

House Energy and Commerce Committee
Subcommittee on Oversight and Investigations Hearing:
“Thoroughbred Horse Racing Jockeys and Workers: Examining On-Track
Injury Insurance and Other Health and Welfare Issues”
October 18, 2005

Testimony Submitted by Amy Birzer

My name is Amy Birzer. My husband is Gary Birzer. On July 20, 2004, our lives were changed forever. This summarizes the events that have occurred since that day.

It was the 7th race at the Mountaineer Race Track in West Virginia, going into the first turn and ‘Lil Bit of Rouge’ was four wide and making her move. A jockey’s wife ran over to me and said “Amy, Gary went down” and she had a panic look on her face. Okay, I thought. Calm down. Give him a minute to catch his breath and get to his feet. I walked outside to talk to the security guard, but he didn’t know anything yet. A few more minutes had passed and Gary still hadn’t gotten to his feet. I went inside to watch the replay and that’s when I saw all 110 pounds of my husband being thrown head first into the dirt going 40 mph. I raced over to be with him. By this time, though, they were loading him into the ambulance. I rode in the front seat. I heard my husband say, “No Sir, I can’t feel that”. That’s when tears started streaming down my face. Never did it enter my mind that Gary wouldn’t be covered for these medical services. It wasn’t even a concern, since I knew we had insurance that we paid into and that there was also a catastrophic policy in place for the jockeys.

After being at the local hospital for several hours, Gary was transported by helicopter to the University of Pittsburgh Medical Center. It was there that I learned my husband would never be able to walk again. In fact, they had to perform surgery and place a metal rod in his neck just so he would be able to hold his head up. My husband was diagnosed as a C6-C7 quadriplegic. He was at the University of Pittsburgh Medical Center for 4 weeks, with bills that escalated to over \$450,000. We were in for the battle of our lives.

It was the first week in August 2004 when Mr. Albert Fiss, Vice President of the Guild, came to see Gary in the ICU in Pittsburgh. Present at the time were myself, Bonnie Birzer (my sister-in-law) and a family friend Pam Isbel. It was at this time that Mr. Fiss informed us that the Guild could be of no help to Gary. He indicated that the Guild had no money to help at all. He said, "You need to get a lawyer and go after the racetrack". Bonnie asked if they could help us by using one of the Guild's lawyers. Mr. Fiss said no but they could recommend one in our area. I thought to myself – here was a guy who is supposed to want nothing but the best for the jockeys and, while my husband was fighting for his life, with ventilators sustaining him, running excessively high temperatures, being packed in ice around the clock - and all he wants to know is how come I haven't thought about suing the race tracks? Wow. I just wanted to scream at him and say "do you not understand that my husband is in there fighting for his life right now and we thought your organization was committed to helping jockeys and their families through tragedies like this?" It was at this point that I realized from my conversation with Mr. Fiss that Gary was not covered for an on-track injury and that the catastrophic policy was no longer in existence. We were completely left with no coverage whatsoever.

The second week in August, Gary's father came to be with Gary. That same week, Mr. Johnnie Beech, a Guild Rep in the Iowa area, was at Prairie Meadows, a racetrack in Iowa, and was talking to Gary's mother (however, he was not aware she was his mother at the time). She asked him how he was planning to help Gary Birzer. He replied "I have a meeting with his parents tonight to discuss it". Gary's mom said "Oh really? While his father is up in Pittsburgh with Gary and I am his mother"? So, what time is that meeting? Mr. Beech turned and walked out of the jockey's room.

The third week in August, Gary's mom came up for a visit. Miss Kelly from Pittsburgh Medical said next week Gary will be ready to go to rehabilitation. You have 3 options: (1) the 11th floor here at this hospital, (2) Squirrel Hill, or (3) a nursing home. Tears instantly started coming out of my eyes. I knew that Squirrel Hill would not take Gary without insurance. My husband is only 29 years old and there was no way I was going to send him to a nursing home. The 11th floor of the hospital was out of the question. He needed to be in a rehabilitation center where they specialized in spinal cord injuries. He was already in deep depression and I could not bear to go into his hospital room and tell him he could have gone to Squirrel Hill, if he had insurance, but instead he had to settle for a nursing home or rehab on the 11th floor of the hospital.

She suggested that we get an advocate. Mr. Joe Delong, a West Virginia state representative, was called. He used to be a jockey's agent and his dad trains horses at Mountaineer, so he knows Gary and Gary's agent Jimmy Isbel very well. Joe Delong sprung into action right away,

speaking on our behalf, trying to find a way for Gary to stay in Pennsylvania to get the therapy he desperately needed.

During these two weeks, phone calls were placed to Mr. Fiss from Jimmy Isbel, Gary's mom, Gary's dad and myself. None of the phone calls were ever returned. During this time, I also applied for help from the state of West Virginia but was turned down on the spot. The lady who helped me said "Mrs. Birzer, you have too many assets for us to be of assistance to you at this time. In the state of West Virginia, if you are over the age 21, acute rehabilitation is not provided."

Then, Miss Kelly came back to us and said that our story had really touched her heart and that she had been working with the people from Squirrel Hill and they agreed to take Gary for his first 4 weeks of therapy as a charity case. For the first time since the accident, I cried tears of joy. Finally, I had some kind of hope to give my husband.

Gary went to Squirrel Hill where he was teamed up with Randy, one of the best therapists there. I started seeing my husband's will to live. The first week was very hard for Gary. Our 2-year-old daughter wanted nothing to do with her daddy because she was so afraid of the wheel chair. Although it broke his heart, he was determined to find a way to ease her fears. His chair had a horn on it, so he taught her how to honk it. Soon she was warming up to the chair and coming around her daddy again.

Randy told us that Gary could live completely independent but that it would take hard work and determination. He told us a few success stories about other spinal cord injured patients and I saw a change in my husband's attitude. You see, Gary felt that everything was stripped away from him – he went from being a successful jockey to being someone who could no longer use the restroom, or roll over in bed, or feed himself, or cook or hold his daughter. The bedsores were a constant worry too. From his nipple line down he no longer could feel his body. He has the use of his wrist flexor, but not his fingers. So picking up things was next to impossible. And now there's someone telling him that he can live completely independent with a little hard work. This was huge!

The next few weeks they worked with Gary on transferring him in and out of his wheelchair and in getting him stronger. However, the four charity weeks were coming to an end and we still had no response from Mr. Fiss on how the Guild could help my husband. I was still calling his office and his cell phone, leaving message after message, but still with no response. I was simply asking for any help with his rehab at Squirrel Hill, or maybe a wheelchair or anything would be greatly appreciated. Then Gary decided to call him and Mr. Fiss finally returned the call. Albert informed Gary that whatever he needed, the Guild would take care of it. Gary asked about 4 more weeks of rehab and a wheelchair and Mr. Fiss agreed that he would take care of that also. He just needed the name of the person to talk to make the arrangements. Gary told him to speak with Joyce Watson, from Admissions. Ms. Watson spoke with Mr. Fiss and when she came back later into Gary's room, she was all smiles saying that Mr. Fiss agreed that the Guild would pay for him to stay there and take care of any of his needs. Again, tears of joy rolled down my face. I remember saying "See, Baby, things are going to be okay". Just don't

give up”. I remember driving home that evening calling everyone and telling them that the Guild is going to help Gary and he gets to stay at Squirrel Hill.

Unfortunately, we soon learned that this was just another lie from Mr. Fiss. He went back on his word. I tried calling him by phone again, and when I finally reached him, I asked, “Why won’t you help my husband”? Mr. Fiss said, “Try to understand. Horseracing is a billion dollar industry. Jockeys should not be paying for their own insurance and we are using your husband as a “guinea pig” to make a statement.” I immediately broke down, raising my voice and fighting back the tears. Again I stated: “Gary needs the Guild’s help. What about the Endowment Fund? Can you use that to help him?” Mr. Fiss said he would have to talk to the Board on Monday, as they are closed on weekends.

I was so distraught over what to do. Alex, Gary’s brother and also a jockey and member of the Guild told me that Dave Shepard, a high member of the Guild, is a family friend and thinks of Gary like a son. Dave was there when Gary rode his first race. He said that Dave was going to take care of things and there is no way was he going to let his little brother move to that facility. It’s all part of a plan and not to worry.

I felt like I had to do something more so I started talking to other jockeys and their girlfriends. That’s when I learned that Larry Saumell and Darrell Haire had been down at the track, telling everyone that the Guild is helping Gary Birzer. I became upset, again knowing that they were lying to these jockeys. I had tears in my eyes and looked at all the riders and pleaded with them

to listen to me. I said, "Please, listen - if you go down during a race, the Guild will not help you!" They all looked at me with disbelief. I told them that they better pray to God that they don't go down tonight, because then they will learn the truth about the Guild.

The Guild reps went back to the track on Monday, September 13th around so everyone can hear what they have to say. I arrived at the track at 6:00 with Mr. Joe DeLong, Dan Taylor, my lawyer at the time, and two of my girl friends. Larry Saumell and Darrell Haire showed up around 7:00. They were talking to Chad Murphy and all three came over to me and asked me what the problem was. Again, with tears in my eyes, I simply asked the question again "why aren't you helping my husband? He is a jockey and a member of the Jockey's Guild. Why do you keep telling the jockeys that you are helping us when you're not". They said that I was angry at the wrong organization. They said they had four lawyers working for Gary. I was shocked to hear this - I said "what four lawyers". This was the first that I heard of this. Mr. Haire also kept reassuring me that they are paying for Gary's rehab. They said the Guild is going to cut a check for \$15,000 so Gary can stay at Squirrel Hill. Dan Taylor immediately called Mr. Fiss to confirm the \$15,000 for Gary's rehab. Mr. Fiss said that the family was misinformed and that the Guild was NOT paying for his continued rehab. Mr. Taylor informed Mr. Fiss that he better get his "boys" in line, because they are telling the jockeys and Mrs. Birzer that a check will be cut to be used for Squirrel Hill.

When we walked back into the jocks room, I emotionally stated, for all to hear, that the Guild was indeed, NOT paying for Gary's rehab and that he is being moved to a state facility in West Virginia. Mr. Haire called Mr. Fiss and told him he needed to get down there right away. They

then moved out of the jocks room to the upper offices, as the jockeys were getting upset. They then asked me if I had asked the racetrack for help and I replied that I had. Rosemary, who I talked to at the track, said she had talked to her legal folks and said they had no money to help my husband. They offered to go with me to talk to them again, and I declined. They decided to have another meeting with the jockeys, but advised that I should not attend because of my emotional state.

The next day Larry Saumell and Darrell Haire went to Squirrel Hill with me to see Gary. They asked me about the “guinea pig” comment and apologized for Mr. Fiss making that statement. When we arrived, we went to talk to Joyce and they informed her that they were going to be cutting a check for \$15,000 to pay for the additional 4 weeks of rehab. My case manager at that time, Melissa, also spoke with them and they discussed the facility in West Virginia. They asked Gary that if they paid for an apartment for his wife in West Virginia, would he be willing to go there. He said that he needed to stay at Squirrel Hill, as it was one of the best rehab centers for spinal cord injuries. After Larry and Darrell left, Gary again called his brother Alex, crying, telling him that they are going to move him down to the state facility. Alex was upset, because the Guild reassured him that Gary would not be moved.

The next day Mr. Fiss came into town and we had a meeting with the hospital staff. Mr. Fiss and Darrell rode with me and during the entire ride. They kept reassuring me that they were not moving Gary. Darrell asked me about the state facility in West Virginia. I told him that it was a step up from a nursing home and nothing compared to Squirrel Hill. When we got to the meeting, Mr. Fiss never offered any money. In fact, the discussion completely went in the

opposite direction. He was pushing for Gary to go to West Virginia. Gary said that he did not want to get on Medicaid and go to a state facility. Squirrel Hill is where he felt he needed to stay. The specialist said that Gary could eventually lead a normal life if he continues to work hard and he should not have to give everything up that he's worked hard for just to be on Medicaid and go to a state facility.

Our battle to keep Gary at Squirrel Hill was lost and he was soon to be moved. The West Virginia institution agreed to take Gary without insurance or Medicaid. They said he needed to be transported by ambulance and that would cost \$1500. Mr. Fiss agreed that the Guild would pay for that bill.

The day before Gary was to be moved, Dr. Gertmenian and Mr. Fiss came back to see Gary. Dr. Gertmenian began telling me about his daughter who is in a wheelchair and how stressful it is. He went on to say that I am going to need all the help and support from family and friends, with a 2-year old daughter and a husband in this condition, and that it was going to be tough on me. He remembered how his wife cried and cried over what happened to their daughter and how helpless he felt because there was nothing he could do. He went on to say that he knows what it's like to be in my shoes and how hard he knows it's going to be for me. He said, "I need the industry to think we have no money" but that he knows people in high places and from time to time he would be sending me money. He also said he was going to give me his "bedside number" and that if I needed anything, to just call him. I became boiling mad at this point and thought "how dare he discuss his situation with me that was so far removed from what I was going through". Since July 20th, I have been begging for help and in return I have been given the

run around and told nothing but lies. The only thing he has done for my husband is make a spectacle out of him and convinced all the riders that Gary Birzer is going to help change the industry. The only thing Gary and my family got was the short end of the stick and how dare he say that he knows what it's like to be in my shoes. I got up and walked out of the room, as I could listen to no more.

Gary ended up being transported to the Institute of West Virginia on September 20, 2004. They agreed to take him without insurance and without Medicaid. I was grateful that they took him, but I can't stress enough the strain it put on my family and my daughter. I had to stay in a hotel room near the facility and could no longer be with my daughter. It was the hardest thing for me to leave her as she was screaming for her mommy.

Gary was in the West Virginia facility when I received a call from Dr. Gertmenian asking me if I was going to sue the racetrack. I told him that the track was building a ramp at our home so Gary could get into the house and they were also going to hold a benefit dinner for him. I told him I couldn't go after the track right now because they were the only ones helping at this point and we desperately needed help. His remark to me was "if you let them buy you for a couple hundred thousand dollars, then there's nothing further I can help you with. If Gary wants to talk, he can call me." And then he hung up

Once we were settled in the rehab center, we soon learned of the lack of experience and knowledge that they had about spinal cord injuries. It was a huge setback from where he was. It was a nightmare as we watched them try to care for Gary. I asked them one day as to why

Gary's hands were not washed and their reply to me was "we thought it was build up from horseback riding". They simply didn't know how to care for his skin on his hands as a spinal cored injured patient. Also, instead of working with Gary on transferring him in and out of bed, they simply picked him up to move him. All the hard work teaching him to transfer was for nothing, as they did not continue the same therapy. Even when he needed his shower – the two aides just manhandled him and didn't try working with him to bathe himself so he could be more independent. I asked them if they could just try to assist Gary in transferring himself from the bed to his chair and they agreed to try. However, because of their lack of knowledge of how to transfer a patient, they almost dropped him. Thank goodness I was there, as he would have been on the floor. The doctors were overmedicating him and the therapists were not well educated on spinal cord injuries. Gary got a bad staph infection and they had to quarantine him to a room by himself. They said he had to stay in bed and get turned every 2 hours to prevent bedsores. Gary ended up getting a very bad, very large bed sore. I asked how he got that, and they indicated that they were short staffed over the weekend and he didn't get turned as much as he should. They apologized. Gary kept losing weight and went down to 94 pounds, and depression began setting in. And this was the very rehab center that the Guild told the jockeys and my family was one of the best places that Gary could be.

In October, a few weeks prior to Gary's move to Cincinnati, Dave Shepard visited Gary at the West Virginia facility. He informed me that the "war has begun". He was referring to the whole insurance issue between riders and racetracks. This was also soon after the incident where Shane Sellers was removed from Churchill Downs in handcuffs. He asked me again if we were going to sue Mountaineer. I said "no", not at this time. He promised that they were going to take care

of Gary and not let him slip through the cracks and that he has discussed this with Dr. Gertmenian.

Gary was losing his will to live and something needed to be done. We decided that we needed to move Gary out of West Virginia and back home to Cincinnati to be with family who wanted to help us. With many phone calls made by my family and much media attention, the Guild paid \$15,000 for a wheelchair-accessible van and \$9,000 for one year's rent for an apartment in Cincinnati. West Virginia agreed to pay for Gary's wheelchair and a shower chair. We registered Gary at Drake, a well-known rehabilitation facility in Cincinnati as outpatient, as they would not take him in-patient with no insurance. We secured a nurse to come into the home to help with Gary's medical needs the first few weeks, but had to discontinue that service as it was extremely expensive.

We are still living in an apartment in Cincinnati and have finally, after 6 months of effort, been approved for Ohio Medicaid. Gary can no longer work, and because I am his soul caregiver, I also cannot work outside the home. We are currently living on Social Security, which barely pays our bills. Our medical expenses have accumulated to over \$500,000, which we cannot begin to pay back. The Guild has not done anything further to help us.