

# Standing up to powerful insurance companies



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By [Fred Dickey \(/staff/fred-dickey/\)](#) | 5 a.m. Feb. 24, 2014

Dan Shea of Rancho Santa Fe is a wealthy man, which will not be news to San Diego business leaders and the rest of you won't actually care. That's important to this story only to point out that Dan has the means to sling a stone against Goliath when many of us don't even own a slingshot.

Moreover, he has something more important than a stone, something that many people have surrendered in our "whatever" culture: He has a sense of outrage.

Dan is a plain-spoken, plain-dressing, everyday kind of guy of 61. And I suspect there are those in his past who regret assuming he would be easy to out-slick in a deal.

Outrage in a man of his even temperament does not flare up, it percolates. But outrage is not emotion-lite. In Dan's case, he is deeply offended by what he considers the financial bullying of powerful insurance companies against ordinary people. Here's why:

As do most complex issues, this one started out rather simple and should have stayed so. It began in August 2011 when Dan's aunt, 83-year-old Kay Shea, was involved in an auto accident in rural Missouri. She was hit head-on by a car that crossed the line on a two-lane highway.

Photos of her vehicle look like the newscast of a car bomb or a stomped-on tin can. Her crushing injuries were as severe as you would expect. She was cut out of the car and helicoptered to a St. Louis hospital where she required a five-month stay and faces a lifetime of constant pain. The hospital bill was \$800,000.

Kay was so badly and permanently injured that she had to give up independent living and relocate cross-country to live with relatives in Spokane, Wash. It was that or a nursing home. That may be the unkindest cut of all: She became what all self-reliant persons of her generation dread — a "burden."

Today, Kay struggles with pain that races through her body like neon gas in a tube. She's by nature an active woman who took pride in being useful. She once worked in a factory and then helped her husband with their modest business.

But not all her pain is orthopedic. She'll never be the old Kay again, and that becomes another battle — depression.

She says, "I've got a strong family behind me. I've always been determined to make it, but I've not determined that I want to live. But I'm afraid I'll die if I don't (desire to live)."

As a grim coincidence, on the morning of the crash, she had received a bill of good health from her family doctor.

Neither Kay nor the family bears ill will toward the other driver, an insured, 17-year-old boy who was neither impaired nor driving recklessly. He said he was swerving wide to keep clear of a dog on the side of the road. Later, he traveled to St. Louis to personally apologize to Kay.

There was no question of fault. The boy admitted it. That shouldn't have left a whole lot to fight over. It was just another accident.

That's the simple part, and accordingly, here's the way it's supposed to work: After fault is established, a claim is filed and the insurance company negotiates a payout with the victim. If no settlement is reached, the matter goes to mediation or to court, damages are denied or awarded, everyone shakes hands, the money is paid and that's that.

Well, it used to be that.

Dan, acting for his aunt, approached the boy's insurers, Farmers Group and Nationwide, to get the matter settled without going to court.

He asked for \$1.5 million on his aunt's behalf. Out of that would have to come money for her long hospital stay and necessary health care for the rest of her life. Pain and suffering? That wasn't even mentioned.

"We figured with \$1.5 million, she would have ended up with \$500,000 after Medicare was paid back for her hospitalization and all other expenses. We would certainly supplement that. We're going to take care of her, so I wasn't overly concerned about it," Dan says.

Instead, Kay was offered \$500,000. And that wasn't just a negotiating ploy, that's what insurers were actually willing to pay. That would have meant Kay and the family would go into the red because of an accident she didn't cause.

Even considering Medicare, anyone who's had even a nibble of long-term health-care costs knows that amount would be laughable, were it not insulting. Beyond that, Dan says there was a fair-play principle violated, and that makes his fringe of hair bristle: His aunt's tragedy — as well as anyone else's — should not be manipulated for profit's sake.

For almost two years, Dan says, he got the run-around from the insurers, including a broken promise of serious mediation. Finally, he was reluctantly forced to sue the boy who caused the accident in order to get Farmers and Nationwide into court to defend their policy obligation.

In the October 2013 trial, company lawyers did what lawyers are paid to do: They threw sticky things at the courtroom wall. It didn't work. After a four-day trial and four-hour jury deliberation, Kay was awarded \$2.16 million.

But don't spend the money quite yet. The game had just started. Insurance lawyers then asked for a new trial and threatened to file an appeal. Even though neither had scant chance of success, it added the specter of several years' wait before Kay would receive her money, in the opinion of Dan's lawyer, Craig McClellan of San Diego.

The matter is still out there in limbo; Kay has received not one dime.

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We might blame insurance company lawyers for how these things happen because they're front and center, but lawyers are hired hands. They bark to their masters' commands. If an attorney protested to his bosses that playing cat-and-mouse on a legitimate claim is unethical, he might find himself chasing DUIs for a living. Besides, lawyers bill by the hour. Get it?

I've asked Farmers and Nationwide to answer specifically Dan's accusations of foot-dragging as their strategy in the Kay Shea case. Both did, kinda. First, let me tell you how it works: A PR committee guardedly crafts a response, then has it lawyered just to make sure nothing is actually said.

Nationwide: "We are aware of the situation and Nationwide is working to resolve all issues within our control."

Farmers: "Since the beginning, Farmers has worked diligently to reach a timely resolution. This is a complex case, with multiple insurers involved, but Farmers has offered the full amount allowable based on policy limits and hope (sic) to resolve this matter in the near future."

Dan responds: "If they have worked so diligently to resolve the issue, why did they force this 85-year-old, broken-bodied woman to travel 2,000 miles to a trial to find a way out of paying? And why did they plead with the jury to give her no more than \$750,000, telling them that the Shea family is already taking care of her? And why did they ask the judge for a new trial if they had offered the policy limits?"

Dan is passionate that there's a larger issue involved beyond his own family's unhappy experience. He's concerned that a cynicism has taken root among some large insurers to subvert the good-faith honoring of claims, and to use the calendar as a lever to bully ordinary people who are in need of their damages money.

A common tactic, he says, is for insurers to employ a strategy of delay, delay, delay in the expectation that the injured party will run out of time, money or patience and settle on company terms, even though the claimant might have already gotten a court judgment in his favor.

The other delay rationale is even ghoulish. If an injured person has been critically injured or is old, companies can drag things out in the realization (or expectation) that the person might die, thus reducing liability. Not very sweet, but sweetness is not a bottom line.

Dan mentions several major events where claimants were left tearing their hair out over foot-dragging: San Diego County's Cedar Fire, the Northridge earthquake and Hurricane Katrina.

California law is of little comfort to aggrieved claimants. In 1988, the state Supreme Court denied injured parties the right to sue insurance carriers for abusing the right to a prompt settlement, Dan's attorney says. There is a law on the books that allows the Department of Insurance to act against companies for deliberate dallying on handling of claims, but the lawyer says it's not enforced.

Dan is not alone. In his book, "Delay, Deny, Defend," Rutgers law professor Jay M. Feinman writes: "Your insurer's main objective is not to protect you; in fact, insurers often try to avoid ... payment of justified claims, deny payment altogether and defend their actions by forcing claimants to enter litigation."

Joanne Doroshow, executive director of the Center for Justice & Democracy, writes: "Time and again, policyholders with legitimate claims encounter nothing but resistance from insurance companies, leaving people frustrated and angry, and sometimes, destitute."

Based on his experience, Dan recommends that claim-filers hire their own lawyer to stand up to company lawyers if they think they're being given the run-around.

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What stunned Dan was the realization that multibillion-dollar companies can be common shirkers — as a matter of company policy.

"I've never seen anything like this, didn't even know it existed," he says. "In business relationships, you walk away from bad operators and bad people. I don't spend two minutes with those who are just bad people, but you don't have a choice when they've got the premiums and they've got the money."

Dan has a website that includes an interview with his aunt and the details of their long battle. It's [insurancebadbehavior.org](http://insurancebadbehavior.org). He urges, "Send (the website) to everybody you care for, and let them know they're not as safe as they thought they were. Make them question, because once everybody starts asking questions, progress will happen."

Dan is a discreet power in the Republican Party, and is well-known to Democrats as well. As you can imagine, both sides take his phone calls, and he's talking, because, ultimately, government regulates the insurance industry. However, only public pressure can cause legislatures to act against the huge lobbying budgets of insurance companies.

When he believes he's right, Dan is as unmovable as a bad neighbor. He can afford to be. He owns three tony Donovan's restaurants, two of which are in San Diego, and is co-owner of a company that owns more than 100 Hardee's restaurants in the southern U.S.

His origins also contribute to his jut-jawed determination. He was raised in Washington County, Ill., where the most imposing thing is the name. It's in the southern part of the state, the land of poor-soil farmers and empty storefronts that have surrendered to Walmart, where the richest man in town might have two new Fords, and where "stiff-necked" is an attitude, not rheumatism.

People raised in that part of the state inherit the populist tradition of native podium-pounders like William Jennings Bryan, where handshakes seal deals and fairness is a litmus test quick to turn pink. It's not just a practice, but a creed. Not everyone follows it, but the better ones do.

Dan Shea is not pursuing a fool's errand. He knows insurance companies won't reform their practices just because he's ticked off. His is a long-haul battle, and he's getting the fight started by speaking in a loud voice that he hopes will become a chorus.

Who knows where echoes get their start?

Back home in Washington County, the old boys lounging on the courthouse benches would be grinning.

Fred Dickey's home page is [freddickey.net](http://freddickey.net). He believes every life is an adventure and welcomes your thoughts and ideas at [freddickey@roadrunner.com](mailto:freddickey@roadrunner.com).

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