

*Survivor's Guide to
Florida Wrongful
Death Claims*

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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.

Accidents resulting in death involve legal issues or questions where the individual facts of the case heavily, if not completely, influence the outcome. 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. If you wish to consult with Mr. Dodson about a specific case, you may use the contact information found at the end of this book.

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THE TRAGEDY OF A WRONGFUL DEATH

Suffering the death of a loved one is a devastating experience, regardless of the circumstances. Feelings of loss are almost unimaginable when a life is cut short due to the carelessness or negligence of another. Words of encouragement offer little comfort after someone's death. If you are reading this book because you have been affected by such a tragedy, I am deeply sorry for your loss.

Florida law gives loved ones and survivors a way to hold wrongdoers accountable, including recoverable compensation. If you find yourself in this situation, I've written this book as a starting point to understand what avenues may be available. I believe you should be able to review this information in the comfort of your own home, before you walk into a lawyer's office or receive calls from an insurance adjuster.

Wrongful death claims are complicated. They require understanding and navigating all of the law involved in the type of injury claim which caused someone's death, as well as the laws of probate and estates. They also require dealing with an insurance adjuster representing the wrongdoer. You must remember, although you may be mourning the loss of a loved one, the insurance adjuster has one goal in dealing with their estate—to pay absolutely as little as possible to settle any claims. Many people are frustrated by the insurance company dealing with them unfairly or resisting to pay just compensation. Those unfamiliar with the process are often shocked at what they find themselves up against in an effort to pursue justice. This has the potential of only compounding the sense of loss families experience.

Dealing with a trained insurance adjuster without the guidance of an experienced personal injury lawyer is not a level playing field. When a death occurs from an accident or other event, the insurance company assigns specially trained adjusters and lawyers to investigate and handle any claim. They are professionals whose responsibility is to protect only the interest of their employer—the insurance company. Their experience and training gives them every advantage over most individuals who are confronting these issues for the first time.

The information in this book will help you understand the issues you may be facing. If you are considering hiring a lawyer, this book will also allow you to start thinking about that decision so you may select the best lawyer for your case.

WHY HIRE A LAWYER EARLY IN THE PROCESS

In my twenty years of representing accident victims and their families, I have observed their sense of anxiety and uncertainty in having to work through all of the questions they face. Many have received a call or letter from an insurance company and are unsure of how to respond. Others recognized right away the insurance adjuster did not have their family's best interest in mind. They wonder whether they should pursue the claim, and how they will find a qualified attorney.

Being in an unfamiliar situation often causes families of accident victims great emotional distress. They fear saying or doing the wrong thing, or that failing to take action could harm their interests. Retaining a lawyer at the earliest stage after a death relieves the family of these and other anxieties.

As we progress in our discussion, it will become clear that very few people have the knowledge or experience necessary to successfully pursue a wrongful death claim on their own. The guidance offered by a qualified lawyer in these tragic situations is invaluable and should include:

1. Taking charge of the situation and solving problems as quickly as possible.
2. Recommending grief counseling and helping to connect families with resources that could help them cope with their loss.
3. Guiding the selection of the personal representative to represent the interest of each beneficiary of the deceased.
4. Retaining a qualified probate and estate lawyer to open the probate case, and getting the personal representative appointed.
5. Advising the legal basis for recovery against the wrongdoer.
6. Developing strategies to maximize the recovery of grieving family members who may be struggling financially.
7. Determining the available insurance coverage and assets of the wrongdoer.
8. Pursuing maximum recovery for the estate and all survivors of the deceased.

STATUTE CONTROLS WRONGFUL DEATH ACTIONS

Unlike most other injury claims, Florida Statutes control wrongful death claims. Section 768.19 of the Florida Statutes is called the Florida Wrongful Death Act. There are several general grounds upon which a wrongful death action can be based. First, the law allows for recovery of damages when someone's wrongful act or **negligence** causes the death. In order to prove negligence, it must be proven that

- the defendant owed a legal duty to the deceased;
- their action or failure to act violated the duty they owed; as a result
- the deceased died; and, as a result,
- the deceased's estate and beneficiaries suffered losses (these are called damages).

Wrongful death actions based on theories of negligence commonly occur when someone dies as a result of one of the following:

- Car, truck, or motorcycle collision
- Pedestrian accident
- Slip, trip, and falls
- Injuries to minors and children
- Medical negligence (also called malpractice)

One of the legal requirements that must be met in order to bring a wrongful death claim is the person who died must have had the right to sue the person who caused the incident that led to his or her death. The practical effect of this requirement is that when the claim is filed—for instance due to a car wreck (a negligence claim)—it must be proven the at-fault party owed a duty of care to the person who died, and they breached or failed to meet that duty of care, causing the death and survivors' damages. In other words, all the elements of a negligence claim involving a car wreck must be provable as the basis for the wrongful death claim.

To use another example, if someone died due to medical malpractice by a doctor, a lawsuit against the doctor for wrongful death would have to meet each of the requirements of investigating and proving a medical malpractice claim. These requirements are laid out in various Florida Statutes and rules of procedure. Any lawyer you select must be knowledgeable about the legal

requirements for investigating and proving the type of case that caused the death.

A common assumption is that most negligence cases occur because of what the at-fault party did (some action they took) to cause the death. Bear in mind, Florida law also recognizes a wrongful death claim can occur when the at-fault party failed to act. In those cases, if a person had a duty to do something they negligently failed to do, they may be held responsible for causing that death.

Although most people are familiar with negligence theories in death cases, they also arise in situations where the conduct of the defendant **breached a contract** or some other type of **warranty**. This commonly occurs in defective product cases (you may have heard lawyers call these “product liability” cases). Many products are accompanied by warranties—some are specifically expressed in documents by the manufacturer to the consumer, while others are “implied” and are created by various laws controlling commercial transactions. For example:

- A defective seatbelt can allow someone to be ejected from a car during an accident, or
- A defective tire can explode, causing a car to roll over.

If a product case involves a negligence theory, the product could have been negligently designed. If it involves a breach of contract or warranty theory, the product could be deemed not reasonably fit for the purpose for which it was purchased—perhaps it broke apart or part of it failed.

Similar to proving negligence caused someone’s death, proving breach of contract or a warranty case requires proving the elements of each theory of recovery.

WHO MAY BRING A WRONGFUL DEATH ACTION

The legislature has enacted the requirement in Florida that a “personal representative” be appointed by the Probate Court. The personal representative is the person who has the legal responsibility to bring any action for the deceased’s estate and for each individual survivor against the person responsible for the death. The claim is not brought, for instance, by the surviving spouse or child individually unless he or she is appointed personal representative. If they are appointed to this position, however, the spouse or child brings the suit as the personal representative of the estate and in that capacity. The personal representative’s duty is to bring one action on behalf of anyone who has a claim of recovery under the Wrongful Death Statute.

The reason a claim is brought solely by the personal representative is to prevent multiple lawsuits on behalf of various survivors against the same defendant. It also prevents one survivor from suing first and collecting all available insurance coverage, discouraging what could become a “race to the courthouse” by several survivors.

The requirements of who can serve as the personal representative are not very strict. Essentially, any mentally and physically competent adult Florida resident able to fulfill the duties may serve. In addition, certain banks, savings, and loan associations may serve. Convicted felons are excluded.

In some situations, several people may be qualified to serve. Sometimes this is resolved by agreement. If it cannot, the Florida Probate Code specifies the order of preference in appointing the personal representative.

TIME TO FILE A LAWSUIT IS LIMITED

The law limits the time period within which a wrongful death claim may be brought; generally, within two years of the death. This means the lawsuit must be filed within that time in order to be within the statute of limitation. In addition, there may be certain notice requirements that apply to claims against governmental entities that must also be fulfilled before a lawsuit may be filed. Claims for medical malpractice must be investigated within a certain time and a notice of intent to file a medical malpractice claim must be sent to the potential defendants before a lawsuit may be filed. Failure to comply with these requirements may bar any recovery. A lawyer should be consulted in evaluating these time periods.

CLAIMANTS UNDER THE WRONGFUL DEATH STATUTE

Under Florida law, the decedent's personal representative is the only one who may bring the wrongful death action. He or she must seek recovery for any claims of the decedent's estate and for each individual survivor. The two groups of claimants under the Wrongful Death Act are: 1) the decedent's estate; and 2) the decedent's survivors.

Survivors include:

- The decedent's spouse
- Minor children (the statute defines a minor as one under the age of 25)
- Adult children (those 25 and over)
- Parents
- Blood relatives and, in some circumstances, adoptive brothers and sisters.

Survivorship is determined at the time of the decedent's death. The Act specifies the type of damages each category of survivors may recover.

Whether someone is a survivor under Florida law is not always as clear as we may think. For example, the status of a spouse may involve issues such as the validity of the marriage.

Because the act provides for specific types of damages based upon "status," all types of legal issues may arise pertaining to the child's status as a survivor under the Act. Issues include the child's age (over or under 25), whether the child was adopted, whether the child was born out of wedlock, or whether the child was born after the death.

Parents are also considered survivors in the event of the wrongful death of their children. Damages awarded will be based on whether the child was older or younger than 25.

Blood relatives and adoptive brothers and sisters may be survivors and entitled to recovery if they are partly or wholly dependent upon the decedent for support or services.

The act specifically defines what could be considered "support" or "services," although "blood relatives" are not specifically defined. Court decisions have defined who is "dependent" upon the decedent.

DAMAGES UNDER THE WRONGFUL DEATH STATUTE

Though it is little consolation to people who have lost a loved one, each survivor may recover money. Damages—the term used to refer to the various reasons for which the court may award financial compensation—are available to the estate and the survivors.

It is easy to describe the category of damages authorized to be awarded to “survivors” and to “the estate.” Applying each of those categories of damages to a particular case, however, will depend upon the facts and circumstances in the lives of those involved. Since each circumstance may be unique, consulting with an experienced personal injury lawyer is very important.

I. Recovery by Survivors

Under the Act, designated “survivors” may recover damages for:

- Lost support and services
- Loss of the deceased’s companionship and protection
- Mental pain and suffering
- Lost parental companionship, instruction, and guidance
- Medical and funeral expenses when paid by the survivor.

(a) **Loss of Support and Services**

Support includes money and contributions in kind (like property). **Services** normally refers to tasks around the house done by the deceased which will become a necessary expense to the survivor. The value of the loss of support and services in the future must be reduced to their “present value.” These calculations are normally done by an economist. They can give an opinion of the amount of money that needs to be awarded to provide the support and services the survivor would have received in the future. In other words, this opinion reflects the amount of support and services survivors would usually expect to receive had the death not occurred. The particular facts in the relationship between the deceased and the survivor are important and the Act says those facts are relevant in awarding these damages to the survivor. In addition, the amount of the deceased’s probable net income available for distribution to the survivor and the replacement value of the deceased’s services to the survivor shall be considered.

In evaluating a survivor’s loss of support (money) from the deceased, the law allows for recovery of the deceased’s **net income** (an amount left after calculating what income would have been consumed for the support of the deceased.)

“Services” lost when the deceased died may include, for instance, work in a business they did without pay that must be replaced. It is the replacement value of the loss of services that should be awarded.

(b) Loss of Companionship, Instruction, and Guidance

These damages cannot be precisely calculated, nor do they have to be—they are what lawyers call “intangible” damages. The surviving spouse and surviving minor children (under age 25) may recover these losses. If there is no surviving spouse, adult children may recover them. However, they may not recover these losses if death was due to medical malpractice. Grief counselors may be permitted to testify to aid the jury in assessing these damages.

(c) Mental Pain and Suffering

The Statute allows the following survivors to recover for mental pain and suffering:

- Surviving spouse
- Minor children (under 25)
- Adult children (if there is no surviving spouse of the deceased)
- Each parent of a deceased minor child
- Parents of an adult child when there are no other survivors.

Again, these are intangible damages not subject to being calculated with precision. Because juries are to award what they believe adequately compensates the survivor for these losses, recovery for these losses vary widely. A grief counselor may be permitted to testify as an aid to a jury.

II. Recovery by the Estate

The estate of the decedent may recover damages for:

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

(a) Loss of Net Accumulations

The Act contains very detailed conditions and definitions for loss of net accumulations. Such details go beyond what is appropriate for the purposes of this guide. A simplistic description would be an estimation of how much the deceased would have “saved” or have “accumulated” in the future. This requires a jury to gain an understanding of the deceased’s lifestyle in projecting losses for what would have been his or her life expectancy. These losses are recoverable by the estate if the deceased is survived by (a) a spouse or lineal descendants (not just their children); or (b) the estate of an adult decedent (over age 25) if the decedent was survived by a parent **and** there are no lost support or services recoverable under the Act.

The method of calculating net accumulation is specifically described in the statutes. An economist may be a critical witness in calculating these losses. This is particularly true in cases involving the death of a young person with limited work and savings history.

(b) Lost Earnings

These damages are awarded when someone is injured but a significant time passes before death. The estate may recover for the loss of the deceased's earnings for that period of time.

(c) Medical and Funeral Expenses

These expenses are recovered by the estate if they are not paid and recovered by a survivor. To be recovered, they must have become a charge against the estate.

(d) Claims by Creditors

The statute provides that all awards to the estate are subject to claims which have been filed against the estate by creditors. This would include certain debts and other obligations of the deceased resulting in claims being filed by the creditor against the estate (Note: recovery by survivors is not subject to claims against the estate by creditors).

SHOULD A CLAIM BE PURSUED?

Recovering money for the loss of a loved one seems to be a hollow victory compared to the loss suffered. Over the past 30 years, the insurance industry has mounted a very intentional campaign to discourage bringing legitimate claims by or on behalf of people who have been killed or injured in accidents. The concept of injury attorneys pursuing "frivolous" lawsuits has become very popular by those expressing the insurance company's agenda. It has even worked its way into political campaigns. Despite this effort, no one who has suffered the catastrophic loss of a loved one should ever feel inhibited or reluctant to hold the wrongdoer accountable for such a tragic loss. Our civil justice system is the model of the world. It provides the framework for settling claims. It has brought increased safety standards and consumer safety innovation, both of which save lives daily. Family members deserve compensation for the mental anguish and loss of financial support they experience due to the wrongful death of a loved one. There is no reason to be reluctant in holding the wrongdoer accountable. Many clients express a sense of relief in that bringing a claim allows them to feel they did all they could have done.

SEEK LEGAL HELP

In a routine personal injury claim, it is sometimes possible to proceed without a lawyer, although it is usually unwise in anything beyond a small case.

However, it would be unwise for someone to believe he or she, acting alone, could successfully navigate seeking a full recovery for the loss of a loved one under the Florida Wrongful Death Act. These cases are typically far too complicated and technical for most people to seriously consider handling on their own.

For instance, only a personal representative may bring a wrongful death action on behalf of the decedent's survivors and estate. This means the matter, in part, must proceed through the probate court, which requires a legal understanding of that part of the process. The lawyer handling your wrongful death claim will do that for you or will consult with a probate attorney to get it done. The estate will remain open until the claim resolves.

Sometimes, these complicated cases get even trickier because the person who caused the decedent's death also dies in the incident. In that case, the claim is made against the wrongdoer's personal representative. If no one ensures the probate court has appointed a personal representative for the at-fault decedent, your lawyer will have to see that one is appointed so your decedent's personal representative can pursue all legal options available. Again, this is a technical process that a lawyer is best suited to handle.

As discussed earlier, your lawyer not only has to show the negligent or wrongful conduct of the defendant caused the death, but must also prove the various elements of each survivor's and estate's claims for damages.

NO-FAULT DEATH BENEFITS

When someone dies after being hit by a car as a pedestrian or bicyclist, or as a driver or passenger in a car, there is a \$5,000 death benefit available under Florida's No-Fault Law.

If the deceased owned their *own* car insured with no-fault (personal injury protection) coverage, the death benefit would be paid by their own insurance company. The benefit follows them as a pedestrian, bicyclist or occupant of another's car. A pedestrian or bicyclist who *did not own* a car insured with no-fault, would be covered under the no-fault on the car which caused the accident. The insurer of the car causing the accident would pay the no-fault death benefit.

If the deceased was in their *own* car at the time of the accident, their own no-fault insurance company would pay the death benefit. This applies in cases when the death was due to the negligence of the driver of another car, the driver of the car in which the deceased was riding as well as in a one-vehicle accident where the deceased was driving.

In many cases, this \$5,000 no-fault death benefit can be paid directly to the deceased's family to assist in funeral expenses without having to open an estate and appoint a personal representative. Most insurance companies will require a copy of the death certificate and proof the death involved a motor vehicle accident.

WAYS A LAWYER CAN HELP YOUR CASE

Attorneys experienced in handling wrongful death cases can help maximize your recovery by making key decisions at the right time in the case. Here are some ways an attorney can help you recover in the event of a wrongful death:

1. An attorney can start an investigation as soon as possible.

The earlier you find an attorney, the better. The investigation into the facts of the case could be crucial to your claim. Someone needs to find witnesses, speak to them, and obtain their statements. Someone needs to interview police officers, photograph the scene, and preserve crucial evidence.

Sometimes the attorney will conduct the investigation. Many times, however, a qualified private investigator or an expert witness is best suited to conduct a proper investigation. Of course, not all investigators possess the same skills. An attorney who handles these types of cases will know the investigator best qualified to handle the investigation of your case. Attorneys tend to use investigators with whom they have had a long-term relationship and will provide priority to an individual case.

2. Accident Reconstruction

An accident reconstructionist uses math and physics to determine the cause of an accident. In a disputed liability situation, both sides often use a reconstructionist to prove their respective cases. Your attorney will use his or her experience and connections to find the right accident reconstructionist for your case.

3. Find all of the Defendants

One of the main jobs of your attorney is to maximize recovery for the client. In order to do that, your attorney will need to find all of the individuals and corporations who maybe responsible for the decedent's death (the potential defendants). Sometimes this is easy. If the defendant ran a red light and caused the death, then the target of the lawsuit is fairly clear. Many of the situations involve multiple potential parties who may be held responsible.

4. Find the right experts.

Experts can make or break your case. Experts are witnesses with specialized knowledge, often needed to prove your case. An expert could be an economist, psychologist, grief counselor, accident reconstructionist, coroner, doctor, scientist, or engineer.

In our office, we belong to state and national plaintiff attorney organizations that provide us with a database of experts. We also have a network of fellow plaintiff lawyers with whom we consult on a regular basis to find the best experts.

5. Find the insurance coverage.

Attorneys do not take an insurance company's word for their coverage amounts, but require them to provide a sworn statement of their policy's coverage amounts. Furthermore, many corporations are either wholly or partially self-insured. What this means is that these corporations pay claims from their own funds or they pay up to a certain amount and have insurance coverage above that amount. For instance, a company may self-insure the first \$500,000 with insurance paying any recovery amount above \$500,000. There are some different issues in dealing with self-insured defendants which you should discuss with your attorney.

6. Document economic loss.

In addition to the enormous emotional loss, families may also suffer huge financial losses when a loved one dies. In order to prove the amount of that loss, an economist may be needed. The economist will examine the decedent's income level, the income the decedent would have earned had he or she lived, examine prior tax returns, and other economic data to figure out the value of the economic loss resulting from the death and reduce that number to its present value as may be required.

7. Psychological injuries and grief counselors.

The Wrongful Death Act allows a surviving spouse to recover for the loss of the decedent's companionship and protection, as well as for mental pain and suffering from the date of injury. It also allows a minor child to recover for loss of parental companionship, instruction and guidance from the date of the injury. If there is no surviving spouse, then the adult children may recover those same damages. A plaintiff normally proves these damages through the testimony of the survivors, friends, clergy and others who know the survivors and have observed the emotional impact from the loss of the decedent. In some instances, a grief expert may give expert testimony on how the loss has affected the survivors. The judge has sole control of whether to allow such testimony.

A grief counselor can help the family through the various stages of the grieving process. The attorney can help the family locate trained professionals who can best deal with these issues.

8. Demonstrate the relationship.

The Florida Wrongful Death Act is designed to benefit the survivors of a person who died as the result of a negligent party. As stated above, the nature of the relationship with the decedent before he or she died becomes critical in determining the nature of the damages the survivor may recover. A crucial element of any case, therefore, is establishing the strength of the relationship that existed between the decedent and the survivors. An experienced lawyer can work with you in developing and communicating these facts.

YOUR LAWYER DOES NOT GET PAID UNLESS YOU DO

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 drafted or to probate their parents' estate, or with a real estate lawyer if they bought a piece of property. One source of concern in hiring an attorney in a wrongful death case is whether the attorney will cost too much money. This should not be a concern. The vast majority of lawyers will take wrongful death cases on a contingency fee basis. This means the attorney's fee is paid from the settlement proceeds or jury award.

The client benefits from this relationship by not having to pay a retainer or any of the costs associated with bringing the action up front. Litigating cases is an expensive process. Most people would not be able to pay a lawyer by the hour for these time-consuming cases, let alone cover the big-ticket costs such as medical experts and complicated exhibits. A contingency fee relationship means family members, regardless of their means, will have their day in court.

The contingency fee arrangement comes with significant risks for the lawyer. If the case has flaws and gets dismissed before going to trial, the attorney will not get paid. When lawyers are careful about the cases they take it is better for everyone: the lawyer does not want to dedicate time and other valuable resources to a weak claim with a low probability of success, and clients do not want to be disappointed when their claim is judged to be too weak.

When you meet with a lawyer, you will have to sign a contract that specifies how the lawyer will be compensated, and how the expenses will be paid. Make sure the contingency fee arrangement is clearly spelled out. If you have questions about the arrangement, make sure you have those questions answered before you sign any contract.

CONCLUSION

The death of someone you love is an emotionally devastating time. It is my sincere hope the information provided in this book has been useful for you to understand the issues which must be confronted in pursuing a wrongful death claim.

During this difficult time, your focus is naturally on the needs and the healing process of you and your loved ones. The last thing you need to be concerned about is how to navigate a legal claim while dealing with the uncertainty of what must be done to pursue justice against the party responsible for your loss.

If we can be of help to you, please see the contact information on the next page to schedule a personal consultation with me in my office or in your home, at no cost or obligation to you. If for some reason, we are unable to help you, we will at the very least, direct you to the right resources or point you in the right direction.

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APPENDIX

Key laws for Wrongful Death Cases

768.16 Wrongful Death Act.—Sections 768.16-768.26 may be cited as the “Florida Wrongful Death Act”

768.17 Legislative Intent.—It is the public policy of the state to shift the losses resulting when wrongful death occurs from the survivors of the decedent to the wrongdoer. Sections 768.16-768.26 are remedial and shall be liberally construed.

768.18 Definitions. — As used in ss. 768.16-768.26:

- (1) “Survivors” means the decedent’s spouse, children, parents, and when partly or wholly dependent on the decedent for support or services, any blood relatives and adoptive brothers and sisters. It includes the child born out of wedlock of a mother, but not the child born out of wedlock of the father unless the father has recognized a responsibility for the child’s support.
- (2) “Minor children” means children under 25 years of age, notwithstanding the age of majority.
- (3) “Support” includes contributions in kind as well as money.
- (4) “Services” means tasks, usually of a household nature, regularly performed by the decedent that will be a necessary expense to the survivors of the decedent. These services may vary according to the identity of the decedent and the survivor and shall be determined under the particular facts of each case.
- (5) “Net accumulations” means the part of the decedent’s expected net business or salary income, including pension benefits, that the decedent probably would have retained as savings and left as part of his or her estate if the decedent had lived her or his normal life expectancy. “Net business or salary income” is the part of the decedent’s probable gross

income after taxes, excluding income from investments continuing beyond death, that remains after deducting the decedent's personal expenses and support of survivors, excluding contributions in kind.

768.19 Right of action.—When a death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.

768.20 Parties.—The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, as specified in this act, caused by the injury resulting in death. When the personal injury to the decedent results in death, no action for the personal injury shall survive, and any such action pending at the time of death shall abate. The wrongdoer's personal representative shall be the defendant if the wrongdoer dies before or pending the action. A defense that would bar or reduce a survivor's recovery if she or he were the plaintiff may be asserted against the survivor, but shall not affect the recovery of any other survivor.

768.21 Damages.—All potential beneficiaries of a recovery for wrongful death, including the decedent's estate, shall be identified in the complaint and their relationships to the decedent shall be alleged. Damages may be awarded as follows:

- (1) Each survivor may recover the value of lost support and services from the date of the decedent's injury to her or his death, with interest, and future loss of support and services from the date of death and reduced to present value. In evaluating loss of support and services, the survivor's relationship to the decedent, the amount of the decedent's probable net income available for distribution to the particular survivor, and the replacement value of the decedent's services to the survivor may be considered. In computing the duration of future losses, the joint life expectancies of the survivor and the decedent and the period of minority, in the case of healthy minor children, may be considered.

- (2) The surviving spouse may also recover for loss of the decedent's companionship and protection and for mental pain and suffering from the date of injury.
- (3) Minor children of the decedent, and all children of the decedent if there is no surviving spouse, may also recover for lost parental companionship, instruction, and guidance and for mental pain and suffering from the date of injury. For the purposes of this subsection, if both spouses die within 30 days of one another as a result of the same wrongful act or series of acts arising out of the same incident, each spouse is considered to have been predeceased by the other.
- (4) Each parent of a deceased minor child may also recover for mental pain and suffering from the date of injury. Each parent of an adult child may also recover for mental pain and suffering if there are no other survivors.
- (5) Medical or funeral expenses due to the decedent's injury or death may be recovered by a survivor who has paid them.
- (6) The decedent's personal representative may recover for the decedent's estate the following:
 - (a) Loss of earnings of the deceased from the date of injury to the date of death, less lost support of survivors excluding contributions in kind, with interest. Loss of the prospective net accumulations of an estate, which might reasonably have been expected but for the wrongful death, reduced to present money value, may also be recovered:
 1. If the decedent's survivors include a surviving spouse or lineal descendants; or
 2. If the decedent is not a minor child as defined in s. 768.18(2), there are no lost support and services recoverable under subsection (1), and there is a surviving parent.
 - (b) Medical or funeral expenses due to the decedent's injury or death that have become a charge against her or his estate or that were paid by or on behalf of the decedent, excluding amounts recoverable under subsection (5).
 - (c) Evidence of remarriage of the decedent's spouse is admissible.

- (7) All awards for the decedent's estate are subject to the claims of creditors who have complied with the requirements of probate law concerning claims.
- (8) The damages specified in subsection (3) shall not be recoverable by adult children and the damages specified in subsection (4) shall not be recoverable by parents of an adult child with respect to claims for medical negligence as defined by s. 766.106(1).

768.22 Form of verdict.—The amounts awarded to each survivor and to the estate shall be stated separately in the verdict.

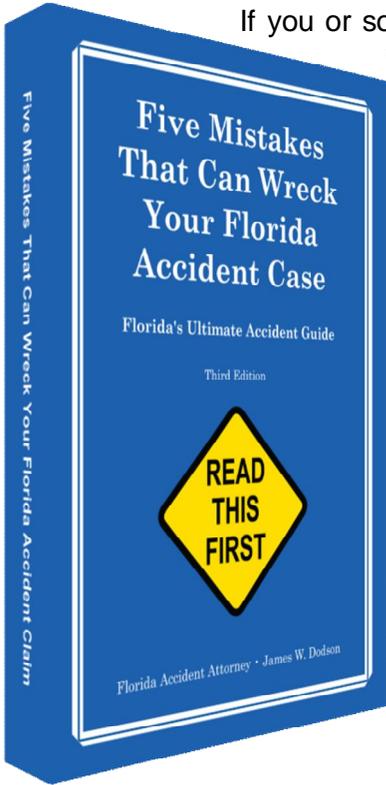
768.23 Protection of minors and incompetents.—The court shall provide protection for any amount awarded for the benefit of a minor child or an incompetent pursuant to the Florida Guardianship Law.

768.24 Death of a survivor before judgment.—A survivor's death before final judgment shall limit the survivor's recovery to lost support and services to the date of his or her death. The personal representative shall pay the amount recovered to the personal representative of the deceased survivor.

768.25 Court approval of settlements.—While an action under this act is pending, no settlement as to amount or apportionment among the beneficiaries which is objected to by any survivor or which affects a survivor who is a minor or an incompetent shall be effective unless approved by the court.

768.26 Litigation expenses.—Attorney's fees and other expenses of litigation shall be paid by the personal representative and deducted from the awards to the survivors and the estate in proportion to the amounts awarded to them, but expenses incurred for the benefit of a particular survivor or the estate shall be paid from their awards.

Five Mistakes That Can Wreck Your Florida Accident Case



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 lawyers office.

Florida's Ultimate Accident Guide will explain:

- 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

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

- ✓ **Visiting: www.FloridaAutoAccidentBook.com**
- ✓ **Visiting my website: www.JWDodsonLaw.com**
- ✓ **Faxing your name, address & email to 727-446-0850**
- ✓ **Calling 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?

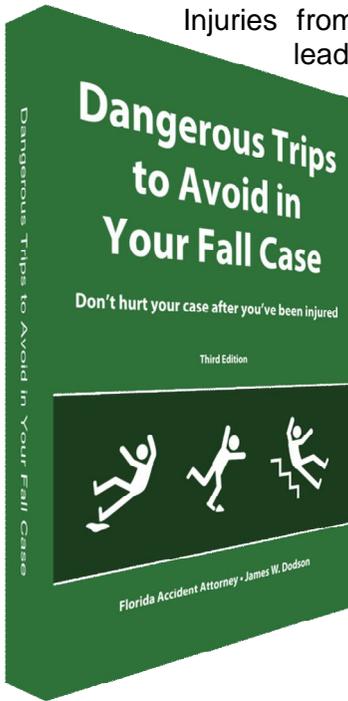
- ✓ How your health insurance company may get paid before you do (even if it leaves you with no recovery.)

- ✓ 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
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- Faxing your name, address and email to (727) 446-0850
- Calling toll-free 1-888-340-0840

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:

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4. Call – toll free – 1-888-340-0840