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The added pain of on-job injuries

Changes in workers' compensation system have benefited insurers, but not many employees

By Dean Calbreath
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Gary Hoag was in the fog when his legs were crushed.

On a foggy day in 2005, the California Highway Patrol officer was standing on the shoulder of Interstate 5 near the San Onofre nuclear plant, calling for an ambulance to help passengers in a Jeep that had crashed into the center median.

Suddenly another car spun out of control on the rain-slick road, slamming into Hoag and pinning him against the Jeep. Hoag's left leg was nearly severed from his thigh.

“I was bleeding profusely and thought I would probably die,” he said. “I asked the dispatcher to call my wife and tell her that I loved her.”

After intense surgery, Hoag's leg was reattached. But because of recent changes to the workers' compensation system, he has faced an uphill battle to receive physical therapy for his left leg, medical care for his right leg, which was also damaged in the accident, and psychological counseling to help him cope with problems after the accident.

“I almost lost my life on duty,” he said. “This isn't some fraudulent case.”

Since a series of changes to the workers' comp system in 2003 and 2004, California has sharply cracked down on payments to injured workers.

In 2005 – the latest date that comprehensive statistics are available – such states as Mississippi and Arkansas offered more income benefits for work- related injuries than California, according to the most recent market study by the U.S. Chamber of Commerce.

Despite the crackdown, many employers say they have not seen the benefits they were expecting from the reforms. California remains one of the 10 most expensive states in the country for workers' comp premiums, according to Department of Insurance estimates.

The disparity between premiums and payouts means that insurers have been enjoying record profits.

In 2005, workers' comp insurers had a 50 percent profit margin on their premiums in California, according to data compiled by the Workers Compensation Insurance Rating Bureau or WCIRB, an insurer-backed advisory board. After those lucrative profits drew more insurers to enter the market, the profit margin slid last year to 40 percent, partly because of the increasing competition.

The profits have drawn the attention of Insurance Commissioner Steve Poizner. Last week, he called on insurers to reduce the premiums they charge customers by at least 14 percent. And he launched a “market conduct review” to investigate whether insurers are providing benefits to injured workers promptly and properly.

A number of lawmakers in Sacramento already believe that injured workers are getting short shrift from the system. Senate President Pro Tem Don Perata has introduced a bill to double the benefits employees receive if they are permanently disabled. A bill by Assembly member Joe Coto would extend temporary disability benefits to three years, rather than the current two-year cap.

In addition, William “Steve” Morris – an attorney who represents injured workers – in April collected enough signatures to put his Fair Medical Treatment Initiative on the ballot.

The initiative would allow injured workers to choose their own doctor when they get injured on the job and stop insurers and employers from contesting, delaying and denying necessary medical care and diagnostic procedures.

Insurers and a number of business groups are fighting to preserve the current system.

The 2004 reforms “halted the skyrocketing workers' compensation costs that had become a drag on our state's economy,” said Allan Zaremberg, president of the California Chamber of Commerce. “They have been opposed at every turn by those who thrived under the old dysfunctional system.”

But San Diego attorney Linda Atcherley, who heads the California Applicants' Attorneys Association, comprised of lawyers who represent injured workers, says that those reforms went too far.

“There were some reforms that needed to be made for cost containment,” Atcherley said. “Employers had some legitimate concerns. But in the haste to draft the legislation, they came up with something that was so unclear that it promoted litigation instead of getting rid of it.”

The California insurance market has been on a roller-coaster ride since it was deregulated in 1995. Deregulation resulted in a flood of new insurance companies hoping for easy profits. The highly competitive market sparked a price war between insurers.

Just as the price war was reaching a crescendo, the Wall Street crash of 2000 deprived insurance companies of the investment income that bolsters their profits. Two dozen companies went belly up, and the survivors jacked up prices to make up for previous losses.

By 2003, insurance rates were soaring in California. The average business was paying $6.47 per $100 of payroll for workers' comp insurance, compared with $2.30 in early 2000. For some businesses, workers comp' rates more than tripled in less than three years.

To quell the market, the Legislature enacted two reform packages: one signed by then-Gov. Gray Davis in November 2003, the other signed by Gov. Arnold Schwarzenegger in April 2004.

Among other things, the laws sharply limited visits to physical therapists and chiropractors. Payments for temporary disabilities were stopped after two years.

Permanent disability payments were slashed up to 50 to 70 percent, depending on the nature of the injury. With limited exceptions, injured workers could not choose their own doctors. Instead, they had to go to clinics designated by the employers. And diagnoses were subject to a “utilization review” that allowed insurers to veto treatments that were outside specific guidelines.

The reforms saved insurers billions of dollars. And they passed some of that savings to their customers. Late last year, California employers were paying an average of $3.25 per $100 of payroll, slightly below where rates were before deregulation.

“Employers have experienced savings during the past three years that enabled them to actually expand their business, provide raises and benefits to workers and create jobs,” Zaremberg said.

But many employers say they are still not seeing the full benefits of the rate reductions.

“Rates are dropping, but slowly,” said Jeff Kavin, head of Greenblatt's Deli in Los Angeles.

Kavin, who was a major backer of Schwarzenegger's reform package, said he was paying more than $100,000 per year in workers' comp in 2004 for his gourmet deli and wine shop. Now, he's paying less than $80,000. But that's still far more than his $32,000 bill in 2002, “and we thought that was outrageous.”

Kavin said that when workers' comp is combined with health and liability insurance, he pays about $20,000 for insurance a month – about $1,170 for each of the 17 tables in his deli.

“This whole system wastes so much money,” he said. “The rates should be dropping a lot more.”

For every dollar that employers paid insurance companies in 2006, about 37 cents went to medical care for injured workers, according to the WCIRB.

About 9 cents went to administrative and other expenses related to the medical payouts. And 14 cents went to overhead and sales expenses, especially commissions and salaries for insurance agents.

That leaves 40 cents for the insurers' profits – slightly more than the payouts to workers. And that does not include the hundreds of millions of dollars that insurers generate through investments.

Last year, for instance, Zenith National Insurance Corp., based in Woodland Hills, generated $101 million in investment income in addition to earning $213 million through its workers' comp premiums. Stanley Zax, Zenith's president, attributed the firm's “substantial underwriting profits” to the workers' comp reforms in California and Florida.

Although the insurers' profits have grown, payouts to workers have dipped far below the national average, judging from information collected by the U.S. Chamber of Commerce.

In 2005, California offered compensation of $660 for loss of a toe, 94 percent below the average of $4,974 for the 30 states that use disability schedules for their workers' comp programs, according to data collected by the U.S. Chamber.

California offered $17,714 for the loss of an eye, 76 percent below the average for the other states. Prior to Schwarzenegger's changes, the payout was $23,100 – still below average. There are lesser disparities in income benefits for the loss of a hand, thumb, foot or eye, as well as for hearing loss.

In most categories, such states as Arkansas, Iowa and Mississippi offer higher benefits than California, despite a much lower cost of living, according to the chamber's data.

Of course, it's a relatively small minority of workers who lose a limb on the job. Surveys by the California Workers' Compensation Board show that most injuries are relatively minor. Twenty-five percent of injured workers require only one visit to a doctor. More than 70 percent require less than 10 visits. Polls show that the vast majority of those workers are satisfied with the treatment they receive.

But the more serious the injury, the more negative the workers feel about their treatment. The survey shows that nearly a third of the long-term patients were dissatisfied with their care. For many patients, the complaints center not only on the cutbacks in care but the increasing bureaucratic hurdles they encounter.

Former CHP officer Hoag says that, initially, his medical care was fine. Workers' comp insurance paid for a two-month stay at Mission Hospital in Mission Viejo, where he had his left leg surgically reattached as well as skin grafts.

He made regular visits to a physical therapist to try to relearn how to use his legs. His biggest complaint was that he had not been able to obtain psychiatric help to cope with nightmares or the stress of taking an unwanted leave from a job where he worked for 23 years.

Then, early this year, a workers' comp claims adjuster notified him that his insurer was changing its policy to be more in compliance with the 2004 reforms.

The adjuster said Hoag no longer qualified for physical therapy, because he had far exceeded the guidelines of 24 visits to a physical therapist established under the 2004 reforms. And she said Hoag was not eligible for care for his right leg, because there was not enough evidence that it had been injured in the accident.

“I knew my right leg was hurt,” he said. “I knew the evidence was there. But the main thing I wanted was to get back into physical therapy. Without therapy for my left ankle, it could have atrophied, which could have resulted in the need for additional surgery.”

Hoag said that when he complained to the adjuster, the message he got was: “The 2004 reforms will be applied. If you don't like what is happening, maybe you should hire an attorney.”

Although one of the stated purposes of the 2004 workers' comp reforms was to take lawyers out of the process, Hoag believed he had no choice but to hire one.

On his own, he also went to Mission Hospital, where he paid $300 to receive his 1,100-page medical report, which showed that his right leg had indeed been damaged in the accident.

Ultimately, Hoag was able to gain 12 more visits to the physical therapist as well as treatment for his right leg, although he still has been unable to obtain psychiatric counseling.

“I don't know what's going to happen after he has 12 visits to the therapist,” said his lawyer, Linda Atcherley. “It would be nice if they would authorize a doctor to prescribe what he feels is necessary, so we don't have to keep wasting time and progress in healing the leg.”

Atcherley says that Hoag is lucky.

“Fortunately, he's a police officer and people really have sympathy for police officers,” she said. “But day laborers and farmworkers and other people have similar injuries, and who knows what happens to them.”

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