

Severely injured employee of National Home Improvement Store, now a ventilator-dependent quadriplegic--Has been denied care many times by insurance companies - Receives restitution

Case settles with National Home Improvement Chain, Insurance Company and Contracted Service Agents

Miami, FL— The family of Darien Smith received restitution and justice when an out-of-court settlement awarding punitive damages was reached in their suit filed by Consumer Justice Attorney Ted Leopold, managing partner of the law firm of Leopold-Kuvin.

Darien Smith was just 19 years old, a young man working hard at his job at a national home improvement store while attending college in Miami when suddenly he fell more than 18 feet to the ground and hit his head while carrying stocking merchandise. Two weeks later he was struck in the head with a board while at work at the same location. Severely injured by these incidents, which rendered him a ventilator-dependent quadriplegic, he is paralyzed from the neck down and cannot survive without constant, round-the-clock nursing and medical care.

Now some 14 years since the accident, Smith's medical care has been supervised and controlled by the chain's workers' compensation carrier and their contracted service agents. These companies, which have overseen Smith's workers' compensation claim, have sought to further harm Darien Smith, through a horrific pattern of callous actions, indifference, and inaction. For the last 14 years this national chain and its contracted service agents, have acted with gross indifference and negligence by conducting themselves in the following manner:

- Refusing to pay nurses reasonable living wages for work – causing Mr. Smith's care to be constantly compromised.
- Improperly pressuring Smith's treating physician to prescribe only a registered nurse for eight hours a day and a non-professional for 16 hours a day when 24-hr skilled respiratory care is imperative to his survival. After being court ordered to pay a particular wage per hour for nursing care, Defendants refused – defying and completely disregarding the court, refusing to pay more than \$10 for skilled on-call nursing care.
- Denying medically necessary life-preserving care, such as providing respiratory supplies, replacing his unsafe wheelchair and paying to make his home handicap accessible, until legal

action was threatened. Had there been a fire in the home Darien Smith may not have been able to exit the home without modifications to accommodate someone in a wheelchair.

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Leopold says days of Smith's torture ends with justice (2)

- Refusing to pay for Mr. Smith's medical care for a two-month period, burdening his mother and guardian Linda McCoy with mounting medical bills and forcing her to pay for supplies through her savings to see that he was cared for and would survive.
- This national chain and its workers' compensation agents continued with their tortuous campaign by their refusal to pay for an emergency, voice-activated phone system. Without this, Darien Smith had no way to call for help in case of a respiratory attack, seizure, fire, accident or any other emergency. Defendants were so determined to deny Mr. Smith the help he needed they not only denied the claim for the system, they violated and completely disregarded an August 2001 court order by not providing it to him, forcing him to go back into court and obtain another order to force them to do what they were originally ordered to do.
- Inflicted emotional distress, which has resulted in injuries separate and distinct from the injuries Darien suffered while working at this major home improvement store.

Until recently legal actions could not be taken against workers' compensation carriers, no matter how egregious the circumstances, that is until a recent case was decided by the Florida Supreme Court. Now Darien Smith has been free to seek justice and restitution in the courts against these companies.

"With this settlement Darien Smith has been able to obtain justice for the cruel, inhumane and up and down emotional rollercoaster that has been bestowed upon him by these companies," said Ted Leopold managing partner in the Palm Beach Gardens law firm of Leopold~Kuin, and attorney for Mr. Smith and his family. "In conducting this egregious campaign against Darien, these defendants have engaged in a concerted campaign of tortuous conduct and harassment that they knew would cause Darien Smith to suffer further physical injury and cause severe emotional distress," Leopold added.

"This callous conduct must stop now! The Defendants had only their own interest and profits at heart. It's obvious that through the past 14 years the only objective in Darien Smith's treatment by these defendants was to save money and harass Darien to the point of either Darien deciding to give in, going away or simply dying," said Leopold.

"We are gratified that we now have had the opportunity to right this terrible injustice to Darien Smith. Rest assured everyone associated with this case has been passionate about it and has

worked tirelessly to see to it that Darien Smith has the treatment and care that he needs for the rest of his life. Hopefully our efforts on behalf of Darien will help in creating a benchmark that will send a clear signal to companies that you can't put profits over the well being of people," Leopold concluded.

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Leopold says days of Smith's torture ends with justice (4)

Ted Leopold is a senior partner in the law firm of Leopold~Kuvin, P.A. As consumer justice advocates, the

attorneys at Leopold~Kuvin pursue justice for those who are harmed by the misconduct of insurance companies and corporations. The firm, founded in 1982, has six attorneys and is headquartered in Palm Beach Gardens, Florida, with offices located at 2925 PGA Blvd. Mr. Leopold can be contacted at (561) 684-6500. Additional information about Leopold~Kuvin, P.A. may be obtained from the firm's website at <http://www.leopoldkuvin.com/>

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This case, which was filed in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, has been settled.