OP-ED CONTRIBUTOR

The Claim Game

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Farmingdale

EACH year, more than 140,000 New Yorkers are injured on the job. For most, the main source for paying medical expenses and replacing lost wages is the workers' compensation system.

As a lawyer whose career is devoted to representing these injured workers, I have spoken to thousands of people over the years about their individual cases and about the limitations of the system. I've spent many unhappy hours explaining that even though someone may not be able to pay rent or feed his family on his benefit amount, he is getting the most the law allows. Often, I have had to tell clients that they cannot have necessary medical testing or treatment until they get approval from their insurance company. And recently, I have had to explain to workers with problems related to 9/11 that they've missed the deadline for claims because of technicalities in the Workers' Compensation Law.

Since 1992, the maximum benefit in New York has been $400 per week, although most injured workers receive less. According to the New York Committee for Occupational Safety and Health, a nonprofit coalition of unions and individual workers, this is the lowest benefit rate in the country as a percentage of the state's average weekly wage. By contrast, New Jersey's maximum weekly benefit is $691 and Connecticut's is $1,005.

Gov. George Pataki, adopting proposals made by the Business Council of New York State, has suggested an increase in the maximum benefit to $500 per week, a figure that would still leave New York far behind most other states. Other elements of the proposal are a 50 percent cut in awards for permanent loss of use and a sliding scale of time limits for permanent disability benefits. This means that a worker who was permanently disabled would no longer be paid for life and "capped" at 500 weeks of benefits; those less than totally disabled would get benefits for an even shorter period.

One wonders how permanently disabled workers would survive after their benefits are exhausted. Only the most disabled are likely to receive Social Security disability benefits, and thousands of "capped out" disabled workers would be left to the mercy of public assistance or charity.

Business groups argue that workers' compensation insurance costs too much money, and that cutting benefits for workers will result in lower insurance premiums for employers. This theory isn't supported by the data, which shows a 45 percent drop in claims for workers' compensation from 1991 to 2005. Other studies show that from 1988 to 1997 financial benefits paid to injured workers declined by 32 percent, a trend that has continued.

By every measure available injured workers have made far fewer claims and have received far less money over the past 15 years. Logically, workers' compensation insurance premiums should have dropped substantially because if fewer claims are made, less money is paid out — and they have, by 30 percent during the last 10 years. During that same period, insurance carriers have made a profit of at least 9 percent per year, taking in more premiums than claims paid out.

Have insurers passed on their savings from the decline in workers' compensation claims? It doesn't look like it, but it's impossible to know if they're overcharging employers. Why? Because in New York, these insurers are required to report their data to the Compensation Insurance Rating Board and this board is governed by the insurers. With no independent verification of the insurers' claims about their charges to employers, their payments to workers or their profits, much of their data remains suspect.

The state Insurance Department, which supervises and regulates all insurance products in New York, recently rejected an application by the rating board for a rate increase, implying its distrust of the insurers' data. The accuracy of their claims has also been challenged by the Professional Insurance Agents of New York and by the state A.F.L.-C.I.O., which estimates that the insurers retain 35 cents out of every premium dollar. And the New York State Attorney General's office has announced settlements with the insurance industry totaling $2.6 billion related to fraud and bid-rigging, much of it related to workers' compensation insurance.

It's clear that we cannot rely on an honor system when dealing with insurers that have settled fraud claims against them for billions of dollars. Therefore, the Legislature must empower the state Insurance Department to audit these insurers and publish the results, bringing a measure of truth to the question of how much premium is collected and what portion actually reaches injured workers and their families.

The problem with the workers' compensation system is that too few of the premium dollars paid by employers reach disabled workers and their families. Too much is kept by insurers, which reap huge profits by pocketing the savings on declining claims instead of reducing charges to employers. Perhaps it should be the other way around.

Robert Grey is a lawyer.

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