

A GUIDE TO YOUR WORKERS' COMPENSATION CLAIM

Prepared by your attorneys at Lewis & Lewis, P.C.

LEWIS & LEWIS, P.C. – PUTTING OUR EXPERIENCE TO WORK FOR YOU

WHEN YOU HAVE A WORKERS' COMPENSATION CLAIM:

DO: See your doctors as often as necessary. Keep a record of your appointments. Be certain to provide your doctors with your WCB case number and ask them to submit regular reports to both the Compensation Board and our office. If you are out of work, be sure to see a doctor at least every month and a half.

DO: Keep a record of your medical and prescription bills. Be sure to provide our office with copies of any unpaid bills. You should also keep a record of your mileage to and from doctor appointments and submit your records to us so we can obtain reimbursement for you.

DO: Notify our office promptly of any changes to your address or phone number.

DO: Attend Independent Medical Examinations (IMEs) scheduled by the insurance company. Remember, the doctor performing the IME is not on your side. Cooperate with the doctor, but be sure to let him or her know your complaints and limitations.

DO: Talk to the secretaries in our Workers' Compensation department. Our attorneys are very busy appearing at hearings and are often not available to take phone calls. Our secretaries are experienced and knowledgeable. They can answer most general, non-legal questions, or speed up the process of getting an answer from an attorney. If you must speak to an attorney, and have had trouble getting a hold of him or her, please ask to arrange a telephone conference or office appointment.

DO: Let us know immediately if you return to any type of work, even if it is self-employment or volunteer work.

DO NOT: Discuss your case with anyone other than the lawyers and staff at Lewis & Lewis, P.C. If your employer or their insurance carrier contacts you, simply give them your lawyer's name, address and phone number. If you choose to talk to them, keep in mind that anything you say may be used against you.

DO NOT: Become worried or upset if you haven't heard from us in a while. When we have matters that require your attention, we will contact you or ask you to come in for an appointment. We have many cases, all of which represent the lives and livelihoods of individuals and families like you. We try to give each of you as much attention as possible, but it is impossible for us to contact clients on a daily or even weekly basis.

DO: USE THIS BOOKLET TO FIND ANSWERS TO YOUR QUESTIONS AND EASE YOUR CONCERNS.

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INTRODUCTION

Thank you for choosing Lewis & Lewis, P.C. as your Workers' Compensation attorneys. Lewis & Lewis has been practicing law for over 58 years. The firm has grown to include 13 attorneys, with departments handling both Workers' Compensation and Personal Injury cases. Our attorneys have the experience, skill and tenacity required to obtain the best possible outcome in each and every case. We understand that injuries disrupt your life, often causing both financial and emotional strain. We hope that this booklet will take away some of the frustration and confusion by explaining the Workers' Compensation process and answering frequently asked questions. The first part of the booklet will walk you through the basics of filing a claim, attending hearings and finalizing your claim. The second half will address specific issues that affect compensation claims. At the end of the booklet you will find a list of frequently asked questions and information on where to find the answers. Your Lewis & Lewis attorneys understand that your case is unique and that not all issues are covered in this book. Please refer to this booklet for general information and feel free to call us with your specific questions. We look forward to putting our experience to work for you!

This booklet is designed to assist you in understanding your Workers' Compensation claim and is intended solely for your information. It does not constitute legal advice and it should not be relied on without discussion of your specific situation with a qualified attorney. For help with your workers' compensation claim, or other legal matters, please call Lewis & Lewis, P.C. at 716-854-2100.

PART 1

THE WORKERS' COMPENSATION PROCESS

HOW DO I KNOW IF I HAVE A WORKERS COMPENSATION CLAIM?

Three elements are required for a valid Workers Compensation claim. First, you must either have an accident while on the job or an occupational disease. Second, you must give timely notice to your employer and third, you must have medical evidence proving that your condition is the result of the accident or occupational disease. Each of these topics is discussed in more detail below.

- **Accident**

An employer is only responsible for injuries caused by work-related accidents. In order for an injury to be “compensable”, meaning covered by Workers’ Compensation, it must occur in the course of employment and also be related to the work. Accidental injuries can be both physical and psychological. Injuries that occur when another employee intends to cause injury and injuries that are the result of intoxication while on the job are not covered by Workers’ Compensation.

Examples:

1. Joe works for a construction company. He falls from a ladder while installing dry-wall and breaks his arm. This is a straightforward claim. Joe was at work when he fell, and he was involved in a work activity when the accident took place.

Now, assume that Joe doesn’t fall off the ladder, but instead takes a break and walks to a nearby coffee shop. On the way, he trips on a curb, falls down and breaks his arm. This case is not as clear. Although the accident happened during the workday, and very close to the job site, it may not be covered by Workers’ Compensation because Joe was not in the course of his employment or performing an activity directly related to his work. However, if Joe’s boss told him to go get coffee for everybody, he might be covered.

2. Mary is a police officer. During the course of her duties she and her partner are involved in a high-speed chase, and motor vehicle accident. Mary witnesses her partner’s death, and is later diagnosed with post-traumatic stress disorder. Mary’s claim will most likely qualify as a work related psychological condition.

Now, assume that Mary isn’t involved in a car accident, but is assigned to the police department’s file room. She is constantly being reprimanded by her supervisor for failure to get her work done on time, and is demoted. The demotion causes her significant stress so she goes to see a psychiatrist and is diagnosed with a work related anxiety disorder. Under these circumstances, Mary will probably not be covered by Workers’ Compensation because the law does not provide coverage for

work related stress claims which are based on lawful personnel decisions such as disciplinary action, work evaluation, job transfer, demotion or termination.

As you can see, it is not always clear whether an injury will be covered by Workers' Compensation, therefore, it is important that you contact your attorneys whenever you get hurt at work and let us know all the facts and circumstances involved.

- **Occupational Disease**

If there is no accident, the only other way to establish a valid claim is to show that the employee has contracted a "disease" from his employment. Common examples of occupational diseases are carpal tunnel syndrome and similar conditions brought on by repetitive use of a body part; diseases caused by prolonged exposure to chemicals and other substances; and hearing loss from occupational noise exposure.

- **Notice**

The law requires an injured employee to provide written notice of an accident to his employer within 30 days. Notice of an occupational disease should be given to an employer within 30 days of the first indication that it is work related. Despite these legal requirements, failure to inform your employer of an accident or occupational disease does not automatically end your claim. If 30 days have gone by and you haven't reported an injury, you should do so as soon as possible.

- **Causal Relationship**

In order to prove causal relationship, an employee must have a medical report describing his work accident, diagnosing his condition, and then explaining how the diagnosis relates to the accident. In order to prove causal relationship in an occupational disease claim, the doctor must provide a detailed description of the injured person's work, diagnose a condition, and then explain how the work duties caused the condition. Because of the causal relationship requirement it is crucial to have strong medical evidence in every case. You should see a doctor as soon after your injury as possible, and maintain a schedule of follow-up appointments.

A common problem in the causal relationship category occurs when a significant period of time elapses before an injury becomes evident. For example, a worker could injure his back lifting a heavy object, and due to extreme back pain, not realize that he also injured his shoulder in the same incident. His initial medical records may only reference the back injury, making it more difficult to prove the shoulder injury later. The best advice we can give is to discuss all possible injuries with your doctors as soon as possible.

If you believe you can prove the factors discussed above; accident or occupational disease, notice and causal relationship, you probably do have a valid Workers' Compensation claim. The next section of this booklet will discuss how to file your claim. If your employer and its Workers' Compensation insurance carrier disagree with you, they will "controvert" your

claim. This means that they will refuse to pay benefits and request a hearing before a Workers' Compensation Law Judge. The hearing process will be discussed on pages 8 and 9.

HOW DO I FILE A WORKERS' COMPENSATION CLAIM?

Both employees and employers are responsible for notifying the Workers' Compensation Board when an accident or occupational disease causes an employee to be injured. You should not assume that your employer will take all the necessary steps to file a claim for you. You should always contact your attorneys about filing your own claim. The methods and forms to be used for claim filing are discussed below.

- Employer's Report of Injury – Workers' Compensation Form C-2

Employers are required to report employee injuries to the Workers' Compensation Board if the injury will result in lost time or require treatment beyond normal first aid or more than two treatments overall. The employer meets these requirements by filing a Form C-2 within ten (10) days of receiving notice of the injury. The employer is required to maintain a copy the C-2 form for 18 years.

- Employee's Claim for Compensation – Workers' Compensation Form C-3

A Form C-3 is completed by the injured worker and filed with the Workers' Compensation Board. This form provides the Board with the basic information about the claim. Upon receipt of a C-3 the Board will assign a case number to the claim.

- Attending Doctor's Report and Carrier/Employer Billing Form – Workers' Compensation Form C-4

You cannot prove a Workers' Compensation claim without medical reports. It is very important therefore that your doctor provide timely and accurate reports of your condition. Doctors reports must be filed with a Workers' Compensation Board Form C-4. A C-4 Form should be submitted to the Workers' Compensation Board, and your employer's insurance company, within 48 hours of your first treatment. Follow-up reports should be submitted at regular intervals thereafter. While you are out of work and claiming benefits you should see your doctor at least every month and a half. Please be certain to notify your doctor of all pertinent information about your claim including your case number and our address. The time you spend helping your doctor will help you greatly in the long term.

Copies of Forms C-2, C-3 and C-4 are found in your Lewis & Lewis folder. You can obtain these forms from our office or the Workers' Compensation Board.

IS THERE A TIME LIMIT FOR FILING MY CLAIM?

A Workers' Compensation claim for an accidental injury must be filed within two (2) years of the date of the accident. When the claim is for an occupational disease, it must be filed within two years from the date the employee knew, or should have known, that the condition was work related. As was discussed on page 3, an employee has thirty (30) days to give his or her employer notice of an injury. The notice requirement is flexible assuming that the employer is given an adequate opportunity to investigate the circumstances of the claim. The two-year statute of limitations for filing a claim with the Workers' Compensation Board is not flexible. There are certain exceptions to the filing rule, but it is always recommended that you file a claim as soon as possible.

A claim for work related hearing loss should not be filed until at least ninety (90) days after the employee has removed himself or herself from the noise exposure. This is generally ninety days after retirement. If a person receiving Workers' Compensation benefits dies as a result of the work related condition, the survivors, or estate, may have a separate claim for death benefits. Death claims require additional forms that must be filed within two (2) years of the date of death. Death claims are discussed in greater detail on page 19.

WHAT BENEFITS AM I ENTITLED TO?

The Workers' Compensation Law provides medical and lost wage benefits to injured workers. Workers' Compensation does not provide benefits for pain, suffering, loss of enjoyment of life, and other non-economic damages that can be recovered in personal injury lawsuits. If your employer and its insurance carrier do not dispute your claim, it will be "accepted". If they "controvert" your claim and you are able to prove accident or occupational disease, notice and causal relationship, your case will be "established" by the Workers' Compensation Board. Once the case is accepted or established you will be entitled to the following benefits:

- Medical Benefits

Once your claim is established, you are entitled to all necessary medical expenses that are causally related to the injury. As long as the medical treatment is reasonable and necessary to the improvement of your condition, the Workers' Compensation insurance carrier is responsible for the payment of the medical expenses. The treatment must be directly related to the injury sites established by the Workers' Compensation Board. For example, if your claim is established for an injury to your low back and you go to a chiropractor who also treats your neck, the insurance company has a right to reject that portion of your bill which relates to the neck treatment.

In order for medical treatment to be covered it must be a type of treatment that is commonly accepted and performed in the general medical community. Items such as doctor visits, physical therapy, chiropractic care, diagnostic studies, surgery and follow-up treatment are normally viewed by the carrier as reasonable. However, treatments such as acupuncture, aromatherapy and holistic medicine are not easily accepted by the insurance carrier and should be discussed

with your attorney before medical expenses are incurred. It should also be noted that the Workers' Compensation Law does not permit treatment with a chiropractor and physical therapist during the same period of time. You should finish one type of treatment before the next type is started. A compensation claimant is always entitled to a second opinion regarding his or her treatment.

It should also be noted that any treatment or testing that costs more than \$500.00 must be pre-approved by the Workers' Compensation carrier. Authorization for diagnostic studies that cost more than \$500.00 must be requested before the study is performed. Additionally, any treatment that is to take place outside New York State must be pre-authorized. It is in your best interest to obtain written approval from the insurance carrier before obtaining any out of state treatment. If you do not obtain prior approval, you may be responsible for the high cost of out of state treatment. If your doctors have any questions regarding authorization and approval for treatment, please have them contact our office.

- Lost Wages

As a Workers' Compensation claimant you are entitled to lost wage payments for periods of time in which you have medical proof of a loss of earnings due to the work injury. In order to receive lost wage payments, your loss of earnings must be directly related to your work injury and not solely due to economic factors. Any claim for lost wages must be backed up with medical evidence demonstrating a work related disability.

Certain employers will pay you your full wages while you are out of work due to a work related injury. However, most people receive only a fraction of their regular earnings. The first step in determining your benefit rate is calculating an average weekly wage (AWW). The AWW is calculated by reviewing your payroll records for the 52 weeks prior to your injury date, and using one of a variety of formulas to come up with an average. If you worked less than a full year before getting injured, a divisor method will be used to calculate your AWW. If you worked for a very short period of time, the payroll records of a "similar employee" may be used to calculate your AWW. The calculation of the AWW does not include consideration for future benefits, but should include overtime and bonuses. The AWW does not include fringe benefits such as contributions to retirement accounts, 401K plans and other private benefits. Once the AWW is established it does not change. The AWW remains the same regardless of changes in job status.

The payments you are entitled to receive are calculated by applying your medical degree of disability to your AWW. If your medical records indicate that you are totally disabled, you are entitled to receive two-thirds of your AWW, up to a statutory maximum of \$400.00 per week. Two-thirds of your AWW is your "temporary total" or "TT" rate. If your medical records indicate that you are partially disabled, you are entitled to receive a percentage of your temporary total (TT) rate. Please note that in order to be considered totally disabled, you must be totally disabled from any and all work. If your doctor says you are totally disabled from your regular job, but able to perform some other type of work, you will only receive a partial compensation rate.

The Workers' Compensation Board uses the following terms to determine the degree of an injured worker's disability:

| | | |
|--------------------------------|---|--|
| Total disability | = | 2/3 of AWW, or the TT rate up to a maximum of \$400.00 |
| Marked disability | = | 75% of the TT rate |
| Moderate to Marked disability | = | 66 2/3% of the TT rate |
| Moderate disability | = | 50% of the TT rate |
| Mild to Moderate disability | = | 33 1/3% of the TT rate |
| Mild disability | = | 25% of the TT rate |
| No disability – Return to work | = | 0 benefits |

Your doctor should submit a report using one of these terms each time you are examined.

Here is an example of how the AWW and disability terms are used to calculate your benefit rate. Sue's AWW is \$300.00. Therefore, her TT rate is \$200.00 (two-thirds of \$300.00). The most Sue can ever receive as a Workers' Compensation lost wage benefit is \$200.00 per week. She can only receive that amount if she has strong medical evidence indicating that she is totally disabled. If Sue's doctor says she has a marked disability, she can only receive 75% of her \$200.00 TT rate, or \$150.00. If her doctor says she is moderately disabled she can only receive 50% of her TT rate, and so on. The benefit amount will also be affected by the opinions of insurance company doctors. The topic of "Independent Medical Examinations" is discussed in detail at page 8.

If you are under age 25 at the time of your work injury, and the injury results in permanency, (see pages 11 and 12) special considerations will be made regarding your AWW. The Board will consider your "wage expectancy". In such cases, you can expect some increase in your AWW based on a prediction of what your earnings would have been if you continued to work at the same job for the period of time between your injury and your 25th birthday. For example, if you were 20 years old on the day you got hurt, the Board will look to the wage of a similar worker who has five years experience at the place of employment.

The most important thing to remember about Workers' Compensation medical and lost wage benefits is that you must prove your ongoing entitlement to them. In order to keep receiving benefits you must continue to treat for your injuries and have your doctors submit regular medical reports.

INDEPENDENT MEDICAL EXAMINATIONS

Almost every person who files a Workers' Compensation claim will be required to attend at least one "independent medical examination" (IME). These exams would be more appropriately called "defense medical examinations" because they are requested and scheduled by the insurance companies and their attorneys. The doctors who perform the examinations are hired and paid by the insurance company. They are not there to treat you, but rather to report

back to the insurance company on your condition, its cause and your degree of disability. Not surprisingly, IME doctors tend to disagree with your own doctors. Despite this, you are required to attend the exams, as failure to do so can result in the suspension of your benefits.

You will receive notice of an independent medical exam in the mail. A sample examination notice can be found on appendix page 4. If for any reason you do not think you can make the appointment, please contact our office and we will let you know what to do. The notice often asks you to bring x-rays with you to your exam. If you have x-ray films, go ahead and bring them. If you do not have them, don't worry about it. When you do go to the appointment you should be aware that the doctor may be watching you exit your vehicle, enter the building and sit in the waiting room. They will also watch you when you leave the office.

We recommend that you keep track of the amount of time you actually see the doctor, and what the doctor actually does. You should be honest and forthcoming with the doctor, but remember that he or she is not on your side. If the doctor asks you to do anything that you feel may worsen your condition, explain your concerns to the doctor. If you are hurting during the exam, be sure to let the doctor know.

After your exam, the doctor will prepare a report for the insurance company, which may be used to reduce your benefits, deny a requested treatment, or controvert your entire claim. If this happens, we may need to go to a number of hearings in order to resolve the issue.

THE HEARING PROCESS

Whenever an injured worker files a claim with the Workers' Compensation Board, a process is set in motion that will eventually result in a Board decision. There are no exceptions to this - once a claim is filed, the Board will have to render at least one formal decision.

- **Administrative Decisions**

In the simplest of cases, the Board may issue a decision without holding any hearings. Such decisions are called "Administrative Decisions." These decisions are usually used when an examiner at the Board thinks that the insurance company has been paying everything that the injured worker is entitled to. However, you should not automatically trust that you are getting all that you deserve if you receive a decision in the mail without having had a hearing. In fact, claimants are often shortchanged in Administrative Decisions. If you receive an Administrative Decision and you are not sure if it is proper, you should call our office and discuss the decision with one of our attorneys. If necessary, we can object to an Administrative Decision (within 30 days of the decision) and request a hearing to protect your rights.

- **Conciliation Meetings**

Conciliation Meetings are scheduled when the Board perceives that the claimant and the insurance company might be able to come to an agreement on the disputed issues. A conciliation is not the same as a hearing. The Conciliator is not a Law Judge, and there is no written record of the proceeding. Conciliators do not have the power to make decisions on their own. If an

agreement cannot be reached, the Conciliator will schedule a regular hearing so that a Law Judge can hear your case.

- **Hearings**

In the majority of cases the Workers' Compensation Board schedules hearings. We can request hearings, but we do not have any control over when they will take place. If a hearing is scheduled in your case, you will receive a notice in the mail directing you to appear. Our office receives a copy of the notice on the same day as you. At the hearing you can expect to see a Law Judge, an attorney for the insurance company, a court reporter, and of course, your Lewis & Lewis attorney.

At a hearing, the Law Judge will listen to arguments from both sides, review the evidence in the file and make decisions regarding your claim. There may be several hearings before a claim is finalized. This is particularly true in cases where the insurance company has "controverted" your claim. In controverted cases, the issues are almost never resolved at the first hearing. Further hearings are scheduled so that you can testify about your injury, so that the doctors can testify about their opinions, so that either side can present additional evidence, or for any other reason the Judge deems necessary and proper.

It is important that you attend any Conciliation Meetings or Hearings that are scheduled on your case unless our office specifically tells you not to. If you don't appear for your hearings you may give the Judge the impression that you do not care about your case. It is also important that you are cooperative and respectful at your hearings, particularly with the Judge. Remember: the Judge is going to decide the issues on your case. Although they are supposed to remain impartial, Judges are only human. If you antagonize the judge, or fail to make a good impression, it could easily turn him or her against you. You should also keep in mind that a Workers' Compensation hearing is a formal administrative proceeding. It is in your best interest to dress appropriately.

AFTER THE HEARING – DECISIONS, PAYMENTS AND APPEALS

After each hearing the Workers' Compensation Board sends out a Notice of Decision. You can expect to receive your decision within two weeks of your hearing date. The decision should set forth all findings made at your hearing, including a direction to the insurance company to pay benefits. Although the insurance company had a lawyer present at the hearing, they are not required to pay benefits until they receive the Notice of Decision. It is the Notice that tells them what they need to do with regard to your benefits.

- **When will I receive my check?**

In most situations, the insurance carrier has 10 days from the date of the Notice of Decision to make the required payment. Keep in mind that the hearing date is not the same date as the date of the Notice of Decision. Check the date on your Notice of Decision to determine if you have been paid on time. If the decision awards on-going payments you should receive a

check every two weeks. If you do not receive a payment, or if a payment is late, you may be entitled to a penalty.

- **What should I do if my check is late, or doesn't arrive at all?**

You should contact our office and let us know if you are not paid, or paid late. This information can be left with a secretary. If you think your check is late, you should keep the envelope the check came in, and make a copy of the check before you cash it. Otherwise, we cannot prove a late payment. Once we receive your message regarding a late, or non-payment, we will review your file and contact the insurance company. If we can verify a late payment, we will request a hearing to correct the error and if appropriate, ask for a penalty.

- **Reasons for late payment or non-payment**

Sometimes the insurance carriers forget to make a payment due to an oversight or error. When this happens, we can generally take care of the problem with a phone call. If a phone call doesn't work, we need to request a hearing. However, you should also be aware that the insurance company might deliberately withhold payment because they plan to appeal the Notice of Decision.

- **Appeals**

Any of the parties to a Workers' Compensation claim can file an appeal of the judge's Notice of Decision. An appeal must be made within 30 days of the date the decision was filed. If the insurance company objects to the judge's decision regarding your payments, they do not have to pay you while the appeal is pending. Please note that when an insurance company files an appeal, we have 30 days following the receipt of that appeal to submit a rebuttal. Three commissioners of the Workers' Compensation Review Board decide appeals. The law does not require that appeals be decided within any specified period of time. We often wait six months to over one year for decisions from the Review Board. Please keep in mind that this office does not receive any information as to when an appeal will be decided. We receive our notice from the Review Board on the same day you do. Additional appeals are possible, and will be pursued depending on individual circumstances.

FINALIZATION OF A WORKERS' COMPENSATION CLAIM

A Workers' Compensation claim remains open for 18 years with a non-permanent injury and for the remainder of the claimant's life with a permanent injury. This means that you can continue to receive medical treatment for all established sites of injury for either 18 years, or the rest of your life. An exception to this rule occurs when a claimant finalizes his or her claim with a "Section 32" settlement where they waive their rights to future medical coverage in exchange for a lump sum payment. Section 32 settlements will be discussed further below. There are two types of permanency awards in New York State Workers' Compensation Law. These are "schedule loss of use" and "classification".

- **Schedule Loss of Use**

Permanent injuries to the extremities (fingers, hands, arms, toes, feet and legs), as well as loss of eyesight and loss of hearing, are the subject of schedule loss of use awards. The time to determine whether you are entitled to a schedule loss of use award is generally one year after your accident, or one year after any surgery that has been performed. In general, a permanency determination can be made if your condition has become stable and no further active medical treatment is contemplated.

When it is time to determine permanency we will instruct you to return to your doctor for a permanency exam. (Under special circumstances, we may arrange an appointment for you). The doctor will examine your injured body part based on Medical Guidelines written by the Workers' Compensation Board. If your doctor is not familiar with the Board's Medical Guidelines we will gladly provide him or her with a copy. Based on the examination your doctor will indicate a percentage loss of use.

The Workers' Compensation Law assigns a value to each of the extremities, the ears and the eyes that is equivalent to a number of weeks. These values are:

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| Arm | 312 weeks |
|-----|-----------|

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| Hand | 244 weeks |
| Leg | 288 weeks |
| Foot | 205 weeks |
| Eye | 160 weeks |
| Thumb | 75 weeks |
| Index Finger | 46 weeks |
| Middle Finger | 30 weeks |
| Ring Finger | 25 weeks |
| Small Finger | 15 weeks |
| Great Toe | 38 weeks |
| Other Toes | 16 weeks |
| Hearing Both Ears | 150 weeks |

The values indicate the number of weeks of benefits you would be entitled to on a permanency award, if you had a 100% schedule loss of use. A 100% schedule loss of use is very rare, generally only occurring in cases of paralysis or amputation. Most people have some smaller percentage loss. For example, if your injury was to your arm, and your doctor indicated that you had a 25% loss of use, you would most likely be entitled to 78 weeks of benefits because 78 is 25% of 312. There are several additional factors that can come into play in calculating a schedule award. As such, when the time comes for you to receive a schedule we will show you the medical reports and formula used to calculate your award. Please keep in mind that when you receive a schedule the insurance company is entitled to a credit for any lost wage payments they have already made to you.

- **Classification**

The term “classification” is used for permanent injuries to the back and neck. Under certain circumstances a person can also be “classified” with permanent internal injuries, head injuries, or severe injuries to the extremities. As with schedule loss of use awards, a classification finding is made at a hearing 1 to 2 years after the accident date or surgery and is based on the Workers’ Compensation Board Medical Guidelines.

The major difference between a schedule loss of use award and a classification is the right to collect on-going lost wage payments. With a classification you are entitled to lifetime benefits so long as you are medically disabled from work. Your on-going benefit rate with a classification is based on medical evidence of degree of disability. If your doctor says you are permanently partially disabled with a moderate degree of disability, you would receive payments at your moderate, or 50%, rate. If your doctor indicates that you have a permanent disability, but you are able to work, you will not receive on-going benefits or a monetary award. You will however, have lifetime medical coverage for treatment related to the original work injury.

At the end of a Workers’ Compensation hearing, you may hear the Law Judge say that “no further action” is planned on your case, or an insurance company adjustor may tell you that your case has been “closed”. These terms only mean that there are no outstanding legal issues requiring a further hearing. If some issue should arise regarding your lost wage payments or medical treatment we can request a hearing. As was stated above, an established case remains

open for 18 years, and if your injury is deemed permanent, you have lifetime protection. The only way to “close” your case on a final and permanent basis is with a Section 32 settlement.

- **Scars**

The Workers’ Compensation Law only provides monetary awards for scars on your face. The maximum amount payable for facial scars is \$20,000, and this amount is reserved for only extremely serious cases. Most facial scars result in payments under \$5,000.00.

- **Section 32 Settlements**

Section 32 of the Workers’ Compensation Law permits settlements of all issues relating to a compensation claim. Generally, it is the insurance company who suggests a Section 32 settlement because these settlements result in a permanent closure of the compensation case. In rare circumstances we are able to negotiate a Section 32 settlement that makes a final cash payment and continues medical coverage, but more often, the insurance company will only settle if the claimant agrees to give up all future benefits, both medical and indemnity (lost wage payments), in exchange for a lump sum payment.

If you do decide to accept a Section 32 settlement offer you need to be aware of the following:

- The settlement agreement must be in writing, and signed by all parties. It can take a considerable period of time for all parties to review and sign the agreement.
- Once all parties have signed the agreement it is submitted to the Workers’ Compensation Board. The Board will determine whether a hearing is necessary to approve the agreement.
- If no hearing is required you will receive a notice from the board indicating that they have received the agreement and plan to address it without a hearing. All parties will then have 10 days to file any objections. If no objections are made, the Board will approve the agreement and issue a written decision. You should receive your check within 10 days of the date of the decision.
- If a hearing is required, you will need to appear before a Workers’ Compensation Commissioner. The Commissioner will review the agreement, make sure that you understand its terms, and ask you several questions in order to be sure that you understand that you are giving up your right to future benefits. If the Commissioner approves the agreement, there will be a 10 day waiting period following the hearing for any party to file an objection. If no objections are received, the Board will issue a written decision. You should receive your check within 10 days of the date of the decision.

Please note that Section 32 agreements can be complicated by several factors. The most common of these is the receipt of Social Security Disability and Medicare or Medicaid benefits.

If you receive these benefits, or plan on applying for them, please make sure we know about it when negotiating your Section 32 agreement.

ATTORNEYS' FEES

The Workers' Compensation Law prohibits direct payments to attorneys. You will never write our office a check. We receive our fees directly from the insurance carriers. The fees do, however, come out of the lost wage or indemnity benefits we obtain for you. Our fees are generally 10% of the money we generate for you and must be approved by a Workers' Compensation Law Judge. The judge will approve fees up to \$450.00 at the end of a hearing. Fees over \$450.00 require a formal fee application that is reviewed by a judge, and confirmed with a formal decision approving, modifying or denying the fee. We request fees that are reasonable based on the work we do behind the scenes in preparation for your hearings as well as our actual appearances at the hearings.

If you are classified with a permanent partial disability and continue to receive weekly benefits, our fee is generally ten times the ongoing weekly benefit rate. These "classification" fees are usually paid out over time, by deducting the fee at \$10.00 or \$20.00 per week until it is paid. Once the attorney's fee is paid in full, the weekly benefit will automatically return to the classification rate.

PART 2 **SPECIAL ISSUES IN WORKERS' COMPENSATION**

THE SPECIAL FUNDS CONSERVATION COMMITTEE

As your compensation case develops, you may hear references to the Special Funds Conservation Committee. Generally, the Special Funds will become involved in your case if any of the following circumstances are present:

- 1) You were working for more than one employer at the time of your injury,
- 2) You had certain disabilities or ailments prior to your work injury, or
- 3) You have an established compensation case that has been inactive for several years.

- **Concurrent employment**

Concurrent employment is a term used in Workers' Compensation law when a person had more than one job at the time of his or her work accident. You should let us know as soon as possible if you had more than one employer at the time of your injury. If you can prove that you had more than one job, and that you collected a paycheck from both employers within the same calendar week as your work injury, the Board will consider your income from both jobs when calculating your average weekly wage. The Special Funds will then be responsible for a portion of your compensation payments. In most cases, the insurance carrier for the employer where

your injury occurred will pay you, and the SFCC will simply reimburse that insurance company the amount they are entitled to. Please note that not all jobs qualify as concurrent employment. To qualify, the second job must be with an employer who is required by law to carry Workers' Compensation insurance.

- **Pre-existing disabilities/diseases**

Section 15(8) of the Workers' Compensation Law deals with the Special Disability Fund. This fund becomes an issue if a worker had disabilities or ailments prior to his or her work accident that make the overall disability "materially and substantially" worse. In such cases, the Special Funds makes reimbursement payments to the compensation insurance carrier. In order to determine whether section 15(8) applies in your case, the insurance carrier may ask you to complete a questionnaire or answer questions in a brief interview regarding your medical background. If you receive a questionnaire or are contacted regarding an interview, you should contact our office.

- **Old cases**

Section 25-a of the Workers' Compensation Law governs the Fund for Reopened Cases. This section of the law becomes an issue if your case has been closed for several years and is later re-opened. If the re-opening takes place more than 7 years after the original accident date, and also more than 3 years after the last payment of compensation, the Special Funds may take over future medical and lost wage payments on the case.

WORKERS' COMPENSATION FRAUD

A person commits Workers' Compensation fraud when he or she "knowingly makes a false statement or representation as to a material fact" for the "purpose of obtaining compensation". If you commit fraud you risk losing all of your compensation benefits. You can also be brought up on criminal charges.

In order to avoid a fraud accusation, we recommend the following:

- If you are under medical restrictions, do not perform any activities; even in your own home, that go beyond your restrictions.
- Be aware that the insurance company may have private investigators asking questions about you, following you and videotaping your actions.
- If you engage in any type of work while claiming or collecting Workers' Compensation benefits, advise this office immediately. This includes unpaid work and self-employment.
- If you receive a questionnaire from the insurance company, go ahead and answer the questions, but return it to this office for an attorney to review.
- If you are contacted on the telephone by an insurance adjustor or investigator do not answer any questions. Let them know this office represents you and end the conversation.

VOLUNTARY WITHDRAWAL FROM THE LABOR MARKET

If you are receiving Workers' Compensation benefits and your doctor indicates that you have less than a total disability, that you are capable of sedentary work, or can return to work in a light duty capacity, you do have an obligation to attempt to return to work. If your employer does not have light duty available, you must seek alternate work within your restrictions. If you do not return to work or look for alternate work, the insurance company can request a hearing and ask the judge to find that you have voluntarily withdrawn from the labor market. If the judge agrees, your benefits will stop.

In order to prevent this from happening, we urge you to follow up on any offers of light duty from your employer. If your employer does not have light duty, you should look for alternate work and keep a careful written record of your job search. A job inquiry form has been included in your Lewis & Lewis folder so you can document your job search.

ACTUAL REDUCED EARNINGS

You may be concerned that finding work within your restrictions will require accepting a job at a lower wage than you are accustomed to. The Workers' Compensation Law takes this into account with awards for "actual reduced earnings" (ARE). You become eligible for actual reduced earnings when:

- 1) Your doctor gives you work restrictions directly related to your work injury, and
- 2) You sustain a loss of earnings due to those restrictions.

If you return to work performing light duty (at any job, not necessarily the one you were injured at) and do not earn your regular wages, you are entitled to receive two-thirds of the difference between your AWW (see page 6) and your new wage. For example, if your AWW for the year prior to your injury was \$450.00 per week, and you return to a light duty job earning only \$300.00 per week, you are entitled to \$100.00 per week as a compensation benefit for actual reduced earnings. The difference between \$450.00 and \$300.00 is \$150.00, and two-thirds of \$150.00 is \$100.00. In order to receive actual reduced earnings benefits, the loss of earnings must be directly related to your disability and work restrictions.

SOURCES OF ADDITIONAL BENEFITS

Many injured workers are entitled to certain benefits while their compensation case is controverted, or in addition to their compensation benefits once their case has been established.

- **New York State Disability**

If your employer controverts or denies your Workers' Compensation claim you may be eligible for New York State Disability benefits. These benefits are paid after a seven (7) day waiting period at a weekly rate equal to one-half of your average earnings for the last eight weeks worked, up to a maximum of \$170.00 per week. Benefits are paid for a maximum of 26 weeks.

If you are awarded Workers' Compensation benefits for the same period of time in which you received disability benefits, the disability insurance carrier will be reimbursed from your compensation benefits. Please note that you may not collect New York State disability benefits and unemployment benefits at the same time.

- **New York State Unemployment Insurance**

If you are receiving temporary total Workers' Compensation benefits you are not eligible for unemployment benefits, because in order to receive unemployment you must be "ready, willing and able" to obtain work. However, if your doctor is reporting a partial disability you may be eligible for unemployment benefits in addition to your compensation benefits. Unemployment benefits are paid for a maximum of 26 weeks.

- **Automobile No-fault Insurance**

If your work accident arose out of the use or operation of a motor vehicle, you may be entitled to no-fault insurance benefits in addition to Workers' Compensation. Your employer's Workers' Compensation carrier will pay your medical coverage and up to two-thirds of your lost wages per week. No-fault permits payment of up to 80% of your lost wages, subject to a maximum of \$2,000.00 per month. Your injury does not necessarily have to be the result of a motor vehicle accident to obtain no-fault coverage. You may qualify if you were working in, on or around a motor vehicle.

- **Social Security Disability (SSD)/Supplemental Security Income (SSI)**

SDD and SSI are federal disability programs administered by the Social Security Administration. SSD benefits may be available to you, your survivors or dependents under the following circumstances:

1. You worked for at least five of the ten years prior to the onset of disability.
2. You have been, or will be, totally disabled from any and all work for at least twelve consecutive months.

If you receive SSD benefits you will also qualify for Medicare after a 24-month waiting period.

SSI is a federal welfare program. In order to receive SSI you must have significant income and financial needs in addition to proving a disability. If you qualify for SSI you will automatically receive Medicaid.

You may receive SSD and SSI benefits in addition to Workers' Compensation benefits. An application for benefits should be completed with the Social Security Administration as soon as there is an indication that your disability may last at least twelve consecutive months. Lewis & Lewis has helped countless claimants obtain Social Security Disability benefits. Feel free to discuss your eligibility for these benefits with any of our attorneys.

LAWSUITS

In most cases, you cannot sue your employer for an injury at work. Workers' Compensation is your exclusive remedy, and only provides for lost wage and medical benefits. You will not receive money for pain and suffering in a Workers' Compensation case. This does not mean that it is impossible to have a lawsuit related to a Workers' Compensation case. If there is a third party involved in causing your accident, you may have a case against that party. Here are some examples:

1. Joe is employed by the X Roofing Co. While he is working on the roof of a building owned by Y Corporation, he falls to the ground and breaks his legs. Joe will be entitled to Workers' Compensation benefits from X Roofing Co., but he may also sue Y Corporation and collect damages beyond those covered by Workers' Compensation.

2. Sue is a saleswoman for A&B Company. While driving to a sales meeting she is rear ended by Bob and suffers serious injuries. Sue can receive compensation benefits from A&B Co. and file a third party lawsuit against Bob. She should also file for no-fault benefits. (See p.)

3. Steve is a deliveryman for The Store. While delivering a television to an apartment building, he trips and falls on a broken step. Steve should file a compensation claim against The Store, and may be able to file a lawsuit against the owner of the apartment building.

It is important that you let us know all the facts and circumstances of your accident so we may determine whether you have a third party lawsuit. We carefully screen all compensation cases for the possibility of a third party suit. If there is a valid third party claim we will take all action necessary to protect your interests.

WORKERS' COMPENSATION DEATH CLAIMS

There are two types of Workers' Compensation death claims. The first type occurs when a person dies while performing his or her work duties. The second occurs when a person dies as a result of his or her work injury, even if the death is many years after the original accident took place, or disease developed. A death claim requires a different set of forms from those discussed on page 4, but the same type of information is necessary. A survivor claiming death benefits must submit a doctor's report indicating the cause of death and how the cause of death relates to the decedent's employment.

Death benefits are payable, in the first instance, to the surviving spouse. If the surviving spouse re-marries, two years of benefits will be paid in a lump sum and then no further benefits will be payable. If there are both a surviving spouse and dependent children both the spouse and children receive benefits. If there are children, but no surviving spouse, benefits are paid directly to the children. Please note that only “dependent” children are eligible for benefits. The Workers’ Compensation Law deems children under 18, and children under 23 who are full-time students, to be dependent. If there is not a surviving spouse, and no children, benefits are paid to the parents, grandparents, grandchildren, siblings, or estate depending on individual circumstances.

CONCLUSION

It is our goal to obtain the best possible outcome on your claim. If you need more information than this booklet provides, please contact our office with your questions. When you call we urge you to leave detailed messages, and accept any non-legal advice offered by our dedicated staff. We are all here to help you.

The last few pages of this booklet list questions we are frequently asked by our clients. We’ve given you the short answers and directed you to the pages in this booklet that provide more details. The time after an injury is a difficult one. We hope you will use this book to ease some of the frustration and help you understand the process.

FREQUENTLY ASKED QUESTIONS

Q: What should I do if I get hurt at work?

A: The first two things you should do are report the accident to your employer and seek immediate medical attention. Once you have reported your accident and have seen a doctor you should contact an attorney at Lewis & Lewis, P.C. For more information on reporting and filing a claim see pages 3-5.

Q: Do I need an attorney?

A: Although the law permits you to appear at a Workers' Compensation Board hearing without an attorney, it is strongly recommended that you retain one. The insurance company will have a staff of attorneys on its side. In order to compete and protect your rights you should have your own attorney.

Q: How much will I have to pay my attorney?

A: Our office will be paid from the money we generate for you. Attorneys' fees are discussed on pages 13-14.

Q: How does a Workers' Compensation case get started?

A: You start your claim by filing forms with the Workers' Compensation Board. See pages 4-5 for more information on filing your claim.

Q: If I can prove a Workers' Compensation injury, what am I entitled to?

A: You will be entitled to all necessary and related medical benefits and a portion of your lost wages. Workers' Compensation benefits are discussed in detail on pages 5-7.

Q: Can I sue my employer for negligence?

A: No, but you may have a case against some third party other than your employer. Please see page 18 for a discussion of lawsuits.

Q: Will I get a settlement for my pain and suffering?

A: No. Workers' Compensation does not provide any monetary award for pain and suffering. Your benefits are limited to medical care and lost wage payments. Please see pages 5-7.

Q: Should I give a statement to the insurance carrier?

A: No! If you are contacted by an insurance company representative tell him or her that this office represents you and end the conversation. Any information you provide may be used against you.

Q: Will the insurance carrier hire a private investigator?

A: You should expect that someone will monitor your activities. It is very common for insurance carriers to check to see if you are exceeding the limitations set by your doctors. Please see page 15 for a discussion of investigators and workers' compensation fraud.

Q: How can I get authorization for expensive medical care?

A: Your doctor must request authorization from the insurance company for any treatment which costs more than \$500.00. The authorization process is discussed on page 5-6.

Q: Can I go outside of New York State for treatment?

A: It is strongly encouraged that you treat with medical professionals in New York State. You may obtain out of state treatment, but any treatment outside of New York must be pre-approved by your employer's workers' compensation carrier. Please see the discussion on pages 5-6.

Q: Can I see a doctor for a second opinion?

A: Yes, you can. For more information on your medical treatment options, see pages 5-6.

Q: Do I have to go to the insurance company's doctor?

A: Yes. Please see page 8 for a discussion of independent medical examinations.

Q: What medical reports do I need to be successful?

A: You must have a medical report sufficient to prove that your injury arose out of and in the course of your employment. Your doctor must provide a specific history of how the injury occurred, the exact diagnosis involved, and a specific comment on whether the injury is causally related to your work. More information is available on pages 3-7.

Q: How long will my medical and lost wage benefits last?

A: In most cases, the insurance company will be responsible for causally related medical benefits for the rest of your life. Lost wage benefits normally extend for 18 years from the date of the injury. In some cases of permanent injury the lost wage payments may last longer than 18 years. See the discussion on pages 11-13.

Q: Do I have to have a Workers' Compensation Board hearing?

A: Hearings are scheduled when there are controverted, or disputed, issues on a case. If the insurance company has accepted your claim and made appropriate payments, a hearing may not be necessary. The hearing process is discussed on pages 8-9.

Q: How long after a hearing will I get paid?

A: Under most circumstances you should expect payment within 10 days from the date of a Workers' Compensation Board Notice of Decision. The payment process is discussed on pages 9-10.

Q: What should I do if my employer does not have work within my restrictions?

A: If you are in a union, you should contact your representative regarding any possible contract violations. If there are no violations and no work is available, you may be eligible for unemployment benefits. Please see page 17.

Q: What is a schedule loss of use?

A: A schedule loss of use is an award given for permanency to one of the extremities, the ears, or eyes. Please see pages 11-12 for a detailed discussion.

Q: What is classification?

A: A classification is a legal determination that an injured worker has an on-going permanent disability. Classification is discussed in detail on page 12.

Q: Do I get paid for scarring?

A: Workers' Compensation will compensate you for scars on your face only. See page 12.

Q: Can my case be re-opened if I have received a final award?

A: The answer to this question is almost always, "yes", unless you have entered into a Section 32 settlement. For more information please see pages 11-13.

Q: What is a Section 32 settlement?

A: A Section 32 settlement is an agreement that resolves your case on a final, permanent basis. These agreements are discussed on page 13.

Q: What are actual reduced earnings?

A: Actual reduced earnings are paid if you have to take a job at a lower wage due to your disability. Please see page 16.

Q: Will I be reimbursed for out-of-pocket expenses?

A: You can receive reimbursement for mileage and parking expenses incurred for medical treatment. You will not be reimbursed for travel to hearings or your attorney's office. You may also receive reimbursement for prescriptions. In order to get your money back, you must keep careful records of your mileage and prescription expenses. An expense sheet is included in your Lewis & Lewis folder.