

**W**orkman's compensation insurance is a costly part of the horse industry and it can be wrought with complications for horsemen and policy writers alike.

Requirements and rates vary from state to state, coverage doesn't transfer from one state to another, and the provisions for the various breeds are also often different. Also, who is and isn't covered is often sketchy at best, and cost is an ever-increasing component of all policies.

"The horse business is like any other business," said New Jersey insurance writer Tom Cunningham, who handles workman's compensation for a healthy portion of the Garden State's Standardbred community. "If a trainer is running his or her barn as a legitimate business, then workman's comp is a major expense. Some trainers consider employees to be independent contractors, and if the IRS were to audit them, they'd be subject to huge fines. Those trainers with that mindset are not paying FICA, unemployment taxes, etcetera, and the IRS takes a very dim view of that."

"Workman's comp is a huge issue, and the Standardbred industry is very under-covered," said Leo McNamara, executive administrator for the Standardbred Breeders and Owners Association of New Jersey (SBOA-NJ). "The harness people get lumped together with the riding horse people, the Thoroughbred people and the breeding industry folks. Unfortunately, since workman's comp is a state issue—instead of a federal one—it's much tougher to get a standard, uniform policy that is effective industry wide."

Frank Zanzuccki, chairman of the Horse Racing Injury Compensation Board of New Jersey (HRICB-NJ) as well as executive director of the New Jersey Racing Commission, explained that his board—formed in 1996—works to provide coverage for all drivers and jockeys in the Garden State.

In New Jersey, as well as in New York and Maryland, the owner of a racehorse is considered to be an employer or co-employer, along with the trainer of the driver or jockey, and as such is required to purchase workman's compensation insurance.

"New Jersey state law requires all trainers in both breeds to carry workman's comp," Zanzuccki explained. "The HRICB-NJ

works to provide blanket policy coverage. In New Jersey, drivers and jockeys are both considered to be employees of the owners, so the cost of the coverage is deducted right off the top of the purses."

Cunningham said he feels the definition between an employee and independent contractor is unclear.

"I don't understand how a driver can be considered an employee of the owner of the horse," he stated. "The driver has the opportunity to drive another horse or opt out of driving a particular horse, so in my mind he's an independent contractor. The guidelines are just not clear."

Even though trainers in New Jersey are required to carry workman's compensation, the state's racing commission doesn't check policies for validity, McNamara said.

"There are a lot of professional stables that pay out normal payrolls like other business, but there are also a lot of small trainers who pay cash and their employees aren't covered," McNamara noted. "The New Jersey racing commission doesn't check to see if policies are valid."

Typically, a New Jersey trainer pays from \$9 to \$10 for every \$100 of payroll. For drivers and the jockeys, the cost is higher, at

# WORKING FOR WORKMAN

Coverage Costly,

about \$16.50 per \$100 of payroll, which is deducted from the purses.

“Workman’s comp became an issue because in 1946 a jockey was injured, and because he was wearing the owner’s colors when he was hurt, he was deemed an employee of the owner,” McNamara said.

Just this year the New Jersey Thoroughbred community was able to secure coverage for any person employed by a trainer, including hot walkers, grooms and exercise riders.

“This is only for those Thoroughbred trainers stabled at New Jersey racetracks,” Zanzuccki stressed. “It doesn’t cover those people at training centers.”

“That is a \$2.5 million policy,” McNamara noted. “The SBOA-NJ can’t afford that.”

In most cases, workman’s compensation claims are clear-cut matters. Someone gets hurt working with a horse while employed for a trainer, and the trainer’s policy covers the cost of treatment/rehabilitation for the injured employee.

Of course, there are always exceptions. Consider this case. In 2001 a second trainer in New Jersey was injured while leading a horse from a shipping van to its stall. But the horse she was leading was not owned by her employer, and therefore the question arose as to whether it was her trainer’s workman’s compensation insurance carrier that was responsible for paying the compensation, or the Horse Racing Injury Compensation Board of New Jersey (HRICB-NJ).

The HRICB-NJ—in NJ Superior Court, Appellate Division—was eventually deemed responsible for paying the compensation since, under the statute, the second trainer was considered to be a “horse racing industry employee at the time of the accident.”

The fact that the horse that injured her was not owned by her employer made no difference, the court said.

## **NOT INSURED? YOU’RE STILL RESPONSIBLE**

Russ Crawford, whose family’s Equine Brokerage Ltd., of Rye, N.Y., has specialized in writing workman’s compensation policies

for both Standardbreds and Thoroughbreds since the 1930s, said that not having a policy doesn’t negate a trainer’s responsibility to his or her employees.

“If you don’t purchase a workman’s comp policy, you haven’t relinquished your obligation of taking care of an employee who gets injured on the job,” Crawford advised. “A caretaker could get hurt and be in the hospital for six months, and it could cost upwards of a million dollars. So in the long run, having a valid workman’s comp policy is much more cost effective.

“Some states have a provision that allows you to leave your home state on a temporary basis and return,” added Crawford. “It’s known as the ‘race and return’ clause. Other states do not. For instance, a trainer in Illinois who goes to Kentucky to race must purchase a separate workman’s comp policy while they’re participating in the Bluegrass State. However, a trainer who’s stabled at the Meadowlands and travels up to Yonkers to race for the night and then ships back to the Meadowlands that same night, could be covered under the ‘race and return’ clause. The biggest problem horsemen face is that not all states are together on this issue with any form of unison.”

## **RATES, REQUIREMENTS VARY STATE TO STATE**

Workman’s compensation insurance costs vary slightly from state to state, but all policies are based on a trainer’s payroll. In Florida, a trainer pays about \$20 per \$100 of payroll, one of the highest rates in the country, while elsewhere the rates fluctuate between \$9 and \$16.

Brian Loman, owner of Broadlands, Ill.-based Loman Insurance Group, said trainers in his state pay high rates for their workman’s comp premiums.

“Ten years ago the minimum policy was \$750, and today it’s \$1,110,” said Loman, who has been writing policies since 1983. “It’s about \$15.46 for every \$100 of payroll right now in Illinois, which is a ‘territory specific’ state, meaning that you’re only covered in Illinois, and if you go to another state to race you’re not

# **’S COMP**

**By Kimberly Rinker**

**Not Always Transferable From State-To-State**





## JOHN CAMPBELL INC. & COVERAGE IN CANADA

At nearly all American racetracks—with the exception of most county fair ovals—the tracks provide coverage for drivers participating in races. However, that's not the case when U.S.-based drivers travel to Canada to participate in races, as Hall of Famer John Campbell—who was seriously injured in a 2006 Breeders Crown mishap—found out.

"In Canada, because of socialized medicine, all of the drivers who are natives, are covered there," Campbell said. "But for the U.S.-based guys who go there to drive, this isn't the case, they're not covered. I was unaware of this until I got hurt."

Campbell drives as a corporation and therefore carries his own workman's compensation policy, which covered his hospital bills in Canada.

"My accountant advised me years ago to incorporate and carry a policy, so I did," Campbell noted. "It's proved to be invaluable."

Insurance has gotten so costly that it's difficult for the tracks and people to afford these policies. But right now, unless drivers based in the U.S. carry their own policies when they're racing in Canada, they're not covered," Campbell added.

Hopefully, that may soon change, Campbell said.

Driver Jeff Gregory has spearheaded a committee to work with the Canadian tracks—specifically the Ontario ovals—to provide insurance coverage for all drivers, Canadian and visiting Americans alike.

"I'm working with (USTA director) John Brennan and (USTA executive vice president) Eric Sharbaugh to implement a complete coverage program for all drivers," Gregory said. "It's very close to being finalized."

If Gregory's vision comes to fruition, it will provide coverage for all U.S.-based drivers who travel to Canada to compete.

"Basically it's workman's comp or accident insurance for people competing there," Gregory said. "A lot of the top drivers are incorporated and have their own workman's comp policies, but your average horsemen, who travel from Detroit to Windsor to race in the overnights, also need that coverage. We're trying to protect everyone."

Gregory said that the Ontario Harness Horse Association does provide a small amount of coverage, to the tune of \$3,000.

"If John (Campbell) didn't have his own workman's comp policy when he got hurt, the cost would have been nearly \$400,000," Gregory noted. "That \$3,000 policy doesn't go very far. The bottom line is that when the Canadian drivers come to the U.S. they're covered, and when we go there, we're not covered. That's not fair and we want to change it."

**Campbell  
drives as a  
corporation**

covered, and would have to purchase separate policies for each of those other states."

"In Illinois, it's a state law that if you have employees, you have to have workman's comp," notes Mickey Ezzo of the Illinois Racing Board (IRB). "However, Standardbred trainers are not required to have workman's comp in Illinois, because the general knowledge is that a trainer typically has the ability to perform all the tasks associated with the training of a harness horse themselves. When they apply for a license, they can sign an affidavit stating that they don't have any employees at that time, or if they do have employees, they must show proof of insurance through a private carrier."

"The rule is a little bit different for Thoroughbreds because their industry is so labor-intensive," Ezzo added. "All Thoroughbred trainers in Illinois must have workman's comp whether they tell us they have employees or not. The IRB realizes that in most cases, very few Thoroughbred trainers have no employees."

In Kentucky, requirements and fees are the same for both racing breeds, with similar requirements for workman's comp insurance as in Illinois.

"It costs about \$10 for every \$100 of payroll," said Mark Guilfoil of the Kentucky Racing Commission. "We require an affidavit showing proof of workman's comp whenever a horseman applies for an owners' license."

If a trainer is found to have employees and can't provide proof of workman's comp, they run the risk of having their license revoked, Guilfoil added.

California, Delaware and Ohio have similar laws regarding workman's comp for horse racing employees.

In Pennsylvania, the state provides a workman's compensation fund where trainers must procure their policies. The rate is \$10 per \$100 of payroll and applies to both Standardbred and Thoroughbred racehorse operations.

"Every year you have to provide your payroll figures, and your annual workman's comp rates are based on that audit," said Ron Battoni, executive director of the Pennsylvania Harness Horsemen's Association.

"The harness horse is a much lower injury risk than a Thoroughbred, but unfortunately, most people in the insurance industry don't realize this," Loman agreed.

Trainer Robin Schadt, who oversees Odds On Racing's horses competing in multiple jurisdictions throughout North America, said she would like to see workman's comp policies tailored to the Standardbred industry specifically.

"I believe the insurance companies should separate the different equine disciplines, as we are one of the lowest risk of horse professions," Schadt said. "In Thoroughbred racing, three-day eventing and show jumping—the participants are mounted and their risk is far greater than ours or the breeding industry participants."