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MAY 2007

Brought to you by
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We hate to brag, but hundreds of lawyers can't be wrong

I was flattered to learn recently that *Main Line Today Magazine* had named me as a "Top Lawyer" in the fields of personal injury and workers' compensation. In the cover story of the April 2007 issue, *Main Line Today* reported that they asked hundreds of Main Line attorneys to name their favorite litigators in 11 different specialties. (And NO, we couldn't vote for ourselves; in fact, I never even knew about the survey until a colleague read about it in the magazine and called to congratulate me.)

As I say in my books and on my new Web site, www.MonahanLawPractice.com, there are certain questions you should ask every lawyer before you hire them. Reporter Tara Behan of *Main Line Today* says that knowing a great lawyer is "like taking out an insurance policy: It sure is nice to have one standing by if life takes an unfortunate turn." That in mind, they named the *Main Line's* best walking, talking insurance policies as chosen by their peers.

In the field of workers' compensation, I was one of three selected by other attorneys as tops in this field. (And yes, if you want to know who the others are, they are my colleagues Dennis Brogan, a college and law school classmate, and Andrew O'Shea of Ardmore.) Looks like the Irishmen have cornered this field of law.

In the area of personal injury litigation, I was named one of ten Top Lawyers. (Call me if you want the names of the other nine. I'll be happy to give you their names if you want to make comparisons.)

While I am obviously flattered by my peers' recognition, choosing the right lawyer is not about picking just anyone out of the phonebook or from listening to a 30-second TV ad. Order my books to find out more on what to look for when hiring a lawyer, or visit my Web site and download my article on questions to ask every lawyer. And if you need a recommendation of a lawyer in a field where I don't practice law, call me and I'll give you the names of lawyers I consider tops in their fields.

Speaking of Web sites, check out my newly completed Web site at

www.MonahanLawPractice.com

It's updated weekly with important and valuable information

With the expert advice of Tom Foster of FosterWebMarketing, we launched our new Web site this month to provide consumers access to valuable information in the fields of personal injury and workers' compensation law. You can access this site and obtain important information, such as ways to order our books and newsletters, or simply direct a question you have about the law in Pennsylvania. You can download information we have posted, check out our biographies, read about what other clients have said about us, and look at a sample of some of the results we have achieved for clients in the past. Plus, we will be adding new, developing stories and information important to the consumer on a timely basis.

We plan on making this site the best small law firm Web site in Pennsylvania, so tell any of your friends, relatives, neighbors, or coworkers to look us up on the Internet if they have any questions. If I am unable to answer them, I promise to find someone who can.

We take your family's safety and security personally.

THIRD-PARTY LIABILITY

After almost 30 years of representing people in personal injury and workers' compensation cases, I am still surprised by the number of people who, when they are injured, have serious misconceptions of what they may or may not be entitled to. That's why I wrote the two books offered in my newsletter every month, which you can order on my Web site: www.MonahanLawPractice.com.

But as I promised in last month's newsletter, I thought it might be helpful to once again review what benefits are available if you've been involved in a work-related injury because of the wrongdoing or negligence of someone or some company other than your employer.

First, let's start at the beginning and outline what benefits are and ARE NOT available to the injured worker. While this article can be by no means comprehensive about the ins and outs of every aspect of the Pennsylvania Workers' Compensation Act, I think it will give the reader a good general outline of what they can expect from their employer and its workers' compensation insurance carrier.

Workers' compensation benefits

If you've been injured in the course and scope of your employment, you are entitled to workers' compensation benefits. However, those benefits are generally limited to (1) payment of reasonable and necessary medical treatment related to the work injury and (2) payment of wage-loss benefits subject to maximum amounts and durations.

There is no—**repeat, NO**—compensation for any other losses, such as pain and suffering, loss of life's pleasures, loss of benefits such as health insurance for non-work-related injuries, lost pensions, or loss of future raises. Historically, as far back as 1915, the Pennsylvania legislature enacted workers' compensation laws to protect employers from direct lawsuits from injured workers for these kinds of benefits in exchange for the agreement to pay workers' compensation benefits regardless of who was at fault. That is why it is sometimes referred to as no-fault insurance coverage.

There are some limited special benefits to which a worker may be entitled in certain circumstances, however. First, any scarring located above the collarbone that involves the head, neck, or face may be compensated—if it is unsightly and not common to your employment—for up to a maximum benefit of 275 weeks of compensation. There are no guidelines, unfortunately, for what amount of compensation will be awarded for any particular kind of scarring.

In addition, workers in need of prosthetic devices and even modifications to their homes or cars can obtain those kinds of benefits. Lastly, in certain circumstances, if a worker has suffered an amputation of an extremity or lost sight or hearing, a specific number of weeks of benefits may be available. These benefits may also apply if the loss of the extremity, although not an amputation, amounts to a loss for all practical intents and purposes.



Other statutory benefits that may be available

In addition to workers' compensation benefits, you may also be entitled to any of the following benefits: social security benefits, unemployment benefits, disability benefits, automobile insurance benefits, or pension payments.

Social Security Disability Insurance is available to workers who have enough taxes paid into the system to provide disability coverage under the Social Security Administration. You should periodically receive a report from Social Security on your eligibility for these and the amount to which you would be entitled. You should keep that document in a safe place in case you ever need to refer to it. Of course, Social Security Disability is only for someone who is disabled from all substantial, gainful activity for the most part, and only applies for disabilities that are expected to last for a year or more.

Even if you have not contributed enough to social security, you may still be entitled to Supplemental Social Security, which is limited social security benefits for those who are disabled and indigent.

If you or your employer has disability insurance, that may be a benefit to which you are entitled (1) regardless of your receipt of workers' compensation if you paid the premium or (2) in place of workers' compensation if that benefit is contested or denied.

Unemployment benefits are available to employees who have been discharged through no fault of their own. However, if you are entitled to workers' compensation, the insurance carrier for the employer is entitled to offset the receipt of those benefits from any workers' compensation you may receive.

In certain circumstances, you may also be entitled to pension benefits or automobile insurance first-party benefits. Pension plans may have disability provisions, and you should contact your pension administrator for more information. You may also want to contact your automobile insurance agent to determine if additional medical or wage-loss benefits are available to you if you have been involved in a work-related auto accident.

Third-party liability

Whenever a client has been involved in a serious accident, I look into the possibility of bringing a claim against any responsible third party. What is a third party? Well, it could be the driver of another car or truck who hit you while you were in the course and scope of your employment. It could be the owner of property where you were pursuing work activities and through the negligence of the property owner, or perhaps even another person or company, you were injured. For instance, maybe you're working on a job site owned or controlled by another company. Perhaps their workers neglected to cover up or secure an unsafe area of the job, causing you to fall through the floor or into a pit, resulting in serious injury. Perhaps one of another company's employees negligently dropped some equipment or a tool, hitting you and causing serious personal injury. Or maybe some equipment you were using on the job was defectively designed or manufactured and it malfunctioned, causing you serious personal injury.

These are all incidences of **third-party liability**, and for which you can seek additional recovery to compensate you for those damages that workers' compensation does not. These damages include pain and suffering, loss of life's pleasures, loss of future increased income, and loss of fringe benefits, among others.

There are some considerations to be made, however. First, since the workers' compensation insurance company is entitled by law to receive a portion of the benefits it pays to you out of any recovery from a responsible third party, a decision has to be made immediately if the case is worth pursuing. Only an attorney can evaluate that situation. Unlike workers' compensation, a claim against a third party has to involve liability on their part. This is not a no-fault situation like workers' compensation. Secondly, an evaluation has to be made as to whether the case is worth pursuing from a monetary perspective. That involves not only an evaluation of the chances of proving liability, but also an analysis if you will recover any monetary damages above and beyond wage-loss and medical benefits. Next, you need to take into consideration the attorney's fees, costs of litigation, and the workers' compensation insurance carrier's right to be paid back the benefits it paid out of any third-party recovery.

If a determination can be made that a third-party case is worth pursuing, here are examples of the kinds of cases and theories of liability that a lawyer may investigate:

1. PRODUCTS LIABILITY

Claims against the manufacturers, sellers, distributors, wholesalers, or suppliers of defective products are known to lawyers as **strict liability**. The product must be provided with every element necessary to make it safe for its intended use. If it doesn't, it is considered defective and the defendant (i.e., any one of those parties named above) is responsible for any harm caused by the defect. Such liability may even be a failure to warn of such a defect.

Examples of these kinds of cases are as follows: You are operating a saw while working construction when the saw blade shatters and flies out of the saw, injuring you seriously. A potential claim would exist against the manufacturer of the saw blade and the saw itself. Another example would be when you are exposed to toxic chemicals or products while working, such as benzene or asbestos, causing you serious and permanent injuries. A potential claim against the manufacturer of those products could be brought in addition to workers' compensation benefits.

2. PREMISES LIABILITY

An owner of land owes a duty of care to persons who have been invited onto the property. Such a person or company is required to use reasonable care in the maintenance and use of the land, and to protect you from foreseeable harm. They are also required to inspect the premises and to discover dangerous conditions. The owner is responsible to you if he knows, or by using reasonable care would discover, the condition which poses an unreasonable risk of harm, and expects you will not discover it or fail to protect yourself and the owner fails to use reasonable care to protect you.

An example of this kind of liability would be like the property owner we mentioned which has a hole in its property that is covered up with a thin sheet of black tarp onto which you step and fall into the hole.

3. NEGLIGENCE OF OTHERS

Negligence of others is also known as carelessness, which is defined as the absence of ordinary care that a reasonably prudent person would use in the circumstances presented. It may consist of either an act or the failure to act where there is a duty to do so.

These kinds of cases can involve a number of different circumstances. It could be an automobile accident where the other driver is at fault. It could be against another company on a job site whose worker negligently dropped a two-by-four on your head. It could be a utility company who failed to issue reasonable precautions of your getting electrocuted on the job.

4. MEDICAL MALPRACTICE

Medical malpractice or "professional negligence" consists of a negligent, careless, or unskilled performance by a physician or other professional of the duties imposed on him by the professional relationship you have with him. It also involves negligence when a physician shows a lack of proper care and skill in the performance of a professional act.

Examples of these kinds of cases generally arise out of the care and treatment you receive as a result of the work injury. However, there has been a lot of publicity about the abuse of these kinds of cases (which is generally a myth and easily debunked) as well as a concerted effort on the part of legislators to severely restrict a patient's right to sue. These cases involve a considerable amount of risk and expense, and need to be reviewed thoroughly by a team of doctors and lawyers before they can be pursued.

SUMMARY

I hope this summary helps you to understand the confusing interrelationship between workers' compensation and third-party liability. If you only get a basic understanding, you will be better off in the event you have to consider such an option. Nevertheless, these cases can be very complicated and usually can only be handled by an attorney experienced in the intricate details involving workers' compensation and third-party cases. These cases involve investigation before they are undertaken. If you have questions or concerns about such a case or know somebody who does, ask them to contact us today. Delaying such an investigation is never the tactic to take when it involves these issues.



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Anxious to get your picture in the papers and gain your 15 minutes of fame?

Try hosting an underage drinking party and you'll get it soon enough

Thousands of teenagers die each year as a result of drinking and driving. Prom nights this time of year have a disproportionate share of these statistics, according to the Department of Highway Safety. If you're thinking of hosting a prom or graduation party and serving alcohol, think again. Not only could you face serious lawsuits if anyone is injured, you may face criminal charges and get your picture on the front page of your local newspaper.

Talk to your kids about the dangers of drinking and driving, set limits on the number of people who will be riding with him or her, and set a curfew—preferably one that's before midnight. Chances of an alcohol-related accident rise dramatically after midnight.

A classy alternative is to rent a limo for the night. The cost can be offset if several couples go in on it together, and it allows all of them to have a great evening without the worries of driving. If your graduate is attending parties this season, make a pact: if they or any of their friends decide to have a drink, be their 911 for a ride home—no questions asked, no repercussions. Remember, it's their safety that is most important. One tragic mistake is not worth it after all you have invested in your children for so many years.



Talk to your kids about the dangers of drinking and driving.