

# FAKE NEWS...AGAIN!?

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I really do respect the media . . . honestly. In fact, I've been a subscriber to the LA Times for nearly 50 years. But maybe it's time to cancel that subscription and go with a news source that reports a story accurately and fairly. I'm referring to a recent article in the Times that focused on two City safety members (one police officer and one firefighter) who were allegedly bilking the City on workers' compensation claims. Neither of the two were my clients so why do I care? Well, the reporters didn't just focus on those two. They disparaged City police and firefighters in general, and much of what they said (or did not say) just didn't add up.

You might recall these same reporters wrote a so-called investigative piece in February about the alleged abuse of members in the DROP program. I wrote an article for you entitled "Fake News . . . I Can't Believe I Said That" in which I pointed out the numerous inaccuracies in the article. In that Times article, the reporters stated that "Mr. Sherwin refused to comment." Actually, I was unable to comment because they contacted me twelve hours before the article went to print and I wasn't in my office to receive the call. So when the same reporters asked if I would speak to them about another story, I gladly accepted the offer and we talked for nearly one hour.

Reporter Jack Dolan initially told me he was working on an article that dealt with the increase in cumulative trauma injury claims since 2004 and he quoted statistics he said he obtained from workers' compensation files. I told him his statistics were wrong and that, in fact, cumulative trauma claims have declined. When I called him back a few days later to provide him with the actual stats, he back tracked and said he wasn't working on cumulative trauma claims but rather claimed injuries with multiple body parts. He said the research he had done showed a "dramatic" increase in such claims and the people he spoke with suggested it was a result of attorneys responding to the changes in the law in 2004 and now "throwing in every body part they could think of for a claim." He asked if I had a different explanation. I reiterated that his numbers were incorrect but even if there was some increase, there were two logical explanations, neither of which was to simply toss in every body part to increase the value of a claim.

I told him that the workers' compensation laws on permanent disability were, in fact, changed in 2004 as a result of legisla-

tion pushed by then Governor Schwarzenegger. The Governor thought most workers' compensation claims were exaggerated and that permanent disability payments should be reduced. He argued for the adoption of guidelines which significantly reduced disability impairment ratings for orthopedic injuries by 40 to 60%. He and employers eventually got their wish. What they didn't realize, however, was that these guidelines included ratings for body parts that were not previously recognized for disabilities. As an example, a firefighter with prostate cancer would probably receive a very small or minimal rating under the old system, but now the rating would now include several body parts, including removal of the prostate, ED residuals, urinary incontinence, etc. So the claim that previously only included "one body part" now included three or four.

it have to do with multiple body part claims? I told him that no one, including me, condone fraud. If they are caught doing such things, I'm not going to be their advocate. I then offered some of my own numbers and said that only 2% of the fraud in workers' compensation comes from injured workers. The remainder comes from the employer, claims adjusters, and doctors.

As my interview concluded, I naively thought, maybe he's going to present both sides and it will be a fair investigative piece. Wrong . . . once again . . . fake news. I was never mentioned in the article. Apparently, I was too boring to be quoted or he just didn't like anything I said because it didn't fit his agenda. I later learned that he had in fact been advised one month earlier by the Department of Industrial Relations that the statistics he was intending to publish were incorrect. He was relying on information collected from the Electronic Access Management System which became active in 2008 and began archiving information that existed prior to 2004. Consequently, the statistics he obtained were not solely from claims filed after 2004. For those reasons, the DIR suggested he not use the information to support his premise. But he still quoted these numbers to imply nefarious conduct by attorneys and injured safety members.

On Saturday, July 26, I was a guest on the Alan Gurvey radio show on KABC Talk Radio. We spoke about the Times article, what I had said to the reporter and what was left out of the article. You can listen to my interview by going to [www.gurveyslaw.com](http://www.gurveyslaw.com) and then click on his podcast link to bring up the show.

As they did in the last article, the Times, with a broad brush, tried to throw the good men and women of LAPD and LAFD under the bus. Talk about one or two bad apples and then argue that the whole basket of apples should be thrown out. Lump together a discussion of cumulative trauma claims, multiple body parts and fraud, and make it seem like they all go together. I get it when it comes to fraud. No one condones or encourages it. But, let's get our facts straight and present the story in a fair and impartial manner.

This LA Times story was truly a disservice to our safety members whom I am proud and honored to represent. We all know what you do and how much you sacrifice to provide for the City of Los Angeles. Maybe the readers of the Times will learn that one day and stop reading this nonsense.

WORKERS COMPENSATION AUDIT PREVENTION  
LITIGATION COMPLIANCE  
BENEFITS MEDICAL EXPENDITURES  
DISABILITY SETTLEMENT  
FINANCIAL RISK WELLNESS  
INJURY PREVENTION  
HAZARDS HEALTH CLAIMS ACCIDENT TRAINING  
EMPLOYMENT  
FINANCIAL  
HAZARDS  
INJURY  
PREVENTION  
HAZARDS  
HEALTH CLAIMS  
ACCIDENT TRAINING

image credit: LA City Clerk Internet Site

I also explained that many cumulative trauma claims do include multiple body parts. A firefighter with 30 years on the job is going to have multiple body parts that are injured due to the arduous work over that period of time. I asked Mr. Dolan what he thinks would happen to a firefighter who has to put gear that weighs 45 lbs (turn-outs alone) to 165 lbs (BIA, axe, helmet, etc.) on a few times a week for 30 years? Would it cause injury to the neck, back, shoulders, knees, etc.? Wouldn't that be a logical explanation for claims with multiple body parts?

We then discussed the "fraud claims" of injured workers who are off work and receiving IOD pay, yet working an outside job or on a vacation doing things they not are supposed to be doing. Didn't he already cover this in the last article on DROP fraud and what does