The Avoidable Death of Michael Wagner



The world of human resources, occupational health and safety (OHS), and workplace management is full of policies, paperwork, and procedures that require great attention to detail while also maintaining empathy for every worker on the job. This often requires you to sacrifice one for the other – crunching numbers and reviewing time-off requests may drain your mental and emotional capacity to fully address the complex inner workings of your employees' wellness on and off the worksite. However, a recent story shared by the New York Times highlights why every worker and every case deserves your undivided attention. Compliance and diligence are professional duties. Compassion is something that you, as an employer, should practice every day. In doing so, you may be saving someone's life.

Michael Wagner's Tragic End

When Brittany Wagner's father, Michael Wagner, committed suicide, he left her and her sister, Jacilyn, no fewer than 694 videos detailing his battle with workers' compensation, employment laws, and dismissal that led to his demise. He had been recording these videos in secret to document his struggle with government programs that are supposed to help workers who are injured on the job. Michael began his battle with workers' compensation on May 2, 2000, after suffering a debilitating injury on an Ohio job site. Since his death on February 10, 2018 – one week before his 58th birthday – Brittany has worked tirelessly, raising money and bringing a documentary to life to prevent fatalities like her father's – fatalities entirely preventable in a working, just system.

Born one of ten children in Cincinnati, Ohio, Michael Wagner came from a humble upbringing and worked as a carpenter. "I was a strong worker, paying my taxes and supporting my girls. When I was happy and successful, I was on top of the world. I was on the beam crew, and they put me on a 66-foot telescoping man lift. The lift had been making noises but we were told we had to use it, so me and the other guy got in it. It popped and we just dropped."

What makes Michael's case so complex is that he didn't break any bones. He didn't even walk away with a bruise or cut on his body. Test after test came back negative for any external or internal damage – and when a worker looks "able to work", they are typically expected to work. Unfortunately, Michael was in constant, horrific pain. Full-body stabbing, needles in hands and feet "like my flesh is being ripped off of my bones" was haunting him 24/7. However, it

wasn’t the physical pain that killed him – it was the battle he endured for a decade to be seen and accommodated as a disabled worker.

Michael applied for workers’ compensation to cover his medical expenses and lost wages while he attempted to recover and figure out the cause of his tremendous suffering. While he waited for his claim to be processed, he went back to work. “I didn’t want to lose my job. I was a single parent. But my employer challenged the claim – they lied and said I never told them that my back was hurting. They accused me of faking my own injuries simply because I returned to work after the accident. I was penalized for trying to tough it out.” Described by Brittany as “destitute from day one”, Michael didn’t have the luxury to rest and recover, so his health and autonomy was a ticking time bomb. He hired a lawyer to fight back.

Michael never stopped his effort to change the way the system processed and accepted claims – even writing letters to governors and the president, stating that “workers should not have to make a choice between paying for medical treatments and being able to eat.” Michael saw more than 20 doctors to assess his ailments from all areas of expertise. He was eventually diagnosed with chronic pain syndrome and deterioration in the discs of his spine. He had two major back surgeries, but he still kept working.

There was one last beacon of hope for Michael – medical marijuana. He was first prescribed opioids but he disliked how they “made him feel like a zombie”, whereas marijuana eased his pain. Even though medical marijuana had recently been legalized in Ohio, actually smoking it was still considered a sign of opioid abuse. The irony was not lost on Michael when the marijuana he was consuming to avoid abusing opioids showed up on a drug test during a routine medical check-up and his doctor dropped him as a patient. “The only thing that helped me feel like I wasn’t dying was the marijuana. I just wanted to feel like myself again, and the government punished me for it.” Michael managed 40 phone calls to find his last pain management doctor, 10 years of pain and denial, and two young girls raised with periodic help from his family until he could not endure any longer. Some may see his ending as the ultimate surrender, when truly the one thing Michael refused to do was give up. That same resilience now lives on through his daughter, who continues his fight to right the wrongs he faced.

“Maybe part of my story will help shed light on things that need to be addressed. This struggle cannot be for nothing,” he says in his final video. If workers’ compensation was easier to access and properly funded – and if its difficult application process and numerous cases were taken seriously – Michael’s life could have been saved. No worker should have to choose between tending to their own health or making a living. There has recently been a proposed bill by Senator Blessing in Ohio, the state in which Michael lived and died, where paid leave is guaranteed for workers dealing with medical issues or family responsibilities. This legislation would have been life-changing for Michael, even though it does not address the hoops he had to jump through and hardships he had to endure.

When speaking with Brittany, I see Michael’s fortitude and humour in her. Even at the most somber moments, she finds a way to laugh. Reminiscing over her dad’s innate tenderness, unrelenting tenacity as a worker, and his unique way of nurturing, she says with a smile, “He was a big, brash teddy bear of a man, honestly. He was a single parent who raised my sister and I, giving us a fun,

colourful upbringing in ways that adult me cherishes. He had a perpetual mindset of never wanting us to do without, and even when he was in the throes of terrible pain and gruelling shifts, he made us a hot breakfast every morning before school. And knew everyone at Kroger by name. The guy who wasn't afraid to embarrass me, picking me up from sleepovers blasting Barry White with his shirt off, yelling "Ándale! Ándale!" He made every weekend special before we were "too cool" for it. My father was complicated and contradictory and completely, unapologetically himself. And he always showed up when it mattered. He was a friendly face to everyone always and despite everything, he always tried to lend a hand."

Michael Wagner at work

Where Workers' Compensation & Employers Failed

Before workers' compensation was implemented decades ago, workers were stuck paying their own medical bills and looking for other sources of income if they were too injured to work. Those with the conviction and resources to even attempt to sue their employer typically lost in court. President Theodore Roosevelt implemented state safety nets, making it compulsory for companies to pay for workers' compensation. Initially, many workplaces supported this effort as it eliminated employee lawsuits seeking damages for work injuries.

Eventually, states began undermining the importance of workers' compensation – reducing benefits and denying claims in gargantuan numbers. This made things cheaper for employers, but hell for employees. In one video, Michael states: "You come home and pass out from exhaustion, get two to three hours of sleep, and do it all over again the next day. I was crying putting my socks on because I was in so much pain, but I had no choice. You are on your own out there as a worker."

The construction company that Michael was [allegedly] working for at the time of his injury is a still-operating, heavy-civil contractor specializing in bridge and marine construction – dangerous work that should be closely monitored with the utmost protections in place for workers. The employer appears multiple times in OSHA's indexed accident records database, so to prevent a tragedy like this from happening at your workplace, take steps to prevent committing the same violations Michael's employer during his time on the jobsite:

1. **Using an aerial lift that was already showing signs of instability.** If the boom/manlift was noticeably unstable before Michael and his coworker entered it, continuing to use it could implicate OSHA's general construction requirements for equipment inspection and removal of unsafe equipment from service. **Prevention:** Require a documented pre-use inspection before every shift. Any abnormal movement, instability, hydraulic problem, damaged stabilizer, control issue or other unexplained defect should trigger an immediate stop-work and tag-out. Stay safe on aerial work platforms.
2. **Telling workers to continue operating despite unusual noises or apparent malfunctions.** An employer cannot substitute production pressure or a

supervisor’s reassurance for required equipment safety controls. **Prevention:** Establish an explicit stop-work authority policy: unusual noises, unexpected movement, hydraulic leaks, alarms, vibration, loss of stability or malfunctioning controls mean work stops immediately.

3. **Possible failure to properly inspect the lift before employees were elevated.** OSHA specifically requires the controls of extensible and articulating boom platforms to be tested each day before use to determine that they are in safe working condition. **Prevention:** Perform regular workplace inspections.
4. **Poor coordination between simultaneous elevated operations.** On a multi-employer construction site, hazardous activities performed by one crew can expose another employer’s workers, and OSHA can assign responsibility depending on which employer created, controlled, corrected or exposed workers to the hazard. **Prevention:** Use daily coordination meetings or pre-task hazard assessments to identify overlapping work.
5. **Inadequate fall protection in the boom lift.** OSHA required employees working from aerial lifts to use appropriate restraint/fall-protection equipment; the applicable construction standard required a lanyard attached to the boom or basket. By 2000, body belts were no longer acceptable as personal fall-arrest systems, although they could still serve certain restraint functions. **Prevention:** Provide the manufacturer-appropriate personal fall-protection system, designated anchorage and trained use. Employers should also distinguish between fall restraint and fall arrest rather than assuming the basket railing alone addresses every ejection/fall hazard.
6. **Failure of competent-person oversight.** Michael’s story raises the broader question of whether anyone with appropriate authority was regularly inspecting the jobsite, recognizing these hazards and correcting them. OSHA requires frequent and regular inspections of jobsites, materials and equipment by designated competent persons. **Prevention:** Designate competent persons with genuine authority to halt operations, remove defective equipment from service, and resolve hazards.

“The name of the game is to starve you out,” he states in another video. And with this knowledge, Michael settled for a lump sum payment of $15,000. His employer denied all liability, the same potential denial that currently 22 million Americans with severe, work-affecting pain may face. Brittany mourns: “I had to watch this larger-than-life guy become so small. Watching the videos he left us…it’s like watching him slowly disappear. His fight to get help consumed his entire life.”

He then turned to a different program for help – social security and disability (SSDI). In the past few years, statistics show that over 70% of applications are denied. Staffing cuts at the Social Security Administration don’t help these numbers – meaning around 30,000 people die every year waiting for a response to their application. Michael was finally approved for disability benefits after waitlists, phone calls, and court proceedings, only to receive $18,000 a year – a fraction of what he was making working as a carpenter and nowhere near enough to support his children.

A Story We’ve Heard Before

Speaking with Brittany and learning about her dad’s story brings up many cases of legal precedent that unfortunately echo Michael’s struggles both on and off

the worksite.

- **Ohio, 1991 – Borebely v. Prestole Everlock, Inc.** Lajos Borbely suffered neck and back problems after a concussion-causing injury that later resulted in psychiatric ailments. Borbely committed suicide in 1985 after being unable to work for two years and subsequently sustaining another back injury. His widow's workers' compensation death-benefit claim was denied. The Ohio Supreme Court recognized that suicide can legally be a consequence of a compensable physical injury.
- **WSIAT Decision No. 566/21, 2022 ONWSIAT 213.** An Ontario truck driver injured his back in 2005 and developed chronic pain and permanent impairment. His loss-of-earnings benefits were terminated after the compensation system determined he "declined suitable modified work", and his claims were denied. He died by suicide in August of 2018. His widow was awarded survivor benefits, and the tribunal admitted that the worker should have continued receiving loss-of-earning benefits as *he had not actually been capable of the modified work that was proposed*.
- **New Jersey, 1981 – Kahle v. Plochman, Inc.** The worker sustained significant back and neck injuries and lived with constant pain. The tribunal concluded that his workplace injury caused depression and despair severe enough to cause his suicide.
- **Pennsylvania, 1998 – Pennsylvania Power & Light v. Workers' Compensation Appeal Board**. Donald Lechner injured his back while on the job in 1988, soon after developing chronic pain and depression. After his suicide in 1992, his employer argued that personal problems led to his early demise rather than the occupational injury he suffered. The Workers' Compensation Appeal Board awarded his widow with benefits and the Commonwealth Court affirmed.
- **California, 2015 – South Coast Framing, Inc. v. Workers' Compensation Appeals Board (Clark).** A carpenter suffered a concussion and back injuries after falling at least eight feet at work. He was prescribed several medications for his injuries and later died as a result of the combined effect of the drugs. The California Supreme Court upheld workers' compensation death benefits because the medication prescribed for his occupational injury contributed to his death.

As you can see, Michael's case is unfortunately not an anomaly. A 2019 study from New Mexico examined 100,806 workers' compensation claimants whose injuries occurred between 1994 and 2000. Researchers linked their compensation records to mortality data for as long as 20 years. Workers whose injuries were serious enough to result in lost-time benefits had a substantially high suicide mortality rate. Washington State research has published findings that workers with lost-time injuries that caused mental distress had a higher suicide mortality rate than workers with medical-only injuries: 49% higher among men and 30% higher among women. Of all U.S. suicide deaths from 2003-2014, 8.8% were committed by individuals who were living with chronic pain.

Finally, construction remains one of the U.S. occupational groups with the highest measured suicide rates. CDC's 2021 occupational analysis found a suicide rate of 65.6 deaths per 100,000 male construction and extraction workers, compared with 32.0 per 100,000 among working men overall. Among male construction labourers, the rate reached 91.0 per 100,000, and it was 86.1 per 100,000 among structural iron and steel workers. CDC

Closing Thoughts

No matter your view on social assistance, welfare, and disability benefits, the point is plain to see that all of this could have been avoided if Michael the worker was seen as Michael the human being – if his pain, the love he held for his job, and the inciting injury were taken seriously and accommodated accordingly. Michael Wagner was a worker every employer dreams of – he followed the rules, he loved what he did, and he worked through astounding pain to continue serving his community.

Providing your employees with healthcare advocates can be lifesaving care. “Millions are fighting with pain you cannot see,” concludes Brittany Wagner. “So, I ask you to believe them.” You can donate to the production of Brittany’s documentary, “One of Many”, to spread awareness about gaps in the system and how employers can do better by clicking this link.

Michael Wagner with his daughters, Brittany and Jacilyn