

***Dirty Little Secrets
Insurance Companies
Don't Want You To Know***

Your Guide to Colorado Workers
Compensation Cases



319 Ross Avenue
Alamosa, CO 81101

(719) 587-1992

www.keithvancelaw.com

Table of Contents

Introduction	3
“Legal Advice”	5
Insurance Tricks to Watch Out For	6
What is a Workers Compensations Case	10
The Legal Process of a Work Comp. Case	12
Myths, Legends & Wishful Thinking	14
The Insurance Claim War	16
What You Must Prove to Win Your Case	17
Can you change doctors?	17
Do You Really Need an Attorney?	18
What a “Good” Attorney Can Do for You Insurance Company Arguments Against You . . .	20
How To Choose The Right Attorney For You . . .	23
The 5 Deadly Sins That Can Wreck Your Case. .	26
Should We Be Your Attorney?	28

INTRODUCTION

This book is to help you figure out what to do about your Workers Compensation claim. If you are like most people, this is the first time you have been in a work related accident or have been hurt at work. Now, you have medical bills, you may be out of work, and you need to know where to go from here. Your employers and their workers compensation insurance company have probably already questioned you about your injuries and you have probably even begun receiving some treatment. You may be in very unfamiliar territory.

You may have never even thought about needing to get an attorney but you would like some help through this unfamiliar process. You see attorneys ads on TV or in the Yellow Pages, but how do you know which lawyer is right for you? They all say “hire me.” They all say: (1) We won’t charge you unless we win or (2) We are tough (“The Bulldog,” “The Strong Arm,” “The Tigers,” etc.) or (3) We care. You probably realize that those ads that show some lawyer winning fistfuls of cash and making empty promises are 100% meaningless.

The truth is you may not even need a lawyer to handle your claim. Maybe you just need some help to avoid the pitfalls, especially if your injuries are not severe and you don't have a "big" claim. But then again, maybe you DO need a lawyer to help you through this difficult time.

The ensuing chapters will give you tips to handle your own workers compensation claim. They will also help you figure out what lawyer is right for YOU.

LEGAL ADVICE

This book and its contents are NOT legal advice. We are not your lawyer unless and until we enter into a written agreement for us to be your lawyer. Yes, we know how to help you because we know some of the tricks and traps used by insurance companies. We share some of those in this book. However, this is not legal advice.

Each case is different and the suggestions we make in this book cannot fit every scenario. In fact, an attorney can only give good advice when he or she knows that facts of your case. Since we don't know anything about your situation, we cannot give you advice. Please do not construe anything in this book as legal advice.

INSURANCE TRICKS TO WATCH OUT FOR

Attorneys at the Vance Law Office used to work for the insurance companies. It took a while to discover their “tricks.” Usually, the attorney is not involved in the games insurance companies like to play. That happens with the claims adjusters. But, as an attorney getting paid by the insurance company, we would later find out some of the things these adjusters said or did. Truthfully, some of the things they did made us sick. That is why we started representing people against tricky insurance companies.

Here are a few of their favorite tricks that can harm your case:

1. Advising “You don’t need a lawyer!” It really gets under our skin to see an insurance company take advantage of someone before he or she has a chance to talk to a lawyer. They use fear tactics like telling you “the lawyer will only take twenty percent of the money you will receive” They say this to steer you away from seeking legal advice.

As we said in the introduction, you may not need an attorney to represent you in your case. However, no one should settle his or her case

without understanding his or her rights and what settlement really means. For example, the adjuster likely will not tell you that if your health insurance paid for any of your work related medical bills, you might have to take the settlement check and pay back your health insurance company. Also, they may not tell you that once you sign on the dotted line your right to re-open your case is gone, even if you do not know how bad you are hurt and it turns out you are hurt worse than you thought. These, and other consequences to settling your claim should be explained to you by a competent legal professional.

NEWS FLASH! Most attorneys won't charge you a dime to explain these things to you. It is only if they take your case that a fee will be charged.

2. Delay. Insurance companies may attempt to wear people down until they are in such financial difficulty that they settle for pennies on the dollar. They know you can't work because of your injuries, and your rent is due and your family needs groceries. So, do they work on your claim quickly? NO! Instead, they take their time so you will give your case away. Then, the claims adjuster looks good to his or

her boss because they “saved the company money.”

3. Denying Available Coverage. I’ve seen adjusters tell injured workers that their injuries were not work related, and therefore, not covered. Then, when an attorney gets involved and a hearing date is established the insurance company “after further evaluation” decides the injury was work related and agrees to pay work comp. benefits. That is fraud, plain and simple.

4. Acting Like Your Friend and Making False Promises. I’ve seen adjusters call victims on the phone and promise them a smooth settlement, payment of all related medical bills or anything else that makes you like them. This is a strategy to persuade you not hire a lawyer. The truth is, they know that by being your “friends” you are less likely to question their actions or seek a lawyer for help. Then, if they think the bills are too high or you went to the doctor or chiropractor too much, they will only pay what they think is “reasonable and necessary.”

5. Denying Medical Bills. Although claims adjusters are not doctors, they often act like they are. Sometimes they say that a certain treatment was unnecessary and they refuse to

pay for it. Or, they claim that something is a “new” injury and un-related to your original work injury so they deny to cover the treatment. Even worse they will tell someone that their work related injury is the result of pre-existing condition and deny benefits. In short they make up reasons to settle with you for less money, requiring you to dip into your own pocket to pay medical bills.

6. Surveillance. Insurance companies love to catch you doing things you doctor says you shouldn't (lifting something heavy, working in your yard, carrying a child, etc.). They will send out a private investigator to catch you on film. We know of investigators that let the air out of someone's tire in the Wal-Mart parking lot just to film them changing it. We have seen them with a camera on a belt buckle to catch someone lifting a watermelon into their grocery cart in the supermarkets. Then, using this video, insurance company's attempt to cut off your benefits. However, most workers compensation judges understand that the investigator only gets a “snapshot” of your life. If you did overdo it on tape, you were probably in bed the next day, regretting it. They never put your condition the next day on videotape.

WHAT IS A WORKERS COMPENSATION CASE

This book will talk about “workers compensation cases.” Not everyone knows what a workers compensation case or claim is, and they know even less about how they work. We will give a brief generalized description of what a workers compensation case is and how they work in this section.

A workers compensation case is a specific type of claim designed to help injured workers get the medical care they need to recover for their injuries, and pay them part of their wages until they are able to go back to work.

If an employee receives a work related injury, then workers compensation insurance should pay for all medical bills, related to their injury, two thirds of the persons average weekly wage (if the employee misses more than 3 days of work), and some amount of money for any permanent impairment received due to the injury. The employee should also be compensated for any disfigurement, scarring etc. they received as a result of the work injury. The insurance company should also cover any future medical expenses that are a result of the work related injury.

Workers compensation benefits are also available to the spouse and children of a worker killed on the job.

If someone is injured on the job to the extent that they are unable to return to work then they can be awarded benefits including a percentage of their wages and medical benefits for the rest of their lives.

THE LEGAL PROCESS IN A WORKERS COMPENSATION CASE

The legal process can begin in a number of places on a workers compensation case depending upon what action the insurance company takes. If the workers compensation insurance carrier denies a worker compensation claim from the very beginning by claiming for example that the injury was not work related, then it may be necessary to go to hearing to let a judge decide if the injury was work related.

The legal process can also begin at any time during the case if the insurer refuses some benefit for whatever reason, for example claiming that an MRI is unnecessary. It may then be necessary at that point to have a judge decide that an MRI is reasonable and necessary, and order that the insurance company pay for it.

Finally, the legal process may begin at the end of the case if the worker receives an unfair settlement offer, or if the insurance company tries to cut off treatment before the healing process is complete.

Sometimes, the case cannot be settled. If the injured worker has injuries that will likely result in expensive medical treatment in the future then it may be best to leave the case open so that workers compensation will pay for the future medical bills.

Maybe the insurance company has a strange opinion about the value of your case and “low-balls” the settlement offer. Maybe the insurance company wants to engage in some of its “tricks” to wear you down so you will accept less in settlement than your case is worth. (See the section entitled “Insurance Tricks To Watch Out For”). When that happens, we would evaluate your case and see if it is in your best interest of go to hearing on a matter or just leave the case open to ensure future treatment.

MYTHS, LEGENDS AND WISHFUL THINKING

These are some of the common perceptions by people. Unfortunately, they are false and relying on these ideas can only help the insurance company and hurt your case.

- I really like my employer and know he/she/it is looking out for me. The truth is your employer really has very little control over how the insurance adjuster handles your claim.
- If I get a lawyer for my workers compensation claim, I'll get fired.
- All lawyers who advertise that they handle workers compensation cases have the ability, tools and experience to handle your case.
- The insurance company or my employer would tell me if I was not getting all the benefits I'm entitled to.
- I can see my personal doctor and Workers compensation will pay for it.

- The workers compensation system is some sort of lottery that will help you get rich.
- A good lawyer will cost me more than I'll recover.
- If I don't do anything, it will all work out.
- I don't have to go back to work if I don't feel able to.
- My friend/acquaintance/etc. got \$XX,XXX for their workers compensation claim so I will too.
- I have to be injured on the job site to qualify for workers compensation.
- If it is my fault I was hurt I will not qualify for workers compensation benefits.

THE INSURANCE CLAIM WAR

The day you were injured, you entered a war zone. Insurance companies have declared war on injured people and their attorneys. Some politicians fight alongside the insurance companies to keep injured people out of court and deny them equal justice. They have waged this war in the media with propagand and lies. This is called “tort reform.”

The success that insurance companies have had in influencing people to think that injured people are faking claims for money is unreal. Many believe that legitimately injured people are playing the “lawsuit lotto” or “jackpot justice.” The success of influencing juries has emboldened insurance companies not to offer fair settlement until you prove to them that you are ready, willing and able to go to trial.

You have probably been affected by the insurance propaganda. Until you or a family member was injured, you may have thought that a workers compensation attorney is a bad person and that a person who makes a work comp. claim is stealing from society. It is sad, but, that is what billions of dollars in insurance company advertising will get you.

WHAT YOU MUST PROVE TO WIN YOUR CASE

Just because you were hurt doesn't mean you are entitled to money damages. You must prove that you sustained a work related injury. This means that you must show that it was something that happened at work or as a result of work that caused you to become injured.

To win a workers compensation case you have to convince an administrative law judge that your injuries are work related. This can be done through medical records, doctors, and personal testimony, as well as examining hazards of the workplace.

CAN YOU CHANGE DOCTORS?

When an employee is injured on the job the employer generally tells the employee what doctor to see. If you are not satisfied with the doctor you have been sent to you may be able to get a change of primary care physicians. Under certain circumstances you may be allowed to see the physician of your choice but the insurance company and your employer will never tell you that. There are certain requirements that must be met by insurance companies and employers when they send you

to a physician, if those requirements are not met then you may have the right to see a physician of your choice. You can even go to hearing on the issue and have a judge grant a change of physician if necessary.

DO YOU REALLY NEED AN ATTORNEY?

As I mentioned in previous sections of this book, you do not always need an attorney to handle your claim. Whether you need an attorney depends on a few facts. If your work injuries were small and you only received minimal medical care and missed no work, you may not need an attorney. Why not? Because in small cases, the attorney fee and expenses might leave little or nothing for you after your work comp. benefits are paid. That isn't good for you.

Yes, it is true that studies show that insurance companies pay higher settlements to injured people who use an attorney than those who do not. In fact, studies show that, on average, they pay 3 ½ times more money in settlement to those with an attorney than those people who settle on their own.

But, that is usually not the result with small cases. Maybe the attorney can turn a \$2,000

settlement into a \$3,000 settlement, but after attorney fees (usually 20% in workers compensation cases) and costs are deducted, you may end up with less then settling it on your own.

WHAT CAN A “GOOD” ATTORNEY DO FOR YOU?

In most cases, a good workers compensation attorney can do the following tasks:

- Teach client about a workers compensation claim.
- Educate client about insurance tricks and how to avoid them.
- Gather incident reports, medical records, bills and other important documents.
- Find out whether there is any insurance available to cover client's medical bills.
- Notify insurance companies and advise them of claims.
- Interview witnesses.
- Collect other evidence, such as photographs of the accident scene.
- Analyze legal issues, such as compensability, apportionment, and pre-existing injuries.

- Talk to client's doctors and obtain a written report from them.
- Analyze the need to repay any health insurance money paid toward medical bills.
- Try to negotiate settlement with the insurance company.
- If reasonable settlement is not possible look at other option such as leaving the case open of setting up a settlement conference.
- If a hearing is set, make disclosures to opposing attorney, propound written discovery and help client answer written discovery requests.
- Prepare client and healthcare providers for depositions and hearings.
- Get client his/her mileage paid.
- Hire experts to help prove case at hearing.
- Set hearing date.

- DIME (2nd opinion)
- Get client reimbursed for out of pocket expenses associated with travel for evaluations
- Prepare for hearing.
- Take the case to hearing.
- Appeal, if necessary.

HOW TO CHOOSE THE RIGHT ATTORNEY FOR YOU

Choosing an attorney to represent you is a very important task. After all, you are placing your life in somebody's hands that you may not even know. This decision certainly should not be made on the basis of advertising alone. The Yellow Pages are filled with ads – all of which basically say the same thing. And TV ads – anyone can buy a slick commercial – and many have. The “Bulldog”, “Tiger”, “Strong Arm” or other characterizations of lawyers do not necessarily mean they are that way in real life, or that such a lawyer is right for your case.

You may be tempted to hire a “big-city” attorney. However, you must remember that Denver or Colorado Springs is a long way from the San Luis Valley and you will not likely have good access to your long-distance attorney. A local attorney knows the judges, medical providers, how judges decide cases, and small details about the region, local politics, community attitudes, and the like. The local attorney has access to local people and is able to “test” various aspects of your case on those local people.

How do you find out who in your local community is best for your case? There are certain questions to ask that will lead you to the best person for you. This will take some time, but this decision is so important that it is worth investing some time.

In my opinion, the world of workers compensation claims is much too specialized for some attorney who does not handle these cases regularly. Many times, we see cases handled by general practice attorneys and mistakes are made. The client is shorted because the attorney did not know something important. The real estate lawyer, criminal lawyer, divorce lawyer, and other type of non-workers compensation specialist is just as bad. If the attorney does not handle workers compensation cases regularly, he or she may not have the knowledge to do a good job. Get a specialist! Do not get someone that advertises doing something other than personal injury and workers' compensation.

You should be aware that insurance companies know the attorneys in your area who go to court and try cases. These insurance companies keep a database of attorneys. They use that information to help evaluate the value of the case.

Insurance companies laugh when they go to hearing against one of those non-personal injury attorneys that don't do workers compensation on a regular basis. For them, it can be like shooting fish in a barrel. Most times, the insurance lawyer will walk all over them.

In addition to specialization and experience trying cases, you probably also want to look for an attorney with memberships in trial lawyer associations. In our area, you can find a lawyer who is a member of the Colorado Trial Lawyers' Association (CTLA) and the American Association for Justice (AAJ). These organizations provide extensive education and networking for workers compensation lawyers.

Lastly, you want an attorney that is properly educated and trained. For instance, Gerry Spence's Trial Lawyers College enrolls around 50 attorneys per year to attend a 1-month training camp where an attorney can refine trial skills and become a better trial lawyer. Having gone through this college or another college put on by AAJ is very beneficial. Also you want an attorney who attends Continuing Legal Education courses on Worker Compensation.

THE FIVE DEADLY SINS THAT CAN WRECK YOUR CASE

1. Hiding Past Accidents From Your Lawyer

Once you begin a case, the other side will be interested in knowing how many past accidents you have been in. The reality is that they probably already know the answer or have easy access to that information. All insurance companies subscribe to insurance databases and often the only reason they ask you this question is to find out if you are an honest person.

If you have been in other accidents, your lawyer can investigate this and make a determination as to whether this is a valid problem in your case or not. If you do not tell your lawyer, however, and you misrepresent your accident history to the insurance company, then it is almost guaranteed that you will lose your case.

2. Hiding Other Injuries

It goes without saying that you should be upfront and honest with your attorney about any injuries that occurred before or after this accident. Again, if you saw a doctor or other

healthcare provider, then there is a record in existence that the insurance company will find. Your lawyer can deal with this if he knows about it. If you lie about it, and the insurance company finds out, then your case is over. Remember, there is no privacy in America today. When you make an insurance claim, your life becomes an open book.

3. Misrepresenting Your Activity Level

Insurance companies routinely hire private investigators to conduct videotape surveillance. Now, they also troll YouTube and other social networking sites or “Google” you. If you claim that you cannot run, climb or stoop, and you get caught on videotape or brag about break dancing on the Internet, you can forget about your claim. There is no explanation (other than “you got my brother, not me”) that can overcome the eye of the camera.

SHOULD WE BE YOUR ATTORNEY?

We are different.

We don't rely on a high volume of cases generated by statewide TV and Yellow Page ads. We don't claim to handle every type of case under the sun. We don't want to. We would rather specialize in workers compensation and personal injury cases.

Each year, we accept a limited number of personal injury and workers' compensation cases from the hundreds of people who ask us to represent them. On the cases we do take, we know them and know the people we represent personally. Fewer cases means more time for you and, we believe, better results overall.

Since 1997, the attorneys at VANCE Law Office have represented accidents, injury and disability clients throughout Colorado. We have also represented clients in New Mexico, Wyoming, Nebraska and Utah. Most of our cases are referred to us by former satisfied clients, other attorneys and health care providers.

The attorneys at the Vance Law Office are members of the Colorado Trial Lawyers Association (CTLA), American Association for Justice (AAJ), and Mr. Vance is a 2005 graduate of Gerry Spence's Trial Lawyers College (TLC). All attorneys are natives of the San Luis Valley and raise our families in the San Luis Valley. Mr. Vance has tried numerous cases to verdict and settled countless others, totaling over \$25 million in total revenues for his clients.

Sometimes the best advice you can get when you are thinking about a workers compensation claim, is that you do not have a claim or it cannot be won. If that is the case, we will tell you. We won't sugarcoat it. We'll also tell you when we think you are better off handling the claim yourself - without an attorney. But, if your case passes our test and we accept it, you can be assured you will receive personal attention. We will represent you aggressively, keep you up to date on the status of your case, and help you decide whether to settle your case or take it to hearing. We will explain all fees and costs to you fully before we start working on your case. Together, as a firm, we will help you get through this chapter in your life, as painless as possible.

**If you can Answer YES to these six questions,
we may be the workers compensation law firm
for you.**

1. Do you have a work related injury that has kept you from being able to work for more than 3 days?
2. Are you worried the insurance company isn't going to pay for all the medical care you need?
3. Do you want to know what your rights are before you agree to accept final admission of liability?
4. Did your employer send you for medical treatment after the accident?
5. Have you followed the recommended course of treatment of your doctor?
6. Do you want someone who knows how the workers compensation system works to guide you through the process?

**If you can answer YES to each of these
questions, give us a call at
719-587-1992.**



**319 Ross Avenue
Alamosa, CO 81101
www.keithvancelaw.com**