NEW YORK
WORKERS' COMPENSATION ALLIANCE

Mailing Address
c/o Grey & Grey, LLP
360 Main Street
Farmingdale, New York
11735

Inquiry Contact:
Robert Grey
Grey & Grey, LLP
(212) 964-1342

WORKERS' COMPENSATION IN 2017: NEW REPORTS SHOW LOW COSTS FOR EMPLOYERS, INADEQUATE BENEFITS FOR WORKERS, AND PROFITS FOR THE INSURANCE INDUSTRY

In the past four months, three major reports have been issued about the state of workers' compensation systems both nationally and in New York.

In October of 2016, the United States Department of Labor issued a report titled Does the Workers' Compensation System Fulfill Its Obligations to Injured Workers?[1] The Department of Labor report analyzed the increasing rate at which the cost of workplace injury is being shifted from employers to workers and taxpayers.

At the same time, the National Academy of Social Insurance released a major data study called Workers' Compensation: Benefits, Coverage and Costs.[2] The Academy provided both

[1] Report available at: https://www.dol.gov/asp/WorkersCompensationSystem/WorkersCompensationSystemReport.pdf
[2] Report available at: https://www.nasi.org/research/2015/report-workers-compensation-benefits-coverage-costs-2013

historical and current data about employment, wages, workers' compensation costs, and workers' compensation benefits in 50 states plus the District of Columbia.

In January, 2017 the New York Compensation Insurance Rating Board released its 2016 State of the System report, with information about claim trends and costs specific to New York.[3]

Taken together, these reports lead to the following conclusions:

1. Workers' compensation is not a high cost to employers either nationally or in New York.

2. Increases in workers' compensation costs both nationally and in New York are attributable to increased employment and increased wages, not to increases in benefits. New York increases between 2010 and 2012 were attributable to the onset of indexing the maximum rate, but have been insignificant since 2012.

3. Only a small fraction of increases in employer costs are passed through to worker benefits.

4. Worker benefits are inadequate and difficult to access.

Each of these conclusions is discussed in greater detail below.

1. Workers' compensation is not a high cost for employers either nationally or in New York.

According to the United States Department of Labor (DOL) report,

> only a small portion of the overall costs of occupational injury and illness is borne by employers. Costs are instead shifted away from employers, often to workers, their families and communities. Other social benefit systems – including Social Security retirement benefits, Social Security Disability Insurance (SSDI), Medicare, and, most recently health care provided under the Affordable Care Act – have expanded our social safety net, while the workers' compensation safety net has been shrinking. There is growing evidence that costs of workplace-related disability are being transferred to other benefit programs, placing additional strains on these programs at a time when they are already under considerable stress.

[3] Report available at: http://www.nycirb.org/state-of-the-system/2016/

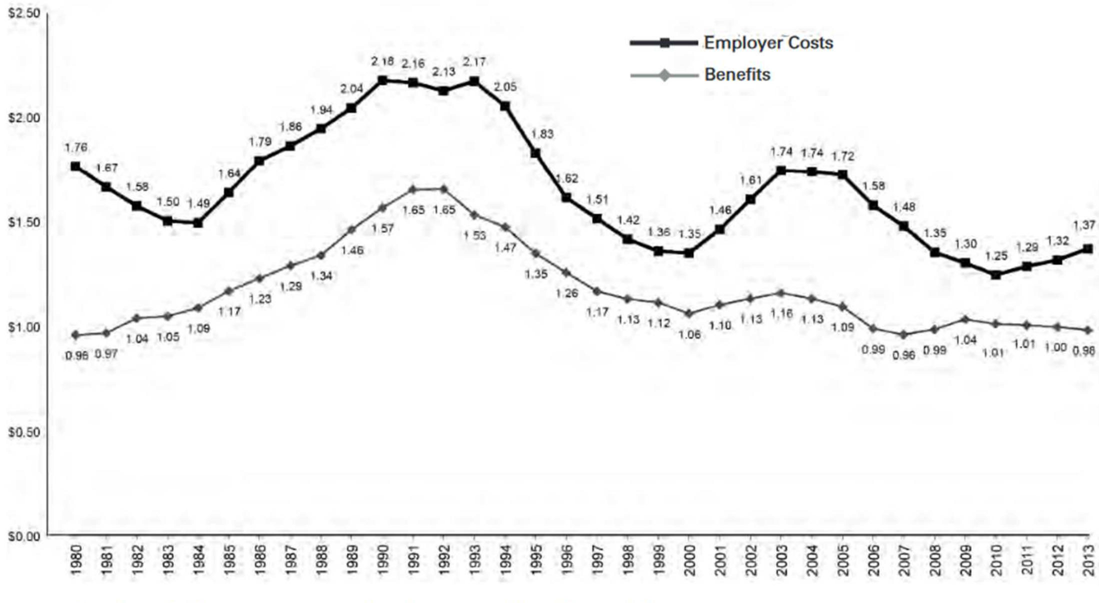
As the costs of work injury and illness are shifted, high hazard employers have fewer incentives to eliminate workplace hazards and actually prevent injuries and illnesses from occurring.[4]

DOL noted that "[a]ccording to one researcher, employers now provide only about 20 percent of the overall financial cost of occupationally caused injuries and illnesses."[5]

Meanwhile, the National Academy of Social Insurance (NASI) report observed that "**[d]espite … recent increases, employer costs per $100 of covered wages remain at some of the lowest levels of the past 35 years. Benefits per $100 of covered wages, which have been fairly constant since 2006, fell from $0.97 in 2013 to $0.91 in 2014, the lowest level since 1980, when the data series began**."[6]

Figure 1

Workers' Compensation Benefits* and Costs Per $100 of Covered Wages, 1980-2013**



* Benefits are calendar-year payments to injured workers and to providers of their medical care.

** Costs for employers that purchase workers' compensation insurance include calendar-year insurance premiums paid plus benefits paid by the employer to meet the annual deductible, if any. Costs for self-insuring employers are calendar-year benefits paid plus the administrative costs associated with providing those benefits.

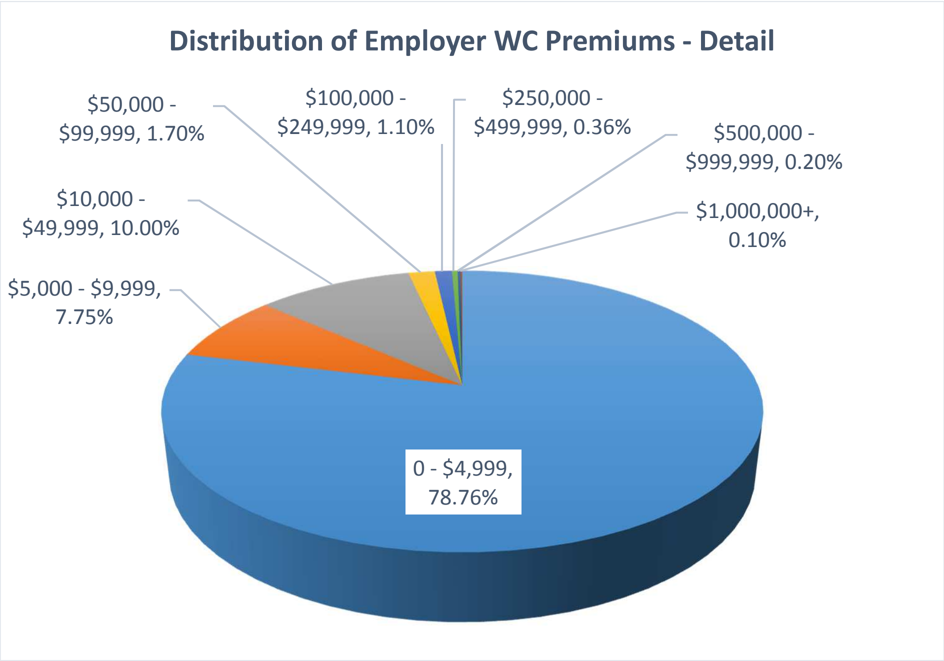
Source: National Academy of Social Insurance estimates.[7]

[4] DOL report at p. 1
[5] Id at p. 5.
[6] NASI report at p. 2.
[7] NASI report at p. 3.

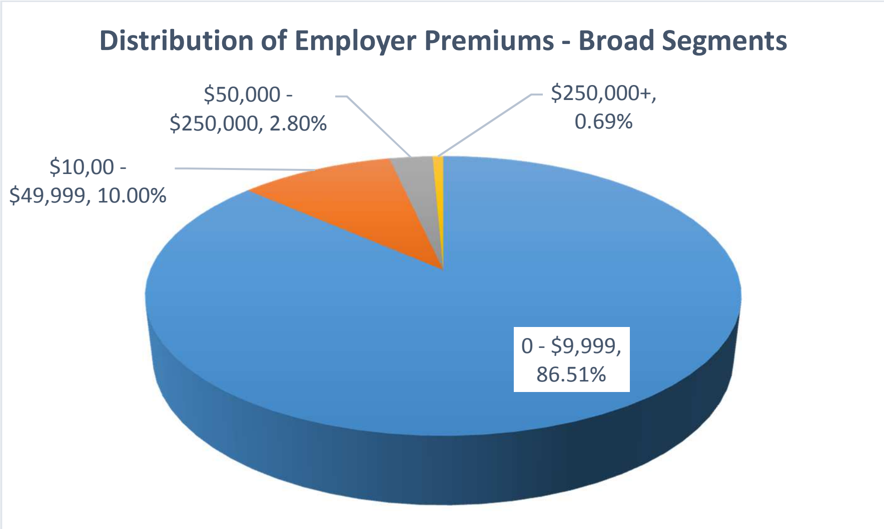
The New York Compensation Insurance Rating Board's (NYCIRB) report provides more specific information about costs for New York employers. According to NYCIRB, in 2016 there were 524,175 workers' compensation insurance policies written by private insurers.[8] The employer costs for those policies can be broadly divided as follows:

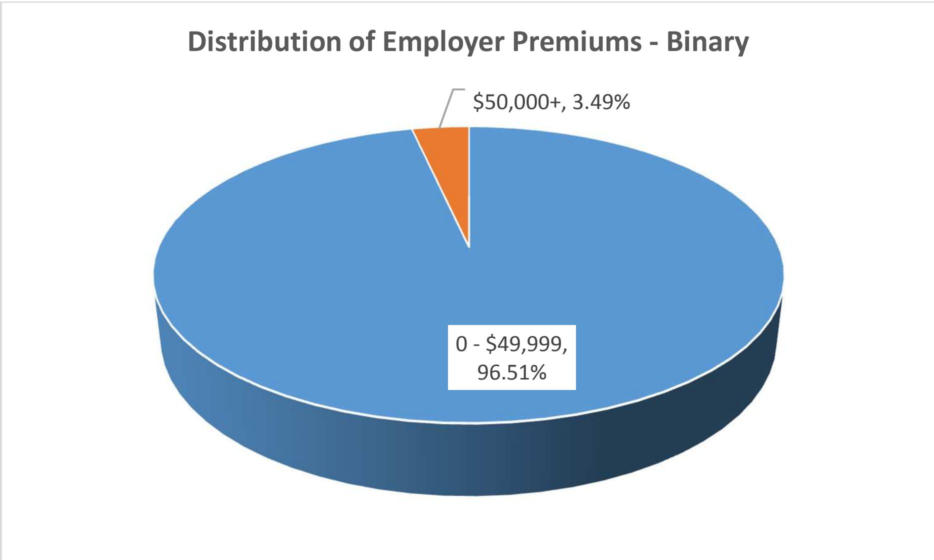
- 412,849 employers pay less than $5,000 in annual premium
- 40,643 employers pay $5,000 - $9,999
- 52,661 employers pay $10,000 - $49,999
- Only 18,022 employers pay more than $50,000[9]

In percentage terms, **over three-quarters of New York employers pay less than $5,000 per year in workers' compensation premium**; over eighty-five percent pay less than $10,000, and over ninety-five percent pay less than $50,000. This is shown in various distributions on the graphs below.

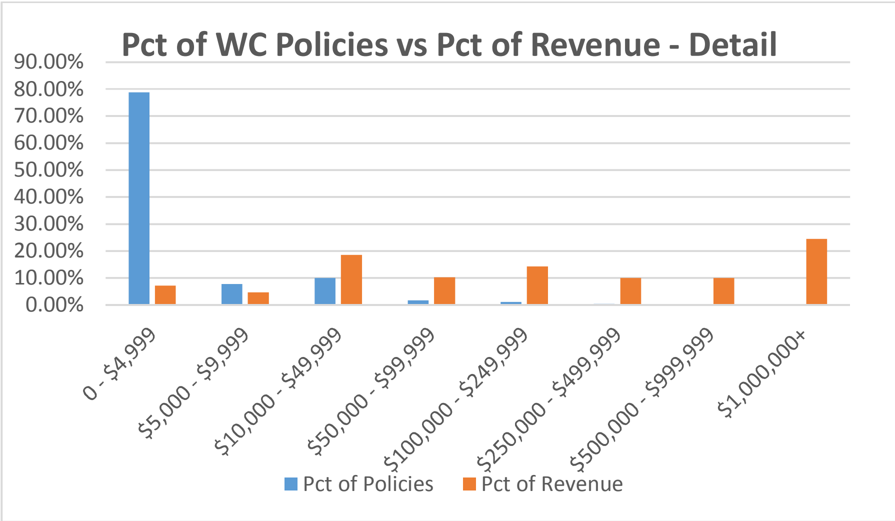


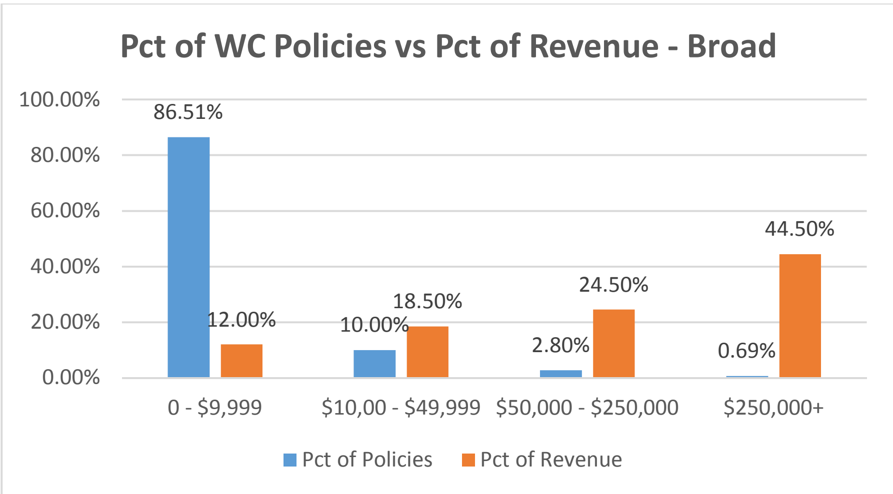
[8] NYCIRB report at p. 6.
[9] Id,

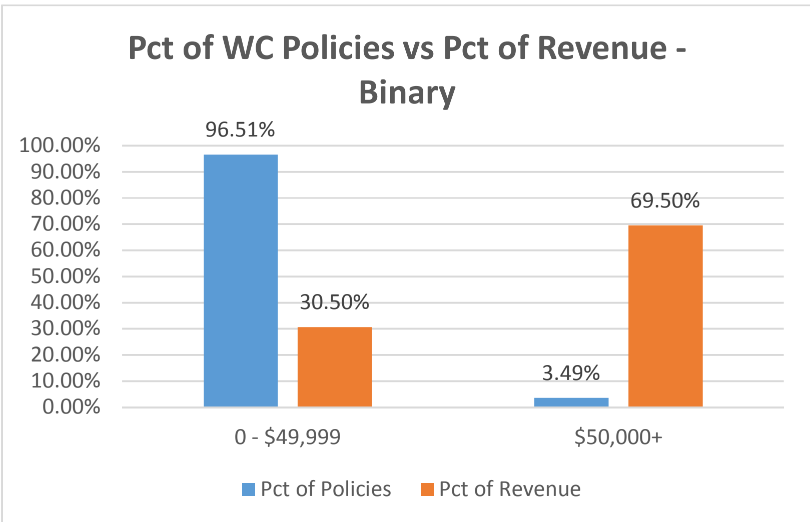




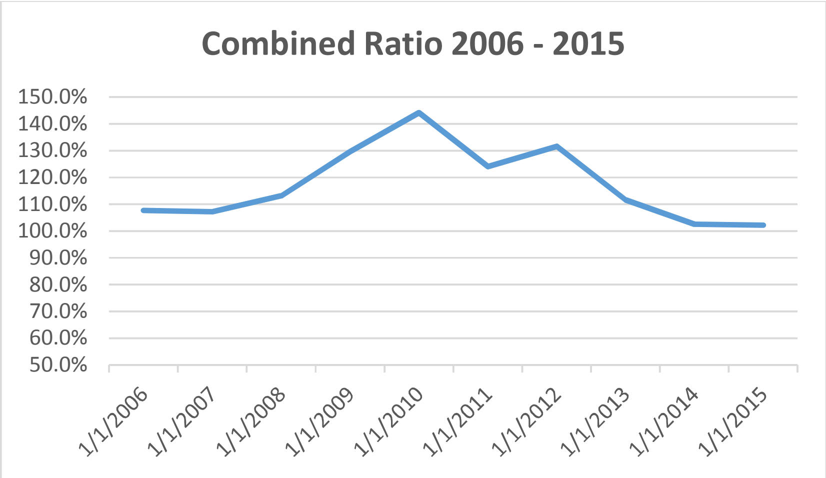
It is also important to note that **nearly seventy percent of insurer revenue (and thus profit) is generated by approximately three percent of the policies issued**. These policies cover a small number of very large employers. The relationship between the percentage of workers' compensation policies issued in each price range and the percentage of the revenue those policies generate for insurers (a figure in excess of $6 billion) is shown on the charts below.


Pct of WC Policies vs Pct of Revenue - Detail
90.00%
80.00%
70.00%
60.00%
50.00%
40.00%
30.00%
20.00%
10.00%
0.00%
0 - $4,999
$5,000 - $9,999
$10,000 - $49,999
$50,000 - $99,999
$100,000 - $249,999
$250,000 - $499,999
$500,000 - $999,999
$1,000,000+
Pct of Policies
Pct of Revenue

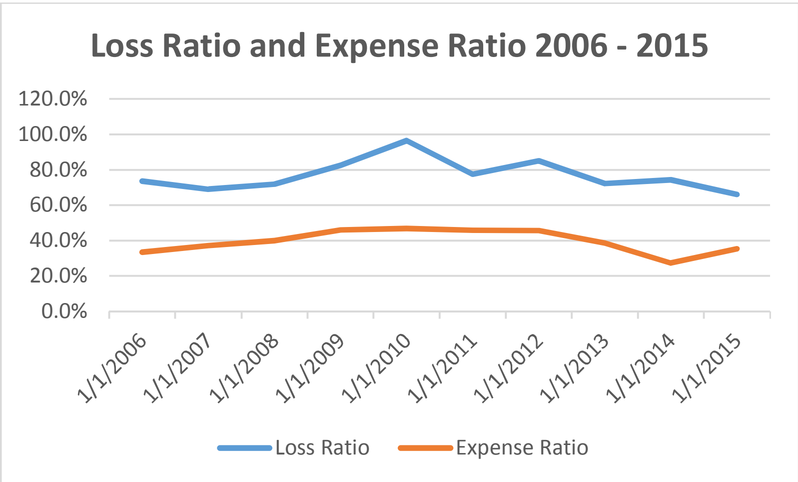

Pct of WC Policies vs Pct of Revenue - Broad
100.00%
80.00%
60.00%
40.00%
20.00%
0.00%
86.51%
12.00%
10.00%
18.50%
2.80%
24.50%
0.69%
44.50%
0 - $9,999
$10,00 - $49,999
$50,000 - $250,000
$250,000+
Pct of Policies
Pct of Revenue


Pct of WC Policies vs Pct of Revenue - Binary
100.00%
90.00%
80.00%
70.00%
60.00%
50.00%
40.00%
30.00%
20.00%
10.00%
0.00%
96.51%
30.50%
3.49%
69.50%
0 - $49,999
$50,000+
Pct of Policies
Pct of Revenue

NYCIRB's report also confirms that insurer profits have skyrocketed in the past several years.[10] The chart below shows that "combined ratio," which leads directly to insurer profit margins, has improved dramatically since 2010 and is now the most insurer-friendly it has been in over a decade.



NYCIRB's report also shows the correlation between insurer profits and diminishing benefits for injured workers. The chart below shows how insurer loss ratio (benefit payments) and expense ratio (defense litigation costs, overhead, administrative costs, etc) have contributed to combined ratio over the past decade.



[10] NYCIRB report at p. 10.

The chart above demonstrates that after peaking at 96.4% in 2010 (the year the maximum benefit rate was tied to the state average weekly wage), **insurer loss ratio has plunged to 66%, the lowest figure in more than a decade**. Expense ratio also remains near a ten-year low.

These results are consistent with other data provided by the NYCIRB report, in particular its observations that claim frequency has not increased and increases in medical severity are consistent with the Consumer Price Index (CPI).[11]

Taken as a whole, the DOL, NASI, and NYCIRB reports clearly establish that workers' compensation is not a high cost for employers, even as it has become increasingly profitable for insurers.

2. Increases in workers' compensation costs both nationally and in New York are attributable to increased employment and increased wages, not to increases in benefits. New York increases between 2010 and 2012 were attributable to the onset of indexing the maximum rate, but have been insignificant since 2012.

According to the NASI report, "[d]espite two consecutive years of declining workers' compensation benefit payments, the increase in costs and coverage reflect, at least in part, the U.S. economy recovering from the Great Recession. As employment increases, the number of workers covered by workers' compensation increases along with the number of work-related injuries. Thus, workers' compensation benefits and costs increase as well. However, employer costs increase more rapidly at first while benefits increase more slowly. This occurs because employer costs immediately reflect the increases in premium paid to cover additional workers. Benefits, on the other hand, lag behind increases in costs and coverage because they commence when an injury occurs and sometimes extend into subsequent years."[12]

---

[11] NYCIRB report at p. 12.
[12] NASI report at p. 2

The NYCIRB report includes charts showing the correlation between increased employment (and payroll) and increased premium collection.[13] The DOL report confirms that increased premium payments are attributable not to claim costs, but to wage and employment trends. This conclusion is buttressed by a variety of New York-specific data included in the NASI report.

The NASI report includes the tables below showing the increase in covered employment and covered wages in New York and nationally from 2010 through 2014 in both raw numbers and percentage increase.[14] During this period, New York had the third most covered workers in the country, with the total increasing 6.3% from 2010 through 2014. It also had the second highest amount of covered wages, with increases of 16.2% during the same time frame.

Table 3 - Workers' Compensation Covered Workers by State, 2010 - 2014									
Number of Workers (in thousands)						Percent Change			Ranking
	2010	2011	2012	2013	2014	2010-2012	2013-2014	2010-2014	
New York	8,195	8,308	8,428	8,549	8,710	2.8	3.3	6.3	24
Total	124,638	126,022	128,055	130,245	132,673	2.7	3.6	6.4	

Table 4 - Workers' Compensation Covered Wages by State, 2010 - 2014									
Covered Wages (in millions)						Percent Change			Rank
	2010	2011	2012	2013	2014	2010-2012	2013-2014	2010-2014	
NY	492,983	512,323	527,111	538,418	572,923	6.9	8.7	16.2	29
Total	5,834,048	6,063,485	6,321,863	6,465,571	6,820,387	8.4	7.9	16.9	

[13] NYCIRB report at p. 4. These charts are reproduced and discussed in Section 3, below.
[14] Data excerpted from NASI report at pp. 12-15

Unsurprisingly, the NASI report shows that New York's workers' compensation benefit costs are precisely in line with the extent of its covered employment and covered wages. It also includes data that provides important context about the impact of the 2007 reforms. The report shows that while New York's workers' compensation benefits increased 20.9% from 2010 to 2014, the increase was 16.3% from 2010 – 2012 and only 3.9% from 2013 to 2014.[15] This is entirely consistent with the significant increase in the weekly maximum benefit rate from 2007 through 2010, followed by indexing which has resulted in small, incremental increases from 2012 to date.[16] It is also important to note that the rate at which benefits were increasing plummeted from 2013-2014 as compared to 2010-2012 even as covered employment and covered wages both increased at a greater rate in the later years.

Table 9 - Workers' Compensation Total Benefits Paid and Pct Change by State, 2010 - 2014									
Total Benefits (in thousands)						Percent Change			Ranking
	2010	2011	2012	2013	2014	2010-2012	2013-2014	2010-2014	
New York	4,617,084	5,097,559	5,370,910	5,543,750	5,581,295	16.3	3.9	20.9	2
Total	58,938,677	60,956,387	63,061,768	62,510,056	62,306,736	7	-1.2	5.7	

The difference between the two timeframes is even more stark when medical costs – which remained relatively stable from 2010 through 2014 in New York – are factored out, and only indemnity benefits are considered.

Table 11 below shows that while indemnity costs in New York increased 22% from 2010 through 2012 (for the reasons outlined above), they increased only 3% from 2013 to 2014.[17]

[15] Data excerpted from NASI report at pp. 26-27.
[16] It also exemplifies the "lag" described by NASI.
[17] Data excerpted from NASI report at pp. 30-31.

Table 12 below shows the amount of workers' compensation benefits per $100 of covered wages, and demonstrates that while benefit costs increased 8 cents for every $100 of covered wages from 2010-2012, they declined four cents per hundred dollars of covered wages from 2013-2014.[18]

Table 14 below shows that while employer costs rose 23 cents per $100 of covered wages from 2010-2012, they rose only 4 cents per $100 of covered wages from 2013-2014.[19]

It is important to note that all of these declines in 2013-2014 occurred even as covered employment and covered wages continued to rise, as shown on the previous tables, and it is also important to note that New York's workers' compensation cost ranking is entirely consistent with its covered employment and covered wage ranking.

Table 11 - Workers' Compensation Cash Benefits Paid and Pct Change by State, 2010 - 2014									
Cash Benefits (in thousands)						Percent Change			Ranking
	2010	2011	2012	2013	2014	2010-2012	2013-2014	2010-2014	
New York	2,898,277	3,269,673	3,534,719	3,698,130	3,640,312	22.0	3.0	25.6	2
Total	29,660,827	30,437,445	34,549,660	31,115,532	30,931,686	6.4	-2	4.3	

Table 12 - Workers' Compensation Total Benefits Paid per $100 of Covered Wages by State, 2010 - 2014								
Benefits per $100 of Covered Wages					Dollar Amount Change			Ranking
	2010	2011	2012	2013	2014	2010-2012	2013-2014	2010-2014	
New York	0.94	0.99	1.02	1.03	0.97	0.08	-0.04	0.04	2
Total	1.01	1.01	1.00	0.97	0.91	-0.01	-0.08	-0.10	

[18] Data excerpted from NASI report at pp. 32-33.
[19] Data excerpted from NASI report at pp. 38-39.

Table 14 - Workers' Compensation Employer Costs Per $100 of Covered Wages by State, 2010 - 2014									
Employer Costs per $100 of Covered Wages						Dollar Amount Changes			Ranking
	2010	2011	2012	2013	2014	2010-2012	2013-2014	2010-2014	
New York	1.17	1.28	1.40	1.50	1.44	0.23	0.04	0.27	4
Total	1.22	1.25	1.31	1.33	1.32	0.09	0.01	0.10	

New York's trends in workers' compensation costs and benefits per $100 of covered wages are consistent with the national trends shown on the table and chart below.[20] The data shows that employer costs per $100 of covered wages are near a twenty-year low, down 37% since 1993. Meanwhile, indemnity benefits for injured workers dropped 43% during that same time period, medical benefits dropped 26%, and total benefits dropped 36%. Like employer costs, all are near twenty-year lows.

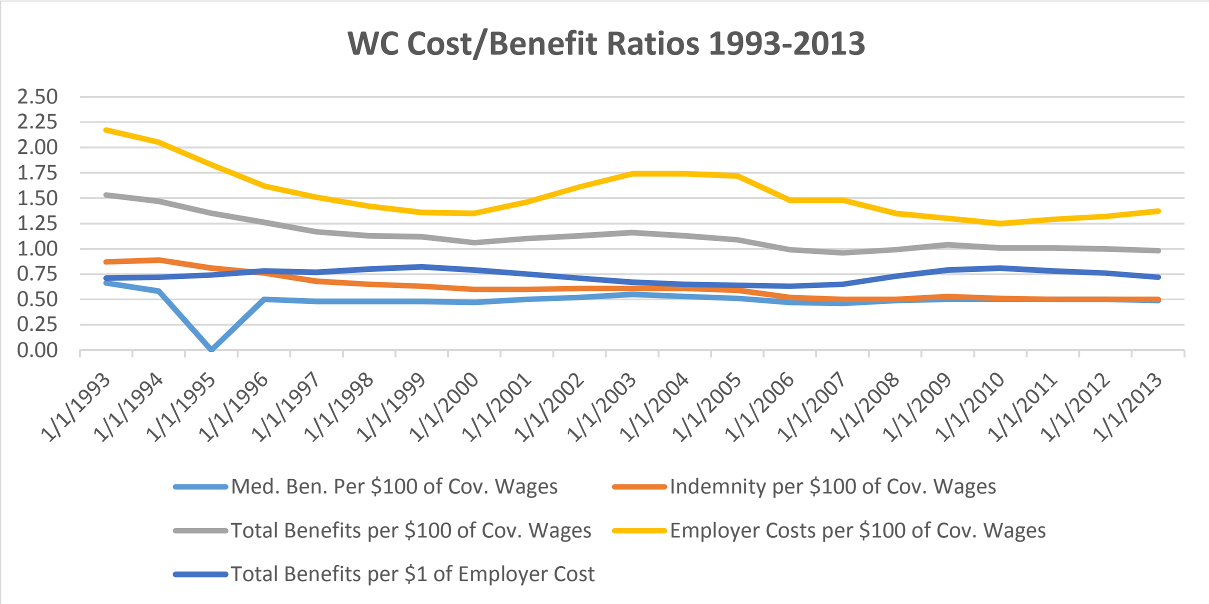
Table 15
Workers' Compensation Benefit/Cost Ratios, 1993-2013

Year	Medical Benefits per $100 Covered Wages	Cash Benefits per $100 Covered Wages	Total Benefits per $100 Covered Wages	Employer Costs per $100 Covered Wages	Total Benefits per $1 Employer Cost
1993	$0.66	$0.87	$1.53	$2.17	$0.71
1994	0.58	0.89	1.47	2.05	0.72
1995	0.54	0.81	1.35	1.83	0.74
1996	0.50	0.76	1.26	1.62	0.78
1997	0.48	0.68	1.17	1.51	0.77
1998	0.48	0.65	1.13	1.42	0.80
1999	0.48	0.63	1.12	1.36	0.82
2000	0.47	0.60	1.06	1.35	0.79
2001	0.50	0.60	1.10	1.46	0.75
2002	0.52	0.61	1.13	1.61	0.71
2003	0.55	0.61	1.16	1.74	0.67
2004	0.53	0.61	1.13	1.74	0.65
2005	0.51	0.59	1.09	1.72	0.64
2006	0.47	0.52	0.99	1.58	0.63
2007	0.46	0.50	0.96	1.48	0.65
2008	0.49	0.50	0.99	1.35	0.73
2009	0.50	0.53	1.04	1.30	0.79
2010	0.50	0.51	1.01	1.25	0.81
2011	0.50	0.50	1.01	1.29	0.78
2012	0.50	0.50	1.00	1.32	0.76
2013	0.49	0.50	0.98	1.37	0.72

Notes: Benefits are calendar-year payments to injured workers and to providers of their medical care. Employer costs are calendar-year expenditures for workers' compensation insurance premiums, benefits paid under deductibles or self-insurance, and administrative costs.

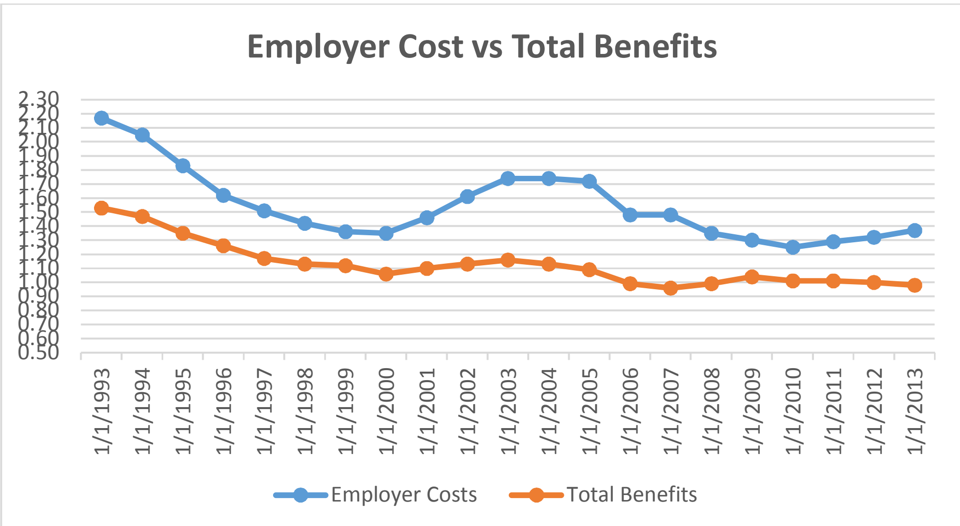
Source: National Academy of Social Insurance estimates.

[20] Data excerpted from NASI report at p.

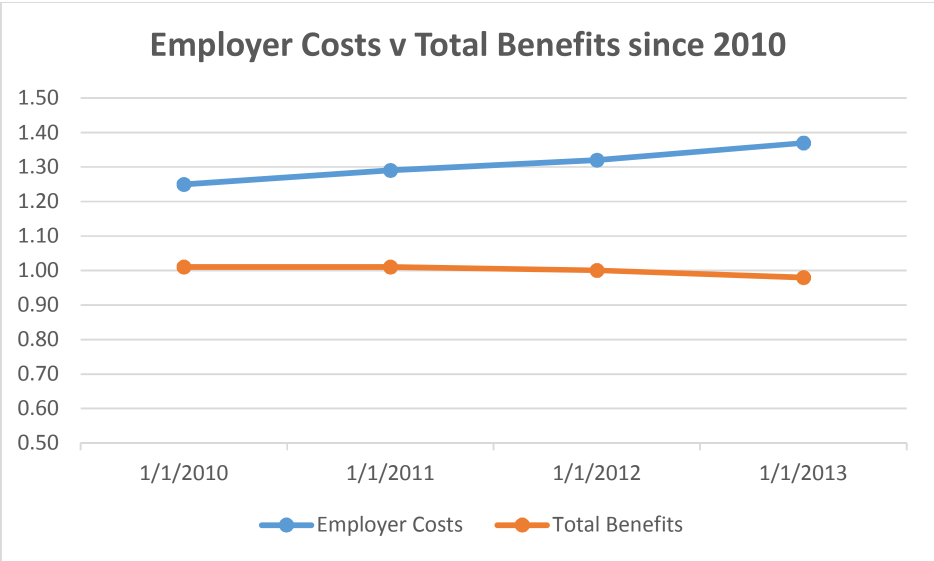


3. <u>Only a small fraction of increases in employer costs are passed through to worker benefits.</u>

The data refutes the contention of business and insurance interests that worker benefits are the driving factor behind employer costs. To the contrary, there is a diminishing correlation between employer costs and worker benefits. The chart below, drawn from Table 15 of the NASI report (above), shows the relationship between employer costs and worker benefits from 1993 through 2013.

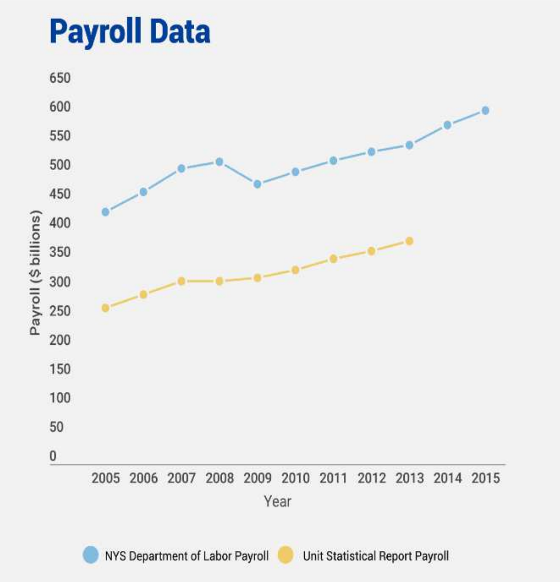


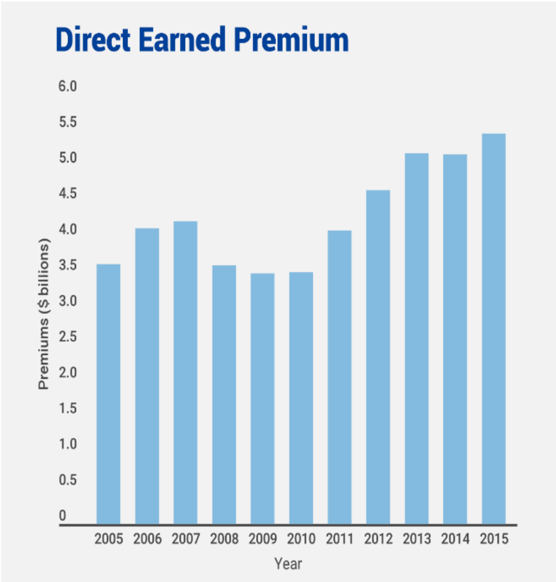
The divergence between employer costs and worker benefits has increased in recent years, making it even clearer that increases in employer costs are unrelated to worker benefits. The chart below shows the relationship between the two since 2010.



As shown on the chart above, worker benefits are decreasing even as employer costs rise. As noted previously, insurer premium collection is largely related to increases in covered employment and covered wages. This is confirmed by charts included in the NYCIRB report, which demonstrate the strong correlation between record employment and record premium collection.[21]

[21] NYCIRB report at p. 4.





However, it is also clear that rather than passing through to injured workers, an increasing share of employer premium dollars are remaining with insurers. NYCIRB confirms that New York is a "healthy market" for the insurance industry with more than 60 insurance groups writing over $1 million each in premium.[22] In fact, private insurers dominate the market, writing more than two-thirds of all workers' compensation insurance policies and possessing nearly half of the market when self-insurers are included.[23]

4. Worker benefits are inadequate and difficult to access.

The DOL reports that "[r]ecent years have seen significant changes to the workers' compensation laws, procedures, and policies in numerous states, which have limited benefits, reduced the likelihood of successful application for workers' compensation, and/or discouraged

[22] NYCIRB report at pp. 3.
[23] Id. According to NYCIRB, private carriers write 67.4% of all policies, compared to 32.6% for the State Insurance Fund. When self-insurers are included, the market is 45.6% private carriers, 32.3% self-insurance, and 22.1% State Insurance Fund.

injured workers from applying for benefits."[24] It goes on to point out that in the current environment,

> Many workers who might be eligible for workers' compensation benefits never file claims. … concerns about retaliation and stigmatization – enhanced by investigations regarding alleged fraud – undoubtedly discourage workers from filing claims. Undocumented or otherwise particularly vulnerable workers are particularly unlikely to file claims. Programs and policies of employers may themselves discourage reporting. Workers are more vulnerable to retaliation without unions – and few workers in the private sector are now unionized.
>
> Legislative changes over the past quarter century contribute to these problems. As benefits are reduced or friction in the system is increased, it is reasonable to assume that workers will respond to these changes by filing fewer claims, given the associated stigma and administrative barriers.[25]

The impact of legislative changes is reflected in worker benefits – though not in employer costs: "Not surprisingly, benefits per $100 of payroll have declined since a high of $1.65 in the early 1990s to $0.98 in 2013. … [R]esearch suggests that a significant component of the decline in total benefits can be attributed to statutory changes that reduced the availability of benefits. Average employer costs have not always followed this downward pattern, further fueling the political attacks on benefits."[26]

However, the challenges for injured workers extend far beyond legislation. According to DOL, "[c]hanges in the processing and adjudication of claims have had enormous, though perhaps more hidden, impact on injured workers' access to benefits."[27] "Overly complicated procedures are frustrating for workers and employers, mystify the processes and increase

[24] DOL report at p. 2.
[25] DOL report at p. 14.
[26] DOL report at p. 13.
[27] DOL report at p. 17.

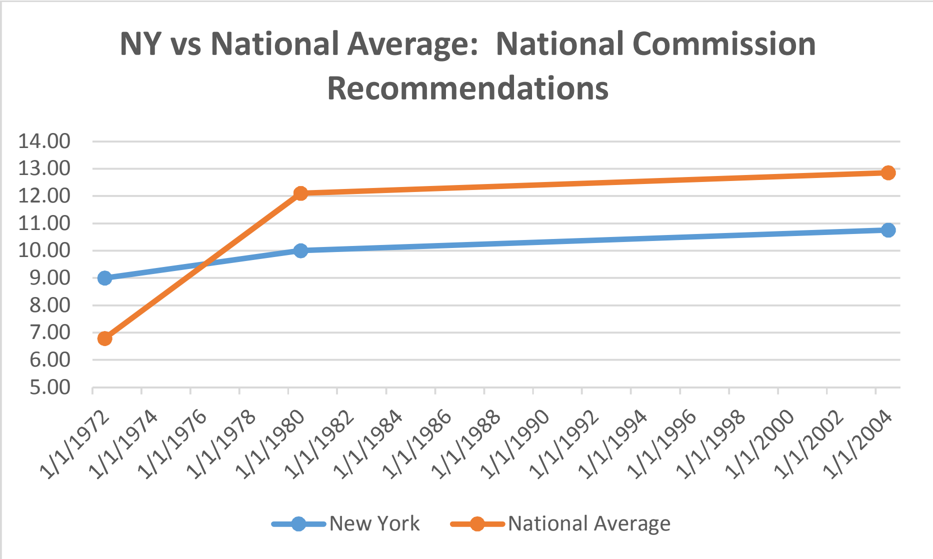
worker-employer animosity. Changes in proof requirements and procedures have resulted in ever-increasing levels of complex and expensive litigation, often involving expert testimony.

The combination of unfiled legitimate claims, benefit caps, barriers to accessing medical care, and potentially inadequate settlements of permanent disability claims together means that the direct costs of worker morbidity and death are transferred away from employers, decreasing any direct economic incentive to invest in safety."[28]

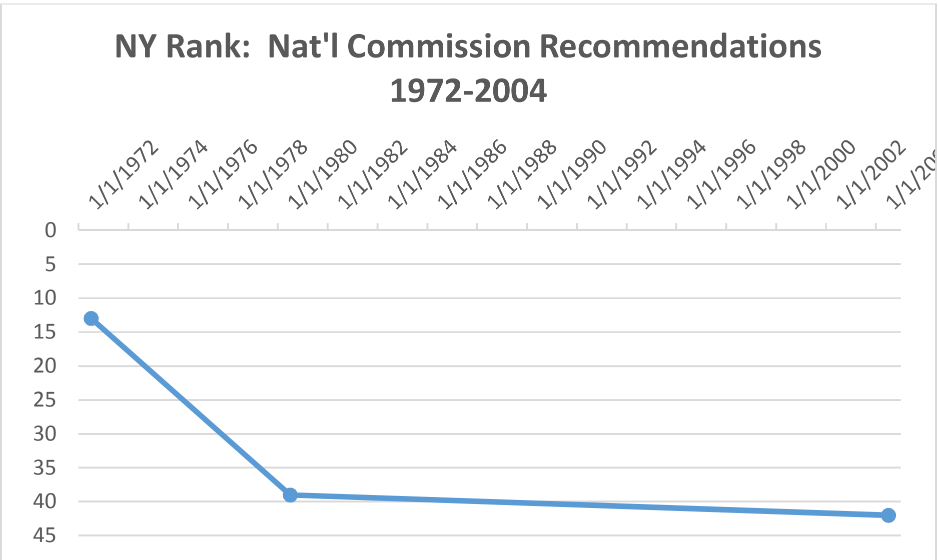
One benchmark against which these issues can be measured is the recommendations of the 1972 National Commission on workers' compensation. "A Pro-Publica analysis of state compliance in 2015 shows that only 7 states now follow at least 15 of the recommendations, and 4 states comply with less than half of them. Although most states had raised and maintained the level of weekly temporary total benefits to conform to the basic National Commission recommendations, other statutory changes represented both overt and more subtle attacks on the availability of benefits for people who were injured at work."[29]

The DOL report includes data showing New York's decline in meeting the National Commission's recommendations.[30] The charts below reflect the DOL's conclusion that in 1972, New York was in compliance with 9 of the recommendations, as compared to a national average of 6.79. Although New York's compliance level rose to 10 recommendation by 1980, the national average had increased to 12.10. From 1980 to 2004 both New York and the national average increased .75, bringing New York to 10.75, still lagging the national average of 12.75.

[28] DOL report at p. 22.
[29] DOL report at p. 12.
[30] DOL report, Appendix B, p. 28.



New York's failure to maintain benefits for injured workers is made clear by the rate at which it has fallen in the state-by-state ranking of compliance with the National Commission recommendations. In 1972 it was 13th; by 1980 it had fallen to 39th, and by 2004 it was 42nd in the country.



New York's failure to maintain compliance with the National Commission recommendations confirms that it suffers from all of the deficits identified by DOL: legislative and administrative change that diminish benefits for injured workers at a greater rate than it achieves savings for employers.

Conclusion.

Taken together, the DOL, NASI, and NYCIRB reports provide strong evidence that workers' compensation is not a high cost to employers either nationally or in New York. To the extent that employer costs have increased, this is generally attributable to increased employment and increased wages as well as insurer profit-taking, not to increases in benefits. Indeed, only a small fraction of increased employer costs is passed through to worker benefits, which are increasingly are inadequate and difficult for workers to access.

In short, to the extent that legislative and administrative action is indicated, it should be directed toward improving access and benefits, rather than further eroding the safety net for injured workers.