PAGE 1
It's time for doctors to fight the insurance companies

PAGE 2
Stop frivolous (business) lawsuits

Visit Virginia-car-accidents.com

Disability claims—
Getting it right from the start

PAGE 3
When is health insurance not insurance at all?

Bank your own blood

PAGE 4
Update on Kevin Glass

Super Bowl lawsuit withdrawn after a storm of protest

This newsletter is published by the law offices of Benjamin W. Glass, III & Associates, P.C. It is for informational purposes only and no legal advice is intended. Each case is different and you are invited to discuss your legal question with Mr. Glass at no initial cost.

SUITE 22-B
3915 OLD LEE HIGHWAY
FAIRFAX, VA 22030

Tel: 703-591-9829
Fax: 703-783-0686
800-683-7427

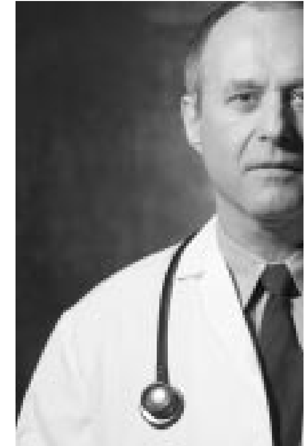
email: Ben@BenGlassLaw.com
www.BenGlassLaw.com
Visit our Web site for more information.

The Road to Justice Starts Here...

BenGlassLaw.com

Malpractice - Accidents - Insurance Disputes

It's time for doctors to fight the insurance companies



There is no evidence whatsoever in Virginia that the recent rise in medical malpractice insurance premiums is due to anything other than insurance-company greed.

I ran into one of my old high-school buddies over Christmas. We were both out shopping for our families. The conversation turned to our respective professions, and it turns out that both he and his wife are physicians in northern Virginia. When I told him that I did malpractice cases, he asked me, "Whose side are you on?" I told him that I was on the same side he was—we both "fight for patients." He was stunned for a moment, but then said, "No, that's the other side." Now it was my turn to be stunned that he would consider his patients to be "the other side." Hadn't he taken an oath to protect his patients?

We talked some more and I began to understand his fears. It seems that each year he has to work harder because health-insurance companies pay him less and less for his work, while his malpractice-insurance company charges him more and more. Like many doctors, he feels powerless to stand up to the health-insurance companies that pay him for office visits, and he is extremely frustrated at his malpractice rates. Even though he is a scientist, he has also accepted the rhetoric that it is patients and their lawyers who drive malpractice premiums.

What he did not know and what he had never investigated was that indeed there is no evidence whatsoever in Virginia that the recent rise in medical malpractice insurance premiums is due to anything other than insurance-company greed. Virginia has some of the most conservative "tort reform" laws in the country. Other states look to Virginia as a "poster child" for tort reform. What my doctor friend needs to do the next time his malpractice insurance premium is increased is to ask the insurance company to show him exactly what dollars had been paid out in Virginia for malpractice cases in the last five years. My doctor friend would probably be stunned to learn that indeed the number of malpractice claims in Virginia has stayed steady or declined, and the actual dollars spent paying for claims has not significantly increased at all in many years. Nothing justifies the quadrupling of premiums here in Virginia.

Perhaps this is why the insurance industry has promised that even if significant tort reform is enacted, this is no guarantee that premiums will go down. Instead, what we see today is another cycle of a "malpractice crisis" that is so closely tied to the cycle of the stock market that it is stunningly obvious that the biggest reason that insurance companies feel that malpractice premiums must increase is because they can no longer get the double-digit returns on premiums they invest.

On February 4, 2004, many Virginia doctors lobbied in the Virginia General Assembly on White Coat Day, and my doctor friend may have been with them. These doctors are right to be concerned, because they fear for the financial security of their own families. What is so surprising to me is that none of them appears willing to stand up to and question these extraordinary rate increases and force their own insurance companies to show them exactly where all of the "big frivolous claims in Virginia" are. They simply do not exist.

For better or worse, many years ago the doctors permitted the health-insurance companies to control their incomes. Now it's time for them to stand up to their malpractice carriers and tell them, "Enough, be honest with us."

Stop frivolous (business) lawsuits

In his State of the Union Address, President George Bush took his usual gratuitous cheap shot at lawyers who represent individuals against big business. We wonder whether he has ever really sat down to give any serious individual thought or investigation into the truth behind the Republican tort-reform agenda. If he did, he might be interested in knowing that businesses suing businesses account for 47 percent of all punitive-damage awards, in contrast to only 4.4 percent of punitive-damage awards due to product defects and medical malpractice. He might be surprised to learn that the federal courts just might be clogged because businesses suing each other comprise nearly half of all federal court case filings. If he wants to look for "frivolous cases" to talk about in his next speech, he might consider:

- **Kellogg Company's** lawsuit against Exxon Corporation, claiming that Exxon's "whimsical tiger" logo would confuse consumers who associate the tiger logo with the Frosted Flakes' mascot, "Tony the Tiger." When the court threw out Kellogg's patently frivolous case, it appealed the verdict to the 6th Circuit Court of Appeals. Kellogg argued that people might be confused between the two companies because the Exxon tiger, like Tony, "walks or runs on two hind legs in a friendly manner."
- **Pepsi Co.'s Frito-Lay Snacks division's** lawsuit against Procter & Gamble after Procter & Gamble said that its Pringles potato chips are "more nutritious than Frito-Lay's chips."
- **Hormel Food's** suit against Jim Henson Productions. Hormel manufactures spam, and when the creator of the "Muppets" wanted to call a character in a new movie "Spam," Hormel claimed that the character was unclean and grotesque, and would call into question the pure quality of its meats. A federal court and an appeals court threw out Hormel's claims.

Business-versus-business lawsuits typically pit some of the biggest law firms in the country against each other. These cases consume enormous judicial resources—sometimes I think President Bush wants to keep little people out of all courts so that the big companies can lawyer each other to death.

VISIT Virginia-Car-Accidents.com

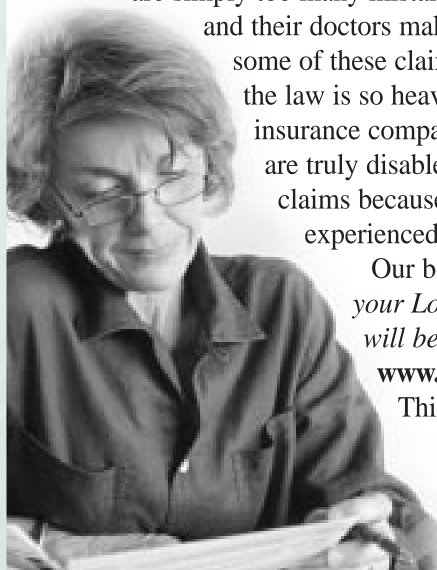
As many of you know, we have written several very informative consumer reports to help level the playing field between claimants and the insurance companies. Thousands of claimants have downloaded, read, and benefited from our article on accident cases. This article, *Five Deadly Sins that Can Wreck your Accident Case,* is now available for your quick and easy download at **www.Virginia-Car-Accidents.com**. As a special bonus, our Consumer Guide to Lawyer Advertising is also available at that site. Please visit the site today, and let us know what you think.

DISABILITY CLAIMS—

Getting it right from the start

We continue to be inundated with an ever-increasing number of claims for long-term disability insurance benefits. It certainly appears to us that the long-term disability insurance companies are haphazardly denying more and more legitimate claims. As one of the few law firms in the state that handles these cases (because most of them fall under an arcane federal law called ERISA), our office is constantly contacted by claimants who often have proceeded through portions of the cases by themselves. We feel that this is a big mistake.

It is our strongly held belief that anyone contemplating filing a long-term disability claim should consult with an experienced ERISA long-term disability attorney before stopping work. There are simply too many mistakes that we have seen claimants and their doctors make that have, unfortunately, made some of these claims simply not winnable. Because the law is so heavily tilted in favor of the insurance companies, we see many people who are truly disabled, but who cannot win their claims because mistakes were made before experienced attorneys got involved.



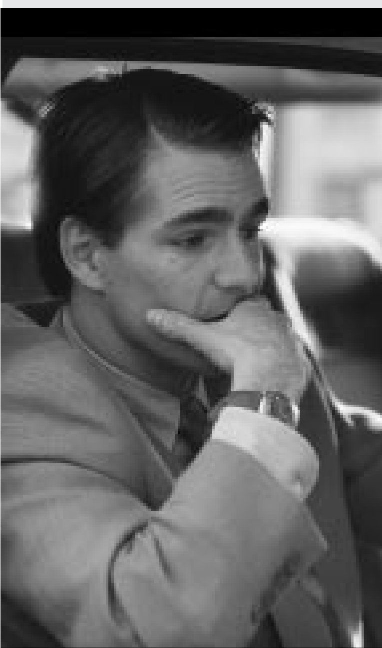
Our book, *14 Ways to Guarantee that your Long-Term Disability Claim will be Denied,* is now available at **www.long-term-disabilityattorney.com**. This book identifies the major errors that claimants and doctors make. Avoid the errors and improve your chances of recovery.

When is health insurance not insurance at all?

Usually, the health-benefit plan will pay the bills so that the health-care providers can be paid; yet, in most cases, that same "insurance company" will attempt to force you to repay everything they have paid if you are successful in your lawsuit.

Most people believe that the health insurance provided by their employers will cover them if they are injured in an automobile accident. The reality is that in most cases, if you are covered by your employer's health-benefit plan and you are injured in an accident, the medical bills you incur will not be covered. Usually, the health-benefit plan will pay the bills so that the health-care providers can be paid; yet, in most cases, that same "insurance company" will attempt to force you to repay everything they have paid if you are successful in your lawsuit.

We recently reviewed the health-benefit plan of a major bank in Virginia. Our client was very seriously injured in an automobile accident, and the plan paid over $50,000 of her medical expenses. The problem was that the person who caused the accident had only $50,000 in liability insurance coverage. Thus, the health-insurance plan's position was that it was entitled to all of the proceeds of the case, and the injured child was entitled to nothing!



What can you do about this?

We have preached time and time again that you should purchase underinsured motorist insurance in the minimum amount of $500,000. Most people should purchase at least $1 million of uninsured motorist coverage; you will be shocked to find how inexpensive this insurance is. This way, if you or a family member is seriously injured and the person who caused the accident has no insurance (this is legal in Virginia!), or very little insurance, then you will be protected even if you must repay the "insurance company" who paid the medical bills. If you do not know how much insurance you have, then pull out your automobile insurance and fax to us the cover page (the page that says what benefits you have). We will tell you the coverage that you have and make recommendations if necessary. Please do not allow your family to be financially devastated because you made a decision to not purchase enough uninsured motorist coverage.

Bank your own blood?

Because of concerns about hepatitis or HIV going undetectedin the blood supply, about five percent of patients opt to donate their own blood in advance of elective surgical procedures. This kind of blood donation is known as an "autologous" transfusion.

Patients usually review surgical needs with their physicians first. Then the doctors can write prescriptions asking hospitals or Red Cross donor sites to make "auto" transfusions to the hospitals' blood banks. Donations should be made about three weeks prior to surgery, with donation sites and hospitals charging a service fee of $70–$100 per pint of blood handled.

Medical authorities note that some patients may not be good "autologous" transfusion candidates. Those with histories of cardiac disease, high blood pressure, seizures, or obesity may not be eligible to contribute. Furthermore, risk of infection during donation, human error in mislabeling, and other problems may add a small, but real, risk to "autologous" transfusions.

Law Offices
Benjamin W. Glass, III & Associates, P.C.
Suite 22-B
3915 Old Lee Highway
Fairfax, VA 22030

BenGlassLaw.com

PRESORTED
STANDARD
U.S. POSTAGE PAID
MAILED FROM ZIP CODE 17604
PERMIT NO. 242

RETURN SERVICE REQUESTED

WANTED— Human Resources Directors

From time to time, we are contacted by the Human Resources Department of major corporations to assist their employees who are applying for long-term disability benefits. Sometimes they have given well-meaning—but bad—advice to claimants. Bad advice can be fatal to a claim. We would like to get our disability information into the hands of every business in Virginia. If you would like your employer to be able to put their hands on the most up-to-date information to better assist their employees with their long-term disability claims, please forward to us the contact information for the Human Resources Department of your employer. This will not be a fruitless effort, and we appreciate your assistance. You can e-mail this information to **Ben@BenGlassLaw.com**.

Leveling the Playing Field Between You and the Insurance Companies

Update on Kevin Glass

In our fall 2003 issue, we introduced you to Kevin Joseph-Hai Jun Glass. Ben and his wife Sandi adopted Kevin from China last August. Kevin was born with a cleft lip and palate.

Kevin Glass with his surgeon, Stephen Baker.

In October, Kevin was operated on by Dr. Stephen Baker, who is a craniofacial plastic surgeon at Fairfax Hospital. As you can see from this picture, Dr. Baker did a wonderful job on Kevin's birth defect. After about six weeks of recovery, Kevin was back to almost all normal activities, which included eating and wrestling with one of his big brothers. Now he is undergoing speech therapy so that all of those words that are waiting to tumble out of his mouth can become more understandable.

Thank you all for your prayers.

Super Bowl lawsuit withdrawn after a storm of protest

On February 3, 2004, Tennessee attorney Wayne Ritchie filed a class-action lawsuit "on behalf of all American citizens who watched the Super Bowl halftime show on February 1, 2004." The suit, filed against Viacom International, CBS, MTV, Janet Jackson, and Justin Timberlake, sought compensatory and punitive damages on behalf of everyone who was offended by the now [in]famous halftime show. The suit alleged that the plaintiff and millions of other Americans were "caused to suffer outrage, anger, embarrassment, and serious injury."

This is a frivolous lawsuit. I suspect that it was filed purely to generate millions of dollars of publicity for the lawyer's law firm. This type of lawsuit makes it more difficult for legitimate claims to be heard in court. You should know that many of my fellow trial lawyers have contacted Mr. Ritchie and told him what we think of his case. You may want to voice your opinion. His number is **865-637-0661.** His e-mail address is **war@rfdlaw.com**.

Many lawyers who represent real victims with real injuries were outraged at this lawsuit, and we let Mr. Ritchie know, in no uncertain terms, that his lawsuit was exactly the type of case that gives all of us a bad reputation. One week after it was filed, the lawsuit was withdrawn.

This publication is intended to educate the general public about personal injury, medical malpractice, insurance, and small business issues. It is not intended to be legal advice. Every case is different. The information in this newsletter may be freely copied and distributed as long as the newsletter is copied in its entirety.