

Value of Toxic Injury Cases Compared to Workers' Compensation Claims

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While monetary recovery is limited in workers' compensation (and has been even further limited by recent legislation), monetary recovery in the third party case can be substantial. Unlike the meager benefits available as workers' compensation, injured workers have the potential of recovering substantial verdicts and settlements in their third party cases. Damages for pain and suffering are available and juries often render verdicts in seven figures for such noneconomic damages. In extraordinary cases, punitive damages may also be recoverable. Of course, workers who prove their cases to the satisfaction of juries are also entitled to past and future medical expenses, as well as past and future lost wages or lost earning capacity. It is therefore not surprising that meritorious third party toxic injury cases often settle in six and seven figures.

Not all toxic injury cases are worth seven figures. A workers' damages are reduced by his own proportionate fault and that of his employer. If the worker got leukemia from occupational exposure to benzene, but most of his benzene exposure came from smoking cigarettes, the worker would only be entitled to that percentage of his damages attributable to the percentage of his occupational benzene exposure. However, in practice juries these days rarely find in favor of a worker whose cancer can be attributed even in part to smoking, alcohol, or recreational drugs. Equally problematic is the case of the worker whose occupational disease was primarily caused by an employer's gross negligence. In such cases, the worker may, however, have a meritorious serious and wilful claim in workers' compensation. Regarding S&W claims, if the worker has a decent third party case, you should not file a S&W claim against the employer, because it can be introduced as evidence against the worker in the third party case. If the jury's verdict is for the plaintiff for \$1 million, but the jury finds that the employer was 95% at fault for causing the worker's injuries, the worker only recovers \$50,000. So carefully consider whether you should file that S&W claim!

Since so many workers suffer from occupational diseases and toxic injury cases can result in large settlements and verdicts, why haven't you heard all that much about these cases? With the exception of asbestos-related disease, few law firms litigate such cases on a third party basis, for several reasons. The cases are extremely complex and difficult, primarily because the third party attorney must not only prove that the defendant was negligent or sold a defective chemical product, but that exposure to the chemical actually caused the worker's disease. It can be very difficult to prove that a worker's cancer occurring thirty or more years after occupational exposure to a chemical was caused by that chemical.

Proving causation in toxic injury cases can also be very costly. Costs in these cases typically run into six figures. Why? Many experts are necessary: a pathologist (to accurately diagnose the disease), a toxicologist (to explain the toxic effects of the chemical), an industrial hygienist (to quantify the worker's exposure to the chemical), a chemical engineer (to establish that the chemical is a defective product), an epidemiologist (to testify that workers exposed to the chemical develop the disease the plaintiff has at a significantly greater rate than those not exposed), an occupational medicine physician or medical toxicologist (to opine that exposure to the chemical caused the worker's disease based upon all the evidence and by ruling out alternative causes), a life care planner (to determine the cost of the worker's medical care), and an economist (to determine lost wages, lost home services, and to reduce the future losses to present value).

Given the difficulty of proving the case, the specialized knowledge of science and medicine required, the problem of employer and worker comparative fault, and the huge costs of bringing the case, few firms choose to litigate toxic injury cases (except for asbestos cases). For these reasons, don't expect the usual one-third referral fee for such cases. Most firms that litigate toxic injury cases will pay referral fees between 15% and 25% after deduction of costs. Raphael Metzger is an attorney for The Metzger Law Group, representing individuals who have been seriously harmed by **toxic chemicals or benzene exposure** in California. Mr. Metzger is a sought after public speaker as well as a widely published writer. <http://www.ToxicTorts.com>