

**A GUIDE TO FLORIDA
BIKE ACCIDENT CLAIMS**

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ABOUT THIS BOOK

This book is a consumer guide for people who have been injured in a bicycle accident. *This book was not written to provide legal advice because each and every case has its own unique set of facts.* Knowledge is power. The purpose of this book is to educate the reader about Florida bike accident law.

This book will help you understand insurance in general, how to protect yourself from liability if you hurt another person, or how to receive compensation if you are injured by another person. You will also learn to be cautious of insurance adjusters and the five ways that you can mess up a Florida bike accident claim. If you have been injured in a bike accident, you will learn how to get your medical bills and lost wages paid, as well as how to get your bike repaired or replaced. Finally, you will learn how to select an attorney to represent you in your accident case. This book does not substitute for the advice of a licensed attorney who should be consulted because every case has its unique set of facts.

CONTENTS

1 Introduction..... 5

2 The ten commandments of bike accident claims..... 6

3 Getting your bike fixed or replaced..... 7

4 What is a bicycle accident claim?..... 8

5 Steps you should take after a bike accident..... 9

6 Seven myths you should know..... 11

7 Getting your medical bills paid..... 12

8 It's you versus the insurance company..... 14

9 Handling your claim without a lawyer..... 19

10 Choosing a bike injury lawyer..... 20

11 The steps in a bike accident claim..... 22

12 Florida bike laws..... 27

13 All cyclists need uninsured motorist coverage..... 28

14 The 5 ways to destroy your case..... 30

15 Bicycle safety..... 32

16 How insurance companies value claims..... 33

17 Children and bike accidents..... 35

Glossary..... 36

About the author..... 37

1

INTRODUCTION

Riding your bike on Florida roads is dangerous. The following factors contribute to these dangers:

- Every year over 50 million people visit the Orlando area and millions more visit the state. These people come from different states and different countries. Many of these folks are renting cars and driving on Florida's roads without an understanding of Florida's laws and really knowing where they are going.
- Florida has a high number of young drivers. With youth comes inexperience and increased danger. Young drivers typically cause accidents because of speed and immaturity.
- Florida is where many people come to retire. When people reach retirement age, their vision changes and depth perception decreases, and reaction time slows down.
- Florida's weather negatively impacts road safety. During the rainy season, we have torrential downpours and slick roadways.

When you put these factors together, you can see why there are so many dangerous bicycle accidents in Florida. In 2015, there were over 7,000 bicycle accidents in Florida. In these accidents, approximately 150 bicyclists passed away.

A majority of bicycle accidents involve a bike and a car. Florida's minimum insurance requirements do not protect bicyclists who have been injured or killed. In Florida, a driver is not required to carry bodily injury insurance. Bodily injury insurance provides insurance coverage to pay for an injury to another person if you hurt that person in a car accident. Next time you drive down the road, at least one of the drivers around you will not be insured if they run into you and cause injury.

2

**THE TEN COMMANDMENTS OF BIKE
ACCIDENT CLAIMS**

THOU SHALT NOT give a recorded statement to the other party's insurance company.

THOU SHALT NOT sign any insurance company papers, medical releases or documents without first speaking to an attorney.

THOU SHALT NOT wait more than a week after an accident to see a health care provider.

THOU SHALT NOT exaggerate or minimize your symptoms, complaints or injuries to your doctor.

THOU SHALT NOT stop your medical treatment too soon or against advice.

THOU SHALT NOT hold back information from your doctor regarding pre-existing injuries, illnesses or medical conditions.

THOU SHALT NOT hide information from your attorney.

THOU SHALT NOT talk to your doctor about what you and your lawyer discuss.

THOU SHALT NOT post anything about your accident or injuries on any social media site. Even the most generic post like, "That guy who hit me was jerk" can hurt your claim.

THOU SHALT NOT discuss your accident, claim or injuries with friends, neighbors or coworkers.

3

GETTING YOUR BIKE FIXED OR REPLACED

The first question that many people ask after a bike accident is: “How do I get a new bike?”

If the accident was with a motor vehicle and the driver of the motor vehicle was at fault, his or her auto insurance company will pay to replace or repair your bicycle.

If the accident was caused by a pedestrian walking out in front of you, and it was the pedestrian's fault, you may be able to get a new bike through the pedestrian's homeowner's insurance.

If the accident was caused by a lawnmower or golf-cart, you may be able to get your bike replaced through the other person's homeowner's or business insurance policy.

If the accident was caused by a dangerous condition on a street, roadway or private property, the person, city, municipality or business insurance may replace or fix your bike.

If you were at fault for the accident, it's your responsibility to replace your bike.

4

WHAT IS A BICYCLE ACCIDENT CLAIM?

A Bike Accident Claim originates if you are injured on your bike because of someone else's negligence or carelessness. A number of factual scenarios can happen. Here are a few:

Under Florida law, all people, businesses and the government are required to act reasonably, and if they are careless, the law holds them responsible for injuries they may have caused. This concept is called "negligence." The first step toward receiving money for an injury is proving that the other party was at fault and their carelessness caused your injury.

Legally, we call this concept "proving liability." You may hear your lawyer say, "We have to prove liability" or "We can't prove liability." As an example, if you are riding your bike and a car pulls out of a shopping center cutting you off, you should have no problem proving that the other person was negligent.

Conversely, proving liability can be very complex and heated when there are no witnesses to a bike accident, and the other person says that you darted out in front of them, and they could not avoid the accident.

If an injured person is able to prove liability, they are entitled to receive compensation for their injuries. Compensation may include compensation for the following:

- Hospital and medical bills
- Lost wages or loss of the ability to earn money in the future
- Pain, suffering and loss of enjoyment of life

Bike accident lawyers help injured people receive fair and just compensation. Bike accident lawyers know how to gather evidence to support a claim, how to talk with insurance adjusters, and the lawyers counsel their clients on how to avoid the common mistakes that people make when filing a personal injury claim.

5 STEPS YOU SHOULD TAKE AFTER A BIKE ACCIDENT

Getting in an accident is not a normal occurrence. Many people do not know the proper steps to take after an accident. Below is a checklist of steps that should be considered after a Florida car accident:

- If you are physically able, call 911 from the scene. The investigating police officer will document the accident, review the scene, and hopefully speak with witnesses.
- Get contact information from any witnesses.
- If you are physically able, take photographs of the accident scene, and *all cars* involved in the accident. If there was a defect on someone's property, take pictures of the dangerous condition.
- If paramedics arrive on the scene, let them evaluate you.
- If you feel that you are injured at the scene, allow the paramedics to take you to the hospital. If you refuse transport to the hospital by Emergency Medical Services (EMS), go to the hospital or doctor within 24 hours.
- If you were involved in an accident with a vehicle, report the accident to your insurance company, and open a personal injury protection (PIP) claim for your medical expenses. See Chapter 7.
- Follow your doctor's advice and treatment schedule. Do not withhold information regarding prior accidents or injuries. Insurance companies will find out if you have been in another accident.
- Generally, patients feel rushed when they go to the doctor. It is best to make a list of your symptoms, complaints and questions for the doctor before you arrive for your appointment. If your problems are not documented in the doctor's record, it will be difficult to prove that you were injured in the accident. There is nothing worse for a claim than a note from a family doctor made one week after the accident with no mention of the accident or injuries.
- If you are not able to work because of the injury, be sure to discuss this with your doctor so it is documented in the record.
- If you are not able to work, make sure the doctor supports your decision. If the doctor doesn't support your decision, you will not receive compensation for lost wages.
- Consult an experienced personal injury attorney even if you don't think you want to make a claim. Most bike accident attorneys offer a free consultation. All conversations with the attorney are protected by the attorney-client privilege even if you don't hire the attorney.

- Be honest with your lawyer; it is much better to learn of a weakness in your case in the beginning as compared to the middle of trial.
- Direct all insurance company calls to your attorney.

These action steps may seem like common sense, but I have seen hundreds of folks who did not follow the steps, and they hurt their chances of receiving fair and just compensation for their legitimate injuries.

6

SEVEN MYTHS YOU SHOULD KNOW

I hear myths about making bike accident claims and insurance companies on a daily basis. Get these out of your mind; there is no truth in them.

- One:** You will get rich because you were injured in an accident; the court system is like winning the lottery. **NOT TRUE.** People who receive a lot of money have the injuries to support the settlement or verdict. **THAT'S RIGHT!** The person pictured on the billboard with a million-dollar check is probably missing a leg and the loss is not visible.
- Two:** Because your family member, neighbor, friend or coworker received X amount of money, you will receive the same settlement. **NOT TRUE.** Each and every case, person, and injury is different. Also, every insurance company or jury will evaluate a claim differently.
- Three:** You must give a recorded statement to the other person's insurance company or it will deny your claim. **NOT TRUE.** You have no duty to give a recorded statement to the insurance company. Occasionally, we will allow our clients to give an informal (non-recorded) statement to an insurance adjuster if we believe it is in the client's best interest.
- Four:** If you make a claim with your insurance company, your insurance rates will go up. **NOT TRUE.** If you were not at fault for the accident, it's against the law to raise your rates.
- Five:** If you are fair with the insurance company, the insurance company will be fair with you. **NOT TRUE.** It's not about fairness; it's all about business. The insurance company's only goal is to get the claim closed as cheaply as possible.
- Six:** If you get into an accident that was not your fault, you are entitled to money. **NOT TRUE.** First, you have to find a source of insurance to pay you. Second, you have to show that the accident, and not some underlying problem, caused your condition.
- Seven:** I do not have to tell the insurance company or my lawyer about an injury that I had 10 years ago. **NOT TRUE.** You need to tell your lawyer everything, and he or she will decide whether or not to tell the insurance company.

7

GETTING YOUR MEDICAL BILLS PAID

Many folks involved in a bike accident are injured because of the lack of protection, and the injuries are real. This brings up the question, “How do I get my medical bills paid?” The answer depends on the underlying cause of the accident.

Accident with a Motor Vehicle

If you were involved in an accident with a car or truck, and you own a motor vehicle that is insured, your first layer of medical coverage is through your own auto insurance company. This may sound strange, but it's true. *Let Me explain!*

Florida is a no-fault state, which means that if you own a vehicle and it's insured, you have the ability to get your medical expenses paid through your no-fault or personal injury protection insurance (PIP). This coverage is available regardless of who caused the accident. Let Me *answer* common questions about PIP!

1. There is up to \$10,000 available. The first layer of coverage is \$2,500, no questions asked. In order to access the additional \$7,500 in coverage, you will need for a health care provider to document that you have an Emergency Medical Condition (EMC). This is a legal term of art.

2. Your insurance premium will not go up. That's right, insurance companies are not allowed to raise premiums if an insured person uses their PIP insurance.

3. You don't have to pay the money back. If your insurance company pays \$10,000 for your medical care, and you get money from the other driver, you do not have to pay your insurance company back any of the money that it paid for your medical expenses. Legally speaking, your insurance company doesn't have a right of subrogation.

Accident with a Homeowner

Let's say you were injured because you lost control of your bike due to algae buildup in front of someone's home (true story). There was no car involved, so you cannot get your medical expenses paid by PIP. However, if the homeowner is insured, there may be some medical coverage through their homeowner's insurance policy. This coverage is termed med-pay. Homeowner's med-pay is available for injuries on the property regardless of fault. Most Florida homeowner's policies have somewhere between \$5,000 and \$10,000 in coverage.

Accident on Commercial Business Property

Let's say you were injured because of a dangerous condition in a business parking lot. Like the situation with a homeowner, most business commercial general liability (CGL) policies have a med-pay provision.

None of the Above

A Guide to Florida Bike Accident Claims

If you are unable to qualify for some medical coverage through auto, homeowner's or commercial insurance, you will need to submit your claims to your health insurance, Medicare or Medicaid. There are complexities in dealing with these payors, but it is workable, and you will get the medical treatment that you need.

8

IT'S YOU VERSUS THE INSURANCE COMPANY

A personal injury is “personal” to the injured person. You may worry about your injuries, ability to work, taking care of your family, and the future. Insurance companies, on the other hand, are in the business of insuring risk of loss. An injury claim is just part of the ordinary course of business to the insurance company.

Most insurance companies are for-profit corporations, so their goal is to maximize profits for their shareholders. Generally, premiums depend on a number of factors including the type of insurance that is purchased, the geographic location, and personal information regarding the applicant such as employment, income range and prior accident history.

An insurance company’s goal is to collect more money in premiums and investment income than it has to pay out in claims. The duty that an insurance company has to an injured person depends on the relationship. Your insurance company has a duty to act in good faith and to deal fairly with you, the policyholder (insured). On the other hand, the other party’s insurance company does not owe you a duty to deal in good faith or act fairly because you are not the policyholder (insured).

When an insurance company is put on notice that their policyholder may have a claim filed against him for an injury, the company’s goal is to protect the policy holder and to settle the claim as cheaply as possible. For instance, if the policy holder has \$100,000 in coverage and the injured party has a claim that is close to \$100,000 in value, the insurance company will do everything in its power to settle the claim for less than the \$100,000.

Insurance companies take this claim business seriously and if they can save a little bit of money on every claim, it makes them a lot of money in the long run. Since the late 70s and early 80s, the insurance industry and corporations have spent millions of dollars on a marketing campaign to convince the public that lawsuits are out of control and people who file these lawsuits are receiving millions of dollars for minor injuries. *This is not true.*

Insurance companies have created and marketed the story called “Tort Reform” to the American public. This story is based on the premise that runaway verdicts (McDonald’s hot coffee case)¹ have created the need to:

- Limit the maximum amount of recovery an injured party can receive no matter how serious the injuries; and
- Reduce the average payout or verdict across the board.

¹ HBO recently aired a documentary *Hot Coffee*, which explains the McDonald’s case and the insurance industry’s tort reform plan.

The insurance industry's methods have been effective because tort reform fits right into the insurance model of doing business. If the insurance company lobby is able to get a state legislature to cap the amount of damages an injured person can receive, it knows the maximum compensation that it could possibly have to pay out on a claim (the risk becomes known). Also, if the insurance industry is able to reduce the average payout to injured parties across the nation by a few hundred dollars, it saves these companies millions of dollars per year.

The Insurance Industry's Strategy Has Worked

As an example, in 2009, the US Department of Justice published an article reviewing all types of accident cases for the years 1996-2005. The article reported that the median jury verdict award for an injured person in an automobile accident case nationwide was \$16,000 in 2005. This was a \$6,000 decrease from 1996 when the median award was \$22,000.

In this 10-year span, insurance companies have spent millions of dollars lobbying and advertising about greedy people injured in automobile accidents and juries have bought the lie—hook, line and sinker. The median award for an automobile accident in 2005 was *27.3% less than the award in 1996*. Yes, it's true. Car accident verdicts have decreased by just over one-quarter throughout the nation. Have medical charges gone down since 1996? Has the price of food gone down since 1996? Has the price of gas gone down since 1996?

Go into downtown Tampa or Jacksonville, and you will notice that the biggest buildings are owned by insurance companies. These companies keep getting fatter and fatter; insurance rates continue to rise; and the average person who buys into the "tort reform" story does not realize that they have been taken for a ride until they, or someone close to them, are seriously injured and want to be treated fairly.

In this day and age, if you are injured, you have to treat your claim like a business. You must follow your doctor's advice and make it your job to get well. If you are seriously injured, it is wise to retain a lawyer to help you with your claim. If you are represented by a lawyer, the insurance company will treat you differently.

Remember, insurance is only a business and you are a statistic and a number to the insurance company. If you are injured in an accident, it is personal to you, but you must treat your claim like a business. Most insurance companies follow a plan when it comes to adjusting a car accident claim. Following are actions the insurance company will most likely take followed by suggested responses.

- 1. The Insurance Company will call you about the claim. Some of the companies may ask you to take a recorded statement regarding the facts of the accident and your injuries.**

You are not required to speak with the other party's insurance company. The objective of this phone call is to get you to concede certain points that may come back to haunt you later. For instance, you may have broken your wrist and injured your back in the accident. The adjuster calls you and asks you about your injuries, and your broken wrist is your major concern. So, when you're asked if you are hurt, you say that you broke your wrist; however, you forget to tell the adjuster about your back injury because it is not bothering you as much as your wrist.

Later, the insurance company will use the statement to argue that you only injured your wrist in the accident and not your back. The adjuster will insinuate that you are trying to take advantage of the system. There is no benefit in giving the other insurance company a recorded statement.

How do you handle the adjuster when she calls?

Thank the adjuster for the call and tell her that you are uncomfortable speaking with her at that time. Ask for her contact information and explain that you will call her back when you are ready. *Don't be rude but be firm.* If you have hired an attorney, give the adjuster the name, address and phone number of your attorney. If you have not yet retained an attorney but are planning to retain an attorney, bring the adjuster's contact information with you when you have your consultation.

2. The insurance adjuster may tell you that you do not need an attorney.

Remember, the insurance adjuster does not owe you a duty to act in good faith. In fact, the adjuster may offer you a settlement in exchange for releasing your claim forever. They often suggest that if you hire an attorney, any money you receive will just go to the lawyer. This was a plan that Allstate followed for many years. This plan was exposed in the 1999 publication *Trial*.

Clients have told me that adjusters have threatened to deny the claim if the client hires a lawyer. Other adjusters have said to clients, "You can go ahead and hire an attorney, but the offer is not getting any bigger." How would the adjuster know what a fair offer should be at the outset of a claim?

What to do. In a minor case, you may decide to settle your case without retaining an attorney. However, read this book before settling your case because it may help you get the money you deserve. Before you settle the case, you may want to ask yourself why the adjuster is telling you that you do not need an attorney. Remember, the insurance adjuster is not on your side.

3. The insurance adjuster may call you and ask you to sign a medical authorization so they can get all your medical records. They will phrase the request something like this, "We really want to settle this case, but we cannot do so until we get documentation showing all your medical treatment."

These forms are usually drafted to allow the insurance company to obtain all of your medical information and it will not be limited to your medical records regarding this accident. It allows the insurance company to go on a fishing expedition for any past medical problems that might be completely irrelevant to the pain you are experiencing. In fact, this medical authorization form will allow them to go back and obtain private medical information even if it is 20 years old. Additionally, these releases are so broad that they allow the company to obtain psychiatry or psychology records, HIV or other communicable disease records, and personnel records.

A client recently received an authorization from a large insurance company not only asking him to sign an authorization allowing them to receive his medical records but also to talk to his doctors. Can you imagine an insurance adjuster being allowed to talk to your doctor without you or your attorney being present?

Recommendation: *Do not sign any medical authorization forms until you have consulted with an attorney.* Do not become a victim again by having your privacy invaded. While some of your past medical records may be relevant to your personal injury case, many are not, and the insurance company may not be entitled to them under the law. An experienced personal injury attorney knows what medical records are relevant to the case and will provide this information to the insurance company at the proper time.

4. The insurance adjuster may use delay tactics to wear you down.

The insurance company has the potential settlement money set aside in a loss reserve. The insurance adjuster knows that people who have been seriously injured have additional expenses. He knows that you may be feeling pressure because your doctor took you out of work and you are not receiving a salary. Insurance companies know that most health insurance or medical payment policies do not cover the entire medical bill. Knowing that these psychosocial stressors push an injured person into a premature settlement, the adjuster will wait until you give up and say, "Enough!" and accept the unfair offer.

Recommendation: An experienced personal injury attorney can advise you about how to handle some of these issues. It may be as simple as calling your doctor's office, explaining the issue, and asking them to wait for payment until the case is resolved.

5. The insurance adjuster may hire an investigator and place the injured person under surveillance.

Credibility is a common theme throughout this book. Credibility becomes the main focus at every personal injury trial. If a jury believes you are credible, it will bend over backwards to compensate you for your injuries. This is why you should never exaggerate injuries or hide facts.

Insurance companies are notorious for trying to dig up facts that can negatively impact an injured party's credibility. For instance, the insurance company may have learned that the injured party has severe low back pain and cannot lift over 15 pounds. In an effort to hurt credibility, the insurance company

may hire an investigator to follow the injured party around and videotape him for days on end. The investigator will take hours of tape and cut it down to a few minutes allegedly showing the injured party doing some type of physical activity. The investigator may not know that the party's doctor told him to try to start normal activities or placed him on a different medication, and the insurance company will attempt to use the surveillance against the injured party.

Recommendation: If you have been injured, do not be paranoid but be aware of your surroundings. Look for suspicious people who may be around your house. If you see a suspicious person around your house or following you, call the police. Also, follow your doctor's advice. If your doctor tells you not to mow the lawn, ask a family member or friend to do it. Nothing can ruin your case more than ignoring your doctor's advice regarding restrictions. If for some reason you are not able to follow your doctor's advice regarding restrictions, discuss the issue with your doctor so it is documented in your medical chart. Finally, never exaggerate your symptoms or injuries.

9

HANDLING YOUR CLAIM WITHOUT A LAWYER

You do not need an attorney for every bike injury claim. In fact, some people are better off not hiring a lawyer and may even have trouble finding a reputable lawyer to take a small injury claim. This is because in cases where your injuries are minor, and/or medical bills are less than a few thousand dollars, the attorney fees and costs might leave little or nothing after paying medical bills. In my experience, you may receive just as good a settlement by yourself in this type of case.

It is important to be aware that many people do not fully realize the extent of their injuries until it is too late. These people think the pain in their neck or back will go away in a couple of weeks and they do not immediately seek medical care or legal advice. Sometimes, a seemingly minor injury may be much more severe than initially thought. This outcome is common with a back or neck injury because of the anatomy. If a person breaks an arm or leg in an accident, it is readily apparent, and they are taken to an emergency room.

On the other hand, if a person injures a disc in their neck, it usually starts as mild to moderate neck pain and gets progressively worse over a period of time. It's always better to be safe than sorry. When you are injured in an accident, seek medical advice and a legal consultation. You do not have to hire the lawyer, but you will learn your rights and equip yourself with valuable information.

A 1999 study performed by the Insurance Research Council (IRC), a not-for-profit research organization funded by the insurance industry, determined injured people who retained an attorney on average received 2½ to 3½ times more compensation than those people who settled their cases on their own. This is not true, however, if you were involved in a fender bender with a whiplash injury that responded to care after a few months.

My best advice if you are injured in a bike accident is to at least talk to an attorney. Most personal injury attorneys do not charge for the initial consultation.

10

CHOOSING A BIKE INJURY LAWYER

Choosing an attorney to represent you is an important task. If you open up your local phone book, you will see ad after ad offering you the same thing. At this moment, I have the Lake County phone book open, but I'm sure that you will find the same ads in your local phone book.

You will notice a lawyer's ad on the back of the phone book and then page after page of ads offering: "Free Consultation," and "No Recovery, No Fee," and "Aggressive and Honest," and "__ Years' Experience." Also, if you turn on your local TV station, you will hear lawyer after lawyer spouting the same information. So how do you go about determining which lawyer in your local community is the best for your case?

Below are some issues that I would consider when hiring an attorney.

1. You should hire an attorney who is Board Certified in Civil Trial Law by the Florida Bar. The only hammer an injured person has with an insurance company is taking a case to trial and getting a verdict that is higher than the insurance limits. Insurance companies which lawyers are competent trial lawyers. Board-certified lawyers have to show proficiency in trial practice and they have tried a minimum number of cases. There are about 90,000 lawyers in Florida. At the time of this writing, the Florida Bar reports 1,048 lawyers are board certified in civil trial law.

2. You should hire an attorney who focuses on injury cases. There are two reasons for this recommendation: Personal injury practice in Florida is complex. The attorney not only needs to know the law; the attorney has to know the medicine. In medicine, it wouldn't be prudent to go to your family practice doctor for heart surgery. Likewise, it wouldn't be prudent for you to retain an attorney that handles divorce, trusts, estates and only an occasional personal injury case.

Insurance companies know the reputation of attorneys who handle personal injury cases. The companies' such share information.

3. Choose an attorney that has inside knowledge of the insurance claims handling process or has defended cases for insurance companies in the past. Attorneys who were claims adjusters or defended cases for insurance carriers know how insurance companies evaluate cases.

4. Choose an attorney who knows the medical issues involved in your case. For example, if you have a neck injury that causes neurological problems in your hands, ask the lawyer about his knowledge of the condition. At least 50% of a personal injury case focuses on the client's injuries. An attorney may know all the law in the world, but if he cannot truly understand the injury, he cannot be an effective advocate for the client. Wouldn't you want a personal injury attorney who is also a doctor?

5. Choose an attorney that is a cyclist. If your attorney is an avid cyclist, he or she knows what you are describing about the accident. She has experienced a situation where a driver looked right past her and made a right turn off of a side street or out of a parking lot and cut her off.

6. Learn about lawyers' advertising. If you drive around town, you will see billboards with people holding checks. The amount of the check, says nothing about the lawyer handling the case. If a person is holding a million-dollar check, but their case was really worth two million dollars, did the lawyer do a good job for that person?

7. Do not hire a lawyer who actively solicits business shortly after an accident. Solicitation is against the law. If someone offers you money to see a doctor or a lawyer, you should run for the hills.

8. Do not use those billboard referral services. Those services are nothing but a bunch of lawyers and doctors who pay to belong to the service, so they can get referrals. Those billboard referral services do not vet their doctors and lawyers.

9. When interviewing the attorney, find out how his/her office works. Many law offices are similar to big box stores with multiple layers of staff. In a number of these offices, the attorney doesn't even know the case exists until it is settled. In these offices, the cases are handled by case managers. Ask the attorney if he or she will actually be handling the case. It makes a difference; the only way for the attorney to actually understand the issues and medicine in the case is by reviewing the client's medical records and bills. If the attorney understands the facts of the case and injuries, he or she will be a more effective advocate.

10. Ask the attorney if he or she is licensed in the state where your case will be filed. Insurance companies know who is not licensed and therefore cannot actually try the case, so you will be at a disadvantage when it comes to negotiations. Also, laws vary from state to state.

11. Ask the attorney if he or she will actually be handling your case. Florida law allows lawyers to pay referral fees to lawyers who generate a case. This practice has led to a cottage industry where lawyers will market cases and then refer them to other law firms, so they can receive the referral fee at the end of the case.

12. Ask the attorney how she will communicate with you regarding your case. I prefer to communicate by email or telephone. If the client has questions, she can send me an email or call for a telephone conference so I can answer all of her questions.

13. There are many excellent and competent lawyers in Florida. Choose a competent lawyer whom you like. You will be dealing with your attorney for one to three years depending on the facts of your case. You wouldn't want to have to spend that amount of time with somebody that you do not like even if he or she is competent or has a good reputation. I'm sure you can find an attorney that is competent and likable.

11

THE STEPS IN A BIKE ACCIDENT CLAIM

In this chapter, I will summarize the basic steps for most car accident cases, especially those involving serious injury. The process can be lengthy with many important decisions required along the way.

Proving Your Bike Accident Claim

You must show the following three elements to successfully prove a bike accident claim:

1. The other driver, person, or property owner is at fault for causing the accident. This first inquiry is *proving liability*.
2. The cyclist suffered injury or death. This is called *damages*.
3. The other person's negligence or carelessness caused or substantially contributed to the injury or death. This is called *causation* and is the bridge between negligence and damages.

Initially we have to determine if the client actually has a case, and if they have a case, we have to determine if the other party is collectible.

Under Florida law, in order to receive compensation, the injured person has the burden of proof.

I. Determining Liability: The first question that has to be answered is: “*Who caused the accident?*” Stated another way, are we able to prove *liability against the other party*? It is important that an investigation start immediately after the lawyer is retained, because as time goes on evidence is destroyed, altered or disappears.

Here is a common story that I hear from clients when they come into the office: “We don’t have to worry about liability because the other person admitted he was at fault and was sorry.” I try to explain that many times the at-fault person’s story changes between the time of the accident and the time they discuss the matter with their insurance company. It doesn’t mean that the other driver is lying; most of the time people just rationalize events.

Because of this, it is important that your accident is investigated ASAP.

The Liability Investigation

1. Vehicles: If a vehicle is involved, the vehicle will have to be inspected. The investigator will take photos of the inside and outside. Additionally, certain measurements may have to be taken, such as the amount of crush the vehicle received during the impact. In some cases, we will need to obtain the EDR [electronic data recorder] or “black box.” If we believe that liability is going to be an issue or if the damages are severe, we may also hire an accident reconstructionist or engineer to inspect the vehicles and the scene and reconstruct the event. Once a vehicle is fixed or totaled, this information is lost forever.

2. **Accident Scene:** We gather the crash report or incident report and visit the scene in person to photograph, inspect and measure skid marks, and to look for other factors such as bushes, trees, broken concrete, pot-holes or any other dangerous condition that may have contributed to the accident. It is important to do this ASAP because trees and shrubs can be cut down or skid marks could wash away.

3. **Witnesses:** If there are witnesses to the accident, we will need to interview them, so we can document what they observed at the time of the crash. As time goes on people move and people forget specifics regarding events.

4. **Insurance:** We need to determine if any insurance policies are available to compensate the client for their injuries.

The most important first step in dealing with a Florida accident case is determining liability because a client's recovery depends on liability. **No Liability = No Recovery.** If an insurance adjuster or jury determines that the injured party is at fault for the accident, the amount of recovery will be reduced by that percentage of fault.

II. Damages (injuries): The next area of investigation is the nature and extent of the client's injuries (harms and losses).

Damages Investigation

1. **Claim Search:** We will order an ISO claim search; an ISO is one of the claims searches performed by insurance companies. This search will give us an idea as to whether the injured person has past auto or worker's compensation claims that have been reported by insurance carriers.

2. **Medical Documentation:** We will obtain all medical documentation related to the accident including EMS reports, hospital records and medical records. We also need to obtain past medical records if there have been prior accidents, injuries or illness in the areas of the body injured in the accident.

3. **Medical Bills:** We will gather all medical bills related to the injury.

4. **Employment Records/School:** If the client lost time from work or school, we will obtain these records.

5. **Lay Damage Witnesses:** Lay damage witnesses are an important part of proving a client's damages. If friends or acquaintances with whom the client has contact are able to describe the changes in the client after the accident, this testimony tends to help jurors determine proper damage awards.

Demand Package

Once we have completed our liability and damage investigation and the client has reached a point of maximum medical improvement, we may submit a demand package to the insurance company. The demand package is a compilation of our liability and damage determinations. It consists of a letter from the attorney setting out the client's position regarding liability and damages. Sometimes a demand package is not sent, and the case is filed directly in court.

A number of insurance companies use claims management software to arrive at a value for the claim. Your attorney must know the insurance companies that use this software and the specific data points to send the company so the injured person gets a fair shake.

Negotiation

The insurance company is usually given 30 days to review the information in the demand package. Once the demand package is reviewed, the insurance adjuster will make an offer in response to the demand. Sometimes the offer will be the entire policy limits of the at-fault driver's insurance policy. The amount of the offer depends on the facts of the accident and the nature and extent of the client's injuries. Once an offer is received by the insurance company, the negotiation process begins. The attorney will consult with the client to discuss the strengths and weaknesses of the case and the best way to proceed. The final decision about whether to settle the case is *always the client's decision*. The attorney will make recommendations based on his/her experience, but the decision is always the client's.

If an offer is fair, there are many advantages to settling a case without going to trial. Below is a list of settlement advantages.

Advantages of Settlement Before Filing a Lawsuit

- Attorney's fees and costs are lower
- Money is obtained immediately
- The client can avoid the stress of a prolonged lawsuit
- The client is in charge of the settlement, not six strangers in a jury box
- Life goes on as planned
- The outcome is guaranteed

Lawsuit

If the parties are unable to negotiate an agreement and the insurance company's highest offer is rejected by the client, the next step is to file a lawsuit. A lawsuit begins with the filing of a complaint. Most of the time, the complaint is filed in the county of the accident. For instance, if the accident occurred in the Villages or Mount Dora, which is in Lake County, we will file the complaint in Lake Circuit Court located in Tavares. Once the complaint is filed, the clerk's office will assign the case to a judge.

We will then serve the complaint on the defendant(s). These are the people legally at fault for the accident and injuries. In Florida, more than one person can be held legally responsible for the injuries, such as the driver and the owner of a vehicle.

Once the lawsuit is filed and the defendant(s) are served with the summons and complaint, the insurance company will hire an attorney to represent the defendant(s). Many of the large insurance companies including State Farm,

Allstate, GEICO, Progress, Nationwide, and Liberty Mutual have in-house attorneys that will represent the company's insured person. The defendant(s) will answer the complaint and the litigation process begins. Once a lawsuit is filed, much more is expected from the client. In order for the case to be successful, the client must be willing and able to actively participate in the litigation process.

The following steps occur in a lawsuit between the defendant's answer and jury trial:

I. Case Management Conference: Following a case management conference, the court will set deadlines for discovery, mediation and motions. Additionally, the court will set a date for trial.

II. Discovery: This is the period of time during which the parties exchange information. Written discovery includes interrogatories, request for admissions and request for production of documents. Additionally, the parties will subpoena records from health care providers or any other persons who have information relevant to the proceedings.

Oral discovery consists primarily of depositions. Depositions are statements under oath that are taken before a court reporter. The parties can take the depositions of all persons who have knowledge regarding liability and damages.

During the discovery process, the insurance company's lawyer will request that you see one or more doctors, of their choosing, for an evaluation. If the other lawyer follows the proper procedure, you are required to attend the examination. Hence, the name given to the examination is the Compulsory Medical Exam.

III. Mediation: This is a confidential settlement conference between the parties and a non-interested third party who tries to help negotiate a resolution to the case. All trial judges will refer the case to mediation. This is usually the last chance to settle a case before trial. Anything discussed during mediation is confidential and cannot be used at trial.

If a settlement is reached at mediation, the insurance company will issue a check within 20 days.

IV. Trial: There are two types of trial. (1) In a bench trial, the judge hears the entire case and rules on the law and the facts. (2) In jury trial six members of the community decide the case. Depending on the complexity of the case, the trial can last from a few days to weeks. A trial can cost between \$25,000 and \$100,000 to present. There is no way to predict what a jury will decide. Attorneys and insurance companies use their past experience and information gleaned from other juries who decided similar issues to make an educated guess regarding the outcome of the case. This is another reason you need to retain an experienced trial attorney.

V. Post-Trial: A verdict following a trial is not necessarily the end of the line. For many cases, it is the beginning of a whole new round of litigation. If a party believes the court committed error during the trial, they can file a motion for a new trial or an appeal. Appeals can take years to resolve. If the

appellate court decides there was reversible error committed during trial, it can remand the case back to the trial court for a new trial.

The length and expense associated with the litigation process, the fact that nobody can foretell what a jury will do with a case, and the fact that jury verdicts can be overturned on appeal are some of the reasons that parties will attempt to compromise and settle a case short of trial.

12 FLORIDA BIKE LAWS

Under Florida law, a bike is considered a human powered vehicle. When riding on a roadway, cyclists are to follow the same road rules as other vehicles. Here are some of the rules to refresh your recollection:

- Your bike needs a permanent seat.
- If you ride a tandem, then two riders are allowed. If you have one seat, no towing.
- An adult rider may carry a young child in a backpack or sling.
- An adult rider must carry a child in a child's seat that protects the child from the bike's moving parts.
- If the adult gets off the bike, he/she must take the child off of the bike.
- If you are under 16 years of age, you must wear a bike helmet.
- If you are riding below the posted speed, you must ride in the designated bike lane or as far to the right as practicable.
- Cyclists cannot ride more than two abreast on roadways.
- If you ride on a sidewalk, you have all the rights and responsibilities of a pedestrian.
- If you ride on a sidewalk, you have to yield to a pedestrian and let the pedestrian know that you are passing.
- Your bike must have brakes.

13

ALL CYCLISTS NEED UNINSURED MOTORIST COVERAGE

This is the most important chapter in this book because people do not think about their insurance needs until it is too late.

Over 50% of the people that caused these accidents had little or no insurance to compensate the victims that they hurt or killed. In Florida, the driver population is woefully underinsured. This means that if you ride your bike in Florida, you must protect yourself.

Florida's Minimum Insurance Requirements Are The Lowest in The Nation

In Florida, the owner of a registered automobile is required to purchase (1) \$10,000 of property damage liability to pay for damage to another person's car if they are at fault; and (2) \$10,000 of personal injury protection (PIP/No-Fault) to pay for medical bills and lost wages. Florida is a no-fault state, so if you're involved in an automobile accident, your medical expenses and lost wages will be paid by your insurance company even if the accident was not your fault.

Florida does not require drivers to carry bodily injury coverage, which would pay for the injuries caused by the at-fault driver. *Remember, over 50% of the people driving on our roads have only minimum insurance coverage, and others are driving illegally without insurance.* The chances are high that if you are involved in a bike accident with a car or truck, the other driver will have little or no insurance to compensate you for your injuries.

HOW DO YOU PROTECT YOURSELF?

Uninsured Motorist Coverage: (Minimum \$100,000/\$300,000; if you have more than one vehicle you should purchase stacked coverage). If you are driving in Florida, you need uninsured motorist coverage to protect yourself if:

- The at-fault driver has little or no liability insurance (which is likely) and your case is worth more than the amount of insurance the driver had. For an example, if the at-fault driver has \$10,000 in coverage and you have \$100,000 in uninsured motorist (UM) coverage, you have \$100,000 in excess benefits.
- Stacked UM is a creature of Florida law that allows you to pay an extra premium to stack your UM benefits depending on the number of vehicles you own. For example, if you own two vehicles and have \$100,000 in UM coverage, you will have \$200,000 in UM coverage available, if needed.

There is something else you must know regarding uninsured motorist coverage. Just because you planned ahead and purchased adequate amounts of insurance coverage, and you've been faithfully paying premiums for a number of

years, doesn't mean that the insurance company is going to pay you what you think you deserve. You will most likely need an experienced personal injury attorney to get a fair deal.

- Many folks are hesitant to make a UM claim because they think it will impact their insurance rate. This is not true. If you were not at fault for the crash, an insurance company cannot raise your rates.

Personal Umbrella Policy with UM Rider: Generally, the most inexpensive way to adequately protect yourself from liability if you are injured by an underinsured/uninsured motorist is through an umbrella policy (PLUP). A PLUP is a single limit excess policy, which is usually available to clients who own multiple assets, like a car and a home. PLUPs are usually available in \$1-5 million limits. The insurance carrier will usually require the insured to purchase a certain level of underlying automobile coverage (BI/UM) if the insured wants the maximum uninsured or underinsured limits.

Conclusion

These insurance recommendations may sound expensive; however, you may be surprised to find that they cost less than you think. This is especially true if you have a good driving record and are insured by a standard insurance company. Uninsured motorist coverage is absolutely necessary because most people driving on Florida's roads do not have adequate insurance. Don't forget: you have to evaluate your insurance needs before an accident occurs.

THE 5 WAYS TO DESTROY YOUR CASE

I have been assisting people injured in automobile accidents for many years. In this chapter, I will list the biggest mistakes that have destroyed any chance of a meaningful recovery for a number of patients and clients.

1. Failing to call the police or obtain proper information at the accident scene.

Problem: If you fail to call the police to the scene of the accident, it can be very difficult to prove the case. Without verifiable documentation from the police, the insurance company may dispute that the accident even happened.

Fix: Document the Accident. Call the police because it is important to document the accident and determine fault. At the accident scene, you should also get the contact information from any witnesses. Sometimes witnesses will stop at the scene to make sure no one is severely injured, and they will leave before the police arrive, so make sure you have paper and a writing instrument in your glove box. I can't tell you how important it can be in the future to have an independent witness corroborate your recollection of the events that caused the accident.

If you are physically able, you should also take photographs of the scene and vehicles. Once the roadway is cleaned up, the accident scene cannot be duplicated. If you do not have a camera on your cell phone, put a disposable camera in your vehicle.

2. Failing to seek immediate medical attention.

Problem: Many people do not seek medical attention at the accident scene or go to the ER because it is too big of a hassle or they think the injury will go away. Delaying medical care can destroy an injured person's accident case for two reasons. First, the person may have a medical condition that progresses because he did not get timely treatment for the condition. Second, the insurance company and a jury will question the person's credibility because "everyone knows that a seriously injured person doesn't wait to go to the doctor."

Fix: If an accident victim feels pain at the scene, he should be evaluated by EMS and follow the paramedic's recommendations. If the person does not want to be transported to the hospital by EMS, he should go to the hospital or urgent care center later that day. An injured person should not try to tough out an injury; it will *mess up* your case.

3. Providing too much information to the other driver's insurance company.

Problem: The adjuster from the other driver's insurance company calls the injured person right after the accident and asks for a recorded statement. Within a week of the accident that person may be taking pain medication, or they may not yet have started to feel the full effects of the entire injury. The adjuster is calling to lock in the victim's version of the facts regarding the accident (liability) and to

discover the extent of his injuries (damages). This recorded statement will be used against the injured person at a later date.

Fix: The injured person should not talk to the other insurance company right after the accident. Instead, when they call, get their name, phone number and claim number. This information should be given to your lawyer, if you hire a lawyer.

4. Waiting Too Long Before Hiring an Attorney.

Problem: Some people initially try to handle their injury case on their own and then they attempt to hire a lawyer after they receive little or no offer from the insurance company. The problem is that evidence related to the accident needs to be preserved. Once evidence gets cold, vehicles are destroyed, or witnesses disappear, an injured person's case can be destroyed. Many people do not get the money they deserve because they did not hire an attorney before evidence was destroyed and witnesses vanished.

Fix: Consult a lawyer immediately after an accident to protect your rights. If you do not feel that you are ready to retain an attorney, follow the recommendations in this book. If you decide to retain an attorney, he can begin investigating the accident to preserve evidence and interview witnesses. An experienced personal injury attorney can identify potential weaknesses and issues early on and attempt to shore up the facts supporting your claim.

5. Hiding Prior Accidents and Injuries from Their Doctor or Lawyer.

Problem: This is the problem that will destroy your case faster than any other problem. Pursuing a personal injury claim depends solely on your credibility. The insurance industry has an extensive database that maintains a history of accidents and insurance claims. An insurance adjuster only has to input a name and social security number into the ISO Claim Search and all insurance claims will come up. Hiding or failing to give accurate information to your doctor and lawyer will ruin your case. The fact that you may have been in another accident or injured the same part of the body can be dealt with if it is disclosed.

Fix: It is important to be completely honest with doctors and lawyers at all times. These professionals must have accurate information about any prior accidents or injuries.

15 BICYCLE SAFETY

Whether you commute to work every day on your bike or you ride on the weekends like me, it is important to think about safety.

Bike Helmet

My wife tells me that I'm hard headed and that is true; however, under my hard head is a soft and delicate brain. We all use our brains, some more than others, which is why it is important to wear a helmet when biking.

Helmets are available in all ranges, styles and prices. When it comes to protection, an inexpensive helmet is just as good as an expensive helmet if it meets national safety standards. You will know if your helmet complies because it will have a CPSC sticker

You can have the most expensive helmet in the world, but if it doesn't fit correctly, it will not protect you. As a reminder, your helmet should be snug and should not have the capability of falling off as you fall to the ground. If your helmet is loose enough to fall off your head when your head changes direction quickly, it is time to get a different size or make an adjustment.

Clothing

The main issue with cyclists and drivers is awareness. When you're on your bike, you should not blend in with your surroundings. The brighter the colors you wear, the safer you will be.

Reflectors and Lights

Like wearing proper clothing, reflectors and lights make it easier for others to see you when you are cycling; they help insure safety. Florida law requires that bikes ridden after sunset be equipped with a white light in the front, visible from at least 500 feet, and a red light and reflector in the rear, visible for at least 600 feet.

Mirrors

Being seen while cycling is important AND being able to see is equally important. A rear-view mirror either attached to your bike, helmet or glasses is paramount. The mirror keeps you informed about vehicles approaching from the rear, and is necessary when changing lanes or making left hand turns. Additionally, the mirror can provide warning when a driver coming up behind you is all over the road.

16 HOW INSURANCE COMPANIES VALUE CLAIMS

One of the most common questions that I get when I first meet with a client is, “How much is my claim worth?” Many times, clients have an idea based on misinformation from TV, family, friends or co-workers. The value of a personal injury case depends on a number of factors. The lawyer will not have all the facts at their disposal during the initial conference. Once an experienced personal injury attorney is retained by a client, the first action taken is to determine the amount of insurance that is available from the at-fault driver and the client.

As an example, if a client’s injuries have a value of \$100,000 and the lawyer discovers that there is only \$25,000 available in coverage; the case is worth only \$25,000 because the likelihood of recovering more than the insurance proceeds is slim to none. A bike accident attorney has the knowledge and experience to evaluate the factors that go into determining case value.

If you have an initial interview with an attorney and she tells you that you “have a great case,” that your case is “worth a ton of money” or if she quotes an amount, ask the attorney to put that in writing and her immediately.

The following factors are used by insurance companies and/or jurors in determining the value of an injured person’s case:

- The credibility of the injured party.
- The credibility of the other party.
- Who is responsible for the crash?
- The damage to the vehicles involved in the crash.
- The nature and extent of the claimant’s injuries.
- Did the claimant wear her seat belt?
- What was the cost of medical care and how much of the care was paid by insurance?
- Is the claimant required to pay back the money that her insurance company paid for her medical care?
- The amount of the claimant’s out-of-pocket expenses.
- The amount of future medical expenses if future medical care is required.
- Did the claimant lose income and is she expected to lose income in the future?

- Did the claimant have any prior injuries or pre-existing medical conditions that were not caused or aggravated by the accident?
- Is the claimant married? Does she have children? How did the injuries impact her relationship with family members?
- These are some of the factors that go into determining the value of a claimant's case. In addition to the factors noted above, the insurance company may employ other strategies (i.e. surveillance) in an attempt to settle cases for less than the full value.
- If you have a serious injury claim, it is in your best interest to speak with an attorney initially, so you do not make mistakes that can destroy your claim.

Aside from the above factors, intangible factors that we don't know about can include the adjuster's background, claims experience with similar claims and personal bias.

17

CHILDREN AND BIKE ACCIDENTS

With youth comes inexperience and lapses in judgment. You can't prevent all accidents, but it is important to teach our children the dos and don'ts of riding a bike. The responsibility is on the parent to teach their children the rules of the road. Here are some safety tips.

- Supervise your children until they have demonstrated the responsibility to go out and ride on their own.
- Children under 10 have difficulty judging speed and distance, so it is best that they trail ride, ride in secure parking lots, or on the sidewalk during this time.
- Don't let your child ride in the street until they demonstrate that they know the rules of the road.
- Remember that our actions speak so much louder than our words. When you are cycling with your kids, model appropriate riding etiquette and behavior.

Taking the time initially to instill good riding habits and behaviors in our children can lead to a lifetime of pleasurable cycling.

GLOSSARY

CPSC: Consumer Product Safety Commission

Comparative Fault: The facts of the case suggest that the injured person's action(s) or inaction caused or contributed to the accident. Any recovery is reduced by the injured person's percentage of fault.

Economic Damages: Compensation that may be available to an injured person, which includes health care expenses, lost wages, and any other monies that are tangible and paid or owed.

First Party Coverage or Claim: An insurance claim made against your insurance company. Includes PIP, medical payments and uninsured motorist claims.

Liability: The determination of fault. The facts of the incident are very important in determining liability or fault.

Negligence: The legal term for fault or liability. The law requires a person to follow a standard of care that it defines as that of a reasonable prudent person under the same or similar circumstances.

Non-Economic Damages: Compensation for the injured person's human losses including physical and mental pain and suffering.

Personal Injury Protection: This is also called PIP or no-fault. PIP is provided through the auto insurance company of the injured person and is available whether or not the injured person caused the accident.

Third Party Coverage or Claim: A claim made against an insurance company for the negligent or at fault party.

Uninsured Motorist Coverage: Provides insurance coverage for the injured person if the at fault driver is uninsured or does not have enough insurance to compensate the injured person.

ABOUT THE AUTHOR



I am a Florida personal injury and bicycle accident lawyer. I have written this book to help you with your bicycle accident case. I am an avid bicyclist; you may see me on my bent-rider on the West Orange, Van Fleet, and Withlacoochee trails. I devote all my time and energy to the clients that I represent. If you become my client, you will be given the personal attention that you deserve. In 1986, I graduated from the National College of Chiropractic.

I practiced chiropractic in Florida and Northwest Indiana for over 16 years. During this time, I had the privilege of treating hundreds of patients with numerous injuries. I also had the privilege of testifying in court for my patients who were injured in accidents. This background gives me the unique ability to truly advocate for my clients because I understand the law and their injuries. In the mid 1990s, I attended Valparaiso University Law School. During this time, I maintained an active clinical practice. In 1999, I opened my own legal practice in Northwest Indiana where I primarily represented people who were injured by medical malpractice and other types of negligence.

In 2003, I relocated to Florida so that I could be closer to my aging parents. From 2003 to 2008, I worked for a large Central Florida insurance defense firm that represented insurance companies, doctors, hospitals and people who were being sued by injured victims. This experience allowed me to gain an understanding of how insurance companies evaluate and settle claims. As an insurance defense attorney, I had no say regarding the clients that I represented. During my insurance defense days, I looked forward to being in a position where I would accept a select number of cases representing persons whose lives have been devastated by the negligence of another person or corporation.

For those interested in my educational background, I obtained a Bachelor of Science Degree in 1984, a Doctor of Chiropractic Degree in 1986, and a Juris Doctor in 1999. I have had chiropractic licenses in Florida, Indiana (inactive) and Illinois (inactive) and law licenses in Florida and Indiana. Additionally, I am admitted to federal courts in Florida, Indiana, Illinois and Colorado.

I am a Florida board certified civil trial lawyer. Florida has approximately 90,000 lawyers and approximately 7% of the lawyers are board certified. Board certification is the highest level a Florida lawyer can obtain. Every lawyer in Florida is required to take continuing legal education courses on a yearly basis. I attend legal courses on a variety of topics. I have also taught continuing legal education courses to attorneys, and I currently teach continuing chiropractic education courses three times a year. This experience allows me to keep up with new developments in health care.

The purpose of this book is to provide the reader with solid information and insight into the selected area of law and how to choose a lawyer. I explain the basics of a lawsuit and how bicycle accident law works in Florida. Before you retain an attorney, I recommend that you learn as much as possible and then call an experienced injury attorney to assist you. Do not rely on a friend to give you advice, and don't rely on the advertisements that you are bombarded with on a daily basis.

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