

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3 **Case No. ADJ1372133 (VNO 0488219)**

4 **THE ROMANO TRUST, on behalf of**
5 **CHARLES ROMANO, deceased,**

6 *Applicant,*

7 **vs.**

8 **THE KROGER CO. dba RALPH'S GROCERY**
9 **CO., permissibly self-insured, administered by**
10 **SEDGWICK CMS,**

11 *Defendants.*

12 **OPINION AND DECISION AFTER**
13 **RECONSIDERATION**

14 We previously granted reconsideration to further study the factual and legal issues in this case.
15 This is our Opinion and Decision After Reconsideration.

16 Defendant seeks reconsideration of the February 13, 2012 Supplemental Findings and Award. In
17 that decision, the workers' compensation administrative law judge (WCJ) addressed defendant's repeated
18 efforts to avoid or postpone its statutory duty to provide medical care, egregious behavior which
19 increased the suffering of a horrifically ill individual.

20 The WCJ found that applicant, Charles Romano, while employed as a stocker for Ralph's
21 Grocery Company on December 20, 2003, sustained an industrial injury to his left shoulder and cervical
22 spine "with subsequently industrially-related staph infection resulting in a compensable consequence
23 injury to the neck, cardiovascular system, pulmonary system, thoracic spine (with resulting paralysis) and
24 as further compensable consequence injury to urinary/fecal incontinence, renal failure, psyche, and vision
25 (bilateral retinal hemorrhages)."¹ Among other things, the WCJ also held that defendant unreasonably
26 delayed medical care in 11 separate instances, imposing for each one the maximum penalty under Labor

27 ¹ Tragically, Mr. Romano's industrial injury ultimately led to his death. However, an inter vivos application was filed on his behalf and, for convenience, we will refer to Mr. Romano as applicant rather than decedent.

1 Code Section 5814: 25% of the delayed medical benefit, not to exceed \$10,000.² The WCJ also held that
2 applicant was entitled to attorney's fees under section 5814.5 at the rate of \$350 per hour, but the
3 reasonable amount of the fee was deferred. The WCJ did not permit defendant to withdraw from a
4 January 15, 2009 trial stipulation in which the parties agreed to present trial testimony in the form of
5 depositions.

6 Defendant contends that no penalties for delay can be imposed because (1) applicant is now
7 deceased; (2) the penalty issues were not heard within two years of the date that payment of
8 compensation was due; (3) the incidents in question were not separate and distinct acts of misconduct
9 subject to multiple penalties; (4) the WCJ did not set forth sufficient reasons for the imposition of each
10 penalty; and (5) there was no unreasonable delay. Defendant further contends that, even if any penalties
11 are warranted, applicant's attorneys' fees are excessive. Defendant also requests that the parties'
12 stipulation regarding deposition testimony be set aside.

13 We have considered the Petition for Reconsideration and applicant's Answer. The parties have
14 shown good cause why they should be allowed to exceed the page limit, so we grant both of their
15 requests to do so. (Cal. Code Regs., tit. 8, §§ 10845(a), 10232(1).) The WCJ prepared a Report of
16 Workers' Compensation Judge on Petition for Reconsideration (Report). For the reasons stated in the
17 Report, which we hereby adopt and incorporate, and for the reasons discussed below, we will affirm the
18 February 13, 2012 Supplemental Findings and Award, except that we will amend Finding No. 8 to clarify
19 that the billing for St. John's Hospital is not included in the penalty for delayed reimbursement of the
20 Medi-Cal lien.

21 We have rarely encountered a case in which a defendant has exhibited such blithe disregard for its
22 legal and ethical obligation to provide medical care to a critically injured worker. Sedgwick CMS, acting
23 as claims administrator for The Kroger Company/Ralph's Grocery Company, demonstrated a callous
24 indifference to the catastrophic consequences of its delays, inaction, and outright neglect. In light of
25 defendant's repeated, unreasonable delays and denials, and its willingness to ignore a 2006 Finding and
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² All further statutory references are to the Labor Code, unless stated otherwise.

1 Award issued by the Workers' Compensation Appeals Board, we will refer this case to the Audit Unit of
2 the Division of Workers' Compensation (DWC). (See Lab. Code, § 129(b)(3); see also Cal. Code Regs.,
3 tit. 8, §§ 10100.2(o), 10106(b), 10106.1(c)(3).)³

4 **I.**

5 Although a thorough description of the facts may be found in the WCJ's Report, we will very
6 briefly summarize them here for the purpose of clarity. (Report, pp. 3-45.)

7 Applicant Charles Romano sustained an admitted industrial injury to his left shoulder on
8 December 20, 2003 and underwent surgery on August 29, 2005.

9 As a result of his surgery, applicant contracted methicillin-resistant staphylococcus aureus (the
10 antibiotic-resistant staph infection known as MRSA), resulting in catastrophic, multi-system injury
11 including renal failure, pulmonary failure, and paralysis from C8 down. Applicant was hospitalized at
12 Ventura County Medical Center, which was paid for by Medi-Cal because defendant refused to authorize
13 treatment. After his discharge, applicant self-procured treatment at County Villa Oxnard Manor, a
14 facility unequipped to deal with his complex injuries; he was then hospitalized at St. John's Regional
15 Medical Center after a visiting friend discovered that applicant's catheter bag was full of blood. (See
16 Report, pp. 3-4.)

17 On October 25, 2006, a prior WCJ issued an Amended Findings and Award holding, among other
18 things, that applicant sustained an industrial injury to the "left shoulder and cervical spine with
19 subsequently industrially related staph infection resulting in a compensable consequence injury to his
20 neck, cardiovascular system, pulmonary system, thoracic spine with resulting paralysis." Applicant was
21 awarded further medical treatment, and defendant was ordered to pay or adjust all reasonable medical
22 and medical-legal liens.⁴ Defendant did not comply, failing to pay medical costs incurred in treating
23 applicant's industrial injury, including the hospital care previously provided by St. John's Regional
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25 ³ The Audit Unit not only audits insurers, but also self-insured employers and third-party administrators.
26 (Lab. Code, § 129(a).)

27 ⁴ Defendant sought reconsideration of this decision, but the Appeals Board denied its petition.
Defendant's subsequent petition for writ was summarily denied on June 19, 2007. (*Ralph's Grocery Co.*
v. Workers' Comp. Appeals Bd. (Romano) 72 Cal.Comp.Cases 1028 (writ den.).)