

THE TACTICAL WORKERS COMP AND PERSONAL INJURY MANUAL

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DISCLAIMER: THIS MANUAL PROVIDES GENERAL INFORMATION ONLY ABOUT PERSONAL INJURY. NOTHING IN THIS MANUAL IS INTENDED, OR SHOULD BE CONSTRUED, AS LEGAL ADVICE. IF YOU HAVE QUESTIONS ABOUT PERSONAL INJURY OR WORKERS COMPENSATION, CONTACT US ABOUT YOUR PROBLEM. WE ASSUME NO LIABILITY FOR ANY ACTIONS THAT OCCUR AS A RESULT OF INFORMATION DERIVED FROM THIS MANUAL IF YOU DO NOT CONSULT US AS YOUR ATTORNEY OR IF YOU DO YOUR OWN LEGAL WORK.

1. A QUICK OVERVIEW OF THIS MANUAL

My Name is Nick Thompson, and I have been a licensed attorney since 1988. I am a former West Virginia State Tax Department attorney and a former Kentucky Assistant County attorney. I practice statewide in all of the Kentucky and Indiana Counties. I'd like to thank you for requesting our personal injury manual. I believe the information in this manual will answer many of your questions about personal injury and workers compensation and that it will help you get the best results from your personal injury or workers compensation claim.

There is nothing wrong with planning your personal injury, lemon auto, or bankruptcy case. Understanding what needs to be done makes it far more likely that you will win your case and stay out of trouble. However you are normally personally and emotionally involved in your case and often by making an emotional decision you will settle for less than you case is worth. It is important to use an attorney from the start if you have significant (large) damages.

One of the most common complaints about attorneys is that they don't explain things thoroughly or that they fail to keep the client informed. This manual is our way of giving you the basic information on personal injury law, explaining the steps you need to take to collect the maximum on your personal injury case, and giving you information to help you determine when you need an attorney.

This manual provides information on how to collect on your personal injury case in Kentucky—whether that case is a Workers Compensation case or whether it is an auto accident. Kentucky personal injury law (often called tort law) has many different ways to collect, and the law is similar in several other states.

The insurance companies and some attorneys might be upset if they knew we were sharing these secrets, but our aim is to help you to prepare and plan for your case and save you from unnecessary costs and problems. We have written this manual so you will know everything we believe you should know when you file your claim. Every year, people fail to follow directions, read this manual, or ask questions—and it always costs them money, property or, at least, their time.

Please read this manual carefully if you are considering filing a personal injury claim. Even if your case is a Workers Compensation case, there may be important information in the personal injury section: For example, if you were injured at work, you may also have the right to file a Social Security or insurance claim. Just because you were injured at work doesn't mean that you can't file a personal injury claim against others including the machinery that injured you. Worker's Compensation only means that you normally can't sue your employer. In some cases even if your employer has Workers compensation insurance you can still sue him anyway. In other cases when someone other than your employer was responsible for the injury you may be able to sue others. If you were injured by a machine you are often able to sue manufacturer of the item that injured you. If your case is not a Workers Compensation case you may only

want to read the first part of this manual and skip the sections on Workers Compensation. People that are limited to workers compensation have a difficult time because workers compensation pays very poorly in Kentucky. Years ago the benefits and the attorney compensation were decreased by Governor Patton. Even if an insurance company refuses to pay a claim in bad faith they cannot be sued for bad faith under the present law. As a result, workers that are injured are often forced to look towards someone else to sue.

2. CHOOSING AN ATTORNEY

You may ask yourself why you should hire an attorney to do your case. Here are a few good reasons:

- A study was done by the Mississippi Workers Compensation Commission, on or about 1985, that study showed that persons who hired an attorney recovered twice as much money for their injuries than those who represented themselves. Even with a 20% Workers Compensation legal fee, the individual who uses an attorney collects far more.
- Insurance companies are in the business of collecting insurance premiums, not paying claims. Only a judge's order can force an insurance company to pay. Not having a court order reduces you to begging for your benefits. In most states outside Kentucky, insurance companies can be sued for not making payments or for certain unfair tactics. However in Kentucky if an insurance company fails to pay in "bad faith" it is difficult to collect for insurance unfair tactics.
- Often, hiring an attorney means you don't have to spend your time and energy trying to collect. You can spend your time doing better things and avoid the emotional hassle and strain. Even if the attorney takes 40 or 50 percent, you may be far better off.

There are other good reasons not to be your own lawyer. For example, here in Kentucky, the State Supreme Court has ruled that insurance companies cannot be sued by the claimant for "bad faith" in Workers Compensation cases. This allows insurance companies in Workers Compensation cases to legally engage in unfair settlement practices. Without an attorney, a person may be helpless. In Kentucky, insurance companies can only be sued for unfair practices in personal injury cases and, even then, only under certain conditions. The insurance companies have paid heavily to get this legislation passed. So, if you think that the insurance companies will "play fair" with you in Kentucky, think again. Kentucky insurance companies have a 12 month "open season" on insurance policy holders and they will do anything (and are allowed to do almost anything) to avoid paying on your claim. If you are going to collect anything, you must prepare your case properly and start working with your attorney as early as possible.

Find an attorney that you are comfortable with and that communicates with you. The

most common complaint from clients is that their attorney does not or will not communicate with them and keep them informed. Most attorneys will charge about 40% of what they collect from the case. If the case goes to appeal, they may charge 50% or more plus the court costs and litigation fees. It costs money to practice law—to have a secretary, pay rent, and to stay qualified—and you should expect to pay if you use the attorney's services. It is unreasonable to expect the attorney to work for nothing. At the same time, you should expect to have your calls returned and to be kept advised of the progress of your case. Your attorney is required to tell you about any settlement offers. You should also expect your attorney to spend about an hour preparing with you for every hour you spend in any deposition.

You need to keep in touch with your attorney about your case. By staying in touch, you become the squeaky wheel, and it is the squeaky wheel that gets greased. You should remember, though, that your attorney only wants to hear about your case: He isn't there to talk to you about your social life or problems.

It is also difficult for the attorney to properly collect when his client disappears for a year or doesn't show up for trial. Believe it or not, I have had persons come in with excellent cases, who later disappear and drop their cases. Don't allow your attorney to ignore you, but don't ignore him either. He will move on to someone else who will work with him to collect.

If you are unhappy, let your attorney know—in clear terms—why you are unhappy. If you can't get him to properly handle your case, get another attorney. If you change attorneys often, however, it may be seen by the insurance company as a sign that you can't prove your case, or even that it is fraudulent. Also, the judge may perceive you as a problem client.

If you are represented by an attorney normally contacting the insurance company, or the insurance company's attorney, will only hurt your case. They are generally not allowed to communicate with you if you are represented by an attorney. Never contact the people that you are suing just because you are unhappy about how your case is going. Contacting them will almost always cause trouble, lower your settlement and provide information to the other side that they will use against you at trial. While the attorney is attempting a settlement he may require you to gather documentation such as your tax returns and doctor records to prove your losses to an adjuster. Providing documentation to your attorney so that the case can be quickly settled does not mean that you should contact the adjuster and provide the adjuster information. The client will almost always misstate the facts and damage his case.

2.1. WHEN SHOULD YOU HANDLE YOUR OWN CLAIM?

When a claim is easily proven, and it consists of mostly property damages, the property damages can easily be calculated, the claim is for a small amount, and the insurance company is happy to pay a fair settlement, you may want to settle the matter without legal expenses. But even then, you should get an attorney to review the settlement before signing.

A lot of factors are involved. Certain types of accidents, injuries, and medical costs may demand that an attorney handle the case. The amount that the insurance case may be willing to pay without going to court may be limited, and the authority the adjuster has is always limited. Large amounts can rarely be settled by an adjuster that has limited authority.

Never file your own case or settle your case by yourself if your case involves any of the following:

- **Permanent or long-term disabilities:** The amount and degree of damages in such a claim is difficult for you to estimate, and it is almost impossible for you to provide for the future medical expenses without help
- **Serious injuries:** In cases involving serious injuries, the adjuster cannot fully pay you the amount you deserve without justifying it to his superiors.
- **Food Poisoning, Toxic torts, product liability cases, or Medical Malpractice:** In these cases, it is difficult for you to prove that the person or product caused the damages. During the time you are trying to settle the case, the evidence often gets old or disappears—which means you may lose the ability to prove that the manufacturer caused the accident. You often need expert testimony to demonstrate that “A” caused “B” and, without that expert testimony, you stand little or no chance of collection.
- **An insurance company that refuses to pay:** An insurance company may refuse to pay on the grounds that there is no coverage under the policy or that there is no legal responsibility to pay. Often, this is a denial of fault. The denial is normally an attempt to see if you will give up your efforts to collect. If you have been denied, there is no reason not to turn the matter over to an attorney, and he deserves to be well paid for what he collects. In the face of a refusal to pay, you have no choice but to hire an attorney.
- **Another party who denies fault:** In order to sue an individual for damages, you must prove they caused your injury. If they refuse to admit fault, you will need an attorney to help prove fault.

There are other issues that may require you to involve lawyers, and that can increase the insurance amounts that you will recover, including:

- Lost income.
- Pain and physical suffering. This can be documented by use of medication, length of illness, seriousness, etc.
- Problems proving the cost or existence of accident injuries or the cost of your future medical insurance care. (Since broken bones are more easily proven than sprained muscles, they are worth more and less likely to be contested.)

- The time and care needed to ensure your recovery.
- Emotional and psychological damage, which you can prove by psychiatric treatment.
- Loss of family, social, and educational opportunities.

Lawyers normally charge \$150 per hour or more; therefore, in small auto accident claims, it may be difficult to justify the time of some lawyers. If the auto accident case involves less than \$3000 in property damages, you may want to attempt settling the case yourself.

If you have personal injuries you should almost always use an attorney if the injuries are over 1000 to 2000 dollars.

3. PERSONAL INJURY

Handling a case yourself and collecting on a personal injury case is simple if you follow these basic rules:

- File your case or claim on time. However plan for handing the case over to an attorney if the insurance company will not reasonably settle. Don't expect an attorney to take a case if you wait to the last day for him to file a lawsuit before the statute of limitations is about to run.
- Never allow an insurance company to stall or make excuses for not paying you fairly. They may just hope you will eventually go away. It does take time to process your claim. Also it is your responsibility to prove your damages and they cant pay you until after you have given them all of the information such as medical releases and property damage estimates. But once you have given them all of the information the claim should be processed promptly.
- It is your responsibility to prove and collect evidence that proves the other party is at fault.
- It is your responsibility to prove and collect evidence that shows you have suffered or incurred substantial damages.
- However if you have shown that the liability and damages are clear, but they still refuse to settle, you must go to court and prove it.

What you collect from an accident is based on what kind of claim you make. If your accident was at work, you might think you are limited to the amount you can get from a Workers Compensation claim. But, if your accident involved some machinery at work, you may have the right to file both a Workers Compensation claim AND a lawsuit against the manufacturer of the equipment. Often, a single accident can involve several defendants and multiple lawsuits. Personal injury cases do require that you prove someone else was at fault, but in some Workers Compensation, product liability, or insurance cases you can collect even if you are at fault.

The person suing for money in a personal injury case is called the Plaintiff, and the person being sued is the Defendant. The Plaintiff will win about 51% of the time, and the Defendant will win about 49% of the time. As time goes on, insurance companies win a higher and higher percentage of cases, and laws tend to limit your rights more and more. Insurance companies lobby and pay congressmen more and more money to change the laws so that they cannot be effectively sued. Very few people lobby congress to help you collect from insurance companies.

3.1. GATHERING THE EVIDENCE

The beginning of your case involves **YOUR RESPONSIBILITY TO** gather the evidence to prove that you have a case. Without evidence, your attorney can't even file your complaint and the adjuster can pay or settle your claim. Most attorneys will ask you to bring with you an accident report and any other records such as out of pocket expenses. Gathering evidence in a Personal Injury case always involves proving these two facts:

- The Defendant was the legal cause of the accident. (legal responsible or the legal cause of the accident)
- The Defendant caused the damages for which you are trying to collect. (The defendant caused the accident in fact)

Proving that the other person is at fault is called proving the legal causation. If the other party is not at fault, then he is not to blame for the accident even if he actually caused the accident and, therefore, not liable to you for payment. Often, what you are proving is that the Defendant violated the law, was negligent, or intentionally caused the accident. Of course, in cases where you are personally insured, you can always collect from your own insurance company for covered losses even if you are to blame. However, when you sue others, the insurance adjuster will often try to deny or shift the blame to someone else as a defense tactic.

Personal injury cases imply that you were personally injured or that your property was damaged at the fault of another. Causation in fact is proving that you have incurred damages that were caused, in fact, by the defendant. It isn't enough that the other person is at fault for the accident: If there are no damages, there is nothing to pay. In a personal injury case, you are always proving legal causation and causation in fact. At the start of the case it is your responsibility to keep receipts and estimates of the damages. Adjusters cant pay a claim without proof of a loss. It is unreasonable for you to expect payment until after the adjuster has all of the receipts, estimates and doctors records to prove your loss.

If you are to collect, YOU must provide evidence to the Court, your attorney, and the insurance company. The Court won't gather evidence for you, and the insurance company certainly won't gather evidence for you. Normally your attorney should not manufacture the evidence for you. Your attorney may be involved in collecting some of the evidence—he may do a deposition or subpoena documents—but he can't and won't

go to the doctor for you. If you are to collect it is often up to you to gather and to provide the proof and the evidence by getting car body damage estimates, and by going to the doctor to create the evidence. In Kentucky you can't collect for pain and suffering normally unless you have at least 1000 in medical damages.

Cases are proved by witnesses, records, or physical evidence. Over time, this evidence disappears: people forget, records are lost or destroyed, and physical evidence can be lost. Your memory about the facts is best in the hours immediately after the accident. That is the best opportunity to write down the facts and document your case. If it's an auto accident, statements from the other driver are fresh, and they are far more likely to admit fault at that time than later. Writing down the facts immediately may bolster your case in other ways, too. For example, if the other driver was working for his employer, you may have two people that you can sue. But, you may not remember that he was driving for the employer if you are trying to remember what he said later.

The first place to go after the accident is to the emergency room. If you don't seek immediate medical attention, it may be assumed it was not a serious accident (or that you are making it up after you thought about it). Be very clear about how you are injured when speaking to emergency room personnel, doctors, and admissions staff. Now is not the time to be courageous and claim it doesn't hurt when it does. The Doctors will record how you describe the pain and your levels of pain. One of the best things that you can do is to keep a journal or dairy of the progress of your medical treatment and recovery. This can be used to show how seriously you were injured and to refresh your memory of what happened.

One of the biggest mistakes you can make is to hand over physical evidence or records to the insurance company when there are no copies. Several insurance companies have been caught destroying and "losing" evidence. In one Kentucky case, a manufacturer asked the homeowner to turn over the coffeepot that started the home fire. However, when the homeowner did turn over the coffeepot, the manufacturer claimed he never got it—and the manufacturer never had to pay after he destroyed the evidence. Putting evidence in the insurance company's "good hands" is not a good idea if there are no copies. Like a bad neighbor, you may wish they weren't there.

At the same time most adjusters are honest people with families just like you. They can and will pay your claim if you show them that the liability and the amount of damage is clear. They would be fired from their jobs if they paid claims just because people asked for money and the cost of insurance would skyrocket and be unaffordable if every claim were paid for whatever people asked for. There is a range of values that your case is worth and you will only be paid when and if you can come up with the records, estimates, receipts etc to show that they should pay you. Remember that they are the ones that have the money and they will get off the treasure chest and hand you the money if and only if you prove to them that you have a claim. The way to prove that you have a claim is by proving legal causation and the extent of the causation in fact.

Making a Paper Trail: The Records

As mentioned above, one of the best things to do is to write down what happened immediately after the accident. In addition, continue to keep records as events happen. Below are some questions that should help you understand what information to record:

- How did the accident happen?
- What happened?
- What were the injuries?
- What caused the injuries?
- What were the damages?
- Who were the witnesses?
- What did the people involved say?
- What did the officer or person reporting the accident report or observe?
- Was a defective product involved?
- Were business records involved? What did they say?
- What insurance companies were notified?
- Was there an accident investigator involved?
- What does the investigator's report say and where is it?
- Were there any photos or physical evidence?
- Where was physical evidence taken and how was it preserved?

If you don't begin to document within the first day or two, you may seriously hamper your case. Many times, the case is won or lost simply because the person failed to keep records. For example, in one case, a child died after eating a chicken sandwich; however, the parent failed to get tests done on the sandwich and the child to prove that the child's death was caused by the sandwich and food poisoning. Because of this, it could never later be proven that the sandwich caused the death. When the parent later went to an attorney, there was nothing that the attorney could do—he had no medical proof and expert testimony—and the restaurant is still selling sandwiches. All too often, a person is injured and simply fails to document it. Later, they are simply never able to prove the case. In a Personal Injury case, the facts are simple: No proof of legal causation or causation in fact.... No case..... No collect.

Sometimes it is possible to recover evidence and make a case. Never assume that the evidence is lost in many cases it can be recovered. But on the other hand, why not preserve it when it is fresh and while you have it in your possession?

3.2. WHAT IS YOUR CLAIM WORTH?

The worth of your claim depends on the type and extent of your damages. Medical expenses are often called “special damages”. Automobile or Property damages and lost wages are called “general damages”. In 1999 Lexington Ky tried 14 jury cases to verdict and 9 of those cases had verdicts under 10,000. Only one case had a 2,936,648 dollar verdict. Before that the average verdict was 2,500 dollars. You can see that the average jury award is low. Often jurors resent being hauled into court and they may give low judgments in retaliation. Many times Judges will grant higher awards.

In the older system of processing automobile and personal injury claims, an accident adjuster would consider your personal injury case (and the skills of your attorney) and normally offer 3 times the special damages, plus the general damages. Personal Injury attorneys would often attempt to settle the case for 4 or 5 times (or more) the medical costs when the damages were particularly painful, disfiguring, life-threatening, or severe. The “3 times specials” formula simply does not apply in some cases. The three times formula was an attempt to pay once to the attorney once to the doctor and once to the victim.

Now, adjusters gather information about the claim and special accident software gives a valuation range of the expected personal injury recovery. They use a simple formula of factors, like the type of accident, type of injuries, and medical costs, to compute your recovery value. In the case of a broken finger 3-5 times the medical damages for a finger that heals may be reasonable. But in a case where an actress has her face mutilated 3-5 times the cost to stitch it up is unfair and ridiculous.

Insurance companies and adjusters will sometime purposely low-ball the value of your case by inputting that you have only minor damages. They also won't tell you how they calculated the value of your accident claim or what it is really worth. Insurance companies, and even their attorneys, have been known to destroy documents and evidence to manipulate claims and lower their payment to you. Put simply, they are not your “good neighbors” and you shouldn't think you are in “good hands” for one moment. They issue the same “Denial of Benefits” letter over and over, regardless of whether or not your accident case deserves to be paid, rather than seriously look at your personal injury accident claim. Most adjusters and insurance attorneys are often paid bonuses on what the insurance company doesn't pay to you. Still many adjusters may be entirely reasonable after you have documented your damages.

Today insurance adjusters are not allowed to give the personal attention that was once common in accident cases. They don't drive to your home to find out how the accident happened and what the damages are. They don't cut you the insurance check right on the spot, as they used to. The insurance adjuster you speak to normally isn't even in Kentucky. Instead, insurance adjusters often have hundreds of cases on their desk, they

are normally located in a boiler room in some other state, and they rely on you or your attorney to give them the facts on your insurance claim. If you don't prove that the insurance company is liable, and have proof of all the amounts, it delays or cuts out your payment. Because the adjuster is using software, and doesn't personally investigate the accident, he often doesn't have the facts about how serious your case is. He is negotiating from a chart. Therefore it is simple for him to overpay or underpay claims, because he lacks any personal knowledge. And in some cases he or she may intentionally downgrade your injuries to lower your settlement.

Relying on the insurance company to tell you the truth about the value of your personal injury insurance claim is foolish. It is just not in their best interests to honestly tell you what your personal injury claim is really worth. But one of the most common questions is when a client asks his insurance company what is it worth. Time after time they have proven that they will deceive you to accept a lesser amount than what your personal injury accident case is actually worth. Each accident case is unique, but case studies have shown that the average person who settles a Workers Compensation case without an attorney settles for less than 50% of what the claim is really worth.

At the same time some attorneys will claim that they can get high dollars for you just so that they can get your case. I often estimate a value conservatively. If I get a higher award the client is happy. I have found that clients are never happy if you get them less than what you estimated their case is worth.

3.3. WHAT DAMAGES CAN YOU COLLECT?

Every year people are injured by defective autos. In Kentucky, if you are injured by a defective auto, or if you have an insurance injury, you are allowed damages. You can not stack liability insurance coverage but you can stack uninsured or underinsured benefits and policies. If you Some of the items you are allowed to collect for in an injury or defective auto case may include:

- medical expenses
- pain and suffering
- lost wages and earnings
- future lost wages
- auto and property damages
- disfigurement
- mental anguish
- death benefits

- damages to your marital relationship

Most insurance companies will total a car if the damages exceed 75% of the car's value.

But a car that is over 20 years old may have a collectors value see Hemmings Motor News for older car values. But the statute on the car value claim is 2 years. The measure for damages for a car is the car's diminishment of value.

Changes in insurance or personal injury law, including the statute of limitations, can occur frequently. Presently, the statute of limitations for auto injury cases is 2 years in Kentucky and Indiana. Slip-and-fall injury cases have a 1 year statute of limitation in Kentucky and 2 years in Indiana. Personal Injury claims against the government must be filed within one year in Kentucky and notice to the state must be within 180 days in Indiana. In slander and other injury cases the limitation can be as little as one year in Kentucky.

Since insurance and automobile injury rules are always changing, and because they can become complicated, you should consult a lawyer early in your injury case. The value of your automobile injury case will decrease each day you delay. Often, insurance companies will stall, hoping the statute of limitations will run out. Each state has different automobile recovery rules. In West Virginia, for example, the value of your auto includes tax title and license, but these amounts are not included other states.

3.4. HOW LONG WILL YOUR CASE TAKE?

Insurance claims can be made through the court system, but only a small percentage of auto accident cases are taken to trial. Almost all auto accident cases are settled for some reasonable amount within a year if a case is filed it normally will go to trial within 2 years but it will often settle within a year. Litigation costs insurance companies money, and there is rarely reason to go to court if you can prove your damages with estimates.

However, as emotions often become involved, clients, attorneys, and insurance companies may decide to go to Court. It may take years to reach a settlement if negotiations break down. Normally, as soon as you have reached maximum medical recovery a final settlement amount can be negotiated. In property cases, a settlement should usually take no more than a few months. In personal injury cases, estimating and arriving at the final total for your injuries will take more time—and it can not reasonably start until you are within sight of a complete recovery. Never accept too little because you settled too early out of impatience. There is no set time for any case. Every case takes as long as it needs, and you should only settle for the full amount deserved.

3.5. DEALING WITH THE INSURANCE ADJUSTER

Often a case is best handled with the insurance company adjuster. This is true, especially, with smaller amounts or when it is easy to document the exact amount of a loss (such as property and auto body damages). If you can prove clearly that the insurance company should pay, and the exact dollar amount, then you may be able to work with a claims agent. However, you still may have problems if you are an individual

making a claim against an insurance company. The adjuster is encouraged to take statements from you that will later be used against you—to destroy your claim and your case.

Many personal injury insurance adjusters were law school students that were recruited out of law school and trained by the insurance companies. They are very well paid to deny coverage and to pay as little as possible. By the time some insurance adjusters are through, you may believe that you owe them for bleeding on their car.

In 1995, it cost an insurance company over \$500 just to start a personal injury insurance claim. Insurance adjusters are paid bonuses and commissions on how many personal injury claims they settle, how quickly they settle, and how little they settle for. The average insurance adjuster may settle between 100 and 150 personal injury insurance claims in a month (that's 5 to 8 cases per day). An adjuster knows exactly what the AVERAGE personal injury case is worth, because he has a computer database of what is paid on insurance claims in your area. He won't tell you what your personal injury case is really worth or that no two personal injury cases are ever exactly the same. He is trying to pay you the same as what someone else got on their personal injury case, or even a little less. Until you show him that your personal injury case is different, and/or that you should be paid more, he won't offer more.

If you are prepared, and if you have all the evidence to prove your insurance case, you won't have a problem working with the adjuster or putting together your own personal injury claim. However, if you aren't prepared, if you aren't ready, it will show. The adjuster will be able to spot that you are not prepared and will offer you a lot less than you deserve for your personal injury claim. He will only give you a few minutes of his time, since he has many other personal injury cases that have to be settled, and—if you frustrate him by wasting his time—you may lose.

Do not resort to underhanded tactics to convince the adjuster you are right. Dishonesty, threats, and abusive language won't help you settle your personal injury case. Instead you appear desperate to settle and that you have no personal belief in your case and the stamina to see it through. **Being prepared, documentation and making the insurance adjuster a firm, but fair offer, will get the job done. Since you are emotionally involved, it can be hard to stay objective. If he won't settle your personal injury claim fairly, or refuses to negotiate despite your proof, walk away and seek a personal injury attorney.**

If you have a large case (such as permanent or long-term injury or disfigurement) or if the case involves damages that are difficult to estimate or prove, do not attempt to settle the case yourself. Remember, everything you say to the adjuster is being recorded. If you say the wrong thing (for example, “Well, I don't know exactly how bad the injury is.”), this may be used against you when the final settlement comes.

Also be aware: Some adjusters cannot be trusted with original documents. If you must turn evidence over to him, never give him original documents or physical evidence. It's quite likely that a faulty product will “get lost” if turned over to the insurance company

or manufacturer. The original contract or warranty will be “misplaced”. Since you can’t know if your adjuster is an honest one, it is best to provide only copies of documents.

Adjuster Tactics and “Bad Faith”

Your insurance policy is a contract. You pay premiums and, in return, the insurance company agrees to provide you with insurance protection and benefits if you need to make a legitimate claim.

If an adjuster uses unethical tactics to avoid paying you your benefits, you may have the right to file a “bad faith” insurance claim. Unethical tactics include the destruction or hiding of evidence, interference with your right to pursue your claim (such as stalling until the statute of limitations has run out), or outright fraud.

Insurance Adjusters may claim that you can’t collect because you didn’t pay for an item out of your own pocket. For example, he may say that since your medical insurance company paid for your medical expenses, you cannot recover those expenses. It’s not true: You are allowed to collect for these expenses just like any other expense. Denying such coverage for “collateral sources” is unethical conduct on the part of any insurance adjuster. It is also wrong if your insurance company denies coverage because a defective product caused the accident. The insurance adjuster may also misrepresent the amount that you can collect from the policy. You should always get the reasons you are being denied benefits in writing and document your dealings with the insurance adjuster. If an insurance adjuster will not give you reasons in writing, you may want to talk to his supervisor or record your conversations with him. You don’t have to advise him that his conversation is being recorded.

Whether or not a person can sue an insurance company for bad faith in a Workers Compensation case is questionable. In Kentucky, an insurance company cannot be held liable for bad faith in a Workers Compensation lawsuit; however, other states (such as Mississippi) do allow bad faith lawsuits against Workers Compensation insurance companies.

If you have been subjected to unfair insurance tactics, you should sue the insurance company for violating your rights to your benefits. (However, starting your personal injury case with a competent personal injury attorney will help you avoid these tactics.) Suing a company for bad faith almost always involves long, dragged-out litigation, but it may add significantly to your damages. Bad faith insurance litigation may mean millions of dollars in recovery against insurance companies that violate the rules and can even lead to very large class action cases, yet many Kentucky insurance companies still take short cuts to cut costs in hopes they will never be caught.

On a final note, beware of the friendly adjuster that wants to quickly pay your claim in exchange for a release. The signed release may mean that you can’t collect later for serious injuries that you may not even be aware of yet. In other cases, you may think you

are settling your auto damages, when you are actually signing away your personal injuries as well. If your own insurance adjuster is giving you tips on how to make a claim, it may really be advice that helps him to avoid payment. If he asks for a statement, you should only make such a statement with your attorney present. Adjusters are well-trained in how to word questions, and the questions are worded so that you will naturally make admissions against yourself.

3.6. PROVING FAULT AND LEGAL LIABILITY

Many attorneys have a “shotgun” approach to litigation: “Sue them all...One of them must be guilty, so we’ll just let the judge and jury figure out which it is”. This may be a good tactic if several defendants disagree about who is at fault, or if you are confused about who is at fault, but often you don’t need to prove who is at fault—it’s obvious. Normally it is best to have one simple theory of the case about who is legally at fault and why.

Kentucky is a comparative fault state. Even if you are liable for the accident remember that Kentucky is a comparable fault jurisdiction and therefore even if you are “at fault the other party may have to pay you substantial damages even with a 50-50 split. For instance if you have 750,000 in damages and the other party has 5,000 if you are 66% at fault the other party still owes you 250,000 or 1/3rd of your damages. In our state you don’t have to prove that the other party is 100% at fault. You only have to show that the other party was at fault to some extent. It may not matter if you were intoxicated or that you were not wearing your seatbelt if that did not cause the damages. You only need to prove that the other party was to some extent negligent. Don’t give up on your claim just for an excuse that sounds good but that is irrelevant.

The reason some attorneys sue multiple defendants is simply to find a deep pocket or to ensure collection in a case where the guilty party is uninsured or just doesn’t have the money to pay. In order to collect, you have to prove someone has the legal liability for your damages (i.e., that they are at fault) and what those damages are, but you have to sue someone that can and will pay. By suing multiple parties you are often more likely to collect because it is more likely that someone will have insurance or assets.

If you have clear insurance coverage, there is no need to prove legal liability. If you have fire insurance and there was a fire, you were covered for the damages and the insurance should pay the benefits. It makes it simple to collect. This is also the principle behind Workers Compensation: The employer pays for an insurance policy that covers the employee if he is injured at work. In exchange for this policy, the employer has no further liability other than the coverage limits. If you have this type of paid insurance, you don’t need to prove fault. Also, if a defective product injured you, there is no need to prove that someone intended to injure you or negligently injured you. You only need to prove that the product was defective. You can often find proof of a defective product in the manufacturer’s technical service bulletins, recall notices, warranty claims or design documents.

However, if you are settling with an insurance company that is representing another

party, they will require that you prove “legal fault”. This is the most common scenario in automobile accidents. Often, your attorney will look at the laws and codes of the state that you are injured in to determine who was at fault. Any time there is a violation of the law, there is normally a violation of the “duty of care” that was owed to you. If you are injured on someone’s property, for example, it is often the duty of the landlord or owner to keep the property safe from known safety hazards. Building code violations or the failure to keep a property maintained may also cause a landlord or owner to incur liability. In the case of product liability (where a product injured you) the manufacturer may be strictly liable, and you may only need to prove the amount of the injury or the causes in fact.

Never forget that you can have multiple parties in your case and, even though you may not collect from one, you may collect from another that was insured under some other theory of liability. As an example: “Jim” was injured by a defective overhead door installed by “Technical Doors”. His employer paid his medical expenses through Workers Compensation, but the manufacturer of the overhead door was also sued for the defective door. In addition, the installer was sued for installing the defective product improperly—and the landlord was sued for not replacing the door even though he knew it was defective. Four lawsuits for one accident. The Workers Compensation paid immediately and the others paid years later. Each case had a different duty of care and a different theory about why the person should pay.

3.7. PROVING CAUSE IN FACT: DOCUMENTING THE DAMAGES

It isn’t enough that you prove someone else is at fault. You have to prove your damages. By this, we mean that you have to prove that “A” caused “B”. You can say “I want a million dollars”, but you have to show how you were caused a million dollars in damages AND that these damages were caused by the defendant. You can’t just complain that you got sick after you ate a Big Mac. You have to prove, often with an expert medical opinion, that the Big Mac actually caused the illness. Without proof that the Defendant caused the damages and what the damages were, the Plaintiff can’t collect.

If the damages are only worth \$1 you won’t collect that million. In Kentucky, you have to have over \$1000 in medical costs to prove you have any right to pain or suffering damages in most auto injury cases. Quite often, the settlement can be 3, 4, or 5 times the medical costs. But to collect your damages, you have to go to the doctor to get a medical record and incur the medical costs and damages as proof of your loss. Sitting at home and suffering in pain creates no records for the injury.

If you don’t have medical bills, you won’t be able to prove your damages and you will lose any right to collect for pain and suffering. You can’t expect the adjuster to pay you if you don’t have any medical bills to pay. Your attorney can’t go to the doctor for you. Bottom Line: If you don’t go to the doctor, you normally won’t collect. Your failure to treat your injuries or to purchase your medication will only cost you in the long run. After the injuries have healed it is often too late to document the damages or to gather the proof. If you want an attorney to prove your case after you have healed, you have waited

too long. Most attorneys won't look at the case if it is too old. You need to document your injuries from the beginning, in any Workers Compensation or personal injury case, or you lose the opportunity forever.

3.8. JURISDICTION AND STATUTE OF LIMITATIONS

Often, the insurance company will try to stall and delay settlements so that the time limits for you to file your case will run out. If an insurance company stalls just to use up the statute of limitations, you have no choice but to turn the case over to an attorney. You are losing every day that you don't file your case.

As time goes on, your case becomes harder to prove, as evidence disappears or becomes stale. It also becomes more difficult, or even impossible, to properly prepare a complaint if there is only a week left to research and file the case. Therefore, if you wait until the last minute, don't be surprised if no attorney in town will take your case. It is unreasonable to expect a professional to drop everyone else's case to handle yours especially at the last minute. If you are to give your accident case to an attorney you should normally do so as soon as possible.

Kentucky has one of the shortest statute of limitations on personal injury cases. In Kentucky, the automotive statute of limitations can be as short as one year, but in most cases it may be two years.

In a case where it is hard or impossible to know if you have been injured until later, you may have until one year after the date of discovery. For example, if a defective product gives you cancer, you may not develop the symptoms until years later and, therefore, the one year statute of limitations is not applicable.

In a case of slander, you may have been fired from your job and yet not know who slandered you. Still, you have only one year from the date the slander was published.

In a Workers Compensation case, the employer must be notified within one year of the injury. In addition, the claim should be filed within 1 year, and must be filed within 2 years, of the injury. If the injury is unknown until later (for example, an illness develops several years after exposure to chemicals in the workplace), the discovery rule may apply.

In some cases, different time rules and statutes of limitations may apply to different defendants. A landlord may be liable for a different time period than the manufacturer of the product that injured you.

The insurance company may also play the jurisdiction game. Your lawsuit must be filed in the right state and county. In the case of injury, the right place is normally where the accident occurred, but it may also be where you reside. Where you bring the lawsuit may determine what you collect: Some states award higher damages than others. For example, one county in West Virginia has never awarded more than \$3000 in damages for any personal injury death. In fact, the people in that county have awarded more for

the loss of a cow than for a person's death. Some states will allow some types of damages that others do not or may have longer statutes of limitations. Never assume that you are stuck claiming in just one state or with just one party. Sometimes just changing which county the case is filed in may triple or more your award.

3.9. THE LEGAL PROCESS

These are the steps you'll go through in a personal injury case:

1. **Filing the complaint.** The complaint starts the lawsuit and it lets the other side know they are being sued. It gives notice to the party so they can prepare an answer to the suit. The complaint sets forth the facts about legal and factual liability and jurisdiction.
2. **Service of process.** You not only have to file the complaint, but the other person has to receive it. You may serve the complaint by sheriff or by certified mail. If the defendant is a corporation, there is an agent for service of process and the complaint is sent to him. The person serving the Defendant returns proof to the Court that the Defendant received the complaint. Normally, the Plaintiff will ask for a default judgment if no answer is filed within 30 days after the process is served.
3. **Defendant files the answer.** After the Defendant receives the complaint, he must file an answer that he disagrees. If he fails to file an answer, a default judgment will be entered. There are about 12 "magic" defenses that must be laid out in the original answer or they can never be made. A common mistake is to omit one of these defenses in the answer such as jurisdiction and to lose it permanently.
4. **You file discovery requests.** You ask for facts, admissions and documents from the other side. Questions are asked under oath and these written answers can be used against the other side later. Discovery normally includes interrogatories (questions), requests for production of documents, and admissions.
5. **Depositions.** Similar to discovery, depositions are oral answers to questions. These question and answer sessions often last for 1 or 2 hours and can be up to 3 or 4 hours in complex cases. See the next subsection for more detail on depositions.
6. **You file a motion for Summary Judgment.** If there is no basis for disagreement on the facts, and the case is only a question of law, you may want to file a motion for a Summary Judgment. A motion for a Summary judgment means that, even if everything the defendant says is true, he should be made to pay anyway.
7. **You have a trial.** After you have gone through all the above steps, if you can't reach a settlement, you will go to trial. A trial is often unpleasant, but it may be necessary to finish the case and to get an order from the court for the Defendant to pay. Trials may be by jury or by a judge that decides the case alone.

8. **You file any appeals, if necessary.** Sometimes a judge makes a mistake and misapplies the law. A person has little chance of reversing a finding of fact, but if the judge makes a mistake about what the law is, he may be reversed on appeal. Appeals take a substantial amount of attorney time to prepare and to argue. It also delays collection.

More on Depositions

People are often very nervous about depositions. Depositions are simply a session of oral questioning, where the opposing attorney tries to find out about the case. There will be a court reporter there, and you will be under oath. If you don't remember something, or are unsure of what the answer is, just say you are unsure. Each attorney has a different style—some are looking for information, some are looking to catch you in a lie, and others are trying to get an admission. Statements are also taken by accident adjusters in automobile cases. The insurance company has attorneys and expert doctors that are paid just to do depositions in auto accident cases and to testify that you are not so seriously injured. Your attorney will normally have to, at least, get the deposition of your doctor to establish that you were injured and the degree of your injury. Your insurance recovery depends largely on your testimony about how disabled or injured you are.

If you are called to testify, you want to testify to the fact that you were injured and that you were injured due to someone else's fault. Your attorney should go over your testimony prior to the deposition and prior to trial. There is no need to be nervous. Honesty is the best policy. You may be nervous with so much at risk; but, there is no need to “improve” on the facts at any deposition. Your complete honesty is the most persuasive weapon you have and, often, the insurance defense attorney will be quick to expose any dishonesty. Depositions about the accident are not done before the judge. Depositions are only your sworn testimony, as a taped statement. Depositions will often be published to the jury or judge later and it will be your statements about the accident and any relevant information pertaining to the accident.

3.10. COMMON DEFENSES TO PERSONAL INJURY CLAIMS

In order to avoid payment, the insurance company may claim that there is no insurance coverage for this item or at the time of the accident, that their client wasn't liable and broke no law, that you don't have any damages to pay, that the damages are worth less than you are asking, that you caused or were in part responsible for your damages, or one of many other “reasons” they shouldn't have to pay. Since **Kentucky is a comparable fault** state you can collect even if you were partially at fault. If you run into these defenses, realize there is no use in pursuing the matter any further on your own. Seek an attorney.

4. WORKERS COMPENSATION

Workers Compensation is supposed to be your “exclusive remedy” under KRS 342.690(1) for an on the job accident. However Workers Compensation pays you very poorly if you are injured. There are rare exceptions to it being your exclusive remedy.

You can reject workers compensation coverage if you reject it prior to the accident KRS 342.295. It isn't the exclusive remedy if the employer hasn't paid for insurance KRS 342.690(2). It also isn't a defense if you are wrongfully discharged. If you are wrongfully discharged you can sue for the injury and for being wrongfully discharged KRS Firestone v Meadows 666 S.W. 2d 729 (1983) and Parimutuel Clerks Union v Kentucky Jockey Club 551 SW2d 801 (1977). It also isn't the exclusive remedy if you assert a Civil Rights Action KRS 344.040. It also isn't an exclusive remedy if the injury was committed intentionally by the employer KRS 342.610.

But try to get the employer to admit that he intentionally or injured you killed you. Even the most gross negligence conduct that violated every safety rule is limited to the workers comp recovery. Negligent conduct that would be criminally negligent conduct is covered under workers compensation. Fortunately, there are 100 other ways that you can collect in addition to Workers Compensation such as through Social Security and product liability for a product that injures you. Employers are well protected from lawsuits by workers comp.

In order start a claim for Workers comp in Kentucky you need to file forms 101, 102, 103, 104, 105, 106 and 107. Form 101 must be notarized and a medical report describing the injury or illness or form 107 must accompany the claims forms or it will be rejected. Along with this there must be an original and 2 copies of these forms for each Defendant or insurance company involved filed with the claim. Depending on the type of injury file either form 101, 102 or 103 but not all 3 forms. Form 101 is for an injury 102 and 103 are for occupational diseases and other claims. 104 is work history 105 is medical history and 106 is a medical consent and waiver form. You will also need proof of your wages.

Workers Compensation is an insurance answer to, and compromise between, employers and employees. Long ago, when workers were injured on the job they had to show that it was due to the fault and negligence of the employer. Because litigation was long, and attorney costs were so high, few employees would win—but when they did win, employers lost large amounts. Under Workers Compensation, employees are not required to show that it was the employer's fault they were injured, and all employees injured in the course of employment are allowed benefits. You only need to prove that you, as an employee, were injured on the job and in the course of your employment to qualify for benefits. But what does this mean? In simple language it means—

- **Only Employees are covered.** Only employees are covered by Workers Compensation. Visitors on the jobsite and subcontractors are not covered. If your employer controls your work, you are an employee not a subcontractor.
- **You must be injured in the course of your employment.** Being injured on the job can even mean being injured going to and from work, if going to or from benefits the employer or is a part of the job. An employee who takes the company vehicle home to make a delivery on the way to work the next day would be covered on the journey the next morning. In one case, a traveling salesman

who was with a prostitute in his motel room while on the road died of a heart attack, and his death was found to be in the “course of employment”, and death benefits were paid to his widow and children. Being injured in the course of employment means that you were doing the normal activity that would be done by an employee when you were injured while on a job. Robbing a 7/11 while you are on company time, and being shot, does not qualify you for Workers Compensation. Playing ball at the company picnic is covered, because it is a normal employee activity for employees—even though you are “off-the-clock” is covered. The presumption is always that you are covered. Otherwise you have the ability to sue your employer for the accident. However if your employer intentionally injures you worker’s compensation does not cover intentional injuries and you are allowed to sue as a personal injury.

4.1. WORKERS COMPENSATION HOW TO FILE BY THE NUMBERS

To qualify for Workers Compensation you must first give notice of the injury to your employer. KRS 342.019 allows you to receive treatment from a chiropractor as well as from a doctor. But you must file within the time limits or you can’t claim benefits.

All your medical treatment is at the expense of your employer and the insurance company, according to KRS 342.020. Even your traveling expenses are paid. The emphasis is on you getting you back to work with medical help and rehabilitation not compensation. In fact if you don’t constantly go the doctor to document and prove that you are disabled you lose your benefits. If you wish to collect temporary total disability you must continually go to your doctor or the checks and the benefits will stop. (They don’t tell you this though). Compensation is paid very poorly and you will need social security and other ways to get full compensation if you are permanently disabled.

You are allowed to have up to two doctors as your medical evidence in your case. All cases must have medical evidence to support the claim, and often you will submit your medical evidence by deposition or written medical report. If you need additional medical testimony, you may introduce it, but only by asking for permission under KRS 342.033.

Every employer is required to keep a record of the accidents that happen with employees under KRS 342.038.

You are not paid benefits unless you are disabled for more than 2 weeks under KRS 342.040. You are paid on your employers regular pay day and you are to be paid with interest if not paid on time (this can include attorney fees if you have to bring it to a hearing).

There is a special fund which insures payment and funds for the Workers Compensation Department under KRS 342.120. A case may be reopened if there is evidence of an increase in the injury (and there almost always is) under KRS 342.125.

If safety rules and laws have not been complied with, there can be an increase in the award over and above what the normal award is KRS 342.165. However, even if your

employer is criminally negligent and kills you, workers comp is your limit for benefits. Your maximum death benefit is only 10,000 to your widow and the orphans. Workers comp is extremely limited in Kentucky and very few attorneys take these cases after Paul Patton cut the attorney fees and the benefits in half. The democratic party screwed the workers in this state royally and workers comp has never recovered.. This is why you need to find other ways and someone else to collect from such as a product liability action if you are injured on the job.

If the employer files for bankruptcy, the claim is to be paid first before any other creditor is paid (just like other preferential claims for wages) under KRS 342.175.

Workers Compensation benefits cannot be attached by creditors, not even the IRS, however it can be attached to collect child support (KRS 342.185).

To start the process, the worker must file a claim within 2 years (KRS 342.185) and notice must be given properly to the employer in writing (KRS 342.190, 342.195, 342.200, and 342.210) or that statute of limitations runs out and you can never file. However if you get worse you can always have the case reviewed and benefits increased.

Workers cannot be discriminated against or fired (KRS 342.197), and it is the right of the employer to send the employee to the doctor of the employer's choice (who will lie like a rug that you aren't injured) under KRS 342.205.

If the insurance company refuses to pay, is involved with fraud, or found guilty of unfair settlement practices, they cannot be sued for bad faith (as in ordinary insurance cases), but normally the insurance companies are slapped on the wrist with \$1 fines that mean nothing to them under KRS 342.267, 342.335, and 342.990. Most of the Worker's Compensation boards are former insurance company executives.

You can collect for diseases as well as accidents under KRS 342.316, and your attorney is limited to a 20% recovery under KRS 342.320. In return, the employer is exempt from suit and can't be sued under KRS 342.375 and 342.690 for negligence, but other people that caused your injuries other than the employer can be sued under KRS 342.700. However almost anyone connected to your work will be under the employer's exemption. Special benefits are paid to widows (KRS 342.750), but you must always be certain that the insurance carrier is notified (KRS 342.470).

4.2. WORKING WITH THE ADJUSTER

Whether you are in an auto accident or in a Workers Compensation accident, you have up to 2 years to file your claim. During this time, the insurance companies are hoping (and betting) that you don't file a claim or see an attorney. Why? If you don't file a Workers Compensation claim, and if you don't use an attorney, they don't have to pay at all or, at least, pay as high a recovery. Attorneys know how to present Workers Compensation claims in a way that the claims are paid more fully.

For example, if you are in a regular Workers Compensation case, you collect nothing for

pain and suffering. However, if you show that your pain and suffering affects and lowers your ability to work and earn, you can collect more. Just knowing how to show pain and suffering will improve your case.

Your loss of “earning potential” and medical expenses are all that you are allowed to collect on in a Workers Compensation Case. **The key to increasing your recovery in a Workers Compensation case is to show that you have lost the ability to earn, temporarily and permanently.** Pain and Suffering are only collectible as a factor in personal injury cases.

What are your rights and benefits under Workers Compensation? Under Workers Compensation, you have the right to collect for medical treatment and all the expenses of that medical treatment. Workers Compensation pays cash for the time you are unable to work and for any period you are temporarily totally disabled. It also pays for retraining and rehabilitation which can be very important. Workers Compensation is based on your average weekly earnings. Workers Compensation entitles you to a cash award for your total disability and the percentage it takes from your permanent ability to earn. Workers Compensation entitles you to Vocational Rehabilitation to return you to work. Workers Compensation entitles you to Death Benefits for your spouse and dependants, and Workers Compensation entitles you to increased benefits if your condition gets worse in the future (and it always should get worse).

As you can see, these rights are limited. Under Workers Compensation, you don't collect for mental anguish, disfigurement, damage to your marital relationship, or pain and suffering...at least, you aren't supposed to. However, you aren't limited to suing your employer in a Workers Compensation case. You can sue the manufacturer of the equipment that injured you or, perhaps, a person that injured you while you were at work. Don't limit your recovery by thinking you can only collect from your employer.

4.3. THE PROCESS

After the claim is filed, the claim is assigned to an ALJ. The employer and his insurance carrier are notified that the claim is filed. The time frame for the carrier to deny or accept the claim, and file a notice of claim denial or acceptance, and for you to file your medical reports and any deposition to support your case, is within 90 days after the case is assigned to the ALJ. This is a very strict filing deadline: Miss it and you lose your case. This is where most attorneys lose your case. Always contact your attorney to make sure he doesn't miss this date.

The case is then assigned a hearing date, and the ALJ must file his decision within 60 days after that. Within 10 days after filing for benefits, the employer must designate a treating physician for you on form 113. You fill the form out, and the employer sends you a medical card to present to the physician. **You have a one-time right to change this physician to a physician of your choice.** Employers and their insurance companies almost always send you to a physician that will find that you are not injured at all. The attorneys that do workers compensation will almost have a physician that will find that

you are permanently disabled.

Attorney Fees in Kentucky are limited to a 20% recovery, contingent on winning your case, and the attorney fee cannot exceed \$12,000 dollars. It costs money and time to litigate cases and if the attorney fees are too low it becomes impossible to find an attorney to take the case because it becomes unprofitable. .

4.4. WHAT YOU ARE PAID

All amounts are for Kentucky: In 2002 the maximum total disability rate is \$530.07 for Permanent Total Disability, and \$397.55 for Permanent Partial Disability. Retraining Incentive Benefits are \$397.55. The minimum amount that can be paid for Total Disability is \$106.01. This is subject to change for cost of living increases. If you are reading this in 2003 I may not update this but understand that it is increased with the cost of living. The formula is so complicated that you just call workers comp up to find out what current amounts are. It changes all the time.

There is a complicated formula to figure the exact amount paid to you, and it is impossible to calculate it until the degree of your disability has been determined. Although these amounts seem small, imagine getting these checks for the next 10 years, or for life, along with paid medical and retraining benefits. When the amounts are reduced to present value or given as a lump sum they can be substantial. These benefits are important. Most cases are settled with a lump sum, which must be approved by an ALJ. If you decide to keep a monthly amount, your award will be reduced at age 65 or retirement. If an employee dies within 4 years of the award, a \$50,000 dollar death benefit is paid to the estate (which is 5 times what they pay if you just die on the job \$10,000 immediately).

Medical benefit claims must be made within 45 days after treatment and every 45 days thereafter. If a final award has been granted, the employer must pay the bill within 30 days after presentment of the bill or contest it through a motion to reopen. Employees are also allowed travel expenses to and from medical treatment using form 114. A medical provider (Doctor or Hospital) cannot require co-payments or bill you for a balance if it accepts Workers Compensation.

4.5. YOUR APPEAL

If you are not happy with the award in your Workers Compensation decision, you only have a short time to appeal to the Workers Compensation Board. The Judge (ALJ) is required to file his decision within 60 days after the decision is made. You have 14 days after he files his decision to ask him to reconsider this decision. If you miss that deadline, you only have 30 days after the decision to ask for an appeal to the Workers Compensation Board. Appeals rarely win because, if there is any conflicting evidence, the ALJ's decision will be upheld (if there is any support for it). The Workers Compensation Board's decision can be appealed to the Kentucky Appellate Courts, which rarely overturn the Workers Compensation Board unless the Board has

misinterpreted the law. It is important to understand that appeals courts rarely change a decision of fact.

However, a case can be reopened within the next 4 years, and a higher award can later be obtained, if the worker's disability changes or if there is new evidence. The time limitations for filing your proof and your testimony in the case, especially the medical evidence of your doctor, are very strict. Miss the filing times, and you lose your case.

4.6. YOUR DEPOSITION

Depositions are often taken in Workers Compensation cases. The insurance company will often have a doctor that is paid to give a deposition, and to testify that you are not injured. Your attorney will normally have to, at least, get the deposition of your doctor to establish that the injury at work made you, at least, temporarily and partially disabled. Your recovery will depend on how disabled or damaged he claims you are.

Also, it's likely you will be called to testify at the deposition. You will want to testify to the fact that you were injured at work, or coming to or going from work, and that you were injured in the course of your employment. Your attorney will often go over your testimony with you prior to the deposition. There is no need to be nervous, and honesty is the best policy. People are often nervous with so much at risk; however, there is no need to "improve" on the facts at any deposition. Your complete honesty will be most persuasive, and often the insurance defense attorney will be ready to quickly expose any dishonesty. Depositions are not done before the judge. Depositions are only your sworn testimony, as a taped statement, about the accident and any relevant information about the accident.

4.7. THE TIME LIMITS FOR YOUR CLAIM

You have up to 2 years to file your Workers Compensation claim in Kentucky. This means within 2 years of date of injury or within 2 years of the last voluntary payment by the insurance company. Paying medical expenses does not extend this time.

Occupational disease claims must be filed within 3 years of diagnosis or discovery or death. The maximum period is 5 years after exposure, unless the exposure is due to radiation or asbestos.

You need to file your Workers Compensation claim as soon as possible. The longer you take to file, the lower your award will be. With each month that passes you miss a month of Workers Compensation benefits. You also make it harder to prove your case. As time passes, it becomes harder to prove that the work-related accident caused the injury. Records become lost, and the injury heals or combines with other medical conditions. There are set formulas for valuing your Workers Compensation case, based on the percentage of your impairment and the length of time you will be impaired. Many Workers Compensation injuries are permanent and require permanent treatments.

People may delay filing Workers Compensation claims because they are afraid their employers will fire them. Under Kentucky Law, a person can sue for these lost wages,

and back pay, if they are fired or demoted for filing Workers Compensation insurance claims.

In 1998 under Governor Patton, the Workers Compensation law was changed substantially to lower benefits and the compensation paid to attorneys, but it is still an important benefit. Many attorneys quit taking Workers Compensation cases, but some still find it profitable to file these cases.

Since Workers Compensation benefits have been lowered, it has also become far more popular to sue other parties. For instance, a person may be injured at work but, if a machine caused that injury, the manufacturer of that machine may be sued for faulty or dangerous design. For an example if you were driving a delivery vehicle and you had an accident you can recover from several sources:

- You can recover from Workers compensation which does not require the other driver to be at fault
- You can recover from your insurance. Your own insurance does not require the other driver to be at fault.
- You can recover from the other driver's insurance company. His insurance will pay but you have to prove him to be at fault and that he caused the accident.
- If the other driver was driving a car for his employer his employer may have to pay under a principle called respondeat superior.
- If the car has defective equipment the car manufacturer may have to also pay.

Worker's Compensation should only be part of a bigger picture and recovery. Workers Compensation often allows you to partially recover lost wages and pays for medical expenses immediately while you are waiting on lawsuits against other parties. Workers Compensation benefits such as lost wages are paid immediately, but you can normally get a far more full recovery from other parties. Seek an attorney's advice.

5. FAQ AND APPENDIX SECTION

5.1. FREQUENTLY ASKED QUESTIONS AT OUR OFFICE

This is not legal advice. Each individual case is different, but these are the “standard” answers to these questions. If you have a question about your case, you need to ask your attorney for an answer based on the facts and particular circumstances of your case.

The top 3 Questions

Q1) I was injured 6 months ago and have been handling my own case. The insurance company has held up my checks, underpaid me, not paid the medical bills, and—in general—given me such a bad time that I may have to file bankruptcy. What can I do to collect? Get an attorney.

Normally, the attorney gets 20% of a Workers Compensation claim. States outside Kentucky allow as much as 25% and, if very special circumstances exist (where it was very hard to prove a case), the Workers Compensation board may approve a fee as high as 33%. There is a one year statute of limitations on filing a Workers Compensation claim. In some cases, this may stretch out to 2 years especially for diseases that don't happen until later. Normally, a person represented by an attorney will get almost twice what a person would get without an attorney; however, if you have been playing attorney and handling your own case for the last 5 or 6 months, you probably have damaged your case and you will probably get a lot less. Normally, if an attorney is handling your case you will get paid faster, and more, than if you didn't use an attorney. These statistics come from a Mississippi Workers Compensation study that proved that, in Mississippi, in the 1980s, where people doubled their awards (on the average) if they were represented by attorneys.

Think for a moment: If you were an insurance company, would you pay anything at all without the threat of legal action? An insurance adjuster once said to me, “We never offer more than 10 cents on the dollar of what a claim is worth to persons that are unrepresented by an attorney. They have already proven to us that they lack the intelligence to use an attorney and, if they continue to wait, the statute of limitations runs out and we pay them nothing.” People that handle their own cases get little, and get paid late. On top of that, they do all the work themselves. They simply can't expect to get as much as a trained attorney would. Insurance companies profit only by paying out less than they take in. They naturally try to reduce their costs as much as possible.

In 1996, there was a major Democratic revision to the Workers Compensation Statutes in Kentucky that sharply reduced attorney fees and benefits. The insurance companies and Paul Patton made it so that it was no longer profitable for attorneys to do such cases. These changes were supported by coal mine operators that supported a reduction in black lung benefits. A Kentucky case in the early 1990s also ruled that you cannot sue an insurance company in the State of Kentucky for bad faith in not paying a Workers

Compensation claim. You are now limited to suing an insurance company for the benefits that they didn't pay. Because of this decision, many insurance companies are not afraid of paying claims short and, in some cases, not paying at all. Why should any insurance company be afraid not to pay with these laws to protect them? Often, the only choice is to use an attorney.

Q2) I want to handle my own case. How do I do it? You have the right to handle your own case. You can do your own dental work, too, but it isn't a good idea. You may be an expert electrician or mechanic or even tax attorney. But, just because a customer is an expert mechanic doesn't mean he knows how to fix his own transmission. You shouldn't attempt to do your own legal work. Processing a Workers Compensation claim is easy. You only need to get the forms from the Workers Compensation board in Frankfort and notify your employer and his insurance carrier that you are making a claim. Again, filing the work and processing the claim is easy: Collecting the full amount you deserve and proving how disabled you are and filing items on time when you don't know the process may be very difficult.

Q3: Can I still recover under Workers Compensation if I have a Personal Injury case?

In 1985 the Mississippi Workers Comp board did a study. That study held that if a person in Mississippi was represented by an attorney they obtained about twice what the average person got without an attorney. If you file for Workers Compensation you may get funds faster than through a lawsuit. However workers compensation has been dramatically reduced in it's benefits in Kentucky and the process now takes much longer because insurance companies are allowed to delay paying benefits and can not be sued for non payment. Attorneys fees have been reduced so much that it is difficult to find attorneys that will take workers compensation cases. If you do collect under workers compensation you may have to repay some of the benefits you get under workers compensation from your personal injury award. However personal injury awards are often much more than what is awarded under workman's compensation and take much longer to get. Workers comp is paid immediately to you and you can live on that until the personal injury award comes in. Also if you have to file bankruptcy workers comp is exempt from the bankruptcy court and creditors taking it. Personal Injury claims, in addition to a workers compensation claim, can be filed against other parties (known as a Third Parties) seeking damages in addition to an award in the workers' compensation court. You should consult with an attorney as soon as possible after the accident to determine whether your case would entitle you to bring a Third Party action. If you are successful in your Third Party action, you are compensated for pain and suffering.

1 Why do I need an attorney for my personal injury or property claim?

Insurance companies pay adjusters and defense attorneys to delay deny or limit your compensation. Often it takes litigation trials and appeals because insurance companies rarely want to settle fairly. Instead they know that they can deny a person payment and unless a person has an attorney there is little or nothing the you can do about it. There is a time value to money. They have the advantage. They have your money and they don't

have to give it back to you unless you are willing to settle for pennies on the dollar so that you can have your compensation now.

2) What should I expect at a law office? The goal of a law office should be to provide the client with a fair settlement as soon as possible, but every case accepted is approached as if it will eventually go to trial. The office staff may be divided in larger firms into pre-litigation and litigation sections, to manage the extensive preparation that goes into cases worth over \$100,000 dollars. The pre-litigation teams work with the client in arranging for medical care and personal needs. Most cases settle before litigation. If the case cannot be successfully settled during the pre-litigation stage, the litigation team files the suit, conducts discovery, and prepares the case for the trial. The trial attorney should lead the litigation team through every phase of a case whether it be negotiation, discovery, mediation, arbitration, or trial.

3) How much will it cost? Most firms charge 40% of what is recovered in personal injury cases. However, if a person attempts to represent himself he will often get nothing. He may damage his own case so much that, even if he does have an attorney later, he loses what he could have gotten. If a case goes to trial, many firms charge 50% of what they recover. Workers Compensation cases are less involved, faster, and are limited to 20% of a recovery. You rarely pay out anything up front to have a firm represent you, other than the court costs. In the long run, the average person gets a larger return by using an attorney. The fees for our services are based on a percentage of what we recover and are determined, when the case is concluded, by the type of case and other factors. No fees are charged unless we recover. Court costs, litigation expenses, and medical bills are normally paid from the client's share of the recovery. If there is no recovery, the client will not be responsible for court costs and litigation expenses unless he withdrew the litigation.

4) What should I do first if I am injured at work? Immediately report the accident to your employer. Seek medical treatment from an employer-authorized doctor. You should also start to document everything about the event and seek the advice of a qualified attorney.

5) Why can't I see my own doctor in a Workers Comp case? The law says that employers must pay for all medical care related to the accident, so they control which doctors you may see. If you decide to go to your own doctor you may be responsible for the bill. In limited circumstances, an employer's Workers Compensation insurance company will authorize a doctor of your choice. You can always use your own health insurance for a second opinion or care. You can request a different doctor. The earlier you make the request the more likely the Workers Compensation insurance carrier will authorize a doctor of your choice. You should also realize that the doctor that is treating you may also be collecting evidence and may testify against you at your hearing, trying to prove that you were not as seriously injured as you claim. Remember, the insurance doctor is not working for you.

6) How much is my case worth? The worth of your case is based on liability and your

damages. Even if the other side is at fault, you can't collect a million dollars unless you were seriously injured. Insurance companies consider the same elements of liability and damages in deciding how much to offer in settlement. Before any settlement is reached, there are generally a series of negotiations involving offers and counter-offers between your lawyer and the insurance company. Insurance companies rarely agree to pay the amount of money which you initially demand to settle your case unless your case is worth the insurance company's policy limits. Every insurance company handles their claims differently. Some companies settle cases before a formal lawsuit is initiated in order to save the expense of hiring an attorney to defend them. Other insurance companies will not make any serious attempt to settle your case until you are "on the courthouse steps" and ready to go to trial.

7) How will I be paid while I am out of work? If you miss a certain amount of time at work, you are entitled to Temporary Disability Benefits. These are paid biweekly, in Kentucky, until you return to work. You are paid benefits based on how seriously you were injured and how it affects your future loss of earnings. You are also paid based on your gross weekly pay at the time of the injury.

8) If the Workers Compensation Insurance Company denies my claim, can I apply for unemployment? No. If the Workers Compensation Insurance Company denies your claim for Temporary Disability Benefits, you cannot apply for unemployment because you are not actively seeking work and are unable to work.

9) How soon after the accident do I have to file a Workers Compensation claim? You should file for benefits as soon as possible. While you wait, the evidence and the witnesses are becoming harder to obtain in court. You have two years from the date of the accident. If you wish to file a claim, you should consult with an attorney as soon as possible after your accident and you must have reported the injury to your employer.

10) Can I receive a monetary settlement if I am at work? Yes, after you receive medical treatment and return to work, you are eligible to receive a settlement for your injury. This is often a bulk settlement award and you can get it even if you never missed work.

11) Can I collect Workers Compensation benefits if the accident was my fault? Workers Compensation does not depend on you not being at fault. You receive Workers Compensation whether or not it was your fault. As long as you were involved in performing your work when you were injured, it doesn't matter if the accident was caused by you, a co-worker, or your employer.

12) Do I have to pay an Attorney up front to represent me? No. You don't pay unless you collect. A Workers Compensation attorney's fee is based upon work done on behalf of the injured worker and is set by a Workers' Compensation Judge. The attorney fee, in Kentucky, is no greater than 20% of the amount recovered on behalf of the injured worker. However in some rare cases it can be increased to 33% if proving the case is very hard. The amounts are small and the percentages are small so few attorneys take these cases.

13) What if I want a second opinion and the insurance company wants to go with their own doctor's opinion? You are allowed a second opinion, but you should use an attorney for your case. The reason they send you to their doctor is to avoid paying you. You have the right to your own doctor and his opinion.

Personal Injury

1) What are Personal Injury mills? Mills attempt to cover an area often with branch offices staffed by non attorneys, paralegals or untrained staff just to get more business and cases. Mills normally handle cases with untrained or under-qualified personnel. Mills often do not keep clients informed about the status of their cases. We are legitimate attorneys. Our practice is based on referrals from clients that are treated like family, not high pressure advertising that blankets an area to maximize the number of clients. Our personnel and resources are located in one office. We send clients a copy of virtually everything that we send or receive. We give status reports by telephone, mail, or in person.

2) Can I still recover under Workers Compensation if I have a Personal Injury case? If you file for Workers Compensation, you may get funds faster than through a lawsuit. However, Workers Compensation benefits have been dramatically reduced, in Kentucky, and the process now takes much longer because insurance companies are allowed to delay paying benefits and cannot be sued for non-payment. Attorney's fees have been reduced so much that it is difficult to find attorneys that will take Workers Compensation cases. If you do collect under Workers Compensation, you may have to repay some of the benefits you get under Workers Compensation from your personal injury award; however, personal injury awards are often much more than what is awarded under Workers Compensation. Personal Injury claims, in addition to a Workers Compensation claim, can be filed against other parties (known as a Third Parties) to seek damages in addition to an award in the Workers Compensation court. You should consult with an attorney as soon as possible after the accident to determine whether your case would entitle you to bring a Third Party action. If you are successful in your Third Party action, you may be compensated for pain and suffering.

3) Why do I need an attorney for my personal injury or property claim? Insurance companies pay adjusters and defense attorneys to delay, deny, or limit your compensation. Often, it takes litigation, trials, and appeals to collect what you deserve because insurance companies rarely want to settle fairly. Instead, they know they can deny you payment and, unless you have an attorney, there is little or nothing you can do about it. There is a time value to money. They have the advantage. They have your money, and they won't be inclined to give it back to you quickly unless you are willing to settle for pennies on the dollar.

4) What should I expect at a law office? The goal of a law office should be to provide the client with a fair settlement as soon as possible, but every case accepted is approached as if it will eventually go to trial. The office staff may be divided in larger firms into pre-litigation and litigation sections, to manage the extensive preparation that goes into cases worth over \$100,000 dollars. The pre-litigation teams work with the

client in arranging for medical care and personal needs. Most cases settle before litigation. If the case cannot be successfully settled during the pre-litigation stage, the litigation team files the suit, conducts discovery, and prepares the case for the trial. The trial attorney should lead the litigation team through every phase of a case whether it be negotiation, discovery, mediation, arbitration, or trial.

5) How much will it cost? Most firms charge 40% of what is recovered in personal injury cases. However, if a person attempts to represent himself he will often get nothing. He may damage his own case so much that, even if he does have an attorney later, he loses what he could have gotten. If a case goes to trial, many firms charge 50% of what they recover. You rarely pay out anything up front to have a firm represent you, other than the court costs. In the long run, the average person gets a larger return by using an attorney. The fees for our services are based on a percentage of what we recover and are determined, when the case is concluded, by the type of case and other factors. No fees are charged unless we recover. Court costs, litigation expenses, and medical bills are normally paid from the client's share of the recovery. If there is no recovery, the client will not be responsible for court costs and litigation expenses unless he withdrew the litigation.

6) How much is my case worth? The worth of your case is based on liability and your damages. Even if the other side is at fault, you can't collect a million dollars unless you were seriously injured. Insurance companies consider the same elements of liability and damages in deciding how much to offer in settlement. Before any settlement is reached, there are generally a series of negotiations involving offers and counter-offers between your lawyer and the insurance company. Insurance companies rarely agree to pay the amount of money which you initially demand to settle your case unless your case is worth the insurance company's policy limits. Every insurance company handles their claims differently. Some companies settle cases before a formal lawsuit is initiated, in order to save the expense of hiring an attorney to defend them. Other insurance companies will not make any serious attempt to settle your case until you are "on the courthouse steps" and ready to go to trial.

5.2. KENTUCKY STATUTES

The Kentucky Personal Injury statutes are found at KRS 304.39 (for the no-fault insurance statutes), and they require over \$1000 in medical injuries and an injury involving permanent disfigurement, broken bones, permanent injury, or loss of body function. A selection of some of the important statutes is given here. Most of the Kentucky Statutes included are involved with Worker's Compensation, and can be used as a reference for persons involved in Worker's Compensation cases. Very few of the remaining Kentucky Statutes, other than the statutes of limitations, would be helpful for the purposes of this manual.

342.019 Coverage of chiropractic services.

A doctor of chiropractic, licensed to practice under the provisions of KRS Chapter 312, shall have his services to employees covered by the workers' compensation law paid for under the workers' compensation provisions of KRS Chapter 342. An employee claiming benefits under the provisions of KRS Chapter 342 shall have the right to choose the services of a licensed doctor of chiropractic.

Effective: June 17, 1978.

342.020 Medical treatment at expense of employer -- Selection of physician and hospital -- Payment -- Managed health care system -- Artificial members and braces -- Waiver of privilege -- Disclosure of interest in referrals.

(1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. The commissioner shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered. Except as provided in subsection (4) of this section, in no event shall a medical fee exceed the limitations of an adopted medical fee schedule or other limitations contained in KRS 342.035, whichever is lower. The commissioner may promulgate administrative regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.

(2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.

(3) Employers may provide medical services through a managed health care system. The managed health care system shall file with the Department of Workers' Claims a plan for the rendition of health care services for work-related injuries and occupational diseases to be approved by the commissioner pursuant to administrative regulations promulgated by the commissioner.

(4) All managed health care systems rendering medical services under this chapter shall include the following features in plans for workers' compensation medical care:

(a) Copayments or deductibles shall not be required for medical services rendered in connection with a work-related injury or occupational disease;

(b) The employee shall be allowed choice of provider within the plan;

(c) The managed health care system shall provide an informal procedure for the expeditious resolution of disputes concerning rendition of medical services;

(d) The employee shall be allowed to obtain a second opinion, at the employer's expense, from an outside physician if a managed health care system physician recommends surgery;

(e) The employee may obtain medical services from providers outside the managed health care system, at the employer's expense, when treatment is unavailable through the managed health care system;

(f) The managed health care system shall establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee; and (g) Statements for services shall be audited regularly to assure that charges are not duplicated and do not exceed those authorized in the applicable fee schedules.

(h) A schedule of fees for all medical services to be provided under this chapter which shall not be subject to the limitations on medical fees contained in this chapter.

(i) Restrictions on provider selection imposed by a managed health care system authorized by this chapter shall not apply to emergency medical care.

(5) Except for emergency medical care, medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians' group having the authority to make referrals, as reasonably necessary, to appropriate facilities and specialists. The employee may change his designated physician one (1) time and thereafter shall show reasonable cause in order to change physicians.

(6) When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces as may reasonably be required at the time of the injury and thereafter during disability.

(7) Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the administrative law judge by affidavits or testimony that, because of the physician selected by the employee to treat the injury or disease, or because

of the hospital selected by the employee in which treatment is being rendered, that the employee is not receiving proper medical treatment and the recovery is being substantially affected or delayed; or that the funds for medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the administrative law judge may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for the injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.

(8) An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury or disease for which the employee claims compensation.

(9) When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the commissioner, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

Effective: July 14, 2000

342.033 Medical evidence -- Limitation -- Form.

In a claim for benefits, no party may introduce direct testimony from more than two (2) physicians without prior consent from the administrative law judge. The motion requesting additional testimony shall clearly demonstrate the need for such additional testimony. A party may introduce direct testimony from a physician through a written medical report. The report shall become a part of the evidentiary record, subject to the right of an adverse party to object to the admissibility of the report and to cross-examine the reporting physician. The commissioner shall promulgate administrative regulations prescribing the format and content of written medical reports.

Effective: July 14, 2000

342.038 Employer to keep record of injuries -- Reports required to be filed.

(1) Every employer subject to this chapter shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within one (1) week after the occurrence and knowledge, as provided in KRS 342.185 to 342.200, of an injury to an employee causing his absence from work for more than one (1) day, a report thereof shall be made to the department in the manner directed by the commissioner through administrative regulations. An employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be responsible for making the report to the Department of Workers' Claims within one week of receiving the notification referred to in subsection (3) of this section.

(2) The report shall contain the name, nature, and location of the business of the employer and name, age, sex, wages, and occupation of the injured employee, and shall state the date and hour of the accident causing the injury, the nature and cause of the injury, and any other information required by the commissioner.

(3) Every employer subject to this chapter shall report to his workers' compensation insurance carrier or the party responsible for the payment of workers' compensation benefits any work-related injury or disease or alleged work-related injury or disease within three (3) working days of receiving notification of the incident or alleged incident.

(4) Every employer or insurer subject to this chapter shall file additional reports covering specifically voluntary payments and settlements, and any other reports required by the commissioner by administrative regulation for the determination of the promptness of voluntary payment and validity and fairness of agreements. In addition, the commissioner may require additional information as may be necessary to comply with a federal statute or regulation or any state statute.

(5) Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of sixty (60) days, then also at the expiration of that period, the employer shall make a supplementary report to the commissioner on blanks procured from the department for the purpose.

Effective: July 15, 1996

342.040 Time of payment of income benefits and retraining incentive benefits -- Attorney's fees for recovery of overdue temporary total disability income benefits -- Interest on overdue benefits.

(1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid, except that if the administrative law judge determines that a denial, delay, or termination in the payment of income benefits was without reasonable foundation, the rate of interest shall be eighteen percent (18%) per annum. In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death.

Income benefits shall be due and payable not less often than semimonthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate or fail to make payments when due, that party shall notify the commissioner of the termination or failure to make payments and the commissioner shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter.

(2) If overdue temporary total disability income benefits are recovered in a proceeding brought under this chapter by an attorney for an employee, or paid by the employer after receipt of notice of the attorney's representation, a reasonable attorney's fee for these services may be awarded. The award of attorney's fees shall be paid by the employer if the administrative law judge determines that the denial or delay was without reasonable foundation. No part of the fee for representing the employee in connection with the recovery of overdue temporary total disability benefits withheld without reasonable foundation shall be charged against or deducted from benefits otherwise due the employee.

(3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable on the regular payday of the employer, commencing with the second regular payday after the award of the retraining incentive benefit by the administrative law judge becomes final. Retraining incentive benefits shall be due and payable not less often than semimonthly.

(4) Upon written request of the employee, all payments of compensation shall be mailed to the employee at his last known address.

Effective: July 14, 2000

342.120 Division of the Special Fund -- Fund's liability for claims occurring after December 12, 1996 -- Payment of settlements for income benefits.

(1) There is created the Division of the Special Fund in the Department of Workplace Standards which shall be responsible for the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund. The Division of the Special Fund shall be headed by a director appointed by the commissioner, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund.

(2) The special fund shall have no liability upon any claim in which the injury occurred, or for cumulative trauma, the disability became manifest, or, for occupational disease, if the date of injury or last exposure occurred, after December 12, 1996.

(3) Where the employer has settled its liability for income benefits and thereafter a determination has been made of the special fund's liability, the special fund portion of the benefit rate shall be paid over the maximum period provided for by statute for that disability, with the period of payment beginning on the date settlement was approved by an administrative law judge. This provision is remedial and shall apply to all pending and future claims.

Effective: July 14, 2000

342.125 Reopening and review of award or order -- Grounds -- Procedures -- Time limitations -- Credit for previously-awarded retraining incentive benefits or income benefits awarded for coal-related pneumoconiosis.

(1) Upon motion by any party or upon an administrative law judge's own motion, an administrative law judge may reopen and review any award or order on any of the following grounds:

(a) Fraud;

(b) Newly-discovered evidence which could not have been discovered with the exercise of due diligence;

(c) Mistake; and

(d) Change of disability as shown by objective medical evidence of worsening or improvement of impairment due to a condition caused by the injury since the date of the award or order.

(2) No claim which has been previously dismissed or denied on the merits shall be reopened except upon the grounds set forth in this section.

(3) Except for reopening solely for determination of the compensability of medical expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2., or for reducing a permanent total disability award when an employee returns to work, or seeking temporary total disability benefits during the period of an award, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, and no party may file a motion to reopen within one (1) year of any previous motion to reopen by the same party.

(4) Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding under this chapter. Upon reopening, the administrative law judge may end, diminish, or increase compensation previously awarded, within the maximum and minimum provided in this chapter, or change or revoke a previous order. The administrative law judge shall immediately send all parties a copy of the subsequent order or award. Reopening shall not affect the previous order or award as to any sums already paid thereunder, and any change in the amount of compensation shall be ordered only from the date of filing the motion to reopen. No employer shall suspend benefits during pendency of any reopening procedures except upon order of the administrative law judge.

(5) (a) Upon the application of the affected employee, and a showing of progression of his previously-diagnosed occupational pneumoconiosis resulting from exposure to coal dust and development of respiratory impairment due to that pneumoconiosis and two (2) additional years of employment in the Commonwealth wherein the employee was continuously exposed to the hazards of the disease, the administrative law judge may review an award or order for benefits attributable to coal-related pneumoconiosis under KRS 342.732. An application for review under

this subsection shall be made within one (1) year of the date the employee knew or reasonably should have known that a progression of his disease and development or progression of respiratory impairment have occurred. Review under this subsection shall include a review of all evidence admitted in all prior proceedings.

(b) Benefits awarded as a result of a review under this subsection shall be reduced by the amount of retraining incentive benefits or income benefits previously awarded under KRS 342.732. The amount to be deducted shall be subtracted from the total amount awarded, and the remaining amount shall be divided by the number of weeks, for which the award was made, to arrive at the weekly benefit amount which shall be apportioned in accordance with the provisions of KRS 342.316.

(6) In a reopening or review proceeding where there has been additional permanent partial disability awarded, the increase shall not extend the original period, unless the combined prior disability and increased disability exceeds fifty percent (50%), but less than one hundred percent (100%), in which event the awarded period shall not exceed five hundred twenty (520) weeks, from commencement date of the original disability previously awarded. The law in effect on the date of the original injury controls the rights of the parties.

(7) Where an agreement has become an award by approval of the administrative law judge, and a reopening and review of that award is initiated, no statement contained in the agreement, whether as to jurisdiction, liability of the employer, nature and extent of disability, or as to any other matter, shall be considered by the administrative law judge as an admission against the interests of any party. The parties may raise any issue upon reopening and review of this type of award which could have been considered upon an original application for benefits.

(8) The time limitation prescribed in this section shall apply to all claims irrespective of when they were incurred, or when the award was entered, or the settlement approved. However, claims decided prior to December 12, 1996, may be reopened within four (4) years of the award or order or within four (4) years of December 12, 1996, whichever is later, provided that the exceptions to reopening established in subsections (1) and (3) of this section shall apply to these claims as well.

Effective: July 14, 2000

342.165 Increase or decrease in compensation for failure to comply with safety law -- Compensation not payable if employee falsely represents physical condition or medical history at time of employment.

(1) If an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or lawful administrative regulation made thereunder, communicated to the employer and relative to installation or maintenance of safety appliances or methods, the compensation for which the employer would otherwise have been liable under this chapter shall be increased thirty percent (30%) in the amount of each payment. If an accident is caused in any degree by the intentional failure of the employee to use any safety appliance furnished by the

employer or to obey any lawful and reasonable order or administrative regulation of the commissioner or the employer for the safety of employees or the public, the compensation for which the employer would otherwise have been liable under this chapter, shall be decreased fifteen percent (15%) in the amount of each payment.

(2) No compensation shall be payable for work-related injuries if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable falsely represents, in writing, his physical condition or medical history, if all of the following factors are present:

- (a) The employee has knowingly and willfully made a false representation as to his physical condition or medical history;
- (b) The employer has relied upon the false representation, and this reliance was a substantial factor in the hiring; and
- (c) There is a causal connection between the false representation and the injury for which compensation has been claimed.

Effective: July 14, 2000

342.175 Lien for compensation.

All rights of compensation granted by this chapter shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

Effective: October 1, 1942.

342.180 Compensation claim not assignable -- Exempt from debts -- Exception.

No claim for compensation under this chapter shall be assignable, except court or administratively-ordered child support pursuant to KRS 403.212. All compensation and claims therefor, except child support obligations, shall be exempt from all claims of creditors.

Effective: July 15, 1994

342.185 Notice of accident -- Claim for compensation -- Limitation.

(1) Except as provided in subsection (2) of this section, no proceeding under this chapter for

compensation for an injury or death shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable after the happening thereof and unless an application for adjustment of claim for compensation with respect to the injury shall have been made with the department within two (2) years after the date of the accident, or in case of death, within two (2) years after the death, whether or not a claim has been made by the employee himself for compensation. The notice and the claim may be given or made by any person

claiming to be entitled to compensation or by someone in his behalf. If payments of income benefits have been made, the filing of an application for adjustment of claim with the department within the period shall not be required, but shall become requisite within two (2) years following the suspension of payments or within two (2) years of the date of the accident, whichever is later.

(2) The right to compensation under this chapter resulting from work-related exposure to the human immunodeficiency virus shall be barred unless notice of the injurious exposure is given in accordance with subsection (1) of this section and unless an application for adjustment of claim for compensation shall have been made with the commissioner within five (5) years after the injurious exposure to the virus.

Effective: April 4, 1994

342.190 Notice and claim to be in writing -- Contents.

The notice and claim shall be in writing. The notice shall contain the name and address of the employee, and shall state in ordinary language the time, place of occurrence, nature and cause of the accident, with names of witnesses, the nature and extent of the injury sustained, and the work or employment in which the employee was at the time engaged, and shall be signed by him or a person on his behalf, or, in case of his death, by any one (1) or more of his dependents or a person on their behalf. The notice may include the claim.

Effective: October 1, 1942.

342.195 Notice and claim -- How served.

The notice and claim shall be given to the employer, or if the employer is a partnership, then to any one (1) of the general partners. If the employer is a corporation or a limited liability company, the notice or claim may be given to any agent of the corporation or limited liability company upon whom process may be served, or to any officer of the corporation or any member or manager, as the case may be, of the limited liability company authorized to manage the limited liability company under its articles of incorporation or to any agent of the corporation or limited liability company in charge of the business at the place where the injury occurred. Notice or claim may be given by delivery to any such person or as provided in KRS 342.135.

Effective: July 15, 1998

342.197 Discrimination against employees who have filed claims or who have a diagnosis of coal-related pneumoconiosis -- Civil remedies.

- (1) No employee shall be harassed, coerced, discharged, or discriminated against in any manner whatsoever for filing and pursuing a lawful claim under this chapter.
- (2) It is unlawful practice for an employer:
 - (a) To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against an individual with respect to his compensation, terms, conditions, or privileges of employment, because such individual has been diagnosed as having category 1/0, 1/1, or 1/2 occupational pneumoconiosis with no respiratory impairment resulting from exposure to coal dust; or
 - (b) To limit, segregate, or classify his employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employee, because such individual has been diagnosed as having category 1/0, 1/1, or 1/2 occupational pneumoconiosis with no respiratory impairment resulting from exposure to coal dust.
- (3) Any individual injured by any act in violation of the provisions of subsection (1) or (2) of this section shall have a civil cause of action in Circuit Court to enjoin further violations, and to recover the actual damages sustained by him, together with the costs of the law suit, including a reasonable fee for his attorney of record.

Effective: October 26, 1987.

342.200 Certain defects or failure to give notice not to bar compensation.

The notice shall not be invalid or insufficient because of any inaccuracy in complying with KRS 342.190 unless it is shown that the employer was in fact misled to his injury thereby. Want of notice or delay in giving notice shall not be a bar to proceedings under this chapter if it is shown that the employer, his agent or representative had knowledge of the injury or that the delay or failure to give notice was occasioned by mistake or other reasonable cause.

Effective: October 1, 1942.

342.205 Right of employer to require continued physical examination -- Payment of cost of examination -- Effect of employee's refusal -- Statement of earnings to be furnished at request of party.

- (1) After an injury and so long as compensation is claimed, the employee, if requested by a party

or by the administrative law judge, shall submit himself to examination, at a reasonable time and place, to a duly-qualified physician or surgeon designated and paid by the requesting party. The employee shall have the right to have a duly-qualified physician or surgeon designated and paid by himself present at the examination, but this right shall not deny the requesting party's physician or surgeon the right to examine the injured employee at all reasonable times and under all reasonable conditions.

(2) The party requesting an examination pursuant to subsection (1) of this section shall make arrangements to provide all the cost of the examination. The requesting party shall also prepay the cost of transportation of the employee to and from the examination if public transportation is utilized. If the employee uses his own vehicle to travel to and from the examination, the requesting party shall prepay the employee at the state mileage rate. The requesting party shall also reimburse the employee for the cost of meals, lodging, parking, and toll charges upon proof of same by written voucher. The amounts prepaid or reimbursed by the requesting party, as required by this subsection, shall be the same as, and in accordance with, state travel administrative regulations and standards promulgated and established pursuant to KRS Chapter 45.

(3) If an employee refuses to submit himself to or in any way obstructs the examination, his right to take or prosecute any proceedings under this chapter shall be suspended until the refusal or obstruction ceases. No compensation shall be payable for the period during which the refusal or obstruction continues.

(4) Any employee receiving benefits under this chapter may be required, upon request of any party, to furnish a sworn affirmed statement of earnings and other supporting information the administrative law judge may require.

(5) The department shall supply forms for the report.

Effective: July 14, 2000

342.210 Limitation of time not to run against minors or incompetents.

No limitation of time provided in this chapter shall run against any person who is mentally incompetent or who is a minor dependent so long as he has no committee, guardian or next friend, or other person authorized to claim compensation for him under KRS 342.160.

Effective: October 1, 1942

342.267 Unfair claims settlement practices -- Penalties.

If an insurance carrier, self-insurance group, or self-insured employer providing workers' compensation coverage engages in claims settlement practices in violation of this chapter, or the provisions of KRS 304.12-230, the commissioner of the Department of Workers' Claims shall

fine the insurance company, self-insurance group, or self-insured employer the sum of one thousand dollars (\$1,000) to five thousand dollars (\$5,000) for each violation and if they have a pattern of violations, the commissioner may revoke the certificate of self-insurance or request the commissioner of insurance to revoke the certificate of authority of the insurance carrier.

Effective: December 12, 1996

342.316 Liability of employer and previous employers for occupational disease -- Claims procedure -- Time limitations on claims -- Determination of liable employer -- Effect of concluded coal workers' pneumoconiosis claim.

(1) (a) The employer liable for compensation for occupational disease shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease. During any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after January 1, 1973, shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection does not relieve the prior operator of any liability under this section. Also, it does not affect whatever rights the later operator might have against the prior operator; and

(b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later.

(2) The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to the disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter, except that notice of claim shall be given to the employer as soon as practicable after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, or a diagnosis of the disease is first communicated to him, whichever shall first occur. (3) The procedure for filing occupational disease claims shall be as follows:

(a) The application for resolution of claim shall set forth the complete work history of the employee with a concise description of injurious exposure to a specific occupational disease, together with the name and addresses of the employer or employers with the approximate dates of employment. The application shall also include at least one (1) written medical report supporting his claim. This medical report shall be made on the basis of clinical or X-ray examination performed in accordance with accepted medical standards and shall contain full and complete statements of all examinations performed and the results thereof. The report shall be made by a duly-licensed physician. The commissioner shall promulgate administrative regulations which prescribe the format of the medical report required by this section and the manner in which the report shall be completed.

1. For coal-related occupational pneumoconiosis claims, each clinical examination shall include

a chest X-ray examination as well as spirometric tests when pulmonary dysfunction is alleged.

2. For other compensable occupational pneumoconiosis claims, each clinical examination shall include a chest X-ray examination and appropriate pulmonary function tests.

Page 1 of 5.(b) To be admissible, medical evidence offered in any proceeding under this chapter for determining a claim for occupational pneumoconiosis resulting from exposure to coal dust shall comply with accepted medical standards as follows:

1. Chest X-rays shall be of acceptable quality with respect to exposure and development and shall be indelibly labeled with the date of the X-ray and the name and Social Security number of the claimant. Physicians' reports of X-ray interpretations shall: identify the claimant by name and Social Security number; include the date of the X-ray and the date of the report; classify the X-ray interpretation using the latest ILO Classification and be accompanied by a completed copy of the latest ILO Classification report.

2. Spirometric testing shall be conducted in accordance with the standards recommended in the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association and the 1978 ATS epidemiology standardization project with the exception that the predicted normal values for lung function shall not be adjusted based upon the race of the subject. The FVC or the FEV1 values shall represent the largest of such values obtained from three (3) acceptable forced expiratory volume maneuvers as corrected to BTPS (body temperature, ambient pressure and saturated with water vapor at these conditions) and the variance between the two

(2) largest acceptable FVC values shall be either less than five percent (5%) of the largest FVC value or less than one hundred (100) milliliters, whichever is greater. The variance between the two (2) largest acceptable FEV1 values shall be either less than five percent (5%) of the largest FEV1 value or less than one hundred (100) milliliters, whichever is greater. Reports of spirometric testing shall include a description by the physician of the procedures utilized in conducting such spirometric testing and a copy of the spirometric chart and tracings from which spirometric values submitted as evidence were taken.

3. The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to effectuate the purposes of this section. The commissioner shall periodically review the applicability of the spirometric test values contained in the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association and may by administrative regulation substitute other spirometric test values which are found to be more closely representative of the normal pulmonary function of the coal mining population.

4. The procedure for determination of occupational disease claims shall be as follows:

a. Immediately upon receipt of an application for resolution of claim, the commissioner shall notify the responsible employer and all other interested parties and shall furnish them with a full and complete copy of the application.

- b. The commissioner shall assign the claim to an administrative law judge and shall promptly refer the employee to such physician or medical facility as the commissioner may select for examination. The report from this examination shall be provided to all parties of record. The employee shall not be referred by the commissioner for examination within two (2) years following any prior referral for examination for the same disease.
 - c. Within forty-five (45) days following the notice of filing an application for resolution of claim, the employer or carrier shall notify the commissioner and all parties of record of its acceptance or denial of the claim. A denial shall be in writing and shall state the specific basis for the denial.
 - d. The administrative law judge shall conduct such proceedings as are necessary to resolve the claim and shall have authority to grant or deny any relief, including interlocutory relief, to order additional proof, to conduct a benefit review conference, or to take such other action as may be appropriate to resolve the claim.
 - e. Unless a voluntary settlement is reached by the parties, the administrative law judge shall issue a written determination within ninety (90) days following assignment of the claim. The written determination shall address all contested issues and shall be enforceable under KRS 342.305.
5. The procedure for appeal from a determination of an administrative law judge shall be as set forth in KRS 342.275.

(4) (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the commissioner within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim therefor be filed with the commissioner within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or his insurance carrier, voluntarily makes payment therefor, or if the incurrance of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the commissioner within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.

(b) Income benefits for the disease of pneumoconiosis resulting from exposure to coal dust or death therefrom shall not be payable unless the employee has been exposed to the hazards of such pneumoconiosis in the Commonwealth of Kentucky over a continuous period of not less than two (2) years during the ten (10) years immediately preceding the date of his last exposure to such hazard, or for any five (5) of the fifteen (15) years immediately preceding the date of such last exposure.

(5) The amount of compensation payable for disability due to occupational disease or for death from the disease, and the time and manner of its payment, shall be as provided for under the

general provisions of the Workers' Compensation Act, but:

- (a) In no event shall the payment exceed the amounts that were in effect at the time of the last injurious exposure;
- (b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later; and
- (c) In case of death where the employee has been awarded compensation or made timely claim within the period provided for in this section, and an employee has suffered continuous disability to the date of his death occurring at any time within twenty (20) years from the date of disability, his dependents, if any, shall be awarded compensation for his death as provided for under the general provisions of the Workers' Compensation Act and in this section, except as provided in KRS 342.750(6).
- (6) If an autopsy has been performed, no testimony relative thereto shall be admitted unless the employer or his representative has available findings and reports of the pathologist or doctor who performed the autopsy examination.
- (7) No compensation shall be payable for occupational disease if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself, in writing, as not having been previously disabled, laid off, or compensated in damages or otherwise, because of the occupational disease, or failed or omitted truthfully to state to the best of his knowledge, in answer to written inquiry made by the employer, the place, duration, and nature of previous employment, or, to the best of his knowledge, the previous state of his health.
- (8) No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which under the provisions of this chapter would give right to compensation, arose subsequent to the beginning of the first compensable disability, except only for after-born children of a marriage existing at the beginning of such disability.
- (9) Whenever any claimant misconceives his remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of the cause, that the claim for injury, disability, or death which was the basis for his application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to assert a claim for injury, disability, or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and compensation may be awarded that is warranted by the whole evidence pursuant to the provisions of this chapter. When amendment of this type is submitted, further or additional evidence may be heard when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of

the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done, shall be deemed to be a notice of filing of a claim under

provisions of this chapter, if given or done within the time required by this subsection. (10) When an employee has an occupational disease that is covered by this chapter, the employer in whose employment he was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, except as otherwise provided in this chapter.

(11) (a) Income benefits for coal-related occupational pneumoconiosis shall be paid fifty percent (50%) by the Kentucky coal workers' pneumoconiosis fund as established in KRS 342.1242 and fifty percent (50%) by the employer in whose employment the employee was last exposed to the hazard of that occupational disease.

(b) Compensation for all other occupational disease shall be paid by the employer in whose employment the employee was last exposed to the hazards of the occupational disease.

(12) A concluded claim for benefits by reason of contraction of coal workers' pneumoconiosis in the severance or processing of coal shall bar any subsequent claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless there has occurred in the interim between the conclusion of the first claim and the filing of the second claim at least two (2) years of employment wherein the employee was continuously exposed to the hazards of the disease in the Commonwealth.

Effective: July 14, 2000

342.320 Approval of attorney's and physician's fees and hospital charges – Limits on attorney's fees -- Payment of attorney fees.

(1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of an administrative law judge pursuant to the statutes and administrative regulations.

(2) In an original claim, attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:

(a) Twenty percent (20%) of the first twenty-five thousand dollars (\$25,000) of the award, fifteen percent (15%) of the next ten thousand dollars (\$10,000), and five percent (5%) of the remainder of the award, not to exceed a maximum fee of twelve thousand dollars (\$12,000). This fee shall be paid by the employee from the proceeds of the award or settlement.

(b) Attorney-client employment contracts entered into and signed after July 14, 2000, shall be subject to the conditions of paragraph (a) of this subsection.

(3) In approving an allowance of attorney's fees, the administrative law judge shall consider the extent, complexity, and quality of services rendered, and in the case of death, the Remarriage

Tables of the Dutch Royal Insurance Institute. An attorney's fee may be denied or reduced upon proof of solicitation by the attorney. However, this provision shall not be construed to preclude advertising in conformity with standards prescribed by the Kentucky Supreme Court.

(4) No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the administrative law judge, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void.

The motion for approval of an attorney's fee shall be submitted within thirty (30) days following finality of the claim. Except when the attorney's fee is to be paid by the employer or carrier, the attorney's fee shall be paid in one (1) of the following ways:

(a) The employee may pay the attorney's fee out of his personal funds or from the proceeds of a lump-sum settlement; or

(b) The administrative law judge, upon request of the employee, may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the employee in equal installments over the duration of the award or until the attorney's fee has been paid, commuting sufficient sums to pay the fee.

(5) At the commencement of the attorney-client relationship, the attorney shall explain to the employee the methods by which this section provides for the payment of the attorney's fee, and the employee shall select the method in which his attorney's fee is to be paid. His selection and statement that he fully understands the method to be used shall be submitted by his attorney, on a notarized form signed by the employee, at the time the motion for approval of the attorney's fee is submitted. The commissioner shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and contain an explanation in nontechnical language of each method.

(6) The General Assembly declares that by the enactment of KRS 342.316(3), it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge shall give due regard to this legislative intent in the handling of uncontested claims and the allowance of attorney's fees therein.

(7) In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be awarded by the administrative law judge subject to the limits set forth in subsection (2) of this section. In awarding the attorney's fee, the administrative law judge shall consider the factors set forth in subsection (3) of this section. If no additional amount is recovered upon reopening, no attorney's fee shall be awarded. No attorney's fee shall be allowed or approved exceeding the amounts provided in subsection (2)(a) of this section applicable to any additional amount recovered.

(8) Attorney's fees for representing employers in proceedings under this chapter pursuant to contract with the employer shall be subject to approval of the administrative law judge in the same manner as prescribed for attorney representation of employees. Employer attorney's fees

are subject to the limitation of twelve thousand dollars (\$12,000) maximum fees except that fees for representing employers shall not be dependent upon the result achieved. Employer attorney's fees may be paid on a periodic basis while a claim is adjudicated and the payments need not be approved until the claims resolution process is completed.

Fees for legal services in presenting a claim for reimbursement to the director of the Kentucky coal workers' pneumoconiosis fund shall not exceed one thousand dollars (\$1,000). All such approved fees shall be paid by the employer and in no event shall exceed the amount the employer agreed by contract to pay.

Effective: July 14, 2000

342.335 Fraud and misrepresentation in filing or delaying the filing of claims and in receiving or providing services or benefits -- Penalties.

(1) No person shall knowingly file, or permit to be filed, any false or fraudulent claim on his behalf to compensation or other benefits under this chapter, or by fraud, deceit, or misrepresentation procure or cause to be made or receive any payments of compensation or other benefits under this chapter to which the recipient is not lawfully entitled, or conspire with, aid, or abet another so to do. No person shall by deceit or misrepresentation or with intent to defraud cause or procure or conspire with, aid or abet another in so causing or procuring any person entitled to compensation or other benefits under this chapter to delay or omit to claim title thereto or to accept the payment of a less sum than that to which he may be lawfully entitled to thereunder.

(2) Any person, as that term is defined in KRS 342.0011, who knowingly, as defined in KRS 501.020, makes any false representation, including misrepresentations of hazards, classifications, payrolls, or other facts by an employer or its agent that are designed to cause a reduction in the employer's premium, for the purpose of or in the course of receiving or providing any service or benefit available under this chapter, shall be subject to the civil fines imposed pursuant to KRS 342.990 for a violation of this subsection. In addition, if a person who violates the provisions of this subsection is also dependent upon a professional license to provide any service or benefit under this chapter, the commissioner shall refer the matter to the appropriate licensing body and recommend revocation of that person's license to work at his profession in the Commonwealth of Kentucky.

Effective: December 12, 1996

342.375 Policy to cover entire liability of employer -- Separate policy for specified plant or location may be authorized.

Every policy or contract of workers' compensation insurance under this chapter, issued or delivered in this state, shall cover the entire liability of the employer for compensation to each

employee subject to this chapter, except as otherwise provided in KRS 216.2960, 342.020, 342.345, or 342.352. However, if specifically authorized by the commissioner, a separate insurance policy may be issued for a specified plant or work location if the liability of the employer under this chapter to each employee subject to this chapter is otherwise secured and provided that no employee transferred from one plant or work location to another within the employment of the same employer shall thereby lose any benefit rights accumulated under the average weekly wage concept.

Effective: July 15, 1994

342.470 How notice may be given to insurance carrier.

Whenever by this chapter any officer is required to give any notice to an insurance carrier, it may be given by delivery, or by mailing a registered letter properly addressed and stamped, to the principal office or chief agent of that insurance carrier within the state, or to its home office, or to the secretary, general agent or chief officer thereof in the United States.

Effective: October 1, 1942.

342.680 Presumptions in the case of death or of physical or mental inability to testify.

In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify as confirmed by competent medical evidence and where there is un rebutted prima facie evidence that indicates that the injury was work related, it shall be presumed, in the absence of substantial evidence to the contrary, that the injury was work related, that sufficient notice of the injury has been given, and that the injury or death was not proximately caused by the employee's intoxication or by his willful intention to injure or kill himself or another.

Effective: December 12, 1996

342.690 Exclusiveness of liability.

(1) If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death. For purposes of this section, the term "employer" shall include a "contractor" covered by subsection (2) of KRS 342.610, whether or not the subcontractor has in fact, secured the payment of compensation. The liability of an employer to another person who may be liable for or who has paid damages on account of injury or death of an employee of such employer arising out of and in the course of employment and caused by a

breach of any duty or obligation owed by such employer to such other shall be limited to the amount of compensation and other benefits for which such employer is liable under this chapter on account of such injury or death, unless such other and the employer by written contract have agreed to share liability in a different manner. The exemption from liability given an employer by this section shall also extend to such employer's carrier and to all employees, officers or directors of such employer or carrier, provided the exemption from liability given an employee, officer or director or an employer or carrier shall not apply in any case where the injury or death is proximately caused by the willful and unprovoked physical aggression of such employee, officer or director.

(2) If an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may claim compensation under this chapter and in addition may maintain an action at law or in admiralty for damages on account of such injury or death, provided that the amount of compensation shall be credited against the amount received in such action, and provided that, if the amount of compensation is larger than the amount of damages received, the amount of damages less the employee's legal fees and expenses shall be credited against the amount of compensation. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risks of his employment, or that the injury was due to the contributory negligence of the employee.

(3) An employer shall retain all common law defenses against any action by an employee who elects not to be covered, as provided under subsection (6) of KRS

342.650.

Effective: July 15, 1980.

342.700 Remedies when third party is legally liable -- Liability and indemnification rights of principal contractors, intermediates, and subcontractors -- Requirement of waiver of remedies for award of contract unlawful.

(1) Whenever an injury for which compensation is payable under this chapter has been sustained under circumstances creating in some other person than the employer a legal liability to pay damages, the injured employee may either claim compensation or proceed at law by civil action against the other person to recover damages, or proceed both against the employer for compensation and the other person to recover damages, but he shall not collect from both. If the injured employee elects to proceed at law by civil action against the other person to recover damages, he shall give due and timely notice to the employer and the special fund of the filing of the action. If compensation is awarded under this chapter, the employer, his insurance carrier, the special fund, and the uninsured employer's fund, or any of them, having paid the compensation or having become liable therefor, may recover in his or its own name or that of the injured employee from the other person in whom legal liability for damages exists, not to exceed the indemnity paid and payable to the injured employee, less the employee's legal fees and expense. The notice of civil action shall conform in all respects to the requirements of KRS 411.188(2).

(2) A principal contractor, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of any one (1) of his intermediate or subcontractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer. Any principal, intermediate, or subcontractor who pays the compensation may recover the amount paid from any subordinate contractor through whom he has been rendered liable under this section. Every claim to compensation under this subsection shall in the first instance be

presented to and instituted against the immediate employer, but the proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the principal or intermediate contractor nor shall the claim be barred by limitations, if the claim is filed against the principal or intermediate contractor within one (1) year after a final unappealed order has been rendered by an administrative law judge determining that immediate employer has insufficient security to pay the full and maximum benefits that could be determined to be due him under this chapter. The collection of full compensation from one employer shall bar recovery by the employee against any other. But he shall not collect from all a total compensation in excess of the amount for which his immediate employer is liable. This subsection shall apply only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or which are under his control otherwise or management.

(3) It shall be considered to be contrary to public policy and unlawful for any owner or employer to require another employer to waive its remedies granted by this section as a condition of receiving a contract or purchase order. Furthermore, in selecting between two (2) or more contractors or suppliers, consideration may not be given by an owner or employer to whether one (1) contractor or supplier voluntarily waives its remedies under this section or offers to accept lesser compensation than another contractor or supplier for that waiver of remedies.

Effective: July 14, 2000

342.750 Income benefits for death -- Additional lump-sum payment for deaths

occurring within four years of injury.

If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following, subject to the maximum limits specified in subsections (3) and (4) of this section:

(1) (a) If there is a widow or widower and no children of the deceased, to such widow or widower 50 percent of the average weekly wage of the deceased, during widowhood or widowerhood.

(b) To the widow or widower, if there is a child or children living with the widow or widower, 45 percent of the average weekly wage of the deceased, or 40 percent, if such child is not or such children are not living with a widow or widower, and in addition thereto, 15 percent for each child. Where there are more than two (2) such children, the indemnity benefits payable on

account of such children shall be divided among such children, share and share alike.

(c) Two (2) years' indemnity benefits in one (1) lump sum shall be payable to a widow or widower upon remarriage. (d) To the children, if there is no widow or widower, 50 percent of such wage for one (1) child, and 15 percent for each additional child, divided among such children, share and share alike.

(e) The income benefits payable on account of any child under this section shall cease when he dies, marries, or reaches the age of eighteen (18), or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of 22. A child who originally qualified as a dependent by virtue of being less than 18 years of age may, upon reaching age 18, continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.

(f) To each parent, if actually dependent, 25 percent.

(g) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, 25 percent to each such dependent. If there should be more than one (1) of such dependents, the total income benefits payable on account of such dependents shall be divided share and share alike.

(h) The income benefits of each beneficiary under paragraphs (f) and (g) above shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen (18) or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent.

(i) A person ceases to be actually dependent when his income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subsection, but full payments shall not be suspended during the pendency of any proceeding to determine dependency.

(2) Upon the cessation of income benefits under this section to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

(3) For the purposes of this section, the average weekly wage of the employee shall be taken as

not more than the average weekly wage of the state as determined in KRS 342.740. In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefit that was or would have been payable for total disability to the deceased, including benefits to his dependents.

(4) The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed 75 percent of the average weekly wage of the deceased as calculated under KRS 342.140, subject to the maximum limits in subsection (3) above. The maximum aggregate limitation shall not operate in case of payment of two (2) years' income benefits to the widow or widower upon remarriage as provided under paragraph (c) of subsection (1) of this section, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subsection (2) of this section, but the weekly income benefits as to such remaining beneficiaries shall not exceed the weekly income benefit that was or would have been payable for total disability to the deceased. The classes of beneficiaries specified in paragraphs (a), (b), and (d) of subsection (1) of this section shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subsection should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in paragraph (f) of subsection (1) in another class.

(5) All relations of dependency referred to in this section shall mean dependency existing at the time of the accident to the employee or at the time his disability from an occupational disease began.

(6) In addition to other benefits as provided by this chapter, if death occurs within four (4) years of the date of injury as a direct result of a work-related injury, a lump-sum payment of fifty thousand dollars (\$50,000) shall be made to the deceased's estate, from which the cost of burial and cost of transportation of the body to the employee's place of residence shall be paid. Annually, the commissioner shall compute, in accordance with KRS 342.740, the increase or decrease in the state average weekly wage, and consistent therewith, shall adjust the amount of the lump-sum payment due under this subsection for injuries occurring in the succeeding year.

(7) All benefits awarded pursuant to this section, other than those provided in subsection (6) of this section, shall be subject to the limitations contained in KRS 342.730(4).

Effective: July 14, 2000

342.990 Penalties -- Restitution.

(1) The commissioner shall initiate enforcement of civil and criminal penalties imposed in this section.

(2) When the commissioner receives information that he deems sufficient to determine that a

violation of this chapter has occurred, he shall seek civil penalties pursuant to subsections

(3) to (7) of this section, or criminal penalties pursuant to subsections

(8) and (9) of this section, or both.

(3) The commissioner shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.

(4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he intends to contest the citation, then the citation shall be deemed final.

(5) If a cited party notifies the commissioner that he intends to challenge a citation issued under this section, the commissioner shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.

(6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.

(7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense.

(b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having reasonable grounds to delay payment may be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense.

(c) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the commissioner within twenty-one (21) days of the date the employer received

notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the department pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice.

(d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense.

(e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the commissioner pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation.

(f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars (\$300) shall be fined per occurrence not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per occurrence not more than five thousand dollars (\$5,000) per individual nor ten thousand dollars (\$10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each violation. (i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per occurrence, or both.

(j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District Court and the Franklin Circuit Court.

(8) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.

(9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisoned for not less than thirty (30) days nor more than one hundred eighty (180) days, or both.

(b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.

(c) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee leasing arrangement or mechanism as defined in KRS 342.615 for the purpose of depriving one (1) or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium shall upon conviction thereof be subject to a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or imprisonment for not more than one hundred eighty (180) days, or both, for each offense.

(d) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

(10) Fines paid pursuant to subsections (7) and (9) of this section shall be paid into the special fund.

(11) In addition to the penalties provided in this section, the commissioner and any administrative law judge, or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.

Effective: July 14, 2000

5.3. DIRECTIONS TO OUR OFFICE

We are presently at the corner of Hurstbourne and Shelbyville Road. We are at 105 Daventry which is the street behind Garretts and Qmodo's Mexican Grill. Go to the end of Daventry we are in 105.

5.4. DIRECTIONS TO THE LOUISVILLE COURTHOUSE

If your Court appearance is in Louisville, the Courthouse is at 7th and Jefferson. Every year, people go to the wrong Courthouse. Do not go to the Gene Snyder Federal Courthouse.

If you are coming from south Louisville, travel north on I-65 and exit in downtown Louisville, on Jefferson Street, and head west. Do not park in front of the Courthouse: You will be towed. You should park in one of the many downtown parking lots and garages. Parking at a meter could cause you to get a ticket or be towed: There may be a delay and the Court hearing may run into overtime. It may also start early, so arrive a few minutes early to prepare for your hearing.

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