

**TEXAS WORKERS' COMPENSATION INPUT FOR  
SENATE SELECT COMMITTEE CONSIDERATION**

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O'Reilly Auto Parts is an after-market auto parts distributor operating with approximately 1,200 stores, and 11 distribution centers, in 18 states. O'Reilly employs over 17,000 team members, and operates nearly 4,000 vehicles. In Texas, it has over 6,000 team members working in nearly 400 store locations and 2 distribution centers. Texas team members represent approximately 35% of O'Reilly payroll, but nearly 65% of the company's total workers' compensation costs. Accordingly, Texas workers' compensation is a significant concern and focus for O'Reilly, as costs are double those of many other states; yet team member medical recovery is the lowest of all states.

O'Reilly has been doing business in Texas since 1998 when it acquired Hi Lo Auto Supply. Experience indicates medical care is the one area in most need of reform. Outlined below are some internal facts and figures for Texas, Tennessee, Florida, and Missouri. Please note that Florida and Tennessee are panel provider states, meaning the employee chooses a provider from a list provided by the employer. In Missouri, the employer directs the care. These figures are averages and were derived from a typical O'Reilly back strain during 2003.

<u>State</u>	<u>Lost Work Days</u>	<u>Length of Treatment</u>	<u>Cost of Care</u>
Texas	97	6.5 months	\$7,557.10
Florida	8	4 months	\$3,295.00
Tennessee	23	2 months	\$5,896.20
Missouri	31	4 months	\$4,978.79

Currently, O'Reilly has 102 team members losing time for work-related injuries. Of the 102 injured team members losing time, 80 of them are from the state of Texas. Based upon the historical trends, 26 of those team members will not be back to work after 2 years of treatment and 12 will never return to work. These jobs are no different in scope or physical requirements than those in our other states.

The above referenced data is alarming and prompts the obvious question of, what is different about Texas. O'Reilly believes the answer lies with the ability to direct care to *qualified* providers. Currently, our injured workers are being enticed by commercials, billboards, and "feel good treatments", to seek care with chiropractic injury clinics, as opposed to occupational medicine professionals, who have the education and training to actually cure and relieve them from the effects of the injury. We also believe that provider abuse is on the rise among these injury clinics and further complicates the process. Over the past several years, O'Reilly has experienced all types of abuse ranging from over-treating, injury elevation, excessive billing practices, questionable diagnoses, as well as ethical/credibility issues. Recently, O'Reilly was even propositioned by a Texas chiropractor. He stated that he would show O'Reilly the "ins and outs of Texas Comp", if we would pay him a six figure income. The following are representative illustrations of abuse situations O'Reilly has encountered:

- **Over-Treatment**

Team Member "A" suffered an alleged back injury from lifting. He initially sought treatment with his family doctor, who took him off work for 5 days and then released him to full duty. Team Member "A", still having pain, changed doctors to "Dr. X." The new treating doctor initially allowed Team Member "A" to work light duty and attend physical therapy. However after three weeks, the treating doctor took Team Member "A" completely off work. He was off work for his back strain for 17 months. During his 17 months of treatment, he received 94 sessions of PT, 12 epidural steroid injections, 43 sessions of work hardening, and 5 psych/pain management sessions. The carrier sent Team Member for a DD exam in September, 2003. He was found to be at MMI by the DD and issued a 5% impairment rating. Despite the MMI finding, the treating doctor kept Team Member "A" off work until 1/23/04 (one week after the last impairment check). Unfortunately, Team Member "A's" medical release on 1/23/04 contained work restrictions, which were heavier and more limited than the work restrictions given by his treating doctor a week after the injury. After 17 months of treatment at a total cost of \$51,111.15 (of which \$26,000 was for PT alone), Team Member "A" was in worse condition than he was at the beginning of his treatment.

- **Injury Elevation**

Team Member "B" sustained an alleged back and neck injury from lifting. Team Member "B" sought treatment with "Dr. X." The treating doctor provided conservative care and treatment for 12 months. Such treatment included epidural steroid injections, trigger point injections, and therapy. Regardless, the treating doctor refused to address MMI or a work release unless the Insurance Carrier accepted carpal tunnel syndrome as a compensable condition and provide treatment. Please note two other physicians believed this condition was not related to the original injury. If Team Member "B" was in need of treatment for his CTS condition, why didn't the treating doctor just treat this condition under health insurance or

private pay? It appears that this treating doctor was more concerned about work comp coverage, than his patient's need for treatment.

### **Unnecessary Treatment & Questionable Diagnosis**

Team Member "C" is a 3 week team member who works in O'Reilly's Dallas Distribution Center. She sustained a wrist strain from lifting a brake drum. She sought treatment with "Dr. X", and was taken off work on 8/5/03 and remains off work today. She has been diagnosed with a wrist strain and CTS. Team Member "C's" treatment over the past 9 months has consisted of PT, injections, biofeedback, and 20 sessions of work hardening. Team Member "C's" injury is to only one of her wrists and O'Reilly would certainly have modified transitional duty assignment for her. However, the treating doctor refuses to consider such, although she would recommend work hardening. Dr. X will not even return calls from O'Reilly to discuss our comprehensive return-to-work program. Additionally, the treating doctor's diagnosis of CTS is certainly disturbing for a 3 week team member. Finally, we struggle with a chiropractor's ability to treatment CTS to begin with.

### **Questionable Ethics & Supporting Medical Documentation**

Team Member "D" sustained a back injury from lifting. He began treatment with Dr. W. Ultimately, Team Member "D" underwent a surgical procedure in order to cure and relieve him from the effects of his injury. During the entire scope of his treatment, the treating doctor refused to consider modified transitional duty for his patient. At end of Team Member "D's" treatment, Dr. X issued a report stating the following:

"He has improved but is in a job that will only result in him having a greater risk of re-injury to his back even a second surgery...I feel at his present job it is just a matter of time before he has another back injury, then surgery and maybe a fusion."

Team Member "D" was issued a 15% impairment rating and permanent restrictions at the sedentary level. Since Team Member "D" was no longer able to safely perform the essential functions of his warehouse position, the company asked him to make a decision regarding his employment. Three months after the notation above, Dr. X issued a full duty release and indicated that Team Member "D" could return to his previous job. Obviously, this chiropractor changes his medical opinions to meet the financial needs of his patients, with no regard to their health and well being.

Please note the examples cited are representative of many dozens of similar situations, and supporting background will be readily shared.

A final point to consider, are the Texas Workers' Compensation administrative requirements. These are extremely burdensome for employers and insurers, when compared to other states. O'Reilly spends many hours preparing TWCC-3(s), TWCC-6 (s), and tailor made bona fide job offers. These hours would be better spent talking with injured workers and explaining the modified transitional duty program to providers.

O'Reilly takes great strides to locate qualified, competent, ethical, and accessible work comp providers for each of our locations. O'Reilly believes our team members to be its most important asset and keeping them happy and healthy is a top priority. With a change in Texas to a network or employer direction, it is certain the quality of medical treatment provided to our team members will greatly improve and the number of lost days will surely decrease. Simply said, the Texas Workers' Compensation System, as compared with all other states of operation, encourages medical provider abuse, virtually no employer involvement, and most importantly the poorest and slowest recovery.

#### **Suggestions for Additional Areas of W/C Reform:**

- Requiring the Designated Doctor to comment on work status. Currently there is no motivation for injured workers to return to work. Treating doctor typically keeps them off work until their impairment benefits expire.
- Penalty against benefits for injuries resulting in willful violations of safety policies.
- Process to enforce compliance with treatment recommendations.