
Committee Meeting

of

SENATE LABOR COMMITTEE

"Examination of the workers' compensation system in New Jersey"

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: May 5, 2008
1:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Paul A. Sarlo, Chair
Senator Fred H. Madden Jr., Vice Chair
Senator Sandra B. Cunningham
Senator Sean T. Kean
Senator Joseph Pennacchio



ALSO PRESENT:

Gregory L. Williams
Office of Legislative Services
Committee Aide

Jonathan Boguchwal
Senate Majority
Committee Aide

John Hutchison
Senate Republican
Committee Aide

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

TABLE OF CONTENTS

	<u>Page</u>
David J. Socolow Commissioner New Jersey Department of Labor and Workforce Development	3
Steven M. Goldman Commissioner New Jersey Department of Banking and Insurance	10
Peter J. Calderone Director/Chief Judge Division of Workers' Compensation New Jersey Department of Labor and Workforce Development	17
Donald Bryan Director Division of Insurance New Jersey Department of Banking and Insurance	33
Senator Stephen M. Sweeney District 3	47
James H. Coleman Jr. Former Justice New Jersey Supreme Court, and Representing James H. Coleman Jr. New Jersey Workers' Compensation American Inn of Court	51
Richard E. Hickey III Administrative Supervising Judge Division of Workers' Compensation New Jersey Department of Labor and Workforce Development, and Representing Association of Workers' Compensation Judges	59

TABLE OF CONTENTS (continued)

	<u>Page</u>
Rose Mary Granados Administrative Supervising Judge Division of Workers' Compensation New Jersey Department of Labor and Workforce Development, and Representing Association of Workers' Compensation Judges	60
Michael J. Van Wagner Vice President Legislative Affairs New Jersey Manufacturers Insurance Group	67
John D. Rogers, Esq. Vice President Human Resources New Jersey Business and Industry Association	70
Charles Wowkanech President New Jersey State AFL-CIO	78
Amos Gern, Esq. President Association of Trial Lawyers of America-New Jersey	81
Marcia S. Freedman, Esq. Chair Workers' Compensation Section New Jersey State Bar Association	90
Arthur H. Kravitz, Esq. Chair-Elect Workers' Compensation Section New Jersey State Bar Association	91
Lynne P. Kramer, Esq. General Counsel New Jersey Advisory Council on Safety and Health	95

TABLE OF CONTENTS (continued)

	<u>Page</u>
Craig H. Livingston, Esq. President New Jersey Advisory Council on Safety and Health	96
 APPENDIX	
Testimony submitted by David J. Socolow	1x
Testimony and charts submitted by Steven M. Goldman	8x
Biography, plus attachments submitted by James H. Coleman Jr.	18x
Testimony submitted by Richard E. Hickey III	31x
Statement submitted by Michael J. Van Wagner	35x
Testimony submitted by Charles Wowkanech	37x
Testimony submitted by Amos Gern, Esq.	39x
Testimony submitted by Marcia S. Freedman, Esq. and Arthur H. Kravitz, Esq.	48x

TABLE OF CONTENTS (continued)

APPENDIX (continued):

	<u>Page</u>
Testimony submitted by Lynne P. Kramer, Esq. and Craig H. Livingston, Esq.	51x
Letter addressed to Senate Labor Committee from David N. Grubb Executive Director Municipal Excess Liability Joint Insurance Fund	57x
Article, plus attachment submitted by Jay H. Bernstein, Esq. Attorney at Law Kirsch, Gelband & Stone	59x
Letter, plus attachments addressed to Gregory L. Williams, and Senate Labor Committee from Jon L. Gelman, Esq. Private Citizen	82x
Letter addressed to Senate Labor Committee from Robert Guzman Private Citizen	101x
Letter, plus attachments addressed to Senate Labor Committee from Peggy Mallen Legislative Advisor New Jersey State Police Survivors of the Triangle-COPS	106x

TABLE OF CONTENTS (continued)

APPENDIX (continued):

Letter addressed to
Senate Labor Committee
from
James C. Knicos
Executive Secretary
New Jersey Self Insurers' Association

115x

rs:1-104

SENATOR PAUL A. SARLO (Chair): Good afternoon, everybody. Welcome to the Senate Labor Committee, May 5, 2008.

This is a small room. It's great to see so many people are interested in this program. We're going to ask everybody to be patient, be respectful of one another. We're going to ask everybody, if you do have any type of electronic devices just put them on vibrate, put them on silent. And if you need to make a phone call, please just step outside of the room. It is a small room. We'll try to be courteous.

I believe all the chairs are taken. And I'm assuming as we go through this, we'll be probably losing some people to other commitments. And once seats do open up, I ask everybody on the sides to just grab seats as people do move on.

This afternoon we are having a hearing on workers' compensation. Almost a hundred years ago, New Jersey became a pioneer when it established the State Workers' Compensation System. It was established with the goal of providing a quick resolution between employers and employees to ensure both sides do not get tangled up in years of litigation, which ultimately leaves the injured worker without income and medical benefits.

To date, New Jersey has been used as a model for all the states and is looked to as a leader in the workers' compensation system nationwide, a \$1.8 billion program here in New Jersey.

To that end, to be a nationwide leader means to be constantly asking ourselves: How is our system working? Where are we successful? And where can we improve? Answering those questions is why we're here

today. We should not jump to conclusions about published reports in any newspapers.

By and large, we have a well-functioning and successful system in place. However, we still have documented cases of individuals not receiving the compensation that they were promised and not having their case heard in court in a timely manner, as is their right.

Additionally, while the law requires every business in the state to obtain workers' compensation insurance, some still decide that violating this law is a better business practice than complying with it, which subsequently hurts not only the employees, but the business community as a whole.

We've invited representatives from a broad range of sectors to come and testify today, and discuss with them what they believe works with the system and where it can be improved.

I ask that each of you limit your testimony to five minutes and try not to duplicate previous testimony. If you're providing written testimony, I ask that you do the best you can to summarize it. The Committee has the written -- will be provided with the written testimony and can read it at a later time.

And please, I cannot stress enough that this is not a witch hunt here today. We're looking for a substantive discussion that will allow us to improve the workers' compensation system and allow New Jersey to remain at the forefront.

We're hoping in the coming weeks, from this meeting, we will be developing recommendations and legislation that could be put forward by this Committee and other committees, where applicable, and hopefully

close some of the potential loopholes that are in the system and hopefully make this an even better system than it is today.

So with that, we're going to try to invite people up in panels. The first panel will be our Commissioner of Labor, Commissioner David Socolow; and the Commissioner of Insurance, Steven Goldman. We're going to ask them to come up.

I believe Judge Calderone is here. And he should also join this panel as the Chief Judge of the workers' comp court here in New Jersey.

And you two gentlemen have more than five minutes, because we want to hear from you guys.

Everybody else has five minutes. (laughter)

COMMISSIONER DAVID J. SOCOLOW: Thank you, Chairman Sarlo.

I appreciate very much the opportunity to appear before you with -- between such distinguished colleagues: the Commissioner of Banking and Insurance, my friend, Steve Goldman; and our terrific Chief Judge and Director of Workers' Compensation in the Department of Labor, Peter Calderone. And I appreciate the opportunity to join you in a review of the issues concerning the New Jersey Workers' Compensation program.

Although New Jersey's private-sector workplaces are among the nation's safest, tied for fifth out of 50 states in terms of lost time, accident, and illness rates, injuries and illnesses are still an unfortunate reality in our workplaces.

For more than 95 years, as you said, Mr. Chairman, New Jersey's Workers' Compensation program has provided medical treatment, temporary partial wage replacement income, permanent disability benefits,

and dependency payments to New Jersey workers and their families for injuries caused by work-related accidents or occupational exposures. It has also ensured that New Jersey employers have a reliable and cost-effective mechanism to resolve workplace injury situations.

I would like to start by giving the Committee an overview of how our system works.

New Jersey employers are statutorily obligated to provide their employees with all reasonable and necessary medical treatment for work-related injuries. In addition, an injured employee is entitled to temporary disability benefits for up to 400 weeks, or until the worker reaches maximum medical improvement and/or returns to work. These wage replacement payments equal 70 percent of the worker's gross wages up to a statutory maximum, which is \$742 a week this year. And they are tax free for the employee. This system provides an injured employee with vital medical treatment and wage replacement benefits to sustain them until they can get back to work.

In 2007, New Jersey employers reported nearly 200,000 work-related accidents. And based on the consistent ratios in prior years, we expect approximately 85 percent of the injuries resulting from these accidents to be resolved between the employer and the employee without the worker ever filing a claim petition with workers' compensation court.

In 2007, about 36,000 new claim petitions were filed, of which an estimated 75 percent alleged a compensable work accident and 25 percent concerned an occupational exposure to hazardous materials or conditions.

In almost every case, the reason an injured employee files a claim petition with workers' comp court is to seek permanent disability benefits, either partial or total. In such cases, the worker is asserting that the injuries have resulted in a continuing functional loss that has significantly impaired his or her work ability and/or personal life activities. And it should be noted that, by statute, the workers' comp court cannot issue a determination as to the permanency of a disability until 26 weeks after the worker has reached maximum medical improvement, to ensure that the injury is fixed and measurable.

During this six-month time frame, the injured worker may be eligible to receive temporary disability benefits and/or Social Security disability benefits. If the injury involved a partial permanent disability and the worker has been cleared to return to work, he or she may in fact be able to return to work and earn wages.

A review of closed cases in '07 -- last year -- reveals that about 50 percent of the claims petitions were resolved within 18 months of the claim petition filing, 62 percent were resolved within two years, and over 80 percent within three years of filing. Again, while the worker's claim is pending, he or she will continue to receive medical benefits and either income replacement benefits or actual wages if he or she has been cleared to return to work.

Now, because we recognize the importance to the injured worker of quickly resolving any dispute involving their income or their medical care, these so-called *med and temp* motions are afforded priority status, and they are heard on an expedited basis. While some medical disputes may require trials with expert witnesses as to causation and

appropriate medical care, more than 99.8 percent of these matters are resolved within four months.

New Jersey's Workers' Compensation is different from systems in other states that are less supportive of injured workers. New Jersey's Workers' Compensation provides more comprehensive coverage than in most other states. For instance, New Jersey is one of the few states that recognize occupational illnesses such as carpal tunnel syndrome, silicosis and other pulmonary injuries as compensable work-related injuries.

Additionally, New Jersey restricts the ability of an employer to settle a workers' comp claim through a lump-sum payment. And accordingly, we see very few claims for serious permanent disability that are settled with lump sums. Most lump-sum payments in New Jersey are for minor injuries or contested cases where there is no permanent work disability medical finding by one or more of the medical experts. And this stands in stark contrast to the prevalent practice in many other states, where major permanent disability cases are settled with a large lump-sum payment, and workers are often enticed to forego continuing medical treatment or lifetime wage replacement benefits.

New Jersey's also one of a handful of states that continue to maintain a Second Injury Fund for totally disabled workers, whose total disability is a combination of work-related injuries and pre-existing disabilities.

In addition, we've been working very hard, under Governor Corzine's leadership, to address the issue of the underground economy in which employers frequently fail to obtain workers' compensation insurance coverage, because an employer has misclassified its workers as independent

contractors or is paying them cash wages under the table. Employers who operate outside the State's registration, tax, and workers' compensation coverage system are a drain on State resources and are shortchanging injured workers from receiving proper benefit payments timely.

In 2007, our Department identified more than 31,000 misclassified or nonreported workers with more than \$482 million in unreported wages. And so my Department and Steve's Department -- the Department of Banking and Insurance -- have cooperated to establish a cross-match program to verify workers' compensation coverage among employers. Where a workers' comp claim petition is filed and there is no employer of record, New Jersey is one of a very few states that provide, through an Uninsured Employers Fund, medical treatment and temporary disability benefits for the injured worker. When uninsured employers are identified, the employers are contacted. And in most such cases, we're successful in getting the employer to obtain workers' comp coverage.

Now, our system is constantly undergoing improvements. And over the past few years, the Division of Workers' Comp has significantly enhanced the administration of the program through automation, including a computerized case management system known as COURTS. And I put the details of that in my written statement.

But we are doing a number of things to provide the most cost-effective and fair process for the resolution of workers' comp claims. But we recognize that the program is not perfect, and so I have the following suggestions, which I submit to the Committee for discussion.

The first one is to amend the statute to provide additional statutory sanctions and enforcement powers for workers' compensation

judges, similar to the kinds of powers that Superior Court judges have. Currently, statutory sanctions are limited to simple interest for noncompliance with a court order for benefits after 60 days and a 25 percent penalty payable to the petitioner if temporary benefits are unreasonably delayed.

You should consider imposing -- or allowing judges to impose additional sanctions, including reasonable counsel fees and monetary penalties for delays in answering a claim petition that necessitates the filing of a default action, failing to provide temporary -- timely medical treatment and payment, and failing to comply with a court order. Monetary sanctions, compensatory damages, and/or fines against attorneys and other parties who delay court proceedings may also be appropriate.

Second, the Legislature should increase the penalties and sanctions in the Workers' Compensation Fraud Statute for employers who misclassify their employees as independent contractors or omit their employees from their workers' compensation policy.

Third, the Legislature should amend the State's insurance fraud statutes, including the Insurance Fraud Prevention Act, to include specific provisions establishing a violation for an employer's failure to obtain workers' comp insurance, and a violation for misclassifying workers with the effect of artificially reducing the number of workers covered under the employer's workers' compensation policy.

And fourth, regulated industries and business, including taxi companies, alcohol retail establishments, construction industry contractors, and others should be required to provide proof of workers' compensation insurance as part of their licensing approval process.

Finally, I recognize that our Division of Workers' Compensation only sees injured workers after they have hired an attorney and filed a claim petition. As I noted earlier, such cases account for fewer than 20 percent of all the reported workplace injuries and illnesses each year. However, in cases that never reach a workers' compensation judge, there can be significant problems between workers and insurance carriers related to scheduling of medical appointments and other administrative matters. And I look forward to working with the stakeholders and the Legislature on how we might streamline the process for workers at this initial phase in the process.

I stand ready to work with this Committee and others involved in the workers' comp system to make improvements that will ensure that New Jersey continues to have a balanced and efficient system to resolve disputes over workplace injuries.

Thank you for the opportunity to testify, Mr. Chairman.

SENATOR SARLO: Thank you, Commissioner.

We just want to-- Now that all the Senators are here, we want to do a quick roll call.

Could we have that for the record?

MR. WILLIAMS (Committee Aide): Sure.

Senator Pennacchio.

SENATOR PENNACCHIO: Here.

MR. WILLIAMS: Senator Kean.

SENATOR KEAN: Here.

MR. WILLIAMS: Senator Cunningham.

SENATOR CUNNINGHAM: Here.

MR. WILLIAMS: Vice Chairman Madden.

SENATOR MADDEN: Here.

MR. WILLIAMS: And Chairman Sarlo.

SENATOR SARLO: Thank you.

We'll continue with Commissioner Goldman, and then we'll do questions from the Committee to the entire panel.

COMMISSIONER STEVEN M. GOLDMAN: Good afternoon, Chairman Sarlo, members of the Senate Labor Committee. I appreciate the opportunity to address this Committee regarding issues on New Jersey's workers' compensation insurance market.

Let me first give some brief remarks on the general background of the market, the role of the Department of Banking and Insurance, the role of the Compensation Rating and Inspection Bureau -- affectionately known as *CRIB* -- and some suggestions for the future.

In addition, we've supplied the Committee with handouts regarding current and historical market conditions.

Let me begin by giving the general background on the marketplace in New Jersey. As the Chairman noted, the New Jersey's workers' compensation insurance system dates back to 1911 and is one of the oldest in the entire country. By law, as David noted, all employers are required to either carry workers' compensation insurance or demonstrate to the Department that they have the financial resources to be self insured.

There are about 217 insurers who are presently actively writing workers' compensation insurance in the State of New Jersey. The 10 largest of these cover 80 percent of the market. In New Jersey, we use what is known as an *administered pricing system*, which means that the rates are set by

the Department based on a filing by the rating bureau. All carriers doing business in New Jersey use the same rating system. New Jersey and six other states use this administered pricing system. Several other states use bureau-related *loss costs* to set the medical and indemnity portion of the rate. The benefit of New Jersey's system is that rates tend to be more predictable and stable, which is very important to current and future employers doing business in New Jersey. Indeed, the average cost for workers' compensation in New Jersey per \$100 of payroll was \$2.04 in 1997 and \$2.05 in 2007.

The Department's role in the workers' compensation insurance system is similar to its role in other lines of insurance, although there are significant differences based on applicable law that reflect the importance of workers' compensation in public policy.

First, and probably most importantly, we regulate the financial solvency of insurance companies through the initial licensing process, regular monitoring of their financial statements, and periodic examinations. We work with insurers who experience financial problems. And if those efforts turn out to be unsuccessful, we liquidate the companies. Fortunately, liquidation is a very rare occurrence for New Jersey domestic companies. There's been only one such insolvency in recent years, and it was a small and relatively new insurer unable to succeed in the market.

Secondly, workers' compensation insurers are, like all other insurers, subject to market regulation standards regarding their sales and distribution systems and practices, and their treatment of policyholders. A significant difference in workers' compensation from other lines is that the Division of Workers' Compensation in the Department of Labor, by statute, has original, exclusive jurisdiction over all benefit claims.

Thirdly, DOBI regulates the product through review and approval of the rating system, including policy forms. Rating rules, and the rates themselves, are all governed by the Department. The rating bureau develops a rate proposal, submits it to the Department each Fall for review by Department actuaries. Once the Department approves the rates, then the rates apply to all policies issued by all workers' comp carriers during the next calendar year. Upon approval, the rates are available to all insurers, producers, and employers by posting on the Bureau's Web site.

Since 1999, workers' compensation insurance carriers have, on average, actually spent more money on claims and expenses than they've received in premium. In 2007, for every premium dollar collected, \$1.02 was spent on these costs. This figure is lower than 2001, when carriers paid out \$1.24 for every premium dollar received. During these same years, 2001 through 2007, medical costs in New Jersey rose by over 30 percent. But because of New Jersey's Rating Bureau system, the changes in rates to address this imbalance, and cover increased medical and weekly benefit costs, have occurred gradually.

I've mentioned CRIB, or the Bureau, which plays a very important role in our system. The Compensation Rating and Inspection Bureau was created by statute in the early years of the last century as part of the original workers' compensation law. By statute, an insurer must be a member of CRIB in order to offer workers' compensation insurance in New Jersey. Although CRIB is made up of insurers, it performs many public or quasi-public functions that promote a stable and healthy market which require oversight by the Department.

CRIB is primarily responsible for collecting statistical data from all insurers and initially developing the workers' compensation rating system, which as mentioned earlier is subject to Department approval. The CRIB rating system is required to be utilized by all workers' compensation insurance carriers. Generally, New Jersey ranks in the middle of the 50 states in relative workers' compensation rates.

When a business purchases workers' compensation insurance, the premium is calculated according to a number of factors. These include the classification codes. These codes are based on the type of industry and the number of jobs within each classification at a particular company. For example, office workers are coded differently than roofers because of the difference in risk that the jobs present.

Payroll is a factor. To calculate the rate for an employer, the classification codes of employers are multiplied by the total payroll of each class of employees per \$100 of remuneration.

Experience modification is a factor, once a company has a three-year claims history, its rate may be adjusted based on its history of claims as compared to similarly situated businesses.

And then there is the CRIB rating system generally, which permits insurers to deviate, to some degree, from the standard rate and offer certain pricing incentives for businesses that have implemented loss management, safety, or other similar loss-reduction programs.

CRIB also administers the residual market program. If an employer cannot obtain insurance on the open market, CRIB will assign an insurer to cover the employer. Assignments are based on the insurer's market share. Over the past several years, the residual market has been

shrinking, which indicates that the private market is covering more and more businesses.

CRIB has many other functions that promote a healthy and efficient workers' compensation system. It tracks which insurers cover which employers, it receives the initial report of worker injuries, and it assesses and collects from each insurer moneys for the Security Fund, the Second Injury Fund, as well as its own operating costs.

Among its other functions, CRIB resolves disputes between insurers and employers over the rate charged and other related issues. If not satisfied with the result, either the employer or the insurer can appeal the decision to the Department. But I must report that such appeals are very rare.

While no system is perfect, New Jersey's Worker's Compensation insurance system is healthy and working well. It is an area where employers have predictable and stable costs. And this is one area where no one can say that New Jersey is not hospitable to business. This point cannot be emphasized enough at a time when we are working to maintain and attract as many employers as possible to our state.

Meanwhile, it is one of the country's most generous systems for employees. Workers can receive up to \$742 a week on account of their workers' compensation insurance. This puts us in the top one-third of the states in benefit levels. New Jersey ranks seventh in the nation in maximum statutory unscheduled benefit levels for permanent partial disability, and 18th in scheduled benefits for permanent partial disability.

I appreciate the opportunity to appear before you today. I think we should keep in mind that while our system is stable and successful,

it is approaching its 100th anniversary. In view of its age, I think that Assemblyman Cohen and others, who have suggested that a review is in order, may be correct.

For example, the relationship between the Department and CRIB can be clarified and the makeup of the CRIB governing board amended perhaps to include employer and public members, as is provided in other quasi-public insurance mechanisms. These kinds of adjustments would promote and implement a more modern governance structure without disturbing the effectiveness and efficiency of the current system.

We at the Department look forward to working with the Legislature on a review of the overall efficiency and effectiveness of the system, with an eye toward making appropriate changes. However, given that the system basically functions well, we should take care that any changes are carefully considered before they're made.

I'd be pleased to answer any questions.

SENATOR SARLO: Thank you, Commissioner.

Before I turn it over to our Committee here, I just have a few opening comments.

From listening to both of you, and looking at your written testimony, and hearing from both of you today, it is safe to say that both Departments feel that the workers' compensation system in New Jersey is in good shape. Is that safe to say?

COMMISSIONER SOCOLOW: Yes.

COMMISSIONER GOLDMAN: Yes.

SENATOR SARLO: Okay.

And there's always room for improvement, of course.

COMMISSIONER SOCOLOW: Right.

SENATOR SARLO: I see from the numbers that you have provided, 200,000 work-related incidents -- 85 percent of these are usually resolved right between the employer and the employee with no insurance company involvement at all?

COMMISSIONER SOCOLOW: No, with the insurance company, certainly -- but without the worker filing a claim petition that necessitates hiring an attorney.

SENATOR SARLO: Okay. So without the workers' compensation judges and that part.

COMMISSIONER SOCOLOW: Right, without coming before comp court, yes.

SENATOR SARLO: Okay.

COMMISSIONER SOCOLOW: Roughly 85 percent don't come before comp court.

SENATOR SARLO: So in '07, 36,000 new claims were filed -- and you add them to other outstanding ones -- so we have about 97,000--

COMMISSIONER SOCOLOW: Cases that are open, right. And so we're looking at 97,000 cases; the average case sort of moving through on a track, as I said in my testimony, somewhere between 18 months to three years to resolve. And again, that's the minority of all the cases. In most cases, the worker gets the medical attention they need, and the temporary benefits they need, and is able to return to work. These are the cases that we're talking about -- that come before comp court -- in which someone is making the allegation that there is a permanent disability involved. And that's what requires the court.

SENATOR SARLO: In your testimony you said, "By statute, the workers' compensation court cannot issue a determination as to the permanency of a disability until 26 weeks after the worker has reached maximum medical improvement," the MMI. That's almost six months. Does that time frame work, or should we revisit that time frame? Do you believe six months is working?

COMMISSIONER SOCOLOW: Do you want to answer that?

JUDGE PETER J. CALDERONE: Senator, I think it does, because you need that period.

SENATOR SARLO: If you could just move the microphone.

JUDGE CALDERONE: There's a period in the statute that was thought out to allow for the disability to reach the point that you really can evaluate it as a permanent disability. So that period after treatment is over, there's no additional treatment required for those injuries -- you wait this period, and then you have permanency evaluations.

SENATOR SARLO: Okay.

In some research that we did internally through OLS, it talked about this three-week period -- every three weeks you can revisit the claim. And then if there's a delay -- if there's a scheduling delay, or if there's a holiday, all of a sudden your out to six weeks, nine weeks. It sounds bureaucratic to me. Is that delaying these cases?

JUDGE CALDERONE: Senator, I think ever since 1911 they've tried every system imaginable. We've had continuous trials, we've had different types of scheduling, we've had cases by petitioner. This has worked out, with the volume, as the most effective way. I think we're always willing to hear some other suggestions.

SENATOR SARLO: Because something that could be resolved is now potentially waiting six weeks, nine weeks.

JUDGE CALDERONE: Well, if it's resolved, you can always ask a judge in that vicinage to have the case put through. If it's settled, you can ask any time to have it moved forward.

SENATOR SARLO: Okay.

Commissioner Socolow, in your remarks you had mentioned -- and this is a complex issue -- workers' comp is a very complex issue. And probably many members of the Committee, for the first time these past two or three weeks, have been getting up to speed on this.

You mentioned case resolutions may be delayed due to Medicare repayment issues. Can you just kind of give the Committee the correlation between Medicare and workers' comp, and how they work?

COMMISSIONER SOCOLOW: Absolutely.

Obviously, many workers who are injured may someday in fact be -- have their health care paid by Medicare at some point in their life, especially, again, if you're talking about a permanent disability with continuing medical. At some point they're going to reach the age at which they'd be eligible for Medicare. So about 25 years ago, the Federal government passed a law -- the Medicare Secondary Payer act, or something like that. And what that does is say, "Let's not have the taxpayers -- the Federal taxpayers -- on the hook for medical costs that really should be paid by some other insurer." Medicare is the secondary payer. They want to make sure that Medicare does not pay for things which properly should be paid for by the workers' comp settlement -- by the insurance carrier.

And so that's a laudable goal. And all of us are in favor of saving Federal taxpayer dollars. And it's a good statute in theory. The problem has been the practice, where Medicare takes forever to make a decision about what its lien is going to be, how much money it wants to ensure it doesn't have to pay toward that medical care over time.

And there was, a few years ago, really a bureaucratic nightmare where there were 13 different Federal contractors. This was privatized by the Medicare agency in Washington -- to these agencies -- to try to resolve these cases. And so workers' comp petitioners and respondents were waiting around for years waiting for answers back from Medicare. Now, that's actually been lessened somewhat. We've also worked with them to get a more streamlined process, and so we've cut in half the number of cases that are delayed because of Medicare. But it does remain an ongoing issue.

SENATOR SARLO: And there's not much we can do though, as a State, with regard to that? It's a Federal--

COMMISSIONER SOCOLOW: I think we've worked with Federal Medicare to try to do this. I mean, I think that certainly continuing to let them know it's an issue is something we can continue to do.

SENATOR SARLO: Judge Calderone, you serve as the Chief Judge and as the--

JUDGE CALDERONE: Director.

SENATOR SARLO: --Director. Do you see any conflict in that -- serving as-- Do you hear cases as well?

JUDGE CALDERONE: Yes.

SENATOR SARLO: But you work under the Department of Labor under Commissioner Socolow.

JUDGE CALDERONE: Yes.

SENATOR SARLO: Do you see any -- as the administrator, and at the same time as somebody -- one of the players on the team? (laughter)

JUDGE CALDERONE: Well, basically it's been about 10 years under this process. Before then, you had two separate offices. It led to a great deal of conflict. The Legislature, to also save money, merged the two offices and put both offices in one position under the Commissioner of Labor and Workforce Development. I think it's the most effective way to do it. You run the risk of differing policies, differing methods of handling cases or handling the administrative function.

SENATOR SARLO: Okay.

We're going to hear from -- probably some testimony later about adding employer discrimination to the jurisdiction of comp courts. I believe it's the position of the Department that that's not necessary. Is that correct?

COMMISSIONER SOCOLOW: Yes, that's correct.

SENATOR SARLO: Okay. I just wanted to confirm that.

Commissioner Goldman, tell us a little bit about this CRIB board. You had mentioned in your opening statement that it's time for us to take a look at this CRIB board. It seems like they get the ball rolling with setting the rates early on.

How are those members appointed? Should we be looking at a more diverse board? I would like to hear your comments on that.

COMMISSIONER GOLDMAN: I think looking at a more diverse board might be a good idea. (PA microphone malfunctions)

COMMISSIONER SOCOLOW: Do you just want to use this one? (referring to PA microphone)

COMMISSIONER GOLDMAN: Yes.

COMMISSIONER SOCOLOW: It seems to be broken.

COMMISSIONER GOLDMAN: Okay.

COMMISSIONER SOCOLOW: There you go.

COMMISSIONER GOLDMAN: I think using a more -- or appointing a more diverse board probably is a good idea. There are six members of the board presently serving, three are from -- by statute -- from mutual companies, three are from stock companies. That alone is probably an anachronism today. Most of the companies are stock companies today. So the way the membership is constituted probably could be expanded -- beneficially expanded. And even the mechanism by -- of who among the carriers serves probably could be amended to a good effect.

SENATOR SARLO: Do you appoint them? I'm sorry, do you--

COMMISSIONER GOLDMAN: No, I don't appoint them. They are elected by each of the respective groups, the stock companies and the mutual companies.

SENATOR SARLO: So they're elected by--

COMMISSIONER GOLDMAN: They're elected by the CRIB members, by the companies-- Remember I mentioned the insurance companies have to be a member of CRIB in order to participate in the workers' comp system? And the member companies elect their representatives.

SENATOR SARLO: What kind of jurisdiction does your Department have over CRIB?

COMMISSIONER GOLDMAN: It's a supervisory function of a limited type. What it does is-- We review their budget annually. We generally review very high-level requests for compensation of the most senior executives. We do not get involved in the day-to-day operation of CRIB. We review, as I said in my testimony, the proposed rate system and filing for a given year. And that's handled through the normal process within the Department. Our actuaries participate. We have a representative attend the board meetings of CRIB on a nonvoting basis. So that's the nature of the supervisory function that we perform.

SENATOR SARLO: The average rates for \$100 of payroll was \$2.04 in '97. It's only \$2.05 in 2007. Do you see that same trend in other parts of the country -- that the rates have been so stable?

COMMISSIONER GOLDMAN: Well, the difference in the systems-- When you have a more market-driven system, as opposed to the system I described, what you see is a lot more ups and downs as the market responds to different market conditions. We've had a period of years where rates have been going up. But they follow a period of years where rates steadily had decreased. The reason for the rate increases was that if you looked at a chart -- and I think we have one actually distributed to the members of the Committee.

SENATOR SARLO: Yes.

COMMISSIONER GOLDMAN: You'll see that in 1998, claims were being paid at the rate of \$0.85 for every dollar paid in premium. Starting in 1999, that reversed itself, and claims -- and

administrative costs, I should say -- went up to \$1.07 per \$1.00 of premium collected. You could see that that loss peaked in 2001 at \$1.24 for every dollar of premium collected. Rate increases started then. And we're now down, as of the year end 2007, to \$1.02 in loss and administrative cost for every dollar of premium collected.

But the reason that that reflects relative stability is because the rating system, and the rates that are proposed by the CRIB board and approved by the Department really don't generally suggest large ups and downs in the rates.

SENATOR SARLO: So, overall, we do have relative stability when it comes to rates here.

COMMISSIONER GOLDMAN: We have a very, very stable system. And as I said, workers' comp cost is an important component for businesses when they -- because it's a real expense for each of the employers. And to know you have a stable rate when you're contemplating where to locate your business or where to keep your business is a factor.

SENATOR SARLO: Your thoughts on higher-income earners who potentially have a very devastating injury at work, and then they're now finding themselves at this weekly average of about \$700 -- \$740 I believe it is -- maximum \$740. But if somebody is a high-income earner, I'm assuming they're receiving much more than that.

Your thoughts on that cap: Is that cap working? And how does it affect somebody who is hurt on the job who is a high-income earner?

COMMISSIONER GOLDMAN: Well, I think the generous benefits -- the benefits New Jersey presently provides are fairly generous, as I said. I think if there's any consideration that's going to be given to higher

benefits, then you're going to have to look at figuring in higher premiums, because the money has to come from somewhere.

So to the extent that you want to be more generous in the benefit program, you're going to have to -- then employers are going to bear a greater cost on the premium side. And I think there's a trade-off to be considered when you're going to consider that kind of change.

SENATOR SARLO: I mean, that would relate to perhaps a union carpenter who is doing 60 hours a week -- who is used to doing 60 hours a week -- bringing in close to \$100,000 a year, and now finds himself permanently disabled. He will be--

COMMISSIONER GOLDMAN: Yes, he's going to have that benefit capped. But the difficulty, as I say, is you're going to take what is really considered nationally a pretty generous system; and if you want to make it more generous, it's going to come from somewhere.

SENATOR SARLO: I understand.

COMMISSIONER GOLDMAN: So premiums are going to have to be collected to pay for that.

SENATOR SARLO: Open up questions from the Committee members.

Senator Cunningham, then Senator Pennacchio.

SENATOR CUNNINGHAM: Good afternoon.

Commissioner Socolow, in your comments you mentioned that you thought workers' compensation judges should be given more powers similar to those of Superior Court judges. And I might agree with you on what I've read so far.

But I was speaking with a former workers' comp judge recently, and his feeling was that workers' compensation judges -- the newer ones -- were not getting enough training. And he felt that that was contributing to some of the problems. What kind of training do we give new workers' comp judges?

COMMISSIONER SOCOLOW: Thank you, Senator, for the question.

I will actually ask Judge Calderone to answer specifically. We do give six weeks -- or is it eight weeks?

JUDGE CALDERONE: Six to eight weeks.

COMMISSIONER SOCOLOW: Six to eight weeks of training. And I'll let Judge Calderone detail it in particular.

But I just want to say that I think you're absolutely right. Training is essential. I think that our workers' comp judges take their jobs very seriously. But if what we're talking about is the concern about those cases which are delayed, there are just some things that no amount of training is going to help. They've got to have some powers and tools, that they don't have, to move those cases along. So I think that-- I don't think those two are mutually exclusive.

But let me ask Peter to detail the training.

JUDGE CALDERONE: In the workers' comp system, judges come in one at a time, generally. There are 46 judges altogether. We'll get one judge -- that we got earlier this year. We expect another judge at the end of May. So we don't have a pool of judges for a training class.

What we do is, we evaluate each judge's experience. If they've been a trial judge in personal injury, they have a lot of medical experience.

If they've done workers' compensation, they understand value of cases. And we actually gear the training to the individual. And it generally is six to eight weeks, depending on the experience they bring with them. Part of it is in Trenton with myself and other administrative judges, going over the general law, the general cases, the procedures. And during that training, they spend most of their time in our field offices. We have 15 field offices, where they are under the supervision of an experienced workers' comp judge to see how the cases are handled every day. That goes on until we reach a point that we feel that particular judge can handle cases on his or her own.

We also have two seminars every year for judges, one in the Spring and one in the Fall, that's a training session. We have a bench bar conference in December, which is a training session. We have a session coming up on the 23rd of May with the State Bar, in Atlantic City, as part of their annual meeting.

In addition, every new judge is assigned to an experienced supervising judge, which, on a daily basis, that supervising judge makes sure that the judge is equipped and able to do their job. Every nontenured judge is evaluated every year by practicing attorneys. Those evaluations come to us; we look through them. We then meet individually with the judge and go over the evaluations. Each supervising judge has to prepare an evaluation every year of the judge. And if there are deficiencies, those are the areas that we work on. But there is a great amount of oversight and training that goes on.

SENATOR CUNNINGHAM: Okay.

SENATOR SARLO: Senator Pennacchio.

SENATOR PENNACCHIO: Thank you, Chairman.

And it's nice to see that the sky is not falling. (laughter)

What we want to make sure that we do, as part of this legislative body, is make sure that we don't throw out the baby with the bath water. And I think, through the testimony that we've heard -- Commissioners and Judge -- I think we're well on our way to doing that -- or not doing that.

A question for the Judge: It would seem to me that any appeals that people have would be a good barometer of the judge, whether or not the system is working, and whether or not the people in that system are sort of happy with the way that it's working.

Do you have any statistics, within the last five or 10 years, whether the number of appeals have gone up, stayed the same, gone down?

JUDGE CALDERONE: Actually, the appeals to the Appellate Division-- Our cases are trial judge decisions. The route of appeal is the Superior Court Appellate Division. Those numbers have actually gone down -- the amount of cases that are appealed. And because of the standard of review, there are very few decisions of the workers' comp judges that are reversed by the Appellate Division. There may be a legal issue that the judge and the Appellate Division disagree on. The Appellate Division always has the final say. But on facts, credibility, the Appellate Division affirms, as a general rule, the decisions of the workers' compensation judges.

SENATOR PENNACCHIO: Is my premise, through the Chair-- Is that more or less correct that because of the amount of appeals -- either staying steady or going down -- that we're not in crisis mode with workmen's comp?

JUDGE CALDERONE: I don't feel we're in the crisis mode in that area.

SENATOR PENNACCHIO: Okay. And the system is working, obviously?

JUDGE CALDERONE: Yes, sir. (laughter)

SENATOR PENNACCHIO: Okay. It was suggested by Commissioner Goldman that perhaps we get some type of commission to look into-- Because CRIB, for instance occurred during the beginning of the century -- some type of advisory board maybe to look into some of the administrative issues. And we could always use some tweaking out.

But in my conversation with Commissioner Socolow earlier, he told us that we already have an advisory board. Could either one of you maybe tell us why that advisory board hasn't been asked to do exactly what the Commissioner asked before?

COMMISSIONER SOCOLOW: Thank you for the clarification, Senator.

The advisory commission on workers' compensation I think probably would not view CRIB governance as within its scope. That's within our Department. That deals with issues related to the court system and related to the administration of justice in workers' compensation. I think that Commissioner Goldman's testimony is a suggestion about looking at the way CRIB is governed. And that probably would require this Legislature, perhaps with a stakeholders group or whatever you all decide to do, to look at that issue.

I don't know, Steve, if you want to answer.

SENATOR PENNACCHIO: Through the Chair--

I'm sorry.

COMMISSIONER GOLDMAN: The distinction is between the claims processing and the court side of the system, and the insurance review side of the system. There's an advisory committee, I'm given to understand, on the claims payment and court side. There is no existing advisory committee with respect to CRIB governance -- the insurance side.

SENATOR PENNACCHIO: Okay. Where would-- Through the Chair, where would issues like misclassification, fraud-- Would they be under the purview of the existing advisory board to make recommendations, or do you think we should go with a new commission?

COMMISSIONER GOLDMAN: Those kinds of claims I think would fall under the present jurisdiction of the Department of Labor with respect to -- working in conjunction with the Department of Banking and Insurance.

SENATOR PENNACCHIO: And respectfully, why haven't they been challenged to do so? We always want to rule out fraud, respectfully, through the Chair.

COMMISSIONER SOCOLOW: Well, I think that the advisory commission, in fact, has brought up the issue of the underground economy, of misclassification of workers by employers to lower their workers' compensation premium costs, and other forms of fraud. And it's been a constant concern. We've talked about-- I mean, I think that a lot of the initiatives we've developed to ensure -- using data matching and other tools to try to catch these kinds of practices have come before the advisory commission and been hashed out there.

When it comes to providing legislative recommendations, I think that those, such as the ones we're discussing today, are certainly ones that get discussed there.

COMMISSIONER GOLDMAN: But in any case, I have to say that the two Departments have been working together to try to get a better handle on the mismatch between claims filed for particular employees and coverage under insurance policies. We have been doing that.

SENATOR PENNACCHIO: I guess my concern, through the Chair, is that it's like we're waiting for each other to do something.

COMMISSIONER SOCOLOW: No, we're--

SENATOR PENNACCHIO: We're waiting to hear from one of the Departments to tell us that you need legislative action. And you're waiting for us to have these meetings to tell you that we need legislative action, as opposed to having legislative action, if so warranted, especially when it comes to fraud and when it comes to some of the issues of misclassification and such. So we're on the same page with that, through the Chair.

Tax free: That's free from State, local, Federal taxes -- \$740?

COMMISSIONER SOCOLOW: All of it, yes.

SENATOR PENNACCHIO: All of it. So \$700 is \$1,500 before Uncle gets his fair share. (laughter)

Okay. So even though it's not a lot of money, Chairman, I think that when you factor in that it is tax free, it bumps it up a little bit.

SENATOR SARLO: Valid point, very valid point.

SENATOR PENNACCHIO: And the premium paid is entirely by the employer, not the employee.

COMMISSIONER SOCOLOW: Correct.

COMMISSIONER GOLDMAN: Correct.

SENATOR PENNACCHIO: Okay. And finally, I'm just curious as to how the -- because we're talking about underground economy, we're talking about money. A lot of this -- significant amount of this deals with illegal aliens. What are we doing, what can we do, in order to maybe see if we can-- What happens if an illegal alien -- excuse my ignorance -- gets hurt on the job? Can he receive workmen's' compensation?

COMMISSIONER SOCOLOW: Yes.

SENATOR PENNACCHIO: Legally he can?

COMMISSIONER SOCOLOW: Yes, Senator.

The purpose of all of our worker protection statutes is to protect all workers. I mean, we don't make a distinction within the documented status. But often times, what you're going to see there is an uninsured employer, an employer that -- if they're cheating on immigration law, they're presumably cheating on labor laws. They may well be harming that worker in a number of ways related to safety and health. And they're certainly cheating on their taxes.

So the way we address those issues is, again, to go after the employer who is failing to cover their worker for workers' compensation, failing to pay into the unemployment and other social insurance trust funds -- Medicare, Social Security, you name it -- and view that, essentially, as that kind of enforcement action. And what we've done is try to coordinate it so that when we find out about those, through any avenue -- whether it's a wage-an-hour complaint, whether it's an audit through our payroll tax side of the Labor Department, whether we find out about it from a workers'

comp claim, or some other form of claim -- we then share that information with all of the different agencies, each of which might have an enforcement role against that employer. So he doesn't hear just from one agency, he may hear from five.

SENATOR PENNACCHIO: And finally, through the Chair, do we have statistics, do we have actual cases where we've actually gone after these employers when they have hired undocumented -- or haven't paid for insurance with documented, undocumented American citizens -- and we've been able to recoup the moneys that we've paid through the State workers' comp -- medical issues and things like that?

COMMISSIONER SOCOLOW: Yes, Senator, I will get you examples of that, through the Chair, in response to this -- but dozens of cases a month in which we are able to encourage greater compliance by employers in the future.

SENATOR PENNACCHIO: On behalf of taxpayers, I thank you.

SENATOR SARLO: Thank you.

Senator Madden.

SENATOR MADDEN: Thank you.

Commissioner, when you spoke of the CRIB-- Can we just shift back to the CRIB for a minute?

COMMISSIONER GOLDMAN: Sure.

SENATOR MADDEN: There are six members in the Bureau?

COMMISSIONER GOLDMAN: Yes.

SENATOR MADDEN: And who appoints those members?

COMMISSIONER GOLDMAN: They're elected from among the insurance carriers who are members of CRIB.

SENATOR MADDEN: And how many members are in CRIB?

COMMISSIONER GOLDMAN: Two hundred-seventeen-- I don't remember the number exactly.

SENATOR MADDEN: And when they elect an individual to be a member of CRIB, who is the person that sits in that committee -- or in that Bureau? Is it the CEO of the individual company?

COMMISSIONER GOLDMAN: Generally not, no -- generally not the CEO.

D O N A L D B R Y A N: Just briefly, most of the companies who are members of the governing board have a representative that they designate to do that.

SENATOR SARLO: Commissioner, can I just have his name for the record?

COMMISSIONER GOLDMAN: Yes, that's Donald Bryan. He's the Director of the Division of Insurance within the Department of Banking and Insurance.

SENATOR MADDEN: Okay, Chairman? (affirmative response)

Thank you.

Would it suffice to say that the individual member that represents that insurance company is an employee of that insurance company--

COMMISSIONER GOLDMAN: Absolutely.

SENATOR MADDEN: --not just a representative that they hired to represent them?

COMMISSIONER GOLDMAN: That's correct.

SENATOR MADDEN: Do you know if those individuals are compensated for their service in the Bureau?

COMMISSIONER GOLDMAN: They are not.

SENATOR MADDEN: Do you know if those individuals are in any kind of a public pension system -- who serve on the -- at the Bureau?

COMMISSIONER GOLDMAN: They do not participate in the pension system.

SENATOR MADDEN: Do they reap any compensation from the taxpayers of New Jersey as a result of their role in that?

COMMISSIONER GOLDMAN: None that I'm aware of.

SENATOR MADDEN: I believe, Commissioner, you had testified saying that you, by Department, had little oversight over CRIB. However, one of the functions that the Department of Banking and Insurance had over CRIB had to do with setting salaries.

COMMISSIONER GOLDMAN: No, we don't set salaries. What we do is--

SENATOR MADDEN: Approving their salary?

COMMISSIONER GOLDMAN: Yes, for only the most senior people. We don't-- What we do is, we get a budget each year from CRIB. A line item in the budget is compensation for CRIB members. And when we approve the budget, that line item is approved along with it.

SENATOR MADDEN: And it's compensation for CRIB members. And that compensation comes from where?

COMMISSIONER GOLDMAN: CRIB employees, not members. It's compensation for the employees of CRIB. And that's raised through assessment of the industry. The money that pays them is a result of an assessment on the--

SENATOR MADDEN: And this is an advisory arm to the Department of Banking and Insurance -- CRIB is?

COMMISSIONER GOLDMAN: CRIB is not an advisory arm, no. CRIB is a separate-- It's similar to PAPE (phonetic spelling) or CAPE (phonetic spelling). It's a separate body. I think, statutorily, it's a local municipality--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Local board.

COMMISSIONER GOLDMAN: It's considered statutorily a local board. But it is not a part of the Department of Banking and Insurance, and it is not advisory to the Department of Banking and Insurance.

SENATOR MADDEN: Okay. Do you have anything to do with approving bonuses for any individuals that sit on that particular board?

COMMISSIONER GOLDMAN: Again, there's a line item in the budget we get that authorizes bonuses in a total sum. And when we approve the budget, we do approve that line item. We do not approve individual bonuses.

SENATOR MADDEN: If we may shift on the heels of Senator-- Let's talk about fraud for a few minutes, if we could.

What response has either Department contributed toward fraud? And I don't necessarily mean an employer's misclassification. I'm

speaking about an individual who is basically beating the system. Talk to me about personnel assigned to investigate fraud cases, statewide; the number of fraud cases you may generate; what you're case-closing rate is or clearance is.

COMMISSIONER GOLDMAN: Insurance fraud cases are generally handled through the Attorney General's Office of the Insurance Fraud Prosecutor. So the question of cases-- We refer those cases, whether it's my Department or Commissioner Socolow's Department. But we don't investigate the case, we don't prosecute the case. When we uncover evidence of fraud on either side, we refer the case.

SENATOR MADDEN: Is there a threshold before you send the case to the Attorney General? Is there a threshold before you send the case over?

COMMISSIONER GOLDMAN: If we -- no. Certainly not--

SENATOR MADDEN: No matter how small, in terms of--

COMMISSIONER GOLDMAN: We make a judgement as to whether or not we see a practice that, in our view, is deserving of investigation by the Office of the Insurance Fraud Prosecutor. And if we believe it is, we refer it. We don't have a minimum dollar amount involved or a maximum dollar amount.

SENATOR MADDEN: But you do have some internal entity that decides whether or not to pursue a criminal investigation.

COMMISSIONER GOLDMAN: As a general proposition, when we see fraud, we refer it. I don't think we have a particular set of standards. If we see something we believe is fraudulent in the -- in someone engaging in a practice in violation of the law, we refer it.

SENATOR MADDEN: When you refer your cases, I would imagine internally within your Department-- If you gave another Department a hundred cases last year, you would track to see what the results of those cases worked out to be, just so you know whether or not you were being efficient or it was worthwhile on your end to have an entity in place to do such practice?

COMMISSIONER GOLDMAN: We do not.

SENATOR MADDEN: Do you have any idea how many cases you send to the Attorney General or the Insurance Fraud Prosecutor's Office?

COMMISSIONER GOLDMAN: I don't have a number off the top of my head.

SENATOR SARLO: If you could get that number and get it to our Committee, after the fact, we'll get it to all the members.

COMMISSIONER GOLDMAN: I'd be happy to.

And they don't only come from the Departments. Oftentimes they come from other companies that see something wrong and refer it directly to the Office of the Insurance Fraud Prosecutor.

SENATOR MADDEN: Or they come to you and you channel it?

COMMISSIONER GOLDMAN: I'm sorry?

SENATOR MADDEN: They'll report it to yourself or your Department, and you'll channel it?

COMMISSIONER GOLDMAN: Sometimes. They'll often report it--

SENATOR MADDEN: I'm just looking for a number, in terms of the workload and so forth.

COMMISSIONER GOLDMAN: I appreciate that, Senator.

SENATOR MADDEN: I appreciate it.

COMMISSIONER GOLDMAN: We don't necessarily have our arms around the entire universe of them, as I say, because a number of them come from the companies themselves. And they don't go through our Department, they go directly to the Office of the Insurance Fraud Prosecutor.

SENATOR MADDEN: If I may shift, let's talk about the employer that misclassifies and plays games with getting over the system. Do you forward those cases to the Attorney General for prosecution or investigation?

COMMISSIONER SOCOLOW: Yes, Senator. And that was one of the recommendations that I made in my testimony -- is that that practice be now made -- considered to be insurance fraud, because it is, in fact, ripping off an insurance company out of premiums, as well as harming the worker and harming the insurance company.

What we do now, in terms of our existing statute -- those cases are fourth degree crimes or disorderly persons offenses. And so yes, we refer them. They don't have a very high track record of success. One of the things we're calling on you to think about in this Committee is whether there might be additional penalties, or frankly a different avenue to make that something that the Insurance Fraud Prosecutor would look at, as well as other parts of the Attorney General's Office.

SENATOR MADDEN: Commissioner, could you give the Committee an idea of the number of cases annually that your Department sends -- or forwards to the Attorney General? Do you have that today?

COMMISSIONER SOCOLOW: I don't have it today, but we will submit it to you.

Peter, do you have that number?

JUDGE CALDERONE: No, not today.

COMMISSIONER SOCOLOW: We'll get that to you, through the Chair.

SENATOR MADDEN: And this I would ask of either -- imagine the Commissioner from Banking and Insurance may respond.

What is the longest-- For workers' compensation, what is the longest length of time that someone could actually collect a workers' compensation check?

COMMISSIONER SOCOLOW: With permanent disability, for the rest of their life.

SENATOR MADDEN: Could you give me an example of what -- just anything, Commissioner? If I lose my arm, would that qualify for lifetime workers' compensation?

COMMISSIONER SOCOLOW: Yes, if it's a permanent disability, and there's a statutory schedule, absolutely.

SENATOR MADDEN: Okay. If I was a police officer, and I was killed in the line of duty, would my wife receive workers' compensation?

COMMISSIONER SOCOLOW: Yes, there's dependency benefits that are part of workers' compensation.

SENATOR MADDEN: And she would receive that compensation for how long?

JUDGE CALDERONE: Unless there's a remarriage, that would continue for her life.

SENATOR MADDEN: So my wife would receive workers' compensation for the rest of her life, as long as she did not remarry.

COMMISSIONER SOCOLOW: Right.

SENATOR MADDEN: So what we have is-- We have a scenario in a system whereby an individual worker could lose their arm and collect a workers' compensation check for the rest of their life. But a spouse could lose their husband, or a husband could lose their wife, and we don't give them a check as long as they don't remarry -- or we'll give them a check as long as they don't remarry.

SENATOR SARLO: Actually, Senator Madden, if I may, we just did legislation here in this Committee earlier in the year. It hasn't moved yet in full body but -- that would provide -- allow that benefit to continue if an individual is to remarry.

SENATOR MADDEN: That's correct. I'm actually the sponsor of the bill. (laughter)

SENATOR SARLO: Sorry about that.

SENATOR MADDEN: But I just-- Since I had the two of you sitting here, I wanted to save you a trip.

SENATOR SARLO: You wanted to see if they knew. (laughter)

SENATOR MADDEN: I wanted to kind of give you an idea of where I think we have some issues with our system -- at least I do, personally.

With that, I'd like to close by just saying it's been a pleasure speaking to you. It's been very informative today -- both Commissioners.

Chairman, thank you for your time.

COMMISSIONER SOCOLOW: Thank you, Senator.

COMMISSIONER GOLDMAN: Thank you, Senator.

SENATOR SARLO: Thank you, Senator Madden.

I wasn't checking up on you, Senator Madden. (laughter) I was just trying to expedite the hearing here. I wasn't following up -- checking up on you to see what you sponsored.

Senator Kean, for a few brief questions; and then we have to move it along then.

SENATOR KEAN: Thank you, Chairman.

Welcome Commissioners, and Judge Calderone. I really appreciate you coming out.

I'm just going to make some general observations, perhaps more than questions. But I want to start out by saying I've been in the Legislature about six years. And I can count on one hand the number of inquiries or complaints I've had about the workers' compensation system. So for me, that speaks volumes.

I believe, over all, the system works. As Joe Pennacchio said, don't throw out the baby with the bath water.

Can we do better? Of course, we absolutely can do better. And maybe that -- some of the ideas that we're talking about here today will come out of this Committee. And I believe, on a bipartisan basis, we can go forward and try to improve some of these things.

Just quickly on some of these major points. Cleaning up the fraud statute: absolutely. One of the things that creates large numbers of uninsured cases is not enforcing the fraud statute, because employers think they can get away with it. Therefore, somebody that works for them gets hurt, and then we get backlogged on the uninsured side. So if there was a little bit more of a hammer, perhaps we wouldn't have as big of a backlog on the uninsured side.

Some of the other criticisms have been along the lines of the length of time it takes to resolve a case.

And Judge Calderone, I just wanted to address you on this. And it's little bit of a rhetorical exercise. But would it be accurate to say that--

I should point out also, I practice law, and I'm a workers' comp attorney. So I'm also learning here today too -- learning from the Commissioner, especially about some of the CRIB issues, which I did not know about. So it's very valuable that you're all here.

Would it be accurate, Judge, if an attorney such as myself came forward with a case for a petitioner -- for an injured worker -- and appeared before you, and the injured worker was still treating; and you may have adjourned the matter for, let's say, six cycles, 24 weeks, six months, whatever it may be. That matter appears on the court listing. That's on the docket; there's a CP assigned to it. We come back in six months. The person is still treating. The attorneys come back into court; and the attorneys will agree, and Judge Calderone would say, "Yes, I agree. We need to adjourn this for another six months, because he's still treating." Under this hypothetical, after a year of treatment, after we've been to court

perhaps three or four times, we come into court, and we say, "The parties agree, Judge, that it's now time to get medical exams." So it takes several months to get medical exams. And as you said, the statute says it can be after 26 weeks. The insurance company can say, "Well, wait a minute. We're not going to get medical exams for 26 weeks." And the reason for that is so that the insurance company has an understanding of what the injuries really are. If you smash your finger with a hammer, it gets a lot better after 26 weeks. So you can more accurately figure out what the permanency is.

So now we're talking about a year-and-a-half later, with the matter listed on the court calendar, and the injured worker has not had a chance yet to even go to the doctor to find out what the permanent injury could be. So by definition, we're talking about probably two years, in this hypothetical, just to get before a judge for you to assess permanency. Is that outline about accurate in some cases?

JUDGE CALDERONE: Every case is different, as you know, Senator, since you've been in our court many times. But it's the critical -- because we're dealing mainly with permanent disability -- whether it be partial or total -- that we have an evaluation of the current status of the individual and what they're entitled to in fair benefits. You don't want to prematurely evaluate them. And also you don't want the case to linger where they're not getting rightful benefits.

The reason we schedule them -- and it may seem -- the three week cycle -- is to keep track of everything. We want to make sure, on a periodic basis -- and why they keep coming up -- that the parties are diligently moving the case, the status of the petitioner, whether there's a

Medicare issue -- that everybody's doing what's essential to have that case closed in the most efficient way.

SENATOR KEAN: Thank you.

And then just a little bit -- and this for either the Commissioner or yourself. With respect to the Second Injury Fund and the Uninsured Fund -- because there have been some criticisms, justifiably so, that some of those cases take a long time -- can you think of any way we may be able to intervene, as a Legislature and as a State, to improve that system?

JUDGE CALDERONE: Well, in August last year I set a list of recommendations for the judges and the parties to move Second Injury Fund cases. It would take a lot more work on the petitioners' side, it would take a lot more work on the judges' side. We have seen some good results. We've seen, last year -- 2007 -- we had the most Second Injury Fund cases closed in the last 10 years. So I think with concerted efforts by the party to make sure the exams are done, to make sure that everybody goes into the hearing in the right frame of attention--

Also, from my experience -- and I have Second Injury Fund lists -- you've got to hear the petitioner's testimony in a lot of these cases. If you hear the individual-- And that's one thing I recommend to judges and the parties: Put the petitioner on the stand and hear from the individual. I would say that's the most efficient way to solve a Second Injury Fund case.

SENATOR KEAN: And perhaps there are ways we can address that with some of the things we're talking about here today.

Very briefly, Commissioner Goldman, you were talking about CRIB. Does CRIB have the oversight ability, like the Department has, with

regular property and casualty companies, to oversee the regular reasonable rate of return issues? In other words--

COMMISSIONER GOLDMAN: No, that's done at the Department.

SENATOR KEAN: Who is charged with that task?

COMMISSIONER GOLDMAN: Our Department.

SENATOR KEAN: The Department of Insurance?

COMMISSIONER GOLDMAN: Yes.

SENATOR KEAN: So just like you look at property and casualty companies?

COMMISSIONER GOLDMAN: That's correct.

SENATOR KEAN: Okay.

I'm just going to close with-- I know it's going to come up later, but some people are advocating for, I guess, a two-tiered system. For employees that make a lot of money, certainly a case can be made that somebody who is making \$1,500 a week should get a higher per weekly -- in his or her temp rate, which is now about \$760 a week, I believe.

My one fear -- and I find that there is an analogy here that can be made with health insurance. If we look at health insurance, and we take out, let's just say, 20-year-olds who don't smoke, and put those individuals in a pool over here, and take that particular company and assess a risk to the rest of those employees, we could look at a situation where we're cherry-picking people, creating an untenable situation for that company to pay for health insurance for those other employees.

I'm concerned that the same thing doesn't happen if we cherry-pick in workers' comp. It certainly can be unfair for somebody making

\$1,500 a week to get only \$750 in pay. It's a problem we have with workers' compensation. As an attorney, sometimes the hardest thing I have to do is -- when somebody comes into my office, and they've fallen off a roof or something serious of that nature, and you tell them, "Okay, you've had a back surgery now -- serious surgery. It's going to change your life probably forever. You're not going to be able to climb that ladder with heavy weight anymore, so you're going to have to find something else to do." And guess what? You're going to walk out of the workers' comp court with somewhere between \$20,000, \$30,000, maybe \$35,000 as an award for a serious back surgery. And that's a common occurrence. And the reason for that-- And as I said, it's very hard to explain to people. And the reason for that is so that there is a benefit there and that you don't bankrupt the system. And it's a very important point for everybody to take away from today.

And as I heard--

Folks, New Jersey is doing something right. New Jersey workers' comp is going pretty well in New Jersey right now. From what I've heard from the testimony, we're right in the middle -- even higher -- in the benefits that we pay out to injured workers. And as far as where we are on the other side of it -- on the premium side of it, we're right about in the middle. So, for me, that's a success. When you hear about New Jersey being number 48 and 49 in most categories, I just think that we need to look long and hard at this before we do anything rash.

Thank you.

SENATOR SARLO: Thank you, Senator Kean.

Thank you.

I think many of us -- you heard from many of us. I think we all believe the system is essential. It does not need any wholesale overhaul. But we are going to be coming up with some minor recommendations to improve it. We're going to look for the cooperation of both your Departments to work with us on that, moving forward.

COMMISSIONER SOCOLOW: We look forward to working with you.

COMMISSIONER GOLDMAN: Thank you, Senator. We look forward to it.

COMMISSIONER SOCOLOW: Thank you, Senator.

SENATOR SARLO: At this point in time, Senator Sweeney would like to address the Committee.

You can do it from there, Senator, if you would like.

And then he will be followed by Justice Coleman.

S E N A T O R S T E P H E N M. S W E E N E Y: Thank you, Chairman Sarlo.

And thank you for taking up a very important issue that I regret I didn't do when I was the Chairman of the Labor Committee.

We're proud of our workers' comp system, but it absolutely, positively can be better. And if the press didn't shine the light on this issue, I don't know if we would be talking about reforming the CRIB board right now, which I think is a positive. I think employers and employees need to serve on that board, beyond just insurance companies.

Improvements can absolutely be made to the system. There are too many cases that do fall between the cracks. If you're one of those cases in the 15 percent that go -- be on that end-- I've been on that end as an

iron worker with a bad back, struggling -- when you're trying to struggle to make ends meet for your family. One case is too many. I understand it is impossible to be perfect, but we can do better.

I agree we need to give workers' comp judges stronger enforcement tools, such as contempt powers to punish businesses that fail to maintain proper coverage. If a business is found to violate the requirement for coverage, the court should be allowed to issue stop work orders and have the ability to impose fines that have real teeth. Substantial fines should also be levied for workers that aren't getting payments that they're entitled to from insurers.

Along the same lines, there should be -- aggressively combating fraud, in making sure workers' comp is a fraud priority for the insurance company fraud prosecutor. And I was actually surprised that we didn't know those numbers, because I think that's something very important. I think that's something that we all should really know.

And when you get those numbers, Chairman, I would love to get a copy of them.

SENATOR SARLO: Absolutely.

SENATOR SWEENEY: Do we have enough workers' comp judges? Are there vacancies? I'm also told there are only five Deputy AGs assigned to represent the Second Injury Fund, which is where most of the complex cases are handled.

The attorneys involved in these report that more deputy attorneys are needed. I don't know if that's falling on deaf ears or not. It's not going to add to the price tag for the State, because that money for the Deputy AGs comes from the Second Injury Fund.

Again, Chairman -- and I'm not going to be long, because you just had a long testimony between the Commissioners. The system isn't broke, but it absolutely can work better. And we need to ensure that workers get treated quicker.

See, Senator Kean is a workers' comp attorney. I'm a union leader. I see people come into my union office day in and day out. Unfortunately, they got hurt on the job. And because of the process with the insurer, more often than when you get into the system-- And this needs to be looked at even -- this is, I guess, the most important thing. The worker gets such a runaround until he gets into the system, he has to go get the lawyer to get into the system to get things resolved, and it drives costs up.

So I would hope that as long as -- as far as the workers' comp piece is looked at, we look at the process before the worker enters the system itself. Because I think that's extremely important, because I think you could avoid a lot of cases where workers have to go get attorneys.

Chairman, thank you for your time in allowing me to address the Committee.

Thank you.

SENATOR SARLO: Thank you.

Any questions?

Senator, would you mind taking a question?

SENATOR SWEENEY: Absolutely not.

SENATOR SARLO: Okay.

SENATOR PENNACCHIO: No question.

I just want to thank you, Senator, for your testimony, and just to echo my agreement with most of what you said. It would be nice to-- One of the only concerns I had was that we had an advisory board that, quite frankly, is not advising us. So whether we have to look at that advisory board, or set up some other type of commission -- that way we don't need a State Senator to come in and tell us what the deficiencies of the system are afterward. I think that's part of the legislative process that we're looking at right now, besides tweaking out some of those fraud issues, and some of those misclassification issues, and some of the other very important issues that you had mentioned, Senator.

SENATOR SARLO: Thank you.

Senator Kean, comment?

SENATOR KEAN: Yes.

Thank you, Senator Sweeney. And I agree with you 100 percent. When there's somebody that is getting the runaround from the insurer, and their calls aren't being answered, and they need treatment -- absolutely there has to be some kind of a mechanism in place for those people to -- for those injuries to be addressed and for them to get relief.

SENATOR SWEENEY: And, Chairman, honestly, the system is a good system. We have problems with it. I actually feel that really the biggest problem is on the insurers end though. And that's why this CRIB board needs reform.

Thank you, Chairman.

SENATOR SARLO: Thank you, Senator Sweeney.

I'd like to bring up, now, Justice James Coleman, formerly of the Supreme Court, and now New Jersey Workers' Compensation American Inn of Court, an expert in workers' comp here in New Jersey.

And we're going to have him followed by the Association of Compensation Judges, Richard Hickey and Rose Mary Granados.

J U S T I C E J A M E S H. C O L E M A N J R.: Mr. Chairman, members of the Committee, I'd like to express my gratitude to each one of you for affording me the opportunity of appearing before this august body today.

I'm indeed privileged to be here, privileged in the first instance because I have lived long enough to have seen tremendous evolution occur within the workers' compensation system. I go back to my first appointment, which was in 1960, as the supervisor of the Second Injury Fund, and also served as a referee of informal hearings. And I can tell you that even at the early days, we started a movement to try to make the administration of workers' compensation, and the lawyers and judges working the system, develop a high level of professionalism.

We believe that we gradually or incrementally achieved that goal. Prior to the year 1963 or '64, no workers' compensation judge had ever been elevated from a judgeship in workers' compensation to the so-called *upper court* system. At that time, the upper court system looked slightly different than it looks now, but they're all constitutional courts. Judge Harold Ackerman was the first one, and I was the second one. Judge Ackerman went to Union County, as did I. And he moved from the Union County Superior Court to the Federal court; and the rest is history with me. All of you probably have some familiarity with it.

I say that because I'm very proud to say I've seen how the practice of workers' compensation has become very professional. And it became that way largely because the lawyers and the judges were devoted to trying to improve the system at every opportunity. Because of that, I was proud to allow my name to be used to be the name of the largest Inns of Court in America. The New Jersey Workers' Compensation Inn of Court is the only one in America that operates statewide, and it is the largest one. And we have a lot of judges participating. And we believe very firmly that that is another way, through the cooperative efforts of all of the masters in Workers' Compensation Inn of Court, to help improve the skills of the persons participating.

Along similar lines, while I was in the Supreme Court, the Supreme Court -- along with other action -- developed a program to permit workers' compensation attorneys to be certified as workers' compensation attorneys. That was a pretty arduous process. And many of the lawyers today belong to that.

I heard some recommendation with respect to how to improve the system. And I too think that, although I've seen many gains that have been made, many improvements perhaps can be made in the future. But as you go about that, I urge you never to lose sight of the fact that when the 1911 Workers' Compensation Act was enacted, it was done so with a spirit of compromise, that was a give and take that had to occur for the worker to give up a common-law tort right of action in the interest of trying to have a certain compromise right of benefits flowing from the Division of Workers' Compensation. And it is in that give and take that, if you begin to cherry-pick to try to focus too much on the income of one individual, you will

begin the process that, I think, may lead to the ultimate destruction of the system. That compromise has been made, and that compromise is what has to continue in the future with some tweaking here and there.

I would suggest that one of the issues, that continues, existed when I was a judge at workers' compensation. And that is: how to deal with the partial trial of the so-called *complex* cases; and there are very complex cases. Should they be on a continuous basis? Well, I can say to you that the partial trial concept is not relegated exclusively to the Division of Workers' Compensation. That same idea is currently operating, rather well too, in the upper Superior Court system in the Family Division, as well as in the general Chancery Division.

But one thing that may be -- one area in which an improvement may be made is to place a time limit on the beginning of a trial until the end, hypothetically. I suspect that it will be very difficult to justify trying a case for longer than a 12-month period from the inception of the trial. And I think it's also a little difficult not to have a decision rendered within some reasonable fixed period after the trial has ended. In the Superior Court system, for example, the judges are required to report to the Administrative Office of the Courts cases that have not been completed. In other words, you've reserved decision for a period of time. That report goes out every 30 days.

And finally, I suppose I may be guilty of something that once got me almost in trouble, and that is to make a recommendation. Because sometimes, when you make a recommendation, you are the person looked to the quickest to try to carry it out.

My recommendation is that maybe -- need to have a little tweaking with the vetting process. I say that to you only because I currently serve on the Governor's -- serve as Co-Chair of the Governor's Judicial Screening Panel, in which we look at all of the candidates and make a recommendation to the Governor, based on a number of factors, on whether or not we believe the individual is qualified to be a Superior Court judge.

There was a point, I believe, in which a similar system existed for workers' compensation. Be that as it may, I know that the process had waxed and waned over the years. For example, when I was appointed, I had a private audience with Governor Hughes. That may not happen all the time now. But I think you do need a vetting process that may need a little improving. And that can happen. For example, for the Superior Court judges, they have a county bar and State bar. But there is a workers' compensation section of the State bar. And I think that's one area that could become involved in the vetting process. Because most of the members of that section of the bar are active workers -- practitioners -- workers' comp practitioners on both the plaintiff and the respondent side.

With that in mind, I will entertain any question that you have.

And I have with me Frank Petro, who is an outgoing president of the Coleman Workers' Compensation Inn of Court, and he also serves on the National Board.

SENATOR SARLO: Thank you.

Thank you, Justice Coleman. And we know you've had a long, distinguished career both as a judge and also in the workers' comp field.

You've answered my question. My question was going to be dealing with vetting of workers' comp judges. And as a member of the Judiciary Committee -- serving in my seventh year on the Judiciary Committee, we finally now are bringing in workers' comp judges for interviews. It's something we haven't done in the past. And I believe we should be doing that.

And just to make it clear, you believe that nominees for workers' comp judges should go before the State bar and the county bars. Am I correct in that?

JUSTICE COLEMAN: Well, I said that if you wanted to-- The county bar may be a little more problematic, because not all of the counties have that many practitioners, perhaps. But at the State bar level -- and that may be sufficient -- they have a State bar section on workers' compensation. And I'm satisfied that the President of the Bar Association could form a committee to do the vetting in a similar fashion, yes. That's one of the recommendations.

SENATOR SARLO: There's been many individuals who have come before the Judiciary Committee that we have questioned how they got there, why they got there, and their ability to serve as workers' comp judges; and now have turned out to be excellent workers' comp judges. And I've heard it now, during my research on this issue for the past couple of weeks -- different names that have surfaced that have just turned out to be excellent workers' comp judges. So I believe more vetting with the State bar is a good thing and would be helpful.

Training: Do you think they're getting enough training?

JUSTICE COLEMAN: Well, I heard the Director explain the training. And that is part of the same policy that was established when I was a workers' compensation judge. We had training. We sat in bunk every month. And as part of that monthly meeting -- involved training -- training to the extent of having legal discussion, not so much hands-on training. But there was a training element of that. And the Director has pointed out that that is an ongoing process.

For the Superior Court judges, there is a baby judge school that will be convened in the Fall of each year and, if enough new judges are appointed, in the Spring also. And it works remarkably well.

When I was a workers' compensation judge, I took advantage of some of the schools -- or training -- educational training courses that were being offered on a national basis. For example, I spent two weeks, over several Summers, taking such courses. And I believe they may still be offered, much like the National Judicial College, that has its home base in Reno but conducts seminars pretty much all over the country. Judges can take advantage of that. Mind you, there is a cost factor that is connected with that. And there will, undoubtedly, be a cost factor connected with having more deputy attorney generals handling Second Injury Funds, as well as more deputy attorney generals working with the fraud section.

SENATOR SARLO: One final question for me: The system is working?

JUSTICE COLEMAN: I think it's working remarkably well.

SENATOR SARLO: Thank you.

Senator Kean, anything?

SENATOR KEAN: One question, Chairman.

Thank you, Justice. Welcome.

Along the lines that you're talking about, do you think there should be any changes in the tenure differential between Superior Court, for instance, and workers' comp judges?

JUSTICE COLEMAN: Well, as I recall, the workers' comp judge is appointed for five years, is it?

SENATOR SARLO: It's three years?

JUSTICE COLEMAN: Three years.

SENATOR SARLO: Just for the record, it's three years. Superior Court judges are seven years.

JUSTICE COLEMAN: Okay. After three years, what happens? Probation?

SENATOR SARLO: Renomination by the Governor, and get reconfirmed by the Senate Judiciary Committee.

JUSTICE COLEMAN: And do you -- at that point, you have tenure?

SENATOR SARLO: At that point in time you have lifetime tenure.

JUSTICE COLEMAN: As a matter of fact, I think the workers' compensation system may be the better of the two in that respect. If, for example, you serve in the court system for seven years and are not reappointed, that lawyer will have virtually no practice to which he or she can return. Three years, maybe you can pick up a few of your old clients. But I can't imagine the difficulty one will have trying to reestablish himself or herself after seven years.

But I do like the system that you eventually do get tenure for good behavior. And you can tweak it a little bit, but I prefer-- If I was going to be denied tenure, I would much rather have it at the end of three years than at the end of seven years.

SENATOR KEAN: Thank you.

SENATOR SARLO: Senator Pennacchio.

SENATOR PENNACCHIO: Thank you, Chairman.

Thank you, Your Honor, for gracing us with your presence today.

You had described the original statute as being a compromise. And you had shown some concern about us not overreaching our boundaries where we can hurt the system.

Can you specifically tell us some of those areas where we should tread very, very lightly where we actually could hurt the system?

JUSTICE COLEMAN: Well, someone mentioned the cherry-picking. As a workers' compensation judge, I was always empathizing with the individual who was a high earner, because I knew that individual was not going to receive, for temporary disability -- and that's where it really matters, because in New Jersey, we have the whole-man system, whole person system. But temporary disability is designed to replace lost wages. So the individual who is a high earner -- and for a temporary disability payment, that individual would get the maximum if the wages were high enough. And for some of those persons, the maximum will be somewhere in the 50 percent of the gross weekly income from the job.

If you begin to cherry-pick to the extent that you begin to try to compensate that individual more -- and I'm not suggesting there isn't a

substantial loss there -- you may very well begin to have a negative impact on people on the other end of the spectrum, because the cost has to come from some place, as was pointed out. And this was part of the compromise. It was known from 1911 until the present day that some individuals would have benefited better in the tort system in the Superior Court, suing the employer. But the risk was that if you sue the employer in the Superior Court, you may end up with zero. So this is all part of that continuing compromise. And this was repeated more recently in a couple of Supreme Court decisions, which I participated in too.

SENATOR PENNACCHIO: Thank you.

SENATOR SARLO: Thank you, Justice Coleman. Thank you for being here today. And we look forward to calling upon you to -- call upon your expertise in this field as we move forward.

JUSTICE COLEMAN: Thank you.

SENATOR SARLO: Thank you, Justice Coleman.

We're going to ask Richard Hickey III and Rose Mary Granados, Association of Compensation Judges, to come up. We're going to ask you to keep your remarks brief, talk about--

And moving forward, we're going to ask everybody-- I think we have a really good historical perspective of what the system is all about. We now want to hear from everybody involved about recommendations or where you think there's a potential problem in the system.

H O N O R A B L E R I C H A R D E. H I C K E Y I I I: Mr. Chairman, members of the Committee, my name is Richard Hickey. I'm the Administrative Supervisory Judge for southern New Jersey.

I've submitted a written statement to you, and I'm not going to go into it in detail. But I just want to point out that I'm one of those individuals who had no background in workers' compensation. And I'm proud to say I'm the only one teaching it at the law school level in the state right now.

HONORABLE ROSE MARY GRANADOS: And I, on the other hand, have spent almost my entire career in the system. I was a Deputy Attorney General representing the Second Injury Fund for many years immediately before I went on the bench. And now I am also an Administrative Supervising Judge, and I supervise Bergen, Passaic, Hudson, Somerset, Hunterdon, and South Warren counties.

JUDGE HICKEY: We have submitted a writing to you, so we're going to be very brief.

Actually, having read the articles in the paper, we were here -- probably initially thinking we were here to defend ourselves. I'm happy to say from the testimony thus far, and the questions that I've heard, that probably isn't necessary.

But I would say to you that, as the Association of Workers' Compensation Judges, we really do welcome further review for the appointment of judges. We don't select our own, but we do try to educate our own. We do have not only the continuing formal training that was mentioned by the Director, but also the ongoing training that occurs within the vicinages. And most of the vicinages have anywhere from two, to four, to six judges sitting. And from time to time during the course of the week, there are discussions between the newer and more experienced judges. So that training does continue at all times.

The Inn of Court has been a marvelous addition to training, not only for the attorneys, but also for the judges. It also gives us a great forum to discuss changes and things we can do from an administrative standpoint to improve the system.

Rose Mary.

JUDGE GRANADOS: Several of the items that we suggested have already been mentioned: the Medicare issue, the Uninsured Employers Fund. We feel that that could be streamlined a bit because the procedures are very cumbersome at present. The more stringent enforcement of the compulsory insurance requirement has already been touched on.

We do agree about the schedule of permanent disabilities to be revised as it regards hand and foot injuries. Now, to lose your hands, particularly in this day and age with computers and so on, it knocks out a whole range of occupations for injured workers.

We also would urge the appointment of an additional Second Injury Fund Deputy. Their caseload is extremely heavy. I have to say that when I was with the Second Injury Fund, which is 16 years ago now, there were six deputies. Now there are only five. And the caseload is a bit heavier, and the complexity is way up. So I think that would be really helpful.

And enforcement of our orders and so on-- It's not really a huge problem in numbers of cases. But we certainly would welcome additional enforcement powers.

Anything else?

JUDGE HICKEY: The only other thing I'd like to add is that while we schedule cases every three weeks -- sometimes six weeks,

sometimes nine weeks -- those cases will go on for a multitude of reasons. Some of those reasons are based solely upon the case not being ready. But in some cases, it's because of multiple injuries. A person goes back to work, is injured again, a new claim is filed -- same part of the body. The first case doesn't move. So now we have two cases running through the system. I think we have to do a better job of at least tracking our cases based on when they're ready to be moved as opposed to when they're filed.

SENATOR SARLO: Thank you.

I'm pleased to hear that your Association is in support of the same type of peer reviews as the Superior Court. I am pleased to hear that -- whether it's through the State bar -- at the county level or the State level. So I am pleased to hear that.

Going into the contempt issue, giving more enforcement powers to workers' comp judges-- And I think that's-- When you read the articles published in the newspaper, they highlighted, of course, probably a half-dozen to a dozen of the worst potential cases that have been out there out of 200,000 of them.

I received a letter today from an individual -- I won't mention his name. But it just says, "I am one of the persons named in the *Star-Ledger* story. I am sending this to you in hopes that it will help you understand what is really happening. My comp insurance company, in defiance of the State law -- multiple judges' orders -- has again cut me off -- no payments now for three months. Judges Coons (phonetic spelling), Calderone, Dietrich have all previously ordered this nonsense to stop. And indeed, Judge Dietrich has fined Universal Underwriters in the past for this same problem."

So what I'm hearing is, you could fine these potential bad characters that are out there, but that is it. There's no penalty. You don't have the ability-- If you could just explain. You don't have the ability to take it to the next step. Explain it to the Committee.

JUDGE HICKEY: Well, we do not have contempt powers. That's first and foremost. The statute, however, does give us those powers. The Appellate Division, in a decision 20 years ago--

JUDGE GRANADOS: More than that.

JUDGE HICKEY: --more than 20 years ago, indicated that we did not have those powers, that they were judicial in nature and not associated with an administrative body. So we don't have contempt powers.

We have certain sanctions that we can impose. Most of those are monetary sanctions, most of them really do not impact most of the carriers. Delay means money. Monetary sanctions don't make up for the loss of time.

SENATOR SARLO: Senator Pennacchio.

SENATOR PENNACCHIO: Real quick: I'm a little concerned about that three-week cycle. Is it by statute that they have to come back within three weeks?

JUDGE HICKEY: No.

SENATOR PENNACCHIO: You don't have that discretion -- or you do have the discretion to say, "Well, we have a holiday coming up within three weeks, so I don't want you waiting six weeks. We'll take you back in two weeks."

JUDGE HICKEY: We can do that.

And I don't mean to jump in.

JUDGE GRANADOS: That's fine.

JUDGE HICKEY: We can do that. We have the authority to say-- You have a case that's resolved for example. We want to put the case through, and the case isn't coming up for another six weeks. "Judge, would you list the matter early?" And we'll take it the next time the respondent's attorney is in court. And of course we'll do that whenever possible.

The problem is that the three-week cycle -- and I'm going to really defer to Judge Granados, because in my understanding of how that developed was to -- as a cost-saving factor for the respondents. Those lists are scheduled around attorneys or insurance companies so that they have the same day every three weeks, or the same days every three weeks before a particular court. Thereby they -- not having to have maybe twice as many attorneys doing the defense work. So it's a cost-saving factor to allow them to come in on a particular day. But because of holidays, because of vacations, we try to work around that as best as possible.

Rose Mary.

JUDGE GRANADOS: We do have the authority, especially in a med temp motion, an emergent situation. We can have the attorneys come in more quickly and resolve things more quickly. And as Judge Hickey mentioned, any time a case is settled, it's pretty easy to get a judge to add it to his calendar -- his or her calendar at any time.

SENATOR PENNACCHIO: How big of an issue, is it an issue, with people having to wait three, six, nine weeks--

SENATOR SARLO: Is it bureaucratic, or is this kind of an understanding between the insurance companies and the petitioners? It sounds like it's an informal agreement.

JUDGE HICKEY: Well, I don't know if I could classify it as an agreement, but it is a procedure. And the procedure is one where it doesn't allow cases to fall off the earth. Eventually they're going to come back, whether it's in three weeks, six weeks, nine weeks. You're going to see them again. But you don't want a case coming back every three weeks when somebody is under medical treatment. There is no point in having an attorney show up in court every three weeks when the client is going to treat for the next six months. The petitioner is not required to be there, nonetheless, so the petitioner is only going to be there when the case is either going to be tried or settled.

SENATOR PENNACCHIO: The only concern I have is that -- not that there is an ongoing medical issue that has to be addressed, and that's why you're waiting -- but somebody who has an urgency or wants to see finality to the case -- that he doesn't have to wait three weeks, six weeks, nine weeks all because of the bureaucracy, or because of the holiday, or whatever. That is within your purview, your discretion. You can-- A judge can say, "No, we can get you in next week, and we can settle this. We can settle this now. You don't have to wait."

JUDGE HICKEY: I would say within a few expectations, that is going to happen 90 percent of the time.

SENATOR SARLO: Senator Kean.

SENATOR KEAN: Thank you.

Just to touch on that, Judge Hickey, you also have the right to mark a case *no adjournment*. So if the attorneys come in, and you think it's being delayed, delayed, delayed, you can mark it, "Three weeks from today, no adjournment," so there's no excuses, which helps move the case.

JUDGE HICKEY: That's true.

JUDGE GRANADOS: Yes.

SENATOR KEAN: Just the only other point: Do you believe that the -- and I wasn't familiar with this -- but that the Appellate Division case of 20 years ago or so -- do you believe that it should be restored to the original statutory intent to give you judges some more powers to issue contempt orders, things like that?

JUDGE HICKEY: I think the more authority we have, the better we can control the lists. But I'll leave that to the good discretion of the Legislature.

SENATOR KEAN: Thank you.

JUDGE GRANADOS: The only thing I would request from the Committee is that, whatever changes you do make -- we've lived with the system for a long time. We'd like to be a part of the discussion, just as we are today, not in the media but with the Committee itself.

SENATOR SARLO: Absolutely.

Thank you.

JUDGE GRANADOS: Thank you.

SENATOR SARLO: Thank you for being here.

At this point in time, we're going to invite up Mike Van Wagner and Bill Barrett, from New Jersey Manufacturers Insurance Group;

and along with them, John Rogers, from New Jersey Business and Industry -- and that panel.

Moving along, we have New Jersey Manufacturers here, as you are the largest provider of workers' compensation insurance. And from all our research, we know we're not referring to you when we refer to bad characters in the industry. So we know you take this seriously and do a very fine job of administering this program as an insurer. So we'd like to hear from you.

MICHAEL J. VAN WAGNER: Thank you, Mr. Chairman.

Chairman Sarlo, Vice Chair Madden, and members of the Committee, my name is Mike Van Wagner. I'm with NJM for 25 years, and currently serve as Vice President of Legislative Affairs.

I'm joined today by Bill Barrett, who has 27 years with NJM. Almost all of those are on the workers' comp side. And Bill heads up our workers' comp legal division, so he is very intimately familiar with the workers' comp legal system.

I do want to say thanks for inviting us to participate. It's an important discussion. And by way of brief background -- the day has gotten long, I appreciate that -- I want to remind you that NJM exists because of workers' comp. And by that I mean that in 1911, the workers' comp law was passed. In 1913 NJM was formed by business owners who saw a need for an efficient, effective approach to insurance. And the mission of the company then, and it's always been the mission of NJM, is to operate in the inclusive interest of our policyholders. Whether it's comp, auto, homeowners, or whatever line it is, it is our policyholders who we represent, and it's who we act on behalf of.

When it comes to comp, you cannot separate service to your policyholders with service to their injured employees. We will have failed our insureds if we fail their injured workers. So the service we provide there is prompt, effective, high-quality, caring medical attention. That means a lot to us. That's what we do. It also extends to loss control services. We have a large engineering department that is out with so many of our insureds on a regular basis to see about ways to improve workplace safety. It makes a difference. Even in an economy that has now shifted from manufacturing to service, there is a lot of good that is done by good loss-control engineering. We do that. It's in the way we handle the bills that come in, the review there. It's in our SIU, our fraud department. We don't have a lot of it at NJM, but it exists everywhere, and we're after it.

That's the service, that's the commitment we've made to our policyholders. And again, in comp, you can't separate service to policyholder with service to their injured worker. We wouldn't be doing anybody a service there. That's the NJM background.

Thank you for that.

To the system, you've heard so much about it today, and you've heard all about its strengths. I don't want to be repetitious. It's a system that works well. It reflects a delicate balance and a compromise between the need to take care of injured workers and to keep the cost to business at a manageable level.

You've also heard, with respect to the rating system today, that New Jersey, relative to a lot of other states, has a very stable workers' comp rating atmosphere. I think one of the key highlights of that is that it is reflective of the loss experience by the workers' comp insurers. Injuries

occur, payments are made. Those go into the data that is sent to CRIB. CRIB is the statistical agent that tabulates that. The rate then is promulgated based on actual experience. That's what an administered pricing system does, and that's what helps keep that rate stable even as health-care costs have continued to rise by double digits. Fortunately, we've seen some offset in the frequency of losses to help offset that a bit.

It's a stable system. The rates reflect the experience. Twenty-third out of 50 states is how we rank. Comp is one of the few areas, as you've heard already today, that this is not a competitive disadvantage for us when we try to attract business. It's a competitive advantage, relative to our near neighbors, Pennsylvania, Delaware, and New York. John Rogers, I'm sure, will emphasize that point a bit more.

Finally, I want to talk just a little -- I want to emphasize a point on the medical portion of workers' comp. So much of this has been focused on the disability, and that's important. Appreciate that New Jersey's workers' comp system provides unlimited medical benefits, whether it's one treatment to the doctor and you're okay, or whether it's a lifetime of acute care. There's no co-pay, there's no deductible, there's no contribution to the premium for that coverage. Employees have, in today's climate with the health-care crisis that we face -- comp is, by far, the most generous health-care coverage that you can have.

We have people, as I said, that can be acute care for a lifetime that have claims that are in excess of \$10 million. We've rebuilt homes for people to equip the home so that they can exist in that home. That's what comp does. It is remarkable in the current system, and maybe even more remarkable than is the stability, overall, of our rating system, when you

consider that unlimited medical. It's a critical part of the system, it's the promises we make to the injured worker. That's part of the compromise that the Judge just touched on -- trade off for giving up the tort option.

Finally, I would be remiss, and we would be remiss, if having 95-plus years experience in this system, and 18 attorneys who are certified by the U.S. Supreme Court as workers' comp specialists, if we didn't acknowledge what we believe to be a judiciary -- with respect to workers' comp -- that is fair, hard-working, conscientious, and balanced in the approach and, I think, always acts with the interest of the injured worker, first and foremost, in mind. They are a good system of judges.

SENATOR SARLO: Thank you.

MR. VAN WAGNER: Finally, I would say that we want -- we recognize that in all systems -- our own -- there's opportunity for improvement. And where there is, we're happy to be a part of that discussion. Some suggestions have been made today that we'd be happy to be a part of.

Thank you, Mr. Chairman and members.

SENATOR SARLO: Thank you, Mike.

John Rogers.

JOHN D. ROGERS, ESQ.: Thank you, Mr. Chairman, members of the Committee.

My name is John Rogers. I'm with the New Jersey Business and Industry Association. The Association has over 23,000 business members, and we employ over 1.2 million workers in the state.

We are the payer of the system. Of all the folks you're going to hear from today -- they can talk about the cost to the system -- my members

pay the freight. As Mike alluded to, there are no contributions from the employee in workers' comp. It's all done by employer premium, and my members are the folks who pay those premiums.

We have a very large stake, Mr. Chairman, in assuring that the system is effective for the worker so that they can return to the workplace as soon as possible, and also that the care is rendered as efficiently as possible.

I don't want to belabor the point about New Jersey's ranking as 23rd. But I can't think of any business climate indices where we are average. New Jersey is the bottom performer in virtually every other category, whether it be taxes, whether it be health care, whether it be regulation. It's good to be average. New Jersey should strive to be average in a lot of these costs and concerns.

And the remarkable thing about that is, as you've heard from Commissioner Goldman and Commissioner Socolow today, we have an average pricing system that delivers very good coverage. There's no question about the benefits that we pay. Mike just alluded to the fact that you have unlimited medical coverage. There's not too many things in today's marketplace -- especially in New Jersey -- where you can have this type of coverage.

The only other things, Mr. Chairman, I'd like to raise to your attention is, we've heard a lot of discussion today about benefit levels. We've heard about the adequacy of folks to hear cases on behalf of the Second Injury Fund. I'm extremely concerned about those as well. With respect to benefit levels, those moderate changes in the system have big consequences for premium dollars. We've seen over the past few years how

court decisions and other things have eroded the workers' comp system to some degree. My feeling is that most of the expense for premium is because of health-care costs. I don't think I need to tell this panel that health-care costs drive a lot of our costs in the State of New Jersey, whether it be at the State level or even for individual, private employers.

But just a couple of recommendations that I might have to the Committee, that I've heard from today-- One is the thought about anti-fraud measures. I do not condone misclassification of employees. That hurts the system, that hurts my members that pay in. But I think the Committee and I think New Jersey needs to really look at how we craft those tests, how well employers understand them, and also whether we're going to combat fraud from the worker point of view. I think I would be remiss in saying to the Committee, "Go after intentional fraud from the employer perspective," if I didn't also ask you to review cases where the employee may have been involved in workers' compensation fraud. The system is balanced. It needs to remain balanced. And attempts to criminalize certain behavior should be balanced just as they are now under the New Jersey Health Care Claims Fraud statute. That statute makes no distinction of whether you're an employer or an individual. If you're trying to beat the system, you're going to be in it. And I would submit to you that that is something I think would be critical for the Committee.

Second: We've talked about the cases in the Second Injury Fund. The State of New Jersey has diverted over \$90 million out of workers' compensation funds over the past nine years now. If you were serious about moving these cases along, you have to stop diverting revenue from these dedicated funds. It's not the State's money. Frankly, it's not

even the workers' money. It's my members' money. And if you want to move cases along in those areas, then you should refrain from taking those proceeds and using them for General Fund obligations. Not only does it hurt the workers' comp system, in the long run it hurts the State. Because we saw what happened with our UI Fund, Mr. Chairman. And I know this Committee is supportive of efforts to restore funding so that we don't automatically trigger a payroll tax. But the same thing will eventually happen with workers' comp. We simply do not have the funds, because of previous deductions, to pay the freight on those types of claims.

Finally, with respect to streamlining the workers' comp practice, I think we can all support a system that provides greater transparency or streamlines some of the practices. My only caution is that if we look at activities that would, for example, cherry-pick claims -- as Senator Kean talked about -- or have different procedures for different groups of workers, that is not necessarily going to be in the best interest of the system as a whole. New Jersey needs to keep the system that we have, from that perspective.

Senator Kean, I thought your analogy was right on. I mean, that is part of the problem with respect to health care. My guess, in New Jersey, it would be part of the problem for workers' comp -- to try and take certain workers out of the system. I think even Justice Coleman alluded to it. At some point, someone is going to have to pick up the tab for that. It's, frankly, going to be my members.

And finally, just one other recommendation, Mr. Chairman. For years now, the State of New Jersey has looked at workers' comp benefit bills. This Committee has looked at a few, both this session and last

session. One of the areas that the State, as an employer, can do themselves a world of good in is with respect to the Sick Leave Injury Program. Many of you have had experience with this during the property tax special session that was held about two years ago. This is a system that costs the State of New Jersey, as an employer, over \$2 million a year to administer. It is duplicitous of the existing workers' comp system.

And Mr. Chairman, for you and the rest of the Committee, as you continue to undertake your review of the budget for this year, I would submit to you that you should look at that system as well. New Jersey does not really do a very good job of recognizing its own claims among its own workers. And this is a system -- the Sick Leave Injury Program, I should say -- is a program that was recommended in 2003 by the State Auditor to be phased out. The State Legislature, again, was poised during the property tax thing to take a review of this system and to phase it out. And today it keeps hanging around.

I don't think a review of the workers' comp system, as a whole, would be fruitful without the State also looking internally at its own costs with respect to workers' compensation.

Thank you, Mr. Chairman. I'm available to answer any questions you or the Committee have.

SENATOR SARLO: Thank you, John.

And just to follow up: The Budget Committee -- the urging of the Budget Committee to the Governor -- the additional \$130 million that was needed to put into the unemployment fund will now be coming from the General Fund and not as an additional employer tax. So that's something that's just happened in the past month or two.

MR. ROGERS: Great.

SENATOR SARLO: That was an important measure that was recently put into effect.

Just one quick question: If 23,000 members -- all good-standing members with -- carry workers' comp insurance, is it increased penalties to stop bad characters from-- What will it take to require some of the bad characters or bad actors out there from not -- carrying workers' comp insurance?

MR. ROGERS: It's interesting. As I view it, there are two groups of employers that are probably deemed misclassifying their employees -- there are intentional and unintentional. And just as we see in other facets of criminal law, if you're going to break the law willfully, purposefully, intentionally, you can make the criminal penalty whatever you want. That employer is going to blow by the law. It's just the way it is. I mean, we know that now.

If, however, what you're trying to do is to get more employers that may unintentionally be misclassifying employees, then you need to do more education. I mean, you can think of this in terms of drunk driving in our state. Everyone in New Jersey knows what the blood alcohol content for drunk driving is. I mean, it's been widely publicized not only by police entities, but by the State itself through the Office of Highway Traffic Safety. You cannot find the test for misclassifying an employee in the State of New Jersey on any Web site. If you call the Department, you cannot get an answer about what would be deemed misclassifying. All they do is refer you to the State -- or to the statute.

If you really want employers to comply, you should do more outreach and help them. Since 2006, I've asked for a fact sheet prepared by the Department of Labor to help better educate my employees -- or employers I should say. And it just hasn't become available yet. So I think that is a huge component to whatever reforms you're looking at.

SENATOR SARLO: It's just not fair that not everybody is paying into the system.

MR. ROGERS: No question. And again, I don't--

SENATOR SARLO: It's not fair to the businesses that are complying.

MR. ROGERS: No. And again, I want to reiterate that I do not condone it. I think it is a practice that costs all of us money. But if you really want to combat it, you need to do more than just crank up the criminal penalties.

SENATOR SARLO: Nothing, Joe? (affirmative response)

Sean, anything?

SENATOR KEAN: Real quick.

Thank you, Chairman.

Just a challenge -- and you probably don't have an answer to this question, because I sure don't.

But Senator Sweeney, before, was alluding to those cases. And it's not NJM, believe me. But there are carriers out there who do give you the runaround. And you have somebody who is usually-- You get a -- represent an injured police officer, and you really get some response -- upstanding citizen and somebody that everybody cares about. And then

you get an unskilled labor member, somebody from an unskilled labor force, some company that the employer doesn't really care about.

Mike, you were talking about the partnership -- that you want to make your client happy, because then they continue to pay their premiums. And they care about their employees. But not every workplace environment is that way. Is there some kind of mechanism or safeguard that we could look at that would require those insurers to be responsive in cases where an attorney, for instance, is representing them, and calling them up, and the adjuster is just not calling you back, and you're not getting treatment? You're certainly not getting temporary benefits. So just something-- The way I read today's hearing, you're going to see legislation coming out. Just something to think about.

SENATOR SARLO: Okay.

And, Mike, from your standpoint -- from NJM -- we'll be looking for your input as we look at these -- the CRIB board and potentially -- if overall that is required.

Your opinion on the CRIB board.

MR. VAN WAGNER: Well, hey, to the extent that folks are uncomfortable, it would seem, with a certain lack of a perceived transparency-- If transparency can be improved, then that's certainly something we'd be willing to talk about.

I would just say that's not going to change the rate if it goes into CRIB. That's the important thing. It's not going to magically change rates.

SENATOR SARLO: It's not going to change rates, absolutely.

MR. VAN WAGNER: But transparency is a good thing for everybody.

SENATOR SARLO: We agree.

Thank you.

And I also just want to-- There are many other carriers who are here who wanted to testify. Just because we didn't have enough time-- I just want to thank those other carriers for being here today and offering some written testimony for input.

Thank you.

MR. ROGERS: Thank you, Mr. Chairman.

SENATOR SARLO: At this point in time, I'm going to bring up Charles Wowkanech, from New Jersey AFL-CIO. And we're going to also bring up, at the same time -- is the Association of Trial Lawyers. And I know there are like five or six people who wrote their name down. I don't know who is coming up and testifying or not, but--

CHARLES WOWNANECH: Good afternoon.

SENATOR SARLO: Go ahead, Mr. Wowkanech.

MR. WOWNANECH: Good afternoon, Mr. Chairman, Vice Chairman, and members of the Committee.

I'd like to thank you for the opportunity for me to testify here today on the workers' compensation system.

What I've heard since around 1:00 this afternoon is that New Jersey has a pretty good system, and we do agree with that. We also feel, I guess as many of you do in the room, as well as -- I know the Commissioner -- I spoke to him at great length about it last week -- that even though what we read in the paper, and maybe what's not in the paper -- that there are a

small percentage of these cases that, for whatever reason or another, sort of get tangled up. It's all of our jobs to work together with the industry, with the business community, to try and make sure that this does not happen.

I was glad to hear from some of the previous speakers that-- It was pointed out that New Jersey has many benefits that other states do not have. Several states cap or restrict certain medical benefits. New Jersey is one of only six states that have an Uninsured Employers Fund. And it also has a Second Injury Fund for total disabled workers that pay them for life. The majority of the states in this country do not have that.

I'm going to get right to the point. We basically, after checking with all of our affiliates -- and we represent roughly 1 million workers in this state. And it's just not industrial workers; we represent people who work in hospitals, construction workers, teachers, professors, airline captains, ship captains, all different types of trades, and casino workers. But basically, we have five recommendations for your consideration this afternoon.

The first one -- I'm not going to go through it all -- but it deals with what you just heard my colleague from BIA -- on the cheating. We also-- We recommend that the Office of the Insurance Fraud Prosecutor consider investigating these employers. We should also support legislation that allows inspectors to execute a stop work order on any employer found to be operating a business without a workers' compensation policy.

Two: Workers' compensation judges need to be given more powerful tools to force timely compliance with court orders for benefits. Included should be the ability to levy fines for failing to provide timely medical treatment or payment.

Three: In order to make the system more transparent, a performance report for workers' compensation systems should be issued annually. This is done approximately by 36 other states in this country. The report should include information about which insurance companies are performing well and which are not. And fines should be levied against insurers that are not meeting the performance standards of the state.

We also recommend Labor appointments to the Compensation Rating and Inspection -- CRIB -- Bureau, which is now exclusively, as has been stated here, made up exclusively of insurance industry representatives.

The workers' compensation system -- number four -- is a complex one and sometimes difficult to maneuver for workers, small businesses, and attorneys alike. We would like to recommend the creation of a workers' compensation ombudsman to help guide workers through the system and to make recommendations for administrative reforms.

And five, finally -- which I'm sure most of you are familiar with -- there are several dozen compensation bills pending in the Legislature right now, but two of which are bills that we have spent a great deal of time in supporting. And I would just ask for your consideration here today. The first one is 1581. It's a Cohen-Egan bill, which increases benefits for the loss of a hand or a foot, which you heard--

SENATOR SARLO: Actually, I'm the sponsor of that bill in the Senate. We actually moved it out of this Committee.

MR. WOWKANECH: Good.

SENATOR SARLO: Since you didn't list me on there, I guess you don't want it to move any further? (laughter)

MR. WOWKANECH: No, we want to do it right--

SENATOR SARLO: You forgot me off the-- You didn't give me any credit for it.

MR. WOWKANECH: Well, we're going to give you credit right now. (laughter) We appreciate you passing it through the Committee. But that is a bill that, as you know, Senator, we've supported for a long time.

And also, another Cohen bill -- and it's been debated about quite a bit -- but A-2499. This seeks to increase the compensation benefit for temporary disabled and permanently disabled from 75 percent to 100 percent of the State's average weekly wage. Several states have already gone to this 100 percent compensation. And we think it's something that should be considered.

I have no further recommendations, Mr. Chairman.

SENATOR SARLO: Thank you.

A M O S G E R N, ESQ.: Thank you.

Do I have to push a button here? (referring to PA microphone)

SENATOR SARLO: Yes, sir.

It wasn't working before.

MR. GERN: It's working now.

SENATOR SARLO: Trial lawyers have that magic touch.
(laughter)

MR. GERN: We do.

Actually, the AFL-CIO had the magic touch.

Chairman Sarlo and members of this honorable Committee, I appreciate the opportunity to speak to you today on behalf of approximately 2,000 members of the Association of Trial Lawyers of

America-New Jersey -- ATLA-New Jersey, to make it easier for the purpose of our discussion.

Just so you know, we just had our -- this past weekend we had our--

SENATOR SARLO: Can we just get your name, sir? I'm sorry.

MR. GERN: Oh, I'm sorry, Amos Gern. I apologize.

SENATOR SARLO: Thank you.

MR. GERN: I'm President of ATLA. And President-Elect Tommie Ann Gibney is here today, as well as three members of our workers' compensation committee, who helped put our draft together. And you have our formal presentation--

SENATOR SARLO: Yes, we do. Thank you.

MR. GERN: --with nine different items. And many of these have been discussed already.

What I was about to say is, my organization just had its Boardwalk Seminar. It's an annual meeting of our attorneys. We had over 1,130 members and nonmembers attend that for educational purposes, in Atlantic City on Thursday and Friday of this week. And among those courses and programs that we run is a program on workers' compensation, as well as many other areas of the law. We help train our attorneys, we help train the judges. In fact, Judge Calderone was a speaker for us, as he has been on numerous occasions before. Judge Mullen was there as well, and has spoken to us before. And it's a very worthwhile program.

I think one of the things I'd like to make a comment on, so as not to be duplicating the issue -- the things that have been said up to now-- I think it is important for this Committee to understand that the attorneys

in the system -- the petitioners' attorneys and the respondents' attorneys -- are the gatekeepers in this process when you really get down to it. Of course, there are judges, and judges make the ultimate decisions. But it's the petitioners' attorneys and the respondents' attorneys who work the case, go through discovery and make determination as to whether, for example, fraud has occurred. Judge Calderone told our organization just a few days ago there are very, very few cases where there is petitioner fraud. There's obviously a good deal more fraud on the employer side -- that is, the mischaracterization of employees, failure to get insurance, things of that nature. And that may require certain fraud prosecutions or other means to address that problem. But when you get right down to it, the attorneys on both sides are an integral part of the system in our situation.

One of the things that we need, and it's been referenced many times before, is the movement of difficult cases. The cases you read about in the *Star-Ledger* have absolutely -- are a very, very small percentage and are really a misrepresentation of the system. The system works virtually all the time. Occasionally, it doesn't work. And when it doesn't work, it's because the cases are heard on these three-week cycles you heard about already. And the three-week cycles do not lend themselves necessarily to moving cases where there's a motion for medical benefits and temporary disability benefits, which are emergent in nature. If someone needs an operation, he can't wait, or she can't wait, 10 weeks, 12 weeks, six months, whatever it may be. You need the determination from a fact-finder. And the workers' compensation judges who are at a very high level when it comes to these kinds of problems, these medical conditions, need to be able to make those

decisions quickly and have the ability -- regulatory ability to make those decisions within a limited time period, as Justice Coleman mentioned.

Decisions by the workers' compensation judges have to be made promptly. They can't take eight months, six months, or any long period of time. And the hearings have to be concluded in far less than a year. Justice Coleman said a year. That might make sense, because you have this cycle -- these three-week cycles. There's no reason that certain judges can't be designated by the Division to handle emergent matters and to expedite matters that require it.

There was much reference to the inadequate rate structure when it comes to temporary disability benefits. It's \$742 this year. There is a trade-off. The system does have a legitimate reason for trade-off. You avoid-- The roofer -- who is somebody, I think, Senator Kean mentioned before. If that roofer did something incorrect or negligent himself, he couldn't collect in a third-party case in our regular court system. However, in a workers' compensation, fault is irrelevant. It's simply: Are you on the job in the scope of your employment, and have you acted within your job description? And if that's the case, you do collect.

Medical benefits: While the insurance industry told you about those, and they're right about it -- that is, it's a very high-level system for the most part. The problem is that the employer and the insurance companies for the employer have the right to designate who the medical care is provided by. So if you have a choice of orthopedic surgeon *A* for your back surgery, and they say, "No, you have to go to *B* or *C*," you're stuck with *B* or *C*, no matter what that person's history is. There are certain benefits to that. It can expedite it. But that's why sometimes there

are hearings that are needed to address the issue of prompt medical care and what the appropriate medical care should be.

You heard about the Second Injury Fund, you heard about Medicare and the coordination of benefits. The only thing I can say on the Second Injury Fund, which was alluded to also with the Uninsured Employers Fund, UEF, is that it needs a more streamlined approach. Petitioners' attorneys, the attorneys who represent the worker, will not take, in our system, an Uninsured Employers Fund case. It is too cumbersome; there's no mechanism for securing permanent disability benefits because there's no funds, because they've been raided for other purposes. And as a result, the people who probably need the most representation -- that is, someone who has been cheated by an illegal-acting employer -- are not able to get proper representation. Lawyers do not want those cases, and the system has made those cases virtually impossible to handle in an expeditious way. That needs to be addressed.

And on the Second Injury Fund, the issue of more Deputy Attorney Generals is a legitimate issue. But beyond that, by the same token, those are the most complex cases with the most medical records, with the most medical testimony. They have to be expedited in some way to make them move through the system.

I just want to point one thing out to this Committee, which is very important. The attorneys who represent the injured workers in our system are paid on a contingent fee basis, a percentage. They get a mere 8 percent, under our system, of what the award is for the injured party. Eight percent of the permanent disability award -- and again, even less if there's been a voluntary award made by the employer during -- after that 26 weeks.

SENATOR SARLO: It doesn't go up to 20 percent?

MR. GERN: It's 20 percent altogether. Of that 20 percent, 8 percent comes from the petitioner, 12 percent comes from the respondent or insurance company. Now, that may not take into consideration motions for medical intent and other issues. But generally speaking, it's an 8 percent fee, and it is-- Given the fact that the petitioners' attorneys are the ones who have to make sure that the medical care is provided -- they're the go-between between the insurance company, who may be stonewalling the employer -- employee, rather -- or the employee who does not know how to fend for him or herself. It's the petitioner's attorney who is responsible for that and will help move the system. So I just point that out to you.

SENATOR SARLO: Just give those numbers again. It's 8 percent.

MR. GERN: It's 20 percent--

SENATOR SARLO: Total.

MR. GERN: --total. Of that, 8 percent is paid by the petitioner -- the worker -- and 12 percent by the insurance company, typically.

So on a relative basis, the way the system currently works, the attorneys offer a tremendous service at a relatively inexpensive means for the system.

That's all.

SENATOR SARLO: Just one-- We touched upon this earlier, this three-week provision. We understand the six-month provision, by statute -- especially in some of those more severe cases -- to see how the

medical treatment is working on that end. But this three-week period that we talked about--

MR. GERN: Cycles.

SENATOR SARLO: Does it create more-- Does it delay-- Is it delaying the process? Are we creating more bureaucracy by doing that?

MR. GERN: It works very well in routine cases. It does allow for a case to come back every three weeks, every six weeks, every nine weeks. It allows the system not to lose somebody who is a petitioner, an injured worker, in the system. It doesn't work as well in the contested cases and in those cases involving the motions for medical and temporary disability. And the reason is: Typically, the best the judge can do -- and it's not the judges fault, usually. The best that judge can do is have one witness on week one; three weeks later, if they're lucky, another witness; three weeks later, another witness. Sometimes, of course, there are gaps, as you pointed out, with holidays and other scheduling issues. The doctors are just not automatically available when you want them. You can do your best, of course, and we should. But that's where the delay comes in.

And that's, frankly, where-- When you read articles about dissatisfied petitioners, injured workers who feel the system is too slow, it's typically in those kinds of complex cases where there have been adjournment after adjournment, usually for very good reasons. But never the less, it's dragged on in the system. The judge hasn't explained it to the worker, the attorney may not have explained it to the worker, the respondent may be -- the insurance company may be delaying for ulterior motives. So there's a host of reasons for that, none of which are good, of

course. You need the worker to be able to rely on a system that is going to move fast.

SENATOR SARLO: From the petitioner's standpoint, overall, the system is in stable shape?

MR. GERN: I think so, yes, overall.

SENATOR SARLO: And, of course, there are some bureaucracies there that we could improve upon to move these cases faster?

MR. GERN: Absolutely. And the enforcement power of the judges, as was mentioned.

SENATOR SARLO: Enforcement is, I think, something you're definitely going to see coming out of this Committee.

Questions?

Senator Kean, who we know is only making 8 percent -- 20 percent actually. (laughter)

We should feel sorry for him today. We have to feel sorry for Senator Kean today.

SENATOR KEAN: Thank you, Chairman.

Quick question: Any ideas-- Have you given any thought to how you might change the system for the motions in cases where you feel somebody deserves the treatment -- because I've been through it too -- deserves the treatment, they're not getting it, it's a contested case, the judges hands are tied, it's an adversarial case, and it's being adjudicated under the current system? How do you change the system to--

MR. GERN: The only thing I can think of is, if it's presented properly -- that is, by proper medical documentation affidavits and the like, there should be a presumption that the worker's entitled to that medical

care. After all, people are signing affidavits, providing medical reports under penalty of perjury. And if they present it that way, there should be at least, in the first instance, a presumption that it's appropriate. Of course, it's a rebuttal presumption, so the system can allow for testimony against that physician or against that petitioner if there's a basis for it. But it has to be expedited. It's really just a matter of moving it quicker.

SENATOR KEAN: Thank you.

SENATOR SARLO: Just to close it-- As members, as elected officials who have been elected to represent the public -- and I think you alluded to this -- the published reports in the newspaper of some of these more severe cases -- that's not the norm by all? That's just some extreme cases that either perhaps fell through the cracks or maybe did not fall through the cracks but are just too complex to be handled in a timely manner?

MR. GERN: Absolutely, Senator Sarlo. And, in fact, no different than in the Superior Court -- cases drag on. We all know that there is civil litigation that can take years and years, depending on the vicinage, and depending on the judge, and so forth.

But even Justice Coleman mentioned the point that our Superior Court also allows cases to be heard in a partial manner. And that's common in the Chancery Division, and family law, and other non-jury segments. Nevertheless, it's usually not as dragged out as it tends to be in the workers' compensation system.

SENATOR SARLO: Thank you.

MR. GERN: Thank you.

SENATOR SARLO: Thank you to ATLA.

And our final panel is Craig Livingston, from the New Jersey Advisory Council on Safety. I think he's going to be joined with Lynne Kramer. And we also have the New Jersey State Bar Association, represented by Marcia Freedman and Arthur Kravitz.

This is our final panel for today.

The New Jersey State Bar Association.

Hopefully, you'll have some-- We've heard a lot today. And we welcome your input on some of the recommendations that you've heard, and so on.

MARCIA S. FREEDMAN, ESQ.: Thank you.

Chairman Sarlo, members of the Committee, we would like to thank you for allowing us the opportunity to speak this afternoon on behalf of the New Jersey State Bar Association, specifically the Workers' Compensation Section.

My name is Marcy Freedman. This is Arthur Kravitz. I'm the current Chair of the Workers' Compensation Section of the New Jersey State Bar Association. And Arthur is the Chair-Elect of that Section.

And we have submitted a written position statement, and we'd respectfully refer you to that statement. And in order to shorten our statement today, we would refer you to that statement.

SENATOR SARLO: We thank you for that.

MS. FREEDMAN: As you may know, the Workers' Compensation Section is made of up attorneys representing both employers and employees. It is the overwhelming position of the Bar that our workers' compensation system is sound and effective. We do not believe a complete overhaul of the workers' compensation system is necessary. And, in fact, to

do so would serve an injustice and a disservice to both injured workers and employers.

The Bar Association believes that our current system is effective, efficient, and fair in providing benefits to injured workers in New Jersey while continuing to be cost-effective to employers.

Of course, that being said, no system is perfect. And the Bar Association can make some recommendations for improvements to that system.

A R T H U R H. K R A V I T Z, E S Q.: The New Jersey Bar Association has long had a system in place to review potential judicial candidates for the workers' compensation bench. The Workers' Compensation Section established a committee in 2000 that can confidentially screen judicial candidates and report directly to the President of the Bar Association regarding its conclusion. We again renew our position that as members of the Bar, we feel our opinions and recommendations should be heard. In this environment, where allegations have been made that our judges are politically tainted, we would welcome the opportunity to be involved in this process.

And I want to take a minute, because I've gone through the process, and I've talked to the people who were originally appointed to it. This was a committee set up separate from the Workers' Compensation Section. It was to meet in private, confidentially. It was to distribute questionnaires to judicial candidates. It would then interview, and meet with judicial candidates, and make its recommendations in confidence to the President of the New Jersey State Bar Association. The New Jersey State Bar Association -- two presidents in the past had agreed to make our

recommendations known to the Governor's Office or to the State Senate and the Senate Judiciary Committee. Unfortunately, that system has been dormant in the last seven years, although everything is in place to revive it, literally on our part, on a moment's notice.

The committee members are still around, the committee's files and work are still there. And the committee did a great deal of work to screen potential candidates who came to the committee and said, "I would seek your review." So here is something that is in place, that can be activated, that can help the issue of screening judicial candidates.

Now, we're not necessary talking about candidates who are workers' compensation experienced. There are many people who sit in the judiciary who actually have experience, even though they say they don't. I'm not making fun of Judge Hickey too much (laughter), but he had experience in a very judicial setting. He was a prosecutor. We have a very, very fine judge of compensation who was clerk of the Appellate Division. So these are people who we would look at their experience and say, "Yes, these are great candidates for the workers' compensation bench, even though they don't have specific workers' compensation experience."

We have a couple other proposals we've made. We've talked many times about the Second Injury Fund and the shortage of deputies. I know Judge Calderone today has made the comments that you want to take testimony in a Second Injury Fund case. But if there are 65 cases on a list, you're never going to get to those to give testimony unless you have an adequate number of deputies and, by the way, their support staff, which is also lacking, to handle those cases. The Bar Association has recently passed a resolution regarding that.

The New Jersey Bar Association has recognized the problems associated with the Uninsured Employers Fund. We believe the statute and regulations should be amended so that injured workers can receive the treatment and wage replacement benefits in a timely manner. We also believe there should be better enforcement.

This may not be an issue of new laws to create criminal sanctions, but rather enforcing the laws we have now. For example, an unscrupulous employer might purchase a workers' compensation policy in order to get a policy certificate and then not pay for it. Now, the workers' compensation carrier, when it knows that this has taken place, will file a notice with the Department of Insurance. Those notices are filed, and that's it. So perhaps an enforcement mechanism can be created within either the Department of Labor or the Department of Insurance to follow up on these phony insurance purchases to cut down on the number of UEF claims, which would then make it more efficient to handle the claims that we have now. So we believe that that's a step that should be taken.

We also believe that the regulations regarding temporary disability should be changed to give the workers' compensation judges the authority to determine whether someone is -- whether a lien filed by Temporary Disability should be paid back to Temporary Disability as a work-related condition or not. And we believe that the workers' compensation judges have the best expertise to do that.

We also know that the workers' compensation court has struggled over the last several years with modernization and improvement in its computer systems. If given the resources to continue to update and modernize its systems, the Division would be in a position to maintain

better recordkeeping. Tracking of cases, and recordkeeping in general, is vital so as to allocate better resources in the future.

SENATOR SARLO: Thank you, Arthur.

MR. KRAVITZ: Thank you.

SENATOR SARLO: I think you heard from the judges, and you've heard from this Committee. We are going to be recommending that judges go back before the Bar. But you know we need cooperation on that from the administration on that sense.

MR. KRAVITZ: We understand.

SENATOR SARLO: So we're going to need cooperation as part of that pact. But they're going to hear, loud and clear I think-- I can't speak for everybody here, but I think they're going to hear loud and clear, from members of both sides of the aisle, that we'd like to see that pact instituted again.

Just one quick question, because the hour is very late. Second Injury Fund: If I hear you correctly, the Second Injury Fund works, it's just that they're short with personnel?

MR. KRAVITZ: They're overwhelmed. They are clearly overwhelmed.

SENATOR SARLO: Right. But there are not that many cases. I was just having a conversation with Senator Kean. There are not that many cases in the Second Injury Fund. Is that correct?

MR. KRAVITZ: There is a large number of Second Injury Fund cases. I don't have the actual number.

SENATOR SARLO: Right.

MR. KRAVITZ: And I know the Division has taken steps to try to reduce the backlog. They've instituted, for example, a requirement--

SENATOR SARLO: So it's not that it's bureaucratic, it just doesn't have the resources.

MR. KRAVITZ: Yes, I think-- Well, yes, I think so. I think if you had more deputies, and the deputies had adequate staff, you could move these cases a lot faster. Yes.

SENATOR SARLO: Questions? (no response)

Thank you.

MR. KRAVITZ: Thank you.

MS. FREEDMAN: Thank you.

SENATOR SARLO: New Jersey Advisory Council on Safety and Health: Craig Livingston and Lynne Kramer.

L Y N N E P. K R A M E R, ESQ.: Good afternoon.

My name is Lynne Kramer. I'm General Counsel for the New Jersey Advisory Council. We're a coalition of attorneys, doctors, and unions that represent petitioners in workers' compensation court. Our only concern is workers' compensation court and how it affects petitioners.

We want to thank you for inviting us here today. Everybody has already said most of the -- made most of the comments, so I will make it short and sweet.

First of all, let us say that we think the workers' compensation court system in New Jersey is one of the best court systems for working people in New Jersey, of all the courts. We also want to say that we second, third -- or maybe fifth -- vetting the judges and reinitiating the compact. We also believe that there are -- we need more deputy attorneys for the

Second Injury Fund. And as you heard numerous times, there will be minimal cost, if no cost, to the State.

We have two pieces of legislation that we believe very strongly in. One is the legislation that you proposed, Senator Sarlo, for increasing the awards for hand and foot injury, and I think you've heard about that. The only other thing I can say about that is, I tried to get some actual numbers on what the costs were, and I was unable to do that. When I contacted CRIB, apparently they -- the numbers they come up with are based on national injury distribution tables. So there are no numbers about how many cases there are in New Jersey, how many are over 25 percent of hands and feet, or anything -- I guess any cases. I wasn't able to get any of those numbers. We think that this is a very important bill, and we urge you to pass it.

Thank you.

SENATOR SARLO: Craig, before you go, I found an editorial from you and Lynne dated April 15, 2004. It was signed by you, Kenneth Wind, Rich Marcolus, Arthur Kravitz, and Julius Feinson. "The system works fine. Thank you." (laughter) Hopefully you still feel the same way. I don't know.

CRAIG H. LIVINGSTON, ESQ.: I do.

SENATOR SARLO: That was in '04.

MR. LIVINGSTON: I do, Senator. I do, Mr. Chair.

Thank you very much.

We go even further than other people who have spoken today before you. And we suggest that this system works so well that we need to take other pieces of law, which are being handled by other judiciaries, and

bring it into the Division of Workers' Comp. In particular, Senator Ray Lesniak has proposed that work-related injuries, whether they be diseases or injuries, which result in allegations of discrimination because of those work-related cases -- and this is Senate Bill 1407 -- be brought within the jurisdiction of the Division of Workers' Compensation so that judges in workers' compensation, who are skilled in medicine and skilled in work -- far more so, with all due respect, than Federal judges or State judges -- can resolve these issues.

Now, why do we do that? Because it's a cost-savings for employers, it's a cost-savings for workers, and it's an expeditious resolution of the cases. Let me give you an example. Right now, discrimination cases, as you know, can be brought either directly in Superior Court, which generally takes between two to four years to be resolved; or to the Division of Civil Rights, and then maybe transferred to the Office of Administrative Law. And their number is that those cases take 1,898 days to be resolved. In stark contrast, the Division of Workers' Compensation resolves motion for temporary and medical in less than 55 days.

Now, what does that mean? If a worker is injured at work, completes his or her treatment, is told that she or he can go back to work, but the employer says -- and we get more calls from our unions. And we represent unions in more than 400 work locations in three states -- many more than 400 work locations -- on this issue. The employer sometimes says, "No, you can't come back to work, because you can't do all of the duties on that job," or, "you can't do sufficient duties on that job." Sometimes the employers are right, and sometimes the employers aren't

right -- are wrong. And therefore, that process now takes between three to five years to resolve.

In stark contrast, if we were to bring it within the Division of Workers' Compensation, we can resolve it within 55 days, because we have motions under two cases. One is called *Williams v. Topps*; and the other is called Harbatuk, which talks about light duty, which an employer is obligated to provide to his or her employee so long as the employer is under active medical treatment, or else the employer's insurance company has to pay temporary workers' compensation benefits to that employee. We can easily take, within the Division of Workers' Compensation, those same matters. That will save employers an enormous amount of money.

There was just a case where an employer had to pay over a million dollars in attorneys fees to the winning petitioner's -- plaintiff's lawyer -- a million dollars, plus punitive damages, plus back pay, plus benefits -- a million dollars. Why was that? Because in Superior Court there's a lot of discovery, and there are a lot of motions, and there's a lot of this, and a lot of that.

Similarly, that case took a very long time. So that employer is not only on the hook for the million dollars that it paid to the plaintiff's lawyer, it's also on the hook for back pay. And the worker's often out of work a long time during that period of time while this case is being litigated.

I had a worker who worked at the Exxon plant in Linden, a black Vietnam Veteran, skilled mechanic, who was injured as a result of a work-related injury. And Exxon said to him, "Oh, Mr. Johnson, we don't want to take you back to work because you can't drive a forklift truck. You're a skilled mechanic." He could fix helicopters for the United States

Army in Vietnam, but he couldn't drive a forklift truck. So Exxon said, "No, you're not going to come back to our mechanic's job." They put him out of work. They ultimately sent him to a clerk's job, and they laid him off because he didn't have seniority to stay in the plant.

It took us eight years to "win" that case -- *win* in parentheses. I think we did a terrible job -- eight years to win that case and to get this person back to work. It cost Exxon an enormous amount of money in attorney fees, it cost back pay, and it didn't fill the job that needed to be filled in that plant, which is the mechanic's job in the Exxon plant.

What we're suggesting is, you take that work into the Division of Workers' Compensation, as Senator Lesniak has so articulately argued, and you allow judges who are skilled in medical, who are skilled in the area of the workplace to resolve those cases.

The second whole area, if I may speak to, is something that we've been talking to Senator Sweeney about. You're not allowed to kiss Senators, I understand, but I would have kissed him before when he talked about the stop work orders. The reality of the industry is that, according to Commissioner Socolow's testimony before Congress-- In the year 2005, he -- the Department of Labor here estimated that there was \$644 million in illegally performed work in this state, meaning people who are misclassified -- \$644 million. That's almost three years ago. That number, I would respectfully suggest, on the basis of our experience, has probably not been adjusted for inflation today.

We're suggesting that the current mechanisms that exist, including the Senator's -- the bill that this Senate passed on independent contractors' misclassification -- is certainly a step forward. But there needs

to be some additional tools given, both procedural and remedial. The procedural tools have to be that-- We would respectfully suggest that stop work orders ought to be able to be issued by the supervising judges in workers' compensation, such as Judge Granados, who has spent her career doing this; such as Judge Hickey, who has spent his career doing this -- so that they can issue stop work orders.

Now, how would that work? It is often the case that these workers who are illegally classified -- whether they're legal immigrants, or illegal immigrants, or American citizens who are working off the books -- would rather fold the cash into their pocket, rather than actually pay Social Security, pay unemployment, pay into State disability. What we're suggesting is that if a motion is brought before a judge -- in workers' compensation -- a supervising judge in each county -- to ask them to order that an employer provide evidence that he or she -- the employer -- has workers' compensation insurance. Because we don't believe they can, and we can get it off the Internet immediately. Then that judge could issue a stop work order, which could be enforceable either in the Chancery Division or in the Appellate Division, depending on how this Committee sculpts it. That would mean that \$644 million worth of business that goes on in this state could be brought within the arena of lawful obedience to our statutes.

As we all know, these employers don't pay into unemployment, they don't pay into TDB, they don't pay State taxes, they don't pay workers' comp, they don't pay into FICA, they don't pay income taxes. It's all cash. We can do this quickly, we can do it effectively. The Division of Workers' Comp is perfectly structured to do this now. We have the people

in place, we have the skill in place, and these judges know how to do it. So we would urge you to amend your statutes and the statute of the State in both regards.

Thank you very much, Mr. Chair.

SENATOR SARLO: Thank you, Craig.

Senator Pennacchio, Senator Kean. (no response)

Senator Madden.

SENATOR MADDEN: Could you define *discrimination*? You were saying *discrimination*.

MR. LIVINGSTON: Sure. The law against discrimination -- the New Jersey law against discrimination says that it's a violation for an employer not to provide a reasonable-- No, let me put it affirmatively. An employee must be able to do the essential functions of his job or her job, so long as those functions can be done with a reasonable accommodation of that handicap. That's the current law. They have to be able to do the essential functions of their job, and the employer has to make a reasonable accommodation of the handicap. That's the law which is set down by the Supreme Court interpreting our statute. The-- I'm sorry.

SENATOR MADDEN: That's okay. No, you did good.
(laughter)

When it came from a discrimination factor, it could be a number of different elements.

MR. LIVINGSTON: No, it's only--

SENATOR MADDEN: But it's based on the talent--

MR. LIVINGSTON: --only the handicap.

SENATOR MADDEN: --being able to carry out the ability.

Thanks.

SENATOR SARLO: You're the first group that we've heard from today who had advocated for the discrimination being moved over to the workers' comp section. Would you be concerned-- Right now, it appears from everybody that the system is working well. We're going to recommend some minor improvements here and there. But overall, we have a pretty good system in place -- one of the good things State government is doing here in New Jersey.

Are you concerned that this would put an extra burden on workers' comp, and then it could begin to make workers' comp become more bureaucratic?

MR. LIVINGSTON: That's a nice, slow-pitched ball, Mr. Chair. Thank you very much.

I have a few thoughts on that. Number one is that we need more judges. Number two is that the need for Deputy Attorney Generals -- additional Deputy Attorney Generals is grossly understated by everyone else, I think. We need more.

These cases-- Maybe there aren't many more cases now, but I can tell you they're far more complex now because of Medicare liens and because of Taft-Hartley liens -- meaning -- and also Aetna liens, and other companies that are saying, "We're paying a million dollars for care, and we want to get our money back." So these cases are much more difficult.

They used to be able to be resolved by Section 20, a dismissal of the case. They can't be done anymore, because of Medicare and other parties paying for these benefits wanting their money back -- rightfully so. So I think we do-- I think our judges can handle it.

Do we need more judges? Absolutely. Do we need more DAGs? Absolutely. Does it cost the taxpayers in the State of New Jersey a penny? No. Does it cost employers money to continue to send in senior people in these law firms every three weeks -- into Second Injury Fund cases, when some cases can't be reached, through no fault of the judges -- including some of the judges in this room -- through no fault of the Deputy Attorney Generals, because there just aren't enough hours in the day to resolve these enormously complex issues? Although I don't look at it -- look like Senator Sarlo, in terms of appearance -- I've been doing this for 36 years. I can assure you that these cases are two to three times more complex now than they ever were when I began. And maybe I didn't understand much of it then, and now I understand more of it-- But it's just more complex now.

We need more judges, we need more DAGs. And they can handle it, and they should be handling it, because right now it's a burden on commerce. If an employer has to pay a plaintiff's lawyer a million dollars in addition to back pay, that's a burden on that employer, isn't it? Yes, it is. And doesn't that hurt that worker who is out of work for five, or six, or four years? Yes, it does. He can't or she can't pay their mortgage, they can't support their family. We should have an expeditious resolution, because it's good business. It's good for the commerce of this state. It's good for your company, and it's good for the workers.

SENATOR SARLO: Thank you.

MR. LIVINGSTON: Thank you very much, Mr. Chair, again.

SENATOR SARLO: Thank you.

As they move away from the table, this concludes our hearing.

I want to thank the members of this Committee for your indulgence and your patience. I want to thank everybody for being here today, and for your input, and your patience.

I believe we concluded that the system is in good shape. But we are going to be looking at some legislation and some slight reforms, working with the Commissioner of Banking and Insurance, including giving the judges contempt powers, potentially placing a time limit on trial lengths, looking at the CRIB board, looking at potentially putting a commission in place to look at the CRIB board and how it's operated, misclassification of employees and going after those bad characters -- bad employers -- who are not carrying workers' comp insurance, and of course working with the administration to vet comp judges through the Bar Association.

So those are just about a half-dozen areas that we are going to be looking at. And as we go through this, we're going to be asking for all of your input into making sure the legislation is done properly.

MR. LIVINGSTON: Thank you very much, Senator.

(MEETING CONCLUDED)

APPENDIX



State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
PO BOX 110
TRENTON, NEW JERSEY 08625-0110

JON S. CORZINE
GOVERNOR

DAVID J. SOCOLOW
Commissioner

TESTIMONY OF
DAVID J. SOCOLOW
COMMISSIONER
DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT

ON

New Jersey's Workers' Compensation System
BEFORE THE SENATE LABOR COMMITTEE

May 5, 2008

New Jersey Is An Equal Opportunity Employer



OFFICE OF THE COMMISSIONER
(609) 292-2323 • FAX (609) 633-9271

Printed on Recycled and Recyclable Paper

AD-18A (R-7-06)

Chairman Sarlo and members of the Senate Labor Committee, I appreciate the opportunity to join you in a review of issues concerning the New Jersey Workers' Compensation program.

Although New Jersey's private sector workplaces are among the nation's safest, (tied for 5th out of 50 states) for lost time accident and illness rates, injuries and illnesses are still an unfortunate reality in workplaces.

For more than 95 years, New Jersey's Workers' Compensation program has provided medical treatment, temporary partial wage replacement income, permanent disability benefits and dependency payments to New Jersey workers and their families for injuries caused by work-related accidents or occupational exposures. It has also ensured that New Jersey employers have a reliable and cost-effective mechanism to resolve workplace injury situations. I would like to start by giving the Committee an overview of how the system works.

OVERVIEW

New Jersey employers are statutorily obligated to provide their employees with all reasonable and necessary medical treatment for work-related injuries.

In addition, the injured employee is entitled to temporary disability benefits for up to 400 weeks or until the worker reaches maximum medical improvement and/or returns to work. These wage replacement payments equal 70 percent of the worker's gross wages up to a statutory maximum, which is \$742 per week for 2008, and they are tax free for the employee.

This system provides the injured employee with vital medical treatment and wage replacement benefits to sustain the worker until he or she can get back to work.

In 2007, New Jersey employers reported nearly 200,000 work-related accidents. Based on the consistent ratios in prior years, approximately 85 percent of the injuries resulting from these accidents will be resolved between the employer and the employee without the worker filing a claim petition with the workers' compensation court.

In 2007, about 36,000 new claim petitions were filed, of which an estimated 75 percent alleged a compensable work accident and 25 percent concerned an occupational exposure to hazardous conditions and/or materials. In addition, workers made approximately 5,000 requests in 2007 to reopen their prior awards for increases in previously-granted permanent disability.

In almost every case, the reason an injured employee files a claim petition with the court is to seek permanent disability benefits, either partial or total. In such cases, the worker asserts that the injuries have resulted in a continuing, functional loss that has significantly impaired his or her work ability and/or personal life activities.

Partial permanent disability is determined by a statutory schedule which increases in length of payments and weekly benefit amounts depending on the seriousness of the injuries.

Total permanent disability results in a lifetime award upon a finding that the injured worker is no longer employable. Total permanent disability cases only amount to approximately 2% of filed claim petitions (approximately 800 cases in 2007). It is also worth noting that many workers who are deemed permanently and totally disabled also may be eligible for Social Security disability benefits under the separate criteria for that program.

Four months after the filing of a claim petition, unless an earlier date is requested by the parties, a conference with a workers' compensation judge is scheduled. Adjournments may be requested, generally due to incomplete medical examinations and/or expert reports.

However, it should be noted that, by statute, the workers' compensation court cannot issue a determination as to the permanency of a disability until 26 weeks after the worker has reached maximum medical improvement to ensure that the injury is fixed and measurable. At that point, the parties engage in any discovery proceedings, exchange medical records, initiate separate medical examinations, file necessary materials with Medicare if the worker is also Medicare-entitled and initiate any pre-hearing motions or other matters. During this six month time frame, the injured worker may be eligible to receive temporary disability benefits and/or social security disability benefits. If the injury involved a partial permanent disability and the worker has been cleared to return to work, he or she may be able to return to work and earn wages.

A review of closed cases in 2007 reveals that about 50 percent of the claim petitions were resolved within eighteen months of a claim petition filing; 62 percent within two years of filing; and over 80 percent within three years of filing. However, it is important to note that while the worker's claim is pending, he or she will continue to receive medical benefits and either income replacement benefits or actual wages if he or she has been cleared to return to work.

Case resolutions may be delayed due to: (1) Medicare repayment issues; (2) continued medical treatment for the petitioner; (3) inability of the petitioner to appear due to relocation, military duty or personal situations; (4) witness scheduling; or (5) other recognized and accepted reasons for continuances.

When there is a dispute over medical treatment and/or temporary disability payments, a motion may be filed with the workers' compensation court. Because we recognize the importance to the injured worker of quickly resolving disputes affecting income and medical care, such matters are afforded priority status and they are heard on an expedited basis. These cases are generally listed for judicial review within 30 days of filing and represent about 1 percent of the current inventory of approximately 97,000 open workers' compensation cases. While some medical disputes may require trials with expert

witnesses as to causation and appropriate medical care, out of the open cases, more than 99.8 percent of disputes involving medical and temporary disability benefits are resolved within four months.

The vast majority (95%) of petitioners are represented by counsel, most of whom are workers' compensation specialists. Attorneys who appear in the workers' compensation court cannot charge a fee for a consultation or for the filing of a motion or claim petition. By statute, an attorney allowance is set by the workers' compensation judge and cannot be more than 20% of the benefits recovered by the worker in the workers' compensation court. If a petitioner is unsuccessful on a motion for medical treatment or temporary disability benefits, there is no counsel fee permitted. When a petitioner is successful on the motion, the carrier generally pays the entire fee for the worker's attorney. Where a permanent disability claim is found compensable either by judgment or settlement, judges generally require the carrier to pay more than half of the petitioner's attorney fee.

All settlements of workers' compensation claims for permanent disability must be approved by a workers' compensation judge to ensure that the resolution is fair and equitable to the injured worker. Where an injury is found to be permanent by judgment or settlement, the injured worker may request within two years after the award is paid additional medical treatment and/or increased permanent disability benefits. This two-year period starts again every time new treatment and/or additional permanent disability benefits are provided.

At this point, it is worth noting some of the unique components of New Jersey's workers' compensation system which distinguish it from systems in other states. I will also highlight some of the areas of concern we have taken steps to address over the course of the last several years.

New Jersey's workers' compensation system provides more comprehensive coverage than is provided in other states. For instance, New Jersey is one of the few states that recognize occupational illnesses, such as carpal tunnel syndrome, silicosis and other pulmonary injuries, as compensable work-related injuries.

Additionally, New Jersey restricts the ability of an employer to settle a workers' claim through a lump sum payment and, accordingly, there are almost no claims for serious permanent disability that are settled with lump sums. In New Jersey, the judge must review the medical reports and other information and determine that the petitioner would have difficulty meeting his or her burden of proof on issues of jurisdiction, liability, causal relationship or dependency before a case can be settled and closed by a lump sum payment. For a lump sum payment to be approved, the law also requires that the worker must be represented by an attorney. Most lump sum payments are for minor injuries or contested cases where there are no permanent work disability medical findings by one or more of the medical experts. Fewer than 5 percent of New Jersey lump sum payments are for amounts over \$25,000 while more than 50 percent are for amounts of \$5,000 or less. This stands in stark contrast to the prevalent practice in other states where major permanent disability cases are settled with large lump sum payments and workers are

often enticed to forego continuing medical treatment or lifetime wage replacement benefits.

New Jersey is one of a minority of states that continues to maintain a Second Injury Fund for totally disabled workers whose total disability is a combination of work-related injuries and pre-existing disabilities. If a petitioner is found eligible for Second Injury Fund benefits, the employer first pays the portion of the total disability that is work-related with ongoing medical treatment responsibility and the Fund then continues total disability payments for the rest of the worker's life. Last year, the Fund paid over \$154 million in benefits. There are currently about 4,000 open Second Injury Fund petitions for benefits. Due to the potential benefit amounts and the apportionment of responsibility, these cases often require a number of conferences and trial proceedings. Procedures to expedite these cases were implemented last year.

For the last several years, an area of concern has been the implementation of the federal Medicare Secondary Payer statute. Under federal procedures, Medicare-entitled petitioners have been required to obtain approval from Medicare of any workers' compensation settlements. These approvals can include the repayment of medical treatment paid by Medicare that Medicare considers a state workers' compensation cost. This has delayed the resolution of many cases in New Jersey and across the country. While there has been improvement in the timeliness of the Medicare process, there are currently more than 2,600 New Jersey workers' compensation cases that are otherwise resolved pending Medicare approval.

Another issue that has been a prime concern is the underground economy, in which employers frequently fail to obtain workers' compensation insurance coverage because the employer has misclassified its workers as independent contractors or paid them in cash under-the-table. Pursuant to Governor Corzine's efforts to reduce the number of misclassified workers, this Department and the Department of Banking and Insurance have cooperated to establish a cross-match program to verify workers' compensation coverage by the more than 250,000 employers in our unemployment tax and temporary disability insurance database. When uninsured employers are identified, the employers are contacted and in most such cases the employer obtains workers' compensation coverage. An employer's failure to provide workers' compensation coverage for its employees is currently deemed a disorderly persons offense; if the failure is willful, it is a crime of the 4th degree.

The misclassification of employees as independent contractors is a significant and widespread problem. In 2007, this Department identified over 31,000 misclassified or non-reported workers, over \$482 million in underreported wages and over \$17 million in unpaid payroll taxes. Through the Administration's initiative to stop employers from misclassifying workers, five different state agencies in three separate Departments now share audit information to cooperatively ensure compliance with state laws, including the workers' compensation statute.

Employers that operate outside the State's registration, tax and workers' compensation coverage systems are a drain on state resources and short change injured workers from receiving proper benefit payments timely. Where a workers' compensation claim petition is filed and there is no employer of record, New Jersey is one of a few states that provides, through an Uninsured Employer's Fund, medical treatment and temporary disability benefits for the injured worker. Most often, the unregistered employer will default without an answer to the claim. Judgments for all benefits paid by this Fund, fines levied by the Fund and permanent disability awards are docketed by the Fund in the Superior Court and collection efforts are made through the Attorney General's office, private collection agencies and by petitioners' attorneys.

Recommendations

New Jersey's Workers' Compensation program is continually undergoing improvements. Over the last few years, the Division has significantly enhanced the administration of the workers' compensation program through automation, including a computerized case management system (COURTS); e-mail transmission of hearing lists to the parties; electronic filing of pleadings and other documents; an on-line program for judge and party use on all case information; and web access to reported court decisions, statutes, court rules, interactive forms and research materials. Additional enhancements to COURTS now under development will enable the court and parties to retrieve information to expedite the preparation of forms and orders, prepare more detailed and expansive statistical and other reports, and streamline data entry requirements. The Division attempts to provide the most cost-effective and fair process for the resolution of workers' compensation claims. However, I realize that the program is not perfect. The New Jersey workers' compensation system could be improved further through the following suggestions:

1. The Legislature should amend the statute to provide additional statutory sanctions and enforcement powers for workers' compensation judges. Current statutory sanctions are limited to simple interest for noncompliance with a court order for benefits after 60 days and a 25% penalty payable to the petitioner if temporary benefits are unreasonably delayed. Additional sanctions including reasonable counsel fees and monetary penalties should be considered for: (a) delays in answering a claim petition necessitating the filing of a default action; (b) failing to provide timely medical treatment and payment; and (c) failing to comply with a court order. Monetary sanctions, compensatory damages and/or fines against attorneys or other parties who delay court proceedings may also be appropriate. Providing such additional enforcement tools would enable Judges to ensure that parties strictly adhere to court rules that include the requirement that specific examination dates be provided when a party requests adjournment for permanency examinations, and confirmed trial scheduling orders and other case management processes.

2. The Legislature should increase the penalties and sanctions in the Worker' Compensation Fraud Statute for employers who misclassify their employees as independent contractors or omit their employees entirely from their workers compensation.
3. The Legislature should amend the State's insurance fraud statutes, including the Insurance Fraud Prevention Act, to include specific provisions establishing a violation for an employer's failure to obtain workers' compensation insurance and a violation for misclassifying workers with the effect of artificially reducing the number of covered workers under the employer's workers' compensation policy.
4. Regulated industries and businesses, such as taxi companies, alcohol retail establishments and construction industry contractors should be required to provide proof of workers' compensation insurance as part of the licensing approval process.

Finally, I recognize that our Division of Workers' Compensation only sees injured workers after they have hired an attorney and filed a claim petition. As I noted earlier, such cases account for fewer than 20 percent of all the reported workplace injuries and illnesses each year. However, in cases that never reach a workers' compensation judge, there can often be significant problems between workers and insurance carriers related to scheduling of medical appointments and other administrative matters. I look forward to working with the stakeholders and the Legislature on how to streamline the process for workers at this initial phase.

I stand ready to work with this Committee and others involved in the workers' compensation system to make improvements that will ensure that New Jersey has a balanced and efficient system to resolve disputes over workplace injuries. I appreciate the opportunity to testify and thank you in advance for your consideration of our suggestions. I would be happy to answer any question you may have.



State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF THE COMMISSIONER
PO Box 325
TRENTON, NJ 08625-0325

JON S. CORZINE
Governor

TEL (609) 292-7272

STEVEN M. GOLDMAN
Commissioner

**New Jersey Department of Banking & Insurance
Testimony of Commissioner Steven M. Goldman
Senate Labor Committee
Monday, May 5, 2008**

Chairman Sarlo and members of the Senate Labor Committee, thank you for inviting me to this hearing to discuss certain issues regarding New Jersey's workers compensation insurance market.

I have some brief remarks on the general background of the market, the role of the Department of Banking and Insurance, the role of the Compensation Rating and Inspection Bureau ("CRIB"), and some suggestions for the future.

In addition, we supplied the Committee with handouts regarding current and historical market conditions.

New Jersey's workers compensation insurance system, which dates back to 1911, is one of the oldest in the country. By law, all employers are required to either carry workers compensation insurance or demonstrate to the Department that they have the financial resources to be self insured.

There are about 217 insurers actively writing workers compensation insurance in New Jersey. The 10 largest insurers in the State cover 80% of the market. In New Jersey, we use what is known as an "administered pricing system", which means that the rates are set by the Department based on a filing by the rating bureau. All carriers doing business in New Jersey use the same rating system.

New Jersey and six other states use an administered pricing system; several other states use bureau-established "loss costs" to set the medical and indemnity portion of the rate. The benefit of such a system is that rates tend to be more predictable and stable, which is very important to current and future employers in the State. Indeed, the average cost for workers compensation insurance per \$100 of payroll was \$2.04 in 1997 and \$2.05 in 2007.

The Department's role in the workers' compensation insurance system is similar to its role for other lines, although there are significant differences based on applicable law that reflect the importance of workers compensation in public policy.

8x

First, we regulate the financial solvency of insurance companies through initial licensing, regular monitoring of their financial statements and periodic examinations. We work with insurers experiencing financial problems, and if those efforts are unsuccessful we liquidate the companies.

Fortunately this is a rare occurrence for domestic companies; there has been only one such insolvency in recent years, a small and relatively new insurer that was unable to succeed.

Secondly, workers' compensation insurers are, like all others, subject to market regulation standards regarding their sales or distribution systems, and their treatment of policyholders. A significant difference in workers compensation from other lines is that the Division of Workers Compensation in the Department of Labor by statute has original exclusive jurisdiction over all claims for benefits.

Thirdly, we regulate the product through review and approval of the rating system, including policy forms, rating rules and the rates themselves. The rating bureau develops a rate proposal and submits it to the Department each fall for review by the Department's actuaries.

Once approved, the rates apply to all policies issued during the next calendar year. Upon approval, the rates are available to all insurers, producers and employers by posting on the bureau's website.

Since 1999, workers' compensation insurance carriers have, on average, actually spent more money on claims and expenses than they received in premium.

In 2007, for every premium dollar collected, \$1.02 was spent on these costs. This figure is lower than 2001 when carriers paid out \$1.24 for every premium dollar.

During these same years, 2001 THRU 2007, medical costs in New Jersey rose by over 30%.

But, because of New Jersey's rating bureau system, the changes in rates to address the imbalance and also cover increased medical and weekly benefit costs have occurred gradually.

I have mentioned the "bureau," which plays an important role in our system. The Compensation Rating and Inspection Bureau was created by statute in the early years of the last century as part of the original workers compensation laws.

By statute, an insurer must be a member of CRIB in order to offer workers compensation insurance in New Jersey. Although CRIB is made up of insurers, it performs many public or quasi public functions that promote a stable and healthy market, which require some oversight by the Department.

CRIB is primarily responsible for collecting statistical data from all insurers and initially developing the workers compensation rating system, which as mentioned is subject to

Department approval. The CRIB rating system is required to be utilized by all workers compensation insurance carriers. Generally New Jersey ranks in the middle of the states in relative workers' compensation rates.

When business purchases workers compensation insurance, the premium is calculated according to the following factors:

- Classification Code – These codes are based on the type of industry and the number of jobs within each classification at a particular company. For example, office workers are coded differently than roofers because of the difference in risk presented by the job.
- Payroll – To calculate the rate for an employer, the classification codes of employers are multiplied by the total payroll of each class of employees per \$100 of remuneration;
- Experience Modification – Once a company has a three year claims history, its rate may be adjusted based on its history of claims as compared to similarly situated businesses; and
- The CRIB Rating System – Permits insurers to deviate to some degree from the standard rate and offer certain pricing incentives for businesses that have implemented loss management, safety or other similar loss-reducing programs.

CRIB also administers the residual market program. If an employer cannot obtain insurance on the open market, CRIB will assign an insurer to cover the employer. Assignments are based on the insurer's market share. Over the past several years, the residual market has been shrinking, which indicates that the private market is covering more businesses.

CRIB has many other functions that promote a healthy and efficient workers compensation system: It tracks which insurer covers which employer; it receives the initial report of worker injuries; and it assesses and collects from each insurer monies for the Security Fund, the Second Injury Fund as well as its own operating costs.

Among its other functions, CRIB resolves disputes between insurers and employers over the rate charged and other related issues. If not satisfied with the result, either the employer or the insurer can appeal the decision to the Department. Such appeals are extremely rare.

While no system is perfect, New Jersey's Worker's Compensation insurance system is healthy and working well. It is an area where employers have predictable and stable costs. This point cannot be emphasized enough at a time when we are working to maintain and attract employers to our State.

Meanwhile, it is one of the country's most generous systems for employees. Workers can receive up to \$742 a week on account of their workers compensation insurance. This puts us in the top one-third of the states in benefit levels.

New Jersey ranks 7th in the nation in maximum statutory unscheduled benefit levels for permanent partial disability (PPD) and 18th in scheduled benefit levels for PPD.

Conclusion and Suggestions

Thank you for affording me the opportunity to appear before you today. Our system, while stable and successful, is approaching its 100th anniversary. In view of its age, I think that Assemblyman Cohen and others who have suggested that a review is in order may be correct.

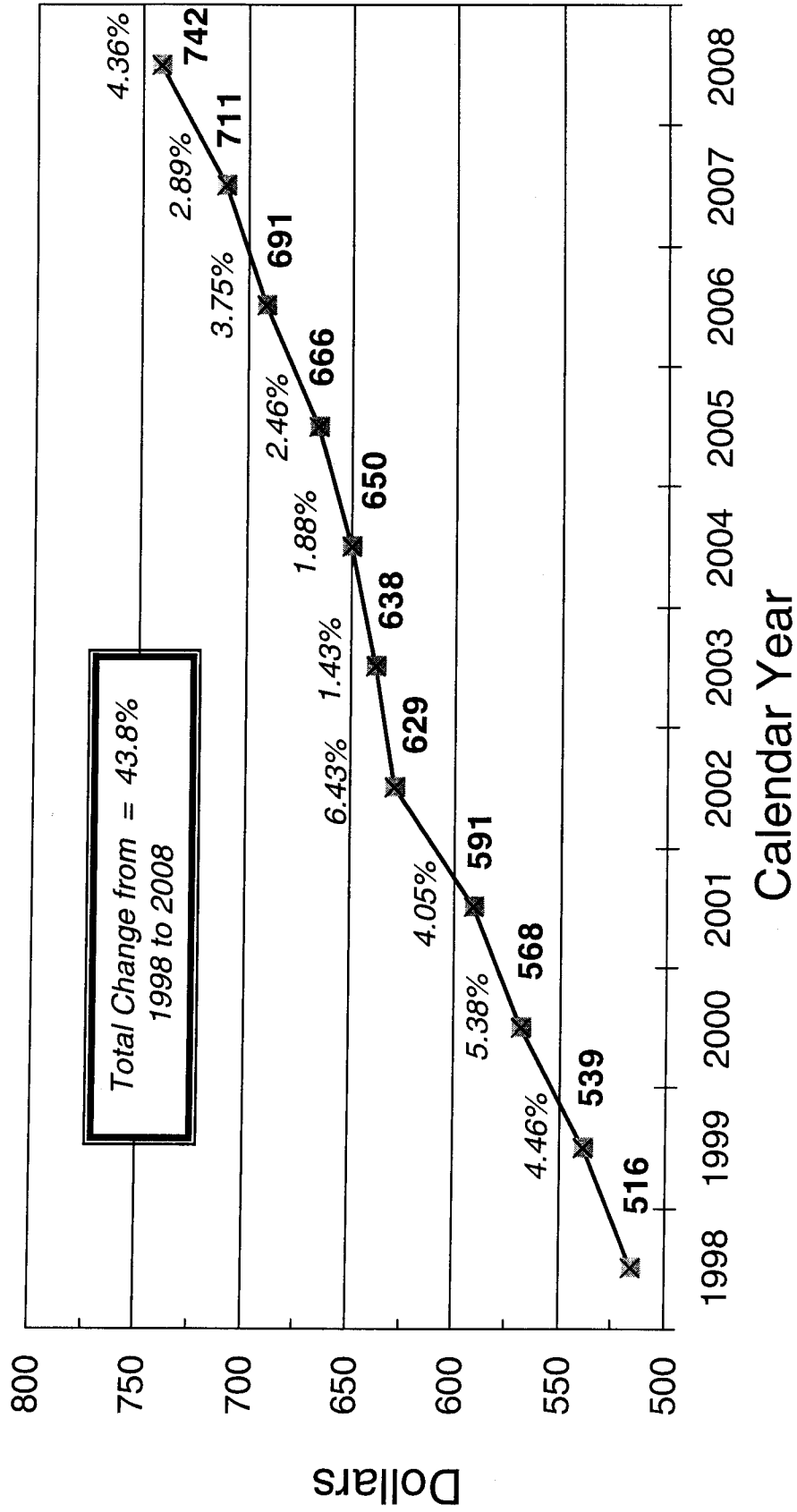
For example, the relationship between the Department and CRIB can be made clearer and the make-up of the CRIB Governing Board amended, perhaps to include employer and public members, as is provided in other quasi-public insurance mechanisms. These kinds of adjustments would promote implement a more modern governance structure without disturbing the effectiveness and efficiency of the current system.

We would certainly like to work with the Legislature on a review of the overall efficiency and effectiveness of the system with an eye making any appropriate changes. However, given that the system overall basically functions well, any changes need to be carefully considered before they are made.

At this time I would be happy to answer any questions.



Maximum Weekly Benefit as 75% of State Average Weekly Wage (SAWW) *

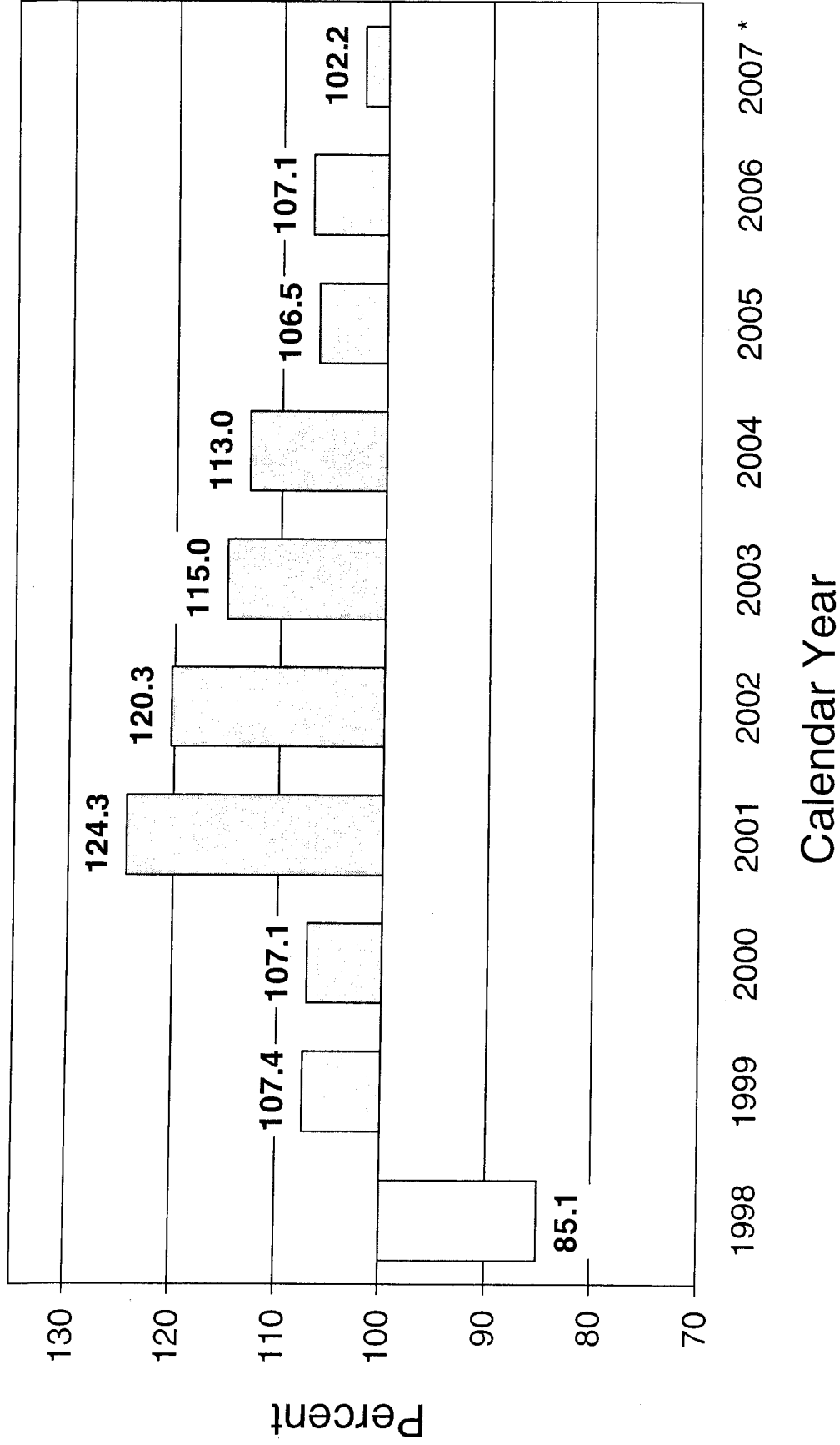


* State Average Weekly Wage of 2006 adjusts benefit level for 2008.

Source: NJ Department of Labor and Workforce Development

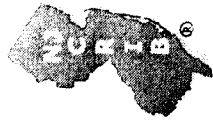


New Jersey Workers Compensation Combined Ratio

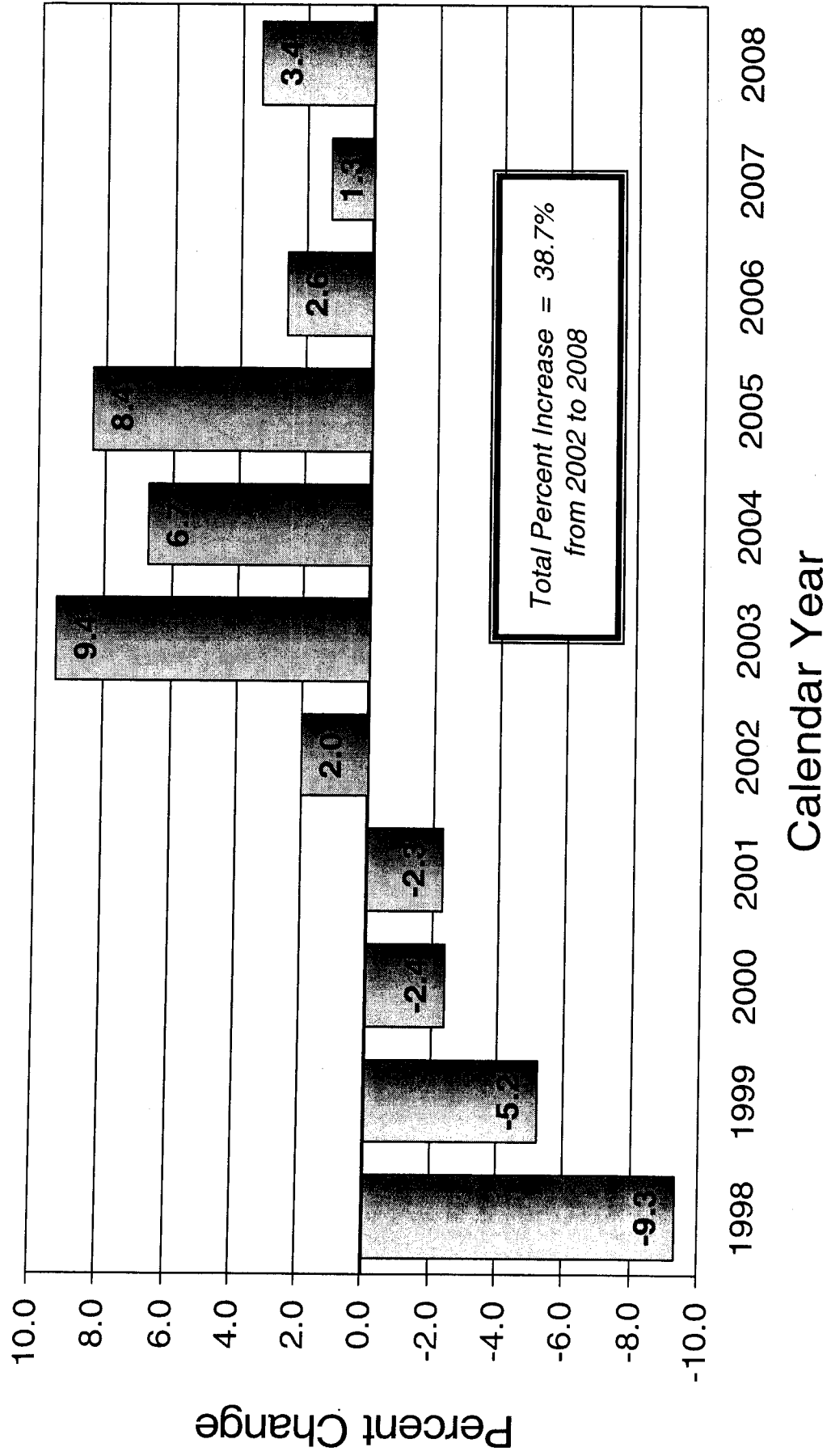


* Estimated

Source: New Jersey Workers Compensation Statistical Plan

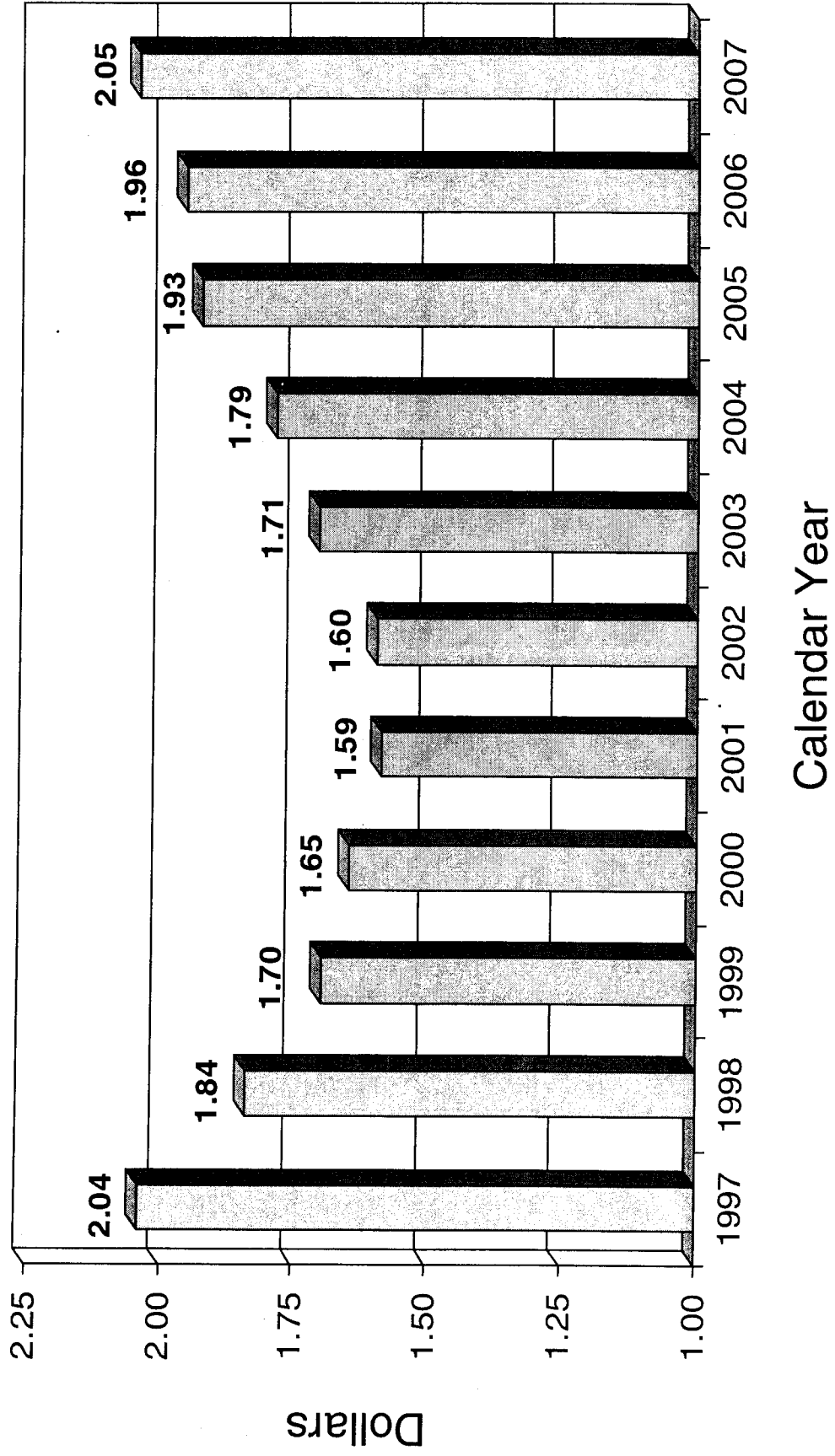


New Jersey Workers Compensation Rate Level Changes





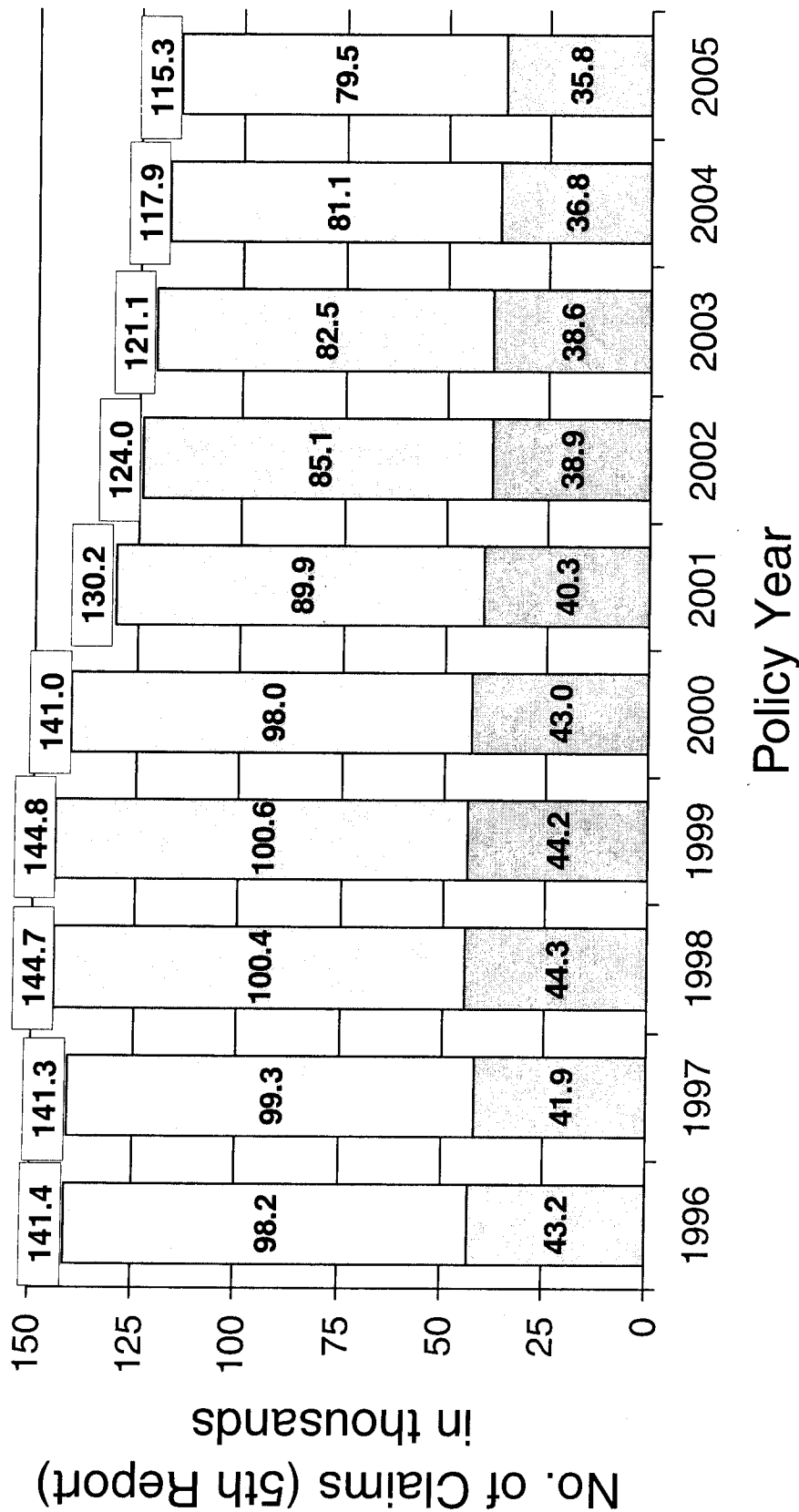
New Jersey Workers Compensation Average Insurer Rate per \$100 of Payroll





New Jersey Workers Compensation

■ Indemnity, ■ Medical Only, and Total Claims

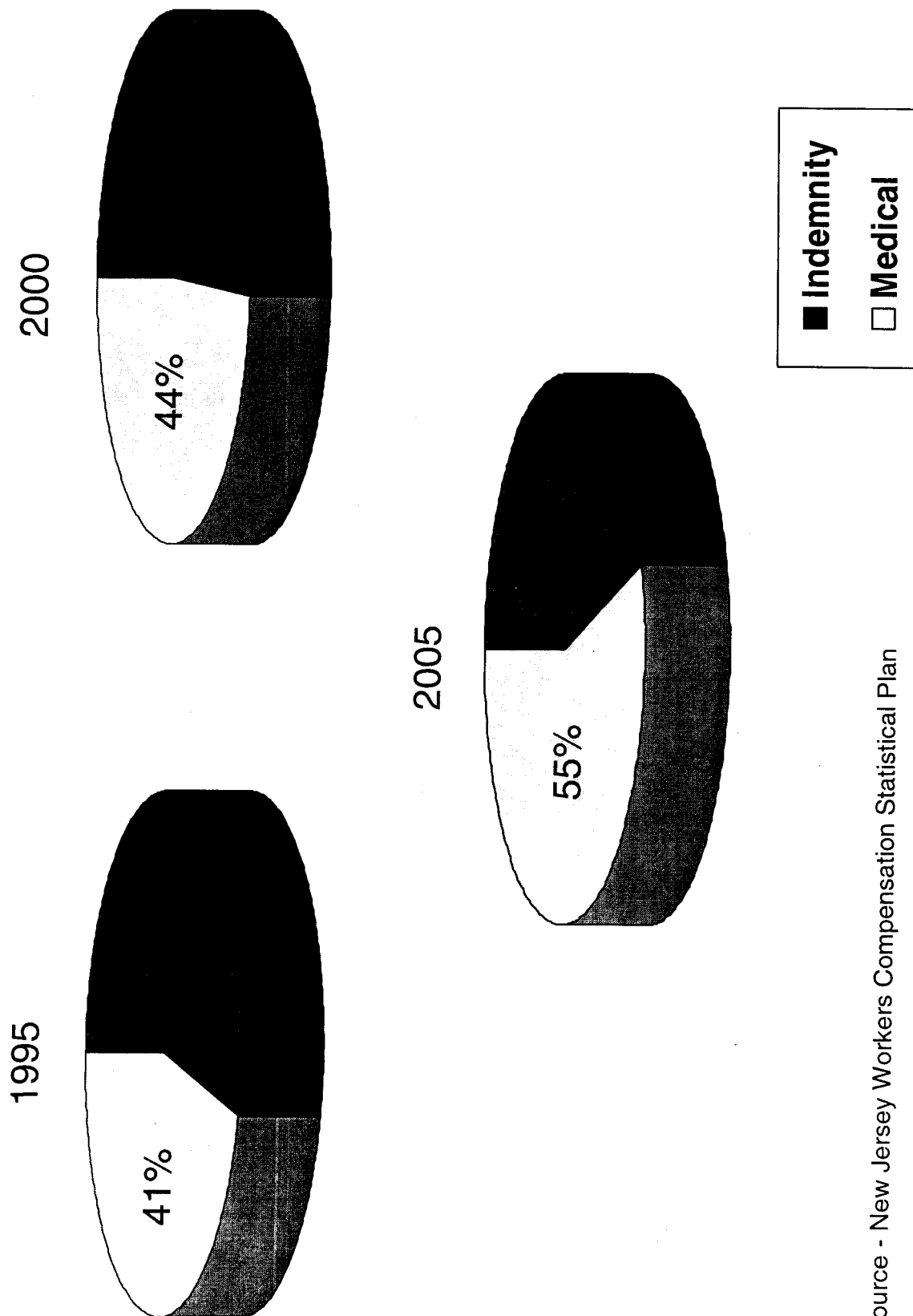


Policy Years 2002 through 2005 are developed to 5th Report.

Source: New Jersey Workers Compensation Statistical Plan

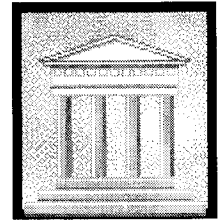


New Jersey Workers Compensation Percentage of Indemnity and Medical Losses



Source - New Jersey Workers Compensation Statistical Plan

JUSTICE JAMES H. COLEMAN, JR. NEW JERSEY WORKERS' COMPENSATION AMERICAN INN OF COURT



#51 Asbury Road • Ocean City, NJ 08226-4425 • Telephone: (609) 970-0054 • Fax: (609) 399-9219
EMAIL JUDGE_AUDREY@COMCAST.NET



JAMES H. COLEMAN, JR.

PRIOR RELEVANT EXPERIENCE

New Jersey Supreme Court, Associate Justice, 1994–2003

New Jersey Superior Court, Appellate Division, Presiding Judge, 1987–1994

Justice Pro Tempore New Jersey Supreme Court, 134 *N.J.* 569 (1993); 121 *N.J.* (1991); 115 *N.J.* 491 (1989)

New Jersey Superior Court, Appellate Division, Judge, 1981–1987

New Jersey Superior Court, Law Division, Judge, 1978–1980

Special Three-Judge Resentencing Panel, 1979–1981

Union County Court, Judge, 1973–1978

New Jersey Workers' Compensation Court, Judge, 1964–1973

PRACTICE

James H. Coleman, Jr. is Of Counsel to Porzio, Bromberg & Newman, P.C. He joined Porzio, Bromberg & Newman following a long judicial career. He focuses his practice on advising attorneys and clients on appellate strategy and on acting as a mediator or arbitrator of complex, private and public disputes.

ORGANIZATIONS/MEMBERSHIPS

Legal Services of New Jersey, Chairman, Board of Trustees ; New Jersey Judicial College, Committee on Judicial Seminars; New Jersey Supreme Court, Appellate Division Management Committee; New Jersey Supreme Court Committee on Criminal Practice; New Jersey Supreme Court Committee on Legal Ethics; New Jersey Supreme Court Committee on Medical Malpractice; New Jersey Supreme Court Committee on Minorities in the Judiciary, Chairman; New Jersey Supreme Court Committee on Probation; New Jersey Supreme Court Committee to Review the ABA and the N.J. Code of Judicial Conduct; New Jersey Supreme Court Committee on Sentence Disparity, Chairman; CPR Panel of Distinguished Neutrals, Member New Jersey Supreme Court Committee to Study Court Reporting Services; Union County Legal Services, Incorporator and Board of Directors; James H. Coleman, Jr. New Jersey Workers'

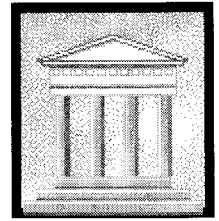
• **JUSTICE JAMES H. COLEMAN, JR.**
NEW JERSEY WORKERS' COMPENSATION
AMERICAN INN OF COURT

Compensation American Inn of Court, 2003–present; CPR Institute for Dispute Resolution; New Jersey State Bar Foundation, Fellow, 2003–present; American Bar Foundation, Fellow, 1995–present; American Law Institute, 1985–present; Garden State Bar Association, 1980–present; Judicial Council of the National Bar Association, 1973–present; American Bar Association, 1971–present; American Judicature Society, 1965–present ; New Jersey State Bar Association, 1962–present; Union County Bar Association, 1962–present; National Bar Association, 1960–present

SPEAKING ENGAGEMENTS

Lecturer, American Academy of Judicial Education; Lecturer, American Law Institute/American Bar Association on Products Liability; Lecturer, Black Congress on Health and Law; Lecturer, Foster Parents Association; Lecturer, International Association of Industrial Accidents, Boards and Commissions; Lecturer, National Bar Association; Lecturer, New Jersey Judicial College; Lecturer, Rutgers and Seton Hall School of Law Moot-Courts; Lecturer, Rutgers University School of Law—Newark and Camden; Lecturer, Seton Hall University School of Law; Lecturer, Various Trial Lawyer Associations

JUSTICE JAMES H. COLEMAN, JR. NEW JERSEY WORKERS' COMPENSATION AMERICAN INN OF COURT



#51 Asbury Road • Ocean City, NJ 08226-4425 • Telephone: (609) 970-0054 • Fax: (609) 399-9219
EMAIL JUDGE_AUDREY@COMCAST.NET

Frank A. Petro, Esquire

Northfield Office (609) 677-1880 ext. 14
Home (609) 652-9259
Cell (609) 432-4666
Email fpetro@petrocohen.com



Mr. Petro heads the Workers' Compensation Department of the firm. He has limited his practice to handling workers' compensation cases over the past 26 years. He is certified by the New Jersey Supreme Court in workers' compensation law. This is the highest specialty certification available to New Jersey Workers' Compensation lawyers.

He has been recognized by "Best Lawyers in America" in all five of their New Jersey surveys as one of New Jersey's top workers' compensation lawyers. He has an "A/V" rating from the world's leading referral service, Martindale-Hubbell. This rating is reserved for those lawyers who are considered top in their field.

He is President of the leading professional organization for New Jersey workers' compensation lawyers and judges, The Justice James H. Coleman, Jr. New Jersey Workers' Compensation American Inn of Court, which has a membership of approximately 175 lawyers and judges throughout the State. He is also one of 30 National Trustees for the American Inns of Court Foundation, the nation's leading professional organization promoting legal excellence, professionalism, ethics and civility for United States judges and lawyers.

- Certified by New Jersey Supreme Court as workers' compensation law attorney, since the inception of the New Jersey certification program (1997);
- President of The Justice James H. Coleman, Jr. New Jersey Workers' Compensation American Inn of Court, the leading New Jersey workers' compensation professional organization for judges and lawyers who practice New Jersey workers' compensation;
- National Trustee for the American Inns of Court Foundation, the nation's leading professional organization for judges and lawyers dedicated to legal excellence, professionalism, ethics and civility;
- Fifteen years service on the Executive Committee for the Workers' Compensation Section of the New Jersey Bar Association, including representative of the Judicial Selection Committee for all attorney's seeking to become workers' compensation judges;
- Named in all five of New Jersey surveys by "Best Lawyers in America" as one of New Jersey's leading workers' compensation lawyers;
- Named in the only New Jersey issue of "Super Lawyers" in the area of workers' compensation;
- A/V rating by Martindale-Hubbell, the world's leading referral service. The A/V rating is reserved for less than 19% of lawyers who are considered preeminent in their fields.



The American Inns of Court Foundation is America's oldest, largest and fastest growing legal mentoring organization. With members nationwide, the sole, nonpartisan mission of the American Inns of Court is to foster excellence in professionalism, ethics, civility, and legal skills.

Looking for a new way to help lawyers and judges rise to higher levels of excellence, professionalism, and ethical awareness, the American Inns of Court adopted the traditional English model of legal apprenticeship and modified it to fit the particular needs of the American legal system. Through the time-honored English tradition and practice of "pupillage"—the sharing of wisdom, insight and experience of seasoned judges and lawyers with newer practitioners, American Inns of Court help lawyers to become more effective advocates and counselors with a keener ethical awareness. Members learn side-by-side with the most experienced judges and attorneys in their community.

This grass roots movement has blossomed into a structure of more than 350 affiliated, yet separate Inns. Each American Inn of Court is an amalgam of judges, lawyers, and in some cases, law professors and law students. An Inn normally meets monthly both to "break bread" and to hold programs and discussions on matters of ethics, skills and professionalism.

An American Inn of Court is not a fraternal order, a social club, a course in continuing legal education, a lecture series, an apprenticeship system, or an adjunct of a law school's program. While many of these concepts may be present to some degree, the American Inns of Court is quite different in aim, scope, and effect.

A large number of Inns concentrate on issues surrounding civil and criminal litigation practice, and include attorneys from a number of specialties. However, there are several Inns that specialize in criminal practice, federal litigation, tax law, administrative law, white-collar crime, bankruptcy, intellectual property, family law, employment and labor law, and even transactional law.

American Inns of Court actively involve more than 25,000 state, federal and administrative law judges, attorneys, legal scholars and law students. Another 75,000 are alumni of the American Inns of Court. Membership is composed of the following categories: Masters of the Bench and Counselors—judges, experienced lawyers, and law professors; Barristers and Solicitors—lawyers with some experience who

do not meet the minimum requirements for Masters and Counselors; Associates—lawyers who do not meet the minimum requirement for Barristers and Solicitors; and Pupils—law students. The suggested number of active members in an Inn is no more than 80.

The basic building block of an American Inn of Court is the “pupillage team,” consisting of a few members from each membership category. Each pupillage team conducts one program for the Inn each year. Pupillage team members get together informally outside of monthly Inn meetings in groups of two or more. This allows the less-experienced attorneys to become more effective advocates and counselors by learning from the more-experienced attorneys and judges. In addition, each less-experienced member is assigned to a more-experienced attorney or judge who acts as a mentor and encourages conversations about the practice of law.

The American Inns of Court Foundation is a 501(c)(3) non-profit organization, headquartered in Alexandria, Virginia (1229 King Street, Second Floor, Alexandria, Virginia 22314). More information is available at www.innsofcourt.org / phone number 703-684-3590.

BACKGROUND

History of the American Inns of Court

In the 1960s, years before his appointment to the Supreme Court, Warren Burger envisioned an American organization that would help lawyers improve their advocacy skills while emphasizing the importance of professional demeanor, integrity and ethics. He was no stranger to the history, goals operation and impact of the English Inns of Court, and saw enormous benefits to be realized by a similar close, ongoing linkage between members of the American judiciary, practitioners and law students.

In 1977, now Chief Justice Warren Burger and other American lawyers and judges spent two weeks in England as part the Anglo-American Exchange. The members of the program were particularly impressed with the collegial approach of the English Inns of Court and with the way in which they passed on to new lawyers the decorum, civility, skills and professional standards necessary for a cooperatively functioning bench and bar.

Soon after his return to the United States, the Chief Justice initiated a pilot program, an adaptation of the English Inns system, but geared to the realities of law practice in the United States. Working with Chief Justice Burger, former Solicitor General Rex Lee, and U.S. District Judge A. Sherman Christensen founded the first American Inn of Court in 1980. The Inn was affiliated with the J. Reuben Clark School of Law at Brigham Young University in Provo, Utah and consisted of 44 member judges, lawyers, professors and law students. Word of the new training model spread across the country, and soon new Inns began to appear, and the grassroots "Inns of Court movement" began to grow.

By the mid-1980s, a dozen Inns of Court were meeting around the country; that many more were in the process of getting started in such diverse places as Brooklyn, Honolulu, Washington, DC, San Diego and Kansas City. This loosely bound confederation of autonomous groups shared a common purpose – to improve the advocacy skills, civil relationships and ethical foundation of all who practice or aspire to practice law in the United States.

In 1985 the American Inns of Court Foundation was chartered in Washington, DC as a non-profit, tax-exempt corporation. The Foundation would serve as the hub for communications among the Inns, answer inquiries from the growing number of judges, lawyers and law professors, and provide the Inns with support, services and programs that as small, local groups would be beyond their individual reach.

The first Board of Trustees of the American Inns of Court was comprised mainly of the progenitors of the local Inns. Great care was given to the growth and direction of the Inns. High on the list of priorities was adherence to the English Inns' successful model of mentoring by experienced, senior members, a focus on training and development of practice skills for newer lawyers, and of course, the amicable association among all members, regardless of rank.

This was the chord that was destined to resonate throughout the American legal community. Interest and participation in the Inns of Court movement skyrocketed. Professionals from all quarters responded to the recognized need to bridge the gap between formal law school education and practical application of the underlying principles of ethics, civility and the development of other practice-related skills. To the nation's judges and lawyers, the American Inns of Court concept was an idea whose time had arrived.

As other legal associations concentrated on studying the perceived problem and developing rules in an attempt to combat the maladies of waning professional practice standards, the American Inns of Court drew upon the wisdom and experience of seasoned practitioners to mentor, educate and inspire in its members the aspiration to a more craftsman-like application of the art and practice of law in America. Keeping this focus, the American Inns of Court soon earned a reputation as a truly unique organization.

Recent History

As early as 1983, the American Inns of Court concept was gaining widespread attention from many of the nation's prominent legal institutions. An *ad hoc* committee, established by the Judicial Conference of the United States to study the goals and methods of American Inns, concluded that "the American Inns of Court have demonstrated the potential for supplying a significant new dimension to legal training", and that "the official duties of judges are consistent with participation in an American Inn of Court." It was to be the first formal recognition of the potential of the Inns of Court movement.

In subsequent years, similar endorsements were passed by such respected groups as the Conference of Chief Justices, the Seventh Circuit's Committee on Civility and the American Bar Association's Judicial Administration Division. In 1988, the American Inns of Court received the ABA's prestigious E. Smythe Gambrell Professionalism Award "in recognition of outstanding achievement in the design and implementation of a model professionalism program."

Later that year, Chief Justice Burger and The Right Honourable The Lord Bridge of Harwich signed a Declaration of Friendship, a historic document on both sides of the Atlantic, fraternally linking the English and American Inns of Court. This linkage was to be of considerable benefit to the American Inns of Court and its members, by providing entrée for American Inn members visiting the London Inns, and helping to lay the groundwork for the Pegasus Trust Scholarships and the Temple Bar Scholarships. These educational programs allow selected American lawyers to participate in valuable work-study programs in the courts, chambers and Inns of London, and allow English barristers to enjoy the same benefits in the United States.

As word of the unique, hands-on approach to developing practice skills and ethics spread, the American Inns of Court moved to the forefront of legal organizations. Strengthened by the involvement of concerned judges and lawyers across the nation, the grassroots movement spread dramatically.

By 1990, 124 chapters were in operation nationwide, actively involving some 8,000 judges, lawyers, professors and students of law in improving the professional skills of the bench and bar through mentoring, discussion and educational programs. The unprecedented growth evidenced not only the recognized need to raise the standards of advocacy, but also the willingness of the nation's professionals to participate in the process.

During the closing decade of the Twentieth Century, the American Inns of Court continued to experience remarkable growth – in members, chapters and financial stability. The Foundation developed and implemented new strategies, programs and support tools to help member Inns make the Inn experience even more available and valuable.

Holding true to its commitment to provide training for aspiring lawyers, the American Inns of Court launched the Law School Project in 1994 to add mentoring and practical training of the Inns to the formal education provided by the nation's law schools. When the Law School Project ended on June 30, 1997, 114 law schools had become affiliated with the American Inns of Court program.

Beyond impressive numerical growth through the 1990s, the American Inns of Court experienced an increase in stature as a national organization. Highlighted by an increase in its international exchange programs as well as programs and cooperative projects with other local, regional and national organizations, the American Inns of Court secured its role as a vital force in shaping a culture of excellence in the practice of law.

In keeping with its mission to foster professional excellence through mentoring, a key component is recognizing those judges and lawyers whose professional lives evidence civility, competence and ethical attitudes worthy of emulation. In addition to the prestigious A. Sherman Christensen Award and Lewis F. Powell, Jr. Award, and the Sandra Day O'Connor Award presented annually at the Foundation's Celebration of Excellence at the United States Supreme Court, the American Inns of Court has been honored since 1996 to present Professionalism Awards in each participating federal circuit as a part of

their annual judicial conferences. Also, the Warren E. Burger Prize is presented annually to the winner of a legal writing competition, designed to promote outstanding scholarship on the practical application of professionalism in the American legal community.

Today

Today, with more than 350 active Inns and close to 100,000 active and alumni members nationwide, the American Inns of Court is exploring exciting new and innovative ways to improve the civility, ethics, skills and professional dignity of the nation's bench and bar. Fueled by the passion and dedicated efforts of newer members and tempered by the wisdom and experience of its elders, the American Inns of Court will continue to provide a collegial forum for study, discussion, inspiration and training for a growing number of legal professionals.

The Foundation converted its extensive, resource-rich Program Library from a paper-based filing system to a fully digital, computer database. Inns and members now have almost immediate access to the hundreds of topical, well researched and documented Continuing Legal Education accredited programs designed to develop skills and practical understanding of a wide variety of practice issues.

Our website, www.innsofcourt.org has, since 1998 been the active Internet home of the American Inns of Court. Our flagship bi-monthly magazine, *The Bench*, will continue to feature timely articles of interest to the general membership and will follow a thematic focus for each issue, with longer, member-submitted articles exploring each issue's theme in more detail. Our monthly electronic newsletter, *InnSight*, will contain helpful information to help the nation's Inn leaders enhance the value of Inn membership.

In 2007, a dynamic administrative system, the Chapter Management System (CMS), was created to handle all aspects of Inn administration more quickly and easily. This web-based application was custom designed for American Inns of Court to help simplify Inn administration. Free to all chartered Inns of the Foundation, this system is accessible 24/7 from anywhere with an Internet connection. This system can also serve as an archive of information for an Inn, which alleviates the inefficient practice of passing file boxes of information from one officer to a successor.

While the Foundation has offered leadership assistance to local Inn of Court leaders for most of its existence, this basis of knowledge has generally been provided through a printed Officers' Manual or Leadership Handbook or through breakout sessions at annual national conferences. With guidance from a volunteer Inn leader task force, we have taken the content that has been developed for the annual national conference breakout sessions, plus the information that exists in the Leadership Handbook and American Inns of Court Web site, and repackaged it into a series of online knowledge modules. These leadership knowledge modules are accessed through the existing national Web site in a special Leadership Community area.

Continuing to pursue a more active involvement with the entire legal profession, the American Inns of Court has greatly increased its cooperative involvement with other legal organizations. Through local, regional and national participation in various bar associations' meetings and events, valuable alliances have been forged to the mutual benefit of the groups involved. Inns across the nation have traditionally put forth special efforts during the Law Day celebration spearheaded by the American Bar Association.

The American Inns of Court is dedicated to serving as a Guardian of the tenets of professionalism and legal excellence. To continue this quest, the American Inns of Court must develop resources to expand our reach, to increase the number of legal professionals we touch and to broaden our ability to provide unique and unparalleled mentoring opportunities. Society's need for a credible system of justice and reliance upon the Rule of Law are too important to neglect the need to nurture professionalism among members of the profession charged with its protection and preservation. Therefore, the American Inns of Court Board of Trustees decided to pursue a major fund-raising campaign in 2007.

In order to provide a sound financial base for the expanding scope of programs and efforts, the Howard T. Markey Endowment Fund, a professionally managed endowment provides the financial bedrock for the future of the American Inn movement. The fund-raising campaign to build up the Markey Fund will not only provide long-term financial security for the growth of a stable professional organization, it will allow essential growth, development and service programs to keep pace with an ever-expanding role in refining the skills, ethics and professionalism of the legal profession.

Building upon the solid traditions of our history, the mission of the American Inns of Court requires a continual focus on the future. In anticipation of continued growth, innovative new programs and efforts are being developed to further benefit the entire spectrum of the legal profession.

The American Inns of Court is working to foster in lawyers a belief that civility makes a difference and lawyers must behave honorably, even as they vigorously defend their clients' interests.

– Retired Supreme Court Justice Sandra Day O'Connor –

As you carry out the responsibilities that are expected of every member,

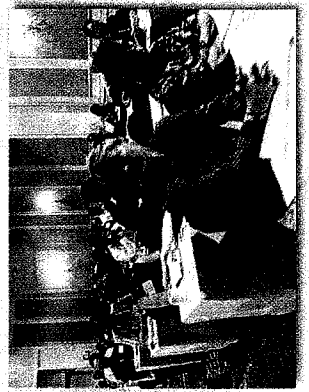


Local Inn Support

keep in mind that help is available to you through our national office. Its full-time staff offers you a number of value-added services. As you've seen, these are designed to support your local Inn in a variety of ways. So please don't hesitate to contact them whenever you're in need of assistance.

The American Inns of Court is a pathway that leads to continual professional self-improvement. It's a forum outside of the courtroom, where judges and lawyers can meet to discuss issues of common and noble importance to all the American Inns of Court. It's a distinguished forum of your commitment to raising our noble profession.

For a closer look at your local Inn, visit our website at www.americaninns.org. Here, you can find out more about the many ways in which the American Inns of Court can help you. We're here to help you through every step of your professional journey.



1111 West Street, Second Floor
Alexandria, Virginia 22304
(703) 838-1210
www.americaninns.org



Building On A Noble Tradition



Achieving higher levels of excellence
 developing a deeper sense of professionalism
 creating a more insightful awareness of ethical standards

Next to

[illegible]

CONCLUSIONS

improving community electric newsmeter of
inn leadership.

Program Specific column in the binder profiles best new programs

[illegible]

Program awards presented at national leadership conference to top professionals submitted by local leagues.

Pegasus Trust and Temple Bar Partnership with
 available for young American lawyers to
 with English bars of course an English app
 English barriesters with American firms con
 in the United States

Clearinghouse for promotional or topic speakers for special Inn events, bar meetings and other professional occasions

[illegible]

SENATE LABOR COMMITTEE

CHAIRMAN AND MEMBERS OF THE COMMITTEE

Thank you for the opportunity to present testimony before this committee. My name is Richard E. Hickey, III and I am an Administrative Supervisory Judge of Workers' Compensation for Ocean, Atlantic, Cape May, Cumberland, Salem, Gloucester, Camden and Burlington Counties. I have been a Judge of Compensation for over sixteen years having been appointed to the Division in 1991 by Governor Florio. Prior to my appointment I served as County Prosecutor of Gloucester County from 1986 to 1991. I am past president of the Gloucester County Bar Association (1990-91) and past president of the County Prosecutor's Association of NJ (1989-91).

For the past twelve years I have lectured for the Institute for Continuing Legal Education, Basic Skills course in Workers' Compensation in New Jersey. For the past eight years I have been an Adjunct Professor at Rutgers Camden School of Law, teaching Workers' Compensation. I am a Master in the James H. Coleman, Jr. Workers' Compensation Inn of Court. I have also frequently lectured for ATLA, University of Medicine and Dentistry, Stratford, and the Bar Associations of Gloucester, Camden and Burlington Counties. I recently participated with Professor Edward Welch of Michigan State University and Professor Emeritus John Burton in a Workers' Compensation Certification Program for Workers' Compensation Professionals at Princeton, N.J. on September 25, 2007. **Before coming to the Workers' Compensation Bench I had no workers' compensation experience.**

The Workers' Compensation system in New Jersey evolved with minor and some major upgrades since its inception in 1911. Since the substantial overhaul of the system in 1979, the Division has continued to improve the tracking of the cases and the facilities where they are heard. The NJ Administrative Code, which contains the rules of the Division, includes a comprehensive Code of Judicial Conduct which mirrors the Superior Court. We hold ourselves to the same standard of conduct as that of the Superior Court Judges. Our decisions follow the same appellate track as those of the Superior Court Trial Division. The appeals go directly to the Appellate Division of the Superior Court.

As Workers' Compensation Judges we welcome the same review as the superior court for appointment and tenure. With the exception of the NJ State Bar Association the process for appointment is the same as for the superior court.

Without a doubt, the most difficult and frustrating cases we have deal with uninsured employers. As our manufacturing base has declined, it seems that more and more employers fail to comply with our law mandating workers' compensation insurance. The Uninsured Employers Fund does give the injured worker of an uninsured employer some measure of recourse he would not otherwise have, but the UEF procedures are cumbersome and they should be streamlined to get benefits to the injured worker more quickly. Also, more stringent enforcement of the compulsory insurance requirement is

imperative so that there are fewer uninsured employers and thus fewer injured workers who must rely on the UEF for their benefits.

[Concerning the question of insurance coverage, consideration might be given as to whether labor unions themselves should be insured, so that claims need not be filed against multiple individual employers, as is often the case and which causes unneeded delay.]

Another cause of delay of our cases is the federal government. Thousands of our cases are inordinately delayed because Medicare, which has in effect asserted a lien for its medical payments, takes an unacceptably long time to provide information as to the extent of its lien. Anything our state representatives could do to impress upon Medicare the need for being more responsive would be welcome. Please be aware that this is a national problem and not just to New Jersey.

We would agree that the schedule of permanent disabilities needs to be revised as regards hand and foot injuries to more appropriately reflect the serious impact of those injuries upon the injured worker.

Finally, although enforcement of our orders is a problem in only a miniscule number of cases, we would welcome additional enforcement powers if the legislature felt such was appropriate.

Our workers' compensation system was designed as, and remains, an essentially friendly system for the injured worker and respondent employer alike. While we agree that it is necessary to continually review the system to ensure that it remains responsive and effective, we are concerned that solutions to imaginary problems could have unintended consequences and prove more detrimental than beneficial.

Our procedures have evolved over time in order to address the claims of injured workers fairly and efficiently. The so-called cycle system, in which a case is scheduled in intervals of three weeks until it is concluded, keeps costs to industry and the worker low and does not prolong cases, but often actually serves to expedite them. It should be noted that although a case may be given many court dates before it is concluded, the number of listings is not in and of itself reflective of any delay since a typical case is not ready to be resolved until the worker's medical treatment is concluded. Finally, the injured worker need come to court only once or at most twice. It is simply not true that our average case mandates a dozen or more appearances by the injured work as has been asserted.

We appreciate being included in your review of the workers' compensation system and offer our time and assistance to this committee and the Legislature for further review.

Thank you.

MICHAEL J. VAN WAGNER
Vice President, Legislative Affairs

May 5, 2008

Statement to the Senate Labor Committee

Discussion of New Jersey's Workers' Compensation System

Thank you for allowing the NJM Insurance Group (NJM) the opportunity to participate in this important discussion regarding New Jersey's Workers' Compensation system.

By way of background, workers' compensation coverage was the first line written by the Company when it was founded in 1913, and NJM has been the leading provider in the Garden State since the 1940s. Today, NJM insures over 19,000 New Jersey employers and their approximately 500,000 employees.

As the long-time market leader, we see first hand how New Jersey's system effectively balances the needs of both employers and their employees. It is a system that encourages workplace safety, provides injured workers with prompt, effective medical care (without any co-payments or deductibles) on a no-fault basis and pays for temporary or permanent disability benefits, while permitting reasonable containment of costs. A long-standing component of New Jersey's balanced system is the ability of employees to direct the choice of medical providers. This control has proven essential to containing ever-increasing medical costs without compromise in the quality of care.

Of the approximately 120,000 workers' compensation claims filed each year in New Jersey, the large majority are resolved quickly and without litigation. Those claims which do involve litigation are handled by a specialized court system within the New Jersey Division of Workers' Compensation. This court system is administered by a panel of judges who, in our experience, are professional, hard working, knowledgeable and fair – handling most cases in an efficient and expeditious manner. Cases that take longer to settle typically do so for legitimate reasons, most often due to extended medical treatment. In the small minority of cases where unreasonable delays occur, we believe that these can and should be dealt with within the current administrative structure. If needed, enhanced enforcement authority – over petitioners and respondents alike – should be extended to the Workers' Compensation judges. For our part, we are always prepared to address court concerns promptly, utilizing 18 in-house attorneys who have earned certification as Workers' Compensation specialists by the New Jersey Supreme Court.

NEW JERSEY MANUFACTURERS INSURANCE GROUP

May 5, 2008

Statement to Senate Labor Committee

Discussion of New Jersey's Workers' Compensation System

Page 2 of 2

With respect to premium levels, New Jersey has a stable, experienced-based rating system that has helped prevent dramatic year-to-year price swings. Known as an administered pricing system, New Jersey's workers' compensation rates are developed annually by the Compensation Rating and Inspection Bureau (CRIB) – subject to approval by the Commissioner of Banking and Insurance – and are based on actual loss experience which all insurers are required to provide to CRIB. Although rates have increased (by single digits) in each of the last seven years (following six consecutive years of rate decreases), these increases are simply a function of rising health care and benefit costs which have only been partially offset by a reduction in the number of claims reported. Notwithstanding these increases, New Jersey's rates remain in the middle of the pack nationally and well below those prevailing in Delaware, New York, Pennsylvania and Connecticut. In fact, the cost of workers' compensation is one of the few areas where New Jersey offers a competitive advantage over our neighbors in trying to attract and retain business.

In summary, we believe that New Jersey's Workers' Compensation system works reasonably well for employer and employee alike. While there is always opportunity for improvement, modifications should be made only after a thorough and constructive analysis. Great care must be taken to preserve the strengths and balance of the current system. As New Jersey's leading workers' compensation carrier, we stand ready to assist in any discussions on improving the system.

NEW JERSEY STATE AFL-CIO

106 West State Street
Trenton, New Jersey 08608
(609) 989-8730
FAX (609) 989-8734
www.njafclcio.org

CHARLES WOWKANECH
PRESIDENT

LAUREL BRENNAN
SECRETARY-TREASURER

CHARLES H. MARCIANTE
PRESIDENT EMERITUS



EXECUTIVE BOARD MEMBERS

JOYCE ALSTON	EDWARD FEDORKO	MANUEL MIRAILH	ANTHONY SANTO
MICHAEL BARNES	VITO FORLENZA	ROCCO MIRANTI	MILLY SILVA
JACK BERGACS	JOHN GERRITY	JOHN NICCOLLA, JR.	JOSEPH SORESI
JEFF BINZ	SHERRYL GORDON	DANIEL O'CONNELL	DERRICK THOMAS
KENNETH CAMPBELL	CHARLES HALL, JR.	GERALD OWENS	RICHARD TOLSON
WILLIAM CANDELORI	KEITH KEMERY	WILLIAM PHILIPSON	ED TREACY
JAMES CONIGLIARO	CHRISTINE KERBER	RAYMOND POCINO	PATRICK TULLY
JOSEPH DEMARK, JR.	THOMAS MANNING	ROBERT PURSELL	ANN TWOMEY
RICHARD DRESSSEL	MATTHEW McCARTY	SUSAN RESCH	HARVEY WHILLE
FRANCELINE EHRET	GERARD MEARA	MORRIS RUBINO	



TESTIMONY OF THE NEW JERSEY STATE AFL-CIO:

by **Charles Wowkanech**
Workers' Compensation: May 5, 2008

Dear Members of the Senate Labor Committee:

Thank you Chairman Sarlo and members of the Committee for the opportunity to testify on the workers' compensation system. First, I would like to state that the New Jersey State AFL-CIO believes the current system has treated the vast majority of workers that enter the system fairly and processed their claims expeditiously. Of course, there is always room for improvement, and we would respectfully urge the Committee to consider our 5 recommendations listed at the end of our testimony.

With this in mind, I would like to state that the Department of Labor and the Workers Compensation Division both have consistently had an "open door" policy to worker advocates to discuss their concerns, and the Department has been pro-active in presenting a forum at which to discuss compensation related issues. In particular, I have served on the Workers' Compensation Advisory Council, which meets quarterly, for over a decade, and it has proven to be a valuable opportunity to share ideas and recommendations with various interests, including representatives of workers' compensation insurance carriers, the business community, academics, attorneys, administrators and labor representatives. All stakeholders are represented on this Council and for the most part, it has acted as a mediator in seeking to build consensus – or as close as you can ever get to consensus, on these extremely important workers' compensation issues.

For example, when the AFL-CIO was receiving numerous complaints in 2003 and 2004 regarding flaws in the system relevant to compensation for certain occupational disease victims, the Division worked with us and the Legislature to pass S-1522, sponsored by Senator Codey and Assemblyman Egan to help streamline some of the legal obstacles workers were facing when bring cases to the Compensation courts and to slightly increase benefits for certain victims. This is an example of parties working together to remedy a problem that was recognized by most stakeholders and acted upon by the Department and the Legislature.

Furthermore, it is important to note that New Jersey's workers' compensation system has certain benefits that many other states do not. For example, our system has unlimited medical treatment that includes all reasonable and necessary care. Several states cap or restrict certain medical benefits. New Jersey also is one of only six states that have an Uninsured Employers Fund. It also has a Second Injury Fund for total disabled workers that pay them for life. The majority of states do not have this type of system.

Recommendations:

As mentioned earlier, although we believe the system works well for most workers, there are of course certain areas where reforms can be made. Of course, when you are managing a \$1.8 billion system and processing approximately 120,000 claims a year, there are bound to be a handful of extreme cases that bring attention to the system. With this in mind, the New Jersey State AFL-CIO has five reforms we believe should be acted upon.

1. Employers in the state cheat workers and the state by failing to obtain compensation insurance. State audits show that approximately 25,000 employers do so, and workers are the ultimate victims. We would recommend that stronger penalties be imposed for these employers and that more resources be budgeted to the Department of Labor so they can hire more inspectors and aggressively pursue these cheats. We would also recommend that the Office of the Insurance Fraud Prosecutor consider investigating these employers. We would support legislation that would allow inspectors to execute a stop work order on any employer found to be operating a business without workers' compensation.
2. Workers' Compensation judges need to be given more powerful tools to force timely compliance with court orders for benefits. Included should be the ability to levy fines for failing to provide timely medical treatment or payment.
3. In order to make the system more transparent, a performance report for the workers' compensation system should be issued annually. This is done by approximately 36 other states. The report should include information about which insurance companies are performing well, and which are not, and fines should be levied against insurers that are not meeting performance standards. We would also recommend labor appointments to the Compensation Rating & Inspection Bureau (CRIB), which is now exclusively made up of insurance industry representatives.
4. The Workers' Compensation system is a complex one and sometimes difficult to maneuver for workers, small businesses and attorneys alike. We would recommend the creation of a Workers' Compensation Ombudsman to help guide workers through the system and to make recommendations for administrative reforms.
5. Finally, there are dozens of workers' compensation bills pending in the Legislature, and although we support several, the two that are considered important for workers and for which we would describe as priorities are:
 - A. A-1581 (Cohen / Egan): Which increases benefits for the loss of a hand or foot;
 - B. A-2499 (Cohen): This seeks to increase the compensation benefit for temporarily disabled and permanently disabled workers from 75% to 100% of the State Average Weekly Wage. Several states already have this 100% compensation level for these types of injured workers.

Thank you again for the opportunity to testify and present our recommendations. The New Jersey State AFL-CIO looks forward to working with the Department of Labor and Legislature on these and other worker compensation issues.

OPEIU:153



150 WEST STATE STREET • CAPITOL VIEW BUILDING • TRENTON, NEW JERSEY 08608

TEL (609) 396-0096 • FAX (609) 396-2463

www.atlanj.org • E-mail: info@atlanj.org

PRESIDENT

Amos Gern, Essex
Slart, Gern, Davison & Rubin
105 Eisenhower Parkway
Roseland, NJ 07068

PRESIDENT-ELECT

Yvonne Ann Gibney, Camden

1ST VICE PRESIDENT

Jonathan Koles, Hudson

2ND VICE PRESIDENT

Michael A. Galpern, Camden

3RD VICE PRESIDENT

Joseph C. Grassi, Cape May

TREASURER

Scott G. Leonard, Union

SECRETARY

Francisco J. Rodriguez, Bergen

ASST. SECRETARY

Thomas M. Conner, Monmouth

PARLIAMENTARIAN

Daniel E. Rosner, Cumberland

IMMEDIATE PAST PRESIDENT

Marc C. Saperstein, Bergen

NATIONAL GOVERNORS

Kenneth G. Andros, Jr., Camden

Jorden N. Pedersen, Jr., Hudson

Bruce H. Stern, Mercer

STATE DELEGATE

E. Drew Blitcher, Bergen

Brian D. Drazin, Monmouth

BOARD OF GOVERNORS

Northern Region

Jeffrey I. Amtman, Bergen

Donald A. Caminilli, Bergen

Evan L. Goldman, Bergen

Lee S. Goldsmith, Bergen

Lawrence H. Kleiser, Bergen

James S. Lynch, Bergen

Keith J. Roberts, Bergen

Garry R. Salomon, Bergen

Thomas A. Sarlo, Bergen

Lawrence M. Simon, Bergen

Hugh M. Turk, Bergen

Albert H. Wunsch, III, Bergen

David P. Affinito, Essex

Abbot S. Brown, Essex

William J. Ewing, Essex

Lisa A. Fiske, Essex

Larry L. Laffer, Essex

Marc E. Lesser, Essex

Bruce H. Nagel, Essex

Bonny G. Rafel, Essex

Jeffrey A. Rizka, Essex

Gregg Alan Slone, Essex

John S. Vojnick, Jr., Essex

Richard M. Winograd, Essex

Gerald H. Baker, Hudson

George Rios, Hudson

John S. Hoyt, III, Morris

Melissa H. Luce, Morris

Gregg A. Vatsky, Morris

Michael B. Zerres, Morris

Thomas L. Bell, Jr., Passaic

Jack Corradino, Passaic

Amy L. Peterson, Passaic

Fred Rabinowitz, Passaic

Michael S. Raff, Passaic

Louis J. Serafini, Passaic

Andrew Ventirelli, Passaic

William E. Mandry, Warren

Michael J. Perrucci, Warren

Central Region

Anthony J. Murgatroyd, Hunterdon

Carla M. Brady, Mercer

Dennis S. Brozman, Mercer

Bruce G. Cassidy, Mercer

Michael G. Donahue, II, Mercer

John S. Eary, Mercer

James P. McHugh, Mercer

Jeffrey S. Monaghan, Mercer

Lynne M. Kizis, Middlesex

Robert R. Levinson, Middlesex

Michael F. Lombardi, Middlesex

Adam L. Rothenberg, Middlesex

Francis A. Thomas, Middlesex

Alan M. Wasserman, Middlesex

Dennis A. Drazin, Monmouth

Christopher M. Placitella, Monmouth

Anthony M. Salito, Jr., Ocean

Cornelius W. Caruso, Jr., Union

Hamilton J. Gordon, Union

Eric G. Kahn, Union

Mitchell H. Portnoy, Union

Southern Region

Barry D. Cohen, Atlantic

Alexa B. D'Amato, Atlantic

Paul R. D'Amato, Atlantic

Joan Freedman Meyer, Atlantic

Robert S. Sandman, Atlantic

Thomas J. Vesper, Atlantic

John D. Borbi, Burlington

Saul G. Garber, Burlington

Michael A. Kaplan, Burlington

Robert A. Parler, Burlington

Robert I. Segal, Burlington

Ross Beigelman, Camden

Esther E. Berezofsky, Camden

Michael S. Berger, Camden

Vincent J. Black, Camden

Lawrence R. Cohen, Camden

Kevin M. Costello, Camden

Michael A. Ferrara, Jr., Camden

Thomas F. Flynn, III, Camden

Scott M. Goldberg, Camden

Jeffrey M. Keiser, Camden

David Jacoby, Camden

Robert Ross, Camden

Franklin P. Solomon, Camden

Jennifer E. Trost, Camden

Niki A. Trunk, Camden

John A. Zohman, III, Camden

Charles I. Coant, Cumberland

Joseph D. O'Neil, Cumberland

Michael L. Testa, Cumberland

Michael L. Testa, Jr., Cumberland

Joseph J. Hoffman, Jr., Gloucester

Martin J. Siegel, Salem

Past President

EXECUTIVE DIRECTOR

Cornelius J. Larkin, CAE, CMP

DIRECTOR OF GOVERNMENTAL RELATIONS

Deborah R. Bozarth

**TESTIMONY OF ASSOCIATION OF TRIAL LAWYERS OF AMERICA -
NEW JERSEY (ATLA-NJ) REGARDING THE NEW JERSEY
WORKERS' COMPENSATION SYSTEM**

May 5, 2008

Senate Labor Committee

ATLA-NJ recognizes that this hearing is being held in an effort to determine whether the New Jersey Workers Compensation System is functioning as the Legislature intended. We understand that this hearing is an effort to address the recent series of articles printed by The Star-Ledger of Newark which analyzed the system over a period of several months and reported dramatic delays, frustrations and inequities in this administrative system, which was designed as a no fault insurance program that pays benefits to employees who have suffered job-related injuries or illnesses. As you know, the New Jersey workers compensation insurance covers every employee in this State. There are approximately 120,000 reported accidents each year involving New Jersey workers, and two-thirds of those are resolved quickly, without the necessity of having an administrative proceeding before the NJ Division of Workers Compensation (DWC). For those work accidents and injuries, the Legislative intent of a remedial insurance program providing an expeditious and effective benefit program is readily met. However, about 40,000 cases a year require a formal claim petition and are litigated before the DWC.

Workers compensation is remedial social legislation that traces its roots to Europe before the United States Industrial Revolution. It was enacted in New Jersey in 1911 as a compact between Industry and Labor to provide a quick and uniform delivery of benefits by employers to injured workers without the necessity of resorting to a complicated and drawn out civil litigation process. In so doing, the goal of the legislature was to avoid civil lawsuits and the costly complications and delays associated with such cases in a

traditional Superior Court action. In other words, the NJ statutory scheme which created a workers compensation system was a promise to the workers of this State that they would get quick and efficient relief in an impartial user-friendly system.

Unfortunately, as revealed by The Star-Ledger, the workers compensation system in NJ, while often providing the speedy and efficient delivery of income replacement, medical benefits and permanent disability awards it was created to deliver, also suffers from some clear failings. ATLA-NJ on behalf of its membership and attorneys who are active in the workers compensation system, representing hundreds of thousands of injured workers, hopes to provide this Committee with some suggestions and observations which will help improve this administrative court in several respects.

However, it is worthy of observation that, for the most part, workers compensation attorneys, on both sides, that is, petitioner attorneys (representing the injured worker) and respondent attorneys (representing the employer and its insurance carrier), find that the overwhelming percentage of cases filed are resolved in a reasonable and efficient manner, without undue stress for the injured worker. However, the increased delays in the delivery of benefits, by a system designed in 1911, before modern medicine and computerized systems, are becoming an increasing problem that can soon paralyze the entire system if left unaddressed. The administrative system in NJ requires immediate attention for the benefit of its constituency, the workers of this State.

There are certain important flaws which can be readily identified including the following:

1. **Delay in the delivery of medical benefits – Motions for medical and temporary disability benefits (“motions for med and temp”):** This is a most flagrant flaw in the system, due to the dramatic administrative delays that ensue from a dispute regarding whether a worker/petitioner is indeed entitled to medical care and medications to cure and relieve the work-related injury and/or illness.

Accordingly, ATLA-NJ recommends that those matters involving emergent medical care, and the commensurate need for continued temporary disability benefits, must be heard by a designated judge on a continuous basis, day-to-day, as such matters would be heard in the Superior Court when an emergent matter arises. Unfortunately, the DWC currently administratively lists a case, at most, every three weeks, on what is known as a "cycle," and usually with only one witness heard on each three week cycle. This administrative procedure creates tremendous delay in the adjudication of these motions and even in contested trials.

Presently, if a dispute arises, the petitioner/worker must file a motion, supported by appropriate affidavits and medical reports from an examining physician, supporting the right to medical care and continued temporary disability benefits. These motions take weeks and months to be listed and heard in the Division of Workers Compensation, and there is no procedure for continuous or expedited hearings which are specifically designed to address the need for emergent care, such as the need for sophisticated diagnostic testing, or surgery. As a result, as The Star-Ledger noted, these workers are "Waiting in Pain." Moreover, simple requests for routine treatment, of a non-surgical nature, such as physical therapy, pain management, and prescription medications, are not heard in a routine fashion, without inordinate delay and poor scheduling. These motions tend to linger inordinately in the system, with no safety net available for many workers who are otherwise uninsured and become a burden upon the taxpayers for charity care. Such hearings should be administratively expedited by requiring video teleconferencing, telephonic testimony, and other means by which they can be quickly concluded and to permit a speedy administrative opinion and decision by the compensation judge.

2. **Inadequate Benefit Rate Structure:** New Jersey now lags behind other states in providing adequate benefits to injured workers. This State applies an antiquated rate structure limited by a statutory formula for temporary disability benefits equal to 75% of the statewide average weekly wage (SAWW), which is further reduced to 70% of a worker's weekly wage, not to exceed the maximum amount for 2008 of \$742. When an injured worker is receiving temporary disability, those benefits only continue so long as

the worker requires continued authorized medical care, and has not reached a point of recovery known as MMI (Maximum Medical Improvement).

3. **The DWC should make available to the public a computer system for statistical accounting, searchable data, and outside monitoring of the performance of compensation judges in moving their calendars, much like the Administrative Office of the Courts (AOC):**

The DWC should make available a weekly statistical report to the Commissioner of Labor, which is also made available to the general public, accessible on the Internet, of the administrative production of each hearing official and of each district DWC office, by case classification, of its statistical performance data. Proper statistical data would allow for identification, accountability and review of non-performing judges. While there are many appropriate and legitimate reasons for cases to be listed and adjourned in the system, there are many reasons why this should not be permitted to occur, especially at the last minute. There is really no safeguard in the current system to prevent a respondent employer and its insurance company from causing delays by abusing the system by simply acting in a dilatory fashion, or refusing to honor Orders of the Court with respect to scheduling a matter, to commence or continue a trial. Such a statistical system would identify patterns of abuse and inefficiency while keeping the public informed concerning the court's production performance in disposing of cases. The DWC already is utilizing its second generation computer docketing system, "COURTS On Line" and an internet interface and generation of public reports could easily be made available.

4. **Greater resources should be provided for speedier processing of cases involving the Second Injury Fund (SIF) and there should be greater economic accountability for SIF funds:**

When an injured worker, with pre-existing disabilities, becomes totally disabled because of the last compensable event, the Second Injury Fund (SIF) contributes

to the claim. The SIF¹ is financed by all employers who are surcharged on all workers compensation policies issued in NJ. These matters are serious, complex and their rapid disposition is critical. While these cases are heard on special lists, they require an unusual amount of time and resources, including the discovery of past medical records and documentation, and multiple medical witnesses. The NJ Attorney General, representing the Commissioner of Labor as Custodian of the Fund, has put an inherent limitation on the ability of these cases to be expeditiously handled by assigning only five Deputy Attorney Generals to the appear on the thousands of Second Injury Fund matters now pending. There are just too many cases, with too few Deputy Attorney Generals available, to process these adjudicated matters, at a contested hearing, quickly. Since everyone acknowledges that Second Injury Fund cases are the most serious cases in the system, and usually involve a claim of either total disability, or at least a very high percentage of partial permanent disability, they deserve special attention, and continuous hearings, rather than in endless three week cycles, with one witness being called each time there is a hearing date.

5. **NJ should avail itself in participation of the free "Data Match" Program offered by the Centers for Medicare and Medicaid Services (CMS):** The federal government, through the Centers for Medicare and Medicaid Services (CMS), offers a free computer interfacing with state workers compensation systems so that data can be matched and made readily available to compensation judges and the attorneys in the system. This would expedite resolution of issues involving Federal Medicare Secondary Payer Act reimbursements and future medical benefit issues. Instead of embracing this logical approach, our system currently relies upon an inefficient and antiquated methodology whereby the petitioner's attorney must secure such information from CMS, which can take months at a time, before the matter can be concluded in the workers compensation

¹ The SIF is a trust fund that serves multiple functions including financing the NJ DWC operations. In recent years the excess SIF funds have been diverted, into the general State revenues. The raiding of these funds should end. SIF revenues should be administered by an independent fiduciary apart from the Commissioner of Labor, as should authority for distribution of SIF benefits.

court, even when a settlement has been amicably reached. This delays the worker's ability to receive disability benefits and other awarded benefits in an expedited and efficient manner. By virtue of federal legislation, in the year 2009, insurance carriers will be obligated to report the information automatically upon the filing of a workers compensation claim to the Social Security Administration and CMS, in an effort to shift the burden to the insurance companies, who can best address this data matching process to expedite payments to petitioners. There is no reason to wait for enforcement of this federal legislation to improve the current system.

6. **Judicial appointments to the workers compensation bench should be vetted by the organized bar, through qualified members of the New Jersey State Bar Association, ATLA-NJ, the County Bar Associations, and other interested professional bodies, just as such appointments to the Superior Court are addressed:** The workers compensation system is very complicated and navigation of it requires a great deal of knowledge, expertise and sophistication. Injured and ill workers, during a most vulnerable and sensitive moment of their lives, are required to access this complex system to attempt to navigate it, sometimes without legal counsel, to obtain benefits. Individual anxiety levels sometimes are high because of the frustrations with the delay and complexity of an unknown system. Workers compensation hearing officials are required to hear sophisticated matters involving: complex medical-scientific issues; difficult issues regarding causation; and intricate issues concerning temporary disability and medical reimbursement involving private, State and Federal programs and offset-issues under NJ pensions, private pensions, Medicaid, Medicare and Federal benefit programs. These tasks are oftentimes too overwhelming for even the most knowledgeable attorneys in the system, representing the parties. As a result, outside experts and vendors are often required to participate. The compensation judge is required to decide complex factual issues and to be knowledgeable on many aspects of the law. Their responsibility is herculean in nature, as are the tasks that they are asked to perform alone, without law clerks, unlike Superior Court Judges. That is why we need competent, experienced judges.

As reported in The Star-Ledger series, workers compensation judges have enormous power and unfettered discretion over the management of their individual caseload and critical decisions over individuals and their economic futures, sometimes for life. Injured and ill workers in this State, who have provided so many benefits to the economic growth of New Jersey, deserve more than to be put unprotected on an industrial scrap heap while waiting in pain for promised benefits and the adjudication of their claims. In the workers compensation system, there are no juries, and accordingly, the judges have enormous power as: a fact-finder regarding the compensability of an accident, as the determinant of the level of permanency or damages arising from the accident, and the sole control of the case docket and movement of any individual claim. Great discretion is given to the enormous tasks assigned to the workers compensation judge, as an expert in the field, gatekeeper of the admissibility of complex scientific evidence, and as the finder of fact and the judge of credibility and demeanor, in these hearings. Moreover, such findings are rarely disturbed by our appellate courts.

Currently, New Jersey workers compensation judges qualify for lifetime reappointment by the Senate after a mere three years. Thus, the re-appointment process deserves careful scrutiny to assure continued, high-level performance. This is of utmost importance given that there are no juries in the compensation system, and the judges are the lone finders of fact, mediators of disputes and compensation, and adjusters presiding over complex cases involving injuries and sophisticated medical treatment. They are asked to decide the truth, recommend a settlement, or set a fair determination of disability for serious and complex medical injuries.

7. **Workers compensation judges require enforcement sanctions available to them against a respondent/employer and its insurance carrier, comparable to the enforcement power available to Judges sitting in the Superior Court:** At present, orders entered by workers compensation judges are routinely disobeyed and flaunted, with absolutely no concern that there will be an action for "bad faith" or other penalties and sanctions designed to punish those employers and their insurance carriers who chose to disregard the order of a compensation judge. This must end, and become fully

enforceable by virtue of a State-wide judgment, in the Superior Court, if need be. Substantial pre-judgment interest and the fair award of counsel fees and other sanctions should be available to workers compensation judges and regularly utilized in their awards, in an effort to encourage the employers/insurance carriers to work efficiently and expeditiously to conclude these matters.

8. **The Uninsured Employers' Fund (UEF) is totally dysfunctional, unmonitored, and discourages private counsel from pursuing employers who have no workers**

compensation insurance coverage: It is currently a system that is designed to investigate and find the availability of insurance coverage for an employer who is the subject of a workers compensation claim, and who maintains that there is no coverage, or refuses to answer a claim petition filed by an injured worker. The burden of pursuing an uninsured employer becomes an administrative nightmare for the injured worker and his counsel, with an added further disincentive resulting from the fact that the injured worker can only receive payment of medical benefits and temporary disability benefits, but no award whatsoever for permanent disability due to a work-related injury. This administrative burden on the sick and disabled worker adds insult to injury. Instead, the DWC should automatically create a UEF claim within a prescribed number of days following the filing of a claim petition by an injured worker, which remains unanswered in a timely manner. The obligation should rest with the insurance carriers and the DWC, rather than on the petitioner, to address this problem by forcing the employer to be accountable to either the compensation system, or be economically responsible by way of penalty and prosecution for failure to address a claim petition that has been properly filed and served. This has taken place at the expense of workers, who not only were injured on the job, but also subjected to an illegally uninsured employer. Uninsured employers should not be able to avoid penalties and resolve claims by utilizing the lump sum mechanism of NJSA 34:15-20 for resolution of a workers compensation claim, currently prohibited on an admitted accident.

9. **There must be annual adjustments in the temporary disability rate, matching the current year's statewide average weekly wage (SAWW), for all claimants,**

irrespective of the year in which the accident occurred: This will serve as an impetus to expeditious resolution of claims, and prompt the respondents/employers/insurance carriers to resolve pending claims that currently drag on for many years, at an old temporary disability rate, to the financial detriment of the injured worker.

These suggestions are meant to highlight areas of potential reform, and are certainly not all-inclusive in nature. ATLA-NJ and its members sincerely appreciate this Committee's interest in the improvement of the workers compensation system for the hard-working citizens of New Jersey.

5/2/08/F:\DonnaK\ATLA\Testimony May 5 2008 retype 2.wpd



NEW JERSEY STATE BAR ASSOCIATION

New Jersey Law Center • One Constitution Square
New Brunswick, New Jersey 08901-1500
(732) 937-7512 • Fax (732) 249-2815
www.njsba.com

Our current Workers' Compensation Law represents a long-standing compact between labor, government and business. It provides benefits to workers who have sustained work related injuries while maintaining appropriate methods of cost containment. The basic statutory framework continues to succeed in providing appropriate benefits to injured workers effectively and efficiently.

The New Jersey State Bar Association (NJSBA), through its Workers' Compensation Section, has actively worked to address issues and suggest improvements to the Workers' Compensation Statute and administrative process. We have a lengthy history of working with the Legislature and Administration with the common goal of achieving the best and fairest Workers' Compensation system.

Our Workers' Compensation system is sound and effective. We all need to continue to monitor and alter when it becomes necessary. A complete overhaul is not warranted and will only serve a disservice to injured employees and employers of New Jersey.

We have made proposals, recommendations and voiced our support or objections to proposed legislation. In the past, at present and into the future, the New Jersey State Bar Association stands ready to lend its expertise and assistance where appropriate and needed.

NJSBA has long supported the continuation of the present system of employer controlled medical treatment under the Workers' Compensation Act. We continue to voice an objection to any proposed change to that present system. It is an essential element in the process that provides good medical care and keeps costs under control.

One of the most significant issues presently affecting the Workers' Compensation system relates to the Second Injury Fund. Due to a shortage of Deputy Attorney Generals assigned to the Second Injury Fund, cases involving potentially totally and permanently injured workers are taking longer to be resolved. In order for the Second Injury Fund to run efficiently and handle the significant number of cases throughout the State, it needs adequate personnel. NJSBA recently passed a Resolution concerning these delays and sought a remedy of additional personnel to address this shortage and delay.

NJSBA has long recognized the problems associated with the Uninsured Employers' Fund. We believe that the Statute and Regulations should be amended so that injured workers can receive treatment and wage replacement benefits in a timely manner. Further, better enforcement is needed to reduce the number of non-compliant uninsured employers and employers who misclassify workers as independent contractors or into low risk job titles in an effort to evade paying properly calculated premiums.

Many workers' compensation claims also involve liens which have been filed by the State Department of Temporary Disability Insurance. NJSBA believes that the Workers' Compensation Judges should be given the jurisdiction to decide whether the lien is appropriate, and should be repaid to the Division of Temporary Disability Insurance. Our Workers' Compensation Judiciary has the expertise needed to determine whether the benefits paid were for a condition related to the alleged work-related injury and if the lien is applicable. As it stands now, that decision is in the hands of the Division of TDI to decide.

NJSBA has long had a system in place for review of potential judicial candidates for the workers' compensation bench. The Workers' Compensation Section established a committee in 2000 that can confidentially screen judicial candidates and report directly to the President of the State Bar Association regarding its conclusions. We again renew our position that as members of the Bar, we feel our opinions and recommendations regarding potential Workers' Compensation Judicial candidates should be heard. In an environment where allegations have been made that our Judges are politically tainted, NJSBA would welcome the opportunity to be involved in the process akin to the Superior Court Judicial nominees.

In the interest of prompt and efficient administration of workers' compensation claims, NJSBA is opposed to the addition of discrimination claims to the jurisdiction of the workers' compensation courts. We believe that expansion of the jurisdiction of the courts would have an adverse affect on the effectiveness and efficiency of the workers' compensation courts.

The workers' compensation courts have struggled over the last several years with modernization and improvement in computer systems. If given the resources to continue to update and modernize its systems, the Division would be in a position to maintain adequate record keeping. Tracking of cases and record keeping in general is vital so as to better allocate resources and benefits in the future.

NJSBA believes that the current system is a fair and balanced system and does not

require wholesale changes to the Workers' Compensation Statute. We caution the Legislature against such changes. The foundation is strong. We offer our continued service and expertise to the Legislature to assist in keeping our current system sound, fair and efficient.

ATTORNEY VICE PRESIDENTS

Michael S. Ahearn, Esq.
 Dennis M. Baptista, Esq.
 Thomas W. Barlow, Esq.
 Howard J. Batt, Esq.
 James S. Beall, Esq.
 Vicki W. Beyer, Esq.
 John E. Biggiani, Esq.
 Charles D. Bodner, Esq.
 Robert Capuano, Esq.
 Patrick, R. Caufield, Esq.
 Steven H. Cohen, Esq.
 Sean Dillon, Esq.
 Frank R. DiMarzio, Esq.
 Jonathan S. Fabricant, Esq.
 Ray Farrington, (Ret. JWC)
 Kenneth H. Feldman, Esq.
 Anthony G. Filomeno, Esq.
 Samuel Gaylord, Esq.
 James E. Gelman, Esq.
 William Grabler, Esq.
 Gregory M. Jachts, Esq.
 Mark S. Jacobs, Esq.
 Marci Hill Jordan, Esq.
 Scott P. Kessler, Esq.
 James Koblin, Esq.
 Lynne P. Kramer, Esq.
 David H. Lande, Esq.
 Neil A. Malvone, Esq.
 Dominick M. Manco, Esq.
 Kenneth D. Mackler, Esq.
 Edward J. Magram, Esq.
 Herbert L. McCarter, Esq.
 Kendall W. Medway, Esq.
 Bruce P. Miller, Esq.
 Fredric M. Milstein, Esq.
 Lawrence A. Mintz, Esq.
 Michael Mizin, Esq.
 Jeffrey S. Monaghan, Esq.
 Maurice J. Nadeau, Esq.
 Robert A. Olkowitz, Esq.
 Mitchell H. Portnoi, Esq.



661 Franklin Avenue, Nutley, NJ 07110
 Phone: 908-269-5531 Fax: 908-269-5531

A New Jersey Non-Profit Public Interest Organization

PRESIDENT

Craig H. Livingston, Esq.

CHAIR

Richard J. Marcolus, Esq.

TREASURER

Lester S. Goldblatt, Esq.

EXECUTIVE DIRECTOR

Steven J. Reichenstein, MBA

GENERAL COUNSEL

Lynne P. Kramer, Esq.

SENIOR VICE PRESIDENT**MEDICAL AFFAIRS**

David Myers, MD
 David Weiss, DO

**SENIOR VICE PRESIDENT,
LABOR RELATIONS**

Joyce A. Parisi, Esq.

**SENIOR VICE PRESIDENT,
POLITICAL AFFAIRS**

Juan L. Negron, IAM/AFL-CIO

**SENIOR VICE PRESIDENT,
PUBLIC AFFAIRS**

Julius J. Feinson, Esq.
 Arthur H. Kravitz, Esq.

**SENIOR VICE PRESIDENT,
BAR RELATIONS**

Fred Hopke, Esq.

**SENIOR VICE PRESIDENT
TECHNOLOGY AFFAIRS**

Gary E. Adams, Esq.

CO-COUNSEL

Todd D. Wachtel, Esq.
 Peter F. Ward, Esq.

LEGISLATIVE ADVISOR

Peter P. Guzzo, Ph.D.

Bonny G. Rafel, Esq.
 Neil M. Rednor, Esq.
 Matthew T. Rinaldo, Esq.
 George Rios, Esq.
 Richard B. Rubenstein, Esq.
 Martin M. Rudnick, Esq.
 Ivan R. Schofield, Esq.
 Paul A. Schwartz, Esq.
 Raymond P. Shebell, Esq.
 Robert S. Sirota, Esq.
 Craig C. Swenson, Esq.
 Scott M. Tashjy, Esq.
 Robert J. Wegner, Esq.
 Edward J. Wilson, Esq.

PHYSICIAN VICE PRESIDENTS

Angela Adams, MD
 Peter Crain, MD
 Steven H. Dane, MD
 Vinobha Gooriah, MD
 Malcolm Hermele, MD
 Bruce Johnson, MD
 Steven Klein, DO
 Warren Klein, MD
 David Lessing, MD
 Stanley Malkin, MD
 Martin Riss, DO
 Arthur Rothman, MD
 Earl Shaw, MD
 Cary Skolnick, MD
 Arthur Tiger, MD
 Edward H. Tobe, DO
 Edwin Turner, MD
 Leon Waller, DO

LABOR VICE PRESIDENTS

Peter A. Busacca, IBEW
 Hermes Bustamante, BCTGM
 Dominick DeVito, ICWU
 Michael F. Horvath, Jr., IUE-CWA
 Raymond J. Koczan, IAM

CHAIR EMERITUS

Kenneth H. Wind, Esq.

May 5, 2008

Chairman Sarlo, Senators, thank you for inviting us to testify today.

We are particularly pleased to appear before you Senator for two reasons. As our Senator representing Nutley, we've come to rely on your judgment and wisdom about the ways of Tenton and second, as the Chief Engineer in one of New Jersey's multinational construction companies, you understand the world of working New Jerseyans from the practical perspective of someone who works with unionized, hard working building trades in this state.

In recent weeks there has been a lot of discussion about New Jersey's Workers' Compensation system. One lawyer is quoted as saying that the worker has been taken out of Workers' Compensation and today we heard others suggest, that everything is fine.

It is our belief that the Workers' Compensation Court is the most effective of any of the Courts that we work in for the working people of New Jersey. As such it must continue to attract and keep the best judges available. This is why we appreciate the fact that you, Senator Sarlo, in your role as a leader of the Judiciary Committee persuaded the Committee to interview all nominated and renominated judges. We also believe that the compact between the Governor's office and the Bar Association for vetting of Superior Court judges should be extended to judges who are nominated to the Workers' Compensation Bench. While we agree that our Workers' Compensation system is a good system, we can and should do better for the working people of this State, the employers, and all of our citizens.

Our view is that this is the time and the place to make New Jersey's Workers' Compensation system the model for the Nation. To begin with we need more Deputy Attorneys for the Second Injury Fund. These attorneys handle the cases of people that are often totally disabled, cases that represent hundreds of thousands of dollars. The salary for these attorneys comes out of the Second Injury Fund which is paid by private insurers. Therefore, there is literally no cost to the State.

There are also two pieces of legislation which we believe will make New Jersey's Workers' Compensation system a model for the nation by enabling our Judges to address some of New Jersey's citizens intractable problems while lowering costs to New Jersey's companies.

The first piece of legislation is Senate Bill No. 639 sponsored by you, Senator Sarlo, to increase awards for hand and foot injuries. This increase is long overdue and is

correcting a grossly inadequate remedy. For instance an Iron Worker suffered a fracture to his hand which left him unable to continue working as an Iron Worker. He lost his profession, his livelihood and received an award of \$14,000. This Bill increases the rates for hand injuries only where the award is greater than 25% thus cutting the number of cases where the rates will be increased and keeping costs in check.

My efforts to determine just how much hand and foot injuries cost New Jersey employers resulted in a finding that there appear to be no such records. In fact, the Compensation Rating and Inspection Bureau actuaries indicated they project costs using National Injury Distribution Tables that are provided to states throughout the United States. There are no records with actual numbers kept by New Jersey to show how many hand and foot injuries are suffered, how many awards are over 25% or how much they cost employers in New Jersey. This is somewhat surprising since it is my understanding that Workers' Compensation Judges have been providing the Bureau with actual numbers for over a year. Thus, as I understand it, any projected costs we are given by the Rating Bureau are at best "estimates".

However, even using guessestimates, the Compensation Rating Bureau projects that passing Senator Sarlo's proposed bill would result in a 1% overall premium increase to New Jersey employers. Therefore, the cost increase to an employer would be minimal! Most, if not all employers would not even notice this minimal increase in their WC insurance premium. However, a minimal rate increase for severe injuries to hands and feet will have a big impact on New Jersey working men and women. This bill was voted out of the Senate Labor Committee and is ready for passage in the Senate. The New Jersey Advisory Council urges prompt passage of this bill in the Senate.

Senator Ray Lesniak's proposed amendment to the Law Against Discrimination NJSA10:5-1 et seq., Senate Bill No. 1407 seeks to allow complaints of discrimination because of a handicap arising from workplace injuries only, to be brought before the Division of Workers' Compensation and handled expeditiously by a Workers' Compensation Judge. Why make this amendment? As you know, workers now have the right to file a handicap discrimination case in Superior Court or they may, alternatively go to the Division of Civil Rights and the Office of Administrative Law. However, the resolution of these cases in Superior Court takes three to four years and in the OAL takes an average of 1,898 days. In contrast, in the Division of Workers' Compensation, Motions for Temporary Compensation and Medical Treatment are resolved in an average of 55 days. Senator Lesniak's bill will get the injured worker back to work in less than two months or at least advise these workers that they can't do the essential functions of the job even with an accommodation. Then, at least they'll know that they can't return to that job but must find other work they can do. Senator Lesnaik's bill will also reduce the cost to employers because they won't risk incurring back pay and benefit liabilities for five years but only for 55 days. Finally, the huge attorneys' fees in discrimination cases; in one recent case, over \$1,000,000 was paid by the losing company to worker's lawyers in addition to probably an even larger amount paid to defense lawyers, will be avoided. Senator's Lesniak's bill is a win/win for the workers, their unions, and employers and all of New Jersey's citizens. We urge that this Bill, S1407, which is now before you Senators of the Senate Labor Committee be acted upon promptly.

We have also discussed a Bill with Senator Sweeney which would give the Judges of Workers Compensation additional powers including the right to enter Stop Work Orders to employers that do not have Workers' Compensation insurance.

This bill would give Workers' Compensation Supervising Judges the power to enter Stop Work Orders against companies and their principals who do not have Workers' Compensation insurance.

These corrupt employers pay in cash, they do not pay into the unemployment fund, they do not pay into the State disability Fund, they do not pay into Social Security, they do not pay State income taxes, they do not pay Federal income taxes. And these same corrupt companies, of course, forget to purchase Workers' Compensation insurance to cover their workers. While it is a crime and a civil wrong for employers not to have Workers' Compensation insurance, there have been very few prosecutions and those prosecutions take far too long. In certain industries, there are no effective enforcement mechanisms.

When the employees of these uninsured employers, particularly in the construction industry, suffer catastrophic accidents, the cost of those injuries, sometimes in the millions of dollars, are borne by the New Jersey's hospitals and doctors and Charity Care, which is funded by the State's underfunded Unemployment Fund. By giving Workers' Compensation Supervising Judges the power to enter Stop Work Orders, enforceable in either the Appellate Division or Chancery Court, you will be giving power to the State's most experienced Judges in workplace law; Judges who deal with the world of the working men and women in this State every day of every week. Judges whose depth and breadth of experience in dealing with emergency matters in an

expeditious way are unparalleled. This law will produce much needed revenue for our state government, will give law abiding companies a level playing field when bidding for work and will shift the risk of related accidents to insurance companies that have collected appropriate premiums. The cost of this amendment will be close to zero with the potential of direct and indirect income to the State and our unemployment funds and health care providers of ten of millions of dollars each year. The benefit to workers will be inestimable.

We also believe that Judges should be empowered to impose penalties as an enforcement mechanism against those who ignore a Judge's Order for treatment and temporary disability. This would help ensure that workers will not be kept waiting long periods of time without either treatment or temporary disability. Delay of either treatment or temporary disability can lead to a much longer recovery time, more time out of work and extreme hardship for the injured worker and his family.

We come here today Senators to propose what we believe and hope you will agree are practical solutions to help both New Jersey workers and employers. These proposals will also make a very good system, better and also help rather than further burden honest, law abiding New Jersey workers, employers and insurers.

Again thank you for this opportunity. All of the members of the New Jersey Advisory Council on Safety and Health stand ready to assist you Senators in any way that we can.

CRAIG H. LIVINGSTON, ESQ., PRESIDENT

LYNNE P. KRAMER, ESQ., GENERAL COUNSEL



Municipal Excess Liability Joint Insurance Fund

Park 80 West, Plaza One
Saddle Brook, New Jersey 07663
Tel (201) 587-0555
Fax (201) 587-8662

To: Senate Labor Committee

From: David N. Grubb, Executive Director

Date: May 5, 2008

Re: Workers' Compensation Issues Impacting Public Entities

Workers' Compensation costs New Jersey public entities in the range of \$500 million per year. On a number of occasions I have testified before various committees here in Trenton that there is an opportunity to better protect the public workforce and save taxpayers millions of dollars if the various levels of government worked to coordinate their safety and risk management programs.

With respect to specific legislation:

1) **Sick Leave Injury:** Almost every public entity in New Jersey has a sick leave injury program that supplements workers' compensation so that employees receive their full salary while out of work. In our 2005 study of the state's risk management program, we estimated that government in New Jersey could save at least \$20 million per year by reforming the outdated SLI program design, while still delivering the same after tax benefit to employees. It is important that the state take the lead on this because the local units will not be able to make headway with their bargaining units unless the state sets an example.

2) **Presumptions:** It is time to reexamine the presumptions. They do not work as intended and needlessly add to the cost.

For example, the Supreme Court's 2003 decision in *Capano v. Bound Brook*, involved a 93 year old firefighter who slipped while putting a log into a wood burning stove in the fire house. The court ruled that under the current law, Capano was in the line of duty, but asked the legislature to reexamine this question. As a result of this decision, the current workers' compensation law often requires New Jersey taxpayers to cover expenses that would otherwise be covered by Medicare.

This is exactly the problem with the proposed firefighter cancer presumption. If this is adopted under workers' compensation, municipalities will pay millions each year in medical bills that otherwise will be paid by Medicare.

The heart attack presumption is another problem. Heart attacks are the leading cause of on duty fatalities among firefighters. While Firefighters do not have a higher risk of heart disease compared to the general population, the sudden exertion of their work can trigger a heart attack in the same way shoveling snow can lead to a heart attack in someone else. This is particularly an issue with volunteers who tend to be older.

A recent study concluded that volunteer fire departments save the New Jersey taxpayers approximately one billion per year. Yet most volunteer departments do not provide their members with proper annual physicals and many volunteers are worried that their families will not be properly cared for if something happens to them while on duty.

Under NJSA 34:15-7.3, there is a rebuttable presumption that a heart attack that occurs in the line of duty is compensable. However, as a practical matter, significant preexisting heart disease is usually present in these cases, resulting in the workers' compensation claim being denied or substantially compromised.

We renew our call that a working group be established to 1) evaluate what should be the compensation for all emergency personnel including such issues as the heart attack and cancer presumptions and (2) what is the most efficient mechanism to provide this compensation. For example, it will be far less expensive to provide benefits through a municipal funded life insurance program than through workers' compensation. As a result, the survivors of volunteer firefighters who die of heart attacks in the line of duty will receive a benefit that is not impacted by subsequent medical testimony concerning preexisting heart disease. At the same time, the benefits can take into consideration the difference between active firefighters and passive "life" members. New Jersey taxpayers should not subsidize the Federal Medicare system.

Of course, our first concern must be to reduce the risk. Annual physicals are a small price to pay to protect volunteers whose service saves the taxpayers at least a billion dollars each year.

And again we renew our call for better coordination between all levels of government on safety and risk management issues. Government is experiencing a budget crisis and this is an area where we can make substantial progress.

Workers comp system:

The failed delivery of health care

The New Jersey workers compensation system fails to deliver timely health care to injured and disabled workers, causing untold suffering to workers and their families, and millions of dollars in costs to the economy. A federal ranking of state workers compensation programs in 2000 by the U.S. Department of Labor's Office of Workers Compensation ranks New Jersey as only 55 percent compliant with essential workers compensation protections.

Justice delayed is justice denied. In 12 years of practice, I have observed people fighting for surgery and medical care, and fighting for temporary wage replacement funds just to keep off welfare and be able to pay for heat and electricity. Injured workers face hostile court battles lasting six to 18 months while their health deteriorates significantly and their family denied any income. It is a monstrous, backward system gone astray, padding the pockets of insurance companies and law firms on both sides of the bench, and supporting an expanding state administrative bureaucracy.



The Law
and
More Jay H. Bernstein

Acute emergent medical care should be vigorously instituted first, and the battle over payment and responsibility should be secondary. Medical care should not be placed on hold while litigation slowly unfolds with one witness every three weeks over a six-month period. Don't litigate while the worker bleeds. Health care should not be at the sufferance of insurance companies, judges and lawyers, and a statutory scheme from 19th century Germany.

Poor workers in New Jersey looking for non-emergency treatment or surgery face hostile insurance adjusters, adversarial lawyers, insurance company doctors paid to automatically cut off treatment as a *quid pro quo* for continued insurance company business, and clinics pressured to get them back to work, violating the medical oath and duty toward patients. Every week I am presented with a new client, whose original authorized surgeon

Kirsh Gelbach
Jay H. Bernstein, a certified workers compensation attorney, is an associate with ~~Spewak and Gelbach~~ in Iselin and supervises its workers compensation department. He specializes in emergency motions for medical and temporary benefits, and is a member of the Coalition for Health Care Reform. He was a founding member of the NJSBA Mass Disaster Relief Program and organized *pro bono* representation of Sept. 11 victims and families.

or treating doctor is replaced by an insurance company "second opinion" doctor, merely for the purpose of halting treatment or canceling an authorized, scheduled surgery — all in the name of the bottom line. We're one of only eight states that deprives injured workers of any choice of a doctor and medical care.

Petitioners must pass myriad hurdles to prove themselves worthy of treatment. The system is broken beyond repair. Our co-workers are treated as malingers, liars, fakers, cheats. Yet "80 percent of the fraud is perpetrated by insurance companies and employers," asserted retired Judge Philip Bolstein at a seminar in 2001.

Why does an Iraqi prisoner of war or an inmate in any New Jersey jail receive quicker, better care than most of my clients?

The workers compensation system here supports systemic medical malpractice in all but name: Medical decisions are made by unqualified, non-licensed, laypeople — insurance adjusters, lawyers and judges. Compensation judges, many with no litigation, workers compensation or medical background, decide whether a worker will have surgery. They try their best to be fair, but their decisions by necessity are arbitrary and unscientific; no replacement for the sound judgment of a physician. Workers' chance for a course of treatment depends on the luck of the draw — which judge they're assigned.

There must be a more civilized, economical way to deliver health care to workers. Today's failed workers compensation system is medieval. Enacted in 1909, it originally was intended to end litigation and provide fast treatment and payment with a no-fault approach. Originally a civil code enactment, the workers compensation system has become entangled in a growing body of case law and is grinding to a halt.

The individual attorneys and judges are competent professionals trapped in a failed system. It's time for a replacement.

If we eliminate the litigation and motions for treatment, and provided blanket medical coverage for *all*, it's probable society would achieve a net savings of millions of dollars. Comparative legal models from Denmark to Japan suggest this alternative — adapted to local conditions — is realistic, equitable and cost-conscious. A Japanese model, mixing private health insurance and government insurance (akin to our system of private insurance and Medicare/Medicaid), but guaranteeing coverage to all citizens, is the best course. Another option is the federal longshoremen's model, providing strict, efficient medical coverage from a list of approved medical providers, guaranteeing workers free choice of competent doctors. Even the AFL-CIO plan, combining workers compensation and major-medical coverage into a single payer plan, is estimated to save 25 percent of the transactional costs of workers compensation litigation.

Until a comprehensive reform of New Jersey's workers compensation system is instituted, small-step, limited reforms should be undertaken. The new Democratic legislative majority must pass A-424, which would enable injured workers to choose a doctor in whom they have full confidence and one not beholden to the hidden agenda of an insurance company. Proper care for injured workers is a basic human right, long-neglected in New Jersey.

59



**RUTGERS
LAW RECORD**

RUTGERS UNIVERSITY SCHOOL OF LAW - NEWARK
123 WASHINGTON STREET, SUITE 001D-E
NEWARK, NEW JERSEY 07102
(973) 353-3011

INTRODUCTION | CURRENT ISSUE | ARCHIVES | SYMPOSIA | CONTACT EDITORS | SUBMISSIONS

THE LAW RECORD

volume 28 - spring 2004

AUTHOR: Stephen P. Pazan

TITLE: Protection of an Insured's Mission or Business in the Context of an Insurer Supplied Defense

CITE (NOTE): 28 Rutgers L. Rec. 1 (May 1, 2004)

FILE: [view article](#)

AUTHOR: Paul M. Digasbarro

TITLE: The Meaning of "Dangerous Condition" within the New Jersey Tort Claims Act Is in a Reasonably Foreseeable State of Disarray

CITE (NOTE): 28 Rutgers L. Rec. 2 (May 1, 2004)

FILE: [view article](#)

AUTHOR: Jay H. Bernstein, Esq.

TITLE: A FAILED SYSTEM OF HEALTH CARE DELIVERY: The Workers Compensation System in New Jersey.

CITE (NOTE): 28 Rutgers L. Rec. 3 (May 1, 2004)

FILE: [view article](#)

AUTHOR: William J. Kambas

TITLE: THE DEVELOPMENT OF THE U.S. BANKING SYSTEM: FROM COLONIAL CONVENIENCE TO NATIONAL NECESSITY

CITE (NOTE): 28 Rutgers L. Rec. 4 (May 1, 2004)

FILE: [view article](#)

AUTHOR: Melinda Minetto

TITLE: HABEAS CORPUS RELIEF FOR FELONIOUS ALIENS: IMPLICATIONS PRIOR TO AND AFTER SEPTEMBER ELEVENTH AND THE EFFECT ON THE CHECKS AND BALANCES OF THE UNITED STATES OF AMERICA

A FAILED SYSTEM OF HEALTH CARE DELIVERY: The Workers Compensation System in New

Jersey. [1]
By Jay H. Bernstein, Esq.

The New Jersey Workers' Compensation system fails to deliver timely health care to injured and disabled workers, causing untold suffering to workers and their families and millions of dollars in costs to the economy.

Justice delayed is justice denied. In twelve years of practice, I have observed human beings fighting for surgery, medical care and psychiatric care, fighting for temporary wage replacement funds to keep off the welfare rolls just to pay their heat and electricity bills. The injured workers face hostile court battles, six to eighteen months in duration, while their health deteriorates significantly and their families are denied any income. It is a monstrous, backward system, gone astray, padding the pockets of insurance companies and law firms on both sides of the bench, and supporting an expanding state administrative bureaucracy.

Acute emergent medical care should be vigorously instituted first, and the battle over payment and responsibility should be secondary. Medical care should not be placed on hold while litigation slowly unfolds with one witness every three weeks over a six month period. Health care should not be at the sufferance of insurance companies, judges and lawyers, and a statutory scheme from nineteenth century Germany.

For the wealthy and middle class, private health insurance (and private disability plans and State of New Jersey temporary disability pay) sometimes act as a temporary safety net, ensuring medical care and wage replacement to an injured worker.

Yet many workers fall through the safety net with no eligibility for income protection. For example, city workers fall outside of New Jersey's temporary disability program, impoverishing the city worker who is denied workers' compensation temporary payments.

For the majority of working poor (30% of the U.S. working population, earning under \$18,000 per year), [2]

employed at "McJobs" with no private health insurance, sick days or personal days, anything short of emergency room treatment is denied. This includes delays in major surgical procedures and proper treatment, no access to prescription medication and, therefore, aggravating acute injuries, leading to malpractice claims and causing lifetime, chronic disabilities, with untold costs to workers, their families, and the state economy.

NEW JERSEY COMPENSATION SYSTEM BELOW NATIONAL AVERAGE

The AFL-CIO reports that a federal ranking of state workers' compensation programs by the U.S. Department of Labor, Office of Workers' Compensation (2000), ranks New Jersey as only fifty-five

[3]
percent compliant with essential workers' compensation protections. We can do better! Nebraska's ranking is eighty-seven percent, Connecticut's is eighty-four percent, and Iowa is at eighty-two percent.

[4] [5] [6]
Even Pennsylvania scores seventy-two percent. The U.S. average is sixty-seven percent. New Jersey compliance with basic federal standards is therefore below even the national average for state workers' compensation programs. Only eight states, including New Jersey, deprive the injured worker of

[7]
any choice regarding a doctor and medical care. We can do better!

Equal access to quality health care is key to our families and workers, and the "United States [is] the only democratic industrialized country in the world that does not provide all of its citizens with equal access to

[8]
quality health care." The World Health Organization rates the United States as "55th in terms of

[9]
financial fairness" vis-à-vis basic health care access.

TREATMENT OF OUR CHILDREN AS A MODEL

Our children, if injured, are cared for immediately with no questions asked. We do not subject our kids to extensive cross-examination and recrimination for months at a time before deciding if treatment is necessary or related. We do not ask our children: Did you report your injury within twenty-four hours? What is the date of your injury? Are you faking your injury? Is it not true that you injured the same body part three years ago? Did you once use drugs? Who did you notify of your accident? Did you notify someone in a position of authority within forty-eight hours, or two weeks, or ninety days? Were you engaged in a fight, not related to your (school) work? What is the exact date and time of your accident? Did you know your injury was related to your activity, and if you did know, and ninety days have passed, and you did not notify anyone, it is too late to receive free treatment or compensation. Don't you have other causes for your injury, depression, etc.?

The wrong answer to any one of these questions for a New Jersey worker results in no medical care. We, as a society, would never expose our children to such a medieval system. The same level of comprehensive care for children (i.e., New Jersey Family Care) should be extended to all members of our family, all adults, and all workers! Emergency room treatment, by law, is provided to all Americans, regardless of cause or ability to pay. So why not all basic care?

Our nation treats felons, prisoners and victims of gun shot wounds immediately, in the emergency room, no questions asked. Our Army troops treat enemy soldiers immediately, no questions asked.

By contrast, a poor worker in New Jersey looking for treatment or surgery beyond the emergency room is faced with hostile insurance adjusters, adversarial lawyers, insurance company doctors paid to automatically cut off treatment as a quid pro quo for continued insurance company business and clinics that are pressured to get them back to work, violating the doctor's medical oath and duty towards the patient. Every week I am presented with a new client, where the original authorized surgeon or treating doctor is replaced by an insurance company doctor merely for the purposes of cutting off treatment or canceling an authorized scheduled operation. All in the name of the dollar.

The original no-fault workers' compensation system, instituted in 1909, has cracked. Petitioners (i.e. injured workers) must pass a myriad of hurdles to prove worthy of treatment. The system is broken beyond repair. Our co-workers are treated as malingerers, liars, fakers, and cheats. Prisoners of war, convicted felons and murderers receive much better, more consistent and more immediate treatment than most New Jersey workers! Why does an Iraqi prisoner of war or an inmate in any New Jersey prison receive quicker and better care than most of my clients? Why does a worker's family suffer with no electricity, no heat, no income, while awaiting a judge's decision regarding temporary pay and emergency surgery, sometimes delayed eighteen months in long drawn out court battles? I have litigated battles between insurance company doctors with questionable backgrounds, (one doctor whom has failed his medical board tests twelve times, yet is chief of treatment for our largest city's police force). I have

602x

been forced to bring to court world renowned experts from the best New York surgical programs in order to face recalcitrant judges adverse to specialized medical care and surgical procedures that could ultimately return a worker to the labor force.

If New Jersey eliminates insurance litigation, the insurance company profit motive, the insurance company lawyers, the administrative workers' compensation courts, the lost days and years of worker production, and instead provides blanket medical coverage for all society, it would likely achieve a net savings of millions of dollars. Comparative legal models from Denmark, the Netherlands, Japan and Canada suggest that this alternative, adapted to local conditions, is realistic, equitable and cost conscious. A Japanese model, mixing private health insurance and government insurance (akin to our system of private insurance and Medicare/Medicaid), but guaranteeing coverage of all citizens, is the best and most realistic course. America covers the poorest individuals under Medicaid, and the middle and upper middle class under private health insurance. However, the working poor (35 million workers) and lower middle class exist in a vacuum, with no proper health coverage.

Recently, the AFL-CIO has proposed a single payer system that would combine both workers' compensation and major medical coverage into a single policy, cutting transaction costs by twenty-five

[10] percent. The AFL-CIO argues that a single payer system would allow injured workers to "have greater access to medical services *without the dispute and delay* imposed under the workers'

[11] compensation system."

Our nineteenth century brethren created a new system from scratch, the workers' compensation civil system. It worked well for nearly one hundred years. It is time for a replacement.

Why has this egregious violation of the most basic human right, the right to health care, come to pass? Is it the fault of judges, striving to lower workers' compensation insurance rates for New Jersey businesses? Or is the problem intrinsic to our statutes and laws, known as the New Jersey Workers' Compensation Rules?

I have witnessed a trial (one of many) with a fair and caring judge, and an honorable respondent and petitioner's counsel grilled a poor elderly woman for an hour, over a simple question of the exact date of her present and prior injuries. She could not remember if it was 1/17/98 or 1/19/97 or 1/21/98 or 2/17/99. The injury was real. The need for immediate treatment, and possible curative surgery was agreed. She had no private medical insurance and no job or income.

If she failed the litmus test of a faded, hazy memory, her treatment, by statute and rule, would be denied. I witnessed a Salem witch trial, dressed in modern form, in New Jersey. Trial by fire, trial by water, trial by Memory.

No one in the courtroom realized the travesty of this cross-examination, a Salem witch trial by memory. If she failed, she was out, out of luck, no chance for treatment anywhere.

I ask, where is the humanity and fairness in this hollow system?

Would we deny treatment to a child for an erroneous memory, or even if the child was at fault, or the child was on drugs, thus causing a serious injury? No. Drug abusers, felons, robbers and prisoners receive full medical care. To do otherwise constitutes unusually harsh punishment, deemed

63x

unconstitutional.

So why do we question, interrogate, litigate, and test the adult worker, the elderly, the undocumented alien, the immigrant and the working poor with a litmus of issues and questions, before commencing the proper medical treatment. Is it simply to prevent fraud?

The threat of worker chicanery and fraud is usually successfully weeded out by the court, aided by insurance company "spies," secretly filming American citizens and conducting vast computer background insurance checks (CIB insurance supercomputer listing of all past accidents and litigation for all

[12]

Americans). I witnessed the same in the former Soviet Union.

Judges effectively spot fraud and stop it in its tracks. As the straight talking, strict conservative Judge Bolstein stated; "Eighty percent of the real fraud is perpetrated by insurance companies and employers, –

[13]

only ten to twenty percent stems from the workers." The audience was shocked at this statement, as going against the grain of politically correct accepted wisdom, and issued by the NYU Law trained dean of the judicial corps.

Treatment of a real injury should be immediate and timely. Let the trial determine liability, causal relationship and payment issues later. The court should care for the injured worker first. The workers' compensation system places the burden of payment on the employer, and thus ultimately on the consumer, through price increases. So be it. Simply provide treatment first, ask questions later.

The obverse withholding of necessary medical treatment and surgery (and temporary workers' compensation payment to feed and clothe the family), while a lengthy motion and trial proceed, is obscene, and medieval in its stark unfairness. Therefore, I would recommend that the courts determine responsibility, causal relationship and liability at the end of the process. Do not litigate while the worker bleeds.

We should not hold medical treatment for injured, battered workers hostage to litigation. The motion for medical and temporary benefits usually demands a three to six month trial at best. The process is grueling and demeaning to the frail and injured workers and takes an unnecessary toll, physically and emotionally.

There must be a more civilized, economically efficient way to deliver health care to our workers. There must be a better way, for instance, national health care. Our present day workers' compensation system, copied from a nineteenth century German model, is medieval and wrong. The workers' compensation system, originally intended to end litigation and provide fast treatment and payment with a no fault approach, has failed. Codified originally as a civil code enactment, the workers' compensation system has become stymied and entangled in a growing body of precedent and case law and is grinding to a halt.

Speed has been ended by litigation. The problem originally intended to be fixed has returned, seemingly endless litigation before payment or proper treatment. We have turned the system on its head. Insurance company profits, and parasitic law firms on both sides gain. The worker loses in the end.

The individual attorney and judge are competent ethical professionals, for the most part, trapped in a failed system. It is time to scrap the system and rebuild from scratch.

64x

65x

The New Jersey Workers' Compensation System Supports Systemic Medical Malpractice.

The New Jersey Workers' Compensation System supports systemic medical malpractice in all but name, medical decisions are made by unqualified, unlicensed, laymen:

- a. High school and community college educated insurance adjusters decide on all questions of medical care, from the necessity of surgery to which medication will be paid. [14]
- b. Biased doctors on insurance company payrolls – some who have been documented (by deposition) to have failed the New Jersey Medical Boards twelve times – decide all aspects of treatment, delivering the lowest level of healthcare possible. Licensed family doctors and hospital surgeons have deemed such treatment unconscionable. [15]
- c. Laymen Judges of Compensation, many with no litigation, workers' compensation, or medical background, decide whether a worker will have surgery or not. They try their best to be fair, but their decisions, by necessity, are arbitrary and unscientific. A patient's chance for a course of treatment depends on the luck of the draw, i.e., which judge is assigned. [16]
- d. Petitioner attorneys – many who view workers' compensation as a business and injured workers akin to Gouls, "Dead Souls," or mere accounts to be settled – with the largest and most prestigious petitioners firms refusing to file, as policy, motions for surgery or treatment, as such are deemed economically inefficient, time consuming, and wasteful. [17]
- e. Insurance lawyers with open disdain for working class people go to great lengths to find any legal loophole to deny treatment to the worker, all in the name of service to the insurance company. [18]

The Answer. New Alternatives for Health Care Delivery.

If New Jersey eliminates insurance litigation, the insurance company profit motive, the insurance company corporate lawyers, the administrative workers' compensation courts, the lost days and years of worker production, and instead provided blanket medical coverage for all, it is probable society would achieve a net savings of millions of dollars. Comparative legal models, from Denmark and the Netherlands to Canada and Japan, suggest that this alternative, adapted to local conditions, is realistic, equitable and cost-conscious. Comparative law paradigms teach us valuable lessons. This article will examine the following health care and workers' compensation models listed below:

- Japanese two tier model – private insurance and government insurance in concert.
- Federal Longshoreman's Compensation model – strict enforcement of treatment rights.
- AFL-CIO proposal – universal health care, eliminate workers' compensation litigation.
- New York system – choice of treating doctor by injured worker.

Collex

- Pennsylvania system – Respondent may only terminate treatment via motion.
- Gephardt Plan – universal health care system.
- Schwarzenegger Plan – adopting effective independent medical review and eliminating judges.
- OSHA increased enforcement – prevention of occupational disease and accidents.

A. Japanese Model: Comprehensive Health Care through Private and Public Insurance.

The Japanese model, mixing private health insurance and government insurance (akin to our system of private insurance and Medicare/Medicaid), but guaranteeing coverage for all citizens, is the best and most realistic course. America covers the poorest under Medicaid, and the middle and upper middle class under private health insurance. The working poor (35 million workers) and lower middle class, by contrast, exist in a vacuum, with no proper health coverage. The Japanese system ensures health coverage for all with a mix of government and private programs.

The Japanese health care model is divided into two primary systems. The first of these systems is the Employee's Health Insurance System, which insures approximately thirty-three million subscribers and is

[19] funded through payroll contributions of eight percent of wages. Both employers and employees pay

[20] these contributions, thereby covering the dependents of each group. The second of these systems is the National Health Insurance System, which insures approximately forty-six million subscribers and

covers self-employed individuals, pensioners, their dependents and members of the same occupation.

[21] Subscribers begin paying into a National Pension program at age twenty. Fixed, old-age pension benefits are available at age sixty-five, and pension benefits are also available to fatherless

[22] families and disabled individuals. Under the National Health Insurance System, premiums are calculated by local governments based on income, the number of individuals that reside in a household,

[23] and the amount of assets that a subscriber has. These premiums total fifty-seven percent of health

[24] expenditures in Japan. The federal government contributes twenty-four percent of premiums, and

[25] local governments contribute seven percent. Additionally, medical insurance systems have been established for seamen, national public service employees, local public service employees, teachers and

[26] staff employees of private schools.

[27] In a recent article comparing various health-care systems, it was stated:

In Japan, about 80% of hospitals and 94% of private clinics are currently owned and operated privately, and very few public not-for-profit hospitals exist. Unlike the United States, where patients are often restricted in choice of health care provision, patients are able to choose their ambulatory care physicians. These physicians are then reimbursed based on a uniform fee-for-service schedule with hospital physicians receiving fixed

[28]
salaries.

B. Federal Longshoreman's Workers Compensation Model

The strict Federal Longshoreman's model, where a list of certified medical providers is guaranteed to the injured worker and treatment is provided immediately by a doctor of the worker's choice, [29] is far better than New Jersey's model. The Federal government protects our nation's dock and shipyard workers under this model, providing excellent healthcare under strict scrutiny by the federal government and immediate temporary payments.

Regarding final or permanent payments, the Federal Longshoreman's Act pays only for a limited list or schedule of specified injuries, [30] compared to the wide range of accidental and occupational pathologies covered under the near limitless New Jersey State Workers' Compensation scheme. [31] New Jersey State Law is superior in its breadth of coverage but illogical in the rationale used to set monetary awards. The Federal Longshoreman's Act, by contrast, provides a logical and sensible marker for compensating an injured worker: if the injury causes the worker to take a deduction in salary, the federal Act makes up the difference. This is an eminently more sensible approach compared to New Jersey's chart of disability payments, [32] where simple bronchitis may garner a \$2500 settlement with no connection to actual diminution of salary or work performance. To the sensible layman, New Jersey's system has no rhyme or reason.

C. The AFL-CIO Integrated Health Care, Single Payer System.

The single payer system proposed by the AFL-CIO is "would combine workers' compensation and major medical coverage into a single policy system. They suggest that a 25% savings will occur as transactional costs will decrease and that injured workers will have greater access to medical services without the dispute and delay imposed under the workers' compensation system." [33]



D. New York Model

New Jersey's working class would be greatly served by passage of pending legislation allowing a worker to choose a private doctor of the worker's choice. [34] In an explanatory note to the bill, the sponsor, Assemblyman Anthony Imperduto, commented that:

The bill would bring the provisions of New Jersey's workers' compensation law regarding who selects medical service *providers into compliance with the provisions of the laws of the majority of states*. Under current New Jersey law, an employee is required to visit the physician of his employer's choice, unless the employer refuses to provide treatment, in which case the employee may select the physician. *New Jersey is among the 17 states that currently have laws permitting the employer to select the attending physician in workers' compensation cases*. Of those state laws, four permit an employee to change physicians after a waiting period and five permit a State agency to change the selection. Of 32 states

68x

which permit the employee to choose the physician: three require the employee to select the physician from a list provided by a state agency; three require that the employee select a physician from a list provided by the employer; and the other 26 states, like this bill, give [35] a free choice of physicians to the employee.

The New York State Workers' Compensation Board provides for personal choice, as stated by the Board:

The injured or ill worker who is eligible for workers' compensation will receive necessary medical care directly related to the original injury or illness and the recovery from his/her disability. The worker is *free to choose any physician*, chiropractor, podiatrist, psychologist (upon referral from an authorized physician), outpatient clinic of a hospital or health maintenance organization authorized to give medical care by the Chairman of the Workers' Compensation Board.

Preferred Provider Organizations (PPO's) are allowed to provide workers' compensation coverage if they offer five providers in every medical specialty and three hospitals (exceptions granted by the Workers' Compensation Board). *If the injured worker is dissatisfied with his/her medical provider after initial treatment, he/she may select another authorized provider outside the PPO after 30 days of initial treatment.*

The cost of necessary medical services is paid by the employer or the employer's insurance carrier. The doctor may not collect a fee from the patient. When appropriate, claimants will be awarded reimbursement for automobile mileage to and from a health care provider's office.

If the injured worker's compensation claim is disputed by the employer or insurance carrier, the doctor may require the claimant to sign form A-9. This will guarantee that the worker will pay the medical bills if the Workers' Compensation Board disallows the claim

[36]

or the worker does not pursue it.

E. **Pennsylvania Model**

While the Pennsylvania system is generally viewed as stacked against the ordinary worker, it does have some redeeming elements that stand in stark contrast to the New Jersey Compensation rules. In New Jersey, medical care and temporary workers' compensation pay checks can be cut off unilaterally by the

[37]

insurance company with no warning and dubious rationale (i.e. cost savings). In Pennsylvania, the

[38]

insurance company must first file a motion to either terminate or reduce treatment or payments. The

[39]

onus is on the insured to prove to the court both a legal and a medical rationale for ending treatment, a much fairer and more ethical approach to the working man or woman, as compared to New Jersey's all powerful insurance agent, randomly stopping medical treatment in mid-course.

Under the current New Jersey system, I have had treatment cut off for workers as they were wheeled into surgery; I have had seizure medication cut off mid-treatment for a New Jersey petitioner; I deal weekly with insurance company independent examiners whose *raison d'être* is to countermand the treating surgeon's instructions and unilaterally cut off all medical treatment. I have seen physical therapy

69x

cancelled after major surgery, contrary to the surgeon's order, and the only recourse in New Jersey is a motion to restore benefits, which may take up to thirty-five days to be listed and up to four months to be tried. New Jersey is home to a backwards, failed system of workers' medical care, of undeniable cruelty to the ordinary worker.

The Pennsylvania rules only allow termination of treatment *after* three steps are taken. These are basic due process and procedural measures to protect the worker:

- (1) Exam;
- (2) Respondent motion to terminate or modify treatment or benefits; and
[40]
- (3) Court hearing.

An insurance company may attempt to stop an injured worker's compensation benefits. The first step in the process to terminate benefits is to send the worker to a physician to undergo an Independent Medical Exam (IME). If the physician determines that the worker can perform either the same "pre-injury" duties of his employment or modified duties, then the insurance company may file a *Petition to Terminate*,

[41]
Suspend or Modify Benefits. These petitions are described by the Pennsylvania Workers' Compensation Legal Center as follows:

☐ **Petition to Terminate Compensation Benefits:**

When an employer files a Petition to Terminate Compensation Benefits, the employer is asking the Bureau of Workers' Compensation to stop compensation payments for a particular reason. The reason may be stated in the petition. Many times, employers file this petition on the basis of a physician's affidavit that states the worker is no longer injured and can return to work. The injured worker has a right to defend the petition. If the worker does not attend a hearing, then payments may be stopped. If the worker

[42]
doesn't report back to work, the job could be lost.

☐ **Petition to Modify Compensation Benefits**

When an employer files a Petition to Modify Compensation Benefits, the employer is asking the Bureau of Workers' Compensation to reduce the amount of money an injured worker is receiving. The reason may be stated in the petition. The reason is usually because the company doctor concludes that the injury is not as disabling as it previously was, and has released the worker to a modified or light duty job. The employer has a modified job available for the worker; however, the worker is rejecting it because the requirements to perform the job exceed the physical restrictions placed on the worker by the physician. The worker has a right to defend the petition. If the

[43]
worker doesn't attend a hearing, then payments may be reduced.

☐ **Petition to Suspend Compensation Benefits**

When an employer files a Petition to Suspend Benefits, the employer is asking the Bureau of Workers' Compensation to suspend payments for a particular reason. The reason may be stated in the petition, and may include the injured worker's failure to comply with certain requirements of the Workers' Compensation Act. Usually, the employer has a different job available for the worker that the worker is rejecting even though it pays the same amount as the pre-injury job paid. The worker has the right to

70x

defend the petition. If the worker does not attend a hearing, then payments may be
[44]
suspended.

The determination of whether compensation benefits will continue is then made by a Workers'
[45]
Compensation Judge, who may need to hold three or four hearings before making this decision.

As a stopgap to bring a semblance of equity for New Jersey workers, the above Pennsylvania motion practice should be adopted to protect our workers from the ex parte cut-off of medical treatment experienced in the majority of New Jersey claims.

E. Gephardt Plan

The Gephardt plan is a system for universal health care. This plan "will not only ensure that all working families have access to quality health care, but will offer both business and state and local governments relief from health insurance costs while offering significant economic stimulus. The proposal will pump
[46]
more that \$280 billion into the economy over the first three years."

F. Terminator Model

Arnold Schwarzenegger, the new California Governor has suggested a radical fix to California's failed system. Schwarzenegger stated several key points, including:

- Working with the legislature to:
 - Implement guidelines that are objective and enforceable and create well-defined networks of providers.
 - Adopt the AMA guidelines for impairment ratings, thereby eliminating excessive payouts for permanent disabilities.
 - Adopt an Independent Medical Review process to reduce litigation and judicial involvement.
- Initiating a comprehensive review of the State Compensation Insurance Fund to determine its financial condition and taking action as necessary.
- Appointing a new team to the Division of Workers' Compensation and making
[47]
cost containment a primary objective.

Schwarzenegger's plan intended to fix the runaway worker's compensation system in California. In 1995, workers' compensation cost Californians \$9.5 billion; today, this cost has risen to an
[48]
estimated \$29 billion. Moreover, insurance premiums in some instances have increased 200 to 250 percent since 1999, and they are two to three times more expensive than the national
[49] [50]
average. The legislature's solution barely redresses this crisis.

The *Miami Herald* reported recently on key provisions of the proposed comprehensive health plan revision in California:

Disability Ratings - Would set up a three-tier system to rate the severity of workers'

permanent disabilities. Workers who couldn't return to work would be rated based on the nature of their injury, their age, occupation and their adaptability to perform a "given job." Under tier two, injured workers who returned to their jobs, refused to return to work or were fired for a non-injury reason would be rated based on the nature of the injury only. In tier three the worker's injury, age and occupation would be considered if the worker was offered a different job that was within reasonable commuting distance and paid at least 85 percent as much as the old position. Currently evaluators can use a number of factors,

including the injured workers' capacity to compete in an open job market.

Cure Or Relieve - Would define the requirement for workers' compensation to "cure or relieve" a job-related injury by requiring the worker to receive medical treatment that was, among other things, based on "high-grade, evidence-based" medical guidelines, was "clinically appropriate and effective" and "not more costly than alternative treatment likely to produce equivalent results." Supporters say the definitions will result in less litigation. Critics say the definitions could lead to "artificial restraints" and HMO-type cost restrictions on treatments for injured workers.

Physician Choice - Would allow an injured worker to pick his or her own physician for treatment only if the employer agreed. Supporters say the change would stop "doctor shopping" by workers' attorneys to get favorable disability ratings. Critics say the change would deny workers a basic right and result in bad medical treatment by a "company doctor."

Independent Medical Review - Would use outside physicians to settle workers' comp medical disputes. The physician-reviewer's decision would be binding. Supporters say the change would allow physicians, instead of state workers' compensation judges, to make medical decisions. Critics say it would allow a doctor who had only reviewed medical records to make a decision on "what treatment the worker is eligible for the rest of his or her life."

Apportionment - Would make it easier for an employer to prove a worker's previous injury or condition contributed to a new work-related injury, thus reducing the amount the employer must pay in worker' [sic] compensation benefits. Would allow an employee to

[51]

be rated no more than 100 percent disabled, despite a series of injuries.

New Jersey should also appoint a committee for comprehensive reform, but with a goal of making fair, cost effective, health care delivery as job one, possibly with a new type of effective independent medical review process, akin to the Canadian model of a medical decision board composed of medical doctors,

[52]

not lawyers or judges.

G. **OSHA Enforcement: Prevention and Safety – stepped up enforcement to ensure a safe work place.**

Enforcement of a safe work environment and safe work conditions could prevent innumerable injuries and disease, from brain encephalopathy to toxic paint exposure to cancer from asbestos exposures.

[53]

Massive pulmonary problems (26% of adult onset asthma is traceable to the workplace) and extensive chemical exposures and safety lapses lead to debilitating injuries and chronic disease. In the author's experience, the worker with a lifetime debilitating pulmonary condition usually receives a small award of money from the workers compensation court, if lucky (i.e., pulmonary Section twenty dismissal

[54]

with a small payment), while workers with no real objective problems clog the dockets with de minimus disability claims.

72x

Why not put the onus on prevention by requiring strict compliance with Federal Clean Air safety statutes [55]

and workplace exposure guidelines for toxic chemical exposures? While the government has set limits on individual toxic exposure to a myriad of chemical substances, no extensive research has been conducted for real world mixtures of toxic chemicals and their concomitant effects and toxicity to humans.

We should as a society protect the health of our workers by beefing up OSHA and PEOSH state and federal inspections, ensuring a safe working environment for all. The government must monitor all air quality, chemical exposure limits, and safe machinery.

Currently, only a few individuals in a limited number of OSHA offices serve to monitor all workplaces in [56]

New Jersey. Money and manpower for prevention would save twice the cost of payments made later for debilitating injuries and chronic occupational and pulmonary disease.

CONCLUSION

A national health care plan or enforced participatory scheme imposed from above may be the only hope for our states' and our nation's workers. Comprehensive and affordable health insurance and guaranteed temporary wage replacement are primary building blocks to future improvement in the life of our nation's thirty-five million working poor. We must change our workers' compensation health care delivery system and join the ranks of the modern industrial nations.

For thirty-five million Americans, America is not the richest nation on earth nor is it even in the top twenty. We must do more than ask why, we must analyze, organize and change the law. We must act! As a first step, we must replace the present New Jersey Workers' Compensation health care delivery system with the goal of making fair, cost effective, health care delivery as job one.

Until a comprehensive reform of New Jersey's Worker Compensation system is instituted, small steps, and limited reforms should be undertaken. The new democratic majority must pass legislation enabling the injured worker to choose a doctor of his or her own choice, a doctor the patient can have full confidence in, a doctor not beholden to the hidden agenda of an insurance company.

[1]

Jay H. Bernstein is certified by the Supreme Court of New Jersey as a Workers' Compensation Attorney, and has specialized in Emergency Motions for Medical and Temporary Benefits. Mr. Bernstein has served as a founding member of the New Jersey Bar Association Mass Disaster Relief Program and as a former clerk to the Minister of Justice in Israel, conducted comparative legal research contributing to the drafting and introduction of new legislation before the Law Committee of Parliament. Mr. Bernstein served as a legal intern in the U.S. Congress for Congressman Torricelli, participating in nationally televised House hearings on Dioxin exposure and environmental issues, and organized a Congressional Human Rights Campaign. Mr. Bernstein currently supervises the Workers' Compensation Department of ~~Spivack & Cannon, located in Iselin, NJ~~ Kirsch Gelband & Stone, in Newark NJ. (M)

73x

[2]

“30% of the U.S. working population earns under \$8.70 per hour (\$18,000 per year); the poverty level for a family of four. Three fourths of the working poor are white, high school educated, some college educated, and a good percentage are women with families to support. None have access to health coverage or even sick or personal days. They are doing jobs essential to our economy but stuck in their jobs with no upward mobility, no health insurance, yet the mainstream of society and white.” Beth Shulman and Annette Bernhardt, *Leonard Lopate Show* (Nat'l Public Radio broadcast, Sept. 22, 2003), available at <http://www.wnyc.org/shows/lopate/episodes/09222003>. Shulman is the author of *The Betrayal of Work: How Low-Wage Jobs Fail 35 Million Americans* (The New Press 2003); Bernhardt is the Director of the Brennan Center for Justice, NYU Law School.

[3]

See U.S. Dep't of Labor, Office of Workers' Compensation, DEATH ON THE JOB: THE TOLL OF NEGLECT (2001), available at <http://www.aflcio.org/yourjobeconomy/safety/wc/upload/comptable.pdf> (table covering all 50 states).

[4]

Id.

[5]

Id.

[6]

Id.

[7]

See A424, 211th Leg. (N.J. 2004), at http://www.njleg.state.nj.us/2004Bills/A0500/424_I1.pdg. The statement included in Bill A424, by Assemblyman Anthony Impreveduto, primary sponsor, compares New Jersey to other states:

Under current New Jersey law, an employee is required to visit the physician of his employer's choice, unless the employer refuses to provide treatment, in which case the employee may select the physician. *New Jersey is among the 17 states that currently have laws permitting the employer to select the attending physician in workers' compensation cases. Of those state laws, four permit an employee to change physicians after a waiting period and five permit a State agency to change the selection.* Of 32 states which permit the employee to choose the physician: three require the employee to select the physician from a list provided by a state agency; three require that the employee select a physician from a list provided by the employer; and the other 26 states, like this bill, give a free choice of physicians to the employee.

Id. (emphasis added). Of the seventeen states that have laws permitting the employer to select a doctor, nine place limitations on this choice, thereby leaving eight states that deprive the worker of any choice of doctor.

[8]

Sahar Dar, *Universal Access to Health Care: An Intentional Comparison*, THE NATION'S HEALTH, May 2002, available at <http://www.apha.org/journal/nation/accesstocareexclus502.htm>.

74x

[9] Thomas Dennison, *Haphazard Health Care*, SYRACUSE UNIV. MAG., Fall 2003, at 24.

[10] See Jon L. Gelman, *Integrated Health Care Proposed*, 1 WORKERS' COMPENSATION NEWS, Aug. 7, 2003, at <http://www.gelmans.com/FrontEnd/ReadingRoom/vwArticle.asp?ArticleId=339&PracticeAreaId=-1>.

[11] *Id.*

[12] As a matter of course, insurance companies conduct a "CIB" (Central Index Bureau), a search of the claims history of a plaintiff who has brought a lawsuit against its insured. This can lead to some very damaging information.

[13] ATLA Convention Seminar, Atlantic City, April 2001, Workers' Compensation Seminar. The Honorable Judge Bolstein is a former respondent insurance company attorney.

[14] Information from testimony taken by the author before the Honorable Judge Apy, JWC, Toms River, New Jersey, on motion to enforce an order for medical and temporary benefits, and the first motion for "fraud" alleged *against* an insurance company in the New Jersey Workers' Compensation Court. Testimony of Insurance Company Adjuster and Supervisor, case name redacted to protect petitioner, Spevack & Cannan Law Office.

[15] Deposition of Dr. Patel, past Newark Police Department authorized treating doctor, wherein Dr. Patel admitted to twelve failed attempts at passing board certification test. Case Name Redacted to protect petitioners' privacy. Deposition on file with Law Office of Spevack & Cannan.

[16] Critical assessment of author, after twelve years of motion practice in most venues of the New Jersey Workers' Compensation Court system.

[17] Author's experience as employee of Freeman & Bass, Newark, New Jersey from 1991 to 1994, and Horowitz & Horowitz, Perth Amboy, New Jersey from 1994 to 1996.

[18] Author's experience dealing with majority of Respondent's Bar in the New Jersey Workers' Compensation Court, 1991 to 2004.

[19] Dar, *supra* note 8.

[20] *Id.*

75x

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] Ministry of Health, Labour and Welfare, *Providing Health Care for All People Without Worries*, at <http://www.mhlw.go.jp/english/org/policy/p34-35.html>.

[28] Dar, *supra* note 8.

[29] Longshore and Harbor Workers' Comp. Act, 33 U.S.C. § 907 (1984), *available at* <http://www.oalj.dol.gov/public/lgshore/refract/lhwca.htm#907>. The statute states in relevant part:

(a) General requirement. The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require.

(b) Physician selection; administrative supervision; change of physicians and hospitals. *The employee shall have the right to choose an attending physician authorized by the Secretary to provide medical care under this Act as hereinafter provided.* If, due to the nature of the injury, the employee is unable to select his physician and the nature of the injury requires immediate medical treatment and care, the employer shall select a physician for him. *The Secretary shall actively supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered to injured employees, shall have authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and may, on his own initiative or at the request of the employer, order a change of physicians or hospitals when in his judgment such change is desirable or necessary in the interest of the employee or where the charges exceed those prevailing within the community for the same or similar services or exceed the provider's customary charges. Change of physicians at the request of employees shall be permitted in accordance with regulations of the Secretary.*

(e) Physical examination; medical questions; report of physical impairment; review or reexamination; costs. *In the event that medical questions are raised in any case, the Secretary shall have the power to cause the employee to be examined by a physician employed or selected by the Secretary and to obtain from such physician a report*

76x

*containing his estimate of the employee's physical impairment and such other information as may be appropriate. Any party who is dissatisfied with such report may request a review or reexamination of the employee by one or more different physicians employed or selected by the Secretary. The Secretary shall order such review or reexamination unless he finds that it is clearly unwarranted. Such review or reexamination shall be completed within **two weeks** from the date ordered unless the Secretary finds that because of extraordinary circumstances a longer period is required. The Secretary shall have the power in his discretion to charge the cost of examination or review under this subsection to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk, in appropriate cases, or to the special fund in section 44 [33 U.S.C. § 944].*

33 U.S.C. § 907 (emphasis added).

[30]

33 U.S.C. § 908(c), available at <http://www.oalj.dol.gov/public/lgshore/refract/lhwca.htm#908>.

[31]

See generally N.J. Workers' Comp. Law, N.J. STAT. ANN. § 34:15-12 (West 2000). Subsection (c) lists various injuries and the number of weeks' compensation for those disabilities. Paragraph (22) then provides a catchall for any injuries not specifically listed in the statute:

In all lesser or other cases involving permanent loss, or where the usefulness of a member of any physical function is permanently impaired, the duration of compensation shall bear such relation to the specific periods of time stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule. In cases in which the disability is determined as a percentage of total and permanent disability, the duration of the compensation shall be a corresponding portion of 600 weeks.

[32]

See N.J. Mar. 1, 2004, *Schedule of Disabilities and Maximum Benefits*, at <http://www.nj.gov/officeofthecomptroller/2004/BenefitsSchedule.pdf>.

[33]

See Gelman, *supra* note 10.

[34]

See A424, 211th Leg. (N.J. 2004), available at http://www.njleg.state.nj.us/2004/Bills/A0500/424_I1.pdf (allowing employee selection of physician and medical services under workers' compensation).

[35]

See A554, 210th Leg. (N.J. 2002), at http://www.njleg.state.nj.us/2002/Bills/A1000/554_I1.HTM (emphasis added).

[36]

See N.Y. State Workers' Comp. Bd., *Medical Benefits (WC)*, at <http://www.wcb.state.ny.us/content/main/onthejob/wc03006.htm> (emphasis added).

[37]

Based on author's twelve years of experience in the New Jersey Workers' Compensation System. No provision exists to protect workers from arbitrary unilateral cut off of benefits. Title 34, chapter 15, article 28.1 imposes a twenty-five percent penalty for negligent delay of thirty days in payment of

77x

temporary workers' compensation benefits, but this provision is rarely enforced by the Court.

[38] See Pa. Workers' Comp. Legal Ctr., *Petitions to Terminate, Modify, or Suspend Workers' Compensation Benefits*, at <http://www.workcomplegalcenter.com/types/petitions.html>.

[39] See *id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] Gelman, *supra* note 10.

[47] Associated Press, *Schwarzenegger's Workers' Compensation Plan*, MIAMI HERALD, December 28, 2003, available at <http://www.miami.com/mld/miamiherald/business/758/6776.htm?template=contentModules/printstory.jsp>. The reforms in California passed the legislature on April 16, 2004, thus limiting the choice of medical care to a pool of pre-approved doctors. "The reform package. . . makes workers accustomed to picking their own doctors choose instead from physicians authorized by employers and insurance companies". Jim Wasserman, *Legislature Overhauls Workers' Comp; Governor to Sign Bill Monday*, MIAMI HERALD, Apr. 15, 2004. The draconian California reforms still are more enlightened than the New Jersey system. In New Jersey, the worker does not even have the benefit of choice of a pool of doctors, but must accept the doctor assigned by the insurance carrier. See also, Jim Wasserman, *Governor, Democrats Set on Revising Workers' Comp Plan*, MIAMI HERALD, Apr. 15, 2004, at 8A.

[48] Wasserman, *Legislature Overhauls Workers' Comp; Governor to Sign Bill Monday*, *supra* note 47. It is notable that a national program sponsored by the Robert Wood Johnson Foundation was enacted in October of 1995 to encourage innovation in the "delivery and financing of the medical care portion of workers' compensation". Univ. of Mass. Med. Sch., *Workers' Compensation Health Initiative*, at <http://www.umassmed.edu/workerscomp>. Six million dollars was made available through this program "to support demonstration and evaluation projects testing innovations in the delivery and financing of the medical care portion of workers' compensation." *Id.*

78x

[49] Wasserman, *Legislature Overhauls Workers' Comp; Governor to Sign Bill Monday*, *supra* note 47.

[50] *Id.*

[51] *Id.*

[52] *See* Dar, *supra* note 8.

[53] Jon L. Gelman, *Occupational Asthma*, 1 WORKERS' COMPENSATION NEWS, Oct. 30, 2003, at <http://www.gelmans.com/FrontEnd/ReadingRoom/vwArticle.asp?ArticleId=397&PracticeAreaId=2> (citing study in Ahmed A. Arif et al., *Occupational Exposures Associated with Work-Related Asthma and Work-Related Wheezing among US Workers*, 44 AM. J. INDUS. MED. 368 (2003)).

[54] N.J. STAT. ANN. § 24:15-20 states that "[a]fter a petition for compensation or dependency claims has been filed, and the petitioner and the respondent are a group of entering into a lump-sum settlement of the controversy, a judge of compensation may . . . enter 'an order approving settlement.'"

[55] Occupational Safety and Health Standards, 29 C.F.R. § 1910.19 (1997) (regarding regulation of Asbestos, Vinyl Chloride, and other air contaminants).

[56] OSHA maintains only four offices in New Jersey: Avenel, Hasbrouck Heights, Marlton, and Parsippany. OSHA Offices, State of New Jersey, at <http://www.osha.gov/oshdir/nj.html>. With limited staff and budget, OSHA does not effectively monitor New Jersey businesses for compliance with Health and Safety standards.

79x

HOME OUR FIRM PRACTICE AREAS PERSONAL INJURY VERDICTS & SETTLEMENTS LEGAL DEFENSE WEB RESOURCES CONTACT U

PROFILE OF: Jay Bernstein



JAY H. BERNSTEIN
Attorney at Law

Certified by the Supreme Court
of New Jersey as a Workers'
Compensation Law Attorney

KIRSCH, GELBAND & STONE
Attorneys at Law

973-623-0100

17 Academy Street, Suite 707
Newark, New Jersey 07102

Biography: Specializes in workers' compensation law, and has won more than three hundred court orders for emergency surgery and medical treatment. He began his legal career as a legal clerk with the Ministry of Justice, in Jerusalem Israel. Returning to America, he served as a Federal Legal Aid Attorney, successfully fighting for housing and shelter for homeless children in New Jersey. Jay received a commendation for excellence from the US Army, Judge Advocate General's Corps, Fort Knox, Kentucky, and interned with the United States House of Representatives, Foreign Affairs Committee. There he conducted a human rights campaign to aid victims of Soviet repression. Jay journeyed to Moscow, Kiev, Leningrad and Tashkent to report on human rights violations, with reports disseminated world wide, in the New York Times and Jerusalem Post. After completing basic training, Jay served as a volunteer in the Israeli Defense Forces, aiding the US and Israeli efforts during the Scud missile attacks of 1991, and received a commendation from the Minister of Defense. Currently his career is devoted to protecting injured Workers. Having built a solid reputation, with over 17 years experience in the Workers' Compensation Court, he has been Certified by the Supreme Court of New Jersey as a Workers' Compensation Law Attorney. Jay has successfully won more than 300 Court Orders for Emergency medical care and surgery, and is devoted to securing basic rights for all workers and employees. His high regard in the field is evidenced by his appointment to the New Jersey Bar Association "Mass Disaster Legal Response Program", where Jay has worked with FEMA and the RED CROSS to aid hurricane victims, flood victims, and victims of the Sept. 11th Terror Attacks.

OUR FIRM | PRACTICE AREAS | PERSONAL INJURY | VERDICTS & SETTLEMENTS | WEB RESOURCES | CONTACT US |

80x

RUTGERS LAW RECORD



INNOVATIVE ARTICLES

GROUNDBREAKING LEGAL ISSUES

CUTTING EDGE VIEW POINTS

INTERNATIONAL PERSPECTIVE

ENTER SITE >

JON L. GELMAN
LICENSED IN NJ, NY, DC, NE & OH

OF COUNSEL
MICHAEL P. BURAKOFF
LICENSED IN NJ
ROBERT E. TAREN
LICENSED IN CA ONLY
SAMUEL A. ROTHFELD
LICENSED IN NJ

JON L. GELMAN
ATTORNEY AT LAW
1450 VALLEY ROAD
PO BOX 934
WAYNE, NEW JERSEY 07474-0934
(973) 696-7900

FAX# (973) 696-7988
INTERNET: WWW.GELMANS.COM
E-MAIL: jon@gelmans.com

OTHER OFFICES
MORRISTOWN, NEW JERSEY
EAST ORANGE, NEW JERSEY

May 4, 2008

Gregory L. Williams, Committee Aide
New Jersey Senate Labor Committee
Office of Legislative Services
Office of Public Information
State House Annex Room 50
P.O. Box 068
Trenton, NJ 08625-0068

Phone: (609) 292-4840

RE: Committee Meeting – May 5, 2008
NJ Workers' Compensation

Dear Mr. Williams:

The following comments are submitted for consideration by the New Jersey Senate Labor Committee. I have practiced in the field of NJ Workers' Compensation for over 37 year and am the author of *NJ Workers' Compensation Law* published by Thomson-West. I write, lecture and comment on the subject of workers' compensation law frequently in New Jersey as well as nationally.¹

On the eve the NJ Senate's investigation into New Jersey's workers' compensation system, the question lingers on how to evaluate its health. New Jersey has always had a very large and very dedicated workforce. A recent newspaper series by Star-Ledger reporters Dunstan McNichol and John P. Martin revealed that the system is seriously flawed and that it is in need of a "complete overhaul."²

The State has a history of being a heavily industrialized state with a huge legacy of pollution from asbestos³ to petrochemical. Dr. Irving J. Selikoff⁴, of Paterson,

¹ For complete curriculum vitae see: <http://gelmans.com/FrontEnd/Company/company.asp?show=bios>

² http://blog.nj.com/ledgerarchives/2008/04/ersev_must_do_better_by_injur.html

³ <http://www.gelmans.com/FrontEnd/ReadingRoom/vwArticle.asp?ArticleId=32&PracticeAreaId=-1>

⁴ <http://www.youtube.com/watch?v=cC04tY5OX74>

JON L. GELMAN

ATTORNEY AT LAW

May 4, 2008

Page 2

NJ, began his landmark studies on asbestos workers in New Jersey. In 1911, almost a century ago, NJ adopted an administrative system known as workers' compensation and it was the intent of the Legislature to provide a speedy and cost effective system of delivering statutorily defined benefits to injured workers while passing the costs onto the consumers of products and services.

This will be the first major evaluation of the workers' compensation system in 30 years. The last one resulted in a fraud report from the NJ State Commission of Investigation⁵ and subsequent statutory change.

Much has changed from the past. In 1911 modern medicine was unknown and so were the diseases that it now treats. The program's benefits were meager and the conditions eligible for compensation were few and far between. More Americans have died from occupational disease in the United States of America in the past 40 years than in all wars dating back to 1776. Hearings on S.79 before the Subcomm. of Labor and Human Resources of the Senate Comm. on Labor and Human Resources, 100th Cong. 1st Session, S.Hrg. 100-56, pt. 1, at page 1 (1987). Collateral benefit programs did not exist: major medical insurance, long term disability, social security and pension programs.

We are experiencing a struggling economy today. Former Labor Secretary Robert Reich stated⁶, "Fifty years ago, when over a third of the American workforce was unionized and most big industries were oligopolies, it was fairly easy for unionized workers to get higher wages and benefits without putting any individual company at a competitive disadvantage. The higher wages and benefits were merely passed on to consumers in the form of higher prices or came out of profits that would otherwise go to investors. Today, though, most companies are in fierce competition because new technologies combined with globalization have destroyed the old oligopolies and allowed many new entrants."

Today the workers' compensation process is confronted with the complexity of the causal relationship of new diseases to synergistic occupational exposures to complex substances as well as traumatic events. Multiple bureaucratic benefits programs that are not formally connected burden the system with claims and

⁵ <http://www.state.nj.us/sci/workcomp.shtml>

⁶ <http://freakonomics.blogs.nytimes.com/2008/05/01/robert-reich-answers-your-labor-questions/?th&emc=th>

JON L. GELMAN

ATTORNEY AT LAW

May 4, 2008

Page 3

liens. Revenue is limited by fewer manufacturing facilities and it is more costly to provide medical treatment and pharmaceutical protocols that result in miraculous recoveries as well as serious and fatal unfortunate results. Benefits must be paid out longer since the average person has a greater life expectancy, ie 1911 – 50 yrs of age and 2007 – 78 years of age.

As in medicine, one must look at both subjective complaints and objective findings to guide its evaluation of the workers' compensation system. One can hear the cry's of injured workers⁷ "Waiting in Pain⁸," and of the injured workers and the families of those who did not survive the compensation system. Stories of frustration and outrage are reported in the press. Testimony to the NJ Senate will come from the stakeholders who have economic interests in the system and those who are organized representatives of those who are unable to speak any longer. Those voices must be heard and evaluated. It is important to heed to words and wisdom of all and evaluate them in the context of self-motivation.

The compensation system has been portrayed as, "a dead elephant in the room⁹," and one that fails to carry out the legislative intent of 1911. Professor Emeritus, John F. Burton, Jr.¹⁰, of Rutgers University of the School of Management and Labor Relations, describes the NJ system as, "It's kind of a sleepy system..." that is "...not particularly worker-friendly¹¹."

Unlike The Constitution¹², the workers' compensation act¹³ deals not in the theoretical and vague general concepts of Democracy. The compensation act is a document, which within its four comers, speaks with certainty, specifics and details.

⁷ <http://adao.corefusion.net/>

⁸ http://blog.nj.com/ledgerarchives/2008/04/workers_compensation.html

⁹ <http://www.riskandinsurance.com/story.jsp?storyId=31723035>

¹⁰ <http://www.disabilityresearch.rutgers.edu/staff.htm>

¹¹ <http://www.disabilityresearch.rutgers.edu/staff.htm>

¹² <http://www.law.cornell.edu/constitution/constitution.overview.html>

¹³ http://lwd.dol.state.nj.us/labor/forms_pdfs/wc/pdf/wc_law.pdf

JON L. GELMAN

ATTORNEY AT LAW

May 4, 2008

Page 4

The program has failed because under the present system the Legislative intent cannot be carried out. One cannot drive a 1911 model car on the NJ Turnpike today. Workers' Compensation should be viewed in that context, and not as a cash cow for any interest parties.

The Act can no longer provide medical treatment in an efficient and effective manner consistent with the legislative intent to provide social remedial benefits through a liberal and summary social insurance program. Medical coverage has become acute in NJ and in other jurisdictions. Almost a majority of workers will soon be uninsured¹⁴ for major medical coverage. NJ should take the initiative, as other states have, to provide for universal health care. NJ should combine workers' compensation medical coverage with a universal employer based medical care program and have a single payer system. A single payer system¹⁵ will be cost effective, efficient and provide more appropriate delivery of medical care.

The workers' compensation system began in 1911 with the noble mission as a social remedial system providing an efficient and certain system of benefits to injured workers. Today, the system struggles to protect employees as the rapidly evolving landscape is demanding increased attention to reconsideration of an IHC system in light of the consequences of the program's costs and the consequences of being uninsured for healthcare benefits. The participants in the current program, including employees and employers, will require a more balanced and certain medical delivery system. The lack of healthcare coverage takes an enormous toll on the uninsured, which results in avoidable deaths each year, poorly managed chronic conditions, undetected or under treated cancer and untried life-saving medical procedures. An Integrated Health Care plan is a potential national shift to reduce costs so that a healthcare safety net can be maintained for workers and their families.

"Full-time healthcare would save money. Instead of paying for two insurance plans – one to cover healthcare for injuries and illnesses on the job and another for injuries and illness off the job – businesses would buy one plan. As Roger Thompson, former director of Travelers Insurance Workers' Compensation Strategic Business Unit put it, the present system is 'like having two trains going

¹⁴ http://www.kaiseredu.org/topics_reflib.asp?id=142&parentid=71&rlD=1

¹⁵ <http://www.gelmans.com/FrontEnd/ReadingRoom/vwArticle.asp?ArticleId=274&PracticeAreaId=-1>

JON L. GELMAN

ATTORNEY AT LAW

May 4, 2008

Page 5

down separate tracks and it doesn't make a lot of sense to have all the administrative costs to maintain these separate systems." R. McGarrah, "Full-time Healthcare for America's Working Families [Draft]," AFL-CIO (August 22, 2003).

In the short run, adopting such concepts, proposed by Senator Stephen M. Sweeney¹⁶ and Assemblyman Neil M. Cohen¹⁷, would be fine initial steps:

- prohibiting the future raiding of revenue on designated workers' compensation funds (CSR-60) should be enacted¹⁸;
- swifter scheduling and use of continuous trials;
- greater permanent, temporary rate and dependency [A-2499]¹⁹, benefits;
- rate increases [A-2498]²⁰ should be enacted;
- a review of judicial appointments as recommenced in the 1974 by the State Commission of Investigation report²¹;
- an enhanced in-service judicial training curriculum;
- exclusive jurisdiction of the Division of Workers compensation over medical fee disputes²² [A-2501]²³;

¹⁶ <http://www.njleg.state.nj.us/members/BIO.asp?Leg=216>

¹⁷ <http://www.njleg.state.nj.us/members/BIO.asp?Leg=62>

¹⁸ <http://workers-compensation.blogspot.com/2008/04/constitutional-amendment-to-stop-rating.html>

¹⁹ http://www.njleg.state.nj.us/2008/Bills/A2500/2499_I1.PDF

²⁰ http://www.njleg.state.nj.us/2006/Bills/A5000/4655_I1.PDF

²¹ <http://www.state.nj.us/sci/workcomp.shtm>

²² Geaney, J. & Gelman, J., "Clearing the Workers' Compensation Benefit Highway of Medical Expense Land Mines," *NJ Lawyer*, April 16, 2007, <http://www.gelmans.com/FrontEnd/ReadingRoom/vwFile.asp?FileId=268>

²³ http://www.njleg.state.nj.us/2008/Bills/A3000/2501_I1.PDF

JON L. GELMAN

ATTORNEY AT LAW

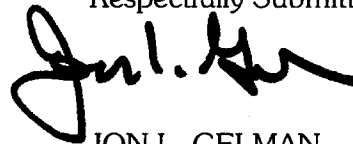
May 4, 2008

Page 6

- a less burdensome Uninsured Employer Fund²⁴ system to shift the responsibility to the State to locate and serve responsible parties and in the alternative to carryout the mandate of the Legislature to make payment to uninsured workers and asbestos victims expeditiously and even more swiftly in exigent cases;
- an independent oversight commission [A-2503]²⁵ should continuously evaluate the status and progress of this system that handles trust funds and benefits valued at over \$1.8 Billion dollars per year; and
- Data Match with the Centers for Medicare and Medicaid Services²⁶ to comply quickly with the Medicare Secondary Payer Act which was enacted decades ago.

By evaluating the health of the compensation system thorough an intensive analysis of both the objective findings and subjective complaints, the NJ Senate will have the opportunity to enact modern, creative and innovative solutions that will be able meet the present needs of the workers, the employers and taxpayers of State. The NJ Legislature has the opportunity to craft an up-to-date system that will cure the ailing and antiquated workers' compensation system and embrace today's needs and tomorrow's future and bring the State into a new century.

Respectfully Submitted,



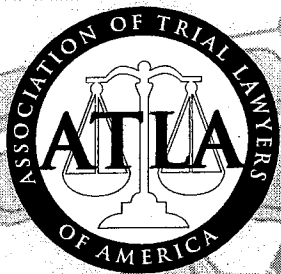
JON L. GELMAN

Enclosures

²⁴ <http://www.gelmans.com/FrontEnd/ReadingRoom/vwArticle.asp?ArticleId=337&PracticeAreaId=-1>

²⁵ http://www.nileg.state.nj.us/2008/Bills/A3000/2503_I1.PDF

²⁶ http://www.cms.hhs.gov/WorkersCompAgencyServices/10_wcdatamatch.asp#TopOfPage



Workers' Compensation & Workplace Injury Section

A Publication of the Association of Trial Lawyers of America

Vol. 8, No. 2, Spring 2004

Does the Workers' Compensation System Need a Prescription Change?

By: Jon L. Gelman, Wayne, NJ

The delivery of medical benefits to injured workers is becoming more costly and difficult to administer. The medical care costs in workers' compensation claims are now increasing at double-digit rates.¹ Overall, in excess of one-quarter of all dollars that Americans spend go to medical care.² Emerging factors that were not existent in 1911 now influence the workers' compensation program: an aging national population; a shifting workforce; the increased use of prescription drugs; lack of affordable group health insurance and unreliable economic investments due to a politically unstable world; deregulation of insurance carriers; the decline of a manufacturing base; and an increased Federal effort to recoup benefits³. The manner and method of the diagnosis, treatment and cure of diseases have changed dramatically. Recent research indicates that many medical conditions do not result from a single contributing cause, but as a consequence of a multitude of risk factors, making it difficult to focus liability on a specific event or exposure. This has caused an increase in disputed claims and scientific evidence challenges.⁴ The purpose of this article is to report developing trends in the United States in the delivery of medical benefits for injured workers.

Overall, in excess of one-quarter of all dollars that Americans spend go to medical care

Workers' Compensation Medical Trends

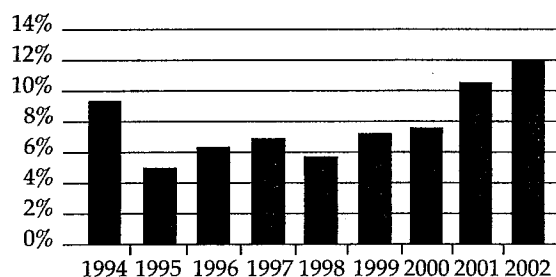


Figure 1 - Spiraling Medical Costs - Source: NCCI

The workers' compensation system was conceived as an administrative process to provide benefits, in a summary fashion regardless of fault, to injured workers who suffer work related diseases and conditions as a result of employment.⁵ The program was implemented by individual States and included the provision of adequate medical care to the injured worker as soon as possible following the accident or manifestation of the illness.⁶ Coexistent with the right of medical care is the requirement for the payment for medications. The employer is required to furnish to the employee reimbursement for all medication that is necessary for the employee's medical care and that is ordered by the authorized treating physician. Medical monitoring, on occasion, may be ordered for latent medical conditions.⁷

continued on Page 3

INSIDE THIS ISSUE . . .

- Cover Does the Worker's Compensation System Need a Prescription Change?
- Page 2 Contacting ATLA
- Page 6 CLE Program Schedule

continued from Page 1

Medical costs are spiraling.⁸ The National Council on Compensation (NCCI) reports that workers' compensation medical costs throughout the nation are rising at a rapid pace.⁹ The total costs for workers' compensation are now apportioned almost equally between medical and indemnity. However, the trend is toward the payment of rising medical costs at a pace that will represent a majority of the workers' compensation allocation.

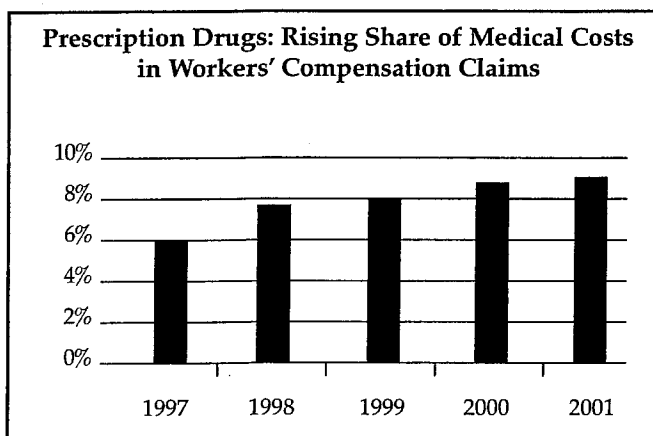


Figure 2-Increases in Prescription Drug Component - Source: NCCI

The individual States are struggling to make an antiquated workers' compensation system function properly. New Jersey has reported that the workers' compensation medical delivery system has created "... a real emergency." The New Jersey Task Force on Medical and Temporary Disability Benefits its final report of December 10, 2002, reported:

"A worker unable to work because of injury often has no income, without medical treatment, no prospect of going back to work. No situation affects a petitioner and petitioner's family more dramatically. This is a real emergency. The most persistent complaint about the current system is its sluggishness in responding to these emergent situations. This is the chief weakness and the chief source of dissatisfaction among injured workers.'" [Emphasis added]¹⁰

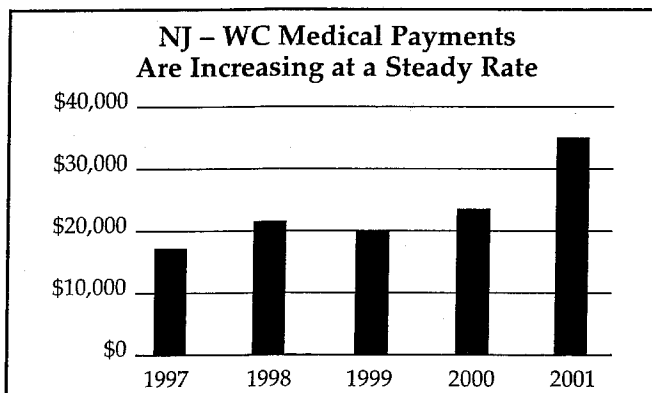


Figure 3- NJ Medical Payments Increase - Source: NJ CRIB

The issues in New Jersey have been mirrored throughout the country. In Florida, Governor Jeb Bush proposed and the Legislature enacted a workers' compensation plan that reduced benefits by controlling claims and medical expenses.¹¹ In West Virginia, Governor Bob Weiss reported that the State faced a near-bankrupt workers' compensation system that was costing taxpayers millions of dollars a day and the viability of the system remains in economic jeopardy.¹² Subsequently, the West Virginia legislature enacted major reforms to the workers' compensation system. In Missouri, Governor Bob Holden was facing a loss of manufacturing-based industries that resulted in 40% of their jobs being lost between 2001 and 2002. He fought valiantly against legislative proposals to put fault back into the workers' compensation system.¹³ In California, workers' compensation presented as a major issue that resulted in a gubernatorial recall.¹⁴ The proposed California reform measures are based upon workers' compensation payments and issues representing medical treatment.¹⁵

Several major options are under consideration throughout the country to reduce medical costs. Some critics have proposed a national workers' compensation system would limit transactional costs, establish a uniform State benefit program and contain medical costs by establishing one tier pricing.

The Federal government is not unfamiliar with the administration and distribution of benefits. Since 1882 the federal government has been providing benefits to injured workers and their widows: in 1900 the postal workers compensation system was established; in 1908 the Federal government established a program for those who work in hazardous environments; and, in 1932 the Social Security Administration was established. However, the Social Security Act did not embrace workers' compensation in 1932 since the primary goal of the law was to reduce unemployment.¹⁶

The federal programs have produced a dismal result over the last few years. The Federal Victims Compensation Fund, enacted following the horrific tragedy of September 11th, 2001, has a very strict eligibility criteria and a limited recovery scheme.¹⁷

The Smallpox Emergency Personnel Protection Act of 2003 (SEPPA) was enacted following an aborted vaccination program after the government reluctantly disclosed available medical research concerning potential fatal cardiovascular reactions. A risk analysis demonstrated that this program may not have been needed at all but was merely implemented to sway public opinion. Ultimately, the federal government halted the Smallpox Vaccination Program and funded \$100 million for the purpose of

continued on Page 4

continued from Page 3

cleaning up the legacy of adverse medical reactions and to ease the burden placed upon the victims and their estates that were struggling to obtain benefits under State compensation programs.¹⁸

The Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) (P.L.106-398) was enacted into law in October, 2000 with strong bipartisan support. EEOICPA established a program to provide compensation to employers of the Department of Energy (DOE), its contractors and subcontractors, companies that provided beryllium to DOE, and atomic weapons employers.

The proposed Federal Compensation Fund for asbestos claimants has been bottlenecked by bureaucratic regulations.¹⁹ After years of on going litigation and approximately 60 major asbestos company bankruptcies, the Republican administration has introduced the Fairness in Asbestos Injury Resolution Act of 2003. Organized Labor and asbestos victims have opposed the bill.²⁰ Despite the sponsors desire to craft a bill acceptable to all parties,²¹ the legislation is a restrictive measure that fails to provide fair, timely and certain compensation to victims of asbestos-related disease, while relieving manufacturers, employers and insurers of all liability. The proposed Federal law unfairly shifts the burden and risk of paying for asbestos related disease to victims and their families.²²

While federalization may not be the panacea, the target remains to limit the cost of medical expenses.²³ The costs of maintaining duplicate medical delivery systems for workers, major medical and workers' compensation, continues to represent an unnecessary and costly duplicate expenditures in administration and management.

It has been suggested that the mandatory workers' compensation plan and an optimal major medical healthcare system be combined into an Integrated Health Care (IHC) plan. Presently, the administration of two separate insurance programs appears to represent a mere duplication of costs. In 1999 healthcare administration costs totaled at least \$294.3 billion in the United States or \$1,059 per capita. The New England Journal of Medicine reports that United States employers spent \$12.2 billion dollars on internal administrative costs related to healthcare benefits and \$3.7 billion in healthcare consultants for a total of \$15.9 billion or \$57 per capita. It is reported that a single payer system operated such as Canada, resulted in employers spending \$3.6 billion for private insurance and \$252 million to manage the healthcare benefits or \$8 per capita.²⁴ A system with multiple insurers is also allegedly costlier than a single-payer system.

In 1993 the Oregon Legislature enacted the "Combined Healthcare Coverage Pilot Program".²⁵ This consisted of a 5 year test under which healthcare insurance and workers' compensation providers created single plans that combined standard healthcare coverage with the major portion of the mandatory workers' compensation coverage. While the initial response to the program by insurers and employers was very positive and 7 pilot plans were approved in 1994, they ultimately were withdrawn by their sponsors. Initially, there was a \$336,000 grant in 1993 from the Robert Wood Johnson Foundation to provide funding for this pilot program. The goal of the program was to facilitate easier, more efficient access for injured workers to obtain medical care. Another obvious reason for the system was an attempt to reduce adversarial tension between an injured worker and their employer and ideally reduce litigation. The program did not take hold because of political and legal considerations including a proposed national Clinton Healthcare Reform System. California²⁶ and Oregon²⁷ proposed universal health insurance. Legislation in the State of Oregon allowed insurance companies other options to offer partially integrated group healthcare coverage in workers' compensation insurance outside of the pilot program.

Global and national factors have now caused increased attention to establishing a full time healthcare plan for America's working families.²⁸ The safety net of a healthcare insurance program is now failing.²⁹ Only two-thirds of the 41 million Americans now employed have health insurance.³⁰ While those who do not have health insurance are covered by workers' compensation insurance if they are injured as a consequence of the employment, they lack benefits if the claim occurs outside of employment.³¹ The increase in the transactional costs for maintaining the delivery of what appears to be duplicate medical benefit systems is a major component of the cost of their operation. The consequence of contested medical claims reduces the ability to provide an efficient and effective delivery system without delay.³² Immediate access of an injured worker to a medical system may be necessary to provide curative treatment within the window of medical opportunity for an effective cure. Furthermore, savings from instituting a single-payer system could be invested in increased research and development of medical treatments and cures for major diseases resulting from occupational illnesses and injuries.

The workers' compensation system was enacted in 1911 with the noble mission as a social remedial system providing an efficient and certain system of benefits to injured workers. While the system struggles to continue to work for employees, the rapidly evolving landscape is demanding increased attention to reconsideration of an IHC system in light of the consequences of the program's costs and the consequences of being uninsured for healthcare benefits. The participants in the current program,

including not only the employees, but the employers who bear workers' compensation costs and the purchasers of products or services to which it is passed on, will be require a more balanced and certain medical delivery system.³³ The lack of healthcare coverage takes an enormous toll on the uninsured, which results in avoidable deaths each year, poorly managed chronic conditions, undetected or under treated cancer and untried life-saving medical procedures.³⁴ An Integrated Health Care plan must be reconsidered and reevaluated to reduce costs so that a healthcare safety net can be maintained for workers and their families.

Jon L. Gelman, who practices in Wayne, NJ, wrote Workers' Compensation Law 3rd Ed. (West-Thompson 2004), is co-contributing author of Modern Workers Compensation-National Treatise (West-Thompson 2001) & is past Vice-President of the national Workplace Injury Litigation Group - Association of Trial Lawyers of America. Jon L. Gelman, 1450 Valley Road, P.O. Box 934, Wayne, NJ 07474-0934, Voice: 973.696.7900, Fax: 973.696.7988, e-mail: mailto:jon@gelmans.com, Internet: www.gelmans.com.

1. Klingel, S.J., "Critical Issues Facing Workers Compensation," NCCI Holdings, Inc., (2003); Workers' Compensation plans are based on date of accident loss and have a "tail of benefits" that may exist for an individual's lifetime. Major medical plans have exposures for only the policy year. Workers' compensation plans pay 125% of the AWP (Average Wholesale Price) for pharmaceuticals while Group Health plans pay only 72%. This difference is based on the types of medicines prescribed and the available of generic substitutes. "Prescription Drugs—Comparison of Drug Costs and Patterns of Use in Workers' Compensation and Group Health Plans, NCCI Holdings, Inc. (2003).
2. Daily Health Policy Report, The Henry J. Kaiser Family Foundation (May 19, 2003).
3. Efforts by the federal government to recoup Social Security Administration payments through offsets and Medicare Secondary Payer claims continue. The Center for Medicare Services is pursuing a "pay and chase mode" as a result of incorrect initial medical bill coding and conditional payments by providers. 4. *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).
5. M. Berkowitz, *Workmen's Compensation, The New Jersey Experience*, New Brunswick, Rutgers University Press, 1960.
6. *Benson v. Coca Cola Company*, 120 N.J. Super. 60, 293A.2d 395 (N.J. App. Div. 1972); Kasper, Daniel M., For a Better Workers' Compensation System, *Harvard Business Review*, March/April 1977.
7. *Taylor v. State of New Jersey*, 91 N.J.A.R. 2d (N.J. WCC 1990); *Goasdone v. American Cyanamid Corp.*, 354 N.J. Super. 519, 808A.2d 159 (N.J. Law Div. 2002).
8. "Workers' Compensation Crisis Revisited, Labor Research Associates, LRA Online (Nov. 1, 2003).
9. Mealey, DC, State of the Line: Analysis of Workers' Compensation Results, National Council on Compensation Insurance, Inc. (2003).
10. Granados, R.M., Task Force on Medical and Temporary Benefits-Final Report, NJ Department of Labor, Division of Workers' Compensation, December 10, 2002. See also: J.H. Bernstein, "Workers Comp System: The failed delivery of health care," 13 NJL 285 (Feb 16, 2004).
11. Pendleton, R., "House Cuts Off Proposed Workers' Compensation Amendments," Associated Press, The MiamiHerald, May 15, 2003.
12. Diana, T., "Wise Pushes Passage of Plan," The Intelligence, March 13, 2004.
13. "The Big Chill," Editorial: MissouriEconomy, St. LouisPost-Dispatch, May 16, 2003.
14. "Calif. Commissioner Address Needs for Reform to Workers' Comp," Insurance Journal, May 6, 2003.
15. Chan, G., "State Fund Control Sought," The Sacramento Bee, March 13, 2004.
16. Halsey, O.S., "Need for and Existing Situation of Workmen's Compensation for Employees of Common Carriers Engaged in Interstate Commerce, Committee on Economic Security (CES).
17. Air Transportation Safety And System Stabilization Act, P.L. 107-42, 115 Stat. 230 (2001); Gelman, Jon L. and Heller, Lewis L., "World Trade Center Tragedy Creates Complex Workers' Compensation Issues," 116 N.J.L.J. 108 (October 8, 2001); Kendall, Jane, "The Incalculable Risk: How The World Trade Center Disaster Accelerated The Evolution Of Insurance Terrorism Exclusions," 36 U. Rich. L. Rev. 569 (May, 2002).
18. Gelman, Jon L. & Boyd, John B. "Should Workers' Compensation Be Vaccinated Against Bioterrorism?," 166 N.J.L. 1173 (December 31, 2001); 42 U.S.C.A. § 239; 42 C.F.R. 51492.
19. Exec. Order No. 13179, 65 FR 77487, 2000 WL 1806782 (Pres.), 66 F.R. 102 (May 25, 2001), Guidelines for Determining the Probability of Causation Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Final Rule Thursday (May 2, 2002); 67 FR 22296-0; 2002 WL 820192 (F.R.).
20. Cornwell, S., "Labor asks U.S. senators to oppose asbestos bill," Reuters, Forbes, March 10, 2004.
21. "Asbestos Litigation Reform Reconsidered", Environmental Working Group Action Fund, March, 2004.
22. Cornwell, S., "Use current medical gauge for asbestos fund-Hatch," Reuters, Forbes, May 16, 2003.
23. Howard, Christopher, "Workers' Compensation, Federalism and the Heavy Hand of History," *Studies in American Political Development* 16, 1 (Spring 2002):28-47.
24. Woolhandler, S., Campbell, T., Himmelstein, D., "Costs of Health Care Administration in the United States and Canada, N ENGL J MED 349:8 (Aug. 21, 2003).
25. Joseph, R.E., "24-Hour Coverage: The OregonPilot, IX Federation of Regulatory Counsel Journal of Ins Law Reg IV (Dec. 7, 1997).
26. California enacted The Health Insurance Act of 2003 SB2 which requires business owners to provide health care coverage to their employees beginning in 2006. Stats.2003, c. 673 (S.B.2), §2.; J. Flanagan, "Crisis and Opportunity—Forging a Universal Health Care Consensus," CaliforniaHealth Consensus Project (March 2004).; A. Hopkins, "Cost of Worker Benefits Weighs on Hiring," Reuters (March 13, 2003).
27. Rundle, R.L., "California Considers Health-Care Bill," The WS Journal (September 11, 2003).
28. It has been reported that 32% of workers lacking health coverage in 2001 were employed by large firms, up from 25% in 1987. Glied, S., Lambrew, J.M., Little, S., "The Growing Share of Uninsured Workers' Employed by Large Firms," The Commonwealth Fund (Oct. 2003); "For Striking Workers, The Bottom Line is Health Care," AFL-CIO (Oct. 17, 2003); Collins, S., Daves, K., Lambrew, J., "Health Care Reform Returns to the National Agenda: The 2004 Presidential Candidates' Proposals, The Commonwealth Fund Briefing Note, Pub.#671 (Oct. 8, 2003).
- Carlson, G., Holve, R., Finder, B., "Employer Health Benefits 2003 Annual Survey," The Henry J. Kaiser Family Foundation and Health Research and Education Trust (2003); Sheils, J., Haight, R., "Covering America—Real Remedies for the Uninsured: Cost and Coverage Analysis of Ten Proposals To Expand Health Insurance Coverage," The Lewin Group, funded by a grant from The Robert Wood Johnson Foundation (October 2003); "Full-time healthcare would save money. Instead of paying for two insurance plans—one to cover healthcare for injuries and illnesses on the job and another for injuries and illnesses off the job—businesses would buy one plan. As Roger Thompson, former director of Travelers Insurance Workers' Compensation Strategic Business Unit put it, the present system is 'like having two trains going down separate tracks and it doesn't make a lot of sense to have all the administrative costs to maintain these separate systems.'" R. McGarrah, "Full-time Healthcare for America's Working Families [Draft]," AFL-CIO (August 22, 2003).
29. "The Uninsured," Issue Spotlight, The Henry J. Kaiser Family Foundation (September 12, 2003);
30. Pear, R., "Big Increase Seen in People Lacking Health Insurance," The NY Times (Sept. 20, 2003). The share of the population without health insurance rose in 2002, which was the second consecutive annual increase. Mills, R.J., Bhandari, S., "Health Insurance Coverage in the United States: 2002," Current Population Reports P60-223, US Census Bureau, U.S. Department of Commerce (Sept. 2003).
31. Employers attempt to shift more of their medical costs onto employees. Fuhrmans, A., "Employers Push Health Insurers To Get Breaks on Their Rates," The WS Journal (Sept. 23, 2003).
32. Anand, G., "The Big Secret On Health Care: Rationing Is Here—Workers Who Are on the Front Lines Decide Who Gets What Treatment," The WS Journal (September 12, 2003).
33. "CFPS View Healthcare Costs as Top Concern—But Recognize Link Between Health Benefits, Productivity and Profits," Press Release, Integrated Benefits Institute (Dec. 9, 2002).
34. McDavid, K., Tucker, T.C., Sloggett, A., Coleman, M.P., "Cancer Survival in Kentucky and Health Insurance Coverage, Arch Intern Med. 2003; 163:2135-2144.

Clearing the Workers' Compensation Benefit Highway of Medical Expense Land Mines

By John H. Geaney¹ and Jon L. Gelman²

Medical expenses in contested workers' compensation cases are now a significant and troublesome issue resulting in uncertainty, delay and potential future liability. The recent NJ Supreme Court decision, *University of Mass. Memorial Hospital v. Christodoulou*, 180 N.J. 334 (2004) has left the question of how to adjudicate medical benefits that were conditionally paid or paid in error. Presently there is no exclusively defined procedure to determine the allocation, apportionment of primary responsibility for unauthorized medical expenses and reimbursement.

The NJ Workers' Compensation statute was enacted in 1911 with the noble mission of creating a social remedial system which would provide an efficient and certain system of benefits to injured workers. In that same year Rambler, in Kenosha, Wisconsin, introduced the Rambler 65 model motor car, which was a luxurious vehicle that accommodated seven people and sold for \$3,050. Like the initial workers' compensation acts enacted that year, the vehicle performed reliably. Both were state of the art and worked flawlessly. Over the years highways have changed, and like motor

¹ John H. Geaney is the author of "Geaney's New Jersey Workers' Compensation Manual for Practitioners, Adjusters, and Employers." John H. Geaney, Capehart & Scatchard P.A., 8000 Midlantic Drive Suite 300 S, Mt. Laurel, N.J. 08054, t 856.914.2066, jgeaney@capehart.com, www.capehart.com

² Jon L. Gelman, who practices in Wayne, NJ, wrote *Workers' Compensation Law* 3rd Ed. (West-Thompson 2007), is co-contributing author of *Modern Workers Compensation-National Treatise* (West-Thompson 2001) & past Vice-President of the national Workplace Injury Law & Advocacy Group – American Association for Justice. Jon L. Gelman, 1450 Valley Road, P.O. Box 934, Wayne, NJ 07474-0934, t 973.696.7900, jon@gelmans.com, www.gelmans.com.

vehicles, there have been changes also in the compensation delivery system to meet the needs of the users or stakeholders. Now the largest component part of the workers' compensation benefit delivery system is medical expenses that account for over 58% of the program's costs. Medical costs continue to grow exponentially.

The Federal government has become deeply concerned about what it considers to be cost shifting of benefit dollars to the Medicare system in workers' compensation actions. Since the administration of Franklin Roosevelt, Americans have relied upon Medicare to insure medical care in certain non-compensable claims. The Centers for Medicare and Medicaid Services (CMS) has, under authority of the Medicare Secondary Payer Act, established an elaborate national collection process to recoup conditional medical payments and to prevent future medical changes from being transferred to the federal system for payment where the employer may be primarily responsible.

Group Healthcare Carriers (GHC) and medical providers themselves are now also seeking to recoup medical payments that they have allegedly paid erroneously or conditionally. Since medical conditions are complex and modern medical treatment modalities and protocols are expensive, obtaining a judicial resolution of the causal relationship and the reasonableness and necessity of bills has become an acute issue. While the NJ Supreme Court has declared that a GHC and/or provider may intervene in a workers' compensation claim, the Court provided no direction as to whether the parties to a workers' compensation action may seek to implead the GHC or medical provider into the pending workers' compensation case.

The New Jersey Workers' Compensation Act provides for employer control of medical treatment from the inception of the claim. *N.J.S.A. 34:15-15*. The employer is

obligated to provide all medical care which is reasonable and necessary, and such care, inclusive of pharmaceutical prescriptions, continues until the employee reaches maximal medical improvement. The obligation of the employer is to cure and relieve the worker of the effects of the injury. For any number of reasons, an employee may end up seeking medical care which is not authorized by the employer. If the employer denies the compensability of the claim, the employee will obviously seek his or her own treatment. If a dispute arises between the parties as to the adequacy of care or the need for surgery, the claimant will sometimes seek unauthorized treatment. In the case of an emergency, the injured worker may seek treatment without waiting for the employer to consent. In these situations and others, the "unauthorized" medical care will become an issue in the workers' compensation case.

The NJ Supreme Court in *Christodoulou, Id.*, discussed the responsibilities of the parties in a workers' compensation claim for medical benefits that remained unpaid; however, it left unanswered whether the Division of Workers' Compensation could exert exclusive jurisdiction over the issue of collateral medical payments and reimbursement of collateral source payments made on a conditional basis. Mario Christodoulou was injured on June 28, 1996, while driving a car owned by his employer, Auto Action Land of Jersey City. The accident occurred in Massachusetts. Christodoulou spent two months in Massachusetts Memorial Hospital Center until his death. Medical services were rendered by the hospital in the amount of \$712,683. Christodoulou's father filed a dependency petition in the Division of Workers' Compensation asserting that he and his wife were dependent on their son. The hospital bill was listed as a medical provider on the dependency claim petition.

Through correspondence, the hospital's attorney was advised by petitioner's counsel that the medical providers' bills would be presented for payment. The petitioner's attorney assured the hospital that its bills would be presented to the court at the time of the hearing and also suggested that a representative of the hospital would likely have to appear at the hearing to prove the bills were reasonable and necessary. However, that did not occur.

On May 10, 1999, the workers' compensation case was settled for \$50,000 by the petitioner and the respondent without participation of the medical provider under *N.J.S.A.* 34:15-20, the provision used for disputed lump sum settlements. Section 20 payments are not considered workers' compensation payments, except for insurance rating purposes. The petitioner, Christodoulou's father, acknowledged on the record that he had no further rights against Auto Action except for indemnification by Auto Action in the event that the hospital should pursue him for the outstanding medical bill. The order stated that the respondent, Auto Action, would hold harmless the petitioner from any medical bills arising out of the accident. The hospital then forwarded the bills after the settlement to AIG, the carrier for Auto Action. The attorney for AIG argued that it had agreed to hold only the father harmless, not his son's estate, and therefore the carrier declined to make payment on the bill.

In the extended litigation that ensued, the Appellate Division held that the hospital was required to file a timely petition in the Division of Workers' Compensation or otherwise intervene in the workers' compensation proceeding. The Supreme Court reversed and held that the Workers' Compensation Act is not the exclusive remedy for the hospital or medical provider which has provided medical services arising from a work

injury. "Nothing in the Act suggests that a medical provider must file a petition in the Division of Workers' Compensation or intervene in a pending action in order to preserve its right to a contractual remedy against a patient whose treatment arose from a work-related injury." *Id.* at 346-347. With regard to the finality of the Section 20 dismissal for \$50,000, the Court said, "The employer and the employee cannot extinguish the rights of those who do not participate, or do not have the opportunity to participate, in a settlement." *Id.* at 348.

The workers' compensation settlement in *Christodoulou*, which did not in any manner resolve the large hospital bill, led to a series of law suits against the parties and their attorneys. The court declared that the health care provider has both a right to intervene in the workers' compensation proceeding or file a civil suit against the worker for payment. If the civil suit is filed during the pendency of the compensation proceeding, the court said that the civil matter should be transferred to the Division of Workers' Compensation.

The Division of Workers' Compensation provides a procedural mechanism, an "Application for Payment or Reimbursement of Medical Payment," which may be filed by a provider for medical recovery. The form reflects information on the medical diagnosis, dates of treatment, billing dates, the amount billed and the amount paid. Such applications are being filed more often in the Division. The issues the court will be required to entertain may include unauthorized treatment or even balances outstanding for medical services. Similarly, PIP carriers have a right to bring a claim in the Division of Workers' Compensation as subrogee of the injured worker in order to recover

payments made for a work-related injury. *Aetna Cas. & Sur. Co., v. Para Mfg. Co.*, 176 N.J.Super. 532 (App. Div. 1980).

The decision in *Christodoulou* does not address whether the parties to a workers' compensation case have their own right to implead the health care carrier as part of the workers' compensation proceeding. The Supreme Court left open whether an impleader of a GHC would grant to the Division of Workers' Compensation exclusive jurisdiction over the issue of collateral medical payments and reimbursement of collateral source payments made on a conditional basis. While medical providers have a specific statutory right to intervene, the parties to a workers' compensation proceeding do not presently have a right to implead the medical provider which may assert reimbursement rights. When an injured worker has received treatment which has not been authorized or paid for by the employer, the parties instead must deal with potential claims for reimbursement via letters and phone calls in order to provide finality to the settlement.

Practitioners have learned from *Christodoulou* that "hold harmless" language in a settlement presents serious risks for both sides. Further, employers are cognizant of the danger of steering employees toward submission of medical bills to the company's private medical carrier when the medical condition arguably is a work-related one. "When an employer undertakes to advise an injured employee to apply for certain disability or medical benefits that are authorized by the employer, the employer necessarily assumes a further obligation not to divert the employee from the remedies available under the Act." *Sheffield v. Schering Plough Corp*, 146 N.J. 442, 460 (1996).

Issues regarding medical reimbursement continue to delay the resolution of cases. Much has been written about the inordinate delays in workers' compensation court

caused by current procedures under the Medicare Secondary Payer Statute. This statute provides that the Centers for Medicare and Medicaid Services (CMS) may pursue damages against any entity that attempts to shift the burden of work-related medical costs to Medicare. The purpose of the statute is to ensure that Medicare is only secondarily responsible for payment of medical expenses for Medicare beneficiaries who were also covered by another type of insurance. 42 U.S.C. §1395y(b). When dealing with Section 20 dismissals in which medical benefits are closed out forever, the parties in New Jersey case often must wait a year or more for a response from the appropriate CMS vendor to inquiries about "conditional payments," or payments which Medicare may have made prior to the date of any proposed workers' compensation settlement.

Given the penalties which are set forth in the Medicare Secondary Payer Statute for failure of the parties to properly protect the interests of CMS, claimants, employers and their counsel have no choice but to wait patiently for a response from CMS. The Director of the Division of Workers' Compensation, the Honorable Peter J. Calderone, has provided helpful guidance to practitioners on resolving orders approving settlement under *N.J.S.A. 34:15-22* while waiting for a response from CMS or its vendors. Section 20 dispositions, however, remain problematic because this vehicle for settlement extinguishes a claimant's right to medical care forever.

In essence, GHC and medical providers, which claim rights of reimbursement in workers' compensation, are asserting that they are secondary payers. In the absence of any formal method to implead the health care carrier, the parties to a workers' compensation case often experience extensive delays in resolving claims while attempting to resolve outstanding medical bills and health care liens and explain why

certain bills may not be “compensable” under the New Jersey Workers’ Compensation Act. Health care policies typically exclude any loss for which benefits are provided under workers’ compensation laws. However, the mere fact that medical bills are paid by a health care provider following the date of a workers’ compensation injury does not mean that the medical care is “compensable” under the New Jersey Workers’ Compensation Act. *Hunt v. Hospital Service Plan of New Jersey*, 33 N.J. 98 (1960) (where unauthorized medical care rendered by various health care providers was held “unauthorized” and therefore not compensable).

Compounding the problem is that several GHC have recapture provisions in the their contracts with health care providers, and the GHC will “recap” the payment from the providers through a book entry. This results in the medical provider seeking redress directly against the patient, injured worker, in a collateral law suit outside of the workers’ compensation arena which is costly and burdensome.

Because issues of compensability require an interpretation of the various provisions of the New Jersey Workers’ Compensation Act, Judges of Compensation are in the best position to decide them. This principle militates in favor of having a mechanism in place to implead health care providers in certain situations in the workers’ compensation proceeding, particularly those in which the health care provider is well aware of the workers’ compensation proceeding and legitimate issues of compensability. There are legitimate concerns about a broad impleader requirement as noted in *Christodoulou*. “A requirement that medical providers intervene or file a claim petition in every pending workers’ compensation proceeding in order to protect their contractual right to payment will entail additional collection costs for medical providers that will

likely result in higher costs for patient care, and may also have the unintended effect of discouraging medical providers from providing care for injured employees. Such a result would be inconsistent with the broad remedial objectives of the Workers' Compensation Act." *Id.*

The new benefit highway that embraces a new paradigm which extends to a new safety net and the existence of these collateral programs require a modification of the Workers' Compensation Act and/or Rules to safeguard the interests of the parties, while remaining consistent with the social remedial intent of the legislation. These considerations should be the subject of further study by the Division in order to accommodate the rights of the parties to expeditiously resolve workers' compensation claims and avoid unnecessary litigation, delay and expense. The basic premise should be consistent with the legislative intent to provide a summary and remedial system to provide benefits to injured workers in a prompt and fair fashion and finality for employers by adjudicating all aspects of medical expenses within the exclusive jurisdiction the Division of Workers' Compensation.

FROM: Robert Guzman
83 Mount Zion Way
Ocean Grove NJ 07756

To: NJ Senate Labor Committee Members:

Senator Sarlo, Paul A. - Chairman
Senator Madden, Fred H. - Vice-Chairman
Senator Cunningham, Sandra B.
Senator Kean, Sean T.
Senator Pennacchio, Joseph

Dear Chairman Sarlo,

I most respectfully offer my sincerest appreciation to the Chair and to the distinguished members of the NJ Senate Labor Committee, for allowing me this forum to address some very serious issues I have encountered with the NJ Workers Compensation system. My name is Robert Guzman. I currently live in Ocean Grove NJ, a resident of the Habcore Inc. sponsored residential assistance program. I am a former Vice President Management of Information Systems for an independent and privately owned Third Party Administrator (TPA). I not only worked directly with the owner, but to paraphrase the now mostly forgotten Sy (Hair Club for Men) Sperling, I am NOT only a former Vice President, I am also a client.

I started my related experience with Marsh & McLennan in 1989 as a Computer Operations Supervisor, in charge of information system migration of newly acquired private insurance firms. I was responsible for the equipment purchase, installation, and training for satellite offices, to our in house corporate system at 1221 6th Avenue in NY. I premise some of my responsibilities because it was required that I not only be proficient in the early IBM System 38 to AS400-C2 protocols, but I also had to learn and master the insurance industry criteria, having come from a prior retail business and restaurant chain management experience since 1976.

I had to learn and become proficient in end user requirements, AIG conformity mandates, IRS reporting procedures, OSHA and PEOSHA reporting protocols, and the most relevant to this discussion, mastery of the WC TPA responsibilities conforming to state and federal law. I also had to become familiar with the legal requirements of the assigned adjusters, their respective supervisors and senior management. Working closely with these dedicated professionals, we were able to design and implement one of the first, attorney client detailed reports, directly responsible in WC cases, from medical only to complex indemnity case processing.

Following appropriate standards involved with loss management, attorney file management, to information input and reporting, while implementing security controls of the adjuster staff, allowing direct monitoring of individual cases by appropriate supervisors within the department, and senior management. I learned and mastered the complete process of a reported work related injury through final adjudication, and ALL aspects therein. Having to learn the meaning and spirit of a 34:15-20, or a 34:15-95, while respecting the standards demanded under RPC 3.3(a)1-5(b)(c)(d) and the integrity of law mandated within.

I also had to implement security controls from the adjuster staff, for direct monitoring of individual cases by appropriate supervisors within the department, and senior management. I learned and mastered the complete process of a reported work related injury through final adjudication, and ALL aspects therein. I did not intend to embellish my credentials so long winded, but I wanted to express that I speak from experience as well as emotion. I became involved in a WC system that

mlv

I helped create in machine language, by designing databases specifically to process claims in AL, PR, GL and WC lines of coverage.

I had to know in complete detail, the processes involved from the reporting, acknowledgement, creation, assignment, reserving, payment and reconciliation, and proper procedures related to **any** independent audit process. I implemented one of the first automated automobile subrogation recovery processes, directly with the very well respected and professionals like treasurers Ted Freedman, Dennis O'Neill, Richard Schwab, Tom Tontarski and the incomparable actuary Erik Bause ARM. I do not know who their respective favorite baseball teams are, as I am a proud New York Yankee fan. I do know first hand however, that their respective professional work ethics and integrity, are not questionable.

In my previous, and now current role, of claimant or petitioner, I do not know if any 'real exposure' and or corrective measures will ever take place. What I do know without reservation is that my own current plight, now open since July of 2003, has seen repeated interruptions of Court Ordered medical treatment and TTD payments. Three times since 2003, those unfettered blatant violations resulting in hospitalizations. The initial assignment JWC the Honorable L. W. Moncher met mandatory retirement, while the respondent continued to periodically interrupt his 'Ordered' benefits over a **forty one** (41) month period.

The respondent in my particular case was 'advised' by the Court (by this cases second JWC, the Honorable J. P. Roche) after repeated pre-trial conferencing, (now going on 18 months) on 7/24/07, because of their repeated attempts to 're-submit their pre-existing condition' posture, to file for relief under the 34:15-95 rule, known as the Second Injury Fund (sometimes referred to as the 2% fund) also as mandated for legal review under WC law. I have also traveled **that** path, and six weeks later on 4/9/06, respondent returned to pre-trial, only to **decline** on the suggestion of Judge J. P. Roche JWC, (and ONLY) after they were advised by MY attorney, that such relief if granted, would require the respondent's full responsibility for ALL future medical costs. Apportionment of legal fees to the discretion of the Court, but absolutely NOT by the SIF. The pre-existing condition burden of proof, which shifted to the party seeking such relief under WC law, and that they could NOT sustain in fact, with medical evidence, further deceiving the Court with bad faith.

The complexity of those requirements and those resulting from the newly arranged marriage between the NJ State WC system and the SSA/CMS, currently known as the WCMSA proposal process, created an even greater complexity, and another very comfortable '**delay cave**' for the respondent. I have also traveled **that** path, and six weeks later (2 cycles) on 9/4/07, the respondent returned to pre-trial, only to **decline** on the suggestion of Judge J. P. Roche JWC, (and ONLY) after they were also advised by ME, through MY attorney, and that the petitioner launched WCMSA proposal process, had been thoroughly reviewed by the CMS/SSA, and approved on 8/27/07. It would NOT have required the respondent's **full responsibility** for ALL future medical costs, but only \$18,740 for future medical treatment, and \$31,500 in conditional payments due to Medicare, **for treatment attributed solely to the 7/23/2003 injury and subsequent interruption of medical treatment.** Apportionment of legal fees to the discretion of the Court, but absolutely NOT by the SIF or without WCMSA approval.

After another six weeks at the next hearing of 10/16/07, it was then suggested BY THE COURT, and in my humble opinion, **a misdirection by the bench** (in my presence, though not sworn in, nor permitted to address the Court) that *petitioner's* counsel file the SIF (AKA 2%) despite my strenuous objections. The respondent's blatant interruptions of Ordered treatment (issued by the NOW retired L. W. Moncher JWC in 9/03, 10/04, 3/06 and 5/9/06) permitted at least four bites of the same 'proverbial defense apple.' The purposeful interruptions of RX, calculated and planned, allowed the 'revision' of the respondents previously counter motioned legal position,

which the Court had denied. No admonishment, no sanctions, no fines, just restart the treatments as previously mandated, and then on 12/31/06, he retired.

When assigned to the Honorable J. P. Roche JWC, in January 2007, eight (8) successive continuances were granted, **despite confirmation** of continuing interruptions of RX/TTD by the respondent. In March of 2007, expert medical opinions submitted in reports by all treating and examining physicians, (all previously approved by the Court) **found a cumulative over 75% PTD fully corroborating the findings of the ATP**. Those reports state definitively and un mistakenly, the work related 7/23/03 injury, in of and of itself with medical treatment interruptions, **were attributed solely**, as to having caused the over 75% PTD.

Beginning in March 2007, after having received expert medical reports from the ATP, but equally important, from the respondent's OWN IME, opposing counsel began offering excuse after excuse including but not limited to (lack of authority for settlement, SSA 80% ACE verification, Original Entitlement proofs from the SSA, WCMSA proposal conditional payment proofs) while continuing to interrupt Court Ordered treatment intermittently, and despite petitioner's own exerted efforts and success, in providing ALL of the respondent delaying tactic requested documents, with irrefutable written proofs from the SSA/CMS, MSPRC, and WCMSA proposal office.

After petitioner finally "DEMANDED" audience before Judge Roche, on 7/24/07, Judge Roche looked me directly in the eye and said, "Mr. Guzman although I am not allowing testimony, and you are not being sworn in." "I was advised by your counsel that you requested directly addressing the Court." He added, "Let me assure you that the Court is looking out for your best interests in this matter." He then turned away and left the courtroom. I never saw him again either. He was re-assigned to the Toms River WC office, immediately after it was 'suggested' and then persuaded by petitioner's counsel (despite petitioner's stated opposition and demand for contempt motions, as the respondent continued to interrupt treatment) to authorize the filing of said SIF motion submitted **10/26/07**.

In the 'real' world, both Rule 50 and Rule 56 of the Federal Rules of Civil Procedure invites the court to make the same determination: That there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. Those continuances permitted without admonishment for violations, 25% penalties, sanctions, legal fees and court costs (as petitioner's counsel refused) to 'cite a colleague,' and chance of besmirching their legal records with the state. The Court's permitted the chicanery to continue. The filing by the petitioner's attorney of the SIF motion, (always a position protested by the client) which then permitted **yet ANOTHER re-assignment**, this one to the **Honorable Leslie Berich JWC**, and Linda Schober DAG **scheduled for 1/15/08**, under an SIF conference umbrella.

This conference, **after yet another hospitalization from 11/30-12/06/07** (resulting from interrupted RX by the respondent) and an alleged SIF conference was held on 1/15/08. I was NOT permitted attendance. Petitioner's counsel advised that NO PTD was denied by the DAG, after reviewing the existing medical evidence. There has NEVER been ANY testimony in now almost five (5) years. **The 1/15/08** conference resulted in another alleged request for the 80% ACE and Original SSA Entitlement numbers (by either the Court or the DAG), permitting **yet another** continuance **until 2/25/08**. Petitioner **AGAIN** provided irrefutable documentation that under 34:15-95 NO credit was due the respondent. The burden of proof by the petitioner had been met. No evidence was EVER produced, nor exists, to substantiate a pre-existing disability, added to the last injury creating the current over 75% PTD assessments.

New assignment judge, submit the old request. The assigned DAG **did not attend the 2/25/08 SIF conference, permitting another continuance**. The case was then again listed, **this time for 4/8/08**. Petitioner's counsel still refusing filing for contempt, told petitioner 'don't show up,' there will be no testimony heard on 4/8/08 (despite having submitted hospitalization reports, (3) over a 4 1/2 year period). I was told by my own attorney, **that the Court will NOT sanction or**

punish a respondent, when evidence can be submitted showing the treatment was restarted before litigation could take place. YET, Respondent on 4/7/08 AGAIN denied authorization of RX, and TTD was 'accidentally removed' from direct deposit. Petitioner's counsel then filed a motion to the Court to authorize treatment petitioner had been receiving for over 1 1/2 years, AND ONLY after petitioner threatened to file his own motion and discharge counsel in the presence of the Court on 5/13/08, the NEXT scheduled listing.

This permitted another continuance and stay of the SIF conference, **to NOW allow a pre-trial motion hearing**, scheduled for 5/13/08, to approve treatment already being received for over the last 18 months. It is NOT coincidence that the billing clock for the respondent continues to click upward against the employer, like a *high test* gas pump counter, and the petitioner's counsel fees, on the 20% 'regular grade' total award pump roll on. Today, even low grade regular gas is over \$4 per gallon. While I wear protective vinyl gloves to permit prescribed steroids to retain moisture and elasticity of my hands. My teeth continue fall out like 'chicklets,' as I do not have dental coverage. A fact of no interest or particular concern to my own and opposing counsel. Their teeth and medical dental coverages are just fine thank you.

On 5/5/08, after reviewing the press release by Senator Paul Sarlo, requesting audience in an open hearing with the NJ Commissioner of Labor, makes this citizen feel that this hearing has as much pomp and circumstance, as a WWE Wrestlemania staged event. Statistics will be spewed like popping corn in the microwave. The people that were featured in local newspaper articles are the one's that need to be questioned and helped in OPEN hearings before the commissioner. Perhaps even the Chairperson, Paula A. Franzese and ranking members of the NJ Ethics Committee, (in addition to Commissioner Socolow), should have been asked to appear before this extremely important open hearing. Yes, selfishly, I would love having a chance to ask a few questions, that I remain absolutely certain would be met with, "well, we will have to look into that, it doesn't sound right, but we need to see exactly what happened and correct it."

They already know what happened because they inherited and or re-invented it Mr. Chairman. I believe that you and the committee members will each find, just exactly that. Exposing sources and information that may have been 'deep throated' won't fly, under privacy and confidentiality restrictions. I personally know of the newspapers reported problems with WC in NJ. In those articles were mentioned certain specifics, those that I know first hand, would be considered either attorney-client or doctor-patient privileges. I do know from personal experience in life, that if the dog does not have teeth, it cannot bite you. If appointed and tenured WC Judges cannot and will not punish, sanction and report ethical violations, **who will** respect righteousness?

When my RX kept getting cutoff, I had to turn to AP1 (a psychiatric ward) at Monmouth Medical Center. But they made me leave when they verified I had not lied. Nor did I suffer from a psychiatric illness, just anger and rage. Although I never drove a truck through the courthouse, don't think for a moment that my rage did not consider it. Instead, my psychiatric counseling helped me get crucial medications, denied in violation of a Court Order and reported it to CMS, who verified I was being truthful. That help, rejuvenated faded strength and dignity I had misplaced. Indeed they justified my sanity, after even I questioned it. They even sent WC the bill, via the WCMSA proposal process and conditional payment summary form. **I was approved a submitted WCMSA proposal approval on 8/27/07. YES, on August 27, 2007!**

I helped design the system that is still in use. I am not ashamed of the work I did to design a system that works for the benefit of injured workers in NJ. I am ashamed however, that political influence and pressure will NOT change the rules to protect the 2 1/2% of violated petitioner's. The esteemed Labor Commissioner shall produce marvelous reports of how 97 1/2% of claims are settled within four to six months. There are injured workers no longer here Mr. Chairman. There are families losing their homes, cars, and as equally important, their dignity. We paid into a system that not unlike the many one armed bandits of this world, will NOT payoff. How long and

how much misery will it take to change this inexcusable "oversight." I thank the members of the committee and the chairman for this opportunity.

Respectfully, Bob Guzman

Senate Labor Committee- May 5, 2008
RE: Senate Bill S785 Workers Comp Supplemental Cost of Living
Senator Paul Sarlo-Chair
Senator Fred Madden-Vice Chair

Dear Senate Labor Committee,

I would like to take this opportunity to ask you to post S785 in your next Senate Labor Committee hearing. S785 corrects a major flaw in New Jersey Workers Comp. This bill is an extremely important piece of labor legislation.

My name is Peggy Mallen. I am the widow of New Jersey State Police Detective, Albert J. Mallen, Sr. My husband was shot and killed during a drug raid on August 28, 1985, in Westville, New Jersey.

"Senate Bill 785 provides an annual cost of living adjustment in the weekly workers' compensation benefit rate for any worker who has become totally and permanently disabled from a workplace injury at any time after December 31, 1979 and for the surviving dependents of workers who have died from a workplace injury at any time after December 31, 1979."

I am enclosing a comparison of New Jersey State Police survivors who would be affected by this bill, including myself. This bill is long overdue. This is not just a benefit for police and fire line of duty death survivors, but rather an increase for the working man or woman who either suffered a permanent and total disability on the job or for the surviving family of someone who died on the job post December 31, 1979.

"Current law requires such an annual cost of living adjustments (COLAs) in the workers' compensation benefit rate for death and permanent total disability to be paid from the SIF (Second Injury Fund), but only in cases in which the injury or death occurred before January 1, 1980. This bill extends the adjustments to cases originating after December 31, 1979.

Again, S785 is an extremely important piece of Labor Legislation. This bill should be posted immediately for a vote in the Senate Labor Committee. Please help ensure the passage of Senate Bill 785. Senator Stephen Sweeney is the Senate sponsor of S785.

Respectfully submitted,
Peggy Mallen-Legislative Advisor
NJSP Survivors of the Triangle-C.O.P.S.
35 LaCosta Dr., Egg Harbor Twp., N.J.
08234

609-226-8753

10/1/08

Senate Labor Committee-May 5, 2008

PLEASE POST S785 ASAP

Comparison for Senate Bill S785
NJ Workers Comp Comparison

2008 NJ widow receives max. \$742.00 per week

1961 NJ widow receives \$607.00 + per week
Mazie Staas-NJSP

1985 NJ widow receives \$269.00 per week
Peggy Mallen-NJSP

1981 NJ widow receives \$199.00 per week
Donna Lamonaco-NJSP

S785 grants a cost of living increase to ALL who collect NJ Workers Comp for 100% disability or to the surviving spouse of someone who dies on the job. This cost of living benefit is for those whose injury, or death, occurred after December 31, 1979. Those injuries or deaths that occurred prior to December 31, 1979, already receive a yearly cost of living increase in New Jersey Workers Comp benefits. Let's bring those, post December 31, 1979, up to date. This benefit is paid by the Second Injury Fund.

SENATE, No. 785
STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED JANUARY 24, 2008

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Concerns certain workers' compensation supplemental benefits.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning workers' compensation benefits and supplementing chapter 15 of Title 34 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. a. Beginning with the fiscal year 2010, commencing July 1, 2009, and each fiscal year thereafter, a person who is an employee, or a dependent of the employee, who is receiving weekly benefits pursuant to subsection (b) of R.S.34:15-12, R.S.34:15-13, or R.S.34:15-95 for a disability or death that occurred after December 31, 1979, and who is not entitled to receive special adjustment benefits pursuant to section 1 of P.L.1980, c.83 (C.34:15-95.4), shall be entitled to receive weekly supplemental benefits from the Second Injury Fund during the period in which the person is eligible to receive the initially-awarded weekly benefits, whenever the amount of the initially-awarded weekly benefits is less than the total amount of weekly benefits that would be payable to the person if that total amount included weekly supplemental benefits calculated in the manner indicated in subsection b. of this section. In making the determination of the aggregate annual surcharge for the Second Injury Fund to be levied pursuant to paragraph (4) of subsection c. of R.S.34:15-94 for calendar year 2008 and each subsequent calendar year, the commissioner shall include the anticipated additional amounts, including administrative costs, required for payment of supplemental benefits pursuant to this section during the fiscal year which begins on July 1 of the respective calendar year. If the aggregate annual surcharge has been determined for calendar year 2008 prior to the effective date of this act, the commissioner shall recalculate the aggregate annual surcharge to accommodate the additional amount required.

b. The base amount of the weekly supplemental benefits to be paid pursuant to this section during each fiscal year shall be calculated in a manner so that when it is added to the workers' compensation weekly benefits initially awarded, the sum of the initial award and the base weekly supplemental benefits shall bear the same percentage relationship to the maximum workers' compensation rate for the current fiscal year that the person's initial compensation bore to the maximum workers' compensation rate in effect at the time of the injury or death. The actual amount of the supplemental benefits paid pursuant to this section shall be 33 1/3% of the base amount during fiscal year 2010; 66 2/3% of the base amount during fiscal year 2011, and 100% of the base amount during fiscal year 2012 and thereafter, except that:

(1) The actual amount of the supplemental benefits paid pursuant to this section shall be reduced if necessary, and as much as is needed, to ensure that the sum of disability benefits provided under the Federal Old Age, Survivors and Disability Act, the weekly supplemental benefits and the workers' compensation initially awarded does not, with respect to any particular case, exceed the amount which would cause any reduction pursuant to 42 U.S.C. 424a of disability benefits payable under the Federal Old Age, Survivors and Disability Act;

(2) The actual amount of the supplemental benefits paid pursuant to this section to any individual

shall be reduced by an amount equal to the individual's benefit payable under the Federal Old-Age, Survivors' and Disability Insurance Act (except for disability benefits paid under that act and any increases in benefits under that act due to federal statutory changes after May 31, 1980), Black Lung benefits, or the employer's share of disability pension payments received from or on account of an employer, except that the supplemental benefit paid to the individual shall not be reduced pursuant to this paragraph (2) if the workers' compensation benefits of the individual on which the supplemental benefit is based are reduced pursuant to section 9 of P.L. 1980, c.83 (C.34:15-95.5); and

(3) A supplemental benefit shall not be paid if the actual amount of the benefit to be paid is calculated to be less than \$5 per week.

c. Notwithstanding any other provision of this section, weekly supplemental benefits paid pursuant to this section shall not be paid in a manner which in any way changes or modifies the provisions of sections 1 or 9 of P.L.1980, c.83 (C.34:15-95.4 and 34:15-95.5).

d. An insurance carrier or self-insured employer responsible for the payment of workers' compensation to an individual shall notify the Division of Workers' Compensation of the need to have the Second Injury Fund make supplemental benefit payments to the individual pursuant to this section not later than the 60th day after the date on which it is determined that the payment of supplemental benefits is required pursuant to this section. If the insurance carrier or self-insured employer fails to notify the division and that failure results in the payment of an incorrect amount of benefits, the liability for the payment of the supplemental benefits shall be transferred from the Second Injury Fund to the employer until the time at which the insurance carrier or self-insured employer provides the required notice.

2. This act shall take effect immediately.

STATEMENT

This bill provides, from July 1, 2009 forward, an annual cost of living adjustment (COLA) in the weekly workers' compensation benefit rate for any worker who has become totally and permanently disabled from a workplace injury at any time after December 31, 1979 and for the surviving dependents of any worker who died from a workplace injury after December 31, 1979.

The COLA would be an amount such that, when added to the workers' compensation weekly benefit rate initially awarded, the sum will bear the same percentage relationship to the maximum benefit rate at the time of the adjustment that the initial rate bore to the maximum rate at the time of the initial award, except that:

1. The bill reduces the amount of the adjustment as much as necessary to ensure that the sum of the adjustment and the amount initially awarded does not exceed the amount which would cause any

reduction of disability benefits payable under the Federal Old Age, Survivors and Disability Act; and

2. The bill reduces the supplemental workers' compensation benefits (but not regular workers' compensation) for claimants injured after 1979 by the amount of any Social Security benefits (other than Social Security disability benefits and any increases in Social Security benefits due to federal statutory changes after May 31, 1980), Black Lung benefits, or the employer's share of disability pension payments received from or on account of an employer, except that if the worker's original workers' compensation award was already reduced under current law, there would be no further reduction of the supplemental benefits under the bill.

These reductions parallel the reductions provided under current law for claimants who were injured before 1980. The bill also provides that no supplemental benefits would be paid in any case where they are calculated to be less than \$5 per week.

Current law requires such annual adjustments in the rate of workers' compensation benefits for death and permanent total disability to be paid from the Second Injury Fund (SIF), but only for cases of injury or death occurring before January 1, 1980. The bill extends the adjustments paid from the SIF to claims originating after December 31, 1979, although the adjustments would apply only to benefits paid on those claims after July 1, 2009, thus avoiding a backlog of retroactive benefits.

The bill provides that supplemental payments will commence only after SIF assessments are sufficient to pay them without using General Fund money. The supplemental benefit payments would start on July 1, 2009 and the Department of Labor and Workforce Development is required to take into account the supplemental benefits when calculating the amount of the Second Injury Fund assessment which starts on January 1, 2009, thus avoiding the need for any General Fund appropriation.

To avoid an abrupt fiscal impact on the workers' compensation system, the bill provides that one third of the supplemental benefit rate be paid during the first year, two thirds of the rate be paid during the second year and the full amount be paid during the third and subsequent years.

The bill sets time limits for workers' compensation insurers and self-insured employers to notify the SIF when supplemental workers' compensation benefits are required under the bill. An insurer or self-insured employer is required to provide the notice not more than 60 days after the supplement is awarded or voluntary payment is to begin. If a failure to notify results in the payment of an incorrect amount of benefits, the liability for the payment of the supplemental benefits is transferred from the SIF to the insurer or employer until the required notice is provided.

The bill makes no change in the provisions of sections 1 and 9 of P.L. 1980, c.83 (C.34:15-95.4 and 34:15-95.5), which provide for the reduction of certain portions of workers' compensation benefits by the amount of Social Security disability benefits paid. In addition, the bill expressly states that the supplemental benefits shall not be paid in a manner which in any way changes or modifies the provisions of those sections. The bill, therefore, will have no effect on existing provisions of State and federal law regarding offsets between workers' compensation and federal Social Security disability benefits.



GARDEN STATE COPS

P.O. Box 504 • Mays Landing, NJ 08330
email: info@GARDENSTATECOPS.com
www.GARDENSTATECOPS.com

*A New Jersey Chapter of
Concerns of Police Survivors*

May 5, 2008

To: The New Jersey Senate Labor Committee

RE: Senate Bill S668

Thank you for giving us the opportunity to testify on behalf of bill S668.

My name is Madeline Neumann. I am the co-founder and immediate past president of Garden State COPS – a local chapter of Concerns of Police Survivors.

I became a law enforcement survivor on August 3, 1989 when my husband Essex County Police Officer Keith E. Neumann was shot and killed during a pre-dawn drug raid in Irvington. Keith was only 24 years old. At the age of 22, I certainly was not prepared to become a widow. In one violent act my life was forever changed. The man I had expected to spend the rest of my life with would never again come home. I would never hold the children we had planned on having. In short, my future had been completely and totally altered. Nothing remained the same.

Unfortunately, my story is not the only one. There are other men and women whose world was turned upside when they too, became widows or widowers when their spouse died while working. Their stories are just as tragic and compelling as mine.

I am requesting that you consider amending workman's compensation to allow police and fire line of duty widows and widowers to remarry without penalty.

When our husbands lost their lives, we became eligible for Workman's Compensation. We were told we would receive this benefit until death, or remarriage. At first, none of us could even think about remarriage, but then as we started to put our lives back together we realized the unjustness of that clause. It essentially says our tragedy ends with remarriage. Well that just isn't so. Our husbands will never come home again. The tragedy about that fact will never diminish, regardless of whether or not we remarry. If we were entitled to workman's comp when our husbands died, then we should be entitled to that same benefit if we choose to remarry.

I will use this analogy to make my point: If I were to lose an arm while working, workman's comp would give me a monthly check. Now we know that I could never grow that arm back, just as my husband will never come back, but I could get a prosthesis. If I were to get an artificial arm, would my workman's comp be terminated? No. Because it is realized that my injury is a permanent one, and my arm can never be replaced, just as my husband can never be replaced.



GARDEN STATE COPS

P.O. Box 504 • Mays Landing, NJ 08330
email: info@GARDENSTATECOPS.com
www.GARDENSTATECOPS.com

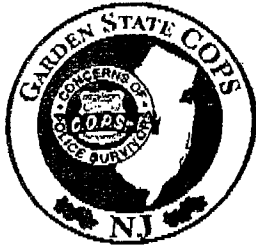
*A New Jersey Chapter of
Concerns of Police Survivors*

The bottom line is we deserve the dignity of remarriage especially when it will not cost the state additional funds. If people are not getting remarried to avoid being penalized, then taking the penalty away will not result in additional funds coming out of workman's comp. We should not be penalized for attempting to rebuild a future after our husbands died protecting and serving the communities in this state.

Thank you for your support and your time.

Sincerely,

Madeline Neumann
Immediate Past President
Garden State COPS Chapter



GARDEN STATE COPS

P.O. Box 504 • Mays Landing, NJ 08330
email: info@GARDENSTATECOPS.com
www.GARDENSTATECOPS.com

*A New Jersey Chapter of
Concerns of Police Survivors*

May 5, 2008

To: The New Jersey Senate Labor Committee

RE: Senate Bill S785

Thank you for giving us the opportunity to testify on behalf of bill S785.

My name is Madeline Neumann. I am the co-founder and trustee of Garden State COPS, a New Jersey Chapter of Concerns of Police Survivors.

I respectfully request that you post S785 for a vote and give widows and widowers after 1979 a cost of living increase. In 1980 a bill was passed giving surviving spouses prior to December 31, 1979 a cost of living increase. For the older widows, this bill was a Godsend. It brought their monthly stipend up to speed with the economy. Unfortunately, the bill did not allow for future surviving spouses. I find that twenty-six years later, I am now one of the "older widows" whose workman's comp check has not increased with the cost of inflation. I find it ironic that those widows who benefited most from that bill lost their husbands in the 1950's and 1960's and now they are receiving double what I am. If you vote to support S785, you will be correcting a terrible oversight in the workman's compensation benefit. All of the people currently collecting for the loss of a spouse should be receiving the same benefit, instead of a select group receiving an additional benefit with a COLA increase.

S785 is about doing the right thing.

Thank you for your support and your time.

Sincerely,

Madeline Neumann
Garden State COPS
NJ Concerns of Police Survivors Chapter



New Jersey Self Insurers' Association

May 9, 2008

The Honorable Senator Paul A. Sarlo
The Honorable Senator Fred H. Madden
The Honorable Senator Sandra Cunningham
The Honorable Senator Sean T. Kean
The Honorable Senator Joseph Pennachio

I currently serve as Executive Director of the New Jersey Self Insurers' Association and attended Monday's committee hearing along with our president Chris Hansen and past president Ralph Angelo. The NJSIA has served the New Jersey Workers' Compensation Community since 1918 as a coalition of major employers in the state who have taken direct responsibility for the safety and well being of our employees by choosing to self insure our workers' compensation programs. Our members worked with the representatives from labor, employer groups and insurance companies in formulating the workers' compensation reform legislation that was adopted in 1980.

We agree with the opinion expressed by the majority of the speakers that New Jersey's workers' compensation law is among the best in the nation in that it provides injured employees with appropriate medical care, a substantial temporary wage replacement and reasonable permanency awards without being overly burdensome to the State's employers.

The recent articles in the Star Ledger criticized the judiciary for the delays that occur in the resolution of the claims. Contested cases take a considerable amount of time for the presentation of lay and medical testimony. Delays are caused by petitioners and respondents alike and in many cases are unavoidable. We should all work to reduce these delays in order to provide benefits on a timelier basis to the injured worker whenever possible.

Litigated workers' compensation cases often involve complex medical issues that must be evaluated with very limited discovery. In my experience the caliber of judges presiding over these cases in New Jersey has improved over the years to meet this challenge with professionalism and compassion.

One Joseph Drive • Lincroft • New Jersey • 07738

Phone: 732.219.0319 • Fax: 732.219.9248 • E-mail: NJSIA@AOL.COM



New Jersey Self Insurers' Association

We would support enactment of sensible legislation that will address the problems that were discussed:

Increase the number of Judges and Deputy Attorney Generals to handle the 2nd Injury Fund list.

Grant the Judges greater power in dealing with non-compliant carriers and employers, including enforcement of awards for medical treatment and payment of temporary disability and authority to shut down uninsured employers.

We would also seek swift passage of legislation to deal with the issue of alcohol and drug related accidents and injuries.

We do not support any legislative changes that would bring employee discrimination matters under the jurisdiction of the workers' compensation system, as this would create an undue burden on a system that is admittedly already taxed when an appropriate forum for the handling of this issue already exists..

We believe that under the guidance of Commissioner Socolow and Director Calderone and with input from the Advisory Committee, employer and employee groups, we can develop legislation to resolve these problem areas.

The New Jersey Self Insurers' Association would like to commend the Chairman and the committee members for the excellent hearing and thoughtful dialogue, and we stand ready to participate in the legislative process in any way we can.

Thank you for your attention.

A handwritten signature in cursive script, appearing to read 'James C. Knicos', is written over the typed name.

James C. Knicos
Executive Secretary
New Jersey Self Insurers Association

Chris Hansen, President
Ralph Angelo, Past President

One Joseph Drive • Lincroft • New Jersey • 07738

Phone: 732.219.0319 • Fax: 732.219.9248 • E-mail: NJSIA@AOL.COM