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TRAUMATIC SERVICE GROUP LIFE INSURANCE: THE BASICS

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11.0—Veterans' claims

Traumatic Service Group Life Insurance (TSGLI) can be a complex subject but it is a very important topic to broach. Many members of the uniformed services have suffered and, unfortunately, will suffer physical injuries. These injuries are often severe and life threatening. Moreover, many service members will suffer injuries that will be with them throughout their life. TSGLI was designed to compensate those who have suffered such injuries and to provide financial support to the immediate family members of the injured service member who may need to travel long distances and take time off from work to care for their loved ones. Thus, TSGLI plays an important role in the lives of many service members and their families.

The purpose of this article is to distill TSGLI's complexities into a basic form in order to provide an overview of the most important aspects in filing a claim for benefits. In an effort to break down TSGLI into its essential parts, a straightforward Q & A process is utilized. In addition, at the end of the Q & A there are three fact patterns that take the reader through hypothetical facts and circumstances to help decipher real-world TSGLI injuries and how they may be compensated. I hope that these fact patterns and the discussion of the potential TSGLI recoveries will be a helpful guide for service members.

I urge each affected service member and his or her family to engage in due diligence and perform in-depth research relating to the individual claim(s). No two claims are alike, and with that being said, the material provided should not be construed as legal advice regarding any particular claim. In the interest of helping service members with their claims, I strongly encourage members to review, in detail, the TSGLI Procedures Guide located at <http://www.benefits.va.gov/INSURANCE/docs/TSGLIProceduresGuide.pdf>.

Q: What is TSGLI?

A: TSGLI stands for Traumatic Service Group Life Insurance which is a program created by the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror and Tsunami Relief 2005, Public Law 109-13, 119 Stat. 231, §1032. TSGLI is a rider to Servicemembers Group Life Insurance (SGLI) and is codified at 38 U.S.C. 1980A. Congress

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designed TSGLI to provide financial support for service members if they were injured as a result of a traumatic event, on or off duty, and suffered a scheduled loss. The financial support is paid in amounts ranging from \$25,000 to \$100,000 depending on the classification of the injury. 38 U.S.C. 1980A(d).

Q: What is the difference between TSGLI and SGLI?

A: SGLI is a life insurance policy and provides a death benefit to the beneficiary of a deceased service member. TSGLI is not a death benefit but instead a one-time lump sum payment to a service member for injury sustained due to a traumatic event. In addition, TSGLI cannot be converted to VGLI. 38 U.S.C. 1980A(i).

Q: Are members covered under TSGLI if they are insured under VGLI?

A: No, TSGLI coverage does not extend to service members with VGLI. In addition, TSGLI cannot be converted to VGLI. 38 U.S.C. 1980A(i).

Q: Does TSGLI extend to all service members 24 hours a day, 365 days a year?

A: TSGLI coverage extends to all members in the uniformed services that are covered under full-time or part-time SGLI. When covered under full-time SGLI a member is covered under TSGLI 24 hours per day, 365 days a year whether on duty or off duty. Full-time is defined as:

1. active duty, active duty for training under orders for 31 days or more or
2. if the member is a Ready Reservist who is assigned to a unit scheduled to drill at least 12 times during the year.

Under part-time SGLI a member will be covered under part-time TSGLI which means the member will be covered under TSGLI only during actual days of duty. Days of duty includes transport to scheduled duty and the return from scheduled duty. Part-time is defined as:

1. Ready Reservist under a call or order for less than 31 days
2. Ready Reservist not scheduled to drill at least 12 times during the year

It is important to note that TSGLI coverage extends to life outside of duty for active duty personnel. For example, if an Army Sergeant on active duty is riding his bike in Arlington, Virginia and is hit by a car, is injured, and suffers an injury that is a scheduled loss he or she will potentially recover TSGLI benefits. However, if a Reservist or National Guard member was hit and was not on orders he or she would not be covered under TSGLI. In that vein, if a Reservist or Guard member was on call or orders (say, for instance, battle assembly/drill) he or she would be covered under TSGLI.

In addition, for service members injured before TSGLI was enacted in 2005 and between October 7, 2001 and November 30, 2005 *SGLI coverage is not required to be eligible for TSGLI coverage*. Furthermore, the law used to require that members injured within that time range must have been injured during Operation IRAQI FREEDOM or Operation ENDURING FREEDOM but that is no longer a requirement. Veterans Benefits Act of 2010, Public Law 111-275, 124 Stat. 2864, §408(a)-(c). However, members must still comply with all other TSGLI eligibility requirements; e.g. a traumatic injury must be a direct result of a traumatic event and that injury is on a list of scheduled losses.

Q: How can I acquire coverage?

A: If a service member is insured through SGLI he/she is automatically covered by TSGLI.

Q: How much does it cost?

A: Generally, TSGLI is \$1 per month but it can differ depending on the personnel type. Active duty members and Reservists with full time SGLI coverage pay \$1 per month. Reservists with part time coverage pay \$1 per year. Personnel involved in funeral honors duty and one day muster duty receive coverage at no charge.

Q: What is TSGLI designed to compensate?

A: TSGLI is designed not only to compensate the service member for sustained physical loss but also to provide support for family members who may be visiting the injured loved one. Keep in mind that TSGLI benefits are granted to service members who may have trouble performing Activities of Daily Living (e.g. bathing, dressing, and eating) and family members are the best to help under these difficult circumstances. Often, a service member will be hospitalized overseas and the monetary support enhances a families' ability to visit and assist the injured loved one.

Q: Can I decline coverage?

A: Yes, but in order to decline TSGLI coverage a service member must also decline SGLI coverage. Generally, there are three ways in which TSGLI coverage ends: declining SGLI, release from service, death. A notable difference between TSGLI and SGLI is that upon release from service SGLI is in effect for 120 days whereas TSGLI ceases immediately.

Q: What are the basic eligibility requirements for TSGLI payments?

A: In order to be eligible for TSGLI payments a service member must meet a number of requirements which are the following (TSGLI Procedures Guide, version 2.24, February 26, 2014, p. 6):

- a. Must be insured through SGLI when the injury occurs.

- b. Must incur a Scheduled Loss that is a direct result of a traumatic injury.
- c. The traumatic injury must be incurred *before* midnight of the day that a service member separates from the military.
- d. The Scheduled Loss must occur within 730 days of the traumatic injury.
- e. The service member is required to survive the traumatic injury for a minimum of *seven days* from the date of the traumatic injury.
 - a. The seven day clock begins to run at the exact time in which the traumatic injury is suffered and is measured in accordance with Zulu time (Greenwich Mean Time) and ends 168 hours (7 days) after the traumatic injury.

In other words, a member covered under SGLI who experiences a **traumatic event** that directly results in a **traumatic injury** causing a **scheduled loss** defined under the program is eligible for TSGLI payment. 38 U.S.C. 1980A(c).

In addition to the above requirements, service members who were injured between October 8, 2001 and November 30, 2005 may receive TSGLI retroactively. However, those service members still must incur a scheduled loss as a direct result of a traumatic injury. Thus, those service members within that retroactive time range must comply with normal TSGLI eligibility requirements. But, those injuries need not have been incurred during Operations ENDURING FREEDOM or IRAQI FREEDOM. Veterans Benefits Act of 2010, Public Law 111-275, 124 Stat. 2864, §408(a)-(c).

Q: What is a “Traumatic Event”?

A: A traumatic event is the application of external force, violence, chemical, biological, or radiological weapons, accidental ingestion of a contaminated substance, or exposure to the elements that causes damage to the body. 38 C.F.R. 9.20(b).

It is important to note that the definition of a traumatic event contains an important sub-definition determining what “external force” means. External force is defined by the VA’s TSGLI Procedures Guide, p. 4:

“An external force is a force or power that causes an individual to meet involuntarily with an object, matter, or entity that causes the individual harm. There is a distinct difference between internal and external forces. “Internal forces” are forces acting between body parts, and “external forces” are forces acting between the body and the environment, including contact forces and gravitational forces as well as other environmental forces.”

Thus, in order to prove that a service member suffered a valid traumatic event for purposes of TSGLI that service member must illustrate that he or she was exposed to an external force that

caused the injury. This is often an area within the TSGLI application process that the respective military service branch will focus on to determine the claim's validity or lack thereof.

Q: What is a "Traumatic Injury"?

A: A traumatic injury is defined in 38 C.F.R. 9.20(c) and is physical damage to a living body that is caused by a traumatic event as defined in 38 C.F.R. 9.20(b) – please see above Q & A. Thus, if a service member suffers from the application of external forces that causes him or her to meet involuntarily with an object, matter, or entity and such a meeting causes harm the service member has suffered a traumatic injury for purposes of TSGLI. In other words, you must suffer a traumatic event in order to suffer a traumatic injury. However, pursuant to 38 C.F.R. 9.20(c)(i)-(ii) the meaning of traumatic injury excludes damage caused by the following:

- a. Mental disorder
- b. A mental or physical illness or disease, except if the physical illness or disease is caused by a pyogenic infection, biological, chemical, or radiological weapons, or accidental ingestion of a contaminated substance.

Thus, if the service member suffers physical damage caused by a mental disorder he or she will not be covered by TSGLI. In addition, should a service member suffer physical damage due to a mental or physical illness or disease he or she will not be covered by TSGLI *unless* that mental or physical illness or disease is caused by exposure to external contaminants. So, if a service member deploys to an area that results in exposure to radiation levels that cause a physical illness or disease he or she will be covered by TSGLI. However, if the service member suffers from latent bipolar disorder he or she will not be covered. In addition, the TSGLI Procedures Guide extends the exclusion list to a number of other categories such as self-inflicted wounds, attempted suicide and injuries caused by vaccinations. For a complete list see TSGLI Procedures Guide, p. 6.

Q: What is a "Scheduled Loss"?

A: "Scheduled Losses" are codified in 38 U.S.C. 1980A(b) and implemented in 38 C.F.R. 9.20 (e) and (f) which lists each and every scheduled loss. The term "scheduled loss" means a condition listed if that condition was directly caused by a traumatic injury. 38 C.F.R. 9.20 (e)(1).

Examples include: 1) Sensory Losses 2) Burns 3) Paralysis 4) Amputation 5) Limb Salvage 6) Facial Reconstruction 7) Activities of Daily Living 8) Inpatient Hospitalization 9) Genitourinary Losses.

Each “Scheduled Loss” entails its own requirements that the member must properly state in the application and match with the medical evidence. I encourage applicants to refer to the TSGLI Procedures Guide to file a claim properly and with the required detail.

Q: What are “Activities of Daily Living” payments?

A: Activities of Daily Living are a type of scheduled loss. 38 U.S.C. 1980A(b)(H)(2)(D). They are defined in the TSGLI Procedures Guide as routine self-care activities that a person normally performs every day without needing assistance. The six basic ADLs are: 1) eating 2) bathing 3) dressing 4) toileting 5) transferring in and out of a bed or chair 6) continence of the bladder and bowel. More in depth descriptions are available in the TSGLI Procedures Guide, p. 43.

A member must require assistance with performing at least two of the six ADLs and without assistance they cannot perform the task. “Requires Assistance” includes physical assistance (when a patient requires hands-on assistance), stand-by assistance (patient needs a person within arms reach), verbal assistance (due to cognitive impairment patient needs verbal instruction).

There is a general pay scale for members that suffer ADL loss involving TBI and those that do not involve TBI. For ADL losses involving TBI, \$25,000 is paid out for 15 days, an additional \$25,000 at 30 days, an additional \$25,000 at 60 days, and an additional \$25,000 at 90 days. When there is ADL loss due to an injury that is not TBI related the pay scale does not include payment at 15 days, rather \$25,000 is paid out at 30, 60, 90, and 120 days of ADL loss. Days are counted consecutively.

Q: What are “Hospitalization” payments?

A: Hospitalization is a type of scheduled loss. If a service member reaches 15 days of inpatient care due to a traumatic injury he or she is eligible for \$25,000. The 15 days begins on the date the traumatic injury occurs and includes travel days to a hospital, transfers among hospitals, and the day of discharge. Thus, if a Marine is injured in Afghanistan and must be airlifted to a hospital in Germany the time for travel is included in the 15 days.

Hospitalization payments take the place of the first Activities of Daily Living milestone. For example, if a service member is unable to perform ADLs due to a TBI that member will need to prove that he or she was unable to perform ADLs for 15 days in order to acquire \$25,000 from TSGLI. However, if that member proves he or she qualifies for Hospitalization payments the first ADL milestone for ADL loss due to TBI (15 days) is replaced with a one-time payment for hospitalization in the amount of \$25,000. So, the hospitalization payment takes the place of the first ADL payment. Importantly, if a member suffered a *non-TBI injury*, they will need to prove 30 days of ADL loss to be eligible for \$25,000. Thus, if that member proves

hospitalization for 15 days the ADL loss due to non-TBI injury (30 days) is replaced with a one-time payment for hospitalization in an amount of \$25,000.

Q: Will my spouse and children receive coverage?

A: No, TSGLI coverage does not extend to spouses or children.

Q: My injury occurred prior to TSGLI becoming law, can I still receive compensation?

A: Yes, as long as you qualified for all TSGLI eligibility requirements (traumatic injury, traumatic event, scheduled loss etc.) between October 7, 2001 and November 30, 2005. Keep in mind that during that time period a service member need not have SGLI coverage to be eligible for TSGLI.

Q: Do I have to file individual claims for each injury?

A: In some instances a member will have to file multiple claims. For example, with a scheduled loss involving a coma or traumatic brain injury TSGLI benefits are paid out in increments ("milestones") of consecutive days in which the member cannot manage ADLs: 15th, 30th, 60th, 90th day. When a member reaches *each* milestone he or she may need to file a separate claim.

In addition, TSGLI calculates injuries based upon 7 day intervals. The subsequent question and answer will explain in more detail. But, to answer succinctly: if a member suffered an injury on April 1 and May 1 stemming from the same traumatic event the member must file a new claim for each new and separate injury even if that new and separate injury stemmed from the same event. The issue of when to file a separate claim can be complex and I suggest those with more questions consult the TSGLI Procedures Guide, Part 4 "Schedule of Losses."

Q: How are multiple injuries calculated?

A: TSGLI calculates the monetary award based on injuries suffered within 7 days periods. The clock begins on the first day the traumatic event occurs and runs for 7 days. Those injuries suffered from a single traumatic event that qualify for TSGLI *within* the 7 days are treated as a single injury and the TSGLI benefit will be the highest paying scheduled loss among those injuries with a cap at \$100,000 – the maximum payable by TSGLI. Those injuries suffered *outside* of the 7 days may be considered new and may be recoverable irrespective of monetary award for injuries within the 7 day period. Thus, if a service member suffers multiple injuries due to a single traumatic event within a 7 day period that service members' recovery is capped at \$100,000. If a service member suffers losses amounting to \$100,000 within the 7 day period but also suffers qualifying injuries at day 10 and 11 from a *separate and new* traumatic event that service member will not be limited in recovering for the new injuries even though he or she already recovered the maximum \$100,000. 38 C.F.R. 9.20(e)(2).

Service members must keep in mind that qualifying losses (injuries) are directly attached to individual traumatic events. If a service member is in a traumatic event and suffers a scheduled loss on February 1, 2014 in the amount of \$75,000 and also suffers a scheduled loss on March 1, 2014 in the amount of \$75,000 as a direct result of that *same* traumatic event, the two injuries (February 1 and March 1) are combined and will max out at \$100,000. 38 U.S.C. 1980A(a)(2). However, in that same situation, if the second injury was a result of a *separate and new* traumatic event the service member would not be capped at \$100,000 total recoverable but instead would receive \$75,000 for both injuries. 38 C.F.R. 9.20(e)(5). (Note: That service member's traumatic events were more than 7 days apart as well which means he or she would not be capped at \$100,000.)

Likewise, multiple traumatic events that occur within a 7 day period are also considered a single traumatic event and the member's TSGLI benefit will be for the highest paying scheduled loss up to a maximum of \$100,000.

Q: Is there a specific rule on what injuries can or cannot be combined?

A: Yes, TSGLI has a quirky rule regarding what injuries can be combined and those that cannot. 38 C.F.R. 9.20(f) as well as TSGLI Procedures Guide, p. 12-13, contain the rules. Generally, the Schedule of Losses is separated by "Part 1" and "Part 2." Those injuries in Part 1 cannot be combined with Part 2 and vice versa. Therefore, if a member suffers an injury in Part 1 and Part 2, he or she will *not* be able to combine the monetary awards for each but instead will receive TSGLI benefits for the injury that has the highest monetary award.

For example, if a member is in an IED blast and suffers permanent hearing loss and also cannot perform two of six ADLs for 60 days, that member cannot combine both losses for a larger monetary amount because hearing loss is in Part 1 and ADLs loss is in Part 2. Thus, the member will instead receive the monetary amount that is the highest between them - \$50,000 for ADL loss, which is contained in Part 2.

There is another caveat contained in the TSGLI Procedures Guide, p. 21. If there is ADL loss due to TBI *and* there is another injury involved (such as an amputation) those losses *can* be combined. Thus, the existence of the TBI alters the TSGLI calculation but, importantly, the loss of ADL must be attributed to the TBI and *not* the amputation in order to receive a combined award.

Q: What are my rights after denial of the TSGLI application?

A: Service members are allowed 3 appeals to the appropriate military branch TSGLI Office, with the first appeal technically called "reconsideration." If the third appeal is denied, the service member may proceed to sue the military branch in federal court.

Q: I suffer from Post-Traumatic Stress. Is that covered?

A: No, PTSD is not currently covered by TSGLI.

Q: Will my TSGLI payment be taxable by the U.S. Government?

A: No, TSGLI payments are tax-free.

Q: Will TSGLI payments interfere with my current pay and SGLI coverage?

A: No, payment of TSGLI does not interfere with the potential amount of SGLI payout. If a service member receives \$100,000 in TSGLI payments and that member later dies, his or her \$400,000 SGLI coverage is not reduced.

Q: Can I file an application on my own?

A: Yes. Be sure to include the relevant medical records and correctly apply the TSGLI Procedures Guide to your injuries in a step by step process.

Your service branch has a TSGLI office that will determine your eligibility. If, after review, the office deems you eligible it will request an insurance payment on your behalf from Prudential (the insurer) for TSGLI payment.

Q: Who is the legal beneficiary of TSGLI coverage?

A: The service member is the beneficiary and cannot name anyone else. However, if the service member dies before payment the TSGLI payment will be made to the beneficiary or beneficiaries of that member's SGLI coverage. 38 U.S.C. 1980A(g).

Examples

FACTS:

A Major in the U.S. Army is deployed to Iraq in 2009 and while traveling within the country he is subject to an IED explosion. The blast knocks him unconscious for a few minutes. He is medically evacuated due to severe facial injuries, bodily injuries and TBI. On day 2, the Major undergoes surgery to save the function of his right foot and remove shrapnel from his face. He is formally diagnosed with a Traumatic Brain Injury as well. On day 5 in the hospital it becomes apparent to his doctors that the foot is not healing properly, is infected, and runs the risk of spreading infection to the rest of his bodily potentially causing death. The Major and doctors conclude that they must amputate his right foot, at the ankle. On day 6 the amputation procedure is performed, is successful and the infection does not spread, he is hospitalized for a total of 15 days and after discharge requires physical help with dressing and bathing for 45

days. Regardless of the amputation the Major would have been hospitalized for 15 days due to TBI. He has SGLI.

Potential TSGLI Application:

a. Is he covered by TSGLI?

The Major is deployed on active duty and participates in SGLI; therefore, he is covered by TSGLI.

b. Has he suffered a Traumatic Event?

A traumatic event is the application of external force, violence, chemical, biological, or radiological weapons, accidental ingestion of a contaminated substance, or exposure to the elements that causes damage to the body. 38 C.F.R. 9.20(b).

The Major was in an IED explosion. That is the application of external force. In addition, he suffered damages to his body. Therefore, he was involved in a Traumatic Event.

c. Has he suffered a traumatic injury?

A traumatic injury is physical damage to a living body that is caused by a traumatic event as defined in 38 C.F.R. 9.20(b).

The Major has suffered severe damage to his face, brain and right hand as a result of a traumatic event (IED blast). He has suffered a Traumatic Injury due to a Traumatic Event.

d. Scheduled Loss?

38 C.F.R. 9.20 (e) and (f) lists each and every scheduled loss. The term “scheduled loss” means a condition listed if that condition was directly caused by a traumatic injury. 38 C.F.R. 9.20 (e)(1).

He has suffered a traumatic injury and the injury – amputation of the foot at the ankle – is a scheduled loss. 38 C.F.R. 9.20(e)(6)(xx) and 9.20 (f). Amputation is a Scheduled Loss payable in the amount of \$50,000. 38 C.F.R. 9.20(f).

e. ADL loss?

Remember, ADL loss is a type of scheduled loss. Here, the Major required amputation but also suffered from a TBI. The question is whether the TBI or the amputation caused ADL loss which resulted in him needing assistance to bathe and dress for 75 days. With that being said, he has satisfied the requirement for loss of at least 2 ADLs. Assistance can be physical, stand-by or verbal. Physical assistance means that the person assisting must be physically in the same space as the injured service member providing physical help. Stand-by assistance means that

the patient must be within arms distance to provide help. And verbal assistance means that a patient requires verbal instruction to complete ADLs due to cognitive impairment.

Based on the facts, the Major requires physical help in dressing and bathing and he needed that help for 45 days. The benefits schedule states that loss of ADLs in conjunction with TBI is \$25,000 at 15, 30, 60 and 90 consecutive days of loss. Because the Major reached 45 consecutive days of ADL loss, he will hit the 30 day mark for \$50,000. But, TSGLI has a rule contained in 38 C.F.R. 9.20(f) that in effect precludes amputation damages from being combined with ADL loss damages. Instead, the law requires that the higher monetary award for a specific injury take precedence. However, there is another rule which states that if the member incurs ADL loss *due to TBI* and another injury the TSGLI recovery will be the ADL loss (\$50,000) and the other injury (amputation, \$50,000). Thus, if the Major properly proffers evidence that the TBI was the main factor in ADL loss he will have a chance at acquiring \$100,000. If he fails carrying his burden of proof, he will receive the highest paying scheduled loss which in this case is one payment of \$50,000 since both scheduled losses are the same amount.

f. In patient hospitalization?

Let's work through this step by step.

The Major was hospitalized for 15 days which normally results in a \$25,000 payment. However, the rules are analyzed a bit differently when TBI is involved. Due to the TBI, the 15 day hospitalization period replaces the first ADL milestone (the first 15 days of ADL loss equal to \$25,000). When hospitalization and ADL loss compete with each other the rule is whichever happens first. Here, the hospitalization occurs first and because it was for 15 days the Major may receive \$25,000. Therefore, under a technical interpretation of TSGLI rules half of the potential \$50,000 ADL payment discussed above is erased and half is replaced with a \$25,000 in patient hospitalization payment (still \$50,000 total).

There is also a slight rule shift when hospitalization is not primarily due to TBI. In other words, if the Major's hospitalization is primarily due to the amputation rather than TBI he will not receive hospitalization payment. 38 C.F.R. 9.20(f) prevents hospitalization payments in conjunction with amputation payments just as it precludes combining ADL loss payments with amputation payments. Thus, the Major must prove that hospitalization is due to TBI. Absent that, he will not recover hospitalization payments. If he does properly prove it, due to the fact the rule with ADL loss and hospitalization is *whichever happens first*, the Major will receive \$25,000 for 15 days of hospitalization. As stated in the preceding paragraph, this \$25,000 will take the place of the first ADL milestone.

Assuming the Major proffers proof that the TBI is the main driver he will most likely receive an award for \$100,000 which includes \$50,000 for amputation, \$25,000 for ADL loss and \$25,000 for hospitalization.

FACTS:

A U.S. Marine Corps Reserve Staff Sergeant is participating in his unit's pre-deployment training in 2004. He does not have SGLI. During this particular exercise he is on the enemy force. His position in a makeshift building is over-run and the opposing force orders him on his back. He obliges. Two members of the opposing force jump on his back aggressively digging their knees into him. He screams in pain but they don't stop. They continue for 45 seconds and pin him to the ground until they clear the rest of the building. The Staff Sergeant gets up and a shooting pain travels from his mid-back down his legs and he realizes that he cannot stand – he falls to the ground due to the pain. The opposing force yells and screams and drags him from the building to a grassy area 20 yards away. Later that day, he is sent to the medical unit and eventually receives an MRI which shows that he suffered a severe spinal disc herniation. Surgery is performed to repair the disc but also fuse a portion of the lumbar spine. The surgery is successful and his legs regain full use. He is hospitalized for 13 days and requires physical assistance for bathing, dressing, and transfer for 50 consecutive days and standby assistance for the same ADLs for 50 consecutive days.

Potential TSGLI Application:

a. Is he covered by TSGLI?

The Staff Sergeant is currently on duty but does not have SGLI. Generally, that would preclude him from recovering under TSGLI. However, for members injured between October 7, 2001 and November 30, 2005 *SGLI coverage is not required to be eligible for TSGLI coverage*. In addition, members injured within that time range do not have to be injured during Operation IRAQI FREEDOM or Operation ENDURING FREEDOM. Veterans Benefits Act of 2010, Public Law 111-275, 124 Stat. 2864, §408(a)-(c). Accordingly, the Staff Sergeant can apply for TSGLI.

b. Has he suffered a Traumatic Event?

A traumatic event is the application of external force, violence, chemical, biological, or radiological weapons, accidental ingestion of a contaminated substance, or exposure to the elements that causes damage to the body. 38 C.F.R. 9.20(b). Clearly, a pair of knees aggressively digging into his back is the application of external force and resultant severe disc herniation is damage to the body; he was exposed to a traumatic event.

c. Has he suffered a traumatic injury?

A traumatic injury is physical damage to a living body that is caused by a traumatic event as defined in 38 C.F.R. 9.20(b). The Staff Sergeant has suffered clear injury due to a traumatic event; a herniated disc requiring surgery and spinal fusion.

d. Scheduled Loss?

38 C.F.R. 9.20 (e) and (f) lists each and every scheduled loss. The term “scheduled loss” means a condition listed if that condition was directly caused by a traumatic injury. 38 C.F.R. 9.20 (e)(1).

The Staff Sergeant has most likely suffered a scheduled loss but not due to the pain interfering with his ability to utilize his legs. The facts seem to indicate that he suffered near-paralysis prior to surgery but the operation was successful and he is no longer struggling to use his legs. Therefore, he has not suffered a scheduled loss for paralysis. However, he may be eligible for a different type of Scheduled Loss – ADL loss and/or in patient hospitalization.

e. ADL loss?

The facts state that the Staff Sergeant needed ADL assistance, physical and standby, for 100 days. As long as physical, standby or verbal assistance is needed he will be eligible. Due to the fact his injuries are not TBI related the benefits schedule is \$25,000 at the 30th, 60th, 90th, 120th day of consecutive ADL loss. He required 100 consecutive days (50 for physical, 50 for standby assistance) therefore he will most likely qualify for \$75,000.

f. In patient hospitalization?

Here, the facts state that the Staff Sergeant was hospitalized for 13 days, less than the required 15 for TSGLI payments. Therefore, he does not qualify for this payment.

FACTS:

In 2010, a Captain in the U.S. Army Reserve is riding her motorbike early Saturday morning to battle assembly and is hit by a speeding car. She has SGLI. She suffered a broken left leg and broken left arm. She is hospitalized for only one day. Three days later, on Tuesday, she is travelling in a vehicle that is violently t-boned and breaks her right arm. She is hospitalized but suffers complications with the new injury and is ultimately hospitalized for 15 days. With one broken leg, and two broken arms, she cannot bathe, eat, transport or continence without physical assistance for 90 days.

Potential TSGLI Application:

a. Is she covered by TSGLI?

The Captain is in the Army Reserve, has SGLI and is traveling to her drill weekend. She is covered by TSGLI because she has SGLI but, most importantly, she is covered because she is on her way to drill therefore she is on duty.

b. Has she suffered a Traumatic Event?

A traumatic event is the application of external force, violence, chemical, biological, or radiological weapons, accidental ingestion of a contaminated substance, or exposure to the elements that causes damage to the body. 38 C.F.R. 9.20(b). It appears she has suffered two traumatic events, one on Saturday and one on Tuesday. These traumatic events are within 7 days of each other; however, they are separate and new events. If multiple traumatic events occur *within* 7 days of each other they are considered a single traumatic event. Here, however, there is a question as to whether or not the traumatic event on Tuesday is covered by TSGLI because she was not on duty at that time. Thus, her only calculable traumatic event will be the one that occurred Saturday. If she was active duty or on orders during the Tuesday accident, those two events would be considered one for purposes of TSGLI which means the injuries sustained within that 7 day period will be capped at \$100,000 even if those injuries as separate injuries would exceed \$100,000.

c. Has she suffered a traumatic injury?

A traumatic injury is physical damage to a living body that is caused by a traumatic event as defined in 38 C.F.R. 9.20(b). The Captain suffered a broken arm and leg due to a traumatic event; she has suffered a traumatic injury.

d. Scheduled Loss?

38 C.F.R. 9.20 (e) and (f) lists each and every scheduled loss. The term “scheduled loss” means a condition listed if that condition was directly caused by a traumatic injury. 38 C.F.R. 9.20 (e)(1).

The Captain has suffered a Scheduled Loss but not because of the broken bones. Broken bones are not on the approved list of injuries that are recoverable. However, if all three broken bones were covered they would be under the umbrella of a single traumatic event because the two events were within 7 days of each other. For purposes of TSGLI, the maximum benefit would be capped at \$100,000 even if, hypothetically, all three injuries were \$75,000 *each*.

With that being said, under the facts the Captain has suffered ADL loss that may be compensable.

e. ADL loss?

The Captain requires physical assistance with bathing, eating, eating, transport and continence for 90 days. The issue here, however, is that the Tuesday event does not "count" for TSGLI purposes. So, it must be determined whether her ADL loss would have occurred absent the second injury on Tuesday. If the answer is in the affirmative, then the Captain will receive \$75,000 because she could not perform at least two ADLs for 90 consecutive days (\$25,000 at 30, 60, 90 day milestones). Due to the second injury not being covered by TSGLI, if that injury were the cause of her loss of ADLs, she would not recover anything.

f. In patient hospitalization?

She was hospitalized for 15 days which normally means that the injured member will receive \$25,000. However, the injury that placed her in the hospital for 15 days was not covered by TSGLI. Therefore, she will not recover for hospitalization.