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## DETERMINING CATASTROPHIC IMPAIRMENT FOR THE NEW SABS



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Courts and Arbitrators have helped us to understand how the definition of catastrophic impairment may apply to individuals who suffer very severe injuries in motor vehicle accidents. These same decisions have helped us to understand that clinical findings by treating and assessing health care professionals are integral to the process of evaluating whether a person has sustained a catastrophic impairment.

The goal of this paper is to provide health care professionals with further tools to assist them in conducting evaluations and providing detailed reports to assist in Catastrophic Impairment determination. This paper examines the definition of catastrophic impairment, legislative intent and provides a summary of all of the decisions concerning catastrophic impairment determination by the courts and by FSCO Arbitrators.

The paper analyzes key chapters in the **American Medical Association Guides to the Evaluation of Permanent Impairment, 4<sup>th</sup> Edition**<sup>1</sup>. For each Chapter, we identify key information and

assessments by treating and assessing health care professionals that can be used to assist in CAT Impairment designation. The paper analyses the Glasgow Coma Scale and the Glasgow Outcome Scale in light of clinicians' assessments. We then address the legal meaning of causation as it relates to accident benefit impairments.

### A. CATASTROPHIC IMPAIRMENT

"Catastrophic Impairment" has been with us since November 1, 1996. The post-September 1, 2010 definition of catastrophic impairment follows:

3(2) For the purposes of this Regulation, a catastrophic impairment caused by an accident is,

- a) paraplegia or quadriplegia;
- b) the amputation or other impairment causing the total and permanent loss of use of an arm or a leg;
- c) the total loss of vision in both eyes;
- d) subject to subsection (4), brain impairment that, in respect of an accident, results in,
  - (i) a score of 9 or less on the Glasgow Coma Scale as published in Jennett, B. and Teasdale, G., *Management of Head Injuries*, Contemporary Neurology Series, Volume 20, F.A. Davis Company, Philadelphia, 1981, according to a test administered within a reasonable period of time after the accident by a person trained for that purpose, or
  - (ii) a score of 2 (vegetative) or 3 (severe disability) on the Glasgow Outcome Scale,

<sup>1</sup>AMA Guides To The Evaluation Of Permanent Impairment , 4<sup>th</sup> Edition, ed. Doege, T.C. © 1995, American Medical Association

as published in Jennett, B. and Bond, M., *Assessment of Outcome After Severe Brain Damage*, Lancet i:480, 1975, according to a test administered more than six months after the accident by a person trained for that purpose;

- e) subject to subsections (4), (5) and (6), an impairment or combination of impairments that, in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4<sup>th</sup> edition, 1993, results in 55 per cent or more impairment of the whole person; or
- f) subject to subsections (4), (5) and (6), an impairment that, in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4<sup>th</sup> edition, 1993, results in a class 4 impairment (marked impairment) or class 5 impairment (extreme impairment) due to mental or behavioral disorder.

(3) Subsection (4) applies if an insured person is under the age of 16 years at the time of the accident and none of the Glasgow Coma Scale, the Glasgow Outcome Scale or the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4<sup>th</sup> edition, 1993, referred to in clause (2) (d),(e) or (f) can be applied by reason of the age of the insured person.

(4) For the purposes of clauses (2)(d),(e) and (f) an impairment sustained in an accident by an insured person described in subsection (3) that can reasonably be believed to be a catastrophic impairment shall be deemed to be the impairment that is most analogous to the impairment referred to in clause (2)(d), (e), or (f) after taking into consideration the developmental implications of the impairment.

(5) Clauses (2)(e) and (f) do not apply in respect of an insured person who sustains an impairment as a result of an accident that occurs after September 30, 2003 unless,

- a) in the case of an impairment that includes a brain impairment, a physician states in writing that the insured person's condition is unlikely to cease to be a catastrophic impairment;
- b) in the case of an impairment that is only a brain impairment, a neuropsychologist states in writing that the insured person's condition is unlikely to cease to be a catastrophic impairment; or
- c) two years have elapsed since the accident.

(6) For the purpose of clauses (2)(e) and (f) an impairment that is sustained by an insured person but is not listed in the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4<sup>th</sup> edition, 1993 shall be deemed to be the impairment that is listed in that document and that is most analogous to the impairment sustained by the insured person."

The new SABS coming into effect September 1, 2010 contains only one substantive change. A person suffering an amputation or complete and permanent loss of use of one arm or one leg will now be deemed catastrophically impaired.

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