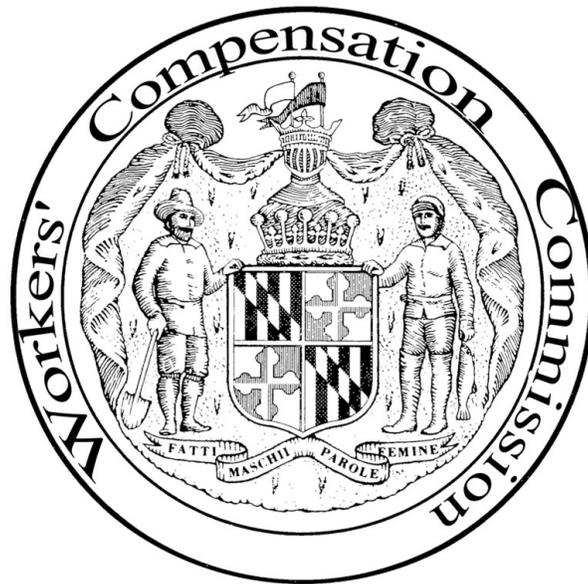


**The Impact of the Harris Decision  
On Workers' Compensation in the State of Maryland**



**Revised Staff Report**

**Submitted August 13, 2004**

**Workers' Compensation Commission**

**10 East Baltimore Street**

**Baltimore, Maryland 21202**

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## 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 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 Harris' true potential impact, earlier estimates were tempered and 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”) has been charged with conducting a study of the effects of the Harris decision and reporting its analysis by August 1, 2004.

This report covers the three-year time period beginning January 1, 2001 and ending December 31, 2003. The Commission conducted a survey of commercial insurers, self-insured employers, private group insurers and the Injured Workers' Insurance Fund (“IWIF”). The data was collected in six-month increments so that five periods preceding Harris and one period post Harris could be included.

This report does not yet include several respondents who did not meet the reporting deadline or otherwise presented data that needed further clarification. The addition of their data will change the market share relationships and could potentially alter the results. However, the data collected to date is sufficiently large enough to illustrate the emerging patterns of claim and loss data. The survey design, coordination, web-based reporting system, response and analysis time for preparing this report was very short. Premium, claim count and reports of first injury remain to be analyzed. In addition, the study team plans to interview selected individuals regarding the impact the Harris decision had on their data submission. This will be part of a subsequent comprehensive report that will be available on or about December 31, 2004.

The aggregated data from the reporting entities show increases in claims, acceptance rates and paid losses. These increases are not limited to post Harris activity but begin in 2001 and forward. As a result, the change in the compensability definition is not the only driver causing increases. Furthermore, increases in paid losses in the post Harris period are not likely to reflect significant payouts as a result of Harris. It is not unusual for payouts on claims to be made over a period of time covering two or more periods. Theoretically, incurred losses would be a better measure for identifying the impact. However, because of the significant swings in this data from period to period, the team did not consider the collected incurred loss data as a reliable basis for establishing the Harris impact.

The data disaggregated into five segments of insurers was also analyzed. IWIF's data is presented on a consolidated and individual segment basis. IWIF's administration of the State Agency Self-Insurance Program showed the smallest increase in acceptance rates of less than one percent. This program also showed the smallest increase in paid losses of 2.5 percent. Voluntary market insurers reported the largest increase in the acceptance rate of six percent. The self-insured employers reported the largest paid loss increase of 18 percent. The private group self-insured employers reported a 20 percent decrease in paid losses. However, as they represent only one percent of the total market, the decrease

has no significant influence on the analysis. With respect to IWIF's Commercial Insurance Program, there is a clear change in the previous downward direction of paid losses approximating an increase of \$10.0 million. The voluntary market insurers reported no increase in paid losses. While all entities reported increases in the claims growth pattern, IWIF's acceptance rate for their Commercial Insurance Program was significantly below the other reporting segments. As stated above, the self-insured employers reported an 18 percent jump in paid losses. With respect to the large increase in paid losses, one self-insured county government accounted for 15 percent of the increase.

While IWIF's Commercial Insurance Program paid losses increased significantly, their premium earnings increased at an even faster rate. IWIF's premiums earned for the year 2003 increased by 30 percent over the prior year, which is the more likely cause for a major portion of the higher payouts. The impact of Harris remains to be established.

The data analysis team believes that the post Harris collection period needs to be extended at least an additional year to confirm the post Harris loss cost data patterns continue and to isolate the elimination of the unusual activity standard as a significant driver of workers' compensation cost increases.

In sum, while it is too early to definitively confirm the impact of the Harris decision, the preliminary data appears to support the conclusion that while there is an increase in the overall number of claims that have been accepted as compensable claims by insurers since the implementation of the Harris decision, the financial impact on the system would not be characterized as significant. The increase in paid losses for IWIF's Commercial Insurance Program is more likely related to an increase in covered employees and policyholders as indicated by higher premium earnings. This remains to be confirmed. The Commission plans to provide a follow-up report by December 31, 2004 that will contain an additional six months of data as well as include all insurers that may materially impact the results of this Harris study.

## 2. Background

On June 6, 2003 the Court of Appeals decided Harris v 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, including the Commission.

The Commission's information was developed after an analysis of all relevant Commission files. Unfortunately, because of the limited amount of information that is included in a Commission Order, a simple study of the denied claims could not answer the impact question with any absolute certainty. Nevertheless, the Commission did conduct an analysis at that time, and in fact, reviewed the Orders and Employee Claim Forms of every claim denied by the Commission in calendar year 2002. It was determined, after that review, that as few as zero (0), and as many as one hundred and sixty (160) claims (approximately 16% of the total number of denied claims) might not have been denied if the law as announced by Harris were applied at the time the decisions were made. The Commission's conclusions (not actuarially supported) at that time, was that the impact on premiums would be less than two (2) percent.

The Commission also considered the theoretical argument that the Harris decision might actually result in reduced attorney involvement and shorter temporary total disability periods. The Commission concluded that while the impact was yet unclear, the Harris decision did not appear to be one that would have any substantial impact in either of these areas as well.

- 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.

As a result of this very disparate testimony before the Senate Finance Committee and the House Economic Matters Committee, the General Assembly requested the Commission to conduct a formal study on the impact of the elimination of the “unusual activity” standard from compensability decisions. Work on that study (in the form of a survey) began in March 2004. From March to the end of May, the survey instrument was developed and coordinated with NCCI. The Commission also developed a web-based programming and system design necessary to permit on-line data reporting, and set up the underlying Access database required to hold the responses. The survey request was sent to all participants on May 28 with a June 30, 2004 due date. There were approximately 150 requests for extensions—all of which were denied. The Commission expects, through active interaction with the respondents, to obtain substantially full compliance by the end of July 2004. Penalties may be assessed against those entities that do not respond or offer no compelling reason for the lack of response.

The Commission does not expect that this initial data collection effort will provide a definitive answer to the impact of the “unusual activity” standard. Additional reporting periods post-Harris are needed to identify trends created by the Harris decision. The Commission plans to extend the data collection for at least another year until clear and confirming patterns emerge. There are many variables driving workers’ compensation costs. Additional data and time is essential to sort out and quantify this cost variable.

### 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 State Agency Self-Insurance Program
- IWIF - Commercial Insurance Program

b. Period of Coverage – The study covered the period January 1, 2001 to December 31, 2003.

c. Design of Survey Instrument - The 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. See Exhibit I

d. Methodology - The data was separated into the five segments listed above and then compared on a period-by-period basis within each segment. Special attention was given to separating and comparing pre and post Harris data. For preliminary reporting purposes, only five of the eleven data elements were considered. The Commission plans to continue analyzing the data using all collected information. Several significant insurers and self-insurers were temporarily excluded from the compilations because their data was incomplete or inconsistent. One of the uncompleted tasks is the isolation of those insurers causing major change in the period-to-period data. The Commission plans to validate this data with those responders.

e. Timeline – Work on the survey began late March. First, the instrument was designed and coordinated with NCCI. Concurrently, the programming of the web-based survey and the Access database and queries began. There was also a significant effort in developing a mailing list. In this regard, most Commission contact with insurers is through a third party administrator (TPA) and not the carrier's corporate office. This list had to be updated to include a contact and address for the corporate headquarters. Many insurers have multiple TPA's as well as multiple companies within their group that write workers' compensation policies in Maryland. It was the Commission's objective to allow insurers to submit consolidated company data if it simplified their completion of the survey. The MIA list of approved insurers was used to accomplish the update. The survey request was mailed on May 28, 2004 with a June 30, 2004 due date. Normally, the Commission allows a minimum of 40 days for insurers to respond to requests for information. Because of the August 1, 2004 due date for the report to the Legislature, the survey team needed at least a month to analyze the data, follow-up with non-respondents, and write the report. The Commission received approximately 150 requests for extensions and due to the tight timeframes, none were granted. While the Commission continues to accept late survey responses, those received after July 7, 2004 are not included in this report. The late reports will be included in the analysis in the follow-up report to be submitted by December 31, 2004. As of July 17, 2004, IWIF, the private self-insured groups and 85 percent of individual self-insured employers have submitted their responses. Approximately 70 percent of the voluntary market insurers have responded. However, with two exceptions, this should not materially alter the absolute values presented in this report. There is one major insurer who has not yet filed and a major governmental self-insured employer that was excluded from the compilation. When these two entities are added, it will increase market share of the insurers and individual self-insured employers and decrease IWIF's percent of market share.

f. Data Issues –

(1) Many responders do not specifically track whether a claim is accepted or rejected or related dates. Further, they do not track Commission claim numbers. Many respondents were able to develop total claims processed and accepted by determining if payments had been made against the claim. This method when applied consistently from period to period provides a reasonable estimate of claims accepted. Taking the total number of claims and subtracting the accepted claims then derived claims denied.

(2) Data elements 4 and 5 requiring identification of claims submitted to the Commission after acceptance or denial by the insurer was troublesome for most responders because they do not track claims using Commission-assigned claim numbers. While most insurers filled in the required information, at this point, further study is needed to determine its validity and value to the study objective.

(3) Data elements 6 and 7, premiums written and earned, have not yet been analyzed due to time constraints. Individual self-insured employers, governmental and private group self-insured employers and IWIF's State Agency self-insured program do not pay premiums for basic coverage.

(4) Data elements 8 and 9, paid and incurred losses were used as part of the analysis. As shown on the graphs, the incurred loss data appears to be inconsistent in terms of its deep shifts from period to period for some segments. Also, some responders misunderstood the definition of incurred losses and provided open reserve data instead of actual incurred losses during the period. In these instances, the team was able to calculate the incurred losses from the data provided except for the period January 1 to June 30, 2001.

(5) Data elements 10 and 11, claim counts and reports of first injury, have not yet been analyzed. The analysis of this data will be included in the subsequent report to be submitted by December 31, 2004.

The five data elements used in this initial report are the most important for establishing whether the elimination of the "unusual activity" standard has had a material impact on workers' compensation costs in the State of Maryland.

#### 4. Analysis

a. Market Share - Each reporting segment has certain characteristics that are unique and can impact the results differently. Obviously, the larger segments dominate the results more than the smaller segments. For this purpose, Table I provides the relative percentage of market share based on preliminary claims and paid loss data. Once all data requested has been received and validated, the absolute and percentage relationships may change.

**TABLE I**

<b>ALL INSURERS MARKET SHARE DATA</b>				
<i>With exception of IWIF data, all other segments are understated due to late, inconsistent or delayed reporting.</i>				
DESCRIPTION	Claims Processed	Market Share	Paid Losses	Market Share
<b>Insurers - Voluntary Market</b>	<b>20,664</b>	<b>52.8%</b>	<b>\$ 98,954,875</b>	<b>43.4%</b>
<b>Self insured employers</b>	<b>4,787</b>	<b>12.2%</b>	<b>37,958,407</b>	<b>16.7%</b>
<b>Private group self insured employers</b>	<b>506</b>	<b>1.3%</b>	<b>2,109,539</b>	<b>0.9%</b>
<b>IWIF - Commercial Insurance Program</b>	<b>9,247</b>	<b>23.6%</b>	<b>67,679,604</b>	<b>29.7%</b>
<b>IWIF - State Agency Self-Insurance Program</b>	<b>3,955</b>	<b>10.1%</b>	<b>21,189,078</b>	<b>9.3%</b>
<b>Total</b>	<b>39,159</b>	<b>100.0%</b>	<b>\$ 227,891,503</b>	<b>100.0%</b>

The above data was developed using the information covering the period July 1 to December 31, 2003.

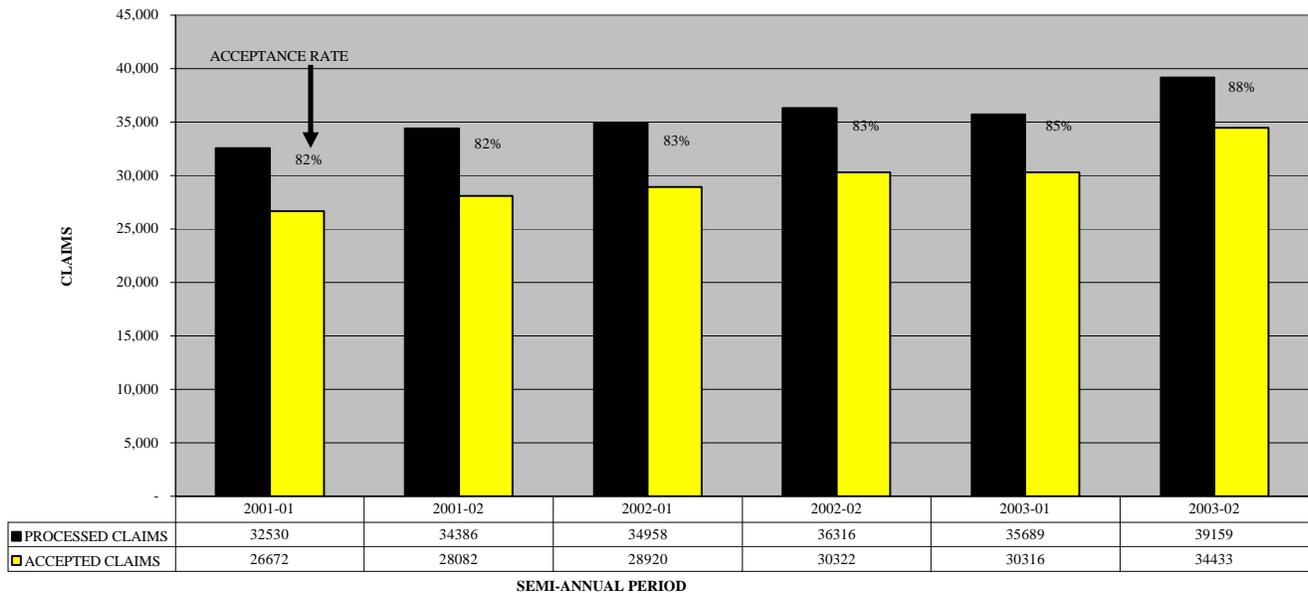
b. Aggregate Industry Data - It is evident that there is an upward trend in number of claims processed by insurers and a higher acceptance rate of these claims. Paid and incurred losses are also rising. Conversely, the data shows that the average cost per claim is dropping both on a paid and incurred basis. It should be noted that NCCI has reported for periods through 2002, that the frequency of claims

per 100 covered workers is decreasing. The data that follows indicates that the number of claims is increasing. NCCI's analysis does not necessarily counter the results reported here because of time period differences and the added use of employee head count to estimate frequency. The three percent increase in the accepted claims rate in the last six months of 2003 over the previous six months appears to be a continuation of a trend suggesting that the Harris decision is not the only variable driving the increase.

TABLE - II

<b>ALL INSURERS</b>						
<b>CLAIMS AND LOSS DATA</b>						
<i>With exception of IWIF data, all other segments are understated due to late, inconsistent or delayed reporting.</i>						
DESCRIPTION	Period	Claims Processed	Claims Accepted	Acceptance Rate	Paid Losses	Incurred Losses
Pre-Harris	1-2001	32,530	26,672	82%	\$ 222,414,020	
	2-2001	34,386	28,082	82%	200,704,771	\$ 180,392,090
	1-2002	34,958	28,920	83%	202,588,450	218,626,186
	2-2002	36,316	30,322	83%	201,053,005	325,471,289
	1-2003	35,689	30,316	85%	210,323,497	314,795,892
	Average		34,776	28,862	83%	207,416,749
Post Harris	2-2003	39,159	34,433	88%	\$ 227,891,503	\$ 259,150,750
Percentage Change		12.6%	19.3%	4.9%	9.9%	-0.3%

**Graph A**  
ALL INSURERS  
CLAIMS GROWTH PATTERNS

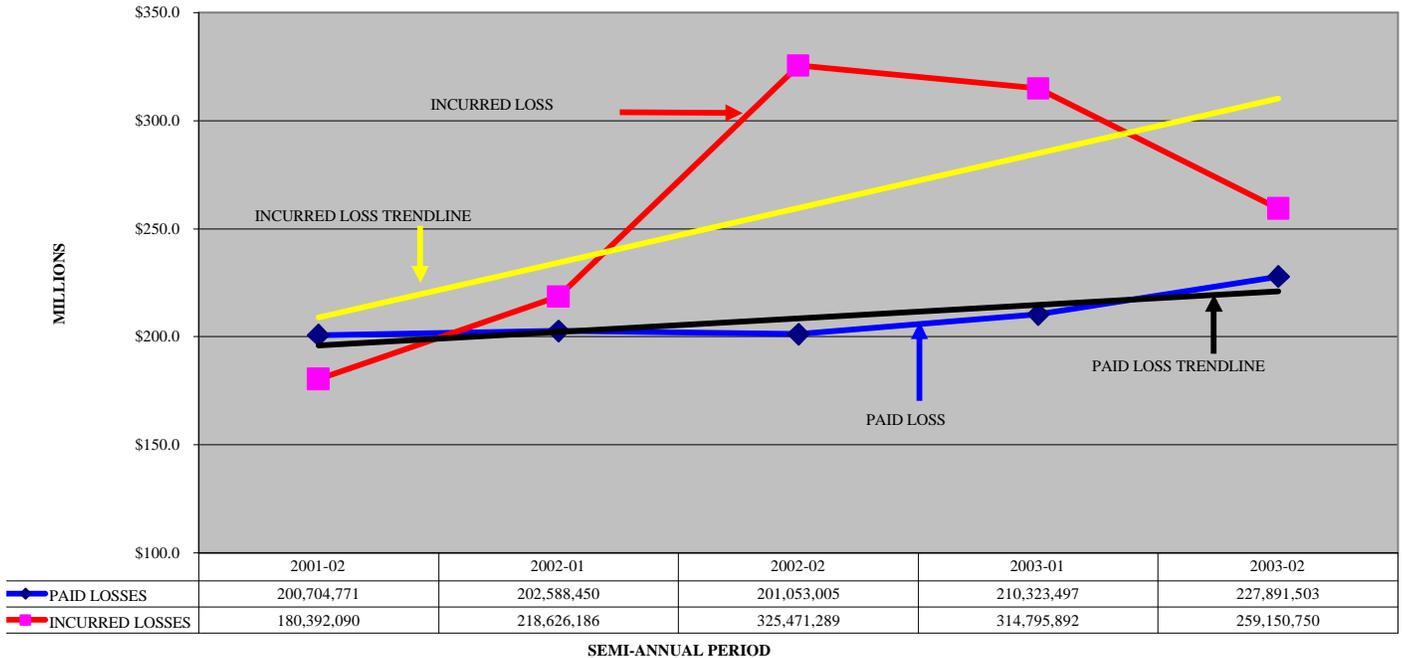


Further analysis is necessary to determine the other variables that are causing the general longer-term increase in the acceptance rate. The two market segments creating the greatest increase in claims are the voluntary market insurers and the State Agency programs.

With respect to the acceptance rate of claims, all segments, except those controlled by IWIF, reported increases above the five percent average.

The significant jump in paid losses is a result of increased costs of individual self-insured employers and the Commercial Insurance Program managed by IWIF.

**Graph B**  
**ALL INSURERS**  
**INCURRED AND PAID LOSS**  
**TRENDS**



These two programs increased 18 percent and 12.6 percent, respectively; whereas insurers' losses rose only seven percent over average and when compared to the immediate past period, only one percent. Further, 15 percent of the 18 percent increase in paid losses involved one self-insured county government. The incurred losses show no change. However, the quality of the data provided is suspect. The graphs accompanying this report show significant semi-annual shifts in losses. This suggests that case reserves may not be systematically maintained except at year-end. There could be at least three other reasons for this variability: (1) Mid-year estimates of open claims may not be as closely monitored as year-end estimates. The latter estimates are used in annual financial reporting and filings and are subject to independent reviews. (2) While the respondents made a good faith effort to estimate their incurred losses on a six-month interval basis, many expressed concern and requested more time to complete the survey. The Commission's requirement for a quick turnaround on the request took priority over more time for developing the requested data. (3) Many respondents misinterpreted the definition of incurred losses and provided open claim balances. We were able to derive incurred losses using this data for those who did not provide the incurred costs during the period.

c. IWIF Data - IWIF provided three separate reports. In addition to the two previously mentioned, they also submitted information for the TPA services provided for the benefit of Bethlehem Steel (BS) injured workers since the takeover by USG in May 2003. Because this data was not subject to breakout by year of occurrence or original action date by BS, and lump sum amounts for many periods were reported in a single period, use of this data would distort the claims and loss data for the latest reporting periods. There were a very large number of claims filed by BS workers in March and

April 2003 after the closing was announced. IWIF established the major portion of case reserves (in this case – incurred losses) in May and June 2003. The team concluded that the Harris decision was not a significant factor in this case. Accordingly, because of these special circumstances, the BS data was not included in this report. Any insurer or self-insured employer in run-off was not included in this survey. The consolidated data for IWIF’s Commercial Insurance Program and State Agency Self-Insurance Program is contained in the following table.

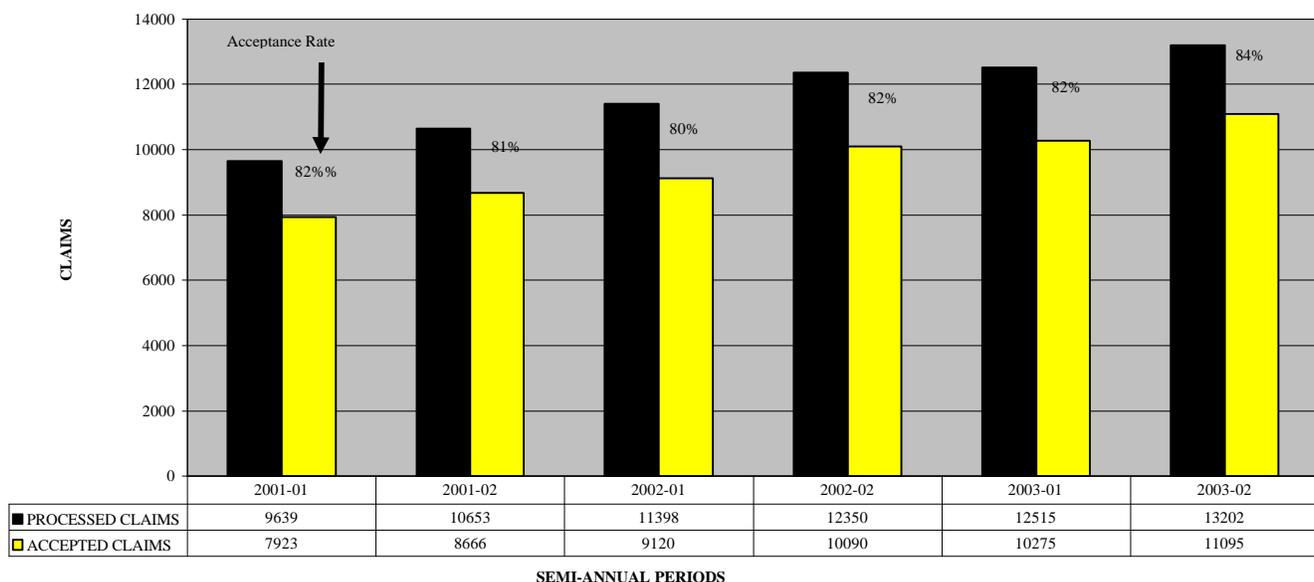
**TABLE - III**

<b>IWIF - CONSOLIDATED</b> <b>Commercial Insurance and State Agency Self-Insurance Programs</b> <b>CLAIMS AND LOSS DATA</b> (Excludes Bethlehem Steel)						
DESCRIPTION	Period	Claims Processed	Claims Accepted	Acceptance Rate	Paid Losses	Incurred Losses
Pre-Harris	1-2001	9,639	7,923	82.2%	\$ 87,406,851	\$ 179,424,826
	2-2001	10,653	8,666	81.3%	82,523,239	42,480,306
	1-2002	11,398	9,120	80.0%	77,891,580	84,209,321
	2-2002	12,350	10,090	81.7%	78,749,623	164,365,244
	1-2003	12,515	10,275	82.1%	77,284,972	142,457,214
Average		11,311	9,215	81.5%	80,771,253	122,587,382
Post Harris	2-2002	13,202	11,095	84.0%	\$ 88,868,682	\$ 70,841,962
Percentage Change		16.7%	20.4%	2.6%	10.0%	-42.2%

In addition, there are two graphs that chart this data.

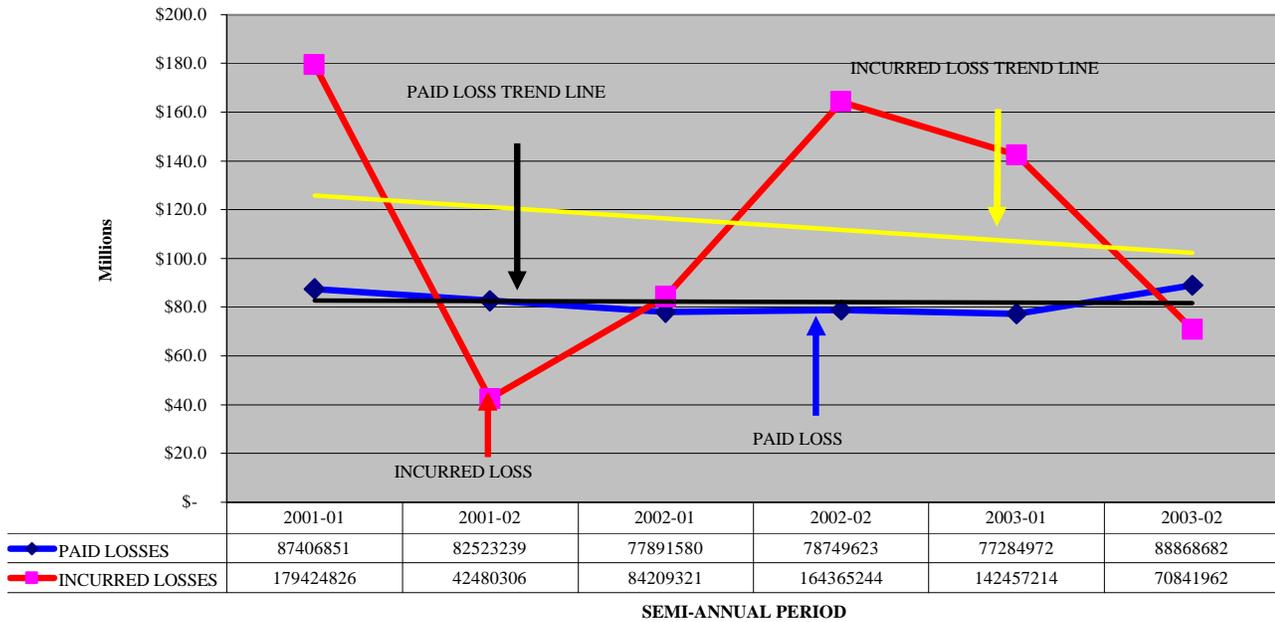
**Graph C**

**CONSOLIDATED IWIF  
CLAIMS GROWTH PATTERN**



**Graph D**

**CONSOLIDATED IWIF  
PAID AND INCURRED LOSS  
TRENDS**



The State Agency Self-insurance Program business, as measured by claims processed and paid losses, represents approximately 8 to 9 percent of the total workers' compensation market in Maryland. This share may be reduced further once all reports are received from insurers and self-insurers.

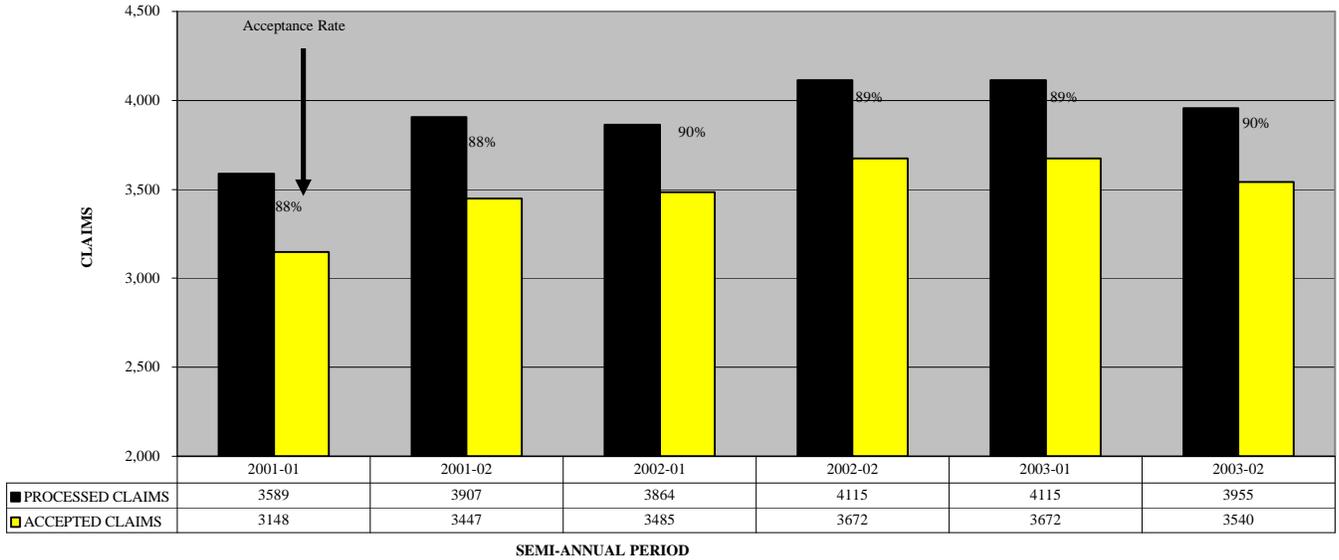
**TABLE - IV**

IWIF - STATE AGENCY SELF-INSURANCE PROGRAM CLAIMS AND LOSS DATA						
DESCRIPTION	Period	Claims Processed	Claims Accepted	Acceptance Rate	Paid Losses	Incurred Losses
Pre-Harris	1-2001	3,589	3,148	88%	23,920,037	53,535,667
	2-2001	3,907	3,447	88%	20,328,985	(3,696,979)
	1-2002	3,864	3,485	90%	20,478,137	22,246,840
	2-2002	4,115	3,672	89%	19,294,776	29,698,716
	1-2003	4,115	3,672	89%	19,298,129	29,941,808
	Average	3,918	3,485	89%	20,664,013	26,345,210
Post Harris	2-2002	3,955	3,540	90%	21,189,078	22,390,007
Percentage Change		0.9%	1.6%	0.6%	2.5%	-15.0%

The reported data shows less than a one percent increase in acceptance rate of claims.

**Graph E**

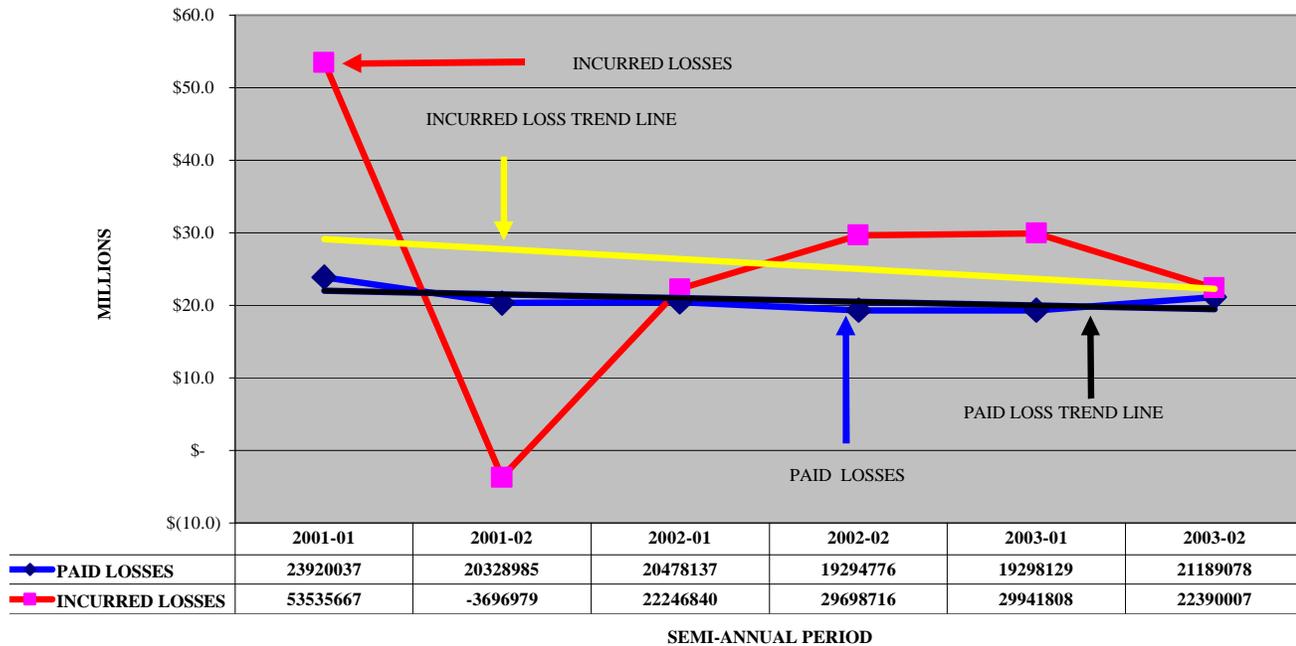
**IWIF - STATE AGENCY SELF-INSURANCE PROGRAM  
CLAIMS GROWTH PATTERN**



Paid losses increased only 2.5 percent while incurred losses dropped 15 percent.

**Graph F**

**IWIF - STATE AGENCY SELF-INSURANCE PROGRAM  
INCURRED AND PAID LOSS  
TRENDS**



The trend line for both paid and incurred costs is downward. The average paid loss per claim appears to be relatively stable. Average incurred losses per claim are decreasing.

IWIF's Commercial Insurance Program represents between 24 and 30 percent of all workers' compensation claims and paid losses. This program is reporting increases.

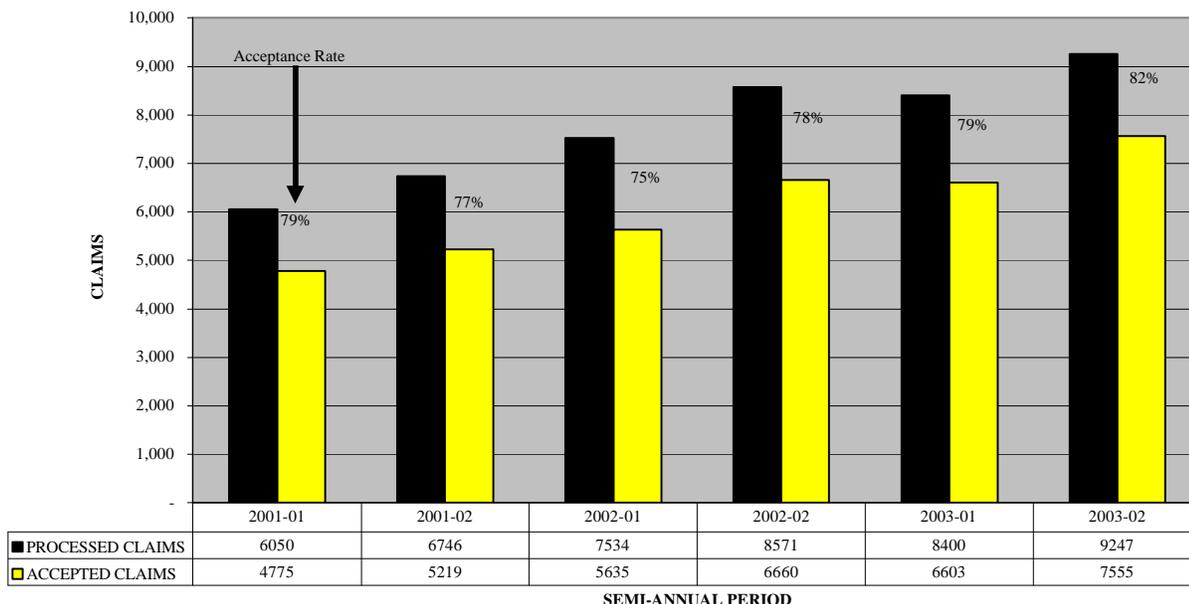
**TABLE - V**

<b>IWIF - COMMERCIAL INSURANCE PROGRAM CLAIMS AND LOSS DATA</b>						
DESCRIPTION	Period	Claims Processed	Claims Accepted	Acceptance Rate	Paid Losses	Incurred Losses
Pre-Harris	1-2001	6,050	4,775	79%	63,486,814	125,889,159
	2-2001	6,746	5,219	77%	62,194,254	46,177,285
	1-2002	7,534	5,635	75%	57,413,443	61,962,481
	2-2002	8,571	6,660	78%	59,454,847	134,666,528
	1-2003	8,400	6,603	79%	57,986,843	112,515,406
	Average	7,460	5,778	77%	60,107,240	96,242,172
Post Harris	2-2002	9,247	7,555	82%	67,679,604	48,451,955
Percentage Change		<b>24.0%</b>	<b>30.7%</b>	<b>4.2%</b>	<b>12.6%</b>	<b>-49.7%</b>

The acceptance rate of claims has jumped 4.2 percent since Harris and the paid losses have climbed 12.6 percent.

**Graph G**

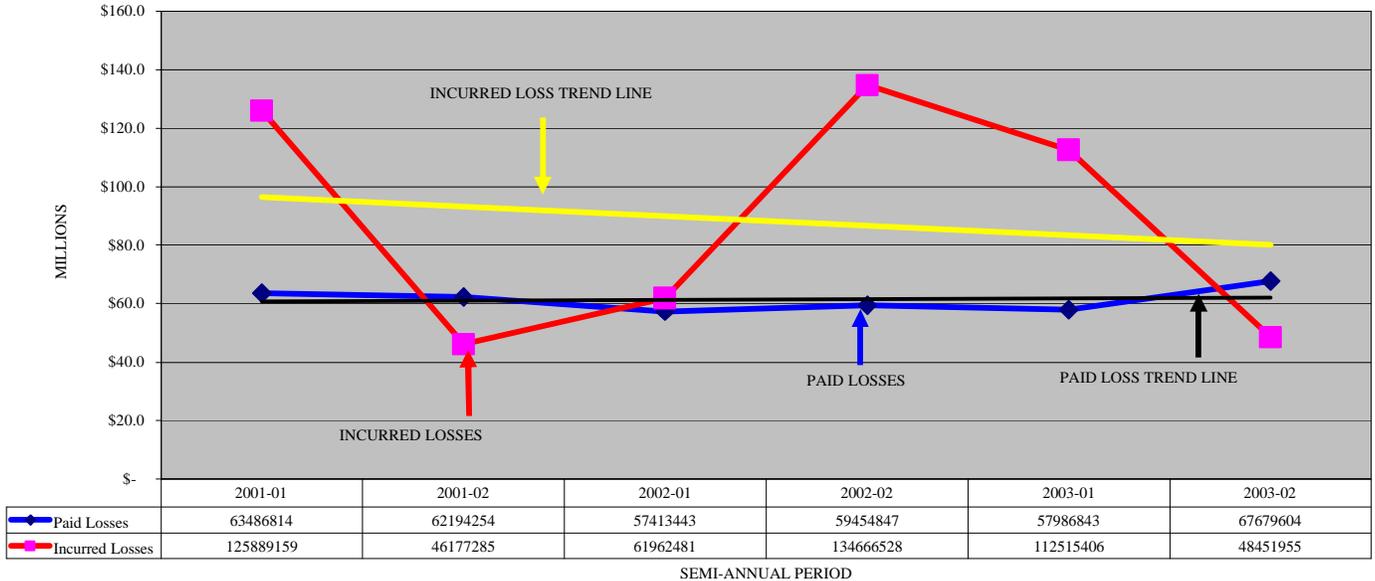
**IWIF - COMMERCIAL INSURANCE PROGRAM  
CLAIMS GROWTH PATTERN**



Incurred losses have dropped dramatically. Because payout on claims, once accepted, usually overlaps into two or more periods, the increase in paid losses cannot be associated with Harris alone. IWIF reported a 30 percent increase in earned premium during the year 2003 and a 22 percent increase in premiums written for the same period. When matched against the 7.5 percent annual increase in paid

losses, it is obvious that there must be a significant increase in their policyholders that could be responsible for the increase in paid losses. More analysis and interaction with IWIF is necessary to isolate the Harris driven portion of these increases.

**Graph H**  
**IWIF - COMMERCIAL INSURANCE PROGRAM**  
**INCURRED AND PAID LOSS**  
**TRENDS**



d. Insurers – Voluntary Market Data – As mentioned previously, approximately 30 percent of Maryland insurers have not yet responded to the survey. Included is one major insurer whose data could alter the relationships represented herein.

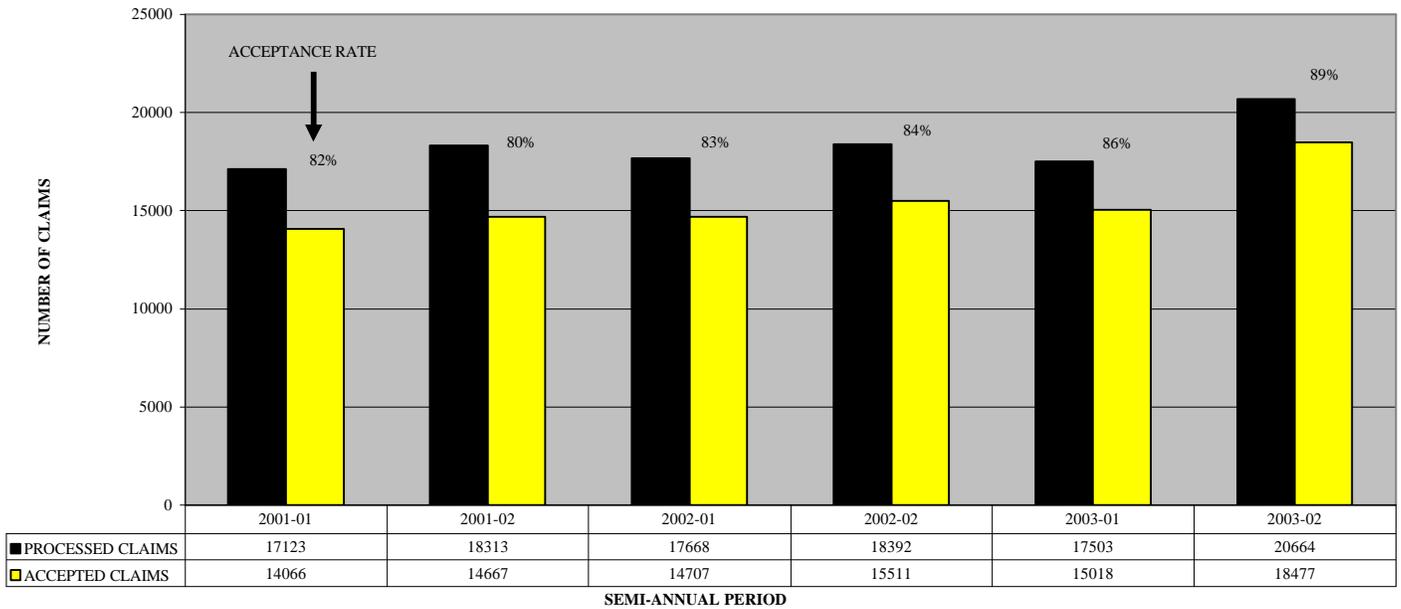
**TABLE - VI**

<b>INSURERS VOLUNTARY MARKET CLAIMS AND LOSS DATA</b>						
<i>With exception of IWIF data, all other segments are understated due to late, inconsistent or delayed reporting.</i>						
DESCRIPTION	Period	Claims Processed	Claims Accepted	Acceptance Rate	Paid Losses	Incurred Losses
Pre-Harris	1-2001	17,123	14,066	82%	90,474,350	82,543,236
	2-2001	18,313	14,667	80%	89,269,989	90,200,629
	1-2002	17,668	14,707	83%	91,184,518	83,489,654
	2-2002	18,392	15,511	84%	92,053,166	112,294,496
	1-2003	17,503	15,018	86%	98,255,450	112,057,002
	Average		17,800	14,794	83%	92,247,495
Post Harris	2-2002	20,664	18,477	89%	98,954,875	125,531,027
Percentage Change		<b>16.1%</b>	<b>24.9%</b>	<b>6.3%</b>	<b>7.3%</b>	<b>30.6%</b>

The insurers are reporting a significant increase in claims processed as well as a rise in the acceptance rate of claims.

**Graph I**

INSURERS - VOLUNTARY MARKET  
CLAIM GROWTH PATTERNS

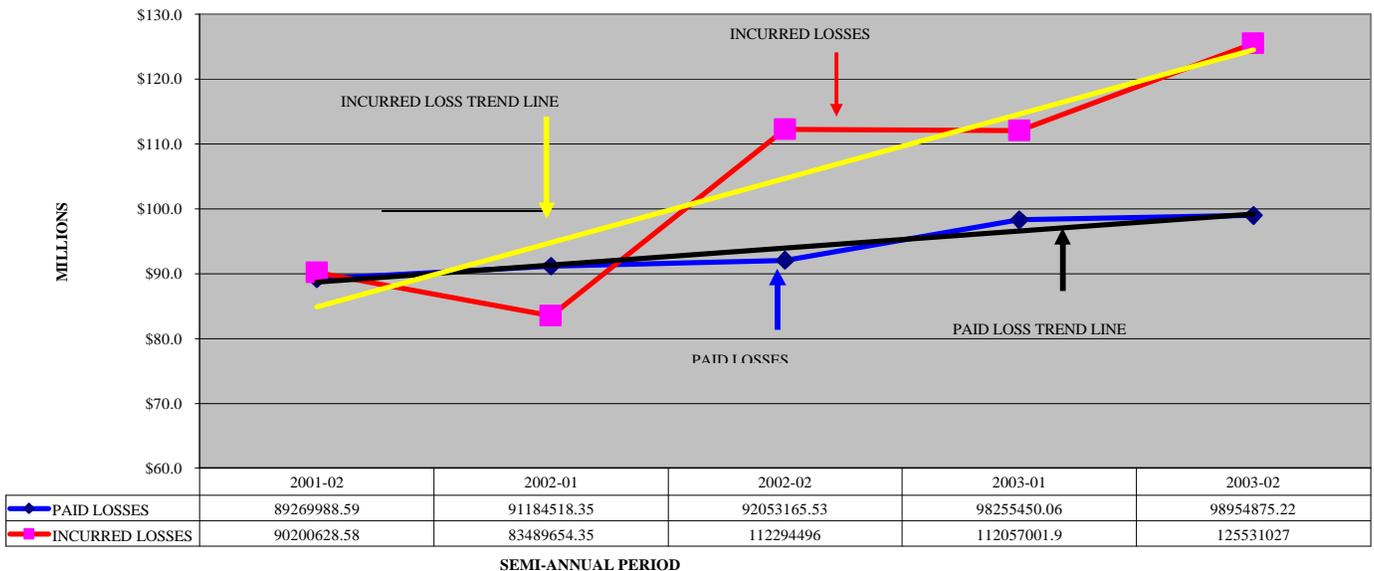


Because there is a three-year pattern of increased acceptance rates, the extent to which Harris affects the three percent increase over the prior period cannot be isolated without consideration of other factors driving the increase. While paid losses are increasing, there is less than a one percent increase in the post Harris period over the period immediately prior to the

Harris decision. Sufficient time has not passed to attribute any significant portion of the paid loss increases to Harris.

**Graph J**

INSURERS - VOLUNTARY MARKET  
INCURRED AND PAID LOSS  
TRENDS



e. Self-Insured Employers Data - As mentioned previously, approximately 15 percent of Maryland self-insurers have not yet responded to the survey. In addition, one major self-insured governmental entity's data was excluded from the compilation. When this data is added, it will change the relationships represented herein.

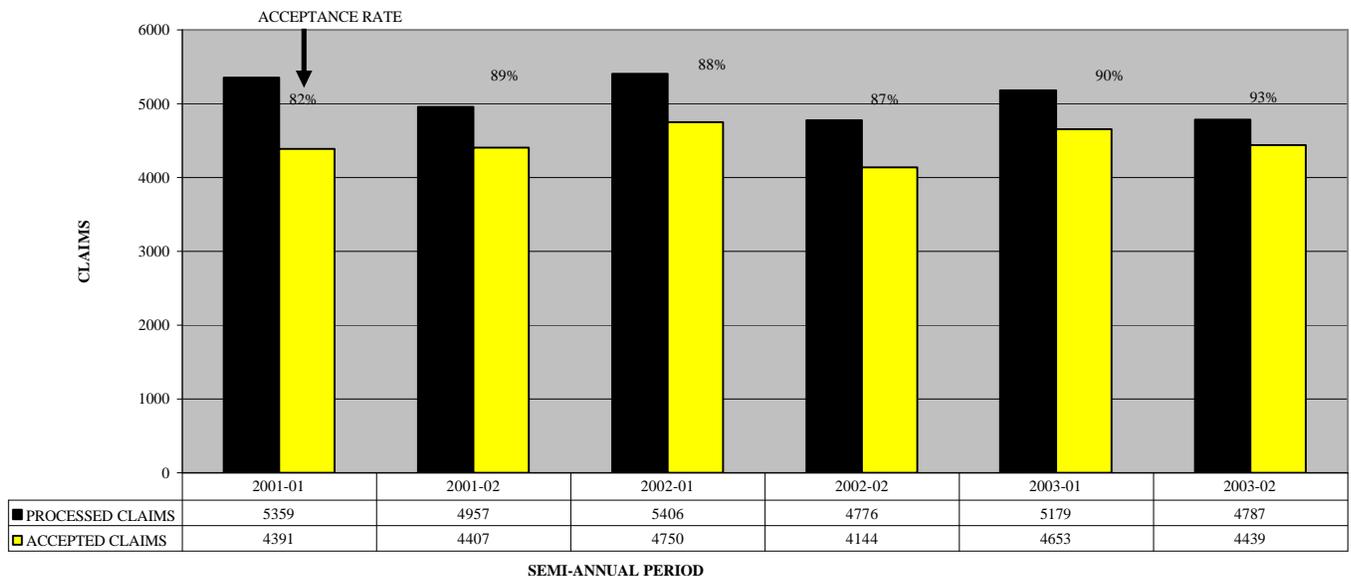
TABLE - VII

<b>SELF-INSURED EMPLOYERS CLAIMS AND LOSS DATA</b>						
<i>With exception of IWIF data, all other segments are understated due to late, inconsistent or delayed reporting.</i>						
DESCRIPTION	Period	Claims Processed	Claims Accepted	Acceptance Rate	Paid Losses	Incurred Losses
Pre-Harris	2001-01	5,359	4,391	82%	42,705,961	50,585,665
	2001-02	4,957	4,407	89%	26,725,801	44,861,745
	2002-01	5,406	4,750	88%	31,528,465	48,422,405
	2002-02	4,776	4,144	87%	27,854,814	45,281,444
	2003-01	5,179	4,653	90%	32,067,299	56,257,497
	Average	5,135	4,469	87%	32,176,468	49,081,751
Post Harris	2002-02	4,787	4,439	93%	37,958,407	57,980,731
Percentage Change		<b>-6.8%</b>	<b>-0.7%</b>	<b>5.7%</b>	<b>18.0%</b>	<b>18.1%</b>

The self-insurers are the only segment reporting a decrease in claims. They are, however, reporting an increase in the acceptance rate of 3 percent over the previous period.

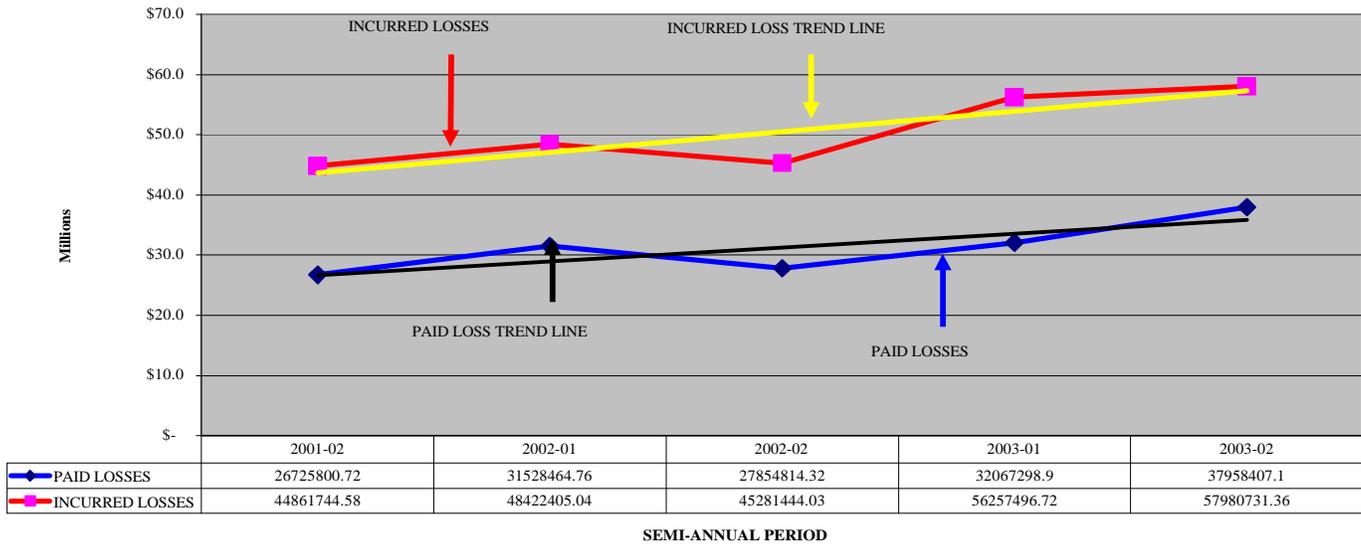
Graph K

SELF-INSURED EMPLOYERS  
CLAIM GROWTH PATTERNS



**Graph L**

**SELF-INSURED EMPLOYERS  
INCURRED AND PAID LOSS  
TRENDS**



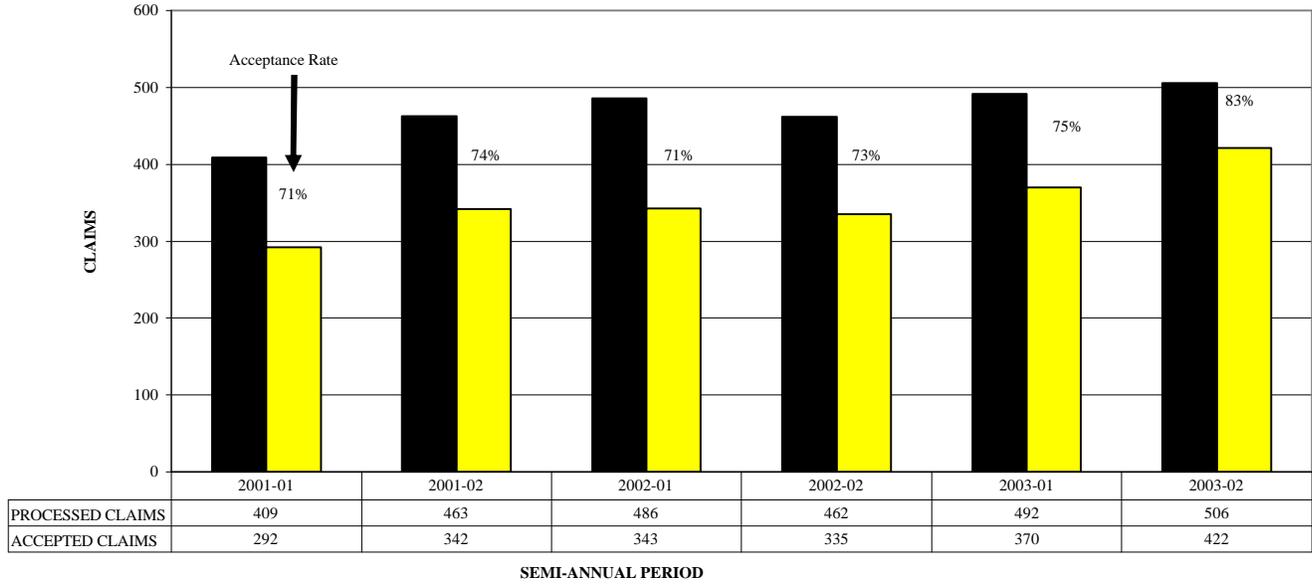
The increase in acceptance rate for this group follows the upward pattern of the other groups. The substantial increase in paid losses is misleading. One self-insured governmental entity accounts for 15 percent of the increase in the post Harris period and that 15 percent increase was not related to Harris. The relationship between paid and incurred loss data for the self-insurers is more consistent than that reported by other groups. More than 50 percent of the self-insurers are publicly held companies who must routinely provide quarterly estimates of claims information for financial reporting purposes to the SEC and the public. This fact may account for what appears to be a more reliable estimate of incurred losses.

f. Private Group Self-Insured Employers Data - Two of the six private self-insured groups responded too late to be included in this analysis and report. That information is material in relation to this segment but should not significantly alter this segment's position in relation to the others. One of these groups is the largest of the six private groups. While we are including the table and the two graphs developed using their data, we are not commenting until the remainder of the private groups can be reported.

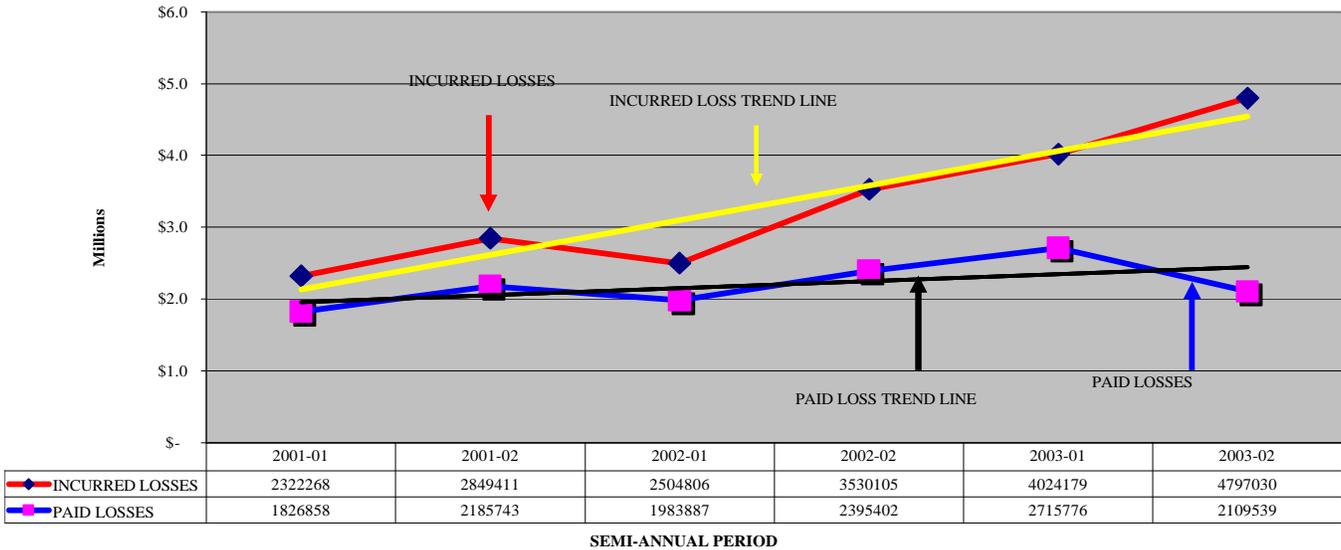
**TABLE - VIII**

<b>PRIVATE GROUP SELF-INSURED EMPLOYERS CLAIM AND LOSS DATA</b>						
<i>With exception of IWIF data, all other segments are understated due to late, inconsistent or delayed reporting.</i>						
DESCRIPTION	Period	Claims Processed	Claims Accepted	Acceptance Rate	Paid Losses	Incurred Losses
Pre-Harris	1-2001	409	292	71%	1,826,858	2,322,268
	2-2001	463	342	74%	2,185,743	2,849,411
	1-2002	486	343	71%	1,983,887	2,504,806
	2-2002	462	335	73%	2,395,402	3,530,105
	1-2003	492	370	75%	2,715,776	4,024,179
	Average		462	336	73%	2,221,533
Post Harris	2-2002	506	422	83%	2,109,539	4,797,030
Percentage Change		<b>9.4%</b>	<b>25.4%</b>	<b>10.6%</b>	<b>-22.3%</b>	<b>19.2%</b>

**Graph M**  
**PRIVATE GROUP SELF-INSURED EMPLOYERS**  
**CLAIMS GROWTH PATTERN**



**Graph N**  
**PRIVATE GROUP SELF-INSURED EMPLOYERS**  
**INCURRED AND PAID LOSS**  
**TRENDS**



## 5. Conclusion and Recommendations

The cost of workers' compensation is increasing. This is evident throughout the data collection period of January 1, 2001 to December 31, 2003. Unlike the rest of the insurer market, IWIF's State Agency program shows relatively flat growth for the five periods preceding Harris, and a major increase after the Harris decision. Further analysis is necessary to determine that portion of the increase attributable to Harris. The team has not yet separated and quantified those drivers that are causing increases throughout the period of the survey. It has been suggested that many insurers were following the generally accepted definition of accidental injury used in 46 other states prior to the Harris decision. If this is the case, then it may not be possible for insurers to isolate this compensability issue as a cost driver. It is the Commission's intention to address this issue in a follow-up report to be submitted by December 31, 2004. One six-month period since Harris is not adequate time to confirm that the increase is not isolated but a continuing pattern created by the Harris decision. Accordingly, we are recommending a continuation of this study for another year at which time more data will have been collected and analyzed to allow a meaningful conclusion as to the financial impact of the Harris decision on workers' compensation in Maryland.

**May 28, 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 June 30, 2004. This first survey will cover six six-month periods beginning January 1, 2001 through December 31, 2003. The Commission will continue to collect this data every six months.

We have developed 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 in the initial mailing) is required to access the survey via:

**<https://services.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 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

## 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, the report should be consolidated into a single insurer/self-insurer filing. 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 requires listing a contact who has responsibility for providing this survey information in the event additional information is required by the WCC.

## Definitions of data collection elements

### **1. Number of decisions as to compensability of workers' compensation claims made for alleged accidental injuries or occupational diseases during the reporting period shown (Jan-Jun, Jul-Dec)**

– 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 July 2003 – Dec 2003, 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, Jul-Dec)**

- 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, Jul-Dec)**

- 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. Number of claims filed with the Workers' Compensation Commission during the period shown (Jan-Jun, Jul-Dec) after a decision to ACCEPT compensability was made** – The date of filing of the claim with the WCC should determine the appropriate reporting period. For example, out of the 600 claims entered for question #2, how many were filed with the Workers' Compensation Commission after the decision to ACCEPT as a compensable WC claim?

**5. Number of claims filed with the Workers' Compensation Commission during the period shown (Jan-Jun, Jul-Dec) after a decision to DENY compensability was made** – The date of filing of the claim with the WCC should determine the appropriate reporting period. For example, out of the 400 claims entered for question #3, how many were filed with the Workers' Compensation Commission after the decision to DENY as a compensable WC claim?

**6. Annual Premiums: Written (Jan-Dec)** – Premiums written include only new or renewed policies during the reporting year.

**7. Annual Premiums: Earned (Jan-Dec)** – Premiums earned include the unearned portion from prior year earned in the current year as well as the earned portion of current year policies.

**8. Paid Losses (Jan-Jun, Jul-Dec)** – The total amount of compensation, medical expense and other directly related expense paid during the reporting period.

**9. Incurred Losses (Jan-Jun, Jul-Dec)** – The total amount of paid loss plus case reserve added during the reporting period.

**10. Paid Claim Counts (Jan-Jun, Jul-Dec)** – 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 a single claim could be reported in each reporting period.

**11. First Reports of Injury (Jan-Jun, Jul-Dec)** – 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**

**This report must be submitted to the WCC no later than June 30, 2004.**

<b>Survey Questions/Content</b>	<b>Format/ Technology</b>
Thomas J. Murphy, CPA Director, Insurance Division Tel: 410-864-5292 tmurphy@wcc.state.md.us	James MacDonald, Webmaster websurvey@wcc.state.md.us

**Maryland Workers' Compensation Commission Web Report Survey 2001-2003 Worksheet**

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

This survey information is provided by: \_\_\_\_\_ (company name as on cover letter)

PIN # \_\_\_\_\_ (as provided on cover letter)

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

	Calendar Year 2001		Calendar Year 2002		Calendar Year 2003	
	1	2	1	2	1	2
<b>1. # Decisions compensability</b>						
<b>2. # Accepting compensability</b>						
<b>3. # Initially denying compensability</b>						
<b>4. # Claims after acceptance</b>						
<b>5. # Claims after denial</b>						
<b>6. Annual Premiums Written</b>						
<b>7. Annual Premiums Earned</b>						
<b>8. Paid Losses</b>						
<b>9. Incurred Losses</b>						
<b>10. Paid Claim Counts</b>						
<b>11. First Reports of Injury</b>						