

Florida Pedestrian Accident Guide

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## **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.

Pedestrian 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.

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# INTRODUCTION

## **Every year, over 8,000 pedestrians are killed or injured in Florida.**

How is that possible...don't pedestrians have the right of way? They do in crosswalks. But most people walking along a road or crossing a street are not at a crosswalk intersection. They may be crossing mid block or between intersections. Unfortunately, most drivers don't know what they are required to do when someone is attempting to cross the street. Many pedestrians don't understand the rules that apply to them either.

## **Too many people assume cars will stop for them when they step into a crosswalk.**

Far too many people mistakenly believe they are safe when they step into a crosswalk. As a result, they fail to make sure an approaching driver has actually seen them and is stopping. Since they assume it is safe, there is a temptation to use their cell phone, carry on a conversation or just focus on where they are heading. They assume cars will stop for them since they are in the crosswalk. This can be a deadly assumption. The sad fact is that too many drivers just don't stop. It has become so bad in some cities they not only have marked crosswalks, but have added warning signs and flashing lights. At some crosswalks along our coast, cities are even providing orange warning flags at some intersections for pedestrians to carry in their hands while crossing.

## **Each year in Florida, over 400 pedestrians lose their life.**

It is shocking when we realize how unsafe our roads have become for someone walking along them or attempting to cross them. This is especially true when people attempt to cross roads and highways with higher speed limits. There is an 85% chance a pedestrian will be killed when hit by a driver going 40 miles per hour. The reasons for fatal accidents vary, but over one-half involve someone attempting to cross a road *not* at an intersection.

## **Drivers must be held responsible.**

Florida has a special label for cars and other vehicles. They are called "dangerous instrumentalities." This special label applies, in part, because of the danger they pose to pedestrians. Drivers must be held responsible when their careless inattention, distraction or impatience causes life-changing injuries, or even death, to someone simply walking along a road or trying to cross a street.

## **FLORIDA PEDESTRIAN INJURY ACCIDENTS**

**Have you, your child or someone you know been injured**

**walking in a crosswalk  
crossing a street, not in a crosswalk  
walking on a sidewalk  
walking in parking lot  
by a vehicle backing up?**

Florida has a well deserved reputation for being a dangerous place for pedestrians. In fact, pedestrians are injured here at more than double the national average. Of the ten most dangerous metropolitan areas in the nation for pedestrians, Florida has the top four. The Tampa, St Petersburg, Clearwater area ranks second in the nation for being dangerous for pedestrians. That information is of little comfort to you when you or someone you know or love has been injured walking our streets, crosswalks sidewalks, or parking lots. When the unexpected happens, you need answers to your questions and a steady hand to guide you through the process of recovering from injuries and seeking financial recovery from the person, business or government entity which has left you injured and in pain.

**How will your medical bills and lost wages be paid?**

This requires understanding Florida's No-Fault laws. The good thing about Florida's No-Fault law is that it will pay medical bills and lost wages. It pays 80% of medical bills using a formula based on what Medicare pays. It also pays about 60% of the person's average weekly wage.

**How do you find which No-Fault insurance may apply?**

No-Fault insurance may come from one of three sources:

- Your, or the injured person's, own car insurance, assuming it is insured with No-Fault. The unique thing about no-fault is it follows the insured as a pedestrian if they are hurt in a collision with a vehicle.
- The car insurance of certain family members you, or the injured person, were living with at the time of the accident.
- The car insurance of the person who caused the accident.

Keep in mind no-fault (PIP) pays regardless of fault, since it is not based on negligence or fault. Even if you, or the injured pedestrian, were entirely at fault for the accident, the no-fault benefits are still required to be paid.

### **Who will pay for pain and suffering and financial losses caused by the accident?**

This is where fault (lawyers call it "negligence") must be proved. The driver or owner of the car or vehicle involved will be held responsible if they were at fault in causing the accident. The insurance they need to pay your, or the injured person's, pain, suffering and other financial losses is called Bodily Injury insurance.

Keep in mind Florida does not require drivers to purchase Bodily Injury insurance. You read that correctly, a driver can be "fully insured" in Florida by purchasing No-Fault and property damage insurance. Far too many cars are driving around our state with absolutely no insurance to pay the financial losses and pain and suffering they cause by their careless and negligent driving.

Why is your uninsured motorist coverage important? If the car which caused the accident is not insured with Bodily Injury insurance, or has it, but not enough to pay the full value of the claim, your lawyer must carefully look for any Uninsured Motorist insurance which may be available. This valuable coverage may pay you if the at-fault driver has no Bodily Injury insurance, or has some small amount which is not enough to cover all of your, or the injured person's, losses. For example, if the value of your case was \$100,000, but the responsible driver had only \$10,000 in Bodily Injury insurance, the remaining \$90,000 to fully pay your claim would have to come from any Uninsured Motorist insurance on your policy. If the driver at fault had no insurance to pay the claim, it could be paid entirely by any Uninsured Motorist insurance available.

Doing a thorough investigation for this valuable Uninsured Motorist coverage often requires your lawyer to go beyond the insurance company's initial denial that it had been purchased. Florida does allow someone purchasing insurance to "reject", or not buy, Uninsured Motorist (UM) insurance. But, they must sign a specific form which tells them they are "rejecting" this valuable insurance. We regularly find insurance companies will respond to written requests for insurance information by simply denying that UM had been purchased. In those situations, we make the insurance company provide a signed "rejection" form. In Florida, if the insurance company cannot produce a validly signed "rejection form" then it must provide Uninsured Motorist coverage on the policy as if it had been purchased. Many times they are unable to produce a signed rejection form, which means they have to make UM insurance available for the claim, as if it had been bought originally. Obviously, this is a valuable benefit for a seriously injured pedestrian, especially when the car which caused the accident had little or no insurance to pay their claim.

We stand ready to assist in finding all available insurance coverage to pay the full measure of pain and suffering and financial losses you, or the injured pedestrian, has suffered.

## **What If You or the Injured Pedestrian Was Partly, or Even Mostly, At-Fault?**

A claim may still be made. In Florida, for instance, a child under age six will not be found to have been partly at fault in causing an accident. This is important in many "dart out" or back over injuries.

Under Florida law, the action of the driver and of the pedestrian will be looked at carefully. Responsibility, for the accident can be found against either the driver or the injured pedestrian. For example, the driver would be found 100% at fault for driving into a crosswalk hitting someone crossing the road while the warning lights were flashing, there would be no argument the pedestrian was at fault. On the other hand, if the pedestrian was crossing a street with out using a nearby marked crosswalk, at night, wearing dark clothing, they would be found at least partially at fault in causing their own injury. However, even in situations where the pedestrian was partly, or even mostly, at fault in causing the accident, many such cases can still be successfully settled for the pedestrian. Of course, the facts of each case are unique and will strongly influence whether a claim may be successfully brought, especially the seriousness of the pedestrian's injuries. That is why it is important to hire an experienced pedestrian injury lawyer, one who has been successful handling such cases in order to have the best chance to recover for all of pain and suffering and financial losses involved.

## **Thinking about settling your injury claim on your own, without a lawyer?**

Not every accident case requires a lawyer, especially those with minor injuries. Unfortunately, in most cases involving a vehicle striking a pedestrian, the injuries are serious, even catastrophic. Still, you may be giving some thought to handling your injury case on your own. If so, you need to read my report entitled, "29 Sure-Fire Tips to Settling Your Florida Car Accident Case Without a Lawyer." While it was specifically written for car accident cases, it is valuable to point out just how complex the process is. Most of the same issues apply to a pedestrian injury case. You can download a copy at no cost on our website:<http://www.jwdodsonlaw.com/library/29-surefire-tips-to-settling-a-fla-car-accident-case-without-a-lawyer.cfm>

## **Are there things which should be done immediately?**

Not every case requires immediate steps be taken, but many do. The sooner investigative steps are taken, the more likely important evidence will not be lost. Important steps include:

good quality photographs of the accident scene, the vehicle, and your physical injuries

locating and interviewing available witnesses before people leave the area, move, or begin to forget the details of what they saw

background investigation on the driver and owner of the vehicle

locate all applicable insurance policies

investigate the history of the intersection or street where the accident happened and which governmental agency controls the roadway, signage and markings

consider the need to hire an accident reconstruction expert to evaluate the accident location and suggest further investigative leads

These steps are best undertaken by an experienced pedestrian injury lawyer.



## **FATAL ACCIDENTS**

Following are some of the more common questions families have when a loved one has died in an accident as a pedestrian in Florida:

### **What benefits will Florida No-Fault insurance pay?**

As you may know, Florida is a No-Fault state. There are benefits available under No-Fault which will pay accident related medical bills. No-Fault also pays a specific death benefit, which helps families pay some of the funeral and related expenses. We will help you obtain these benefits which may be available from the car which caused the accident, any car insurance owned by the deceased or even from a relative with whom the deceased lived at the time of their death. Any lawyer you retain must be familiar with how to locate these benefits and determine which policy will be responsible to pay them. Please understand, at our firm you will never be charged any attorney fee for obtaining these no-fault benefits, either for paying medical bills or the death benefit.

### **When can a claim be made for emotional pain and suffering and financial losses for the loved ones left behind?**

Family members of the person who died may be entitled to receive financial compensation for the loss of their loved one, including spouses, minor children, adult children, parents and others. These claims are called "wrongful death claims" in Florida. Any claim must be based on proving the driver involved

had some fault in causing the accident, this means they must have been negligent. Proving fault is a critical part of evaluating any claim. Some of the common situations where the driver will be found responsible include (there are others as well):

hitting someone crossing a street in a marked or unmarked pedestrian crosswalk

striking someone attempting to cross a road, while not using a crosswalk

hitting a pedestrian walking on the shoulder of the road or on a sidewalk

hitting a pedestrian walking in a parking lot

backing over someone walking or standing behind the driver's vehicle.

I have written [The Survivor's Guide To Wrongful Death Claims in Florida](#). In it you will find an explanation of who may recover for the loss of a loved one, as well as a discussion of what losses are payable. I also describe the legal process required. Florida requires there be one person appointed to act on behalf of all who may be entitled to compensation for the loss of their loved one. This person is called the "personal representative of the estate." This guide will tell you who may function as a Personal Representative and why Florida requires a personal representative to be appointed. If I am your lawyer, I will guide you through this process every step of the way.

### **What if the person who died was partly, or even mostly, at fault in causing the accident?**

In those situations a claim may still be successfully brought to recover the tremendous loss suffered by loved ones left behind. Death claims have the potential for large jury awards due to the unique emotional, as well as financial, losses loved ones tragically suffer. Insurance companies have the duty to protect the drivers they insure who might have caused, or only partially caused, the death of your loved one. This places pressure on them to try and get cases settled, even if the person they insure played only a small part in causing the accident. For instance, even if the pedestrian was crossing a dark road, not at a marked crosswalk, it is possible to reach a settlement. Of course, every case is different. Many times we must work with accident reconstruction and other experts to prove the driver was responsible. Such factors as speed, alcohol, drugs and driver distraction or impatience are commonly involved. The unique facts of each case will determine if it can be successfully pursued. You need to deal with a lawyer who has successfully handled difficult cases and has experience working with families to get the result they believe is best for them.

### **What needs to be done immediately?**

There are several things which should be done as soon as possible after a fatal accident. Although this is not designed to be an exhaustive list, these are steps which should be undertaken at the earliest opportunity:

Even though the police will conduct an investigation, in some jurisdictions their efforts are not always the best, even in fatal accidents. Part of the police investigation will involve sending certain evidence to a crime lab for analysis. Police reports are commonly not released until the lab results are completed. This process may take months. It is best to get as much information as possible independent of the police report.

Every effort should be made to identify and interview all witnesses with knowledge of how the accident happened.

Photographs of the scene and any vehicle involved should be taken, if possible.

Investigative leads about whomever caused the accident should be pursued.

It is important to identify every person or entity liable, or who could be liable, for the accident. In Florida, the driver of a car or vehicle is responsible when they are at fault in causing an accident. The owner will be held responsible as well. Corporations and governmental entities may be held responsible when their vehicle or their employees kill someone in a pedestrian accident.

All potential insurance coverage, needs to be investigated. This includes the driver and owner of the vehicle, as well as any uninsured motorist insurance which may be available to pay the losses owed to the survivors. Investigation may also be undertaken to determine the personal assets of the driver or owner.

Consideration for hiring accident reconstruction and other experts should be made.

These and other required steps are best undertaken by an experienced Florida pedestrian accident lawyer. These are not things the average person should consider attempting on their own.

### **What role does Uninsured Motorist insurance play?**

The unfortunate reality of wrongful death cases involving pedestrians is that there is commonly not enough insurance on the driver or owner causing the accident. Florida law does not even require drivers to carry insurance to pay for these damages (called Bodily Injury insurance). The car insurance industry has successfully prevented this law from being changed. There are hundreds of thousands of drivers on Florida roads who do not carry one penny of this important insurance. Many of them are not the most responsible drivers on the road. There are also hundreds of thousands, probably even more, who may carry \$10,000, the absolute minimum offered to those willing to buy it. This simply means, the chances of having a fully insured driver/owner causing a fatal accident are low. Where do loved ones look for insurance to pay their losses in such cases?

Uninsured Motorist insurance may be available to pay the pain and suffering and financial losses caused by irresponsible drivers with little or no insurance. It is designed to pay when the driver or owner who caused the accident does not have any bodily injury insurance, or carried too little insurance. If the pedestrian owned their own car, they may have uninsured motorist on their policy. It may also be available if they lived with a family member who owned a vehicle insured with uninsured motorist coverage.

Careful investigation by an experienced Florida pedestrian injury lawyer is most important in order to have a chance to get the best results. Some insurance companies must be forced to reveal the existence of this important insurance. This coverage may be rejected at the time the insurance is purchased. A special form is required to be signed by the consumer and the company must keep that form. If they later respond to an insurance request from your lawyer that uninsured motorist insurance was "rejected" by the person purchasing the policy, we will require them to actually produce the signed rejection form. Otherwise, if they are unable to provide the "rejection" form, they must provide the uninsured motorist insurance as if it had been purchased originally. It is extremely important to address this issue properly during the investigation of any fatal pedestrian accident.

## **What should you do now?**

When someone you love dies suddenly, I fully understand you may feel overwhelmed and have any number of questions. I have found that many families want to deal with these issues together and to help each other through the process of selecting a lawyer and getting all questions answered. We often deal with surviving parents or children who live out of state, many times with no one living locally to meet with us. When dealing with local families, sometimes there is only one person who has the time and opportunity to meet with a lawyer and make these important decisions. I will, of course, talk or meet with you or any member of your family at any time to answer your questions and allow you to make the decisions you must make.

If you want to talk to me right away to schedule a time and place convenient for you and other members of your family, including at someone's home, my contact information can be found at the end of this book. There is no obligation, nor is there any charge for the conference.

# COMMONLY MISUNDERSTOOD RULES OF THE ROAD FOR PEDESTRIANS AND DRIVERS

## Rule #1 - Marked Crosswalks

Crosswalks at many intersections have distinctive markings on the roadway, either white lines on either side, or lines horizontally, indicating a walking path. Some crosswalks at intersections or mid-block may be marked and have signals. Many marked crosswalks have no signals. A pedestrian who lawfully enters a crosswalk has the right-of-way (including unmarked crosswalks). This means the pedestrian entered the crosswalk when they were legally permitted to do so. (For instance, a pedestrian *cannot* enter a crosswalk when it is impossible for a driver to yield.)

## Rule #2 - Unmarked Crosswalks

- i. Most intersections in Florida have no marked crosswalk.
- ii. Where two streets or roads intersect, both having paved sidewalks, an unmarked crosswalk is created. It would be within the lines of the sidewalks as if the line extended across the street or road. The same rule applies for unpaved sidewalks at an intersection.
- iii. An unmarked crosswalk does not exist if there are signs posted warning not to cross.
- iv. An unmarked crosswalk is a legal crosswalk.

### **Rule #3 - Pedestrians Crossing Mid-Block**

- i. A pedestrian is permitted to cross mid-block if there is a marked crosswalk or if there is not an intersection with a signal in either direction. (Note, this law does not discuss how far away the signal has to be).
- ii. Where there is no crosswalk, the pedestrian must yield the right-of-way to any approaching driver.
- iii. When crossing mid-block, the pedestrian must walk at right angles taking the shortest route to the opposite side.

### **Rule # 4 - Crossing a roadway using a crosswalk having no signal (this would include a marked or unmarked crosswalk at an intersection or a marked crosswalk mid-block).**

- i. If there is a sign indicating the driver is to stop for pedestrians in the crosswalk, the **driver must stop** to allow pedestrians to cross the roadway when:
  - a. The pedestrian is in the crosswalk or steps into the crosswalk and,
  - b. The pedestrian is in the driver's one half of the road or so close approaching from the opposite half of the road to be in danger.
- ii. If there is no signal and no sign advising drivers to stop for pedestrians, then the **driver must yield**, slowing down or stopping, as needed, if a pedestrian is in a marked or unmarked crosswalk on the driver's half of the road or when approaching from the opposite half, but so close as to be in danger.
- iii. A pedestrian is not permitted to walk into the path of a vehicle so close that it is impossible for the driver to yield.
- iv. **No driver may pass** another driver stopped at a crosswalk.
- v. The **drivers must yield** the right of way to any pedestrian lawfully within a crosswalk (marked or unmarked) so long as the pedestrian began crossing when lawfully permitted.

### **Rule #5 - Pedestrians**

- i. Must use a sidewalk, if available, when walking along the road.
- ii. When walking along the road, pedestrians are to walk **facing traffic** (on the pedestrian's left) using the shoulder, if available.
- iii. Are not lawfully permitted to cross between two intersections which have signals. (Note, the law does not discuss how far the signals may be apart).

### **Rule #6 - Drivers**

- i. **Must always exercise due care** to avoid hitting a pedestrian.
- ii. When emerging from an alley, building, private road, or driveway, **must stop** before crossing a sidewalk and yield to all pedestrians posing an immediate hazard.

### **Rule #7 - Who is a pedestrian? Pedestrians include anyone:**

walking

in a wheelchair

on skates or on a skateboard

- iv. on a bicycle when using a sidewalk or crosswalk

### **Rule #8 – Bicyclists**

- i. When using a sidewalk or in a crosswalk, have the same rights and duties as a pedestrian.
- ii. Must yield to pedestrians.
- iii. Must give an audible warning before passing a pedestrian.

These rules are intended to summarize what is contained in the Florida statutes and other rules affecting pedestrians and drivers. Many of them form the basis for deciding who is at fault, or who may have been negligent, when a pedestrian is injured. The fact that a pedestrian may have violated the right-of-way of a driver may result in the pedestrian being found partially or potentially even entirely at fault in an accident. As discussed elsewhere in this report, many pedestrian accidents and fatalities may be successfully settled even though the pedestrian may have violated one of these rules. In fact, depending on the circumstances, some cases may be successfully settled even though it may appear the pedestrian was largely, if not entirely, at fault in causing the accident.

## **COMMON FACTORS IN DRIVER-PEDESTRIAN ACCIDENTS**

A national study produced by the Federal Highway Administration found the following conditions were often contributing factors in pedestrian-vehicle accidents.

### **Common Pedestrian Errors**

Failure to yield the right-of-way, crossing at a mid-block location.

Failure to yield the right-of-way, crossing at an intersection.

Traveling along a roadway in the wrong direction.

### **Common Errors by the Driver**

Failing to yield for pedestrian at an intersection crosswalk either while turning or going straight.

Backing up.

We have found other common causes of pedestrian accidents involve the following factors by the driver:

inattention

alcohol, drugs

distraction and inattention, including talking on a cell phone or texting

driver impatience, including passing a stopped vehicle or trying to “make” a light

driver ignorance of the duty to stop for pedestrians in lawful crosswalks, both marked and unmarked.

## **SIX COMMON INSURANCE TACTICS**

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: 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.

### **Second: 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.

### **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: 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.

### **Fifth: 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 \$1000, \$1500 or \$2500 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.

Not long ago, I was called by someone who had been hit by a car and suffered a serious injury. Unfortunately, they had accepted \$10,000 and signed a release to the insurance company. There was nothing I could do for them.

### **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 following which treatment for any injury lasts no more than a few weeks. These typically would not involve fractures or nerve damage, for instance. In a small case, the medical bills usually will not exceed a few thousand dollars. After treatment, the person has completely recovered, needs no future treatment and the injury does not impact the person's 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 ability to earn wages in the future. 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 any uninsured/underinsured (UM) motorist carrier, as well as other potential claims.

**Third**, 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 law contains very specific requirements with which an injury party must comply in order to make a claim for any UM benefits. The failure to meet these requirements may permanently prevent making a UM claim.

**Fourth**, if health insurance, Medicare or Medicaid paid for medical treatment, you must understand the complex rules requiring reimbursement of those payments. Health insurance policies covered by ERISA (Employee Retirement Income Security Act of 1974) may claim 100% reimbursement of what they paid out regardless of how much your claim settles for (even if it leaves you with nothing). Medicare and Medicaid have specific reimbursement rules with which you must comply. In fact, the failure to take Medicare's interest into consideration regarding possible future medical expenses may result in their reducing future Medicare payments to you.

**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.**

## **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:

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

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?

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.

The lawyer you see on the ad may not be the lawyer who will handle your case. In some cases, they will never be.

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.

Some ads are by paid referral services, such as directory services or 1-800-ASK-ME companies. 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. Some such services know little more about the lawyer other than that their check cleared the bank.

In too many instances, those large ads are designed to produce volumes of clients. Is that what you want for your case?

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.

## 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 your injury and how long it takes to complete required medical care and rehabilitation. As discussed earlier, no lawyer can put a value on your injury claim until your medical treatment has been completed and it is known whether you fully recovered or will require future treatment and, if so, how much future treatment will cost. Some clients complete treatment in months. However, the most seriously injured may require a year or more of medical care. This is one of the most significant factors influencing how long your case will require.

Once your 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 your medical records, an explanation of how the injury has affected your 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 counteroffers made. If an agreement is reached, your case is settled. Cases which do not involve serious medical conditions requiring prolonged treatment may be settled much more quickly, often in less than a year.

If settlement is not possible and a lawsuit is required, your case will take longer. After a lawsuit is filed, in most jurisdictions, many pedestrian accident claims require a minimum of six to nine months in order to complete the required discovery process and get your case to a mediation conference. The vast

majority of lawsuits in Florida do settle at a mediation conference or shortly thereafter. If your 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 to settle, is always made by you. You always retain the ultimate decision-making authority on these issues, guided by your lawyer's advice.

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 your claim by filing suit prior to the time you actually reach the completion of your medical treatment. This allows your case to be worked up for mediation shortly after the completion of the required treatment.

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

The facts and circumstances of each case are unique. As a result, we routinely explore with our 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.

### **What is Mediation?**

Mediation is a process used to attempt to bring opposing parties to 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 each 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 over 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 WE DO TO GET YOUR CASE SETTLED**

The following is an outline of the steps you may be assured of, as we handle your case, 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 you for an initial interview.

Listen to your concerns.

Determine your goals for resolving your claim.

Commit in writing to returning your phone calls promptly – every time.

Inform you about the steps which will occur and what must be proven.

Gather all information you have, with names, police reports, bills, records, photographs.

Go over your insurance policy and coverage; determine what coverage is available to pay for medical bills and lost wages.

Suggest changes you should consider on your insurance coverage for the future.

Put your insurance company and the opposing party's insurance company on notice of the claim.

Request sworn copies of available insurance coverage from each carrier.

Notify you in writing of what insurance coverage is available to pay your damages and losses.

Identify and interview all known witnesses, as may be necessary.

Collect evidence, which includes examining and photographing the scene and the vehicle involved.

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 your records from all current treating physicians.

Obtain records of your medical treatment *prior* to accident.

Discuss your treatment with physicians as necessary.

Request updated lien and payment records from each physician.

Monitor payments made to providers by the no-fault (PIP) carrier or other health or disability insurance.

Request lien information from any health, disability, or benefit plan paying benefits on your behalf.

Request treating doctors written opinions: have you reached maximum medical improvement, have you suffered a permanent injury, what are your restriction of function, and what are your future medical needs and how much will they cost?

Analyze defenses to requests for repayment by your health, disability or benefit plan carrier, which has asserted their entitlement to repayment of some or all benefits they have provided.

Discuss whether suit should be filed or whether you would prefer to attempt to negotiate a settlement.

Educate you 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 ("loser pays") process.

Determine the need for expert testimony to support your claim; locate and hire any necessary expert witnesses, either for settlement purposes or for use in a lawsuit.

If you want to pursue negotiation with the responsible insurance carrier, prepare demand package, forward to you for review and reach an agreement on amount to demand for settlement.

If negotiation is pursued, personally discuss with you every offer and counter offer and determine whether you agree with the settlement range being offered.

If settlement is reached, negotiate all possible reductions of unpaid medical expenses or liens claimed

for benefits paid due to your injury.

Upon settlement, review release language and contents and review with you 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 your signed acknowledgement and instruction to file suit and ensure an understanding of the process.

Personally assist you in preparing answers to sworn questions (interrogatories) submitted by the other party.

Provide you with copies of medical records to review before your deposition.

Personally meet with you to prepare for your deposition, go over medical records, and review video on how to be an effective witness.

Take the sworn testimony of the driver and necessary witnesses, at deposition, including use of video depositions.

Schedule mediation and meet with you to prepare for mediation, and watch video on the mediation process.

If your case is not settled at mediation, get a trial date from the judge.

Meet with you 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 your 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.

## **CLOSING WORDS**

You must have requested this book because you want to understand the steps you should take after a serious pedestrian accident. Based on helping others who have faced the same uncertainty, I know it

can seem overwhelming. You definitely want to avoid making mistakes that may hurt you further as you go forward. I am sure this book has given you confidence in understanding how to best protect your interests or those of someone you love.

I am committed in my personal injury practice to holding drivers responsible for the harm they cause to pedestrians who are simply trying to walk along or across our busy Florida roads. This is what I do and what I have done for over two decades.

I want to hear from you. You may reach me at:

The Law Office of James W. Dodson PA  
1259 Myrtle Avenue South  
Clearwater, Florida 33756  
1-888-340-0840

HYPERLINK "mailto:jim@jwdodsonlaw.com" [jim@jwdodsonlaw.com](mailto:jim@jwdodsonlaw.com)

You may obtain a confidential, no cost, no obligation evaluation of your case through our website:

HYPERLINK "http://www.pedestrianaccidentlawyerflorida.com"  
[www.pedestrianaccidentlawyerflorida.com](http://www.pedestrianaccidentlawyerflorida.com)

There is, of course, no cost or obligation to hire a lawyer. But do not wait too long. Florida has limits on when a claim may be brought, and...we don't accept "stale" cases.

- Jim Dodson

## CONTACT INFORMATION

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**Website:**

HYPERLINK "http://www.JWDodsonLaw.com" [www.JWDodsonLaw.com](http://www.JWDodsonLaw.com)

NO obligation, NO cost online contact form

Extensive accident and injury information  
for Florida consumers including  
articles, videos, blogs, and other resources

**Email:**

**[jim@jwdodsonlaw.com](mailto:jim@jwdodsonlaw.com)**

**Five Mistakes That Can Wreck Your Florida Accident Case**

	<p>If you or someone you know has been injured in a car wreck, do yourself a favor and read this book before you talk to an adjuster, sign any forms or walk into a lawyer's office.</p> <p>Florida's Ultimate Accident Guide will explain:</p> <p>Who pays your medical bills and lost wages Do you even need a lawyer, many cases don't require one What adjusters do to keep from paying a claim Four things your claim must have to be successful How injury claims are valued</p>
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Although this book sells online for \$13.95, you may obtain your copy at **NO COST** by doing one of the following below:

Visiting: [www.FloridaAutoAccidentBook.com](http://www.FloridaAutoAccidentBook.com)

Visiting my website: [www.JWDodsonLaw.com](http://www.JWDodsonLaw.com)

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

**Calling toll free: 1-888-340-0840**

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

	<p>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.</p> <p>The Ultimate Guide to Injuries From a Fall explains:</p>
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	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?
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This book is available online for \$13.95; however, you can obtain a copy at **NO COST** by doing one of the following below:

Visiting: [www.FloridaFallBook.com](http://www.FloridaFallBook.com)

Visiting my website: [www.JWDodsonLaw.com](http://www.JWDodsonLaw.com)

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

**Calling 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 online for \$13.95, you may obtain your copy at **NO COST** by doing one of the following below:

Visiting: [www.FloridaWrongfulDeathBook.com](http://www.FloridaWrongfulDeathBook.com)

Visiting my website: [www.JWDodsonLaw.com](http://www.JWDodsonLaw.com)

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

**Calling toll free: 1-888-340-0840**

**When Kids Suffer Big Injuries:**  
**A Parent's Guide to Child Injury in Florida**

Most parents or guardians of a child who has been seriously injured or, even more tragically, lost their life, in an accident, from a dog bite, or because of a medical mistake, have no idea where to turn for help. This book was written to provide that help. In it you will find:

	Most common childhood accidental injuries and their cause
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	What insurance may apply for pain and suffering after an accident How Florida No-Fault insurance will pay when a child is injured as a pedestrian, on a bike or in a car crash How to pay for needed medical treatment Common medical mistakes doctors make treating children Understanding traumatic brain injury and much more.
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This book is available on Amazon.com; however, if your child has been injured in Florida you may obtain a copy at no cost by doing one of the following:

Visiting my website: HYPERLINK "http://www.childinjurylawyerflorida.com"

[www.childinjurylawyerflorida.com](http://www.childinjurylawyerflorida.com)

Faxing your name and address, and request to 727-446-0850

Emailing your request for a copy (or pdf copy) to HYPERLINK "mailto:jim@jwdodsonlaw.com"

[jim@jwdodsonlaw.com](mailto:jim@jwdodsonlaw.com)

Calling toll free 1-888-340-0840

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