



# WORKERS' COMPENSATION INSURANCE INDUSTRY SETTLEMENT TACTICS

How To Navigate The Work Accident War Zone On Your Own

By Michele S. Lewane, Attorney at Law

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# INSURANCE INDUSTRY SETTLEMENT TACTICS

## *HOW TO NAVIGATE THE WORK ACCIDENT WAR ZONE ON YOUR OWN*

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### **Unknowingly You Have Entered A War Zone**

Did you know that the day you were injured you entered a war zone with the insurance industry? Over the past 30+ years, the insurance industry has spent billions of dollars on advertising to spread false and misleading information about work accident claims. The industry wants people to believe that the justice system is out of control and that people who file lawsuits are getting millions of dollars for minor injuries and that most people are faking their injuries and managerring. Such propaganda has created the false perception among the public that the system needs fixing. Unfortunately, this “misinformation” spread by the insurance industry has had an enormous negative influence.

Lawyers who handle these cases have learned over the past few years that it is much more difficult to achieve justice for their clients. A very legitimate workers’ compensation claim does not mean your case will be accepted and you will be paid fairly.

You need to be aware that the insurance claims adjustor will utilize any means necessary to pay out as little as possible, even on legitimate claims that involve serious injuries. Insurance adjustors receive extensive training on how to save the company money, and not necessarily on how to examine a claim and pay a fair settlement. Many insurance companies reward their adjustors with bonuses or promotions based on how much money that person saves the company rather than how many claims are resolved. The claims adjustor accomplishes this in many ways:

- **Using Delay.** The adjustor is a master of using delay tactics to wear people down. He knows that many people will at some point throw up their hands and say “Enough!” and finally accept the company’s last offer just to be done with the whole process.

- **Requesting Unnecessary Information.** Another method is when the adjustor makes repeated requests for “documentation” even if the information will have little or no bearing on the amount that will be offered in settlement. Repeated requests for unnecessary documentation can easily frustrate people and wear them down so they’re more likely to accept a lower settlement offer.
- **Disputing the Medical Treatment.** Another way the adjustor will minimize your claim is to dispute or question your need for medical treatment, despite having no medical training! (Even if the treatment is prescribed by their own doctor!). Often it does not matter to the adjustor that your treatment has been recommended by a reputable licensed physician. A “triple play” is very common with doctors’ request for medical tests such as MRIs. The insurance adjustor delays response to the doctors office’s request for approval, then requests “documentation from the doctor” and then the adjustor says the MRI is not necessary. Six months

later, you finally get the MRI and the correct treatment. What has the delay cost you? A quick medical recovery, lots of pain, financial stress and possibly loss of your job.

- **Tell You Not to Hire an Attorney.** Other times the insurance company will dissuade you from hiring an experienced attorney and falsely tell you that any money you receive will go only to the attorney. Still other times the adjustor may threaten to “deny” or “lowball” the claim if you hire a lawyer.
- **Failing to Advise an Injured Worker of All His Benefits or Any of his Obligations.** The adjustor doesn’t have to tell you that certain types of benefits even exist! Rarely have I known an adjustor to freely give this information. What is worse than not getting “fully made whole” is to lose your benefits because the adjustor didn’t tell you about filing a claim for benefits form, changes in condition, permanent partial disability benefits, and the statute of limitations runs out and you lose benefits!

- **Acting as Your Friend.** There are times when the claims adjustor will “befriend” you and make it appear that she is watching out for your interests when in fact she is not. Sometime the adjustor will give you advice about the type or frequency of your medical treatment, and then decide later on not to pay for the treatment because it is “excessive.” The worst is directing you to change physicians to a “company doctor.” (i.e. a doctor who is more easily persuaded to state nothing is wrong with you and release you to full duty.)
- **Making False Promises.** There are times when the adjustor will make promises to you that he or she knows can’t be met. For example, this author had a client who was promised that the insurance company would pay for her to go to school to become an MRI technician. This went on for months until the injured worker was resigning her light duty position and retiring to attend the MRI courses. The problem was that the client didn’t find out

about the insurance company’s decision not to pay for the classes until she had resigned!

These are just a few of the tactics that the insurance industry uses to badger and wear down injured victims so that less money is paid out. And to a large extent, the industry has been successful. The strong backlash created by the insurance industry against our justice system is a very strong movement in many parts of our country. The movement has a name, it is called Tort Reform. The success of the Tort Reform movement has emboldened the insurance industry to withhold fair settlements and deny valid claims until you convince them that you are ready, willing and able to go the limit. But do not be discouraged. You CAN achieve fair compensation for your injuries and beat the insurance industry at their own game. But it may take time and effort.

### **Case Study: Insurance Company Nailed for Engaging In Illegal Claims Practices**

Some insurance companies use fraudulent tactics to trick work accident victims into accepting very small settlements. This is an example of “bad faith” on the part of Allstate Insurance company in a non WC automobile accident. This carrier had a policy of deceiving accident victims into believing that the company was representing their best interests in settling the claim. The reason I am using a non WC example is because there is no “bad faith” remedy in Virginia for injured workers.

In 1997 Janet Jones was severely injured when a teenager ran a stop sign and t-boned her vehicle. The impact of the crash hurled Jones’s minivan onto its side. A defective seatbelt caused her to be partially ejected from the van. She sustained severe head and facial injuries, including the loss of an eye. The medical expenses from her initial hospital stay grew to more than \$75,000.00 – exceeding the \$25,000.00 liability limit on the teenager’s Allstate policy. Three days after the accident, Allstate claims

adjustors contacted Jones with a form letter promoting its “Quality Service Pledge.” Allstate said it would serve as Jones’s claims representative for the accident. Allstate’s claims adjustor continued to contact Jones and asked the Jones family to “trust” Allstate and reaffirmed the company’s commitment to make an “appropriate offer of compensation” for her injuries. However, Allstate adjustors cautioned the Jones family that Allstate would not continue to represent them in the claims process if they retained an attorney.

Allstate then falsely told Mrs. Jones that she needed to settle with the company for the amount of the teenager’s policy limits. But by doing so, Mrs. Jones would have relinquished her claim against the manufacturer that made the defective seat belt, causing her to lose virtually hundreds of thousands of dollars in settlement proceeds. By settling with Allstate, Mrs. Jones’ settlement only benefited the insurance company. After Mrs. Jones filed suit against Allstate, her attorney obtained the company’s training manuals. These materials showed that Allstate’s adjusters were instructed to bilk

injured citizens. They were trained to contact accident victims immediately after the accident and then portray themselves as representatives for the claims process. Allstate also had a policy of routinely sending accident victims a letter promising a "Quality Service Pledge" with a brochure telling accident victims that they "do not need attorneys to receive fair treatment or a fair settlement." Allstate's explicit goal was to remove attorneys from the claims process entirely so it could pay out less money to claimants and thereby increase its own revenue.

The Washington State Supreme Court ruled that Allstate engaged in the illegal practice of law by advising Mrs. Jones to accept a settlement that only benefited the company. Fortunately, Mrs. Jones was allowed to recover damages against the insurance company. There have been more than 50 similar lawsuits filed against Allstate for its claims practices nationwide.

The sad truth is that in Virginia, there is no "bad faith" consequences for workers' compensation insurance companies, adjustors, nurse case managers and vocational rehab

specialists who deny claims unjustifiably. Even after an award order is entered an insurance adjustor can unilaterally decide to cut benefits off. By the time (six months or more) the matter is heard by a deputy commissioner and benefits reinstated, irreparable harm from no income and/or medical treatment has occurred to the injured worker and nothing is done to the insurance company. Here is just one example of bad faith in a case of mine.

Weekly benefits checks were cut off to a Virginia worker for the reluctance to have surgery. Insurance company denied surgery and continued not to pay him his weekly benefits. A client of mine, a construction worker, suffered a severe injury to his back on 9/19/05. He had worked for his employer for 11 years, but due to his injuries he would never be able to return to this line of work. The insurance company cut off his weekly check on 8/20/08. The "basis" was a Doctor's note dated 10/04/07 (six months before hand) noting that surgery was an option. Until his check was cut off, my client didn't even know the insurance company wanted him to have surgery. No warnings, no notice, nothing. He had never said or implied "I am never going to have surgery." He

wanted to try pain management first which he was doing and the doctors were supporting it. There was no evidence that the surgery would alleviate his symptoms. (Which is a requirement under workers' compensation) There was no offer to let him have a second opinion (which is another requirement under workers' compensation). There was a hearing on 12/17/08 where he testified he was willing to have surgery but defense counsel wanted to take the Doctor's deposition which "left the record open" and so he continued without a weekly check. He finally had surgery set for January 13, 2009 but two days prior the insurance company denied approval for the surgery questioning if it was necessary. Still he received no weekly check. The "earliest" defense

counsel could take the doctor's deposition was March 11, 2009 which meant it could be mid April 2009 before the Deputy Commissioner could reinstate his benefits. The pressure was high to take their low ball settlement offer (\$52,000 when his case was worth \$175,000 to \$200,000 but we refused their low ball offer.) Nine months with no income! Who could survive? (This is all in a day's work for the insurance company and defense counsel. No penalties, no consequences except congratulations and pats on the back from supervisors for a job well done in delaying valid payments for such a long time.)

## ABOUT THE AUTHOR

### MICHELE S. LEWANE

A graduate of the University of Virginia and the University of Richmond, T.C. Williams School of Law, Michele Lewane has been representing injured workers against insurance companies since 1990.

In 2008, after over eighteen years in business as a partner of the law firm of Hubbard, Samuels, and Lewane, P.C., Attorney Michele S. Lewane, Esquire left the firm to start a new practice, Injured Workers' Law Firm, with its focus on the legal representation of injured Virginia workers.

“The most important aspect of my job is to inform my clients of their rights and responsibilities. I handle the full range of assistance needed for my injured clients – from contested death cases to getting a small prescription paid.”

The Injured Workers' Law Firm represents clients throughout the Commonwealth of Virginia. Injured Workers' Law Firm is located at 7826 Shrader Road, Richmond, Virginia 23294, in the office complex of Shrader Commons, located next to Advanced Orthopedic Clinic.

Michele S. Lewane has published a survival guide for anyone who is hurt on the job in Virginia: *The Ultimate Guide to Workers' Compensation in Virginia: Everything You Need to Know if You Get Hurt on the Job*. This comprehensive legal book explains the laws related to worker's compensation in easy-to-understand language and guides readers through how to deal with doctors, nurse case managers, and vocational rehabilitation counselors.

Anyone in the unfortunate position of dealing with a work-related injury, or that of a loved one, could benefit from the wealth of knowledge in these pages. Additionally, it's a helpful for any Virginia employee to understand worker's compensation laws *before* an injury occurs.

Ms. Lewane has lectured and written about various areas of the law, including Workers' Compensation seminars for other lawyers. She is a member of many professional organizations, including the Virginia Trial Lawyer's Association. Ms. Lewane is a native Richmonder, with deep connections in this community. For more information, contact the Injured Workers' Law Firm at (804) 755-7755 or visit the firm's website at [www.injuredworkerslawfirm.com](http://www.injuredworkerslawfirm.com)