

**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 2013**

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 because of Act 796.

Arkansas continues to enjoy a competitive workers' compensation market with the continuing effects of Act 796 of 1993.

In the most recent data available, Arkansas had a combined loss ratio of 91% 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 2012, NCCI filed for decreases in both the voluntary market loss costs (-1.4%) and assigned risk plan rates (-8.5%) Several factors and trends in the industry may affect future rates. These factors include changes in claim frequency, 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 2001 saw our first increase in the assigned risk plan rates while experiencing a decrease in the voluntary market. In 2012, Arkansas had the lowest loss costs in the region per \$100 of payroll, \$0.79, compared to the regional average loss cost of \$1.58 and the countrywide average loss cost of \$1.49. The average rates in 2013 were -54% from 1995 when the law changes went into effect. There are still positive effects from this Act that benefits 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%
1998	-9.1%	-8.2%

<b>Year</b>	<b>Voluntary Market</b>	<b>Assigned Risk Plan</b>
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%
2010	1.9%	4.5%
2011	-5.8%	-9.7%
2012	-7.4%	-6.7
2013	-8.5%	-1.4

### **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 (0.953 from 0.971). This 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. The 2011 countrywide average experience modifier is 0.987. Please refer to Exhibit "A" for additional statistical information regarding premiums.

### **ASSIGNED RISK PLAN**

The assigned risk plan has seen a history of decline in population since the passage of Act 796 except for a gentle upward trend during 2002 through 2004. It was down from a record high of \$150,000,000 in 1993, to a low of \$6,566,275 in September 2000. The current recession has affected the market causing voluntary carriers to tighten underwriting and increase their minimum premiums. The assigned risk premium volume for 2013 was \$22,650,710 as compared to \$17,712,749 for 2012. Due in part to the economy the assigned risk plan has continued to grow. In 2013 the carriers continue to decline to write small policies, which is one factor in the growth of the assigned risk plan to \$24,517,070. It is anticipated that the assigned risk plan will continue to grow due to the voluntary carriers changing underwriting rules. 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 2012, small premium employers (less than \$2,500 in annual premium) constituted approximately 74% of the plan policy volume with an average of \$896 in premium per policy. Average plan premium per

policy at the end of 2012 was \$3,536 for all 6,405 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 for comparison to new applications submitted. When an application is received by NCCI, it is compared to the filed guidelines and if the risk appears to meet a company's guidelines, the application will be forwarded to the insurer to determine whether they will make a voluntary offer of coverage. This program was approved effective October 1, 2008. By December 31, 2013, 187 employers were removed from the assigned risk plan with a premium of \$570,633. These policyholders saved a total of \$183,878. 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 policyholder savings.

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

The NCCI is an "Advisory Organization" licensed in Arkansas to assist its member insurers with 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 most recent examination found concerns about statistical reporting and error correction. These concerns were remedied and are monitored by the working group of the NAIC. These errors 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. A current multi-state examination is in progress and Arkansas is participating in this examination, as well.

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 Exhibit "A" entitled *State Advisory Forum 2013* and Exhibit "B" entitled *Arkansas Residual Market 2nd Quarter 2013 Status Report*; and 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 95% of applications being submitted online in 2010.

The Annual Servicing Carrier Performance Review conducted by NCCI reveals either “Commendable” or “Satisfactory” scores for all areas for Arkansas’ servicing carriers. For the period commencing January 1, 2011, through December 31, 2013, the servicing carriers are Travelers Indemnity Company, Liberty Insurance Corporation, and Riverport Insurance Company (W.R. Berkley Group).

### **SUMMARY OF INSURANCE DEPARTMENT’S CRIMINAL INVESTIGATION DIVISION**

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 about 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.

In the 2013 reporting period, there were 43 workers compensation investigations opened. Three cases were referred to prosecution. The investigative work continues on many of the cases that have been opened. Since the creation of the division in 1993, 154 cases have been referred for prosecution, which resulted in 113 convictions. Out of these 154 cases, only three prosecutions have resulted in acquittals. In the remaining 38 cases, the charges were not filed or dropped.

### **2013 LEGISLATIVE ACTIVITY WITH REGARD TO WORKERS' COMPENSATION**

Act 1166 entitled 'AN ACT TO REGULATE MOTOR CARRIERS IN RELATION TO WORKERS' COMPENSATION LAWS; AND FOR OTHER PURPOSES' was passed. This bill does not replace any existing laws. It adds to the AWCC Code definitions of commercial motor vehicle", driver, motor carrier, and owner-operator.

ACA 11-9-402 deals with Liability of prime contractors and subcontractors. Previously the code required the motor carrier (contractor) who used an uninsured subcontractor with employees to cover those employees. It now removes that duty of the motor carrier to provide any coverage for the workers. It changes the requirement that all employees of the subcontractor must be covered by a policy—either by the contractor or the subcontractor.

It doesn't appear to require the uninsured owner/operator to provide coverage for any drivers because it says the owner/operator **may** elect to secure coverage.

### **SELECTED WORKERS' COMPENSATION CASES** **FISCAL YEAR 2012**

#### **TOPICS AND CASES**

#### **CAUSATION**

Tommy R. Kimble v. Hino Motors Mfg. USA, Inc., 2012 Ark. App. 646 (F801104)

John Pearson v. Worksource and Wausau Insurance Co., 2012 Ark. 406

Carpenter v. Ricon, Inc. Full Commission Opinion, November 13, 2012 (G108281)

Shawn R. Branum v. American Greetings Corp., Full Commission Opinion, June 24, 2013 (G004852)

## **CREDITS & OFFSETS**

St. Edward Mercy Medical Center & Sisters of Mercy Health System v. Jimmie Howard, 2012 Ark. App. 673 (G100242)

Rodger Brigman v. City of West Memphis, 2013 Ark. App. 66 (G101863)

## **DEATH BENEFITS**

Moss v. Rogers Logging, Full Commission Opinion, August 28, 2013 (G101576)

## **EMPLOYMENT SERVICES**

Cecil Shelton v. QualServ, Full Commission Opinion, December 17, 2012 (G105497)

LVL, Inc. v. Donald Ragsdale, 2013 Ark. App. 65 (G100744)

Norma Ness v. Fort Smith Public School District, Full Commission Opinion, May 6, 2013 (G109129)

Shelton v. Qualserv, 2014 Ark. App. 469

## **EXTENT OF PERMANENT DISABILITY**

Cliff E. Contant v. Marrlin Transit, Inc., Full Commission Opinion, February 12, 2013 (G103936)

Meadows v. Tyson Foods, Inc., 2013 Ark. App. 182, \_\_S.W.3d\_\_ (March 13, 2013)

Greene v. Cockram Concrete Co., 2012 Ark. App. 691, \_\_S.W.3d\_\_ (December 12, 2012)

Ray Walker v. Fresenius Medical Care Holding, Inc., Full Commission Opinion, June 7, 2013 (F604962)

Ott v. Sigma Supply, Full Commission Opinion, September 4, 2013 (G008050)

## **JURISDICTION**

Dee Ann Miller and Clayton Bratt v. Dennis C. Enders, 2013 Ark. 23, \_\_S.W. 3d (January 31, 2013)

Porocel Corp. v. Circuit Court of Saline County & Booker T. Washington, 2013 Ark. 172, \_\_S.W.3d\_\_ (April 25, 2013)

Lambert v. LQ Management, LLC, 2013 Ark. 114, \_\_S.W.3d\_\_ (March 14, 2013)

Long v. Superior Senior Care, Inc., 2013 Ark. App. 204, \_\_S.W.3d\_\_ (March 27, 2013)

Webb v. Hot Springs Packing Company, 2013 Ark. App. 526

Watkins v. USA Trucking, Inc., 2013 Ark. App. 244

## **MEDICAL TREATMENT**

Brewer v. Bradley School District, Full Commission Opinion, December 12, 2012 (F20134 & F306091)

Jackson v. O'Reilly Automotive, Inc., Full Commission Opinion, April 30, 2013 (G104519)

Pack v. Little Rock Convention Center & Visitors Bureau, 2013 Ark. 186, \_\_S.W.3d\_\_ (May 2, 2013)

June Elizabeth Vilches v. Pine Bluff School District, Full Commission Opinion, June 19, 2013 (F512340)

## **PENALTIES**

Carl Johnson v. U.S. Food Service, Inc., 2013 Ark. App. 86 \_\_S.W.3d\_\_ (February 13, 2013)

Jackson v. Mest Memphis Steel & Pipe, Inc., Full Commission Opinion, December 17, 2012 (G005985)

Green v. Allen Engineering Corp., Full Commission Opinion, February 14, 2013 (F610626 & F505785)

Brenda L. (Jones) Pruitt v. Community Development Institute Head Start, Full Commission Opinion, February 12, 2013 (F908541)



## **PROCEDURE**

Carl J. King, Sr. v. Redneck Logging, LLC., Full Commission Opinion, November 8, 2012 (G109004)

## **CAUSATION**

Tommy R. Kimble v. Hino Motors Mfg. USA, Inc., 2012 Ark. App. 646 (F801104)

The claimant alleged he sustained a compensable heart attack while unpacking automotive parts for inspection. The Commission denied the claim in reliance upon medical reports that his heart attack was caused by a coronary occlusion which is not occasioned by any particular stress.

On appeal, the Court of Appeals affirmed. The Court stated the Commission's conclusion regarding the cause of the claimant's heart attack was supported by medical evidence and it further noted the claimant was not performing any extraordinary or any unusual exertion at the time of his injuries. That is, while the activities described by the claimant may have been strenuous, they were not unusual extraordinary in compared to his usual work.

John Pearson v. Worksource and Wausau Insurance Company, 2012 Ark. 406

The claimant who is diabetic, alleged he sustained an injury to his big toe because of his activity at work. The claimant testified his injury occurred while wearing steel toed boots which rubbed against his toe. Eventually, the claimant developed an infection resulting in the surgical debriement of his toe.

The Commission found this case involved a nonspecific injury and, further, the claimant was unable to prove his job duties involved rapid and repetitive motion. For that reason they denied the claim. The Court of Appeals reversed, holding the claimant provided sufficient evidence of the nature of his employment so that reasonable minds could not have reached the Commission's conclusion. The Supreme Court vacated the Court of Appeals decision and reversed the Commission.

The Supreme Court's rationale was that the claimant had successfully established a specific incident injury to his toe. In support of that conclusion, the Court cited Cedar Chemical Company v. Knight, 372 Ark. 233, 273 S.W. 3<sup>rd</sup> 473 (2008), which involved a claimant who had sustained a knee injury from climbing stairs. Just as in the Cedar Chemical case, where the claimant knew the injury had occurred while climbing the stairs but could not designate a specific step which had caused the injury, the Court reasoned this claimant had suffered an injury to his toe while doing the extensive walking required to carry out his duties. While he could not pin point the exact moment the injury happened, it was sufficient that he could indicate a time frame when the accident occurred. The Court held since the claimant was a credible witness, and his testimony specified a time frame of when the accident occurred, it was unreasonable for the Commission to conclude the claimant did not sustain a specific incident injury.

Carpenter v. Ricon, Inc., Full Commission Opinion, November 13, 2012 (G108281)

The claimant alleged he sustained a job related hernia. The dispute revolved around whether the claimant met the fifth criteria for establishing a compensable hernia, that is, whether the hernia required the attendance of doctor within 72 hours of the occurrence of the hernia.

The injury occurred in August of 2010 when, while escaping from a fire at his place of employment, the claimant ran into a stair railing which struck him the abdomen. There was little dispute the claimant did sustain a forceful impact to the abdominal wall, which caused the claimant severe pain and required him to stop work immediately. Further, the respondent was notified within 48 hours of the event since the claimant's immediate supervisor witnessed the accident.

However, the claimant did not seek medical treatment until after he had been terminated by the employer in 2011. The claimant testified the symptoms of a hernia had been present immediately following the injury and in support of this contention he noted he had been forced to miss approximately a week of work following the injury. He also submitted medical evidence from his physician when he sought treatment for the hernia in 2011 in which the doctor stated the hernia had been diagnosed approximately a year earlier.

In affirming the Administrative Law Judges award of benefits, the Commission noted the hernia statute did not require an injured worker to have specifically seen the doctor in order to establish a compensable hernia. The statute merely requires the symptoms of a hernia, which would require medical treatment, be present within 72 hours of the occurrence. Both the Commission the ALJ found that the claimant's testimony regarding the presence of symptoms following the accident, and the report from his doctor diagnosing a hernia were sufficient to meet the standard.

Shawn R. Branum v. American Greetings Corp., Full Commission Opinion, June 24, 2013 (G004852)

The claimant contended he sustained trigger finger syndrome as a result of his job related activities. The respondents denied the claim arguing, among other things, that the claimant's job was not rapid and repetitive. The claimant's job required him to make a series of movement taking approximately fifteen (15) minutes. There was some dispute in the testimony as to whether completing the tasks within fifteen (15) minutes was a requirement or merely a guideline, but the testimony established if an employee consistently took more than fifteen (15) minutes to complete one (1) unit of production they, would have to explain this failure to their supervisor.

An ALJ held the process the claimant used in creating each item was rapid and repetitive and was the cause of the claimant's injury. However, the Commission reversed. While the Commission noted the activity was repetitive in the sense the process was repeated with each new project, the Commission held the weight of the evidence failed to establish the claimant's overall work activities were rapid and repetitive. The Commission noted the record did not contain any evidence as to the frequency and duration of any certain activity while the claimant performs his job related task. The Commission found the evidentiary record to be ambiguous as to the exact nature of the activities involved in the production activities undertaken by the claimant because of the variations involved in each particular project. On that basis, the Commission concluded the

claimant had not met his burden of establishing his work activities work rapid and repetitive as that term is used in the Workers' Compensation Act.

### **CREDITS & OFFSETS**

St. Edward Mercy Medical Center & Sisters of Mercy Health System v. Jimmie Howard, 2012 Ark. App. 673, (G100242)

The claimant sustained an admittedly compensable injury. The respondent's provided him certain benefits but contested his entitlement to temporary disability benefits. Their position was based on the fact the claimant had received his full salary during the time he had missed work in the form of accumulated sick leave and vacation pay. This argument was based on Ark. Code. Ann. § 11-9-807 (b) which provides an injured worker shall not receive temporary total disability benefits during a period in which they receive their full wages. An Administrative Law Judge had held the respondent's were not entitled to an offset during the period because the vacation pay the claimant received did not constitute the receipt of wages, as that term is used in the statute. The Commission affirmed and adopted that decision.

On appeal, the respondent's asserted that, since the vacation pay the claimant received from them was in the same amount as his salary, he was not entitled to receive temporary disability benefits during the same period of time. The Court rejected that argument and affirmed the Commission. The Court noted Ark. Code Ann. § 11-9-102 (19) defines wages as compensation for services rendered. Since the claimant was not performing any work during the period in question, the vacation pay he received could not be considered wages as that term is defined in the Workers' Compensation Act. The Court also noted *Larsons* also provides that respondent's are not normally granted credits against temporary disability benefits when the injured worker receives sick pay or vacation pay. For that reason, the Commission decision was affirmed and the claimant was awarded temporary total disability benefits as requested.

Rodger Brigman v. City of West Memphis, 2013 Ark. App. 66 (G101863)

The claimant sustained an admittedly compensable injury, resulting in a substantial amount of permanent disability benefits. At the time of the injury, the claimant was fully vested in the Local Police and Fire Retirement System (LOPFI). He later began receiving disability-retirement benefits from that fund based upon his injury. The respondents requested an offset against the claimant's permanent disability benefits pursuant to Ark. Code Ann. § 11-9-411. The claimant objected to any offset being taken against his permanent disability benefits on this basis based upon a 2009 amendment to that statute which provided that the offset otherwise provided would not apply to any benefit received from a group disability policy if the injured worker paid for the policy. The claimant contended in July of 2009, approximately 18 months prior to his compensable injury, he began contributing a portion of his salary into LOPFI. He contended the respondents were therefore not entitled to an offset to portion of the benefits he was receiving from that fund.

In deciding this issue, the Commission found both the employer and the claimant had contributed towards the premium which was the basis of the claimant's disability retirement benefits. Consequently, the Commission held the respondents were entitled to an offset, but only in proportion to the amount of the contribution made by them.

The claimant appealed to the Court of Appeals and argued the applicable statute acts as a total bar to the respondent's offset. He asserted the strict interpretation provisions of the act required that result. The Court of Appeals disagreed and affirmed the claimant's decision. They stated the legislative intent of the respondent's subrogation rights was to avoid a potential double recovery where an employer not only provided disability benefits but was forced to pay workers' compensation benefits as well. On the other hand, the legislature believed a claimant who had provided his own disability policy should not be penalized by granting the employer an offset for a benefit he had provided himself. The Court concluded the Commission's decision to prorate the offset based upon the respective contributions of both the injured worker and the employer put the legislative intent into effect and was an appropriate resolution of the case.

## **DEATH BENEFITS**

Moss vs. Rogers Logging, Full Commission Opinion, 8-28-13 (G101576)

Donnie Moss was killed while employed by the respondent. His fatal accident occurred when a falling tree struck another tree causing it to fall and strike Mr. Moss. When a claim for benefits was filed on behalf of the decedent's spouse, the respondent denied liability arguing the fatal accident was substantially occasioned by Mr. Moss' intoxication as evidenced by the presence of cocaine found to be in his body immediately following the accident. In the alternative, the respondents contended Mr. Moss' spouse was not a dependent or at least not fully dependent upon him at the time of his death.

An ALJ found Mr. Moss had sustained a compensable injury, but that Mrs. Moss was not dependent for workers' compensation purposes. The Commission affirmed that decision. In reviewing the issues regarding the claimant's intoxication, the Commission noted there was a dispute over the validity of the drug test concerning the chain of custody and the manner it was taken. However the Commission held the results of the test appeared to be valid and any discrepancies in the chain of custody or other procedural issues were minor and did not affect the test's accuracy. Since the Commission is not bound by strict rules of evidence or procedure, the test was held to be sufficient to create a presumption the claimant was intoxicated at the time of the injury and the intoxication substantially occasioned the injury.

But, in considering the circumstances surrounding the accident, the Commission further held the presumption had been rebutted. A co-worker testified he and the decedent appeared to be well away from the machinery felling trees and were in no apparent danger. Also, an OSHA report cited the respondent employer for not properly training employees on the minimum safe distance from the tree felling equipment. The totality of the evidence convinced the Commission any intoxication on Mr. Moss' part played no role in his death, and it held the fatal accident was job related.

The ALJ's decision regarding dependency was also affirmed. The record established Mr. Moss and his wife had separated in 1999 and had not cohabited between then and his death in February of 2011. While Mrs. Moss testified she occasionally received financial assistance from Mr. Moss, she was unable to provide any documentation to that effect. Also, there was evidence that Mr. Moss had been living with a girlfriend during much of the time he was separated from his wife, and the girlfriend was the beneficiary on his life insurance policy. The Commission held the testimony of Mrs. Moss was insufficient to establish she was in any way dependent on him and could not have had any reasonable expectation of support. Consequently, her claim for benefits was denied.

## **EMPLOYMENT SERVICES**

Shelton vs. Qualserv, 213 Ark. App. 469

The claimant was injured when he slipped on some ice in his employer's parking lot. At the time of the fall, he was halfway through his 30 minute lunch break. The claimant was in the parking lot because he was returning his lunch box to his car. The claimant testified the employer did not require him to keep his lunch box in the car, but was returning it as a matter of personal convenience. An ALJ found the injury was compensable, but the Commission reversed, finding the claimant was not performing an employment service at the time of injury.

On appeal, the claimant argued he was entitled to benefits because his injury occurred on the employer's premises while he was within the time and space boundaries of his employment. The Court of Appeals rejected this argument and affirmed the Commission. In doing so, the Court noted the employer obtained no benefit from the claimant returning his lunch box to his car, and while it permitted him to do so, they did not require such action, nor was it in furtherance of any of his job duties. On that basis the Court concluded the claimant did not establish he was performing an employment service and affirmed the Commission.

LVL, Inc. v. Donald Ragsdale, 2013 Ark. App. 65

The issue presented in this case was whether a claimant injured in a motor vehicle accident while attempting to pull a truck into a rest stop was performing an employment service. After the accident, the claimant informed a police officer preparing an accident report that he was pulling into the truck stop to buy some cigarettes. Later, the claimant testified he almost always stop at this particular truck stop on his route to, among other things, use the restroom and to conduct a mandatory safety inspection of his truck.

The Commission found the claimant's testimony was credible and held injuries during restroom breaks were part of an employee's employment services and the performance of the safety check was not only a benefit to the employer but was one of his required duties. Whether the claimant might also have purchased cigarettes while at the truck stop, did not change either of those two factors.

On appeal, the respondents argued the Commission had misconstrued the facts and should have held the claimant's desire to purchase cigarettes was not an employment service and should have denied the claim. The Court of Appeals affirmed the Commission. The Court held that, not only were findings of credibility within the Commission's purview, it held the Commission's legal reasoning was correct. The Court stated the applicable standard was whether the injury occurred "within the time and space boundaries of the employment, when the employee was carrying out the employee's purpose or advancing the employer's interest directly or indirectly." Since the Court found there was substantial evidence to support the Commission's finding in this regard, the case was affirmed.

Norma Ness v. Fort Smith Public School District, Full Commission Opinion, May 6, 2013 (G109129)

The claimant was a school bus driver who was injured in a fall shortly after arriving at her place of employment. The claimant had been dropped off at work by her husband and was walking across the bus yard when she tripped and fell. The employer's policy was that bus drivers, on arrival, would sign in and then would conduct a visual inspection of the bus before leaving. The claimant testified as she walked up in the bus yard she observed her bus but, at the time she fell, she had not yet signed in and was still carrying some packages which she wanted to put down before beginning her visual inspection.

The claimant contended she was performing an employment service at the time of her injury and that as she was walking up to the bus she was visually inspecting it as required by her employer. The Administrative Law Judge agreed with this argument and awarded benefits. However, the Commission reversed. The Commission stated their view was that the claimant had not yet begun working at the time of her injury. In support of this finding the Commission noted the claimant stated she was still carrying certain personal items which she wanted to put in the bus before she began her actual visual inspection. The Commission specifically stated merely glancing at her bus as she was walking up to it did not constitute performing an employer required visual inspection. For that reason, the Commission held the claimant was not performing employment services at the time of her injury and denied the claim.

### **EXTENT OF PERMANENT DISABILITY**

Cliff E. Contant v. Marrlin Transit, Inc., Full Commission Opinion, February 12, 2013 (G103936)

The claimant had sustained an admittedly compensable injury. A dispute later arose over the extent of the claimant's permanent disability benefits and, after a hearing, an Administrative Law Judge awarded wage loss disability benefits in the amount of 17% to the body as a whole. However, at the time the hearing took place, the claimant was undergoing a plan of vocational rehabilitation training. The respondents contended that, because the vocational rehabilitation effort was still ongoing, questions as to the extent of the claimant's wage loss disability were premature and should not be considered.

The Commission rejected that argument and held the claimant could still receive wage loss disability while the program of vocational retraining was ongoing. In reaching this decision, the claimant noted the claimant had a compensable injury, and had not been able to return to work at wages equal to or greater than his average weekly wage. Nor did the claimant waive vocational rehabilitation or in any other way failed to cooperate in job placement assistance. Accordingly, the Commission affirmed the Administrative Law Judge's award.

Meadows v. Tyson Foods, Inc., 2013 Ark. App. 182, \_\_S.W. 3d\_\_ (March 13, 2013)

The claimant sustained an admittedly compensable back injury. However, after returning to work on light duty during his healing period, he was terminated for cause. Later, the claimant was assessed with some permanent impairment which the respondent voluntarily paid. His subsequent claim for wage loss disability benefits was denied, with the respondent contending the claimant's termination for cause ended any liability they had for providing wage loss disability benefits. The Commission ruled in favor of the respondent on that issue and the claimant filed the present appeal.

The Court of Appeals upheld the Commission. The Court noted Ark. Code Ann. § 11-9-522 (B) and (C) provide a claimant shall not be entitled to benefits in excess of his anatomical impairment if the employer either provides him a job at the same or greater wages than he was earning at the time of the injury or makes a bonafide offer of re-employment which the claimant either declines or is terminated from for cause. In this case, the Court upheld the Commission's finding the claimant's termination had been for good cause, and that, but for the termination, the employer would have continued to provide the claimant employment at the same or greater wages. The Court concluded merely because the termination had occurred while the claimant was still in his healing period, did not change the application of the statute. The Court also held similar cases involving temporary disability did not apply because those turned on Ark. Code Ann. § 11-9-526, a different statute than the one being relied upon in this case. Accordingly, the claim was denied and dismissed.

Greene v. Cockram Concrete Co., 2012 Ark. App. 691, \_\_S.W. 3d\_\_ (December 12, 2012)

Among the issues presented for determination in this case, was the claimant's entitlement to permanent disability benefits based upon an injury to his shoulder. The claimants treating physician had opined the injury and resulting surgery resulted in a impairment of 4% to the body as a whole. Later, an Administrative Law Judge awarded the claimant benefits based upon that impairment rating and the Commission affirmed. On appeal to the Court of Appeals, the claimant asserted the impairment rating was incorrect. The claimant cited the relevant sections of the AMA Guide To The Evaluation Of Permanent Impairments (4<sup>th</sup> Edition) and noted the range of possible impairments for the claimants injury would of been a minimum of 6% to the body as a whole to a maximum of 14% to the body as a whole.

The Court of Appeals acknowledged the doctors impairment rating was not within the assessment range posited by the AMA guides. However, the Court held that a doctor was not necessarily obligated to follow the AMA guides, and the Commission, in determining the extent of a claimant's permanent impairment, was likewise not obligated to follow them. The Court also

stated the Commission had the responsibility of assessing the amount of permanent impairment and could either review the claimant's injury and make their own assessment or accept the one proffered by the claimant's physician. In this case, the Commission opted to accept the impairment rating promulgated by the claimant's physician, and this decision was within the Commissions purview to make. Accordingly, the Court affirmed the decision.

Ray Walker v. Fresenius Medical Care Holding, Inc., Full Commission Opinion, June 7, 2013 (F604962)

The claimant sustained an admittedly compensable injury and later developed reflex sympathetic dystrophy (RSD). The Commission eventually awarded the claimant an impairment rating of thirty-seven percent (37%).

The decision in this case illustrates an important distinction from certain past decisions holding a claimant could not receive anatomical impairment based upon RSD. See WalMart Stores, Inc. v. Connell, 340 Ark. 475 10 S.W. 3d 882 (2000) and Potocki v. St. Edward Mercy Medical Center, Full Commission Opinion, February 3, 2004 (F004149).

The AMA Guides do not contain a specific impairment rating for RSD. However, in this case the impairment rating was not based on RSD, per se, but instead was based upon the effects of the condition. That is, because of the RSD, the claimant had sustained physical impairment and the degree of the impairment was supported by objective measurable physical findings.

Ott vs. Sigma Supply Company, Full Commission Opinion, 9-4-13 (G008050)

The claimant sustained a compensable injury to his knee which resulted in him undergoing reconstructive surgery. There were some complications during the operation involving the grafts used in surgery and the nerves and blood vessels in and around the claimant's knee.

The claimant eventually recovered with a good result to his knee. However, he continued to have problems with pain in his thigh and groin. The physician who performed the surgery assessed the claimant with a permanent impairment rating of 44% to his leg based upon knee surgery, laxity in the knee joint as well as nerve and circulatory damage to the claimant's thigh and groin area.

At the request of the respondent, the claimant was subsequently evaluated by a consulting physician who opined the claimant had a permanent impairment of 10% to the leg as a result of the job-related injury. In making that assessment, the consulting physician was of the opinion the neurological and circulatory problems which the treating physician had based a substantial amount of his impairment rating on were not supported by any objective findings. He also noted the other rating had also included pre-existing arthritic changes which were not due to the claimant's compensable injury.

An ALJ accepted the treating physician's impairment rating, and awarded benefits accordingly. The Commission reversed, holding the claimant had only established an entitlement to PPD benefits based upon an impairment of 10% to his leg. It reached that decision because, even



though the treating physician's impairment rating met the criteria of the AMA Guides, Workers' Compensation Act did not allow impairment ratings to be based on non-objective factors and the Guides, could not contradict the statute. Therefore, the Commission concluded the only basis for awarding the claimant permanent disability benefits was the consulting physician's assessment of 10% to the leg.

## **PENALTIES**

Carl Johnson v. U.S. Food Service, Inc., 2013 Ark. App. 86 \_S.W. 3<sup>rd</sup>\_ (February 13, 2013)

Involved in a job related accident, where he sustained a compensable injury to his shoulder. However, an injury to the claimant's back which he alleged also occurred in the same accident was found to be non-compensable.

Subsequently, the claimant filed the present claim, by then acting pro se, and alleged he sustained other compensable low back and left shoulder injuries in the same accident. Both the Administrative Law Judge and the Commission held res judicata barred reconsideration of those issues. The claimant was also found to be liable for paying the cost and attorney's fees incurred by the respondents in defending the claim.

The Court of Appeals affirmed the Commission. It noted the sole contention asserted by the claimant was that his first trial did not provide a full and fair opportunity to prove his claim in that he did have certain medical records available to him at the time of the first hearing. The Court also noted that the Commission had found the evidence cited by the claimant was irrelevant to the issues and did not act as a basis for not applying the doctrine of res judicata.

The Court also affirmed the Commission's conclusion as to the award of costs and attorney's fees. The Court stated the claim was brought without any valid basis, and the respondents had made it clear early in the litigation that if the claimant continued to pursue this claim they would assert their entitlement to be reimbursed for their costs and expenses. The Court also noted the claimant had been advised by Commission personnel to thoroughly research his claim before proceeding. The Court had concluded the claimant had ignored those warnings to his peril and since his claim had no merit the Commission's award was affirmed.

Jackson v. West Memphis Steel & Pipe, Inc., Full Commission Opinion, December 17, 2012 (G005985)

In a previous round of litigation, the respondents were ordered to pay temporary disability benefits and certain medical expenses incurred by the claimant. However, the respondent failed to pay the temporary disability benefits in a timely manner and were late in paying the medical expenses. In a subsequent claim for penalties related to these late payments, an Administrative Law Judge ordered the respondents to pay a 20% penalty on temporary disability benefits and found the respondents were in contempt for not having promptly paid the medical expenses and assessed an additional penalty of 36% on all medical expenses previously awarded.

On appeal, the Commission affirmed the penalty assessed on the temporary disability benefits, finding the penalty applies anytime benefits are not paid within fifteen (15) days of when they came due regardless of the reason. Since there was no question the payments were made outside that time limit, the respondents were ordered to pay the penalty.

As for the medical expenses, the Commission the Administrative Law Judge and found the respondents were not in contempt for failure to pay the medical bills promptly, and disallowed the 36% penalty. In reaching that conclusion, the Commission the bills in question had been paid by the claimant's health insurance carrier, and there were some uncertainty as to when the respondents had been notified of these medical expenses. The Commission therefore could not make the required finding of intentional, willful misconduct on the part of the respondents in regard to the medical expenses.

Green v. Allen Engineering Corp., Full Commission Opinion, February 14, 2013 (F610626 & F505785)

The bulk of this decision deals with a finding by an Administrative Law Judge that the respondent had willfully and intentionally refused to pay certain indemnity benefits to the claimant and had, likewise, failed to timely pay certain medical expenses on the claimant's behalf including medical mileage. The Commission reversed the Judge's finding of contempt and set aside the 36% payment penalty.

In so doing, the Commission noted the respondent had paid the disability benefits due the claimant late and had voluntarily paid an additional 20% penalty on those benefits, including an additional 20% payable to the claimant's attorney. The Commission held the fact these benefits were paid late and the respondent had voluntarily paid a 20% penalty, did not equate to intentional or willful misconduct. In the absence of any other evidence on this point, the Commission concluded the respondents conduct was not willful and intentional in their conduct and set aside the 36% penalty.

As to the medical bills, the Commission noted the respondents claims adjuster who was overseeing payment of the medical expenses had not followed up on payment of these expenses because of his time away from work caring for a terminally ill wife. While the Commission held this failure could have been construed to be negligence of the respondent, earlier cases have held negligence was not sufficient to constitute willful and intentional misconduct. The Commission held a delay in payment did not justify a contempt penalty in the absence of evidence that the respondents failure to pay the medical expenses was not the result of any pattern of intentional misconduct, merely delaying because of negligence was not sufficient to give rise to the 36% penalty. As to certain other medical expenses, the Commission noted the claimant had submitted a large number of bills to the respondent, some of which were related to this injury and some were not. The Commission held any delay in payment under this circumstance was in part due to the claimants conduct and therefore any penalty was not warranted.

Brenda L. (Jones) Pruitt v. Community Development Institute Head Start, Full Commission Opinion, February 12, 2013 (F908541)

Among the issues presented for determination in this case was the respondents' liability for penalties due to an alleged late payment of medical expenses incurred by the claimant. In a prior round of litigation, it had been determined the claimant sustained a compensable injury. The respondents were, pursuant to that finding, ordered to pay all reasonable hospital medical expenses arising out the injury.

Subsequently, a dispute arose over the extent of the claimant's permanent disability. During the course of that litigation an issue arose over the respondents' alleged failure to reimburse the claimant for her mileage expenses and pay certain medical expenses. At the hearing, the respondents acknowledged they had received statements from the claimant, including copies of the unpaid medical expenses over sixty (60) days prior, which had not yet been paid.

The Commission held the failure to pay the medical bills within thirty (30) days as required by Ark. Code Ann. §11-9-802, constituted a willful and intentional failure and justified the assessment of thirty-six percent (36%) penalty. The Commission specifically noted the respondents had not offered a valid or explainable reason as to why they had not paid the mileage and medical bills within thirty (30) days. The Commission did, however, reverse the Judge's *sua sponte* finding that the respondents were in contempt.

## **JURISDICTION**

Dee Ann Miller and Clayton Bratt v. Dennis C. Enders, 2013 Ark. 23,

This case has been extensively litigated for a number of years. Miller and Bratt were injured when a helicopter they were riding crashed. At the time the crash occurred, they were working as EMT's in an air ambulance service. They filed a complaint in Circuit Court alleging their injuries were due to the negligence of the pilot of the helicopter, who was their co-employee. The case was later removed to Federal Court, and eventually the claim was referred to the Commission to determine whether the plaintiffs were acting in the course of their employment at the time of the injury and if the exclusive remedy provision of the Workers' Compensation Act limited their recovery to the benefits provided therein.

The Commission determined Miller and Bratt were acting in the course their employment at the time of their injury and the exclusive remedy provision acted as a barr to the pursuit of a tort claim. The Court of Appeals, and now the Supreme Court, affirmed the Commission.

The Court held the issue was whether the co-employee was carrying out an employment service at the time of the accident. The Court held so long as the co-employee was carrying out his job duties and acting in furtherance of the employer's interest, he was covered under the exclusive remedy provisions of the Workers' Compensation Act. Since, in this case, Enders was the pilot of the aircraft which was transporting Miller and Bratt to a location of an accident to provide the ambulance services which was the nature of the employer's business, the exclusive remedy provisions applied.

It was also asserted the Arkansas constitutional provisions regarding the right to receive damages for injuries sustained overrode the Workers' Compensation Act's exclusive remedy provision. However, the Court held the workers' compensation sections in the Arkansas Constitution granted the legislature authority to limit an injured parties cause of action to a workers' compensation claim when the injury arose in the course of the individual's employment. Since that was the case here, the Court held the exclusive remedy statute was valid.

Porocel Corp. v. Circuit Court of Saline County & Booker T. Washington, 2013 Ark. 172,

This cause of action was originally filed as a workers' compensation claim in 2011. In that proceeding, the claimant alleged he had developed silicosis as a result of a job related exposure to asbestos and silica dust. However, the workers' compensation claim was denied and dismissed because it was not filed within the applicable statute of limitation. Specifically, Ark. Code Ann. § 11-9-601, which requires claims for silicosis can be filed within one (1) year of becoming disabled if the disability occurred within three (3) years of the last injurious exposure. In this case, the claimant's last injurious exposure was in 2008 and it was stipulated that he became disabled in that same year. Therefore, the claimant would have had to file the claim sometime in 2009. Since it was not filed with the Commission until 2011 it was clearly outside the time limit.

After the dismissal of his workers' compensation claim, the claimant filed an action in circuit court alleging he had developed silicosis as a result of his employer's negligence. The employer filed a motion in Circuit Court citing the exclusivity provisions of the Workers' Compensation Act as a bar to the claim. The Circuit Court denied the motion holding the Commission had found the Workers' Compensation Act did not have jurisdiction over the claimant's injury. The case was brought before the Supreme Court on the employer's motion for a writ of prohibition directing the Circuit Court to dismiss the case.

In arguing the Circuit Court should be upheld, the claimant noted he was not diagnosed with silicosis until 2011 and his case was filed shortly after that. Also, the claimant argued the Commission's decision to deny the case because of the Statute of Limitation was tantamount to a finding the Workers' Compensation Act had no jurisdiction over the claimant's cause of action. Therefore, the Circuit Court filing was appropriate as a way to allow him to recover for his injuries.

The Court granted the writ of prohibition and directed the Circuit Court to dismiss the case. While the application of the Statute of Limitation created a harsh result, the Court stated the denial of the case was correct in that the claim was outside the statutory time limit. The Court also held it was up to the Legislature to determine limitation on actions and the Court could not vary it simply because the result was harsh. The Court held the claims based upon a silicosis injury must be filed within one (1) year of disability, not diagnosis. Also, the Workers' Compensation Act had jurisdiction over this type of injury, and merely because of the Statute of Limitations prohibited it did not mean the Workers' Compensation Act did not apply to the claim.

Lambert v. LQ Management, LLC, 2013 Ark. 114, \_\_ S.W.3d \_\_ (March 14, 2013)

This case was before the Supreme Court because of a certified law question posed by the Federal District Court of the Eastern District of Arkansas. Specifically, the Court asked whether Ark. Code Ann. § 16-118-108, which provided crime victims a cause of action where the criminal conduct of another causes them injury, revived an individual cause of action for a retaliatory firing which was apparently prohibited by Ark. Code Ann. § 11-9-107 in the Workers' Compensation Act.

The Court concluded the Workers' Compensation Act was controlling, and the Crimes Victim Act did not allow a claimant to sue his or her employer for a firing in retaliation for seeking workers' compensation benefits. In reaching that conclusion, the Court noted a specific statute could not be over ruled by a more general one. In this case, the Court determined Ark. Code Ann. § 11-9-107 was intended to specifically prohibit a worker from having a civil cause of action against their employer for a retaliatory discharge. Instead, that statute intended to provide specific remedies under the Workers' Compensation Act. On the other hand, the Court held, Ark. Code Ann. § 16-118-107 was intended to allow crime victims a cause of action against persons having committed certain criminal offenses and was not intended to extend into the realm of workers' compensation.

Long v. Superior Senior Care, Inc., 2013 Ark. App. 204, \_\_S.W.3d\_\_ (March 27, 2013)

This case concerns whether the claimant was an employee or an independent contractor at the time of her injury. The claimant provides in-home nursing services to elderly persons or those whose disabilities or infirmities require in-home nursing assistance. The claimant testified she was assisting a patient from their wheelchair to the bed when she injured her back. She subsequently filed a claim for benefits contending she was an employee of the respondent at the time of the injury and they were obligated to provide her medical care and disability benefits. The respondent denied liability contending the claimant was not their employee, but was employed by the patient and that they merely acted as an intermediary between the claimant, who was an independent contractor and the person needing care. The evidence established the contract the claimant signed at the time she began working through the respondents provided she would be an independent contractor and that her agreement would be with the patient. Also, she was paid by directly by the patient and she would continue to work for them as long as they were satisfied with her services. On that evidence, the Commission determined the claimant was an independent contractor.

On appeal, the claimant argued she was employed through the respondent because she received her assignments through them and they could terminate employment. After reviewing the evidence of the case, the Court of Appeals cited the factors used by the Arkansas Courts in determining the status of employees and independent contractors and concluded there was a substantial basis for the Commission's determination the claimant was an independent contractor. The Court specifically cited as a key factor being the fact the claimant had signed an agreement acknowledging her status as self employed before she accepted any assignments from the respondent and that the claimant was responsible for providing her own training, certification, uniforms and paying her own taxes. In addition, the Court noted the claimant was free to market her own services to others.

Webb vs. Hot Springs Packing Company, 2013 Ark. App. 526

Prior to his work for the respondent, the claimant operated an electronics repair business. In March of 2011, the respondent, a meat packing company, hired the claimant to repair a malfunctioning meat smoker. Because there were numerous other mechanical and electronic devices in the respondent's facility in need of repair and maintenance, the claimant was hired to work on a near full time basis. However, when arriving and departing from the facility, the claimant did not clock in or out as regular employees were required to do. Rather, he signed in as a visitor, and provided billing statements to the respondent for the hours he had worked. Also, the respondent did not make any tax withholdings from the payments made to the claimant and the claimant's tax return from this period indicate he was self employed during the period in question. Based upon the above evidence, both the ALJ and the Commission found the claimant to be an independent contractor and not an employee.

Before the Court of Appeals, the claimant argued he was entitled to workers' compensation benefits because he was working full-time for the respondent, and his services were integral to the respondent's overall operation. He also asserted he was under the control of the respondent in that they set his hours, directed him to the machinery in need of repair or maintenance, and ALJ other assigned tasks.

The Court considered and reviewed prior cases considering the employee/independent contractor issue. In the end, the Court concluded the circumstances of this case favored the finding that the claimant was not an employee of the respondent and the Commission's decision was correct.

Watkins vs. USA Trucking Inc., 2013 Ark. App. 444

The claimant, a long haul truck driver, was injured while unloading tires from his truck. He filed a claim asserting he was injured while acting in the course and scope of his employment with respondent. The respondent denied the claim, contending he was not an employee at the time of his injury, but was instead an independent contractor. In finding the claimant was not an employee, the Commission relied to a great degree on a document titled "Contractor Operating Agreement." The terms of the agreement not only specified the intent of the parties was to create an independent contractor relationship, it also required the claimant to furnish his own truck, and provided he would only accept loads from the respondent under a trip lease or interchange agreement.

The Court of Appeals extensively discussed prior decisions involving truck drivers and questions as to whether they had been employees or independent contractors. The Court noted the relationship between the claimant and the respondent was distinguishable from the situation in cases finding the drivers had been employees, such as *Cloverleaf vs. Fouts*, 91 Ark. App. 4, 207 S.W. 3<sup>rd</sup> (2005). In those cases, the drivers were not operating at "arms length" as were the parties in the present case. The Court cited the claimant's testimony indicating he was very experienced in the trucking business and fully understood the ramifications of the agreement he entered into. He also owned his own truck and had the right to decline offered loads and could terminate the agreement with notice. He was also free to use other drivers to carry the loads and

had the skills and knowledge to reduce his expenses and maximize his profits while acting within the confines of the operating agreement. After considering all those factors, the Court concluded the claimant was an independent contractor who entered into an agreement with the respondent in that capacity and not as an employee.

### **MEDICAL TREATMENT**

Brewer v. Bradley School District, Full Commission Opinion, December 12, 2012 (F201034 & F306091)

In a previous hearing, the claimant had been found to be entitled to additional medical treatment, but that she was not entitled to any benefits in excess of her anatomical impairment. Sometime after that decision, respondent no. 2, The Second Injury Fund (The Fund) filed a motion to dismiss themselves as a party to the claim. The Fund asserted since the prior finding in regard to the claimant's entitlement to additional benefits for wage loss disability was final they had no further potential liability in the case. However, the Commission denied the motion finding the previous decision had awarded the claimant additional compensation in the form of medical benefits and therefore, the claim upon which the earlier order was based was still in existence and had not yet been satisfied. The Commission concluded as long as the claimant was continuing to receive compensation pursuant to the claim, the parties could not be dismissed.

Jackson v. O'Reilly Automotive, Inc., Full Commission Opinion, April 30, 2013 (G104519)

The claimant sustained an admittedly compensable injury to his knee. However, he had a long history of prior knee injuries and eventually sought benefits for a total knee replacement.

The respondents contested his entitlement to that particular medical treatment, contending the need for the knee replacement was entirely due to his prior knee condition. An Administrative Law Judge held the claimant established there was a causal connection between the claimant's compensable knee injury and his need for the knee replacement surgery. On appeal, the Commission reversed, finding the knee replacement was due entirely to the claimant's pre-existing condition.

In support of that finding, the Commission noted the claimant had originally injured his left knee in 1994. The Commission also cited testimony from the claimant's treating doctor that the claimant's need for treatment was due to the prior injuries and his deterioration after them. The doctor characterized the claimant's most recent knee injury as a meniscal tear whereas the knee replacement surgery was necessary to address the claimant's pre-existing arthritic knee condition. The Commission also cited a lack of any other medical evidence to the contrary.

Pack v. Little Rock Convention Center & Visitors Bureau, 2013 Ark. 186, \_\_\_S.W.3d\_\_\_ (May 2, 2013)

The claimant sustained a serious head injury on April 16, 1991. At that time, he was thirty-one (31) years of age and the injury rendered him permanently and totally disabled due to organic brain damage stemming from the accident.

For many years after his injury, the claimant lived with his mother. In a previous round of litigation, it had been determined the claimant did not at that time need actual nursing services, and that his mother only assisted him in daily tasks and housekeeping and did not provide him any medical care.

The claimant's mother died in 2003 and, since that time, had been living with his aunt and uncle who are his legal guardians. Subsequently, the guardians filed a claim for additional benefits asking that the respondents be ordered to provide nursing services for the claimant at an assisted living facility. The guardians contended the claimant's condition had deteriorated to the point he needed specialized care and, because of their advancing age, they were not able to provide him the assistance he needed. The guardians had specifically requested the respondents be ordered to pay for such services the claimant was to receive at Timber Ridge Ranch Neuro Restorative Center (Timber Ridge) in Benton, Arkansas.

The respondents contested the request arguing the Timber Ridge facility provided assisted living services but not medical care and, consequently, they were not required to furnish their services.

An Administrative Law Judge found the claimants had established he was entitled to nursing services because of the deterioration of his condition and that Timber Ridge would provide the appropriate services to him. On that basis, the Judge ordered the respondent to provide care at that facility. On appeal, the Commission reversed the decision finding that, while Timber Ridge might provide some medical care, that was not their primary purpose and therefore, they would not be providing nursing services, as that term is defined by the Workers' Compensation Act. The Court of Appeals affirmed the Commission's finding.

The Supreme Court reversed the Commission and held the claimant was entitled to treatment at the Timber Ridge facility. The Court specifically held the evidence established the claimant needed nursing services because of a deterioration of his condition since the original round of litigation. The Court also held the services being provided by Timber Ridge were nursing services and the respondent was obligated to provide them.

The Court cited earlier decisions which had allowed nursing services and defined this type of care as what is necessary to "take care of or tend, as a sick person or invalid" or, "to tend, or minister to, in sickness or infirmity." The Court noted in prior cases, spouses had been awarded payment as providing nursing services where they were required to give injections, enemas, hot baths, massages and similar treatments. Likewise, the Court referred to cases which had held nursing services included assistance in bathing, linen changing and dressing. In reviewing the services offered by Timber Ridge, the Court was of the opinion the assisted living functions and similar treatments carried out at this facility would constitute nursing services. Specifically, the Court stated testimony established the claimant could not be left alone, could not cook, needed cues to dress and otherwise take care of himself and that he would need assistance in carrying out personal hygiene tasks. The Court concluded Timber Ridge was providing these services



and that this would constitute nursing services and that the respondents were liable to provide it to the claimant.

June Elizabeth Vilches v. Pine Bluff School District, Full Commission Opinion, June 19, 2013 (F512340)

Among the issues decided in this case was the respondent's liability for payment of a penalty on certain medical expenses awarded to the claimant. An ALJ had determined the respondent had failed to provide reasonable and necessary medical care in the form of a surgery prescribed by the claimant's treating physician. The Judge was of the opinion the respondents' failure to pay for this bill was willful and intentional and assessed a thirty-six percent (36%) penalty.

The Commission reversed that finding noting that, while in prior opinions had found the respondents liable for future reasonable or necessary medical care, the specific surgery the claimant was seeking at this time was not one of the benefits awarded. Consequently, while the respondents had contested the claimant's entitlement to this surgery, the Commission held the penalty could not apply until the specific benefits had been awarded. In this case, the benefits being the surgery from the claimant's treating physician.

The respondent also argued they were not liable for the medical treatment in question because the treatment itself had not been submitted to them for pre-authorization. In support of this argument they cited Commission Rule 30, more commonly referred to as the "Fee Schedule." The Commission rejected this argument and held the fee schedule was intended to act as a way to have carriers receive medical bills in a timely fashion so as to verify the merit and accuracy. However, the Commission stated, the rule was not relevant for determining whether requested medical treatment was reasonable and necessary or the responsibility of the respondents. The Commission went on to conclude the treatment the claimant received was reasonable and necessary and was the result of her compensable injury.

## **PROCEDURE**

Carl J. King, Sr. v. Redneck Logging, LLC., Full Commission Opinion, November 8, 2012 (G109004)

This claim was originally filed in October of 2011, alleging the claimant had been injured in a job related accident in August of that year. In November, the claimant requested a hearing in a letter sent to the Commission. The respondents subsequently denied the claim. No further action was taken and the respondent eventually requested the matter be dismissed for failure to prosecute.

In June of 2012 and Administrative Law Judge granted the motion and dismissed the claim with prejudice. The Commission reversed that finding noting that a timely request for a hearing had been made and the two year statute of limitation had not expired. The claim was reinstated and the Commission suggested the claimant take steps to pursue his claim.

## **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 "C" entitled State of the Line 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;
- 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, 2014

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. James W. Daniel, Chief Executive Officer, AWCC  
Ms. Lenita Blasingame, Insurance Chief Deputy Commissioner, AID  
Mr. Nathan Culp, Public Employee Claims Division Director, AID  
Mr. Greg Sink, Criminal Investigation Division Director, AID  
Ms. Alice Jones, Communications Director, AID



## Arkansas State Advisory Forum 2014

June 5, 2014

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### Arkansas Workers Compensation State Advisory Forum

- State of the Industry
- Arkansas Workers Compensation System Overview
- NCCI Filing Activity
- State of the Economy
- Legislative Issues
- Emerging Issues in Workers Compensation: Medical Marijuana
- Arkansas Workers Compensation Claim Adjudication
- Arkansas Workers Compensation Commission Update—Watson Bell, Chairman
- Arkansas Workers Compensation System Cost Drivers
- Arkansas Residual Market
- Q & A—Closing Remarks

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## State of the Industry

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### NCCI Market Outlook

- 2010—"Precarious"
- 2011—"Deteriorating"
- 2012—"Conflicted"
- 2013—"Encouraging"
- 2014—"Balanced"

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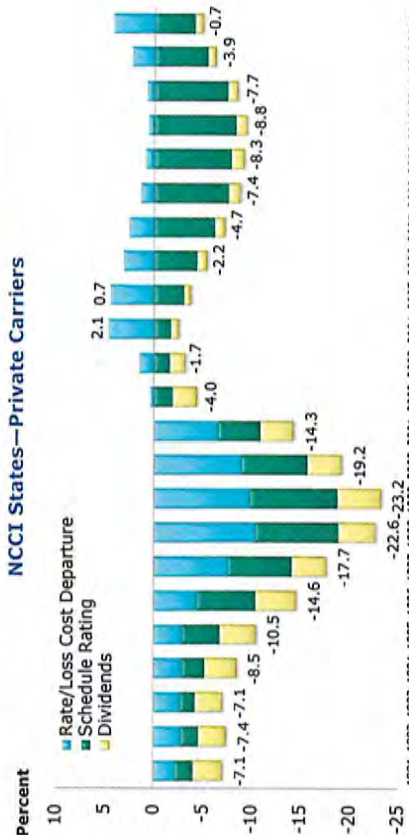
## State of the Workers Compensation Market

- Calendar year and accident year combined ratios reflect further improvement, bringing system more in balance
- Net premium volume again increased
- Lost-time claim frequency again decreased in 2013
- Medical and indemnity severity up modestly
- Impact of federal healthcare reform and TRIPRA extension remain uncertain



## Countrywide Workers Compensation Impact of Discounting on Premium

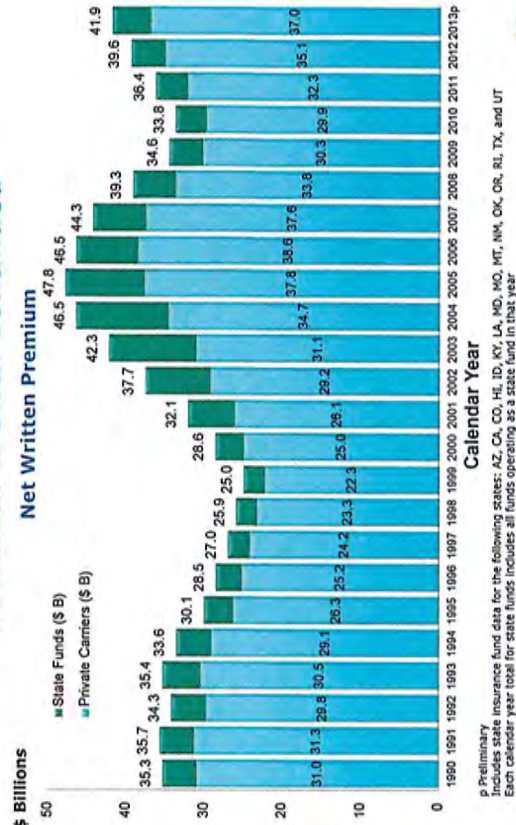
NCCI States—Private Carriers



<sup>p</sup> Preliminary  
Dividend ratios are based on calendar year statistics  
NCCI benchmark level does not include an underwriting contingency provision  
Based on data through 12/31/2013 for the states where NCCI provides ratemaking services, excluding TX



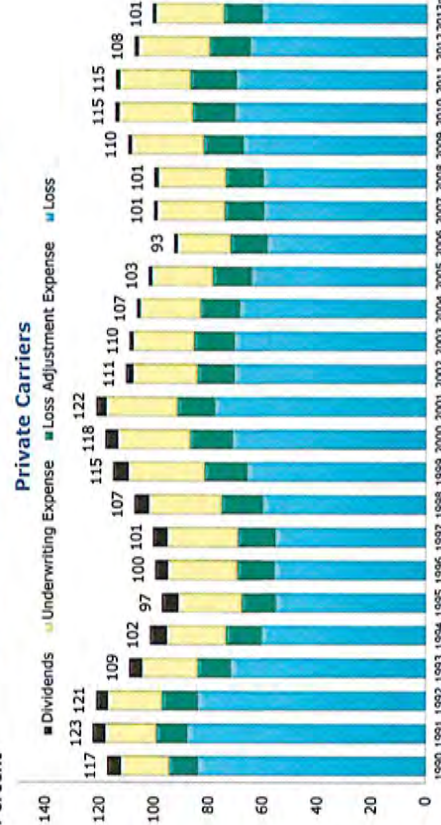
## Countrywide Workers Compensation Premium Growth Continued



<sup>p</sup> Preliminary  
Includes state insurance fund data for the following states: AZ, CA, CO, HI, IL, IN, KY, LA, MD, MI, MN, MO, MT, NM, OK, OR, RI, TX, and UT  
Excludes state insurance fund data for states that are not operating as a state fund in that year  
Sources: 1990–2012, Annual Statement data; 2013<sup>p</sup>, NCCI



## Countrywide Workers Compensation Combined Ratio Improved Again

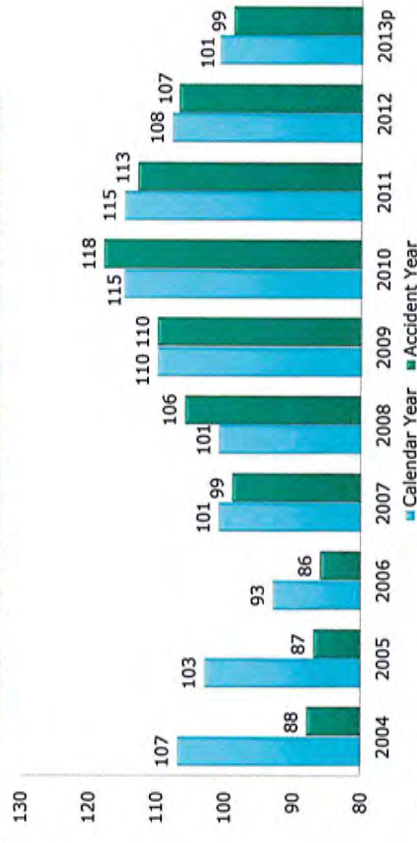


<sup>p</sup> Preliminary  
Sources: 1990–2012, Annual Statement data; 2013<sup>p</sup>, NCCI



## Countrywide Workers Compensation Accident Year Net Combined Ratios

Percent Calendar Year vs. Ultimate Accident Year—Private Carriers



p Preliminary data is evaluated as of 12/31/2013 and developed to ultimate  
Sources: Calendar Years 2004–2012, Annual Statement data; Calendar Year 2013p and Ultimate Accident Years 2004–2013, NCCI  
Includes dividends to policyholders

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## Arkansas Workers Compensation System— An Overview



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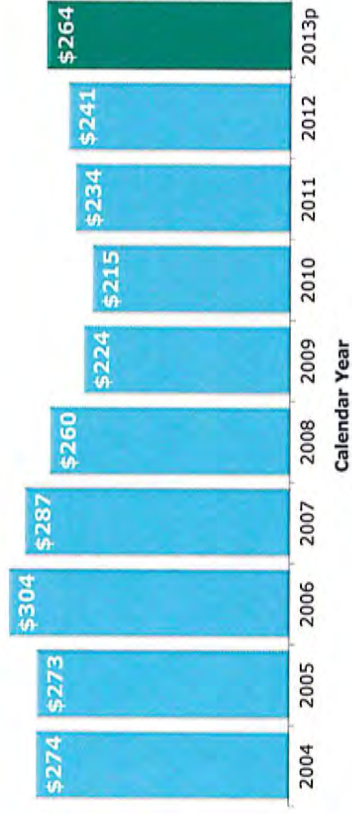
11

## Arkansas Workers Compensation System Overview

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## Arkansas Workers Compensation Premium Volume

Direct Written Premium in \$ Millions



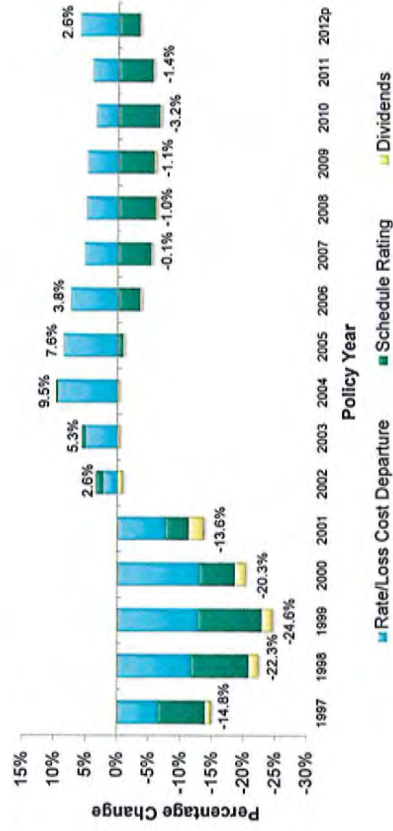
p Preliminary  
Source: NCCI Annual Statement data

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## Impact of Discounting on Workers Compensation Premium in Arkansas

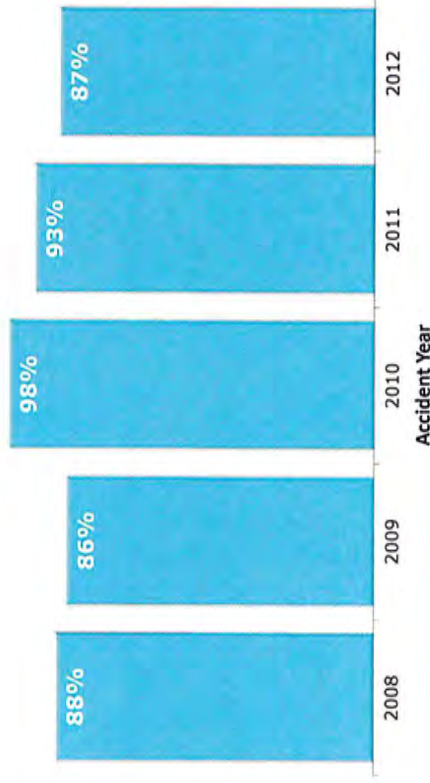


p Preliminary  
Based on data through 12/31/2012  
Dividend ratios are based on calendar year statistics

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## Arkansas Accident Year Combined Ratios



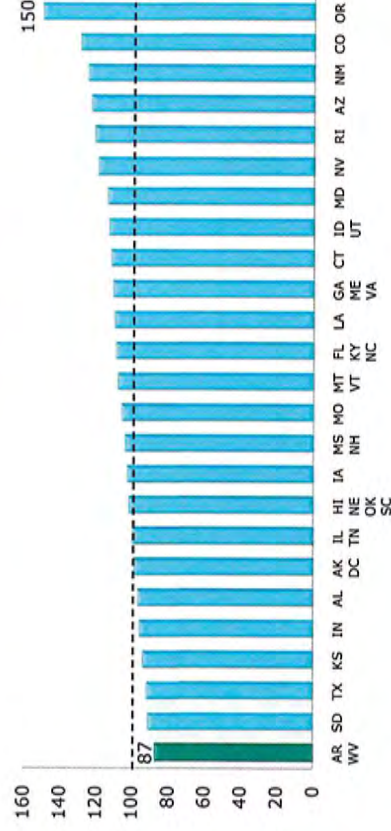
Sources: NCCI financial data; NAIC Annual Statement data

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## Results Vary From State to State

Accident Year 2012 Combined Ratios

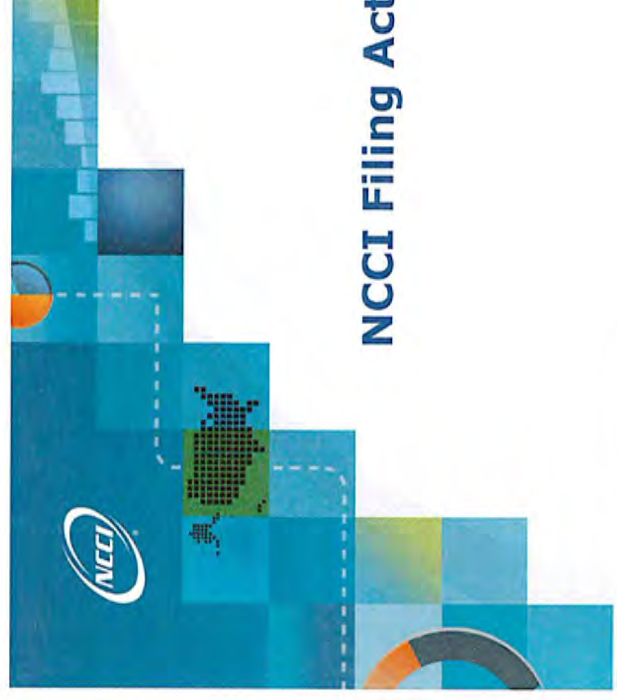


Data is evaluated as of 12/31/2012

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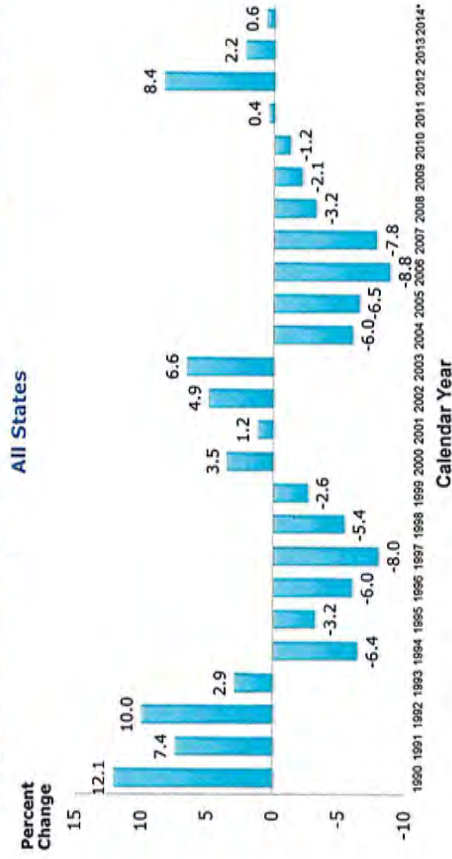
15

## NCCI Filing Activity

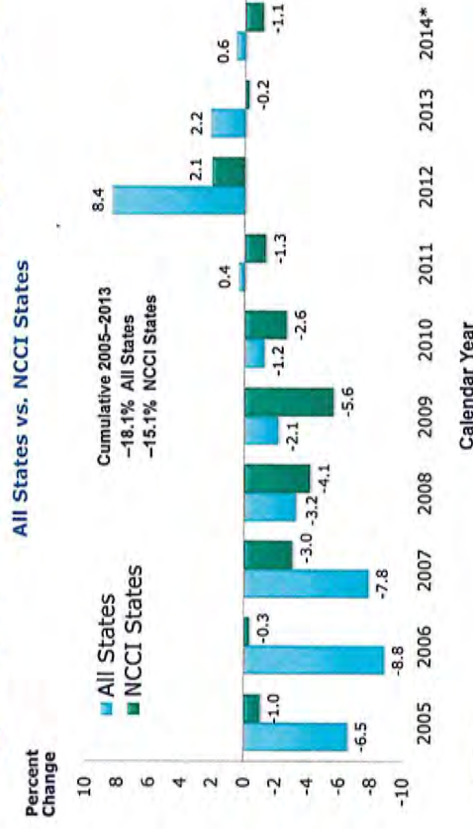


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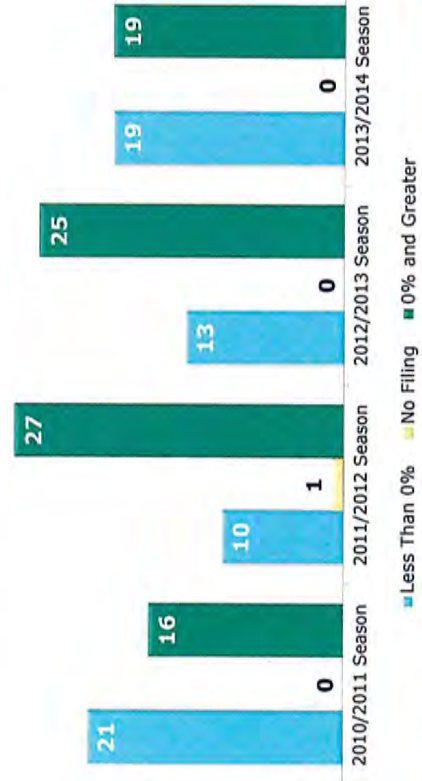
## Countrywide Workers Compensation Approved Changes in Bureau Rates/Loss Costs



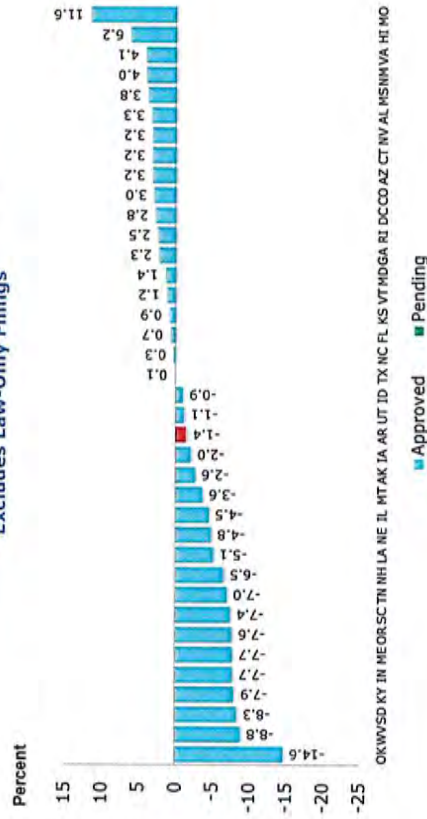
## Countrywide Workers Compensation Approved Changes in Bureau Rates/Loss Costs



## NCCI Voluntary Market Filing Activity Number of State Loss Cost/Rate Filings by Filing Season



## Current NCCI Voluntary Market Loss Cost/Rate Level Changes Excludes Law-Only Filings





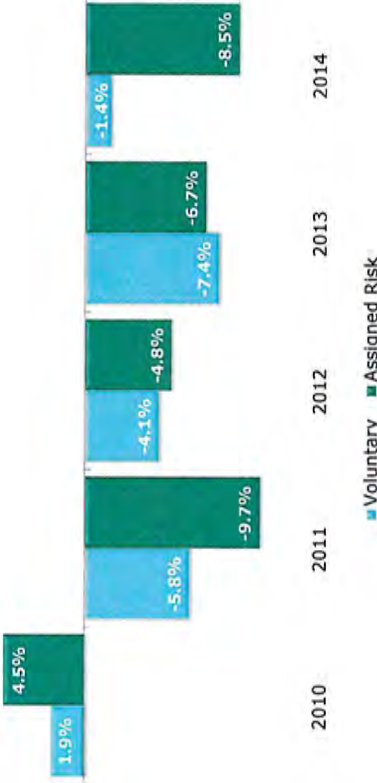
# Current Approved Voluntary Market Loss Cost Level Changes in Nearby States

Missouri	1/1/14	+11.6%
Mississippi	3/1/14	+3.8%
Alabama	3/1/14	+3.3%
Texas	6/1/14	+0.1%
<b>Arkansas</b>	<b>7/1/14</b>	<b>-1.4%</b>
Louisiana	5/1/14	-5.1%
Tennessee	3/1/14	-6.95%
Kentucky	10/1/13	-7.9%
Oklahoma	1/1/14	-14.6%

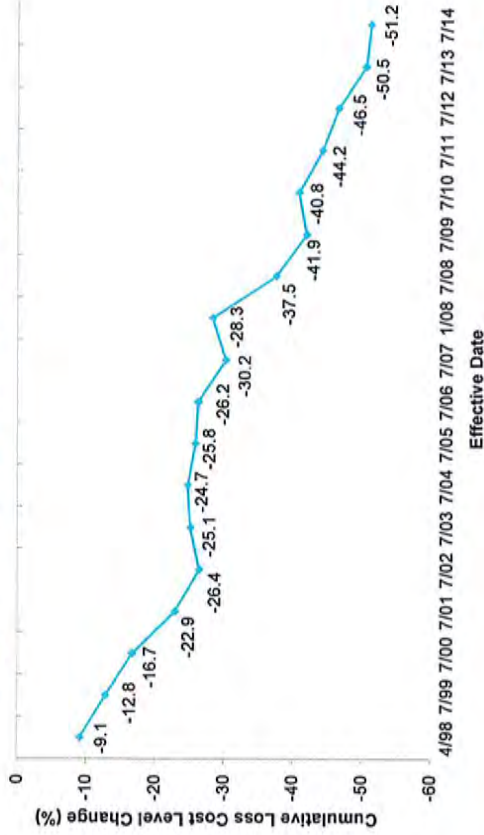


# Arkansas Filing Activity

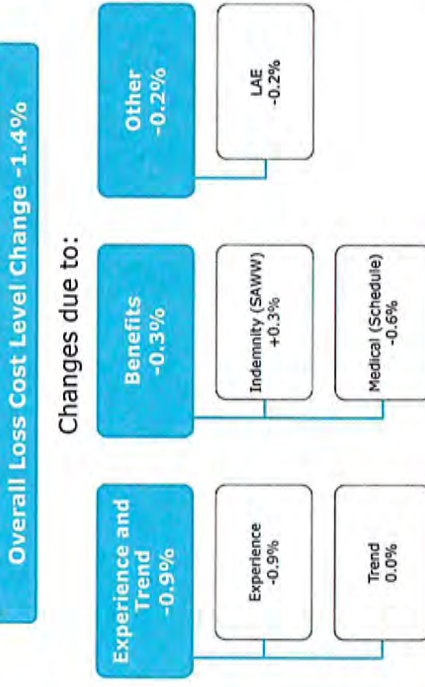
Approved Voluntary Loss Cost and Assigned Risk Rate Changes



# Arkansas Cumulative Approved Loss Cost Level Change

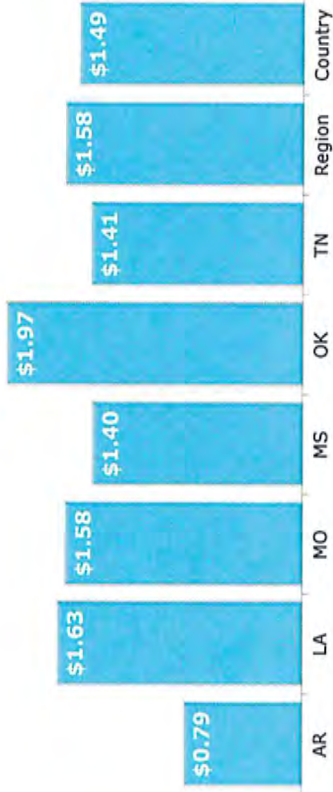


# Arkansas July 1, 2014 Loss Cost Filing



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

Pure Loss Cost—All Classes



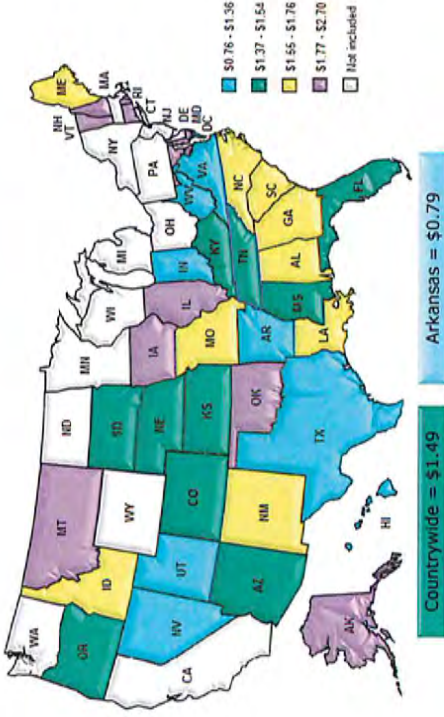
Based on the latest NCCI approved rates and loss costs in the various states

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



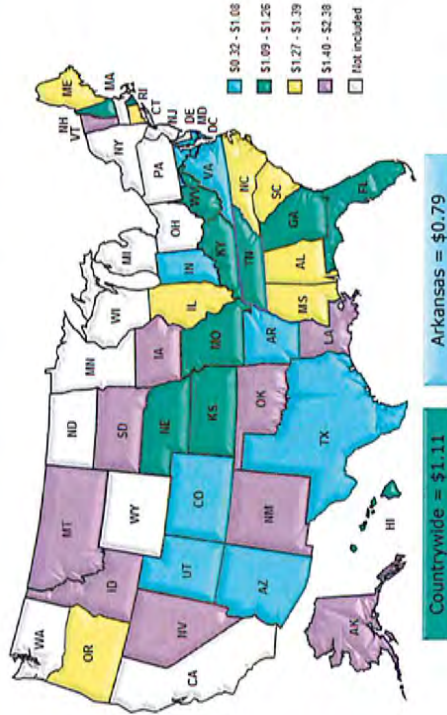
Based on the latest NCCI approved rates and loss costs in the various states

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## Average Voluntary Pure Loss Costs Quartiles Using Each State's Own Payroll Distribution



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

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## Arkansas July 1, 2014 Filing—Average Changes by Industry Group



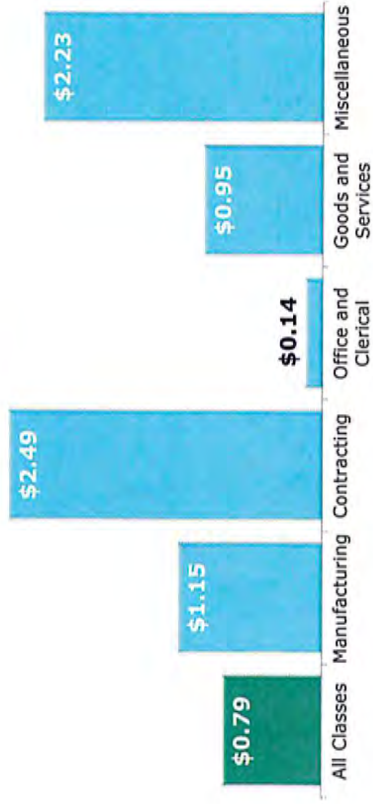
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## Arkansas Current Average Voluntary Pure Loss Costs by Industry Group



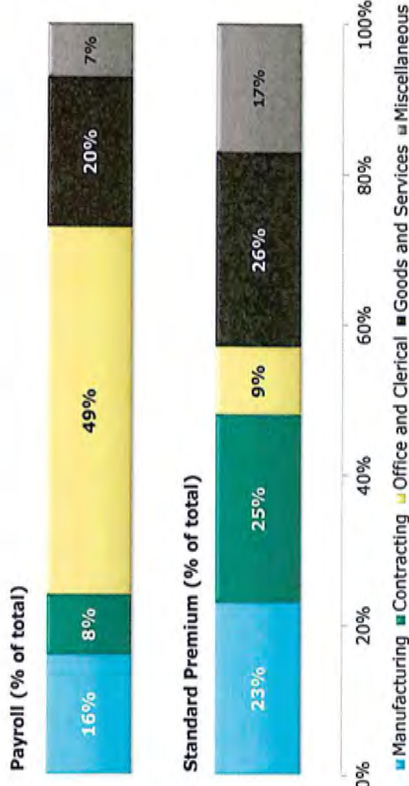
Based on the latest NCCI approved loss costs in Arkansas

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## Arkansas Current Distribution of Payroll and Premium by Industry Group



Based on the latest NCCI approved loss costs in Arkansas

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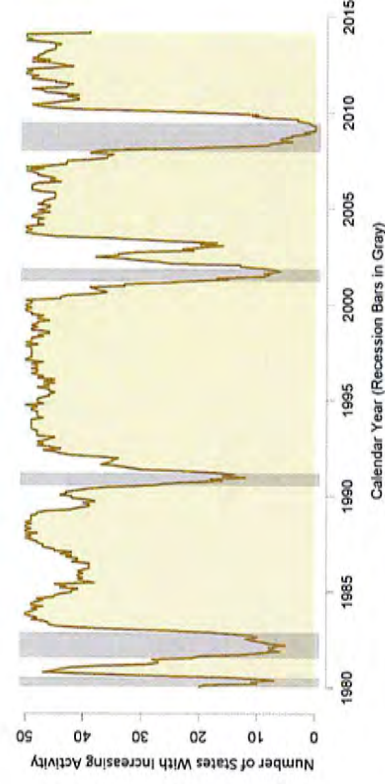
30



## State of the Economy: Weak but Gaining Strength

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## The US Recovery Is Broad-based— Most States Are in Expansion Mode Comparison to Prior Month—Latest: March 2014



The chart shows the number of states for which the one-month change in the coincident index of economic activity indicates an expansion. This index summarizes the state of the economy in a single statistic, using nonfarm payroll employment, average hours worked in manufacturing and construction, and retail sales. The index is published monthly by the Federal Reserve Bank of Philadelphia. Frequency of observation: monthly; latest observation: March 2014; does not include DC. Source: FRED of Philadelphia, [www.philadelphiafed.org/research-and-data/regional-economy/indices/coincident](http://www.philadelphiafed.org/research-and-data/regional-economy/indices/coincident)

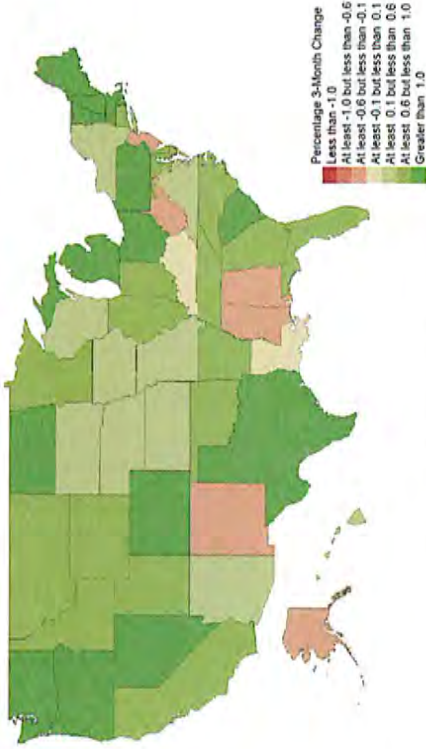
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## There Are Signs of Modest Regional Growth

### March 2014 Is Compared to December 2013



The map shows state coincidence indexes, which combine four state-level economic measures to summarize current economic conditions. The four measures are: nonfarm payroll employment, average hours worked in manufacturing, the unemployment rate, and wage and salary disbursements. The map is based on the latest available data for the frequency of observation: monthly; latest observation: March 2014. DC is not shown on the map.

Source: FRED, [www.philadelphiafed.org/research-and-data/regional-economy/indexes/coincident](http://www.philadelphiafed.org/research-and-data/regional-economy/indexes/coincident)

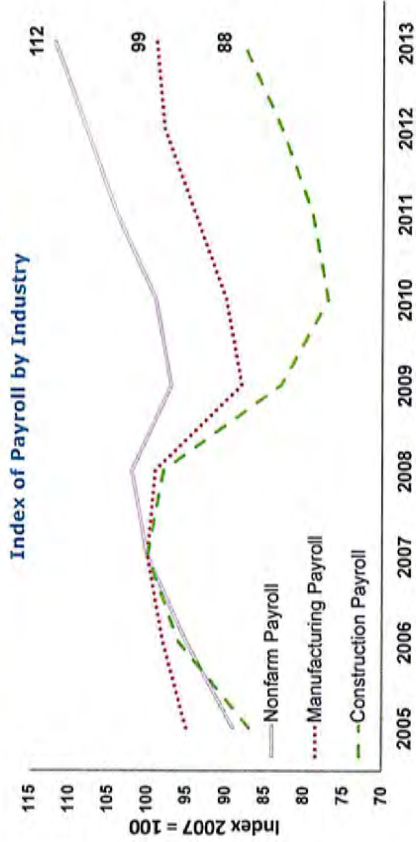
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## On the Other Hand, Payrolls Are Above Prerecession Levels

### Index of Payroll by Industry



Source: US Bureau of Economic Analysis (BEA), Wages and salaries by industry

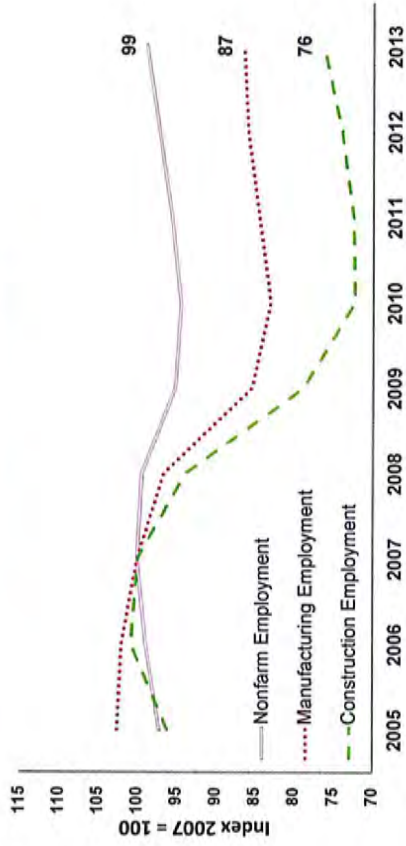
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## Employment Is Still Below Its Prerecession Level

### Index of Employment by Industry



Source: US Bureau of Labor Statistics (BLS), Current Employment Statistics (CES)

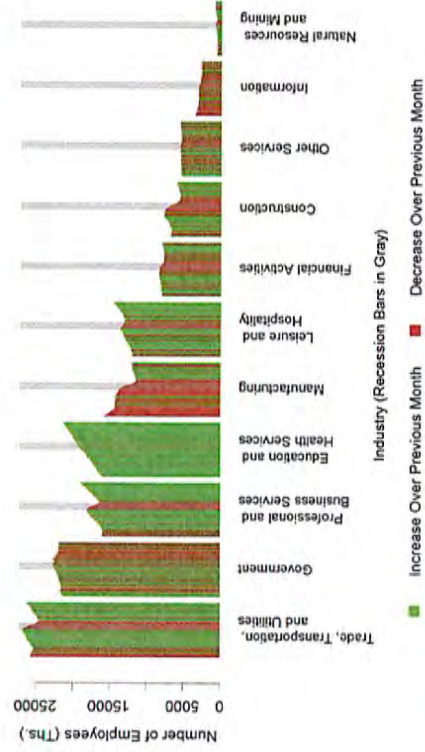
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## The Industrial Structure Is Changing

### Healthcare Employment Keeps Expanding Unabated



Nonfarm Employment, seasonally adjusted  
Monthly employment shown for the period November 2001 through March 2014  
Sources: FRED, [research.stlouisfed.org/fred2/](http://research.stlouisfed.org/fred2/); US Bureau of Labor Statistics (BLS), [www.bls.gov](http://www.bls.gov)

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## Workers Compensation Written Premium Change

### Written Premium Change From 2012 to 2013

Net Written Premium—Countrywide	+ 5.4%
Direct Written Premium (DWP)—Countrywide	+ 7.8%
Direct Written Premium (DWP)—NCCI States	+ 7.3%
Components of DWP Change for NCCI States:	
Change in Carrier Estimated Payroll	+ 4.7%
Change in Bureau Loss Costs and Mix	- 0.3%
Change in Carrier Discounting	+ 2.3%
Impact of State Fund Conversion to Private Carrier	+ 1.0%
Change in Other Factors	- 0.5%
Combined Effect:	+ 7.3%

Sources: Countrywide: Annual Statement data, Private Carriers  
NCCI States: Annual Statement data, Private Carriers, NCCI's ratemaking states  
Components: NCCI's policy data

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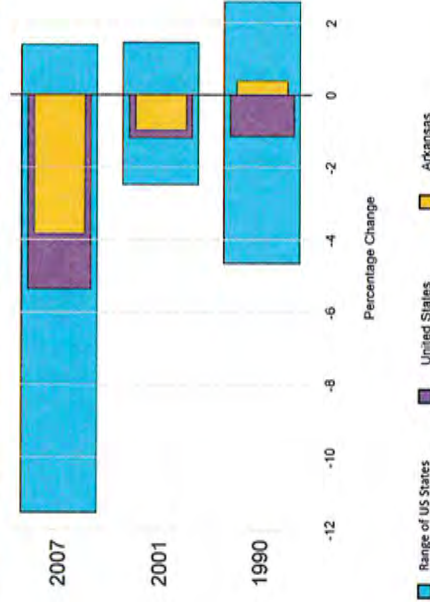
37

## Arkansas— The Economic Environment Is Similar to the Nation

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### Arkansas

Job Losses in the Recent Recession Were Less Than the National Average



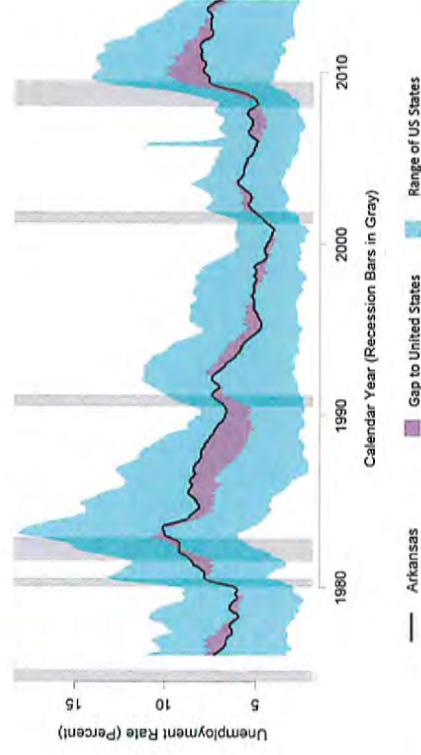
Percentage change from the onset of the recession (peak of economic activity, as defined by the NBER) to the onset of the recovery (trough of economic activity); Current Employment Statistics Survey, seasonally adjusted  
Frequency of observation: monthly; range of US states includes DC  
Source: US Bureau of Labor Statistics (BLS), [www.bls.gov/ces](http://www.bls.gov/ces)

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### Arkansas

The Unemployment Rate Is Slightly Above the National Average



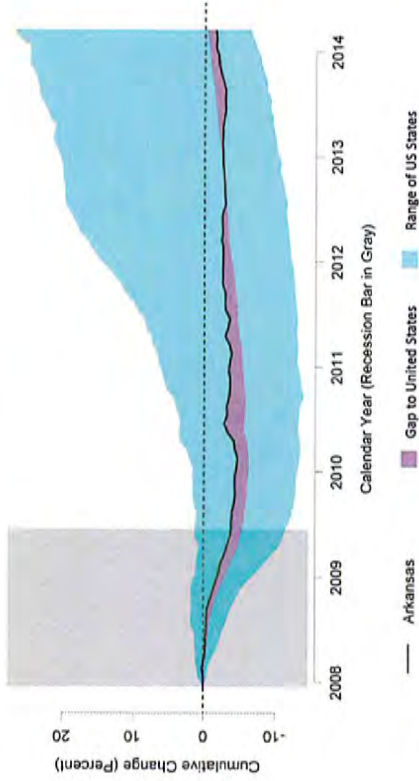
Unemployment rate, seasonally adjusted; range of US states includes DC  
Frequency of observation: monthly; latest available data point: March 2014  
Source: US Bureau of Labor Statistics (BLS), [www.bls.gov](http://www.bls.gov)

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## Arkansas

Employment Is Approaching the Pre-recession Level

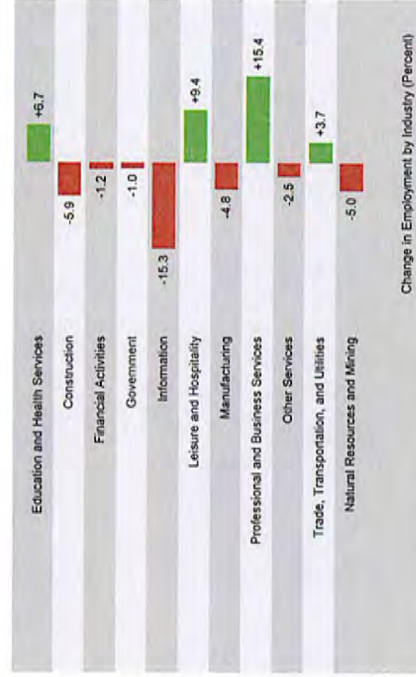


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## Arkansas

A Few Sectors Have Added Jobs Since the Onset of the Recovery



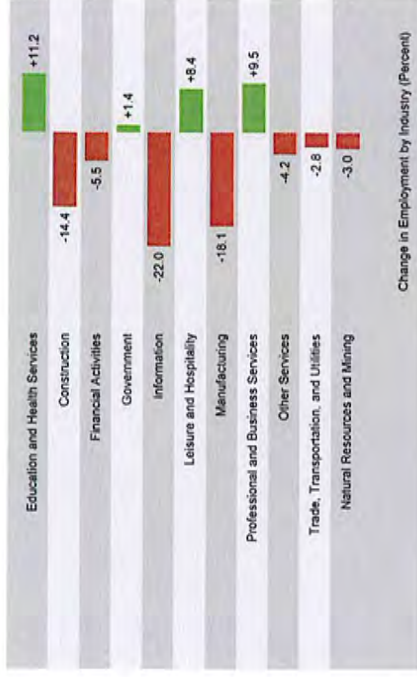
Percentage change since the onset of the recovery (onset of economic activity, June 2009); Current Employment Statistics Survey, seasonally adjusted; frequency of observation: monthly; latest observed data point: March 2014  
Source: US Bureau of Labor Statistics (BLS), www.bls.gov/ces

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## Arkansas

In Most Industries, Employment Has Yet to Recover From the Recession



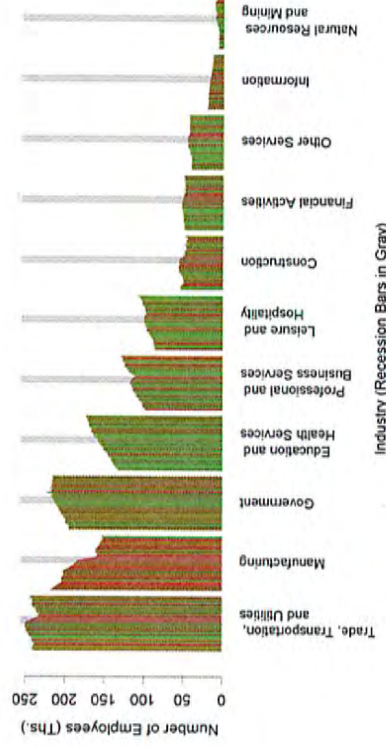
Percentage change since the onset of the recession (peak of economic activity, December 2007)  
Current Employment Statistics Survey, seasonally adjusted; frequency of observation: monthly; latest observed data point: March 2014  
Source: US Bureau of Labor Statistics (BLS), www.bls.gov/ces

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## Arkansas

The Industrial Structure Is Changing



Nonfarm Employment, seasonally adjusted  
Monthly employment shown for the period November 2001 through March 2014  
Source: US Bureau of Labor Statistics (BLS), www.bls.gov; Moody's Economy.com

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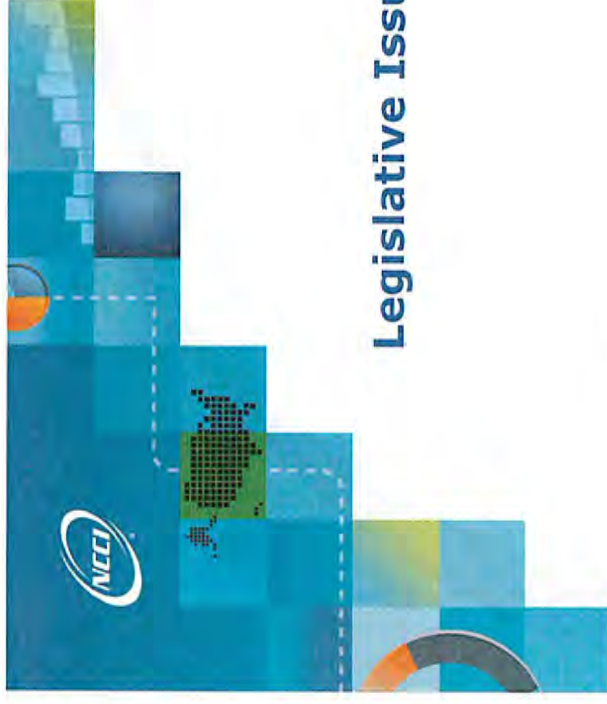
## The State of the Economy: Weak but Gaining Strength

- The US economy is growing, but the recovery is likely to remain modest for the next couple of years
- The economy in Arkansas is likely to follow the same path as the United States as a whole
- Health services is an area of job creation nationally and in Arkansas
- The recovery in the workers compensation system will continue as employment and payrolls continue to grow



## Countrywide Legislative Environment

- In 2014, most states are focusing on parochial legislative issues with many states establishing study committees, which are poised to bring system recommendations to the legislative process. This is generally a quiet year as a result of many states having engaged in major system reform in recent years, and 2014 being a mid-term election year.
- Two issues that predominate legislation in 2014:
  - Medical cost containment initiatives
  - Expansion of first responder compensability



## Legislative Issues

### Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) of 2007

- TRIPRA sunsets December 31, 2014
- Proposed legislation:
  - HR 508 extends current program for five years
  - HR 1945 and HR 2146 extend program for 10 years
- National Association of Insurance Commissioners—working group monitoring activity for regulators
- National Conference of Insurance Legislators—resolution in support of extending TRIA
- RAND Policy Briefs
- General Accountability Office (GAO) report
- President's Working Group report



## Terrorism Risk Insurance Program Reauthorization Act of 2007

### NCCI activity:

- Engaged in educational efforts with members of Congress and stakeholder groups
- Reviewing current rules and forms for possible changes
- Filed Item P-1410—Pending Law Change Notification Endorsement
- Updated information and FAQs on **ncci.com**

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## Emerging Issues in Workers Compensation: Medical Marijuana



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### Federal Law on Marijuana

- On the federal level, it's illegal to possess marijuana for any reason; it was legal for medicinal purposes until 1970, when the Controlled Substances Act was introduced, classifying marijuana as a Schedule I drug
- Schedule I drugs have a high potential for abuse and are not currently accepted for medical use in the United States
- Why was medical marijuana categorized as a Schedule I drug?
  - Insufficient clinical trials to show benefits outweighed risks
  - Marijuana does not have well-defined and measurable ingredients consistent from unit to unit (marijuana compounds differ from plant to plant)

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### State Law on Marijuana

- Legal in 22 jurisdictions (including the District of Columbia) for medicinal use; California was the first to legalize in 1996; Illinois and New Hampshire legalized in 2013, and Maryland is the most recent in 2014
  - Most states require patient registry/proof of residency
  - Most states limit amount of marijuana by the ounce or number of plants
- Growing number of states considering medical marijuana-related legislation (19 in 2014)
- Legal in two states and one city for recreational use—Washington and Colorado; Portland, Maine

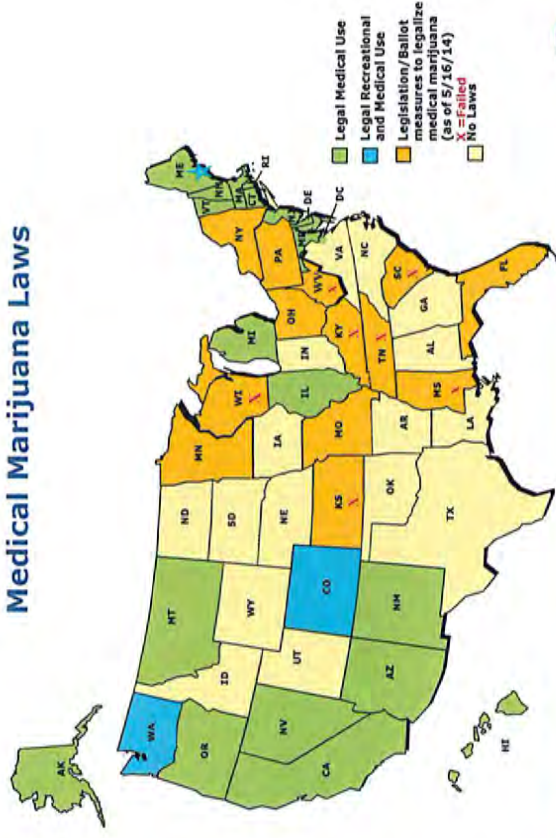
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## Medical Marijuana Laws



## What Challenges Does This Present in the Workplace?

- No states allow employees to use marijuana in the workplace or require employers to allow its use on the job
- An employee **who can legally use medical marijuana while off duty** may still face consequences (e.g., possible termination) for arriving at work with detectable amounts of marijuana in his/her system (marijuana ingredient THC could be in the system of a user for as long as three months)
- Many patients experience lingering side effects, which may impact performance of regular work duties
- Some states have introduced legislation preventing employee termination for off-duty medical marijuana use
- Similarly, some states have laws that an employee cannot be terminated for off-duty legal activities



## How Is Marijuana Used to Treat Injured Workers?

- Scientists have confirmed that the cannabis plant contains active ingredients with therapeutic potential for relieving pain, controlling nausea, stimulating appetite, and decreasing ocular pressure
- Marijuana could be used for injured worker pain relief, but it is not typically recommended as the first choice of drugs to address pain; however, it's cheaper and less addictive than drugs like Oxycontin
- There is no strong evidence that it is effective at improving function
- The side effects and behavioral effects may make it counterproductive to the treatment of pain for injured workers
- According to the National Institute on Drug Abuse, marijuana has the potential to cause or exacerbate problems in daily life, including increased absences, tardiness, accidents, workers compensation claims, and job turnover



## 2014 Related WC Cases Decided by Arkansas Supreme Court

#	Case	Decision
1	<i>Prock v. Bull Shoals Boat Landing and American Home Assurance/AIG Claim Services, Inc.</i> (2/27/14)	Employees Prock and Edmisten were injured when Prock tried to open a drum with an acetylene torch that Edmisten held down. By rebutting the preponderance of evidence that their marijuana intoxication substantially occasioned their work injury, the employees' injuries were compensable. No witness saw the employees intoxicated or impaired on the date of the accident, nor had anyone seen the employees impaired at work in any way prior to the accident.
2	<i>Edmisten v. Bull Shoals Boat Landing and American Home Assurance/AIG Claim Services, Inc.</i> (2/27/14)	





## What Challenges Does Medical Marijuana Present in Workers Compensation Insurance?

- Banks are restricted from establishing accounts for “illegal” business endeavors. How does this apply to insurers? Increasingly, insurers are receiving requests to pay for medical marijuana.
- Absence of National Drug Code creates reimbursement issues.
- Potentially, employers and insurance companies that pay for medical marijuana could become liable for additional injuries caused by drug intoxication.
- Given federal issues, state courts may be reluctant to approve medical marijuana treatment for injuries.
- Some states are proposing legislation/regulation that medical marijuana treatment not be covered in the workers compensation system.



## Arkansas and Medical Marijuana

- 2014 multiple initiatives to develop constitutional amendment language
  - Rejected by attorney general
  - Requires 78,133 voter signatures
  - Signatures must be filed by July 7, 2014
- 2012 proposed constitutional amendment
  - 507,757 in favor—48.6%
  - 537,898 opposed—51.4%
- 1.3 million active voters in Arkansas



## Potential Classification Issues Related to Medical Marijuana— New Types of Businesses

- Cultivation Facilities
- Testing Facilities
- Product Manufacturing Facilities
- Wholesale/Retail Sales



## Final Thoughts

- Medical marijuana is an emerging issue that will continue to receive more attention among workers compensation stakeholders in the coming years
- With 22 jurisdictions now allowing medical marijuana, it appears there is a critical mass of popular support; but a myriad of workers compensation issues still need to be addressed

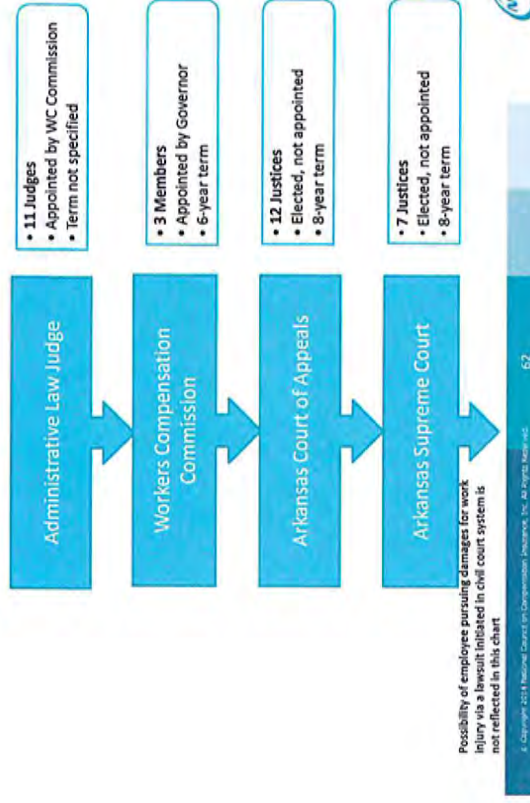




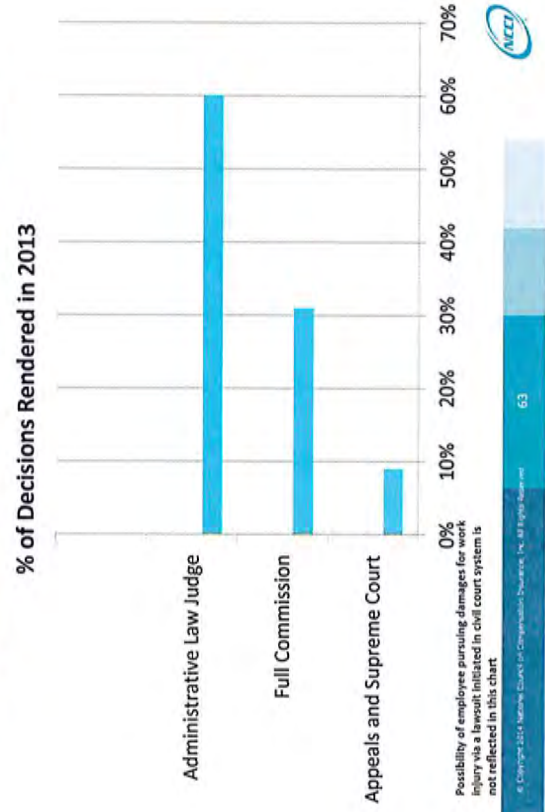
## Arkansas Workers Compensation Claim Adjudication

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## Adjudication of Workers Compensation Cases in Arkansas

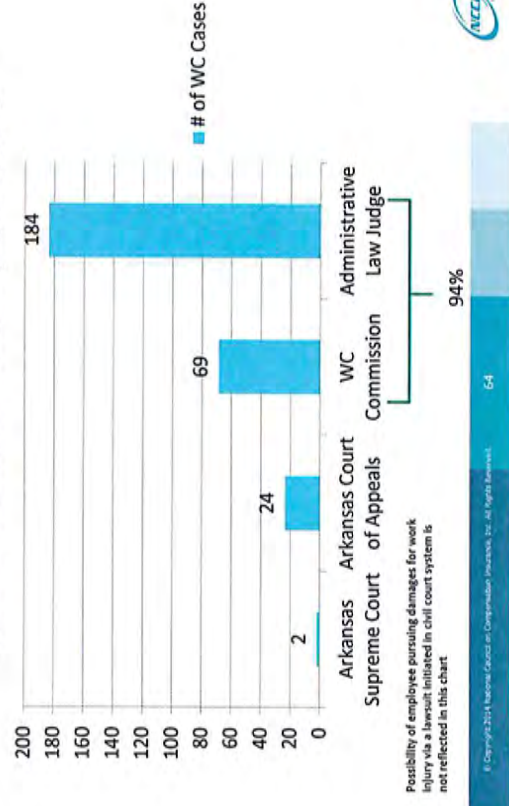


## 2013 Statistics: Adjudication of WC Cases in Arkansas



## 2014 Statistics: Adjudication of WC Cases in Arkansas—As of May 13, 2014

### Decisions Rendered in Workers Compensation Cases



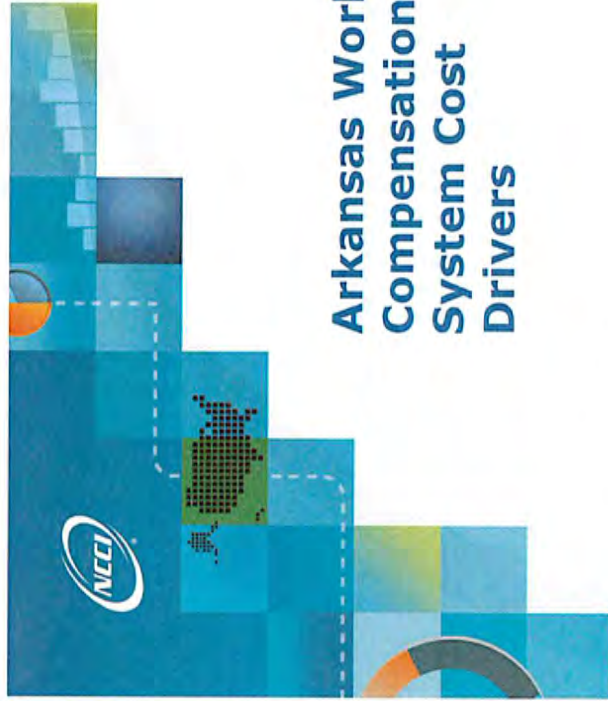




## Arkansas Workers Compensation Commission Update

Watson Bell, Chairman

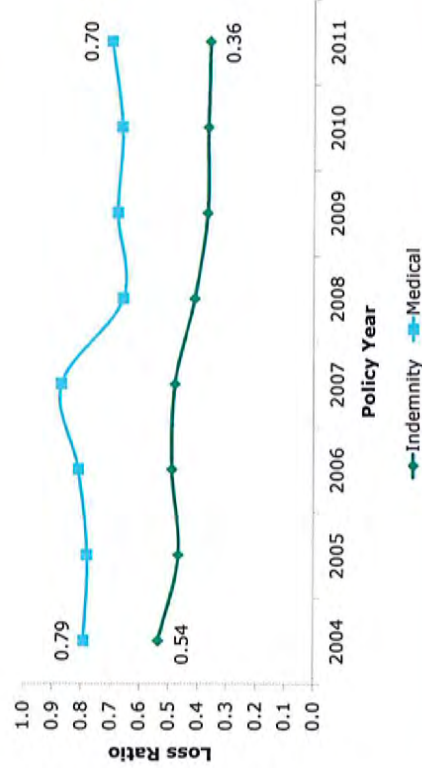
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## Arkansas Workers Compensation System Cost Drivers

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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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## Arkansas Large Loss Summary Comparison Policy Years 2007–2011 at 12/31/2011 vs. 12/31/2012

Policy Year	Reported Total Incurred Losses for Claims \$500,000 and Greater				
	At 12/31/2011		At 12/31/2012		Difference
	Claim Count	Reported Losses	Claim Count	Reported Losses	
2007	21	\$29.1 M	19	\$27.6 M	-\$1.5 M
2008	11	\$11.5 M	12	\$12.0 M	\$0.5 M
2009	10	\$15.2 M	11	\$13.6 M	-\$1.6 M
2010	9	\$12.6 M	12	\$15.7 M	\$3.1 M
2011	2	\$2.0 M	15	\$15.0 M	\$13.0 M

July 1, 2014  
Filing  
Experience  
Period

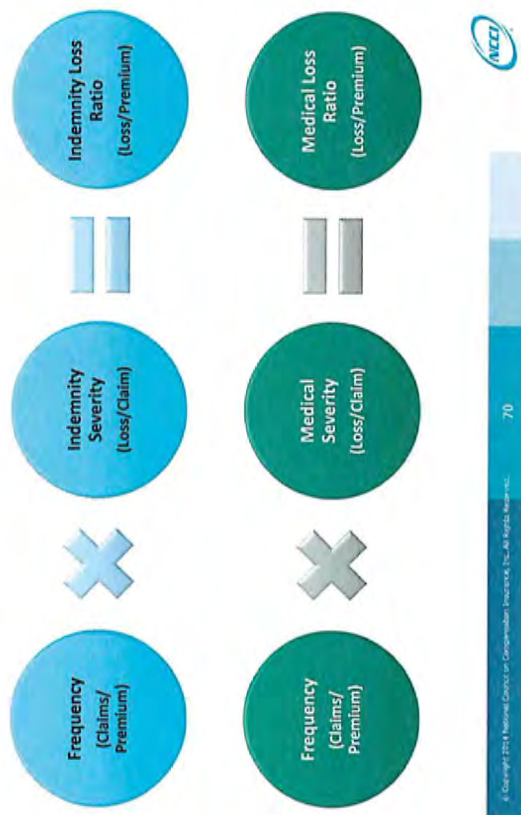
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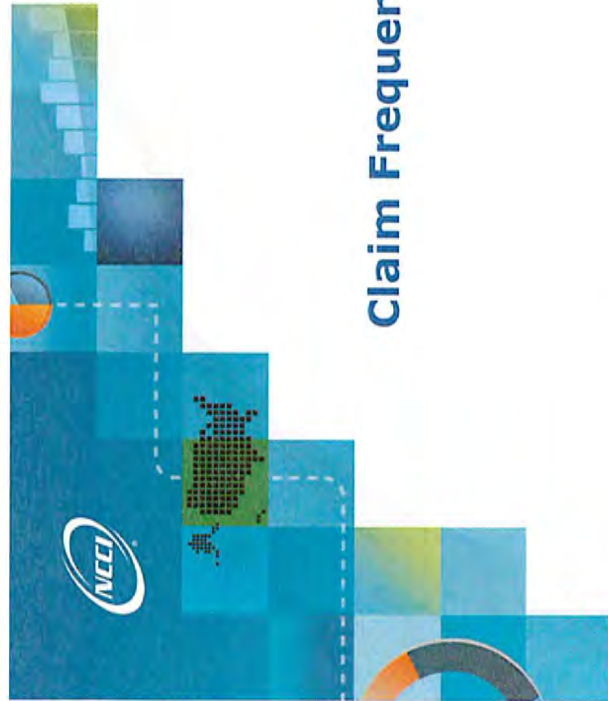
## Medical Benefits Constitute the Majority of Total Benefit Costs in Arkansas



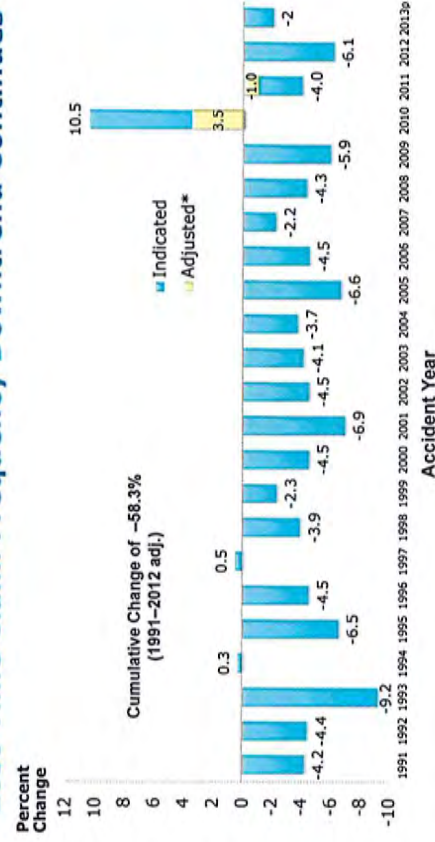
## What Drives Indemnity and Medical Loss Ratios?



## Claim Frequency

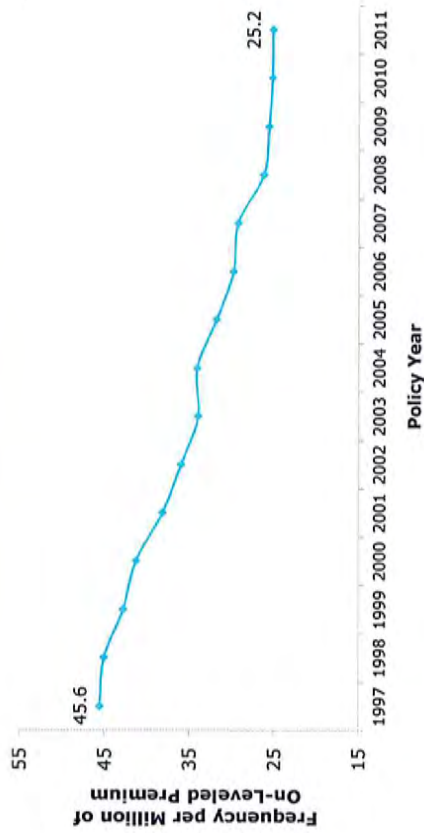


## Countrywide Workers Compensation Lost-Time Claim Frequency Downtrend Continues





## Arkansas Claim Frequency



Based on NCCI's financial data  
Frequency of lost-time claims adjusted to a common wage level

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## Arkansas Workers Compensation Lost-Time Claim Frequency



Based on data through 12/31/2012, developed to ultimate

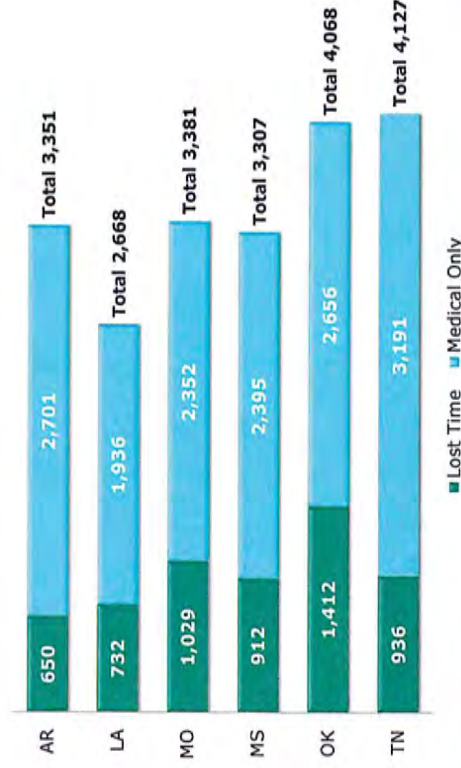
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## Arkansas Average Claim Frequency

Frequency per 100,000 Workers—All Claims



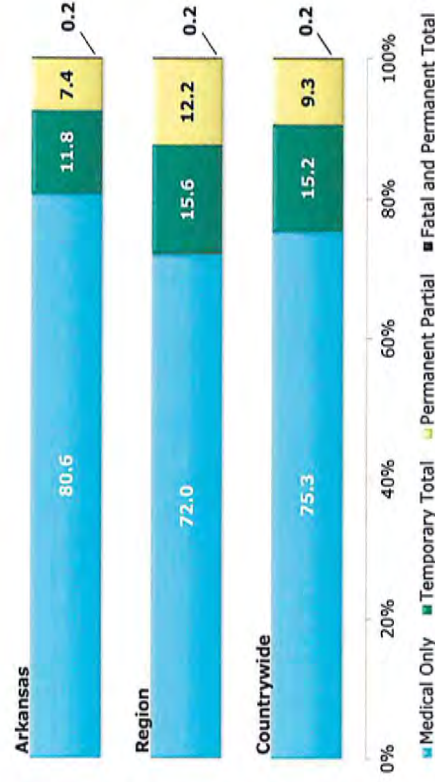
Based on NCCI's Statistical Plan data

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## Arkansas Distribution of Claims by Injury Type



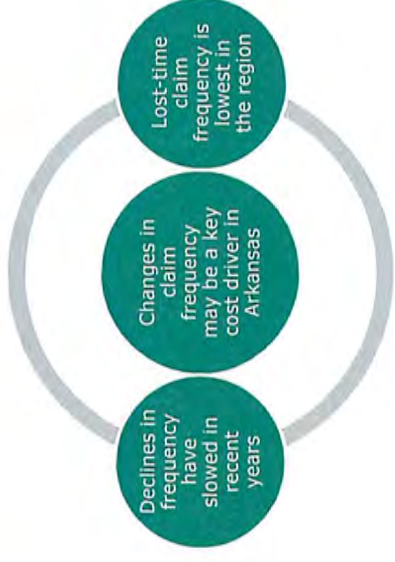
Regional states are LA, MO, MS, OK, and TN  
Based on NCCI's Statistical Plan data

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## Key Takeaways—Claim Frequency

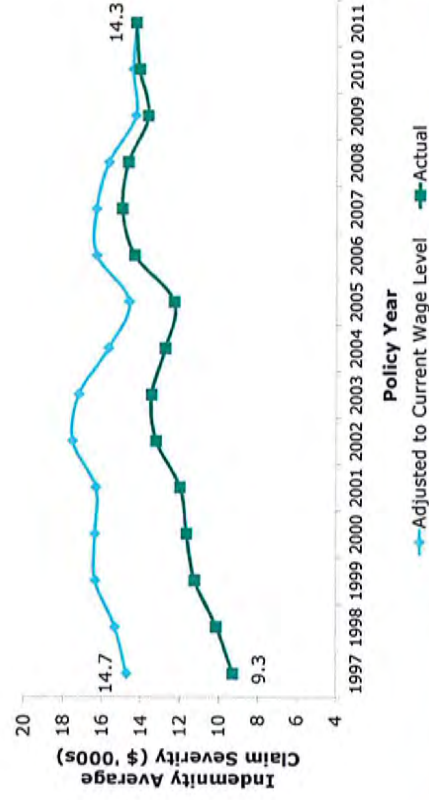


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## Arkansas Average Indemnity Severity



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

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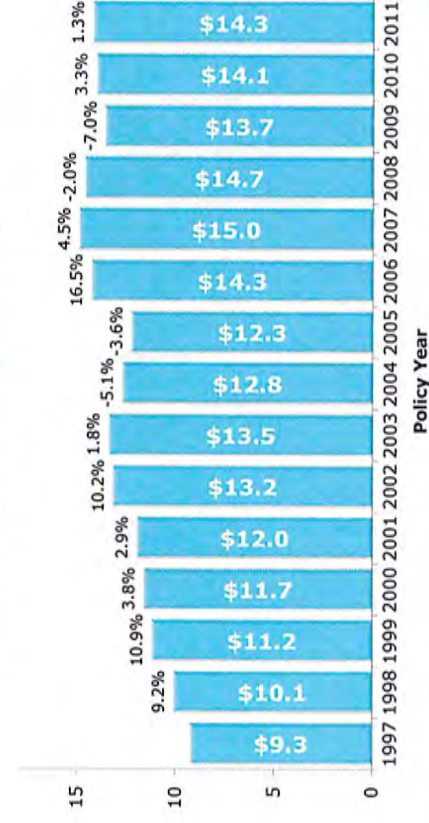


## Indemnity Severity

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## Arkansas Average Indemnity Claim Severity

Lost-Time Claim Severity in \$ Thousands



Based on data through 12/31/2012, on-levelled and developed to ultimate.

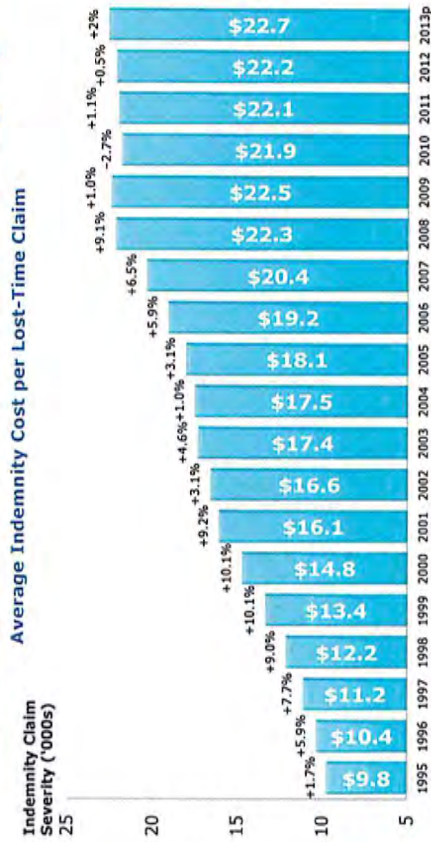
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## Countrywide Workers Compensation Indemnity Claim Severity Increased Slightly

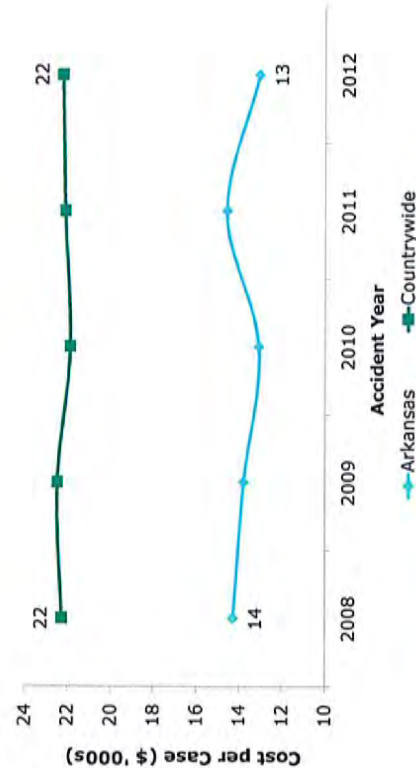


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## Arkansas vs. Countrywide Average Indemnity Claim Severity



Source: NCCI Countrywide Frequency and Severity Analysis using financial data valued as of 12/31/2012

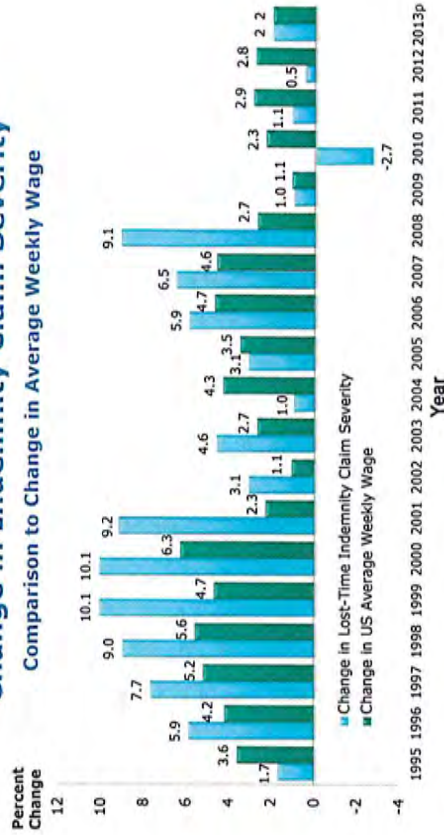
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## Countrywide Workers Compensation Change in Indemnity Claim Severity

Comparison to Change in Average Weekly Wage



Change in lost-time indemnity claim severity; 2013p: Preliminary based on data valued as of 12/31/2013

1995-2012: Based on data through 12/31/2012, developed to ultimate; excludes high deductible policies

Average severity for the states where NCCI provides ratemaking services, including state funds; excluding WV

Source: US Average Weekly Wage 1995-2007: Quarterly Census of Employment and Wages, 2008-2013p, NCCI; Moody's Economy.com

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## Average Indemnity Claim Severity in the Region

Lost-Time Claim Severity in \$ Thousands



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

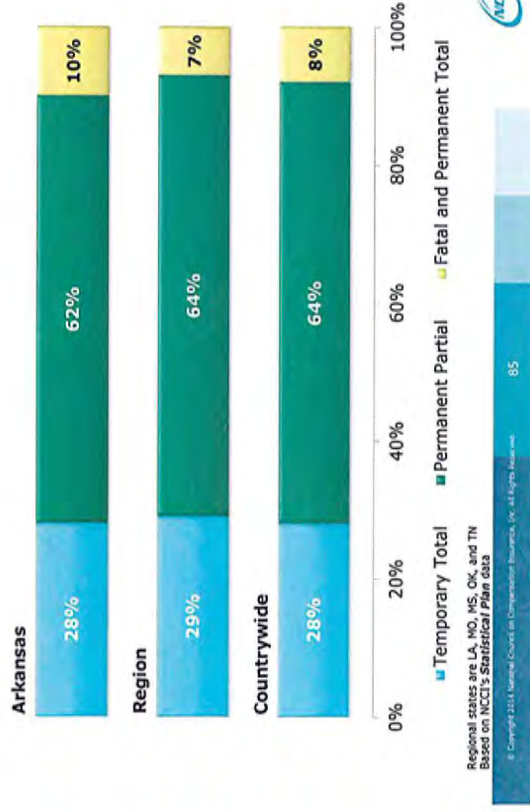
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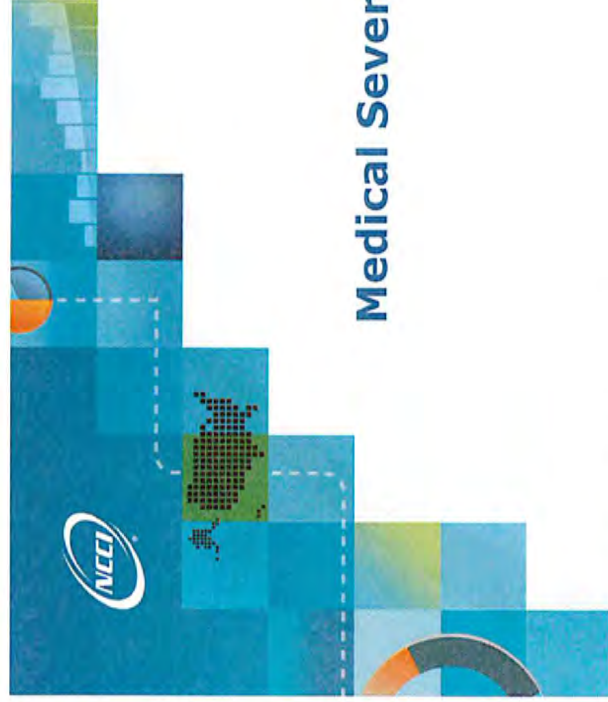




## Arkansas Indemnity Loss Distribution by Injury Type

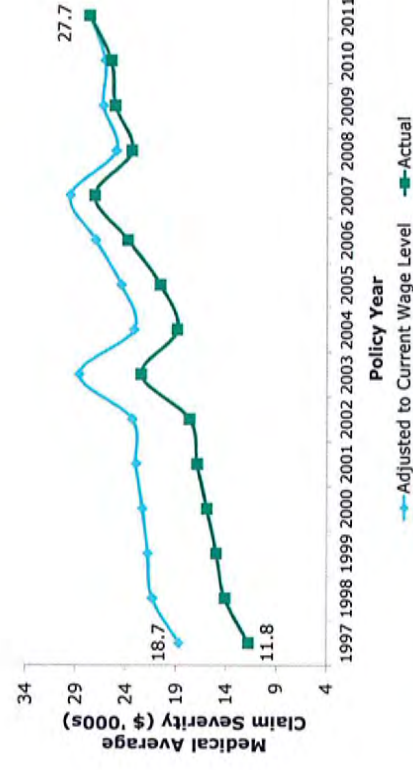


## Key Takeaways—Indemnity Benefit Costs



## Medical Severity

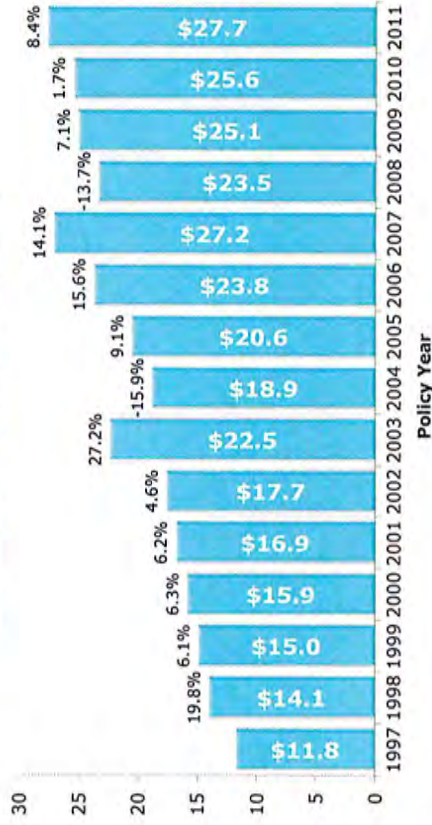
### Arkansas Average Medical Severity



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

## Arkansas Average Medical Claim Severity

Lost-Time Claim Severity in \$ Thousands



Based on data through 12/31/2012, on-levleed and developed to ultimate

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## Countrywide Workers Compensation Medical Claim Severity Increased Moderately

Average Medical Cost per Lost-Time Claim



2013p: Preliminary based on data valued as of 12/31/2013  
2009: Preliminary based on data valued as of 12/31/2009  
Average severity for the states where NCCI provides ratemaking services, including state funds; excluding WV

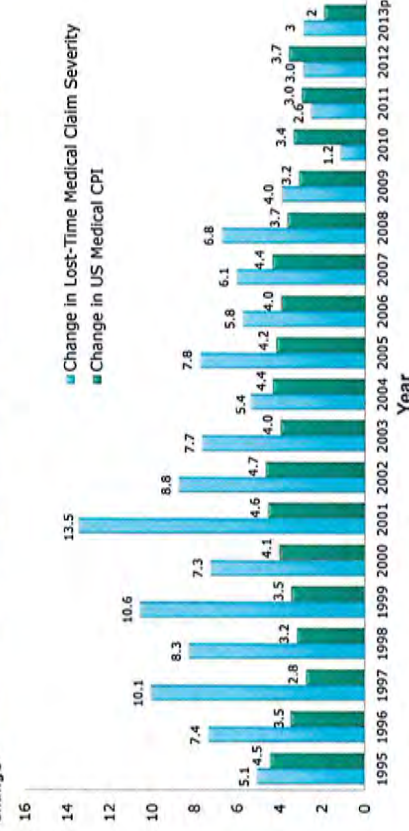
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## Countrywide Workers Compensation Change in Medical Severity

Percent Comparison to Change in Medical Consumer Price Index (CPI)



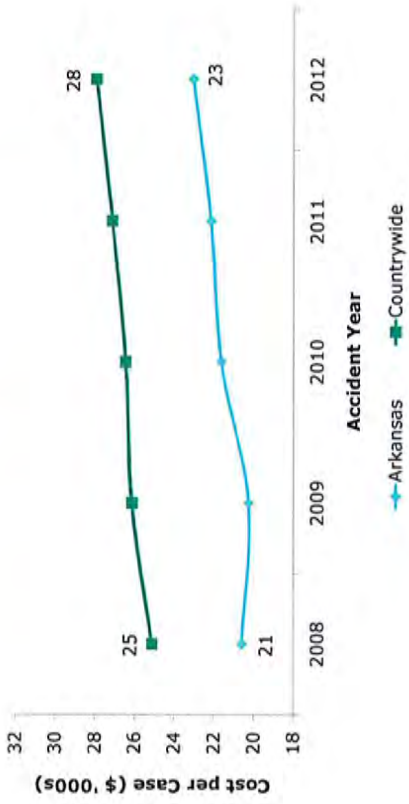
Change in lost-time medical claim severity: 2013p: Preliminary based on data valued as of 12/31/2013  
1995-2012: Based on data through 12/31/2012, developed to ultimate  
Average severity for the states where NCCI provides ratemaking services, including state funds; excluding WV  
Source: US Medical CPI: US Bureau of Labor Statistics (BLS)

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## Arkansas vs. Countrywide Average Medical Claim Severity



Source: NCCI Countrywide Frequency and Severity Analysis using financial data valued as of 12/31/2012

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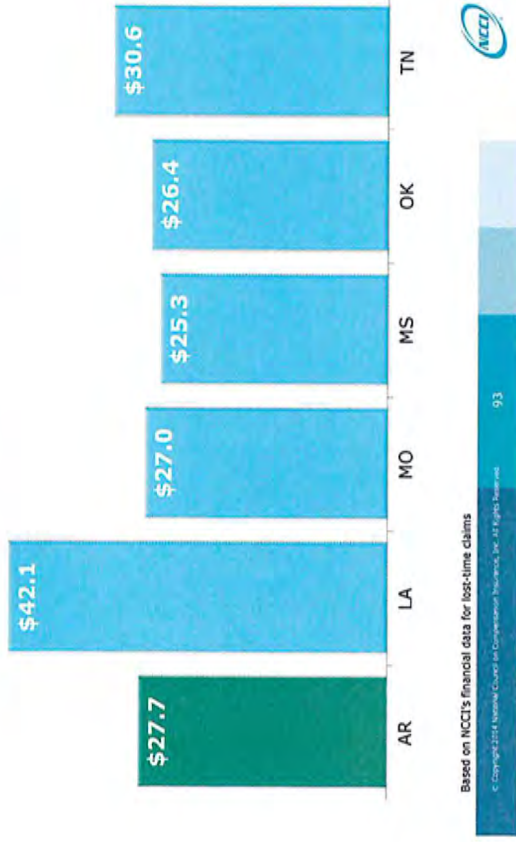
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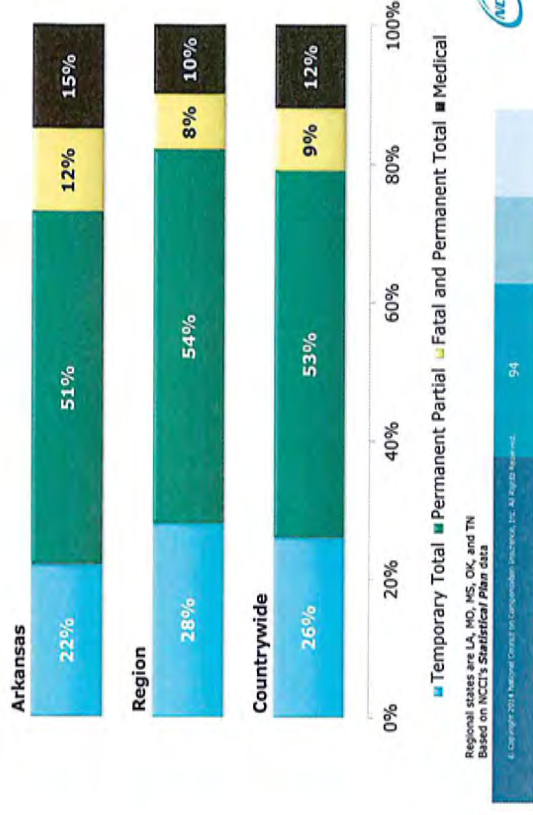


## Average Medical Claim Severity in the Region

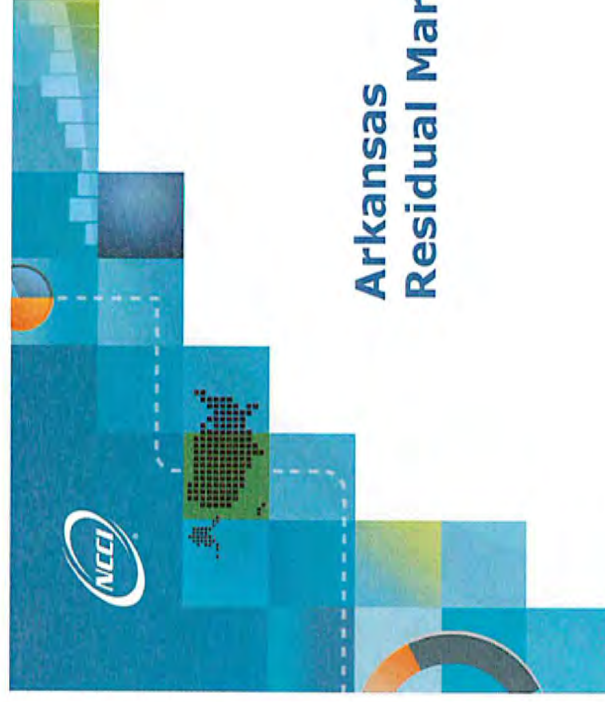
Lost-Time Claim Severity in \$ Thousands



## Arkansas Medical Loss Distribution by Injury Type

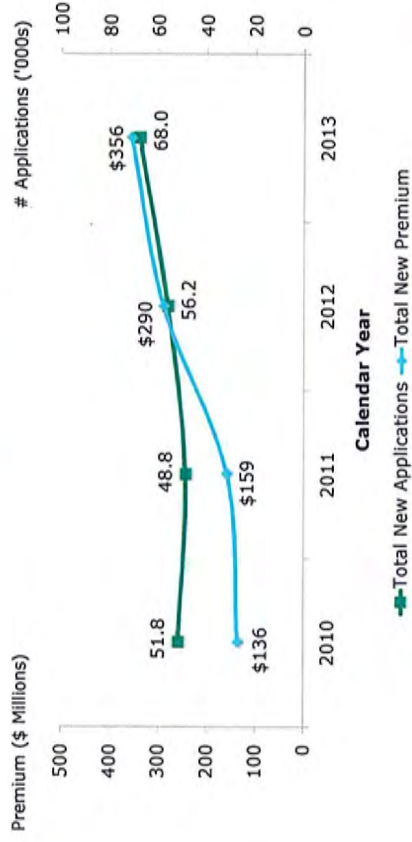


## Key Takeaways—Medical Benefit Costs



## Arkansas Residual Market

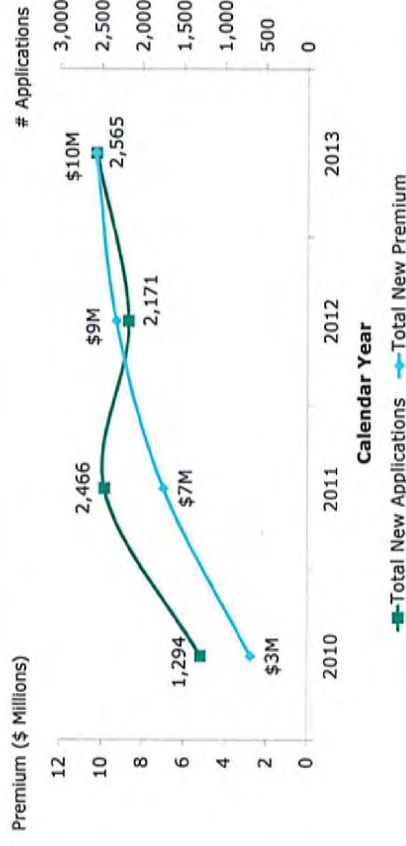
## Total Residual Market New Applications and Premium Assigned in All Plan States



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

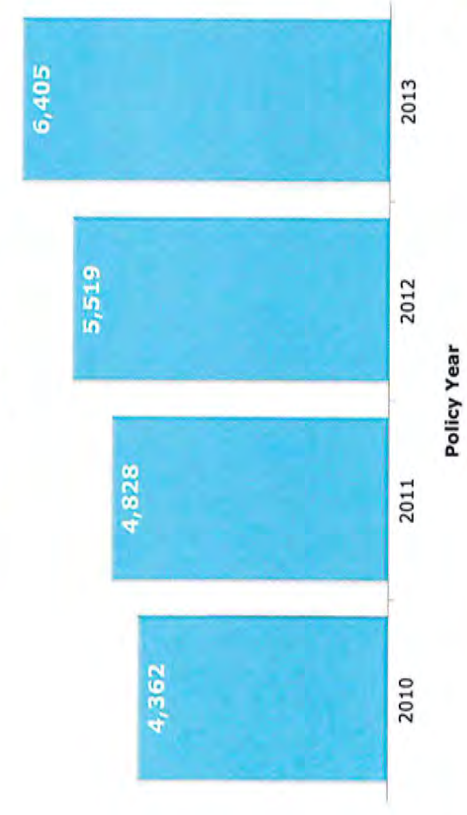


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## Arkansas Total Residual Market Plan Policy Count

Number of Policies

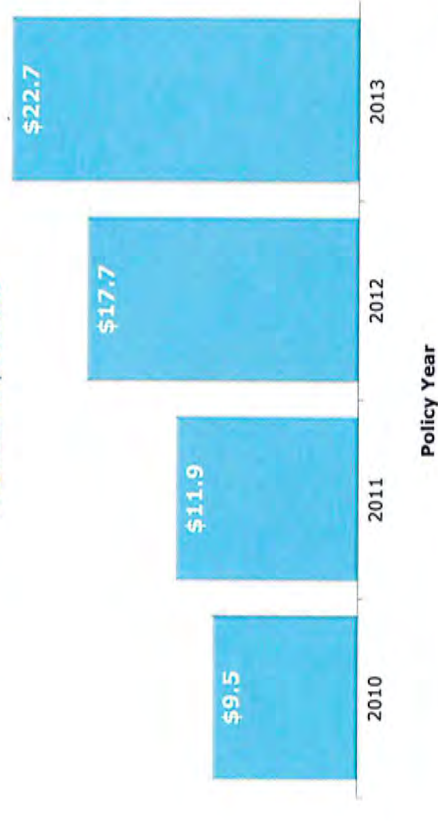


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## Arkansas Total Residual Market Plan Premium Volume

Premium in \$ Millions



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## Arkansas Residual Market Plan 2013 vs. 2012 Total Policy Size Comparison

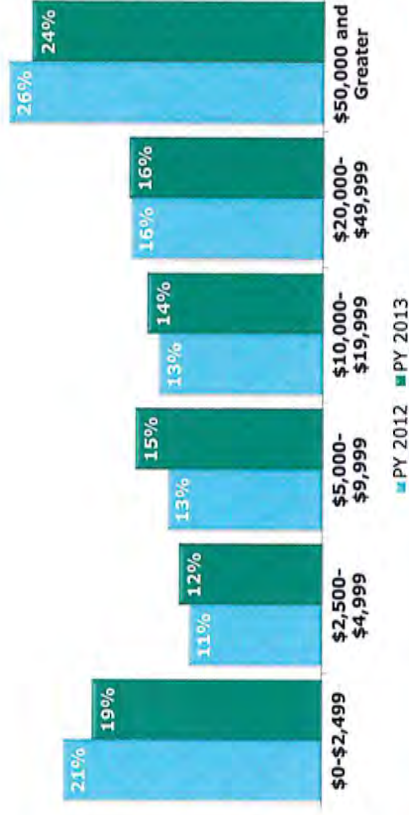
Premium Size	2013		2012	
	# of Policies	Premium	# of Policies	Premium
\$0-\$2,499	4,742	\$4,250,602	4,332	\$3,762,909
\$2,500-\$4,999	756	\$2,666,653	553	\$1,944,801
\$5,000-\$9,999	503	\$3,473,312	329	\$2,260,129
\$10,000-\$19,999	233	\$3,252,325	170	\$2,390,939
\$20,000-\$49,999	117	\$3,597,588	94	\$2,795,878
\$50,000-\$99,999	38	\$2,664,365	24	\$1,634,229
\$100,000-\$199,999	13	\$1,882,783	15	\$2,154,226
\$200,000 and Greater	3	\$863,082	2	\$784,528
<b>TOTAL</b>	<b>6,405</b>	<b>\$22,650,710</b>	<b>5,519</b>	<b>\$17,727,639</b>

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## Arkansas Residual Market Plan Total Policy Size Comparison by Premium Percentage of Premium by Policy Size

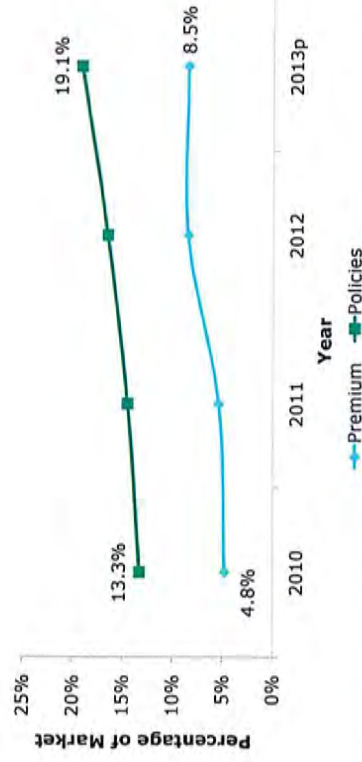


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## Comparison of the Estimated Market Share for Arkansas Residual Market by Total Policy Count and Written Premium



Market share as a percentage of residual market total written premium/policies in force  
2013 numbers are preliminary

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## Arkansas Assigned Risk Programs

- Alternate Preferred Plan
- Tabular Adjustment Program (TAP)
- Alcohol- and Drug-Free Premium Credit
- Merit Rating
- Differential/Surcharge
- Removal of Premium Discounts
- Take-Out Credit (TOC) Program
- Voluntary Coverage Assistance Program (**VCAP® Service**)

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## Residual Market Approved Filings

Connecticut	1/1/14	+5.7%
North Carolina	4/1/14	+4.2%
Mississippi	3/1/14	+3.8%
Georgia	3/1/14	+3.5%
Alabama	3/1/14	+3.3%
Nevada	3/1/14	+3.3%
Arizona	1/1/14	+3.2%
Vermont	4/1/14	+2.7%
New Mexico	1/1/14	+2.2%
Kansas	1/1/14	+2.0%
Iowa	1/1/14	+1.9%
Illinois	1/1/14	-1.2%

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## Residual Market Approved Filings

South Carolina	9/1/14	-2.6%
Alaska	1/1/14	-3.1%
Oregon	1/1/14	-3.6%
New Hampshire	1/1/14	-4.2%
Virginia	4/1/14	-4.2%
Washington, DC	11/1/13	-4.6%
Tennessee	3/1/13	-6.9%
Indiana	1/1/14	-7.7%
South Dakota	7/1/14	-7.8%
<b>Arkansas</b>	<b>7/1/14</b>	<b>-8.5%</b>
West Virginia	11/1/13	-8.5%

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## Closing Remarks

## Thank You!

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## Glossary

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## 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 100 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 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 workers 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)**—A disability that is permanent but does not involve a total inability to work. The specific definition and associated workers compensation benefits are defined by statute and vary by jurisdiction.
- **Policy Year (PY)**—The year of the effective date of the policy. Policy year financial results summarize experience for all policies with effective dates in a given calendar year 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

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### NCCI Workers Compensation Resources

- 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

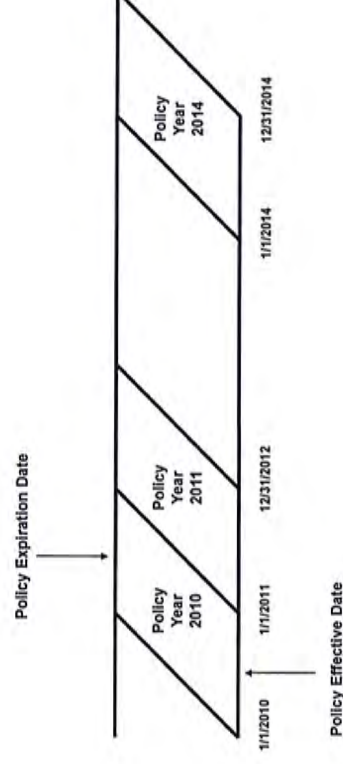
- Collected Annually
  - Policy and calendar-accident year basis
  - Statewide and assigned risk data
- Premiums, Losses, and Claim Counts
  - Evaluated as of December 31
- Purpose
  - Basis for overall aggregate rate indication
  - Research



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### Policy Year Financial Aggregate Data

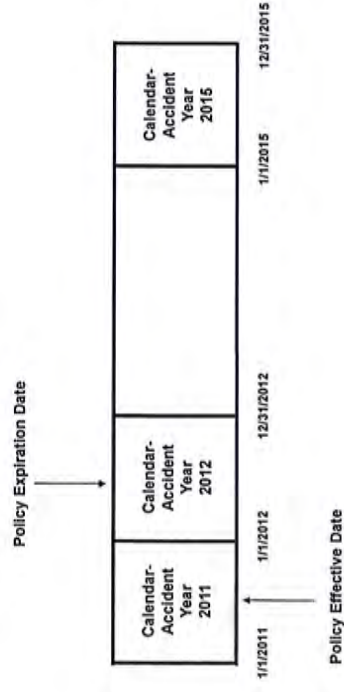


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## Calendar-Accident Year Financial Aggregate Data

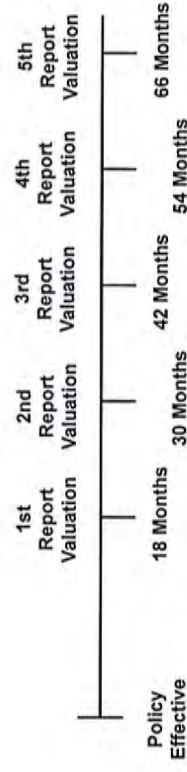


## Statistical Plan for Workers Compensation Employers Liability Insurance (Statistical Plan) Data

- 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





# Arkansas Residual Market Performance Report

April 1, 2014 – June 30, 2014

## Top 5 Class Codes\*

5645—Carpentry Construction (19%)

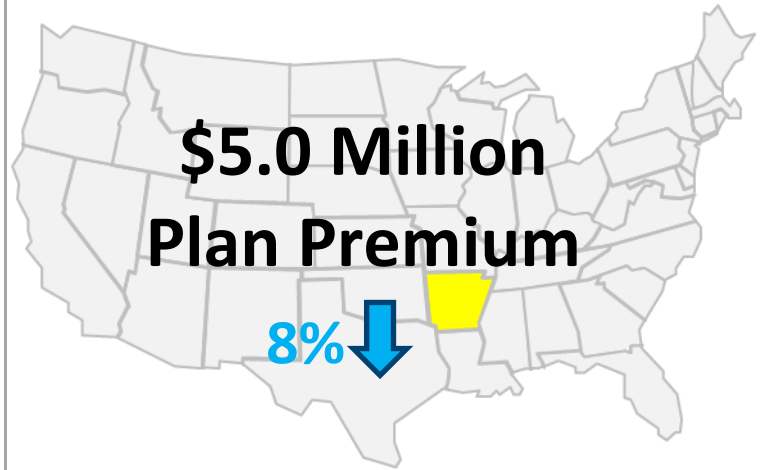
5551—Roofing-All Kinds (3.4%)

5022—Masonry NOC (3.2%)

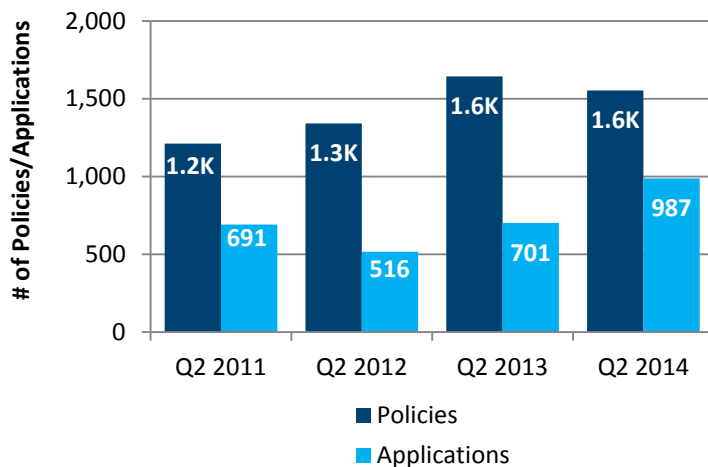
5437—Carpentry-Installation (2.6%)

5183—Plumbing NOC (2.5%)

*\*By policy count*



## Total Policy Count 5% ↓



## VCAP® Service Redirected

**\$29K 77% ↑**  
**Premium**

Savings from Redirected Premium

**7.5%**

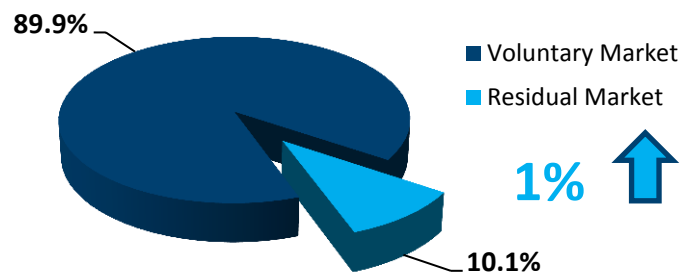
## Avg Policy Size

**\$3,192 3% ↓**

Policies with Premium 100K+

**\$0 473K ↓**

## Market Share



Data reported as of June 30, 2014



# Arkansas Residual Market Performance Report

April 1, 2014 – June 30, 2014

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# Arkansas Residual Market Performance Report

*April 1, 2014 – June 30, 2014*

## Executive Summary

NCCI, as Pool and Plan Administrator of the Arkansas Workers Compensation Insurance Plan, is pleased to provide the Second Quarter 2014 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      (314) 843-4001

Kevin Ott, Technical Specialist                      (561) 893-2610



# Arkansas Residual Market Performance Report

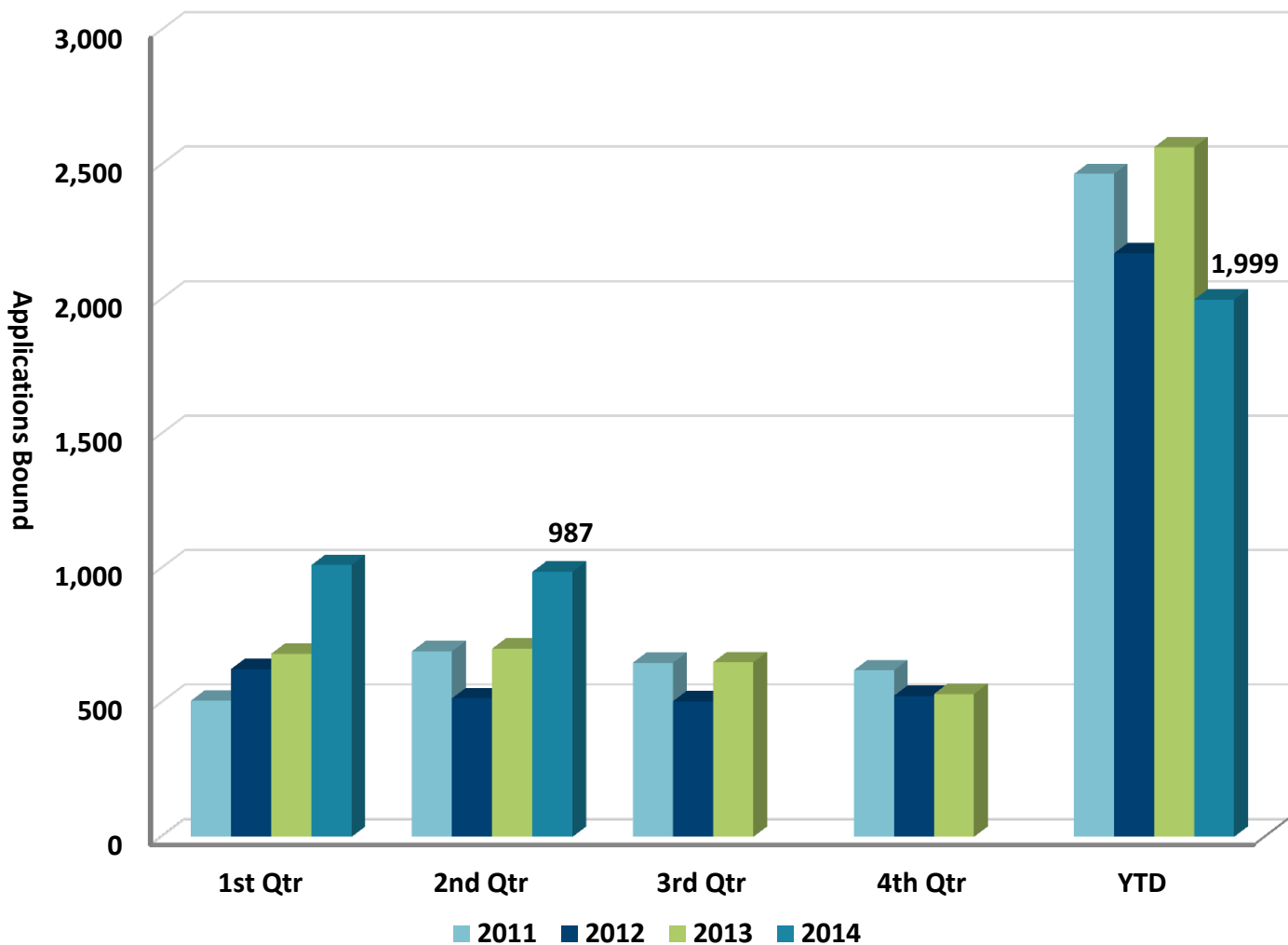
April 1, 2014 – June 30, 2014

## Residual Market Demographics

### Total Applications Bound

#### 2011 vs. 2012 vs. 2013 vs. 2014

The number of applications—both new and churn—that are assigned to a Servicing Carrier or a Direct Assignment Carrier (if applicable).





# Arkansas Residual Market Performance Report

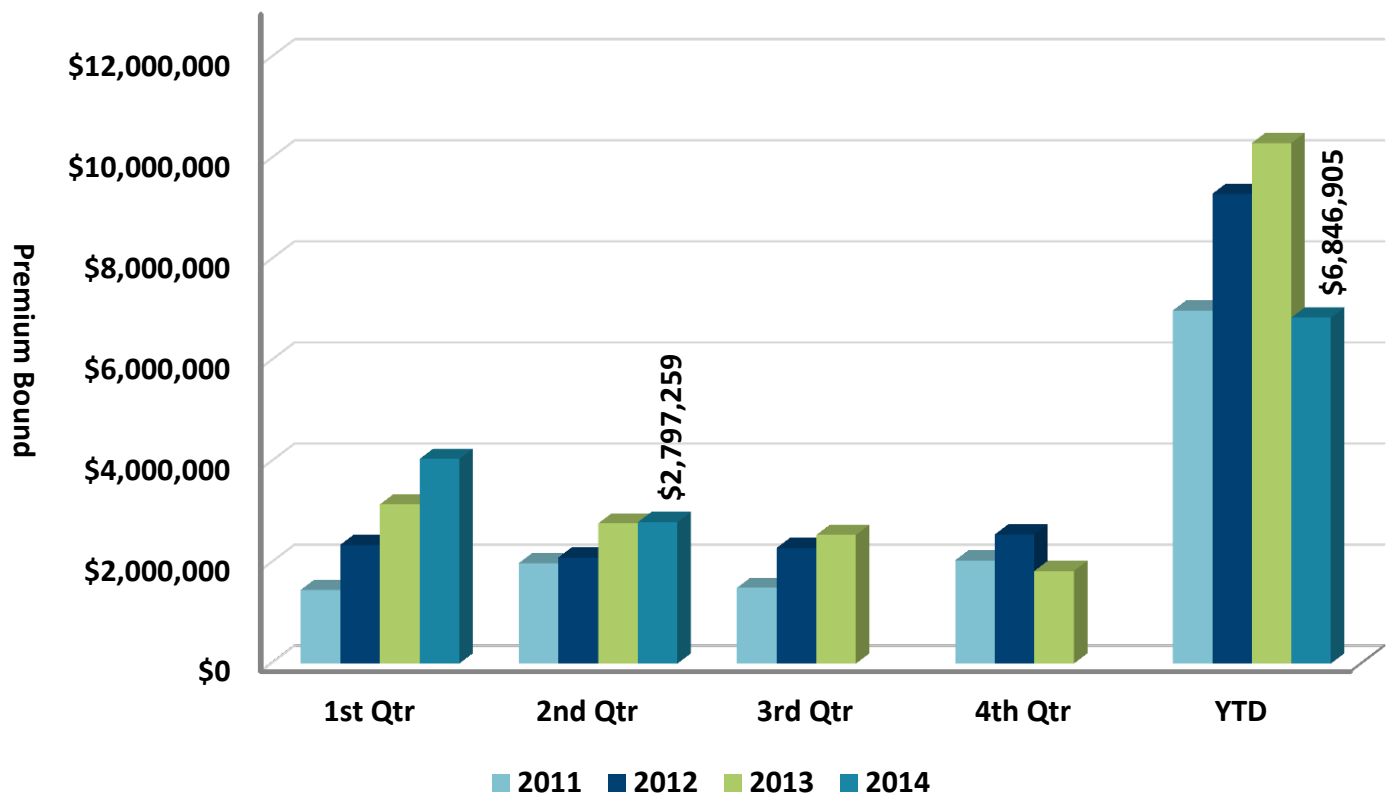
April 1, 2014 – June 30, 2014

## Residual Market Demographics

### Total Application Premium Bound

#### 2011 vs. 2012 vs. 2013 vs. 2014

The total estimated premium on bound applications—both new and churn—that are assigned to a Servicing Carrier or a Direct Assignment Carrier (if applicable).





# Arkansas Residual Market Performance Report

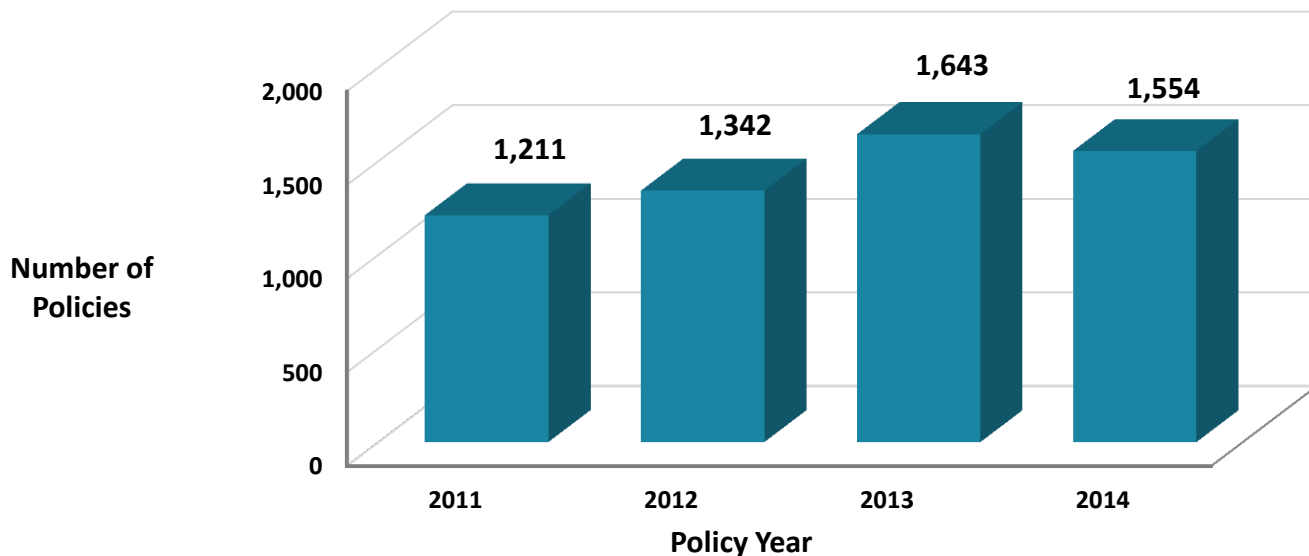
April 1, 2014 – June 30, 2014

## Residual Market Demographics

### Residual Market Total Policy Counts

#### Second Quarter Data for Policies Reported through June 30, 2014

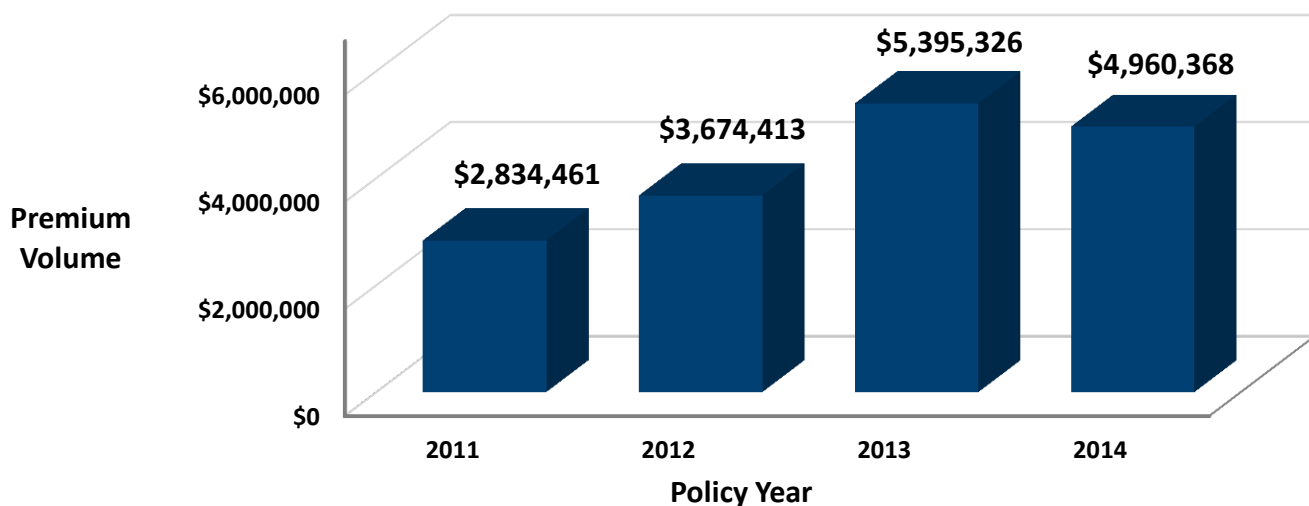
Total number of all Assigned Risk Plan policies effective during and reported as of the date listed above.



### Residual Market Total Premium Volume

#### Second Quarter Data Reported through June 30, 2014

Total amount of all Assigned Risk Plan premium effective during and reported as of the date listed above.





# Arkansas Residual Market Performance Report

April 1, 2014 – June 30, 2014

## Residual Market Demographics

### Residual Market Total Policies and Premium in Force

#### As of June 30, 2014—compared to prior year

Total number of Assigned Risk Plan policies and estimated premium volume in force reported as of the date listed above. The other exhibits in this report describe quarterly and year-to-date data.

	2013	2014	2013 vs. 2014 #	2013 vs. 2014 %
<b>Policy Count</b>	6,005	6,218	213	3.5%
<b>Premium Volume</b>	20,447,378	22,976,127	2,528,749	12.4%





# Arkansas Residual Market Performance Report

April 1, 2014 – June 30, 2014

## Residual Market Demographics

### Total Premium Distribution by Size of Risk

#### Second Quarter Data Reported through June 30, 2014

The total number of Assigned Risk Plan policies reported to NCCI 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	1,120	72.1%	\$1,088,467	21.9%	\$971
\$2500–4999	210	13.5%	\$738,383	14.9%	\$3,516
\$5000–9999	126	8.1%	\$871,721	17.6%	\$6,918
\$10000–19999	60	3.9%	\$854,751	17.2%	\$14,245
\$20000–49999	30	1.9%	\$887,208	17.9%	\$29,573
\$50000–99999	8	0.5%	\$519,838	10.5%	\$64,979
\$100000–199999	0	0.0%	\$0	0.0%	\$0
\$200000 +	0	0.0%	\$0	0.0%	\$0
Total	1,554	100.0%	\$4,960,368	100.0%	\$3,192

### Second Quarter 2013 Data for Comparison

Premium Interval	Policy Count	% of Total Policies	Total State Premium	% of Total Premium	Average Premium
\$0–2499	1,225	74.6%	\$1,089,326	20.2%	\$889
\$2500–4999	190	11.6%	\$664,625	12.3%	\$3,498
\$5000–9999	122	7.4%	\$855,644	15.9%	\$7,013
\$10000–19999	66	4.0%	\$922,037	17.1%	\$13,970
\$20000–49999	30	1.8%	\$865,754	16.1%	\$28,858
\$50000–99999	7	0.4%	\$524,580	9.7%	\$74,940
\$100000–199999	3	0.2%	\$473,360	8.8%	\$157,786
\$200000 +	0	0.0%	\$0	0.0%	\$0
Total	1,643	100.0%	\$5,395,326	100.0%	\$3,284



# Arkansas Residual Market Performance Report

April 1, 2014 – June 30, 2014

## Residual Market Demographics

### Residual Market Top 10 Classification Codes by Policy Count

#### Second Quarter Data Reported through June 30, 2014

The top 10 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 CONSTRUCTION OF RESIDENTIAL DWELLINGS NOT EXCEEDING THREE STORIES IN HEIGHT	295	19.0%
2	5551	ROOFING-ALL KINDS & DRIVERS	53	3.4%
3	5022	MASONRY NOC	49	3.2%
4	5437	CARPENTRY-INSTALLATION OF CABINET WORK OR INTERIOR TRIM	41	2.6%
5	5183	PLUMBING NOC & DRIVERS	39	2.5%
6	5403	CARPENTRY NOC	36	2.3%
7	6217	EXCAVATION & DRIVERS	35	2.3%
8	5474	PAINTING NOC & SHOP OPERATIONS DRIVERS	34	2.2%
9	7228	TRUCKING-LOCAL HAULING ONLY-& DRIVERS	34	2.2%
10	9014	JANITORIAL SERVICES BY CONTRACTORS-NO WINDOW CLEANING ABOVE GROUND LEVEL & DRIVERS	31	2.0%

### Residual Market Top 10 Classification Codes by Premium Volume

#### Second Quarter Data Reported through June 30, 2014

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 CONSTRUCTION OF RESIDENTIAL DWELLINGS NOT EXCEEDING THREE STORIES IN HEIGHT	\$553,235	11.2%
2	7228	TRUCKING-LOCAL HAULING ONLY-& DRIVERS	\$226,332	4.6%
3	5551	ROOFING-ALL KINDS & DRIVERS	\$173,863	3.5%
4	7229	TRUCKING-LONG DISTANCE HAULING-& DRIVERS	\$141,498	2.9%
5	0037	FARM: FIELD CROPS & DRIVERS	\$138,083	2.8%
6	6217	EXCAVATION & DRIVERS	\$116,700	2.4%
7	5445	WALLBOARD SHEETROCK DRYWALL PLASTERBOARD OR CEMENT BOARD INSTALLATION WITHIN BUILDINGS	\$114,263	2.3%
8	5403	CARPENTRY NOC	\$100,501	2.0%
9	8018	STORE: WHOLESALE NOC	\$100,345	2.0%
10	3724	MACHINERY OR EQUIPMENT ERECTION OR REPAIR NOC & DRIVERS	\$97,659	2.0%



# Arkansas Residual Market Performance Report

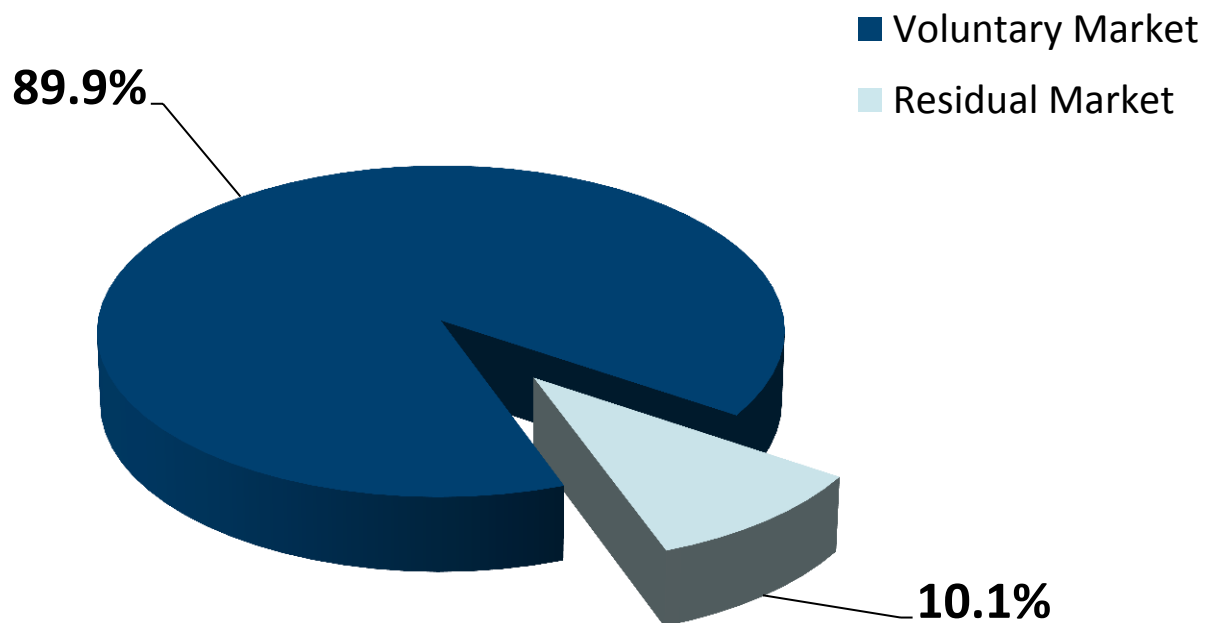
April 1, 2014 – June 30, 2014

## Residual Market Demographics

### Residual Market Share

Second Quarter Data through June 30, 2014

States estimated residual market share compared to the voluntary market share by written premium.





# Arkansas Residual Market Performance Report

April 1, 2014 – June 30, 2014

## Residual Market Demographics

### Voluntary Coverage Assistance Program

#### Second Quarter Data through June 30, 2014

The volume of assigned risk applications redirected to the voluntary market through NCCI's **VCAP<sup>®</sup> Service**. The following shows the results **VCAP<sup>®</sup> Service** has provided during First Quarter 2014.

Number of Applications Reviewed by <b>VCAP<sup>®</sup> Service</b>	992
Associated Premium for Applications Reviewed	\$2,911,332.64
Number of <b>VCAP<sup>®</sup> Service</b> Matches	143
<b>VCAP<sup>®</sup> Service</b> Matches as a % of Applications Reviewed	14.42%
Number of <b>VCAP<sup>®</sup> Service</b> Offers	4
<b>VCAP<sup>®</sup> Service</b> Offers as a % of Matches	2.80%
Number of Confirmed <b>VCAP<sup>®</sup> Service</b> Policies	4
Confirmed <b>VCAP<sup>®</sup> Service</b> Policies as a % of Applications Reviewed	0.40%
Redirected Assigned Risk Premium	\$28,860.04
Associated Voluntary Market Premium	\$26,695.00
Savings	\$2,165.04
Average Savings per Application	\$541.26
Savings as a % of Redirected Assigned Risk Premium	7.50%
Redirected Premium as a % of Associated Premium for Applications Reviewed by <b>VCAP<sup>®</sup> Service</b>	0.99%



# Arkansas Residual Market Performance Report

April 1, 2014 – June 30, 2014

## Residual Market Demographics

### Collections/Indemnification

The following shows a comparison of gross written premium and uncollectible premium reported in Arkansas for Policy Years 2010-2014, obtained through NP-4 and NP-5 reports including traumatic and black lung claims, evaluated through First Quarter 2014.

Policy Year	Gross Written Premium	Uncollectible Premium	Percentage
2010	\$10,896,473	\$593,879	5.5%
2011	\$14,653,834	\$1,406,608	9.6%
2012	\$20,355,574	\$901,198	4.4%
2013	\$24,230,160	*	N/A
2014	\$4,803,560	*	N/A

\* The uncollectible premiums provided are reported by the servicing carriers on a quarterly basis.

Uncollectible premium is generally reported up to 24 months after the policy expiration date due to audit, billing, and collection requirements. Therefore, the uncollectible premium data has not yet developed for the more recent policy years.





# Arkansas Residual Market Performance Report

April 1, 2014 – June 30, 2014

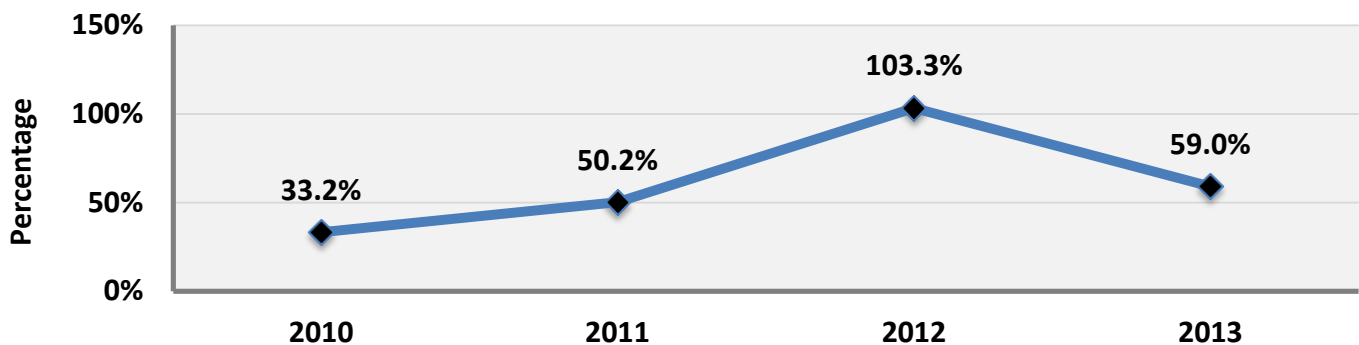
## Residual Market Demographics

### Arkansas Residual Market Reinsurance Pool Booked Loss Ratio

#### Policy Year Financial Results through 1st Quarter 2014 for 2014 and prior years\*

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

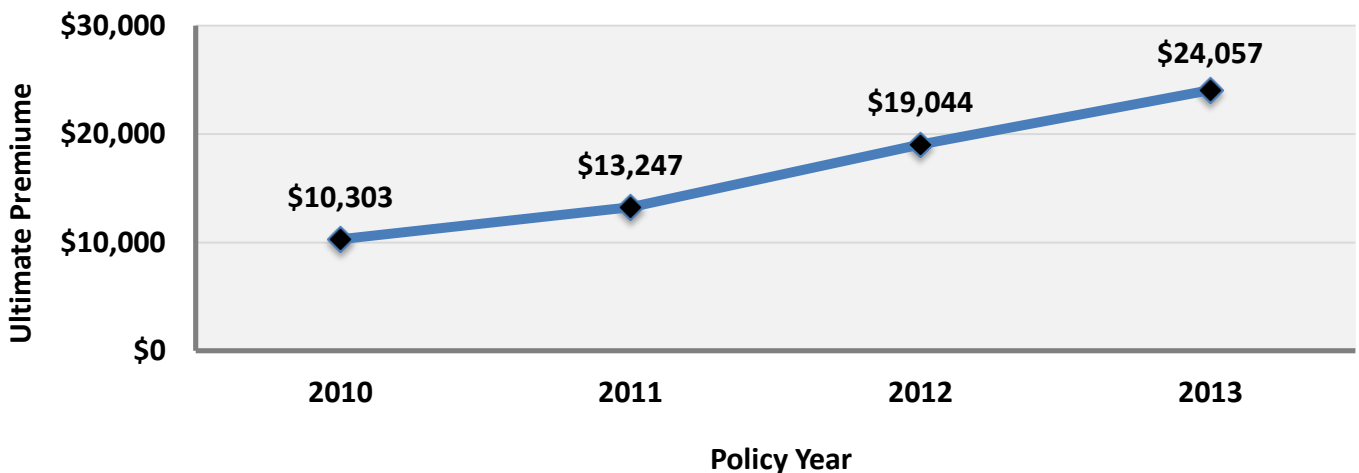
#### Booked Loss Ratio



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

#### Policy Year Financial Results through 1st Quarter 2014 for 2014 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.



\* Second Quarter 2014 data will be available the end of October 2014 due to the timing of data reporting



# Arkansas Residual Market Performance Report

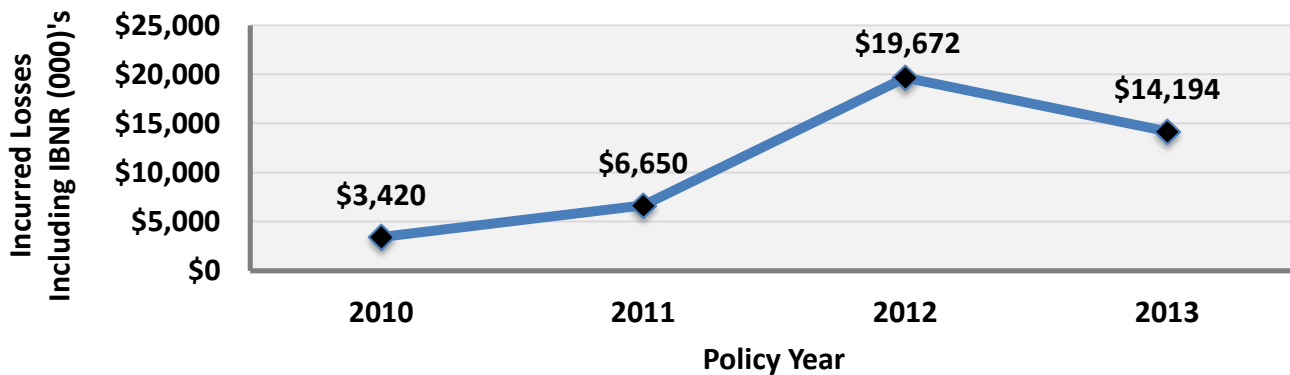
April 1, 2014 – June 30, 2014

## Residual Market Demographics

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

#### Policy Year Financial Results through 1st Quarter 2014 for 2014 and prior years\*

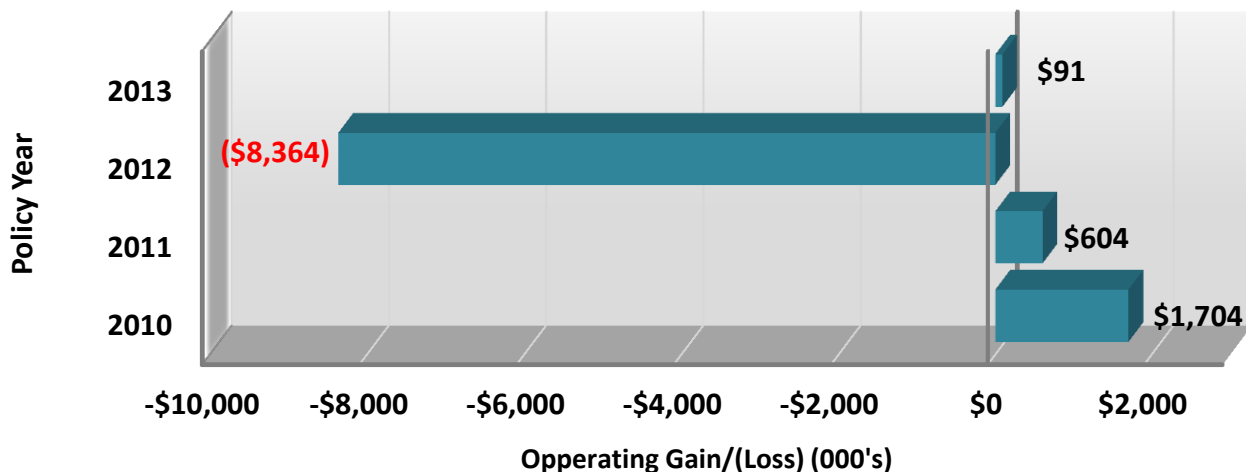
Policy year incurred losses reflect paid losses, case reserves and IBNR reserves for policies written in a particular policy year in that state.



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

#### Policy Year Financial Results through 1st Quarter 2014 for 2014 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.



\* Second Quarter 2014 data will be available the end of October 2014 due to the timing of data reporting



# Arkansas Residual Market Performance Report

April 1, 2014 – June 30, 2014

## Glossary of Terms

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

**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.

**In Force (Policies/Premium)**—All policies and associated estimated premium that are current as of a given date.

**Incurred But Not Reported (IBNR)**—Pertaining to losses where the events that 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.

**Loss Ratio**—The ratio of total incurred losses to total earned premiums in a given period, expressed as a percentage. The formula for loss ratio is  $(\text{loss} + \text{loss adjustment expense}) / \text{earned premium}$ .

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

**Residual Market Share**—The ratio of assigned risk premium (pool plus direct assignment) to the total net direct written premium.

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

**VCAP<sup>®</sup> Service**—Voluntary Coverage Assistance Program is a supplemental program to NCCI’s Workers Compensation Insurance Plan. As part of NCCI’s strategic vision of maintaining and depopulating the residual market, NCCI’s **VCAP<sup>®</sup> Service** redirects coverage opportunities for employers to voluntary market insurers, which generally provide coverage at a lower cost. **VCAP<sup>®</sup> Service** provides an additional source for producers and employers to secure voluntary workers compensation coverage prior to entering the residual market for coverage.



2014 Annual Issues Symposium

## State of the Line

Kathy Antonello, FCAS, FSA, MAAA  
NCCI Chief Actuary

May 8, 2014  
Orlando, Florida

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- Property/Casualty Results
- Workers Compensation Results
- Concluding Remarks

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## Exhibit C

### P/C Industry Net Written Premium Increased for All Major Lines

Private Carriers

Line of Business (LOB)	2011 (\$Billions)	2012 (\$Billions)	2013p (\$Billions)	2012- 2013p Change (%)
Personal Auto	\$ 163.2	\$ 167.7	\$ 174.4	4.0%
Homeowners	\$ 63.4	\$ 67.9	\$ 72.8	7.2%
Other Liability (Incl Prod Liab)	\$ 38.9	\$ 40.7	\$ 44.3	9.0%
<b>Workers Compensation</b>	<b>\$ 32.3</b>	<b>\$ 35.1</b>	<b>\$ 37.0</b>	<b>5.4%</b>
Commercial Multiple Peril	\$ 29.6	\$ 31.0	\$ 32.3	4.2%
Fire & Allied Lines (Incl EQ)	\$ 24.6	\$ 24.7	\$ 25.7	4.1%
Commercial Auto	\$ 21.0	\$ 21.8	\$ 22.9	5.0%
All Other Lines	\$ 65.0	\$ 67.8	\$ 68.2	0.6%
<b>Total P/C Industry</b>	<b>\$ 438.0</b>	<b>\$ 456.7</b>	<b>\$ 477.7</b>	<b>4.6%</b>

### Property/Casualty (P/C) Results

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p Preliminary

Sources: LOB Annual Statement data  
Workers Compensation (WC), NCCI; Total P/C Industry, Insurance Services Office, Inc. (ISO)

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## P/C Industry Achieved Overall Underwriting Gain

Net Combined Ratio—Private Carriers

Line of Business (LOB)	Calendar Year		
	2011	2012	2013p
Personal Auto	102%	102%	100%
Homeowners	122%	102%	90%
Other Liability (Incl Prod Liab)	100%	103%	99%
<b>Workers Compensation</b>	<b>115%</b>	<b>108%</b>	<b>101%</b>
Commercial Multiple Peril	113%	106%	96%
Fire & Allied Lines (Incl EQ)	102%	103%	84%
Commercial Auto	104%	107%	105%
All Other Lines	112%	100%	86%
<b>Total P/C Industry</b>	<b>108%</b>	<b>103%</b>	<b>96%</b>

p Preliminary

Sources: LOB, Annual Statement data

Workers Compensation, NCCI; Total P/C Industry, ISO

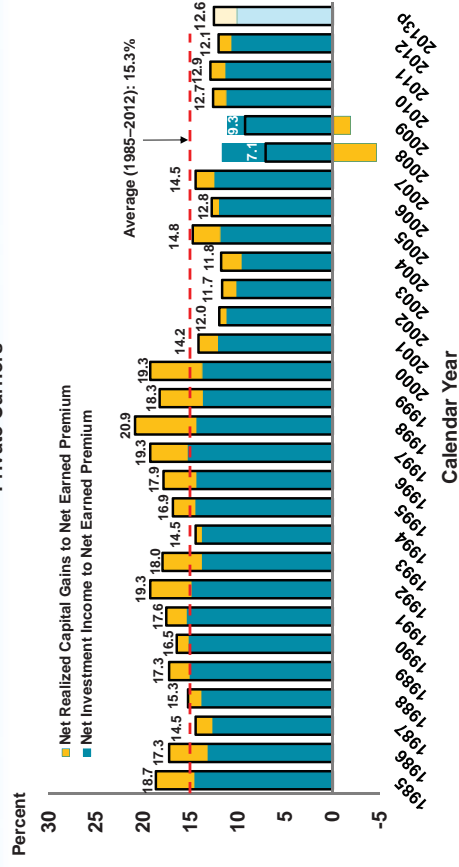
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## P/C Investment Gain Ratio Remained Steady

Private Carriers



p Preliminary

Sources: 1985–2007, Annual Statement data; 2008–2013p, ISO

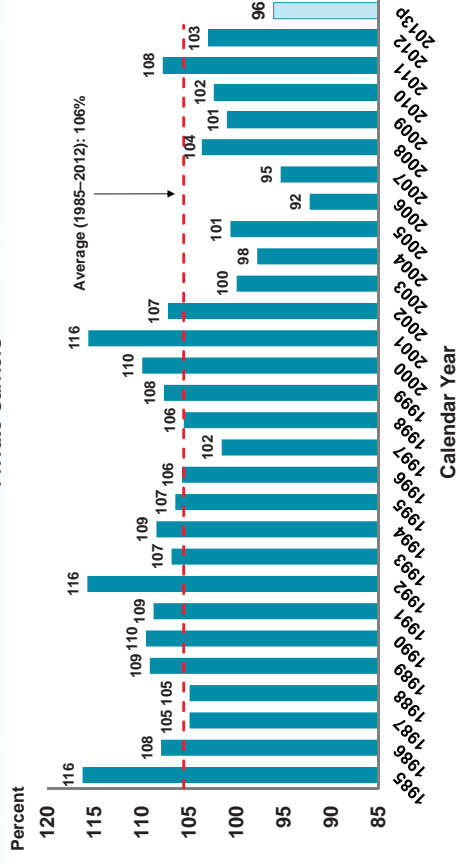
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## P/C Industry Calendar Year Net Combined Ratios

Private Carriers



p Preliminary

Sources: 1985–2007, Annual Statement data; 2008–2013p, ISO

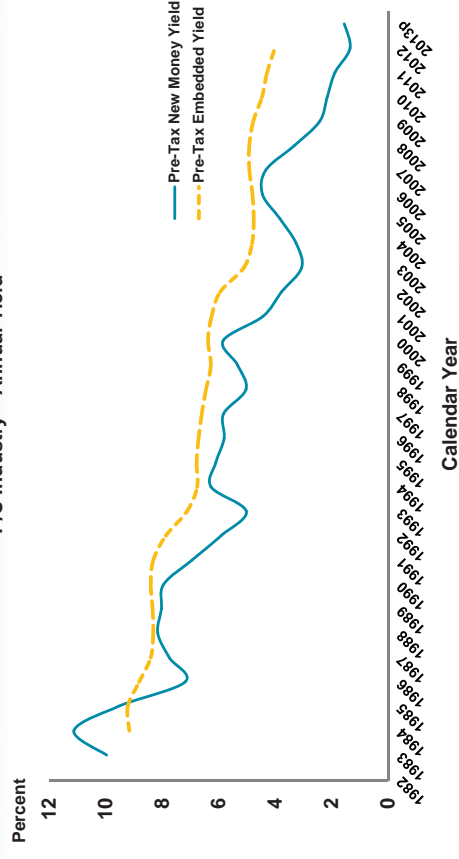
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## Embedded Yields Remained Notably Higher Than New Money Yields

P/C Industry—Annual Yield



p Preliminary

Embedded Yield is the reported investment income for bond instruments divided by the asset value of those instruments

New Money Yield is the pre-tax yield on bonds

Sources: NCCI, Best's Aggregates & Averages, Federal Reserve Bank, ValueLine, Treasury Direct, Barron's

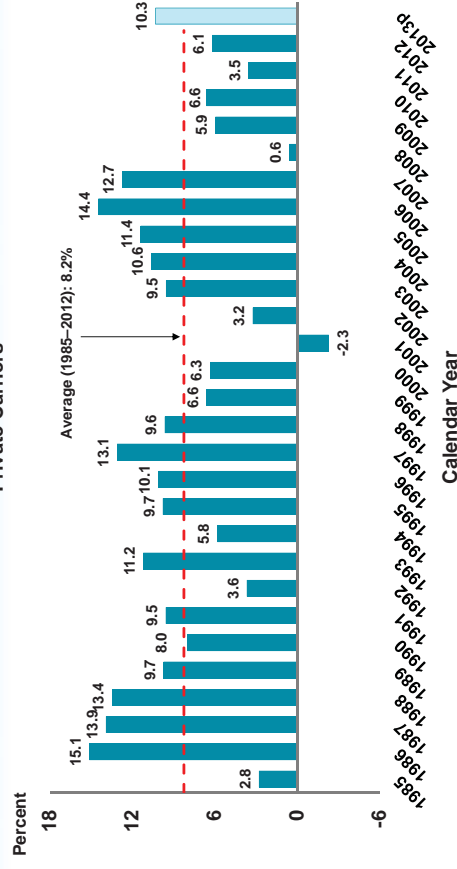
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## P/C Industry Return on Surplus

Annual After-Tax Return on Surplus  
Private Carriers



p Preliminary

After-tax return on average surplus, excluding unrealized capital gains

Sources: 1985-2007, Annual Statement data; 2008-2013p, ISO

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## P/C Industry Contributions to Surplus

Private Carriers

	(\$ Billions)	
	2011	2012
Underwriting Gains/Losses	(36.2)	(15.4)
Investment Income	49.2	48.0
Realized Capital Gains/Losses	7.0	6.2
Other Income	2.5	2.4
Unrealized Capital Gains/Losses	(4.4)	18.5
Federal Taxes	(3.0)	(6.1)
Shareholder Dividends	(25.9)	(23.8)
Contributed Capital	2.3	4.6
Other Changes to Surplus	3.1	(1.1)
Total	(5.4)	33.3
		66.3

p Preliminary

Source: ISO

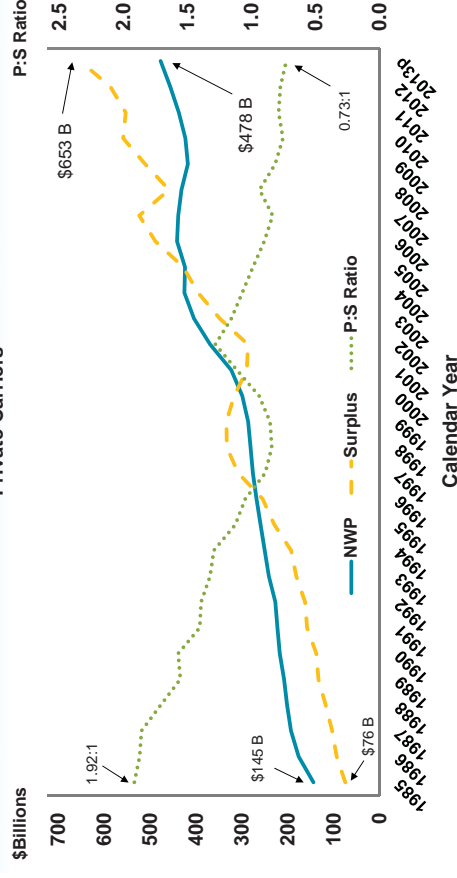
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## P/C Industry Premium-to-Surplus Ratio at Historic Low

Private Carriers



p Preliminary

Sources: 1985-2007, Annual Statement data; 2008-2013p, ISO

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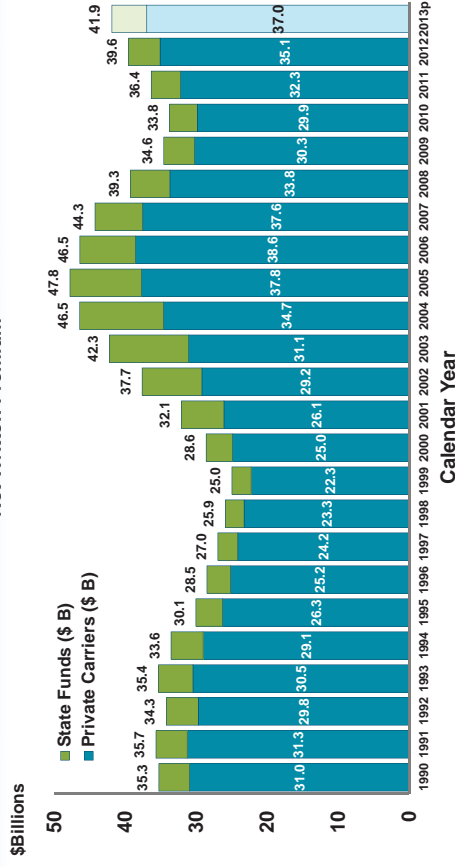
## Workers Compensation Results

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## Workers Compensation Premium Growth Continued

Net Written Premium



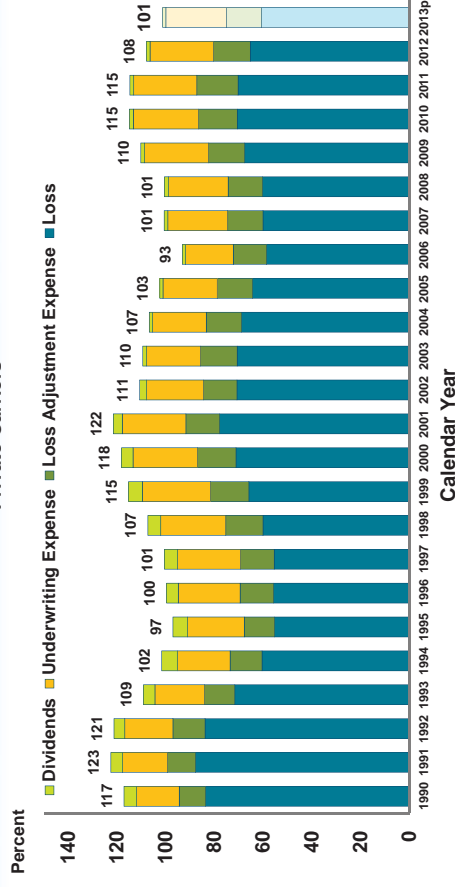
**Preliminary**  
Includes state insurance fund data for the following states: AZ, CA, CO, HI, ID, KY, LA, MD, MI, MT, NM, OK, OR, RI, TX, and UT.  
Each calendar year total for state funds includes all funds operating as a state fund in that year.  
Sources: 1990–2012, Annual Statement data, 2013p, NCCI  
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## Workers Compensation Combined Ratio Improved Again

Private Carriers



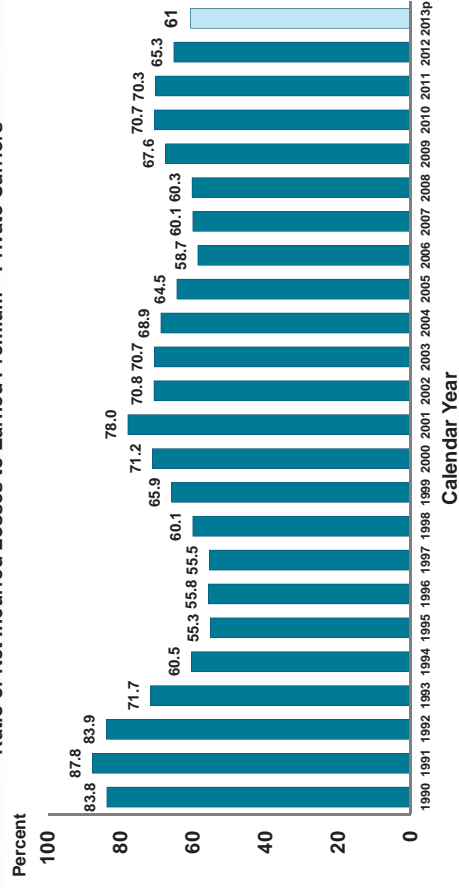
**Preliminary**  
Sources: 1990–2012, Annual Statement data, 2013p, NCCI  
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## Workers Compensation Calendar Year Loss Ratio

Ratio of Net Incurred Losses to Earned Premium—Private Carriers



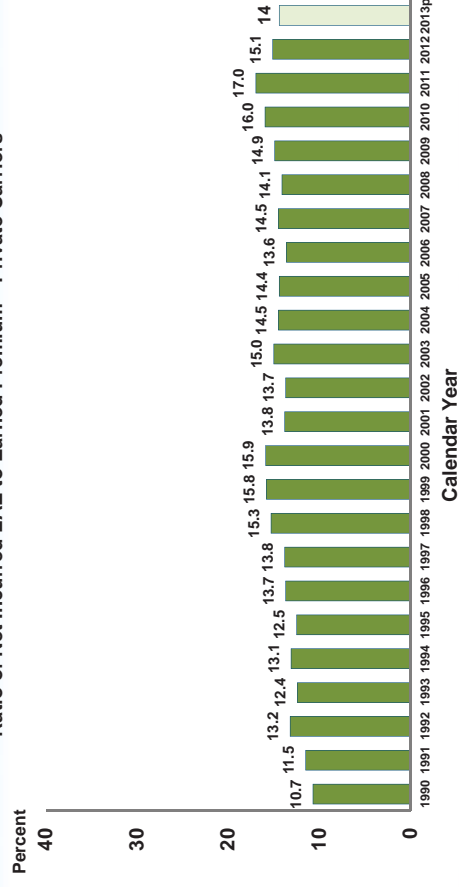
**Preliminary**  
Sources: 1990–2012, Annual Statement data, 2013p, NCCI  
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## Workers Compensation Calendar Year Loss Adjustment Expense (LAE) Ratio

Ratio of Net Incurred LAE to Earned Premium—Private Carriers



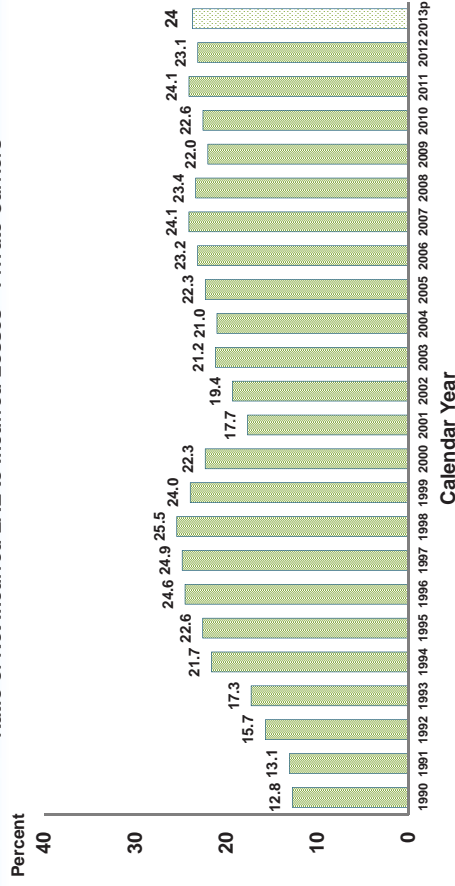
**Preliminary**  
Ratio of Incurred (Defense and Cost Containment Expense plus Adjusting and Other Expense) to Earned Premium  
Sources: 1990–2012, Annual Statement data, 2013p, NCCI  
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## Workers Compensation Calendar Year Loss Adjustment Expense to Loss Ratio

Ratio of Net Incurred LAE to Incurred Losses—Private Carriers

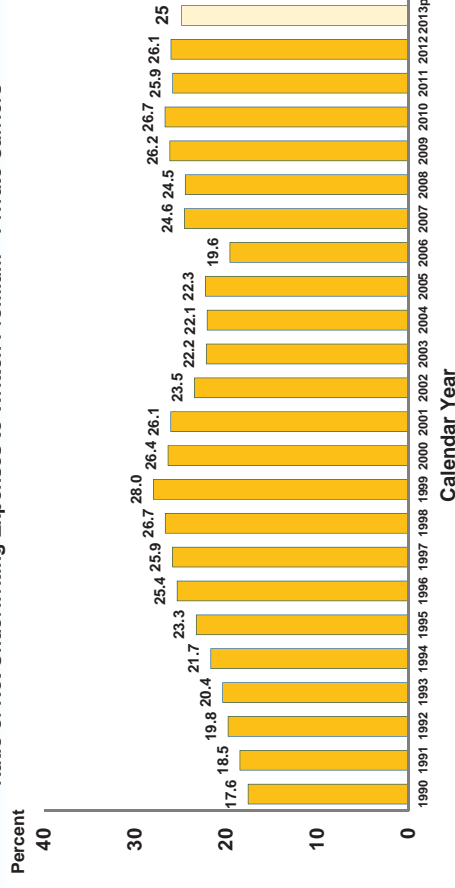


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## Workers Compensation Calendar Year Underwriting Expense Ratio

Ratio of Net Underwriting Expenses to Written Premium—Private Carriers

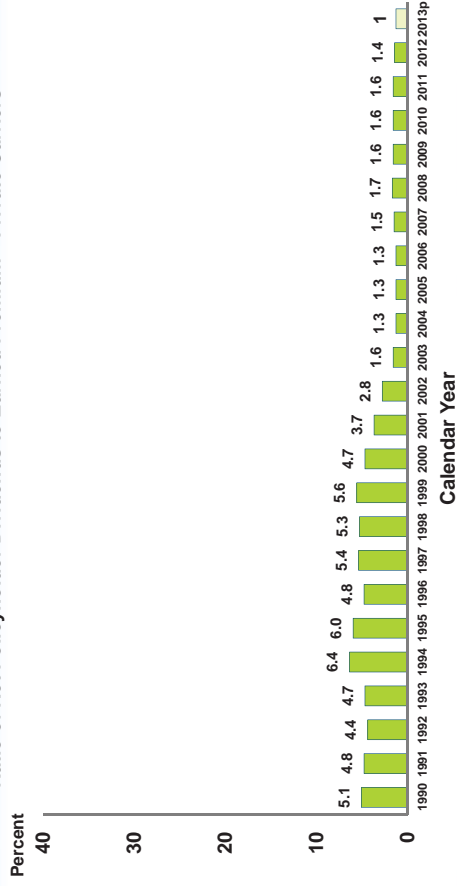


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## Workers Compensation Calendar Year Policyholder Dividend Ratio

Ratio of Net Policyholder Dividends to Earned Premium—Private Carriers

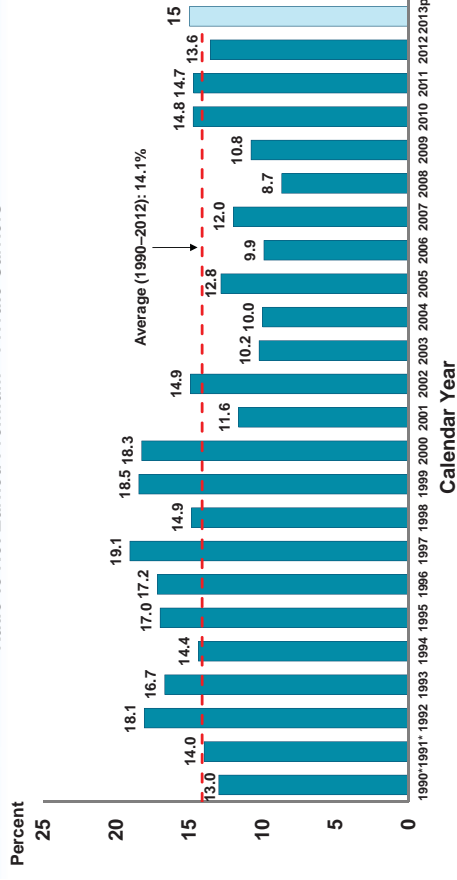


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## Workers Compensation Investment Gain on Insurance Transactions

Ratio to Net Earned Premium—Private Carriers

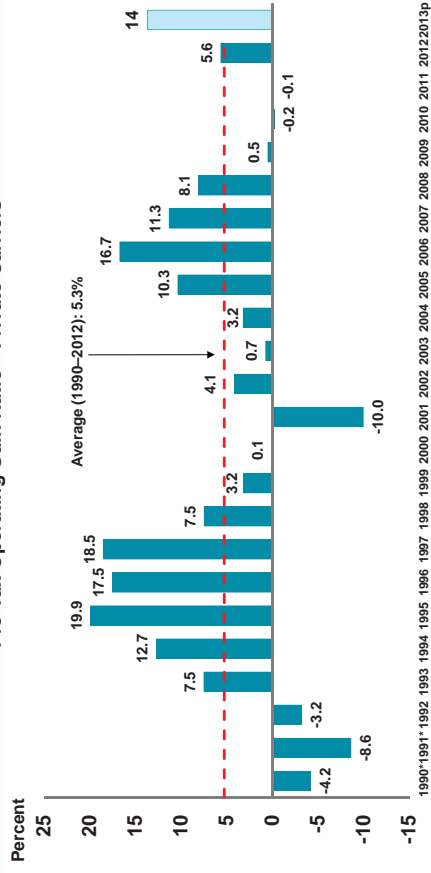


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## Workers Compensation Operating Gain Rose Sharply Pre-Tax Operating Gain Ratio—Private Carriers

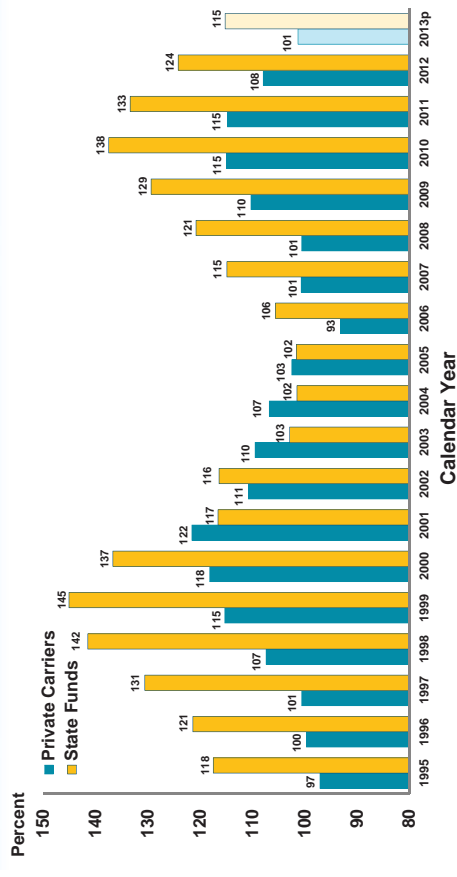


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Preliminary  
Operating Gain Equals 1.00 minus (Combined Ratio) Less Investment Gain on Insurance Transactions and Other Income  
\*Adjusted to include realized capital gains to be consistent with 1992 and after  
Sources: 1990-2012, Annual Statement data, 2013p, NCCI  
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## Workers Compensation Calendar Year Net Combined Ratios

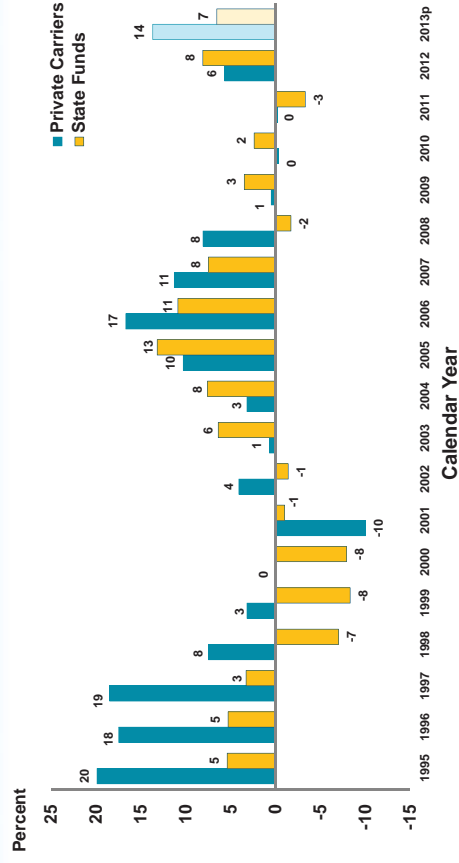


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Preliminary  
Includes state insurance fund data for the following states: AZ, CA, CO, HI, ID, KY, LA, MD, MO, MT, NM, OK, OR, RI, TX, and UT  
Each calendar year total for state funds includes all funds operating as a state fund in that year  
Sources: 1995-2012, Annual Statement data, 2013p, NCCI  
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## Workers Compensation Pre-Tax Operating Gain Ratios



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Preliminary  
Includes state insurance fund data for the following states: AZ, CA, CO, HI, ID, KY, LA, MD, MO, MT, NM, OK, OR, RI, TX, and UT  
Each calendar year total for state funds includes all funds operating as a state fund in that year  
Sources: 1995-2012, Annual Statement data, 2013p, NCCI  
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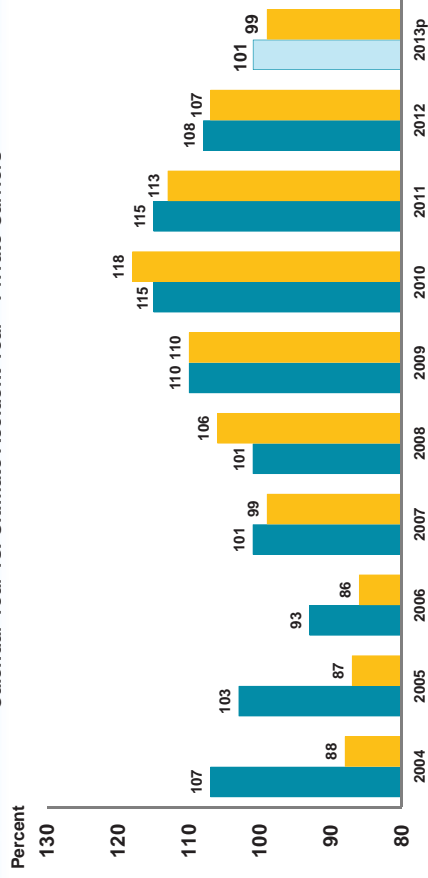
## Workers Compensation Accident Year Results and Reserve Estimates

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## Workers Compensation Accident Year Net Combined Ratios

Calendar Year vs. Ultimate Accident Year—Private Carriers



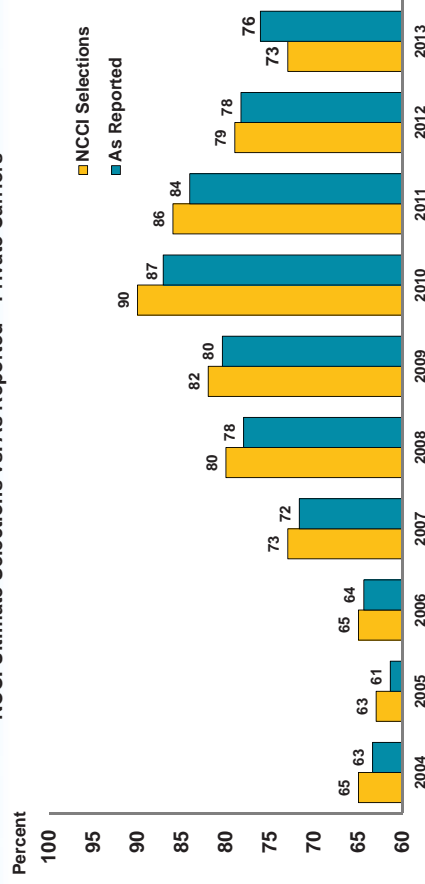
\* Preliminary  
 Accident Year data is evaluated as of 12/31/2013 and developed to ultimate  
 Sources: Calendar Years 2004–2012, Annual Statement data  
 Calendar Year 2013p and Ultimate Accident Years 2004–2013, NCCI  
 Includes dividends to policyholders  
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## Workers Compensation Accident Year Net Loss and LAE Ratios

NCCI Ultimate Selections vs. As Reported—Private Carriers



Accident Year

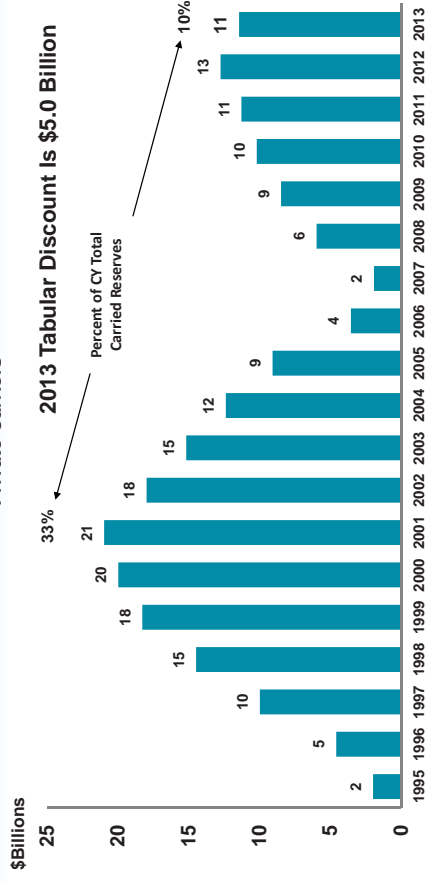
As Reported Loss and LAE ratios are net of tabular reserve discounts and gross of non-tabular reserve discounts  
 Sources: As Reported, Annual Statement Schedule P, Part 1D data as of 12/31/2013 by private carriers  
 NCCI Selections, NCCI Reserve Analysis  
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## Workers Compensation Loss and LAE Net Reserve Deficiencies

Private Carriers



Year-End Valuation

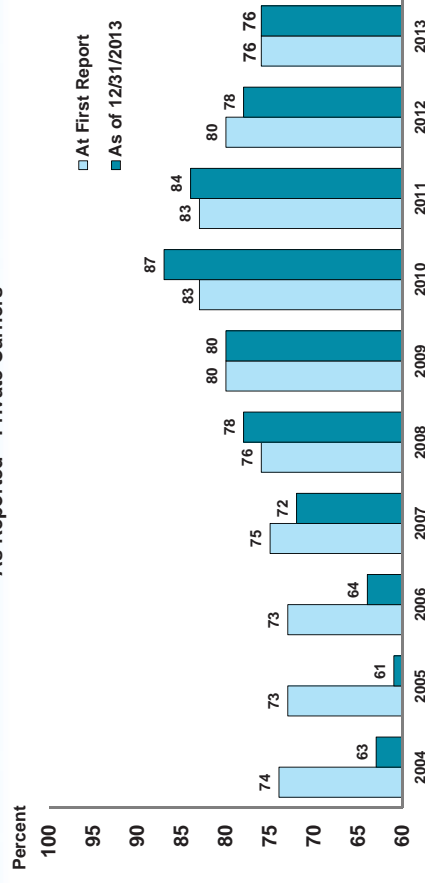
Loss and LAE figures are based on NAIC Annual Statement data for each year end valuation date and NCCI latest selections  
 Considers all reserve discounts as deficiencies  
 Source: NCCI  
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## Workers Compensation Accident Year Net Loss and LAE Ratios

As Reported—Private Carriers



Accident Year

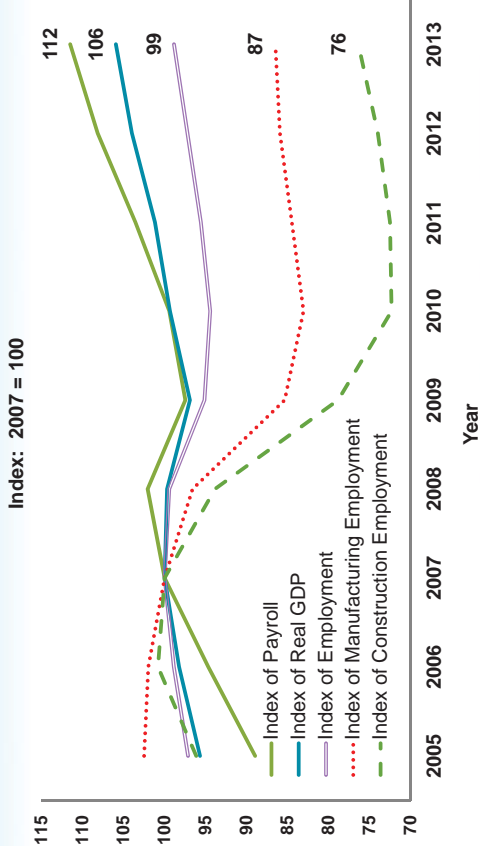
As Reported Loss and LAE ratios are net of tabular reserve discounts and gross of non-tabular reserve discounts  
 Source: Annual Statement Schedule P, Part 1D data as reported by private carriers  
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## Workers Compensation Premium Drivers

## Employment Nears Prerecession Levels



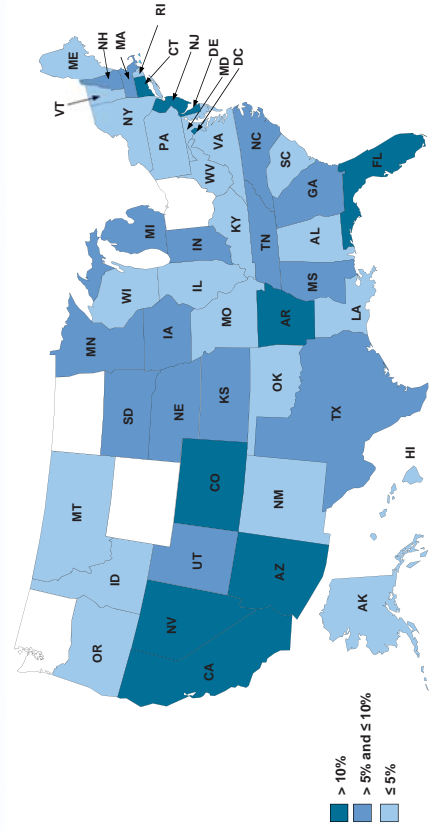
## Workers Compensation Written Premium Change

### Written Premium Change From 2012 to 2013

Net Written Premium—Countrywide	+ 5.4%
Direct Written Premium (DWP)—Countrywide	+ 7.8%
Direct Written Premium (DWP)—NCCI States	+ 7.3%
Components of DWP Change for NCCI States:	
Change in Carrier Estimated Payroll	+ 4.7%
Change in Bureau Loss Costs and Mix	− 0.3%
Change in Carrier Discounting	+ 2.3%
Impact of State Fund Conversion to Private Carrier	+ 1.0%
Change in Other Factors	− 0.5%
Combined Effect:	+ 7.3%

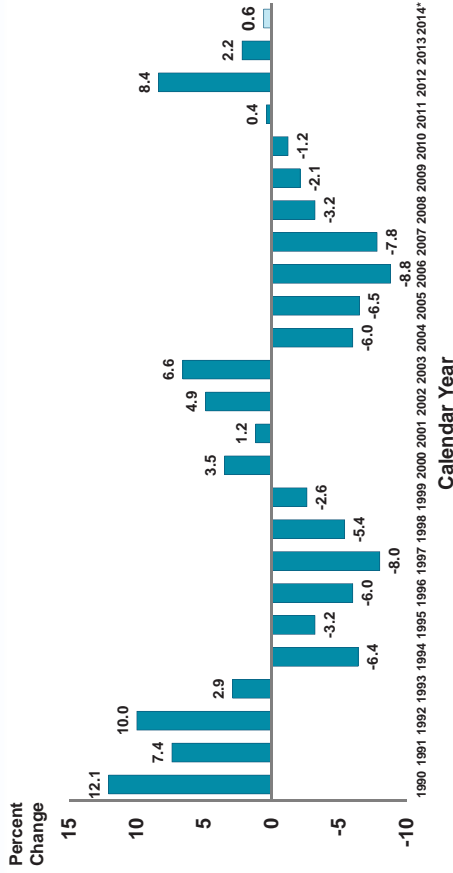
Sources: Countrywide: Annual Statement data; Private Carriers  
NCCI States: Annual Statement Statutory Page 14; Private Carriers: NCCI's ratemaking states  
Components: NCCI's policy data

## 2013 Workers Compensation Direct Written Premium Growth by State



Source: 2013, 2012, Annual Statement data; Exhibit of Premiums and Losses (Statutory Page 14)

## Workers Compensation Approved Changes in Bureau Rates/Loss Costs



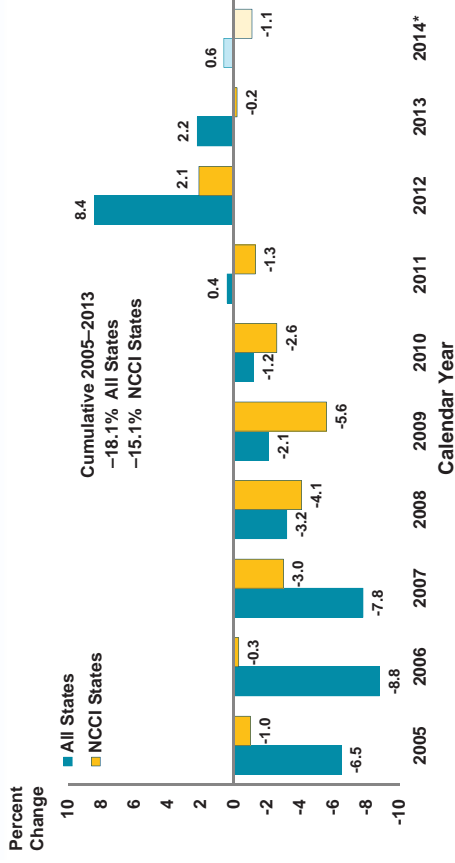
\*States approved through 4/8/2014  
 Nationwide approved changes in advisory rates, loss costs, and assigned risk rates as filed by the applicable rating organization, relative to the previously filed rates

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## Workers Compensation Approved Changes in Bureau Rates/Loss Costs



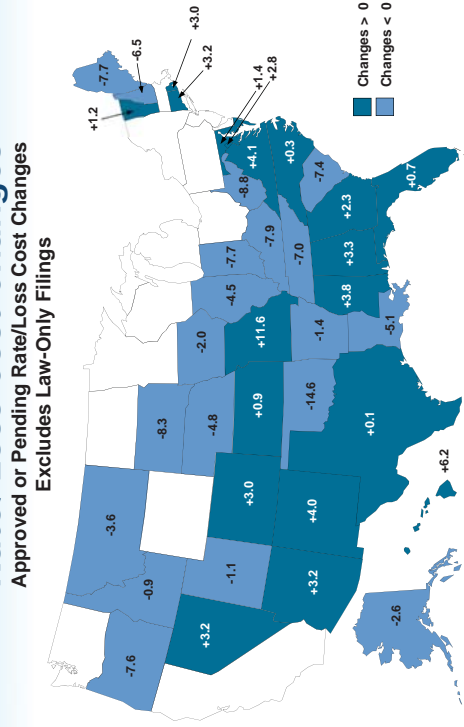
\*States approved through 4/8/2014  
 Nationwide approved changes in advisory rates, loss costs, and assigned risk rates as filed by the applicable rating organization, relative to the previously filed rates

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## Current NCCI Voluntary Market Rate/Loss Cost Changes



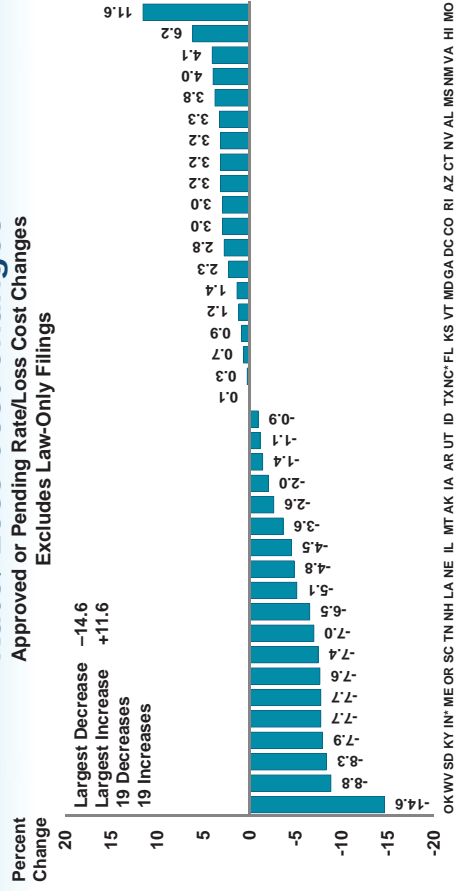
States approved or pending as of 4/8/2014  
 IN and NC filed in cooperation with state rating bureau

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## Current NCCI Voluntary Market Rate/Loss Cost Changes



States approved or pending as of 4/8/2014  
 \*IN and NC filed in cooperation with state rating bureau

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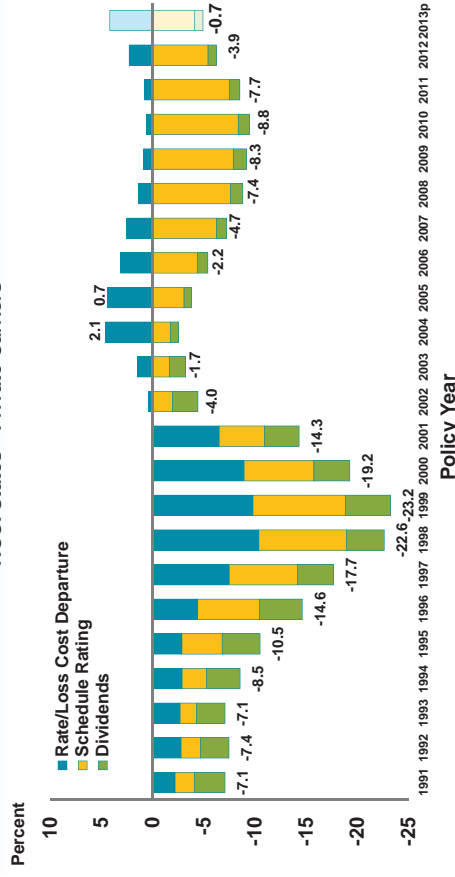
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## Workers Compensation Impact of Discounting on Premium

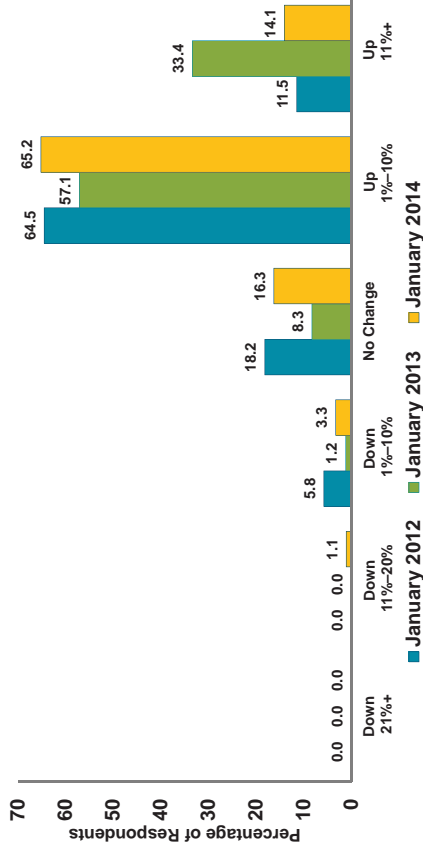
NCCI States—Private Carriers



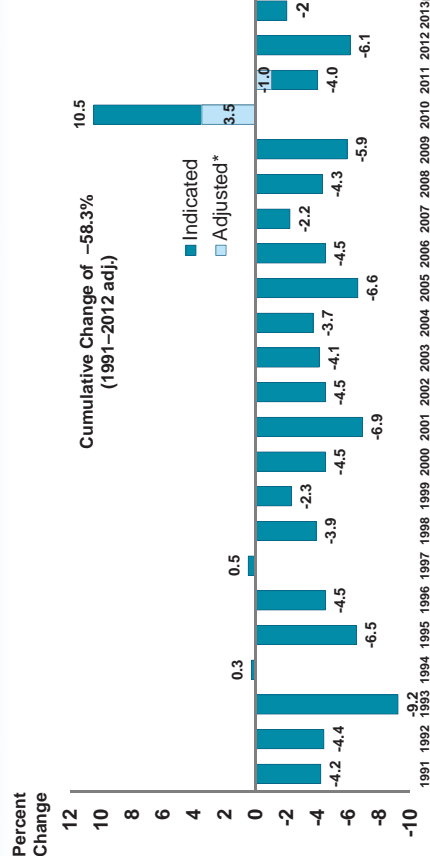
## Workers Compensation Loss Drivers

## Goldman Sachs Survey Indicates Price Increases Are Moderating

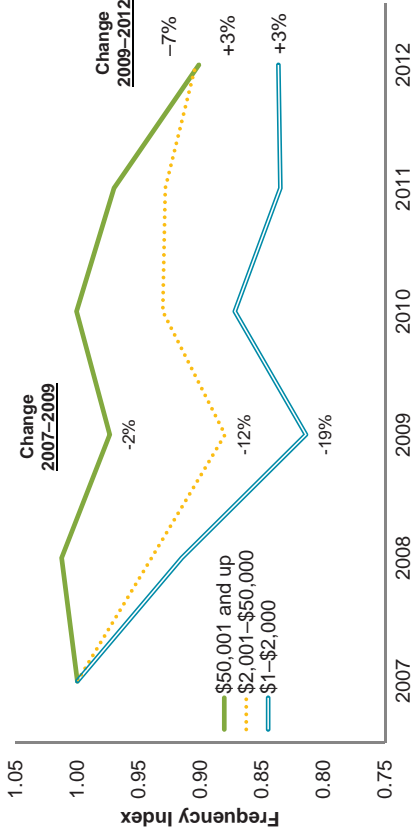
Agent Responses on Workers Compensation Rates on Renewals vs. 12 Months Prior



## Workers Compensation Lost-Time Claim Frequency Downtrend Continues



## Workers Compensation Lost-Time Claim Frequency by Size of Total Loss Indexed to 2007



Exposure Accident Year (EAY)

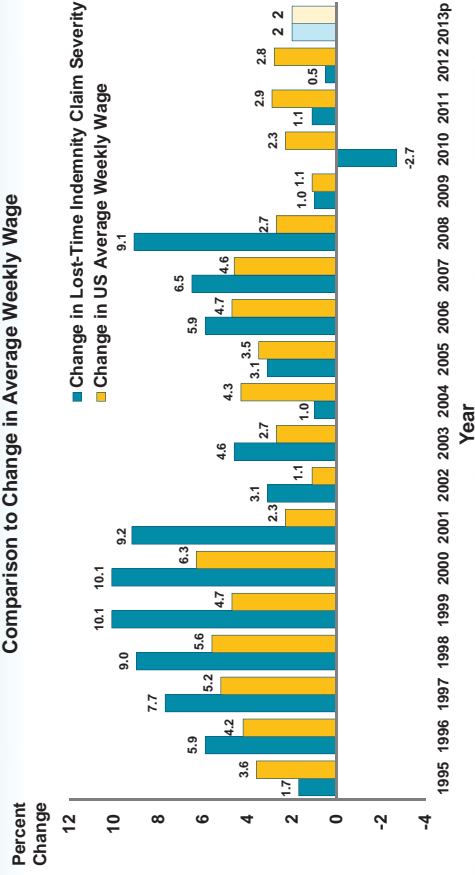
Lost-Time Frequency at 1st report per \$M wage adjusted on-level premium. Statistical Plan data. Premium is indexed to 2007 rate per \$M wage and was adjusted by state to EAY 2012. Prior to assigning individual claims to size of loss groupings, reported loss amounts are adjusted for inflation to EAY 2012. For all states where NCCI provides ratemaking services, excluding WV.

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## Workers Compensation Change in Indemnity Claim Severity Comparison to Change in Average Weekly Wage



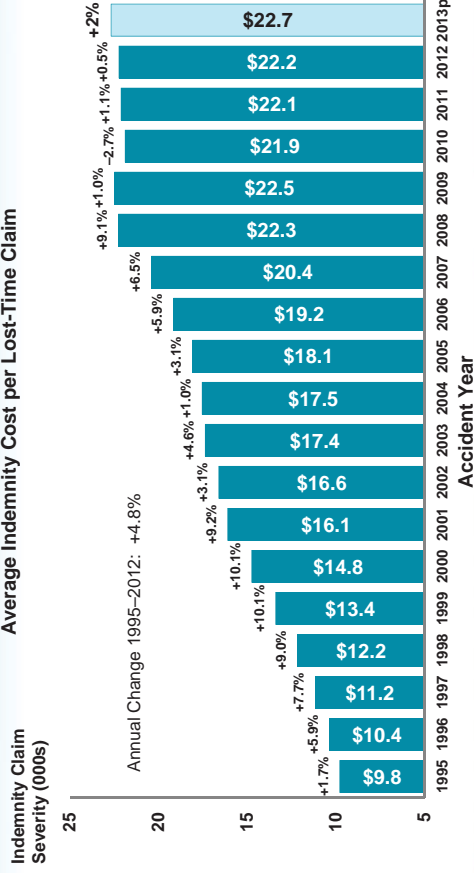
Change in lost-time indemnity claim severity, 2013p. Preliminary based on data valued as of 12/31/2013. 1995-2012: Based on data through 12/31/2012, developed to ultimate, excludes high deductible policies. Average severity for the states where NCCI provides ratemaking services, including state funds, excluding WV. Sources: US Average Weekly Wage: 1995-2007: Quarterly Census of Employment and Wages; 2008-2013p, NCCI. Moody's Economy.com

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## Workers Compensation Indemnity Claim Severity Increased Slightly Average Indemnity Cost per Lost-Time Claim



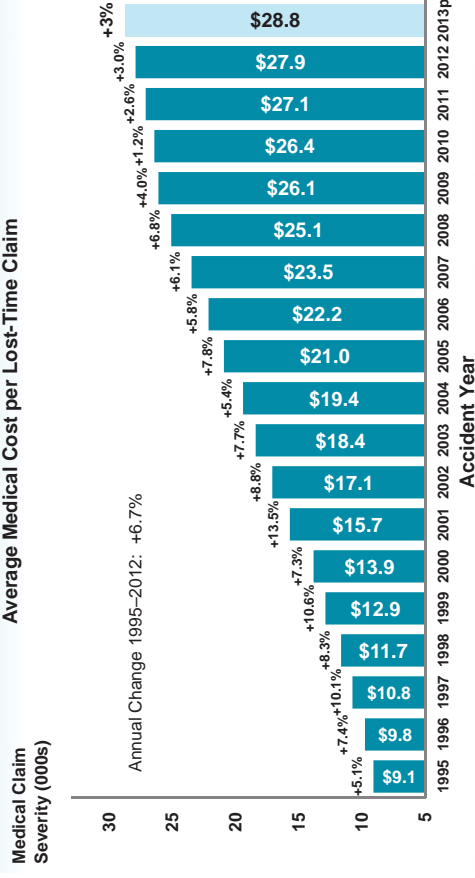
2013p. Preliminary based on data valued as of 12/31/2013. 1995-2012: Based on data through 12/31/2012, developed to ultimate, excludes high deductible policies. Average severity for the states where NCCI provides ratemaking services, including state funds, excluding WV.

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## Workers Compensation Medical Claim Severity Increased Moderately Average Medical Cost per Lost-Time Claim



2013p. Preliminary based on data valued as of 12/31/2013. 1995-2012: Based on data through 12/31/2012, developed to ultimate, excludes high deductible policies. Average severity for the states where NCCI provides ratemaking services, including state funds, excluding WV.

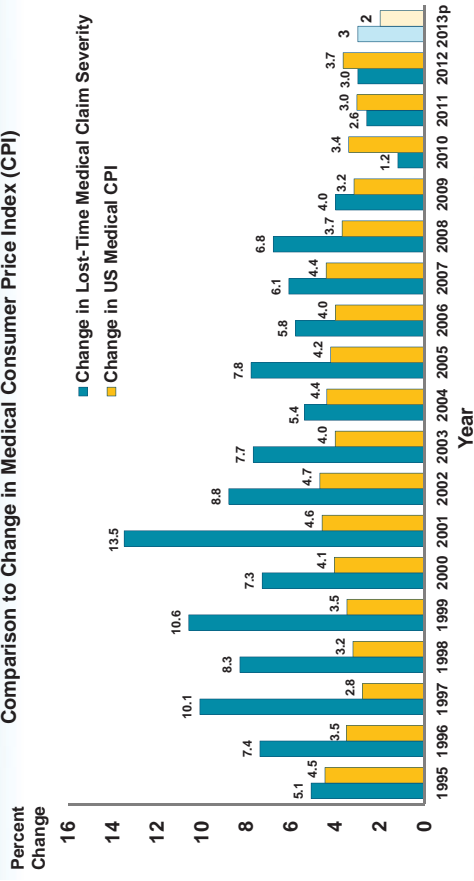
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## Workers Compensation Change in Medical Severity

Comparison to Change in Medical Consumer Price Index (CPI)



Change in lost-time medical claim severity, 2013p: Preliminary based on data collected as of 12/31/2013.  
1995-2012: Based on data through 12/31/2012. Developed to ultimate, excludes high deductible policies.  
Average severity for the states where NCCI provides ratemaking services, including state funds, excluding WV.  
Sources: US Medical CPI: US Bureau of Labor Statistics (BLS)

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## Workers Compensation Residual Market

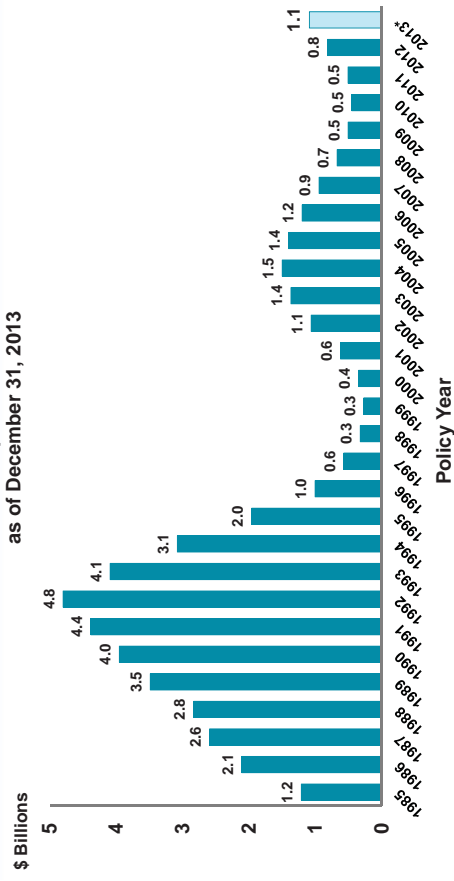
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## Workers Compensation Residual Market Premium

NCCI-Served Workers Compensation Residual Market Pools  
as of December 31, 2013



\*Incomplete policy year projected to ultimate

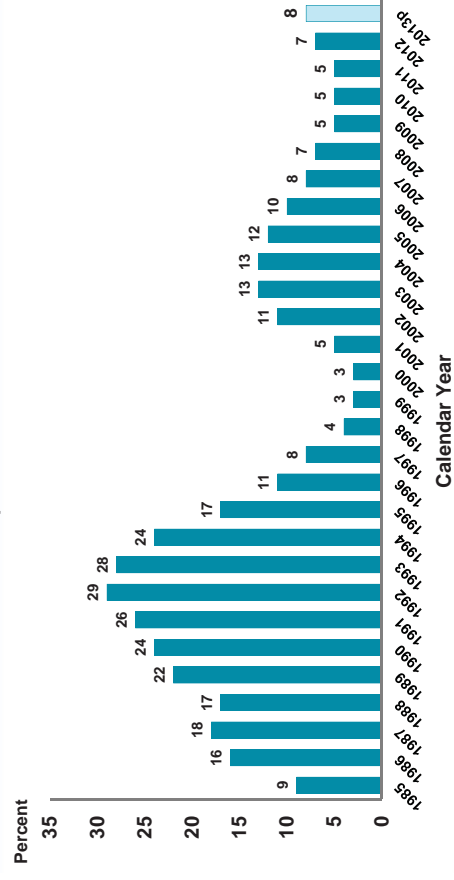
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## Workers Compensation Residual Market Share

Workers Compensation Insurance Plan States\*



\* Preliminary

\* States administered by NCCI

Source: NCCI, *Residual Market Management Summary*

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## Workers Compensation Residual Market Growth by Policy Size

Size of Risk	2012	2013	Change
\$ 0 – \$ 2,499	89.3 M	105.3 M	18%
\$ 2,500 – \$ 4,999	50.3 M	60.9 M	21%
\$ 5,000 – \$ 9,999	64.2 M	83.1 M	29%
\$ 10,000 – \$ 49,999	179.9 M	238.2 M	32%
\$ 50,000 – \$ 99,999	79.3 M	104.7 M	32%
\$ 100,000 and greater	116.5 M	165.6 M	42%
<b>Total</b>	<b>579.6 M</b>	<b>757.7 M</b>	<b>31%</b>

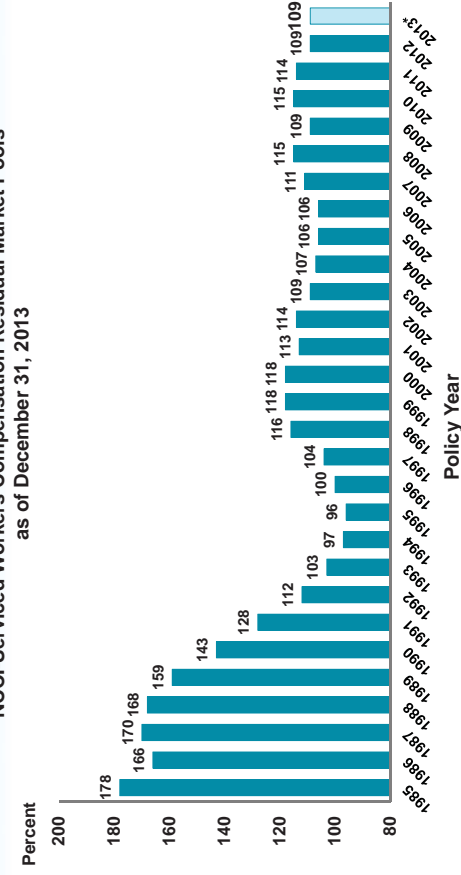
Total estimated annual premium  
Includes residual market policies for AK, AL, AR, AZ, CT, DC, GA, IA, IL, IN, KS, MS, NH, NM, NV, OR, SC, SD, VA, VT, and WV

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## Workers Compensation Residual Market Combined Ratio



\*Incomplete policy year projected to ultimate

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## Workers Compensation Residual Market Growth Slowed During the First Quarter

Size of Risk	Q1 2013	Q1 2014	Change
\$ 0 – \$ 2,499	24.3 M	28.2 M	16%
\$ 2,500 – \$ 4,999	14.4 M	16.4 M	14%
\$ 5,000 – \$ 9,999	20.5 M	23.0 M	12%
\$ 10,000 – \$ 49,999	59.7 M	68.3 M	14%
\$ 50,000 – \$ 99,999	26.2 M	28.3 M	8%
\$ 100,000 and greater	48.0 M	45.0 M	–6%
<b>Total</b>	<b>193.2 M</b>	<b>209.1 M</b>	<b>8%</b>

Total estimated annual premium

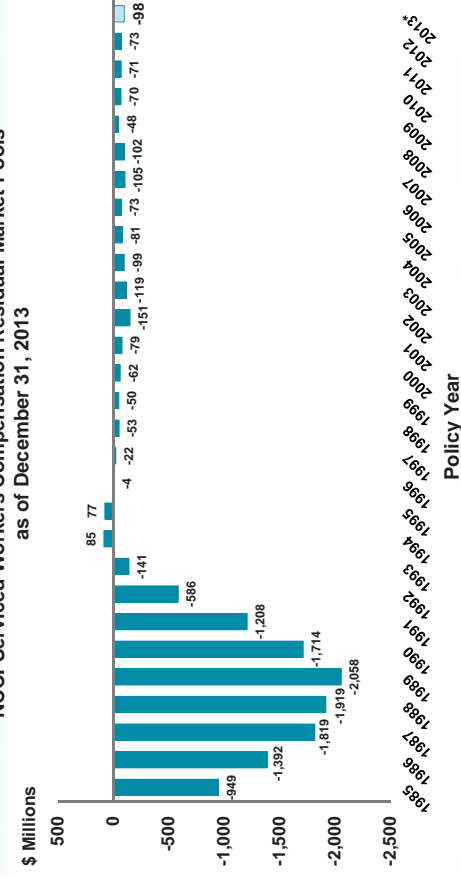
Includes residual market policies for AK, AL, AR, AZ, CT, DC, GA, IA, IL, IN, KS, MS, NH, NM, NV, OR, SC, SD, VA, VT, and WV

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## Workers Compensation Residual Market Underwriting Results



\*Incomplete policy year projected to ultimate

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## Concluding Remarks

## AIS Preview—NCCI Research

- Panel of experts discuss the Affordable Care Act and implications for workers compensation
- NCCI actuaries and economists present current NCCI research studies
  - Medicare set-asides
  - Post-reform monitoring analysis
  - Drivers of claim frequency

## Questions and More Information

Questions on the State of the Line presentation?  
Email 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](http://ncci.com)**.

## Current State of the Line

### Positives

- Improvement in underwriting results
- Strong investment income
- Industry's capital position
- Employment growth continues
- Frequency and severity well behaved

### Negatives

- Low interest rate environment
- Embedded yields continue to decline
- Uncertainty surrounding TRIA renewal
- Construction & Manufacturing employment lagging
- Uncertain impact of healthcare reform