

Regina McPherson
513 Heathcliff Drive
Seaford, New York 11783
January 23, 2024

Testimony before the New York State
Senate Standing Committee on Labor
Chair, Senator Jessica Ramos

It is with deep regret that I am unable to attend this hearing in person to outline the current deficiencies of the Worker's Comp. system.

In June, 2021, my fiancé, Paul, fell from a roof sustaining traumatic brain injury, neck and back injuries and injuries to his dominant right shoulder and foot which required surgeries.

At the time of the accident, Paul was 53 years old, had worked since he was 13 as a paperboy, continued to work part-time throughout his HS years and was gainfully employed his entire adulthood life, all without incident and with many years of perfect attendance.

After putting into the system for forty (40) years and having his employers pay into the Worker's Comp. system, the system forsook him at his most vulnerable hour. Below are some examples of the systemic deficiencies of the Worker's Comp system.

MEDICAL

After the establishment of injuries, you are afforded the privilege of seeing a doctor, however, the medications prescribed and physical therapies, surgeries, medical equipment and tests ordered are frequently arbitrarily denied without reason or cause, leaving the injured worker to endure unnecessary pain and exacerbating the injuries.

In fact, Paul's foot surgery was denied for a year and a half. An MRI taken immediately after the accident compared with a follow up MRI taken just prior to the surgery showed significant deterioration of the foot injury resulting in a more complex surgery and a reduction in the likelihood of recovery. Paul's foot is now permanently injured and he is left without recourse against the insurance carrier for the willful neglect and intentional delay in providing necessary medical treatment.

The Worker's Comp. system presently allows the insurance carrier to deny medical treatment to the injured party three (3) times before a hearing can be requested, causing unacceptable delays in medical treatments and causing an additional burden to doctors who are already overwhelmed by the deluge of paperwork, reports and repeated requests for payment.

EMPLOYER INDEMNIFICATION

Despite Paul's employer sending him out in the rain on a roof without any tethering equipment, he is not allowed to sue his employer under New York State law because the Worker's Comp. system is supposed to "cover the injuries and income loss". The income loss is capped and the ultimate settlement amounts to a pittance and is insufficient to cover the average person's losses. This law allows the employer's culpable conduct to go unpunished while leaving the injured worker at a complete loss.

SETTLEMENT

The settlement parameters are a labyrinth of confusion and inadequacies. There is a schedule of losses for various body parts, i.e. 312 weeks' pay for a loss of an arm. However, that amount is contingent upon the degree of loss and even in the event of a total loss, it is CAPPED at a rate that is insufficient to sustain a household on Long Island.

Perhaps more troubling is the fact that when there are head, neck and/or back injuries involved, compensation for the remaining injured body parts are completely excluded from any settlement and the settlement is limited to payment of a reduced rate of pay for a certain number of weeks based upon the arbitrary degree of injury to combined head, neck and back injuries. In Paul's case his traumatic brain injury and back and neck injuries will be treated as one injury and he will not be compensated at all for his right shoulder and foot injuries nor will the insurance carrier be held liable for the additional damage caused by its neglect and culpable conduct.

ATTORNEYS

Here's another breeding ground for dysfunction. While it should not be the case, you do need an attorney to represent you in order to navigate these treacherous waters. The attorney's fees are paid by the injured employee, further diminishing their "recovery of income" that they have been paying for their entire lives. This burden is deducted from the injured party's already significantly reduced income settlement amount, leaving the injured party further disadvantaged.

Thankfully, the attorneys' fees are capped. However, the insurance companies' attorneys' fees are not, thus, providing an unfair and inequitable advantage to the insurance company and ultimately, leaving the injured worker's attorney teetering between advocating for his client's best interests and receiving adequate compensation for the work he/she provided.

In this instance, several hearings were called based upon the insurance company's unjustified denials for necessary medical treatment and the insurance company's unreasonable requests for reductions in pay to someone who has since proven to be 100% disabled by the Social Security Disability Administration. In addition, depositions were taken. Thereafter, the insurance company presented an outrageously low monetary settlement offer without any medical coverage to a person who has once again been deemed 100% disabled.

Testimony before the New York State
Senate Standing Committee on Labor
Chair, Senator Jessica Ramos
Page 3

The insurance companies' attorneys have no incentive to settle and in fact, are rewarded with limitless attorneys' fees derived from unnecessary litigation and failure to provide a fair and reasonable settlement offer. The very idea that the insurance companies' attorneys' fees are not capped, thus, allowing them to be enriched while taking advantage of a disabled person is unconscionable. If any change is made to the Worker's Comp system at all, it should be regulations on insurance companies' attorney's fees to as this is the main source that allows the various dysfunctions outlined above to exist.

In closing, the Worker's Comp system is inadequate and a glaring example of how governmental agencies' policies benefit big business and insurance companies rather than the people it was meant to protect.

Regretfully,

A handwritten signature in blue ink, appearing to read "Regina McPherson", with a long horizontal flourish extending to the right.

Regina McPherson