



# HOW TO DETERMINE THE VALUE OF A WORKERS COMPENSATION CASE

What Is Your Work Accident Case Really Worth?

By Michele S. Lewane, Attorney at Law

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When all is said and done, the bottom line for most people is the answer to this question. The system is, after all, called *compensation*. Unfortunately, this question is much easier to ask than it is to answer, since there are many issues bearing on the value of a case. In this article I will deal with the obvious: an accepted case where benefits have been paid and there are some benefits still due and owing.

Your expectations may be quite different from reality. A worker's compensation case is very different from a personal injury case. You can't sue your employer for negligence, and you get nothing for pain and suffering, and you can't get punitive damages.

First, the workers' compensations system caps out the weekly benefit payment. All awards and settlements are based in part on this weekly benefit payment; thus, there is a limit to the value of your compensation case. As of July 1<sup>st</sup>, 2009, the maximum weekly benefit is \$895.00 per week up to 500 weeks.

Second, remember that the workers' compensation system is a compromise; it

was intended to begin immediate payment to the injured worker at some reduced rate in exchange for the employer to be exempt from civil lawsuits. The injured worker doesn't have to prove negligence and the employer faces limited financial exposure. So, a slip and fall case civilly that might generate a \$125,000.00 jury verdict, may generate only \$20,000 in a workers compensation settlement. On the flip side, the worker has received 2/3rds of his lost wages and medical treatment for 3 years while the slip and fall person was litigating and receiving nothing. We have heard a few times something like, "My neighbor had a similar injury and his case was worth \$30,000 more." If that happened it's one of four things: 1. Your neighbor earned a lot more than you; 2. Your neighbor had a more serious injury or couldn't return to his usual job; 3. Your neighbor's injury was really nothing like yours; or 4. Your neighbor may not be telling you the truth.

Again, don't be afraid to ask questions. Listen to what I am telling you and learn why. Let us work with you as a team and the results will be the absolute best for you!

Okay, now that I am done with all the preliminaries, let's do a brief review of what the benefits are in workers compensation so that we have an understanding of how this all fits together in the valuation of a case.

Those benefits are: **temporary total disability benefits** (TTD), **permanent partial disability benefits** (PPD), **life time medical benefits**, and **vocational rehabilitation** (VR). There are also death benefits for dependants and in rare instances such as brain injury or the loss of two extremities, there are permanent total disability benefits.

Temporary total disability (TTD) is paid when you cannot work so long as you have your workers compensation doctor taking you out of work. If you are unable to return to work, you could receive up to 500 weeks of total temporary disability. TTD is calculated as 2/3rds of your average weekly wage. However, if you are unable to return to your pre-injury job but can do light duty work, the insurance company will place you in some form of light duty employment. If the placement is successful, then the insurance company can reduce the compensation it is paying you. This is a part of vocational rehabilitation (VR).

Permanent partial disability (PPD) is the compensation awarded for the loss of range of motion in an extremity or loss of hearing or vision. This is limited by a schedule, and does not compensate for pain and suffering, loss of consortium, or any of those other fuzzy valuations that are a part of a personal injury jury verdict. Necks and backs are not covered. Also, you cannot receive

permanent partial disability benefits if you are still out of work and receiving temporary total disability benefits. (You can't get both at the same time.)

The injured worker is entitled to lifetime medical treatment related to the injury . This is something that most insurance companies are quite willing to settle because of the life time valuation of such an award, and the uncertainty of what may lie in the future, because typically any aggravation of an earlier workers' compensation covered injury may mean that the carrier is on the hook for all of the treatment.

Now that we have reviewed what the benefits are in a typical workers compensation case, how do we put a dollar figures on it? For the most part, a valuation of those benefits is simply figuring out what is due and whether it has been paid.

Our firm determines the value of the claim by looking at the following: (1) the income from the job and the compensation rate; (2) the number of weeks of potential compensation remaining; (3) the inability to return to any form of work; (4) the ability to return to some form of light duty work and the availability of such work; (5) if there is a return to light duty work, the payment rate of the light duty job; (6) the permanent injuries to any extremity or hearing or vision; (7) the cost of the future medical treatment; (8) the present value of these future benefits. The present value is simply the application of the old saying, "A dollar today is worth more than a dollar tomorrow." and (9) we create tactics and strategies we can employ to negotiate with the insurance company.

Often times it may take many months or years before the value of a case can be adequately assessed. One reason for this is because of the slow progress of the person's recovery or rehabilitation. Another reason is due to the complexity of the injury or condition which may cause a significant delay in a firm diagnosis. In many instances a case should not be settled or resolved until the person obtains maximum improvement following the accident. This can also contribute to the delay of achieving a reasonable resolution of the case.

In many instances the value of a case is driven primarily by the extent and severity of the person's injuries. Other important factors to consider include the type, extent and frequency of past medical treatment, and the need for future treatment. When I evaluate a case, I also rely on several other factors to help me determine the case value. These factors may include, but are not limited to, the client's likeability and his or her credibility, the facts of the accident giving rise to the case, the extent and

permanency of the injuries, the client's age, whether the client will ever be able to return to work, the identities of the insurance company, adjustor and the companies defense attorney, specific legal or evidentiary issues involved in the case, and the amount of settlements for similar types of cases that other lawyers and I have handled in the past.

You should note that no two cases are alike, even if the accident and/or injuries involved are nearly identical. This means that the evaluation of two cases which appear to be similar on the surface may actually produce widely different evaluations due to the other factors listed above. Evaluating workers compensation cases take a lot of knowledge, experience and some hard earned intuition. Without these traits you may be at a serious disadvantage when negotiating with the insurance adjustor. And unless you are in the business of evaluating and settling workers compensation cases for a living, you should look to an experienced workers' compensation attorney for guidance.

## 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](http://www.injuredworkerslawfirm.com)