



11

Secrets to
***Winning* Your**

WORKERS' COMPENSATION CLAIMS

IN THE STATE OF ILLINOIS

LARRY DISPARTI & JILL WAGNER

11 Secrets to Winning Your Workers' Compensation Claim

*What the Insurance Companies
and Employers DON'T Want
YOU to Know About YOUR
Workers' Compensation Rights*

**Lawrence Disparti, Esq.
& Jill Wagner, Esq.**

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From the Author

Knowledge is Power. The purpose of this book is to give YOU the knowledge you NEED about Workers' Compensations Claims so you can make sure you are treated fairly if you or a loved one is injured on the job. The sad truth is when you or your loved one is injured, the Employers, or the Workers' Compensation Insurance adjuster or even the doctor that workers comp sends you to, really are not your friend. Typically, they DON'T have your best interests at heart. You need to know you or your loved one's rights. The purpose of this book is to give you that knowledge.

Most people who have been injured at work, or have a loved one who has been hurt on the job have a ton of questions: What should I do first? Who should I talk to? What should I say to my Employer? Will my Employer or the Insurance company take care of me or treat me fairly? What will happen to my job if I file a Workers' Compensation claim? Do I need a lawyer to represent me? What if I did not go to the doctor right after the injury? What do I do if the Workers' Compensation Doctor is not listening to me? What do I do if my Employer denied my claim?

If you have asked any of these types of questions, then keep reading. My hope is that this book will answer many of these questions and give you the knowledge you need.

You may feel uncertain, frustrated, upset, scared, or worried, and those feelings are understandable. You may be in considerable physical pain or watching a loved one suffer and feeling powerless to help. My hope is that this book will ease some of your stress, frustration, and worry.

This book is designed to help people just like you to explain how a Workers' Compensation claim really works, and to share information that the Insurance Companies and even Employers DON'T want you to know.

In the state of Illinois if you are injured by an accident on the job then you may be entitled to compensation for those injuries under the Illinois Workers' Compensation Act. This law makes it clear that you are entitled to benefits for a job-related injury or illness. This should include medical compensation, the payment of your medical bills, lost wages based upon your inability to earn wages as a result of your work-related injury or illness, and a permanency award based on the nature and extent of your injuries.

My name is Larry Disparti and I am an experienced Workers' Compensation lawyer. I have also spent my entire legal career helping people who have become injured or disabled. Through the years I have seen first-hand how important it is that people understand their rights and how damaging it can be to someone's case if they don't! The Workers' Compensation system is complicated. There are extremely specific rules and procedures that must be followed, and forms that must be submitted, and time limits on when and how things must be done. It is an area of the law where what you don't know can really hurt or even destroy your case. It is for this reason that I have taken the time to write this book. I want to make sure YOU don't miss out on benefits that should be yours or the compensation that you rightfully deserve after you or a loved one has suffered a work-related injury.

Because the Illinois Workers' Compensation system is complex, there is no way for me to provide a complete and exhaustive analysis of this area of the law. Instead, I have tried to lay out in laymen's terms some of the most important pitfalls injured employees in Illinois face when

dealing with their Workers' Compensation claim. Please understand that this book is a tool to give you helpful information, but it is not a substitute for competent legal representation by a lawyer who knows your specific facts and injuries.

Thank you for requesting this book and taking the important step of trying to make sure that your injuries are fairly compensated. It is my hope that the information you find in this book will help you in your journey to obtaining fair compensation for you or your loved one's work-related injury.

Keep in mind that not every claim needs a lawyer. You may be surprised that I would say that, since I am a lawyer but it is true. In order to decide whether you need a lawyer to handle your claim, it is important that you understand more about how the Workers' Compensation Act works. There is no substitute for good information that will help you make the best decisions for yourself and your family. I also think it is important that you receive this valuable information right now, for free, before you are pressured by an Employer or an Insurance adjuster to answer questions or settle your case.

You may be a little suspicious, since I am a lawyer and I am giving you this book for free. That is understandable. The truth is that I am sick and tired of seeing Employers and Insurance companies taking advantage of injured people before they have had a chance to talk with a lawyer. I hate to see people innocently hurt their own cases and chances for full and fair compensation after they have suffered an on-the-job injury. Although you may not need a lawyer to help you in your case, I want you to be equipped with the important knowledge that you need now and that your Employer or the Workers' Compensation Insurance carrier won't tell you.

Most lawyers expect you to make an appointment and come into their office to get some of the information that I am providing to you here. I believe you should have that information now, with no pressure and no strings attached. Hiring a lawyer to represent you is an important step and one that should not be taken lightly and certainly should not come with any pressure.

Frankly, giving you this helpful information also saves me time, too. This book contains information that would take me or my staff hours to explain. I cannot and will not accept every case. In fact, we turn down many types of injury cases that do not meet our case selection criteria or when we feel the person does not need a lawyer. This book allows me to provide you with valuable information that you can take your time to read. It will also give you the tools you need so that you can make an informed decision about what steps you need to take in your own case. No one should ever fall victim to the big Insurance companies or self-insured Employers. Everyone is entitled to rightful and full compensation for their work-related injuries. Period.

THIS IS INFORMATION TO HELP YOU BUT I AM NOT ALLOWED TO GIVE LEGAL ADVICE IN THIS BOOK!

This book will give you suggestions and identify pitfalls and traps that Employers or Workers' Compensation carriers can use against you, but I am NOT allowed to give you legal advice in this book. Official legal advice can only be given to someone after they have asked me to represent them, and I have agreed to do so, and we have both signed a written contract that states that I am going to represent them in a legal matter.

IF YOU ALREADY HAVE A LAWYER

If you already have a lawyer representing you in your Workers' Compensation claim, we do not want to interfere with that relationship. Please do not ask us to take your case from another lawyer who has agreed to represent you and is already working on your case. This book may raise questions for you, and I strongly encourage you to talk to your current lawyer and share your concerns with him or her. Every law firm does things differently and small differences do not necessarily mean that one way is right and the other is wrong. Anytime you have an issue with your lawyer, you should always sit down and discuss your concerns and try to come to a mutual understanding if possible. Most of the time it is wisest to stay with the lawyer you have rather than switch in mid-stream. Our firm does not normally accept representation in cases where another lawyer is already under contract of representation.

WHAT DOES THE ILLINOIS WORKERS' COMPENSATION ACT COVER?

The State of Illinois adopted the Illinois Workers' Compensation Act to protect injured workers who become injured on the job, and covers all reasonably necessary medical expenses, loss of income, if the injury takes the worker out of work for more than 3 days, and a permanency award to compensate the worker for the injuries sustained. Every Employer must carry Insurance to cover their employees for on the job injuries or they must self-insure, meaning they have created their own company owned Insurance coverage for their employees. It is supposed to cover the injured employee's medical bills for all reasonably necessary medical care and treatment. It should also cover a portion of the employee's lost wages if the injury has taken the worker out of work for more than 3 days. Lastly, it allows for a permanency award or settlement to compensate the injured worker based on the nature and extent of his or her injuries. The Employer is responsible for the employee's injuries the moment the employment begins.

Employers must provide emergency medical care to their injured employee if needed. These benefits should also include all the reasonable medical care needed to completely correct or help alleviate the worker's injury. Depending on how severe the injury is, the Employer must also provide total disability payments, either permanently, temporarily, or partial disability payments where employees are unable to return to their job temporarily or permanently. The Employer may also be required to cover necessary job training and vocational rehabilitation where the injuries are such that the employee cannot return to their prior job and will need assistance in training for and locating suitable future employment. Benefits may also include payments to family members.

The rules and regulations within the Illinois Workers' Compensation Act are complex. It is important that you have a basic understanding of the term "Workers' Compensation." This Compensation is NOT based on fault. That means that if you are injured while you are working, it does not matter whether you caused the injury or someone else caused the injury. Your injuries are covered if the accident or injury occurred on your employer's premises or where you were reasonably expected to be for work and while you were performing work duties. The Employer does not need to have caused the accident or injury. The Employer does not need to be at "fault" or "negligent." It does NOT even matter if the employee contributed to the accident that caused the injury. In fact, the injury or accident could be 100 % your fault, but if you were injured while working, you are covered and protected by the Workers' Compensation Act. You would STILL be entitled to full benefits! The Employer is responsible for your injuries if they occurred while you were at work and while you were doing your job. All you must prove is that your injury "arose out of and in the course and scope of your employment."

WHAT THE WORKERS' COMPENSATION ACT DOES NOT COVER:

The purpose of the Workers' Compensation Act is to compensate injured workers for their medical treatment, lost wages which may include any diminished future earning capacity, and a permanency award to compensate the injured worker for the nature and extent of his or her injuries. It will NOT cover pain and suffering, as you would expect in a civil personal injury lawsuit. Since the Act covers a worker's injury, regardless of fault, it does NOT provide for punitive damages. However, the Act does allow for penalties to be imposed against the

insurance company for a delay in benefits if its conduct was “unreasonable and vexatious.”

IMPORTANT LEGAL TERMS

The Workers’ Compensation Act can sound a bit like a foreign language. I want to help you understand some of the basic legal terms that are frequently used in connection with Workers’ Compensation Claims. What follows is a simplified listing of some of the commonly used terms, defined in plain English:

Accepted Claim: This is a claim in which the Insurance company or the self-insured Employer accepts or agrees that your injury or illness WILL be covered by Workers’ Compensation.

Average Weekly Wage (AWW): This is the injured employee’s average weekly salary prior to the injury. To determine the AWW you must look at the 52 weeks, of the injured employee’s gross earnings, prior to the accident. The total yearly salary is divided by 52 and that gives you the AWW amount. If the employee lost 5 or more calendar days during the last 52 weeks, that amount of time is deducted and then the amount is divided by 52. If the injured employee has not worked for the Employer for a full 52 weeks at the time of the injury, then the calculation is based on the actual number of weeks that wages were earned. If the employment period was so short that the above methods are impractical, then the AWW may be calculated based upon 52 weeks of typical earnings for someone similar in the same pay grade, employed at the same type of work, for the same hours. Note of caution: The AWW can be complicated and can be affected by many factors such as if the employee had more than one job at the time of the injury, worked less than 52 weeks or on a casual basis, or included mandatory overtime.

Employers and Carriers can also make mistakes when calculating the AWW. It is always wise to have an experienced Workers' Compensation lawyer look at the AWW numbers the Employer or carrier computes, to make sure you are being compensated fairly and accurately.

Temporary Total Disability (TTD): This is the rate at which wages are paid to the injured employee who is off of work per his treating physician and is currently two-thirds (66 2/3%) of the employee's average weekly wage, AWW.

Denied Claim: This is a claim in which the Insurance company or the Employer does NOT accept or believe that they have a responsibility to provide compensation to the injured employee. This is NOT the end of the road. You can and should fight this denial if you were injured during the course and scope of your employment, even if the Employer disagrees. Claims are filed and can be argued and tried with the Illinois Workers' Compensation Commission.

Maximal Medical Improvement (MMI): This term is used to describe when the injured employee has reached a point where his or her condition will not change or improve, with or without more medical treatment. At MMI the employee's injuries are as good as they are going to get, and the doctors have done all they reasonably can. This status is determined by the authorized treating physician. Usually at this point, the injured employee is "released" from the doctor's care. This is also the point in which Insurance companies or self-insured Employers will work to settle the claim. Never settle your Workers' Compensation claim when you are still being treated or have not yet reached MMI.

Medical Only Claim: This term is typically used to describe a claim where the Employer or Insurance company accepts responsibility for the medical injury, treatment and

medical bills, but believe the injured employee is capable of working so they are ONLY agreeing to pay for the medical treatment. You do NOT have to accept this decision if you feel you cannot return to work and you should consult a lawyer immediately.

Modified or Light Duty Work: This term describes the temporary employment offered by an Employer to the injured employee while they are on a restrictive duty by the treating physician.

Permanent Partial Disability (PPD): This term is the percentage amount of disability negotiated on behalf of an injured employee based upon injury to a specific body part that is permanent. It may include the complete or partial loss of a part of the body or the use of a part of the body or even the partial use of the body as a whole. It is usually negotiated between the Insurance company and the injured worker or his/her lawyer based on multiple factors including but not limited to the injured workers' diagnosis, extent of treatment, type of treatment received, length of time off of work, permanent pain and subjective symptoms following MMI, ability to return to work, among others. It is an amount paid only if the job-related injury results in some permanent physical loss and should not be computed until the point of MMI. It is computed based upon 5 factors: 1) an impairment report prepared by a physician, if completed, 2) the occupation of the injured employee, 3) the age of the employee at the time of injury, 4) the employee's future earning capacity, and 5) evidence of disability supported by the treating medical records. This can be a complex analysis and it is wise to have a lawyer review this rating to make sure that you are fairly compensated and that the settlement value reflects your true injuries and permanent limitations.

Suitable Employment. This term means permanent employment available in the competitive marketplace

which the employee is both able and qualified to perform after he or she has reached MMI. Whether suitable employment exists after MMI depends on the employee's education, skills, background, physical, vocational and educational abilities. This can be assessed by a vocational expert who completes a labor market survey to determine whether they think suitable employment exists based on those factors and the current marketplace.

Temporary Partial Disability: (TPD) This term describes the weekly disability compensation amount to be provided to the injured employee for his or her reduction in their average weekly wage due to their injuries if they are working on light duty restrictions, but working less hours or for less pay than before their injury. It is two-thirds the difference of the injured worker's pre-injury wages and wages earned after the date of the injury.

Vocational Rehabilitation: This term describes the educational and training benefits which you are entitled to if you are permanently unable to do your usual job due to your work-related injury, and your Employer cannot accommodate your permanent restrictions. It typically includes job placement retraining, and assistance to help you obtain other employment during which time you are receiving maintenance benefits which are two-thirds of the AWW (same amount as TTD).

Secret #1:

You Must Report Your Accident and Injury to Your Employer and should do so immediately after you are hurt!

It is YOUR responsibility to notify your Employer ASAP if you have been hurt at work.

You must let them know the details and should do so in writing. If the Employer has an incident report for you to use, fill it out fully. If your Employer has an accident policy in place, then follow those guidelines as best you can. If they do not have a specific form or incident report for workplace injuries and accidents, then write out the details of your accident and injury on a piece of paper and give it to your Employer. Describe the injury, including the exact date and time, who was involved in the accident, the location, any witnesses, and include any medical treatment you have already received. Describe all your injuries, major and minor. You can also request an Incident Report from the Illinois Worker's Compensation Commission online.

Far too often injured workers have their claims DENIED because they made a simple mistake or misstep in reporting the incident/injury correctly and within the required time period. DON'T take unnecessary chances when it comes to this important first step.

Do NOT put off letting your Employer know what happened. Under Illinois Workers' Compensation law, if you wait too long, you will miss your opportunity to have your injuries covered under Workers' Compensation. For most claims, you have 45 days in which to notify your Employer, but do NOT wait! The sooner you notify your Employer, the better!

Sometimes Employers and Insurance Companies tell injured employees that they cannot file a claim for Workers' Compensation because the employee did not notify them of the accident within the proper time. Don't take any chances tell them right away! Some Employers will tell the injured worker that they won't cover the claim because they didn't receive notice within 24 hours **DON'T BELIEVE THEM!** While you should let them know ASAP, for most claims you have a full 45 days in which to let them know about the accident and your injuries. That is the law! If you aren't sure if you have time to make a claim with your Employer, then consult a lawyer who is experienced in Illinois Workers' Compensation and they will be able to tell you.

Secret #2:

Every Employer in Illinois is required to cover Employees for on the job injuries!

Employers MUST purchase Workers' Compensation Insurance or self-insure their company to cover their employees work related injuries.

They must post a notice at the workplace to alert employees about that coverage. They must keep comprehensive records on all workplace injuries that cause their employees to miss more than 3 days of work.

You are still covered under Illinois Workers' Compensation, even if the Employer is based in another state, if they had you working in Illinois when the accident happened. You may also be covered under Illinois Workers' Compensation if your Employer is an Illinois

company that had you working in another state at the time the accident happened, or you were hired in Illinois.

If your Employer tells you they do not have Workers' Compensation Insurance for their employees, and they can't cover your injuries, medical bills or lost wages, **DON'T BELIEVE THEM!** Seek the assistance of an experienced Workers' Compensation lawyer to make sure your rights are protected and that your Employer takes responsibility for your injuries.

If you are injured in a work-related accident, your Employer must provide emergency medical care, if needed and ongoing medical care needed to completely correct or help alleviate your injury. It is on them to cover ALL of your necessary medical treatment. This can include doctor visits, hospital care, surgery, physical therapy, chiropractic treatment, pharmaceuticals, prosthetic devices, and prescribed medical appliances. The costs of devices such as a shoe lift or a wheelchair may be covered. If the work injuries result in a disability that requires physical modifications to the employee's home, such as a wheelchair ramp, the Employer may have to pay these costs as well.

If you must miss more than 3 days of work, you may be entitled to weekly payments until you can return to work. If your injuries keep you out of work for more than 3 days, one of three things must happen:

- 1) The Insurance company will start paying you Temporary Total Disability benefits. (TTD). Then if you are off for over 14 weeks per your treating physician, you will be reimbursed the first 3 days.
- 2) The Insurance company will request more information about your accident. (If they want more information, it is YOUR responsibility to provide that information.) or

- 3) The Insurance company will DENY your claim, and provide a letter of explanation, telling you in writing why they are refusing to take responsibility for the accident and your injuries. Do not accept their denial without having an experienced Workers' Compensation lawyer review your case!

Depending on the severity of the injury, you may be entitled to Permanent Partial Disability (PPD), Permanent Total Disability (PTD) as well as Temporary Partial Disability (TPD) and Temporary Total Disability (TTD). Family members are also sometimes entitled to benefits. A lawyer who understands the Workers' Compensation laws can make sure that the Employer or the Employer's Insurance company pays for all the benefits you are entitled to.

Secret #3:

Don't just accept a Denial from the Insurance company!

You have a right to APPEAL the Insurance Company's denial; It isn't the end of the story!

Just because you have already made a claim and been turned down for Workers' Compensation for a work-related injury, doesn't mean it's over. You have a right to appeal this decision. The Workers' Compensation system is complicated, but if you understand the process and submit the right documents, and have the right evidence, you can still obtain Workers' Compensation benefits.

If you feel that the Insurance company has wrongfully denied your claim, you can and should hire

an experienced Workers' Compensation lawyer to help you fight for the benefits that you need and deserve.

If you have been denied, you have the right to file a motion with the IWCC. During a hearing, the Arbitrator will review your paperwork, medical evidence, etc. and consider your testimony. Based upon the evidence YOU present the Arbitrator will either uphold your denial, or award you Workers' Compensation benefits. He/she may even award retroactive payment of lost wages. You can have a lawyer represent you at this hearing and the sooner you hire a lawyer to help you, the greater your chances are of putting together a strong case with the most persuasive evidence!

It is YOUR responsibility to request a hearing before the IWCC the Employer will not do this for you. Keep in mind that there are time limits for when an injured employee can request a hearing. If an employee waits too long to file their claim, they will lose their right to file and their claims will be barred. For most claims, the time limit is 3 years after the injury occurred or 2 years after the last payment of TTD or medical bills. Some conditions have different time limits, but an experienced Workers' Compensation lawyer will be familiar with the complexities of the Workers' Compensation hearing process and can give you advice and make sure your rights are protected, and that you receive all the benefits you are truly entitled to.

Employers can deny Workers' Compensation claims for many reasons. They may argue that there was not a real Employer/employee relationship, or that the accident and injuries the employee suffered were outside the scope of their employment. They may argue that the injury was not really a result of a work accident, but rather a preexisting condition. The Employer may argue they were not given proper notice by the employee, etc. An

experienced lawyer will be familiar with all these arguments and will be able to tell you if you have a valid claim, despite what the Insurance company or Employer has said. So, do NOT just accept an Insurance Company's or Employers denial without having an experienced lawyer take a close look at your case.

Filing a claim with the IWCC is also wise, even if the Insurance company is currently paying you benefits and covering your medical expenses, because it will protect your right to pursue future benefits down the road, should the Insurance company or Employer stop covering your injuries, fail to provide adequate light duty work, seek to settle your claim when you are not truly recovered, fail to provide you with adequate retraining or other benefits. Keep in mind that there are time limits for filing a claim with the IWCC and an employee who fails to file a claim within the time limits loses his or her right to claim future benefits.

The truth is that the Illinois Workers' Compensation Act provides significant protections and compensation for injured workers, **if** they understand all the rights contained in the Act and the ways in which the Employer may be shortchanging them. Unfortunately, the laws involved are complex. An experienced lawyer will be aware of all the benefits contained under the law and is better positioned to hold the Employer or Insurance company fully accountable. They will be able to double check an Employer or Insurance companies' computations of lost wages, and evaluate if a settlement offer is fair. Never take the Employer or Insurance company's word for these numbers or calculations.

Secret #4:

NO Employer has the right to harass you, fire you, refuse to rehire you or discriminate against you because you are seeking Workers' Compensation!

Some people are scared to seek Workers' Compensation when they have been hurt or injured at work. They are concerned that the Employer will retaliate against them make their work life miserable, or even fire them altogether if they try to obtain these benefits. Some Employers think that if they create a hostile environment, or make the process of giving notice too difficult, that it will keep employees from making legitimate claims when they are hurt or injured. Do not be intimidated! The law is on your side, and an experienced lawyer can help you every step of the way to make sure that the laws designed to protect you are applied in your case.

The Illinois Worker's Compensation Act is designed to protect ALL employees! If you are hurt or injured on the job, notify your Employer, and then if you feel threatened in any way, you should consult a lawyer. No Employer has the right to scare you into giving up the rights, benefits, and protections that the law provides for workers.

I have spent years protecting the rights of people who have been hurt or injured and nothing burns me up more than workers brow-beaten into accepting less than they are entitled to under the law. Justice and fairness are what every worker is and should be entitled to.

Secret #5:

Make sure you give your doctors a full and complete history including the details about the accident and all your injuries!

This is especially important! If you do not tell the medical providers where you hurt and how you were hurt you could be harming yourself, hampering your medical treatment, and derailing your Workers' Compensation case! Let me explain:

Anytime you are seeking medical treatment, (even when it has nothing to do with a work-related injury) you should always be up front with your doctors and tell them everywhere that you are hurting. Your doctors need to have a complete understanding of your medical problems so that they can give you the best treatment possible. But in a Workers' Compensation claim this becomes vitally important to establishing the nature and extent of your compensable injuries. Employers and Insurance companies like to minimize a worker's injuries or deny claims they think are not work related.

When the Employer or the Insurance company is investigating a claim, they take statements from the injured party and witnesses, and they thoroughly inspect the medical records. One of the things they are looking for is to see if the medical records support what the employee "says" happened. Did the employee tell the doctors that they were injured at work? Did the employee explain right away how the accident happened? Did they give a listing of the injuries to the specific body parts that they are now seeking compensation for? That's why it is important that when you go to a doctor after you have been hurt or injured, be clear and detailed when discussing the nature of your injuries and how they occurred. Identify everywhere

you are hurting and explain where and how the accident happened. Include anything unusual that caused your injuries, and do not just do that on the first doctor's visit. Every time you go to the doctor, make sure you tell them everything that is bothering you and everything that is hurting, even if you think that they already know. The sad fact is that many times, if the injury or complaint of pain and discomfort doesn't continue to show up in the medical records over and over, it is as if the injury is no longer a problem, no longer causing pain and has healed. So, make sure you tell your doctors everything. It will help them fully treat your injuries and help to make sure that the medical records accurately reflect your continued injuries.

When an injured employee comes into my office and the Insurance company or Employer has denied their Workers' Compensation claim or they are refusing to cover the full extent of injuries, one of the biggest and most common obstacles is that the worker failed to report the accident or injury **in the medical records**, until days or weeks **after** the alleged date of the injury. Employers and Insurance companies review all the medical records very carefully, looking for ways to turn down a claim. If there's no mention in the initial medical records of the accident having happened at work, and no description of how it happened, or no mention of particular injuries until much later, it's easy for Employers and Insurance companies to turn the claim down. Don't let this happen to you. Go to the doctor immediately, tell them everything and keep telling them!

If your claim ends up needing to go to trial or hearing, the medical records are one of the strongest pieces of evidence you can have. When the IWCC is evaluating a claim, they will give great weight to the medical records because they are written by a third party, with no direct stake in the claim.

Secret #6:

Make sure you go to the RIGHT doctors!

An injured employee should seek medical treatment right away after an accident occurs and continue to receive treatment until they are released from their doctors. You should also follow all your doctor's prescribed medications and treatment recommendations. Don't miss doctor's appointments. Don't stop therapy. You don't want your Employer or the Insurance carrier insinuating that the injuries are worse because you haven't done what your doctors have advised.

And here's another very important point to know: One of the biggest mistakes employees can make is seeking medical treatment from the wrong provider! In Illinois, Insurance companies cannot direct treatment. You can seek treatment anywhere you would like that decision is completely up to you. Your employer may send you to their company clinic for treatment, and you can choose to continue treatment there, but you do not have to. The insurance company is liable for payment of reasonable and necessary medical bills as recommended from two doctors. If one of your doctors refers you to another doctor, that follows the referral chain and only counts as one doctor. If you sought emergency care in an emergency room or urgent care facility, that does not count as a choice. If you sought treatment at the company clinic, that does count as a choice, you can still stop treatment and seek a second opinion.

Employers have the right to participate in a Preferred Provider Program or "PPP" and maintain a list of approved doctors that you must choose from. If your Employer has established a PPP, then you need to know about it, and know that you have a choice of two physicians

from that PPP list. A failure to choose within the PPP can result in you being responsible for your medical bills and not your Employer!

If your Employer has established a PPP, they are required to inform the employee about the PPP in writing on a form provided by the IWCC. If your Employer has a PPP listing of approved medical providers, make sure you seek medical treatment within that list of providers. If you go outside the PPP for medical care and treatment, you must send your Employer a written notice of your desire to decline participation. If you do not seek treatment from a provider within the PPP, you may choose any doctor or hospital that the provider refers you to but seeing another chain of providers must be approved by your Employer. This process can seem confusing, but an experienced Workers' Compensation lawyer can make sure you are seeking medical treatment from the RIGHT providers.

If you believe the PPP or second choice provider is providing improper or inadequate care, it is up to you, as the employee, to petition the IWCC. If they agree that the care is improper or inadequate, then you may choose another provider at the Employer's expense.

Keep in mind that Employers often look for ways to challenge the necessity of medical care or treatment. They may perform a "utilization review" which is a review of your past, present and future medical treatments related to the work injury and analyze the necessity of these treatments.

They may also arrange an Independent Medical Examination (IME), which is a onetime visit with a doctor of their choosing. This doctor will examine you, review your medical records, and give an opinion on your diagnosis, treatment, and causation to the work injury. This doctor may agree or disagree with your treating physician.

An experienced Workers' Compensation lawyer can contest any negative findings in the Utilization Review or IME , and they can fight for you to continue to receive the medical treatment you need and to make sure that the Employer is held financially responsible for that care.

Make sure that you attend all medical appointments and follow your doctor's recommendations. Remember, Employers and Insurance companies are looking for ways to minimize your claim and turn you down. Failing to follow your doctor's recommendations and to attend therapies, take medications as prescribed, etc. can really hurt your case and make it easier for the Employer to deny your claim.

Secret #7

Do not return to light duty work unless you have been cleared by your doctor and all of the work fits within your doctor's restrictions!

If you have been injured in a work-related accident and have been taken out of work by your treating doctor, do not return to work until you have been cleared to do so by your doctor. It is common for the Employer, at the request of the Workers' Compensation Insurance company, to provide an injured employee with "light duty" work. The idea is that this work is supposed to be lighter in physical requirements. If this "light" work is provided to the employee, they are "required" to accept reasonable accommodations and return to work. But here is the catch: the light work that an Employer provides for the injured employee must be consistent with the restrictions that the treating doctor has given the employee. You should not

accept light work that is more strenuous than what your doctor has advised. If your Employer contacts you and is requiring you to return to the job for a “light duty” assignment, you should ask the Employer to put the complete job description and all job duties in writing, and check with your doctor to make sure it is safe for you to perform these duties. If you go ahead and report to work and end up performing more strenuous work, you could further injure yourself and potentially hurt your case. It is hard to argue later that you have limitations that you did not appear to have while you were on “light duty”. Also, if you return to work without a clear job description in place, the Employer will be forced to come up with tasks over and over again throughout the “light duty” period. In that kind of environment, other employees often begin to resent the employee and supervisors may begin to demean the employee due to this resentment. Also, there is a real likelihood that you may be asked to perform tasks that will hurt you physically or hurt your case in the long run.

The safest way to handle a “light duty” request by your Employer is to ask that it be put in writing, and then make sure your doctor approves of this specific work, and the tasks involved. If your doctor looks at the Employer’s job description and feels the work is not appropriate for your injuries, and the Employer refuses to adjust the “light work” accordingly, that is a red flag that you need to see a lawyer right away.

Once you return to a “light duty” position, make sure that you stay within your doctor’s restrictions. If your Employer asks you to perform job duties outside of your restrictions, show them your doctor’s note.

Secret #8:

You may be entitled to Workers' Compensation for work-related injuries even when there was NO Acute Accident at work: Repetitive Motion Injuries!

Most people think that there needs to be an acute accident to recover benefits for a work-related injury. But that is NOT necessarily the case. Illinois law recognizes Repetitive Motion Work injuries. These injuries may develop over time, with no sudden accident or moment of injury. Instead, these are injuries that occur from repeatedly performing the same motion over and over as part of your job. These injuries can cause significant damage and result in an inability to work and may qualify for Workers' Compensation benefits.

We all know that doing the same physical motion over and over can eventually cause damage to joints, muscles, tendons, and bones. If your job requires you to perform a repeated physical motion over and over and has resulted in an injury such as tendonitis, bursitis, carpal tunnel, cubital tunnel, herniated discs, torn ACL or rotator cuff, etc., for which you need medical treatment, or has caused you to have to stop working, you may be entitled to compensation. Illinois law provides some significant benefits for these kinds of work-related injuries, even when there was no "accident" which caused them. But the difficult part is that you must still establish that your injury was caused by and occurred "in the course and scope of your employment." The tough part about these claims is that they involve types of injuries which occur over time, so there is no one point at which the injury happened. You must prove that your job, and the repetitive motion required to do your job, resulted in the injury. That causal link can

be difficult to establish, but an experienced Workers' Compensation lawyer will be familiar with Repetitive Motion Injuries and will be able to determine if you have a strong claim.

If you are suffering with a repetitive injury, it is very important that you see your doctor as soon as possible and that you make sure the doctor understands the kind of work you are doing and the repetitive motion that is involved in that work. Ideally, you want your doctor to link the work you are doing to your injury. These are not easy cases to prove, but if you think you may have such a claim you should pursue it and seek the compensation that you deserve, and that Illinois law provides.

Secret #9:

Understand YOUR benefits, and Don't Settle Your Claim too quickly; After you settle with the Employer or Insurance company, your claim is probably closed FOREVER!

As I have stressed throughout this book, your Employer and the Insurance company typically do NOT have YOUR best interest at heart. Employers and Insurance companies look for ways to minimize and deny claims. They never want to pay more money than they absolutely have to. It is up to YOU to look after your interests and make sure you receive full and fair compensation for your injuries. If an Employer or Insurance company has agreed to pay your claim, that does NOT mean they are going to pay you what your claim is worth, without a fight! And, if they are pushing or encouraging you to go ahead and "settle" your claim, do

not accept what they are offering you without being absolutely sure you are receiving the full amount of benefits you deserve for the injuries you have suffered.

In most instances, once you settle your claim with the Employer or Insurance company, that is it - the end of the story. You will not get a second bite at the apple if your condition worsens, if you need more medical treatment, or if you find out that you are not able to hold down a similar job or earn the kind of wages you did before you became injured. In most cases a settlement agreement closes your case FOREVER. For this reason, I strongly urge you NOT to settle your Workers' Compensation claim without having an experienced lawyer who really understands Workers' Compensation law review your case.

Typically, the issue of settlement will arise once you have reached Maximum Medical Improvement (MMI). That is the point where your doctor has released you from his or her care and says that you are as good as you are going to get.

Under the Illinois Workers' Compensation act, the benefits available to you depend upon the severity of your injury, the recovery time you will need, which body part was injured, and whether your injuries are temporary or permanent. The law takes into account whether you can return to your prior employment at the same wage rate, or whether you will have to return to a lesser paying position, and whether you will need retraining or vocational assistance to obtain a future job.

Here is the breakdown of basic Workers' Compensation Benefits you may be entitled to. I am going into detail about them because I want you to understand what you should be receiving from your Employer or the Insurance company. You must advocate for yourself or

hire a lawyer to advocate for you, to make sure you are treated fairly.

TPD: Temporary Partial Disability benefits are available to you if your employer is accommodating your light duty restrictions, but with less hours or at a lesser rate of pay than you earned not on light duty. In this instance you will get the pay from your employer for hours worked and additionally the Insurance Company has to pay you 66% of the difference between what you are earning on light duty and what you earned before your injury, or your average weekly wage.

TTD: Total Disability benefits are available to you if you are injured on the job and your doctor has determined that you are not able to work or places restrictions on your ability to work that your Employer is unable to fulfill because they don't have a job available that can accommodate those restrictions. TTD is calculated by taking two-thirds of your AWW and then adding ten Percent for your spouse and one percent for each of your dependent children, subject to minimums and maximums created by law. These benefits won't kick in unless you are off of work for over three days. If you then continue to be off work for over two weeks, the Insurance company will issue you TTD for the first three days you did not initially receive.

PPD: Permanent Partial Disability benefits are available to you if you are injured on the job and have not completely recovered but are at the point of MMI (maximum medical improvement). For these benefits to apply, you must have lost the use of or partial use of a body part, or the partial loss of the use of your whole body and this now prevents you from doing the work you used to be able to do. The PPD benefit calculation is somewhat complicated, and you will probably want to have an experienced lawyer take a look at what your Employer or

Insurance company is offering you in a settlement to make sure that the calculations are fair and correct, and that you are not being offered less than what your injury merits.

There are five types of PPD:

1. Wage Differential under Section 8(d)1 of the Worker's Compensation Act. If as a result of the injury you had to obtain a new job that pays less than your pre-injury job, then you may be entitled to wage differential benefits. This is calculated as two-thirds of the difference between your pre-injury AWW and post-injury wages. These benefits are capped by statute, and you can receive them for five years or until you turn 67, whichever happens later.
2. Scheduled Awards under Section 8(e) of the Workers' Compensation Act. This type of PPD uses a chart that the IWCC has created that sets a value on certain body parts, with a certain number of weeks compensation assigned to the various body parts injured. If the injury includes the complete loss of a body part, then the full number of weeks applies. If you have suffered the partial loss of use of a body part, that percentage of loss is computed. For example, if you lost the complete use of your arm, you are entitled to 253 weeks of benefits, multiplied by 60% of your AWW. If it has been determined you lost 50 percent of the use of your arm, you would be eligible for 253 weeks of compensation x 50% and that amount is then multiplied by 60% of the your AWW.
3. Non-scheduled Injuries: If your injuries involve body parts not covered in the chart discussed above,

then you are eligible for non-scheduled benefits. For example, if you have a Repetitive Stress Injury that has created limitations in the use of your fingers or hands, the scheduled chart does not apply. In this kind of case, the IWCC looks at a combination of factors, including your occupation, your skill level, your age, and the extent the injury has affected your range of motion, quality of life and your ongoing pain.

4. Disfigurement: This PPD is based upon a work-related injury that has left you with serious and permanent disfigurement to visible areas such as your face, neck, head, lower legs, arms, or hands. With this benefit, you can receive up to 162 weeks of benefits, multiplied by 60 % of your AWW. You are not entitled to receive both a scheduled award and a disfigurement award. You must choose one or the other.
5. Odd-Lot Total Permanent: This is an award for someone who is found to be totally and completely disabled based on their injuries where no suitable employment exists. This is usually established by medical records, permanent restrictions, and unsuccessful job attempt, and sometimes a vocational expert.

The Disability determination also takes into account five critical factors: 1) an impairment report prepared by a physician, if one was submitted into evidence, 2) the injured employee's occupation, 3) the injured employee's age, 4) the employee's future earning capacity and 5) evidence of disability from the medical records.

PTD: Permanent Total Disability benefits: You are entitled to these benefits if your job related injury or illness has left you totally unable to do any kind of readily available work for the rest of your life, or if you have lost the permanent use of both hands, both arms, both feet, both legs, both eyes, or any two such body parts. PTD requires severe permanent job restrictions and documentation by your doctor that you are unable to work under any condition. If you qualify for PTD you are entitled to two-thirds of your AWW for life, with minimums and maximum monthly amounts set by statute.

Vocational Rehabilitation and On the Job Training: These are important benefits that many people do not realize exist under the Illinois Workers' Compensation Act. If you have suffered permanent or long term injuries that keep you from being able to return to your previous job, you may be eligible for vocational education and training to help you develop to rebuild lost skills or develop new skills and can also include active assistance in helping you find new employment. You can qualify for these benefits in addition to your disability payments.

IT'S A COMPLICATED SYSTEM: You can see that the way Workers' Compensation benefits are determined and calculated is complex. There are many opportunities for the Employer to undervalue your injuries, your rate of disability, compensation, and future medical or vocational needs.

Once you have reached MMI and you are in as good a shape as you are going to be following the injury, the Employer or Insurance company will probably want you to agree to a settlement. They will probably offer you a lump sum payment that will end the case, and they will tell you that they are taking into account what you are entitled to under the Workers' Compensation Act, using the benefit

calculations I listed above. Be Careful! An experienced lawyer who is advocating for *you* can look at your medical evidence and determine if the proposed settlement is fair. If you hire the lawyer early on, they can make sure you have a second opinion from a doctor if your initial doctor is minimizing your injuries. They can advocate for you to receive needed vocational training and be fairly compensated for likely future medical needs. While you may suffer for the rest of your life, once your case is settled, it is business as usual for the Insurance company or the self-insured Employer.

Secret #10:

Not Hiring A Lawyer Can Severely Damage YOUR Case!

I have mentioned the importance of having a lawyer help you in a Workers' Compensation case. Although most people should know how important it is to seek sound advice when they are injured, statistics show that many people fail to do so.

Here are the four most common reasons that people don't seek a lawyer's help after they have been injured:

- 1) I am not sure I really need a lawyer.
- 2) I don't know any lawyers, and don't really know where to begin to find one.
- 3) I'm not sure I can trust a lawyer to help me and treat me fairly.

- 4) I believe the Insurance company, who told me I will end up with less money if I hire a lawyer to help me with my case.

I hope by now you understand why you need a lawyer's help if you have a work-related injury. It is a complicated system, and the Employer and the Insurance company will not be working to make sure you receive the maximum benefits that you are entitled to. There are many experienced and honest lawyers who understand Workers' Compensation law, and the tactics that Insurance companies use to wrongfully deny a claim or devalue a claim to keep their own financial responsibility as low as possible. While a lawyer will usually get a portion of the money you collect from the Insurance company, a good lawyer can dramatically increase your chances of winning your case, and help you collect substantially more than you will likely recover on your own.

From the minute you give your Employer notice that you have been injured on the job, you are likely to encounter a hostile and adversarial system. Insurance companies have a host of people working for them, whose job is to look for ways to deny your claim or minimize your injuries. In fact, it is not unusual for Insurance companies to hire private investigators to spy on you, to see if you are as injured as you say you are! The Insurance company's goal is to pay as little as possible and get you back to work as quickly as possible, regardless of whether you are truly able to do so.

You or someone you know may have had a bad experience with a lawyer in the past and may be reluctant to seek out a lawyer now. You may be thinking you can just handle the case yourself and you may be able to do so. But many people end up seeking a lawyer at some point later in their case, when they realize it has become

complicated and they don't understand what is happening, or how to advocate for themselves. Waiting too late to bring a lawyer in can be very damaging to an otherwise strong case. An injured worker can easily make innocent mistakes, like giving a statement to an Insurance adjuster, that can't be undone. The longer you wait to seek a lawyer's help, the harder it can be to gather witness statements and strong evidence that you will need to fight the Insurance company, or to make sure the medical aspects of the case are strong. There are also time limits for filing claims, and once they have run, it's too late.

Insurance Companies are powerful, and they know the loopholes. They have a host of strategies designed to keep them from paying out any more money than they have to. Hiring an experienced Workers' Compensation lawyer will help you level the playing field and increase the chances of winning your case and receiving all the benefits that the law provides.

Having said all that, if you were injured at work and your injuries were small – necessitating minimal medical care, you probably do not need to hire a lawyer at all. If you only needed a couple of doctor's visits have only lost a few days work, and are fine now and back at work, you probably don't need to hire a lawyer. Even so, there's no harm in talking with a lawyer just to make sure. Initial consultations with most lawyers are free, although some lawyers will not talk with you once they determine there's not a case. My office is NOT like that, even if we determine we cannot help you, or that there isn't a viable Workers' Compensation case, we won't rush you off the phone or out the door. If you contact our office, we will try and answer your questions, and refer you to another lawyer, agency or community resource if we are not able to take your case.

Secret #11

Hiring the Wrong Lawyer can Severely Damage Your Case!

Once you have made the wise decision to hire a lawyer to help you with your Workers' Compensation case, the next big question is how to hire the RIGHT lawyer.

Not all lawyers or law firms are the same! As with any profession, there are good lawyers, and lawyers that are not so good. You have a tremendous amount at stake if you have been hurt on the job. It's your life and your livelihood, and you need to make sure that you hire a lawyer who understands how important your case is and will treat it and you with the respect you deserve. Unfortunately, there are many law firms that take an assembly-line approach to their cases, treating them all the same, doing the least amount of work possible, and trying to settle the case as quickly as possible, even if it means settling the claim for less than it is truly worth. If they cannot settle the case quickly, they may withdraw so that the injured worker is forced to try and scramble to find another lawyer to take their case to trial. You should avoid these kinds of firms.

Instead, look for a firm that will take your case and agree to pursue it from start to finish, including a hearing, if necessary. You should look for a firm that will treat you with respect, and take the personal time necessary to answer your questions, return your phone calls, emails, and keep you apprised of the progress in your case.

If you are considering hiring a specific firm, ask your friends and family about them. If they had a positive experience with the firm, there is a good chance you will too. It is also a good idea to reach out to a potential law firm and ask them to send you materials or go online and

read about the firm. Make an appointment to meet with them in person or talk with them over the phone and ask them all the questions that you have. I welcome questions from potential clients, because I believe in helping people and I want clients to feel sure that they have made the right decision by hiring my firm to represent them.

Here is a list of questions to ask a law firm before you make the important decision to hire them:

- 1) How much experience does your firm have in handling Workers' Compensation cases?
- 2) How will you keep me informed about the progress and developments in my case?
- 3) How often will I hear from the lawyer or my case manager?
- 4) How quickly do you return client phone calls?
- 5) Have you ever been sued for legal malpractice?
- 6) Have you ever been disciplined by the State Bar?
- 7) Who at your firm will be communicating with the Employer or Insurance company about my case?
- 8) Do you have legal malpractice Insurance?
- 9) Will you be able to take my case all the way to trial if necessary?
- 10) If I am not happy with your firm within the first 30 days after I hire you, can I pick up my case file and not owe you anything?

CONCLUSION

I hope that this book has given you a greater understanding of how YOU can help yourself or a loved one, in negotiating with the Insurance company or Employer. Inside knowledge of how the Insurance companies and self-insured Employers operate when it comes to Workers' Compensation claims is important! . And what you don't know can HURT you and your case! There is no way I can give you a complete education on every aspect of the Workers' Compensation law. It takes three years of law school and years of practical experience as a Workers' Compensation lawyer to gain that level of expertise. But the advantage you have now is that you are better informed. I wish I could assure you that it is not a battle or that the Insurance companies and the Employer have your best interests at heart. But experience has shown that they simply do NOT.

How Else Can We Help YOU? If you or a loved one have suffered a work-related injury it can be an extremely difficult time. You have the physical pain the injury causes, along with the emotional stress and strain of being out of work and trying to navigate a possible and complicated worker's compensation case. Most people feel frustrated, overwhelmed, confused, intimidated and uncertain as to their next steps.

Over the years, I have found that many people are greatly relieved once they have come to my office and discussed their claim, understanding how the process works, and have had their questions answered and their concerns addressed. We always are happy to talk with potential clients, at no cost and with no pressure whatsoever. After we talk, they have a better understanding of the Workers' Compensation system, and

what is and is not fair treatment and compensation. They have a better understanding of their rights and their options, and they feel good about pursuing a claim where it is warranted.

YOU SHOULD NEVER FEEL PRESSURED TO HIRE ANY LAWYER!

If you go to any lawyer's office to discuss your case and begin to feel pressured to hire them, walk away. The relationship between a lawyer and his or her client should be one of mutual respect, concern, and professionalism. You should expect nothing less and accept nothing less!

Obviously, one of the reasons I wrote this book was to let you know that I am happy to talk with you about YOUR case and help you if you want us to. I promise that you will NOT receive any kind of pressure from me or my firm, that's not how we operate. In fact, if I feel you honestly do not have a case, I will tell you that. If I feel you honestly do not need a lawyer for your particular case, I will let you know that, too.

As we discuss your case, it is our hope that we can help you find a way to get the medical care you need and the compensation you deserve for your injuries. We hope that we can help you determine if the Insurance company or Employer you are up against is downplaying your case, or depriving you of benefits you are entitled to, or if they are pushing you for a settlement that isn't fair or adequate compensation for your injuries. With our years of Workers' Compensation experience, we will also be looking to see if there are *more* benefits you are entitled to, or unnecessary risks that you are being exposed to that could harm you or your case down the road.

If you decide to contact my office, please remember that you are under NO obligation to hire my firm! While I am committed to helping injured workers fight for their

rights in Workers' Compensation claims against the Insurance companies, I will not pressure you to hire my firm. That will be a choice you must make for yourself. We are here to help you if you want us to.

We also understand that this is probably a difficult and stressful time for you and your family. You may be feeling terrible and taking pain medications that make you feel nauseas or light-headed and out of sorts. We will try our best to make you feel comfortable and at ease. Most importantly, we will listen to you and answer your questions fully.

Now that you have had a chance to read this book, if you have more questions, please feel free to contact us. We are here to help.

If you do decide that you want our firm to represent you in your Workers' Compensation case, you may be wondering how the legal fees are paid. Our firm ONLY gets paid legal fees when we collect money for our clients. So, we do not get paid unless you get paid, and our fee is a percentage of what the Insurance company pays on the claim. The more money we can get for your claim, the more money we both receive. We do not get paid any legal fees unless and until your claim is resolved. We have every incentive to focus our energies on fighting the Insurance company on your behalf to make sure that you receive the full benefits you deserve.

While we are truly sorry that you or a loved one has suffered a work related injury, we are glad to be able to share this book with you and hope that it has answered some of your questions and concerns. If you have more questions, just give us a call.

ABOUT THE AUTHORS



LARRY DISPARTI (Founder/Owner) grew up in a union family. His father was a labor union member, as well as many generations of his extended family. Early in his career, Larry became a nationally known attorney fighting for the injured. He has been featured on MSNBC, FOX, CBS, as well as having been published in over 100 major newspapers across the country including the Wall Street Journal. He has prevailed in winning injury cases throughout Illinois and nationwide. Larry's

entire career has been about fighting for his clients against government and big insurance companies. The National Trial Lawyers' association recently named Larry and his firm to the A-List top 100 firms in the country. When he is not traveling around the Chicagoland area visiting with clients and community leaders, Larry enjoys spending valuable time with his family.



JILL WAGNER grew up in a medical household, with her father serving as the community's general surgeon and her mother as a registered nurse. Her parents often treated workers' compensation patients and Jill's understanding of work related injuries stems from her youth. Their discussions over demand for quality patient care provides Jill with the ideal exposure and drive to ensure that people hurt on the job receive fair compensation.

Jill concentrates her practice solely in workers' compensation law. She has practiced at all levels, including numerous trials at the arbitration levels and appeals at the Illinois Workers' Compensation Commission, Circuit Court, and Appellate Court levels. She has been selected to be a board member of the Workers' Compensation Lawyers Association and is also a member of the Illinois Trial Lawyers Association, American Bar Association, and Chicago Bar Association. She has been recognized by her peers as an Illinois Rising Star from 2016 - 2020.

