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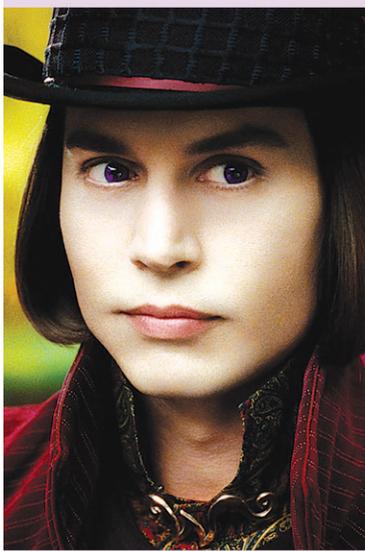
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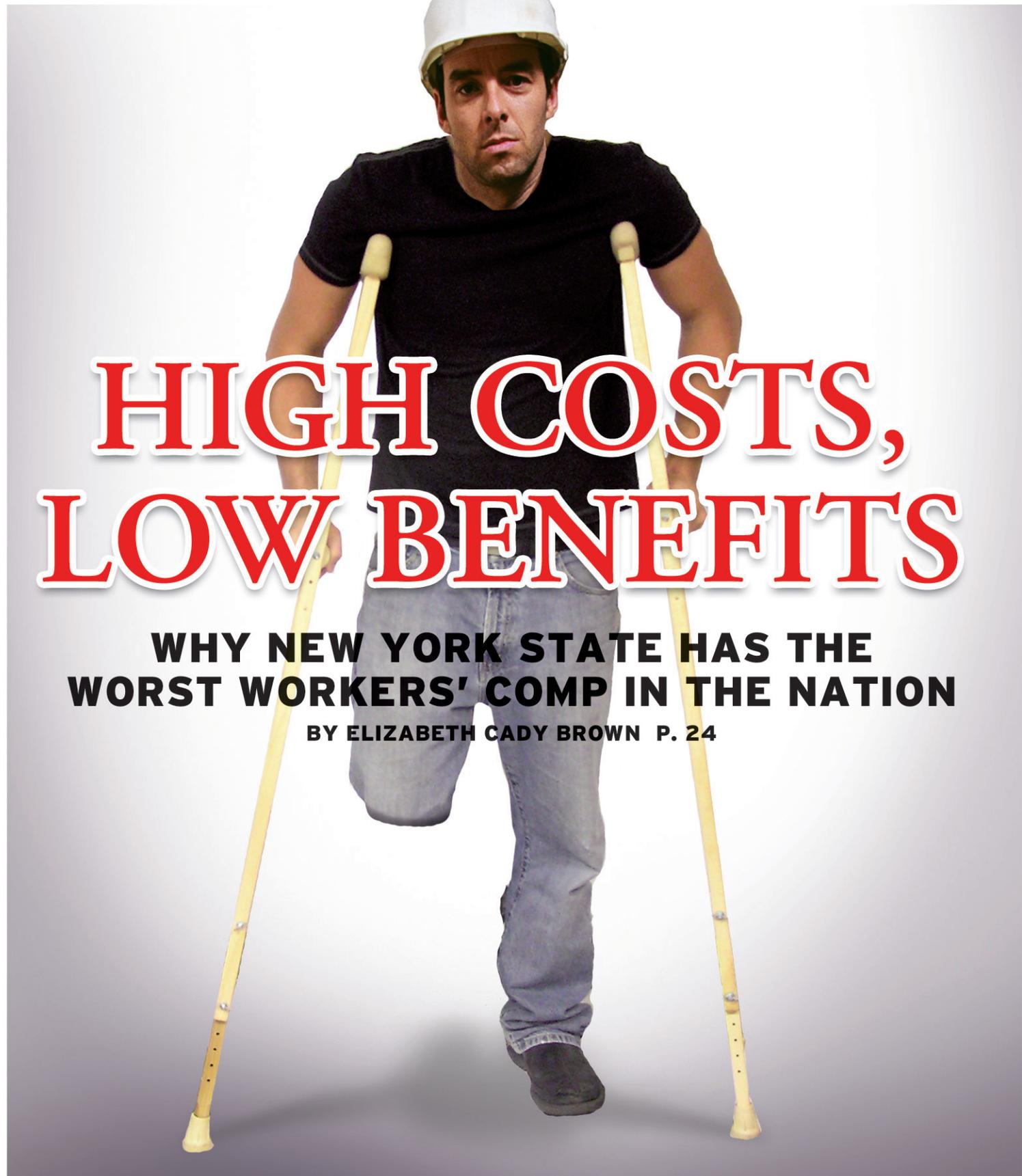


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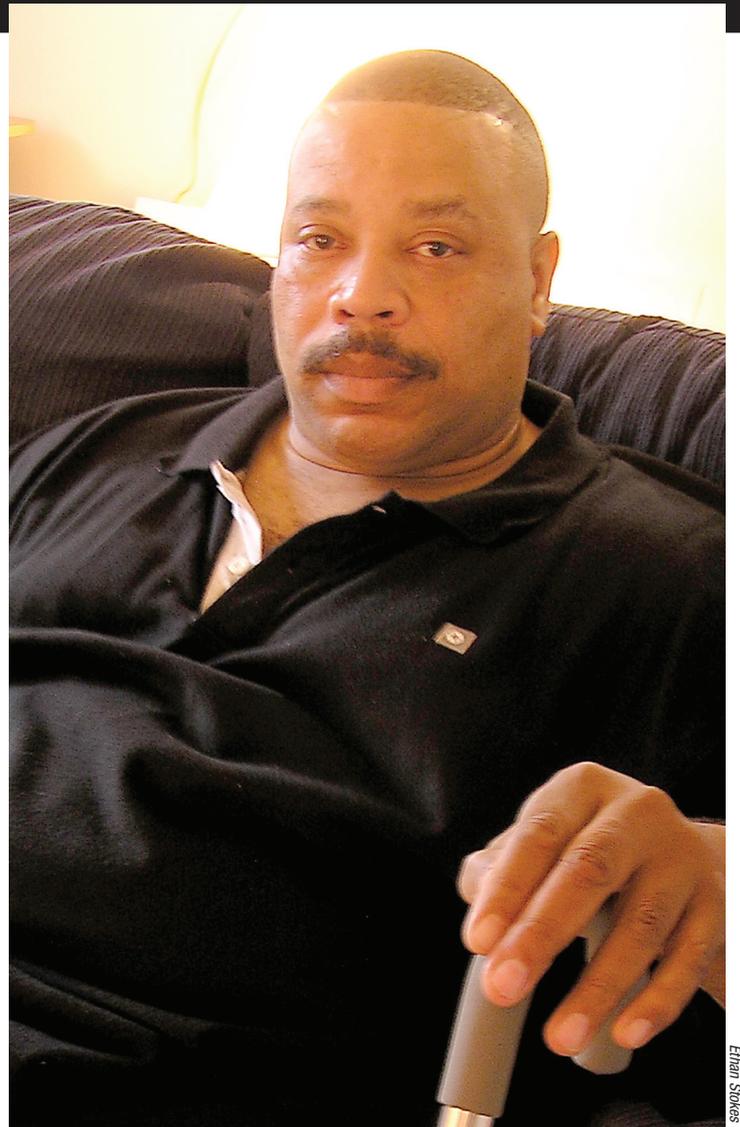
# HIGH COSTS, LOW BENEFITS

**WHY NEW YORK STATE HAS THE  
WORST WORKERS' COMP IN THE NATION**

BY ELIZABETH CADY BROWN P. 24

# HIGH COSTS, LOW BENEFITS

*Kendall Brown, a former truck driver, was injured on the job last fall and is frustrated by New York's workers' compensation system.*



Ethan Stokes

Almost nothing about New York's workers' compensation system is straightforward, but Kendall Brown understands this much: The cash benefits he gets are not enough to make ends meet. He knows that since his right knee was crushed in an on-the-job accident on Nov. 2, 2004, the modest condo he and his wife were planning to buy for their retirement is now out of reach, replaced by unspeakable pain and financial ruin.

Big and burly, Brown, 46, started driving trucks for building and plumbing suppliers when he was 19. He took pride in the work, joined the Teamsters and after three decades on the job was taking down \$3,500 or more a month. He had also learned a lot about mechanics. But when Brown said it was unsafe for four men to try to lower a 1,200-pound boiler into a basement using only a rope, the boss ignored him.

"We couldn't hold the weight," Brown remembers, "and the boiler took off. My leg was immediately pinned against the wall with the rope caught at my knee. I heard something pop and crack, it took maybe 10 seconds, and then I went down."

Sitting on the couch in his rented Massapequa home with his leg outstretched—which is

## WHY NEW YORK STATE HAS THE WORST WORKERS' COMP IN THE NATION

BY ELIZABETH CADY BROWN  
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basically all he's able to do these days—he can explain with the cool remove of a doctor how the muscles, tendons and cartilage in his knee were torn to shreds and then reconnected. But when asked to describe how the accident has changed his life, grief emerges.

"I can't walk or sit for prolonged periods. I can't work and my savings are gone. I can't ride bikes or play football with my grandkids. I can't even raise my leg to wash myself," Brown says. "I have no life."

To keep the boredom and pain from driving him completely crazy, Brown has spent the last few months studying the complex social insurance program known as workers' compensation, which he now relies on to cover his medical and living expenses. But that may not prove the best therapy, since experts on all sides agree that New York's system, started in 1914, is among the most maddening and dysfunctional in the country.

While each state's program is different, all are based on a deal struck between workers and

business owners a century ago. In exchange for receiving weekly medical and cash benefits in the event of a job-related injury or illness, employees surrendered the right to sue employers for negligence. The government sets the benefit levels, which are paid under insurance policies that employers are required to purchase.

The insurance program originally intended to protect everyone is now scorned almost universally. Workers say benefits are stingy to the point of cruel and employers say the costs are unfairly high. And they're both right.

"Employers want to see a good, sound workers' compensation system because it eliminates friction," says Eric Oxfeld, president of the national business group UWC—Strategic Services on Unemployment and Workers' Compensation. "But the problem is the cost. It was not meant to compensate everybody for every little ache and pain that might be related to work."

To date, state lawmakers in Albany have declined to address the workers' compensation mess

in any meaningful way. The system was last tweaked in 1996, and this year's legislative session closed without an iota of progress.

"Workers' compensation is an issue that no one pays attention to because it's so complicated," bemoans Joel Shufro, executive director of the New York Committee for Occupational Safety and Health (NYCOSH). "It's only when you are injured that you start to really pay attention."

But as Kendall Brown will attest, once you're injured, it's too late. Brown argues that before one more person gets caught in New York's tangled web of hearings and disability classifications, all interested parties should step back, put some serious reform proposals on the table and join forces to press the politicians into action.

### WORKERS' VIEW

The first change unions and other workers' rights advocates want to see is an increase in the maximum cash benefit. Injured workers get coverage for medical care related to the injury and cash benefits to replace lost wages, but

the maximum cash benefit in New York is currently capped at \$400 a week—no matter a worker's prior wages, number of dependents or degree of injury. Relative to the state's average wage, New York's cash benefit is the lowest in the nation. (See chart p. 26)

"We haven't had a benefit increase in New York since 1992," when the limit was set at \$400, explains Shufro of NYCOSH. "What this means is that every year, the benefit actually drops, due to inflation. It's a silent cut."

Since the cap has not risen with the cost of living, the \$400 maximum payment set in 1992 now only buys about half as much. (See chart, next page) And very few people actually get the maximum: just 3 percent of all injured workers, according to the New York AFL-CIO.

Brown, who can't move from the couch to the bathroom without wincing, is classified as a 70 percent permanent partial disability and gets \$300 a week in wage replacement benefits. But \$1,200 a month doesn't replace \$3,500 in real life. Even with the \$28,500

yearly income his wife brings in as a nonprofit manager, they can no longer make their house or car payments. Brown, like many permanently disabled workers, can eventually expect to receive disability payments from Social Security, but not for a year or more.

"What \$400 means," says Lee Clarke, safety and health director for DC 37, New York City's public employee union, "is that if a worker gets injured on the job, they can't pay their bills. They can't feed their kids and pay their rent, and workers should not have to make that choice."

Many workers also complain about the difficulty of getting insurance companies to promptly pay for necessary medical care. Mary Jeffords, formerly of Massapequa, started Injured Workers of New York, Inc. (IWN) after she was nearly beaten to death by a psychiatric patient when she was working as an institutional aide in Upper Brookville. She says she has heard the same story from hundreds of workers over the last 15 years—that workers' compensation insurers try to force them out of the system by delaying or denying authorization for treatment.

"Starvation medicine," says Jeffords. "That's what the insurance claim adjusters call it. They cut off payments for medications or bring up your sexual history in a benefits hearing to embarrass you. They are just waiting for claimants to die so they don't have to pay out."

Jeffords says insurers' attorneys might mention that a woman once had an abortion or read her weight into the record, even if these details are unrelated to the claim injury, just to make the hearings unpleasant and intimidating.

Labor groups say any overhaul in the workers' compensation system must include two key changes: higher weekly benefits

and more focus on workplace safety. They want the maximum weekly payment raised to roughly \$625, two-thirds of New York's average weekly wage, and pegged to inflation. They also want to shift the economic incentives, so employers and insurers save more money by preventing injuries rather than being stingy once injuries occur.

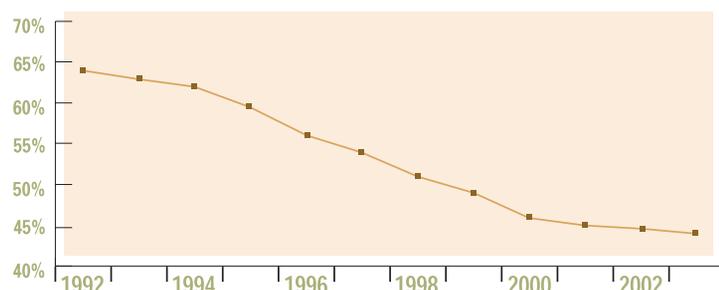
### BUSINESSES' VIEW

Business owners in New York, wary of being depicted as evil ogres taking bread out of the mouths of babes, try to entirely reframe the debate over workers' compensation. Even those who acknowledge that New York provides comparatively low cash benefits quickly point out that in one respect, the state's system is generous and exceedingly expensive.

Independent Business (NFIB). Employers don't have to report workers' compensation costs, so it's impossible to confirm this estimate. But Frederic Buse, a former director of unemployment insurance for the New York State Department of Labor, did his own analysis using insurance industry data from 2000, and found that New York has the second highest overall cost-per-case in the country, behind California.

Benefits are paid for as long as a person is disabled; the amount depends on a worker's disability classification. The maximum is paid to those who are classified as totally disabled (permanent or temporary). Partially disabled workers (permanent or temporary) are paid a portion of the maximum. Workers with certain

New York State Maximum Workers' Compensation Benefit As A Percent Of Average Weekly Wage, 1992-2003



Source: NYS Department of Labor (Average Weekly Wage) and NYS Workers Compensation Law (Maximum Weekly Benefit).

There is no limit on the number of weeks most workers classified as permanently partially disabled (PPD) can receive compensation benefits. So even though most states provide higher weekly payments, 42 states pay those benefits for only a limited time—between five and 20 years.

"This is the main cost driver in New York and the reason employers' workers' compensation costs are about 20 percent higher than the national average," says Mark Alesse, New York director for the National Federation of

permanent partial disabilities—loss of eyesight, hearing or use of a limb—get benefits for a limited number of weeks.

"But if you get a permanent partial injury, like your range of motion is only 80 percent of what it was," says the NFIB's Alesse, "even if you are back at work, you will still get paid benefits for the rest of your life."

While only 14 percent of workers are classified as permanently partially disabled (PPD) with an injury not subject to a time limit, according to the

## Late Payments, Late Fees Why Nassau Outsourced

By Rebekah Rombom

Usually, outsourcing is damaging to workers. But Nassau's decision to finally outsource the processing of workers' compensation claims is benefiting both workers and taxpayers.

Nassau County has been late on workers' compensation payments to injured workers and medical vendors at least 2,776 times since Jan. 1, 2000, says New York State's Workers' Compensation Board spokesperson Jon Sullivan. Every time a payment is late, the county has to pay 20 percent in late fees. Sullivan adds that failing to pay doctors, pharmacies and claimants on time has cost the county nearly \$150,000 in penalties.

While that's not a huge amount of money in the context of overall county spending, workers' comp lawyers say that late payments exacerbate their clients' already tenuous financial states.

"Almost all of these clients depend upon the money," says Barbara Levine, an attorney with the LI law firm Sherman, Federman, Sambur & Levine, which specializes in these types of cases. "A lot of times, if they don't have any more sick time, then they've got no money coming in."

But today, even relatively small sums can annoy LI's taxpayers.

"I think they're literally wasting my money," says Robert Saminsky, another attorney who handles such cases. "I'm a Nassau County resident, and quite frankly, I'm angry. It's not like they don't know about it."

An audit by the New York State Comptroller released in 2004 recognized the seriousness of the problem: "[Nassau's] Workers' Compensation Bureau has significant deficiencies in the procedures used to account for, investigate and manage workers' compensation costs and claims."

The county took action. Since July 12, 2004, Triad Group, an independent claims processing firm, has been in charge of all new claims. Nassau County Managing Attorney Peter Reinharz insists that Troy-based Triad, by processing and investigating claims and medical bills the way private insurers do, has so far eliminated late payment penalties.

"Under the old processing system, there were inherent delays built in," Reinharz says, referring to multiple offices and individuals who handled every claim.

Indeed, the number of penalties went down from 784 in 2003 to 514 in 2004, the year Triad signed on as third-party administrator, says Sullivan. As of early this month, there were 315 penalties against the county for late payments in 2005. But those recent penalties could pertain to cases that were processed before Triad was hired.

"If you ask any of my staff, what's the worst thing they can do, it's get a penalty," says Triad CEO Victoria Manes, adding that she would pay out of pocket any late fees resulting from her company's handling a claim.

In addition to paying claims and medical bills in a more timely fashion, county employees say Triad is also helping stop payment of unnecessary and fraudulent claims.

"Triad, so far, on the medical bills has denied close to \$1 million," Reinharz says. "That's a big difference for us."

Still, even Triad isn't perfect.

"I've put three calls into Triad since Thursday for two of my clients," Levine, the workers' comp attorney, said late on Monday afternoon. "So, is that better than the county? Not really."

Levine is willing to agree with state and county officials, however, that Triad may just need more time to adjust to the new workload and smooth out areas where the county system was deficient for so long.

NYS Comp Board spokesperson Jon Sullivan is optimistic about the future of Nassau's system.

"Nassau County has some catching up to do, [but] they appear to have a real willingness to try," he says. "Our people see that as a step in the right direction."

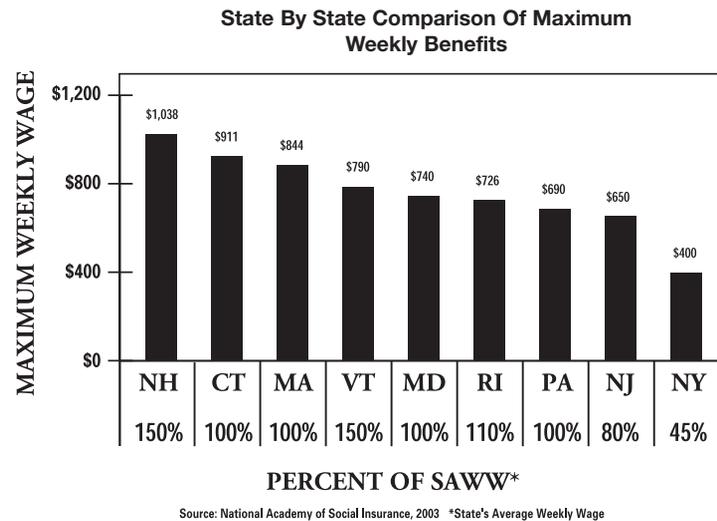
**"THEY CUT OFF PAYMENTS FOR MEDICATIONS OR BRING UP YOUR SEXUAL HISTORY IN A BENEFITS HEARING TO EMBARRASS YOU. THEY ARE JUST WAITING FOR CLAIMANTS TO DIE SO THEY DON'T HAVE TO PAY OUT."**

Business Council of New York State, the largest business association in the state. Yet those claims add up to roughly 77 percent of the more than \$3 billion paid out in medical and cash benefits each year. Matthew Maguire, communications director for the council, says those lifetime payments for PPD claims raise premiums and hurt the bottom line.

"The cumulative effect is that it depresses economic activity, discourages job creation and forces small businesses to downsize or move," says Alesse. "Business owners are quite disappointed by the business climate in New York."

While specific proposals vary, business lobbyists generally agree that any overhaul of workers' compensation must reduce costs. They say a 10- to 12-year time limit on PPD payments is more than sufficient, allowing workers to get as well as possible and be retrained for new kinds of work.

Business groups also want doctors to follow a set of standardized treatment guidelines, which



they say will stop scammers from charging workers' compensation for unnecessary or unrelated medical costs. While labor groups are not opposed in principle to guidelines, there is concern about standardization simply being code for more limited medical coverage. And they argue that business interests purposely exaggerate accusations of fraud as part of a public relations strategy.

"Yes, a few people do get paid for boo-boos," says Mary Jeffords

of IWNY, "but many more injured workers spend years slowly going bankrupt."

#### INSURERS' VIEW

Surprisingly, labor groups are not wholly unsympathetic to the plight of business. They know that New York's workers' compensation is both low-benefit and high-cost. What they resent is businesses looking to reduce costs by punishing the victims. Instead, unions say, businesses should stand with

them against the real profiteers silently milking the system for millions: the insurance companies.

According to the National Association of Insurance Commissioners (NAIC), the national average profit margin on workers' comp insurance was 6.9 percent in 2003. In New York the profit margin was 9.9 percent. And a powerful group of insurers, the New York Compensation Insurance Ratings Board (NYCIRB), has a request for a 16.1 percent rate increase in premiums pending before the state regulatory board, which will vote on Friday, July 15.

A private company made up of 360 "member" insurance companies, NYCIRB is the primary organization in charge of analyzing premiums and recommending increases. Art Wilcox, director of New York's AFL-CIO public employees division, is one of only two NYCIRB board members not affiliated with a large private insurer, and he is highly critical of what he calls the "insurance industry cartel."

"One problem is that the private insurance companies are the sole caretakers of data about medical costs," says Wilcox. "They may give a figure of 8 or 9 percent profit, but I'm not buying on to that. It's all phony numbers."

He's not the only one who suspects insurance companies of playing fast and loose. New York Attorney General Eliot Spitzer launched a probe in April to look at whether American International Group, Inc., the besieged insurer better known as AIG, intentionally misreported how many workers' comp policies it carries.

Wilcox reserves some fire for the broader business community as well, which he says mistakenly identifies with the big insurers. By refusing to challenge the members of the NYCIRB, Wilcox says, the overall business community essentially lets its pockets be picked.

"I was at a State Insurance Department hearing the other day," says Wilcox, "and not one

*"High Costs, Low Benefits" continued on page 71*

## FUSIONISTS: Boxes

By Matt Mannion



# HIGH COSTS, LOW BENEFITS

Continued from page 26

employer showed up to say that they are paying too much in workers' compensation and won't pay another dollar. But the insurance companies were there. The pigs were at the trough, asking for higher premiums, and the employers weren't there to defend themselves."

The insurance lobby denies that they are making anywhere near the profits Wilcox suggests. According to the NAIC, workers' comp insurers in New York earned \$3.45 billion in premiums in 2003 and paid \$2.53 billion in claims, a loss ratio of 73.4 percent—and that doesn't include their administrative costs.

"Many years, insurers lose money on workers' compensation, and some years, they make money," says Oxfeld, president of business group UWC. "But their

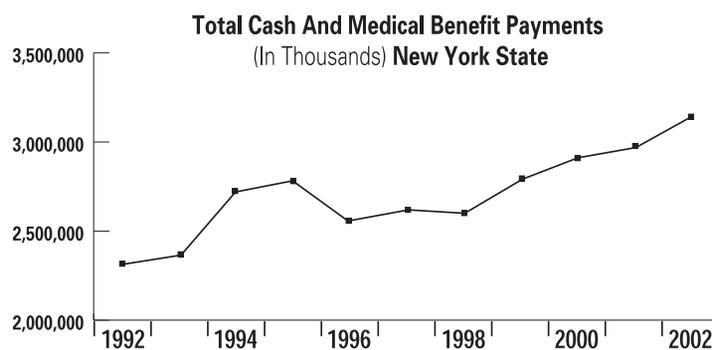
profitability doesn't stand out as excessive."

"Medical costs," says David Corum, assistant vice president of the American Insurance Association, "that's where more and more of the dollars are going."

## IMPASSE

Despite the fact that workers, businesses and insurers each argue that they are getting screwed by the system, none of the dozen or so legislative reforms proposed over the last decade in the Assembly or the Senate have even made it out of committee. Caught in a bind of not wanting to anger the unions or the business lobby, state legislators have opted to avoid the issue, or to speak only in general terms about the need for reform.

"Nobody really disagrees with



Source: Strategic Services on Unemployment Compensation & Workers' Compensation.  
Published by the National Foundation for Unemployment Compensation & Workers' Compensation.

the fact that there should be an increase in benefits," says Joe Erdman, legislative director for Sen. George Maziarz (R-Wheatfield) and the new chair of the Senate Labor Committee. "But we are looking at ways to defray the costs to business. We want to take a pragmatic approach to ensure it would not be anything bad for businesses or workers."

Workers' compensation is a classic example of how issues get trapped in political purgatory, says Joel Shufro, NYCOSH director. Addressing the issue is sure to

alienate at least one powerful interest group, while ignoring the issue keeps concerned parties forever vying for politicians' affections with endorsements and campaign contributions.

"A lot of legislators who I've talked to say privately that it's advantageous for them politically to have the unions or businesses always coming and asking them for action," says Shufro, "because that is how they deliver on small favors."

Albany watchers bet that the state will remain in limbo for at least the rest of Gov. George

Pataki's current term, since he is unlikely to sign a bill that the unions would even consider supporting. A fresh face in the governor's mansion, however, might shake up the power balance enough to break the current impasse.

In the meantime, Kendall Brown is left to figure out how to manage his injury, stay sane and get by on limited cash benefits that, in his case, are scheduled to end in roughly five years. By that point he may qualify for the knee replacement surgery that could get him on his feet again (which, he says, workers' comp won't cover until bone is literally rubbing against bone). Brown may be able to get trained in another line of work, but right now the pain and uncertainty are paramount.

"I just don't think the politicians have any understanding of how completely becoming disabled can affect your life," says Brown. "Nobody is looking to get rich, but I'm afraid of living in poverty. To them, though, I'm just a name and number." ❏

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