

Five Mistakes
That Can Wreck Your Florida
Accident Case

Florida's Ultimate Accident Guide

Third Edition

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Printed and bound in the United States of America.

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Table of Contents

Forward	5
Why I Wrote This Book	7
What Is a Personal Injury Case?	9
You Have Entered a War Zone Against the Insurance Company	11
Should You Settle Your Injury Claim Without a Lawyer?	15
Florida's No-Fault System	19
What Every Injury Claim Must Have	23
How Do You Determine the Value of a Personal Injury Case?	29
Common Questions About the Claims Process	33
What is a Wrongful Death Claim?	39
Pedestrian Injury	41
What You May Not Know About Lawyer Advertising	45
How Do You Find a Qualified Personal Injury Attorney?	47
What an Injury Lawyer Does in Your Case	51
Common Myths About Accident Cases	55
Five Mistakes That Can Wreck Your Florida Accident Case	59
Steps to Maximize Your Recovery	63
Your Lawyer Doesn't Get Paid Unless You Do	67
About My Practice	69
Other Consumer Guides Available	71

DISCLAIMER

The information in this book is just that – INFORMATION. This book does not constitute legal advice, and no attorney-client relationship has been formed by receiving and reading this book. Although the author is a licensed attorney in good standing in the state of Florida, Mr. Dodson is not the reader's attorney, absent a signed retainer agreement.

Accidents causing injury involve legal issues or questions where the outcomes are heavily, if not completely, influenced by the individual facts of the case. Slight variations in the facts may result in enormous differences in the outcome of any case. Therefore, for specific legal advice, it is advisable to consult with an experienced personal injury lawyer. Anyone who wishes to consult with Mr. Dodson about a specific case will find his contact information at the back of this book.

Forward

You may have been injured in an accident or know someone who has. Either way, requesting this book is a good choice. If you're like me, you do your homework before making an important decision. And believe me you have an important decision to make.

At some point, you must decide how you want to pursue your accident case. Do you hire an attorney or do you go it alone? If you go it alone, how do you deal with the insurance adjuster? What information is important? What potential traps lie ahead? This book will guide you.

If you're thinking about hiring a lawyer, the information in this book will help you on your search for an experienced and qualified accident attorney (personal injury attorney). You'll find helpful tips on what to look for in hiring a personal injury lawyer and what you need to understand when you see attorney advertising in the Yellow Pages and on television. This book will also explain many of the myths associated with injury or accident claims. Reading this book is the best initial decision you will make about your accident case.

If you have further questions, call me without any obligation for a free evaluation of your accident case. My contact information is listed at the back of this book.

Jim Dodson

Why I Wrote This Book

I've seen too many instances of insurance companies taking advantage of people before they have a chance to talk with an attorney and trying to convince them they are better off without the help of an attorney. I am also tired of excessive lawyer advertising, which tells you nothing about how your case will be handled.

Most attorneys require you to make an appointment in which you would get some of the information that I have provided here. I believe that you should be able to have this information right now, without any pressure. The hiring of an attorney to represent you is a very important step that should not be taken lightly.

Lawyer advertising is relatively new to the legal profession. It has totally changed the practice of personal injury law. Unfortunately, not many of those changes are good for people like you who are looking for a lawyer.

Most people I represent have never sued anyone and have never been in an accident. They may have worked with a lawyer to get a will or to probate their parents' estates or with a real estate lawyer if they bought a piece of property. After an accident, they will call the lawyer they know and ask for a referral to a personal injury lawyer. The vast majority of my clients are referred to me by those lawyers who trust me to handle their client's injury claim as well as by my clients who happily refer their friends and family.

But how do people find a lawyer when they don't know a lawyer or have trusted friends who have had a good experience with a lawyer? All too often they turn to an advertiser. And they are everywhere...TV, phone book covers, yellow pages, white pages, buses, billboards and on and on. But what do all those ads tell you about how the lawyer will handle your case? Nothing!

I want to give you the INFORMATION that will help you decide which lawyer is best for your case.

There is nothing wrong with advertising. Many excellent, qualified lawyers advertise. Unfortunately, though, advertising has created other firms that are little more than processing mills where runners sign clients up, referrals are made to only certain doctors, many clients never see a lawyer, and file processors handle their claim. Clients have no idea what to expect. They assume that is how all lawyers operate.

What Is a Personal Injury Case?

We hear the term “personal injury case” everywhere in lawyer advertising. Your friends have probably brought it up to you if you have been in an accident. But what does it really mean? An injury claim is based upon proving someone was negligent. This means they had some duty (such as a duty of reasonable care driving a car) and they breached that duty, meaning they were careless or negligent. We all understand people can be negligent, but so can corporations and governmental entities. If someone's carelessness caused damage only to property (such as to a car, boat or structure) but did not cause injury to another person, this is called a “property damage case”. Most personal injury lawyers will not handle a property damage case unless the person also suffered injuries.

Common personal injury claims include:

- Wrongful death
- Vehicle crashes
- Falls and unsafe premises
- Defective and unsafe products
- Dog bites and animal attacks
- Medical malpractice

It's important to deal with an experienced personal injury lawyer who knows how to gather the specific evidence needed to best support your claim and prove it in court, if necessary. Evidence a lawyer may need to gather to prove your claim may include: witness testimony, medical records, financial records, photographs and scene investigations, expert evaluation and reports, exhibits, illustrations and animations. Once the needed evidence is gathered to support your claim, your lawyer must have the skill and experience to effectively

communicate your case to an insurance company and negotiate strongly on your behalf.

Experienced personal injury lawyers regularly deal with complicated issues of medicine, accident reconstruction, vocational rehabilitation, engineering and other specialized areas of study which may affect your case. They should also have experience trying injury cases to a jury, and be willing to do this on your behalf if necessary. You must feel comfortable that any lawyer you select will be effective in communicating your best interest to a claims adjuster or to a jury.

Just because a lawyer has some experience trying criminal cases or divorce cases does not mean they would be effective in pursuing an injury claim on your behalf. Insurance companies know the lawyers they have learned to respect and those they do not.

You Have Entered a War Zone Against the Insurance Company

Did you know the day you were injured you entered a war zone with the insurance industry? Over the past 30 years, the insurance industry has spent billions of dollars on advertising to spread false and misleading information about accident claims. The industry wants people to believe the justice system is out of control and people who file lawsuits are getting millions of dollars for minor injuries. Such propaganda has created the perception among the public the tort system is broken. Even President Bush regularly argued there were too many “frivolous lawsuits”. Unfortunately, this misinformation campaign has had its desired effect upon people who are called for jury duty. Too many jurors today are highly skeptical of people who file lawsuits claiming money for pain and suffering. They have bought the myths created by the insurance industry. This can be a huge obstacle to achieving justice in your case, even when injuries are severe and negligence has been proven. Lawyers who handle these cases have learned over the past years it is much more difficult to achieve justice for their clients.

Be aware the insurance claims adjuster has one goal in mind in dealing with your injury claim- settle it for as little money as possible. Adjusters receive extensive training on how to save the company money. They are evaluated on that basis and promoted on that basis.

Here are some of the things adjusters do in order to minimize what they will pay on your claim.

First: deny liability

One of the first steps every insurance company undertakes in evaluating any claim is whether they can deny liability. They immediately look for any argument their insured was not at fault, you were entirely at fault or they are not otherwise legally responsible, as when their insured’s auto was loaned to an unlicensed driver or their

policy has lapsed. Many policies actually exclude certain people as authorized drivers.

Second: get the victim to give a recorded statement

Insurance adjusters are trained to get a recorded statement of the victim after an accident. They call at the earliest opportunity and try to put the victim at ease. Their goal is to obtain harmful admissions about how the accident occurred, or to minimize injury complaints and the need for medical care. Lawyers see the harmful effects of such recorded statements. For instance, it is not uncommon for someone injured in an accident to downplay the significance and force of the impact, or to simply agree with the adjuster's misstatement of how the accident really occurred. In addition, victims may not feel the need for medical attention for several days. Often, the adjuster is able to obtain a recorded statement in which the person says they feel good and don't need to see a doctor. When their condition worsens, requiring extensive medical treatment, they are left to later explain why they made such an earlier admission, making it appear they've changed their story.

Third: obtaining a signed medical authorization

The adjuster would love to have the victim sign a general, unrestricted medical authorization giving the insurance company the ability to request medical records from any medical provider they have ever seen. It gives the adjuster the advantage of having the information from treating and other physicians before their lawyer has received those records. While we do not play hide the ball with medical records given to an adjuster, we certainly need to know what records they have in their possession. Additionally, the adjuster has no reason to have any medical records unless, and until, a claim is actually made seeking compensation for injuries received in the accident. At the appropriate time, once a claim is made, all relevant medical records will be delivered to them. There is no reason for the insurance adjuster to have them before a claim is made.

Fourth: quick settlement with a full release

A very common insurance tactic is to contact the victim quickly after an accident and offer a small amount of money to settle any potential claim. This is done before they have ever visited a doctor or realized their need for medical attention. Many serious injuries are not always apparent immediately after an accident. It is not uncommon for people to wait days or weeks before realizing they need treatment. Insurance adjusters are well-trained and understand this fact. Some companies aggressively pursue people injured in an in a car accident, offering them \$500, \$1000, or \$1500 to settle their case on the spot. The condition, of course, is giving the adjuster a signed release of all claims. A release is a legally binding document written by the insurance company to serve as a complete bar against any further recovery, even if the person's condition turns out to be far worse than they realized at the time the release was signed. Accepting a small amount of compensation when no injury has occurred is one thing. Accepting a small amount of compensation, which turns out to bar recovery for a much more serious injury, is totally different. Insurance companies well know that paying a few people a little bit of money, when they have little or no injury, is much cheaper than paying them a great deal of money later after the full extent of their injury is known and they have a lawyer on their side.

Fifth: convincing the accident victim the adjuster will be fair to them and a lawyer will only cost them money

Lawyers regularly deal with clients who have been contacted by adjusters who have assured them their claim will be fairly evaluated. Injured victims are actually told not to contact a lawyer. Adjusters do this for one purpose, to save money. They understand claims settle for larger amounts to clients represented by lawyers. The job of an adjuster is to minimize the amount they pay in settlement of any claim. They also know the injured party has never attempted to place a value on any injury, has no experience negotiating, nor do they have any knowledge of verdicts juries award for similar injuries. Dealing with the adjuster without the assistance of a lawyer is not a level playing field and they know it.

Sixth: surveillance

It must be assumed anyone with any significant injury in a car crash will be under surveillance. Adjusters hire investigators to photograph and videotape accident victims bending over to pick up the newspaper, walking the dog, working in the yard, shopping, going to the gym or to the store. They are looking for evidence of any activity which “appears” to be inconsistent with any physical limitations claimed to have occurred from the accident. Often at trial, they will attempt to introduce a videotape of the victim simply carrying on their daily routine without any apparent difficulty. When asked about the effect of their injury, many accident victims, unaware that they been under surveillance, are not careful in describing their actual limitations, making statements which may conflict with what surveillance appears to show.

These are just a few of the tactics the insurance industry uses. The effort of the industry has resulted in a national call for “tort reform.” Political parties even use it as part of their platform. In too many instances, the success of the tort reform movement has emboldened the insurance industry to withhold fair settlements. Any lawyer you select must be familiar with these issues and ready to confront them aggressively on your behalf.

Studies have shown clients who are represented by lawyers, receive up to two to three times more in settlement than those who are unrepresented.

Should You Settle Your Injury Claim Without a Lawyer?

You definitely do not need an attorney for every small accident case. What is a small accident case? There are no hard and fast rules, but usually a small case involves an accident with no damage, or little damage to the vehicle and the treatment for any injury lasts no more than a few weeks. In a small case, the medical bills usually will not exceed a few thousand dollars, and the injury has resolved and does not significantly impact your quality of life.

These are cases that can often be settled without the assistance of a lawyer. In my practice, I tell clients it may not be cost effective to use an attorney for a small case. You may have just as good a chance of recovering a net settlement near or equal to one that an attorney could get in a small case. You may be well served by handling the case on your own without an attorney.

*But even if you have a small case, this book can help in understanding the issues which must be considered. **There are some considerations you should be aware of before simply accepting an offer from an insurance company.***

First, in accepting an offer to settle an injury claim you are assuming you fully know the nature and extent of your injuries and whether any further medical treatment may be necessary. Accepting the insurance company's offer will require providing a release. As mentioned before, the purpose of a release is to forever bar any further payment, even should your medical condition become worse, or be far more serious, than originally believed by you at the time the release was signed. Therefore, you must be absolutely certain you will not require further medical care. The amount received must fully compensate you for physical and emotional pain, suffering, scarring, disfigurement, emotional distress and loss of the enjoyment of life, as well as any out-of-pocket expenses incurred. These expenses include: any unreimbursed medical expenses, lost wages and wage earning capacity. You must be confident the amount will cover expenses likely to be incurred in the future as a direct result of treatment related to the injuries received in the accident.

Second, many general releases prepared by insurance companies are broadly worded. They include language releasing not only the insurance company and party directly involved, but other potential parties whether named in the release or not. Signing such a broadly worded general release has the potential of unintentionally releasing claims against your uninsured/underinsured (UM) motorist carrier, as well as potential claims, such as for medical malpractice resulting from treatment received in the accident.

Additionally, in cases involving more significant damages, particularly when there is a relatively small bodily injury policy covering the defendant, consumers sometimes attempt to avoid hiring a lawyer and work out a settlement with the bodily injury insurance carrier with the intention of seeking further compensation for their injury from their own UM policy. This has the potential for actually preventing them from being able to seek such damages. Florida statutes require notice to be given to the UM carrier before settling with the at-fault party and giving them a release of liability. The injured party must obtain the written consent of their own UM carrier before such a settlement occurs in order to preserve their right to seek further damages under their own policy of insurance. The failure to obtain such written consent may result in the UM carrier claiming prejudice against their interest and denying coverage altogether.

Finally, most consumers have virtually no experience in evaluating what an injury claim is worth. *You should be very wary of relying on any representations of value suggested by the opposing claims adjuster. The adjuster's one goal is to settle for as little money as possible. They are trained in this process and are evaluated constantly by their company on their ability to save the insurance company's money. They have no incentive to fully compensate you for your injuries.*

Most lawyers are not able to economically handle cases in which the settlement is less than \$5,000, for instance. Once you have considered the issues outlined in this chapter, you may feel comfortable settling your claim without hiring a lawyer. If you have been unsuccessful in finding a lawyer to take your case, it may be a sign it is a small case in their eyes.

As I have mentioned elsewhere, I am not giving, nor am I allowed in this book, to give you or anyone advice on what to do with any particular case. I can point out issues and help inform the reader on the legal process. Slight variations in the facts of any case can render vastly differing results and present entirely different legal issues.

Florida's No-Fault System

Florida has been a no-fault state for more than 30 years. The law was allowed to expire in October, 2007. The legislature reenacted it with some substantial amendments, effective January 1, 2008. Most people who have been involved in an auto accident have no understanding of how no-fault works and what it is designed to accomplish.

First: Your Insurance Pays

The first purpose of a no-fault system is to require your own insurance carrier to pay your medical bills, even when you were not at fault and the other party was clearly at fault. Florida's system allows you to obtain medical treatment from virtually any medical provider you choose. There is no preauthorization or pre-approval process. You simply report your accident to your no-fault insurance carrier and obtain a claim number, make an appointment with the medical provider of your choice and give them your claim number for payment.

Under Florida's amended law, each car must be insured with \$10,000 in no-fault insurance, also known as PIP (personal injury protection). Your PIP policy provides each occupant of your vehicle with \$10,000 in no-fault benefits. The new statute changed the payment for many providers and services to a formula based upon what Medicare would pay for the same service. This change was made at the request of the insurance industry in order to reduce what was being paid to doctors under the old PIP statute. The new system has been successful in reducing what the insurance company is required to pay, which they like, because it increases their profit. Unfortunately, a larger percentage of these billed services remain unpaid after PIP has applied its formula. This may result in larger unpaid balances for injury victims to deal with.

Things you might not know about No-Fault:

- ✓ It reserves the first \$5,000 of your PIP benefits for emergency medical care billed within the first 30 days after an accident. After 30 days the \$5,000, or what remains, may be used for other medical expenses.
- ✓ It pays 60% of your average weekly wage, if you are out of work on your doctor's order after an auto accident. It is important to note if you are unable to work, you should always get your doctor's order taking you off work for any dates for which you are claiming no-fault reimbursement.
- ✓ In the most serious cases, resulting in someone's death, PIP pays a death benefit of \$5000.

Your PIP benefits are a valuable asset and should be carefully used in pursuing medical treatment. **Some doctors and clinics have no problem billing your PIP until your benefits are exhausted, whether you actually need the treatment or not.** Be aware of what expenses you are incurring. Question your doctor if you do not feel the treatments you are receiving are worthwhile. Once your PIP benefits are exhausted, your medical treatment may be transferred to your health insurance, if you have it, or the expenses may simply accrue as an unpaid balance, to be resolved out of any settlement you receive.

Second: Threshold

The second purpose of Florida's no-fault scheme was to deny the right to make a liability claim to anyone not meeting the minimum threshold. In states which do not use a no-fault system, any injury, no matter how small, may be used as a basis for compensation after an auto accident. It was thought such a system created too many lawsuits. No-fault was created to limit lawsuits. Threshold applies to most vehicle accidents.

What Is the Threshold?

Generally, it means your doctor must be willing to state in writing you have suffered a permanent injury, loss of a significant bodily function or permanent and significant scarring. This is the minimum threshold in Florida.

What Happens When Your PIP is Exhausted?

First, if you have no health insurance, most medical providers who treat automobile accident patients will continue to treat you under an agreement to satisfy any unpaid balance of your medical expenses from any settlement you obtain. You may work out a payment arrangement directly with the medical provider.

It is common for a medical provider to request you to sign a letter of protection (LOP) which is an agreement between the patient, the doctor and the patient's lawyer agreeing the doctor will not seek collection of any unpaid balance until the patient's case has been resolved. It creates an ethical obligation on behalf of your attorney to satisfy the medical provider's unpaid balance prior to the lawyer distributing settlement funds to you.

Bear in mind that unpaid medical bills will come out of your settlement in the end. The advantages and disadvantages of the use of letters of protection should be carefully discussed with your lawyer. You should be very wary of any lawyer who encourages the blanket use of letters of protection for medical treatment being offered without fully discussing with you their advantages and disadvantages.

Second, your health insurance may take over. Most health insurance policies give them the authority to compel reimbursement of any expenses they pay when you have been hurt in an accident. They do offer several advantages, however. Under most health plans a medical provider will be paid on a reduced fee, which is much less than you would pay otherwise. This saves you money. Additionally, once your case settles, many health insurance companies will negotiate the unpaid balance with your lawyer. This gives you a second opportunity to reduce the cost of your care compared to what

you would pay on your own for the same services or under a letter of protection.

Have You Heard of ERISA?

There is a secret danger in using your employer-sponsored health insurance plan to pay your medical expenses once your no-fault benefits have been exhausted...ERISA. In its wisdom, Congress passed the Employee Retirement Income Security Act (commonly called ERISA). You see the health insurance industry convinced Congress it was inconvenient for them to be dealing with insurance laws in each of the various states where their plans were in place. So Congress delivered this gift to the insurance industry. It gives employer-sponsored health insurance plans the right to require 100% reimbursement of every dollar they pay out on your behalf when you receive payment for your injuries. Congress thought it wise to allow the plan to recover every penny it pays out, **even if you receive nothing**. This is the hidden danger of relying on those health insurance plans after an auto accident.

Not all employer-sponsored plans are written as ERISA plans. Your lawyer must obtain information from your health insurance company in order to determine if it is an ERISA plan. Luckily, not all ERISA-based insurance plans have carefully written their plan documents to take full advantage of what Congress has given them. It is important for your lawyer to understand ERISA, how it works and how your plan documents describe the plan's right of reimbursement. Plans do vary. When an ERISA-based health plan pays your medical expenses and is claiming its right of reimbursement, your lawyer must know how to obtain the plan documents and understand exactly what the plan may be entitled to receive and what defenses apply to making reimbursement.

What Every Injury Claim Must Have

- ✓ **Liability**
- ✓ **Injury**
- ✓ **Damages**
- ✓ **Insurance Coverage**

Liability

The first issue your lawyer must consider in every accident claim is whether it can be proven the other party was at fault. Lawyers call this **establishing liability**.

In evaluating the issue of liability, the **insurance company will look for every opportunity to argue the injured party was at least partially at fault** in the accident. This is known as arguing **comparative fault**.

Florida is a comparative fault state, which means when an auto accident occurs involving two cars, it is possible that both cars may be found responsible (or be held liable) for the accident. Every insurance adjuster evaluates every accident with the goal of attempting to place as much blame as possible on the injured party for any fault they may have had in causing the accident.

Why is this important to you?

They do not have to place the fault entirely on you. Any amount of comparative fault they can successfully prove will reduce the amount they you owe in compensation.

For example, proving comparative fault by you of twenty five percent in causing the accident would reduce your settlement or verdict by twenty five percent. Any combination of fault can be made by a jury, if the evidence shows that both parties were at fault.

The issue of evaluating exactly what occurred leading up to an accident is extremely important. Your lawyer needs to question you closely and you need to be honest in telling your lawyer exactly what happened. Otherwise, both you and your lawyer may be caught off guard later, hurting your case. **Rest assured the insurance company is going to look for every argument you were also at fault. If they are successful in making that argument, it will save them money.**

Injury

The second issue which must be proven is that someone's negligent act caused your injury. This is referred to as **causation**. In most accidents, causation is not an issue where there was a collision with visible crush damages to your vehicle. However, there are two major areas involving auto accidents where causation issues arise.

The first involves cases where there is no evidence of impact on your vehicle, most commonly in minor impact rear end collisions. Lawyers frequently see cases involving collisions resulting in absolutely no evidence of impact on the car occupied by the injured person. These cases, typically, involve complaints of neck and back injury with minor soreness and soft tissue damage (no broken bones, no spinal damage.)

Many insurance companies have set up special teams to handle the defense of claims involving little or no property damage, often referred to as MIST cases (minor impact soft tissue). Insurance companies believe they can convince a jury you were not likely injured in a collision when photos of your car show virtually no evidence of impact. As a result, settlement offers on these cases are very often seen as quite minimal. Many lawyers have stopped taking these minor impact cases involving only soft tissue damage.

However, other accidents involving little or no property damage result in serious injuries which may be objectively proven, typically disk injuries of the neck or back revealed on an MRI. Your lawyer must have a full understanding of the medical and engineering principles which will be argued by the insurance industry against you and how

the injury can be proven. This must be fully discussed with any lawyer you hire.

The second area in which causation issues may be argued by the insurance company typically arises if you have been injured in a prior accident or reported a prior injury, most commonly involving the back or neck. If so, you can expect the insurance company to question whether the accident caused the current injury or whether it simply aggravated a pre-existing condition. The insurance company will work very hard to find any such evidence. They have access to medical claims databases which often show medical claims paid on your behalf in the past. They will work hard to obtain any evidence you were treated in the past for similar complaints.

The reason insurance companies focus so much attention on the existence of prior injuries or complaints is because juries may award lower damage verdicts when you suffer an aggravation of some preexisting condition, as opposed to the same injury with no preexisting condition.

Damages

Once you and your lawyer consider liability and causation, the issue of damages must be evaluated. Damages include both financial losses and other damages.

Financial losses include:

- ✓ wages and your ability to earn money
- ✓ medical expenses which must be repaid to insurance companies and other third parties, including Medicare, Medicaid, VA and Worker's Compensation insurance carriers
- ✓ unpaid medical expenses incurred and those you more likely than not will need in the future

This will require your lawyer to have a full understanding of your medical treatment and any medical treatment your doctor believes you will more likely than not require in the future, together with the

cost of such treatment. In proving any lost wages and wage earning capacity, your lawyer will need to obtain evidence of your earnings and evaluate whether an expert could be used to establish the likelihood that you will suffer a loss of your earning capacity in the future.

Other damages include:

- ✓ Physical pain and suffering
- ✓ Mental anguish
- ✓ Inconvenience
- ✓ Disability or physical impairment
- ✓ Loss of the enjoyment of life
- ✓ Scarring and disfigurement

These are sometimes called general or intangible damages. You should work closely with your lawyer in order for him or her to fully appreciate the magnitude of your injury and how it has and will impact your quality of life.

Insurance Coverage

Finally, your lawyer must determine if the at-fault party has the ability to pay the losses that you have suffered. This usually comes down to insurance coverage and investigation of the defendant's assets, if necessary. What limits of insurance coverage are available to pay your losses? Are there other sources of insurance?

Based on the circumstances of your case, your lawyer may be required to do one or more of the following in order to investigate coverage:

- ✓ Request and obtain sworn policy information from any insurance company providing coverage for the driver, the owner, and any other entity having legal responsibility for the vehicle, including any excess or umbrella insurance policy;

- ✓ Request and obtain sworn policy information from your auto insurance company regarding any uninsured/underinsured motorist coverage available on your policy. If your insurance company maintains you rejected uninsured/underinsured motorist coverage on your policy, require them to produce any rejection form to make sure it complies with the requirements of Florida's insurance laws.

- ✓ Conduct an assets check of any assets owned by the owner, driver, or other entity legally responsible for the at-fault vehicle.

I urge my clients to carry as much uninsured/underinsured motorist coverage as they can afford to protect themselves against irresponsible drivers with little or no insurance. Florida does not require the owner or driver of a car to carry bodily injury coverage to pay damages to anyone they may hurt in an accident. You may request a free copy of my consumer guide entitled, **Buying Car Insurance-The Ultimate Guide to Your Protection from Irresponsible Drivers in Florida**. Instructions for requesting a free copy are available at the end of this book.

How Do You Determine the Value of a Personal Injury Case?

There is no magic formula or process by which some one can predict with certainty the amount of money a personal injury case may be worth. If there were, society would not need personal injury lawyers. One could simply apply a formula to come up with the value of a case. If this were so, there would be no need for a trial. Yet we know the trials are necessary when the two sides cannot agree on what a case is worth.

Ultimately, the true value of the case is what a jury would award at trial. As the case develops, the injured party's attorney and the insurance company are continually trying to evaluate how a jury might see the case and how much money a jury might award. While it does not mean a case will go to trial, it is the yardstick each side uses to create a range of their estimation of the value of a case. Settlement is possible when the money offered intersects with the range both sides feel the case should fall within. No settlement is possible if the plaintiff believes their case is worth no less than \$100,000 but the insurance company is offering only \$25,000.

No value can be placed on a case until all of the damages are known. All medical treatment must be completed and any estimate of future medical treatment must be provided by the treating physician. This means the injured party must reach what lawyers and doctors refer to as **maximum medical improvement**; meaning **further medical treatment is not raising the injured party's level of recovery**. They have reached a plateau. Further medical care may be required, but it will only maintain their condition, not improve it.

A lawyer is not capable of predicting whether an injured person will need further treatment, such as a major surgery. This information is provided only by a physician. The need for future surgery, for instance, may be a significant factor in the value of the case. Attempting to reach a settlement prior to reaching maximum medical improvement could result in significant future medical needs not being taken into consideration in determining the losses suffered or most likely to be suffered in the future.

Let's pull together some of the concepts we discussed above. The circumstances of the accident will have a strong influence on value:

- ✓ Does the injured party have strong evidence to prove the driver was at fault (liability) or is proof of liability weak?
- ✓ Does the insurance company have any argument the injured party was also at fault (comparative fault)?
- ✓ Can the injured party prove the accident clearly caused their injury (causation)? Did they suffer a new injury or was it an aggravation of a preexisting condition?
- ✓ How impressive was the collision and the crush damage to the vehicles?

Bearing those factors in mind, the value of any injury case is also a function of the injury and damages suffered by the victim. Those damages are generally broken down into two categories.

First, **special damages** are those capable of being calculated with certainty. Special damages include past and future medical expenses, lost earnings, lost earning capacity (the ability to earn money) and property damage.

The second includes **intangible damages**. A person's intangible losses are more difficult to calculate and juries are instructed to use their own common sense and judgment in determining the value of those damages.

Intangible damages include:

- ✓ Physical and mental pain and suffering
- ✓ Inconvenience and mental anguish
- ✓ Scarring and disfigurement
- ✓ Loss of the enjoyment of life

Other important factors to consider regarding the value of an injury case include:

- ✓ has the injured party had significant medical treatment in the past
- ✓ the general health of the injured party
- ✓ life expectancy of the injured party
- ✓ is the injured party seen as someone with credibility

All of these factors combine into a unique combination of circumstances which will greatly influence the value of any case.

Virtually no two cases are alike, even if the accident and injuries involved are nearly identical. This means the evaluation of two cases which appear to be similar on the surface may actually produce widely different evaluations due to other factors, including those listed above.

Evaluating personal injury cases takes knowledge, experience and hard earned intuition. Without these traits you may be at a serious disadvantage when negotiating with the insurance adjuster. Unless you're in the business of evaluating and settling personal injury cases for a living, **you should look to an experienced personal injury attorney for guidance.**

Common Questions about the Claims Process

How Long Will My Case Take?

New clients regularly express the concern whether their case will take years to resolve. This misconception comes from cases in news reports which have taken many years to be finalized. For the most part, this remains a myth.

Let's look at some of the factors which will influence how long a case will take.

The first is the seriousness of the injury and how long it takes to complete required medical care and rehabilitation. As discussed earlier, no lawyer can put a value on an injury claim until the medical treatment has been completed and it is known whether the injured client fully recovered or will require future treatment. Some clients complete treatment in months. However, the most seriously injured may require years of medical care. This is one of the most significant factors influencing how long a case will require.

Once a client's medical treatment has been completed, settlement negotiations are possible. Typically, your lawyer will prepare a demand package to be sent to the claims adjuster with all the medical records, an explanation of how the injury has affected the person's life and a demand amount. In my office, all demands are reviewed fully with our clients and a demand amount is agreed upon.

Then, your lawyer and the claims adjuster will negotiate. Your lawyer will advise you of each offer. You and your lawyer will agree on any counter offers made. If an agreement is reached the case is settled. Cases which do not involve serious medical conditions requiring prolonged treatment may be settled within a year of the accident.

If settlement is not possible and a lawsuit is required, the case will take longer. After a lawsuit is filed, in most jurisdictions, even routine auto accident claims require a minimum of six to nine months in order

to complete the required discovery process and the get the case to a mediation conference. The vast majority of lawsuits in Florida do settle at a mediation conference or shortly thereafter. If the case does not settle at mediation and must be scheduled for trial, it will take longer. While your lawyer will certainly give you their best advice, the decision of whether to file a lawsuit, or settle, is always made by the client. Clients always retain the ultimate decision-making authority on these issues.

I encourage clients with concerns about how long their case may take to frankly discuss those concerns. It may actually shorten the process of resolving a claim by filing suit prior to the time the client actually reaches the completion of their medical treatment, allowing the case to be worked up for mediation shortly after the completion of the required treatment.

Litigation may not be the best option for every case. Serious concerns about liability (the likelihood of having a jury find the responsible party to be at fault), causation (proving the injury was caused by the accident) or the likelihood of a jury awarding adequate damages for the harm caused, must all be carefully analyzed in considering whether to file a lawsuit in any case.

The facts and circumstances of each case are unique. As a result, we routinely explore with clients the options available to shorten the time required to finalize their case. Together, we mutually agree on a course which best meets their goals for resolving their case.

Will My Case Go to Court?

Most clients walking into a lawyer's office want nothing to do with having their case go to trial. Many express their fear that once they hire a lawyer they will lose control of their case. I emphasize with clients they will remain in charge of whether their case settles without a lawsuit or whether a lawsuit may be required. My role as a lawyer is to give them advice and guide them in the choices available to resolve their case in a way consistent with their goals. Very few clients come into a lawyer's office wanting to file suit and go to the litigation process. That being so, why do cases end up in suit?

I discussed in an earlier chapter the elements required to make an injury claim.

The strongest cases have the following:

- ✓ **Clear liability** - there is strong evidence the other party was clearly at fault
- ✓ **No comparative fault** - there is no argument that you were also responsible for the accident
- ✓ **Clear causation** - the medical evidence clearly shows the injury resulted from the accident with no pre-existing similar injury or condition
- ✓ **Significant damages** - serious injury or death
- ✓ **Insurance coverage** - enough to pay all damages provable

Insurance companies are most anxious to settle the strongest cases, fearing a runaway jury verdict if it does not settle. Most cases, however, do not have each of these strong elements. Cases which are not as clear-cut either have questions of liability, in which the defendant argues they are not liable for the accident, issues of causation in which they argue the accident did not cause all of the injuries complained of, or limited damages making a large verdict for the plaintiff unlikely. Such issues affect how much an insurance company will pay to settle the case.

Again, this boils down to the plaintiff arguing their case is worth more than the defendant says they are willing to pay. When the two sides cannot agree after settlement negotiations have been completed, the plaintiff can either accept what the defendant is offering or reject the defendant's offer and file their lawsuit.

What is Mediation?

Mediation is a process which is used to attempt to bring opposing parties to reach an amicable agreement to settle their differences, typically after a lawsuit has been filed. It is used in virtually all injury cases prior to trial.

Mediation is generally arranged voluntarily between the parties, but may be court ordered as well. In many Florida jurisdictions, judges will not assign a trial date for a case until it has been unsuccessfully mediated. Experience has shown nearly 70% of cases which are mediated after a lawsuit has been filed will result in a settlement agreement being reached. Most of the rest will settle before trial.

In conducting voluntary mediations, the lawyers for each party confer and reach an agreement for a neutral third party to act as the mediator. The date and place of the mediation is agreed upon convenient for the parties, the lawyers and the mediator. The mediator is a lawyer or former judge who has completed a specific course of study in the mediation process in order to become certified by the court to conduct mediations. There are hundreds of names to choose from in most jurisdictions. In reality, most lawyers normally operate off a "short list" of a dozen or so mediators whom they have found to conduct meaningful and productive mediations. Lawyers strive to find a mediator they believe has the personality, background and skills to be effective for that particular case.

The role of the mediator is to facilitate an agreement which will settle the case. The mediator has no authority to require either side to change their position or make them compromise. They do not operate as decision-makers or fact finders. They are facilitators. Consequently, the mediator's experience and ability to be persuasive is critical in successfully achieving settlements.

The advantage of a mediated settlement is that both sides exercise some control of the final result. Some cases simply must be tried as no acceptable compromise is possible to reach. Even so, after a trial, one party is normally happy with the result and the other very unhappy. While juries usually reach a verdict which is logical and just,

they may also be unpredictable. All trial lawyers have experiences proving what is commonly known by them, which is any jury can reach any result from any set of facts.

What is a Wrongful Death Claim?

A wrongful death claim exists when someone dies as a result of the negligence of another party. Fatal injuries occur frequently in:

- car, truck or motorcycle collisions
- pedestrian accidents
- slips, trips and falls
- injuries involving minors and children
- unsafe or defective products
- medical negligence

These cases differ from other injury cases because they are governed by the Florida wrongful death statute. The wrongful death statute specifically provides who is entitled to receive compensation, as well as the types of damages which may be recovered.

There are several distinguishing factors about death claims. First, in Florida, there is a much shorter time within which a death claim must be filed, generally within two years of the date of death. Normal injury claims in Florida, other than medical negligence, must be brought within a period of four years. The period of time within which a claim must be brought is referred to as the statute of limitations.

Second, death claims are pursued by a personal representative appointed by the court on behalf of all beneficiaries of the decedent's estate. There may be several people with the right to pursue claims when someone dies, such as: both parents of a surviving minor child, even though they are divorced; children of a deceased parent; or a parent and one or more children of the decedent. A petition must be filed in the Probate Court on behalf of the decedent's estate for the appointment of the personal representative, generally the surviving spouse, adult child, a parent or other relative. Once appointed, the personal representative of the estate is given authority to retain a lawyer on behalf of the estate and to pursue all claims for compensation on behalf of all beneficiaries.

Sometimes the injury lawyer retained on behalf of the personal representative may also represent the estate in the probate proceedings. More commonly, the injury lawyer will associate a probate and estates lawyer to handle the probate proceedings. It is beyond the scope of this article to outline in any detail the potential beneficiaries of a wrongful death claim and the damages they may be entitled to receive.

However, the statute provides generally for recovery for the decedent's spouse, minor or adult children, parents (in certain situations) and other survivors whom it defines. A minor under this statute means a child under the age of 25. Damage awards for the death of a loved one have the potential to be substantial because of the unique loss loved ones suffer.

I have written the [Survivor's Guide to Florida Wrongful Death Claims](#), which is available at no cost on our website www.JWDodsonLaw.com. In this guide, you will find answers to common questions including:

- Who may bring a wrongful death claim?
- Who is entitled to receive compensation?
- What damages may be awarded?
- How can a lawyer help?
- Why don't you need money upfront to hire a lawyer?

Pedestrian Injury

Pedestrians struck by a car, truck or bus are an ever-growing percentage of fatal and non-fatal injuries nationwide.

Dangers exist for them in many ways:

- ✓ Being struck, while walking in crosswalks, crossing streets, on a sidewalk, or walking behind a backing car or SUV;
- ✓ Too many drivers waiting to turn, focus only on traffic coming from one direction and fail to see a pedestrian walking within the crosswalk from the other direction;
- ✓ Drivers attempting to enter or exit a parking lot fail to see a pedestrian walking along a sidewalk;
- ✓ Drivers backing their vehicle fail to see someone behind them; this is a particular problem when the driver of an SUV fails to see a child below their line of sight behind the vehicle.

While most people are aware of these dangers, the actual statistics are quite shocking. The Insurance Institute for Highway Safety reports pedestrians account for 11% of motor vehicle deaths, making them the second largest category of vehicle deaths. The National Highway Traffic Safety Administration reports 4808 pedestrians were killed in traffic crashes in the United States in 2002 and 71,000 injured. Nearly one-fourth of those fatalities were children between the ages of five and nine.

They further report injuries and deaths of pedestrians occur most frequently in three age groups: children between 5 and 9; adults 70 and older; and people impaired by alcohol.

Pedestrian injuries are often serious due to potential impact against a vehicle, the pavement, or both.

While Florida's No-Fault benefits apply to pay your medical bills, there is no threshold injury requirement for pedestrian injury. This means you don't have to prove you suffered a permanent injury, as is required if you were injured as a passenger in a car accident.

Every vehicle operated within the state is required to maintain \$10,000 of no-fault/personal injury protection (PIP) benefits. These benefits pay a portion of medical expenses and lost wages due to injuries received by a motor vehicle. When someone is injured as a pedestrian in Florida, they are entitled to these no-fault/ PIP benefits. If the pedestrian owns a vehicle insured with no-fault coverage, their own PIP pays their medical and wage loss expenses up to the limits of the policy. If the injured pedestrian did not have PIP benefits, the no-fault/PIP benefits carried on the responsible driver's policy is available to pay the injured pedestrian's medical and wage loss expenses. In cases involving death, a death benefit of \$5,000 is available from any applicable no-fault coverage.

The injured pedestrian is entitled to compensation for:

- mental and physical pain and suffering
- scarring, disfigurement and road rash
- inconvenience
- loss of the enjoyment of life
- medical expenses incurred and those likely to be incurred in the future
- lost wages and wage earning ability

In the worst cases involving death, the estate of the deceased is entitled to receive damages provided under the Florida Wrongful Death Statute.

The damages suffered by an injured pedestrian, or by their estate in cases resulting in their death, are often substantial. It is critical to learn the insurance coverage available to pay these damages by the insurance carrier for the driver responsible for the accident. When the responsible driver does not have enough insurance to pay all of the damages incurred, a claim is possible against the uninsured/underinsured motorist coverage available to the pedestrian.

Consumers must be aware of the need to carry adequate uninsured/underinsured motorist coverage on their own auto policy in order to protect themselves from irresponsible drivers causing injuries, and who carried little or no insurance. **These issues are more fully discussed in my free consumer guide, Buying Car Insurance, available at www.TheFloridaInsuranceBook.com.**

What You May Not Know About Lawyer Advertising

If you watch TV during a week day you'll have an opportunity to see personal injury lawyer ads aired non-stop. They all pretty much look alike. Listen to them, if you can. When the day is over, you'll know virtually nothing about the lawyer or who will actually handle your case and talk with you or the adjuster.

If you have looked at the lawyer ads in the yellow pages, in most books you will see twenty or more full page ads. Some books feature "double truck" ads consisting of two full pages, side by side, for the same firm.

These ads all attempt to out-shout the others with the same format: A large picture of one or more lawyers and bullet points about what they do.

The same message is often repeated:

- ✓ aggressive
- ✓ fighting for you
- ✓ caring
- ✓ we come to you
- ✓ no recovery, no fees
- ✓ free consultation

These ads tell you nothing about any of the issues which will actually affect your case.

Here are some things to keep in mind about most lawyer advertising:

1. There is no Florida Bar requirement about the level of actual experience a lawyer has in the area of law for which they advertise.

2. There are virtually no restrictions on advertising for multiple areas of law. Do you want a lawyer who limits their practice or one that does many other areas as well? Would you put your life in the hands of a general practitioner or one specializing in the surgery you need?
3. The company selling the ads (TV or yellow pages directory) does not verify any claims made in these advertisements. They get paid to sell ads..... period.
4. The lawyer you see on the ad may not be the lawyer who will handle your case. In some cases, they will never be.
5. In many people's mind's "advertising lawyers" are perceived very negatively. Should your case need to be tried to a jury, this could hurt your case if the jury recognizes your lawyer as "one of them". The defense often looks for ways to bring this information out in front of the jury for that very reason.
6. Some ads are by paid referral services. Many of these simply rotate calls received to the next lawyer who has paid a fee to be on the list or a lawyer who has purchased the exclusive right to receive referrals in certain geographic locations, a county or a zip code. Such services know little more about the lawyer other than that their check cleared the bank.
7. In too many instances, those large ads are designed to produce volumes of clients. The systems designed to handle large volumes of cases produces many of the issues I have discussed in this book. Is that what you are really looking for?

You need to arm yourself with information, ask questions and carefully consider what you get in response. Your case is too important for you to simply "hope" someone you select, at random, will meet your needs and work to achieve your goals.

How Do You Find A Qualified Personal Injury Attorney?

Unfortunately, today too many people have fallen for simply locating an advertiser convenient to where they live or work. If you look closely at all lawyer ads, there is a Florida Bar required disclosure which says:

“The hiring of a lawyer is an important decision that should not be based solely on advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.”

My experience is that no one requests such written information. For years, I was a partner in a firm which advertised. I was astonished at the number of people who hired attorneys without requesting any information about the lawyers' background or experience. The common statement I heard was “I assume you're qualified or you wouldn't be advertising.” Everyday, countless people entrust their cases into the hands of attorneys about whom they have virtually no information. They certainly know nothing about how their case is going to be handled.

I've written this book to help you ask the right questions, become informed, and select the lawyer you decide is right for your case. Let's look at some things you need to consider.

Who is Reputable in Your Area?

Helpful Tips to Know:

1. If you know a lawyer, ask for a referral to someone who is an experienced personal injury lawyer they know and trust.
2. What about yellow page advertisements?

- ✓ Keep in mind not everyone advertises in the yellow pages (in my own practice, I have never had a yellow page display ad).
- ✓ Be wary of lawyers doing too many specialties, no one can do everything well. Personal injury law demands a lawyer's full time attention to stay current.
- ✓ Be careful of full page ads, they are designed to attract volume. Can you be assured your case won't be lost in the mass of other cases the lawyer is handling? Will your case be relegated to case managers, paralegals, and file clerks?

3. There are referral services that will refer you to an attorney. Most lawyers have paid a fee to be listed under a specialty. Find out what screening the referral service did to list the attorney. When interviewing, ask some of the questions I've raised in this book, before you decide.

4. If you meet with an attorney, see if he/she offers you the type of information provided in this book to help you become informed before you decide. What type of specific information does the lawyer provide about how each case is handled and by whom? Make sure you meet and spend time with the lawyer who will do the work on your case.

5. What about the practice of having someone sent to your home to "sign you up?" It is common in large volume practices to have a non-lawyer go to the client's home for the initial visit. Do you believe it is in your best interest not to meet with your lawyer at an initial visit? When will you meet with your lawyer? Has the lawyer designed his/her practice so he/she seldom, if ever, personally deals with clients? Do you want to deal only with file processors and legal assistants? It is important for you to know this up front.

6. Be careful if you have been solicited at home by a "cold" mailing. Look carefully at the material you have been provided. Does it give you the type of information found in this book or do you feel rushed to make a decision?

7. Be careful if the lawyer insists on you seeing "their" doctor. Watch out for a stack of their business cards. As I discuss in my book, this

has the potential to be used by the insurance company to kill your case at trial.

8. How will the attorney keep you informed of the activities in your case? Who will you hear from and when? What will you receive in writing and how often? How promptly will your phone calls be answered? The most common complaint about lawyers is their failure to answer client calls and questions promptly.

9. Who will actually work on your case? What responsibility does each person have? If you are hiring a lawyer because of their trial skills, make sure that person will be trying your case.

Here are some very important points you must look for and discuss with your attorney. Every attorney won't meet each one, but you should be careful when you learn of glaring weaknesses.

Experience

Almost without exception, the longer a lawyer has practiced a special area of the law, the more they will know. Experience is a big factor in most cases. Do they limit their practice to representing victims injury and motor vehicle accident cases?

Can your lawyer take your case to trial, if required?

Is he/she ready and willing to try your case?

Do they have the financial means to pay the costs required to take your case to the courtroom? Has he/she achieved significant verdicts or settlements? Insurance companies respect lawyers willing to try cases. Past results are not a guarantee of the future, but they do represent some level of experience and success.

Who will you be working with?

Some large volume practices are designed so the lawyer, if you meet one, may do very little in pursuing your case. Ask who will work on your case and whether the lawyer employs a case manager or paralegal to negotiate your case with the insurance company, and what involvement the lawyer will have personally on your behalf.

Respect in the legal community

Is the lawyer viewed with respect by other lawyers? Martindale-Hubbell provides a legal review process for lawyers, allowing them to be rated by other lawyers in the area of legal ability and ethics. Go to Martindale-Hubbell.com to see how the lawyer is rated. I will be glad to explain my AV rating, the highest rating available for legal ability and ethics.

Publication

Has the lawyer published anything which would help you select the best lawyer for your case?

Organizations

Is the lawyer involved professionally? Does he/she belong to trial lawyer organizations, such as Florida Justice Association, American Justice Association or the local Tampa Bay Trial Lawyer Association?

Continuing Legal Education

All lawyers are required to report to the Bar certain minimum legal education courses. Does the lawyer go beyond the minimum? How many continuing education courses has he/she attended in the last year and who conducted them?

Protection of your file

How will your file materials be protected? Fires and hurricanes are a fact of life in Florida. Does the lawyer have a system to electronically scan your file materials for safe keeping in the event of an unexpected disaster? Failure to have such systems would result in everything being lost, should tragedy occur.

Once you have decided on an attorney, make sure you both understand your goals and how the relationship between you and the attorney will work.

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What an Injury Lawyer Does in Your Case

The following is an outline of the steps our clients may be assured of, as we handle their cases, working together as a team. Not every case is the same. Not every step is required in every case; specific cases may require other specific action to be taken.

- ✓ Personally meet with every client for an initial interview.
- ✓ Listen to our client's concerns.
- ✓ Determine their goals for resolving their claim.
- ✓ Commit in writing to returning clients phone calls promptly – every time.
- ✓ Inform each client about the steps which will occur and what must be proven.
- ✓ Gather all information client has, with names, police reports, bills, records, photographs.
- ✓ Go over client's insurance policy and coverage; determine what coverage is available to pay for medical bills and lost wages.
- ✓ Suggest changes client should consider on their insurance coverage for the future.
- ✓ Put client's and opposing party's insurance company on notice of the claim.
- ✓ Request sworn copies of available insurance coverage from each carrier.
- ✓ Notify client in writing of what insurance coverage is available to pay their damages and losses.
- ✓ Identify and interview all known witnesses, as may be necessary.
- ✓ Collect evidence, which includes: seeking to obtain scene photos and examination as may be necessary, photos of vehicle damages and vehicle damage estimates.

- ✓ Analyze legal issues, such as comparative fault, workers compensation immunity, vicarious liability, and whether any other party bears any responsibility for the accident.
- ✓ Request copies of client's records from all current treating physicians.
- ✓ Obtain records of client's medical treatment *prior* to accident.
- ✓ Discuss client's treatment with physicians as necessary.
- ✓ Request updated lien and payment records from each physician.
- ✓ Monitor payments made to providers by client's no-fault (PIP) carrier or other health or disability insurance.
- ✓ Request lien information from any health, disability, or benefit plan paying benefits for client.
- ✓ Request treating doctors written opinions: has client reached maximum medical improvement, has client suffered a permanent injury, what are client's restriction of function, and what are the future medical needs and how much will they cost.
- ✓ Analyze defenses to requests for repayment by client's health, disability or benefit plan carrier, which has asserted their entitlement to repayment of some or all benefits they have provided.
- ✓ Analyze whether client's vehicle has suffered diminished value which should be pursued. Retain expert when appropriate to estimate loss of value.
- ✓ Discuss whether suit should be filed or whether client would prefer to attempt to negotiate a settlement.
- ✓ Educate client on litigation steps, the types and amounts of costs which will be required in a law suit (all of which will be paid by our firm), and Florida's Proposal for Settlement process.
- ✓ Determine the need for expert testimony to support client's claim; locate and hire any necessary expert witnesses, either for settlement purposes or for use in a lawsuit.

- ✓ If client wants to pursue negotiation with the responsible insurance carrier, prepare demand package, forward to client for review and reach an agreement on amount to demand for settlement.
- ✓ If negotiation is pursued, personally discuss with client every offer and counter offer and determine whether client agrees with settlement range being offered.
- ✓ If settlement is reached, negotiate reductions of unpaid medical expenses or liens claimed for benefits paid due to client's injury.
- ✓ Upon settlement, review release language and contents and review with client all payments to be made from settlement funds.
- ✓ If lawsuit is pursued, send draft complaint together with description of Florida's Proposal for Settlement process and obtain client's signed acknowledgement and instruction to file suit and ensure an understanding of the process.
- ✓ Personally assist client in preparing answers to sworn questions (interrogatories) submitted by the other party.
- ✓ Provide client with copies of medical records to review before client's deposition.
- ✓ Personally meet with client to prepare for their deposition, go over medical records, and review video on how to be an effective witness.
- ✓ Take the sworn testimony of the defendant and necessary witnesses, at deposition, including use of video depositions.
- ✓ Schedule mediation and meet with client to prepare for mediation, and watch video on the mediation process.
- ✓ If case is not settled at mediation, set case for trial.
- ✓ Meet with client and all necessary witnesses and prepare trial testimony.
- ✓ Determine what demonstrative aids will be used in the trial such as blow-ups, enlargements, colorized radiographic images, or animations.

- ✓ Take required video depositions of client's treating physicians.
- ✓ Organize and prepare medical exhibits and demonstrative exhibits for trial.
- ✓ Prepare jury instructions and verdict form.
- ✓ Prepare applicable Motions in Limine to limit the other side's evidence and tactics.
- ✓ Trial of case to jury.

Common Myths about Accident Cases

1. You need to cooperate with the other drivers' insurance company and give them a recorded statement.

This is absolutely not true. Why do you believe insurance adjusters are so persistent in requesting your recorded statement? They know there is a good chance you will give them information or make a statement that will help them justify reducing or denying your claim. They only want information from you and will not give information to you in return. For instance, ask them to make their insured driver available to you for a recorded statement. That will never happen. Cooperation is a one way street to them!

2. The other driver is at fault, so you can trust their insurance company to give you a fair settlement.

First, don't assume they will agree with the accident report conclusion that their driver was at fault. They will look for every argument that you were also at fault, reducing what they believe they might owe you. Further, they know you have no idea what your case may actually be worth; you do not have the guidance of a lawyer; and you have probably never negotiated an injury claim. This is not a level playing field. They will use your inexperience to their advantage.

3. The other driver's insurance company took care of your property damage, so you can trust them to pay your medical bills, lost wages and pain and suffering.

Most insurance companies are fairly responsive in paying property damage claims. Most are simply paying repairs. Even if your car was totaled, you have access to Edmonds and NADA as a starting point to establishing the vehicle's value. Remember, the property adjuster is not the adjuster who will evaluate your bodily injury claim. They are handled entirely separately. The bodily injury adjuster's full-time job is to pay as little as possible to settle your injury claim. This is what he is trained to do. This is what his superiors use to evaluate his/her job.

4. All lawyers are the same; you might as well go with the one with the big ad.

Hopefully, this book has shed light on some of the differences you need to look out for in finding a lawyer. All lawyers are not the same, neither are the systems they have set up to handle their client's claims. Your claim is too important to you to simply settle on the easiest way to find a lawyer.

5. All lawyers charge the same fees in injury cases.

This is mostly true. Most lawyers charge a contingency fee of 33 1/3% on settlements not involving a lawsuit and 40% when a lawsuit is involved. However, in our practice, we do not raise our fee to 40% once a lawsuit is filed. We still charge only 33 1/3% if the case is resolved at a mediation conference, even after a lawsuit is filed. I do not want my clients to feel if a lawsuit is necessary in their case, it simply works to my advantage in a higher fee.

6. It will help your case if you go to a doctor your lawyer recommends.

There are perfectly valid reasons for a lawyer to refer a client to a doctor. However, even an honest, straight forward referral to a good physician is subject to being viewed very suspiciously by a jury if that referral is made known to them. I have seen doctors put in their charts that a patient was referred to the doctor by Lawyer Jones.

Of greater concern, however, is the too cozy relationship that often exists between some doctors and some lawyers. Is the lawyer truly motivated by a client's best interest when every client is referred to the same doctor or chiropractor? How would you think a jury would react in that client's case if the defense was able to show the large volume of referrals passing between the doctor and the lawyer? Further, it is very common for a lawyer to have to request and firmly negotiate a doctor's final bill in order to assist in their client's getting a fair recovery. How willing will that lawyer be to stand up for their client's interest when negotiating with "their" doctor to lower the bill? That creates the potential for a conflict of interest for the lawyer.

7. When lawyers advertise "No attorney fees or costs unless you win" this means there is no risk to you if you lose your case in court.

Virtually all attorneys doing injury work use the contingent fee. This means the lawyer is only paid an attorney fee from any recovery made by the client (the contingency.) If you lose your case in court, you owe no attorney fees to your lawyer. But, that's not all. Florida has a form of loser pays. This "loser pays" will not come into play if you settle your case before a verdict is delivered. The vast majority of cases are settled at some point before trial.

Five Mistakes That Can Wreck Your Florida Accident Case

These are five mistakes which have the potential to ruin otherwise good cases. They are based on my experience and conversations with other lawyers and clients.

1. The client is referred by the lawyer to a doctor. If your case has to be tried to a jury, this can be seen as the kiss of death. While there is nothing improper about a lawyer referring a client to a doctor, **jurors are highly suspicious of lawyers and doctors who have referral relationships.** Clients may not be aware that a lawyer routinely refers every case to the same chiropractor or surgeon. But, it is fair game at trial for the defense to attempt to put this evidence in front of the jury. The defense knows it would create the impression the doctor's testimony is less credible; especially if it comes out that the doctor had 50 referrals from the lawyer that year.

“Are there exceptions?”

Yes, you may need a doctor with a certain specialty. It is perfectly legitimate for a lawyer to suggest a doctor to a client. But even then, the pitfalls above may still exist and you should be told by your lawyer of the possibility it could be used against you at trial. You and your lawyer can then make an informed decision. Further, I believe that too cozy of a relationship between a lawyer's practice and a doctor's practice is not always in the client's best interest. When you see a stack of the doctor's business cards in a lawyer's office, or when the lawyer is encouraging you to change your doctor to “their” doctor, beware.

2. Not revealing past accidents and injuries to your lawyer. Lawyers decide how to handle cases based on the assumption their client has been truthful with them. Unfortunately, some clients will withhold their history of past accidents. Sometimes they are convinced it has no bearing on their new case. Sometimes they fear the lawyer won't take their case if their past accidents are revealed. Unfortunately, they almost always come out and the **failure to reveal them is much worse than the fact they occurred in the first place.**

Many clients have never had a prior injury or treatment. But when they exist, it is absolutely required for you to fully discuss them with your lawyer. Insurance companies have access to claims databases showing virtually all past medical treatments paid by insurance. If you have been treated for back or neck pain in the past, they will find it. Your life becomes an open book when you make an insurance claim. While the existence of prior treatment may not help your claim, the **failure to reveal** it will absolutely destroy it by destroying your credibility. The jury must believe everything you tell them. You must be credible to them. Without credibility, you have no claim. **I've seen these issues cost clients thousands of dollars.**

3. **Gaps in treatment.** My standard advice to clients is to pursue medical care when they need it. I don't want them to treat simply to try and make their case look more valuable. When clients do not seek treatment immediately after an accident or when they treat, but have gaps of weeks or months without treatment, it generally works to reduce the value of their claim. Adjusters view not seeing a doctor, or not pursuing treatment, as meaning the person did not need treatment. One of the worst things someone can do to reduce the value of their claim is not diligently pursuing medically necessary and needed treatment.

4. **No tax returns or inaccurate returns.** Most serious accidents result in lost wages or lost wage earning capacity. Your tax returns must be made available to your lawyer and to the other side to prove your claim. Failing to file a return or being paid "under the table" is the kiss of death if you want to pursue a claim for lost wages. You must be honest with your lawyer on this issue.

5. **Not being honest about your activity level.** As you complete your medical treatment, you must be brutally honest with your lawyer about what you can and cannot do: things like walking, bending, climbing, yard work or hobbies. Clients obtain too much bad information from their friends on how to make their cases better. Whether you are capable of your pre-accident level of activity is an important part of your claim. The **failure to reveal your true level of function**, however, **destroys your credibility**. Insurance companies commonly have investigators conduct surveillance of you and your residence. It is done in virtually every serious accident case. It is amazing what

they capture which conflicts with what clients represent they are capable of doing. Be honest with your lawyer. The failure to do so has destroyed many claims.

Steps to Maximize Your Recovery

If you've been injured in an accident, the initial steps you take can make a big difference to the outcome of your case. As an additional bonus, I've added some additional tips that will help you make sure you get the recovery your injury deserves.

1. **Seek treatment immediately.**

If you've been injured this isn't the time to tough it out and hope that you will miraculously heal. You need to get the treatment you need to recover from the injuries you've suffered.

When you do consult with a doctor, follow their orders. If they tell you to go to physical therapy, do it. If you treat with a chiropractor, complete the recommended treatment plan, so long as you feel you need to. An insurance adjuster is going to base any settlement offer on the medical care you've received. It does provide some measure of the injuries and resulting pain. Your failure to follow the treatment recommendation of your doctor is a strong argument by the insurance adjuster that you never needed to follow treatment because you were not seriously injured.

2. **Don't underestimate the insurance adjusters who contact you.**

I've talked a lot in this book about insurance adjusters. By now you must understand that they are paid to do a job by their employer, the insurance company. It doesn't make them bad people. However, their job is to try to minimize what they pay you and you should never underestimate their effectiveness in doing their jobs. It's up to you and your lawyer to look out for your interest - the insurance adjuster is looking out for the insurance company's interest. If you drive through any major metropolitan area you will see the name of insurance companies on many skyscrapers. They have gotten rich by collecting as much money as possible from all of us while making sure they pay out as little as possible to someone who's been injured in an accident.

3. Don't provide a statement to the other party's claims adjuster.

If you've been called by an adjuster, simply tell them you'll talk to them at some other time and you're not prepared to make a statement at that time. You do not have to be rude, but you need to be firm. They can't make you talk.

4. Don't sign any medical authorization forms at the request of the other party's insurance company.

This is a reminder of something we've discussed earlier in this book. Your lawyer will obtain the medical records necessary and relevant to your claim. Not giving the insurance adjuster a blanket authority to rummage through your past medical history keeps them from having your personal information winding up in the wrong hands.

5. Start a file to document everything connected to your case.

One of the best things you can do to help your lawyer pursue your case effectively is to gather everything that's available to you in an organized fashion. Keep your bills, the police report or driver's exchange form, and any correspondence you get from any issuance company. Keep copies of photographs of your car, notes of any statements of witnesses or the identification of witnesses to the accident, as well as any notes and scraps of information you gather at the scene or in discussing various aspects of your claim with property damage, medical, or bodily injury adjusters.

In addition, keep track of any wages you've lost because you've been unable to work. Remember to get a copy of any "off work" order from your doctor. Many times these do not end up in your medical records when your lawyer requests them and it's handy to have them if you are given an off work order directly by your doctor.

6. Honesty is the best policy.

One of the most critical factors that will help you receive fair compensation is being honest and maintaining your absolute credibility. Anything you say to a claims adjuster and to your lawyer must be honest and accurate.

If you're not in pain, don't get unnecessary medical treatment. It will only drive up your bills and won't help your case get resolved. If your case does happen to be one that requires a trial, if jurors feel that you're not being honest, they won't give you fair compensation you deserve.

You must also be absolutely straight with your lawyer. Most lawyers won't handle a case if they believe you're not being honest with them. Your lawyer must know what's really happening in your case in order to represent you effectively.

7. Hire a lawyer who devotes his entire practice to personal injury.

I've discussed above many of the pitfalls that exist in pursuing injury claims without the representation of a lawyer, but at the same time you must have a lawyer that insurance companies respect and one who knows exactly what they're doing to pursue your claim. You only have one opportunity to pursue a claim. Numerous studies have shown you're far more likely to end up with more money at the end of the case if you hire a lawyer rather than trying to settle the case on your own. Lawyers who have had years of experience in dealing with cases know which cases need to be tried and those cases which are better off being settled. They know the factors that will help increase the value of your case and those which will work against the value of your case. Through handling thousands of cases they've learned the value of a case and can apply their knowledge and experience to help you. They deal with insurance adjusters everyday and experience first hand the arguments an insurance company will make to try to talk down the value of any case.

Your Lawyer Doesn't Get Paid Unless You Do

People are understandably nervous about hiring a lawyer. Many fear it will cost them money out of their pocket. Money fears stop many people from even calling a lawyer, especially when expenses may be adding up as a result of an accident. Accident victims, however, do not pay their lawyer anything unless a settlement is reached or they win at trial.

Attorneys represent accident victims using a contingent fee. That simply means the lawyer's fee depends on his or her success in resolving your case. If you win your case or get a settlement, the lawyer earns a fee. If you lose at trial or the insurance company won't settle, you don't get anything, but you won't owe your lawyer any attorney fee under a contingent fee contract. The normal lawyer fee is one third of the amount of the settlement without a lawsuit. This arrangement works for both parties. The lawyer takes a risk that they will not get paid if the case doesn't settle. At the same time, the client gets to pursue their claim without having to come up with thousands of dollars in legal fees. Without this arrangement, people would never be able to bring a claim because they couldn't afford it.

Handling cases can be expensive, especially those cases that require filing a lawsuit and potentially going to trial. Court reporters have to be hired to take depositions and transcribe testimony, medical records have to be obtained, expert witnesses and physicians have to be consulted with, exhibits have to be compiled and court costs have to be paid. Your lawyer will usually cover these expenses because most clients would be unable to pay them on their own. When the case settles or the client wins at trial, the lawyer is reimbursed for these expenses incurred in handling the case. Again, this only benefits the client. It allows clients to pursue cases they would be unable to pursue if they were responsible for paying costs and fees in advance. And remember, your lawyer will only be advancing money for costs on your case they are convinced are necessary for you to win. They are spending their money and, generally, will only be reimbursed if you win.

The rules under the Florida Bar require when you hire a lawyer on a contingent fee agreement, it must be in writing. It must tell you how

any expenses will be paid and who will pay them. The contingency fee must be clearly spelled out in the agreement.

If you meet with a lawyer and don't feel comfortable with the contract, don't sign it. You are in control of the situation. If you have questions, make sure the lawyer answers before you sign the document.

When your case is settled, the insurance company will send a check to your lawyer, generally made payable to you and to the lawyer. Florida Bar rules require the settlement funds be deposited into your lawyer's trust account for a period of five business days. After the five business days, the lawyer will issue checks as outlined in a Settlement Statement, which you will sign. The Settlement Statement clearly shows any funds coming out of the settlement, including lawyer's fees, costs, medical bills to be paid, and any liens, such as to a health insurance company or Medicare. Your lawyer should help you resolve any unpaid medical expenses or any insurance liens which must be paid out of the settlement proceeds. In our office, we always work as hard as we can to reduce the amount of any unpaid medical bills which must be paid or any insurance liens which must be reimbursed. We do this in order to maximize the recovery of our client.

About My Practice

For many years, I was a partner in a large personal injury practice handling hundreds of files at one time. I left that practice in 2001 and established my own office committed to limiting the number and types of cases my office would accept.

I have none of the typical lawyer television or yellow page advertising. I do not operate a “high-volume” personal injury law firm, which many people have come to associate with personal injury lawyers.

I am selective about the cases my office will accept. Unlike some “high volume” practices, I do not employ case managers or runners to sign up clients, no paralegal will negotiate a case with the insurance company. I believe by accepting fewer cases I have the ability to work closely with each client.

I know personal injury lawyers who have never even tried an accident case in court. Many of them never meet with a client, let alone perform substantial legal work on the client's behalf. I believe when someone is hiring a lawyer, they should have the opportunity to meet with that lawyer before entrusting them with their case. Yet it remains a common practice in some offices that a client has virtually no contact with a lawyer throughout the firm's representation of them.

I have been handling injury cases in Florida for more than 20 years. My practice is limited exclusively to personal injury law and accident cases. This is all I do. I don't handle any other type of case. Most of my clients are referred to me by satisfied clients and other attorneys.

Sometimes the best advice I can give a client is their case cannot be won, or the risk and cost of pursuing their case is simply too great for the client to incur. Other times I may tell a client he or she is best served by handling the case on their own because it is too small for my office to undertake. Regardless of the circumstances, I will give you my best opinion about what you should do.

If my office accepts your case, you can be assured you'll receive personal attention from me and my staff. Together we will vigorously pursue your case against the insurance company and their lawyers. We handle cases involving auto accidents, wrongful death, pedestrian injuries, falls, dog bites, and injuries to children, medical negligence and other accidental injuries. You will learn more about our office at our website: www.JWDodsonLaw.com. We regularly update the site with new information and informative articles and videos about many topics you will find interesting.

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Other Consumer Guides Available

There's more for you...

I have written other valuable consumer guides relied upon by Floridian's throughout the state, including:

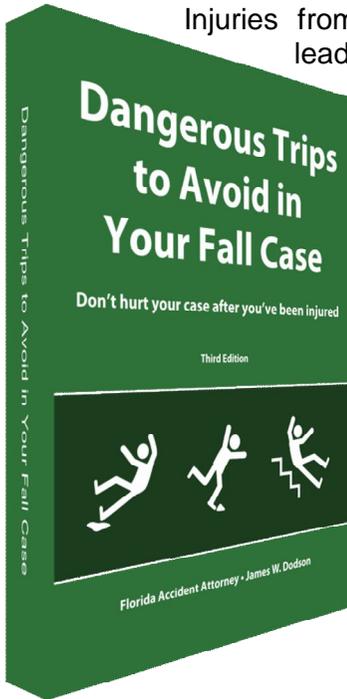
- **Dangerous Trips to Avoid in Your Fall Case**

- **Survivor's Guide to Florida Wrongful Death Claims**

- **Buying Car Insurance**

If you or someone you know would benefit from any of these guides, request a copy today at no cost by one of the easy ways described on the following pages.

Dangerous Trips to Avoid in Your Fall Case



Injuries from slips, trips and falls are the second leading cause of injury in the United States. Yet, most people have no idea what they need to do after they have been badly injured in a fall.

The Ultimate Guide to Injuries From a Fall explains:

- What proof is required
 - Why the insurance adjuster will argue you are at fault
 - Why you don't want to give a recorded statement
-
- Should you settle your claim without a lawyer?

This book is available on Amazon.com for \$13.95; however, you can obtain a copy at **NO-COST** by doing one of the following below:

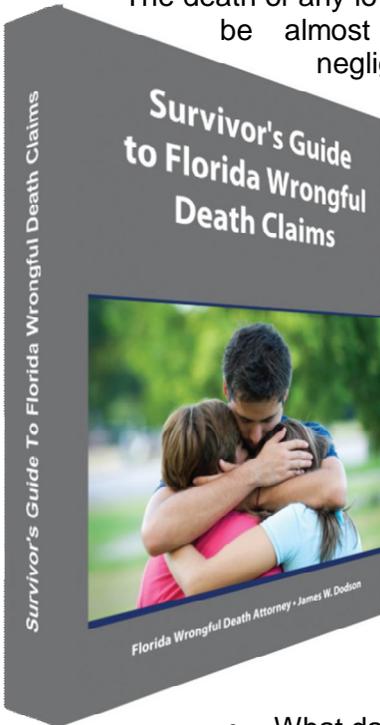
1. Visiting: www.FloridaFallBook.com

2. Visiting my website: www.JWDodsonLaw.com

3. Faxing your name, address & email to 727-446-0850

4. Call – toll free – 1-888-340-0840

Survivor's Guide to Florida Wrongful Death Claims



The death of any loved one is tragic, but the sense of loss can be almost unimaginable when caused by the negligence and carelessness of another. Yet when tragedy strikes, most families have no idea what compensation may be available for the survivors or whether a claim may be brought at all. This easy to read consumer's guide will answer these and many other questions.

Florida's Ultimate Survivor's Guide will explain:

- There is a limited time to bring a claim
- Why Florida uses a Personal Representative and what they do
- Which survivors may recover – children, spouse, parents, siblings
- What damages may be awarded to a survivor
- How to recover for funeral and other expenses

Although this book is available on Amazon for \$13.95, you may obtain your copy at **NO COST** by doing one of the following below:

- 1. Visiting: www.FloridaWrongfulDeathBook.com**
- 2. Visiting my website: www.JWDodsonLaw.com**
- 3. Faxing your name, address & email to 727-446-0850**
- 4. Call – toll free – 1-888-340-0840**

Buying Car Insurance

The Ultimate Guide to Your Protection from Irresponsible Drivers in Florida



Most people who are injured in car accidents have no idea what coverage they absolutely must have to be protected from careless drivers who carry little or no car insurance. This consumer guide will tell you what your insurance agent probably didn't bother to tell you. I

In it you will learn:

- ✓ Why it is perfectly legal to drive without liability insurance in Florida.

- ✓ What “full coverage” really means?

- ✓ How your health insurance company may get paid before you do (even if it leaves you with no recovery.)

- ✓ The one coverage you must have on your policy.

Available on Amazon.com for \$13.95, this guide is available to you at **NO COST** by doing one of the following:

- Visiting www.TheFloridaInsuranceBook.com
- Visiting my website: www.JWDodsonLaw.com
- Faxing your name, address and email to (727) 446-0850
- Calling toll-free 1-888-340-0840

