

# Tyson Foods' Secret Recipe for Carving Up Workers' Comp

Over the past 25 years, the giant meatpacking company has taken a lead in pushing for changes in workers' comp in state after state — often to the detriment of workers.

by Michael Grabell, ProPublica

Dec. 11, 2015, 10:06 a.m.



*Billy Shawn Walkup hurt his back working at a Tyson bacon factory in Texas in 2011. Tyson asked him to sign a lawsuit waiver before extending his medical benefits, but later terminated them. (Dylan Hollingsworth for ProPublica)*

About five years ago, one of the nation's largest corporations, Tyson Foods, drew a bullseye on the official who oversaw Iowa's system for compensating injured workers.

As workers' compensation commissioner, Chris Godfrey acted as chief judge of the courts that decided workplace injury disputes. He had annoyed Tyson with a string of rulings that, in the company's view, expanded what employers had to cover, putting a dent in its bottom line.

So when Republican Terry Branstad ran for governor in 2010, vowing to make Iowa more business-friendly, Tyson hosted an event for him at its headquarters and arranged another meeting for him to hear from large companies who were frustrated with the workers' comp commission.

Within weeks of his victory, Branstad demanded Godfrey's resignation. When Godfrey refused, the new governor did the harshest thing in his power: He cut Godfrey's salary by more than 30 percent.

Amid the fallout, Tyson drafted and hand-delivered 14 pages of talking points criticizing Godfrey to help Branstad defend his decision.

Godfrey quickly grasped just how much sway Tyson and other big companies can have over workers' comp. "It's just chilling that someone would go to that level to try to influence the system," said Godfrey, who is now the chief judge of the federal employees' workers' comp appeals board.

Tyson's tactics, pieced together from depositions and documents in a lawsuit Godfrey filed — many of which have never been released — are far from unique to the Hawkeye State. Over the past 25 years, as the Arkansas company grew to be one of the world's largest meatpackers, Tyson has taken a lead in reshaping workers' comp, often to the detriment of workers, a ProPublica investigation has found.

Tyson's story also tells a broader one about American politics: How time after time, one determined company, facing a challenge to its profits, can bend government and the law to its will.

Using its economic leverage — combined with time-honored wining-and-dining and behind-the-scenes arm-twisting — Tyson has helped steer legislative changes through several states in the South and Midwest. It has urged officials, often successfully, to remove or appoint workers' comp judges. And the company's lawyers have crafted novel legal arguments for limiting the rights and benefits of injured workers.

Rather than advocating for benefit cuts outright, Tyson has often pushed for subtle changes, such as giving employers more say over medical care, raising workers' burden of proof or limiting the scope of activities judges have deemed work-related.

These changes have had a comparable effect to

cutting benefits, excluding people whose doctors say have legitimate work injuries — especially the costly musculoskeletal disorders like carpal tunnel syndrome that poultry workers are prone to.

Tyson declined to make company officials available for interviews. In response to written questions, the company denied its involvement in workers' comp was out of the ordinary.

“Like other major companies,” Tyson wrote in an email, “it’s important for us to monitor state regulations that affect how we make sure workers hurt on the job get the care and benefits they deserve.”

Tyson, which supplies chicken, beef and pork to supermarkets and fast-food restaurants like McDonald’s around the world, employs about 113,000 workers at more than 400 facilities and offices.

With job titles that describe a worker’s place in the processing chain, like “live hang” and “throwing jowls,” meat plants like Tyson’s pose an array of risks. Workers face everything from crippling hand injuries from repetitive cutting motions to catastrophic amputations in grotesquely named machines like fat suckers and neck breakers.

Curbing the expense of such injuries is important to Tyson, whose former chairman Don Tyson developed a storied cost-cutting reputation as he built his father’s company into an empire. The company spends about \$105 million on workers’ comp every year, according to court documents, making it among the top corporate payers. It’s an amount equal to more than 10 percent, and sometimes nearly 20 percent, of the company’s annual profits.

Over the past year, ProPublica and NPR have examined how many states have been quietly dismantling their workers’ comp systems, leading to cataclysmic consequences for injured workers. The cutbacks, often driven by business, have landed workers on public assistance and forced them to fight insurers for medical care their doctors recommended.

Every state has its own history and politics. Businesses large and small complain about the cost of workers’ comp. Unions lobby to increase benefits and doctors fight cuts in medical fees. Bo Pilgrim, the founder of rival chicken giant Pilgrim’s Pride, once handed out \$10,000 checks on the floor of the Texas Senate during a debate over a workers’ comp bill. Even in Iowa, Tyson was far from the only business bending the governor’s ear.

But unlike most companies, Tyson has asserted an unusually high level of control over its workplace-injury program, giving it a nitty-gritty perspective on issues other employers leave to insurance companies.

Tyson self-insures, meaning it pays nearly all of its claims from its own pocket. When workers are injured, they’re usually sent to a Tyson nurse at the plant. Their claims are processed by Tyson adjusters. And in many states, the company even has its own managed-care unit, handpicking the doctors that workers can see and advising those doctors on light-duty jobs injured employees might be able to do.

Tyson said the system allows it to provide better medical care for its workers and help them get back on the job.

Worker advocates say Tyson’s approach allows it to deny workers necessary medical care and force them back to dangerous jobs before they’re ready.

A look back on the past quarter-century reveals that Tyson has influenced workers’ comp much in the same way it reshaped the poultry industry, famously steering every step of production from the breeding of the birds to the Chicken McNugget.

## The Playbook

The seeds of the workers’ comp laws being pushed today — when insurance companies’ profits are at historic highs and employers’ costs at modern-day lows — were sown during a legitimate crisis in the late 1980s.

A growing recognition of occupational diseases and repetitive trauma had expanded the types of injuries companies had to cover. Medical costs were rising and insurers had undercut themselves competing for business. Insurance companies went bankrupt, and some carriers bailed on unprofitable states. In some, average insurance rates had doubled, while in others, employers were paying an average of \$6 for every \$100 they spent on wages — more than three times what they pay today.

In 1993, Tyson’s home state of Arkansas became one of the first to overhaul its workers’ comp system after rates rose 60 percent from 1986 to 1992.

By then, the company founded during the Great Depression had become America’s largest poultry processor, as well as Arkansas’ biggest employer and political contributor.

Tyson and the state chamber of commerce pushed lawmakers hard for a package of reforms to cut employers' costs. Until then, business and labor had always negotiated changes to the workers' comp law, often with Tyson serving as a management representative.

But this time, the chamber bypassed a labor-management committee set up by the governor and drove a bill over the objections of the state AFL-CIO.

"The business community in particular and people in general were concerned about the rising rates," said former state Rep. Mike Wilson, who sponsored the bill. "Tyson as a large employer with people who had a lot of workplace injuries or were exposed to dangerous conditions, they had a large interest in workers' comp."

The new law drastically changed rules considered part of the bedrock of the system.

It narrowed the list of injuries that were considered work-related, raised the bar for workers to prove their jobs caused their injuries, required more objective medical evidence, gave employers and insurers more control over workers' medical care and made it harder for workers to qualify as permanently disabled.

Labor leaders decried the new law. "Congratulations to business and industry; let them enjoy their bloody victory," said state AFL-CIO president J. Bill Becker. "God help the widows, orphans and injured workers of Arkansas!"

A national insurance ratings bureau estimated at the time that the law cut benefits for the most severely disabled workers by 20 percent and medical and lost wage benefits for all workers by more than 10 percent.

While other states such as Oregon had adopted some of the provisions before, Arkansas' package provided a comprehensive playbook for other states to follow.

But even some on the employers' side worried that legitimate injuries would go uncovered. Summing up the consequences in a law review article, John Copeland, a business defense lawyer and University of Arkansas professor, said the law left him with an "uneasy feeling."

"There is no question," wrote Copeland, who later went to work for Tyson, "that the new act severely curtails and even eliminates many workers' compensation claims."

The law didn't specifically eliminate repetitive stress injuries like carpal tunnel, which were becoming an epidemic in the early 1990s. But some critics say it effectively accomplished the same thing by making it tougher for workers to qualify.

"That was really the thing that was costing Tyson," said Laura McKinnon, an attorney who represented workers opposing the bill. "That's why Tyson got so involved back then because they were having so much trouble with carpal tunnel at the time."

Tyson said, "The purpose of the reform act was to streamline workers' compensation."

## The Oracle of Workers' Comp

Following its success in Arkansas, Tyson took its involvement with workers' comp to another level. The company formed a subsidiary to specialize in workers' comp managed care and sold the system to other companies.

And to help direct its efforts, Tyson hired Allyn Tatum, an Arkansas workers' comp commissioner who had drafted many of the 1993 law's provisions and had recruited and guided the business representatives who hammered out the final version, according to multiple people involved in the effort.

Tatum was already a legend in the industry. He'd served on the commission since 1977 and had recently been president of the International Association of Industrial Accident Boards and Commissions.

"He was the most powerful workers' comp commissioner in the country," said Michael Clingman, CEO of Arkansas' comp commission in the mid-1990s. "He was hired because he knew commissioners in all the states."

Tyson and Tatum pressed for regulations that would make it mandatory for companies to contract with managed-care organizations — like the one Tyson had formed. But Arkansas employers opposed the requirement, and the commission made managed care voluntary.

Despite the setback, Tyson continued to hold sway over the workers' comp commission, especially when it came to the judges charged with interpreting the new law.

In 1997, Wilson, the lawmaker who sponsored the workers' comp bill, was appointed as the management representative on the commission, which decides

appeals. The business community, he recalled, “went to the governor and said ‘Here’s our boy,’ and the governor said ‘You’re it.’ ” A few months later, a Tyson employee and former Walmart lawyer named Max Koonce was hired as a workers’ comp judge.

With business-friendly representatives on board, Tyson and other employers took aim at the ones they believed weren’t interpreting the law correctly.

The final paragraph of the new workers’ comp act had delivered a warning to judges: The changes were necessary because courts had “broadened the scope and eroded the purpose” of workers’ comp, it said. To ensure judges got the message, the chamber of commerce sent them a memo noting that it would not only be watching but asking to be copied on any decision addressing the new law.

In 1998, a judge named Eileen Harrison was fired following a pattern of business pressure similar to what Godfrey faced in Iowa, according to depositions obtained by ProPublica in a lawsuit she filed.

Earlier that year, Tatum, Walmart lobbyist Stephen Carter and others had complained to Arkansas Gov. Mike Huckabee’s staff and appointees that commission decisions were “eroding” the new law and hurting business.

In one meeting described in a deposition in Harrison’s lawsuit, Carter said he pointed his finger at the commission’s chairman and demanded he resign. The business community was concerned about some administrative law judges as well, he said, and wanted Harrison terminated. In an interview, Carter, now in private practice, said his concerns “had nothing to do with anything other than her performance.”

As complaints mounted, Tatum requested his own meeting with Huckabee’s chief of staff, according to testimony and exhibits in the case. Shortly after, the chief of staff sent word to the commission that it was time for Harrison to go. Harrison ultimately obtained a settlement from the state, but the forces behind her departure weren’t lost on the judges who remained.

“We were already feeling the pressure,” recalled C. Michael White, an administrative law judge at the time. “Now we had proof of what would happen if we didn’t decide cases in favor of employers.”

Over the years, Tatum became the business community’s go-to workers’ comp guru, speaking at conferences

across the country and advising employers how to craft workers’ comp provisions and make their voices heard. He is now retired, but still has a phone line and email at Tyson, and is listed as a Tyson representative on national workers’ comp boards.

Tatum originally agreed to meet with a ProPublica reporter in Arkansas. But he later declined, sending a text message that said, “from what I hear, you already have lots of folks to talk to, and I’m sure they will tell you the story you want to hear.”

Those who have taken on Tatum describe him as daunting.

“He’s one of the more dangerous characters in workers’ comp in my view,” said Jim Ellenberger, a longtime AFL-CIO workers’ comp expert who often debated Tatum. “Paying a worker any sum of money for any injury is going to get his ire up. That tells you something about how serious that issue is for that company.”

### **‘It’s Almost Like They Wrote the Law’**

As Tyson and other companies have assumed more control over workers’ comp, injured workers say they’ve faced the consequences.

Billy Shawn Walkup was working at a Tyson bacon factory in Vernon, Texas, in 2011 when he slipped walking down wet stairs and hurt his back.

About two weeks later, Walkup said, a Tyson employee handed him a form waiving his right to sue. If he didn’t sign it, the employee said, his medical care would end and he’d have to go back to full duty within two months.

“When I have a wife and a 4-year-old son at home — at the time, he was 2 — what am I supposed to do?” Walkup said recently. “I didn’t know what was fixin’ to happen. I was scared. I was afraid of losing my job.”

Walkup signed the waiver, and the doctor sent him back to work with restrictions. But struggling with pain from the injury, Walkup missed too many days and was fired a few months later.

Tyson continued paying Walkup’s medical care for another year under its benefit plan. But after a spine surgeon, whom Tyson approved, determined that Walkup had multiple disc protrusions in his back and numbness in his legs that caused him to occasionally collapse, Tyson sent him for an independent medical exam.

That orthopedic surgeon was 77 years old and had previously been disciplined by the Texas Medical Board for failing to document a physical examination. According to his report, the doctor spent 35 minutes examining Walkup and reviewing his extensive medical records before concluding that he'd merely suffered a strain. No further medical care was necessary, said the doctor, who didn't return calls for comment.

Tyson terminated Walkup's benefits.

"If it hadn't been for my father-in-law bailing us out time after time, we would have lost our house," said Walkup, who was 35 when the injury happened. "The bank called us and they were fixin' to foreclose on our house. They repo'd my wife's car. They repo'd my pickup."

Tyson declined to discuss Walkup's case but said it wants to make sure workers receive "the medical care they need and the compensation they deserve."

One of the biggest trends in workers' comp over the past 25 years has been the increased ownership of risk by employers who either self-insure, paying claims themselves, or buy high-deductible insurance plans that require them to cover the cost of injuries up to a certain amount. Nationwide, employers now pay as much in benefits out of their own pockets as private insurance companies do, according to the National Academy of Social Insurance.

And they have sought a much greater say over what they have to pay for. Few companies have been more active than Tyson, which is on the executive committee of the National Council of Self-Insurers and on the boards or in leadership positions of similar groups in Alabama, Arkansas, Iowa, Missouri, North Carolina, Tennessee and Texas.

Tyson was one of the first companies to self-insure in Texas in 1993, and the following year, it lobbied the state to let it process its own claims, rather than hiring an outside firm.

As it sought permission for this approach, Tyson dangled the possibility of a \$60 million poultry processing plant in East Texas, according to the Wall Street Journal. The state made the change. Tyson never built the plant, though it did open a meat plant in another part of Texas a decade later.

And despite the change, Tyson eventually dropped out of the workers' comp system, taking advantage of

another Texas law that gave it yet more control. Instead, Tyson created its own benefit plan, exempt from state oversight, to handle injured employees like Walkup.

It can be beneficial for companies to hold such power and financial responsibility over workers' comp, industry experts say. Being more involved in claims forces companies to become more aware of, and fix, unsafe conditions, they say. It also allows them to find doctors who understand their workplaces and what alternative assignments may be available.

But as Walkup learned, this approach can also have negative consequences. When employers have more control over medical care, worker advocates say, they may choose doctors who see things the company's way, giving them cover to get rid of undesirable employees and expensive claims.

"They have it set up where they pay for what they want to," Walkup said.

In August, Walkup was approved for Social Security disability. He hopes to get surgery. But for now, he gets around using a cane and a motorized wheelchair.

After being cut off, Walkup sued Tyson. But the judge quickly dismissed it because of the waiver Walkup signed.

Walkup's attorney Eric Marye said it was stunning how the company's waiver process followed "the letter of the law to a T."

"It's almost like they wrote the law," he said.

In fact, Tyson and other meatpackers were heavily involved in pushing post-injury waivers. Tyson said removing the threat of lawsuits allows them to offer better benefits.

Texas lawmakers tried to ban the practice. But a deal was struck in 2005, allowing waivers so long as workers had 10 days to see a doctor and decide whether to sue or accept the company's benefit plan.

Around this time, Tyson was working on another front to limit injured workers' rights by testing a new legal theory that undocumented immigrants who got injured on the job weren't entitled to compensation for lost earnings.

The theory arose out of a 2002 U.S. Supreme Court decision involving undocumented workers who were laid off for supporting a union drive. At the time, Tyson was

appealing a Texas case involving Gustavo Tovar Guzman, a chicken catcher who suffered a spinal injury when was hit by a forklift while trying to round up birds for slaughter.

The company eventually lost, but its bold strategy helped set the stage for more than a decade of similar challenges across the country.

## Spreading the Gospel of Reform

Few states have seen steeper drops in workers' comp costs than Arkansas and Texas. Pro-business lawmakers and lawyers interviewed over the past year frequently referred to the two states as models while worker advocates called them nightmares. And nowhere felt the changes more powerfully than Oklahoma.

In 1996, Oklahoma Lt. Gov. Mary Fallin, who is now governor, held a meeting at the National Cowboy Hall of Fame to kick off what became a nearly 20-year campaign to change the state's workers' comp law. A Tyson personnel manager handed Fallin a check for \$200 to help her campaign. Reforming the Oklahoma law, he told the crowd, would save Tyson \$200,000 a year.

"Tyson's fingerprint since 1996 has been heavy on Oklahoma workers' comp," said Bob Burke, a longtime workers' lawyer who has negotiated legislation.

Fallin finally fulfilled her goal in 2013. One of the most significant changes was that disputes would no longer be heard by workers' comp courts, but by an administrative commission modeled after Arkansas.

And to tell the state how to build one, the authors brought in Tatum from Tyson.

Tyson was also involved in crafting Mississippi's workers' comp overhaul in 2012, when the state adopted many of the restrictive provisions that Arkansas had embraced in the early 1990s.

The bill limited workers' ability to change doctors, raised the burden of proof, allowed drug tests, eliminated the legal standard that judges should view evidence in a light most favorable to workers and reduced employers' liability when work injuries aggravated preexisting conditions.

Lawmakers had been trying to pass such provisions for 20 years, but a Republican takeover of the statehouse finally gave them traction. The House speaker's law firm, which represents Tyson, drafted key elements of the bill

with the company's help, said Rep. Gary Chism, who co-authored the bill.

Tyson was "very instrumental in pushing this bill," Chism said. "They picked up some pro-business Democrats for us. They had some processing plants in Mississippi and, where they were, they encouraged that representative of that district to support this workers' comp legislation."

As the bill was being drafted and debated, Tyson's lobbyist treated key lawmakers to dozens of meals at steakhouses and other fine restaurants around the capital, according to expenditure reports. The six members who ultimately hammered out the final bill received 21 meals over the course of three months. The lobbyist even gave one a gift from "God Father Cigars."

"I can remember the celebratory dinner," Chism said. "It was more patting each other on the back. We had accomplished what we set out do."

## Tyson Goes to Iowa

Tyson's stake in Iowa grew immensely in 2001 when it acquired IBP, the giant beef packer and hog producer. Overnight, it became one of the biggest employers in a state where workers' comp benefits have traditionally been more generous than in the South.

Back then, Godfrey defended workers' comp cases for IBP and helped train another young lawyer, Todd Beresford, now the senior workers' comp manager for the Tyson Fresh Meats subsidiary, headquartered in Dakota Dunes, South Dakota.

Godfrey eventually began representing injured workers. But he and Beresford remained close. And in 2006, when some lawmakers sought to block Godfrey's confirmation as workers' comp commissioner, Beresford wrote to the president of the Iowa Association of Business and Industry (ABI), seeking the group's support.

"I can personally attest to his good character and integrity," Beresford wrote. "I believe that Mr. Godfrey would approach every case before him as commissioner impartially."

But the relationship soon soured as Tyson grew concerned that the commission's decisions were stretching the purpose of workers' comp and increasing its costs, according to Beresford's deposition in Godfrey's lawsuit.

When ABI remained neutral on Godfrey's reappointment in 2009, Tyson formed the Iowa Self-Insurers Association to advocate for large employers on workers' comp issues. Beresford became president.

The following year, Branstad, a Republican who'd been governor from 1983 to 1999, mounted a campaign to retake the governor's office.

"When I first ran for governor in the '80s, our workers' comp system was working very well and we were one of the lowest-cost states," Branstad said in a deposition. "It was only in the 2010 campaign that I was really hearing a lot of concerns about workers' comp."

In fact, premium rates in Iowa had been fairly stable under Godfrey. And they were nearly half what they were when Branstad was governor. But as other states cut benefits or saw their economies sink further than Iowa's, Iowa jumped from the seventh-cheapest state in 2006 to the 16th in 2010 — the same ranking as when Branstad first ran for reelection in 1986.

But that wasn't the impression Branstad was getting from the business community, which donated millions to his campaign. Branstad specifically recalled a meeting with the founders of Beef Products Inc., which makes the finely textured beef that some have dubbed "pink slime." They contributed \$152,000.

Before even taking office, Branstad summoned Godfrey to a meeting.

That morning, ABI sent Branstad's chief of staff, Jeff Boeyink, an email titled "Issues with Chris Godfrey." In forwarding the message to Boeyink, ABI's president Mike Ralston added a thinly veiled threat that the state could change a law to prevent Godfrey from practicing before the commission after leaving office. "Actions have consequences," he wrote.

Ralston said in an interview that he didn't intend it as a threat and that ABI never suggested Godfrey be terminated.

At the meeting, Branstad ticked off the business community's complaints and requested Godfrey's resignation.

Godfrey dismissed the concerns and said he intended to serve his full term. Because his appointment was independent of the election cycle to insulate it from politics, Branstad was barred from simply firing him.

Branstad asked his legal counsel to look into the cases businesses were complaining about and explore his legal authority for dealing with Godfrey.

Six months later, Godfrey was called to another meeting. That morning, ABI again emailed Boeyink information. The governor's chief of staff asked Godfrey again to resign. And when he said no, Boeyink informed him that the governor had decided to cut his pay from \$109,000 a year to \$73,259 — the lowest amount allowed by law.

"It's one of those situations where you feel your mouth go dry, you feel your hands get sweaty, and it just kind of seems like the world comes to a stop," recalled Godfrey, 43. "It was devastating. It kept us from buying a house. It impeded my ability to care for my parents."

## Tyson Defends the Governor

Publicly, ABI denied involvement in trying to oust Godfrey. So Tyson decided the governor needed its help.

Tyson's government relations team asked Beresford to put together a list of cases that employers felt were unfair.

In a memo to the governor, Tyson claimed that costs had increased significantly under Godfrey and that workers' lawyers often dropped Godfrey's name as leverage during settlement negotiations.

"If Godfrey continues as the Iowa commissioner," Tyson warned, "it is not only going to continue increasing current employers' w.c. costs, but it also is likely going to impact other employers as they look to locate in Iowa or expand current operations in Iowa."

In an email to Tyson's senior vice president of fresh meats, Beresford noted that the company's lobbyist had dropped off the memo and that the governor's chief of staff was "very appreciative" and "thought it would be very helpful."

The governor's office referred calls to his attorney, who didn't return calls.

Tyson's memo detailed a gallery of cases that seemed silly on the surface — injuries that occurred at a company bowling tournament or while bench-pressing at the office fitness center, workers with seemingly minor injuries ruled permanently and totally disabled.

The cases all fell into a large gray area of workers' comp law that judges have sought to define over the

past century. Such injuries that aren't clear-cut may be deemed work-related depending on the circumstances. They include such things as slipping on ice in company parking lots, aggravating conditions related to aging and recreational activities that serve a business purpose.

Godfrey said he had followed precedent in ruling for the workers and hadn't even made all the decisions listed. Many had also been upheld by higher courts.

One of the cases that stuck most prominently in the minds of the governor and his staff was the slip-and-fall injury of Tyson employee Shawn Durkop — which Branstad remembered in his deposition as an injury “while shopping for clothes for work.”

Durkop had just started orientation at Tyson's meatpacking plant in Waterloo, Iowa. The company had arranged for new employees to buy the required white uniform with Tyson's logo through a payroll deduction. After work, Durkop went to the store to get the uniform, where she slipped on ice and injured her ankle and back.

A deputy commissioner ruled that Tyson was responsible for her medical care and lost wages because, even though she was off work, she was on a special errand at the direction of her employer.

Godfrey affirmed the decision, adding that the clothing was federally mandated equipment for meatpacking work that couldn't be worn off the job. Tyson could have easily shipped the uniforms to the plant. And the company benefited from the arrangement, he said, allowing new employees to be “ready to work upon completion of the training period even if they do not have money to purchase the uniforms.”

After Godfrey left for Washington in 2014 to become chief judge of the federal employees' workers' comp appeals board, Beresford applied to become Iowa's new workers' comp commissioner and was interviewed by the governor's staff. They talked about his vision for the agency and what Tyson thought should be changed.

But when the discussion turned to salary and moving his family, “I believe I said, ‘Yeah, I probably wouldn't consider the job at that time,’ ” Beresford said in his deposition.

Instead, Beresford, who declined to comment through a Tyson spokesman, was named to a key labor-management committee that advises the legislature and the commission on workers' comp issues.

“Obviously they had a very open phone line to the governor's office,” Godfrey said. “People expect fairness. They expect a judge to be a judge, not to be a puppet for some other interest.”

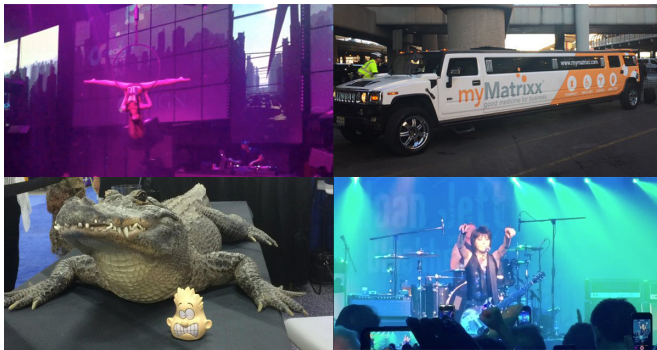
*Tobin Asher, Andy McCarthy and Jennifer Stahl contributed research to this story.*



# 'All of This Because Somebody Got Hurt at Work'

Hummer limos, go-go dancers, a live alligator and glowing aliens in spandex at the national workers' comp and disability expo. Journey into the little-known workers' comp industrial complex.

by Michael Grabell, ProPublica  
Dec. 29, 2015, 8 a.m.



The National Workers' Compensation and Disability Conference & Expo in November featured a party with an acrobat, Hummer limos and a live alligator named Spike. Another workers' comp conference in August hosted a concert by Joan Jett & the Blackhearts. (Clockwise from top left: Michael Grabell/ProPublica, Artemis Emslie via Twitter, Tom Kerr via Twitter, Jamie Gassmann via Twitter)

LAS VEGAS — A scantily clad acrobat dangles from the ceiling, performing flips and splits as machines puff smoke and neon lights bathe the dance floor in turquoise and magenta. Dancers in lingerie gyrate on poles to the booming techno. Actors dressed as aliens pose for selfies with partygoers. There's an open bar and waiters weave through the crowd passing out chocolate truffles.

It's the closing night of the National Workers' Compensation and Disability Conference & Expo.

The party at Light, a Cirque du Soleil-themed club at the Mandalay Bay Resort and Casino, capped off the workers' comp industry's biggest annual networking event. For three days in November, hundreds of vendors wooed insurers and employers with lavish after-hours parties, giveaways of designer handbags, photos with Olympic gymnast Kerri Strug, and free rides in orange Hummer limousines.

A top manager for a major insurance company recalled standing amid the hoopla a few years back when a company CEO turned to her and marveled: "All of this because somebody got hurt at work."

Workers' comp is supposed to be simple. If you're injured on the job, your employer pays your medical bills and part of your wages while you recover.

But over the past two decades, a cottage industry of middlemen has emerged, which some have dubbed the "workers' comp industrial complex." Even private equity firms have bought in, seeing profit opportunities in employers' and insurers' quest to contain spending.

The middlemen offer an array of services, from managing claims to negotiating medical bills, all promising to reduce costs — although critics say some actually raise them, as well as the burden on those hurt on the job.

It's a world largely unknown to the injured workers that the firms ultimately serve, and often to the employers who spent an estimated \$89 billion on workers' comp in 2013.

Over the past year, ProPublica and NPR have detailed how state after state has reduced the benefits historically granted to injured workers. As a result, some workers have been evicted from their homes, denied medical care and put in humiliating situations.

While lawmakers have clamped down on payments to workers, doctors and lawyers, little scrutiny has been given to these "cost containment" firms — even though today they arguably have more influence on how injury benefits are handled than insurers and employers.

Highlighting the bounty, there are now more than 150 workers' comp conferences a year. There's one for the American Society of Workers Comp Professionals, one for the Association of Workers' Compensation Professionals and one for the Association of Workers' Compensation Claims Professionals. At least 26 have golf tournaments.

At the national workers' comp and disability expo, vendors gave away Apple watches, bottles of bourbon,

and a Vespa scooter. There were free massages and shoeshines, a superhero caricature artist, more than one mentalist, and a live alligator named Spike.

Over the past year, conference attendees have heard from Pete Rose, Arianna Huffington, Ted Koppel, Herschel Walker and Joan Jett & the Blackhearts.

Rarely have they heard from injured workers.

“Even though the injured worker is the center of the claim, they’re very far removed from what actually happens to them,” said David DePaolo, editor of the industry news site, WorkCompCentral. “It’s very dehumanizing. Why aren’t injured workers part of the conferences? It’s because they’re a number.”

### Private Equity Buying Spree

Last year, workers’ comp insurers in California spent 36 percent of premiums on overhead — more than they spent on medical care. That’s over twice what group health plans can spend on administrative costs under the Affordable Care Act.

A glimpse of the Vegas expo shows why. There were companies that provide networks of doctors and companies that review medical bills, firms that provide expert medical opinions and firms that specialize in complex claims. There were defense lawyers, data processing firms, rehab facilities, surveillance companies, outside claims shops, occupational medicine clinics, pain management services, translators, schedulers, headhunters and associations promoting other conferences.

There were labs that test injured workers’ urine for illegal drugs. There were even labs that test urine to ensure workers are taking the prescribed drugs instead of selling them.

In California, the amount of money that insurers spend on medical cost containment programs has more than doubled from \$197 million in 2005 to \$471 million in 2014, according to the state workers’ comp ratings bureau.

Seeing huge profit potential, private equity firms have gone on a buying spree.

Sedgwick, a company that processes claims for large employers, was acquired by two private equity firms for \$1.1 billion in 2010 and then sold to another for \$2.4 billion in 2014. One Call Care Management, known in

the industry as a medical “cost containment” firm, was bought for more than \$2 billion in 2013, and reportedly bid to buy another vendor, pharmacy benefit manager Helios, for \$2 billion this fall.

Some of the biggest firms — Sedgwick, Genex, Helios, CorVel, MedRisk and One Call — are little known outside the workers’ comp industry. But they have become powerful players in determining the future of how injured workers are treated.

The companies say they play a critical role in reducing excessive medical costs and preventing inappropriate treatment. Southern California, for example, has recently witnessed a series of scandals involving doctors and hospital executives who’ve been accused of bribery, kickbacks and unnecessary surgeries involving workers’ comp patients.

Some firms advertise that they analyze data to find the best doctors and can get injured workers in to see them faster than the general public. They say their data tools help employers identify safety problems and manage long-term claims before they spiral out of control.

Robert Hartwig, president of the Insurance Information Institute, said the companies have become necessary as medical care, and the regulations for delivering it across 50 different state systems, have become increasingly complex. The firms don’t just reduce costs, he said, but also improve outcomes by helping employees get back to work quicker.

“Cost containment is not a dirty phrase,” Hartwig said. “If insurers were to eliminate cost containment because it was costing too much, I can assure you we would see a rapid escalation in fraud and abuse in the system. And we would quickly see an explosion in claims costs.”

Increasingly, though, decisions to deny care aren’t being made by workers’ employers or insurers, but by these myriad claims administrators, managed care companies and cost-containment firms. Some industry observers say the firms have added a layer of cold bureaucracy to an already complicated system. CorVel — a managed care and claims-handling firm whose stock price has nearly doubled in the last three years — recently sent letters to the widows of two police officers killed in the line of duty, wishing their husbands a “speedy recovery.”

There’s even a Facebook group for injured workers who say they’ve been mistreated by Sedgwick.

“I don’t think we have created the savings intended and

I think we've made the system a much more complex, difficult to navigate system," said Bob Wilson, who runs the popular industry site, WorkersCompensation.com.

Wilson said he jokes that even though he's been in the industry for 15 years, he still doesn't understand what some people do. "No wonder injured workers are getting lost in the system."

## Controversy in Cost Containment

As business has boomed, little effort has been made to find out whether the companies are helping or hurting injured workers.

Ed Welch, former director of the Workers' Compensation Center at Michigan State University, said managed care is necessary in workers' comp.

"You can look at the field of doctors and say this doctor is really good, he does a lot of back surgeries, he's very effective, we can negotiate a price," Welch said. But employers and insurance companies can also use managed care to limit benefits by finding the cheapest doctors or "doctors who will very rarely agree that work caused the disability," he said.

One of the field's most controversial niches is firms that supply doctors to provide second opinions for employers and insurers. This alone is a \$4 billion a year industry in the United States, according to one of the leading firms, ExamWorks, whose stock price has tripled in the past four years. Treating physicians say such hired experts are often retired doctors who make quick decisions without fully understanding patients' medical histories.

A recruitment letter for one medical review firm, which a doctor provided to ProPublica, promised an "additional revenue stream" and said that "once a provider is in the rhythm of performing these reviews they should easily be able to perform 4-5 an hour."

Many cost-containment firms negotiate prices with doctors and other medical providers and then take a cut of the discount they provide to insurers. Often, the insurers and claims administrators receive fees and commissions from cost-containment firms for selling their services to employers, said Frank Pennachio of Oceanus Partners, an insurance consulting firm.

Some cost-containment companies have found another way to profit, according to several doctors, insurance consultants and other service providers who asked not to be named because they must do business with these

companies. They said firms misrepresent the cost of services to insurers, pocketing not only the percent of savings but also the difference between the inflated price and the true charges.

"The presence of these companies is becoming so overwhelming that providers are getting squeezed out," said Steve Cattolica, government relations director for a doctors' organization, the California Society of Industrial Medicine and Surgery. Some firms are "raising the costs of work comp health care without delivering any value."

## The Workers' Comp Expo

The 43-story Mandalay Bay casino stands like a shimmering gold cathedral, towering over the Luxor pyramid and the Excalibur castle on the south end of the Vegas Strip.

It was the perfect setting for this year's workers' comp and disability expo, which featured panels on how to prevent claims from spiraling out of control, what to do about medical marijuana and "Current Trends in Urine Drug Screening — What the Research Shows."

Conferences like these are where insurer-driven ideas for legislative reforms spread. And they're also where deals are made, which explains the attention showered on those holding the purse strings.

One morning, those entering the expo were greeted by a latte bar, hosted by ExamWorks, with baristas etching elaborate patterns in the milk, like the face of a lion or Pacman eating a ghost. Convention-goers mingled at booths and browsed the swag. Strug posed for pictures, drawing people to one firm's booth while also raising money for charity. Some attendees lined up early to get wristbands for the after-hours parties.

Prime Health Services, a cost-containment company, held its party at the Wynn casino's Tryst nightclub with a live band playing in front of the club's 90-foot waterfall and cocktails containing fake ice cubes with the company's logo.

Rising Medical Solutions, another cost-containment firm, hosted a Great Gatsby theme party with guests dressed as flappers. Paradigm Outcomes, a catastrophic case management firm, held its reception at the lounge inside the Cosmopolitan's three-story crystal chandelier. And Michael Sullivan & Associates, a defense law firm in California, held its party at the House of Blues' Foundation Room, whose website says it features "high-class debauchery" and "luxurious party rooms to suit

any desire — no matter how wicked.”

But none of them could compete with the closing-night blowout hosted by One Call that featured the acrobat, go-go dancers and glowing aliens clad in spandex.

“If I was an injured worker at home wondering how I would pay my bills, I would be sick to see this,” said one insurance company manager who asked not to be named.

One Call, which is based in Jacksonville, Florida, said in a statement that such events are typically sponsored by companies in the industry as “a cost of doing business” and that it chose the Cirque du Soleil theme to keep with the conference’s Las Vegas location.

“The focus of One Call Care Management is to make sure that injured workers receive the best care possible, quickly and efficiently,” its statement said. “Having opportunities for our colleagues to meet and connect is important for workers’ compensation and for any industry.”

Not every conference is as elaborate as the national expo. Some focus on providing continuing education credits for lawyers and claims adjusters. Many states put on annual educational conferences to update stakeholders on new trends and regulatory issues.

This year, there were conferences in 104 cities in 41 states — more places than in the country song, “I’ve Been Everywhere.” One hotel, the Beau Rivage Resort & Casino in Biloxi, Mississippi, hosted three workers’ comp conferences in 2015.

There are so many conferences that there is even a website called CompEvent.com, which serves as a kind of Ticketmaster for them.

At this year’s Risk and Insurance Management Society conference in New Orleans, MedRisk — a network of physical therapy and diagnostic imaging centers for workers’ comp — led a parade through the French Quarter, complete with Mardi Gras performers and a brass band, to its reception at Latrobe’s on Royal.

And not to be outdone, the 70th Annual Workers’ Compensation Educational Conference in Orlando featured a concert by rock ‘n’ roll legends Joan Jett & the Blackhearts.

In a video posted on Twitter, attendees bopped their heads as they sang along to her hit, “Bad Reputation.”

# Workers' Comp Benefits: How Much is a Limb Worth?

by Lena Groeger and Michael Grabell, ProPublica, and Cynthia Cotts, special to ProPublica  
Mar. 5, 2015

If you suffer a permanent injury on the job, you're typically entitled to compensation for the damage to your body and your future lost wages. But depending on the state, benefits for the same body part can differ dramatically.

Select a state to see the maximum it pays for different body parts.

The average maximum compensation for one **Arm** in **The USA** is **\$169,878**



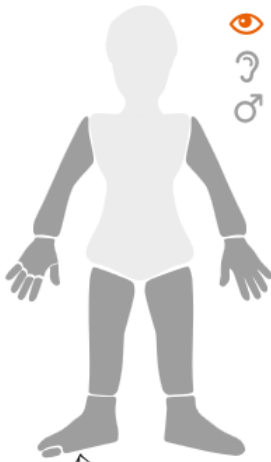
🏠 Back to all states

Select a state to see the maximum it pays for different body parts.

The maximum compensation for one Eye in Alabama is **\$27,280**

### National Average

**\$96,700**



Hover over a body part for details

### Alabama

**\$27,280**



### Difference from National Average

	- LOWER	SAME	+ HIGHER
Arm	-		\$121,038
Leg	-		\$109,221
Hand	-		\$107,530
Thumb	-		\$28,792
Index Finger	-		\$15,014
Middle Finger	-		\$14,176
Ring Finger	-		\$9,820
Pinky	-		\$7,823
Foot	-		\$61,199
Big Toe	-		\$16,396
Eye	-		\$69,420
Ear	-		\$26,390
Testicle			NOT AVAILABLE

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