



*On the  
Horizon*



## **ASSESSING AND DEFENDING A TRAUMATIC BRAIN INJURY CLAIM**

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## **ASSESSING A TRAUMATIC BRAIN INJURY CLAIM**

First, there is no inexpensive means by which to defend an allegation of a traumatic brain injury when the goal of the injured employee is to obtain a medical/legal finding that the injury has resulted in physical brain damage. A finding of physical brain damage pursuant to *Section 42-9-10 (c)* of the *South Carolina Code of Laws* results in an award of lifetime indemnity and medical benefits.

The litigation expenses associated with defending a brain injury claim costs tens of thousands of dollars. Retaining medical experts and paying for various diagnostic tests is costly. Additionally, the attorneys in these complex cases must procure and review all available records and data regarding the injured worker's health history, academic background and mental health status pre and post-brain/head injury.

Second, a battery of medical and neuropsychological tests will be necessary to properly ascertain whether an individual has suffered severe permanent physical brain damage. The following tools are most helpful in properly assessing and defending an allegation of a brain injury claim which may potentially result in a finding of physical brain damage:

1. If the injured employee is transported by ambulance or EMS, the run sheet or EMS intake sheet must be obtained and carefully analyzed.
  - a. Review the EMS technician's account of the patient's symptoms and whether a visible sign of a head injury is recorded.
  - b. Was the injured employee rendered unconscious or did he/she appear disoriented?
  - c. Is there any evidence of post traumatic amnesia; headaches; or post-concussion syndrome?
2. Obtain photographs of the head injury and photographs of the object upon which the injured employee struck his/her head during the accident.
3. Secure medical records regarding patient's pre- and post-accident emotional, mental and physical state. The following medical records are vital:
  - a. Psychological records.
  - b. Psychiatric records.
  - c. Pre and post-employment physical examinations. DOT examination results.

- d. Records from family physician; gynecologist; and mental health counselor.
4. Retain or consult with neuropsychologist.
5. Retain or consult with a neurologist.
6. Retain or consult with forensic psychiatrist or psychiatrist.
7. Employ use of various diagnostic tests and radiologic studies to assess brain injury and damage, i.e., EEG, CT scan, MRI, PET (Positron Emission Tomography), SPECT (Single Photon Emission Computerized Tomography), QEEG (Quantitative Electroencephalogram), and DTI (Diffusion Tensor Imaging); Note DTI uses magnetic resonance imaging technology. DTI is a new diagnostic test and still in the clinical testing stage.
8. Note employee's engagement in post-accident activities such as returning to work, continuing to work without interruption, and continued participating in hobbies and recreational activities.
9. Retain expert to render opinion about the adverse reactions of various medications utilized with regard to medication side effects causing memory loss, lethargy and depression.
  - a. Are hormonal changes evident?
10. Obtain academic records, I.Q. tests, and other academic performance indicators, which include school and college records, scholastic standardized test results, employment records and military records. These records often reflect the injured parties' skills, level of sophistication and comprehensive knowledge.
11. Retain economist and life care planner if employee has sustained permanent physical brain damage.
12. Retain MSA vendor to assess the need to satisfy Medicare regulations and policies.