



TOUGH QUESTIONS

Questions Workers' Compensation Insurance Adjustors
Don't Want You To Ask

By Michele S. Lewane, Attorney at Law

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Printed in the United States of America.

TOUGH QUESTIONS

QUESTIONS THE INSURANCE ADJUSTORS DON'T WANT YOU TO ASK

I have been representing work accident victims against insurance companies for the past 20 years. My office has handled hundreds (if not thousands) of cases during this time. By representing hundreds and hundreds of work accident victims over the years, I began to see how the insurance industry deals with victims after they begin the claim process following the work accident.

I have found that most insurance adjustors are highly trained adversaries. Most people do not realize this, at least not in the beginning of the claims process. Most people understand that the insurance company's job is to make money. One way it does this is by settling claims for less than the claim is worth. Yet, most people are unaware of how sophisticated, yet simple, the methods the carrier will utilize to help accomplish this goal.

Here are some questions that will make the insurance carrier know that you are well informed. Now, the carriers don't like it when you ask these questions because they either cannot answer the question or worse, they don't want you to have the answer.

QUESTION 1: Isn't it true that if I use an attorney, I'm likely to recover more benefits and more money in settlement than if I try to manage or settle the claim on my own?

ANSWER: Don't be surprised if the adjustor lies to you and says "no" to this important question. How do I know the answer is false? Because a study by the Insurance Research Council (a nonprofit group funded by major insurance companies across the nation) found that the average total payout on claims that have an attorney involved is *4.8 times greater* than those claims where the injured victim settled on his or her own. This same study showed that individuals who use an attorney receive 3.28 times more money *after the attorney's fee is paid*. Most insurance claims adjustors are very aware of this study. So, if the insurance company wants to maximize profits it will train its claims representatives to go to great efforts to dissuade people from hiring an attorney. Simply put, the insurance companies know that if you hire counsel you will likely get more money in settlement, even after deducting the lawyer's fee. Second, since in workers' compensation, the injured worker has the burden of proof, they are not obligated to tell you if there are any additional benefits you could be receiving. Rarely have I had some one come to me who knew all of the benefits for which they were entitled from their insurance adjustor.

QUESTION 2: How can the insurance company verify that the settlement amount (or the allowed calculation or impairment rating, etc) being offered to me is fair and reasonable?

ANSWER: It can't and it won't. Sure, the adjustor will *tell* you that the settlement offer is reasonable and fair but he can't verify or prove to you that everyone with similar injuries never receives more. Unless you are in the business of negotiating and settling injury claims, there is little chance you will know whether the settlement amount that is being offered is fair. Therefore, by negotiating and settling the claim yourself without using the assistance of a professional, (i.e., a workers compensation attorney), you run the risk of accepting a sum that may turn out to be much less than what is considered reasonable for your type of claim.

QUESTION 3: Why do I have to give you a recorded statement when you can get information about the accident from the 1st report of accident?

ANSWER: Because the insurance company will try to use your own statements against you! In most accidents, a 1st report of accident will be filed and the insurance company has easy access to this report (it just takes a phone call to your employer). So why is a recorded statement necessary? Most companies have written policies in place which require the adjustor to get a recorded statement to see if there's any information the accident victim might reveal which could be later used to either deny the claim or pay out less money.

QUESTION 4: If I give you a recorded statement, can I then get a recorded statement from your own insured, i.e., your employer, supervisor, or co-workers?

ANSWER: No! This will never happen. It seems fair though, doesn't it? If you have to give a recorded statement about the accident, then why can't you also get a statement from the other individuals involved? Yet, the insurance adjustor will never allow this for the same reasons you should never give a recorded statement to the insurance company.

QUESTION 5: Why do I have to give you an unrestricted medical authorization before I can get any medical treatment?

ANSWER: So the adjustor can go fishing into your past medical history and find anything about your prior health which will help the company either deny your claim or pay out as little as possible. You can just as easily collect your accident-related records and send them to the carrier for its review. But usually if you are not represented by counsel, the carrier will never accept this. By using an attorney, the attorney can usually put a few limits on how much medical information needs to be disclosed. There is no doctor/patient privilege in a workers' compensation case, so they can get any medical records but an attorney can help steer them in the right direction.

QUESTION 6: Shouldn't I wait until my medical status is stabilized to settle the claim?

ANSWER: Yes, because the insurance company knows that the quicker you settle the claim the less money it will have to pay out. Once you settle the claim you can't reopen the case if it turns out your injuries are more severe or if you need more treatment as recommended by your doctor.

QUESTION 7: Why haven't you told me about mileage reimbursement, COLA (cost of living adjustments), or other benefits?

ANSWER: Probably because they don't have to. The injured workers have the burden to prove their case. The insurance company can sit back and do nothing. They probably have a don't ask, don't tell policy to save their company money. If you do not independently find out about your benefits, the insurance adjustor will not tell you.

QUESTION 8: If you are claiming that my medical treatment is unreasonable, will you pay my doctor to write a detailed report explaining why my treatment has been reasonable, necessary and related to the work accident?

ANSWER: Of course not! The insurance company will always refuse this request. Although the claims adjustor has absolutely no medical training, nothing stops him or her from arguing that your treatment was excessive or unreasonable. This is just one way the carrier will whittle down your claim. An experienced workers' compensation attorney on your side will solve the problem!

QUESTION 9: Why didn't you tell me to file a claim for benefits form with the Virginia Workers' Compensation Commission? (even if you are making voluntary payments.)

ANSWER: In Virginia, you only have 2 years from the date of the accident to file your claim for benefits against your employer. This is also called the statute of limitations. Sometimes the insurance company will intentionally delay and drag out the process or make voluntary payments. Then before you know it, the 2 years statute of limitations is right around the corner. The insurance company knows that you only have a certain amount of time to file your claim and if you're backed up against the statute of limitations, there is a good chance no reasonably good attorney will take your case. You will then be forced to accept a settlement that is virtually pennies on the dollar of the true value of what the claim is worth or receive nothing further at all. The insurance company making voluntary payments is not the same thing as filing a claim for benefits with the Virginia Workers' Compensation Commission which ensures your rights. The reason to file your claim with the Virginia Workers' Compensation is to get an award order. The award order indicates that the insurance company is legally obligated on your claim, that you are entitled to lifetime medical benefits and details the facts of other benefits if you are entitled to other benefits.

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 Hubard, 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