NEW ENGLAND UPDATE

Comp Reform in New England: It Works

Legislation and Safety Efforts Reduce Premiums

Five years ago, almost everyone called the workers compensation insurance system, which pays for replacement income and medical care for workers injured or disabled on the job, a disaster. Injury rates and days missed were rising; medical costs were spiraling upward at double-digit annual rates; and insurance companies were fleeing the market or raising premiums radically. In construction, premiums rose an average of 12% annually and sometimes jumped as much as 40% in a year. Comp insurance was costing many contractors as much as 25% of their payroll costs, and were rising yearly (see "Straight Talk About Workers Comp," 2/93.)

Today, this seemingly unstoppable trend toward ever-rising insurance costs has been reversed throughout the Northeast. As a result, workers compensation premiums, while still among the largest expenses for most contractors, have been dropping in all of the New England states, and are expected to drop in New York as a result of recently passed legislation there.

Why the turnaround? Observers credit widespread reform legislation in the individual states (one industry observer called the recent changes "the biggest set of reforms the industry has ever seen") as well as efforts by insured industries, particularly construction, to increase safety measures. All agree the turnaround has been remarkable.

Increased attention to safety, along with legislative reforms, has produced double-digit decreases in workers compensation costs in most New England states.

Paul Sullivan, an insurance broker who underwrites the group plan for the New Hampshire Home Builders Association, says, "We've gone from double-digit increases annually to decreases almost every year. We've got more safety programs, quicker returns to work, lower medical costs, and a more competitive rate environment. It's a dramatic improvement."

Sullivan was speaking of New Hampshire, but he could have been speaking about any of the New England states. While the states' reform measures have differed in detail, most have sought common goals: to control rising medical costs through some form of managed care or medical fee structure; to encourage or require safety programs; to limit lost-wage benefits; to provide incentives for workers to return to work sooner; and to curb costs due to fraud, abuse, and litigation over claims. Below is a rundown of the specific changes made in the New England states.

Rhode Island. Rhode Island's workers comp reform package, passed in 1992, was perhaps the region's most comprehensive. Its key provisions included the establishment of a "maximum medical improvement" standard to end treatment when a worker's injury stabilizes to the point where no further improvement is expected; 6-month and 1-year

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post-injury medical and occupational ability reviews; the establishment of treatment protocols for common injuries; the creation of a medical fee schedule; the limitation of lost-work compensation to 75% of the employee's base wages; the establishment of an arbitration program to reduce appeals and litigation; and the establishment of the Beacon Mutual Insurance Company, a state-sponsored insurance group that provides insurance at competitive rates to companies in the "assigned risk pool" or "residual market" — the companies that can't find insurance through private insurers because of their risk factors or small size. Many construction companies have traditionally fallen into this poorly served, expensive market.

All of these changes helped reduce premiums. The Beacon Mutual Insurance Company in particular, with its incentives and reduced premiums for companies or "safety groups" (coalitions of companies) that instituted safety programs, has helped cut costs for the building industry. The Rhode Island Builders Association (RIBA), working with Beacon, created a safety group of several dozen companies in 1994; the companies agreed to institute safety programs and abide by certain standards. These programs reduced claims rates for those companies to far below the construction industry norm. As a result, the companies in the group recently received a 38% dividend, or refund, on premiums they have paid over the last two years.

Connecticut. Connecticut's 1993 reform bill was also among the most aggressive measures passed. It reduced benefit levels 20%, created medical fee schedules for work-related injuries; eliminated the cost-of-living adjustment for unemployment benefits; and eliminated benefits paid for scarring. These changes reduced premiums by 17.5% in 1993, and created an additional 36% decrease since then — a total decrease of almost 50%. While construction industry premiums haven't dropped that much, most contractors have seen their rates drop significantly.

Massachusetts. Massachusetts' 1991 reform bill added more judges to speed disposition of litigated cases, reduced most benefits and their duration, and established "preferred provider networks" of physicians to provide medical care at controlled fee schedules. As a result, says Massachusetts Home Builders Association director of government affairs Bill Habib, "we've seen a 40% reduction in general premium rates over the last three years — though not quite that much in construction."

Maine. Maine's 1993 reform bill curbed benefits, imposed new controls on medical costs and unemployment benefits, and created the Maine Employers Mutual Insurance Co. to handle the residual market. These moves and others helped create modest but steady decreases in premiums for most covered industries, particularly those in the residual market.

New Hampshire. New Hampshire's reform bill, passed in 1994, established a fraud unit to investigate possibly fraudulent claims; required mandatory safety programs for companies with ten workers or more and created incentives for other companies to create such programs; provided guidelines for returning injured workers to work; reduced some unemployment and medical benefits; and created incentives encouraging the use of managed medical care. These changes produced single-digit decreases in premiums, and, perhaps more important for the long term, increased competition among insurance companies, which are now offering better plans and lower rates and leaving fewer companies in the residual market.

Vermont. Vermont's comp legislation, passed in 1994 and 1995, established procedures for obtaining medical care, outlined new guidelines for compensating disability losses, streamlined some unemployment benefits and simplified procedures for litigated cases. These and other small changes lowered premiums approximately 7% in 1995 and 8% in 1996.

Done for now — maybe. For the time being, at least, these efforts seem to have satisfied the drive for reform. As Ken Christiansen of the National Council on Compensation Insurance (a nonprofit industry group that sets rates) put it, "You simply don't see that much push toward broad reforms anymore. Most people feel the major problems have been fixed."

Whether these premium reductions will last is a subject for debate. Most observers feel the rate decreases are due partially to good luck — to the normal corrections of the cyclical insurance industry, to a slowing in the rise of medical costs, and to increased vigilance by OSHA regarding safety in the more dangerous industries. These "accidental" factors may have multiplied the good effect the reforms have had.

Good luck or not, however, most observers find it encouraging that business, the insurance industry, and (in some states) labor have been able to work together to fix a system that most everyone agreed was ailing. As one observer put it, "The bottom line on this is that the high costs of the late 1980s drove everyone to be more vigilant about safety. And that's something that benefits everyone." ■

Cutting-Edge Solar Technology Comes to Maine

Maine's frosty climate has long inspired energy-efficient construction. Now a new house on the Maine coast showcases not only energy-efficient design, but state-of-the-art solar technology as well.

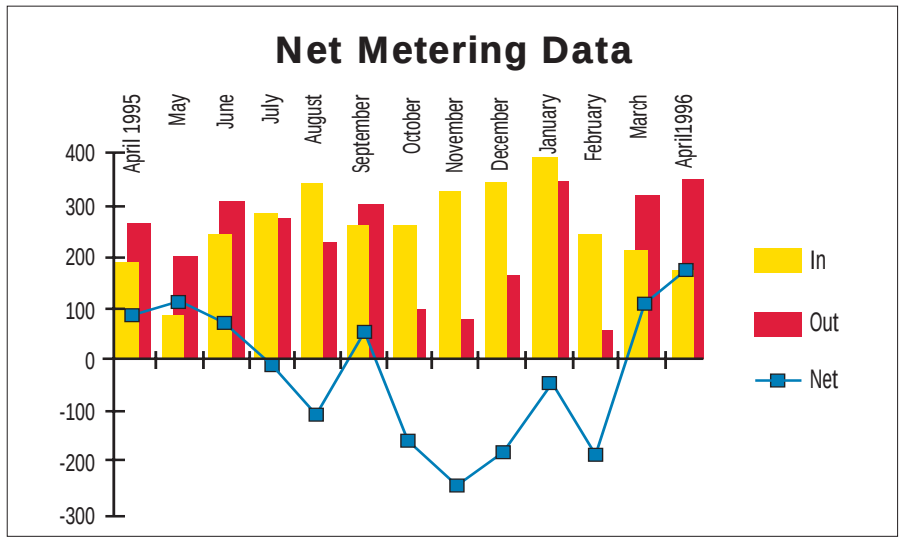
The house, designed by architect Steven Strong and built in 1995 by builder Tim Spang for William and Debbi Lord, is a veritable catalog of cutting-edge features. The home's shell includes R-28 2x6 walls insulated with fiberglas batts and covered with 2 inches of rigid foam; R-8 Hurd Solar Glass windows and sliding doors; a trussed roof with R-60 insulation; monolithic air and vapor barriers throughout; airlock vestibules; a heat-recovery ventilation system; and radiant floor heating.

The Lords, however, having paid for electric heat in their last home, wanted this one to be as independent of conventional fuel and electric supplies as possible. So they had Strong's firm, long a leader in solar design, create a house that used the sun not just for passive heating, but to heat water for both the radiant floor heating system and to fill their hot water supply tank and to generate electricity. The system works. The house's multiple hot water and photovoltaic panels, integrated gracefully into the roof, produce enough hot water and electrical energy that the Lords use only a little firewood and virtually no power from the grid.

Solar thermal system. Water heated in the roof panels is stored in two insulated 500-gallon tanks in the basement. When the roof temperature reaches 10 degrees higher than the water stored in the tanks, pumps circulate the stored water to the roof to be heated and returned to the tanks. The pumps shut off when the two temperatures equalize. Lord says that even in January, just a 10-minute opening in the cloud cover is enough to "crank up" the system. The heated water in the tanks supplies both the heating system and the tap and appliance water. The floors are oak strip over 1 1/2 inches of light concrete and radiant tubing. A propane backup warms the water on the rare occasions when its temperature drops below the mid-100s, and also supplies gas for cooking and clothes drying.

The juice. The house's most impressive feature is probably the photovoltaic system. The house integrates its "building-integrated photovoltaic" (or BIPV) system into the building's roof. Sixteen 4x6-foot panels provide 4,200 watts of DC power at 48 volts to an inverter in the basement; the inverter converts the power to AC current, which is then used by the house or, if produced in excess of the home's needs, exported through an "out meter" to the public power grid. So far the PV system has produced enough electricity that in about half the months, the Lords export more energy than they use, generating a credit with the power utility; for the first six months of 1996, they exported 127 kWh more power to the grid than they used. "If this keeps up," says William Lord, "we just may get a check from the power company later this year." ■

This new house along the Maine coast, designed by Steven Strong and built by Tim Spang for William and Debbi Lord, is a state-of-the-art example of both active and passive solar design.



The house's photovoltaic system, driven by integrated roof panels, creates a surplus of electrical energy in most of the nonwinter months — and is improving as the system is tweaked. Since Maine is a "net metering state," the homeowners could receive a modest check from their power company if their energy production exceeds consumption.

Developer Turns Sawyer, Likes It

Portable Sawmill Produces Good Lumber, Big Savings

When developer and former National Association of Home Builders vice-president Bob Marcotte ended his 35-year contracting career and turned his construction business over to his son David, he didn't waste much time finding something else to do. He went right out and bought himself a sawmill — specifically, a Wood-Mizer LT 30 portable bandsaw mill, which is big enough to cut trees more than 2 feet wide, but small and light enough to tow behind a pickup. In doing so, Marcotte joined a growing number of people who are finding that for about $30,000 they can mill their own wood from local forests. This not only saves them money, but improves local economies by steering what money is spent on the wood directly to local loggers and landowners. The use of portable sawmills has environmental benefits as well: little fuel is used to transport the wood, and the small logging jobs done to feed portable sawmills are often completed with more care than is the case with large industrial growers of sawtimber.

Marcotte has been nothing but pleased with his own use of the Wood-Mizer. Marcotte says he recouped that $30,000 investment (which bought not only the sawmill, but a used tractor with a bucket and forks for maneuvering logs, a wood chipper, a blade sharpener, and a Wood-Mizer solar drying kiln) with the first six houses he built. Since he's cutting trees from land he and his son own, he figures he saves about $6,000 per house in lumber costs. The variety of trees available in the northern New England woods supplies him with framing lumber, interior and exterior trim, oak flooring, and custom nontapered white pine clapboards.

Wood-Mizer almost singlehandedly established the market in portable sawmills over the last decade or so, and makes more portable sawmills than any other firm. Its LT 30 cuts grade boards up to 28 inches wide and 16 feet long; it uses a thin bandsaw blade that takes only a 1/16-inch kerf. "There's virtually no waste," says Marcotte, "and that suits my nature. I'm a frugal person." It costs Marcotte only about $3 to run the mill a full day, in which he can cut about 1,000 board feet. Blades cost $18.50 each, and a box of 10 lasts Marcotte a year. Electricity to power the fans in his solar kiln cost about $1 a day, and it takes six to eight weeks to dry 1,500 board feet of hardwoods down to the desired 6% to 7% moisture content. So milling and drying that much hardwood costs a total of about $60.

Marcotte, who as an NAHB vice-president spent a lot of time promoting the NAHB's high-tech Smart House, now spends a fair amount of time talking up the virtues of relatively low-tech bandsaw portable sawmills. As he points out, these sawmills — the design and manufacture of which was largely perfected over the last 10 to 15 years — enable builders, landowners, or loggers to produce custom milling jobs from logs cut carefully from local woods, reducing both the environmental and financial costs that are part of the conventional lumber market. "There should be a hundred of these in Vermont alone," he says. He also thinks it's fun. "You can spend a whole day sawing and never be bored."

For more information on Wood-Mizer sawmills, contact Wood-Mizer at 8180 W. 10th St., Indianapolis, IN 46214; 800/553-0182; or, on the Internet, at *http://www.woodmizer.com*. ■

This story was adapted with permission from a story by Dick Nelson in the Vermont edition of Builder/Architect Magazine.

The Latest on the Law: Mass. "Takings" Decision; R.I. Wetlands

A "takings" decision out of Cape Cod dominated the New England construction legal landscape this summer, while new wetlands laws have pleased Rhode Island builders.

Cape Cod ruling changes takings landscape. In a decision that may have national implications for property rights, the Massachusetts Land Court ruled that the Cape Cod Commission's denial of landowner Francis Daddario's application to mine 35 of his 70-acre Falmouth property for sand and gravel constituted a "taking" of that property. The court then ordered the commission to approve the owner's permit, with some restrictions.

The decision (which the Cape Cod Commission is appealing before the state's Supreme Judicial Court) is significant for its opinion that the conditions set by the Cape Cod Commission on the permit it offered Daddario were so onerous as to be a taking of his land. In the past, most courts have ruled that the commission's conditions, while they often reduced the value of land, did not effectively "take" the land without compensation, as is declared unconstitutional by both Massachusetts law and the U.S. Constitution. In this case, however, the court ruled that the commission's offer, which was to let Daddario mine 25 acres of the commission's choosing, so reduced the economic use of his land as to cross the line from a reduction to a taking — even though the land retained considerable value as developable real estate. In particular, the court ruled that the commission's requirement that 40% of the land be preserved as permanent open space "certainly falls into the taking category" and that the Cape Cod Commission "is unreasonable in dictating which areas the plaintiff must leave as open space, without offering compensation."

If Daddario prevails in appeals before the Supreme Judicial Court and any subsequent courts, this decision could have lasting implications for development not just on Cape Cod, but elsewhere as well, since it might leave vulnerable many town, regional, or state laws resembling the Cape Cod Commission's.

Rhode Island firms up wetlands bill. A new wetlands bill is expected to streamline permit applications for construction near wetlands in Rhode Island, according to the Rhode Island Builders Association (RIBA). The bill, forged by a committee with representatives from all sides of the issue, was as of this writing expected to receive approval from the General Assembly and the governor. Among other things, the bill simplifies the state's wetlands definitions, allows licensed professionals as well as state officials to delineate regulated wetlands boundaries (which should speed permitting), and creates an expedited process for activities considered to have a minimal impact on freshwater wetlands.

RIBA, which helped negotiate the bill in an arduous process involving industry, state regulators, and environmentalists, is cautiously optimistic about the bill's effect on builders. "The devil is in the details," as past RIBA president Frederick Schick told the *Rhode Island Builder Report.* "The next step, the regulations that come from the bill, will be what really matters." ■