

## FOR IMMEDIATE RELEASE

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### Detailed Background

## **McDONALD'S CORP. CRIPPLED A POOR HISPANIC FEMALE EMPLOYEE AND THEN ABUSED THE LEGAL SYSTEM TO COVER-UP THEIR ACTS OF BAD FAITH**

***Decade-long legal battle for truth and justice raged in two courts:  
Superior Court (Mendoza vs. McDonald's Corp. Case No. CV 2000-018376) and the  
Industrial Commission of Arizona ("ICA (Claim No. 97195129312)***

In theory, at least, in Arizona (like most states) a worker who is injured on the job has the absolute right to timely medical care and disability pay. In reality, however, Arizona's worker's compensation system is consistently ranked as one of the worst in the nation, *if you are an employee*. Bad faith handling of worker's compensation claims (unreasonable denial of benefits) is systemic, and runs rampant in the Industrial Commission of Arizona ("ICA"), which was created to protect injured workers.

The worker's compensation system is routinely abused by employers, their insurance companies and defense lawyers, who are paid handsomely or profit from the unreasonable denial of injured workers' rights. In this respect, Arizona is still the wild west and employers such as McDonald's Corp. and their attorneys ride roughshod over individual rights as found during the nine-year saga of Maria Mendoza vs. McDonald's and how her rights were trampled at every stage of the process, leading to pain, suffering and permanent dysfunction.

Maria Mendoza, an Hispanic woman with a third grade education, embodies the American dream in a small way. She worked as a child through middle-age adulthood as a seasonal migrant worker, often doing other hard labor jobs to make ends meet. Like most laborers, in her life of hard work, Maria Mendoza suffered a few work injuries, from which she fully recovered. For years prior to her accident at McDonald's that would forever change her life (as described below), she had no physical disability, and was in good health.

### ***Single Mother, Eight Children***

Against all odds, and like many immigrants before her, Maria came to America as a single mother to pursue the American dream for her eight children, who are now successful adults. Her dream almost came true in 1997, when she was hired by McDonald's to work as a cook-laborer for minimum wage at a local, company owned restaurant. Maria loved her job, and was loyal and very hard working. While many would consider a dead-end and underpaid "McJob"<sup>1</sup> to be demeaning, for Maria it was a huge promotion. It was the golden opportunity to work in air conditioning, and be part of the McDonald's team, where she proudly donned a company uniform, until June 3, 1997, when she was injured on the job, suffering a contusion to her right dominant forearm. It was then and there her dream turned into nine-year nightmare of social injustice, pain and suffering – a story of psychological abuse one might find in the books of Stephen King and John Grisham. The story needs to

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be told about Maria and the light shone on a dysfunctional system that allows large corporations and their attorneys to play the system like a violin, hoping to crush the opposition, particularly when minorities are involved who don't know their rights and are easily intimidated.

McDonald's is self-insured in Arizona, thereby acting as its own insurance workers' compensation insurance company, and adjusting its own injured employee's claims. Maria's accident-injury to her arm at McDonald's was not serious. All she needed was an inexpensive 15 minute outpatient surgery for carpal tunnel syndrome (CTS), to relieve the pain she suffered from a traumatically induced compression of the median nerve. Afterwards, she would have returned to normal, and been back to work soon. That didn't happen.

### ***First Surgery Denied, All Disability Pay Benefits Cut Off***

Instead, McDonald's refused to authorize the surgery in September 1997, for no reason whatsoever; and completely cut-off her disability pay although she was on strict "no work" status by her treating board certified orthopedic surgeon. The surgeon (part of McDonald's own self-insured network of doctors), pleaded repeatedly to McDonald's to authorize the surgery and warned the company that further delay could lead to "permanent dysfunction". Still McDonald's refused.

In the spring of 1998, her benefits cut-off, in severe pain, unable to work and suffering economic hardship, the Spanish speaking only Maria Mendoza sought the assistance of attorney, Marcus Ambrose who is fluent in Spanish. Through her tears and prayers, she convinced him to take her case *pro bono* because in Arizona, unlike well-paid insurance-employer defense lawyers, a "claimant's lawyer" would not receive any legal fee, or even repayment of costs incurred for this type of injury, and medical and disability pay benefit denial no matter how unreasonable.

### ***Unethical Defense and Delays, Back Pay Denied***

After over one year of hotly contested ICA litigation and frivolous and unethical defenses interposed by McDonald's and their attorneys, Ambrose finally prevailed. In April 1999, the ICA administrative law judge (ALJ) ordered McDonald's to authorize Maria's surgery, which came 19 months too late, and ruled that the company acted in bad faith. It took Ambrose another five years of ICA litigation that led all the way to the Arizona Supreme Court just to get McDonald's to pay her back pay that had been wrongfully cut-off (amounting to \$6500.00). When the ALJ finally ordered McDonald's to pay her back six years later, McDonald's refused! The same ICA judge re-affirmed that McDonald's committed bad-faith. More ICA litigation ensued. Finally, McDonald's paid, but continued to argue in court the money wasn't due, an "overpayment." After more litigation, McDonald's finally admitted the money was due and owing all along.

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### ***McDonald's Delays, Interferes with Needed Medical Treatment***

Because of the CTS denial and 19 month surgical delay, the ignored warning of Maria's doctor about the specter of permanent dysfunction became reality. Her ongoing symptoms worsened and her care was transferred to an upper extremity expert who tried to make a diagnosis. McDonald's interfered with his recommendations by refusing to authorize diagnostic testing, outside expert consultations and even routine inexpensive conservative medical care to relieve the pain. A note from a claims adjuster at McDonald's said "medical too high." The upper extremity medical expert now diagnosed her with radial tunnel syndrome ("RTS"), and scheduled surgery. McDonald's denied the authorization for no medical or legal reason, *again!*

Ambrose continued to fight for treatment and disability pay for Maria. Next, McDonald's, in draconian abandon, decided to close the claim and cut-off all benefits because, as could best be determined, Maria didn't speak English. Ambrose protested the suspension of benefits while at the same time her doctor was repeatedly urging surgery for RTS.

More ICA litigation frivolously ensued, until the ALJ lifted the "arbitrary and capricious" suspension of benefits. Thereafter, even with medical benefits restored *again*, McDonald's denied radial tunnel surgery for Maria, resulting in more ICA litigation. Finally, McDonald's gave up and authorized the surgery some two and a half years after the diagnosis, but not before denying Maria psychological care for pain management.

### ***Disability Pay Denied, Creating Hardships***

McDonald's also repeatedly delayed and denied Maria Mendoza payment of her disability pay of \$220.00 every 14 days, which she needed to survive. The hardship almost forced her into foreclosure and she was threatened with shut off of her electricity. She survived only with her children's assistance while attorney Ambrose continued to battle for her rightful benefits and treatment. A proud and once independent woman, she never sought state or federal assistance or charity.

After two long two surgical delays for CTS (19 months), RTS (24 months), unabated severe pain and inability to work and dependency on others, her medical and psychological condition continued its downward spiral. Ambrose, who saw his client becoming increasingly desperate, pleaded with McDonald's for a referral to a psychiatric professional with expertise in depression. McDonald's refused. The treating surgeon could do no more within his limited field of expertise.

Next, Ambrose sent Maria to highly respected medical and other experts in different fields to get their opinions, including upper extremity, pain syndromes, psychologist, life care planner and vocational rehabilitation. They unanimously concluded in extensive written reports that Maria had "complex regional pain syndrome ("CRPS") and or centrally mediated pain<sup>2</sup> (formerly known as RSD) and "major depression". The doctors unanimously recommended a multi-disciplinary medical care from a team of experts including: upper extremity physician, psychiatrist, psychologist, physical therapy,

vocational rehabilitation, and above all, an expert in complex pain syndromes for the treatment of CRPS. The doctors warned that further delay would lessen any chance of salvaging Maria. Ambrose sent McDonald's the written medical reports in September 2005.

### ***Important Medical Reports, Diagnoses Ignored, Medical Care Halted***

They weren't even read by the nominal claims adjuster. Instead, McDonald's and their attorneys concluded that the best course of action for them was to once and for all close the workers' compensation claim. Effective October 1996, they did just that and all medical care ceased and all disability pay benefits were terminated. Maria's youngest daughter moved back home, interrupted her plan to reenroll in a masters program, and took on a second job at night to help her mother. All this was too much for Maria.

### ***Driven by Pain and Suffering to Consider Suicide***

With all hope gone, too much pain and suffering to bear, she developed suicidal ideation, calling the crisis hotline (Value Options) in December 2005. Before she could end her misery, Ambrose called dozens of mental health professions seeking emergency help for Maria. It was the busy holiday season and few spoke Spanish. They all refused, except one. To insure treatment, Ambrose agreed that the medical bills and anti-depressant medications would be paid by the attorney.

### ***ICA Rules for Maria and Against McDonald's One More Time on Oct. 10***

At the same time, Ambrose protested McDonald's heartless acts before the ICA, launching another hotly contested litigation that McDonald's fought for one year. In the meantime, McDonald's attorney's alleged that the payment of medical bills for needed psychiatric care by an attorney violated the code of ethics, and threatened a bar complaint. Finally, after one year, the ICA issued its decision on October 10, 2006, finding that McDonald's was wrong again: awarding Maria back pay since the cut-off, which had still not been paid. More importantly, the ICA awarded her the complete multi-disciplinary medical care to which she was always entitled. However, physicians believe this is too late; no matter what the treatment, Maria Mendoza will never be able to return to normal function.

### ***Civil Case Filed***

In 2000, as the bad faith battles were about to enter the fourth year and Mrs. Mendoza's physical and mental state continued to deteriorate, Ambrose filed civil action against McDonald's in Phoenix Superior Court. The legal delays, ongoing pain and harassment were taking their toll at the time, causing a permanent dysfunction in her right arm and mental illness. Mrs. Mendoza was diagnosed with complex regional pain syndrome (CRPS), a crippling disease of the central nervous system, and Maria also suffered from "major depression", from which she almost died. Both were caused by McDonald's and its relentless pattern and practice of bad faith delays in medical treatment and benefit denials for nine years. Ambrose felt he had to seek just compensation for Maria outside the systemically flawed ICA, which provides no meaningful remedy to right any of these wrongs<sup>3</sup>. And he hoped that the civil litigation might put a stop to McDonald's bad faith, but it didn't. They became more emboldened and vindictive before the ICA. Next,

Ambrose hoped that a jury verdict, if big enough, might send a message to McDonald's, other employers and the defense attorneys who represent them in taking on powerless injured workers who, but for attorneys like Ambrose, have no recourse to right these wrongs.

After three different ALJ's found against McDonalds from 1999, 2004 and 2006, what could the McDonald's defense raise as issues in the civil case?

### ***McDonald's Attorneys Attack the Victim and Her Attorney***

In the attack mode, after all else had failed, the attorneys alleged that Marcus Ambrose and Maria Mendoza were liars, frauds and cheats, and every ALJ got it wrong, up through and including the October 10, 2006 decision. They attempted to make their case in court by "doctor shopping" (misusing medical experts to get favorable medical opinions to justify a legal position), stonewalling discovery of the incredible trail of bad faith and pain and suffering, and, above all, making misrepresentations about the law and the facts to the judge and the jury.

### ***Playing the System Like a Violin***

Clinton E. Miller, J.D., a nationally recognized insurance consultant, published author and qualified expert, said in sworn testimony that this case ranks in "the top three worst cases of bad faith" he's experienced in his 43-year career. And the worst known case, involving an injured worker arising out of what should have been a simple straightforward workers' compensation claim.

The malicious defense put on by McDonald's and its attorneys and a system that allows defense attorneys to play the system like a violin creates a deplorable environment of continuing social injustice. The strategy is to crush the opposition, particularly when minorities are involved who don't know their rights and are easily intimidated.

The question is: if you are rich and powerful enough, can you buy justice? The answer by many legal system observers lay and expert, is "yes." Certainly, McDonald's and their lawyers believe it to be true. But Ambrose never did, at least not in ***Mendoza v. McDonald's***. He felt justice would prevail, even with nine years of delays and abuse. Hopes were becoming incredibly dimmer until the decision of Nov. 18, 2006, which may create a small glimmer of hope for future social justice as Diogenes tries to shine his light on Arizona, the ICA and the judicial system.

### ***Civil Jury Awards Damages to Maria, Cites McDonald's for Bad Faith***

On that date, the civil jury rendered its verdict: McDonald's committed bad faith, and the jury awarded \$250,000.00 to Maria Mendoza for "emotional distress" – the only compensatory element of damages they could consider. The jury was erroneously instructed by the court, at the request of the McDonald's attorneys, to only consider emotional distress for damages – not for the pain and suffering, her inability to enjoy life, her lost wages and the future crush of significant medical expenses she must endure because of this unbelievable trail of abuse.

The verdict represents a miscarriage of justice because the jury never heard the whole truth and was subjected to lies--clear misrepresentations of what occurred with the ICA. The attorneys for McDonald's maliciously defended the case by telling the jury to ignore nine years of litigation before the Industrial Commission of Arizona out of which the civil case arose, "as if it never happened." The ICA litigation included two awards and decisions finding that McDonald's had **in fact committed bad faith** in handling the claims by Mrs. Mendoza. The jury never heard those facts and many others needed to reach a fair and just decision.

Evidence shows that for more than nine years, Mrs. Mendoza was in severe and unrelenting pain, abused by McDonald's and the system, discriminated against because she doesn't speak English, and regularly denied her rights to timely medical care and disability following her accident while working at McDonald's. The bigger story is the social injustice being carried out day in and day out against unempowered, injured workers in workers' compensation claims/cases across the country. Human rights are being squashed daily and we need serious reform of the system.

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<sup>1</sup> Webster's dictionary defines a McJob as "low paying and dead-end work". Responding to the inclusion of the word by Webster's, McDonald's said: "nothing could be more wrong ...McDonald's jobs are all about opportunity for hundreds of thousands of Americans, from teens getting their first job experience and seniors supplementing their income" [reported in San Diego Tribune on 7-1-03 by Michael Stetz (619) 542.4570 [michael.stetz@uniontrib.com](mailto:michael.stetz@uniontrib.com)]

<sup>2</sup> CRPS is central mediated pain emanating from and overtaking the central nervous system. It is a progressively crippling disease that, untimely treated, can downwardly spiral to total debilitation and possibly suicide.

<sup>3</sup> Two ALJ's found that McDonald's committed bad faith. The combined penalty-remedy for this egregious wrong in the ICA: a \$500.00 payment.