

**A REPORT TO THE LEGISLATIVE COUNCIL AND  
THE SENATE AND HOUSE INTERIM COMMITTEES  
ON INSURANCE AND COMMERCE  
OF  
THE ARKANSAS GENERAL ASSEMBLY  
(AS REQUIRED BY ACT 796 of 1993)**

**ANNUAL STUDY OF THE WORKERS' COMPENSATION  
INSURANCE MARKET IN ARKANSAS**



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**REPORT TO THE LEGISLATURE ON ACT 796 OF 1993  
THE STATE OF THE WORKERS' COMPENSATION MARKET  
FOR YEAR ENDING 2008**

Previous reports to the Legislature have discussed in detail the condition of Arkansas's Workers' Compensation marketplace prior to the passage of Act 796 in 1993, and subsequent to the changes brought about as a result of Act 796.

Arkansas continues to enjoy a competitive workers' compensation market with the lowest premium levels in decades.

In 2008, Arkansas had a combined loss ratio of 80%, ranking it among the lowest of any state for which Arkansas's statistical agent, the National Council on Compensation Insurance (NCCI), compiles loss data. In 2009, NCCI filed for decreases in both the voluntary market loss costs (-7.0%) and assigned risk plan rates (-6.4%). Several factors and trends in the industry, however, may offset future decreases. These factors include increased medical costs, increasing prescription drug utilization, increased reinsurance costs, and catastrophe loading for potential terrorism losses.

**CONTINUED RATE IMPACT OF ACT 796 OF 1993**

Arkansas's voluntary workers' compensation market would have disappeared and many employers would have found themselves unable to afford workers' compensation coverage, facing the choice of either closing down their business or operating outside the law, had Act 796 not become reality.

The impact of the Act on workers' compensation premiums is clear and significant. Prior to its enactment, rates were increasing significantly. For example, for both the voluntary market and the assigned risk plan, rates in 1991 and 1992 increased 15% and 18% respectively. Passage of the Act forestalled anticipated rate increases in 1993 and 1994, with 1993 being the first year in the last ten in which there was no rate increase. 1993 and 1994 were years of market stabilization, and subsequent years have seen significant rate reductions in both the voluntary market and the assigned risk plan. Year 2000 saw our first increase in the assigned risk plan rates while experiencing a decrease in the voluntary market. In 2003, Arkansas had the lowest loss costs in the region per \$100 of payroll (\$1.26) compared to the regional average loss cost of \$2.11 and the countrywide average loss cost of \$2.00. There are still positive effects from this Act that benefit Arkansas employers

<b>Year</b>	<b>Voluntary Market</b>	<b>Assigned Risk Plan</b>
1993	0.0%	0.0%
1994	0.0%	0.0%
1995	-12.4%	-12.4%
1996	-8.0%	-3.7%
1997	-4.7%	-7.6%

<b>Year</b>	<b>Voluntary Market</b>	<b>Assigned Risk Plan</b>
1998	-9.1%	-8.2%
1999	-4.1%	-3.0%
2000	-4.5%	-2.0%
2001	-7.5%	1.9%
2002	-4.5%	-1.9%
2003	1.8%	5.5%
2004	0.5%	5.1%
2005	-1.5%	-2.8%
2006	-0.5%	-2.0%
2007	-5.4%	-6.8%
2007 (effective 1/1/08)	2.7%	2.7%
2008 (effective 7/1/08)	-12.8%	-13.8%
2009	-7.0%	-6.4%

### **PAYROLL AND EXPERIENCE MODIFIER**

Reported payroll in Arkansas continues to increase while premiums for insureds continue to decrease. The average experience modifier has decreased minimally (0.916 from 0.961). This minimal change in experience modifier could represent the continuing effectiveness of loss control measures and the impact of the Hazardous Employer Program operated by the Health and Safety Division of the Workers' Compensation Commission. Please refer to Exhibit "A" for additional statistical information regarding premiums.

### **ASSIGNED RISK PLAN**

The assigned risk plan has seen a consistent history of decline in population since the passage of Act 796 except for a gentle upward trend during 2002 through 2004. Down from a record high of \$150,000,000 in 1993, to a low of \$6,566,275 in September 2000, the premium volume as of December 31, 2008, was \$14,077,770 as compared to \$17,881,539 on December 31, 2007. The increase in premium during the 2002 through 2004 period was, in part, attributable to the failure of several insurers domiciled in California and other states. A portion of the increase may also have been attributable to an increase in plan population of small premium employers who have premiums too low to be attractive to the competitive market. In essence, their premiums are less than the minimum premium for which coverage is available in the voluntary market. These employers may often get better rates through the plan; consequently, as of the end of 2008, small premium employers (less than \$2,500 in annual premium) constituted approximately 86% of the plan policy volume with an average of \$825 in premium per policy. Average plan premium per policy at the end of 2008 was \$2,428 for all 5,275 policies in the plan.

In 2008, NCCI filed a Voluntary Coverage Assistance Program (VCAP) which has helped to remove some employers from the assigned risk plan by allowing voluntary carriers to file their underwriting guidelines. When an application is received, it is compared to the filed guidelines, and if it meets a company's guidelines, the application will be forwarded to the company to

determine if it will make a voluntary offer of coverage. This program was approved effective October 1, 2008. By December 31, 2008, three employers were removed from the assigned risk plan with a premium of \$4,369. These policyholders saved a total of \$4,369, with an average savings of \$768. We believe that as carriers become more familiar with this program, the number of policyholders taken out of the plan will continue to grow as will their savings.

For those employers qualifying for voluntary coverage, cost savings have been substantial. According to the NCCI, price discounting by voluntary carriers reached record levels of 24% during 1999. Carriers pulled back on the discounting in 2000 to 14.7% and, as anticipated, carriers further reduced discounts in 2004 and 2005. In 2006, carriers resumed increased discounting again using primarily schedule credits and dividends. In 2006, there was a net -2.2%. That has continued into 2008 with a projected net of -6/8%.

### **PLAN ADMINISTRATION/SERVICING CARRIERS**

The NCCI is an “Advisory Organization” licensed in Arkansas to assist its member insurers with respect to ratemaking and data collection activities. Effective July 1, 2009, the Commissioner re-appointed NCCI as Administrator for the Arkansas assigned risk plan until at least July 1, 2013.

Arkansas participates in the oversight of the market and the NCCI through a multi-state working group of the National Association of Insurance Commissioners (NAIC). The working group monitors data reliability and any other issues that arise involving the market.

In recent years, Arkansas has also participated in a multi-state examination of the NCCI in its role as an advisory organization licensed pursuant to Ark. Code Ann. §23-67-214. Participation in the examination task force and periodic reviews of this nature function to assure the quality of the data, as well as presenting the opportunity to improve existing systems and procedures. The examination found concerns about statistical reporting and error correction. These concerns were remedied and are monitored by the working group of the NAIC. They were never significant enough to affect the overall reliability of the data reported by the NCCI for the State of Arkansas.

During the implementation of the examination findings, Arkansas served as chair of the multi-state exam task force and concluded its responsibilities in this capacity after implementation of the required reforms.

The location of an office in Little Rock (mandated by 1993 legislation) continues to resolve many policy-related service problems and provides Arkansas agents and insureds easy, immediate access to responsive company personnel. The effectiveness of this office is apparent in the reduction of the number of complaints received by the Insurance Department and the reduction in the number of appeals reaching the Appeals Board. The NCCI personnel assigned to the office are knowledgeable and committed to providing excellent service.

Attached are Exhibits “B” entitled *Arkansas Residual Market 1st Quarter 2009 Status Report* and Exhibit “C” entitled *Arkansas Residual Market Annual 2008 Status Reports*. The exhibits are prepared by the NCCI and provide detailed information on risk profiles such as average premium

size, top ten classifications by code and by premium, and a list of contacts within NCCI for specific areas of concern.

NCCI provides, at no charge to the agent, the option to submit assigned risk applications online. Upon successful submission, the customer receives a confirmation code and application identification number for reference. There are significant savings to the plan when an application can be processed electronically. Arkansas agents have been extremely responsive to this initiative with 85.2% of applications being submitted online.

The Annual Servicing Carrier Performance Review conducted by NCCI reveals either "Commendable" or "Satisfactory" scores for all areas for Arkansas's servicing carriers. For the period commencing January 1, 2008, through December 31, 2011, the servicing carriers are Travelers Indemnity Company, Liberty Insurance Corporation, Union Insurance Company, and Technology Insurance Company.

## **SUMMARY OF INSURANCE DEPARTMENT'S CRIMINAL INVESTIGATION UNIT**

Before the passage of Act 796 of 1993, there had never been a criminal prosecution in Arkansas for workers' compensation fraud committed by employees, employers or healthcare providers.

Act 796 of 1993 created the Workers' Compensation Fraud Investigation Division and made any type of fraud committed within the workers' compensation system a Class D felony (maximum six years and/or \$10,000 fine). The Division was renamed the Criminal Investigation Division during the 2005 Legislative Session.

Fraud in the workers' compensation system was perceived to be epidemic. Since the majority of employers were in the "plan," there was little, if any, incentive for thorough investigation of possibly fraudulent insurance claims and few consequences to those caught making intentional misrepresentations. Act 796 changed the entire landscape of the workers' compensation system, particularly in regard to the detection, prevention and prosecution of workers' compensation fraud. The actual prosecution of a workers' compensation fraud case is contingent on many factors.

Key among those factors is the elected prosecutor's willingness to carry a case forward. If the information provided from an investigation is not enough to meet the standards for conviction found at Ark. Code Ann. § 11-9-106, a prosecutor will be unwilling to pursue the case. Local law enforcement agencies often do not have the resources to investigate workers' compensation fraud; fortunately, the investigative authority of the Criminal Investigation Division allows the Arkansas Insurance Department to supplement these often under-funded local agencies. This Division's dedication to a single purpose allows for complex investigations which require time and focus that would otherwise not be available. As these complex cases evolve, they frequently require investigators to work through a myriad of leads to develop a case. Occasionally, even with dedicated resources for this single purpose being used, there simply is not enough information for a prosecutor to prosecute the crime. While the number of actual prosecutions varies from year to year, the possibility of investigation and prosecution is a constant deterrent.

Any lessening of the Division's enforcement powers would likely result in a re-emergence of both frequency and severity of fraud committed by employees, employers, and healthcare providers.

The cases represented by the statistics noted below, which are comparable per capita to those of other states with active anti-fraud efforts, are believed to have had a significant impact on workers' compensation rates in Arkansas, and the deterrent factor has been substantial. In fact, many cases are not carried forward to prosecution. In many instances, the threat of prosecution is enough to get the parties involved to settle the cases outside of court, resulting in restitution for the aggrieved parties. While not technically prosecutor wins, these cases result in positive outcomes for injured workers in the state.

Act 743 of 2001 (The Act) significantly enhanced the efficiency and effectiveness of the Division by granting its investigators certified law enforcement authority. The Division can now execute arrest warrants, thus reducing the backlog of warrants that were awaiting service by local law enforcement agencies. Annual referrals to the Criminal Investigation Division have been reduced significantly since its first year of operation. This reduction is attributed to increased enforcement efforts under the Act. In the 2008-2009 reporting period, there were 46 workers' compensation investigations opened. Eleven cases were referred to prosecution. The investigative work continues on many of the cases that have been referred. Since the creation of the Division in 1993, a total of 140 cases have been referred for prosecution which resulted in 104 convictions. Out of these 140 cases, only three prosecutions have resulted in acquittals. In the remaining 33 cases, the charges were not filed or the charges were dropped.

### **2009 LEGISLATIVE ACTIVITY WITH REGARD TO WORKERS' COMPENSATION**

The following changes to Arkansas's workers' compensation code were put into effect by Acts 327 and 726 of 2009:

Ark. Code Ann. §11-9-411 has been amended to prohibit an offset of workers' compensation benefits for group disability benefits if the injured worker purchased the group disability policy.

Ark. Code Ann. §11-9-525 has been amended to provide that for all claims for permanent partial disability or permanent total disability made after January 1, 2008, the employer at the time of the compensable injury will be liable for said benefits (subject to the remaining provisions of the state's workers' compensation laws, excluding §§11-9-525(a)(1)-(d)(2)).

Ark. Code Ann. §11-9-525 has been further amended to shift liability for permanent and total disability benefits, payable by the Second Injury Fund, to the Death and Permanent Total Disability Trust Fund effective January 1, 2010.

Ark. Code Ann. §17-25-308 has been amended to allow the Contractors' Licensing Board to revoke the license of a contractor who fails to obtain or maintain workers' compensation coverage.

Act 327 also added a new section to Title 17, Subchapter 25 (most likely codified as Ark. Code Ann. §17-25-316), which requires the Contractors' Licensing Board to obtain proof of workers' compensation coverage prior to issuing a license.

In addition, Act 726 of 2009 amended Ark. Code Ann. §11-9-801 to allow for payment of workers' compensation benefits by electronic transfer of funds.

**SUMMARY OF SIGNIFICANT WORKERS' COMPENSATION CASES FROM  
THE ARKANSAS COURT OF APPEALS AND SUPREME COURT  
FISCAL YEAR 2009<sup>1</sup>**

**Supreme Court Cases**

*Sierra v. Griffin Gin*, 374 Ark. 320, 2008 WL 4378093, No. 07-1104 (September 25, 2008): In this case involving the appropriate average weekly wage, the Arkansas Supreme Court reversed the Arkansas Court of Appeals and affirmed the original findings made by the Arkansas Workers' Compensation Commission. The Claimant had contracted with the Respondents to work for a seasonal period of nine weeks at the rate of \$1,020 per week. At the hearing level, an Administrative Law Judge determined that the Claimant's average weekly wage was \$1,020 per week, and that he was entitled to the maximum compensation rate of \$466. The Commission reversed this determination, concluding that it would be "unjust and unfair" to award the Claimant a compensation rate that would allow him to receive more in disability benefits after twenty weeks than he had contracted to earn in wages over nine weeks. Instead, the Commission divided the amount the Claimant would have earned over nine weeks (\$9,180) by fifty-two weeks for an average weekly wage of \$177. This, in turn, yielded a compensation rate of \$118. The Arkansas Court of Appeals subsequently reversed the Commission. See *Sierra v. Griffin Gin*, 100 Ark. App. 113, \_\_\_ S.W.3d \_\_\_ (2007); 2007 WL 2964199 (Oct. 10, 2007). On further appeal, however, the Arkansas Supreme Court held that the prevailing standard of review for workers' compensation cases required the Commission's findings to be affirmed: "We cannot say that reasonable minds could not have reached the Commission's conclusion that Sierra's average weekly wage should be computed by dividing the total wage by 52 weeks rather than 9 weeks."

*Williams v. Johnson Custom Homes*, 374 Ark. 457, 2008 WL 4669465, No. 07-1101 (October 23, 2008): Here, the Arkansas Supreme Court reversed the Arkansas Court of Appeals' earlier holding that the Claimant had made an election of remedies by seeking workers' compensation benefits in Ohio and thus could not subsequently file for them in Arkansas. In so holding, the Court of Appeals had affirmed the Arkansas Workers' Compensation Commission, which had also found that the Claimant was estopped, by the election of remedies doctrine, from seeking workers' compensation benefits in Arkansas after knowingly applying for and receiving them from Ohio. In reaching its decision, the Commission had relied on the Court of Appeals' prior decision in *Biddle v. Smith & Campbell, Inc.*, 28 Ark. App. 46, 773 S.W.2d 840 (1989),

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<sup>1</sup> Westlaw citations are provided where standard legal citations are partially available or unavailable.

which the Commission interpreted to mean that “The Arkansas Court of Appeals has indicated that the determination as to whether or not an election of remedies has been made regarding workers’ compensation benefits depends upon whether the claimant actively initiated the proceedings or knowingly received benefits pursuant to the laws of another state.” The Supreme Court, however, found the Commission’s reliance on *Biddle*, and the “misconceptions announced therein,” to be erroneous. In particular, the Supreme Court pointed out that “For decades, the law has been well settled that all states having a legitimate interest in the injury have the right to apply their own diverse workers’ compensation rules and standards, either separately, simultaneously, or successively.” [Citing several cases, such as *Mo. City Stone, Inc. v. Peters*, 257 Ark. 917, 521 S.W.2d 58 (1975)]. According to the Court, this did not give rise to a double recovery since “A supplemental award may give full effect to the facts determined by the first award and also allow full faith and credit for payments made pursuant to the first award; there is neither inconsistency nor double recovery.” (Citing from the line of cases referenced above.) The Court went on to point out that *Biddle* itself relied on a case involving the tolling of the statute of limitations in workers’ compensation cases (*Houston Contracting Co. v. Young*, 267 Ark. 322, 590 S.W.2d 653), which should not have been extended to address election of remedies. Noting further that the election of remedies doctrine precluded seeking more than one recovery on inconsistent remedies (such as contract and tort), the Court reasoned that election of remedies did not apply where a claimant is “seeking only one remedy, workers’ compensation, but in more than one forum.” Accordingly, the Court overruled *Biddle*, as well as any of its progeny which may have applied the election of remedies doctrine to workers’ compensation claims where more than one state has jurisdiction. The Court went on to hold that the agreement the Claimant had signed in the instant case, in which he had agreed to Ohio as the “State of Exclusive Remedy” for workers’ compensation purposes, was void and unenforceable under the workers’ compensation and insurance codes of the State of Arkansas (as an invalid “waiver of compensation” under Ark. Code Ann. §11-9-108, and because it did not satisfy Ark. Code Ann. §23-92-409(c)(4)(A) of the insurance code). Finally, the Court declined to address the Claimant’s constitutional arguments, due to a lack of “full adversarial development” of the issue.

### **Court of Appeals Cases**

*Plane Techs v. Keno*, 103 Ark. App. 121, 2008 WL 4149946, No. CA08-108 (September 10, 2008): Respondent Plane Techs hired the Claimant to work a temporary staffing assignment as an airplane mechanic for one of its clients in Hot Springs, Arkansas. The Claimant’s compensation consisted of a \$7.50 base hourly rate, in addition to \$24.00 per hour for overtime wages. In addition, the Claimant was eligible for a per diem of \$120.00 per day as reimbursement for duplicate expense relating to meals, lodging and incidentals. Such portion of the per diem not spent for these purposes was to be returned to Plane Techs or reported by the Claimant to the IRS as income. The Arkansas Workers’ Compensation Commission concluded that the per diem amount should be included in calculating the Claimant’s average weekly wage. On appeal to the Arkansas Court of Appeals, the Respondents argued otherwise, asserting that neither the relevant statutes or the Court’s previous decision in *Eckhardt v. Willis Shaw Express, Inc.*, 62 Ark. App. 224, 970 S.W.2d 316 (1998), required inclusion of the per diem in the Claimant’s average weekly wage. In particular, the Respondents contended that *Eckhardt* was distinguishable since the per diem payments in the present matter did not constitute a true economic gain for the Claimant, but were instead intended to allow him to “break even” with

regard to his living expenses (in *Eckhardt*, if the Claimant was required to stay overnight, then \$35.00 of his salary for the day was paid as a “per diem” from which no withholding was required, thus essentially “boosting” his take-home pay). The Court, however, took a broader view of its previous decision in *Eckhardt*, and held that the per diem payments received by the Claimant in the present matter amounted to an “advantage” within the meaning of “wages” under Ark. Code Ann. §11-9-102(19): “We see no meaningful distinction between Plane Techs providing ‘board, rent, housing, lodging or similar advantage’ as set forth in the statute and the per diem payments made by Plane Techs to Keno so that he can purchase the same...Furthermore, Keno has the option of retaining any unused per diem funds, thus increasing his income. Thus, the per diem payments made to Keno fall within the statutory definition of ‘wages,’ as it is an ‘advantage’ received from his employer.”

*Kent v. Single Source Transp., Inc.*, 103 Ark. App. 151, 2008 WL 4277534, No. CA08-42 (September 17, 2008): In a second appeal of this case, the Arkansas Court of Appeals reversed the Arkansas Workers’ Compensation Commission’s finding that the Claimant’s claim for additional benefits was time-barred by the applicable statute of limitations. In the first appeal, the Commission had awarded benefits based on its finding that the Claimant had sought additional treatment for his left shoulder within one year of an order of dismissal for failure to prosecute. However, the Court reversed the Commission by holding that the December 13, 2001, order of dismissal had rendered the Claimant’s claim for additional benefits filed on March 12, 2001, a nullity, to be treated as if it had never been filed. The Court also remanded the matter for the Commission to determine when the last payment of compensation had occurred prior to the Claimant’s resumption of treatment on March 13, 2002. On remand, the Commission determined that the last payment of compensation had been May 24, 2001, and that the statute of limitations had expired no later than May 24, 2002 (such that the additional treatment sought by the Claimant in 2005 was time-barred). On the second appeal, the Court disagreed and held that the last payment of compensation prior to the dismissal order had occurred on September 12, 2001, when the Claimant received treatment for his shoulder injury, and that “Thereafter, the statute of limitations did not expire, as appellant received treatment at least once every twelve months for his compensable injuries through February 10, 2005. He filed another claim for benefits in June, 2005, clearly within one year of the last date of treatment.” In essence, the Court concluded that May 24, 2001, was the last date prior to March 13, 2002, that the Respondents had paid for medical treatment; however, the Claimant had actually received treatment on September 12, 2001, and continued to do so annually up until he filed another claim in June, 2005. Since the Court also concluded that such treatment was necessitated by the Claimant’s work-related injuries, and because the furnishing of reasonably necessary medical services rather than payment thereof constitutes “payment of compensation” for statute of limitations purposes, the Court concluded that the Claimant had indeed filed his 2005 claim within one year of the last payment of compensation.

*Parson v. Arkansas Methodist Hosp.*, 103 Ark. App. 178, 2008 WL 4335175, No. CA07-1185 (September 24, 2008): The Arkansas Court of Appeals, in an earlier opinion (CA06-1223; June 20, 2007), had remanded this matter to the Arkansas Workers’ Compensation Commission for consideration of whether the Claimant had proven a compensable closed-head physical injury. In the earlier litigation, the Commission had found that the Claimant had failed to prove that she sustained a compensable mental injury. On remand, the Commission again found that

the Claimant had failed to prove a compensable injury. In affirming the Commission, the Court of Appeals pointed out that the claimant's neuropsychological test results, standing alone, did not amount to sufficient evidence of a physical or organic injury to the brain in the absence of "some other objective evidence of injury." (Relying on its previous opinion in *Watson v. Tayco, Inc.*, 79 Ark. App. 250, 86 S.W.3d 18 (2002)). The Court did note the Claimant's assertion that her medical records referred to a hematoma on her forehead as well as facial contusions, and also mentioned a diagnosis of "concussion." However, the Court reasoned that the objective findings of a hematoma and contusions ran only to the appellant's head injury (for which compensation had already been paid) rather than to an organic brain injury, and that there was nothing from which to conclude that her diagnosis of a concussion "was based on anything other than subjective criteria."

*Gaither Appliance v. Stewart*, 103 Ark. App. 276, 2008 WL 4724079, No. CA07-878 (October 22, 2008): Before the Arkansas Workers' Compensation Commission, the Claimant obtained an award of additional medical benefits, a twelve percent anatomical impairment rating, and wage loss disability benefits. The Respondents subsequently challenged all three aspects of the award on appeal to the Arkansas Court of Appeals, which affirmed the Commission in part and reversed in part. Because the Commission had simply accepted the testimony of one physician over another in awarding a twelve percent impairment rating, the Court indicated that it was "powerless" to reverse as to this point (running as it did to the weight and credibility of the evidence rather than its sufficiency; the former being essentially the sole prerogative of the Commission). The Court likewise affirmed the Commission's award of additional medical treatment, holding that "Dr. Safman's opinion that the compensable injury was the major cause of appellee's anatomical impairment is substantial evidence to support the Commission's finding to that effect." (The Respondents had contended that the major cause of the impairment, and thus further treatment, was a pre-existing condition rather than the compensable injury.) However, with regard to wage loss disability benefits, the Court took note of evidence that the Claimant had declined to speak with a vocational rehabilitation counselor until after his hearing before the Commission. In light of this evidence, the Court held that the "only reasonable conclusion to be drawn was that a rehabilitation plan existed and that appellee manifested an unwillingness to cooperate." Consequently, the Court reversed as to this point and remanded the matter back to the Commission for further proceedings.

*Finley v. Farm Cat, Inc.*, 103 Ark. App. 292, 2008 WL 4724076, No. CA08-222 (October 22, 2008): In a likely case of first impression, the Arkansas Court of Appeals considered whether a posthumous child, which existed as a frozen, un-implanted embryo at the time of his father's death, was entitled to dependency benefits under Ark. Code Ann. §11-9-527. The Claimant perished in an electrocution accident on July 19, 2001. Approximately eleven months later, in June, 2002, the Claimant's widow had two frozen embryos implanted in her uterus. These, along with eight others, had been conceived through the in-vitro fertilization of the widow's eggs with the Claimant's sperm a year earlier. The Claimant's widow gave birth to a son on March 4, 2003, nearly two years after the Claimant's death, and subsequently filed for workers' compensation dependency benefits on behalf of her minor child. The Arkansas Workers' Compensation Commission reversed the decision of one of its Administrative Law Judges, and denied such benefits. On appeal, the Arkansas Court of Appeals agreed, noting that children who did not live with an injured employee at the time of the employee's death had to

demonstrate “actual dependency” upon the deceased as a prerequisite to dependency benefits. The Court declined to accept the payment of embryonic storage fees as the type of support envisioned by Ark. Code Ann. §11-9-527, and went on to conclude that “...there is no evidence in the record demonstrating that at the time of his father’s death, Wade III was ‘wholly and actually dependent’ upon his father or that he had a reasonable expectation of support from him. The facts establish that Wade III was a frozen embryo at the time of his father’s death and was not born until almost two years after his father’s death. His mother was not pregnant with him until almost one year after his father’s death. As such, we hold that substantial evidence supports the Commission’s finding that Wade III was not wholly and actually dependent upon his father and accordingly, that he was not entitled to dependency benefits under §11-9-527(c).” The Court did not consider the Claimant’s constitutional arguments since they had not been properly preserved at the hearing level.

*Averitt Express, Inc. v. Gilley*, 104 Ark. App. 16, 2008 WL 4822967, No. CA08-152 (November 5, 2008): In this permanent disability case, the Arkansas Workers’ Compensation Commission found that the Claimant had sustained a 12% permanent anatomical impairment rating and was also entitled to a wage loss disability rating of 20%. On appeal, the Respondents asserted that the Commission had erred in relying on the 12% impairment rating because the physician who assigned it had only examined the Claimant once. In contrast, the Claimant’s treating physician had assigned a 6% impairment rating. While the Arkansas Court of Appeals acknowledged that the Commission can give greater weight to the opinion of a treating physician (as opposed to that of an independent evaluating physician who examines a Claimant only once), it pointed out that the Commission was not required to do so and that the “opinion of a doctor who performs a one-time examination of the claimant can constitute substantial evidence of the Commission’s opinion.” The Respondents further asserted that there was no evidence to show that the assigning physician had utilized the *AMA Guides* in arriving at the 12% impairment rating; however, the Court stated that “Arkansas does not require any specific ‘magic words’ with respect to expert opinions; said opinion are to be judged upon the entirety of the opinion, not validated or invalidated on the presence or lack of ‘magic words.’” (Citing *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001)). The Court also noted that the Commission itself had determined that the 12% rating was supported by the *Guides*. The Court went on to likewise affirm the Commission’s assessment of a 20% wage loss disability rating, holding that the Commission was entitled to rely on the Claimant’s testimony that he was unable to continue his previous duties, and that “once the Commission finds a claimant credible, we are bound by that determination.”

*Huckabee v. Wal-Mart, Inc.*, 104 Ark. App. 22, 2008 WL 4821668, No. CA08-515 (November 5, 2008): The Claimant sustained a severe ankle injury in 2001 which ultimately resulted in a 12% permanent impairment rating and led her treating physician to recommend annual follow-up examinations to monitor the possible onset of post-traumatic arthritis. The Claimant subsequently presented to her treating physician toward the end of the year in 2004, 2005, and 2006. Following a hearing, the Arkansas Workers’ Compensation Commission found that the Claimant was not entitled to additional benefits and that she had been seeking medical care for the sole purpose of tolling the statute of limitations. In so finding, the Commission noted that the Claimant’s treating physician had not recommended any additional treatment nor had the Claimant actually developed post-traumatic arthritis over the previous five years. The

Arkansas Court of Appeals, however, reversed, observing that two physicians (including the treating physician) had indicated that the Claimant had a chronic condition which could eventually require an ankle fusion. The Court further noted that the Claimant's treating physician had "consistently recommended that appellant be periodically evaluated to allow for proper monitoring of the condition," and concluded that "periodic evaluations of a medically foreseeable condition related to a compensable injury constitute reasonably necessary medical treatment."

*Moody v. Addison Shoe Co.*, 104 Ark. App. 27, 2008 WL 4822966, No. CA08-452 (November 5, 2008): The Arkansas Workers' Compensation Commission found here that the Claimant had failed to prove the occurrence of a compensable gradual shoulder injury. In particular, the Commission found that the Claimant's work duties, while repetitive, were not sufficiently rapid. The Court of Appeals disagreed and remanded the matter for the Commission to consider further. Specifically, the Court noted that although the General Assembly itself had not defined "rapid" for purposes of the "rapid repetitive motion" standard, previous case law provided some guidance, such as a claimant who bent her neck once every twenty seconds or one who had to place a nut every fifteen seconds on average (citing *Hapney v. Rheem Mfg.*, 342 Ark. 11, 26 S.W.3d 777 (2000) and *High Capacity Products v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (1998)). Because the Claimant in the present case completed her own task faster than either of these examples (every twelve to fourteen seconds), the Court did not find substantial evidence to support the Commission's decision and remanded the matter for further fact-finding.

*Neal v. Sparks Regional Medical Ctr.*, 104 Ark. App. 97, 2008 WL 4938321, No. CA08-557 (November 19, 2008): In this instance, the Arkansas Court of Appeals affirmed the Arkansas Workers' Compensation Commission's finding that the Claimant had been offered suitable light duty which she did not accept and was therefore barred from receiving temporary total disability benefits pursuant to Ark. Code Ann. §11-9-526. However, the Claimant also argued that she "should still be entitled to temporary partial disability benefits because of the difference between the wages she would have earned doing the work that Sparks offered her and the wages she was earning at the time of her injury" (before her injury, the Claimant earned substantial income doing *per diem* shift work which the Respondents' offer of light duty would not have fully replaced). The Court of Appeals declined to accept this assertion, holding that the same rationale which barred temporary total disability benefits pursuant to §11-9-526 also operated to bar the receipt of temporary partial disability benefits.

*Ellis v. Hines Trucking, Inc.*, 104 Ark. App. 118, 2008 WL 5172801, No. CA08-688 (December 10, 2008): The Claimant was involved in a work-related car wreck and subsequently claimed injuries to the neck, shoulder and knee. The Respondents accepted the neck injury, but denied the shoulder and knee injuries. Following a hearing and an appeal, the Arkansas Workers' Compensation Commission agreed with the Respondents, finding that the neither the Claimant's knee or shoulder injuries were established by medical evidence supported by "objective findings." In so finding, the Commission noted two pieces of medical evidence that the Claimant offered in support of his claim: (1) an E.R. note with a checkmark beside the words "tenderness/swelling" with "L shoulder" written to the side, and (2) a Texas Workers' Compensation Work Status Report in which a physician noted "contusion L shoulder and L knee." The Commission determined that neither record amounted to an objective medical

finding. On further appeal, the Arkansas Court of Appeals reversed and remanded. While agreeing with the Commission that the reference to “tenderness/swelling” was ambiguous, the Court held that the note offering a diagnosis of “contusion” was an objective finding. In support of its decision, the Court distinguished this case from *Rodriguez v. M. McDaniel Co.*, 98 Ark. App. 138, 252 S.W.3d 146 (2007), upon which the Commission had relied. In *Rodriguez*, the Claimant had been diagnosed with a “hip contusion on the right” at the E.R. and later by Dr. Yawn. However, Dr. Yawn later testified that “his diagnosis of a contusion did not necessarily mean that he had viewed a disturbance in the skin and tissue.” Dr. Yawn also testified that the E.R. contusion diagnosis “most likely referred to tenderness and not to visible darkening or bruising.” In sum, the Commission had to resolve conflicting medical evidence regarding the contusion in *Rodriguez*, and the Court had affirmed the Commission’s determination that said evidence did not amount to an objective finding. However, in the present case, the Court held that “Here we have a contusion diagnosis with no conflicting testimony about the nature of the contusion.” Because of this unequivocal diagnosis, the Court further concluded that reasonable persons with the same facts before them could not have reached the same decision as the Commission (e.g., the “substantial evidence” standard of review), and remanded the matter for further consideration.

*Walker v. Cooper Automotive*, 104 Ark. App. 175, 2008 WL 5265334, No. CA08-519 (December 17, 2008): Here, the Arkansas Workers’ Compensation Commission found that the Claimant had proven the compensability of his alleged knee injury, but was not entitled to temporary total disability benefits because he had voluntarily left his employment in return for a severance package in relation to a reduction-in-force. The Arkansas Court of Appeals affirmed the Commission as to the compensability of the knee injury, but reversed as to the denial of temporary total disability. Specifically, the Court noted that Ark. Code Ann. §11-9-521 allows a claimant with a scheduled injury to receive temporary total disability benefits “during the healing period or until the employee returns to work, whichever occurs first...” and that §11-9-526 barred temporary total disability where an employee refuses suitable employment unless the refusal is justified. Applying these rules to the facts, the Court determined that there was no substantial evidence of a refusal to work offered light duty since the “appellant was terminated at the urging of his employer...Construing the statute strictly, as we must, the facts remain that this employee was neither offered employment, nor did he refuse employment, at any time after July 5, 2006.”

*Lewis v. Auto Parts & Tire, Inc.*, 104 Ark. App. 230, 2008 WL 5424024, No. CA08-687 (December 31, 2008): The Arkansas Workers’ Compensation Commission held in this case that it could not award a lump sum attorney’s fee to be paid by the Second Injury Fund because the amount of installment benefits to be paid to the claimant over his lifetime was “unascertainable.” In so finding, the Commission relied on language from *Seward v. The Bud Avents Co.*, 65 Ark. App. 88, 985 S.W.3d 332 (1999); however, the Arkansas Court of Appeals concluded that the Commission had misinterpreted *Seward* and reversed. Specifically, the Court explained that *Seward* provided for lump sum attorney’s fees chargeable to the employer while providing for installment payment of attorney’s fees chargeable to the employee. Since *Seward* allowed for an award of lump sum attorney’s fees chargeable to the employer, and since the Second Injury Fund stood in lieu of the employer in this instance, the Commission could award a lump sum fee payable by the Fund. The Arkansas Court of Appeals also concluded that nothing in Ark. Code

Ann. §§11-9-715, 11-9-716, or 11-9-804 limited an award of lump sum fees to employers only. Finally, the Court held that *Second Injury Fund v. Furman*, 336 Ark. 10, 983 S.W.2d 923 (1999), was not controlling since it dealt with the recovery of attorney's fees after prevailing before the Court of Appeals itself (Ark. Code Ann. §11-9-715(b)(1)), while the present case dealt only with an award of fees for proceedings before the Commission (Ark. Code Ann. §11-9-715(a)(2)(A)).

*Hicks and C.H. v. Bates and D.B., et al*, 104 Ark. App. 348, 2009 WL 331447, No. CA08-501 (February 11, 2009): Jerry Hicks ("decedent") died as the result of a work-related accident sustained on July 29, 2002, resulting in the payment of dependency benefits to his surviving spouse (Appellant Hicks) and minor child, C.H. Prior to his marriage to Hicks, the decedent had fathered a child, D.B., with Appellee Bates. Bates learned of the decedent's death on July 30, 2002, and subsequently applied for and obtained Social Security dependency benefits for D.B. In February, 2006, Bates learned of D.B.'s entitlement to workers' compensation benefits, and arranged for DNA testing that established the decedent as D.B.'s biological father. On March 10, 2006, a Missouri circuit court appointed Bates as D.B.'s legal guardian and conservator. Bates subsequently filed a claim for workers' compensation benefits on D.B.'s behalf on May 17, 2006. Following a hearing, an Administrative Law Judge with the Arkansas Workers' Compensation Commission found that: (1) D.B. was the decedent's son; (2) D.B. was "wholly and actually dependent" upon the decedent at the time of death; and (3) D.B.'s claim for workers' compensation dependency benefits was not barred by the statute of limitations. On December 21, 2007, the Full Commission affirmed the Administrative Law Judge's findings. On further appeal, the Arkansas Court of Appeals noted that Ark. Code Ann. §11-9-702(f)(2) provided an exception to the usual two-year statute of limitations:

- (2) The provisions of subsection (a) or (b) of this section shall not apply to a mental incompetent or minor so long as the person has no guardian or similar legal representative. The limitations prescribed in subsection (a) or (b) of the section apply to the...minor from the date of the appointment of a guardian or similar legal representative for that person, and where no guardian or similar representative has been appointed, to a minor upon obtainment of majority.

The Appellants argued that the statute of limitations had run on D.B.'s claim since he had been under the care of his natural guardian, his mother (Bates), since birth. The Court, however, agreed with the Commission's findings, reasoning that Bates was not D.B.'s legal guardian simply by virtue of being his mother, and that the use of the word "appointment" carried with it the connotation of a legal action "endowing a formal guardian with the power to protect a minor, his or her legal rights, and his or her estate." (citing Ark. Code Ann. §28-65-201 to 323.) Accordingly, the statute did not begin to run on D.B.'s claim until his mother was appointed his legal guardian, such that his eventual claim was timely (the Court also place considerable weight on the fact Ark. Code Ann. §11-9-801 authorizes benefits to be paid to a minor's "legally appointed guardian," which the Court felt "demonstrates the legislative intent that a guardian is one who is sanctioned by judicial action"). Finally, the Court agreed that D.B. had been "wholly and actually" dependent upon the decedent at the time of death consistent with *Lawhon Farm Services v. Brown*, 335 Ark. 272, 984 S.W.2d 1 (1998).

*Mitchell v. Tyson Poultry, Inc.*, 104 Ark. App. 327, 2009 WL 331445, No. CA08-843 (February 11, 2009): In this case, the administrator of a deceased claimant's estate refused the employer/carrier's tender of workers' compensation death benefits, asserting that the Commission lacked jurisdiction since the decedent was not performing "employment services" at the time of death. Although conceding that the decedent had finished his break at the time of his death, the Appellant argued that he was not performing employment services because he had not yet arrived at the office where he was to receive instructions for his next work assignment. The Court of Appeals, however, affirmed the Commission's finding that the decedent's death had, in fact, been compensable, since he "had finished his break and was performing the employment service of returning to the office to obtain instructions. He was in the yard, his assigned work area, when the fatal injury occurred...It is undisputed that he was within the time and space boundaries of his employment, finished with his break, and en route to receive further instructions. This constitutes performance of employment services under *Sands*." (Citing *Wal-Mart Stores, Inc. v. Sands*, 80 Ark. App. 51, 91 S.W.3d 93 (2002))

*Death & Permanent Total Disability Trust Fund v. Rodriguez, et al*, 104 Ark. App. 375, 2009 WL 331439, No. CA08-842 (February 11, 2009): In yet another death claim, the Commission awarded dependency benefits to the decedent's three minor children, all of whom were nonresident aliens in Mexico. The Trust Fund appealed, essentially arguing, *inter alia*, that the minor children were not "wholly and actually dependent" upon the decedent because he had abandoned them after departing for the United States in 1996 (and subsequently marrying an American woman without first divorcing his wife in Mexico). However, the Arkansas Court of Appeals noted that the decedent had sent monetary support to his family in Mexico until 2003, and that the children, "by virtue of their ages, could not have been expected to pursue support on their own." Consequently, while the decedent's original wife may have no longer had a reasonable expectation of support at the time of death, the same could not be said of his minor children, who the Court found to be "wholly and actually dependent" upon the decedent. The Court also affirmed the Commission's finding that the minor children were not barred from receiving benefits by Ark. Code Ann. §11-9-111(a), pertaining to resident and non-resident aliens.

*Burkett v. Exxon Tiger Mart*, 2009 Ark. App. 93, 2009 WL 395245, No. CA08-741 (February 18, 2009): In this instance, the Arkansas Workers' Compensation Commission vacated an Administrative Law Judge opinion which ordered an IME and reserved issues pertaining to compensability and additional benefits. On appeal, the Claimant asserted that the Commission had erred by: (1) determining that the Administrative Law Judge lacked the authority to order an IME; (2) deciding issues that had been reserved by the Administrative Law Judge; and (3) failing to make findings of fact to support its denial of compensability. As a general matter, the Claimant also argued that the Commission's denial was not supported by substantial evidence. The Arkansas Court of Appeals affirmed the Commission as to the IME, noting that "[T]he plain language of sections 11-9-511(a) and 11-9-811 does not authorize the Commission to, sua sponte, order an IME after the parties have litigated compensability and additional benefits." The Court further determined that, in vacating the Administrative Law Judge's opinion and deciding the issues presented by the parties, the Commission had properly relied on previous precedent from *Gencorp Polymer Products v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (1991). However, the Court found that the Commission had failed to actually make

findings of fact to support its denial of compensability, in that it had “summarily found” that the Claimant had failed to meet her burden of proof. Accordingly, the Court reversed as to this point and, consequently, did not reach the question of whether substantial evidence supported the Commission’s decision.

*Care Manor of Baxter Co. v. Wheeler*, 2009 Ark. App. 132, 2009 WL 465064, No. CA08-702 (February 25, 2009): Here, the Arkansas Court of Appeals considered whether the Respondent, by stopping payment of Commission-ordered medical benefits, could commence the statute of limitations to run against a subsequent claim to resume those benefits. The Arkansas Workers’ Compensation Commission found that it could not, and the Arkansas Court of Appeals agreed. The Claimant had sustained injuries in 1999 and 2000, which were ultimately found compensable by virtue of a Commission order that the Court of Appeals affirmed in April, 2003. However, without an order to do so, the Respondent ceased paying for medical care received after May, 2002, on the basis that such care was neither reasonably necessary nor related to the compensable injury. The Claimant continued to receive treatment and eventually obtained a change of physician from the Commission in February, 2003. Two years later, in February, 2005, the Claimant requested a hearing with regard to payment of her medical expenses. The Respondent contended that the claim was time-barred since it had been filed more than one year from the last payment of compensation. Relying on *Helena Contracting and Carroll Elec. Coop. v. Pack*, 85 Ark. App. 293, 151 S.W.3d 324 (2004), the Commission found that the claim was not one for additional benefits, but was rather a claim to enforce a prior opinion and order. As such, it was not barred by the statute of limitations. The Court of Appeals held that the Commission had properly applied *Helena Contracting*, and noted the Commission’s finding that “[t]here is nothing in the record demonstrating that the award of all reasonable and necessary medical treatment for [Wheeler’s] compensable injury...had expired or that the stop payment of benefits by [Care Manor] was sanctioned in any form.” The Court further noted that, similar to the Respondent in *Helena Contracting*, the Respondent here had “ignored a prior opinion and award when it stopped paying for medical treatment Wheeler received after May 2002.” Accordingly, the statute of limitations had not begun to run.

*CV’s Family Foods v. Caverly*, 2009 Ark. App. 114, 2009 WL 465069, No. CA08-775 (February 25, 2009): The Claimant sustained injuries when he tripped and fell while watching over a young, female employee who was walking to her car at night after the close of business. The Respondents denied the claim for a lack of employment services; however, the Arkansas Workers’ Compensation Commission found otherwise, and determined the claim to be compensable. The Arkansas Court of Appeals agreed, reasoning that “Watching the young employee to ensure her safety at night was more than gentlemanly and laudable: it was an activity that came within the scope of his oversight, and it benefited the employer by ensuring the safety of a trained and valuable employee, and by helping establish a record of safety on the premises that would benefit the employer...We conclude that the Commission could properly find that appellee’s activities carried out the employer’s purpose and advanced the employer’s interest, and we therefore affirm.”

*Sally v. Service Master*, 2009 Ark. App. 209, 2009 WL 700607, No. CA08-847 (March 18, 2009): The Arkansas Workers’ Compensation Commission found here that the Claimant had failed to prove the compensability of his carpal tunnel syndrome, in large measure due to its

finding that the Claimant's testimony was not as credible as the employer's. Although it acknowledged that credibility determinations were the Commission's prerogative, the Arkansas Court of Appeals reversed, stating that "...the Commission's disregard of appellant's testimony based upon his status as an interested party cannot sustain the Commission's credibility determination under these facts. The Commission specifically discredited appellant's testimony because he was an interested party while simultaneously crediting the testimony of the employer's representative, another interested party in the matter...Merely relying upon appellant's status as an interested party is insufficient to support disregarding his testimony on these facts." The Court went on to conclude that nothing in the record suggested any cause for the Claimant's carpal tunnel syndrome other than his work, and that the Commission's decision was not supported by substantial evidence.

*Goyne v. Crabtree Contracting Co., Inc.*, 2009 Ark. App. 200, 2009 WL 700638, No. CA08-1152 (March 18, 2009): In this instance, the Claimant obtained a Commission-approved change of physician, and the Respondents paid for the new doctor's initial evaluation. However, the Respondents subsequently controverted additional diagnostics recommended by the second physician. An Administrative Law Judge awarded Claimant the additional diagnostics, but the Arkansas Workers' Compensation Commission reversed, relying on the fact that the Claimant's previous physicians had placed him at maximum medical improvement and assigned an impairment rating prior to the change of physician. The Arkansas Court of Appeals affirmed, stating that "It is clear that, after granting Goyne the change of physicians to Dr. Chakales, the Commission simply assigned greater weight to the earlier records of Drs. Carle and Ackerman than to his new doctor's recommendations for a diagnostic EMG. The Commission's ruling that Goyne did not show the testing to be reasonably necessary was based on the Commission's finding that appropriate medical treatment, physical therapy, and pain management services had been provided. Thus, the Commission's decision displays a substantial basis for the denial of Goyne's claim for payment of the EMG test that his new physician had recommended."

*Sea Ark Marine, Inc. v. Pippinger*, 2009 Ark. App. 223, 2009 WL 857542, No. CA08-776 (April 1, 2009): Following a hearing in November, 2007, an Administrative Law Judge entered an order finding that the Claimant was entitled to additional medical treatment. However, the Administrative Law Judge went on to find that further medical evaluation was required before additional treatment could proceed, and also indicated that a spinal column stimulator would be the "preferred course of treatment." The Arkansas Workers' Compensation Commission subsequently adopted the Administrative Law Judge's findings as its own. On appeal to the Arkansas Court of Appeals, the Respondents essentially asserted that the Commission had awarded additional medical treatment, including the prospect of a spinal stimulator, but had also conceded or found that further medical evaluation was required before such treatment could proceed. In sum, "[Respondents] maintain that the finding that another evaluation needs to occur is a tacit admission that the record did not contain sufficient evidence to rule outright that additional treatment, including the implantation of a dorsal-column stimulator was reasonable and necessary." The Court agreed, holding that "it was the statutory obligation of the Commission to make findings of fact and to decide the issue of additional benefits by determining whether appellee met his burden of proof...we hold that the Administrative Law Judge and the Commission erred by ordering an additional evaluation and reserving a decision on the primary issue in the litigation."

*Curtis v. Big Lots*, 2009 Ark. App. 292, 2009 WL 1010880, No. CA08-691 (April 15, 2009): The Claimant sustained compensable injuries to her neck, shoulder, arm and hand on August 8, 2002. Following a course of medical care, the Respondents accepted and paid a 9% impairment rating to the whole body, which exhausted in November, 2005. Prior to that, the Claimant submitted a claim for additional benefits on May 12, 2003, which was followed by an agreed order in November which awarded additional benefits and medical treatment. The Claimant's treating physician released her from his care on June 28, 2005. While the Respondents subsequently paid for a prescription re-fill on May 24, 2006, they denied an appointment scheduled for March 27, 2007. Following an award of benefits by an Administrative Law Judge, the Arkansas Workers' Compensation Commission found that the Claimant had failed to meet her burden of proof and that her claim was barred by the statute of limitations. On appeal to the Arkansas Court of Appeals, the Court found fault with the Commission's view that the claim for additional benefits had been "adjudicated and resolved" by virtue of the agreed order in November, 2003. Though it acknowledged that dismissal of a claim under Ark. Code Ann. §11-9-702(d) can "untoll" the statute of limitations, the Court also noted that such occasions were, in fact, "specifically limited to cases dismissed pursuant to subsection (d)." The Court further noted that "This case was never dismissed pursuant to subsection (d). In fact, the agreed order memorializes the reason for the hearing not being held on the scheduled date and grants a continuing award of benefits which included the referral to Dr. Standefer." The Commission had also "reasoned that the timely filing of a claim for additional benefits will toll the statute of limitations until the claim is decided," however, the Court pointed out that "To be a final adjudication, an order must dismiss the parties from the court, discharge them from the action, or conclude their rights as to the subject matter in controversy...The Commission's denial of benefits and its simultaneous determination that the agreed order allowing appellant to pursue additional medical treatment with the referral to Dr. Standefer was a final adjudication cannot be reconciled with the finality requirements."

*Salmon & Sons, Inc. v. Pate*, 2009 Ark. App. 272, 2009 WL 1010893, No. CA08-742 (April 15, 2009): Among several other issues that related primarily to the weight and credibility of the evidence, the Arkansas Court of Appeals held that the 26-week limitation on temporary total disability compensation related to mental injuries did not run afoul of Article 2, Section 3 of the Arkansas Constitution. Specifically, the Court stated that "there is a rational and legitimate public purpose for distinguishing between mental and physical injuries in this manner because mental injuries often cannot be confirmed by objective findings, and there is thus a greater potential for fraudulent claims being advanced, causing needless expense for taxpayers and employers alike."

*Stewart v. Ark. Glass Container, et al*, 2009 Ark. App. 300, 2009 WL 1076761, No. CA08-1311 (April 22, 2009): Following a course of litigation involving additional medical benefits, the Claimant filed a request for additional benefits on December 21, 2005. An Administrative Law Judge with the Arkansas Workers' Compensation Commission found that this claim was not time-barred because the earlier hearing of March 19, 2004 (which resulted in a denial ultimately affirmed by the Arkansas Court of Appeals), had dealt with additional medical benefits and all other issues had been reserved by the parties. The Commission, however, reversed this finding, having reasoned that the only claim before the Commission had been the

question of additional medical benefits – since this issue had been fully and finally resolved, there were no other pending matters to reserve. On appeal, the Arkansas Court of Appeals stated that it “...must determine the tolling impact – if any – a specific request for one benefit (medical expenses in this case) has on other benefits that could arise or flow from the specifically requested benefit. In more simplistic terms, we must determine if the statute-of-limitations tolling is claim or benefit specific.” In resolving this issue, the Court reasoned that “If we were to require claimants to be benefit specific, within one distinct compensable-injury claim, there would be multiple statutes of limitations running. This would result in piecemeal litigation at its worst...Therefore, we conclude that Stewart’s timely request for ‘additional medical benefits’ tolled the statute of limitations until the claim was finally and completely litigated, not only on the general medical-benefit claim but on all benefits that might flow from that specific request.”

*Nestle, USA, Inc. v. Drone*, 2009 Ark. App. 311, 2009 WL 1076781, No. CA08-1082 (April 22, 2009): The Respondents in this instance appealed the Commission’s award of benefits pursuant to Ark. Code Ann. §11-9-505 for an unreasonable refusal to return the Claimant to work. On appeal, the Respondents argued that the Commission had erred as a matter of law since, at the time his employment was terminated, the Claimant was not “disabled.” In fact, the Claimant had not lost any time from work in association with his compensable injury. Looking to a similar situation in *Clayton Kidd Logging Co. v. McGee*, 77 Ark. App. 226, 72 S.W.3d 557 (2002), and reiterating the prerequisites for an award of benefits under §11-9-505 as set forth in *Torrey v. City of Ft. Smith*, 55 Ark. App. 226, 934 S.W.2d 237 (1996), the Court declined to agree with the Respondents’ assertion: “In the appeal now before us, Drone returned to work immediately following his injury and continued to work for over a year before Nestle fired him. Although Drone received some medical treatment, just as in *McGee* he was not disabled and did not receive disability benefits. The Commission found that he met the requirements we listed in *Torrey*, and we cannot say that the evidence does not support the Commission’s findings, or that the Commission erred in its construction of the statute and its application of the relevant case law.”

*North Little Rock School Dist. v. Lybarger*, 2009 Ark. App. 330, 2009 WL 1151756, No. CA08-1149 (April 29, 2009): The Claimant here worked at Boone Park Elementary as a teacher’s aide. On September 27, 2007, the Claimant attended a required staff meeting at another campus a few miles from her regular place of employment. The Claimant arrived at 8:00 a.m., attended meetings, and was released to lunch at 11:00 a.m. After lunch, the Claimant and others were to report to Boone Park Elementary for additional meetings. In order to reach her car, the Claimant exited the building where the meetings had been held, and entered another building where she fell and broke her leg while ascending some stairs. The Arkansas Workers’ Compensation Commission adopted the findings of an Administrative Law Judge, who had found that the Claimant was performing “employment services” since she was on a “foreign campus” attending a required seminar and had never made it to her car, where she normally ate her lunch. On appeal by the Respondents, the Arkansas Court of Appeals affirmed, noting first that “Lybarger testified that she was attending a seminar at the Lakewood campus, and...was on duty and that her obligation as a district employee on school grounds was to provide assistance if there had been anything asked of her.” The Court also reasoned that, though the Claimant had been released for lunch, she subsequently had to report to her regular place of employment for additional meetings and, in turn, that “...by walking through the Lakewood campus, she was

carrying out her the employer's purpose and advancing her employer's interest in that she was leaving Lakewood, preparatory to reporting to Boone Park Elementary. That there also may have been a non-employment-related purpose in walking through the campus does not alter the conclusion that she was also performing employment services."

*Taggart v. Mid America Packaging*, 2009 Ark. App. 335, 2009 WL 1151746, No. CA08-1303 (April 29, 2009): In this wage loss case, an Administrative Law Judge awarded the Claimant a 20% wage loss disability in excess of her permanent anatomic impairment rating. In so doing, the Administrative Law Judge took into apparent account several of the traditional wage-loss factors, including age, education, motivation, and post-injury income. The Arkansas Workers' Compensation Commission affirmed and adopted the law judge's findings, prompting the Claimant to appeal. Upon review, the Arkansas Court of Appeals concluded that the Administrative Law Judge had considered many, though not all, of the relevant wage loss factors. In particular, the Court felt that "appellant's pre-injury income was not addressed beyond a general finding that appellant 'will have difficulty in replacing her wages at the level before her injury.'" The evidence indicated that the Claimant had earned \$67,721.07 during a one-year time frame surrounding her injury. However, her maximum earnings as a social worker (which she was studying to be at the time of the hearing), or in one of the sedentary jobs identified by her disability insurer, would be only \$35,000.00. Though the Court acknowledged that there was "no formula for determining wage loss," it concluded that "the record simply does not support a finding that appellant's wage loss disability was no more than twenty percent." Consequently, the Court reversed as to this finding, and remanded for further proceedings.

*Ballasteros v. Tyson Poultry, Inc.*, 2009 Ark. App. 349, 2009 WL 1151744, No. CA08-1390 (April 29, 2009): Here, the Arkansas Workers' Compensation Commission denied a claim for temporary total disability during a disputed time frame after finding that the Claimant had falsified a prescription. The Commission further found that altering the prescription was justifiable cause for the Respondent to have terminated the Claimant's employment. On appeal, the Arkansas Court of Appeals affirmed the Commission as to both findings, holding first that there was sufficient evidence to support the Commission's conclusion that the Claimant had indeed altered his prescription. In affirming the Commission's denial of benefits under Ark. Code Ann. §11-9-505, the Court noted that the Respondents had a legitimate interest in accurate information regarding an employee's injury, and that the prescription in question was properly regarded as a "work record" – the falsification of which provided adequate cause for termination and thus the preclusion of benefits under §11-9-505.

## **NATIONAL MARKETS IN GENERAL**

While Arkansas has seen increases in the average indemnity and medical cost per lost time claim, claims frequency continues to decline. Arkansas's market remains strong and competitive.

The attached state of the industry report (Exhibit "D") graphically depicts the sound condition of the workers' compensation marketplace; still, the NCCI continues to discover that workers' compensation results are affected by a number of factors that are having a negative impact on the market:

- lower earnings relating to investments;
- assigned risk applications continue to increase;
- claim costs that are beginning to rise at more rapid rates than in previous years;
- pending proposals for benefit increases;
- challenges to workers' compensation as an exclusive worker remedy for workplace injury;
- recent federal initiatives that threaten to increase claim costs, broaden compensability definitions, and have the potential to create duplicate remedies;
- reform roll-back proposals in recent state legislative sessions;
- increasing costs of medical benefits; and
- increasing utilization of certain prescription pain medications.

The NCCI does point out one favorable development among the negatives. The incidence of workplace injuries continues to fall sharply since the reform efforts of 1993. This means fewer injured workers – the most valuable outcome imaginable for workers, their families, and employers.

## CONCLUSION

Absent the reforms encompassed in Act 796 of 1993, it is doubtful Arkansas's employers would now have the option of voluntary workers' compensation insurance. Rather, the assigned risk plan, designed to be a market of "last resort," would have become Arkansas's market of "only resort." The General Assembly is to be highly commended for its leadership in reforming the workers' compensation market in our State while protecting the interests of the injured worker.

Arkansas's employers must have available to them quality workers' compensation products in the voluntary market at affordable prices. The creation of good jobs requires a marketplace where all businesses, regardless of size, can grow. Maintaining a stable workers' compensation system is essential for this growth. The evidence shows the reforms have worked. The incidence of fraud has been reduced through high-profile fraud prosecutions, employee compensation rates and benefits have been increased, and workers injured within the course and scope of their employment have received timely medical treatment and the payment of much improved indemnity benefits. Eroding the positive changes incorporated into Act 796 would be counterproductive to continued economic growth and development.

Prepared: September 1, 2009

cc: The Honorable Mike Beebe, Governor  
 The Honorable A. Watson Bell, Chairman, AWCC  
 The Honorable Karen H. McKinney, Commissioner, AWCC  
 The Honorable Philip Alan Hood, Commissioner, AWCC  
 Mr. Alan McClain, Chief Executive Officer, AWCC  
 Mr. Nathan Culp, Insurance Public Employee Claims Division Director, AID  
 Mr. Greg Sink, Criminal Insurance Fraud Director, AID  
 Ms. Alice Jones, Public Information Manager, AID



# Arkansas

## STATE ADVISORY FORUMS '09

June 4, 2009

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## Arkansas Workers Compensation State Advisory Forum

- 8:30 a.m.** Continental Breakfast
- 9:00 a.m.** Industry and Arkansas Outlook  
Workers Compensation System Overview  
State of the Industry  
Claim Frequency  
Indemnity Severity  
Arkansas Kids Chance Presentation  
Break  
Medical Severity  
Workers Past Age 65—Implications for Workers Compensation  
Legislative Issues Nationwide and in Arkansas  
The Residual Market in Arkansas
- 11:45 a.m.** Closing Remarks

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2

### State of the Industry—An Overview

- Total workers compensation premium continues to decline
- Underwriting results continue to be good
- Calendar year combined ratios remain steady, while accident year combined ratios continue to decrease
- Claim frequency continues to decline
- Medical costs remain above inflation
- Continued regulatory turnover

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3



### Arkansas Workers Compensation System— An Overview

- Loss costs continue to decrease
- Combined ratio remains low
- Frequency decreases continue to offset growth in indemnity and medical costs
- Employment is forecast to decline into 2010, led by a sharp decline in the more hazardous manufacturing sector
- Residual market continues to depopulate

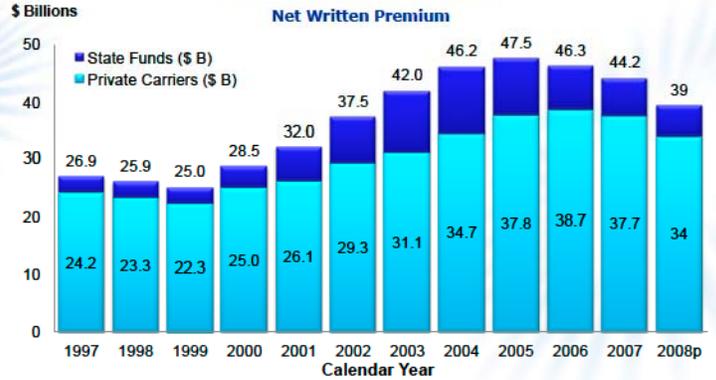
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4



# Workers Compensation System Overview

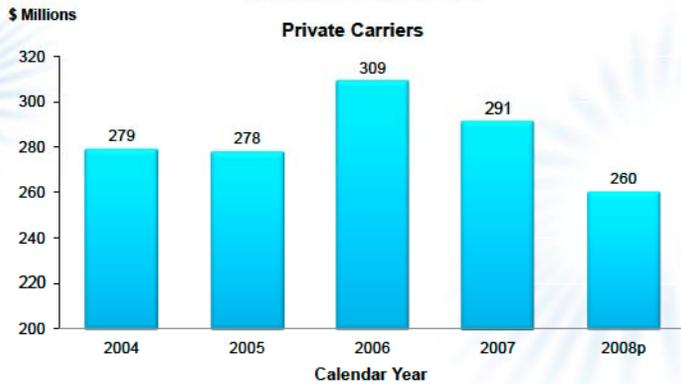
## Countrywide Total Workers Compensation Premium Continued to Decline in 2008



p Preliminary  
 Source: 1997-2007 Private Carriers, Best's Aggregates & Averages; 2008p, NCCI  
 1997-2008p State Funds: AZ, CA, CO, HI, ID, KY, LA, MO, MT, NM, OK, OR, RI, TX, UT Annual Statements

## Arkansas Workers Compensation Premium Volume

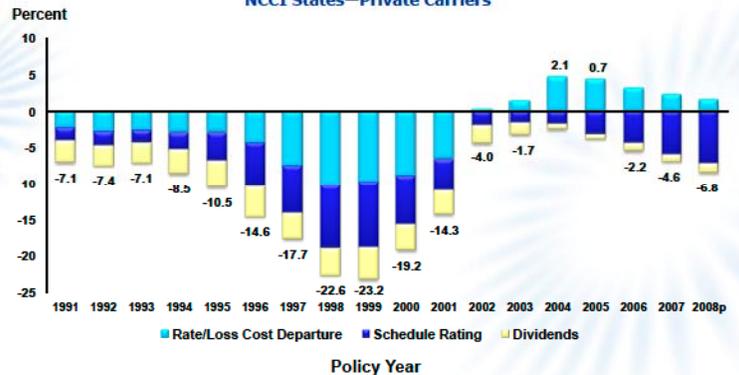
Direct Written Premium



p Preliminary  
 Source: NAIC Annual Statement data

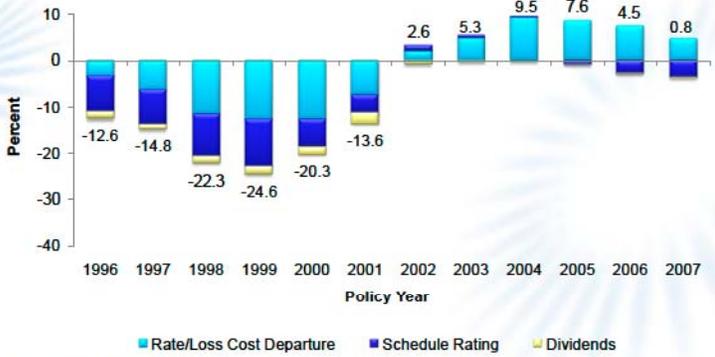
## Countrywide Impact of Discounting on Workers Compensation Premium

NCCI States—Private Carriers



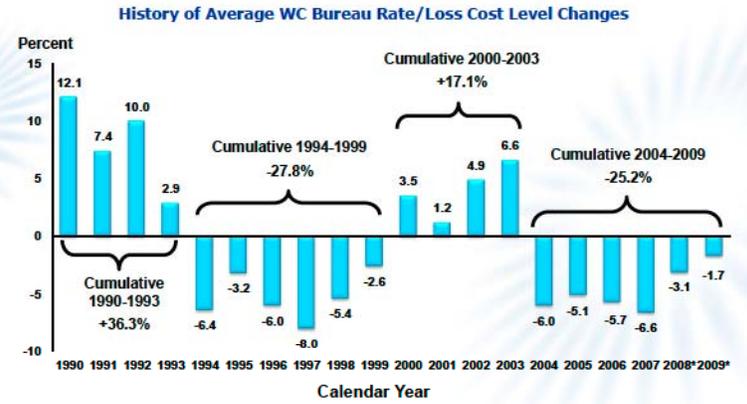
p Preliminary  
 Dividend ratios are based on calendar year statistics  
 NCCI benchmark level does not include an underwriting contingency provision  
 Based on data through 12/31/2008 for the states where NCCI provides ratemaking services

## The Impact on Premium of Rate/Loss Cost Departures, Schedule Rating, and Dividends in Arkansas



Based on data through 12/31/2007  
Dividend ratios are based on calendar year statistics  
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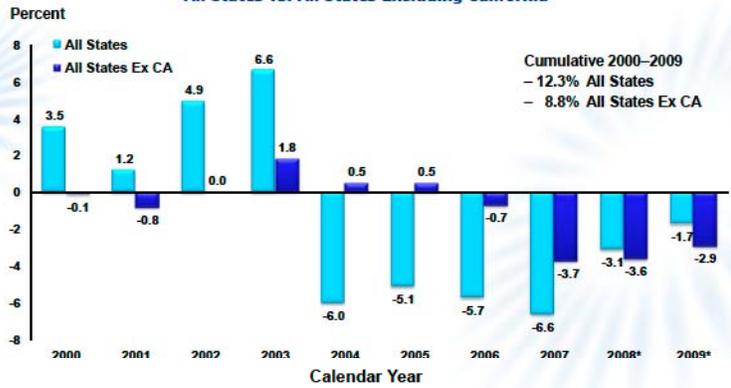
## Countrywide Average Approved Bureau Rates/Loss Costs



\* Preliminary  
Countrywide approved changes in advisory rates, loss costs, and assigned risk rates as filed by the applicable rating organization  
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## Countrywide Average Approved Bureau Rates/Loss Costs

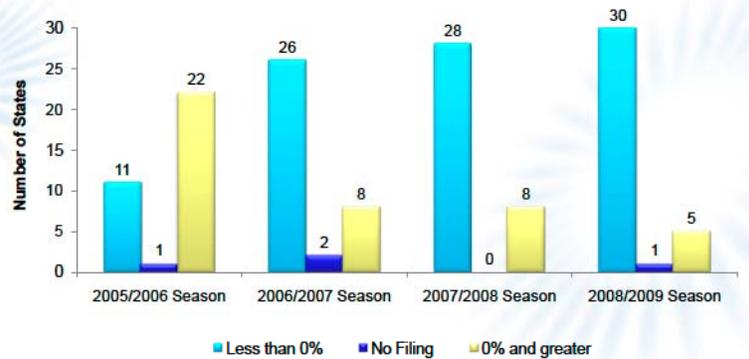
All States vs. All States Excluding California



\* Preliminary  
Countrywide approved changes in advisory rates, loss costs, and assigned risk rates as filed by the applicable rating organization  
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## Status of NCCI Filing Activity

Voluntary Market Filings



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## 2008/2009 Filing Cycle

### NCCI Voluntary Market Filing Activity

- Data for 36 states has been reviewed
  - 6 states have filed a change of 0% or greater or will not have a filing during this filing cycle
  - 30 states have filed decreases
- Range of voluntary filings: –18.6% to +9.1%

Based on data evaluated as of 12/31/2007

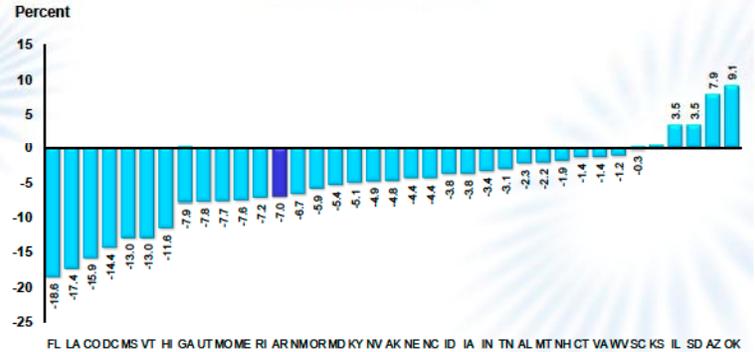
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## Current NCCI Voluntary Market Filed Rate/Loss Cost Changes

Excludes Law-Only Filings



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## State Voluntary Market Filings Southeastern NAIC Zone

South Carolina*	7/1/09	-0.3%
West Virginia	7/1/08	-1.2%
Virginia	4/1/09	-1.4%
Alabama	3/1/09	-2.3%
Tennessee	3/1/09	-3.1%
North Carolina	4/1/09	-4.4%
Kentucky	10/1/08	-5.1%
Arkansas	7/1/09	-7.0%
Georgia	7/1/09	-7.9%
Mississippi	3/1/09	-13.0%
Louisiana	5/1/09	-17.4%
Florida	1/1/09	-18.6%

\* Pending

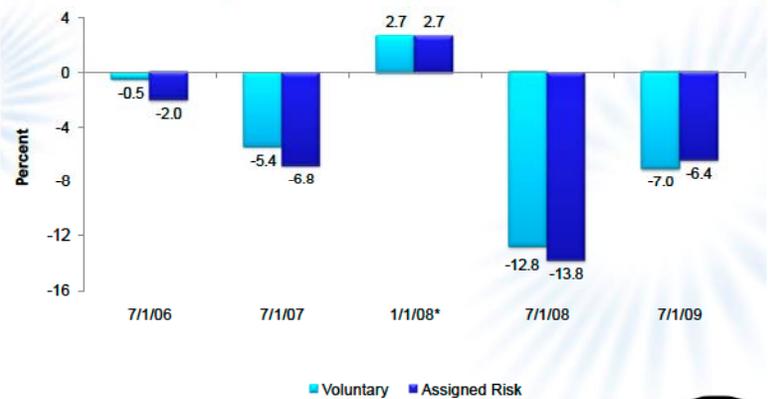
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## Arkansas Filing Activity

Voluntary Loss Cost and Assigned Risk Rate Changes



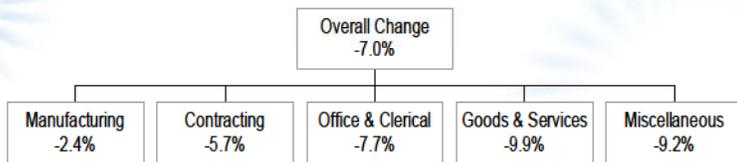
\* Law only Filing—Act 1415 and Act 1599

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## Arkansas July 1, 2009 Filing Average Changes by Industry Group

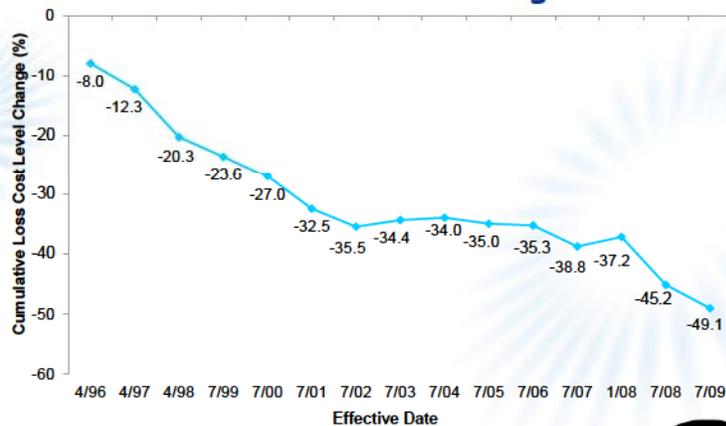


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## Arkansas Cumulative Loss Cost Level Change

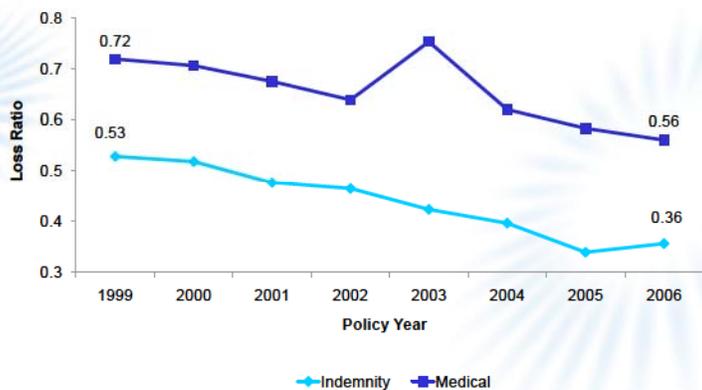


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## Arkansas Indemnity and Medical Loss Ratios



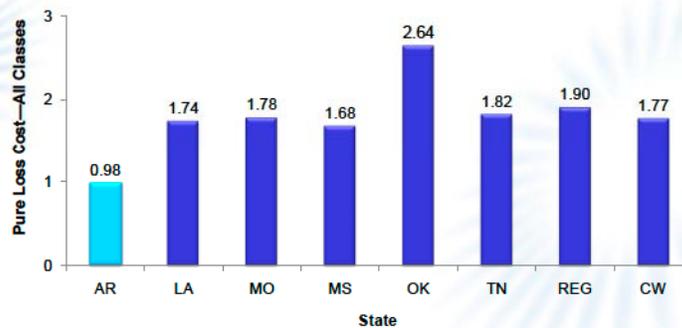
Based on NCCI's financial data at current benefit level and developed to ultimate

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## Current Average Voluntary Pure Loss Costs Using Arkansas Payroll Distribution



Based on the latest NCCI approved rates and loss costs in the various states

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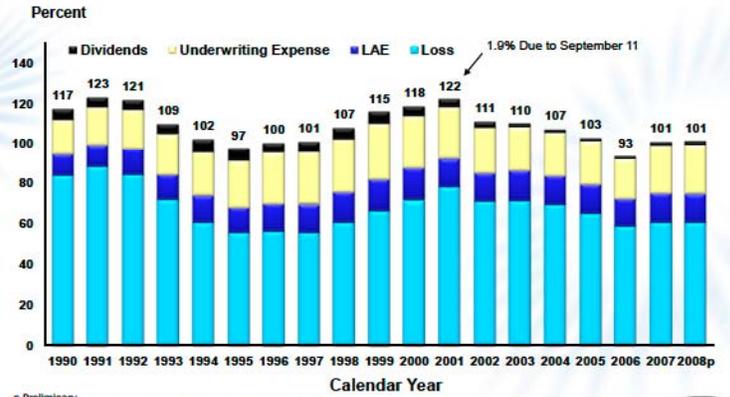
20



# State of the Industry

## Countrywide Workers Compensation Calendar Year Combined Ratios

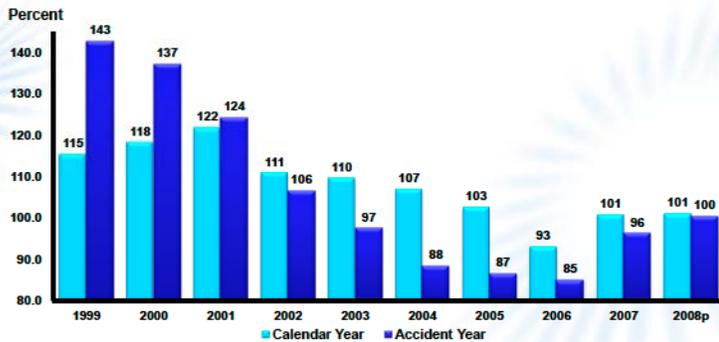
Private Carriers



p Preliminary  
Source: 1990-2007, Best's Aggregates & Averages; 2008p, NCCI

## Countrywide Accident Year Combined Ratios

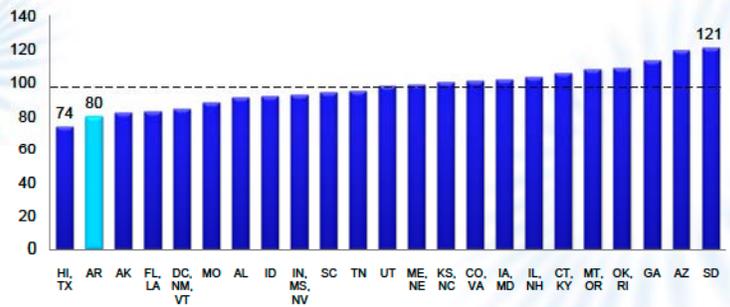
Workers Compensation Calendar Year vs. Ultimate Accident Year  
Private Carriers



p Preliminary  
Accident Year data is evaluated as of 12/31/2008 and developed to ultimate  
Source: Calendar Years 1999-2007, Best's Aggregates & Averages;  
Calendar Year 2008p and Accident Years 1999-2008p, NCCI analysis based on Annual Statement data  
Includes dividends to policyholders

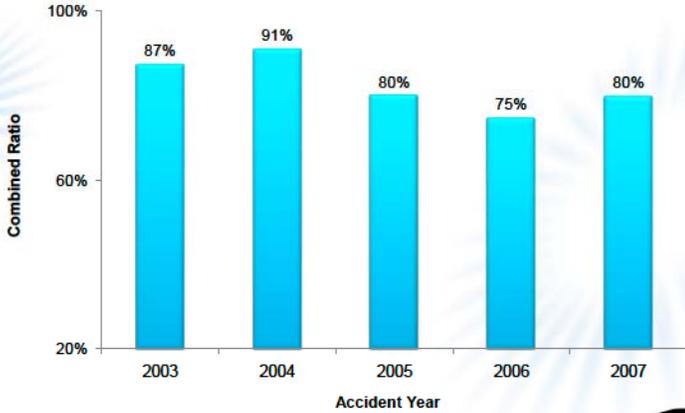
## Results Vary From State to State

Accident Year 2007 Combined Ratios



Data is evaluated as of 12/31/2007

## Arkansas Accident Year Combined Ratios



Source: NCCI financial data, NAIC Annual Statement data

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## Countrywide Workers Compensation Claim Frequency and Severity

- Countrywide frequency continues to decline. In fact, for each of the last 11 years (and 16 of the last 18), on-the-job claim frequency for workers compensation injuries has declined from the previous year's level
- Countrywide medical and indemnity costs continue to rise—somewhat negating the good news regarding reduced claims

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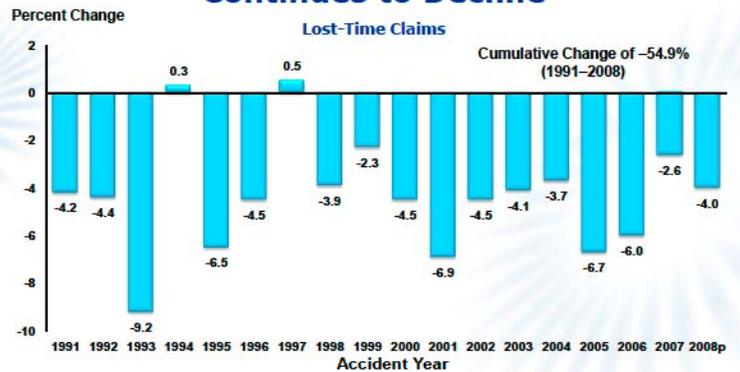


**NCCI** National Council on Compensation Insurance, Inc.

# Claim Frequency

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## Countrywide Workers Compensation Lost-Time Claim Frequency Continues to Decline



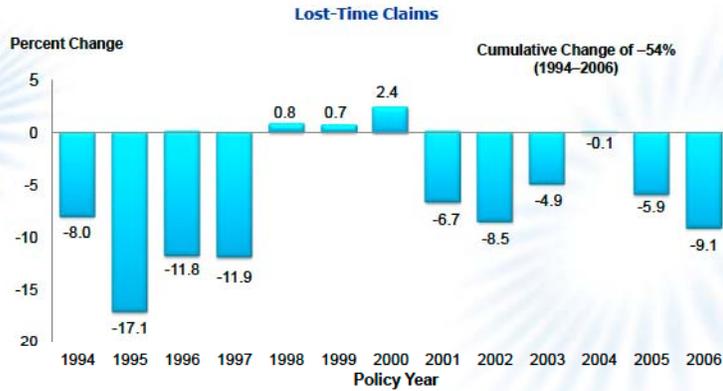
2008p: Preliminary based on data valued as of 12/31/2008  
 1991-2007: Based on data through 12/31/2007, developed to ultimate  
 Based on the states where NCCI provides ratemaking services, including state funds; excludes high deductible policies  
 Frequency is the number of lost-time claims per 100,000 workers as estimated from reported premium

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## Arkansas Workers Compensation Lost-Time Claim Frequency



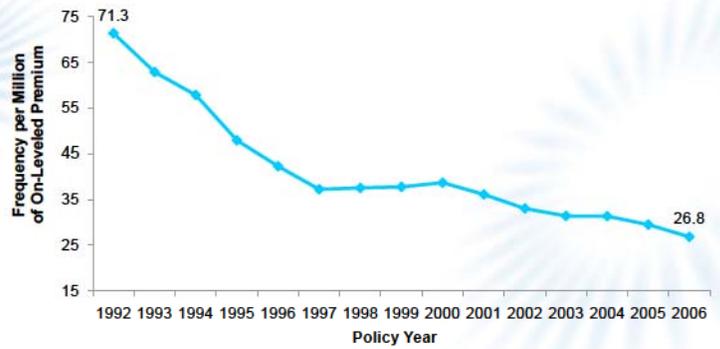
Based on data through 12/31/2007, developed to ultimate

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## Declines in Claim Frequency Have Contributed to Arkansas Improving Results



Based on NCCI's financial data  
Frequency of lost-time claims

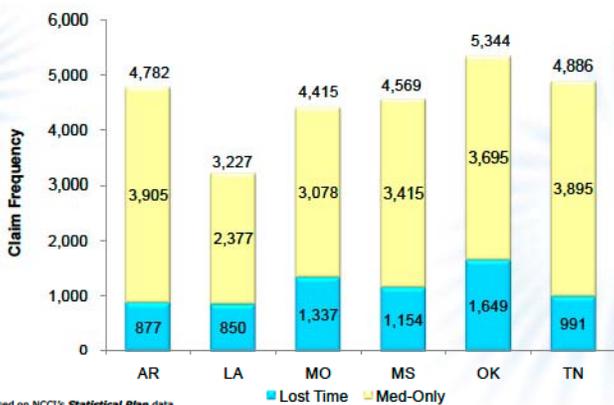
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## Arkansas Average Claim Frequency

Frequency per 100,000 Workers—All Claims



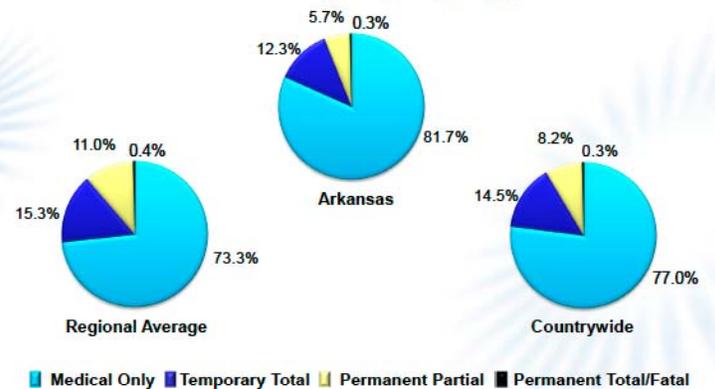
Based on NCCI's Statistical Plan data

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## Arkansas Distribution of Claims by Injury Type



Medical Only Temporary Total Permanent Partial Permanent Total/Fatal

Regional states are LA, MO, MS, OK, TN  
Based on NCCI's Statistical Plan data

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# Employment in Arkansas – Implications for Claim Frequency

## Changes in Employment Impact Claim Frequency via the “Experienced Worker” Effect

- In economic expansions, increases in new hires reduce the experience level of the workforce
- In recessions, the rate of new hires plummets, so the experience level of the workforce increases
- Impact of changes in new hires dominates any upward pressure on claim frequency because of possible “moral hazard” effects (e.g., from mass layoffs)
- As a result, frequency tends to come under upward pressure in expansions and downward pressure in contractions
- New NCCI research provides quantitative confirmation of these relationships

## Frequency of Injuries: Experience Matters

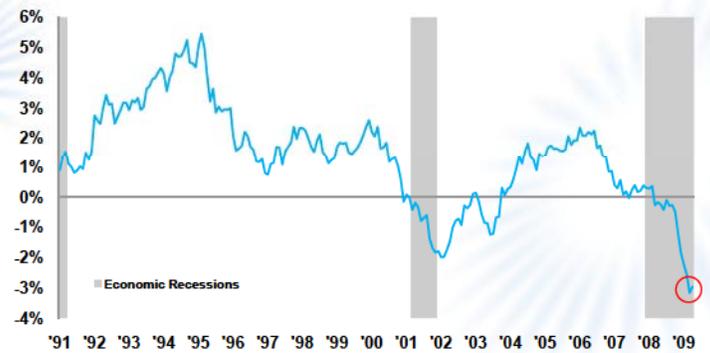
Inexperienced Have a Disproportionately High Share of Lost Work-Time Injuries and Illnesses

Time With Current Employer	Share of Employment (2008)	Share of Lost Work-Time Injuries & Illnesses (2007)	Relative Difference Share of Injuries vs. Employment
Less Than 1 Year	24.9%	34.2%	37.3% : Higher
1 – 5 Years	37.8%	35.2%	-6.9% : Lower
5+ Years	37.4%	30.6%	-18.2% : Lower

Time periods in the table are based on Share of Lost Work-Time Injuries and Illnesses. Tenure “breaks” for Share of Employment classifications: 12 months or less, 13 months to 5 years, and 5 years and above. Data for Share of Employment based on data as of January 2008. Source: US Bureau of Labor Statistics

## Job Losses in Arkansas May Have “Bottomed Out” on Pct. Change from Year-Ago Basis

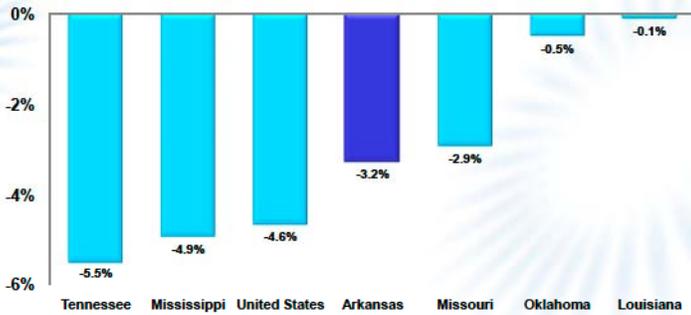
Private Employment, Percent Change From Year Ago



Source: US Bureau of Labor Statistics. Data through April 2009

## Arkansas Job Losses in This Recession Are Less Than Nationally

Percent Decline in Private Employment From Start of National Recession (Dec. 2007) to March 2009



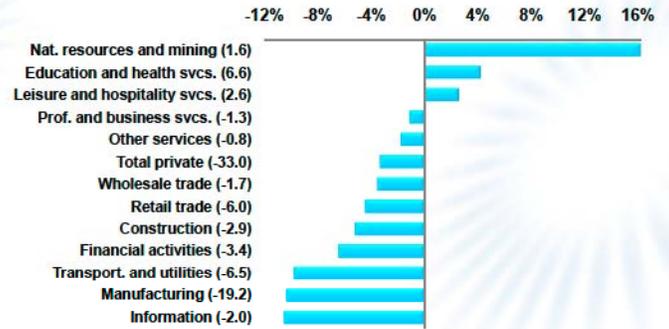
Source: US Bureau of Labor Statistics  
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## Most Industry Sectors in Arkansas Have Posted Job Declines in This Recession

Percent Change in Employment Between December 2007 and April 2009



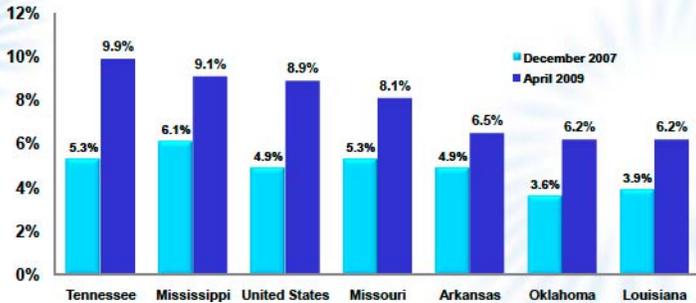
( ) = Change in employment between December 2007 and April 2009, thousands

Source: US Bureau of Labor Statistics  
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## Arkansas Unemployment Rate: Still Low vs. Many of Its Neighbors, But Much Higher Than Earlier



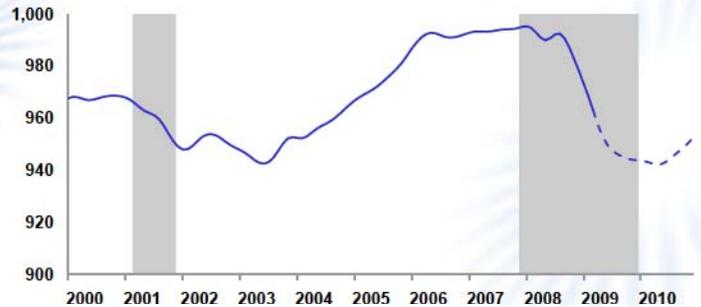
Source: US Bureau of Labor Statistics  
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## Scant Employment Gains Are Expected in Arkansas After the End of the National Recession (Forecast to Be Q4 2009)

Private Sector Employment in Arkansas, Thousands

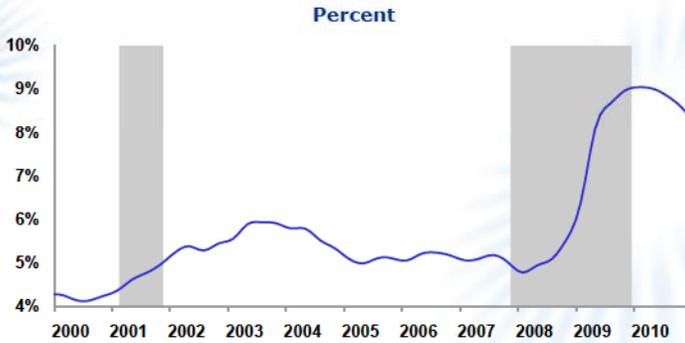


Source: US Bureau of Labor Statistics and Moody's Economy.com  
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## Arkansas Unemployment Rate Is Forecast to Continue to Rise Through Mid-2010



Source: US Bureau of Labor Statistics and Moody's Economy.com

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## Employment and Claim Frequency: Key Takeaways

- Employment changes affect claim frequency through the experienced worker effect
- Weakening employment suggests downward pressure on claim frequency
- Job weakness in Arkansas is most apparent in the more hazardous manufacturing sector
- Unlikely to see much job growth this year or next

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# Indemnity Severity

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## Countrywide Workers Compensation Indemnity Claim Costs



2008p: Preliminary based on data valued as of 12/31/2008  
 1991-2007: Based on data through 12/31/2007, developed to ultimate  
 Based on the states where NCCI provides ratemaking services, including state funds  
 Excludes high deductible policies

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## Countrywide Indemnity Severity Outpacing Wage Inflation in 2008

Average Indemnity Cost per Lost-Time Claim

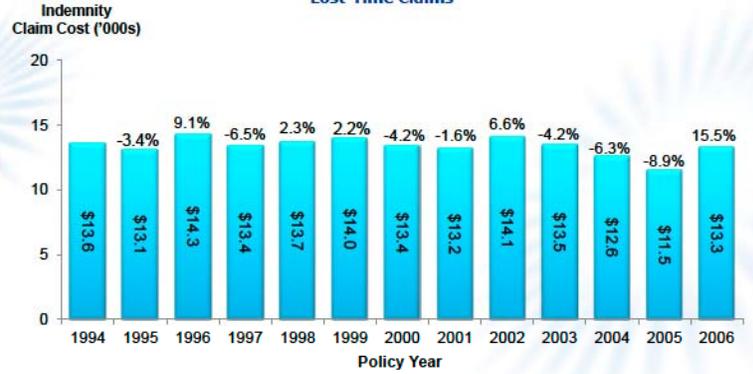


Indemnity severity 2008p: Preliminary based on data valued as of 12/31/2008  
 Indemnity severity 1995-2007: Based on data through 12/31/2007, developed to ultimate  
 Based on the states where NCCI provides ratemaking services, including state funds; excludes high deductible policies  
 Source: CPS Wage—All states (Current Population Survey), Economy.com;  
 Accident year indemnity severity—NCCI states, NCCI



## Arkansas Workers Compensation Indemnity Claim Costs

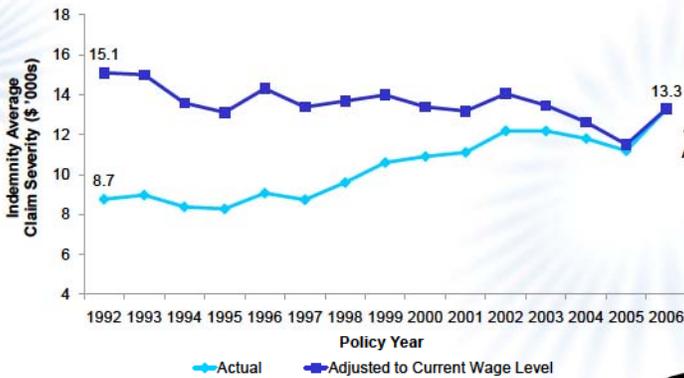
Lost-Time Claims



Based on data through 12/31/2007, on-leveted and developed to ultimate



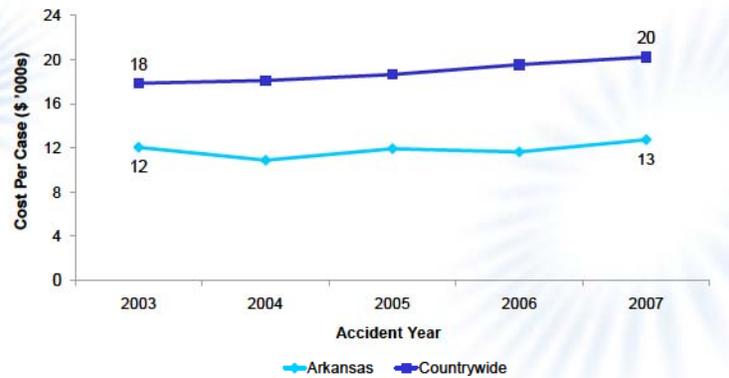
## Arkansas Average Indemnity Severity



Based on NCCI's financial data for lost-time claims at current benefit level and developed to ultimate



## Arkansas Indemnity Average Cost per Case vs. Countrywide



Source: NCCI Financial Call data valued as of 12/31/2007



## Arkansas Indemnity Average Claim Severity Compared With Neighboring States



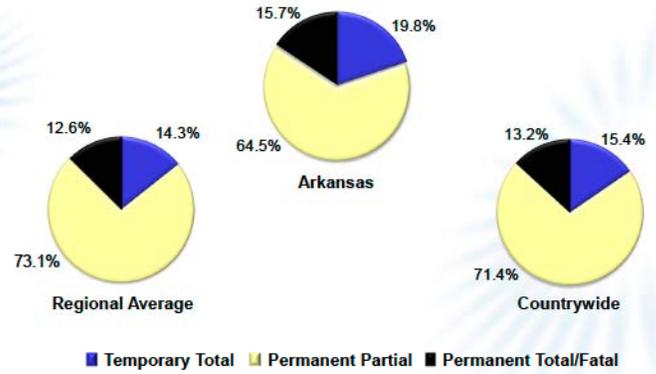
Based on NCCI's financial data for lost-time claims

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## Arkansas Indemnity Loss Distribution by Injury Type



Regional states are LA, MO, MS, OK, TN  
Based on NCCI's *Statistical Plan* data

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## Key Drivers of Indemnity Severity

### Drivers of Indemnity Severity

- Wages
  - Arkansas-specific information
- Demographics
  - How indemnity severity varies by age

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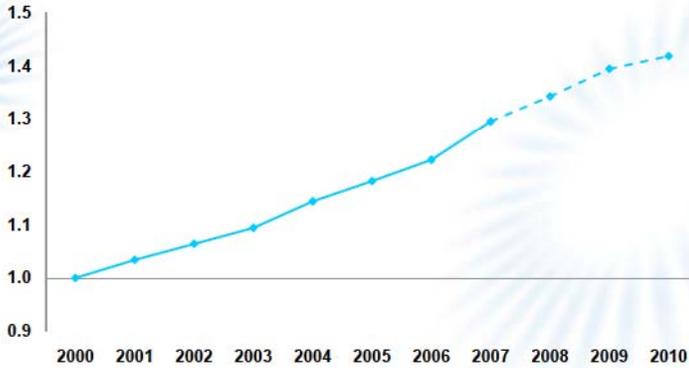
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## Increases in Arkansas Average Weekly Wage Are Expected to Moderate Through 2010

Index of AWW (2000 = 1.0)



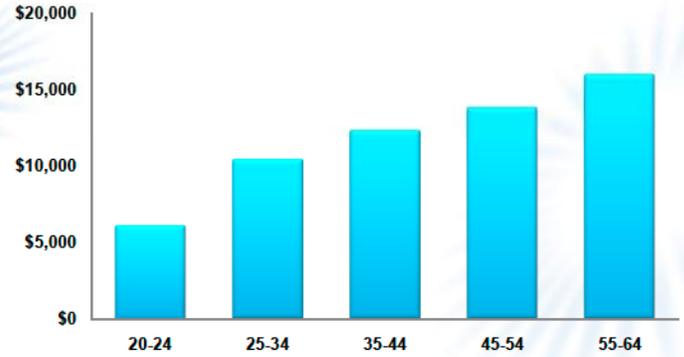
Source: US Bureau of Labor Statistics and NCCI  
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## Indemnity Severity Increases With Age

Average Paid + Case Indemnity Severity Reported at 18 Months by Age  
Accident Year 2005, NCCI States



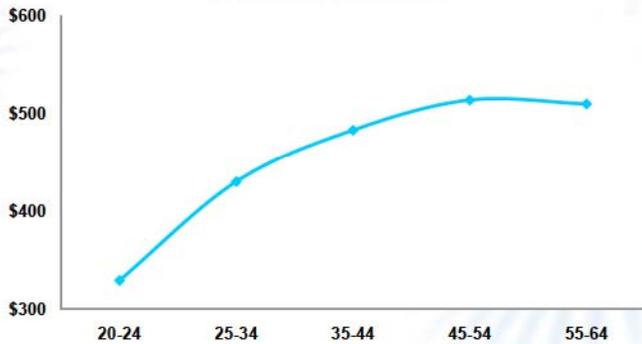
Source: NCCI  
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## Average Weekly Wage Increases With Age

Average Weekly Wage of Injured Workers Closed Claims at 60 Months,  
1996-2003, NCCI States



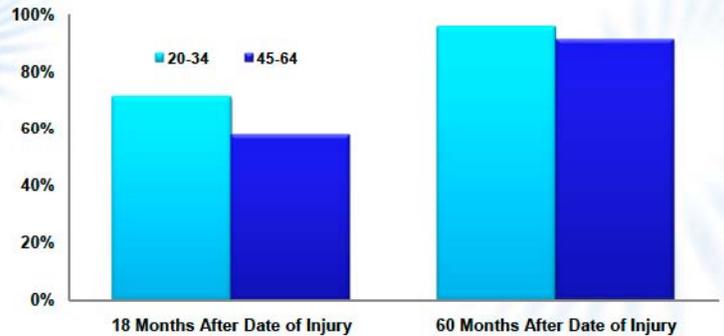
Source: NCCI  
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## Older Workers Have Fewer Claims Closed Than Younger, Both at 18 and 60 Months After Injury

Percent of Claims That Are Closed, 1996-2003, NCCI States



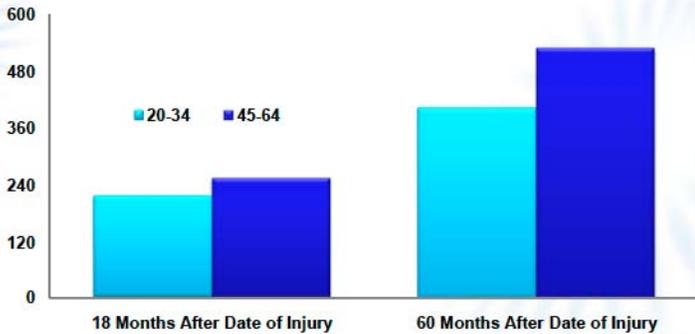
Source: NCCI  
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## Average Duration Is Longer for Older Workers

Average Days From Date of Injury to Closure, Closed Claims  
1996-2003, NCCI States



Source: NCCI

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## Medical Severity

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## Countrywide WC Medical Claim Cost Trends—Growth Continues in 2008



2008p: Preliminary based on data valued as of 12/31/2008  
1991-2007: Based on data through 12/31/2007, developed to ultimate  
Based on the states where NCCI provides ratemaking services, including state funds  
Excludes high deductible policies

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## Countrywide WC Medical Severity Still Growing Faster Than the Medical CPI



Medical severity 2008p: Preliminary based on data valued as of 12/31/2008  
Medical severity 1995-2007: Based on data through 12/31/2007, developed to ultimate  
Based on the states where NCCI provides ratemaking services, including state funds; excludes high deductible policies  
Source: Medical CPI—All states, Economy.com; Accident year medical severity—NCCI states, NCCI

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## Arkansas Workers Compensation Medical Claim Cost Trends



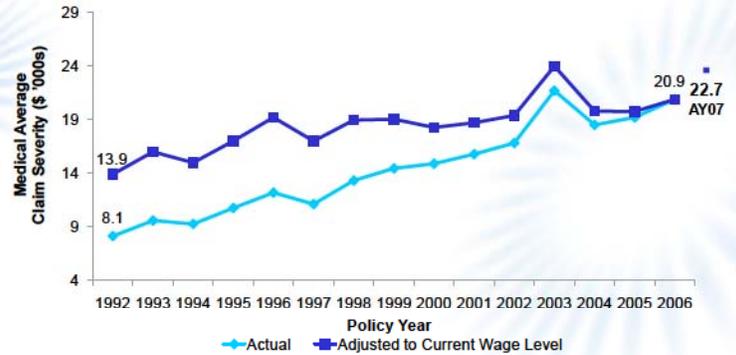
Based on data through 12/31/2007, on-leveled and developed to ultimate

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## Arkansas Average Medical Severity



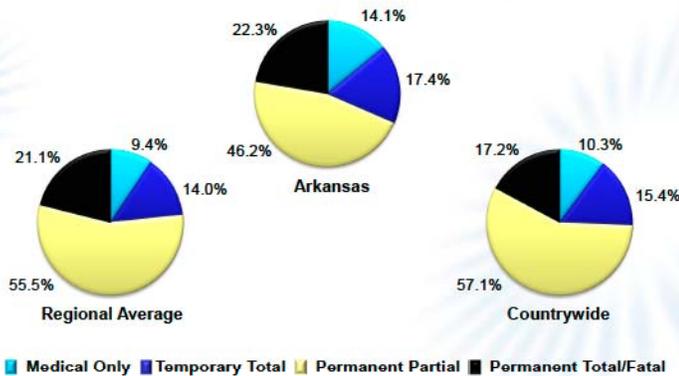
Based on NCCI's financial data for lost-time claims at current benefit level and developed to ultimate

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## Arkansas Medical Loss Distribution by Injury Type



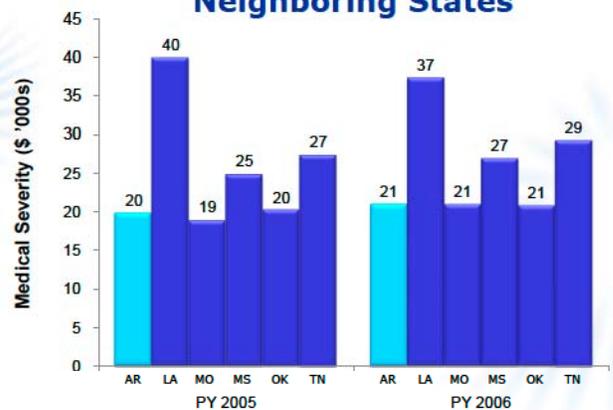
Regional states are LA, MO, MS, OK, TN  
Based on NCCI's Statistical Plan data

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## Arkansas Medical Average Claim Severity Compared With Neighboring States



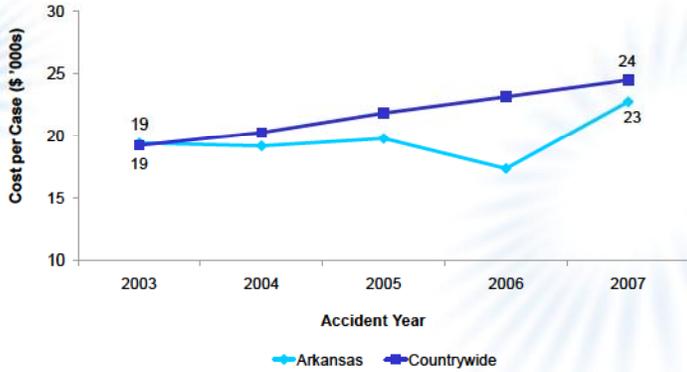
Based on NCCI's financial data for lost-time claims

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## Arkansas Medical Average Cost per Case vs. Countrywide



Source: NCCI Financial Call data valued as of 12/31/2007

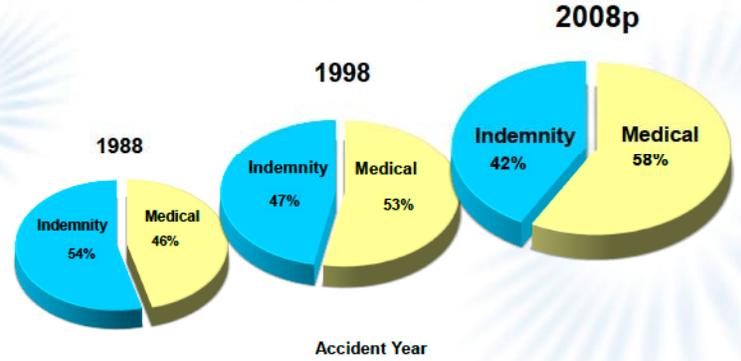
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## Workers Compensation Medical Losses Are More Than Half of Total Losses

All Claims—NCCI States



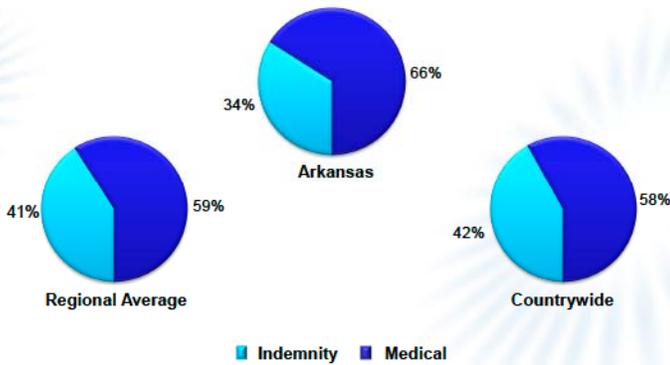
2008p: Preliminary based on data valued as of 12/31/2008  
 1988, 1998: Based on data through 12/31/2007, developed to ultimate  
 Based on the states where NCCI provides ratemaking services, including state funds  
 Excludes high deductible policies

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## Medical Benefits Constitute the Majority of Total Benefit Costs in Arkansas



Regional states are LA, MO, MS, OK, TN

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## Key Drivers of Medical Severity

- ▶ Medical Inflation
- ▶ Utilization
- ▶ Demographics

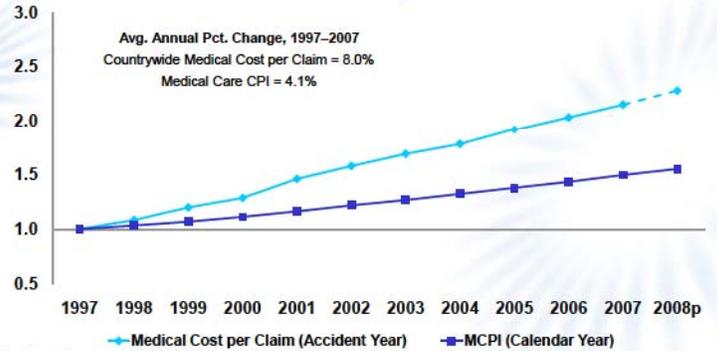
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## Medical Care Inflation



## Medical Severity Is Outpacing the Medical CPI

Indexes of Medical Severity\* and Medical Care CPI, 1997 = 1.0

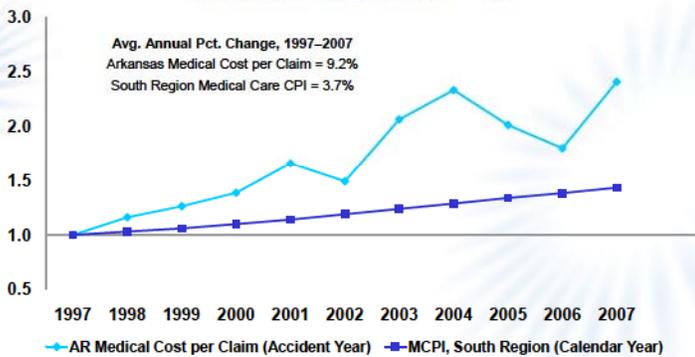


\* Last-time claims  
2008p: Preliminary based on data valued as of 12/31/2008  
1997-2007: Based on data through 12/31/2007, developed to ultimate  
Excludes high deductible policies. Based on the states where NCCI provides ratemaking services, including state funds.  
Source: NCCI, US Bureau of Labor Statistics  
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## Medical Severity in Arkansas Is Outpacing the Medical CPI

Indexes of Medical Severity\* and Medical Care CPI, 1997 = 1.0

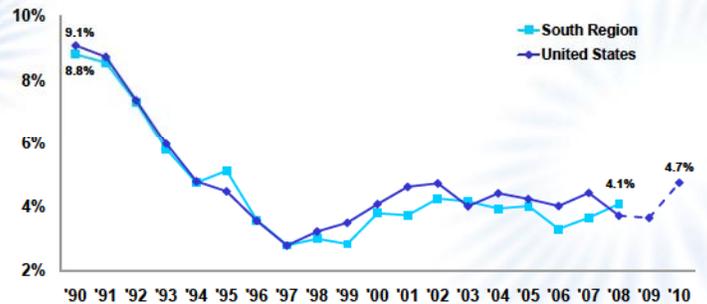


\* Last-time claims  
Based on data through 12/31/2007, developed to ultimate  
Medical Severity is represented above as unlimited medical losses at ultimate without adjustments for either wage or benefit changes  
Excludes high deductible policies  
Source: NCCI, US Bureau of Labor Statistics  
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## Further Increases in Medical Care Inflation Are Expected Through 2010

Medical Care CPI, Percent Change From Year Ago

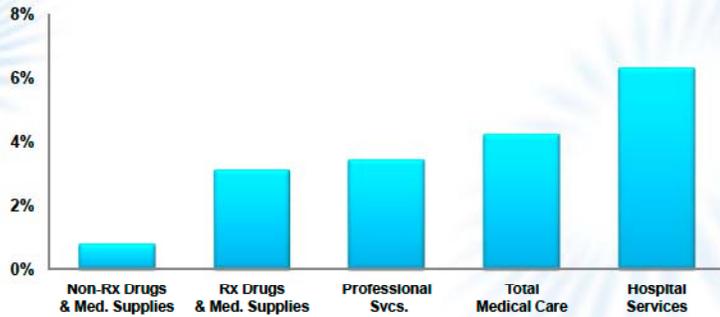


Source: US Bureau of Labor Statistics



## Medical Care Price Increases Are Highest for Hospital Services

Average Annual Pct. Change in Components  
of the US Medical Care CPI, 2003–2008



Source: US Bureau of Labor Statistics

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## Utilization

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## Changes in Utilization Can Come From Many Sources

- Changes in the number of services provided
- Changes in treatment modalities (use of MRIs instead of X-rays)
- Introduction of newer pharmaceuticals/generics
- Adaptive practices by providers

## Demographics

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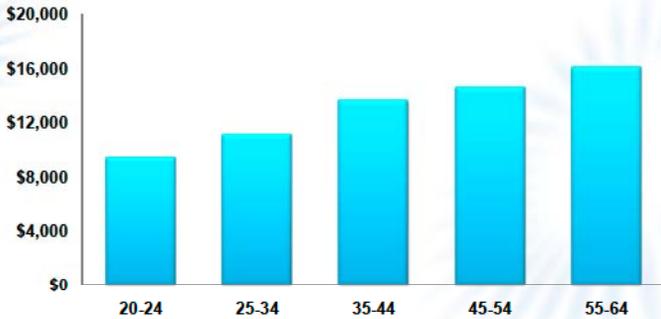
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## Medical Severity Increases With Age

Average Paid + Case Medical Severity Reported at 18 Months by Age  
Accident Year 2005, NCCI States



Source: NCCI  
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## Rankings of Top Ten Lost-Time Claim Diagnoses

1996–2003, NCCI States

Ages 20–34

Ages 45–64

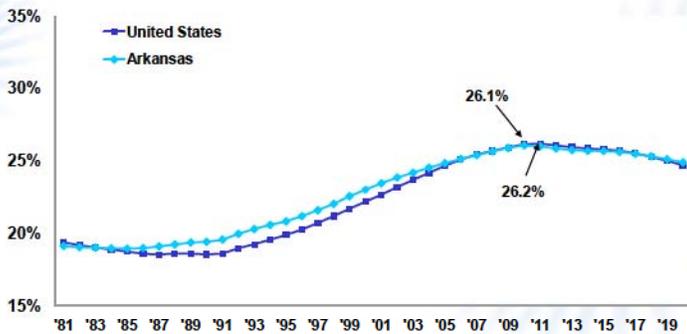
Ages 20–34	Ages 45–64
1 SPRAIN LUMBAR REGION	1 CARPAL TUNNEL SYNDROME
2 LUMBAR DISC DISPLACEMENT	2 LUMBAR DISC DISPLACEMENT
3 CARPAL TUNNEL SYNDROME	3 <b>SPRAIN ROTATOR CUFF</b>
4 LUMBAGO	4 <b>TEAR MENISCUS KNEE</b>
5 CERVICALGIA	5 CERVICALGIA
6 LOWER LEG INJURY NOS	6 SPRAIN LUMBAR REGION
7 <b>SPRAIN OF ANKLE NOS</b>	7 <b>ROTATOR CUFF SYNDROME NOS</b>
8 <b>SPRAIN OF NECK</b>	8 LUMBOSACRAL NEURITIS NOS
9 LUMBOSACRAL NEURITIS NOS	9 LUMBAGO
10 <b>SPRAIN LUMBOSACRAL</b>	10 LOWER LEG INJURY NOS

Source: NCCI  
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## The Share of Arkansas Population 45 to 64 Is Expected to Peak in 2010



Source: US Census Bureau; Moody's Economy.com  
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## Key Takeaways— Drivers of Medical Severity

- Ongoing increases in medical inflation and utilization suggest further upward pressure on medical severity
- Medical severity increases with age
- Upward pressure on medical severity may diminish as baby boomers exit the workforce
- This latter effect may be partly offset to the extent that persons work well beyond the "normal" retirement age

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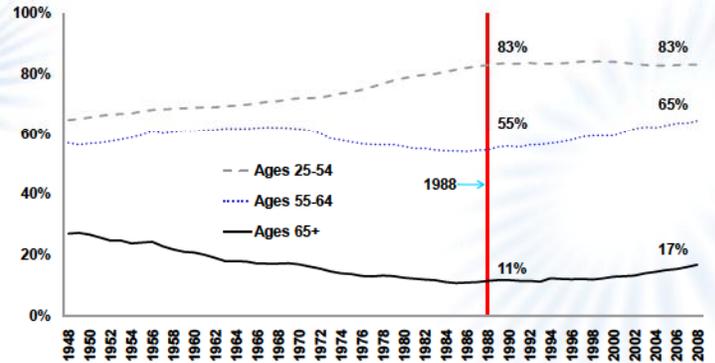


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# Working Past Age 65— Implications for Workers Compensation

## The Postponement of Retirement Began in the Late 1980s

Percent of the Working Age Population at Work or Looking for Work



Source: US Bureau of Labor Statistics

## Working Past Age 65

### Why More Older Workers?

#### Two Motivations:

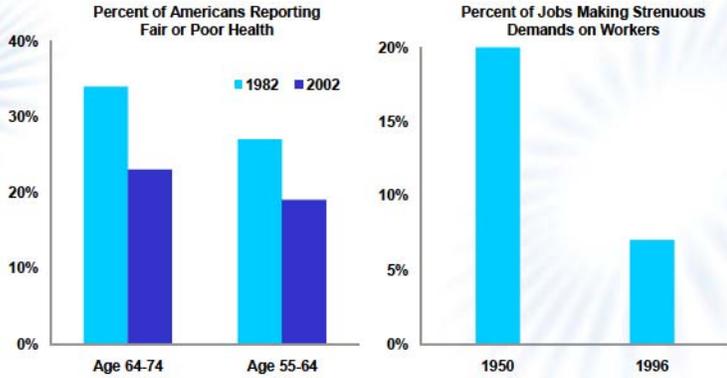
- Wanting to Work Longer
- Needing to Work Longer

## Working Past Age 65

### Wanting to Work Longer

- Prohibitions Against Mandatory Retirement
- Changes in Social Security (Removal of Earnings Cap)
- Improved Health Characteristics/Less Strenuous Work Environment

## Improved Health, Less Strenuous Jobs



Source: The Urban Institute  
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## Working Past Age 65

### Needing to Work Longer

- Increased Life Expectancy
- Changes in Pension Plans
- Increased Healthcare Costs
- Financial Meltdown
- Lengthening of SS Normal Retirement Age

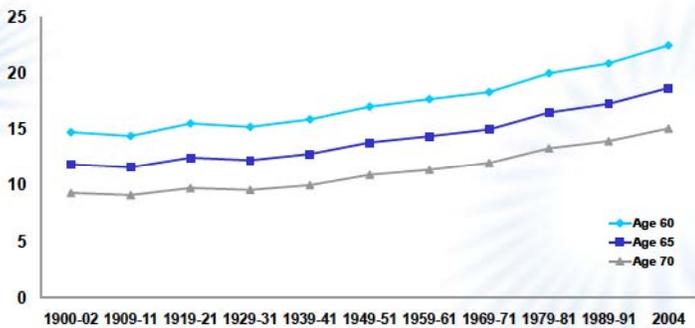
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## The "Expectation of Life" Has Been Steadily Increasing for Older Persons

Avg. No. of Years Remaining to Be Lived for Persons Surviving to Age Shown



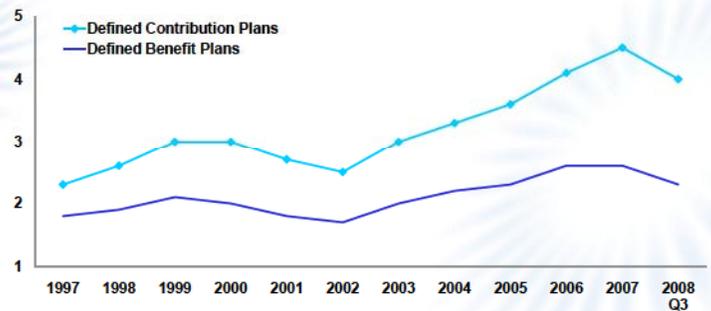
Source: National Vital Statistics Reports, Centers for Disease Control and Prevention  
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## There Is an Ongoing Shift Toward Defined Contribution Pension Plans

Trillions of Dollars, End of Period



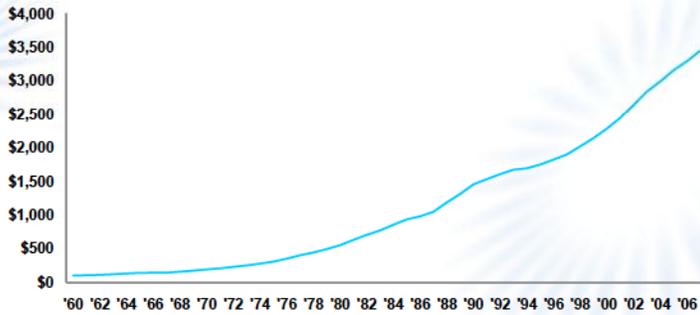
Defined contribution plans include 403(b), 457, and private employer-sponsored plans (including 401(k))  
Source: Investment Company Institute

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## Per Capita Consumer Spending on Medical Care Is Trending Higher



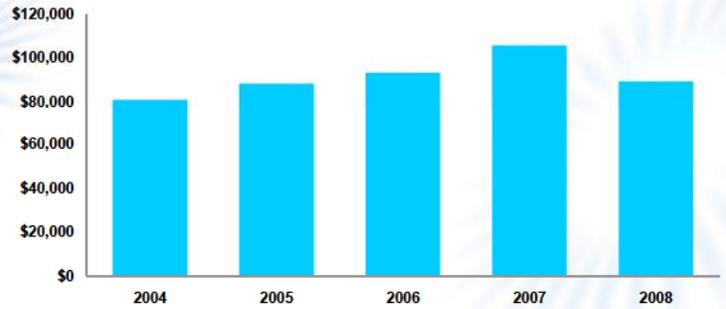
Source: Centers for Medicare and Medicaid Services (CMS)  
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## Retirement Accounts Have Suffered a Shock (But Are Still Above 2005 level)

Median Retirement Accounts of Household Age 50 and Older

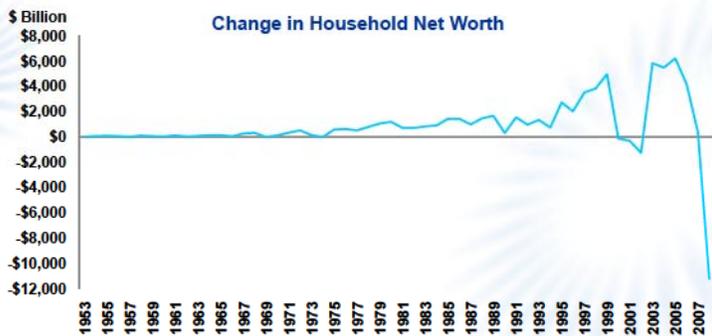


Source: Richard W. Johnson, Mauricio Soto, and Sheila R. Zedlewski,  
"How is the Economic Turmoil Affecting Older Americans?" Urban Institute, October 2008  
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## Household Wealth Stocks, Bonds, Real Estate—Down Sharply



Data include households and nonprofit organizations  
Source: Federal Reserve Board  
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## Working Past Age 65

### Workers Compensation Experience of Older Workers

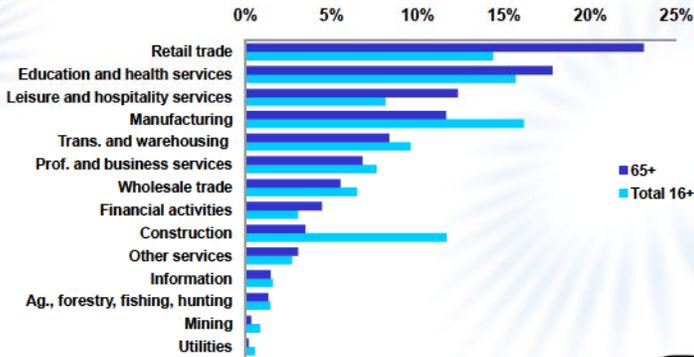
Injury and Illness Shares



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## Retail Trade Accounts for the Largest Share of Injury and Illness Cases for Older Workers (BLS)

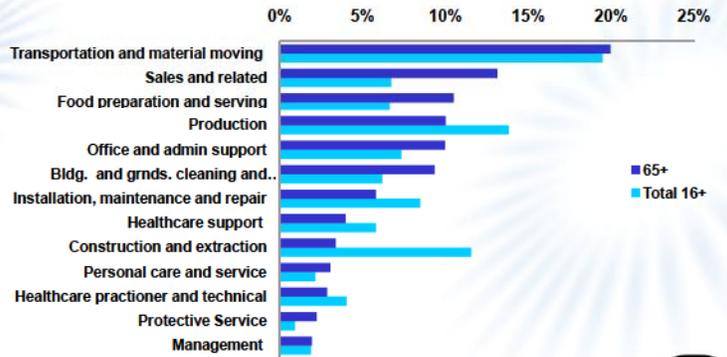
Pct. of Cases With Days Away From Work by Occupation, 2007



Source: US Bureau of Labor Statistics  
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## Transport. Occupations Have the Largest Share of Injury/Illness Cases (BLS)

Pct. of Cases With Days Away From Work by Occupation, 2007



Source: US Bureau of Labor Statistics  
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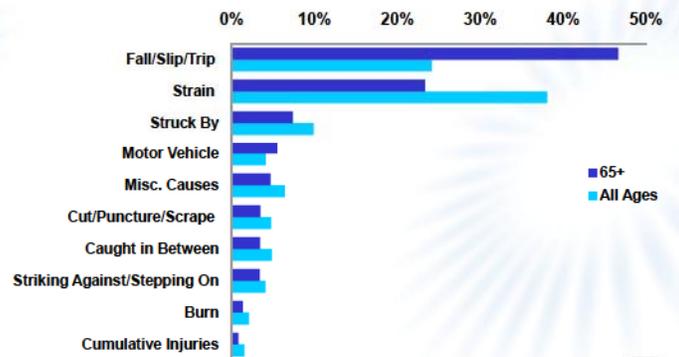
## Analyses Using NCCI Data

- Uses NCCI's Detailed Claim Information (DCI) database
- Data as of Second Report (18 months after date of injury)
- Based on average of data for 2000–2006

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## Falls/Slips/Trips Dominate Workplace Injury Claims of Older Workers (NCCI)

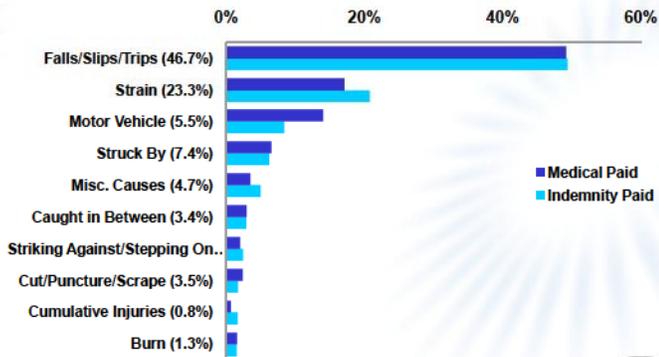
Share of Claims by Cause of Injury, 65+ vs. All Ages, 2000–2006



Source: NCCI  
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## Falls/Slips/Trips Account for the Largest Share of Indemnity and Medical Payments (NCCI)

Shares of Indem. and Med. Paid by Cause of Injury for Workers 65+, 2000–2006



Percent values displayed in parentheses represent share of claims from workers aged 65 and older  
Source: NCCI

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## Working Past Age 65

### Workers Compensation Experience of Older Workers

Incidence Rates (Frequency)

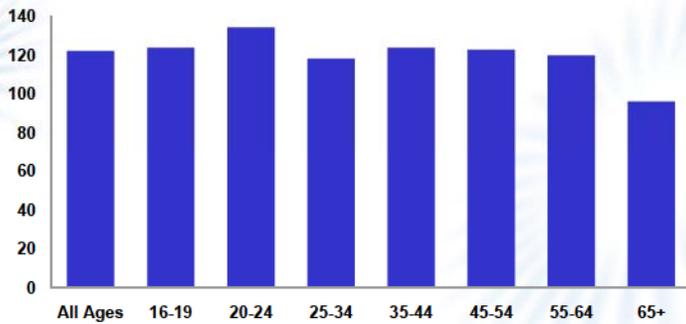
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## Older Workers—Lower Frequency of Workplace Injuries (BLS)

Injury and Illness Incidence Rates per 10,000 Full-Time Workers Private Industry, 2007



Source: US Bureau of Labor Statistics

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## Working Past Age 65

### Workers Compensation Experience of Older Workers

Indemnity and Medical Costs

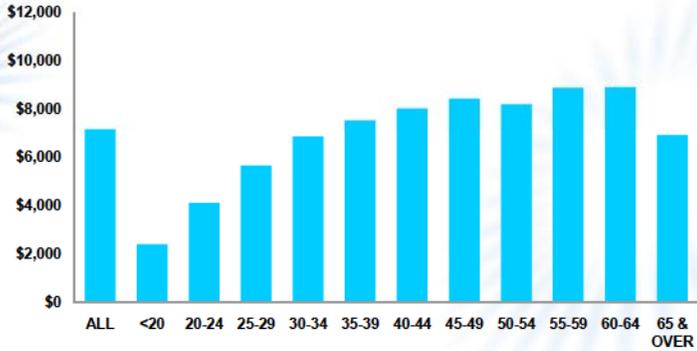
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## Average Indemnity Paid per Claim Decreases for Workers 65 and Older (NCCI)

Based on Total Claims and Indemnity Payments in 2000–2006 \*



\* Data not adjusted for inflation  
Source: NCCI

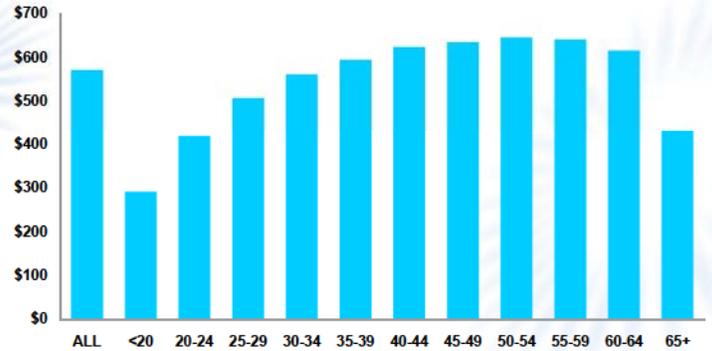
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## Average Weekly Wage Decreases by Age of Worker

Pre-Injury Average Weekly Wage, Average, 2000–2006\*



\* Annual data not adjusted for inflation  
Source: NCCI

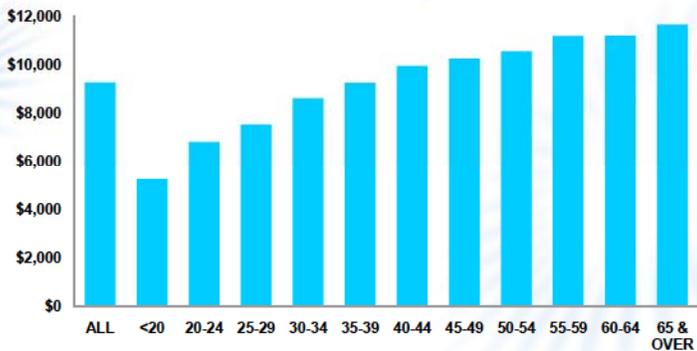
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## Average Medical Paid per Claim Costs More For Workers 65 and Older (NCCI)

Based on Total Claims and Medical Payments in 2000–2006 \*



\* Data not adjusted for inflation  
Source: NCCI

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## Working Past Age 65

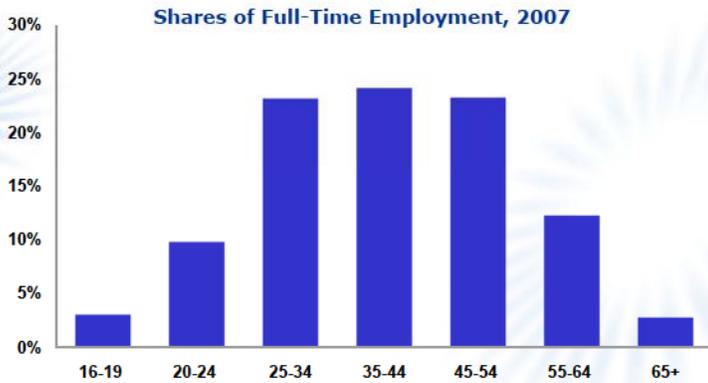
How Great a Cost Concern to Workers Compensation?

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## Workers 65+ Represent a Small Share of Private Employment

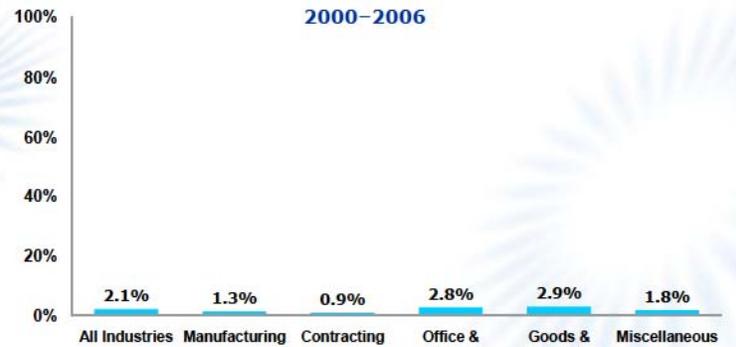


Source: US Bureau of Labor Statistics  
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## Workers 65+ Represent a Small Share of Total Claims Within Each of NCCI's Industry Groups



Source: NCCI  
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## Working Past Age 65—Key Takeaways

- Why More Older Workers?
  - Better Health
  - Workplace Changes
  - Financial Incentives/Necessity
- Workplace Characteristics of Older Workers
  - Service-Oriented: Especially Retail Trade
- Workers Compensation Experience of Older Workers
  - Lower Frequency
  - Lower Indemnity
  - Higher Medical
- Implications for the Future of Workers Compensation
  - Safety/Loss Prevention: Environmental Changes to Reduce Falls
  - Cost Implications: Minimal

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# Legislative Issues Nationwide and in Arkansas

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## Financial Services Modernization/Reform

- Systemic-Risk Regulator
- Resolution Authority
- Financial Stability Council
- Optional Federal Charter Bill
- Insurance Information Office



## National Commission on Workers Compensation Insurance Laws (Baca Bill)

- Similar to 1972 Commission
- Purpose:
  - Review the findings and recommendations of the previous Commission
  - Study and evaluate state workers compensation laws to determine if the laws provide an “adequate, prompt, and equitable” system of compensation
  - Study and evaluate possible recommendations for additional remedies for benefits and medical care
- 18 months to complete final report



## Medicare Workers Compensation-Related Reporting

- Reporting of payments, settlements, etc., received by Medicare or Medicare-eligible claimants
- Reporting required by Responsible Reporting Entities (RREs), including insurance companies
- Possible penalties for noncompliance:  
\$1,000 per day per claimant



## Health IT Records

- 2009 Economic Stimulus Act
  - Begins national system of electronic health records (no mandate)
  - Headed by National Coordinator with office in Department of Health and Human Services
  - Would work with Chief Privacy Officer
  - No mention of applicability to workers compensation, but no exclusion either
- Rockefeller Bill
  - Mandates national adoption of electronic health records
  - Creates public utility board within National Coordinator’s Office



## Legislative Environment

- The ailing economy had an ameliorating effect on the number and nature of legislative proposals this session
- Misclassification of workers/independent contractors has become a key issue in many states this legislative session
- More states attempted to expand firefighter presumptions, increase death benefits, and adjust medical and hospital fee schedules rather than focus on business-led reforms
- Regulatory turnover continues with many veteran commissioners either retiring or seeking other state offices

## 2009 Arkansas Legislation—HB 1362

- Prohibits an offset for benefits previously paid by a group disability policy if the policy was purchased by the injured worker
- Clarifies that the employer at the time of the compensable injury is liable for benefits for PPD or PTD claims made on or after January 1, 2008
- Shifts the liability for PTD benefit payments compensable by the Arkansas Second Injury Fund to the Arkansas Death and Permanent Total Disability Trust Fund, effective January 1, 2010

## 2009 Arkansas Legislation—HB 1362

- Requires the Arkansas Contractors Licensing Board (Board) to obtain proof of workers compensation coverage prior to issuing or renewing a license to a contractor
- Affirms that the Board has the authority to not issue or revoke a contractor's license for failure to obtain or maintain workers compensation coverage as required by law

## 2009 Arkansas Legislation—HB 1362

NCCI anticipates that Arkansas HB 1362 will not measurably impact overall system costs in Arkansas.

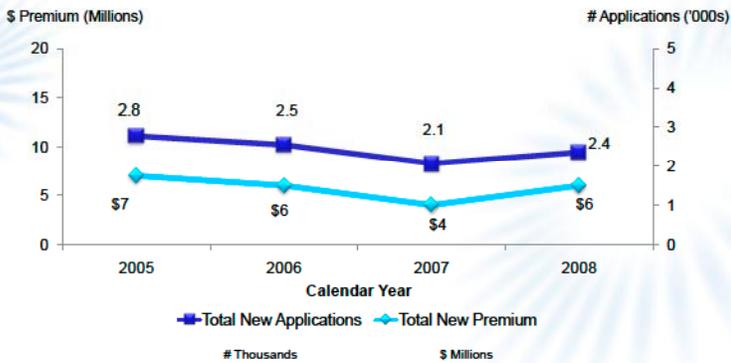
Any impact on costs would be realized in future loss experience and reflected in subsequent Arkansas loss cost filings.

# The Residual Market in Arkansas

## Total Residual Market New Applications and Premium Assigned in All Plan States



## Total Residual Market New Applications and Premium Assigned in Arkansas

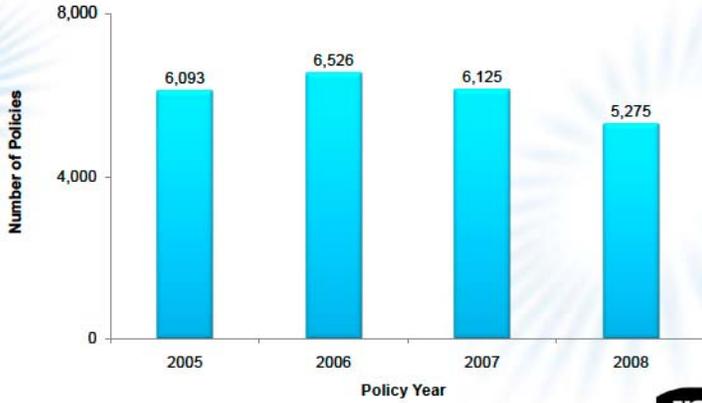


## In Arkansas, Growing Percentages of New Residual Market Plan Applications Are Being Processed Online

### Percentage of Arkansas New Applications Received via Electronic Transmission

	<u>Arkansas</u>	<u>National Average</u>
2005	68.8%	76.4%
2006	74.3%	81.6%
2007	81.7%	85.8%
2008	85.2%	89.5%

## Arkansas Total Residual Market Plan Policy Count

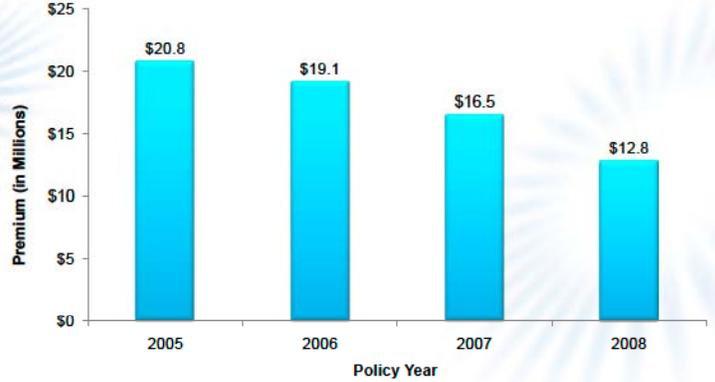


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## Arkansas Total Residual Market Plan Premium Volume



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## Arkansas Residual Market Plan 2007 vs. 2008 Total Policy Size Comparison

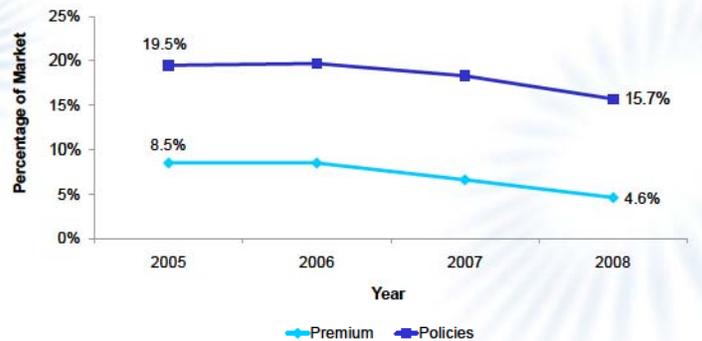
Premium Size	2007		2008	
	# of Policies	Premium	# of Policies	Premium
\$0-\$2,499	5,041	\$4,027,593	4,499	\$3,711,853
\$2,500-\$4,999	528	\$1,861,632	390	\$1,371,511
\$5,000-\$9,999	274	\$1,923,249	199	\$1,393,202
\$10,000-\$19,999	157	\$2,238,479	96	\$1,360,258
\$20,000-\$49,999	89	\$2,605,555	59	\$1,788,522
\$50,000-\$99,999	24	\$1,656,187	20	\$1,325,052
\$100,000-\$199,999	10	\$1,318,448	10	\$1,259,714
\$200,000+	2	\$896,788	2	\$598,799
<b>TOTAL</b>	<b>6,125</b>	<b>\$16,527,931</b>	<b>5,275</b>	<b>\$12,808,911</b>

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## Comparison of Market Share for the Arkansas Residual Market by Total Policy Count and Written Premium



Note: Market share as a percentage of residual market total written premium/policies in force

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## Arkansas Top Five Class Codes Based on Residual Market Plan Total Policy Count

Nationally	Arkansas
5645—Carpentry (11.1%)	5645—Carpentry (27.7%)
5437—Carpentry, Interior Trim (4.8%)	8810—Clerical (3.8%)
5474—Painting (4.2%)	5022—Masonry (3.2%)
8810—Clerical (4.1%)	5551—Roofing (2.9%)
7228—Trucking, Local (3.8%)	5474—Painting (2.7%)

## Arkansas Top Five Class Codes Based on Residual Market Plan Total Written Premium

Nationally	Arkansas
5645—Carpentry (6.4%)	5645—Carpentry (12.0%)
5551 Roofing (3.1%)	5403—Carpentry NOC (3.4%)
7229—Trucking, Long Distance (2.5%)	2710—Sawmill (3.3%)
7228—Trucking, Local (2.5%)	7705—Ambulance Service Company (2.5%)
8835—Nursing, Home Health (2.4%)	5474—Painting (2.2%)



## Demographics: Top Ten Zip Codes With the Largest Number of Arkansas Residual Market Policies

Zip Code	City	Policy Counts	% of Policies in Zip Code
71913	HOT SPRINGS, AR	111	2.22%
72401	JONESBORO, AR	98	1.96%
72756	ROGERS, AR	94	1.88%
72712	BENTONVILLE, AR	89	1.78%
72032	CONWAY, AR	85	1.70%
72023	CABOT, AR	82	1.64%
72764	SPRINGDALE, AR	70	1.40%
72120	SHERWOOD, AR	69	1.38%
72143	SEARCY, AR	67	1.34%
72223	LITTLE ROCK, AR	66	1.32%
		831	16.62%

## Demographics: Top Ten Zip Codes With the Largest Arkansas Residual Market Premium Volume

Zip Code	City	Premium in Zip Code	% of Premium in Zip Code	Avg. Policy Size
71943	GLENWOOD, AR	\$332,122	3.08%	\$30,193
71730	EL DORADO, AR	\$324,147	3.00%	\$5,314
72653	MOUNTAIN HOME, AR	\$219,398	2.03%	\$5,351
71802	HOPE, AR	\$210,651	1.95%	\$42,130
72231	NORTH LITTLE ROCK, AR	\$200,258	1.86%	\$66,753
71913	HOT SPRINGS, AR	\$178,229	1.65%	\$1,606
72112	NEWPORT, AR	\$177,443	1.64%	\$14,787
71754	MAGNOLIA, AR	\$175,432	1.63%	\$9,746
72401	JONESBORO, AR	\$170,300	1.58%	\$1,738
72712	BENTONVILLE, AR	\$163,087	1.51%	\$1,832
		\$2,151,067	19.93%	



## Arkansas Assigned Risk Applications Redirected Into the Voluntary Market Through NCCI's Voluntary Coverage Assistance Program

	Date Range: 01/01/2008 - 12/31/2009
Number of Applications Reviewed by VCAP® Service	389
Associated Premium for Applications Reviewed	\$1,012,148
Number of VCAP® Service Matches	34
VCAP® Service Matches as a % of Applications Reviewed	8.7%
Number of VCAP® Service Offers	3
VCAP® Service Offers as a % of Matches	8.6%
Number of Confirmed VCAP® Service Policies	3
Confirmed VCAP® Service Policies as a % of Applications Reviewed	0.8%
Redirected Assigned Risk Premium	\$6,673
Associated Voluntary Market Premium	\$4,309
Savings	\$2,304
Average Savings per Application	\$768
Savings as a % of Redirected Assigned Risk Premium	34.5%
Redirected Premium as a % of Associated Premium for Applications Reviewed by VCAP® Service	0.7%

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## Demographics: Some Interesting Facts

New applications received by NCCI provide some interesting information, based on how the producers answer the questions, such as:

- Request USL&H coverage
  - 6 of 323 applications requesting USL&H coverage were from Arkansas (or 1.9%)
- Indicate that the risk was previously "self-insured"
  - 197 of 3,113 applications indicating previous self-insurance were from Arkansas (or 6.4%)

Note: "Self-insured" could also indicate small accounts that were formerly group self-insureds or PEOs

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## Arkansas Assigned Risk Programs

- Merit Rating
- Differential/Surcharge
- Removal of Premium Discount
- Take-Out Credit Program
- Alternate Preferred Plan
- Managed Care Credit Program
- Tabular Adjustment Program
- Drug-Free Workplace Credit
- Voluntary Coverage Assistance Program (**VCAP® Service**)

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## Residual Market Filings

Arizona	10/1/08	+7.9%
South Carolina	7/1/08	+4.3%
Illinois	1/1/09	+3.5%
Georgia	7/1/09	+3.0%
Connecticut	1/1/09	+1.2%
South Dakota	7/1/09	0.0%
Kansas	1/1/09	0.0%
Oregon	1/1/09	0.0%
New Mexico	1/1/09	-1.3%
New Hampshire	1/1/09	-1.7%
Alabama	3/1/09	-2.3%

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## Residual Market Filings

Indiana	1/1/09	-3.4%
Iowa	1/1/09	-3.8%
North Carolina	4/1/09	-3.8%
Virginia	4/1/09	-5.0%
Alaska	1/1/09	-5.2%
Arkansas	7/1/09	-5.6%
Nevada	3/1/09	-6.0%
Tennessee	3/1/09	-8.4%
Vermont	4/1/09	-9.6%
Mississippi	3/1/09	-13.0%
Dist. of Columbia	11/1/08	-15.8%



## Q & A

## Closing Remarks

**Thank You!**



## Glossary

## Glossary

- **Assigned Risk Adjustment Program (ARAP)**—An assigned risk market program that surcharges residual market risks based on the magnitude of their experience rating modification.
- **Calendar Year (CY)**—Experience of earned premium and loss transactions occurring within the calendar year beginning January 1, irrespective of the contractual dates of the policies to which the transactions relate and the dates of the accidents.
- **Calendar-Accident Year (AY)**—The accumulation of loss data on all accidents with the date of occurrence falling within a given calendar year. The premium figure is the same as that used in calendar year experience.
- **Claim Frequency**—The number of claims per unit of exposure. For example, the number of claims per million dollars of premium or per one hundred workers.



## Glossary

- **Claim Severity**—The average cost of a claim. Severity is calculated by dividing total losses by the total number of claims.
- **Combined Ratio**—The sum of the (i) loss ratio, (ii) expense ratio, and (iii) dividend ratio for a given time period.
- **Detailed Claim Information (DCI)**—An NCCI Call that collects detailed information on an individual workers compensation lost-time claim basis, such as type of injury, whether or not an attorney was involved, timing of the claim's report to the carrier, etc.
- **Direct Written Premium (DWP)**—The gross premium income adjusted for additional or return premiums, but excluding any reinsurance premiums.



## Glossary

- **Indemnity Benefits**—Payments by an insurance company to cover an injured worker's time lost from work. These benefits are also referred to as "wage replacement" benefits.
- **Loss Ratio**—The ratio of losses to premium for a given time period.
- **Lost-Time (LT) Claims**—Claims resulting in indemnity benefits (and usually medical benefits) being paid to or on behalf of the injured worker for time lost from work.
- **Medical-Only Claims**—Claims resulting in only medical benefits being paid on behalf of an injured worker.
- **Net Written Premium (NWP)**—The gross premium income adjusted for additional or return premiums and including any additions for reinsurance assumed and any deductions for reinsurance ceded.



## Glossary

- **Permanent Partial (PP)**—Disability that prevents the insured from working at their own (and sometimes any) occupation. A disability is considered to result in partial permanent loss of earning power.
- **Policy Year (PY)**—Premium and loss data on business for a 12-month period for policies with inception dates within the 12-month period.
- **Schedule Rating**—A debit and credit plan that recognizes variations in the hazard-causing features of an individual risk.
- **Take-Out Credit Program**—An assigned risk program that encourages carriers to write current residual market risks in the competitive voluntary marketplace.
- **Temporary Total (TT)**—A disability that totally disables a worker for a temporary period of time.



# Appendix

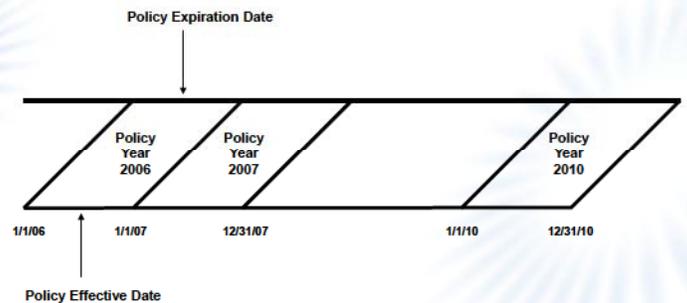
## NCCI Workers Compensation Databases

- Financial Aggregate Calls
  - Used for aggregate ratemaking
- **Statistical Plan for Workers Compensation and Employers Liability Insurance (Statistical Plan)**
  - Used for class ratemaking
- Detailed Claim Information
  - In-depth sample of lost-time claims
- Policy Data
  - Policy declaration page information

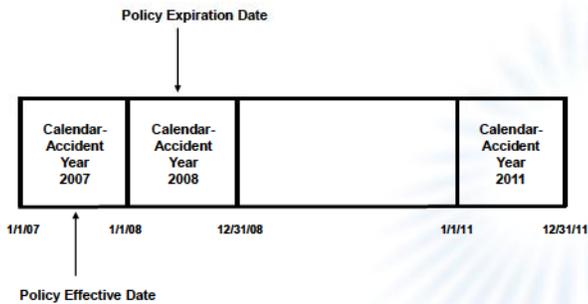
## Financial Aggregate Calls

- Collected annually
  - Policy and calendar-accident year basis
  - Statewide and assigned risk data
- Premiums, losses, and claim counts
  - Evaluated as of December 31
- Purpose
  - Basis for overall aggregate rate indication
  - Research

## Policy Year Financial Aggregate Data



## Calendar-Accident Year Financial Aggregate Data



## Statistical Plan for Workers Compensation and Employers Liability Insurance (Statistical Plan) Data

- Experience by policy detail
  - Exposure, premium, experience rating modifications
  - Individual claims by injury type
- Purposes
  - Classification relativities
  - Experience Rating Plan
  - Research

## Valuation of Statistical Plan Data



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# Executive Summary

NCCI, as Pool and Plan Administrator of the Arkansas Workers Compensation Insurance Plan, is pleased to provide the First Quarter 2009 Residual Market State Activity Report.

Readers will notice an update of the key measurement factors and issues relating to the operation of the Arkansas Plan. NCCI has enhanced our data reporting tools to provide a more accurate picture of what is happening in your state.

If you have any questions or comments about this report, please feel free to contact any of the individuals listed below.

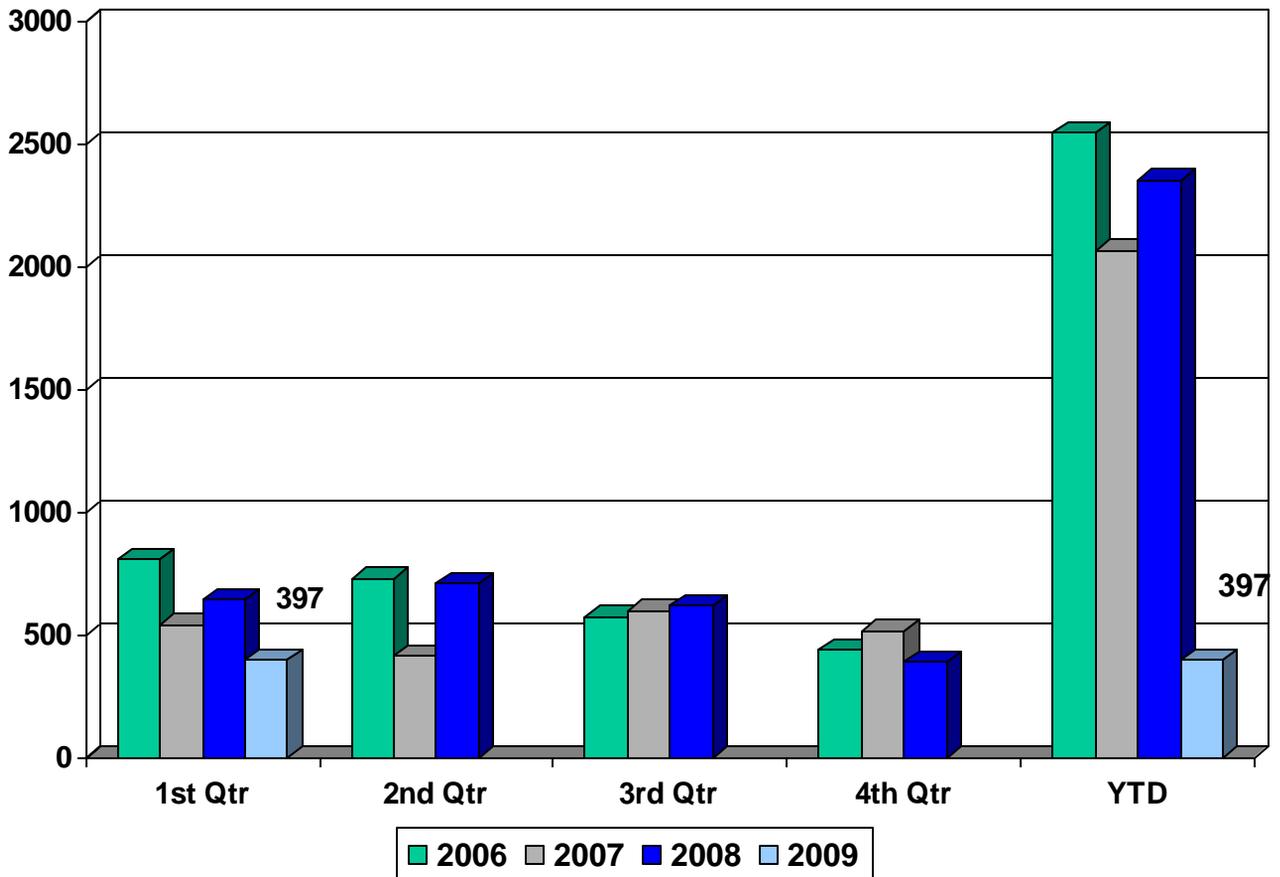
Terri Robinson, State Relations Executive  
Chantel Weishaar, Technical Specialist

(314) 843-4001  
(561) 893-3015

# Residual Market Demographics – 1Q 2009

## Arkansas Residual Market Total New Applications Bound 2006 vs. 2007 vs. 2008 vs. 2009

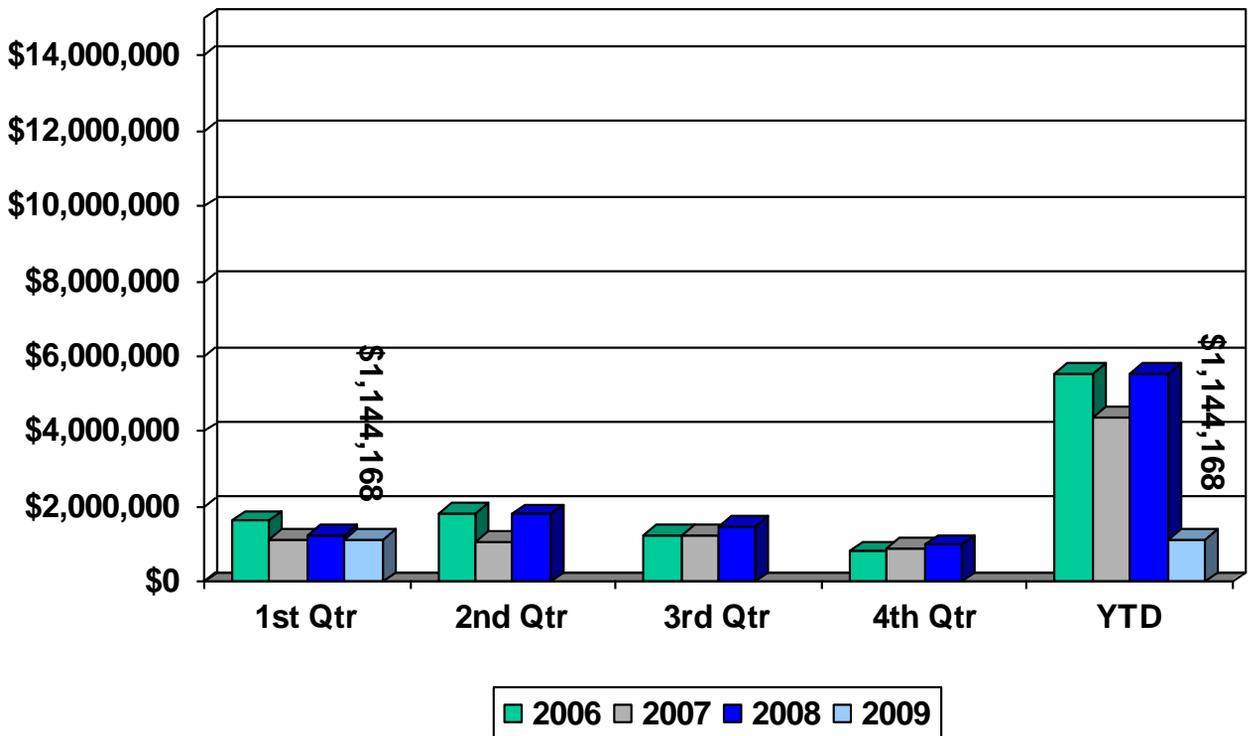
*The number of new applications that are actually assigned to a Servicing Carrier or Direct Assignment Carrier (if applicable).*



# Residual Market Demographics – 1Q 2009

## Arkansas Residual Market Total New Application Premium Bound 2006 vs. 2007 vs. 2008 vs. 2009

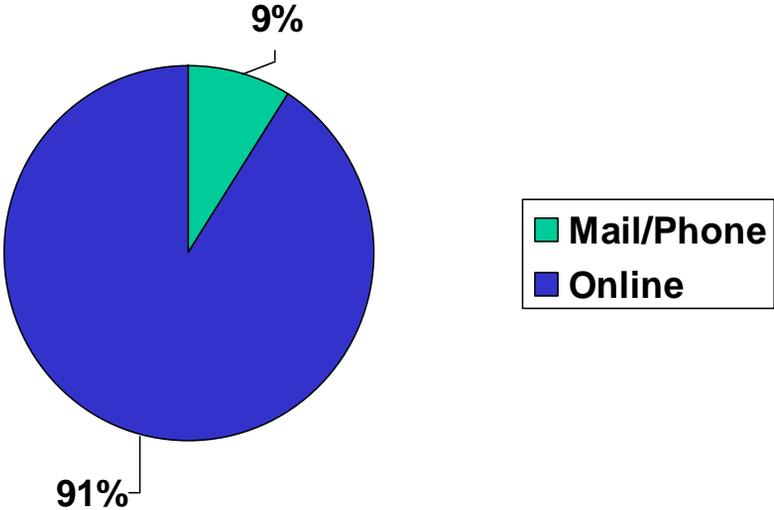
*The total estimated premium on bound new applications assigned to as Servicing Carrier or Direct Assignment Carrier (if applicable).*



# Residual Market Demographics – 1Q 2009

## Percentage of New Applications Received by Submission Format Data through March 31, 2009

*The total percentage of new applications received via online, phone or mail formats.*

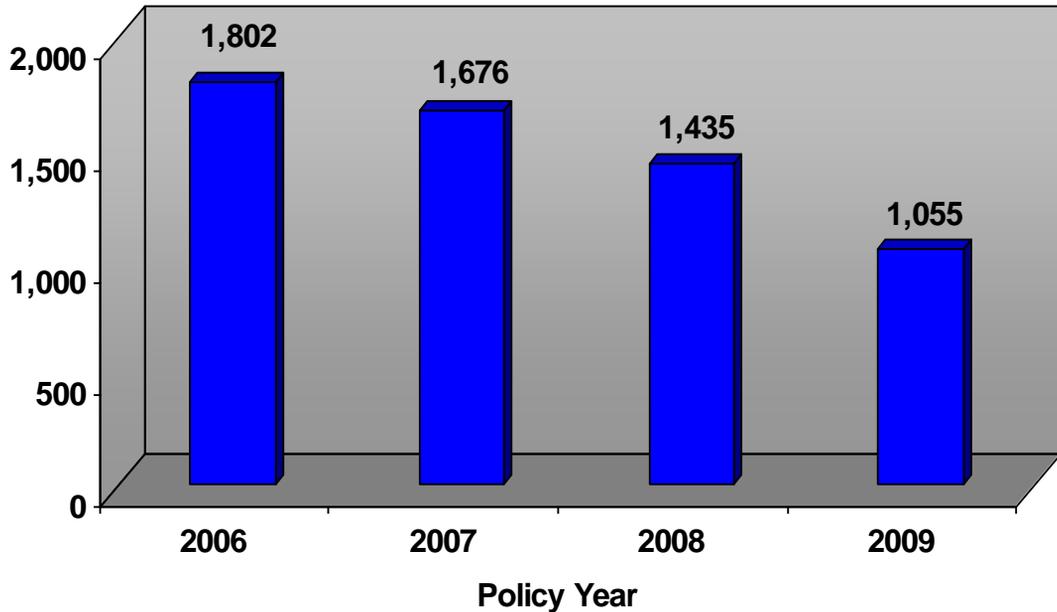


# Residual Market Demographics – 1Q 2009

## Residual Market Total Policy Counts

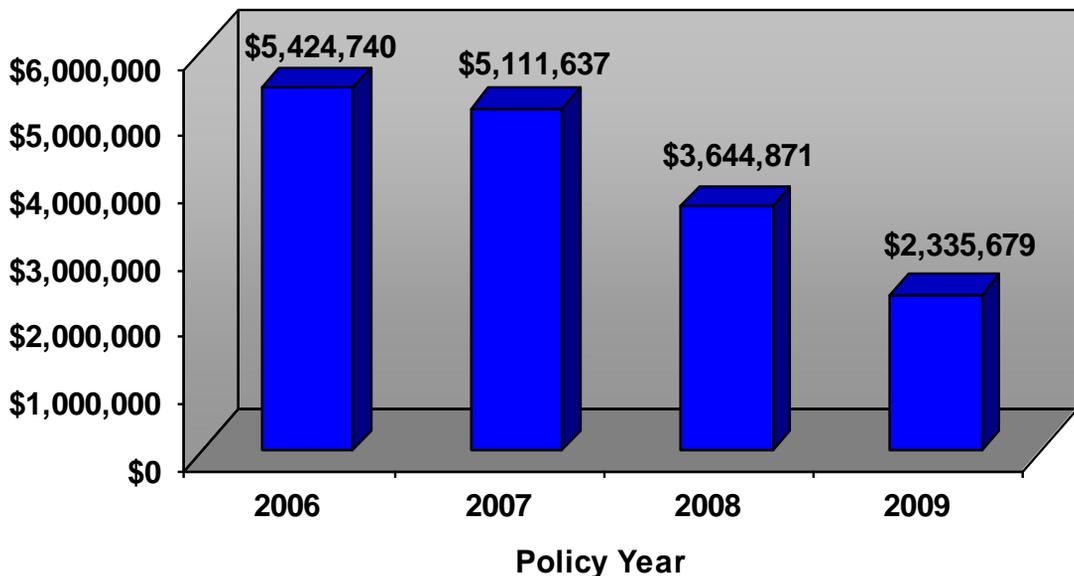
### First Quarter Data for Policies Reported through March 31, 2009

Total Number of all Assigned Risk Plan Policies effective during this quarter and reported as of the date listed above.



## First Quarter Data Reported through March 31, 2009

Total Amount of All Assigned Risk Plan Premium effective during this quarter and reported as of the date listed above.



# Residual Market Demographics

## Residual Market Total Policies and Premium in Force As of March 31, 2009 compared to prior year

*This chart reflects the total number of policies and estimated premium in-force for this state as of the date shown above.*

*The other exhibits in this report describe quarterly and year-to-date data.*

	2007	2008	2007 vs. 2008 #	2007 vs. 2008 %
<b>Policy Count</b>	5,783	4,774	-1,009	-17.5%
<b>Premium Volume</b>	\$14,770,968	\$10,876,355	-\$3,894,613	-26.4%

# Residual Market Demographics – 1Q 2009

## Residual Market First Quarter 2009 Total Premium Distribution by Size of Risk Data Reported through March 31, 2009

*The total number of assigned risk plan policies reported to NCCI for this quarter by Direct Assignment and Servicing Carriers in a premium range as of the date listed above.*

Premium Interval	Policy Count	% of Total Policies	Total State Premium	% of Total Premium	Average Premium
\$0 - 2499	889	84.27%	\$733,184	31.39%	\$824
\$2500 - 4999	90	8.53%	\$325,264	13.93%	\$3,614
\$5000 - 9999	39	3.70%	\$276,871	11.85%	\$7,099
\$10000 - 19999	22	2.09%	\$287,772	12.32%	\$13,080
\$20000 - 49999	13	1.23%	\$394,399	16.89%	\$30,338
\$50000 - 99999	1	0.09%	\$53,898	2.31%	\$53,898
\$100000 - 199999	1	0.09%	\$264,291	11.32%	\$264,291
\$200000+	0	0.00%	\$0	0.00%	\$0
Total	1,055	100%	\$2,335,679	100%	\$2,214

## Residual Market Total Premium Distribution by Size of Risk First Quarter 2008 Data for Comparison

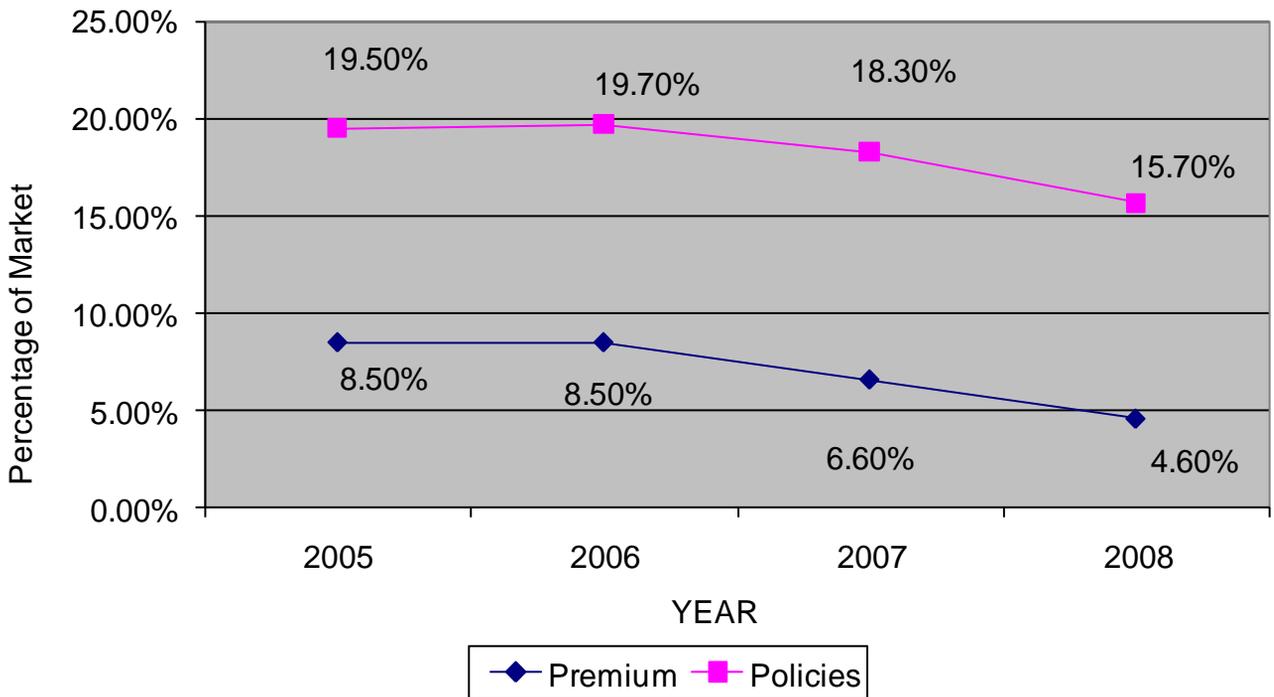
*The total number of assigned risk plan policies reported to NCCI for this quarter by Direct Assignment and Servicing Carriers in a premium range as of the date listed above.*

Premium Interval	Policy Count	% of Total Policies	Total State Premium	% of Total Premium	Average Premium
\$0 - 2499	1,207	84.11%	\$953,735	26.17%	\$790
\$2500 - 4999	113	7.87%	\$410,044	11.25%	\$3,628
\$5000 - 9999	57	3.97%	\$408,622	11.21%	\$7,168
\$10000 - 19999	27	1.88%	\$385,024	10.56%	\$14,260
\$20000 - 49999	21	1.46%	\$660,271	18.12%	\$31,441
\$50000 - 99999	6	0.42%	\$355,173	9.74%	\$59,195
\$100000 - 199999	4	0.28%	\$472,002	12.95%	\$118,000
\$200000 +	0	0.00%	\$0	0.00%	\$0
Total	1,435	100%	\$3,644,871	100%	\$2,540

# Residual Market Demographics

## Total Arkansas Assigned Risk Plan Market Share

*The percentage of total assigned risk plan policies and estimated annual premium, as compared to the total policies and estimated annual premium for the voluntary market, as of December 31, 2008.*



# Residual Market Demographics – 1Q 2009

## Residual Market Top 10 Classification Codes by Policy Count Data Reported through March 31, 2009

*The top ten governing class codes by total policy count - policies issued by Servicing Carriers and Direct Assignment Carriers in this state as of the date listed above.*

Rank	Code	Description	Policy Count	% of Policies
1	5645	Carpentry-Detached One Or Two Family Dwellings	233	22.09%
2	8810	Clerical Office Employees NOC	47	4.45%
3	8279	Stable Or Breeding Farm	40	3.79%
4	8832	Physician & Clerical	27	2.56%
5	5022	Masonry NOC	27	2.56%
6	5437	Carpentry-Installation Of Cabinet Work Or Interior Trim	26	2.46%
7	5445	Wallboard Installation Within Buildings	26	2.46%
8	5474	Painting Or Paperhanging NOC	25	2.37%
9	5183	Plumbing NOC	24	2.27%
10	0037	Farm: Field Crops	23	2.18%

## Residual Market Top 10 Classification Codes by Premium Volume Data Reported through March 31, 2009

*The top ten governing class codes by premium volume written on total policies issued by Servicing Carriers and Direct Assignment Carriers in this state as of the date listed above.*

Rank	Code	Description	Premium	% of Premium
1	5645	Carpentry-Detached One Or Two Family Dwellings	\$302,947	12.97%
2	6216	Oil Or Gas Lease Work NOC-By Contractor	\$269,491	11.54%
3	0037	Farm: Field Crops	\$92,172	3.95%
4	8832	Physician & Clerical	\$91,034	3.90%
5	7720	Police Officers	\$60,789	2.60%
6	3821	Automobile Dismantling	\$51,930	2.22%
7	0034	Farm: Poultry Or Egg Producer	\$51,176	2.19%
8	7403	Aviation - All Other Employees	\$45,345	1.94%
9	3724	Machinery Or Equipment Erection Or Repair NOC	\$44,259	1.89%
10	0083	Farm: Cattle Or Livestock Raising NOC	\$44,143	1.89%

# Residual Market Demographics

## Voluntary Coverage Assistance Program - Arkansas

*The volume of assigned risk applications redirected to the voluntary market through NCCI's **VCAP® Service**. The following shows the results **VCAP® Service** has provided during First Quarter 2009.*

Date Range:	01/01/2009 - 03/31/2009
Number of Applications Reviewed by VCAP® Service	413
Associated Premium for Applications Reviewed	\$1,190,121
Number of VCAP® Service Matches	81
VCAP® Service Matches as a % of Applications Reviewed	19.6%
Number of VCAP® Service Offers	14
VCAP® Service Offers as a % of Matches	17.3%
Number of Confirmed VCAP® Service Policies	14
Confirmed VCAP® Service Policies as a % of Applications Reviewed	3.4%
Redirected Assigned Risk Premium	\$43,498
Associated Voluntary Market Premium	\$31,827
Savings	\$11,671
Average Savings per Application	\$834
Savings as a % of Redirected Assigned Risk Premium	26.8%
Redirected Premium as a % of Associated Premium for Applications Reviewed by VCAP® Service	3.7%

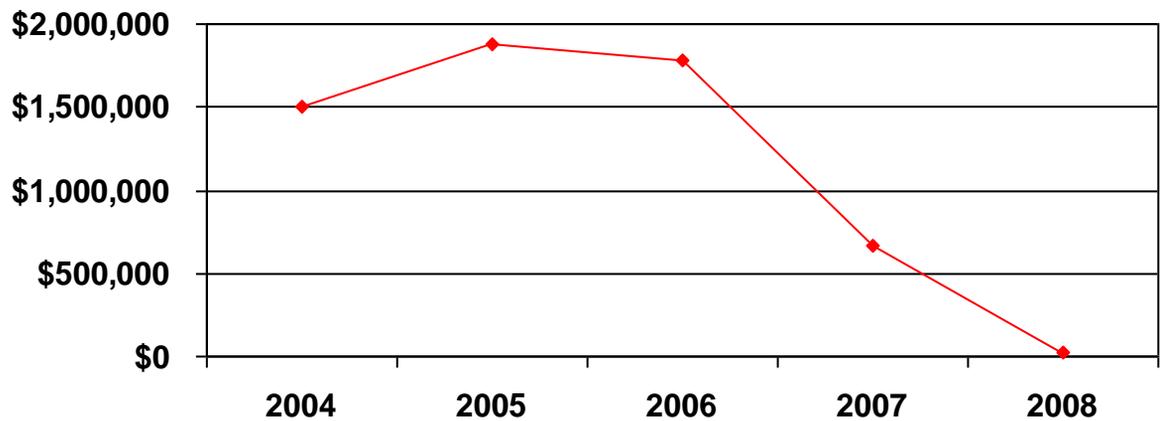
# Residual Market Demographics

## Collections/Indemnification

*The following shows a comparison of gross written premium and uncollectible premium reported in Arkansas and the National Pool for Policy Years 2004-2008, obtained through NP-4 and NP-5 reports including traumatic and black lung claims, evaluated through Fourth Quarter 2008.*

Arkansas	Gross Written Premium	Uncollectible Premium	Percentage
<b>2004</b>	\$28,705,571	\$1,500,561	5.2%
<b>2005</b>	\$25,335,140	\$1,884,613	7.4%
<b>2006</b>	\$22,693,108	\$1,783,969	7.9%
<b>2007</b>	\$18,156,869	\$663,013	3.7%
<b>2008</b>	\$13,000,786	\$24,961	0.2%
<b>National Pool 2008</b>	\$567,703,050	\$2,104,247	0.4%

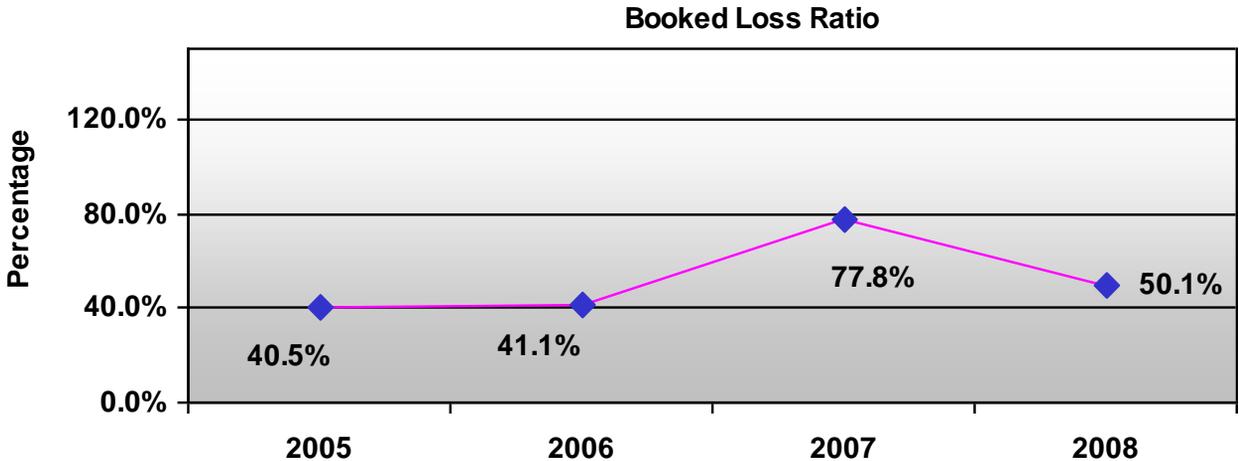
**Arkansas Uncollectible Premium**



# Residual Market Demographics

## Arkansas Residual Market Reinsurance Pool Booked Loss Ratio Policy Year Financial Results through 4th Quarter 2008 for 2008 and prior years

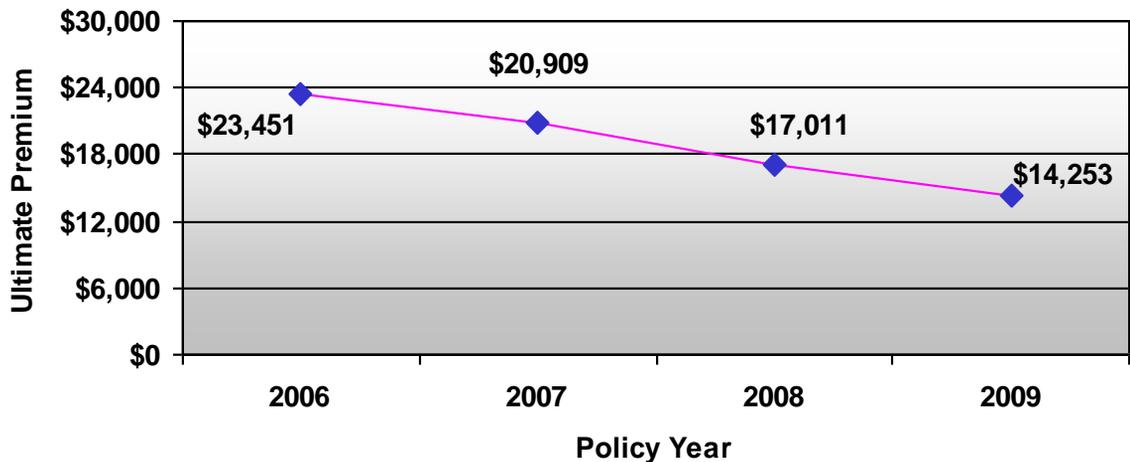
*The ratio of total incurred losses to total earned premiums in a given period, in this state, expressed as a percentage .*



## Arkansas Residual Market Reinsurance Pool Ultimate Net Written Premium (Projected to Ultimate) (000's)

### Policy Year Financial Results through 4th Quarter 2008 for 2008 and prior years\*

*The premium charged by an insurance company for the period of time and coverage provided by an insurance contract in this state.*



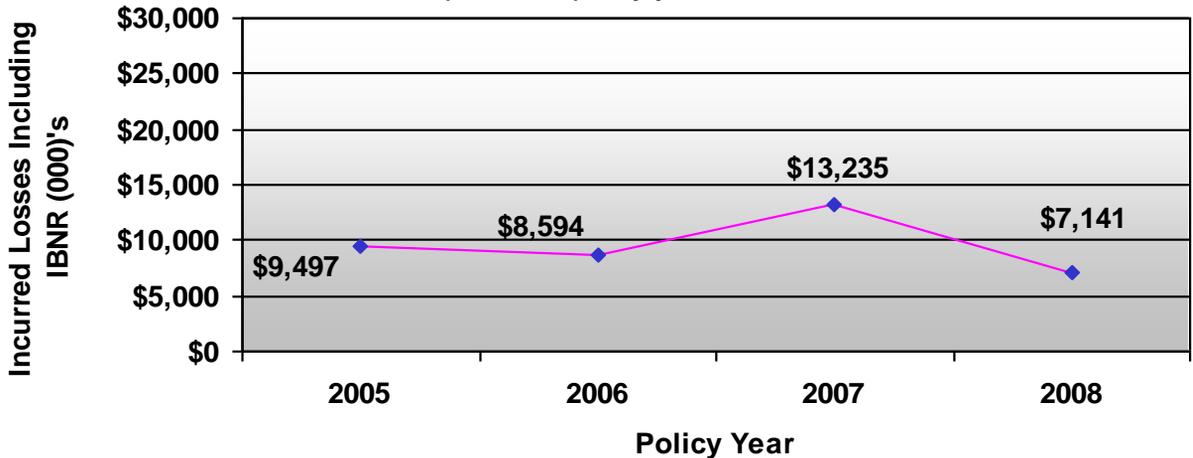
\*-First Quarter 2009 Data will be available the end of June 2009 due to the timing of data reporting

# Residual Market Demographics

## Arkansas Residual Market Reinsurance Pool Net Operating Results (Projected to Ultimate) Incurred Losses

### Policy Year Financial Results through 4th Quarter 2008 for 2008 and prior years\*

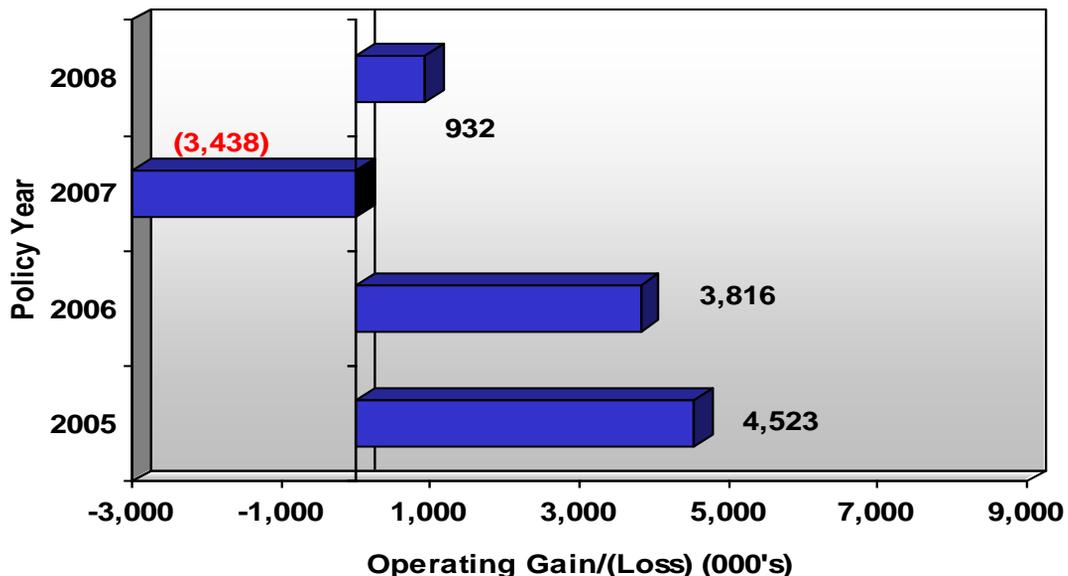
*Policy year incurred losses reflect paid losses, case reserves and IBNR reserves for policies written in a particular policy year in that state.*



## Arkansas Residual Market Reinsurance Pool Net Operating Results (Projected to Ultimate) Estimated Net Operating Gain/(Loss) (000's)

### Policy Year Financial Results through 4th Quarter 2008 for 2008 and prior years\*

*The financial statement presentation that reflects the excess of earned premium over incurred losses, less all operating expenses, plus all investment income in that state.*



\*-First Quarter 2009 Data will be available the end of June 2009 due to the timing of data reporting

# Glossary of Terms

**Combined Ratio**-The combined loss ratio, expense ratio and dividend ratio, expressed as a sum for a given period. The formula for combined ratio is [(loss + loss adjustment expense)/earned premium] + [underwriting expenses/written premium].

**EBNR (Earned But Not Reported) Premium Reserve**-A projection of additional premium that is expected to be uncovered after auditing at the end of the policy.

**Earned Premium or Premiums Earned**-That portion of written premiums applicable to the expired portion of the time for which the insurance was in effect. When used as an accounting term, "premiums earned" describes the premiums written during a period plus the unearned premiums at the beginning of the period less the unearned premiums at the end of the period.

**Incurred But Not Reported (IBNR)**-Pertaining to losses where the events which will result in a loss, and eventually a claim, have occurred, but have not yet been reported to the insurance company. The term may also include "bulk" reserves for estimated future development of case reserves.

**Underwriting Gain/(Loss)**-The financial statement presentation that reflects the excess of earned premium over incurred losses.

**Applications Bound**-The applications that are actually assigned to a Servicing Carrier or Direct Assignment Carrier (if applicable).

**Premium Bound**-The total estimated annual premium on bound applications.

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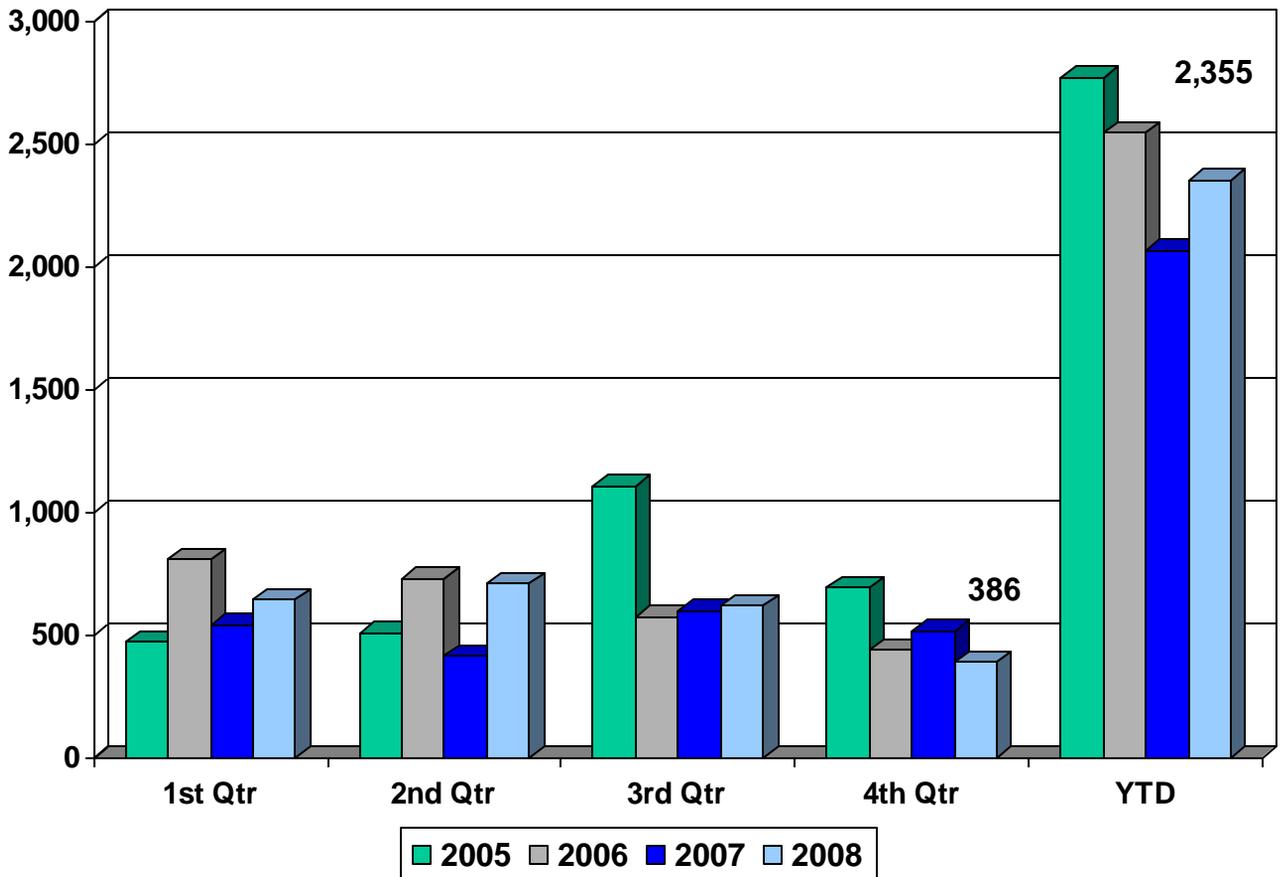
Terri Robinson, State Relations Executive  
Chantel Weishaar, Technical Specialist

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# Residual Market Demographics – Annual 2008

## Arkansas Residual Market Total New Applications Bound 2005 vs. 2006 vs. 2007 vs. 2008

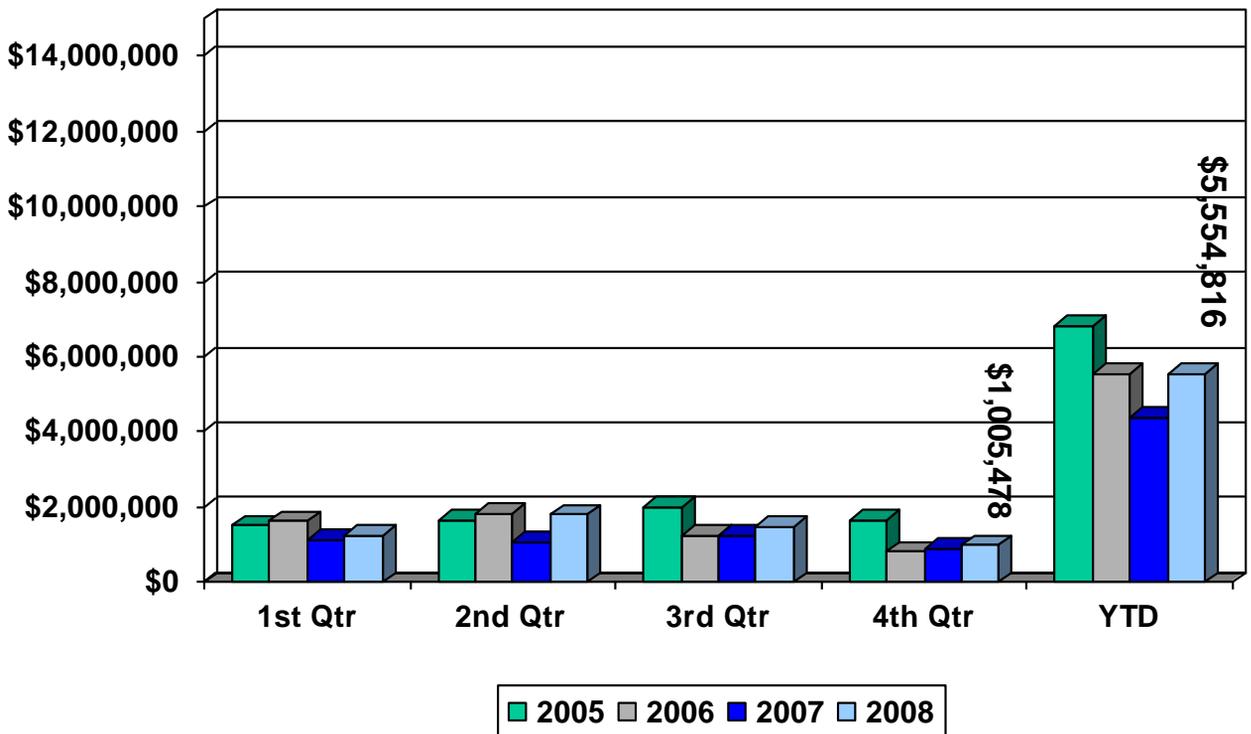
*The number of new applications that are actually assigned to a Servicing Carrier or Direct Assignment Carrier (if applicable).*



# Residual Market Demographics – Annual 2008

## Arkansas Residual Market Total New Application Premium Bound 2005 vs. 2006 vs. 2007 vs. 2008

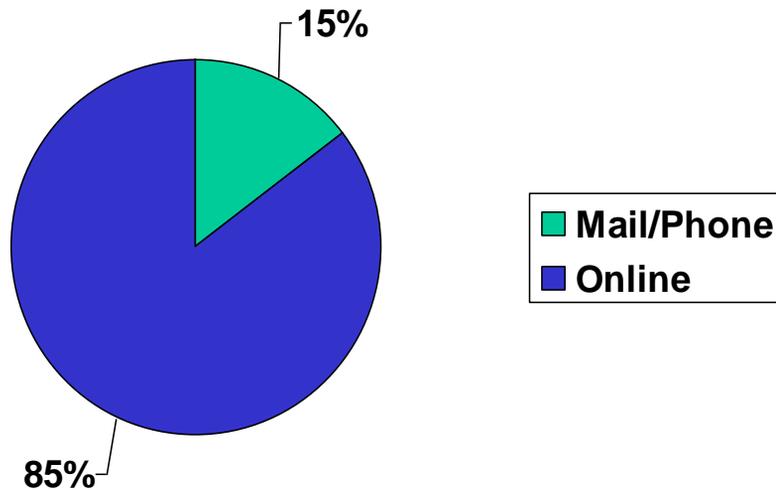
*The total estimated premium on bound new applications assigned to as Servicing Carrier or Direct Assignment Carrier (if applicable).*



# Residual Market Demographics – Annual 2008

## Percentage of New Applications Received by Submission Format Data through December 31, 2008

*The total percentage of new applications received via online, phone or mail formats.*

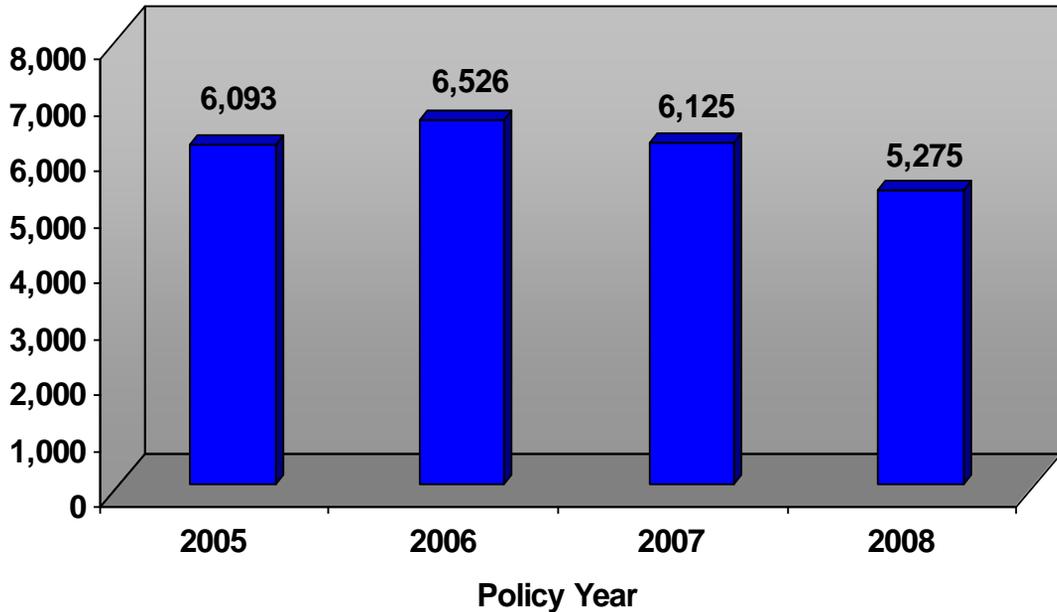


# Residual Market Demographics – Annual 2008

## Residual Market Total Policy Counts

### Annual Data for Policies Reported through December 31, 2008

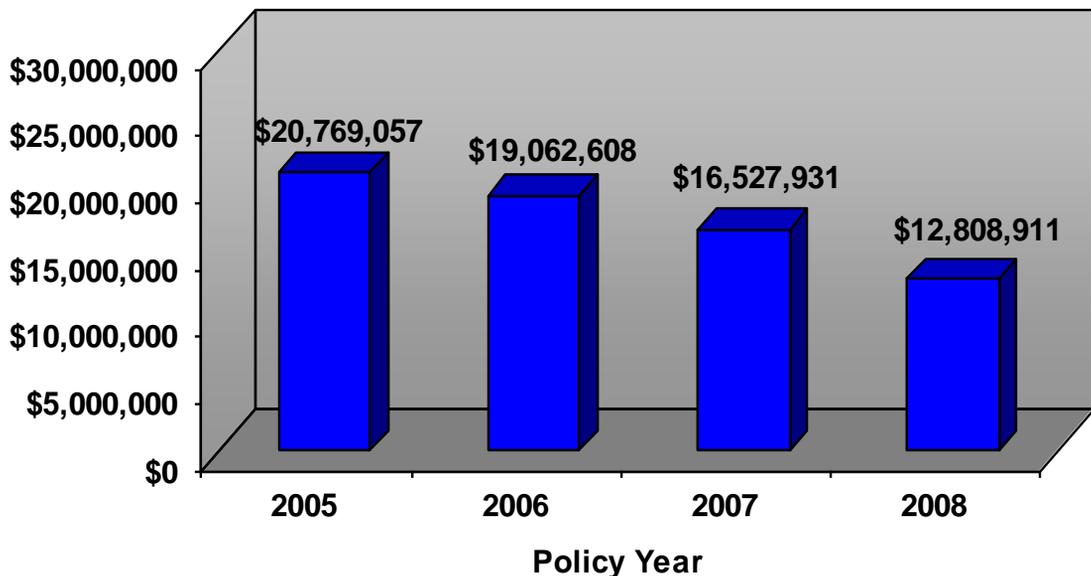
Total Number of all Assigned Risk Plan Policies effective during this year and reported as of the date listed above.



## Residual Market Total Premium Volume

### Annual Data Reported through December 31, 2008

Total Amount of All Assigned Risk Plan Premium effective during this year and reported as of the date listed above.



# Residual Market Demographics

## Residual Market Total Policies and Premium in Force As of December 31, 2008 compared to prior year

*This chart reflects the total number of policies and estimated premium in-force for this state as of the date shown above.*

*The other exhibits in this report describe quarterly and year-to-date data.*

	2007	2008	2007 vs. 2008 #	2007 vs. 2008 %
<b>Policy Count</b>	6,026	5,218	-808	-13.4%
<b>Premium Volume</b>	\$16,188,876	\$12,700,605	-\$3,488,271	-21.6%

# Residual Market Demographics – Annual 2008

## Residual Market Annual 2008 Total Premium Distribution by Size of Risk Data Reported through December 31, 2008

*The total number of assigned risk plan policies reported to NCCI for this year by Direct Assignment and Servicing Carriers in a premium range as of the date listed above.*

Premium Interval	Policy Count	% of Total Policies	Total State Premium	% of Total Premium	Average Premium
\$0 - 2499	4,499	85.29%	\$3,711,853	28.98%	\$825
\$2500 - 4999	390	7.39%	\$1,371,511	10.71%	\$3,516
\$5000 - 9999	199	3.77%	\$1,393,202	10.88%	\$7,001
\$10000 - 19999	96	1.82%	\$1,360,258	10.62%	\$14,169
\$20000 - 49999	59	1.12%	\$1,788,522	13.96%	\$30,313
\$50000 - 99999	20	0.38%	\$1,325,052	10.34%	\$66,252
\$100000 - 199999	10	0.19%	\$1,259,714	9.83%	\$125,971
\$200000+	2	0.04%	\$598,799	4.67%	\$299,399
Total	5,275	100%	\$12,808,911	100%	\$2,428

## Residual Market Total Premium Distribution by Size of Risk Annual 2007 Data for Comparison

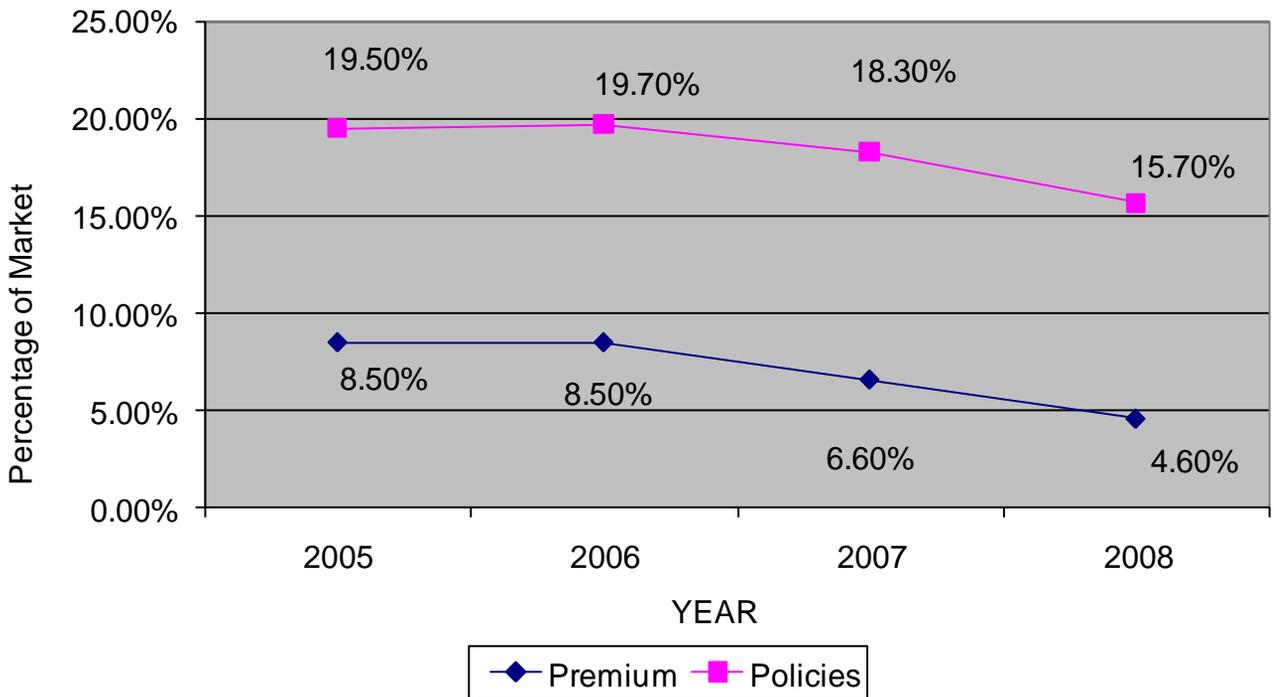
*The total number of assigned risk plan policies reported to NCCI for this year by Direct Assignment and Servicing Carriers in a premium range as of the date listed above.*

Premium Interval	Policy Count	% of Total Policies	Total State Premium	% of Total Premium	Average Premium
\$0 - 2499	5,041	82.3%	\$4,027,593	24.37%	\$798
\$2500 - 4999	528	8.62%	\$1,861,632	11.26%	\$3,525
\$5000 - 9999	274	4.47%	\$1,923,249	11.64%	\$7,019
\$10000 - 19999	157	2.56%	\$2,238,479	13.54%	\$14,257
\$20000 - 49999	89	1.45%	\$2,605,555	15.76%	\$29,275
\$50000 - 99999	24	0.39%	\$1,656,187	10.02%	\$69,007
\$100000 - 199999	10	0.16%	\$1,318,448	7.98%	\$131,844
\$200000 +	2	0.03%	\$896,788	5.43%	\$448,394
Total	6,125	100%	\$16,527,931	100%	\$2,698

# Residual Market Demographics

## Total Arkansas Assigned Risk Plan Market Share

*The percentage of total assigned risk plan policies and estimated annual premium, as compared to the total policies and estimated annual premium for the voluntary market, as of December 31, 2008.*



# Residual Market Demographics – Annual 2008

## Residual Market Top 10 Classification Codes by Policy Count Data Reported through December 31, 2008

*The top ten governing class codes by total policy count - policies issued by Servicing Carriers and Direct Assignment Carriers in this state as of the date listed above.*

Rank	Code	Description	Policy Count	% of Policies
1	5645	Carpentry-Detached One Or Two Family Dwellings	1,463	27.73%
2	8810	Clerical Office Employees NOC	199	3.77%
3	5022	Masonry NOC	170	3.22%
4	5551	Roofing-All Kinds	152	2.88%
5	5474	Painting Or Paperhanging NOC	140	2.65%
6	5437	Carpentry-Installation Of Cabinet Work Or Interior Trim	134	2.54%
7	5183	Plumbing NOC	105	1.99%
8	5445	Wallboard Installation Within Buildings	104	1.97%
9	8832	Physician & Clerical	103	1.95%
10	5606	Contractor - Project Manager Construction Executive Construction Manager	100	1.90%

## Residual Market Top 10 Classification Codes by Premium Volume Data Reported through December 31, 2008

*The top ten governing class codes by premium volume written on total policies issued by Servicing Carriers and Direct Assignment Carriers in this state as of the date listed above.*

Rank	Code	Description	Premium	% of Premium
1	5645	Carpentry-Detached One Or Two Family Dwellings	\$1,539,226	12.02%
2	5403	Carpentry NOC	\$436,140	3.40%
3	2710	Sawmill	\$424,189	3.31%
4	7705	Ambulance Service Companies And EMS (Emergency Medical Service) Providers	\$315,552	2.46%
5	5474	Painting Or Paperhanging NOC	\$276,247	2.16%
6	9403	Garbage Ashes Or Refuse Collection	\$240,456	1.88%
7	8868	College: Professional Employees	\$220,367	1.72%
8	8106	Iron Or Steel Merchant	\$212,689	1.66%
9	5022	Masonry NOC	\$208,168	1.63%
10	8279	Stable Or Breeding Farm	\$186,147	1.45%

# Residual Market Demographics

## Voluntary Coverage Assistance Program - Arkansas

*The volume of assigned risk applications redirected to the voluntary market through NCCI's **VCAP® Service**. The following shows the results **VCAP® Service** has provided during Annual 2008.*

Date Range:	01/01/2008 - 12/31/2008
Number of Applications Reviewed by VCAP® Service	389
Associated Premium for Applications Reviewed	\$1,012,148
Number of VCAP® Service Matches	34
VCAP® Service Matches as a % of Applications Reviewed	8.7%
Number of VCAP® Service Offers	3
VCAP® Service Offers as a % of Matches	8.8%
Number of Confirmed VCAP® Service Policies	3
Confirmed VCAP® Service Policies as a % of Applications Reviewed	0.8%
Redirected Assigned Risk Premium	\$6,673
Associated Voluntary Market Premium	\$4,369
Savings	\$2,304
Average Savings per Application	\$768
Savings as a % of Redirected Assigned Risk Premium	34.5%
Redirected Premium as a % of Associated Premium for Applications Reviewed by VCAP® Service	0.7%

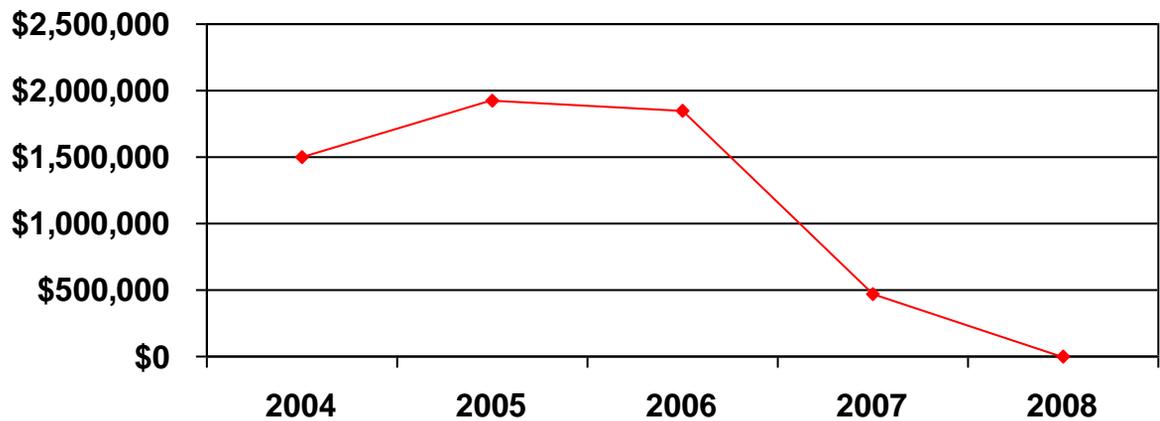
# Residual Market Demographics

## Collections/Indemnification

The following shows a comparison of gross written premium and uncollectible premium reported in Arkansas and the National Pool for Policy Years 2004-2008, obtained through NP-4 and NP-5 reports including traumatic and black lung claims, evaluated through Third Quarter 2008.

Arkansas	Gross Written Premium	Uncollectible Premium	Percentage
2004	\$28,709,458	\$1,504,156	5.2%
2005	\$25,346,165	\$1,924,640	7.6%
2006	\$22,845,491	\$1,848,159	8.1%
2007	\$18,202,042	\$470,815	2.6%
2008	\$10,046,252	\$2,170	0.0%
National Pool 2008	\$430,283,331	\$240,897	0.1%

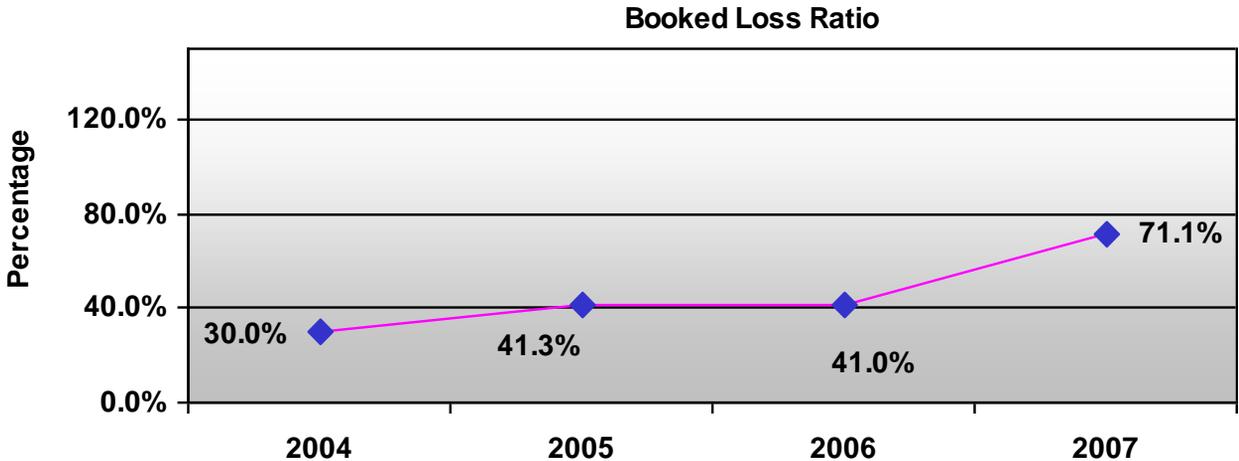
## Arkansas Uncollectible Premium



# Residual Market Demographics

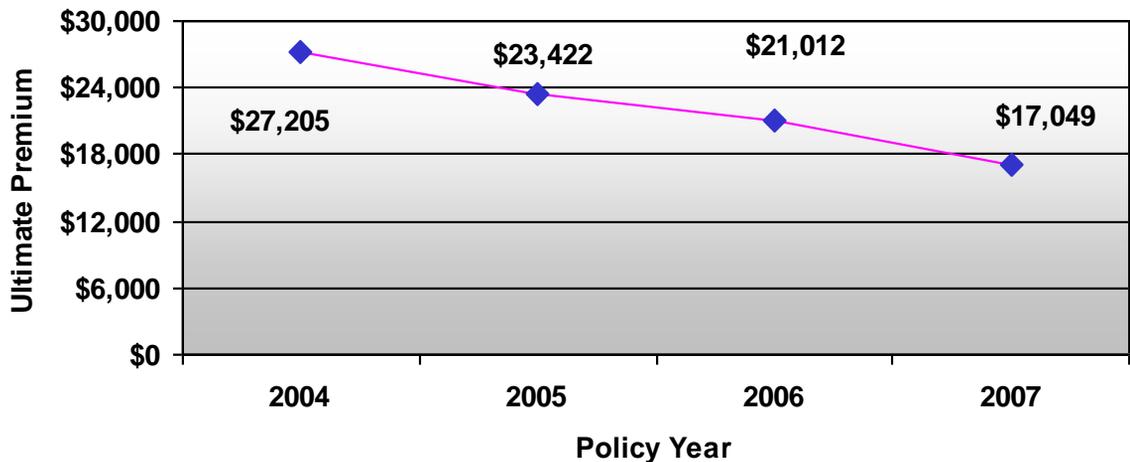
## Arkansas Residual Market Reinsurance Pool Booked Loss Ratio Policy Year Financial Results through 3rd Quarter 2008 for 2007 and prior years

*The ratio of total incurred losses to total earned premiums in a given period, in this state, expressed as a percentage .*



## Arkansas Residual Market Reinsurance Pool Ultimate Net Written Premium (Projected to Ultimate) (000's) Policy Year Financial Results through 3rd Quarter 2008 for 2007 and prior years\*

*The premium charged by an insurance company for the period of time and coverage provided by an insurance contract in this state.*



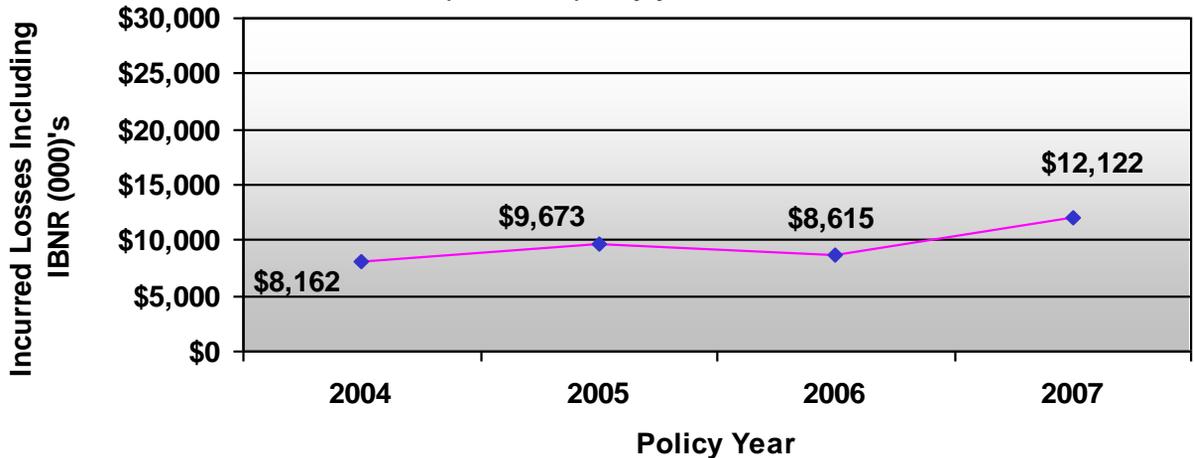
\*-Fourth Quarter 2008 Data will be available the end of March 2009 due to the timing of data reporting

# Residual Market Demographics

## Arkansas Residual Market Reinsurance Pool Net Operating Results (Projected to Ultimate) Incurred Losses

Policy Year Financial Results through 3rd Quarter 2008 for 2007 and prior years\*

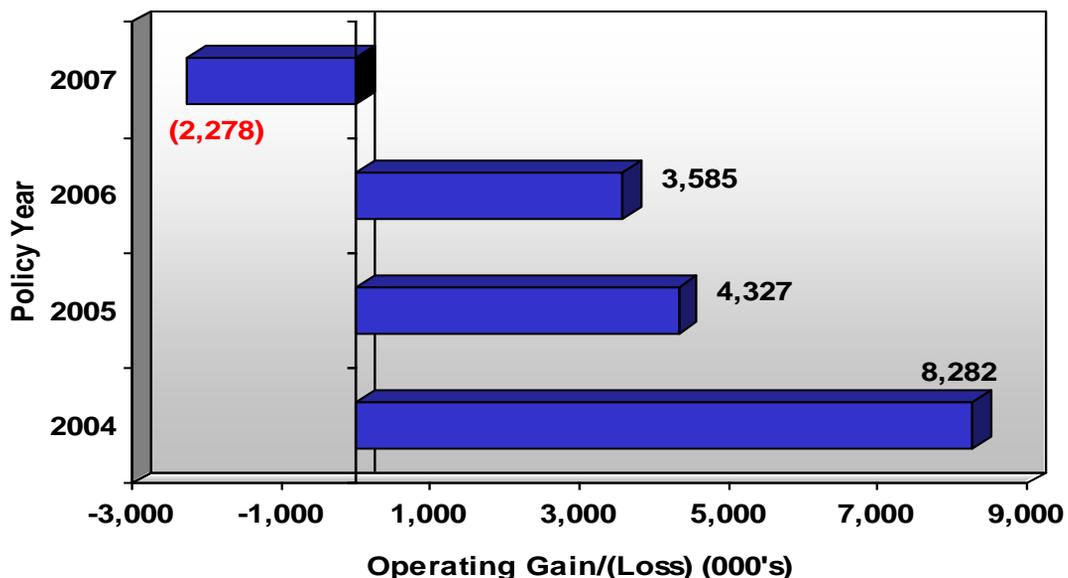
*Policy year incurred losses reflect paid losses, case reserves and IBNR reserves for policies written in a particular policy year in that state.*



## Arkansas Residual Market Reinsurance Pool Net Operating Results (Projected to Ultimate) Estimated Net Operating Gain/(Loss) (000's)

Policy Year Financial Results through 3rd Quarter 2008 for 2007 and prior years\*

*The financial statement presentation that reflects the excess of earned premium over incurred losses, less all operating expenses, plus all investment income in that state.*



\*-Fourth Quarter 2008 Data will be available the end of March 2009 due to the timing of data reporting

# Glossary of Terms

**Combined Ratio**-The combined loss ratio, expense ratio and dividend ratio, expressed as a sum for a given period. The formula for combined ratio is [(loss + loss adjustment expense)/earned premium] + [underwriting expenses/written premium].

**EBNR (Earned But Not Reported) Premium Reserve**-A projection of additional premium that is expected to be uncovered after auditing at the end of the policy.

**Earned Premium or Premiums Earned**-That portion of written premiums applicable to the expired portion of the time for which the insurance was in effect. When used as an accounting term, "premiums earned" describes the premiums written during a period plus the unearned premiums at the beginning of the period less the unearned premiums at the end of the period.

**Incurred But Not Reported (IBNR)**-Pertaining to losses where the events which will result in a loss, and eventually a claim, have occurred, but have not yet been reported to the insurance company. The term may also include "bulk" reserves for estimated future development of case reserves.

**Underwriting Gain/(Loss)**-The financial statement presentation that reflects the excess of earned premium over incurred losses.

**Applications Bound**-The applications that are actually assigned to a Servicing Carrier or Direct Assignment Carrier (if applicable).

**Premium Bound**-The total estimated annual premium on bound applications.



NCCI Holdings, Inc.

## State of the Workers Compensation Line

Dennis C. Mealy, FCAS, MAAA  
Chief Actuary  
National Council on Compensation Insurance, Inc.  
May 7, 2009



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### I. Property/Casualty Results

### II. Workers Compensation Results

### III. Current Topics of Interest

### IV. Concluding Remarks

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## Property/Casualty Results

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## P/C Industry Net Written Premium— Another Decline

### Private Carriers

Line of Business (LOB)	2006	2007	2008p	2007–2008p Change
Personal Auto	\$160.2 B	\$159.1 B	\$159.9 B	0.5%
Homeowners	\$54.5 B	\$54.8 B	\$56.2 B	2.5%
Other Liability (Incl Prod Liab)	\$45.7 B	\$44.3 B	\$41.2 B	-7.0%
<b>Workers Compensation</b>	<b>\$38.7 B</b>	<b>\$37.7 B</b>	<b>\$34.0 B</b>	<b>-9.8%</b>
Commercial Multiple Peril	\$31.7 B	\$31.1 B	\$29.5 B	-5.0%
Commercial Auto	\$26.7 B	\$25.5 B	\$23.7 B	-7.0%
Fire & Allied Lines (Incl EQ)	\$20.0 B	\$21.9 B	\$25.0 B	14.5%
All Other Lines	\$65.9 B	\$66.2 B	\$65.1 B	-1.8%
<b>Total P/C Industry</b>	<b>\$443.5 B</b>	<b>\$440.6 B</b>	<b>\$434.6 B</b>	<b>-1.4%</b>

p Preliminary

Source: Workers Compensation, NCCI;  
All Other Lines, Best's Review Preview and ISO

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## Return to Underwriting Losses

Net Combined Ratio—Private Carriers

Line of Business (LOB)	Calendar Year		
	2006	2007	2008p
Personal Auto	96%	98%	99%
Homeowners	90%	96%	117%
Other Liability (Incl Prod Liab)	95%	99%	101%
<b>Workers Compensation</b>	<b>93%</b>	<b>101%</b>	<b>101%</b>
Commercial Multiple Peril	93%	92%	106%
Commercial Auto	92%	94%	99%
Fire & Allied Lines (Incl EQ)	81%	70%	105%
All Other Lines	86%	93%	119%
<b>Total P/C Industry</b>	<b>92%</b>	<b>95%</b>	<b>105%</b>

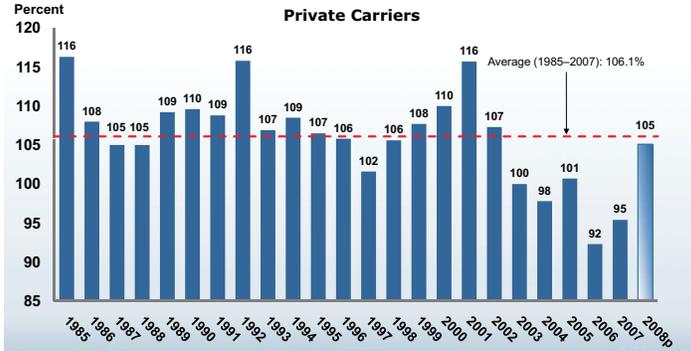
p Preliminary

Source: Workers Compensation, NCCI;  
All Other Lines, Best's Review Preview and ISO

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## P/C Industry Calendar Year Net Combined Ratios



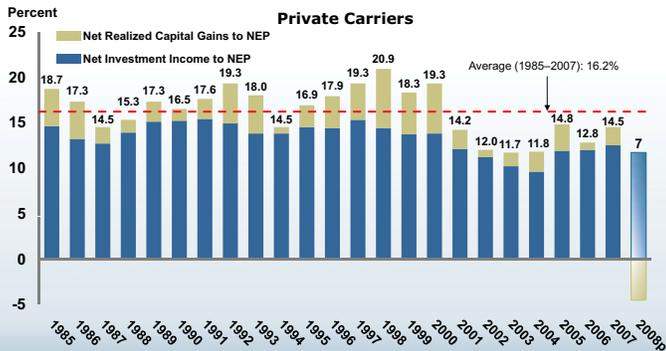
p Preliminary

Source: 1985-2007, Best's Aggregates & Averages; 2008p, ISO

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## Investment Gain Ratio Remains Below Historical Average



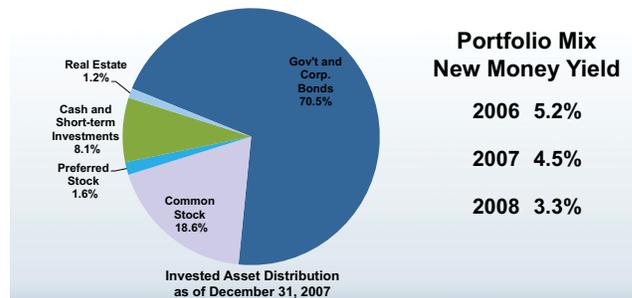
p Preliminary

Source: 1985-2007, Best's Aggregates & Averages; 2008p, ISO

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## Bonds Comprised Roughly 70% of P&C Invested Assets and Yields Declined



### Portfolio Mix New Money Yield

2006 5.2%

2007 4.5%

2008 3.3%

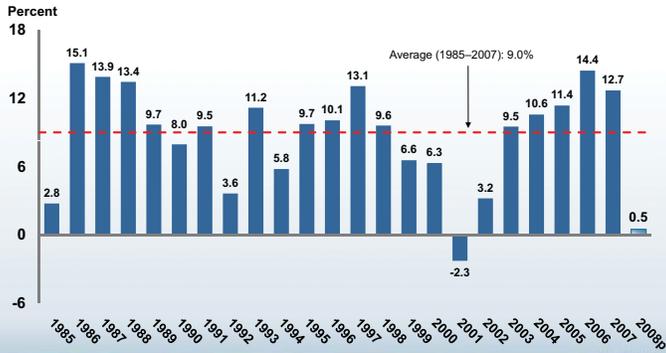
Source: Invested Asset distribution, Best's Aggregates and Averages, 2008 Edition; Yields, NCCI

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## P/C Industry Return on Surplus

### Annual After-Tax Return on Surplus—Private Carriers



p Preliminary

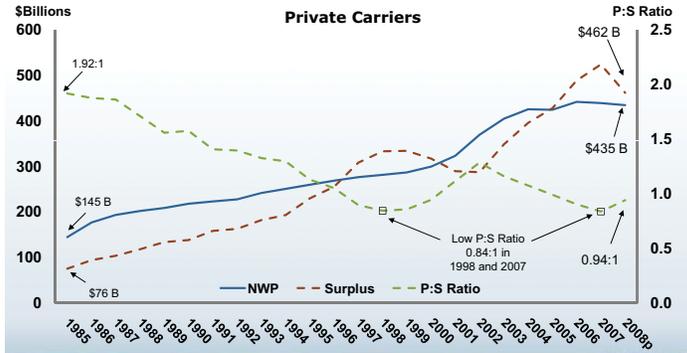
Calendar Year

Source: 1985-2007, Best's Aggregates & Averages; 2008p After-Tax Net Income, ISO, 2008p Surplus, 2007 Best's Aggregates & Averages \* 2008 ISO contributions to surplus  
Note: After-tax return on average surplus, excluding unrealized capital gains

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## P/C Industry Premium-to-Surplus Ratio Remains Strong



p Preliminary

Calendar Year

Source: 1985-2007, Best's Aggregates & Averages; 2008p Surplus, 2007 Best's Aggregates & Averages \* 2008 ISO contributions to surplus

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## Contributions to Surplus

### Private Carriers

	2006	2007	2008p
Underwriting Gains/Losses	\$ 31.1 B	\$ 19.3 B	\$ (21.2) B
Investment Income	\$ 52.3 B	\$ 55.1 B	\$ 51.2 B
Realized Capital Gains/Losses	\$ 3.5 B	\$ 8.9 B	\$ (19.8) B
Other Income	\$ 1.2 B	\$ (1.0) B	\$ (0.1) B
Unrealized Capital Gains/Losses	\$ 20.6 B	\$ (0.6) B	\$ (52.9) B
Federal Taxes	\$ (22.4) B	\$ (19.8) B	\$ (7.7) B
Shareholder Dividends	\$ (24.7) B	\$ (32.2) B	\$ (23.3) B
Contributed Capital	\$ 3.8 B	\$ 3.2 B	\$ 11.2 B
Other Changes to Surplus	\$ (4.9) B	\$ (1.2) B	\$ 0.3 B
Total	\$ 60.4 B	\$ 31.7 B	\$ (62.3) B

p Preliminary

Source: ISO

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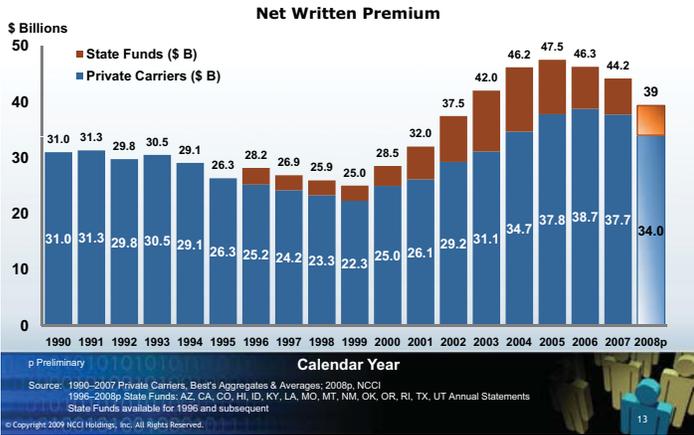
## Workers Compensation

### Results

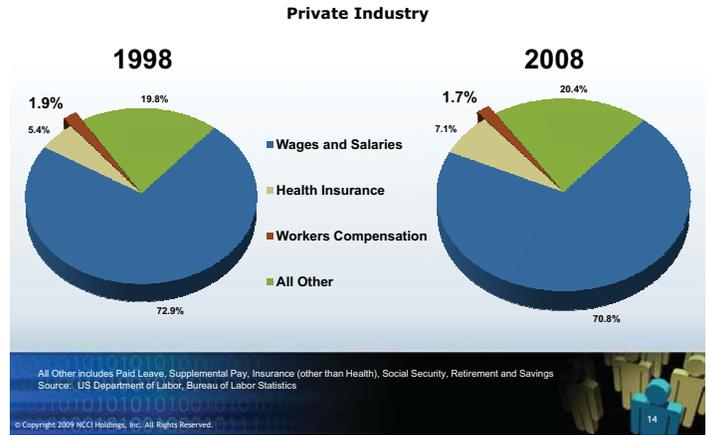
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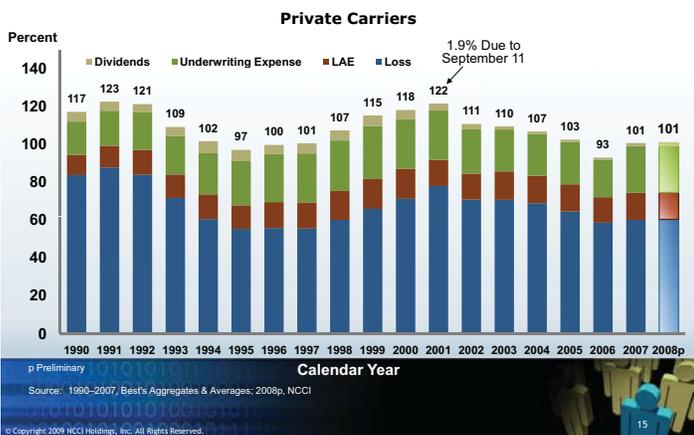
## Workers Compensation Premium Continued to Decline in 2008



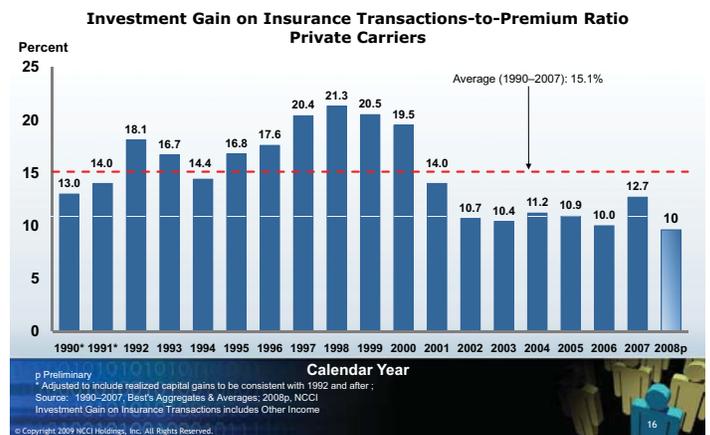
## Employer Costs as Percentage of Total Compensation



## WC Calendar Year Combined Ratio— Will History Repeat Itself?

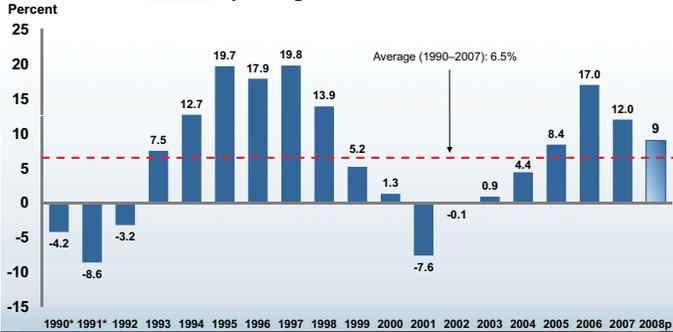


## Workers Compensation Investment Returns Remain Below Historical Average



## Workers Compensation Results Remain Above Historical Average

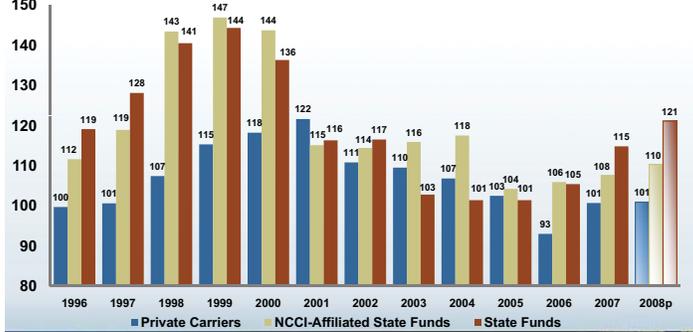
Pre-Tax Operating Gain Ratio—Private Carriers



p Preliminary  
 \* Adjusted to include realized capital gains to be consistent with 1992 and after  
 Source: 1990–2007, Best's Aggregates & Averages, 2008p, NCCI  
 Operating Gain equals 1.00 minus (Combined Ratio less Investment Gain on Insurance Transactions and Other Income)  
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## Workers Compensation Calendar Year Net Combined Ratios

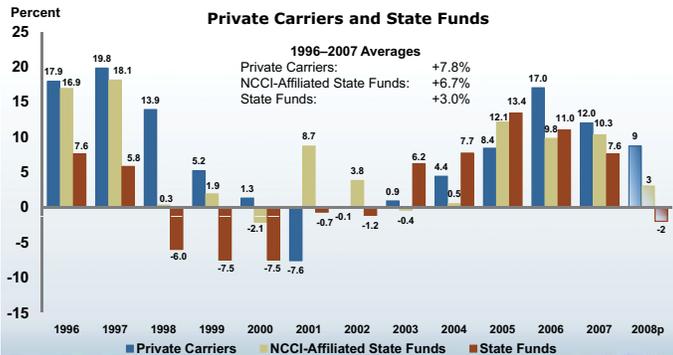
Private Carriers and State Funds



p Preliminary  
 Source: 1996–2007 Private Carriers, Best's Aggregates & Averages, 2008p, NCCI  
 1996–2008p NCCI-Affiliated State Funds: AZ, CO, HI, ID, KY, LA, MO, MT, NM, OK, OR, RI, UT Annual Statements  
 1996–2008p State Funds: AZ, CA, CO, HI, ID, KY, LA, MO, MT, NM, OK, OR, RI, TX, UT Annual Statements  
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## Workers Compensation Pre-Tax Operating Gain Ratios

Private Carriers and State Funds



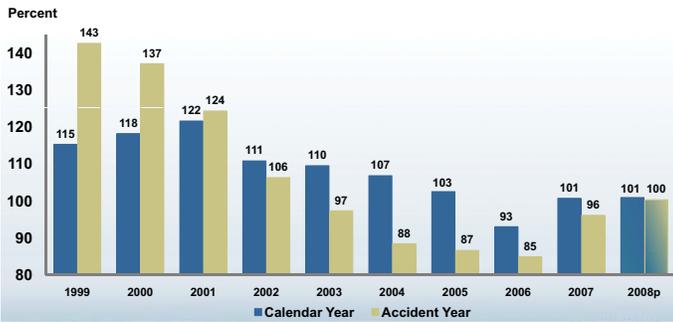
p Preliminary  
 Operating Gain equals 1.00 minus (Combined Ratio less Investment Gain on Insurance Transactions and Other Income)  
 Source: 1996–2007 Private Carriers, Best's Aggregates & Averages, 2008p, NCCI  
 1996–2008p NCCI-Affiliated State Funds: AZ, CO, HI, ID, KY, LA, MO, MT, NM, OK, OR, RI, UT Annual Statements  
 1996–2008p State Funds: AZ, CA, CO, HI, ID, KY, LA, MO, MT, NM, OK, OR, RI, TX, UT Annual Statements  
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## Workers Compensation Accident Year Results and Reserve Estimates

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## Accident Year Combined Ratios

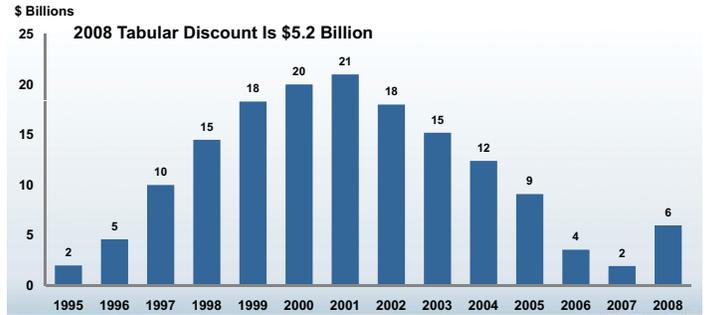
Workers Compensation Calendar Year vs. Ultimate Accident Year  
Private Carriers



p Preliminary  
Accident Year data is evaluated as of 12/31/2008 and developed to ultimate  
Source: Calendar Years 1999–2007, Best's Aggregates & Averages;  
Calendar Year 2008p and Accident Years 1999–2006p, NCCI analysis based on Annual Statement data  
Includes dividends to policyholders  
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## Calendar Year Reserve Deficiencies

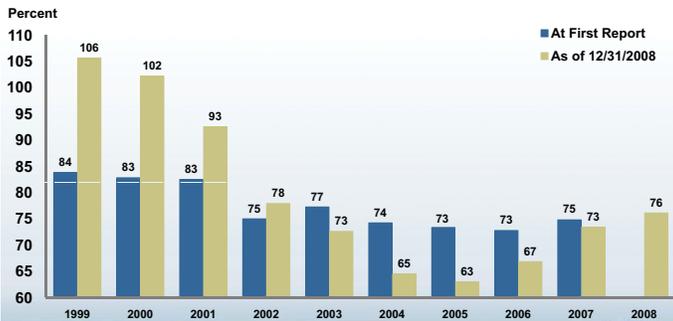
Workers Compensation Loss and LAE Reserve Deficiency  
Private Carriers



Considers all reserve discounts as deficiencies  
Loss and LAE figures are based on NAIC Annual Statement data for each valuation date and NCCI latest selections  
Source: NCCI analysis  
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## Workers Compensation Accident Year Loss and LAE Ratios

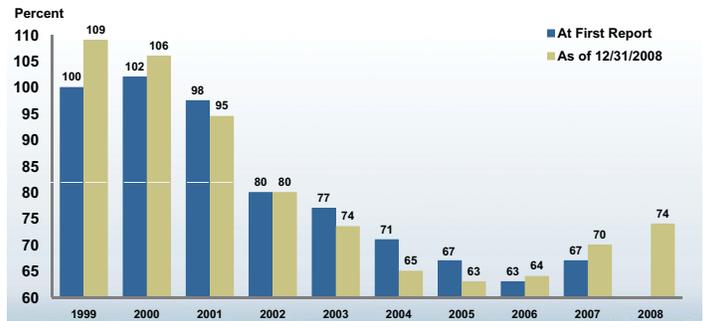
As Reported—Private Carriers



Reported Loss and LAE ratios  
Source: NAIC Annual Statement, Schedule P data as reported by Private Carriers  
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## Workers Compensation Accident Year Loss and LAE Ratios

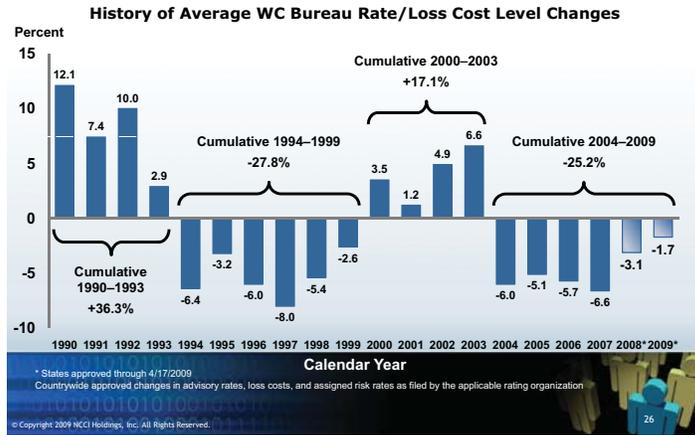
NCCI Selections—Private Carriers



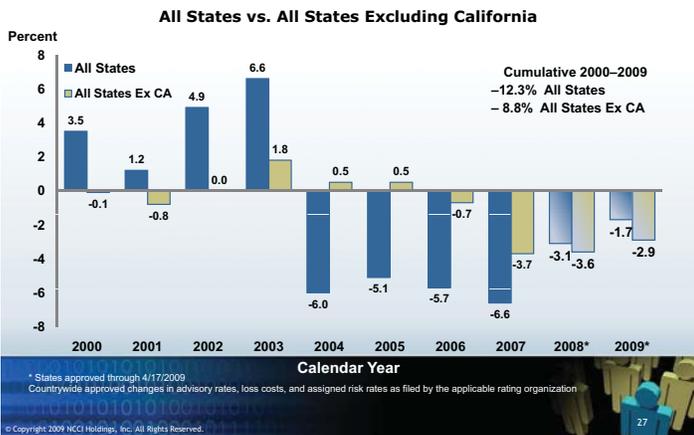
Selected Loss and LAE ratios  
Source: NCCI Reserve Analysis  
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# Workers Compensation Premium Drivers

## Average Approved Bureau Rates/Loss Costs



## Average Approved Bureau Rates/Loss Costs

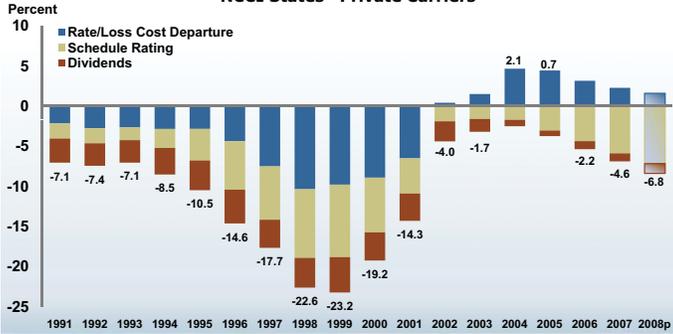


## Current NCCI Voluntary Market Filed Rate/Loss Cost Changes



## Impact of Discounting on Workers Compensation Premium

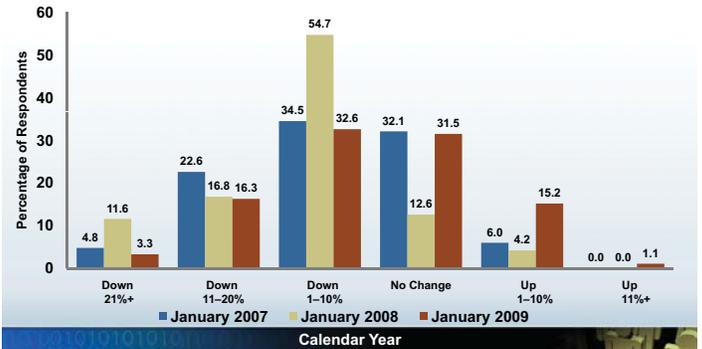
NCCI States—Private Carriers



p Preliminary  
Dividend ratios are based on calendar year statistics  
NCCI benchmark level does not include an underwriting contingency provision  
Based on data through 12/31/2008 for the states where NCCI provides ratemaking services  
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## According to Goldman Sachs, Most Survey Respondents See Price Declines Moderating

Agent Responses on Policy Renewal Premiums vs. 12 Months Prior



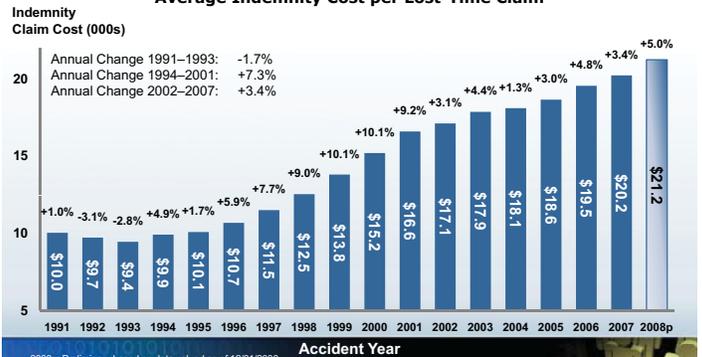
Source: Goldman Sachs Research, Proprietary Survey, "January 2009 Pricing Survey, Insurance: Property & Casualty" (Exhibit 8, Workers' Compensation, Percentage of Respondents)  
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## Workers Compensation Loss Drivers

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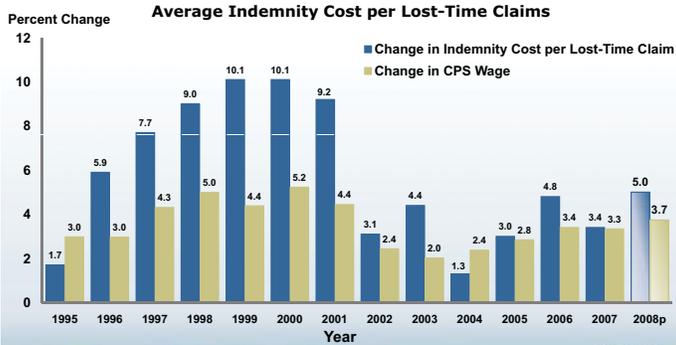
## Workers Compensation Indemnity Claim Costs Continue to Grow

Average Indemnity Cost per Lost-Time Claim



2008p: Preliminary based on data valued as of 12/31/2008  
1991-2007: Based on data through 12/31/2007, developed to ultimate  
Based on the states where NCCI provides ratemaking services, including state funds  
Excludes high deductible policies  
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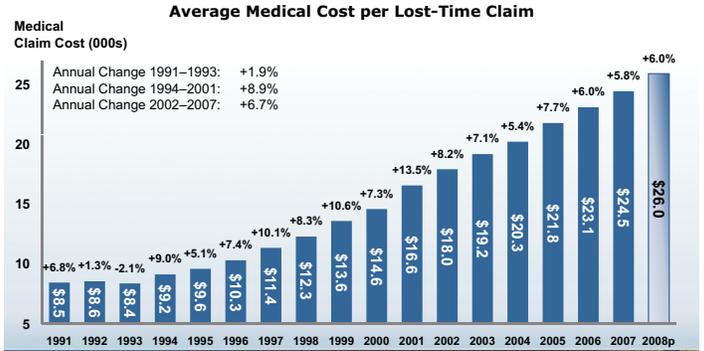
## WC Indemnity Severity Outpacing Wage Inflation in 2008



Indemnity severity 2008p: Preliminary based on data valued as of 12/31/2008  
 Indemnity severity 1995-2007: Based on data through 12/31/2007, developed to ultimate  
 Based on the states where NCCI provides ratemaking services, including state funds; excludes high deductible policies  
 Source: CPS Wage—All states (Current Population Survey), Economy.com,  
 Accident year indemnity severity—NCCI states, NCCI  
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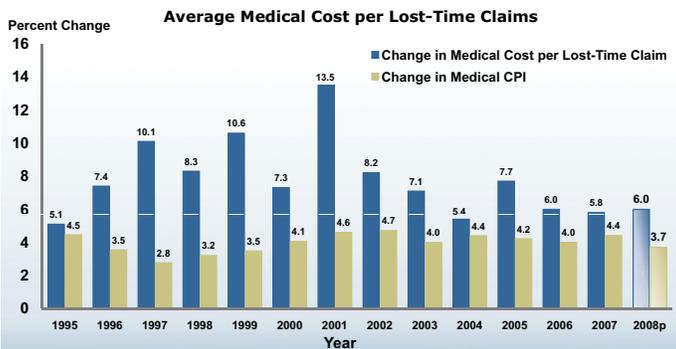
## WC Medical Claim Cost Trends—Growth Continues in 2008



2008p: Preliminary based on data valued as of 12/31/2008  
 1991-2007: Based on data through 12/31/2007, developed to ultimate  
 Based on the states where NCCI provides ratemaking services, including state funds  
 Excludes high deductible policies  
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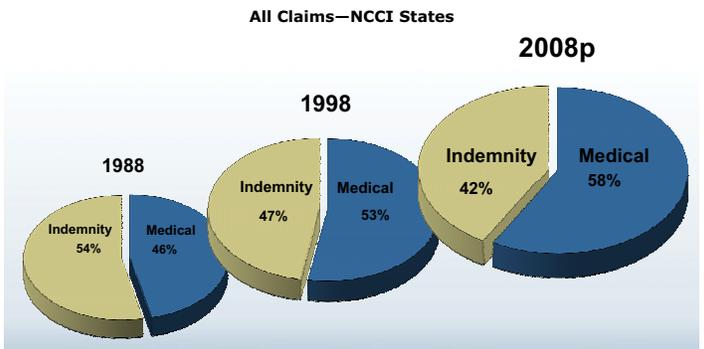
## WC Medical Severity Still Growing Faster Than the Medical CPI



Medical severity 2008p: Preliminary based on data valued as of 12/31/2008  
 Medical severity 1995-2007: Based on data through 12/31/2007, developed to ultimate  
 Based on the states where NCCI provides ratemaking services, including state funds; excludes high deductible policies  
 Source: Medical CPI—All states, Economy.com; Accident year medical severity—NCCI states, NCCI  
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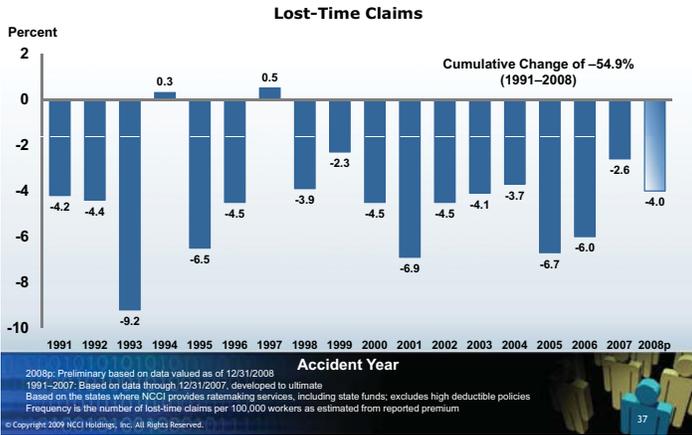
## Workers Compensation Medical Losses Are More Than Half of Total Losses



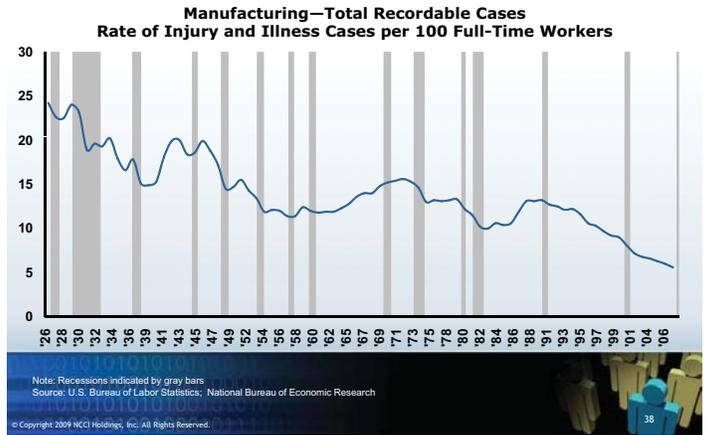
2008p: Preliminary based on data valued as of 12/31/2008  
 1988, 1998: Based on data through 12/31/2007, developed to ultimate  
 Based on the states where NCCI provides ratemaking services, including state funds  
 Excludes high deductible policies  
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## Workers Compensation Lost-Time Claim Frequency Continues to Decline



## Frequency A Long-Term Drift Downward



## The Business Cycle Impact on the Frequency Growth Rate in Isolation

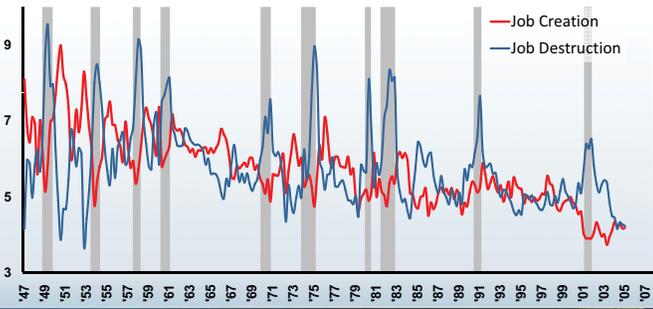


## Job Creation Is a Leading Indicator of the Change in WC Claim Frequency

- Job creation and job destruction increase frequency
  - During recessions, job creation slows dramatically
  - The rate of job creation bottoms at the trough of economic activity and rises sharply during the ensuing economic recovery
  - During recession, job destruction increases
  - NCCI's statistical modeling shows that the decline in job creation dominates quantitatively
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## Cyclical Pattern of Job Creation and Job Destruction

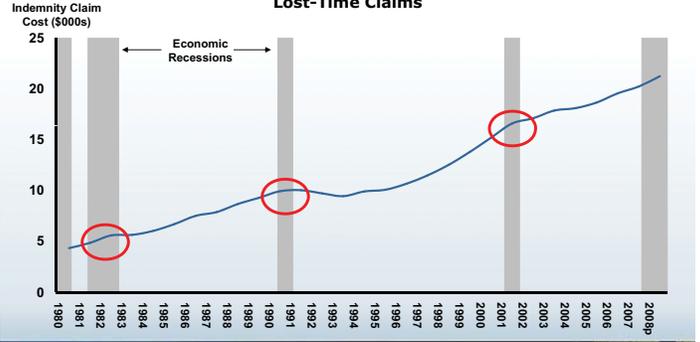
Rates of Job Creation and Job Destruction—Manufacturing



Note: Recessions indicated by gray bars.  
 Source: Davis, S.J., R.J. Faberman, and J. Haltiwanger (2006) "The Flow Approach to Labor Markets: New Data Sources and Micro-Macro Links," *Journal of Economic Perspectives* 20(3), pp. 3-26.  
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## The Growth in Indemnity Severity Has Eased Coming Out of Prior Recessions

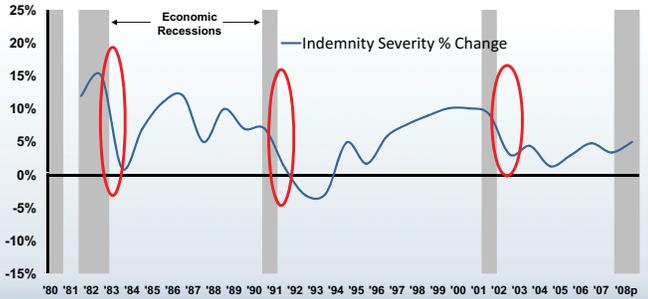
Lost-Time Claims



2008p: Preliminary based on data valued as of 12/31/2008  
 1991–2007: Based on data through 12/31/2007, developed to ultimate  
 Based on the states where NCCI provides ratemaking services, including state funds  
 Excludes high deductible policies.  
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## Indemnity Severity Growth Rates Show a Lagged Response to Recessions

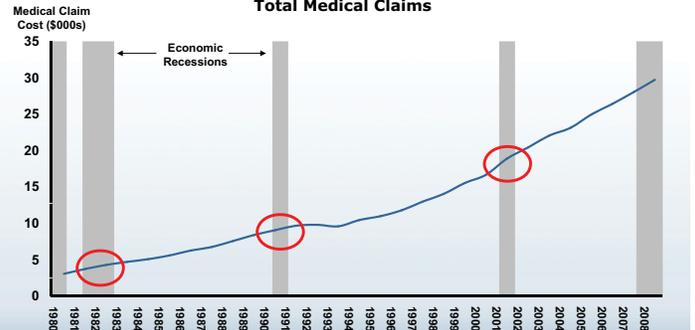
Percent Change, Lost-Time Claims



2008p: Preliminary based on data valued as of 12/31/2008  
 1991–2007: Based on data through 12/31/2007, developed to ultimate  
 Based on the states where NCCI provides ratemaking services, including state funds  
 Excludes high deductible policies.  
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## Medical Claim Costs Increased During Prior Recessions

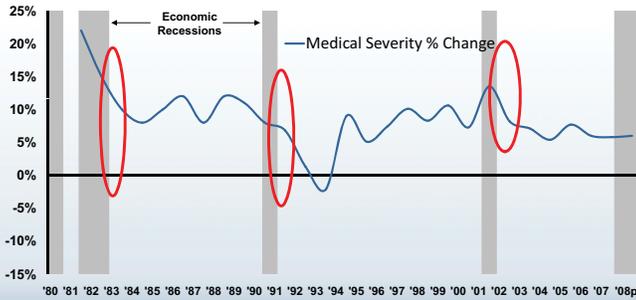
Total Medical Claims



2008p: Preliminary based on data valued as of 12/31/2008  
 1991–2007: Based on data through 12/31/2007, developed to ultimate  
 Based on the states where NCCI provides ratemaking services, including state funds  
 Excludes high deductible policies.  
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## Medical Severity Growth Rates Show a Varied Response

Percent Change, Lost-Time Claims



Accident/Calendar Year

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## Total Severity Growth Rates—Up and Down Response

Percent Change, Lost-Time Claims

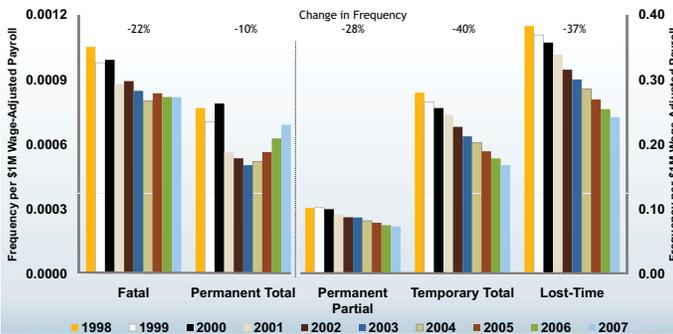


Accident/Calendar Year

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## Declines in Claim Frequency Are Consistent for All Injury Types Except Permanent Total

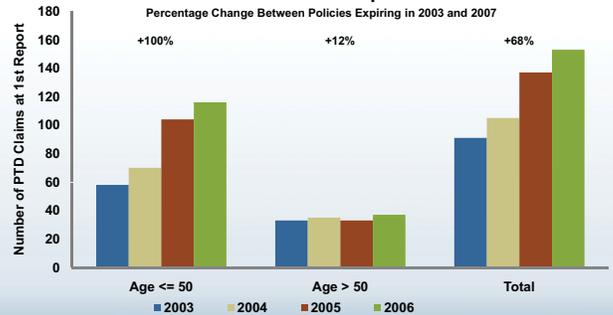
Frequency at First Report



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## Increase in Permanent Total Claims It Wasn't Older Workers

Change in Permanent Total Claims, by Age Group Data at First Report



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## Lost-Time and Permanent Total Disability Claims by Cause of Injury

Percentage Change, Data at First Report



All NCCI States  
Percentage change between policies expiring in 2003 and 2007  
Source: NCCI Unit Statistical Plan data, First Report.

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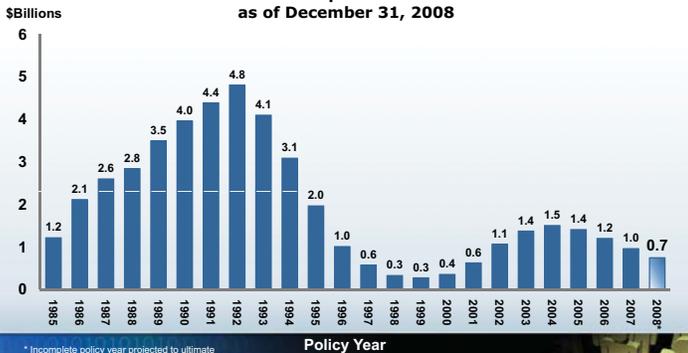
## Workers Compensation Residual Market

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## Workers Compensation Residual Market Premium Volume Declines

NCCI-Serviced Workers Compensation Residual Market Pools as of December 31, 2008



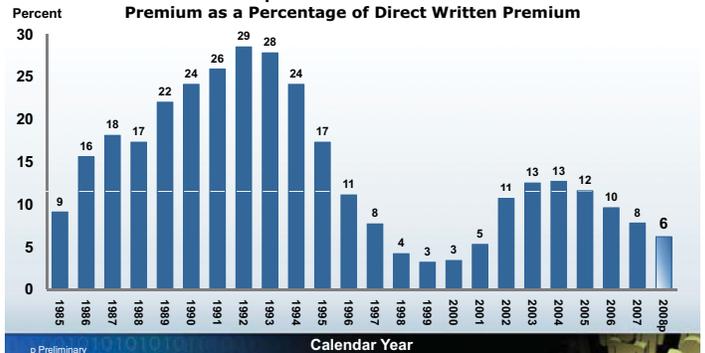
<sup>a</sup> Incomplete policy year projected to ultimate

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## Workers Compensation Residual Market Shares Continue to Decline

Workers Compensation Insurance Plan States\* Premium as a Percentage of Direct Written Premium



<sup>b</sup> Preliminary

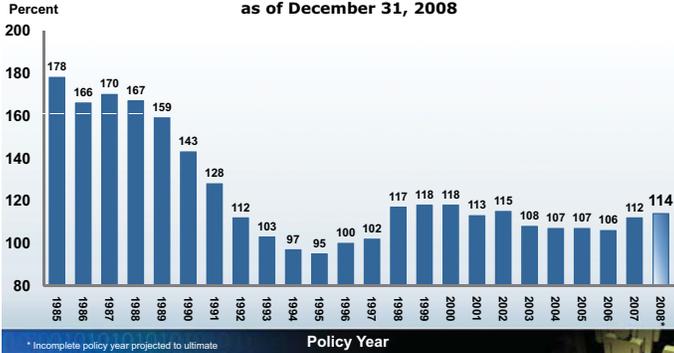
\* NCCI Plan states plus DE, IN, MA, MI, NJ, NC

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## Workers Compensation Residual Market Combined Ratios

NCCI-Serviced Workers Compensation Residual Market Pools as of December 31, 2008



\* Incomplete policy year projected to ultimate

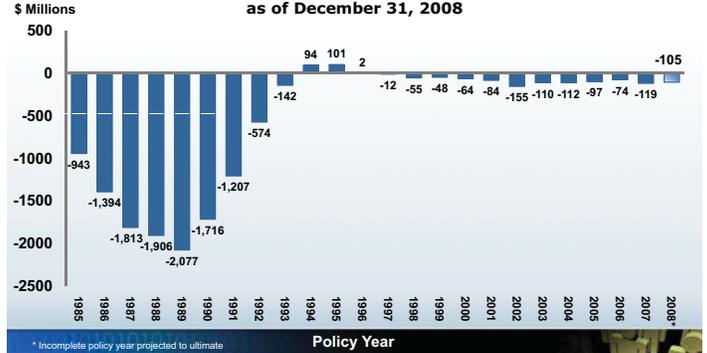
Policy Year

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## Workers Compensation Residual Market Underwriting Results

NCCI-Serviced Workers Compensation Residual Market Pools as of December 31, 2008



\* Incomplete policy year projected to ultimate

Policy Year

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## Residual Markets Depopulated

2008 vs. 2004

Size of Risk	2004	2008	Change
\$ 0 - \$ 2,499	110.9 M	103.7 M	-6%
\$ 2,500 - \$ 4,999	80.6 M	55.7 M	-31%
\$ 5,000 - \$ 9,999	106.2 M	67.7 M	-36%
\$ 10,000 - \$49,999	315.8 M	160.5 M	-49%
\$ 50,000 - \$99,999	149.4 M	56.5 M	-62%
\$ 100,000 and over	236.5 M	56.6 M	-76%
<b>Total</b>	<b>999.5 M</b>	<b>500.8 M</b>	<b>-50%</b>

Total estimated annual premium on policies includes residual market policies for: AK, AL, AR, AZ, CT, DC, GA, ID, IL, IA, IN, KS, MS, NV, NH, NM, OR, SC, SD, VA

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## Residual Markets Depopulated

First Quarter 2009 vs. First Quarter 2008

Size of Risk	2008	2009	Change
\$ 0 - \$ 2,499	26.3 M	20.1 M	-24%
\$ 2,500 - \$ 4,999	15.9 M	10.8 M	-32%
\$ 5,000 - \$ 9,999	21.9 M	12.6 M	-43%
\$ 10,000 - \$49,999	53.8 M	33.0 M	-39%
\$ 50,000 - \$99,999	18.6 M	11.7 M	-37%
\$ 100,000 and over	20.7 M	11.5 M	-45%
<b>Total</b>	<b>157.2 M</b>	<b>99.6 M</b>	<b>-37%</b>

Total estimated annual premium on policies includes residual market policies for: AK, AL, AR, AZ, CT, DC, GA, ID, IL, IA, IN, KS, MS, NV, NH, NM, OR, SC, SD, VA

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## Current Topics of Interest

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## NCCI Developments in Class Ratemaking Methodology

- NCCI conducted a comprehensive review of all class ratemaking methodologies
- The review concluded in August 2008
- The goal of NCCI's new class ratemaking methodology is to improve accuracy, class equity, and loss cost stability from year to year
- The new methodology will be in NCCI loss cost filings effective October 1, 2009 and subsequent

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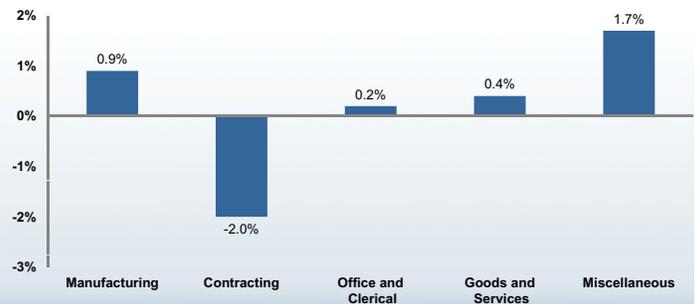
## Class Ratemaking Changes

- Lower loss limits
- Revised loss development approach using injured part of body
- Medical development differentiated between likely to develop and not likely to develop for reports 1 through 5
- Replaced use of serious and non-serious partial pure premiums with indemnity partial pure premiums
- Revised excess loss treatment to incorporate ELPPFs
- Revised industry group differentials using new methodology
- Adjusted class credibility to accommodate new partial pure premiums

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## Industry Group Loss Cost Changes New vs. Prior Method

Estimated 1<sup>st</sup> Year Impact, Percentage Change



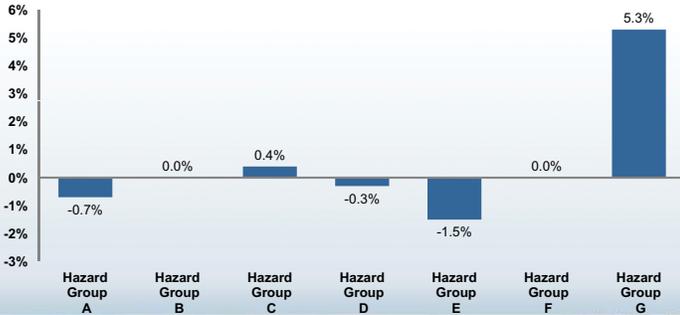
Percentage change impact in loss costs due to new class ratemaking methodology  
Note: Results exclude F-Class and Maritime class codes

Source: NCCI analysis

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## Hazard Group Loss Cost Changes New vs. Prior Method

Estimated 1<sup>st</sup> Year Impact, Percentage Change



Percentage change impact in loss costs due to new class ratemaking methodology  
Note: Results exclude F-Class and Maritime class codes

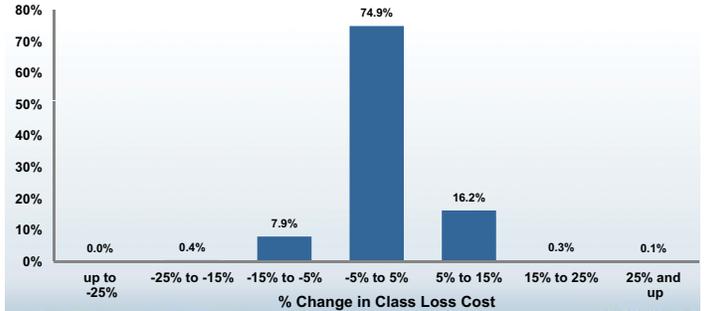
Source: NCCI analysis

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## Distribution of Class Loss Cost Changes New vs. Prior Method

Estimated 1<sup>st</sup> Year Impact, Percentage of Classes in Range



Percentage change impact in loss costs due to new class ratemaking methodology  
Note: Results exclude F-Class and Maritime class codes

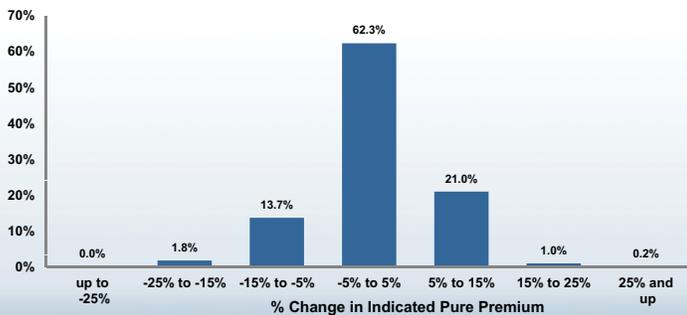
Source: NCCI analysis

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## Distribution of Changes: Large Class Codes, New vs. Prior Method

Estimated Long-Term Impact, Percentage of Classes in Range



Percentage change impact due to new class ratemaking methodology for classes with credibility greater than 50%  
Notes: Results exclude F-Class and Maritime class codes  
Both Indemnity and Medical Credibility greater than 50%

Source: NCCI analysis

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## Anticipated Benefits of New Class Ratemaking Methodology

- Equity
  - New loss development using injured part of body
  - Medical development for likely and not likely
  - Expected excess by hazard group
  - Revised industry group calculations
- Stability
  - Lower loss limits
  - New loss development using injured part of body
  - Expected excess by hazard group
  - Revised industry group calculations
  - Revised credibility formulae

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## Experience Rating Plan Methodology Review

- Experience Rating Plan in midst of three-year review
- Excellent results in prior years' performance testing
- Number of years in the plan will remain the same
- Progress to date includes:
  - Review of performance by Hazard Group
    - Suggests that credibility should be modestly increased
  - Review of single vs. multiple split point options
    - We will maintain a single split point
  - Methodology for determining primary and excess credibility
    - We will use a Bayesian statistical approach

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## Concluding Remarks

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## In Summary

### Positives

- Industry's Capital position
- WC Underwriting results
- Frequency continues to decline
- Residual market depopulation continues

### Negatives

- Low investment returns continue to put pressure on underwriting results
- Potential reform erosion
- Medical costs still above inflation
- Uncertain political fallout from federal action
- Underwriting cycle

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## Questions and More Information

Questions on the State of the Line presentation?  
E-mail us at [stateoftheline@ncci.com](mailto:stateoftheline@ncci.com)

Download the complete presentation materials  
and watch a video overview of the State of the  
Line at **ncci.com**

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