

The Horse Racing Industry & Workers' Compensation Task Force Report

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Workers' Compensation & Horse Racing

The horse racing industry continues to struggle with problems associated with workers' compensation insurance. In recent years, the horsemen of several states have been plagued by a shortage of companies willing to offer insurance, and then only at rapidly increasing premiums¹. Horsemen are being forced to insure through state funds that lack portability in an industry that requires state-to-state mobility. In order to better understand and possibly reduce these insurance burdens, a group of racing industry stakeholders (representatives from various horsemen's groups, tracks and the insurance industry) conducted a strategic planning session during the 2002 Race Track Industry Program Symposium on Racing held annually in Tucson, Arizona.

During this planning session participants collectively determined the most pertinent insurance related concerns affecting the racing industry. Discussions generated an extensive list of critical issues including numerous strengths and weaknesses². Eventually, the participants agreed on three final objectives on which to focus. Various participants from a variety of different backgrounds volunteered to form working groups and investigate potential solutions for the industry that were outlined during the planning session.

This report describes the final objectives, findings, and final recommendations of the three separate task force groups. Since the strategic planning session in 2002, each of the working groups convened four to six times to discuss and report their findings. These conferences produced constructive insights and allowed the group members to candidly explore these issues in depth with the goal of making specific recommendations relative to each objective.

Objective One: *Understand the Successful, Existing Insurance Programs*

The task of the first working group, lead by Richard Hoffberger, President of the Hoffberger Insurance Group and Board member of the Maryland Thoroughbred Horsemen's Association, was to analyze the successful insurance programs that already exist in the horse racing industry. Numerous states have endured painful premium increases in the past few years, yet other states have managed to avoid these rate hikes. In seeking solutions for all horsemen, it seemed natural to first consider the key attributes of states with successful programs. The group recognized New York and Maryland as states with effective systems in place to provide relatively inexpensive coverage for jockeys (and exercise riders in New York). By providing specific workers' compensation coverage for "athletic participants" (jockeys / exercise riders) horsemen in these states are then able to secure reasonable insurance plans for their other - lower risk - employees (grooms, hot walkers). These programs were each established independently more than a decade ago, and while initially controversial have received widespread approval and are expected to continue operating smoothly in the future. Attached to this report is a separate set of tables providing details of the programs in New York, Maryland, and also New Jersey.

In the cases of New York and Maryland specific legislation was required to establish special "funds" with the sole purpose of providing workers' compensation for jockeys. New York and Maryland both have state funds that provide workers' compensation insurance to employers in all industries. The presence of these established administrative bodies in New York and Maryland likely facilitated the creation of the separate entities to insure jockeys. Among the major racing states, half have state funds similar to those in New York and Maryland that could potentially assist in forming comparable mechanisms to provide insurance coverage for jockeys and possibly exercise riders as well³.

In addition, these three states (New York, Maryland, and New Jersey) are unlike most other racing states in that the law requires all jockeys to have workers' compensation coverage. In other words, jockeys are not treated as independent contractors. The legal coverage requirement under state workers' compensation laws bring up another important concern recognized by this group. Providing the appropriate coverage at reasonable rates may require a change in the way racing industry employees are coded for insurance purposes. Under the current system, most states do not distinguish between exercise riders, jockeys, grooms and hot walkers. In most states the insurance "class codes" are determined by NCCI which combines thoroughbred horse racing industry employees with workers in several unrelated industries. More importantly, these class codes include riding schools, boarding and livery stables, and all other breeds which make it impossible to specifically examine the thoroughbred horse racing industry.

While adopting the New York / Maryland model would offer the quickest and most cost efficient solution to the growing workers' compensation crisis, realistically the cost of such transitions is a very real concern and passage of special legislation to do so might be a difficult hurdle in many states. During the 1990s, attempts to expand the New York program nationally were met with harsh criticism. Thus, further inquiry is required to determine the expected costs of creating similar systems in other states.

Objective Two: *Determine the Cost of an Alternative Insurance Mechanism*

The task of the second working group led by Linda Mills, President of the Florida HBPA, was to determine the feasibility and costs of utilizing an existing insurance captive or purchasing a shell insurance company. To accomplish this objective the group sought a variety of opinions, and considered several different alternatives that would provide horsemen a greater role in the insurance process. After thorough review, the group concluded that, on balance, the option with the fewest obstacles to success - including and most importantly, cost - would be to utilize the infrastructure and resources of an insurance captive as opposed to the outright purchase of an existing shell insurance company⁴ which could run in the tens of millions of dollars range. This may mean using an existing captive in the short-run with a long-run goal of forming an industry-owned captive.

In assessing the potential viability of the alternatives, the group gained several insights. One is that the ability to underwrite workers' compensation insurance depends on the availability of accurate loss histories. Attempts to obtain recent, reliable data on accidents and payrolls in the industry were largely unsuccessful⁵. In particular, this revealed the industry's need for a mechanism to collect this information on accidents and payrolls. In addition, since insurance premiums directly correspond to the risk of operations, any efforts to systematically increase safety will improve the long-run ability to have reasonable insurance rates.

David Hoskins and Dan O'Leary, two insurance industry representatives with long-standing experience in the racing industry, each shared valuable perspectives on the possible insurance alternatives, and highlighted the costs and benefits of purchasing a shell insurance company. While there are obvious benefits to having an industry owned shell, the substantial costs associated with purchasing a shell company led the group to focus on other options. Purchasing a shell company would require a huge capital outlay and a competent staff of personnel to handle operations. Moreover, since some workers' compensation claims are payable for the lifetime of the injured worker, it may be very difficult to exit this business.

Discussions led to the less expensive and less risky option of utilizing an existing captive for the workers' compensation insurance of horsemen. The idea here is for horsemen to assume some of the insurance risk – a captive is an insurance (or re-insurance) company that is owned by its policy-holders. There are several possible arrangements that could be feasible. For example, the captive could act as a re-insurer, and the captive could agree to pay the first \$50,000 of each claim. Then, the policy-issuing company would pay the balance of the claim. This would make the risk more predictable for the issuing insurance company.

Objective Three: *Develop an Education Program for Safe Industry Practices*

The third working group, headed by Dennis Oelschlager, Executive Director, Nebraska Racing Commission, was charged with developing a safety plan and education program which could lead to “best practices” requirements to reduce accidents. Horse racing is inherently dangerous; however, limiting unnecessary, preventable injuries was the main purpose of this task force.

First, the group recognized that gauging the effectiveness of any safety programs requires the ability to draw comparisons with previous injury rates. While the racing industry is adept at collecting and utilizing racing information and past performance data (Equibase Company) it currently has no similar mechanism for recording and reporting accidents on the backstretch on a national level. Since accident histories are extremely vital in developing insurance premiums, such information is critically important. For this reason the group strongly recommends a national accident reporting system that is fully independent of insurance companies' loss history reports. A national racing industry accident reporting system could be modeled after similar systems used by departments of transportation across the country for highway accidents. In addition, a national accident database could maintain records of all relevant loss information and accident histories. This information will be especially valuable for the industry in negotiating or determining the appropriate insurance rates.

Second, the group believes the industry would benefit – and make itself much more attractive to insurers – if it developed a set of national employee safety standards and, eventually, a safety manual which could be distributed by horsemen to their employees (as is currently being done in California). A set of model “best practices” could be developed and incorporated into the existing NAPRA/ARCI Model Rules. The manual should list recommended minimum competency requirements and emphasize the keys of barn safety, including items such as first aid procedures and fire prevention techniques. Bi-lingual manuals would then be distributed to all backstretch licensees who could acknowledge their understanding of the appropriate actions and conduct in the barn. The group also discussed the possibility of establishing national competency standards for stable area licensees. This could potentially be monitored by the stewards, and also be a licensing requirement as is the case now for horsemen applying for trainers' licenses (in most states they are required to pass both written and practical exams given by stewards and/or state veterinarians).

Finally, the group recommends the adoption of a national training program. This could come in the form of a national vocational racing school (as has been developed in other countries) and/or through existing educational entities like the Groom Elite Program.

Suggested Changes:

Together the working groups have highlighted several possible solutions to mitigate the problem of obtaining reasonably priced worker's compensation insurance. However, by investigating strategies to lower the costs of workers' compensation the groups have revealed several key areas that could greatly improve the future situation for all horsemen, not only those currently suffering from high premiums. In fact, the groups advocate a long-run approach and a commitment to advancing the entire industry. The groups recommend the following changes to increase overall insurability:

First, group one recommends that, ideally, the racing industry should seek to expand successful programs such as the New York system for insuring "athletic participants" (jockeys and exercise riders) through a state fund thus reducing workers' compensation insurance costs for other employees.

Second, group two suggests that given the hurdles standing in the way of "exporting" the New York model approach cited above, the most realistic alternative would be for the industry to utilize an existing captive. Furthermore, group two also suggests that the industry should adjust to avoid the high insurance rates caused by the problem of payroll reporting. Underreporting payrolls increases insurance rates over time because it makes the industry appear more dangerous to insurers. Potential alternatives might include an updated auditing system or a new system patterned after a "Cost-Per-Stall" approach currently being suggested by Linda Mills⁶ in Florida.

Third, group three believes the industry needs to develop a consistent and standard loss prevention program.

Fourth, there is a clear need for enforced minimum qualification standards for backstretch licensees. Restricting employment to competent, qualified individuals will reduce accidents and promote safety. Several possible testing methods could be implemented to ensure that all backstretch licensees are familiar with standards manuals and understand proper practices. As they do, currently with trainers, stewards could be given the responsibility of evaluating applicants for exercise rider, groom and hot walker licenses as well.

Finally, horsemen must commit themselves to a long-term approach. Insurance rates tend to exhibit a cyclical pattern, so the short-run strategy of purchasing insurance at the lowest available cost will not prevent insurance crises like this one from occurring again in the future. A major concern of insurers would be that horsemen would "jump ship" from a captive program as soon as some other insurer comes in with short term lower rates.

Conclusions:

This report outlined the findings of the three task force groups that were formed to investigate solutions to the crisis in workers' compensation. The common goal was to ensure the long-run stability and affordability of insurance in the racing industry. These groups believe insurance rates can be reduced by (1) increasing the use of effective plans to cover athletic participants, namely jockeys and exercise riders; (2) forming a captive to make the industry more attractive to insurers; (3) developing systems for reporting accidents and payroll so that insurers and the industry can determine risk and keep track of progress on safety issues and; (4) establishing manuals and testing requirements for employees on the backstretch to promote a safer, more competent workplace.

Task Force Participants

Group One: *Successful Industry Programs*

Group Leader:

Richard Hoffberger (Insurance; Maryland Thoroughbred Horsemen's Association)

Group Participants:

Rick Violette (President, New York Thoroughbred Horsemen's Association)

Bob Bossert (Harness Tracks of America)

Anthony Spadea (Insurance; New England HBPA)

Kevin Lavin (Lavin Insurance, Lexington, KY)

Charlie Dougherty (California Thoroughbred Trainers)

Ragan E. Montemayor (Assoc. Counsel, NTRA)

Group Two: *Cost of Insurance*

Group Leader:

Linda Mills (President, Florida HBPA)

Group Participants:

John Roark (President, National HBPA)

Mike Vitek (Vice President, Finance, Sam Houston Park)

Craig Fravel (Executive Vice President, Del Mar Thoroughbred Club)

Randall Hampton (Vice-President, McGriff, Seibels & Williams Insurance)

David Hoskins (Senior Vice-President, Andreini & Co. Insurance)

Tom Daly (Horse owner / Canterbury Stables)

Dan O'Leary (Harness Tracks of America; Dan O'Leary, Counsel, Wagering Insurance NorthAmerica Program)

Albert Fiss (Executive Director, The Jockeys' Guild)

Tomey Swan (Chairperson, The Jockeys' Guild)

Ragan E. Montemayor (Assoc. Counsel, NTRA)

Group Three: *Safe Practices*

Group Leader:

Dennis Oelschlager (Executive Director, Nebraska Racing Commission)

Group Participants:

Sue O'Hara (Founder, Executive Director, Groom Elite Program)

Albert Fiss (Executive Director, The Jockeys' Guild)

Mary Ann O'Connell (Executive Director, Washington HBPA)

Rick Violette (President, New York THA)

Ed Halpern (Executive Director, California Thoroughbred Trainers)

Donna McArthur (Board Member, AQHA)

Ragan E. Montemayor (Assoc. Counsel, NTRA)

ENDNOTES

¹ For a more complete description of problems in the industry and an overview of workers' compensation please see the White Paper available at the National HBPA website: http://www.hbpa.org/resources/WhitePaper_wkcomp.pdf

² For additional detail please see the Strategic Planning Session Report.

³ Workers' compensation is available through the state fund (or privately) in Arizona, California, Colorado, Maryland, Montana, New York, Oklahoma, and Pennsylvania. Workers' compensation is available through private insurers in Delaware, Florida, Illinois, Kentucky, Louisiana, New Jersey, Texas, and Virginia.

⁴ A "shell" company refers to a firm licensed to sell insurance in one or more states, but has paid its liabilities, and discontinued operations, thus leaving only a shell.

⁵ The group would like to express its gratitude to Randall Hampton for his time and effort in acquiring data from NCCI.

⁶ However, the ability to charge on a per-stall basis may require special exemptions at the state level.