White Paper

Workers' Compensation Problems in Horse Racing

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The racing industry currently faces a crisis in workers' compensation. The problems are currently limited to a few states, but the problems in those states have the potential to spread to other states and thus become an industry-wide crisis. In some sense, the crisis has already become a national one because many trainers move across state boundaries to race in states where workers' compensation has become a problem. In several states trainers recently have seen significant jumps in the costs of their workers' compensation coverage. In some states private insurers have stopped underwriting workers' compensation risk in the equine industry, driving the trainers to purchase coverage from the insurer of "last resort." These trainers end up paying higher rates both because there are fewer discounts and because the typical risk history in the "last resort" group is worse than in the regular group. Insurers who have stopped selling coverage have cited high accident risks in a more uncertain environment (partially due to 9/11), sharp declines in their returns on investment as interest rates have fallen, and concerns about understatements by trainers in reporting their payrolls and exposure to risk. The solutions proposed include the following:

1) the development of a "captive" insurer for the racing industry to underwrite workers' compensation risk in racing under the distinct rules in the various states;
2) creating workers' compensation programs that replace payrolls as the measure of exposure to risk; and

3) federal legislation to allow for all racing workers to have the same coverage nation-wide.

In addition to the problems faced in providing workers' compensation for grooms, assistant trainers, and other stable employees, there remains the question of how to provide appropriate accident coverage for jockeys and exercise riders. Jockeys and exercise riders are currently covered under workers' compensation in New York, New Jersey, Maryland, Colorado, and California. In the remaining states they are treated as independent contractors and have occupational accident coverage through disability policies. The coverage on those policies does not offer equivalent benefits to workers' compensation coverage. These differences in coverage have led the Jockeys' Guild to seek to include jockeys under workers' compensation in the many states where they are currently not covered.

In this white paper, we seek

1) to provide information about the nature of workers' compensation coverage in leading racing states,
2) to discuss the causes of the rise in workers' compensation premiums,
3) to provide information about the solutions proposed for the workers' compensation problems.

We draw no conclusions as to the proper course for the racing industry to take. The purpose is to lay out the issues and to provide information to interested parties in the racing industry to put them in a better position to decide how best to resolve these problems.

The Basics of Workers' Compensation

Workers' compensation standards are determined by state law. The employer is liable for medical costs and wage replacement for accidents "arising from and in the course of employment" up to the limits established by state law. The injured worker is eligible for wage replacement if the accident leaves him or her out of work for more than several days.[1] The states require that employers display evidence that they have workers' compensation insurance coverage. If an employer is large enough, the employer may self-insure but must post a bond. In thirteen states small employers with few employees are not required to participate under workers' compensation, although they have the option of joining the system. For example, in Florida's general workers' compensation law, employers with fewer than four employees are eligible for the exemption. Even so, the majority of racetracks require trainers who wish to race to show evidence of workers' compensation, even if they have no regular employees. In some states workers' compensation coverage is required for a training license.

There are exceptions to these generalizations. In Texas workers' compensation coverage is optional. It has been characterized as expensive and difficult to obtain. Consequently, only about 20 percent of the trainers have coverage, and these tend to be the larger trainers. In New Mexico all horse people are exempt from workers' compensation by statute, and during 2001 Montana exempted horse people from workers' compensation while on the grounds of a licensed meet.[2] In the absence of workers' compensation, injured workers have recourse to obtain full compensation for their losses under common law rules of negligence liability. For the injured worker to receive compensation under negligence liability rules, he or she must show that the employer was negligent (failed to exercise due care).[3] A worker accepting coverage under workers' compensation prior to any accidents does not have the right to sue for a workplace accident under negligence liability unless they can show willful intent to injure on the part of the employer. This was a key clause in the original passage of the workers' compensation acts and may be an important issue in setting up reforms, particularly when relying on disability insurance as a substitute for workers' compensation coverage. It should be noted, however, that lawyers representing injured workers have sought alternative means of obtaining full compensation for injuries by suing under alternative rules, for example, under product liability rules for design flaws in safety machinery.

If a worker is injured for more than three days in most states, he or she is eligible for wage replacement benefits while injured.[4] The workers' compensation benefits replace between 60 percent and three-fourths of the worker's weekly wage during the injury. Table 1 shows the replacement rates for a large number of racing states. For a racing stable worker earning $400 per week, the benefits would range from $240 per week to $300 per week, depending on the state, during the period of injury. Most states have set maximums and minimums for the weekly benefit payments. Given the typical weekly wages on the backstretch, the weekly maximums and minimums generally do not affect the benefits the workers would receive.[5] Since workers' compensation benefits are not taxable, the benefits replace a higher percentage of after-tax weekly earnings. Assuming workers pay an average of 10 percent of their earnings in income taxes to the federal and local governments on their salary, the workers' compensation benefits would replace between 67 and 83 percent of after-tax earnings.

Workers injured on the job are also provided with medical coverage. Medical expenses as a share of total workers' compensation costs for all industry rose from 33.2 percent in 1980 to 41.9 percent by 1993. Some of those problems arose because the medical coverage under workers' compensation provides for no deductibles or co-payments. Both are features of regular health insurance that serve to control the usage of medical services. Employers began to control costs by monitoring claims more closely and a number shifted to HMOS and managed care in the early 1990s. It has been argued that this helped slow the rise in medical costs through 1997. Experts on the issue suggest that managed care was only a one-time fix to the issue, although such a move might be helpful in the racing industry if HMOs have not been tried yet. Since 1997 medical costs have begun to rise again. Generally, medical costs have been rising sharply over the past two or three years in all types of insurance settings.

Coverage for Trainers' Employees aside from Jockeys and Exercise Riders

In this section we will address the coverage of grooms, hot walkers, and other racing stable employees who are covered under workers' compensation in all states. Trainers in a number of states have seen workers' compensation premiums rise over the last few years. For all industries in aggregate, workers' compensation premiums fell through the 1990s but over the past two to four years, they have shown a tendency to rise again.

To determine the trends in rates in the Racing Industry, we have obtained evidence from two sources, which are summarized in Tables 2 and 3. Table 2 shows information on basic premium rates in 2002 and the trend over several years for some of the racing states. The data were obtained from NCCI, a not-for-profit firm that plays an important role in helping set workers' compensation rates in a number of states. Workers' Compensation Code 8279 is the NCCI code applicable to the training of race horses, training of polo ponies and exhibition horses and for stable hands in racetrack operations. There are also specific codes for racing stables in Florida (7205), California (8631), and New York (8280). All rates are listed per $100 on the payroll. The voluntary rates in the table are developed by NCCI. They include all expenses and must be used by all carriers writing coverage in the voluntary market. Similar rates are set by the state funds in California and New York in the table. In the middle of the table are rough estimates of rates insurers might charge in states where the NCCI plays an advisory role by providing base loss-cost rate information. We obtained the rates by multiplying the loss-cost ratios by 1.5 to take into account typical loads added by insurers.

Table 3 provides information from phone surveys of HBPA representatives in various states. The representatives were asked to give us a sense of the rates that they see in the current markets and their sense of changes in the rates over time.

Both Tables 2 and 3 show substantial variation across states with respect to the basic workers' compensation rates. Workers' compensation rates are highest in California and Florida. The Tables also show an enormous range in the growth rates in workers' compensation rates. In the information on rates in Table 2 California experienced the most dramatic increase, as the voluntary rate for racing stables jumped

64.5 percent between 1999 and 2002. This was especially damaging because California already had a relatively high rate of $17.10 per hundred dollars on the payroll in 1999. Florida also experienced rapid growth on top of high initial premiums. New York, Kentucky, and Maryland experienced rapid growth in rates, but they started with substantially lower rates than in many other states.

The survey results in Table 3 also show wide variation in experiences across states. Florida and California again have the highest rates and have experienced dramatic increases in rates recently. Colorado and Washington insurers use a different exposure rate, but operations in both states have seen 4-fold increases in their rates within the past decade. Meanwhile, a number of states have seen their workers' compensation rates hold fairly steady. The information from the survey and from NCCI doesn't always match. The NCCI information is for base rates, while the surveys are of people who are giving their impressions based on their own experiences and experiences of others. As we discuss below, different trainers often face quite different rates for a variety of reasons.

Workers' compensation premiums rise because 1) the anticipated risk and costs of accidents rise based on changes in the experience in the industry or 2) because the costs to the insurer of providing workers' compensation coverage increase. The fundamental factors that drive the workers' compensation rates are the anticipated payments for wage replacement and for medical costs for accidents in a specific year. These payments are divided by the payroll (or an alternative exposure measure) to obtain a pure premium per $100 on the payroll. Information on this pure-premium in Table 4 gives a sense of the change in the anticipated amounts to be paid for wage replacement and for medical costs for workers in accidents during that year. We report it here to get a sense of changes in workers' compensation losses that might have been the source for rate increases. The rate makers use the pure premium as one of several factors in making rates. Remember that the pure premium is based on the past, so the rate makers also use information on anticipated changes derived from changes in state law, common trends in medical costs and other factors that are likely to influence the benefits that they will be paying to injured workers.

As can be seen by comparing Table 2 and Table 4, the variation in rates across states is largely reflective of the difference in expenditures on workers' compensation benefits and medical costs per $100 on the payroll. New York, Arizona, Illinois, Kentucky, and Maryland have low workers' compensation rates and low pure premium ratios, while California and Florida have both high rates and high premiums. Florida's high rates appear to be driven by an incredibly bad year when anticipated workers' compensation costs associated with injuries from April 1997 through March 1998 soared to $62.95 per $100 on the payroll. The rapid rise in rates in California appear to be in part the results of the removal from the pure premium calculations of an unusually low year for workers' compensation losses in 1994 when the losses were $5.31 per $100 dollars on the payroll. The California rates may also be rising due to some state-wide expansions in the generosity of benefits and state-wide problems with a shrinking reserve fund that have led to rate increases for all California employers.

The rates in Tables 2 and 3 do not reflect fully the different situation for individual trainers. Insurers offer discounts based on the size of the operation, the experience modification for a good accident history, and documentation that the stable meets specific standards. On the other hand, insurers are not required to insure every trainer, particularly those who appear to be bad risks, in the voluntary market. Trainers who are unable to purchase insurance from a private insurer end up purchasing from an insurer of "last resort." In some states, like California, the insurer of last resort is the state fund. In many states firms that cannot obtain insurance in the voluntary market end up in the "assigned-risk" or the "residual" market, where the client is assigned to one of the insurers. Generally, the firms that wind up in this market are poor risks, and the rates in these markets are substantially higher than in the voluntary markets to reflect these greater risks. As insurers of racing workers' compensation risk in California and Florida have either failed, been closed down by regulators, or dropped out of writing coverage, all trainers have been thrown into this "last resort" market where premiums are higher. In California for example, there are reports that rates for high-risk trainers have reached 43.3 percent of payroll, while large trainers with a low claims history can obtain rates as low as 18 percent.

Some of the largest increases in premiums have occurred for trainers purchasing the minimum coverage. Table 6 shows estimates of the 2002 rates for the minimum coverage and the trends in those rates over the past several years. The minimum coverage policy is typically purchased by small trainers who must show evidence of coverage before they are allowed to race and by out-of-state trainers whose home-state coverage does not extend to tracks outside the state where their stable is located. Private insurers in New York in the past wrote coverage that extended outside the state, but nearly all coverage is now written by the state fund, which does not provide coverage at out-of-state tracks.

Several states have experienced very rapid rises in the premiums for minimum coverage, including Colorado, Florida, Louisiana, New Jersey, and Washington. In some cases trainers technically have no employees because they are handling the horses themselves although they might hire exercise riders and others on a temporary basis. In Louisiana, the premiums on these minimum coverage policies have sharply increased over the past 4 to 5 years from roughly $400 to $500 to $1200 in July of 2002. Some Louisiana trainers had formed "partnerships" to share the costs of minimum coverage, but the practice will no longer be allowed after January 15th, 2003.

In Washington state, where all workers' compensation is written by the state insurance fund, the base rate for workers' compensation has risen steadily from $200 per year for all trainers in 1996, when racing restarted, to $1320 per year plus $450 per groom per year currently. Contacts in Washington expect that the base rate might rise as high as $2,000 in the coming year. The rise in rates has been borne most strongly by small trainers without employees because all trainers pay the same base rate and the only adjustment for size is the per groom fee. It should be noted, however, that the rise in rates has reflected the fact that the premiums in Washington in prior years have not fully covered the state fund's costs of paying for medical care and wage replacement to injured racing workers.

It is possible that the rise in rates is reflecting a rapid rise in accident costs associated with trainers purchasing the minimum coverage. The literature on workers' compensation in all industries suggests that experience modifications on premiums within an industrial class do not fully reflect the differences in accident experiences of small and large employers. Most compensation experts believe that the rates for large employers are not as low as their relative accident histories might allow; therefore, the large rates paid by large employers typically subsidize coverage for small employers. However, we would need more specific evidence on the racing industry before we could definitively make this claim.

It is probable that trainers who are forced to hire workers with only short-term attachments to their operation might face greater problems with workers' compensation. Generally, less experienced workers are more prone to accidents. The trainer is not in a good position to provide effective safety training and closely monitor claims because of the short time horizon of employment. Finally, the lack of a long-term attachment might give workers more incentive to report non-work related injuries as work related. This would be particularly tempting when the worker does not have health insurance. In states with short racing seasons, there have been claims of people reporting injuries late in the season and staying on workers' compensation for extended periods of time. We have no way of knowing how common such "moral hazard" or illegitimate claims have become. Certainly, there are a number of reports of such activity. These types of problems have always plagued workers' compensation and therefore would not be a driving force behind the rise in premiums unless there has been a recent change in incentives.

Insurance companies

One reason for the rise in premiums paid has been a decline in discounting of the base insurance rate. NCCI reports that the average discounts for all industries have declined markedly from 23 percent in 1999 to 14.9 percent in 2001 since 9/11. The trend appears to be heading toward a return to the average discounts of 7 percent that we saw during the early 1990s. The decline in discounting may have been driven, in part, by declines in interest rates and the plunge in the stock market, which have caused the returns on the investments of reserve funds to go down. The decline in returns has meant that insurance companies have less ability to offer discounts when they compete for business.

In addition to the decline in discounting, insurers have stopped underwriting workers' compensation risk for racing in some states. In some situations, long time insurers have closed up shop entirely and other insurers who do not have experience with the racing industry are hesitant to enter the field because they can't assess the long-term base risks in the industry. The problem of insurers dropping coverage was a general phenomenon for many industries in the late 1980s and early 1990s when states were restricting premium increases while the insurers' workers' compensation payouts were rising sharply. The reforms of the early 1990s eased the situation. As yet, we have seen no evidence that limits on premiums have created this problem currently, but regulatory limits when workers' compensation payouts are rising rapidly is a potential reason why insurers might drop coverage.

Insurance companies are extremely wary of uncertainty about long-term base risk. They make money by collecting funds to insure risks that they can measure. If they know the base risk and they insure a large number of people with that base risk, the law of large numbers in statistics suggests that they will make money. Even if there is an "unlucky" run of accidents for a number of people, it tends to be evened out over a longer time period and over more people by the group of people who have "lucky" runs that offset the risk. The problem arises when the long-term base risk is uncertain. Then the insurer has problems setting appropriate rates to insure payment of claims and their own profitability. In these cases insurers are more likely to stop providing insurance.

One source of uncertainty for insurers in the racing industry has been concerns that payrolls are being under-reported by trainers. Insurers in Florida and California have complained of underreporting and this may be a general problem given the cash basis of many racing stable transactions. Underreporting creates problems for insurers because they do not have an accurate base on which to calculate the accident rates. The actual losses from workers' compensation are probably better reported than the payrolls because they are reported to the insurer and the state administrator to insure compensation. The accident rate is then calculated based on some measure of exposure to danger, typically the amount of the payroll. If the payroll is consistently under-reported, the insurers will just raise the premiums over the long run. However, if the payroll is inconsistently reported-- under-reporting by some, correct reporting by others, and then changes over time in the extent of under-reporting--this raises more uncertainty for the insurer and makes them less willing to insure the industry.

One current source of uncertainty claimed by insurers is the increased risk of terrorist attacks in the aftermath of September 11th. The problem is less one of losses from the actual attack and more greater uncertainty about the possibility of further attacks. Thus, insurers have become more conservative in their choice to insure. Since racing is already a relatively high risk industry, insurers may have become more wary. There may be some concerns as well about the fact that the racetrack is a public venue, and thus there may be greater risks of a catastrophic attack than at more private places. This is likely a minor issue overall but has created problems for all of workers' compensation. NCCI reports that insurers are pressing for a government solution that limits their exposure to such catastrophic risk.

Solutions for the Workers' Compensation Problem

The specific problems in each state have led concerned parties to seek solutions that address those problems. In Florida for example, private insurers have announced that they will not renew many workers' compensation policies in January. When the policies expire, the trainers will end up in the assigned risk pool, where their rates will rise still further. One of the insurers' major complaints has been that they do not trust the payroll numbers that are being reported and therefore have no good measure of accident risk on which to base premiums. Linda Mills, President of the HBPA in Florida, has been negotiating with a private insurer to come up with an alternative to payrolls as a measure of exposure to risk. She has proposed a charge per stall at the track per day as the basis for exposure to risk. In addition, the medical coverage would be provided under an HMO. As of mid-November, the negotiations over the proposal had not yet been concluded. The insurer suggested that the initial rates might be high due to uncertainty about the accident history, but would likely come down as the insurer gained more experience assessing the risk in the industry.

In Colorado owners pay for workers' compensation on a per start basis. Trainers, jockeys, exercise riders, and backstretch workers are all covered as employers of the owner while they are working at Arapahoe Park. This has not necessarily slowed the rise in rates. Current rates are $118 per start compared with $25 per start in 1992, when the program was started.

In California rates have been rising and over the past several years several insurers stopped writing equine coverage. In February 2002, the last private insurer, Legion insurance, stopped writing horse racing coverage in California, which threw trainers into the state fund where rates have risen as high as $43 per $100 on the payroll. Jim Ghidella and Ed Halpern of the Thoroughbred Owners of California have negotiated with AIG to formulate a plan to cut the trainers' workers' compensation premiums by one-third. The proposal also provides for coverage for out-of-state horsemen who send horses to run in California stakes races and a $300,000 top-end limit on catastrophic claims. The key to the reduction in rates is the provision of a reserve fund that can be used to cover workers' compensation payments that exceed the amounts collected in premiums. The reserve fund is $5.2 million. Approximately half of the money has been released from the stabling and vanning fund through emergency state legislation, while the remainder will come from purses and from the California Marketing Committee. One contingency of the AIG policy is a minimum participation level of the state's trainers. The program was finalized in mid-November. The key to the long-term success of this program will be the ability of the industry to keep their compensation costs at or below the levels warranted by the premiums. Problems will arise if the compensation costs are high enough to force the insurer to consistently use the reserve fund.

Another proposal has been to move away from the state-by-state response and work with a "captive" insurer who would offer workers' compensation coverage in each of the states. There are several advantages to the notion of the national captive. This might take the form of a single insurer or a nonprofit mutual. The advantage of the captive is that it will reduce the turnover of insurers, particularly during hard times in the insurance industry. The captive will be better able to deal with the idiosyncrasies of the industry, possibly develop an exposure measure that is superior to the amount on the payroll, and can better monitor claims. The HBPA currently serves as a claims monitor in Colorado and Washington. The national feature will expand the pool of workers covered and will also allow for portability of workers' compensation policies from state to state.[6] Premiums could potentially be reduced if claims handling and administrative costs are sensitive to experience. A nonprofit industry mutual might reduce the premiums further and would be there in good times and bad.

There are some potential disadvantages to a national "captive." Other insurers might bid away the low-risk trainers, particularly in good years, leaving only the high-risk trainers in the pool of trainers insured by the captive. Such competition would lead to higher rates. It is not clear how serious this problem would be. For example, reports from the scaffolding industry suggest that the vast majority of employers are loyal to the captive. There are also the problems for the company with dealing with multiple state administrations. If the captive is a regular insurer, there may be a potential monopoly problem, where the insurer does not pass on the benefits of the lower costs described above to the trainers because it faces no competition. One possible solution is to have competitive bidding for the captive position, but the turnover in insurers would then mitigate the long-term benefits from the captive. Another is to choose a nonprofit mutual association. It should be noted that an industry-run nonprofit still might become a lightning rod for controversies over worker's compensation in a setting where rising accident costs would lead to higher rates. Several people report that over the past decade that there have been efforts to develop some type of national association, but thus far nothing has come of these proposals.

Another suggestion has been to seek federal legislation to have a national program for workers' compensation in horse racing. The advantage of federal legislation is that it would cut administrative costs for insurers by eliminating the wide array of compensation rules and procedures and would insure portability of coverage across the country. Jack Martone of the Department of Labor has suggested that horse racing workers might obtain national coverage through an amendment of the Longshore and Harbor Workers' Compensation Act. Off-shore oil workers and civilian employees of military bases have received national coverage this way. To obtain federal legislation, the racing industry would have to establish the interstate nature of the industry and would have to come to agreement as to whom should be covered and what they are seeking. One source of disagreement might come over the benefit schedules under the Longshore and Harbor Workers Compensation Act. The typical weekly wage replacement benefits are two-thirds of the workers' average weekly wage. The weekly maximums are substantially higher than in most states at 200 percent of the national average weekly wage, currently $966 per week. The higher weekly maximum may not be an issue for the racing industry because most backstretch workers don't receive weekly earnings above the national average weekly wage. On the other hand the weekly minimum, currently $241.5 may become the basis of compensation for many workers. If the injured worker's average weekly earnings are below $241.5, they will receive wage replacement benefits equal to 100 percent of their average weekly earnings.

If the industry agreed on national coverage but decided to avoid the lobbying expense of seeking federal regulation, Mr. Martone suggested the national coverage might be implemented through a collective bargaining agreement. This has been the method used by the airlines, who also face the issues of having employees in many states who often work across state lines.

Jockeys and Exercise Riders

One issue that has arisen on several occasions over the past decade is how to provide appropriate accident coverage for jockeys and exercise riders. The Jockeys' Guild seeks to have jockeys included under workers' compensation in the states where they are currently not covered. Jockeys are currently covered under workers' compensation in California, Colorado, Maryland, New Jersey and New York, and they have access to coverage in Montana. Exercise riders are covered in Colorado, New York, and California but are treated as independent contractors in New Jersey and Maryland.[7] In the remaining states jockeys and exercise riders are typically treated as independent contractors and have occupational accident coverage through disability policies. There is a substantial difference in the accident coverage for jockeys in the workers' compensation and nonworkers' compensation states.

In the states where jockeys are treated as independent contractors, racetracks typically purchase an accident policy for approximately $772 per day (extra on training days) that covers them during races and in morning workouts. The policies pay $50,000 for accidental deaths, scheduled amounts for certain long-term injuries, and $200 per week in wage replacement benefits for up to 104 weeks. Medical expenditures are covered up to $100,000. There is a $50 deductible, but it is paid by the racetrack.

In general, workers' compensation benefits are more generous than this disability policy. A jockey earning $400 per week, would receive weekly benefits of $267 per week while injured, with permanent total disability benefits for life and similar benefits for his family should he die in an accident. All benefits would be tax free. The medical coverage appears similar but under workers' compensation in most states is not capped.

In the workers' compensation states--New York, New Jersey, Maryland, and California-- the tracks also purchase a catastrophic accident policy for death and permanent total disability. The payouts in the policy depend on whether the jockey signs a "waiver" to not sue under negligence liability. Without the waiver the maximum payout is $100,000. With the waiver the maximum payout ranges from $300,000 to $1.3 million depending on the earnings in prior years. These payouts would be added to the mandatory benefits stipulated in workers' compensation law in those states.

In the states where jockeys are covered by workers' compensation, the administration of the benefit schemes differs markedly. In New York workers' compensation coverage for jockeys and exercise riders is paid through the New York Jockey Injury Compensation Fund (NYJICF). Jockeys are the "employees" of the fund for workers' compensation purposes, while owners and trainers both pay into the fund. New York Racing Association Inc. trainers each pay $420 per year plus 40 cents per stall per day.[8] Owners each pay $420 per year plus 0.65 percent of the purse money up to a maximum of $2000 in any given race. Stables shipping in from out of state pay $105 per start up to a maximum of $420. The administrators of the New York fund suggest that the fund is in good shape, that accident costs are under control, and that they have been able to pay rebates on the fees at the end of the year.

Jockeys in Maryland are also treated as "employees" of the Maryland Jockeys Injury Compensation Fund (MJICF). All licensed owners and trainers are required to pay $150 each per year into the fund to pay for coverage for jockeys. The insurance is underwritten by the state accident fund. The state fund offers a total premium, and then it is split evenly among all licensed owners and trainers. The premium has risen from $100 several years ago and is expected to rise further to $175 in 2003.

In California jockeys and exercise riders are treated as employees of the trainer in the workers' compensation system. John Russell reports that jockey insurance premiums are based on the number of starters with adjustments for experience modification with possible discounts for a larger number of starters. Current rates range from $40 to as much as $90 per start.[9] The pure premium rate has risen from $47.49 per start on January 1, 2001 to $60.32 on January 1, 2002, and is to rise to $84.79 in 2003. The rise in rates seem to be tied to a sharp rise in payments for wage replacement and medical expenses for injured jockeys. Total payments rose from lows of $1 million in 1995 and $385,434 in 1996 to $2.5 million in 1997, and over $3 million in 1998 and 1999. Meanwhile the exposure measure has fallen. Some insurers suggest that this fall in the exposure rate is related to an increase in under-reporting of starts by trainers, which in turn leads the rate to start to be substantially higher than if the starts were properly reported.

In Colorado the jockeys and exercise riders are covered along with backstretch workers and trainers as employees of the owner while they are working at the race track.

Payments are based on a per start basis. But as reported earlier, Colorado has experienced a dramatic rise in rates over the past 10 years.

There is a current proposal by David Hoskins and John Andreini of Andreini & Company Insurance to develop a national insurance fund for jockeys to regularize the benefits for jockeys nationwide. The same pros and cons for a "captive" insurer arise here as well. The Jockeys' Guild is asking that coverage in the states without workers' compensation coverage be raised to the levels of coverage provided in the states where jockeys are covered by workers' compensation. In 1995 Dan Fick of the American Quarter Horse Association commissioned an actuarial study to look at the costs of developing a national fund for jockeys. The results of the study showed that raising the level of benefits for jockeys in the non workers' compensation states to benefits that were nearing the ballpark of benefits in the workers' compensation states would cost roughly $900,000. Given the rise in rates over the past several years, it is likely that the cost of equalizing coverage between workers' compensation and nonworkers' compensation states will rise higher.

So how best to pay for this? One important issue to consider is the cost of general liability coverage for tracks, trainers, and owners in the states where jockeys are independent contractors. Jockeys injured in accidents in the absence of workers' compensation coverage have the legal right to sue under common law rules of negligence any persons or entities who might have influenced the accident by their actions. An injured jockey or the heirs of a fatally injured jockey might well sue the track, the trainer, and the owner for negligence. The expected costs of these suits and settlements would therefore be included in the premiums for general liability policies or would be borne directly by those without insurance. One key feature of workers' compensation coverage is that when the worker accepts coverage prior to the accident, he or she gives up the right to sue under negligence liability. In fact, the creation of the Maryland Jockey Injury Compensation Fund was driven in part by a successful multi-million dollar injury suit in the 1970s. Thus, part of the additional costs of equalizing coverage across states would be defrayed if it can be documented that the switch to workers' compensation would eliminate a whole class of negligence claims by jockeys under general liability policies. The savings might come in the form of reductions in general liability premiums, particularly if a multi-million dollar settlement is eliminated once every two or three years.

The accident coverage is part of the jockeys' overall compensation package. Jockeys appear to be independent contractors who have relationships with owners, trainers, the racetrack, and the betting public. All of the entities along with the jockey determine the dangers in the jockeys' work environment. Most economic studies of workers' compensation show that even though employers pay workers' compensation premiums by law, the cost of increases in benefits often are shared with consumers as employers raise product prices and also with workers as wages adjust downward. Such sharing of the costs is likely to occur in this setting too. Given the problems the racing industry has been facing in competing with casinos and lotteries, we don't believe the racing industry can pass much of the costs on to the betting public. The costs of better benefits will likely be shared among the jockeys, tracks, trainers, and owners.

A separate fund for jockeys like the ones in New York, Maryland, and New Jersey may make sense in other states. Treating them as employees of the trainer appears to worsen the workers' compensation problems associated with backstretch workers because it lumps jockeys in with substantially less dangerous jobs. The NCCI and other actuaries determining rates would most likely want to treat jockeys as a separate category anyway. In California where jockeys are treated as employees of the trainer, the trainers are facing problems because jockey injuries alter the trainer's experience modification for all employees and thus sometimes lead to substantial increases in the premiums the trainer pays for backstretch workers.

Summary

The racing industry is facing significant workers' compensation problems in a number of the leading racing states. There have been substantial increases in workers' compensation premiums in several states. Both large and small trainers in these states are facing problems because premiums have risen in those states both on the payroll basis and for the charge for the minimum coverage.

A significant part of the rise in the premiums is being driven by increases in the payments insurers are making to injured workers per $100 on the payroll. Part of the solution would therefore appear to be improvements in risk management, monitoring of claims, and also improvements in reporting of payrolls. Some of the rise in rates is caused by general problems in the insurance industry associated with lower returns on investment and to a lesser degree greater uncertainty about the treatment of terrorist incidents. Thus, many insurers have reduced their discounting programs in all industries.

One important source of the problem has been the exodus of private insurers from writing coverage for horse racing in some states. Many trainers have been forced to purchase coverage from the insurer of last resort, which typically charges much higher rates. There may be potential gains therefore from developing an industry captive insurer or developing a national fund.

Finally, there is the issue of providing appropriate accident coverage for jockeys and exercise riders. There is a substantial difference in the injury coverage when comparing jockeys under workers' compensation to those treated as contractors. Equalization of the coverage across states would lead to a substantial rise in premiums in the states where they are treated as contractors. Much of this rise in premiums might be offset by declines in premiums under general liability policies and reductions in payments for negligence suits.

Table 1
Information about Workers' Compensation in General

	Workers' Compensation Temporary Disability Benefits						
Racing State	**Share of Wage Replaced by Statute**	**Temporary Disability Maximum Weekly Benefit, 2002**	**Maximum Benefits Indexed to Weekly Wage**	**Max Benefits are ___ % of State Average Weekly Wage**	**Average weekly wage of equine workers 2000**	**Employee Chooses WC Doctor (1)**	**Jockeys under WC or Independent**
Alabama	0.67	549	Yes	100	270	0	independent
Arizona	0.67	374.01	No		321	1	independent
Arkansas	0.67	425	Yes	85	275	0	independent
California	0.67	490	No		474	0	WC
Colorado	0.67	645.96	Yes	91	281	0	WC
Connecticut	0.75	887	Yes	100	356	1	independent
Delaware	0.67	469.1	Yes	66.6666		1	independent
Florida	0.67	594	Yes	100	477	1	independent
Idaho	0.67	473.4	Yes	90	147	0	independent
Illinois	0.67	972.12	Yes	133.333	402	1	independent
Indiana	0.67	508	No		537	0	independent
Iowa	0.80	1069	Yes	200	302	0	independent
Kansas	0.67	417	Yes	75	266	0	independent
Kentucky	0.67	550.66	Yes	100	428	1	independent
Louisiana	0.67	398	Yes	75	310	1	independent
Maine	0.80	471.76	Yes	90	193	0	independent
Maryland	0.67	668	Yes	100	437	1	WC
Massachusetts	0.60	890.94	Yes	100	406	1	independent
Michigan	0.80	644	Yes	90	524	0	independent
Montana	0.67	454	Yes	100	70	1	independent
Nebraska	0.67	528	Yes	100	219	1	independent
Nevada	0.67	580.72	Yes	100		1	independent
New Hampshire	0.60	997.5	Yes	150	358	1	independent
New Jersey	0.70	629	Yes	75	458	0	WC
New Mexico	0.67	516.89	Yes	100	372	0	independent
New York	0.67	400	No		446	1	WC
North Dakota	0.67	516	Yes	110	71	1	independent
Ohio	0.72	628	Yes	100	357	1	independent
Oklahoma	0.70	473	Yes	100	302	0	independent
Oregon	0.67	857.85	Yes	133.33	249	1	independent
Pennsylvania	0.67	662	Yes	100	416	0	independent
Rhode Island	0.75	682	Yes	110	841	1	independent
South Dakota	0.67	468	Yes	100	67	1	independent
Texas	0.70	533	Yes	100	330	1	independent
Virginia	0.67	645	Yes	100	428	1	independent
Washington	0.75	851.28	Yes	120	282	1	independent
West Virginia	0.70	506.49	Yes	100	333	1	independent
Wisconsin	0.67	647	Yes	110	204	1	independent

Source: www.workerscompensation.com, Department of Labor

Table 2
Estimates of Basic Premiums and Trends in Premiums for Backstretch Workers from NCCI

Voluntary Rates (NCCI Code)	2002 Premium per $100 on the Payroll	Trends
Arizona (8279)	6.73	fairly steady
Illinois (8279)	8.09	4.5 % rise since 2002
Florida (8279)	19.97	20.7 % rise since 2000
Florida (7205)	17.10	21.4 % rise since 2000
Kentucky (8279)	4.11	20.2 % rise since 1999
State Fund Rates		
California (8631)	28.14	64.5 % rise since 1999
New York (8280)	9.53	11% rise since 1999
Estimated Rates based on 1.5*(Loss Cost Ratio)		
Louisiana (8279)	9.77	26.5 % fall since 1999
Maryland (8279)	5.57	44.3 % rise since 1999

Source: NCCI, New York State Fund, California State Fund. .
Notes. The 8279 rates are for Racetrack Operation: Horse Or Dog: Stable Hands Or Kennel Employees & Drivers. They cover training of horses for racing. Code 7205 is for horse training and are applicable only to Florida. Code 8280 is for racing stables and drivers in New York. Code 8631 is for racing stables in California. In the voluntary market, there are two types of rating laws, competitive rating and administered pricing.

- NCCI publishes advisory loss costs for competitive rating states. Loss costs are base figures published by NCCI, which do not include expenses. In these states, a carrier is allowed to deviate from the published loss cost by adding expenses to the loss cost. Typically, loss costs do not include provisions such for production, general expense, taxes, and profit contingency allowances. It is the responsibility of the carrier to develop a multiplier that will include these provisions. Once the multiplier is calculated it is then approved by the appropriate state.
- NCCI publishes voluntary rates in administered pricing states, which must be used by all carriers writing coverage in the voluntary market. Voluntary rates include expense provisions and are approved by the appropriate state.

Table 3
Estimates of Workers' Compensation Premiums and Trends from Phone Survey

	Estimate of Current Rate per $100 on Payroll	Trends
Arizona	7.00	fairly steady
California	43.00	25 % rise in past year
Florida	78.00	4-fold rise
Kentucky	5.59	down from 7
Louisiana	15,17, 22	36 % rise over 4 years
Maryland	11.00	fairly steady
New Jersey	11.00	used to be 9
Ohio	10.00	fairly steady
Pennsylvania	10.83	10 % rise over 4 years
Texas	20 to 25	4-fold rise
	Alternative Rates	**Trend**
Colorado	118 per start	372% increase in past 10 years

Source: Phone surveys of HBPA representatives and Horsemen's Association representatives.

Table 4
Changes in Workers' Compensation Commitments for Accidents in Year Listed. Historical Basis for setting rates.

	Pure Premium per $100 (8279)					
	Arizona	**Florida**	**Illinois**	**Kentucky**	**Louisiana**	**Maryland**
4/95 through 3/96	2.75	7.13	5.92	6.86	5.23	7.10
4/96 through 3/97	3.86	12.68	2.19	2.17	5.49	7.17
4/97 through 3/98	5.20	62.95	7.27	6.07	6.98	2.87
4/98 through 3/99	10.27	15.54	4.41	3.26	10.60	4.70
4/99 through 3/2000	1.62	10.61	4.89	4.87	15.32	5.08
5-year average	4.81	22.09	4.95	4.49	8.97	5.22
3-year Average						
4/95 through 3/98	3.94	27.59	5.13	5.04	5.90	5.71
4/97 through 3/2000	5.70	29.70	5.52	4.74	10.96	4.22
	%Chg.	**%Chg.**	**%Chg.**	**%Chg.**	**%Chg.**	**%Chg.**
Percent Change Comparing 95/98 to 97/00	44.74	7.65	7.71	-5.95	85.77	-26.19
	Racing Stable					
	California	**New York**				
1993	17.71					
1994	5.31					
1995	15.17	4.83				
1996	22.76	5.24				
1997	18.71	3.56				
1998	17.47	3.74				
1999	18.77	8.08				
3-year Average						
1995-97	18.88	4.54				
1999-97	18.32	5.13				
	%Chg.	**%Chg.**				
Percent Change Comparing 95/97 to 97/99	-2.98	12.90				

Source: NCCI, New York State Fund, California State Fund

Table 5
Changes in Workers' Compensation Medical Commitments for Accidents in Year Listed.

Historical Basis for setting rates.

	Medical Pure Premium Per $100 on the payroll (8279)					
	Arizona	**Florida**	**Illinois**	**Kentucky**	**Louisiana**	**Maryland**
4/95 through 3/96	1.91	4.46	3.30	4.76	3.19	2.88
4/96 through 3/97	2.78	8.34	1.19	1.19	3.47	4.08
4/97 through 3/98	3.28	53.67	3.81	4.13	4.80	1.28
4/98 through 3/99	7.71	10.42	2.34	2.19	6.49	2.36
4/99 through 3/2000	1.34	7.92	2.57	2.69	6.19	3.12
5-year average	3.49	17.25	2.65	2.83	4.90	2.72
3-year Average						
4/95 through 3/98	2.66	22.16	2.77	3.36	3.82	2.75
4/97 through 3/2000	4.11	24.00	2.90	3.00	5.83	2.25
	%Chg.	**%Chg.**	**%Chg.**	**%Chg.**	**%Chg.**	**%Chg.**
Percent Change Comparing 95/98 to 97/00	54.57	8.33	4.92	-10.57	52.62	-18.04
	Racing Stables in					
	California	**New York**				
1993	7.86					
1994	2.70					
1995	7.40	1.32				
1996	11.88	1.46				
1997	9.95	1.62				
1998	8.18	1.36				
1999	10.43	3.20				
3-year Average						
1995-97	9.74	1.47				
1999-97	9.52	2.06				
	%Chg.	**%Chg.**				
Percent Change Comparing 95/97 to 97/99	-2.30	40.49				

Source: NCCI, New York State Fund, California State Fund

Table 6
Costs of Minimum Premium Policies and Trends in Rates Over Past Several Years

State	Annual Cost	Trends
Arizona	$600	fairly steady over time
California *	$2,500	fairly steady over time
Colorado	$118	372% increase in last 10 years
Delaware	$1,100	
Florida	$5,600	700% increase (used to be $700)
Illinois	$750	steady over time
Kentucky	$889	
Louisiana	$1,200	100-140% increase in last 3-4 years
Maryland	$550	fairly steady over time
New Jersey	$1,200	140% increase in last 5 years
New York	$275	steady, mild increases over time
Pennsylvania	$1,063	10% increase in the last 3-5 years.
Texas	optional	300-400% increase in last 5 years
Virginia	$200	
Washington	$1,320	560% increase in 6 years

Source: Phone survey of HBPA and Horsemen's Association representatives.
* Out-of-state trainers coming in for a few races pay a minimum of $750 in California.

ENDNOTES

[1]Although we refer to injured workers throughout the paper, it is important to remember that the dependents of a worker killed in a fatal workplace accident are eligible to receive wage replacement payments.

[2] The specific wording in the Montana materials says that "the Workers' Compensation Act and the Occupational Disease Act do not apply to any of the following employments: Trainer, assistant trainer, exercise person, or pony person who is providing services under the Board of Horseracing while on the grounds of a licensed race meet. A jockey who performing under a license issued by the Board of Horse Racing, from the time the jockey reports to the scale room to a race through the time weighed out and has acknowledged in writing that jockey is not covered while performing services as a jockey."

[3] Workers in the railroad industry operate under negligence liability rules rather than workers' compensation under the Federal Employers' Liability Act of 1908 and amendments thereafter. At various times both workers and employers in the railroad industry have become dissatisfied with the operations of this system and investigate switching to workers' compensation.

[4] The minimum waiting time before the wage replacement benefits is three days in most states and as high as seven days in some states.

[5] The weekly minimums in most key racing states range from as low as $40 to $158. However, the weekly minimums are likely to have substantial influence in Pennsylvania where the benefits are 90 percent of the weekly wage below $357.80.

[6]Arizona has reciprocal agreements with California and Washington to accept coverages from their states. Acceptance requires that the worker was hired in the state where the coverage was purchased. Maryland accepts most other states' coverages. The New York state fund does not provide out-of-state coverage for New York trainers. Florida trainers can not carry Florida coverage out of state. Florida does accept out-of-state coverages, but there are a number of technicalities, and some out-of-state trainers who thought they were covered ran into problems when their employees sought benefits.

[7] The coverage of exercise riders has become a thorny issue. Contacts in states where exercise riders are covered suggest that accidents to exercise riders are their biggest problem. The Maryland Jockey Injury Fund covered exercise riders at one point but had so many problems with the coverage that they now only cover jockeys when they ride in races.

[8] Saratoga meet trainers pay a flat fee based on a per stall charge of 40 cents per day per stall allotted and accepted, while Finger Lakes Racing Association trainers pay a per stall charge of 12 cents per day.

[9]See Backstretch magazine in June 2002 (pp. 12-14).