

Opening Remarks

Games Insurers Play

By David Armstrong

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Four years ago, Bryan Stow was severely beaten at Dodger Stadium. He has yet to be compensated

Dave Stow, 71, strains to push the wheelchair carrying his 250-pound son, Bryan, over ramps and into the basement of St. Joseph's Catholic Church in Capitola, Calif., for its Friday fish fry. Bryan Stow is greeted by ladies who kiss him, men who hug him, and a 103-year-old woman who grabs his hand and asks if he is walking yet.

Four years ago, Bryan Stow was a strapping paramedic who spent his days off biking with his son and daughter. That was before March 31, 2011, when he and three friends made the mistake of wearing San Francisco Giants garb to an Opening Day game against the rival Los Angeles Dodgers at Dodger Stadium. They were harassed and threatened. Afterwards, two Dodgers fans beat Stow so savagely in a parking lot that doctors had to induce a coma to save him. He was hospitalized for seven months.

Stow, 46, now has a scar running from the left side of his forehead to the back of his head. On the right side, a shunt to drain fluid from his brain protrudes from his skull. The thick hair he once fussed over is now patchy and thin. Stockings on his legs prevent life-threatening blood clots.

The beating drew national attention to sports hooliganism. It's also brought to light a virtually unknown aspect of the legal system that cuts compensation to victims.

Stow was sucker-punched twice: first by his assailant, then by his health insurer.

Although a Los Angeles Superior Court jury awarded Stow \$18 million from the Dodgers and his assailants last year, he has yet to receive any money. In a bizarre twist, the Dodgers' liability insurer, ACE Property and Casualty Insurance, stands to net \$1.6 million from a side deal in the case.

It's all because Stow's health insurer is entitled to a huge slice of the settlement, even before he is paid. Federal law, upheld by a recent U.S. Supreme Court case, gives insurers the right to recoup medical costs caused by a third party—in the face of state laws that prohibit it. "This is what people pay premiums for," says Stow's ex-wife, Jacque Kain. "To worry about some insurance company taking what is his is absurd."

The centuries-old concept is known as subrogation and is applied in areas such as property insurance. An insurer, for instance, might seek to be repaid by the maker of a faulty furnace that caused a fire in a building the company covered. In recent years, subrogation has mushroomed into a multibillion-dollar source of funds to offset costs for private health insurers as well as Medicare and Medicaid. Medicare reaped almost \$2.5 billion last year, aided by a 2007 law that requires the



federal insurer for the elderly to be notified of any legal settlements paid to its beneficiaries so it can subrogate the funds.

Such medical liens have reduced and delayed compensation in several cases—including the thousands of patients who suffered heart attacks or strokes from diabetes drug Avandia and the 1,000 Montana residents sickened by asbestos from a mine. “It is extremely frustrating for people who are sick, or dying, or who have loved ones who have died and are desperately in need of money,” says Allan McGarvey, an attorney representing some of the asbestos victims.

The liens have spawned companies and law firms that identify cases and, representing insurer interests, pursue patients who have received court settlements. A unit of Xerox recovered more than \$1 billion for health-care clients in a recent three-year period. Optum, owned by insurance giant UnitedHealth Group, is a major player.

Insurers and employers say getting back money in these cases helps lower premiums for all members of a group plan. University of South Dakota law professor Roger Baron disagrees. He says research shows the recovered money does little to reduce rates while increasing executive pay and shareholder payouts. “It would

be wrong to think that the insureds benefit from subrogated recoveries, because they don’t,” says Baron, who’s consulted for injured people facing health-care liens.

All but two states either ban subrogation outright or limit how much insurers can collect. Unfortunately, many employers provide health insurance as an employee benefit under the Employment Retirement Income Security Act, or Erisa, which is a federal law. Congress specifically designed Erisa to supersede any state statutes related to employee benefit plans. More than 90 percent of workers with medical coverage at the largest U.S. corporations are insured this way, according to the Kaiser Family Foundation. Hailed at its passage in 1974 for safeguarding employees’ pension plans, Erisa now helps deny or reduce compensation to workers injured through someone else’s negligence.

Stow received his insurance through an Erisa plan. So did James McCutchen, a US Airways mechanic badly injured in a 2007 highway wreck. When US Airways demanded repayment of \$66,866 it spent on his treatment—a figure slightly exceeding the \$66,000 he netted in a settlement after paying his lawyer—McCutchen refused to pay. He argued the US Airways lien was unfair because he wasn’t fully compensated for his injuries. A federal appeals court agreed, calling it a “windfall” for the airline.

In 2013 the U.S. Supreme Court sided with US Airways, ruling that as long as the health plan’s contract with employees specifies that it can be reimbursed for medical costs in these situations, it has a legal right to collect. Most employees have no idea these provisions exist.

Stow and his family certainly didn’t. As a paramedic for American Medical Response, a subsidiary of Envision Healthcare, Stow paid a \$334 monthly premium for the insurance coverage that was a perk of the job. After the attack, his family initially didn’t worry about the costs, knowing he was insured.

Then Envision demanded repayment of the more than \$3.4 million it paid for Stow’s treatment. His mother, Ann, couldn’t believe it. She asked her attorneys how the insurer “could get away with this,” she says. “The thing is, it is not illegal.”

The Stows had another surprise when they sued the Dodgers and the assailants. During the civil trial last year, Envision quietly assigned its rights to the \$3.4 million to the Dodgers’ liability insurer, ACE, at the discounted price of \$1.8 million.

The jury ordered the Dodgers to pay \$13.9 million. ACE then sent a check to Stow’s lawyer, Thomas Girardi, deducting \$3.4 million for the medical lien that they purchased at a discount. The maneuver

would effectively allow the team’s insurer to realize \$1.6 million from its lien deal.

“It’s disgusting,” says Girardi, who returned the check and is refusing to pay the lien. Stow’s legal team expects Ace to file a lawsuit to collect the \$3.4 million. Given the Supreme Court decision, Stow faces an uphill fight. “The problem now is the law is pretty clear with the McCutchen case,” says another of Stow’s lawyers, Christopher Aumais. The “options are severely limited,” he adds.

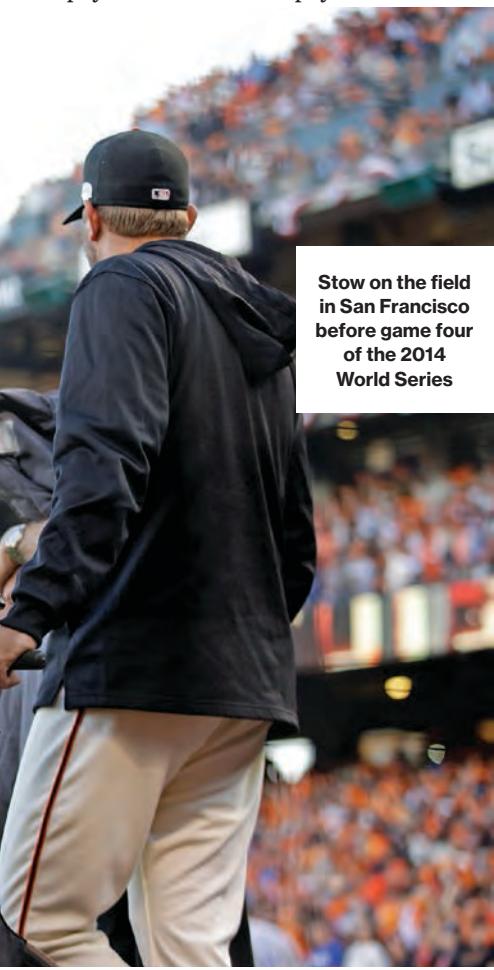
Stow’s attackers are responsible for the other \$4 million of the \$18 million judgment, but no one expects they will ever pay. Louie Sanchez, who jumped out from behind a car, punched Stow from the back and kicked him in the head several times, pleaded guilty to one count of mayhem and was sentenced to eight years in prison. Co-defendant Marvin Norwood pleaded guilty to a count of assault and received four years of jail time.

Stow also owes his lawyers \$3.6 million. San Francisco General Hospital, where Stow was transferred from Los Angeles, has filed its own lien of \$1.2 million for care not reimbursed by his health insurer, according to Stow’s lawyers.

Unless he wins his long-shot effort to nullify or reduce the multimillion-dollar insurance lien, Stow will be left with \$5.8 million, far short of what he’s likely to need for a lifetime of care. An expert hired by the Stows pegged his future medical costs and rehabilitation at more than \$30 million.

Envision says that “fortunately” its plan provided Stow with medical benefits. It didn’t comment on the sale of the lien to ACE. The Dodgers’ insurer said in a statement that “acquiring medical liens is common practice that is regulated by the health-care industry. By acquiring a lien, lien purchasers also acquire the risk of default on the lien.”

To accommodate Stow, volunteers built a ramp from the driveway to the front of the modest home near Santa Cruz, Calif., that his parents bought in 1975. Famous supporters—from Pearl Jam’s Eddie Vedder to many current and former San Francisco Giants—have done their best to lighten the burdens that come with taking 56 pills each day to ward off seizures, pain, and complications from the beating. On April 16, Stow is scheduled to throw out the first pitch at the home opener of the San Jose Giants, a minor league affiliate of the big league team. He’s been practicing with his dad in the backyard, and he plans to get up from his wheelchair and make his way onto the field using a walker. He won’t throw from the mound. Sixty feet is an unthinkable distance. But he’ll throw to the catcher. And he plans on tossing a strike. **E**



Stow on the field in San Francisco before game four of the 2014 World Series