

SOFT TISSUE INJURY

Soft tissue injuries can occur in motor vehicle accidents or other incidents that give rise to personal injury claims. Soft tissue include ligaments, tendons, muscles, and nerves. These injuries often occur because of sudden acceleration or deceleration of body parts which results in the stretching of these soft tissues. Muscle splinting occurs when the nervous system goes into flight or fight when the body is reacting to a violent motion in order to handle the impact.

A common type of a soft tissue injury is whiplash. Whiplash occurs when there is an abrupt back-and forth flexion of the neck which is common in car accidents. However, soft tissue injuries are very hard to prove because they do not show up in diagnostic tools like an x-ray. This does not mean deep muscle bruises are not painful and detrimental to a plaintiff's lifestyle, rather that the plaintiff needs to thoroughly document medical records as strong proof of an injury. It is critical to seek medical treatment for a soft tissue injury immediately.

Examples:

- Herniated disc
- Muscle tears
- Nerve Damage
- Sprains
- Strains
- Whiplash (most common in car accidents)

Symptoms:

- Back pain
- Bruising
- Inability to bear weight
- Lack of concentration
- Limited range of motion
- Soreness
- Stiffness
- Swelling

Unfortunately, these types of injuries are usually met with suspicion by the insurance company. The insurance company is not going to take the plaintiff's claim on good faith. Either the plaintiff or defendant's insurance company will pay for the injuries. Often the insurance

company is willing to settle a case before it even gets to trial. A settlement depends on each individual case. If the case doesn't settle then it will go to trial and the case will depend on the strength of plaintiff's medical proof. Winning is not important but proving the existence and extent of a soft tissue injury is. A plaintiff may need to hire an expert witness to testify how an accident caused the injuries.

Factors to consider:

1. Lack of Evidence

- Medical records
- Records establish proof of injury/ outline treatment/ how much suffered due to accident

2. History of fraud

- Many people have faked sprains and whiplash in the past

Settlement factors:

1. Medical Bills (includes all medical treatment you have received, continue to receive, and will receive in the future)

- Physical therapy
- Doctor visits
- Emergency care
- Crutches

2. Lost wages/earning potential

- Missed time from work
- Injuries do not allow the victim to return to full capacity

3. Pain and suffering

- Heavily influenced by amount of medical bills
- Stress
- PTSD
- Anxiety

There is no 'settlement calculator' because there are too many variables. However, lawyers have consultations and case evaluations to determine the claim value of each individual case. If you were mostly at fault in the accident then the adjuster will lower the settlement offer. However, if the other driver is 100% at fault then the settlement will not be impacted because of your actions.

Massachusetts has a no fault statute: **Mass. G. L. §36D** which states that as a prerequisite to a suit, plaintiff must show that his fair and reasonable medical expenses exceed \$2,000. The

insurance company can challenge the fair and reasonable expenses and then the plaintiff must show that the expenses were reasonable, fair, and necessary. **Victim v. Martin, 53 Mass. App. (1973).**

In Massachusetts a tortfeasor takes his victim as he finds him which is important for soft tissue injuries because the nature of the injury is such that often recurring chronic problems is vulnerable to reinjury to such symptoms. The defendant can also be liable for additional pain and suffering resulting from an injury that aggravates a pre-existing condition. **Thurlow v. Shaws Supermarket, Inc., 49 Mass. App. Ct. 175 (2000).** The defendant is liable for all pain and suffering resulting from an injury even if a person who was not so presupposed would not have been injured.

Loss of earning capacity is not equivalent to loss of wages, although plaintiff's prior wages are some evidence of his earning capacity. See, **Mitchell v. Walton, 305 Mass. 76 (1940).** In order to recover for loss of earning capacity the plaintiff must prove that he was:

- a) Disabled from work
- b) The probable duration or permanency of this disability
- c) And the monetary earnings that have been lost or that he was capable of earning as a result of this disability

An economist may be used to establish the value of the plaintiff's work capacity and reduce that amount to present value.

Under **Mass. G. L. c18, §5**, Medicaid has a right to be reimbursed for payments made by it from a third-party recovery. Under this statute, when a claimant receives a payment liability insurer (Workers compensation or other 3rd party) he is obligated to repay the Department of Public Welfare to the extent of the benefits provided if the benefits were a result of the injuries sustained in the accident.

General tips:

- The insurance company is not your friend (they want to pay as little as possible)
- Be prepared to address weaknesses
- Tell the truth (investigation will be thorough)
- Have losses carefully calculated (medical records, lost wages documentation, claim forms)