

INJURY ACCIDENT CLAIMS



**A Resource for
Florida Accident Victims**

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About This Guide

According to the Florida Department of Highway Safety and Motor Vehicles there were 316,943 Florida vehicle accidents in 2013. As a result, 2,402 people were killed and tens of thousands more were injured. Sadly, a large percentage of these crashes were avoidable and many occurred as the direct result of negligence.

When someone is seriously injured in an accident, their lives can be turned upside down. They may be forced to take a significant amount of time off work or in some cases, they may even lose their job. How will they continue to support themselves or their family? How will they pay the medical bills that continue to pile up and the future medical treatments that will be needed? These are the types of questions and concerns many accident victims face. This guide was created to address as many of those questions as possible.

The information contained in this guide is not, nor is it intended to be, legal advice. Every case is unique and as such, you should seek counsel of a qualified attorney to discuss the specifics of your case. It is our hope that the information provided will help better educate you about the personal injury accident claim process and provide valuable resources you can utilize for further research.

About The Author

Tim David is a Personal Injury Attorney who has been practicing law for nearly 30 years. Tim started his legal career as an assistant state attorney in Orange County, Florida. He worked as a Felony Prosecutor where he gained considerable trial experience. He then joined a large insurance defense firm. At this firm he continued his trial practice defending various insurance companies and governmental agencies from claims that were brought against them. In 1988, Tim founded his own personal injury law practice. Since starting his own practice he has remained committed to defending and protecting the rights of injured individuals.

The Accident

In this section we discuss events immediately following an accident. A checklist of what you should do, strategies for preserving evidence, and some things you should NEVER do when it comes to dealing with insurance adjusters.

What To Do After An Accident – A Checklist

1. Make sure you are safe from further harm.

Depending upon your injuries and how your accident happened it might be safer for you to get away from your car and off the highway.

2. See if anyone else is in need of medical care.

Check with everyone in your vehicle and any other vehicles involved to see if they have been injured in any way.

3. Call and report the accident

To ensure that medical personnel and law enforcement can be dispatched to the accident scene in a timely fashion.

4. Cooperate with law enforcement

State the facts on how the accident happened. Stay calm and factual, even if the other person is lying about what took place.

5. Speak with the at fault person to find out why they caused the accident.

Often the at-fault person will admit to being distracted, such as talking on the cell phone or texting.

6. Obtain witness names and contact information.

Do not rely on law enforcement to do this important task. Witnesses may leave the scene before law enforcement arrives, or law enforcement may overlook documenting the witness's identity. If the witness does not cooperate simply take a picture of the car's license tag and write down its make and model. Your attorney can use that information to secure that witnesses' identity.

7. Obtain photographs

If possible, take pictures with your cell phone or camera of the vehicles involved and any physical evidence at the scene, including any skid or tire marking on the pavement. If you are not able to take these yourself, and there is a family member or friend present, ask them to do it for you.

8. Immediately seek medical treatment.

It is important for you to see a qualified healthcare professional and allow them to conduct a physical examination as well as perform necessary diagnostic testing. Your failure to do this could result in further injury and will be used as a defense to any claim of injury.

9. Contact your insurance company to report the claim.

You have a duty to notify your insurance company that an accident occurred. If you are not feeling up to it because of your injuries, have a family member make the initial call to report the fact you were in an accident.

10. Do NOT speak to the at fault insurance company.

It is important that you do NOT speak to the at fault insurance company or any of their investigators. The at fault insurance company will try to obtain a recorded statement from you. They are trained in questioning you in a certain manner in an effort to avoid their insured's accountability.

11. Talk to an attorney.

Knowing your legal rights is imperative to protecting you. There are many important things a Personal Injury Attorney can do for you. Having someone on your side to help navigate through the legal procedures involved can be a godsend.

By following these 11 simple steps you can help ensure that the appropriate information has been accurately documented and should a law suit be filed, your rights are protected to the best of your ability.

Preserving Evidence – The Importance of Taking Notes

When you are involved in a car accident that was not your fault, it is easy to become confused and fail to take the steps that are necessary to preserve the evidence. This failure can become a serious problem for you later if you have to file a personal injury claim. Learning how to preserve the evidence in an accident before one happens may be a better way to prepare yourself to take constructive action.

Why Should I Take Notes after a Car or Truck Accident?

You may not realize it now, but six months from now your recollection of the details of the accident may be important if you are seeking compensation. It is highly likely that your memory will not be as fresh and that you may have forgotten important things that could change the outcome of your case. Therefore, having notes to remind you of these details is extremely important.

As you remember things, you should continue to write them down. Sometimes details become more apparent and clear after the fact than during the confusion

immediately following an accident. No detail is too small; the more information you have, the more likely you are to be able to support your personal injury claim.

What Should I Write Down?

You should jot down everything that you can remember about the accident itself: how it happened, what you were doing, where you were going and whether there were witnesses as well as the time, place, weather and any other details you noticed. You should also write down exactly what you felt: jarring, twisting, pain or shock. If anyone said anything, write that down as well.

After the crash, write down the details of your injuries. This includes not only details about your medical treatment but an ongoing diary of any ways the accident has affected your life. Note your pain, suffering, inability to work or perform household tasks. These notes can be important later in establishing the extent to which the accident affected your life.

Finally, keep notes of any conversations you have about your accident with repair shops, work hours, insurance agents and anyone else.

Should I Take Pictures?

It is usually a good idea to take photos of the accident scene, your car and yourself. You may want to enlist the help of a friend to get the best photos. The more photographs you have, the better your chances of preserving the scene as it was at the time of the accident.

By documenting your injuries and your actions after the accident, you maximize your chances of a fair and just personal injury settlement.

Why You Should Never Give Recorded Statements

One of the most dangerous things you can do as the victim of a personal injury accident is to give a recorded statement to an insurance adjuster or anyone else involved in the case. It is inevitable that the insurance company and defense attorneys will ask you for a statement, but giving one without consulting a personal injury attorney can be a recipe for disaster.

Why Should I Avoid Talking To The Insurance Adjuster?

When you are involved in an accident, there is usually at least one and probably two insurance companies involved. Your own insurance company may be paying your medical bills through your Personal Injury Protection or PIP coverage and the other driver's insurance company may be liable for other damages.

The simple fact is that the other insurance company will do everything they can to avoid paying your claim. This may include trying to get a statement from you and then use your own words against you in order to support claim denial.

Here are some simple questions and answers regarding talking to an insurance adjuster:

Q: Am I required to answer the questions of the other insurance company's adjuster?

A: No, you are not required to give a statement to anyone unless there is a legal requirement, such as a contract, statute, or court order. Consulting with an experienced personal injury attorney will assist you in determining whether any legal requirement exists.

Q. Do I have to talk to my own insurance company's adjuster?

A: If your insurance company is paying any portion of your bills, they do have the right to demand a recorded statement, although they will usually not ask for one. If they do, and you refuse to give it, you may find that your company denies payment of your claim. The best way to handle any request from your own insurance company is to advise them now is not a good time. Your next step should be to call a personal injury attorney and discuss the request.

Q: May I ask questions of the other company's adjuster before giving a statement?

A: You may ask anything you want, but the chances of you getting any answers are slim. You may ask how much insurance is available under the policy of the person who hit you and if the company will admit in writing that the accident was their insured's fault.

Q: Should I sign medical releases?

A: Never sign medical releases except on the advice of your attorney. This is the only way an insurance company can see your medical records without a court order, so do not give them this information unless there is a legal obligation to do so.

Q: What if I tell the truth?

A: Almost everyone tells the truth when they are interviewed in a recorded setting. Telling the truth, however, will not stop the insurance company from using your testimony against you and twisting your words, or taking them out of context in an effort to deny your claim.

Q: Can giving a recorded statement help my case?

A: It is probably safe to say that allowing the other insurance company to take a recorded statement from you has never once helped a victim collect any money for his or her injuries. However, it has prevented many victims from getting just compensation from the people who hit them.

What Should I Do Instead?

Instead of giving a recorded statement to an insurance adjuster, contact a personal injury attorney who will consult with you about your case and advise you on how you can protect yourself from making critical mistakes that could reduce the amount of money you are legally entitled to.

Do I Have A Case?

Being involved in an accident that resulted in injuries does not automatically mean you are entitled to compensation. In order to seek compensation, it is necessary to prove another party's negligence caused, or contributed to, your injuries. In this section, we explain the concepts of causation, negligence, and damages and how they apply to personal injury accident claims.

Proving Negligence In A Car Accident Claim

Proving negligence in a car accident claim is usually a critical component of a personal injury lawsuit. If the victim can show that the other driver was negligent, it becomes much easier to convince an insurance company to settle or a jury to award damages. However, proving negligence is not as simple as just referring to a police report. There are key elements attorneys consider when constructing a case so that they can prove the other driver was negligent.

The Negligence Factor in Car Accidents

Proving that another driver is "at fault" for an accident is usually based in the idea of negligence. There are three elements to a negligence claim in any personal injury case: duty of care, breach of duty and damages. Depending on the jurisdiction and the type of court where the case is heard, car accident claims may also carry additional requirements to prove negligence.

First, victims must establish that the driver had a duty of care to others on the road or to his or her own passengers. This is usually not too difficult, as most states outline these duties clearly when someone gets a driver's license. Traffic laws, speed limits and local traffic rules all combine to lay the foundation for the duty of care that drivers owe others.

Establishing a breach of duty of care springs directly from the establishment of that duty. Once an attorney shows that the duty existed, it can be a fairly simple matter to show that the driver committed a breach. For example, if a driver was traveling 70 miles per hour in a 35 mile-per-hour zone, it is relatively easy to show that the driver was not exercising the required care and caution necessary to protect others on the road.

A breach of duty can be fairly small but can still lead to big consequences. For example, a driver who fails to use his or her turn signals or rolls through a stop sign is not committing a felony traffic offense. However, that small action could potentially cause serious harm or even death to another person. A lawsuit based on negligence is not concerned with the size of the offense but with the results. However, the more egregious the offense, the easier it is to establish negligence. A driver who rolls through a stop sign has simply not committed the same breach of duty as someone who is driving drunk and speeds through an intersection.

Causation and damages are interrelated and are usually considered together. If the breach of duty was the cause of damages, it is easy for a jury to draw a line from the action to the results. This means that showing causation usually results in an award for damages. Causation can be “in fact,” meaning that the breach was the direct cause of damages, or proximate, meaning that the damage would not have occurred except for the breach even if the action was not the direct cause of damage.

Types of Damages

We will be covering Damages in much more detail in the next section however, since Causation and Damages are so inter-related, we’ll cover them briefly here as well.

Damages can be compensatory or designed to pay you for actual expenses. Medical bills and property damage fall into this category. It is easy for a jury to understand that you incurred \$15,000 in medical bills and \$10,000 in damage to your vehicle. “Pain and suffering” is a common type of non-economic damage that awards victims a sum for their mental and emotional distress. In order to collect any of these damages, it is usually necessary to establish the negligence of the other driver.

In addition to the traditional elements of negligence, many states have special laws regarding car accident cases. For example, some states, like Florida, are “no-fault” states. This means that all drivers must carry their own auto insurance and collect from their own insurers up to a certain point. We cover Florida’s no-fault law and Personal Injury Protection insurance in the next section. In a no-fault state, in order to force someone else to pay for damages, the victim must not only establish negligence but also show that the damages were serious enough to warrant a lawsuit.

What is Gross Negligence and How Can It Effect My Claim?

You may have heard someone refer to another person as being guilty of “gross negligence.” It is important to understand the difference between typical negligence and gross negligence in a personal injury case, as gross negligence often entails the pursuit of additional compensation for the victim. A personal injury attorney can

help you determine if your case involves gross negligence and, if so, whether you should pursue punitive or other types of damages.

What Is Gross Negligence?

There is a difference between the legal definition of gross negligence and the commonly understood application of the term. Many people think that gross negligence involves someone who deliberately tries to harm someone else, as when a person deliberately shoots or stabs another person. However, that is not the true definition of the term.

The legal concept of gross negligence means carelessness or lack of precautions that includes a conscious or voluntary disregard of the duty to use reasonable care. In other words, in order to show gross negligence, the victim must show that the person who committed the act that led to the accident or injury should have known and deliberately ignored the need for reasonable safety. This does not mean that the person intended to harm someone else; instead, it means that the person was so outrageously careless that any reasonable person could have anticipated that harm could come to someone else due to the action.

What Is The Effect of Gross Negligence on a Personal Injury Case?

In many states, it is necessary to show gross negligence in order to pursue punitive damages. Punitive damages, as the name implies, are extra monetary sums awarded to the victim to punish the behavior of the defendant. This does not usually happen when the defendant is simply negligent; instead, the victim must show that the defendant was so incredibly negligent that he or she should have known that the behavior could place others in danger.

Those who have suffered any type of personal injury may wish to consult an attorney to determine if there was gross negligence involved in the case and if they may be entitled to additional damages as a result.

Proving Mental and Emotional Injuries From A Car Accident

One of the most difficult types of injuries to prove are mental and emotional injuries after a car accident. Mental and emotional injuries can cause just as much damage as physical injuries, but it may be much harder to convince others that you are truly injured. However, victims of mental and emotional trauma are entitled to compensation just as victims of physical injury may be.

What Are Mental and Emotional Injuries?

Most mental and emotional injuries are referred to under the collective term “pain and suffering” in a personal injury case. These injuries range from fairly mild problems such as fear, anger, shock and distress to severe problems such as post-traumatic stress disorder.

People who suffer from mental and emotional trauma may experience fits of crying, anger, loss of appetite, mood swings, sexual problems or sleep disturbances. Sometimes these symptoms disappear quickly, but at other times they linger for a long time.

How Can I Treat Mental and Emotional Injuries?

Mental and emotional issues may need psychological treatment. In some cases, these symptoms will clear up on their own in time, but in other cases it may be necessary to seek professional help. Therapy may include drugs, counseling and psychotherapy to address underlying fear issues.

How Can I Prove These Injuries In Court?

Unfortunately, it is not as easy to “prove” that you have suffered emotional distress as it is to prove that you have suffered physical trauma. If you break a leg, for instance, you could show the jury x-rays of your broken bone. However, you cannot really show someone that you have suffered emotional trauma. In order to “prove” mental or emotional distress, you must rely on your testimony and that of others who might have evidence that shows your mental state. For example, family members might testify as to your personality changes after a serious accident.

It is not uncommon for insurance companies to accept a person’s claim of emotional distress as part of an overall settlement for an accident, provided the claim is not outlandish or out of proportion to the severity of the injury. Juries also tend to sympathize with someone who has been in an accident provided that they can relate to the amount of distress the person may have suffered.

Fortunately, most jurors understand that accidents are traumatic. If you have been hit by a car, for example, a reasonable juror will automatically assume that you suffered emotional as well as physical trauma. Juries are usually willing to award a certain amount of damages for mental and emotional distress proportionate to the severity of the accident. In other words, the greater the physical injury, the greater the likelihood of a large award by a jury for pain and suffering.

How Much Is My Case Worth?

In this section we cover the concept of “Damages” and how they are determined. We also discuss the rules around Florida’s Personal Injury Protection (PIP) insurance and how that coverage applies to claims. We talk about Bad Faith Insurance Claims and also tactics insurance adjusters use to deny or reduce your claim amount.

Understanding Damages

If you have been injured by someone else’s negligence you may be entitled to recover personal injury damages. However, in order to collect these damages, you may have to file a personal injury lawsuit. These lawsuits are filed in civil court and are governed by civil law in the state in which you sue.

Victims often have a very vague understanding of the difference between different types of personal injury damages. Just because you were injured does not mean you are automatically entitled to recover every type of damage. The types of damages available in your case will depend on the type of injury you sustained and the circumstances surrounding the accident.

Compensatory Damages

The word “compensatory” comes from the Latin roots that mean “to weigh together.” The image is of a judge placing something in one side of a balance scale and something in the other. The goal is to make the scale balance perfectly. Therefore, compensatory damages are defined as those that restore balance to a situation by giving a victim back what he or she has lost.

Unfortunately, many personal injury victims cannot really recover exactly what they have lost, so money must be substituted instead. A dollar amount is assigned to the victim’s emotional, physical and financial damage to compensate the victim for those losses.

Monetary Losses

Compensatory damages include compensation for physical, emotional and monetary losses. Monetary damages are the most specific as the victim can present written proof that he or she has sustained these losses. Monetary damages might include:

- **Medical expenses.** Many accidents involve the need for medical treatment. Sometimes this treatment is very brief while in other cases it may go on for years. Once a lawsuit has been filed, the victim must account for all past medical expenses and estimate the need for future medical treatment based on life expectancy.

- **Disability costs.** When an injury results in a permanent disability, the victim may have to pay money for someone to do things that the victim used to do alone. For example, if a victim is confined to a wheelchair after an accident, the victim may have to pay not only for the medical supplies but also for costs of future assistance in and around the home.
- **Lost income.** Whether the victim is a wage earner or owns his or her own business, there may be a substantial loss of future income if the victim is unable to work after an accident. In these cases, the victims can claim the amount he or she would have made had the accident never happened.
- **Property damage.** Many accidents involve the loss of personal property such as a vehicle. The value of this loss is calculated based on fair market value.
- **Funeral expenses.** When someone is killed in an accident, the family members may be able to claim the amount of funeral expenses for the victim.

Non-Monetary Losses

Non-monetary damages are much more difficult to calculate than monetary damages. It is up to the judge or a jury to decide on the amount appropriate for non-monetary damages, which can include:

- **Pain and suffering.** Victims often suffer debilitating pain, emotional distress, fear and other mental issues after an accident and can claim damages for this suffering.
- **Loss of consortium.** Family members may be able to claim the loss of emotional support, love and affection, comfort and companionship and the general society of a victim.

Punitive Damages

The final type of damages awarded is punitive damages. They are not designed to compensate the victim but to punish the person who caused the accident for outrageous conduct. In most cases gross negligence must be proven in order to be awarded punitive damages. Punitive damages are not awarded in every case and may not be appropriate in some cases.

Structured Settlements

Many large settlements are not paid in lump sums but in structured payments over time. You should discuss with your personal injury attorney the best way to set up payment of your compensation.

What Is Personal Injury Protection (PIP) Insurance And How Can It Effect An Accident Injury Claim

Personal Injury Protection, or PIP is part of your car insurance contract with your insurance company. In some states PIP, also known as No-Fault Insurance is mandatory. PIP insurance will cover a portion of your medical expenses and lost wages regardless of whether you caused the accident or not.

How PIP works

14 days or lose it! Under Florida law anyone involved in an accident must seek medical treatment related to the accident within 14 days from the accident and can only seek treatment from certain licensed physicians.

What is troubling about this limitation is that some people do not immediately go to a doctor for treatment. Instead, they hope their pain will go away without treatment. For those who wait, they can lose valuable PIP benefits including payment for medical expenses and wage loss compensation.

Excluded from PIP are massage therapists and acupuncturists. Limitations now exist on the amount of compensation allowed to be received by Chiropractors is \$2,500.

How much will PIP pay?

Depending upon your contract most PIP payments are limited to \$10,000. In Florida you have the ability to have a deductible, at an amount you select. If you have a deductible then you will personally have to come out of pocket up to that deductible before PIP is responsible.

Notify your insurance company of the accident

One of the most important aspects of understanding personal injury protection is that in order to preserve your ability to collect PIP benefits it is imperative that you notify your insurance company and report the accident. A phone call and follow up email to the insurance company will remove any doubt that they were in fact notified.

PIP cannot tell you who you can see for treatment

One important thing to remember, while the insurance company may want to pick and choose who you see for treatment, they do not have the right to do so. PIP is different than many health insurance plans that have strict requirements on listed

or approved healthcare providers. There is no requirement to wait, or seek permission from your automobile insurance company on which doctor you choose to see. Do not let the insurance company dictate whom you see for treatment.

How quickly do I get my benefits?

Under Florida law if you are eligible for PIP benefits, such as wage loss or medical payments the statute requires that the benefits be paid to you within 30 days after the insurance company receives written notice of the claim and amount. It is extremely important that notice provisions are complied with in order to receive the benefits you are entitled to.

In the event the insurance company denies payment on otherwise eligible claims you may be forced to put them on notice and later file a lawsuit to get benefits that should have been paid.

Does PIP apply in every situation?

No, limitations do exist on which type of injuries are covered by PIP. Certain types of injuries may be excluded from PIP coverage. Some examples include motorcyclists, vehicles used in mass transit, uninsured motor vehicles with relatives in the same household, intentional acts and injuries occurring during the commission of a felony.

However, even if PIP may be excluded that does not mean you do not have a potential claim. This is why it is important to allow an attorney to evaluate each situation and determine if other avenues of recovery exist.

What Is Bad Faith And How Can It Effect My Personal Injury Claim?

Insurance companies have a duty to act in “good faith” when settling a claim. However that does not mean that insurance companies have not been known to prevent claimants from obtaining full justice, or even deny claims based on bogus reasons. It is important to understand bad faith and how Florida law views these attempts on the part of an insurance company. It is also important to consult an attorney who may be able to help you maximize the amount you collect for your injury from the insurance company.

What Is Bad Faith?

The term “bad faith” refers to any action by an insurance company that attempts to avoid paying out money or otherwise settling a claim for which they are legally liable. Your insurance policy, or that of the person who caused your accident, is paid

for in advance to ensure that you have protection. If the company does not negotiate and settle a valid claim, the insurer may be guilty of bad faith.

Insurance companies have a legal duty to act in good faith toward any injured person if their own insured caused the accident. If you believe that a third-party insurer has acted in bad faith by withholding important evidence or by interfering with the settlement of a claim, you should speak to a personal injury attorney about the matter.

When Is It Not Bad Faith?

Not every denial by an insurance company is bad faith. Bad faith is predicated on a deliberate attempt to deny you the value of your claim, not a realistic dispute over the claim's value. An attorney may elect to start by sending a letter to the adjuster for the insurance company claiming a possible bad faith action. If the insurance company is honestly trying to settle the case, this will usually elicit a rapid response and may help bring the matter to a speedy conclusion.

Florida law makes provisions for those who want to file a bad faith claim against an insurer. As early as 1938, the Florida Supreme Court addressed the issue of third-party bad faith in common law. In 1982, the Florida legislature extended bad faith law to include first-party contractors as well. Today, Florida courts consider the lengths to which an insurer goes to provide the protection offered by the insurance policy when making a bad faith judgment. Our article, *What is bad faith insurance*, covers this topic in more detail.

If you believe you have been the victim of bad faith on the part of an insurance company, contact a personal injury attorney immediately. There is a statute of limitations that governs the amount of time you have in which to file a claim, so do not delay.

Tactics Insurance Adjusters Use To Deny Or Reduce Your Claim Amount

The job of an insurance adjuster is simple: keep the company's exposure to a minimum and keep the amount paid in claims as low as possible. Many people forget how simple this rule is and believe that talking to an insurance adjuster will somehow help them collect more money from the insurance company.

In reality, insurance adjusters have a single mission, and that is to prevent you from collecting damages to the greatest extent possible. Here are five ways that insurance adjusters try to keep you from collecting compensation for your injuries:

- **Deny, deny, deny.** “When in doubt, deny,” may be the first lesson insurance adjusters learn. They already know that if the claim is not very large, simply denying it and hinting that the process to collect damages will be long and drawn-out may cause many victims to simply give up. In addition, adjusters may be able to convince a victim that the accident was really his or her fault or that, as there were no witnesses, the jury would never believe the victim.
- **Take a recorded statement.** It is never a good idea to give a recorded statement to an insurance adjuster. This is a tactic that often allows adjusters to deny claims based on things that the victim says that are taken out of context. Never give a recorded statement without your attorney present.
- **Obtaining a medical release.** Once the adjuster has your medical records, there is nothing to stop him or her from building a case based on doubt about your injuries. Signing a medical release for an adjuster to look at your files is one of the worst things you can do if you are a victim, even if the adjuster promises that he or she will expedite your claim once they “see your medical bills.”
- **Performing surveillance.** If you have had a significant injury, assume that you are being watched and perhaps photographed or filmed. An insurance adjuster would love to have evidence that you are not injured to show a judge or jury. Similarly, expect that the insurance company will be looking at your social media and other accounts for evidence that you are not really injured and that you do not deserve the compensation you are requesting.
- **Convincing you that a quick settlement is best.** One of the favorite tricks of adjusters is to convince the victim that a lawyer will only cost him or her money and that the adjuster can help the victim get a fair settlement. This is almost never true; whatever the adjuster offers is usually much less than what the victim would be entitled to with the help of an attorney.

Filing a Personal Injury Claim

This section addresses the most common questions we receive from clients regarding Personal Injury Claims.

How Soon After The Accident Should I File A Claim?

Florida car accidents have a statute of limitations for filing a personal injury claim. Victims of a car accident in Florida have four years in most cases to file a personal injury claim. While this amount of time can vary according to certain conditions, it is advisable for everyone who suffers injury from an accident to consult a Florida personal injury attorney as soon as possible.

The Difference Between an Insurance Claim and a Personal Injury Claim

Filing a claim with an insurance company is not the same thing as filing a lawsuit for damages. You may file a claim with an insurance company for your injuries only to find that the insurance coverage does not pay for all of your expenses. In order to be sure that you recover all the damages possible for your personal injury, it is important for you to speak to a personal injury attorney and, if necessary, file a lawsuit to protect your rights. Proving negligence in a car accident claim is required to receive compensation and an auto accident attorney in Orlando can help with that.

Victims sometimes misunderstand the difference between an insurance claim and a personal injury claim. It is quite possible for a victim to file a claim with an insurance company but still seek damages through a personal injury case. If an insurance company pays your medical bills, for example, that does not mean that you may not recover damages for pain and suffering, property damage and other costs associated with your accident. However, if you collect money from the insurance company and then settle your personal injury claim at a later time, the insurance company may insist on subtracting the amount already paid as a result of your insurance claim from the final settlement amount.

Beating the Statute of Limitations

It is extremely important that you file your lawsuit within the time limit established by law. See our article on the steps to filing a personal injury lawsuit after a car accident for more information. Injuries caused by Florida car accidents may be the subject of a lawsuit for up to four years after the date of the injury, in most cases. This means that once the four-year time period has passed, you may be barred from filing any claims against the person who caused your injury.

Lawsuits must also be filed in the right venue or location. Depending on the circumstances of the accident, the lawsuit may be filed in the defendant's county of residence or the victim's or in some other location altogether.

It is very important that you begin to act early to put in motion the process of filing a lawsuit. Your personal injury attorney may have to trace the locations of certain defendants, retain an accident reconstruction expert, take depositions of interested parties and prepare a case for trial. This should be done as soon after the accident as possible, as it becomes more difficult with time to find witnesses, reconstruct events of an accident or locate important information. Further, a personal injury attorney must prepare the case for filing, and this may take some time. If you have a strong claim, it is likely that the case will never go to trial. If, on the other hand, your case is complicated or there is less likelihood of a good verdict, you may find yourself preparing for a long legal battle.

Protecting Your Rights

When you are involved in a car accident in Florida, it is very important that you protect your rights by speaking with a personal injury attorney about your case. A personal injury lawyer will advise you on how to file a lawsuit against the person or people responsible for your injuries and the best strategy for recovering the maximum amount possible in compensation. You should contact a personal injury attorney as soon as possible after your accident to be sure that your rights are fully protected.

How Long Do Personal Injury Cases Take To Settle?

The answer to this question is not so simple because there are so many factors involved depending upon the type of case and facts involved. Some cases only take a short time, within months to settle, but others are more complicated and can take years to reach a fair settlement.

The type of injury that you have sustained will affect whether or not your case can settle quickly. An injury may not be very serious. In those instances, insurance companies generally like to settle these cases quickly because they do not wish to go to court over matters that may be more costly to litigate than to settle. In some instances, insurance companies tend to settle cases when there is no doubt as to who is responsible for the accident that caused your injuries.

Why Serious Injury Cases Take Longer

When the injuries are serious and liability is in doubt, the at-fault insurance company purposely wastes time and delays matters by doing the following:

- Disputing that their driver/client was at fault
- Suggesting that the injuries are due to a pre-existing condition and not the accident
- Disputing that the claimant is injured, and
- Claiming that the injured contributed to the accident

Serious injuries mean that there will be more visits to the doctor's office, more medical records and more billings for the lawyers to gather and examine to submit to the insurance carrier. Your personal injury lawyer will need more time to build a case that supports your claims in order to maximize any potential settlement or recovery.

Another reason that personal injury cases involving serious injury take longer to settle is because these cases are more likely to be taken to trial. The shortest lawsuit is usually around six months, but you can also expect yours to last one, two, and in some cases three years before you receive a settlement or jury verdict.

What Happens Throughout Those Years?

If your case takes several years to complete, this will be because each side will need to perform several tasks. The first year will be spent evaluating your health before and after the accident by reviewing all of your medical records, as well as the bills. This needs to be done in order to determine what your injuries are and what your prognosis will be. From there, we will have to decide how much treatment you are going to need in the future. However, consideration will be given to your past medical history before anyone can decide on what a proper and fair settlement would be.

When an insurance company receives records or bills, the lawyers ordinarily take 30 business days to examine them. Then, they take about two weeks to decide what the settlement offer they would likely recommend be made. If your case settles, another two weeks will be spent working out the remaining details and drawing up legal documents that are required to be signed.

Which Injuries Are Considered to Be Serious?

Serious injuries include brain injuries, back injuries, neck injuries, birth injuries, broken or fractured bones, severed limbs and death. It can also include injuries that result from medical malpractice. Illnesses due to exposure to toxic chemicals in the workplace or in the environment may be considered to be serious injuries as well. If

you are suffering from any of the maladies listed above, it will take longer for your case settle, but you may be entitled to higher compensation.

Accepting a Lower Settlement

As a rule, insurance companies do not want to voluntarily pay large settlements, and cases that involve serious injuries require them to do that. Therefore, they try and avoid making these payments by delaying your case as long as they possibly can. Their intention is to try and make you accept a lower settlement because you cannot afford to wait for the case to run its course.

It is within your rights to accept less monetary compensation than you deserve so that you can move on with your life. However, this will mean that your settlement will be lower than it would be if you wait until the most pressure can be exerted against the insurance company.

The Two Most Important People

Basically, the time frame of personal injury cases largely depends on two people: you and your Lakeland personal injury lawyer. It is entirely up to you to decide to wait for a larger settlement from what is initially offered, but this will cause the process to take longer.

Your personal injury attorney is also instrumental in determining how long this process takes because he or she will be charged with collecting evidence and imparting it to the opposing side when this information is requested. For this reason, you must contact a personal injury attorney as soon as possible so that this sometimes-lengthy process can begin right away.

When to Pursue a Settlement

Although you are advised to immediately consult a Lakeland personal injury lawyer, he or she will advise you not to pursue a settlement until you are medically stable. Generally, this will be when you have made a full recovery, or you have learned what your prognosis will be. In other words, a medical expert opinion will be needed in order to explain how your injuries will affect you from now into the future.

The dangerous alternative is to settle before you know these things, but the full extent of your injuries may not have presented themselves. It's possible that you could develop another medical condition that is related to the accident and will require further medical treatment. A good example of this is soft tissue injuries and whiplash from car and truck accidents. If you settle early with the opposing side, you will not be able to ask for an increase in compensation.

Hiring an Attorney

It is common for insurance companies to work very hard not to offer you a fair settlement that would truly benefit you, or in many cases they will deny personal injury claims altogether. For these reasons, a personal injury attorney is necessary. Although the process may take years, your lawyer can help shorten it, and the fee you would have to pay will be worth the price.

Steps For Filing A Personal Injury Lawsuit In Florida

There are important steps for filing a personal injury lawsuit after a car accident that you should be aware of. First and foremost, if you are in a car accident, make sure you follow the steps outlined in the first section immediately after the accident.

While insurance companies often pay the full amount of the damages incurred in an auto accident, there are also circumstances that may cause some claims to be denied. Insurance companies are driven by profit, and personal injury claims may not be approved for a number of reasons. For many car accident victims in Central Florida, the only way to receive the compensation they are due is to hire Orlando car accident attorneys to navigate the waters of the legal system. Filing a personal injury lawsuit can be a complicated undertaking, and following the proper procedure is essential in your case.

Before Filing a Personal Injury Lawsuit

Before you file a lawsuit in regards to an automobile accident, it is important to understand several factors that could affect your case:

- Personal injury lawsuits in Florida are subject to the statute of limitations. The court will not accept your complaint if the accident occurred more than four years prior to filing.
- Every area of Florida is under the jurisdiction of several court systems, including circuit courts, state courts and federal courts. You must know which court handles cases such as yours.
- Your lawsuit must be legitimate and seek compensation only for actual damages. An experienced attorney can help you avoid filing a frivolous lawsuit that will be thrown out by the court.
- Hold on to any evidence that supports your case, including physical objects, photographs, recorded statements and documentation.

Starting the Lawsuit

The first step in filing a personal injury lawsuit is to file a complaint with the court. The complaint will detail all of the elements of your case, including the facts surrounding the accident, the injuries incurred and all of the associated damages, such as medical expenses, lost wages and unrecoverable future earnings. Each element should be supported by evidence so that the judge can decide whether your case is legitimate. In addition, you will need to pay a filing fee for your lawsuit to be accepted and entered into the system.

After the complaint has been successfully filed, you will need to notify the other party through a process server. A process server is a neutral third party who is charged with ensuring that all of the paperwork is delivered to the proper person. Among the documents to be delivered is a summons that states that the defendant must answer your complaint in a timely manner. The response, also called an answer, will detail the legal defenses that may be raised to prevent the defendant from having to pay the amount you requested in your initial complaint.

Pretrial Proceedings

Contrary to what most people believe, very few personal injury lawsuits go to trial. Most of them are either dismissed or settled before a trial becomes necessary. Read our article “How Long Do Personal injury Cases Take To Settle” for more information on the timing of a personal injury case. After the court has received the complaint and answer, the case enters what is known as the discovery phase. During this phase, the attorneys for both parties will exchange information regarding the case. This can be done in three different ways: interrogatories, depositions and requests for documentation. Interrogatories are simply written questions to be answered by the other party while depositions are personal testimony that is provided under oath.

As the pretrial process continues, the attorneys will most likely be entering into concurrent settlement negotiations. If your attorney negotiates an acceptable amount of compensation, the case will end promptly. It is only after all negotiations fail will the case go to trial.

Selecting The Best Personal Injury Attorney For Your Case

If you are considering hiring a personal injury attorney, it is very important that you ask certain questions before you sign a fee agreement. Asking these questions and listening carefully to the answers can save you a great deal of trouble and help you hire the right attorney for your case.

8 Important questions to ask a Personal Injury Attorney

1) What areas of law do you specialize in?

We have all heard the saying that someone may be a jack-of-all-trades, but a master of none. A personal injury attorney should ideally focus their practice almost exclusively on handling personal injury matters. The problem with hiring an attorney who handles multiples areas of the law such as bankruptcy, criminal cases and real estate closings in addition to personal injury is that they may not have the expertise to handle your case like an experienced attorney who dedicates his practice to personal injury. An attorney who focuses only on personal injury has not only the experience but also the network of resources to maximize your case's potential.

2) How long have you been practicing law?

It is important to hire an experienced attorney. An attorney who is just starting out may be eager to take your case but, does he or she have the experience and know-how to handle the trial of a complex personal injury case? Personal injury law is extremely complicated and ever changing. It is important to hire someone that has experience in handling your claim in order to receive fair and just compensation.

3) Have you handled any cases similar to mine? What was the outcome?

It is important to know if the attorney you are considering has handled cases involving the technical details of your type of injury. For example, if you are suing a railroad, you want an attorney who has handled railroad cases in the past. If your case involves a trucking accident, or medical malpractice, make sure you consider hiring an attorney who knows how to handle the particular type of case you have.

4) How do you communicate with your clients and how often?

This is a very important and often overlooked aspect of the attorney-client relationship. If your attorney is too busy to call you or answer your questions, you will quickly become frustrated.

5) How busy are you? Do you have time to handle my case?

It is difficult to get an honest answer to this question from an attorney; most will say that they have plenty of time for your case. However, you can watch for signs, including does the attorney meet with you personally or simply send an associate or even a paralegal to handle the initial meeting?

Meeting with a potential client is crucial in my view for several reasons. First, as the attorney responsible to help the client you want to ask all the questions you feel are important in evaluating if you have a potential case. Second, there may be a need to take immediate action to preserve evidence. When it comes to preservation of evidence it makes sense to have an attorney make that initial call, not someone else. Last, important matters such as providing statutory notice of claims or locating witnesses while the events are fresh in their mind is something best left up to the attorney at the initial hearing.

6) Are you prepared to take my case to trial if the insurance company offer is not acceptable?

One concern is if it appears your attorney is more concerned with settling a case quickly rather than getting you the best results. It is perfectly acceptable to ask an attorney what percentage of his or her cases proceed to trial. While this number may be low as most cases are settled prior to trial, the attorney should ideally have some trial experience, indicating that he or she is not afraid to proceed to trial if that is in the best interests of the client.

7) Has your license ever been suspended? If so, why?

You want to ask has the attorney ever been suspended or disciplined by the bar association or another group? If so, why?

8) What is your contingency fee?

The contingency fee is the amount of money the attorney will take from your settlement. This is usually expressed as a percentage, but be careful: contingency fee agreements may outline a percentage to be paid after all expenses, such as court reporter fees and investigation fees, are paid. This could leave you with substantially less money than you think you will recover.

What Taxes Will I Have To Pay On My Settlement?

One of the first things that most people want to know when they receive an award after an auto accident settlement is whether they have to pay taxes on this money. The answer may depend on how the verdict or settlement is structured and the circumstances of the award.

Only a tax advisor can ultimately answer questions about taxes. However, it helps to have an understanding of the basic ground rules of how settlements or verdicts in personal injury cases may be subject to being taxed.

Internal Revenue Service Code and Taxable Damages

Every tax authority may have its own rules about what can be taxed, but the IRS or the federal taxation authority is the one with whom most people are concerned. According to the Code of Federal Regulations, damages received for personal physical injuries or sickness are not taxable. However, money received for emotional damages or punitive damages may not be considered part of the physical injury or sickness settlement and may be taxable unless the emotional damage is directly related to the physical distress. For more information on the different types of damages, read our article “Understanding Personal Injury Damages”.

Here are a few general rules about different types of reimbursements and how they can be taxed:

- Most amounts that are considered compensatory damages, or damages that compensate you for direct expenses such as medical bills, are typically not taxable. However, if you have already taken a deduction for your out-of-pocket medical expenses on a tax return when you receive the award, that portion may be subject to tax.
- Money received for car repairs, rental expenses while your car is in the shop or other property damage is usually not taxable.
- Money you are awarded for lost wages is generally subject to income tax. This is because the compensation you would have received in the normal course of business would have been taxed, so any amount you receive as restitution for income should also be taxed.
- Emotional damages may be taxed, but pain and suffering is usually not. Therefore, it is important to determine how the settlement or award is structured to determine whether these amounts are taxable.
- Punitive damages are relatively rare. They are usually awarded when someone has committed a deliberately negligent or egregious action and the court wants to punish the offender. These types of damages are usually taxable when they are awarded because they are not considered compensatory.

State Laws vs. Federal Laws

While the IRS rules and regulations apply to everyone, state codes can vary widely. Each state implements its own tax rates and regulations and interprets insurance policies differently. Therefore, it is important to talk to a tax expert who can explain state laws and provide guidance for managing the taxes on a personal injury settlement.

A personal injury attorney is not usually a tax expert. However, a personal injury attorney can work with a tax expert to help you understand your settlement and deal with the tax consequences.

Additional Online Resources For Accident Victims

If you have been involved in a Florida car accident or commercial vehicle accident, chances are you have a lot of questions you need answers to. Below is a comprehensive list of free online national and state level resources that you may find helpful.

U.S. DEPARTMENT OF TRANSPORTATION

DOT.gov

This federal agency regulates all transportation laws and regulations for travel in the United States. Here you will find statistics on collision, injury, and fatality cases that have occurred on highways across the country, as well as other relevant information. Links to a wealth of other online resources are also provided.

BUREAU OF TRANSPORTATION

BTS.gov

This exhaustive site provides statistics for everything transportation-related, including freight and passenger travel in Florida and other states.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)

NHTSA.DOT.gov

This government agency strives to prevent injuries, wrongful death, and the economic costs that result from highway collisions. Dedicated to research, education, setting safety standards, and enforcement, the NHTSA is an excellent resource for victims seeking compensation and information after an accident. Here you will find

statistics, safety tips, information about product defects and recalls, and other helpful links.

FEDERAL HIGHWAY ADMINISTRATION (FHWA)

FHWA.DOT.gov

A branch of the U.S. Department of Transportation, the FHWA provides financial and technical support to state, local, and tribal governments by aiding in the construction, maintenance, and improvement of the nation's highway system. The site includes an electronic reading room and a pressroom, as well as other helpful resources for victims seeking compensation and information.

FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)

DOT.STATE.FL.US

The Florida DOT is a state government agency that regulates all of the traffic for Florida roads and highways. Their site provides access to travel advisories, maps, local road and weather conditions, lane closures, and notifications of road construction.

Our Orlando, Florida firm has a strong coalition of wrongful death lawyers committed to preventing highway collisions and helping victims obtain compensation. We urge you to take advantage of local organizations such as the Florida DOT.

TRIP

TRIPNET.org

TRIP is a nonprofit organization founded in 1971 that promotes transportation policies to relieve traffic congestion, improve air quality, make highway travel safer, and enhance economic productivity. Their website includes information about roads, bridges, traffic congestion, highway safety, and transportation-related environmental issues.

U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

CPSC.gov

The CPSC is responsible for protecting citizens from serious injury or wrongful death resulting from defective products. The website includes safety tips, statistics, recall information, and a wealth of other resources for those seeking victims' compensation.

www.cpsc.gov.

MOTHERS AGAINST DRUNK DRIVING (MADD)

MADD.org

MADD is a non-profit grass roots organization with more than 400 local entities nationwide, including a chapter in Orlando, Florida. MADD's mission is to stop wrongful death as a result of drunk driving, prevent underage drinking, and support the victims of drunk drivers. The site includes answers to frequently asked questions, information on volunteer and leadership opportunities, discussion forums, and a schedule of MADD-sponsored events.

BUCKLE UP FLORIDA

BUCKLEUPFLORIDA.com

Devoted to promoting seat belt awareness, Buckle Up Florida is non-profit organization that seeks to enact seat belt legislation and educate the public. The site includes a calendar of sponsored events, numerous resources, and testimonials from people whose lives have been saved by seat belts.

Insurance Institute for Highway Safety (IIHS)

IIHS.org

The Insurance Institute for Highway Safety is a nonprofit organization with the mission statement of reducing deaths, injuries, and property damages caused by collisions on the United States highways. The site includes crashworthiness rankings for several vehicles on the market.

About David & Philpot, P.L.

The attorneys at David & Philpot have been helping protect the rights of Florida accident victims for over 20 years. They have first hand experience with how Insurance companies work to deny claims and use that knowledge on behalf of their clients. They provide compassionate, aggressive, and knowledgeable representation to each and every client.

David & Philpot work on a contingency fee basis. That means if they are unable to obtain a settlement for your claim, you pay nothing. They offer free consultations and would be happy to discuss the details of your case. To contact David & Philpot call toll free **800.360.7015**. You may also visit their website at <http://DavidLaw.com/contact-us> and fill out a free case evaluation form.