A

MEMBERSHIP

COMMISSION ON SAFETY AND HEALTH IN THE MAINE WORKPLACE

TERM

Wayne T. Brooks — Represents Experts
4 Friar Lane — 2/18/91-2/18/95
Cape Elizabeth, ME 04107
Tel. (H) 767-3839

James W. Evers — Represents Mgmt.
S. D. Warren — 2/18/90-2/18/94
RFD#3 Home: RFD#4 Box 3388
Skowhegan, ME 04976 Waterville, ME 04901
Tel. (H) 453-2083 (W) 453-9301 ext. 5262

G. Paul Falconer — Represents Experts
30 Hallowell Street — 7/29/91-7/29/93
Winslow, ME 04901
Tel. (H) 873-1776 or 397-3671

Eugene V. Gendron ** — Represents Experts
Hanover Insurance Co. — 2/18/90-2/18/94
8 Ashley Drive, PO Box 9001 — **Send all correspondence to home.
Scarborough, ME 04070-5001 — **28 Greenfield Lane**
Tel. (H) 282-2510 (W) 883-1695 — **Biddeford, ME 04005**
FAX 883-1026

Edward F. Gorham — Represents Labor
3 Maple Street — 4/5/89-4/5/93
Randolph, ME 04345
Tel. (H) 582-4493 (W) 947-0006 or (623-1220 Legislature)

Richard J. Haines — Represents Experts
P. O. Box 155 — 10/1/90-4/5/93
Wayne, ME 04284
Tel. (H) 685-9637 (W)783-2211 or
1-800-698-3267

Charles A. Morrison, **Vice Chair**
Dept. of Labor
State House Sta. #54
Augusta, ME 04333
Tel. (W) 289-3788 FAX 289-5292

Thomas F. Ryan — Represents Labor
Rt 4 Box 6570 — 7/29/91-7/29/95
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Tel. (H) 873-1254 (W) 784-2385 ext. 287

Richard C. Sanborn — Represents Experts
RFD#1 Box 51 — 2/18/90-2/18/94
West Baldwin, ME 04091
Tel. (H) 625-3580 (W) 883-5546

Elizabeth K. Stowell — Represents Experts 2/18/90-2/18/94
Center for Health Promotion
576 St. John Street
Portland, ME 04102
Tel. (H) 829-5960 (Summer Tel. 655-3083)
(W) 774-7751

Gregory S. Tedford — Represents Experts 7/29/91-7/29/95
RR1 Box 4773A
Camden, ME 04843
Tel. (H) 236-8424 (W) 594-4446

Charles Weeks, **Chair** — Represents Mgmt. 2/91-2/95
H. E. Sargent, Inc.
101 Bennoch Road Home: 194 N. Fourth St.
Stillwater, ME 04489 Old Town, ME 04468
Tel. (H) 827-3347 (W) 827-4435
FAX 827-6150

Governing Statute: 1985 Public Law Chapter 372, Sec. 51 & 63
Term: four years
Chair appointed by the Governor, Commissioner of Labor serves as Vice-Chair.

8/91

APPENDIX B

OCCUPATIONAL SAFETY AND HEALTH LOAN PROGRAM

1.	C. V. Finer Foods, Winthrop, ME	$50,000.00
2.	Duck Trap River Fish Farm, Lincolnville, ME	$50,000.00
3.	Goodridge's Screen Printing, Coopers Mills, ME	$ 9,382.95
4.	Graphite Technology, Inc., Van Buren, ME	$47,652.00
5.	Harborside Graphics, Belfast, ME	$50,000.00
6.	Christopher Wetherall, Bangor, ME	$50,000.00
7.	J. R. Mains, Bridgton, ME	$50,000.00
8.	Raymond M. Labbe, Brunswick, ME	$17,195.78
9.	Masters Machine Co., Round Pond, ME	$28,006.00
10.	Monroe Saltworks, Inc., Monroe, ME	$42,379.00
11.	Performance Product Painting, Auburn, ME	$15,000.00
12.	Portland Diversified Services, South Portland, ME	$15,000.00
13.	R. F. Technologies Corp., Lewiston, ME	$31,940.00
14.	Service Engineering, Bangor, ME	$50,000.00
15.	Shaer Shoe, Auburn, ME	$50,000.00
16.	Winthrop Water District, Winthrop, ME	$ 6,420.00
17.	Wolf Construction, Limestone, ME	$13,844.00
18.	H & H Boatworks, Inc., Sebasco Estates, ME	$50,000.00
19.	Creative Work Systems, Saco, ME	$ 4,355.00
20.	George R. Roberts Co., Alfred, ME	$50,000.00
21.	Atlantic Labs, Inc., Waldoboro, ME	$14,905.00

APPENDIX C

PARTIAL LIST OF PRESENTATIONS

9/13/88, Overview of BLS statistical programs, Bill Peabody, BLS

11/29/88, CMTC Occupational Health and Safety Center, Annee Tara, CMTC

1/4/89, Health and Safety in Maine, Bill Masters, US OSHA and John Hanson, University of Maine

5/9/89, Video "Put'er There", produced by Northern Maine Woods Foundation with partial support from BLS

6/13/89, Millinocket Regional Hospital Return to Work Program, facility staff

8/8/89, Executive Order update, Tim Smith

3/27/90, Warnco/ACTWU Safety and Health Program, Labor and Management representatives

2/26/91, State Government's Workers' Compensation System, Tim Smith

2/26/91, State Government's VDT Training Program, Robert Meixall

9/17/91, Maine Technical College Health and Safety Program, John Fitzsimmons

11/26/91, State Government's Workers' Compensation system, Isabella Tighe

2/11/92, Report: 1990 Occupational Injuries and Illness Data, Bob Leighton, BLS

3/17/92, Report: 1990 Characteristics of Work-Related Injuries & Illnesses, Janet Callahan, BLS

APPENDIX D

John R. McKernan, Jr.
Governor

Charles R. Weeks
Chair

Commission on Safety & Health in the Maine Workplace

TO: Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health

IN RE: Logging Operations [Docket No. S-048], submission of written comments by Commission on Safety and Health in the Maine Workplace

These written comments are submitted by the Commission on Safety and Health in the Maine Workplace responding to PROPOSED RULES published in the Friday, May 11, 1990 Federal Register at page 19745. This Commission was created by 1987 Maine Public Law Chapter 559, Sections 3, 7, and 9 to advise the Governor, the Legislature, the Commissioner of the Labor, and other persons or groups on matters of occupational safety and health. The Commission's members are appointed by the Governor of the State; they represent business and industry, labor and subject matter experts.

The Maine Department of Labor assisted in preparing these comments.

1 - TRAINING

The Commission approves and supports the proposed training requirement: at time of initial assignment prior to starting to work; at least annually thereafter; and when changes-of any character-bring new or additional hazards.

Delay in the effective date of the training requirement is not thought to be necessary. At this moment it can be assumed there will be training requirements in the standard, the interval from now to the effective date of the completed Logging Operations standard will provide ample opportunity for preparing the training program.

A performance-oriented training requirement is to be preferred. It permits designing the training program in light of prevailing local conditions. Designing such program will, as such, be training experience. A performance requirement is particularly appropriate in skills training. There are sought after outcomes-behavioral objectives. The test of the validity of the program is: Can the trainee upon completion of training satisfactorily and safely, as regards him/herself and others, perform the tasks, operate the equipment for which trained?

The extent of training appropriate for the newly hired-experienced logger should be determined by: Was the experience in conditions and circumstances similar to those prevailing in the new workplace; how long has it been since he/she underwent a training program; and, what degree of competence is the new

hire able to demonstrate in performing the tasks, or operating the equipment of the new workplace.

2 - PERSONAL PROTECTIVE EQUIPMENT

The Commission approves and supports the dual requirements that 1) "the use" and 2) "of the proper protective equipment"--be ensured by employers. Employers should be required to pay for gloves, boots, helmets. Only if the employer pays for these items of protective equipment can the quality of the equipment, its design, selection and use as required by standards, its care and maintenance, and its replacement when damaged or worn out--be controlled.

3 - LEG PROTECTION

The Commission approves and supports the requirement of protection covering each leg of chain saw operators from upper thigh to boot top or shoe top.

Standards which specify the strength to be designed and built into leg protection are to be preferred. The integral strength of chaps can be more readily determined at the manufacturing stage than at any given later time.

Leg protection should extend to the boot top or the shoe top. This part of the leg is most susceptible to injury by the chain saw.

Contentions of heat, humidity, discomfort are common as to many different protective devices. The hazards protected against are more severe than the discomfort.

4 - FIRST AID

All supervisors and one member of each crew should have first aid training. CPR training is not thought to be usefully required.

5 - VISUAL AND AUDIBLE CONTACT

It is to be acknowledged that in some surroundings and some crew size visual and audible contact might be difficult, but such contacts are very important to employee safety and rescue of an injured employee. Visual and audible contact should be provided for when planning undertaking the work.

6 - CHAIN SAW PROTECTIVE DEVICES

The present machine guarding standard applies to chain saws and requires point of operating guarding, agreed. Chainbrakes are the most effective protective device and should be specifically required by the standard.

7 - OPERATOR'S MANUAL

Performance language should be used. The objectives are: Manuals should be obtained from manufacturers (they are readily available), the contents should be incorporated in training programs, the manuals should be stored where their condition is protected and where available for some specific reference, and for more extensive use in training.

8 - RIDERS

Anyone who in addition to the operator rides the equipment at work is at risk the same as is the operator, and should be provided seating and protective equipment the same as the operator.

However, in training an instructor may ride the equipment along with the operator-trainee. Training should be carried out in terrain and surroundings which minimize the risk but yet impart to the trainee a sense of the reality of actual work. Protection for the instructor should be devised-at least safety belt.

9 - EQUIPMENT PROTECTIVE DEVICES

Rollover protective structures and falling object protective structures should be standard fixtures on all logging equipment. Retrofitting should be required but on some reasonably spaced time table. The need is not apparent to require retrofitting on older machines which may not be put to rollover or falling object risk.

Incorporating the listed standards by reference is opposed as singularly inappropriate. There is a quality in OSHA standards which rises form careful drafting and public reaction which is taken into account that may be absent from standards of a source outside OSHA.

10 - MANUAL FELLING

Performance language should be applied here. Specification of what cut to be used in certain conditions and what cut in other conditions, and what exceptions as permissible owing to tree and site factors would make the standard uselessly complex. The performance requirement should be the cut which in the circumstances causes the least risk. Manual cuts the different cuts in different conditions, the hazards and minimizing the risk should be included and emphasized in training programs.

Respectfully submitted,

Commission on Safety and Health in the Maine Workplace by Wayne T. Brooks, member.

STATE OF MAINE
WORKERS' COMPENSATION COMMISSION
STATE HOUSE STATION 27
AUGUSTA, MAINE 04333
207-289-3751

June 4, 1992

William Hathaway
6707 Wemberly Way
McLean, VA 22101

Dear Mr. Hathaway:

Enclosed is a draft copy of an annual summary of operations and data for the Workers' Compensation Commission. This is a "next to last" draft. It will become part of a three agency report. I have enclosed a copy of the legislation that calls for this report.

Sincerely,

Frank R. Richards

Frank R. Richards
Assistant to the Chairman

FRR:km

Enclosures

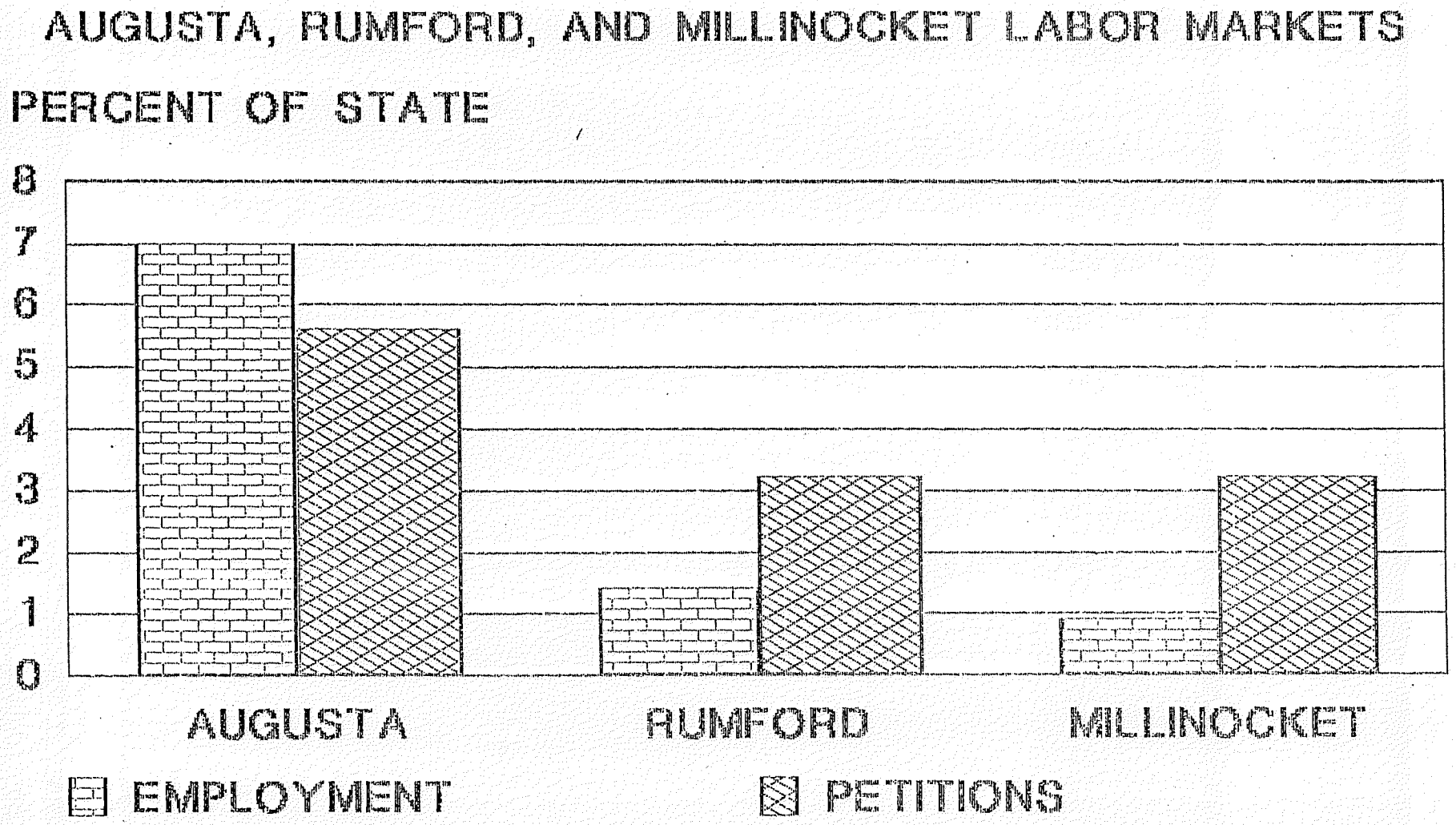
HOW INDUSTRIAL MIX AFFECTS AVERAGE STATE COSTS

Safety is Assumed to be Constant
Different Number of Claims per Firm Type
Reflect Different Employment Levels

TYPE FIRM	AV CLAIM COST	# CLAIMS STATE 1	COST STATE 1	# CLAIMS STATE 2	COST STATE 2
LOGGING	$4,000	400	$1,600,000	100	$400,000
PAPER	$3,000	300	$900,000	200	$600,000
LGT MANF	$2,000	200	$400,000	300	$600,000
OFFICE	$1,000	100	$100,000	400	$400,000
TOTAL		1,000	$3,000,000	1000	$2,000,000
STATE AVERAGE CLAIM COST			$3,000		$2,000

DISTRIBUTION OF EMPLOYMENT AND LITIGATION

AUGUSTA, RUMFORD, AND MILLINOCKET LABOR MARKETS



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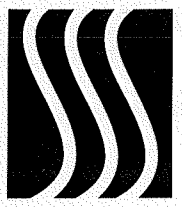

Maine Anti-Gravity Systems

William Hathaway
c/o University of Maine
246 Deering Avenue
Portland, ME 04102

June 5, 1992

Dear Mister Hathaway,

As per our conversation, I am enclosing a copy of a letter from Anne Kafka. She was an attorney working with the worker's comp system in New York state. As you will notice, she addressed this letter to Governor McKernan. You may already have seen this but here it is anyway. It seems self-explanatory.

Good luck with your research, and let us know if we can be of any help.

Sincerely,

Charles D. Crane

Charles D. Crane
Director of Marketing
Maine Anti-Gravity Systems, Inc.
299 Presumpscot Street
Portland, ME 04103
(207) 775-3800

CDC/al

ANNE G. KAFKA
ATTORNEY AT LAW - NEW YORK STATE
309 Maine Street
Brunswick, Maine 04011

March 2, 1992

Governor John McKernan
State House Station #1
Augusta, Maine 04333

Dear Governor McKernan,

I have been following the media with great interest with respect to the Workers' Compensation crisis in Maine.

I practiced law in New York State for 40 years, specializing in the field of Workers' Compensation. For the first 23 years I was associated with a law firm that represented insurance carriers before the New York Workers' Compensation Board. During that period I was also privileged to have handled many compensation appeals in behalf of carriers before the Appellate Division of the New York Supreme Court, and in New York's highest court, The Court of Appeals. The remaining years up to 1990 I had my own office on Long Island, representing compensation claimants before the Board. From 1976 to 1978 I was President of the New York Worker's Compensation Bar Association. I am now retired and living in Brunswick.

One of the articles in the Portland Press Herald mentioned the fact that New York State is one of the lowest states when it comes to workers' compensation cost increases. Therefore I thought you might be interested in some of the provisions in the New York Workers' Compensation Law which I believe to be responsible.

In my experience the New York Law functions well largely because every aspect of it is monitored by the Workers' Compensation Board. A claim form must be filed with the Workers' Compensation Board, and the original copies of all medical reports must be filed there as well. Employers must file immediate notices of controversy. The law is structured as an adversary proceeding. At least 95% of all claims have at least one hearing before an Administrative Law Judge. Permanent Hearing Points have been set up throughout the state. For the convenience of carriers, calendars are set up so numerous hearings involving a given carrier are heard on the same day in the same part. If a claim is controverted ab initio, it gets a preferential hearing, so that a trial date can be set and the matter resolved as promptly as possible. When there is no controversy, cases appear for hearing in order to make basic findings, establish an average weekly wage (an average of claimant's own payroll for the year prior to the accident, or one of a similar worker if claimant not employed for a year, or absent both of these, the claimant's own average daily wage times 260 if a 5-day worker, 300 if a 6-day worker, or 200 if a seasonal worker). The Judge then makes awards based upon

this a.w.w. and the medical degree of disability. Regular hearings are held as long as a claimant is being paid on a basis of temporary disability. If payments are made pursuant to an award by a Judge, the carrier may not suspend or modify payments for any reason, but must file a form requesting an immediate hearing. At that hearing the judge determines whether payments should be suspended or the rate changed as requested.

Who is an employee is carefully defined in the law as construed by the Courts. An employer is not permitted to call a worker an independent contractor in order to escape compensation coverage. In such cases the decision as to whether a person is a true independent contractor or an employee is made by a judge. For example, carpet installers have been found to be employees despite the contracts which they sign.

Attorneys are not permitted to take any money from claimants. Fees to them are awarded at hearings by Judges, and they are deducted from claimant's compensation and paid directly to the attorney by the carrier. At a hearing the attorney requests a fee commensurate with the work performed and considering the amount of money coming to the claimant. The Judge then may grant the fee requested, or he may reduce it. If there is no money coming to a claimant, the attorney does not get paid. The attorney's fee is not based on hours spent on a case.

Although it may seem that attorneys could not make a living under this law, this is not so. This is a volume practice, so that an attorney can and does make a very satisfactory living. There is no dearth of attorneys practicing in this field in New York State.

Doctors and chiropractors who treat compensation claimants must be licensed by the WCB to do so after which they get special code letters based upon their specialities. They must also abide by the Medical Fee Schedule fixed by the Board. Hospital fees are also regulated. These fees are adjusted from time to time. They must also submit reports regularly to the Board, the carrier, and the claimant's attorney. If a carrier objects to a medical bill, it files a notice controverting such bill with the Medical Practice Committee of the Board, which then arranges an arbitration hearing of which both the carrier and doctor are notified and asked to appear. When a doctor is subpoenaed to appear at a compensation hearing, his fee for the testimony is awarded by the Judge and paid by the carrier. Such fees are very reasonable.

Doctors who examine for insurance carriers make their own arrangements with the carriers as far as their fees are concerned.

There is a State Doctor (a State employee) present at each hearing point to examine claimants. He determines the percentage loss of use of arms, hands, fingers, legs, feet and toes, each of which by law is worth a certain number of weeks of compensation. He may also be asked to give his opinion as to the degree of disability, i.e. mild (25%), moderate (50%) severe (75%), or

total. He reviews the Board file in conjunction with his examination at the hearing.

The judge makes the award based upon the medical degree of disability and based upon the established average weekly wage. For example, an employee whose gross earnings give him an average weekly wage of $300, if he is found to have a moderate disability would get compensation at the rate of $100 reduced earnings per week (50% of $300 is $150, and 2/3 of $150 is $100). If a claimant returns to work part time or earning less than his average weekly wage, the compensation rate is fixed at an amount which is 2/3 of the difference between the average weekly wage and his present average earnings, up to the maximum statutory amount allowable at the time of his injury.

The New York Law has a disparity between the maximum rate for total disability, which as of 7/1/90 was raised to $340, and the maximum rate for partial disability which as of that date was raised from $150 to $285 per week (the largest jump in rate that I know of). A claimant is found to be partially disabled if he is found medically able to do some type of work. Thus claimants are usually not kept very long at the total disability rate.

If a claimant has the type of injury that cannot be scheduled, and if the State Doctor finds that he has a permanent injury as a result of the accident, he is then classified as having a permanent partial disability. A degree of disability is then established and his case is closed, but he is entitled to receive medical treatment as necessary. He then receives the resultant reduced earnings rate for the rest of his life, unless he returns to work making wages which would not justify that rate, in which case an application from the carrier will promptly reopen the case.

Settlements under the New York Law are strictly controlled. Only cases that are classified as permanent partial cases may be settled. The provision in the law for lump sum settlements does permit negotiation within narrow limits (usually amounting to from 4 to 6 years of future payments at the fixed rate). For example, a claimant whose average weekly wage was established at $450 with a moderate permanent partial disability would be receiving compensation at a rate of $150 per week. This amounts to $7,800 per year. Such a case would be settled for from about $30,000 to $45,000. The actual amount would depend upon the claimant's age and his general health. Once a figure is agreed upon, a written application must be made to the Board for permission to settle the case, and there is then a hearing before a panel of three Board Members, whose duty it is to decide whether the settlement is in the claimant's interest. The claimant testifies at that hearing as to what he intends to do with the money, and what other financial resources he has, if he is not working. If the settlement is approved, then claimant becomes responsible for his subsequent medical bills, and the case is closed.

The New York Law also provides for compensation based on a finding of occupational disease. Certain diseases have been

established as compensable, and there are certain rules which apply to some specifically. Generally speaking, an occupational disease is one which develops over a period of time, due to exposure to something in the work environment. In the case of those classified as ***dust diseases*** the law provides that the last employer who so employed a worker is responsible for the entire condition. In other occupational disease cases, such as, for example, dermatitis, the present as well as past employers where exposure occurred are all brought into the case, and responsibility is then apportioned.

The New York law does not recognize back injuries as occupational diseases (there have been attempts in the past to establish them as such, but so far as I know, to date they have not been successful). In order to be compensable, a back condition must have resulted from one or more specific accidents. If there was a prior compensable back injury (or more), disability would be apportioned between them based upon medical reports and medical testimony. If there was a prior back condition which was not the result of a prior compensable injury, a determination is made in the same fashion and the injury in question is then found to have caused a certain percentage of the overall condition. If it is found, for example, that the current accident produced 40% of the disability, then an overall compensation rate would be found and the award would be for 40% of that.

Death cases could be the result of an accident causing the death, or they may result from a prior established case. For example, if a person, during the course of performing heavy physical labor, drops dead, his widow has a death claim. Benefits in a death case are based on the decedent's average weekly wage, but the rate for total disability applies, and the surviving spouse is paid for life (without regard to whether he or she is working or not) or until he or she remarries, at which time he or she would receive a lump sum remarriage award consisting of two years of benefits. On the other hand, if a person survived a compensable heart attack and was receiving benefits, and his condition then deteriorated until he died, his widow would also be entitled to death benefits. It has been held, depending on the medical testimony, that if such person suffered a second heart attack, that it was a result of the first. However, this does not automatically follow. Incidentally, heart attack cases are almost invariably controverted ab initio in New York.

Section 15(8) of the Workers' Compensation Law was originally passed to encourage employers to hire handicapped people. However, both the Board and the courts have given it a broader interpretation. This section established The Special Funds Conservation Committee. If an employer had knowledge before an employee is injured on the job, that such employee had a previous permanent physical impairment, and the carrier filed such notice with the Board within a given time, then the insurance carrier is reimbursed by Special Funds for all compensation and medical payments made in the case after two years. This section occasionally produces some litigation. However, it has made carriers alert to remind employers to make records of any such physical impairments among employees.

The Special Funds is also liable for all compensation and medical payments, and for the management of the claim, in cases which are reopened after seven years since the case was closed, and three years since the last payment of compensation. The Special Funds is a State agency.

No case may be reopened if it is over eighteen years old and no payments of compensation have been made for more than eight years.

The cost of the Worker's Compensation Board and its appendages is borne by the insurance carriers, who are assessed each year according to some formula. This money goes into the State Treasury.

In New York an employer has three choices of coverage:

1. He can obtain coverage with a private company.
2. If large enough he might become a self-insured employer.
3. He can obtain coverage from the State Insurance Fund. This is a semi-State agency, which functions essentially as an insurance company. The State Fund must accept any employer who asks for coverage, and its rates are lower than those of private carriers. It is fully staffed to do all the work of an insurance company, including attending hearings in its behalf. All its employees are considered State employees and are covered by the State's health insurance and retirement plan.

The New York law allows employees of carriers who are not attorneys as well as attorneys to appear at all hearings in their behalf. If the carrier chooses to hire outside counsel to represent it, then it pays such attorneys. Customarily large insurance companies, such as Liberty Mutual, use hearing representatives who are employees to handle simple hearings and hire outside counsel for complicated hearings. Some carriers, such as Aetna Casualty Co., hire attorneys as employees to handle hearings. Some small companies rely entirely upon outside counsel. The State Insurance Fund has numerous hearing representatives (who are not lawyers), but it also uses outside counsel on occasion.

With respect to appeals, either party may appeal to the Board from the decision of a judge. This applies to both appeals on questions of fact as well as questions of law. The Board will then put the case on a Board calendar, where arguments will be heard before a panel of three Board members. However, only questions of law may be appealed to the Appellate Division (but substantial evidence is regarded to be a question of law). The Court of Appeals has recently changed its rules, so that now appeals to the highest court are possible only if the Court grants the appellant's Motion to Appeal.

The New York Law does not permit an employer to force a claimant to take another job elsewhere, or even an inferior job in the company. Also, a claimant who moves out of the state is still entitled to be paid compensation if it is so indicated.

There are heavy penalties if an employer fails to have compensation coverage. If there is no coverage and it is found that a claimant has a valid claim, then the No Insurance Unit of the WCB pays the claimant, and it then has the responsibility to attempt to collect from the uninsured employer.

I am not sure exactly how this functions, but I do know that premiums for employers engaged in what are classified as hazardous industries, are retro-rated. A company would be more likely to observe safety precautions if it stands to be personally held responsible for failure to do so.

In the end, the efficiency of operation of an insurance company is largely responsible for its statistics. The question of fraud has been brought up in the media with respect to Maine's difficulties. With sound investigation most frauds can be discovered. However, if a company does not have top-notch investigators, this will be discovered and fraud will result. We did not have any particular problem with this in New York while I was working there. Nor did we have the bitterness or the use of threats which seem to pervade the system here.

I sincerely hope that this information will be of value in resolving Maine's Workers' Compensation problems. From what I have read, it seems to me that you require a brand new law.

AGK:m

Very truly yours,

Anne G. Kafka

the BRIDGE construction corporation
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AUGUSTA, MAINE

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June 5, 1992

Blue Ribbon Commission
on Workers' Compensation
c/o Governor McKernan
Augusta, ME 04333

Dear Governor McKernan:

Having read the Executive Summary published by the Workers' Compensation Group, I must say that I am quite impressed and I support their conclusions. It is impressive to see Management and Labor representatives come together, pinpoint major common problem areas, and propose a more workable system. Their summary highlights many concerns which we have had at Bridge and recommends logical solutions. Who can understand the system better than those employees and employers involved in it?

We sincerely urge the Blue Ribbon Commission to support this direction.

Sincerely,

THE BRIDGE CONSTRUCTION CORPORATION

By _____
Allison B. Pederson
Human Resources Manager

ABP/cy

Blue Ribbon Commission in session (MSCI Quarterly – A publication of the Maine Council of Self-Insurers, Spring 1992) ●

(Available on request-please include the following citation: WC115-BRC-08-Pt.A-103.pdf)

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1560 Broadway, Ste 700
Denver, CO 80202
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TO: Ms. Bushey

FROM: Brenda Trolin / John Lewis

DATE: 6-8-92

___For your information ___Per your request

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TRANSMITTAL LETTER

Honorable Ladies and Gentlemen:

The attached reports and recommendations are the products of the deliberations of a Blue Ribbon Panel formed under the auspices of the National Conference of State Legislatures (NCSL) to provide assistance to the NCSL Task Force on Workers' Compensation. In other contexts, the groups represented have sometimes been adversaries and may well be in the future. However, their concern for the serious problems confronting state workers' compensation systems and the impact on business and labor provided the basis for the cooperative efforts of this somewhat unlikely alliance. The list of members is attached.

Each member of the panel is recognized as an expert in the field of state workers' compensation. Each has come to respect the expertise of the others. Each has come to understand the legitimate interests of the broad range of stakeholders, including labor, management, the insurance industry, the legal profession, the medical community, and administrators of the state programs. It is probably no coincidence, in the face of a mounting crisis, that a degree of camaraderie and mutual respect has grown up within this group because it would not have been possible to achieve this final work product without it.

The Blue Ribbon Panel must now go on record with a statement of the fundamental philosophy underlying this effort. There are three components to that philosophy.

First, five topics were selected for review: the delivery of medical services, permanent partial disability, administration of the system, insurance economic issues, and occupational health and safety. These represent five issue areas that the group considered major problem areas in state systems. They are not the only policy areas of interest to state legislators, but do represent critical components to be considered in any analysis of a state workers' compensation system.

A second component of the philosophy is that no individual paper should be considered apart from the whole. To provide meaningful reforms, each of the issue areas addressed in the papers must be reviewed and analyzed. In addition, the recommendations must be considered within the text of each paper and not simply by itself. The workers' compensation system is just that: a system. Tinkering with parts of it and failing to view the various components and their relationships will result in failure to create a healthy, viable system.

The third cornerstone is that these recommendations are for consideration by the NCSL task force and any state experiencing difficulties with their system. It is not the intent of the Blue Ribbon Panel to suggest that these recommendations be used in any state in which the legislature is content with current law. Instead, these recommendations are offered to the NCSL task force and those states desiring to amend their laws in a way likely to find support among all the competing interests.

While we have completed work on the enclosed papers, the group will remain intact to respond to any questions that task force members may have. In addition, we welcome the opportunity to continue to work with the task force -- by drafting additional papers at the request of the task force, by participating at task force meetings, or in any manner the task force deems appropriate.

Respectfully submitted,

The NCSL Blue Ribbon Panel
on Workers' Compensation

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March 19, 1992

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MEDICAL ISSUES IN WORKERS' COMPENSATION AND THE DELIVERY OF MEDICAL SERVICES

National Conference of State Legislatures
Blue Ribbon Panel on Workers' Compensation

When workers' compensation programs were first instituted in this country, the general health care delivery system was quite different from what it is now. In most instances health care was obtained through the family physician or the local hospital, on a fee for service basis, without most of the third party payor programs and private and governmental cost containment mechanisms that now dominate the health care system. The literature of the time gives reason to believe that the need to make medical decisions, particularly those involving treatment, was not expected to result in much dispute or litigation. Experts for hire were virtually nonexistent, and fee schedules were the cutting edge of medical cost containment.

The landscape is now quite different. The cost, quality and availability of health care have become front-page issues across the country. The workers' compensation system coexists with a myriad of health care programs. Cost-shifting from one program to another has become a major issue. Workers' compensation now deals with a far broader range of medical issues than it once did, many of them extremely complex. Access to quality health care has become a concern for workers' compensation benefit recipients in some areas, due to the reluctance of health care providers to participate in a system that they believe pays inadequate rates and burdens them with paperwork and frequent litigation. The entire workers' compensation system has become much more expensive, driven in large part by its medical services component and the expense of resolving disputed medical issues. All of these developments have made it essential that we look critically at each of the system's components, to determine whether there are more effective ways of meeting its responsibility to provide quality health care at a reasonable cost.

For many years debates over the direction of the medical segment of the workers' compensation system have taken place as if it existed in a vacuum. While massive changes were occurring in the general health care system (and equally massive problems being recognized), workers' compensation remained focused on fee schedules and choice of physician issues as means of controlling costs and maintaining quality. It should now be clear that the workers' compensation system cannot continue to rely solely on these limited mechanisms in its efforts to control the cost and quality of medical services.

Workers' compensation is a minor piece of a very troubled and controversial health care system. It is doubtful that workers' compensation can simply go its own way, unaffected by what is occurring elsewhere. Certainly any escalation of costs in the general health care system will drive workers' compensation costs higher, and to date the workers' compensation system has proven even less effective than others in moderating these increases. It is highly likely that the workers' compensation system would benefit through greater use of at least some of the cost and quality control tools that are common to the rest of the health care network.

Over the years most insurance carriers and self insurers have implemented health care cost containment processes on their own, often without legislative mandate or support. Recently, however, legislatures and administrators in a number of states have attempted to force all of the participants in the workers' compensation system to use some of the techniques that are commonplace in the general health care system. Fee schedules have existed for a long time in a few workers' compensation programs, but they are now becoming commonplace. Utilization review, treatment standards, case management, second opinions, independent medical examinations and similar techniques are being employed by state agencies and insurers in some workers' compensation programs, and are likely to become more prevalent.

Through all of the discussions and debates, we should remember that the health care goals of any workers' compensation system are the same as those of the general health care system. They are to provide good medicine at a reasonable cost. We believe that because the goals are the same, and because it uses the same medical care delivery resources as the far bigger general health care system, wherever possible workers' compensation should seek to avoid duplication of effort. It must take advantage of economies of scale that can come about by working with rather than being independent of the general health care delivery system.

This is not an easy task, because of the multitude of programs involved in health care delivery (various private programs, Medicare, Medicaid, etc.) and the extent of their differences as compared to workers' compensation. Rather than take on this whole range of programs, we will focus on the relationship between workers' compensation and the health care benefits provided by employers to a segment of the employed population.

Approximately 89 percent of the work force is provided with some form of health care coverage for non-occupational conditions through their employment. In many instances coverage is also provided for family members. These programs are typically paid for through a combination of employee and employer contributions. Considerable variation exists in all aspects of the programs, including the levels of deductibles, co-insurance, reimbursement and aggregate maximums.

Many of the general health care programs utilize the controls that are now being brought to bear on the workers' compensation system. Because these programs are for the most part established and controlled by contractual agreements rather than by laws and regulations, they are better able to utilize cost and quality control mechanisms, and have implemented them to a far greater extent than has the workers' compensation system. Whether or not the mechanisms have been effective in controlling costs and assuring quality of care remains a matter of considerable debate. Unfortunately, there is greater reason for concern over their potential when considering their use in workers' compensation.

Workers' compensation remains a system in which medical issue disputes are subject to a litigation-based resolution process, and one in which the relationship among employer, employee and medical provider is driven by a set of statutory and regulatory provisions, rather than a consensual arrangement. It is further hampered by the fact that decisions involving medical care can affect entitlement to substantial cash benefits. Thus, the parties to a workers' compensation dispute may have greater incentives to fight over medical issues

that could be easily resolved or would not even occur in general health care delivery systems.

Notwithstanding these concerns, the Panel believes that it is in the best interests of the parties to the workers' compensation compact to bring many of the techniques previously described into the workers' compensation system, and to partially integrate them with similar programs already in existence in the general health care system. That is, state workers' compensation programs should recognize and work with some of the actual delivery and control programs that are operating in various health care delivery and payment systems, rather than simply adopt the techniques they use to control the quality and cost of services.

This does not necessarily require the adoption of what is often referred to as "24-hour coverage," involving the merger of the workers' compensation system's health care component with a general health care program. It simply means that in those instances in which an employer provides general health care coverage for its employees, medical care for work-related injuries and diseases should be provided within the same mechanisms and subject to the same controls. They include limited provider panels, utilization review, managed care, PPOs and HMOs, case management, and additional levels of administrative-style review within the program.

The use of an employer's cost containment program in conjunction with the delivery of workers' compensation medical services will raise legitimate concerns over the potential for abuse. Because they are often designed and implemented by the employer and its insurer without the active participation of employees or their representatives, such programs may be viewed as totally responsive to employer interests. As a result, some parties fear that they may be used to deny workers proper care for their work-related injuries, through the adoption of overly stringent limitations on treatment in the guise of legitimate cost and quality controls.

There are at least two ways to prevent this problem from developing. The first is to require certification of the employer's program, to minimize the likelihood that it will be used inappropriately. This can be accomplished by the workers' compensation authority or another state agency that has the expertise and resources to evaluate and monitor this type of program.

The second is a protection that must exist in any event, to meet the due process requirements that apply to every workers' compensation system. It is the review authority of the workers' compensation agency, exercised both informally and through the litigation process. Just as is presently the case in most instances of disagreement over medical treatment, the workers' compensation agency's dispute resolution process can be used to review any disagreements arising out of limitations contained in the employer's program and decisions made by its review process, in the same manner as it would deal with any other medical issue dispute.

This does not mean that every disagreement over medical treatment, whether it first goes through some outside review process or comes directly to the workers' compensation agency, should be immediately placed into the formal litigation process. The same techniques used in the private programs -- certification, review, case management, etc. --

should be utilized by the workers' compensation agency, in its efforts to resolve medical issue disputes quickly and with the highest level of expertise. Each workers' compensation agency should have in place, either through its own staff or by contract with an outside provider, all of the medical cost control and quality assurance mechanisms that can be shown to have legitimate value. If the employer, its general health care insurer or its workers' compensation insurance carrier also has such mechanisms in place, the agency's program would act as a reviewing body. If they do not have such programs, the agency's program would be the first line of control, making initial decisions concerning medical treatment disagreements.

This approach is intended to obtain two results. First, it should encourage the private sector programs to insure that the control mechanisms they use are fair and can withstand scrutiny through both a certification process and a review process. Secondly, through the adoption of its own expert-based control and review processes, the agency will be in a position to prevent medical issue disputes from occurring in some cases, and to more quickly and appropriately resolve them when they do arise.

No matter how well the system operates, there is no reason to believe that every medical issue will be resolved without the need for invoking the litigation process. When that occurs, there are steps that workers' compensation agencies should take to bring litigation to a prompt and correct conclusion. The use of health care professionals who have been identified by the workers' compensation system as having the highest level of competence and the ability to render opinions without partisanship, to conduct independent examinations or review conflicting medical opinions, will help reach these goals.

In some states the use of so-called independent medical examinations does not involve neutral experts, but rather the selection of an expert by one side or the other. This choice of terminology should not confuse matters. Each state should adopt laws and regulations which will permit it to structure a true independent medical examiner program and ensure its effectiveness. This requires considerable attention to issues such as how the agency should select independent examiners, how they should be assigned to a case when the parties cannot agree to a specific examiner, and how much weight should be given to the IME's opinions in order to strike a balance between the need for IME opinions to have significant impact without making them binding.

A workers' compensation system can go even farther in structuring its medical issue dispute resolution process. Many of the issues that are decided on a case-by-case basis through the litigation process, such as the weight to be given to a particular diagnostic technique or to a theory of disease causation, can be better dealt with through the use of rules, established through the rule-making process, to establish decision criteria that are binding on all cases. When properly utilized, this process permits the agency to obtain the best possible medical opinions involving specific issues, rather than relying on the resources and abilities of the parties in individual cases to determine what medical evidence will be made available to the fact-finder. Not every issue is amenable to this type of approach. For those that are, and are likely to come up time and again, it has significant value, providing uniformity and predictability, and avoiding multiple litigation of the same issue. This proposal should not be interpreted as meaning that workers' compensation agencies be permitted to use their rule-making authority to make decisions on baseline issues of compensability, such as whether heart attacks or carpal tunnel syndrome should be compensable.

If all of the processes described in this document are further developed on the basis of valid medical concepts and are professionally implemented, it is likely that they will be supported by the ultimate arbiter, the formal litigation and appellate review process. (If they are not supported, there may be good reason to question the validity and effectiveness of the dispute resolution process.) Once this occurs, the result will be higher quality and more cost-effective medical care, and a reduction in the medical disputes that now permeate the workers' compensation system.

The recommendations are intended to develop a system that limits the exercise of discretion, makes many decisions in the aggregate rather than on a case-by-case basis, attempts to prevent disputes by providing clear directions, and resolves disagreements in most instances with something less than full-blown litigation. It requires a workers' compensation agency that is adequately financed and professionally staffed. Without the necessary resources, there is no reason to believe that an agency can exercise proper and effective control over its medical care delivery system.

Some parties view the workers' compensation system as a litigation process rather than a delivery system. They believe that the way to get the right result is to permit the parties to do battle as they would in a civil trial, with a full range of testimony and expert witnesses, and almost total discretion on the part of the fact-finder to determine what medical treatment is appropriate, what it should cost, and what cash benefits should be provided. Those who subscribe to that model will not be supportive of the approach described in these recommendations.

This discussion has not dealt with the difficult questions of how or even if the deductibles, co-insurance and aggregate maximums which are often found in general health care insurance programs should be permitted in workers' compensation. The possibility of their use involves very significant issues which have not been resolved during the committee's discussions, other than to recognize that with the exception of one unimplemented experimental provision in the Florida law, no state's law permits the use of these tools in its workers' compensation program.

The committee has also not attempted to reach a decision on another major issue, that of choice of provider. Most of the parties to the debate over who should choose the treating physician have strongly held positions. The proponents of employer choice claim that it provides lower cost and higher quality care, and argue that the party paying for the care should have control over it. Employee choice is alleged to be correct on grounds that it gives control to the one individual most directly affected by the care being provided, prevents employers and insurance carriers from having undue influence over the treatment process, and results in lower costs. Various medical services providers often view one version or another as likely to increase the volume of their business, and lawyers are likely to believe that having control of physician choice provides their clients with control over much of the claim and furnishes an advantage should litigation occur.

There is also a secondary aspect of the physician choice issue, that of the right to change treating physician. Either party may wish to implement a change for very legitimate reasons, such as concerns over the quality and appropriateness of the care being received, or a lack of rapport with the treating physician. However, there are other reasons as well,

such as doctor shopping to find a "treating" physician who will support a particular litigation-related position. A few states now expressly limit an employee's absolute right to change treating physician, and in some the employer or insurance carrier's right to force a change without either the employee's agreement or the intervention of the administrative agency is limited through court decision or custom.

The claims and allegations made over the significance of one method of choosing medical providers versus another are seldom backed up with hard evidence, particularly with regard to quality and cost. Even when studies are undertaken, they often result in conflicting or questionable conclusions. Nonetheless, the question of provider choice continues to play a prominent role in many workers' compensation reform efforts, and gives the impression that it is a crucial issue in every case. However, this is not true. Many, if not most, injured workers are satisfied with the medical care that they receive, irrespective of how their health care providers were chosen. Many employers permit their employees to choose their own physicians, even when the law provides for employer control, and many employees use physicians designated or suggested by their employers, even when the law permits employee choice.

There is no consensus within the Panel regarding the resolution of this issue. However, the Panel believes that most of the problems associated with choice of physician occur in only a limited number of cases, despite the fact that the issue is the cause of considerable debate and disagreement in many states. The problems that do exist are exacerbated by laws which give one party or the other virtually total control over treatment, and systems in which medical issues are resolved solely through the formal litigation process. The importance of control over provider choice for quality and cost reasons is lessened when an effective managed care and utilization review system is in place, when there is flexibility in the physician selection process, and when the administrative agency is able to quickly and appropriately respond to treatment questions raised by the party not involved in making the choice. Concerns should be reduced even further when the system does not permit either party to use "doctor shopping" for litigation-related reasons.

Progress in this direction can be made when medical issue disputes are resolved through reliance on truly independent expert practitioners, or some other procedure that is trusted by both parties.

The choice of physician question is closely related to another issue that will not be resolved here, that of the role of particular types of health care providers, most notably chiropractors. Few states have been able to avoid the intense political pressure that arises when efforts are made to limit or control their involvement in the workers' compensation system. Although the committee has reached no conclusion as to the appropriate role for chiropractic care in the workers' compensation system, there is considerable support for the approach taken by Oregon in its 1990 legislative enactments. That is to provide a form of utilization control by requiring the involvement of an M.D. or D.O. as primary treating physician and limiting the total number and frequency of chiropractic treatments unless additional services are agreed to by the primary treating physician or the employer/carrier.

In addition to the major concerns that have been discussed, there are a number of less controversial issues that surface in many states and which can be dealt with relatively easily. One of the most prevalent is the practice of "balance billing," through which a medical

provider seeks payment from the injured worker for that part of its bill which the workers' compensation system has determined should not be paid because the services were unnecessary or the charges too high. Several states have established statutory rules and procedures that prevent this from occurring, and the Panel supports their efforts.

There are also concerns over the entire process of billing and reporting as it affects medical service providers, the employer or insurance carrier, and the workers' compensation agency. Similar concerns are also found in the debates over the future of the general health care system as well. Workers' compensation agencies must review their billing and reporting procedures, to meet three goals. The first is the development of "user friendly" methods of communication. Bills and reports should be in formats that are easily understood by the sender and the recipient and which match as closely as possible their counterparts in the general health care system. One suggestion that has been made is that workers' compensation adopt the HCFA billing form.

Next, physicians must be educated regarding the specific informational needs of the parties to the workers' compensation system, so that their reports can match those needs. Reports that are delayed because the physician erroneously believes that a great deal of information is required impair the benefit delivery system, as does a report that contains insufficient information.

Finally, just as more attention has been focused on timely payment of medical bills, similar attention must be paid to the furnishing of reports. Not only should reasonable time frames for reporting be established, but they must also be enforced. Much of the cost containment activity that this report recommends can be substantially hampered when the providers' reports are not received in a timely fashion. Similarly, injured workers suffer when benefit payments are delayed due to lack of medical information, and carriers may overpay for the same reason.

POLICY STATEMENT
ON PERMANENT PARTIAL DISABILITY

National Conference of State Legislatures
Blue Ribbon Panel on Workers' Compensation

It is widely agreed that states encountering a variety of difficulties with their workers' compensation programs usually face problems with a category of cases known as permanent partial disabilities. States seeking to reform their laws often grapple with the task of identifying more suitable alternatives to their own system of compensating workers with these disabilities. A number of states have undertaken these changes only to find, eventually if not immediately, that the problems persisted or recurred. Specifically, efforts to hold down costs and litigation rates in this area were generally unsuccessful.

The evidence regarding the problematic nature of permanent partial disability claims is clear. Compared with temporary total disability claims, permanent partial disability claims require about six times the medical expense, but 17 times the average indemnity expense. Based on one study of experience in 13 states over a recent five-year period, about 3 percent of temporary total disability claims involved attorneys, whereas over 31 percent of the partial disability claims involved lawyers. It is these sorts of issues that have brought greater attention to this category of claims.

Perhaps it is because of the difficulties that many states have had with their permanent partial disability programs, that so much interstate variation exists. Few, if any, areas of workers' compensation exhibit so much variation in approach, allowing these to serve as experiments in operating these benefit programs. It is the policy setter's challenge to draw from this pool of experience those techniques that can be best adapted to their own particular state settings.

Minimally, goals must be established for any permanent partial disability program. An understanding must exist regarding the reasons for which benefits are to be paid, and the circumstances of those workers who receive the benefits ought to correlate with those reasons. The panel accepts the principles that the benefits should be adequate and distributed equitably among benefit recipients in the same factual situation. Agreement also exists that after the worker's condition has been stabilized, the benefits should be delivered promptly and with low transaction costs.

As noted above, states have adopted many different approaches to compensating workers with these disabilities. Variations exist regarding the basis on which compensation is to be paid and what factors are to be considered regarding benefit amounts. Broadly speaking, particular benefit approaches can be fitted into three categories:

> Impairment. Providing compensation based upon physical or mental loss of use of bodily function. This concept focuses on such factors as loss of motion and loss of strength.

Wage loss. The compensation benefit is based on the actual loss of earnings experienced as the result of the permanent impairment, with the amount of the compensation calculated and paid as the loss is actually experienced.

Loss of wage earning capacity. This approach takes into consideration the impact that factors such as age, education and work experience, when combined with a permanent impairment, have on the worker's ability to compete in the labor market. In some states, it is viewed as a predictor of the earnings loss that is expected to occur as the result of the permanent injury.

We believe that there is widespread acceptance of the proposition that the most important justification for compensation in such cases is actual loss of income. In a limited benefit system such as workers' compensation, it is appropriate to attempt to correlate the dollars paid for permanent partial disability (PPD) with the economic loss incurred.

The income replacement or "wage loss" approach to PPD compensation is the most direct method used to meet this goal. It involves monitoring post-injury earnings and replacing all or part of the income loss attributable to the permanent injury.

Another method which on its face appears to offer some opportunity to deliver benefits to those who are likely to experience income loss is the loss of earning capacity system. Unlike wage loss, it is intended to predict who will suffer income loss in the future as the result of their permanent injuries, or, in some states, to compensate for the worker's loss of ability to compete for jobs.

Because the impairment based approach determines benefit amounts through the evaluation of loss of physical (and possibly mental) function, on its face this approach may appear to have little value in a system that seeks to replace lost income. However, it may actually accomplish this. The dollar value accorded to a degree of impairment can be considered as the compensation level deemed appropriate to compensate for the average income loss sustained by a person with such impairment. Historical evidence indicates that the development of scheduled impairment benefits was based upon this concept. In addition, impairment is as good a predictor of who will suffer income loss as the combination of factors which are used in the loss of earning capacity approach.

Each of the basic compensation approaches has significant flaws:

Wage loss systems can provide significant disincentives to workers to return to full employment. Additionally, it can be extremely difficult, if not impossible, to determine if the loss of wages suffered years after the injury is due to the injury, as contrasted with economic conditions. This is particularly true in cases involving minor impairments. In a pure wage loss system, there is often a sense of unfairness about a scheme that gives a worker nothing even for a serious permanent impairment if he/she sustains no actual loss of earnings after the end of the healing period. There is also a sense of unfairness where very substantial compensation is awarded to persons whose injuries result in very minor physical impairments, although they experience sizable earnings loss.

The calculation of loss of wage earning capacity is inherently subjective, and generates the need for attorney involvement and litigation. In addition, there is little evidence that this approach is a very accurate predictor of future earnings loss.

Impairment benefits do not respond directly to the economic impact of the injury. The pianist and the attorney both receive the same benefits for the loss of a finger.

Each approach also has certain advantages:

Wage loss probably comes closest to the historic purpose of workers' compensation, replacement of lost income, and has the maximum potential for getting the highest proportion of permanent partial dollars to the people with the greatest economic need, those suffering actual loss of income. Theoretically, this approach should also encourage employers to rehire workers after injury, and to provide vocational rehabilitation when necessary.

Loss of wage earning capacity allows for consideration of both impairment and the potential for loss of income. Its subjectiveness can give administrators considerable flexibility.

Impairment can (though it need not) be estimated with relative ease, and with small disparities among evaluators, especially if the evaluators use the same standards.

Having described in very basic form each of the three approaches, it must be observed that variations on each theme exist. For example, adoption of the impairment concept does not require that impairment be the only factor considered. More complex alternatives are available. A state might choose to accept the impairment approach but modify the basic impairment rating by adding to or reducing the assessed degree of impairment through the application of factors relating to the worker's age, educational attainment level and other objective and, perhaps, subjective elements.

Another possible modification of the basic impairment benefit system is to provide substantially greater benefits for cases involving high levels of impairment, because they are the ones that are more likely (but not guaranteed) to result in loss of income. Under this approach, for example, a 20 percent impairment might be compensated at three times the value of a 10 percent impairment, rather than the more customary method which would provide twice as much compensation.

Using any of these three basic approaches, the determination of the actual benefit amount can be calculated in different ways. States that compensate based on impairment tend to provide greater indemnity benefits for higher paid workers, assuming similar impairment ratings. This occurs where the compensation rate is linked by formula to the worker's pre-injury earnings level. Where the maximum wage rate for purposes of partial disability compensation benefits is a low one, there is more uniformity in the benefit amounts paid to workers with similar rates of impairment. This situation is especially likely to occur in those states where the maximum weekly benefit for a permanent partial disability is below the maximum set for temporary total disabilities. In a small number of states that are impairment based, permanent partial disability benefits are not linked to previous earnings,

but instead are provided as a fixed number of dollars per point or degree of assessed impairment.

It has been difficult for the Blue Ribbon Panel to reach consensus on a preferred approach to permanent partial disability compensation. Some find that the wage loss approach was proven to be flawed when implemented and as interpreted by the courts in Florida, yet the experience in Michigan has been more favorable. Others argue that the widespread use of lump sum settlements to close out cases means that Michigan does not actually practice a wage loss approach. In the absence of such settlements, administering such a scheme is difficult and prone to contention. Impairment-based approaches should be the simplest to administer, but the experience in states like Oklahoma and New Jersey proves that the approach is not guaranteed to function easily. In the absence of common evaluation guidelines, agreed standards and impartial medical examiners, impairment-based schemes can also involve litigation, delays and inconsistent outcomes.

Perhaps the most serious reservation about an impairment system is that it can result in a grave injustice in those limited instances where there is a very serious, if not catastrophic economic loss suffered by a person which is far out of proportion to the degree of impairment (and, therefore, the compensation). Some states that use the impairment approach have tried to deal with that. In Wisconsin, Minnesota and Colorado, for example, benefits are based on impairment unless the worker has not been able to return to his/her pre-injury level of wages. In states such as Connecticut and Massachusetts, benefits are paid for impairment and additional amounts can be paid for earnings losses.

There is a concern that schemes that pay for impairment and allow also for earnings loss may evolve so as to regularly pay both types of benefits. (Massachusetts comes to mind here.) Instead, it would seem desirable, in most cases, to limit benefits to be paid for impairment, with the door left ajar for those rare instances where an egregious injustice has occurred. In those instances, the worker would be paid, initially, an impairment-based benefit, and when those benefits expired, a supplemental income award based on their actual wage loss. The challenge becomes how to limit these awards to those cases where serious economic harm has been done. The following represent possible ways that effective limits may be imposed:

> If the worker enters into a compromise and release agreement (lump sum settlement), eligibility for any supplemental benefit would cease. This option would discourage some workers from taking lump sum settlements, but it would lead insurers to pay a premium over and above the pure impairment value of the scheduled benefit to get closure of the case. A variant of this is to allow C&Rs for the scheduled loss only where the claimant has returned to work. In that case the insurer would not have to pay a significant bonus to achieve closure, since the worker has demonstrated a willingness and ability to return to and hold employment.
>
> The state might opt to provide income replacement benefits only where the impairment is a serious one. Texas and New York are examples here. This option has two virtues. First, it would keep the numerous minor injuries from clogging the adjudicatory mechanism, and second, it would prevent those minor cases from drawing funds from the system. In turn, more dollars would remain available for the more serious cases. Two problems exist here. The threshold becomes a focal point

for litigation as the parties battle to be on the right side of the margin. Second, no matter how low the threshold, it is possible that some workers who fall below it will be harmed economically by their "minor" impairment. Note, however, that this situation already widely prevails where schedules are employed.

A time limit could be instituted so that there would be no supplemental income award if the required level of income loss does not occur within that time after maximum medical improvement is achieved. This provides employers and insurers with some degree of predictability -- in most cases.

A supplemental income award could be limited to instances where the worker met a vocational rehabilitation requirement. For example, the worker's entitlement would be based on having submitted to an evaluation of the value of rehabilitation, and possibly requiring participation in a recommended vocational rehabilitation program.

Eligibility for the supplemental income award would be reviewed regularly -- at least at one-year intervals, unless the agency believes that these reviews are academic.

The supplemental income award would terminate at some specific age, perhaps linked to a common age of retirement.

Use of an impairment approach, even when coupled with other objective factors, also raises questions of if and how pain and suffering and related factors are to be used in the permanent disability benefit system. Workers' compensation, as originally designed, was not intended to compensate for pain and suffering, and none of the existing systems explicitly provides payment for that element of loss. We believe that the original decision not to deal with pain and suffering was and is appropriate, and that no changes should be made. Any attempt to directly compensate for pain and suffering would turn workers' compensation into a tort-like system that would have substantially higher friction costs. It is unlikely that the system would be able to provide the prompt and relatively efficient delivery of benefits that is its goal.

That does not mean that consideration of pain and suffering is not already a factor in some aspects of the compensation system, or that this will not continue in the future. Many judges, hearing examiners and commissioners have expressed privately that they cannot disregard the pain and suffering that a worker has experienced or continues to sustain when the worker is rated. In states that compensate for loss of wage earning capacity, so much flexibility (or subjectivity) exists in the setting of rating that pain and suffering may be compensated implicitly, even where the statute makes no provision for it.

When a state uses an impairment-based benefit system, there may appear to be no room for compensating for pain and suffering. However, it can be argued that considerations of pain and suffering are built into the schedule. The impairment award can be considered the state's determination of the appropriate benefit to compensate for both income loss and pain and suffering for the average case, though in reality some individuals will be overcompensated and some will be undercompensated. And the AMA guides used to evaluate the extent of impairment expressly recognize that pain can contribute to impairment.

Only in pure wage loss systems is pain and suffering ignored as a possible subject of compensation, but even here their existence and extent will influence decisions as to whether an individual is capable of working. In those jurisdictions, workers receive no compensation if they sustain no earnings loss after temporary total disability has ended, and the benefit entitlement is determined solely by the amount of the loss. As a result, there is little opportunity for increasing an award to reflect the judge's concern over the claimant's pain and suffering. However, some wage loss jurisdictions also provide impairment benefits under certain circumstances, thereby providing compensation for non-economic losses.

During 1990-1991 at least 11 states addressed the issue of permanent partial disability. Though New York and California raised benefits, most changes reflect an attempt to contain the cost of permanent partial benefits by either adopting provisions to better measure the degree of impairment or by reducing the duration and/or maximum amounts of benefits payable.

With respect to the type of permanency benefits, only Texas adopted a major change. It eliminated the loss of wage earning capacity approach and shifted to one that is impairment based. Additionally, it provides for a supplemental income benefit in certain instances where there is wage loss and the impairment rating is at least 15 percent. The remaining 10 states -- Massachusetts, Rhode Island, New York, New Mexico, Colorado, California, Connecticut, Oregon, Florida and Maine have essentially maintained existing statutory provisions with modest to substantial modifications relating to eligibility, duration or maximum payments or a combination thereof.

States that increased either the weekly amount or duration of partial disability benefits include New York, Colorado, Oregon and California (Colorado and Oregon added provisions to more credibly determine impairment). States that reduced the duration and/or amount of wage loss or loss of earning capacity or impairment benefits include Massachusetts, Rhode Island, Florida, Maine, Texas and Connecticut. Policymakers considering the issue of PPD in the future may want to review the experience in the above states that led to their changes.

With the passage of the Americans with Disabilities Act, considerable uncertainty exists regarding its impact on compensation for permanent partial disabilities. There cannot be any certainty how the law will evolve with future court decisions and regulations. Employers are likely to be under an increased obligation to reemploy their injured or sick workers. For that reason, disability benefits paid based on the (prospective) loss of wage earning capacity may decline, relatively. Alternatively, these benefit payments could increase in those states where employers do not reemploy such workers, since such an action would be presumed to indicate the existence of a very severe occupational disability.

The A.D.A. provides yet an additional incentive in states using a wage loss approach for employers to reemploy their disabled workers. Consequently, costs to employers of compliance with the law could be somewhat offset by lower workers' compensation costs.

For states that base their permanent partial disability awards on impairment alone, the A.D.A. may not have an immediate impact on compensation costs. However, the likelihood that the new law will lead to greater employment opportunities for workers with

handicaps could prompt some states to modify (reduce) the size of their impairment benefits. All of this is speculative, but the Panel is confident that the long-term consequences of the law can be significant for state workers' compensation programs.

For many persons, permanent partial disability compensation is related to another contentious issue. Many states award benefits for disfigurement. Except in the rare case, this benefit cannot be justified on the basis of earnings or economic loss. In a few states the benefits may be large, but in many they are perceived to be almost a nuisance award. There, a good case can be made that payments that are being made to workers with relatively minor injuries occur at the expense of those with more serious impairments. Others argue, however, that these benefits are simply frosting on a pretty skimpy piece of cake. In almost all states, issues of disfigurement rarely lead to litigation.

THE ADMINISTRATION OF STATE WORKERS' COMPENSATION PROGRAMS

National Conference of State Legislatures
Blue Ribbon Panel on Workers' Compensation

Inherent in the workers' compensation concept is the obligation to assure injured workers that the correct amount of benefits will be provided in a timely manner, with a minimum amount of dispute or need for litigation. When disagreements do arise, they must be resolved quickly, efficiently and fairly. The only way that these goals can be met is through the existence of a strong administrative agency overseeing the operation of the program and providing a forum for the resolution of disputes.

This philosophy is not necessarily accepted by the entire workers' compensation community in every state. Many of the arguments concerning the appropriate role of government in other aspects of economic life can be applied to workers' compensation. However, the Panel believes that the need for a strong, proactive administration is clear, and that any disagreements should be over the details of administration rather than the fact of its existence.

It is also important to note that an agency's ability to administer a workers' compensation system is dependent not only upon the financial resources that it is given, but also the quality of law that it is asked to enforce. A law that is well written and which establishes a system that is relatively simple to understand and implement is likely to have greater success than one that is highly complex.

1. The structure of the workers' compensation agency

A. The agency should be directed by a professional administrator, appointed for a fixed term that is long enough to minimize the influence of political pressures. The appointment should be made by either the governor or the governor's appointee to whom the administrator is to report, with customary legislative involvement.

B. The agency staff, including senior management, should consist of qualified persons selected through civil service procedures. They should be remunerated at levels consistent with the need to ensure that skilled personnel will work at the agency. Their work should be reviewed annually in a manner comparable to that in other state agencies, to promote high levels of professional competence.

C. There should be recognition that the workers' compensation agency has significant responsibilities beyond merely providing a forum for litigation. Its primary obligation is to administer the law and to see to it that appropriate benefits and services are provided promptly, thereby avoiding the opportunity and need for litigation.

D. Formal dispute resolution should be dealt with through professional hearing officers, appointed by the administrator for fixed terms. Appointment and reappointment should be on a non-political basis, with the involvement of employee and employer representatives. Hearing officers need not be attorneys but require access to a staff

attorney. They also require educational support, at the time of appointment and on a continuing basis.

E. There should be a level of administrative review of individual case decisions within the workers' compensation agency, to provide consistency among the decisions of the hearing officers. Review within the agency will also furnish interpretations of the law by a body with significant workers' compensation expertise, rather than solely by courts that may have little understanding of workers' compensation and less desire to deal with it. Members of the review body should be appointed by the governor or through a process following the procedures used to appoint appellate judges.

F. The agency and its staff should be accessible to worker and employers. Consequently, agency offices should be distributed across the state consistent with the location of employments. Adequate numbers of toll free telephone lines, serviced by knowledgeable agency staff, should be available from all locations in the state.

G. The agency should be structured in divisions that can provide appropriate services for each of the agency's functions, such as:

1. Oversight of the benefit delivery process.
2. Coordination of all activities related to the delivery of medical services, including review of quantity, quality and cost of services, approval of service providers, provision of advice and assistance to the parties, and assistance to the dispute resolution process.
3. Supervision of vocational rehabilitation services.
4. Informal dispute resolution facilities, such as an ombudsman and informal mediation.
5. Collection and assembly of data to be used for management information, program evaluation and research activity.
6. Development of linkages between occupational safety and health programs and the workers' compensation agency.

2. Funding of the agency

A. There must be recognition of the need for adequate funding of all of the agency's responsibilities. Failure to maintain adequate funding will result in the agency being unable to meet its obligations. This is likely to decrease the quality of benefit delivery to injured workers and increase the cost of the system to employers. A labor-management advisory committee can be employed to oversee the agency's budget and to act as an advocate when necessary.

B. Consideration should be given to revenue sources other than general revenues, to assist the agency in maintaining the required level of services during periods of state budgetary restrictions. Currently, 35 states fund their agency primarily from assessments on carriers and self insured employers (this includes six exclusive state fund states). Two states levy assessments only on insurance carriers while one state assesses only employers and another levies assessments on both employers and employees. Additionally, many state agencies utilize funds collected in fines, penalties and interest charges that are not paid as damages to a party for administrative funding purposes.

For those states that use a percentage assessment mechanism, the Panel supports an assessment base that relates to workers' compensation experience. That is, the assessment should be a percentage of workers' compensation benefits paid, or of premiums, or some other experience-related amount, rather than a percentage of payroll.

3. Education

A. A workers' compensation system will function most effectively if all parties understand their rights and responsibilities. A state workers' compensation agency should design and actively utilize programs to educate and inform all of the participants in the system.

B. When the agency is notified of a workplace injury or occupational disease, the injured worker or his/her family should be given information regarding program entitlements and limits in the clearest possible terms. At a minimum the agency should provide pamphlets that explain the law in simple terms (and in languages other than English where that is appropriate) and which direct people to a toll free telephone number through which more information and assistance can be obtained.

C. State agencies should use public service announcements on radio and television and any other means available in order to inform the public about workers' compensation programs. Where possible, it is desirable for these announcements to be sponsored jointly by labor and business groups.

D. The agency's educational program should include efforts to inform the parties about the importance of prompt reporting of injuries by workers to employers, by employers to their insurance carriers, by self insured employers and insurance carriers to the state agency, and by medical providers to other appropriate parties.

E. The agency should regularly provide educational programs for employee lay representatives, health care providers, attorneys, claims adjusters, their respective support staffs, and all others who must routinely deal with the workers' compensation agency. It should work in conjunction with state and local organizations and societies that could carry out agency-sponsored educational programs, which would allow broader dissemination without stretching the agency's own resources. A periodic newsletter may also be utilized to keep all parties informed as to the operation of the system.

4. Enforcement

A. The workers' compensation agency has the duty to actively enforce all of the requirements of the state workers' compensation law. It should not be a passive entity responding only when a complaint is made or the need for litigation arises.

B. The workers' compensation agency, in conjunction with state licensing and revenue departments, must enforce the provisions of the law which require that employers either obtain workers' compensation insurance coverage or secure the approval of the appropriate agency to self-insure its workers' compensation obligations. Where appropriate, the workers' compensation agency should refer illegal avoidance of the

insurance obligation to the state attorney's office, and be empowered to seek the immediate closure of illegally uninsured operations. Further, the workers' compensation agency should work with the insurance department to eliminate insurance fraud by employers that deliberately misrepresent their employee classifications and payroll when securing insurance. In addition, employers must not be permitted to evade their responsibilities through the misuse of independent contractor status or employee leasing arrangements.

C. The agency should monitor employer and carrier compliance with the law's reporting and benefit payment requirements, and compile and periodically publish data which show their compliance records. The agency should be authorized to establish penalties where appropriate, and must actively and routinely enforce those penalties. Repeated violations should result in a suspension of the right to self insure or to write workers' compensation insurance.

D. The agency must also take steps to ensure that workers use the system in the manner it was intended.

E. The agency should scrutinize closely all lump sum settlements, where permitted, and enforce any statutes and regulations pertaining to them.

F. The system is not well served if attorney fees are set so low as to eliminate the ability to retain competent counsel, nor should they be so high as to encourage unnecessary attorney involvement and reduce net benefits to workers. The agency should assure that fees are consistent with statutes and regulations, and adjudicate any disputes regarding fees.

G. The state agency should monitor the conduct of attorneys, medical providers, vocational rehabilitation providers, insurance agencies and brokers, third party administrators and others to ensure that they perform in accordance with the requirements of the law. The agency should have the authority to take appropriate steps when violations occur, including cooperation with other regulatory bodies.

H. The workers' compensation agency or other entity responsible for regulating self insurers should have either on staff or available by contract sufficient actuarial and financial expertise to ensure that only those employers who are financially secure are permitted to self insure, and that the bonds, excess insurance and other security arrangements required by law are in place and in the proper amounts. The state should also establish a guarantee fund to provide benefits in the event of default by a self insurer.

5. Dispute resolution

A. States are encouraged to implement reasonable structural changes which preempt disputes in the first instance. These include laws, rules and regulations that are comprehensive and relatively simple to understand and implement, and which provide all of the parties with a clear understanding of their rights and obligations. The use of the educational programs previously described, coupled with active enforcement of the law's requirements, will help prevent the mistakes and delays which account for much litigation.

The existence of ombudsmen and other forms of assistance can also help prevent and resolve problems before they become real issues.

B. When a dispute arises, an informal dispute resolution procedure should be utilized as early as possible. The parties should be able to effectively participate in this procedure with or without being represented by attorneys, at their option. A specialized mediation facility may be provided. In the alternative, hearing officers should seek to mediate between parties but, where unsuccessful, be permitted to issue findings and orders, and otherwise adjudicate the dispute in a formal manner. Concerns have been expressed by some Committee members that the roles of mediator and adjudicator are mutually exclusive and that a judge cannot and should not do both. Mediation requires willingness by the parties to communicate more freely than they would in formal proceedings, and in their view, open discussions might lead to the entry of an order. This may inhibit or destroy opportunities for effective mediation. There is no disagreement that informal dispute resolution procedures should be used by the agency.

C. When the need for dispute resolution occurs, efforts should be made to identify the issues as soon as possible and to exchange information between the parties. There should be a formal procedure in place to ensure that this occurs.

D. If a dispute is not settled informally, the parties should be given the option of utilizing an alternative dispute resolution procedure, inside or outside of the agency. The decision of the arbitrator should be final and binding on the parties. Procedures for electing alternative dispute resolution should be established by the agency, for use on a case-by-case election basis, or through collective bargaining. Availability of arbitration will permit the parties to choose a somewhat less formal approach to dispute resolution when they deem it appropriate, and will provide them with an alternative when the state fails to provide a prompt and equitable means of dispute resolution.

E. Disputes must be resolved promptly. Each state should establish and monitor standards for the timing of dispute resolution, and publish the results. Steps should be taken in each jurisdiction to ensure that hearing officers and commission members work productively and efficiently and that they decide cases in an unbiased and consistent manner. Each state should initiate procedures to achieve these goals. These might include the appointment of a bipartite review committee, the publishing of data concerning productivity, and the establishment of standards by which judges would be examined at the end of their terms. A procedure similar to that used by judicial screening committees might be considered.

F. In disputed cases the parties are entitled to a full and fair hearing of the factual issues involved in the dispute, on the record. Some jurisdictions have allowed a retrial of factual issues at an administrative or judicial appellate level. Most of the Panel members believe that the system should be designed to limit the resolution of factual issues to the hearing officer, with review only of legal issues (including the question of whether the hearing officer's findings of fact were supported by the evidence) by the administrative review body and the courts. A variation of this approach is to permit the administrative review body to consider the factual decisions made below, but reverse them only when they are clearly extreme when compared to the findings made by other hearing officers in cases involving similar factual situations.

At least one member of the Panel believes that the review body should have the absolute right to make its own findings of fact, to prevent wide variations in the results of cases involving similar facts. Other Panel members are concerned that this approach encourages the losing party in every case to seek administrative review in order to get "another bite at the apple." There was no disagreement, however, that appeals from the review body level to the court system should be on matters of law only.

Written opinions should be provided at each level, to fully inform the parties as to why a particular decision was reached. Judges and hearing officers should be trained in decision writing to enhance their ability to promptly write clear, concise and well-reasoned opinions that do not take so long to write that they delay the dispute resolution process.

There is some support within the Panel for initial decisions that do little more than announce the result, since they are quick, and may be sufficient for many cases, particularly those that involve relatively simple issues such as extent of impairment. The other side of the argument is that decisions that do not provide reasoning are unfair to the parties, and encourage appeals. One solution is to permit the parties to request a short-form order in those cases in which they feel they are appropriate.

6. Disputes over medical issues

A. Many disputes in workers' compensation involve medical issues such as the extent of impairment and the need for specific types of medical treatment. Each state should identify and use medical experts from various fields to provide impartial analyses and opinions on disputed issues.

B. Where there are medical issues in dispute, the parties should be permitted and encouraged to select an Agreed Medical Expert (AME). The findings of the AME should control the resolution of those issues.

C. When the agency requests that an impartial expert be used and the parties cannot agree to one, the impartial expert should be selected from a pre-established list. The findings of the impartial expert should be given great presumptive weight. Some members of the Committee believe that each party should be free to utilize their own experts, and that no particular weight should be given to any testimony unless the factfinder determines that it is deserving of additional weight. This reflects in part differences of opinion as to whether workers' compensation should act as a structured benefit delivery system as opposed to a litigation-based delivery system similar to the civil trial courts.

D. The agency's medical staff or consultants may be used by the agency to assist it in deciding disputed medical issues. This must be done in conjunction with established procedures which ensure that the parties are aware of this involvement and are given due process of law.

E. The cost of the AME or the impartial expert should be borne by the insurer or by the agency. Payment by the agency helps avoid perceptions that the party paying for an opinion has influence over it, and is the preferred option.

F. Standardized reporting by health care providers should be required. The agency may also develop regulations to ensure that established criteria are used in the resolution of issues which arise repeatedly. These issues include the value of various diagnostic procedures, determination of the compensability of conditions due to occupational exposure, the propriety of specific treatment modalities, etc. In the same manner it may provide for uniform assessment of impairment.

In establishing regulations of this nature the agency may in some instances be making policy decisions. These must be reflective of legislative intent, and not result in the extension of administrative authority to the determination of basic issues, such as those dealing with the types of conditions for which compensation will be paid. In others the agency will use the rule-making process to consider a wide range of high quality medical opinion to make medical judgments in the aggregate, rather than on a case-by-case basis. For example, it may decide that one theory of causation relating to a particular causation has greater validity than other competing theories, and require that theory to be used in all cases, rather than leaving the decision to individual judges in individual cases. Once again this raises questions as to whether workers' compensation is a structured delivery system or a litigation-based system.

Some Committee members expressed concern over exclusive reliance on the American Medical Association Guides to the Evaluation of Permanent Impairment in workers' compensation matters. The Guides are not intended to be used in making disability-based (as contrasted with impairment) evaluations. Further, these Guides do not evaluate every conceivable medical impairment.

The reason for using the AMA Guides or any other set of guidelines is to bring more uniformity to the rating of impairment or disability. With this goal in mind, states should review the AMA Guides as well as guides established by other professional organizations or by other states, to determine the extent to which any of them meet the state's intentions and needs. Appropriate adjustments can be made, and a uniform set of guidelines put in place. This is best done through the rule making process rather than by statute, to permit periodic review and improvement.

7. Data collection

A. It is impossible for any workers' compensation agency to meet its responsibilities without having access to relevant, accurate, consistent and timely data. Data are also necessary in order for the parties to the system to understand how the system is performing and what it costs.

B. Each state workers' compensation agency should work with organizations such as NAIC (its model legislation is attached), IAIBC and the Occupational Safety and Health Administration to classify and store its data in a manner consistent with the methods recognized by those entities. This will help reduce the burden on employers and carriers that must provide the data, by making reporting requirements similar if not identical across state lines. This approach will also permit more accurate comparisons among states. States should begin work immediately on these programs, but should confer with the parties to their system as well as other states and professional organizations to ensure that the programs are designed and implemented properly.

C. Each state agency should share its data on a regular basis with these other organizations, so as to foster, in principle, the spirit of cooperation and to promote, in particular, accuracy, uniformity and completeness of data among the states.

D. Data programs should be periodically evaluated to ensure that they are reliable, of value to the law's administration and improvement, and operated in a cost-effective manner. Where valid independent data sources exist outside the workers' compensation agency, they should be used to supplement the agency's efforts and to evaluate their effectiveness and accuracy.

8. Advisory councils

A. Each state should have an advisory council or committee which provides continuing oversight and allows for input to the state agency and the legislature. The council would monitor the activities of the workers' compensation system, to determine whether it is meeting its goals. The council would also be utilized to consider revisions in the statutes or regulations. The voting members should be an equal number of representatives of labor and management. Other parties, such as insurers, medical providers, attorneys and others may be specifically included as non-voting members, or brought in when needed at the request of the council members.

B. An advisory council should have sufficient staff support to permit it to perform its assigned functions. This support can come from the workers' compensation agency, preferably with a specific budgetary allocation, or through the establishment of its own staff. The latter approach permits more independence, and if adequately funded, provides the council with the resources necessary to conduct its own investigations, independent of the influence and control of the entity that it is monitoring.

C. The existence of an advisory council does not necessarily guarantee success in amending or improving a state's workers' compensation system. If individuals who understand the system and can speak for their respective interest groups are actively involved in monitoring the system, rational improvements are more likely.

D. The continuing presence of such an advisory group does not preclude the utilization of other advisory groups by the legislature or the agency. Such bodies can be used, as needed, to study specific issues or make recommendations in technical or specialized areas. There is also a very significant need for a monitoring program directed specifically at legislative and administrative changes. It is important for any state that seeks to modify any aspect of its workers' compensation program that it identify the changes in results or behavior that it expects to occur, and monitor the operation of the compensation system to permit it quickly to learn whether or not the actual results meet the intent. This information will permit policy makers to fine tune their efforts and correct problems before they have a major impact on the system.

TOWARD A WORKPLACE SAFETY AND HEALTH PUBLIC POLICY

National Conference of State Legislatures
Blue Ribbon Panel on Workers' Compensation

Preventing accidents and illness in the workplace is a key element in seeking to reduce human suffering and to achieve lower workers' compensation insurance costs. Injury and illness rates and the number of work-related fatalities can be lowered in jurisdictions that implement reasonable but aggressive safety and health programs. Many individual businesses have been able to lower their workers' compensation premiums by putting effective safety and health programs in place. Legislators and regulators recognize that a public policy which improves workplace safety and health can spread these gains across a broader spectrum of business and commerce.

The primary responsibility for workplace safety and health rests upon employers. Employees should observe established safety and health standards and practices, including the use of provided safety devices and appliances. Joint efforts by employers and employees can enhance workplace safety and health. In addition, there are a variety of federal, state and local government programs and legislation aimed at improving workplace safety and health. These range from the federal Occupational Safety and Health Act (which requires employers to "furnish to each of his employees employment...free from recognized hazards that are causing or are likely to cause death or serious physical harm") to state OSHA plans, from federal and state labor standards to local building and fire codes, from hazardous materials handling laws to state and local ordinances dealing with a wide variety of issues.

The workers' compensation insurance system provides employers with a financial incentive to invest in workplace safety and health. To the extent that workers' compensation premiums reflect the likelihood of workplace injury and illness, employers with good safety programs pay less than similar employers with poor safety programs. Financial incentives arising through the insurance mechanism affect employers differently. Where premiums are large, relative to the cost of safety programs, and where losses directly affect the employers' premiums, workers' compensation insurance provides a strong safety incentive. As these impacts diminish, safety incentives also diminish.

Various states have attempted to use workers' compensation statutes or other laws to encourage a "pro-active" stance to prevent job injury, illness and death. These programs vary in concept, approach and funding but have as their goal the prevention of injury and pain and the reduction of the economic costs of workers' compensation through safer and healthier workplaces. Such efforts include mandatory safety and health committees, safety plans or programs, specific loss prevention undertakings, deductible plans, education programs and research.

The absence of a universally accepted model program for states interested in improving workplace safety and health emphasizes the need for consideration and analysis of public policy options. The limits to occupational safety and health public policy are not insurmountable obstacles. Rather, they are factors to bear in mind when setting realistic

goals and considering alternatives. Developing effective public policy to improve workplace safety and health will require a considerable amount of analysis and experimentation. We recommend that legislators and regulators focus their attention in the following areas:

- Legislators need to recognize that attempts to address workers' compensation costs are incomplete if the prevention of injuries and illnesses in the workplace is not considered. Workplace injuries and illnesses are the basic factors giving rise to workers' compensation costs. Focusing cost reduction efforts exclusively on how workers are compensated once they are injured overlooks significant opportunities to control costs and, just as importantly, ignores the social responsibility of the workers' compensation system to promote a safe and healthful workplace.

- Improve data collection to identify and describe occupational injury and illness within states and to target prevention efforts.

  There are several reasons for gathering data. Two are directly relevant to safety and health, and two can improve services provided to employers and workers:

  - Data can be used to prevent future injuries and occupational disease. For this purpose, information should be gathered concerning the incidence, cause and nature of injuries, illnesses and fatalities.

  - Information is also gathered by state regulatory agencies and insurers for rate making and to experience-rate employers. This requires information about the losses in each job classification, as well as information about the experience of individual employers.

  - Data can be used to administer a state workers' compensation system and resolve disputes that arise. This requires gathering data about what payments have been made, when, and by whom, as well as other information about the performance of the state system.

  - Data can be used to analyze the performance of a state workers' compensation system and make comparisons between systems in different states. This requires comparable information about where the money is going, what the problems are, and what the likely result is of proposed changes.

The Occupational Safety and Health Administration, the Bureau of Labor Statistics, the National Council on Compensation Insurance, the National Association of Insurance Commissioners, and the International Association of Industrial Accident Boards and Commissions are developing models for collecting workers' compensation data which can be used in establishing priorities and evaluating occupational safety and health public policy.

States should work with these organizations to develop a uniform data collection system which can be used for safety and health purposes and to avoid duplicative efforts and lessen the reporting burden of employers.

- Improve the means of identifying high-hazard employers and develop targeted programs to mitigate injury and illness.

  Several states identify employers whose workers' compensation losses are significantly above those of similar groups of employers. States may require these employers, once identified, to have a safety consultant survey their operations, provide safety training to their employees, undergo a safety inspection, or implement a safety program. States should continue to consider equitable and effective methods for selecting high-hazard employers and examine the most effective approaches to protecting employees in these worksites.

- States should explore all available means to encourage safer and healthier workplaces.

  Commitment to improving workplace safety and health is a first and basic step in implementing a safety program. Committed employers and employees know the worksite better than anyone else. They are the most effective way to improve workplace safety. Legislation and regulation can provide penalties for unsafe conditions, require or encourage special insurance premium reductions for policyholders implementing safety programs, and lower safety costs by providing government safety services. Government can also play a role in raising awareness and understanding of the value of investing in occupational safety and health. Education, research, information, publications, public service promotions, and special events all serve to raise the level of action and concern about workplace safety. State governments should continue to explore ways to help employers and employees become more committed to working in a safe and healthful manner. Existing programs need to be carefully evaluated to see if they make sense and are accomplishing their objectives. Particular attention should be given to developing awareness and commitment for groups, such as small employers, who do not have access to the same range of safety and health tools as other employers.

- States should encourage technical engineering, loss control, and environmental health support for employers.

  State programs which provide consultation services to employers make a significant contribution. As well, states with particular concentrations of industry can benefit safety and health by supporting research to enhance the understanding of specific industrial hazards or the best ways to prevent injury and illness from these hazards.

- States should coordinate the safety and health activities of both private and public parties to maximize the use of safety and health resources, to minimize duplication, and to address new problems.

Under the auspices of state government, groups of employers, various federal, state and local government agencies, labor, academics, insurers, and safety and health professionals can be organized to establish priorities and monitor the effectiveness of safety and health public policy.

INSURANCE ECONOMICS

National Conference of State Legislatures
Blue Ribbon Panel on Workers' Compensation

In every state, employers who are subject to the workers' compensation law or who elect to come under its provisions are required to secure the payment of workers' compensation benefits through one of several alternatives. In almost every state, larger employers are permitted to self-insure their obligations. In over half, employers may join together to form group self-insurance programs, which in many respects operate in a manner similar to a mutual or reciprocal insurance company. In 44 states, commercial companies provide a market for workers' compensation coverage, and in 14 of those there is also some form of state-sponsored competitive insurance program. In the remaining six states, insurance coverage is provided by a state fund, although in most of these self-insurance is offered as an option. This paper deals with a number of issues arising from the use of the insurance mechanism, and excludes self-insurance from consideration. Many of these issues apply to group self-insurance and exclusive state funds, as well as commercial insurance carriers and competitive state funds.

The insurance mechanism is an integral part of every workers' compensation system. Through commercial insurance companies and state funds, it plays a number of vital roles. These include:

- Spreading of risk
- Allocation of cost among employers in different industries and with different job classifications
- Professional management of health care and disability benefits
- Loss control (safety) and loss mitigation (rehabilitation)

In recent years rate setting, which involves the first two roles, has attracted considerable attention. Most states are annually faced with the task of determining whether insurance rates (including those charged by state funds) are appropriate in terms of their relationship with benefit costs. Premiums that do not provide enough underwriting and investment income to pay for the benefits that the system provides must eventually lead to the collapse of the insurance mechanism.

It is important to distinguish between "rates" and "costs." The costs of the system are the benefits costs that are incurred as the result of providing the medical, indemnity and other benefits that injured workers are entitled to. These benefit costs provide the basis for determining insurance rates. Costs will be high or low, relatively speaking, as a result of factors such as accident rates, injury severity, benefit levels, system utilization and administration. When insurance rates accurately reflect underlying costs, providing enough revenue to pay the benefits and permit an acceptable level of profit, they may be perceived as "high" or "low" by those paying them, but they are appropriate from the standpoint of system costs. However, it is also possible for rates to be "too low," when they raise insufficient revenues to pay the benefits provided by the system, or "too high," when they generate excess profits or permit inefficient insurance operations.

Rates are "excessive" because they allow insurers unreasonably high profits relative to system costs, but they are simply "high" when they reflect underlying system costs that are high, even though these rates may actually be insufficient to cover system costs. The former is a matter of "high rates," whereas the latter is a matter of "high costs." No matter what the system costs, insurance rates should adequately reflect them. This is the goal of the regulatory process. Of course, when costs are high, more public attention to ratemaking is to be expected, and there must be public confidence that this regulatory responsibility has been fulfilled properly.

Insurance regulators have the duty to assure that rates are not excessive, but that they fully reflect underlying system costs. Rate determinations cannot be predicated on erroneous assumptions or wishful thinking about future system costs. Rate decisions based on the hope that costs will somehow be lower because of system changes that have not been fully implemented and which may not be implemented as expected, or which have been given a value far in excess of their true worth, can create rate inadequacies that will sooner or later place the system in crisis.

When costs increase rapidly or are perceived as too high, businesses may have a competitive disadvantage. Workers will also be adversely affected, because of the economic impact on wages and job availability. Consequently, high costs will trigger a public debate about whether adjustments are needed to restore or reset the balance.

Unfortunately, in its present form the workers' compensation rate setting process is an arcane one, fully understood by only a tiny number of specialists. As a result, excessive resistance to carrier rate requests can be rationalized more easily by those who seek political gain in appearing to protect consumer interests. Conversely, though desirable it is difficult for even the most well-intentioned policy maker to fully appreciate how the system works and whether the rates being charged are appropriate.

Rate making is further complicated by the nature of the workers' compensation system itself. If rates are to accurately reflect the cost of the claims that will be incurred during a given year, they must predict with reasonable accuracy the frequency and severity of those claims, and determine the ultimate costs that will be incurred over the many years that it will take before the claims are fully paid. It is obvious that there are many factors that might change the cost of workers' compensation claims, often in ways that are difficult to forecast. Changes in the law or practice brought about by the legislature, the courts or the administrative agency can affect the number and types of conditions that are to be compensated, as well as the benefits that are to be paid in individual cases. The cost of medical services has tended to rise faster than forecasts in recent years. Changing economic conditions are likely to affect system utilization and thereby costs. Interest rates will also change. They have a significant effect on rates, since they are a consideration in determining the present day dollars which, together with investment return, will be required to provide the benefits that will be paid over the 15 to 20 years, and often more, that will pass before all the benefit costs incurred during a policy year are fully paid.

Despite or perhaps as a result of this uncertainty, there is considerable pressure to moderate rates, for both political and economic reasons. Rate judgments may be based

more upon what regulatory hope will happen than upon more likely but also more pessimistic possibilities. As a consequence, rate setting is far from an objective process, but rather one in which subjective evaluations and political and economic pressures have significant influence.

The clear trend in the United States has been the expansion of workers' compensation costs. Benefit levels and utilization have increased, the scope of coverage is broader than in the past, and increases in workers' compensation medical costs have outpaced those in the general health care system. These changes have brought with them significant pressures on the pricing system, as well as pressures to reduce benefit levels and utilization.

Rapid cost increases in recent years have placed employers and the insurance industry under considerable stress. In some states the traditional alliance between insurers and employers has been weakened by insurer requests for higher rates. Employers, responding to pressures emanating from an economic slowdown and heightened interstate and international competition, have organized directly or through trade organizations to resist these rate hikes. Unable to achieve rates that are adequate, insurers have watched their surplus being reduced, placing some carriers in precarious positions and forcing others to withdraw from the market or go out of business. One commentator estimates that insurers lost $7.3 billion in 1987-89 due to rate suppression. (Orin S. Kramer, *Rate Suppression and Its Consequences: Private Passenger Auto and Workers' Compensation Experience*, Insurance Information Institute Press, 1991.) In each year from 1987 to 1990, the combined ratio, the ratio of expenses plus losses to premiums, for private insurance carriers was 118 percent. In 1991, it rose to 123 percent.

When an insurance regulator fails to respond adequately to an economically justified rate request, several things will happen. Just as no other business is prepared to sell its product at a loss for a sustained period, there is little reason to believe that insurers are any different. They will eventually cut back on their writing, or rely more heavily on retrospectively rated or deductible policies that place a greater portion of the risk on the insured. Large scale cutbacks in voluntary writing are now commonplace. The question "If they are really losing money why don't they just stop writing?" is now being answered by carriers doing just that.

One manifestation of rate inadequacy is the enormous growth of the residual market in some states. In pools administered by the National Council on Compensation Insurance, the proportion of direct premiums written in them nationally increased from 6.2 percent in 1983 to 25.0 percent in 1991, with some states at much higher levels. These markets were originally intended to provide coverage for a small number of employers, who, because of the nature of their business or loss history, found it impossible to obtain insurance coverage in the voluntary market. In recent years, in some states the residual market (assigned risk pool) has become the leading provider of workers' compensation insurance, as the result of insurers declining to provide voluntary coverage for large numbers of employers with relatively good loss experience and nonhazardous operations, because they view these accounts as inherently unprofitable due to inadequate rates, or too risky because of the volatile nature of the compensation system.

Residual markets are very unpopular with many employers, who seek unsuccessfully to avoid them. Rates there are often higher, and the quality of safety and claims services is potentially inferior to that in the voluntary market. Some employers like these pools, where they are beneficiaries of subsidized rates. Incentives for both insurer and insured to prevent accidents and reduce costs are also affected, because there may be lesser or no financial payoffs to doing this in these markets. An insurance carrier servicing assigned risk pool accounts is not directly affected by their performance, other than through the assessments that all carriers writing voluntary business are subject to in order to make up any pool deficits. For many employers in the pool, insurance premiums are unaffected by their current experience, although some pools are moving toward a rate structure that puts most of their accounts in premium plans that reflect current experience.

Increased utilization of the residual market mechanism may not provide relief for insurance carriers as a group, even if individual carriers can shift some of their own burdens. Assigned risk pools typically operate at a deficit. In 1991, operating losses in the residual market were estimated to be $2.7 billion. Someone must pay for this. It is done through assessments on insurance carriers based upon their voluntary writings. The carriers then attempt to pass on at least a portion of these assessments to their policyholders. This can induce some employers to opt for self-insurance or group self-insurance programs, which do not have to pay these assessments. In any case, some firms are forced to subsidize others. In addition, it may not be possible to fully pass on the cost of assessments. As a result, insurance company profits are reduced or losses increased. Money to pay assessments may even have to come from insurance company revenues generated through their operations in other states and from other lines, thereby creating a subsidy from one or more states to another state. In any case, there is no sound reason why insurers, or any others, are called upon to subsidize those firms assigned to pools. The Blue Ribbon Panel recognizes that a need exists to provide insurance to all employers in the state. Assigned risk pools are one of several possible vehicles that can be used to make insurance available. Providing a mechanism, however, is not a justification to subsidize certain employers at the expense of other businesses or taxpayers.

Another consequence of inadequate rates is that insurers respond by reducing their administrative costs. In some instances this means cutting back on services, an evident consequence of the closing of local offices, and elimination of field and home office staff. Though such cuts may be effective in reducing short-term administrative costs, they may also result in increased claims costs over time, when there are insufficient personnel and other resources available to provide required services. A somewhat related consequence is the destruction of the consensual relationship between insurance carrier and insured. When the relationship is forced, by virtue of the employer becoming an assigned risk, the likelihood of cooperation between the two may be greatly reduced, and with it the opportunity for optimum safety and workers' compensation experience.

Ultimately, some insurance carriers may be forced out of business if rates are not sufficient to support benefits. (It is of course also possible for an insurer to contribute to its own demise, through poor operations, bad investments and the like.) Texas Employers Insurance Association (TEIA) is often cited as a good example of bad results. TEIA was a one-line, one-state insurance company that provided workers' compensation coverage in Texas. This meant that it had no opportunity to subsidize its Texas workers' compensation

operations with revenues from other states and other lines of insurance. Its rates were mandated by the State Board of Insurance, with no deviations permitted. From 1983 to 1989, TEIA went through $1.3 billion in premium income and $111 million in surplus, and became insolvent. This occurred during a period of rapidly escalating benefit costs, rapidly increasing insurance rates, insurer claims of inadequate rates, assertions by trial lawyers and others that rate increases were being driven by insurance company profiteering, an expanding assigned risk pool, and a very substantial assigned risk pool deficit leading to significant assessments.

When workers' compensation insurance carriers fail, workers' benefits are likely to be assured through the existence of guarantee funds. However, since the money for these funds comes from assessments on other insurance carriers, any financial burden brought about by a failing carrier will be placed on other carriers, some of whom may themselves be on a weak financial footing. Even if guarantee assessments do not threaten the stability of other carriers, they do create another form of subsidy, with the remaining carriers and their insureds being forced to assume the responsibilities of the failed carrier and its insureds.

Throughout the debates and disputes that focus on rates and the rate-setting process, the methods and motives of the organizations that present insurance industry data and proposals to individual state insurance rate regulators have been the focus of scrutiny and attack. These entities (the National Council on Compensation Insurance in 32 states and independent rating bureaus in the other 12 states that do not have exclusive state funds) are established and run by the insurance industry. This fact, coupled with the complexity of the ratemaking process itself, at times makes their recommendations and objectivity the focus of controversy, and may place roadblocks in the way of even the most justified rate increases.

It is of course possible to establish rating bureaus that are operated by someone other than the insurance industry, such as the state, or to establish parallel facilities. However, no matter who runs the bureau, the underlying data needed to establish rates must come from the insurance carriers. Since it is always possible for the ratemaking authority or other interested parties to review methodology, this puts a premium on ensuring the integrity of the data that are collected.

During 1990-91, the National Association of Insurance Commissioners conducted an audit of NCCI data collection, data quality and rate making procedures. Its results were released in December of 1991. In its executive summary, the report stated the following:

> Broadly speaking, for the elements studied, our conclusion is that the NCCI ratemaking system is not as good as it could be, but that it is a sophisticated system that can ordinarily be expected to produce reasonably accurate results. Many of our recommendations relate to aspects of the current NCCI ratemaking system that we believe are basically reasonable but which can be improved. Only a small number of aspects of the current system were found to generally result in underestimation or in overestimation of the overall rate level.

The Blue Ribbon Panel is not in a position to comment on the scope, quality and reliability of this study, or to interpret and evaluate their findings and conclusions. States working either individually or in concert should act to evaluate this material and reach their own conclusions.

There are several points the Panel can comment on. One involves the need to eliminate the negotiations and political influences that permeate the rate making process in some states. Workers' compensation is not free, someone must pay for it. Avoiding the reality of the system's costs through denial of justified rate increases, whether for a competitive insurance market or an exclusive state fund, can do little more than distort the system and provide short-term relief. At some point what comes out of the system has to be put into it.

If regulatory authorities or the legislature have reason to believe that requested rate increases are not justified, they have an obligation to the public to accurately determine the true state of affairs. If the political belief is that the insurance industry or a state fund is willing or even able to provide workers' compensation coverage at a loss, the fact is that it is becoming less likely that they will or that they can. No state can expect to operate its workers' compensation system without paying for it.

The Blue Ribbon Panel discussed the advisability of eliminating administered pricing for workers' compensation insurance. It can be noted that no states allowed competitive rating before 1980, and that since 1982 16 states have adopted one form or another of this practice. In the limited time available to the Panel, no consensus emerged on this issue. Still, very substantial support was given to the general principle that market forces be allowed to operate as fully as possible in all areas of workers' compensation insurance. This implies eliminating subsidies and cross-subsidies, and encouraging competition among the participants.

Increased competition will not necessarily bring with it immediate lower rates in some states. Policy makers who are considering moving in this direction can look at recent rate filings, the level of assigned risk activity and the size of the assigned risk pool deficit to get some idea of whether competitive rating is likely to bring higher or lower rates, at least in the short term.

Some employers, particularly those concerned with an immediate problem of business survival, may believe that the lowest absolute rate is the best one. Others, using a longer term perspective, recognize the desirability of maintaining a healthy insurer environment and take a more sophisticated view. For many of these employers, however, rate adequacy does not mean that insurance carriers be automatically granted any increases requested by their rating bureaus. Instead, they believe that insurers carry a significant responsibility to pursue practices that will limit cost increases.

Discussion of each of these positions could generate an entire series of papers. The most important point they demonstrate is that there is no single position which, if responded to, will result in employer acceptance of a particular rate-setting mechanism or philosophy. Once again, there is no simple answer to the concerns of the employer community.

Although needed benefit improvements and inflation have contributed, the major sources of cost increases are the result of state government, i.e., the governor, legislators, courts and/or the workers' compensation agency. However, the insurance mechanism is more than a passive mechanism that turns premium dollars into benefits. On the contrary, workers' compensation insurance companies and state funds are in many respects the delivery mechanism. Their actions in providing safety services affect the incidence of occupational injuries and disease. The manner in which they investigate claims, provide medical treatment and pay benefits affects the quality of the benefits that injured workers receive, and the cost of those benefits.

Business persons with a long-term view argue that in an environment of explosive cost increases, all the major participants should be under pressure to keep costs in check. That, in their view, will make insurers a part of the solution to the workers' compensation system. While insurance carriers do not control all aspects of the system, they do play a substantial role. If they do not fulfill their obligations properly, they cannot expect to be rewarded. When they do, they are entitled to the premium rates that are required to deliver the benefits and sustain the insurance mechanism.

The Blue Ribbon Panel believes that a sound workers' compensation system must depend upon a healthy and effective insurance sector, be it publicly or privately provided. Unwarranted rate suppression even for a few years will result in a deterioration in the quality of claims management and loss control services, enlarged amounts of destructive cross-subsidies, growing residual markets, insurer flight from states or product lines and, eventually, insurer bankruptcies and resort to guaranty funds. Insurers must bear some responsibility for keeping costs from growing as rapidly as they have. State government, however, is in the best position to deal with cost increases that society deems to be unacceptable. For specific suggestions as to how that can be accomplished, please note the accompanying reports on administration, medical care and cost containment, permanent partial disability benefits, and occupational safety and health.

File - copies sent

John R. McKernan, Jr.
Governor

Charles A. Morrison
Commissioner

James H. McGowan
Director

DEPARTMENT OF LABOR
Bureau of Labor Standards

June 9, 1992

Dear Interested Party:

Attached for your information is the Notice of Agency Rule-Making, the rule-making fact sheet, and the proposed rules regarding Workplace Health and Safety Programs for Employers With Workers' Compensation Modification Rates of Two or More. These rules were authorized by Title 39 MRSA, Section 21-A, subsection 4, as enacted by Public Law, Chapter 615, Section A-22.

A public hearing will be held on July 10, 1992, with written comments allowed through July 31, 1992. Please feel free to use either avenue to express any comments you may have.

Sincerely,

James H. McGowan
Director

JHM/ln
enc.

RECEIVED BY
SECRETARY OF STATE: _____

NOTICE OF AGENCY RULE-MAKING PROPOSAL

AGENCY: Department of Labor, Bureau of Labor Standards

RULE TITLE OR SUBJECT: Workplace Health & Safety Programs for Employers with workers compensation modification rates of two or more.

PROPOSED RULE NUMBER: (LEAVE BLANK - ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY: (SHOULD BE UNDERSTANDABLE BY AVERAGE CITIZEN)

This chapter establishes standards for occupational health and safety programs required of employers with a workers' compensation insurance modification rate of two or more, pursuant to 39 MRSA Section 21-A, subsection 4 as enacted by Public Law Chapter 615, Section A-22.

STATUTORY AUTHORITY: 39 MRSA Section 21-A §ubsection 4

PUBLIC HEARING: (IF ANY, GIVE DATE, TIME AND LOCATION)
July 10, 1992 10:00 A.M.
State House Annex
Bureau of Labor Standard
Room 107, Hallowell, Maine

DEADLINE FOR COMMENTS: July 31, 1992

AGENCY CONTACT PERSON:

NAME: James McGowan

ADDRESS Bureau of Labor Standards
State House, Station #45
Augusta, Maine 04333

PHONE NUMBER: 207-624-6400

RULEMAKING FACT SHEET
(5 M.R.S.A., Section 8057-A)

AGENCY: Department of Labor, Bureau of Labor Standards

CHAPTER NUMBER AND RULE TITLE: Chapter 8 Workplace Health & Safety Programs for Employers with workers' compensation modification rates of two or more.

STATUTORY AUTHORITY: 39 MRSA Section 21A, Subsection 4

PRINCIPAL REASON FOR PROPOSING TO ADOPT THE RULE: Required by 39 MRSA Section 21-A, subsection 4 as enacted by Public Law Chapter 615, Section A-22.

PURPOSE AND OPERATION OF THE RULE: The purpose is to provide assistance and guidance to those employers who have excessively high workers' compensation modification rates. The employer is to establish a program to assist in reducing and managing the number of injuries and illnesses in the workplace. The plan will be reviewed and commented on by the Maine Department of Labor, Bureau of Labor Standards.

ANALYSIS OF THE RULE: These standards were adopted to assist employers with workers' compensation modification rates of two or more to develop health and safety plans in their workplaces. Although compliance with these or other standards is not a guarantee to an incident free workplace, it is believed that by analyzing past experience, identifying resources, and creating an employer written program, there is a greater prospect for success.

FISCAL IMPACT OF THE RULE: This regulation will only be applicable to employers who have a workers' compensation modification rate of two or more. These employers will then design a plan for the Department of Labor's review. It is expected that individual employers will take special approaches that will have various fiscal impact. It is expected that fiscal impact will be a consideration as the employer designs his or her own plan.

FOR RULES WITH FISCAL IMPACT OF $1,000,000. ALSO INCLUDE:

ECONOMIC IMPACT (INCLUDING EFFECT NOT QUANTIFIED IN MONETARY TERMS):

Not applicable

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:

BENEFITS OF THE RULE:

NOTE: If necessary, additional pages may be used

12-170 Department of Labor, Bureau of Labor Standards

Chapter 8 RULES REGARDING WORKPLACE HEALTH AND SAFETY PROGRAMS FOR EMPLOYERS WITH WORKER COMPENSATION MODIFICATION RATES OF TWO OR MORE

SUMMARY: This chapter establishes standards for occupational health and safety programs required of employers with a workers' compensation insurance modification rate of two or more, pursuant to 39 MRSA Section 21-A, subsection 4 as enacted by Public Law Chapter 615, Section A-22.

A. DEFINITIONS

1. Bureau: "Bureau" means the Bureau of Labor Standards, Maine Department of Labor.

2. Commissioner's designee: "Commissioner's designee" means the Director of the Bureau of Labor Standards.

3. Director: "Director" means the Director of the Bureau of Labor Standards or the Director's designee.

4. Mod rate: "Mod rate" means a workers' compensation insurance experience modification rate for an employer's establishments or operations in Maine.

B. NOTIFICATION OF EMPLOYERS

1. The Superintendent of Insurance shall communicate to the Director the names, Maine addresses, insurance carriers, policy term, and the mod rate of those employers that receive, in any policy year, an experience modification rating of 2 or more. Such communication must take place at the earliest possible time prior to the new mod rate taking effect. The mod rate reported must be the rate computed for those establishments or operations active in Maine.

2. The Director shall notify any such employer in writing of the requirement to undertake a workplace health and safety program, shall provide a statistical evaluation of the employer's workplace health and safety experience and shall enclose a set of workplace health and safety options for the employers information and consideration. A copy of the notice will be sent to the insurance carrier.

3. The employer shall submit a workplace health and safety plan to the Bureau within 60 calendar days of notification.

C. ELEMENTS OF AN EMPLOYER'S HEALTH AND SAFETY PLAN

1. The employer shall develop a written occupational health and safety plan which identifies the specific actions to be taken, the officials responsible for implementation and the dates by which the actions will be completed. If an appropriate plan already exists, a copy may be submitted. The plan must address the following five elements.

   a. Management commitment and employee involvement

   b. Worksite analysis and accident investigation

   c. Hazard prevention and control

   d. Safety and health training

   e. Medical management of injured or ill workers

2. The employer must describe what steps have and/or will be taken to improve workplace safety and health and to abate the documented hazards. If corrective action has recently been taken, those actions should be described. If implementation of a plan extends beyond the current policy year, each element should be described and the projected time frames for implementation specified.

3. The employer may describe any extenuating or unique circumstances that lead to the mod rating and how these problems have been addressed.

4. If the employer is unable to create a comprehensive program within the submittal deadline, the employer shall submit a preliminary plan which outlines the strategy and time tables within the current policy year. A final plan must be submitted prior to the end of the policy year.

5. The plan should involve employees to the greatest extent feasible to identify and correct possible hazards.

6. All individual employer submissions to the Bureau will be considered confidential under Title 26 MRSA Sections 3, 43, and 48.

7. If an employer has a mod rate of two or more in consecutive policy years, each succeeding plan must include a description of the results from previous plans and how the current plan has been refined using that experience. Repeated plan submissions should result in a more targeted and developed plans.

D. BUREAU'S REVIEW AND COMMENT

1. The Bureau will review each submission for relevance to the hazards identified, taking into account the experience and ability of the employer to identify and provide corrective action.

2. The Bureau will review and the Director will comment on all first submissions within 30 working days of receipt, unless further information is needed. The insurance carrier will receive copies of all review results.

3. The Bureau may wish to seek clarification of an employer's submission at any time during the review process. The Bureau may make on-site visits to evaluate the plan. If the Bureau does not receive clarification or is unable to have excess to the site, the Director may choose to deem the submission incomplete.

4. The Director shall provide comments on the plan analyzing its strengths and weaknesses. If all, or part, of the plan is ruled to be incomplete or inappropriate, the problem areas will be identified and suggestions or options to address the problems will be included.

5. Employers who experience a mod rate of two or more and request Bureau consultation services shall be given a priority for those services.

6. Comments by the Bureau are advisory only and do not in any way release an employer from their legal obligation to provide safe and healthy working conditions.

E. EMPLOYER'S COMPLETION OF THE PROGRAM

1. The employer shall submit a final status report within 30 calendar days of the end of the term of the policy. If the employer is obligated to create another plan for the next policy term, the status report may be a part of the new plan.

F. BUREAU'S NOTIFICATION TO THE SUPERINTENDENT

1. The Director shall notify the Superintendent of Insurance of any employer that fails to submit a program as required above, or submits one that is incomplete or inappropriate. Copies of such notice must be sent to the employer and the employer's insurance carrier. The Director's notice will be considered final agency action and affected parties may request judicial review under MRSA Title 5, Chapter 375, subchapter VII.

2. The Superintendent shall assess a surcharge of 5% on that employer's workers' compensation insurance premium or the imputed premium for self-insurers, to be paid to the Treasurer of State who shall credit ½ of that amount to the Safety Education and Training Fund, as established by Title 26, Section 61, and ½ to the Occupational Safety Loan Fund, as established by Title 26, Section 62.

BASIS STATEMENT:

These standards were adopted to assist employers with worker compensation modification rates of two or more to develop health and safety plans in their workplaces. Although compliance with these or other standards is not a guarantee to an incident free workplace, it is believed that by analyzing past experience, identifying resources, and creating an employer written program there is a greater prospect for success.

AUTHORITY: 39 MRSA SECTION 21-A, SUBSECTION 4

EFFECTIVE DATE: **90 days after filing with the Secretary of State.**

BLUE RIBBON COMMISSION TO EXAMINE ALTERNATIVES
TO THE WORKERS' COMPENSATION SYSTEM
University of Maine School of Law
246 Deering Avenue
Portland, Maine 04102

Members of the Commission:

Richard B. Dalbeck
William D. Hathaway
Emilien Levesque
Harvey Picker

June 9, 1992

John H. Lewis
P.O. Box 330550
Coconut Grove, FL 33233

Dear Mr. Lewis:

I am forwarding the following materials at the request of the Commissioners:

Testimony of the Public Advocates
Testimony/Policy Paper of the Maine Council of Self-Insurers
Testimony/Outline of Bill Hardy - ME Bar Assoc., Workers' Comp. Sec.
Testimony of the American Insurance Association
Testimony of Ed Welch
Overview of Workers' Comp. in Michigan by Ed Welch

In addition, I am sending you a copy of the latest Maine Council of Self-Insurers Quarterly and a copy of A Report of the Commission on Safety and Health in the Maine Workplace. Also at the request of the Commissioners you will be sent a copy of the Public Advocate's most recent rate brief which will be sent directly from that office.

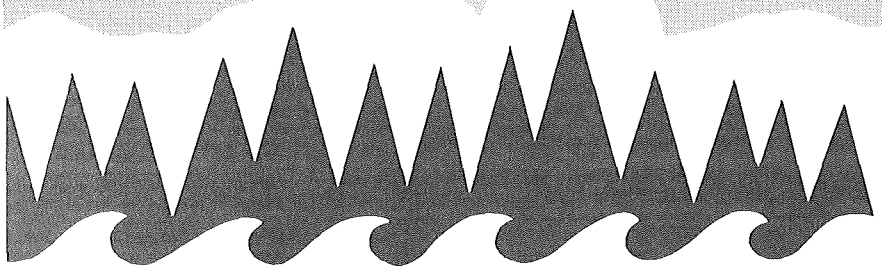
Commissioners Hathaway and Picker wanted me to remind you that in order for them to receive a copy of your report of June 16 as soon as possible you will need to pay the additional surcharge required by Federal Express to ensure delivery at the earlist possible time.

I have received the signed letter of agreement between yourself and the Commission and will forward it to the Legislature which will allow you to receive payment for your services. Please send all bills directly to me at the above address and I will forward them to the Legislature.

Sincerely,

Michelle E. Bushey

Michelle E. Bushey



MAINE CHAPTER
AMERICAN
PHYSICAL THERAPY
ASSOCIATION,
INCORPORATED

June 10, 1992

Commissioner Richard Dalbeck
The Honorable William D. Hathaway
The Honorable Emilien LeVesque
Dr. Harvey Picker
The Blue Ribbon Commission on Workers' Compensation
University of Maine
School of Law
246 Deering Ave.
Portland, ME 04102

Dear Messrs. Dalbeck, LeVesque, Picker, Hathaway:

Although we recognize that the Commission does not intend to receive any further public testimony from invited individuals, I wanted to provide the Commission with a brief letter regarding the Maine Physical Therapy Association's position on improving workers' compensation based upon our success record in reducing lost work hours.

As you may be aware, I and another physical therapist currently participate in the Medical Coordinator's Healthcare Advisory Group and have been working with Sandra Hayes in the development of regulations. We have been and continue to be closely involved in treating injured workers and in seeking their early return to work. We strongly believe in early intervention and its relationship to lost work hours.

In our treatment of injured workers, we are consistently involved with the issues surrounding an individual's return to work. Clearly the biopsychosocial elements of patients with work-related injuries are far more complex than patients with non-work related injuries. As a result of the constantly changing information regarding industrial rehabilitation, it is critical that both the employer and the healthcare provider understand these dynamics and provide the timely and appropriate treatment.

In order to determine the effectiveness of on-site physical therapy treatment, a study was conducted in 1987 with a large company to analyze their progress in reducing their medical costs and in reducing their lost work days. The comparisons between 1985, when no physical therapist was on site and there was little physical therapy involvement, and 1987, when a physical therapist was on site, are overwhelming. In 1985, the company had **$4,128,545 in**

medical and indemnity costs and 16,929 lost work days. In 1987, the company paid $489,255 in medical and indemnity costs and had 1,871 lost work days. Further, the average intervention interval went from 2.5 months in 1985 to 3 days in 1987. There is a significant correlation between early intervention and the success in reducing lost work days. In the first quarter of 1992, we had a 77% success rate in returning employees to their regular jobs. The average treatment duration was 9 visits.

Moreover, I cannot emphasize enough our commitment to ergonomics and its relationship to reducing first-time injuries and repetitive injuries. If we fail to recognize the inadequacies of the working environment, the same injuries and chronic pains will persist. Clearly the employer's involvement is essential to addressing these problems to create a healthier working environment.

Finally, I would like to clarify a common misconception regarding over-utilization of physical therapy. Frequently other healthcare professions may provide "physical therapy" services through a non-professional, not a licensed physical therapist, and indicate on an insurance reimbursement form that physical therapy was provided. As a result, the reference to the excessive use of physical therapy may include many hours of non-professional services being provided under the guise of physical therapy.

We would appreciate the opportunity to meet with the Commission to more fully discuss these issues and respond to your questions. However, we will be preparing written testimony to comprehensively convey the Maine Physical Therapy Association's comments on improving the workers' compensation system.

I look forward to speaking with you soon.

Sincerely,

Allen W. Wicken, PT
President

POSITION STATEMENT OF THE MARYLAND INSURANCE GROUP ON WORKERS' COMPENSATION REFORM IN THE STATE OF MAINE

The Maryland Insurance Group, through Maine Bonding & Casualty Company (chartered in 1893), has actively participated in the Maine market since 1926. Our Company has 160 employees based in Maine, and over 20 employees in the Home Office service our Maine book of business. In addition, we have many independent agents residing in the State.

We have remained in the Maine workers' compensation marketplace despite great adversity over the past 10 years while most other carriers have withdrawn. As a result, we are one of three remaining carriers active in the workers' compensation market and have an overall market share of almost 20%.

There are a number of major problems that continue to trouble the workers' compensation system in Maine. We believe that these problems must be resolved in 1992 if the private insurance market is to survive in the State. A significant rate increase is needed to achieve rate adequacy. Regrettably, the Legislature, by law, recently directed the Superintendent of Insurance to delay consideration of the pending 32% rate increase until November of this year with an effective date of August 1, 1992. This delay will lead to further losses in both the voluntary and residual markets and create greater uncertainty as to future prospects for rate adequacy. In addition, our Company faces residual market deficits for 1989, 1990, and 1991 in the millions of dollars.

The State has not allowed us to collect enough premium to pay for these losses which will have to be paid out of surplus earned from other sources. We are also facing a baseless anti-trust suit instigated by a group of out-of-state attorneys and, even if the suit is dismissed as being without merit, we will have incurred over a million dollars in defense costs. Finally, a lawsuit has been filed against the Insurance Department's 1991 residual market regulation which creates stability and predictability in residual market assessments for 1992 and into the future. If this regulation is revised or overturned, our exposure to assessments will increase considerably.

Given this ominous background, we believe there are actions that must be taken by the Maine Legislature to resolve these problems and to recreate a healthy competitive workers' compensation market in the State. Our recommendations to accomplish this are as follows:

I. ENACT COMPETITIVE RATING LEGISLATION

The insurance industry is not a monopoly similar to the power company and does not require monopoly regulation. There are at least three competing carriers and more carriers are likely to return to the market over time if they are allowed to establish

prices based upon competitive forces. The Maryland Insurance Group does not believe that the Maine workers' compensation marketplace can be effectively served under the current prior approval system.

II. THE WORKERS' COMPENSATION RESIDUAL MARKET MUST BE MADE SELF-SUPPORTING

Actions by the State Legislature and the Department of Insurance over the past several years have resulted in substantially inadequate rates in both the voluntary and residual markets. As a result, the workers' compensation pool has developed hundreds of millions of dollars in losses, a substantial part of which must be paid for by our Company. It is unfair and bad economic policy to require the seller of a product to subsidize its costs to its buyers. For The Maryland Insurance Group to effectively continue to serve the Maine workers' compensation market, these subsidies must end and the residual market be made self-supporting. This can be accomplished in one of two ways:

a. If the workers' compensation pool is to continue, it should by law be made self-supporting on a year-to-year basis. An annual reconciliation system, through a surcharge on employers, should be instituted to accomplish this purpose. The surcharge must not be subject to prior approval and any overcharges or undercharges must be adjusted annually, or;

b. The establishment of a competitive state fund would serve as both a competitive insurer and a market of last resort. This fund must be self-supporting and operate on a level playing field with insurers in the private market. The privately-run workers' compensation pool would be abolished at the time the competitive state fund begins operations and all pool business would be moved into the fund at that time. Prior to the start-up of the state fund, insurers should be given certain incentives to encourage them to take business out of the pool and write it in the voluntary market.

III. ENACT COST CONTAINMENT REFORMS

The cost of Maine workers' compensation is relatively high with regard to the cost of similar systems in other states and with regard to the ability of the Maine economy to afford such an expensive system. Additional reforms should be enacted to bring the cost of the Maine system in line with that of other states and to make it more affordable.

While the adoption of a competitive rating system and the creation of a self-supporting residual market will help improve market availability, the system will continue to have problems unless underlying costs are contained. In order to reduce the costs of the system, reforms should be adopted in the followings areas:

a. Eliminate both the opportunity and incentive to litigate claims by simplifying the statute, use a predominant cause definition, cap permanent partial benefits

duration at 250-300 weeks, pay legal fees out of awards, limit lump sums, and tighten use of AMA guides in PPD cases.

b. Restructure the current workers' compensation commission to reduce litigation and improve caseload management.

c. Enact medical cost containment provisions by including an effective fee schedule and encouraging managed care arrangements.

IV. MICHIGAN SYSTEM - COMMENTS

We have met with the Maine Workers' Compensation Group and have learned of their support for the adoption of the Michigan workers' compensation law in the State of Maine. While we are very supportive of this cooperative effort between labor and management groups to bring about needed reform, we offer the following cautions:

1. Before any final judgment is made regarding the adoption of the Michigan law in Maine, the determination must be made as to the approximate cost of that system as it would operate in Maine. It is possible that the system could cost as much and maybe more than the present system.

2. As in any workers' compensation system, there is a great deal of settled case law in Maine interpreting the workers' compensation statute. The adoption of the Michigan system in Maine without adoption of interpretive Michigan case law, could result in years of litigation to establish new case law. Further, there is no guarantee that the Maine courts would interpret the law as it has been interpreted in Michigan.

3. The Michigan plan includes a competitive state fund and a privately-run workers' compensation pool. This system would not be acceptable to The Maryland Insurance Group in the State of Maine. We believe there should be only one residual market mechanism and that it should be fully self-supporting. Our preference at this time in Maine is the adoption of a competitive state fund that will serve as the market of last resort.

* * *

For further information, please contact Grover E. Czech, Vice President, Government and Industry Affairs at 410-338-9681.

June 2, 1992

United Timber Corp.

P.O. Box 650
Dixfield, Maine 04224 (207) 562-7277

June 11, 1992

Blue Ribbon Commission on
Workers Compensation
University of Maine Law School
246 Deering Avenue
Portland, ME 04102

Attn: Ms. Michelle Bushey

Re: Workers Compensation - Self-Insurance
Use of Letters of Credit

Dear Commission:

In the last session of the legislature, L.D. 2238 was passed and signed into law which facilitated and improved entry by Maine businesses into individual and group self-insurance for Workers Compensation. Included in this bill was the approval for use of irrevocable standby letters of credit for funding Workers Compensation obligations with the Bureau of Insurance. However, in the final draft of L.D. 2238, a qualification was placed on the use of letters of credit, as follows:

> "An individual self-insurer that proposes to use an irrevocable standby letter of credit shall maintain at all times a net worth of not less than $50,000,000, have a ratio of current assets to current liabilities of at least 1.1 to 1 and have a ratio of long-term debt to tangible net worth not in excess of 1.3 to 1."

The soundness of a letter of credit is determined by the financial strength of the issuing institution and not by the financial strength of the company on whose behalf it is being issued. A letter of credit is either acceptable or it isn't. Qualification on the financial strength of the self-insured business is not relevant to the soundness of the letter of credit.

For individual self-insureds with a net worth of less than $50,000,000, the inability to utilize a letter of credit represents a terrible drain on liquid assets of the corporation. For United Timber Corp. this has resulted in a $1,500,000 to $2,000,000 cash funding of our Workers Compensation program which

could be replaced by a letter of credit but for the above noted qualification. These funds could be used instead for business expansion and increased employment at our operations.

We ask that the Commission recommend eliminating the qualification on letters of credit which qualification imposes a hardship on my company without enhancing the Workers Compensation system.

Very truly yours,

Rand N. Stowell
President

RNS:bgm

cc: Governor John R. McKernan, Jr.

Harriet Dawson
Office of the Governor

John R. McKernan, Jr.
Governor

Charles A. Morrison
Commissioner

James H. McGowan
Director

DEPARTMENT OF LABOR
Bureau of Labor Standards

June 12, 1992

Dear Commission Members:

Attached are exhibits provided in response to inquiries made at our meeting with the Commission on May 15, 1992. There were four specific requests.

The first was for a comparison between Maine and the U.S. of the growth in the impact of "repeated trauma" cases. This category includes carpel tunnel syndrome reports. The chart shows the percentage of occupational illness cases that involved repeated trauma for the period 1981-1990. This was the fastest growing occupational illness grouping in Maine during the late 1970's into the 1980's. For the nation as a whole, the increase has been fairly steady throughout the last decade.

The second request was to provide an age adjustment to the length of service graphs. We could not find the data necessary to make a direct adjustment. We did develop two charts that give some indication as to what an age adjustment might show. Before going further the term "length of service" deserves some explanation. The response provided on the First Report should indicate the length of time the injured or ill worker has been employed at their current position. It is expressed as the unit of time completed. As an example a worker with a LOS of 11 months is in their 12th month on that job. The first chart shows the percentage of reports by length of service within each age group. As might be expected, workers within their first 6 months are more of a problem in the younger age groups, but this experience level is significant even among workers 65 years of age or older. The second chart is a cross tabulation of length of service by age group taking into account the varying time frames involved. The hot spot identified here is the first 6 months of work at a new job for the 20-24 and the 25-34 age groups. These two groups account for over one-quarter of all disabling (i.e. lost time) injuries and illnesses. Adding the second 6 months of the 25-34 group brings the total to over one-third of all disabling cases.

The third request was for an example of a comparison of the Annual Occupational Injuries and Illnesses Survey data between Maine and another state at a finite level. The logging industry in Maine and Oregon was suggested. Three charts are provided. All three are based on a three year average to provide a more recognizable trend line. The total case rates and lost workday case rates show a similar pattern. In 1981, the Maine rates were well above both the U.S. and Oregon rates. These rates generally declined over the decade so they are now much more in line with the U.S. average. The Oregon rates on the other hand, rose during the first part of the decade and then declined. The pattern of the rates for lost work days is similar except that the Maine rates show a second increase in the late 80's. Discussions with the research directors in Oregon and Maine produced several explanations for these patterns. In both cases there were voluntary consultation and training (both public and private) and enforcement emphasis programs targeting logging that began in mid-decade. Economics were also a factor. In the early 80's, the logging industry in Oregon was expanding after a recession. The expansion ended, employment stabilized and later declined again. This tended to cause the rates to drop. In Maine, this industry had a steady decrease in employment over the period. Generally a decline in employment shows up as a decrease in rates as the younger, less experienced workers are released.

The last item requested was the staffing of the OSHA offices in Maine. The list attached was recently provided to the Bureau for use in estimating the cost to state-plan status.

I hope this information proves useful to you. Feel free to contact me with any additional questions or comments or if you need any additional data.

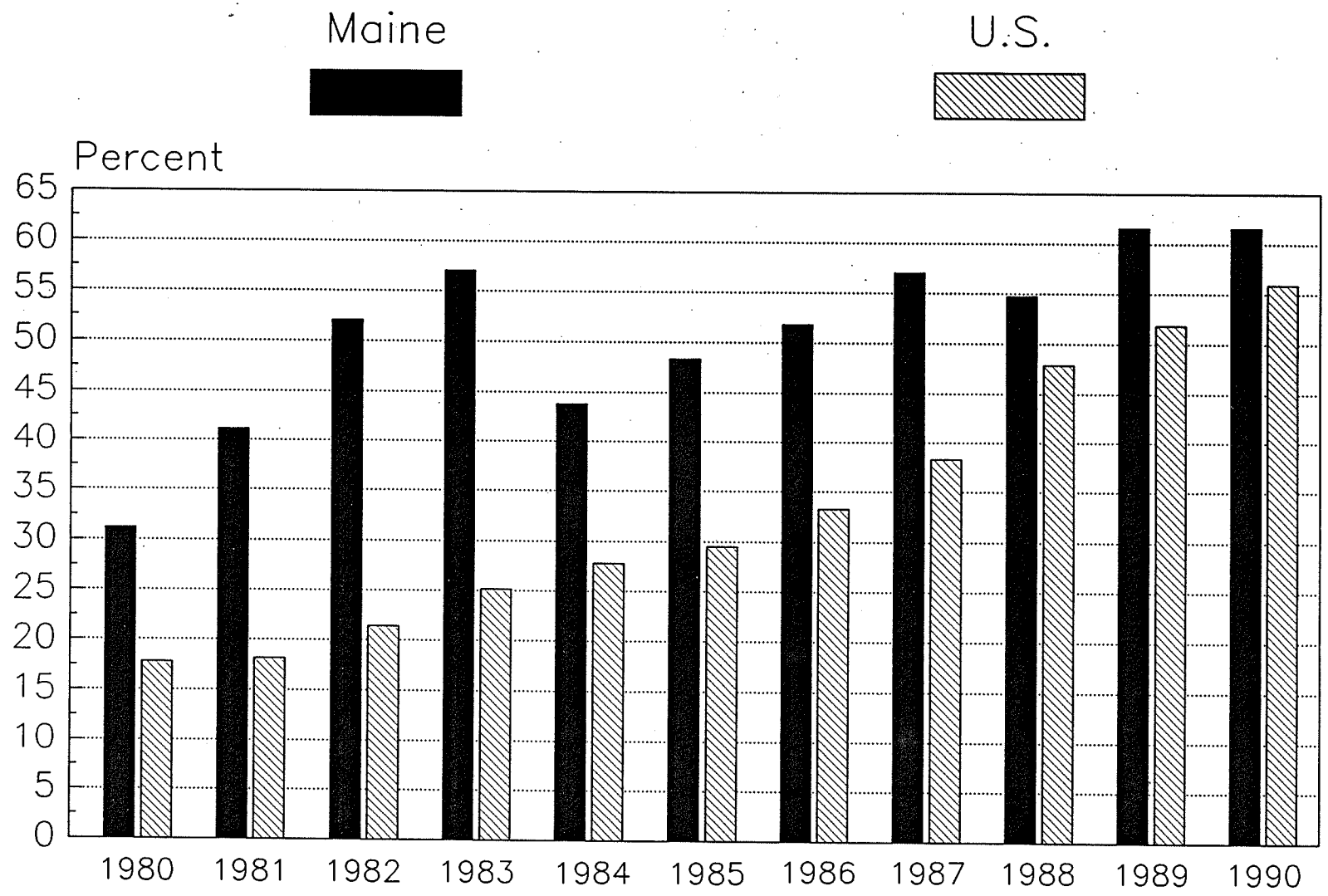
Sincerely,

William A. Peabody
Deputy Director

WAP/ln
attachments

cc: Charles Morrison, Commissioner
James McGowan, Director

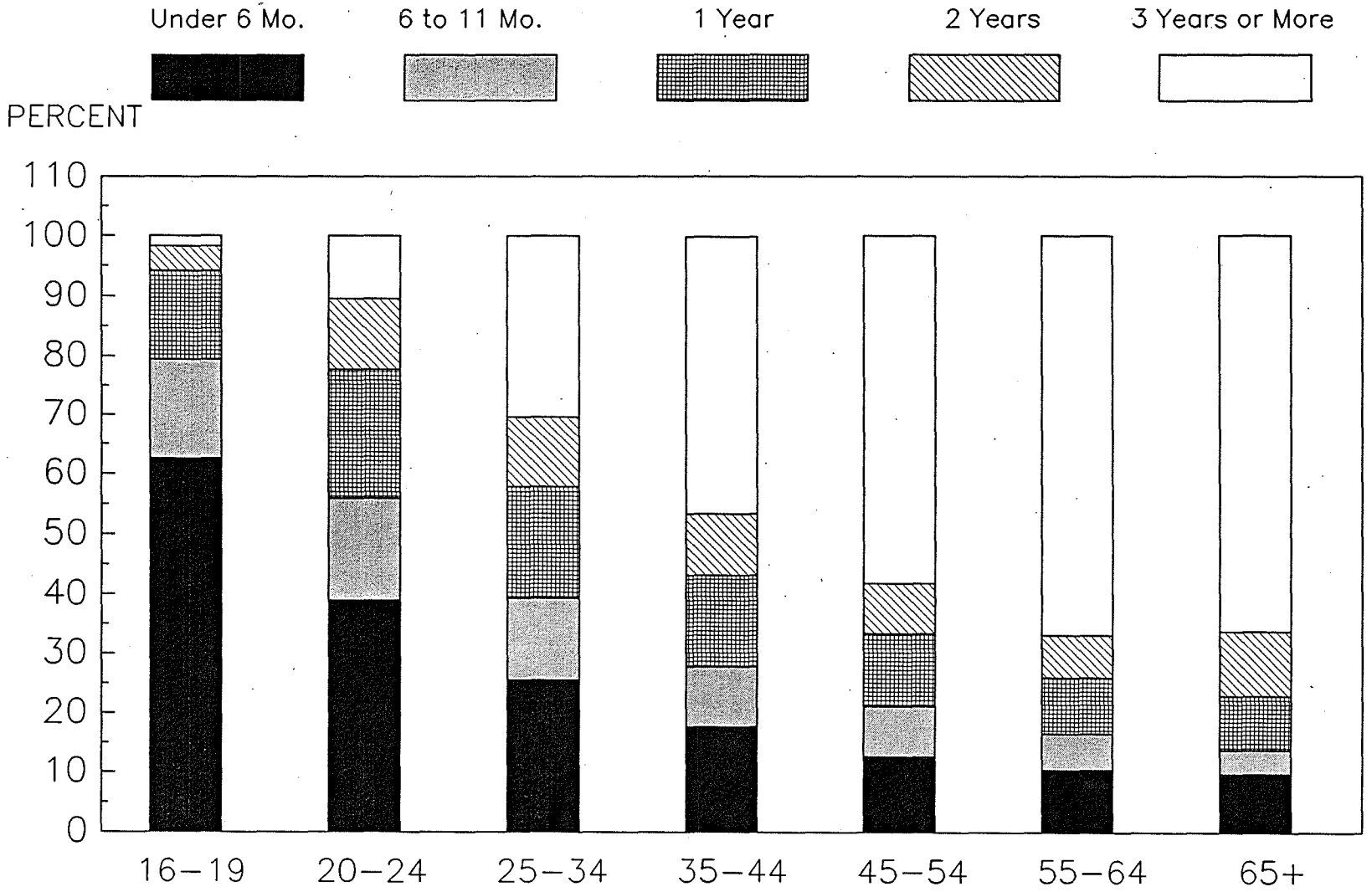
Percent of All Illness Cases That Involved Repeated Trauma



Source:
Annual Occupational Injuries and Illnesses Survey

Produced By:
Maine Bureau of Labor Standards, June 1992

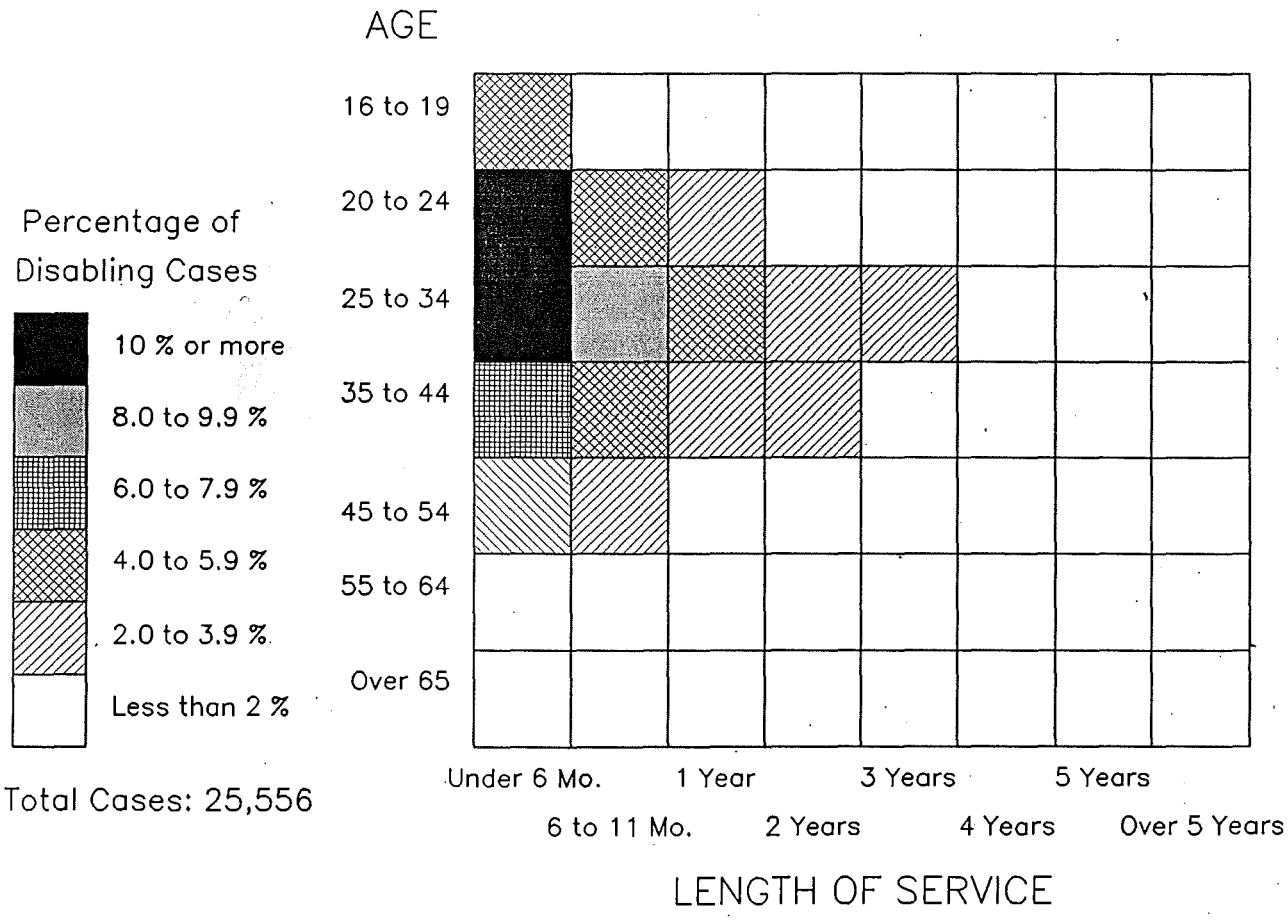
FIRST REPORTS OF OCCUPATIONAL INJURY OR ILLNESS, DISABLING CASES, PERCENT LENGTH OF SERVICE WITHIN AGE GROUP, MAINE, 1990



Source: First Reports submitted to the Maine Workers Compensation Commission

Produced by:
Maine Bureau of Labor Standards
June 1992

FIRST REPORTS OF OCCUPATIONAL INJURY OR ILLNESS, DISABLING CASES, LENGTH OF SERVICE BY AGE, MAINE, 1990

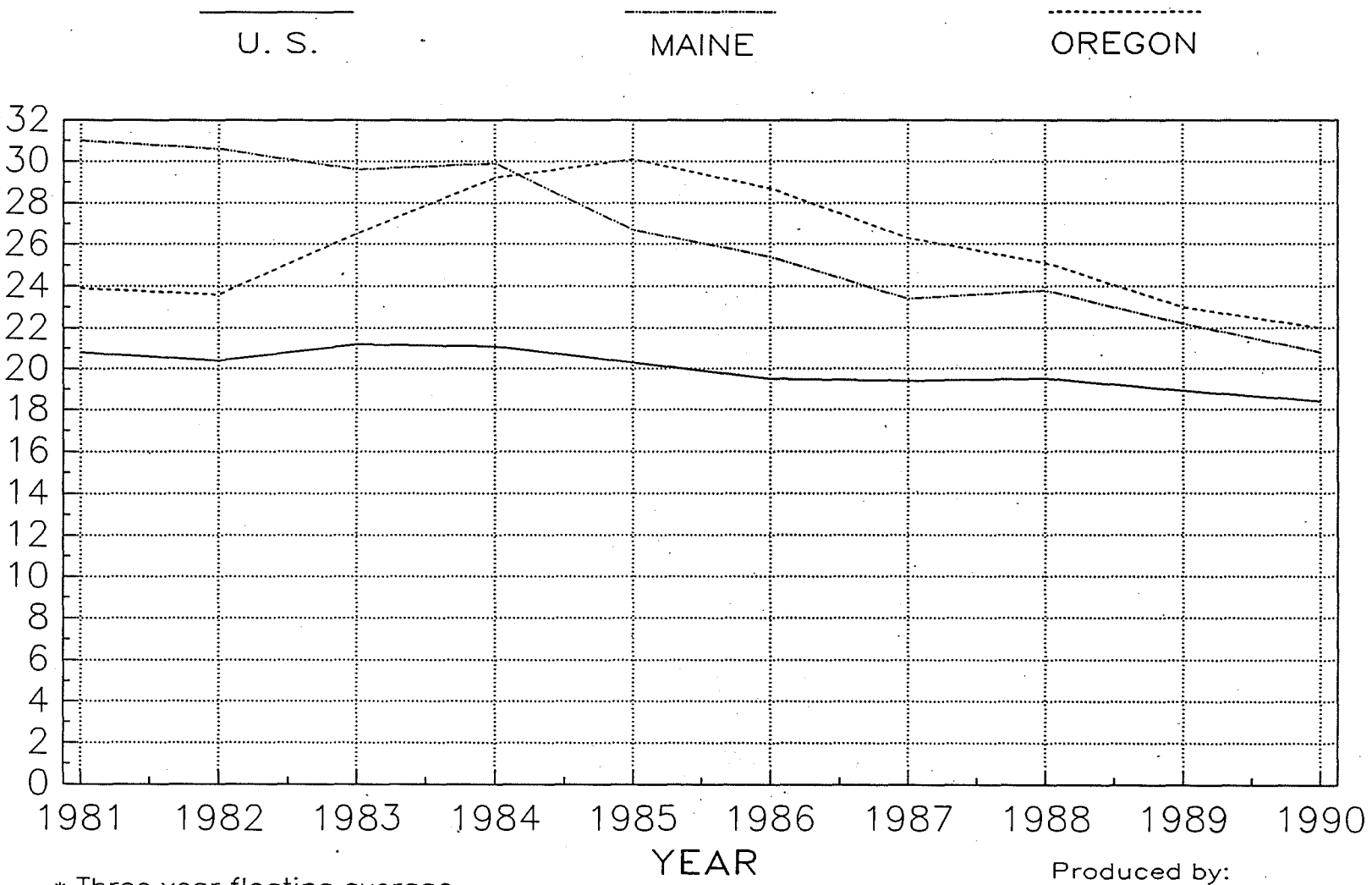


Total Cases: 25,556

Source: First Reports submitted to the Maine Workers' Compensation Commission

Produced by:
Maine Bureau of Labor Standards
June 1992

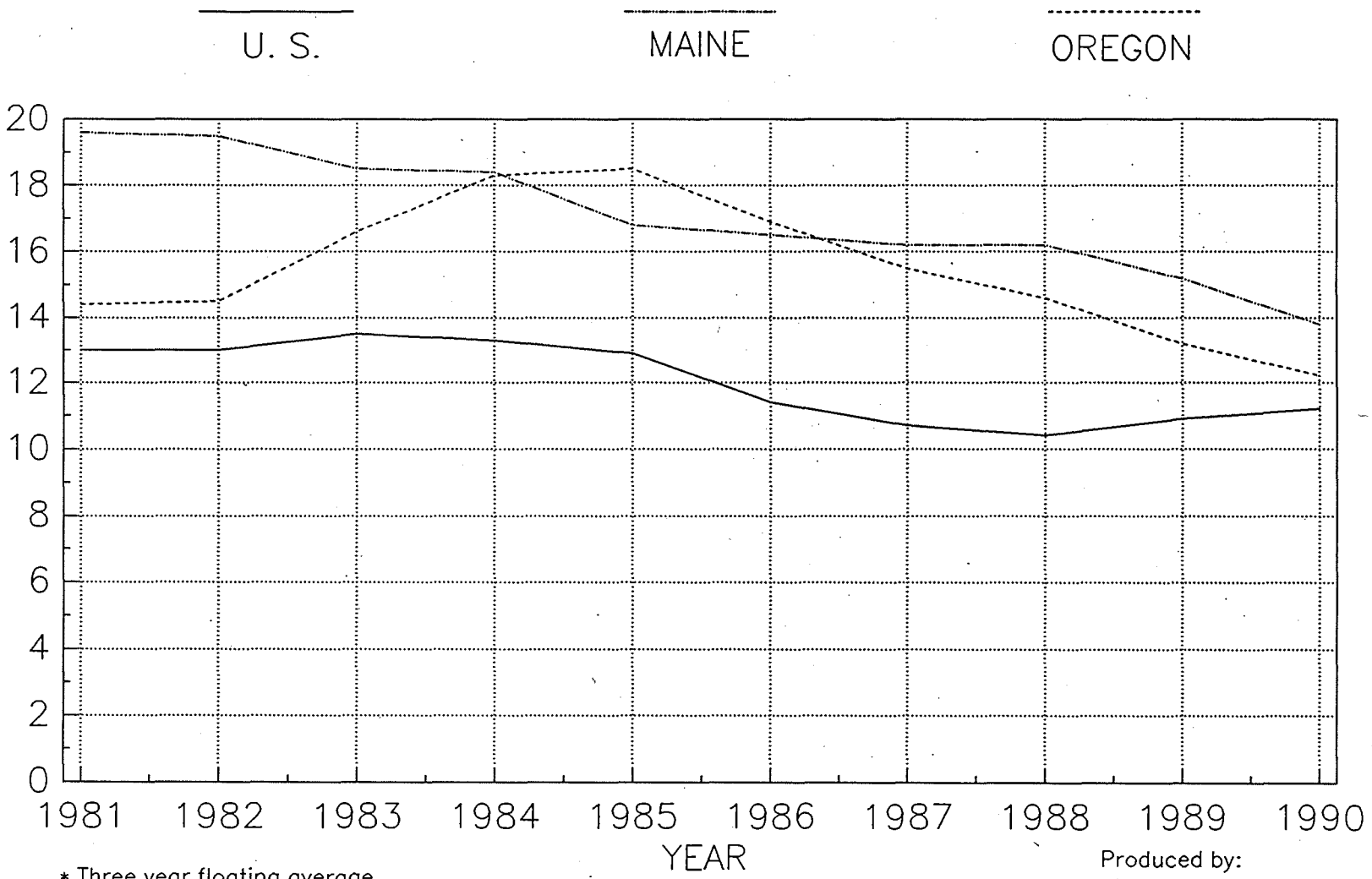
TOTAL CASE INCIDENCE RATE,*
U. S., MAINE, & OREGON,
1981–1990



* Three year floating average
Source:Annual Occ. Injury & Illness Survey June 1992

Produced by:
Maine Bureau of Labor Standards

LOST WORKDAY CASE INCIDENCE RATE,*
U. S., MAINE, & OREGON,
1981–1990

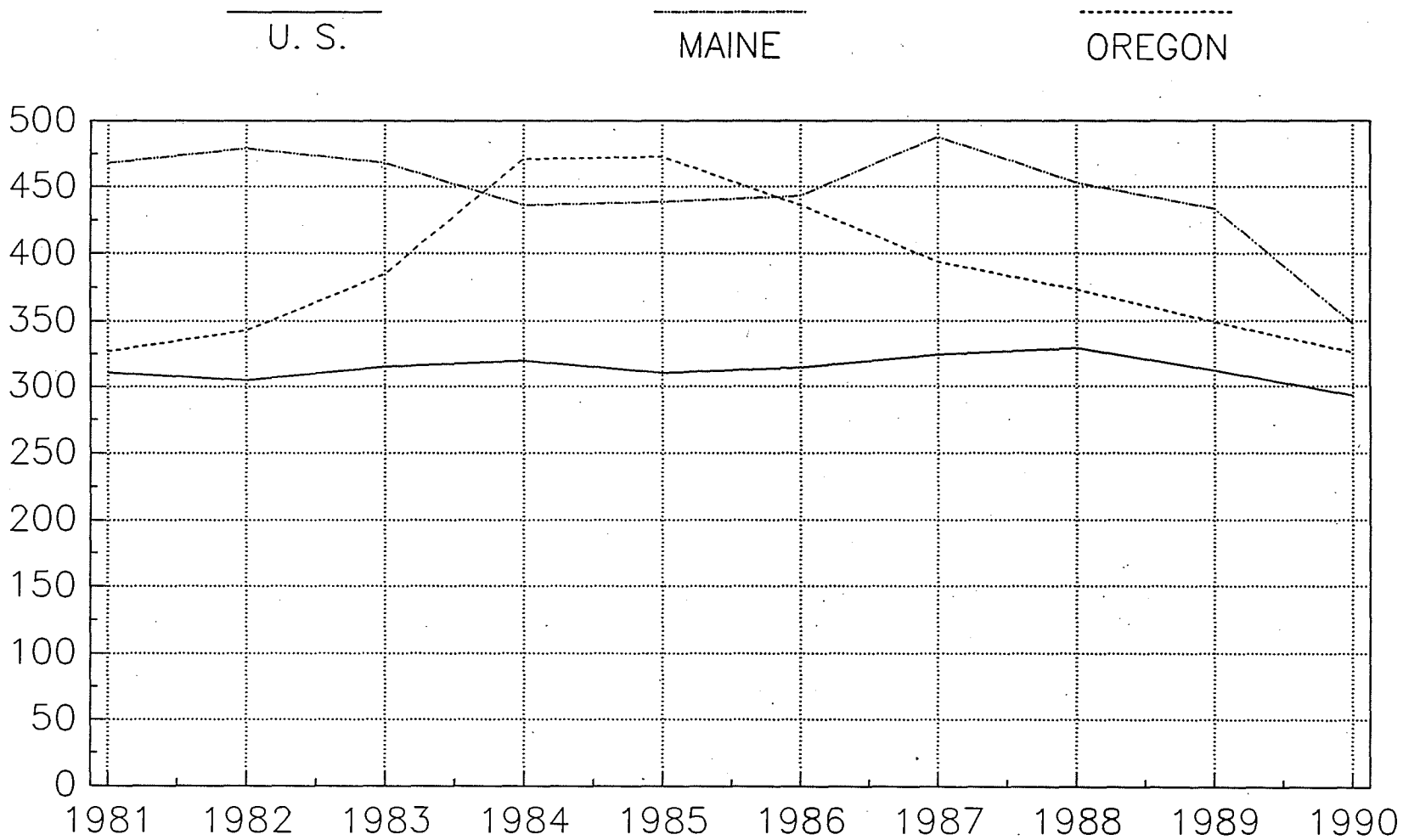


* Three year floating average
Source; Annual Occ. Injury & Illness Survey

June 1992

Produced by:
Maine Bureau of Labor Standards

LOST WORKDAY INCIDENCE RATE,*
U. S., MAINE, OREGON,
1981–1990



* Three year floating average
Source; Annual Occ. Injury & Illness Survey

June 1992

Produced by:
Maine Bureau of Labor Standards

Staffing of the Maine Area Offices of the
U.S. Department of Labor
Occupational Safety and Health Administration
(as of April 1992)

Augusta Area Office (20 positions)

- Area Director (1)
- Supervisors (2) (one for Safety, one for Health)
- 11C Investigator (1)*
- Inspectors (11)
  - Safety (6)
  - Health (5)
- Administrative (3)
- Vacant (2)**

Bangor District Office (8 positions)

- District Supervisor (1)
- Inspectors (5)
  - Safety (3)
  - Health (2)
- Administrative (1)
- Vacant (1)**

* Specializes in the investigation of complaints of discrimination from exercise of employee rights under the Act.

** Vacant positions are Safety or Health Inspectors

As Reported to the
Maine Department of Labor
Bureau of Labor Standards

John R. McKernan, Jr.
Governor

Stephen G. Ward
Public Advocate

Executive Department
PUBLIC ADVOCATE
Telephone (207) 289-2445
FAX (207) 289-4317

FACSIMILE TRANSMISSION COVER SHEET

DATE: 6/15/92

SENT TO: Michelle Bushey

OFFICE/COMPANY/FIRM: Blue Ribbon Commission on W.C.

LOCATION: University of Maine LAW School (780-4913 - FAX)

COMMENTS:

We are putting a copy of this letter in the mail to you.

INDIVIDUAL SENDING TRANSMISSION: B. Black

NUMBER OF PAGES TO FOLLOW THIS COVER SHEET: 2

If you do not receive all the pages to this transmission or the pages are not legible, please notify the office at (207) 289-2445. Thank you.

John R. McKernan, Jr.
Governor

Stephen G. Ward
Public Advocate

Executive Department
PUBLIC ADVOCATE

Telephone (207) 289-2445
FAX (207) 289-4317

June 9, 1992

Richard Dalbeck
William Hathaway
Blue Ribbon Commission
University of Maine School of Law
Deering Street
Portland, ME 04102

Dear Chairmen Dalbeck and Hathaway:

Thank you for giving us the opportunity to talk to the Commission yesterday about the issues involving insurance rates and the residual market.

At one point during our presentation, we mentioned the importance of encouraging a spirit of cooperation and openness throughout the process of rebuilding the system. Mr. Picker asked us if we had specific suggestions. Because time constraints prevented us from going into more detail on Monday, we are writing to explain our thoughts on this issue further.

We particularly suggest that the Blue Ribbon Commission continue to meet openly, rather than in executive session. Open discussions and deliberations are critical to the success of your work.

After the disagreements that occurred in 1991 and prior years, many jealousies and petty suspicions persist among the various parties that have appeared in front of you. Openness will build confidence and acceptance for the solution that you adopt. If your decisions are made in the open, warring parties are less likely to challenge the final result as being influenced by special interests and behind-the-scenes discussions.

Furthermore, as you know, the present workers' compensation problems are complex and multifaceted. There are people in this State who have been discussing solutions to those problems for a good while. The chief problem is that nobody has been able to agree.

As we said in our testimony, there already has been some new collaboration between management and labor. The solution that

you develop will have a better chance of success if you can build on that cooperation by involving representatives of management and labor in your process. You do not have to accept their advice, but you should continue to encourage their participation. If they are involved in the development of a solution, the key players are more likely to develop a sense of ownership of the solution. That sense of ownership will be a key factor in the efforts that the various players make to ensure that your solution will work once it has been adopted.

That spirit of involvement and ownership will be facilitated if others have both the opportunity to follow your decision-making process, and the opportunity to help explore or respond to a particular idea or design in more depth as you progress toward a solution. For example, you might want to appoint a subcommittee, chaired by one or two Commissioners, to investigate a particular question and propose solutions. The legislature apparently intended that you use that structure because the Legislative Resolve states that, "The Commission shall proceed with its work through committee meetings and the use of subcommittees."

Finally, the Commission's meetings should be kept open because the Legislative Resolve that created the Commission requires that "All meetings of the commission be open to the public." Chapter 59, Sec. 1, para. 4. The Freedom of Access law (1 M.R.S.A. § 403) also requires that all public proceedings be open to the public. Executive sessions can only be called to discuss personnel matters, acquisition or sale of property, labor negotiations, matters in litigation and confidential records. 1 M.R.S.A. § 405. Any questions about the legality of the process could undermine acceptance of the solution.

As you move forward toward a result, we wish you well and we hope that we can provide assistance, where needed. We look forward to working with you.

Sincerely,

Bill Black

William C. Black
General Counsel

Martha McCluskey

Martha T. McCluskey
Counsel

pjm
cc: Harvey Picker
cc: Emilien Levesque

John R. McKernan, Jr.
Governor

Stephen G. Ward
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Sincerely,

Bill Black

William C. Black
General Counsel

Martha McCluskey

Martha T. McCluskey
Counsel

pjm
cc: Harvey Picker
cc: Emilien Levesque

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June 15, 1992

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

Dear Ms. Bushey:

I am writing to express my thanks to the Commission for allowing me the opportunity to speak on the 8th before its deliberations. As I mentioned at the hearing, I was one of the very few persons who had the opportunity to speak who had inside personal knowledge of the daily workings of the system.

Given these circumstances and given the fact that I am interested in volunteering some time to help out if I possibly can with this process, would you pass along to the members my desire to help and willingness to do whatever I am called upon to do assist in their efforts.

One possibility may be to provide some technical support and assistance in explaining and working through the intricacies of workers' compensation administrative procedure. There may also be other areas.

Again, if I can be of any help, please let me know.

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

William P. Hardy

WPH/sec

cc Frank DeLong, III, Esq.

Maine Organic Farmers
and Gardeners Association

Box 2176 • Augusta, ME 04338-2176 (207) 622-3118 Fair 623-5115

June 15, 1992

Ms. Michelle Bushey
246 Deering Avenue
University of Maine Law School
Portland, Maine 04102

Dear Ms. Bushey,

The Maine Organic Farmers and Gardeners Association is concerned that the Commission may be considering adoption of the "Michigan Plan" without any changes.

Organic farms in Maine are small operations which could not afford premiums required for workers comp coverage. These farmers are already burdened by the requirement that their liability insurance be in force year round even though they hire workers for less than half the year.

We urge that Maine's present level of exemption for six agricultural employees be retained in whatever proposal is adopted. We would further ask that the system allow flexibility for seasonal employment of six or fewer workers.

Thank you very much for your consideration.

Sincerely yours,

Nancy Ross

Nancy Ross
Executive Director

NR:gaf

STATE OF MAINE
WORKERS' COMPENSATION COMMISSION
STATE HOUSE STATION 27
AUGUSTA, MAINE 04333
207-289-3751

June 15, 1992

William Hathaway
6707 Wemberly Way
McLean, VA 22101

Dear Mr. Hathaway:

Enclosed are two charts displaying the effect of industrial mix on workers' compensation costs. Chart 1 is entitled "How Industrial Mix Affects Average State Costs". It compares two hypothetical states, assuming everything is the same except industrial mix.

Chart 1 makes certain assumptions. It then uses simple arithmetic to illustrate how much state average claim cost and total state cost could be affected. This illustrates a hypothetical relationship. However, it is obviously not a proof that this is how things work in practice.

Chart 2 is entitled "Distribution of Employment and Litigation - Augusta, Rumford, and Millinocket Labor Markets". The Augusta labor market has much office employment. Rumford and Millinocket have much paper manufacturing and logging.

Chart 2 assumes that more expensive cases are more likely to be litigated. Therefore, you would expect more litigation in labor markets with hazardous industries and more severe injuries.

Chart 2 compares the percent of Maine's labor force to the percent of litigation in 1987. For example, the Augusta labor market was then about seven percent of the state labor market. However, it accounted for only about five and a half percent of litigation. By contrast, Millinocket had about one percent of the state labor market and accounted for three percent of litigation.

Chart 2 reflects actual data. It is not easy to follow. However, I think it confirms the strong relationship between the type of industry, the amount of cost, and the amount of litigation.

Sincerely,

Frank R. Richards

Frank R. Richards
Assistant to the Chairman

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June 15, 1992

MEMORANDUM
TO: MEMBERS OF THE MAINE BLUE RIBBON COMMISSION ON WORKERS' COMPENSATION
FROM: MAINE AFL-CIO
RE: POSITION STATEMENT OF MARYLAND INSURANCE GROUP

Dear Commissioners Dalbeck, Hathaway, Levesque and Picker:

President O'Leary of the Maine AFL-CIO has asked me to respond to the position statement of the Maryland Insurance Group dated June 2, 1992 submitted by Grover E. Czech, Vice President of Government and Industry Affairs.

Initially, the Maine AFL-CIO notes the remarkable similarity between the Maryland Group's position and the position asserted by the AIA consultant and the former Superintendent of Insurance.

1. Residual market deficits.

The Maryland Insurance Group asserts that it faces residual market deficits for 1989 through 1990 of millions of dollars. The Maine AFL-CIO, which for the last 8 or so years, has participated with the Public Advocate and Maine Chamber of Commerce and Industry in workers' compensation insurance rate cases, including the determination of residual market deficits and "Fresh Start" surcharges as enacted in 1987. The AFL-CIO concurs with the Maine Public Advocate that the amount, if any, and size of Fresh Start deficits for 1989 through 1991 are unknown because the figures submitted by the insurance industry have been shown to be substantially unreliable and because the the figures are an attempt to estimate the future. Clearly there is no cash deficit and the Maine AFL-CIO believes that before Maine's insured businesses are required to pay additional charges to make up deficits, that deficits should be established with reasonable certainty, by requiring the use of a paid rather than incurred methodology and requiring the use of professionally and impartially audited statistics.

2. Competitive Rates. The Michigan system, which the Labor-Management Group recommended, does contain a competitive rates feature, however, the assertion that the insurance industry does not require rate regulation is wholly dependent upon the existence of a long functioning and aggressive marketing state fund assuring coverage and price competition. The question of whether the residual market should be totally self-funding, considering the tendency of insurers not only in casualty but in health and other lines of insurance to "cream skim" and to avoid small business, should be carefully considered and a decision made based on public policy considerations.

3. Cost containment reforms. From 1987 until 1992, Maine public policy was effectively determined by the insurance industry with its emphasis on reducing benefits and erecting barriers to the receipt of needed benefits as the ONLY means of cost containment. During that period, benefits were cut over 50% and insurance rates increased a minimum of 90% considering the pending rate increase (and in particular instances up to 200%). Benefit cuts in our view are not reforms, they are simply benefit cuts. Real and effective reforms require fundamental consideration of the underlying cost drivers--the number of workplace injuries and the problems of re-employment which increases the severity of workplace injuries. Maryland Casualty continues to suggest that Maine repeat 7 years of demonstrated failure.

For example, the so-called, "predominant cause" definition not only would decrease benefits and require a metaphysical determination of what are "predominant" and what are subordinate causes, but also require litigation for that determination in every case. That would clearly delay benefits in most cases and drive up costs through increases in administrative overhead.

On Maryland Casualty's recommendations on permanent partial disability suffers from a confusion between the concepts of permanent (medical) impairment and the loss of wage-earning capacity.

Rising medical costs are a very substantial concern. Indeed, medical costs have risen in the last 3 years reported by NCCI from approximately 25% of benefits to approximately 40% of benefits. However, the lack of controls over the frequency and repetition of particular treatments and the failure to integrate to any degree the workers' compensation health care system with the general health care system are ignored.

4. The Michigan System, Michigan Statutes and Michigan Interpretations. At page 3 of its report under the Michigan system comments, Section 2, the Maryland Group recommends the adoption of Michigan interpretive law and regulations as well as the Michigan statute. As we understand the testimony of Mr. Welch before the Blue Ribbon Commission, he recommends all three. The Maine AFL-CIO concurs.

Under Section 3 of its comments in the Michigan system, the Maryland Insurance Group requests the right to "cream skim" in Maine with no proportionate responsibility for the residual market. The Maine AFL-CIO believes that that position, although obviously desirable to particular insurers, is already contrary to the public interest of the State of Maine, particularly to small businesses.

Very truly yours,

Patrick N. McTeague
Counsel, Maine AFL-CIO

PNM:cw
cc: Charles J. O'Leary, President
Maine AFL-CIO
Edward Gorham, Sec.-Treas.
Maine AFL-CIO

MAINE MEDICAL ASSESSMENT FOUNDATION
P. O. Box 4682
Augusta, Maine 04330
(207) 622-9342 • Fax (207) 622-5647

Robert B. Keller, M.D.
Executive Director

JUN 17 1992

June 16, 1992

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

Dear Harvey:

Because I do not have an address for your commission, I am writing directly to you as a member of the Blue Ribbon Commission on Workers' Compensation.

During my testimony on May 26, you indicated an interest in any further thoughts I might have regarding development of a system that would more effectively meet the needs of injured workers and other parties. I will make suggestions under three separate headings - Expert Systems, Data Systems and Treatment Effectiveness.

Expert Systems

I indicated that the development, utilization, and expansion of "expert systems" would be highly desirable. The objective is to direct injured and symptomatic workers into an organizational structure that can deal with all the complexities and can work with the compensation system. The average provider, even those with significant expertise in specific medical areas, simply cannot deal with the logistics of the Workers' Compensation System in an efficient and effective way.

By "system" I mean an entity that can provide prompt, expert, high quality health care and, at the same time, has the administrative and organizational capacity to support and guide the worker through the potential problems he/she faces. Currently, those tasks are poorly coordinated, if at all. The managed care concept seen in staff model HMOs has many of these features. Patients are treated by a "gatekeeper", and there are controls and coordination of consultations and treatment protocols.

One could debate whether or not the medical component of the workers comp system is the appropriate location for responsibilities which are not purely medical. I believe that it is. The reason is that the driving factor putting an individual into the compensation system is a symptom, injury or illness. All other components of the system depend on the decisions and recommendations of health care providers.

If a physician makes the statement that an individual cannot work or cannot lift a weight of over ten pounds, that statement becomes "law", and the only way to change it is to get another provider to say that those restrictions are not appropriate. At this point, the whole dispute mechanism comes into play. Thus, the medical entity not only has responsibility for the care of the worker, but it also has a tremendous authority in regulating what the worker can and can not do. As you know, there is little knowledge and less consistency in making those determinations. The "expert system" concept would allow approved organizations to develop, improve and control the care and disposition of workers.

This type of clinic would require a range of personnel including physicians, nurses, other therapists, managers, data processing, and management staff. The Maine Occupational Health Program has developed much of this capacity. There may be others.

A major requirement of this kind of system is that the worker be placed under the managed care model in which the clinic has considerable responsibility and authority. Open-ended, free choice of health care has not worked. It produces high cost, confusion, endless lost time and disability. The new workers' compensation laws and regulations have, at last, recognized this fact, and there are some limits on the kind of shopping activity that has gone on in the past. Workers are no longer free to move from one provider to another at will, but there is nothing in the law that specifies the kind of health care system that should be utilized by the worker.

Presently, all health care providers have equal status. For example, I have reviewed many medical records in which physicians assistants have declared people unfit for work, recommended work restrictions, ordered expensive drugs, tests and therapies and even recommended surgery. Yes, these records are ultimately approved by a supervising physician, but not until after these recommendations and orders have been implemented.

Clearly, many people will object to this concept. There will undoubtedly be objections made by workers, providers, lawyers and others, but I believe major restructuring of the mechanism of providing care to this population is essential if effective change is to occur.

Data Systems

As we have discussed, there is an obvious need for better data. Specialized clinics, such as the Maine Occupational Health Program, are already computerized and currently do collect a lot of useful data. The individual physician or provider office practice would have difficulty dealing with increased data requirements, whereas specialized clinics have or could build in this capacity. The State of Texas is now centrally collecting a modest amount of medical data on every injured worker, and this represents a significant step forward. What is lacking in all systems is information about treatments and outcomes of care. Collection of this kind of information would be of tremendous value in assessing the effectiveness of the system in all respects. It is not simple nor is it cheap. In my view, the increased efficiency and lower health care costs that should result would more than pay for the cost of data systems, and the outcomes would be significantly improved.

The kind and amount of data that should be collected needs to be the subject of a careful discussion and negotiation, probably beyond the work of your Commission and certainly beyond my ability to specify at the moment. However, a strong endorsement of the need for development of a data collection system, with mention of important categories of data collection, beginning with simple injury reporting and demographic data (much of which is already done), all the way up to treatment and outcomes information, certainly would be an important recommendation.

Paying for Effective Care

Another recommendation relates to authorizing the utilization and reimbursement for only those treatments which are known to be effective. As I mentioned in my remarks to the Commission, there is a growing base of knowledge about this subject. There are techniques available to review current scientific literature and make very definitive statements about effective [and ineffective] treatments. We know that providers recommend and utilize many treatments which have never been proven to be

efficacious, and only rarely do the insurance carriers, patients and employers call them into question. This means that the system is paying for huge numbers of ineffective treatments. As I stated, not only do these worthless methods burden the system with cost, but I am confident they aggravate and prolong the disability status of patients.

The development of practice guidelines will be helpful in assessing current and new treatments. For example, the federally funded guideline on the treatment of low back pain will contain very specific information about the numerous available treatments for that condition. It will clearly list what has and what has not been found to be effective. Beyond the availability of external guidelines, the Workers' Compensation Commission could be charged with the responsibility of insuring that only treatments of reasonable effectiveness would be authorized and reimbursed. This could be accomplished by setting up a special panel of providers to review questionable treatments and approve new ones. Providers wishing to utilize and be reimbursed for treatments which have not been previously proven effective should be forced to prove that they are effective - before being reimbursed for such services, tests, etc.

As an example, chiropractors are currently advocating the use of various forms of manipulative massage therapy for carpal tunnel syndrome. This is based on an article written by a plastic surgeon [in conjunction with his son who is a chiropractor]. We know a fair amount about the pathology of carpal tunnel syndrome. It occurs as a result of compression of the median nerve at the level of the wrist. There is no possibility that manipulative or massage therapy could be effective in reducing symptoms. Yet, at the present, patients who wish to seek this kind of care will likely receive it, and reimbursement will be unquestioned in the Workers' Compensation system. There are examples of this kind of thing in every branch of medicine. No discipline or provider is exempted.

I hope these additional thoughts will be of some assistance to you and your colleagues. I will attempt to retrieve some information I have received from the Texas Workers' Compensation Program. If I can, I will contact colleagues there and obtain it for you.

Sincerely,

Bob

Robert B. Keller, M.D.
Executive Director

RBK:hmd

MILLIMAN & ROBERTSON, INC.
Actuaries and Consultants
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FACSIMILE TRANSMISSION

DATE: 6/16/92

NUMBER OF PAGES: 7
(Including cover page)

TO: William Hathaway

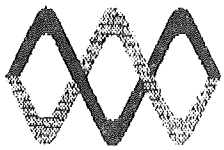
FAX NUMBER: 1-207-780-4913

COMPANY:

FROM:

COMMENTS: Tel # 207-934-5259

Here is our letter. Call us if you have any comments or questions.



MILLIMAN & ROBERTSON, INC.
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Godfrey Perrott, F.S.A.
Bertram N. Pike, F.S.A.

Wendell Milliman, F.S.A. (1976)
Stuart A. Robertson, F.S.A.
Chairman Emeritus

June 16, 1992

Mr. William Hathaway
Maine Blue Ribbon Commission on Workers Compensation

Dear Mr. Hathaway;

This letter responds to your request for information as to how Milliman & Robertson, Inc. ("M&R") could assist the Blue Ribbon Commission in estimating the cost of potential changes to the workers compensation system in Maine.

It is our understanding that the Commission is currently performing research and studying how to revise the Maine system. John Lewis, who is consulting to the Commission will be providing recommendations shortly. Once these recommendations are evaluated by the Commission, they will require assistance in estimating the premium (rate) impact of any change to the system in Maine.

Milliman & Robertson

Milliman & Robertson, Inc. is a nationwide independent actuarial firm. We have over 800 professional personnel in 25 offices around the country. We provide actuarial consulting services in the property/casualty, life, health and pension disciplines to clients which include regulators, insurance companies, insurance purchasers, self-insurers, captive insurers, risk retention groups, pension plan sponsors, etc.

M&R has extensive experience in all aspects of property/casualty insurance consulting including workers compensation, general liability and automobile liability. We have assisted six insurance departments in the review of workers compensation rate filings, and another four insurance departments in connection

with a NAIC examination of the National Council on Compensation Insurance. We have also assisted parties in many states with pricing the effects of changes to workers compensation laws. In Maine, we assisted the Superintendent with pricing in 1987 and 1991. We have assisted legislative committees in Oklahoma and Texas. We have also assisted the New Hampshire insurance department in evaluating workers compensation legislation.

We are familiar with the rate and benefit structure in Maine. We have been assisting the Bureau of Insurance on various assignments since 1987.

Other Considerations

The National Council on Compensation Insurance ("NCCI") is a ratemaking and statistical gathering organization. They will be pricing whatever legislation is passed in a future filing for rates. In order to assist you, we will require various kinds of data from the NCCI regarding benefits and loss experience in the Maine system and in other system(s) throughout the United States. In order to expedite the process as well as to control costs, it may be useful to get the NCCI involved soon. They could independently price proposed legislative changes, although we would suggest that pricing calculations they develop, be reviewed by us. We can assure you that NCCI's involvement will not impact on the independence of our study.

Cost of Services

Our fees are based on the amount of time spent on the project times our usual hourly billing rates. In addition, we are reimbursed for expenses related to computer use, typing, communications, travel and the like. The consultants who will work on this project and their hourly billable rates will vary from $50 per hour to $325 per hour.

The pricing of workers compensation legislative changes can be complex. In addition, legislative proposals often undergo frequent revisions. Occasionally, seemingly minor changes in wording can produce complex interactions in the benefit structure that require extensive changes to actuarial models. For this reason, it is difficult to estimate costs precisely.

We estimate that the cost of this assignment will be approximately $30,000. This estimate includes the following:

1. Up to three days of meetings with the Commission to discuss legislative alternatives and our preliminaty findings 1 Day
2. Pricing one major legislative proposal, including several minor variations
3. ~~Detailed analysis of NCCI's pricing of that one legislative proposal~~
4. One day of testimony before the Commission to describe our findings
5. A report of our findings and conclusions

Additional testimony or meetings other than those described above are outside the scope of our assignment.

We appreciate the opportunity to offer our services to the Commission. We we would happy to come up and meet with members of the Commission to discuss this proposal further.

mes of our consultants who may work on this project are attached.

truly yours,

E. Frederick Fossa, FCAS, MAAA John Herzfeld, FCAS, MAAA

John Herzfeld
Consulting Actuary

John is an Associate Member with the Boston Office of Milliman & Robertson, Inc.

He has worked extensively on property and casualty consulting assignments. These assignments have covered areas such as loss reserving, ratemaking, captive planning, feasability studies, and rate of return analysis. John has substantial expertise in the pricing and analysis of Workers' Compensation benefit changes. He has also worked on developing models for pricing and reserving for difficult casualty lines. John has expertise in Actuarial computer systems and applications. As former chief actuary for a Massachusetts domiciled insurer, he was responsible for ratemaking for all lines of insurance. In addition to multi-line property and casualty insurers, clients have included reinsurers, medical professional liability specialty insurers, workers' compensation specialty insurers, self-insurers, and captive insurers.

John is a Fellow of the Casualty Actuarial Society and Member of the American Academy of Actuaries. He is a graduate of Yale University. John joined M&R in 1986.

Milliman & Robertson, Inc.
289 Edgewater Drive
Wakefield, MA 01880
(617) 245-4847

E. Frederick Fossa
Consulting Actuary

Fred is a Principal of Milliman & Robertson, Inc. and manages the Boston Property Casualty Office. He joined M&R in 1987.

Fred has extensive experience in most areas of property and casualty insurance. He has expertise in ratemaking, in loss reserve analysis and in the valuation of insurance companies for mergers and acquisitions. He has assisted companies in the design of rating plans, the analysis of self-insurance funding mechanisms and the development of financial projections. Fred has advised commercial insurers, insurance brokers, professional associations, insurance departments and governmental agencies.

A Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries, Fred is a graduate of Merrimack College in North Andover, Massachusetts.

Fred has spoken at meetings and served on various committees for the Casualty Actuarial Society and the Casualty Loss Reserve Seminars. He is a former member of the Board of Directors of the Casualty Actuarial Society.

Milliman & Robertson, Inc.
289 Edgewater Drive
Wakefield, MA 01880
(617) 245-4847

Mark Mulvaney

Consulting Actuary

Mark is with the Denver office of Milliman & Robertson, Inc.

He has worked in workers compensation matters since 1978. Prior to joining Milliman & Robertson, Inc. in 1988, he worked at the National Council on Compensation Insurance as Regional Actuary, as the Manager of the Law Evaluation Division, and in various other positions. His responsibilities at NCCI included the determination, filing, and support of workers compensation rate filings for the western states, providing testimony in regulatory proceedings, and providing expert testimony at legislative hearings concerning the cost impact of new legislation.

Since joining Milliman & Robertson, Mark has continued his involvement in workers compensation matters, performing assignments to evaluate the feasibility of self insurance and captive insurance programs for workers compensation exposures, performing various valuation assignments for workers compensation carriers and state workers compensation funds.

A Fellow of the Casualty Actuarial Society and the American Academy of Actuaries, Mark is a graduate of Georgetown University.

He has spoken at meetings and other presentations of the NCCI, and meetings of Workers Compensation Self Insurers, Safety Engineers, Risk and Insurance Managers, Captive Insurance Association members, and other groups.

Milliman & Robertson, Inc.
370 Seventeenth Street, Suite 2250
Denver, CO 80202-5602
(303)592-5500

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE
04333

JOHN R. McKERNAN, JR.
GOVERNOR

M E M O R A N D U M

Bill,
I thought this might be interesting.
Abby

TO: Governor McKernan

FROM: Abby Harkins, Law Clerk

SUBJECT: Frequency of Workers' Compensation Claims

DATE: June 17, 1992

In response to your request and questions raised at the Blue Ribbon Commission meetings regarding the high frequency rate of claims in Maine, I have gathered the following information.

The final analysis of this report is that Maine's high frequency rate of workers' compensation claims is not a result of a higher percentage of unsafe workplaces in Maine than in other states. Claim frequency, however, is peculiar to specific categories. The following analysis will indicate that based on the different trends in categories, Maine's frequency rates are driven by the Workers' Compensation system and factors other than safety.

Safety and frequency have always been part of the debate on Maine's workers' compensation costs. The AFL-CIO and others have cited the OSHA Lost Workday Cases and Lost Workday incidence rates published in the Maine Department of Labor's Occupational Injuries and Illnesses in Maine. Excerpts from the 1990 publication are attached. It is alleged that if Maine employers improved workplace safety and the incidence of lost workdays were reduced to the countrywide level, Maine's rates would be reduced proportionately and there would be no need for benefit acts or other reforms. Recently, even NCCI has cited these numbers in support of filed rate increases.

The OSHA data is collected by the Bureau of Labor or equivalent agencies in each state. It is not workers' compensation experience but, if collected consistently, should track workers' compensation experience. There have been allegations that the collection is not uniform in each state.

If safety were a problem in Maine one might expect higher frequency for all injury categories under NCCI's standard injury types. To test this we looked at claim frequency (per 100,000 workers) for each of the categories (deaths, permanent total disability, permanent partial disability, temporary disability, and medical only claims). Three-year averages were used to smooth out variation from year to year in the death and permanent total categories. Maine is well above the countrywide unweighted average for the permanent partial and temporary disability categories, but close to or below the countrywide for deaths, permanent totals, and medical only cases. These figures are workers' compensation insured experience frequencies and are not adjusted for industry mix. It would be expected that Maine's frequency would be higher than countrywide because it has a higher percentage of hazardous or higher rated industry (logging, labor intensive manufacturing) and a lower percentage of low-risk employment (clerical, financial, etc.). The fact that Maine's frequency is not out of line with the countrywide figures for medical only claims, deaths, and permanent totals suggest that Maine is not unsafe but that the workers' compensation system and factors other than safety are contributing to the high frequency of partial incapacity and temporary disability workers' compensation claims and the high OSHA incidence rates of lost workdays.

The attached exhibits also include frequency data from Michigan. The waiting period for benefits in Michigan is 7 days rather than 3 days, which contributes to the lower frequency of indemnity claims.

AHH/mpm

Enclosure

	Fatal	Permanent Total	Permanent Partial	Temporary Total	Medical
Three Year Totals	1,094	1,603	87,397	257,446	1,356,018
Total Average	8.10	11.87	647.39	1,907.01	10,511.77
Maine Average	7.00	13.33	850.67	3,622.67	13,793.00
Michigan Average	7.33	6.00	391.00	1,930.00	12,072.00

STATE	1989 Fatal	Permanent Total	Permanent Partial	Temporary Total	Medical
Alabama	9	5	440	2,672	12,554
Alaska	33	16	927	2,932	12,377
Arizona**	5	3	580	1,728	12,780
Arkansas	12	6	668	1,663	12,487
California**	13	4	1,407	2,820	13,756
Colorado**	7	20	592	2,016	10,402
Connecticut	6	6	857	2,433	9,205
Delaware	4	11	178	2,136	n/a
D.C	6	1	268	819	3,478
Florida	7	13	416	1,778	10,857
Georgia	8	12	483	1,398	13,388
Hawaii	10	81	1,210	3,364	9,928
Idaho*	17	2	693	1,924	11,637
Illinois	6	5	891	1,254	8,526
Indiana	5	2	263	1,198	10,897
Iowa	5	5	460	1,858	9,668
Kansas	7	6	666	1,270	11,592
Kentucky	9	6	541	1,742	11,548
Louisiana	13	23	536	1,621	11,352
MAINE	4	4	831	3,532	12,957
Maryland**	5	4	738	1,928	8,986
Massachusetts	4	3	542	2,346	9,375
Michigan**	8	9	438	1,928	12,810
Minnesota**	4	8	679	1,924	9,558
Mississippi	14	4	363	1,842	11,820
Missouri	7	3	949	1,926	9,391
Montana**	9	4	797	1,688	11,599
Nebraska	4	4	344	1,284	10,042
New Hampshire	8	1	447	3,210	11,578
New Jersey	4	5	867	1,406	9,436
New Mexico	9	97	925	1,623	11,126
New York**	8	3	817	1,766	9,362
North Carolina	5	2	452	994	10,665
Oklahoma**	18	10	1,335	2,128	12,392
Oregon**	12	17	1,541	3,481	15,803
Pennsylvania*	6	20	198	1,737	n/a
Rhode Island	4	4	677	2,374	9,364
South Carolina	19	3	688	1,055	10,365
South Dakota	9	6	294	1,270	9,237
Tennessee	7	2	507	1,512	11,728
Texas	11	15	1,034	1,663	10,965
Utah**	6	2	429	1,686	13,187
Vermont	8	1	425	2,017	9,179
Virginia	5	3	282	1,241	9,079
Wisconsin	5	1	577	2,496	11,220
Totals	385	462	29,252	86,683	467,656
Average	9	10	650	1,926	10,876

STATE	1990				
	Fatal	Permanent Total	Permanent Partial	Temporary Total	Medical
Alabama	9	6	412	2,749	11,972
Alaska	34	19	815	2,687	11,536
Arizona**	6	1	641	1,588	12,640
Arkansas	14	7	618	1,695	12,156
California**	11	4	1,373	2,655	12,931
Colorado**	9	22	639	2,050	10,949
Connecticut	6	6	857	2,433	9,205
Delaware	4	11	178	2,136	n/a
D.C	1	7	225	892	3,242
Florida	9	16	417	1,575	10,240
Georgia	9	11	540	1,266	11,923
Hawaii	6	88	1,322	2,921	9,546
Idaho*	13	3	623	1,996	11,446
Illinois	5	4	876	1,314	8,502
Indiana	7	2	261	1,273	10,544
Iowa	5	4	476	1,805	9,299
Kansas	8	13	881	1,288	10,791
Kentucky	6	6	474	1,584	10,489
Louisiana	14	18	585	1,475	9,512
MAINE	6	9	816	3,154	12,908
Maryland**	5	5	613	1,708	8,198
Massachusetts	3	3	531	2,589	9,215
Michigan**	8	6	381	1,826	11,582
Minnesota**	4	4	583	1,818	8,907
Mississippi	12	1	487	1,805	11,716
Missouri	7	3	949	1,926	9,391
Montana**	17	17	1,255	1,554	11,143
Nebraska	6	3	379	1,231	9,379
New Hampshire	4	7	503	3,441	11,784
New Jersey	2	2	894	1,398	8,821
New Mexico	9	137	796	1,464	9,788
New York**	6	3	657	1,467	7,471
North Carolina	5	4	427	1,022	9,630
Oklahoma**	11	10	1,266	1,644	10,435
Oregon**	11	23	1,500	3,395	14,917
Pennsylvania*	6	20	198	1,737	n/a
Rhode Island	3	23	571	2,568	9,081
South Carolina	19	3	688	1,055	10,365
South Dakota	7	4	332	1,186	9,240
Tennessee	6	5	473	1,355	11,502
Texas	9	13	1,040	1,510	9,614
Utah**	6	2	303	1,508	11,395
Vermont	4	1	401	2,205	9,890
Virginia	4	4	310	1,341	9,297
Wisconsin	4	4	574	2,570	11,286
Totals	360	564	29,140	83,859	443,878
Average	8	13	648	1,864	10,323

STATE	1991				
	Fatal	Permanent Total	Permanent Partial	Temporary Total	Medical
Alabama	8	10	376	2,593	10,836
Alaska	24	8	853	2,697	11,459
Arizona**	5	1	619	1,680	12,565
Arkansas	13	10	619	1,779	12,050
California**	11	3	1,456	2,604	12,770
Colorado**	9	22	639	2,050	10,949
Connecticut	6	1	752	2,511	8,944
Delaware	6	19	312	1,795	n/a
D.C	3	2	215	915	3,239
Florida	8	22	453	1,592	9,921
Georgia	8	4	535	1,242	10,615
Hawaii	7	104	1,218	2,995	9,384
Idaho*	13	2	560	2,089	11,870
Illinois	5	3	840	1,513	9,271
Indiana	6	1	254	1,437	10,873
Iowa	6	3	516	2,275	10,803
Kansas	8	4	702	1,343	10,481
Kentucky	5	13	426	1,581	9,751
Louisiana	14	14	524	1,611	9,062
MAINE	11	27	905	4,182	15,514
Maryland**	4	1	561	1,791	7,981
Massachusetts	3	3	611	2,647	9,173
Michigan**	6	3	355	2,036	11,826
Minnesota**	5	6	634	1,949	9,312
Mississippi	13	6	450	1,793	10,790
Missouri	7	1	907	1,872	9,250
Montana**	12	9	675	1,434	10,383
Nebraska	5	6	337	1,192	9,074
New Hampshire	5	8	486	3,366	13,042
New Jersey	3	3	877	1,419	8,809
New Mexico	8	157	923	1,542	10,034
New York**	6	2	646	1,447	7,331
North Carolina	6	2	449	1,091	10,010
Oklahoma**	14	8	1,242	1,171	9,743
Oregon**	9	11	1,749	3,479	15,726
Pennsylvania*	6	28	332	1,953	n/a
Rhode Island	2	20	708	2,674	8,862
South Carolina	15	6	833	1,051	10,546
South Dakota	6	0	383	1,324	9,415
Tennessee	6	3	518	1,427	9,770
Texas	9	13	1,040	1,510	9,614
Utah**	9	2	234	2,038	13,447
Vermont	5	0	411	2,247	9,597
Virginia	5	3	309	1,337	9,143
Wisconsin	4	3	561	2,630	11,249
Totals	349	577	29,005	86,904	444,484
Average	8	13	645	1,931	10,337

Workers' Compensation Group
Box 4024, RFD 3
Brunswick, Maine 04011

June 18, 1992

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

Dear Chairmen Hathaway and Dalbeck:

When the Workers' Compensation Group appeared before you on May 4 to present our findings and recommendations, you requested we continue to work closely with the Commission and that we keep you abreast of our ongoing work.

As a result, on May 21 we wrote you a detailed letter outlining six areas which we had identified as issues needing resolution if the adoption of the Michigan system was to be seriously evaluated. We have attached a copy of that letter for reference.

Since then, you have asked us to draft specific recommendations for your consideration and forward them to you. We deeply appreciate the opportunity to continue to advise you of our best thinking and research on these important transition issues.

In response to your request, we respectfully submit the following proposals:

Creation of "The Economic Alliance for Maine" (TEAM)

In addition to the adoption of the substantive provisions of Michigan's workers' compensation system as outlined in our original report, we propose the Blue Ribbon Commission also recommend creation of The Economic Alliance for Maine (TEAM). The primary duty of this group will be to review all proposed changes to Maine's workers' compensation system once the Michigan system has been passed. The group will also have the option to propose changes of its own .

Membership

The group will be composed of seven management representatives and seven employee representatives who will be appointed insofar as possible outside the political process.

Potential management reps will be selected by the Maine Chamber of Commerce in conjunction with local Chambers of Commerce. They will forward a list of 14 potential nominees to the Governor, who will select seven nominees, who will then be considered for confirmation by the Joint Judiciary Committee of the Legislature.

The management reps will be allocated as follows: two from businesses with less than 50 employees, two from businesses with between 50 and 500 employees, two from businesses with more than 500 employees, and one public sector manager.

Potential employee reps will be selected by the Maine AFL-CIO which will also submit a list of 14 potential nominees to the Governor, who will select seven nominees, who will then be considered for confirmation by the Judiciary Committee.

The employee reps will be allocated as follows: two from public sector unions, one from a unionized employer with more than 500 employees, one from a unionized employer with between 50 and 500 employees, one from a private sector unionized employer with less than 50 employees, one from a non-union employer with more than 500 employees, one from a non-union employer with less than 50 employees.

Term of Members

Members will be appointed to three year staggered terms, allowing for one-third membership turnover each year.

Duties

In addition to its primary responsibilities to screen proposed changes to the workers' compensation statutes and create a QAC (see below), TEAM may also be used as a "sounding board" or forum by the Legislature for other issues primarily affecting employers and employees, including issues relating to health insurance, implementation of the Americans with Disabilities Act, etc.

Reimbursement

TEAM members shall receive only reasonable reimbursement for expenses, consistent with comparable state boards or commissions.

Staff

TEAM will be allocated no permanent staff, but will devise a system for meeting its support staff needs by in-kind donations from the resources of its members.

Creation of Quality Assurance Council (QAC)

One of the first tasks of TEAM will be to review the standard qualifications used in other states to determine eligibility to become a workers' compensation adjudicator/mediator. Upon completion of this review TEAM will adopt standards which will guide the appointment **and reappointment** of adjudicators/mediators under the new law.

TEAM will then determine standards to guide appointments to the Quality Assurance Council and, based on those standards, will then appoint five members (on staggered terms) to the Quality Assurance Council (QAC).

The QAC will have two primary functions: first, it will become responsible for appointment and reappointment of adjudicators/mediators under the "new" system; second, QAC will perform general management oversight of the Workers Compensation Commission.

Under its appointment/reappointment authority, the QAC will, by reference to the standards created by TEAM to guide appointment of adjudicators, appoint magistrates and mediators under the new system. The QAC will have authority to review sitting magistrates/mediators to determine their suitability for reappointment. The QAC will also review existing Workers' Compensation Commissioners to determine whether they meet qualification standards for consideration for appointment as adjudicators/magistrates under the new system (see discussion under "Existing Commissioners" below).

Under its oversight authority, the QAC will work with top Workers' Compensation Commission administrators to review the management of the agency and hold it accountable to its mandate. While we believe the Commission must preserve its autonomy and not become subsumed within a larger bureaucracy, it is also important that a labor-management group retain oversight responsibility.

Recommendation on Existing Commissioners & Administrative Structures

Existing Commissioners

We have been asked on many occasions whether it was our intention to replace existing Workers' Compensation Commissioners. Our Task Force reviewing this issue identified four potential options:

1) Leave the existing commissioners alone until their normal term expires (several years in some cases).

2) Put all existing commissioners on an accelerated review process.

3) Allow sitting commissioners to deal only with existing cases until the effective date of the new law or until all "old" cases are concluded.

4) Remove them all and start over if the law permits.

It is the recommendation of the Workers' Compensation Group that the Commission choose option #2. All existing Workers Compensation Commissioners should be provided copies of the qualification standards established by TEAM and the QAC, and be given a specified period of time in which to conform their conduct to those standards. Existing Commissioners would then be evaluated by QAC to determine their suitability for appointment based on the new standards.

Other than these proposals, it is the suggestion of the Workers Compensation Group that the Blue Ribbon Commission recommend no other changes in state administrative structures of various departments relating to workers compensation.

Projected Timeline for Implementation

It is clear that the changes suggested herein, as well as any other changes the Blue Ribbon Commission feels necessary, will take a period of time to implement. What follows is a suggested date for implementation:

On or before September 1, 1992-- Blue Ribbon Commission files report/proposed statute with Legislature

September 15, 1992-- Legislature enacts Blue Ribbon Commission recommendation

October- January, 1993-- Appointment process for TEAM

January 1, 1993 to July 1, 1993-- TEAM constituted and begins its work, including creation of QAC

July 1, 1993-- Effective date of "new" law; all injuries after this date governed by new law.

It is apparent to us that transition to any new system will require a prodigious and coordinated effort on the part of several state agencies. We respectfully suggest the Blue Ribbon Commission recommend creation of a "Conversion Group," the function of which will be to work with appropriate state agencies to manage the transition to whatever new system is created.

The Workers Compensation Group wishes to make clear and explicit our firm conviction that, given sufficient time and resources, the Blue Ribbon Commission should draft a statute which the legislature may adopt in toto. If the drafting of the actual statute is left to the traditional legislative/administrative bodies, we have two concerns: first, that the time required for that process to unfold will unduly delay implementation of the new system which is badly needed now, and second, that by leaving statutory drafting to traditional processes will lead to the very "horsetrading", in-fighting and compromise which have led us to this very crisis.

Status of "old" injuries under "new" law

We continue to be asked for a recommendation on this issue. The Workers' Compensation Group recommends a three-step approach:

1) In the first year after effective date of the "new" law (i.e. until July 1, 1994), an employee injured before the effective date of the new law has the choice to: a) have his case be processed under the "new" administrative case handling procedures, or b) leave his case under the existing case handling procedures of the "old" system. In either case, employee's monetary benefits would be governed by the law in effect at the time of his injury.

2) After July 1, 1994, all cases, regardless of when the injury occurred, will be transferred to the case handling procedures of the "new" system.

3) Commissioners or magistrates shall have the authority for "good cause shown" to extend the one-year transition period for a period not to exceed six months. This extension may also be granted at the mutual request of the parties (when they are quite close to finishing a case, or settling it, for instance).

Ed Welch and others contacted by us suggest that one of the most significant dangers in enactment of a new system is the "drag" on that new system by the number of cases still handled by the prior system. Our proposal gives litigants a one year window in which to utilize the old procedures if they deem that to their benefit. During that year, if they choose, they may transfer their case to the new system's procedures. After that year, all cases, except for "good cause shown," will be handled under the new system's procedures.

State Fund Issues

The Workers Compensation Group is obviously aware that several witnesses appearing before the Blue Ribbon Commission have opposed the formation of a competitive state fund like that in Michigan on the grounds that, at some unspecified point in the future, such a fund might incur losses and require a "bail out" from an already thinly stretched general revenue fund.

With all respect, such testimony ignores the successful record of the Michigan state fund itself (with a current surplus in excess of $40 million), as well as the outstanding records of service of other state funds. With careful attention paid to the development of an appropriate start-up business plan, there is simply no justification for the fears which have been expressed.

For information purposes only, the Business Plan for the New Mexico state fund and the Pro Formas for the Minnesota State Fund Mutual are appended to this letter as Appendix 1 and Apprendix 2.

The following notes on a variety of state fund issues were compiled by Dick Haskell, Vice President and Treasurer of Lucas Tree Company and a member of the Workers Compensation Group who led our Task Force which studied this issue and met with a representative of the National Association of State Funds:

Keys to a Successful State Fund

1) Qualified Manager and Management-- There is a great deal of data available on the successes and setbacks of several states and thus Maine need not reinvent the wheel. Making good use of available structures, by-laws, rules and regulations, underwriting, budgets and programming is the key.

2) Proper Underwriting Criteria-- Necessary to insure that employees and employers are rated correctly, that reserves are properly set, that loss prevention techniques are implemented and good case management exists.

3) Comprehensive Claims Management-- Includes computerized reporting, initial contact within 48 hours, in-house medical specialists reviewing all services for reasonableness and pricing, continual contact with injured worker and all providers in search of appropriate individualized return to work programs (Can result in 15-20% Medical Cost Savings).

4) Underwriting-- Although being a servicing carrier in the Assigned Risk Market is one goal, successful state funds only take what is deemed to be an appropriate pro-rata portion of sales and will maintain it as a separate profit center to be sure it is made a profitable business.

5) Capitalization-- The state fund begin last year in New Mexico is used for example purposes only. As seen in more detail in the New Mexico state fund business plan which is attached to this letter as an appendix, the New Mexico state fund created a two-stage funding process:

a) Startup Funding: Initial startup costs prior to operations commencement were covered by a $1 million startup fund from the state's general fund, to be repaid with interest in two years.

b) Permanent Funding: Authorization to Issue $10 million in revenue bonds, $5 million of which are sold at outset. One million of that fund used to repay startup fund obligation, leaving $2 million to fund ongoing costs. This leaves $3 million unused (per the proformas will maintain the desired premium to surplus ratio to 3 to l).

The revenue bonds are equivalent to surplus notes and thus subordinate to all injured workers' claims (incurred losses). They are more like equity instruments than debt. They accrue interest but principal and interest is only payable from earned, excess surplus, when and if it exists.

The $3 million in unused authorized revenue bonds is a reserve, should abnormal growth and economic development present additional sound underwriting opportunities.

6) Premiums-- All premiums will require payment of 24% down and 25% at the commencement of the succeeding policy quarters. Policies of less than $2000 annually will be paid in full initially.

7) Investment Returns-- Estimated @ 7% after tax given a 34% federal tax bracket and the IRS requirement of 20% taxable income recognition of unearned premium reserves (a Mutual Insurance Company).

8) Loss Ratio-- Estimates are 82% in the first year, declining to 78% in second full year, to 76% in third year; 15 year average of 73.2% has been assumed in the pro forma.

9) Expense Ratio-- Estimates of 13. 57% are assumed in the 15-year forecasts, with reinsurance at 1-2% of premium.

10) Repayment-- Estimates running profitably in the second full year of operation with more than $500,000 growth in surplus and devoting $200,000 of this amount to revenue bond principal payments.

11) Market Share-- In New Mexico, their goal was 15%, Anything less would cause higher expense ratio costs in the first two years. By the end of four full years,

state fund should generate acceptable surplus levels.

12) Marketing-- Policies to be sold through general agents; 4.5% commission has been used in pro-formas (4.5% sub agency and 1% general agency). Any premium above $50,000 requires negotiated commission.

General Notes

The Workers Compensation Group takes no position on whether the State Fund should be be a state agency or, like Michigan, a quasi-independent agency. We suggest only that the top administrators of the Fund be persons knowledgeable in the area of comp insurance and that, if the employees are not state employees, that they have at least the same bargaining rights as state employees. We have also discussed allowing the State Fund to subcontract out loss control and claims administration to existing private sector firms.

We are aware that the Maryland Casualty Company's letter to the Blue Ribbon Commission dated June 5, 1992, proposes that "at the time the competitive state fund begins operations... all pool [residual market assigned risk] business would be moved into the state fund." While we can sympathize with and even support the insurers' desire to be freed of the onerous burden of the assigned risk insureds, to "dump" them on a newly-formed state fund is impracticable. That would require far greater startup capitalization than is realistic. While the state fund should be expected to provide coverage to a reasonable share of the residual market, to require it to assume all of that market would be unjust and would doom a nascent state fund to failure before it began.

Self Insurance

As noted in our report to the Blue Ribbon Commission (page 51) we recommend "grandfathering" existing heterogeneous self-insurance groups and allowing other self-insurance groups to be created if they meet the guidelines for self-insurance established by the " Greater Portland V" self-insurance group.

How Can Michigan Be Cheaper When Its Benefits are Comparable?

In the weeks since our testimony before the Commission, many people have

asked the Workers' Compensation Group how it is possible for Michigan's comp costs to be so much lower than Maine's when the benefits are roughly comparable. They have said, in fact, "We like what we see in Michigan, but we don't understand how they can do all they do and still keep costs down."

First things first. Several documented sources confirm that compensation costs to Michigan employers are roughly half what Maine businesses pay. Instructive on that issue is the experience of one sizable employer with operations in both Michigan and Maine. That employer, which wishes to remain anonymous for business and competitive interest purposes, recently provided the Workers Compensation Group the following data:

Annual Workers Compensation Cost per 1991 Maine claim was **$8742.**

Annual Workers Compensation Cost per 1991 Michigan claim was **$4669.**

(Documentation of these figures can be made available to the Commission under procedures which protect the identity of the employer in question). Other sources confirm this approximate cost savings ratio.

The Workers' Compensation Group analysis of Michigan's system leads us to believe there are several factors which lead to lower costs there, despite benefits which are roughly comparable to Maine's:

a) The Michigan work environment is safer. Employers maintain safe workplaces because they know that in the deregulated insurance market their premium is largely based on their experience and their experience is directly affected by the quality of their safety program. Fewer accidents result directly in lower comp premiums. Michigan is one of many states where this relationship has been proven.

b) Employers and employees have the attitude that early return to work is desirable. When the injured employee returns to work the employer realizes a tangible benefit by filling a job function the employer must pay someone to do. While the injured employee may produce at a lower rate, she is providing meaningful work in return for compensation received.

c) Along with other states, Michigan has developed an effective network of vocational rehabilitation, which converts injured employees into productive workers.

d) Michigan is the only state in the nation which utilizes all six recognized medical cost containment provisions which results in lower medical costs. Provider are paid promptly and when they are not, penalties are levied.

e) Legal expenses are lower. The Michigan system requires mediation and

encourages resolution of disputes. You have been provided figures purporting to show a "Dispute Resolution Comparison" between Michigan and Maine. According to that document, 22% of Maine claims are disputed, while 20% of Michigan claims are disputed. This is misleading because it ignores the vast difference in populations: Michigan has roughly 9 million residents and only 21,000 litigated workers compensation claims. Maine, with only 1 million residents, has 22,000 litigated claims.

Another reason for the lower legal expenses of the Michigan system is that the system is more easily understood by the average worker and the need for legal counsel is less. Finally, the limits on fee structures of settlements limits legal expenses, as does the rule that workers' pay for their own attorneys from their award.

f) Cases move through the Michigan system relatively quickly. Again, the "Dispute Resolution Comparison" document is misleading when it states it takes 332 days for a Maine case to go from petition to filing, versus the 528 days it takes in Michigan. This fact ignores that Michigan has roughly one-third the number of adjudicators Maine does. If Michigan had as many commissioners as Maine, the delays would be roughly half that experienced in Maine.

g) In a deregulated market, competition and creativity flourish. Competition among carriers mean employers can shop around for the lowest rates and that carriers become creative in the support systems they offer employers (e.g. safety and loss control). Our insurance community contacts suggest carriers want two things from a workers' compensation system-- a fair opportunity to make a profit, and a predictable environment. Both are present in Michigan, according to the carriers with whom we spoke.

Conclusion

Because some misleading information has been circulated, let us make clear again our position on whether we will accept any changes in the Michigan system as it now exists-- **we will accept any changes which we feel meet our original nine criteria and on which the members of the Workers Compensation Group can unanimously agree.**

We have prepared this document in response to your request that we forward to you the results of our ongoing study of the transition issues which would be involved in the adoption of the Michigan system.

We look forward to your response to this letter. Please contact us for clarification of any of these points, or if there are further areas which you would like us to investigate on your behalf. We wish to continue the positive working relationship we have

established with the Blue Ribbon Commission thus far.

Very Truly Yours,

Kenneth Goodwin
Employer Co-Chair

James Mackie
Employee Co-Chair

cc: Members of Workers' Compensation Group

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June 22, 1992

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Commissioner Emilian Levesque
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Farmingdale, ME 04344

Dear Blue Ribbon Commission Members:

I wish to thank you for the opportunity to provide testimony before the Commission on the ciritcally important issue of restoring Maine's Workers' Compensation system. One of the questions asked of me was Hanover's position vis-a-vis the Michigan plan and other state plans, as well as other, more specific positions on issues which need to be addressed to remedy the current crisis. Please accept the following comments as Hanover's further response on these issues.

First, Hanover has increasing concern with the concept of the wholesale adoption of another state's law to replace Maine's current workers' compensation system. Our concern stems from the very complicated and expensive transition issues which would be encountered in following such a path. Not only are the legal complications staggering in adopting a sister-state's entire law, but the costs associated with creating and administering a new system would be as well. Such costs are very difficult to anticipate prior to a system's adoption.

In addition, Hanover has very serious reservations about whether Michigan is the appropriate system, were such a wholesale adoption to occur. We believe that there is no basis for believing that the savings Michigan seems to realize with their system will be duplicated here in Maine.

In particular, it is our estimation that Michigan's benefit schedule, while appearing to work in Michigan, would not produce cost savings if transplanted in Maine. A major component of the 1987 reform was elimination of unlimited durational limits on partial disability benefits. Under Michigan law, even though the wage calculation may result in a lower weekly benefit, such benefits would be unlimited. Returning to the unlimited durations coupled with the high frequency of claims in Maine would lead to an explosion of costs, just as it did prior to the 1987 law change. This is but one example

of a provision of Michigan's benefit schedule, which, we believe, will return us to the disaster years of pre-1988. This would be unacceptable to us.

Hanover has also compared the premium levels for workers' compensation classifications between Maine, Michigan, and Wisconsin. The results strongly advocate against the adoption of Michigan's system. The average rate in Maine is 10.88, while Michigan is 10.22, virtually no difference. On the other hand, Wisconsin's average rate is 6.43, significantly less. Moreover, closer examination of individual rates demonstrates that many of the more common classifications, particularly industry-related, are higher in Michigan than in Maine. As one of the principal goals of your Commission is to significantly reduce costs to employers, adoption of Michigan's benefit schedule would lead to a failure to meet this critical goal.

Thus, given the high claim frequency rate in Maine, the virtually same average rates and the higher rates in Michigan for many individual classifications, and the presence of "flashpoints" for litigation in Michigan law, which we have just closed in Maine, we are lead to conclude that we would not be able to support the adoption of the Michigan system or its benefit schedule as being in the best interests of Maine. Were Michigan adopted, it would be unlikely that we could participate as an insurer in the workers' compensation system.

Nevertheless, we wish to offer positive suggestions for resolving the issues we all face. We have identified the following eight key areas which must be addressed in order to restore confidence and stability to Maine's workers' compensation system. We believe that if all these issues are appropriately addressed, not only will the immediate workers' compensation crisis be resolved, but that a healthy, normal system, in which Hanover can continue to play a role, will be restored within an acceptable time period.

1. OPEN COMPETITION

We believe that in order to restore a healthy voluntary workers' compensation insurance market, rate setting within that market be regulated in the manner currently occurring for the balance of the property/casualty arena. We believe that a simple rate-setting statute can be fashioned, patterned on current Maine statute, which would provide for open and competitive competition among carriers in the voluntary market. See 24-A M.R.S.A. Chapter 25, Subchapter 1, §§2301 et seq. This change can be simply completed by making workers' compensation rate-setting applicable to Subchapter 1 of Chapter 25 of Title 24-A. Any further specificity needed for ratemaking can be accomplished administratively by the Bureau of Insurance. Furthermore, we see no need for the involvement of the Public Advocate in this process, as the Bureau of Insurance is the only appropriate regulator and watchdog. We believe that such competitive rate-setting will encourage greater carrier involvement more quickly than otherwise might be the case as we move into this new era. A competitive insurance market will greatly help to restore stability in the system.

However, we must caution the Commission against giving new or returning insurance carriers any competitive advantage over the current, authorized carriers in any attempt to restore a competitive marketplace. Any actual or perceived advantage that is given to carriers, who have not shown the willingness to help the market like the few remaining carriers in today's market, will certainly be met with disapproval from Hanover.

2. SELF-FUNDED RESIDUAL MARKET

The Commission has been presented with different proposals for "reforming" the existing residual market. Most of these have a similar thread, whereby today's residual market would be reconstituted into either a mutual company or "self-insurance" styled regional pools, both of which would be managed by employers rather than the insurance industry, and employers would thereby be responsible for any deficit accruing to that market. Advocates include the Governor, the Self-Insurance Council, as well as the chairs of the Legislature's Banking and Insurance Committee. While we are certainly in agreement that any residual market mechanism be self-funded, we have identified some issues that must be explored to insure the success of any such plan, as well as to determine whether the plan can be successfully incorporated into the eventual overall strategy that will restore the workers' compensation market. The issues which we have identified, which may not be inclusive, include the following:

a. Solvency.

Solvency protection in the form of a guaranty fund must be incorporated, but be completely separate from the two existing guaranty funds that currently protect workers' compensation claimants.

b. Adequate Rates.

The new residual market mechanism must set adequate rates so that there are not incurred insolvency situations on an unacceptable frequency rate. In order to guarantee the solvency of the new mechanism and protect claimants, employers must pay adequate rates in order to cover expected claims and costs. Furthermore, inadequate rates would greatly inhibit the restoration of the voluntary insurance market and, thereby, prolong the crisis atmosphere surrounding Maine's workers' compensation system. Moreover, any attempt, whether by the Commission or the Legislature, to implement an unsubstantiated flat rate rollback will lead to the collapse of the insurance market.

c. Effective Date.

There is a concern in the business community that a uniform effective date of policy coverage may need to be utilized in order for employers to immediately realize the expected lower rates under the new system. As you know, the vast majority of insured employers are in the current residual market. There are numerous renewal dates on those policies that number as many

days as there are in a year. After any major reform, a full year must pass before all employers realize the cost savings associated with such reform. Depending on employer demand for immediate savings, the Commission may be forced to determine whether the transition period should last the traditional full year or not. If it does not wish to wait a full year, the cancellation of all existing residual market coverage must occur, entailing refunds of premium previously collected for periods that would not fall under the new system, as well as further complicate many administrative matters which occur on the renewal of insurance coverages. The Commission must be aware that the renewal of an insurance policy requires a great deal of work, such as renewal quotes, calculation of experience modification factors, premium audits, billing and collection, and other administrative procedures. We believe that a system with common renewal dates could not work and might restrict the number of servicing entities willing to service the new system; therefore, the Commission must weigh these factors when considering how to transition into a new system.

d. Reinsurance.

There must be serious exploration and consideration given by the Commission into whether reinsurance is necessary and prudent to cover large claims in the new mechanism and, if so, whether providers are willing to issue reinsurance coverage to whatever residual market mechanism the Commission establishes. By having regional pools, with many differing and varying employers, obtaining reinsurance over such pools may be difficult. This reinsurance issue should be important in deciding whether one entity or the pooling arrangement is chosen for this new system.

e. Employer Flight.

The Commission must also give consideration to issues that arise when an employer moves from the voluntary market into these pools, from the pools into the voluntary market or self-insurance, or from a pool into the accident prevention account or its successor. All of these movements have implications concerning assessments, solvency, and liability arising under workers' compensation. Rules must be established that govern the apportionment of such assessments and liabilities when an employer moves from one of these particular markets into another.

f. Size Constraints.

With this term, we identify the issue of whether or not one particular employer in a regional pool would dominate that pool because of its size and work force characteristics and, therefore, skew the experience and costs of a pool. Adequate investigation should be undertaken to determine what problems arise when a regional employer would dwarf all the other players of regional pool. With one or a few major employers dominating, transfer of liabilities from the major employer to the smaller employers may occur. Such transfer of liability needs to be considered.

g. Servicing Stability.

We believe that any servicing contracts entered into to service this new residual market mechanism(s) should be for a period of at least three years. This would provide stability in servicing and permit closer cooperation between the servicer and the pool in order to effectively deal with loss control, claims handling, and other services that are utilized when providing efficient and economical servicing. The Commission should also be aware that servicing contracts for the more remote regions would likely run a little higher, since the bulk of servicing entitles are located within the southern half of the state. Therefore, employers should not expect all servicing arrangements to be of equal cost.

3. INCORPORATION OF BENEFIT SCHEDULES

We believe that the adoption of a "benefit schedule" system, similar to Wisconsin's, provides the necessary and critical ability to accurately predict the costs of a new system. Our investigation reveals that the system in Wisconsin provides fair and appropriate benefits to injured workers in a manner which reduces, to a significant degree, controversy erupting between employees and employers over the issue of entitlement to those benefits. A benefit schedule, as proven by the Wisconsin system, also addresses two other critical areas of concern: attorney involvement, and efficient administration. These are further discussed below. Moreover, the adoption of the schedule of benefits, as mentioned above, makes the process of guessing future costs of a system much more predictable, and thereby, assures that premium is set appropriately and that employers are adequately paying to fund the system. This further reduces the fear that a particular system, whether a voluntary or a residual market, is being underfunded, thereby scaring away carriers and further heightening employer and employee mistrust of the system. Therefore, we strongly urge that the Commission adopt a "schedule benefit" system and thoroughly investigate Wisconsin's law for delivering benefits to injured employees.

4. ADMINISTRATION

Again, in our investigation of sister-state laws, the Wisconsin Administrative System, whereby the Wisconsin Department of Industry, Labor and Human Relations (DILHR) closely monitors the delivery of benefits, is very enticing. DILHR takes a very strong and fair role in insuring that all parties in the system live up to their responsibilities in delivering benefits and in seeking a request for benefits. As a result, we believe that when the new administrative system is adopted, it be patterned after the Wisconsin system which incorporates the goals and responsibilities under which that system operates.

5. LITIGATION REDUCTION

Another critical issue that a new system in Maine must incorporate is the goal of reducing controversy between the parties. As mentioned above, the utilization of a "benefit schedule" much like Wisconsin's is a simple means of reducing tremendous amounts of controversy between the parties involved in a workers' compensation claim. Such a system provides easy and predictable rights and responsibilities, thereby reducing points of controversy that currently arise in our present system. Further, a Wisconsin-styled administrative system, which takes an active role in pursuing the rights of injured workers and, has as its goal the utilization of the legal system only as a last resort when securing compensation benefits, also will reduce litigation. The new system in Maine must provide administration of the system so that injured workers do not need the services of attorneys and that discourages the areas of flashpoint whereby a party feels the need for the services of an attorney. Determination of medical issues by medical professionals, rather than through litigation, would also reduce a major source of friction. We would also encourage the utilization of alternative dispute resolution such as mediation and arbitration, which should further reduce the need for a formal, legal process. Finally, we believe that attorneys' fees awarded in a case be paid out of the award of benefits, as is done in the vast majority of states. All these issues, taken together, will effectively and appropriately reduce the need for attorney involvement without erecting a barrier to attorney services when such services are needed.

6. MEDICAL COST CONTAINMENT

We believe that the continued utilization of fee schedules, independent medical examiners and medical records reporting requirements, contained in the current Maine law, are very appropriate. We strongly believe that incorporation of all medical costs containment measures, including the use of preferred provider arrangements (PPOs) and other innovative arrangements be authorized and encouraged to provide the delivery of medical services at the least cost possible to the parties. We believe that the current fee schedule ought to be finally updated so that all appropriate medical procedures be included with it. We believe also that utilization reviews and protocols be developed and implemented under the new law. As you have discovered, medical costs increases are one of the driving forces to rising workers' compensation costs. As a result, this issue must be given serious deliberation.

7. ADVISORY COMMITTEE

We strongly encourage the incorporation of an advisory committee made up of labor, management, and insurers to monitor the workers' compensation system. We believe that the models of Wisconsin-Michigan can be adopted within Maine to give various parties a voice in providing direction within the system. We strongly believe that insurer participation be included in these advisory committees. We believe that legislation ought to be filtered through such panels. We hope that such an advisory committee will greatly reduce the

number of proposals that the Maine legislature faces each year regarding workers' compensation, thereby restoring greater stability to the market. Moreover, it should create an arena whereby all parties can discuss issues of concern, further reducing the antagonistic nature that has unfortunately grown in Maine within the last two decades. We believe that the success evident in Wisconsin and Michigan with these advisory panels will also be found if adopted here in Maine.

8. COST

The aggregate cost of Maine's workers' compensation system must be brought down. If Hanover were purely self-interested, the cost of the system would be irrelevant as long as we were able to collect appropriate premium. But we are a Maine business, and as such, recognize the critical need to make the system affordable. We must make Maine business competitive. Even if the previous seven areas are addressed, the cost of the system must be brought into line. This must be a critical goal of the Commission if your recommendation is to be accepted by the Legislature and the People of Maine. Further savings beyond those realized from the seven issues raised above may be achieved through limiting accessibility to the system and reducing benefits awarded to claimants. Regardless of how savings are achieved, the Commission must bring down the cost of Maine's system.

I know these eight areas are wide-ranging, but they address the serious concerns we have with the current Maine system. As we testified, we wish to be able to continue our leading role in the Maine workers' compensation market into 1993. We will be able to do so only if these critical areas are appropriately addressed.

We look forward to working with you on these issues and in exploring in further detail the solutions to resolving the issues incorporated under each of these particular areas. Please feel free to call me at any time to respond to any of your questions which this letter raise.

Sincerely,

Lincoln J. Merrill Jr., CPCU
President
Hanover of Maine, Inc.

LJM/a

cc: Governor John R. McKernan, Jr.
President Charles P. Pray
Speaker John L. Martin
Superintendent Brian Atchinson
Representative Peter Hastings
Representative Sumner Lipman
Senator Judy C. Kany
Representative Elizabeth H. Mitchell
Senator Donald Esty

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B. Dean Stearns
Director - Government Affairs

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Phone (207) 797-1188

June 23, 1992

Richard Dalbeck
Co-Chair, Workers' Compensation Blue Ribbon Commission
17 Spoondrift Lane
Cape Elizabeth, ME 04107

Dear Dick:

New England Telephone is a member of two organizations, the Maine Council of Self-Insurers and the Chamber of Commerce of the Greater Portland Region, each of which has presented a Workers' Comp policy position to your Blue Ribbon Commission, I understand. There are aspects of both which are compatible, such as the emphasis by both groups on the need for a less confrontational approach to help make the Maine Compensation system work. There also appears to be significant variance from one to the other, particularly as relates to the Michigan Plan.

It is my intent to briefly identify areas of agreement and disagreement between NET and these organizations with which we are affiliated.

As you would expect, we have a work group in our company devoted full time to dealing with Workers' Compensation issues and claims. Incidentally, Richard Waldron, the leader of that group, has dealt with Worker's Compensation for more than thirty years in various capacities.

Mr. Waldron's group advises me that the May 6, 1992 presentation to your Commission by John Melrose, representing the Maine Self-Insurers, is a well conceived plan which NET fully supports. The four stated objectives and the accompanying back-up material properly addresses this very complex issue, in our view.

We also agree with the Self-Insurers' position of rejecting the concept that Maine should repeal its entire law, including improvements that have been implemented over the past few years, and replace it totally by a plan from another State, i.e. Michigan.

The Greater Portland Chamber of Commerce is providing strong emphasis for the need for cooperation by management, Labor and other involved interests. We applaud the Chamber for its energetic efforts in this arena. However, we do have serious reservations about the Michigan plan as suggested previously.

I have included extra copies of this letter for the other Commission members and staff. Should the Commission have questions of NET, I would be happy to connect you to our experts.

Dick, thank you for your attention to this matter.

Sincerely,

Sean

cc: Ed Dinan
Dick Waldron

0862N

SAS SHOEMAKERS

LEW HAYDEN

Office 512/924-6561 • Res. 512/742-8145 • Box 21990
1717 SAS Drive • San Antonio, Texas 78221-0990

To

Michelle Beasley - From - Rep. Leah Joseph

of the Board of Governors of the Management of Residual Fund

Other 2 employer representatives are

Steve Hapsie - Maine Cellular

Mitchell Shannons - Portland Gloss

& Lew Hayden - San Antonio Shoe -

On Friday - we (Blue Ribbon Com.) heard about a probable deficit from the ins. carriers.

However - it was a complete surprise to the employer members of the Board of Governors who manage the residual pool.

NCCI staffs the "Board" with incomplete minutes

Lew Hayden attempted to record the sessions but was told not to - Direct conflict with Maine's Right-to-Know Law. Since then the NCCI minutes have improved.

Harold Pachios, attorney, representing NCCI is always present and paid by the Fund.

Currently $70 million to manage fund. Could be done for $20 million according to Lew Hayden.

There are major concerns about all of this. 1) this is employers' money 2.) there should only be public open discussion of the management of the residual fund 3.) Carriers representatives show

June 23 1992
Blue Ribbon Commission

evidence of collusion, etc. but are protected by the federal anti-trust exemption. (McCarran-Ferguson Act, Sec. 12-B.) Currently Bills before Congress to repeal that exemption. No action expected during this Congress. (Brooks, Dingell & Metzenbaum Bills).

4.) If the Fund is bankrupt for 1988 yr. and beyond (?) other injured workers can not, will not be paid.

There are more questions than answers.

R

CHAMBER OF COMMERCE
OF THE GREATER PORTLAND REGION

145 MIDDLE STREET
PORTLAND, MAINE 04101-4163
TEL. 207 772-2811 FAX 207 772-1179

June 23, 1992

Honorable William Hathaway, Co-Chair
Mr. Richard Dalbeck, Co-Chair
Mr. Emilian Levesque
Dr. Harvey Picker
Blue Ribbon Commission on Workers' Compensation
246 Deering Avenue
Portland, ME 04102

Dear Blue Ribbon Commission Members:

The Chamber of Commerce of the Greater Portland Region, which represents more than 1,000 businesses in southern Maine, has been closely following the issues related to Maine's workers' compensation system. We have analyzed the problems, considered the alternatives and engaged in the debate that has occurred over the years.

The debate surrounding workers' compensation has been as much a reflection of the state of employer/employee relations in Maine as it has been about the workers' compensation system itself. It has come to symbolize labor/management friction.

Until recently, we have been unable to resolve the problem in a manner that is satisfactory to the two most important parties involved: Maine employers and employees. The workers' compensation system has failed, the methods for resolving the conflict have failed, and both need to change.

We must begin to demonstrate our collective ability to solve problems in this state. Workers' compensation is not the most pressing issue we face in Maine today, but it is one of many serious structural problems that need to be addressed.

An unusual opportunity exists today for meaningful change in both the workers' compensation system and in the way employers and employees in this state address public policy issues and solve problems. Your Blue Ribbon Commission can be the key to achieving positive change.

Two major initiatives are underway which offer the most promising possibility that our workers' compensation system can be changed: the work of your Commission and that of the Workers' Compensation Group.

These initiatives offer the Chamber two alternatives: We can either reject "The Michigan Plan," fashion our own solution and seek to build our own coalition, strong enough and broad-based enough to enjoy majority support in the Legislature; or, we can work cooperatively with the Workers' Compensation Group and your Blue Ribbon Commission to craft a system based on the Michigan Plan that is suitable to the Maine workplace.

In our judgment, if we pursue the former course, we will fail.

We believe that public and political sentiment is with the Workers' Compensation Group, their criteria for a workers' compensation system, and the process by which they arrived at their decision and recommendations.

We endorse the latter course of action, and therefore urge you to support the efforts of the Workers' Compensation Group.

The Board of Directors of the Chamber of Commerce of the Greater Portland Region, in response to a unanimous recommendation from our Governmental Affairs and Workers' Compensation Committees, has unanimously approved the following motion:

> The Chamber of Commerce of the Greater Portland Region endorses the criteria established by the Workers' Compensation Group and the concepts contained in "The Michigan System." Further, the Chamber commits to working with the Workers' Compensation Group and the Blue Ribbon Commission toward implementation of the Michigan system concepts, with appropriate changes that may be necessary for transition and which are suitable for the employers and employees in the State of Maine, if such changes are unanimously endorsed by the Workers' Compensation Group.

We are prepared to participate in any way you believe may be useful toward a solution that enjoys broad-based labor and management support. If the Michigan system isn't exactly right for Maine, then we would encourage continued labor and management participation in refining the details to make it appropriate. We believe the final, acceptable solution will only be reached if employers and employees continue to cooperate.

We will encourage other interested groups to consider an endorsement similar to ours in the hopes that we may all, employers and employees, work together to construct a new workers' compensation system in Maine.

Respectfully submitted,

Joel B. Russ

Joel B. Russ
President

Peerless Insurance
Member The Netherlands
Insurance Companies

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June 23, 1992

The Blue Ribbon Commission on
Workers' Compensation
University of Maine School of Law
246 Deering Street
Portland, Maine 04101

Gentlemen:

I represent the Netherlands Insurance Company which is located in Keene, New Hampshire. We market our products in the Northeast under member company names which include Peerless Insurance Company, The Netherlands Insurance Company and Excelsior Insurance Company. I am the Branch Manager of our Falmouth, Maine Office. We write all lines of Property and Casualty coverage out of this office. Our year-end 1991 total premium for all lines in the State of Maine was approximately $20 million with $900,000 of it Workers' Compensation premium. We employ 51 people in our Maine Branch Office.

As I noted earlier, we wrote approximately $900,000 in Workers' Compensation premium in 1991, all of it voluntary. We are not a servicing carrier in Maine or in any of the other states in which we operate. We project our 1992 Maine Workers' Compensation writings to be in the neighborhood of $1.2 - $1.3 Million which would be approximately 6.2% of our total projected premium writings for the State of Maine. Our Workers' Compensation writings company-wide are projected to be approximately $22 Million which is about 8.7% of our projected company wide all lines premium writings. Hence, the percentage of our resources dedicated to writing Workers' Compensation is slightly less in Maine than it is company-wide.

In our view, the Maine Workers' Compensation System is in complete disarray. I will comment on two general areas of concern to us but these are by no means all inclusive. First, the uncertainty of and the potential magnitude of the residual market deficit is of extreme concern to us. While no carrier has been assessed anything as yet, there is a large unfunded deficit looming on the horizon which must be dealt with at some point. Our estimate of the magnitude of that deficit for policy year '89 alone is in the range of $50 Million. This was estimated in early '91 on a present value basis and hence could be much larger now.

Our share of a deficit that size would range from $1.5 - $2.5 Million (again on a present value basis) compared to our premium writings in '89 of $330,000.

Hence for the privilege of writing $330,000 in voluntary Workers' Compensation premium, we face potential deficit obligations in excess of a million dollars. Future policy years are expected to yield similar results. We cannot continue to write business in a system where the potential for loss is so significant with so little potential for gain.

Another area of serious concern to us is the manner in which the Workers' Compensation Commission administers the Workers' Compensation laws. In our view the commission acts as an advocate for injured workers rather than as an arbiter of disputed cases. Hence, there is no balance to the current Workers' Compensation system with respect to disputed cases. Since the Workers' Compensation Commission will have to administer and implement any law changes recommended by the Blue Ribbon Commission and enacted by the legislature, we believe it is critical that the Workers' Compensation Commission becomes a division of the Judiciary rather than the Labor Department. Otherwise, the laws enacted will not be implemented and administered in an impartial, balanced manner.

I thank you for allowing us the opportunity to submit testimony and am more than willing to discuss these issues or answer any questions you may have.

Respectfully submitted,

Stephen R. Myers, CPCU
Resident, Asst. Vice President
Branch Manager
The Netherlands Insurance Company

SRM:md

June 24, 1992

Senator William D. Hathaway
6707 Wemberly Way
McLean, VA 22101

Dear Senator Hathaway:

The current preoccupation with Michigan's workers' compensation program is cause for considerable concern. In our view, the principal objective of workers' compensation reform should be cost savings. Yet, the plain and simple facts are that adoption of Michigan's comp statute in Maine would increase overall costs to Maine employers.

The proponents of the Michigan plan have grossly failed to inform Maine employers of the true cost consequences of their proposal. It is a concern to us that this burden of proof has not been met. It is of even greater concern that few policymakers have demanded that this burden be met. While it seems obvious, we feel compelled to emphasize that we will strongly oppose any proposal that would result in increased comp costs for Maine employers.

You may reasonably be bewildered by the disagreement between us and the employer members of the Workers' Compensation Group. Keep in mind that the primary party of interest representing labor on the comp issue, namely the AFL-CIO, was formally represented on the Workers' Compensation Group. AFL-CIO President Charles O'Leary informed you in testimony before the Commission that he personally appointed the labor representatives. The principal organizations representing business interests and employers were not involved in the Group in any way. The eight employers in the Group did not represent these organizations nor the thousands of employers they serve.

As individuals, the employer members of the Group clearly have the right to favor adoption of a plan that would increase workers' compensation costs to Maine employers. However, we feel obliged to favor policies that would reduce costs to Maine employers.

As membership organizations representing Maine employers, we have taken the time to examine the Michigan plan from the perspective of potential cost impacts to our members. The following comparison of residual market rates per $100 of payroll for Maine and Michigan cause us, on behalf of our members, to oppose adoption of the Michigan statute. We recognize that there are many more rates than those listed below but these are the rates that concern us most.

		Maine	Michigan
2702	Logging or Lumbering	$36.97	$50.43
3726	Boiler installation	$27.48	$31.08
6217	Excavation	$13.66	$15.75
6824	Boat building & repair	$ 7.91	$10.80
7219	Trucking	$16.79	$19.50
8008	Clothing store	$ 1.57	$ 1.82
8010	Hardware store	$ 2.25	$ 2.62
8017	Retail store	$ 2.00	$ 2.36
8033	Meat/Grocery store	$ 4.02	$ 4.73
8350	Gas/Oil dealers	$ 8.24	$12.91
8380/8395	Auto repair	$ 5.23	$ 6.75

Since workers' compensation insurance carriers in Maine are not allowed to set their own rates it is not possible to also provide a competitive rate comparison with Michigan. However, please be aware that it is not uncommon for the average competitive market rate in Michigan to also exceed Maine's residual market rate.

Further, it must be recognized that in transferring Michigan's rates to Maine it is necessary to adjust Michigan's rates to compensate for Maine's higher incidence and severity of injuries as compared to Michigan. This adjustment would cause Maine to have higher rates than those now in effect in Michigan if Maine were to adopt the Michigan law.

It is our hope that you will set aside the Michigan proposal and first focus your attention on the pending residual market collapse. The solution to this problem is not likely to be found in some other state's statute. No other state is facing this unique set of circumstances. It is asked that you address this problem in a manner that would enhance the authority of employers to manage their workers' compensation liability. You have received testimony of a bipartisan nature that is compatible with this request.

It is further requested that you address the need of employers to have the management tools that will allow for prompt return to work, medical cost containment, medical management and a reduction in the friction points that bring on lawyer involvement and litigation. To the extent practical, these provisions should apply retroactively to cover open claims already in existence.

Retroactive procedural changes are critically needed to reduce the liability of employers for funding the comp carrier's net operating loss for the years 1988 through 1991. The National Council of Compensation Insurance has estimated this loss at $574 million. If Maine's Bureau of Insurance accepts that estimate, Maine employers will have to raise $381 million as their statutory share of this loss. To put this amount in perspective, $381 million is over one and one half times the estimated current annual workers' compensation premium. This liability can only be reduced by challenging NCCI's estimate before the Maine Bureau of Insurance or through retroactive changes in law that allow for cost savings on existing open claims.

Finally, it is imperative that the Commission squarely address the employee's right to coverage and the employer's liability for non-work related disabilities. The current workers' compensation system provides broad coverage of non-work related disabilities. The system has assumed a function well beyond its original design. Workers' compensation insurance should not bear the cost of non-work related disability coverage. The state must either do away with this coverage or design a more equitable method for funding this coverage.

It is requested that the Commission grant us the opportunity to appear before it to answer any questions this letter may raise and to state in greater detail our proposals for realizing a constructive resolution of Maine's workers' compensation dilemma. We would also appreciate having the opportunity to address the matter of workplace safety.

Sincerely yours,

Edward I. Johnston
Executive Director
Maine Forest Products Council

Patricia W. Aho
General Counsel
Maine Merchants Association

Richard Jones
Executive Director
Maine Motor Transport Association

Eugene Guilford
Executive Director
Maine Oil Dealers Association

cc: Michelle Bushey

Fleet Bank

Bradford A. Hunter
Senior Vice President

June 24, 1992

Mr. Steven Hoxsie
Chief Financial Officer
Maine Cellular Telephone Co.
190 Riverside Street, Turnpike West
Portland, Maine 04103

Dear Steve:

In regard to my telephone conversation with you yesterday and with Keith Shoemaker last week, we are confronted with several obstacles when considering a loan to fund deficits in the 1988 plan year. Specifically, there are four areas which need to be addressed:

1. Proposed Borrower

With over 25,000 companies comprising the pool, we would need to determine who our borrower would be. It would be overly cumbersome to have 25,000 obligors to our loan or 25,000 guarantors if one entity was selected to act on behalf of the entire pool. Possibly if a joint and several guaranty was executed, then we could limit our focus on one or two of the strongest companies in the pool. However, I would suspect that the selected companies would be reluctant to sign such an agreement.

Furthermore, I suspect that some of the 25,000 businesses that comprise the 1988 pool are no longer in business which further complicates determining who has liability as our borrower.

2. Source of Repayment

As a lender, we would want to be able to accurately determine our repayment source. As I understand the situation, the deficit for 1988 (and consequently our loan) would be repaid from the assessment of premium surcharges made to the pool participants. While I further understand that this surcharge can or may be mandated by law, at this point in time, there is uncertainty whether it will be or not. Even if it is, I

believe the amount of the surcharge (3%?) is so low, that it would take over 30 years for the surcharges to be completed and our loans repaid. Our commercial term loans typically run five to seven years in maturity which would not be compatible with a 30 year repayment source.

3. Collateral

Typically, banks require two sources of repayment. The first is from the borrower's earnings and cash flow (or, in this case, surcharges). The second would come from liquidation of collateral securing the loan should there be any interruption from the primary source of repayment. In my conversations with Keith Shoemaker, he indicated that any investments held for subsequent plan years ('89-'92) would not be able to be pledged to secure our loan. Hence, a proposed unsecured 30 year term loan would again be in conflict with our credit policy. If we were able to secure a loan with subsequent years' cash, it would make our ability to structure a loan much easier. Of course, we would want good legal opinions stating that the pledging of such collateral, and if need be, ultimately applying such cash to repay our loan is valid and enforceable.

4. Determining Amount of Liability

Lastly, a concern exists given the nature of how long claims can continue to be made to adequately assess the true amount of the deficit. As I understand, an actuarial analysis has been completed with regard to the 1988 plan year and that the ultimate deficit could be as large as $188 million. Certainly, this "moving target" gives rise of concern to a lender. Presumably, this concern could be mitigated by the further pledging of cash collateral as outlined in (3) above.

Steve, these are some of my thoughts with regard to a proposed loan to cover the unfortunate deficit with which you and the other Directors are faced. While I have been up front with outlining our concerns for such a proposed loan, please believe that Fleet Bank of Maine is appreciative of your dilemma and would like to help wherever possible.

Sincerely,

Bradford A. Hunter

BAH:pmw

Business Insurance Agency, Inc.

BIA

Post Office Box 5060
Augusta, Maine 04332-5060

Telephone 207-623-1238
Fax 207-623-8377

called 2:45 6/25

FAX MESSAGE

Date 6/25/92

To Michelle Dunkley Attn: _____

_____ # of pages (including this) 5

Re: Dealer Blue Ribbon Crew

June 24, 1992

Mr. Emilién Levesque
52 Burke Street
Farmingdale, ME 04344

Dear Mr. Levesque:

The current preoccupation with Michigan's workers' compensation program is cause for considerable concern. In our view, the principal objective of workers' compensation reform should be cost savings. Yet, the plain and simple facts are that adoption of Michigan's comp statute in Maine would increase overall costs to Maine employers.

The proponents of the Michigan plan have grossly failed to inform Maine employers of the true cost consequences of their proposal. It is a concern to us that this burden of proof has not been met. It is of even greater concern that few policymakers have demanded that this burden be met. While it seems obvious, we feel compelled to emphasize that we will strongly oppose any proposal that would result in increased comp costs for Maine employers.

You may reasonably be bewildered by the disagreement between us and the employer members of the Workers' Compensation Group. Keep in mind that the primary party of interest representing labor on the comp issue, namely the AFL-CIO, was formally represented on the Workers' Compensation Group. AFL-CIO President Charles O'Leary informed you in testimony before the Commission that he personally appointed the labor representatives. The principal organizations representing business interests and employers were not involved in the Group in any way. The eight employers in the Group did not represent these organizations nor the thousands of employers they serve.

As individuals, the employer members of the Group clearly have the right to favor adoption of a plan that would increase workers' compensation costs to Maine employers. However, we feel obliged to favor policies that would reduce costs to Maine employers.

As membership organizations representing Maine employers, we have taken the time to examine the Michigan plan from the perspective of potential cost impacts to our members. The following comparison of residual market rates per $100 of payroll for Maine and Michigan cause us, on behalf of our members, to oppose adoption of the Michigan statute. We recognize that there are many more rates than those listed below but these are the rates that concern us most.

		Maine	Michigan
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Since workers' compensation insurance carriers in Maine are not allowed to set their own rates it is not possible to also provide a competitive rate comparison with Michigan. However, please be aware that it is not uncommon for the average competitive market rate in Michigan to also exceed Maine's residual market rate.

Further, it must be recognized that in transferring Michigan's rates to Maine it is necessary to adjust Michigan's rates to compensate for Maine's higher incidence and severity of injuries as compared to Michigan. This adjustment would cause Maine to have higher rates than those now in effect in Michigan if Maine were to adopt the Michigan law.

It is our hope that you will set aside the Michigan proposal and first focus your attention on the pending residual market collapse. The solution to this problem is not likely to be found in some other state's statute. No other state is facing this unique set of circumstances. It is asked that you address this problem in a manner that would enhance the authority of employers to manage their workers' compensation liability. You have received testimony of a bipartisan nature that is compatible with this request.

It is further requested that you address the need of employers to have the management tools that will allow for prompt return to work, medical cost containment, medical management and a reduction in the friction points that bring on lawyer involvement and litigation. To the extent practical, these provisions should apply retroactively to cover open claims already in existence.

Retroactive procedural changes are critically needed to reduce the liability of employers for funding the comp carrier's net operating loss for the years 1988 through 1991. The National Council of Compensation Insurance has estimated this loss at $574 million. If Maine's Bureau of Insurance accepts that estimate, Maine employers will have to raise $381 million as their statutory share of this loss. To put this amount in perspective, $381 million is over one and one half times the estimated current annual workers' compensation premium. This liability can only be reduced by challenging NCCI's estimate before the Maine Bureau of Insurance or through retroactive changes in law that allow for cost savings on existing open claims.

Finally, it is imperative that the Commission squarely address the employee's right to coverage and the employer's liability for non-work related disabilities. The current workers' compensation system provides broad coverage of non-work related disabilities. The system has assumed a function well beyond its original design. Workers' compensation insurance should not bear the cost of non-work related disability coverage. The state must either do away with this coverage or design a more equitable method for funding this coverage.

It is requested that the Commission grant us the opportunity to appear before it to answer any questions this letter may raise and to state in greater detail our proposals for realizing a constructive resolution of Maine's workers' compensation dilemma. We would also appreciate having the opportunity to address the matter of workplace safety.

Sincerely yours,

Edward I. Johnston
Executive Director
Maine Forest Products Council

Patricia W. Aho
General Counsel
Maine Merchants Association

Richard Jones
Executive Director
Maine Motor Transport Association

Eugene Guilford
Executive Director
Maine Oil Dealers Association

cc: Michelle Bushey

THE UNIVERSITY OF CONNECTICUT

The College of Liberal Arts and Sciences
Department of Economics
Box U-63, Room 328
341 Mansfield Road
Storrs, CT 06269-1063
(203) 486-3022
Telex — 994484
FAX — (203) 486-4463

June 24, 1992

William D. Hathaway, Commissioner
Federal Maritime Commission
Washington, D.C. 20573

Dear Commissioner Hathaway:

Enclosed is a copy of the paper on the costs of health care that we discussed yesterday. I hope that you and the other members of the Blue Ribbon Commission find it to be of interest.

I enjoyed my visit with you yesterday. My best wishes to you on your formidable task. I shall be sending you the description you requested in the next 2 weeks.

Sincerely,

Peter S. Barth
Professor of Economics

PSB/lmr
Encls.

Moving toward national health care policy (Barth, Peter S. and Dennis R. Heffley)(University of Connecticut, 1992) ●

(Available on request-please include the following citation: WC115-BRC-08-Pt.A-242.pdf)

N E W H O R I Z O N S

Innovative Problem Management

165 Cony Street
Augusta, Maine 04330

207 - 622-3009
24 June 1992

Honorable William Hathaway, Co-Chair
Mr. Richard Dalbeck, Co-Chair
Mr. Emilian Levesque, Member
Dr. Harvey Picker, Member
Blue Ribbon Commission on Workers' Compensation
246 Deering Avenue
Portland, Maine 04102

Gentlemen:

Design of the Workers' Compensation System

Recently I received a copy of the testimony submitted by William Black and Martha McCluskey to the Blue Ribbon Commission on Workers' Compensation and a copy of Senator Vose's proposal dated 92/05/22. While I am not a comprehensive expert on Workers Compensation, I do have some applicable knowledge and skills as a small business owner/manager (retailing and consulting) and as a practitioner of the scientific method in business and government. Therefore I write in support of the Black and McCluskey testimony and the concepts underlying the Mitchell-Kany and Vose proposals.

The historical analysis of the development of the current crisis in the Workers' Compensation System provided by Black and McCluskey is an excellent delineation of the problem. (I do wish they had given a little more attention to the non-financial dis-incentives.)

The recommendations presented by Black and McCluskey are of comparable quality to their analysis, and I urge your support of these recommendations. I note that they endorse the recommendations of the Mitchell-Kany proposal, the Maine Chamber of Commerce, the Council of Self-Insurers and the Workers' Compensation Group. The contents of this letter are consistent with, and supportive of, their recommendations and the Mitchell-Kany and Vose proposals.

In their presentation of recommendations Black and McCluskey point to some problem areas which they did not fully address. The main purpose of this letter is to provide some suggestions for dealing with these specific problem areas:

. EMMP Size and Homogeneity. A supporting proposal to increase cost containment competition. (EMMP: Employer/Employee-Managed Mutual Pool)

. Financial Incentives for Safety and Return to Work. Using an information and injury analysis system to enable effective use of penalties and to maintain a rate setting data base.

. Liability and Technology. Applications of technology to reduce reserve requirements to prudent levels and facilitate verification of soft tissue injury claims.

The implicit concept underlying claims processing and its effect on the design of that process is also a serious problem area, but I elect to deal with that problem in this letter only in context with the Vose proposal.

As you well know, the Worker's Compensation System is based on the concepts that (1) some work site injury is inevitable, and (2) it is to the advantage to society at large as well as to employer and employee that the financial consequences of injury should not cause significant harm to either the employee or the employer. Through Legislative action a Worker's Compensation System was created to implement the second concept. Further, the system has been defined to accommodate the first concept by having settlements made without recourse to the courts (of the Judiciary Branch) with tort actions.

The present design of this system - the way it works - has evolved as a response by the Executive Branch to the initial legislation and the subsequent modifications enacted. The fiscal crisis of the system (and of state government) has caused the Blue Ribbon Commission to be created. From a systems science and total quality management perspective:

. The Black & McCluskey testimony asserts that the present design is not capable of providing the intended protection at a cost that the employers (and employees) can bear.

. The role of the Blue Ribbon Commission is to provide a clear outline of a new design for the system

My suggestions, from this perspective, are intended to help the Blue Ribbon Commission prepare and present a comprehensive outline of the new design; a design which is based on sound principles so that its cost is prudent relative to the protection provided to the employees, the employers and the citizenry at large.

Re: EMMP Size and Homogeneity.

(See page 21, section 1, Black & McCluskey Testimony.)

Black and McCluskey make some observations about the possible size of pools, but they make no particular recommendation. From context, the lack of recommendation stems from the conflict between the financing advantages of large heterogeneous pools versus the need for safety, work return, and other services that can be instituted most efficiently on a industry specific basis (i.e., homogeneous pools).

It seems that a compromise approach would be in order: Large heterogeneous pools to maximize financial security, and separate industry specific entities that would provide the safety, early work return and other services. Let me refer to these entities as EMMP Support Providers. This approach has two advantages:

. The independent EMMP Support Provider has more independence from insurance underwriters than would a pool's internal service component.

. It introduces another dimension of competition which helps minimize over-all Workers' Compensation costs.

A funding formula could be developed for the EMMPs to finance the EMMP Support Providers on the basis of both services delivered and aggregate results achieved by each industry.

Re: Financial Incentives for Safety and Return to Work.

The employee as well as the employer need appropriate incentives for early return to work. In recent years the design of the claims process has evolved to a focus of preventing fraud by employees rather than maintaining a focus on financial support for treatment, rehabilitation and early return to work. As clearly pointed out in the Vose proposal, the occurrence of fraud is nearly inconsequential, and most of the fraud which does take place is motivated by the disincentives of current claims processing design.

It is necessary as well as prudent to take reasonable actions to detect and deter fraud. But it is even more necessary to change the focus of the claims processing back to the mitigation of financial adversity resulting from injury. That is, the design of the claims processing must be based on the assumption that less than 15 out of 100 claims are fraudulent.

The concepts for dealing with fraud by injury claimants are well defined in the Vose proposal, albeit the three-step process of sanctions may be less stringent than warranted.

In the Black & McCluskey discussion of the High Cost Pool (page 24, et seq.) they recommend that "employers in the High Cost

Pool that repeatedly fail to comply with certain safety or return to work plans should be penalized by termination of workers' compensation coverage. Provisions for imposing such penalties, and procedures for review should be developed and be based on recommendations of the Guaranty Fund board, subject to approval of the Superintendent."

While this is a reasonable recommendation, it glosses over two very serious concerns:

- Some employers will continue to deal with insurance expense as just another cost of doing business, unless the basis for assessing "penalties" can be made on a basis of fact and the weight of evidence. Otherwise, a sanctioned employer can go to court for relief on constitutional grounds.

- An employer who is closed down means that the terminated employees will suffer financial hardship, and all communities affected by the loss of work will suffer.

We need to carefully consider the traditional assumptions underlying the recommendation about penalties.

Absent any explicit guidance, the staffs of the EMMPs, the Guaranty Fund board and the Superintendent will not have the opportunity to identify the mutually competitive options for processes to:

- Identify whether the individual employer has ignored plans to the detriment of the financial status of the pool involved and the health, safety and earnings capacity of the employees.

- Devise appropriate sanctions as a function of the specifics at issue.

- Evaluate the probable impact of the proposed sanctions on the employer and the employees.

Therefore I believe that the approach to developing processes and procedures should be outlined by legislation proposed by the Blue Ribbon Commission.

If the issue is approached from the perspective that most employers and employees are willing to cooperate in a fair/just workers' compensation system, then that system design should include a component that functions as the driver for identifying both the excellent and atrocious employment situations. The reason for taking this approach is fundamental: To provide mutual assistance and support for injury and financial loss avoidance actions, on an industry specific basis.

Thus there should be created a decision support system to collect the necessary data about working conditions, compensatory costs and injuries and analyze that data to identify, on an industry specific basis, which employers are experiencing obviously:

- Less injury, so that what they have done can be identified and then exported to other employers (so long as trade secrets are not compromised).

- More injury, so that the candidates for receiving the guidance can be identified.

That is, I propose a performance analysis and review subsystem within the Workers' Compensation System. This subsystem would act as a catalyst for promoting continuous improvement in the work place as it relates to the scope of workers' compensation system issues. The Department of Labor would be the appropriate "house" for such a system.

A Performance Analysis and Review System is needed from the stand-point of rate setting, for it requires only a few moments thought to recognize that this kind of system would contain all the data needed for the rate setting process. As Black & McCluskey have repeatedly noted: Although NCCI has the best data base available, it does not have the incentive to maintain an adequate data base for analysis. Therefore, if a third party has the authority and financing to provide this data, then:

- Responsive rate setting is enabled, and

- The data can be sold to NCCI.

The functional delineation of a Performance Analysis and Review System can be accomplished for $2,500, at most. Development of a prototype system can probably be accomplished for a reasonably complex industry group for about $100,000, refined for another $100,000, and then modified for other industry groups for an average of $50,000 each. The annual operating cost for this system would be in the range of $3 to $6 per covered employee.

Since a Performance Analysis and Review System would operate in the interest of the general welfare as well as in the interest of the employers, part of the development and operation costs should be provided from the general fund.

Getting back to sanctions for failure to adopt plans for safety and work return: The findings provided by the Performance Analysis and Review System would be routinely given to the board of whatever pool is involved for follow-up. If an employer fails to institute corrective plans then the board would be in a strong position to invoke sanctions.

However, it may not be necessary for a board to invoke sanctions if the Performance Analysis and Review System were established. The information relevant to all work site injury from this system makes it possible to separate the occurrence of misadventures from a pattern of neglect (and indifference, etc.), for every employer in the pool. In other words, this system provides the ability to classify a specific injury either as an occasional misadventure or as part of a pattern of negligence. The findings of the system would be submitted to the board of the pool involved, which would accept the findings or return the findings with instructions for further research and analysis.

The new design for Workers' Compensation System should still be based on the concept that the worker should receive compensation for work site injury with out either the worker or the employer suffering financial hardship. (Compensatory damages: Principally medical, rehabilitative and retraining expenses and disability income.) The new design should still require that settlements should be made without resort to tort actions in the courts. But the civil actions (and criminal ones, for grievous cases) in the courts should still be available as a means for insuring that safety and return to work programs are aggressively adopted by employers.

Given the availability of information about occasional misadventures and patterns of negligence:

- The injured worker can be legislatively empowered to sue for punitive damages when the employer's record shows a pattern of neglect.

- Absent a pattern of neglect, an injured worker is only entitled to compensatory damages, which would be the normal compensation coverage provided by the EMMP involved.

- If analysis discloses a pattern of neglect for a particular employer subsequent to injury occurrences, then the prior injured parties can be legislatively empowered to join in a current suit for punitive damages.

In other words, a Performance Analysis and Review System enables prompter payment of compensatory damages while providing a solid basis for court action where punitive damages are truly warranted.

Black & McCluskey are concerned about the effect on pool financial strength by loss of membership when an employer moves to a lower risk pool or becomes self-insured (page 26). If the state government is operating a Performance Analysis and Review System then the Legislature can require all employers to participate in the data collection component of the system. In this scenario, the information contained in the system about the pools affected can be readily analyzed to help the Superintendent

and the Guaranty Fund board assess financial impact.

Re: Liability and Technology.

The future liability of the existing residual market pool is a matter of concern. Black & McCluskey are particularly concerned that the strategy for funding this liability is inappropriate to the nature of the pool (page 29), and they recommend changing to a more appropriate investment strategy.

Actually, the future liability of any pool is a matter of concern. The insurers, using NCCI data and other resources at their disposal, have used the unfunded liability argument to press for higher premiums. The insurers position is that the size of the reserves must accommodate worst-case conditions, so the actuarial analysis is designed to cover at least 95%of the worst case scenario. Given the realities of current analysis in the existing Workers' Compensation System design, the insurers' position must be accepted as reasonable (i.e., conservative).

What is really at issue is the need to predict (1) the expected extent of recovery from a disabling injury and (2) the point in time when this recovery is expected, at a confidence level of at least 80%. The current design of the Workers' Compensation System does not have the capacity to apply any reasonably objective process for determining worst case probabilities. This flaw is readily correctable by using recent, but proven, pattern matching technology to make these predictions. The technology is called "neural network software", and it is being used for similar predictions in various situations, such as predicting length of stay in various types of facilities for people with mental health problems.

The use of neural network software would provide conservative estimates of degree and time for recovery in individual cases. These predictions would then be aggregated on a time series basis to keep a running projection of future liability. The expected effect would be to make a substantial reduction in reserve requirements. If no other state has applied this technology, then it would be prudent to fund a demonstration program; $50,000 would probably be sufficient to design and test a prototype. The Bureau of Labor Standards would also be the appropriate "house" for this capability.

Liability determination in soft tissue injury claims is also an unmanaged problem. In every case the adjudicator forms an opinion after listening to other opinions; no factual data as to the reality of the degree of injury is available.

Technology exists that can be used to reach a finding of fact about the degree of soft tissue injury: High resolution infrared scanning. Actual soft tissue injury causes

inflammation, and inflammation causes local temperature increases. By securing periodic infrared scans to establish base-line temperature profiles and comparing these profiles to a current scan, a factual finding of injury can be made.

Many employers already use commercial services for employee health data acquisition, on a periodic basis. For example, Yankee Health Care provides periodic assessments of gross serum cholesterol for the employees of several area employers. Entities such as Franklin Hospital and Yankee Health Care would certainly be willing to perform periodic high resolution infrared scans along with their other services to employers, provided that the infrared technology is adapted to this situation.

High resolution infrared scanning is current technology in other applications, principally as a diagnostic tool. In the Workers' Compensation environment the technology would have to be adapted to multi-purpose scan needs, each of which would be a function of job classification. A development grant could probably be obtained to fund the adaptation of the technology (hardware and software) to this environment. At this juncture I have no idea of the amount of funding needed to develop a commercially viable service setup. The Bureau of Labor Standards could perform an investigation, using its interstate communications network, and devise an appropriate grant request.

Once a commercially viable system had been developed and then been proven through a demonstration project, the commercial entities would make the investment needed to service the market. The employers would pay for the services rendered, because the kind and amount of scans required would be a function of the job type composition of the employer's operation. In other words, in this application the government would serve as the catalyst for change, and then drop out of the picture as far as service delivery is concerned.

I would be pleased to respond to enquiries about any matter contained in this letter.

Sincerely,

Darwin L. Hatheway
Principal

cc:
(next page)

Legislators, State of Maine:
Charles P. Pray, Senate President
John L. Martin, Speaker of the House
Beverly M. Bustin, Senator, District 19
Donald E. Esty, Jr., Senator, District 28
Judy C. Kany, Senator, District 17
Harold L. Vose, Senator, District 7
Elizabeth H. Mitchell, Representative, District 87
Public Advocate Office: William Black and Martha McCluskey
Bath Iron Works, Inc.: Duane D. Fitzgerald

MAINE MERCHANTS ASSOCIATION INC.
P.O. BOX 5060 • AUGUSTA, ME 04332-5060 • TEL. (207) 623-1149
Affiliated with National Retail Federation, Washington, D.C.

DIANE WAGNER
PRESIDENT

KENNETH OUDSON
EXECUTIVE VICE PRESIDENT

June 25, 1992

Commission to Examine Workers'
Compensation Alternatives
c/o Michelle Bushey
University of Southern Maine Law School
246 Deering Avenue
Portland, Maine 04101

Dear Ms. Bushey:

I am writing on behalf of the Maine Merchants Association, the Maine Forest Products Council, the Maine Motor Transport Association and the Maine Oil Dealers Association, who have recently submitted the attached letter to the members of the Blue Ribbon Commission. We have also requested that the Commission grant us the opportunity to appear before it to answer any questions that the letter may raise.

told her testimony finished - will call. If things change

Please feel free to use me as the contact person for the four Associations. Thank you for your time and attention in this matter.

Sincerely,

PATRICIA W. AHO, ESQ.
General Counsel

PWA/d

Attachment

June 24, 1992

Mr. Emilien Levesque
52 Burke Street
Farmingdale, ME 04344

Dear Mr. Levesque:

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Executive Director
Maine Forest Products Council

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Executive Director
Maine Motor Transport Association

Eugene Guilford
Executive Director
Maine Oil Dealers Association

cc: Michelle Bushey

File

MAINE MERCHANTS ASSOCIATION INC.
P.O. BOX 5060 • AUGUSTA, ME 04332-5060 • TEL. (207) 623-1149
Affiliated with National Retail Federation, Washington, D.C.

DIANE WAGNER
PRESIDENT

KENNETH QUIRION
EXECUTIVE VICE PRESIDENT

June 25, 1992

Commission to Examine Workers'
Compensation Alternatives
c/o Michelle Bushey
University of Southern Maine Law School
246 Deering Avenue
Portland, Maine 04101

Dear Ms. Bushey:

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Please feel free to use me as the contact person for the four Associations. Thank you for your time and attention in this matter.

Sincerely,

PATRICIA W. AHO, ESQ.
General Counsel

PWA/d

Attachment

File

Oxford Hills Chamber of Commerce

P.O. BOX 167 • SOUTH PARIS, MAINE 04281 • 207/743-2281
OFFICE LOCATED AT 70 MAIN STREET, NORWAY, MAINE

June 26, 1992

Honorable William Hathaway, Co-Chair
Mr. Richard Dalbeck, Co-Chair
Mr. Emilian Levesque
Dr. Harvey Picker
Blue Ribbon Commission on Worker's Compensation
246 Deering Avenue
Portland, Maine 04102

Dear Blue Ribbon Commission Members:

The Oxford Hills Chamber of Commerce supports the work that the Ad Hoc Workers Compensation Committee has performed in the last few months and strongly recommends that the Blue Ribbon Panel adopt as a solution to the workers compensation problems in the state, the committee's Michigan Proposal.

Furthermore, that the Blue Ribbon Panel set a strong enough tone in its findings to the Governor and Legislature that a new workers compensation system be established without further unnecessary delays.

Sincerely,

Deborah Wyman
Executive Director

cc: Mr. Kenneth Goodwin Co-Chair
Workers Compensation Committee

M E M O R A N D U M

TO: ABBY

FROM: KIM KDR

SUBJECT: HISTORY OF WORKERS' COMP APPOINTMENTS

DATE: June 26, 1992

The following lawyers were serving as Workers' Comp Commissioner when Governor McKernan took office in Jan. 1987 and the history or who was reappointed, resigned and/or replaced:

Comissioner	Term Began	Term Ended(s)	Reappointed/Replaced
Ralph Tucker	Oct. 1985	Oct. 1990	Reappointed
Chair, Brunswick	Oct. 1990	Oct. 1997	
David Soucy	Nov. 1987	Oct. 1991	Resigned to return to private practice
Ft. Kent			
Replaced with:			
Reginald Burleigh	March 1990	March 1996	
Peter Michaud	Jan. 1984	Jan. 1988	Reappointed
Bangor	March 1988	March 1992	
Nicholas Scaccia	Aug. 1984	July 1988	Left at end of term to return to private practice
W. Lebanon			
Replaced with:			
Dawn Lieb	Sept. 1988	Sept. 1992	
Lendall Smith	Sept. 1986	Sept. 1990	Reappointed
Brunswick	Oct. 1990	Oct. 1996	
Ellen Gorman	July 1986	July 1990	Resigned to accept Court appointment
Portland			
Replaced with:			
Gail Ogilville	April 1989	April 1993	
Richmond			

Suzanne Smith Woolwich Replaced with: Bruce Livingston	Feb. 1986 July 1988	Feb. 1990 July 1992	Resigned
Roland Beaudoin Falmouth Replaced with: Ronald Vigue	Oct. 1985 April 1990	Oct. 1989 April 1996	Left to be appointed to the Administrative Court
James Smith Whitefield	Feb. 1986 April 1990	Feb. 1990 April 1996	Reappointed

New positions added by the Legislature in 1987:

Dawn Pellitier Winterport	Feb. 1988 April 1992	Feb. 1992 April 1998	Reappointed
James Cox Bangor	March 1988 Has been nominated for reappointment; Judiciary Committee has failed to meet to hold confirmation hearing	March 1992	
Paul Cote	March 1988	March 1992	Reappointed

UNITED PAPERWORKERS INTERNATIONAL UNION

REGION I

31 Birch Street, Madawaska, ME 04756

LUCIEN DESCHAINE
International Representative

Telephone
(207) 728-7989

June 29, 1992

Blue Ribbon Commission
Workers' Compensation System
State House
Augusta, Maine 04330

RE: Forest Workers' Compensation Experience

Introduction

The State of Maine's logging industry has a great interest in where the Compensation System is presently and where its ultimate reforms will end up. The term "great interest" must not be interpreted to mean special interest group. In the following documents there will consist of vital information which will clearly identify the short comings the present system has afforded the woods workers when a work related injury occurs.

Having served on three previous Commissions, and appointed by both previous and present Governors, I have been exposed to the working mechanics and short comings of the present Workers' Compensation System. The first Commission was the Work Place Safety Commission, which I served under Governor Brennan. Specific to the logging industry, the findings were well documented that the highest injury rates for the State of Maine was in the Wood Industry. Politically many interests attempted to disapprove the findings, but ultimately they stood up to constant review. Once the administration changed in Augusta, the focus to safety quickly shifted to benefit reforms and much of the safety priorities to correct work place injuries in Maine's woodlands were set aside. Benefit reform is the path of the least resistance and as such, it became apparent that the focus was more on benefit cuts to lower costs.

Safety became a cost liability because of the resources which would have been a short term cost because of the safety incentives which are practically none existent.

The second Commission which Governor McKernan appointed me on was the Workers' Compensation Reform Commission, which was intended to review the overall system and make recommendations in how to make the system more reactive to the various peripheral interests to the system. Although much assurances were made on the outset that this Commission was not intended for benefit reductions, this is what happened anyway.

The third Commission which I was appointed by House Speaker Martin was called Special Commission to review the Workers' Commissioner's responsibilities and their functions. It's main focus was on the Commissioner's case loads and system structuring and how it could be refined to be more efficient. Prior to it's completion and due report, the Blue Ribbon Commission was established and this most recent Commission has got to make it's final determination.

The point being made here has to do with my involvement and knowledge of several prior reviews in the Workers' Compensation System. Also, I represent 3,800 union members in papermills, sawmills, and specific to the report, woodcutters and heavy equipment operators.

Specifics

Woodcutters," operators" by legal definition per Workers' Compensation, are considered "seasonal workers". These workers have cutting seasons based on total tonnage contract and or weather conditions and as such their average yearly season is 24-26 weeks. Also, part of their total tonnage/stumpage wages go towards equipment upkeep which can apply to their chainsaws and or skidders. The amount applied to the equipment is not calculated as their weekly income.

The present calculation formula applied to an injured wood worker is two-thirds of their weekly income divided by 52 weeks. Since the loggers total weekly income can be $500.00 but $200.00 is applied to equipment, the system allows calculation on $300.00 only. Added to this fact is that the formula insists on a 52 week division when in fact the worker only worked 26 weeks. This additional disparity leaves a worker with less than $150.00 a week to live on and his/her equipment liability to the bank is not waived. This disparity is tremendous in nature and application. It does not reflect the original intent of fair compensation. Liability to skidder payments or any heavy equipment can be up to $700.00 to $800.00 per month.

Another issue arises out of the pay out disparity to the workers. Why would Workers' Compensation rates be so high for the contractors if the weekly payment to their workers is so low?

Another issue which the compensation system fails to recognize is the language and documentation interpretation for french speaking workers. The percentage of wood cutters in the State of Maine either under bonded labor or visa's is extremely high. The paperwork sent to these workers advising them of their rights and obligations are in English and many times their signatures are requested with no comprehension of the document. The system spells intimidation to these workers and they find themselves totally dependent on someone else for direction. This issue may seem minor in the overall system problems, but serves only to invite more disparity for a key element to the Workers' Compensation System; The Worker!

Report Conclusion

The major point for this report is for the Panel to know that there is **extreme disparity** within the system which hits an area of injury statistics concern. The wood workers represents a major concern because of the fact that documented proof shows the wood industry represents the most dangerous and accident prone work experience in the State of Maine.

I ask that the Commission focus in this area of equal benefit applications and also emphasize the need to address safety as the key to lowered compensation liabilities for both management and their employees.

I am available to respond to any questions you may have on this or other issues on experiences with Workers' Compensation and safety.

Respectfully submitted,

Lucien Deschaine

Lucien Deschaine
International Representative

LD/vr

cc: Charlie Pray
John Martin
Judy Paradis
Elizabeth Pinnette
Elizabeth Mitchell
Herby Clark
Charlie O'Leary
Pat McTeague
Labor Committee (Augusta)

Workers' comp costs: Out of control (Thompson, Roger) (Nation's Business, July 1992) ●
(Available on request-please include the following citation: WC115-BRC-08-Pt.A-294.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

NORTHERN
GENERAL SERVICES, INC.

36 MALLETT DRIVE
P.O. BOX 477
FREEPORT, MAINE 04032-0477
207/865-0200 FAX 207/865-0212

June 25, 1992

Senator William Hathaway
207 East Grand Avenue, Apt. 6D
Old Orchard Beach, ME 04064

Dear Senator Hathaway:

I'm enclosing the servicing recommendations we submitted to Senator Judy Kany this morning.

She seems to feel, and I agree, that a brief meeting to explain our service in more detail would be helpful to your committee. The experience of self insured groups and employers is markedly different from that of employers in the residual market, and proper claims management and loss control are major reasons.

I would be able to visit with you at your convenience, although a couple of days notice would be helpful.

Cordially,

O. William Robertson, CPCU
President

owr/em

I. CLAIMS ADMINISTRATION

1. The Third Party Administrator will provide the following services:

A. Examine, on behalf of Trust, all reports which are submitted by Trust to TPA of personal injury, sickness, disease or death of employees of Trust for which benefits may be payable under Workers' Compensation laws.

B. Limit the number of lost time (indemnity) claims managed by any one claims examiner to 200 at any one time. Medical only claims will be handled by support staff under the direct supervision of the claims examiner.

C. The claims examiner will personally meet with the claimant in all cases resulting in seven days days or more of disability. The meeting will take place no later than ten working days from the date of loss, or from the date upon which disability begins.

D. Conduct any investigations of the foregoing claims to verify the legitimacy of such claims or to assist in the defense of controverted claims.

E. Recommend to Trust what benefits, if any, should be paid or rendered under the applicable Workers' Compensation laws with respect to each reported claim.

F. Arrange for physical and/or vocational rehabilitation in serious injury cases or where required by applicable laws.

G. Prepare compensation, medical expense, and "Allocated Loss Expense" checks and forward to the payee.

H. Maintain a claim file on each reported claim, which shall be available to Trust at all reasonable times for inspection and audit.

I. Provide forms necessary for the efficient operation of the program and assist Trust in filing of all legally required forms.

J. Recommend reserves on all claims in accordance with accepted industry practices and provide written justification for all reserve adjustments totalling $------- or more.

K. Assist in the preparation of controverted cases for settlement or hearing.

L. Furnish full and complete monthly reports to Trust listing all accidents, including occupational diseases, and tabulate all payments made and reserves set up for benefits and expenses on account of liability and/or reasonably anticipated liability for accidental injuries and/or occupational diseases sustained by employees of Trust.

M. Prepare on behalf of Trust all scheduled hearings and personally attend on behalf of Trust all informal hearings before the Maine Workers' Compensation Commission; but all legal expenses attendant thereto, including attorneys' fees, witness fees for general and expert testimony and costs, shall be paid by Trust.

N. Assist Trust in the selection of a panel of physicians or other providers of health care, to initially treat injured employees and a panel of medical specialists to provide long term or specialty care, where applicable.

O. Assist Trust in the monitoring of treatment programs recommended for employees by physicians, specialists, and other health care providers by reviewing all medical reports so prepared and by assisting Trust in maintaining such contact with those providers as may be appropriate.

P. Meet monthly with Trust to review management objectives on claims or other related issues.

Q. Investigate Workers' Compensation subrogation possibilities, with approval of Trust. All legal expenses incurred in connection with subrogation activities shall be borne by Trust.

2. All claims examiners will be licensed by the State of Maine no later than six months following the date of employment.

3. All claims examiners shall be based at an office maintained by the TPA within the State of Maine, and all claim files shall be available for inspection at this office.

4. One hundred and eighty days (180) following the date of termination of the contract, and at each subsequent anniversary date, a charge will be made on each open tail claim which occurred during the contract. The charge for the first and subsequent tail years will be negotiated prior to termination of the contract.

II. LOSS CONTROL

1. The Third Party Administrator will provide the following services:

A. For all employers with standard premiums of $25,000 or more:

a. Conduct physical survey of each location annually

b. Prepare 12 month Action Plan, incorporating loss control recommendations.

B. Conduct one day group training programs for employers with standard premiums of less than $25,000

C. Provide additional safety consulting to individual employers as requested by the Trust, at a fee to be negotiated.

III. TERM OF SERVICE CONTRACT

Minimum of five years

IV. SERVICE FEE

The fee for all services provided by the Third Party Administrator shall be computed as a percentage of premium contributions.

V. COMPOSITION OF SELF INSURED GROUPS

Heterogeneous, by geographical divisions

VI. COMMISSIONS

Maine licensed insurance agents shall receive servicing commissions consistent with current residual market commission schedule.

from Sedgwick / No Gen Services

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this COS not good on this

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Heterogeneous, by geographical divisions

VI. COMMISSIONS

Maine licensed insurance agents shall receive servicing commissions consistent with current residual market commission schedule.

N E W H O R I Z O N S

Innovative Problem Management

165 Cony Street
Augusta, Maine 04330

207 - 622-3009
24 June 1992

Honorable William Hathaway, Co-Chair
Mr. Richard Dalbeck, Co-Chair
Mr. Emilian Levesque, Member
Dr. Harvey Picker, Member
Blue Ribbon Commission on Workers' Compensation
246 Deering Avenue
Portland, Maine 04102

Gentlemen:

Design of the Workers' Compensation System

Recently I received a copy of the testimony submitted by William Black and Martha McCluskey to the Blue Ribbon Commission on Workers' Compensation and a copy of Senator Vose's proposal dated 92/05/22. While I am not a comprehensive expert on Workers Compensation, I do have some applicable knowledge and skills as a small business owner/manager (retailing and consulting) and as a practitioner of the scientific method in business and government. Therefore I write in support of the Black and McCluskey testimony and the concepts underlying the Mitchell-Kany and Vose proposals.

The historical analysis of the development of the current crisis in the Workers' Compensation System provided by Black and McCluskey is an excellent delineation of the problem. (I do wish they had given a little more attention to the non-financial dis-incentives.)

The recommendations presented by Black and McCluskey are of comparable quality to their analysis, and I urge your support of these recommendations. I note that they endorse the recommendations of the Mitchell-Kany proposal, the Maine Chamber of Commerce, the Council of Self-Insurers and the Workers' Compensation Group. The contents of this letter are consistent with, and supportive of, their recommendations and the Mitchell-Kany and Vose proposals.

In their presentation of recommendations Black and McCluskey point to some problem areas which they did not fully address. The main purpose of this letter is to provide some suggestions for dealing with these specific problem areas:

. EMMP Size and Homogeneity. A supporting proposal to increase cost containment competition. (EMMP: Employer/Employee-Managed Mutual Pool)

. Financial Incentives for Safety and Return to Work. Using an information and injury analysis system to enable effective use of penalties and to maintain a rate setting data base.

. Liability and Technology. Applications of technology to reduce reserve requirements to prudent levels and facilitate verification of soft tissue injury claims.

The implicit concept underlying claims processing and its effect on the design of that process is also a serious problem area, but I elect to deal with that problem in this letter only in context with the Vose proposal.

As you well know, the Worker's Compensation System is based on the concepts that (1) some work site injury is inevitable, and (2) it is to the advantage to society at large as well as to employer and employee that the financial consequences of injury should not cause significant harm to either the employee or the employer. Through Legislative action a Worker's Compensation System was created to implement the second concept. Further, the system has been defined to accommodate the first concept by having settlements made without recourse to the courts (of the Judiciary Branch) with tort actions.

The present design of this system - the way it works - has evolved as a response by the Executive Branch to the initial legislation and the subsequent modifications enacted. The fiscal crisis of the system (and of state government) has caused the Blue Ribbon Commission to be created. From a systems science and total quality management perspective:

. The Black & McCluskey testimony asserts that the present design is not capable of providing the intended protection at a cost that the employers (and employees) can bear.

. The role of the Blue Ribbon Commission is to provide a clear outline of a new design for the system

My suggestions, from this perspective, are intended to help the Blue Ribbon Commission prepare and present a comprehensive outline of the new design; a design which is based on sound principles so that its cost is prudent relative to the protection provided to the employees, the employers and the citizenry at large.

Re: EMMP Size and Homogeneity.

(See page 21, section 1, Black & McCluskey Testimony.)

Black and McCluskey make some observations about the possible size of pools, but they make no particular recommendation. From context, the lack of recommendation stems from the conflict between the financing advantages of large heterogeneous pools versus the need for safety, work return, and other services that can be instituted most efficiently on a industry specific basis (i.e., homogeneous pools).

It seems that a compromise approach would be in order: Large heterogeneous pools to maximize financial security, and separate industry specific entities that would provide the safety, early work return and other services. Let me refer to these entities as EMMP Support Providers. This approach has two advantages:

. The independent EMMP Support Provider has more independence from insurance underwriters than would a pool's internal service component.

. It introduces another dimension of competition which helps minimize over-all Workers' Compensation costs.

A funding formula could be developed for the EMMPs to finance the EMMP Support Providers on the basis of both services delivered and aggregate results achieved by each industry.

Re: Financial Incentives for Safety and Return to Work.

The employee as well as the employer need appropriate incentives for early return to work. In recent years the design of the claims process has evolved to a focus of preventing fraud by employees rather than maintaining a focus on financial support for treatment, rehabilitation and early return to work. As clearly pointed out in the Vose proposal, the occurrence of fraud is nearly inconsequential, and most of the fraud which does take place is motivated by the disincentives of current claims processing design.

It is necessary as well as prudent to take reasonable actions to detect and deter fraud. But it is even more necessary to change the focus of the claims processing back to the mitigation of financial adversity resulting from injury. That is, the design of the claims processing must be based on the assumption that less than 15 out of 100 claims are fraudulent.

The concepts for dealing with fraud by injury claimants are well defined in the Vose proposal, albeit the three-step process of sanctions may be less stringent than warranted.

In the Black & McCluskey discussion of the High Cost Pool (page 24, et seq.) they recommend that "employers in the High Cost

Pool that repeatedly fail to comply with certain safety or return to work plans should be penalized by termination of workers' compensation coverage. Provisions for imposing such penalties, and procedures for review should be developed and be based on recommendations of the Guaranty Fund board, subject to approval of the Superintendent."

While this is a reasonable recommendation, it glosses over two very serious concerns:

. Some employers will continue to deal with insurance expense as just another cost of doing business, unless the basis for assessing "penalties" can be made on a basis of fact and the weight of evidence. Otherwise, a sanctioned employer can go to court for relief on constitutional grounds.

. An employer who is closed down means that the terminated employees will suffer financial hardship, and all communities affected by the loss of work will suffer.

We need to carefully consider the traditional assumptions underlying the recommendation about penalties.

Absent any explicit guidance, the staffs of the EMMPs, the Guaranty Fund board and the Superintendent will not have the opportunity to identify the mutually competitive options for processes to:

. Identify whether the individual employer has ignored plans to the detriment of the financial status of the pool involved and the health, safety and earnings capacity of the employees.

. Devise appropriate sanctions as a function of the specifics at issue.

. Evaluate the probable impact of the proposed sanctions on the employer and the employees.

Therefore I believe that the approach to developing processes and procedures should be outlined by legislation proposed by the Blue Ribbon Commission.

If the issue is approached from the perspective that most employers and employees are willing to cooperate in a fair/just workers' compensation system, then that system design should include a component that functions as the driver for identifying both the excellent and atrocious employment situations. The reason for taking this approach is fundamental: To provide mutual assistance and support for injury and financial loss avoidance actions, on an industry specific basis.

Thus there should be created a decision support system to collect the necessary data about working conditions, compensatory costs and injuries and analyze that data to identify, on an industry specific basis, which employers are experiencing obviously:

. Less injury, so that what they have done can be identified and then exported to other employers (so long as trade secrets are not compromised).

. More injury, so that the candidates for receiving the guidance can be identified.

That is, I propose a performance analysis and review subsystem within the Workers' Compensation System. This subsystem would act as a catalyst for promoting continuous improvement in the work place as it relates to the scope of workers' compensation system issues. The Department of Labor would be the appropriate "house" for such a system.

A Performance Analysis and Review System is needed from the stand-point of rate setting, for it requires only a few moments thought to recognize that this kind of system would contain all the data needed for the rate setting process. As Black & McCluskey have repeatedly noted: Although NCCI has the best data base available, it does not have the incentive to maintain an adequate data base for analysis. Therefore, if a third party has the authority and financing to provide this data, then:

. Responsive rate setting is enabled, and

. The data can be sold to NCCI.

The functional delineation of a Performance Analysis and Review System can be accomplished for $2,500, at most. Development of a prototype system can probably be accomplished for a reasonably complex industry group for about $100,000, refined for another $100,000, and then modified for other industry groups for an average of $50,000 each. The annual operating cost for this system would be in the range of $3 to $6 per covered employee.

Since a Performance Analysis and Review System would operate in the interest of the general welfare as well as in the interest of the employers, part of the development and operation costs should be provided from the general fund.

Getting back to sanctions for failure to adopt plans for safety and work return: The findings provided by the Performance Analysis and Review System would be routinely given to the board of whatever pool is involved for follow-up. If an employer fails to institute corrective plans then the board would be in a strong position to invoke sanctions.

However, it may not be necessary for a board to invoke sanctions if the Performance Analysis and Review System were established. The information relevant to all work site injury from this system makes it possible to separate the occurrence of misadventures from a pattern of neglect (and indifference, etc.), for every employer in the pool. In other words, this system provides the ability to classify a specific injury either as an occasional misadventure or as part of a pattern of negligence. The findings of the system would be submitted to the board of the pool involved, which would accept the findings or return the findings with instructions for further research and analysis.

The new design for Workers' Compensation System should still be based on the concept that the worker should receive compensation for work site injury with out either the worker or the employer suffering financial hardship. (Compensatory damages: Principally medical, rehabilitative and retraining expenses and disability income.) The new design should still require that settlements should be made without resort to tort actions in the courts. But the civil actions (and criminal ones, for grievous cases) in the courts should still be available as a means for insuring that safety and return to work programs are aggressively adopted by employers.

Given the availability of information about occasional misadventures and patterns of negligence:

. The injured worker can be legislatively empowered to sue for punitive damages when the employer's record shows a pattern of neglect.

. Absent a pattern of neglect, an injured worker is only entitled to compensatory damages, which would be the normal compensation coverage provided by the EMMP involved.

. If analysis discloses a pattern of neglect for a particular employer subsequent to injury occurrences, then the prior injured parties can be legislatively empowered to join in a current suit for punitive damages.

In other words, a Performance Analysis and Review System enables prompter payment of compensatory damages while providing a solid basis for court action where punitive damages are truly warranted.

Black & McCluskey are concerned about the effect on pool financial strength by loss of membership when an employer moves to a lower risk pool or becomes self-insured (page 26). If the state government is operating a Performance Analysis and Review System then the Legislature can require all employers to participate in the data collection component of the system. In this scenario, the information contained in the system about the pools affected can be readily analyzed to help the Superintendent

and the Guaranty Fund board assess financial impact.

Re: Liability and Technology.

The future liability of the existing residual market pool is a matter of concern. Black & McCluskey are particularly concerned that the strategy for funding this liability is inappropriate to the nature of the pool (page 29), and they recommend changing to a more appropriate investment strategy.

Actually, the future liability of any pool is a matter of concern. The insurers, using NCCI data and other resources at their disposal, have used the unfunded liability argument to press for higher premiums. The insurers position is that the size of the reserves must accommodate worst-case conditions, so the actuarial analysis is designed to cover at least 95%of the worst case scenario. Given the realities of current analysis in the existing Workers' Compensation System design, the insurers' position must be accepted as reasonable (i.e., conservative).

What is really at issue is the need to predict (1) the expected extent of recovery from a disabling injury and (2) the point in time when this recovery is expected, at a confidence level of at least 80%. The current design of the Workers' Compensation System does not have the capacity to apply any reasonably objective process for determining worst case probabilities. This flaw is readily correctable by using recent, but proven, pattern matching technology to make these predictions. The technology is called "neural network software", and it is being used for similar predictions in various situations, such as predicting length of stay in various types of facilities for people with mental health problems.

The use of neural network software would provide conservative estimates of degree and time for recovery in individual cases. These predictions would then be aggregated on a time series basis to keep a running projection of future liability. The expected effect would be to make a substantial reduction in reserve requirements. If no other state has applied this technology, then it would be prudent to fund a demonstration program; $50,000 would probably be sufficient to design and test a prototype. The Bureau of Labor Standards would also be the appropriate "house" for this capability.

Liability determination in soft tissue injury claims is also an unmanaged problem. In every case the adjudicator forms an opinion after listening to other opinions; no factual data as to the reality of the degree of injury is available.

Technology exists that can be used to reach a finding of fact about the degree of soft tissue injury: High resolution infrared scanning. Actual soft tissue injury causes

inflammation, and inflammation causes local temperature increases. By securing periodic infrared scans to establish base-line temperature profiles and comparing these profiles to a current scan, a factual finding of injury can be made.

Many employers already use commercial services for employee health data acquisition, on a periodic basis. For example, Yankee Health Care provides periodic assessments of gross serum cholesterol for the employees of several area employers. Entities such as Franklin Hospital and Yankee Health Care would certainly be willing to perform periodic high resolution infrared scans along with their other services to employers, provided that the infrared technology is adapted to this situation.

High resolution infrared scanning is current technology in other applications, principally as a diagnostic tool. In the Workers' Compensation environment the technology would have to be adapted to multi-purpose scan needs, each of which would be a function of job classification. A development grant could probably be obtained to fund the adaptation of the technology (hardware and software) to this environment. At this juncture I have no idea of the amount of funding needed to develop a commercially viable service setup. The Bureau of Labor Standards could perform an investigation, using its interstate communications network, and devise an appropriate grant request.

Once a commercially viable system had been developed and then been proven through a demonstration project, the commercial entities would make the investment needed to service the market. The employers would pay for the services rendered, because the kind and amount of scans required would be a function of the job type composition of the employer's operation. In other words, in this application the government would serve as the catalyst for change, and then drop out of the picture as far as service delivery is concerned.

I would be pleased to respond to enquiries about any matter contained in this letter.

Sincerely,

Darwin L. Hatheway
Principal

cc:
(next page)

Legislators, State of Maine:
Charles P. Pray, Senate President
John L. Martin, Speaker of the House
Beverly M. Bustin, Senator, District 19
Donald E. Esty, Jr., Senator, District 28
Judy C. Kany, Senator, District 17
Harold L. Vose, Senator, District 7
Elizabeth H. Mitchell, Representative, District 87
Public Advocate Office: William Black and Martha McCluskey
Bath Iron Works, Inc.: Duane D. Fitzgerald

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STATE HOUSE STATION 6
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FERNAND R. LAROCHELLE
DEPUTY, CRIMINAL
CHRISTOPHER C. LEIGHTON
DEPUTY, HUMAN SERVICES
JEFFREY PIDOT
DEPUTY, NATURAL RESOURCES
THOMAS D. WARREN
DEPUTY, LITIGATION
STEPHEN L. WESSLER
DEPUTY, CONSUMER/ANTITRUST
BRIAN MACMASTER
DIRECTOR, INVESTIGATIONS

June 25, 1992

Brian K. Atchinson
Superintendent of Insurance
State House Station 34
Augusta, ME 04333

Dear Brian:

A question has arisen concerning the authority of the Board of Governors of the Maine Workers' Compensation Residual Market Pool to borrow funds to cover a cash shortfall for policy year 1988. At some point during the first quarter of 1992, the total losses and expenses paid on residual market policies issued during 1988 exceeded the amounts collected with respect to that policy year (premiums, investment income and subrogation recoveries). The Board of Governors is attempting to identify the alternatives for covering the shortfall until the Superintendent establishes rates and fresh start surcharges later this fall subject to the procedures of P.& S.L. 1991, Chapter 108.

Under the terms of Insurance Bureau Rule Chapter 440, which establishes the plan of operation for the residual market, the Board is authorized to cover a cash shortfall through borrowing. Section 13(B) of Subchapter II provides in pertinent part:

> In order to give notice to Pool members and the Superintendent of whether any surcharge, or the failure to surcharge, will result in cash deficits for the Pool during any quarter, the Pool manager shall certify quarterly to the Superintendent anticipated premium, investment income, losses, and expenses.
>
> Whenever any such report indicates a temporary cash inadequacy is likely to occur in the Pool, the Board shall arrange short-term debt financing for the Pool in order to ensure that the Pool can meet its loss and expense obligations as they become due.

The plan manager and the Board have been pursuing the possibility of a bank loan to cover the anticipated cash shortfall

through November 15, which is the deadline for a decision in the pending rate and surcharge proceeding under Chapter 108. The question has been raised as to whether funds held by the Pool with respect to other policy years can be pledged as collateral for such a loan or borrowed against directly (i.e., internally) to cover the temporary shortfall.

I see nothing in Chapter 440 or the fresh start statute, 24-A M.R.S.A. § 2367, which precludes either a pledge of these funds or their interim use to satisfy the shortfall provided that the borrowing costs are appropriately charged to policy year 1988. Assuming that a pledge of the funds derived from other policy years in conjunction with a commercial loan to the Pool is legal and appropriate, it would appear appropriate for the Pool simply to use these same funds directly to fund the present shortfall, i.e., an intra-Pool borrowing, rather than undertaking a commercial borrowing. This would avoid the potential difficulties (and transaction costs) which may be associated with commercial borrowing. Internal borrowing is consistent with the manner in which servicing carriers routinely account for funds in their possession, which are accounted on a policy year basis but remitted to the Pool net of cash provided for all open years. Moreover, the plan manager has already used funds attributable to subsequent policy years to cover a 1988 policy year cash shortfall in settling with the servicing carriers for the first quarter of this year.

The concerns raised about the propriety of borrowing are largely attributable to the fact that policy year 1988 is the only policy year under fresh start in which deficits are solely the responsibility of employers; to the extent that funds borrowed from subsequent policy years are not repaid, such defaults would increase insurers' exposure to assessments with respect to those years. This issue, in and of itself, does not pose a bar to borrowing between policy years, since the legal means are available under existing statutes to achieve repayment.

This advice is provided to you as Insurance Superintendent with the understanding that you will inform the Pool Board of Governors of the views expressed. However it is beyond the scope of this letter to provide advice concerning the fiduciary obligations of the members of the Pool Board of Governors.

I trust this responds to your question. If I can be of further assistance, please let me know.

Very truly yours,

Linda M. Pistner

Oxford Hills Chamber of Commerce
P.O. BOX 167 • SOUTH PARIS, MAINE 04281 • 207/743-2281
OFFICE LOCATED AT 70 MAIN STREET, NORWAY, MAINE

June 26, 1992

Honorable William Hathaway, Co-Chair
Mr. Richard Dalbeck, Co-Chair
Mr. Emilian Levesque
Dr. Harvey Picker
Blue Ribbon Commission on Worker's Compensation
246 Deering Avenue
Portland, Maine 04102

Dear Blue Ribbon Commission Members:

The Oxford Hills Chamber of Commerce supports the work that the Ad Hoc Workers Compensation Committee has performed in the last few months and strongly recommends that the Blue Ribbon Panel adopt as a solution to the workers compensation problems in the state, the committee's Michigan Proposal.

Furthermore, that the Blue Ribbon Panel set a strong enough tone in its findings to the Governor and Legislature that a new workers compensation system be established without further unnecessary delays.

Sincerely,

Deborah Wyman
Executive Director

cc: Mr. Kenneth Goodwin Co-Chair
Workers Compensation Committee

President
Charles J. O'Leary

maine afl-cio

157 Park Street, Suite One
P.O. Box 2669 • Bangor, Maine 04401
Tel. 207-947-0006

Secretary-Treasurer
Edward Gorham

6/30/92

MAINE BLUE RIBBON COMMISSION

PHYSICAL IMPAIRMENT, A REASONABLE SUBSTITUTE FOR WAGE LOSS AS A BASIS FOR INJURED WORKERS BENEFITS?

Views of the Maine AFL-CIO

I. The Centrality of the Wage Loss Principle.

A. Workers compensation, as recognized by the authoritative expert, Professor Larson, in his treatise is based on the "historic" centrality of the wage loss principle."

The origin of the "scheduled loss" or the physical impairment principle was with amputations. There could be little dispute about the totality of the loss in amputations. But as the scheduled loss principle has spread from amputations to total and partial loss of "industrial" use including not only obvious physical loss of appendages, but also including the digestive, cardiovascular, and psychological systems, problems of complexity has increased.

The basic principle of not only workers' compensation but all methods of disability compensation is to compensate for economic loss. This basic principle applies across the board to contracts, torts, and property law. It applies to social insurance systems such as Social Security and unemployment compensation and to mixed systems of social insurance such as workers' compensation. The fundamental principle of economic compensation for economic loss is universal.

The crucial nexus is economic compensation for economic loss. Fundamentally, at its origin, workers compensation paid to injured workers compensation for economic losses both in terms of their medical expenses and losses of wage earning capacity.

It would be clearly irrational to pay for medical expenses on a basis unrelated to ECONOMIC COST. It is equally irrational to attempt to "pay for" or PURPORT TO compensate for wage losses on a basis other than by determining what wages are lost would be without any rational basis.

The physical impairment theory attempts to provide economic compensation unrelated to economic loss. This is not a new or modern idea, indeed, it is a very old idea. It existed in pre-medieval England before the development of a money economy.

II. Administrative Simplicity?

A. Mixed Results

Physical impairment may be administratively simple or administratively complex. The evidence is clearly mixed. Where simplicity is achieved, it is achieved by totally ignoring real life economic impact. It is course, academically possible to construct a theoretical model which ignores economic reality as a basis for "compensation" but clearly that is not compensation in any way related to economic loss.

B. Physical impairment--Always administratively simple?

1. The experience is mixed. In Florida before 1979 a system of physical impairment compensation existed which caused dissatisfaction among all parties. Florida's law was changed essentially to a wage loss law.

2. In Maine, permanent impairment compensation was never a substitute for loss of wage earning capacity. Indeed, a necessary feature of the physical impairment approach, Maximum Medical Improvement, (which delineates between temporary total and permanent partial benefits) was introduced into Maine's law in 1987 and repealed by the Maine Legislature in 1991 because of great dissatisfaction with its administrative complexity and the excessive contention and litigation caused by the need to determine "maximum medical improvement".

III. Can Physical Impairment be a Reasonable Proxy for Wage Loss?

A. Even though physical impairment is clearly not an exact substitute for wage loss, can it be made a reasonably approximate substitute for measuring economic loss, being accurate perhaps within a factor of 20% for 80+% of injured workers? If so, physical impairment might be worthy of consideration because the administrative simplicity hoped for (if achieved) might outweigh inaccuracy in particular cases. But that depends on one's perspective. Clearly physical impairment would not be a fair substitute to those workers who receive gross under-compensation for real economic losses.

B. In order to analyze whether physical impairment may be a reasonable proxy or substitute for wage loss, it is necessary to consider two questions:

1. Which type workers are most likely to suffer substantial physical injury with long-lasting economic consequences?

2. Which type workers are likely to suffer the greatest wage loss from a particular level of physical impairment?

The answer to those questions is that manual workers, particularly workers who perform either heavy or at least moderately heavy manual work, are the most likely to suffer substantial injury and are also the most likely to have the greatest wage loss as a result of a particular level of physical impairment. Thus attempting to compensate for economic loss based on the "proxy" of physical impairment cannot be successful.

Either the benefits will be inadequate, indeed woefully inadequate, for manual workers as measured by actual wage loss, or they will be on a comparative basis excessive, indeed, grossly excessive, for non-manual workers who have the same benefit levels but little or no economic loss FROM A PARTICULAR LEVEL OF PHYSICAL IMPAIRMENT.

For example, a ruptured intevertebral disk with surgery and a mediocre result with substantial limitations on lifting, long standing, bending, etc. will totally disable a heavy or moderate manual worker from the only work activities for which he is trained and which are available to him. Even if he obtains

light duty reemployment the continuing loss of wage earning capacity is likely to be 50-75%. However, the exact same injury and treatment result is unlikely on a continuing basis to interfere with the wage earning capacity of an executive whose physical duties are "light".

IV. Can the Conceptual Deficiencies in the Permanent Impairment Approach be Remedied by More Money--More Generous Physical Impairment Awards?

A. The Problem of Focus.

Focus requires the rational and fair utilization of society's limited resources. The principal purpose of workers' compensation is to compensate for economic (wage) losses. Increasing physical impairment awards so as to provide fair wage loss benefits to manual workers will very substantially over-compensate non-manual workers. Physical impairment is an approach that would be wasteful of society's scarce resources and hence it is not only irrational but is unlikely to achieve public acceptance.

B. Removing the Incentive for Reemployment.

Substituting the physical impairment basis for the wage loss basis for compensation would greatly reduce, if not extinguish, the employer's incentive to provide reemployment. Employers, not workers, have dominant control of reemployment opportunities.

V. Some Practical Examples.

A. Maine's workers compensation law last amended in 1991 assigns a very small role to permanent impairment. Permanent impairment is calculated on a "whole body" basis rather than on a "particular part" basis. Whole body physical impairment benefits are reduced by the receipt of any disability benefits, whether for temporary total, permanent partial or permanent total. Hence, physical impairment plays a very small role in Maine's workers' compensation system. The same is true of Michigan where it appears that physical impairment benefits are not only reduced by actual disability benefits but are only awarded in the case of frank amputations.

Examples under Maine's physical impairment law:

1. A paperworker making $600 a week wages, has a neck injury, which is not subject to surgical

treatment, but which permanently and substantially limits him from quickly and repeatedly turning his head from side to side, looking up/down, working overhead lifting, etc. He is unable to perform the duties of his employment and his employer releases him from employment. He is fortunate in obtaining alternative employment with a new employer at the rate of $300 a week (fringe benefits are ignored by the law) and he receives a whole body permanent impairment rating of 6%. See AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. at pg. 73. Under current Maine law, his whole body permanent impairment of 6% entitles him to a one time permanent physical impairment award of $1,576.32.

Yet if he is age 40 at the time of the injury, has 25 years of remaining work expectancy (ignoring inflation and fringe benefits) he should have received $200 per week for the $300 per week wage loss, which is approximately $10,000 per year or approximately $250,000 over the next 25 years. However, because of the current 520 week limitation on permanent partial disability benefits under Maine law, he receives only approximately $100,000. Nevertheless, in order to give him approximately the same compensation and thus constitute physical impairment, a decent proxy for actual wage loss physical impairment benefits would have to be increased 63 times (6300%) from $1,576.32 to $100,000.

2. A shipyard worker making $450 per week has a ruptured lumbar disk and excision but no fusion with a fair result but he is limited from heavy or repeated lifting, climbing and prolonged standing on hard surfaces.

He obtains alternative employment at the rate of $225 a week (the difference of fringe benefits is ignored by the law) and he receives a whole body permanent impairment rating of 10%. See AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. at pg. 73.

Under current Maine law, his whole body permanent impairment of 10% entitles him to a permanent physical impairment award of $2,627.20. Yet he is age 40 at the time of the injury and the 25 years of his remaining work expectancy (ignoring

inflation and fringe benefits) he would have received $150 per week for the $225 per week wage loss, which is approximately $7500 per year or approximately $187,500 over the next 25 years. However, because of the current 520 week limitation on permanent partial disability benefits in Maine law, he receives only approximately $78,000. In order to give him approximately the same compensation and thus constitute physical impairment, a decent proxy for actual wage loss, physical impairment benefits would have to be increased 30 times from $2,627.20 to $78,000, an increase of 3000%.

3. An executive performing only light physical duties making $900 per week injures his knee in a fall down the stairs in his office and has a total knee replacement. After period of surgery and medical care and physical rehabilitation he returns to work with no continuing wage loss, and has a whole body physical impairment rating of 8%. He is entitled to 2,101.76 under the current Maine law. But if the Maine law were adjusted so as to leave the paperworker and shipyard worker with equivalent economic coverage to that provided under the wage loss system (mid-point between shipbuilder and paperworker), there would be an economic surplus to the executive of $97,773.84.

   The misallocation of economic resources from the physical impairment system would be huge.

VI. Subsidiary questions.

If the physical impairment concept is sound, should it not also be applied not only to permanent partial disability but to death, permanent total disability and temporary total disability.

A. The application of physical impairment theory as applied to death would obviously be 100% physical impairment. If the wage loss concept is ignored, death without survivors would be treated the same as death with survivors, another unjustified mis-allocation of resources.

   Indeed the age or remaining life expectancy of the decedent or survivors would also be ignored because the payment is for physical impairment, not wage loss. ONCE THE RATIONAL NEXUS BETWEEN ECONOMIC LOSS AND ECONOMIC COMPENSATION IS BROKEN, THE "TROUBLES" THAT PROFESSOR LARSON WARNS OF EMERGE.

B. Permanent total.

Should the physical impairment system be applied to permanent total disabilities? If not and the wage loss system is retained for permanent total disability, will there not be inevitably a substantially increased number of claims for permanent total disability because there is nothing to lose and much to gain by by making such a claim?

C. Temporary Total.

If physical impairment is a reasonable proxy for wage loss in permanent partial disability cases, why is it not equally a reasonable proxy for temporary total disability cases? Or in fact are temporary total, permanent partial and indeed temporary partial and permanent total cases not all part of overall economic loss? Is it not an invitation to contention, delay and litigation to make the benefits available significantly different by whatever particular "pigeonhole" the injured worker's claim is capable of being fitted into at a particular time?

That was the experience of Maine which enacted in 1987 the "maximum medical improvement" (MMI) concept as a means of attempting to distinguish between temporary total and permanent partial disability benefits. The Maine Legislature with universal support repealed the "maximum medical improvement" concept in 1991 because experience had shown injured workers were very motivated under that system to resist a determination of maximum medical improvement and insurers were very motivated under that system to obtain a determination of maximum medical improvement. The contention and delays over "maximum medical improvement" from 1987 to 1991 were on a relative basis small compared to the contention which would likely arise if a physical impairment system were substituted for a wage loss system but the physical impairment system was limited only to permanent partial disability situations.

VII. Private Disability Insurance

Would prudent purchasers of private disability insurance seek to purchase that coverage on a physical impairment rather than a loss of earnings basis? The question contains the answer.

An interesting recent article in Consumer's Reports is attached. The entire emphasis of private disability insurance is on loss of wages earnings' and coverage for

partial as well as total disability with waiting periods and integration and coordination of benefits with other benefit systems such as Social Security and pensions.

If the fundamental nexus between economic loss and economic compensation is ignored, if physical impairment is treated as a pretended proxy, for economic loss when it in fact is not, the workers compensation system would no longer seek to compensate for the economic consequences of injury, but rather would become in effect an injury lottery with the greatest economic winners, if it can be said to be any winners in this field of human tragedy, would be persons whose normal job duties are light duty and who receive substantial physical impairment ratings but have no actual interferrence with their wage earning capacity.

Substituting physical impairment for economic loss is conceptually unsound, fundamentally unfair and unacceptable in a democratic society.

Enclosure

Maine AFL-CIO

- *Add* the impairment values contributed by forward flexion and backward extension. Their sum represents the impairment of the lower extremity contributed by abnormal forward flexion and backward extension of the hip.

Ankylosis

- Place the goniometer base as if measuring the neutral position (Figure 72). Measure the deviation from neutral position with the goniometer arm and record the reading.

Table 35. Impairment Due to Amputation, Abnormal Motion and Ankylosis of the Knee Joint

Amputation	% Impairment of Lower Extremity
At Joint	90
Abnormal Motion*	
Average range of *Flexion-Extension* is 150°	
Value to total range of joint motion is 100%	
Retained active flexion of:	**% Impairment of Lower Extremity**
0°	53
10°	49
20°	46
30°	42
40°	39
50°	35
60°	32
70°	28
80°	25
90°	21
100°	18
110°	14
120°	11
130°	7
140°	4
150°	0
Extension back to (extension lag):	**% Impairment of Lower Extremity**
0° (neutral position)	0
10°	1
20°	7
30°	17
40°	27
50° to 150° (full flexion)	90
Ankylosis	
Joint ankylosed at:	**% Impairment of Lower Extremity**
0° (neutral position)	53
10°	50
20°	60
30°	70
40°	80
50° to 150° (full flexion)	90

*If a permanent groin-to-ankle orthosis is required for extension stability, there is a 50% impairment of the lower extremity, although there may be full range of motion of the knee joint. This rating does not apply to any other types of local knee bracing.

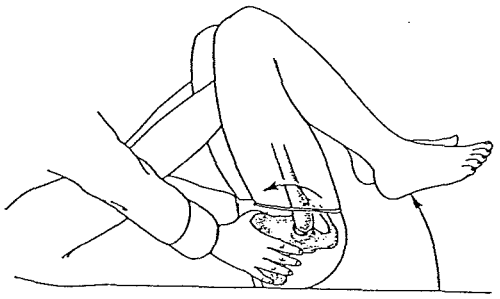
†Position of function

Table 36. Impairment Ratings of the Lower Extremity For Other Disorders of the Knee

Disorder	Impairment of Lower Extremity*
1. Patellectomy (with loss of power)	5-15%, combined with impairment for loss of motion**
2. Torn meniscus and/or meniscectomy	0-10%, for one meniscus; 0-25% for both menisci; combined with impairment for loss of motion
3. Knee replacement arthroplasty	20%, if in optimum position
4. Patella replacement only	Same as for patellectomy
5. Arthritis due to any etiology, including trauma; chondromalacia	0-20%, according to deformity
6. Anterior cruciate ligament loss	0-15%, combined with impairment, for loss of motion
7. Posterior cruciate ligament loss	0-15%, combined with impairment for loss of motion
8. Collateral ligament loss	10% for moderate instability 20% for marked instability
9. Post-traumatic varus deformity (if over 15°)	10%, combined with impairment for loss of motion
10. Post-traumatic valgus deformity (if over 20°)	10%, combined with impairment for loss of motion

*See Table 35 for impairment ratings for loss of motion.
**The combining of any impairment value in this table with impairment for loss of motion is to be done using the Combined Values Chart

Figure 71. Forward Flexion of Right Hip



See next page for Conversion To whole body

2e Lower Extremity—Involvement Multiple Units

asure separately and record the impairment of the ver extremity contributed by each unit (foot, ankle d subtalar joints, knee joint, and hip joint). Then, mbine the impairment values using the Combined lues Chart.

mple: scription	% Impairment of Lower Extremity	
ot impaired at 57%	40	(Table 32)
nd foot impaired	30	
ee impaired	20	
% combined with 30% = 58%; % combined with 20% = 66%)	66	

ally, consult Table 42 to determine the impairment the whole person that is contributed by the lower tremity.

Impairment values for amputations of various rts of the lower extremity are found in Table 43.

.2f Impairment of the Lower xtremity Due to Peripheral Nervous ystem Disorders

able 44 shows the site of origin and function of the ripheral nerves to the lower extremity. Figure 79 ows the sensory nerves and their roots of origin. The nciples and methods of evaluation discussed in ction 3.1i (page 36) for the upper extremity apply to he lower extremity as well.

Figure 78. Movement of Foot as Measure of Internal and External Rotation of Hip

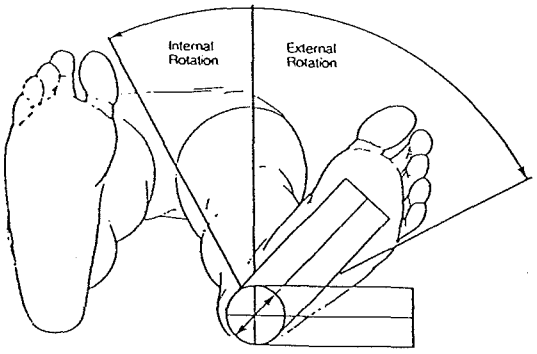


Table 41. Impairment of the Lower Extremity Due to Other Disorders of the Hip Joint

Disorder	% Impairment of Lower Extremity*
1. Replacement Arthroplasty (in optimum position)	20
2. Non-union of hip fracture	30
3. Avascular necrosis of the hip	10-30
4. Loose hip prosthesis	40

*These ratings should be combined with the ratings for loss of motion to determine impairments of the lower extremity (Tables 37-40), using the Combined Values Chart.

Table 42. Relationship of Impairment of the Lower Extremity to Impairment of the Whole Person

% Impairment of Lower Extremity	=	% Impairment of Whole Person	% Impairment of Lower Extremity	=	% Impairment of Whole Person	% Impairment of Lower Extremity	=	% Impairment of Whole Person
0	=	0	34	=	14	68	=	27
1	=	0	35	=	14	69	=	28
2	=	1	36	=	14	70	=	28
3	=	1	37	=	15	71	=	28
4	=	2	38	=	15	72	=	29
5	=	2	39	=	16	73	=	29
6	=	2	40	=	16	74	=	30
7	=	3	41	=	16	75	=	30
8	=	3	42	=	17	76	=	30
9	=	4	43	=	17	77	=	31
10	=	4	44	=	18	78	=	31
11	=	4	45	=	18	79	=	32
12	=	5	46	=	18	80	=	32
13	=	5	47	=	19	81	=	32
14	=	6	48	=	19	82	=	33
15	=	6	49	=	20	83	=	33
16	=	6	50	=	20	84	=	34
17	=	7	51	=	20	85	=	34
18	=	7	52	=	21	86	=	34
19	=	8	53	=	21	87	=	35
20	=	8	54	=	22	88	=	35
21	=	8	55	=	22	89	=	36
22	=	9	56	=	22	90	=	36
23	=	9	57	=	23	91	=	36
24	=	10	58	=	23	92	=	37
25	=	10	59	=	24	93	=	37
26	=	10	60	=	24	94	=	38
27	=	11	61	=	24	95	=	38
28	=	11	62	=	25	96	=	38
29	=	12	63	=	25	97	=	39
30	=	12	64	=	26	98	=	39
31	=	12	65	=	26	99	=	40
32	=	13	66	=	26	100	=	40
33	=	13	67	=	27			

Note: In case of shortening due to overriding or malalignment or fracture deformities, but not to include flexion or extension deformities, combine the following values with other functional sequelae, using the Combined Values Chart.

0-½ inch = 5% of lower extremity
½-1 inch = 10% of lower extremity
1-1½ inch = 15% of lower extremity
1½-2 inch = 20% of lower extremity

Note: Impairment of whole person contributed by lower extremity may be rounded to the nearest 5 percent only when it is the *sole* impairment involved.

Table 49. Impairments Due to Specific Disorders of the Spine

Disorder	% Impairment of Whole Person		
	Cerv	Thor	Lumb
I. Fractures			
A. Compression of one vertebral body			
0%-25%	4	2	5
26%-50%	6	3	7
>50%	10	5	12
B. Fracture of posterior elements (pedicles, laminae, articular processes, or transverse processes)	4	2	5
Note: Impairments due to compression of the vertebral body and to fractures of the posterior elements are combined using the Combined Values Chart.			
Note: When two or more vertebrae are compressed or fractured, combine all impairment values.			
C. Reduced dislocation of one vertebra	5	3	6
Note: If two or more vertebrae are dislocated and reduced, combine the impairment values using the Combined Values Chart.			
Note: An unreduced dislocation causes temporary impairment until it is reduced; then the physician should evaluate permanent impairment on the basis of the subject's condition with the reduced dislocation. If no reduction is possible, then the physician should evaluate impairment on the basis of restricted motion and concomitant neurological findings in the spinal region involved, according to the criteria in this Chapter and in Chapter 4.			
II. Intervertebral disc or other soft tissue lesions			
A. Unoperated, with no residuals	0	0	0
B. Unoperated with medically documented injury and a minimum of six months of medically documented pain, recurrent muscle spasm or rigidity associated with none-to-minimal degenerative changes on structural tests	4	2	5
C. Unoperated, with medically documented injury and a minimum of six months of medically documented pain, recurrent muscle spasm, or rigidity associated with moderate to severe degenerative changes on structural tests, including unoperated herniated nucleus pulposus, with or without radiculopathy	6	3	7
D. Surgically treated disc lesion, with no residuals	7	4	8
E. Surgically treated disc lesion, with residual symptoms	9	5	10
F. Multiple operative levels, with or without residual symptomatology	*Add* 1%/level		
G. Multiple operations ("failed back surgery") with or without residual symptoms:			
1. Second operation	*Add* 2%		
2. Third or subsequent surgery	*Add* 1%/operation		
III. Spondylolysis and spondylolisthesis, unoperated			
A. Spondylolysis or Grade I (1%-25% slippage) or Grade II (26%-50% slippage) spondylolisthesis, accompanied by medically documented injury and a minimum of six months of medically documented pain, recurrent muscle spasm, or rigidity	7	4	8
B. Grade III (51%-75% slippage) or Grade IV (76%-100% slippage) spondylolisthesis, accompanied by medically documented injury and a minimum of six months of medically documented pain, recurrent muscle spasm, or rigidity	9	5	10
IV. Spinal stenosis, segmental instability, or spondylolisthesis, operated			
A. Single level operation, with no residuals	8	4	9
B. Single level operation, with residual symptoms	10	5	12
C. Multiple levels operated, with residual symptoms	*Add* 1%/level		
D. Multiple operations ("failed back surgery") with residual symptoms:			
1. Second operation	*Add* 2%		
2. Third or subsequent surgery	*Add* 1%/operation		

Note: List impairments separately for cervical, thoracic, and lumbar regions (Figures 83a-c).

Note: All impairment ratings above should be combined with the appropriate values of residuals, such as:

1. Ankylosis (fusion) in the spinal area or extremities
2. Abnormal motion in the spinal area (i.e., objectively measured rigidity) or extremities
3. Spinal cord and spinal nerve root injuries, with neurologic impairment (see Upper Extremity and Lower Extremity sections of Chapter 3 and Peripheral Nervous System section of Chapter 4)
4. Any combination of the above using the Combined Values Chart.

Pocket guide to Money- Do you need disability insurance? (Consumer Reports, July 1992) ●
(Available on request-please include the following citation: WC115-BRC-08-Pt.A-330.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