

The JLF Report

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When Family Ties Are Broken

When it came to automotive body work, Myron Roberts thought he had found his life's calling. Before his ability to do this work was ended by a severe back injury he sustained on July 2, 2003, Myron had specialized in doing frame repair for severely damaged cars for most of his adult life.

"I was never all that good at school but there was something about working on cars that just came natural for me," said Myron. "I always figured I would do that work up until the day I retired."

For most of the 25 years that Myron did body work, he felt fortunate to work for a business owned by one of his brothers. Unfortunately, the nature of his relationship with his brother would also be permanently altered as a result of his severe work injury.

When July 2, 2003 began, Myron felt like everything was going well in his life. His wife and he had just purchased a few acres in the country and he had finished having his home moved to this location the week before. Myron was looking forward to a cookout at his new home and enjoying the 4th of July holiday weekend.

Myron's holiday plans changed with one missed step. While working on a damaged car, Myron was standing on the framing tower approximately three feet off of the ground. While reaching to adjust a chain on the car, Myron misstepped and fell from the tower, striking a steel column as he fell to the concrete floor. Immediately after he fell, Myron dusted himself off and felt that he was not seriously injured.

"Those types of things happen all the time when you're doing framing work," said Myron. "If I had a dollar for every scrape or bruise I had all the years I did the job, I would have a good bit of money."

As the workday went on, Myron had some lingering pain in his right hip and he mentioned this to another brother who worked with him (but who was not the brother who owned the body shop). During the days after the accident, Myron began to realize that he may have sustained more injuries than just a couple of bruises. He began to have persistent pain running down into his right leg, which was unlike any pain he had ever experienced before.

Concerned about the continuing problems, Myron went to his sister-in-law, who ran the front office for her husband's body shop. Myron began to sense from the outset that he may have some problems getting assistance for his work injuries and he was told that she would discuss the situation with her husband (who worked a full-time job at another location), and then get back to him. A few weeks later, Myron figured he could not go any longer without medical care and he went into the front office insisting that

medical treatment be lined up for him. This encounter quickly escalated into a shouting and cursing match. Not sure what he should do next, Myron then went to his family doctor, who immediately recommended that he be seen by a back specialist.

Myron was still hopeful that he would be able to reason with his brother about getting treatment started for him. However, when he went to his brother to ask him if he could help get workers' compensation lined up for him, his brother told him that he did not believe that Myron had been hurt on the job and that Myron should just work through any pain he was having. At this time, Myron made the decision to call the Joye Law Firm for

assistance with his claim and the long legal battle over his entitlement to workers' compensation benefits began.

After meeting with Myron and gathering the limited medical records that were available, attorney Ken Harrell of the Joye Law Firm filed a hearing request on Myron's behalf on August 14, 2003. To prepare for the eventual trial in the case, Mr. Harrell took numerous depositions (sworn statements before a court reporter), including taking statements from Myron's brother who owned the body shop, Myron's sister-in-law, and several co-workers.

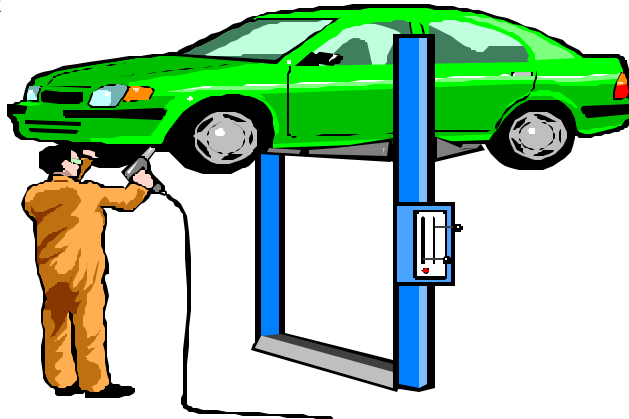
The case eventually proceeded to a hearing in April of 2004. (Unfortunately for Myron and his family, this case was filed at

a time when it was taking considerably longer for the Workers' Compensation Commission to schedule evidentiary hearings. Fortunately, changes have been made to the system which now result in an injured employee typically getting a hearing set three to four months after the hearing request is filed.)

The trial of the case was every bit as contentious as the months leading up to it. Both sides presented multiple witnesses, with the owners of the body shop making accusations that Myron had injured his back while moving his mobile home (Mr. Harrell was able to submit documentation confirming that Myron had hired a moving service to do this work) and that Myron had had back problems for several years (there was no medical evidence to support this).

Shortly after the trial of the case, the hearing commissioner issued a decision that was fully favorable to Myron. The hearing commissioner ordered that Myron was entitled to back-owed weekly benefits from the end of July, 2003 through the day of the hearing and continuing, and that the workers' compensation insurance company was to provide Myron with medical treatment for his severe back injury.

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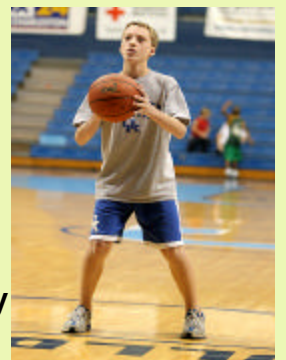
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Red Cross Tourney Winners



For the fifth consecutive year, the Joye Law Firm sponsored the halftime contest at the Red Cross / Rotary high school basketball tournament held at the Citadel in late December. The law firm paid contest winners several thousand dollars this year. Pictured at left is Eric Wagenlander, the \$1,000.00 Grand Prize winner, with tournament director Danny Kassis. At right, Eric shows his winning form.



When Family Ties Are Broken (Continued from p.1)

This did not end the fight for Myron on his claim. The workers' compensation insurance company filed an appeal of this decision to the Workers' Compensation Commission's Appellate Panel. An appellate hearing was held before the Commission's Appellate Panel on November 29, 2004. One month later, this panel issued a decision fully affirming the hearing commissioner's decision in Myron's favor.

There was still concern about whether the workers' compensation insurance company would file yet another appeal. (There are potentially three appellate levels for a workers' compensation case, including possible appeals to the Circuit Court level and to the Court of Appeals or the Supreme Court following the commission's appellate panel hearing.) Fortunately for Myron and his wife, the insurance company decided to stop fighting his claim, to pay him back-owed benefits of nearly \$35,000, to place him on a weekly payments status, and to provide him with medical care.

"The day that Ken called me to tell me that the insurance company was going to stop fighting us is a day I'll never forget," said Myron. "I can't tell you how low my wife and I had gotten while my claim was being denied - I don't know how we made it through. I know one thing. I never could have made it without Ken's help. Whenever things were at their darkest, he kept telling me to hang in there and that he would keep fighting to try to make things right for me. He was certainly true to his word."

While the initial legal battle was over, Myron still faced a dark road ahead because of his severe back injury, which had gone largely untreated while the case was being tried and appealed. Myron had consulted with orthopedic surgeons in Florence but they had understandably advised him that they would not be able to perform a surgery without some guarantee that the hospital and the surgery charges would be paid. Once the insurance company stopped its appeals and medical coverage was available to Myron, he was able to undergo a surgery to remove a portion of his herniated disc in June of 2005. Myron had little improvement after this surgery and his treating doctor advised him that this was due to the fact that he had severe permanent nerve damage because of the long delay in his having the surgery done from the time that he was injured.

"I don't have any doubt that I would have been 100% better if I could have gotten my surgery done a few months after I got hurt," said Myron. "If that had been done, I feel like I would have been back to work and I would be working today."

Concerned about his lack of improvement, Myron asked Mr. Harrell if he could get the insurance company to set up a second opinion evaluation for him with another medical specialist. Eventually, Mr. Harrell was able to get the carrier to agree to have Myron evaluated by Dr. Don Johnson at the Southeastern Spine Institute. Following his initial evaluation, Dr. Johnson recommended that Myron undergo a fusion surgery because of the severe damage he had at several disc levels in his low back. This fusion surgery

was performed in January of 2006. While the fusion surgery did not take away most of Myron's pain in his low back and in his legs, it did provide enough pain relief that Myron felt that he could better cope with it.

"I'll always be thankful to Ken for helping me get to Dr. Johnson," stated Myron. "Dr. Johnson did the best he could with a bad situation. I live with severe pain in my back every day, but I didn't know if I could go on living with the type of pain I was having before the fusion surgery."

The end result of Myron's treatments were that he was left with chronic pain which require him to take narcotic medications and he was assigned permanent physical restrictions, including not lifting more than 15 pounds and his avoiding bending, twisting, prolonged sitting and standing. Dr. Johnson recommended that he apply for Social Security disability benefits, noting that he would never be able to return to doing any type of manual labor.

After Myron was released by Dr. Johnson, Mr. Harrell filed another hearing request on Myron's behalf seeking a hearing to address Myron's entitlement to disability benefits. Mr. Harrell hired a vocational consultant to examine Myron and this consultant was of the opinion that Myron was totally and permanently disabled. Shortly before a second trial to address Myron's entitlement to permanent disability benefits, the workers' compensation disability portion of the case was settled for over \$127,000, which figure was only slightly below the maximum amount that Myron could have recovered under South Carolina law given his weekly compensation rate. The insurance company also agreed to pay a separate amount to set up a Medicare set-aside account to cover Myron's future medical costs causally related to his work injury. As part of the settlement agreement, Mr. Harrell had language included in the settlement agreement to protect Myron's entitlement to possible Social Security disability benefits. At Mr. Harrell's urging, Myron had applied for Social Security disability benefits while his workers' compensation case was pending.

Once the workers' compensation case was settled, Mr. Harrell turned the file over to attorney Matt Jackson, the head of the Joye Law Firm's Social Security disability practice. Mr. Jackson had already been working to prepare Myron's file for an eventual Social Security disability hearing. This hearing was held in November of 2006 and the Social Security Administration judge issued a decision shortly thereafter ruling that Myron was totally disabled and entitled to receive monthly Social Security disability benefits. Once again, Myron felt like he could not find the words to express how grateful he was to the Joye Law Firm.

"I really don't know what I would have done or where I would be if it had not been for Ken and Matt," said Myron. "Unless you have been as down as I got, you can't understand it, but those guys really saved my life. There is no way I can say enough to thank them for what they did for me."

For Mr. Harrell, the situation that Myron faced is indicative of the benefits of having a law firm that provides a variety of services.

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Working People - Wake Up!

(By: Ken Harrell, Joye Law Firm Partner)

Note: Mr. Harrell is the head of the workers' compensation department at Joye Law Firm and serves on the executive committee of the Association of South Carolina Claimant Attorneys for Workers' Compensation.

Recently, I read Lou Dobbs' latest book, "The War on the Middle Class." Many of you may be familiar with Mr. Dobbs, who has been the host of CNN's Moneyline for years. A life-long Republican, Mr. Dobbs is certainly no liberal, but he sets out a convincing case in his book that working people in the United States have had their rights eroded and have been rendered voiceless in our nation over the last 20 years.

Mr. Dobbs writes about how the obscene amounts of money that corporations and their lobbyists pour into the political campaigns of both Republicans and Democrats has served to make the majority of our elected officials (at the national and state levels) beholden to big money interests, as opposed to being responsive to what is best for the average working man or woman. The results of this erosion of the rights of working people are evident in many ways. Stagnant wages; the transfer of hundreds of thousands of good-paying manufacturing jobs from the United States to third world countries; the inability to protect our borders from illegal immigrants; spiralling healthcare costs while the quality of care seems to decline due to our physicians being hamstrung by insurance companies; and widespread tort "reforms" that favors big business interests over the rights of individuals are but a few of the examples of what is happening in this country as the result of a "war" on working people.

Unfortunately, the "war" on working men and women has not been limited to members of the middle class. The working poor in our country have also faced out-right hostility from well-funded politicians. The fact that a Republican-controlled Congress failed to raise this country's federal minimum wage from \$5.15 from 1997 through 2006 is more than bad policy - it is a moral indictment of a self-described Judeo-Christian nation's failure to look out for "the least of our brethren." "Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me." See Matthew 25:40 (KJV). Hopefully, some change is in the works. Within 20 days of starting the 2007 legislative session, the new Democratic-controlled House voted to raise the federal minimum wage from \$5.15 to \$7.25. However, if his past statements are any indication, there is a good chance that this bill will be vetoed by President Bush.

Closer to home, the current attack on the rights of injured workers in South Carolina is but yet another example of an attempt by "big money" (in this case, the insurance industry) to trample the rights of our working men and women. A Senate bill supported by the "Civil Justice Coalition" (a collection of insurance companies and large corporations) would erode many of the rights that injured workers in this state have enjoyed since our Workers' Compensation Act was enacted 70 years ago.

The only reason that a workers' compensation system was ever enacted in this country is that big business was smart enough to realize that it would be more cost-effective for employers to be immune from civil liability when workers suffered catastrophic injuries (such as paralysis and brain damage) or were killed, even if that meant providing some safety net to injured workers by insuring that they would receive medical coverage and limited benefits under a workers' compensation system. As such, workers' compensation was the original "tort reform."

This original tort reform is apparently no longer satisfactory to the insurance industry, which is calling for major cuts in the rights of injured workers in South Carolina. One change the Civil Justice Coalition proposes even goes so far as to require that all South Carolina appellate court decisions over the past 70 years related to the rights of injured workers be rendered null and void and that any future review of a workers' compensation decision by an appellate court must decide whether the result would be "economically feasible" for the insurance industry.

Over the past year and a half, I have spent countless days in Columbia at legislative sessions and in meetings with numerous legislators, along with several other dedicated attorneys for injured workers. The truth of the matter is that with the exception of the lawyers for injured workers, there is no

one else in this state who is speaking out for the worker. Working men and women certainly cannot afford to hire lobbyists and they also cannot afford to give contributions of several thousand dollars or more to our state's politicians or to political action committees organized by politicians. In many states, unions still have some clout they can bring to bear on these types of debates but "union" has been a dirty word in South Carolina for decades. With the flood of manufacturing jobs leaving the state and the erosion of worker rights, we may be seeing the result of this fact.

It is regrettable that the workers' compensation insurance carriers have been largely successful in pitting the state's employers against their employees in this debate. Businesses in this state have every reason to be upset with double digit increases in their workers' compensation insurance premiums over the past few years. While our state still ranks in the bottom 1/3rd when it comes to the cost of workers' compensation insurance on a per capita basis, our state's economy cannot grow as we would all like to see it grow if these insurance premiums continue to increase at the rate they have been increasing over the past few years.

With that in mind, the key question in the debate over any specific proposed change to our current law should be whether the proposed change would actually result in premiums coming down.

As I noted above, I have been present at several legislative committee hearings on proposed workers' compensation legislation. The one group which has largely been absent (with the exception of its lobbyists parading under misleading names such as the "Civil Justice Coalition") has been the insurance industry. While the insurance companies are loathe to send representatives to these hearings as they know they will not commit to premiums coming down if worker rights are cut, the National Council on Compensation Insurance (which is the nation-wide trade group for workers' compensation insurance companies) studied many of the proposed changes when they were pending during the 2006 legislative session and concluded that at best, the reductions in worker benefits would only reduce South Carolina workers' compensation insurance premiums by approximately 2.1%. Do we really want to place a harsher burden on men and women who have suffered the most severe injuries in exchange for a 2.1% decrease in workers' compensation premiums? If we truly are a Christian society, I would hope not.

We have already seen this insurance industry tactic before in the debate over medical malpractice "reform." Despite the fact that medical malpractice verdicts in favor of a patient in South Carolina are about as common as the Red Sox winning the World Series, hundreds of doctors paraded through the state house sharing anecdotal stories about how frivolous malpractice claims were driving doctors out of the state and out of the practice of medicine. (The actual statistics indicated that the number of doctors in South Carolina has been increasing at a significant rate each year over the past 20 years, far in excess of the growth that our state's population has experienced.) Convinced by these stories (and quite possibly by the hundreds of thousands of dollars that the insurance industry and medical organizations poured into their campaign coffers), our state legislature enacted sweeping medical malpractice damages limitations in a law passed in 2005.

Interestingly, the only group which seems to have benefitted from these changes has been the insurance companies. I have many friends who are outstanding doctors. In speaking with these doctors, none of them relate any savings in their malpractice insurance, and many of them complain that dealing with insurance companies has them considering a change in their work, especially in light of the squeeze that health insurance companies have been placing on doctors for the payment of services. (Each time I hear a doctor friend tell me these things, I feel like screaming, "I told you - it's the insurance companies, dummy!") The insurance companies now have a medical malpractice system that will cap the amount they have to pay for the most catastrophically injured patients whose doctor made a mistake, while the doctors have to continue to deal with increasing insurance premiums.

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"Working People - Wake Up!" (continued from p.3)

One can only hope that this mistaken approach will not be repeated with our workers' compensation laws. Fortunately, there are some elected officials who have recognized that the light in this debate needs to shine on the insurance industry. Senator Glenn McConnell of Charleston has been a leader in repeatedly stating that he wants the insurance companies to have to account for tens of millions of dollars in increased premiums that workers' compensation insurance companies have charged since 2003 related to increases in what the insurance companies refer to as the "lost cost modifier." It would take a small book (and perhaps an economics degree) to explain and understand the "lost cost modifier" but it should be pointed out that the South Carolina Department of Insurance (under Governor Mark Sanford) stopped regulating the "lost cost modifier" factor for workers' compensation premiums in 2003. Our state's workers' compensation premiums began to significantly increase that same year. You don't have to be Albert Einstein to see that there may be a connection there. As Senator McConnell stated at a recent Senate subcommittee hearing on workers' compensation proposals, every business owner in South Carolina deserves to hear what the insurance companies have been doing in regard to the lost cost modifier in this state.

This is a complicated debate, but one thing is clear. If you are one of the people that the country band Alabama pays tribute to when they sing about every person who "works a 40-hour week for a living, just to send it on down the line," you owe it to yourself to write, call, or go visit your state senator and state representative to ask them to please look out for the rights of South Carolina's workers under our workers' compensation system. One of the hardest things we have faced in this debate is getting workers motivated to get involved. Those people who have already been

injured understand that any changes to the law will not impact their claim, so they have limited motivation. Other workers are inclined to think that they will never get hurt, so none of this will ever affect them.



I hope you will not sit idly by and watch yet another one of your rights be wiped away. Lou Dobbs got it right. There is a "war" being conducted on working people in this country and in this state. I grew up in a blue-collar family and what is happening to working people in this country breaks my heart. Working South Carolinians do have a choice. They can sit idly by and do nothing and be trampled, or they can do what Americans have always done in a war situation - fight back and win!

"When Family Ties Are Broken" (continued from p.2)

"It seems like this situation comes up all the time where we have a client who we can help more than once because of the different areas of practice our firm has," he said. "This is especially true when it comes to severely injured workers who are disabled from going back to work. The biggest mistake a lot of workers who are in this situation make is trying to handle their workers' compensation claim on their own, and not including the necessary language in their workers' compensation settlement to protect their future Social Security disability benefits. In doing this, they can cost their family and themselves tens of thousands of dollars. I really am amazed at how people who have to fight on their claim for years and months like Myron did can survive, but the fighting spirit of the American working man is an amazing thing to behold."

While Myron's legal dilemma ended on successful terms, he feels that it is unlikely that he will ever be able to repair the broken relationship with his brother.

"I still can't believe I got treated the way I did by my own flesh and blood, all because they were trying to save money on insurance premiums," said Myron. "It is a crying shame that I feel like I lost a brother on top of everything else I went through, but on the plus side, I also feel like I picked up two life-long friends in Ken and Matt."

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