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
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’s 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.
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.
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) *

Total Change from  = 43.8%
1998 to 2008

Source: NJ Department of Labor and Workforce Development

New Jersey Workers Compensation
Combined Ratio

Calendar Year

Percent

1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 *

85.1 107.4 107.1 124.3 120.3 115.0 113.0 106.5 107.1 102.2

* Estimated

Source: New Jersey Workers Compensation Statistical Plan
New Jersey Workers Compensation Rate Level Changes

Total Percent Increase = 38.7% from 2002 to 2008

Source: NJCRIB Annual Report
New Jersey Workers Compensation
Average Insurer Rate per $100 of Payroll

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Rate (Dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>2.04</td>
</tr>
<tr>
<td>1998</td>
<td>1.84</td>
</tr>
<tr>
<td>1999</td>
<td>1.70</td>
</tr>
<tr>
<td>2000</td>
<td>1.65</td>
</tr>
<tr>
<td>2001</td>
<td>1.59</td>
</tr>
<tr>
<td>2002</td>
<td>1.60</td>
</tr>
<tr>
<td>2003</td>
<td>1.71</td>
</tr>
<tr>
<td>2004</td>
<td>1.79</td>
</tr>
<tr>
<td>2005</td>
<td>1.93</td>
</tr>
<tr>
<td>2006</td>
<td>1.96</td>
</tr>
<tr>
<td>2007</td>
<td>2.05</td>
</tr>
</tbody>
</table>
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

1995

41%

2000

44%

2005

55%

Source - New Jersey Workers Compensation Statistical Plan

- Indemnity
- Medical
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
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


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
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 grassroots 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, membersubmitted 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 –
Local Inn Support
- Additional ongoing support from the national office on local initiatives and resources
- National liaisons serve as support for local initiatives and resources
- Additional knowledge of national programs and resources
- National leadership round and local leadership round
- National and local Inn programs for individual and group participation

Program Services
- Program library offering ideas, topics, and guidelines for local Inn programs
- Program library offering ideas, topics, and guidelines for local Inn programs
- Program library offering ideas, topics, and guidelines for local Inn programs
- Program library offering ideas, topics, and guidelines for local Inn programs

Awards
- Annual Outstanding Inn Award for outstanding contribution to the American Inn of Court
- Annual Outstanding Inn Award for outstanding contribution to the American Inn of Court
- Annual Outstanding Inn Award for outstanding contribution to the American Inn of Court
- Annual Outstanding Inn Award for outstanding contribution to the American Inn of Court

International Programs
- Reciprocal agreement for members to visit another Inn's home base or to participate in a local Inn
- Reciprocal agreement for members to visit another Inn's home base or to participate in a local Inn
- Reciprocal agreement for members to visit another Inn's home base or to participate in a local Inn
- Reciprocal agreement for members to visit another Inn's home base or to participate in a local Inn

Outreach Initiatives
- Outreach initiatives promote the American Inn of Court and its benefits to the public
- Outreach initiatives promote the American Inn of Court and its benefits to the public
- Outreach initiatives promote the American Inn of Court and its benefits to the public
- Outreach initiatives promote the American Inn of Court and its benefits to the public

Individual Services and Benefits
- Free membership for individual members
- Free membership for individual members
- Free membership for individual members
- Free membership for individual members
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.
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.
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.
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.

“The Voice for Working Families in New Jersey”
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
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 SIF 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 an 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.
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.
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 Trenton 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
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

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 adjudicators, 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 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 malingerers, 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.
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. Dlgasbarro

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.

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), 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 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. 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
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 quality health care.” The World Health Organization rates the United States as “55th in terms of financial fairness” vis-à-vis basic health care access.

TREATMENT OF OUR CHILDREN AS A MODEL

Our children, if injured, are cared for immediately without any 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
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 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’ 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 grilling 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
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 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, 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.
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.

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.

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.

d. Petitioner attorneys – many who view workers’ compensation as a business and injured workers akin to Ghouls, “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.

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.

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.
- New York system – choice of treating doctor by injured worker.
- 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 funded through payroll contributions of eight percent of wages. Both employers and employees pay 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. 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 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, and the amount of assets that a subscriber has. These premiums total fifty-seven percent of health expenditures in Japan. The federal government contributes twenty-four percent of premiums, and local governments contribute seven percent. Additionally, medical insurance systems have been established for seamen, national public service employees, local public service employees, teachers and staff employees of private schools.

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. Theses physicians are then reimbursed based on a uniform fee-for-service schedule with hospital physicians receiving fixed
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, 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 of specified injuries, compared to the wide range of accidental and occupational pathologies covered under the near limitless New Jersey State Workers' Compensation scheme. 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, 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."

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. In an explanatory note to the bill, the sponsor, Assemblyman Anthony Impeveduto, 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...
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.

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

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
insurance company with no warning and dubious rationale (i.e. cost savings). In Pennsylvania, the
insurance company must first file a motion to either terminate or reduce treatment or payments. The
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

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
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, Suspend or Modify Benefits. These petitions are described by the Pennsylvania Workers’ Compensation Legal Center as follows:

**Box checked: 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 doesn't report back to work, the job could be lost.

**Box checked: 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 worker doesn't attend a hearing, then payments may be reduced.

**Box checked: 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

defend the petition. If the worker does not attend a hearing, then payments may be
suspended.

The determination of whether compensation benefits will continue is then made by a Workers’
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
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
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
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 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, 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. 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 with a small payment), while workers with no real objective problems clog the dockets with de minimus disability claims.
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 (Spivak & Cannan, located in Iselin, N.J.)
“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.


Id.

Id.

Id.

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 Impeveduto, 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.


[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.


[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.


[20] *Id.*
[21] 
Id.

[22] 
Id.

[23] 
Id.

[24] 
Id.

[25] 
Id.

[26] 
Id.

[27] 

[28] 
Dar, *supra* note 8.

[29] 

(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*
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].


[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 (2) 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.


[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
temporary workers’ compensation benefits, but this provision is rarely enforced by the Court.


[39] See id.

[40] Id.

[41] Id.

[42] Id.

[43] Id.

[44] Id.

[45] Id.


[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.
Wasserman, *Legislature Overhauls Workers' Comp; Governor to Sign Bill Monday, supra note 47.*

*Id.*

*Id.*

See Dar, *supra* note 8.


[54] See STAAT, ANN. § 3115.20 ("Falsification or destruction of evidence may result in a contempt of court") (citing to[17] 78 and the person or the respondent are among the order approving settlement of the controversy, a judge of compensation may . . . enter 'an order approving settlement.'"


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.
May 4, 2008

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 of 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 serious 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 asbestos\(^3\) to petrochemical. Dr. Irving J. Selikoff\(^4\), of Paterson,

---

\(^1\) For complete curriculum vitae see: [http://gelmans.com/FrontEnd/Company/company.asp?show=bios](http://gelmans.com/FrontEnd/Company/company.asp?show=bios)

\(^2\) [http://blog.nj.com/ledgerarchives/2008/04/jersey_must_do_better_by_injur.html](http://blog.nj.com/ledgerarchives/2008/04/jersey_must_do_better_by_injur.html)

\(^3\) [http://www.gelmans.com/FrontEnd/ReadingRoom/vwArticle.asp?ArticleId=32&PracticeAreaid=-1](http://www.gelmans.com/FrontEnd/ReadingRoom/vwArticle.asp?ArticleId=32&PracticeAreaid=-1)

\(^4\) [http://www.youtube.com/watch?v=cC04tY5OX74](http://www.youtube.com/watch?v=cC04tY5OX74)
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 Investigation\(^5\) 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 stated\(^6\), “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](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](http://freakonomics.blogs.nytimes.com/2008/05/01/robert-reich-answers-your-labor-questions/?th&emc=th)
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 corners, 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
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 uninsured 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 system 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&rd=1

15 http://www.gelmans.com/ForeEnd/ReadingRoom/vwArticle.asp?ArticleId=274&PracticeAreaId=-1
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. Sweeney\(^\text{16}\) and Assemblyman Neil M. Cohen\(^\text{17}\), would be fine initial steps:

- prohibiting the future raiding of revenue on designated workers’ compensation funds (CSR-60) should be enacted\(^\text{18}\);
- swifter scheduling and use of continuous trials;
- greater permanent, temporary rate and dependency [A-2499]\(^\text{19}\), benefits;
- rate increases [A-2498]\(^\text{20}\) should be enacted;
- a review of judicial appointments as recommenced in the 1974 by the State Commission of Investigation report\(^\text{21}\);
- an enhanced in-service judicial training curriculum;
- exclusive jurisdiction of the Division of Workers compensation over medical fee disputes\(^\text{22}\) [A-2501]\(^\text{23}\);

\(^{16}\) http://www.njleg.state.nj.us/members/BIO.asp?Leg=216

\(^{17}\) http://www.njleg.state.nj.us/members/BIO.asp?Leg=62


\(^{19}\) http://www.njleg.state.nj.us/2008/Bills/A2500/2499_J1.PDF

\(^{20}\) http://www.njleg.state.nj.us/2006/Bills/A5000/4655_J1.PDF

\(^{21}\) http://www.state.nj.us/sci/workcomp.shtm


\(^{23}\) http://www.njleg.state.nj.us/2008/Bills/A3000/2501_J1.PDF
a less burdensome Uninsured Employer Fund\textsuperscript{24} 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]\textsuperscript{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 Services\textsuperscript{26} 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,

\begin{center}
\includegraphics[width=2cm]{signature.png}
\end{center}

JON L. GELMAN

Enclosures

\textsuperscript{24} http://www.gelmans.com/FrontEnd/ReadingRoom/vwArticle.asp?ArticleId=337&PracticeAreaId=-1

\textsuperscript{25} http://www.njleg.state.nj.us/2008/Bills/A3000/2503_11.PDF

\textsuperscript{26} http://www.cms.hhs.gov/WorkersCompAgencyServices/10_wcdatamatch.asp#TopOfPage
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. Overall, in excess of one-quarter of all dollars that Americans spend go to medical care. 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 benefits. 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. 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.

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. 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. 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.

continued on Page 3
Medical costs are spiraling. The National Council on Compensation (NCCI) reports that workers’ compensation medical costs throughout the nation are rising at a rapid pace. 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.

| Prescription Drugs: Rising Share of Medical Costs in Workers' Compensation Claims |
|---------------------------------|---|---|---|---|---|
| 10%                             | 8% | 6% | 4% | 2% | 0% |

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]

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. 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. 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. In California, workers’ compensation presented as a major issue that resulted in a gubernatorial recall. The proposed California reform measures are based upon workers’ compensation payments and issues representing medical treatment.

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.

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.

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...
In 1993 the Oregon Legislature enacted the “Combined Healthcare Coverage Pilot Program”\textsuperscript{5} 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. California\textsuperscript{26} and Oregon\textsuperscript{27} 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.\textsuperscript{28} The safety net of a healthcare insurance program is now failing.\textsuperscript{29} Only two-thirds of the 41 million Americans now employed have health insurance.\textsuperscript{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.\textsuperscript{30} 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.\textsuperscript{31} 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 require a more balanced and certain medical delivery system.35 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.36 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.


1. Klingel, S.J., “Critical Issues Facing Workers Compensation,” NCCI Holdings, Inc., (2003); Workers’ Compensation plans are based on date of accident and 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 AWF (Average Wholesale Price) for pharmaceuticals while Group Health plans pay only 72%. This difference is based on the types of medications 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).


Clearing the Workers’ Compensation Benefit Highway of Medical Expense Land Mines

By John H. Geaney and Jon L. Gelman

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 “Ganey’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
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. Christodoulous'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

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 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
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, 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 unmistakenly, 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 Soclow), 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 throat’ 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 petitioners. 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
commitee 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
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. SWEENY
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.

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 down 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.
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,

[Signature]

Madeline Neumann
Immediate Past President
Garden State COPS Chapter
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,

[Signature]

Madeline Neumann
Garden State COPS
NJ Concerns of Police Survivors Chapter
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.
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.

James C. Knicos
Executive Secretary
New Jersey Self Insurers Association

Chris Hansen, President
Ralph Angelo, Past President