

ABISS

ACQUIRED BRAIN INJURY SURVIVOR SOLUTIONS



INSURANCE ADVOCACY POSITION STATEMENT

Car insurance is mandatory for everyone owning a motor vehicle. The growth of the auto insurance industry has resulted in it being a wealthy and powerful lobby group. At the same time there is an inherent conflict of interest for insurers between choosing to maximize profit for its shareholders versus choosing to protect the interests of its clients, the insured. This conflict inevitably leads to a lack of accountability to their clients. Hence there is a very significant need for an independent regulated structure to ensure fair treatment of those who experience personal injury from a motor vehicle accident (MVA), particularly those with a medically diagnosed brain injury.

This position statement is generated by a brain injury advocacy group whose members have all experienced a brain injury. All members report experiencing significant emotional distress from dealing with the procedures demanded by their insurance company, as well as considerable financial losses at the most vulnerable time of their lives post injury.

This document highlights the typical life experiences of those with acquired brain injury (ABI) with their insurance claims and presents several recommendations.

DIFFICULTIES FACED WITH INSURANCE COMPANIES AND LAWYERS POST INJURY

- Car insurance is a system that lacks accountability to the insured. In order to maximize their profits and avoid paying claimants the benefits they are entitled to, many insurers take the stance that most injured claimants are magnifying their injuries, if not totally malingering.
- The laws/regulations governing the insurance industry, as well as the benefits available to claimants, have changed repeatedly in recent years and are complicated. Lawyers that attempt to assist injured clients with their claims must specialize in Personal Injury Law.
- Because of the legal complexities, it is now impossible to navigate the insurance system without a lawyer. In addition, individuals recovering from an acquired brain injury (ABI) may face difficulty processing information presented to them by their lawyer and understanding the implications of the choices that they are asked to make, based on that information.
- Insurance companies often question the credibility of the patients' own doctors or clinicians (e.g., medical doctors, physiotherapists, occupational therapists) and demand multiple and lengthy visits to doctors and therapists chosen by the Insurer. Unfortunately, these 'Independent Assessors' who are paid by the Insurer are themselves in a conflict of interest. During an 'Independent Examination', claimants are often asked very personal questions about their lives or their past history; questions often totally unrelated to the

injuries sustained in the accident are common; as are intrusive questions about what was discussed during their recovery with other doctors such as psychologists.

- Long Term Disability (LTD) coverage may vary but can be limited to a greatly reduced amount of previous income with no cost of living increases and the right to garnish any additional income.
- Insurance companies also use surveillance and harassment to ensure they pay the smallest amount possible. This commonplace practice used by both auto insurers and LTD companies is an inadequate means of assessing cognitive impairment.
- Barriers created by the insurance companies such as repeated assessments, denial of treatment plans, changes of adjusters and delays to income replacement funds create delays and access to reasonable and necessary rehabilitation services and often force claimants into financial hardship or even bankruptcy.
- Our current legal system is adversarial resulting in maximized or even exaggerated claims by both sides in order to arrive in the middle at a fair settlement. This can result in lawyers for the insurance company acting in an insulting and invasive manner, lacking empathy for the insured person at their most vulnerable time. The claimant is assumed to lack honesty in their claim regardless of evidence to the contrary.
- The stipulation of non-disclosure of settlements reached between the two parties mean that claimants with similar circumstances can receive vastly different amounts of compensation. With no established precedent, people are often left vulnerable when planning for future security.

The following challenges are common amongst all experiencing brain injury...

POSSIBLE CHALLENGES OF RECOVERING FROM A LIFE ALTERING INJURY

- Sudden change from everything familiar and expected.
- Need to rewrite life plans.
- Difficulty in or inability to return to past employment, school, social activities, goals and hobbies.
- Physical limitations.
- Verbal and written communication difficulties making personal life, professional life and recovery challenging, this makes support for understanding of and decision making about both legal and medical issues critical.

- Chronic fatigue.
- Inability to drive or restricted driving ability.
- Depression.
- Memory and cognitive limitations.
- Loss of long term goals.
- Long-term health challenges resulting from injuries.
- Financial hardship with loss of income and additional expenses.
- Challenges to family and friends to understand and cope with the changes.
- Difficulty with social interactions and management of affairs.
- Multiple appointments with many doctors and multiple appointments with the insurance company doctors.
- Appointments with lawyers.
- Many phone calls on a daily basis from insurance, lawyer, doctors, therapists.

Acquired Brain Injury (ABI) is often an invisible injury. Those living with an ABI frequently face comments such as “You look fine to me” or “Well surely you are over that by now.” Their deficits and limitations, and their ongoing daily challenges, may only be obvious to their close companions or their clinicians. For most of the general public, and for many insurers, the lifelong limitations that often result from brain trauma remain unrecognized.

Major life changes are stressful and, when they are accompanied by the limitations imposed by a brain injury, they can become overwhelming. The addition of having to deal with the insurance company and lawyers adds an enormous amount of stress exacerbating any depression or other emotional issues being dealt with. Stress impairs recovery.

Many doctors will refuse to see you if they know it is an insurance claim due to the lengthy reports they must provide and the possibility of having to go to court, limiting the choice of health care providers. The doctors and lawyers employed by the insurance companies lack empathy and treat the patient as though they have done something wrong. This is not only stressful but reinforces feelings of failure and insecurity. This practice is also an unwarranted questioning of the qualifications of your existing doctors.

We want to be well again and most make diligent efforts towards recovery, however, anything you are able to accomplish regardless of its limits, is used against you to diminish your claim, encouraging people to not try as hard for fear they will not receive sufficient income replacement for the future. For those without social and family supports many badly injured people have settled for trivial amounts with the insurance company, who arrive at your door

very soon after you return home, with documents to sign taking advantage of someone who is unwell, under stress and without council to advise them it is not necessary for them to settle.

You are advised by doctors to think positive, make sure you get enough rest, reduce stress and exercise your brain and body, some of which you can control however, there is a great burden placed on you by the insurance company whose demands interfere with this advice. They also will take every positive action you undertake and any accomplishment as a strike against you and a reason for them to pay less.

RECOMMENDATIONS

It is the position of this brain injury advocacy group that:

1. Insurance claimants must be provided with clear, fair and thorough guidelines on how to proceed with their claim and what the expected process will be.
2. Second opinion assessors must be nominated by an objective body such as the applicable professional regulatory colleges.
3. Surveillance can be legitimately utilized for physical impairment only.
4. All brain injuries diagnosed by a physician, even those considered mild, must be taken seriously.
5. Regulations to prevent unwarranted invasions of privacy need to be in place. Doctor/patient confidentiality should be honoured and access to medical records limited to only those related to the injury in question.
6. The accountability of insurers to their clients must be ensured through an independent and objective regulatory process.

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