

## **MEMO re: DAMAGES, to Clients of Feehan Law Office**

This memo is intended to briefly explain what it is that you are required to do when you have been asked at a Questioning (formerly called "Examinations for Discovery") to "undertake" to provide particulars of a certain type of damages (or losses). An "**undertaking**" given at Questioning involves a situation where, because you do not have the complete answer right now, you have (or your lawyer has on your behalf) agreed to provide the answer at a later date. Please note that giving an undertaking is a serious commitment, and if you delay the Court can compel you to provide the answer(s), and penalize you if you don't. The Courts do not take undertakings lightly.

We will of course help you to prepare the final answer(s), but we need your input. We want you to think about these losses in advance, so that when we meet you will be prepared to sit down and work out a complete listing of your losses (we will prepare a detailed spreadsheet, which usually also contains an offer to settle). This is a big step toward settlement of your claim.

### **"SPECIAL" Damages:**

Special Damages (also called "pecuniary damages"), are simply out-of-pocket expenses caused by or related to the injury. These can be for anything you spent money on and have not already been reimbursed for, chiropractor, physio, massage, vehicle damage or deductible, parking, mileage, medications (both prescription and over-the-counter), and so forth. The list can be long. It helps immensely to convince a Defendant to pay if you have the receipt, so **never throw away a receipt!** Insurers often do not even argue if you have the receipt, but they rarely like to pay an unsubstantiated expense claim.

If you have spent money on anything due to your injury claim, you should keep the receipt (or cancelled cheque, or invoice) in a large envelope, and from time to time just send it all in to us. We will organize it and in due course provide a copy to the Defendant(s). It is also helpful if you make a list of your out-of-pocket expenses, but this is not crucial.

NOTE: we are really only interested in the expenses for which you have NOT already been reimbursed. Keep your other documents in a separate place until the lawsuit is over, as you may be asked to produce those as well.

If you no longer have a particular receipt, try to get another copy. (You can often re-attend at a pharmacy, for example, and request a complete printout of your prescriptions; or you can go into a store again and ask for a "quote"). Some legwork may be involved.

Over-the-counter medications: we know it seems like a small sum to worry about, but it also shows that you have been having pain (why are you buying pain medication?).

Some things of course you will want to claim for, but not be able to produce a receipt, mileage for example, or parking meters. Keep track of the **kilometres** you put on due to the injury accident, going to doctors, treatment, physio, looking for a new car etc. List the places you've been, the number of times you've been there, and the kilometres one-way (we will do the final totals when you bring it in). Listing your mileage and parking also tells the Court about the wasted hours and dollars you have spent travelling to various places, all due to the original negligence of the Defendant.

Any expense you don't keep track of, or forget about, or don't keep the receipt for, is just lost money to you. You might be surprised how it can all add up. So put together a list of **ALL expenses** due to the injury accident, together with ALL available substantiating receipts & documentation for all expenses that you can think of and be prepared to bring it in to us.

### **"PAST WAGE LOSS" Damages:**

Hopefully you have kept track of time missed from work, any lost overtime, lost pay increases, jobs you may have lost, and so forth. You should now put together the details (with all supporting and substantiating documentation you have available) regarding your **wage loss claim**. Any supporting documentation that you are able to provide to us will be of great assistance in establishing your wage loss claim. For example, T4's, actual pay stubs, time sheets showing hours you could have worked but were unable to, a letter from your employer stating what your hours would normally have been, how many hours (and overtime) you have missed, or pay increases or bonuses you missed out on. Get a letter confirming that your employment and hours would have been available to you if you had not been injured, and any other documentation which you feel may be of assistance to us.

While many people feel uncomfortable asking their employer or supervisor for a supporting letter, note that such a letter is very convincing to a Court (and thus a Defendant).

#### “HOUSEKEEPING” Damages:

Often mistakenly called the “housekeeping” claim, the correct terminology for this part of your claim is actually the “loss of **household services** abilities or capacity” claim. This is where:

- other people (volunteers, usually a family member) had to step in and help out around the house and/or yard, whether paid or not; or
- where you had to do your chores but it was more difficult or took you longer; or
- where you let things “go”, and didn’t do them because it was too difficult to try to do. You just lived with the mess.

We need details, with supporting statements from family and friends if at all possible. We need to know what you had trouble doing or couldn’t do. And we need to know why you had trouble and needed help (what was it about the injuries that impacted on your ability to do work around the house and yard?). If you have any receipts or cancelled cheques for obtaining paid help with your housework or yard work, make sure you keep these!

This area of the claim can involve ANY aspect of the general house chores you do that are valuable to you or your family but that you do not normally get paid to do. These can include mowing the lawn, shovelling snow, doing laundry, gardening, vacuuming, shopping for groceries, child care, spring cleaning, moving furniture, cooking meals, doing the dishes, cleaning the tub, and so on. Think outside the box on this one, it can include cleaning the eavestroughs, changing the oil in your car, walking the dog, painting the fence, or entertaining/hosting parties. Providing details can be VERY important, as it will describe to a Court how your day-to-day life has been affected by the injuries.

#### “FUTURE COST OF CARE” Damages”:

It is important that you understand that once your claim has settled, it is forever final. *You cannot come back and ask for more money for expenses you incur after the date of settlement.* You must include your future expenses in your settlement claim now. Therefore, we will need the details of what you and your doctor think you will need to cover for future expenses for: house and yard chores, treatment, equipment, items for assistance, prescriptions, chiropractor, medications, physio, massage, therapy, travel, counselling, dental, or basically anything you can think of that you might have to spend money on in the future because of this injury accident. You are being asked to put together a rough (at this time) list of the details of **anticipated future expenses**.

Note that Courts are reluctant to give an award for a future treatment expense unless there is some kind of medical recommendation for it.

#### “FUTURE LOSS OF INCOME”:

Likewise, you will not be able to come back later and ask for more money if you miss more time from work. We need to know **NOW** all of the details concerning your anticipated future wage losses, and we have to claim it now. I need your (rough) input on this. I need to know what you think you will miss or not be able to do, how much time you might miss and what it will cost you, how often you might miss work or overtime. Any supporting evidence, statements or information you can provide will be very helpful. Again, your doctor’s confirmation of difficulties with doing your job can be invaluable. Always keep your doctor advised of the difficulties you are having due to the injuries.

---

As always, if you ever have any questions about this or any other aspect of your lawsuit, please feel free to call and ask.

Kind regards, Mark E. Feehan

|   |  |
|---|--|
| Feehan Law Office<br>10160 - 118 Street<br>Edmonton, Alta.<br>T5K 1Y4 | Ph: 780-424-6425<br>Fax: 780-424-6477<br><br>Email: <a href="mailto:markfeehan@shaw.ca">markfeehan@shaw.ca</a> |
|---|--|