



Biggest
Mistakes

7

**THAT CAN WRECK
YOUR WORKERS'
COMPENSATION
CLAIM AND HOW TO
AVOID THEM**

**What Every
Pennsylvania Worker
Needs to Know about
Workers'
COMPENSATION**

MHKATTORNEYS

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DISCLAIMER

Your employer's workers' compensation plan handles many claims like yours every day. We know this because people like you call our offices every day and are shocked when we explain their rights to them. We wrote this book for YOU. This book is for information purposes only and should not be construed as legal advice. Each client and each set of facts and circumstance is different and requires a skilled attorney to apply the law and advocate for the client. Receiving this book does not imply an attorney/client relationship between Merwine, Hanyon & Kaspszyk, LLP and the reader.

After reading this book, if you have any unanswered questions, we would be more than happy to discuss your case with you and help you decide whether you need an attorney.

FOREWORD

Frankly, we wrote this book to make it easier for us to provide a premium service to our clients. An educated client is the best kind of client. We are tired of employers and their big workers' compensation insurance companies taking advantage of injured employees who feel they have nowhere to turn. You're not alone. Our firm has represented thousands of workers' compensation clients and this book is the result of their commonly-asked questions *and* the mistakes we've seen most often. Many times, our clients feel they are at the mercy of these large insurance companies and have no choice but to take what is offered or get nothing at all. You have rights, and this book was designed to educate you on those rights—in simple terms, not a bunch of legal mumbo-jumbo.

The One Thing You Should Never Allow the Workers' Comp Insurance Company to Control

The intent of this book is help consumers stop employers, employer-hired medical providers, insurance companies and insurance company lawyers from reducing, thwarting and denying injured workers the rights they have under the Workers' Compensation Act. In this book, we have outlined a number of things that you should and should not do when you have a claim. However, we asked ourselves what is the most important thought that we need to impart upon the

readers of this book. In the most general terms, **you should never allow the workers' comp insurance company to control your case.** You need to understand and stand up for your rights.

When you have been injured at work, you should never allow the workers' compensation insurance company to control you and your workers' compensation case. Insurance adjusters want you to think they are doing their jobs properly and that they are looking out for your interests. Nothing could be further from the truth. Insurance adjusters will purposely mislead and misinform you about the status of your case and about what you are entitled to in terms of medical coverage and wage loss benefits. The only way to take control of your case is to become informed. The more information you possess as to how the system works, the better off you will be. It's like playing poker or monopoly; if you don't know the rules of the game, you will never win. A qualified workers' compensation law firm can give you the information you need to take control of your case and get the benefits the law provides.

Of course, every workers' compensation claim is different. After reading this book, if you have additional questions, please feel free to call us—with no obligation!

CHAPTER ONE

THE 7 BIGGEST MISTAKES THAT CAN WRECK YOUR WORKERS' COMPENSATION CLAIM

Biggest Mistake #1: Failing to report your work injury as soon as possible.

You're a hard worker and you're an asset to your employer. You're not one of those people who try to "game" the system—but now you've twisted the wrong way and felt a pop in your back. It hurts a bit, but you think you can work through it. You've seen what happens when other employees report work injuries and you don't want the hassle; you just want this to go away. What do you do? The answer is simple; you must report your injury, preferably in writing, as soon as possible, to the person designated by your employer to take such reports. The longer you wait to report the injury, the more likely your employer's workers' compensation insurance carrier will be able to deny it happened or was related to work. Even if you don't believe you will need medical treatment or miss any time from work as a result of it, REPORT IT! A very large percentage of serious work injuries seem to be minor when they first happen, but slowly get worse and become debilitating over time. Failing to report your work injury as soon as possible can result in the workers' compensation insurance company being able to avoid paying for your medical treatment or wage loss.

Biggest Mistake #2: Taking your employer's advice about your rights.

You did the right thing by going to your supervisor and reporting your work injury, but your supervisor is being less than cooperative. Your supervisor tells you that you waited too long to report your injury, or it was your fault. Perhaps they tell you that you will get in trouble if you file for workers' compensation benefits, or a multitude of other reasons why you should not or cannot get workers' compensation benefits. Even worse, sometimes you are told to lie and say your injury didn't happen at work, or that you should file for "short term disability benefits" instead. Unfortunately, these types of responses from an employer are not uncommon. Many employers do not want to report your injury to their workers' compensation insurance company, out of fear that their insurance rates will go up. Therefore, some employers will tell you anything to avoid reporting your injury. If you try to be a "good employee" and you do not verify the accuracy of what your employer is telling you by talking to a lawyer who knows the workers' compensation law, you are most likely making a big mistake.

Biggest Mistake #3: Failing to seek timely medical treatment and failing to tell your medical provider that the injury happened at work.

You hurt your back at work, but you need your job, so you tough it out and you don't go for medical treatment right away. But the pain keeps getting worse. You cannot sleep, over-the-counter pain medication is not working, so you eventually decide to go to a medical provider for treatment.

When you go, you don't tell the medical provider that your back pain started as a result of a work injury. After a couple of months of treatment you're still not better. In fact, you're worse, and now you're scared that you won't be able to do your job anymore due to the pain. You finally decide to tell your medical provider that it happened at work. You just committed two of the most common and biggest mistakes: failing to get timely treatment and failing to tell your medical provider at your first visit that the injury was caused at work. This is critical because once a medical provider is aware of the fact that the injury happened at work, he or she must bill the workers' compensation insurance carrier, not your health insurer. But much more critical is the fact that your delay in going for treatment and your delay in telling the medical provider it was related to a work injury, gives your employer's workers' compensation insurance carrier some powerful evidence to successfully deny paying the workers' compensation benefits you're entitled to.

Biggest Mistake #4: Failing to follow your medical provider's instructions.

You reported your work injury and you started to go for treatment. The medical provider has suggested that you go for diagnostic tests, like MRIs or EMGs, and has directed that you attend physical therapy several times a week. But the pain medications that you were prescribed eased the pain and you really don't have time to, or just don't feel like going for the tests the doctor ordered or attending physical therapy, so you don't bother. Big mistake, for lots of reasons. First, your injury

may not be fully and accurately diagnosed if you don't have the tests that the medical provider ordered to be performed. Second, your injury may not heal if you don't follow your medical provider's treatment plan. Third, when you go back to see the medical provider, he or she will indicate in your records that you are non-compliant with your treatment plan, which will hurt your workers' compensation claim. Finally, and possibly most importantly, your non-compliance may make your medical provider believe that you are really not hurt, and therefore they may discharge you from treatment, release you to return back to work and discontinue your pain medication. If that happens, you will have to return to work and the pain that was controlled by the pain medications may return once you're no longer on the medication. If you then attempt to go back to your medical provider, he or she may no longer be willing to treat you due to your prior non-compliance. Bottom line: follow your medical provider's instructions.

Biggest Mistake #5: Trusting the workers' compensation insurance company.

You reported your injury; your employer did the right thing and turned your claim over to the workers' compensation insurance company. The insurer assigned an adjuster to handle your claim. You have spoken to the adjuster, who seems really nice and helpful. Therefore, you trust the adjuster and you don't think you need an attorney to get involved. Big mistake. Even though most insurance adjusters are honest, remember who they work for: the insurance company. The adjusters are

trained to earn your trust and get you to listen to what they tell you to do. What does this mean? Their job is to minimize the cost of your claim for the insurance company, and get you off of workers' compensation and back to work as soon as possible, even if you are not truly ready to go back to work. They have no legal obligation to tell you your rights. Even if they lie to you, which sometimes happens, they cannot be sued! Think about this before you decide to listen blindly to what the workers' compensation insurance adjuster tells you.

Biggest Mistake #6: Failing to get legal advice early in the process.

It is very common for injured workers to presume that since they and their boss knows that they got hurt at work, they are entitled to workers' compensation benefits. They also presume that the workers' compensation insurance company is obligated to take care of them, so there is no need for legal advice. Big Mistake. Workers' compensation insurance companies are private, for-profit businesses. They make money by taking in insurance premiums from employers and they lose money by paying out money on claims like yours. They will do whatever they are legally permitted to do to avoid paying your claim. As explained in #5 above, sometimes they will even do things that they are not legally entitled to do to avoid paying your claim. If they do, you cannot sue them for "bad faith" because workers' compensation insurance companies are immune from such law suits. Knowing this, you should seek the advice of a workers' compensation attorney as soon as possible. The longer you wait, the more damage you could

be doing to your claim. A workers' compensation attorney obligation is to you and only you (but see #7 below). It is the job of the attorney to know and explain your rights to you.

Biggest Mistake # 7: Failing to pick the right law firm to represent you.

Many attorneys advertise that they handle workers' compensation claims. Advertising and handling workers' compensation claims is not the same thing. Although there are many issues to consider when picking a firm that's right for you, there are a few important questions that you should always ask, including, how many years experience does the firm have handling workers' compensation claims? Experience matters. Also, to litigate a claim, you will almost always need to have your treating doctor's deposition as evidence. Doctors usually charge several thousand dollars per hour for a deposition. Does the firm you are considering hiring pay that cost or do they expect you to pay it, even though you are not working and have no income? This is something you need to know before you hire an attorney. Another question you may want to ask is, does the firm only represent injured workers, or do they also represent workers' compensation insurance carriers? It is permissible for lawyers to represent both insurance companies and injured workers, but it may raise questions in your mind as to where the attorney's loyalties really lie. Just asking these few questions can quickly eliminate from consideration many firms whose advertising seems impressive.

CHAPTER TWO

WHAT IS WORKERS' COMPENSATION?

The Pennsylvania Workers' Compensation Act is a no-fault insurance system of benefits designed to compensate injured workers for lost wages and medical expenses. A no-fault system means that it doesn't matter who caused the worker's injury; even if the worker caused his or her own injury, he or she is entitled to workers' compensation benefits. Therefore, if your employer tells you that your claim is being denied because your injury was caused by "your own fault," he or she is either wrong or lying to you. The only recourse an employee has against his or her employer when injured on the job is through the Workers' Compensation Act. Even if the employer or a co-employee caused the injuries, an injured worker cannot "sue" him or her for pain and suffering. This is called the "exclusivity provision" of the act.

The Act was not designed to replace all of the wages lost by the injured worker, but only a percentage of those wages in a non-taxable form of weekly or bi-weekly checks. The Workers' Compensation Act does not provide any compensation for the pain and suffering the injury has caused. It pays for lost wages and medical bills for injuries and diseases that occur as a result of employment.

Due to a perception by the Pennsylvania Legislature that workers' compensation insurance was becoming too expensive and therefore causing employers to leave Pennsylvania, the laws governing workers' compensation benefits were dramatically changed in the 1990s, in an effort to reduce employers' insurance costs. Those changes, referred to as "Act 44" and "Act 57," made it more difficult for medical providers and injured workers to be paid benefits and gave employers more control over injured workers.

Every employer in Pennsylvania is required to carry workers' compensation insurance. Some employers are self-insured, which means that they pay benefits out of their own bank accounts. Through another amendment to the law called Act 147, which was passed in 2006, the Uninsured Employers Guaranty Fund was established to pay for claims where the employer has failed to carry workers' compensation insurance.

Your right to receive workers' compensation benefits begins the moment you are hired. The Workers' Compensation Act applies to all employees, regardless of the number of workers an employer has. Further, if you are a volunteer firefighter, rescue worker, or other volunteer, you also are entitled to workers' compensation benefits for injuries that you sustain while performing these important volunteer services.

A. Suing Your Employer, Co-Employees or Other “Third Persons”

You cannot sue your employer or your co-employees if they cause your work place injury, so long as your employer carried workers’ compensation insurance coverage. You can sue your employer for their negligence and your pain and suffering if they do not have workers’ compensation insurance or are not a properly registered self-insured employer. However, you would then have to prove your employer’s negligence, i.e. you would have to prove the employer was at fault for causing your injury. Also, employers who do not carry workers’ compensation insurance are violating the law and are subject to potential criminal prosecution.

You can sue someone who is not your employer or co-employee, a “third party,” if your work injury was caused in whole or in part by that third party. For example, if you are a truck driver and you are rear-ended by someone while performing your job, if you are a construction worker who is injured because of a defective scaffold, if you are a production worker who is injured by a machine that was not equipped with proper safety guards or warning devices, if you fall on ice that is somewhere other than your employer’s premises, or if you are further injured by the medical malpractice of a doctor or hospital, you may have the ability to pursue a separate civil cause of action. In these types of circumstances, you can pursue both a workers’ compensation claim and a civil lawsuit at the same time.

If you receive money as a result of a third party lawsuit, the employer is entitled to be paid back the workers' compensation benefits you received. This is called a lien or "subrogation," which will be discussed later in this booklet.

B. Injuries Covered by the Workers' Compensation Act

The Workers' Compensation Act applies to any and all types of injuries or occupational diseases occurring during the course and scope of employment and which are related to that employment. The act applies even if you have a pre-existing condition, known or unknown to you and your employer. One of the most common examples of this relates to back and neck injuries. If you have a bad back and then you have a work injury that makes it worse, that is called an aggravation. If you have an aggravation of a pre-existing condition, you are entitled to collect workers' compensation benefits from your employer. Therefore, if your employer tells you that you are not entitled to workers' compensation because you had a pre-existing condition, he or she is either wrong or lying to you.

If your injury or occupational disease results in your death, certain members of your family may be entitled to collect workers' compensation. For example, a widow or widower or other dependent, who was dependent upon the injured worker at the time of death, is allowed to collect certain workers' compensation benefits, until that widow or widower remarries.

If you are injured either on your way to or coming home from work, your injury is normally not covered by the act. However, if your job requires you to travel, you have no fixed place of employment, or you are under a contract that covers you while on your way to and from work, then you may be covered. Also, if you are injured in a parking lot owned or provided by your employer, you may also be covered.

However, certain stress, mental, or physiological conditions caused by the work environment, which were not caused by a physical injury, may not be covered as compensable injuries under the act.

C. Employees Covered by the Workers' Compensation Act

Any employee who is injured in the state of Pennsylvania is covered under the act. An employee is any person who performs services for another for valuable consideration, i.e. paid with money. It does not matter if the job is part-time or seasonal in nature. Members of volunteer organizations such as fire departments and rescue squads are considered employees as well, even though they are not paid employees.

Federal government workers, military personnel, railroad workers, maritime workers, and National Guard members are all covered under separate and different statutory compensation laws. Longshore and harbor workers can be covered under both the Pennsylvania Workers' Compensation Act and the Longshore and Harbor Workers' Compensation Act in certain cases, but for the most part, these workers are covered under the Federal Workers' Compensation Act.

D. Occupational Illnesses or Diseases

Workers exposed to certain toxic chemicals that cause cancer or other illnesses are covered under a part of the act called the Occupational Disease Act. Injuries and illnesses covered by this part of the act include: asbestos, coal, silica, hepatitis, diseases of the heart and lungs caused by exposure to heat, smoke, or other gases, poisoning caused by methane, arsenic, mercury, lead and infections of the skin caused by chemical cutting, and chemical lubricants. Also covered under the act would be injuries caused by exposure to other health hazards including loud noise, dust, fumes, etc. If a worker's illness or disease was caused by or contributed to by these work conditions, he or she is entitled to collect workers' compensation benefits. If you feel that your medical condition was in any way related to your job, you need to discuss this with your doctor immediately. Ask your doctor if he or she agrees that your job in whole or in part caused your illness. If your doctor agrees, you must then provide your employer with immediate "notice" that your condition was caused by your job.

E. How Much Does Workers' Compensation Pay?

Workers' compensation benefits normally pay two-thirds of an employee's gross Average Weekly Wage ("AWW"), up to a maximum amount. These weekly compensation benefits are payable beginning on the eighth day of total disability. Disability is defined as an inability to earn wages. If your disability extends beyond 13 days, you are then entitled to be paid from your first day of disability. If you are normally paid on a weekly or bi-weekly basis from your employer,

your workers' compensation benefits should also be paid on a weekly basis or bi-weekly basis. Your workers' compensation check should be mailed directly to your home. You do not have to physically travel to your employer or its workers' compensation insurance carrier to pick up your check. If you are told that you must come to either place to pick up your check, the person telling you that is either wrong or lying.

An employer has 21 days from the date it is put on notice of your injury to either accept or deny your injury is work-related or disabling to you. You should therefore begin to receive checks within 21 days of the date you were last able to work, along with a Notice of Compensation Payable, or you should receive a Notice of Denial within 21 days of the date you last worked. If you do not receive your benefits within 21 days or if you receive a Notice of Compensation Denial, you should contact a workers' compensation attorney immediately to assist you in filing a Claim Petition. If your employer does not pay you and you do not receive a Notice of Compensation Denial within 21 days, you can also file a "Penalty Petition." Penalties may be awarded to injured workers for the employer's violation of the act. These penalties can be between 10% and 50% of the outstanding workers' compensation benefits owed, depending on the circumstances.

F. Notice: Reporting Your Injury to Your Employer

As soon as you are injured on the job, you should report the injury to your employer, even if the injury does not cause you to miss time from work. The notice should be given in writing,

but if that is not possible, remember that you, or someone acting on your behalf, must report that you were injured and that your injury was caused by your job. The injury must be reported to your supervisor or the person whose job it is to prepare injury reports. Telling your co-workers is not sufficient notice; you must tell your boss, supervisor or someone else who is designated to record work injuries. Also, even if you only suspect that you may have an occupational illness, you should report it.

You have 120 days to report your injury to your employer. The time begins from the date of your injury or the date you knew or should have known of an occupational illness or disease. If you do not provide notice within 21 days, you will not be entitled to recover workers' compensation benefits until the date that you actually give notice, as long as notice is given within 120 days. Failure to give notice within 120 days will bar you from collecting any workers' compensation benefits.

G. Medical Treatment for Your Work Injury

The Workers' Compensation Act permits your employer to control your post-injury medical treatment for 90 days, if your employer posts a list of at least six health care providers where the employees can easily see it at work. This list is called the "panel doctors." Further, you must have signed two "acknowledgement of rights and duties" documents both before and after your injury. If the employer did not comply with the above, you do not have to treat with the panel doctors or any other doctor referred to you by the employer

or the workers' compensation carrier. However, as a practical matter, it is very common for workers' compensation insurers to refuse to pay for any treatment with doctors other than panel doctors, even where the employer did not post the list of panel doctors.

If you do treat with a panel physician, you do have the right to obtain a second opinion from a doctor of your choice; however, the workers' compensation carrier may refuse to pay for that second opinion. If that second opinion physician recommends a different course of care that you would like to pursue, then you must proceed with getting that treatment from one of the panel doctors during the initial 90 days after the injury.

After the first 90 days, you can either continue treating with the panel doctors or seek out a new doctor with whom to treat. Once you begin treating with a doctor of your own choosing, that doctor must provide copies of your medical reports (on a prescribed medical report form) along with the bill, in order to be paid. Your employer does not have to pay for any medical bills until the proper forms and bills are submitted. The workers' compensation insurance carrier is required to pay the bill within 30 days of receiving the bill and report. You must make sure you tell your doctor about how your injury occurred at work, your job duties, and your physical limitations. The more information and details you give to your doctor about your work injury, the less likely it is that the workers' compensation carrier will delay payment.

H. Average Weekly Wage

It is very common for the workers' compensation insurance carrier to miscalculate an injured worker's Average Weekly Wage ("AWW"). The amount of weekly workers' compensation benefits you are to be paid is based solely on your AWW. This is important because your wage benefit rate never goes up; there are no cost of living adjustments for workers' compensation wage benefits. Therefore, it is vital that you make sure your employer or its carrier has made this calculation correctly. Your Temporary Total Disability benefit ("TTD") rate is usually two-thirds of your AWW up to a maximum that is set by the law. There are also certain minimum compensation rates that may pay you a higher percentage of your AWW, if you are a low wage earner. Unlike unemployment compensation benefits, you do not have to pay income taxes on the workers' compensation benefits you receive.

Your AWW is the total of all gross wages (before taxes) from every employer that you are working for at the time of your injury. The figure also includes overtime, bonuses, incentives, tips (if reported to the Internal Revenue Service), board, lodging, and vacation pay. If you are paid a fixed amount per week, your AWW is your weekly gross wage; if you receive a fixed monthly income, multiply your monthly income by 12 and divide that number by 52. If you are paid an hourly rate, the method of calculating your AWW is based upon how long you have been working for the employer where your injury occurred. If you have been employed more than 3 quarters

out of the 4 quarters of a year prior to your injury, your AWW is the average sum of the 3 highest quarters of earnings. If you have not been employed for more than 3 quarters during the year prior to your injury, your AWW is arrived at by taking the total wages earned for any completed calendar quarter(s), divided by the number of weeks in each completed quarter.

The courts have recently ruled that the calculation of the AWW is supposed to reflect what the injured worker could have expected to earn had the injury not occurred. Thus, if the above methods of calculating your AWW result in a figure below what you were actually going to earn, you can file a review petition to request a judge to change the AWW and thereby the wage benefits you receive.

CHAPTER THREE

TYPES OF WORKERS' COMPENSATION BENEFITS

A. Total Disability Wage Benefits

Temporary Total Disability (“TTD”) benefits are payable for as long as you are unable to work. There are no specific time limits to collect these benefits. However, after you have collected TTD for two years, you may be asked to undergo an Impairment Rating Evaluation (“IRE”) by the workers’ compensation insurance carrier. If, as a result of the IRE, you are found to have less than a 50% whole body impairment, the amount of time you can collect TTD benefits is limited to a maximum of 500 additional weeks from the date of the IRE forward. Your TTD benefit rate does not change as a result of the IRE. The workers’ compensation insurance carrier can still attempt to suspend, modify or terminate your wage benefits during the 500-week period.

B. Partial Disability Benefits

You are considered “partially disabled” if you have an ability to earn some amount of wages but have not fully recovered from your work injury. This is typically seen in situations where an injured worker returns to work in a light duty capacity either with the time of injury employer or a new employer, but continues to treat with a doctor. If the new job pays less

than your pre-injury AWW, you are entitled to be paid two-thirds of the difference between your AWW of your old and your new job. Partial disability wage benefits can continue up to a maximum of 500 weeks (9.6 years).

Either your treating doctor or an independent medical exam doctor (“IME” doctor) may give an opinion that you are no longer totally disabled, but rather you are partially disabled. When this occurs, before your employer attempts to change your wage benefits from TTD to partial, your employer must send you a form called a “Notice of Ability to Return to Work” form. They cannot reduce your benefits based solely on that form, but if you receive one, it is a good indication that the insurance company is preparing to file a petition to terminate, suspend or modify your benefits.

C. Specific Loss Benefits

Specific loss benefits are payable if you suffer an amputation or loss of use of various body parts, such as fingers, hands, and toes. If you suffer a loss of hearing or vision, you are also entitled to be paid specific loss benefits. Any permanent or serious disfigurement (scars) of your head, neck, or face, entitles you to receive specific loss or scarring benefits. Payment to specific loss benefits are equal to your TTD benefit rate for the time period and the healing periods listed on a chart that pays a different number of weeks for different body parts.

D. Medical Expenses

Your employer is required to pay for any reasonable, necessary and related medical care that you incur as a result of a work

injury. This may also include costs of home or vehicle renovations to accommodate a seriously injured worker. There are no specific time limitations on how long an employer is responsible to pay for medical treatment related to work injuries, however, the longer the period of time between your last treatment and your most recent treatment, the more likely a workers' compensation carrier will attempt to argue that the treatment is no longer related to the work injury.

E. Travel Expenses

For treatment: Travel expenses to and from medical providers generally are not reimbursable under the Pennsylvania Workers' Compensation Act. However, if you have to travel outside your local community for treatment that is not available in your community, then you may be entitled to reimbursement of travel expenses.

For exams: An insurance carrier is required to provide transportation to and from an Independent Medical Examination ("IME") or Impairment Rating Exam ("IRE") if the injured worker cannot get there on his or her own.

F. Death Benefits

If a worker dies as a result of a job injury or illness, within 300 weeks of the date of injury or date of last exposure to the health hazard, the worker's family is entitled to receive \$3,000 in funeral expense reimbursement, and the widow or widower is entitled to collect compensation until he or she remarries. The children of the deceased worker are also entitled to receive compensation until they turn 18 (or until

age 23 if they are enrolled as full-time students in school). The amount of death benefits payable to the surviving spouse and/or children is a percentage of what the deceased worker would have been entitled to receive as total disability benefits.

CHAPTER FOUR

COMMON TYPES OF BUREAU DOCUMENTS

(Be careful about signing documents!)

There are many different types of workers' compensation documents. Signing the wrong document could result in your benefits being cut off for an extended period of time while you are still disabled. It is important that you not sign any document that you do not fully and completely understand. Although most workers' compensation adjusters are attempting to be truthful when they explain documents they want you to sign, others will attempt to mislead you. Most importantly, remember that all insurance adjusters work for the insurance companies, not for you. Their job is to attempt to get you back to work as inexpensively for the insurance company as possible. They have no allegiance to you and are not required to look out for your best interests. You should always seek the opinion of an attorney prior to signing any workers' compensation documents.

A. Notice of Compensation Payable, Medical-Only Notice of Compensation Payable, and Statement of Wages

If your employer or its carrier decides to accept your claim (pay you benefits), they are required to issue a Notice of Compensation Payable ("NCP") and Statement of Wages, which shows your Average Weekly Wage ("AWW"). The

employer or its carrier may also choose to pay medical benefits, but not wage loss benefits, by filing a Medical-Only Notice of Compensation Payable. An NCP must be issued within 21 days of the date upon which you gave your employer notice of your injury. Make sure every injured body part is listed on the NCP and that your AWW is correctly stated in the Statement of Wages. If these forms are not correct, they can cause you problems later on. Even if the employer pays for treatment of body parts not listed on the NCP, they may later argue that they are only responsible for the injury set forth in the NCP, even though they know that your injury is more severe and affects other body parts. These forms are supposed to be filed with the Bureau of Workers' Compensation in Harrisburg, and you should be provided with a copy. These documents are very important. If your employer does not send you copies, you can request copies directly from the bureau.

B. Notice of Temporary Compensation Payable (NTCP)

Your employer may decide to file a Notice of Temporary Compensation Payable ("NTCP") instead of a Notice of Compensation Payable. This document is only supposed to be used if the employer is not sure you have a compensable work injury, but while the employer investigates if you do, it is agreeing to pay you "temporary compensation." The temporary compensation can be paid up to 90 days. Those benefits can be stopped at any time during the 90 days by the employer filing a Notice Stopping Temporary Compensation Payable ("NSTCP") within 5 days of you receiving your last workers' compensation check. If the employer does so, it

must also mail you a Notice of Compensation Denial. If you do not receive a NSTCP or Notice of Compensation Denial within 90 days of your first date of disability, the NTCP automatically converts to a Notice of Compensation Payable.

C. Notice of Compensation Denial (NCD)

If your employer decides not to accept liability for a work injury, a Notice of Compensation Denial (“NCD”) must be filed and mailed to you. It means that the employer is not going to pay your wage losses or your medical bills. Either a Notice of Compensation Payable or NCD must be filed within 21 days of the date you gave your employer notice of your injury. If you do not receive a Notice of Compensation Denial and wish to pursue your claim further, you must file a claim petition with the bureau. You have 3 years from the date of your injury to file a claim petition, as long as you gave your employer notice of your injury within 120 days of the date of your injury.

D. Notice of Ability to Return to Work

If you receive this form in the mail, it means that a doctor, either a treating doctor or a doctor who examined you at the insurance company’s request, has found you have recovered from your work injury sufficiently, and you now have the ability to perform some kind of work. This form also sets forth your rights and obligations in relation to your ability to work. It alone cannot be a basis to stop your wage benefit checks.

E. Notification of Suspension or Modification Pursuant to 413(C) & (D)

This form may be filed by the workers' compensation insurance carrier or employer when you return to work (at any job). It is very important that you review the information completely. If the form states that your benefits are "suspended," this means that you are working and earning at least as much as you did on a weekly basis when you were injured. The form is only supposed to be used where it is undisputed that you have returned to work and are continuing to work.

If the information contained on the form is incorrect, you have the right to challenge the suspension. In order to challenge the suspension, you must check the box, (even though on the form there sometimes is no box to check) sign, and mail to the bureau within 20 days of receiving it. You should send the challenge via certified mail, return receipt requested, and keep a copy of it. A hearing will then be scheduled by a judge.

F. Employee Verification of Employment, Self-Employment, or Change in Physical Condition

If you are collecting workers' compensation benefits, you may receive this form from time to time. If you receive this form, you cannot ignore it. You are required to complete this form and send it back to the insurance carrier within 30 days. If you do not, your benefits will be stopped and not reinstated until you return the form. It is important that you complete the form honestly and in its entirety. If you have any employment

and you do not report it, it is workers' compensation fraud punishable by up to seven years in jail. You should also mail this form back to the insurance carrier via certified mail, return receipt requested.

G. Employee's Report of Benefits (Unemployment Compensation, Social Security [Old Age] and Pension Benefits for Offsets)

This is a form similar to the one discussed above; however, it requires you to report to the workers' compensation insurance carrier the receipt of unemployment compensation benefits, Old Age Social Security benefits and pension benefits received after the date of injury. Again, if you fail to report receipt of these benefits, you could be subject to the fraud provisions of the act and may face criminal prosecution. If you receive this form in the mail, you should complete it fully, honestly, and as quickly as possible.

CHAPTER FIVE

WHAT OTHER ISSUES AFFECT WORKERS' COMPENSATION?

A. Child Support Arrearages

Act 109, which became effective on September 6, 2006, requires injured workers to provide child support collection information to workers' compensation judges. In those cases where Act 109 applies, a workers' compensation judge may not issue a decision if this required information is not provided. Any child support arrearages must be paid out of an injured worker's wage benefits or settlement.

B. Offsets for Receipt of Unemployment Compensation, Social Security, Severance, and Pension Benefits

For any workers' compensation injury occurring on or after June 24, 1996, the employer may reduce your receipt of workers' compensation benefits if you begin to receive any of the following: old age social security benefits (retirement benefits); pension benefits (if these benefits were paid by the time of injury self-insured employer); or severance benefits. Also, if an injured worker files for and receives unemployment compensation benefits, the employer or the workers' compensation insurance carrier will be entitled to take a "credit" against the workers' compensation benefits for the gross amount of weekly unemployment compensation benefits

received. There is no credit of these offsets if the worker is receiving specific loss benefits as opposed to Temporary Total Disability benefits.

C. Subrogation

If you are involved in a situation where you have a workers' compensation claim and a third party civil lawsuit being pursued as a result of the same work injury, the employer and the workers' compensation insurance carrier have a lien against any money you recover from the "third party." This is called the right to "subrogation." If a third party is held responsible for causing your injury, then whatever benefits were paid by the workers' compensation carrier must be paid back to that carrier out of the verdict or settlement amount you receive as a result of the third party case. The notion of subrogation stems from the common law idea that prohibits "double-recovery."

The workers' compensation insurance carrier's lien (the total amount paid in indemnity and medical benefits) is reduced by the pro-rata share of expenses and costs the injured worker had to pay to obtain the money from which the lien is paid. Further, if the injured worker is still collecting workers' compensation wage benefits when the worker recovers money from the third party action, the employer not only has its subrogation right, but it also gets a "credit" as to future payments. The unfortunate practical application of this concept usually means that unless the third party recovery is substantially greater than the total workers' compensation

lien and credit, the injured worker could end up with little or no net money from the third party lawsuit.

It is, therefore, very important that you discuss the idea of subrogation with your attorney so that you have a complete understanding of the interplay between your civil lawsuit and your workers' compensation claim.

D. Medical Bill Payment Requirements

As set forth previously, in order for your treating doctor to be paid for treatment rendered in connection with your work injury, the doctor must provide the insurance carrier with the bill and a copy of your medical report on a "medical report form." The employer is not responsible for payment until the medical report form has been filed. Also, your doctor cannot charge you any balance he or she may believe is owed on any bill paid by the workers' compensation insurance carrier. The medical provider must accept the payment by the workers' compensation insurance company as payment in full on the bill. Further, if the workers' compensation insurance carrier refuses to pay a bill, the medical provider cannot hold you personally responsible for unpaid medical bills related to a work injury unless a workers' compensation judge first rules that the treatment you had with a medical provider was not related to the work injury.

E. Independent (Insurance) Medical Exams

While you are receiving workers' compensation benefits, your employer may require you to attend an examination with a doctor it selects. They will call this an Independent

Medical Exam (“IME”), when, in fact, it is a defense or insurance company medical exam. The “independent” doctor is paid by the insurance company to perform the exam, write a report, and testify against you. You can be asked to attend this type of examination up to two times within a twelve-month period. If you refuse to attend this exam, you may lose your right to receive benefits until you actually attend the exam. If you receive a letter advising you that an exam has been scheduled, you should contact your attorney to verify that you need to attend. Depending on the circumstances, you may or may not have to attend. Remember, these exams are used for the purpose of gathering evidence against you, so it is vitally important that you know your rights in relation to this issue.

F. Impairment Rating Evaluation

Another type of medical examination that the workers’ compensation insurance carrier may require you to attend is called an Impairment Rating Evaluation (“IRE”). This examination, similar to the IME, can be requested up to 2 times within a 12-month period. If the insurance company IRE physician determines that you are less than 50% whole body impaired, you will automatically convert to a partial disability status and your benefits will be limited thereafter to a total of 500 weeks. If you are found to be over 50% impaired, your benefits will continue indefinitely. As a practical matter, it is only the most serious and horribly disabling injuries that will result in a whole body impairment of over 50%.

G. Utilization Review

The workers' compensation insurance carrier may request a Utilization Review of the bills submitted to your doctor. This request is to determine the "reasonableness and necessity" of the specific treatment that you are receiving. A Utilization Review Organization ("URO") will contact your doctor. If your doctor does not mail copies of your medical records, with an original signature from the doctor, within 30 days of the date the doctor is requested to by the URO, the treatment is automatically deemed to be unreasonable and unnecessary and that determination cannot be appealed. If your doctor submits the records on time, then the URO reviews the records and issues a report. This must be done within 30 days of submission of the medical bill. As part of this review, you are permitted to send a letter to the URO setting forth why you feel the treatment is necessary. Once this report is issued, your doctor or the carrier has the right to file a "Petition to Review" if they do not agree with the URO's conclusion. This petition will be heard by a workers' compensation judge. Once the request for Utilization Review is made, the insurance carrier does not have to pay for the bills or treatment in question unless the Utilization Review is decided in the doctor's favor.

H. Vocational Rehabilitation

In an effort to modify or suspend your workers' compensation wage benefits, an employer is permitted to use a "Vocational Rehabilitation Counselor." The counselor is hired to meet with you and determine your "transferable skills" based upon

your educational and work background. The counselor then either uses your treating doctor's physical work restrictions or, more commonly, the IME doctor's physical work restrictions, in an effort to locate jobs you are able to perform.

If your employer has a specific job vacancy that is within your physical restrictions, you must be offered that job, prior to the employer attempting to modify or suspend your wage benefits. If you receive a letter from either your employer or a vocational counselor advising you of a specific job opening that complies with your physical work restrictions, you have an obligation to try to perform that job. If you ignore the letter or if you do not try the job, your workers' compensation benefits may be cut off. If you receive a letter advising you to apply for a job that is within your physical work restrictions, if you do not go to that job and fill out an application, the employer may attempt to suspend your wage benefits.

Very often the jobs you will be offered comply with the restrictions that the IME doctor has placed on you, but not your treating doctor's restrictions. It is important that you know exactly what your physical limitations/restrictions are. Get a note from your treating doctor outlining your restrictions. Be truthful when completing any employment application. Keep a diary of any job that you may apply to. This diary should include the date you applied for a specific job, the person you spoke to or the person who interviewed you, and the nature of your discussions. Ask for a copy of the application. If the employer is sending you job applications, it would be very prudent to talk to a lawyer.

I. Labor Market Survey

Anyone who was injured after June 24, 1996 can be sent a Labor Market Survey. This is another way an insurance company can try to reduce or suspend your benefits. Under this method, no specific job offers need to be presented to you. In this case, you will meet with a vocational rehabilitation counselor who will, instead of trying to actually provide you jobs, merely prepare a report called a Labor Market Survey, showing that there are jobs within your physical restrictions “available” in the usual employment area where you live, or in some cases, where your injury occurred. If the employer is sending you for a vocational interview, it would be very prudent to talk to a lawyer.

CHAPTER SIX

WHAT TO DO IF YOU RETURN TO WORK

In the event you have recovered from your injuries sufficiently enough to permit you to return to your regular job or in a restricted light duty, it is very important that you not sign any Supplemental Agreement, Final Receipt or other document presented to you by your employer. Have these documents reviewed by an attorney. If you are only able to return to work at a modified job with physical restrictions, make sure your boss is made aware of the specific restrictions. You are required to make a good faith attempt at the modified job, if your treating doctor releases you to perform that modified job. This means that you should make every reasonable attempt to do the assigned job. If that job results in you feeling increased pain, notify your doctor immediately and follow his or her restrictions regarding continuing that job. If your treating doctor recommends that you stop performing the modified job, you should obtain a written note saying so and provide it to your employer. Make sure you keep a copy of the note. If an IME doctor says you can return to a modified duty job, but your treating doctor says you cannot perform such a job, it is very likely that your employer will ignore what your treating doctor says and rely upon the opinion of the IME doctor. In such a situation, you should consult with an attorney as soon as possible.

CHAPTER SEVEN

FILING PETITIONS, ATTORNEYS' FEES, AND THE HEARING PROCESS

A. Filing Petitions and Attorneys' Fees

The filing of a Workers' Compensation Petition with the Bureau of Workers' Compensation begins the legal process of adjudicating workers' compensation claims. If your claim has been denied, you need to file a claim petition. If your benefits have been cut off, but now you are again unable to work, you need to file a reinstatement petition. If you receive a petition filed against you by your employer, you should immediately contact an experienced workers' compensation attorney. Selecting an attorney to represent you in a workers' compensation proceeding is an important decision. Not all attorneys are alike. Ask the attorney with whom you are speaking how much of his or her practice is devoted to representing injured workers. Also, ask the attorney if he or she also represents employers and workers' compensation insurance carriers. You should never be charged a fee unless an attorney is successful in representing you. You should not have to pay an initial consultation fee. Your attorney should be willing to advance the costs of litigation for you. Under the Worker's Compensation Act, counsel fees are usually earned on a contingency fee basis that is limited to twenty percent (20%)

of the wage benefits and settlement amount in compromise and release settlements.

B. The Hearing Process

Workers' compensation hearings are usually held in the county where the injured worker resides. Whenever you receive a notice of a hearing, you should always call your attorney to see if you need to be at that hearing. Sometimes your presence is not required. Litigating a workers' compensation case from start to finish can take anywhere from 90 days to 18 months. At the first hearing, the workers' compensation judge must set forth a mandatory schedule. The schedule shall include a specific date and time for a mediation conference. See the section below for an explanation of mandatory mediation. The hearing process will include a hearing where you and any of your witnesses will testify and the same for the employer's witnesses. Both sides will normally have to take a doctor's deposition, which is testimony used in the litigation as evidence, but the testimony is taken at the doctor's office and then the transcript of the deposition is provided to the judge. Once the hearing process ends, the "briefing" process begins. The judge gives the parties a timeline to submit written arguments in support of the respective party. The judge will review these documents and briefs, along with all of the evidence of record, and then issue a decision. The decision is sent to each party in the mail.

If either party believes that the judge committed an error of law, an appeal may be filed with the Workers' Compensation

Appeal Board (“WCAB”). The WCAB is made up of 12 commissioners. The commissioners conduct oral arguments by attorneys, but no new evidence is presented to the WCAB. Credibility determinations made by the judge cannot be overturned by the WCAB. It is common for a decision from the WCAB to take up to a year to be issued, due to the high volume of appeals it must consider. Either party may file an appeal to the Commonwealth Court if they disagree with the WCAB’s decision.

C. Mandatory Mediation

When setting a case schedule at the first hearing, the workers’ compensation judge may also set a date and time for a mediation conference. However, if the workers’ compensation judge determines that mediation would be futile, the mandatory mediation requirement can be waived. A workers’ compensation judge will conduct the mediation conference. It will normally not be the same judge assigned to rule on your case. The mediation conference must be attended by all parties.

If the parties agree to the terms of a settlement at the mediation, they still must prepare and sign a form called a Compromise and Release Agreement, which must be approved by a judge. See the section below for an explanation of the settlement process.

D. Settlements

Act 57, which amended the Workers’ Compensation Act in 1996, created the right to settle your entire workers’

compensation claim for a lump sum payment. In exchange for giving up your rights to future benefits, you can receive a lump sum of money. You may settle your wage loss benefits only, your medical benefits, or both. Usually the employer will want to settle both your wage and medical benefits. Any settlement must be set forth in a form called a Compromise and Release Agreement, and the settlement must be approved by a workers' compensation judge. The settlement amount is primarily based upon the nature of your injury, and what your wage benefit rate payments are. There is no compensation for the pain and suffering you endured as a result of the injury.

Any decision to settle your case should be discussed with your family and an experienced workers' compensation attorney. Insurance companies prefer that you not have an attorney, as they can settle your case for less money if you are without representation from a qualified attorney.

CHAPTER EIGHT

SOCIAL SECURITY DISABILITY BENEFITS

In addition to receiving Temporary Total Workers' Compensation benefits, you may also be eligible to receive social security disability benefits. If you have been out of work for at least 12 months or are expected to be out of work for 12 months and cannot perform any substantial gainful employment, you may file a social security disability claim. Social security takes into consideration your age, education, and all of your medical impairments, even those that are not work related. You can collect both social security disability benefits and workers' compensation benefits at the same time, but the amount of social security benefits you receive will be reduced by a certain amount because of the workers' compensation benefits you receive. If you are receiving both workers' compensation and Social Security Disability benefits, and you negotiate a settlement of your workers' compensation claim, the Social Security Administration gets a credit against future payments as a result of your settlement. Further, if you are receiving Medicaid or Medicare or are eligible to receive such benefits, you may be required to establish a "set aside trust" out of your worker's compensation settlement; the amount of this money must be determined by the Center for Medicare Services. This means you will have to put some of your settlement proceeds into a

separate account and pay future medical bills related to the work injury out of this account; you must save your receipts regarding payments made out of this account so that when you exhaust the account, you can prove to Medicare that you properly used the funds. If you can do so, then Medicaid or Medicare will be responsible to pay for future ongoing treatment, as long as you otherwise remain Medicare eligible.

CHAPTER NINE

5 KEYS TO A SUCCESSFUL WORKERS' COMPENSATION CLAIM

We put this section at the end of the book for a reason. By the time you get to this part of the book, you will understand the keys to a successful claim and should be able to write this section. To some extent, the 5 keys are merely the inverse of the biggest mistakes that can destroy your claim.

The 1st Key: Report Your Injury to Your Employer.

It is sometimes uncomfortable to go to your supervisor or employer and report that you got hurt at work, but it absolutely the first thing you must do, presuming you have not been taken for immediate medical care. Don't rely upon your co-workers or someone else to report your injury; you must do it. If you don't report your injury in a timely manner, it can be a basis for the workers' compensation carrier to deny your claim. When you report your injury, make sure you tell your employer about every body part affected by the injury. If possible, ask for a written incident report and ask for a copy of it.

The 2nd Key: Report Your Work Injury to Every Medical Provider You See.

Whether you seek immediate treatment for your work injury in an emergency room, or it is a few weeks or even a

few months later, you must fully disclose how and when the injury occurred. One of the first things the workers' compensation company will do is review the medical records of each and every medical provider you see. If it is not indicated in all the medical provider's notes that you told him or her that the injury happened at work, the insurance carrier may attempt to deny your claim. Don't wait for the medical provider to ask you if the injury happened at work, and don't presume that the medical provider knows your injury happened at work. Tell every new medical provider that you see that you are there for treatment of a work injury.

The 3rd Key: Follow Your Medical Provider's Instructions to the Letter.

Your doctor, nurse or other medical provider may order diagnostic studies such as MRIs, EMGs, or other types of tests. It is very important that you get these tests performed if they are ordered. These tests are ordered because the medical provider is trying to determine the full extent of your injury, so that he or she can administer the proper medical care to help improve your condition. These tests are very helpful in proving your workers' compensation claim as well. The insurance adjuster may try to convince you that you only have a "sprain or strain" but an objective diagnostic test will show the true extent of your injury. If you don't go for those tests when directed by your medical provider, you may be stuck with the insurance adjuster's characterization of the injury—even though the injury is actually far more serious. Also, your medical provider may order physical or other type

of therapy. If you don't attend the therapy, the insurance company will try to convince a workers' compensation judge that the injury is not really that serious—even if it is very serious. The bottom line is, follow your medical provider's instructions. If you don't agree with the instructions, address the issue with the medical provider--don't just discontinue treatment on your own.

The 4th Key: Don't Relying Exclusively on Advice from Your Employer or the Insurance Company Adjuster.

Your employer is in business to make money. Your employer makes money when you are a productive worker, and loses money when you are out of work due to a work injury. Many injured workers believe that a workers' compensation insurance carrier exists to look out for their best interest when they get hurt at work. But the insurance company is a private, for-profit business that makes money by getting insurance premiums from your employer, and loses money when it pays your medical bills and lost wages. Therefore, both your employer and its insurer have a big financial incentive to get you off of workers' compensation and back to work as soon as possible. Knowing that both of them have this incentive, do you really want to rely exclusively on what they tell you about your rights or what you are entitled to? Don't do it. Talk to a lawyer. It's free.

The 5th Key: Get Answers to Your Questions from a Good Attorney.

Workers' compensation is a highly complex area of law with many confusing procedures and forms. It is very unlikely you

will be able to successfully handle your claim using “common sense” or just relying on the “truth.” Although these concepts are at the heart of any legal matter, you should not rely exclusively upon them, for if you do, will most likely fall into one of the many traps that await any person who does not know how to navigate the workers’ compensation system. There are many attorneys who advertise that they handle workers’ compensation claims. There are a few important questions that can quickly eliminate firms from consideration, including, how many years experience does the firm have handling workers’ compensation claims? You should also ask about the costs and expenses of litigating a claim. You will almost always need to have your treating doctor’s deposition submitted as evidence. Doctors usually charge several thousand dollars per hour for a deposition. Does the firm you are considering hiring pay that cost or do they expect you to pay it, even though you are not working and have no income? Another question you may want to ask is, does the firm only represent injured workers or do they also represent workers’ compensation insurance carriers? You would be surprised how many firms represent injured workers, employers, and insurance companies. Where do their loyalties lie? Just asking these few questions can quickly eliminate from consideration many firms whose advertising seems impressive, but whose credentials are not.

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For more than 20 years, MHK Attorneys has been representing injured workers. Michael B. Kaspszyk, Esq. and Joshua B. Goldberg, Esq. focus their practice on helping injured workers secure rights and benefits entitled by the Pennsylvania Workers' Compensation Act. Attorney Kaspszyk has reviewed, handled and represented injured workers in thousands of workers' compensation claims. Attorney Goldberg gained first-hand insight into insurance company's defense strategies when he worked with a workers' compensation defense law firm as a young attorney. Prior to that, he gained valuable experience as a law clerk for the Pennsylvania Workers' Compensation Appeal Board. MHK Attorneys wrote this book to give injured workers the answers to their most common questions. For more answers, articles, blogs, newsletters and the latest information on Pennsylvania workers' compensation law, visit *MHKAttorneys.com*.

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