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ADDITIONAL PROTECTION BY SUBSEQUENT INJURIES BENEFITS TRUST FUND (SIBTF)

BY: SCOTT A. O'MARA

1945 was the year the Subsequent Injuries Benefits Trust Fund (SIBTF) was enacted in California. This system was developed in part because many disabled military veterans came home and had need to return to the civilian labor market. The Subsequent Injuries Benefits Trust Fund allowed all workers the opportunity to return to work. The Subsequent Injuries Benefits Trust Fund provided an Umbrella of Opportunity and Protection for the employer and the employee. The Subsequent Injuries Benefits Trust Fund is funded with the goal to encourage the employer to offer a disabled worker the opportunity of returning back to the labor market and obtain gainful employment and not be barred by the level of a previous disability.

The SIBTF is designed to pay additional benefits based upon the difference between the disability caused by the most recent occupational injury and the worker's overall disability. The SIBTF is established to provide coverage when there is a disability that existed prior to the new work-related injury. There are several types of disabilities; one is a work-related disability that existed prior to the most current one. The second one is a disability that existed prior to the current work-related injury that was not work-related, and the third types are conditions that are silent and the worker was not aware of the existence of the disease itself or disability.

Many medical condition or injuries can be factors in supporting the access to the Subsequent Injuries Benefits Trust Fund and the existence of certain silent medical conditions such as cancer and cardiovascular problems, the worker may not have awareness of these until they are found because of a current job-related injury study.

The preexisting conditions which are proven to exist prior to the current job-related industrial injury are important elements to prove. Whether the preexisting disabilities are industrial or non-industrial is not a determination as to the threshold of receiving the Subsequent Injuries Benefits Trust Fund benefits. Doctors may not have found a preexisting medical condition labor disabling. Now, based upon the current job-related injury the findings that the doctor establishes they indeed are disabling. Those medical findings fall within the threshold of the Subsequent Injuries Benefits Trust Fund. The preexisting conditions can now be addressed to compensate to the current injury.

Also, the disability can be comprised of previous residual problems that the worker had a finding of disability under the workers' compensation system for previous and current injury.

The key element is that SIBTF provides the Umbrella of Protection to the worker and the employer regarding the past injuries and disabilities. It also allows and encourages the worker to remain independent by seeking employment. The protection for the employers is a limit of costs of the disability to the current job injuries not to all the disabilities that are not related to their current job injury.

For a society as a whole allowing and encouraging the workers' with a prior injury to return back to work is one of societal and economic protection for that worker, their family and our communities.

SIBTF protects the worker in the event of a new injury when combining the prior residual disability of the totality of the prior disability and the current injury is equal to 70% or more, can provide protection for additional life changing moments that have occurred. Labor Code §4751 (California) states the elements the injured worker must prove, for access to the SIBTF.

1. The injured worker has a level of disability of 70% or greater;
2. The current work injury has caused 35% or greater of the disability;
3. Different standards if the preexisting disability is, a limb or an eye, or the current job illness or injury involves the opposite corresponding body part, causing 5% or greater disability.

The worker is not penalized for coming back to work; the employer is not penalized for hiring a worker with a preexisting condition. SIBTF is an economic cushion for both the worker and the employer.

If the totality of the previous disability and the current injury/disability does not meet that threshold of 70%, that removes the economic protection of SIBTF.

The Umbrella Protection for the worker and employer by of the usage of SIBTF is based upon residual impairment that has increased because of the new employment injury and there is a residual disability of 35% post the new job-related injury.

The procedure to obtain SIBTF benefits requires a special filing of court documents against the SIBTF with the Workers' Compensation Appeals Board. The SIBTF has their own counsel and adjusters that make the determination as to whether the case meets that threshold of the most recent injury causing at least 35% of their residual impairment and the totality of at least 70% or greater, plus the different forms of resolution. A dual injury to the limb or eye, or opposite corresponding body parts, causing at least 5%, again is another standard that can be utilized to obtain these benefits. The preexisting disability must be actually labor disabling. If the injured worker receives compensation from other sources such as a prior workers compensation claim, social security disability, employer disability, pension, or possible civil lawsuits (examples such as a car accident), can be used to lower the Subsequent Injuries Benefits Trust Funds responsibilities.

You the California worker, in the vast majority of all cases post a job-related injury, may have the economic benefit to you because of the societal business combinations that are allowed and affords you to continue in life and engage in activities that can benefit the community, the employer and yourself. With that in mind, if you sustained a new injury and you have had prior disabilities or prior injuries, those prior injuries and disabilities if within the Umbrella of the SIBTF standards will not take away from your full protections. The additional costs of benefits paid by SIBTF are placed upon all employers, both insured and self-insured.

The Subsequent Injuries Benefits Trust Fund (SIBTF) application requires information on your current job injury and the preexisting condition that has caused disability. Your case may require a medical expert to provide information to the court. The SIBTF will have to pay for your medical expert, you may need the medical expert who understands Labor Code §4751. Depending on the elements of your case, you may need an attorney.

The Rand Corporation is a research entity that was requested by California Department of Industrial Relations to study the Subsequent Injuries Benefits Trust Fund. The Rand Study of June 20, 2024 found the total number of applications of Subsequent Injuries Benefits Trust Fund has increased overall between the years of 2010 to 2022. In 2010 there were 6,621 Subsequent Injuries Benefits Trust Fund cases pending, and starting in the year 2023, there were 15,000

pending cases. The back and spine problems were the highest level of cases that were filed on. The psychiatric problems were the second highest level of cases filed on, the knee and GERD was the third highest, and heart and hypertension was the fifth most common cases filed on.

The level of payments of Subsequent Injuries Benefits Trust Fund has increased from \$13.6 million in 2010, to \$232 million in 2022. The volume for cases filed in the period of time for 2010 to 2014 was approximately 850 per year, and the volume for cases filed for the year 2022 was approximately 2,481.

The Rand Corporation has proposed resetting the standards to qualify for the Subsequent Injuries Benefits Trust Fund. The concept is to make a smaller window of opportunity for eligibility for the Subsequent Injuries Benefits Trust Fund. The eight proposals that are suggested by the Rand Corporation impacts many factors such as the preexisting permanent disability and definition of that, removal of common chronic conditions and the methodology used to measure levels of impairment that was refined by the *Todd vs. SIBTF*, case number ADJ745146 on June 23, 2020. These eight amendments suggested by the Rand Corporation lowers the benefits that are currently available. These recommendations remove some substantial coverage to the injured worker that was found a necessity by the 1945 Legislation to protect the California worker.



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NOTICE: *Making a false or fraudulent Workers' Compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.*

