

INJURED WORKERS' House of Horrors



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Denials of Care & Compensation Cuts Lead to Injured Worker Desperation & Death, Huge Carrier Profits *Insurers use new laws to Deny Benefits, “Insurance Company Responsible for My Husband’s Death”*

SACRAMENTO, CA - Injured workers and their advocates said today that injured workers across the state are unable to obtain the care and compensation they need to recover from their on-the-job injuries. “There is an epidemic of pain and despair overtaking California workers who’ve been injured on the job,” David Schwartz, president of the California Applicants Attorneys Association (CAAA), told a State Capitol news conference. “Today we are making the public aware of the third suicide in the last several months. Injured workers are unable to get the care and compensation they were promised. We are witnessing a horrific suicide outbreak among California’s increasingly desperate injured workers due to denials of care and compensation and cuts in disability benefits since the 2003 and the governor’s 2004 cutbacks took effect. More deaths will follow unless something is done to force insurers to provide the care and compensation to cure and relieve the injuries these workers suffered on the job.”

Carole Sinclair, the widow of Brandan Curtis Sinclair, a totally and permanently disabled California worker who killed himself in April in despair over the insurance carrier’s denials and failure to pay benefits, released a statement attributing her husband’s suicide to the Travelers insurance company’s “total lack of compassion and failure to meet their responsibilities. My husband was declared 100% disabled from his work accident in 1989 and 14 years later had still not been properly compensated for his injuries. We lived over those years with a constant battle trying to get bills paid and be able to survive. I feel that the insurance company is as responsible for my husband’s death as if they had personally put a gun to his head and pulled the trigger.”

Governor Schwarzenegger's workers' compensation reforms undercut an injured worker's widow's ability to provide for her future.

A recent decision that SB 899's reductions in penalties insurers face for repeated failures to provide treatment and compensation to injured workers apply retroactively will deeply affect Carole Sinclair's ability to provide for her future. "I am now told that the thousands of dollars that should be due to my husband's estate in Labor Code Section 5814 penalties could be reduced to as little as \$10,000, another win for the insurance company," wrote Mrs. Sinclair.

David Schwartz told the news conference that "the governor's legislation has made it possible for insurers to deny legitimate treatment. Insurers misuse the ACOEM guidelines to deny treatment across the board. With penalties for misconduct reduced to insignificant levels, insurers have no consequence to their illegal conduct."

Dr. James Sylvain, of Watsonville, told the news conference, "SB 899 does nothing to help workers and employers: it simply aids the insurance industry. Rather than help provide needed services, SB 899 has created an adversarial atmosphere in which the employee is virtually criminalized and the efforts of the health care providers to provide treatment is thwarted on every possible level. We must return to letting the health care provider, not the insurance representatives, direct the injured worker's care."

Dr. Sylvain said that "the care allowed by the ACOEM guidelines is inadequate for the chronically-injured patient. These guidelines were written for acute injuries lasting less than six months. A dangerous trend is occurring: insurance adjustors are practicing medicine by countermanning physicians orders on a daily basis. Insurance adjustors interfere with the doctor-patient relationship and demand tedious and redundant documentation for such simple orders as constipation medications. If we practice medicine the way the insurance companies are, we would be sued for malpractice."

"Insurance companies are simply trying to wear out patients an care givers alike, knowing that many will give up in the face of so much adversity and the carriers will not have to cover treatments that are medically necessary," said Dr. Sylvain.

Paul Palomo, the husband of injured worker Esther Palomo, traveled from Palm Desert to tell the story of how his wife, a 15-year employee of Ralph's Grocery, has been forced to live in excruciating pain. Esther Palomo suffered injuries to her lower back, neck, shoulders, arms and both hands. The injury has been found to be

work-related by an Agreed Medical Evaluator (AME), but the insurance adjustors have denied the treatments that Esther needs to lessen her pain (facet blocks). Ralph's is self-insured, and their attorneys and adjustors have delayed and denied treatments recommended by Esther's doctors to relieve her pain and cure her injuries. "We have endured the most tortuous three years of our lives," Palomo told reporters. "The incessant denials and delays confined Esther to a bed, except for doctors' appointments. The insurance adjustors have denied and delayed any and all medical services and treatments that have been ordered by Esther's doctors, especially since the passage of SB 899. The new law allows insurance companies to blatantly harass, deny, delay and totally ignore legitimate worker-related injuries.

Since the passage of SB 899 the insurance companies and their adjustors have been given a green light to not have to take a moral or legal responsibility to care for the injured workers, discarding us like we are trash the way slaves were mistreated throughout history."

Mr. Palomo released his open letter to Governor Schwarzenegger, questioning the value of the governor's reforms. Mr. Palomo called upon the governor to "reevaluate this piece of legislation. It is extremely flawed and injured workers are basically being tortured by its passage." Palomo said that the "insurance companies love this law because it has stopped them from having to take moral and financial responsibility for the injured workers of this state." Mr. Palomo addressed Gov. Schwarzenegger directly, "You, sir, would never allow someone to do this to one of your loved ones. I beg you, I implore you to help me stop the pain and suffering my wife Esther endures every day."

The Case of Brandon Curtis Sinclair

Brandon injured his spine in December 1989 while working for Construction Electronics/BDT Alarm. Brandon was found to be 100% disabled, and received a lifetime medical award. What seemed like the end of the case was just the beginning of the Sinclairs' nightmare. The insurance carrier, Travelers, repeatedly failed to provide timely approval for Brandon's treatment, medications, authorizations and payments. The company repeatedly failed to meet its obligations. Travelers refused to pay pharmacy bills for Brandon's medications, at one point running up a \$20,000 bill, prompting the pharmacist to threaten to cut off Brandon's medications. The Sinclairs had to resort to paying for Brandon's medical care and their household bills with their personal credit card.

Travelers consistently delayed payments so that the Sinclairs went three and four months at a time with no payments. The Sinclairs lost their San Diego home, because the \$224 per week Brandon received in benefits was not enough to pay the mortgage and household bills. Mrs. Sinclair was to have been paid to provide in-home care for Brandon, but Travelers owes her more than seven years' back pay! Mr. Sinclair filed two petitions for penalties under Labor Code Section 5814. The carrier argues that the drastically reduced penalties in SB 899 should apply to its past misconduct in the Sinclair case.

California's workers' compensation system cost the Sinclairs their home, their dignity, and Mr. Sinclair's life. Now, the insurance carrier responsible for repeated delays and failure to pay deserved benefits wants to escape the financial penalties it should bear for causing such damage to the Sinclairs. The governor's reductions in penalties for insurer misconduct make such misconduct more profitable for insurers.

Brandon Curtis Sinclair's parents, Conrad and Sammie Sinclair, appeared at the State Capitol news conference and laid the responsibility for Brandon's desperate act of suicide at the foot of the insurance carrier. "He just couldn't keep fighting the insurance company day after day. He finally gave up in despair that he would ever receive the care and compensation he deserved," said Conrad Sinclair. "Insurance carriers are not delivering the care that injured workers need. The carrier constantly delayed payments they had agreed to make. The compensation the insurer offered was not enough to pay for the medical care and medications he needed. My son desperately wanted to return to work. He would have given anything to be able to work again."

Mr. Sinclair received just \$214.83 per week. This was not enough to keep up his mortgage payments. Mr. & Mrs. Sinclair lost their home in San Diego, and moved to Mrs. Sinclair's native country, Australia.

Failure to Pay Permanent Disability Benefits

Travelers repeatedly failed to provide Mr. Sinclair's minimal disability payments on time. Almost every permanent disability benefit arrived at least two weeks late. Travelers repeatedly failed to pay sufficient postage, so checks would be returned. Travelers repeatedly failed to put include an airmail sticker on the checks, so the checks were sent by regular mail, which took an average of two months to reach Australia. Travelers even failed to sign the disability checks, and so they were dishonored. The Sinclairs were never able to keep current with their obligations, due to the delays in receiving payment. They were forced to pay their overdue expenses by credit card.

Mr. Sinclair could not even get Travelers to pay for replacement batteries for his wheelchair. He waited four months to obtain reimbursement for wheelchair batteries.

The Sinclairs, and their attorney, requested that Travelers directly deposit the permanent disability checks, which Travelers refused to do. The Sinclairs repeatedly reminded Travelers of the need to airmail disability checks to Australia, with no success.

Failure to Pay Mrs. Sinclair for Home Aid Care

Brandon Curtis Sinclair was totally permanently disabled, and entitled to at home medical care to meet his living needs. As is common, Mrs. Sinclair provided personal aid care for her husband, Travelers agreed to the need for personal aid care, but refused to pay Mrs. Sinclair for many years.

After years of Travelers failure to pay its obligations, Mr. Sinclair left Australia and came To California to personally try to bring his case to a close. Brandon Curtis Sinclair was just 43 years old when in despair he took his own life on April 10, 2004.

STATEMENT OF CAROLE SINCLAIR,
WIFE OF BRANDON CURTIS SINCLAIR

Everyone who loses a loved one suffers, but when the death is completely unnecessary the pain is too difficult to bear. My husband should not have died. His death, I believe, is directly due to the total lack of compassion and failure to meet their responsibilities of the legal and insurance world.

My husband was declared 100% disabled from his work accident in 1989 and 14 years later had still not been properly compensated for his injuries. We lived over those years with a constant battle trying to get bills paid and be able to survive. By the very nature of his percentage disability he was unable to care for himself and yet received no help to pay for nursing care until 1987. I am still owed 7 years of nursing pay, which the Travelers is refusing to pay to me.

We lost our home in San Diego and had to move overseas where the cost of living was more reasonable and that made matters worse due to distance. We often paid for medical help ourselves and then had to try to get reimbursed. We had outstanding medical bills of over \$20,000 to the hospital at one time and such high pharmacy bills that my husband was told his medication would be cut off because the pharmacy could not carry the account.

The stress upon both of us impacted on our marriage, I have been denied medical assistance and my husband suffered a major depressive disorder as a direct result of the stress of trying to be paid what was rightfully his. In the late 90's a life care plan was done and the case was valued at over \$4 million and yet the amount offered to him was a few thousand. The insurance company and their legal representative have shown little compassion and lack of responsibility during his life, and that carried over even after his death. My mother and father in law received a letter of condolence from the lawyer but I did not even get a "we are sorry for your loss" note. I felt crushed and hurt. I had loved and cared for this man for many years and yet did not even rate acknowledgement after his death.

The workers compensation laws should be there to help the injured worker and yet there seem to be many loopholes that allow insurance companies to renege on their responsibilities. I am now told that the thousands of dollars that should be due to my husband's estate in 5814 late medical penalties could be reduced to as little as \$10,000, another win for the insurance company.

I pray that the new governor of the State of California can be made to understand how much difficulty injured workers must endure and that many more lives will be lost until the law is written to protect the workers and not the insurance companies.

I could say so much more but one thing I would say is that I feel that the insurance company is as responsible for my husband's death as if they had personally put a gun to his head and pulled the trigger. They have a great deal to answer for.

For additional information regarding this case, please contact Philip Cohen at 619/297-5100.

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