

LEGAL ACTION after a **BURN INJURY**

Comprehensive, factual answers to your questions
about taking legal action after a burn injury



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LEGAL ACTION AFTER A BURN INJURY

Phoenix Society has partnered with the *Pritzker Hageman Law Firm* to provide comprehensive, factual answers to your questions about taking legal action after a burn injury.

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This book is for informational purposes only and does not provide legal advice. Your specific legal issues are unique, and you should not rely on the information in this book without seeking professional legal counsel.

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DO I HAVE A CASE?

You (or someone you love) suffered serious burn injuries. It is one of the worst experiences of your life. You are trying to figure out what to do, including whether to hire a lawyer and make a claim for money damages.

THE INITIAL INVESTIGATION

THE ORIGIN AND CAUSE

While burn injuries can be caused by many things, including chemicals and even extreme cold, most serious burn injuries are direct thermal burns caused by fire or hot liquids or gases. Electrical burn injuries, while not as common as direct thermal burns, are also often very severe because of the way high-energy current passes through deep tissue and organs causing catastrophic damage along the way.

The answer to whether you have a good legal case begins with the analysis of the origin and cause of what injured you. An “origin and cause investigation” is a standard term used in fire investigations, but the concept is the same for any type of burn investigation.

For instance, if a burn resulted from contact with scalding water or from electrical current, the origin of where the scalding water or electricity came from might be obvious and readily understood. If a burn resulted from fire, the origin would be the precise location where the fire started. This location is often highly obscured by

damage from the fire and an investigation would be required to identify it. Once the origin is identified, the investigation shifts to determining the cause of the fire, electrical current, scalding water, etc. at that location.

Because fires and explosions are so destructive and often create so much debris (and because the process of putting out a fire and securing the scene creates even more disturbance), the precise origin of a fire is often not obvious. For that reason, fire investigators must go to the scene of the fire as soon as possible after the event to sift through the wreckage; identify and categorize fire patterns and fire dynamics; examine and secure artifacts; map the scene; and obtain photos and video.

Fire codes and practices require that every interested party (i.e., those with a financial or legal interest in the outcome of the case – typically insurance companies and the attorneys for anyone injured) must be given notice of the scene inspection and the opportunity to participate in it. The same is typically true for injuries caused by contact with powerlines (and in those cases the power utility likely also needed to access the scene early on to help insure it was safe).

Time is of the essence. Because the scene where an injury occurred is often exposed to the elements and may not be secured from vandals or trespassers, key evidence may be lost unless there is a prompt and thorough inspection. This is especially true in the case of a fire or explosion.

Following the scene inspection, key items of evidence are usually secured and may be transferred to a laboratory for further analysis and testing.

The entire process may take weeks to months.

Once the point of origin is determined, experts try to determine the precise factors that caused the fire, stray electric current, or other hazardous condition. For example, is there evidence of a gas leak, cracked wire, poorly maintained power line, defective product, or other cause to account for a fire or other burn hazard at that location?

IDENTIFICATION OF FAULT

Along with identification of the fire's origin and cause, it is necessary to identify **the person or business entity whose fault caused or contributed to the fire.**

For example, although the "origin" phase of the investigation may show that the fire started in the southwest corner of the basement and the "cause" phase may identify a gas leak and ignition source, it is essential to identify the party responsible for the gas leak in the basement.

Simply put, to make a claim, you must prove that the party or parties being sued were at fault **and** that such fault was a direct cause of the injuries and damages suffered by the burn survivor. Failure to establish causation and fault means that you will lose your case.

In most burn cases, fault is based on the principle of **negligence**. Although each state has different rules and definitions, a good working definition of negligence is the "failure to exercise such care as persons of ordinary wisdom usually exercise under the same or similar circumstances." Proof of this failure is often based on

industry standards and codes, applicable laws and regulations, the defendant's own rules and procedures that were supposed to be followed (but weren't), etc.

Assessing fault and its impact on your case is critically important. That is why experienced burn injury lawyers need to understand – as soon as possible – any factual issues bearing on the fault of any potential party, including the burn survivor.

It is also why burn survivors need to be completely candid with their attorney.

***Most States Require Four Basic Elements
of Negligence:***

1. Was there a duty of care owed by the party being sued? (Duty of Care: a requirement that a person act toward others and the public with the watchfulness, attention, caution and prudence that a reasonable person in the circumstances would use.)
2. Was there a breach (or failure) of that duty of care?
3. Did that breach of duty of care result in actual injuries to the person making the claim?
4. Was that breach of duty of care the proximate (or immediate) cause of the injuries?

**The jury must answer “yes” to all four questions
for the claimant to win.**

STATUTE OF LIMITATIONS (SOL):

IS IT TOO LATE TO MAKE A LEGAL CLAIM?

A statute of limitations is a law that establishes a time limit within which a claim must be brought. If the claim is not commenced within that time limit, the case will likely not be allowed and there will be no recovery for the burn survivor.

SOL time periods vary greatly from state to state. For example, a negligence cause of action must be commenced in some states within a year of the incident whereas in other states, that same cause of action may have a six-year SOL.

There are also exceptions to the harsh dictates of the SOL time limit. For example, some states recognize what has come to be known as the **discovery rule**. In those states that recognize it, the discovery rule “postpones the beginning of the limitations period from the date when the plaintiff is wronged to the date when he discovers he has been injured.”

SOL laws can be complicated and confusing. Time periods vary depending on the types of claims being made – even though each claim stems from the same incident. For example, it is not uncommon for an explosion to be due to both negligence and a defective product. Even though both claims result from the same explosion, the SOL time period for each cause of action may be and often is different.

There are also many exceptions to the SOL requirements. The discovery rule is only one and virtually every state’s law has different rules and exceptions, so it is important that the lawyer with whom you consult has experience with assessing statutes of

limitations and how they will apply to the facts of your case and the relevant exceptions.

Finally, because the clock often starts ticking on the SOL right away, among other reasons, you need to **consult with a lawyer as soon as possible following the incident.**

Of course, that is often easier said than done. Burn survivors and their families, especially those with severe burns, are often overwhelmed in the days, weeks and even months following a severe burn injury. Many find they simply do not have the time, energy or emotional wherewithal beyond the moment-by-moment demands imposed by life-changing burns. That includes the time and effort necessary to research suitable lawyers, gather information in preparation for the lawyer meeting, and actually meet with the lawyer.

WORKERS COMPENSATION

Another “do I have a case” factor concerns whether the burn survivor was injured during the course and scope of their employment. In most states, injury claims are not allowed to be pursued if the incident was caused by the fault of the employer or one of the other employees working for the employer. In such cases, recovery is limited to workers compensation benefits which usually are far more limited than sums allowable in a typical lawsuit.

Third-Party Liability:

The Exception to Workers Compensation Limits

The exception to the severe workers compensation rule is what is called **third-party liability**. In most states, a burn injury survivor – even if they are injured while on the job – may still be able to sue a **third-party** (for instance, a person or company not employed at the worker’s place of employment or the outside manufacturer or provider of defective equipment) whose fault caused or contributed to the incident.

Here is an example:

An explosion at a local school injured several school employees who at the time were acting within the course and scope of their employment. School officials knew or should have known that it was unsafe for its employees to be working inside the building while gas lines were undergoing repair and replacement. But the real fault for the explosion was a massive gas leak created by an independent contractor’s employee (a third-party) who failed to shut a gas valve before removing a pipe section downstream from the valve.

In that scenario, the negligence claim against the contractor can proceed even though a direct action against the employer-school may not have been allowed.

As you can see, the ability to assess fault and pursue claims against viable wrongdoers is one of the most important skills possessed by experienced burn injury lawyers. It’s also why burn and explosion cases are incredibly fact-specific. Just like origin and cause experts having to carefully sift through fire debris to find key evidence, burn lawyers must unearth and examine all the facts necessary to evaluate a case and pursue viable claims against responsible parties.

HOW MUCH IS MY CASE WORTH?

If your case goes to trial, the jury is required to assess damages – the amount of money you are entitled to receive because of the injuries you suffered, usually based on six categories of injury and loss.

*There are (typically) 6 Categories of Loss
the Jury Is Required to Assess:*

1. Pain, suffering, emotional distress, and disfigurement from the date of the incident to the time of trial
2. Cost of medical bills and additional costs incurred from the date of the incident to the time of trial
3. Loss of wages/income from the date of the incident to the time of trial
4. Pain, suffering, emotional distress, and disfigurement reasonably certain to occur in the future
5. The cost of medical care and treatment reasonably certain to occur in the future
6. Loss of earnings and earning capacity reasonably certain to occur in the future

The jury has a great deal of latitude regarding the amount, if any, to award for each category of loss.

While these six categories are the broad considerations the jury will assess, the actual specific list of factors affecting the value of a burn injury case is long.

FACTORS AFFECTING THE VALUE OF YOUR CASE

Burn Severity

Burns are initially assessed according to the depth of injury, expressed in terms of degree of tissue damage. Third and Fourth-degree burns are the most severe. Third-degree burns, also known as full-thickness burns, involve the destruction of the epidermis (outer layer of non-living skin) and dermis (the thicker layer of living skin below the epidermis) and may extend to the innermost skin layer, the subcutaneous tissue. Fourth-degree burns go even deeper and may include muscle and bone destruction.

Burn severity is also based on the extent of body surface involvement. That is why a detailed estimation of total body surface area (TBSA) is made early on during burn treatment and then re-evaluated during the course of care. Obviously, deeper burns with a greater percentage of TBSA involvement increase case value.

There are many other burn-related factors, including burn location. Simply put, burns and scarring that are highly visible (e.g., face and hands) or involve sensitive body parts (i.e., genitalia) also increase case value. Effects of Fourth-degree burns, including bone loss requiring amputation and muscle destruction, also increase case value.

Severe harm from burn injury is not limited to burn degree, total body surface area or burn location. In fact, even comparatively less

severe burn injuries can and do lead to complications affecting damage to and failure of specific organs as well as multisystem organ dysfunction (MODS) which can lead to massive injuries and death.

MULTISYSTEM ORGAN DYSFUNCTION (MODS)

Multisystem organ dysfunction (highly simplified for discussion purposes here) is caused by an infection, in the cases we are discussing, involving burn wounds or the lungs (from inhalation or thermal damage) that cause the release of toxins which then trigger the body's own inflammatory response. These inflammatory mediators may lead to damage to or failure of key organs (that were not harmed by the thermal damage from the burns) including the kidneys, lungs, heart, liver, blood, and central nervous system. There is often a damage "cascade" involving multiple organ systems leading to full-blown MODS. This inflammatory response is difficult to treat which makes it very important to limit wound-associated inflammation **before** organs are damaged. That is one of the primary reasons why treatment at a specialized burn unit is so critically important. Studies indicate that 50% of people who died as a result of burn injuries had also been diagnosed with MODS. MODS can sometimes occur even from what might be considered "competitively" less severe burns.

Psychological effects and PTSD

The [psychological effects of severe burns](#) are every bit as real and harmful as the tissue damage that triggered them. This cannot be overstated (and should never be misunderstood): some burn survivors spend the rest of their lives dealing with the

psychological, behavioral, and emotional consequences of severe or even moderate burn injuries. This may continue long after burns heal, treatment ends, and maximum medical improvement is reached.

Take, for example, Post-Traumatic Stress Disorder (PTSD) which frequently develops in people with severe burns but is often not diagnosed for months after the burn event or sometimes not at all.

Unlike a burn scar, PTSD injuries are not readily observable. Even burn surgeons and burn unit personnel sometimes miss or fail to appreciate the full extent of PTSD symptoms. A trained burn injury lawyer should be attuned to his/her client's symptoms and absolutely must be sure that the client receives the proper care, treatment, and respect this often-devastating condition demands.

Venue

Another factor affecting case value is what lawyers refer to as "venue." The venue refers to the county within a state or the judicial district within the U.S. where the lawsuit is to be tried. The venue of a lawsuit is typically specifically set by the law, but it can sometimes be changed to another county or district if the facts of the case allow it. It is also sometimes possible to change venue for the convenience of witnesses. In practical terms, venue is usually located where the fire or explosion took place or where the wrong doer resides.

Some venues (and the potential jurors who live there) are simply more or less friendly to injured people than others. For example, a

jury in a big city may be more generous than one in a rural community. That's not always the case – rural juries often award large sums of money to injured people – but venue issues are still important considerations that must be assessed in determining the value of a given case.

Related to venue are choice of law issues. Simply put, if a case is venued in a state where the law is hostile to injured people, the value of that case may be much lower than an identical case venued in a different state. For example, starting in the 1980s, product manufacturers and others began a PR campaign (without reliable evidence to back it up) that juries were “out of control” and that legislation was necessary to reign them in. This so-called “tort reform” legislation included damage caps which limited the amount an injured person was allowed to collect, especially in catastrophic loss cases like those involving severe burns.

Damage Caps

Several states have caps on non-economic damages (i.e., for pain, suffering, emotional distress). This means that if the sum awarded by a jury for non-economic losses exceeds the cap amount, the burn survivor only receives the “capped” amount (which may be hundreds of thousands or even millions of dollars less than the true value of the case).

Here's an example of just how unfair this can be: a woman in her forties was in her Colorado vacation home when a gas explosion leveled it. Debris from the explosion pinned her body down preventing her from escaping. Flames from the burning gas grew closer as she used her cell phone to summon authorities. Even

though the terrible moments prior to her death were recorded in the 911 call and provided harrowing evidence of incredible suffering, and even though a responsible party was identified who had the financial means to pay, because Colorado has a cap on noneconomic loss in wrongful death the case was worth a total of only \$571,870. The same case venued in a state without damage caps would have been worth millions more than that.

Risk Tolerance

Another intangible factor affecting case value is risk tolerance: some injured people are simply more risk averse than others. There is nothing right or wrong about risk aversion, but some burn survivors are unwilling or unable to take a case to trial and are willing to settle even if it means forgoing a larger sum that may be available by settlement at a later date or by a jury verdict (of course, that may be a wise choice: some settlement offers go down over time and some juries award less than what the case could have been settled for before trial).

Client Specific Factors

The fact is the amount of money the jury is likely to award for each of the six categories of loss typically can vary widely depending on the characteristics of the person making the claim. For example, burn survivor “A” is a 42-year-old female physician earning \$350,000 per year. The injuries she suffered prevent her from working. Burn survivor “B” suffered similar injuries, but he is 62 and makes \$65,000 per year. Given his time until retirement and lower

earnings, the value of his case is likely less than that of burn survivor “A.”

Burn Harm is Unique to The Person Who Experienced It

The harm caused by severe burn injuries is not and can never be understood solely in terms of burn degree and body surface involvement. Nor can such harm be understood solely in terms of objective measures generalized from data points taken from group studies. This is the key: each burn case is as unique as the person who suffered it.

A suitable and qualified burn injury attorney knows from experience about the importance of spending time and really getting to know their burn survivor client as well as the client’s family – building a relationship based on trust, communication, and the art of listening.

The fact is, most lawyers talk too much. They were taught about the importance of projecting their competence and control, but never learned that by listening and hearing, by asking questions and testing observations, they become better advocates for their clients because they begin to understand the full experience and the true depth of loss suffered by you...their client and collaborator.

COMPARATIVE FAULT – DOES THIS CHANGE WHAT MY CASE IS WORTH?

Another issue in assessing whether you have a case involves the concept of **comparative fault**. This refers to any fault attributable to (or caused by) you, the burn survivor, rather than the fault of the wrongdoer(s) being sued by you.

Although comparative fault issues vary considerably from state to state, the key issue is this: **the percentage of fault, if any, found against you by the jury reduces the amount you can recover from the wrongdoer by that same percentage.**

Consider this example:

A case goes to trial and the jury awards the burn survivor a sum of \$5,000,000 for the six categories of loss. However, the jury also finds that 40% of the fault for the incident is attributable to the burn survivor. In that situation (simplified for this example) the burn survivor's recovery would be reduced by that percentage of fault. They would receive only 60% of \$5,000,000 (which would be \$3,000,000).

It is even worse in some states: if your percentage of fault is greater than some arbitrary percentage (e.g., 50%), you would collect nothing at all. And, if there are multiple wrongdoers involved, to collect against each or any of them, your percentage of fault must be less than the party against whom you are making a claim.

In many burn cases, comparative fault is not an issue; there is simply no evidence that the burn survivor did anything wrong. But that is not always the case.

Consider this example:

A homeowner turns up the thermostat during the first cold snap of the heating season. The house fails to warm up, so the homeowner inspects the furnace, smells gas, notices the pilot light is out and then tries to relight it. An explosion occurs, and the homeowner is badly burned.

In that scenario, even if the local gas company was at fault to some degree, its lawyers will claim the homeowner's fault was a significant contributing factor because they smelled the gas and knew, or should have known, that lighting a furnace in the presence of gas in the air is a highly dangerous thing to do.

Assessing fault and its impact on your case is critically important. That is why experienced burn injury lawyers need to understand – as soon as possible – any factual issues bearing on the fault of any potential party, including the burn survivor. It is also why burn survivors need to be completely candid with their attorney.

IS THERE MONEY TO BE RECOVERED?

Unfortunately, sometimes a person sustains serious burn injuries, and the investigation clearly shows that there is someone at fault for those injuries, but there is no money available to collect. In order to have a successful outcome the “at fault” party must have insurance or financial assets sufficient to fully compensate you for your losses.

This is an important consideration. Unless the at fault party is identified and shown to have sufficient assets or insurance to compensate you for your losses, it would typically not be practical or sensible to pursue a claim on your behalf.

Here is an example of a case likely worth pursuing:

Shortly after the gas company comes out to fill a gas tank, an explosion occurs in the house resulting in severe burns to a person who lived there. The “origin” investigation identifies a wall in the kitchen area as the place where the explosion originated. The “cause” investigation reveals that the gas escaped from a line valve that was left in the open position by a gas company technician.

This would be a strong case and one worth pursuing.

But consider this similar scenario:

The same severe burns, the same point of origin, and the same open valve. But in this case, an elderly neighbor volunteered to help get the home ready for heating season. He went outside to open the main tank valve and then lit the furnace pilot light. However, he did not inspect the open uncapped line in the kitchen.

Even though the fault would be determined to clearly lay with the neighbor, he had few assets and no insurance. Thus, the burn survivor would likely not have a case worth pursuing.

For a deeper dive into the complexities of how compensation is determined see Appendix III: Additional Details Affecting Compensation Amounts

FINDING AND HIRING A BURN INJURY ATTORNEY

Because of the complexity and severity of serious burn cases, very few lawyers have the experience, record of success, and financial wherewithal necessary to pursue them. That is why it is essential to not only speak with an attorney as soon as possible but also make sure the attorney is, in fact, a reputable and recognized fire/burn/explosion professional.

YOUR FIRST MEETING WITH YOUR ATTORNEY

Many people think that they will need to travel to meet with their attorney in person. However, these days many meetings can happen over the phone or via video conferencing (for example, Zoom or FaceTime). An experienced burn attorney will also know that it's often important to make house calls and hospital calls and will travel to whatever state and city you are in when needed.

When you first speak with an experienced burn attorney, the lawyer will need to ask a lot of questions and get as much information as possible.

This information may include:

- Newspaper or television accounts of the fire
- Fire marshal reports
- Police/fire/first responder records
- Purchase or repair records

- Photos of the fire scene
- Burn photos
- Identification of potentially at-fault parties, etc.

Because some or all this information will not be available when you first speak to the attorney, the attorney will have to rely on their experience to initially decide whether to hire experts and spend the money necessary for them to inspect the scene, conduct the origin and cause investigation, retain, evaluate, test components, and do whatever else needs to be done to secure the best possible outcome.

HOW A BURN ATTORNEY IS PAID

It is important to note that the costs associated with investigating a case and then pursuing a claim on your behalf (assuming the results of the initial investigation warrant it) are the responsibility of the lawyer you desire to retain.

That means **costs come from the lawyer's pocket, not yours.**

“The costs associated with investigating a case and then pursuing a claim on your behalf are the responsibility of the lawyer you desire to retain.”

This is part of what is known as the **contingent fee agreement.**

Experienced burn attorneys understand that most people cannot afford to pay a lawyer by the hour and fund the costs associated with burn cases, especially if those sums are payable even if there is no case or if the case is lost at trial.

That is why you need to ask the potential lawyer these and similar questions:

- Will you handle this case on a contingent fee basis?
- If so, what percentage of the recovery do you charge?
 - Because of the complexity, time and risk associated with serious burn case, the smallest percentage is usually one-third but may be as high as 40% depending on circumstances.
- Will you confirm in writing that if there is no recovery, I do not have to pay you or anyone else anything, including any attorney fees and case costs?
- Regarding case costs (e.g., cost of obtaining medical and investigation records; hiring and paying for experts; filing costs; travel expenses; etc.), do you agree to front all such costs, not look to me personally to advance any costs; and agree to “eat” all costs if there is no recovery?
- I understand that burn cases are expensive to prosecute and that costs can run high, particularly if the case goes to trial. Do you, attorney, have the financial wherewithal to front those costs and make sure my case is funded at the level it deserves?

EARLY CONSULTATION IS IMPORTANT

While a burn attorney can be consulted at any time to determine if you have a case, the earlier you or a family member are able to talk to one, the better. As difficult as it may be, early consultation with a capable attorney can be critical.

Here's why:

1. **The factors and conditions at a fire scene are changing even before the fire is extinguished.** Fire officials are obligated to put out the fire and protect the public. They are usually not equipped to search through debris or precisely identify the origin and cause of the fire. In reality, this is the job of insurance companies on behalf of any potential wrongdoers they may insure. In practice, this means that insurance adjusters and their experts are often on scene within a few hours of the fire. Putting it more bluntly, insurance companies are trying to build a case in their favor even as the burn survivor is fighting for their life. For that reason, it is imperative that investigators for the burn survivors be at the scene as soon as possible.
2. **Burn survivors and their families have never been through something like this before.** In the immediate aftermath of devastating injuries, they have no idea what their rights are, who they should talk to, and what they should say (or not say). Unfortunately, this confusion is often exploited.
3. **Treatment for burn injuries and the pain and distress endured by burn survivors while receiving treatment**

are critical elements in any burn case. Jurors have no frame of reference for understanding the suffering of burn survivors without graphic photos and video depicting their actual ordeal. This is particularly true during the earliest treatment phases when the survivor's pain and suffering is most intense. **Early documentation is therefore critical.**

4. **Peace of mind.** This is hard to quantify, but it may be the most important factor. Serious burn injuries are both life threatening and life changing. There is simply too much at stake and too much to learn. Without information and guidance – right from the beginning – there is a high probability that even a very strong case will be jeopardized.

MAKING DECISIONS THAT ARE RIGHT FOR YOU AND YOUR FAMILY

The purpose of an early meeting with an experienced lawyer is to get information that will allow you to make decisions that are right for you and your family.

Following the meeting, you may decide that you do not want to make a claim or simply wish to postpone the decision. **Consulting with a lawyer does not obligate you to do anything.** You always retain the right and the responsibility to take no action if that is what you choose to do.

For example, some people are philosophically opposed to legal action. Some are dealing with emotional and behavioral issues that make it too challenging to proceed. And some do not believe the amount likely to be recovered is enough to justify taking legal

action. **Any or all these reasons are real, valid, and entirely up to you.**

Concerns and beliefs about the wisdom of making a claim (or not) should be discussed during the initial consultation with a lawyer.

If you feel pressured to make a claim, you are meeting with the wrong lawyer. This is your case, not theirs.

YOUR TIME AND FINANCIAL COMMITMENT

Some people erroneously believe that bringing a claim requires a huge time commitment, lots of money or a very uncertain outcome that does not justify making a claim.

In fact, and as we have already discussed, **the vast majority of work on a case is performed by the attorney, not the client.** Any experienced burn lawyer understands that burn survivors and their families are legitimately pre-occupied by the physical and emotional consequences of treatment and recovery.

Likewise, the costs associated with a burn case are advanced by the lawyer with repayment only if there is a settlement or verdict. **No seriously injured burn survivor should ever expect to pay anything out of pocket even if there is no recovery.**

ADDITIONAL QUESTIONS TO ASK

Most people, including lawyers, do not understand and need to be educated about burn care and the life-long complications and treatments associated with severe burn injuries.

When consulting with a burn lawyer, you should ask these additional questions:

- How many severe burn injury cases like mine have you handled?
- How much money did each of those burn survivors receive?
- How many of those cases went to trial?
- What were the verdict amounts awarded by the jury in each case?
- As a burn lawyer, what do you do to keep abreast of the science and medicine of burn injuries, burn care and burn complications?
- What medical journals and publications do you regularly read to do so?
 - For example, the official publication of the American Burn Association is the bi-monthly *Journal of Burn Care & Research* from the Oxford University Press. Each issue contains a variety of articles and case reports specific to the care, treatment, and outcomes associated with severe burn injuries.

Finally, keep in mind that **any reasonable and experienced burn lawyer will meet with you for free for an initial consultation.**

Since there is no out-of-pocket cost and no obligation to hire the lawyer or proceed with legal action and because you will learn so much valuable information, it is in your best interest to consult with a lawyer as soon as possible.

APPENDIX I: DEALING WITH INSURANCE COMPANIES

Insurance companies will end up playing a role at some point in the recovery journey of almost every burn survivor. And, while they may not necessarily be actively antagonistic, it is important to understand that insurance companies have a primary self-interest in limiting, as much as they possibly can, how much they are required to pay out.

In most legal cases that involve severe burn injuries there ends up being multiple types of insurance coverage to consider. The rules and responsibilities for each are different, so let's break it down by coverage type.

Liability Insurance

Liability insurance protects businesses and individuals ("insureds") from fault-based legal claims brought by injured people. In other words, if a burn survivor was harmed by the fault of an insured business or individual, the claim against them would be defended and paid by the insurance carrier for the wrongdoer.

Consider the following example:

A man staying temporarily at a rental home returns there at the end of the day and decides to smoke a cigar on the home's second-floor deck. A moment or two after striking the match, a gas explosion ignites the man's clothing and catapults him off

the deck. He suffers third-degree burns over 50% of his body and is transported by plane to the closest burn unit which is over 400 miles away.

The origin and cause investigation revealed that the exploding gas was no longer odorized due to a well-recognized phenomenon known as “odor fade,” a chemical or physical process that causes the level of odorant in the gas to be reduced or eliminated. Accepted practices within the gas industry must be followed to prevent odor fade which the at-fault gas company did not do. Since the burn survivor could not smell the gas (since it was no longer odorized) before lighting the match, there was no fault on his part.

The at-fault gas company was insured for this claim, and it was the company’s liability insurer that paid for the multi-million-dollar settlement based on the fault of the gas company. In that regard, the liability insurance for the gas company is just like the liability insurance you are required to have on your car: it pays for any injuries, up to the insurance limit, caused by your fault while driving your car.

Liability insurers, their adjusters, investigators, and lawyers are interested in only one thing: reducing or eliminating the obligation to make payments to the burn survivor. They do this by trying to marshal facts to prove that their insured was not at fault; that if they were at fault, more of the fault was on some other party; that the fault of their insured did not cause the fire/explosion/electrocution hazard; that there was substantial fault on the part of the burn survivor; that the value of the burn survivor’s injuries is far less than claimed, etc. If possible, the

insurer will also claim there is no insurance coverage at all; that a policy exclusion in the insurance contract precludes any coverage, no matter how much fault is attributed to the insured wrongdoer.

In short, the interests of liability insurers and their representatives are contrary to the interests of the burn survivor.

“You should never, ever speak with any representative of the insurance company providing coverage for the wrongdoers in your case. There are no exceptions to this rule. And it applies to anyone employed by or working on behalf of the insurance company or the insured party including insurance adjusters, investigators, attorneys, photographers, etc.”

A near universal tactic used by liability insurers is to interview burn survivors before a lawyer is involved and try to develop information that establishes fault on the burn survivor and/or minimizes the fault of the wrongdoer. Burn survivors, who would have no experience with the legal and technical issues involved in burn litigation, can be led into making statements that will be used against them as the case progresses.

In the above example, the gas company insurer would have loved to question the burn survivor while he was still in the burn unit and on high doses of narcotic pain medication. Questions would have been asked without the presence of a lawyer for the burn survivor and any responses helpful to the insurer’s case would have been recorded.

Because of the harm resulting from this unfair advantage, you should be aware of the following:

- You are **not required** to speak with representatives of the wrongdoer or its liability insurance company **and should never do so**. Anything you say (or fail to say) will be at your peril.
- Even if you think what you have to say helps your case, **don't do it**.
- If the liability insurance adjuster says she only wants to clear up "a few points" and needs your help to do so, **don't do it**.
- If you're confused about which party's liability insurer is contacting you (yours or the wrongdoer), **don't speak with them**.
- If you are contacted by liability insurance personnel, you should absolutely speak with a competent burn injury lawyer **before** you even think about whether it is in your best interest to be questioned...and since it never is, **don't do it!**

Health Insurance

The cost of care for burn survivors is extremely high – often over \$1,000,000. This is for direct patient care and does not include any compensation for pain, suffering, emotional distress, disfigurement, lost wages, loss of earning capacity, or loss of enjoyment of life.

Health insurance comes from many sources: employers, individual policies, insurance exchanges, etc. Policies vary in coverage limits, deductibles, coverage periods, losses covered, and a host of other variables.

In addition to the terms and limitations in your insurance contract, health insurance benefits are also affected by state and federal laws, especially those laws concerning repayment of burn-related treatment costs when your case is settled or goes to trial.

Because of these variables, it is impossible to provide specific advice without examining the health insurance policy in question and the laws of the state applicable to a particular loss. There are, however, some general rules and situations that you need to consider.

1. Health insurers are not liability insurers. You should not ignore, put off, or postpone dealing with the health insurer. Every health insurance policy has requirements with which you must comply including when a bill must be submitted and what documentation must be provided.
2. You need to keep copies of everything you receive from and send to the health insurer.
3. You need to cooperate with the health insurer (unlike the liability carrier).
4. You need to carefully review, keep copies of and understand EOBs (explanation of benefits letters) received from the insurer which, as the name implies, explain which benefits were paid, declined, or reduced.
5. Despite the anger and frustration this process often entails, you should do your best not to lose your temper.
6. Keep in mind that for most competent burn injury lawyers, assisting their clients with health insurance claims is part of the service provided. There is no separate fee for this. It's part of the contingent fee. Take advantage of it!

Subrogation

Most health insurance policies contain something called “subrogation provisions”. In practice, this means that when a health insurer pays medical bills due to an incident caused by the fault of a third-party (i.e., the wrongdoer whose fault caused the burn injury), the health insurer has a right under its policy to collect all or a portion of the money it paid out for medical bills from the burn survivor’s settlement or trial verdict.

For example:

A female burn survivor seriously injured in a residential explosion was hospitalized in a burn unit for almost a month and required outpatient care for two years thereafter. Her medical expenses paid by her health insurer exceeded \$1,500,000.

The explosion occurred less than 24 hours after a service call based on a report of a strong gas odor. The gas company employee who responded to the call failed to conduct a routine inspection and failed to detect an obvious gas line leak and gas build-up that ignited when the woman entered her home. She eventually recovered an eight-figure settlement from the gas company and its insurers. The health insurer claimed it was entitled to recover all its payments out of the settlement amount because of the subrogation provision in the health insurance policy even though the carrier did nothing to help secure the settlement and even though reimbursement meant that the burn survivor was not fully compensated for her losses.

Enforcement of subrogation provisions depend on many factors including the policy's terms and conditions, the law (statutes and court decisions) of the state interpreting the subrogation claim, whether the insurance policy is subject to a particular federal law such as the Employee Retirement Income Security Act of 1974 (ERISA), the extent to which the health insurer is willing to negotiate and reduce its claim, etc.

This means that there are no "one size fits all" solutions. How much, if any, reimbursement the health insurer is entitled to receive varies from state-to-state and case-to-case and absolutely depends on the skill and experience of the burn attorney negotiating with the health insurer. It also means that depending on which state's law applies and whether the policy is subject to ERISA, the amount of reimbursement can and will vary from zero to full reimbursement, dollar-for-dollar.

In practice, the subrogation claim is rarely paid in full. In the example noted above, the health insurer ended up accepting less than a third of its original subrogation claim.

Keep in mind that a competent burn injury lawyer must obtain the largest possible verdict or settlement and be willing and able to defend the amount recovered from any creditor claims, including health insurance subrogation interests.

Workers Compensation Insurance

As discussed in the first chapter of this book, burn survivors injured while working within the course and scope of their employment are entitled to workers compensation benefits.

These benefits typically include the cost of care, partial payment of lost wages, and compensation for permanent disability, among other benefits. These benefits are payable even if the fault for the burn injuries rests on the injured worker, on co-workers, or on the employer.

Workers compensation benefits typically do not include compensation for pain, suffering, emotional distress, loss of enjoyment of life and other benefits allowed in a non-work-related personal injury claim.

In other words, workers compensation systems – which are created by state law and vary widely from state to state – represent a no-fault compromise: in exchange for payment of workers compensation benefits regardless of fault, the injured worker is required to forgo certain benefits that would be available to them in a fault-based civil tort (lawsuit) action.

Third Party Claims

As mentioned earlier in this book, the exception to this rule involves so-called “third party claims” – an on-the-job injury caused by the fault of someone other than the burn survivor, co-worker, or employer.

Another example:

Several workers employed by a manufacturing company sustained severe electrical burns. The origin and cause investigation revealed that the stray voltage that caused their injuries came from a defective part in the machine they were operating. Even though the burn survivors were injured

during the course and scope of their employment and did receive workers compensation benefits, they were also allowed to make a claim against the third-party manufacturer whose defective product led to their electrical burns. In that third-party claim, the workers received compensation not otherwise available under the workers compensation statute.

Because it varies significantly depending on the law of the state in which the incident occurred, the interplay between workers compensation and third-party claims is complicated and beyond the scope of this article. It is important to note, however, that insurers providing workers compensation benefits are almost always entitled to recoup a portion of the benefits paid to an injured worker from proceeds received in a companion third-party claim. In other words, in the example mentioned above, one of the badly burned workers received a high seven-figure settlement from the defective product manufacturer and its insurer after already receiving workers compensation benefits totaling approximately \$1,200,000.

The workers compensation insurance carrier had a subrogation right, as part of state law, against the third-party settlement proceeds for a portion of the benefits paid to the injured worker. However, the amount it received was a small fraction of the \$1,200,000 it initially paid. The variables involved in the negotiation with the workers compensation carrier also vary by state and by policy and are too numerous and complicated to discuss in this article. In the end it will be up to the skill and experience of the burn injury lawyer to negotiate down the claim to the lowest possible level.

Because of the complexities involving third-party and workers compensation claims, it often makes sense for the burn injury survivor who was injured during the scope of their employment to have both a workers compensation lawyer and a separate burn injury lawyer.

Medicare

Burn survivors entitled to Medicare include people who are 65 or older, younger people with disabilities, and people with End Stage Renal Disease, among others.

If Medicare makes a payment for burn-related treatment, federal law imposes responsibilities on the person whose treatment they are covering, including: notifying Medicare and its contractors if there is a potential claim involving workers compensation, a first-party claim (e.g., no-fault automobile insurance), or a third-party claim against an at-fault party. This would be the case if legal action is being taken and an experienced burn injury attorney would be able assist in meeting this requirement.

The reason for this notification requirement is based on the fact that Medicare is a “secondary payor;” it steps in to make a payment even though the primary payors (which might be no-fault insurers, workers compensation, or a third-party insurer) are ultimately responsible for the medical bills incurred by the burn survivor. In these cases, Medicare will step in to make “conditional payments” when the primary payor is not likely to reimburse in a timely manner.

For example, if a third-party wrongdoer was at fault and that fault caused an explosion that burned a Medicare recipient, Medicare steps in to make a payment for medical bills even though months or years later, the third-party agrees to settle the case or the case goes to trial and there is a verdict in favor of the burn survivor.

In exchange for making these conditional payments, Medicare is entitled to reimbursement for a portion of those payments from an eventual third-party liability settlement, court judgment, or other recovery.

Medicare is required to share in costs associated with obtaining any third-party recovery including a pro-rata share of attorney fees and costs. In other words, Medicare rarely if ever receives 100% reimbursement from the third-party recovery.

In addition to the notice requirement noted above, there are other Medicare requirements with which the burn survivor and their attorney must comply including:

- Medicare's claim must be paid *first* before settlement proceeds are distributed
- Medicare must be paid within sixty days of receipt of proceeds from the third-party
- Medicare must be notified if a settlement has been negotiated or a verdict has been obtained
- Medicare must be given enough time to update the expenses it paid on behalf of the burn survivor

This is just a brief summary of what can be a fairly complicated process. Failure to comply with these and other requirements may

result in interest penalties or even criminal liability. This is yet another reason why it is important to consult with a competent and experienced burn injury attorney.

Other Insurance

There are other types of insurance or benefit programs that may make payments on behalf of burn survivors and for which reimbursement may be required.

For example, if a burn survivor had no health insurance and a state Medicaid program (which is not the same as Medicare) paid for treatment, it is highly likely that the Medicaid payor would be entitled to reimbursement from the settlement proceeds.

Some burn survivors may also be entitled to short or long-term disability benefits. Such policies may also contain subrogation/reimbursement obligations that have to be considered and dealt with as part of the settlement negotiation process.

The important thing to remember is that each burn case is as unique as the burn survivor who endured it. The variety of issues, including insurance matters, is incredibly wide and very important. Early consultation with an experienced attorney can help you understand the risks, benefits and requirements that come from dealing with insurance companies and their representatives.

APPENDIX II: THE EMOTIONAL IMPACT OF THE LEGAL PROCESS

Surviving a severe burn injury is an incredibly difficult emotional experience.

In general, as well as specifically for the legal process, it is important to realize that many of these emotional challenges are the result of alterations in brain chemistry and function. For example, many burn survivors experience post-traumatic stress disorder (PTSD). These symptoms are the result of neurobiological changes in the brain every bit as real as the effects of severe burns on the skin.

PTSD is characterized by specific symptoms, including intrusive thoughts, hyperarousal, flashbacks, nightmares, and sleep disturbances, changes in memory and concentration, and startle responses. Symptoms of PTSD are hypothesized to represent the behavioral manifestation of stress-induced changes in brain structure and function. Stress results in acute and chronic changes in neurochemical systems and specific brain regions, which result in long term changes in brain “circuits,” involved in the stress response. Brain regions that are felt to play an important role in PTSD include hippocampus, amygdala, and medial prefrontal cortex. Cortisol and norepinephrine are two neurochemical systems that are critical in the stress response.

J.D. Bremner, MD. “Traumatic stress: effects on the brain,” *Dialogues Clin Neurosci.* 2006 Dec; 8(4): 445–461.,

It is the role of a competent burn attorney to understand the physiological changes in the brain that precipitate neurological conditions, feelings, and symptoms that may persist long after burns are treated and burn therapy has ended.

An excellent [factsheet addressing elements of psychological distress after burn injury](#) which identifies the emotional recovery challenges experienced by burn survivors is published by the Model Systems Knowledge Translation Center based on data from the **Burn Model System** sponsored by the National Institute of Disability, Independent Living, and Rehabilitation Research, U.S. Department of Health and Human Service.

That checklist identifies emotional challenges experienced by many burn survivors including:

- Feeling...
 - Sad, anxious or irritable
 - Helpless
 - Hopeless
 - Upset about depending on other people for assistance
 - Distant from family, friends or the general public
 - Alone
 - As if the injury was happening again or reliving it
 - A physical reaction (e.g. heart pounding, trouble breathing, or sweating) when something reminds you of the injury
 - Jumpy or easily startled
 - “Super alert” or watchful and on guard
- Difficulty falling asleep due to thoughts like:

- “I worry about bad things that might happen”
- “I keep thinking about the way I was injured”
- Difficulty finding enjoyment in things that used to give pleasure
- Difficulty staying asleep
- Avoiding situations that remind you of the accident
- Avoiding thinking or talking about the injury and how it occurred

The checklist also outlines some of the psychological distress burn survivors often experience, including:

- Thinking about the event itself – both in sustaining the injury and/or witnessing others who were also seriously injured or died
- Worries about the future
- Concerns about finances and the impact the injury has had on family members
- Changes in appearance because of scars and contractures
- Physical discomfort
- Pain while the wound is still healing (especially during the repeated dressing changes) and pain that continues for months afterward as nerves are healing
- Itching
- Difficulty adhering to range of motion and Physical Therapy exercises
- Limitations in physical abilities
- Loss of independence
- Difficulty in returning to work or school
- Loss of property, residence, pets, etc.
- Interruption of daily life activities and roles
- Challenges with sexual interests and intimacy

Understanding and documenting the psychological distress experienced by you is a critically important aspect of your case. The burn injury attorney you choose to represent you must be familiar with and able to discuss with you these feelings and causes of distress; make sure you are receiving proper care for them; and properly document your psychological distress as part of the settlement and litigation process.

Emotional Aspects of the Litigation Process

Burn injury survivors may also be concerned about the emotional aspects of the litigation process. They worry that it may be too time-consuming; that they will make mistakes that will jeopardize their case; that the lawyers will intimidate them; or that facts may come out that will embarrass them and their families.

These are common concerns, but rarely do they affect you or your case. Here's why:

1. Virtually all the time expended in getting your case ready for settlement or trial is by your lawyer and his/her staff, not by you. You will not be asked to pour through records, interview witnesses or do any other important tasks. That's why you hired a lawyer!
2. Some clients want to know about developments as they occur; some prefer not to know details at all. Your lawyer should discuss this with you and follow your direction. If not, you have the wrong lawyer.
3. If your case does not settle during pre-suit negotiations and litigation is required, you *may* have to attend a deposition. A deposition is nothing more than being questioned under

oath by lawyers representing the parties you sued. Generally speaking, the questions concern the facts about what happened that led to the cause of your injuries, the nature and extent of your injuries, questions about your background, etc. Any good burn injury attorney will spend ample time with you preparing you for your deposition. Besides, and most importantly, the truth is on your side. You just have to explain what happened. Your lawyers will help you understand the process, go over key issues and answer your questions and concerns. They will be with you throughout the entire process.

4. Most people worry about embarrassing or problematic things they've done in the past. They're concerned they might come out during the litigation process. Chances are they won't, but it's very important that you share truthfully any embarrassing or problematic issues with your lawyer before they're raised against you. Your lawyer is there to advise you and work on your behalf, they are not there to judge you. Understanding those issues and knowing what to do about them is what a good lawyer does.

If you have anxiety-producing concerns, don't hold them in; discuss them with your lawyer. An experienced burn attorney will understand your emotional concerns and will know how to address them. You've never gone through this before. Many people in your situation feel and have felt the same way. You have endured a life-changing event and your attorney's job is to help you through it. Honest communication with your lawyer is the key. Again, if you're not getting the support you need, discuss it with your lawyer. If the situation does not improve, find a new lawyer.

APPENDIX III: ADDITIONAL DETAILS AFFECTING COMPENSATION AMOUNTS

The information in chapter 2 (‘How Much Is My Case Worth?’) provides an excellent overview of this topic – The following is provided for those who are interested in more detail on how state laws, juries, and courts might affect the amount of money a burn survivor could collect.

How Will Compensation Be Determined?

When negligent actions or defective products lead to a burn injury or a wrongful death, one of the first questions asked by burn survivors and the families of those injured and killed is, “how will compensation be determined?” This is a very important question to be asked, as the answer will help determine how secure a future they might have.

It is important to start with this basic fact:

The only real, concrete, and objective way to establish case value is by taking the case to trial and getting a verdict in the burn survivor’s favor. In other words, **a case is worth what a jury says it is worth**. In reaching its verdict, the jury hears opening statements describing the evidence that will be presented; listens to testimony from witnesses called by the lawyers for each party (which can take days or even weeks);

hears closing arguments from the lawyers; and then receives instructions from the judge about the law the jury must apply in reaching its verdict. Then, and only then, the jury members retire to the jury room to consider the evidence and decide how much, if anything, to award the burn survivor as compensation for their losses.

Here is another basic fact:

Most cases never go to trial. As with most personal injury/wrongful death cases, up to 95% of burn injury cases are settled out of court.

Why are most cases settled out of court? Because the risk of an adverse verdict is too great (to both sides) and because, once the case goes to trial, both parties lose control of the outcome. In other words, there are no do-overs, second chances or repeats; you are stuck with whatever the jury decides. And even then, the amount the jury awards is not necessarily what the burn survivor ultimately receives. That depends on the results of any appeals, the amount of insurance coverage applicable to the loss (which the jury is not allowed to know or even consider in most states), post-trial motions to reduce an “excessive” jury award, the percentage of fault attributable to the burn survivor (which may reduce or eliminate the amount of compensation awarded by the jury) plus a host of other factors that vary from state to state.

And there is this:

Due to the uniqueness of each case, the composition of the jurors hearing the case, and many other factors, jury awards are highly variable. Put another way, **if you tried the same**

case 10 different times before 10 different juries, there would likely be 10 different results.

When you think about it, jury verdicts mirror the uncertainty associated with any of life's ambiguous situations. For example, if you have a serious medical condition like cancer or advanced heart disease, your physician can provide you with *general* statistics about survival curves and the efficacy of treatment options, but cannot give you precise, valid information about how those means and averages will play out in your *specific* situation, including how much time you have left or how you will respond to a particular treatment regimen.

So, How Do I Know What My Case is Worth?

Settlement negotiations often begin following submission of the settlement demand letter by the burn survivor's attorney to the insurance company and its lawyers. This demand letter sets forth in great detail the evidence in support of the settlement demand figure that is also communicated in the letter.

In some respects, it is like the opening statement that is given if the case goes to trial. Done well, it addresses all the issues in the case including fault and damages and provides the other side with the factual basis to support the dollar figure contained in the demand letter.

If most cases settle out of court and there is so much variability in jury verdicts, how does the burn survivor (or anyone, for that matter) have any idea what a particular burn case is worth?

To start, it is important to understand some of the basic ground rules in personal injury litigation.

The Verdict Form

If the case goes to trial, after receiving instructions from the judge, the jury will be given a verdict form containing several questions which the jury must answer. The answers given by the jury determine the amount of the verdict award. Questions concerning damages (compensation) often include the following (depending on the laws of the state in which the case is tried):

1. What sum of money will fairly compensate the plaintiff for damages resulting from the (date) of the initial burn injuries up to the date of this trial:
 - a) Medical expenses
\$ _____
 - b) Loss of earnings
\$ _____
 - d) Pain, disability, disfigurement, emotional distress
\$ _____

2. What sum of money will fairly compensate the plaintiff for damages reasonably certain to occur in the future for:
 - a) Medical expenses
\$ _____
 - b) Loss of earning capacity
\$ _____
 - c) Pain, disability, disfigurement, emotional distress
\$ _____

3. What sum of money will fairly and adequately compensate [spouse of burn survivor] for the loss of services and companionship which (he/she) would have received from the [burn survivor] in the usual course of their married life to the date of trial?

\$ _____

4. What sum of money will fairly and adequately compensate [spouse of burn survivor] for the loss of services and companionship which (he/she) is reasonably certain to lose in the future?

\$ _____

The **sum** of these damage/compensation amounts is what the burn survivor is *theoretically* entitled to receive (although, as discussed above, the amount the jury awards is not likely to be the same amount the burn survivor ultimately receives).

Trying to estimate the answers to these questions informs all settlement discussions on both sides. But this is like telling someone how basketball is played. They will know what *could* happen on the court but little about what *will* happen once two teams of players start the game.

Witnesses

And so it is for jury trials. You need the “players”, in this case the expert witnesses and the “lay” witnesses (ordinary people who give evidence based upon their personal knowledge) through whom

testimony is presented. They supply the facts the jury considers in filling out the verdict form.

For the burn survivor, lay witnesses may include:

- The burn injury survivor
- The spouse of the burn injury survivor
- Other family members and friends
- People who witnessed the incident
- Co-workers
- EMTs, police and fire personnel who treated the burn survivor at the scene of the incident
- Anyone else with knowledge about what the burn injury survivor went through and how it affects him/her

Expert witnesses are those permitted to testify at a trial because of special knowledge or proficiency in a particular field that is relevant to the case. In a burn case, experts called to testify on behalf of the burn injury survivor specific to determining damages may include:

- Burn clinic doctors who treated the burn survivor while in the burn unit and as an outpatient
- Other physicians who treated the burn survivor for specific medical problems (e.g., a pulmonary specialist who treated the burn survivor for smoke inhalation and lung damage)
- Psychologists who treated the burn survivor for depression, post-traumatic stress disorder (PTSD), anxiety and other neurobiological conditions resulting from trauma and treatment
- Acute and chronic pain specialists

- Vocational rehabilitation experts able to testify about loss of the burn survivor's earning capacity
- Life care planner who estimates the cost of future care. This includes both the type and cost of medical treatment as well as the cost of assistive devices, handicap accessibility modifications, special vehicles to accommodate wheelchairs, etc.

In other words, the testimony of the lay and expert witness provides the factual and emotional basis which the jury considers in arriving at the dollar figures plugged into the verdict form questionnaire.

It is important to note, however, that the wrongdoer also gets to call witnesses. The testimony of those witnesses is almost always at odds with testimony from the burn survivor's lay and expert witnesses. Thus, the jury must weigh the credibility of each witness and may reject their testimony altogether.

The Critical Role of Your Burn Doctor(s)

Of particular importance in a burn case is the testimony of the burn doctor who treated the patient during their long in-patient stay in the burn unit and who followed the patient and supervised their care as an outpatient.

The reason this testimony is vital is because burn injuries are unique. Most physicians and virtually all lay people (including jurors) have no experience with the science and consequence of burn injuries, especially severe ones. Thus, the burn doctor testifies both as a healer and educator and is often the most important witness in the case. As noted in the excellent medical journal article, "[Burn injury Primer](#)" in [Nature Reviews Disease Primers](#):

“Of great importance is that the injury affects not only the physical health, but also the mental health and quality of life of the patient. Accordingly, patients with burn injury cannot be considered recovered when the wounds have healed; instead, burn injury leads to long-term profound alterations that must be addressed to optimize quality of life. Burn care providers are, therefore, faced with a plethora of challenges including acute and critical care management, long-term care and rehabilitation.”

The authors of this article list multiple factors that burn injury doctors evaluate when treating burn injury patients. These same factors should directly inform the amount of money the jury is likely to award for each category of loss on the verdict form. Importantly, they also inform settlement discussions and provide the burn survivor’s lawyer with the factual basis for the settlement demand letter that will be sent to start the settlement process.

The factors that lawyers consider, and doctors treat, begin with an understanding of the **cause** of the burn injury. This is important because each separate cause results in a different set of tissue and organ destruction which, in turn, will directly impact the nature of treatment and likely outcome.

“Burn injuries are an under-appreciated trauma that can affect anyone, anytime and anywhere. The injuries can be caused by friction, cold, heat, radiation, chemical or electric sources, but the majority of burn injuries are caused by heat from hot liquids, solids or fire. Although all burn injuries involve tissue destruction due to energy transfer, different causes can be

associated with different physiological and pathophysiological responses.” (Burn injury Primer)

It is also imperative to identify the **severity** of the burns. The categories include four degrees of tissue damage:

“In addition to determining the cause of a burn injury it is imperative to classify the injury according to its severity — its depth and size. Although superficial and superficial partial-thickness burns usually heal without surgical intervention, more severe burns need careful management, which includes topical antimicrobial dressings and/or surgery.” (Burn injury Primer)

Another key factor is the **percentage of the total body surface area (TBSA)** involved and the severity of burns comprising the TBSA. In addition, consideration must be given to **burn-related damage other than skin**. For example, lung damage from smoke inhalation, physical trauma to other organs from an explosive blast or building collapse, as well as the body’s own **hypermetabolic response**.

“The uniqueness of a severe or major burn injury is anchored in the body responses to it. After the injury, an immediate systemic and local stress response is triggered that, unlike sepsis or trauma, does not recover quickly. Severe burns cause a complex pattern of responses that can last up to several years after the initial insult. In general, immediately after the insult, an inflammatory response is triggered to promote the healing process. However, in severe burns, this inflammatory process can be extensive and become uncontrolled, leading to an augmented inflammation that does not induce healing but

rather causes a generalized catabolic state and delayed healing. This response is almost unique to burns and is referred to as the hypermetabolic response; it is associated with catabolism, increased incidence of organ failure, infections and even death.” (Burn injury Primer)

The list of other factors that need to be considered for treatment purposes and, ultimately, for settlement discussions is extensive. They include:

- Age and sex of the burn patient
- Location of injury on the patient’s body
- Mechanism of injury
- Initial injury course and healing
- Existence and severity of the burn patient’s hypermetabolic state
- Immune dysregulation and infection
- Existence and severity of other injuries, potentially including lung damage, brain damage, eye damage and systemic organ damage:

“Additionally, burn injury affects all organs to some degree, owing to the systemic response to the burn. Possible effects include brain atrophy, pulmonary damage leading to pneumonia and/or acute respiratory distress syndrome (ARDS), acute renal failure, liver failure, hepatic fatty infiltration, gut atrophy, lipolysis and fat catabolism, cardiac dysfunction, and thymus and immune dysfunction and depletion. These effects lead to immunocompromise, loss of bone mineral density, hormone depletion and dysfunction, and thyroid dysfunction, all of which are common in the

complex picture of burn-associated hypermetabolism. In an autopsy study, for example, multiple organ failure was a primary cause of >70% of all burn-related deaths.” (Burn injury Primer)

- Type of treatment required (e.g., autologous split-thickness skin grafts vs. biological skin substitutes)
- Existence and degree of scarring
- Presence of injury and treatment-related complications
- Need for and progress made during rehabilitation including physical and occupational therapy
- Presence and severity of burn-related post-traumatic stress disorder, adjustment disorders, depression, and anxiety
- Whether and to what extent the burn survivor is able to return to work or school
- Long-term effects of secondary conditions and how they may require additional care and lead to further post-treatment hospital admissions
- Amount of medical bills incurred for burn-related treatment through the date of settlement or trial
- Cost and nature of medical treatment reasonably likely to be required in the future
- Lost wages from the date of the incident through the date of settlement or trial
- Loss of earning capacity reasonably likely to occur in the future
- Pain, suffering, emotional distress, and disfigurement experienced by the burn injury survivor from the date of the incident through the date of settlement or trial

- Pain, suffering, emotional distress, and disfigurement that the burn injury survivor is reasonably likely to experience in the future

Most of the above factors are based on objective evidence observed or treated by health care professionals. These factors are extremely important, but they do not consider the perspective of the burn injury survivor: how does he or she perceive the effects of the burn injuries on quality of life?

Health-Related Quality of Life Measures

It is important to realize that healing does not equal recovery. Health-related quality of life (HRQOL), according to the [Primer](#) authors...

*“Is a multidimensional concept that reflects an individual’s **perception** of how a condition affects health-related domains for physical, psychological, emotional and social wellbeing that considers quality of life in relation to other health-related components (personal and environmental factors). HRQOL is an increasingly studied outcome after burn injuries, in both the short and long term.” (Emphasis added)*

HRQOL is assessed and measured by responses to written assessments (of which there are several) administered to burn survivors at various intervals following injury. The result is the burn survivor’s perception of his or her own physical and mental health over time.

“Due to substantial improvements in burn treatment, an increasing number of patients survive burns. This increases the importance of documenting outcomes of burns on both the short- and long-term as a significant number of patients face

physical and/or psychological consequences, such as post-traumatic stress symptoms, depression, and limited physical functioning. Moreover, disabilities and disfigurement are frequently accompanied with burn injury....HRQOL measurement is increasingly used in both clinical practice and burn research to qualify the impact of burns. It may help to tailor aftercare to the patient's need.” (Health related quality of life in adults after burn injuries: A systematic review)

“The historical belief that once burn wounds have healed, the patient is recovered is no longer valid. Indeed, the last phase of burn care — rehabilitation — is becoming one of the most important. Burn survivors have a substantially greater mortality than their matched non-injured counterparts, with the greatest risk of death during the first year after the injury (declining each year thereafter). This increased mortality is related to trauma and mental illness, clearly indicating that survivors of burn injury have considerable care needs that are not being met. Indeed, burn survivors also have a decreased quality of life and struggle for a long time to adjust to their new life. At this time, it is not fully understood how we will diagnose, treat and prevent these long-term morbidities and, therefore, long-term studies to gain better insights are urgently needed.” (Burn injury Primer)

The importance of this evidence cannot be overstated and goes directly to the issue of “suffering,” one of the key damage components on the verdict form. The decrease in quality of life represents a wholistic assessment of the often-terrible life-long effects of burn injuries.

What is the “Typical” Value of a Burn Injury Case?

As you can see, there is tremendous complexity in assessing compensation in a burn injury case. Moreover, the effects of burn

injuries vary greatly from case to case. It is only through rigorous analysis, a key understanding of the medical and scientific literature, selection of and communication with expert witnesses, and, above all, trusted communication between the burn injury survivor and their attorney that allows for the best possible outcome in a burn case.

So, what is your case worth? It is impossible to tell unless and until all these factors are assessed and enough time passes to understand potential effects that are simply unknown at the beginning of the case. Any lawyer who attempts to put a specific dollar value on your case before that information is known is one to be avoided.

That said, it is safe to say that on average and depending on many factors, a strong case that involves severe burn injuries often settles in the seven to eight figure range and, in exceptional cases, in the low nine-figures. It is also safe to say that most injury lawyers who claim to have experience in burn cases rarely, if ever, handle cases that are as big or as complex as burn injury cases turn out to be. Make sure you cover this as part of your evaluation when hiring an attorney. The value of your case depends on it.

Where Will the Settlement Money Go?

Let's shift focus and talk about distribution of the money once a settlement is reached or a final verdict amount is obtained. In other words, what is the final sum available to the burn survivor?

For purposes of discussion, we'll assume a severe burn case settled for \$10 Million. Of that amount, the first "takeaway" is for attorney fees – typically this is one-third of the settlement amount, although in some cases it can be up to forty percent.

The next takeaway is for costs incurred by the lawyer in prosecuting the case. Those costs include charges by expert witnesses, the cost of travel for depositions and other trips necessitated by the case, the cost of acquiring medical and other important records, photos and videos of the scene and of the injuries suffered by the burn survivor, etc. The amount of these costs usually ranges from \$100,000 to \$500,000 and depends on the complexity of the case and the timing of its resolution (costs tend to be lower if the case is settled prior to going to trial). For our purposes, let's assume costs in the amount of \$250,000 (which is 2.5% of the total settlement).

Are there other takeaways? There *may* be depending on the law of the state that controls the case. For example, the law in some states requires repayment of all or a portion of the medical bills previously paid by the health insurer. On the other hand, some states prohibit health insurance companies from recouping any sums paid out for healthcare. And, as we've discussed elsewhere, the rules are different for health insurers subject to the federal ERISA law (ERISA covers most employer-sponsored health insurance plans), state workers compensation laws and pursuant to government-paid health benefits including Medicare and Medicaid.

Again, it is important to note that these potential reimbursements for health insurance are usually subject to negotiation. In other words, the amount claimed is usually a lot more than the sum actually repaid. So, for purposes of our example, let's assume the amount claimed was \$400,000 and the amount actually paid back was \$100,000.

Plugging in these numbers, here is the burn survivor's net recovery:

\$10,000,000	
- <u>\$3,333,333</u>	Attorney's Fees
= \$6,666,666	
- <u>\$250,000</u>	Case Prosecution Costs
= \$6,416,666	
- <u>\$100,000</u>	Insurance Reimbursements
= \$6,316,666	Net Amount to Survivor

In other words, the burn survivor netted slightly more than 63% of the total settlement. Is this enough to justify bringing a claim in the first place? By most measures it is – a net sum of over \$6M, invested wisely, will provide for virtually all expenses a burn survivor will ever incur over the course of his or her lifetime.

How Are Settlement Funds Paid?

The final issues in this section concern the timing of the settlement payout and the way the settlement funds are paid.

Regarding the timing (and the large sum involved) of the settlement, it will usually take a few months for the funds to become available. During this time, the lawyers will be negotiating the terms of the settlement release document and the risk insurers will be dragging their heels in order to gain interest for as long as possible. Sometimes, court approval of the settlement is also required which also delays things. And, as noted above, there are often protracted settlement discussions with the health insurers

and other lien holders (especially if the state or federal government is involved) that may slow things down as well.

How the net settlement payments are made (i.e., cash, via structured settlement where money is paid out over time like an annuity, or some combination of the two, or a different way altogether) is usually up to the burn survivor.

A few important considerations are worth noting:

1. It is the job of your lawyer to obtain the maximum recovery allowed by law and then defend that sum from any claims against it. It is not the lawyer's job to advise you what you should do to invest the settlement proceeds. Most importantly, **your lawyer should never, ever invest your share of the proceeds and/or derive any financial benefit because of any such investment.**

For example, in the hypothetical case discussed above in which the burn survivor netted \$6,316,666, no portion of that sum should ever be invested in any scheme or plan that generates revenue of any kind to the lawyer. That includes direct investment in a company or investment created or sold by the attorney or any other form of investment.

2. Before signing any settlement release document, you are entitled to and should be provided by your attorney with a settlement statement. Done correctly, this document should specify (to the penny!) each "takeaway" that reduces the gross settlement down to the burn survivor's net recovery including every cost item incurred by the attorney in prosecuting the case. If you have questions or concerns

about any item on the list, you are entitled to see all documentation supporting that line item.

3. It is beyond the scope of this article to discuss the tax consequences associated with settlement proceeds. However, and as a general rule (for which there are exceptions), settlement proceeds are not taxed by state or federal authorities.

That said, income derived from investing the settlement proceeds is ordinarily taxable (with some key exceptions). For example, and again using the above hypothetical and subject to exceptions, the burn survivor would pay no taxes on the lump sum settlement. But if the money was invested and earned an annual return of 4% ($.04 \times 6,316,666 = \$252,666.64$), that sum would be taxable.

4. Given the large sums of money involved, tax consequences and investment strategies, most burn survivors don't have the experience or training necessary to make investment decisions on their own. For that reason, it is essential to **obtain independent advice from financial professionals** before signing any release documents or taking control of settlement proceeds.

“Independent” advice is critical. It should not come from your lawyer, a relative, friend or anyone else who stands to profit from your settlement proceeds. This includes stockbrokers and “financial planners” (paid on commissions), insurance agents, annuity brokers, or anyone else with a real or potential conflict of interest.

5. Many people who recover money from a settlement choose (with proper advice) to use all or part of the settlement proceeds to purchase a **structured settlement** (a form of annuity). Again, it is beyond the scope of this document to discuss detailed issues about this or any other investment vehicle

That said and generally speaking, there are tax benefits conferred by the U.S. tax code on structured settlement proceeds. In addition, there is reliability and stability associated with structured settlement proceeds much the same as investing in government bonds or other high quality investment instruments.

As with any investment, there are also downsides associated with structured settlements. These pros and cons are yet another reason why it is important to seek out truly independent advisors.

And finally, there is this: the decision to invest in a structured settlement must be made before the settlement proceeds are distributed and the release is signed. If not, the tax advantage conferred by the tax code will be lost.

Wrongful death and survivorship claims

Severe burns are terribly devastating injuries and people who are severely burned sometimes die from those injuries. In such cases, state statutes define what is allowed to be claimed as a loss and what family members are allowed to recover and there is great variance between and among those statutes. Thus, it is impossible to provide

detailed analysis of the effects of a state's law in any given case without knowing which state's laws will be affecting the outcome.

Generally speaking, there are **two types of statutes**:

- **Wrongful Death Actions:** A statutory right (written into state law) that allows specific groups (called “classes”) of people to sue for their own damages resulting from a wrongful death. These classes of people can often include spouses and children and sometimes other surviving relatives. Usually, but not always, the statute is written to include any surviving spouse and next of kin (often as designated in a will if, it exists, or by the probate laws of the state).
- **Estate Actions** (often confusingly called “**survival statutes**” referring to the “survival” of the right of the estate to sue and not to a surviving relative): This is the right of the deceased person's estate to sue for damages as if the person was still alive. The damages claimed are often typically similar, though not identical, to what would be claimed if the person had survived.

In some states both types of statutes exist separately and in others both types of statutes are combined into an overarching “Wrongful Death Statute”.

A few states also have a separate “**loss of accumulations to an estate**” statute that allows survivors of the person who died (statutes refer to the person who died as the “decendent”) to sue for the likely decline in what would have been the future value of the estate had the death not happened.

It is important to note that state laws may also define what types of “pecuniary” and what, if any, “non-pecuniary” damages may be considered. **Pecuniary** damages are damages that can be directly measured in money. Medical bill or lost wages are examples of pecuniary damages. **Non-pecuniary** damages cannot be directly measured in money. Pain and suffering, permanent impairment, disfigurement and “loss of society and companionship” (depriving a family member the benefits of the love, care, and protection that comes from a relationship – “loss of consortium” is similar) are all examples of non-pecuniary damages.

Wrongful Death Examples from Minnesota and Wisconsin

By way of example, Minnesota allows for a wrongful death action, but there is no statutory claim for a survival action.

Minnesota’s wrongful death statute reads, in-part, as follows:

573.02 ACTION FOR DEATH BY WRONGFUL ACT; SURVIVAL OF ACTIONS.

Subdivision 1. Death action.

“When death is caused by the wrongful act or omission of any person or corporation, the trustee appointed as provided in subdivision 3 may maintain an action therefor if the decedent might have maintained an action, had the decedent lived, for an injury caused by the wrongful act or omission. An action to recover damages for a death caused by the alleged professional negligence of a physician, surgeon, dentist, hospital or sanitarium, or an employee of a physician,

surgeon, dentist, hospital or sanitarium shall be commenced within three years of the date of death, but in no event shall be commenced beyond the time set forth in section 541.076. An action to recover damages for a death caused by an intentional act constituting murder may be commenced at any time after the death of the decedent. Any other action under this section may be commenced within three years after the date of death provided that the action must be commenced within six years after the act or omission. **The recovery in the action is the amount the jury deems fair and just in reference to the pecuniary loss resulting from the death, and shall be for the exclusive benefit of the surviving spouse and next of kin, proportionate to the pecuniary loss severally suffered by the death. The court then determines the proportionate pecuniary loss of the persons entitled to the recovery and orders distribution accordingly.** Funeral expenses and any demand for the support of the decedent allowed by the court having jurisdiction of the action, are first deducted and paid. Punitive damages may be awarded as provided in section 549.20.

If an action for the injury was commenced by the decedent and not finally determined while living, it may be continued by the trustee for recovery of damages for the exclusive benefit of the surviving spouse and next of kin, proportionate to the pecuniary loss severally suffered by the death. The court on motion shall make an order allowing the

continuance and directing pleadings to be made and issues framed as in actions begun under this section.”

(Emphasis added)

In practical terms, this means that a trustee is appointed to bring the claim on behalf of the decedent’s heirs. Each of those heirs is entitled to receive any pecuniary (monetary) losses they suffered because of the burn victim’s death. In assessing those pecuniary losses, the jury is instructed as follows:

“When you consider damages for claimant (s), determine an amount of money that will fairly and adequately compensate (claimant)(s) for the losses (he) (she) (they) suffered as the result of this death. You should consider what (name of deceased) would have provided to the (claimant)(s) if (he) (she) (they) had lived.

Factors to consider:

1. (His) (Her) contributions in the past
2. (His) (Her) life expectancy at the time of (his) (her) death
3. (His) (Her) health, age habits, talents, and success
4. (His) (Her) occupation
5. (His) (Her) past earnings
6. (His) (Her) likely future earning capacity and prospects of bettering (himself) (herself) had (he) (she) lived

7. (His) (Her) personal living expenses (cost of supporting the child)
8. (His) (Her) legal obligation to support the (surviving spouse) (next of kin) and the likelihood that (he)
9. All reasonable expenses incurred for a funeral and burial (etc.), and all reasonable expenses for support due to (his) (her) last sickness, including necessary medical and hospital expenses incurred after and as a result of the injuries causing death
10. [The probability of (name of decedent)'s paying the debt owned by _____ to _____]
11. The counsel, guidance, and aid (he) (she) would have given (claimant) (s)
12. [The advice, comfort, assistance, and protection that (name of decedent) would have given if (he) (she) had lived.]

Lost time together:

Decide the length of time those related might be expected to survive together. You should compare the life expectancy of (name of decedent) with the life expectancy of each claimant. Take into account only the amount of time the two being compared would be expected to survive together. Base your money damages for each claimant on the

shorter life expectancy of the two being compared.

Items to exclude

Do not include amounts for:

1. [Punishing the defendant]
2. [Grief or emotional distress of the surviving spouse and the next of kin],
or
3. [For the pain and suffering of _____
before (his)(her) death].

Factors to exclude

Do not be influenced by the fact that:

1. [The (surviving spouse) (next of kin) (may have received) (may get) money or other property from (name)'s estate],
or
2. [The (surviving spouse) (next of kin) (may collect) (has collected) insurance of workers' compensation benefits because of (name)'s death],
or
3. [The surviving spouse has remarried],
or
4. [The minor children have been emancipated], or
5. [There is no legal obligation to support the next of kin]

You (the jury) must determine the total amount of money that will fairly and adequately compensate the (claimant)(s) for damages suffered as the result of death.

[I (the judge) will divide the damages among the claimants]

It is important to note there is no right of recovery for any pain and suffering sustained by the victim prior to his/her death.

It is also important to note that statutes represent political tradeoffs. While pain and suffering damage claims for the decedent in Minnesota are not counted after their death, the compensation allowed to the survivors for *their* claims is quite expansive.

Compare the Minnesota approach with that of its neighbor, Wisconsin.

Wisconsin's statute limits and prioritizes claimants and caps losses for "loss of society and companionship" which significantly reduces the amount of recoverable wrongful death damages compared to Minnesota.

895.04 Plaintiff in wrongful death action.

(1) An action for wrongful death may be brought by the personal representative of the deceased person or by the person to whom the amount recovered belongs.

(2) If the deceased leaves surviving a spouse or domestic partner under ch.770 and minor children under 18 years of age with whose

support the deceased was legally charged, the court before whom the action is pending, or if no action is pending, any court of record, in recognition of the duty and responsibility of a parent to support minor children, shall determine the amount, if any, to be set aside for the protection of such children after considering the age of such children, the amount involved, the capacity and integrity of the surviving spouse or surviving domestic partner, and any other facts or information it may have or receive, and such amount may be impressed by creation of an appropriate lien in favor of such children or otherwise protected as circumstances may warrant, but such amount shall not be in excess of 50% of the net amount received after deduction of costs of collection. If there are no such surviving minor children, the amount recovered shall belong and be paid to the spouse or domestic partner of the deceased; if no spouse or domestic partner survives, to the deceased's lineal heirs as determined by s. 852.01; if no lineal heirs survive, to the deceased's brothers and sisters. If any such relative dies before judgment in the action, the relative next in order shall be entitled to recover for the wrongful death. A surviving nonresident alien spouse or a nonresident alien domestic partner under ch. 770 and minor children shall be entitled to the benefits of this section. In cases subject to s. 102.29 this subsection shall apply only to the surviving spouse's or surviving domestic partner's interest in the amount recovered. If the amount allocated to

any child under this subsection is less than \$10,000, s. 807.10 may be applied. Every settlement in wrongful death cases in which the deceased leaves minor children under 18 years of age shall be void unless approved by a court of record authorized to act hereunder.

(3) If separate actions are brought for the same wrongful death, they shall be consolidated on motion of any party. Unless such consolidation is so effected that a single judgment may be entered protecting all defendants and so that satisfaction of such judgment shall extinguish all liability for the wrongful death, no action shall be permitted to proceed except that of the personal representative.

(4) Judgment for damages for pecuniary injury from wrongful death may be awarded to any person entitled to bring a wrongful death action. Additional damages not to exceed \$500,000 per occurrence in the case of a deceased minor, or \$350,000 per occurrence in the case of a deceased adult, for loss of society and companionship may be awarded to the spouse, children or parents of the deceased, or to the siblings of the deceased, if the siblings were minors at the time of the death.

(5) If the personal representative brings the action, the personal representative may also recover the reasonable cost of medical expenses, funeral expenses, including the reasonable cost of a cemetery lot, grave marker

and care of the lot. If a relative brings the action, the relative may recover such medical expenses, funeral expenses, including the cost of a cemetery lot, grave marker and care of the lot, on behalf of himself or herself or of any person who has paid or assumed liability for such expenses.

(6) Where the wrongful death of a person creates a cause of action in favor of the decedent's estate and also a cause of action in favor of a spouse, domestic partner under ch. 770, or relatives as provided in this section, such spouse, domestic partner, or relatives may waive and satisfy the estate's cause of action in connection with or as part of a settlement and discharge of the cause of action of the spouse, domestic partner, or relatives.

(7) Damages found by a jury in excess of the maximum amount specified in sub. (4) shall be reduced by the court to such maximum. The aggregate of the damages covered by subs. (4) and (5) shall be diminished under s. 895.045 if the deceased or person entitled to recover is found negligent.

However, and unlike Minnesota, Wisconsin allows for survival actions. Their survival statute reads in pertinent part as follows:

895.03 Recovery for death by wrongful act. Whenever the death of a person shall be caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled

the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured; provided, that such action shall be brought for a death caused in this state.

Taken together, the Wisconsin wrongful death and survival statutes allow for the recovery of pecuniary losses (which are capped for loss of society and companionship) but also allow for the recovery of the decedent's conscious pain and suffering that occurred prior to death. In the case of severe burns, that represents a significant loss, especially if the death occurred weeks, months or even years following the date of the incident.

As we have noted, recoveries for personal injury, wrongful death and survival actions vary greatly from state to state. It is not the purpose of this article to highlight interstate variances; it is just to recognize that every state's law is different and to understand how those difference may impact wrongful death recoveries.

Experienced burn injury lawyers are aware of these differences and should be prepared to discuss their implications throughout the course of their representation.

ABOUT THE AUTHORS

The award-winning Pritzker Hageman national burn, fire, electrocution, and explosion legal team is led by attorneys Fred Pritzker and Eric Hageman. They help survivors and their families throughout the United States get compensation and justice. Fred and Eric know that it's not just about money. It's about restoring dignity, holding wrongdoers accountable, and forcing changes so that what happened to their clients doesn't happen to someone else.



Fred Pritzker is the founding attorney and president of Pritzker Hageman, P.A. Fred has over 40 years of experience representing burn survivors and their families in some of the biggest, most complicated cases in the United States. Fred is committed to supporting the entire burn survivor community and is an active member of the American Burn Association and a proud partner and sponsor of the Phoenix Society.



Eric Hageman is a trial lawyer at the Pritzker Hageman, P.A. law firm. He brings over 25 years of experience trying and winning difficult cases for people who have been injured – or for the families of people wrongfully killed – due to the careless or reckless actions of wrongdoers and rule-breakers. Eric is passionate about his work handling catastrophic injury and wrongful death cases throughout the country. His recoveries for clients include a \$45 million settlement for a person who was severely burned.

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