



Personal Injury

SURVIVAL GUIDE

Learn What To Do After Suffering A Personal Injury
and How To Gain The Best Chance At Being
Fairly Compensated For Your Injuries

Automobile Accidents

Getting into a car accident is no fun! But unless you are really lucky, it is almost inevitable. There are more than 5.5 million car accidents in the United States each year, injuring more than 2.2 million people. But surprisingly, most people don't know what to do if they are in a car accident. This guide will give you some pointers on what to do if you involved in a car accident which causes injuries to you or your passenger(s) and it will give you a synopsis of the claims and lawsuit process.

10 things to do after immediately after an automobile accident

1. Stay Calm – after an accident is not the time to lose your cool. Keep your wits about you.

2. Safety of everyone involved is a top priority – your first priority after an accident is to maintain the safety of everyone involved in the accident and to take actions to prevent more accidents and injuries. If the accident is minor and the cars are still functioning, move them off or to the side of the road.

3. Injuries – Call 911 if an ambulance is needed - ask everyone who was in the car with you if they are okay. Then check on the driver and passengers of the other car. Again, call 911 for an ambulance if needed.

4. Call the Police – After an accident, the other person involved might suggest not calling the police and settling things between just the two of you. Ignore him and call the police, even if it's just a minor accident for several reasons:

You may be required to call the police. In Florida, you are required to call the police when the accident results in injury to, or death of any person and/or results in vehicle damage or any other property damage in the apparent amount of at least \$500.00.

A police report is important to establish who caused the accident - although the police report is inadmissible in a civil trial for injuries, the insurance companies use them to help them determine who was at fault for the accident. Even if the police don't come to the scene, file a report as soon as you can so your version of the event is in the record.

A police report can protect you from fraud - it is not completely unusual for an individual to try to stage an accident. Police officers are trained to detect staged accidents. Police can help prevent you from being a victim of a staged accident.

Police can keep everyone at the scene stay calm – understandably, emotions run high after an accident. The police often have a calming effect on the individuals and can help “keep the peace”.

5. Exchange information with the other driver -

- ✓ Name
- ✓ Driver's license number
- ✓ Address
- ✓ Telephone number
- ✓ Email address
- ✓ Insurance Company
- ✓ Insurance Policy number

6. Write down information about the car accident. After the exchange of information with the other driver, write down as much information about the accident as you can:

- ✓ Time
- ✓ Location (draw a diagram if possible)
- ✓ Description of the other vehicle (including make, model, year, color, license plate number).

- ✓ Description of individuals who were in the vehicles
- ✓ Description of damage to the vehicles not in the photographs

7. Take plenty of photos from all angles and of all vehicles involved. You've heard the expression: "a picture is worth a thousand words", well this is never more true than after a car accident. Take photos of the entire scene to put the photographs of the vehicles in context. This includes taking photographs of the roadway and any traffic signs which are important in your case. Make sure you take photographs from all angles and on all sides of the vehicles. Don't forget to take photographs of any skid marks and any other evidence at the scene.

8. Get witness information – If there are any witnesses to the accident, get their names, addresses, telephone numbers and email addresses. Witnesses help tremendously when it is a "he said, she said" situation.

9. Don't admit fault or assign blame at the scene – because determining fault is a complicated process, leave the blame for whose fault the accident was, to the professionals, including the police, your attorneys and the insurance companies.

10. Call your insurance company as soon as possible – this is important for several reasons, not the least of which is that most insurance policies require it. Notifying your insurance company immediately after an accident, will help your insurance company gather information in order to efficiently process your claim for injuries and/or property damage to your vehicle.

What to do if you are injured

Go to the emergency room or an urgent care center.

Call 911 for an ambulance if necessary.

Things NOT to do after an accident

Do not talk with any insurance company without consulting with your lawyer

Do not discuss your accident on any social media or put photographs of your activities on social media! Courts are now allowing the defense lawyers in a personal injury cases to obtain social media from your websites and admit this information at trial. Frankly, even while the case is in its early stages, just about anybody with any knowledge of social media can obtain your posts. Just Don't Do It! **In fact we suggest that you "close" any social media until your case is over.** That way, no one can take what you say out of context. However, we do not advocate deleting or altering any previous posts. If you don't close your account(s), you should at least turn the settings to the most "private" settings.

Do not forget that as your claim progresses, the insurance company may have an investigator take surveillance video of you.

10 Reasons why hiring a lawyer is important.

1. Catastrophic injuries such as a wrongful death case, brain injury cases, paraplegic and quadriplegic cases, serious burn injuries or other serious injury cases should never be handled without the expertise of an experienced attorney because only an experienced trial attorney knows how to negotiate the complex legal challenges that will be presented by the insurance company and the defense attorneys. Remember, the more money that is involved, the harder they will fight. Even if the case does not appear so significant, the experience and knowledge of a qualified personal injury attorney is invaluable.
2. Complicated cases such as trucking cases, or cases where the at-fault party is DUI must be handled by a competent attorney because there are too many technical aspects of these cases to ever consider handling on your own. Additionally, in some cases, there is more than one way to recover for your injuries. For example, if you are involved in an accident while at work, you also have a workers compensation claim. It is important that you do not waive your right to recover for all of your potential claims.
3. Insurance companies prey on unrepresented injured persons.
4. The process is complex. As mentioned above, personal injury cases can be some of the most complex cases requiring the hiring of many expert witnesses.
5. A lawyer can help you get medical treatment and make sure your medical providers are paid

PIP/medpay insurance; 14 day rule, EMC – there are complicated laws in Florida which require you to do certain things within a certain amount of time. For example, in order to qualify for PIP benefits (the part of your automobile policy which pays 80% of your medical bills and 60% of your lost wages up to \$10,000.00) you must see a licensed medical provider (defined by Florida law) **within 14 days of an accident.**

There are also complicated laws which require a medical doctor to determine if you have an injury which qualifies as an “emergency medical condition” in order to get the full extent of your PIP benefits from:

Your insurance policy

Insurance of the driver of your vehicle if you are a passenger

Insurance from family members if you don't own a vehicle

Insurance from the at fault party if you are a pedestrian

Letters of Protection – sometimes there is no medical insurance available to pay medical expenses, such as when your PIP benefits have been exhausted, or where there is no health insurance available. Your lawyer may be able to convince your medical providers (with your permission) to accept an LOP which is a promise by your lawyer to pay the medical provider out of the proceeds of your case. That way, you can get the medical treatment you need.

6. A lawyer can help you with the damage to your vehicle and impound the vehicle if necessary. In certain cases, it is necessary to preserve the vehicle(s) involved in an accident. Your lawyer has the resources to store the vehicle(s) if necessary.

7. A lawyer can help determine who is at fault for the accident

At fault vehicle(s) – as discussed above, determining fault in an accident is sometimes a complex endeavor which may require an expert to be hired and to give opinions on your behalf. Your lawyer has the resources and the connections to bring these expert into the case if necessary.

Florida is known as a pure comparative negligence state. This means that in Florida for example, if you are 50% responsible for the accident you can only recover 50% of the damages awarded.

Other parties – sometimes there are other entities that are responsible for the accident in whole or in part:

City – if a city employee was negligent

County – if a county employee was negligent

State – if a state employee was negligent

Construction companies – if a part of the roadway or the surrounding area was either constructed in an unsafe manner or which created a hazard to motorists.

Product manufacturers – It is not unusual for some automobiles to be designed or manufactured in an unsafe manner which may cause or contribute to your injuries. An experienced personal injury lawyer is trained to discover these defective vehicles.

Employer (worker's compensation claims) – if you are injured while on the job, your employer's worker's compensation insurance may pay all or part of your medical expenses and/or lost wages.

Other third parties – there may be others who are responsible for your accident and/or your injuries.

8. A lawyer can help you find liability insurance policies – finding insurance can be an extremely complicated task.

Liability policy of driver of at fault vehicle – your lawyer knows how to require the at-fault party's insurance company to provide the insurance policy including insurance coverages that apply to that driver.

Liability policy of the owner of the at fault vehicle – the owner of the vehicle may be responsible to pay some or all of your damages. Your lawyer knows how to obtain the owner's insurance information if available.

Uninsured/underinsured motorist coverage – this is insurance that you purchase in the event the at fault driver/owner do not either have any or enough liability insurance to compensate you for your damages. This is a complex area of the law and many special rules apply when it comes to obtaining their insurance coverage.

9. A lawyer can help you recover for 7 types of damages in Florida

Medical expenses in the past – medical expenses caused by the accident.

Medical expenses in the future – medical expenses which are reasonably certain to be incurred in the future as a result of the accident.

Lost wages in the past – your lost income from work as a result of the accident.

Lost wages in the future – future income that is reasonably certain to be lost as a result of the accident.

Pain and Suffering in the past – these are the intangible damages that Florida law requires that you meet a certain threshold before you can recover such damages.

Pain and suffering in the future - (keep track of your hardships in a diary).

Loss of Consortium claim – this is your spouses claim for his or her losses due to injuries. These include: loss of comfort and companionship.

10. A lawyer can have investigators gather the evidence while it is fresh to show who was at fault in the accident – this is **CRITICALLY IMPORTANT**. Evidence goes away quickly and easily. A lawyer can have the right people get the accident scene and to the vehicles in order to make sure all of the evidence is preserved.

The process of hiring a lawyer – finding the right lawyer

Background and experience – you are entitled to know your lawyer's background, education and experience in the handling of a personal injury claim which results from an automobile accident. Make sure you ask the lawyer questions about these things. If your lawyer is a good one, he will be proud to discuss his accomplishments with you.

Trial lawyers vs. settling lawyers – some lawyers rarely go to trial. The insurance companies know who these lawyers are. It is important for you to know if your lawyer is a lawyer who has had success in trial and who is willing and able (and has the resources) to try your case, if necessary.

Meeting with lawyer – your first meeting with the lawyer is for the purpose of determining whether or not you have a case. If you wish to hire this lawyer, you will discuss the details of your arrangement and will agree to the details in writing.

The Attorney's Fee Agreement – this is the written document which covers all of the details of your agreement with your lawyer, and which is in accordance with Florida law. Personal injury lawyers work on a contingency fee which means that if they don't recover for you, they get no fee. If the lawyer does recover for you, he takes a percentage of the gross recovery as his fee. He will also be entitled to recoup any costs spent on your case out of the gross recovery.

Statement of Clients' Rights – this is a document which Florida law requires that your attorney have you read and sign in every personal injury case. It tells you all of your rights and your lawyer's duties in the handling of your case.

Medical Authorizations – these are forms which HIPPA laws require in order for your attorney to get your medical records.

Other necessary forms and authorizations – (these include: lost wage forms, mileage forms, affidavit forms etc.)

The Claims Process

Opening a claim – once you have hired your lawyer, he will report your claim to the necessary parties including insurance companies, so as to begin the claim process.

Determining the correct Statute of Limitations – Every state has a law which requires that a lawsuit be filed within a certain period of time. In Florida, in an automobile accident case, that SOL is 4 years. In a wrongful death case, the statute is only 2 years from the date of death.

Applying for PIP benefits – PIP (personal injury protection) is a complex law in Florida that is constantly changing. Originally, it was a tradeoff between the insurance companies and the legislature which was designed to make sure that most people who are involved in an accident have way of paying their medical expenses, and obtaining some of their lost wages, regardless of fault. Again this law is complex and a thorough discussion of this law is beyond the scope of this summary. An application for PIP benefits must be submitted to your insurance company to start the claim process.

Medical expenses – PIP pays 80% of your medical expenses (subject to the requirements of Florida's PIP law).

Lost wages – PIP pays 60% of your lost wages.

Repairing/replacing your vehicle – your lawyer will point you in the right direction regarding how to get your vehicle damage adjusted and repaired/replaced.

Medical treatment – there is no more important aspect of your case, than your medical treatment. In addition to the fact that this involves “your health” insurance companies evaluate your case, initially, almost entirely based upon medical records.

Keep your medical appointments – a failure to keep your medical appointments will not only affect your health, but will affect your case.

Follow your medical providers' instructions – you are seeing your medical provid-

ers because they are in the best position to help you with your injuries. Follow their advice.

Do not change medical providers without consulting with your current medical providers and your attorney – if you wish to change medical providers for some reason, make sure you consult with your attorney so he can give you his advice and so he knows where he can get records if you do end up switching providers.

Letters of Protection – As mentioned above, in some instances where no insurance is available, your lawyer (with your permission) will sign a letter advising the medical provider that the bill or balance will be paid out of the proceeds of the lawsuit. This will prevent you from paying up front for the doctors' visits, and from being sent to collections.

X-Rays – these diagnostic tests are usually taken by a hospital and reviewed to determine if there is a broken bone.

MRI's – these are advanced radiological studies on which you are best able to see the soft tissues within the area of the study. For example, in the spine, a herniated disc can be seen, whereas on an x-ray, maybe not.

Other diagnostic tests – EMG/NCV, Bone Scan, CT scan – these are some other diagnostic tools which help your medical providers diagnose injury.

Medical Procedures – in addition to conservative care for a neck or a back injury in the form of physical therapy or the like, a physician may recommend trigger point injections, epidural or facet injections, si joint injections or the like. Your doctor may even recommend surgery. These treatments may assist in providing some relief from symptoms from a spinal injury. They also affect (may increase) the value of your case.

Gathering information to submit to the insurance company – your attorney will constantly be gathering information about your case. He will be obtaining insurance coverage information, medical records and bills, and input from you about the changes the accident has caused in your life.

Discussing your claim with you – once you have finished medical treatment, your attorney will conference with you about the value of your case and how much money he will be demanding from the insurance company.

Getting your permission to submit a claim to the insurance company

Your attorney should get your written permission to submit a claim to the insurance company on your behalf.

Submitting the claim to the insurance company

Demand letter – The demand letter is a comprehensive summary which is sent to the insurance company and which outlines fault for the accident as well as your injuries, medical treatment and other damages. The demand letter will demand a certain amount of money to be paid by the insurance company within a certain amount of time. It will include:

- ✓ medical records
- ✓ medical bills
- ✓ police report
- ✓ photographs
- ✓ lost wage information
- ✓ evidence of how the accident has affected your life
- ✓ other evidence

Providing additional information to insurance company – sometimes an insurance company will not make an offer, initially. They may request additional information in the form of:

Additional medical records and bills

Additional lost wage information

Diagnostic films

Prior medical records

It is customary to provide this information and provide a reasonable extension of time for the insurance company to make an offer.

Negotiating your claim with the insurance company

Determining the value of your claim – only years of experience will equip your attorney with the knowledge of the potential settlement value of your claim. Many factors are taken into consideration including the degree of fault on the other party, the type of injury sustained, the amount of medical treatment you had, the severity of the injury sustained, the extent to which it is permanent, the medical expenses, lost wages, and the affect this accident has had on your life.

Negotiating for the highest dollar amount in order to fully compensate you. Your lawyer will use his many years of experience to properly evaluate your case and will counteroffer any demands that require a counteroffer. If the case is worth the policy limits, your lawyer will either require payment of the policy limits or in the alternative will file suit. (discussed below).

Discussing settlement offers with you – your lawyer is required to discuss all settlement offers with you. He will advise you of any and all offers and make recommendations as to what the counter-offers should be.

Getting your authority to settle your case – You lawyer cannot settle your case without your authority. Your lawyer should get your settlement authority for the amount you and your lawyer agree on, in writing.

Settling your case – in most cases, your claim can be settled prior to filing a lawsuit. About 95% of all claims settle at the pre-suit stage. If you are able to come to an agreement with the insurance company, the insurance company will send your lawyer a check and a release for your to sign.

Understanding the Release – your lawyer will review the release to make sure it contains the appropriate language. In doing so he will explain the release to you before you sign it. Once you sign the release and return it to the insurance company, you are forever prevented from making a claim against the insurance company for anything related to the subject accident.

Obtaining the settlement check – as mentioned above, the insurance company will send a settlement check to your lawyer. Once your attorney receives the check he will deposit it in a trust fund from which no money can be disbursed before a settlement statement is signed by both you and your lawyer.

Getting permission from your uninsured/underinsured motorist carrier to settle with the at fault party – in some cases there is both uninsured motorist coverage/underinsured motorist coverage and your damages exceed the liability policy limits of the at-fault party. This creates an uninsured/underinsured motorist claim. It is critical that your lawyer does not allow you to release the at-fault party until the uninsured/underinsured motorist carrier has an opportunity to decide if it will either protect its right to pursue the at-fault party or waive that right. Your lawyer will send a certified letter to the UM carrier giving the UM carrier 30 days to make this decision. If the UM carrier decides to go after the at-fault party, your lawyer cannot release the settlement funds from the liability carrier nor allow you to release the at-fault party! However, the UM carrier, must pay the amount the liability carrier paid you instead.

Negotiating medical bills and liens – your lawyer will attempt to reduce your outstanding medical expenses so as to put as much money in your pocket as possible.

The Settlement Statement – a settlement statement is the final document to be signed by both you and your attorney. After the settlement statement is signed you can get your check, your attorney can take his fee, and the medical providers can be paid. At this time or prior to this time any release must be returned to the at-

fault insurer (unless the UM carrier must pay you instead, as discussed in c above). The settlement statement will itemize each of the below amounts to be paid according to the settlement statement.

Attorney's fees Costs

Medical bills Liens

Your net recovery

The Lawsuit (litigation) -

If the case does not settle at the Claims stage – a small percentage of cases do not settle at the pre-suit stage for one or more of several reasons. These may include: the insurance company does not evaluate the claim as you do; the insurance company wants to get additional information through the discovery process (discussed below); you are not satisfied with any settlement offers made by the insurance company, or other reasons.

Meeting with your lawyer – at this point your lawyer will have a conference with you to discuss whether your case should go into suit. (the process of starting an action in court).

Discussing with your lawyer whether you should file a lawsuit

The risks of a lawsuit – before a lawsuit is filed there is no risk to you.

The increased attorney's fees - after a lawsuit is filed the attorney's fees typically increase from 1/3 of the gross recovery to 40%. The timing of this increase is technical and beyond the scope of this discussion, but that is the rule in general.

The increased costs – before a lawsuit is filed, the costs (the money your attorney advances for getting medical records, hiring an investigator, sending mail, faxes or the like) are typically very low (less than \$1,000.00). After a lawsuit is filed the

costs could exceed several thousand, if not tens of thousands of dollars through a trial. Why? Because your attorney typically has to hire expert witnesses to establish fault or damages or both. Accident reconstructionists, medical experts, and economists are just some of the expensive expert witnesses that drive up the costs of litigation. These costs will be repaid to your lawyer out of any judgment or settlement obtained on your behalf, before you are paid.

The additional time involved in filing a lawsuit – the lawsuit process can typically take several months or even years, thus extending the time for your anticipated recovery.

Your participation in the process – after a lawsuit is filed, you will be required to be involved in the process in a more active way. These ways will be discussed below.

Filing the Lawsuit -

Drafting the Complaint – Your lawyer will draft the formal lawsuit papers to be filed with the court. This initial document known as the complaint sets forth all of the pertinent facts and the law which applies to your case. Florida requires your lawyer to be specific when he is pleading your case.

Drafting Initial Discovery – your lawyer may also draft other pleadings (this is what the papers filed with the court are called) to be served on the defendant (this is the party you are suing, either the at-fault party/parties or the UM insurance company or both).

Interrogatories – these are written questions to the defendant which must be answered by the defendant within a certain amount of time, either 30 days from service, or 45 days from service if served with the complaint.

Request for Production – these are requests for documents which the defendant must respond to within the same amount of time as the interrogatories.

Request for Admissions – these are requests for the defendant to admit certain

facts or issues of law which will then not need to be proven at trial.

Preparing the Summons – this is a document which is served on the defendant with the initial pleadings.

Filing a Civil Cover Sheet – this is a form that is required to be filed with a complaint which identifies the type of action the complaint describes.

Filing the Complaint – your lawyer will file this pleading to begin the lawsuit process. This document frames the facts and the issues of law to be decided in your case. It may include the negligence of the defendant (fault), the breach of contract of any UM carriers, the itemization of your 7 types of damages (or 6 if there is no spouse), and a prayer for relief.

Serving the Complaint – after the initial pleadings are filed, they must be served on the defendant, either by personal service, substitute service, or through the insurance commissioner's office if there is a UM claim.

Motion to Dismiss Complaint – sometimes, however, a defendant will file a response in the form of a motion to dismiss which is the defendant's first attack on the Complaint. If the motion is granted in whole or in part, your lawyer must amend the complaint to correct any deficiencies. If the motion is denied the defendant must answer the complaint within a time designated by the judge. If the complaint is amended, the complaint must then be responded to within the time designated by the judge.

The Answer to the Complaint/Affirmative defenses – typically, the defendant has 20 days to Answer the Complaint and file any defenses it has to the action.

The Response to the Affirmative Defenses to the Complaint – Your attorney may choose to respond to the Affirmative Defenses in the form of a Response. Typically, if your lawyer does not file a Response, all Affirmative Defenses to the Complaint are denied as a matter of law.

Punitive Damages – Florida law allows, in some circumstances, damages known

as punitive damages. Punitive damages may be allowed to be added to the Complaint upon a motion and a showing that your case merits a punitive damage claim. Punitive damages are available when the conduct of the defendant is either the type that shows that the defendant acted intentionally in disregard of indifference to life, or that the conduct is so reckless that the conduct is considered indifference to life. Examples of automobile cases where punitive damages are sometimes allowed are accidents involving a DUI driver, or sometimes where the at-fault driver is texting at the time of the accident.

Discovery – the process of gathering information in a lawsuit is called discovery. It comes in several forms discussed below.

The Interrogatories to You – these are written questions that are sent to you in the same manner as you served them on the defendant. Your lawyer will assist you in answering these questions, which must be given under oath, within 30 days of service, unless an extension of time is granted.

The Request to Produce to You (it is important for you and your lawyer to gather all of your medical records in the past as well as tax returns) – this is a request for documents and other items which is sent to you in the same manner as you served them on the defendant. Typically the items you will need to gather are tax returns and W-2's if there is a lost wage claim, medical records in the past, any other things that are relevant to the case and that are in your possession. Your attorney will provide the defense with any medical records and bills and other items in your attorney's possession. Again, this request must be responded to within 30 days of the request unless there is an extension granted.

The Request for Admissions to You – as discussed above, these are facts and issues of law that must be admitted or denied. Your attorney will assist you in responding to these.

Your Deposition – this is the defendant's opportunity to ask you questions in person and under oath. There are several purposes for the taking of your deposition. These include: finding out from you in your own words what happened and what

are your damages; the defense attorney (and sometime the insurance adjuster's) opportunity to "lay eyes on you" and to listen to how you relate the facts as this will impact how they evaluate you as a plaintiff (how you will appear in front of a jury); and the defense's opportunity to gather information that they can use against you at a later time, such as inconsistent statements, or your failure to admit to a prior injury. Your attorney will prepare you for your testimony in a meeting which occurs sometime before your deposition, known as a pre-deposition conference.

The at fault party's deposition – if the defendant does not admit fault, it may be necessary for your attorney to take the deposition of the at-fault party. This is also important, because it will give your attorney the same opportunities to evaluate the defendant as they had to evaluate you. It will help in determining how sympathetic a party the defendant will be. After all, you will be requesting money from the defendant at trial, because the jury won't be told about insurance coverage, unless there is a UM carrier in the lawsuit.

Any accident witnesses depositions – it may be necessary to take the depositions of witnesses to the accident. This is especially important when the defendant disputes that it is at fault, in whole or in part, for causing the accident.

The investigating officer's deposition – The investigating officer's deposition is often important when the officer is either a witness to the crash, or the officer is a witness to the evidence at the scene of the accident. However, most statements made by the persons involved in the crash, to the police officer at the scene of the crash, are privileged under a special accident report privilege in Florida. This privilege is designed to encourage participants in the accident to tell the truth and the whole story, without fear of the statements later being used against them.

Your expert witness(es) deposition – the defendant will take your expert witnesses depositions. Your attorney will discuss this testimony with your expert witness's, whether they are a medical witness, and accident reconstruction expert, an economic expert or other expert prior to the witness giving testimony in deposition. This will help prepare the expert witness for the testimony that they will give in the deposition. Again, this is referred to as a pre-deposition conference.

The defense expert deposition – it will be important for your lawyer to find out several things from a defense expert deposition not the least of which are: how credible the expert will appear at trial; what his expert opinions are; what material your attorney can use to demonstrate bias or prejudice on the part of the expert; and many other things.

Your before and after (B/A) witness depositions – early in the case, your attorney will determine who the best witnesses are to talk about how you were before and after your accident (thus the term before and after witness). The best before and after witnesses are less likely to appear biased, such as an employer or supervisor, a medical doctor who has treated you before and after the accident, neighbors who have the opportunity to observe you both before and after the accident. Relatives and friends can often be good B/A witnesses, but for obvious reasons they will be more biased.

Other depositions – there may be other witnesses who may be deposed in your case before the case is ready for a trial.

The Defense Medical Examination –

Under the law in Florida, the defendant is entitled to have his own medical witness perform a medical examination of you. These CME doctors (compulsory medical examination) are often doctors who have testified for the defense many times in the past and have made an exorbitant amount of money doing so. Of course your attorney will have the opportunity in deposition or trial to bring this bias to light, but often times these experts are so well trained and experienced they appear believable to the jury, notwithstanding their bias.

This examination may only take 10-15 minutes with a 45 minute interview, which is almost like another deposition with the medical doctor as a witness to your statements.

Your attorney may do several things in preparation for this examination: he will discuss with you what to do and what not to do in the examination; he may file a motion which limits what types of questions that doctor can ask, or what type of non-invasive procedures the doctor can perform; he may also have a court reporter and/or

a videographer attend the examination in order to document what happened in the defense examination.

The CME Doctor is not your doctor or your friend – often a plaintiff is confused about the role of the CME doctor. He is NOT your friend. He is NOT your doctor. In fact *he isn't even bound by the hypocritical oath during his examination and the writing of his report and the giving of testimony.* He cannot be sued for malpractice if he gives the wrong opinion (and he says only what the defendant needs him to say to defend the damages in the case). This may seem unfair, and it may be, but because you have treating doctors, the Florida Supreme Court has determined that it is only fair for the defendant to have his own medical witnesses.

Settlement Process – often times your case can be settled while it is in suit and before a trial.

Proposals for Settlement – a proposal for settlement is a special type of an offer which is made by one of the parties which is designed to promote settlement. It is a harsh rule which penalizes you when a defendant makes such an offer, and if you do not accept the offer within 30 days, and if you go to trial and obtain a judgment which is not at least 75% of the offer. If this occurs, you may be responsible to pay the defendant's attorney's fees and costs, from the time of the offer, which could add up to several thousands of dollars, if not tens of thousands of dollars. This rule seems unfair to virtually every plaintiff. There is a corollary rule, however, which says that if you make a proposal for settlement to the defendant and the defendant does not accept the offer within 30 days and the case goes to trial and you obtain a net judgment which equals or exceeds 125% of the offer, then the defendant may be responsible to pay a percentage or all of your attorney's fees and costs from the time you filed the motion.

Any pre-mediation negotiations – sometimes the defendant will attempt to settle a case before a formal settlement conference, known as a mediation.

Mediation –

this is an informal settlement conference which is required to occur before any trial. It is a conference where the respective parties give a brief presentation of their cases and then they negotiate. The mediator is not the judge and no testimony will be given. The mediator's rule is to help settle the case. He basically goes between the parties who, after the presentations, split into separate rooms. The mediator relays demands and offers until either the case is settled or an impasse is reached.

Post-mediation negotiations –

sometimes a case doesn't settle at mediation and negotiations continue after the mediation. This can also result in a settlement before trial.

Negotiating for the highest dollar amount in order to fully compensate you – your attorney will use his best efforts to negotiate for the highest amount possible. This is true, not only because he wants the best for you, but because he also has a financial interest in the case.

Discussing settlement offers with you – again, your lawyer will discuss all offers with you and should estimate for you how much you will get in your pocket with any offer.

Getting your authority to settle your case – again, your lawyer must have your permission to settle your case and it should be in writing.

Settling your case – if negotiations are successful you will settle your case.

Understanding the Release – your lawyer will review the Release to make sure it contains the appropriate language and he will explain the release to you before you sign it. Once you sign the release and returns it to the insurance company, you are forever prevented from making a claim against the insurance company for anything related to the subject accident.

Obtaining the settlement check – as mentioned above, the insurance company will send a settlement check to your attorney. Once your attorney receives the check he will deposit it in a trust fund from which no money can be disbursed before a settlement statement is signed by both you and your lawyer.

Getting permission from your uninsured/underinsured motorist carrier to settle with the at fault party – in some cases there is both uninsured motorist coverage/underinsured motorist coverage and your damages exceed the liability policy limits of the at fault party. This creates an uninsured/underinsured motorist claim. It is critical that your lawyer does NOT allow you to release the at-fault party until the uninsured/underinsured motorist carrier has an opportunity to decide it will either waive it's right to pursue the at-fault party or waive that right. Your lawyer will send a certified letter to the UM carrier giving the UM carrier 30 days to make this decision. If the UM carrier decides to go after the at-fault party, your lawyer cannot release the settlement funds from the liability carrier nor allow you to release the tortfeasor! However, the UM carrier, must pay the amount the liability carrier paid you instead.

Negotiating medical bills and liens – your lawyer will attempt to reduce your outstanding medical expenses so as to put as much money in your pocket as possible.

The Settlement Statement – a settlement statement is the final document to be signed by both you and your attorney. After the settlement statement is signed you can get your check, your attorney can take his fee, and the medical providers can be paid. At this time or prior to this time any release must be returned to the at-fault insurer (unless the UM carrier must pay you instead, as discussed in f above). The settlement statement will itemize each of the below amounts to be paid according to the settlement statement.

Attorney's fees	Costs
Medical bills	Liens
Your net recovery	

Trial – if your case doesn't settle, there will be a trial.

This is generally in front of 6 jurors (plus maybe an alternate or two) who are from the area and who have a driver's licence. There's no real way of predicting what any jury will do at any one time; that's why most cases settle. But if there is a trial, this is the process:

Preliminary Instructions by the judge – The judge will give some opening instructions to the jury panel, described below as the venire. These instructions are basic, but they advise the jury of things like not discussing the case before the deliberations, (when the jury gets together and decides the case).

Jury Selection – this is the only time your lawyer can ask questions of the potential jurors (called the venire) during the trial. Your lawyer will prepare various areas of inquiry for each of these folks in a way that is designed to weed out the jurors who might not be favorable to your case. The process can be complex but basically each party has 3 preemptory challenges for the venire. (this means that the juror can be stricken for any reason as long it is race/religion neutral). However, the attorney's can strike as many jurors as they want for cause, (this is where the juror has in some fashion indicated that even before the trial begins, they cannot be fair and impartial). There are several theories and methods of jury selection, but the best lawyers focus on striking (and succeed at striking) as many jurors for cause as possible. This takes a lot of skill from an experienced trial lawyer. Ultimately, 6 strangers (who have been asked many questions) and possibly one or two alternates are "deselected" from this venire and they are seated and sworn.

More preliminary instructions will be given by the judge at the beginning of the case.

Opening Statements – this where the lawyers give a brief summary of the case. It is distinguishable from a closing argument in that it should be a relatively neutral description of the case without arguing the case. However, good lawyers fashion their opening statements in such a way that it sounds like an argument without being one. This also takes a lot of skill from an experienced trial lawyer.

Your (Plaintiff's Case) – the plaintiff always goes first. This holds true for every aspect of the trial. Your lawyer will choreograph your case for maximum effect on the jury. In an automobile accident case, the case might go like this:

8.e.a.A.i. Investigating Officer – the lawyer may call the investigating officer who will come in in uniform to testify to the jurors. He sort of makes the accident “official”.

Accident witnesses – the lawyer may call accident witnesses. These are especially important when the defense disputes fault in whole or in part for the accident.

Medical witnesses – your lawyer may call medical experts. These are doctors who have treated you for the injuries you received in the accident. They may testify either live or by written deposition or video deposition. There are certain requirements that a medical expert must testify to in order for the plaintiff to recover compensation for the plaintiff's injuries. For example: in an automobile accident case in Florida, the plaintiff must prove the injury within a reasonable degree of medical probability. Also, in most automobile accident cases in Florida, the plaintiff must prove a permanent injury within a reasonable medical probability in order to recover pain and suffering damages.

Other expert witnesses – there may be other expert witnesses that your lawyer will call to the stand such as economic experts who will help the jury understand a claim for future losses as well as past losses.

Before and after (B/A) witnesses – as discussed above, some witnesses can testify about their observations of you before and after an accident and how the accident changed your life. The best before and after witnesses are less likely to appear biased, such as an employer or supervisor, or a medical doctor who has treated you before and after the accident, neighbors who have the opportunity to observe you both before and after the accident. Relatives and friends can often be good B/A witnesses, but for obvious reasons they will be more biased.

Your testimony – Your testimony is the highlight of the Plaintiff's case. Often times a good lawyer will allow the case to build up to the crescendo which is your testimony. Most lawyers would agree that primarily the value of your case is dependent on you as a witness. Generally, if jury likes you, they will compensate you.

Motions – at this point, the defense may make motions designed to persuade the judge to end the entire case or a portion of the case, before the defense even presents evidence, on the basis that the plaintiff has not met the basic requirements of proving the plaintiff's case. This is called a motion for directed verdict.

The Defense's Case – After the Plaintiff's case, the defendant is entitled to put on evidence.

The at fault driver – The defendant may call the at-fault driver. Sometimes even though the defense partially admits fault, the issue of comparative negligence (discussed above) is brought to light by the defendant's testimony. Just like a plaintiff, a jury will evaluate the defendant. Woe unto the defendant who does not make a good appearance in front of a jury!

Accident witnesses – As discussed above, the defense lawyer may also call accident witnesses. These are especially important when the defense disputes fault in whole or in part for the accident.

The Defense Doctor – this is the CME doctor discussed above. He was not your friend or doctor during the examination, and he will not be your friend or doctor in court. Sometimes, the defense calls the CME doctor as their only witness. This is how powerful the CME's doctor's testimony can be.

Other Defense Experts – the defense may match your (plaintiff's) expert witnesses with their own witnesses, if they so choose. For example, if each side has an accident reconstructionist to blame the other party, you can expect a "battle of the experts". And while this is often exciting to watch, it will be nerve-racking for you and possibly your lawyer. A good, experienced trial lawyer knows how to handle these defense experts in trial.

Other witnesses – like you, the defense may call other witnesses such as an investigator to testify about video-surveillance of you doing things that you have said you can't do.

Rebuttal – Sometimes the Plaintiff will want to put on a rebuttal case. A rebuttal is the Plaintiff's (and only the plaintiff's) opportunity to answer with evidence, something that the defense presented in it's case and which was not covered in Plaintiff's case. It is not the time for the Plaintiff to present new evidence.

Motions – at this point, the plaintiff's attorney may move the court and request the judge to throw out the defendant's case in whole or in part. This is also called a motion for directed verdict.

Closing Arguments – In contrast to the opening statement, this final opportunity for the lawyers to address the jury is designed to be an argument. (thus the term closing argument). In the closing argument, the lawyers will sum up the evidence and attempt to persuade the jury to find in their client's favor, respectively. And while the argument is not evidence, cases are often won and lost in the closing argument. An experienced trial lawyer knows just how to persuade a jury to find in your favor.

Jury Instructions – The judge will now give the law in the case to the jury. This is such an important part of the trial, that for the first time during the entire trial, the doors of the courtroom will be locked. The jury has heard the facts from the evidence, but now the judge will provide them with the law to apply to facts. Lawyers spend hours and hours refining jury instructions, because no matter how well the evidence comes in, without the correct law, the jury might make the wrong decision.

The Verdict – After sometimes what is many days or weeks in trial, and all of the evidence is in, and after the judge instructs the jury on the law, the jury will be sent out of the courtroom and put in a room known as the jury room to decide on a verdict. In Florida, this verdict must be unanimous. This rule often causes a jury to deliberate for several hours or even days, because a juror or jurors may have heard evidence differently, may have understood the law differently or is /are simply biased or prejudiced such that he/she is a "hold-out". Ultimately, the jury will return to the courtroom with the unanimous verdict, or they will return to the courtroom and say they couldn't

reach a unanimous verdict. When the latter occurs, the judge will send the jury back to the jury room to attempt to reach a unanimous verdict. If the jury is still unable to reach a unanimous verdict, the judge will declare a mistrial, and the parties may, at a later time, start the trial process all over again. After the verdict is read, the judge will ask the lawyers whether he wishes to “poll” the jury. If a lawyer requests a jury poll, the judge will ask each juror if this is indeed his/her verdict.

Post Trial Motions

Motion for Judgment notwithstanding the verdict – the lawyers may ask judge to make his own decision about the law and the evidence, which is contrary to the verdict. These motions are typically denied.

Motion for New Trial – the lawyers may also ask for a new trial. This can be granted on all or a portion of the case. For example: the judge may grant a motion for new trial on the issue of damages alone. Then at a later time, the parties would have the opportunity to present the damages portion of the case again.

Motion for Additur – this motion, brought by the plaintiff’s lawyer asks the judge to increase the damages portion of the verdict.

Motion for Remittur – this motion, brought by the defendant’s lawyer asks the judge to reduce the damages portion of the verdict.

Motion for taxable Costs – the prevailing party (determined by the judge) will be required to pay “taxable costs” in accordance with the Florida Rules.

Motion for Attorney’s fees and Costs (if there was a proposal for settlement) – as discussed above. If either party did not meet the requirements of this rule, he/she may be liable for the other side’s attorney’s fees and costs.

Motion for final judgment – at this point, one or both of the parties will move for a final judgment which the judge will enter.

The Appeal Process

Notice of Appeal and/or cross appeal – after a final judgment, each party in Florida has the right to appeal the judgment. If the party so chooses, the party will file a Notice of Appeal, within the time prescribed by the Florida Rules.

Appellant Brief – at this time the party who has appealed the case will write a brief describing any and all rulings in the trial that the party considers in error.

Respondent or Appellee Brief – at this time, the party against whom the appeal is taken, will answer the arguments presented by the appellant in the appellant brief. This is called the Appellee brief.

Any motions – the appellate court will rule on any motions made by the parties during the case.

Oral argument – sometimes the parties will be allowed to make an in-person argument in front of the appellate justices. This is called the oral argument. During this interesting part of the case, the justices might ask questions of the party or parties attorneys after or during the respective attorneys' argument.

Appellate court Opinion(s) – ultimately, the appellate court will render a decision which is known as an appellate opinion. This is the final word in the case, unless there are further appeals, in which case, the appellate process begins all over again in a higher court.

Thank You

**All of us at the All Injuries Law Firm appreciate you,
our client, and we are honored to represent you.**

And while we cannot guarantee any particular results,
we will work tirelessly achieve the best results possible.

We also appreciate your taking the time to read through this Survival Guide and
we sincerely hope you found the information contained herein to be helpful.

We also we want you to know that we are available, at all times, to answer
any questions you may have about your case or our representation of you.

If you would like any additional information,
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