

A Guide to Florida Car Accident Claims

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ABOUT THIS BOOK

This book is a consumer guide for people who have been injured in a car 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 Car Accident Law.

This book will help you understand insurance in general, how to protect yourself from liability if you hurt another person, or 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 accident case. If you have been injured in an automobile accident, you will learn how to get your medical bills and lost wages paid, as well as your vehicle repaired. 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 each and every case has its unique set of facts.

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1

INTRODUCTION

Florida is a dangerous place to drive. 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 not knowing where they are going.
- Florida has a high number of young drivers. With youth comes inexperience and a sense of danger. Young drivers typically cause accidents because of speed and immaturity.
- Florida is place where many people come to retire. When people reach retirement age, their vision chances 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.

If you put these factors together, you can see why there are so many dangerous car accidents in Florida. In 2015, there were over 374,000 car accidents in Florida that involved over 630,000 drivers. The cost of damage to property and injuries to people costs in the hundreds of millions of dollars.

Finally, Florida's minimum insurance requirements do not protect drivers who have been injured or killed. In Florida, a driver is not required to carry bodily injury insurance. Bodily injury insurance affords 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.

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**THE TEN COMMANDMENTS OF CAR
ACCIDENT CASES**

THOU SHALT NOT give a recorded statement to the other driver'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 regarding pre-existing injuries, illnesses or medical conditions for your doctor.

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

PROPERTY DAMAGE – GETTING YOUR CAR FIXED

The first question that many people have after a car accident is; how do I get my car fixed? In legal terms this is a "property damage claim". Generally, personal injury attorneys do not handle property damage claims. In our office, as a courtesy to our clients, we will assist them with their property damage claim.

Before a decision can be made as to who is responsible for getting your car fixed, the insurance companies have to sort out who was at fault for the accident. If you are the at-fault driver, you only have one way available to get your car fixed, and that is through your own "collision insurance". For a complete description of collision insurance, turn to Chapter 13, which is an in-depth discussion of the types of insurance coverage available to Florida drivers.

If you did not cause the accident, you may have two options available to get your car repaired. First, review your insurance policy and see if you purchased collision insurance. If you have collision insurance, you can get your car fixed through your own insurance company. Most collision policies have a deductible that can range from \$100.00 to \$1,000.00. Your insurance company will pay the agreed upon estimate price minus the deductible, which you will have to pay to the body shop.

The benefits of going through your own collision insurance:

- Many times, it is quicker because the other driver's insurance company will have to investigate the claim before it accepts liability and agrees to repair your car.
- Your insurance company has a duty to treat you more fairly than the other driver's insurance company.
- If you go through your insurance company, your rates will not go up if the accident was not your fault.

- If your property damage is more than \$10,000 and other driver only has the Florida minimum of \$10,000 in property damage insurance.

The disadvantage of going through your own collision insurance:

- You have to pay your deductible to the body shop before you will be able to pick up your vehicle. So, you may have to reach into your pocket for \$500.00 or \$1,000.00. Your insurance company will seek repayment from the other driver's insurance company, which will include your deductible. When your insurance company receives payment, it will forward you your deductible. It could take three to six months to get your deductible returned.

The other option available to you is waiting and going through the other driver's insurance company. In Florida, all drivers are required to purchase a minimum of \$10,000.00 of property damage insurance. If you choose to go through the other driver's insurance company, you will first have to wait for a claim to be set up and an insurance adjuster to contact you.

Some insurance companies will require you to bring your vehicle to their estimating facility. Other insurance companies have property damage appraisers who will come to your home or storage facility and estimate the vehicle. Still others will ask you to take your vehicle to one of their preferred shops for the estimate.

Below are answers to the most frequently asked questions regarding Florida property damage claims:

How will the insurance company decide whether to repair or total my vehicle?

The insurance company will total your vehicle if your frame or chassis is bent so much that it cannot be easily repaired or if your car costs more to repair than it is worth.

How does the insurance company determine how much my vehicle is worth?

The standard is actual cash (fair market) value of the vehicle. Most insurance companies use auto evaluation software programs. If you have concerns that the insurance company is not acting fairly regarding your vehicle, you can do your own market research by checking out Kelley Blue Book, NADA (National Automobile Dealers Association), Edmunds or checking out your local newspaper advertisements.

Do I have to go the repair shop that the insurance company recommends?

You do not have to go to the repair shop that the insurance company recommends; however, if it is a private preferred shop, you may have an easier time getting additional items fixed that were not on the original estimate because the insurance company has a working relationship with the body shop.

If my car is totaled or getting repaired, will the insurance company provide a rental car?

Yes. If your car is totaled the insurance company will generally allow you to rent a car for about one month so you can purchase another vehicle. Some insurance companies will attempt to cancel your rental car the day you receive the total loss check for your vehicle, you need to negotiate this point before you agree to the total loss money. The insurance company will also allow you to rent a car for a reasonable amount of time that your car is in the body shop.

The insurance company will allow a certain amount of money for each day of rental coverage. So, do not plan on a luxury car, SUV or van unless you opt to pay the difference in rental price.

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WHAT IS A PERSONAL INJURY CLAIM?

A personal or bodily injury claim addresses injury to the person. The law requires people to use reasonable care in their daily activities. If you have been injured because the other driver was careless, it is called “negligence.” Personal injury cases can happen under many different factual scenarios, including: (1) car or truck accidents; (2) motorcycle or bicycle accidents; or (3) boating accidents. If a person dies because of an accident it is called a wrongful death case.

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 any injuries they may have caused. This concept is called “negligence.” The first step to receiving money for an injury is proving that the other party was negligent and their negligence 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 stopped at a traffic light on US1 and you are rear-ended by a car behind you that didn’t stop because the driver was on his cell phone, liability is clear. 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 car accident. For instance, there could be a crash going through the intersection at Highway 441 and Hwy. 19. The crash occurred right in the middle of the intersection and both drivers say they had the green light. In this case, it may be much more difficult to “prove liability” even though a person was hurt in the accident.

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

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

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ACTION STEPS AFTER AN ACCIDENT

Getting in an accident is not a normal occurrence. Many people do not know the proper action steps to take after an accident. Below is a checklist of action 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 the contact information from any witnesses.
- If you are physically able – take photographs of the accident scene, and **all cars** involved in the accident. Most phones have a camera, if your phone doesn't have a camera, you should keep a disposable camera in the glove box. Professional drivers always keep cameras in their vehicles.
- 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 EMS, go to the hospital or doctor within 24 hours.
- Report the accident to your insurance company.
- Follow your doctor's advice and treatment schedule. Do not withhold information regarding prior accidents or injuries. Insurance companies have the ability to 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 case than a note from a family doctor one week after the accident that has no mention of the accident or injuries.

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- 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 personal injury 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 them hurt their chances of receiving fair and just compensation for their legitimate injuries.

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THE 7 OLD WIVES TALES

I hear old wives' tales about personal injury cases and insurance companies on a daily basis. Get these out of your mind, there is no truth in them.

Tale One: You will get rich because you were injured in an accident because 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.

Tale Two: Because your family member, neighbor, friend or co-worker received X amount of money – you will receive the same settlement. **NOT TRUE.** Each and every case, person, and injury are different. Also, car insurance companies evaluate claims differently.

Tale Three: You must give a recorded statement to the other driver'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.

Tale Four: If you make a claim for Uninsured Motorist Benefits or Underinsured Motorist Benefits your insurance company will raise your rates. **NOT TRUE.** You were not a fault for the accident and you purchased the insurance just in case the other driver didn't have insurance or have enough insurance.

Tale Five: If you are fair with the insurance company - the insurance company will be fair to you. **NOT**

TRUE. The insurance company's only goal is to get the claim closed as quickly as possible without having to pay the insurance limits.

Tale Six:

If you get into an accident that was not your fault, you are entitled to money. **NOT TRUE.** You also have to show that the accident, and not some underlying problem, caused your condition.

Tale 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.

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THE TRUTH ABOUT FLORIDA AUTO LAW

People injured in an automobile accident have a lot of questions about the law and their personal injury claim. The most common questions are:

1. Who will pay for my medical bills?
2. The doctor wants me to take some time off of work, how will I get paid?
3. How do I get compensated for my personal injuries?
4. What are the types of things will an insurance company compensate me for in an accident? What harms & losses is an injured person entitled to?
5. What are the elements of damages that a decedent's Personal Representative can receive when a person has died because of someone else's negligence?
6. Will, I be able to recover money for my injuries if I was partially at fault for the accident?

1. Who will pay for my medical expenses?

Florida is a no-fault state. The law requires all motor vehicle owners in Florida to carry "no-fault/ personal injury protection (PIP)" coverage. The minimum PIP coverage is \$10,000. So, 80% of your medical bills will be paid by your insurance company under your PIP coverage. The at-fault driver's insurance company will be responsible for unreimbursed medical expenses including the 20% not paid by PIP and any charges over \$10,000. Currently, even though you are entitled to \$10,000 in PIP benefits, there are two tiers of benefits that are available. All folks injured in car accidents have the initial benefit of \$2,500. In order to break the ceiling and access the additional \$7,500, a designated healthcare provider (MD, DO, ARNP, or DDS) has to find that you have an "emergency medical condition - EMC". Additionally, in order to qualify for PIP benefits, you must seek medical attention within 14 days of the accident. For a complete discussion of PIP refer to chapter 13.

Generally, the other driver's insurance company will not pay your medical bills that exceed the PIP limit as they accumulate. Medical expenses are part of the settlement amount at the end of a case.

2. The doctor wants me to take some time off of work, how will I get paid?

Personal Injury Protection insurance pays 60% of your lost wages. The remainder of your lost income is an element of compensation that you are entitled to receive from the at-fault driver at the time of settlement or jury verdict. If you have sick days at work or short-term disability, you may also need to apply for these benefits.

3. How do I get compensated for my personal injuries?

Your attorney will seek compensation for your injuries from the other driver's insurance company. If the other driver is uninsured or underinsured, your attorney will be able to seek compensation from your insurance company if you purchased uninsured or underinsured motorist coverage. See Chapter 13 for a more complete description of uninsured motorist coverage. The compensation you receive will depend on the facts of the accident, the nature and extent of your injuries, and whether your injuries are permanent.

4. What categories of compensation can an injured person?

In legalese, a person can receive money for their damages. The car accident victim has the burden of proving her damages by a preponderance of the evidence. The following categories of damages will be considered by an insurance adjuster or jury when considering the value of a car accident claim:

- Past Healthcare Expenses
- Future Healthcare Expenses
- Past Lost Wages
- Future Loss of Earning Capacity
- Pain & Suffering Damages which are intangible and consist of physical and mental pain and suffering, humiliation, disfigurement, and the loss of enjoyment of life

5. What are the elements of damages that a decedent's Personal Representative can receive when a person has died because of someone else's negligence?

A wrongful death action is governed by Chapter 768.16-768.21, Florida Statutes; the Florida Wrongful Death Act. There are two different categories of damages in a wrongful death action: (1) estate damages; and (2) survivor damages.

A Survivor's damages include the following:

- Loss of the decedent's companionship
- Loss of support and services
- Mental pain and suffering
- Lost parental companionship, instruction and guidance
- Medical and funeral expenses that may have been paid by the survivor

The Estate's damages may include the following:

- Loss net accumulations
- Decedent's lost earnings
- Decedent's medical and funeral expenses

6. Will I be able to recover money for my injuries if I was partially at fault for the accident?

Yes. Florida is a pure comparative fault jurisdiction. A jury will assign a percentage of fault to each and every person or entity involved in the accident. Any damage award will be reduced by your percentage of fault. For instance, if a jury awards you \$100,000 and finds you 50% at fault, your net recovery will be \$50,000.

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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 are dependent 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 is dependent on the relationship. Your insurance company has a duty to act in good faith and deal fairly with you, the policy holder (insured). On the other hand, the other driver’s insurance company does not owe you a duty to deal in good faith or act fairly because you are not the policy holder (insured).

When an insurance company is put on notice that their policy holder may have a claim filed against him for an injury, the Company’s goal is to protect the policy holder and 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 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 just 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.

The insurance industry’s methods are tremendous 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

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?

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

Go into downtown Tampa or Jacksonville and you will notice that the biggest buildings are owned by insurance companies. These companies just 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, an injured person has to treat their injury claim like a business. He must follow his doctor’s advice and make it his job to get well. The seriously injured person must also retain an attorney to assist them with their accident case. He will be treated differently when he is represented by an attorney who truly understands (1) the area of law (2) the injuries (3) jury bias and (4) is willing to go toe to toe for what is right.

Remember, insurance is only a business and you are a statistic and 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. The following are actions the insurance company will most likely take – with the 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 driver’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 tell her that you broke your wrist; however, you forget to tell the adjuster about your back injury because it was 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 on retaining 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 their 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 that you sign a medical authorization so they can obtain all your medical records. They will phrase the request something like this, "we really want to settle this case but we cannot 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 will not be limited to your medical records regarding this accident. It allows the insurance company to go on a fishing expedition for any other 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 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 has learned 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 just wait until you give up and say, “enough!” and accept the unfair offer.

Recommendation: An experienced personal injury attorney can advise you 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 until the case is resolved for payment.

5. The insurance adjuster may hire an investigator and place you 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 achieve this result, 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. There is nothing that can ruin your case more than not following 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.

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HANDLING YOUR CASE WITHOUT A LAWYER

You do not need an attorney for every small injury case. 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 there is little or no property damage, the 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, the injured person may receive just as good a settlement by herself 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. The 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 fact scenario is much more 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 2 ½ to 3 ½ 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 to a person injured in an automobile accident is to at least talk to an attorney. Most personal injury attorneys do not charge for an initial consultation.

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CHOOSING A PERSONAL INJURY LAWYER

Choosing an attorney to represent you is an important task. If you open up your local phone book – you are going to 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.

What you will notice is a lawyer ad on the back of the phone book and then page after page of ads offering: “Free Consultation”, “No Recovery, No Fee”, “Aggressive and Honest”, “__ 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 know the lawyers that are competent trial lawyers. Board certified lawyers have to show proficiency in trial practice and have tried a minimum number of cases. There are almost 90,000 lawyers in Florida. Just over 1050 attorneys 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 an occasional personal injury case.

Insurance companies know the reputation of attorneys who handle personal injury cases. The companies share information between each other.

3. Choose an attorney that has inside knowledge of the insurance claims handling process or 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 can know all the law in the world, 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. Learn about lawyer 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?

6. Do not hire a lawyer who actively solicits business shortly after an accident. News flash. It's illegal to solicit clients, and if someone offers you money to go and see a doctor or lawyer, run for the hills.

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

8. When interviewing the attorney find out how his/her office works. There are many law offices that 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 settles. 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.

9. 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.

10. 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 has led to a cottage industry where lawyers will market cases and then refer them to other lawyer firms so they can receive the referral fee at the end of the case.

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

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

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THE STEPS IN A CAR ACCIDENT CASE

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 that have to be made along the way.

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.

In order to receive compensation, the injured person has the burden of proof. For purposes of this discussion, in all personal injuries we have to determine whether there is (1) liability or negligence; and (2) damages (injuries).

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 starts immediately after the lawyer is retained because as time goes on evidence is destroyed, altered or disappears.

A common story that I hear from clients when they come into the office is this: “We don’t have to worry about liability because the other driver admitted he was at fault and was sorry.” I try to explain to them that many times the at-fault driver’s story will change 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.

Next, the client says that the other driver received a ticket so that proves he was a fault for the accident. I have to explain to them that a jury will not learn that the other driver was ticketed for the accident. Because of these issues, it is important that the accident is investigated ASAP.

The Liability Investigation

1. Vehicles: The cars 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 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 review the vehicles, scene and reconstruct the event. Once the car is fixed or totaled, this information is lost forever.

2. Accident Scene: We gather the crash report, and visit the scene in person in order to photograph, inspect, measure skid marks, and look for other factors such as bushes or trees or anything else that could have contributed to the accident. It is important to do this ASAP because trees and shrubs change can be cut down or skid marks could wash way.

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 there are any insurance policies 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 is dependent 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 & losses).

Damages Investigation

1. Claim Search: We will order an ISO claim search, which is one of the claims searches performed by insurance companies. This will give us an idea if the injured person has any 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 to 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 a very important part of proving a client's damages. If there are friends or acquaintances with whom the client has contact, and these people 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 will may submit a demand package to the insurance company. The demand package is a compilation of our liability and damage determination. 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 of 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 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

- Attorneys 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 by 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) (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 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 automobile insurance companies including State Farm, Allstate, GEICO, Progress, Nationwide, and Liberty Mutual have in-house attorneys that will represent the company's insured. The defendant(s) will answer the complaint and the litigation process begins. Once a lawsuit is filed, much more is expected

out of the client. In order to for the case to be successful, the client must be willing and able to actively participate in the litigation process.

The following are phases occur in a lawsuit between the 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 the case for trial.

II. Discovery: This is period of time where the parties exchange information. Written discovery includes interrogatories, request for admissions and request for production of documents. Additionally, the parties will subpoena records from healthcare 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 deposition 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 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. Things that are discussed during mediation are 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 trials. (1) A bench trial, in which the judge hears the entire case and rules on the law and the facts. (2) A jury trial in which six members of the community will 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.

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WHAT DOES AN INJURY LAWYER DO?

Most folks do not know what is involved in working up a car accident case from beginning to end. One of the main things that I do in my practice because of my medical background is counsel my clients regarding their injuries and appropriate medical care. Many clients do not understand their medical records or what their doctors have told them about their specific injury, treatment options and prognosis. Unlike their treating doctors who are busy running from room to room and patient to patient, I am able to sit down with my clients go over their MRIs and other diagnostic tests, and make sure that they understand what is going on with their health. Below I have also set out the other activities that a personal injury lawyer must do in order to maximize compensation for their clients:

- Interview the client
- Explain the claims process with the client
- Gather liability and damage evidence to support the client's claims
- Review the client's automobile insurance policy to see what coverage is available to pay for the client's medical bills, lost wages, and other losses
- Contact the adverse party's insurance company to put them on notice of the claim so they can set appropriate loss reserves
- Start the initial investigation of the client's claim, which may include: gathering physical evidence, speaking with witnesses, photographing the vehicles and scene
- Analyze the legal issues involved in the case to determine if there are other parties that may be responsible for the claim or if there are facts that might diminish the client's recovery because the client is also at fault for the accident or has pre-existing medical condition
- Obtain and review the client's medical records (past and present)
- Work with the client's health insurance or governmental benefit plan to make sure they pay for the treatment
- Negotiate with the insurance adjuster in an effort to settle the claim. Discuss negotiations with the client to determine if a lawsuit will be filed

- If a lawsuit has to be filed, prepare and draft the summons and complaint
- Locate the defendant(s) so they can be served with the complaint
- Draft written discovery to the defendant(s) and respond to written discovery from the defendant(s)
- Take depositions of parties and witnesses
- Hire necessary experts to prove client's claim
- Attend pre-trial conferences
- File all necessary documents with the court identifying witnesses and exhibits
- Prepare for and attend mediation
- For larger exposure cases – hire and present the case to focus group(s)
- Take the client's case to trial
- Draft or respond to any post-trial motions if necessary
- Negotiate any outstanding medical bills with client's doctors and negotiate with client's insurance company

As you can see, a number of tasks must be completed before a case is resolved through settlement or trial.

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FLORIDA INSURANCE PRIMER

This is the most important chapter in this book because people do not think about their insurance needs until it is too late. Insurance has two main purposes. First, it will protect your assets if you injure another party. Second, it will provide coverage to make you whole if you are injured by another party. Insurance must be purchased before an accident. Frequently, I have to explain to clients that they have to pay money when they have been injured by another party because they did not purchase uninsured motorist insurance. Understandably, these clients become upset when they learn that they have to pay for someone else's mistake.

Remember, when you're involved in an accident it is too late to sure up any insurance deficiencies. In 2017, there were over 354,000 motor vehicle accidents in Florida. 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 drive in Florida you have to 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 only have the minimum insurance coverage, and others are driving illegally without insurance.** The chances are high that if you are involved in an automobile

accident that the other driver will have little or no insurance to compensate you for your injuries.

Below is a description of the different benefits that you can purchase to protect yourself on Florida's dangerous roads.

Collision: This benefit provides coverage to repair your vehicle if it is damaged in an accident. You can purchase this insurance with a deductible that ranges from \$100.00 to \$1,000.00. If you do not have collision insurance, you will have to pay for your car to be fixed in the following scenarios:

- The damage to your car is more than \$10,000 and the other driver only has \$10,000 in coverage.
- The other driver is uninsured
- The other driver's insurance company denied liability and will not fix your car
- You caused the accident

Personal Injury Protection (PIP) – “No-Fault”: This coverage provides medical payments and wage loss payment up to \$10,000 whether or not you are at fault for the crash. There are a number of steps to qualify for PIP coverage. First, you must see a healthcare provider within 14 days of the accident. Second, there are two tiers of PIP benefits - \$2,500 or \$10,000. All Florida insured persons will receive \$2,500 in PIP benefits - no questions asked. In order to unlock or access the additional \$7,500 in PIP benefits, a healthcare provider (except chiropractor) must document that the patient has an "emergency medical condition" or "EMC". This is term of art, which is why it is important for car accident victims to see healthcare providers who handle these cases and understand the requirements under the law.

PIP also pays a wage loss benefit of 60%, if the injured person is taken off of work by a healthcare provider.

Medical Payments Coverage: This coverage will pay the 20% co-insurance that is not covered under PIP, and it will also pay medical expenses when PIP runs out. Some insurance companies do not offer

extended PIP benefits so you will need to purchase medical payments coverage. Under these circumstances, you should purchase the highest amount available.

Bodily Injury Liability: (Minimum \$100,000/\$300,000 or more if you have substantial assets that can be attached if you were to injure another person). You need to purchase this coverage if:

- You were at fault in the accident and caused serious injury to another person.
- You need bodily injury coverage in order to purchase uninsured motorist coverage.

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 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 from your insurance company, and you've been faithfully paying premiums for a number of years, doesn't mean that the insurance company is just 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.

Group Health Insurance: Many clients have group health insurance through their employees. These insurance carriers will pay for medical treatment once your PIP is exhausted. However, you will be responsible for the co-insurance payments. Additionally, most health insurance carriers will require reimbursement at the time of settlement. This is another area where you need an experienced personal injury attorney. The insurance carrier's right of subrogation or recovery could be based on contract, ERISA (a federal law) or equity.

Medicare/Medicaid: Some clients are covered under Medicare or Medicaid. Once PIP is exhausted, Medicare/Medicaid will pay the client's medical bills but they will require repayment at the time of settlement.

Personal Umbrella Policy: Generally, the most inexpensive way to adequately protect you from liability or 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 out 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 clients over the years.

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 to 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 timely treat 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 have not yet 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, 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 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 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 vanish.

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 sure 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 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.

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HOW INSURANCE COMPANIES VALUE CASES

One of the most common questions that I get when I first meet with a client is “how much is my case 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 they lawyer discovers that there is only \$25,000 available in coverage; the case is only worth \$25,000 because the likelihood of recovering more than the insurance proceeds is slim to none. A personal injury 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 she quotes you an amount, ask the attorney to put that in writing and her immediately.

The following factors are utilized 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?

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- 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 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 there are intangible factors that we don't know about. These can include the adjuster's background, claims experience with similar claims and personal bias.

GLOSSARY

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 include healthcare 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, collision, medical payments and uninsured motorist claims.

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

Negligence: Is the legal term for fault or liability. The law requires a person to follow a standard of care that it defines as 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. In a car accident case, non-economic damages are only available if the jury finds the injured person has (1) permanent injury; (2) significant scarring; or (3) loss of an important bodily function.

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

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 the injured person if the at fault driver is uninsured or does not have adequate 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 Car Accident Case. 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 Florida 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 predominately 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 other 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 for 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 currently teach continuing chiropractic education courses three times a year. This allows me to keep up with new developments in healthcare.

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 how Car Accident Law works in Florida as well as the basics of a lawsuit. 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 the advertisements that you are bombarded with on a daily basis or a friend to give you advice.

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