California's Workers' Compensation Death Benefits: Leaving the Unmarried and Childless Behind

Maya Mouawad
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I. INTRODUCTION

In their attempts to cope with the premature loss of a loved one, families often are left with many questions unanswered. One question with which a grieving family should not have to struggle, particularly in situations where the death resulted from a work-related injury, is why they have to compete with the State1 to obtain their loved

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1. In a case of fatal injury that may be compensable under the workers’ compensation law, the claims administrator must advise the employee’s dependents of the status of any benefits to which they
one’s death benefits. This is especially true where the workers’ compensation system is supposed to help the families of the deceased worker, not challenge them.\(^2\)

On April 5, 2012, 21-year-old Caltrans subcontractor, Connor Penhall, was killed by a drunk driver while performing freeway construction work within a signed-off area of Interstate 10 between La Puente and the 605 freeway.\(^3\) Connor was survived by his parents, with whom he lived; he was not married and did not have any children. Much to the Penhall’s surprise, the State of California promptly contested their right to Connor’s workers’ compensation death benefits. The State ultimately prevailed, pursuant to a 2006 decision in *Six Flags*.\(^4\)

The *Six Flags* case involved similar facts. On April 9, 2004, 21-year-old Bantita Rackchamroon,\(^5\) a ride operator at Six Flags Magic Mountain in Valencia, sustained a fatal injury after being struck by a moving roller coaster during a routine test run, approximately 30 minutes prior to the park’s opening to the public.\(^6\) At the time of the accident, Bantita was not married and had no children or legal dependents.\(^7\)

The administrator of her estate filed a claim for workers’ compensation death benefits, on June 1, 2004, to be paid to her estate pursuant to California Labor Code section 4702(a)(6)(B), in effect at the time.\(^8\) Six Flags’ insurer, Pacific Employers Insurance, asserted during the workers’ compensation proceedings that section 4702(a)(6)(B)\(^9\) was unconstitutional because it extended the death benefits to the “estate” of the

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2. The instructions on filling out claim forms as described on the Department of Industrial Relations’ website state that “The Death Without Dependents Unit, although technically an ‘employer,’ acts only in the capacity of an ‘other applicant.’ Currently, they are registered as noted *supra* as a ‘person’ with the role of ‘other applicant.’ Please use ONLY this entry when adding them as a case participant and as an applicant on the ADJ Home Page. Each of the three (3) OD [‘Office of the Director Of’] Legal offices listed *supra* handles DWD cases. Be sure to add the correct OD Legal office, based on the venue of the case, as a case participant, and as an applicant on the ADJ Home Page. Their ‘DOB’ is 01/01/1950.” Consequently, the Death Without Dependents Unit of the Department of Industrial Relations, also referred to as the Legal unit, is comprised of trained attorneys whose primary objective is to assert the State’s right to the deceased worker’s death benefits by challenging dependency claims raised by individuals related to or claiming to be dependent upon the deceased worker. [DIR.CA.GOV](https://www.dir.ca.gov/dwc/eams/eams-lc/EAMS_ClaimsAdmins_Reps.htm#4) (last visited Dec. 29, 2014).


6. Six Flags, 51 Cal. Rptr. 3d at 379; *See also* Malnic & Becerra, *supra* note 5.


8. *Id.*

9. [CAL. LAB. CODE § 4702(a)(6)](https://www.ca.gov/wp-content/uploads/2015/08/LAB_CompCode.pdf), Section 4702(a)(6)(B) provides that “For injuries occurring on or after January 1, 2004, in the case of no total dependents and no partial dependents, two hundred fifty thousand dollars ($250,000) [shall be paid] to the estate of the deceased employee.”
Nevertheless, the judge ordered Pacific Employers Insurance to pay $250,000 to Bantita’s estate and $125,000 to the California Department of Industrial Relations’ Death Without Dependents Unit, pursuant to California Labor Code section 4706.5. Following the denial of its petition for reconsideration, Pacific Employers Insurance filed a petition for writ of review, contesting the double award. In the ensuing appeal that took place on November 7, 2006, Justice Kitching of the California Court of Appeal, Second Appellate District, declared section 4702(a)(6)(B) unconstitutional, annulled the $250,000 award to Bantita’s estate, and affirmed the $125,000 award to the Department of Industrial Relations.

J. Kitching’s opinion in *Six Flags*, was a landmark decision. It struck down a statute that awarded death benefits to the “estate” of a worker for injury resulting from work-related accidents under the workers’ compensation system on grounds that “estate” is not a named beneficiary in the California Constitution, article XIV, section 4. The holding in that case was in part based on the argument that California voters supported Proposition 13 in 1972 which amended the state’s Constitution by adding the State of California (“State”) as a class of beneficiaries when a worker dies with no dependents.

In his 2006 *Six Flags*, opinion, J. Kitching cites to the 1982 holding in *Travelers Ins. Co. v. Workers’ Comp. Appeals Bd.*, which in turn quotes language from the 1972 ballot pamphlet that led to the passage of Proposition 13’s constitutional amendment. However, a closer examination of the 1972 ballot shows that the terms “dependents” and “legal heirs” were both present in the text of that ballot measure. In the general elections ballot of 1972 entitled “Proposed Amendments to Constitution,” under the section entitled “WORKMEN’S COMPENSATION,” the term “dependents” was used in the “General Analysis by the Legislative Counsel” section, whereas the term “legal heirs” was used in the “Argument in Favor of Proposition 13,” the section designed to explain to voters what their “YES” vote on Proposition 13 would accomplish.

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10. *Six Flags*, 51 Cal. Rptr. 3d at 378.
11. *Id.*
12. *Id.* The $125,000 was ordered payable to the Department of Industrial Relations, Death Without Dependents Unit, pursuant to section 4706.5.
13. CAL. LAB. CODE § 4706.5(a) was enacted pursuant to Proposition 13, which was voted into the California Constitution in 1972, and provides that workers’ compensation death benefits be paid to the state when the worker has no dependents. *See also* Vincent L. Jamison, *Review of Selected 2007 California Legislation: Labor: Workers’ Compensation Death Benefits: Family First*, Code Sections Affected Labor Code sections 4702, 4706.5 (amended). AB 2292 (Montanez); 2006 Stats Ch. 119, 38 McGREGOR L. REV. 239 (2007).
14. *Six Flags*, 51 Cal. Rptr. 3d at 378.
15. *Id.* at 389.
16. *Id.* at 387.
17. *Id.* at 378.
18. *Id.* at 383.
19. *Id.*
20. WORKMEN’S COMPENSATION, California Proposition 13 (1972), http://repository.uchastings.edu/ca_ballot Props/764.
21. *Id.*
Proposition 13 was supposed to mean. There was no negative opinion included in the ballot that would present an opposing view on the proposed amendment. In reading this proposed amendment, it is likely that the average voter, looking at the differing terminology used in the ballot, understood “dependents” and “legal heirs” as having interchangeable meanings. At the very least the verbiage used in the text of the measure raises the question as to which one did the voters actually approve: the provision listing the “no dependent” condition or the one discussing the “no legal heirs” condition attached to the payment of death benefit awards within the workers’ compensation scheme.

Ultimately Proposition 13 of 1972 was passed by a 72.6 percent voter approval, or a total of 5,632,332 votes in favor of the measure, thus effectuating a constitutional amendment to California’s provisions governing the State’s workers compensation system, adding the State of California as a third class of beneficiaries. Currently, article XIV section 4 of California’s Constitution reads as follows:

The Legislature shall have power to provide for the payment of an award to the state in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer. (emphasis added)

This provision’s explicit assignment to the State, of the workers’ compensation death benefits of a deceased employee who is not married, has no children, and no legal dependents, effectively disenfranchises a class of people who cannot have dependents even if they desired to. For example: same-sex partners living together, individuals with certain physical disabilities that prevent them from procreating, unmarried couples living together, adult children still living with their parents, those who wish to assign their parents, stepchildren, or other family members as beneficiaries, as well as those caring for their elderly parents but without a formal legal dependency relationship, just to name a few.

To further complicate the issue, the amended constitutional provision gives the State complete discretion in whether and how to use those funds. The use of the term “may” in the language of the California Constitution, suggests that the funds are not required or mandated to be used to assist any employer in covering extra compensation for subsequent injuries suffered by their employees where the resulting total injuries

22. Id.
23. Id.
25. Id.
26. A “subsequent injury fund” is designed to assist employers in situations where the employee suffers a permanent disability as a result of a second work-related injury under the terms of section 4751 of the California Labor Code which provides that “If an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent
exceeds the single employer’s liability. This adds to the deceased worker’s family’s pain by directing the worker’s death benefits back to his or her employer and away from the family who is directly and more deeply impacted by the worker’s death.

Society’s views, as reflected in our laws, have made significant progress towards providing equality in terms of how benefits are generally distributed, so as to avoid arbitrary distinctions. With that in mind, it is perplexing to learn that today, in California, losing one’s life on the job prompts an award of death benefits only if that person has legal dependents, such as a spouse earning below a specified amount, or minor children living in the home, or other narrowly defined classes of dependents. In contrast, employees suffering other less severe injuries are eligible for disability benefits under the workers’ compensation program regardless of their household situation.

Parents, adult children, and other individuals who would typically be either classified or named as beneficiaries under inheritance or intestate succession laws are excluded from workers’ compensation death benefits unless they can meet the high burden of proving their legal dependency upon their deceased loved one. This position appears to be inconsistent with how California traditionally has been on the forefront of promulgating laws based on social policies that benefit people equally, regardless of their ability to marry or have children. There is an abundance of examples of groundbreaking state laws that were passed to provide protection for employees, and promote equality in the workplace. Examples include laws promoting workplace safety, and equal pay for equal work.

27. CAL. CONST. art. XIV, § 4.

28. Occupational Safety & Health Administration, OSHA.GOV, https://www.osha.gov/dcsp/osp/stateprogs/california.html (last visited Dec. 29, 2014) (Such as California’s occupational safety and health plan which was approved by the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) in 1973).

29. CAL. LAB. CODE § 1197.5 (which provides that “[n]o employer shall pay any individual in the employer’s employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where the payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex.”).
A recent example is the recognition of same-sex marriage. In 2008, California was the second state in the nation, following Massachusetts, to recognize same-sex marriage. Same-sex marriage in California was legal until it was curtailed with the passage of Proposition 8, which was later ruled unconstitutional, thus reinstating the State’s recognition of same-sex marriages.

Consistent with those notions, this article proposes a reconsideration of the manner in which death benefits within the context of workers’ compensation are evaluated. This article addresses the inconsistent ballot language concerning Proposition 13 Workmen’s Compensation and discusses the high burden of proof families are required to meet in determining their legal dependency upon the deceased worker under current workers’ compensation laws. In addition, this article examines the pros and cons of dependency requirements, and proposes modifications to the current archaic-based workers’ compensation death benefit allocation.

The article begins with a brief legislative background on the particular statutes addressing death benefits within the context of workers’ compensation followed by a discussion of the current requirements for establishing dependency for purposes of receiving workers’ compensation death benefits. The analysis then proceeds to expounding reasons the removal of “estate” from the list of beneficiaries went practically unchallenged. The article then concludes with proposed solutions to the current process of allocating death benefits following a fatal occupational injury.

II. LEGISLATIVE BACKGROUND: THE WORKERS’ COMPENSATION SYSTEM

The workers’ compensation system was first introduced in the United States over 100 years ago, in 1902, in the State of Maryland. A parallel program covering federal employees working in the railroad industry, known as the Federal Employers Liability Act (“FELA”) was passed in 1908. Currently, federal employees’ work-related accidents are regulated under the Federal Employment Compensation Act

30. *In re Marriage Cases*, was overruled by a popular referendum, Proposition 8, that amended the California Constitution to allow marriages only to opposite-sex couples. 43 Cal. 4th 757 (2008). However, Proposition 8 was later ruled unconstitutional. See *Hollingsworth v. Perry*, 133 S.Ct. 2652 (2013).
32. *Id.*
33. *See* 45 U.S.C. § 51 (2014) (which covers federal railroad employees and requires proof of employer’s negligence as initially approved in April 22, 1908 and again in January 16, 2014; the law provides in relevant part that “[e]very common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories... shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee’s parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.”).
while non-federal employees follow their individual state laws regarding workers’ compensation benefits.

The basic premise common to both federal and state workers’ compensation programs is to provide employees injured in the course of their employment with timely compensation, without the need to resort to costly and laborious litigation, through a no-fault-based system that bars suits by the employees under the tort law of negligence against their respective employers, in exchange for said compensation.35

Individual states have adopted slightly varying forms of workers’ compensation laws that require all employers36 to provide their employees with a no-fault benefits program, or an equivalent program, for injuries incurred while acting within the scope of their employment.37 These programs are entirely regulated by the respective states and the requisites for benefit distribution vary statutorily from one state to the other.38

A. California’s Workers’ Compensation Named Classes of Beneficiaries

California’s workers’ compensation system was initially voted into the State’s Constitution in 1911;39 several amendments later followed which shaped it into its current form.40 Under California’s originally adopted workers’ compensation program, only two classes of beneficiaries were recognized: (1) workers and (2) dependents.41

The State of California did not become a named beneficiary of workers’ compensation death benefits until 1972, when California voters approved Proposition

35. 5 U.S.C. § 8101 (2014). (provides that “In the case of employees of the federal government . . . express provisions of the statutes establishing these [workers’ compensation] systems provide that the right to receive benefits for work-related injuries is the exclusive remedy of the employee, thereby barring any suit under the Federal Tort Claims Act.” Similarly, Cal. Lab. Code section 3601 in reference to work-related injuries provides that “the right to recover such compensation, pursuant to the provisions of this division is . . . the exclusive remedy for injury or death of an employee against any other employee of the employer acting within the scope of his or her employment.”).
36. A minority of states such as Texas allows an opt-out option altogether, thereby allowing the employer who chooses to opt-out the option to take on the risk of liability for any work-related injuries. See Labor and Employment Workers’ Compensation, Texas Wide Open for Business, http://www.texaswideopenforbusiness.com/guide/labor/workers-compensation.php (last visited Dec. 29, 2014).
38. Id.
39. “Every employer except the state” is required to secure the payment of compensation either by obtaining workers’ compensation insurance from one or more insurers authorized to write workers’ compensation insurance in this state or “by securing from the Director of Industrial Relations a certificate of consent to self-insure which may be given on furnishing proof satisfactory to the Director of the employer’s ability to self-insure and to pay any compensation that may become due to its employees.” CAL. LAB. CODE § 3700.
40. California’s workers’ compensation law was initially adopted in October 10, 1911, as Cal. Const. art. XX, section 21; it was later repealed and reenacted in 1976 as Art XIV, section 4. CAL. LAB. CODE § 3700. SCA 20 (Grunsky) (as amended May 22, 1972) is the constitutional amendment which would grant authority to the Legislation providing for the payment of death benefits to the Subsequent Injury Fund Whenever deceased employees have no dependent heirs.
41. Six Flags, 51 Cal. Rptr. 3d at 378.
13, a constitutional amendment which expanded the classes of beneficiaries of workers' compensation benefits to three, adding the State as the third class of beneficiaries. The general election of 1972 resulted in a 72.6 percent ‘YES’ vote and a 27.4 percent ‘NO’ vote for Proposition 13.

B. Inconsistent Terminology for Proposition 13 on 1972 Ballot

What Proposition 13 actually proposed to California voters is subject to debate. The finalized verbiage of the ballot measure highlights the several advantages of the proposition, with one key advantage being an annual positive fiscal impact on the State's budget in the range of $1.8 million. However, the language used in the text of the measure pertaining to what precisely was being proposed appears to send conflicting messages to the voters. On the one hand, in the “General Analysis by the Legislative Counsel” section of the ballot, the measure explained that “no dependents” is the prerequisite to making the State of California the recipient of a deceased worker's death benefits; the section reads as follows:

A “YES” vote on this legislative constitutional amendment is a vote to grant the Legislature the power to provide for the payment to the state of workmen's compensation awards on the death of employees injured in the course of their employment who have no dependents, and to permit such awards to be used to pay extra compensation for “subsequent injuries,” which is now paid from the General Fund.

On the other hand, in the “Argument in Favor of Proposition 13” section of the ballot measure, the term “legal heirs” is used in a similar context, appearing to mean that “no legal heirs can be found” would be the prerequisite for the state to receive those benefits. This appears to suggest that an effort will be made to locate such heirs. The section reads as follows:

Under existing law the death benefits from Workmen’s Compensation award, which normally are paid to legal heirs, are paid to no one if legal heirs cannot be found. A YES vote for Proposition 13 would allow the Legislature to enact laws which would require that such benefits be paid to a state fund when no legal heirs can be found.

(emphasis added)

The application of one criterion (“no dependents”) over the other (“no legal heirs can be found”) has widely varied legal consequences. By law, a dependent is

42. WORKMEN'S COMPENSATION, supra note 20.
43. Six Flags, 51 Cal. Rptr. 3d at 383 (explaining that the amendment authorized the imposition on employers to pay applicable workers' compensation death benefits to the state arising out of the death "of an employee without dependents").
45. WORKMEN'S COMPENSATION, supra note 20.
46. Id. See also Six Flags, 51 Cal. Rptr. 3d at 381.
47. Id.
48. Id.
"[o]ne who relies on another for support; one not able to exist or sustain oneself without the power or aid of someone else."\textsuperscript{49} By the same token, a legal dependent is "[a] person who is dependent according to the law; a person who derives principal support from another and [usually] may invoke laws to enforce that support."\textsuperscript{50}

Conversely, an heir is defined as "[a] person who, under the laws of intestacy, is entitled to receive an intestate decedent’s property. — Also termed legal heir; heir at law; lawful heir; heir general; legitimate heir."\textsuperscript{51} Under these definitions, a legal heir may or may not be a dependent in the eyes of the law. More people are generally considered “legal heirs” than “dependents” simply because a group of “heirs” typically includes individuals beyond immediate family or household members, whereas “legal dependency” is a more intimate relationship.

It follows that, in the context of workers’ compensation laws, fewer workers who suffer fatal injuries would fall into the no-dependent category if the “legal heirs” terminology was applied as opposed to the “dependent” terminology.

Accordingly, whether California voters who participated in the 1972 general elections read the full text of the measure and whether their vote was swayed by the use of one terminology over the other will forever remain unknown because no evidence exists to prove one theory or the other. However, the fact remains that those incompatible terms were an essential part of the ballot measure and their presence and use in the text of the ballot raises some doubts as to the true validity of the outcome of the election and, consequently, the subsequent amendments it prompted.

C. The Impact of Proposition 13 on California Labor Codes

Proposition 13 was passed by the voters and the California legislature promptly exercised their new constitutional authority and enacted AB 749 in 1973.\textsuperscript{52} In AB 749, the legislature added section 4706.5 to the California Labor Code section 4700\textsuperscript{53} and amended Labor Code section 4702, originally enacted in 1937, by inserting subdivision 4702(a)(6)(B).\textsuperscript{54} An overview of the two sections follows.

The newly added section 4706.5 provided that, when a worker with no dependents suffers fatal injuries in the course of her employment, the employer (or its insurer) is to pay a lump sum death benefit in the amount of $125,000, pursuant to Labor Code section 4700, to the Death Without Dependents Unit ("DWD") of California’s Department of Industrial Relations.\textsuperscript{55} A claim by a dependent must be filed within one year of the worker’s death and within 240 weeks of the injury that led

\textsuperscript{49} Black's Law Dictionary (9th ed. 2010).
\textsuperscript{50} Id.
\textsuperscript{51} Id.
\textsuperscript{52} Cal. State Archives, Secretary of State. Statement of Vote, General Election, November 7, 1972, p.29, Compiled by Edmund G. Brown Jr., Secretary of State.
\textsuperscript{53} Six Flags, 51 Cal. Rptr. 3d at 389.
\textsuperscript{54} Id.
\textsuperscript{55} The benefits amount was later increased to $250,000 for injuries incurred on or after January 1, 2004. Cal. Lab. Code § 4702. See also Cal. Lab. Code § 4706.5 which reads as follows:
to the death; both time requirements must be met in order for the claim to proceed, with narrow exceptions granted for certain types of injuries such as asbestosis, and HIV-related deaths of health care and public safety employees. This time limitation is strictly applied and, as such, the absence of such a claim within the prescribed

(a) Whenever any fatal injury is suffered by an employee under circumstances that would entitle the employee to compensation benefits, but for his or her death, and the employee does not leave surviving any person entitled to a dependency death benefit, the employer shall pay a sum to the Department of Industrial Relations equal to the total dependency death benefit that would be payable to a surviving spouse with no dependent minor children.

(b) When the deceased employee leaves no surviving dependent, personal representative, heir, or other person entitled to the accrued and unpaid compensation referred to in Section 4700, the accrued and unpaid compensation shall be paid by the employer to the Department of Industrial Relations.

(c) The payments to be made to the Department of Industrial Relations, as required by subdivisions (a) and (b), shall be deposited in the General Fund and shall be credited, as a reimbursement, to any appropriation to the Department of Industrial Relations for payment of the additional compensation for subsequent injury provided in Article 5 (commencing with Section 4751), in the fiscal year in which the Controller's receipt is issued.

(d) The payments to be made to the Department of Industrial Relations, as required by subdivision (a), shall be paid to the department in a lump sum in the manner provided in subdivision (b) of Section 5101.

(e) The Department of Industrial Relations shall keep a record of all payments due the state under this section, and shall take any steps as may be necessary to collect those amounts.

(f) Each employer, or the employer's insurance carrier, shall notify the administrative director, in any form as the administrative director may prescribe, of each employee death, except when the employer has actual knowledge or notice that the deceased employee left a surviving dependent.

(g) When, after a reasonable search, the employer concludes that the deceased employee left no one surviving who is entitled to a dependency death benefit, and concludes that the death was under circumstances that would entitle the employee to compensation benefits, the employer may voluntarily make the payment referred to in subdivision (a). Payments so made shall be construed as payments made pursuant to an appeals board findings and award. Thereafter, if the appeals board finds that the deceased employee did in fact leave a person surviving who is entitled to a dependency death benefit, upon that finding, all payments referred to in subdivision (a) that have been made shall be forthwith returned to the employer, or if insured, to the employer's workers' compensation carrier that indemnified the employer for the loss.

(h) This section does not apply where there is no surviving person entitled to a dependency death benefit or accrued and unpaid compensation if a death benefit is paid to any person under paragraph (6) of subdivision (a) of Section 4702.

56. Cal. Lab. Code § 5406, as referenced in CA Law of Employees Injuries and Workers Comp section 9.01, which provides in relevant part: “An application for the collection of a death benefit on behalf of an applicant must be filed and a hearing held before a workers’ compensation judge within one year after the date of death and within 240 weeks from the date of injury. Both of these time requirements must be satisfied. The Appeals Board has held that a widow’s February 2007 claim for death benefits stemming from her husband’s December 2006 death was barred by Labor Code Section 5406, when the decedent died and the claim was filed more than 240 weeks after the 2001 heart injury incurred during the decedent’s employment as a firefighter. The Board, while finding that the decedent’s heart injury proximately caused his death, was bound by the prevailing interpretation that “date of injury” as used in Labor Code Section 5406 refers to the decedent’s date of injury for purposes of commencing the 240-week period, rather than to the date of injury that dependents suffered by virtue of loss of support, and that the 240-week period set forth in Labor Code Section 5406 is not a statute of limitations subject to being tolled until the surviving dependent discovers that death was industrially related.” Cal. Lab. Code § 5406.

period may be used by the State to establish that there are no dependents and that the State should be entitled to the deceased worker’s death benefits.

In that same Bill (AB 749), the legislature added subdivision (a)(6)(B) to Labor Code section 4702, which provided that a death benefit amount of $250,000 is to be paid to the “estate” of the deceased employee in the event she left no total or partial dependents behind.58

The concurrency of these two provisions created a claim of right in both the estate of the deceased employee as well as the State of California, to the deceased employee’s workers’ compensation death benefits, and, consequently created a double payment obligation for employers (or their insurers), for a total amount of $375,000 ($250,000 to the estate plus the $125,000 to the State).

D. California Legislature Enacts AB 2292

Efforts to reconcile the two conflicting labor code provisions did not materialize until June 2006, when the California legislature proposed AB 2292.59 As approved by California’s then Governor Arnold Schwarzenegger,60 AB 2292 expanded the class of beneficiaries by establishing a right in non-dependent heirs to receive workers’ compensation death benefits through the deceased workers’ estate.61 The language of AB 2292 provided somewhat of a resolution as to who is eligible for death benefits when a worker with no dependents suffers a fatal industrial injury, and eradicated the dual-payment mandate.62 The language seemed to suggest that the “estate” of the deceased worker gets priority in terms to receiving the death benefits associated with the accident, and that the payment of such benefits to the State of California are released only as a last possible alternative, in the event no other eligible beneficiaries were identified.63 AB 2292 reads in relevant part:

This bill would specify that those death benefits shall be paid to a surviving dependent, personal representative, heir, or other person entitled to compensation under specified workers’ compensation laws, notwithstanding any amount of the deceased employee’s accrued and unpaid compensation that is paid or owing to a surviving dependent, personal representative, heir, or other person entitled to a deceased employee’s accrued and unpaid compensation . . . This bill would specify that those requirements to pay the department, when the employee does not leave surviving any person entitled to a dependency death benefit, shall not be applicable if a death benefit or

58. “For injuries occurring on or after January 1, 2004, in the case of no total dependents and no partial dependents, two hundred fifty thousand dollars ($250,000) to the estate of the deceased employee.” CAL. LAB. CODE § 4702(a)(6)(B).
59. AB 2292 was approved by the Governor July 24, 2006.
62. Id.
63. Id.
accrued and unpaid compensation is paid to the estate of the deceased employee.\textsuperscript{64} (emphasis added)

Proponents of AB 2292 hailed the bill for putting forward the true intent of the legislature of placing the interest of the deceased’s family ahead of the State Department of Industrial Relations’ financial interests.\textsuperscript{65} Workers’ compensation insurance plan providers were split on the matter: some welcomed the end of the dual payment mandate, while others challenged the constitutionality of the bill and asserted that the California Constitution must be amended prior to giving “heirs” a right to receive the deceased worker’s death benefits.\textsuperscript{66}

Ultimately, AB 2292 was short lived; it swiftly became obsolete following J. Kitching’s declaration in \textit{Six Flags} of the unconstitutionality of California Labor Code section 4702(a)(6)(B), and effectually removed “estate” and “heirs” from the class of beneficiaries while retaining “dependents” instead.\textsuperscript{67}

\textbf{III. CURRENT ELIGIBILITY REQUIREMENTS FOR ESTABLISHING DEPENDENCY}

The right to workers’ compensation death benefits either by dependent(s) or the State must be asserted.\textsuperscript{68} The burden appears to be heavier on the dependents than it is on the State to establish the right to such benefits. The simple absence of a claim by a dependent of the worker within “a reasonable time” can be used by the State to establish that there are no dependents.\textsuperscript{69} This begs the question of whether such an interpretation contradicts the language used in the voter ballot: “can be found.” The ballot language may mislead one to believe that there will be some effort undertaken either by the employer, or by the Department of Industrial Relations to locate a dependent of the deceased worker. Absent a legally recognizable marriage or minor children living in the home at the time of injury, it is extremely difficult for other members of a worker’s family to establish a dependency relationship that would outweigh the State’s constitutional right to the benefits.

\textsuperscript{64} \textit{Id.}


\textsuperscript{66} \textit{Id.}

\textsuperscript{67} \textit{Six Flags}, 51 Cal. Rptr.3d at 378.

\textsuperscript{68} Cal. Lab. Code section 5406 sets forth the time limitations within which a claim for death benefits may be filed. \textit{See note} 54 supra. \textit{Cal. Lab. Code} § 5406.

\textsuperscript{69} State of California v. Workers’ Comp. Appeals Bd., 161 Cal. Rptr. 821, 824 (Ct. App. 1980) (where Justice Scott of the Court of Appeals of California, First Appellate District, Division Three, states “the absence of claimed dependency within a reasonable time of the employee’s death is evidence of no dependency (see Lab. Code section 4706.5, subd. (g)), and as such would satisfy the State’s burden of proof.”).
The California Legislature and judicial system have attempted to define the parameters within which dependency can be determined for purposes of receiving workers’ compensation benefits. Currently, California’s workers’ compensation law provides, generally, that establishing dependency status sufficient to receive death benefits is not exclusively confined to having kinship, with the deceased employee, within the traditional categories of family relations recognized under the common law.\textsuperscript{70}

In 1921, the Supreme Court of California, in \textit{Moore}, Hon. William A. Sloane\textsuperscript{71} in an En Banc decision, articulated three “vital conditions” requisite to determining whether a claimant should be considered a “dependent” upon a deceased employee and consequently eligible to receive the ensuing death benefits.\textsuperscript{72} The first required condition is that the person claiming dependency (“claimant”) be “actually dependent” upon the decedent for support.\textsuperscript{73} The second required condition is that the claimant be a “member of the [deceased] worker’s family or household.”\textsuperscript{74} The third required condition is for the claimant to have had a “relation or connection” with the deceased worker that was “sustained in good faith.”\textsuperscript{75} These required conditions were subsequently codified in California Labor Code section 3503 in 1937.\textsuperscript{76} Section 3503 defines “dependent” as a person who either has one of the family or household relation to the deceased worker specified in the statute or who is a dependent “in good faith” upon the deceased worker.\textsuperscript{77} A brief discussion of each of the three required conditions set forth in \textit{Moore} and the corresponding labor code provisions and court interpretations follows.

\textsuperscript{70} Moore Shipbuilding Corp. v. Indus. Accident Comm’n, 196 P. 257, 258 (Cal. 1921) (“where the Supreme Court of California held that a child who is not blood-related to the deceased employee but was living with him, along with the child’s mother outside of a marital relationship, is eligible to receive death benefits following the death of the worker and such an award was justified by the fact that the worker had voluntarily and in good faith cared and provided for the child for a year prior to his fatal work-related accident. The court explained that ‘the workmen’s compensation system was designed to establish the authority of the legislature to pass laws making the relation of employer and employee subject to a system of rights and liabilities different from those prevailing at common law.’”).

\textsuperscript{71} William A. Sloane was born in 1854; he was appointed to the superior court in 1911, to the District Court of Appeal in Los Angeles in 1919, and to the state Supreme Court in 1920. He became the Presiding Justice of the newly created Fourth District Court of Appeal in 1929. San Diego History Center, SANDIEGOHISTORY.ORG, http://www.sandiegohistory.org/bio/sloanewa/sloanewa.htm (last visited Dec. 29, 2014).

\textsuperscript{72} \textit{Id.}

\textsuperscript{73} \textit{Id.}

\textsuperscript{74} \textit{Id.}

\textsuperscript{75} \textit{Id.}

\textsuperscript{76} Cal. Lab. Code section 3503 was enacted in 1937 and provides that “No person is a dependent of any deceased employee unless in good faith a member of the family or household of the employee, or unless the person bears to the employee the relation of husband or wife, child, posthumous child, adopted child or stepchild, grandchild, father or mother, father-in-law or mother-in-law, grandfather or grandmother, brother or sister, uncle or aunt, brother-in-law or sister-in-law, nephew or niece.” \textsc{Cal. Lab. Code} § 3503.

\textsuperscript{77} \textit{Id.}
A. Establishing Dependency: “Actual Dependency” Prerequisite

The first requirement to proving dependency as set forth in Moore Shipbuilding is that the claimant establishes “actual dependency” upon the deceased worker. The term “actual dependency” may appear on its face to be a plain and straightforward proposition, but as it turns out, it is far from it, and is where many death benefit claims meet their demise.

The determination of actual dependency, initially articulated in Moore, is codified in California Labor Code sections 3501, 3502, and 3503. According to these Labor Code provisions, for a claimant to be considered an “actual” dependent of the deceased worker, the claimant must present evidence as to the extent to which he or she was in fact dependent upon the deceased worker; specifically, that the claimant was either totally dependent or partially dependent upon the deceased worker at the time the injury occurred. Either of these two levels of dependency, total or partial, requires a showing, by a preponderance of the evidence, of actual contribution and receipt of financial support from the deceased worker prior to the injury that ultimately led to the worker's death.

The inquiry as to actual dependency, however, does not stop here. The Supreme Court of California has often declared claimants who have “actually” and systematically received contributions from the deceased worker ineligible to receive death benefits when considering the amount of contribution received in light of the claimant's overall source(s) of income. In a 2007 decision, for example, Hon. Sidney Chapin of the California Court of Appeal determined that the parents of a deceased worker failed to meet their burden of proof regarding their dependency upon their son, despite showing that their son regularly sent them money, because they did not actually need or rely on the son’s contribution to sustain their livelihood. The decision manifests the difficulties in establishing “partial dependency” despite proof of partial financial support.

White was based on Owl Drug Co., a seminal case dating back to 1925. In Owl Drug, Hon. Craig of the Court of Appeal of California, Second Appellate District,
denied a mother claiming partial dependency, workers’ compensation death benefit award, on grounds that she did not ask her son for the money he sent her, and because she did not depend on the intermittent amounts he sent.85 The court found the mother was not a partial dependent despite facts showing the mother lived with another one of her children and could not afford to live on her own.86

However, California Labor Code section 3501 does provide an exemption from requirement of proving actual dependency for two classes of claimants, by creating a conclusive presumption that the two classes of claimants are wholly dependent upon the deceased worker.87 The first class of claimants are minor children of the deceased worker who were domiciled with the decedent at the time of the injury,88 or any children, within statutorily defined parameters, who are mentally or physically incapacitated.89 The second class of claimants is the deceased worker’s surviving spouse who earned no more than thirty thousand dollars ($30,000) in the twelve months preceding the injury.90 No such presumption is applicable to any other classes of claimants, and as such all others must establish actual dependency at the time of the worker’s injury.91

85. Id.
86. Id. at 306 (where Hon. Craig explained that “[t]he whole theory of the compensation act as to death cases is that the dependents of the employee killed through some hazard of his employment shall be compensated for the loss of the support they were receiving from him at the time of his injury. This necessarily means that the death benefit must be computed on the rate of contribution at that time. It is the rate which is the measure of the loss, not the gross amount which the decedent has happened to pay through any past year, or through any other period of time.”).
87. Cal. Lab. Code § 3501 was originally enacted in 1937 and provides that “[a] child under the age of 18 years, or a child of any age found by any trier of fact, whether contractual, administrative, regulatory, or judicial, to be physically or mentally incapacitated from earning, shall be conclusively presumed to be wholly dependent for support upon a deceased employee-parent with whom that child is living at the time of injury resulting in death of the parent or for whose maintenance the parent was legally liable at the time of injury resulting in death of the parent.” Initially, section 3501 provided a conclusive presumption of total dependency for the widow. In 1977, however, the California Supreme Court held that provision void due to its unconstitutional discrimination against surviving husbands, who were granted no such legislative presumption, and employed women. The legislature responded to the decision by amending section 3501 in 1989 to its current form, which establishes a conclusive presumption of total dependency for the surviving spouse of a deceased employee if the surviving spouse earned $30,000 or less in the 12 months immediately preceding the death. This provision creates a presumption in favor of qualifying widows and widowers, but, for those who earned more than $30,000 in the twelve months before the death, the dependency issue must be determined as a question of fact without reliance on the statutory presumption. CAL. LAB. CODE § 3501. See 1-9 CA Law of Employee Injuries & Workers’ Comp section 9.05[3][c].
88. Cal. Lab. Code §?3501(a) provides that if the child was not living with the deceased parent at the time of the fatal injury, then the conclusive presumption of total dependency will not apply unless the parent was legally liable for the support of the child, such as where the parent has legally adopted the child.
89. CAL. LAB. CODE § 3501.
90. Id.
91. Section 3502 of the California Labor Code was originally enacted in 1937 and provides that “[i]n all other cases, questions of entire or partial dependency and question as to who are dependents and the extent of their dependency shall be determined in accordance with the facts as they exist at the time of the injury of the employee.” CAL. LAB. CODE § 3502.
“Time of injury,” not time of death, plays a critical role in the determination of dependency.\textsuperscript{92} In some instances, the time of injury and the time of death are separated by years and a person who becomes reliant on the deceased worker within the period of time that precedes death but follows the injury will not likely be found a “dependent” eligible to receive the ensuing death benefits.\textsuperscript{93}

Once actual dependency is established, the next required condition is that the claimant be either a member of the deceased’s family or household, or a member in good faith of the deceased’s family or household.\textsuperscript{94} The two types of household relation to the deceased worker are considered by the courts separately;\textsuperscript{95} only one of the two needs to be established in order to meet the eligibility requirements to receiving death benefits.\textsuperscript{96} A brief discussion of each type of dependency follows.

B. Establishing Dependency: Member of Family or Household\textsuperscript{97}

Prerequisite

The second condition required to establish dependency sufficient for determining eligibility to receiving workers’ compensation death benefits is defining the claimant’s status as a member of the deceased’s family or household.\textsuperscript{98} The court rarely engages in a discussion of whether the terms “family” and “household” as used

\textsuperscript{92} Marguerite Granell v. Indus. Accident Comm’n, 153 P.2d 358 360 (Cal. 1944). (The Supreme Court of California denied the award of death benefits to the widow of a deceased employee where the deceased employee suffered an injury in 1941, got married in 1942 and later died in 1943 due to that same injury on grounds that she was not his wife at the time he suffered said injury. The Court held that a surviving spouse “who marries an employee between the time of the occurrence of a compensable injury and death resulting therefrom is not entitled to a death benefit under the workmen’s compensation laws, as ... questions of who are dependents must be determined by the facts existing at the time of injury.” The Court explained that this is the result of an amendment to the act of 1911 that the legislature enacted in 1919 to specify that “the date of injury rather than death as the time at which the then existing facts were controlling in all cases” and that the amendment remains “substantially the same to the present time.”).

\textsuperscript{93} Id.

\textsuperscript{94} \textsc{CAL. LAB. CODE} § 3503.

\textsuperscript{95} Moore, 196 P. at 260. (The Supreme Court of California said “The two classifications here, one of persons who are in good faith members of the employee’s family or household, and the other of persons having specific relations of kinship, are clearly used in the alternative and are to be separately considered.”).

\textsuperscript{96} Harlan v. Indus. Accident. Comm’n., 228 P. 654,656 (1924). (In this decision, the Supreme Court of California affirmed an award of workers’ compensation death benefits to the aunt of a deceased worker whom she cared for and was living with since his birth. Hon. Seawell, in an en banc decision, explained that household or family membership can be established under kinship or good faith type relationship and that “if either of the two conditions or relationships described therein exist the dependent person is entitled to the benefits conferred by the statute ... If it be determined that the applicant was in good faith a member of the family or household of said employee then it becomes immaterial what the degree of relationship was, if any, that existed between applicant and said employee. On the other hand, good faith as to family or household membership is not a necessary prerequisite to the right of recovery under the relationship or kindred clause. Such right exists by force of relationship alone, if dependency is shown.”).

\textsuperscript{97} Defined as “kinship; blood relationship; the connection or relation of persons descended from the same stock or common ancestor.” \textsc{BLACK’S LAW DICTIONARY} (9th ed. 2010).

\textsuperscript{98} Moore, 196 P. at 260.
in the statute are meant to refer to different things, because, as Hon. Sloane explained in Moore, there is "little to be gained" from such discussions.99

The determination of whether the claimant is a member of the deceased worker’s family or household is narrowly and directly defined under California Labor Code section 3503 as persons holding kinship to the deceased employee.100 Section 3503 enumerates particular types of kinship used for determining dependency, namely, "husband or wife, child, posthumous child, adopted child or stepchild, grandchild, father or mother, father-in-law or mother-in-law, grandfather or grandmother, brother or sister, uncle or aunt, brother-in-law or sister-in-law, nephew or niece."101 The presence of such kindred, in addition to actual dependency, may be used to establish the claimant’s eligibility to workers’ compensation death benefits.102 Consequently, the determination of the type of kinship to the deceased employee as specified in section 3503, leaves little room, if any, to multiple interpretations; except perhaps when it comes to the dependency determination with regards to posthumous children and children born at a date after the date of the injury which ultimately led to the worker’s death.103 In such cases, legitimacy and actual dependency become the determining factors.104

C. Establishing Dependency: Non-Family Members

Alternatively, a claimant may be considered a dependent for purposes of receiving workers’ compensation death benefits if she relied in good faith upon the support of the deceased employee.105 The question of “good faith” household or family membership typically arises in quasi-marital relationships, and is reviewed on a case-by-case basis.106 Unmarried couples and children of unmarried couples fall within this category and, as such, would need to establish that they maintained a membership to the deceased worker’s household in good faith, in addition to establishing actual dependency, in order to be eligible to receive the death benefits.107

99. Id. at 259, where the court explained that “There is little to be gained by reviewing the numerous definitions given by the courts and lexicographers of the words ‘family’ and ‘household.’ They mean different things under different circumstances. The family, for instance, may be an entire group of people of the same ancestry, whether living together or widely separated; or it may be a particular group of people related by blood or marriage, or not related at all, who are living together in the intimate and mutual interdependence of a single home or household. Again, the word ‘household’ is variously used to designate people, generally, who live together in the same house, including the family, servants, and boarders, or it may be used as including only members of the family relation. It is probable that the two terms are coupled together in this statute to indicate that they are used synonymously, the “family” to include only those of the household who are thus intimately associated, the ‘household’ to exclude those of the family not living in the home.”

100. CAL. LAB. CODE § 3502.

101. CAL. LAB. CODE § 3503.

102. Harlan, 228 P. at 656.


104. Id.

105. CAL. LAB. CODE § 3502.

106. 1-9 CA Law of Employee Injuries & Workers' Comp section 9.05[2].

Determining whether a good faith relationship exists with is somewhat abstract and, as such, this relationship is a more complicated type of relation upon which to determine dependency. A determination that such relation exists has largely been left up to the discretion of the courts to be determined on a case-by-case basis.\textsuperscript{108}

In \textit{Taylor v. Industrial Accident Commission}, the California Court of Appeal, Third Appellate District, held that a woman who lived with the deceased worker for a period of eighteen years, believed she was his wife because he had told her "we are just as good as being married—it is a state law,"\textsuperscript{109} and who was entirely dependent upon him prior to his fatal injury, was not a member of the household within the provisions of the workers' compensation act.\textsuperscript{110} The court in \textit{Taylor} noted that the putative widow "was not foreign-born, uneducated, a minor, or otherwise unable to appreciate her legal relationship to the employee."\textsuperscript{111} Conversely, in \textit{Temescal Rock.}, the Supreme Court of California determined that a woman who had been living with the deceased worker without a marriage license was entitled to benefits as a dependent in good faith because both the man and the woman were foreign-born and "unacquainted with the legal requirements of marriage in this country."\textsuperscript{112}

The question of whether minor children, not kindred of the deceased worker, can be determined to be members of the deceased worker's household in good faith, and therefore, presumed to be wholly dependent upon him or her, is also determined on a case-by-case basis. However, the courts seem to lean toward awarding benefits to minor children living in the same home as the deceased worker as opposed to denying them such benefits solely on the basis of the nature of the relationship between their parents.\textsuperscript{113} In \textit{Moore}, for example, the minor child of a non-dependent woman with whom the deceased worker was living without a marriage license was determined to be

\textsuperscript{108} \textit{Moore}, 196 P. at 259. The Court explained that "As has been pointed out, the benefits of this law are not provided as an indemnity for negligent acts committed or as compensation for legal damages sustained, but is an economic insurance measure to prevent a sudden break in the contribution of the worker to society, by his accidental death in the course of his employment. From this economic standpoint it makes no difference whether the workman's earnings are being distributed to those whose support he has voluntarily assumed, or to those who are legally entitled to such support. In either case they are the reliance of dependent members of society. The only difficulty is that where there is no legal dependence it is harder to determine that the contribution of support has been made so as to constitute the recipient a dependent in good faith."

\textsuperscript{109} \textit{Taylor}, 21 P.2d at 472. In denying the death benefits, J. Pullen stated that "[h]ere, as already pointed out, petitioner, although a woman of thirty-five, born in California, and to some extent at least had attended schools and churches in her youth, began living with a man, and after a week of such relationship, accepted without a question the statement that they were as good as married, is scarcely entitled to full credit. The Commission was justified in holding she did not come within the provisions of the act."

\textsuperscript{110} \textit{Id.} at 473.

\textsuperscript{111} \textit{Id.}

\textsuperscript{112} \textit{Temescal Rock Co. v. Indus. Accident. Comm'n.}, 182 P. 447,449 (Cal. 1919). (Hon. Shaw explained that "[i]t is true that if the provision is loosely administered, it may give rise to great abuses. Persons consciously living in illicit relations may endeavor to take advantage of the situation for their own gain. But for the proper administration of the law in this respect the state depends upon the Industrial Accident Commission. It will, of course, exercise the greatest care to require strict proof of entire good faith in such cases. There is nothing in the evidence in the present case to indicate that there was any ground for a charge of bad faith in the conduct of the parties at and prior to the time of the accident.").

\textsuperscript{113} \textit{Moore}, 196 P. at 259.
a member of the worker’s household in good faith and therefore awarded compensation. By the same token, in *Federal Mutual*, a minor child, who was living in the same home as the employee, was held by the Supreme Court of California to be a dependent in good faith of the deceased employee, and therefore entitled to compensation following his death, despite the fact that her mother was not legally married to the employee, and was living with him without being legally divorced from the minor’s biological father.

IV. Why Removal of “Estate” from Death Beneficiaries’ List Went Unchallenged

A. Death Benefit Payment Lower When the State is the Recipient

At the time Proposition 13 was passed in 1972, the benefit amount payable to the State in cases where no dependents file a claim within the prescribed period of time was $25,000. That amount was revised later to $125,000 to the State when no dependents are found, and $250,000 to dependents of the deceased if a surviving total

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114. *Id.* at 260. (Justice Olney, concurring with Judge Sloane, stated that “in view of the finding of the Commission that Bauer had assumed the relation of father toward the child, the character of his relations with the child’s mother is a false quantity in the case. The final question was, Did Bauer stand in loco parentis toward the child, had he genuinely assumed toward the child the relation of father? If he had (and the commission finds he had and the finding is supported by the evidence), it makes no difference how or why he had. The relation was there and by virtue of it the child was a member of his household in good faith, and that is enough.”).

115. *Fed. Mut. Liab. Ins. Co. v. Indus. Accident. Comm’n*, 202 P. 664, 668 (Cal. 1921) (J. Lawlor of the Supreme Court of California determined that the child is a member of the household in good faith because the facts of the case at bar showed that the deceased employee “treated Bertha as if she were his own child and that he provided for her as a father might. It is ample to support the finding of the Industrial Accident Commission that Bertha Fern Gnash was wholly dependent on Thompson and was a member of his household. There can be no question but that she regarded him as a father and that she was in good faith a member of his household.”).

116. 1-9 CA Law of Employee Injuries & Workers’ Comp section 9.02[4][d.2] states in relevant part that “For injuries occurring on or after January 1, 2004, if there are no total or partial dependents, the death benefit is $250,000, payable to the estate of the deceased employee. However, the court of appeal has held this provision unconstitutional, finding that the constitutional enabling provision did not identify estates as a class of beneficiaries entitled to workers’ compensation death benefits. Rather, the enabling provision identified only three classes of beneficiaries of workers’ compensation benefits, workers, dependents, and the State of California. Moreover, said the court of appeal, the Supreme Court had declared two prior statutes unconstitutional for going beyond the constitutional enabling provision. Finally, noted the court of appeal, the drafters of the enabling provision did not intend to include estates as a class of beneficiaries within the definition of dependents, so that under present law those estates were not dependents, and the policy underlying the workers’ compensation scheme of compensating injured workers and those dependent on them supported the conclusion that Labor Code Section 4702(a)(6)(B) was unconstitutional, and its legislative history supported the same conclusion. Subsequently, the court of appeal annulled an Appeals Board order requiring an employer to pay a full $125,000 death benefit to the Death Without Dependents Unit pursuant to Labor Code Section 4706.5(a), when the court found that the employer had paid a deceased employee’s mother/heir death benefits of $104,208 pursuant to Labor Code Section 4702(a)(6)(B). The employer had ceased such payments following the decision in Six Flags, discussed *supra*. Because death benefits were paid to the decedent’s heir pursuant to Labor Code Section 4702(a)(6)(B) before it was declared unconstitutional, the Death Without Dependents Unit was not entitled to be paid any death benefit.”
dependent is found eligible to receive the benefit. Paying the State clearly presented an advantage to privately-owned workers' compensation insurance carriers as it essentially reduced the amount they would have to pay by half. In addition, it is important to note that the largest carrier of workers' compensation insurance in California is the state itself under its insurance arm, State Compensation Insurance Fund ("State Fund"). Effective January 1, 2004, the amount the state receives has been revised again to an amount equal to what a total dependent would have received, i.e., $250,000.

B. The Number of People Impacted is Relatively Small

California reported its highest number of fatal occupational injuries in 2012, second only to the state of Texas, according to the most recent statistics published by the U.S. Bureau of Labor Statistics of the U.S. Department of Labor.

<table>
<thead>
<tr>
<th>States with Five Highest Number of Fatal Occupational Injuries - 2012</th>
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<tbody>
<tr>
<td>State</td>
</tr>
<tr>
<td>Texas</td>
</tr>
<tr>
<td>California</td>
</tr>
<tr>
<td>Florida</td>
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<tr>
<td>New York</td>
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<tr>
<td>Pennsylvania</td>
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</tbody>
</table>

According to the preliminary 2012 data published by the U.S. Bureau of Labor Statistics, 7.7 percent of the 4,383 fatal occupational injuries reported nationwide took place in California. This amounts to 339 workplace deaths. Though it may seem like a small number, it averages to nearly one work-related fatal injury daily. The statistics on whether those who suffered from a fatal work-related injury had

117. Id.
118. "Established in 1914 by the state legislature State Fund has operated for 100 years, is California's largest provider of workers' compensation insurance ... With approximately 130,000 policyholders, more than $1.2 billion in premium, and nearly $20 billion in assets." STATE COMPENSATION INSURANCE FUND, http://www.statefundca.com/home/history/index.html (last visited Dec. 29, 2014).
119. 1-9 CA Law of Employee Injuries & Workers' Comp section 9.02[4][d.2].
121. Id.
122. Id.
123. Id.
124. The number of work-related deaths averages to 0.92 per day.
dependents are not readily available;\textsuperscript{125} however, the U.S. Bureau of Labor Statistics provides a breakdown by age.\textsuperscript{126} The 2012 preliminary numbers are as follows:

### Fatal Occupational Injuries in California by Age - 2012\textsuperscript{127}

<table>
<thead>
<tr>
<th>Age</th>
<th>Total</th>
<th>Approx. Percent of Total Number of Occupational Injuries</th>
</tr>
</thead>
<tbody>
<tr>
<td>19 &amp; under</td>
<td>—</td>
<td>—%</td>
</tr>
<tr>
<td>20 to 24 years</td>
<td>24</td>
<td>7%</td>
</tr>
<tr>
<td>25 to 34 years</td>
<td>55</td>
<td>16%</td>
</tr>
<tr>
<td>35 to 44 years</td>
<td>62</td>
<td>18%</td>
</tr>
<tr>
<td>45 to 54 years</td>
<td>94</td>
<td>28%</td>
</tr>
<tr>
<td>55 to 64 years</td>
<td>64</td>
<td>19%</td>
</tr>
<tr>
<td>65 years and over</td>
<td>40</td>
<td>12%</td>
</tr>
<tr>
<td>Total</td>
<td>339</td>
<td>100%</td>
</tr>
</tbody>
</table>

The two subgroups that are most likely to not have legal dependents are the youngest (age twenty to twenty-four years) and the oldest (age sixty-five years and over).\textsuperscript{128} The amalgamation of those two subgroups adds up to sixty-four cases in 2012, or approximately nineteen percent of total claims where the death benefits are paid out to the State. This number, however, may underestimate the number of such claims because it does not include those in the other age groups who may not have dependents for a variety of reasons, such as by choice or inability to procreate, or because the families settled.\textsuperscript{129}

\textsuperscript{125} A letter requesting information under the California Public Records Act of California Government Code section 6250 et seq., was sent to the Legal Unit, also known as the Death Without Dependents Unit, asking for the number of annual cases, over the past three years, where there was a final determination that the deceased worker had no dependents, and as such the State received the death benefits amount. Unfortunately, the only data that the Legal Unit was willing to share is the total number of fatal industrial injuries, whether or not there were dependents. Those numbers were consistent with the ones reported by the U.S. Bureau of Labor Statistics.


\textsuperscript{127} Id.

\textsuperscript{128} This is because they either are likely not married and with no minor children or widowed/divorced with adult non-dependent children.

\textsuperscript{129} In one of the many telephone conversations with the Director of the Legal Unit, Marlene Obando, she mentioned that even if she were to share the requested data (\textit{see supra} note 123), those numbers would not be accurate because they include cases where families have settled with the State in order to avoid a court battle.
V. PROPOSED SOLUTIONS: REVISITING PROPOSITION 13 AND DEPENDENCY REQUIREMENTS

The area of workers' compensation is complex. It is part and parcel of a long history of promulgating state laws protecting employees' rights without creating an undue burden on employers. Though state statutes addressing workers' compensation benefits are intermittently amended, they seem to have maintained a rigid core configuration that does not mesh well with modern laws grounded on social policies placing state citizens' interests ahead of the government's interests. No easy solution exists to the quandary a family faces when the life of a loved one is abruptly cut short by a fatal occupational injury. The family often finds itself wedged between coming to grips with the reality of their loss and battling the state with all of its resources over the death benefits. Therefore, it behooves the legislature to reevaluate the seemingly-antiquated criteria of determining dependency for purposes of disbursement of workers' compensation death benefits, and to give priority to family members over the State.

Several steps can be taken to achieve this goal. A sound starting point would be to look back and critically review Proposition 13 and its purported positive impact on the State's Subsequent Injury Benefits Trust Fund. Additionally, broadening the definition of "dependents" for purposes of workers' compensation death benefits would provide employees the option, if they so desire, to take steps necessary to ensure their loved ones are taken care of should the unfortunate occur. A discussion of each of these two propositions follows.

A. Revisiting Proposition 13 and Its Purported Financial Benefits to the State

Proposition 13, as well as the initial court interpretation of California Labor Code section 4702(a)(6)(B) which allowed benefits to be paid to the estate of the deceased, warrants reconsideration to better align it with California's current social and economic policies. The primary advantage of Proposition 13 as advanced by the California legislature rests on its fiscal benefit to the State, estimated at $1,800,000 per year. The money is to be deposited into the Subsequent Injury Benefits Trust Fund, which represents an additional government source of compensation to workers for injuries suffered following an existing disability or impairment which results in a permanent disability of at least seventy percent. The fund also serves as a

130. Examples mentioned earlier in this comment include California's occupational safety and health plan which was approved by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) in 1973. Occupational Safety & Health Administration, OSHA.GOV, https://www.osha.gov/dcsp/osp/stateprogs/california.html (last visited Dec. 29, 2014). See also CALIFORNIA LABOR CODE SECTION 1197.5 (which addresses equal pay for women in the workplace).
131. WORKMEN'S COMPENSATION, supra note 20.
mechanism to alleviate concerns employers may have about being held liable for the combined potential effects of future injuries when hiring workers with pre-existing injuries.133

This positive fiscal impact, or savings to the state, of $1.8 million annually was highlighted as the key benefit of Proposition 13 and articulated in the ballot measure itself as well as in the Senate Constitutional Amendment, SCA 20, endorsed by the authors of the measure, State Senator Donald L. Grunsky and Assemblyman Frank Murphy, Jr.134 The number is calculated based on an estimated average annual number of total job-related deaths of 725 at the time Proposition 13 was placed on the ballot.135 Senator Grunsky and Assemblyman Murphy further estimated that ten percent of those total occupational fatalities, or seventy-two, involved no-dependents.136 Based on the applicable statutory amount of $25,000 in death benefits, the estimated revenue to the State’s workers’ compensation Subsequent Injury Benefits Trust Fund was estimated at $1.8 million per year.137 In today’s dollars, the $1.8 million fiscal benefit initially outlined in Proposition 13 would equate to approximately $10.2 million.138 This is approximately what the savings amount should be today in order to maintain the same level of advantage to the state as the one set forth before the voters when the proposition was passed.

Arguably, this does not appear to be the case today. Assuming the state’s ten percent estimate still holds true, and based on the table summarizing the number of fatal occupational injuries in California in 2012 in section IV(B) supra, there would have been nearly thirty-four incidents of fatal occupational injuries to workers without dependents where the State received the death benefits. Based on that estimate and the current benefit amount of $250,000 per occurrence, the state would receive an amount of approximately $8.2 million.139 This falls short of where the purported benefit would be, based on Proposition 13’s initial estimate, by nearly $1.9 million, or nineteen percent. This is also despite the astronomical jump in the amount of death benefits payable to the state from $25,000 in 1972 when Proposition 13 was passed, to its current $250,000, as of January 1, 2004.140 The purported financial benefit to the State must be revisited in light of the growing costs and resources the State has put forward in order to assert its right to death benefits, such as the cost of litigating fatal work injury cases and establishing and maintaining the Death Without Dependent Unit.

Furthermore, an additional disadvantage to the current statutory scheme governing workers’ compensation death benefits is its negative impact on insurance

133. Id.
135. Id.
136. Id.
137. Id.
139. Calculation is based on 34 cases multiplied by $237,650 ($250,000 discounted by three percent as required by Lab. Code section 5101(b) which provides that any lump sum payment must be discounted at an interest rate of three percent per annum.) Cal. Lab. Code § 5101(b).
140. 1-9 CA Law of Employee Injuries & Workers’ Comp section 9.02[4][d.2].
providers. When an insurance provider is paying death benefits to the State, the amount of the death benefit has to be paid in full and in a lump sum, discounted by three percent.141 Contrast that with the fact that death benefits payable to an eligible dependent of the deceased worker are to be paid in installments, spread over several years.142 This discrepancy may lead to a rise in workers’ compensation insurance cost in order for insurers to recover the added expense. The compounded impact of the rise in the amount of death benefits payable to the state and the lump sum payment requirement present sizeable financial disadvantages to insurance providers.143 This should prompt insurance companies to push for a legislative revision of the death benefits scheme by California’s Legislature.

B. Restoring the Definition of “Dependent”

Proving dependency for purposes of receiving workers’ compensation death benefits is an arduous hurdle for grieving family members to overcome. Absent a legally recognizable relation or dependent minor children living in the home at the time of injury, it is extremely difficult for family members of the deceased worker to establish a level of dependency that would outweigh the State’s constitutional right to the benefits. This level of proof appears to be in apposition with the original language used in the ballot measure containing Proposition 13 which used varying terms when referring to eligible beneficiaries; specifically, the terms “dependents” and “legal heirs” were both present in the text of the ballot.144 Consistent with the ballot’s language are the statutes enacted shortly following the passage of Proposition 13 which allowed legal heirs to receive the death benefits of the deceased worker.145 This is evidenced in the language used in section 4702(a)(6)(B) which included the “estate” of the deceased worker as eligible recipients to the worker’s death benefits.146 Notwithstanding, the subsequent declaration of section 4702(a)(6)(B)’s unconstitutionality in the Six Flags decision147 and language used in the statutes that

141. See Cal. Lab. Code § 4706.5(a) (which provides that if there are no surviving dependents or heirs, the employer must make a lump sum payment to the Department of Industrial Relations equivalent to the total dependency benefit that would be payable to a surviving spouse with no dependent minor children). See also Cal. Lab. Code § 5101(b) (providing that any lump sum payment must be discounted at an interest rate of three percent per annum).

142. Cal Lab. Code § 4702(b) provides that unless the Appeals Board orders otherwise, the death benefit is payable in weekly installments at a rate of no less than $224 per week, to be made at least twice each calendar month, in the same manner and amounts as temporary disability indemnity would have been paid to the employee. Cal. Lab. Code § 4702(b).

143. Id.


145. This is evidenced by the language of section 4702(a)(6)(B) which provides that “For injuries occurring on or after January 1, 2004, in the case of no total dependents and no partial dependents, two hundred fifty thousand dollars ($250,000) [shall be paid] to the estate of the deceased employee.” Cal. Lab. Code § 4702(a)(6).

146. Id.

147. Six Flags, 51 Cal. Rptr. 3d at 389.
followed that declaration, restricted a deceased worker's beneficiaries only as legal "dependents."148 This begs the question as to whether those later statutes reflect the true legislative intent of the original drafters of Proposition 13 and the true desire of the voters who supported that measure during the 1972 general elections.

Conversely, fewer obstacles are placed in the State's way when asserting its right to the death benefits.149 Although the right to workers' compensation death benefits either by dependent(s) or the State must be asserted in a timely manner,150 the State's burden is met simply if no dependents come forward within "a reasonable amount of time."151 Once again the issue of whether this represents the intent of the drafters of Proposition 13, and the voters who supported the measure is raised.

This practice appears to be in opposition with the language used in the ballot measure that explicitly declares the State is to receive the death benefits "when no legal heirs can be found."152 The implication that an effort will be made to locate "legal heirs" is perhaps one of the reasons no counter-argument to Proposition 13 was presented in the ballot.153 The ballot measure seems to have covered all grounds, from making dependents and legal heirs eligible to receive death benefits, to the implication that an effort will be made to locate them,154 and yet the current statutes governing death benefits, and the manner in which they are disbursed are contrary to what was purported in the ballot measure. When an occupational death occurs, the State’s Death Without Dependents Unit promptly moves to assert the State’s right to the death benefits, and challenges all claims of dependency, leading many family members who may qualify as partial dependents to settle with the State to avoid a painful and costly legal battle.155

VI. CONCLUSION

There is a general maxim of the law that provides in essence that "[w]hen the reason of a rule ceases, so should the rule itself."156 Proposition 13’s key purported fiscal benefit to the State’s budget does not appear to be materializing any longer. Additionally, the State’s strong challenge to legal dependency claims is inapposite California’s leading social policy of placing people’s interest ahead of the government’s.

The time has come for California to address the current body of law governing eligibility for death benefits under workers’ compensation from this perspective. The

148. See generally CAL. LAB. CODE §§ 4700-4709 and 3500-3503.
150. CAL. LAB. CODE § 5406.
153. Id. Note the absence of a counter-argument to the ballot measure.
154. Id.
155. See cases cited supra note 119.
156. CAL. CIV. CODE § 3510.
mechanism to bringing the applicable statutes back to what the drafters of Proposition 13 originally intended requires nothing short of a ballot measure.\textsuperscript{157} Given the relatively small number of impacted families, such a measure would only be successful if backed by the influential power of insurance companies. Such an initiative would help grieving families in their healing process and assert California's position as a leader in legislative enactments based on social policy. Unfortunately, until then, California laws provide no solace to the Penhalls and other similarly-situated families.

\textsuperscript{157.} \textit{Six Flags}, 51 Cal. Rptr. 3d at 383.