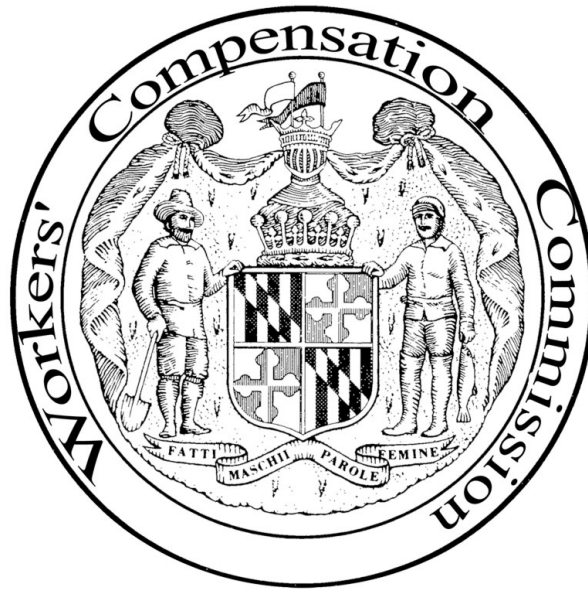


**The Impact of the Harris Decision**  
**On Workers' Compensation in the State of Maryland**  
**2005 Update**



**Staff Report**

**Submitted March 23, 2005**

**Workers' Compensation Commission**

**10 East Baltimore Street**

**Baltimore, Maryland 21202**

# TABLE OF CONTENTS

|  |           |
|--|-----------|
| <b>1. Executive Summary.....</b>   | <b>4</b>  |
| <b>2. Background .....</b>   | <b>5</b>  |
| <b>3. Scope and Methodology.....</b>                                     | <b>6</b>  |
| <i>a. Scope .....</i>  | <i>6</i>  |
| <i>b. Period of Coverage.....</i>  | <i>6</i>  |
| <i>c. Design of Survey Instrument .....</i>                              | <i>6</i>  |
| <i>d. Methodology.....</i>   | <i>6</i>  |
| <i>e. Timeline.....</i>  | <i>7</i>  |
| <i>f. Data Issues .....</i>  | <i>7</i>  |
| <i>g. Data Terminology.....</i>  | <i>7</i>  |
| <b>4. Analysis .....</b>   | <b>8</b>  |
| <i>a. Overview.....</i>  | <i>8</i>  |
| <i>b. WCC Data.....</i>  | <i>9</i>  |
| <i>c. Survey and Commission Data Combined .....</i>                      | <i>11</i> |
| <i>d. Survey Data – Voluntary Market Insurers.....</i>                   | <i>12</i> |
| <i>e. Survey Data – Injured Workers’ Insurance Fund.....</i>             | <i>12</i> |
| <i>f. Survey Data – Self-Insured County and Local Jurisdictions.....</i> | <i>13</i> |
| <i>g. Survey Data - Hospitals.....</i>                                   | <i>13</i> |
| <i>h. Survey Data - Other Individual Self-Insured Employers.....</i>     | <i>14</i> |
| <i>i. Survey Data - Other Private Group Self-Insured Employers.....</i>  | <i>14</i> |
| <b>5. Conclusion and Recommendations .....</b>                           | <b>14</b> |

## **Tables**

| <b><u>Table</u></b> | <b><u>Description</u></b>  | <b><u>Page</u></b> |
|---------------------|--|--------------------|
| 1                   | Covered Payroll by Market Segment  | 9                  |
| 2                   | Claim Filings with Commission  | 9                  |
| 3                   | All Reporting Entities – Commission Claim Data                                   | 10                 |
| 4                   | Accidental Injury Disputed Claims Filed with WCC                                 | 10                 |
| 5                   | Incidents Processed and Commission Filings – All Filers                          | 11                 |
| 6                   | Incidents Processed and Commission Filings – Voluntary Market                    | 12                 |
| 7                   | Incidents Processed and Commission Filings – Combined IWIF                       | 12                 |
| 8                   | Incidents Processed and Commission Filings – Self-Insured Government<br>Entities | 13                 |
| 9                   | Incidents Processed and Commission Filings – Self-Insured Hospitals              | 13                 |
| 10                  | Incidents Processed and Commission Filings – Other Self-Insurers                 | 14                 |

| <b><u>EXHIBIT</u></b> | <b><u>TITLE</u></b>                      |   |
|-----------------------|--|---|
| A                     | Survey Data Request – Second Installment | 6 |

# Report on the Impact of the Harris Decision On Workers' Compensation in the State of Maryland

## 1. Executive Summary

Current statute defines a compensable accidental personal injury as an injury that arises out of and in the course of employment. In June 2003, the Court of Appeals in the case of Harris vs. the Howard County Board of Education (“Harris”) held that since the unusual activity standard was not statutorily mandated, it could not be used to deny the compensability of an accidental injury in the course of employment. The opinion made clear that the current interpretation has always been the law despite the 85 years of cases in which the unusual activity requirement was injected. As a result, members of the Maryland workers' compensation community raised concerns about the decision's potential impact. Hearings were held on several bills that would make the unusual activity standard a matter of law. While there was no clear understanding as to the true potential impact of the Harris decision, earlier estimates ranged from a possible decrease in costs to a 20 percent increase. Pursuant to the 2004 Joint Chairmen's Report, the Workers' Compensation Commission (“Commission”) was charged with conducting a study of the effects of the Harris decision and reporting its analysis by August 1, 2004. The required report was timely submitted, but because of the relatively short passage of time from the Court's decision, no reasonable conclusions could be drawn. The Commission, therefore, believed that a follow-up report would be appropriate. This report is an update of the original report submitted in August 2004.

This updated report focuses on a comparative analysis of the year before and immediately after the Harris decision. In addition to insurer-provided data, this report contains statistics taken from Commission files to support the data analysis presented herein. This report excludes paid loss amounts submitted by the insurer groups because they are not a reliable measure for judging the impact of Harris. A more detailed discussion of this issue is in the body of the report. The report does, however, include covered payroll data by market segment to provide a relative measure of the size and growth of each segment.

Many variables and statistical variances are implicit in the data collected and analyzed for this study. It is not possible to clearly isolate the Harris decision as the only indicator causing the variances in this report. Notwithstanding that caveat, there are certain data patterns wherein persuasive arguments could be advanced that suggest the variances may be because of the change in the interpretation of the law occasioned by Harris. This report is based on those assumptions. Accordingly, this report provides a minimum/maximum range of values rather than a single value representing the possible Harris impact. It should be emphasized, however, that presenting the findings in this manner is not to suggest that the “minimum” or “maximum” determinations should be considered as absolutes; but rather, they should be viewed merely as the low and high ends, respectively, of a possible impact of Harris.

The study assumptions were:

- An increase in the rate of acceptance of the incidents of injury could be an indicator of Harris impact after growth was factored out of the increase.
- An increase in the rate of initial claim filings in relation to the increase in the incidents of injury processed in the post-Harris period could be an indication of Harris impact after growth was factored out. Although not all claims involve lost time, for purposes of establishing the maximum possible limits of impact, this study assumes that changes in claim filings were lost time claims and changes in the acceptance rate of incidents of injury were medical-only incidents net of the change in lost time.
- A decrease in the rate of disputed claim filings could be a Harris indicator.
- A decrease in the rate of disallowed claims could be an indicator of Harris impact.

This report concludes that Harris may have a maximum possible impact of 2.4 percent and a minimum of 0.5 percent on the cost of workers' compensation overall. The statistics contained in this report are assumed equally predictive of the impact on the cost of workers' compensation. The impact on individual market segments varied. The combined programs of IWIF showed a 5.8 percent maximum possible increase whereas other segments were less. IWIF programs represent approximately 19.1 percent of the covered employment in the State of Maryland.

## **2. Background**

On June 6, 2003, the Court of Appeals decided Harris vs. the Howard County Board of Education. In that decision, the Court held that the activity underlying the "accidental injury" is not required to be unusual. Despite a long line of cases dating back to the 1920's in which the "unusual activity" requirement was injected, this opinion makes clear that the current interpretation has always been the law in Maryland.

Many different segments of the workers' compensation community testified to what they believed would be the expected impact of this decision on the cost of workers' compensation in Maryland.

- The National Council on Compensation Insurance (NCCI) estimated a two percent increase in premiums.
- IWIF testified to an initial estimate of five percent and for the year 2004, a 7.2 percent increase.
- Large county governments testified to a range of 4 – 20 percent.
- The AFL-CIO testified to no impact.
- The Commission testified to less than a 2.0 percent increase.

In the initial installment of the Harris report issued August 2004, the Commission concluded that while the impact was yet unclear, the Harris decision did not appear to be one that would have an across the board substantial impact on the cost of workers' compensation in Maryland. This second installment of the Harris study provides additional insight as to how Harris might affect certain segments of the workers' compensation community.

### 3. Scope and Methodology

**a. Scope** – This study covers all active workers’ compensation insurers in the State of Maryland. They are as follows:

- Maryland Insurance Administration (“MIA”) approved insurance companies writing workers’ compensation policies
- Commission approved individual self-insured employers and one governmental group
- MIA approved private self-insured groups
- IWIF – Third party administrator for the State Agency self-insurance program
- IWIF – Commercial insurance program

After the initial analysis was completed, the Commission concluded that the Maryland-only insurers might have a different profile of experience than the multi-state insurers. This analysis separates each of these segments. Accordingly, the report addresses separately over 150 voluntary market insurers and groups, the combined commercial insurer and State Agency self-insurance program administered by IWIF, 27 self-insured governmental entities, 48 self-insured hospitals, approximately 80 large individually self-insured employers and over 1,200 small employers who are members of private groups.

**b. Period of Coverage** – The entire period of study to date has been January 1, 2001 to June 30, 2004. The data used in this installment of the report is limited to the two-year period July 1, 2002 to June 30, 2004.

**c. Design of Survey Instrument** – The initial survey instrument contained a series of 11 items covering claims, losses and premium data. NCCI participated in the selection of these items. Responders were asked to provide this data for six semi-annual periods beginning January 1, 2001. A web-based survey program was developed to allow easy response and immediate access to the data in an Access database. The second installment of the survey instrument was a shortened version of the initial survey, limited to the six-month period of January 1 to June 30, 2004 containing seven items. (See Exhibit A attached)

**d. Methodology** – In the initial study period of January 1, 2001 to December 31, 2003, the report contained paid loss data. That study concluded that changes in paid losses were the result of many factors but that paid losses during the six-month period following Harris would not yet include any significant payments made because of Harris. The timing of payments on claims may not always be directly related to the period in which compensability decisions are made but are more likely to occur, in part, in subsequent periods. Without the examination of case histories involving Harris decisions and assessing them in light of all other factors, meaningful estimates of financial impact using paid loss data are not possible. Accordingly, this report uses claim counts and incidents of injury to derive rates of change that should equate to the change in workers’ compensation costs. The assumption is that

Harris did not change the average cost of a claim (excluding consideration of a reduction in legal fees). If the volume of incidents and claims changed, it is Harris related only if the rate of claim filing increased as a percentage of incidents processed. Changes in the number of incidents processed were expected to create a corresponding change in number of claim filings and would not be Harris related but a continuation of existing filing patterns.

Under the law, the Commission must approve all lost time claims. Medical-only claims do not require filing. This study assumes, for maximum possible impact only, that the change in the rate of claim filings with the Commission were all lost time and the difference between the increase in accepted incidents of injury and claim filings are medical-only incidents on which no claims were filed. A certain portion of initial claims is deferred because there is no lost time. These deferrals may result in indemnity awards later. In order to estimate the minimum possible impact, this study used the drop in the rate of disputed claim filings since there was no change in the rate of claim filings to the total incidents processed. The actual change in filings may include a combination of lost time and medical-only claims. Further, the study assumes that since medical-only losses represent approximately 50 percent of total workers' compensation costs, the report discounted the percentage change in medical only incidents by 50 percent to derive the percentage change in the number and cost of workers' compensation for maximum possible change. For lowest possible impact, this study assumes that medical-only incidents of injury on which no claim was filed were not Harris related. This report does not evaluate the change in the cost of workers' compensation as a result of Harris. The average cost of a single workers' compensation claim or incident of injury is not expected to be affected by Harris. Workers' compensation costs will change in total, however, because of volume changes directly related to Harris. This percentage change is considered equally predictive of the increase in the cost of workers' compensation as well as the number of claim filings and change in the rate of acceptance of incidents of injury that can be associated with Harris.

**e. Timeline** – The request for the second installment of the data collection was issued on September 14, 2004 with an October 31, 2004 response date. Due to significant late filings by survey responders, the completion of the analysis and this report has been delayed.

**f. Data Issues** – Most respondents have set up tracking systems to overcome the issues raised in the initial survey. In addition, the Commission eliminated two questions that were not readily determinable and is relying on Commission data to supplant these two items. Paid and incurred loss data was collected but not used in this report. The reason for not using the paid loss data is discussed above. Incurred loss data is not considered reliable so that period-to-period comparisons can be made.

The study excluded data from two significant self-insured reporting entities in order to minimize data distortion. Because of the special circumstances surrounding Bethlehem Steel that were not Harris related they were not included. Baltimore County is in the midst of a system upgrade and could not provide incidents of injury data for all periods. This study also excludes Commission statistics for uninsured employers, Uninsured Employers' Fund and the Subsequent Injury Fund.

**g. Data Terminology** – The following list of frequently used terms are defined here:

- Incidents of Injuries Processed by Insurers/Self-Insurers – In order not to confuse claims received from injured workers and acted on by insurers/self-insurers from claims filed with the Commission, the report uses “incidents of injury” to classify and distinguish claims processed by insurers and self-insurers from claims filed with the Commission.
- Incidents Accepted by Insurers/Self-Insurers – Incidents of injury reported to the insurer/self-insurer that is accepted by the insurer/self-insurer. Injured workers are not required to file a claim with the Commission for medical-only claims.
- Claims filed with Commission – These claims include all lost-time claims, claims for both lost time and medicals and medical-only filings.
- TT Awards Made – These claims include uncontested and contested claims on which the Commission issued a Temporary Total (TT) Award for lost time.
- Claims Deferred – These claims are considered compensable but there is no lost time at the time of filing. Therefore, the Commission Order extends the right of the claimant to file for indemnity benefits later if conditions warrant.
- Disputed Claims – This study is limited to disputes as to accidental injury only (issue 1) that may be Harris related.
- Claims Disallowed – Claims that are determined to be non-compensable by the Commission.

## 4. Analysis

### a. Overview

Table 1 shows covered payroll and the percentage change between the pre-Harris and post-Harris periods. This information is used throughout the report as one measure of growth as well as to estimate individual segment impact on workers’ compensation as a whole.



| <b>Table 1</b>                              |                  |               |                  |               |                |
|---|------------------|---------------|------------------|---------------|----------------|
| <b>Covered Payroll by Market Segment</b>    |                  |               |                  |               |                |
| Pre-Harris: July 1, 2002 to June 30, 2003   |                  |               |                  |               |                |
| Post-Harris: July 1, 2003 to June 30, 2004  |                  |               |                  |               |                |
| Stated in Billions                          |                  |               |                  |               |                |
| Market Segment                              | Pre-Harris       |               | Post-Harris      |               | Pre/Post       |
|   | Amount           | Percent       | Amount           | Percent       | Percent Change |
| IWIF – State Agency Programs <sup>(1)</sup> | \$ 5.042         | 5.8%          | \$ 5.164         | 5.7%          | 2.4%           |
| IWIF – Commercial Program                   | 11.651           | 13.3%         | 12.510           | 12.5%         | 7.4%           |
| Voluntary Market – Insurers <sup>(2)</sup>  | 53.315           | 61.3%         | 54.963           | 61.1%         | 3.1%           |
| Political Subdivisions                      | 8.209            | 9.4%          | 7.999            | 8.9%          | -2.6%          |
| Hospitals                                   | 2.943            | 3.4%          | 3.076            | 3.4%          | 4.5%           |
| Other Individual Self-Insurers              | 4.969            | 5.7%          | 5.328            | 5.9%          | 7.2%           |
| Other Private Group Self-Insurers           | 0.875            | 1.0%          | 0.969            | 1.1%          | 10.7%          |
| <b>Total</b>                                | <b>\$ 87.005</b> | <b>100.0%</b> | <b>\$ 90.009</b> | <b>100.0%</b> | <b>3.5%</b>    |

(1) Source -State Budget Document – Summary of Operating Budget by Object Classification for Fiscal Years 2003 and 2004

(2) Excludes reported payroll of one major insurer whose data was considered unreliable

Other Data Sources: Annual Insurer Assessment Payroll Reported to Commission on Form A-02 for Fiscal Years 2003 and 2004

The Department of Labor, Licensing, and Regulation (“DLLR”) has reported a 0.3 percent increase in employment and a 3.3 percent increase in average weekly wage. The 3.3 percent average weekly wage increase was subtracted from the reported individual segment’s covered payroll to estimate growth in employment in each segment.

Accordingly, this study assumed that the aggregate employment growth in all segments was only 0.2 percent; whereas, actual State and local government employment declined. The change in employment growth rates and payroll dollars among segments might be due, in part, to moving from one insurer segment to another.

## b. WCC Data

Table 2 shows a breakdown of claims filed with the Commission for the year before and after the Harris decision.

| <b>Table 2</b>                               |               |               |              |             |
|--|---------------|---------------|--------------|-------------|
| <b>Claim Filings with Commission</b>         |               |               |              |             |
| Pre-Harris: July 1, 2002 to June 30, 2003    |               |               |              |             |
| Post-Harris: July 1, 2003 to June 30, 2004   |               |               |              |             |
| Market Segment <sup>(1)</sup>                | Pre-Harris    | Post-Harris   | Change       |             |
|  | Count         | Count         | Count        | Percent     |
| Voluntary Market Insurers Self-Insured       | 14,369        | 14,601        | 232          | 1.6%        |
| Governmental Entities                        | 4,337         | 4,365         | 28           | 0.1%        |
| Hospitals                                    | 829           | 767           | (62)         | -7.5%       |
| Other Private Groups                         | 410           | 450           | 40           | 9.8%        |
| Other Self-Insured Employers                 | 1,727         | 1,254         | (473)        | -27.4%      |
| Injured Workers’ Insurance Fund              | 5,658         | 6,671         | 1,013        | 17.9%       |
| Other – Uninsured and Subsequent Injury Fund | 846           | 1,083         | 237          | 28.0%       |
| <b>Total</b>                                 | <b>28,176</b> | <b>29,191</b> | <b>1,015</b> | <b>3.6%</b> |

(1) Includes all filings before reduction for entities referred to in paragraph 3f.

Claim filings increased by 3.4 percent, after factoring out the 0.2 percent estimated growth in employment. (See Table 1 commentary) However, claim filings, as a percent of incidents processed, (See Table 5) did not change. This study assumed that an increase in claim filings in relation to total incidents of injury might be an indication of Harris impact. Therefore, on an aggregate basis, the change in the number of claim filings would not appear to be related to Harris but a continuation of filing patterns before Harris.

The purpose of Table 3 is to show the relative percentage of disputed accidental injury claims to the total number of filed claims, how many of the disputed claims are disallowed and the relative change that has occurred before and after the Harris decision. This study assumed that if disputed accidental injury claims decreased because of Harris, that there would be a corresponding decrease in the rate of claims disallowed by the Commission. The drop in the disputed claim rate was 2.1 percent and the rate of disallowance was 0.8 percent when taken as a percentage of claim filings. However, when considered in the context of the total incidents of injury (Table 4) there was only a 0.5 percent drop in the disputed claim rate and 0.2 percent change in the rate of claims disallowed. (See Table 5)

| <b>Table 3</b>   |            |         |             |         |                       |         |
|--|------------|---------|-------------|---------|-----------------------|---------|
| <b>All Reporting Entities – Commission Claims Data</b> |            |         |             |         |                       |         |
| Pre-Harris: July 1, 2002 to June 30, 2003              |            |         |             |         |                       |         |
| Post-Harris: July 1, 2003 to June 30, 2004             |            |         |             |         |                       |         |
| Commission Claim Actions                               | Pre-Harris |         | Post-Harris |         | Change <sup>(1)</sup> |         |
|  | Count      | Percent | Count       | Percent | Count                 | Percent |
| Total Claims Filed With WCC                            | 28,176     | 100.0%  | 29,191      | 100.0%  | 1,015                 | 3.6%    |
| Disputed Accidental Injury Claims                      | 5,808      | 20.6%   | 5,410       | 18.5%   | (398)                 | -1.4%   |
| Temporary Total Awards                                 | 15,576     | 55.3%   | 15,176      | 52.0%   | (400)                 | -1.4%   |
| Claims Deferred  | 6,242      | 22.2%   | 6,886       | 23.6%   | 644                   | 2.3%    |
| Claims Disallowed by Commission                        | 918        | 3.3%    | 738         | 2.5%    | (180)                 | -0.6%   |

(1) Percent of change calculated as change in count divided by total pre-Harris claims filed.

| <b>Table 4</b>  |              |              |              |              |
|---|--------------|--------------|--------------|--------------|
| <b>Accidental Injury Disputed Claims Filed with WCC</b> |              |              |              |              |
| Pre-Harris: July 1, 2002 to June 30, 2003               |              |              |              |              |
| Post-Harris: July 1, 2003 to June 30, 2004              |              |              |              |              |
| Source  | Pre-Harris   | Post-Harris  | Change       |              |
|   | Count        | Count        | Count        | Percent      |
| Voluntary Market Insurers                               | 3,145        | 2,805        | (340)        | -10.8%       |
| Self-Insured  |              |              |              |              |
| Governmental Entities                                   | 810          | 698          | (112)        | -13.8%       |
| Hospitals   | 95           | 130          | 35           | 36.8%        |
| Other Private Groups                                    | 58           | 79           | 21           | 36.2%        |
| Other Self-Insured Employers                            | 307          | 293          | (14)         | -4.5%        |
| Injured Workers' Insurance Fund                         | 1,092        | 1,181        | 89           | 8.2%         |
| <b>Total</b>  | <b>5,507</b> | <b>5,186</b> | <b>(321)</b> | <b>-5.8%</b> |

Table 4 shows a change in the number and percentage of disputed claims for the individual segments. While the aggregate impact was estimated not to exceed 0.5 percent (See Table 5), individual segments were impacted differently.

### c. Survey and Commission Data Combined

| <b>Table 5</b>   |            |         |             |         |        |         |
|--|------------|---------|-------------|---------|--------|---------|
| <b>Incidents Processed and Commission Filings – All Filers</b> |            |         |             |         |        |         |
| Pre-Harris: July 1, 2002 to June 30, 2003                      |            |         |             |         |        |         |
| Post-Harris: July 1, 2003 to June 30, 2004                     |            |         |             |         |        |         |
|  | Pre-Harris |         | Post-Harris |         | Change |         |
|  | Count      | Percent | Count       | Percent | Count  | Percent |
| Incidents Processed by Insurer/Self-Insurer <sup>(1)</sup>     | 93,802     | 100.0%  | 97,712      | 100.0%  | 3,910  | 4.2%    |
| Incidents Accepted by Insurer/Self-Insurer                     | 76,791     | 81.9%   | 83,917      | 85.9%   | 7,180  | 7.7%    |
| Claims Filed with Commission <sup>(2)</sup>                    | 26,500     | 28.3%   | 27,692      | 28.3%   | 1,192  | 1.3%    |
| Disputed Accidental Injury Claims <sup>(2)</sup>               | 5,507      | 5.8%    | 5,186       | 5.3%    | (321)  | -0.4%   |
| Claims Disallowed by Commission <sup>(2)</sup>                 | 869        | 0.9%    | 689         | 0.7%    | (180)  | -0.2%   |

(1) Percent of change calculated as change in count as a percent of pre-Harris Incidents Processed by Insurers/Self-Insurers.

(2) Excludes statistics of entities identified in paragraph 3f.

The purpose of Table 5 is to provide a relative measure of potential Harris incidents to the total of all incidents of injury processed by insurers/self-insurers and filed with the Commission. This study assumed that if the rate of accidental injuries accepted increased, then this might be an indication of a possible Harris impact. The incident acceptance rate increased 4.0 percent. This study also assumed that if the percentage of incidents of injury accepted was higher than the increase in the rate of claims filed with the Commission, then the difference indicates that the majority of the increase was associated with medical-only claims since lost time claims must be filed with the Commission. Claimants with no immediate lost time may also file for a compensability determination (claim deferred) that if awarded, extends the right to a future claim up to five years. During the period of this survey, claim deferrals increased 0.3 percent in relation to the rate of increase in incidents of injury. However, there was a 1.1 percent decrease in the rate of Temporary Total Awards as a percentage of incidents of injury processed, the net decrease being 0.8 percent (net percentage change between TT Awards and Deferrals in Table 4 calculated as a percentage change in relation to total incidents of injury in Table 5).

This study did not give any weight to the fact that incidents of injury not filed with the Commission might include a significant number of reported incidents that had only minor medical expense. The study assumes that since medical expenses, as reported by NCCI, approximate fifty percent of total workers' compensation costs, then, for estimating purposes, medical-only incidents should be discounted 50 percent. Accordingly, we estimate that the maximum value that might be potentially Harris-related for medical-only is 2.0 percent of the total incidents of injury (50 percent of the pre- and post-Harris percentage difference in acceptance rate).

Another study assumption was that if the percentage of disputed claims filed with the Commission in relation to the percentage of all incidents processed decreased, then this might be a Harris indicator. There was a 0.5 percent change in the rate of disputed filings to the total incidents processed. Therefore, we assumed a 0.5 percent impact for lost time because of Harris.

In summary, this study concludes that the maximum possible Harris impact should not exceed 2.5 percent (0.5 percent indemnity and 2.0 percent medical) without taking into consideration the 0.8 percent relative drop in Temporary Total Awards and claims deferred. The reader should not assume that the increase in the medical-only claims is totally related to Harris although this study makes that assumption. Therefore, most likely, other factors are causing some of the increase in medical-only claims.

#### d. Survey Data – Voluntary Market Insurers

| <b>Table 6</b>   |            |         |             |         |        |         |
|--|------------|---------|-------------|---------|--------|---------|
| <b>Incidents Processed and Commission Filings – Voluntary Market</b> |            |         |             |         |        |         |
| Pre-Harris: July 1, 2002 to June 30, 2003                            |            |         |             |         |        |         |
| Post-Harris: July 1, 2003 to June 30, 2004                           |            |         |             |         |        |         |
|  | Pre-Harris |         | Post-Harris |         | Change |         |
|  | Count      | Percent | Count       | Percent | Count  | Percent |
| Incidents Processed by Insurer                                       | 45,851     | 100.0%  | 51,254      | 100.0%  | 5,107  | 11.3%   |
| Incidents Accepted by Insurer  | 37,276     | 81.1%   | 41,978      | 81.8%   | 4,486  | 9.9%    |
| Claims Filed with Commission   | 14,369     | 31.7%   | 14,601      | 28.9%   | 232    | 0.5%    |
| Disputed Accidental Injury Claims                                    | 3,145      | 6.5%    | 2,805       | 5.3%    | (293)  | -0.6%   |
| Claims Disallowed by Commission                                      | 540        | 1.2%    | 416         | 0.8%    | (124)  | -0.3%   |

Table 6 shows relative pre- and post-Harris consistency in acceptance rates, claim filings, disputed claims and claims disallowed. There is a significant increase in the number of reported incidents of injury over and above what would be expected because of growth or increase in acceptance rates. This study attributes this increase to better reporting. We were advised by insurers in the first phase of the survey that they did not keep their data in the form requested in the survey instrument so that the information provided was, in many cases, estimated rather than actual incident counts. They have now created systems for tracking the number and acceptance of incidents of injury that were used in this report.

This study estimates that the maximum possible impact on lost time claims in the voluntary insurer market is 1.1 percent calculated as a percentage change in claims filed and disputed in relation to total incidents of injury processed in the pre-Harris period. An additional 0.4 percent is added to cover medical-only incidents of injury calculated as one-half the difference between pre- and post-Harris acceptance rates.

#### e. Survey Data – Injured Workers’ Insurance Fund

| <b>Table 7</b>   |            |         |             |         |        |         |
|--|------------|---------|-------------|---------|--------|---------|
| <b>Incidents Processed and Commission Filings – IWIF’s Combined Programs</b> |            |         |             |         |        |         |
| Pre-Harris: July 1, 2002 to June 30, 2003                                    |            |         |             |         |        |         |
| Post-Harris: July 1, 2003 to June 30, 2004                                   |            |         |             |         |        |         |
|  | Pre-Harris |         | Post-Harris |         | Change |         |
|  | Count      | Percent | Count       | Percent | Count  | Percent |
| Incidents Processed by IWIF  | 24,865     | 100.0%  | 26,771      | 100.0%  | 1,906  | 7.7%    |
| Incidents Accepted by IWIF   | 20,365     | 81.9%   | 23,900      | 89.3%   | 3,535  | 14.2%   |
| Claims Filed with Commission   | 5,658      | 22.8%   | 6,671       | 24.9%   | 1,013  | 4.1%    |
| Disputed Accidental Injury Claims  | 1,120      | 4.5%    | 1,195       | 4.5%    | 75     | 0.3%    |
| Claims Disallowed by Commission  | 146        | 0.6%    | 118         | 0.4%    | (28)   | -0.1%   |

(1) Excludes statistics of entities identified in paragraph 3f.

Table 7 shows a 7.7 percent increase in reported incidents of injury, almost all of which is associated with the Commercial Insurance Program. The assumption was that the net increase in the acceptance rate of 6.5 percent is the maximum possible Harris impact. Of that amount, 2.1 percent (the difference between pre- and post-Harris claim filings) might be the maximum increase in lost time claims. However, since there was no relative change in the disputed claim rate, then it is questionable that the entire increase is related to Harris. Accordingly, this study assumes that the maximum possible lost time increase is 2.1 percent. This study also estimates the total maximum possible medical-only claims impact to be 2.7 percent. (Relative change in acceptance rate (7.4 percent) less lost time estimate of 2.1 percent, discounted 50 percent.) The total estimated maximum impact on the combined IWIF programs is 5.8 percent.

#### f. Survey Data – Self-Insured County and Local Jurisdictions

| <b>Table 8</b>   |            |         |             |         |         |         |
|--|------------|---------|-------------|---------|---------|---------|
| <b>Incidents Processed and Commission Filings – Self-Insured Government Entities</b> |            |         |             |         |         |         |
| Pre-Harris: July 1, 2002 to June 30, 2003  |            |         |             |         |         |         |
| Post-Harris: July 1, 2003 to June 30, 2004   |            |         |             |         |         |         |
|  | Pre-Harris |         | Post-Harris |         | Change  |         |
|  | Count      | Percent | Count       | Percent | Count   | Percent |
| Incidents Processed by Insurer   | 15,528     | 100.0%  | 12,079      | 100.0%  | (3,449) | -22.2%  |
| Incidents Accepted by Insurer  | 12,698     | 81.8%   | 11,158      | 92.6%   | (1,540) | -10.0%  |
| Claims Filed with Commission <sup>(1)</sup>  | 3,957      | 25.5%   | 3,772       | 31.2%   | 185     | 1.2%    |
| Disputed Accidental Injury Claims <sup>(1)</sup>                                     | 810        | 5.2%    | 698         | 5.8%    | (112)   | -0.7%   |
| Claims Disallowed by Commission <sup>(1)</sup>                                       | 78         | 0.5%    | 78          | 0.6%    | 0       | 0.0%    |

(1) Excludes statistics of entities identified in paragraph 3f.

In addition to the exclusions identified in paragraph 3f, Table 8 contains statistics of one governmental entity that substantially distorts the above results in the pre-Harris period. Excluding those results from the calculation of the acceptance rate, increases the acceptance rate to 90.1 percent in the pre-Harris period. The differential of 2.5 percent change in acceptance rate represents the maximum possible Harris impact. The change associated with lost time claims is 1.9 percent (increase in the rate of claims filed plus decrease in rate of disputed claims in relation to the incidents during the pre-Harris period).

#### g. Survey Data - Hospitals

| <b>Table 9</b>   |            |         |             |         |        |         |
|--|------------|---------|-------------|---------|--------|---------|
| <b>Incidents Processed and Commission Filings – Self-Insured Hospitals</b> |            |         |             |         |        |         |
| Pre-Harris: July 1, 2002 to June 30, 2003                                  |            |         |             |         |        |         |
| Post-Harris: July 1, 2003 to June 30, 2004                                 |            |         |             |         |        |         |
|  | Pre-Harris |         | Post-Harris |         | Change |         |
|  | Count      | Percent | Count       | Percent | Count  | Percent |
| Incidents Processed by Insurer   | 1,536      | 100.0%  | 1,724       | 100.0%  | 188    | 12.2%   |
| Incidents Accepted by Insurer  | 1,402      | 91.3%   | 1,481       | 85.9%   | 79     | 5.1%    |
| Claims Filed with Commission   | 628        | 40.9%   | 767         | 44.5%   | 139    | 9.0%    |
| Disputed Accidental Injury Claims  | 95         | 6.2%    | 130         | 7.5%    | 35     | 2.3%    |
| Claims Disallowed by Commission  | 20         | 1.3%    | 22          | 1.3%    | 2      | 0.1%    |

Table 9 shows the hospital market segment reversing the higher acceptance rate trend of other larger segments. The hospital segment acceptance rate decreased 5.8 percent. This study attributes the 3.6 percent increase in Commission filings to lost time claims but reduced it by the 1.3 percent increase in disputed claims because an increase in disputed claims in the post-Harris period would not be related to Harris. Accordingly, the potential maximum increase in lost time claims might be 2.3 percent. This study assigns no additional value to the reduction in the acceptance rate. The assumption is for estimating the total maximum impact that the Harris decision is expected to increase the acceptance rate. If the acceptance rate decreases, then it must be for reasons unrelated to Harris.

#### **h. Survey Data - Other Individual Self-Insured Employers**

| <b>Table 10</b>  |            |         |             |         |        |         |
|--|------------|---------|-------------|---------|--------|---------|
| <b>Incidents Processed and Commission Filings – Other Self-Insured</b> |            |         |             |         |        |         |
| Pre-Harris: July 1, 2002 to June 30, 2003                              |            |         |             |         |        |         |
| Post-Harris: July 1, 2003 to June 30, 2004                             |            |         |             |         |        |         |
|  | Pre-Harris |         | Post-Harris |         | Change |         |
|  | Count      | Percent | Count       | Percent | Count  | Percent |
| Incidents Processed by Insurer   | 3,897      | 100.0%  | 3,843       | 100.0%  | (54)   | -1.4%   |
| Incidents Accepted by Insurer  | 3,165      | 81.2%   | 3,580       | 93.2%   | 415    | 10.6%   |
| Claims Filed with Commission   | 1,478      | 37.9%   | 1,431       | 37.2%   | (47)   | -1.2%   |
| Disputed Accidental Injury Claims                                      | 307        | 7.9%    | 293         | 7.6%    | (14)   | -0.4%   |
| Claims Disallowed by Commission  | 74         | 1.9%    | 49          | 1.3%    | 25     | 0.6%    |

Table 10 shows that the remaining individual self-insured employers are apparently accepting more medical-only incidents of injury and there is a minor drop of 0.7 percent in their lost time claim filings and a 0.3 percent drop in disputed claims. Accordingly, this study assumes the maximum possible Harris related impact for lost time claims to be 0.3 percent. To be consistent, this study estimates the maximum possible impact resulting from medical-only claims to be 6.0 percent. However, this large of a change was not caused by Harris but by unrelated distorting statistics from two self-insured employers.

#### **i. Survey Data - Other Private Group Self-Insured Employers**

The private self-insured groups of employers represent only 1.0 percent of the total covered employment. Their profile is very similar to the individually self-insured employer except that the increase in acceptance rate is only 3.0 percent. This segment also had an increase in claim filings and disputed accidental injury claims. Because the statistics in this segment are very small, minor changes in the count create large percentage variations in the rate of change. This study concludes that a presentation of changes in rates using only these statistics implies substantial rate changes when, in fact, there was very little movement in the number of incidents and claims. Accordingly, this study does not make any statistical inference on the statistics applicable to this segment

### **5. Conclusion and Recommendations**

This study concludes that the maximum possible impact the Harris decision may have had on the cost of workers' compensation in the State of Maryland was 2.4 percent. The minimum possible impact is 0.5 percent. Individual segments varied with the combined programs of IWIF showing the largest possible margin of 5.8 percent. The large

impact on IWIF is consistent with the generally understood notion that, before the Harris decision, IWIF consistently relied on the “unusual activity” defense, whereas many other insurers did not. Included in this estimate is a discounted value for medical-only claims, all of which this study assumes were Harris related. The study team believes that further analysis of the cause for change in acceptance rate is for reasons other than Harris, except for the lost time claims. Therefore, the range of 0.5 percent minimum and 2.4 percent maximum impact on the cost of workers’ compensation is the study conclusion.

The Commission has already issued a request for another six months of data from insurers and self-insurers. If the data responses, along with the updated Commission data, follow the same patterns as in this report, then there will be a clear indication that Harris has not materially affected the cost of workers’ compensation in Maryland. If the reverse occurs, then it suggests that the full effect of Harris is just beginning to emerge and further reassessments will be necessary.

## **EXHIBIT A**

September 14, 2004

To all Insurers and Self-Insurers:

The Maryland Workers' Compensation Commission (Commission) has been directed by the Legislature to collect certain data from insurers, self-insurers and Injured Workers Insurance Fund (IWIF) and to submit the results of the data collection in a report to them. In order to comply with this request, the Commission is requiring insurers, self-insurers including the Injured Workers Insurance Fund, to respond to this survey as specified herein. The survey is due on or before October 31, 2004. This follow-up survey will cover one six-month period beginning January 1, 2004 through June 30, 2004. The Commission will continue to collect this data every six months.

We are continuing with a simple online survey so that the required information can be easily submitted online via a standard Internet browser, such as Internet Explorer (5.x or later version). The WCC WebSurvey PIN number (included on the reverse of this page) is required to access the survey via:

**<http://inetapps.wcc.state.md.us/websurvey/insurersurvey1.asp>**

Directions are included in the online survey and these enclosures are available as Adobe (Acrobat) Reader PDF from the survey page(s). Please read the instructions carefully and respond accordingly. You should contact, Tom Murphy, Director of Insurance, (410) 864-5292 or email: [tmurphy@wcc.state.md.us](mailto:tmurphy@wcc.state.md.us) if you have questions regarding this survey.

The PIN (number) MUST be retained for submission. This PIN is not available from the survey page. It is your unique identifier, and required to certify and submit your completed report online.

The worksheet included herein contains all required data fields and should be completed prior to WebSurvey login. All open fields are required. The survey must be completed and submitted during the online session, it cannot be submitted or saved incomplete. If all steps are not completed, the insurer/self-insurer will be contacted regarding their non-compliance.



Thomas Patrick O'Reilly,  
Chairman



# Study of Workers' Compensation Compensability Decisions

Reporting Period: January 1 to June 30, 2004

## Purpose

Pursuant to a Legislative requirement, the Maryland Workers' Compensation Commission (WCC) requests that all insurers, including the Injured Workers' Insurance Fund (IWIF) and self-insurers, submit a report or analysis that the WCC considers useful to increase public understanding of the purpose, administrative procedures, costs, coverage or effectiveness of workers' compensation in the State.

## Who should complete the survey?

Each insurer and self-insurer is required to complete this form. For insurers who use multiple service organizations in Maryland, the report should be consolidated into a single insurer/self-insurer filing. Members of a group may be consolidated into a single report. If consolidated a separate email should be sent to tmurphy@wcc.state.md.us, listing the PIN number and name of each group member covered by the consolidation. If you receive duplicate requests or there are members who are no longer writing workers compensation in Maryland they should be identified in that same email. Self-insurers terminated or withdrawn and insurers who ceased operations in Maryland prior to January 1, 2001 need not complete this report. The survey form now requires the mailing address of the survey contact person so that future mailings will be sent to the contact of the reporting insurer only.

## Definitions of data collection elements

- 1. Number of decisions made as to compensability of workers' compensation claims for alleged accidental injuries or occupational diseases during the reporting period shown (Jan-Jun)** – The date of the decision on the incident, regardless of when it occurred, should determine the appropriate reporting period. Hence, this question will capture all claims that required a decision to be made as to its compensability under workers' compensation. For example, if the employer/insurer made decisions regarding the compensability of 1000 claims under workers' compensation in the reporting period Jan 2004 – Jun 2004, 1000 should be entered in the appropriate box.
- 2. Number of decisions made to ACCEPT workers' compensation claims as compensable for alleged accidental injuries or occupational diseases during the reporting period shown (Jan-Jun)** – The date of the decision on the incident, regardless of when it occurred, should determine the appropriate reporting period. Hence, this question will capture those claims captured in question #1 where a decision was made to accept as compensable workers' compensation claims. For example, if 600 claims were accepted by the employer/insurer as compensable workers' compensation claims out of the 1000 entered for question #1 above, then 600 should be entered in the appropriate box.
- 3. Number of decisions made to DENY workers' compensation claims as compensable for alleged accidental injuries or occupational diseases during the reporting period shown (Jan-Jun)** – The date of the decision on the incident, regardless of when it occurred, should determine the appropriate reporting period. Hence, this question will capture those claims

captured in question #1 where a decision was made to deny as compensable workers' compensation claims. For example, if 400 claims were denied by the employer/insurer as compensable workers' compensation claims out of the 1000 entered for question #1 above, then 400 should be entered in the appropriate box.

**4. No longer required**

**5. No longer required**

**6. Annual Premiums: Written** – Not required this reporting period.

**7. Annual Premiums: Earned** – Not required this reporting period

**8. Paid Losses** – The total amount of compensation, medical expense and other directly related expense paid during the reporting period.

**9. Incurred Losses** – The total amount of paid loss plus case reserves added during the reporting period. This amount should be calculated as shown in the following sample:

|   |    |                  |
|---|----|------------------|
| Case reserves at June 30, 2004              | \$ | 2,000,000        |
| Plus: paid losses during reporting period   |    | 750,000          |
| Minus case reserves at December 31, 2003    |    | <u>2,225,000</u> |
| Incurred losses during the reporting period | \$ | <b>525,000</b>   |

This calculation accounts for the paid and accrued losses of new claims as well as adjustments (up or down) to claims from prior periods.

**10. Paid Claim Counts** – The total number of claims on which payments were made during the period. Claims opened in prior periods could be included if payment made during the current period. For example, it is possible that the same claim could have multiple payments in more than one reporting period. It should be counted as one in each period a payment was made.

**11. First Reports of Injury** – The total number of first reports of injury made during the reporting period.

**Collection Period**

The data is to be reported in 6-month increments beginning January 1, 2001 and ending December 31, 2003.

**Due Date**

The survey will be available on the web for inputting your response on October 15, 2004. This report must be submitted to the WCC no later than October 31, 2004.

# Maryland Workers' Compensation Commission Web Report Survey 2004 Worksheet

The person submitting this information online cannot skip any data fields, all require input, enter 0 if none or n/a.

This survey information is provided by: \_\_\_\_\_

PIN # \_\_\_\_\_

|   |
|---|
| <b>The person (1) completing this online survey is:</b> |
| <b>First/Last Name:</b>                                 |
| <b>Title:</b>   |
| <b>Telephone Number:</b>                                |
| <b>Email Address:</b>                                   |

|   |
|---|
| <b>If the WCC needs further information on this survey or related topics in your company, the person (2) we should contact:</b> |
| <b>First/Last Name:</b>   |
| <b>Title:</b>   |
| <b>Telephone Number:</b>  |
| <b>Street Address:</b>  |
| <b>(Suite/Floor/Drop)</b>   |
| <b>City/State/Zip:</b>  |
| <b>Email Address:</b>   |

|  | <b>Calendar Year 2004<br/>January 1 - June 30, 2004</b> |
|--|---|
| <b>1. # Decisions compensability</b>         |   |
| <b>2. # Accepting compensability</b>         |   |
| <b>3. # Initially denying compensability</b> |   |
| <b>4. <i>Removed</i></b>                     |   |
| <b>5. <i>Removed</i></b>                     |   |
| <b>6. Annual Premiums Written</b>            | Not Required in this report                             |
| <b>7. Annual Premiums Earned</b>             | Not Required in this report                             |
| <b>8. Paid Losses</b>                        |   |
| <b>9. Incurred Losses</b>                    |   |
| <b>10. Paid Claim Counts</b>                 |   |
| <b>11. First Reports of Injury</b>           |   |