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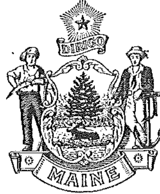


STATE OF MAINE
WORKERS' COMPENSATION COMMISSION
STATE HOUSE STATION 27
AUGUSTA, MAINE 04333
207-289-3751

July 2, 1992

William Hathaway
Blue Ribbon Commission
University of Maine School of Law
246 Deering Avenue
Portland, Maine 04102

Dear Senator Hathaway:

Although workers' compensation is "no fault", many other aspects of a claim may be seen differently by the parties and may result in litigation. You have asked for a description of these issues.

I ran a computer program to tabulate the types of petitions filed at the Commission. The results were not easy to interpret because the type of petition only generally indicates the nature of the dispute. Often the precise nature of the factual disagreement is only narrowed down at a preliminary conference, or during discovery. For example a petition for award may result from a dispute over wages, employment, notice, injury, disability period and causation, or just one of these issues. However, there seemed to be five basic areas.

1) Amount of Compensation Due
   a. Calculation of average weekly wage
   b. Period of disability

2) Medical Payments
   a. Is treatment for a work related injury?
   b. Is the charge appropriate?

3) Compensability - Is the injury work related?

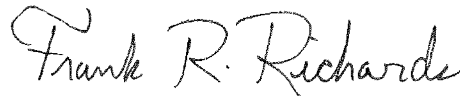
4) Degree of Continuing Disability
   a. Has the disability ended?
   b. Amount of partial disability

5) Subsequent incapacity after a return to work
   a. Related to the old injury?
   b. Amount of compensation

6) Apportionment
   a. How should the costs be shared, for multiple dates of injury with multiple employers

Many cases involve several of these issues and so it is difficult to say what is the most important source of disputes. However, I will make a subjective assessment. Each seems to represent approximately an equal number of disputes, except for apportionment. Typically, apportionment is not difficult to resolve after other questions have been settled. There is some litigation over the degree of permanent impairment. However, it is not as significant an issue as the others on my list.

Sincerely,



Frank R. Richards
Assistant to the Chairman

FR:ca

cc: Richard Dalbeck
Emilien Levesque
Harvey Picker

FILE COPY

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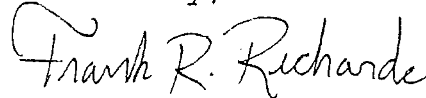

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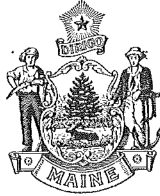


STATE OF MAINE
WORKERS' COMPENSATION COMMISSION
STATE HOUSE STATION 27
AUGUSTA, MAINE 04333
207-289-3751

July 2, 1992

William Hathaway
6707 Wemberly Way
McLean, VA 22101

Subject: Informal Dispute Resolution Mediation, Ombudsman, Small Claims Arbitration

Dear Mr. Hathaway:

At its meeting on July 1st, the Blue Ribbon Commission made it clear that it welcomed follow up letters. Thanks for the kind invitation. I bet you are getting mail by the truckload. I will be sending a series of letters, arranged by subject for filing purposes.

I would like to congratulate the Commission on its initial public discussion. I think your meeting of July 1st was very good. I didn't agree with every point, however, it was a refreshing, independent, rational discussion.

Many ideas like mediation, small claims arbitration, and an ombudsman have been proposed. I am writing to let you know that the existing informal conference system has these types of features. It just doesn't use those terms.

The Workers' Compensation Commission has eleven staff members, known as Employee Assistants. Our Employee Assistants function in a way that is similar to an Ombudsman.

Under the existing system, either the employer/carrier or the injured worker can request an informal conference. Employee Assistants schedule informal conferences and attempt to work our problems before the conference. They may become involved with a case due to a phone call instead of a specific filing for an informal conference. They provide information and assistance directly to injured workers. The Commission's computer sends a letter with addresses of regional offices and an 800 telephone number to injured workers whenever we receive a first report.

From time to time, I work on legislative referrals, myself. Usually, I only need to contact the employee assistant for that area. I am often surprised at the types of problems our employee assistants can resolve without holding a conference.

The whole process is designed to let the parties work things out. The conference is mediation. Our Commissioner, the injured worker, the employee assistant, and an adjuster meet to review available information. By statute, the Commissioner issues a non-binding advisory opinion about the legal status of the problem. This may be different than arbitration. However, most small problems are resolved.

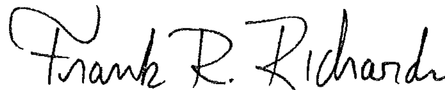
Our informal process does a reasonably good job of screening problems. Many would otherwise end up in the hands of an attorney. However, it doesn't work as well when serious questions about the facts or the applicable law exist.

Too many things are against it. The parties may need due process in a complex dispute. The statute's ambiguity invites litigation. It has been revised, repeatedly. There are exceptions to the exceptions and amendments to the amendments. Most significantly, our labor relations climate is acrimonious. Sometimes, insurance carriers send cases to a law firm without making much effort to resolve the dispute non-litigiously.

Considering the unfavorable environment, I am surprised that our informal process works as well as it does. It may screen out seventy to eighty percent of cases where potentially an attorney might become involved. There is a lot that could be done to improve it. However, Maine has had serious budget problems for about the past four years. It hasn't exactly been a period of opportunity for program development. However, we have been able to hold our ground despite resource problems. The informal process may even be working a little better now than four years ago.

There are many different ways to strengthen the informal conference process. In particular, we think replacing the Commissioner at the conference with a hearing officer or mediator would be more efficient. Strengthening the informal conference process might be a policy directive given to the labor management board instead of a specific set of recommendations. All the various options have definite pros and cons.

Sincerely,



Frank R. Richards
Assistant to the Chairman

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July 2, 1992

Michelle B. Bushey
Blue Ribbon Commission
on Workers' Compensation
University of Maine School of Law
246 Deering Avenue
Portland, ME 04102

Dear Ms. Bushey:

Enclosed is a brief report that the Blue Ribbon Committee asked me to prepare when we met on June 23. Frank Richards suggested that you are in a position to distribute this to the four commissioners, if I cannot reach them directly. Good luck in your efforts and thank you.

Sincerely,

Peter S. Barth

PSB/lmr
Encls.
cc: Richard Dalbeck
Harvey Picker
William Hathaway
Emilien Levesque

An Equal Opportunity Employer

A Memorandum to the Blue Ribbon Commission
on Workers' Compensation

by Peter S. Barth

Introduction.

During my testimony before the Blue Ribbon Commission on June 23, 1992, I was asked to prepare a brief outline of my views on an appropriate system for permanent partial disability benefits in Maine. In the interest of time and the patience of the Commissioners, it was suggested that this outline be kept brief. I am pleased to have been asked to elaborate on my views. In complying with the need for brevity, my aim is to give you a coherent picture of an alternative system to your current one. The format of the presentation is designed to accomplish that.

General Framework.

My proposed approach to permanent partial disability benefits builds on the system that already exists in Maine. Possibly, it may even duplicate an approach used in Maine in earlier years. It bears a strong resemblance to approaches found in a few other states such as Texas and Connecticut.

At the time that a worker is found to have reached maximum medical improvement, the worker would be given an impairment rating. Ideally, the rating would be made by a physician that is an expert in making such evaluations, and that I believe should be on the staff of the Commission. Alternatively, the rating could be made by a treating doctor, with neutral experts engaged only when a dispute occurs over the rating. Where disputes over the rating are small, differences of 5 points or less for example, the use of

neutrals could be eliminated. There are numerous issues that arise when neutrals are to be involved. While some of them are minor, others can have a substantial impact on the effectiveness of the approach.

A variety of formulas can link a medically determined impairment rating to the impairment benefit to be paid. There is no ideal or pure formula. The current approach is a progressive one with increasing benefit rates for more severe impairments. Many states have lower effective PPD benefits than their total disability benefits, as is generally the case in Maine. Only a handful, however, pay benefits that do not vary with the wage as in Maine.

In my model, most workers with permanent impairment would receive only the impairment benefit. "Supplemental income awards" would be paid only in exceptional cases, only when the impairment benefit period had expired, and only for limited periods of time between a review of the circumstances by a commissioner (or a select panel that evaluated only this issue).

<u>Questions and Answers.</u>

1. How does the above approach differ from the current one?

   It would differ in several ways. The essential one is that for almost all permanent impaired workers, their benefits would expire when their impairment benefits ended.

2. Would this approach save on workers' compensation costs?

Clearly, this alternate approach could result in system savings, but it need not. Impairment based benefits can be expensive or inexpensive depending upon what the legislation calls for and how it is administered. Ultimately, these costs will depend upon the size of weekly benefits, the average length of time for which benefits are awarded, the frequency of utilization of the benefit, and the transactions costs. Clearly, the aim is to reduce wage loss benefit costs though not to eliminate them entirely.

3. Would this approach be fair to workers?

There are several answers to this. First, were the state to raise the impairment benefit level, as a tradeoff for generally eliminating wage loss, some injured workers would find themselves better off than under the existing law. Second, most states provide "scheduled benefits" and only those benefits for many categories of injuries. My recommended approach would be fairer in the sense that wage loss benefits would not be entirely precluded, once the scheduled benefit has been paid.

4. What are the advantages of the proposal?

First, the potential cost savings cannot be overlooked. Second, an impairment system is a more objective one, potentially, thereby reducing the need for delay and contention. The system's resources need not be routinely drained by litigation.

5. Is an impairment approach litigation free?

Obviously, the parties may still contend with each other over compensabiltiy, average earnings, MMI, etc. as they do now. They may also fight over impairment ratings though there are means to reduce the frequency of that. Maine already does some of this, by requiring that ratings of impairment be tied to the AMA or Orthopaedic Guides. Clearly, this can be extended. The use of agency medical staff and/or neutral doctors will do that.

6. What would impairment benefits be?

The legislature can schedule losses at any levels that it chooses. The impairment value today in Maine for the loss of a hand is $36,780. In Connecticut, for a higher paid worker, a hand is valued at $186,000, while in Indiana it was worth $24,000 (1991) and $294,000 under F.E.C.A. Clearly, a schedule allows considerable variability.

7. When would impairment benefits end?

Benefits to workers would be paid so that more severe impairments would result in benefits for longer periods of time. Only when those weekly benefits ended would a supplemental income award be potentially payable. While the worker was receiving impairment benefits, the worker could resume or continue to work with no reduction in the impairment benefit.

8. Where is the approach vulnerable?

Aside from the potential for the battleground to switch from evaluating wage loss to evaluating impairment, the approach can be subverted if supplemental income awards are routinely paid, either directly or indirectly via higher settlement values. The key is to sort out those cases where an income award is genuinely warranted from others. The legislation can establish screens and criteria that would help to assure this. For example, just as Social Security Disability Insurance requires that a serious impairment exists, legislature could preclude paying these awards to workers with minor levels of impairment.

9. When would the supplemental income award end?

The legislation could choose to place a limit on these benefits short of lifetime duration. It could set an arbitrary limit, e.g., 250 weeks, it could terminate them at a certain age, e.g., the normal retirement age, and/or it could rule out any benefit if the worker has not received it for some period, e.g., 2 years without the award eliminates a future entitlement.

10. How large would a weekly supplemental income award be?

The award could be a fixed amount or it could vary with previous earnings of the worker. The only aspect of it that must be true is that it cannot be larger than the level of the weekly impairment benefit.

11. Is a supplemental income award given once and for all to a worker?

    Decidedly not. The Commission would review entitlements periodically with a view to encouraging a return to work as quickly as possible. Reviews at 6 months intervals seem reasonable.

12. What of C and Rs?

    This system and any other permanent partial system, will have a greater chance for success where lump sum settlements are not permitted. (This avoids the issue of such settlements in disputes over compensability.) In my testimony I spoke about the destructive effects that these lump sum settlements bring. The underlying system described earlier can coexist with the use of C and Rs but all approaches will benefit if they are available only rarely, if ever.

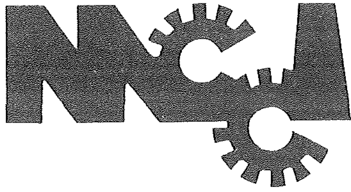
13. Can insurers get the finality they seek without lump sum settlements?

    In most cases, probably not, but insurers will have to learn to live with this. The opportunity to get a supplemental income award could be ended after 2 years of no use, as noted earlier. In most cases benefits will end at the expiration of the impairment benefit.

14. In the absence of wage loss, are there still incentives in place for an employer to rehire an injured worker?

    First, it must be acknowledged that there is no hard evidence of the degree to which the current system provides an

incentive either for employers to rehire, or for workers to return to their previous employment. Second, the Americans with Disabilities Act will change existing incentives, though no one knows how these will materialize. Third, the supplemental income awards will exist and could affect employer decision-making.



Maine Chamber of Commerce & Industry

126 Sewall Street ▪ Augusta, Maine 04330 ▪ (207) 623-4568

July 2, 1992

The Honorable William D. Hathaway, Co-Chair
Mr. Richard B. Dalbeck, Co-Chair
Blue Ribbon Commission on Workers' Compensation
246 Deering Avenue
Portland, ME 04102

Dear Chairmen Hathaway and Dalbeck:

Recently you received a long correspondence from Ken Goodwin and Jim Mackey on behalf of the workers' compensation group proposing the creation of "The Economic Alliance For Maine" (TEAM) and a QAC to oversee the workers' compensation system. Within the next couple of weeks, I hope to get some response from our Human Resources Committee about the proposals. In the meantime, I wanted to give you some quick thoughts from the Maine Chamber about these suggestions by the Workers' Compensation Group.

First, we are concerned that the suggestions are predicated on the adoption of the State of Michigan's workers' compensation system, apparently in toto. The Workers' Compensation Group continues to maintain that they are not pressing for wholesale adoption of the Michigan plan but much of their correspondence would indicate otherwise. Please understand that the Maine Chamber is opposed to the adoption of Michigan in toto. We stand by our position that Michigan's benefits should not be adopted and that we should carefully review the procedural side of Michigan's law adopting only those section which appear to enhance our ability to pay claims quickly and get injured workers back to work.

We are intrigued by the concept of a labor/management council to provide advice to the Legislature on workers' compensation matters. However, it is imperative that this group be only advisory since no group should be established to stand between individual citizens or groups and their legislators. Requiring approval of a non-elected group before an elected body could consider changes to a law would be contradictory to the democratic process.

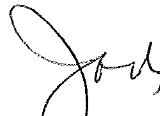
We appreciate the fact that the labor/management group recommends that the Maine Chamber nominate individuals to serve on "TEAM." However, we urge the Blue Ribbon Commission if it creates such an advisory council to consider how representation could be drawn from the broadest employer/employee spectrum possible. We would be happy to share our appointment powers with others if the Commission felt that was appropriate. We feel strongly that organized labor should not be appointing such a disproportionate number of members when they represent less than 20% of the working men and women in the State of Maine.

Finally, the workers' compensation group raises some interesting questions as to who should supervise the Workers' Compensation Commission and/or its successor. This is a pivotal question. In our opinion, the Commission has foiled legislative reforms and not been responsive to workers or their employers in many cases. We think there is opportunity to build on the thoughts of the labor/management group in trying to find some way to provide appropriate oversight to the Commission.

If we have further thoughts after our Human Resources Committee digests the suggestions of the Workers' Compensation Group, we will get them to you immediately.

Thank you for your consideration.

Sincerely,



John S. Dexter, Jr.
President

JSD:nbl

National
Council on
Compensation
Insurance

Law Evaluations

Barry I. Llewellyn
Vice President and Actuary

TO: Maine Blue Ribbon Commission Members **DATE:** 07/02/92

FR: Barry Llewellyn, NCCI

During the course of NCCI's testimony before the Commission on June 22, several items of information were requested. The attached material responds to those requests as follows:

A. Maine Reform Activity

A brief summary of the significant changes in Maine's permanent partial benefits over the last five years. Included in this summary are the rate level effects determined by the Superintendent in the relevant rate proceedings following the 1987 and 1992 reform enactments.

B. Cost Impact Analyses - Maine versus Michigan

Supporting material underlying the "Variation of Effect" estimates provided at the June 22 hearing.

NCCI reaffirms the 7.8% to 15.8% overall cost increase effect and notes that the order of the range effect for permanent partial +50% . . . +40% is consistent with the savings estimates for the other injury types. This is based on the view that the maximum savings effects and the minimum cost effect represent the most favorable possible result to rate payers.

Also included in this section are alternate scenarios which represent the retention of various features (e.g. durational limits) of Maine's current permanent partial benefit structure together with the remaining features of Michigan's system. The first scenario (Exhibit 2) retains Maine's 520 week durational limit and, together with the changes resulting from other features of the Michigan system, yields an overall "Variation of Effect" of +0.1% to -5.7%. The second scenario (Exhibit 3) uses the Michigan maximum benefit formula and rate of compensation together with all other Maine permanent partial features. The remaining injury type benefits follow the Michigan system. This approach yields an overall "Variation of Effect of -3.1% to -8.4%.

One Penn Plaza, New York, NY 10119
Telephone: 212-560-1971

C. <u>NCCI Workers' Compensation Congress</u>

A summary of the report of NCCI's 1989 Workers Compensation Congress dealing with w.c. system problems and solutions.

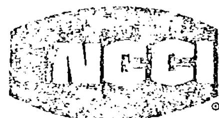
D. <u>NAIC Examination of NCCI</u>

A copy of the Executive Summary of the NAIC Examination Report together with NCCI's responses and highlights contained in an NCCI press release.

Other items are being assembled and will follow under separate cover.

Attachments

BIL/mic/0316



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BIL/mic/0316

ATTACHMENT A

Maine Reform Activity

Changes in Permanent Partial Benefits

Prior to 1987 Reform

- Lump sum settlement for scheduled impairment
  (2/3 SAWW x Scheduled Weeks)
  Based on Scheduled injury table in ME law
  In addition to Temporary Total and Wage
  Loss benefits

- No time limit on benefits

- Escalation, capped at 5% for PP and TT

1987 Reform (SP704XX - Effective 11/20/87)

- Weekly benefit
  (2/3 SAWW x % Impairment)
  Based on AMA Guidelines and percent impairment to whole body
  In addition to Temporary Total and Wage Loss Benefits

- Permanent Partial for no longer than 400 weeks after MMI

- No escalation for Wage Loss. Escalation for TT beginning on third anniversary of injury, capped at 5%.

- Overall effect: -41.9%
  Permanent Partial Effect: -56.1%

1991 Reform (LD1981 - HP1397, Effective 10/17/91)

- In order to eliminate disputes over when MMI has occurred, total compensation for Permanent Partial Injuries is limited to 520 weeks, including temporary total and wage loss. Permanent impairment benefit is reduced by any compensation for total or partial incapacity).

- Overall effect: -14.9%
  Permanent Partial effect: -21.4%

ATTACHMENT B

Maine versus Michigan Law
Permanent Partial

The cost of permanent partial is expected to increase by 40 - 50 %. The significant reasons for this increase in cost are:

- a lack of a maximum duration on non-schedule injuries in Michigan. The healing period can be expected to increase to pre-1987 reform levels.

- Michigan's schedule leads to longer durations. Maine's current schedule is based on AMA Guidelines for percent impairment to whole body while Michigan's schedule is defined by its current law. The average scheduled benefits in Maine, as compared to Michigan, are significantly lower (66 weeks vs. 211 weeks).

- Michigan has no offset on scheduled injuries. For Maine, scheduled awards are reduced by temporary total and wage loss benefits.

Calculations of this effect, in present value dollars at an interest rate of 3.5%, are shown in Exhibit 1-A (Major Permanent Partial) and Exhibit 1-B (Minor Permanent Partial). The overall effect on permanent partial is 48.97% (see Exh 1). Due to the possible variation around some of the inputs, a range of +40 - 50% can be expected.

Exhibits 2, 2-A, 2-B reflect the effect on permanent partial impairment if the current Maine 520 week limit is retained. Under this scenario, healing periods are expected to remain the same, but an increase of +10 - 15% can still be expected due to a substantial increase in scheduled benefits.

Exhibits 3, 3-A, 3-B reflect the effect on permanent partial impairment if the Maine law is updated with the Michigan maximums and Michigan rate of compensation only. The effect of +5.98% reflected in this scenario results mainly from the increase in wage loss benefits.

MAINE VERSUS MICHIGAN LAW (APPLIED TO MAINE)

PERMANENT PARTIAL

1. Effect of Major Permanent Partial (Exhibit 1-A)	1.5010
2. Effect of Minor Permanent Partial (Exhibit 1-B)	1.3133
3. Percent of Losses, Major Permanent Partial	42.1%
4. Percent of Losses, Minor Permanent Partial	2.7%
5. Overall Effect	1.4897

MAINE VERSUS MICHIGAN LAW (APPLIED TO MAINE)

MAJOR PERMANENT PARTIAL

	MAINE	MICHIGAN
1. Healing period (% claims)	100%	100%
2. Cost in weeks of Benefits	120	165
3. Annuity Value	115.37	156.34
4. Average Weekly Benefit	274.48	253.84
5. Cost of Healing Period (1) x (3) x(4)	31,667	39,685
6. Scheduled Impairment (% of claims)	11.3%	49.9%
7. Cost in weeks of benefits	66	211.88
8. Average Weekly Benefit	272.74	253.84
9. Cost of Impairment Benefit (6)x(7)x(8)	2,034	26,838
10. Wage Loss (% claims)	100%	50.1%
11. Cost in weeks of Benefits	345	679.40
12. Annuity Value	281.51	477.58
13. Average Weekly Benefit	111.31	133.56
14. % of Claims affected by SS offset	2.8%	2.8%
15. 100%-(14)	97.2%	97.2%
16. Reduced benefit for claims affected by offset	24.00	46.25
17. Cost of Wage Loss Benefit (10x(12)x[(13)x(15) + (14)x(16)]	30,647	31,372
18. Subtotal, Indemnity	64,348	97,895
19. Effect, Indemnity		1.5213
20. % Indemnity spent on Vocational Rehabilitation	0.9%	0.5%
21. Effect, Vocational Rehabilitation		0.5556
22. Vocational Rehabilitation as a Percent of Major PP losses		2.1%
23. Indemnity as a Percent of Major PP losses 1-(22)		97.9%
24. Effect		1.5010

EXHIBIT 1-B

MAINE VERSUS MICHIGAN LAW (APPLIED TO MAINE)

MINOR PERMANENT PARTIAL

	MAINE	MICHIGAN
1. Healing period (% claims)	100%	100%
2. Cost in weeks of Benefits	20	20
3. Annuity Value	19.87	19.87
4. Average Weekly Benefit	274.48	253.84
5. Cost of Healing Period (1) x (3) x(4)	5,454	5,044
6. Scheduled Impairment (% of claims)	12.5%	65.7%
7. Cost in weeks of benefits	6.4	30.29
8. Average Weekly Benefit	272.74	253.84
9. Cost of Impairment Benefit (6)x(7)x(8)	218	5,052
10. Wage Loss (% claims)	89%	34.3%
11. Cost in weeks of Benefits	196	504.75
12. Annuity Value	180.74	418.77
13. Average Weekly Benefit	69.58	83.47
14. % of Claims affected by SS offset	2.8%	2.8%
15. 100%-(14)	97.2%	97.2%
16. Reduced benefit for claims affected by offset	7.00	7.00
17. Cost of Wage Loss Benefit (10x(12)x[(13)x(15) + (14)x(16)]	10,911	11,682
18. Total Cost, Minor Permanent Partial	16,583	21,778
19. Effect		1.3133

EXHIBIT 2

MAINE VERSUS MICHIGAN LAW (APPLIED TO MAINE)
520 WEEK LIMIT RETAINED
PERMANENT PARTIAL

1. Effect of Major Permanent Partial (Exhibit 1-A)	1.1469
2. Effect of Minor Permanent Partial (Exhibit 1-B)	0.9129
3. Percent of Losses, Major Permanent Partial	42.1%
4. Percent of Losses, Minor Permanent Partial	2.7%
5. Overall Effect	1.1328

EXHIBIT 2-A

MAINE VERSUS MICHIGAN LAW (APPLIED TO MAINE)
520 WEEK LIMIT RETAINED
MAJOR PERMANENT PARTIAL

	MAINE	MICHIGAN
1. Healing period (% claims)	100%	100%
2. Cost in weeks of Benefits	120	120
3. Annuity Value	115.37	115.37
4. Average Weekly Benefit	274.48	253.84
5. Cost of Healing Period (1) x (3) x(4)	31,667	29,286
6. Scheduled Impairment (% of claims)	11.3%	49.9%
7. Cost in weeks of benefits	66	211.88
8. Average Weekly Benefit	272.74	253.84
9. Cost of Impairment Benefit (6)x(7)x(8)	2,034	26,838
10. Wage Loss (% claims)	100%	50.1%
11. Cost in weeks of Benefits	345	345
12. Annuity Value	281.51	281.51
13. Average Weekly Benefit	111.31	133.56
14. % of Claims affected by SS offset	2.8%	2.8%
15. 100%-(14)	97.2%	97.2%
16. Reduced benefit for claims affected by offset	24.00	46.25
17. Cost of Wage Loss Benefit (10x(12)x[(13)x(15) + (14)x(16)]	30,647	18,492
18. Subtotal, Indemnity	64,348	74,616
19. Effect, Indemnity		1.1596
20. % Indemnity spent on Vocational Rehabilitation	0.9%	0.5%
21. Effect, Vocational Rehabilitation		0.5556
22. Vocational Rehabilitation as a Percent of Major PP losses		2.1%
23. Indemnity as a Percent of Major PP losses 1-(22)		97.9%
24. Effect		1.1469

MAINE VERSUS MICHIGAN LAW (APPLIED TO MAINE)

MINOR PERMANENT PARTIAL

	MAINE	MICHIGAN
1. Healing period (% claims)	100%	100%
2. Cost in weeks of Benefits	20	20
3. Annuity Value	19.87	19.87
4. Average Weekly Benefit	274.48	253.84
5. Cost of Healing Period (1) x (3) x(4)	5,454	5,044
6. Scheduled Impairment (% of claims)	12.5%	65.7%
7. Cost in weeks of benefits	6.4	30.29
8. Average Weekly Benefit	272.74	253.84
9. Cost of Impairment Benefit (6)x(7)x(8)	218	5,052
10. Wage Loss (% claims)	89%	34.3%
11. Cost in weeks of Benefits	196	196
12. Annuity Value	180.74	180.74
13. Average Weekly Benefit	69.58	83.47
14. % of Claims affected by SS offset	2.8%	2.8%
15. 100%-(14)	97.2%	97.2%
16. Reduced benefit for claims affected by offset	7.00	7.00
17. Cost of Wage Loss Benefit (10)x(12)x[(13)x(15)+(14)x(16)]	10,911	5,042
18. Total Cost, Minor Permanent Partial	16,583	15,138
19. Effect		0.9129

MAINE VERSUS MICHIGAN

ESTIMATED EFFECT OF REPLACING MAINE LAW WITH MICHIGAN LAW 520 WEEK LIMIT RETAINED

TYPE OF INJURY	PERCENT OF LOSSES	VARIATION OF EFFECT	
Fatal	1.6%	-70.0%	-80.0%
Permanent Total	2.7%	-50.0%	-60.0%
Permanent Partial	44.8%	15.0%	10.0%
Temporary Total	10.9%	-20.0%	-30.0%
Medical	40.0%	-5.0%	-10.0%
Total	100.0%	0.1%	-5.7%

MAINE VERSUS MICHIGAN LAW (APPLIED TO MAINE) USING MICHIGAN MAXIMUMS AND RATE OF COMPENSATION PERMANENT PARTIAL

1. Effect of Major Permanent Partial (Exhibit 1-A)	1.0569
2. Effect of Minor Permanent Partial (Exhibit 1-B)	1.1053
3. Percent of Losses, Major Permanent Partial	42.1%
4. Percent of Losses, Minor Permanent Partial	2.7%
5. Overall Effect	1.0598

MAINE VERSUS MICHIGAN LAW (APPLIED TO MAINE)
USING MICHIGAN MAXIMUMS AND RATE OF COMPENSATION
MAJOR PERMANENT PARTIAL

	MAINE	MICHIGAN
1. Healing period (% claims)	100%	100%
2. Cost in weeks of Benefits	120	120
3. Annuity Value	115.37	115.37
4. Average Weekly Benefit	274.48	253.84
5. Cost of Healing Period (1) x (3) x(4)	31,667	29,286
6. Scheduled Impairment (% of claims)	11.3%	11.3%
7. Cost in weeks of benefits	66	66
8. Average Weekly Benefit	272.74	253.84
9. Cost of Impairment Benefit (6)x(7)x(8)	2,034	1,893
10. Wage Loss (% claims)	100%	100%
11. Cost in weeks of Benefits	345	345
12. Annuity Value	281.51	281.51
13. Average Weekly Benefit	111.31	133.56
14. % of Claims affected by SS offset	2.8%	2.8%
15. 100%−(14)	97.2%	97.2%
16. Reduced benefit for claims affected by offset	24.00	46.25
17. Cost of Wage Loss Benefit (10x(12)x[(13)x(15)+(14)x(16)]	30,647	36,910
18. Subtotal, Indemnity	64,348	68,089
19. Effect, Indemnity		1.0581
20. % Indemnity spent on Vocational Rehabilitation	0.9%	0.9%
21. Effect, Vocational Rehabilitation		1.0000
22. Vocational Rehabilitation as a Percent of Major PP losses		2.1%
23. Indemnity as a Percent of Major PP losses 1−(22)		97.9%
24. Effect		1.0569

MAINE VERSUS MICHIGAN LAW (APPLIED TO MAINE) USING MICHIGAN MAXIMUMS AND RATE OF COMPENSATION MINOR PERMANENT PARTIAL

	MAINE	MICHIGAN
1. Healing period (% claims)	100%	100%
2. Cost in weeks of Benefits	20	20
3. Annuity Value	19.87	19.87
4. Average Weekly Benefit	274.48	253.84
5. Cost of Healing Period (1) x (3) x(4)	5,454	5,044
6. Scheduled Impairment (% of claims)	12.5%	12.5%
7. Cost in weeks of benefits	6.4	6.4
8. Average Weekly Benefit	272.74	255.84
9. Cost of Impairment Benefit (6)x(7)x(8)	218	203
10. Wage Loss (% claims)	89%	89%
11. Cost in weeks of Benefits	196	196
12. Annuity Value	180.74	180.74
13. Average Weekly Benefit	69.58	83.47
14. % of Claims affected by SS offset	2.8%	2.8%
15. 100%−(14)	97.2%	97.2%
16. Reduced benefit for claims affected by offset	7.00	7.00
17. Cost of Wage Loss Benefit (10x(12)x[(13)x(15)+(14)x(16)]	10,911	13,082
18. Total Cost, Minor Permanent Partial	16,583	18,329
19. Effect		1.1053

MAINE VERSUS MICHIGAN

ESTIMATED EFFECT OF REPLACING MAINE LAW WITH MICHIGAN LAW

USING MICHIGAN MAXIMUMS AND RATE OF COMPENSATION

TYPE OF INJURY	PERCENT OF LOSSES	VARIATION OF EFFECT	
Fatal	1.6%	-70.0%	-80.0%
Permanent Total	2.7%	-50.0%	-60.0%
Permanent Partial	44.8%	8.0%	4.0%
Temporary Total	10.9%	-20.0%	-30.0%
Medical	40.0%	-5.0%	-10.0%
Total	100.0%	-3.1%	-8.4%

The Sheridan Corporation

July 3, 1992

Mr. William D. Hathway
5706 Weberly Way
McLean, VA 22101

Dear Mr. Hathway:

At the direction of the members of the Maine Workers Compensation Residual Market Pool ("Pool"), I am writing to you in my capacity as Chair of the Board of Governors ("Board") in order to inform the Blue Ribbon Commission of the actions taken by the Board in response to the current financial status of the Pool and, in particular, the actions taken to temporarily bridge the current cash needs of the pool.

Attached for your reference are copies of the Committee Report of a Committee appointed by the Board to consider various options available to the Board to address cash deficits under Chapter 440 of the Maine Insurance Regulations. Also attached is a copy of the April 6, 1992 Circular to Member Companies of the Maine Workers Compensation Residual Market Pool, distributed by the National Council on Compensation Insurance ("NCCI"), which is the designated Plan Manager of the Maine residual market. This Circular reflects operating results and cash positions for each policy year and all policy years combined. The exhibits for each policy year and the combined policy year reflect both the results for the fourth quarter of 1991 and the cumulative results through December 31, 1991.

The immediate financial difficulty relates to the 1988 policy year. The last line of the cumulative policy year 1988 report reflects a cash balance at December 31, 1991 of $1,496,212.57 while the fourth quarter report for 1991 reflects a negative cash outflow of $8,730,163.66. With a similar cash outflow during the first quarter of 1992, the 1988 policy year went into a cash deficit position. Simply stated, the Pool has expended in excess of $8 million dollars in cash which, technically, it does not have available with which to pay costs for claims incurred in 1988. On an aggregate basis, the Pool reflects an inception-to-date net operating loss of $574,271,633.15. Assuming that the full value of loss reserves are ultimately paid, this is the additional amount of funds that will be needed by the Pool to settle claims.

P.O. BOX 359 • WESTERN AVENUE AT I-95, FAIRFIELD, MAINE 04937 • 207/453-9311 • FAX 207/453-2820

At its meeting of June 29 the Board of Governors approved motions that accepted the Committee Report and adopted part of the Committee recommendations. The Board directed NCCI to utilize premium and income received by the Pool for 1989 and subsequent policy years to meet cash deficits for policy year 1988. The Board authorized and directed NCCI to utilize such funds from 1989 and subsequent policy years to meet cash deficits of the Pool through the settlement of Third Quarter 1992 Pool results, which will likely occur in December, 1992. The Board of Governors established a rate of return on the borrowed funds equal to the rate of return of Pool investments over the same period. This action is only a temporary solution to the looming problem. The magnitude of this real cash problem is contested, as you know; however, the size of the impending deficit is generally agreed to be very large and will be a punishing blow to the employers of the State of Maine should no allowance for deficit correction be contained within the recommendations by the Blue Ribbon Commission.

The Board acted to utilize Pool funds related to 1989 and subsequent policy years considering the advice received from the Department of the Attorney General, dated June 25, 1992 and included with the attached Committee Report. However, legal counsel to the Plan Manager has advised against the action taken by the Board to utilize funds allocable to 1989 and subsequent years.

The board requests, via this letter, that the Blue Ribbon Commission become better informed of this situation and include consideration of the severe economic impact it will have on the State of Maine should the repayment of the majority of the deficit simply be placed on the shoulders of the employers and remaining servicing carriers which comprise the Residual Market Pool.

If you have any questions regarding these matters, please contact me.

Very truly yours,

Mitchell P. Sammons, Chair
Board of Governors
Maine Workers Compensation Residual Market Pool

MPS/jan
encls

cc: Blue Ribbon Commission
Mr. Richard Dalbeck
Mr. Emilien Levesque
Mr. Harvey Picker

REF:LX2:BLURIB.LTR

COMMITTEE REPORT

Board of Governors
The Maine Workers Compensation
Residual Market Pool

June 29, 1992

Committee Members:
Mitchell P. Sammons
Steven Hoxie
Keith Shoemaker

Committee Purpose: In accordance with Maine Insurance Rule Chapter 440, Section 13, Paragraph B, the Board is required to take appropriate action when notified of a cash deficit, to resolve the situation. By request of the Board, this committee was formed to research options, report its efforts and recommend a financing option to bridge the reported cash deficit.

General: During the meeting held June 19, 1992, options for shortfall funding were identified:

1. Borrow from Subsequent Policy Years.
2. Borrow from Financial Institution.
3. Borrow from Servicing Carriers.
4. Assess Employers ("Fresh Start" Legislation)

Research Effort:

Option 1. Borrow From Subsequent Policy Years

A request was made of the Attorney General's office to issue a written statement as to the ability of the Pool to borrow sufficient funds from subsequent years in order to meet the reported cash deficit of premium year 1988. This request was made in recognition of Pool counsel's position that such borrowing from subsequent years was not an advisable option.

Option 2. Borrow From Financial Institution

In an effort to determine the capability of the Pool to borrow sufficient funds from a substantial banking institution, S. Hoxie initiated discussions with Fleet/Norstar Bank with the goal of receiving loan criteria necessary to secure adequate shortfall financing; M. Sammons did the same with Casco-Northern/Bank of Boston and Key Bank Corporation.

Option 3. Borrow From Servicing Carriers

In effect, servicing carriers currently are providing the financing of 1988 policy year cash needs. These carriers will be requesting reimbursal of the fronting of claims payments.

Option 4. Assess Employers

The ability of the Superintendent of Insurance to impose surcharges necessary to meet cash shortfalls is established in Chapter 440. However, emergency legislation L.D.2457 prohibits such action until after Blue Ribbon Commission reporting due to anticipated fundamental structural changes to the current Workers Compensation system.

Research Results:

Option 1 - Based upon the opinion of the Attorney General's office, "borrowing" of available funds generated by subsequent policy years and held in the Residual Market Pool fund is not prohibited by Chapter 440. In effect, policy year co-mingling of funds has occurred as a result of rate changes and modifier impact upon employers premiums in subsequent years; this option is viable.

Option 2 - The results of efforts to secure third party financing have yielded the enclosed written response(s) from Fleet Bank and Casco Northern Bank/Bank of Boston.

Issues and guarantees relating to 1) who is the borrower, 2) what is the source of repayment, 3) what collateral will be pledged and 4) what is the ultimate amount and duration of the total liability.

Verbal response from Key Bank of Maine has followed the same line of trepidation. Essentially, these institutions recognize that the Maine Residual Market Pool is an entity created by the State government and that, ultimately, the employers contributing to this Pool have a joint and several liability implied by the agreements effected for policy year 1988. The complications of this element are obvious to the institution. As a result, it appears that this option is not viable.

Option 3 - Given the reported cash shortfall and assuming that servicing carriers are following their contractual obligation to pay claims presented to them by claimants whose claims fall in the 1988 policy year, the servicing carriers are already providing short-term financing. What remains to be established is a means to reimburse the carrier(s) for such fronting of payments in an equitable manner. This option, although by default, has been proven viable for the short-term and only lacks formalization to ensure no financial injury to all affected parties.

We suggest an arrangement in principle that would allow the carriers to deduct the amount of any un-reimbursed financing of 1988 policy year claims expenses from any future assessments which might be levied against carriers for Pool deficits in subsequent (1989, 1990, 1991, 1992, etc.) policy years, at an interest rate equal to the average interest earned on Pool funds.

Option 4 - Since current emergency legislation prohibits surcharge application, this option is not available.

Recommended Action:

In order to meet the reported cash shortfall which is assumed to be currently occurring, the Committee recommends that a blending of Options 1 and 3 is the prudent course of action. This recommendation is based upon the following factors: (1) the right of the Pool to act in a manner consistent with typical pool operation which allows the use of funds on hand to meet current cash flow shortfalls; (2) servicing carriers are providing resources to meet presented claims for payment; (3) the actual cash expenditures for

1988 claims paid by the carriers is not exactly known; and (4) the efforts of the Blue Ribbon Commission are expected to address this cash deficit in their recommendations for fundamental Workers Compensation system changes. The time-frame of which allows for a minimum of time lost and Pool fund usage.

The Superintendent of Insurance should then request a current defined accounting of the payments made by the insurers for the 1988 claim year which have been reimbursed by the Pool as well as a per period (period of which to be negotiated) accounting of disbursements by the carriers during the time in which no rate change or surcharge activity is allowed as mandated by emergency legislation L.D.2457. The current cash balance in the Pool's account should be considered as available for use to repay the affected insurers for the current and future cash outlay. Acceptable re-payment terms should be negotiated between the insurers and the Bureau of Insurance and reported to the Board of Governors in recognition of the responsibilities of the Board members in regards to the status of the Pool fund. The State of Maine should be completely appraised of this situation and also have reports which verify the immediate and ultimate actual cash deficit resulting from the 1988 policy year.

Summary:

Committee members wish to point out that Chapter 440, Sections 13A and 13B address "short term cash deficits", "temporary cash inadequacy", and the requirements that the Board endeavor to arrange "short term debt financing". Given the magnitude of the size of the shortfall occurring and projected to occur by N.C.C.I. as well as the ongoing concern comments by the independent auditor which have been referenced, "short term" financing alternatives would not meet the accruing obligation and, therefore, a long term solution must be developed by the State of Maine, not the Board. The Committee request the Bureau of Insurance to again review the rate hearings surrounding the 1988 policy year, and the resultant "Fresh Start" rulings in order to re-visit the then projected shortfall anticipated as a result of that policy year in order to validate the imposed 3% surcharge, its intended effective time-frame, and the ultimate premiums anticipated to be generated during that time-frame.

In recognition of the credibility gap which is prevalent and expounded upon during any rate hearing, the Committee feels that a strong system of accountability and reimbursement must be instituted should the recommendations contained herein in respect to temporary loans for cash flow deficit be acted upon.

Finally, given the magnitude of the Pool's aggregate projected cash flow deficits (even if only 25% accurate) and the concerns well-voiced within the letter received by Fleet Bank, it is apparent that additional surcharges levied by the Superintendent of Insurance against the employers, covered by this Pool, would be inequitable and would cause significant hardship and possibly the failure of many businesses in this State. The imposition of heavy surcharges is not a viable, long-term solution and cannot be sustained by the employers. The State of Maine must make fundamental changes in the current system, seriously follow up on the recommendations of the Blue Ribbon Commission, and remove the political polarity surrounding the situation in order to provide a sound Workers' Compensation System for this state.

MICHAEL E. CARPENTER
ATTORNEY GENERAL

VENDEAN V. VAFIADES
CHIEF DEPUTY

Telephone: (207) 289-3661
FAX: (207) 289-3145

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

CROMBIE J. D. GARRETT, JR.
DEPUTY, GENERAL GOVERNMENT
CABANNE HOWARD
DEPUTY, OPINIONS/COUNSEL
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.

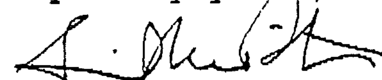
I see nothing in Chapter 440 or the fresh start statute, 24-A M.R.S.A. § 2367, which precludes either a pledge of these funds or their interim use to satisfy the shortfall provided that the borrowing costs are appropriately charged to policy year 1988. Assuming that a pledge of the funds derived from 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

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

Casco Northern

A Bank of Boston Company

JUL 1 1992

RECEIVED

June 25, 1992

Mr. Mitchell Sammons, Chairman
Board of Governors
Maine Workers Compensation Residual Marketing Pool ("MWCRMP")
P.O. Box 359
Fairfield, Maine 04937

Dear Mitch:

The Board has requested bank financing of up to $40 million to fund anticipated shortfalls in the 1988 Worker's Compensation Pool. Casco Northern would be pleased to consider the Board's request under a number of scenarios, including:

1. Secured by reserve funds to the extent allowed by law or regulation;
2. Credit-enhanced by the State of Maine;
3. Secured by a dedicated and incremented stream from employers or insurers as prescribed by law.

With respect to (1): This option is applicable to the extent that the Pool is authorized to pledge its reserve funds and collateral. In a practical sense, if reserve funds may become loan collateral, they most likely may be used to self-fund the deficit, eliminating the need for a loan.

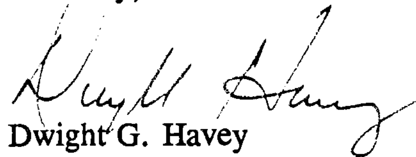
With respect to (2): If the credit is enhanced or guaranteed by the State of Maine, it could be sold to institutional investors. We would like to offer the support of the Public Finance unit of the Bank of Boston in structuring such a transaction. This group has a special New England focus and a superior track record in underwriting and selling debt of the State of Maine and its agencies.

With respect to (3): Subject to independent actuarial review of the Pool, and the identification of an incremental source of revenue, the repayment of the loans could be structured without regard to cash collateral or the credit of the State of Maine. The Insurance and Financial Institutions lending division of the Bank of Boston provides underwriting services to the insurance industry and would assist you in evaluating such an approach.

One Monument Square, Portland, Maine 04101 207-774-8221

Due to the limited information available to us today, none of these alternatives constitutes an offer or commitment to lend. The actual terms and conditions upon which the Bank might extend credit are subject to the completion of extensive due diligence, credit approval, and documentation. However, with your commitment to work with Casco and Bank of Boston, we would be delighted to undertake this analysis and respond appropriately to the Board's needs.

Sincerely,



Dwight G. Havey
Executive Vice President
Corporate Banking

DGH/jaw

National
Council on
Compensation
Insurance

Memorandum

Residual Market Finance

Contact: Clifford G. Merritt, Director 407-997-4296
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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 TOTALS
GROSS PREMIUMS WRITTEN (LESS RETURNS)	(136,721.94)	(1,618.34)	1,044,443.83	906,103.55
UNEARNED PREMIUMS - PREVIOUS	0.00	0.00	0.00	0.00
TOTAL	($136,721.94)	($1,618.34)	$1,044,443.83	$906,103.55
UNEARNED PREMIUMS - CURRENT	0.00	0.00	0.00	0.00
NET PREMIUMS EARNED	($136,721.94)	($1,618.34)	$1,044,443.83	$906,103.55
LOSSES PAID	8,200,341.00	1,512,265.81	0.00	9,712,606.81
KNOWN OUTSTANDING LOSSES - CURRENT	66,560,906.38	10,643,956.33	0.00	77,204,862.71
I.B.N.R. LOSS RESERVES - CURRENT	97,594,386.00	15,606,614.00	0.00	113,201,000.00
TOTAL	$172,355,633.38	$27,762,836.14	$0.00	$200,118,469.52
KNOWN OUTSTANDING LOSSES - PREVIOUS	71,953,999.08	11,937,721.73	0.00	83,891,720.81
I.B.N.R. LOSS RESERVES - PREVIOUS	94,438,866.00	15,668,134.00	0.00	110,107,000.00
LOSSES INCURRED	$5,962,768.30	$156,980.41	$0.00	$6,119,748.71
GROSS UNDERWRITING GAIN / (LOSS)	($6,099,490.24)	($158,598.75)	$1,044,443.83	($5,213,645.16)
SERVICING CARRIER ALLOWANCES	(21,383.91)	(408.60)	0.00	(21,792.51)
OTHER EXPENSE ALLOWANCES	22,774.88	1,096.18	0.00	23,871.06
ADMINISTRATIVE EXPENSES	583.55	75.29	0.00	658.84
NET UNDERWRITING GAIN / (LOSS)	($6,101,464.76)	($159,361.62)	$1,044,443.83	($5,216,382.55)
INTEREST INCOME	149,422.87	(70,345.88)	0.00	79,076.99
NET OPERATING GAIN / (LOSS)	($5,952,041.89)	($229,707.50)	$1,044,443.83	($5,137,305.56)
CURRENT E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00	0.00
PREVIOUS E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00	0.00
CURRENT E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00	0.00
PREVIOUS E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00	0.00
ADJ. NET OPERATING GAIN / (LOSS)	($5,952,041.89)	($229,707.50)	$1,044,443.83	($5,137,305.56)
CASH SURPLUS / (DEFICIT)	($8,189,614.59)	($1,584,992.90)	$1,044,443.83	($8,730,163.66)

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

9712607
906104
8806503 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	219,174,082.05
UNEARNED PREMIUMS - PREVIOUS	0.00	0.00	0.00	0.00
TOTAL	$187,284,935.80	$24,163,382.26	$7,725,763.99	$219,174,082.05
UNEARNED PREMIUMS - CURRENT	0.00	0.00	0.00	0.00
NET PREMIUMS EARNED	$187,284,935.80	$24,163,382.26	$7,725,763.99	$219,174,082.05
LOSSES PAID	135,281,092.03	24,258,031.08	0.00	159,539,123.11
KNOWN OUTSTANDING LOSSES - CURRENT	66,560,906.38	10,643,956.33	0.00	77,204,862.71
I.B.N.R. LOSS RESERVES - CURRENT	97,594,386.00	15,606,614.00	0.00	113,201,000.00
TOTAL	$299,436,384.41	$50,508,601.41	$0.00	$349,944,985.82
KNOWN OUTSTANDING LOSSES - PREVIOUS	0.00	0.00	0.00	0.00
I.B.N.R. LOSS RESERVES - PREVIOUS	0.00	0.00	0.00	0.00
LOSSES INCURRED	$299,436,384.41	$50,508,601.41	$0.00	$349,944,985.82
GROSS UNDERWRITING GAIN / (LOSS)	($112,151,448.61)	($26,345,219.15)	$7,725,763.99	($130,770,903.77)
SERVICING CARRIER ALLOWANCES	64,631,672.22	8,041,996.68	0.00	72,673,668.90
OTHER EXPENSE ALLOWANCES	350,683.71	117,944.11	0.00	468,627.82
ADMINISTRATIVE EXPENSES	557,888.84	67,092.94	0.00	624,981.78
NET UNDERWRITING GAIN / (LOSS)	($177,691,693.38)	($34,572,252.88)	$7,725,763.99	($204,538,182.27)
INTEREST INCOME	14,497,005.82	1,131,526.31	0.00	15,628,532.13
NET OPERATING GAIN / (LOSS)	($163,194,687.56)	($33,440,726.57)	$7,725,763.99	($188,909,650.14)
CURRENT E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00	0.00
PREVIOUS E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00	0.00
CURRENT E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00	0.00
PREVIOUS E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00	0.00
ADJ. NET OPERATING GAIN / (LOSS)	($163,194,687.56)	($33,440,726.57)	$7,725,763.99	($188,909,650.14)
CASH SURPLUS / (DEFICIT)	$960,604.82	($7,190,156.24)	$7,725,763.99	$1,496,212.57

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

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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	22,814,421.01	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 TOTALS
GROSS PREMIUMS WRITTEN (LESS RETURNS)	37,819,650.66	8,620,324.97	1,044,443.83	47,484,419.46
UNEARNED PREMIUMS - PREVIOUS	49,513,801.48	11,493,059.00	0.00	61,006,860.48
TOTAL	$87,333,452.14	$20,113,383.97	$1,044,443.83	$108,491,279.94
UNEARNED PREMIUMS - CURRENT	46,080,539.31	8,041,642.83	0.00	54,122,182.14
NET PREMIUMS EARNED	$41,252,912.83	$12,071,741.14	$1,044,443.83	$54,369,097.80
LOSSES PAID	34,245,113.39	8,824,011.75	0.00	43,069,125.14
KNOWN OUTSTANDING LOSSES - CURRENT	248,113,711.52	62,079,378.87	0.00	310,193,090.39
I.B.N.R. LOSS RESERVES - CURRENT	392,841,939.00	100,895,061.00	0.00	493,737,000.00
TOTAL	$675,200,763.91	$171,798,451.62	$0.00	$846,999,215.53
KNOWN OUTSTANDING LOSSES - PREVIOUS	244,086,858.74	60,243,217.80	0.00	304,330,076.54
I.B.N.R. LOSS RESERVES - PREVIOUS	366,344,292.00	93,617,708.00	0.00	459,962,000.00
LOSSES INCURRED	$64,769,613.17	$17,937,525.82	$0.00	$82,707,138.99
GROSS UNDERWRITING GAIN / (LOSS)	($23,516,700.34)	($5,865,784.68)	$1,044,443.83	($28,338,041.19)
SERVICING CARRIER ALLOWANCES	11,439,476.49	2,494,268.59	0.00	13,933,745.08
OTHER EXPENSE ALLOWANCES	142,082.46	18,180.15	0.00	160,262.61
ADMINISTRATIVE EXPENSES	1,275,327.17	354,894.43	0.00	1,630,221.60
NET UNDERWRITING GAIN / (LOSS)	($36,373,586.46)	($8,733,127.85)	$1,044,443.83	($44,062,270.48)
INTEREST INCOME	3,215,039.61	902,572.45	0.00	4,117,612.06
NET OPERATING GAIN / (LOSS)	($33,158,546.85)	($7,830,555.40)	$1,044,443.83	($39,944,658.42)
CURRENT E.B.N.R. PREMIUM RESERVES	2,536,224.00	805,776.00	0.00	3,342,000.00
PREVIOUS E.B.N.R. PREMIUM RESERVES	4,408,276.00	1,391,724.00	0.00	,800,000.00
CURRENT E.B.N.R. EXPENSE RESERVES	776,085.00	246,567.00	0.00	,022,652.00
PREVIOUS E.B.N.R. EXPENSE RESERVES	1,348,932.00	425,868.00	0.00	1,774,800.00
ADJ. NET OPERATING GAIN / (LOSS)	($34,457,751.85)	($8,237,202.40)	$1,044,443.83	($41,650,510.42)
CASH SURPLUS / (DEFICIT)	($6,067,309.24)	($2,168,457.50)	$1,044,443.83	($7,191,322.91)

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	881,586,011.82
UNEARNED PREMIUMS - PREVIOUS	0.00	0.00	0.00	0.00
TOTAL	$700,995,447.00	$172,864,800.83	$7,725,763.99	$881,586,011.82
UNEARNED PREMIUMS - CURRENT	46,080,539.31	8,041,642.83	0.00	54,122,182.14
NET PREMIUMS EARNED	$654,914,907.69	$164,823,158.00	$7,725,763.99	$827,463,829.68
LOSSES PAID	299,511,339.03	70,768,233.35	0.00	370,279,572.38
KNOWN OUTSTANDING LOSSES - CURRENT	248,113,711.52	62,079,378.87	0.00	310,193,090.39
I.B.N.R. LOSS RESERVES - CURRENT	392,841,939.00	100,895,061.00	0.00	493,737,000.00
TOTAL	$940,466,989.55	$233,742,673.22	$0.00	$1,174,209,662.77
KNOWN OUTSTANDING LOSSES - PREVIOUS	0.00	0.00	0.00	0.00
I.B.N.R. LOSS RESERVES - PREVIOUS	0.00	0.00	0.00	0.00
LOSSES INCURRED	$940,466,989.55	$233,742,673.22	$0.00	$1,174,209,662.77
GROSS UNDERWRITING GAIN / (LOSS)	($285,552,081.86)	($68,919,515.22)	$7,725,763.99	($346,745,833.09)
SERVICING CARRIER ALLOWANCES	222,705,732.14	52,058,159.55	0.00	274,763,891.69
OTHER EXPENSE ALLOWANCES	1,075,744.96	266,719.37	0.00	1,342,464.33
ADMINISTRATIVE EXPENSES	3,874,921.83	1,049,906.71	0.00	4,924,828.54
NET UNDERWRITING GAIN / (LOSS)	($513,208,480.79)	($122,294,300.85)	$7,725,763.99	($627,777,017.65)
INTEREST INCOME	43,288,878.13	10,216,506.37	0.00	53,505,384.50
NET OPERATING GAIN / (LOSS)	($469,919,602.66)	($112,077,794.48)	$7,725,763.99	($574,271,633.15)
CURRENT E.B.N.R. PREMIUM RESERVES	2,536,224.00	805,776.00	0.00	3,342,000.00
PREVIOUS E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00	0.00
CURRENT E.B.N.R. EXPENSE RESERVES	776,085.00	246,567.00	0.00	1,022,652.00
PREVIOUS E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00	0.00
ADJ. NET OPERATING GAIN / (LOSS)	($468,159,463.66)	($111,518,585.48)	$7,725,763.99	($571,952,285.15)
CASH SURPLUS / (DEFICIT)	$217,116,587.17	$58,938,288.22	$7,725,763.99	$283,780,639.38

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

$571 xxx xxx
494 xxx xxx
??

Employees of Boise Cascade celebrate the 4th of July and 2 million hours with no lost time accident! (Boise Cascade Rumford Mill) (Maine Sunday Telegram, 7/5/1992) ●

(Available on request-please include the following citation: WC115-BRC-08-Pt B-60.pdf)

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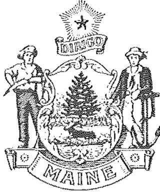

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE
04333

JOHN R. McKERNAN, JR.
GOVERNOR

July 6, 1992

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

Senator William Hathaway
Danton Tower, Apt. 6D
207 East Grand Ave.
Old Orchard, ME 04064

Dear Dick and Bill,

I am writing to you as chairs of the Blue Ribbon Commission to request the Commission to address the residual pool crisis. I understand that the residual pool deficits have been discussed by the Commission. At this point in time, the Blue Ribbon Commission is the foremost authority on the Workers' Compensation Insurance crisis. The Commission not only has the expertise, but also the crediaility to address and solve this enormous problem.

Although Resolve 59 does not specifically ask you to investigate the prospective residual deficits, the intent is for the Commission to recommend a system that is financially stable and provides a healthy insurance mechanism. Such a goal cannot be reached without resolving the overshadowing deficits that hang over employers and insurance companies. If these deficits are reduced by the Commission, it is much more likely that employers will be able to provide the necessary capital to fund a Mutual Insurance group.

It should also be noted that Chapter 108, the law that froze any rate decision or surcharges by the Bureau of Insurance until after November 15th cited the potential work of the Blue Ribbon Commission as effecting the final rate decision and fresh start surcharges. Thus, the intent of the Legislature can be read in Chapter 108 as supporting any effort your Commission can make in reducing the projected deficits. I recommend that you discuss with Dick Johnson the means that can be implemented that will reduce the potential bill this year to employers of $100 to $135 million.

I have attached two memos that I received from the Bureau of Insurance that outline the likely impact of the next rate case if no reductions in costs are made. Please note that any purely prospective changes will only reduce the 15 to 18% in next year's base rates. As you can see, that will still leave Maine employers with the likely increase of at least 30% when the "fresh start" surcharges are made.

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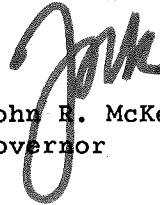
I also suggest that the actuary hired by the Commission review these numbers to provide you with an independent basis to begin your analysis. It is important that the Commission continue its work maintaining its independence and integrity. Not only is it important to businesses and workers that the Commission look at the residual pool, it is also critical to the State of Maine. Deficits of this magnitude cannot help but adversly affect all of Maine's citizens.

Sincerely,



John R. McKernan, Jr.
Governor

JRM/mpm

cc:
Dr. Harvey Picker
Emilien Levesque

John R. McKernan, Jr.
Governor

Brian K. Atchinson
Superintendent

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

MEMORANDUM

Date: July 2, 1992

To: John R. McKernan, Jr.,
Governor, State of Maine

From: Brian K. Atchinson, Superintendent BKAtchinson

Subject: Status of Residual Market

Enclosed please find a memo from Dick Johnson to me regarding the Workers' Compensation Residual Market Pool deficits. I think it is important to bring this information to your attention, as well as update you on the recent actions taken by the Residual Market Pool Board of Governors.

On Monday, June 29, the Residual Market Pool Board voted to borrow money from reserves for policy years 1989 through 1991 to pay for policy year 1988 claims. An announcement was made at the Board's previous meeting on June 19 that policy year 1988's cash reserves were negative and had been so for two or three weeks. At the June 19 meeting, the plan manager (NCCI) referred to its year end financial statements for the Maine Pool, in which there is an estimated unfunded liability of $189 million for policy year 1988. In those financial statements, NCCI has also reported that policy years 1988 through 1991 have a cumulative operating deficit of $574 million.

After the Board's vote to allow the short term solution of borrowing from other policy years to pay for 1988's cash shortfall, the Board voted unanimously to send a letter to the Blue Ribbon Commission asking the Commission to consider a long-term solution to resolve the huge deficit problem.

The cash shortfall for the next 12 months for policy year 1988 could reach $35 million. An assessment on employers cannot be ordered at this time by the Superintendent to solve this problem, in accordance with P&S 1991, Chapter 108, AN ACT to Delay Workers' Compensation Rate Increase, which extended any rate decision or surcharge until November 15th, in anticipation of the Blue Ribbon Commission report and the special legislative session.

As the likely presiding officer at a subsequent rate hearing on this matter, I must reserve judgement with respect to a decision on rates and fresh start surcharges until all the evidence is presented and the record closed. However, I believe it imperative to bring to your attention this recently reported information due to the potentially devastating impact it may have on the workers' compensation system and on the state, as a whole. Set forth below is a breakdown of the policy year fresh start assessments that could potentially be assessed against employers and insurance companies in the next rate decision. This analysis is based on a 41.9% savings from the 1987 reforms. Included in this calculation merely for illustrative purposes (and in no way intended to represent any conclusions regarding the rate case on my part) is one conceivable portrayal of the amortization over 10 years of one estimate of the operating deficit for 1988-90.

Item	Percent	Amount
1992 Rate Decision (Phase I.)...........	15-18%	$50 million
1988 Fresh Start,* (100% ER for 12 mos.).	12.5%	$35 million
1989 Fresh Start,* (50/50% ER/INS).......	5%	$14 million
1990 Fresh Start, (50/50% ER/INS)		
1988, 89 & 90 operating deficit total of $117 million amortized over 10 years..........................	4.2%	$12 million
Total	36.7% - 39.7%	$111 million

* Cash reportedly needed for the next 12 months only.

As you may be aware, there has been some discussion as to whether the value of the 1987 reforms will prove to be 41.9% or whether the percentage may ultimately be lower. If the 1987 reforms are valued at 30%, using the above example, the operating deficits for years 1988-90 would increase from $117 million to approximately $390 million. The adjustment to the bottom line on the above chart would be as follows:

Total 46.3% $138 million

If the savings are less than 30%, the deficit and assessment numbers will be correspondingly higher.

EMPLOYER COSTS

The increase in rates and assessments employers may be liable to pay this year, based on the 1987 reforms representing savings of 41.9%, are the following:

POTENTIAL EMPLOYER LIABILITY AS OF 1992:

1992 Rate Decision.............$50 million
1988 Fresh Start*..............$35 million
1989 Fresh Start*.............. $7 million
1990 Fresh Start
1988-90 deficit................ $8 million

(100%-88, 50%-89,90)
Total $100 million

* Cash reportedly needed for next 12 months only.

If 30% savings from the 1987 reforms is used to calculate the employers liability, the amount attributable to the 1988-1990 deficit increases from $8 million to $26 million, increasing the total to $118 million.

A one time assessment to pay off the estimated deficits for policy years 1988-91, assuming a 30% savings, could place employers responsible for as much as $200 million. This does not even include the liability of insurance companies.

CONCLUSION

It should be noted that borrowing from the cash reserves of any other policy year to pay for policy year 1988 reduces the investment income to be earned from those cash reserves. If no assessment were to be ordered this year, based on NCCI's quarterly reports, policy year 1989 is likely to be cash negative as early as six months from now. The Pool Board of Governors limited its borrowing to only two fiscal quarters as a result of concerns regarding future legislative activity, uncertainty concerning repayment, and the ramifications if repayment is not made.

It is imperative that the 1988 cash shortfall, projected future cash shortfalls, and the significant accumulating deficits be addressed as soon as possible. The longer the delay, the larger the deficits will be, potentially causing the workers' compensation market to collapse, inflicting on employers huge liabilities, and placing payments to injured workers in jeopardy.

It is hard to envision the restoration of a competitive insurance market in Maine without resolving the issue of the large pool deficits. Recent discussions of the Pool Board of Governors lead me to believe that the issue of the deficits could be instrumental in bringing about some form of market collapse.
Just this week, one of the three remaining Tier One servicing carriers, Commercial Union, filed to withdraw from the market. Whether the 1987 reforms result in a 41.9% savings, a 30% savings, or some other percentage, the deficits are likely to be large and future assessments may conceivably far exceed the pending rate increases.

In light of the insolvent condition of the 1988 policy year reserves and the information received from NCCI regarding the magnitude of the total unfunded liability for policy years 1988 - 1991, I believe it is imperative that consideration be given as to how to proceed in order to protect the interests of Maine's citizens. While certain factors set forth above are not agreed upon by all parties and may be open to interpretation, I am compelled to consider the seriousness of the situation, even if portions of the above information need to be adjusted.

BKA/m

John R. McKernan, Jr.
Governor

Brian K. Atchinson
Superintendent

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE
(207) 582-8707
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June 26, 1992

TO: Brian Atchinson, Superintendent

FROM: Dick Johnson, Property/Casualty Actuary

RE: Workers' Compensation Residual Market Pool Deficits

The quarterly Pool reports prepared by the National Council on Compensation Insurance ("NCCI"), for the year ended December 31, 1991, indicates a policy year 1988 operating deficit of $189 million and a cumulative operating deficit for years 1988-1991 of $574 million.

The figures prepared by NCCI for the Pool differ substantially from those presented in the "Fresh Start" rate hearing concluded in April. In that case, NCCI projected deficits of $28.7 million, $34.6 million and $26.7 million for policy years 1988, 1989, and 1990, respectively. No estimate was prepared for 1991. In that same hearing, the Public Advocate's actuary projected deficits of $16.6 million, $20.9 million, and $10.4 million, respectively. However, in the brief filed at the conclusion of the hearing, the Public Advocate's position was "No Employer Surcharge [is] Justified At This Time" (p. 60) and recommended further study of carrier performance. In its filing, NCCI projected a negative cash balance in the first quarter of 1996 rather than the first quarter of 1992. (For policy year 1989 the projected negative cash balance if no surcharges are assessed is the second quarter of 1996, but NCCI quarterly reports indicate that without assessment policy year 1989 will be out of cash in early 1993.)

The "Fresh Start" filing figures are substantially less than the operating numbers for the following reasons:

1. The numbers are prepared by different people using a different procedure.

2. The "Fresh Start" estimates assume a 41.9% savings from the 1987 law change.

State House Station 34, Augusta, Maine 04333 -- *Offices Located at:* Gardiner Annex, 124 Northern Avenue, Gardiner, Maine 04345

Although we do not know the procedure and assumptions used to produce the most recent Pool operating reports, in prior years the savings attributable to the 1987 law change was less. The savings estimate is used because loss development patterns based on pre 11/87 claims are used to estimate ultimate costs of 1988 and subsequent claim costs.

3. Management report figures do not anticipate future investment income, but the "Fresh Start" figures are on a present value basis. However, if there is no funds to invest (i.e. 1988), the effect is eliminated.

4. The "Fresh Start" figures reflect actual carrier expenses, while the Pool management figures reflect the servicing carrier allowance. In effect, the difference is the profit level to the servicing carrier, which may have drawn off approximately $10-15 million of cash.

5. The actual losses, both on an incurred basis and on a paid basis, are higher than originally estimated. This may reflect carrier performance, interpretation or application of 1987 law changes, and deteriorating workers' compensation claim activity.

<u>What are the possible assessment implications to insurers and employers</u>?

The cash shortfall for policy year 1988 for the next 12 months has been roughly estimated by NCCI to be about $35 million. Because of the delay in implementing an assessment (ch. 108) borrowing of some type will be necessary to reimburse servicing carriers for payments to claimants. Assessments to employers to generate $35 million would be equivalent to a surcharge of 12.5%. (The current insured workers' compensation market is about $280 million). To fund the entire deficit a surcharge ranging from 6% (if the Public Advocate's actuary is correct) to 68% (if the Pool management report is accepted and if assessments are spread out so no investment income is earned).

For years 1989 and subsequent at the current voluntary market level insurers would be responsible for half the deficit, and employers responsible for the other half. If NCCI's numbers in the rate filing are correct (including a 41.9% savings from the 1987 law changes) employers could be responsible for $59 million and insurers for $31 million. If the actual savings from the 1987 law change is 30% rather than 41.9%, the employer costs would increase from $59 million to $102 million and the insurers assessments would increase from $31 million to $54 million. The one time assessments to employers of $59 million and $102 million would be equivalent to a one time rate increase of about 21% and 36%, respectively. Because these figures are on a discounted basis, any delay in collecting these figures will increase the magnitude of the deficit.

The alternative scenario as represented in the Pool accounting done by NCCI would be assessments to employers of $189 million for policy year 1988 and one half of the remaining operating deficit of $385 million, or a total unfunded liability of $382 million. Based upon this information, it is important to understand that the impact on employers of assessments to fund past years' premium shortfalls could exceed the impact of the requested filing in the pending rate case. Under the current system, outstanding claims from 1988 and

subsequent years can be expected to represent a significant cost to employers. The surcharges to cover prior years' deficits apply to all currently insured employers.

REJ/lph

cc: Linda Pistner, AAG

President
Charles J. O'Leary

maine afl-cio

157 Park Street, Suite One
P.O. Box 1571 • Bangor, Maine 04401
Tel. 207-947-0006

Secretary-Treasurer
Edward Gorham

7/6/92

BLUE RIBBON COMMISSION
ON WORKERS' COMPENSATION

Supplement to Maine AFL-CIO's Memorandum Entitled:

"Physical Impairment, a Reasonable Substitute for Wage Loss As a Basis for Workers' Compensation Benefits?"

I. Introduction.

This supplement is keyed to the general concepts discussed in the Maine AFL-CIO's memorandum to the Blue Ribbon Commission dated June 30, 1992 in the light of Professor Barth's 7 page proposal forwarded to the Blue Ribbon Commission by letter of July 2, 1992.

II. The Proposal Ignores Recent Maine Legislative Choices.

A. Physical Impairment.

Maine's physical impairment benefits (PI) were de facto abolished in the vast majority of cases by legislative action during July, 1991. By that recent action, the Legislature evidenced a strong preference for the wage loss approach even to the exclusion of any recovery for permanent impairment. The Legislature made a very deliberate choice: that with a cut back on benefits, physical impairment should be sacrificed in order to preserve wage loss protection. Under 1991 Maine law, physical impairment benefits were only available to the extent that wage loss benefits are not received. That is, wage loss benefits are subtracted from physical impairment benefits on a dollar for dollar basis. During the last NCCI rate case before the Maine Bureau of Insurance, a savings of 9.2% was attributed to this change.

B. Physical Impairment System Requires a Line Drawing at the End of the Temporary Total Wage Loss Benefit Period Which Requires a Finding of "Maximum Medical Improvement".

GCU 13-C

The concept of "maximum medical improvement" existed in Maine law from November, 1987 to October, 1991, when it was abolished with unanimous legislative support. The Maine evidence was that strong contention involving delay and litigation are inherent in a maximum medical improvement concept an essential divider between temporary total benefits where a wage loss concept is employed and permanent partial disability benefits with a physical impairment or non-wage loss basis.

The Maine Legislature may be reluctant to revisit fundamental choices made less than a year ago.

III. Conceptual Concerns.

A. Ignoring The Centrality of the Wage Loss Concept.

The proposal does not address the fundamental question of whether or not physical impairment benefits are or can be made into a reasonable proxy for wage loss benefits. Thus all the concerns and the practical examples given in the AFL-CIO's prior memo remain relevant.

B. The Wage Loss "Supplement" Loophole.

The proposal includes a wage loss supplement to permanent impairment benefits. Under this implicit recognition of the lack of focus and the lack of compensation for the economic loss involved in a physical impairment concept could create a substantial "loophole".

C. Lack of Focus and Wastage.

There is an inherent wastage problem with physical impairment benefits in that dollars expended for physical impairment benefits where there is no or little wage loss are not available to compensate for actual wage loss.

D. The Proposal's Confusion Regarding Social Security Disability Benefits and Physical Impairment.

Social Security is a wage loss system only. It does not compensate or attempt to compensate in any fashion for physical impairment.

The attempt of Social Security to reduce the need for dispute resolution by medical examiners has been

unsuccessful. In fact, particularly in Maine, the U.S. Dept. of Health and Human Services indicates that 70+% in Maine reversal rate on ALJ hearings and a 60% nationwide reversal rate.

IV. Lack of Clarity and Definition in the Proposed Model.

A. How Much Money and How Much Additional Money of Physical Impairment?

B. How Would Additional Funds be Determined and How Would They be Allocated?

C. Wage Loss Supplement? It is Undefined!

V. The Question of Motivation.

A. Motivation to litigate.

1. Temporary Total/"MMI" is a breeder of litigation by 4 years of Maine experience.

2. The Attraction of Permanent Total, Unlimited Benefits.

The physical impairment system would create a great new additional and immediate motivation to qualify for permanent total benefits and thus avoid the strictures of the physical impairment system and its failure to compensate for economic loss. Indeed, the current limitation in Maine at 520 weeks on permanent partial benefits provides a substantial part of the explanation for Maine's eight-fold excess of permanent total cases compared to Michigan which has unlimited permanent partial wage loss benefits.

B. Reemployment.

The proposal recognizes the criticism that physical impairment benefits are counterproductive in regard to reemployment.

1. The self insurers experience. Yet the proposal ignores the actual experience of Maine self-insurers. The chart attached shows a substantial increase throughout the 1980s in the number of days of restricted work because of light duty jobs provided mostly in the self-insured sector.

2. The Americans With Disabilities Act <u>may</u> be of substantial assistance in reemployment. Yet important questions are unanswered as to the application of the ADA particularly in the absence of a state workers' compensation supplement to the Americans With Disabilities Act.

VI. The Essential Question.

The proposal states at page 5 in Section 8,

> "...The key is to sort out those cases where an income award is <u>genuinely</u> warranted from others."

Any line drawn is arbitrary and any arbitrary line leads to both injustice or perceptions of injustice by the parties and hence to contention and litigation.

The fundamental problem is ignoring the centrality of the wage loss principle as recognized by Larson in attempting to compensate for economic loss by a measure which is in no way related to economic loss.

VII. Examples under Maine's physical impairment law:

A. A <u>paperworker</u> 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 <u>AMA Guides to the Evaluation of Permanent Impairment</u>, 3rd Ed. at pg. 73. Under current Maine law, his whole body permanent impairment of 6% entitles him to a <u>one time</u> 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.

B. A <u>shipyard worker</u> 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 <u>AMA Guides to the Evaluation of Permanent Impairment</u>, 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%.

C. An <u>executive</u> 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 <u>no</u> 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 <u>surplus</u> to the executive of $97,773.84.

The misallocation of economic resources from the physical impairment system would be huge.

A Memorandum to the Blue Ribbon Commission
on Workers' Compensation

by Peter S. Barth

Introduction.

During my testimony before the Blue Ribbon Commission on June 23, 1992, I was asked to prepare a brief outline of my views on an appropriate system for permanent partial disability benefits in Maine. In the interest of time and the patience of the Commissioners, it was suggested that this outline be kept brief. I am pleased to have been asked to elaborate on [illegible] views. In complying with the need for brevity, my aim is to give you a coherent picture of an alternative system [illegible] your current one. The format of the presentation is designed to accomplish that.

General Framework.

My proposed approach to permanent partial disability benefits builds on the system that already exists in Maine. Possibly, it may even duplicate an approach used in Maine in earlier years. It bears a strong resemblance to approaches found in a few other states such as Texas and Connecticut.

At the time that a worker is found to have reached maximum medical improvement, the worker would be given an impairment rating. Ideally, the rating would be made by a physician that is an expert in making such evaluations, and that I believe should be on the staff of the Commission. Alternatively, the rating could be made by a treating doctor, with neutral experts engaged only when a dispute occurs over the rating. Where disputes over the rating are small, differences of 5 points or less for example, the use of

neutrals could be eliminated. There are numerous issues that arise when neutrals are to be involved. While some of them are minor, others can have a substantial impact on the effectiveness of the approach.

A variety of formulas can link a medically determined impairment rating to the impairment benefit to be paid. There 's no ideal or pure formula. The current approach is a progressive one with increasing benefit rates for more seve impairments. Many states have lower effective PPD benefits than their total disability benefits, as is generally the case in Maine. Only a handful, however, pay benefits that do not vary with the wage as in Maine.

In my model, most workers with permanent impai[illegible] would receive only the impairment benefit "Supplemental income awards" would be paid only in exceptional cases, only when the impairment benefit period had expired, and only for limited periods of time between a review of the circumstances by a commissioner (or a select panel that evaluated only this issue).

Questions and Answers.

1. How does the above approach differ from the current one?

It would differ in several ways. The essential one is that for almost all permanent impaired workers, their benefits would expire when their impairment benefits ended.

2. Would this approach save on workers' compensation costs?

Clearly, this alternate approach could result in system savings, but it need not. Impairment based benefits can be expensive or inexpensive depending upon what the legislation calls for and how it is administered. Ultimately, these costs will depend upon the size of weekly benefits, the average length of time for which benefits are awarded, the frequency of utilization of the benefit, and the transactions costs. Clearly, the aim is to reduce wage loss benefit costs though not to eliminate them entirely.

3. Would this approach be fair to workers?

There are several answers to this. First, were the state to raise the impairment benefit level, as a tradeoff for generally eliminating wage loss, some injured workers would find themselves better off than under the existing law. Second, most states provide "scheduled benefits" and only those benefits for many categories of injuries. My recommended approach would be fairer in the sense that wage loss benefits would not be entirely precluded, once the scheduled benefit has been paid.

4. What are the advantages of the proposal?

First, the potential cost savings cannot be overlooked. Second, an impairment system is a more objective one, potentially, thereby reducing the need for delay and contention. The system's resources need not be routinely drained by litigation.

5. Is an impairment approach litigation free?

Obviously, the parties may still contend with each other over compensabiltiy, average earnings, MMI, ot [illegible] they as now. They may also fight over impairment ratings though [illegible] are means to reduce the frequency of that. Maine already does some of this, by requiring that ratings of impairment [illegible] ed to the AMA or Orthopaedic Guides. Clearly, this [illegible] be extended. The use of agency medical staff and/or neutral doctors will do that.

6. What would impairment benefits be?

The legislature can schedule losses at any levels that it chooses. The impairment value today in Maine for the loss of a hand is $36,780. In Connecticut, for a higher paid worker, a hand is valued at $186,000, while in Indiana it was worth $24,000 (1991) and $294,000 under F.E.C.A. Clearly, a schedule allows considerable variability.

7. When would impairment benefits end?

Benefits to workers would be paid so that more severe impairments would result in benefits for longer periods of time. Only when those weekly benefits ended would a supplemental income award be potentially payable. While the worker was receiving impairment benefits, the worker could resume or continue to work with no reduction in the impairment benefit.

8. Where is the approach vulnerable?

Aside from the potential for the battleground to switch from evaluating wage loss to evaluating impairment, approach can be subverted if supplemental income awards routinely paid, either directly or indirectly via [illegible] settlement values. The key is to sort out those cases where an income award is genuinely warranted from [illegible] The legislation can establish screens and criteria that would help to assure [illegible]'s. For example, just as Social Security Disability Insurance requires that a serious impairment exists, legislature could preclude paying these awards to workers with minor levels of impairment.

9. When would the supplemental income award end?

The legislation could choose to place a limit on these benefits short of lifetime duration. It could set an arbitrary limit, e.g., 250 weeks, it could terminate them at a certain age, e.g., the normal retirement age, and/or it could rule out any benefit if the worker has not received it for some period, e.g., 2 years without the award eliminates a future entitlement.

10. How large would a weekly supplemental income award be?

The award could be a fixed amount or it could vary with previous earnings of the worker. The only aspect of it that must be true is that it cannot be larger than the level of the weekly impairment benefit.

11. Is a supplemental income award given once and for all to a worker?

Decidedly not. The Commission would review entitle ments periodically with a view to encouraging a return work as quickly as possible. Reviews at 6 months inter seem reasonable.

What of C and Rs?

This system and an, other permanent partial sys have a greater chance for success where lump sum are not permitted. (This avoids the issue of such se in disputes over compensability.) In my testimony I spoke about the destructive effects that these lump sum settlements bring. The underlying system described earlier can coexist with the use of C and Rs but all approaches will benefit if they are available only rarely, if ever.

Can insurers get the finality they seek without lump sum settlements?

In most cases, probably not, but insurers will have to learn to live with this. The opportunity to get a supplemental income award could be ended after 2 years of no use, as noted earlier. In most cases benefits will end at the expiration of the impairment benefit.

14. In the absence of wage loss, are there still incentives in place for an employer to rehire an injured worker?

First, it must be acknowledged that there is no hard evidence of the degree to which the current system provides an

incentive either for employers to rehire, or for workers t return to their previous employment. Second, the Americans with Disabilities Act will change existing incentives, though no one knows how these will materialize. Third, the supplemental income awards will exist and could affect employer decision-making.

Weak argument

May 28, 1991

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Ph.D. 1965 University of Michigan

PROFESSIONAL SOCIETIES: American Economics Association, Industrial Relations Research Association

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Swedish Institute Fellow, 1988
Brookings Institution Economics Policy Fellowship, 1970-71
National Distillers Corp. Policy Fellow, 1976-77
German Marshall Fund Fellow, 1976

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Distinguished Service Award, Connecticut Joint Council on Economic Education 1982

RESEARCH INTERESTS: Workers' Compensation, Manpower, Labor Markets

EXPERIENCE:

Sept. 1973 - Present, Professor, Department of Economics, University of Connecticut. Department Head 1973-1978, 1984-1985.

July, 1972 - Aug. 1973, Director, Office of Research, Office of the Assistant Secretary for Policy, Evaluation and Research, U.S. Department of Labor, Washington, D.C.

June, 1971 - July 1972, Executive Director, National Commission on State Workmen's Compensation Laws, Presidential Commission, Washington, D.C.

July, 1970 - July 1971, Brookings Institution Economic Policy Fellow, U.S. Department of Labor (On leave from Ohio State University)

1969- 1971 - Associate Professor of Economics, Ohio State University

1968 - Visiting Assistant Professor of Industrial Relations, The Graduate School of Business, University of Chicago

1965- 1970 - Research Associate, Center for Human Resource Research, Ohio State University
1965- 1968 - Assistant Professor of Economics, Ohio State University

OTHER ACTIVITIES:

Chair, (Connecticut) Blue Ribbon Commission on Fair Wages, 1990-91.
Consultant, U.S. General Accounting Office, 1986-88.
Consultant, Peat Marwick Mitchell & Co., 1987.
Conference Organizer, "Workers' Compensation: The Changing Character of State Systems", Storrs, CT., April 30-May 1, 1987.
Principal Investigator, "A Follow-up Study of Adult Terminees under JTPA in Connecticut", Annual Contracts with Connecticut Department of Labor, 1986-1991.
Member, National Advisory Council, The Media Institute, 1982 to 1987.
Coordinator, Conference on Research on Workers' Compensation, Storrs, Connecticut. July 19-21, 1981
Director, Workers' Compensation Project--A contract between the University of Connecticut and the U.S. Department of Labor, 1979 to 1981
Consultant, Employment Standards Administration, U.S. Department of Labor
Consultant, Assistant Secretary for Policy, Evaluation and Research, U.S. Department of Labor. 1978 to 1981, on workers' compensation and occupational disease
Consultant, Mt. Sinai Hospital - Environmental Sciences Laboratory. 1978 to 1981, on occupational disease
Member, Academic Advisory Panel on the Continuous Manpower Longitudinal Sample, U.S. Department of Labor (E.T.A.) and Westat. 1979 to 1981
Member, Faculty Advisory Council, Connecticut Board of Higher Education. 1977-1979
Member, Advisory Committee to National Academy of Sciences, National Research Council. 1974-75
Grants Review Panel (One of five members), The Office of Manpower Research, The Manpower Administration. Oct. 1968-July 1972
Lecturer, International Manpower Institute, U.S. Department of Labor. Summer, 1969
Lecturer, Human Resources Institute for Latin America, Columbus, Ohio. 1967
Lecturer, Human Resource Planning Seminar (for AID/Latin America, personnel), Columbus, Ohio. 1967
Advisor, Human Resource Planning, to USAID and the Government of Bolivia, Summers, 1966 and 1967, LaPaz, Bolivia
Advisor, Human Resource Planning, to USAID and the Government of Ecuador, Summer of 1967, Quito, Ecuador

BOOKS AND MONOGRAPHS:

Workers' Compensation in Texas: Administrative Inventory, Workers Compensation Research Institute, 1989, 117pp. (with R. Victor and S. Eccleston).
Administrative Inventory of Workers' Compensation in Connecticut, Workers Compensation Research Institute, 1987, 68 pp.

The Tragedy of Black Lung: Federal Compensation for Occupational Disease, W.E. Upjohn Institute for Employment Research, 1987, 292 pp.
Resolving Occupational Disease Claims: The Use of Medical Panels, Workers Compensation Research Institute, 1985, 98 pp.
Contemporary Dissertation Research on Employment and Training, Social Science Research Council, 1985, 102 pp.
Workers' Compensation and Asbestos in Ontario, A Report prepared for the Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario, Jan. 1982, 204 pp.
Compensation for Asbestos Associated Disease: A Survey of Asbestos Insulation Workers in the U.S. and Canada, Report to the U.S. Department of Labor/ASPER, Jan. 1981, 117 pp.
Workers' Compensation and Work Related Illnesses and Diseases, M.I.T. Press, 1980, 391 pp. (Awarded Clarence Kulp Memorial Prize, American Risk and Insurance Association)
Workers' Compensation and Work Related Illnesses and Diseases, (with H. Allan Hunt), Report for the Interdepartmental Workers' Compensation Task Force, Oct. 1976, 480 pp.
Human Resources in Ecuador, with S.C. Kelley et al, Center for Human Resource Research, 1973, 280 pp.
Compendium on Workmen's Compensation, Co-Author and Co-Director (with C. Arthur Williams) Government Printing Office, 1973, 317 pp.
Supplemental Studies for the National Commission on State Workmen's Compensation Laws, Director, U.S. Government Printing Office, 1973. Vol. I, 349 pp., Vol. III, 580 pp.
Basic Economics, (with M. Gisser) The International Textbook Co., 1970, 449 pp.
Ecuador: A National Plan for Economic and Human Resource Development, with Associates of the Center for Human Resource Research, OSU and the National Planning Board of Ecuador, December 1969, 350 pp. (report)

ARTICLES AND PROCEEDINGS:

"Workers' Compensation for Mental Stress Cases," Behavioral Sciences and the Law, Vol. 8, 1990, pp. 349-360.
"Special Purposes for Some Special Funds," NCCI Digest, Vol. I, No. 3, Dec. 1986, pp. 53-59.
"A Proposal for Dealing with the Compensation of Occupational Diseases", Journal of Legal Studies, XIII, Aug. 1984, 569-586.
"Recent Studies in Workers' Compensation" Proceedings of the 67th Annual Convention, International Association of Industrial Accident Boards and Commissions, Oct. 1981, pp.
"Social Security Finances, Workers' Compensation and Occupational Disease", Labor Standards Subcommittee, Committee on Education and Labor, U.S. House of Representatives, Testimony, Oct. 6, 1981.
Comment for, Studies of the National Minimum Wage Study Commission, Vol. 5, June 1981, pp. 171-172.
"Can the Compensation System Cope with Occupational Diseases?" Proceedings, National Conference on Workers' Compensation and Workplace Liability, May 1981, pp. 295-299.
"Commentary on OSHA", Economic Effects of Government-Mandated Costs, ed. Robert Lanzilotti, University of Florida Press, 1979, pp. 80-82.

"Labor Market Operations: A Review of Research", in Manpower Research and Labor Economics, Eds., Swanson and Michaelson, Sage Publications, 1979, pp. 179-242.
"Testimony on S. 3060", Hearings before the U.S. Senate Committee on Human Resources, Sept. 19, 1978, pp. 52-60.
"Occupational Cancer and Workmen's Compensation", Job Safety and Health, Vol. 5, No. 12, December 1977, pp. 20-22.
"The Proposed Lead Standard and Workers' Compensation", Testimony Presented to the U.S. Occupational Safety and Health Administration, October 1977.
"Die Entschadigung von Arbeitsunfallen - Ein Aktueller Ausblick", Die Berufsgenossenschaft, Heft 7, July 1977, pp. 309-312.
"Workers' Compensation and Occupational Disease", Testimony before The Labor Committee, U.S. Senate, June 1977.
"The Effort to Rehabilitate Workers' Compensation", American Journal on Public Health, Vol. 66, No. 6, June 1976, pp. 553-557.
"The Costs of Occupational Diseases", Proceedings of the Interdepartmental Workers' Compensation Task Force Conference, Feb. 1976, by by the Subcommittee on Labor and Public Welfare, U.S. Senate, pp. 835-859.
"Human Resources for Economic Development in Connecticut", (with H. Allan Hunt), 3rd Annual Training for Economic Development Seminar (1975), pp. 1-21.
"OSHA and Workers' Compensation: Some Thoughts on Fatalities", Spring 1975, Meetings Industrial Relations Research Association, published in Labor Law Journal, Vol. 26, No. 8, Aug. 1975, pp. 486-490.
"An Economist's View of Career Education", Cutting Edge, Journal of the Society for Educational Reconstruction, Vol.6, No. 1, Fall, 1974, pp. 9-15.
"Productivity and the Quality of the Work Environment", Alternative Futures and Environmental Quality, 1973.
Comment on: "Forecasting Connecticut's Manpower Needs to 1980", Proceedings of Regional Business and Economic Development: The New England Experience, 1973.
"On Interprogram Manpower Studies", in M. Borus, Ed., Evaluating the Impact of Manpower Programs, D. C. Heath and Company, 1972, pp. 3-13.
"Workmen's Compensation: A Lesson for No-Fault", Massachusetts Physician, Vol. 31, No. 9, September 1972.
"Discussion of 3 papers: The Production of Manpower Specialists" edited by John R. Niland, (Ithaca: NYSSILR), 1971, pp. 199-201.
"A Time Series Analysis of Layoff Rates", The Journal of Human Resources, Vol. VI, No. 4, March 1971, pp. 448-465.
"Some Measures of the Adequacy of Workmen's Compensation", Proceedings of the Industrial Relations Research Association, Twenty-fourth Annual Meeting, December 1971, pp. 332-341.
"The Minimum Wage and Teenage Unemployment", Industrial Relations Research Association, Twenty-Second Annual Meeting, December 1969, pp. 296-310.
"An Economist Looks at Welfare Programs, Bulletin of the Bureau of Business Research, Vol. XLIV, No. 10, October 1969.
"Social Security and Economic Development: A Quantitative Approach --A Comment", Industrial and Labor Relations Review, Vol. 22, No. 2, January 1969, pp. 257-259.
"Education and Economic Development", (with D. Sanders) Review of Educational Research, Vol. XXXVIII, No. 3, June 1968, pp.213-230.

"Unemployment and Labor Force Participation", Southern Economic Journal, Vol. XXXIV, No. 3, January 1968, pp. 375-382.

"Economic Change and the Labor Force in Michigan", published in Industrial Relations Research Association, 19th Annual Meeting, December 1966, pp. 365-371. Excerpt published in The Monthly Labor Review, Vol. 90, No. 3, March 1967, p. 29.

"What do Human Resource Planners Plan", Bulletin of the Bureau of Business Research, Vol. XLII, No. 4, April 1967.

"A Cross-Sectional Analysis of Labor Force Participation Rates", Industrial and Labor Relations Review, Vol. 20, No. 2, January 1967, pp. 234-249.

SHORT REPORTS

Follow-up Study of JTPA Terminees in Connecticut, A Report to the Job Training Partnership Act Administrator, Connecticut Department of Labor, January 1988, 63 pp.

On the Use of Impartial Medical Experts in Evaluating Permanent Partial Disability in Workers' Compensation in California, A Report to the California Workers' Compensation Institute, August 1987, 42 pp.

Workers' Compensation for Occupational Disease in New York State, A Report to the Temporary State Commission on Workers'Compensation and Disability Benefits, Dec. 1985, 45 pp.

On Wage Premiums for Risks of Asbestos Workers, A Report to ASPER, U.S. Department of Labor, March 1981, 17 pp.

Resolving Disputes in Workers' Compensation Cases: The Use of Medical Review Panels in Selected Canadian Provinces, A Report Submitted to ASPER, U.S. Department of Labor, Nov. 1980, 47 pp.

Four Reports on "Implementing the Youth Employment Demonstration Projects Act" for the National Council on Employment Policy, From 1977-1979.

"Benefits Under the Federal Employees Compensation Act", Report prepared for the Employment Standards Administration, U.S. Department of Labor, August, 1977, 33 pp.

"Implementing a Model Data System in Workers' Compensation", A Report prepared for Rutgers University and the U.S. Interdepartmental Task Force on Workers' Compensation, 1975, 20 pp.

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE
04333

JOHN R. MCKERNAN, JR.
GOVERNOR

FAX: (207) 289-1034
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OFFICE OF GOVERNOR MCKERNAN
TELECOPIER INFORMATION FORM:

SENT TO: Michelle Parker

FROM: Abby Harkins

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COMMENTS:

Michelle — This is the cover letter.
Call me if you need the rest.
Phone # for Don Carey
is — # 775-5621

A

If this page does not transmit properly, please contact the Governor's Office as soon as possible. We will be happy to forward another copy.
To contact the office directly, please dial (207) 289-3531.

July 3, 1992

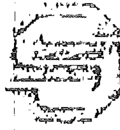
Mr. William D. Hathway
5706 Weberly Way
McLean, VA 22101

Dear Mr. Hathway:

At the direction of the members of the Maine Workers Compensation Residual Market Pool ("Pool"), I am writing to you in my capacity as Chair of the Board of Governors ("Board") in order to inform the Blue Ribbon Commission of the actions taken by the Board in response to the current financial status of the Pool and, in particular, the actions taken to temporarily bridge the current cash needs of the pool.

Attached for your reference are copies of the Committee Report of a Committee appointed by the Board to consider various options available to the Board to address cash deficits under Chapter 440 of the Maine Insurance Regulations. Also attached is a copy of the April 6, 1992 Circular to Member Companies of the Maine Workers Compensation Residual Market Pool, distributed by the National Council on Compensation Insurance ("NCCI"), which is the designated Plan Manager of the Maine residual market. This Circular reflects operating results and cash positions for each policy year and all policy years combined. The exhibits for each policy year and the combined policy year reflect both the results for the fourth quarter of 1991 and the cumulative results through December 31, 1991.

The immediate financial difficulty relates to the 1988 policy year. The last line of the cumulative policy year 1988 report reflects a cash balance at December 31, 1991 of $1,496,212.57 while the fourth quarter report for 1991 reflects a negative cash outflow of $8,730,163.66. With a similar cash outflow during the first quarter of 1992, the 1988 policy year went into a cash deficit position. Simply stated, the Pool has expended in excess of $8 million dollars in cash which, technically, it does not have available with which to pay costs for claims incurred in 1988. On an aggregate basis, the Pool reflects an inception-to-date net operating loss of $574,271,633.15. Assuming that the full value of loss reserves are ultimately paid, this is the additional amount of funds that will be needed by the Pool to settle claims.



At its meeting of June 29 the Board of Governors approved motions that accepted the Committee Report and adopted part of the Committee recommendations. The Board directed NCCI to utilize premium and income received by the Pool for 1989 and subsequent policy years to meet cash deficits for policy year 1988. The Board authorized and directed NCCI to utilize such funds from 1989 and subsequent policy years to meet cash deficits of the Pool through the settlement of Third Quarter 1992 Pool results, which will likely occur in December, 1992. The Board of Governors established a rate of return on the borrowed funds equal to the rate of return of Pool investments over the same period. This action is only a temporary solution to the looming problem. The magnitude of this real cash problem is contested, as you know; however, the size of the impending deficit is generally agreed to be very large and will be a punishing blow to the employers of the State of Maine should no allowance for deficit correction be contained within the recommendations by the Blue Ribbon Commission.

The Board acted to utilize Pool funds related to 1989 and subsequent policy years considering the advice received from the Department of the Attorney General, dated June 25, 1992 and included with the attached Committee Report. However, legal counsel to the Plan Manager has advised against the action taken by the Board to utilize funds allocable to 1989 and subsequent years.

The board requests, via this letter, that the Blue Ribbon Commission become better informed of this situation and include consideration of the severe economic impact it will have on the State of Maine should the repayment of the majority of the deficit simply be placed on the shoulders of the employers and remaining servicing carriers which comprise the Residual Market Pool.

If you have any questions regarding these matters, please contact me.

Very truly yours,

Mitchell P. Sammons, Chair
Board of Governors
Maine Workers Compensation Residual Market Pool

MPS/jan
encls

cc: Blue Ribbon Commission
Mr. Richard Dalbeck
Mr. Emilien Levesque
Mr. Harvey Picker

REF:LX2:BLURIB.LTR

Acadia Insurance

July 7, 1992

Blue Ribbon Workers' Compensation Commission
c/o Michelle E. Bushey
University of Maine School of Law
Portland, Maine 04103

Dear Commissioners:

On June 19th I testified before your Commission together with Judy Plummer, Acadia's Director of Marketing and Rick Greene, our General Counsel. I emphasized the need for new measures to change the culture of conflict into one of cooperation between employer and employee to achieve their common goal of return to appropriate work as quickly as possible.

At the invitation of the Commission, we would like to offer a number of specific proposals for your consideration.

1. Source of the weekly benefit. The law should allow and encourage that weekly payments be made from the employer's office (either in person or by mail) rather than from the insurance company. The objective is to make the employee continue to feel a part of the organization and to encourage face-to-face discussion about return to work. To speed up the early payments, employers could make such payments directly and be reimbursed later by the insurance company; this would require close communication between adjuster and employer to insure that correct amounts are paid.

2. Ongoing Employer-Employee Communication. Workers' compensation disputes often wreak irreparable havoc upon the employment relationship because once a petition is filed, employers and employees believe (or are advised) that they should no longer speak directly with each other. The law should clearly state that during such times, employers and employees may and are expected to continue speaking with each other about return to work and other personnel matters. A clear policy should be

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established strongly urging employers to maintain contact with employees who are out of work.

3. Repeal the Early Pay System. The Early Pay System (39 M.R.S.A. §51-B) and in particular Notices of Controversy (NOC) have failed to achieve their intended purpose of speeding up payments. Most claims that are controverted are eventually paid voluntarily yet the NOC sends a message to the contrary and therefore encourages early litigation. If Early Pay System is eliminated, employees should have another means of knowing when their claim is being denied and of getting prompt action, and this could perhaps be handled by a well staffed "800" number for employees to call to ask for assistance.

4. Returning The Employee To Work. Section 66-A of the Workers' Compensation Act requires, in theory, that employers reinstate their employees as soon as possible after injury. This policy objective is extremely important, but the statute has failed because litigation has to be filed to obtain an order requiring an employee to return to work or requiring an employer to re-hire. The litigation tends to destroy the employment relationship in its effort to save it. Section 66-A should be repealed. In its place, we favor a less confrontational means of urging and facilitating reinstatement of injured employees.

5. Enforce Anti-Discrimination Laws. The Workers' Compensation Commission and the Maine Human Rights Commission should be encouraged to more vigorously enforce existing laws prohibiting discrimination in the hiring of persons with injury disabilities. At the same time, an employer-employee council (such as Michigan's) should directly address the reasons why many employers perceive that injured employees are poor risks. The council should operate at or near the CEO level. If more is needed, the costs of coverage should be made to substantially rise upon a finding that an employer improperly failed to rehire.

6. Responsibility For Non-Work-Related Injuries. Much of the discontent among employers can be traced to the extraordinary expansion of the concept of compensability. Two examples will illustrate this:

> An employee with a long-term history of back pain will obtain benefits for which the employer is entirely responsible if lifting at work causes a mild exacerbation as long as symptoms are just slightly worse (no matter how slightly) than before;

> An employee who has returned to work following a healed back injury will receive total benefits for which the employer is entirely responsible if there is a subsequent out-of-work car accident as long as the work-injured back remains symptomatic, no matter how slightly.

In both cases, the fact that the work-injury symptoms by themselves would not be disabling is of no consequence. The culture of entitlement to benefits in such cases has become ingrained and will be difficult to shake, even though there seems to be general agreement that such results are wrong.

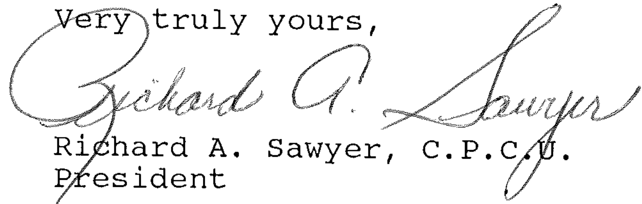
In the case of pre-existing conditions, the law should limit benefit entitlement to the period of time during which the average non-work exacerbation would take to heal. In the case of subsequent injuries, the employer should no longer be responsible for re-injuries if the work-injury has been healed for a substantial period of time, such as a year or more.

7. Service Excellence. Prompt payment in theory is encouraged or coerced by the Early Pay System, penalties, and oversight of servicing carriers in the residual market. The marketplace could serve this goal much better. Acadia would welcome the opportunity to compete on the basis of excellence in service and could do so if there were a means of publicizing performance reviews. A mechanism like the Michigan employer/employee committee, should be established to receive and disseminate to employers feedback from employees and employers (e.g. "you guys were taken for a ride by this fraud", or "you waited way too long to pay this valuable employee", or even, "thanks, you did a great job").

8. Open Competition. Acadia strongly believes that Maine employers will benefit greatly from the experience and entrepreneurial motivation of the private insurance market once artificial constraints are removed. De-regulation of the workers' compensation insurance market in Maine can have positive results, but only if the industry has confidence in the long-term stability of the rules upon which underwriting assumptions are based. This means elimination of looming future deficit assessments of unpredictable size in the residual market, and it means that the Legislature must reliably demonstrate that whatever system is adopted will be left in place for a long time without significant change.

We would be very pleased to contribute comments on any additional topics that you may request.

Very truly yours,



Richard A. Sawyer, C.P.C.U.
President

cc: Governor John R. McKernan, Jr.
President Charles P. Pray
Speaker John L. Martin
Superintendent Brian Atchinson
Senator Judy Kany
Representative Elizabeth Mitchell
Representative Joseph Carleton, Jr.
Representative Peter Hastings

Acadia Insurance

July 7, 1992

Blue Ribbon Workers' Compensation Commission
c/o Michelle E. Bushey
University of Maine School of Law
Portland, Maine 04103

Dear Commissioners:

On June 19th I testified before your Commission together with Judy Plummer, Acadia's Director of Marketing and Rick Greene, our General Counsel. I emphasized the need for new measures to change the culture of conflict into one of cooperation between employer and employee to achieve their common goal of return to appropriate work as quickly as possible.

At the invitation of the Commission, we would like to offer a number of specific proposals for your consideration.

1. Source of the weekly benefit. The law should allow and encourage that weekly payments be made from the employer's office (either in person or by mail) rather than from the insurance company. The objective is to make the employee continue to feel a part of the organization and to encourage face-to-face discussion about return to work. To speed up the early payments, employers could make such payments directly and be reimbursed later by the insurance company; this would require close communication between adjuster and employer to insure that correct amounts are paid.

2. Ongoing Employer-Employee Communication. Workers' compensation disputes often wreak irreparable havoc upon the employment relationship because once a petition is filed, employers and employees believe (or are advised) that they should no longer speak directly with each other. The law should clearly state that during such times, employers and employees may and are expected to continue speaking with each other about return to work and other personnel matters. A clear policy should be

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established strongly urging employers to maintain contact with employees who are out of work.

3. Repeal the Early Pay System. The Early Pay System (39 M.R.S.A. §51-B) and in particular Notices of Controversy (NOC) have failed to achieve their intended purpose of speeding up payments. Most claims that are controverted are eventually paid voluntarily yet the NOC sends a message to the contrary and therefore encourages early litigation. If Early Pay System is eliminated, employees should have another means of knowing when their claim is being denied and of getting prompt action, and this could perhaps be handled by a well staffed "800" number for employees to call to ask for assistance.

4. Returning The Employee To Work. Section 66-A of the Workers' Compensation Act requires, in theory, that employers reinstate their employees as soon as possible after injury. This policy objective is extremely important, but the statute has failed because litigation has to be filed to obtain an order requiring an employee to return to work or requiring an employer to re-hire. The litigation tends to destroy the employment relationship in its effort to save it. Section 66-A should be repealed. In its place, we favor a less confrontational means of urging and facilitating reinstatement of injured employees.

5. Enforce Anti-Discrimination Laws. The Workers' Compensation Commission and the Maine Human Rights Commission should be encouraged to more vigorously enforce existing laws prohibiting discrimination in the hiring of persons with injury disabilities. At the same time, an employer-employee council (such as Michigan's) should directly address the reasons why many employers perceive that injured employees are poor risks. The council should operate at or near the CEO level. If more is needed, the costs of coverage should be made to substantially rise upon a finding that an employer improperly failed to rehire.

6. Responsibility For Non-Work-Related Injuries. Much of the discontent among employers can be traced to the extraordinary expansion of the concept of compensability. Two examples will illustrate this:

> An employee with a long-term history of back pain will obtain benefits for which the employer is entirely responsible if lifting at work causes a mild exacerbation as long as symptoms are just slightly worse (no matter how slightly) than before;

> An employee who has returned to work following a healed back injury will receive total benefits for which the employer is entirely responsible if there is a subsequent out-of-work car accident as long as the work-injured back remains symptomatic, no matter how slightly.

In both cases, the fact that the work-injury symptoms by themselves would not be disabling is of no consequence. The culture of entitlement to benefits in such cases has become ingrained and will be difficult to shake, even though there seems to be general agreement that such results are wrong.

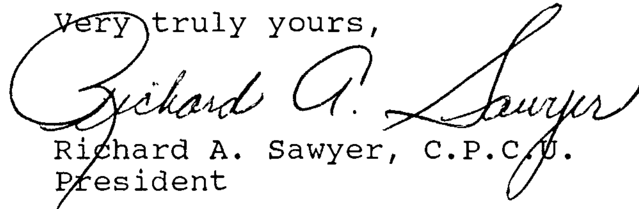
In the case of pre-existing conditions, the law should limit benefit entitlement to the period of time during which the average non-work exacerbation would take to heal. In the case of subsequent injuries, the employer should no longer be responsible for re-injuries if the work-injury has been healed for a substantial period of time, such as a year or more.

7. Service Excellence. Prompt payment in theory is encouraged or coerced by the Early Pay System, penalties, and oversight of servicing carriers in the residual market. The marketplace could serve this goal much better. Acadia would welcome the opportunity to compete on the basis of excellence in service and could do so if there were a means of publicizing performance reviews. A mechanism like the Michigan employer/employee committee, should be established to receive and disseminate to employers feedback from employees and employers (e.g. "you guys were taken for a ride by this fraud", or "you waited way too long to pay this valuable employee", or even, "thanks, you did a great job").

8. Open Competition. Acadia strongly believes that Maine employers will benefit greatly from the experience and entrepreneurial motivation of the private insurance market once artificial constraints are removed. De-regulation of the workers' compensation insurance market in Maine can have positive results, but only if the industry has confidence in the long-term stability of the rules upon which underwriting assumptions are based. This means elimination of looming future deficit assessments of unpredictable size in the residual market, and it means that the Legislature must reliably demonstrate that whatever system is adopted will be left in place for a long time without significant change.

We would be very pleased to contribute comments on any additional topics that you may request.

Very truly yours,



Richard A. Sawyer, C.P.C.U.
President

cc: Governor John R. McKernan, Jr.
President Charles P. Pray
Speaker John L. Martin
Superintendent Brian Atchinson
Senator Judy Kany
Representative Elizabeth Mitchell
Representative Joseph Carleton, Jr.
Representative Peter Hastings

<u>MEMORANDUM</u>

TO: Interested Persons

FROM: Joe McGonigle

DATE: July 7, 1992

RE: REPORT ON RESTORING THE SOCIAL CONTRACT

Enclosed please find the report on Restoring the Social Contract which is being presented by Senator Harry Vose. The final 2 pages of this report were inadvertently left out when they were mailed on July 2, 1992.

RESTORING THE SOCIAL CONTRACT:

Shared Responsibility and Workers' Compensation Reform

Presented by
Senator Harry Vose

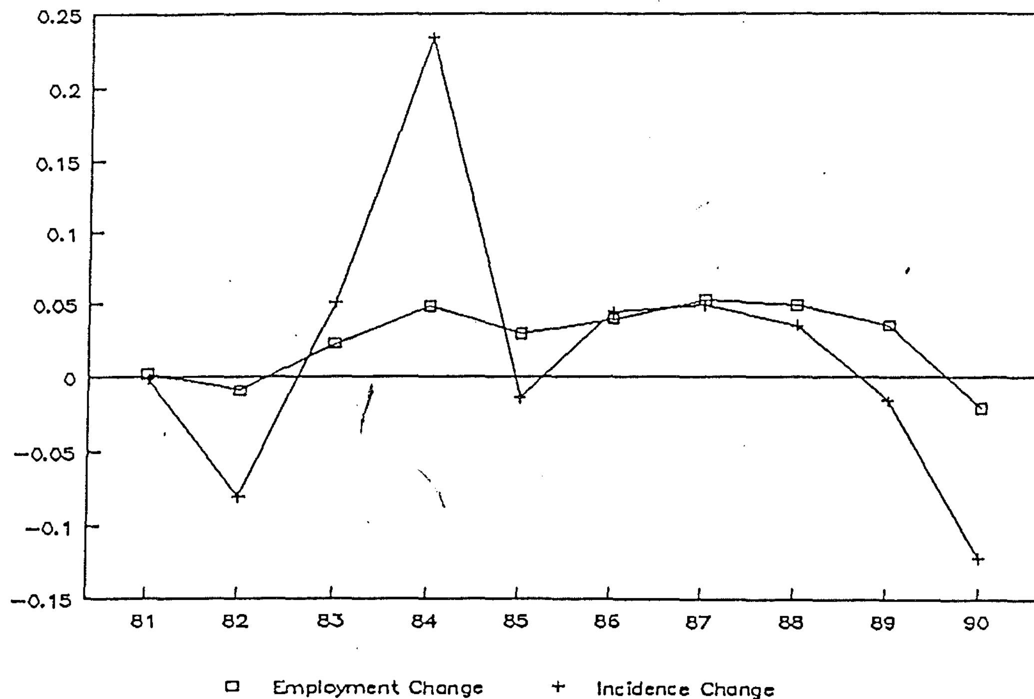
July 2, 1992

Introduction

Maine's Workers' Compensation system insures more than 500,000 employees earning more than $10.1-billion in wages, at an annual cost to employers of approximately $500-million -- about 5-percent of payroll and less than 1-percent of total business costs.

Some 17,000 Maine workers are injured each year, the highest workplace injury rate in the nation. These 17,000 injuries generate about $450-million worth of benefit payments -- or about $26,000 per injured worker -- to cover doctor bills, hospital costs and lost wages. On average, an injured Maine worker receives about $10,000 to replace wage losses, while medical bills absorb the remaining $16,000.

Economic Structure and Industrial Accidents



The injury rate rises and falls with total employment in the Maine economy, but rises more rapidly than the change in employment during periods of intensive hiring and falls more quickly during periods of recession. This close correlation offers an important clue to the underlying dynamics driving the extraordinary injury rates and costs of workers' comp in Maine.

Maine firms, dependent on older technology and aging equipment, must rely on new hires, additional shifts, deferred maintenance and faster operating speeds to increase production during times of economic prosperity. Injury rates rise among

inexperienced new workers and among permanent employees working double shifts and exhausting, high-speed schedules. As production rates slow with the onset of recession, employment declines, design limits are reimposed on equipment speeds and maintanence schedules, and injury rates fall.

Medical Costs in the Comp System

At about $3 in every $5 of benefit payments, medical costs represent the most significant component of the overall cost of workers' compensation. And while health care costs, in general, have been rising faster than the cost of other goods and services for more than a decade, medical costs within the workers' comp system nationwide have been increasing faster still.

According to the National Conference of State Legislatures, the health care industry has targeted workers' comp patients to maintain profit margins in the face of cost containment strategies imposed by federal and third-party payers. Writing in the May, 1992 edition of State Legislatures, NCSL specialist Brenda Trolin, describes the comp crisis nationwide:

> "Over the last 10 years, health care costs in the workers' compensation system have risen faster than those outside the system ... mainly because of cost shifting.
>
> "When health care costs escalated in the 1980s, insurers and the federal government implemented restrictive cost containment measures for many private insurance programs and Medicare and Medicaid. So the workers' comp system, with relatively insignificant health care costs for many years, became a target for cost shifting. Hospitals, doctors and rehabilitation therapists looked for payers without cost restrictions."

Disputes, Delays and Insurer Liability

Because a significant fraction of injury claims are routinely contested, delays average two years between the time an injury occurs and the time wages are replaced and medical bills paid. The delays, while allowing the ultimate scope of insurer liability to be defined with sufficient clarity for actuarial control, contribute unacceptably to the impoverishment of injured employees and to the introduction of an adversarial atmosphere into a system that was established as a social contract confering mutual benefits to employers and employees.

The objective of rapid return to work, which limits indemnity costs to the employer and restores full income to the employee, is the first casulty in the adversarial atmosphere of contested

claims. In the presence of unresolved claims, unpaid medical bills and depleted personal savings, employees have little incentive to return to work at the risk of undercutting their claim and size of eventual settlement. And as the length of the dispute increases, the financial disincentives of return to work increase as well.

The introduction of an adversarial relationship between employer and employee also undercuts the opportunity for mutual cooperation in controlling medical costs, when alternative diagnoses by employee and insurer physicians represent the principal basis for claims resolution, liability exposure and disability level. The incentives on both sides in an adversarial proceeding, therefore, tend to maximize the use and number of medical professionals as disputants attempt to establish and support their competing positions.

Of equal importance, where the cost shifting documented by the NCSL contributes to high medical costs, the adversarial system created by insurer-contested claims replaces the employer-employee alliance, based on rapid recovery and lower cost, with an employee-physician alliance, based on excessive testing and extended treatment.

Restoring the Social Contract

Any equitable, long-term solution to the high cost of workers' compensation must begin with the renewal of the alliance between employer and employee that served the system effectively during the 6 decades before the 1980s. Neither simplistic reductions of employee benefits nor punitive sanctions on employer finances and freedoms will restore stability to a system caught between the economic imperatives of the health care and insurance industries.

Only the replacement of the adversarial relationship between employer and employee created by insurer-contested claims with a relationship of shared responsibility for workplace safety and medical cost containment holds any realistic hope of controlling the large, societal forces driving comp costs in Maine and in the nation.

The following outline develops the skeletal structure of a shared responsibility system, applied to four key areas associated with uncontrolled Workers' Compensation costs in Maine. Two fundamental innovations constitute the irreducable core of the proposal:

A. The elimination of industry-specific rate classes and adoption of a single, "average cost" premium for all business firms. The

rationale behind this innovation is the interdependence of firms, industries and sectors in an economy, by which wages earned in one firm are spent to support wages and profit potential in another firm;

B. The adoption of a co-pay system within the firm, which allocates premium costs among employers and employees. The rationale behind this innovation is the restoration of a relationship of alliance between employer and employees aimed at controlling costs and utilization of the comp system.

1. Shared Responsibility for Safety:

* State establishes a Safe Workplace Commission composed of 7 members with expertise in Industrial Accident and Disease Prevention, Workplace Ergonomics, Technology Investment Strategy, Operations Management, and Human and Engineering Tolerance under Stress.

* Employer and employee representatives inspect each workplace and submit a consensus report on conditions, agreed remedies and timelines to Safe Workplace Commission.

* Commission certifies progress toward timely completion of agreed remedies.

* Failure to institute agreed remedies removes immunity from civil liability to injured employee.

2. Shared Responsibility for Industrial Structure

* Standardize comp premium levels at statewide average for all industries and employers.

* Maintain risk pool with higher rates only for employers that fail to receive Safe Workplace Commission certification.

* Reduce standardized premium levels over time, from the current 5-percent of payroll average, as safe workplace objectives are achieved statewide.

3. Shared Responsibility for Medical Costs

* Institute employer-employee co-pay system for workers' comp premium in order to create employee incentives for reasonable treatment levels and cost containment.

* Establish employer copayment share at 90-percent of premium and employee share at 10-percent of premium, (or 4.5-percent of payroll and 0.5-percent of payroll at current 5-percent of payroll average premium).

* Employer and employee representatives select a consensus list of mutually agreeable diagnostic physicians and treatment providers. Diagnosis of injury, need for specialist care, progress toward recovery and determination of return to work status made by consensus providers becomes binding on both parties.

* Employer, employee and consensus provider representatives establish fee schedule and reimbursement policy comparable to employer-provided health insurance or, where health benefits are not provided, to public insurance programs available to employees. Prepayment contracts may be established, with costs deducted from standardized comp premium rates.

* Fee schedules may be adjusted anually by no more than a weighted average of statewide cost of living index and CPI-medical.

4. <u>Shared Responsibility for Return to Work</u>

* Employee maintains full take-home pay and benefits, seniority rights, scheduled raises, overtime, premium pay and bonuses during disability period or until normal age of retirement. Outside income from supplemental employment, private or social insurance benefits, but excluding private investment income, must be deducted from disability payments. If disability continues to retirement age, normal pension benefits based on full normal compensation schedule and worklife replaces disability pay.

* Subject to appeal to the Workers' Compensation Commission, employer must provide and employee must accept light duty or training for appropriate alternative work assignment, including technical, professional and managerial assignments, when approved by consensus provider. Where alternative assignment entails loss in wage, disability payments must continue in the amount of the wage differential. Where alternative assignment results in a higher wage, original compensation level must be maintained until training costs are recovered.

* Unreported paid or unpaid employment, or physical recreation exceeding the limits of certified return to work status constitute evidence of fraud, appealable to

the Workers' Compensation Commission. Upon a finding of fraud, the Workers' Compensation Commission must:

A. Provide a written warning for the first offense,

B. Impose a fine, to be decucted from disability pay, for the second offense,

C. Terminate benefits and rights to participate in the system for the third offense.

* Employer-provided health and hospitalization plans must continue during disability period. Life insurance rider equal to 3 year salary must be included.

* Replace permanent total disability classification with periodic recertification of status by consensus provider. Eliminate lump sum settlement option.

Conclusion

This proposal outlines a four point approach to Workers' Compensation reform in Maine. It is based on the concept of shared responsibility for controls imposed on the major factors driving costs in the system -- Safety and Industrial Structure, Medical Care, Adversarial Claims Adjustment and Return to Work.

Key elements of the proposal include a single, statewide premium level, and premium co-payments by employers and employees. Joint labor-management safety inspections and remediation plans are required for participation in the system. Medical care providers, fee schedules and scope of treatment are subject to constraints jointly imposed by labor-management review teams. Alternative duty must be provided and accepted. Definitions and penalties for fraud are enumerated.

While objections may be raised that this Shared Responsibility approach would result in higher rates for firms in low risk industries -- restaurant rates, for example, would rise from 3.4-percent to 5-percent under an average cost premium structure -- these losses would be more than offset by significant reductions in the rates paid by virtually all of Maine's leading industries -- our state's prime employers on whose payrolls the lower-rated retail and service sectors depend for survival. Paper (11 %), Millwork (23 %), Logging (40 %), Trucking (20 %), Wood Products (12 %) and Residential Construction (12 %), which together account for more than half of Maine's production base, would benefit from rate reductions of 200 - to - 800-percent.

Although self-insurance would be eliminated in order to sufficiently broaden the average cost base, large self insurers, such as the paper industry, would benefit from lower raw materials costs as well as a reduction from the current self-insurance reserve level to the new average cost premium.

UNITED INJURED WORKERS OF MAINE

316 Center Street • Old Town, Maine • 04468
Tel. (207) 827-6212

July 7, 1992

The Hon. William Hathaway
Co-Chair, Maine Blue Ribbon Commission on Workers' Compensation
Danton Towers
207 E. Grand Ave., Apt. 6D
Old Orchard Beach, ME 04064

Dear Senator Hathaway

I am writing on behalf of the United Injured Workers of Maine to reaffirm the concern of injured workers regarding Maine's workers' compensation system.

We appreciated the opportunity to testify and stated frankly our views from our unique perspective regarding inadequacies of the current workers' compensation system and the need to improve both the workers' compensation system and reduce workplace injuries and to provide reemployment opportunities for injured workers.

We are terribly concerned that at least some of the recommendations of the Blue Ribbon Commission (and we recognize there are no recommendations at this time but only tentative discussions) which may result not in a betterment of the situation but in a drastic worsening of the situation, particularly from the perspective of Maine's injured workers.

The retroactivity of any changes, particularly the retroactivity of changes effecting benefits and eligibility, is of overwhelming personal concern to our members. Likewise, any procedural changes that prejudice the rights of our members to a fair hearing in regard to their benefits are of the utmost personal concern to our membership.

On a general basis, we are concerned with what we view as the commercial insurance carriers apparent attempt to foist upon Maine the ''worst of all worlds'' by picking and choosing between Maine, Michigan and other approaches, tending towards not the fairest approach, but indeed the most niggardly and unfair approach.

In that regard we wish to express forcefully our two overwhelming objections to Michigan: 1) the requirement that injured workers pay their own attorneys fees, which we fear will, particularly in cases that do not involve great amounts of money, result in the practical unavailability of lawyers to injured workers and 2) the provision of the arbitrary cut-off of benefits without any standards.

We prefer the protections enacted by the Maine Legislature in 1965 and carried through substantially until 1991. The Maine Legislature enacted those protections in 1965 because sad and persistent experience had shown that insurers frequently abused their power to make unilateral cut-offs.

At the very least, legislation which seeks to be fair to injured workers should have a provision to the effect that ''no benefit should be cut off or reduced except in good faith and for just cause.''

In addition to the questions of retroactivity. attorneys fees and fairness in the continued receipt of benefits. injured workers feel that the 3 critical issues for determination by the Blue Ribbon Commission are:

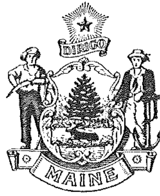
1. Removal of the arbitrary cap on partial disability of benefits.

2. A retention of the wage loss system of compensating for ongoing partial disability as opposed to the ''one size fits all'' physical impairment provision which is grossly discriminatory against manual workers – the very persons most likely to be injured.

3. Retention of current ''combined effects'' rule rather than attempting to import the predominant cause'' rule. The extended delays and litigation which would result from the change would likely be substantially greater than any cost ''savings''. Of course, fundamentally, cost savings would be achieved by unfairness, and that we are fundamentally opposed to.

Respectfully,

Ralph I. Coffman
Executive Director
United Injured Workers of Maine



John R. McKernan, Jr.
Governor

Stephen G. Ward
Public Advocate

Executive Department
PUBLIC ADVOCATE
Telephone (207) 289-2445
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July 8, 1992

Commissioner Richard Dalbeck
17 Spoondrift Lane
Cape Elizabeth, ME 04107

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

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

Commissioner Emilien Levesque
32 Burke Street
Farmingdale, ME 04344

Dear Blue Ribbon Commission Members:

At your meeting this week, you asked for assistance with a number of questions regarding the residual market. We have some thoughts we would like to offer, based on our experience in dealing with residual market problems in rate cases.

At the outset, we'd like to clarify the basis for the comments provided in this letter, noting that our experience in dealing with workers compensation ratemaking (for the voluntary as well as residual markets) dates back to 1984 and the eight successive NCCI rate cases in which we have participated since then. Additionally, we have participated in several Superior Court appeals of Bureau of Insurance orders and in numerous administrative proceedings governing requests for withdrawal from the Maine market. In each of these settings we have presented expert testimony and final recommendations to the Bureau (or the courst) in response to a NCCI or carrier request. The Public Advocate's expertise in workers compensation ratemaking has developed in, and as a result of, a fully litigated and adversarial process. Our comments today should therefore be understood in the context of informed advocacy on behalf of policyholders, as is our duty under Maine law. We cannot, and do not, aspire to Olympian detachment in our analysis of the current crisis.

Having made these comments on our role in workers compensation proceedings, we can turn to specific responses to questions raised during Blue Ribbon Commission meetings.

1. Why do we need a residual market at all?

We agree that employers should be responsible for their workers' comp costs in order to provide direct incentives for cost control and to maintain a stable market. Dr. Picker asked whether this principle could be taken further by getting rid of the residual market altogether. Without a residual market, each employer would be forced to pay its full costs or go out of business.

Residual markets serve two distinct purposes. We believe that Maine's residual market problem can best be resolved by restructuring the current residual market so that these two functions are separated into two new systems.

A. Residual Market as Alternative Coverage Source

First, the residual market typically provides insurance coverage for employers who could pay their full costs, but who for other reasons cannot obtain coverage through the voluntary market or through self-insurance. Nearly 80% of Maine's residual market is made up of "Safety Pool" employers with relatively good loss experience. Even in healthy competitive markets, voluntary insurers often do not find it worthwhile to service and underwrite businesses that are small, new or unusual.

For many of those businesses, traditional forms of self-insurance will never be a viable option because of the necessarily high transaction costs (in particular, steep up-front financing requirements and a long approval process). Not all small businesses can organize or fit into traditional self-insured groups: forming workable groups is a long, complex and arduous process that can require substantial resources and ties to other businesses. Traditional self-insurance (whether individual or group) will never meet the needs of some new businesses and many small businesses that do not fit within established categories.

In other words, those businesses need a "residual market" for coverage, not to avoid high costs. The fundamental problem they face is the lack of an insurance structure geared to their particular needs. For those businesses, it is desirable to provide an alternative to the voluntary market and to self-insurance. Moreover, because it will take several years under the best of circumstances for a strong voluntary market to return to Maine, an alternative insurance source is necessary for virtually all Maine businesses who are not currently self-insured.

We believe the system of Mutual Pools suggested by Senator Kany and Representative Mitchell would provide the best alternative insurance source for those employers. The Mutual Pools avoid the financial and organizational barriers of traditional self-insurance while offering some of the cost-reduction opportunities of the self-insurance market.

Maine's unique residual market situation makes our problems quite different from other states, where residual market rates may be artificially depressed relative to the voluntary market. The consensus of

artificially depressed relative to the voluntary market. The consensus of parties in recent rate cases has been that the Maine Safety Pool actually may have lower costs than the voluntary market (based on comparable loss costs and lower capital costs) -- even though rates are the same for both markets. Indeed, Maine rates have been artificially set at higher than actual costs in the Safety Pool portion of the residual market explicitly to prevent competition with the voluntary market.

Nonetheless, rate shortfalls appear to be developing in the residual market because costs are rising much faster than rate case evidence predicted.[1] What is lacking in the current Safety Pool mechanism is a management structure that encourages cost control. By adopting some of the management structures from the group self-insurers who have accumulated surpluses with comparable rates and risks, we believe the Mutual Pools have potential to replace the Safety Pool portion of the current "residual market" with a healthy, self-supporting and competitive insurance entity at lower cost than the current system. The remaining "residual market" would then be a small and manageable high risk pool.

B. Residual Market for High Risk Employers

The second reason for a residual market is to spread the risk of insuring employers who face unusually high losses. A little over 20% of the Maine residual market consists of employers in this "bad experience" group, called the "Accident Prevention Account." This is the portion of the residual market that raises concerns about allowing employers to avoid responsibility for high costs.

Some employers develop bad experience because of injuries that are completely outside of their control. For example, an employee may be hit by a drunk driver while driving on the job. Some catastrophic occupational injuries and diseases may be unforeseeable even with the most sophisticated safety programs. By providing a mechanism for spreading extreme and

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[1]Two explanations have been offered for these apparent cost overruns. The NCCI believes that the 1987 benefit reforms have not had the savings impact anticipated. The 1991 law changes were designed, in part, to address this potential problem. Another explanation for the problem of escalating residual market costs is inadequate management and poor servicing, particularly in the areas of safety and returning injured employees to work. Many self-insurers have been able to use the 1987 law changes to achieve significant savings. The fact that some self-insurers have moved out of the residual market and accumulated surpluses after 1988 based on NCCI rates suggests that they may even have achieved greater than expected savings from the 1987 law reforms. The 1991 law reforms should add to this savings for employers able to self insure, although the self-insureds have reduced their claims frequency to such a degree that the impact of the 1991 law changes is not yet discernable.

unavoidable risks broadly across the market, a "high risk" residual market pool can offer stability and protection for all well-run businesses.

Other employers develop bad experience because of failure to adopt safety measures or insufficient loss control. We agree that incentives need to be built into the system so that those high risk employers cannot simply avoid responsibility for maintaining a safe workplace and getting injured employees back on the job. Nonetheless, the state might benefit from giving those employers the opportunity to correct their bad experience rather than immediately forcing them out of business.

A "high cost pool" for employers with bad experience could be designed and managed as a structured and intensive program for improved safety and back-to-work efforts so that employers could quickly return to other markets (Mutual Pools, self-insurance or voluntary). Any employer failing to comply with a strict plan for reducing its losses after a period of time would be denied coverage and forced to go out of business.

The high risk pool should place the primary responsibility for covering costs on employers in that pool, with a system of retroactive surcharges to cover any deficits. Yet some form of back-up guarantee fund or excess (aggregate) insurance funded by the entire market is probably necessary to ensure financial solvency of the high risk pool in the event it faces extreme unforeseeable losses. Because this pool would contain only the truly high risk employers -- most of whom would quickly move out -- we think that this pool would remain small enough so that a portion of the costs of ensuring its solvency could appropriately be spread across the whole market without overburdening it. The question of who should bear the risk of this high risk pool has been a matter of some debate.

We are concerned that if the costs of protecting high risk pool solvency are shared only by the proposed Mutual Pools, those Mutual Pool employers -- primarily small businesses -- would end up subsidizing the higher risk employers. That burden could drive up costs in the Mutual Pools, threatening that market's ability to provide stable and competitive coverage. Because Maine's smallest businesses are likely to remain most vulnerable and least able to obtain self-insurance or voluntary market coverage, we are concerned about a system that would place the heaviest burden on those employers.

Above all, the focus of residual market insurance must be changed from merely risk-spreading to a thorough program of risk-reducing. In a meeting with Senator Kany and Dick Johnson from the Bureau of Insurance, we heard some suggestions from third-party administrators in the self-insurance market for improved servicing standards. They explained that improved servicing standards could decrease litigation and improve safety so that employers in a Mutual Pool and High Risk Pool might achieve some of the

cost reductions enjoyed by many self-insureds.[2]

2. Difference Between Mutual Pools and Traditional Group Self-Insurance

Commissioner Dalbeck raised some questions about the differences between the proposed Mutual Pools and traditional self-insurance groups. In order to provide a competitive alternative coverage source, the proposed Mutual Pools must be a unique system distinct from the self-insurance system.

First, the proposed Mutual Pools are financed differently than self-insurance. Self-insurance (individual and group) typically requires large trusts fully funded up-front as a solvency protection. That requirement creates a financial barrier for many employers. The proposed Mutual Pools would not require the same level of up-front funding because they would be large enough (at least 1,000 employers each, to start) and diverse enough to cover any deficits through employer retroactive surcharges, if necessary. A guarantee fund financed through a much smaller up-front assessment should be sufficient to protect the Mutual Pools from insolvency. In addition, the Bureau of Insurance should closely regulate each Pool to ensure it remains large enough be self-supporting.

This financing system also differs from a traditional "Mutual Fund" because it does not require full up-front capitalization, but instead relies in part on the ability to surcharge a large body of employers retroactively in the event of a deficit. Of course, the Mutual Pools should always be fully funded and self-supporting in terms of ongoing rates, and (unlike the current pool) they should be aggressively managed to control costs.

Second, the Mutual Pools must have an "obligation to serve" all employers who satisfy the requirements for good experience (not in the high risk pool). In order to prevent market collapse, Maine needs such an alternative coverage source open to small businesses and others for whom self-insurance and voluntary insurance are not practical. In contrast, the self-insurance market (like the voluntary market) is free to pick and choose among employers.

To avoid cream-skimming and adverse selection, the Mutual Pools must not allow movement from one Pool to another. Instead, employers must be assigned to a Pool that will function over the long run as a healthy, competitive insurance source. Employers should move out only to go into

[2]After this discussion, we have decided that tying servicing fees to loss ratios in a new insurance fund (as we had suggested in our written testimony submitted to the Blue Ribbon Commission) would not work because it might create incentives to under-reserve claims. We think detailed, strictly enforced (not self-audited) servicing standards would be the best way of maintaining good servicing in the new system.

the voluntary market or the self-insurance market. Eventually, we expect the Mutual Pool system to shrink to a portion of the market comparable to the size of competitive state funds in other states.

Third, the Mutual Pools must allow public access in certain circumstances. Unlike private insurance companies or self-insurance groups, these Pools serve a quasi-public function because they must be available to cover all qualified employers.

3. Problem of Unfunded Liability under Existing Residual Market System

In response to an earlier request from Senator Hathaway, we have considered possibilities for an "opt-out" provision for employers in the residual market that would allow employers to assume liability for their individual claims remaining for prior policy years as a way of ending their liability for Fresh Start surcharges.

Servicing carriers have been paid up-front for their expenses of processing all the claims in a particular policy year, regardless of how long those claims may stay open (the long tail over which comp claims develop). Carriers typically set aside a percentage of this amount as reserves for future loss adjustment expenses -- for one carrier, about half of the 25.6% or 30% servicing fee was reserved. The servicing carriers run the risk that that amount will not be enough to cover the actual costs of servicing the claims. Employers run the risk that servicing carriers will attempt to minimize this risk and maximize servicing profits by inappropriately lump-summing claims and otherwise performing poor service.

We mentioned briefly the issue of whether an employer in the residual market might go back and buy out this "tail" from the servicing carrier. That question was prompted by the rate case testimony of Guilford Industries, a large employer that left the residual market in 1990 to become self-insured. Guilford was so frustrated by the poor servicing it had experienced from its servicing carrier in the residual market pool that it has stated it could save money by servicing the claims remaining on its 1988 and 1989 policies itself, and assuming the risk of losses for these policies directly (rather than paying a "fresh-start" surcharge).

That idea would effectively allow employers to retroactively self-insure. After considering it, we've decided that the specific language of a law allowing for retroactive self-insurance and the question of whether such a provision would be feasible is beyond the scope of our expertise. The Bureau of Insurance staff who are familiar with self-insurance requirements and procedures would be better able to discuss whether a system could be devised that would sufficiently protect claimants from insolvencies and that could fit in with existing insurance systems. An employer would have to satisfy existing self-insurance standards in order to ensure ability to pay any losses that develop. Constitutional problems might arise if the state went back and mandated changes in the terms of existing insurance contracts, so it would seem that the law would have to be structured to allow insurers to negotiate voluntarily with employers to terminate those contracts for negotiated prices.

to be employers are subsidizing bad management in the residual market, not that employers are subsidizing higher residual market costs. Employers in the residual market appear to some extent to be paying artificially high prices. In contrast, by assuming responsibility for the costs themselves, self-insured employers appear to be saving money in many cases. A key step toward solving the problem of liability for the residual market is to raise the standards of management and servicing.

Thank you for the opportunity to present our thoughts and for the opportunity to listen to the many informative meetings you have had.

Sincerely,

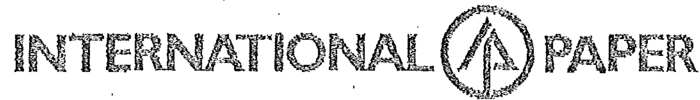
Bill Black

William C. Black
General Counsel

Martha McCluskey

Martha McCluskey
Counsel

cc: Abby Harkins, Governor's Office



PUBLIC AFFAIRS
NORTHEAST REGION

PHONE (207) 621-4217
FAX (207) 621-4280

July 8, 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:

On behalf of International Paper, I am writing to express our concern with a particular issue which has recently been discussed by the commission. I am referring to the issue of liability for injuries to employees of contractors and subcontractors. This issue has arisen in the context of discussions over Michigan's workers' compensation system. In Michigan, an employer is liable for the injuries sustained by a contractor's employees if the contractor has failed to secure his own workers' compensation coverage. Workers' Disability Compensation Act, section 171. In Maine, on the other hand, an employer is not liable under those circumstances. 39 MRSA Sec. 2(5) (A) (8).

It has been suggested that Maine adopt the Michigan approach to this issue. We strongly object to that suggestion. International Paper is a major forest landowner in Maine. Like most major landowners in Maine, we do not maintain a workforce to cut timber on these lands. That work is performed by independent logging firms. During a given year, we do business with dozens of these contractors. In the process, we also do our best to ensure that they maintain workers' compensation coverage for their employees. We do not permit any contractor to work on our land unless they first provide a certificate of insurance coverage. We do not do this because it is legally required; it is not. We do this because we believe it to be a good business practice.

Unfortunately, even this precaution would not necessarily protect the company from liability were Maine to adopt Michigan's approach. While providing some assurance, a certificate of coverage is not a guarantee of coverage. Policies, for example, may be cancelled and unless updated on a daily basis, an ostensibly current certificate may indicate coverage when none exists.

None of this, however, addresses the question as to whether it is rational

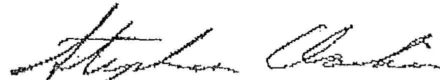
or fair to impose one employer's liability on another. It is important to remember that, with few exceptions, all employers are legally required to maintain workers' compensation coverage. In Maine, an employer's failure to comply can result in serious civil and criminal penalties as well as liability for common law damages. The same is true in Michigan. Yet Michigan takes it a step further. If the employer who violates the law is a contractor, Michigan law also penalizes the company who engaged the contractor. It does this by making him liable for injuries sustained by that contractor's employees. And that liability can be an enormous penalty, particularly for a self-insured company such as International Paper. Liability for workplace injuries can cost tens or even hundreds of thousands of dollars on a per claim basis.

While we recognize the problems associated with employers who fail to maintain coverage, we do not believe the Michigan approach is the appropriate answer. Since the problem is the result of employers violating the law, perhaps the answer lies in increased penalties or stepped-up enforcement. Or perhaps the real answer lies in reducing disincentives to obtaining coverage in the first place, that is, by reducing the staggering cost of the system. That is an objective which seems consistent with this commission's statutory responsibilities.

In either case, we do not believe the answer lies in penalizing one employer for an offense committed by another.

I appreciate the opportunity to comment on this issue. Thank you for your consideration.

Sincerely,



Stephen C. Clarkin
Regional Manager
Public Affairs

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

One City Center, P.O. Box 17537, Portland, Maine 04101 (207) 874-5000
A Member of Fleet/Norstar Financial Group

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

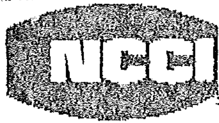
Lastly, a concern exists given the nature of how long claims can continue to be made to adequately assess the true amount of the deficit. As I understand, an actuarial analysis has been completed with regard to the 1988 plan year and that the ultimate deficit could be as large as $188 million. Certainly, 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



National Council on Compensation Insurance

Memorandum

Residual Market Finance

April 6, 1992 RMF-92-11

Contact: Clifford G. Merritt, Director 407-997-4296
Technical Contact: Pat Muoio, Manager, Residual Marketing Accounting 407-997-4304

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.

750 Park of Commerce Drive, Boca Raton, Florida 33487 • Telephone: 407-997-1000 CIR/3156-1

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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 [illegible]
GROSS PREMIUMS WRITTEN (LESS RETURNS)	(136,721.94)	(1,618.34)	1,044,443.83	906,[illegible]
UNEARNED PREMIUMS - PREVIOUS	0.00	0.00	0.00	
TOTAL	($136,721.94)	($1,618.34)	$1,044,443.83	$906,[illegible]
UNEARNED PREMIUMS - CURRENT	0.00	0.00	0.00	
NET PREMIUMS EARNED	($136,721.94)	($1,618.34)	$1,044,443.83	$906,[illegible]
LOSSES PAID	8,200,341.00	1,512,265.81	0.00	9,712,[illegible]
KNOWN OUTSTANDING LOSSES - CURRENT	66,560,906.38	10,643,956.33	0.00	77,204,[illegible]
I.B.N.R. LOSS RESERVES - CURRENT	97,594,386.00	15,606,614.00	0.00	113,201,[illegible]
TOTAL	$172,355,633.38	$27,762,836.14	$0.00	$200,118,[illegible]
KNOWN OUTSTANDING LOSSES - PREVIOUS	71,953,999.08	11,937,721.73	0.00	83,89[illegible]
I.B.N.R. LOSS RESERVES - PREVIOUS	94,438,866.00	15,668,134.00	0.00	110,107,[illegible]
LOSSES INCURRED	$5,962,768.30	$156,980.41	$0.00	$6,119,[illegible]
GROSS UNDERWRITING GAIN / (LOSS)	($6,099,490.24)	($158,598.75)	$1,044,443.83	($5,213,[illegible]
SERVICING CARRIER ALLOWANCES	(21,383.91)	(408.60)	0.00	(21,[illegible]
OTHER EXPENSE ALLOWANCES	22,774.88	1,096.18	0.00	23,[illegible]
ADMINISTRATIVE EXPENSES	583.55	75.29	0.00	[illegible]
NET UNDERWRITING GAIN / (LOSS)	($6,101,464.76)	($159,361.62)	$1,044,443.83	($5,216,[illegible]
INTEREST INCOME	149,422.87	(70,345.88)	0.00	79,[illegible]
NET OPERATING GAIN / (LOSS)	($5,952,041.89)	($229,707.50)	$1,044,443.83	($5,137,[illegible]
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,[illegible]
CASH SURPLUS / (DEFICIT)	($8,189,614.59)	($1,584,992.90)	$1,044,443.83	($8,730,[illegible]

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

9712607
9061104
$ 8806,503 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	219,174,08[illegible]
UNEARNED PREMIUMS - PREVIOUS	0.00	0.00	0.00	0[illegible]
TOTAL	$187,284,935.80	$24,163,382.26	$7,725,763.99	$219,174,08[illegible]
UNEARNED PREMIUMS - CURRENT	0.00	0.00	0.00	0[illegible]
NET PREMIUMS EARNED	$187,284,935.80	$24,163,382.26	$7,725,763.99	$219,174,0[illegible]
LOSSES PAID	135,281,092.03	24,258,031.08	0.00	159,539,12[illegible]
KNOWN OUTSTANDING LOSSES - CURRENT	66,560,906.38	10,643,956.33	0.00	77,204,[illegible]
I.B.N.R. LOSS RESERVES - CURRENT	97,594,386.00	15,606,614.00	0.00	113,201,00[illegible]
TOTAL	$299,436,384.41	$50,508,601.41	$0.00	$349,944,9[illegible]
KNOWN OUTSTANDING LOSSES - PREVIOUS	0.00	0.00	0.00	0[illegible]
I.B.N.R. LOSS RESERVES - PREVIOUS	0.00	0.00	0.00	0[illegible]
LOSSES INCURRED	$299,436,384.41	$50,508,601.41	$0.00	$349,944,9[illegible]
GROSS UNDERWRITING GAIN / (LOSS)	($112,151,448.61)	($26,345,219.15)	$7,725,763.99	($130,770,9[illegible]
SERVICING CARRIER ALLOWANCES	64,631,672.22	8,041,996.68	0.00	72,673,4[illegible]
OTHER EXPENSE ALLOWANCES	350,683.71	117,944.11	0.00	468,[illegible]
ADMINISTRATIVE EXPENSES	557,888.84	67,092.94	0.00	624,9[illegible]
NET UNDERWRITING GAIN / (LOSS)	($177,691,693.38)	($34,572,252.88)	$7,725,763.99	($204,538,18[illegible]
INTEREST INCOME	14,497,005.82	1,131,526.31	0.00	15,628,53[illegible]
NET OPERATING GAIN / (LOSS)	($163,194,687.56)	($33,440,726.57)	$7,725,763.99	($188,909,68[illegible]
CURRENT E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00	0[illegible]
PREVIOUS E.B.N.R. PREMIUM RESERVES	0.00	0.00	0.00	0[illegible]
CURRENT E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00	0[illegible]
PREVIOUS E.B.N.R. EXPENSE RESERVES	0.00	0.00	0.00	0[illegible]
ADJ. NET OPERATING GAIN / (LOSS)	($163,194,687.56)	($33,440,726.57)	$7,725,763.99	($188,909,68[illegible]
CASH SURPLUS / (DEFICIT)	$960,604.82	($7,190,156.24)	$7,725,763.99	$1,496,21[illegible]

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

Cap 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	22,814,421.01	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 TOTAL
GROSS PREMIUMS WRITTEN (LESS RETURNS)	37,819,650.66	8,620,324.97	1,044,443.83	47,484,4[illegible]
UNEARNED PREMIUMS - PREVIOUS	49,513,801.48	11,493,059.00	0.00	61,006,8[illegible]
TOTAL	$87,333,452.14	$20,113,383.97	$1,044,443.83	$108,491,2[illegible]
UNEARNED PREMIUMS - CURRENT	46,080,539.31	8,041,642.83	0.00	54,122,[illegible]
NET PREMIUMS EARNED	$41,252,912.83	$12,071,741.14	$1,044,443.83	$54,369,0[illegible]
LOSSES PAID	34,245,113.39	8,824,011.75	0.00	43,069,1[illegible]
KNOWN OUTSTANDING LOSSES - CURRENT	248,113,711.52	62,079,378.87	0.00	310,193,0[illegible]
I.B.N.R. LOSS RESERVES - CURRENT	392,841,939.00	100,895,061.00	0.00	493,737,0[illegible]
TOTAL	$675,200,763.91	$171,798,451.62	$0.00	$846,999,2[illegible]
KNOWN OUTSTANDING LOSSES - PREVIOUS	244,086,858.74	60,243,217.80	0.00	304,330,0[illegible]
I.B.N.R. LOSS RESERVES - PREVIOUS	366,344,292.00	93,617,708.00	0.00	459,962,0[illegible]
LOSSES INCURRED	$64,769,613.17	$17,937,525.82	$0.00	$82,707,1[illegible]
GROSS UNDERWRITING GAIN / (LOSS)	($23,516,700.34)	($5,865,78[illegible].68)	$1,044,443.83	($28,338,0[illegible]
SERVICING CARRIER ALLOWANCES	11,439,476.49	2,494,268.59	0.00	13,933,7[illegible]
OTHER EXPENSE ALLOWANCES	142,082.46	18,180.15	0.00	160,2[illegible]
ADMINISTRATIVE EXPENSES	1,275,327.17	354,894.43	0.00	1,630,2[illegible]
NET UNDERWRITING GAIN / (LOSS)	($36,373,586.46)	($8,733,127.85)	$1,044,443.83	($44,062,2[illegible]
INTEREST INCOME	3,215,039.61	902,572.45	0.00	4,117,6[illegible]
NET OPERATING GAIN / (LOSS)	($33,158,546.85)	($7,830,555.40)	$1,044,443.83	($39,944,6[illegible]
CURRENT E.B.N.R. PREMIUM RESERVES	2,536,224.00	805,776.00	0.00	3,342,0[illegible]
PREVIOUS E.B.N.R. PREMIUM RESERVES	4,408,276.00	1,391,724.00	0.00	[illegible],800,0[illegible]
CURRENT E.B.N.R. EXPENSE RESERVES	776,085.00	246,567.00	0.00	[illegible],022,6[illegible]
PREVIOUS E.B.N.R. EXPENSE RESERVES	1,348,932.00	425,868.00	0.00	1,774,8[illegible]
ADJ. NET OPERATING GAIN / (LOSS)	($34,457,751.85)	($8,237,202.40)	$1,044,443.83	($41,650,5[illegible]
CASH SURPLUS / (DEFICIT)	($6,067,309.24)	($2,168,457.50)	$1,044,443.83	($7,191,3[illegible]

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,[illegible]
UNEARNED PREMIUMS - PREVIOUS	0.00	0.00	0.00	[illegible]
TOTAL	$700,995,447.00	$172,864,800.83	$7,725,763.99	$881,586,[illegible]
UNEARNED PREMIUMS - CURRENT	46,080,539.31	8,041,642.83	0.00	54,122,[illegible]
NET PREMIUMS EARNED	$654,914,907.69	$164,823,158.00	$7,725,763.99	$827,463,[illegible]
LOSSES PAID	299,511,339.03	70,768,233.35	0.00	370,279,[illegible]
KNOWN OUTSTANDING LOSSES - CURRENT	248,113,711.52	62,079,378.87	0.00	310,193,[illegible]
I.B.N.R. LOSS RESERVES - CURRENT	392,841,939.00	100,895,061.00	0.00	493,737,[illegible]
TOTAL	$940,466,989.55	$233,742,673.22	$0.00	$1,174,209,[illegible]
KNOWN OUTSTANDING LOSSES - PREVIOUS	0.00	0.00	0.00	[illegible]
I.B.N.R. LOSS RESERVES - PREVIOUS	0.00	0.00	0.00	[illegible]
LOSSES INCURRED	$940,466,989.55	$233,742,673.22	$0.00	$1,174,209,[illegible]
GROSS UNDERWRITING GAIN / (LOSS)	($285,552,081.86)	($68,919,515.22)	$7,725,763.99	($346,745,[illegible]
SERVICING CARRIER ALLOWANCES	222,705,732.14	52,058,159.55	0.00	274,763,[illegible]
OTHER EXPENSE ALLOWANCES	1,075,744.96	266,719.37	0.00	1,342,[illegible]
ADMINISTRATIVE EXPENSES	3,874,921.83	1,049,906.71	0.00	4,924,[illegible]
NET UNDERWRITING GAIN / (LOSS)	($513,208,480.79)	($122,294,300.85)	$7,725,763.99	($627,777,[illegible]
INTEREST INCOME	43,288,878.13	10,216,506.37	0.00	53,505,[illegible]
NET OPERATING GAIN / (LOSS)	($469,919,602.66)	($112,077,794.48)	$7,725,763.99	($574,271,[illegible]
CURRENT E.B.N.R. PREMIUM RESERVES	2,536,224.00	805,776.00	0.00	3,342,[illegible]
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,[illegible]
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,[illegible]
CASH SURPLUS / (DEFICIT)	$217,116,587.17	$58,938,288.22	$7,725,763.99	$283,780,[illegible]

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

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[illegible]
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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

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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.

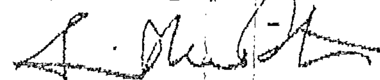
I see nothing in Chapter 440 or the fresh start statute, 24-A M.R.S.A. § 2367, which precludes either a pledge of these funds or their interim use to satisfy the shortfall provided that the borrowing costs are appropriately charged to policy year 1988. Assuming that a pledge of the funds derived from 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

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COMMITTEE REPORT

Board of Governors
The Maine Workers Compensation
Residual Market Pool

June 29, 1992

Committee Members:
Mitchell P. [illegible]ammons
Steven Hoxi[illegible]
Keith Shoem[illegible]er

Committee Purpose: In accordance with Maine Insurance Rule Chapter 440 Section 13, Paragraph B, the Board is required to ta[illegible] appropriate action when notified of a cash deficit, [illegible] resolve the situation. By request of the Board, th[illegible] committee was formed to research options, report i[illegible] efforts and recommend a financing option to bridge t[illegible] reported cash deficit.

General: During the meeting held June 19, 1992, options f[illegible] shortfall funding were identified:

1. Borrow from Subsequent Policy Years.
2. Borrow from Financial Institution.
3. Borrow from Servicing Carriers.
4. Assess Employers ("Fresh Start" Legislation)

Research Effort:

Option 1. Borrow From Subsequent Policy Years

A request was made of the Attorney General's office [illegible] issue a written statement as to the ability of the Po[illegible] to borrow sufficient funds from subsequent years [illegible] order to meet the reported cash deficit of premium ye[illegible] 1988. This request was made in recognition of Po[illegible] counsel's position that such borrowing from subseque[illegible] years was not an advisable option.

Option 2. Borrow From Financial Institution

In an effort to determine the capability of the Pool [illegible] borrow sufficient funds from a substantial bank[illegible] institution, S. Hoxie initiated discussions w[illegible] Fleet/Norstar Bank with the goal of receiving l[illegible] criteria necessary to secure adequate shortfa[illegible] financing; M. Sammons did the same w[illegible] Casco-Northern/Bank of Boston and Key Bank Corporatio[illegible]

Option 3. Borrow From Servicing Carriers

In effect, servicing carriers currently are provid[illegible] the financing of 1988 policy year cash needs. Th[illegible] carriers will be requesting reimbursal of the front[illegible] of claims payments.

Option 4. Assess Employers

The ability of the Superintendent of Insurance to im[illegible] surcharges necessary to meet cash shortfalls [illegible] established in Chapter 440. However, emerge[illegible] legislation L.D.2457 prohibits such action until af[illegible] Blue Ribbon Commission reporting due to anticipa[illegible] fundamental structural changes to the current Work[illegible] Compensation system.

Research Results:

Option 1 - Based upon the opinion of the Attorney General's offi "borrowing" of available funds generated by subsequent policy years and h in the Residual Market Pool fund is not prohibited by Chapter 440. effect, policy year co-mingling of funds has occurred as a result of r changes and modifier impact upon employers premiums in subsequent yea this option is viable.

Option 2 - The results of efforts to secure third party financing h yielded the enclosed written response(s) from Fleet Bank and Casco Nort Bank/Bank of Boston.

Issues and guarantees relating to 1) who is the borrower, 2) what is source of repayment, 3) what collateral will be pledged and 4) what is ultimate amount and duration of the total liability.

Verbal response from Key Bank of Maine has followed the same line trepidation. Essentially, these institutions recognize that the Ma Residual Market Pool is an entity created by the State government and th ultimately, the employers contributing to this Pool have a joint several liability implied by the agreements effected for policy year 19 The complications of this element are obvious to the institution. As result, it appears that this option is not viable.

Option 3 - Given the reported cash shortfall and assuming t servicing carriers are following their contractual obligation to pay cla presented to them by claimants whose claims fall in the 1988 policy ye the servicing carriers are already providing short-term financing. W remains to be established is a means to reimburse the carrier(s) for fronting of payments in an equitable manner. This option, althoug default, has been proven viable for the short-term and only la formalization to ensure no financial injury to all affected parties.

We suggest an arrangement in principle that would allow the carrie deduct the amount of any un-reimbursed financing of 1988 policy year cla expenses from any future assessments which might be levied against carr for Pool deficits in subsequent (1989, 1990, 1991, 1992, etc.) policy yea at an interest rate equal to the average interest earned on Pool funds.

Option 4 - Since current emergency legislation prohibits surc application, this option is not available.

Recommended Action:

In order to meet the reported cash shortfall which is assumed to currently occurring, the Committee recommends that a blending of Optio and 3 is the prudent course of action. This recommendation is based upon following factors: (1) the right of the Pool to act in a manner consis with typical pool operation which allows the use of funds on hand to current cash flow shortfalls; (2) servicing carriers are providing resou to meet presented claims for payment; (3) the actual cash expenditures

1988 claims paid by the carriers is not exactly known; and (4) the eff of the Blue Ribbon Commission are expected to address this cash deficit their recommendations for fundamental Workers Compensation system chang The time-frame of which allows for a minimum of time lost and Pool f usage.

The Superintendent of Insurance should then request a current defi accounting of the payments made by the insurers for the 1988 claim y which have been reimbursed by the Pool as well as a per period (period which to be negotiated) accounting of disbursements by the carriers dur the time in which no rate change or surcharge activity is allowed mandated by emergency legislation L.D.2457. The current cash balance in Pool's account should be considered as available for use to repay affected insurers for the current and future cash outlay. Accepta re-payment terms should be negotiated between the insurers and the Bureau Insurance and reported to the Board of Governors in recognition of responsibilities of the Board members in regards to the status of the P fund. The State of Maine should be completely appraised of this situat and also have reports which verify the immediate and ultimate actual c deficit resulting from the 1988 policy year.

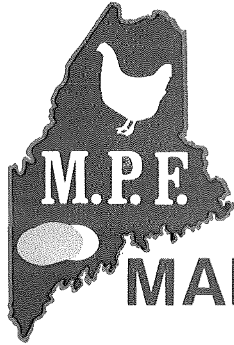
Summary:

Committee members wish to point out that Chapter 440, Sections 13A 13B address "short term cash deficits", "temporary cash inadequacy", and requirements that the Board endeavor to arrange "short term debt financin Given the magnitude of the size of the shortfall occurring and projected occur by N.C.C.I. as well as the ongoing concern comments by the independ auditor which have been referenced, "short term" financing alternati would not meet the accruing obligation and, therefore, a long term solut must be developed by the State of Maine, not the Board. The Commit request the Bureau of Insurance to again review the rate heari surrounding the 1988 policy year, and the resultant "Fresh Start" rulings order to re-visit the then projected shortfall anticipated as a result that policy year in order to validate the imposed 3% surcharge, its inte effective time-frame, and the ultimate premiums anticipated to be gener during that time-frame.

In recognition of the credibility gap which is prevalent and expou upon during any rate hearing, the Committee feels that a strong system accountability and reimbursement must be instituted should recommendations contained herein in respect to temporary loans for cash f deficit be acted upon.

Finally, given the magnitude of the Pool's aggregate projected c flow deficits (even if only 25% accurate) and the concerns well-voi within the letter received by Fleet Bank, it is apparent that additio surcharges levied by the Superintendent of Insurance against the employe covered by this Pool, would be inequitable and would cause signific hardship and possibly the failure of many businesses in this State. imposition of heavy surcharges is not a viable, long-term solution cannot be sustained by the employers. The State of Maine must m fundamental changes in the current system, seriously follow up on recommendations of the Blue Ribbon Commission, and remove the politi polarity surrounding the situation in order to provide a sound Work Compensation System for this state.

FILE



POST OFFICE BOX 228
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MAINE POULTRY FEDERATION

July 8, 1992

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

Dear Ms. Bushey:

Our Federation was pleased to learn of the Commission's preliminary decision to maintain our state's exemption of up to six agricultural employees from mandatory workers compensation coverage. It is essential that the Commission adhere to this decision in its final recommendations.

Equally important is the need for the Commission to drastically reduce, through retroactive procedural changes, the current potential liability of Maine employers for carrier losses going back to 1988. This liability for $300-500 million in losses will result in such a staggering surcharge against Maine employers that all the grievances voiced against the current system will appear minor in comparison to the outcry which will occur if employers are held liable, as stands to happen under current Maine law.

The Commission's attention to these two issues is greatly appreciated.

Sincerely,

Bill Bell

William A. Bell
Executive Director

WB:ts

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.**

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July 8, 1992

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

Fax No. (207) 236-3510

Dear Harvey:

This is in response to your fax of July 7, 1992 regarding worker safety. In the light of the numbers of lost worktime cases in Maine compared with the rest of the country, I must say that I share Emilien's and your view that something needs to be done. Unfortunately, there is so little time to give you a complete response to your inquiry. Nevertheless, let me share some thoughts with you.

1. The Texas reforms of 1989-90 have only gone into effect recently so that it is absolutely premature to evaluate how they have had an impact. Issues relating to problems of implementation, however, are clear. For an insight here I suggest you call upon Mr. Bobby Gierisch at (512) 478-3705 or Ms. Pam Beachley at (512) 474-7255. They are well informed, honest and my name can be used.

Specifically, Texas has created a safety and health division within its WC Commission. Much of what they shall do is develop information regarding the sources of workplace injuries with the view to ameliorating the problems. "Extra hazardous" employers have been identified, they must develop safety plans and take steps to improve their performance and they have been placed in a very public limelight.

The Texas law obligates insurers to perform accident prevention services. The statute requires that the Commission provide inspectors to check up on the insurance carriers to make certain that these services are delivered.

Article 7 of the new law came into being because Texas had an awful record on workplace health and safety, though I do not believe that it was as bad as Maine's. I do know that employers have fought vigorously to avoid being designated as extra hazardous employers.

I like the Texas approach. However, this is a large, (potentially) wealthy state with a large state agency under the new law.

2. A number of states have assessed employers or insurers to create education and/or prevention programs. Connecticut placed an assessment on employers to fund its Division of Worker Education. Employers and insurers have criticized the Division for the stridency of some of its literature and public statements (I think the criticism was totally justified). Some of the Division's work has become worker and employer education on matters of safety and health, using forums, cable t.v., pamphlets and the like. So far I know no objective evaluation has been done of the program. The costs of the program are not large and the benefits have yet to be determined.

An Equal Opportunity Employer

The state has also created a fund to assist occupational health clinics. In reality, the program was designed to bail out the clinic at Yale which had not succeeded in any other way to support itself. The Yale clinic has gone out of its way for ideological reasons to antagonize the state's employers. Still, this type of clinic can do much more than diagnose and treat occupational illnesses. It can alert the community to health hazards so as to prevent further exposures from occurring. In that sense, these clinics further the health and safety goals you support. UConn has such a clinic also, that appears to be well respected by most parties.

New York State has also put into place a program to support occupational health centers. I believe that these programs are aimed more at research than at treatment. The underlying goal was to subsidize groups that had difficulty supporting themselves using more traditional sources. Again, a heavy dose of ideology surrounds these.

In general I think that state programs that aim to identify occupational disease problems can be important for prevention purposes. Admittedly, the sources of exposure are often no longer present as materials and processes change and businesses come and go. However, the big problem is that the accident rate is so high in Maine presently, that this would seem to most urgently command one's attention. Intuitively, I think that a dollar spent on safety at this point in Maine will yield a higher profit than a dollar spent on occupational health.

3. Your letter mentioned an interest in sanctions. That prompted me to call an attorney acquaintance regarding the possibility of problems due to a federal preemption on account of OSHA. His response was that he would have been ambivalent on the matter until 2 weeks ago. The Supreme Court ruled on a toxics case in Illinois (citation can follow - I am getting the decision later today or tomorrow) in such a way as to make the preemption concern a very real one. Apparently, penalties can be levied via the compensation system but less clearly via some type of safety enforcement program. Simply be aware that you may have less flexibility than you might think.

4. Structurally, I see no problem with a safety education program, operating either within the WC agency or alongside of it, and reporting to a labor-management board of commissioners directly. Arguments regarding visibility, independence, lines of authority, administrative economies can tilt this choice in one direction or another, but none seem compelling to me. Instead, the issues that are more likely to be contentious are:

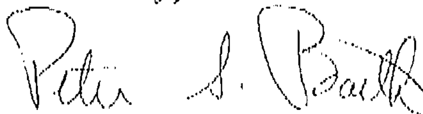
- Scope of the effort - with the funding question being the point of leverage here.
- Is the education directed at both employers and employees?
- Can the program build upon existing labor-management cooperation and extend that?
- Is the program to be basically an educational one, or will it be a policing activity?
- Will this be directed at those willing or seeking help or will it also be imposed on those who do not want it?
- How will the program interface with insurance carriers?
- Do the state colleges and university have any programs in place that can contribute to such a program? Can they be induced to work collaborating on this?

5. Finally, there are many ways to encourage labor-employer cooperation at the micro level. However, concerns have emerged recently about them in non-unionized establishments on the grounds that some may be 8(a)(2) violations of Taft-Hartley.

We have all heard of wonderful accomplishments that can come from such cooperation and the state should seek to foster them. My only doubts arise from situations where the state would force the parties to work cooperatively, where one or both parties do not wish to do so. I am skeptical of payoffs coming from such shotgun marriages. Instead, education programs and dissemination of the success stories seem to me to hold more promise.

Again, I regret that the time to do this right is simply not available. I hope that this can be of some value to you.

Sincerely,



Peter S. Barth
Professor of Economics

PSB/lmr

Workers' Compensation: Coverage, benefits, and costs, 1989 (Nelson, William J. Jr.) (Social Security Bulletin, Spring 1992) ●

(Available on request-please include the following citation: WC115-BRC-08-Pt.B-141.pdf)

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Maine State Law and Legislative Reference Library

IX. WORKERS' COMPENSATION AND WORK-RELATED INJURY

9.1 Overview of Legal Obligations

- An employer may not inquire into an applicant's workers' compensation history before making a conditional offer of employment.

- After making a conditional job offer, an employer may ask about a person's workers' compensation history in a medical inquiry or examination that is required of all applicants in the same job category.

- An employer may not base an employment decision on the speculation that an applicant may cause increased workers' compensation costs in the future. However, an employer may refuse to hire, or may discharge an individual who is not currently able to perform a job without posing a significant risk of substantial harm to the health or safety of the individual or others, if the risk cannot be eliminated or reduced by reasonable accommodation. (See Standards Necessary for Health and Safety: A "Direct Threat", Chapter IV.)

- An employer may submit medical information and records concerning employees and applicants (obtained after a conditional job offer) to state workers' compensation offices and "second injury" funds without violating ADA confidentiality requirements.

- Only injured workers who meet the ADA's definition of an "individual with a disability" will be considered disabled under the ADA, regardless of whether they satisfy criteria for receiving benefits under workers' compensation or other disability laws. A worker also must be "qualified" (with or without reasonable accommodation) to be protected by the ADA.

9.2 Is a Worker Injured on the Job Protected by the ADA?

Whether an injured worker is protected by the ADA will depend on whether or not the person meets the ADA definitions of an "individual with a disability" and "qualified individual with a disability." (See Chapter II.) The person must have an impairment that "substantially

limits a major life activity," have a "record of" or be "regarded as" having such an impairment. S/he also must be able to perform the essential functions of a job currently held or desired, with or without an accommodation.

Clearly, not every employee injured on the job will meet the ADA definition. Work-related injuries do not always cause physical or mental impairments severe enough to "substantially limit" a major life activity. Also, many on-the-job injuries cause non-chronic impairments which heal within a short period of time with little or no long-term or permanent impact. Such injuries, in most circumstances, are not considered disabilities under the ADA.

The fact that an employee is awarded workers' compensation benefits, or is assigned a high workers' compensation disability rating, does not automatically establish that this person is protected by the ADA. In most cases, the definition of disability under state workers' compensation laws differs from that under the ADA, because the state laws serve a different purpose. Workers' compensation laws are designed to provide needed assistance to workers who suffer many kinds of injuries, whereas the ADA's purpose is to protect people from discrimination on the basis of disability.

Thus, many injured workers who qualify for benefits under workers' compensation or other disability benefits laws may not be protected by the ADA. An employer must consider work-related injuries on a case-by-case basis to know if a worker is protected by the ADA. Many job injuries are not "disabling" under the ADA, but it also is possible that an impairment which is not "substantially limiting" in one circumstance could result in, or lead to, disability in other circumstances.

> **For example**: Suppose a construction worker falls from a ladder and breaks a leg and the leg heals normally within a few months. Although this worker may be awarded workers' compensation benefits for the injury, he would not be considered a person with a disability under the ADA. The impairment suffered from the injury did not "substantially limit" a major life activity, since the injury healed within a short period and had little or no long-term impact. However, if the worker's leg took significantly longer to heal than the usual healing period for this type of injury, and during this period the worker could not walk, s/he would be considered to have a disability. Or, if the injury caused a permanent limp, the worker might be considered disabled under the ADA if the limp substantially limited his walking, as compared to the average person in the general population.

An employee who was seriously injured while working for a former employer, and was unable to work for a year because of the injury, would have a **"record of"** a substantially limiting impairment. If an employer refused to hire or promote this person on the basis of that record, even if s/he had recovered in whole or in part from the injury, this would be a violation of the ADA.

If an impairment or condition caused by an on-the-job injury does not substantially limit an employee's ability to work, but the employer regards the individual as having an impairment that makes him/her unable to perform a class of jobs, such as "heavy labor," this individual would be **"regarded"** by the employer as having a disability. An employer who refused to hire or discharged an individual because of this perception would violate the ADA.

Of course, in each of the examples above, the employer would only be liable for discrimination if the individual was qualified for the position held or desired, with or without an accommodation.

9.3 What Can an Employer Do to Avoid Increased Workers' Compensation Costs and Comply With the ADA?

The ADA allows an employer to take reasonable steps to avoid increased workers' compensation liability while protecting persons with disabilities against exclusion from jobs they can safely perform.

Steps the Employer May Take

After making a conditional job offer, an employer may inquire about a person's workers' compensation history in a medical inquiry or examination that is required of all applicants in the same job category. However, an employer may not require an applicant to have a medical examination because a response to a medical inquiry (as opposed to results from a medical examination) discloses a previous on-the-job injury, unless all applicants in the same job category are required to have the examination. (See Chapter V.)

The employer may use information from medical inquiries and examinations for various purposes, such as:

- to verify employment history;
- to screen out applicants with a history of fraudulent workers' compensation claims;

- to provide information to state officials as required by state laws regulating workers' compensation and "second injury" funds;

- to screen out individuals who would pose a "direct threat" to health or safety of themselves or others, which could not be reduced to an acceptable level or eliminated by a reasonable accommodation. (See Chapter IV.)

9.4 What Can an Employer Do When a Worker is Injured on the Job?

Medical Examinations

An employer may only make medical examinations or inquiries of an employee regarding disability if such examinations are job-related and consistent with business necessity. If a worker has an on-the-job injury which appears to affect his/her ability to do essential job functions, a medical examination or inquiry is job-related and consistent with business necessity. A medical examination or inquiry also may be necessary to provide reasonable accommodation. (See Chapter VI.)

When a worker wishes to return to work after absence due to accident or illness, s/he can only be required to have a "job-related" medical examination, not a full physical exam, as a condition of returning to work.

The ADA prohibits an employer from discriminating against a person with a disability who is "qualified" for a desired job. The employer cannot refuse to let an individual with a disability return to work because the worker is not fully recovered from injury, unless s/he: (1) cannot perform the essential functions of the job s/he holds or desires with or without an accommodation; or (2) would pose a significant risk of substantial harm that could not be reduced to an acceptable level with reasonable accommodation. (See Chapter IV.) Since reasonable accommodation may include reassignment to a vacant position, an employer may be required to consider an employee's qualifications to perform other vacant jobs for which s/he is qualified, as well as the job held when injured.

"Light Duty" Jobs

Many employers have established "light duty" positions to respond to medical restrictions on workers recovering from job-related injuries, in order to reduce workers' compensation liability. Such positions usually place few physical demands on an employee and may include tasks such as answering the telephone and simple administrative work. An

employee's placement in such a position is often limited by the employer to a specific period of time.

The ADA does not require an employer to create a "light duty" position unless the "heavy duty" tasks an injured worker can no longer perform are **marginal** job functions which may be reallocated to co-workers as part of the reasonable accommodation of job-restructuring. In most cases however, "light duty" positions involve a totally different job from the job that a worker performed before the injury. Creating such positions by job restructuring is not required by the ADA. However, if an employer already has a vacant light duty position for which an injured worker is qualified, it might be a reasonable accommodation to reassign the worker to that position. If the position was created as a temporary job, a reassignment to that position need only be for a temporary period.

When an employer places an injured worker in a temporary "light duty" position, that worker is "otherwise qualified" for that position for the term of that position; a worker's qualifications must be gauged in relation to the position occupied, not in relation to the job held prior to the injury. It may be necessary to provide additional reasonable accommodation to enable an injured worker in a light duty position to perform the essential functions of that position.

> **For example**: Suppose a telephone line repair worker broke both legs and fractured her knee joints in a fall. The treating physician states that the worker will not be able to walk, even with crutches, for at least nine months. She therefore has a "disability." Currently using a wheelchair, and unable to do her previous job, she is placed in a "light duty" position to process paperwork associated with line repairs. However, the office to which she is assigned is not wheelchair accessible. It would be a reasonable accommodation to place the employee in an office that is accessible. Or, the office could be made accessible by widening the office door, if this would not be an undue hardship. The employer also might have to modify the employee's work schedule so that she could attend weekly physical therapy sessions.

Medical information may be very useful to an employer who must decide whether an injured worker can come back to work, in what job, and, if necessary, with what accommodations. A physician may provide an employer with relevant information about an employee's functional abilities, limitations, and work restrictions. This information will be useful in determining how to return the employee to productive work, but the employer bears the ultimate responsibility for deciding whether the individual is qualified, with or without a reasonable accommodation. Therefore, an employer cannot avoid liability if it relies on a physician's advice which is not consistent with ADA requirements.

9.5 Do the ADA's Pre-Employment Inquiry and Confidentiality Restrictions Prevent an Employer from Filing Second Injury Fund Claims?

Most states have established "second injury" funds designed to remove financial disincentives in hiring employees with a disability. Without a second injury fund, if a worker suffered increased disability from a work-related injury because of a pre-existing condition, the employer would have to pay the full cost. The second injury fund provisions limit the amount the employer must pay in these circumstances, and provide for the balance to be paid out of a common fund.

Many second injury funds require an employer to certify that it knew at the time of hire that the employee had a pre-existing injury. The ADA does not prohibit employers from obtaining information about pre-existing injuries and providing needed information to second injury funds. As discussed in Chapter VI., an employer may make such medical inquiries and require a medical examination after a conditional offer of employment, and before a person starts work, so long as the examination or inquiry is made of all applicants in the same job category. Although the ADA generally requires that medical information obtained from such examinations or inquiries be kept confidential, information may be submitted to second injury funds or state workers' compensation authorities as required by state workers' compensation laws.

9.6 Compliance with State and Federal Workers' Compensation Laws

a. Federal Laws

It may be a defense to a charge of discrimination under the ADA that a challenged action is required by another Federal law or regulation, or that another Federal law prohibits an action that otherwise would be required by the ADA. This defense is not valid, however, if the Federal standard does not require the discriminatory action, or if there is a way that an employer can comply with both legal requirements.

b. State Laws

ADA requirements supersede any **conflicting** state workers' compensation laws.

For example: Some state workers' compensation statutes make an employer liable for paying additional benefits if an injury occurs because the employer assigned a person to a position likely to jeopardize the person's health or safety, or exacerbate an earlier workers' compensation injury. Some of these laws may permit or require an employer to exclude a disabled individual from employment in cases where the ADA would not permit such exclusion. In these cases, the ADA takes precedence over the state law. An employer could not assert, as a valid defense to a charge of discrimination, that it failed to hire or return to work an individual with a disability because doing so would violate a state workers' compensation law that required exclusion of this individual.

9.7 Does Filing a Workers' Compensation Claim Prevent an Injured Worker from Filing a Charge Under the ADA?

Filing a workers' compensation claim does not prevent an injured worker from filing a charge under the ADA. "Exclusivity" clauses in state workers' compensation laws bar all other civil remedies related to an injury that has been compensated by a workers' compensation system. However, these clauses do not prohibit a qualified individual with a disability from filing a discrimination charge with EEOC, or filing a suit under the ADA, if issued a "right to sue" letter by EEOC. (See Chapter X.)

9.8 What if an Employee Provides False Information About his/her Health or Physical Condition?

An employer may refuse to hire or may fire a person who knowingly provides a false answer to a lawful post-offer inquiry about his/her condition or workers' compensation history.

Some state workers' compensation laws release an employer from its obligation to pay benefits if a worker falsely represents his/her health or physical condition at the time of hire and is later injured as a result. The ADA does not prevent use of this defense to a workers' compensation claim. The ADA requires only that information requests about health or workers compensation history are made as part of a post-offer medical examination or inquiry. (See Chapter VI.)

Lois W. Knight
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Gail E. Lind
Insurance Services Manager

Clark Associates
* Insurance *

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Paula M. Hamilton
Leon D. Libby
Judy Conley Dibble
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Kenneth A. Ross
Andrew N. Berglund
Charles H. Smith

David G. Bruneau
Charles S. Clark
David W. May
Life, Health & Group

July 8, 1992

The Honorable William Hathaway, Co-Chair
Mr. Richard Dalbeck, Co-Chair
Mr. Emilian Levesque
Dr. Harvey Picker
The Blue Ribbon Commission on Workers' Compensation
246 Deering Avenue
Portland, ME 04102

Dear Blue Ribbon Commission members:

We wish to commend you for the process being used to research and develop a proposal to improve the Maine Workers' Compensation system. We have been working within four different organizations that we belong to, in an effort to develop a consensus amoung the business community. As you know, the interests represented by business are varied. The one issue upon which most agree is the legislature has been unable to resolve the problems created by our current system, and ideally, the system should be free from political influences in the future.

We agree the solution needs to be found within a forum such as the so called Workers' Compensation Reform Group; a forum of employers and employees, without influence by special interest groups. We support the use of the Michigan law as a base with appropriate changes to assure it's success in Maine and to incorporate some of Maine's recent improvements. We believe the best solutions will be those upon which such a group can reach a unanimous consensus.

The role of the independent agent in the Workers' Compensation system of Maine, is often misunderstood. We believe agents play a vital role by providing the policy holder with an advocate to explain and assist with a wide array of systems and programs which affect the costs they must bear. The enclosed will help you to better understand some of the claims management services available to our policy holders; typically, for those large enough to be experience rated. Regardless of premium size, there are many other issues an agent can help policyholders to deal with. The completion of the application, and understanding the issues therein, can be very confusing to a small business person. There is a need at this early stage of the process to have an agent interpret not only what is on the application form, but also to explain claims reporting and handling issues.

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FAX – (207) 774-2994

An independent agent can help the employer in understanding the payroll auditing system and will then be better able to assign payrolls, and develop costs based upon appropriate classification usage. The owner of a business must also decide whether or not to have workers' compensation benefits apply to him or her. Agents are able to explain the various issues that need to be understood in order to make this an informed decision, and to be sure their workers' compensation arrangement dovetails with their personal life, medical and disability insurance program. The current system provides for a variety of deductibles which may apply to lost wages or medical payments. Agents play a very valuable role in helping employers determine the feasibility and applicability of these deductibles.

Every workers' compensation policy includes Coverage B, which is referred to as employers liability. Many employers buy commercial umbrella liability policies, which will add a million dollars of protection to the employers liability section of the workers' compensation policy. Depending upon the umbrella liability insurance carrier's requirements, the employers' liability limits often need to be increased beyond the standard limits provided by the policy. It may even be more important to increase those limits if an employer is not purchasing an umbrella liability policy. No one is in a better position than the insurance agent to offer the appropriate advice surrounding this particular issue.

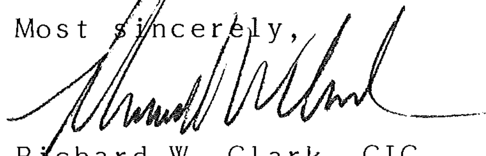
Many employers in Maine have out of state exposures and on the water exposures. These employers need an insurance agent to help them understand and purchase appropriate insurance to cover their employees who are subject to the federal laws, commonly referred to as Admiralty Law (Jones Act) and the United States Longshoremen and Harbor Workers Act. An agent is in the best position to help their customer determine whether or not the Maine Workers' Compensation Policy will respond to the individual needs of the employer and/or if additional policies are necessary.

The Maine Self Insurers Council has proposed a series of self-insured groups to replace the residual market. Such a system apparently does not allow the small business person access to Independent Agents. We feel this would be a serious disadvantage, and would rather see a State Competitive Fund with Agents involved to assist the policyholders with issues included herein.

In conclusion, we believe it to be in the best interest of employers for the Maine Workers' Compensation system to have independent insurance agents as the sales force and advocate for policyholders. Agents do play a critical role in the system. Whatever system is created, we encourage you to preserve the independent agents' role.

Thank you for your considerations. If we can be of further assistance, please feel free to contact us.

Most sincerely,



Richard W. Clark, CIC
President

Kenneth A. Ross, CIC
Vice President

Enc.

File

Lois W. Knight
Accounting Manager

Gail E. Lind
Insurance Services Manager

Clark Associates
* Insurance *

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David W. May
Life, Health & Group

July 9, 1992

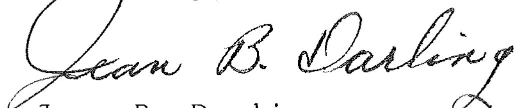
The Honorable William Hathaway, Co-Chair
Mr. Richard Dalbeck, Co-Chair
Mr. Emilian Levesque
Dr. Harvey Picker
The Blue Ribbon Commission on Workers' Compensation
246 Deering Avenue
Portland, ME 04102

Dear Blue Ribbon Commission Members:

Richard Clark and Kenneth Ross, of this office, mailed you a letter yesterday, 7/8/92, and the enclosed information was inadvertently left out of the envelope.

They are sorry for any inconvenience this may have caused.

Sincerely,



Jean B. Darling
Executive Secretary
Enc.

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Clark Associates

WE, AT CLARK ASSOCIATES, REALIZE THAT WORKERS' COMPENSATION COSTS IN MAINE ARE TOO HIGH.

Do you realize what can be done to reduce them?

Clark Associates' Claims Management Services can help you better understand the various systems that affect your Workers' Compensation costs. We have made an investment in people and resources so as to assist our clients to manage, and gain more control over, their costs. The better you understand the system, the more effective we can be in working together to gain the best result possible for your company.

The Experience Rating System plays a major role in determining your Workers' Compensation premiums. We will review your company's worksheet as calculated by the National Council on Compensation Insurance to verify the accuracy of the payroll and claims information used to determine your experience modification. Experience has shown us that mistakes are common, and usually they work to the detriment of the employer.

The following examples illustrate the value of our service:

1. A contractor's policy was cancelled midterm, and placed into the Accident Prevention Account with a 39% premium increase. Clark Associates identified incorrect payroll data used, and had the contractor reassigned to the Safety Pool.
   NET RESULT – A $29,500 premium savings.
2. A woodworking manufacturer was identified by Clark Associates as eligible for the Accident Prevention Account upon their forthcoming renewal date. After four months of negotiating and working with claims adjustors, two major claims were closed for about 50% of their previous reserved amounts.
   NET RESULT – Avoidance of the Accident Prevention Account and a $45,000 premium savings.
3. A retail store has their experience modifier increased from .98 to 1.09. A $47,000 claim is the culprit. Clark Associates researched it and learned the claim actually had been closed for about $9,000. The insurance carrier agreed to refile using the lower figure, and a new modifier was calculated.
   NET RESULT – A premium savings of $2,700.

Our Claims Management Services are results-oriented and include the following:

- Review of the current experience rating worksheet
- Monitoring of, and negotiating within, the claims settlement process
- Use of our in-house software program to predict your renewal experience modification from thirty days to as much as eight months in advance

As important as these services are, they are responding to claims which have already taken place. Safety and Loss Control efforts are essential to minimize the likelihood of an injury. We can help you develop an appropriate strategy to provide a safe work environment and train your employees to avoid unsafe work habits.

Another area of potential savings is the correct placement of your payrolls within the various classifications. It is important your insurance agent act as your advocate and have you assigned to a class that is appropriate with the lowest possible rate.

Although less tangible, Clark Associates is heavily involved in the process of redefining the Maine Workers' Compensation Act through legislation. We are actively involved through our participation in the Professional Insurance Agents Association, the Chamber of Commerce of the Greater Portland Region and the Associated General Contractors of Maine, Inc.

Clark Associates makes a point of getting to know your business and your business challenges. You can make a difference in the amount you pay for workers' compensation insurance.

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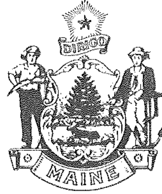

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MEMORANDUM

To: Members, Blue Ribbon Commission on Workers' Compensation

From: Lisa Copenhaver, Legislative Analyst
Jane Orbeton, Legislative Analyst

Date: July 9, 1992

We enclose for the commission's consideration a number of items requested by Senator William Hathaway on behalf of the commission. Topic areas of the materials include the following:

Coverage

Benefits

Attorneys' Fees

Lump Sum Settlements

Coordination of Benefits

Vocational Rehabilitation

Workplace Health and Safety

Comparison of Rehabilitation Services, Michigan and Maine

Michigan statute and rule page 1

Maine statute page 2-4

Vocational Rehabilitation in Workers' Compensation

Michigan
Statutory section is 418.319 and Rule 408.45 Rule 15

Summary:
Michigan statutes 418.319 provides:
Employee entitled to vocational rehab. services if unable to return to work.

Voc. rehab. services available are retraining and job placement as may be reasonably necessary to restore the employee to useful employment.

Payment by the employer for the voc. rehab. services may be ordered by the agency director.

Employee may also receive payments for transportation and other extra and necessary expenses arising out of voc. rehab.

Voc. rehab. program duration of 52 weeks, extendable by another 52 weeks employee may lose or receive reduced benefits for unjustifiable refusal to participate in voc. rehab.

Voc. rehab. disputes resolved through hearing and order.

Rule 408.45, Rule 15 provides:
Carriers and self-insurers must report on provisions made for voc. rehab. 3 months after injury and every 4 months thereafter. The report must contain a current medical report.

The agency director may refer the injured employee for an evaluation of the need for a voc. rehab. program and the kind of voc. rehab. program necessary to return the employee to work.

Hearing procedure for contested cases and appeal procedure to court.

/

Maine
Statutory sections are Title 39 sections 81 through 90

Summary
Maine Title 39 sections 81-90 provide:

Goal of employment rehab. is to return the injured employee to work consistent with the priorities of section 86:

> To be used in order of their appearance on the list, the latter options to be used only upon a determination that the prior options are unlikely to result in a suitable job placement. The priorities are: former job, modified job, new job with pre-injury employer, on-the-job training with pre-injury employer, new employer, on-the-job training with new employer, and career retraining.

Office of Employment Rehabilitation created under the direction of the rehabilitation administrator. Office and administrator responsible for receiving reports, monitoring the rehab. system, monitoring cases and services, encouraging agreements on rehab. issues, recommending penalties for failure to comply with the Act, approving agreements, developing rules, developing fee schedules, coordination of rehab. with other job training programs and educational responsibilities.

The Office does not provide rehab. services. Rehab. services are provided by public and private providers and in-house programs of employers.

Rehab. services follow these procedures:

> Report 120 days after injury for all injured employees who have not returned to work to identify employees who may need rehabilitation services.
> Initial report and informed consent of the injured employee.
> Evaluation of suitability for rehab., employee willingness to participate is required, also assessment of medical condition of the employee. Employer certifies that the employee is unlikely to return to work. Employee needs rehab. services to return to suitable work. No litigation on compensability or benefits may be pending.

Plan development looks at employee's work and earnings history, interests, aptitude, education, skills, work life expectancy, locality of employment and likelihood of re-employment. Plan includes job placement strategy and program of actions. Plan must consider cost, to be paid by employer, and may not cost more than $%000 or last longer than 2 years without demonstration of special and unusual circumstances.

Plan implementation is ordered by the rehab. administrator if all parties agree, plan is consistent with the law and is in employee's best interests. Procedure for contested plans, which may be ordered implemented by the rehab. administrator.

Office to supply advice and assistance to employees.

If the insurer or employer has counsel, the employee may, paid by the employer. The employee may have counsel at the employee's expense if the insurer or employer has none.

Early evaluation screening to be implemented for early entry into rehab. Temporary panel to develop short-term occupational health training program and identify illnesses and injuries that would benefit from medical management services.

Plans may be reviewed and modified under a range of circumstances.

In-house rehabilitation may be provided by employers subject to regulation by the office. Employee may have a choice of in-house rehab. or rehab. that is not in-house.

Costs may be assessed against an insurer or employer that has refused to agree to implementation provided the plan is successful, as defined in section 85.

Rehab. plan may provide for rehab. diagnosis and plan preparation, physical rehabilitation, counseling and other services, tuition, books and fees and sustenance and travel, reasonable moving and relocation expenses, compensation, and rehab. services.

Suspension of benefits may be ordered for an employee who refuses a comply with the terms of an approved plan or agreement. Sanctions may be ordered against an employer for failure to comply with an order, determination or requirement of the commission.

Appeals from decisions of the rehab. administrator may be taken to a single workers' comp. commissioner. Procedure and costs are provided for in section 88.

The Employment Rehabilitation Advisory Board advises the chair of the Workers' Compensation Commission and the rehab. administrator.

A report to the 116th Legislature is required to cover: statistics on success rates, costs, types of services used, effect of the administrator's ability to order plan implementation, and methods of coordination with other job training programs.

Rehabilitation subchapter as a whole sunsets on September 1, 1993, unless continued by law.

Lump Sum Settlements in Workers' Compensation Cases

Michigan law, rewritten for Maine pages 1-5

Current Maine law pages 6-8

pp 2, 4,

Lump Sum Settlements Workers' Compensation Cases

Michigan statute is the original print with strikethroughs and underlinings to reflect changes for Maine. Lump sum settlements are referrred to as redemptions in Michigan law. Maine's administering agency is referred to as the Workers' Compensation Commission pending decision by the Commission.

(Applicable citations are Michigan Compiled Laws Annotated section 418.835, 836 and 837 and Maine Revised Statutes Annotated Title 39, sections 71-A and 106.)

418.835 ~~Redemption-of-liability-from-personal-injury~~ Settlements; payment of lump sum; proposed ~~redemption~~ settlement agreement as lump sum application; liability of employer; hearing; notice to employer; waiver; use of fees; applicability to proposed ~~redemption~~ settlement agreements of subsections (2) to (5).

Sec. 835. (1) **(Imposes a 6 month waiting period.)** After 6 months' time has elapsed from the date of a personal injury, any liability resulting from the personal injury may be ~~redeemed~~ settled by the payment of a lump sum by agreement of the parties, subject to the approval of a ~~hearing-referee-or worker's-compensation-magistrate,-as-applicable~~ commissioner. If special circumstances are found which in the judgment of the ~~hearing-referee-or-worker's-compensation-magistrate,-as applicable,~~ commissioner require the payment of a lump sum, the ~~hearing-referee-or-worker's-compensation-magistrate,-as applicable,~~ commissioner may direct at any time in any case that the deferred payments due under this ~~a~~Act be commuted on the present worth at 10% per annum to 1 or more lump sum payments and that the lump sum payments shall be made by the employer or carrier. When a proposed ~~redemption~~ settlement agreement is filed, it may be treated as a lump sum application, within the discretion of ~~a-hearing-referee-or worker's-compensation-magistrate,-as-applicable~~ the commissioner. The filing of a proposed ~~redemption~~ settlement agreement or lump sum application shall not be considered an admission of liability and if the ~~hearing-referee-or-worker's compensation-magistrate,-as-applicable,~~ commissioner treats a proposed ~~redemption~~ settlement agreement as a lump sum application under this section, the employer shall be entitled to a hearing on the question of liability.

(2) The carrier shall notify the employer in writing of the proposed ~~redemption~~ settlement agreement not less than 10 business days before a hearing on the proposed ~~redemption~~ settlement agreement is held. The notice shall include all of the following:

(a) The amount and conditions of the proposed ~~redemption~~ settlement agreement.

(b) The procedure available for requesting a private informal managerial level conference. **(Note, this requires some mechanism for such a conference.)**

(c) The name and business phone number of a representative of the carrier familiar with the case.

(d) The time and place of the hearing on the proposed ~~redemption~~ settlement agreement and the right of the employer to object to it.

(3) The ~~hearing-referee-or-worker's-compensation-magistrate,-as applicable,~~ commissioner may waive the requirements of subsection (2) if the carrier provides evidence that a good faith effort has been made to provide the required notice or if the employer has consented in writing to the proposed ~~redemption~~ settlement.

(4) **(Note, each party pays $100 to a new dedicated fund.)** For all proposed ~~redemption~~ settlement agreements filed ~~after December-31,-1983,~~ each party to the agreement shall be liable for a fee of $100.00 to be used to defray costs incurred by the ~~bureau,-the-worker's-compensation-board-of-magistrates,-the appeal-board,-and-the-worker's-compensation-appellate commission-administering-this-act~~ Workers' Compensation Commission, except that in the case of multiple ~~defendants~~ employers or insurers ~~the~~ there shall be one $100 fee ~~for-the party-defendant-shall-be-$100.00~~ to be paid by the carrier covering the most recent date of injury. The ~~bureau~~ commission shall by rulemaking develop a system to provide for the collection of the fee provided for by this subsection.

(5) The fees collected pursuant to subsection (4) shall be placed in the ~~w~~Worker's ~~c~~Compensation ~~a~~Administrative ~~r~~Revolving ~~f~~Fund under section 835a **(Cross reference to correct section number in new law.)** and shall only be used to supplement and not replace appropriations for financing the ~~bureau,-the-worker's-compensation-board-of-magistrates,-the appeal-board,-and-the-worker's-compensation-appellate~~ commission. Money in the worker's compensation administrative revolving fund shall be dedicated funds and shall only be used

to pay for costs in regard to the following specific purposes of the ~~bureau, the worker's compensation board of magistrates, the appeal board, and the worker's compensation appellate~~ commission as applicable:
(a) Education and training.
(b) Case management.
(c) Hearings and claims for review.
(6) ~~Subsections (2) to (5) only apply to proposed redemption agreements filed after December 31, 1983.~~ **(Policy choice needed on making this provision retroactive or prospective.)**

418.835a Worker's compensation administrative revolving fund; creation; administration and use of fund; carry over.

(Funded by $100 payments from redemptions under section 835.)

Sec. 835a. (1) The ~~w~~Worker's ~~c~~Compensation ~~a~~Administrative ~~r~~Revolving ~~f~~Fund is ~~created in the state treasury~~ established to be used by the commission as a nonlapsing, revolving fund for carrying out the commission's responsibilities under this Act. The fund shall be administered by the ~~department of labor~~ commission and shall be used only as prescribed in section 835(5). **(Cross reference to correct section number in new law.)**
(2) Any money, including interest earned by the fund, remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years and shall not be credited to or revert to the general fund.
(3) Money in the fund not currently needed to meet the obligations of the commission shall be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by statute. Interest received on that investment shall be credited to the fund.

418.836 Approval of ~~redemption~~ settlement agreement; findings; factors considered in making determination; employer as party.

Sec. 836. (1) A ~~redemption~~ settlement agreement shall only be approved by a ~~hearing referee or worker's compensation magistrate, as applicable,~~ commissioner if the ~~hearing referee or worker's compensation magistrate, as applicable,~~ commissioner finds all of the following:
(a) That the ~~redemption~~ settlement agreement serves the purpose of this ~~a~~Act, is just and proper under the circumstances, and is in the best interests of the injured employee.
(b) That the ~~redemption~~ settlement agreement is voluntarily agreed to by all parties. If an employer does not object in writing or in person to the proposed ~~redemption~~ settlement agreement, the employer shall be considered to have agreed to the proposed agreement.

(c) That if an application has been filed ~~pursuant-to-section-847~~ for hearing or mediation **(Policy choice needed on mediation.)** it alleges a compensable cause of action under this ~~a~~Act~~,~~; and
(d) That the injured employee is fully aware of ~~his--or--her~~ the employee's rights under this ~~a~~Act and the consequences of a ~~redemption~~ settlement agreement.
(2) In making a determination under subsection (1), factors to be considered by the ~~hearing---referee---or---worker's---compensation magistrate,--as--applicable,~~ commissioner shall include, but not be limited to, all of the following:
(a) Any other benefits the injured employee is receiving or is entitled to receive and the effect a ~~redemption~~ settlement agreement might have on those benefits.
(b) The nature and extent of the injuries and disabilities of the employee.
(c) The age and life expectancy of the injured employee.
(d) Whether the injured employee has any health, disability, or related insurance.
(e) The number of dependents of the injured employee.
(f) The marital status of the injured employee.
(g) Whether any other person may have any claim on the ~~redemption~~ settlement proceeds.
(h) The amount of the injured employee's average monthly expenses.
(i) The intended use of the ~~redemption~~ settlement proceeds by the injured employee.
3) The factors considered by the ~~hearing--referee--or--worker's compensation--magistrate,--as--applicable,~~ commissioner in making a determination under this section and the responses of the injured employee thereto shall be placed on the record.
(4) An employer shall be considered a party for purposes under this section.
(This section does not require the commissioner to go over the listed factors with the employee, as required by Maine law. It does not include the following factors in current Maine law: the affect the settlement would have upon the employee's rights, including release of future medical expenses, post-injury earnings, prospects for support, and the advisability of consulting with a financial analyst.)
(

418.837 Approval or rejection of ~~redemption~~ settlement agreements and lump sum applications; review; order; appeal; finality.

Sec. 837. (1) All ~~redemption~~ settlement agreements and lump sum applications filed under the provisions of section 835 **(Cross reference to correct section in new law.)** shall be approved or rejected by the ~~hearing referees or worker's compensation magistrates, as applicable~~ commissioner.
(2) **(Policy decision needed on route and timetable for appeals.)** ~~The director may, or upon the request of any of the parties to the action shall, review the order of the hearing referee entered under subsection (1). In the event of review by the director and in accordance with such rules as the director may prescribe and after hearing, the director shall enter an order as the director deems just and proper.~~ Any order of the ~~director~~ commissioner under ~~this~~ subsection 1 may be appealed to the ~~board or appellate commission, as applicable,~~ Appellate Division pursuant to section 103-B **(This cross-reference is to Title 39 of the Maine statutes.)** within 15 days after the order is mailed to the parties.
(3) Unless review is ordered or requested within 15 days of the date the order of the ~~hearing referee or worker's compensation magistrate, as applicable,~~ commissioner is mailed to the parties, the order shall be final.

Michigan Rule 408.39 Rule 9 specifies the form on which the agreement to redeem (settle) must be submitted. The agreement must be accompanied by a report, approved by the employee, from a licensed physician stating in detail the findings of a recent examination of the employee.

The Commission may wish to consider provisions similar to these for a new lump sum settlement law.

Maine law provides for review of settlement agreements in Title 39 section 71-A, a copy of follows.

39 § 71-A. Lump sum payments

1. Commutation. Subject to the limitations of this section, an employer and employee may by agreement discharge any liability for compensation, in whole or in part, by the employer's payment of an amount to be approved by the commission. The employer, the employee or the employee's dependents may petition the commission for an order commuting all payments for future benefits to a lump sum.

2. Review. Before approving any lump sum settlement, a commissioner shall review the following factors with the employee:

A. The employee's rights under this Title and the effect a lump sum settlement would have upon those rights, including, if applicable, the effect of the release of an employer's liability for future medical expenses;

B. The purpose for which the settlement is requested;

C. The employee's post-injury earnings and prospects, considering all means of support, including the projected income and financial security resulting from proposed employment, self-employment, any business venture or investment and the prudence of consulting with a financial or other expert to review the likelihood success of such projects; and

D. Any other information, including the age of the employee and of the employee's dependents, which would bear upon whether the settlement is in the best interest of the claimant.

E. The commissioner shall initiate the review within 14 days of his receipt of a request for a settlement review. The commissioner may not approve any settlement for any employee who fails to attend a scheduled review without good cause.

3. Approval. A commissioner may not approve any lump sum settlement unless he finds the settlement to be in the employee's best interest in light of the factors reviewed with the employee under subsection 2. In addition, a commissioner may not approve a lump sum settlement which requires the release of an employer's liability for future medical expenses of the employee unless the parties would be unlikely to reach agreement on the amount of the lump sum payment without the release of liability for future medical expenses.

Maine law Title 39 section 106, subsection 2 contains a requirement that settlement agreements be filed with the commission and that they are not final until approved by the commission. It provides for notice, objection and appeal of inclusion of the settlement amount in the employer's insurance experience modification factor when the settlement is over $10,000 and the insurance is written through the Maine Residual Market. It specifies that an agreement does not effect the employee's rights to complete a rehabilitation plan. A copy follows.

39 MRSA §106. Reports to commission (Injuries before October 17, 1991.)

2. **Settlements.** Whenever any settlement is made with an injured employee by the employer or insurance carrier for compensation covering any specific period under an approved agreement or a decree or covering any period of total or partial incapacity that has ended, the employer or carrier shall file with the commission a duplicate copy of the settlement receipt or agreement signed by the employee showing the total amount of money paid to him for that period or periods, but the settlement receipt or agreement is not binding without the commission's approval.

39 MRSA §106. Reports to commission (Injuries on or after October 17, 1991.)

2. **Settlements.** Settlements are subject to this subsection as follows.

A. Whenever any settlement is made with an injured employee by the employer or insurance carrier for compensation covering any specific period under an approved agreement or a decree or covering any period of total or partial incapacity that has ended, the employer or carrier shall file with the commission a duplicate copy of the settlement receipt or agreement signed by the employee showing the total amount of money paid to the employee for that period or periods, but the settlement receipt or agreement is not binding without the commission's approval.

B. At least 14 days prior to submitting any residual market settlement agreement that is in excess of $10,000 to the commission for approval, the insurance carrier shall give notice of the settlement to the employer. If the employer objects to the settlement agreement, the employer shall give notice of the grounds for objection to the carrier within 7 days of receipt of

the agreement. If an employer gives notice of objection under this paragraph, within 60 days of the commission approving a settlement the employer may appeal inclusion of all or part of the settlement payment in calculation of the experience modification factor to the Superintendent of Insurance. Within 30 days from the date notice of appeal was filed, both parties shall submit any relevant information to the superintendent and within 60 days from receipt of the appeal notice the superintendent shall issue a decision based upon the written submissions of the parties. Upon issuance of a decision by the superintendent, either party may request a hearing before the superintendent pursuant to Title 24-A, section 229. The procedures set forth in Title 24-A, section 2320 do not apply to appeals pursuant to this section.

C. A settlement approved under paragraph A while the injured employee is participating in a rehabilitation plan does not affect the injured employee's rights to complete the plan.

Attorneys' Fees in Workers' Compensation Cases

Michigan law and rules pages 1-3

Current Maine law pages 4-7

Michigan law and rule rewritten for Maine pages 8-11

p 9

Attorneys' Fees in Workers' Compensation Cases

Michigan statute is the original print with strikethroughs and underlinings to reflect changes for Maine. Maine's administering agency is referred to as the Workers' Compensation Commission pending decision by the Commission.

(Michigan Compiled Laws Annotated section 418.858 and Department of Labor Bureau of Workers' Disability Compensation Administrative Rule 408.44, Rule 14, Attorneys' Fees. Cross references appear in 418.315, 821 and 862.)

In Michigan, the statutes and a bureau rule set the rates of fees for attorneys. They follow unchanged. Maine law is printed after the Michigan law and rule and is followed by a draft new statute containing the Michigan statutory and rule provisions.

418.858 Cost of hearing; fees of attorneys and physicians; disagreement as to fees; application for hearing; order; review; maximum attorney fees; rules; special order awarding fees; computation of attorney fees; limitation on fees; reduction in fees.

Sec. 858. (1) The cost of a hearing, including the cost of taking stenographic notes of the testimony presented at the hearing, not exceeding the taxable costs allowed in actions at law in the circuit courts of this state, shall be fixed by the director and paid by the state as other expenses of the state are paid. The fees and payment thereof of all attorneys and physicians for services under this act shall be subject to the approval of a hearing referee or worker's compensation magistrate, as applicable. In the event of disagreement as to such fees, an interested party may apply to the bureau for a hearing. After an order by the hearing referee or worker's compensation magistrate, as applicable, review may be had by the director if a request is filed within 15 days. Thereafter the director's order may be reviewed by the appeal board or the appellate commission, as applicable, on request of an interested party, if a request is filed within 15 days.

(2) The director, by rule, may prescribe maximum attorney fees and the manner in which the amount may be determined or paid by the employee; but the maximum attorney fees prescribed by the director shall not be based upon a weekly benefit amount after coordination which is higher than 2/3 of the state average weekly wage at the time of the injury. For claims in which an application under section 847 is filed after March 31, 1986,

the maximum attorney fee shall be based upon the coordinated worker's compensation benefit amount according to a contingency fee schedule, as provided for under rules promulgated pursuant to this act, but if this would result in a fee of less than $500.00, the claimant may agree to pay a sum, as specified in a written agreement between the claimant and the attorney prior to the filing of an application for hearing, so that the total fee received by the attorney would be not more than $500.00. When fees are requested in excess of that provided by rule, the director may award the fees by special order. In the computation of attorney fees for a case in which an application under section 847 is filed after March 31, 1986 and decided by the worker's compensation appellate commission, the fees shall be assessed on not more than 104 weeks of the period the matter was pending before the commission. This limitation on fees applies only to weekly compensation and does not apply to the period of time the matter was pending review before the court of appeals or supreme court.

(3) The director is authorized to promulgate rules calling for reductions in attorney fees in cases where applications for hearing have been dismissed, or where, in the discretion of the hearing referee or worker's compensation magistrate, as applicable, such action is appropriate.

Michigan Rule
R 408.44 Attorney fees

Rule 14. (1) The limitation in this rule as to fees applies to plaintiff's attorneys, including combined charges of attorneys who combine their efforts toward the enforcement or collection of any compensation claim.

(2) In a case tried to completion with proofs closed or compensation voluntarily paid, an attorney, before computing the fee, shall deduct from the accrued compensation the reasonable expenses incurred on plaintiff's behalf. The fee that the administrative law judge may approve shall not be more than 30% of the balance.

(3) In a case involving a redemption of liability, the attorney, before computing the fee, shall deduct the reasonable expenses incurred on plaintiff's behalf from the total settlement The fee that the administrative law judge may approve shall be as follows:

(a) Of the first $25,000.00, a fee of not more than 15%.

(b) Of any amount more than $25,000.00, a fee of not more than 10%.

(4) In a case tried to completion with proofs closed but before a final order, after which there is a redemption of liability, the attorney, before computing the fee, shall deduct the reasonable expenses incurred on plaintiff's behalf from the total settlement.

The total settlement in such redemptions shall be deemed to include the gross amounts of any partial payments made pursuant to section 862 of the act, if such redemption specifically includes a waiver of the right of reimbursement of such amounts from either the plaintiff or the second injury fund. The fee that the administrative law judge may approve shall not be more than 20% of the balance.

(5) Reasonable expenses, as used in this rule, include all of the following:

(a) Medical examination fee and witness fee.

(b) Any other medical witness fee, including cost of subpoena.

(c) Cost of court reporter service.

(d) Appeal costs.

(6) Subrules (2) to (4) of this rule apply to a case with an injury date on or after September 1, 1965. The rule as to attorney fees in effect before September 1, 1965, applies to a case with an injury date before September 1, 1965.

(7) In a case dismissed for lack of progress or prosecution or in which the petition for hearing is withdrawn for reasons other than voluntary payment or other meritorious reasons and further action is taken by the same attorney or law firm, the fee that the administrative law judge may approve in cases specified in subrule (2) of this rule shall be not more than 25% of the balance; in subrule (3) of this rule, of the first $25,000.00, not more than 12 1/2%, and of any amount more than $25,000.00, 10%; in subrule (4) of this rule, the fee shall be not more than 15% of the balance.

(8) A group disability or hospitalization insurance company that enforces an assignment given to it as provided in the act shall pay a part of the fee of the attorney who secured the compensation recovery in the same proportion that the group insurance company payments bear to the total compensation recovery upon which the attorney's fee is based.

(9) In the computation of attorney fees in a case decided by the workers' compensation appeal board, the fee shall be assessed on not more than 52 weeks of the period the matter was pending before the board. All other weekly benefits due and owing for the period of appeal shall be fully paid to the plaintiff. The limitation of fee applies only to weekly compensation.

MAINE LAW

Title 39, section 83 Rehabilitation services

7. Counsel. If the employer or insurer elects to be represented by legal counsel at any stage of the rehabilitation process under this subchapter prior to an appeal under section 88, the employee is entitled to be similarly represented by legal counsel of his choice, with all reasonable attorneys' fees to be assessed against the employer. If no adverse party elects to be so represented, the employee retains the right to secure legal counsel at his own expense.

Title 39, section 94-B Procedure upon notice of controversy; informal conference

3. Representation. In preparation for and at the conference, the commission shall assure that competent technical staff from the Office of Employee Assistants is available to provide advice and assistance to the employee.

If at this stage the employer or insurer elects to be represented by legal counsel, the employee is entitled to be similarly represented by legal counsel of his choice, with all reasonable attorney fees to be assessed against the employer. If no adverse party elects to be so represented, the employee retains the right to secure legal counsel at his own expense.

The employer or representative of the employer or insurer who attends the informal conference must be familiar with the employee's claim and has full authority to make decisions regarding the claim. The commissioner may assess a penalty in the amount of $100 against any employer or representative of the employer or insurer who attends the conference without full authority to make decisions regarding the claim. If a representative of the employer attends the informal conference or any other proceeding of the commission, the representative shall notify the employer of all actions by the representative on behalf of the employer and any other actions at the proceeding.

39 § 110. Witness and attorney's fees allowable

1. Injuries prior to effective date of section. (Injuries prior to June 30, 1985.)
When the commission or commissioner finds that an employee has instituted proceedings under this chapter on reasonable grounds and in good faith or that the employer through or under his insurance carrier has instituted proceedings under this chapter, the commission or commissioner may assess the employer costs of witness fees and a reasonable attorney's fee, when in the commission's or commissioner's judgment the witnesses and the services of the attorney were necessary to the proper and expeditious disposition of the case. The employer may not be assessed costs of an attorney's fee attributable to services rendered prior to one week after the informal conference under section 94-B or, if the informal conference is waived, services rendered prior to the date of that waiver, unless a party adverse to the employee was so represented at that stage.

No attorney representing an employee in a proceeding under this Act may receive any fee from that client for an appearance before the commission, including preparation for that appearance, except as provided in section 94-B, subsection 3. Any attorney who violates this paragraph shall lose his fee and shall be liable in a court suit to pay damages to the client equal to 2 times the fee charged for that client.

Notwithstanding any other provision of this subsection, the employer may be assessed a reasonable attorney's fee for services rendered to the employee in executing an agreement under section 100, subsection 4, paragraph A.

This subsection does not apply to injured employees governed by subsection 2.

2. Injuries on or after effective date of section. (Injuries on and after June 30, 1985.) If an employee prevails in any proceeding involving a controversy under this Act, the commission or commissioner may assess the employer costs of a reasonable attorney's fee and witness fees whenever the witness was necessary for the proper and expeditious disposition of the case.

The employer may not be assessed costs of an attorney's fee attributable to services rendered prior to one week after the informal conference under section 94-B or, if the informal conference is waived, services rendered prior to the date of that waiver, unless a party adverse to the employee was so represented at that stage.

No attorney representing an employee who prevails in a proceeding involving a controversy under this Act may receive any fee from that client for an appearance before the commission, including preparation for that appearance, except as provided in section 83, subsection 7 and section 94-B, subsection 3. Any attorney who violates this paragraph shall lose his fee and be liable in a court suit to pay damages to his client equal to 2 times the fee charged for that client.

This subsection applies only to employees injured on and after the effective date of this subsection.

A. For the purposes of this subsection, "prevail" means to obtain or retain more compensation or benefits under the Act than were offered to the employee by the employer in writing before the proceeding was instituted. If no such offer was made, "prevail" means to obtain or retain compensation or benefits under the Act.

B. Any employee, employer or insurance carrier involved in any proceeding involving a controversy under this Act shall report to the commission, on forms provided by the commission, any amounts that he has paid for legal assistance in that proceeding, including any amount paid for an employee's legal fees under this subsection.

3. Attorney's fees. (Injuries on and after October 17, 1991.)
Attorney's fees for lump-sum settlements are limited as follows. The employer may be assessed an attorney's fee based on a lump-sum settlement for services on behalf of the employee. The fee may not exceed:

A. Ten percent of the first $50,000 of the settlement;

B. Nine percent of the first $10,000 over $50,000 of the settlement;

C. Eight percent of the next $10,000 over $50,000 of the settlement;

D. Seven percent of the next $10,000 over $50,000 of the settlement;

E. Six percent of the next $10,000 over $50,000 of the settlement; and

F. Five percent of any amount over $100,000 of the settlement.

A new draft for Maine, using the Michigan standards and establishing the rates for attorneys' fees by statute follows:

Retain Title 39 sections 83, subsection 7, section 94-B, subsection 3, and section 110, subsection 1 and 2. Add to them the following:

(From Michigan.) Sec. 858. (1) ~~The-cost-of-a-hearing,-including-the-cost-of-taking-stenographic-notes-of-the-testimony-presented-at-the-hearing,-not-exceeding-the-taxable-costs-allowed-in-actions-at-law-in-the-circuit-courts-of-this-state,-shall-be-fixed-by-the-director-and-paid-by-the-state-as-other-expenses-of-the-state-are-paid.~~ The fees and payment thereof of all attorneys and physicians for services under this act shall be subject to the approval ~~of-a-hearing-referee-or-worker's-compensation-magistrate,-as-applicable~~ by a commissioner. In the event of disagreement as to such fees, an interested party may apply to the ~~bureau~~ Appellate Division for a hearing pursuant to section 103-B **(This cross-reference is to the Title 39 of the Maine statutes.)**. ~~After-an-order-by-the-hearing-referee-or-worker's-compensation-magistrate,-as-applicable,-review-may-be-had-by-the-director-if-a-request-is-filed-within-15-days.--Thereafter-the-director's-order-may-be-reviewed-by-the-appeal-board-or-the-appellate-commission,-as-applicable,-on-request-of-an-interested-party,-if-a-request-is-filed-within-15-days.~~

Section 110, subsection 4. Maximum amount of attorneys' fees allowable.

4. Maximum fees. Attorneys' fees payable by the injured employee shall be approved by the commission prior to payment according to the following formula. This subsection applies to combined charges of attorneys who combine their efforts toward the enforcement or collection of any compensation claim

A. Maximum attorney fees shall be based upon a weekly benefit amount after coordination which is no higher than 2/3 of the state average weekly wage at the time of the injury.

B. **(This paragraph requires a choice on retroactivity and prospectivity as applied to contingency fee agreements.)**

C. The commissioner may reduce attorneys'fees in cases where applications for hearing have been dismissed, or where, in the discretion of the commissioner such action is appropriate.

D. In a case tried to completion with proofs closed or compensation voluntarily paid, an attorney, before computing the fee, shall deduct from the accrued compensation the reasonable expenses incurred on the injured employee's behalf. The fee that the commissioner may approve shall not be more than 30% of the balance.

E. In a case involving a settlement of liability, the attorney, before computing the fee, shall deduct the reasonable expenses incurred on plaintiff's behalf from the total settlement The fee that the commissioner may approve shall be as follows:

(1) Of the first $25,000.00, a fee of not more than 15%.

(2) Of any amount more than $25,000.00, a fee of not more than 10%.

F. In a case tried to completion with proofs closed but before a final order, after which there is a settlement of liability, the attorney, before computing the fee, shall deduct the reasonable expenses incurred on injured employee's behalf from the total settlement.

The total settlement in such settlements shall be deemed to include the gross amounts of any partial payments made pursuant to section 862 of the act, if such settlement specifically includes a waiver of the right of reimbursement of such amounts from either the injured employee or the second injury fund. **(Policy choice on Second Injury Fund. Check correct cross reference to Maine law.)**. The fee that the commissioner may approve shall not be more than 20% of the balance.

G. Reasonable expenses, as used in this rule, include all of the following:

(a) Medical examination fee and witness fee.

(b) Any other medical witness fee, including cost of subpoena.

(c) Cost of court reporter service.

(d) Appeal costs.

H. In a case dismissed for lack of progress or prosecution or in which the petition for hearing is withdrawn for reasons other than voluntary payment or other meritorious reasons and further action is taken by the same attorney or law firm, the fee that the commissioner may approve in cases specified in paragraph D shall be not more than 25% of the balance; in paragraph E, of the first $25,000.00, not more than 12 1/2%, and of any amount more than $25,000.00, 10%; in paragraph F, the fee shall be not more than 15% of the balance.

I. A group disability or hospitalization insurance company that enforces an assignment given to it as provided in the act shall pay a part of the fee of the attorney who secured the compensation recovery in the same proportion that the group insurance company payments bear to the total compensation recovery upon which the attorney's fee is based. **(Check for whether assignment is allowed in new law.)**

J. In the computation of attorney fees in a case decided by the Appellate Division, the fee shall be assessed on not more than 52 weeks of the period the matter was pending before the Appellate Division. All other weekly benefits due and owing for the period of appeal shall be fully paid to the injured employee. The limitation of fee applies only to weekly compensation.

K. **(Insert section designating prospectivity and retroactivity of this subsection.)**

Workplace Health and Safety Programs in Maine

Teaching of occupational health and safety in the Maine Technical College System page 1

Insurance carriers providing workplace health and safety consultations page 1

Commission on Safety and Health in the Maine Workplace page 3

Safety Education and Training Fund page 5

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Required workplace health and safety programs for high experience employers page 10

Safety Provisions related to Workers' Compensation in Maine

1. The teaching of occupational health and safety in the technical colleges:

Title 20-A, section 12704, subsection 1, Tasks (of the the Maine Technical College System)

20A § 12704. Tasks

The tasks of the system shall include, but not be limited to:

1. Long-term and short-term training. Providing, in close cooperation with the private sector, both the long-term education and training required for certain vocational and technical occupations, including occupational health and safety aspects of those occupations, and the short-term training necessary to meet specific private sector and economic development needs;

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2. Insurance carriers providing workplace health and safety consultations:

24A § 2362-B. Workplace health and safety consultations

Workplace health and safety consultation services provided by workers' compensation insurance carriers to employers with an experience rating factor of one or more are subject to the following.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Workplace health and safety consultations" means a service provided to an employer to advise and assist the employer in the identification, evaluation and control of existing and potential accident and occupational health problems.

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2. Standards for workplace health and safety consultations. The superintendent shall adopt rules establishing the standards for approval of workplace health and safety consultations provided to employers by insurance carriers, including provision of adequate facilities, qualifications of persons providing the consultations, specialized techniques and professional services to be used and educational services to be offered to employers.

3. Required coverage and premium. All insurance carriers writing workers' compensation coverage in this State shall offer workplace health and safety consultations to each employer as part of the workers' compensation insurance policy. The premium for the workplace health and safety consultation must be identified as a separate amount that must be paid.

4. Optional purchase from another provider. An employer may elect to purchase workplace health and safety consultation services from a provider other than the insurer. Upon submission by the employer of a certificate of completion of workplace health and safety consultation services from another approved provider, the insurance carrier must refund to the employer the portion of the premium attributable to the workplace health and safety consultation.

5. Notification to employer; request for consultation services. An insurance carrier writing workers' compensation insurance coverage shall notify each employer of the type of workplace health and safety consultation services available and the address or location where these services may be requested. The insurer shall respond within 30 days of receipt of a request for workplace health and safety consultation services.

6. Reports to employers. In any workplace health and safety consultation that includes an on-site visit, the insurer shall submit a report to the employer describing the purpose of the visit, a summary of the findings of the on-site visit and evaluation and the recommendations developed as a result of the evaluation. The insurer shall maintain for a period of 3 years a record of all requests for workplace health and safety consultations and a copy of the insurer's report to the employer.

7. Safe workplace responsibility. Workplace health and safety consultations provided by an insurer do not diminish or replace an employer's responsibility to provide a safe workplace. An insurance carrier or its agents or employees do not incur any liability for illness or injuries that result from any consultation or recommendation.

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3. Commission on Safety and Health in the Maine Workplace, Title 26 section 51: (The Commission has full membership, meets monthly and is an advisory committee. The vice-chair is the Commissioner of Labor, Charles Morrison. The chair is Charles Weeks, safety director of A.G. Sargent Company. The commission acts as an advisory and study commission and makes recommendations to the Commissioner of Labor regarding loan applications to the Occupational Safety and Loan Fund. Funding for the commission is provided from the Safety Education and Training Fund.)

26 § 51. Commission on Safety and Health in the Maine Workplace

1. Purpose; members; compensation. The Commission on Safety and Health in the Maine Workplace, established by Title 5, chapter 379, section 12004-G, subsection 26, consists of knowledgeable citizens who shall examine safety attitudes, programs and procedures in the State's workplaces; identify initiatives to reduce the frequency, severity and cost of work-related accidents and illnesses; and promote and improve best-practice safety programs.

A. The Governor shall appoint the members of the commission, which consists of not more than 12 members, including:

(1) Three members with expertise and professional qualifications in the field of occupational safety and health;

(2) Two members representing workers and 2 members representing private employers, all of whom must be knowledgeable in the area of workplace safety; and

(3) Other members the Governor considers necessary and appropriate to carry out the purposes of this section.

B. Initial appointments are made for terms of one, 2, 3 and 4 years such that the terms of approximately 1/4 of the members expire in each year. All subsequent appointments are for terms of 4 years. Each member shall hold office until a successor is appointed and qualified.

C. The Governor shall appoint the chair of the commission and the Commissioner of Labor shall serve as vice-chair. The commission shall actively seek information and involvement from organized labor, the professional safety community, the various state and federal agencies concerned with safety and interested private citizens, groups and organizations.

D. The appointed members of the board are entitled to compensation according to Title 5, chapter 379. The commission chair must approve and countersign all vouchers for expenditures under this paragraph.

2. Duties. The commission shall conduct studies and hold public meetings as necessary to develop findings and recommendations respecting each of the following issues:

A. Evaluation of the effectiveness of current worker safety efforts, practices and programs in the State and the attitudes of employers and workers toward safety;

B. Identification of the best-practice safety programs in the State and elsewhere, whose widespread adoption would reduce the incidence, severity and cost of workplace accidents and illnesses;

C. Identification of emerging occupational safety and health issues that will be of importance in the future and assessment of their policy implications; and

D. Determination of existing statistical information on accidents and illnesses and reliability and adequacy to monitor trends and to support effective safety rehabilitation and compensation programs.

The commission shall also review occupational safety loan requests as provided for in section 63.

3. Recommendations. The commission shall make recommendations on a continuing basis to include:

A. Specific recommendations for action by the Governor, the Legislature, educators, the safety profession, employers and workers that will reduce the frequency, severity and costs of work-related accidents and illnesses and will enhance, promote and improve safety in the State's workplaces; and

B. Recommendations for actions that will improve employer, worker and public attitudes toward safety in the workplace and that will create a continuing public-private, employer-employee partnership in the area of job safety.

4. Support. The Department of Labor shall provide administrative, clerical and technical support to the commission and act as its fiscal agent unless otherwise provided for. All agencies of the State shall cooperate fully with the commission.

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4. Safety Education and Training Fund within the Department of Labor Bureau of Labor Standards: (Funding is provided by a levy on insurers and group and individual self-insurers. The levy is based on paid losses excluding medical benefits and may not exceed 1% of total workers' compensation benefits paid during the previous calendar year. Funding for FY 1992 was $1,813,469 and for FY 1993 is $1,734,091.)

Title 26 section 61 Safety Education and Training Fund established to accomplish the goals of section 42-A:

26 § 42-A. Safety education and training programs

1. Department to establish programs. The department shall establish and supervise programs for the education and training of employers, owners, employees, educators and students in the recognition, avoidance and prevention of unsafe or unhealthful working conditions in employment. The department shall consult with and advise employers, owners, employees and organizations representing employers, owners and employees as to effective means of preventing occupational injuries and illnesses.

2. Safety education and training program functions. The functions of the safety education and training program shall include:

A. The development and application of a statewide safety education and training program to familiarize employers, supervisors, employees and union leaders with techniques of accident investigation and prevention, including education and training assistance to employers and employees under the chemical substance identification law in sections 1715 and 1720;

B. The development and utilization of consultative educational techniques to achieve long-range solutions to occupational safety and health problems;

C. The acquisition, development and distribution of occupational safety and health pamphlets, booklets, brochures and other appropriate safety and health media as may be useful to accomplish the objectives of this section;

D. The development and administration of a program for employers, with special emphasis on small business employers, providing technical and educational assistance on matters of occupational safety and health;

E. The development and implementation of a training and education program for department staff engaged in the administration and enforcement of this section;

E-1. The development and administration of programs to educate employers and employees regarding the Whistleblowers' Protection Act, chapter 7, subchapter V-B;

E-2. The support for the development of long-term strategies to improve occupational health and safety professional education and resources. The department may award contracts to public and private nonprofit organizations as seed money to develop programs that will serve this purpose and that will develop other funding sources in the future; and

F. The conduct of other activities as necessary for the implementation of an effective safety education and training program.

3. Programs provided upon request. The department shall provide safety training programs, upon request, for employees and employers. Priority for the development of safety training programs shall be in those occupations which pose the greatest hazard to the safety and health of employees.

4. Continuing research. The department may conduct continuing research into methods, means, operations, techniques, processes and practices necessary for improvement of occupational safety and health of employees.

5. Consulting services. The department shall, upon request, provide a full range of occupational safety and health consulting services to any employer or employee group. These consulting services may include providing employers or employees with information, advice and recommendations on maintaining safe employment or places of employment, and on applicable occupational safety and health standards, techniques, devices, methods, practices or programs.

6. Contract. The department may contract with others to perform these functions.

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5. Occupational Safety Loan Fund established administered by the Department of Labor Bureau of Labor Standards: (Funding provided already for a revolving loan fund. Allocations will enable the Department of Labor to make loans of $391,368 for FY 1992 and $371,551 for FY 1993.)

26 § 62. Occupational Safety Loan Fund

1. Establishment of fund. There is established in the State Treasury a special fund known as the Occupational Safety Loan Fund, for the sole purpose of making loans in accordance with section 63, and of providing funds for the administration of that section. The loan fund must be administered by the commissioner. The department has authority over the loan fund and may do all things necessary or convenient in the administration of the loan fund and shall formulate and adopt rules pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375 governing the administration, maintenance, loan

disbursements and loan repayments and collections of the loan fund, and perform all other functions which the laws of this State specifically authorize or which are necessary or appropriate. All money and securities in the loan fund must be held in trust by the Treasurer of State for the purposes of the loan program established under section 63 and may not be money or property for the general use of the State, except that during the fiscal year ending June 30, 1991, the State may transfer up to $400,000 to the undedicated General Fund revenues. The Treasurer of State shall invest the money of the fund in accordance with law. The fund does not lapse.

2. Loans from fund. The loan fund may make loans in accordance with section 63.

3. Source of fund. The loan fund shall be established and maintained by funds received from the following:

A. Repayments of loans made by the loan fund and accrued interest on those loans;

B. Interest, income and dividends from investments made by the Treasurer of State under subsection 1; and

C. Payments pursuant to subparagraph (1).

(1) The commissioner shall assess a levy based on the total actual workers' compensation premiums paid in 1984 by employers under Title 39, the Workers' Compensation Act. As soon as practicable after July 1, 1985, the commissioner shall assess upon and collect from each insurance carrier licensed to do workers' compensation business in the State an amount equal to 1/2 of 1% of the total workers' compensation insurance premiums paid to that insurance carrier during 1984 by employers in the State. The levy assessment shall constitute an element of loss for the purpose of establishing rates for workers' compensation insurance.

(a) The Commissioner of Labor shall send notice of the assessments by certified mail to each carrier and self-insured employer. Payment of assessments must be received in the principal office of the Department of Labor before a date specified in the notice, but not more than 90 days after the date of the mailing.

26 § 63. Occupational safety loans

The department may administer a statewide program to make low interest loans to improve safety and promote healthful working conditions in factories, workshops and workplaces in this State. This program shall be known as the Occupational Safety Loan Program.

1. Loan criteria. The department shall promulgate rules to implement the Occupational Safety Loan Program which shall include, but not be limited to, the following loan criteria:

A. The purpose of the loan must be to improve, install or erect equipment which reduces hazards to and promotes the health and safety of workers;

B. (repealed)

C. No loan may be made in an amount in excess of $50,000 to any single applicant, or at an interest rate in excess of 3%. The maximum term of an individual loan shall be 10 years. The Commissioner of Labor may waive the limitation on the amount, the duration, or both, of a loan to address severe circumstances, as funds are available;

D. A majority vote of the Commission on Safety and Health in the Maine Workplace is necessary to recommend approval of a loan that is then transmitted to the department for final disposition in accordance with the policies adopted by the department;

E. Loan applications must be reviewed by both the Commission on Safety and Health in the Maine Workplace and the department for feasibility, such as, for the general reasonableness and safety need for the proposal, whether the applicant has sufficient capital, whether an adequate safety analysis or other counseling requirement has been completed, whether the applicant is creditworthy within the scope of this program and whether the collateral offered to secure the loan is adequate;

F. Loans are not insured or guaranteed by the State, but the department shall require collateral in the form of security for the loan, if available, and may, in appropriate cases, take a mortgage on real estate;

G. Loan applications must be on forms and accompanied by additional information as required by the department. Loan applicants may be required to submit whatever personal or business related financial information as may be necessary to determine eligibility for the Occupational Safety Loan Program; and

H. Loans may not be approved without a prior safety inspection by the division of industrial safety and a recommendation by the division for the installation of the safety device.

2. (repealed)

2-A. Commission on Safety and Health in the Maine Workplace. The Commission on Safety and Health in the Maine Workplace shall review loan proposals under this section. The commission shall meet at least twice yearly for this purpose in Augusta or any other place designated by the chair.

3. Administration. The department may contract with the Finance Authority of Maine to assist in the administration of the program, with compensation to the Finance Authority of Maine to be paid out of amounts in the loan fund.

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6. Required workplace health and safety programs for high experience employers:

Title 39 section 21-A. Liability of employer, subsection 4.

4. Workplace health and safety training programs. The following workplace health and safety plan requirements apply to all employers in the State required to secure payment of compensation in conformity with this Title.

A. The Commissioner of Labor or the commissioner's designee shall adopt rules regarding workplace health and safety programs.

B. The Superintendent of Insurance shall communicate to the Department of Labor the names of employers that receive in any policy year an experience rating of 2 or more. The Department of Labor shall notify each employer on that list that the employer is required 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, including on-site consultation, education and training activities and technical assistance.

C. The employer shall submit a workplace health and safety plan to the Department of Labor for review and comment, complete the elements of the plan and notify the Department of Labor of its completion. The plan may include attendance at a Maine technical college or the Department of Labor workplace health and safety training programs.

D. The Department of Labor shall notify the Superintendent of Insurance of any employer that fails to complete the workplace health and safety program as required by this section and the rules. 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 1/2 of that amount to the Safety Education and Training Fund, as established by Title 26, section 61, and 1/2 to the Occupational Safety Loan Fund, as established by Title 26, section 62.

E. The Commissioner of Labor shall report to the joint standing committee of the Legislature having jurisdiction over banking and insurance matters and the joint standing committee of the Legislature having jurisdiction over labor matters by October 1, 1993 on the rules adopted, performance by employers and any surcharges imposed by the Superintendent of Insurance.

Maine Provisions on Coverage of the Act
Title 39, Chapter 1, Subchapter 1

Sections related to coverage:

Definitions

- Employer p. 1-2
- Design professional p. 7
- Employee p. 7-11
- Aquaculture p. 12
- Agriculture p. 12
- Independent contractor p. 13

Exclusive remedy/no fault p. 14

Notes pp 4, 9, 14

NOTE: The following is the subchapter of the Maine Act that contains the provisions on the coverage of the Act. The sections which do not pertain to coverage have been noted.

Maine Workers' Compensation Act
Chapter 1, Subchapter 1
General Provisions

39 § 1. Short title

This chapter shall be known, and may be cited and referred to in proceedings and agreements thereunder, as "The Workers' Compensation Act;" the phrase "this Act," as used in said chapter, refers thereto.

39 § 2. Definitions

The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meaning:

1. **Employer.** The term "employer" includes:

A. Private employers;

B. The State;

C. Counties;

D. Cities;

E. Towns;

F. Water districts and all other quasi-public corporations of a similar nature.

G. Municipal school committees;

H. Union school committees; and

I. Design professional.

If the employer is insured, the term "employer" includes the insurer unless the contrary intent is apparent from the context or is inconsistent with the purposes of this Act.

1-A. Private employer. The term "private employer" includes corporations, including professional corporations, partnerships and natural persons. Any agricultural employer otherwise included under this Act is not included when harvesting 150 cords of wood or less each year from farm wood lots, provided that, in order to qualify for this exemption, the employer must be covered by 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.

2. Average weekly wages.

Note: The procedures for determining average weekly wages under the Michigan law are specified in sections 371 and 372 of chapter 3 (compensation).

A. "Average weekly wages, earnings or salary" of an injured employee shall be taken as the amount which he was receiving at the time of the injury for the hours and days constituting a regular full working week in the employment or occupation in which he was engaged when injured except that this shall not include any reasonable and customary allowance given to the employee by the employer for the purchase, maintenance or use of any chainsaws or skidders used in the employee's occupation, provided such employment or occupation had continued on the part of the employer for at least 200 full working days during the year immediately preceding that injury. For purposes of this paragraph, a "reasonable and customary allowance" is the allowance provided in a negotiated contract between the employee and the employer, or if not provided for by a negotiated contract, an allowance determined by the Department of Labor, Bureau of Employment Security. Except that in the case of piece workers and other employees whose wages during that year have generally varied from week to week, such wages shall be averaged in accordance with the method provided under paragraph B.

B. In case such employment or occupation had not so continued for said 200 full working days, the "average weekly wages, earnings or salary" shall be determined by dividing the entire amount of wages or salary earned therein by the injured employee during said immediately preceding year, by the total number of weeks, any part of which

the employee worked, during the same period. The week in which employment began, if it began during the year immediately preceding the injury, and the week in which the injury occurred, together with the amounts earned in said weeks, shall not be considered in computations under this paragraph if their inclusion would reduce said "average weekly wages, earnings or salary."

B-1. Notwithstanding paragraphs A and B, the average weekly wage of a seasonal worker shall be determined by dividing the employee's total wages, earnings or salary for the prior calendar year by 52.

(1) For the purposes of this paragraph, the term "seasonal worker" does not include any employee who is customarily employed, full time or part time, for more than 26 weeks in a calendar year. The employee need not be employed by the same employer during this period to fall within this exclusion.

(2) Notwithstanding subparagraph (1), the term "seasonal worker" includes, but is not limited to, any employee who is employed directly in agriculture or in the harvesting or initial hauling of forest products.

C. In cases where the foregoing methods of arriving at the "average weekly wages, earnings or salary" of the injured employee cannot reasonably and fairly be applied, said "average weekly wages" shall be taken at such sum as, having regard to the previous wages, earnings or salary of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or a neighboring locality, shall reasonably represent the weekly earning capacity of the injured employee at the time of the injury in the employment in which he was working at such time.

D. Where the employee is employed regularly in any week concurrently by 2 or more employers, for one of whom he works at one time and for another he works at another time, his "average weekly wages" shall be computed as if the wages, earnings or salary received by him from all such employers were wages, earnings or salary earned in the employment of the employer for whom he was working at the time of the injury.

E. Where the employer has been accustomed to pay to the employee a sum to cover any special expense incurred by said employee by the nature of his employment, the sum so paid shall not be reckoned as part of the employee's wages, earnings or salary.

F. The fact that an employee has suffered a previous injury or received compensation therefor shall not preclude compensation for a later injury or for death; but in determining the compensation for such later injury or death, his "average weekly wages" shall be such sum as will reasonably represent his weekly earning capacity at the time of such later injury in the employment in which he was working at such time, and shall be arrived at according to and subject to the limitations of this section.

G. "Average weekly wages, earnings or salary" does not include fringe benefits, including but not limited to employer payments for or contributions to a retirement, pension, health and welfare, life insurance, training, social security or other employee or dependent benefit plan for the employee's or dependent's benefit or any other employee's dependent entitlement.

3. **Commission; commissioner.** "Commission" means the Workers' Compensation Commission created by section 91. "Commissioner" means any member of the commission, including the chairman, appointed under section 91 to hear and determine cases. **Note: Policy decision required on administrative structure.**

3-A. **Compensation payment scheme.** "Compensation payment scheme" means the procedure whereby an employer is required to provide compensation or other benefits under this Act to an employee. The term "compensation payment scheme" includes a decree of the commission, payment under the early-pay system provided in section 51-B, and, in case of injuries prior to January 1, 1984, an approved agreement. **Not a coverage issue.**

3-B. **Community.** "Community" means the area within a 75-mile radius of an employee's residence or the actual distance from an employee's normal work location to the employee's residence at the time of an employee's injury, whichever is greater. **Note: This relates to the area in which the employee must search**

for employment. Michigan defines "reasonable employment" in §301, sub-§9 (in the compensation chapter) as being within a reasonable distance from the employee's residence.

4. Dependents.

Note: Dependent is defined in the Michigan law in the section on death benefits, §331. See note there.

"Dependents" shall mean members of an employee's family or next of kin who are wholly or partly dependent upon the earnings of the employee for support at the time of the injury. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

A. A wife upon a husband with whom she lives, or from whom she is living apart for a justifiable cause or because he has deserted her, or upon whom she is actually dependent in any way at the time of the injury. A wife living apart from her husband shall produce court order or other competent evidence as to separation and actual dependency.

B. A husband upon a wife with whom he lives, or upon whom he is actually dependent in any way at the time of the injury.

C. A child or children, including adopted and stepchildren, under the age of 18 years, or under the age of 23 years if a student, or over the age of 18 years but physically or mentally incapacitated from earning, upon the parent with whom he is or they are living, or upon whom he is or they are actually dependent in any way at the time of the injury to said parent, there being no surviving dependent parent, "child" shall include any posthumous child whose mother is not living and dependent. In case there is more than one child dependent, the compensation shall be divided equally among them.

The term "student" means a person regularly pursuing a full-time course of study or training at an institution which is:

(1) A school, college or university operated or directly supported by the United States, or by any state or local government or political subdivision thereof;

(2) A school, college or university which has been accredited by a state or by a state recognized or nationally recognized accrediting agency or body;

(3) A school, college or university not so accredited but whose credits are accepted, on transfer, by not less than 3 institutions which are so accredited, for credit on the same basis as if transferred from an accredited institution;

(4) An additional type of educational or training institution as defined by the commission, but not after he reaches the age of 23 or has completed 4 years of education beyond the high school level, except that, where his 23rd birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed 5 months and if he shows to the satisfaction of the commission that he has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or during periods of reasonable duration during which, in the judgment of the commission, he is prevented by factors beyond his control from pursuing his education. A child shall not be deemed to be a student under this Act during a period of service in the Armed Forces of the United States.

In all other cases questions of total or partial dependency shall be determined in accordance with the fact, as the fact may have been at the time of the injury. If there is more than one person wholly dependent, the compensation shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is no one wholly dependent and more than one person partly dependent, the compensation shall be divided among them according to the relative extent of their dependency. If a dependent is an alien residing outside of the United States or of the Dominion of Canada, the compensation paid to any such dependent shall be 1/2 that provided in case of the death of an employee.

4-A. Design professional. "Design professional" means:

A. An architect, professional engineer, landscape architect, land surveyor, geologist or soil scientist licensed to practice that profession in the State in accordance with Title 32; or

B. Any corporation or partnership, professional or general, which employs one or more of any of the professionals described in paragraph A and whose sole purpose is the rendering of professional services practiced by any professional described in paragraph A.

5. Employee.

A."Employee" includes officials of the State, counties, cities, towns, water districts and all other quasi-public corporations of a similar character, every duly elected or appointed executive officer of a private corporation, other than a charitable, religious, educational or other nonprofit corporation, and every person in the service of another under any contract of hire, express or implied, oral or written, except:

(1) Persons engaged in maritime employment or in interstate or foreign commerce, who are within the exclusive jurisdiction of admiralty law or the laws of the United States;

(2) Firefighters, including volunteer firefighters who are active members of a volunteer fire fighters' association, as defined in Title 30-A, section 3151; volunteer emergency medical services persons, as defined in Title 32, section 83, subsection 12; and police officers shall be deemed employees within the meaning of this Act. In computing the average weekly wage of an injured volunteer firefighter or volunteer emergency services' person, the average weekly wage shall be taken to be the earning capacity of the injured employee in the occupation in which the employee is regularly engaged. Employers who hire workers within this State to work outside the State may

agree with such workers that the remedies under this Act shall be exclusive as regards injuries received outside this State arising out of and in the course of that employment; and all contracts of hiring in this State, unless otherwise specified, shall be presumed to include such an agreement. Any reference to an employee who has been injured shall, when the employee is dead, include the employee's legal representatives, dependents and other persons to whom compensation may be payable;

(3) Notwithstanding any other provisions of this Act any charitable, religious, educational or other nonprofit corporation that may be or may become an assenting employer under this Act may cause any duly elected or appointed executive officer to be an employee of the corporation by specifically including the executive officer among those to whom the corporation secures payment of compensation in conformity with subchapter II; and the executive officer shall remain an employee of the corporation under this Act while such payment is so secured. With respect to any corporation that secures compensation by making a contract of workers' compensation insurance, specific inclusion of the executive officer in the contract shall cause the officer to be an employee of the corporation under this Act;

(4) Any person who, in a written statement to the commission, waives all the benefits and privileges provided by the workers' compensation laws, provided that the commission has found that person to be a bona fide owner of at least 20% of the outstanding voting stock of the corporation by which that person is employed or a shareholder of the professional corporation by which that person is employed and that this waiver was not a prerequisite condition to employment. For the purposes of this subparagraph, the term "professional corporation" has the same meaning as found in Title 13, section 703, subsection 1.

Any person may revoke or rescind that person's waiver upon 30 days' written notice to the commission and that person's employer.

The parent, spouse or child of a person who has made a waiver under the previous sentence may state, in writing, that the parent, spouse or child waives all the benefits and privileges provided by the workers' compensation laws if the commissioner finds that the waiver is not a prerequisite condition to employment and if the parent, spouse or child is employed by the same corporation which employs the person who has made the first waiver;

(5) The parent, spouse or child of a sole proprietor who is employed by that sole proprietor or the parent, spouse or child of a partner who is employed by the partnership of that partner may state, in writing, that the parent, spouse or child waives all the benefits and privileges provided by the workers' compensation laws if the commission finds that the waiver is not a prerequisite condition to employment;

(6) Employees of an agricultural employer when harvesting 150 cords of wood or less each year from farm wood lots, provided that the employer is covered under an employer's liability insurance policy as required in subsection 1-A;

(7) An independent contractor; or

(8) If a person employs an individual contractor, any employee of the independent contractor is not considered an employee of that person for the purposes of this Act. The person who employs an independent contractor is not responsible for providing workers' compensation insurance covering the payment of compensation and benefits to the employees of the independent contractor. No insurance company may charge a premium to any person for any employee excluded by this subparagraph.

Note: Policy decision required on contractor/subcontractor liability question.

B. The term "employee" shall be deemed to include, if he elects to be personally covered by this Title, any person who regularly operates a

business or practices a trade, profession or occupation, whether individually, or in partnership or association with other persons, whether or not he hires employees. Such a person shall elect personal coverage by insuring and keeping insured the payment of compensation and other benefits under a workers' compensation insurance policy. The insurance policy shall clearly indicate the intention of the parties to provide coverage for the person electing to be personally covered. The insurance company shall file with the commission notice, in such form as the commission approves, of the issuance of any workers' compensation policy to a person electing personal coverage. That insurance shall not be cancelled within the time limited in that policy for its expiration until at least 30 days after mailing a notice of the cancellation of that insurance to the commissioner and the person electing personal coverage. In the event that the person electing personal coverage has obtained a workers' compensation insurance policy from another insurance company, and that insurance becomes effective prior to the expiration of the 30 days, cancellation shall be effective as of the effective date of the other insurance. The Superintendent of Insurance is authorized to review for his approval, at his discretion, an appropriate classification for this class of persons and a reasonable rate.

C. The term "employee" does not include any person who is otherwise an employee, if he is injured as a result of his voluntary participation in an employer-sponsored athletic event or an employer-sponsored athletic team.

D. The term "employee" does not include a real estate broker or salesman whose services are performed for remuneration solely by way of commission, provided that the broker or salesman has signed a contract with the agency indicating the existence of an independent contractor relationship.

E. The term "employee" does not include any person who is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except in relation to compensable injuries suffered by the prisoner during incarceration and while the prisoner is:

(1) A prisoner in a county jail under final sentence of 72 hours or less and is assigned to work outside of the county jail;

(2) Employed by a private employer;

(3) Participating in a work release program;

(4) Sentenced to imprisonment with intensive supervision under Title 17-A, section 1261; or

(5) Employed in a program established under a certification issued by the United States Department of Justice under the United States Code, Title 18, Section 1761.

6. **Employer.** repealed

6. **Employer further defined.** . See §2, sub-§1

7. **Workers' compensation insurance policy.** "Workers' compensation insurance policy" shall mean a policy in such form as the Insurance Superintendent approves, issued by any stock or mutual casualty insurance company or association that may now or hereafter be authorized to do business in this State, which in substance and effect guarantees the payment of the compensation, medical benefits and expenses of burial provided for, in such installment, at such time or times, and to such person or persons and upon such conditions as in this Act provided. Whenever a copy of a policy is filed, such copy certified by the Insurance Superintendent shall be admissible as evidence in any legal proceeding wherein the original would be admissible.

8. **Insurance company.** "Insurance company" shall mean any casualty insurance company or association authorized to do business in this State which may issue policies conforming to subsection 7. Whenever in this Act relating to procedure the words "insurance company" are used they shall apply only to cases in which the employer has secured the payment of compensation and other benefits by insuring such payment under an workers' compensation insurance policy, instead of furnishing satisfactory proof of his ability to pay compensation and benefits direct to his employees.

No insurance carrier shall be qualified to issue an workers' compensation insurance policy covering any employees working in this State unless it has and continuously maintains an employee or claims agent within this State empowered to investigate claims arising under this chapter; sign agreements for the payment of compensation as provided by this chapter; and issue drafts or checks in payment of obligations arising under this chapter in amounts of at least $1,000.

9. Representatives. "Representatives" shall include executors and administrators.

10. Dependent of another person. For purposes of the payment or the termination of compensation under section 58-A, a widow or widower of a deceased employee shall be the dependent of another person when over half of his or her support during a calendar year was provided by the other person.

11. Aquaculture. "Aquaculture" means the commercial culture or husbandry of oysters, clams, scallops, mussels, salmon or trout.

12. Agriculture. "Agriculture" means the operation of farm premises, including:

A. The planting, cultivating, producing, growing and harvesting of agricultural or horticultural commodities on those premises;

B. The raising of livestock and poultry on those premises; and

C. Any work performed as an incident to or in conjunction with these farm operations, including the packing, drying and storing of these commodities for market, if these operations:

(1) Are incident to or in conjunction with growing and harvesting farm operations of the same employer; and

(2) Are not provided as a service for other farm operations or employers.

13. Independent contractor. "Independent contractor" means a person who performs services for another under contract, but who is not under the essential control or superintendence of the other person while performing those services. In determining whether such a relationship exists, the commission shall consider the following factors:

A. Whether or not a contract exists for the person to perform a certain piece or kind of work at a fixed price;

B. Whether or not the person employs assistants with the right to supervise their activities;

C. Whether or not the person has an obligation to furnish any necessary tools, supplies and materials;

D. Whether or not the person has the right to control the progress of the work, except as to final results;

E. Whether or not the work is part of the regular business of the employer;

F. Whether or not the person's business or occupation is typically of an independent nature;

G. The amount of time for which the person is employed; and

H. The method of payment, whether by time or by job.

In applying these factors, the commission shall not give any particular factor a greater weight than any other factor, nor shall the existence or absence of any one factor be decisive. The commission shall consider the totality of the relationship in determining whether an employer exercises essential control or superintendence of the person.

14. Maximum medical improvement. "Maximum medical improvement" means the date after which further recovery and further restoration of function can no longer be reasonably anticipated, based upon reasonable medical probability. **Not used in Michigan.**

15. Permanent impairment. "Permanent impairment" means any anatomic or functional abnormality or loss existing after the date of maximum medical improvement which results from the injury.

39 § 3. Common-law defenses lost

In an action to recover damages for personal injuries sustained by an employee arising out of and in the course of his employment, or for death resulting from such injuries, it shall not be a defense to an employer, except as hereinafter specified:

1. Employee negligent. That the employee was negligent;

2. Fellow employee negligent. That the injury was caused by the negligence of a fellow employee; or

3. Employee assumed risk. That the employee has assumed the risk of the injury.

Note: Michigan removes these defenses in §141.

39 § 4. Applicability to certain actions and employers; exemptions

An employer who has secured the payment of compensation in conformity with sections 21-A to 27 is exempt from civil actions, either at common law or under sections 141 to 148, Title 14, sections 8101 to 8118, and Title 18-A, section 2-804, involving personal injuries sustained by an employee arising out of and in the course of employment, or for death resulting from those injuries. These exemptions from liability apply to all employees, supervisors, officers and directors of the employer for any personal injuries arising out of and in the course of employment, or for death resulting from those injuries. These exemptions also apply to occupational diseases sustained by an employee or for death resulting from those diseases. These exemptions do not apply to an illegally employed minor as described in section 28-A, subsection 2.

Note: Michigan has an exception to the above exemption in the case of intentional tort by the employer. See Michigan §131(1).

A design professional acting within the course and scope of providing professional services during the

construction, erection or installation of any project or a design professional's employee who is acting within the course and scope of assisting or representing the design professional in the performance of design professional services on or adjacent to the site of the project's construction, erection or installation is immune from liability for any personal injury or death, occurring at or adjacent to such a site, if compensation is paid to the injured person or decedent's representative for the injury or death under this Act, and the design professional has no duty under a written contract to assume responsibility for construction site safety. The immunity provided by this section to any design professional shall not apply to the negligent preparation of design plans and technical specifications. Except as provided by this section, any waiver, oral or written, express or implied, of the design professional's immunity granted by this section shall be void and unenforceable as a matter of law.

39 § 5. Predetermination of independent contractor status

1. Predetermination permitted. A worker, an employer or a workers' compensation insurance carrier, or any together, may apply to the Department of Labor for a predetermination of whether the status of an individual worker, group of workers or a job classification associated with the employer is that of an employee or an independent contractor.

A. The predetermination by the Department of Labor creates a rebuttable presumption that the determination is correct in any later claim for benefits under this Act.

B. Nothing in this section requires a worker, an employer or a workers' compensation insurance carrier to request predetermination.

2. Premium adjustment. If it is determined that a predetermination does not withstand commission or judicial scrutiny when raised in a subsequent workers' compensation claim, then, depending on the final outcome of that subsequent proceeding, either the workers' compensation insurance carrier shall return excess premium collected or the employer shall remit premium subsequently due in order to put the parties in the same position as if the final outcome under the contested claim were predetermined correctly.

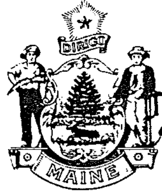
3. Predetermination submission. A party may submit, on forms approved by the Department of Labor, a request for predetermination regarding the status of a person or job description as an employee or independent contractor. The status requested by a party is deemed to have been approved if the Department of Labor does not deny or take other appropriate action on the submission within 14 days.

4. Hearing. A hearing, if requested by a party within 10 days of the Department of Labor's decision on a petition, must be conducted under the Maine Administrative Procedure Act.

5. Certificate. The Department of Labor shall provide the petitioning party a certified copy of the decision regarding predetermination that is to be used as evidence at a later hearing on benefits.

6. Rulemaking. The Commissioner of Labor is authorized to adopt reasonable rules pursuant to the Maine Administrative Procedure Act to implement the intent of this section, which is to afford speedy and equitable predetermination of employee and independent contractor status.

John R. McKernan, Jr.
Governor



Charles A. Morrison
Commissioner

James H. McGowan
Director

DEPARTMENT OF LABOR
Bureau of Labor Standards

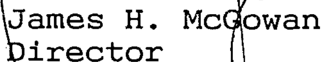
June 9, 1992

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.

State House Station #45, Augusta, Maine 04333 - 0045 Telephone (207) 624-6400
Offices Located at Hallowell Annex, Central Building, Room 308

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 Subsection 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.

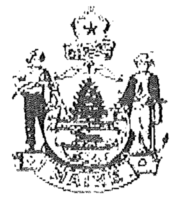
F. BUREAU'S NOTIFICATION TO THE SUPERINTENDENT

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.

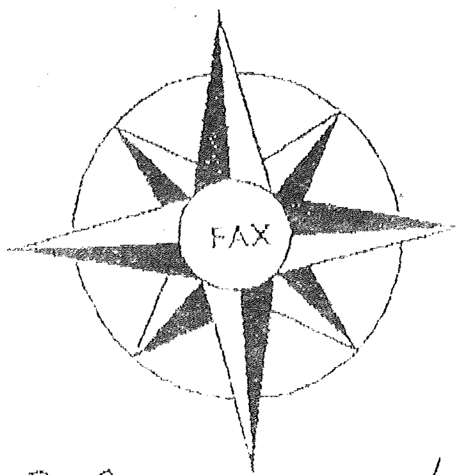
copies given
FILE.

John R. McKernan, Jr.
Governor

Brian K. Atchinson
Superintendent



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



Date of Transmission: 7-9-92 Time: 1:30

Operator: Eric Cioppa No. of pages (cover sheet inc.) 3

Recipient: If you do not receive all of the pages or if any are illegible, please call operator as soon as possible at (207) 582-8707.

NOTES: For members of the WCBRC. Superintendent Atchinson will provide copies for the members at tomorrow's meeting. If any questions give me a call -- Eric C.

TO:

NAME: Michelle Bushey

FIRM: WCBRC

FROM:

Eric Cioppa

Maine Bureau of Ins

ADDRESS:

FAX # 780-4913

Eric

John R. McKernan, Jr.
Governor

Brian K. Atchinson
Superintendent

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

July 8, 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, Maine 04102

Dear Blue Ribbon Commission Members:

The Bureau of Insurance appreciates the opportunity to comment on some of the outstanding issues which the commission is presently debating.

Mandating that all subcontractors have workers compensation insurance has potential advantages and disadvantages. For example one advantage of mandating coverage for all subcontractors would be to possibly eliminate premium fraud by employers claiming that employees are independent contractors. Furthermore, mandating coverage of subcontractors would insure that injured workers would have the necessary protection. Also, the potential liability of employers without coverage who are later adjudged to be liable for benefits would be eliminated. In a 1991 analysis by the Bureau, it was estimated that by mandating coverage for subcontractors in the construction/contracting industry, the total amount of additional premiums collected would be approximately $7.7 million dollars annually.

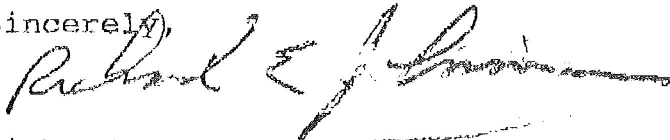
Among the disadvantages of requiring subcontractor coverage are that these subcontracting firms would have to bear an additional cost of doing business. The 1991 analysis estimated that the cost

of workers' compensation insurance for sole proprietors in the construction/contracting field would average $3000. Many of these individuals already have disability coverage which, combined with their medical coverage, arguably provides adequate protection. Also, any losses incurred by these subcontractors would be an added burden to the system.

Other issues which the Commission has raised are: predominate cause and what costs may be associated with changing the definition, how changing the duration of permanent partials may impact the costs of the system, and the possible effect of changing the statewide worksearch definition. At this time the Bureau is looking into what resources are available to thoroughly analyze these issues. We would also be very willing to assist the Commission's actuaries, Milliman & Robertson, in its efforts related to these and other matters.

Finally, attached is a chart based upon Department of Labor data which shows that the number of disabling reports increased at a rate roughly equal to the increase in employment during the period 1980 to 1990. Overall, disabling reports have increased at a rate greater than employment for the gradual or less evident type injuries and illnesses and for motor vehicle accidents while the number of reports for events which are the result of a specific event decreased over the same time period.

Sincerely,



Richard E. Johnson

Number of Disabling Reports, Maine By Type of Accident or Exposure			
Categories of Accident or Exposure	1980	1990	Percentage Change
Immediate or Evident: Struck against; struck by; fall from elevation; fall onto or against;* caught in, between or under; rubbed, abraded; contact with electric current; explosion; contact with temperature extremes	9,439	9,132	-3%
Gradual or Less Evident: Bodily reaction; overexertion; fall to the working surface,* contact with radiation, caustics, etc.; exposure to noise	9,276	15,872	71%
Transportation and Motor Vehicle	282	535	90%
Accidents, other	219	598	173%
Non classifiable	443	550	24%
Total	19,846	26,693	35%
Employment, including government	400,800	509,610	27%

Source: Maine Department of Labor, Bureau of Labor Standards, Characteristics of Work Related Injuries and Illnesses in Maine.

* Data from 1980 not available, 1981 figures were used.

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE
04333

JOHN R. McKERNAN, JR.
GOVERNOR

July 6, 1992

Mr. Richard Dalbeck
17 Spoondrift Lane
Cape Elisabeth, ME 04107

Senator William Hathaway
Danton Tower, Apt. 6D
207 East Grand Ave.
Old Orchard, ME 04064

Dear Dick and Bill,

I am writing to you as chairs of the Blue Ribbon Commission to request the Commission to address the residual pool crisis. I understand that the residual pool deficits have been discussed by the Commission. At this point in time, the Blue Ribbon Commission is the foremost authority on the Workers' Compensation Insurance crisis. The Commission not only has the expertise, but also the credibility to address and solve this enormous problem.

Although Resolve 59 does not specifically ask you to investigate the prospective residual deficits, the intent is for the Commission to recommend a system that is financially stable and provides a healthy insurance mechanism. Such a goal cannot be reached without resolving the overshadowing deficits that hang over employers and insurance companies. If these deficits are reduced by the Commission, it is much more likely that employers will be able to provide the necessary capital to fund a Mutual Insurance group.

It should also be noted that Chapter 108, the law that froze any rate decision or surcharges by the Bureau of Insurance until after November 15th cited the potential work of the Blue Ribbon Commission as effecting the final rate decision and fresh start surcharges. Thus, the intent of the Legislature can be read in Chapter 108 as supporting any effort your Commission can make in reducing the projected deficits. I recommend that you discuss with Dick Johnson the means that can be implemented that will reduce the potential bill this year to employers of $100 to $135 million.

I have attached two memos that I received from the Bureau of Insurance that outline the likely impact of the next rate case if no reductions in costs are made. Please note that any purely prospective changes will only reduce the 15 to 18% in next year's base rates. As you can see, that will still leave Maine employers with the likely increase of at least 30% when the "fresh start" surcharges are made.

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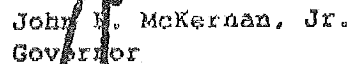
I also suggest that the actuary hired by the Commission review these numbers to provide you with an independent basis to begin your analysis. It is important that the Commission continue its work maintaining its independence and integrity. Not only is it important to businesses and workers that the Commission look at the residual pool, it is also critical to the State of Maine. Deficits of this magnitude cannot help but adversly affect all of Maine's citizens.

Sincerely,



John R. McKernan, Jr.
Governor

JRM/mpm

cc:
Dr. Harvey Picker
Emilien Levesque

John R. McKernan, Jr.
Governor

Brian K. Atchinson
Superintendent

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

MEMORANDUM

Date: July 2, 1992

To: John R. McKernan, Jr.,
Governor, State of Maine

From: Brian K. Atchinson, Superintendent

Subject: Status of Residual Market

Enclosed please find a memo from Dick Johnson to me regarding the Workers' Compensation Residual Market Pool deficits. I think it is important to bring this information to your attention, as well as update you on the recent actions taken by the Residual Market Pool Board of Governors.

On Monday, June 29, the Residual Market Pool Board voted to borrow money from reserves for policy years 1989 through 1991 to pay for policy year 1988 claims. An announcement was made at the Board's previous meeting on June 19 that policy year 1988's cash reserves were negative and had been so for two or three weeks. At the June 19 meeting, the plan manager (NCCI) referred to its year end financial statements for the Maine Pool, in which there is an estimated unfunded liability of $189 million for policy year 1988. In those financial statements, NCCI has also reported that policy years 1988 through 1991 have a cumulative operating deficit of $574 million.

After the Board's vote to allow the short term solution of borrowing from other policy years to pay for 1988's cash shortfall, the Board voted unanimously to send a letter to the Blue Ribbon Commission asking the Commission to consider a long-term solution to resolve the huge deficit problem.

The cash shortfall for the next 12 months for policy year 1988 could reach $35 million. An assessment on employers cannot be ordered at this time by the Superintendent to solve this problem, in accordance with P&S 1991, Chapter 108, AN ACT to Delay Workers' Compensation Rate Increase, which extended any rate decision or surcharge until November 15th, in anticipation of the Blue Ribbon Commission report and the special legislative session.

As the likely presiding officer at a subsequent rate hearing on this matter, I must reserve judgement with respect to a decision on rates and fresh start surcharges until all the evidence is presented and the record closed. However, I believe it imperative to bring to your attention this recently reported information due to the potentially devastating impact it may have on the workers' compensation system and on the state, as a whole. Set forth below is a breakdown of the policy year fresh start assessments that could potentially be assessed against employers and insurance companies in the next rate decision. This analysis is based on a 41.9% savings from the 1987 reforms. Included in this calculation merely for illustrative purposes (and in no way intended to represent any conclusions regarding the rate case on my part) is one conceivable portrayal of the amortization over 10 years of one estimate of the operating deficit for 1988-90.

1992 Rate Decision (Phase I.)...........	15-18%	$50 million
1988 Fresh Start,* (100% ER for 12 mos.).	12.5%	$35 million
1989 Fresh Start,* (50/50% ER/INS).......	5%	$14 million
1990 Fresh Start, (50/50% ER/INS)		
1988, 89 & 90 operating deficit total of $117 million amortized over 10 years..........................	4.2%	$12 million
Total	36.7% - 39.7%	$111 million

* Cash reportedly needed for the next 12 months only.

As you may be aware, there has been some discussion as to whether the value of the 1987 reforms will prove to be 41.9% or whether the percentage may ultimately be lower. If the 1987 reforms are valued at 30%, using the above example, the operating deficits for years 1988-90 would increase from $117 million to approximately $390 million. The adjustment to the bottom line on the above chart would be as follows:

Total 46.3% $138 million

If the savings are less than 30%, the deficit and assessment numbers will be correspondingly higher.

EMPLOYER COSTS

The increase in rates and assessments employers may be liable to pay this year, based on the 1987 reforms representing savings of 41.9%, are the following:

POTENTIAL EMPLOYER LIABILITY AS OF 1992:

1992 Rate Decision..............$50 million
1988 Fresh Start*..............$35 million
1989 Fresh Start*.............. $7 million
1990 Fresh Start
1988-90 deficit................ $8 million

(100%-88, 50%-89,90)
Total $100 million

* Cash reportedly needed for next 12 months only.

If 30% savings from the 1987 reforms is used to calculate the employers liability, the amount attributable to the 1988-1990 deficit increases from $8 million to $26 million, increasing the total to $118 million.

A one time assessment to pay off the estimated deficits for policy years 1988-91, assuming a 30% savings, could place employers responsible for as much as $200 million. This does not even include the liability of insurance companies.

CONCLUSION

It should be noted that borrowing from the cash reserves of any other policy year to pay for policy year 1988 reduces the investment income to be earned from those cash reserves. If no assessment were to be ordered this year, based on NCCI's quarterly reports, policy year 1989 is likely to be cash negative as early as six months from now. The Pool Board of Governors limited its borrowing to only two fiscal quarters as a result of concerns regarding future legislative activity, uncertainty concerning repayment, and the ramifications if repayment is not made.

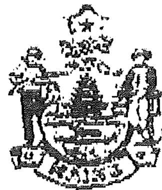
It is imperative that the 1988 cash shortfall, projected future cash shortfalls, and the significant accumulating deficits be addressed as soon as possible. The longer the delay, the larger the deficits will be, potentially causing the workers' compensation market to collapse, inflicting on employers huge liabilities, and placing payments to injured workers in jeopardy.

It is hard to envision the restoration of a competitive insurance market in Maine without resolving the issue of the large pool deficits. Recent discussions of the Pool Board of Governors lead me to believe that the issue of the deficits could be instrumental in bringing about some form of market collapse. Just this week, one of the three remaining Tier One servicing carriers, Commercial Union, filed to withdraw from the market. Whether the 1987 reforms result in a 41.9% savings, a 30% savings, or some other percentage, the deficits are likely to be large and future assessments may conceivably far exceed the pending rate increases.

In light of the insolvent condition of the 1988 policy year reserves and the information received from NCCI regarding the magnitude of the total unfunded liability for policy years 1988 - 1991, I believe it is imperative that consideration be given as to how to proceed in order to protect the interests of Maine's citizens. While certain factors set forth above are not agreed upon by all parties and may be open to interpretation, I am compelled to consider the seriousness of the situation, even if portions of the above information need to be adjusted.

BKA/m

John R. McKernan, Jr.
Governor



Brian K. Atchinson
Superintendent

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

June 26, 1992

TO: Brian Atchinson, Superintendent

FROM: Dick Johnson, Property/Casualty Actuary dj

RE: Workers' Compensation Residual Market Pool Deficits

The quarterly Pool reports prepared by the National Council on Compensation Insurance ("NCCI"), for the year ended December 31, 1991, indicates a policy year 1988 operating deficit of $189 million and a cumulative operating deficit for years 1988-1991 of $574 million.

The figures prepared by NCCI for the Pool differ substantially from those presented in the "Fresh Start" rate hearing concluded in April. In that case, NCCI projected deficits of $28.7 million, $34.6 million and $26.7 million for policy years 1988, 1989, and 1990, respectively. No estimate was prepared for 1991. In that same hearing, the Public Advocate's actuary projected deficits of $16.6 million, $20.9 million, and $10.4 million, respectively. However, in the brief filed at the conclusion of the hearing, the Public Advocate's position was "No Employer Surcharge [is] Justified At This Time" (p. 60) and recommended further study of carrier performance. In its filing, NCCI projected a negative cash balance in the first quarter of 1996 rather than the first quarter of 1992. (For policy year 1989 the projected negative cash balance if no surcharges are assessed is the second quarter of 1996, but NCCI quarterly reports indicate that without assessment policy year 1989 will be out of cash in early 1993.)

[illegible] resh Start" filing figures are substantially less than the operating numbers for the [illegible] reasons:

1. The numbers are prepared by different people using a different procedure.

2. The "Fresh Start" estimates assume a 41.9% savings from the 1987 law change.

State House Station 34, Augusta, Maine 04333 – *Offices Located at:* Gardiner Annex, 124 Northern Avenue, Gardiner, Maine 04345

Although we do not know the procedure and assumptions used to produce the most rec... Pool operating reports, in prior years the savings attributable to the 1987 law change was less. The savings estimate is used because loss development patterns based on pre 11/87 claims are used to estimate ultimate costs of 1988 and subsequent claim costs.

3. Management report figures do not anticipate future investment income, but the "Fresh Start" figures are on a present value basis. However, if there is no funds to invest (i.e. 1988), the effect is eliminated.

4. The "Fresh Start" figures reflect actual carrier expenses, while the Pool management figures reflect the servicing carrier allowance. In effect, the difference is the profit level to the servicing carrier, which may have drawn off approximately $10-15 million of cash.

5. The actual losses, both on an incurred basis and on a paid basis, are higher than originally estimated. This may reflect carrier performance, interpretation or application of 1987 law changes, and deteriorating workers' compensation claim activity.

<u>What are the possible assessment implications to insurers and employers?</u>

The cash shortfall for policy year 1988 for the next 12 months has been roughly estimated by NCCI to be about $35 million. Because of the delay in implementing an assessment (ch. 108) borrowing of some type will be necessary to reimburse servicing carriers for payments to claimants. Assessments to employers to generate $35 million would be equivalent to a surcharge of 12.5%. (The current insured workers' compensation market is about $280 million). To fund the entire deficit a surcharge ranging from 6% (if the Public Advocate's actuary is correct) to 68% (if the Pool management report is accepted and if assessments are spread out so no investment income is earned).

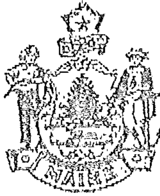
For years 1989 and subsequent at the current voluntary market level insurers would be responsible for half the deficit, and employers responsible for the other half. If NCCI's numbers in the rate filing are correct (including a 41.9% savings from the 1987 law changes) employers could be responsible for $59 million and insurers for $31 million. If the actual savings from the 1987 law change is 30% rather than 41.9%, the employer costs would increase from $59 million to $102 million and the insurers assessments would increase from $31 million to $54 million. The one time assessments to employers of $59 million and $102 million would be equivalent to a one time rate increase of about 21% and 36%, respectively. Because these figures are on a discounted basis, any delay in collecting these figures will increase the magnitude of the deficit.

The alternative scenario as represented in the Pool accounting done by NCCI would be assessments to employers of $189 million for policy year 1988 and one half of the remaining operating deficit of $385 million, or a total unfunded liability of $382 million. Based upon this information, it is important to understand that the impact on employers of assessments to fund past years' premium shortfalls could exceed the impact of the requested filing in the pending rate case. Under the current system, outstanding claims from 1988 and

subsequent years can be expected to represent a significant cost to employers. The surcharges to cover prior years' deficits apply to all currently insured employers.

REJ/lph

cc: Linda Pistner, AAG



STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE
04333

JOHN R. MCKERNAN, JR.
GOVERNOR

July 6, 1992

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

Senator William Hathaway
Danton Tower, Apt. 6D
207 East Grand Ave.
Old Orchard, ME 04064

Dear Dick and Bill,

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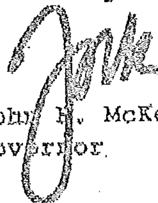
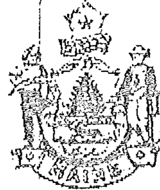


John R. McKernan, Jr.
Governor

JRM/mpm

cc:
Dr. Harvey Picker
Emilien Levesque

John R. McKernan, Jr.
Governor



Brian K. Atchinson
Superintendent

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

MEMORANDUM

Date: July 2, 1992

To: John R. McKernan, Jr.,
Governor, State of Maine

From: Brian K. Atchinson, Superintendent

Subject: Status of Residual Market

Enclosed please find a memo from Dick Johnson to me regarding the Workers' Compensation Residual Market Pool deficits. I think it is important to bring this information to your attention, as well as update you on the recent actions taken by the Residual Market Pool Board of Governors.

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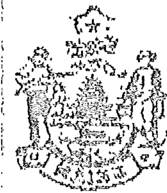
BKA/m

John R. McKernan, Jr.
Governor



Brian K. Atchinson
Superintendent

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE
(207) 582-8707
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June 26, 1992

TO: Brian Atchinson, Superintendent

FROM: Dick Johnson, Property/Casualty Actuary dj

RE: Workers' Compensation Residual Market Pool Deficits

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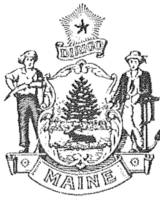
REI/lph

cc: Linda Pistner, AAG



STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE
04333

JOHN R. McKERNAN, JR.
GOVERNOR

July 9, 1992

Richard Dalbeck
17 Spoondrift Lane
Cape Elizabeth, ME 04107

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

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

Emilien Levesque
52 Burke Street
Farmingdale, ME 04344

Dear Commissioners,

There have been a couple of issues raised at the last two meetings for which I thought a response would be appropriate. I would like to address the discussions concerning past appointments of commissioners and the idea of creating a labor-management committee.

During Governor McKernan's administration, every commissioner appointed by a previous Governor that has requested to continue has been reappointed. Comments made that there is a need to change the confirmation process because appointments have become politicized is not apparent on record of the McKernan Administration. It has also certainly never been the intent of Governor McKernan to allow the appointment process of commissioners to become political, as shown by his decisions. There have been concerns brought to the attention of the administration concerning commissioners and they have been thoroughly reviewed by the Governor's staff.

I have attached a list of all of the reappointments that have been made by the Governor since he has served. I hope this helps to dispel any concerns that have been raised concerning this administration's appointment of commissioners.

The Texas law creating a labor-management commission appears to be a good model to review. The comprehensive list of criteria to be applied in choosing the membership of the commission appears to create a most equitable representation.

I am also aware that the "Workers' Compensation Group" has also proposed a different labor-management model. Contained in their plan is the suggestion that the 7 management members be chosen from a list of 14 nominees supplied by

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the Maine State Chamber of Commerce and that the employee representatives be chosen from a list of 14 nominees supplied by the Maine AFL-CIO. As stated in several meetings, the State's organized labor represents less than 20% of Maine's workforce. Thus, allowing the AFL-CIO propose the entire selection of employee representatives is not necessarily a fair representation of Maine's workforce.

The need for a reflective cross-section of Maine's employers is also worth reviewing in choosing one organization to select the management representatives. Whatever method is chosen in the selection process, the main concern is the Commission truly represent the diverse employer and employee interests contained within this State, and not be merely a Commission of interest groups.

It should also be noted that the "TEAM" proposal provides for the Commission to review any legislative reforms to Maine's workers' compensation system. What the actual "review" process will be may have Constitutional implications. Under Article V, Section 9, of the Maine Constitution, the Governor has the power "to recommend to their (the Legislature) consideration such measures, as he may judge expedient." As far as the Governor's authority is concerned, the Commission can serve in an advisory capacity in reviewing legislation which the Governor submits. Any greater role of the Commission may conflict with the Governor's executive powers, not to mention the Legislature's powers.

Thank you for taking the time to consider my comments. I am confident that the Blue Ribbon Commission will carefully balance the many issues and arrive at a final solution that will delicately address the existing complexities, while substantially reducing costs of all the components of the system. I would also like the members of the Blue Ribbon Commission to feel confident that the Governor continues his support of the Commission's nonpartisan efforts.

Sincerely,

Abigail H. Harkins
Law Clerk

AHH/mpm

Safety and health through workers'compensation (AFL-CIO, 7/8/1992) ●
(Available on request-please include the following citation: WC115-BRC-08-Pt. B-247.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

The Sheridan Corporation

July 10, 1992

Ms. Michelle Bushey
Blue Ribbon
University of Maine School of Law
246 Deering Avenue
Portland, ME 04102

Dear Michelle:

Enclosed please find submission to Blue Ribbon Commission, as you requested.

Yours very truly,

THE SHERIDAN CORPORATION

Mitchell P. Sammons
Vice President/Comptroller

MPS/jam

Enc.

Ref:lxl:ms.ltr

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July 10, 1992

To: Members of State of Maine Blue Ribbon Commission

Re: State of Maine-Workers' Compensation Residual Market Pool

I. Introduction

A. Name: Mitchell P. Sammons

Employer: The Sheridan Corporation
General Contractor-Commercial, Industrial, Institutional Buildings
Annual Sales Volume - $25 million

Employment Responsibilities: Title-Vice President/Comptroller
Corporate Principal

Sheridan, incorporated in 1947, employs an average of 120 personnel, year-round.

B. Current Chair of the Board of Governors, Maine Workers' Compensation Residual Market Pool.

II. Current Status of Pool Funds

A. Actual cash deficit is occurring specific to policy 1988. Outflow of approximately $8 million per quarter is being expended.

B. Board of Governors, in recognition of cash deficit and emergency legislation which prohibits surcharge action by Superintendent of Insurance, recommended that funds currently on hand that have been accumulated through premiums collected from subsequent policy years be used to reimburse carriers for cash outlay due to claims incurred in policy year 1988. This is a <u>short term fix</u> which must be addressed in order to equalize the pool fund.

C. N.C.C.I. ultimate projection of cash deficit is around $500 million.

1. Annual Residual Market premium level is about $220 million. If we accept the projection, we are talking a two-year level of premium shortage over the policy years 1988 to 1991.

2. Dispute as to accuracy of projections. Because of the factor "Incurred But Not Reported"-reserves for claims to

→ also the 1988 "tail" IBNR may be high

come, there is room for a great deal of speculation as to forecast accuracy. However, even if the projection is 50% accurate, it will take an additional one full year of Residual Market premiums to cover a real cash shortfall/bankruptcy.

D. "Fresh-Start" Legislation

Benefit change cost impacts

This legislation established a vehicle to surcharge the employers by additional 3% to cover an anticipated $40 million shortfall due to 1988. In addition, any additional shortfall was to be paid entirely by the employers in Maine. If there really is a $120 million shortfall for 1988, and a vehicle has been established to cover $40 million, the balance is another surcharge of about 6%.

Fresh-Start also established a carrier assessment and employer share of expense mechanism for recouping losses from subsequent year.

III. Personal Observations

A. A real cash shortfall is impending for this Pool unless fundamental changes occur. The real threat of pool insolvency should be viewed as the impetus for all factions to grasp this opportunity to correct the system in Maine, thus sending a national message that this State is seriously endeavoring to provide employment, raise its standard of living and, as a result of the improvement in personal liquidity, strengthen the resource base necessary to sustain the social programs expected by the general population. Otherwise, the remaining employers will not be able to finance the burgeoning cash deficit now in front of us.

B. Changes Necessary to Reduce Costs

1. Reduce legal involvement by elimination of 44-day and 7-day notification rules as well as by the following items.

2. Increase the number of Commissioners in order to allow faster processing of hearings. Allow only two hearings per claim before the Commissioners so that the tactic of stalling while receiving benefits is eliminated, and force quick claim resolution. Provide for Commissioner ruling appeal system, one appeal only, to a Board comprised of peers, medical professionals, and employers.

3. Eliminate ability to lump-sum settlement without insured's approval and only after employee has returned to active employment (study Texas System).

4. Strengthen fraud rules and staff. Automatic Fraud Dept. investigation into claims that remain open for more than

one year. Allow for litigation to prosecute and fine fraud offender. (Employer already has OSHA)

5. Investigate coordination and offsetting of benefits.
C Welch example

6. Allow employer voluntary involvement in WC Insurance program as in Texas. Approve plans that provide 24-hour medical coverage and long term disability coverage with deductibles and co-insurance (ref. Healey & Assoc. memo and Confederation Life memo) clauses.

7. Review/reduce servicing carrier fee allowance.

C. Funding

Premiums could continue to be generated as they currently are being handled. However, establish a specific monetary fund similar to State Unemployment Insurance tax, apart from General Fund, which provides means of an across-the-board employer, shared with employee, unrated payroll tax matching deduction. This provides alternate means of insuring funds are available as "Guarantee Fund" or "Umbrella" coverage in the event that extraordinary fiscal events occur such as the current 1988 policy year shortfall. This also causes employees to realize that there is a real limited resource that cannot, by itself, maintain the social welfare net currently demanded by the population. The employee must share in the cost of this program for psychological reasons as well.

Example: Maine Dept. of Labor Report for April, 1992 indicates a labor force of over 600,000 employees. Using a conservative income level of $15,000/year/employee at a rate of 2% (1% employer, 1% employee) a premium of $300.00/employee is generated. If the labor force is actually 400,000 x $300, a total annual premium of $120 million is created.

Please refer to my letter, dated June 13, 1991, to J. Edwards (then Superintendent of Insurance) for means of administering pool and claims.

If employee wants rich plan, he should help pay
— our Group Plan - 100% employer/health, life, STD
LTD premium about $3-4/week — STD gives/meets 6 mo. cut-off —

Healey & Assoc. memo

DATE: July 7, 1992

TO: Mitch Sammons, Sheridan Corporation

FROM: Mark W. Anthoine, RHU, CLU, ChFC

RE: **Worker's Compensation Meeting for July 9, 1992**

As a follow up to our discussion at your office last week, I would like to summarize the information that we obtained when reviewing ~~revealing~~ the possibility of offering a Group Short Term and Long Term Disability Program which would not be offset by any Worker's Compensation benefits to be received by a disabled employee.

As you are aware, all insurance companies underwriting Group Short Term Disability (STD) and Long Term Disability (LTD) coverages include a provision within the contract that states that no benefits would be paid under a Short Term Disability plan should an employee be receiving Worker's Compensation benefits, and any employee receiving Worker's Compensation benefits when eligible for a Group Long Term Disability benefit would only receive a Group LTD benefit according to the formula of the contract which would then be offset by any Worker's Compensation benefits received. We investigated with insurance carriers what the actuarial cost of taking out the "offset" contractual language would be, and what we found was that for Group LTD plans that have an elimination period of 90 days or longer, there is only a minimal actuarial pricing decrease by including the "offset" contractual language. In other words, if they were to remove the offset language, there would conversely be only a minimal increase in the overall pricing of the Group LTD plan. (estimated at 2.5 to 1

Our intent was to determine if there would be a feasible way to allow an employer to cover his or her employees with a plan design equivalent to the Worker's Compensation plan design, while at the same time costing the employer less than their Worker's Compensation premium. Our findings indicated that if the employer were able to self-fund the first 90 or 180 days of income replacement benefits for all employees, and purchasing a Group LTD benefit plan which would take over at 90 or 180 days, then the employer would potentially save money by going this route. We further found that some insurance carriers would possibly be able to adjudicate the claims for the employer that occurred during the period of the first 90 or 180 days.

We also discovered that imperative to the whole process would be the fact that the insurance carrier would have to be able to write a contract to meet the definitions and standards of the State of Maine's Worker's Compensation laws. We would invite the opportunity to further investigate this as an alternative or an option to the State of Maine's Worker's Compensation package.

Thank you.

Confederation Life
INSURANCE COMPANY

FAX TRANSMISSION

FROM Robin Michael
DEPT. Boston Group Office
DATE 7/6/92 PHONE

TO Mark Anthoine
Healey & Associates
RE: LTD Offsets

Dear Mark:

Per your request, I asked Underwriting if they would write an LTD policy without offsetting for workmens compensation. I have been advised that it is not something that they like to do, but it has been done on a few cases (mainly in Texas), and they would consider doing it on other cases if necessary. Note, the policy would be rated accordingly to reflect this.

Mark, if you have any further questions, please do not hesitate to contact me.

Best regards,

Robin Michael
Office Manager

/rm

FOR OPERATOR'S USE ONLY

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Date Sent	

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Kuc

The Sheridan Corporation

512-921-7458

June 13, 1991

Mr. Joseph Edwards, Superintendent of Insurance
Dept. of Professional & Financial Regulation
Bureau of Insurance
State House Station 34
Augusta, ME 04333

Dear Mr. Edwards:

Yesterday, I met with Lou Hayden and Steve Hoxie at Lou's SAS operation in Pittsfield. We, of course, discussed the Board of Governors and NCCI, our role as members of the Board and our mutual frustration with NCCI's methods of operation.

Until I have fully read and digested the Sections 440, etc. that, I am told, pertain to the responsibilities of the members of the Board of Governors; I'll admit to my ignorance of regulations, rules and even laws that may not allow the alternative to the Assigned Risk Pool guidelines that I am suggesting here.

Lou Hayden had expressed his opinion that the creation of a state agency to administer the Assigned Risk Pool, replacing NCCI and the insurance companies, would be better than the current situation. I am not quite so sure of that idea, and have been against the idea of a "State Fund" for all the reasons mentioned before whenever John Martin brings the idea up.

However, I have to wonder if a quasi-state operation may yield some advantages. Resources are already in place that have demonstrated the ability to administer Workers' Compensation claims handling, such as The Dunlap Corporation's operation in Gray. Their arrangement with Maine Bonding and Casualty runs on a much lower fee basis and has the sensitivity of a competition/marketplace, profit-oriented business. The Bureau of Insurance could replace NCCI as the monitor of the arrangement. This would not succeed as a one-source provider, I understand, but negotiations and bid solicitations to other Workers' Compensation agencies qualified to administer claims (eg. Morse, Payson, Noyes; Sedgwick-James) have the potential for success due to profit-oriented and corporate competitive desires. The definition of "qualified" would be the Bureau's, and the market, or capacity service needs could be met by letting claims administration contracts to more than one agency. When the arrangement with MGA was ending, the Board received statements of commitment and capacity from insurance companies willing to service the northern counties. A similar administrative event could take place for solicitation and qualification of an agency's ability to handle pool claims.

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The Board of Directors of this new entity would be comprised of business, labor, medical, legal, and state representatives. The current board make-up seems to be hampered by an insurance business-as-usual slant irritated by the business members desire to produce effective solutions. I am afraid that I must admit to my disappointment in NCCI's management of the pool and board interaction. Their reluctance to finalize the movement of Pool funds to a Maine-based bank, the lack of response to inquiries regarding the "northern counties" management and their apparent inability to provide the basic tools of management (eg. meeting agendas on time, readable funds reports) seem designed to keep us in the dark.

In any event, I can assure you that the three members representing businesses on the Board are committed to doing our share to bring effective results. When we have been given a chance, I believe we have proven that commitment.

Thank you for your time, I hope this current round of debate and talk of reform yields productive measures.

Yours very truly,

Mitchell P. Sammons
Vice President/Comptroller

MPS/gbs

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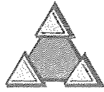

HARDY WOLF & DOWNING, P.A.

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FAX 795-6296

July 10, 1992

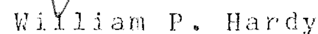
Michelle E. Bushey
Staff Assistant
Blue Ribbon Workers' Compensation Commission
University of Maine Law School
Portland, ME 04103

Dear Michelle,

I am enclosing a copy of some comments that I had to Senator Hathaway's remarks on the July 10th meeting. He suggested that if I had some input I should get it to him for his consideration.

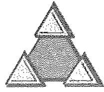
If you would be kind enough to be sure that Senator Hathaway gets this material I would appreciate it.

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



William P. Hardy

WPH/mec
Enclosure



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July 10, 1992

Senator William Hathaway
Blue Ribbon Commission on Workers' Compensation

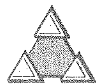
Dear Senator Hathaway,

As you may recall, following the meeting on July 10th we had a brief discussion on dispute resolution. At that time, you invited me to make written comments. I make these remarks as a lawyer representing hundreds of workers in Maine, but not necessarily represesnting any group.

The proposals that you made were intriguing. I understood them to be "talking points" and not finished proposals, especially as they needed to be melded with ideas advanced by Commissioner Dahlbeck on administration. In any event, they were innovative and creative ideas which hopefully will feed into a workable system.

I share your desire to limit the amount of litigation in workers' compensation. One of the greatest sources of delay and unnecessary paperwork and expense is pre-trial discovery. It puts a significant burden particularly on employee's counsel and results in expenses that may not be needed or justified. Whether such discovery is necessary to assure a due process hearing is unclear. The reality and the perception of due process are essential in giving the system legitimacy and true fairness.

There may be some constitutional concerns about the powers of the independent medical examiner. If the independent medical examiner is considered to be the ultimate adjudicator of many of the significant issues of the case, I wonder if there might be a due process issue especially if there is no opportunity to cross-examine the independent medical examiner. I do not know the answer to this question, and would suggest perhaps an independent adviser such as Professor Gregory with whom you had previously consulted might be better qualified to do this. I am sure that a system can be constructed where some significant weight is given to an independent medical examiner, but I am not certain that the independent medical examiner can constitutionally be the last word on essential issues of fact and law. In any event, I am sure you could get a much more thorough and well-reasoned analysis from someone of Professor Gregory's stature.

 HARDY WOLF & DOWNING, P.A.

At the meeting the week of the 4th, all the members of the Commission appeared to subscribe to the Michigan view on attorney's fees. Your remarks on the 10th appeared to revisit that issue. A few points on that question:

1. Regardless of what other witnesses have said, Maine attorney's fee cost is a trivial part of the whole (5.4%, according to the NCCR's annual figures).

2. By 1984 and 1985 legislative changes, Employees' attorney's fees were reduced by 25% to 35%. Employers' attorney's fees were not.

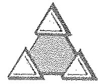
3. As a result of these changes, many small town practitioners can no longer afford to represent compensation claimants. In Lewiston-Auburn, the number of attorneys who represent workers has been cut about in half.

4. The Michigan schedule would probably reduce Employees' attorney's fees and may result in further concentration of the business in a couple of big firms specializing in this area.

5. Any alteration in Michigan's formula would probably in time make it impossible for an employee to obtain counsel except through these large firms.

6. The average compensation case is about very serious issues far more crucial to real people than the average Superior Court case. These are not administrative hearings on drivers licenses. This is about people feeding their families. Due process is absolutely essential to resolve these basic issues, as all 50 states now recognize. All 50 states also recognize the need for counsel if due process is to have any meaning at all.

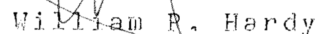
It has always been fashionable to vilify lawyers. But, lawyers here provide valuable guidance at the most critical juncture in many injured worker's lives. Standing up for people who are otherwise powerless is never going to be popular when the public dialogue is controlled by those more powerful. But, a balance of power in dispute resolution is essential to due process.

 HARDY WOLF & DOWNING, P.A.

In short, I believe the Michigan system as used there would represent a significant reduction in the current attorney's fees available. However, if the Commission is adopting the Michigan system in large part as far as benefits and other issues are concerned, there is logic in having the attorney's fee schedule brought along. Any reduction in the fee schedule Michigan has will be tantamount to denying counsel to a significant number of workers, particularly the lower earning, non-union workers which make up the vast majority of Maine employees.

As for the independent medical examiner, the last thing this Commission should want to do is to create a law which is challenged successfully on constitutional grounds, and it seems prudent to find out of this independent medical examination system is vulnerable in that score.

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



William R. Hardy

WPH/mec

WORKER'S COMPENSATION
Current Situation (July 1992)

Senator Judy Kany
July 10, 1992

100% by premium

Individual and Group Self-Insurance (40%)

*Joint & several liability

*Up-front scrutiny of member financials

*Up-front actuarial determinations of funding requirements

*Self-Insurance Guarantee Fund if reserves or "joint & several liability" insufficient

*Servicing is usually done by a TPA (Third Party Administrator), but sometimes by employer itself

Residual Market Liabilities for years prior to 1993

If any self-insureds were in residual market during a year now found to have a deficit, that self-insured shares in deficit according to Fresh Start Law. This also applies to employers in voluntary market. Voluntary market insurers participate in deficits, too, as required by Fresh Start and Bureau of Insurance Rule #650.

Voluntary Market (6%)

*Often retrospective rating

*Rate set by Superintendent is ceiling

*If insurance company becomes insolvent, then Maine Insurance Guarantee Association covering insolvencies for all types of insurance takes over claims.

Residual Market/Assigned Risk Pool (54%)

Safety Pool: Mostly very small employers - 78%

Accident Prevention Account: High Risk Pool - 22%

Residual market pool fund: $296 million, December 1991

*Governance determined by Bureau of Insurance Rule #440, not by statute.
- 3 employer members
- up to 12 insurance carrier members
- Board of Governors chooses Plan Manager
- Plan Manager is NCCI, insurance organization

*Rates determined by Superintendent of Insurance. Higher rate for Accident Prevention Account. Rates vary for work classifications. Rates applied to employer's "mod", experience modification factor weighting 3 years' experience.

*Insurance carriers service the residual market and are paid 25.6% of premium. An insurance carrier can contract with a TPA to service.

*Deficit now shared 50-50 between employers and employees under Fresh Start Law. See 24A MRSA §2367.

WORKERS' COMP PROPOSAL
Effective January 1, 1993

Senator Judy Kany
July 10, 1992

100% by premium

45%	5%	50%	
Individual & Group self-insurance	Voluntary Market	Residual Market (Assigned Risk Pool) Employers Mutual Funds	
No changes to law.	Allow "file & use", de-regulation of rates. Regulate only regarding solvency and claims administration. Eliminate requirement that insurers participate in residual market in any way - servicing or deficits.	80% (Old Safety Pools) 8-10 geographic or industry groups (divisions)	20% (High Risk Pool) Division/Group
Residual Market Liabilities for years prior to 1993		*Governance of each "group" to be 50-50 employer/employee. *Separate deficit or surplus determinations for each group. If surplus, surplus to be distributed only to employers within group earning surplus. If deficit, 50% of deficit to be paid by employers in group causing deficit and 50% to be paid by all employers in group. *Eliminate need for servicing agent to be associated with insurance companies. Servicing can be bid on basis of price and performance. Servicing by insurance companies, TPA's or by paid staff.	*High risk Division to be governed by employer/employee mix of other Employers Mutual Funds groups and High Risk Pool members. *Safety plans and committees required. Minutes to governing board. Can be eliminated from High Risk Pool for safety compliance problems *Must cover own deficits beginning with 1993.
Change make-up of Board of Governors to reflect employers' responsibility under Fresh Start Law. Prohibit NCCI from being Plan Manager. Improve servicing. Deficits expected to decline immediately due to improved servicing, procedures, laws, and labor/management relations. No change is recommended in allocation of responsibilty.			

*Flexibility. Group can determine standards for elimination of members for non-payment and safety reasons.

Employers' Mutual Guarantee Fund
(Pre-funded 2%)

To pay claims only in the case of employer insolvency (chapter 7 or 11 under the bankruptcy code) or upon termination of employer's business. To be governed by representatives from each smaller pool's board.

WORKERS' COMP
Expected results by January 1996
if proposal effective January 1993

Senator Judy Kany
July 10, 1992

100% by premium

55% Individual & Group Self-Insurance	25% & growing Voluntary Market	20% & getting smaller Residual Market Employers Mutual Fund	
		10%	10%
		Very small employers with good safety records (old safety Pool)	High Risk Pool (old Accident Prevention Account)

Individual pools take care of deficits and surpluses. Overall, Employers Mutual Fund Guarantee Fund only covers claims due to employer insolvencies under Chapter 7 or 11 under the Bankruptcy Law or because employer has gone out of business.

Residual Market Deficits
from 1988-1992

It is expected that deficits for '88-'92 will cease due to improved servicing, procedures, laws and labor/management relations.