



montana
workers'
compensation



annual report



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Montana Department
of Labor & Industry
Employment Relations Division

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commissioner's letter



Governor Brian Schweitzer
Keith Kelly, Commissioner

Montana

Department of Labor and Industry

Commissioner's Office

Dear Colleagues and Fellow Montanans,

It is my pleasure to present the Workers' Compensation Annual Report for Fiscal Year 2009 to the Governor, the legislature, and to stakeholders in Montana's workers' compensation system. The report provides an overview of system activities and statistics.

Since last year's Annual Report, there has been significant research and work on the workers' compensation system by the Department, the Labor-Management Advisory Council (LMAC) and the Economic Affairs Interim Committee (EAIC). LMAC is an advisory council attached to the Department, composed of representatives of both management and labor that studies and recommends improvement to Montana's system. EAIC was authorized by the 2009 Montana Legislature (SJR30) to study workers' compensation cost drivers in Montana and the laws related to the Montana State Fund.

LMAC continued to study and recommend changes that would reduce workers' compensation system costs, plus reviewed Montana's workers' compensation benefit structure and developed recommendations to modify benefits to improve predictability, consistency, and equity. Another major effort completed during the year was an evaluation and selection of Montana's new utilization and treatment (U&T) guidelines by a cross-section of medical practitioners. The new guidelines, a combination of the Colorado and either ACOEM or ODG guidelines, will be implemented in late 2010. The guidelines are intended to provide evidence-based medical treatments to injured workers while helping to contain the rising cost of medical care.

Created in 2008 by LMAC as a public/private partnership to address workplace safety and return to work, WorkSafeMT held its first Safety Fest in Helena in May 2010. The event was a resounding success in terms of numbers and positive feedback, attracting over 500 participants and 2,900 classroom seats. Additional safety conferences are planned in various locations across the state over the next year. The Stay at Work/Return to Work Committee developed and published "Montana's Best Practices for Stay at Work/Return to Work Programs", while the Communications Committee developed a focused and effective spring social marketing campaign.

We hope you find the information in this report useful in understanding what's happening in Montana's system. The Department is committed to continue working to meet its goals of system wide improvements that serve the interests of Montana's employers and employees.

Sincerely,

A handwritten signature in cursive script that reads "Keith Kelly".

Keith Kelly, Commissioner
Department of Labor & Industry



table of contents and exhibits

Summaryv

section 1 ■ montana workers' compensation system

Declaration of Public Policy 3

Insurance Coverage Requirements 4

Life of a Claim 5

Workers' Compensation System Administration 7

Labor-Management Advisory Council 8

WorkSafeMT 9

Workers' Compensation Market 10

 Exhibit 1.1–Gross Annual Payroll–Plan 1 – By Calendar Year 10

 Exhibit 1.2–Premium Market Share–Plans 2 and 3–By Calendar Year (*chart*) 11

 Exhibit 1.3–Premium Market Share–Plans 2 and 3–By Calendar Year (*table*) 11

section 2 ■ claim statistics

Claims Data Summary 15

Claims by Plan Type 16

 Exhibit 2.1–Reported Claims–Five Year Trend–By Plan Type and Fiscal Year of Injury . 16

 Exhibit 2.2–Reported Claims–By Plan Type and Fiscal Year of Injury 16

Injury Incident Rates by County 17

 Exhibit 2.3–Injury Incident Rates and Number of Employees–FY09–By County 17

Injured Worker Characteristics 18

 Exhibit 2.4–Reported Claims-Five Year Trend–By Age at Time of Injury and Fiscal Year of Injury 18

 Exhibit 2.5–Reported Claims–By Age at Time of Injury and Fiscal Year of Injury. 18

 Exhibit 2.6–Reported Claims–FY09–By Standard Industrial Classification Major Groups 19

 Exhibit 2.7–Reported Claims–By Standard Industrial Classification Major Groups and Fiscal Year of Injury 19

 Exhibit 2.8–Reported Claims - FY09–By Cause of Injury 20

 Exhibit 2.9–Reported Claims–By Cause of Injury and Fiscal Year of Injury. 20

 Exhibit 2.10–Reported Claims–FY09–By Nature of Injury 21

Exhibit 2.11—Reported Claims—By Nature of Injury and Fiscal Year of Injury	21
Exhibit 2.12—Reported Claims—FY09—By Standard Industrial Classification Major Groups and Nature of Injury.	22
Exhibit 2.13—Reported Claims—FY09—By Part of Body	23
Exhibit 2.14—Reported Claims—By Part of Body and Fiscal Year of Injury	23
Insurer Denial of Claims	24
Exhibit 2.15—Insurer Denial of Claims—By Fiscal Year of Injury	24
Exhibit 2.16—Insurer Denial of Claims—By Reason of Denial and Fiscal Year of Injury . .	24

section 3 ■ **benefits**

Total Benefits	27
Exhibit 3.1—Total Benefits Paid—By Plan Type and Fiscal Year of Payment (<i>chart</i>)	27
Exhibit 3.2—Total Benefits Paid—By Plan Type and Fiscal Year of Payment (<i>table</i>)	27
Exhibit 3.3—Medical Payments—By Plan Type and Fiscal Year of Payment (<i>chart</i>)	28
Exhibit 3.4—Medical Payments—By Plan Type and Fiscal Year of Payment (<i>table</i>)	28
Exhibit 3.5—Indemnity Payments—By Plan Type and Fiscal Year of Payment (<i>chart</i>) . . .	29
Exhibit 3.6—Indemnity Payments—By Plan Type and Fiscal Year of Payment (<i>table</i>) . . .	29
Benefit Distribution	30
Exhibit 3.7—Total Benefits Paid—By Benefit Type and Fiscal Year of Injury	31
Exhibit 3.8—Indemnity Benefits Paid—By Benefit Type and Fiscal Year of Injury	31
Exhibit 3.9—Total Wage Loss Benefits and Medical Benefits, including Lump Sums . . .	32
Exhibit 3.10—Total Wage Loss: TTD, TPD, PTD, PPD, including Lump Sums	33
Exhibit 3.11—Total Medical Benefits, including Lump Sums	34
Exhibit 3.12—Wage Loss Benefits: Temporary Total Disability, including Lump Sums . .	35
Exhibit 3.13—Wage Loss Benefits: Temporary Partial Disability, including Lump Sums .	36
Exhibit 3.14—Wage Loss Benefits: Permanent Partial Disability, including Lump Sums	37
Exhibit 3.15—Wage Loss Benefits: Permanent Total Disability, including Lump Sums . .	38
Exhibit 3.16—Medical Benefits: Payments to Physicians	39
Exhibit 3.17—Medical Benefits: Payments to Hospitals	40
Exhibit 3.18—Medical Benefits: Payments to Other Medical Providers	41
Exhibit 3.19—Vocational Rehabilitation Benefits, including Lump Sums.	42
Temporary Disability Paid Duration	43
Exhibit 3.20—Temporary Disability Paid Duration—1 Year Maturity—By Plan Type and Fiscal Year of Injury (<i>chart</i>)	43

Exhibit 3.21—Temporary Disability Paid Duration—3 Year Maturity—By Plan Type and Fiscal Year of Injury (<i>chart</i>)	44
Exhibit 3.22—Temporary Disability Paid Duration—1 Year Maturity By Plan Type and Fiscal Year of Injury (<i>table</i>)	44
Exhibit 3.23—Temporary Disability Paid Duration—3 Year Maturity By Plan Type and Fiscal Year of Injury (<i>table</i>)	44
Settlement Dollars	45
Exhibit 3.24—Average Settlement—By Fiscal Year of Injury	45
Exhibit 3.25—Settlement Amounts for Claims Settled—By Plan Type and Fiscal Year of Injury	45
Injured Worker Attorney Fees	46
Exhibit 3.26—Average Attorney Legal Fees—By Fiscal Year of Injury	46
Exhibit 3.27—Total Attorney Legal Fees—By Plan Type and Fiscal Year of Injury	46
Exhibit 3.28—Attorney Fees from Claimant Settlements—By Fiscal Year of Settlement	47
Insurer Legal Expenses	48
Exhibit 3.29—Average Insurer Legal Expenses per Claim—By Fiscal Year of Injury	48
Exhibit 3.30—Total Insurer Legal Expenses—By Plan Type and Fiscal Year of Injury	48

section 4 ■ **dispute resolution**

Mediation	51
Exhibit 4.1—Claims in Mediation—FY09—By Plan Type	51
Exhibit 4.2—Claims in Mediation—By Plan Type and Fiscal Year of Receipt	51
Exhibit 4.3—Percent of Mediation Petitions Resolved—FY09	52
Exhibit 4.4—Mediation Petitions—By Fiscal Year of Receipt	52
Contested Case Hearings	53
Exhibit 4.5—Petitions Received by the Hearings Bureau—By Plan Type and Fiscal Year	53
Workers’ Compensation Court	54
Exhibit 4.6—Percent of Petitions Received by the WCC—FY09—By Case Type	54
Exhibit 4.7—Petitions Received by the WCC—By Case Type and Fiscal Year	55
Exhibit 4.8—Decisions by the WCC—By Fiscal Year	55
Exhibit 4.9—Full and Final Compromise Settlements by the WCC—By Case Type and Fiscal Year	55
Significant Workers’ Compensation Cases	56
Supreme Court Decisions on Workers’ Compensation and Occupational Disease	59

section 5 ■ department administered programs

Organizational Charts	65
Exhibit 5.1—Montana Department of Labor & Industry.....	65
Exhibit 5.2—Employment Relations Division	66
Workers’ Compensation Assessments as Expended	67
Exhibit 5.3—Workers’ Compensation Assessments as Expended—By Fiscal Year of Expenditure.....	67
Subsequent Injury Fund	68
Exhibit 5.4—SIF Payments and Dollars Assessed—By Plan Type and Fiscal Year	68
Uninsured Employers’ Fund	69
Exhibit 5.5—Uninsured Employers’ Fund—Financial Activity by Fiscal Year of Payment (<i>chart</i>)	70
Exhibit 5.6—Uninsured Employers’ Fund—Financial Activity by Fiscal Year of Payment (<i>table</i>).....	70
Exhibit 5.7—UEF Medical and Indemnity Payments—By Fiscal Year of Payment (<i>chart</i>)	71
Exhibit 5.8—UEF Medical and Indemnity Payments—By Fiscal Year of Payment (<i>table</i>)	71
Construction Contractor Registration	72
Exhibit 5.9—Registered Construction Contractors—By Fiscal Year	72
Independent Contractor Exemption Certificates	73
Exhibit 5.10—Independent Contractor Exemption Certificates—Applications for FY09 .	73
Exhibit 5.11—Percent of Independent Contractor Exemptions Applications—FY09 By Industry.....	74
Professional Employer Organizations	75
Exhibit 5.12—Licensed Professional Employer Organizations—By Fiscal Year	75
Exhibit 5.13—Number of Professional Employer Organization Clients—By Fiscal Year ..	76
Exhibit 5.14—Leased Employees—By Fiscal Year	76
Safety & Health	77

section 6 ■ appendices

Definitions	81
Methodology	86
Data Sources	88
Further Information	89

summary

Listed below are highlights from the Montana Workers' Compensation Annual Report, Fiscal Year 2009. This report contains information about Montana's workers' compensation system, including injury statistics and characteristics, benefits paid by insurers, dispute resolution and miscellaneous regulatory programs and functions. Unless otherwise cited, all reported numbers, charts, and tables are derived from the Employment Relations Division workers' compensation database (WCAP).

Claims Statistics

There were 28,206 claims reported in Fiscal Year 2009 (FY09) compared with 32,236 reported in FY08, a decrease of 12.5%. From FY08 to FY09, private carriers witnessed a 10.6 decrease in the number of claims reported. The number of claims reported by self-insured carriers decreased by 6.7%. Claims reported by Montana State Fund decreased by 16.8%. The service industry was responsible for 37.4% of all claims reported in FY09, the most of any industry. The most common nature of injury in FY09 was sprain/rupture, which accounted for 43.1% of injuries. Strains, jumping, or lifting (33.2%) caused more injuries than other categories of cause and upper extremities (29.1% of injuries) were more often injured than other parts of the body. In FY09, 6,394 claims were denied by insurers.

Benefits

Total indemnity (wage loss) and medical benefits paid in FY09 were \$247.9 million. Adjusted for inflation, medical payments increased 3%, while indemnity payments decreased 4%.

Dispute Resolution

The Mediation Unit of the Employment Relations Division (ERD) is the front line in dispute resolution. The Unit holds conferences between disputing parties and issues written recommendations. During FY09, the unit processed 1,387 petitions, with a resolution rate of 79%.

The Hearings Bureau received four new petitions for contested case hearings in FY09.

The Workers' Compensation Court (WCC) received 208 petitions, dismissed 51 petitions and issued 191 decisions in FY09.

Workers' Compensation Assessments as Expended

The administration of the Workers' Compensation and Occupational Disease Acts and the various occupational safety laws is funded by an assessment on employers and insurers. The cost of the regulatory functions in FY09 was \$6.84 million. Each insurer is assessed up to 3% of benefits paid. For policies written by private insurers and the Montana State Fund, the assessment is collected as a premium surcharge paid by individual policy holders.

Subsequent Injury Fund

The Subsequent Injury Fund (SIF) payments in FY09 for all dates of injury totaled \$817,130. There were 168 new SIF certifications during FY09 resulting in a total of 4,376 certified individuals in Montana.

Uninsured Employers' Fund

Uninsured Employers' Fund (UEF) provides benefits for injured employees when employers are without appropriate workers' compensation insurance. In FY09, UEF collections decreased 7.8% from FY08, from \$2.1 to \$1.9 million. Injured workers received \$1,381,544 in medical and indemnity benefits in FY09.

Construction Contractor Registration

The Construction Contractor Registration program (CCR) facilitates the registration of construction contractors working in Montana. In FY09 there were 11,107 active Construction Contractor Registrations, with approximately 2,652 contractors registered as having employees.

Independent Contractor Exemptions

Independent contractors who do not wish to be covered under workers' compensation insurance may file for an exemption with the Department of Labor and Industry (DLI). The number of independent contractor exemption applications received for FY09 totaled 7,998, of which 7,682 were approved. Sixty-three percent of independent contractors are in the construction industry.

Professional Employer Organizations

To be licensed, a Professional Employer Organization (PEO) must submit an application and proof of workers' compensation coverage. Forty (40) PEOs were licensed in Montana at the end of FY09. These PEOs leased 2,917 employees to 517 client companies.

section 1

montana workers' compensation system

- ✦ declaration of public policy
- ✦ insurance coverage requirements
- ✦ life of a claim
- ✦ workers' compensation system administration
- ✦ labor-management advisory council
- ✦ worksafemt
- ✦ workers' compensation market



declaration of public policy¹

It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole, but are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that a holder of a current, valid independent contractor exemption certificate issued by the department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this chapter unless the person has elected to be bound personally and individually by the provisions of compensation plan no. 1, 2, or 3.

A worker's removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

Title 39, chapter 71, MCA must be construed according to its terms and not liberally in favor of any party.

The legislature's intent regarding stress claims, often referred to as mental-mental claims and mental-physical claims, is not to provide for compensation under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.

¹ §39-71-105, MCA (2005)

insurance coverage requirements

If you are an employer or an employee, the Workers' Compensation and Occupational Disease Acts apply to you. An employer who has an employee in service under any appointment or contract of hire, expressed or implied, oral or written, must elect to be bound by the provisions of compensation Plan 1 (self-insured), Plan 2 (private insurance companies) or Plan 3 (Montana State Fund).

Employment Exempted

The Workers' Compensation Act² may not apply to any of the following employments:

- Household or domestic employment
- Casual employment
- Dependent member of an employer's family for whom an exemption may be claimed by the employer under the Federal Internal Revenue Code
- Sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member managed limited liability company
- Real estate, securities or insurance salesperson paid solely by commission without a guarantee of minimum earnings
- A direct seller
- Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States
- A person performing services in return for aid or sustenance only, except employment of search and rescue volunteers
- Employment with a railroad engaged in interstate commerce, except railroad construction work
- An official, including a timer, referee, umpire or judge, at a school amateur athletic event
- A person performing services as a newspaper carrier or freelance correspondent
- Cosmetologist's services and barber's services
- A person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the reservation
- A jockey who is performing under a license issued by the Board of Horse Racing, from the time the jockey reports to the scale room prior to a race, through the time weighed out, and has acknowledged in writing that the jockey is not covered while performing services as a jockey
- Trainer, assistant trainer, exercise person or pony person who is providing services under the Board of Horse Racing while on the grounds of a licensed race meet
- An employer's spouse
- A petroleum land professional
- An officer of a quasi public or a private corporation or manager of a manager managed limited liability company
- A person who is an officer or a manager of a ditch company
- Service performed by an ordained, commissioned or licensed minister of a church
- Independent Contractors
- Providers of companionship services or respite care, if a family member or legal guardian hires the person providing care
- A person performing services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meet the definition of a broker or freight forwarder
- An athlete employed by or on a team or sports club engaged in a contact sport
- A musician performing under a written contract

² §39-71-401, MCA (2009)

life of a claim

Workplace injuries and illnesses do happen and when a Montana employee files a workers' compensation claim, the life of that claim is dictated primarily by statute. Progress of a typical workers' compensation claim in Montana is determined by the following guidelines:

- Once the injury occurs, the injured worker or their authorized representative has 30 days from the date of injury to notify the employer (employer, managing agent or superintendent in charge of the work) or the insurer. [§39-71-603, MCA]
- The employer then has six days from the date of notification of an injury to report the injury to the insurer or the DLI. [§39-71-307, MCA, and ARM 24.29.801]
- The claimant or the claimant's representative has 12 months from the date of injury to file a claim. [§39-71-601(1), MCA] The claim filing time can be extended up to an additional 24 months if it can be proven that the worker was somehow prevented from filing the claim because of something the employer or the insurer said or did, or if the injury was latent or the worker lacked knowledge of disability. [§39-71-601(2), MCA]
- The signed claim form or First Report of Injury and Occupational Disease (FROI) (form ERD-991) can be submitted to the employer or sent directly to the insurer or the DLI. [§39-71-601(1), MCA]
- The insurer shall accept or deny a claim within 30 days of receipt of a signed claim for compensation by the claimant, the employer or the claimant's representative. If the claim is denied, the worker is notified in writing of the denial. [§39-71-606, MCA]
- If further investigation is needed before the insurer accepts liability and the 30 day limitation for a decision on compensability is due to expire, the insurer may pay wage loss and/or medical benefits without such payment being an indication of admission of liability or waiver of any right of defense. [§§39-71-608 and 39-71-615, MCA]
- The first 4 days or 32 hours (whichever is less) of total wage loss is not compensable, but a claimant may use sick leave during this time. A claimant cannot use sick leave and receive wage loss benefits at the same time. [§39-71-736, MCA]
- In addition to using an emergency room or urgent care center, the claimant has the right to select the first treating physician (within the treating physician definition). The insurer must then approve changes of treating physicians. The insurer has the right to deny payment for any unauthorized medical referrals and treatments. [§39-71-1101, MCA, and ARM 24.29.1510]
- The physician bills the insurer directly. Payment is made according to a fee schedule. [§39-71-704(2) and (3), MCA]. Once the insurer has accepted a claim, the medical provider must accept the fee scheduled reimbursement as payment in full, and the claimant is not responsible for any balance.
- The claimant is responsible for payment of: (1) unauthorized treatment, (2) medical care not related to the injury, (3) medical services if treatment is not received for 60 months, (4) secondary medical services and palliative or maintenance care unless specifically covered, and (5) medical procedures specifically excluded. [ARM 24.29.1401 and §39-71-704, MCA]

- Temporary total disability (TTD) benefits are based on $66\frac{2}{3}\%$ of the claimant's average weekly gross wages, subject to a maximum of the state's average weekly wage, and are paid bi-weekly until the claimant returns to work or has reached maximum medical improvement (MMI). [§§39-71-701 and 39-71-740, MCA] If the claimant is classified as permanently totally disabled (PTD), benefits can continue until the claimant reaches retirement age. [§39-71-710, MCA]
- If prior to attaining maximum medical improvement (MMI) and due to medical restrictions, the claimant returns to work at less than the wages received at the time of injury, they may be entitled to temporary partial disability (TPD) benefits. Temporary partial disability is paid until the claimant returns to work without a wage-loss or reaches MMI. [§39-71-712, MCA]
- If after reaching MMI, the claimant has a residual impairment greater than zero, the insurer is required to pay out the permanent partial disability (PPD) liability bi-weekly, unless the claimant requests a lump sum payment. [§§39-71-703 and 39-71-741, MCA]

- Other permanent partial disability liability is based on age, education, wage-loss and work capacity restrictions. These criteria are determined based on the specifics of each individual case. [§39-71-703, MCA]
- If the worker is precluded from returning to the job they held at the time of injury and suffers an actual wage loss or has an impairment of 15% or greater, the worker is eligible for rehabilitation services. The insurer designates a rehabilitation provider and rehabilitation services are provided with the goal of returning the claimant to work as soon as possible. If a rehabilitation plan is established which indicates some type of retraining, the claimant may be eligible to receive monies for tuition, fees, books and other reasonable and necessary retraining expenses. The worker may also receive bi-weekly benefit payments based on the temporary total disability rate. [§39-71-1006, MCA] Financial assistance may also be available for reasonable travel and relocation for training and job-related expenses, subject to a maximum amount of \$4,000. [§39-71-1025, MCA]

- Medical benefits may remain available for at least 60 months (5 years) from the last date of service. The insurer may not be required to furnish palliative or maintenance care after the claimant has achieved MMI. [§39-71-704(1)(f,g), MCA]



workers' compensation system administration

Employment Relations Division (ERD) provides a wide variety of services and regulation related to workers' compensation and safety.

Workers' Compensation Regulation Bureau

The **Carrier Compliance Unit** monitors compliance of private workers' compensation carriers (Plan 2). The unit also licenses professional employer organizations and processes extraterritorial agreements.

The **Construction Contractor Registration Unit** ensures construction businesses with employees register and are in compliance with workers' compensation requirements. The law provides protection from liability for workers' compensation claims for contractors who use the service of other registered construction contractors.

The **Independent Contractor Central Unit** issues decisions on employment relationships for the Department of Revenue, Labor Standards, Unemployment Insurance, Human Rights and Workers' Compensation. The unit also issues Independent Contractor Exemptions Certificates (ICEC).

The **Medical Regulations Unit** develops fee schedules to provide an effective and equitable method

of health care cost containment. Medical fee schedules are established by the unit and utilized by insurers to reimburse medical providers. Treatment guidelines are being established to determine best practices for medical treatment of workers' compensation patients.

The **Self-Insurance Unit** administers the program for employers who elect to be self-insured for workers' compensation (Plan 1).

The **Subsequent Injury Fund Unit** certifies workers with permanent impairments or that have a substantial obstacle to obtaining employment. The unit administers the funds that are used to offset claim costs associated with subsequent injuries to these workers.

The **Uninsured Employers' Fund Unit** makes sure employers and employees are protected under the Workers' Compensation Act. The unit enforces coverage requirements for all employers, pays benefits to injured workers whose employers did not have workers' compensation coverage, and manages the fund from which benefits are paid.

Workers' Compensation Claims Assistance Bureau

The **Claims Unit** ensures compliance with the Workers'

Compensation Act relating to benefits and claims. The unit also regulates attorney fees and provides assistance to insurers, attorneys and injured workers.

The **Data Management Unit** ensures compliance with claims reporting standards, maintains the workers' compensation database system and provides a comprehensive annual report on workers' compensation to the governor and the legislature. In addition, the unit performs research on various workers' compensation topics.

The **Mediation Unit** provides an alternative method of resolving workers' compensation benefit disputes before the dispute goes to the Workers' Compensation Court. This is a mandatory, non-binding process.

Safety & Health Bureau

The **Safety & Health Bureau** conducts inspections of public employers, performs on-site consultations for private employers, and inspects coal mines and sand and gravel operations throughout the state. The Bureau provides safety and occupational health training for both public and private employers.

labor-management advisory council

The Labor-Management Advisory Council (LMAC) was re-commissioned by the Department of Labor and Industry in 2008. The goal of the LMAC is to enhance business competitiveness through a safe and healthy workforce, while maintaining benefits to injured workers and reducing insurance costs. The LMAC is chaired by Lt. Governor John Bohlinger at the request of Governor Brian Schweitzer.

The LMAC has five employer representatives:

- Bill Dahlgren (Sun Mountain Sports)
- Annette Hoffman (St. Vincent's Healthcare)
- Riley Johnson (National Federation of Independent Business)
- Connie Welsh (State of Montana)
- Bob Worthington (Montana Self-Insurers Association)

And five labor representatives:

- Doug Buman (Laborers' International Union of North America)
- Jacquie Helt (AFL-CIO)
- Don Judge (Injured Workers Resource Council)
- Dan Lee (AFL-CIO)
- Jason Miller (Teamsters and Carpenters Unions)

Montana's frequency and duration rates remain a major area of concern for the LMAC. According to the 2007 Bureau of Labor Statistics, Montana's injury rate is 50% higher than the national average. Plus, an injured worker in Montana is off work an average of 111 days compared to a national average of 88 days. In 2008, the LMAC formed WorkSafeMT, a public/private partnership, to direct and coordinate safety and return-to-work programs. The LMAC continues to monitor the efforts of WorkSafeMT and individual LMAC members participate on the WorkSafeMT foundation board and committees.

In addition, the LMAC has been studying other system cost drivers and researching ways to improve the efficient delivery of benefits, with the goal of developing a comprehensive issue package with recommendations that have the endorsement of management and labor alike.

Advisory Council meetings are open to the public and public comment is encouraged. For more information on the council, visit:

<http://erd.dli.mt.gov/wcstudyproject/labormngmntadvisorycouncilonwc.asp>.

Introduction

WorkSafeMT was created in 2007 by the LMAC as a public/private collaborative effort to address workplace safety and stay at work/return to work. The WorkSafeMT Foundation was organized in May 2008 as a not for profit educational effort dedicated to the elimination of workplace injury, illness and fatalities in the state of Montana. The WorkSafeMT Foundation Board of Directors consists of business, labor and state agency leaders, health care providers, injured workers, and worker's compensation insurers.

WorkSafeMT's mission is to develop a universal expectation of workplace health and safety in Montana through proactive training, education, utilization of available resources and shared accountability. For injured workers, WorkSafeMT promotes a stay at work/return to work employment system that supports and values the physical and mental health and financial well-being of the employee and the needs of the employer.

Status Update

Marketing and Public Awareness.

Lt. Governor John Bollinger kicked off WorkSafeMT's inaugural social marketing campaign in

October 2009 at a special event in conjunction with the Governor's Conference on Workers' Compensation and Occupational Safety and Health. As part of the campaign, which included print, television, radio and web based advertising, the short film, "A Safer Tomorrow", was broadcast on all of Montana's major television stations during the first weekend of November. The campaign included four print ads, two radio spots and two online banner ads. Subsequently, WorkSafeMT received a Gold Addy for the 'Safer Tomorrow' video and four Silver Addy awards for the other campaign components.

The Communications Committee developed and rolled out a focused and effective social marketing campaign beginning in May and running through August 2010. The campaign message is that working safely isn't just something you do for yourself.

WorkSafeMT also developed press and speaker kits, which provided resources for partners to present a consistent safety message across the state.

Safety Training. WorkSafeMT held its first SafetyFestMT in Helena in March 2010. The event was a resounding success in terms of numbers and positive feedback,

attracting over 500 participants and 2,900 classroom seats. Over 44 different presentations and training sessions were offered, covering numerous industries and aspects of workplace safety, and ranged in length from two hours to multiple days. Thanks to sponsor donations and pro bono speakers, SafetyFestMT was provided to attendees at no cost. Additional safety conferences are planned for December 2010 (Missoula) and various locations across the state over the next year. For more information go to www.safetyfestmt.com.

Stay at Work/Return to Work.

The Stay at Work/Return to Work Committee developed and published, "Montana's Best Practices for Stay at Work/Return to Work Programs". This was in conjunction with resources on how to design and implement a Stay at Work/Return to Work program.

WorkSafeMT's website address is: www.worksafemt.com. The website contains extensive information on the program, safety resources, marketing campaigns and an opportunity to publicly commit to workplace safety.



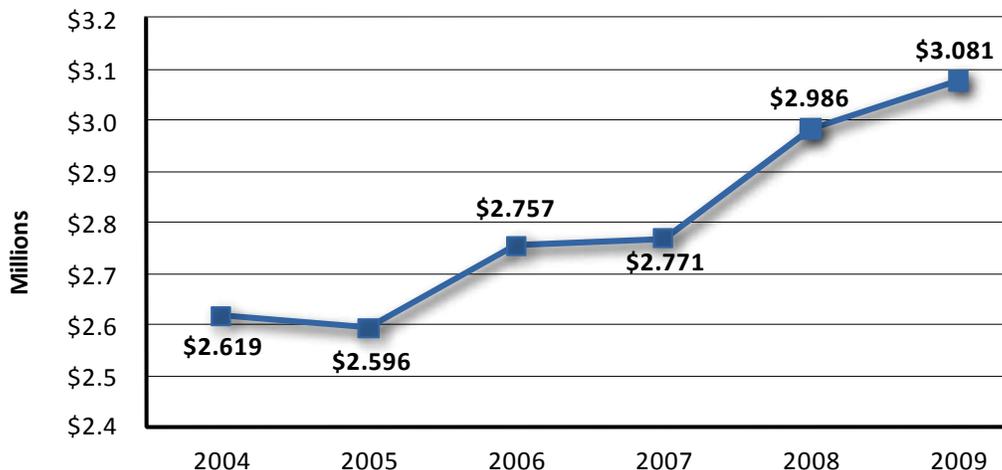
workers' compensation market

Montana employers have three options for securing workers' compensation coverage for their employees. Employers that meet the Department's financial requirements may opt to become self-insured (Plan 1), either individually or by joining with other employers in their industry to form a self-insured group. Employers may also obtain coverage with private insurance companies (Plan 2) in the voluntary market. And finally, employers can insure through Montana State Fund (Plan 3). Montana State Fund's role as the guaranteed market provides assurance that all Montana employers can provide workers' compensation insurance coverage for their employees.

As of December 31, 2009, Montana had 33 individual self-insured employers, three private groups with 121 member employers and five public groups with 402 member employers. During calendar year 2009, there were 167 private carriers that reported premiums to the Department.

Since employers insured under Plan 1 typically do not report premium, there is not an "apples to apples" means by which to compare all three Plans' share of the Montana workers' compensation market. The reported payroll for Plan 1 employers has been generally trending upwards over the past several years, as can be seen in Exhibit 1.1.

Exhibit 1.1
Gross Annual Payroll
Plan 1 - By Calendar Year



The premium for Plan 2 and Plan 3 insurers is compared in Exhibits 1.2 and 1.3 below. The total premium reported for 2009 by both Plans is down 11% from the prior year and marks the second consecutive

year total reported premiums are down. After losing market share in 2005, Plan 2's share of the reported premium has increased from 31% in 2005 to 37% in 2009.

Exhibit 1.2
Premium Market Share
 Plans 2 and 3 - By Calendar Year

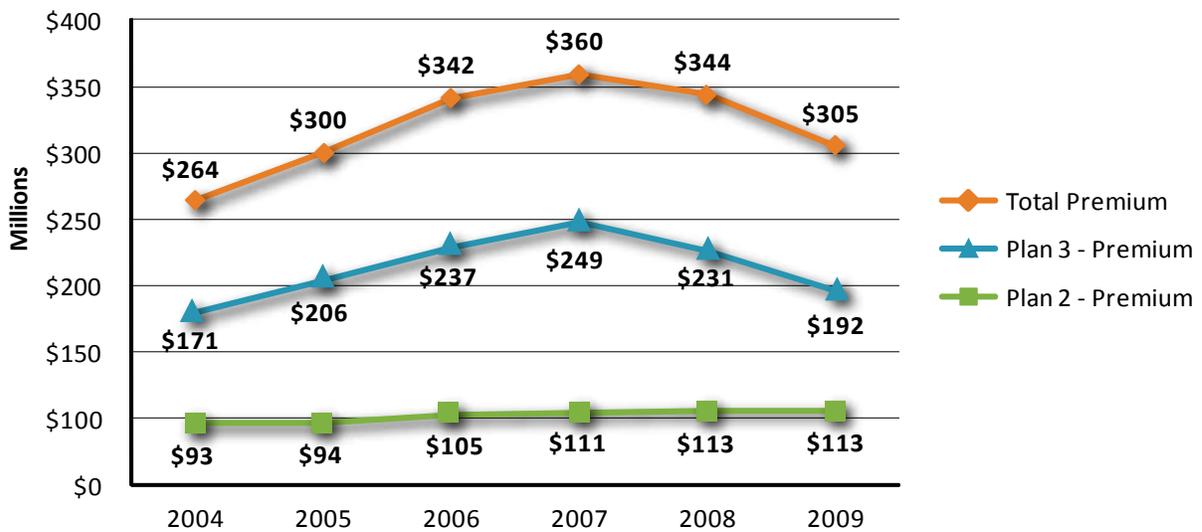


Exhibit 1.3
Premium Market Share
 Plans 2 and 3³ - By Calendar Year

Calendar Year	2004	2005	2006	2007	2008	2009
Plan 2 - Premium	\$92,915,175	\$93,774,300	\$104,876,336	\$110,601,722	\$112,660,545	\$112,560,759
Plan 3 - Premium	\$171,439,374	\$206,425,227	\$237,137,186	\$248,995,521	\$231,192,059	\$192,443,055
Total Premium	\$264,354,549	\$300,199,527	\$342,013,522	\$359,597,243	\$343,852,604	\$305,003,814

³ Plan Types: Plan 2 - Private Insurance and Plan 3 - Montana State Fund.

section 2

claim statistics

- ✦ claims data summary
- ✦ claims by plan type
- ✦ injury incident rates by county
- ✦ injured worker characteristics
- ✦ insurer denial of claims



claims data summary

Introduction

Workers' Compensation claims come to the Department from insurers, employers or claimants through a First Report of Injury or FROI. These reports tell us important demographic and injury information. Tables and charts in this section provide a snapshot of reported data through fiscal year 2009 for both medical only and indemnity claims, as well as some historical trends. Federal agencies are not required to report claims data to ERD.

Status Update

Fiscal Year 2009 saw a reduction in claims overall and most notably for Montana State Fund (Plan 3) claims (Exhibit 2.2). The National Council on Compensation Insurance (NCCI) suggested in its 2010 Montana State Advisory Forum that recessionary periods often correlate with lower claim counts.

Exhibit 2.3 illustrates the incidence rate by county per 1,000 workers. The statewide average was 68 claims per 1,000 workers.

The distribution of claims by age at the time of injury has remained relatively stable since FY05 with a slight upward trend for ages 55-64. The age group 45-54 has consistently held the largest percentage of claims.

The majority of the injuries occurred in Services, Retail, and Public Administration industries for FY09 (Exhibit 2.8).

The natures of injury were primarily Sprain/Rupture, Cut/Abrasion, and Bruise/Swelling (Exhibit 2.9). The causes of injury were largely from Strain and Fall/Slip/Trip (Exhibit 2.11). The majority of injuries occurred in the Upper Extremities and Back of the body (Exhibit 2.14).

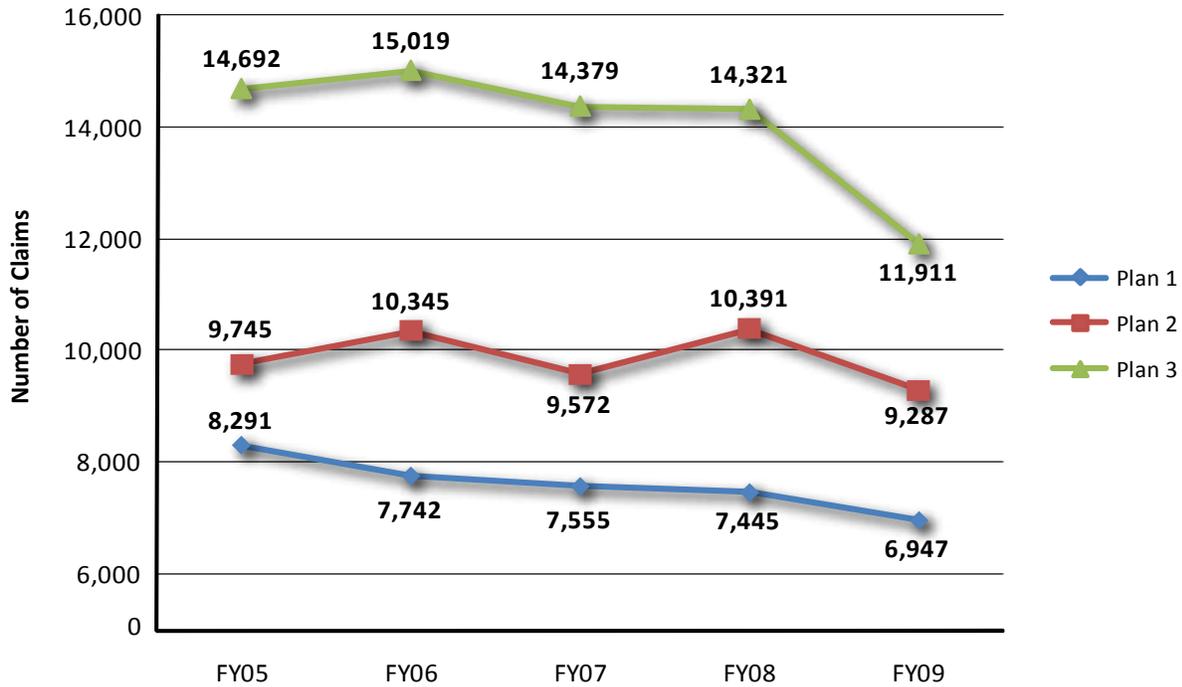
Denials of claims continue to rise (Exhibit 2.16), but some of these claims may eventually become accepted. The most common reason for a denial is lack of objective medical evidence.

Significance Statement

Costs continue to trouble employers and policy makers. Reducing work-related injuries and disease is the best way to reduce Workers' Compensation costs. Creating a greater safety culture through safety programs, educating workers on workplace safety and promoting safe work environments are the best ways to reduce injuries and diseases. The causes of disease making up the majority of injuries are often preventable through such things as education, ergonomic assessment and modification, and on-site safety development. Service, Retail, and Public Administration industries, due to their high number of employees and injuries, will play a major role in whether or not safety or other programs will provide overall claim count reductions.

claims by plan type

Exhibit 2.1
Reported Claims¹-Five Year Trend
 By Plan Type² and Fiscal Year of Injury



¹ Total reported claim counts may change over time due to the receipt of new injury reports or corrections to previous reporting.

² Plan types: Plan 1 - Self Insured Employers, Plan 2 - Private Insurance, Plan 3 - Montana State Fund.

Exhibit 2.2
Reported Claims³
 By Plan Type⁴ and Fiscal Year of Injury

Plan Type	FY05		FY06		FY07		FY08		FY09	
	Count	Percent								
Plan 1	8,291	25.3%	7,742	23.3%	7,555	23.9%	7,445	23.1%	6,947	24.6%
Plan 2	9,745	29.7%	10,345	31.1%	9,572	30.3%	10,391	32.2%	9,287	32.9%
Plan 3	14,692	44.8%	15,019	45.2%	14,379	45.5%	14,321	44.4%	11,911	42.2%
UEF	77	0.2%	122	0.4%	68	0.2%	79	0.2%	61	0.2%
Total⁵	32,805	100%	33,228	100%	31,574	100%	32,236	100%	28,206	100%

³ Total reported claim counts may change over time due to the receipt of new injury reports or corrections to previous reporting.

⁴ Plan types: Plan 1 - Self Insured Employers, Plan 2 - Private Insurance, Plan 3 - Montana State Fund, UEF - Uninsured Employers' Fund.

⁵ Totals may not sum exactly to 100% due to rounding.

injury incident rates by county

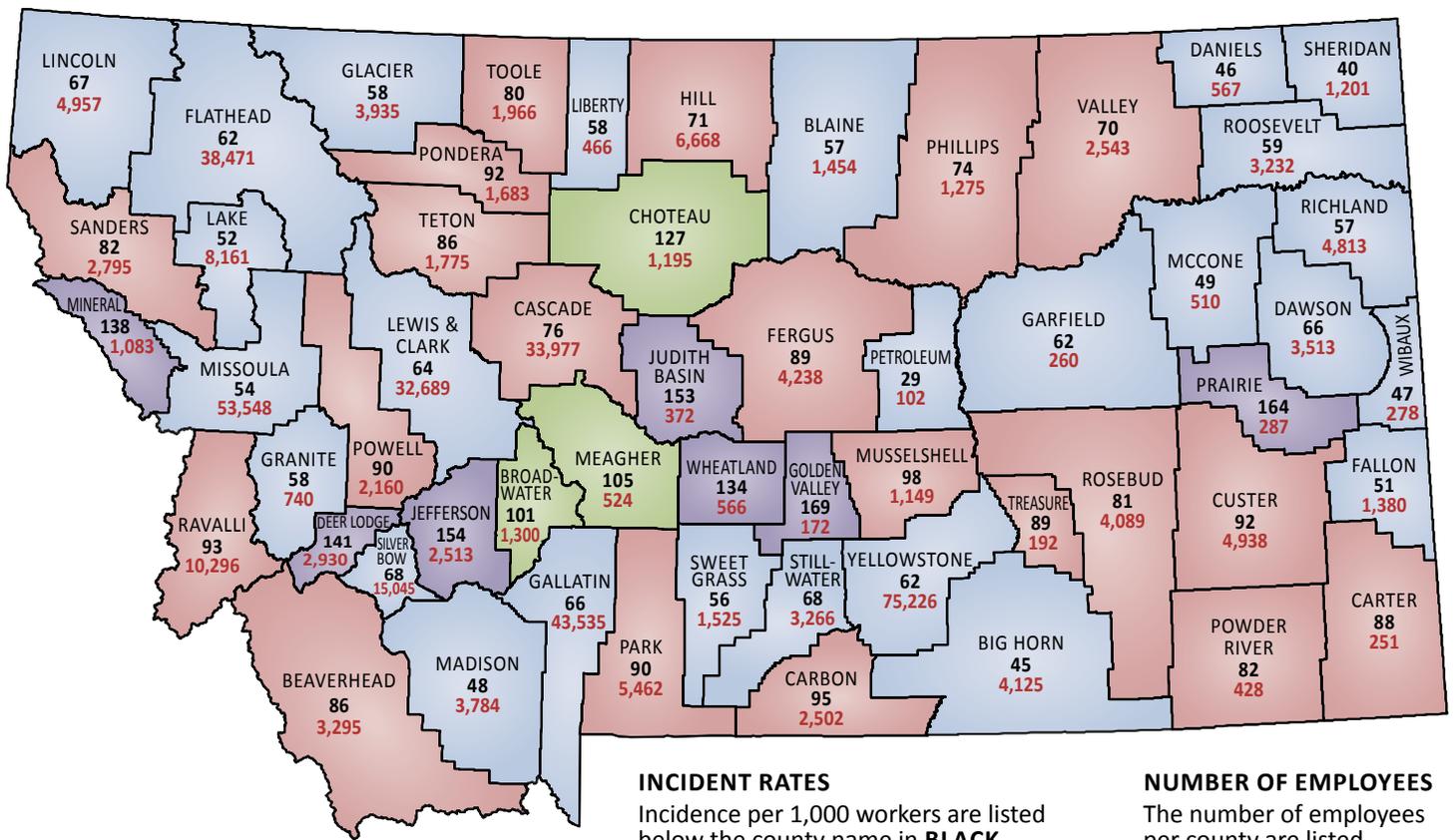
Injury incidence rates were calculated by dividing the number of reported claims in each county by the number of employees per county. The calculated state level rate for FY09 is 68 per 1,000 employees. For comparison purposes, BLS reported a state level incident rate of 64 per 1,000 employees in calendar year 2008.

Claim counts were derived using the claimant's home address. This

may not correspond with their work address or the location at which the injury occurred. This means that a resident of Jefferson County injured in Lewis & Clark County still gets counted in Jefferson County. Therefore, due to the high volume of commuting workers, Jefferson County's incidence rate is artificially inflated. Further research will attempt to address or minimize these issues.

Employment data was obtained from the Quarterly Census of Employment and Wages, Bureau of Labor Statistics (BLS). BLS data does not include federal employees, military, self-employed individuals or farms with fewer than 11 employees. ERD data does include farms with fewer than 11 employees.

Exhibit 2.3
Injury Incident Rates and Number of Employees⁶ - FY09
By County



INCIDENT RATES

Incidence per 1,000 workers are listed below the county name in **BLACK**.

- <70 per 1,000 Workers
- 70-100 per 1,000 Workers
- 101-130 per 1,000 Workers
- >130 per 1,000 Workers

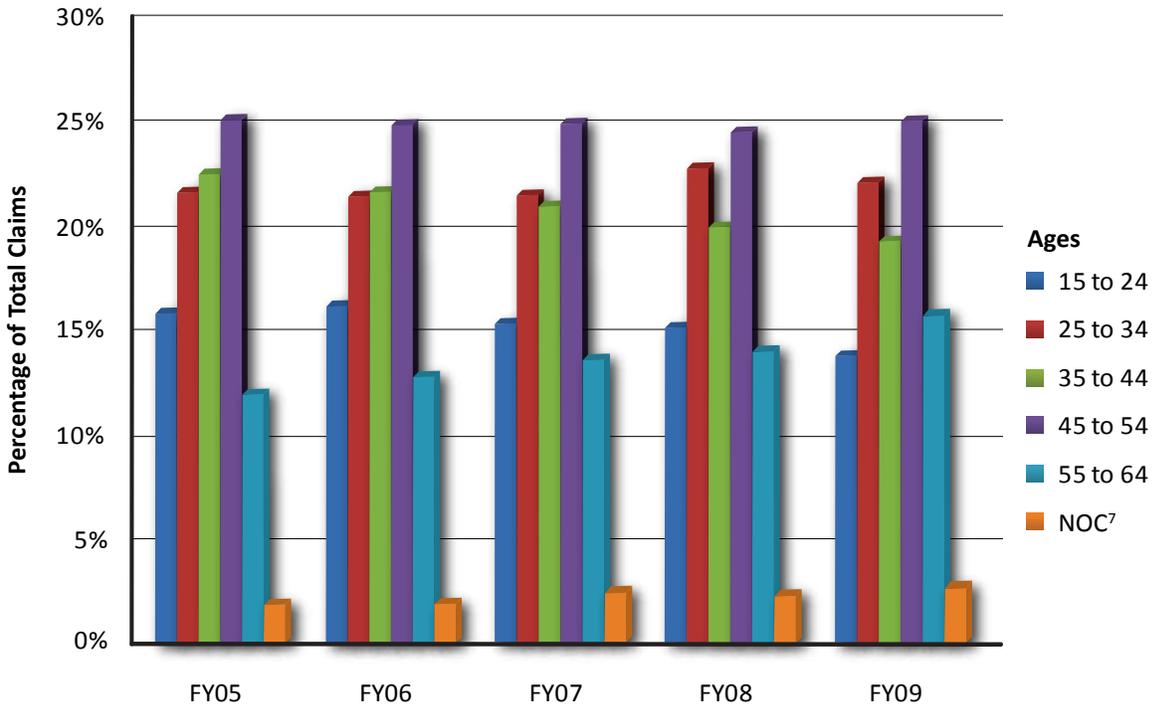
NUMBER OF EMPLOYEES

The number of employees per county are listed below the name of the county in **RED**.

⁶ Source: Quarterly Census of Employment and Wages, Bureau of Labor Statistics, U.S. Dept. of Labor

injured worker characteristics

Exhibit 2.4
Reported Claims-Five Year Trend
 By Age at Time of Injury and Fiscal Year of Injury



⁷ NOC: Not Otherwise Classified.

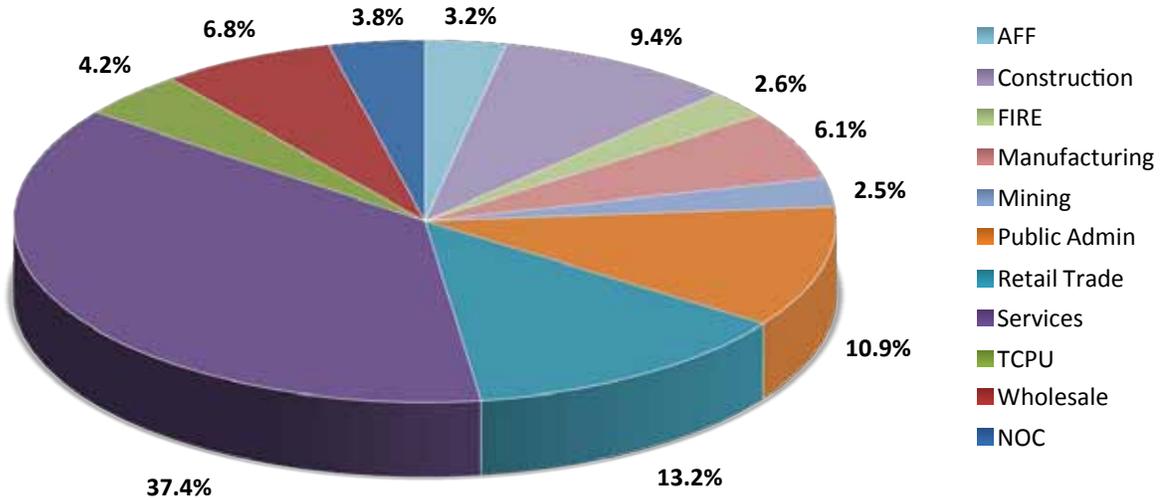
Exhibit 2.5
Reported Claims
 By Age at Time of Injury and Fiscal Year of Injury

	FY05	FY06	FY07	FY08	FY09
Age group	Percent	Percent	Percent	Percent	Percent
15 to 24	16%	16%	16%	15%	14%
25 to 34	22%	22%	22%	23%	22%
35 to 44	23%	22%	21%	20%	20%
45 to 54	25%	25%	25%	25%	25%
55 to 64	12%	13%	14%	14%	16%
NOC ⁸	2%	2%	2%	2%	3%
Total⁹	100%	100%	100%	100%	100%

⁸ NOC: Not Otherwise Classified.

⁹ Totals may not sum exactly to 100% due to rounding.

Exhibit 2.6
Reported Claims - FY09
 By Standard Industrial Classification Major Groups¹⁰



¹⁰ Source: Office of Management and Budget, *Standard Industrial Classification Manual 1987*.
 AFF: Agriculture, Forestry and Fishing, FIRE: Finance, Insurance and Real Estate,
 TCPU: Transportation, Communication and Public Utilities, NOC: Not Otherwise Classified.

Exhibit 2.7
Reported Claims¹¹
 By Standard Industrial Classification Major Groups¹² and Fiscal Year of Injury

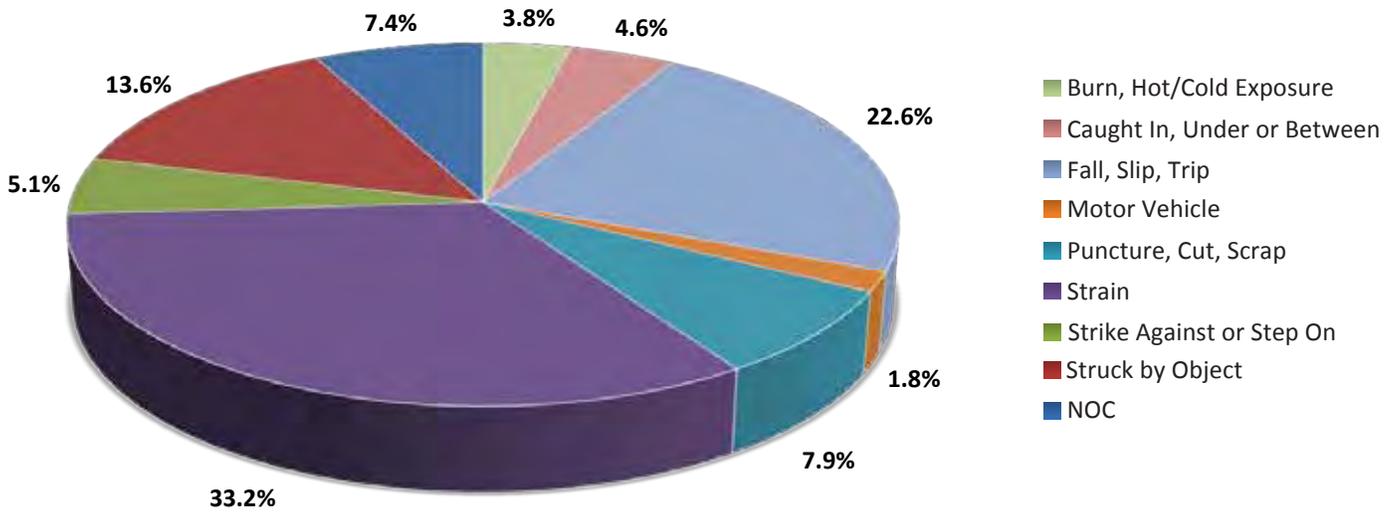
Standard Industrial Classification	FY05		FY06		FY07		FY08		FY09	
	Count	Percent								
Agriculture, Forestry & Fishing	1,314	4.0%	1,196	3.6%	1,065	3.4%	888	2.8%	902	3.2%
Construction	3,143	9.6%	3,679	11.1%	3,570	11.3%	3,510	10.9%	2,642	9.4%
Finance, Insurance & Real Estate	769	2.3%	800	2.4%	670	2.1%	731	2.3%	723	2.6%
Manufacturing	2,352	7.2%	2,494	7.5%	2,311	7.3%	2,273	7.1%	1,710	6.1%
Mining	840	2.6%	853	2.6%	872	2.8%	763	2.4%	712	2.5%
Public Administration	3,552	10.8%	3,528	10.6%	3,047	9.7%	3,212	10.0%	3,086	10.9%
Retail Trade	4,637	14.1%	4,407	13.3%	4,315	13.7%	4,614	14.3%	3,714	13.2%
Services	10,908	33.3%	11,029	33.2%	10,853	34.4%	11,319	35.1%	10,553	37.4%
Transportation, Communication & Public Utilities	1,448	4.4%	1,558	4.7%	1,455	4.6%	1,462	4.5%	1,173	4.2%
Wholesale Trade	2,130	6.5%	2,263	6.8%	2,302	7.3%	2,326	7.2%	1,928	6.8%
NOC	1,712	5.2%	1,421	4.3%	1,114	3.5%	1,138	3.5%	1,063	3.8%
Total¹³	32,805	100%	33,228	100%	31,574	100%	32,236	100%	28,206	100%

¹¹ Counts may vary slightly from previous reports due to corrections from insurers or ERD's data quality efforts.

¹² Source: Office of Management and Budget, *Standard Industrial Classification Manual 1987*.

¹³ Totals may not sum exactly to 100% due to rounding.

Exhibit 2.8
Reported Claims - FY09
 By Cause of Injury¹⁴



¹⁴ Source: Workers' Compensation Insurance Organizations (WCIO).

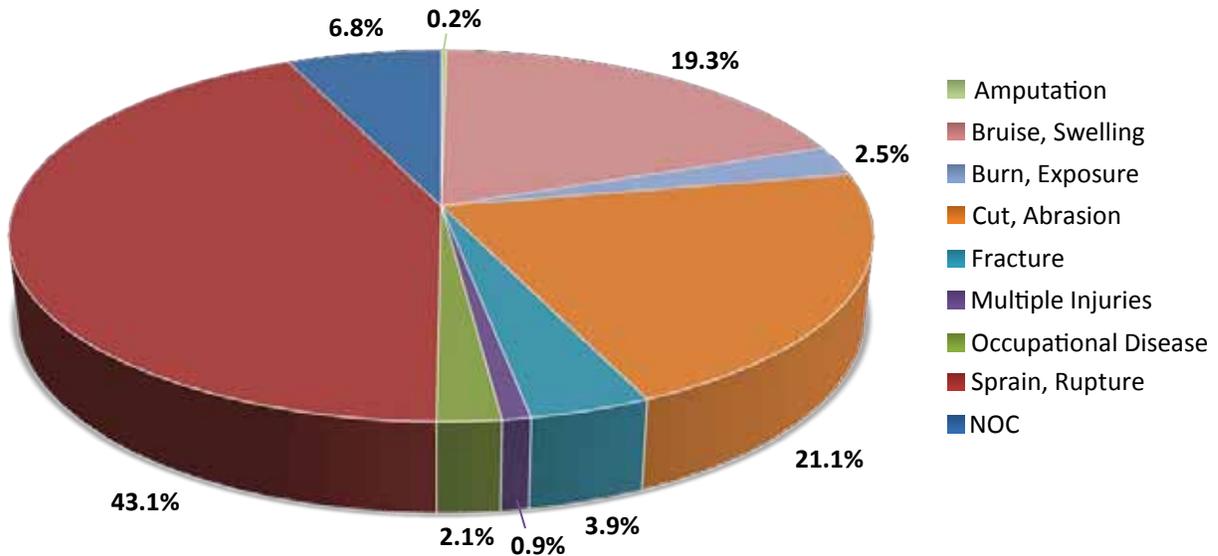
Exhibit 2.9
Reported Claims
 By Cause of Injury¹⁵ and Fiscal Year of Injury

Cause of Injury	FY05		FY06		FY07		FY08		FY09	
	Count	Percent								
Burn, Hot/Cold Exposure	1,402	4.3%	1,404	4.2%	1,237	3.9%	1,244	3.9%	1,083	3.8%
Caught in, under or between	1,506	4.6%	1,533	4.6%	1,376	4.4%	1,341	4.2%	1,299	4.6%
Fall, Slip, Trip	5,968	18.2%	6,341	19.1%	6,491	20.6%	6,847	21.2%	6,365	22.6%
Motor Vehicle	574	1.7%	694	2.1%	801	2.5%	604	1.9%	515	1.8%
Puncture, Cut, Scrape	2,261	6.9%	2,842	8.6%	3,962	12.5%	2,441	7.6%	2,223	7.9%
Strain	9,920	30.2%	9,516	28.6%	8,229	26.1%	11,109	34.5%	9,375	33.2%
Strike Against or Step On	1,836	5.6%	1,895	5.7%	1,661	5.3%	1,679	5.2%	1,428	5.1%
Struck by Object	4,680	14.3%	4,625	13.9%	4,314	13.7%	4,441	13.8%	3,837	13.6%
NOC	4,658	14.2%	4,378	13.2%	3,503	11.1%	2,530	7.8%	2,081	7.4%
Total¹⁶	32,805	100%	33,228	100%	31,574	100%	32,236	100%	28,206	100%

¹⁵ Source: Workers' Compensation Insurance Organizations (WCIO).

¹⁶ Totals may not sum exactly to 100% due to rounding.

Exhibit 2.10
Reported Claims - FY09
 By Nature of Injury¹⁷



¹⁷ Source: Workers' Compensation Insurance Organizations (WCIO).

Exhibit 2.11
Reported Claims
 By Nature of Injury¹⁸ and Fiscal Year of Injury

Nature of Injury	FY05		FY06		FY07		FY08		FY09	
	Count	Percent								
Amputation	832	2.5%	806	2.4%	553	1.8%	63	0.2%	66	0.2%
Bruise, Swelling	5,661	17.3%	5,947	17.9%	5,740	18.2%	6,007	18.6%	5,456	19.3%
Burn, Exposure	861	2.6%	862	2.6%	800	2.5%	843	2.6%	719	2.5%
Cut, Abrasion	6,351	19.4%	6,601	19.9%	6,581	20.8%	7,052	21.9%	5,961	21.1%
Fracture	1,341	4.1%	1,371	4.1%	1,292	4.1%	1,333	4.1%	1,102	3.9%
Multiple Injuries	224	0.7%	205	0.6%	164	0.5%	260	0.8%	260	0.9%
Occupational Disease	1,789	5.5%	1,514	4.6%	1,098	3.5%	714	2.2%	580	2.1%
Sprain, Rupture	14,262	43.5%	14,188	42.7%	13,576	43.0%	13,906	43.1%	12,158	43.1%
NOC	1,484	4.5%	1,734	5.2%	1,770	5.6%	2,058	6.4%	1,904	6.8%
Total¹⁹	32,805	100%	33,228	100%	31,574	100%	32,236	100%	28,206	100%

¹⁸ Source: Workers' Compensation Insurance Organizations (WCIO).

¹⁹ Totals may not sum exactly to 100% due to rounding.

Exhibit 2.12
Reported Claims - FY09
 By Standard Industrial Classification Major Groups²⁰ and Nature of Injury²¹

Nature of Injury	Burn Exposure	Caught in or Between	Puncture, Cut by	Fall, Slip, Trip	Vehicle Related	Strain, Jump, Lift	Hit against, Step on	Struck by	All others	NOC	Totals
Agriculture, Forestry & Fishing	3.2%	8.1%	3.8%	20.7%	3.9%	26.1%	6.2%	22.2%	5.7%	0.2%	100%
Construction	2.8%	4.8%	8.4%	17.0%	1.8%	35.0%	5.8%	15.3%	8.6%	0.4%	100%
Finance, Insurance & Real Estate	3.9%	4.6%	4.8%	36.1%	2.4%	31.0%	3.7%	9.5%	3.7%	0.3%	100%
Manufacturing	3.6%	6.4%	7.6%	14.4%	1.1%	39.1%	5.3%	11.8%	10.1%	0.6%	100%
Mining	5.2%	9.0%	3.8%	14.0%	5.1%	33.4%	5.3%	16.6%	7.4%	0.1%	100%
Public Administration	4.6%	5.8%	4.0%	24.5%	3.2%	31.3%	4.8%	13.9%	7.8%	0.1%	100%
Retail Trade	3.5%	3.4%	10.9%	18.7%	0.8%	38.2%	6.5%	11.2%	6.3%	0.3%	100%
Services	4.1%	3.6%	8.3%	26.4%	1.2%	31.7%	4.5%	13.7%	6.2%	0.2%	100%
Transportation, Communication & Public Utilities	2.1%	5.1%	5.2%	25.1%	4.3%	33.5%	4.5%	11.8%	7.8%	0.4%	100%
Wholesale Trade	5.3%	4.6%	11.6%	20.8%	2.1%	31.0%	4.3%	12.2%	7.2%	1.0%	100%
NOC	2.0%	4.9%	8.6%	17.8%	0.9%	33.7%	5.8%	16.5%	8.9%	0.9%	100%
Total²²	3.8%	4.6%	7.9%	22.6%	1.8%	33.2%	5.1%	13.6%	7.0%	0.3%	100%

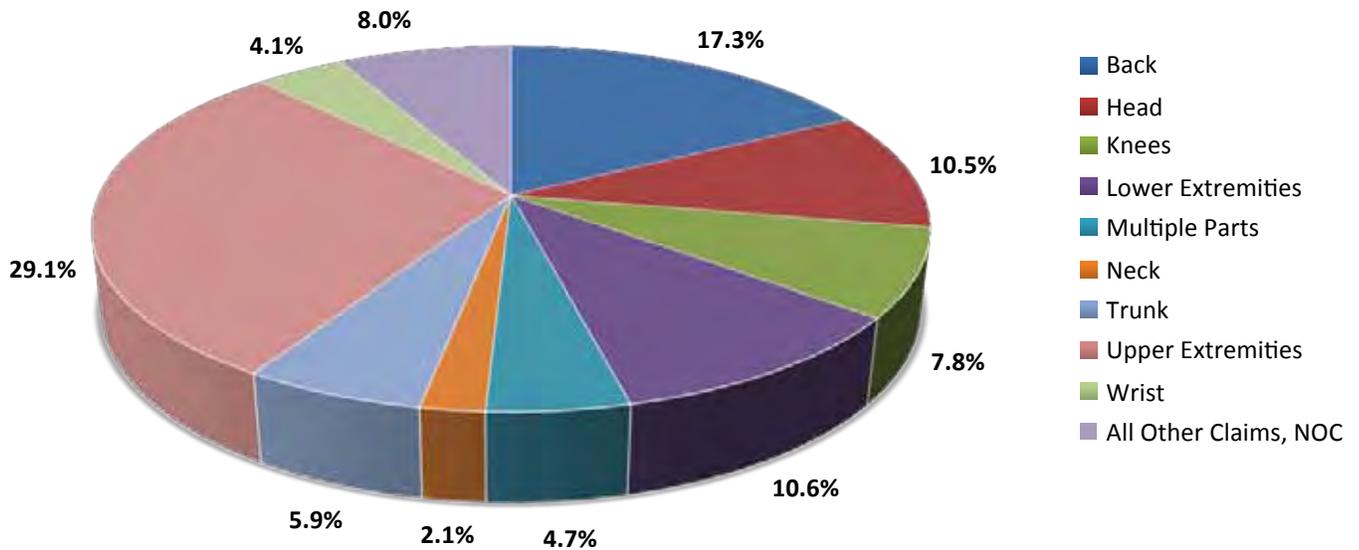
²⁰ Source: Office of Management and Budget, *Standard Industrial Classification Manual 1987*.

²¹ Source: Workers Compensation Insurance Organizations (WCIO).

²² Totals may not sum exactly to 100% due to rounding.



Exhibit 2.13
Reported Claims - FY09
By Part of Body²³



²³ Source: Workers' Compensation Insurance Organizations (WCIO).

Exhibit 2.14
Reported Claims
By Part of Body²⁴ and Fiscal Year of Injury

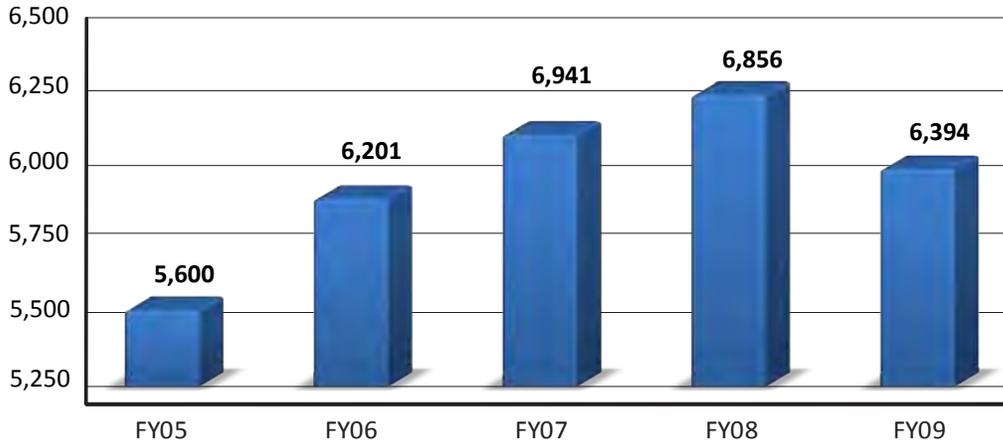
Part of Body	FY05		FY06		FY07		FY08		FY09	
	Count	Percent								
Back	6,604	20.1%	6,655	20.0%	6,118	19.4%	5,958	18.5%	4,877	17.3%
Head	3,586	10.9%	3,824	11.5%	3,432	10.9%	3,581	11.1%	2,969	10.5%
Knees	2,466	7.5%	2,510	7.6%	2,474	7.8%	2,644	8.2%	2,187	7.8%
Lower Extremities	3,601	11.0%	3,629	10.9%	3,572	11.3%	3,666	11.4%	2,986	10.6%
Multiple Parts	1,704	5.2%	1,449	4.4%	1,369	4.3%	1,315	4.1%	1,312	4.7%
Neck	790	2.4%	765	2.3%	750	2.4%	740	2.3%	594	2.1%
Trunk	2,181	6.6%	2,097	6.3%	2,069	6.6%	2,021	6.3%	1,671	5.9%
Upper Extremities	10,062	30.7%	10,528	31.7%	10,066	31.9%	9,919	30.8%	8,216	29.1%
Wrist	1,552	4.7%	1,566	4.7%	1,462	4.6%	1,390	4.3%	1,148	4.1%
All Other Claims, NOC	259	0.8%	205	0.6%	262	0.8%	1,002	3.1%	2,246	8.0%
Total²⁵	32,805	100%	33,228	100%	31,574	100%	32,236	100%	28,206	100%

²⁴ Source: Workers' Compensation Insurance Organizations (WCIO).

²⁵ Totals may not sum exactly to 100% due to rounding.

insurer denial of claims

Exhibit 2.15
Insurer Denial of Claims²⁶
 By Fiscal Year of Injury



²⁶ The insurer may accept claims initially denied. Statistics on accepted injuries subsequent to a denial are not currently available.

Exhibit 2.16
Insurer Denial of Claims²⁷
 By Reason of Denial and Fiscal Year of Injury

	Reason for Claim Denial	FY05	FY06	FY07	FY08	FY09
Coverage Issue	Corporate officer rejected	5	0	0	2	0
	Elects no coverage	1	4	1	0	0
	Independent Contractor issue	3	1	0	1	3
	Question which insurer liable	14	8	13	6	2
	No coverage	14	51	25	21	16
Definition of Injury	Heart attack - not caused by accident	23	4	3	8	5
	Does not meet definition of injury	521	324	322	341	262
	Does not meet definition of Occupational Disease	73	42	42	40	31
	Stress - not compensable	19	20	15	14	16
Insufficient Information	Incomplete or missing information necessary to accept liability	101	155	119	371	170
Late Claim Filing	Injury	83	135	233	65	40
	Occupational Disease	0	1	1	0	0
No Employer Notice	No 30-day notice to employer or insurer	206	176	118	206	161
Not in Course & Scope	Not in course and scope of employment	411	432	454	423	403
No Objective Medical	No objective medical findings to substantiate injury	3,656	4,390	5,168	4,834	4,822
Other	Other	470	458	427	524	463
Total		5,600	6,201	6,941	6,856	6,394

²⁷ The insurer may later accept claims initially denied. Statistics on accepted injuries subsequent to a denial are not currently available.

section 3

benefits

- ✦ total benefits
- ✦ benefit distribution
- ✦ temporary disability paid duration
- ✦ settlement dollars
- ✦ injured worker attorney fees
- ✦ insurer legal expenses





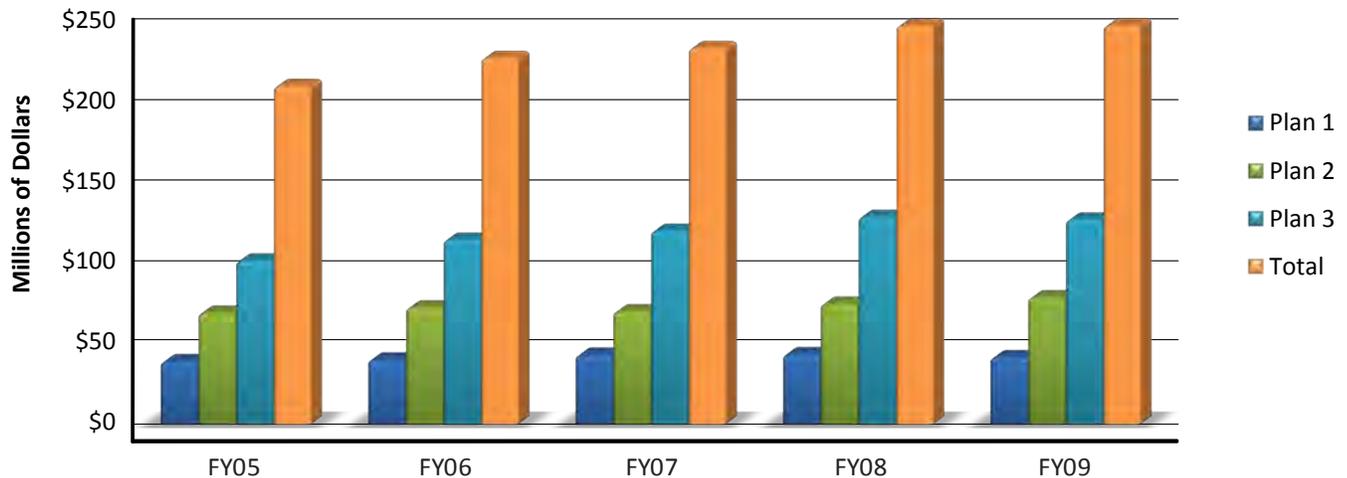
total benefits

The total benefits paid for each fiscal year are compiled from the total dollars that insurers report paid in that year for medical and indemnity benefits, regardless of the original date of injury. This data was compiled from quarterly expenditure reports submitted to the Department by workers' compensation insurers or by claims administrators on the insurers' behalf.

There has been little change over the past several years of each Plan's share of total benefits paid, with overall benefits paid by all three Plans in FY09 almost unchanged from FY08.

Please note that prior years' benefit totals may have been updated since the publication of previous annual reports due to the receipt of amended quarterly expenditure reports.

Exhibit 3.1
Total Benefits Paid^{1, 2}
By Plan Type³ and Fiscal Year of Payment



¹ Total benefits paid represent indemnity and medical (including medical in excess of \$200,000), from DLI quarterly expenditure reports as of March 17, 2010.

² All dollars are adjusted for inflation to FY09 dollars.

³ Plan types: Plan 1 - Self-Insured Employers, Plan 2 - Private Insurance and Plan 3 - Montana State Fund.

Exhibit 3.2
Total Benefits Paid^{4, 5}
By Plan Type⁶ and Fiscal Year of Payment

Plan Type	FY05		FY06		FY07		FY08		FY09	
	Amount	%								
Plan 1	39,355,738	19%	40,473,575	18%	43,397,787	19%	43,812,928	18%	41,874,087	17%
Plan 2	69,138,452	33%	72,408,071	32%	70,094,651	30%	74,880,486	30%	78,791,453	32%
Plan 3	101,699,733	48%	114,818,303	50%	120,374,764	51%	129,105,522	52%	127,242,162	51%
Total	\$210,193,923	100%	\$227,699,949	100%	\$233,867,202	100%	\$247,798,936	100%	\$247,907,702	100%

⁴ Total benefits paid represent indemnity and medical (including medical in excess of \$200,000), from DLI quarterly expenditure reports as of March 17, 2010.

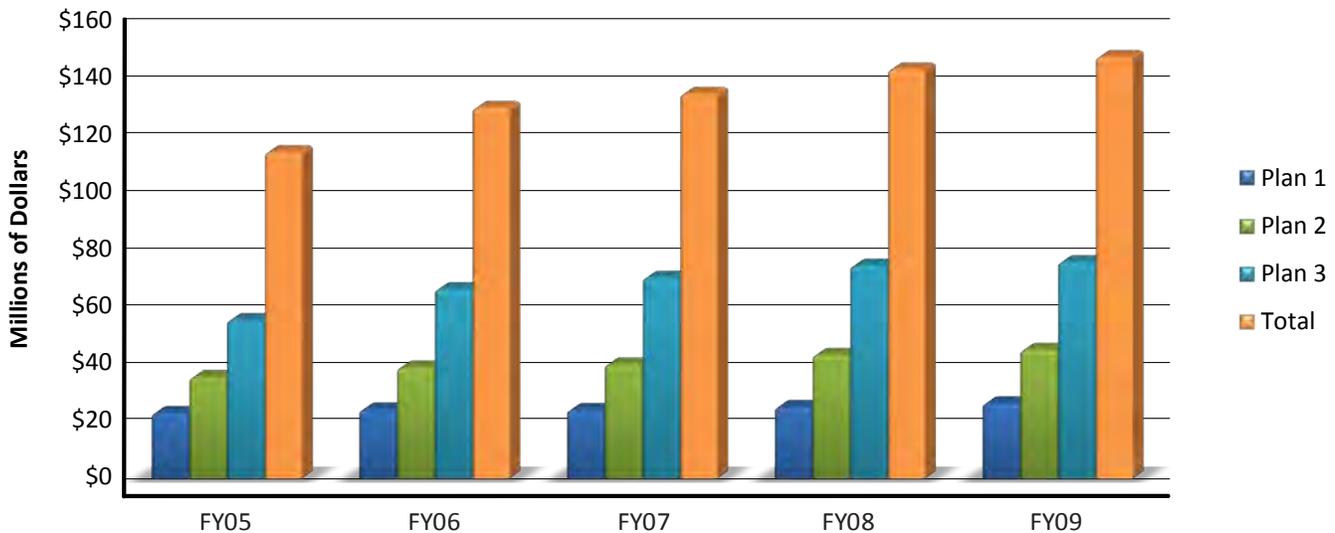
⁵ All dollars are adjusted for inflation to FY09 dollars.

⁶ Plan types: Plan 1 - Self-Insured Employers, Plan 2 - Private Insurance and Plan 3 - Montana State Fund.

The total medical payments by all three Plans, represented in Exhibits 3.3 and 3.4 below, increased by 3% from FY08. Each Plan's share of the total medical payments has been relatively stable over the past several years.

Please note that the prior years' medical payment totals may have been updated since the publication of previous annual reports due to the receipt of amended quarterly expenditure reports.

Exhibit 3.3
Medical Payments^{7, 8}
 By Plan Type⁹ and Fiscal Year of Payment



⁷ Total represents medical payments including medical in excess of \$200,000, from DLI quarterly expenditure reports as of March 17, 2010.

⁸ All dollars are adjusted for inflation to FY09 dollars.

⁹ Plan types: Plan 1 - Self-Insured Employers, Plan 2 - Private Insurance and Plan 3 - Montana State Fund.

Exhibit 3.4
Medical Payments^{10, 11}
 By Plan Type¹² and Fiscal Year of Payment

Plan Type	FY05		FY06		FY07		FY08		FY09	
	Amount	%								
Plan 1	23,202,950	20%	24,400,250	19%	24,284,035	18%	25,334,628	18%	26,615,215	18%
Plan 2	35,695,614	31%	38,933,227	30%	40,051,853	30%	43,312,875	30%	45,115,836	31%
Plan 3	55,579,237	49%	66,422,372	51%	70,368,905	52%	74,622,827	52%	75,880,013	51%
Total	\$114,477,801	100%	\$129,755,849	100%	\$134,704,793	100%	\$143,270,330	100%	\$147,611,064	100%

¹⁰ Total represents medical payments including medical in excess of \$200,000, from DLI quarterly expenditure reports as of March 17, 2010.

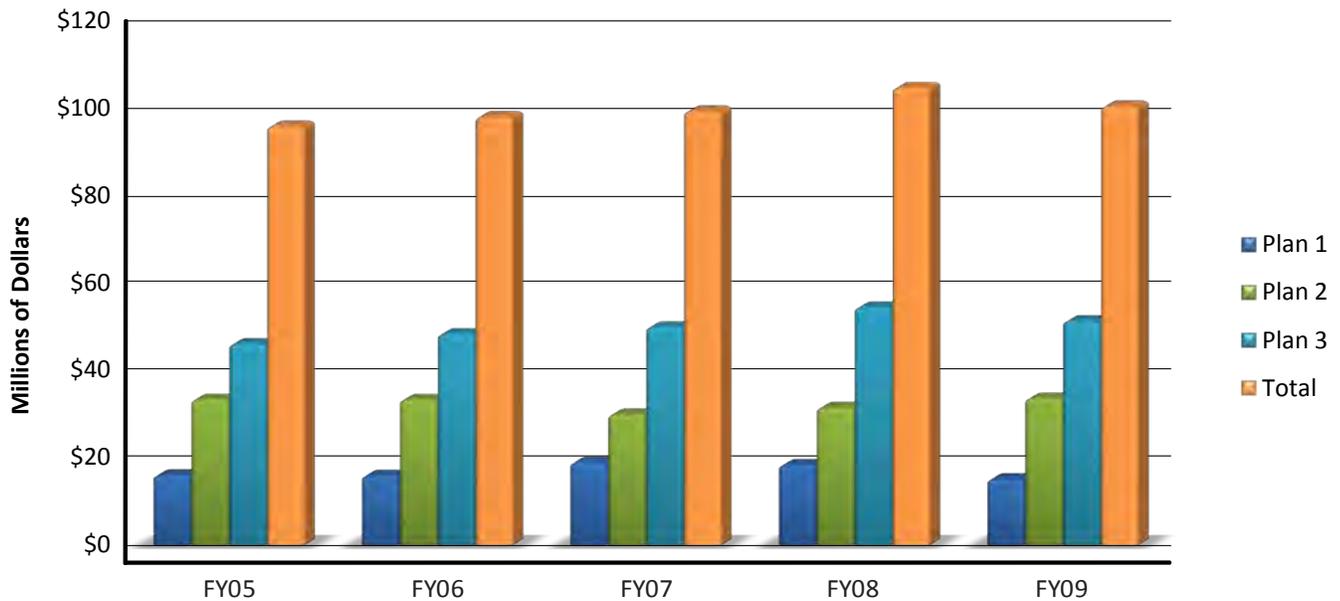
¹¹ All dollars are adjusted for inflation to FY09 dollars.

¹² Plan types: Plan 1-Self-Insured Employers, Plan 2-Private Insurance and Plan 3-Montana State Fund.

Indemnity payments made by all Plans, while generally trending upwards over the past several years, were down by 4% in FY09. Plan 1's share of those payments in FY09 was down by 3%, while Plan 2's share increased by 4%.

Please note that that the prior years' indemnity payment totals may have been updated since the publication of previous annual reports due to the receipt of amended quarterly expenditure reports.

Exhibit 3.5
Indemnity Payments^{13, 14}
 By Plan Type¹⁵ and Fiscal Year of Payment



¹³ Any payment made directly to the worker or the worker's beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights, or in settlement of a dispute over initial compensability of the claim. The term does not include expense reimbursements for items such as meals, travel or lodging. ARM 24.29.4303(4)

¹⁴ All dollars are adjusted for inflation to FY09 dollars.

¹⁵ Plan types: Plan 1 - Self-Insured Employers, Plan 2 - Private Insurance and Plan 3 - Montana State Fund.

Exhibit 3.6
Indemnity Payments^{16, 17}
 By Plan Type¹⁸ and Fiscal Year of Payment

Plan Type	FY05		FY06		FY07		FY08		FY09	
	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
Plan 1	16,152,788	17%	16,073,325	16%	19,106,752	19%	18,478,300	18%	15,258,872	15%
Plan 2	33,442,838	35%	33,414,844	34%	30,042,798	30%	31,567,611	30%	33,675,617	34%
Plan 3	46,120,496	48%	48,395,931	49%	50,005,859	50%	54,482,695	52%	51,362,149	51%
Total¹⁹	\$95,716,122	100%	\$97,884,100	100%	\$99,155,409	100%	\$104,528,606	100%	\$100,296,638	100%

¹⁶ Any payment made directly to the worker or the worker's beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights, or in settlement of a dispute over initial compensability of the claim. The term does not include expense reimbursements for items such as meals, travel or lodging. ARM 24.29.4303(4)

¹⁷ All dollars are adjusted for inflation to FY09 dollars.

¹⁸ Plan types: Plan 1 - Self-Insured Employers, Plan 2 - Private Insurance and Plan 3 - Montana State Fund.

¹⁹ Totals may not sum exactly to 100% due to rounding.

benefit distribution

ERD compiles information on wage loss, medical, and vocational rehabilitation benefits paid to injured workers or their beneficiaries. This section is intended to display data regarding the number of claims and costs of developing wage loss claims. *Payment data on medical only claims is not included in this section.*

Exhibits 3.9 through 3.19 (benefit triangles) display the claim counts, average yearly benefits, average total benefits, and percentages of claims receiving benefits for the specified fiscal year of injury, starting in FY02. Year one shows statistics for claims with benefits paid during their first year after the date of injury, while years two through eight provide statistics for claims as they move beyond their injury years or as new claims come in over time for that year of injury.

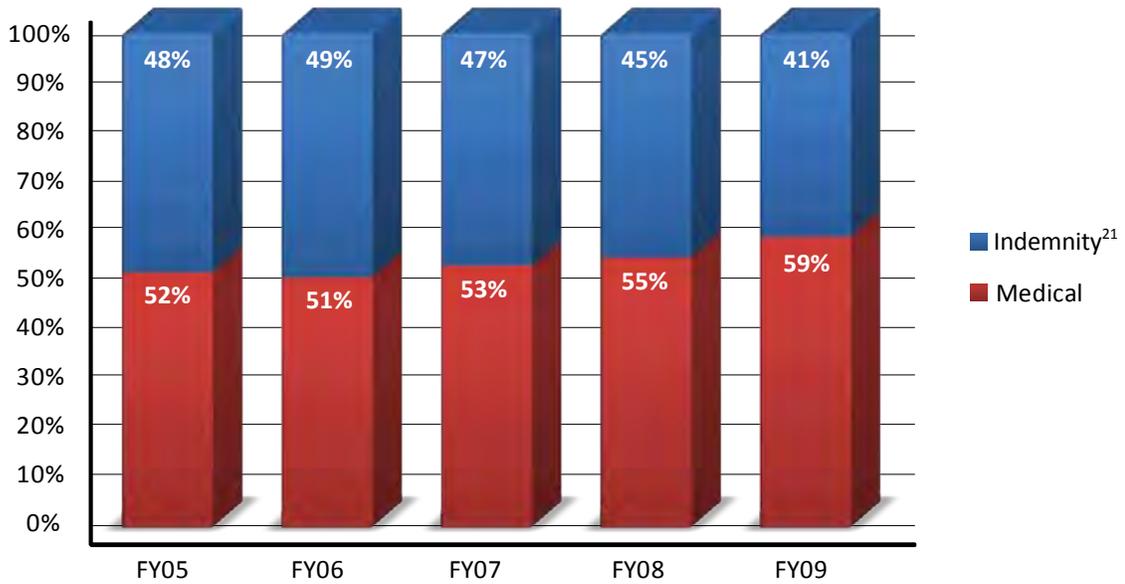
Depending on the type of claim and benefit or reporting issues, a claim may not be reported or receive benefits until two or more years after the date of injury or illness. *These charts, then, should not be construed to represent the duration of claims.* Each table consists of eight rows of data; each row holds information pertaining only to injuries sustained during the fiscal year shown in the “Injury Year” column. Each row may have up to eight (8) years of data illustrating

how claims open and close and how benefits develop and change over time for each fiscal year.

- Exhibits 3.7 and 3.8 report total benefits paid and total indemnity benefits paid.
- Exhibits 3.9 through 3.15 contain the benefit triangles for total benefits, total wage-loss benefits, total medical benefits, and indemnity benefits individually by the four primary categories: temporary total disability (TTD), temporary partial disability (TPD), permanent partial disability (PPD), and permanent total disability (PTD).
- Exhibits 3.16 through 3.18 report medical benefits individually by the three primary categories (excluding lump sum payments): payments to physicians, hospital costs, and other medical provider costs.
- Exhibit 3.19 reports vocational rehabilitation benefits paid.

A detailed explanation, including an example of the development and use of these benefit statistics, is provided in the methodology section of the appendices. Readers should be aware that due to enhancements in the reporting and methodology, comparisons to annual reports prior to 2008 may not be valid.

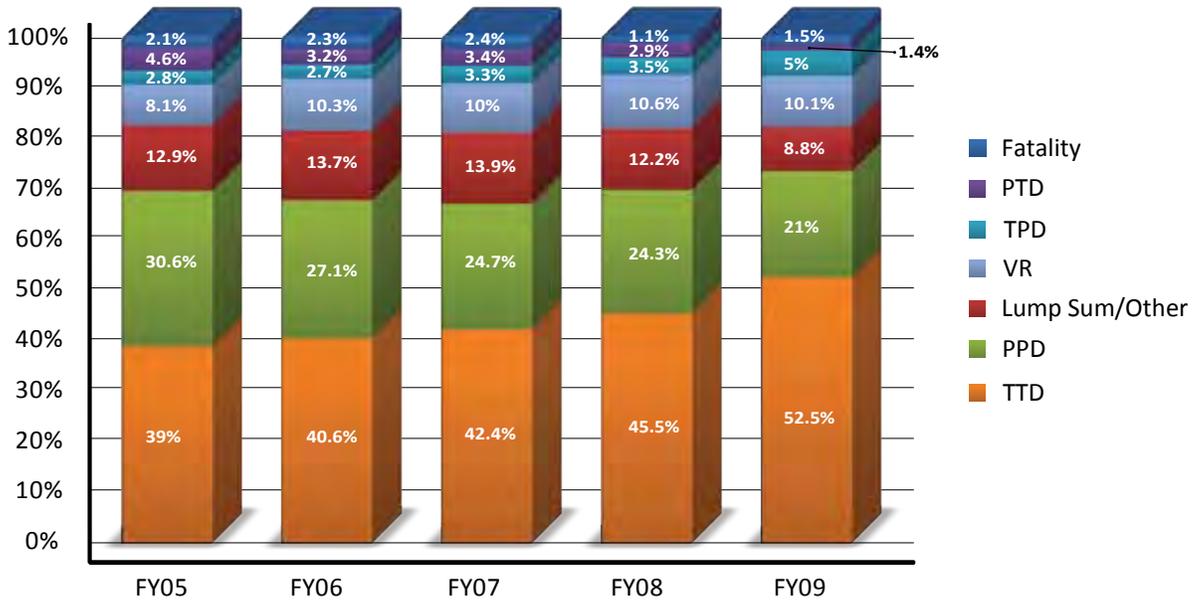
Exhibit 3.7
Total Benefits Paid
 By Benefit Type and Fiscal Year of Injury²⁰



²⁰ Data as accurate as reported to Employment Relations Division and does not include reserves.

²¹ Any payment made directly to the worker or the worker's beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights, or in settlement of a dispute over initial compensability of the claim. The term does not include expense reimbursements for items such as meals, travel or lodging. ARM 24.29.4303(4)

Exhibit 3.8
Indemnity Benefits Paid^{22, 23}
 By Benefit Type and Fiscal Year of Injury²⁴



²² Any payment made directly to the worker or the worker's beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights, or in settlement of a dispute over initial compensability of the claim. The term does not include expense reimbursements for items such as meals, travel or lodging. ARM 24.29.4303(4)

²³ Totals may not sum exactly to 100% due to rounding.

²⁴ Data as accurate as reported to Employment Relations Division and does not include reserves.

Exhibit 3.9
Total Wage Loss Benefits and Medical Benefits, including Lump Sums

Injury Year	Category	YR1	YR2	YR3	YR4	YR5	YR6	YR7	YR8
2002	Claims	4,468	2,547	1,581	1,178	971	822	523	488
	Average Yearly Benefits	\$14,154	\$17,061	\$17,747	\$14,006	\$10,759	\$10,255	\$11,964	\$14,746
	Average Total Benefits	\$14,154	\$36,134	\$57,054	\$67,269	\$76,727	\$92,285	\$127,351	\$135,193
	Percent	92.1%	52.5%	32.6%	24.3%	20.0%	16.9%	10.8%	10.1%
2003	Claims	4,742	2,967	1,811	1,149	978	681	574	
	Average Yearly Benefits	\$13,094	\$17,000	\$14,395	\$12,568	\$15,045	\$12,192	\$10,968	
	Average Total Benefits	\$13,094	\$33,156	\$52,359	\$70,944	\$86,559	\$108,592	\$122,725	
	Percent	92.5%	57.9%	35.3%	22.4%	19.1%	13.3%	11.2%	
2004	Claims	4,986	2,920	1,491	1,153	725	619		
	Average Yearly Benefits	\$13,326	\$14,513	\$13,968	\$16,831	\$13,081	\$10,335		
	Average Total Benefits	\$13,326	\$31,858	\$53,245	\$69,155	\$92,377	\$100,318		
	Percent	93.3%	54.6%	27.9%	21.6%	13.6%	11.6%		
2005	Claims	4,746	2,546	1,721	981	754			
	Average Yearly Benefits	\$17,127	\$14,547	\$15,362	\$16,751	\$16,041			
	Average Total Benefits	\$17,127	\$39,582	\$60,702	\$82,275	\$98,096			
	Percent	94.0%	50.4%	34.1%	17.6%	14.9%			
2006	Claims	4,733	3,346	1,650	1,120				
	Average Yearly Benefits	\$12,742	\$16,235	\$15,968	\$13,776				
	Average Total Benefits	\$12,742	\$30,904	\$57,004	\$75,335				
	Percent	92.2%	65.2%	32.2%	21.8%				
2007	Claims	4,686	2,909	1,681					
	Average Yearly Benefits	\$15,888	\$15,146	\$16,122					
	Average Total Benefits	\$15,888	\$35,236	\$56,650					
	Percent	93.2%	57.9%	33.4%					
2008	Claims	4,923	2,856						
	Average Yearly Benefits	\$15,191	\$16,100						
	Average Total Benefits	\$15,191	\$36,228						
	Percent	95.5%	55.4%						
2009	Claims	4,048							
	Average Yearly Benefits	\$15,263							
	Average Total Benefits	\$15,263							
	Percent	99.5%							

Exhibit 3.10
Total Wage Loss: TTD, TPD, PTD, PPD, including Lump Sums

Injury Year	Category	YR1	YR2	YR3	YR4	YR5	YR6	YR7	YR8
2002	Claims	4,424	1,836	912	540	328	178	111	71
	Average Yearly Benefits	\$6,424	\$12,311	\$14,634	\$13,181	\$13,022	\$11,901	\$12,227	\$36,621
	Average Total Benefits	\$6,424	\$22,395	\$40,700	\$48,730	\$63,412	\$79,238	\$93,824	\$202,543
	Percent	93.5%	38.8%	19.3%	11.4%	6.9%	3.8%	2.3%	1.5%
2003	Claims	4,719	1,932	910	479	282	180	122	
	Average Yearly Benefits	\$6,239	\$12,288	\$13,999	\$13,555	\$13,253	\$13,323	\$10,496	
	Average Total Benefits	\$6,239	\$21,940	\$38,754	\$55,562	\$70,474	\$81,251	\$90,345	
	Percent	94.0%	38.5%	18.1%	9.5%	5.6%	3.6%	2.4%	
2004	Claims	4,945	1,801	741	389	205	127		
	Average Yearly Benefits	\$5,852	\$11,391	\$13,019	\$13,168	\$13,140	\$12,132		
	Average Total Benefits	\$5,852	\$20,056	\$36,894	\$52,919	\$63,653	\$76,711		
	Percent	94.8%	34.5%	13.7%	7.5%	3.9%	2.4%		
2005	Claims	4,699	1,580	705	407	195			
	Average Yearly Benefits	\$8,493	\$11,382	\$13,033	\$16,504	\$13,931			
	Average Total Benefits	\$8,493	\$28,578	\$37,915	\$54,387	\$58,655			
	Percent	95.3%	32.0%	14.3%	8.3%	4.0%			
2006	Claims	4,609	1,528	738	335				
	Average Yearly Benefits	\$5,865	\$12,281	\$13,812	\$12,805				
	Average Total Benefits	\$5,865	\$22,380	\$36,070	\$49,191				
	Percent	94.4%	31.3%	15.1%	6.9%				
2007	Claims	4,373	1,496	680					
	Average Yearly Benefits	\$6,059	\$11,193	\$13,981					
	Average Total Benefits	\$6,059	\$20,833	\$35,305					
	Percent	94.0%	32.1%	14.6%					
2008	Claims	4,582	1,470						
	Average Yearly Benefits	\$5,621	\$11,860						
	Average Total Benefits	\$5,621	\$21,411						
	Percent	95.6%	30.7%						
2009	Claims	3,784							
	Average Yearly Benefits	\$5,578							
	Average Total Benefits	\$5,578							
	Percent	99.0%							

Exhibit 3.11
Total Medical Benefits²⁵, including Lump Sums

Injury Year	Category	YR1	YR2	YR3	YR4	YR5	YR6	YR7	YR8
2002	Claims	3,780	2,177	1,370	1,032	888	781	495	470
	Average Yearly Benefits	\$8,748	\$7,222	\$8,173	\$7,131	\$5,685	\$6,761	\$9,286	\$9,029
	Average Total Benefits	\$8,748	\$18,376	\$27,136	\$32,018	\$35,127	\$41,048	\$58,704	\$61,116
	Percent	78.1%	45.0%	28.3%	21.3%	18.3%	16.1%	10.2%	9.7%
2003	Claims	3,767	2,708	1,636	1,038	940	645	556	
	Average Yearly Benefits	\$8,286	\$8,161	\$6,514	\$5,083	\$9,392	\$8,025	\$8,055	
	Average Total Benefits	\$8,286	\$16,665	\$24,873	\$32,135	\$40,507	\$54,422	\$61,816	
	Percent	73.6%	52.9%	32.0%	20.3%	18.4%	12.6%	10.9%	
2004	Claims	4,501	2,661	1,316	1,099	692	602		
	Average Yearly Benefits	\$8,014	\$6,559	\$6,396	\$8,852	\$8,237	\$7,373		
	Average Total Benefits	\$8,014	\$16,598	\$25,953	\$33,014	\$45,608	\$50,707		
	Percent	84.5%	50.0%	24.7%	20.6%	13.0%	11.3%		
2005	Claims	4,442	2,344	1,613	901	717			
	Average Yearly Benefits	\$8,920	\$6,195	\$8,199	\$8,326	\$11,338			
	Average Total Benefits	\$8,920	\$18,366	\$27,750	\$40,742	\$51,692			
	Percent	88.2%	46.6%	32.0%	17.9%	14.2%			
2006	Claims	4,192	3,161	1,547	1,072				
	Average Yearly Benefits	\$7,155	\$9,522	\$7,958	\$8,171				
	Average Total Benefits	\$7,155	\$16,894	\$29,313	\$38,005				
	Percent	82.0%	61.8%	30.3%	21.0%				
2007	Claims	4,273	2,770	1,603					
	Average Yearly Benefits	\$10,463	\$7,767	\$8,369					
	Average Total Benefits	\$10,463	\$20,027	\$30,064					
	Percent	85.1%	55.2%	31.9%					
2008	Claims	4,713	2,768						
	Average Yearly Benefits	\$9,623	\$8,116						
	Average Total Benefits	\$9,623	\$20,204						
	Percent	91.5%	53.7%						
2009	Claims	3,938							
	Average Yearly Benefits	\$9,779							
	Average Total Benefits	\$9,779							
	Percent	96.7%							

²⁵ Includes payments to physicians, hospitals, and other medical providers and payments to claimants as settlement of medical liability.

Exhibit 3.12
Wage Loss Benefits: Temporary Total Disability, including Lump Sums

Injury Year	Category	YR1	YR2	YR3	YR4	YR5	YR6	YR7	YR8
2002	Claims	4,026	1,156	528	306	179	92	54	30
	Average Yearly Benefits	\$5,033	\$8,406	\$9,047	\$7,266	\$7,942	\$7,365	\$7,331	\$9,016
	Average Total Benefits	\$5,033	\$18,100	\$28,462	\$32,565	\$37,621	\$43,907	\$52,181	\$65,427
	Percent	97.4%	28.0%	12.8%	7.4%	4.3%	2.2%	1.3%	0.7%
2003	Claims	4,258	1,160	530	283	162	84	4	
	Average Yearly Benefits	\$5,082	\$8,204	\$7,669	\$7,333	\$7,606	\$7,490	\$7,075	
	Average Total Benefits	\$5,082	\$18,152	\$26,174	\$32,790	\$38,982	\$48,911	\$46,683	
	Percent	97.5%	26.6%	12.1%	6.5%	3.7%	1.9%	1.1%	
2004	Claims	4,418	1,028	422	207	113	65		
	Average Yearly Benefits	\$4,493	\$7,553	\$7,393	\$7,550	\$7,453	\$7,867		
	Average Total Benefits	\$4,493	\$16,149	\$25,066	\$32,608	\$41,296	\$49,957		
	Percent	97.6%	22.7%	9.3%	4.6%	2.5%	1.4%		
2005	Claims	4,249	955	391	196	97			
	Average Yearly Benefits	\$7,080	\$7,638	\$8,277	\$8,437	\$7,016			
	Average Total Benefits	\$7,080	\$28,639	\$26,256	\$35,309	\$46,761			
	Percent	96.9%	21.8%	8.9%	4.5%	2.2%			
2006	Claims	4,259	1,003	426	169				
	Average Yearly Benefits	\$4,688	\$8,217	\$8,296	\$8,546				
	Average Total Benefits	\$4,688	\$17,737	\$27,908	\$37,011				
	Percent	96.2%	22.7%	9.6%	3.8%				
2007	Claims	4,094	976	395					
	Average Yearly Benefits	\$4,907	\$8,063	\$8,087					
	Average Total Benefits	\$4,907	\$17,800	\$28,002					
	Percent	96.3%	23.0%	9.3%					
2008	Claims	4,236	929						
	Average Yearly Benefits	\$4,660	\$7,656						
	Average Total Benefits	\$4,660	\$17,876						
	Percent	97.6%	21.4%						
2009	Claims	3,436							
	Average Yearly Benefits	\$4,604							
	Average Total Benefits	\$4,604							
	Percent	99.3%							

Exhibit 3.13

Wage Loss Benefits: Temporary Partial Disability, including Lump Sums

Injury Year	Category	YR1	YR2	YR3	YR4	YR5	YR6	YR7	YR8
2002	Claims	783	175	55	35	12	5	1	4
	Average Yearly Benefits	\$1,868	\$2,986	\$2,573	\$2,401	\$1,030	\$772	\$125	\$958
	Average Total Benefits	\$1,868	\$5,578	\$7,425	\$8,385	\$14,385	\$2,169	\$125	\$1,072
	Percent	90.5%	20.2%	6.4%	4.0%	1.4%	0.6%	0.1%	0.5%
2003	Claims	868	198	67	28	14	10	9	
	Average Yearly Benefits	\$1,909	\$3,747	\$2,641	\$2,762	\$3,206	\$1,762	\$3,565	
	Average Total Benefits	\$1,909	\$6,517	\$7,893	\$7,454	\$8,283	\$6,754	\$5,693	
	Percent	92.4%	21.1%	7.1%	3.0%	1.5%	1.1%	1.0%	
2004	Claims	907	164	50	23	10	8		
	Average Yearly Benefits	\$1,829	\$2,868	\$2,725	\$2,154	\$3,550	\$1,317		
	Average Total Benefits	\$1,829	\$5,236	\$8,911	\$11,343	\$9,479	\$5,597		
	Percent	95.2%	17.2%	5.2%	2.4%	1.0%	0.8%		
2005	Claims	849	178	50	20	12			
	Average Yearly Benefits	\$2,208	\$2,844	\$2,416	\$8,098	\$1,886			
	Average Total Benefits	\$2,208	\$7,308	\$15,981	\$39,013	\$10,048			
	Percent	91.3%	19.1%	5.4%	2.2%	1.3%			
2006	Claims	904	193	55	22				
	Average Yearly Benefits	\$1,839	\$2,187	\$2,179	\$1,857				
	Average Total Benefits	\$1,839	\$4,862	\$4,880	\$6,694				
	Percent	92.2%	19.7%	5.6%	2.2%				
2007	Claims	898	191	47					
	Average Yearly Benefits	\$1,997	\$2,694	\$2,646					
	Average Total Benefits	\$1,997	\$5,140	\$6,625					
	Percent	89.9%	19.1%	4.7%					
2008	Claims	945	157						
	Average Yearly Benefits	\$1,875	\$2,114						
	Average Total Benefits	\$1,875	\$5,017						
	Percent	96.2%	16.0%						
2009	Claims	758							
	Average Yearly Benefits	\$1,910							
	Average Total Benefits	\$1,910							
	Percent	99.2%							

Exhibit 3.14
Wage Loss Benefits: Permanent Partial Disability, including Lump Sums

Injury Year	Category	YR1	YR2	YR3	YR4	YR5	YR6	YR7 ²⁶
2002	Claims	970	1,220	645	351	184	87	43
	Average Yearly Benefits	\$6,874	\$9,856	\$11,638	\$10,638	\$8,324	\$8,902	\$9,136
	Average Total Benefits	\$6,874	\$12,953	\$24,542	\$25,454	\$30,623	\$33,759	\$35,828
	Percent	45.9%	57.7%	30.5%	16.6%	8.7%	4.1%	2.0%
2003	Claims	1,226	1,361	631	288	156	99	57
	Average Yearly Benefits	\$4,852	\$9,537	\$11,260	\$10,243	\$9,802	\$7,760	\$5,168
	Average Total Benefits	\$4,852	\$11,386	\$20,648	\$30,816	\$36,671	\$33,908	\$37,627
	Percent	52.3%	58.0%	26.9%	12.3%	6.6%	4.2%	2.4%
2004	Claims	1,283	1,228	475	237	108	51	
	Average Yearly Benefits	\$5,761	\$9,602	\$10,484	\$12,040	\$10,363	\$7,864	
	Average Total Benefits	\$5,761	\$11,708	\$20,973	\$31,639	\$30,417	\$29,774	
	Percent	57.9%	55.4%	21.6%	10.7%	4.9%	2.3%	
2005	Claims	1,203	999	466	270	113		
	Average Yearly Benefits	\$6,519	\$9,876	\$10,980	\$13,740	\$7,558		
	Average Total Benefits	\$6,519	\$12,898	\$21,648	\$29,110	\$23,012		
	Percent	60.8%	50.5%	23.5%	13.6%	5.7%		
2006	Claims	833	871	489	213			
	Average Yearly Benefits	\$6,401	\$11,075	\$11,494	\$9,428			
	Average Total Benefits	\$6,401	\$13,493	\$18,192	\$22,776			
	Percent	51.5%	53.9%	30.3%	13.2%			
2007	Claims	694	868	425				
	Average Yearly Benefits	\$6,554	\$9,481	\$11,236				
	Average Total Benefits	\$6,554	\$11,106	\$16,660				
	Percent	46.7%	58.5%	28.6%				
2008	Claims	756	902					
	Average Yearly Benefits	\$5,574	\$9,888					
	Average Total Benefits	\$5,574	\$11,274					
	Percent	52.9%	63.1%					
2009	Claims	705						
	Average Yearly Benefits	\$5,383						
	Average Total Benefits	\$5,383						
	Percent	76.8%						

²⁶ Due to a formula error that was unable to be fixed, YR8 was removed from this triangle.

Exhibit 3.15

Wage Loss Benefits: Permanent Total Disability, including Lump Sums

Injury Year	Category	YR1	YR2	YR3	YR4	YR5	YR6	YR7	YR8
2002	Claims	6	27	36	40	41	38	31	28
	Average Yearly Benefits	\$4,107	\$12,503	\$25,589	\$26,907	\$31,849	\$17,436	\$18,335	\$25,531
	Average Total Benefits	\$4,107	\$12,975	\$28,955	\$40,213	\$61,580	\$65,885	\$75,733	\$93,522
	Percent	7.2%	32.5%	43.4%	48.2%	49.4%	45.8%	37.3%	33.7%
2003	Claims	9	19	31	40	32	40	37	
	Average Yearly Benefits	\$21,645	\$26,477	\$44,914	\$34,771	\$29,436	\$24,152	\$16,419	
	Average Total Benefits	\$21,645	\$33,411	\$55,718	\$59,078	\$68,558	\$58,300	\$55,544	
	Percent	10.2%	21.6%	35.2%	45.5%	36.4%	45.5%	42.0%	
2004	Claims	3	14	24	26	29	26		
	Average Yearly Benefits	\$12,962	\$34,960	\$58,796	\$25,255	\$24,027	\$23,564		
	Average Total Benefits	\$12,962	\$37,187	\$62,264	\$42,719	\$54,879	\$54,459		
	Percent	6.0%	28.0%	48.0%	52.0%	58.0%	52.0%		
2005	Claims	3	15	19	28	25			
	Average Yearly Benefits	\$36,988	\$21,157	\$37,597	\$40,094	\$46,647			
	Average Total Benefits	\$36,988	\$25,692	\$47,852	\$66,375	\$63,077			
	Percent	5.9%	29.4%	37.3%	54.9%	49.0%			
2006	Claims	7	16	22	19				
	Average Yearly Benefits	\$33,408	\$40,428	\$46,497	\$39,781				
	Average Total Benefits	\$33,408	\$53,367	\$66,791	\$48,566				
	Percent	16.3%	37.2%	51.2%	44.2%				
2007	Claims	3	14	20					
	Average Yearly Benefits	\$20,675	\$9,357	\$76,265					
	Average Total Benefits	\$20,675	\$10,471	\$81,408					
	Percent	9.7%	45.2%	64.5%					
2008	Claims	4	20						
	Average Yearly Benefits	\$6,551	\$54,194						
	Average Total Benefits	\$6,551	\$55,058						
	Percent	20.0%	100.0%						
2009	Claims	2							
	Average Yearly Benefits	\$2,019							
	Average Total Benefits	\$2,019							
	Percent	33.3%							

Exhibit 3.16
Medical Benefits: Payments to Physicians

Injury Year	Category	YR1	YR2	YR3	YR4	YR5	YR6	YR7	YR8
2002	Claims	3,587	2,082	1,239	878	783	686	431	374
	Average Yearly Benefits	2,944	2,503	2,263	2,312	1,490	1,688	2,710	2,204
	Average Total Benefits	2,944	5,995	8,127	9,732	10,026	11,338	16,072	16,949
	Percent	79.2%	46.0%	27.3%	19.4%	17.3%	15.1%	9.5%	8.3%
2003	Claims	3,597	2,542	1,449	914	832	565	463	
	Average Yearly Benefits	3,053	2,697	2,040	1,513	2,462	2,320	2,268	
	Average Total Benefits	3,053	5,599	7,856	9,776	11,409	14,871	16,903	
	Percent	74.7%	52.8%	30.1%	19.0%	17.3%	11.7%	9.6%	
2004	Claims	4,189	2,470	1,191	966	586	490		
	Average Yearly Benefits	2,766	2,170	2,000	2,356	2,293	2,469		
	Average Total Benefits	2,766	5,476	7,923	9,456	12,701	14,732		
	Percent	84.9%	50.0%	24.1%	19.6%	11.9%	9.9%		
2005	Claims	4,170	2,218	1,458	767	612			
	Average Yearly Benefits	2,902	2,077	2,455	2,116	2,418			
	Average Total Benefits	2,902	5,832	8,285	11,650	13,247			
	Percent	88.4%	47.0%	30.9%	16.3%	13.0%			
2006	Claims	4,053	3,009	1,348	882				
	Average Yearly Benefits	2,441	2,928	2,058	2,157				
	Average Total Benefits	2,441	5,359	8,667	10,456				
	Percent	83.4%	61.9%	27.7%	18.1%				
2007	Claims	4,207	2,561	1,375					
	Average Yearly Benefits	3,081	2,211	2,366					
	Average Total Benefits	3,081	5,844	8,334					
	Percent	88.2%	53.7%	28.8%					
2008	Claims	4,516	2,576						
	Average Yearly Benefits	2,903	2,437						
	Average Total Benefits	2,903	6,021						
	Percent	92.8%	52.9%						
2009	Claims	3,812							
	Average Yearly Benefits	2,939							
	Average Total Benefits	2,939							
	Percent	99.2%							

Exhibit 3.17
Medical Benefits: Payments to Hospitals

Injury Year	Category	YR1	YR2	YR3	YR4	YR5	YR6	YR7	YR8
2002	Claims	2,875	1,474	803	548	390	277	158	129
	Average Yearly Benefits	5,336	3,859	4,128	4,389	3,743	5,010	6,140	7,794
	Average Total Benefits	5,336	10,304	13,942	16,909	17,690	21,880	25,679	27,937
	Percent	77.1%	39.8%	21.5%	14.7%	10.5%	7.4%	4.2%	3.5%
2003	Claims	2,845	1,902	967	474	410	210	160	
	Average Yearly Benefits	4,836	4,512	3,948	3,457	5,964	6,910	3,903	
	Average Total Benefits	4,836	9,001	14,124	19,297	22,859	27,643	27,303	
	Percent	71.8%	48.0%	24.4%	12.0%	10.3%	5.3%	4.0%	
2004	Claims	3,410	1,794	645	464	231	166		
	Average Yearly Benefits	4,730	3,740	4,787	5,711	6,129	4,825		
	Average Total Benefits	4,730	9,271	15,791	19,962	23,687	28,743		
	Percent	84.4%	44.4%	16.0%	11.5%	5.7%	4.1%		
2005	Claims	3,409	1,493	765	320	248			
	Average Yearly Benefits	5,533	3,534	4,996	5,388	6,297			
	Average Total Benefits	5,533	10,531	16,055	20,186	23,850			
	Percent	86.4%	37.8%	19.4%	8.1%	6.3%			
2006	Claims	2,863	1,778	596	370				
	Average Yearly Benefits	4,000	5,286	5,569	5,044				
	Average Total Benefits	4,000	9,076	14,030	16,295				
	Percent	82.1%	51.0%	17.1%	10.6%				
2007	Claims	2,149	1,219	552					
	Average Yearly Benefits	6,776	4,910	5,116					
	Average Total Benefits	6,776	11,211	15,198					
	Percent	81.3%	46.1%	20.9%					
2008	Claims	2,322	1,222						
	Average Yearly Benefits	5,988	4,963						
	Average Total Benefits	5,988	10,658						
	Percent	89.5%	47.1%						
2009	Claims	1,981							
	Average Yearly Benefits	6,085							
	Average Total Benefits	6,085							
	Percent	100.0%							

Exhibit 3.18
Medical Benefits: Payments to Other Medical Providers

Injury Year	Category	YR1	YR2	YR3	YR4	YR5	YR6	YR7	YR8
2002	Claims	3,314	1,891	1,199	871	702	605	416	402
	Average Yearly Benefits	2,171	2,560	4,218	3,354	3,387	4,515	5,491	5,605
	Average Total Benefits	2,171	5,358	9,766	10,489	13,667	17,610	26,566	29,564
	Percent	76.9%	43.9%	27.8%	20.2%	16.3%	14.0%	9.6%	9.3%
2003	Claims	3,346	2,376	1,379	835	752	531	470	
	Average Yearly Benefits	1,950	2,800	2,825	2,693	5,779	4,533	5,727	
	Average Total Benefits	1,950	4,722	7,923	11,075	15,979	21,949	26,920	
	Percent	72.8%	51.7%	30.0%	18.2%	16.4%	11.6%	10.2%	
2004	Claims	4,116	2,310	1,091	929	599	526		
	Average Yearly Benefits	2,043	2,295	2,741	4,931	4,757	4,745		
	Average Total Benefits	2,043	4,829	8,312	12,275	17,553	20,351		
	Percent	84.6%	47.5%	22.4%	19.1%	12.3%	10.8%		
2005	Claims	4,114	2,034	1,417	830	633			
	Average Yearly Benefits	2,132	2,300	4,112	4,883	7,378			
	Average Total Benefits	2,132	5,056	9,495	15,474	21,988			
	Percent	88.1%	43.6%	30.3%	17.8%	13.6%			
2006	Claims	3,933	2,938	1,413	962				
	Average Yearly Benefits	2,230	4,049	4,368	5,114				
	Average Total Benefits	2,230	6,387	12,115	17,344				
	Percent	82.8%	61.9%	29.7%	20.3%				
2007	Claims	4,007	2,593	1,485					
	Average Yearly Benefits	4,306	3,750	4,727					
	Average Total Benefits	4,306	8,482	13,667					
	Percent	85.1%	55.1%	31.6%					
2008	Claims	4,413	2,540						
	Average Yearly Benefits	4,124	3,931						
	Average Total Benefits	4,124	8,857						
	Percent	91.6%	52.7%						
2009	Claims	3,760							
	Average Yearly Benefits	4,128							
	Average Total Benefits	4,128							
	Percent	98.3%							

Exhibit 3.19
Vocational Rehabilitation Benefits²⁷, including Lump Sums

Injury Year	Category	YR1	YR2	YR3	YR4	YR5	YR6	YR7	YR8
2002	Claims	77	172	125	74	40	27	13	4
	Average Yearly Benefits	\$2,225	\$4,738	\$8,328	\$8,575	\$5,643	\$3,884	\$4,031	\$3,260
	Average Total Benefits	\$2,225	\$5,191	\$12,060	\$20,442	\$15,426	\$11,565	\$8,714	\$20,469
	Percent	23.3%	52.1%	37.9%	22.4%	12.1%	8.2%	3.9%	1.2%
2003	Claims	76	209	116	89	67	52	21	
	Average Yearly Benefits	\$2,630	\$4,120	\$6,355	\$7,542	\$5,767	\$5,691	\$3,484	
	Average Total Benefits	\$2,630	\$4,772	\$10,093	\$14,394	\$12,192	\$10,821	\$7,729	
	Percent	20.2%	55.6%	30.9%	23.7%	17.8%	13.8%	5.6%	
2004	Claims	71	164	161	114	43	17		
	Average Yearly Benefits	\$2,209	\$3,860	\$4,769	\$5,949	\$4,837	\$6,441		
	Average Total Benefits	\$2,209	\$4,277	\$6,474	\$11,532	\$11,887	\$13,529		
	Percent	20.8%	48.0%	47.1%	33.3%	12.6%	5.0%		
2005	Claims	105	415	264	115	54			
	Average Yearly Benefits	\$2,178	\$4,739	\$5,977	\$5,713	\$6,443			
	Average Total Benefits	\$2,178	\$4,949	\$9,009	\$12,089	\$16,201			
	Percent	20.9%	82.7%	52.6%	22.9%	10.8%			
2006	Claims	523	617	245	92				
	Average Yearly Benefits	\$3,134	\$4,311	\$5,113	\$3,912				
	Average Total Benefits	\$3,134	\$5,600	\$8,228	\$9,279				
	Percent	56.4%	66.6%	26.8%	9.9%				
2007	Claims	553	591	226					
	Average Yearly Benefits	\$2,943	\$3,533	\$4,011					
	Average Total Benefits	\$2,943	\$4,335	\$6,515					
	Percent	55.5%	59.3%	22.7%					
2008	Claims	624	588						
	Average Yearly Benefits	\$2,444	\$3,598						
	Average Total Benefits	\$2,444	\$4,355						
	Percent	62.7%	59.1%						
2009	Claims	451							
	Average Yearly Benefits	\$2,561							
	Average Total Benefits	\$2,561							
	Percent	89.3%							

²⁷ Includes payments to claimants for vocational rehabilitation benefits.

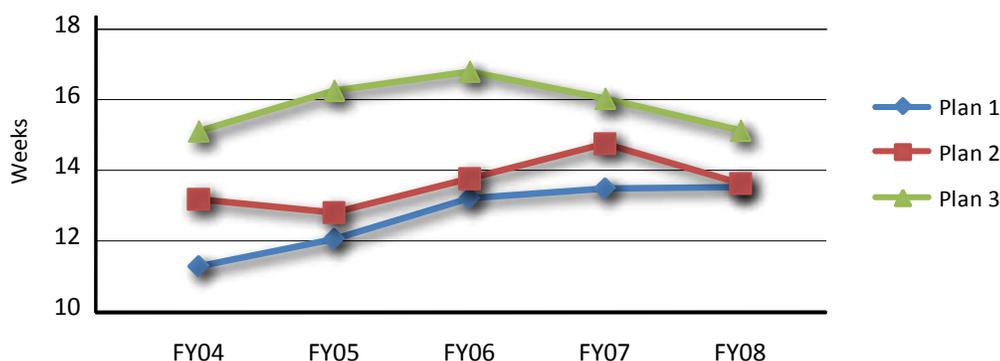
temporary disability paid duration

Disability duration is an important measure of how quickly injured workers heal. Here we highlight trends for fiscal years 2004–2008. Claims with Temporary Total Disability (TTD) or Temporary Partial Disability (TPD) or both were considered to calculate the average paid disability duration of injured workers in Montana from 2004 to 2008. We calculated the paid disability duration as the total TTD payments plus TPD payments on each claim divided by the reported weekly benefit rate for each claim. The weekly benefit rate value was chosen by the following rules:

- If TTD WBR(weekly benefit rate) is available, TTD WBR is used for both TTD and TPD;
- If TTD WBR is not available, TPD WBR is used for both TTD and TPD;
- If neither TTD WBR nor TPD WBR is available, cases are excluded.

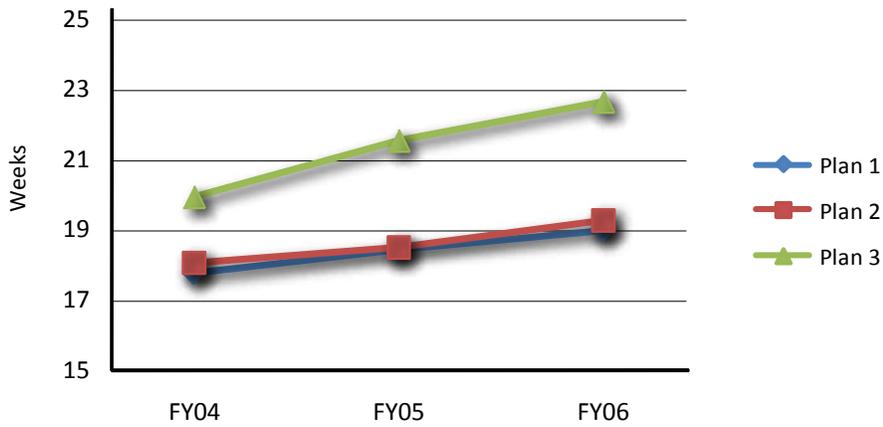
Extremely high (>\$626) or low weekly benefit rate (<\$60) values were excluded from the analysis due to data quality concerns. For 1-year maturity, the longest maturity cannot be beyond 52 weeks and the longest 3-year maturity was capped at 157 weeks.

Exhibit 3.20
Temporary Disability Paid Duration - 1 Year Maturity
 By Plan Type²⁸ and Fiscal Year of Injury



²⁸ Plan types: Plan 1 - Self-Insured Employers, Plan 2 - Private Insurance and Plan 3 - Montana State Fund.

Exhibit 3.21
Temporary Disability Paid Duration - 3 Year Maturity
 By Plan Type²⁹ and Fiscal Year of Injury



²⁹ Plan types: Plan 1 - Self-Insured Employers, Plan 2 - Private Insurance and Plan 3 - Montana State Fund.

Exhibit 3.22
Temporary Disability Paid Duration - 1 Year Maturity
 By Plan Type³⁰ and Fiscal Year of Injury

Plan Type	FY04	FY05	FY06	FY07	FY08
Plan 1	11.3	12.1	13.2	13.5	13.5
Plan 2	13.2	12.8	13.8	14.8	13.6
Plan 3	15.1	16.3	16.8	16.0	15.1
All Plans	14.0	14.6	15.3	15.2	14.4

³⁰ Plan types: Plan 1 - Self-Insured Employers, Plan 2 - Private Insurance and Plan 3 - Montana State Fund.

Exhibit 3.23
Temporary Disability Paid Duration - 3 Year Maturity
 By Plan Type³¹ and Fiscal Year of Injury

Plan Type	FY04	FY05	FY06
Plan 1	17.8	18.5	19.0
Plan 2	18.1	18.5	19.3
Plan 3	20.0	21.6	22.7
All Plans	19.1	20.2	21.1

³¹ Plan types: Plan 1 - Self-Insured Employers, Plan 2 - Private Insurance and Plan 3 - Montana State Fund.

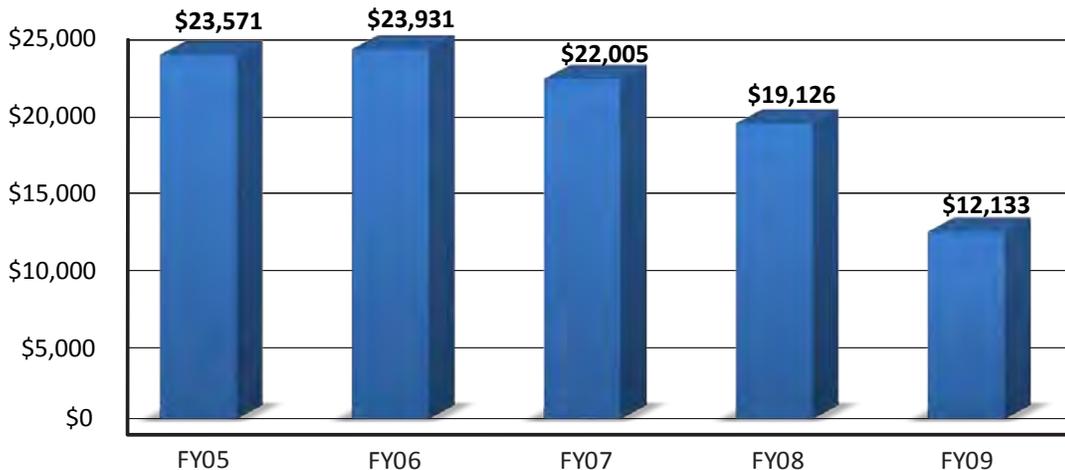
settlement dollars

Settlements are lump sum payments of the claimant's workers' compensation indemnity and/or medical benefits. Benefits are usually paid in periodic payments designed to sustain an injured worker over an extended period of time. Settlements can occur when the claimant and the insurer agree that benefits will be converted to a lump sum payment.

If the claimant has more than one claim, a settlement may settle more than one of those claims. Settlements are subject to approval by ERD.

Exhibit 3.24 displays average settlement amounts, by fiscal year of injury. This information includes both injury and occupational disease settlements.

Exhibit 3.24
Average Settlement³²
By Fiscal Year of Injury



³² These charts do not include settlements ordered by the Workers' Compensation Court.

Exhibit 3.25
Settlement Amounts for Claims Settled³³
By Plan Type³⁴ and Fiscal Year of Injury³⁵

Plan Type	FY05		FY06		FY07		FY08		FY09	
	Amount	Count	Amount	Count	Amount	Count	Amount	Count	Amount	Count
Plan 1	\$2,936,474	156	\$3,588,549	164	\$2,116,997	105	\$1,222,863	72	\$117,401	9
Plan 2	\$7,118,068	321	\$7,268,999	338	\$6,244,957	287	\$3,887,623	201	\$761,381	51
Plan 3	\$10,827,555	410	\$10,801,719	402	\$9,058,248	398	\$5,121,203	262	\$971,293	94
UEF	\$119,739	4	\$46,266	3	\$73,844	5	\$20,000	1	\$42,608	2
Total	\$21,001,836	891	\$21,705,533	907	\$17,494,046	795	\$10,251,689	536	\$1,892,839	156

³³ These charts do not include settlements ordered by the Workers' Compensation Court.

³⁴ Plan types: Plan 1 - Self-Insured, Plan 2 - Private Insurance, Plan 3 - Montana State Fund, and UEF - Uninsured Employers' Fund.

³⁵ Previous fiscal year information has been updated.

injured worker attorney fees

ERD requires claimants' attorneys to submit a Legal Fee Report at regular intervals throughout the life of a claim. The Legal Fee Report provides the amount of attorney fees received by attorneys. Maximum legal fees are set by rule and regulated³⁶ by ERD.

The data in exhibits 3.26 and 3.27 present attorney legal fee information by plan type and fiscal year of injury.

³⁶ §39-71-613, MCA (2009).

Exhibit 3.26
Average Attorney Legal Fees
By Fiscal Year of Injury

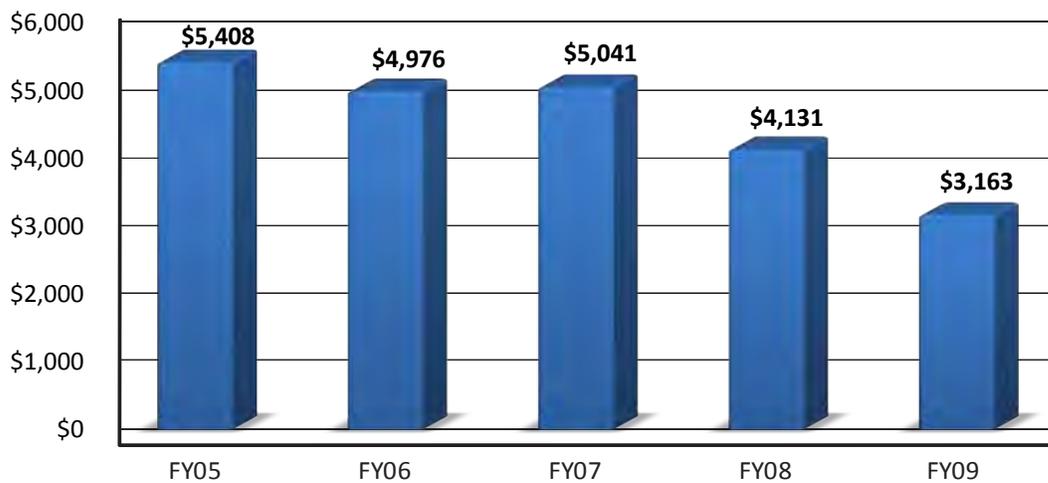


Exhibit 3.27
Total Attorney Legal Fees
By Plan Type³⁷ and Fiscal Year of Injury

Plan Type	FY05		FY06		FY07		FY08		FY09	
	Amount	Count	Amount	Count	Amount	Count	Amount	Count	Amount	Count
Plan 1	\$232,405	59	\$431,844	101	\$224,755	50	\$227,463	48	\$36,867	18
Plan 2	\$785,420	162	\$733,011	168	\$807,538	171	\$521,954	140	\$187,776	59
Plan 3	\$1,376,054	222	\$,453,404	256	\$1,271,492	236	\$697,599	161	\$237,183	69
UEF	\$7,114	1	\$44,041	10	\$4,916	1	\$3,093	2	0	0
Total	\$2,400,993	444	\$2,662,300	535	\$2,308,701	458	\$1,450,112	351	\$461,826	146

³⁷ Plan types: Plan 1 - Self-Insured, Plan 2 - Private Insurance, Plan 3 - Montana State Fund, and UEF - Uninsured Employers' Fund.

ERD also collects legal fee information on approved workers' compensation settlements. The table below represents fees claimed in the fiscal year of the approved settlement

regardless of the fiscal year in which the injury or disease occurred. Data shows that approximately 54% of all settlements in FY09 involved attorneys.

Exhibit 3.28
Attorney Fees from Claimant Settlements³⁸
 By Fiscal Year of Settlement

	FY05	FY06	FY07	FY08	FY09
Number of Settlement Petitions Processed	1,451	1,459	1,405	1,410	1,465
Claims Settled with Attorney Representation	778	796	775	786	785
Percent Claimants Represented by Attorney	54%	55%	55%	56%	54%
Total Settlement Amount with Attorney Involvement	\$22,361,132	\$26,086,926	\$24,538,844	\$29,304,566	\$27,298,340
Total Attorney Fees	\$3,936,199	\$4,729,148	\$4,424,590	\$5,365,189	\$5,004,176
Average Fee/Settlement Percentage	17.6%	18.1%	18%	18.3%	18.3%

³⁸ Similar to reports issued in previous years, there are a small percentage of records for which no attorney fees were listed due to entry errors and/or reporting limitations.



insurer legal expenses

ERD requires insurance companies to report legal fees and costs associated with each indemnity claim.³⁹ These costs are reported to ERD on the subsequent report of injury at regular intervals throughout the life of a claim.

The data in exhibits 3.29 and 3.30 present insurer legal expenses by plan type and fiscal year of injury.

³⁹ ARM 24.29.4335 and 24.29.4336 (2008).

Exhibit 3.29
Average Insurer Legal Expenses per Claim
By Fiscal Year of Injury

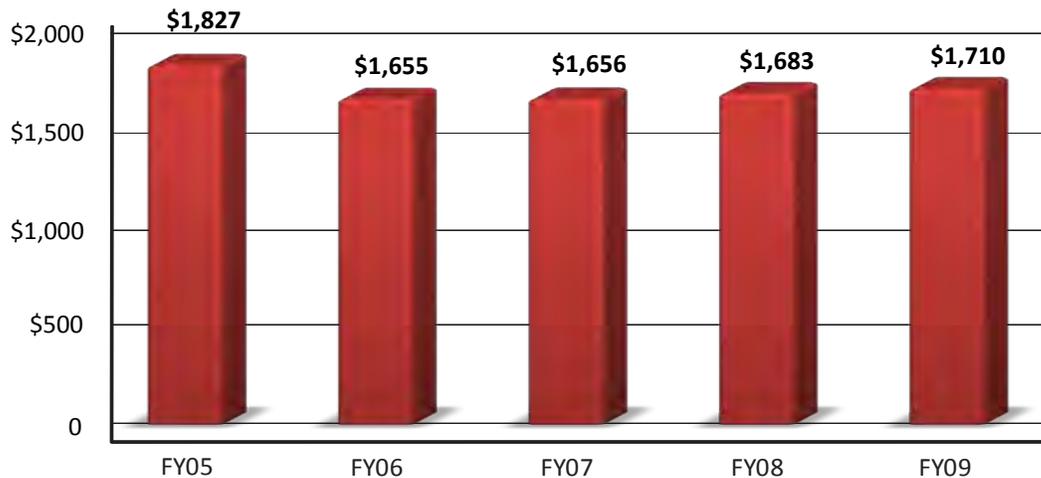


Exhibit 3.30
Total Insurer Legal Expenses
By Plan Type⁴⁰ and Fiscal Year of Injury

Plan Type	FY05		FY06		FY07		FY08		FY09	
	Amount	Count								
Plan 1	\$43,767	28	\$23,222	24	\$22,912	34	\$70,288	32	\$26,110	13
Plan 2	\$301,665	114	\$150,218	92	\$106,402	79	\$51,146	73	\$50,418	50
Plan 3	\$359,703	244	\$480,454	279	\$489,946	261	\$418,881	216	\$294,492	154
Total	\$705,135	386	\$653,894	395	\$619,260	374	\$540,315	321	\$371,020	217

⁴⁰ Plan types: Plan 1 - Self-Insured Employers, Plan 2 - Private Insurance and Plan 3 - Montana State Fund.

section 4

dispute resolution

- ✦ mediation
- ✦ contested case hearings
- ✦ workers' compensation court
- ✦ significant workers' compensation cases
- ✦ supreme court decisions on workers' compensation and occupational disease



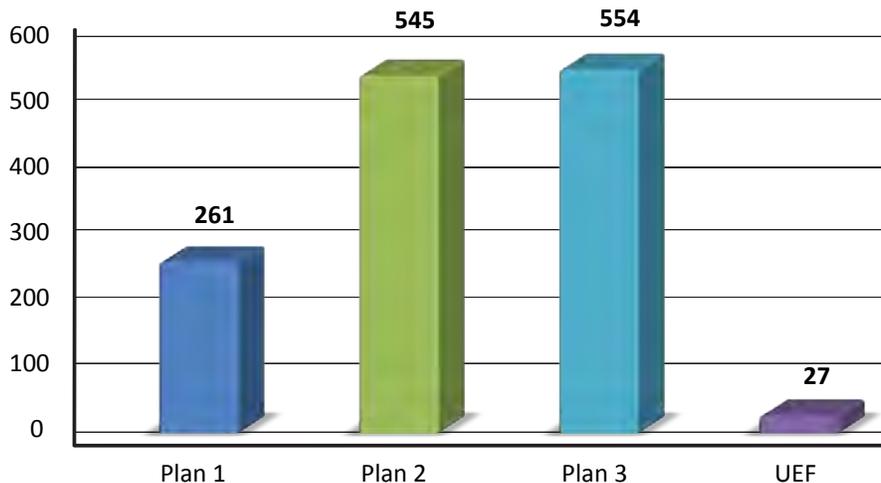


mediation

The Workers' Compensation Mediation Unit of ERD administers a mandatory process for resolving disputes dealing with benefits for both occupational injury and disease claims. The mediation process is confidential, non-binding and informal. The mediator facilitates the exchange of information between the parties and assists with solutions aimed at resolving the

dispute. Conferences are usually by telephone but can be held in person in Helena upon request. Often more than one conference is held in order to resolve the disputes on a claim. In FY09, the Mediation Unit received and processed 1,249 petitions, which involved 1,387 claims. A petition is a request for mediation and may include multiple claims.

Exhibit 4.1
Claims in Mediation - FY09
 By Plan Type¹



¹ Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance, Plan 3 – Montana State Fund and UEF – Uninsured Employers' Fund.

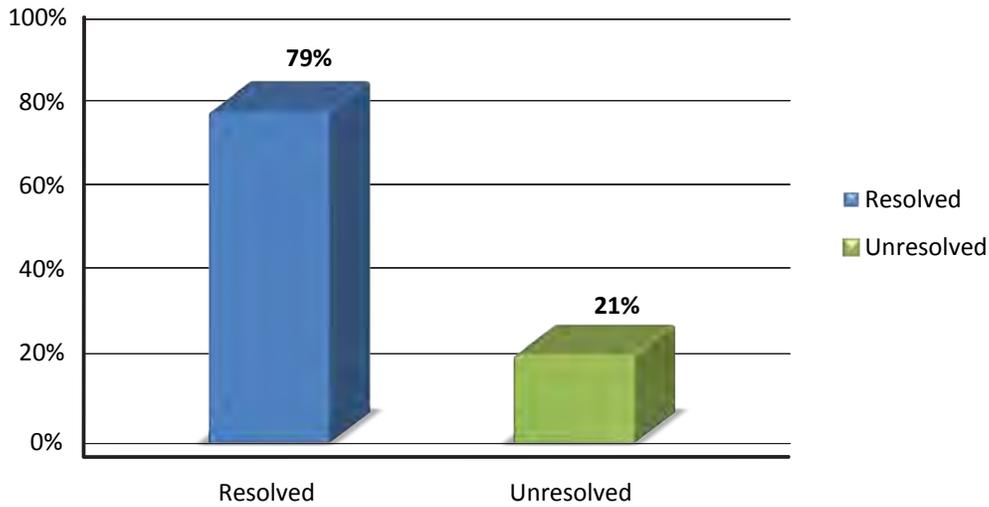
Exhibit 4.2
Claims in Mediation
 By Plan Type² and Fiscal Year of Receipt

Plan Type	FY05		FY06		FY07		FY08		FY09	
	Count	%								
Plan 1	270	18%	268	17%	245	17%	273	18%	261	19%
Plan 2	543	37%	586	38%	562	38%	593	40%	545	39%
Plan 3	622	43%	675	43%	644	43%	577	39%	554	40%
UEF	27	2%	28	2%	35	2%	43	3%	27	2%
Total³	1,462	100%	1,557	100%	1,486	100%	1,486	100%	1,387	100%

² Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance, Plan 3 – Montana State Fund and UEF – Uninsured Employers' Fund.

³ Total count represents the number of claims, not the number of petitions. Due to coverage and claim updates to our database following mediation, the claim counts may be changed slightly over prior years.

Exhibit 4.3
Percent of Mediation Petitions Resolved - FY09



Over the past five years, the mediation process has had an average resolution rate of 81%. From the date of the petition receipt to issuing

a written recommendation, the average completion time for mediation was 42 days in FY09.

Exhibit 4.4
Mediation Petitions⁴
By Fiscal Year of Receipt

Petitions Received	FY05		FY06		FY07		FY08		FY09	
	Count	%								
Pending ⁵	0	0%	3	1%	0	0%	2	1%	95	8%
Closed	1,336	100%	1,407	99%	1,312	100%	1,342	99%	1,154	92%
Total Petitions Received	1,336	100%	1,410	100%	1,312	100%	1,344	100%	1,249	100%
Resolved	1,032	77%	1,145	81%	1,085	83%	1,130	84%	906	79%
Unresolved	304	23%	262	19%	227	17%	212	16%	248	21%
Total Petitions Closed	1,336	100%	1,407	100%	1,312	100%	1,342	100%	1,154	100%

⁴ A single petition may include multiple claims and/or multiple insurers.

⁵ Eventual outcome of pending petitions will affect percent resolved.

contested case hearings

The DLI Hearings Bureau holds contested case hearings. Disputes heard at contested case hearings include appeals from orders and determinations issued by ERD and assessments

of penalties for uninsured employers. In FY09, the Hearings Bureau received four new requests for contested case hearings.

Exhibit 4.5
Petitions Received by the Hearings Bureau
 By Plan Type⁶ and Fiscal Year

Plan Type	FY05		FY06		FY07		FY08		FY09	
	Count	%	Count	%	Count	%	Count	%	Count	%
Plan 1	0	0%	1	10%	1	7%	0	0%	0	0%
Plan 2	3	28%	0	0%	10	67%	1	11%	0	0%
Plan 3	4	36%	7	70%	1	7%	2	22%	0	0%
UEF	4	36%	2	20%	2	13%	6	67%	3	75%
Other	--	--	--	--	1	6%	--	--	1	25%
Total	11	100%	10	100%	15	100%	9	100%	4	100%

⁶ Plan types: Plan 1 - Self-insured Employers, Plan 2 - Private Insurance, Plan 3 - Montana State Fund, UEF - Uninsured Employers' Fund and Other.



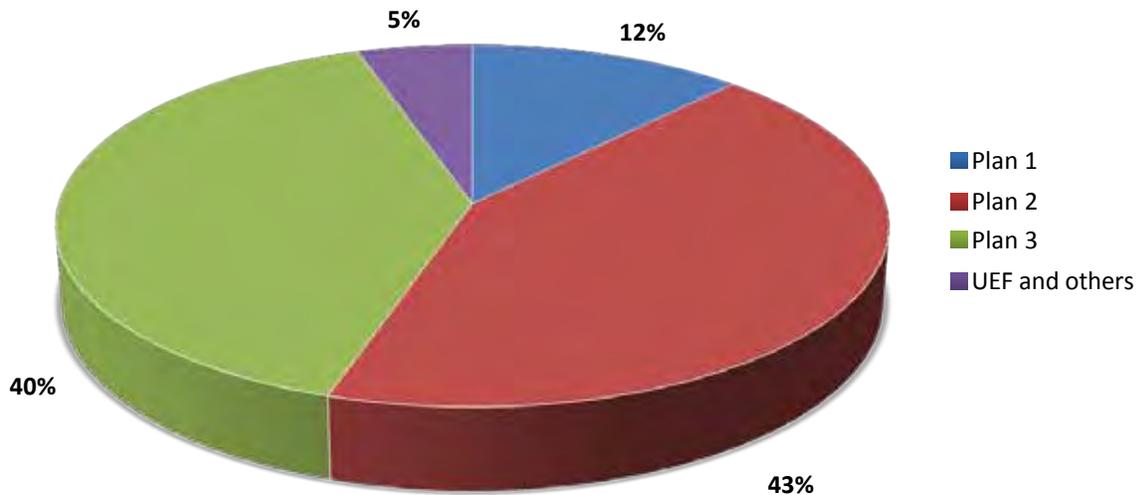
workers' compensation court

The Workers' Compensation Court resolves disputes between insurers or employers and workers injured as a result of occupational injuries or diseases. The court has original jurisdiction over benefit issues arising under the Workers' Compensation Act. For an injury occurring after July 1, 1987, disputes must first be mediated through the ERD Mediation Unit. The court's exclusive jurisdiction also extends to disputes

involving independent contractor exemptions under both the Workers' Compensation and Unemployment Insurance Acts, civil penalties for violations of workers' compensation provisions, and the two-year return to work preference specified in section 39-71-317(2), MCA.

Data Source: The Workers' Compensation Court website: <http://www.wcc.dli.mt.gov>

Exhibit 4.6
Percent of Petitions Received by the WCC - FY09
By Case Type⁷



⁷ The Workers' Compensation Act provides for three separate "plans", i.e., Plan 1 – Self-Insureds, Plan 2 – Private Insurers, and Plan 3 – the State Compensation Insurance Fund. The court breaks down its case types further for statistical purposes, i.e., Self-Insureds, Private Insurers, Montana State Fund (State Compensation Insurance Fund), Subsequent Injury Fund, Uninsured Employers' Fund, ICCU (Independent Contractor Compensation Unit), and DLI (Department of Labor and Industry). The court's statistics can be located on the web at: <http://www.wcc.dli.mt.gov/stats.asp>.

Exhibit 4.7
Petitions Received by the WCC
 By Case Type⁸ and Fiscal Year

Case Type	FY05		FY06		FY07		FY08		FY09	
	Count	%								
Plan 1	40	14%	34	11%	18	7%	8	4%	25	12%
Plan 2	124	45%	150	46%	122	49%	115	55%	90	43%
Plan 3	96	35%	108	33%	81	33%	66	31%	83	40%
UEF and others	18	6%	32	10%	26	11%	21	10%	10	5%
Total⁹	278	100%	324	100%	247	100%	210	100%	208	100%

⁸ The Workers' Compensation Act provides for three separate "plans", i.e., Plan 1 – Self-Insureds, Plan 2 – Private Insurers, and Plan 3 – the State Compensation Insurance Fund. The court breaks down its case types further for statistical purposes, i.e., Self-Insureds, Private Insurers, Montana State Fund (State Compensation Insurance Fund), Subsequent Injury Fund, Uninsured Employers' Fund, ICCU (Independent Contractor Compensation Unit), and DLI (Department of Labor and Industry). The court's statistics can be located on the web at: <http://www.wcc.dli.mt.gov/stats.asp>.

⁹ Petitions may involve more than one plan type.

Exhibit 4.8
Decisions by the WCC
 By Fiscal Year

Decisions	FY05	FY06	FY07	FY08	FY09
Telephone Conference Resulting in Disposition	0	0	0	0	0
Bench Rulings without Written Decisions	3	1	0	0	2
Decisions	161	182	166	170	143
Orders on Appeal	1	1	0	0	0
Substantive Orders	41	27	19	68	43
Attorney Fee Orders	2	2	2	2	0
Orders on Cost	2	2	5	6	3
Subtotals	210	215	192	246	191
Petitions Dismissed by Agreement	83	96	80	46	51
Totals	293	311	272	292	242

Exhibit 4.9
Full and Final Compromise Settlements by the WCC
 By Case Type and Fiscal Year

Case Type	FY05	FY06	FY07	FY08	FY09
Plan 1 - Self-Insured	1	1	7	2	2
Plan 2 - Private Insurers	6	6	8	6	5
Plan 3 - State Compensation Ins. Fund	10	15	7	12	12
Uninsured Employers' Fund	0	0	0	0	0
Total	17	22	22	20	19

significant workers' compensation cases

Case summaries are taken from the WCC Website: <http://wcc.dli.mt.gov/>

Gayle Brown vs. Hartford Insurance Company of the Midwest

2009 MTWCC 38

Summary: Petitioner worked full-time cutting hair at a salon and began to experience pain and numbness in her hands and wrists. A PA-C diagnosed her with carpal tunnel syndrome and requested referral to a physician. Respondent did not grant the referral until after it denied Petitioner's claim, citing a lack of causative evidence within the 30-day investigative period. Although the physician disagreed with the specific diagnosis of carpal tunnel syndrome, he concluded that Petitioner suffered from "an occupational disease related to overuse." Respondent again denied the claim, asserting that the physician's diagnosis was "ambiguous." Petitioner's employer then discontinued allowing her to work in a modified position to accommodate her restrictions, stating that it provided modified positions only for workers with accepted workers' compensation claims. Petitioner argues that she is entitled to acceptance of her claim, medical and indemnity benefits, and her costs, attorney fees, and a penalty for

Respondent's unreasonable denial of her claim.

Held: Respondent is liable for Petitioner's occupational disease claim. Petitioner is entitled to medical and indemnity benefits. Respondent unreasonably denied Petitioner's claim and Petitioner is entitled to her attorney fees and a 20% penalty.

William Short vs. J.H. Kelly Holdings, LLC

2009 MTWCC 33

Summary: Petitioner William Short petitioned the Court for a determination of the appropriate labor market for purposes of terminating temporary total disability benefits pursuant to § 39-71-609, MCA. Petitioner was a permanent resident of Shoreline, Washington, at the time he was injured. Petitioner's injury occurred at a temporary work assignment as a millwright in Missoula, Montana. Shortly after Petitioner's injury, he moved to Clark Fork, Idaho. A vocational rehabilitation provider developed several job analyses utilizing the Montana and Shoreline, Washington, labor markets. Petitioner's treating physician approved six of these alternative job analyses, and Respondent J.H. Kelly Holdings, LLC, terminated Petitioner's

TTD benefits based on the treating physician's approvals. Petitioner argues that Clark Fork, Idaho, is his labor market because he currently resides and has sought employment there. Petitioner also petitioned the Court for a determination of whether he is permanently totally disabled.

Held: In determining the appropriate labor market for purposes of terminating TTD benefits pursuant to § 39-71-609, MCA, the Court employs a fact-driven analysis. In this case, Petitioner permanently resided in Shoreline, Washington, from 1998 through the time of his injury. Petitioner accepted millwright jobs throughout the Pacific Northwest, but returned to Shoreline as his residential base between 2003 and the time of his injury. At the time of his injury, Petitioner worked in Montana only on a temporary basis. After his injury, Petitioner returned to Shoreline, and testified that he would have stayed there for his recovery had he been able to locate a treating physician in that region. Although Petitioner testified that he could not locate a treating physician in Shoreline willing to accept Montana workers' compensation insurance, he also testified that he moved from Shoreline to Clark Fork because he knew other millwrights living

there and envisioned working as a millwright again after recovering from his injury. Based on these factors, Shoreline, Washington is the appropriate labor market for purposes of terminating Petitioner's TTD benefits. Regarding Petitioner's PTD status, Petitioner's treating physician restricted him to medium duty work and a fifty-pound lifting restriction. The treating physician approved six job analyses that complied with the approved restrictions. A vocational rehabilitation provider testified that Petitioner had a reasonable prospect of performing all of these approved jobs. Therefore, Petitioner failed to prove that he is permanently and totally disabled.

Donna Burke, as surviving widow of James F. Burke, Deceased, vs. Roseburg Forest Products Co.

2009 MTWCC 32

Summary: Respondent moved to dismiss Petitioner's petition based on Petitioner's failure to complete the mediation process before filing her Petition for Hearing as required by § 39-71-2408(1), MCA and § 39-71-2905, MCA. Although the mediator had not issued her report prior to the filing of Petitioner's petition, Petitioner argued that the Court should nevertheless exercise jurisdiction because the purposes of mediation had been served.

Held: Respondent's motion is granted. The Court lacked jurisdiction over this matter prior to the completion of the statutorily-mandated mediation process. Although the Court might conceivably exercise jurisdiction now that the statutorily-mandated mediation process had been completed, albeit two months after the petition was filed, the case would be moving forward under a cloud of uncertainty as to whether jurisdiction could be retroactively restored. Although dismissing the petition and restarting the process is inconvenient at this juncture, it is much more impractical to proceed to trial with the specter of restarting the process after an appeal. The more prudent course of action is to dismiss the petition without prejudice.

Terry Boyd vs. Zurich American Insurance Company

2009 MTWCC 26

Appealed to Montana Supreme Court - 09/09/09

Summary: Zurich American Insurance Company moved for summary judgment on the grounds that Petitioner Terry Boyd failed to petition this Court within two years of Zurich's denial of benefits, as required by § 39-71-2905(2), MCA. Boyd argued that Zurich's motion should be denied because

the statute of limitations should not have commenced running until June 2008, when Boyd obtained the medical evidence needed to support his claim. Boyd contends that the language of § 39-71-2905(2), MCA, implies a tolling of the time limitation until the "dispute arises and is supported by admissible medical evidence."

Held: Zurich's motion is granted. Section 39-71-2905(2), MCA, unambiguously requires that "[a] petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied." Although this Court has recognized a tolling of this time limit while the dispute is in mandatory mediation, it has never recognized an "implied tolling" until the claimant obtains medical evidence in support of his claim, and the Court declines to do so now.

Gregory Skiff vs. Montana State Fund

2009 MTWCC 8

Notice of Appeal filed by Petitioner April 3, 2009

Stipulation for Settlement and Dismissal With Prejudice Filed July 6, 2009

Summary: Respondent accepted liability for Petitioner's industrial

accident which caused Petitioner's paraplegia. Respondent currently pays Petitioner's wife \$7.50 per hour for .75 hours of daily domiciliary care. Respondent converted Petitioner's benefits after Petitioner informed Respondent that he disagreed with Respondent's vocational rehabilitation proposal. Petitioner argues that he is entitled to 2.8 hours of daily domiciliary care at a rate of either \$9.84 or \$18.88 per hour. Petitioner further argues that Respondent's vocational proposal was unreasonable, that Respondent unreasonably converted his benefits, and that Respondent has been unreasonable in its adjustment of Petitioner's claim, and therefore the Court should award Petitioner his costs, attorney fees, and a penalty.

Held: Petitioner is entitled to have his wife provide .5 to 1 hour of daily domiciliary care at an hourly

rate of \$7.50 per hour until June 22, 2007, and \$9.84 thereafter. Regarding the reasonableness of Respondent's vocational rehabilitation plan, after Petitioner rejected Respondent's initial proposal, Respondent requested Petitioner's input in developing an alternative plan and Petitioner failed to respond to Respondent's request. The Court therefore finds that Respondent has not failed to offer a reasonable vocational plan.

Respondent properly converted Petitioner's benefits. Respondent did not act unreasonably and therefore Petitioner is not entitled to attorney fees or a penalty.

Kimberly M. Keller vs. Liberty Northwest Insurance Corporation
2010 MTWCC 4

Summary: Petitioner petitioned the Court for reinstatement of

her medical benefits. Petitioner argues that a mutual mistake of fact occurred in this case. Petitioner contends that the parties failed to account for the onset of nerve damage and/or chronic nerve inflammation and winging of her right scapula as the major injury and cause of Petitioner's pain at the time they entered into two settlement agreements.

Held: No mutual mistake of fact occurred in this case. Even if Petitioner was unaware that her condition at the time she entered into the settlement agreements included scapular winging and long thoracic nerve damage, she failed to establish that Respondent entered into the settlement agreements under the same mistaken belief. Therefore, the settlement agreements will not be set aside.



supreme court decisions on workers' compensation and occupational disease

These decisions can be found at <http://mtlawlibrary.wordpress.com/>

Catherine Satterlee v. Lumberman's Mutual Casualty Company, et al

2009 MT 368

Appeal from WCC. Affirmed.

The issue before the Court is the constitutionality of § 39-71-710, MCA. Satterlee claims the statute is unconstitutional because it denies PTD benefits to Satterlee and other similarly situated individuals on the basis of their age.

Section 39-71-710, MCA, provides: [T]ermination of benefits upon retirement. (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement, the claimant is considered to be retired. When the claimant is retired, the liability of the insurer is ended for payment of permanent partial disability benefits other than the impairment award . . . and medical benefits. (2) If a claimant who

is eligible under subsection (1) to receive retirement benefits and while gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits.

The termination of PTD based on SSRI eligibility is a sufficiently rational means of ensuring that PTD benefits do not become a lifetime benefit. As Lumberman's and Montana State Fund explained during oral arguments, nearly two-thirds of people who reach the age of 66 are no longer working, while seventy-five percent are no longer employed at age 70. With the statutory intent of § 39-71-710, MCA, in mind, it is rational for the workers' compensation system to terminate PTD benefits at a time when, statistically, most people's work-lives have ended. While this may not always seem fair, it is not unconstitutional. By acting to terminate benefits as it does, § 39-71-710, MCA, rationally advances the governmental purpose of providing wage-loss benefits that bear a reasonable relationship to actual wages lost.

As we have discussed, the statute is rationally related to the legiti-

mate government interest in assisting the worker at a reasonable cost to the employer so that the wage-loss benefit bears a reasonable relationship to actual wages lost.

We conclude that § 39-71-710, MCA, is constitutional under the Substantive Due Process and Equal Protection Clauses of the Montana Constitution.

Liberty Northwest Insurance Corporation v. Montana State Fund,

in re: Claim of Gary Mitchell,

2009 MT 386

Appeal from WCC. Affirmed.

Liberty contends that the last employer in a series of employers is liable for an OD only if the last employment materially or substantially contributed to the OD. Liberty asserts that under the prior decisions of *Caekaert v. State Compensation Mut. Ins. Fund*, 268 Mont. 105, 885 P.2d 495 (1994) and *Lanes*, the last injurious exposure will trigger liability for an OD claim only if objective medical findings establish that the employment materially or substantially contributed to the claimant's condition.

We held in *Caekaert* that for the last injurious exposure rule to apply there must be evidence of a second injury or injurious exposure that materially or substantially contributed to Caekaert's second set of carpal tunnel symptoms. *Caekaert*, 268 Mont. at 111-12, 885 P.2d at 499. This holding was limited to the situation where a compensable OD has already been established with respect to an insurer, because an original insurer remains liable for an OD "if it is a direct and natural result of a compensable primary injury, and not the result of an independent intervening cause attributable to the claimant." *Caekaert*, 268 Mont. at 112, 885 P.2d at 499.

In other words, once causation and liability for an OD has already been established, only an intervening cause will break the chain of liability with respect to the original insurer. Here, by contrast, original liability for Mitchell's OD was first established by the WCC in this case and the *initial* assignment of liability is the question before the Court. Thus, *Caekaert* provides no guidance. *Lanes* is

inapplicable for largely the same reasons. In that case, claimant Lanes had suffered an OD to his knee while working as an electrician. State Fund had accepted liability for the claim and paid for knee surgery. *Lanes*, ¶ 3. After surgery, Lanes began working as a minister and claimed to develop further knee problems. The question was whether the aggravation was attributable to Lanes' work as a minister, or was instead attributable to the original knee condition for which State Fund had already accepted liability. *Lanes*, ¶¶ 10-12. The WCC concluded that Lanes' duties as a minister only constituted a "temporary" aggravation of his knee condition, and did not constitute an injurious exposure. *Lanes*, ¶ 29. Our analysis in *Lanes* was predicated upon the existence of an underlying OD which had already been diagnosed. See *Lanes*, ¶ 36. Again, this case concerns the determination of initial liability for Mitchell's OD claim. Because Mitchell does not have an underlying OD claim for which liability has already been established, *Lanes* provides no guidance.

The court accepted this testimony in support of a conclusion that the claimant's exposure under the last insurer, who had been at risk for only two months, was not a "substantial contributing cause" of death. Other courts have also held that in order to impose liability on the insurer who was last at risk, the exposure during its period of risk must have been of such length or degree that it could have *actually* caused the disease." (*Busse v. Quality Insulation*, [322 N.W.2d 206 (Minn. 1982),] in which the Minnesota Supreme Court)

In sum, the application of the last injurious exposure rule in the present context runs the gamut from a requirement that the exposure was a "substantial contributing cause" of the OD to a presumption that the exposure gives rise to liability for the OD so long as the working conditions at the time of the exposure were of the kind which could cause the OD. We conclude that the "potentially causal" standard is consistent with § 39-71-407(10), MCA (2005), and will be applied in this and future cases in Montana. Under this approach,

the claimant who has sustained an OD and was arguably exposed to the hazard of an OD among two or more employers is not required to prove the degree to which working conditions with each given employer have actually caused the OD in order to attribute initial liability. Instead, the claimant must present objective medical evidence demonstrating that he has an OD and that the working conditions during the employment at which the last injurious exposure was alleged to occur, were the type and kind of conditions which could have caused the OD. As the Nebraska Supreme Court recognized in *Olivotto*, proving that an exposure is of a type which could cause the OD does demonstrate, in a certain sense, that the exposure bears a casual relationship to the onset of the OD. See *Olivotto*, 732 N.W.2d at 365 (discussing *Mathis v. State Accident Insurance Fund*, 499 P.2d 1331 (Or. App. 1972)). This rule applies, of course, only in those situations where an OD is being diagnosed for the first time, as in the case at bar and the WCC's decision in *Fleming*. In cases where an OD has already been

diagnosed, liability for the OD has been determined, and the question is whether a recurrence of the OD condition is attributable to the original employer or is attributable to a second employer based on an intervening exposure to the hazard of the OD, the *Caekaert* and *Lanes* approach will continue to apply.

The objective medical evidence established that while Mitchell's work with Industrial was not the major contributing cause of his OD, it was of the same type and kind which led to the development and eventual diagnosis of that OD. See Opinion, ¶¶ 7-8, 10. Thus, this exposure could have caused Mitchell's OD. Under our application of the last injurious exposure rule, this evidence is sufficient to support the WCC's determination that Mitchell's last injurious exposure to the hazard of the OD occurred during his employment with Industrial.

We affirm the WCC. We further hold that for purposes of the initial liability determination of an OD where two or more employ-

ers are potentially liable, the "last injurious exposure" to the hazard of the OD occurs during the last employment at which the claimant was exposed to working conditions of the same type and kind which gave rise to the OD.



section 5

department administered programs

- ✦ organizational charts
- ✦ workers' compensation assessments as expended
- ✦ subsequent injury fund
- ✦ uninsured employers' fund
- ✦ construction contractor registration
- ✦ independent contractor exemption certificates
- ✦ professional employer organizations
- ✦ safety & health



organizational charts

Exhibit 5.1
Montana Department of Labor & Industry

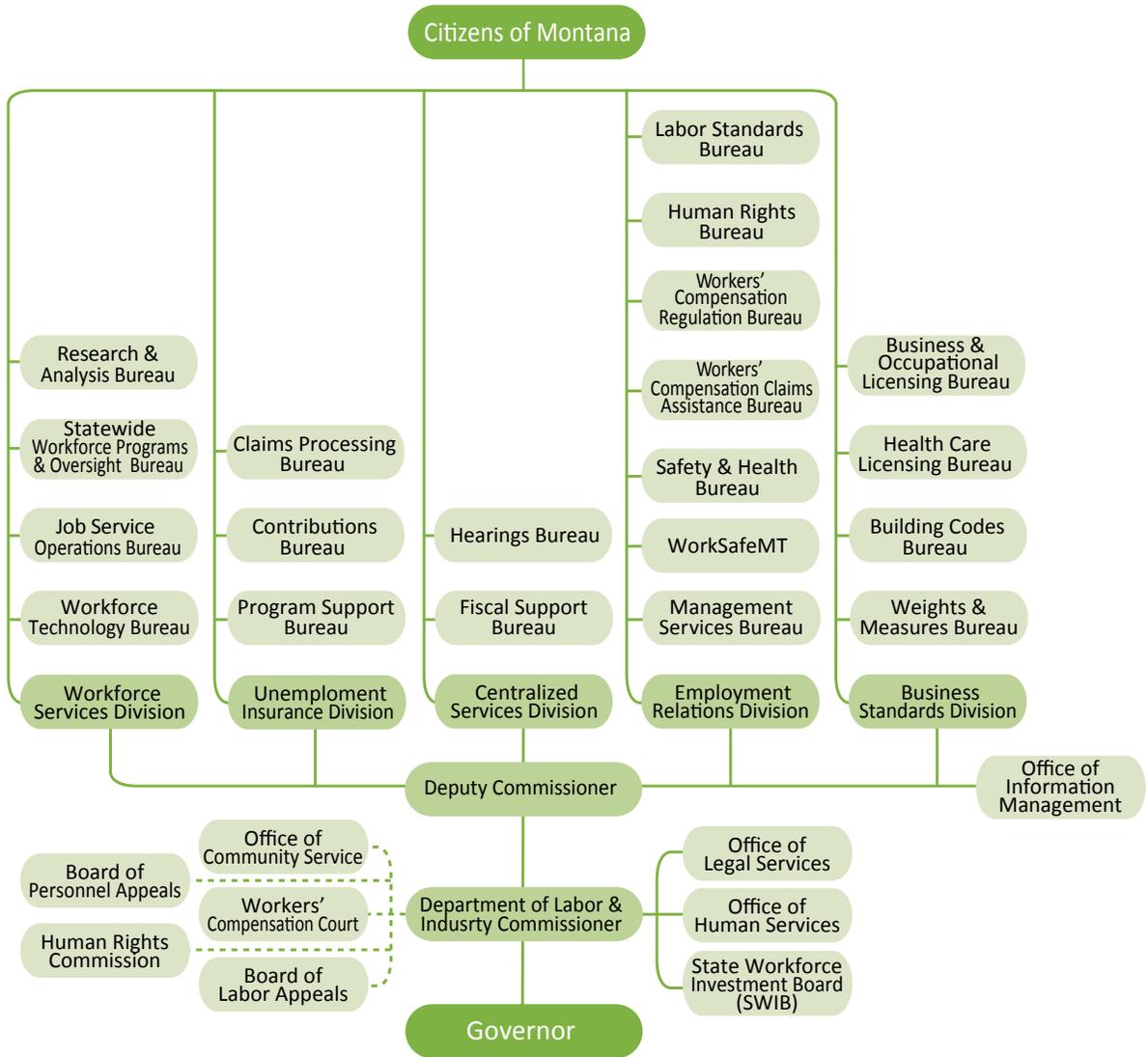
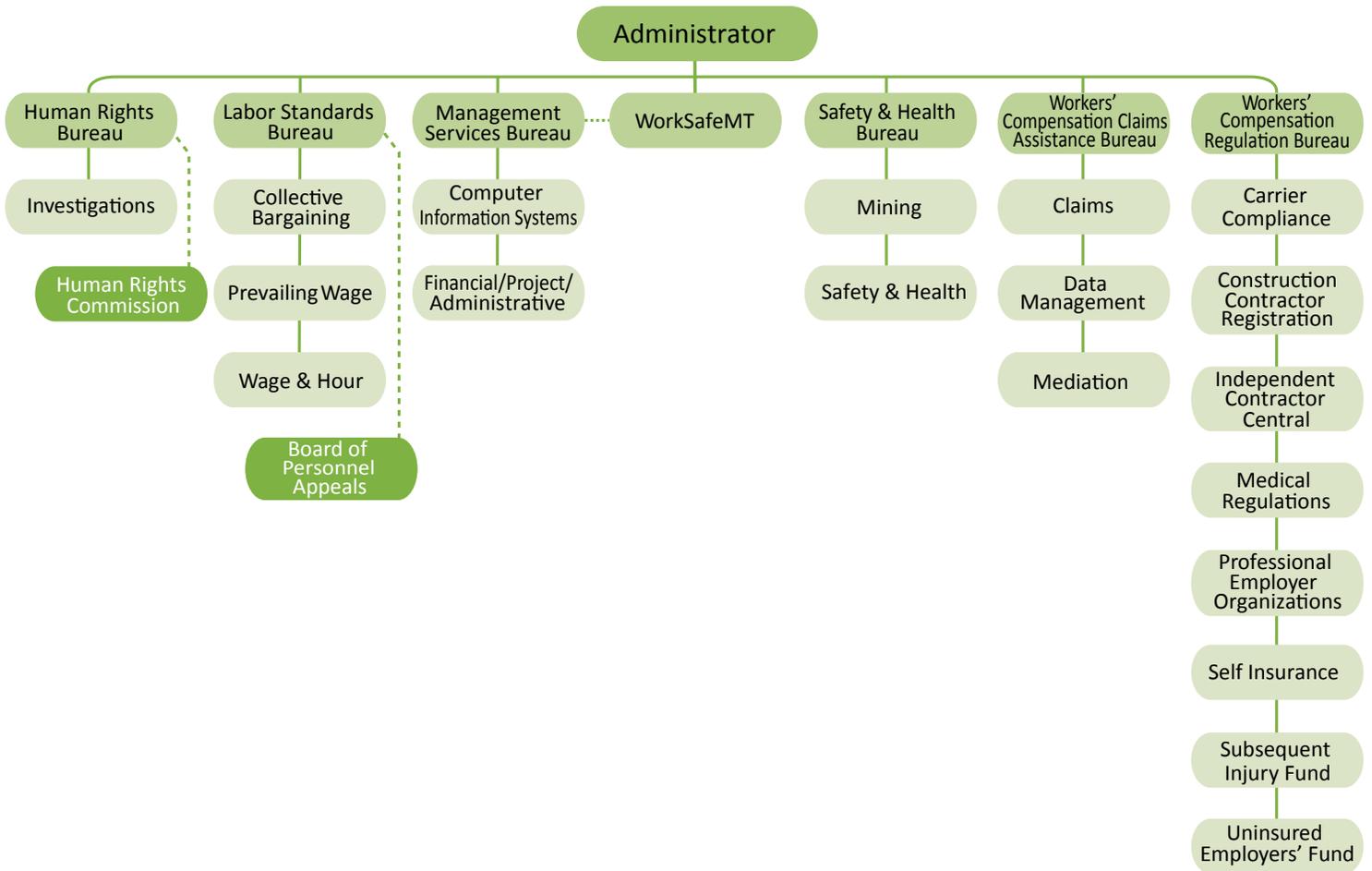


Exhibit 5.2
Employment Relations Division



workers' compensation assessments as expended

The administration of the Workers' Compensation Act and the various occupational safety laws is funded by an assessment to Plan 1 (self-insured employers), Plan 2 (private insurance carriers), and Plan 3 (Montana State Fund). Section 39-71-201, MCA, requires the administrative assessment to be up to three percent of benefits paid during the preceding calendar year for injuries and occupational disease covered under the Workers' Compensation Act, without regard to the application of any deductible, whether the employer or the insurer pays the losses. Benefits included in the calculation are: (1) compensation benefits paid and (2) medical benefits paid (except payments in excess of \$200,000 per occurrence, which are exempt from the assessment).

DLI Functions funded by the administrative assessments:

- Legal functions of the Workers' Compensation Court and the Hearings and Legal Bureaus;
- Administration of the Employment Relations Division, including the Workers' Compensation Database;
- Claims management, data analysis, mediation and administration functions of the Claims Assistance Bureau;
- Medical regulation, self-insurance, carrier compliance, Professional Employer Organizations (PEOs), Construction Contractor Registration (CR), Independent Contractor Central Unit (ICCR), Managed Care Organizations and administration functions of the Workers' Compensation Regulation Bureau; and
- Occupational safety statistics, public facility inspections, OSHA on-site consultation grant match, mining inspection, MSHA mine training grant match and safety culture functions of the Safety & Health Bureau.

Exhibit 5.3
Workers' Compensation Assessments as Expended
 By Fiscal Year of Expenditure



subsequent injury fund

Introduction

The purpose of the Subsequent Injury Fund (SIF) is to assist individuals with a permanent disability that is a hindrance to obtaining employment, by offering a financial incentive to employers to hire SIF-certified individuals. Many states have similar funds called either subsequent or second injury funds. Montana's program is funded through an annual assessment on Montana Plan 1 workers' compensation employers and a surcharge on premium for Plan 2 and Plan 3 policyholders.

The assessment is based on a percentage of the compensation and medical benefits paid in Montana by each insurer in the preceding calendar year. The rate is set by the Employment Relations Division based on the total amount of paid losses reimbursed by the fund in the preceding calendar year and the expenses of administration less other income.

The SIF program reduces the liability of the employer by placing a limit (104 weeks of wage loss benefits or

104 weeks following the injury for medical benefits) on the amount an employer, or the employer's insurer, will have to pay if the worker becomes injured or re-injured on the job. When that limit is reached, SIF assumes liability for the claim. This helps keep the modification factor low for an insured employer and is a direct recovery of expense for a self-insured employer. If a certified worker does become injured on the job, the worker remains entitled to all benefits due under the Workers' Compensation Act.

Status Update

Use of the Fund by insurers to recoup claim payments has increased over the last 5 year period from a low of \$172,559 in FY05 to a high of \$817,130 in FY09. Applications from individuals seeking certification under the program have remained fairly constant each year with 168 new certifications approved in FY09. The total number of individuals currently certified under the program is 4,376.

Exhibit 5.4
SIF Payments and Dollars Assessed
 By Plan Type¹ and Fiscal Year

Plan Type	FY05		FY06		FY07		FY08		FY09	
	Payments	Assessment	Payments	Assessment	Payments	Assessment	Payments	Assessment	Payments	Assessment
Plan 1	\$55,417	\$42,792 ²	\$184,279	0	\$340,568	0	\$405,627	\$89,001	\$244,436	\$107,095
Plan 2	\$116,938	\$82,832	\$17,545	0	\$250,886	0	\$103,636	\$149,929	\$137,534	\$156,197
Plan 3	\$204	\$151,763	\$223,959	0	\$1,183	0	\$118,420	\$213,388	\$435,160	269,964
Total	\$172,559	\$277,387	\$425,783	\$0	\$592,637	\$0	\$627,683	\$452,318	\$817,130	\$533,256

¹ Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance and Plan 3 – Montana State Fund.

² Previous year carryover credit from Plan 1 reduced the actual Assessment to zero.

uninsured employers' fund

Introduction

The primary roles of the Uninsured Employers' Fund (UEF) are to provide medical and indemnity benefits to employees injured on the job while working for an uninsured employer and to ensure that employers comply with Montana's workers' compensation laws so that employees are properly covered.

The UEF is self-funded. Revenues are collected from uninsured employers from two sources:

1. Penalties. UEF levies and collects penalties for the time that the employer was legally required to have a Workers' Compensation policy until they are in compliance. Penalties can be double the insurance premium that would have been paid by the employer, or \$200.00, whichever is greater. Penalties levied by UEF are based on the cost of the policy that should have been in place during the uninsured period, based on the company's industry code.
2. Recoupment of benefits paid. UEF collects from uninsured employers all medical and indemnity benefits paid by UEF on behalf of injured employees. UEF has the statutory authority to charge late fees and interest and can file liens on real property while trying to collect the debt owed.

Status Update

UEF's revenues from penalties have declined since 2007 due to, but not limited to, the following factors:

- effect of the economy on small businesses' hiring practices in that businesses are not hiring as many employees or are using independent contractors in more instances, which are not subject to workers' compensation coverage requirements
- increased efforts and successes by both the UEF and the Independent Contractor Central Unit (ICCU) to market and educate employers on workers' compensation coverage requirements and conduct timely enforcement activities
- revisions to various statutes, including the Independent Contractor changes in 2005 and 39-71-401(2)(r)iii, that allowed exemption from workers' compensation coverage for certain types of corporations, have reduced the number of businesses requiring coverage
- UEF's ability to act more quickly to bring employers in compliance has significantly reduced the period of time the penalty is based on, which reduces the penalty amounts. Increased coordination and relationships between UEF,

ICCU and Unemployment Insurance has been a major factor in this ability to act more quickly

The number of penalties levied by UEF is increasing, while the average dollar value of each penalty is decreasing. The increase in penalty numbers is due in part to UEF staff finding a greater level of non-compliance in non-construction based businesses. These businesses tend to have lower cost industry code premiums and coupled with the trend of increased compliance in the construction industry has led to lower overall penalty assessments. Also following from this trend is that the construction industry, which by its nature has relatively high-cost policies and resulting large dollar penalties, historically made up a large percentage of UEF revenues. The companies being penalized more recently have relatively lower cost policies.

The last five years of benefit expenses shows a general trend of increases in both medical and indemnity costs. Medical expenses increased almost 90% from 2005 to 2009. Indemnity expenses increased an average of almost 18% per year since 2005.

The number of accepted injuries covered by UEF has shown a downward trend from FY06 through FY09, from 119 injuries to 61 injuries (see Exhibit 2.2).

Exhibit 5.5
Uninsured Employers' Fund
 Financial Activity by Fiscal Year of Payment

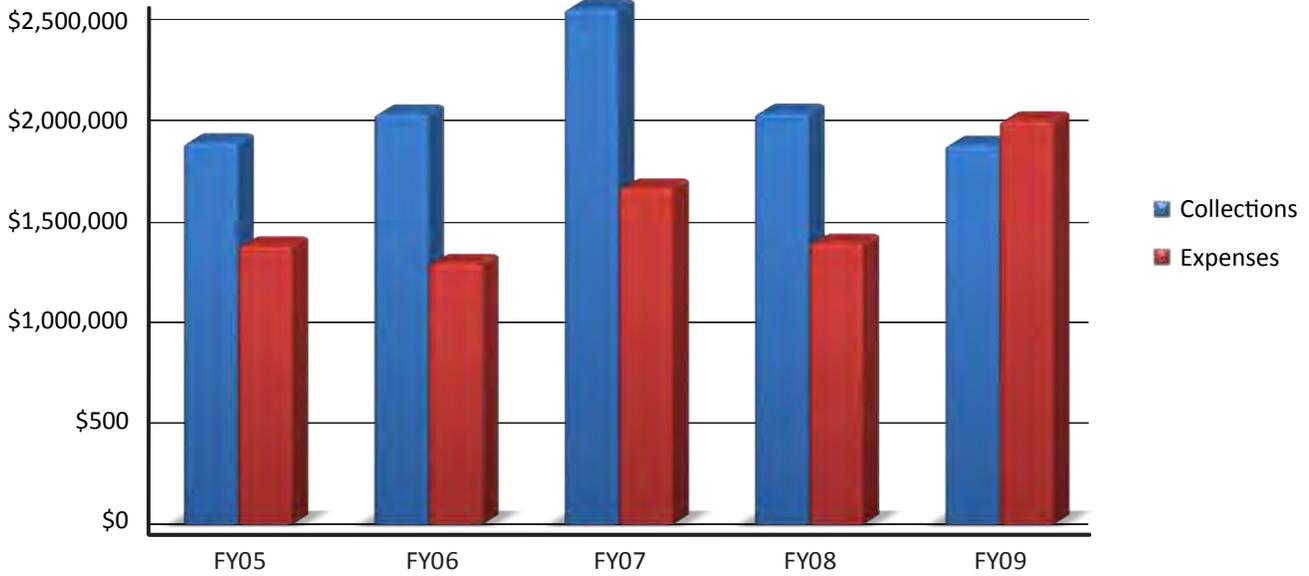


Exhibit 5.6
Uninsured Employers' Fund
 Financial Activity by Fiscal Year of Payment

	FY05	FY06	FY07	FY08	FY09
Collections	\$1,908,717	\$2,051,992	\$2,574,227	\$2,056,374	\$1,896,480
Expenses	\$1,393,575	\$1,304,891	\$1,682,811	\$1,406,550	\$2,018,128

Exhibit 5.7
 UEF Medical and Indemnity Payments
 By Fiscal Year of Payment

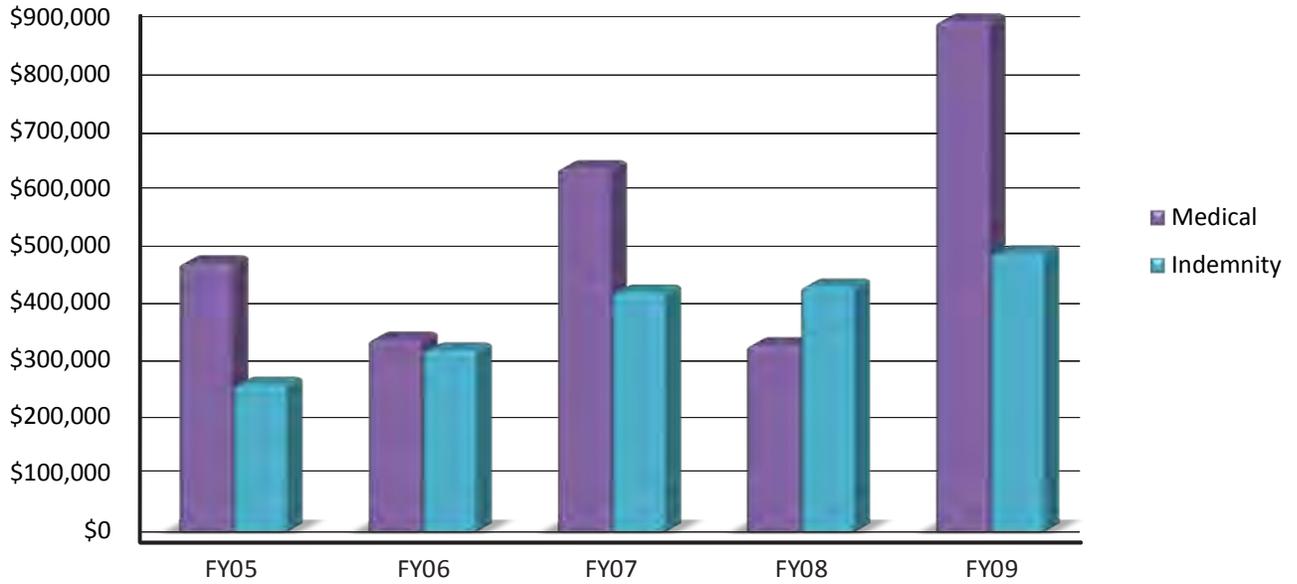


Exhibit 5.8
 UEF Medical and Indemnity Payments
 By Fiscal Year of Payment

	FY05	FY06	FY07	FY08	FY09
Medical	\$470,659	\$336,953	\$637,303	\$327,124	\$893,731
Indemnity	\$257,620	\$317,805	\$419,541	\$430,178	\$487,813

construction contractor registration

Introduction

The Montana Department of Labor & Industry, Construction Contractor Registration (CR) program facilitates the registration of construction contractors working in Montana. All construction contractors working in Montana that have employees, corporations and manager-managed limited liability companies are required by law to register.

The program serves three primary purposes. The first is to verify the contractor has complied with the workers' compensation insurance laws. The second is to prevent liability of a workplace injury from moving upward from one contractor to another. And the third is to level the playing field by assuring all construction contractors with employees have a Montana workers' compensation insurance policy. Hiring a registered contractor, however, does not guarantee quality assurance. Just because a contractor is registered does not mean that they are licensed, bonded or tested.

Status update

Montana's workers' compensation law does not allow coverage from other state's workers' compensation plans

in the construction industry. An out-of-state company only bidding jobs in Montana, may ask for a "Bid Only" registration. Our bid-only applications from out-of-state construction companies remained around 200 per year for the past six years. When these out-of-state construction contractors come to work in Montana, they must have a workers' compensation insurance policy specific to Montana. Construction companies with "Bid Only" certificates must modify their registration before they can start working in Montana.

There were 5,265 active CR applications in FY09 with approximately 2,652 registered contractors having employees. This indicates that 2,435 CRs did not have employees; thus they may not have a workers' compensation policy. Subcontracting almost every project on a job appears to be how the construction industry is dealing with the rising costs of workers' compensation.

From FY04 to FY06 the number of CRs decreased about 5%. However, from FY06 to FY09 CRs have increased about 9%.

Exhibit 5.9
Registered Construction Contractors
By Fiscal Year

	FY04	FY05	FY06	FY07	FY08	FY09
Applications received	6,820	4,946	6,746	5,478	6,773	5,265
Active CR's	10,601	10,304	10,108	10,736	11,227	11,107
Bid only	223	278	159	165	200	178
With employee's	2,918	3,573	3,115	2,601	3,607	2,652

independent contractor exemption certificates

Introduction

Independent Contractor Exemption Certificates (ICEC) are issued through the department's Independent Contractor Central Unit (ICCR). It is the intent of the program to assure only those individuals who are truly established in a business receive an ICEC and those who hire them can rely on the certificate as conclusive proof the worker is an independent contractor.

Certificates may be suspended if control is exerted over the worker by the hiring agent enough to destroy the independent contractor relationship. They may also be revoked if a certificate holder fails to cooperate with the Department. During FY09, 474 investigations took place across the state either affirming independent contractor relationships or requiring workers' compensation policies. The department revoked 30 exemption certificates for failure to cooperate with the Department's investigation.

Status Update

One goal of the program is to educate the public of the rights and responsibilities of being an independent contractor or hiring one. This is ac-

complished through seminars, presentations, home show participation, small community fairs, news articles, a multi-media campaign, and as a last resort, penalty enforcement. Both the worker and those that hire them may be penalized. No penalties were issued for FY09.

The department received 7,998 applications during FY09, of which 7,682 were approved and 316 denied. Failure to provide a complete application was the primary reason for the denials. With 63% of the total applications, the construction industry is clearly the industry with the largest number of applicants. Administrative, Support, Waste Management and Remediation Services comprised 10%, Transportation and Warehousing applications were 8%, and Professional, Scientific and Technical Services were 5%. The graph on the following page categorizes all exemption applications received by the industry.

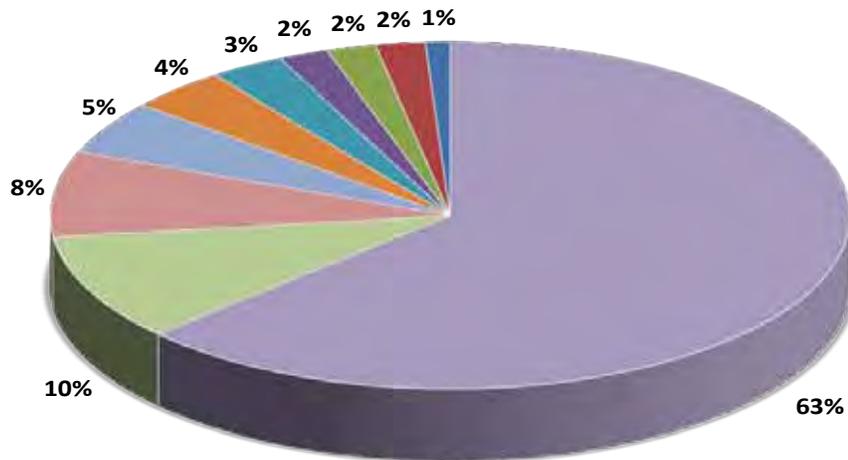
The website www.mtcontractor.com provides more information on independent contractors in Montana.

Exhibit 5.10

Independent Contractor Exemption Certificates Applications for FY09

Received	Approved	Denied
7,998	7,682	316

Exhibit 5.11
 Percent of Independent Contractor Exemptions Applications - FY09
 By Industry



- Construction
- Administration, Support & Waste
- Transportation & Warehouse
- Professional, Scientific & Technical
- Agriculture, Forestry, Fishing, Hunting
- Arts, Entertainment & Recreation
- Manufacturing, Finance, Insurance, Real Estate, Rental, Leasing, Educational
- Health & Social Assistance
- Other Services
- Mining, Utilities, Wholesale, Retail, Information, Accommodation & Food, Public Administration



professional employer organizations

Introduction

Professional Employer Organizations (PEO's) are required to be licensed by the Department of Labor and Industry. A PEO is a business which contracts its services to other businesses, which are called clients or members of the PEO. The PEO establishes a contractual relationship with its clients whereby the PEO pays wages, employment taxes, workers compensation premiums and employee benefits from the PEO's account.

Status Update

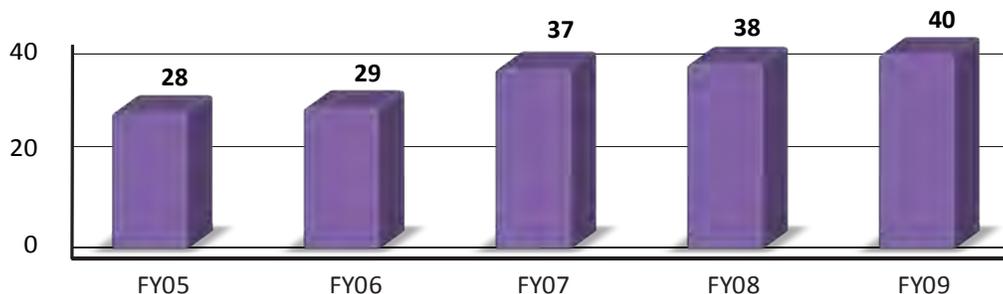
In FY09, Employment Relations Division licensed 40 PEOs (Exhibit 5.11). The number of client companies, 517 in FY09 (Exhibit 5.12), has progressively increased since FY05, but fell slightly in FY09. The decline is most

likely due to the national economic downturn that is now affecting Montana. The number of employees, 2,917 in FY09 (Exhibit 5.13), has decreased over 10% when compared to FY07 and FY08. The average number of employees per client for FY09 is 5.6. Interestingly enough, the average for the four previous fiscal years was somewhat higher at 6.8 employees per client.

Significance Statement

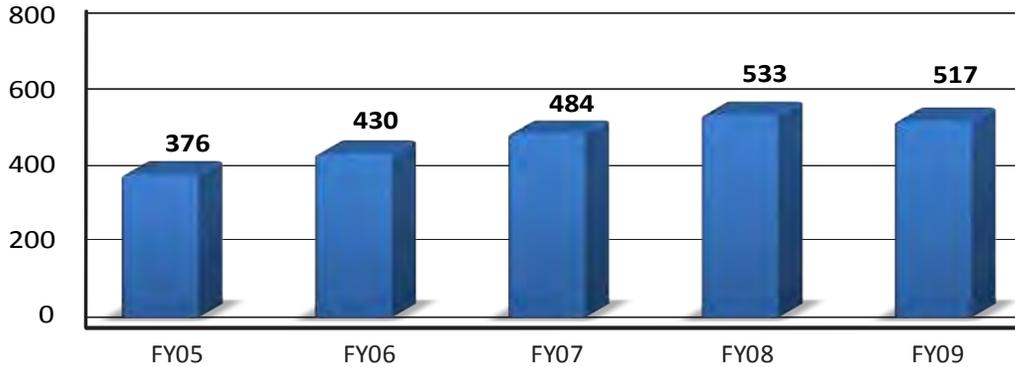
The legislature recognizes there is a public need for professional employer services and finds it necessary in the interest of public health, safety, and welfare to establish standards for the operation, regulation, and licensing of professional employer organizations and groups in this state.

Exhibit 5.12
Licensed Professional Employer Organizations³
By Fiscal Year



³Source: WC Regulation Bureau (licensed PEO's)

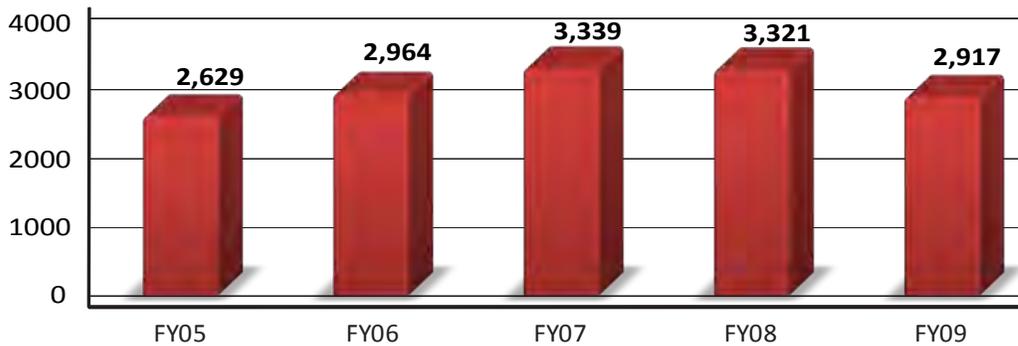
Exhibit 5.13
Number of Professional Employer Organization Clients⁴
 By Fiscal Year⁵



⁴ Source: WC Regulation Bureau (Client list)

⁵ The client count for FY05-08 has been recomputed. This new way of computing the count will be used in future years to standardize and accurately reflect the client count.

Exhibit 5.14
Leased Employees⁶
 By Fiscal Year



⁶ Source: Unemployment Insurance Tax System (UIT)

safety & health

The purpose of the Safety and Health Bureau (SHB) is to raise the level of awareness of Montana employers and employees about workplace safety and health through inspection, consultation, technical assistance and training.

The SHB helps identify workplace safety and health hazards before they become accidents by offering safety consultations and providing industrial hygiene services. They train employers and employees in safe work practices and help set up effective safety and health programs.

Montana Safety Culture Act

The Montana Safety Culture Act enacted by the 1993 Montana State Legislature encourages workers and employers to come together to create and implement a workplace safety philosophy. It is the intent of the act to raise workplace safety to a pre-eminent position in the minds of all Montana's workers and employers. It is the responsibility of employers to participate in the development and implementation of safety programs that will meet the specific needs of their workplace.

The SHB helps employers establish or strengthen a safety program appropriate to their business and employees' needs by incorporating the Montana Safety Culture Act.

Mine Safety

The SHB, under Montana Public Law 50-73-101 MCA (The Montana Coal Mine Safety Act), is responsible for workplace safety and health compliance in underground and surface coal mines. They conduct mine safety inspections and assist mine operators in safety training plan development. The SHB also inspects sand and gravel operations, under Montana Public Law 50-72-101, MCA.

The SHB partners with contractors to ensure Mine Safety and Health Administration (MSHA) compliance and works with multiple county, state and federal agencies to assist in accident investigations and safety. Under a grant from MSHA, the Bureau provides CPR training and certification, new miner training, annual refresher courses, as well as mine foreman training and certification at the employer's request.

Training Institute

The Montana Safety & Health Training Institute provides basic and advanced training courses, covering required OSHA training and a wide variety of other safety topics, to all public and private Montana employers. The Institute utilizes expert trainers with comprehensive knowledge and practical experience. The training is provided at no cost to the employer or employee. For more information, please visit www.montanasafety.com.

section 6

appendices

- ✦ definitions
- ✦ methodology
- ✦ data sources
- ✦ further information



definitions

Calendar Year: The year beginning January 1st and ending December 31st.

Cause of Injury Code: The code that corresponds to the cause of injury or occupational disease. Maintained by the Workers' Compensation Insurance Organizations, the codes for cause of injury are grouped into ten categories. (<http://www.wcio.org/Document%20Library/InjuryDescriptionTablePage.aspx>)

Burn or Scald – Heat or Cold exposures – Contact With: Chemicals, hot objects or substances, temperature extremes, fire or flame, steam or hot fluid, dust, gases, fumes or vapors, welding operation, radiation, contact with, not otherwise classified (NOC), cold objects or substances, abnormal air pressure, electrical current

Caught In, Under or Between: Machine or machinery, object handled, caught in, under or between, NOC, collapsing materials (slides of earth).

Cut, Puncture, Scrape Injured By: Broken glass, hand tool, utensil; not powered, object being lifted or handled, powered hand tool, appliance, cut, puncture, scrape, NOC.

Fall, Slip or Trip Injury: From different level (elevation), from ladder or scaffolding, from liquid or grease spills, into openings, on same level, slip or trip did not fall, fall slip or trip NOC, on ice or snow, on stairs.

Motor Vehicle: Crash of water vehicle, crash of rail vehicle, collision or sideswipe with another vehicle, collision with a fixed object, crash of airplane, vehicle upset, motor vehicle, NOC.

Strain or Injury By: Continual noise, twisting, jumping or leaping, holding or carrying, lifting, pushing or pulling, reaching, using tool or machinery, strain or injury by NOC, welding or throwing, repetitive motion.

Striking Against or Stepping On: Moving part of machine, object being lifted or handled, sanding, scraping, cleaning operation, stationary object, stepping on sharp object striking against or stepping on NOC.

Struck or Injured By: Fellow worker, patient or other person, falling or flying object, hand tool or machine in use, motor vehicle, moving parts of machine, object being lifted or handled, object handled by others, struck or injured NOC, animal or insect, explosion or flare back.

Rubbed or Abraded By: Repetitive motion, rubbed or abraded NOC.

Miscellaneous Causes: Absorption, ingestion, or inhalation NOC, foreign matter (body) in eye (s), natural disasters, person in act of a crime, other than physical cause of injury, mold, terrorism, cumulative NOC, other – miscellaneous, NOC.

Compensation Benefits: Wage loss, medical, rehabilitation and all other benefits that are payable under the Montana Workers' Compensation and Occupational Disease Acts.

Employment Relations Division (ERD): The State of Montana's regulatory agency for workers' compensation. This division is part of Department of Labor & Industry.

Fiscal Year: The State of Montana's fiscal year begins July 1st and ends June 30th of the following year. (Example: 07/01/08 - 06/30/09 = FY09)

First Report of Injury and Occupational Disease (FROI): The initial report designed to notify parties of the occurrence of an injury or occupational disease. The FROI contains basic claim information about the worker, accident, employer and insurer.

Indemnity Benefits: Any payment made directly to the worker (or the worker's beneficiaries), other than a medical benefit. The term includes payments made pursuant to a reservation of rights, or in settlement of a dispute over initial compensability of the claim. The term does not include expense reimbursements for items such as meals, travel or lodging. ARM 24.29.4303(4)

International Association of Industrial Accident Boards and Commissions (IAIABC): An organization of workers' compensation specialists including government officials and regulators, business and labor leaders, medical providers, law firms, insurance carriers, and rehabilitation and safety experts. Working groups work jointly to standardize reporting of workers' compensation data. Standards have been developed for communicating data electronically through Electronic Data Interchange (EDI). www.iaiaabc.org.

Montana Code Annotated (MCA): The definitive guide to Montana laws, consisting of the Constitution, codes and statutes. The MCA is normally published each odd numbered year incorporating changes made by the Legislative session of that year.

Nature of Injury Code: The code that corresponds to the nature of the injury or occupational disease. Maintained by the Workers' Compensation Insurance Organizations, the codes for nature are grouped into eight categories. A ninth category "All Other Claims, NOC", was created to account for the records that did not have a nature code entered. (<http://www.wcio.org/Document%20Library/InjuryDescriptionTablePage.aspx>)

All Other Claims, NOC: Includes asphyxiation, loss of circulation, infection, concussion, heart problems, vision loss, hearing loss, poisoning, fainting, no physical or psychological injuries; includes all records where nature code was reported as "unclassified", the code was not reported on the First Report of Injury, or the code could not be converted to IAIABC codes.

Amputation: Includes loss of a limb that involves bone, loss of part of an organ, enucleation or severance of a body part.

Bruise or Swelling: Includes contusions, broken blood vessels and inflammation.

Burn or Exposure: Includes electrical shocks, chemical burns, temperature extremes, freezing, sunburns, heat stroke and lightning.

Cut or Abrasion: Includes slivers, lodged small objects, open wounds, scrapes and needle sticks.

Fracture: Includes any breaking of a bone.

Multiple Injuries: Involves more than one Nature of Injury Code.

Occupational Disease: Includes repetitive motion, loss of hearing or sight, respiratory conditions, poisoning, mental disorders, radiation, heart disease, cancer, AIDS, carpal tunnel and any disease resulting from work related experiences.

Sprain or Rupture: Includes strains, dislocations, hernias, organ ruptures and trauma to joints or muscles.

Other Benefits Code: A code that identifies the type of other benefits paid to date or recovered for an injury or occupational disease. The following are IAIABC code definitions:

Consultant/Expert Witness Fees Paid to Date by Insurer: Sum of fees paid to expert witnesses (in a legal proceeding for expert testimony or opinion) for this claim.

Employer's Deductibles Recovery: Sum of monies recovered through Insured reimbursement of deductible amounts for this claim.

Funeral Expenses Paid to Date: Sum of the funeral expenses for this claim.

Hospital Costs Paid to Date: Sum of costs of both inpatient and outpatient services which the injured employee received because of the work related injury.

Employer's Legal Expense Paid to Date: Sum of the employer's legal expenses paid for this claim.

Other Medical Paid to Date: Sum of medical costs not included in payments to physicians or hospital costs, i.e. laboratory tests, prescriptions.

Other Vocational Rehabilitation Education Paid to Date: Sum of vocational rehabilitation services not otherwise reported for this claim.

Overpayment Recovery: Sum of monies recovered due to overpayment of indemnity, medical or expenses for a claim.

Subrogation Recovery: Sum of monies recovered through subrogation for this claim.

Total Payments to Physicians Paid to Date: Sum of services paid to physicians for this claim.

Unspecified Recovery: Sum of monies recovered through salvage, apportionment/contribution, and all others not otherwise defined for a claim.

Vocational Rehabilitation Education Paid to Date: Sum of vocational rehabilitation education payments (including tuition, books, tools, transportation and additional living expenses) for this claim.

Vocational Rehabilitation Evaluation Expense Paid to Date: Sum of vocational rehabilitation evaluation services (testing and evaluating the claimant's ability, aptitude, or attitude in determining suitability for vocational rehabilitation or placement) for this claim.

Part of Body Code: The code which corresponds to the part of body to which the employee sustained injury or occupational disease. Maintained by the Workers' Compensation Insurance Organizations, the code definitions for part of body are divided into six categories. The additional categories of "Wrist", "Back" and "Knee" are reported to provide greater detail. A tenth category, "All Other Claims, NOC", was created to account for the records that did not have a part of body code entered. (<http://www.wcio.org/Document%20Library/InjuryDescriptionTablePage.aspx>)

All Other Claims, NOC: Includes all records where the part of body code was reported as "unclassified", the code was not reported on the First Report of Injury, or the code could not be converted to IAIABC codes.

Back: Includes the upper and lower back, disc, or lumbar and sacral vertebrae.

Head: Includes multiple head injuries, skull, brain, ears, eyes, nose, teeth, mouth, soft tissue or facial bones.

Knee: Includes the patella (kneecap) and supporting ligaments.

Lower Extremities: Includes multiple lower extremities, hip, upper leg, lower leg, ankle, foot and toe.

Multiple Body Parts: Includes artificial appliances, multiple body parts or body systems.

Neck: Includes multiple neck injuries, vertebrae, disc, spinal cord, larynx, soft tissue or trachea.

Trunk: Includes multiple trunk injuries, disc, chest, sacrum and coccyx, pelvis, spinal cord, internal organs, heart, lungs, abdomen (including groin) and buttocks.

Upper Extremities: Includes multiple upper extremities, upper arm, elbow, lower arm, fingers, thumb and shoulders.

Wrist: Includes hand and wrist or just wrist injuries.

Occupational Disease: Harm or damage caused by work-related events that occur on more than a single day or work shift. It includes acute chronic illnesses or diseases caused by inhalation, absorption, ingestion or overuse syndrome.

Occupational Injury: A cut, fracture, sprain, amputation, or other physical harm, which results from a work accident on a single day or during a single work shift.

Permanent Partial Disability (PPD): Permanent impairment resulting from an injury or occupational disease, after achieving maximum medical improvement that impairs the worker's ability to work and causes an actual wage loss. PPD benefits are calculated using $66\frac{2}{3}\%$ of the wages received at the time of injury, not to exceed half the state's average weekly wage at the time of injury. Maximum length for PPD benefits is determined by the date of injury.

Permanent Total Disability (PTD):

A physical condition resulting from an injury or occupational disease, after achieving maximum medical improvement, in which the worker has no reasonable prospect of physically performing regular employment. PTD benefits are calculated using $66\frac{2}{3}\%$ of the wages received at the time of injury, not to exceed the state's average weekly wage at the time of injury. The injured worker may receive cost of living increases.

Plan Type: The type of workers' compensation insurance coverage chosen by an employer. There are three different types of insurance plans:

Plan 1: Self-insurance provided by employers who have sufficient financial strength to cover potential workers' compensation claims. If an injury occurs, a self-insured employer will pay the expenses and benefits.

Plan 2: Insurance coverage provided by a private insurance company.

Plan 3: Insurance coverage provided by the Montana State Compensation Insurance Fund (Montana State Fund).

UEF: Uninsured Employers' Fund (UEF).

Professional Employer Organizations (PEO): Professional Employer Organizations provide human resource services for small to medium size businesses. Examples of services provided by PEOs are staffing, securing unemployment and workers' compensation insurance, and handling payroll taxes and medical benefits. PEOs must be licensed by ERD prior to contracting with any client companies.

Standard Industrial Classification (SIC) Codes: Codes used to categorize employers by industry and are published by the Federal Office of Management and Budget in the 1987 Standard Industrial Classification Manual. SIC codes are grouped into ten different industrial divisions, as listed below with examples of each division:

Agriculture, Forestry & Fishing (AFF): Includes establishments primarily engaged in agricultural production, forestry, commercial fishing, hunting, trapping and related services.

Construction: Includes establishments performing new work, additions, alterations, reconstruction, installations, and repairs. Three broad types of construction activity are covered: building construction by general contractors, heavy construction other than building by general contractors, and construction activity by other special trade contractors.

Finance, Insurance and Real Estate (FIRE): Finance includes depository institutions, non-depository credit institutions, holding companies, other investment companies, brokers and dealers in securities and commodity contracts, and security and commodity exchanges. Insurance covers carriers of all types of insurance, and insurance agents and brokers. Real estate includes owners, lessors, lessees, buyers, sellers, agents, and developers of real estate. Establishments primarily engaged in the construction of buildings for sale are classified in construction.

Manufacturing: Includes establishments engaged in the mechanical and chemical transformation of materials or substances into new products. These establishments are usually described as plants, factories, or mills and characteristically use power driven machines and materials handling equipment. Establishments engaged in assembling component parts of manufactured products are also considered manufacturing if the new product is neither a structure nor other fixed improvement. Also included is the blending of materials, such as lubricating oils, plastic resins or liquors.

Mining: Includes all establishments engaged in the extraction of minerals occurring naturally, and also includes quarrying, well operations, milling, and other preparation customarily done at the mine site, or as a part of mining activity. Exploration and development of mineral properties are included.

Public Administration: Includes the executive, legislative, judicial, administrative and regulatory activities of federal, state and local governments.

Retail Trade: Includes establishments engaged in selling merchandise for personal or household consumption and rendering services incidental to the sale of the goods.

Services: Includes establishments primarily engaged in providing a wide variety of services for individuals, business or government establishments, and other organizations such as, hotels and other lodging places; establishments providing personal, business, repair, and amusement services; health, legal, engineering, and other professional services; educational institutions; and membership organizations.

Transportation, Communication, and Public Utilities (TCPU): Includes establishments providing to the general public, or to other business enterprises, passenger and freight transportation, communications services, or electricity, gas, steam, water, or sanitary services and all establishments of the United States Postal Service.

Wholesale Trade: Includes establishments or places of business primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional, farm, construction contractors, or professional business users, or to other wholesale; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies.

Subsequent Report of Injury (SROI): A report that gives indemnity and medical payment information on an injured worker's claim. The report includes the date benefit payments begin and amounts paid by benefit type.

Temporary Partial Disability (TPD): A physical condition resulting from an injury or occupational disease, prior to achieving maximum medical improvement that causes a partial loss of wages. TPD benefits are the difference between the injured worker's actual weekly wage and the actual weekly wage earned during the injured worker's temporary partial disability. TPD benefits are limited to a total of 26 weeks, but the insurer may extend the period. They are subject to a maximum of 40 hours per week and capped at the injured worker's Temporary Total Disability rate.

Temporary Total Disability (TTD): A physical condition resulting from an injury or occupational disease, prior to achieving maximum medical improvement that causes a total loss of wages. TTD benefits are calculated using $66\frac{2}{3}\%$ of the wages received at the time of injury, not to exceed the state's average weekly wage at the time of injury.

Vocational Rehabilitation Benefits: Benefits paid to the injured worker at the worker's TTD rate. The benefits are paid for the period specified in the job placement or retraining plan, not to exceed 104 weeks. The plan is prepared by the rehabilitation provider and agreed to by the insurer and injured worker.

Industry Divisions

Information is grouped by industry division whenever possible to allow for comparison using Standard Industrial Classification (SIC) codes. It is not mandatory to report SIC codes and if they are not provided, the injury will be reported under “NOC-Not Otherwise Classified” on the tables.

Injury and Occupational Disease Data

The First Report of Injury and Occupational Disease (FROI) is used to gather injury and occupational disease data. FROIs consist of four sections that provide information on the worker, accident, employer and insurer. It is completed and submitted to ERD by employees, employers or insurers. The injury or occupational disease may be reported under “NOC-Not Otherwise Classified”, due to lack of data or the inability to categorize the data.

The FROIs in this study include all injuries and occupational diseases reported to ERD; however, all injuries and occupational diseases that occurred in Montana may not have been reported.

Subsequent Report Data

The Subsequent Report (SROI) is completed for each individual claim with idemnity benefits and is submit-

ted to ERD by adjusters or insurers on every six-month anniversary of the date of injury, until the claim is closed or additional compensation or medical payments are not anticipated. The form includes claimant identification information, status of the claim, type of benefits paid and benefit payment amounts.

The study includes data reported to ERD on injury and occupational disease indemnity claims. Subsequent Reports may not have been submitted to ERD for all indemnity claims.

Benefits Section Report Methodology

The benefit information used to determine the amounts and dates of paid benefits is extracted from Subsequent Reports of Injury (SROIs). SROIs are reports that the DLI requires insurance companies to submit at six month intervals from the date of injury throughout the life of a claim with indemnity benefits. The reports provide updates as to the status of an indemnity claim, including information on the wage loss and medical benefits paid.

For wage loss benefits, the SROI contains the amount paid for each type of wage loss benefit and specifies both the date benefits began and the date through which the stated benefit amount was paid.

For medical benefits, the payment start and end dates are not explicitly stated. The medical benefit information is required to be up-to-date when the SROI is submitted; therefore, the SROI submission date is used as the date through which medical benefit payment information is current. A SROI must be submitted within six months of the payment of medical benefits; accordingly, the most recent of the date of injury or the date six months previous to the SROI submission date or the date immediately after the previous SROI submission date is used as the benefit payment start date.

For example, the injury date for a claim is 8/1/1999. The first SROI with medical benefit paid to physicians (\$500) was submitted on 12/25/1999. Therefore the payment (\$500) start date was 8/1/1999 and the end date was 12/25/1999. The second SROI was submitted on 7/3/2000. The total payment to physicians paid to date was \$1000. The benefit difference between the two submitted SROI was \$500, paid from 1/3/2000 to 7/3/2000.

For each type of benefit, the paid amount was distributed proportionally over the months between the payment start and end dates. The monthly benefit amounts were inflation adjusted to December 2009 dollars using CPI-U provided by the U. S. Department of Labor Bureau of Labor Statistics. Next, the monthly benefit amounts were aggregated by year from date of injury.

To illustrate this methodology, assume a benefit is paid from 2/1/2000 to 4/1/2001 for an injury that occurred on 8/1/1999. The benefits (post inflation adjustment) paid from 2/1/2000 to 8/1/2000 are reported in year one, and benefits paid from 8/2/2000 to 4/1/2001 are reported in year two.

For each claim and type of benefit an amount was identified in this manner for each year from the date of injury. The yearly amounts from all of the individual claims and relative benefit types were compiled and grouped by year, post the date of injury. All benefit amounts were adjusted for inflation and are stated in 2009 dollars.

data sources

Department of Labor and Industry, Mediation Unit

The Mediation Unit of ERD provided mediation section data.

Department of Labor and Industry, Safety and Health Bureau

The Safety and Health Bureau of ERD provided safety section data.

Department of Labor and Industry, Workers' Compensation Regulation Bureau

The Workers' Compensation Regulation Bureau provided data for the following sections of the report: Plan 1 Gross Annual Payroll, Plan 2 and 3 premium dollars, PEOs, Indemnity and Medical Benefits, SIF, Managed Care Organizations (MCOs), UEF, Construction Contractor Registration, and Independent Contractor Exemption Certificates.

Department of Labor and Industry Hearings Bureau

The Hearings Bureau provided Contested Case Hearings data.



Quarterly Expenditure Reports

Quarterly Expenditure Reports are reported to the DLI by carriers. Totals are data entered into WCAP in three categories: compensation, medical and miscellaneous.

Regulatory Costs and Industrial Accident Rehabilitation Trust Fund Expenses

These costs were obtained from the State's Accounting, Budgeting and Human Resource System (SABHRS).

Workers' Compensation Court

WCC data were provided by the court, which is administratively attached to the DLI.

Workers' Compensation Database (WCAP)

The database system was built at the request of the legislature to provide management information. Employers, insurers, claimants, attorneys, medical providers and other parties of the workers' compensation community in Montana provide data for the system. ERD maintains the database.

further information

Future Annual Reports

If you have suggestions or comments about this annual report, please share them with us. We are most interested in any comments or suggestions that will make this report more useful to Montanans in general and the workers' compensation system in particular. You may direct your comments to:

- Diana Ferriter, Bureau Chief
Department of Labor and Industry
Employment Relations Division
Workers' Compensation Claims Assistance
PO Box 8011
Helena, MT 59604-8011
Phone: (406) 444-1574
Fax: (406) 444-4140
Email: diferriter@mt.gov

Forthcoming Special Studies

- The Attorney Fee Supplement
- Research and survey studies on various topics related to workers' compensation

To request a copy of an Annual Report, Attorney Fee Supplement or special study please contact:

- Workers' Compensation Claims Assistance Bureau
Department of Labor and Industry
Employment Relations Division
PO Box 8011
Helena, MT 59604-8011
Phone: (406) 444-1600
Fax: (406) 444-4140
Email: kstreet@mt.gov

Internet Site

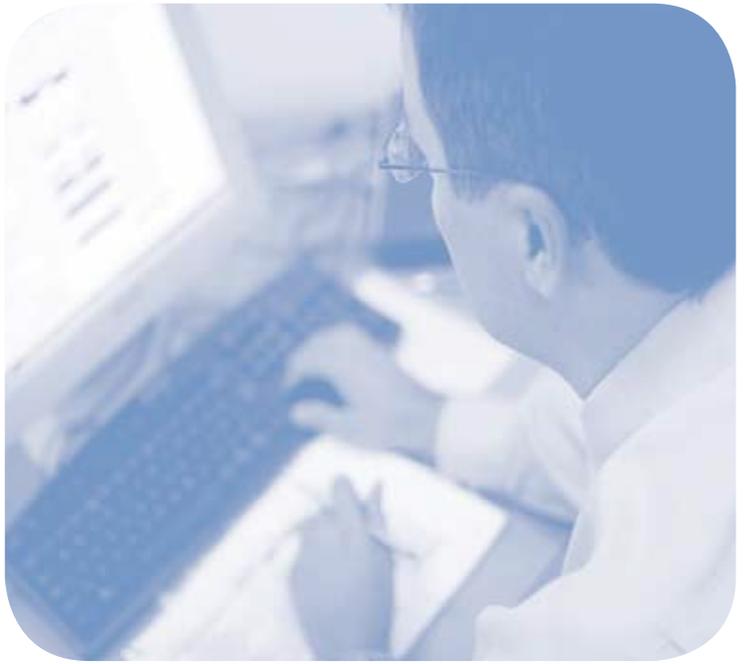
This report and previous reports are available on the Internet at the following web site:

<http://erd.dli.mt.gov/wcclaims/wcchome.asp>

Planning Team

The Annual Report planning team consisted of the following staff:

- Diana Ferriter, Bureau Chief, Workers' Compensation Claims Assistance Bureau
- David Elenbaas, Supervisor, Data Management Unit
- Barb Gullickson, Supervisor, Claims Unit
- Debbie Blossom, Mediator, Mediation Unit
- Ryan Morton, Workers' Compensation Analyst, Data Management Unit
- Kristine Shields, Workers' Compensation Analyst, Data Management Unit
- Kelli Street, Graphic Designer, Data Management Unit
- Xiaoshuo Wu, Workers' Compensation Analyst, Data Management Unit



No cost disclosure is required because the FY09 Annual Report was printed internally at the Employment Relations Division.

