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Report of the Governor's Workers' Compensation Review Commission

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REPORT OF THE GOVERNOR'S WORKERS' COMPENSATION REVIEW COMMISSION

Thomas A. Eaton & David B. Mustard** ****

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*** This report was prepared by the authors on May 20, 2003.

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FOREWORD: SCHOLARSHIP AND SERVICE

The editors of the Georgia Law Review asked me to write this Foreword to explain why a governmental report of this nature should be published in an academic journal. I write solely in my capacity as a law professor—not as Chair of the Governor's Workers' Compensation Review Commission. My case, simply put, is that the Report illustrates how service and scholarship can go hand in hand.

The Report contributes to a growing body of empirical legal research. Traditional legal scholarship has been theoretical or doctrinal in nature. In contrast to other disciplines, the legal academy has been slow to encourage and produce empirical research. While there are many reasons for this lag,¹ it is clear that the amount and variety of empirical legal research have increased dramatically in recent years.² The focus of much of this empirical legal scholarship has been the civil justice system, with special emphasis on tort litigation. There have been significant studies on case filing and disposition patterns, jury verdicts, damage awards and punitive damages.³ Collectively, these studies provide a factual framework for discussions and policymaking on tort reform

¹ The reasons why empirical legal scholarship is less developed than doctrinal and theoretical scholarship are explored in Michael Heise, *The Importance of Being Empirical*, 26 PEPP. L. REV. 807 (1999).

² See, e.g., *Symposium: Empirical and Experimental Methods in Law*, 2002 ILL. L. REV. 791. This symposium contains fourteen articles addressing various facets of empirical legal scholarship. An article by Professor Heise provides an insightful discussion of the history of legal empiricism and its growing role in the legal academy. Michael Heise, *The Past, Present and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, 2002 ILL. L. REV. 819; see also *Exchange: Empirical Research and the Goals of Legal Scholarship*, 69 U. CHI. L. REV. 1 (2002) (containing lively debate on appropriate methodology and use of empirical scholarship).

³ Examples of such work include, Theodore Eisenberg et al., *Juries, Judges, and Punitive Damages*, 87 CORNELL L. REV. 743 (2002); Marc Galanter, *Real World Torts: An Antidote to Anecdotes*, 55 MD. L. REV. 1093 (1996); Marc Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 UCLA L. REV. 4 (1985); Michael J. Saks, *Do We Really Know Anything About the Behavior of the Tort Litigation System—And Why Not?*, 140 U. PA. L. REV. 1147 (1992); Neil Vidmar, *The Performance of the American Jury: An Empirical Perspective*, 40 ARIZ. L. REV. 849 (1998); PATIENTS, DOCTORS, AND LAWYERS: MEDICAL INJURY, MALPRACTICE LITIGATION, AND PATIENT COMPENSATION IN NEW YORK: THE REPORT OF THE HARVARD MEDICAL PRACTICE STUDY TO THE STATE OF NEW YORK (1990).

initiatives. Quite often, the facts regarding civil litigation do not support the political rhetoric of reform.⁴

There are fundamental parallels between calls for tort reform and less publicly visible⁵ cries for reform of the workers' compensation system. In both instances, "reform" generally means changes in the legal rules designed to reduce the number of claims, the size of awards, or both. The primary arguments for reform are grounded in the empirical allegations that there are too many claims, awards are too high, and that these two factors combine to make insurance costs too high. The Report published here examines many of the facts underlying these empirical assumptions. It provides a descriptive, factual snapshot of the workers' compensation system in the State of Georgia. In the case of Georgia, many of the facts do not support the rhetoric of reform. Surprisingly, during the past decade the number of workers' compensation claims declined even in the face of significant growth in employment; the aggregate amount of benefits paid actually decreased, rather than increased; and that overall insurance costs have remained remarkably stable, largely varying between two to three percent of the employers' gross earnings.

This Report adds to our collective understanding of how one state's workers' compensation system performs relative to other systems, and hence, can stand alone as a piece of scholarship. But it is also a work of service. This project did not originate in the academy, but in the legislature and governor's office. It was designed for a very particular, though not partisan, purpose: to describe the current state of Georgia's workers' compensation

⁴ See Lynn A. Baker & Charles Silver, *Symposium Introduction: Civil Justice Fact and Fiction*, 80 TEX. L. REV. 1537 (2002) ("The articles in this Symposium cast doubt on many of [the factual claims of critics of the civil justice system].").

⁵ Occasionally, however, workers' compensation attracts significant public attention. In April of 2004, Governor Schwarzenegger muscled through what has been described as a "massive overhaul" of the California workers' compensation system (S.B. 899) after a much publicized political battle. See Marc Lifsher & Don Lee, *Workers' Comp Bill Elicits Wary Optimism: The 'Holistic' Overhaul Could Yield Bigger and More Lasting Benefits Than Previous Fixes, But How Much Employers Will Save Is Unclear*, L.A. TIMES, Apr. 17, 2004, at A1. Much of the comparative data contained in this Report illustrates that performance of workers' compensation systems varies widely from state to state. The Georgia system does not appear to have experienced the same problems that gave rise to the recent reforms in California.

system and assess how it stacks up against similar systems in other states. The ultimate objective of those who funded this project was not a publication in an academic journal, but the production of a Report that will inform policymakers.

I am confident that the Report meets this service objective in the short run. It presents a detailed, factual description of the state's workers' compensation system from which policymakers can make informed judgments regarding reform proposals. The Report's long term contribution to policymaking remains to be seen. When the cries for reform arise in the future, as they inevitably will, policymakers will want current data.⁶ Too often, governmental reports are issued, shelved, and forgotten. They are left simply to gather dust on shelves of libraries garnering the occasional attention of an academic. It is my fervent hope that this Report does not share that fate. The Report may be the first systematic study of Georgia's workers' compensation system—but it should not be the last. Ideally, the Report's lasting contribution to policymaking will be to provide benchmark measures of system performance against which future assessments will be constructed.

I am grateful that the Report appears in the *Georgia Law Review*. Publication in the *Review* will give the Report visibility it would not otherwise achieve and an audience it would not otherwise reach. In so doing, the *Georgia Law Review* not only disseminates scholarship, but also increases the likelihood that the Report will make a more lasting contribution to informed policymaking.

Thomas A. Eaton
May 2004

⁶ My personal experience with this is perhaps insightful. In 2000, my co-authors and I published an article that summarized filing, disposition, trial outcome, and damage award data on more than 25,000 tort cases filed in Georgia courts over a four year period. Thomas A. Eaton et al., *Another Brick in the Wall: An Empirical Look at Georgia Tort Litigation in the 1990s*, 34 GA. L. REV. 1049 (2000). When the winds of tort reform began to rise again in October of 2003, I was contacted by a legislator who said he found the study to be informative, but it needed to be updated before the January 2004 legislative session. I explained to him that it took two years to collect those data at a cost of more than \$150,000. Without hesitation, the legislator lamented that there were no funds available but wondered if I could complete the update by December nonetheless.

EXECUTIVE SUMMARY

THE COMMISSION, ITS GOALS, AND SOURCES OF INFORMATION

The Commission appointed by Governor Barnes consists of fourteen members, three ex officio members, and seven advisory members. This group includes academics, members of the legislature, claimants attorneys, defense attorneys, representatives from the insurance industry, organized labor, the textile industry, and government agencies. It was charged by the Governor to review and evaluate Georgia's laws and procedures affecting workers' compensation.

The Commission's primary goal was to prepare an accurate description of the current workers' compensation system in Georgia. More specifically, this Report provides detailed information regarding the number of claims, benefits paid to employees, employer costs, and insurance profitability. It also compares workers' compensation costs and benefits in Georgia with those in other states, particularly our Southeastern neighbors. Our purpose is to determine whether workers' compensation costs place Georgia employers at a competitive disadvantage in regional and national markets.

In preparing this Report, the Commission relied on the most recent available reports and data collected by organizations such as the National Academy of Social Insurance, the National Council on Compensation Insurance, the Workers Compensation Research Institute, the United States Department of Labor and the Georgia State Board of Workers' Compensation.

MAJOR FINDINGS

1. *The overall health of the Georgia workers' compensation system is quite good and is likely to continue to be good.* This assessment is based on a number of trends.
 - Both nationally and in Georgia, the number of workers' compensation claims is declining.
 - The number of claims has declined in Georgia despite significant growth in the size of the workforce.

- Georgia has a low percentage of claims in which the worker has missed seven or more days from work.
 - The aggregate cost of workers' compensation to Georgia employers has declined despite increases in the number of covered workers.
 - Workers' compensation costs have ranged between 1.74% and 2.99% of gross earnings during the past 17 years.
 - Workers' compensation costs are currently less than 2% of gross earnings.
 - In the 1990s, workers' compensation was a profitable line of insurance in Georgia compared to the profitability of workers' compensation in other states.
 - However, in the 1990s, workers' compensation in Georgia recorded very low levels of profitability compared to many industries.
2. *Total workers' compensation costs do not place Georgia employers at a competitive disadvantage in regional or national markets.*
- Georgia has a low average "cost per worker" compared with other states. Every state bordering Georgia has a higher average "cost per worker."
 - Every state contiguous to Georgia has a higher average "cost per claim."
3. *Georgia has one of the lowest limits (caps) on maximum weekly indemnity benefits of any state.*
- Georgia is one of only a few states that caps the maximum weekly indemnity benefit at less than two-thirds of the state's average weekly wage.
 - Thirty-three states, including seven southern states, cap the maximum weekly indemnity benefit for temporary total disability at 100% of each state's average weekly wage.
 - The current cap on maximum benefits affects one-third of Georgia workers who receive indemnity benefits.
 - Georgia is one of only a very few states that does not index its cap on maximum weekly benefits.

4. *Despite the low cap on maximum weekly indemnity benefits, Georgia has a comparatively high average total cost for claims with seven or more days lost time.*
 - Georgia has a higher average total cost for claims with seven or more days lost time than many states.
 - Georgia's higher average total cost for this category of claim may be driven by indemnity rather than medical benefits.
 - Georgia's higher average indemnity benefit for this category of claim may be influenced by a longer average duration for temporary total disability benefits.
 - Georgia's longer average duration for temporary total disability benefits is influenced by the use of a "return to work" instead of a "maximum medical improvement" standard.

5. *Benefits paid for catastrophic injuries are not currently placing an undue burden on the workers' compensation system.*
 - Benefits paid for catastrophic injury claims account for 6.7% of total benefits paid.
 - The number and cost of catastrophic injury claims declined in recent years; but catastrophic injury claims need to be closely monitored, as the number and cost figures will change over time.

6. *The State Board of Workers' Compensation needs to enhance its technological capabilities to collect, retain, and analyze data.*
 - The Board currently must employ outside consultants to perform certain research.
 - The Board currently does not store data for more than five years, making it difficult to track long-term trends.

7. *Georgia should continue to participate in studies that compare workers' compensation system performance among states.*

CONCLUSION

The vitality of the workers' compensation system is important to employers, employees and the public. The best available data indicate that the workers' compensation system in Georgia is quite healthy. It delivers hundreds of millions of dollars in benefits each year relatively efficiently. Total costs to Georgia employers are low compared to costs in other states, and there is no evidence that workers' compensation costs place Georgia employers at a competitive disadvantage in regional or national markets. There are no signs of crises in the system. While the Commission found few problems with the workers' compensation system as a whole, this Report identifies certain features that merit further scrutiny, particularly the adequacy of indemnity benefits and the standard used to separate temporary from permanent disability.

This Report is the first fact-based assessment of the Georgia workers' compensation system. We hope it is not the last. Georgia workers need and deserve a system that provides adequate compensation to those who are disabled by work-related injury and disease. Georgia employers need and deserve a system whose costs do not place them at a competitive disadvantage in regional and national markets. All Georgians need and deserve a system that operates efficiently. Only through periodic assessments such as this Report can system performance be evaluated.

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I. INTRODUCTION

Workers' compensation is big business. In the year 2000, more than 126 million workers in the United States were covered by various state workers' compensation systems⁷ that paid more than \$45.9 billion in benefits.⁸ In the same year, our state's workers' compensation laws covered more than 4 million Georgia workers, and Georgia employers or their insurers paid more than \$456 million in benefits.⁹ The public clearly has an interest in a program that affects so many people and involves the annual expenditure of so much money. With this in mind, Governor Roy Barnes established this Commission and charged it to review and evaluate Georgia's laws and procedures affecting workers' compensation.

At our first meeting, the Commission identified as its primary objective the compilation and analysis of facts pertaining to the Georgia workers' compensation system. We firmly believe that policy decisions should be driven by facts, rather than anecdotes or assumptions. The Commission gathered the most recent factual information from reliable sources such as the National Academy of Social Insurance (NASI), the National Council of Compensation Insurance, Inc. (NCCI), the Workers Compensation Research Institute (WCRI), and the Georgia State Board of Workers' Compensation (State Board). This Report summarizes the data compiled from these and other sources. Before delving into the factual details, we will first provide a brief overview of the workers' compensation system and its major goals and objectives.

A. A BRIEF HISTORY AND OVERVIEW OF WORKERS' COMPENSATION

Workers' compensation systems arose first in Europe in the late 1800's and in the United States in the early 1900's. The impetus for such systems was the rising toll of work-related deaths and injuries associated with the shift from an agricultural to an industrial

⁷ NAT'L ACAD. OF SOCIAL INS., WORKERS' COMPENSATION COVERAGE BY STATE tbl.1 (Oct. 2002) [hereinafter NAT'L ACAD. OF SOCIAL INS.].

⁸ DANIEL MONT ET AL., NAT'L ACAD. OF SOCIAL INS., WORKERS' COMPENSATION: BENEFITS, COVERAGE, AND COSTS, 2000 NEW ESTIMATES 1 (June 2002).

⁹ GA. STATE BD. OF WORKERS' COMP., 2001 ANNUAL REPORT, at At-A-Glance (2002).

economy. It is difficult today to comprehend the danger of the workplace in the late nineteenth and early twentieth centuries. The metaphor of war was often used to convey the magnitude of industrial carnage. For example, Secretary of the Interstate Commerce Commission Edward Moseley compared the number of occupational deaths and injuries in the railroad industry with those during the great battles of the Civil War. Moseley stated, “[m]ore of the grand army of railway men of this country were cut and bruised and maimed and mangled last year than all the Union wounded and missing on the bloody field of Gettysburg; nearly equal in number to the wounded and missing in the reign of death and devastation of Shiloh, first and second Bull Run and Antietam combined . . .”¹⁰ Others pointed out that in 1917 more American workers died on the job than did American soldiers fighting in World War I.¹¹

Tort law proved inadequate for providing compensation to those killed or disabled by work-related injuries. Many injuries and deaths simply were not the fault of an employer.¹² The “unholy trinity” of contributory negligence, assumption of risk, or the fellow servant doctrine often defeated work-related injury claims that might have otherwise been actionable in tort.¹³ Professor Larson concluded that the tort system “was a complete failure and in most serious cases, left the workers’ family destitute.”¹⁴

National conferences and state commissions began advocating the adoption of workers’ compensation laws. State statutes soon followed. Many of the early state workers’ compensation systems

¹⁰ Melvin L. Griffith, *The Vindication of a National Public Policy under the Federal Employers’ Liability Act*, 18 LAW & CONTEMP. PROBS. 160, 165 (1953) (quoting 1893 speech by Edward A. Moseley).

¹¹ E.H. DOWNEY, WORKMEN’S COMPENSATION (MacMillan Co. 1924).

¹² Larson cites a detailed study of German industrial injuries that found that approximately 17% of industrial injuries were caused by employer fault. The remaining 83% of workplace injuries were attributable to employee fault (29%), no one’s fault (42%), the fault of both employer and employee (5%), negligence of a fellow servant (5%), or an act of God (2%). 1 ARTHUR LARSON & LEX K. LARSON, LARSON’S WORKERS’ COMPENSATION LAW § 2.03 (2003) [hereinafter LARSON’S WORKERS’ COMPENSATION LAW].

¹³ *Id.*

¹⁴ *Id.* § 2.05.

were declared to be unconstitutional.¹⁵ The turning point came in 1917 when the United States Supreme Court upheld the New York law in *New York Central Railroad Co. v. White*.¹⁶ By 1920 all but eight states had adopted workers' compensation acts. Georgia passed its first workers' compensation law in 1920.¹⁷ The Georgia Supreme Court upheld the constitutionality of this statute in *Metropolitan Casualty Insurance Co. of New York v. Huhn*.¹⁸

Today, every state has a workers' compensation system and most share the same fundamental features. Limited compensation is provided to injured workers or their survivors on a "no-fault" basis provided the death or injury is work related. In Georgia and many other states, the element of work-relatedness is reflected in the phrase "arising out of and in the course of employment." Basic compensation includes medical and limited income benefits. Income benefits are often referred to as "indemnity benefits." The benefits provided under workers' compensation protect workers and their families from the catastrophic economic consequences of a disabling occupational injury. Unlike damages in tort, workers' compensation benefits are not intended to make the worker "whole" or to offer any compensation for non-economic loss such as pain and suffering. Workers' compensation is the employee's "exclusive remedy," so that neither the injured worker nor her family can sue the employer in tort. This arrangement is often referred to as a *quid pro quo*. That is, in exchange for prompt, though limited, compensation without regard to fault, employees surrender their right to sue their employers in tort. Conversely, in exchange for incurring limited liability on a no-fault basis for work-related injuries and death, employers receive an immunity from tort suits by employees or their families. Disputed workers' compensation claims typically are processed through an administrative agency rather than a court. Administrative law judges rather than juries serve as the finders of fact.

¹⁵ The historical development of workers' compensation systems is summarized in 1 LARSON'S WORKERS' COMPENSATION LAW, *supra* note 12, § 2.07.

¹⁶ 243 U.S. 188 (1917).

¹⁷ 1920 Ga. Laws 167.

¹⁸ 165 Ga. 667, 142 S.E. 121 (1928).

B. THE GOALS AND OBJECTIVES OF A WORKERS' COMPENSATION SYSTEM

To assess how well a workers' compensation system is functioning, we must identify its goals and objectives. We adopt as our benchmarks the following five objectives listed by the National Commission on Workmen's Compensation Laws in its 1972 Report:¹⁹

1. Provide Broad Coverage of Employees and Work-Related Injuries and Diseases;²⁰
2. Provide Substantial Protection Against Interruption of Income;
3. Provide Sufficient Medical Care and Rehabilitation Services;
4. Encourage Safety;²¹ and
5. Deliver Benefits Efficiently.

Our Commission directed most of its efforts toward items 2, 3, and 5. More specifically, we measured workers' compensation costs and benefits in Georgia and how they compared with costs and benefits in other states, particularly with states in the Southeast that are our primary competitors for both business and labor.

This Report does not address many more specific issues that might merit additional study. For example, we do not consider whether agricultural workers should continue to be excluded from coverage or whether there is a continued need for the Subsequent Injury Trust Fund. These and other more narrowly focused issues lie outside the ambit of this Report.

The bulk of this Report will address the questions of cost and benefits in some detail. Before doing so, however, we identify some of the "big-picture" [trends] driving workers' compensation systems.

¹⁹ NAT'L COMM'N ON STATE WORKMAN'S COMP. LAWS, THE REPORT OF THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS 35-40 (1972).

²⁰ With regard to item 1, 88.1% of Georgia workers are covered by workers' compensation laws, compared to the national average of 87.5%. NAT'L ACAD. OF SOCIAL INS., *supra* note 7, at tbl.1. The two major exclusions from coverage under Georgia law are domestic and agricultural employment. The Commission did not address these exclusions.

²¹ Although this Report does not directly evaluate the extent to which the workers' compensation system promotes workplace safety, it does point out in the next section that the number and rate of workplace injuries and the number of cases with days away from work have been steadily declining.

Understanding these trends is necessary to place the details of costs and benefits in context.

II. BIG-PICTURE TRENDS IN WORKERS' COMPENSATION NATIONALLY

Three related trends shape the present and future of workers' compensation. The first is the long-term decline of occupational injuries and fatalities; the second is a decline in the number and frequency of workers' compensation claims; and the third is a decline in workers' compensation costs to employers and benefits paid to employees. We will now turn to each of these trends.

A. THE LONG-TERM TREND OF DECLINING RATES OF OCCUPATIONAL INJURIES, DISEASES AND FATALITIES

Table 1 shows the number and rates of occupational injuries, diseases and fatalities as nationwide from 1987-2000.

Table 1
Private Industry Occupational Injury and Illness:
Total Cases and Incidence Rates, 1987-2000

Year	Number of Cases (in millions)		Incidence Rate ^a	
	All Cases	Cases with Days Away from Work	All Cases	Cases with Days Away from Work
	(1)	(2)	(3)	(4)
1987	6.0	2.5	8.3	3.4
1988	6.4	2.6	8.6	3.5
1989	6.6	2.6	8.6	3.4
1990	6.8	2.6	8.8	3.4
1991	6.3	2.6	8.4	3.2
1992 ^b	6.8	2.3	8.9	3.0
1993 ^b	6.7	2.3	8.5	2.9

1994 ^b	6.8	2.2	8.4	2.8
1995 ^b	6.6	2.0	8.1	2.5
1996 ^b	6.2	1.9	7.4	2.2
1997 ^b	6.1	1.8	7.1	2.1
1998 ^b	5.9	1.7	6.7	2.0
1999 ^b	5.7	1.7	6.3	1.9
2000 ^b	5.7	1.7	6.1	1.8

Source: DANIEL MONT ET AL., NAT'L ACAD. OF SOCIAL INS., *WORKERS' COMPENSATION: BENEFITS, COVERAGE, AND COSTS, 2000 NEW ESTIMATES*, 25 tbl.14 (2002).

Notes:

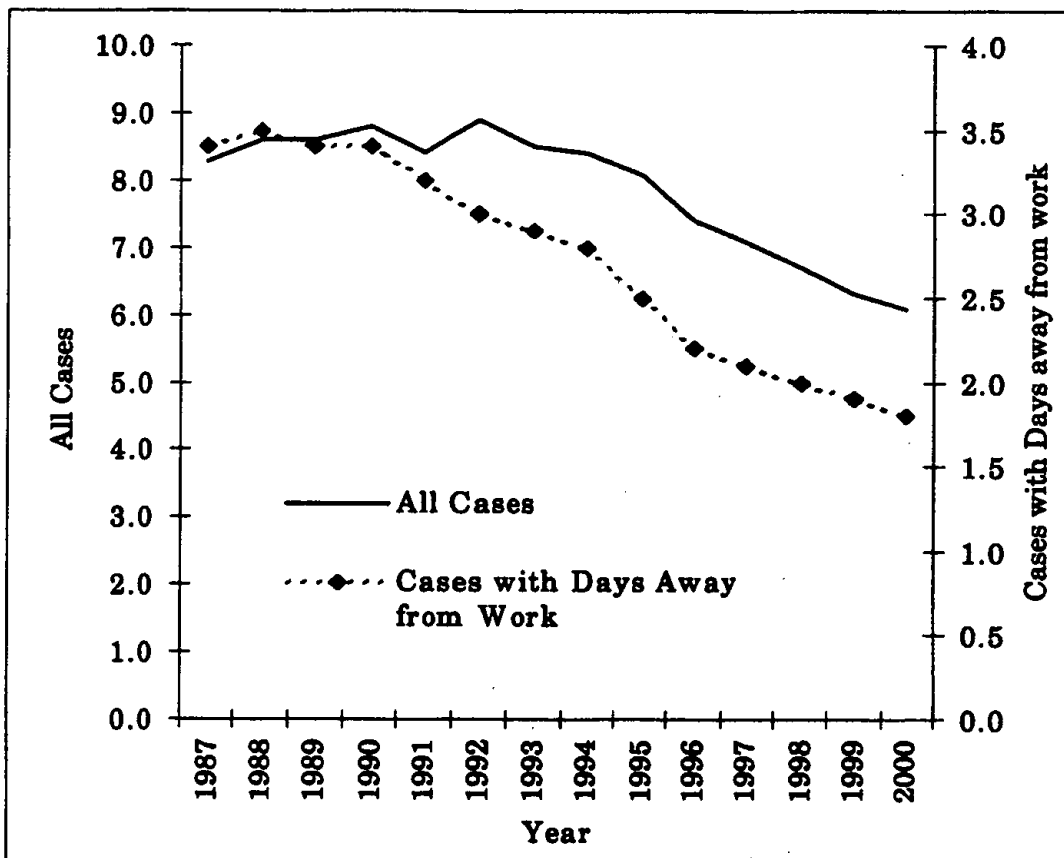
^a The incident rate is the number of cases per 100 full-time workers.

^b Data for these years exclude fatal work-related injuries and illnesses.

Table 1 provides many important insights. First, column 1 shows that between 1987 and 1994 the number of occupational injuries and diseases increased from 6.0 to 6.8 million, and then declined to 5.7 million by 2000. Second, column 2 shows that the number of cases with days of missed work also declined during this period from about 2.5 million in 1987-1991 to 1.7 million in 1998-2000. Because the workforce grew substantially during this period, the rate of injuries and disease (per 100 workers) decreased even more rapidly. Columns 3 and 4 of Table 1 reveal that the rates of both claims and cases with lost days declined during this 14-year period. By 2000, the incidence rate for all cases decreased 31.5% from its 1992 peak. The incidence rate for cases with days away from work dropped even more sharply—by 48.6%—between its 1988 peak and 2000. While 3.4% of workers suffered an occupational injury or disease that required them to miss work in 1990, only 1.8% of workers experienced the same fate in 2000. Figure 1 graphically depicts these trends.

Figure 1

Incidence Rates for Private Industry Occupational Injury and Illness



Source: DANIEL MONT ET AL., NAT'L ACAD. OF SOCIAL INS., WORKERS' COMPENSATION: BENEFITS, COVERAGE, AND COSTS, 2000 NEW ESTIMATES 25, tbl.14 (2002).

Note: Rates are expressed per 100 full-time workers.

Table 2 provides data on occupational fatalities.

Table 2
Number of Fatal Occupational Injuries,
1992-2000

Year	Number of Fatal Injuries
1992	6,217
1993	6,331
1994	6,632
1995	6,275
1996	6,112
1997	6,238
1998	6,026
1999	6,023
2000	5,915

Source: DANIEL MONT ET AL., NAT'L ACAD. OF SOCIAL INS., *WORKERS' COMPENSATION: BENEFITS, COVERAGE, AND COSTS, 2000 NEW ESTIMATES*, 26 tbl.15 (2002).

Since 1994, the number of fatal occupational injuries has decreased by 10.8%.²²

The data from Tables 1 and 2 all point in the same direction: declining rates of occupational injuries, declining severity of injuries and declining numbers of occupational fatalities.²³ Collectively, they indicate that the pool of potential workers' compensation claims has been shrinking since 1994.

²² These figures do not include deaths caused by long-term occupational diseases. MONT ET AL., *supra* note 8, at 25.

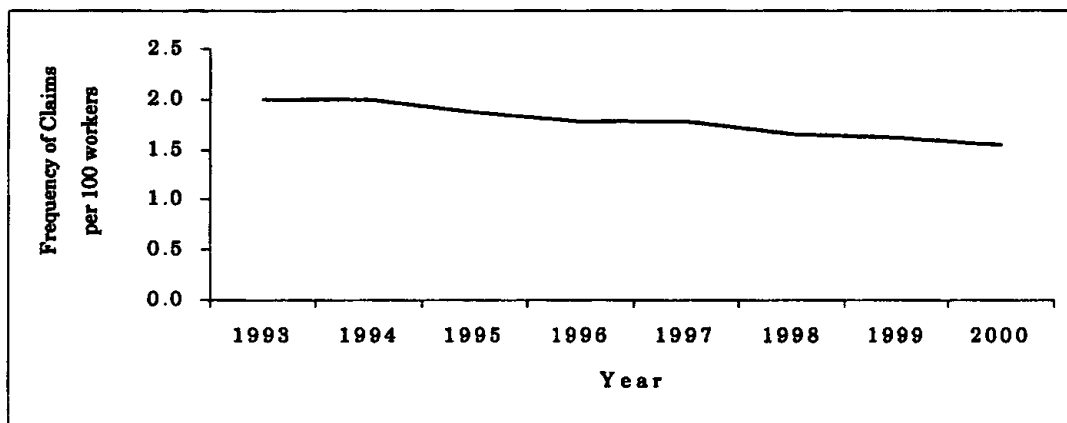
²³ Among the reasons suggested for the decline in occupational injury rates are governmental work safety programs, such as OSHA, private risk management programs initiated by employers or their insurers, a shift in the economy from higher-risk manufacturing and industrial jobs to lower-risk service and technology jobs, and improvements in occupational safety technology, such as ergonomic designs, cordless tools and better materials. NAT'L COUNCIL ON COMP. INS., *GEORGIA WORKERS' COMPENSATION STATE ADVISORY FORUM 7* (July 12, 2002). Others have suggested that "[i]t is also possible that some of the decline in injury rates is an indirect result of tighter eligibility standards for workers' compensation." MONT ET AL., *supra* note 8, at 26.

B. A DECLINE IN THE NUMBER AND RATE OF WORKERS' COMPENSATION CLAIMS

This decline in the injury rate has been accompanied by a corresponding decrease in the number and frequency of workers' compensation claims. The National Council on Compensation Insurance²⁴ reports that the number of workers' compensation claims fell by 7.8% nationally between 1993 and 1997, and states, "The Southeast (excluding Florida) stands out with above-average improvement in claim frequency."²⁵ Georgia is reported to have a 15.5% reduction in the number of claims during this period.²⁶ When expressed in terms of the frequency of claims, the decline is even more dramatic. Georgia's claim frequency decreased 25.6% compared to the national rate of 18% over the same period.²⁷ Figure 2 shows that the frequency of claims in Georgia has continued to decline from two claims per one hundred workers in 1992 to 1.5 claims per one hundred workers in 2000.

Figure 2

Frequency of Claims per 100 Workers,
1993-2000



Source: NAT'L COUNCIL ON COMP. INS., GEORGIA WORKERS' COMPENSATION STATE ADVISORY FORUM 7 (July 12, 2002).

²⁴ Christopher Poteet & Tony DiDonato, *Analyzing the Decline in Claim Frequency*, NATIONAL COUNCIL ON COMPENSATION INSURANCE ISSUES REPORT 29 (Spring 2001).

²⁵ *Id.* at 32.

²⁶ *Id.*

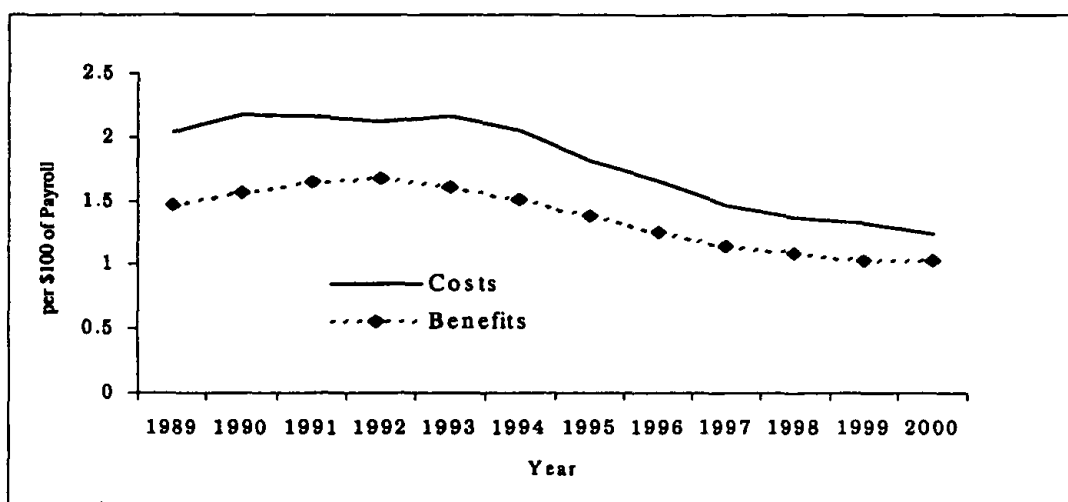
²⁷ *Id.*

C. A DECLINE IN WORKERS' COMPENSATION COSTS TO EMPLOYERS AND BENEFITS PAID TO EMPLOYEES

Similarly, this decrease in the number and frequency of workers' compensation claims has been accompanied by a decline in costs to employers and benefits paid to employees, as shown in Figure 3.

Figure 3

Workers' Compensation Benefits and Costs, 1989-2000



Source: DANIEL MONT ET AL., NAT'L ACAD. OF SOCIAL INS., WORKERS' COMPENSATION: BENEFITS, COVERAGE, AND COSTS, 2000 NEW ESTIMATES 24, tbl.13 (June 2002).

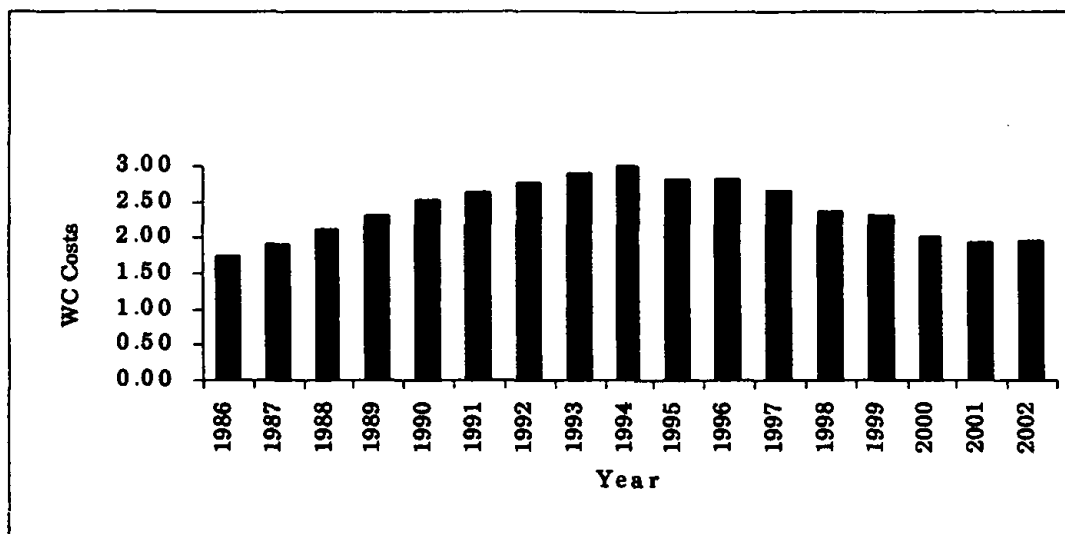
Employer costs peaked in 1990 and decreased by 42.7% by 2000. Benefits paid increased by 15.1% between 1989 and 1992, and decreased 38.7% between 1992 and 2000.

Employer costs²⁸ are often expressed in two ways: as a percentage of gross earnings or in dollars per hour worked. Figure 4 shows employer costs expressed as a percentage of gross earnings.

²⁸ The term "costs" used in Figures 4 and 5 includes insurance costs. See John F. Burton, Jr., *Workers' Compensation Costs for Employers: Divergent Trends for 2002*, WORKERS' COMPENSATION POLICY REVIEW May-June 2002, at 7 n.1.

Figure 4

Workers' Compensation Costs as a Percentage of Gross Earnings,
Private Industry Employers, 1986-2002

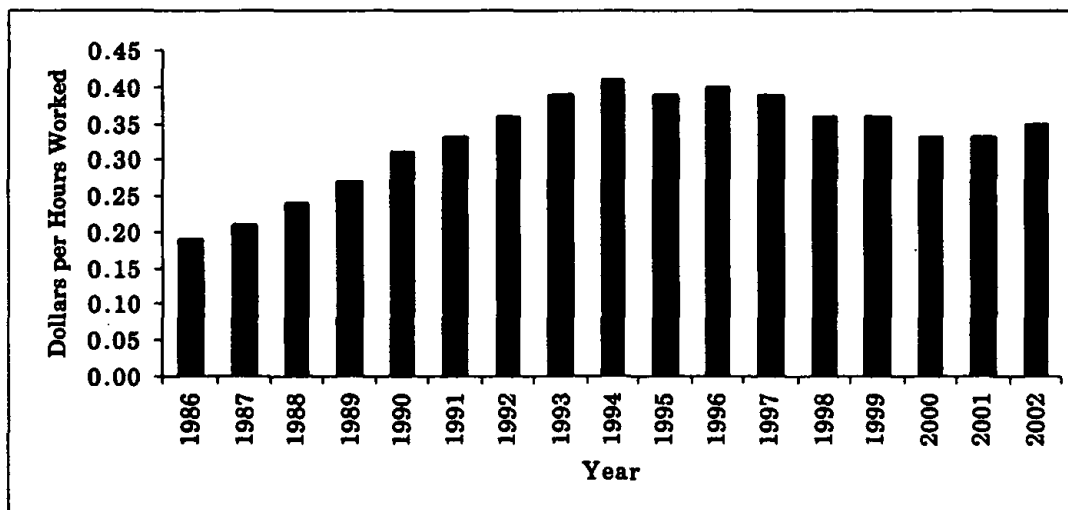


Source: John F. Burton, Jr., *Workers' Compensation Costs for Employers: Divergent Trends for 2002*, WORKERS' COMPENSATION POLICY REVIEW May-June 2002, at 2 fig. A.

Figure 5 plots employer costs expressed in terms of dollars per hour worked.

Figure 5

Workers' Compensation Costs for Private Industry Employees,
1986-2002 (In Dollars per Hour Worked)



Source: John F. Burton, Jr., *Workers' Compensation Costs for Employers: Divergent Trends for 2002*, WORKERS' COMPENSATION POLICY REVIEW May-June 2002, at 5 fig. D.

Figures 4 and 5 provide four important insights. First, both measures indicate that workers' compensation costs increased substantially from the mid-1980s and peaked in 1994. In just eight years between 1986 and 1994, costs as a percentage of gross earnings increased by 71.8% and costs in dollars of hours worked increased 115.8%. Second, between 1994 and 2001, these costs decreased by 35.8% and 14.6%, respectively. Third, the recent pattern of decline in costs has ended, and a possible increase may have commenced. Employers' workers' compensation costs increased from 1.92% of gross earnings in 2001 to 1.96% in 2002. One important component of total costs is the cost of health care, whose annual rate of growth has been increasing since 1997.²⁹ Others have documented that costs since 2000 have increased due to a convergence of factors like rising claim costs, deregulated pricing, harder-to-obtain reinsurance, and potential workplace terrorism.³⁰ Fourth, while there have been substantial increases and decreases in workers' compensation costs during this period, the variation of workers' compensation costs as a percentage of gross earnings has been relatively stable. Over a seventeen-year period, employer workers' compensation costs ranged from a low of 1.74% to a high of 2.99%. For most of this period, employer costs ranged between 2 and 3% of gross earnings. Since 1990, employer costs expressed in terms of dollars per hour worked ranged from \$.31 to \$.41—a variation of only ten cents per hour worked. Under either measure, employer costs are lower today than they were in the early 1990s.

III. BIG-PICTURE TRENDS IN WORKERS' COMPENSATION IN GEORGIA

Georgia has experienced the same patterns as described in the preceding section. The State Board of Workers' Compensation reports reductions in the number of workers' compensation claims

²⁹ The annual percentage change in the overall medical price index was 2.8% in 1997, 3.2% in 1998, 3.5% in 1999, 4.1% in 2000, 4.6% in 2001, and 4.7% in 2002. U.S. Dep't of Labor, MEDICAL CARE INDEX, U.S. CITY AVERAGE, NOT SEASONALLY ADJUSTED, Series Id: CUUR0000SAM.

³⁰ Annmarie Geddes Lipold, *The Soaring Costs of Workers' Comp*, WORKFORCE, Feb. 2003, at 42-48.

and in the aggregate amounts of benefits paid. Before discussing these patterns in detail, we briefly explain how the State Board of Workers' Compensation collected and reported its data.

Each year the Board issues an Annual Report that contains statistical information, some reported on a "calendar year" basis. For example, payments made in "medical only" claims are reported for the calendar year in which the payment was made. Other information is reported on an "accident year" basis. For example, indemnity benefits paid in 2000 for an accident that occurred in 1999 would be reported as a 1999 cost. Because medical and indemnity benefits frequently are paid for several years after the date of the accident, "accident year" data are revised annually. Thus, the amount of benefits paid for 1997 accidents as reported in the 1998 Annual Report will be less than the amount reported in the 1999 Annual Report, which will be less than the amount reported in the 2000 Annual Report, etc. The Annual Reports prepared by the State Board provide data from the current calendar year and the three preceding years. The most complete data are those reported four years after the accident year. Thus, the most complete information is for accident year 1997 as reported in the 2000 Annual Report.

Tables 3 and 4 summarize data in the Annual Reports of the State Board of Workers' Compensation. Table 3 contains data for the specified calendar year and covers years 1995-2000.³¹ Table 4 reports data on a "four-year-lag-time" basis. That is, it contains cost information on accidents that occurred in 1997 based on payments made through 2000.

³¹ Changes in the way data were collected and reported preclude comparisons of calendar year data before 1995.

Table 3³²Georgia Workers' Compensation "At-A-Glance,"
1995-2000

	1995	1996	1997	1998	1999	2000
Created Cases	48,991	47,815	45,260	44,717	44,155	43,258
<u>Benefits (\$000s)</u>						
Indemnity Benefits	\$140,535	\$135,796	\$170,464	\$155,896	\$159,651	\$174,908
Medical Benefits*	\$161,794	\$162,247	\$179,450	\$163,096	\$169,779	\$172,981
Other Benefits**	\$9,064	\$11,396	\$12,746	\$11,798	\$11,563	\$11,160
Total Benefits in Indemnity Claims	\$311,394	\$309,437	\$362,660	\$330,791	\$340,992	\$359,050
<u>Averages</u>						
Claim Cost	\$6,308	\$6,472	\$8,012	\$7,397	\$7,723	\$8,300
Lost Work Days	53	54	54	57	58	62
<u>Medical Only</u>						
Number	180,074	168,226	209,176	195,572	207,555	210,566
Amount (\$000s)	\$57,963	\$82,480	\$69,979	\$76,025	\$80,922	\$97,750
Total payments on all claims (in \$000s)	\$369,357	\$391,917	\$432,638	\$406,816	\$421,915	\$456,800

Source: Data from the GA. STATE BD. OF WORKERS' COMP., ANNUAL REPORTS 1996-2001, at At-A-Glance (1996-2001).

Notes:

* "Medical Benefits" calculates the sum of "Physicians Benefits," "Hospital," "Pharmacy Benefits," "Physical Therapy," "Chiropractic," and "Other."

** "Other Benefits" calculates the sum of "Rehabilitation," "Late Payment Penalties," "Assessed Attorney's Fees," and "Burial."

³² EDITOR'S NOTE: Slightly different numbers appear in the Report as originally published. The revised numbers do not change the tone or conclusions of the Report.

Table 4

Georgia Workers' Compensation "At-A-Glance,"
Four-Year Lag,
1992-1997

	1992	1993	1994	1995	1996	1997
Created Claims	53,774	53,527	54,306	51,110	49,376	46,695
<u>Benefits (\$000s)</u>						
Indemnity Benefits	\$416,393	\$398,396	\$402,780	\$378,975	\$364,461	\$385,080
Medical Benefits*	\$338,401	\$317,269	\$310,010	\$296,668	\$295,397	\$285,017
Other Benefits**	\$30,225	\$19,700	\$20,433	\$20,600	\$22,232	\$21,228
Total Benefits in Indemnity Claims	\$785,018	\$735,365	\$733,223	\$696,243	\$682,091	\$691,325
<u>Averages</u>						
Claim Cost	\$14,598	\$13,738	\$13,501	\$13,622	\$13,814	\$14,805
Lost Work Days	180	161	104	102	100	106
<u>Medical Only</u>						
Number	255,074	250,647	168,862	180,071	168,226	209,176
Amount (\$000s)	\$81,494	\$135,099	\$46,105	\$57,961	\$82,480	\$69,979
Total payments on all claims (in \$000s)	\$866,512	\$870,463	\$779,328	\$754,204	\$764,571	\$761,304 [†]

Source: Data from the GA. STATE BD. OF WORKERS' COMP. ANNUAL REPORTS 1996-2001, at At-A-Glance (1996-2001).

Notes:

* "Medical Benefits" calculates the sum of "Physicians Benefits," "Hospital," "Pharmacy Benefits," "Physical Therapy," "Chiropractic," and "Other."

** "Other Benefits" calculates the sum of "Rehabilitation," "Late Payment Penalties," "Assessed Attorney's Fees," and "Burial."

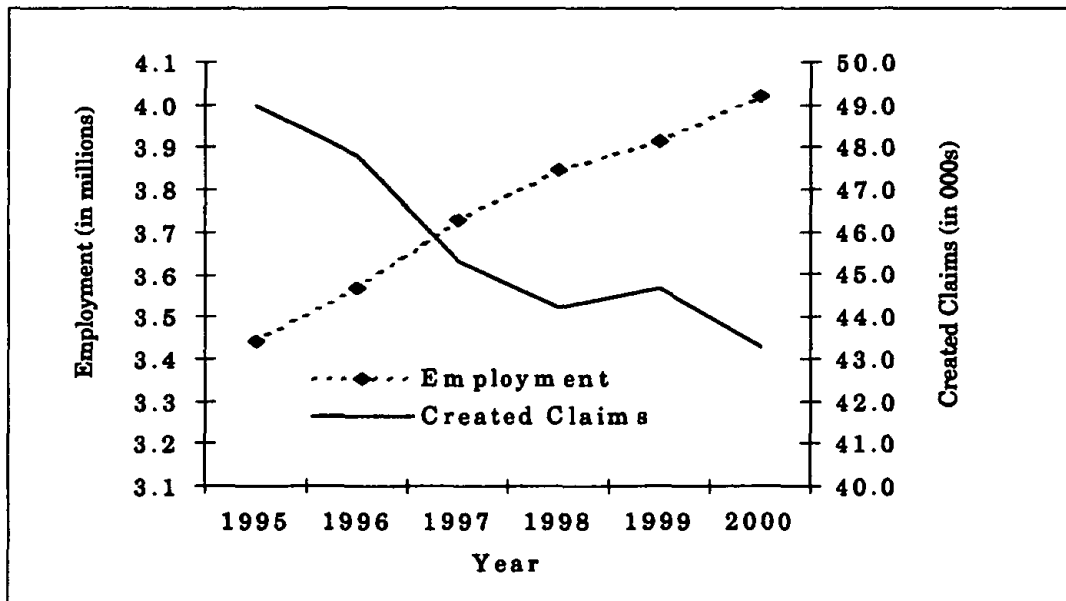
[†] This differs from the reported number in the 2001 edition in the "At-A-Glance" page. The correct number shown above was confirmed in emails from Pamela Carter and Carolyn Hall, both dated 31 Dec. 2002.

Table 3 provides more current, but necessarily incomplete, information. Table 4 provides more complete, but less current, information. Both tables show declining numbers of claims, slight increases in the average number of lost workdays and average costs per claim. Table 4 documents a marked decline in the aggregate amount of benefits paid.

A. A DECLINE IN THE NUMBER OF WORKERS' COMPENSATION CLAIMS

Tables 3 and 4 show that the number of created claims is decreasing. Table 3 documents a decline in the number of created claims each year from 1995 through 2000. Specifically, there were 5,733 fewer claims created in 2000 than in 1995. Table 4 shows the same pattern—there were 7,079 fewer claims created in 1997 than in 1992. Given the growth in employment during this same period, this decline in the number of created claims is all the more remarkable. Employment grew by 578,017 between 1995 and 2000.³³ Thus, there were 578,017 *more* Georgians working during the period in which the number of created workers' compensation claims *declined* by 5,733. Figure 6 illustrates that the number of workers' compensation claims decreased despite an increase in the number of people employed.

Figure 6
Employment and Created Claims,
1995-2000



Source: Claim data from GA. STATE BD. OF WORKERS' COMP., ANNUAL REPORTS 1996-2001, at At-A-Glance (1996-2001). Employment data from Ga. Dep't of Labor, *Labor Force, Employment and Unemployment Data in Georgia*, QUICKSTATS!, Nov. 13, 2002.

³³ Georgia Dep't of Labor, *Labor Force, Employment and Unemployment Data in Georgia*, QUICKSTATS!, Nov. 13, 2002.

B. THE AVERAGE NUMBER OF LOST WORK DAYS

One measure of the seriousness or severity of a workers' compensation claim is the average number of lost workdays. More lost workdays imply more severe injuries and greater costs. The two types of data show different trends in lost workdays. Table 3 (the one-year data) shows that the number of lost workdays increased from fifty-three in 1995 to sixty-two in 2000, an increase of 17%. In contrast, Table 4 (the four-year data) indicates that the average number of lost workdays declined dramatically from the early 1990s and has become more stable. The average number of lost workdays dropped from 180 in 1992 to 106 in 1997. Between 1994 and 1997 the average ranged between 100 and 106 lost workdays.

C. THE AVERAGE COST PER CLAIM

Table 3 reports that the average cost per claim was \$6,308 in 1995 and \$8,300 in 2000, an increase of 31.6% over the 5-year period. However, Table 4, which contains more mature data and thus a more complete picture, reveals a more stable pattern. The average cost per claim was \$14,598 in 1992 and \$14,805 in 1997, an increase in the average cost per claim of only \$207, or 1.4% over 5 years. This increase is quite modest compared to the 19.2% increase in Georgia's average weekly wage during the same period.³⁴

D. A DECLINE IN THE AGGREGATE PAYMENTS IN ALL CLAIMS

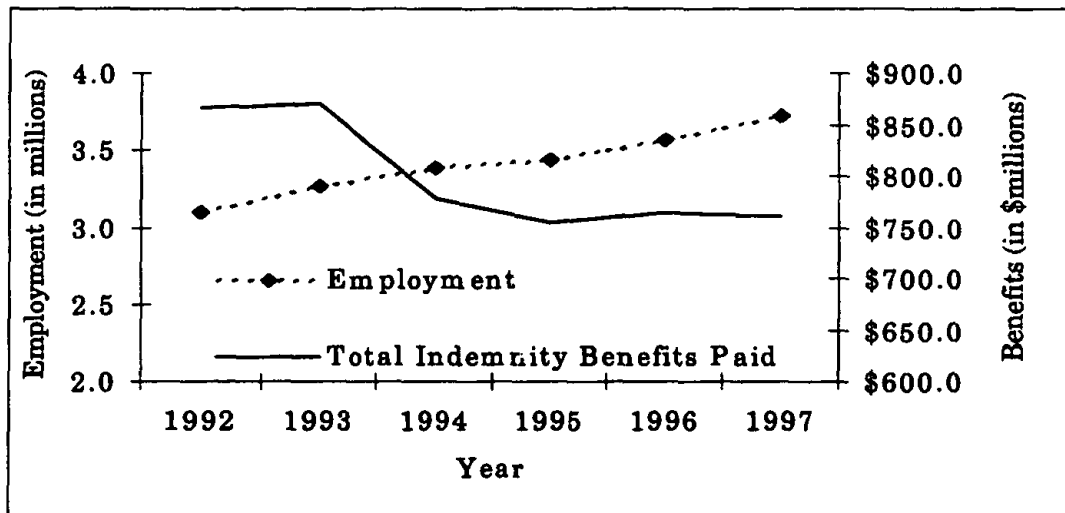
Perhaps the most telling measure of costs is the aggregate payments made. Aggregate payments include benefits paid on indemnity claims as well as medical only claims. Table 4 reveals a dramatic drop in the aggregate total payments over time. The aggregate total payment for covered injuries occurring in 1992 was \$866.5 million, while the corresponding figure for 1997 claims was \$761.3 million. Thus, Georgia employers and their insurers paid \$105.2 million less for 1997 workplace injuries than they did for

³⁴ Georgia's average weekly wage increased from \$468 in 1992 to \$558 in 1997. Analysis by Taryn Trent, Georgia Department of Labor, at the request of the Commission.

injuries occurring in 1992. This decline in aggregate payments undoubtedly is attributable to the decrease in the number of created claims during the same period. The decline in the aggregate payment is all the more remarkable because the number of covered employees increased substantially during this period, as illustrated in Figure 7.

Figure 7

Employment vs. Total Indemnity Benefits Paid, 1992-1997



Source: Claim data from GA. STATE BD. OF WORKERS' COMP., ANNUAL REPORTS 1996-2001, at At-A-Glance (1996-2001). Employment data from Ga. Dep't of Labor, *Labor Force Employment and Unemployment Data in Georgia*, QUICKSTATS!, Nov. 13, 2002.

IV. A COMPARISON OF WORKERS' COMPENSATION COSTS IN GEORGIA WITH COSTS IN OTHER STATES

By several measures, Georgia workers' compensation costs compare favorably with those incurred by employers in other states, including our neighbors in the Southeast. Georgia enjoys a relatively low average total cost for "all claims paid" compared to other states. This is due largely to the exceptionally small percentage of claims paid in Georgia involving seven or more lost days of work. However, Georgia has a comparatively high average total cost for "all claims paid claims involving seven or more lost days of work."

A. GEORGIA HAS A COMPARATIVELY LOW AVERAGE "COST PER WORKER"

One way to compare costs is to divide the aggregate payout by the number of covered workers to produce an average cost per worker. Table 5 compares the average cost per worker for ten Southeastern states and the states with the highest and lowest average costs in the nation. The data reported in Table 5 are not adjusted for interstate differences in factors like self-insurance, wage levels, and injury and industry mix.

Table 5
Cost per Worker,
Southeastern States and States with the Highest and Lowest
1998 Average Cost,
Policy Years 1996 and 1998

State	1998 Average Cost per Worker (in dollars)	1996 Average Cost per Worker (in dollars)
Alaska	781	679
Florida	549	617
Alabama	447	472
Tennessee	396	340
North Carolina	357	267
Kentucky	332	354
South Carolina	329	278
Mississippi	314	307
Virginia	277	297
Georgia	273	299
Arkansas	212	186

Source: WORKERS COMP. RESEARCH INST., COMPSCOPE™ BENCHMARKS: MULTISTATE COMPARISONS 1994-2000 21 tbl.2.3 (2003); WORKERS COMP. RESEARCH INST., COMPSCOPE™ BENCHMARKS: MULTISTATE COMPARISONS 1994-1999 20 tbl.3.1 (2001).

The first column of Table 5 indicates that the average cost per worker in 1998 ranged from a high of \$781 in Alaska to a low of \$212 in Arkansas. Georgia's 1998 average cost is ninth out of the

ten Southeastern states, trailing only Arkansas, and its average cost is lower than that of its border states. Compared to Georgia, South Carolina's cost was 20.5% higher, North Carolina's was 30.8% higher, Tennessee's was 45.1% higher, Alabama's was 63.7% higher, and Florida's was 101.1% higher. Measured in average cost per worker, Georgia ranked fortieth of forty-six states in 1998 and twenty-eighth of forty-four states in 1996 (Appendix I contains the rankings of all surveyed states). Furthermore, Georgia's average cost per worker decreased from \$299 in 1996 to \$273 in 1998.

B. GEORGIA HAS A COMPARATIVELY LOW AVERAGE "COST PER CLAIM"

Another point of comparison is the average cost per claim, which examines the costs of workers' compensation claims in which payments were made. Table 6 compares the average cost per claim for ten Southeastern states and the states with the highest and lowest average costs in the nation. The average cost per claim for every surveyed state is reported in Appendix II.

Table 6

Cost per Claim,
Southeastern States and the States with the Highest and Lowest
Average Cost per Paid Claim,
Policy Years 1994, 1996, and 1998

State	1998 Average Cost per Claim (in dollars)	1996 Average Cost per Claim (in dollars)	1994 Average Cost per Claim (in dollars)
New York	11,936	11,583	9,979
Florida	8,439	9,211	9,548
Alabama	6,991	6,560	5,586
North Carolina	6,609	4,774	4,119
South Carolina	5,709	4,421	4,308
Virginia	5,704	6,229	4,330
Tennessee	5,680	4,368	4,087
Georgia	5,461	5,206	5,377
Mississippi	4,420	4,076	3,770
Kentucky	4,219	4,015	4,478
Indiana	2,433	2,169	2,022

Source: NAT'L COUNCIL ON COMP. INS., ANNUAL STATISTICAL BULLETIN (1998, 2000, & 2002 editions).

Table 6 and Appendix II yield three observations. First, Georgia's average cost per claim was low compared to both the Southeastern and all states. In 1998, Georgia's average cost per claim was \$5,461 compared to New York, which had the highest average cost per claim at \$11,936, and Indiana, which had the lowest at \$2,433. In 1998, none of Georgia's border states had lower average costs per claim, and Mississippi and Kentucky were the only states in the Southeast that had lower average costs than Georgia. Tennessee (4.0% higher), South Carolina (4.5% higher), North Carolina (16.4% higher), Alabama (28.0% higher), and Florida (54.5% higher) all had higher average costs per claim than Georgia. Second, Georgia's overall average costs per claim stayed relatively constant during this period—going from \$5,377 in 1994 to \$5,461 in

1998. Third, while Georgia experienced relatively constant average costs during this period, most other states experienced increases. Thus, Georgia's ranking in average costs dropped from seventeenth of thirty-six jurisdictions in 1994, to twenty-first of forty-three in 1996, and twenty-sixth of forty-six in 1998.

WCRI performed several "Benchmarks" studies in which it examined in great detail the workers' compensation systems of participating states. The second Benchmark study was published in 2001 and included eight states (California, Connecticut, Florida, Georgia, Massachusetts, Pennsylvania, Texas and Wisconsin). The third Benchmark study incorporates four additional states—Illinois, Indiana, North Carolina and Tennessee. The twelve states included in the most recent Benchmarks study account for more than 50% of the nation's benefits payments.³⁵ The WCRI Benchmark studies provide improved interstate comparisons of workers' compensation systems by adjusting for differences in industry and injury mix, wage levels and waiting periods. Table 7 reports the average total costs per all paid claims. It separately reports average total costs for "immature" (twelve months after injury) and "mature" (thirty-six months after injury) claims.

³⁵ WORKERS COMP. RESEARCH INST., COMPSCOPE™ BENCHMARKS: MULTISTATE COMPARISONS, 1994-2000 XXVII (2003) [hereinafter WCRI BENCHMARKS 1994-2000].

Table 7

**Average Total Cost per All Paid Claims,
Accident Years 1997 and 1999**

State	Average Total Cost per Claim, Accident Year 1999	Average Total Cost per Claim, Accident Year 1997
IN	\$1,921	\$2,381
WI	\$2,182	\$2,812
GA	\$2,353	\$3,910
NC	\$2,373	\$3,690
CT	\$2,382	\$4,179
PA	\$2,449	\$3,942
MA	\$2,760	\$4,550
TN	\$2,772	\$4,368
FL	\$3,081	\$5,216
IL	\$3,376	\$5,192
CA	\$3,538	\$6,583
TX	\$4,513	\$5,797
12-State Median	\$2,604	\$4,274

Source: WORKERS COMP. RESEARCH INST., COMPScope™ BENCHMARKS: MULTISTATE COMPARISONS 1994-2000, 26 tbl.2.6 (2003).

Note: 1997 and 1999 claims as of mid-2000.

The Table 7 data indicate that Georgia has a lower average total cost per all paid claims than the twelve-state median for both immature (by \$251) and mature claims (by \$364). Also, Florida's average total cost for immature claims was 30.9% higher and its average total cost for mature claims was 33.4% higher than Georgia's. Tennessee's cost for immature claims was 17.8% higher and cost for mature claims was 11.7% higher than Georgia's. North Carolina's cost for immature claims was only \$20 (0.8%) more than Georgia's, and its cost for mature claims was 5.6% lower than Georgia's. The WCRI Benchmarks study further breaks down "average total costs" into component parts of "benefit payments," "medical payments," "indemnity benefit" and

“benefit delivery expenses.” The average cost per claim in Georgia in each of these sub-categories was less than the 12-state medians.³⁶ These findings are consistent with those reported in WCRI’s earlier eight-state Benchmark study.³⁷

The low average cost per claim in Georgia may be explained by the exceptionally low percentage of claims involving more than seven days lost time. Table 8 shows that Georgia has a very low percentage of claims in which the injured worker misses more than seven days of work. Only 14-15% of workers’ compensation claims in Georgia involve workers who miss more than seven days of work compared to the 12-state median of 20%.

Table 8

Claims with More than 7 Days of Lost Time as a Percentage of All Paid Claims, Accident Years 1997 and 1999

State	Percent of all paid claims with more than 7 days lost time, Accident Year 1999	Percent of all paid claims with more than 7 days lost time, Accident Year 1997
IN	13	15
GA	14	15
TN	15	17
NC	16	17
PA	17	19
WI	19	20
FL	20	20
IL	22	25
CA	23	24
CT	23	27
TX	25	25
MA	28	28
12-State Median	20	20

Source: WORKERS COMP. RESEARCH INST., COMPSCOPE™ BENCHMARKS: MULTISTATE COMPARISONS 1994-2000 68-69, tbl.2.15 (2003).

Note: 1997 and 1999 claims as of mid-2000.

³⁶ WCRI BENCHMARKS 1994-2000, *supra* note 35, at 26 tbl.2.6.

³⁷ WORKERS COMP. RESEARCH INST., COMPSCOPE™ BENCHMARKS: MULTISTATE COMPARISONS, 1994-1999 26-31 tbls. 3.5, 3.6, 3.7, 3.8 & 3.9 (2001) [hereinafter WCRI BENCHMARKS 1994-1999].

Tables 7 and 8 show that the states with the lowest average total costs per paid claim tend to be those with low percentages of claims with more than 7 days of lost time. WCRI offers two possible explanations for why Georgia has such a low percentage of such claims: first, the low maximum weekly benefit for total disability (discussed in Part VI) may create an incentive to return to work “prematurely”; and second, injuries may be less serious in Georgia despite WCRI’s efforts to control for injury mix.³⁸ A third explanation is that Georgia employers and insurers may have developed more effective “return to work” programs than those used in other states.³⁹ Whatever the explanation, the low percentage of claims with more than seven days of lost work helps keep the average total cost per claim of all paid claims comparatively low.

C. GEORGIA HAS A COMPARATIVELY HIGH AVERAGE TOTAL COST FOR CLAIMS WITH SEVEN OR MORE DAYS LOST TIME

The most serious workplace injuries cause the worker to miss substantial time from the job. To measure serious injuries, Table 9 examines data from the claims with seven or more days lost time from work.

Table 9

Average Total Cost per Claim with More than 7 Days of Lost Time,
Policy Years 1997 and 1999

State	Average Total Cost per Claim, Accident Year 1999	Average Total Cost per Claim, Accident Year 1997
CT	\$8,275	\$14,104
MA	\$8,647	\$14,722
WI	\$8,878	\$12,186

³⁸ WCRI BENCHMARKS 1994-2000, *supra* note 35, at 139.

³⁹ As discussed in Part VII.C, Georgia allows injured workers to receive temporary disability benefits until they can return to work at or above the pre-injury wage or until the expiration of the statutory period. This facet of Georgia law creates an incentive for Georgia employers to find suitable employment for injured workers and may decrease the number of claims with seven or more days of lost time.

IN	\$10,900	\$13,038
PA	\$11,205	\$18,591
NC	\$12,748	\$19,285
IL	\$12,836	\$18,656
FL	\$13,012	\$23,651
CA	\$13,091	\$25,235
GA	\$13,108	\$22,394
TN	\$14,670	\$22,815
TX	\$15,733	\$21,536
12-State Median	\$12,792	\$18,971

Source: WORKERS COMP. RESEARCH INST. COMPSCOPE™ BENCHMARKS MULTISTATE COMPARISONS 1994-2000, 33 tbl.2.8 (2003).

Note: 1997 and 1999 claims as of mid-2000.

Table 9 yields three observations. First, there is considerable variation across the states in average cost per claim with more than seven days lost time. Texas, the state with the highest cost for immature claims, has a cost that is \$7,458 (90.1%) higher than the costs of immature claims for Connecticut. For mature claims the difference between the states with the highest (California) and lowest (Wisconsin) costs is \$13,409, or 107.1%. This variation suggests that system features play a significant role in determining the level of medical and indemnity benefits paid to workers with similar injuries, working in similar industries, and earning similar wages. Second, the average total cost per claim with more than seven days lost time in Georgia is higher than the twelve-state medians for both immature (by \$316 or 2.5%) and mature (by \$3,423 or 18.0%) claims.⁴⁰ Third, Georgia's average total cost for mature claims is \$421 (1.8%) lower than Tennessee's, \$1,257 (5.3%) lower than Florida's, and \$3,109 (16.1%) higher than North Carolina's.

⁴⁰ The "average total cost" includes the benefit payments (which include medical and indemnity benefits) and benefit delivery expenses. Georgia had higher than median "average cost per claim" for each component of the average total cost. WCRI BENCHMARKS 1994-2000, *supra* note 35, 33 tbl.2.8.

D. A BOTTOM LINE ASSESSMENT OF WORKERS' COMPENSATION COSTS IN GEORGIA

Georgia has relatively low overall workers' compensation costs per claim compared to other states, including our neighbors in the Southeast. Although the average cost per claim with more than seven days lost time is higher, these claims account for approximately only 14-15% of total claims. The lower average total cost per claim for the other 85-86% of claims keeps Georgia's average cost per claim for all claims comparatively low. There is no indication in these data that workers' compensation costs place Georgia employers at a competitive disadvantage with employers in other states. Our conclusions here are reinforced by a recent report that lists Georgia as one of only seven states to receive a grade of "A" in controlling workers' compensation costs.⁴¹

V. INSURANCE PROFITABILITY

This section examines the insurance industry and has three objectives. First, it provides a broad overview of the insurance market in Georgia. Second, it compares insurance industry data by state between 1991 and 2000.⁴² The third goal is to compare the profitability of the insurance industry in Georgia with the profitability of other sectors.

A. THE GEORGIA INSURANCE MARKET

In 2002, 324 insurance firms were in the workers' compensation market in Georgia.⁴³ The market was extremely competitive and very fragmented with a large number of firms. Only four firms had a market share of more than 2.5% (Builders Insurance with 7.4%, Commerce & Industry Insurance Co. with 3.5%, Travelers Indem-

⁴¹ WORK LOSS DATA INST., STATE REPORT CARDS FOR WORKERS' COMPENSATION (Feb. 24, 2003).

⁴² Robert E. Hoyt, Chairman of the Department of Legal Studies, Real Estate, and Insurance at the Terry College of Business, University of Georgia, used data from the National Association of Insurance Commissioners for this analysis.

⁴³ All market share information in this paragraph is provided by the THOMPSON FINANCIAL INFORMATION, GEORGIA WORKERS' COMPENSATION MARKET SHARE REPORT (2001).

nity Co. of IL with 3.4%, and Liberty Mutual Fire Insurance with 2.9%). Only 26 firms have a market share of more than 1%. The ten largest firms had a combined market share of 29.6% and the 25 largest firms had a combined market share of 48.9%.⁴⁴ In the past few years there has been some consolidation in the industry. For example, Legion (which was the second-largest firm in Georgia and had a 2001 market share of 6.1%) and Reliance are no longer writing workers' compensation insurance in Georgia because of regulatory actions taken in other states.

One important characteristic of the insurance industry is that it is procyclical (moves with the economy). So the industry tends to perform well during periods of economic growth and less well during economic slowdowns,⁴⁵ as has been occurring in the last few years. Also, the al-Qaeda terrorist attacks in September 2001 constituted a large negative capital shock to the insurance industry, which is still trying to resolve issues that relate to terrorism in the workplace.

The insurance industry differs from many industries in that it collects its revenues (in the form of premiums) up front, but does not incur many of its costs until later (sometimes years later) when it pays its benefits. Because of this delay between revenues and costs, investment income plays an important role in determining the profitability of insurance firms and the premiums they charge. When the return on investment is relatively high, customers benefit in the form of reduced premiums. Conversely, when the return on investment is relatively low, customers pay more for premiums. Consequently, premium prices can change even if the underlying likelihood of being injured and the cost of treating injured workers do not change. This quality of the insurance market helps to explain why insurance premiums have increased so rapidly in the last few years, as the high returns in the equity markets have significantly decreased.

Another important characteristic of this industry is that because of industry discounting, employers' premiums can change even

⁴⁴ These reported market shares do not include the shares of subsidiaries, which are tallied independently.

⁴⁵ See *infra* Part V.B & C.

though the manual rate approved by the insurance commissioner remained the same. The data show two important conclusions about discounting. First, discounts in Georgia are substantially more than they are nationwide. From 1991-2000 the annual average discount in Georgia was 17.7%, 3.9 percentage points higher than the average annual rate of 13.8%.⁴⁶ This gap between Georgia and the rest of the nation was especially large between 1998-2000, when Georgia's average was 33.7% compared to the national average of 21.5%. Second, the degree of discounting recently declined, indicating that employers are paying higher premiums even though the manual rate has not changed. Nationwide the discount was 23.4% in 1999, 19.2% in 2000, and 15.3% in 2001.⁴⁷ The change in Georgia started one year earlier but has not been as large as it is nationwide. In 1998, Georgia's average discount was 35.9%, the largest of the decade. In 1999 and 2000, Georgia's discount declined to 32.6 and 32.7%, respectively.⁴⁸

B. INTERSTATE COMPARISONS OF INSURANCE PROFITABILITY AND PERFORMANCE

The interstate comparisons report four measures—the Loss Ratio, Underwriting Profit, Net Income and Return on Equity (ROE). The analysis includes the national average, Georgia, its five border states (Alabama, Florida, North Carolina, South Carolina, and Tennessee), and California, which has received a lot of attention for its changes in workers' compensation laws. To summarize, Georgia ranks very well compared to the other states and is either first or second in each of the categories. The trends of two other states—California and Florida—are important to examine. At the beginning of the period, California was consistently ranked as one of the top-performing states. However, the substantial regulatory changes it implemented during the 1990s harmed the industry, and by 2000 it was by far the worst in each of the four categories. In

⁴⁶ Nat'l. Council on Comp. Ins., *The Impact of Discounting on Premium in Georgia* (2002) [hereinafter *NCCI Georgia*]; Nat'l Council on Comp. Ins., *The Impact of Discounting on Premium* (2002) [hereinafter *NCCI National*].

⁴⁷ *NCCI National*, *supra* note 46.

⁴⁸ *NCCI Georgia*, *supra* note 46.

contrast, Florida went from being the poorest-performing state in the beginning of the period to one of the highest-performing states at the end. This section concludes by comparing the Return on Equity of Georgia's workers' compensation to other industries and shows that Georgia's workers' compensation carriers had a low Return on Equity relative to other industries.

Table 10 ranks the average Loss Ratio (the share of losses incurred⁴⁹ to direct premiums earned⁵⁰) by state for the years 1991 through 2000. The top-performing state is South Carolina, which over this period had only 62.7 cents in losses incurred for every dollar earned in direct premiums. Georgia has the second-best average (63.7%) over this period and did well throughout the period.⁵¹ The trends in Florida and California stand out. In 1991, Florida's loss ratio (106.3%) exceeded its direct premiums earned by 6.3%, by far the worst in that year. By 2000, Florida improved its loss ratio to 64%, second only to Alabama's 63.5%. California experienced the exact opposite pattern, going from the second-best Loss Ratio (78.0%) in 1991 to 108.9% in 2000, which exceeded the next-worst state's experience (North Carolina) by 36.2%. Last, in most states the loss ratio has increased significantly since 1997. Between 1997 and 2000, the loss ratio in Georgia increased by 75.8%, the largest change of all the states during this period. However, even after this growth in 2000, Georgia's loss ratio was 14.9% lower than the U.S. average and was lower than that of all the comparison states except for Florida and Alabama.

⁴⁹ Losses incurred are the paid and reserved losses, which include all the losses actually paid for a given year, and the reserved losses, which are estimates of how much the company will need to pay in the future for the given year's insurance.

⁵⁰ The measure of direct premiums earned includes premiums sold to buyers and excludes reinsurance.

⁵¹ Georgia's loss ratio in 2001 was the lowest of the 36 states in which NCCI acts as the statistical agent. NAT'L COUNCIL ON COMP. INS., ON WORKERS' COMPENSATION: MONTHLY DEVELOPMENTS AROUND THE NATION, Mar. 2003, at tbl.1.

Table 10

Loss Ratio by State 1991-2000,
Ranked by Average

State	1991-2000	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
SC	62.7	72.6	58.4	62.9	55.1	53.5	63.1	44.5	66.4	75.9	74.6
GA	63.7	84.1	81.2	69.5	51.9	67.5	50.9	39.7	59.1	62.9	69.8
TN	67.5	85.7	84.2	73.9	66.5	59.0	48.2	47.1	87.2	52.4	70.8
NC	70.3	98.4	91.6	75.9	59.0	50.0	56.4	50.1	71.4	77.5	72.7
US	71.5	85.9	83.1	73.0	60.8	61.3	63.2	61.9	68.5	76.6	80.8
CA	80.7	78.0	79.1	65.1	53.1	61.4	82.4	84.6	88.6	105.7	108.9
AL	80.8	99.9	87.3	88.4	49.0	87.9	76.4	75.1	102.4	78.1	63.5
FL	81.5	106.3	119.7	99.2	72.3	91.6	73.7	53.5	69.7	64.6	64.0

Source: NAT'L ASS'N OF INS. COMM'RS, PROFITABILITY BY LINE BY STATE IN 2000 126-354 (Nov. 2001).

Note: The Loss Ratio is the share of losses incurred to direct premiums earned.

Table 11 reports underwriting profit (the share of underwriting profit⁵² to direct premiums earned) by state from 1991 through 2000. During this period all states had negative underwriting profits on average that were offset by the high returns on investment income they received. Tennessee is the best performer at -3.5%, followed closely by Georgia, with an average of only -4.9%. In 1991, Florida had the largest losses (-40.0%) but by 2000 had improved its underwriting profit to -15.5%, which was third best in that year. Between 1997 and 2000, Georgia's underwriting profit dropped 35.6 points from 16.6 to -19.9, the second-largest drop behind only South Carolina's, which dropped 37.1 points during the same period. In 2000, Georgia's underwriting profit was still 26.6% better than the

⁵² Underwriting profit includes losses incurred and a broader range of expenses (like operating expenses and commissions) but excludes investment income.

national average. In 2000, Alabama, North Carolina, and Tennessee had higher underwriting profits than did Georgia.

Table 11

Underwriting Profit by State 1991-2000,
Ranked by Average

State	1991-2000	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
TN	-3.5	-15.5	-16.1	-4.0	0.3	6.9	17.2	15.9	-31.8	5.3	-13.6
GA	-4.9	-14.0	-16.6	-4.0	9.8	-8.9	7.7	16.6	-7.2	-13.6	-19.0
SC	-4.9	-1.6	6.4	-0.3	7.2	7.3	-10.8	12.3	-16.7	-28.0	-24.8
NC	-6.1	-30.3	-21.5	-4.2	10.7	19.4	9.5	-1.4	-11.4	-18.9	-12.6
US	-12.2	-19.4	-17.7	-7.0	1.1	-1.3	-5.7	-5.0	-15.5	-25.7	-25.9
AL	-22.5	-31.7	-20.9	-23.4	18.4	-29.5	-21.7	-28.3	-51.0	-27.0	-9.7
CA	-25.0	-15.9	-17.4	-0.7	0.9	-12.2	-29.4	-26.4	-35.3	-56.6	-56.6
FL	-27.0	-40.0	-63.2	-39.8	-13.1	-38.3	-21.3	0.4	-21.6	-17.4	-15.5

Source: NAT'L ASS'N OF INS. COMM'RS PROFITABILITY BY LINE BY STATE IN 2000, 126-354 (2001).

Table 12 lists the Net Income (the profit on insurance transactions⁵³ divided by direct premiums earned) by state. Georgia had the best average Net Income from 1991 to 2000, receiving 10.2 cents in profit from insurance transactions for every dollar of direct premiums received. Compared to the experience of other states, Georgia's record was more consistent throughout the period. California, which performed most poorly, was the only state that had a negative average Net Income (-2.3%) during the period. By this measure Georgia's post-1997 profit dropped 21.7 points, the largest drop in the group. In the last year of the period Georgia's net income was more than twice the national average, and ranked behind Florida, North Carolina, and Tennessee.

⁵³ Profit on insurance transactions includes investment income.

Table 12

Net Income by State 1991-2000,
Ranked by Average

State	1991-2000	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
GA	10.2	1.1	1.6	10.8	18.9	8.1	18.7	25.0	10.8	3.4	3.3
TN	8.6	-1.0	-0.3	8.3	8.9	13.7	20.3	20.9	-6.8	15.3	6.7
SC	8.0	9.1	15.8	10.4	14.0	15.0	3.3	19.7	1.8	-6.9	-1.8
NC	7.9	-9.2	-1.3	9.7	17.0	24.8	17.7	11.5	4.2	-0.9	5.9
US	7.4	-0.3	3.2	9.8	13.1	14.0	12.1	14.3	7.0	-1.0	1.4
AL	5.1	-7.2	1.1	1.8	26.1	1.6	11.0	3.3	-10.7	3.5	20.7
FL	0.7	-6.6	-15.7	-0.9	7.7	-6.8	2.5	17.5	1.4	2.3	5.4
CA	-2.3	0.1	0.6	10.6	10.8	8.3	-1.7	-0.4	-8.3	-22.9	-20.5

Source: NAT'L ASS'N OF INS. COMM'RS, PROFITABILITY BY LINE BY STATE IN 2000 126-354 (2001).

Note: Net Income is the ratio of direct premiums earned to profit on insurance transactions.

Table 13 ranks the Return on Equity (percent return on net worth divided by total net worth) by state for the years 1991-2000 by the average ROE over this period. In each year throughout the period Georgia is one of the best performers, with a relatively high return on equity. Georgia's overall average is 11.1%, second only to South Carolina's 11.3%. As is true for the other measures, California performed well at the beginning of the decade, but was the worst performer in every year from 1996 to 2000. In 1999 and 2000, California was the only state that had negative returns on equity, at -6.7% and -5.3%, respectively. This table also shows that Georgia experienced the largest decreases (12.1 points) in ROE between 1997 and 2000. In 2000, Georgia's return on equity was slightly higher than the national average and greater than only South Carolina and California.

Table 13

Return on Equity by State 1991-2000,
Ranked by Average

State	1991-2000	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
SC	11.3	15.0	20.8	14.3	14.8	14.8	6.5	15.9	5.6	0.9	3.9
GA	11.1	6.0	6.9	13.4	17.4	9.8	16.0	18.6	9.9	6.2	6.5
TN	10.6	3.7	5.3	12.7	11.2	14.6	18.8	18.1	1.6	12.2	8.1
US	10.0	4.9	8.6	13.3	14.4	14.3	12.4	12.8	8.8	4.5	6.0
NC	9.6	-4.8	4.0	12.6	17.3	21.7	15.8	11.1	7.0	3.9	7.8
AL	7.4	-1.7	6.2	6.0	22.4	5.4	9.4	6.8	1.1	6.1	12.4
FL	5.0	0.1	-4.0	4.4	9.8	0.4	6.1	13.7	5.8	5.7	7.8
CA	4.8	5.2	6.1	15.3	13.7	10.2	3.9	4.9	1.0	-6.7	-5.3

Source: NAT'L ASS'N OF INS. COMM'RS, PROFITABILITY BY LINE BY STATE IN 2000 126-354 (2001).

Note: Return on Equity is the percent of net worth to return on net worth.

The most recent rate filings by NCCI confirm that workers' compensation remains a profitable line of insurance in Georgia. NCCI has a pending rate request in Georgia that would decrease rates by 6.7%. In states that border Georgia, NCCI recommends rate decreases in Alabama (-7.5%), North Carolina (-2.0%) and Tennessee (-2.7%); and rate increases in Florida (+7.6%) and South Carolina (+22%).⁵⁴

C. COMPARING PROFITABILITY IN THE INSURANCE SECTOR WITH THE PROFITABILITY OF OTHER INDUSTRIES

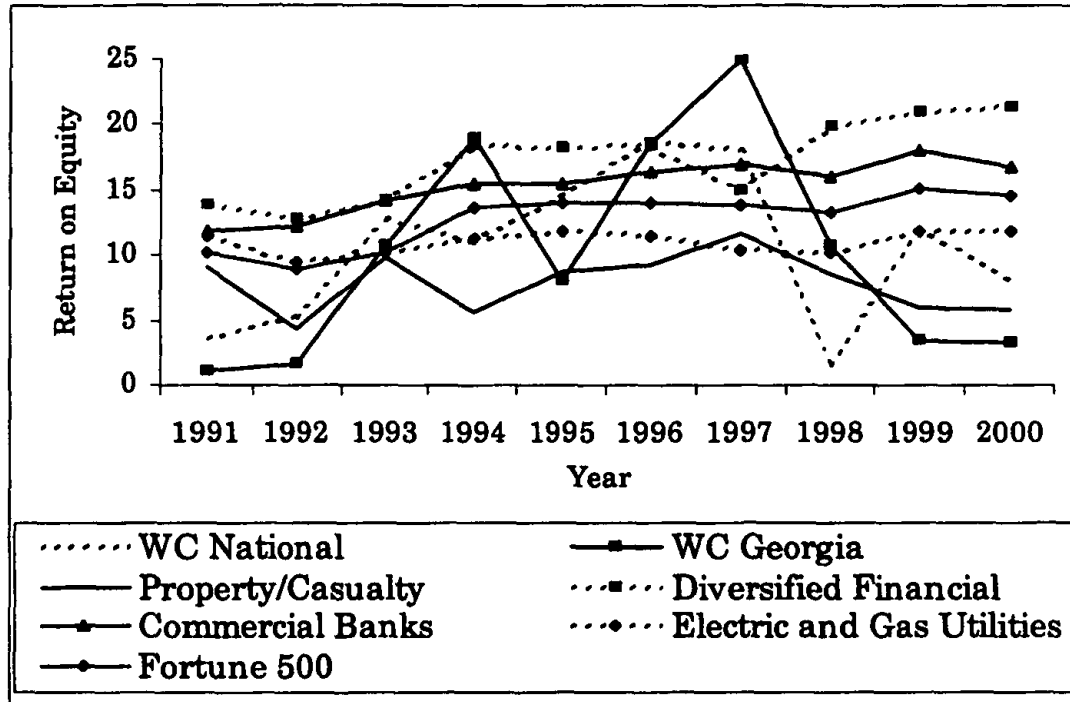
It is also helpful to compare the insurance industry's experience in Georgia with the experiences of other industries during the last decade. Figure 8 compares the Return on Equity in Georgia to the Return on Equity of other industries. Diversified Financial Organizations, Commercial Banks, and the Fortune 500 are the

⁵⁴ NAT'L. COUNCIL ON COMP. INS., STATUS OF RATE REVISIONS (Jan. 24, 2003).

highest-performing sectors, and in 2000 have Returns on Equity of about 22%, 17% and 15%, respectively. The Electric and Gas Utilities sector is the most stable performer, both starting and finishing the decade with a Return on Equity of about 12%. The National and Georgia workers' compensation sectors start the period with the lowest Returns on Equity (about 6%), and are typically in the middle of the pack in the middle of the decade. In 1999 and 2000, the last two years of the sample, the Georgia workers' compensation insurance industry exhibits the lowest Returns on Equity of all the categories. This figure clearly reflects the procyclical nature of the insurance industry as its ROE was very low at the beginning and end of the period when there were economic slowdowns and grew quickly during the middle part of the decade when returns on investments were relatively high. All property and casualty insurance lines (measured by Generally Accepted Accounting Principles) consistently exhibited the lowest Return on Equity. Recent industry reports indicate that the ROE for property and casualty insurance, in general, and workers' compensation, in particular, remains low compared to the ROE in other industries.⁵⁵

⁵⁵ Robert P. Hartwig, *Ins. Info. Inst., Workers Compensation: The Industry's Quiet Crisis? An Overview and Outlook for Workers Compensation Markets Today* (Apr. 24, 2003) (on file with author).

Figure 8

Return on Equity by Industry,
1991-2000

Source: INS. INFO. INST., FACT BOOKS (1995 & 2002 editions).

To conclude, during the 1990s, Georgia's workers' compensation performed well relative to other states. In contrast to the profiles of some states, especially Florida and California, Georgia's profitability measures were relatively stable throughout the decade. One concern, however, is that between 1997 and 2000, Georgia's rates of change in loss ratio, net income, and return on equity were the worst of all the included states, and Georgia experienced the second-largest decrease in underwriting profit. However, even with these changes, Georgia outperformed the national average in each of the four profitability measures for each year between 1997 and 2000. Georgia also performed well compared to other states in each measure in 1997-1999. Four states outperformed Georgia in underwriting profits and return on equity in 2000, and three states outperformed Georgia in net income and loss ratios in 2000. Compared to other industries, Georgia workers' compensation had Returns on Equity that were quite low, and exhibited much greater

variance than the more consistent annual measures reported in other sectors.

VI. ARE INDEMNITY BENEFITS IN GEORGIA ADEQUATE TO PROTECT INJURED WORKERS AND THEIR FAMILIES?

Indemnity (income) benefits are intended to protect workers and their families from the catastrophic economic consequences of workplace injuries and fatalities. The amount of weekly indemnity benefits paid to an injured worker commonly is calculated in terms of a percentage of that worker's average weekly wage and is subject to a statutorily defined maximum or ceiling. In many states injured workers receive two-thirds of their average weekly wage but no more than a specified percentage of the state's average weekly wage.⁵⁶ Whether a state's workers' compensation system is providing adequate income protection to injured workers generally depends on the ceiling (or cap) placed on recovery. The data indicate that Georgia workers are not provided as much income protection as their counterparts in other states.

A. GEORGIA IS ONE OF ONLY A FEW STATES THAT SETS A MAXIMUM RECOVERY FOR INDEMNITY BENEFITS AT LESS THAN TWO-THIRDS OF THE STATE'S AVERAGE WEEKLY WAGE

Forty-three states set the maximum indemnity benefit as a percentage of the state's average weekly or monthly wage. Thirty-three of these states have a cap of 100% or more of the state's average weekly or monthly wage for temporary total disability.⁵⁷ Forty-four states set their maximum award for permanent total disability by

⁵⁶ In discussions of workers' compensation benefits, there has been some disagreement about whether to use the state average weekly wage for all workers or to use the state average weekly wage excluding federal employees, because the state's workers' compensation laws do not cover federal employees. To determine the significance of this difference we requested the Georgia Department of Labor to calculate the average weekly wage in two ways—including and excluding federal employees—for the period 1980 to 2000. During this twenty-one-year period, average wages that covered federal workers were between \$4 and \$6 higher than average wages excluding federal workers. This paper reports the state average weekly wage for all employees.

⁵⁷ OFFICE OF WORKERS' COMP. PROGRAMS, U.S. DEPT OF LABOR, STATE WORKERS' COMP. LAWS 24-34 tbl. 6 (2002) [hereinafter OFFICE OF WORKERS' COMP. PROGRAMS].

reference to the state's average weekly or monthly wage. Thirty-two of these states set the cap at 100% or more of the state's average weekly or monthly wage.⁵⁸ Georgia is one of only a few states that uses a fixed cap. Currently the maximum benefit an injured worker can receive is \$400 per week.⁵⁹ According to the Georgia Department of Labor, the state's average weekly wage for 2000 was \$657.⁶⁰ Thus, the most an injured Georgia worker can receive in indemnity benefits is 60.8% of the state's average weekly wage. Table 14 compares the cap on indemnity benefits in Georgia with those in eleven southern states.

Table 14⁶¹

**Statutory Cap as a Percentage of Average Weekly Wages,
Southeastern States**

State	Statutory Cap as a Percentage of Average Weekly Wage	Cap on Weekly Indemnity Benefits (in Dollars)	Average Weekly Wage
Alabama	100%	\$654.00	\$654.00
Florida	103%	\$549.00	\$531.00
North Carolina	101%	\$594.00	\$587.00
Kentucky	100%	\$551.00	\$551.00
South Carolina	100%	\$549.42	\$549.42
Tennessee	100%	\$581.00	\$581.00
Virginia	96%	\$645.00	\$671.00
Arkansas	85%	\$425.00	\$500.00
Louisiana	74%	\$398.00	\$536.00
Mississippi	68%	\$322.90	\$477.00
Georgia	60.8%	\$400.00	\$657.00

Source: The information on the respective state statutory caps as a percent of the state average weekly wage is from the OFFICE OF WORKERS' COMP. PROGRAMS, U.S. DEPT OF LABOR, STATE WORKERS' COMP. LAWS 24-34 tbls. 6 & 7 (2002).

The state average weekly data came from websites and telephone contacts in the state Departments of Labor.

⁵⁸ *Id.* at 35-45 tbl. 7.

⁵⁹ O.C.G.A. § 34-9-261 (2003).

⁶⁰ State average weekly wage data provided by Taryn Trent, Georgia Department of Labor, at the request of the Commission.

⁶¹ EDITOR'S NOTE: Slightly different numbers appear in the Report as originally published. The revised numbers do not change the tone or conclusions of the Report.

Georgia is the only southern state that does not provide income protection of at least two-thirds of the state's average weekly wage. Six of the other ten southern states place the cap at 100% or more of the state's average weekly wage.

B. THE CURRENT CAP ON INDEMNITY BENEFITS ADVERSELY AFFECTS APPROXIMATELY ONE-THIRD OF GEORGIA CLAIMANTS

At the request of the Commission, the State Board undertook to determine how many claims are adversely affected by the cap and in which sectors of the economy those workers were employed. Table 15 summarizes these data.

Table 15
Maximum Comp/Non Max Comp by SIC Code,
1997-2001

Sector	Number of Claims Paid At the Statutory Cap	Number of Claims Paid Below the Statutory Cap
Manufacturing	10,379	16,278
Transport/Communications	9,402	6,450
Service	6,592	20,730
Construction	6,047	9,121
Government	4,403	9,256
Retail	2,734	16,140
Wholesale	1,849	3,129
Finance/Insurance/ Real Estate	624	1,036
Agriculture/Fish/Forest	389	1,410
Other	15	29
Total	42,434	83,579
Percent	33.67%	66.32%

Source: GA. STATE BD. OF WORKERS' COMP., COMPENSATION PAID AT THE STATUTORY CAP 4 (2002).

Table 15 reveals that approximately one-third of indemnity claims paid between 1997 and 2001 were paid at the statutory maximum. These claimants would have received more benefits if

the cap had been calculated in terms of at least two-thirds of the state's average weekly wage. It is impossible to calculate precisely how much more these workers would have received because the wages of individual claimants are not reported if the claim is paid at the statutory maximum. However, these injured workers clearly would have received greater income protection if Georgia employed the same standard for calculating maximum indemnity benefits as used in every other southern state. Table 15 also shows the sector of the economy in which these workers were employed. Not surprisingly, the largest number of claims paid at the statutory maximum (10,379) involves workers employed in manufacturing. The next largest groups are transportation, service, construction, and government.

C. GEORGIA IS ONE OF ONLY A VERY FEW STATES THAT DOES NOT INDEX ITS MAXIMUM WEEKLY INDEMNITY BENEFITS

In forty-four states and the District of Columbia, the maximum weekly indemnity benefit payable is adjusted annually by reference to some index.⁶² The most common index is the state's average weekly wage. Indexing automatically adjusts the maximum benefits without legislation, depending on what happened to the state's average weekly wage in the preceding year. Georgia is one of a very few states in which specific legislation is required to adjust the level of income protection. In fact, Georgia is the only southern state that does not index its maximum weekly indemnity benefit. The past practice in recent years of legislatively enacted \$25 incremental increases in the maximum indemnity benefit has fallen short of providing Georgia workers with weekly income protection equal to that provided in sister states.

⁶² OFFICE OF WORKERS' COMP. PROGRAMS, *supra* note 57, at 69-70 tbl. 10.

VII. WHY ARE GEORGIA'S AVERAGE COSTS FOR CLAIMS WITH SEVEN OR MORE LOST DAYS COMPARATIVELY HIGH WHEN THE CAP ON WEEKLY INDEMNITY BENEFITS IS ONE OF THE LOWEST IN THE NATION?

Part IV stated that the average cost per claim with seven or more lost days is higher in Georgia than in many states. Part VI documented that Georgia has one of the lowest caps on weekly indemnity benefits in the nation. How can income benefits be low and average costs high for this category of claims?⁶³ What explains this apparent anomaly? The Commission acknowledges that it does not have a definitive answer to these questions. However, we have identified some variables that may provide insight.

A. DURATION OF TEMPORARY TOTAL DISABILITY BENEFITS

The duration of benefits is one important reason why Georgia's weekly income benefits are comparatively low and overall costs are comparatively high. Table 16 compares the average duration of temporary total disability income benefits for claims involving seven or more days of lost time in twelve states.

Table 16
Average Duration of Temporary Disability,
Claims with More than 7 Days of Lost Time,
Accident Years 1997 and 1999

State	Average Number of Weeks of TD Benefits; Accident Year 1999	Average Number of Weeks of TD Benefits; Accident Year 1997
WI	8	9
IL	11	11
TN	11	11
IN	11	12
CT	11	14
FL	13	16

⁶³ It bears reminding that claims with seven or more days lost time account for only 14-15% of the total claims in Georgia. See Table 8.

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GA	13	20
NC	13	16
PA	13	23
MA	14	23
CA	16	23
TX	17	20
12-State Median	13	16

Source: WORKERS COMP. RESEARCH INST., COMPSCOPE™ BENCHMARKS: MULTISTATE COMPARISONS 1994-2000, 68-69 tbl. 2.15 (2003).

Note: 1997 and 1999 claims are as of mid-2000.

These data reveal that for immature claims the average Georgia worker who misses seven or more days of work receives temporary total disability benefits for about the same period of time as the twelve-state median. However, for the mature claims the duration of Georgia claims is twenty weeks compared to the median of sixteen weeks. A subsequent study by WCRI, discussed in section C below, reinforces the suggestion made here that the duration of temporary total disability awards in Georgia is a factor that helps explain why the average total cost for claims with 7 or more lost days is comparatively high despite a low cap on weekly indemnity benefits.

B. CLAIMS WITH SEVEN OR MORE DAYS LOST TIME THAT INCLUDE PAYMENTS FOR PERMANENT PARTIAL DISABILITY

WCRI characterizes as “permanent partial disability” (PPD) all claims settled by a lump-sum payment. All payments made pursuant to a lump-sum settlement are treated as payments for PPD. According to WCRI, this is a standard convention that it applies to data from all states. Several members of the Commission maintain that this standard does not accurately describe practices in Georgia. That is, both claimant and defense attorneys dispute that all moneys paid pursuant to a lump-sum settlement are paid for PPD. In fact, they maintain that payments for PPD may account for only a small portion of most lump-sum settlements. The discrepancy between Georgia practices and the standard convention employed by WCRI may produce an overestimation of the number

and costs of PPD claims in Georgia. With this important caveat in mind, we turn to WCRI data on PPD claims.

WCRI reports that approximately 25% of immature and 44% of mature claims include payments for PPD.⁶⁴ These percentages are in line with patterns in other states.⁶⁵ Table 17 shows that the average total cost for PPD claims with more than seven days of lost time is comparatively high in Georgia.

Table 17

**Average Benefit Payment per Permanent Partial Disability Claim
with More than 7 Days of Lost Time,
Accident Years 1997 and 1999**

State	Average Benefit Payment per Claim; Accident Year 1999	Average Benefit Payment per Claim; Accident Year 1997
CT*	\$14,349	\$24,835
IL**	\$15,190	\$23,577
NC**	\$16,495	\$25,506
WI**	\$17,058	\$26,891
FL*	\$17,137	\$30,931
IN*	\$17,804	\$24,456
GA*	\$18,042	\$33,082
TX*	\$18,703	\$30,658
CA**	\$18,774	\$34,424
TN**	\$29,122	\$37,196
10-State Median	\$17,470	\$28,774

Source: WORKERS COMP. RESEARCH INSTITUTE, COMPSCOPE™ BENCHMARKS: MULTISTATE COMPARISONS 1994-2000, 43 tbls. 2.10 & 2.11 (2003).

Notes: 1997 and 1999 claims as of mid-2000.

* PPD based on impairment only.

** PPD based on impairment and other factors.

The average total cost in Georgia is \$572 higher for immature claims and \$4,308 higher for mature claims than the 10-state

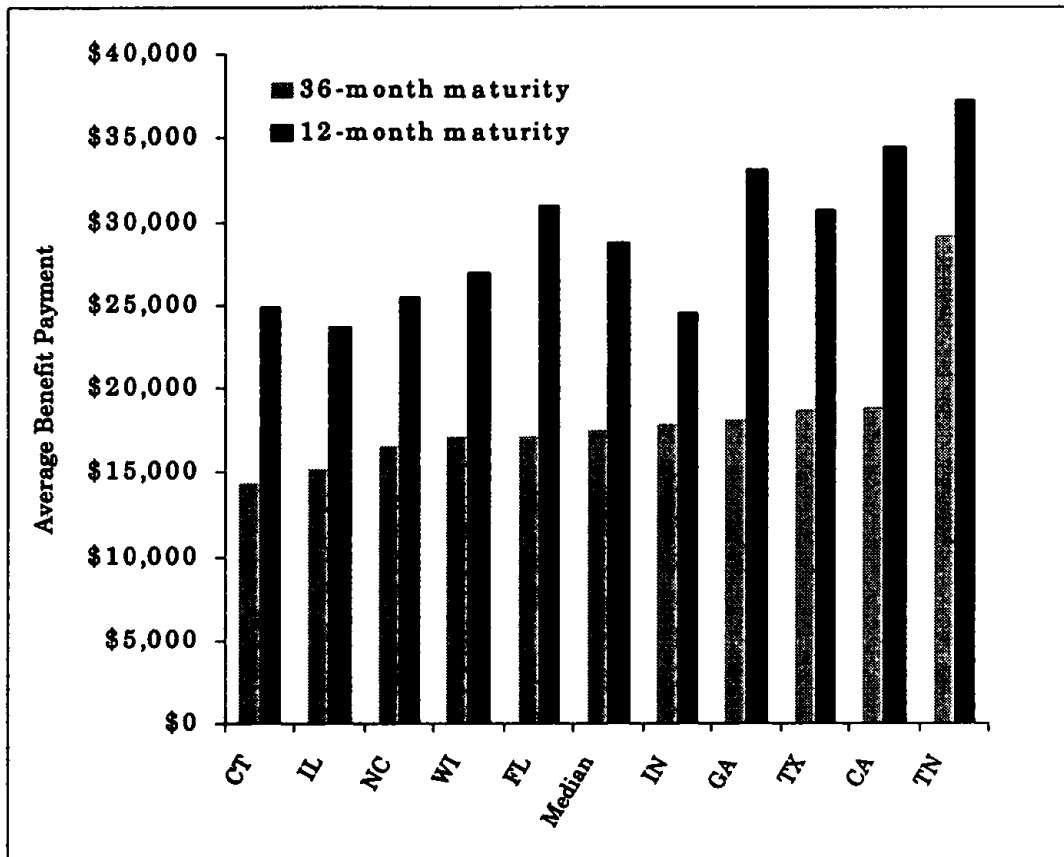
⁶⁴ WCRI BENCHMARKS 1994-2000, *supra* note 35, at 43 tbls. 2.10 & 2.11.

⁶⁵ The twelve-state medians are 21% and 43%, respectively. *Id.* at 43 tbls. 2.10 & 2.11.

medians.⁶⁶ Figure 9 graphically depicts the differences among the ten states.

Figure 9

**Average Benefit Payment per Permanent Partial Disability Claim
with More than 7 Days of Lost Time,
Accident Years 1997 and 1999**



Source: WORKERS COMP. RESEARCH INSTITUTE, COMPSCOPE™ BENCHMARKS: MULTISTATE COMPARISONS 1994-2000, 43 tbls. 2.10 & 2.11 (2003).

Notes: 1997 and 1999 claims as of mid-2000.

CT, FL, GA, IN and TX PPD data are based on impairment only.

CA, IL, NC, TN and WI PPD data are based on impairment and other factors.

The primary components of the “average total cost” are medical and indemnity benefits. The average medical benefit in this

⁶⁶ Tables 17-19 report 10-state medians instead of 12-state medians used in other tables because WCRI did not include two states (Pennsylvania and Massachusetts) in these calculations. These two states were excluded because they employ a fundamentally different approach in determining PPD awards.

category of claim was actually lower in Georgia than in most of the comparison states.⁶⁷ However, Table 18 shows that the average indemnity payment for such claims was higher than in most of the comparison states.

Table 18

**Average Indemnity Payment per Permanent Partial Disability Claim
with More than 7 Days of Lost Time,
Accident Years 1997 and 1999**

State	Average Indemnity Payment per Claim; Accident Year 1999	Average Indemnity Payment per Claim; Accident Year 1997
WI**	\$6,998	\$13,177
IN*	\$7,700	\$10,286
CT*	\$8,439	\$14,887
TX*	\$8,955	\$14,605
IL**	\$9,131	\$15,000
FL*	\$9,704	\$19,959
CA**	\$10,261	\$21,819
GA*	\$11,169	\$20,491
NC**	\$11,240	\$16,822
TN**	\$18,485	\$24,517
10-State Median	\$9,417	\$15,911

Source: WORKERS COMP. RESEARCH INST., COMPSCOPE™ BENCHMARKS: MULTISTATE COMPARISONS 1994-2000, 43 tbls. 2.10 & 2.11 (2003).

Notes: 1997 and 1999 claims as of mid-2000.

* PPD based on impairment only.

** PPD based on impairment and other factors.

⁶⁷ The average medical payment per PPD claim with seven or more lost work days in Georgia was \$6,873 for immature claims and \$12,591 for mature claims. The corresponding 10-state medians were \$7,973 and \$12,598, respectively. WCRI BENCHMARKS 1994-2000, *supra* note 35, at 43 tbls. 2.10 & 2.11.

The average indemnity payment per PPD claim with more than 7 days of lost time was \$1,752 higher in Georgia than the 10-state median for immature claims and \$4,580 higher for mature claims.

Table 19 reveals that the average payment for the PPD component of indemnity benefits for such claims is higher in Georgia than in many of the comparison states.

Table 19

**Average Permanent Partial Disability Payment per PPD Claim
with More than 7 Days of Lost Time,
Accident Years 1997 and 1999**

State	Average PPD payment per Claim; Accident Year 1999	Average PPD payment per Claim; Accident Year 1997
WI**	\$3,509	\$7,752
CA**	\$4,195	\$11,997
TX*	\$4,323	\$6,516
CT*	\$4,673	\$9,448
IN*	\$4,742	\$5,319
FL*	\$5,503	\$13,410
IL**	\$6,993	\$11,355
GA*	\$8,072	\$14,405
NC**	\$8,525	\$11,599
TN**	\$15,001	\$20,207
10-State Median	\$5,122	\$11,477

Source: WORKERS COMP. RESEARCH INST., COMPScope™ BENCHMARKS: MULTISTATE COMPARISONS 1994-2000, 43 tbls. 2.10 & 2.11 (2003).

Notes: 1997 and 1999 claims as of mid-2000.

* PPD based on impairment only.

** PPD based on impairment and other factors.

WCRI reports that the average PPD payment for both immature and mature claims is more than \$2,900 higher than the 10-state median.

The final bit of information regarding this category of claims concerns lump-sum settlements. A higher percentage of claims in Georgia are resolved by a lump-sum settlement than in many of the

comparison states. In Georgia, 10% of the immature claims and 24% of the mature claims were resolved by lump-sum settlements compared to the 12-state medians of 7% and 20% respectively.⁶⁸ Table 20 reveals that the average amount paid in a lump-sum settlement in Georgia is \$1,991 higher than the 12-state median for immature claims, and \$2,558 higher for mature claims.

Table 20

**Average Lump-Sum Payments per Claim
with More than 7 Days of Lost Time and a Lump-Sum Settlement,
Accident Years 1997 and 1999**

State	Average LS payment per claim; Accident Year 1999	Average LS payment per claim; Accident Year 1997
WI	\$3,743	\$7,034
TX	\$4,648	\$5,213
CT	\$4,878	\$9,548
IN	\$5,413	\$5,607
CA	\$6,304	\$10,368
FL	\$7,611	\$16,029
MA	\$8,136	\$15,360
IL	\$9,110	\$15,162
NC	\$9,190	\$12,104
GA	\$9,865	\$16,191
PA	\$12,875	\$28,235
TN	\$15,479	\$18,314
12-State Median	\$7,874	\$13,633

Source: WORKERS COMP. RESEARCH INST., COMPSCOPE™ BENCHMARKS: MULTISTATE COMPARISONS 1994-2000, 48 tbl.2.12 (2003).

Note: 1997 and 1999 claims as of mid-2000.

The data presented in this section indicate that the average total cost for claims with seven or more lost work days is higher in Georgia than the 10-state median; average medical costs are lower,

⁶⁸ WCRI BENCHMARKS 1994-2000, *supra* note 35, at 48 tbl. 2.12.

but average indemnity costs are higher, especially for claims in which PPD payments are made; and the percentage of lump-sum settlements and the average amount of such settlements are higher. However, we again caution that discrepancies between Georgia practices and the reporting conventions used by WCRI may produce an overestimation of costs attributable to PPD claims.

C. MAXIMUM MEDICAL IMPROVEMENT (MMI) AND RETURN TO WORK STANDARDS

In every workers' compensation system there comes a point when the injured worker is no longer considered to have a "temporary" disability and becomes eligible for "permanent" disability benefits. In a majority of states the line that separates temporary from permanent is called "maximum medical improvement" (MMI). As the name implies, MMI is a measure of physical ability, not job performance. When workers reach MMI, they no longer receive temporary total disability benefits and are evaluated for permanent disability benefits. This evaluation may result in an award of permanent partial disability benefits (PPD).

Georgia does not use the MMI standard. Instead, a Georgia worker is entitled to receive temporary (total or partial) disability benefits until he or she returns to work at or above the pre-injury wage. The "return to work" standard used to end temporary total disability benefits in Georgia is framed in functional terms (*i.e.*, can the worker perform her job?) rather than an abstract measure of physical ability.

WCRI recently examined PPD claims in six states (California, Connecticut, Georgia, Florida, Texas, and Wisconsin). The purpose of the study was to identify factors associated with the incidence of PPD awards. WCRI found that of these six states, Georgia had the longest mean duration of temporary disability benefits and the

largest percentage of lump-sum payments.⁶⁹ This study concludes that:

The absence of MMI drives the use of lump-sum settlements and lengthens duration of temporary disability in Georgia. In our group of six states, Georgia is an exception. It does not use maximum medical improvement (MMI) as the basis for ending temporary disability benefits and rating workers for permanent disability. It seems evident that the absence of MMI in Georgia has an impact on the duration of claims, the use of lump-sum settlements, and their respective relationship to PPD rates. If policy makers in Georgia wonder why the use of lump-sum settlements in their state is high, they need to focus on their unusual practice of not using MMI as a point at which impairment is rated.⁷⁰

However, Georgia's "return to work" standard may have cost-saving effects not measured by the duration of temporary disability benefits. Under a return to work standard, an employer must continue paying temporary disability benefits until the injured employee can return to work at his or her pre-injury wage. This creates an incentive for employers to return injured workers to suitable employment as quickly as possible. This incentive may help explain why Georgia has one of the lowest percentages of claims with seven or more days lost time. As discussed Part IV.B, the low percentage of claims with more than seven days lost time is a major reason why Georgia's average total cost per claim on all claims was one of the lowest of the states included in the WCRI study. Thus, while MMI may shorten the average duration of temporary disability claims, a return to work standard may reduce the number of claims with seven or more days lost time.

⁶⁹ WORKERS COMP. RESEARCH INST., WHO OBTAINS PERMANENT PARTIAL DISABILITY BENEFITS: A SIX STATE ANALYSIS 47 tbls. 3.1 & 3.1A (2002).

⁷⁰ *Id.* at 61.

D. BENEFIT DELIVERY EXPENSES

Medical and indemnity benefits are the primary cost components in the workers' compensation system. A third component is the expense of delivering those benefits. Benefit delivery expenses include the medical cost containment expenses,⁷¹ medical-legal expenses,⁷² and litigation expenses.⁷³ Benefit delivery expenses account for 6-15% of total claim costs within the states surveyed by WCRI. In Georgia, benefit delivery expenses account for 12% of total claim costs for immature claims and 10% of total claim costs in mature claims.⁷⁴ Figure 10 compares the benefit delivery expenses of the surveyed states.

⁷¹ Medical cost containment expenses are defined as "[a]ll payments related to medical cost containment, including fees for bill review, utilization review, case management, and preferred-provider networks." WCRI BENCHMARKS 1994-2000, *supra* note 35, at 358.

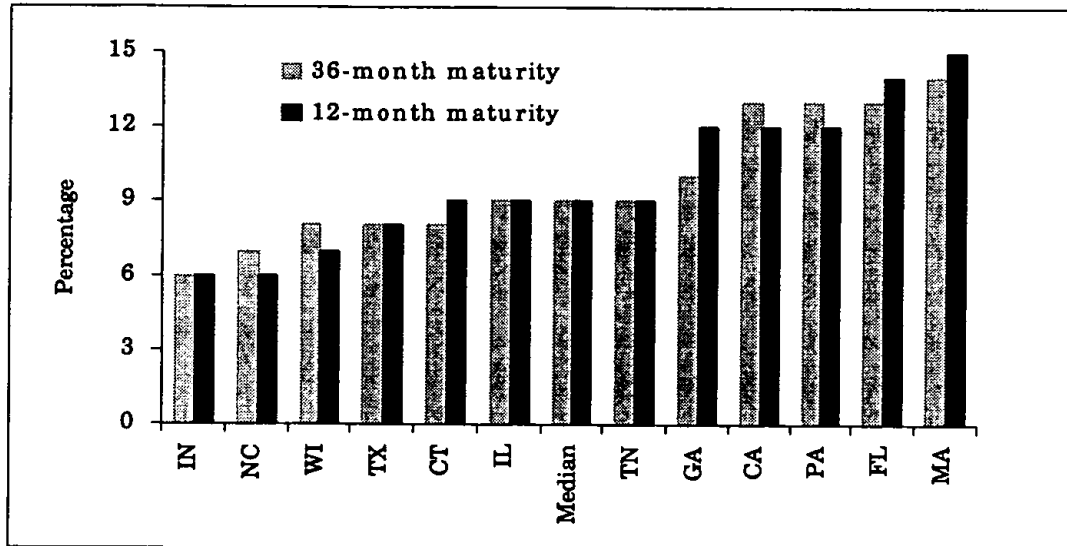
⁷² Medical-legal expenses are payments for independent medical examinations used to determine impairment ratings. *Id.* at 359. The cost of such exams in Georgia averages \$598 and is incurred in only 3-4% of claims with seven or more days lost time. WCRI BENCHMARKS 1994-2000, *supra* note 35, at 61 tbl. 2.14. The relatively infrequent use of independent medical exams may be due to the fact that under Georgia law, impairment ratings are determined by American Medical Association *Guides to the Determination of Permanent Impairment*, O.C.G.A. § 34-9-263(e), and are routinely performed by the injured worker's treating physician. WCRI BENCHMARKS 1994-2000, *supra* note 35, at 61. As medical-legal expenses do not contribute significantly to benefit delivery expenses in Georgia, we will not address them further in this Report.

⁷³ WCRI BENCHMARKS 1994-2000, *supra* note 35, at 357. Litigation expenses are defined as "[p]ayments for defense attorney fees, ancillary legal costs, medical-legal costs, and other claims adjusting expenses." *Id.* at 358.

⁷⁴ *Id.* at 36 tbl. 2.9.

Figure 10

**Allocated Benefit Delivery Expenses as a Percentage of Total Costs
per Claim with More than 7 Days of Lost Time**



Source: WORKERS COMP. RESEARCH INST., COMPScope™ BENCHMARKS: MULTISTATE COMPARISONS 1994-2000, 65 tbl. 2.14 (2003).

Note: 1997 and 1999 claims as of mid-2000.

1. *Medical Cost-Containment Expenses.* Table 21 reports medical cost containment expenses per claim in the 12-state sample.

Table 21

**Average Medical Cost Containment Expenses per Claim
with More than 7 Days of Lost Time,
Accident Years 1997 and 1999**

State	Average Medical Cost-Containment Expenses per Claim; Accident Year 1999	Average Medical Cost-Containment Expenses per Claim; Accident Year 1997
WI	\$460	\$640
IN	\$578	\$583
CT	\$611	\$701
NC	\$677	\$885
IL	\$846	\$843
MA	\$942	\$1,118

PA	\$975	\$1,132
TN	\$983	\$1,063
GA	\$1,010	\$1,147
TX	\$1,013	\$1,249
CA	\$1,062	\$1,320
FL	\$1,200	\$1,382
12-State Median	\$958	\$1,090

Source: WORKERS COMP. RESEARCH INST., COMPSCOPE™ BENCHMARKS: MULTISTATE COMPARISONS 1994-2000, 65 tbl.2.14 (2003).

Note: 1997 and 1999 claims as of mid-2000.

The difference between the average medical cost-containment expense in Georgia and the 12-state median is less than \$60 per claim. Medical cost-containment expenses are not out of line with those incurred in other states and do not contribute significantly to the overall costs.

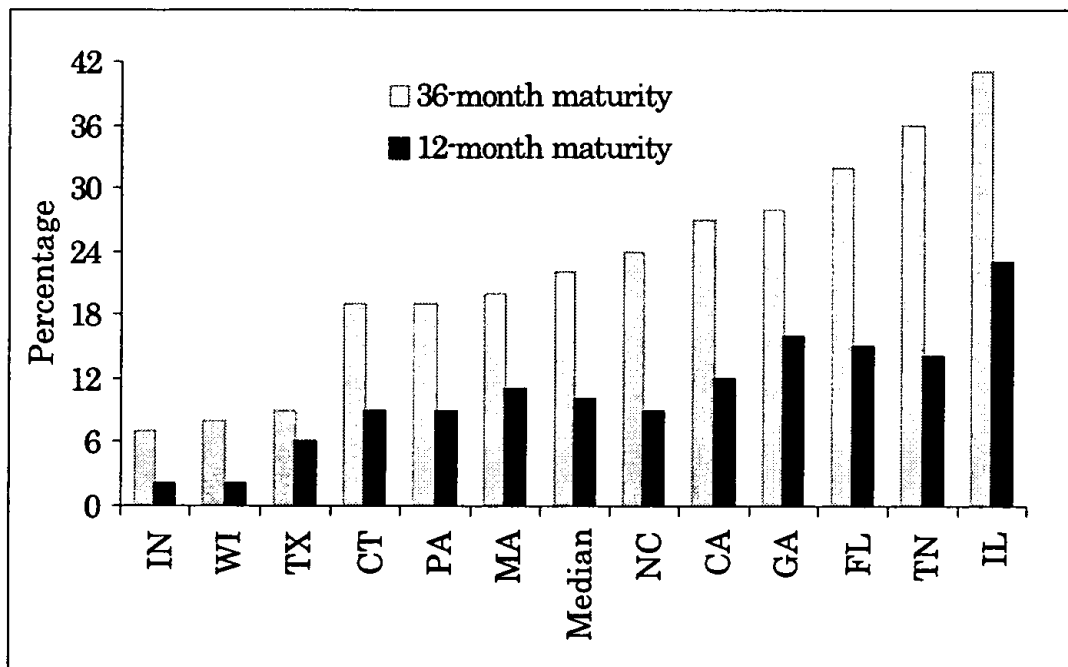
2. *Defense Attorney Involvement.* WCRI compares the frequency and cost of defense attorneys in workers' compensation cases. There is no systematic reporting of claimant attorney involvement or the fees paid to claimant attorneys.⁷⁵ The WCRI data do not report the services provided by defense counsel, nor do they purport to evaluate the need for such services. Thus, there are inherent limitations on the inferences and conclusions that can be drawn from such data. Not surprisingly, however, benefit delivery expenses are higher in claims in which employers or insurers employ an attorney.

Figure 11 shows the percentage of claims with seven or more days lost time in which defense counsel is involved.

⁷⁵ Claimant attorneys are commonly compensated on a "contingent fee" basis calculated as a percentage of indemnity benefits. Thus, claimant attorneys' fees do not directly contribute to total claim costs, but will reduce the claimant's overall recovery. Claimant attorneys' fees are subject to approval by the Board. O.C.G.A. § 34-9-108 (Supp. 2003).

Figure 11

Claims with Defense Attorney Payments as a Percentage of Claims
with More than 7 Days of Lost Time



Source: WORKERS COMP. RESEARCH INST., COMPSCOPE™ BENCHMARKS: MULTISTATE COMPARISONS, 1994-2000, 62 figs. 2.15a & 2.15b (2003).

Note: 1997 and 1999 Claims as of mid-2000.

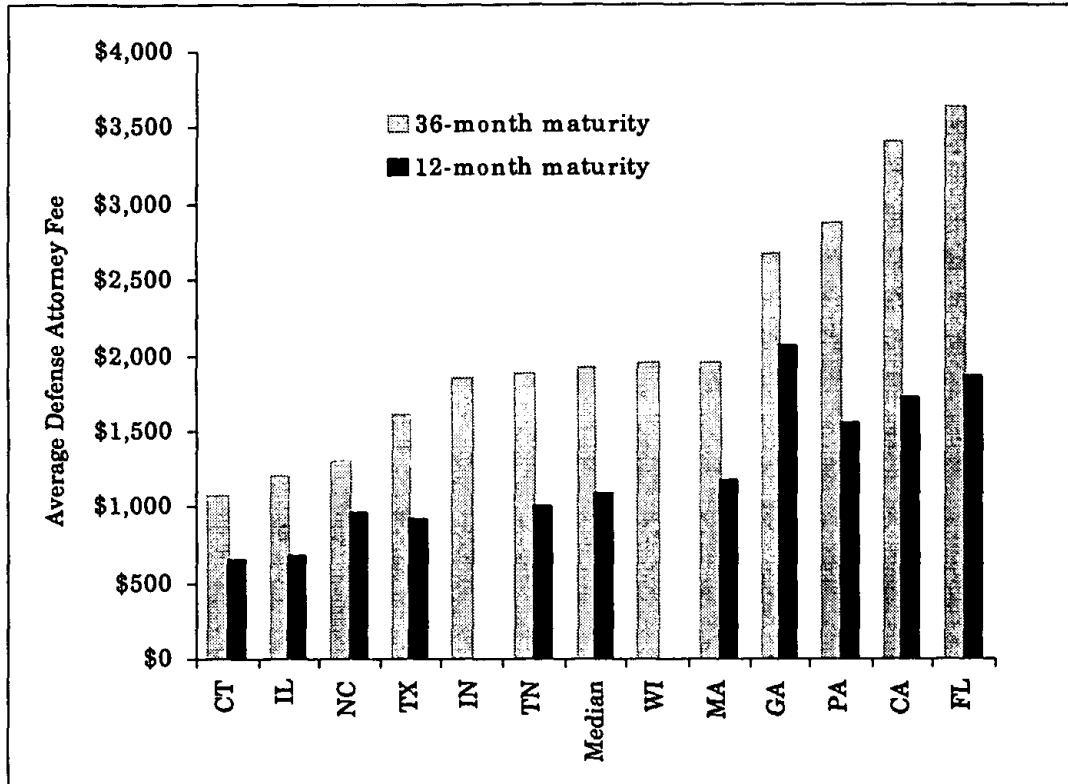
Figure 11 lends itself to two observations. First, states vary considerably in the frequency of use of defense attorneys in workers' compensation cases. Second, in Georgia defense counsel are used in a higher percentage of immature and mature claims with seven or more lost days than in the 12-state median. However, WCRI notes that the rate of attorney involvement in mature claims declined in Georgia by at least 1.9% points per year.⁷⁶

Figure 12 illustrates the average defense attorney fee in claims with 7 or more lost workdays.

⁷⁶ WCRI BENCHMARKS 1994-2000, *supra* note 35, at 138 tbl. 4.4B.

Figure 12

**Average Defense Attorney Fees per Claim
with More than 7 Days of Lost Time with Defense Attorney Fees**



Source: WORKERS COMP. RESEARCH INST., COMPScope™ BENCHMARKS: MULTISTATE COMPARISONS, 1994-2000, 64 fig. 2.16a & 2.16b (2003).

Notes: WCRI omitted Indiana's and Wisconsin's 12-month values because they were not meaningful due to excessive variation likely caused by small sample sizes. 1997 and 1999 claims as of mid-2000.

Georgia employers/insurers pay the highest average fee in these twelve states for immature claims and 39.5% more than the median for mature claims. WCRI cautions, however, that services provided by defense attorneys in workers' compensation cases vary from state to state. An attorney in one state may perform services provided by a claims adjuster in another state. WCRI specifically observes that employers/insurers utilize attorneys in Georgia to draft all stipulated settlements "so an attorney is involved (a fee is charged) on every claim that is settled, whether or not the claim is litigated."⁷⁷

⁷⁷ WCRI BENCHMARKS 1994-2000, *supra* note 35, at 61.

The impact of attorneys' fees on the overall costs of the workers' compensation system in Georgia is not great. Employers/insurers utilize the services of defense counsel in a small percentage of cases. Claims with seven or more days lost time account for approximately 14-15% of all claims, and a defense attorney appears in only a small percentage of these claims (16% for immature and 28% of mature claims). In the relatively small number of cases in which a defense attorney appears, fees constitute a portion of benefit delivery expenses, which in the aggregate constitute somewhere between 10-12% of total costs.

VIII. CATASTROPHIC INJURY CLAIMS

The most serious injuries are designated as "catastrophic" under the Georgia worker's compensation laws. Catastrophic injury claims typically incur the highest costs. The Commission asked the State Board to compile the number and costs of catastrophic injury claims. As explained below, we found no evidence that catastrophic claims as a whole, or any category of catastrophic claims, currently impose an undue burden on the system. However, this is a relatively new type of claim under Georgia law, and such claims should be monitored.

A. THE BACKGROUND OF CATASTROPHIC INJURY CLAIMS

The 1992 amendments to the Georgia Workers' Compensation statutes imposed a 400-week maximum on the duration of indemnity benefits paid for total disability.⁷⁸ This limit on income benefits does not apply to "catastrophic injuries." Under the statute, there are seven categories of catastrophic injuries.⁷⁹ Six of these categories involve largely objectively determined conditions and have not generated much controversy.⁸⁰ One category of catastrophic injury (category 6) incorporates the definition of total disability used in the

⁷⁸ O.C.G.A. § 34-9-261 (1992 & Supp. 2003).

⁷⁹ O.C.G.A. § 34-9-200.1(g) (Supp. 2003).

⁸⁰ These include spinal cord injuries, specified amputations, severe brain injuries, severe burns, blindness and any multiple combination of these injuries. O.C.G.A. § 34-9-200.1(g) (Supp. 2003). We refer to these catastrophic injuries as categories 1-5 and 7.

federal Social Security system.⁸¹ Some have suggested that the standards for total disability under Social Security are too subjective, and their inclusion into the Georgia definition of catastrophic injury might lead to an excessive number of claims bypassing the 400-week limitation. With this question in mind, the Commission asked the State Board to compile data on catastrophic claims in general and category 6 catastrophic injury claims in particular.

B. CATASTROPHIC INJURY CLAIMS ACCOUNT FOR A SMALL PERCENTAGE OF OVERALL COSTS

Table 22 contains information about the number of injuries designated catastrophic between 1997 and 2002, the amounts paid in benefits for such claims, and the percentage of benefits paid for catastrophic claims compared to the total benefits paid for all claims.

Table 22

**Benefits Paid for Injuries Designated Catastrophic,
Accident Years 1997-2002**

Categories	Number of Claims	Indemnity Benefits Paid	Medical Benefits Paid	Total Benefits Paid*	Total Benefits Paid as a Percentage of Total Cost**
1-5, 7	642	\$46,233,122	\$113,201,694	\$159,434,816	4.4%
6	627	\$42,796,630	\$39,427,943	\$82,224,573	2.2%
Total	1215	\$89,029,752	\$152,629,637	\$241,659,389	6.7%

Source: GA. STATE BD. OF WORKERS' COMP., NUMBER AND COST OF CATASTROPHIC INJURY CLAIMS, 1997-2002 (Mar. 2003). All data as of Dec. 31, 2002.

Notes:

* Dollars are accounted for on an accident year basis.

** During this period there was a total of 252,959 claims with a total cost of \$3,601,657,878.

⁸¹ O.C.G.A. § 34-9-200.1(g)(6) (Supp. 2003).

During this six-year period, 1,215 injuries were designated as catastrophic. Category 6 claims (627) accounted for the largest number of claims for any one category. Benefits paid for catastrophic injuries accounted for 6.7% of the total benefits paid for all claims during this period. Benefits paid for category 6 catastrophic claims accounted for only 2.2% of the total benefits.⁸²

C. THE NUMBER OF INJURIES DESIGNATED "CATASTROPHIC" HAS DECLINED IN RECENT YEARS; BUT THE NUMBER AND COST FIGURES FOR RECENT YEARS WILL INCREASE OVER TIME AND SHOULD BE CLOSELY MONITORED

Table 23 compares the number of injuries designated as catastrophic under category 6 with the number of other categories of catastrophic injuries claims.

Table 23

Number of Injuries Designated Catastrophic,
by Accident Year 1997-2002

Year	Categories 1-5, 7	Category 6	Total
1997	125	152	277
1998	110	176	286
1999	147	161	308
2000	115	84	199
2001	80	33	113
2002	65	21	86
Total	642	627	1269

Source: GA. STATE BD. OF WORKERS' COMP., NUMBER AND COST OF CATASTROPHIC INJURY CLAIMS, 1997-2002 (Mar. 2003). All data as of Dec. 31, 2002.

⁸² Some members of the Commission commented that the potential for an injury to be designated "catastrophic" may increase the amounts paid in settlement. Thus, the full impact of catastrophic injuries on total workers' compensation costs may not be measured simply by the amounts paid for claims that have formally been designated catastrophic. Other Commission members did not believe that the potential designation of an injury as catastrophic affected amounts of settlement. The Commission has no reliable information on what impact, if any, the potential designation of an injury as catastrophic has on settlement practices.

Table 23 shows that the total number of injuries designated catastrophic has declined in each of the past three years. The number of category 6 catastrophic injuries has declined in each of the past four years, with only twenty-one such injuries in 2002.

The decline in the number and cost of claims for catastrophic injuries reflected in Tables 22 and 23 may not be as dramatic as it first appears. An injury may not be designated catastrophic until several years after its occurrence. A worker may not seek catastrophic designation until near the expiration of the 400-week limit on total disability benefits. Ultimately there will be more injuries designated catastrophic in recent accident years than are currently reported. Thus, we will not know the total number and costs of catastrophic injury claims for recent accident years until more time has passed. At this time, however, catastrophic claims as a whole, and category 6 claims in particular, are not placing an undue burden on the Georgia workers' compensation system in terms of the number or cost of claims.

IX. TECHNOLOGY, DATA AND ONGOING COMPARISONS WITH OTHER STATES

Workers' compensation is a dynamic system. Monitoring its performance requires an ongoing process of data collection and analysis. Moreover, data require some benchmarks, or points for comparisons, to yield meaningful insights into system performance. The Commission believes that there is a need to enhance the Board's technological capacity to collect, organize, retain and analyze data; and that Georgia should continue participating in interstate studies of workers' compensation systems.

A. TECHNOLOGY

Workers' compensation systems generate volumes of data. Standard forms must be filled out when injuries occur, payments are made, claims are controverted, and claims are settled or otherwise finally disposed. Much data generated by a workers' compensation claim is sent to the Board and thus is centrally located. There is great *potential* for systematic collection, retention,

and analysis of data already being reported on various forms. The Commission found, however, that this potential is not being fully realized. Despite its good-faith efforts, the Board often had to retain outside consultants to respond to requests by the Commission for specific data. Moreover, the Board retains data for only five years. This time limitation makes it more difficult to track long-term trends. The Board, of course, is aware of the inherent limitations of its current technological resources and is making plans for improvements. The Commission did not undertake an independent assessment of the technology or additional personnel needed to improve the Board's ability to collect, retain, and analyze data. We do, however, support the Board's efforts in these regards.

B. PARTICIPATION IN STUDIES OF INTERSTATE COMPARISONS OF SYSTEM PERFORMANCE

Georgia has participated in two of WCRI's "benchmark" studies of workers' compensation system performance. The Commission believes that Georgia should continue to participate. It is difficult to make interstate comparisons of workers' compensation systems because there are many subtle, but significant, differences in how state systems operate. The statistical methodology used to compare system performance is quite complex. It is doubtful that Georgia or any other individual state can dedicate the resources needed to undertake such studies on a regular basis. WCRI's "benchmark" studies provide a unique source of information that compares system performance among an important group of states. Participation in interstate studies might also yield useful information on more narrowly focused issues not addressed in this Report, such as the exclusion of agricultural workers from coverage or the continued need for the Subsequent Injury Trust Fund.

We caution, however, that state officials need to work closely with WCRI to ensure that the studies address issues relevant to policymaking in Georgia. By way of example, WCRI purported to measure the speed with which payments are made to injured workers by calculating the percentage of claims in which the first payment was made within twenty-one days of injury. It reported that forty percent of Georgia claims were paid within twenty-one

days from the date of injury.⁸³ This implies that sixty percent of Georgia claims are not paid in a timely fashion. However, in many instances the first payment is not legally due within twenty-one days of notice of injury as when, for example, an employee continues to work after the initial injury and later becomes disabled. According to the Board, more than seventy percent of Georgia's workers receive the first payment of income benefits within the time prescribed by the statute. Thus, in this instance, the WCRI figure provides a somewhat misleading picture of the timeliness of payments in Georgia.

The WCRI officials who assisted the Commission were exceptionally cooperative and receptive to suggestions on how future studies might be better tailored to the informational needs of individual states. The Commission believes that continued participation in interstate studies such as those currently performed by WCRI will contribute to better-informed policymaking.

X. CONCLUSION

A. THE BIG PICTURE: DECLINING NUMBER OF CLAIMS; DECLINING AGGREGATE COSTS; COMPARATIVELY LOW AVERAGE COSTS PER CLAIM; PROFITABLE INSURANCE RELATIVE TO WORKERS' COMPENSATION IN OTHER STATES

The overall health of the Georgia workers' compensation system is quite good. The number of claims continues to decline despite growth in the work force. Reductions in the number of workers' compensation claims have led to a decline in aggregate costs. Workers' compensation costs in Georgia are low compared to those in other states whether measured in terms of cost per worker or average cost per claim for all claims paid. The low average total cost appears to be driven by the low percentage of Georgia cases with seven or more lost days from work. During the 1990s, workers' compensation has been a profitable line of insurance compared to the workers' compensation sectors in other states. The most recent NCCI rate request in Georgia calls for a further reduction in

⁸³ WCRI BENCHMARKS 1994-2000, *supra* note 35, at 16 tbl. 2.1.

premium cost. However, the profitability of Georgia workers' compensation is quite low compared to other sectors of the economy.

These big-picture features indicate that workers' compensation costs do not place Georgia at a competitive disadvantage in attracting businesses to the state, nor do they place Georgia employers at a competitive disadvantage with employers in other states.

B. SPECIFIC POINTS FOR FURTHER CONSIDERATION AND STUDY

While the workers' compensation system in Georgia is in good shape as a whole, specific aspects of the system merit additional attention. The statutory cap on weekly indemnity benefits in Georgia is one of the lowest in the country. Georgia is the only southern state that does not provide a disabled worker with a maximum level of income protection of at least two-thirds of the state's average weekly wage. Every contiguous state sets the maximum indemnity benefit at 100% or more of the state's average weekly wage. The low cap on weekly indemnity benefits raises a serious question whether Georgia is providing an adequate level of income protection to its injured workers. This problem is exacerbated by Georgia's failure to index the weekly maximum indemnity benefit; it is the only southern state that does not do so.

Despite having one of the lowest caps on weekly indemnity benefits, Georgia has a comparatively high average total cost per claim with seven or more lost workdays. The higher average total cost per claim is driven by indemnity rather than medical benefits. The higher average indemnity benefit per claim appears to be related to the duration of temporary total disability benefits, which appears to be lengthened by the use of a return to work standard rather than MMI. The return to work standard, however, may provide incentives to find suitable employment for injured workers, which may help explain why Georgia has a low percentage of claims with seven or more lost work days.

Benefits paid for catastrophic injuries are not placing an undue burden on the workers' compensation system at present. An injury occurring in any given year, however, may not be characterized as catastrophic until many years later. Consequently, present mea-

tures of the number and costs of catastrophic injuries may increase, and the Board should track catastrophic injury claims over time.

Finally, there is a great need for collecting, retaining, and analyzing data on an ongoing basis. That may require additional investments in technology and personnel. Moreover, comparisons of system performance in Georgia with that of other states provide points of reference from which to evaluate the Georgia system. Interstate comparisons are complex, and care must be taken to ensure that the comparisons are relevant to policymaking issues in Georgia. However, the Commission believes that continued participation in such studies will make a positive contribution to future policymaking.

XI. TABLE OF AUTHORITIES

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XII. APPENDICES

APPENDIX I

National Rating Bureau Ranking by Cost per Worker,
Policy Years 1996 and 1998

State	1998 Avg. Cost per Worker (in dollars)	1996 Avg. Cost per Worker (in dollars)
Alaska	781	679
California	621	520
Florida	549	617
Montana	539	557
Nevada	534	
New York	527	538
Pennsylvania	491	505
Oklahoma	487	509
Vermont	474	388
Delaware	457	
Louisiana	456	371
Colorado	451	502
Alabama	447	472
Maine	432	451
Idaho	415	350
Texas	411	369
Rhode Island	404	264
New Hampshire	401	367

Tennessee	396	340
Hawaii	389	418
Missouri	386	317
Oregon	384	525
Illinois	380	351
Maryland	373	267
Connecticut	373	366
Nebraska	370	315
Wisconsin	359	292
North Carolina	357	267
Arizona	356	331
Massachusetts	343	268
Iowa	340	275
Kentucky	332	354
South Carolina	329	278
Michigan	327	322
Mississippi	314	307
Minnesota	306	297
Kansas	303	246
New Mexico	300	282
Virginia	277	297
Georgia	273	299
New Jersey	264	276
South Dakota	249	349

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Utah	225	244
Indiana	215	192
Arkansas	212	186
District of Columbia	145	156

Source: WORKERS COMP. RESEARCH INST., COMPScope™ BENCHMARKS: MULTISTATE COMPARISONS 1994-2000 21, tbl. 2.3 (2003); WORKERS COMP. RESEARCH INST., COMPScope™ BENCHMARKS: MULTISTATE COMPARISONS 1994-1999, 20 tbl. 3.1 (2001).
Note: No 1996 data for Nevada and Delaware were reported.

APPENDIX II

National Rating Bureau Ranking by Cost per Claim,
Policy Years 1996 and 1998

State	1998 Avg. Cost per All Paid Claims (in dollars)	1996 Avg. Cost per All Paid Claims (in dollars)	1994 Avg. Cost per All Paid Claims (in dollars)
New York	11,936	11,583	9,979
California	9,796	7,259	5,848
DC	9,358	9,077	8,829
Alaska	9,254	7,215	5,590
Maryland	8,655	5,520	5,941
Texas	8,479	7,662	6,761
Florida	8,439	9,211	9,548
Louisiana	8,418	7,428	5,966
Delaware	7,822		
Colorado	7,211	6,534	5,895
Hawaii	7,163	7,208	8,888
Alabama	6,991	6,560	5,586
Illinois	6,753	5,798	5,435
North Carolina	6,609	4,774	4,119
Oklahoma	6,431	6,925	7,600
Vermont	6,383	5,248	6,301
Pennsylvania	6,159		
Connecticut	6,006	5,340	4,931
New Jersey	5,973	5,862	4,916

New Jersey	5,973	5,862	4,916
Missouri	5,947	4,903	4,316
South Carolina	5,709	4,421	4,308
Virginia	5,704	6,229	4,330
Tennessee	5,680	4,368	4,087
Nevada	5,541		
Montana	5,478	5,563	7,766
Georgia	5,461	5,206	5,377
Massachusetts	5,442	4,446	5,574
New Hampshire	5,371	4,602	5,062
Kansas	5,263	3,703	3,605
Nebraska	5,163	4,115	3,052
Oregon	4,983	6,695	4,821
Rhode Island	4,980	4,174	4,717
New Mexico	4,975	4,204	4,300
Arizona	4,863	4,207	4,481
Maine	4,854	5,804	4,534
Iowa	4,833	3,821	3,141
Mississippi	4,420	4,076	3,770
Idaho	4,373	3,585	3,287
Minnesota	4,307	3,951	4,257
Michigan	4,227	3,833	3,706
Kentucky	4,219	4,015	4,478
Wisconsin	3,865	2,950	3,073

South Dakota	3,167	3,830	3,866
Arkansas	2,979	2,553	2,928
Utah	2,856	2,607	3,018
Indiana	2,433	2,169	2,022

Source: NAT'L COUNCIL ON COMP. INS., ANNUAL STATISTICAL BULLETIN, 1998, 2000 & 2002 editions.

Note: No 1994 and 1996 data for Nevada and Delaware were reported.